

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

CPV Shore LLC	)	
	)	Docket No. ER19-1083-000
	)	

**ANSWER AND MOTION FOR LEAVE TO ANSWER  
OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rules 212 and 213 of the Commission’s Rules and Regulations,<sup>1</sup> Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM<sup>2</sup> (“Market Monitor”), submits this answer to the answer submitted on April 2, 2019, CPV Shore LLC (“CPV”). CPV’s answer provides no new or useful information. CPV’s answer misrepresents the purpose of fuel cost policies and why granting the requested waiver would undermine that purpose. The Market Monitor provides this answer in order to dispel the potential confusion and thereby facilitate the decision making process.

**I. ANSWER**

CPV claims (at 5) the Market Monitor’s complaint is “inconsistent with the Commission’s previous caution to the IMM not to ignore the realities of commercial gas markets during stressed conditions.” CPV further states (at 6): “the IMM would have Shore use the day-ahead estimate rather than its verifiable live quote intra-day actual gas even though Shore’s gas costs not surprisingly changed between the day-ahead and intra-day markets as a result of the volatile conditions caused by a Bomb Cyclone.”

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<sup>1</sup> 18 CFR §§ 385.212 & 385.213 (2018).

<sup>2</sup> Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”) or the PJM Operating Agreement (“OA”).

The fuel cost policy that CPV seeks to prevent PJM from enforcing was developed by CPV and approved by the Market Monitor and PJM. It is not the Market Monitor's policy. The effective policy is CPV's policy. The penalty results from CPV's failure to follow its own policy. CPV has the responsibility to put in place a systematic and verifiable fuel cost policy that is consistent with "the realities of commercial gas markets" and then adhere to it.

Akin to the filed rate doctrine, penalties are assessed based on the fuel cost policy currently in effect, not other policies that could have been in effect. Under the filed rate doctrine, if the filed tariff requires that a penalty applies under a specified circumstance and that circumstance occurs while that tariff provision is effective, the penalty would be applied. Any subsequent change to the tariff penalty rules would not be relevant. That is true even if the later rules were better in some way. The same principle applies to fuel cost policies. CPV should have instructed its staff to adhere to its fuel cost policy or pay the penalty. CPV violated its fuel cost policy and the consequence is a penalty.

The Market Monitor agrees with CPV (at 7) that in this proceeding the "only relevant date is January 5<sup>th</sup>." The only relevant CPV fuel cost policy relevant to this proceeding is the CPV fuel cost policy effective on January 5<sup>th</sup>. Whether a revised fuel cost policy was pending on that date and whether a revised policy would be approved after that date is irrelevant. It is equally irrelevant that CPV believes that the new fuel cost policy is better than the fuel cost policy that was actually effective.

Petitions for waivers should not be abused to retroactively change the effective fuel cost policy. CPV responds (at 8) that the Market Monitor "creates a number of doomsday scenarios." The Market Monitor has one concern and it is not hyperbole. If fuel cost policies are not routinely enforced based on the policy in effect on dates when relevant market behavior occurs, then the purpose of fuel cost policies will be defeated. The point and purpose of fuel cost policies is to require market participants to explain ex ante how they are going to determine the fuel cost to be used in their cost-based offer so that there is a basis to evaluate the participant's actual behavior, including in, and especially in, volatile

fuel market situations. Such situations create significant opportunities to exercise market power and manipulate the market. With ex ante approval of fuel cost policies, the public can have confidence that participant actions are based on the commercial realities, as the participant views them and as the participant defines them, and that participant actions are not based on post facto rationalizations.

The petition should be denied.

## II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to answers or protests unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.<sup>3</sup> In this answer, the Market Monitor provides the Commission with information useful to the Commission's decision-making process and which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

## III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this answer as the Commission resolves the issues raised in this proceeding.

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<sup>3</sup> See, e.g., *PJM Interconnection, L.L.C.*, 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that "provided information that assisted ... decision-making process"); *California Independent System Operator Corporation*, 110 FERC ¶ 61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process); *N.Y. Independent System Operator, Inc.*, 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

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Dated: April 11, 2019

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,  
this 11<sup>th</sup> day of April, 2019.



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