UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
Old Dominion Electric Cooperative	)	Docket No. ER14-2242-000
	)	

COMMENTS 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 for PJM[2] ("Market Monitor"), submits these comments responding to the petition for waiver filed by Old Dominion Electric Cooperative ("ODEC") on June 23, 2014 ("June 23rd Petition").

In the June 23rd Petition, ODEC seeks retroactive waiver of tariff provisions so that it can collect $14,925,669.58 plus accrued interest from customers of PJM Interconnection, L.L.C. ("PJM") associated with certain of its combustion turbine units ("ODEC Units") on January 7–8, 22-23 and 28, 2014 ("Event Days"). The combustion turbines at issue are ODEC's Rock Springs Generation Facility Units 1 and 2 ("Rock Springs"), Marsh Run Generation Facility Units 1 through 3 ("Marsh Run"), and Louisa Generation Facility Units 1 through 5 ("Louisa"). Rock Springs is gas-fired, while Louisa and Marsh Run are dual fuel with the ability to burn gas and oil.

The claimed amount can be divided into two broad categories. ODEC attributes a portion of these losses to high gas costs on days that the PJM $1,000 per MWh offer cap prevented higher offers. ODEC asserts (at 8) that losses of $2,710,338.03 at Rock Springs on

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1 18 CFR § 385.211 (2011).

2 Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT").

January 23 and Marsh Run on January 23 resulted from actual gas costs that were incurred to generate electricity that required a marginal cost-based energy offer in excess of $1,000 per MWh. ODEC attributes the remainder of the claimed losses to its inability to cover the cost of gas that ODEC purchased in order to be ready to run the ODEC Units on the Event Days, but did not use. [3] ODEC asserts that losses of $12,215,331.55 at Rock Springs, Louisa and Marsh Run and Rock Springs from purchases of gas not used to generate electricity resulted from PJM's decision to cancel its request to start or early release of these units.

The Market Monitor agrees that a waiver is appropriate for Rock Springs to recover the losses for gas that was both purchased at prices that required a cost-based energy offer greater than the PJM offer cap of $1,000 per MWh and used to generate electricity. This waiver should be accomplished by advancing the period covered by the blanket waiver granted in ER14-1144 so that it covers January 23, 2014.[4]

The Market Monitor does not agree that a waiver is appropriate for Marsh Run associated with the offer cap, because the offers of these units were less than the $1,000 per MWh offer cap on January 23, 2014, and were therefore not limited by the PJM $1,000 per MWh offer cap. As a result, neither the blanket waiver granted in ER14-1144 nor any other waiver of the $1,000 per MWh offer cap should apply to the Marsh Run Units.

The Market Monitor does not agree that a waiver of any rules is appropriate for the balance of ODEC's claims. ODEC has not supported its request for a retroactive waiver of whatever rules are necessary to permit it to recover the costs of gas that was purchased but was not burned to serve PJM customers. By waiving various rules, ODEC seeks to shift losses to customers that in part resulted from its failure to operate its units in accordance

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3 ODEC purchased gas through ACES, its agent. In this pleading, the Market Monitor refers to ODEC without distinguishing between ODEC and ACES, or their respective personnel, when ACES is acting as ODEC's agent.

4 *See PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041 (2014).

with PJM dispatch and in part resulted from the risks associated with being a Generation Capacity Resource in the PJM market that are appropriately borne by generation owners. The associated unrecovered gas costs in the amount of $12,215,331.55 are entirely the responsibility of ODEC and ODEC's claim should be rejected for that reason.

Procuring fuel to run its units when needed is ODEC's obligation, not the obligation of PJM customers. ODEC has been appropriately compensated under the PJM market rules. The PJM market rules do not compensate unit owners for fuel that is purchased but not used to provide electric power to customers. Such a rule is not part of the PJM market design, such a rule should not be part of the PJM market design, and such a rule should not be effectively created especially for ODEC or any other company on the Event Days through a retroactive waiver of PJM market rules. ODEC is not guaranteed recovery of its costs to provide capacity or energy. When operating in markets, suppliers are at risk for losses. The allocation of risk to those best situated to bear it is an essential feature of markets in general and the PJM wholesale power market in particular. Suppliers do not provide profits made on gas transactions for operating power plants to customers and suppliers do not and should not expect to receive payment for losses on gas transactions for operating power plants from customers.

ODEC has not shown good cause to grant its petition for retroactive waivers. Granting the requested relief would be inconsistent with the proper assignment of risks in markets regulated through competition and inconsistent with the obligations assumed by Generation Capacity Resources. ODEC is asking that market rules be waived because the rules allegedly had large negative consequences for ODEC on specific days. In fact, some claimed losses were the direct result of ODEC's failure to operate as PJM requested. Other claimed losses are appropriately borne by ODEC as a generation owner in the PJM market. Regardless, the requested waiver would violate a basic precept of markets and open the door to an unlimited set of such requests whenever generation owners incur losses. PJM customers are not, and should not be, a source of funds to pay for suppliers' losses in markets.

Accordingly, the blanket waiver granted in ER14-1144-000 should be extended to permit recovery by the Rock Spring Units 1 and 2 of losses that resulted from the $1,000 per MWh offer cap on January 23, 2014, and, in all other respects, the June 23rd Petition should be denied.

I. COMMENTS

A. Summary of ODEC's Requests.

Table A-1 shows ODEC's requests for payment, categorized per ODEC's assertions about the reasons for the requests.

Table A-1 ODEC Unrecovered Gas Claims

Event	ODEC Claim	Description
Costs Above $ 1,000/MWh Offer Cap:		
Rock Springs 1 & 2 on Jan. 23	$2,098,713.80	Units received $1,967,567 in uplift for operation at $1,000/MWh offer.
Marsh Run 1-3 on Jan. 23	$611,624.23	Units received $1,422,575 in uplift for operation at $948/MWh offer. Option to burn oil not used.
Subtotal:	$2,710,338.03	
Canceled Dispatches:		
Rock Springs 1 & 2 on Jan. 7 & 8	$1,783,036.92	Units could not start at 18:00 and 22:00 on Jan. 7. PJM declined to run units when ready to start after 22:42 for failure to follow dispatch instructions.
Louisa 1-5 on Jan. 22-23	$3,481,385.04	Units requested by PJM for 5:00-10:00 and 16:00-21:00 operation on Jan 23. Morning operation cancelled for transmission constraint. Option to burn oil not used.
Rock Springs 1 & 2 on Jan. 28	$6,529,372.70	Units offered at a high price with 24-hour Minimum Run Time on Max Emergency Status so units could not clear in Day-Ahead Market. Offers did not meet guidelines for Capacity Resource. PJM requested units to be available and later indicated not needed.
Subtotal:	$11,793,794.66	
Gas Balancing Costs:		
Marsh Run on Jan. 23	$359,560.85	Claim based on units running 822 unit-minutes rather than initially requested 900 unit-minutes. Option to burn oil not used. Option to extend operation to burn gas not used.
Louisa on Jan. 28	$61,976.04	Claim based on units running 501 unit-minutes rather than requested 540 unit-minutes. Option to burn oil not used. Option to extend operation to burn gas not used.
Subtotal:	$421,536.89	
Total:	$14,925,669.58	

B. Units Capped at the $1,000 per MWh Offer cap on the Event Days Should Receive a Make Whole Payment Under the Terms and Conditions of the Waiver Approved in Docket No. ER14-1144.

ODEC asks (at 37) that "the Make Whole Waiver granted by the Commission in its January 24, 2014 Order in Docket No. ER14-1144-000 be extended to ODEC's operation of its Rock Springs and Marsh Run Units on January 23, 2014." The Market Monitor supported the waiver that the Commission granted in Docket No. ER14-1144 (the "Make Whole Waiver"). The IMM filed a motion for clarification that, if granted by the Commission, would extend the waiver to cover all units running on January 23, 2014, that had marginal cost-based energy offers limited by the PJM offer cap of $1,000 per MWh and can demonstrate actual, verified after the fact costs for fuel burned in order to serve PJM customers that required a marginal cost-based energy offer greater than $1,000 per MWh.[5] The Market Monitor's request remains pending, and, if granted by the Commission, would render ODEC's separate waiver request moot and afford appropriate similar relief to all eligible participants.[6]

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5 *See* Motion for Clarification of the Independent Market Monitor for PJM, Docket No. ER14-1144-000 (January 29, 2014) at 2 ("PJM requested (at 3) and the January 24th Order granted (at P 1) relief effective January 24, 2014. PJM indicates that it is open to additional discussion and the potential for a future filing requesting relief from an earlier effective date. The events giving rise to the requested waiver began on the Gas Day starting at 10 a.m., January 22, 2014, and there is no reason why sellers held to offers incorporating fuel costs below the actual cost of fuel during that period should not also have an opportunity to receive make-whole payments if they can document eligibility. Accordingly, an additional order should advance the effective date to January 22, 2014, to ensure non-discriminatory treatment and to avoid the need for any additional future filings on this matter.").

6 The Market Monitor notes that PJM may not have requested that the blanket waiver be effective earlier than January 24, 2014, due to concerns that the waiver would have been retroactive. *See* PJM filing in Docket No. ER14-1144-000 (January 23, 2014) at 8–9. Such concerns have not prevented PJM from supporting ODEC's request for retroactive relief in this proceeding. Such concerns should not prevent granting the Market Monitor's request for clarification of the blanket waiver so that it would apply effective January 22, 2014, with the result that all PJM market participants would be covered on a non-discriminatory basis.

If the Make Whole Waiver is clarified as the Market Monitor requested, then Rock Springs would receive relief. The Market Monitor continues to support such relief for Rock Springs, and agrees with ODEC's calculation (at 32) of $2,098,713.80 as the appropriate level of recovery. For January 23, 2014, ODEC offered Rock Springs at $1,000 per MWh, based on ODEC's estimate of gas costs which implied an offer price greater than $1,000 per MWh. Based on its review of the actual, after the fact cost of the gas purchased and the actual marginal cost to produce energy from the Rock Springs Units, the Market Monitor agrees that $2,098,713.80 is the appropriate payment to ODEC to cover the actual marginal costs associated with the actual generation of energy at Rock Springs for the PJM market. It is important to recognize that a portion of the costs associated with the operation of the Rock Springs Units resulted from the inflexibility on which the units were offered. The units were offered with a 12 hour minimum run time, which obligated PJM dispatchers to commit the units during hours when the units were not needed based on economics.

If the Make Whole Waiver is clarified as the Market Monitor requested, then Marsh Run would not receive additional payment. ODEC indicates (at 36–37) that Marsh Run offered energy at $948 per MWh for January 23, 2014. The offer of Marsh Run was not limited by the $1,000 per MWh offer cap. Marsh Run was made whole to the $948 per MWh offer under the current rules and received $1,422,575 in make whole payments. Accordingly, Marsh Run is not entitled to any additional make whole payment and the additional $611,624.23 claimed is not justified.

ODEC claims (at 38), "PJM's waiver request did not specify that submission of a Day-ahead bid of $1,000 per MWh would be a prerequisite for recovery under the requested waiver." This requirement is implicit in PJM's request to the extent that it is not explicit. An offer below the cap cannot be logically interpreted to have been limited by the cap. Any other reading would render it illogical, without any just and reasonable rationale and significantly expand the scope of the Make Whole Waiver making it effectively unlimited.

ODEC claims (at 39) that it would have raised its $948 per MWh offer had it foreseen the consequences. There is no reason to suppose that an offer at $948 per MWh was limited by the $1,000 per MWh offer cap (or even the apparent misperception of some that the offer cap is $999 per MWh). Under PJM market rules, ODEC has responsibility for its offers, ODEC has responsibility for foreseeing the consequences of its offers and ODEC has responsibility for bearing the consequences of its offers.[7]

C. The Request for Retroactive Waiver of the Rules Preventing the Recovery of the Cost of Gas Purchased but Not Burned Should Be Denied.

1. Background

PJM operates a wholesale power market in which competition results in compensation to suppliers and payments by loads. FERC's decision to use competition in order to produce just and reasonable results means that compensation is left to the market, operating consistent with a set of rules defined in the tariff, rather than to regulatory decisions about individual unit's required returns or costs of fuel.[8] Since the inception of full market-based LMP markets in PJM on April 1, 1999, energy market and capacity market prices have been high and energy market and capacity market prices have been low. Suppliers have been aggrieved at times and load has been aggrieved at times.

In markets, generation suppliers assume sole responsibility for all the decisions that come with owning and operating generating units and for all the associated risks and rewards of owning and operating generating units. When suppliers have a cost advantage in the market, suppliers' profits increase and when suppliers have a cost disadvantage in

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[7] See PJM Operating Agreement Schedule 1 § 1.10.1A(d).

[8] *See, e.g.*, *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs.¶ 31,089 (1999), , 89 FERC ¶ 61,285 (1999) (The Commission determined that competition is the best way to protect the public interest and ensure that electricity customers pay the lowest price possible.); *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

the market, suppliers' profits decrease. PJM market rules assign risks to those best situated to manage them. Suppliers are best situated to manage operational risks at their power plants. Suppliers are best situated to manage risks associated with the availability of their power plants to meet their market and reliability obligations. Suppliers are best situated to manage fuel price risks at their power plants. Suppliers receive the benefits when the results are favorable; suppliers pay the costs when the results are unfavorable.

ODEC proposes to retroactively change these basic market precepts to shift responsibility for fuel price, fuel procurement and fuel choice risks to all PJM customers for specific days in January 2014. ODEC does not propose to credit PJM customers with any profits associated with fuel purchases.

ODEC has to purchase fuel to run the ODEC Units. Rock Springs is gas-fired only while Louisa and Marsh Run are dual fuel with the ability to burn gas or oil. ODEC is responsible for long and short term decisions about fuel procurement, including the firmness of its gas supply, the timing of gas purchases and sales, the availability of oil and the decisions about whether to burn gas or oil. It is inappropriate for ODEC to ask PJM customers to hold it harmless from such decisions, from which ODEC has benefitted. It is also unfair to ODEC's competitors, who may have made different choices about fuel supply.

The ODEC Units were Generation Capacity Resources for the 2013/2014 Delivery Year, which runs from June 1, 2013, through May 30, 2014. ODEC received capacity revenues for the ODEC Units during that Delivery Year. Like all Generation Capacity Resources, the ODEC Units are required to offer into the PJM Day-Ahead Energy Market and Real-Time Energy Market every day and the ODEC Units have an obligation to provide energy whenever it is needed for the duration of the Delivery Year.[9] In managing fuel procurement risk, ODEC may make money or lose money. If ODEC enjoys gains as a result

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[9] *See, e.g.*, OATT Attachment DD § 8.1; PJM Operating Agreement Schedule 1 § 1.10.1A(d).

of successful fuel cost management, ODEC does not share the gains with PJM customers. If ODEC suffers losses from fuel cost management, ODEC does not share the losses with PJM customers. There is nothing in the facts of this case that supports a different approach. ODEC should not be allowed to share its losses with PJM customers.

Despite the assertions of PJM, market rules are not suspended when markets are stressed. If markets only work when conditions are good, then markets are not working.

Generation Capacity Resources are required to be available at their installed capacity value unless on an approved scheduled outage or a forced outage.[10] No scheduled outage applied to the ODEC Units on the Event Days. Gas was available to all three stations for purchase by ODEC for operating on the Event Days, and ODEC did purchase gas for the ODEC Units. ODEC had purchased oil which was in storage and available to Louisa and Marsh Run, the dual fuel stations, for operating on the Event Days. ODEC did the right thing in purchasing fuel and, in doing so, acted consistent with its capacity obligations.

2. ODEC Has Not Justified Retroactive Waiver of the Rules Preventing Recovery of the Cost of Gas Not Used to Serve Customers for Units with Canceled Dispatches.

a. Rock Springs on January 7–8

Rock Springs was offered on Maximum Emergency Generation status for January 7 and PJM called them to operate that morning during the Maximum Emergency Generation action (4:30 to 12:14) but ODEC replied they could not start. PJM then instructed them to record a forced outage which ODEC entered for both units from 3:40 to 14:20. ODEC then could not operate Rock Springs from 18:00 on January 7 to 10:00 on January 8, 2014, despite PJM's request to run. ODEC did not bring Rock Springs on line at 18:00 as PJM requested but stated they could start at 22:00. ODEC sold the gas not burned during this four hour

10 *See* OATT Attachment DD § 8.1; PJM Reliability Assurance Agreement § 9.1(c).

delay. ODEC does not request compensation for the sale of gas associated with the failure to operate from 18:00 to 22:00.

At 22:05 ODEC informed PJM the units still could not start. At 22:42 ODEC notified PJM the units could start their run but, after three failures to start as instructed that day, PJM declined them. ODEC did not self-schedule the units to burn the gas, and sold the gas immediately.

The claimed $1,783,036.92 for gas balancing costs is unjustified because the costs resulted from the repeated failure to perform as originally requested.

Granting the retroactive waiver requested by ODEC would transfer to PJM customers the operational risks associated with keeping its units in service. ODEC has the responsibility to operate its units in accordance with PJM dispatch. ODEC bears the risk of loss for outages and failure to follow PJM dispatch. ODEC should be required to take a forced outage for Rock Springs based on its failure to respond to PJM dispatch.[11] Because ODEC's unrecovered gas costs can be attributed to its failure to operate Rock Springs consistent with PJM's dispatch instructions. Accordingly the request for waiver should be denied.

b. Rock Springs on January 28

Rock Springs experienced what ODEC refers to as canceled dispatches on January 28, 2014. The units were not called to start and the units did not start.

Rock Springs was offered in the day-ahead market at a high offer of $X per MWh on January 27 for January 28 with a 24 hour Minimum Run Time (normally 4 hours) not consistent with parameter limited schedule rules, and as a Max Emergency Status generator, all of which contributed to its failure to clear the day-ahead market. At 16:10 on

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[11] *See* PJM Operating Agreement Schedule 1 § 1.3.7. Designating a force outage would increase the units' EFORd (forced outage rate) and decrease the amount of capacity the unit is able to sell to PJM. *See* PJM Reliability Assurance Agreement Schedule 5. A forced outage could also affect capacity market revenues and Peak-Hour Period Penalties. OATT Attachment DD § 10.

January 27, after the day-ahead market cleared for January 28, PJM requested that Rock Springs be available from 10:00 on January 28 to 10:00 on January 29. The duration of PJM's request was a result of the 24 hour minimum run time. At 7:06 on January 28, the request was cancelled.

The default parameter limit for the Minimum Run Time (MRT) parameter for parameter-limited schedules for Rock Springs is 5 hours or less. ODEC filed a request for a temporary exception to modify the MRT to 24 hours to be effective from January 27 through January 30 based on pipeline tariff restrictions. Temporary parameter exception requests are accepted without prior review to allow generators to reflect operational flexibility of a unit and give dispatchers the most accurate information regarding physical limitations that may have changed the ability of a unit to perform to its abilities. It is the Market Monitor's position that pipeline tariff restrictions are not physical limitations at a unit and are not a valid justification for a temporary parameter exception.

ODEC did not self-schedule the units to earn energy revenue or cash out the nominated gas on the pipeline at a future index price. ODEC chose to sell the gas on January 28 and 31 at a loss of $6,529,372.70.

It was ODEC's decision how to handle its fuel procurement, and ODEC should incur the financial consequences. The claim for $6,529,372.70 for gas balancing costs should be denied.

c. Louisa on January 22–23

At 12:57 on January 22, PJM requested Louisa 1 through 5 be ready for January 23, 2014, from 05:00–10:00 and then from 16:00–21:00. PJM cancelled the request for the morning because of a transmission constraint and ODEC sold the excess gas at month's end resulting in a $3,481,385.04 loss. The constraint was resolved by the afternoon and the units operated for somewhat longer than originally requested.

It was ODEC's decision how to handle its fuel procurement, and ODEC should incur the financial consequences. The claim for $3,481,385.04 for gas balancing costs should be denied.

d. Louisa on January 28

Louisa on January 28 did not experience losses resulting from a failed start. Louisa started and ran.

At 16:10 on January 27, PJM requested ODEC to have Louisa available for 05:30–10:00 on January 28 to support the AP South constraint. The units were run by PJM with Unit 1 operating from 5:35–9:44 and Unit 2 from 5:22–9:34. ODEC claims losses of $61,976.04 based on the fact that the actual 501 unit operating minutes time of operation was slightly different than PJM's original request of 540 unit operating minutes.

In this case ODEC is requesting compensation for routine operational practices by PJM that are not compensated under the tariff. In addition, ODEC started Unit 1 late and ODEC chose not to continue running the units after release by PJM until 10:00.

Louisa Units 3, 4, and 5 operated using oil on January 28, for both morning and afternoon load peaks. The operation of Louis Units 3, 4 and 5 on oil shows that ODEC could and did manage fuel resources to avoid losses on gas and that ODEC could have managed their fuel resources to mitigate any losses on Units 1 and 2. Operation of Louisa 1 & 2 on January 28 on oil would have only consumed about 60,000 gallons (Market Monitor estimate from public data) from the very large storage facility at the plant.

It was ODEC's decision how to handle its fuel procurement, but it is also ODEC who should receive, for better or worse, the financial consequences. The claim of $61,976.04 for gas balancing costs should be denied.

e. Marsh Run on January 23

On January 22, 2014, at 12:57 PJM requested that ODEC have the Marsh Run units available for periods 05:00–10:00 and 16:00–21:00 on January 23. The units were dispatched in Real Time (RT) by PJM and performed as follows: Unit 1 ran 05:06-5:10; Unit 1 had an outage from 5:10 to 5:31; Unit 1 ran from 05:44–10:15; Unit 1 ran from XX to YY; Unit 2 ran from 05:19-09:37; Unit 2 ran from AA to ZZ; Unit 3 ran from 05:24-09:53; and Unit 3 ran from BB to CC.[12]

ODEC claims losses of $359,560.85 based on the fact that the actual 822 unit operating minutes time of operation was slightly different than PJM's original request of 900 unit operating minutes for the morning schedule. The afternoon operation of XXX unit operating minutes compared to the planned 900 is not in dispute. The actual operating times for the morning operation are still all within reasonable operating ranges, however, as unit starts and shutdowns must be staggered. In this case ODEC is requesting compensation for routine operational practices by PJM that are not compensated under the tariff. The 34 minute period of non-operation at Unit 1 resulted in some unburned gas and ODEC could have self-scheduled and extended its run time to burn any excess gas. ODEC has not shown that extending the run could not have allowed it to recover some or all of the gas costs.

It was ODEC's decision how to handle its fuel procurement in choosing gas over oil for some units, and ODEC should receive the financial consequences. The claim for $359,560.85 for gas balancing costs should be denied.

3. Generation Capacity Resources Such As the ODEC Units Have an Obligation to Provide Energy When Needed.

Generation Capacity Resources such as the ODEC Units have an obligation to provide energy when it is needed.[13]

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12 Capital letters are used in this document in order to protect potentially confidential information.

13 *See New England Power Generators Association, Inc. v. ISO New England, Inc.*, 144 FERC ¶ 61,157 at P 47–59 (2013) ("*NEGPA v ISO-NE*") ("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).

ODEC characterizes PJM communications with it (at 1 & n.2) as "dispatch instructions," but it does not recognize and appropriately take into account that, regardless of how PJM's communications on the Event Days are characterized, the ODEC Units are Capacity Resources, and, as such, are obligated to be ready to provide energy when needed.[14] For January 23 and 27, 2014, PJM issued Maximum Emergency Generation Alerts. PJM market rules explain, "The intent of the alert(s) is to keep all affected system personnel aware of the forecasted and/or actual status of the PJM RTO… Alerts are issued in advance of a scheduled load period to allow sufficient time for members to prepare for anticipated initial capacity shortages."[15]

Before and after PJM issued a Maximum Emergency Generation Alert, PJM contacted ODEC so that ODEC Units would be ready to provide energy when needed.[16] PJM compensated ODEC for the ODEC Units' start up and output when they started and when they generated energy. Once PJM determined that the ODEC Units were no longer needed, PJM released them. Under the PJM market rules, PJM does not compensate Generation Capacity Resources for the cost of fuel that generators do not use to provide energy. The market rules are designed to avoid that result, which would be fundamentally inconsistent with a competitive market design.

The ODEC Units are Generation Capacity Resources for the 2013/2014 Delivery Year. The ODEC Units are paid to be ready throughout the year to provide energy when it is needed. The ODEC Units have an obligation to provide the service for which they are paid every day.[17]

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[14] *Id*.

[15] PJM Manual 13 § 2 at 16.

[16] *Id*.

[17] *See*, *e.g.*, OATT Attachment DD § 8.1; PJM Operating Agreement Schedule 1 § 1.10.1A(d).

PJM and PJM customers are entitled to expect that ODEC will procure fuel for the ODEC Units so that they are ready to run when called and that they will be available when called. This leaves decisions about a resource's readiness in the hands of the owner, and the owner is entirely responsible for the attendant risks and rewards.

D. The Standards Are Not Met to Grant a Request for Retroactive Waiver of the Rules Preventing the Recovery of Gas Purchased but Not Burned in Order to Provide Service.

ODEC seeks a retroactive waiver of the PJM market rules so that it can obtain payment for asserted losses on its gas purchases on the Event Days. ODEC has not demonstrated that it meets the requirements to waive the tariff provisions that are designed to prevent the recovery of gas purchased but not burned to provide service to PJM customers and, effectively, to put in their place a rule that would permit ODEC, and only ODEC, to recover such costs from PJM customers during the Event Days.

ODEC states the applicable standard for evaluating a waiver request: "(1) the applicant has been unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) the waiver would address a concrete problem; and (4) the waiver would not have undesirable consequences, such as harming third parties."[18]

Because the request is for a retroactive waiver, a higher level of scrutiny should apply.[19] ODEC's request for waiver fails under each element of the standard that applies,

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18 ODEC at 22, citing *Invenergy Nelson*, 147 FERC ¶ 61,067 (2014).

19 The law that applies to the Commission's authority to grant retroactive waivers is unclear. *See Transcontinental Gas Pipe Line Corporation*, 62 FERC ¶ 61,129 at 61,827–62,828 (1993) ("[no] court has squarely decided whether the Commission's waiver power may extend backward past the original filing date absent the parties' agreements. Indeed, resolution of the conflict between the waiver power and the retroactive ratemaking rule presents difficult questions of statutory interpretation and regulatory policy," citing Columbia Gas Transmission Corp. v. FERC, 895 F.2d 791, 795 (D.C. Cir. 1990), *cert. denied*, 408 U.S. 907 (1990), quoting City of Girard v. FERC, 790 F.2d 919, 924 (1986)). The Market Monitor believes as a matter of policy that there are circumstances where retroactive relief is appropriate. The Make Whole Waiver is an example. The Make Whole Waiver applied to rules that had an unintended result and operated against their purpose which is to ensure market

with the sole exception of ODEC's request for a make-whole waiver for Rock Springs through an extension of the blanket Make-Whole Waiver granted in Docket No. ER14-1144.

The PJM market rules that ODEC wants waived are all in place for good reasons and ODEC has provided no good policy reason for waiving them and no good explanation for why the rules should not apply in this case. The responsibility for managing all aspects of fuel related risk is assigned to suppliers because suppliers are in the best position to make choices about how to manage that risk. Fuel related risk management is difficult, as ODEC's description of its difficulties on the Event Days illustrates, and that is why the rules place incentives on ODEC and other suppliers to manage those risks. Fuel related risks, while they appear to be the result of short run market conditions, are the result of long term decisions that have been made by generation owners. These decisions include the availability of back up fuel, the level of firmness of gas purchases, and whether to do a winter test of equipment. PJM customers are not in a position to manage fuel related risk either directly or indirectly through PJM. It does not matter that the Events Days are days when fuel risk management was challenging. High risk days are exactly the days when the incentives to manage fuel well matter. High risk days are the reasons the incentives exist. High risk days are exactly the days when market participants should be held to the market rules. Nothing happened on the Event Days that was not foreseeable and not well within the scope of conditions that the rules were designed to address. The rules are not meant to apply only during nice weather. Waiving the rules for ODEC would open the floodgates for others to ask for waivers whenever the stakes are high and market decisions have negative consequences.

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efficiency and the appropriate allocation of risks. When the market rules operated precisely as they were intended to operate, precisely as they were expected to operate, and in circumstances that were foreseeable, these factor should weigh heavily against granting a waiver and against granting a waiver on a retroactive basis. For these reasons, the waiver of rules preventing recovery of losses on fuel not used to serve PJM customers should not be granted.

1. ODEC Has Not Shown That It Could Not Comply with the Rules; ODEC Did Comply with the Rules.

ODEC has not shown that it could not comply with the tariff rules. ODEC's behavior did comply with the rules, for the most part. Consistent with its capacity obligations, ODEC purchased gas and oil for the ODEC Units so that the ODEC Units could run. ODEC was right to make those fuel purchases. PJM has not authorized these personnel to commit PJM customers to guarantee anyone's fuel related decisions. The PJM market rules are designed to avoid imposing this responsibility on PJM customers. Generation owners have the responsibility to manage their fuel related decisions. Generation owners have incentives to manage those decisions well; they bear the positive and negative consequences of those decisions.

This proceeding does not concern whether ODEC could comply with the rules. It concerns whether ODEC or PJM customers should pay for the consequences of ODEC's fuel related decisions including ODEC's choice of fuel, without regard to how well ODEC managed its fuel related decisions and its choice of fuel.

While ODEC performed, other units have claimed outages for fuel related reasons. The Market Monitor is investigating whether units that were not available for fuel related reasons made the same good faith efforts that ODEC made to acquire fuel under difficult circumstances.

2. The Request Is Not of Limited Scope.

ODEC's requested waiver is not of limited scope. ODEC seeks waiver of whatever provisions prevent it from receiving a make-whole payment. There are many such provisions. ODEC cites some of them, but not enough to actually obtain the relief sought. Moreover, new provisions would be needed to obtain the result that ODEC seeks.

The existing rules are all in place for good reasons. Provisions for make whole payments appropriately limit when make whole payments are made, and the rules for make whole payments do not apply to ODEC's circumstances. A waiver is not limited in scope when granting it would require broad revisions of the PJM market rules and would incorporate significant changes to those market rules, as would ODEC's request.

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. PJM customers do not receive the benefits when risks are successfully managed.

a. *Waiving the Provisions Requested by ODEC Would Not Allow ODEC Any Cost Recovery.*

In order to recover costs for gas purchased but not burned due to canceled dispatch, ODEC requests (at 43–45) waiver of Sections 1.9.7(b)(ii) and 1.10.2(d) of Schedule 1 to the PJM Operating Agreement. Waiving these two provisions would not provide the relief sought by ODEC because these provisions pertain to the recovery of start up costs. ODEC's requested relief does not involve start up costs. ODEC's Louisa and Rock Springs Units did not start on the relevant Event Days. ODEC's unrecovered gas costs are not start up costs under any possible interpretation of the market rules. The rules intentionally limit compensation for start up costs to units that actually initiate the start up process. Granting the relief sought by ODEC would require the waiver of additional unspecified rules. Such waivers would require a basic shift in market rules governing the assignment of risk in markets.

Energy offers are comprised of three components: start up, incremental energy and no load.[20] Gas costs that are incurred in the process of starting a unit may be included in the start up component.[21] Daily cost-based offers include the actual marginal costs for each component, including the marginal cost of fuel. Daily price-based offers may include the cost-based start up costs and the cost-based no load costs plus an incremental offer selected by the seller.[22] But if the seller does not elect to use cost-based start up and no load components as part of its price-based offer, the seller must define the level of start up and no load components at defined dates twice a year and cannot change them during the following six month period for its price-based offer. These rules were introduced in order to limit the exercise of market power and prevent market manipulation by sellers in extreme market conditions.[23]

There can be no reasonable claim for start up costs in this case. There is no reasonable interpretation of the rules defining start costs which would include the costs of gas required to operate a unit and generate power. Those costs belong in the incremental offers and in the no load offers, following the rules for each, and are recoverable only if a unit operates subject to specific rules.

In order to recover costs for gas purchased but not burned due to PJM's early release of ODEC's Louisa and Marsh Run Units, ODEC requests (at 78–80) waiver of Section 3.2.3 of Schedule 1 to the PJM Operating Agreement. ODEC explains (at 80) that Section 3.2.3(f) limits it "to only recovery based on a calculation of an hourly amount based upon the level of output of the units, the actual hourly integrated output of the unit, the applicable real-

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20 *See* PJM Operating Agreement Schedule 1 § 1.10.1A(d).

21 For cost-based start offers, this means the cost of gas incurred in the process of bringing the unit on-line. *See* PJM Manual 15 (Cost Development Guidelines) § 2.4.1 at 12.

22 See PJM Operating Agreement Schedule 1 § 1.10.1A.

23 *See* PJM Operating Agreement Schedule 1 § 1.9.7(b).

time LMP, and the unit offer." In other words, customers only have to pay ODEC for energy actually supplied at the higher of the market price or ODEC's offer price. Compensation at that level is, of course, exactly what the rules intend. The rules are not intended to compensate ODEC for the cost of fuel that it does not consume because it does not generate power. In fact, waiver of Section 3.2.3 in its entirety would not provide ODEC the relief that it seeks. There would still be no rule that allows the recovery of the cost of fuel purchased but not consumed when no power is generated. There would also be no provision to allocate such costs to PJM customers or to any PJM market participants.

b. The Commission Has Rejected Waivers in Similar Circumstances Where Suppliers Requested Significant Changes to Market Rules in Order to Create Eligibility for Make Whole Payments.

The Commission recently rejected a waiver in similar circumstances because the requested waiver was not limited in scope. On March 14, 2014, the Commission denied a request for waiver of the market rules of the California Independent System Operator, Inc. ("CAISO") from certain market suppliers who sought an order that would require CAISO to "reimburse generators for the cost of natural gas procured in response to CAISO dispatch directives," including "the cost of disposing of natural gas when CAISO later elects not to dispatch units for which natural gas was procured."[24] The Commission found that the request was "overly broad in scope and did not meet the Commission's requirements for a tariff waiver." Consistent with this precedent, ODEC's request for waiver of PJM market rules should also be denied.

The Commission found (at P 22): "Specifically, Suppliers' request does not identify specific provisions of the CAISO tariff for which they seek waiver. Rather, Suppliers' waiver request seeks broad revisions of the CAISO tariff that appear to incorporate significant changes to the CAISO current market rules."

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[24] *Indicated CAISO Suppliers*, 146 FERC ¶ 61,183 at P 1.

ODEC attempts to correct CAISO suppliers' oversight by specifying certain provisions (i.e. section 1.9.7(b)(ii) and 1.10.2(d) for canceled dispatch and section 3.2.3 for early release), but ODEC still fails to identify the discrete provisions or provisions that would provide it relief by waiver of those provision. Even if the Commission waived the provisions ODEC cites, ODEC still fails to establish eligibility for make-whole payments for ODEC's asserted unrecovered gas costs. Waiver of additional unspecified provisions and the addition of new provisions would be needed in order to grant the requested relief. More importantly, despite ODEC's attempt to demonstrate limited scope by citing certain provisions, the argument still fails to satisfy the substantive concern about an overly broad scope that the Commission raised in *Indicated CAISO Suppliers*, and on which basis the Commission denied waiver. ODEC seeks a broad change to the applicable market rules in order to achieve an outcome opposite to the outcome intended by the rules. ODEC has not shown that a discrete market rule or set of existing market rules were never intended to apply to its particular isolated circumstances, that the rules have become obsolete, or that the rules create an inefficient, unjust and unreasonable outcome.

3. The Request Does Not Establish a Concrete Problem with the PJM Market Rules That Needs to Be Remedied.

ODEC has not identified a concrete problem with the PJM market rules for which it seeks waiver. ODEC should not be allowed to recover losses that resulted from buying gas but being unable to burn it. ODEC has the responsibility to manage its fuel procurement risks. Each of the provisions that ODEC seeks to change operates as it is intended to operate, and no changes to provisions are needed. No changes to these rules have been proposed.

ODEC shows that managing fuel related risks on the Event Days was challenging. The Market Monitor has criticized some of ODEC's decisions as it managed those risks. The point of this is not to suggest that ODEC's skill at managing risks should determine whether it should be eligible for relief. ODEC should not be eligible for relief even if ODEC could show that it had made no mistakes on the Event Days. The point is that managing risks is difficult and the costs incurred can vary widely based on the quality of those decisions. ODEC and other suppliers must have strong incentives to make the best decisions that they can, and the only way to assign those incentives is to ensure that suppliers know that they will live with the consequences of their decisions.

It also makes no sense to suddenly reassign costs when they are higher than expected. The incentives must apply to low likelihood/high cost events as well as the reverse. Regulation through competition and markets is not just for nice weather. It is meant to be a comprehensive regulatory regime.

The answer to ODEC's problems on the Event Days is not to shift the costs and risks of similar future events to PJM customers. It is not the responsibility of PJM customers in a competitive market to manage the risks of owning and operating Generation Capacity Resources. The risks and rewards of such decisions appropriately lie with the owners of Capacity Resources.

4. The Request Cannot Be Granted Without Harm to Third Parties.

ODEC's request clearly does not meet the third requirement for a waiver. Waiving the rules for ODEC's benefit means harming third parties. Granting ODEC's requested waiver would require customers to pay ODEC's gas costs.

In support of its waiver request, ODEC cites to the Commission's holding that "increased costs to load as a result of more accurate cost recovery calculations do not amount to a legally cognizable harm."[25] The Commission's holding applies only to cost recovery calculations that are "more accurate," such as the use of fuel price indices shown to be more accurate than indices included in the tariff.[26] This case is not about the accuracy of costs, it is about whether ODEC should be able to impose costs properly borne by ODEC

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25 ODEC at 26, citing *California ISO*, 146 FERC ¶ 61,184 at P 20 (2014).

26 146 FERC ¶ 61,184 at P 20.

on PJM customers. Moreover, the Commission explained that it was notable that "no party asserts that undesirable consequences would result from granting this waiver."[27] However, in the ODEC case, granting the requested waivers would upset the fundamental rules for incenting fuel procurement and fuel choice risk management in PJM markets. In this case, granting the requested waiver would result in less accurate cost recovery. Accordingly, the holding ODEC cites does not apply to the facts here.

E. Any Relief Awarded ODEC Should Be Conditional on a Process for Calculating and Verifying the Correct Amount.

If, contrary to the Market Monitor's arguments, the market rules are waived so that ODEC can receive a make whole payment for part of its request, then the Commission should reserve the decision on the specific amount of make-whole payment. In that event, a separate process would be needed to calculate and verify ODEC's costs and to otherwise ensure proper application of whatever principles the Commission determines to apply.

As PJM makes clear, PJM's support for ODEC's waiver is based on its views that the Event Days involve a "confluence of circumstances" and "unprecedented … events" that, in PJM's view, are a reason to allow ODEC to recover its gas balancing losses from PJM customers.[28] PJM specifically declines to support the specific amounts claimed by ODEC and the specific bases for calculating those amounts, stating (*Id*.):

> While PJM does not believe ODEC can be compensated for its losses under the current provisions of its Tariff, Operating Agreement or the RAA, and will not opine on the justness and reasonableness of the specific level of costs ODEC should be compensated for, PJM generally supports the ODEC Waiver Request under the specific facts and circumstances that occurred here as a matter of policy.

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27 *Id*.

28 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 12.

No specific claims should be paid without thorough investigation of whether they have a just and reasonable basis. The Market Monitor does not believe that any waiver is appropriate, regardless of how well ODEC managed its fuel procurement. If however, it is determined that a waiver is appropriate, then it is important to calibrate any such relief based on performance. If ODEC receives any relief, then ODEC still should not receive compensation for unrecovered gas costs that are the result of poor decisions. The Market Monitor is ready to assist with such calculation and verification, if necessary.

II. CONCLUSION

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

Respectfully submitted,

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Dated: July 28, 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 28th day of July, 2014.

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