UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)))	Docket No. EL08-47-000

ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 213 of the Commission's Rules and Regulations, 18 CFR 385.213 (2008), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor"), submits this answer to the Request for Clarification or, in the Alternative, Rehearing filed by Mirant on March 23, 2009.[1] Mirant requests (at 5) that the Commission clarify that in its order in the above captioned proceeding on February 19, 2008,[2] that the Commission meant to include "any and all legitimate and verifiable opportunity costs in their mitigated offer prices, not just those opportunity costs resulting from limited available annual run hours due

---

[1] "PJM" means PJM Interconnection, L.L.C. is a FERC-approved Regional Transmission Organization. Words capitalized herein and not otherwise defined have the meaning specified in the PJM Open-Access Transmission Agreement ("OATT") or the PJM Operating Agreement ("OA"). "Mirant" includes the following affiliated suppliers: Mirant Energy Trading LLC; Mirant Chalk Point, LLC; Mirant Mid-Atlantic, LLC, and Mirant Potomac River, LLC. As this pleading is in part a motion, and not only a request for rehearing, no special permission to file an answer is necessary. *See* 18 CFR § 385.213(a)(3).

[2] *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,145 (2009) ("February 19th Order").

to energy and environmental limitations." The Market Monitor opposes this request for clarification to the extent that it would (i) require that the filing required by July 31, 2009,[3] address issues other than restrictions on run hours and/or energy output imposed by regulatory authorities for environmental reasons or (ii) predetermine the outcome of the PJM membership discussions on the nature of and appropriate inclusion of various types of opportunity costs. In the alternative, if the Commission determines that clarification is necessary, the Market Monitor offers additional suggestions that would assure that PJM stakeholders have ample flexibility to fully address the issues and a more complete list of factors to consider.

I. COMMENTS

The Commission clearly emphasizes its special concern that environmental restrictions which limit the energy output of units be addressed immediately.[4] The Market Monitor believes that the limited period available to develop a compliance filing is insufficient to achieve more than this clearly defined objective. Restrictions imposed

---

[3] *Id*. at P 48.

[4] *Id*. at P 28 ("[W]e find that the current mitigation measures imposed on those that fail the screen fail to fully account for opportunity costs,[footnote omitted] particularly for energy- and environmentally-limited resources"), and at P 42 ("[B]ecause default bids do not clearly and explicitly provide for the inclusion of opportunity costs, especially for energy and environmentally-limited resources, the mitigation measures related to determining default bids are unjust and unreasonable. With retention of the three-pivotal-supplier test, we agree that it is critical to assure that mitigation measures account for opportunity costs, while not violating the environmental limitations.").

by regulatory authorities do not raise all the more complicated issues raised by other approaches to opportunity costs. An environmental regulatory directive is clear and objective and does not require further unit specific analysis. In addition, after defining acceptable opportunity costs, the development of a generally applicable method of actually quantifying opportunity costs for such regulatory requirements is challenging and time consuming. It will be a challenge to accomplish this clear objective by the July 31 deadline.

Opportunity cost is a very general economic concept. Opportunity costs arise from every economic decision, but the mere existence of opportunity costs does not mean that should be added to offer caps for units with market power. Thus, the practical fact is that it is not possible to have fully debated all the complex issues raised by Mirant's assertions let alone to develop a method of calculation, should it be required, by the July 31 deadline. The staged approach being pursued, by vote of the members in the CDTF, is a reasonable approach to defining an implementable definition of opportunity cost. The Commission should not disturb this approach.

Mirant's concerns about legitimacy and verifiability both are satisfied in the case of operational restrictions imposed by government action to impose hard caps on run hours for environmental reasons. In contrast, the "operational limitations" of concern to Mirant (at 6–8), which may arise, inter alia, from the age or condition of the unit, raise complex and difficult issues. Particularly in the presence of a capacity market, where an

essential feature of the sale of capacity is the obligation to offer energy in the Day-ahead Energy Market every day and for every hour, the assertions of Mirant are questionable. Capacity markets also define available capacity through the use of outage rates. As a general matter, units that cannot run when otherwise economic, as a result of fuel or mechanical limitations, should take an outage, as the rules provide. This provides the correct signal to the market and to reliability planners who need to reflect the actual probability that units will or will not be available when called upon. Mirant's proposal, taken at face value, impacts these market design fundamentals. While it would be appropriate to discuss these issues, requiring PJM and its members to resolve these issues by July 31 is not reasonable or practical. Requiring PJM and its members to accept Mirant's questionable logic prior to July 31 would be even more inappropriate for a proposal with such a potentially significant impact on markets.

The opportunity cost discussion is relevant only to the level of offer caps in the presence of structural market power. Mirant has not, nor could they have, asserted that offer capped units need to apply their proposed definition of opportunity costs in order to attain revenue sufficiency. A combination of the RPM capacity market design and scarcity pricing has successfully addressed the revenue adequacy issue. PJM and its members have agreed to discuss scarcity pricing with a goal of implementation by summer 2010. There is no reason that the same time frame should not apply to the opportunity cost discussion.

It is important that the Commission not prematurely circumscribe the approach to these issues that PJM and its stakeholders ultimately will propose. In addition to requirements that opportunity costs are demonstrably (i) "legitimate" (the definition of legitimate needs to be stated clearly as it has no operational definition in Mirant's filing) and (ii) "verifiable," it is also important that the approach to the definition of opportunity costs (iii) is consistent with all the rules governing the capacity market by such units and (iv) does not result in an inappropriate shift of outage and other operational risks from suppliers to consumers. It would not be helpful here for the Commission to issue a clarification at this time which might unduly compromise the ability of PJM stakeholders to develop the optimal solution.

The Market Monitor does not believe that any clarification from the Commission is necessary at this time, but should it choose to offer additional guidance, the Market Monitor recommends that the Commission clarify:

- It is acceptable that the compliance filing from PJM due on July 31, 2009 address only those opportunity costs that result from run times restricted by a regulatory authority for environmental reasons that results in hard caps on energy output.
- The compliance filing may include a schedule for further discussion of all issues related to opportunity costs.
- Opportunity costs should be recovered only to the extent that they are (i) legitimate, (ii) verifiable, (iii) consistent with the rules governing the capacity market in PJM, and (iv) do not interfere with an appropriate allocation of outage and other business risks.
-

Aside from any action that the Commission may take on Mirant's Motion for Clarification, the Commission should deny Mirant's request for rehearing because it was not timely filed. Section 313(a) of the Federal Power Act, requires that a request for rehearing be filed within 30 days of issuance of the relevant order. [5] Because a statute mandates this deadline, it cannot be extended.[6] The Mirant request for rehearing was not filed within 30 days of the February 19th Order, and therefore must be denied.

---

[5] 16 USC § 825*l*(a).

[6] Puget Sound Energy, Inc., 114 FERC ¶61,231 (2006); Wisconsin Valley Improvement Co., 80 FERC ¶61,257 (1997).

II. CONCLUSION

The Market Monitor respectfully requests that the Commission (i) deny Mirant's motion for clarification, or, in the alternative, provide clarification consistent with the Market Monitor's suggestions above and (ii) dismiss Mirant's request for rehearing.

Respectfully submitted,

Joseph E. Bowring

Independent Market Monitor for PJM

President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
(610)-271-8051
joseph.bowring@monitoringanalytics.com

Jeffrey W. Mayes

Monitoring Analytics, LLC

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

Dated: April 7, 2009

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 7th day of April, 2009.

Jeffrey W. Mayes
General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
(610)271-8053
jeffrey.mayes@monitoringanalytics.com