UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Independent Market Monitor for PJM,	)	
	)	
Complainant	)	
	)	
v.	)	**Docket No. EL17-82-000**
	)	
PJM Interconnection, L.L.C.,	)	
	)	
Respondent	)	

COMMENTS OF POTOMAC ECONOMICS, LTD

Pursuant to the Commission's July 25, 2017 notice in the above-captioned docket, Potomac Economics, Ltd. ("Potomac Economics") respectfully submits the following comments narrowly addressing the motion of PJM Interconnection, L.L.C. ("PJM") to dismiss the complaint of the PJM Independent Market Monitor ("PJM IMM") in this proceeding.

Specifically, Potomac Economics objects to PJM's unfounded and unduly narrow conception of the circumstances under which an Independent Market Monitor ("IMM") may file a complaint against a Regional Transmission Organization ("RTO") or Independent System Operator ("ISO"). PJM's motion to dismiss in this case would rewrite the Commission's procedural rules to strip IMMs of their rights to file a complaint under the Federal Power Act ("FPA"). PJM's request has no basis in the FPA or the Commission's regulations and precedent. It is also contrary to the public interest for PJM to try to create impediments to IMMs raising concerns with the Commission.

Contrary to PJM's view that the right to file a complaint is defined by tariff, the provisions of the FPA itself, as well as the Commission's implementing regulations, are what actually governs and they establish a broad right to file complaints at the Commission. Commission Rule 206, which implements the complaint provisions of Sections 206 and 306 of the FPA, establishes who may file complaints. It states that:

> Any person may file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction. [1]

Neither the FPA nor Rule 206 establishes or references any restrictions on which "persons" may file complaints. Rule 105(d) broadly defines "person" as follows:

> [P]erson means an individual, partnership, corporation, association, joint stock company, public trust, an organized group of persons, whether incorporated or not, a receiver or trustee of the foregoing, a municipality, including a city, county, or any other political subdivision of a State, a State, the District of Columbia, any territory of the United States or any agency of any of the foregoing, any agency, authority, or instrumentality of the United States (other than the Commission), or any corporation which is owned directly or indirectly by the United States, or any officer, agent, or employee of any of the foregoing acting as such in the course of his or her official duty.[2]

In *American Electric Power Service* Corporation,[3] the Commission recently reiterated the traditional understanding that "[t]he plain language of the FPA and the Commission's implementing regulations allow broad participation in proceedings before the Commission" including complaint proceedings. In that case, the Commission affirmed that retail electric customers of Commission-jurisdictional public utilities may file complaints addressing

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1 18 CFR § 385.206 (2016).

2 18 CFR § 385.102(d). *See Competitive Transmission Developers v. New York Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,164 at P 31 n. 80 (2016) ("A ″person″ is broadly defined as ″an individual . . . an organized group of persons, whether incorporated or not . . .″").

3 153 FERC ¶ 61,167 at P 13 (2015).

Commission-jurisdictional transmission rates despite the indirect and relatively remote nature of their interest.[4] The Commission's order cited a statement by the United States Supreme Court that numerous entities without a direct financial interest in a dispute may nevertheless file complaints.[5] It also indicated that there is no difference between the types of "persons" who may file complaints and those who may file protests.[6]

To the best of Potomac Economics knowledge, the Commission has never before taken the position that market monitors are not permitted to file complaints. The Commission has previously denied market monitor complaints on the merits but not based on the novel procedural theories advanced by PJM in this proceeding.[7] Indeed, PJM's tariff expressly specifies that market monitors may file complaints against market participants in certain instances.[8] The Commission itself recently suggested that it expected PJM's market monitor to file complaints against PJM under certain circumstances.[9] This statement prompted PJM to seek clarification

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[4] 153 FERC ¶ 61,167 at P 15.

[5] 153 FERC ¶ 61,167 at n. 44, *citing NRG Power Mktg. v. Me. Pub. Utils. Comm'n*, 558 U.S. 165, 176 & n.5 (2010) for the proposition that "complainants may include consumers, advocacy groups, state utility commissions, and elected officials acting *parens patrie*."))

[6] 153 FERC ¶ 61,167 at P 13 and n. 42 (equating the eligibility requirement for filing a complaint with the requirement for filing a protest). This is directly contrary to PJM's view that a market monitor may file a protest but is somehow barred from filing a complaint. *See PJM* Answer at 18 ("PJM does not contest an IMM's right to file comments or protests in Commission proceedings to apprise the Commission of its views. Any person—market monitor or not--may do so").

[7] *See Independent Market Monitor for PJM v. PJM Interconnection, LLC*, 155 FERC ¶ 61,059 (2016) (denying IMM complaint on substantive grounds but giving no indication that market monitors were precluded from filing complaints in the first place).

[8] *See PJM* Interconnection, L.L.C., *Request for Clarification*, Docket No. ER16-372-002 (March 6, 2017) ("PJM Clarification") at 5 ("For market power concerns 'related to a Sell Offer submitted in an RPM auction,' the IMM is authorized to file a complaint with the Commission").

[9] *See PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133 (2017) at P 86 (stating that disputes between PJM and its market monitor regarding generators' fuel cost policies should not be referred to the Office of Enforcement but should instead be addressed through complaint or alternative dispute resolution procedures).

regarding its market monitor's authority to file complaints against it,[10] which in turn resulted in the strong objections by PJM state regulators and other parties.

Simply stated, an IMM is a "person" for purposes of the Commission's complaint regulations. Consistent with Rule 206 it is "seeking Commission action" against another "person" in this instance PJM, that is in "contravention or violation of" Section 205's prohibitions against unjust, unreasonable, and unduly discriminatory rules. Nothing in PJM's motion to dismiss provides a rationale that could plausibly justify the proposition that the Complaint was prohibited under the Commission's rules; nor has PJM shown that it would be good policy to reinterpret those rules to prohibit IMMs from filing complaints pertaining to its core monitoring responsibilities.

While complaints filed under the Federal Power Act ("FPA") are not the only mechanism that IMMs have to highlight such problems, such complaints are nevertheless a vital part of the panoply of remedial approaches available to IMMs. Precluding IMMs from filing complaints when necessary to address market problems will hamper the Commission's own administration of its regulatory responsibilities, and its ability to facilitate efficient, well-functioning markets.

Even if the Commission had the authority to limit market monitors' complaint rights, it would be unwise to do so. Broad complaint rights ensure that the Commission has access to information about potential issues from a wide spectrum of sources. Given their responsibilities, expertise, and access to information, market monitors are uniquely well-positioned to identify and raise important issues. Limiting their ability to do so by reading a needlessly stringent and legally-unjustifiable standing requirement into the complaint rules would hobble the Commission

[10] PJM expressly did not ask the Commission to address market monitors' right to file complaints against market participant in that proceeding but argued only that market monitors were prohibited from filing complaints against PJM itself. *See PJM* Clarification at 3.

and its ability to implement effectively its rules and policies. This kind of concern is the very reason why the Courts and the Commission have consistently held that there is a broad right to file a complaint,[11] and have consistently rejected efforts to narrow the scope of Rule 206.[12]

PJM's motion to dismiss the complaint on the ground that its IMM has no standing is the latest in a long line of similar attempts to artificially deprive market monitors of filing rights that are theirs by law and which the Commission has an interest in preserving. PJM's argument has no merit under the FPA or the Commission's implementing rules, would hamper unnecessarily the Commission's ability to administer the statute effectively, and should be rejected.

Respectfully submitted,

/s/ David B. Patton

David Patton
President
Potomac Economics, Ltd.

September 1, 2017

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11 *See NRG Power Marketing v. Maine Public Utilities Commission, et al.*, 558 U.S. 165, 176 n.5 (2010) (emphasizing the breadth of the FPA's provision allowing for the filing of complaints).

12 *See American Electric Power Service Corporation*, 153 FERC ¶ 61,1167, PP 13-17 (2015) (holding that, based on the broad language of FPA Section 306 and FERC's implementing regulations, retail customers are allowed to file complaints at FERC and participate in proceedings, even though FERC's jurisdiction extends only to sales for resale and transmission in interstate commerce; also holding that the question of who may file a complaint at FERC "is not a matter of first impression" and has been addressed by the Commission many times before); Potomac-Appalachian Transmission Highline, LLC, 140 FERC ¶ 61,229, P 106 (2012) (finding that a complaint "can be filed by any person, including an end-use customer that will pay . . . some portion of that rate when flowed through its retail bill.").