

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

Independent Market Monitor for PJM)	Docket No. EL19-27-000
v.)	
PJM Interconnection, L.L.C.)	

**REQUEST FOR REHEARING OF THE
INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 713 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM² (“Market Monitor”), submits this request for rehearing of the order issued in this proceeding December 19, 2019 (“December 19th Order”).³ The December 19th Order denied the Market Monitor’s complaint filed in this proceeding December 28, 2018 (“Complaint”). The Complaint asked that PJM be directed to find that Tenaska Power Services (“Tenaska”) violated its Fuel Cost Policy and to assess the required penalty.

Rehearing should be granted because the facts determined in the December 19th Order show that Tenaska violated its Fuel Cost Policy (“FCP”) and that the PJM market rules require assessment of a penalty in response. None of the rationales relied upon in the December 19th Order are relevant to the allegation in the complaint. None of the rationales

¹ 18 CFR § 385.713 (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 *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,231.

support any outcome other than assessment of a penalty. The law should be applied to the relevant findings of fact and rehearing should be granted.

I. REQUEST FOR REHEARING

The December 19th Order denies the Complaint, finding (at P 41): “that PJM acted reasonably in finding that Tenaska acted in accordance with its FCP.” PJM did not act reasonably because it is undisputed that Tenaska did not follow its FCP.

The December 19th Order improperly relies on arguments amounting to an assertion that PJM acted properly in considering FCPs that Tenaska could have had in place when interpreting the FCP that Tenaska actually did have in place. The December 19th Order finds (at P 41) that no “specific fuel cost calculation methodologies” support Tenaska’s offer submitted January 6, 2018. The December 19th Order points to language in the FCP general overview section stating that quotes may be used under defined conditions, but the FCP never defines those conditions. Furthermore, the cost-based offer submitted by Tenaska used an offer from the Intercontinental Exchange (ICE), not bilateral quotes. The December 19th Order errs in its reliance on terms that could have been but were not included in Tenaska’s FCP. PJM acts arbitrarily and beyond the scope of its discretion when it interprets FCPs based on terms that could have been but are not in the FCP.

The December 19th Order explicitly finds: “Tenaska’s FCP contained two specific fuel cost calculation methodologies.” The December 19th Order further and correctly notes (*id.*): “neither method could be applied on January 6 because the data required for those calculations did not exist.” On January 6, 2018, Tenaska could not submit a nonzero cost based offer based on natural gas and comply with its fuel cost policy.⁴ It is undisputed that

⁴ See OA Schedule 2.1 (“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 consistent with each fuel type for such generation resource.”).

Tenaska, nevertheless, did submit a nonzero cost based offer based on natural gas on January 6, 2018.

The complaint alleges “a seller ... violated its FCP” and that PJM did not “assess the required penalty.”⁵ The findings in the December 19th Order uniformly confirm the allegation. The December 19th Order finds that the FCP included no provision supporting the offer submitted by Tenaska on January 6, 2018. The rules require that Tenaska follow its FCP. Tenaska did not. A penalty should have been assessed. PJM did not do so.⁶

Accepting PJM’s argument would penalize participants who followed their FCPs even if an after the fact modification would have benefited them. Participants who comply in good faith do not attempt to conceal their behavior and/or evade penalties.

The rules provide that Market Sellers have responsibility to ensure that FCPs are accurate and compliant with the rules.⁷ Tenaska should not be rewarded for its failure to create a more inclusive FCP by allowing it to assert and rely on a method developed after its offer was submitted.

⁵ December 19th Order at P 5, citing the Complaint at 4.

⁶ See OA Schedule 2 § 5.

⁷ OA Schedule 1 § 6.4.2(d) (“Market Participants shall have exclusive responsibility for preparing and submitting their offers on the basis of accurate information and in compliance with the FERC Market Rules, inclusive of the level of any applicable offer cap, and in no event shall PJM be held liable for the consequences of or make any retroactive adjustment to any clearing price on the basis of any offer submitted on the basis of inaccurate or non-compliant information.”); OATT § 12A (“A market participant may submit any offer or bid that it chooses or make a decision not to offer a committed resource, provided that the Office of the Interconnection determines that: (i) the market participant has participated in the review process conducted by the Market Monitoring Unit (without regard to whether an agreement is obtained) if required by the Tariff; (ii) offer is no higher, in the case of seller market power, or lower, in the case of buyer side market power, than the level to which the market participant has committed or agreed in the course of its participation in such review process; and (iii) the offer is compliant with the Tariff and PJM Manuals. The market participant assumes exclusive responsibility for any adverse findings at the Commission related to its offer.”).

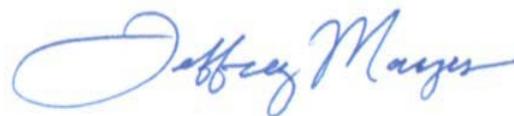
Allowing Tenaska to escape responsibility for paying a penalty as the tariff requires is illogical and creates an incentive for market participants to put in place ambiguous and unenforceable FCPs. Such incentive contradicts the fundamental purpose of FCPs, which is to allow for objective review of market participant behavior and avoid the exercise of market power. Market participants that do not explain their behavior in advance can justify any behavior after the fact, including exercise of market power. FCPs are required to be verifiable and systematic. Verifiable means that a reviewer, using the same facts available to the market seller in real time, would calculate exactly the same fuel cost after the fact. An FCP cannot be verifiable if the FCP can be modified after the fact.

The December 19th Order is arbitrary and capricious because it fails to reach the conclusion compelled by the facts, facts which the December 19th Order correctly confirms. Tenaska violated its FCP and violated the OA. Rehearing should be granted, and PJM should be directed to assess the required penalty.

II. CONCLUSION

For the reasons provided above, the Market Monitor respectfully requests that the Commission grant rehearing.

Respectfully submitted,



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Dated: January 17, 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 17th day of January, 2020.



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