

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

CPV Shore LLC)
) Docket No. ER19-1083-000
)

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 (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),² submits these comments responding to the request filed February 19, 2019, for waiver of certain filed tariff provisions of PJM Interconnection, L.L.C. (“PJM”). The request fails to satisfy the criteria for a waiver and should be denied.³

I. COMMENTS

A. CPV Has Not Shown that It Meets the Requirements for a Waiver.

CPV did not follow its approved fuel cost policy in January 2018 and was appropriately subject to defined penalty payments. CPV has not shown that it acted in good faith. CPV knew the rules and knew the consequences but violated the rules nonetheless.

¹ 18 CFR § 385.211 (2018).

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 See, e.g., *Empire Dist. Elec. Co.*, 166 FERC ¶ 61,164 (2019) (“The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.”).

CPV has not shown that its request is of limited scope. If CPV's request were granted, it would undermine the entire process for ensuring the accuracy of cost-based offers and would provide a precedent for requests for any participant that wanted to modify their fuel cost policy after the fact. CPV has not shown that the waiver addresses a concrete problem. The waiver is a broad attack on the approved rules which ensure that fuel cost policies are verifiable and systematic and that the resultant cost-based offers are similarly verifiable. CPV has not shown that the waiver has no undesirable consequences. If granted, the waiver would undermine customers' confidence in market power mitigation which depends on verifiable cost-based offers. The waiver would undermine market power mitigation because it would permit after the fact justifications to support use of fuel costs and cost-based offers that were not based on a verifiable and systematic fuel cost policy. If CPV's waiver and associated rationale were adopted, the result would be to undermine the rule based process for defining the accurate and market based level of cost-based offers and the market power mitigation rules which rely on accurate cost-based offers.

The overarching purpose of PJM's Schedule 2 penalty provisions is to ensure that market power mitigation is effective. When units are defined to have market power, units are required to make competitive, cost-based offers. The rules governing fuel cost policies exist solely to ensure that cost-based offers are verifiable and systematic. Verifiable and systematic means that, given the information available at the time and the current approved fuel cost policy, a third party would calculate exactly the same cost-based offer as submitted by the unit owner at the time. Fuel cost policies replaced the type of practice that CPV would reinstitute, reliance on after the fact and unverifiable rationales for fuel costs and cost-based offers. CPV's approach would substitute after the fact judgment for that process and, by definition, would undermine that process if accepted. CPV's approach is directly antithetical to the purpose of the rules and would undermine the relatively recently instituted rule based approach.

PJM and the Market Monitor cannot verify the accuracy of cost-based offers without consistent use of approved fuel cost policies. A penalty applies "when 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.”⁴ Schedule 2 requires adherence to the approved fuel cost policy.

B. PJM Correctly Applied its Tariff in Issuing the Penalty.

On January 5, 2018, CPV Shore submitted a cost-based offer that did not adhere to its PJM approved Fuel Cost Policy. Therefore, CPV Shore submitted a cost-based offer that did not comply with Schedule 2 of the PJM Operating Agreement and is subject to the defined penalty. PJM and the IMM agree that CPV Shore violated Schedule 2, and PJM accordingly issued the penalty. No concrete problem justifies a waiver of the tariff. PJM correctly applied the tariff, and the rules operated as intended.

C. CPV Shore Did Not Have an Approved Revision to Its Fuel Cost Policy until January 26, 2018.

On December 27, 2017, the Market Monitor agreed with CPV Shore on the appropriateness of fuel cost policy revisions to base fuel costs on a different approach.⁵ The Market Monitor worked with CPV Shore to draft corresponding changes to the fuel cost policy. Both the Market Monitor and PJM separately advised CPV Shore to continue using the previously approved fuel cost policy until PJM approved a new fuel cost policy. Due to CPV’s failure to submit all the required information, the revised fuel cost policy did not pass the Market Monitor’s review until January 26, 2018.

The Market Monitor wrote to CPV Shore on December 27, 2017:

Hi Nate, thank you for the note.

The calculation of the unit’s cost based offer has to be in line with the approved fuel cost policy until a new one is approved.

Once you have a new draft, we’ll review it as soon as possible.

⁴ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,282 at P 63 (2016).

⁵ The alternative approach is confidential and is therefore not described here.

Thanks.

Joel

PJM wrote to CPV Shore on December 27, 2017:

Agreed. We will review it as soon as possible as well but until then you must use your current one until new one approved.

Jeff Schmitt

CPV Shore submitted revisions to the fuel cost policy on January 2, 2018. On January 3, 2018, the IMM requested additional edits and advised CPV Shore to include the required supporting documentation, a cost-based offer numerical example and a copy of the contract with Sequent.

The Market Monitor wrote to CPV Shore on January 3, 2018:

Brian, find attached the new CPV Shore draft with some small modifications. If you agree, please accept the changes, delete the comment and submit in MIRA along with the fuel supply agreement.

We'll take a look at the agreement, if the policy is in line with the agreement, the policy will pass the IMM's review. Don't forget to copy over the numerical example in the new FCP ID.

Thanks.

Joel

CPV Shore uploaded the revised fuel cost policy on January 3 but did not include the required documentation. CPV Shore did not upload the requested fuel supply agreement until January 29, 2018. On January 26, 2018 at 11:35 AM, the Market Monitor reminded CPV Shore to provide the fuel supply agreement. On January 26, 2018 at 12:22 PM, (three days before CPV provided the revised fuel supply agreement), PJM approved the fuel cost policy.

PJM wrote to CPV Shore on January 26, 2018:

Dear Account Managers for : CPV Shore, LLC

The Fuel Cost Policy ID(s) listed below has been approved by PJM in accordance with Manual 15 and Operating Agreement, Schedule 2. Please be reminded that while PJM has approved the Fuel Cost Policy ID(s) referenced in this notice, Market Sellers may still be required to submit an updated Fuel Cost Policy as described in Manual 15, and the Operating Agreement, Schedule 2.

This policy will remain in effect until superseded by a new approved policy or revoked by PJM. Any changes to the currently approved policy will need to be formally submitted as documented in Manual 15, as a new policy to be reviewed by PJM and the IMM in accordance with Manual 15.

Fuel Cost Policy Information			
Fuel Cost Policy ID (s)	Fuel Cost Policy Document Date	Effective Date	Expiration Date ^[1]
003100	01/03/2018	01/26/2018	11/01/2018

Please send questions to fuelcostpolicyanalysis@pjm.com

Thank you-

[1] The expiration for this policy is driven by the next annual review period, which is from June 15, 2018 – November 1, 2018. Market Sellers will be required to inform PJM and the IMM whether the current Fuel Cost Policy complies with governing documents or submit a new policy for review.

On January 29, 2018, after reviewing the fuel supply agreement, the Market Monitor passed the CPV Shore fuel cost policy.

D. Cost-based Offers on January 5, 2018, Did Not Adhere to the Approved Fuel Cost Policy.

CPV Shore acknowledges that its cost-based offers for January 5, 2018, did not adhere to its approved fuel cost policy. The fuel costs submitted in intraday offers on January 5, 2018, exceeded the fuel cost defined by the approved fuel cost policy. Under these circumstances, PJM appropriately issued the Schedule 2 penalty to CPV Shore. There is no reason to waive those penalties.

II. CONCLUSION

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

Respectfully submitted,



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Dated: March 19, 2019

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 19th day of March, 2019.



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