

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

PJM Interconnection, L.L.C.)
) Docket No. ER20-1764-000
)

**ANSWER AND MOTION FOR LEAVE TO ANSWER
OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rules 212 and 213 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”), submits this answer to the joint answer submitted on June 10, 2020, by Old Dominion Electric Cooperative , Exelon Corporation, Dominion Resources Services, Inc., J Power USA Development Co., Ltd., Competitive Power Ventures, Inc., and Vistra Energy Corporation (“Joint Suppliers”).² If approved, the revisions filed in this proceeding on May 4, 2020 (“May 4th Filing”), supported by Joint Suppliers, would create a broad exception to the rules for fuel cost policies required by and established under the Commission’s June 17, 2016, order on offer flexibility (“FCP Order”) that market sellers must adhere to an approved fuel cost policy or face penalties.³ The *force majeure* exception would apply under a wide range of circumstances, including the most critical days of the year for the application of fuel cost policies. The May 4th Filing

¹ 18 CFR §§ 385.212 & 385.213 (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 *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,282; *see also PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133 (2017).

provides only for a limited ex post review by PJM with no defined standards. The May 4th Filing would replace the current, approved approach to fuel cost policies with the vague unenforceable standards that preceded fuel cost policies and that the Commission explicitly rejected in the FCP Order. The *force majeure* exception undermines the purpose of fuel cost policies, violates the directives in the FCP Order, and proposed exceptions should therefore be rejected.

I. ANSWER

A. Suppliers Must Follow Their Own Fuel Cost Policies and Comply with PJM Market Rules or Pay Penalties.

The Joint Suppliers, once again, fail to provide any reasons they cannot follow their fuel cost policies under any and all circumstances. The Joint Suppliers clearly state that they want to use a fuel value not determined by the market or by an unaffiliated fuel supplier and therefore not subject to verification. The Joint Suppliers argue (at 4), “[I]t is not at all clear how in the wake of an event of *force majeure*, a market seller should be held to any of the indicators identified by the Market Monitor—clearing prices, market indicators, or third party bilateral transactions or quotes.” The Joint Suppliers fail to provide an alternative measure of the market value of fuel. The Joint Suppliers advocate against an objective and verifiable definition of the market value of fuel.

The Market Monitor disagrees with the position of the Joint Suppliers. To ensure accurate cost-based offers and adequate market power mitigation, market sellers must be required to follow their fuel cost policies and use a verifiable source for fuel costs under all market conditions. PJM market sellers have been able to use clearing prices, market indicators, and third party bilateral transactions and quotes through numerous events that qualify as *force majeure* under NAESB standards, including freezing temperatures, hurricanes, pipeline operational flow orders, firm gas curtailments, a pandemic and riots. Joint Suppliers seek permission to not follow their fuel cost policies under circumstances in which they have previously followed them. The Market Monitor has not seen a single case

in which a market seller received a penalty, or notified the Market Monitor that it was unable to follow a fuel cost policy, when the fuel cost policy included provisions for using bilateral transactions and/or quotes when market indices were unavailable. Market sellers have not identified any such case.

The Joint Suppliers argue (at 5): "[T]he notion that the Market Monitor is not satisfied with the examples provided by PJM or stakeholders should not be the reason to reject PJM's proposal. The very notion of an event of *force majeure* is that it is unforeseeable." This statement is misleading. It is foreseeable that the events described as *force majeure* in the June 4th Filing will occur. It is common knowledge that freezing temperatures will occur in winter, and that hurricanes affect the PJM footprint. PJM market sellers have adequate experience to know that accidents occur on pipelines that result in curtailments and that pipelines will experience outages to repair equipment. While these events may be outside the control of the PJM market seller, they are not unforeseeable.

Even if an unforeseen event were to occur, market sellers have failed to explain why their fuel cost policy does not or cannot define the fuel cost in a verifiable way. If market sellers can obtain fuel during such an event, the basis for pricing such fuel can be defined in advance in a verifiable and systematic way. An essential purpose of fuel cost policies is to define a method for calculating the fuel cost under uncertain and, at times, unforeseeable conditions. The use of fuel cost policies reduces exposure to regulatory risk by market sellers and allows the Commission and market participants to be confident that the actual market price of fuel is reflected in the price of power. This approach means that there is no after the fact second guessing about what the market seller knew or did not know at the time.

The May 4th Filing provided an example of a *force majeure* event as defined in the proposal. But the May 4th Filing did not provide an example of when it would be permissible for market sellers to not follow their fuel cost policies. Neither the May 4th Filing nor the Joint Suppliers provided an explanation of how a market seller would actually develop the fuel costs included in its energy offer under those circumstances. This

is a fundamental problem with the arguments of the Joint Suppliers. Providing such an explanation would demonstrate that market sellers would use one of the methods already identified to define their fuel costs and that there is no objective pricing source or method that the Market Monitor or market sellers have not identified for use in fuel cost policies (e.g. published fuel indices, commodity exchanges, contracts, actual purchases, inventory costs, third party quotes). If market sellers would prefer to use another verifiable method, as yet not revealed, it can be included in fuel cost policies today.

The Joint Suppliers argue against any enforceable standard for fuel costs when market conditions are unusual for any reason. The very broad definition of *force majeure* proposed in the May 4th Filing covers most situations when markets are more volatile and harder to predict. The proposed broad definition of *force majeure* is really a proxy for uncertainty. These are exactly the conditions under which it is most critical to have an enforceable fuel cost policy. Market sellers have less compliance risk and greater ability to exercise market power with a vague and unenforceable standard. Such a standard does not serve the public interest.

B. The Concern Is to Ensure Accurate Offers.

The Joint Suppliers argument regarding the need for penalties is illogical. The Joint Suppliers argued (at 4–5):

As stated in comments submitted in this filing, the purpose of the penalty provisions is “to ensure that resources have the proper incentive to submit accurate cost-based offers.”[footnote omitted] As PJM noted in its filing, the Commission previously agreed with the Market Monitor that the concern is with the deliberate misrepresentation of fuel costs – not with these sorts of events which are reasonably beyond the control of a Market Seller that directly impact their ability to comply with their Fuel Cost Policy. In the limited circumstance where PJM determines that the Market Seller could not comply with its Fuel Cost Policy due to an event of force majeure, a penalty provides no incentive and is instead unjustly punitive.

The Joint Suppliers imply that market sellers do not have an incentive to misrepresent fuel costs during the events beyond the control of a market seller. However, these types of events are precisely when the incentive to overstate fuel costs is greatest. When market sellers face uncertainty regarding their fuel supply, they have an incentive to overstate fuel costs thereby avoiding a commitment by PJM and avoiding submitting a forced outage for lack of fuel. Competitive markets impose risks on suppliers. Joint Suppliers attempt to shift supplier risk to customers. This is inconsistent with competition. Requiring market sellers to comply with their fuel cost policies during stressed market conditions or face penalties is paramount in protecting consumers from the exercise of market power and managing reliability by ensuring accurate offers. Failure to maintain such requirement will result in unjust and unreasonable rates.

The issue is not whether fuel costs are high or low. Under a competitive market design, power prices reflect the current market value of natural gas and other fuels burned to generate power. The issue is whether there should be a clear and verifiable method for determining the current market value of fuel so that offers in the PJM energy market are competitive. The Joint Suppliers' advocate for a process where they would not be held to the standard of a clear and verifiable method. That is inconsistent with a competitive market. It is essential for ensuring competitive market outcomes that market sellers use verifiable fuel costs as the basis for offers. Without such verifiable offers, it is not possible to determine whether market outcomes are competitive.

C. Fuel Cost Policies and Fuel Cost Policy Penalties are the Safeguards against abuse of Market Power.

The Joint Suppliers argue (at 5) that PJM's proposal has safeguards against misuse or abuse because PJM might decide that a penalty is appropriate. This is wrong and inconsistent with the Commission's goal when it required market sellers to have verifiable fuel cost policies and to adhere to them in developing cost-based offers. Markets work when market participants know the rules before they make market decisions and know the

consequences of not following such rules. The Joint Suppliers seek to undo the verifiable fuel cost policy approach.

The Joint Suppliers seek to eliminate fuel cost policies under the conditions when they are most needed and to return to the after the fact review of cost-based offers and no penalties. The Commission rejected this approach in 2016 when it required fuel cost policy approval. The after the fact approach does not and can not meet the Commission's verifiable standard. Verifiable means that when a reviewer has the same input data available to the market seller in real time, the reviewer will calculate exactly the same fuel cost if they follow the steps in the fuel cost policy. Anything short of verifiable means that subjective standards will be used to evaluate fuel costs. Hindsight does not allow for objective review of what was or was not known when the fuel cost was calculated. The result is an effectively unenforceable approach to the definition of fuel costs. This is inefficient and ineffective and is likely to lead to protracted litigation. PJM will be required to make counterfactual, subjective determinations. Neither PJM nor the Market Monitor nor FERC will be able to effectively and efficiently determine what fuel costs actually were because there will be no applicable fuel cost policy if any of the broadly defined *force majeure* conditions exist.

The Commission determined on June 17, 2016, that "additional measures [were] necessary to ensure that resources have the proper incentive to submit accurate cost-based offers" as part of the incorporation of hourly offer flexibility. That was one of the reasons the Commission ordered PJM to incorporate a penalty for the submittal of noncompliant cost-based offers. The Joint Suppliers are attempting to relitigate an issue that was previously addressed and resolved by the Commission and to reverse the prior decision of the Commission on this issue.⁴ The May 4th Filing would reverse the Commission's directive on the issue of fuel cost policies and penalties.

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

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.⁵ 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.

⁵ 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. Independent System 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).

III. CONCLUSION

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

Respectfully submitted,



Jeffrey W. Mayes

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

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

Catherine A. Tyler
Deputy Market Monitor
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
catherine.tyler@monitoringanalytics.com

Joel Romero Luna
Senior Analyst
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
joel.luna@monitoringanalytics.com

Dated: June 25, 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 25th day of June, 2020.



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