

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

PJM Interconnection, L.L.C.

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Docket No. ER20-1764-000

PROTEST OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),² submits this protest to the filing submitted in this proceeding by PJM on May 4, 2020 (“May 4th Filing”). The May 4th Filing proposes to weaken, or in some cases eliminate, the rules that govern fuel cost policies, to permit PJM defined cost-based offers to replace market seller defined cost-based offers in some cases, in contravention of the PJM tariff, and to reduce or eliminate the penalties associated with the submittal of incorrect cost-based offers. The current rules for fuel cost policies were established under directives of the Commission pursuant to its authority under Section 206 of the Federal Power Act.³ Although submitted under Section 205, PJM is not free to propose revisions to its rules that contradict the directives in an earlier order directing PJM to combine new rules for offer flexibility with “appropriate market power

¹ 18 CFR § 385.211 (2019).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”), the PJM Operating Agreement (“OA”) or the PJM Reliability Assurance Agreement (“RAA”).

³ 16 U.S.C. §§ 824e, 825e (2012).

mitigation.”⁴ The May 4th Filing does not even attempt to demonstrate compliance with the directives in the order issued June 17, 2016, rejecting PJM’s first proposal to allow intraday offer changes (offer flexibility) in PJM markets (“FCP Order”).⁵ The proposed changes operate contrary to those directives. The proposed changes will result in rates that are unjust and unreasonable because the proposed changes permit the exercise of market power, because the proposed changes result in fuel costs that are not accurate and verifiable, because the proposed changes permit PJM to define market sellers’ fuel costs, and because the proposed changes fail to appropriately penalize incorrect submissions.

Functional and accurate fuel cost policies are essential to effective market power mitigation. The May 4th Filing degrades the market power mitigation rules that the Commission required in order to balance the introduction of offer flexibility. An efficient and effective process to ensure accurate fuel cost policies and encourage compliance is now core to the market power mitigation needed to protect PJM markets. An efficient and effective process to ensure accurate fuel cost policies and encourage compliance is core to efficient and effective monitoring of participant behavior.

The May 4th Filing should be rejected because it violates the Commission directives in the FCP Order and the findings in the order on PJM’s compliance filing issued February 3, 2017 (“FCP Compliance Order”).⁶ There is no reason to relitigate these matters.

PJM states that a key goal of the May 4th Filing is to reduce some of the administrative burdens on market sellers associated with fuel cost policies.⁷ The filing does include several administrative changes designed by the Market Monitor to improve the fuel cost policy review process for market sellers, PJM and the Market Monitor. But the most

⁴ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,282 at P 32.

⁵ *Id.*

⁶ *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133 at PP 80–82.

⁷ May 4th Filing at 1.

significant elements of the filing are not about administrative burden but are about undermining the purpose of fuel cost policies. PJM's proposed changes would abrogate fuel cost policies when they are most needed, would permit PJM to define market sellers' cost-based offers in violation of the PJM Operating Agreement, and would eliminate the penalties needed to provide appropriate incentives. The administrative elements of the May 4th Filing that are consistent with the Commission's directives and that the Market Monitor supports can be refiled.⁸

I. BACKGROUND

Substantial changes made to the rules governing PJM generator offers in the aftermath of the 2014 Polar Vortex allowed generators to submit hourly offers, make intraday changes to offers, and submit offers exceeding \$1,000 per MWh. The Market Monitor recognized that, if not modified, the changes would weaken market power mitigation. The Market Monitor supported the changes, but only if the changes included explicit and parallel changes to the market power mitigation rules. The Market Monitor explained:

The existing requirement to have a single offer daily for every unit was introduced as a market power mitigation measure with the original PJM market design in 1997 and was consistent with PJM offer rules that predated the creation of the PJM market. If a unit has to make a single offer for the day, it has a strong incentive to make a competitive offer to ensure that it will run. If the unit can change its offer hourly, the unit has the ability to increase its markup over marginal cost and its offer when demand is high and thus to exercise market power by increasing the market price above the competitive level. This rule has been one of the key elements of market power mitigation rules in PJM since the markets began operating in 1999. In addition to the fixed daily offer rule, the overall energy market offer cap of \$1,000 per MWh

⁸ Minor elements of a filing cannot be accepted while rejecting the core purpose of a filing under Section 205. *See* NRG Power Mktg., LLC v. FERC, 862 F.3d 108 (2017).

served as an extreme upper bound to limit the exercise of aggregate market power.⁹

In response to a market seller's complaint that the inability to change offers intraday resulted in losses, the Commission found under its Section 206 authority that the PJM Operating Agreement "may be unjust and unreasonable because it does not allow market participants to submit day-ahead offers that vary by hour or to update their offers in real-time (hourly offers), including during emergency situations."¹⁰ The Market Monitor agreed that hourly offers would improve market efficiency if corresponding modifications to the market power mitigation rules ensured that market offers were competitive.¹¹

In the FCP Order (at P 33), issued June 17, 2016, the Commission rejected PJM's first proposal to introduce hourly offers because it lacked sufficient protection against market power. The Commission determined that market sellers' "great flexibility to modify their offers" and the public interest in "proper price formation and efficient real-time dispatch" must be "combined with appropriate market power mitigation."¹² PJM's proposal for ex post review, "that PJM or the IMM may request evidence supporting the calculation of cost-based offers in the event that either PJM or the IMM suspects that a resource has not submitted a cost-based offer in accordance with the PJM Tariff and manuals," was rejected as inadequate.¹³

The Commission explained:

⁹ Protest of the Independent Market Monitor for PJM, Docket Nos. EL 15-73 and ER 16-372 (December 14, 2015) at 6.

¹⁰ *Duke Energy Corp. v. PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,206 (2015), *order on reh'g*, 154 FERC ¶ 61,156 (2016).

¹¹ Protest of the Independent Market Monitor for PJM, Docket Nos. EL15-73-000 & ER16-372-000 (December 14, 2015) at 5.

¹² FCP Order at P 32.

¹³ *Id.* at P 63.

PJM proposes offer flexibility reforms that are generally consistent with the directive of the June 2015 Order, but we reject PJM's proposal in response to the Commission's section 206 directive because, as discussed below, it lacks specific details necessary to find that it is just and reasonable. PJM's proposal is deficient because it (1) does not include in PJM's Tariff and Operating Agreement the proposed rules for the offer parameters that are subject to flexible hourly offers and the appropriate definitions for various terms, (2) lacks rules pertaining to the mitigation of self-scheduled resources, and (3) lacks provisions for sufficient review of cost-based offers to ensure that—even with increased offer flexibility—resources continue to have the proper incentive to submit accurate cost-based offers.¹⁴

The FCP Order included specific directives aimed primarily at ensuring the appropriate market power mitigation found lacking in PJM's proposal. The FCP Order included a directive that PJM incorporate in its market rules: "(1) a requirement for market participants to submit fuel cost policies [footnote omitted] that are approved by PJM prior to submission of cost-based offers, and (2) a penalty structure that will be applicable in the event that PJM or the IMM determines that a resource has submitted a cost-based offer that does not comply with Schedule 2 of the Operating Agreement or the Cost Development Guidelines in Manual 15."¹⁵ The Commission directed ex ante review and approval of fuel cost policies and tariff defined penalties for the failure to follow the fuel cost policy. The goal was efficient and effective market power mitigation.

¹⁴ *Id.* at P 33. The FCP Order directive was a response to the Market Monitor's arguments, summarized at P 62: "The IMM argues that a resource's fuel cost policy could be updated as part of PJM's compliance with the Final Offer Cap Rule, which could enable ex ante verification of cost-based offer input assumptions. The IMM states that fuel cost policies require resources to define how they calculate hourly fuel costs in day-ahead cost-based offers and how they update those fuel costs in real-time cost-based offers."

¹⁵ *Id.* at P 63.

On August 16, 2016, PJM filed revisions to its market rules in compliance with the directive in the FCP Order, which the Commission approved with minor modifications in the FCP Compliance Order issued February 3, 2017.¹⁶

The revised market rules approved by the Commission required a market seller's submittal and PJM's approval of a fuel cost policy before a market seller could submit a nonzero cost-based offer without being subject to penalties.¹⁷ The approved revised rules defined penalties on any market seller if PJM and the Market Monitor determined that such market seller submitted cost-based offers that did not comply with the market seller's fuel cost policy, or with Schedule 2 of the Operating Agreement and PJM Manual 15.¹⁸ In accepting the fuel cost policy provisions, the Commission explained that they "will help promote transparency and clarity regarding the standards that will govern PJM's review of a Market Seller's Fuel Cost Policy."¹⁹ The Commission also found that the revisions "will also provide Market Sellers with the flexibility to use an alternative methodology to document fuel costs..."²⁰

The rules for fuel cost policies are included in Schedule 2 of the Operating Agreement, which also refer to PJM's Cost Development Guidelines ("PJM Manual 15"). The revised rules were implemented May 15, 2017.

¹⁶ *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133 at PP 80–82.

¹⁷ *Id.* at P 56; OA Schedule 2.

¹⁸ *Id.* at P 70; OA Schedule 2.

¹⁹ *Id.* at P 50.

²⁰ *Id.*

Just over a year after implementation, on August 8, 2018, several generators submitted a problem statement to PJM’s Markets Implementation Committee (MIC) to revise the fuel cost policy rules.²¹ That process resulted in the May 4th Filing.

II. PROTEST

A. The Force Majeure Exemption Is Not About Force Majeure and Would Eliminate Clear Rules When Most Needed.

The May 4th Filing proposes (at 18–24) to add “an exemption from a penalty ... for Market Sellers that submitted a non-compliant cost-based offer if the reason for fuel pricing and/or cost estimation deviation is due to an unforeseen event that is outside of the control of the Market Seller, its agents, and its affiliated fuel suppliers.” The May 4th Filing argues (at 18–19) that current fuel cost policies do not account for every foreseeable scenario. The May 4th Filing purports (at 20) to address “limited circumstances” in which the actual or estimated fuel cost differs from the method approved in the fuel cost policy.

While framed as exempting unit owners from penalties, PJM’s force majeure provisions permit abrogation of fuel cost policies when they are most needed, e.g. under extreme weather conditions. PJM’s proposed tariff language would remove the requirement to follow the approved fuel cost policy and instead apply a vague standard that fuel costs must be just and reasonable and be based on the best available information.²² Fuel cost policies were introduced and approved by the Commission precisely to replace such vague standards, applied with ex post review in an undefined process.²³

²¹ See “Fuel Cost Policy—Problem Statement - Issue Charge” presented at the August 8, 2018 meeting of the Markets Implementation Committee. <<https://pjm.com/-/media/committees-groups/committees/mic/20180808/20180808-item-04-fuel-cost-policy-problem-statement-issue-charge.ashx>>.

²² May 4th Filing at 18–24; proposed OA Schedule 2 § 6.3.

²³ FCP Order at P 63.

1. Existing Fuel Cost Policies Cover All Events.

Under the proposed approach, PJM would eliminate fuel cost policies in the event of “an unforeseen event outside the control of” the unit owner or the seller of fuel. Yet neither PJM nor any market participant could provide an example of such an unforeseen event that could not be, and is not, addressed in multiple actual fuel cost policies. No such examples were provided during the stakeholder process and PJM provided no such examples in its filing. The example that PJM provided is addressed under numerous existing and approved fuel cost policies.

The term *force majeure* conjures thoughts of events that could not be anticipated, and, therefore, events that could not be anticipated in a fuel cost policy. There are only two possible outcomes, whatever the event and whether anticipated or not. Either fuel can be purchased, or fuel cannot be purchased. If fuel can be purchased, the market value or the purchase price can be defined in a fuel cost policy. If fuel cannot be purchased, the unit follows PJM outage rules. Whether an exact event is anticipated is irrelevant. The fact that the cost of fuel is out of the generator’s control is irrelevant; the markets for natural gas are always outside generators’ control. The only relevant question is what is the market price, or purchase price, of fuel under any and all circumstances.

A well designed fuel cost policy defines the cost of fuel with reference to transparent market indicators, like prices on ICE. When clearing prices are not available, the market indicators may be the bid-ask spread on ICE. Fuel cost policies can and do rely on multiple sources including published fuel indices, commodity exchanges, contracts, actual purchases, and inventory costs to develop their fuel cost. But ultimately, every well constructed fuel cost policy defines the cost of fuel when there are no available market data. In that case, the cost of fuel is defined by a documented, independent third party bilateral

transaction or quote.²⁴ This is well known, included in many approved fuel cost policies and in the fuel cost policy template developed by the Market Monitor.

It is well understood that fuel cost policies for most days of the year are uninteresting. There is a transparent market price by location with little variation from day to day or hour to hour. A primary reason for the existence of fuel cost policies is to address what happens when the weather is cold, markets are tight and nontransparent, yet PJM generators must make an offer in the energy market. That is a critical time to have a fuel cost policy and a fuel cost policy that addresses market realities. That is when generators rely on independent third party bilateral transactions or quotes.

If a market participant is able to purchase gas, it has a purchase price. Any fuel cost policy can include provisions for actual purchase prices, regardless of the source, so any fuel cost policy can cover all foreseeable circumstances under which the unit is able to purchase fuel. If a market participant is not able to purchase gas or receive a quote for the purchase of gas, PJM's outage rules apply.

Fuel cost policies permit unit owners to define the market price of fuel rather than the delivered price of fuel. That is a critical difference. The market price of fuel at a point on the system is not a function of the actual delivery method or of the terms of a delivery contract. The market price of fuel is what others in the market are willing to buy or sell the fuel for at that time and at that place. Fuel cost policies use the market value of natural gas, almost without exception.

The May 4th Filing includes what it purports to be an example (at 19) of a situation in which a resource should be allowed to abrogate its fuel cost policy without facing penalties,

²⁴ Independent third party quotes are executable offers provided by companies not affiliated with the market seller or with the market seller's energy manager (also known as marketer). Independent third party quotes require bilateral interaction between the two parties, the potential buyer (e.g. the market seller or the energy manager) and the potential seller. Independent third party quotes are not offers on exchanges made available to multiple parties.

based on PJM's so called force majeure provision. The May 4th Filing example is a case in which a resource is able to procure gas from a different direction (north to south) than initially scheduled (south to north). Such a situation could occur routinely outside even PJM's excessively broad definition of force majeure. But even if the change in source were a result of a force majeure event, the possibility could and should be addressed in the fuel cost policy. PJM's example illustrates a confusion between the fuel procurement process and the market price of the fuel. If the fuel cost policy specifies the market price of gas, the spot price at the defined hub is the market price and not the price at which the natural gas was purchased. In that case, the direction of delivery is irrelevant. Alternatively, for resources that do not use market prices, fuel cost policies frequently define the cost of natural gas as the cost of the purchased gas. The May 4th Filing has not provided a valid example of an unforeseeable situation that could not be, and is not, covered by a fuel cost policy. This example and every other example raised in the stakeholder process have been successfully identified and addressed in existing fuel cost policies.

2. The Fuel Cost Policy Exemption Violates the Commission's Verifiable and Systematic Standard.

The proposed fuel cost policy exemption is not consistent with the Commission's adoption of the standard that fuel cost policies must be verifiable and systematic.²⁵ The Commission specifically adopted PJM's proposed definitions of both "systematic" and "verifiable," which PJM had adopted from the Market Monitor:

We note that PJM has stated that Fuel Cost Policies need to be verifiable, meaning they "must provide a fuel price that can be calculated by the [IMM] after the fact with the same data available to the [Market Seller] at the time the decision was made and

²⁵ FCP Compliance Order at P 57 The Commission also determined (at P 50): "PJM's proposed Fuel Cost Policy will also provide Market Sellers with the flexibility to use an alternative methodology to document fuel costs provided the alternative is consistent with or superior to the standard review criteria set forth in Schedule 2(g) of the Tariff and Operating Agreement."

documentation for that data from a public or a private source.”[footnote omitted] Similarly, PJM requires Fuel Cost Policies to be systematic, meaning they must “document a standardized method or methods for calculating fuel costs including objective triggers for each method.”[footnote omitted] We find that PJM’s proposal requires that Fuel Cost Policies be verifiable and systematic.[footnote omitted]²⁶

In order for fuel costs to be developed in a verifiable manner, as required by PJM, they must come from a verifiable, independent source specified in the fuel cost policy. Fuel cost policies rely on multiple sources including published fuel indices, commodity exchanges, contracts, actual purchases, and inventory costs to develop their fuel cost. Many fuel cost policies, especially natural gas policies, include an option to use independent third party bilateral quotes when no other sources are available.

Under the proposed revised rules, market sellers will be allowed to ignore the verifiable fuel cost sources specified in their fuel cost policies and use unverifiable sources (such as internal estimates) for their fuel cost. Reliance on unverifiable sources is currently, and should continue to be, explicitly prohibited under any circumstance as it allows market sellers to artificially inflate their cost-based offers and attempt to exercise market power.

3. The Fuel Cost Policy Exemption is Broad in Scope.

The May 4th Filing misrepresents the proposed provision (at 22) as “limited” in scope. The scope of the provision would include five common situations where it would allow market sellers to abrogate their fuel cost policies without being subject to a penalty: weather events such as landslides, lightning, earthquakes, fires and storms; less disruptive weather events such as low temperatures that cause fuel delivery equipment freezing or failure; interruption or curtailment of firm transportation or storage; acts from unaffiliated

²⁶ *Id.*

third parties such as strikers, riots, etc.; governmental actions that require compliance with court orders, law, regulations, etc.

These circumstances are not limited. These are common circumstances that fall well short of Catastrophic Force Majeure as defined in the PJM tariff and accepted by the Commission.²⁷ The definition of Catastrophic Force Majeure explicitly excludes these common events.

4. The Fuel Cost Policy Exemption Undermines the Development of Sound Fuel Cost Policies.

The proposed force majeure exemption creates an incentive to exclude reasonable provisions from fuel cost policies because such exclusion will result in exemptions from compliant fuel cost policies during foreseeable and commonly occurring events. In the Market Monitor's experience, many market sellers have sought to have a level of flexibility in their fuel cost policies that would allow them to estimate unverifiable fuel costs on the high side to avoid risks, rather than using an objective market metric of fuel costs. All of these fuel cost policies failed the Market Monitor's market power review. Many were subsequently corrected and eventually passed the Market Monitor's market power review and were approved by PJM. Some remain deficient. The fuel cost policy review process has

²⁷ See *PJM Interconnection, L.L.C. v. PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at P 464 (2015) ("Multiple intervenors argue that PJM's proposed definition of the new term, Catastrophic Force Majeure, is unnecessarily narrow and improperly assigns risk to capacity suppliers without compensation for bearing that risk. We disagree. As the Commission stated in the *ISO-NE Capacity Performance Order*, the risk of capacity resource non-performance must be borne by either capacity suppliers or consumers, and capacity suppliers are in the best position to assess and price the performance risk associated with their resources, including performance risks beyond a resource owner's control, such as weather-related outages.[...147 FERC ¶ 61,172 at P 64.] Under PJM's proposed definition of Catastrophic Force Majeure, a resource will be excused from its performance in the event that all, or substantially all, of the electric transmission or fuel delivery infrastructure in the PJM region is incapacitated. We find this definition consistent with the principle that risk should be borne by the party that is best able to assess and price it.").

worked reasonably well. It would make more sense to continue to improve the process than to revert to a subjective and unverifiable process.

PJM's proposal would abrogate fuel cost policies "if PJM determines that the unforeseen force majeure event directly impacts the Market Seller's ability to submit a cost-based offer that conforms to the fuel cost methodology in the approved Fuel Cost Policy." This type of counterfactual exercise is unverifiable and unsystematic. The approach does not solve one of the core problems it is apparently attempting to address. Market Sellers will still face uncertainty at the time they make their offers in the PJM energy market because they will not know at the time they deviate from their Fuel Cost Policies if they are in violation of the tariff.

There is simply no reason to permit routine abrogation of fuel cost policies under common and predictable circumstances and create a new subjective standard to replace the fuel cost policies.

The proposed provision will permit market sellers to exercise market power through inflation of their cost-based offers in common situations by allowing them to use unverifiable fuel costs. The provision is contrary to the purpose of fuel cost policies as defined by the Commission, undermines reliance on the integrity and efficiency of PJM markets, breaks the verifiable link to market prices in the fuel markets, and is contrary to the public interest.

B. Reducing Penalties Under the Circumstances Identified by PJM Contradicts the Purpose of Fuel Cost Policies and the Directives in the FCP Order and Should Be Rejected.

The Commission accepted the current rules for assessing penalties as compliant with its directives, explaining:

We find that PJM's proposed penalty structure is appropriate because, as PJM explained, it is designed to grow in proportion with the possible impact that a Market Seller's cost-based offer may have on the market (i.e., the proposed penalty is based on the product of LMP and MW). Also, the proposed penalty is cumulative for each hour of each Operating Day that a Market

Seller submits a non-compliant cost-based offer. Further, we note that PJM's proposed penalty structure was based on the penalty formulation developed by the IMM during the stakeholder process. The penalty structure should dissuade a Market Seller from submitting a cost-based offer that is inconsistent with its Fuel Cost Policy.²⁸

The May 4th Filing proposes (at 14–18) to reduce the penalty for submitting noncompliant cost based offers. The proposed revisions do not comply with the Commission's directive that such rules "ensure that resources have the proper incentive to submit accurate cost-based offers."²⁹ The current rules were approved based on a finding that they "should dissuade a Market Seller from submitting a cost-based offer that is inconsistent with its Fuel Cost Policy."³⁰ The May 4th Filing fails to demonstrate any problem with current rules or explain how adopting the proposed rules would better dissuade noncompliance.

The rules for penalties in Schedule 2 to the Operating Agreement became effective on May 15, 2017. Since then, PJM has assessed 318 penalties, of which 279 were identified by the Market Monitor, 29 were identified by the market seller and 10 were identified by PJM. Penalty charges since May 15, 2017, have totaled \$2.2 million, for an average penalty of \$7,064 per violation. The majority of the penalties have resulted from incorrect calculation of cost-based offers not related to fuel costs. They have resulted, in part, from incorrect application of variable operating and maintenance costs, incorrect calculation of incremental heat rates and no load heat. Many of the assessed penalties have led to improvements in market sellers' cost-based offer calculation, verification and submittal processes. This is an indication that the rules are working as intended.

²⁸ FCP Compliance Order at 78.

²⁹ FCP Order at P 63.

³⁰ FCP Compliance Order at P 78.

The May 4th Filing relies on the same arguments considered and rejected by the Commission when it approved the current rules.³¹ The Commission found that the current penalty structure balances the concerns identified in the process about whether penalties were too high or too low.³² The May 4th Filing would upset that balance and install a weak approach. The May 4th Filing does not comply with the Commission’s directives nor does it assert that it does comply. The May 4th Filing does not demonstrate that a weak approach is just and reasonable. The current approach has worked as intended, serves the public interest and should be maintained.

If PJM and the Commission are concerned about the level of penalties related to cost-based offers, PJM should help generators reduce the number of errors they make by significantly improving its Cost Development Guidelines to provide useful guidelines for the development of accurate cost-based offers. For example, PJM’s Cost Development Subcommittee (CDS) has not met since May 2013. The Cost Development Guidelines do not even include the method for calculating an incremental energy offer curve. Many of the issues identified by the Market Monitor have resulted from incorrect calculation methods. Many of these issues could have been addressed as lessons learned at the CDS in order to improve and clarify the guidelines.

C. Allowance of a Temporary Cost Offer Method In Lieu of an Approved Fuel Cost Policy Contradicts the Purpose of Fuel Cost Policies.

The May 4th Filing proposes (at 7–9) to allow resources to submit nonzero cost-based offers without an approved Fuel Cost Policy if they follow what PJM terms a “temporary cost offer” method but which is actually a PJM defined cost-based offer that does not follow the fuel cost policy rules. The proposed approach would significantly weaken market power mitigation in PJM by allowing market sellers to make offers without an approved

³¹ *Id.* at P 78.

³² *Id.*

fuel cost policy. The proposed approach would substitute an inaccurate and unsupported fuel cost calculation in place of an accurate fuel cost policy.³³ PJM's proposed approach would undercut a core principle of PJM, that market sellers have sole and exclusive authority over their own offers.³⁴

PJM does not explain why it is appropriate to permit market sellers to operate without an approved fuel cost policy or to substitute a PJM defined fuel cost for that of the market seller. As PJM explained when proposing the current rules, "an effective Fuel Cost Policy approval process is integral to the effective clearing of cost-based hourly offers."³⁵ PJM explained that its approval of fuel cost policies "is intended to discipline cost-based offers submitted by Market Sellers so there can be reasonable confidence that such offers reflect the prevailing costs facing Market Sellers at the time they submit offers into PJM's energy markets."³⁶

The May 4th Filing responds to complaints from market sellers that may have their fuel cost policies revoked or acquire resources lacking an approved fuel cost policy. The concern is having to submit a cost-based offer at zero until a fuel cost policy is approved or face penalties. To date, no PJM market seller has been required to submit an offer of zero because PJM revoked a policy, demonstrating that current rules provide an adequate incentive for market sellers to engage in the fuel cost policy approval process.

³³ May 4th Filing at 8. PJM describes the temporary fuel cost policy as conservative. By using a published index, the temporary policy would frequently use a stale fuel price, which may be higher or lower than the current market price. The temporary policy would also exclude relevant emissions costs and other short run marginal costs, described by PJM as "adders."

³⁴ See OA Schedule 1 § 6.4.2(d).

³⁵ PJM FCP Compliance Filing, Docket No. ER16-372-002 (August 16, 2016) at 2 ("PJM FCP Compliance Filing").

³⁶ *Id.* at 6.

The complaints show that the rules work as intended. The current rules encourage market sellers to have approved fuel cost policies in place. The May 4th Filing does not explain what would prohibit a market seller from having a fuel cost policy in place. Creating a mechanism for avoiding the fuel cost policy approval process undermines the incentives to comply with the rules. Creating such an incentive can and should be avoided.

When the Commission determined that the current rules comply with its directive, it addressed the same points raised and the same proposal made again in the May 4th Filing. The Commission declined a market seller's request that it "direct PJM to supplement its Fuel Cost Policy proposal with a mechanism that will allow new resources to establish an interim approval of a simplified fuel cost policy until the new resource has sufficient operational experience to complete a full Fuel Cost Policy."³⁷ The Commission accepted the requirement that: "a Market Seller may only submit a non-zero cost-based offer into the PJM Interchange Energy Market for a generation resource if it has a PJM-approved Fuel Cost Policy for such generation resource."³⁸ The May 4th Filing provides no reason to reconsider.

The Commission should reject incorporating a temporary cost method in Schedule 2 of the Operating Agreement in lieu of an approved fuel cost policy.

D. The Proposed Replacement of the Revocation Provision with the Ability for PJM to Expire Fuel Cost Policies Is Unnecessary.

The May 4th Filing (at 10–13) proposes changes to the current rules for revoking fuel cost policies. Under the current rules, PJM can revoke fuel cost policies whenever necessary to ensure a market seller's "procurement practices or the method for determining other components of cost-based offers is no longer consistent with the approved Fuel Cost Policy,

³⁷ FCP Compliance Order at P 42.

³⁸ *Id* at P 56.

Schedule 2 of the Operating Agreement or PJM Manual 15.”³⁹ This approach has worked satisfactorily. There is no reason to change it.

The May 4th Filing proposes that PJM “expire” fuel cost policies immediately when a market seller’s fuel pricing or cost estimation method is no longer consistent with its approved fuel cost policy, Schedule 2 of the PJM Manual 15. The proposed rules require PJM to immediately expire fuel cost policies without the currently available option to allow the market seller time to make necessary changes.

PJM has never revoked a fuel cost policy. In cases in which the Market Monitor has recommended that PJM revoke a fuel cost policy, the Market Monitor has also recommended that such revocation be done within a specified time to allow the market seller to make the necessary changes to the fuel cost policy. There may be instances where an immediate expiration of a fuel cost policy is appropriate, but a rule generally requiring immediate expiration of fuel cost policies is unnecessarily inflexible.

The proposed changes to policy revocations/expirations should be rejected in favor of preserving the current rules.

E. Fuel Cost Policies are Inputs to Mitigation, not Prospective Mitigation.

PJM states (at 3) that review of Fuel Cost Policies constitutes prospective mitigation as described in Order No. 719. PJM is incorrect. The Commission did not characterize the review and approval of fuel cost policies as “prospective mitigation.”⁴⁰ In fact, Order No. 719 distinguishes prospective mitigation, such as the offer capping process when a supplier fails the Three Pivotal Supplier test, from the development of inputs to mitigation, such as

³⁹ OA Schedule 2 § 2.4.

⁴⁰ See FCP Compliance Order at PP 68–69.

cost calculations.⁴¹ Fuel cost policies are cost calculations. The Commission encouraged the development of inputs to mitigation by the MMU to “enable the RTO or ISO to utilize the considerable expertise and software capabilities developed by their MMUs, and reduce wasteful duplication.”⁴²

F. Replacing the Annual Fuel Cost Policy Review Process with a Periodic Review Process Is a Useful Change.

The May 4th Filing proposes (at 4–6) to replace the current annual fuel cost policy review process with a periodic review process. Inclusion of a periodic review process restores the process employed by the Market Monitor prior to PJM’s involvement in the review and approval of fuel cost policies. Monitoring participant behavior through the use of fuel cost policies is an ongoing process that necessitates frequent updates. Market participants must revise their fuel cost policies whenever circumstances change that impact fuel pricing (e.g. different pricing points, dual fuel addition capability). Rejection of the May 4th Filing should be without prejudice to including this element in a new proceeding.

G. Removing the Requirement for Resources with Zero Short Run Marginal Cost to Have a Fuel Cost Policy Is Logical and Useful.

The May 4th Filing proposes (at 6–7) to remove the requirement for resources with zero short run marginal cost to have an approved Fuel Cost Policy before they can make cost-based offer at zero without being subject to a penalty. The Market Monitor supports removing the requirement to have a fuel cost policy under this limited and logical condition. Rejection of the May 4th Filing should be without prejudice to including this element in a new proceeding.

⁴¹ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 375 (2008), *order on reh’g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009), *reh’g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009). Order No. 719 at P 375.

⁴² Order No. 719 at P 375.

III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this protest and reject the May 4th Filing for failure to comply with the directives in the FCP Order, and, if not rejected, to deny approval for its lack of merit.

Respectfully submitted,



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Dated: May 26, 2020

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 26th day of May, 2020.



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