



7). The rules do not recognize any “allocation” of fuel costs, particularly when that fuel is not used for electric service. “ODEC’s fuel costs” are ODEC’s. To support a waiver, ODEC would have to show that the rules unintentionally failed to assign ODEC’s losses on fuel purchases to others or that changes since the rules were established made such reassignment appropriate. The rules work precisely as they are intended to work, and nothing about the facts and circumstances in this proceeding alter ODEC’s basic responsibility to manage its business and meet its obligations.

ODEC agrees (at 11) that “management of fuel supply risks generally is the job of the suppliers with capacity supply obligations.” Given that concession, the only argument in this proceeding is whether any facts and circumstances during the winter peak events that resulted in this waiver request are cause to transfer fuel supply risk from ODEC to others.

Nothing in ODEC’s answer refutes the Market Monitor’s explanation in its comments of why the waiver request does not meet the standards identified by the Commission in its prior orders. ODEC instead reiterates its argument (at 5) that it should be allowed to shift its losses to others because the PJM system experienced emergency conditions during the winter peak period and ODEC incurred large losses associated with fuel procurement during that period.

Market Participants must manage their risks all of the time. There is nothing extraordinary about continuing to assign to ODEC responsibility for managing its risks under the circumstances on the Event Days. Peak days are not the norm, but they are expected to happen, and participants are expected to manage the risks when they happen. Market rules are not waived during cold weather or hot weather. Many other resource owners also had to manage risks on the Event Days in decisions made on or just before the Event Days and in decisions made long before. Some did so more successfully than others. PJM customers are not required to shoulder the consequences of unsuccessful risk management.

ODEC also argues (at 11–17) that statements from PJM dispatchers, while those dispatchers were managing winter peak emergency conditions, are a basis to ignore the filed tariff rules and retroactively transfer multimillion dollar losses to others.

ODEC has not shown that PJM dispatchers made commitments on behalf of PJM customers to assume ODEC’s fuel procurement risks. ODEC has not shown that PJM dispatchers had the authority to make such commitments, had they really done so, or that PJM dispatchers have the authority to micromanage ODEC as ODEC seeks to meet its capacity obligations.

If the relief requested by ODEC is granted, it would create an incentive for suppliers to call PJM dispatchers during system emergencies in order to elicit statements that could support future attempts to shift financial liabilities. PJM dispatchers are not the appropriate PJM representatives to make such financial commitments under any circumstances.

PJM is quoted by ODEC in support of the argument that suppliers would not cooperate with PJM in the future to maintain reliability if the requested waiver is not granted is not persuasive.<sup>2</sup> PJM’s position is not consistent with its market design. If customers pay for capacity they have the right to expect performance. If the incentives for such performance are not strong enough for PJM to rely on, they should be strengthened until PJM can rely on capacity resources to meet their obligations.

PJM’s assertion that PJM fears that generation owners will not comply with the Tariff if they are not provided special payments for which they do not qualify under the Tariff is extraordinary. It is a statement that the current incentives are not adequate. The

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<sup>2</sup> See ODEC at 20–21, quoting the Motion to Intervene and Comments of PJM Interconnection, L.L.C. in Support of Petition and Waiver Request, Docket No. ER14-2242-000 (July 11, 2014) at 20 (“In fact, greater harm may result to the market, Market Participants and consumers longer term if generators hesitate to respond to PJM dispatch instructions, in such extreme and extraordinary conditions as occurred in this particular case, because they fear they won’t recover all of their costs incurred in preparing their resources to meet obligations that support system reliability during emergency conditions.”).

Market Monitor agrees. But the solution is to strengthen the performance incentives and not to make special after the fact payments for the purpose of assuring participants that they may receive such payments in the future. There is no incentive based reason to pay participants for actions that they have already taken. PJM could meet the same objectives by changing the rules to provide for such payments in the future or by fixing the performance incentives.

The Market Monitor has previously identified the issue of inadequate performance incentives for capacity resources.<sup>3</sup> By supporting this waiver, PJM effectively agrees that incentives are not strong enough. PJM should take immediate action to fix its flawed performance incentives. PJM should have performance incentives that are transparent, consistent with its overall market design and applied on a non-discriminatory basis to all participants. PJM should not support one-off requests for retroactive subsidies. This approach does not fix PJM's flawed rules. Granting this waiver request would open the floodgates to future requests for waivers, but it would not provide certainty to any participant that its costs will be reimbursed. Accordingly, waivers are not a means for PJM to achieve its purported objectives.

The result of this proceeding will determine whether the precedent set in *New England Power Generators Association, Inc. v. ISO New England, Inc.* will be sustained or reversed.<sup>4</sup> If, contrary to the precedent set in *NEPGA v. ISO-NE*, a capacity resource may consider the economics of fuel procurement when determining whether to provide energy

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<sup>3</sup> See, e.g., 2013 State of the Market Report for PJM, Vol. 2 (March 13, 2013) at 161.

<sup>4</sup> 144 FERC ¶ 61,157 at P 47–59 (2013) (“The Commission agrees with ISO-NE that the Tariff imposes a strict performance obligation on capacity resources and that capacity resources may not take economic outages, including outages based on economic decisions not to procure fuel or transportation. However, ... we find that a demonstrated inability to procure fuel or transportation, as opposed to an economic determination not to procure fuel or transportation, may legitimately affect whether a capacity resource is physically available under the Tariff, and therefore may excuse nonperformance.”), *order on reh'g*, 145 FERC ¶ 61,206 (2013).

when it is needed, then reliability will be degraded and consumers will be assigned risks that they cannot manage.

Accordingly, for the above reasons and for the reasons included in the Market Monitor's earlier comments, ODEC's 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>5</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 pleading as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,



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<sup>5</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. Indep. Sys. 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: September 5, 2014

## 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 5<sup>th</sup> day of September, 2014.



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