

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

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

**REQUEST FOR REHEARING OF THE
INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 713 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 this request for rehearing of the order issued in this proceeding on July 28, 2020 (“July 28th Order”).³ The July 28th Order is arbitrary and capricious because, without explanation, it fundamentally alters the rules for fuel cost policies established in prior Commission orders. When the Commission approved intraday offer flexibility in 2016, it issued an order requiring that PJM develop and file rules that efficiently and effectively protect against the potential for the exercise of market power that is created by allowing intraday offer flexibility (“FCP Order”).⁴ The FCP Compliance Order (at P 57) approved a verifiable and systematic standard so that the fuel price used in cost-based offers “can be calculated by the [IMM] after the fact with the same

¹ 18 CFR § 385.713 (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., 172 FERC ¶ 61,094.

⁴ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,282 at P 63 (“FCP Order”); *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133 at P 78 (2017) (“FCP Compliance Order”).

data available to the [Market Seller] at the time the decision was made and documentation for that data from a public or a private source.” The FCP Compliance Order approved a penalty structure to ensure that market sellers have an incentive to adhere to their verifiable and systematic fuel cost policies.

The July 28th Order accepts revisions filed by PJM, at the behest of market sellers, that do not require market sellers to adhere to their verifiable and systematic fuel cost policies. The revisions filed by PJM conflict with PJM’s own proposal in the stakeholder process that would have upheld penalties under all circumstances for market sellers that do not adhere to fuel cost policies.⁵ As revised, the rule will not protect the markets, but will instead interfere with the ability to mitigate market power and monitor market seller behavior. Rehearing should be granted, the Commission’s policies concerning fuel cost policies set in its prior order should be reaffirmed, and the rules approved under the FCP Order should be restored.

I. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS

In accordance with Rule 713(c)(2), the Market Monitor submits the following statement of the issues and specification of the errors on which it seeks rehearing.

Ample precedent supports reversal of the July 28th Order. The July 28th Order is arbitrary and fails to consider important aspects of the problem at issue.⁶ The July 28th

⁵ See “Fuel Cost Policy Summary - Presentation,” PJM presentation to the Markets Implementation Committee. (December 11, 2019) <<https://www.pjm.com/-/media/committees-groups/committees/mic/20191211/20191211-item-03a-fuel-cost-policy-summary-presentation.ashx>>.

⁶ See 5 U.S.C. § 706(2)(A); *Pac. Coast Fed’n of Fishermen’s Ass’ns, Inc. v. Nat’l Marine Fisheries Serv.*, 265 F.3d 1028, 1034 (9th Cir. 2001) (“[An agency action is arbitrary and capricious if the agency has:] relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”) (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm*, 463 U.S. 29, 43, (1983)).

Order is not supported by substantial evidence.⁷ The July 28th Order cannot be sustained because it lacks an “articulated [] rational connection between the facts found and the conclusions made.”⁸ An agency must explain changes in course.⁹ The July 28th Order fails to address record evidence and arguments that contradict its findings.¹⁰

⁷ See 5 USC § 706(2)(E) (“The reviewing court shall ... hold unlawful and set aside ... findings ... found to be ... unsupported by substantial evidence”); *Motor Vehicle Mfrs. Ass’n. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 168 (1962) (“Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”)); *Illinois Commerce Comm’n*, 576 F.3d 470, 477 (7th Cir. 2009) (explaining that a reviewing court cannot “uphold a regulatory decision that is not supported by substantial evidence on the record as a whole”); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1319 (D.C. Cir. 2004); *Missouri Pub. Serv. Comm’n v. FERC*, 337 F.3d 1066, 1072–75 (D.C. Cir. 2003) (vacating and remanding Commission orders because it found, among other things, that the Commission had failed to articulate the actual reasons for its decision, and the reasons it did cite were “speculative,” unsupported by record evidence, and did not support its decision); *Dickinson v. Zurko*, 527 U.S. 150, 162 (1999).

⁸ *Pac. Coast Fed’n of Fishermen’s Ass’ns*, 426 F.3d at 1090.

⁹ See, e.g., *Nw. Env’tl. Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 687–88 (9th Cir. 2007) (“[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.”) (internal quotation marks and citation omitted); *Atchison, Topeka & Santa Fe Ry. v. Wichita Bd. of Trade*, 412 U.S. 800, 808, 93 S.Ct. 2367, 37 L.Ed.2d 350 (1973) (“Atchison”) (“Whatever the ground for the [agency’s] departure from prior norms, . . . it must be clearly set forth so that the reviewing court may understand the basis of the agency’s action and so may judge the consistency of that action with the agency’s mandate.”); *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009) (explaining that a reviewing court cannot “uphold a regulatory decision that is not supported by substantial evidence on the record as a whole”); *Ass’n of Oil Pipelines v. FERC*, 83 F.3d 1424, 1431 (D.C. Cir. 1996) (the Commission’s orders must articulate “a rational connection between the facts found and the choice made”) (citations omitted); *Ne. Util. Serv. Co. v. FERC*, 993 F.2d 937, 944 (1st Cir. 1993) (reasoned decision making requires “a reasoned explanation supported by a stated connection between the facts found and the choice made”) (citation omitted).

¹⁰ See 5 USC § 557(c) (the Commission is charged with addressing “all the material issues of fact, law, or discretion presented on the record”); 5 U.S.C. § 706(2)(A); *Genuine Parts Co. v. EPA*, 890 F.3d 304, 312 (D.C. Cir. 2018) (“[A]n agency cannot ignore evidence that undercuts its judgment; and it may not minimize such evidence without adequate explanation.”); *Lakeland Bus Lines, Inc. v. NLRB*, 347 F.3d 955, 962 (D.C. Cir. 2003) (explaining that a court “may not find substantial evidence

The July 28th Order errs in finding that adhering to fuel cost policies is not required at all times. The July 28th Order creates what is incorrectly termed a force majeure exemption from fuel cost policy penalties that allows market sellers to deviate from their approved fuel cost policies under vaguely defined circumstances, all of which can be and are addressed in fuel cost policies. It is incorrectly termed and misleading because there is no force majeure event that cannot be and is not addressed in a fuel cost policy. While it appears to be common sense to assert that it is impossible to foresee or address all possible circumstances, that is not the issue. No one can foresee all possible circumstances. But it is possible to define the cost of purchasing fuel under all possible circumstances. That is what fuel cost policies do.

Allowing this exemption from fuel cost policies departs from the rationale in prior orders on fuel cost policies. Such exemptions are also inconsistent with prior orders on the rules concerning force majeure applied in PJM markets. The change in policy is unexplained, has no basis in logic, is arbitrary and capricious, is unsupported by record evidence and is contradicted by record evidence. The July 28th Order also approved other changes to the fuel cost policy rules concerning the application of penalties, the use of temporary cost offers when no fuel cost policy is in place and the replacement of certain termination provisions with certain expiration provisions. The record lacks support for such changes, and the July 28th Order fails to address arguments exposing their flaws. Rehearing should be granted on the July 28th Order.

The rules developed by the FCP Order have performed well. The fuel cost policy rules have resulted in most fuel cost policies being algorithmic, verifiable, systematic and accurate. The fuel cost policy rules have created incentives for market sellers to improve

‘merely on the basis of evidence which in and of itself justified [the agency’s conclusion], without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn’’) (quoting *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487 (1951)).

their calculations of fuel costs. The July 28th Order will undermine that progress towards accurate cost-based offers in the PJM energy market.

II. BACKGROUND

Fuel cost policies are an integral component of energy market power mitigation in the PJM Market Rules. Fuel cost policies define the process for developing the fuel cost used in the calculation of cost-based offers, which serve as energy market offer caps for market sellers that fail the structural market power test, the Three Pivotal Supplier test. Fuel cost policies define the process for developing the fuel cost used in the calculation of cost-based offers over \$1,000 per MWh which can occur when fuel costs are very high. Fuel costs generally comprise more than 85 percent of cost-based energy market offers. Every market seller is required to have a fuel cost policy in order to submit nonzero cost-based offers. The fuel cost policy is reviewed and approved by PJM and the Market Monitor prior to use in developing cost-based offers. Fuel cost policies must accurately reflect short run marginal costs associated with producing energy from fuel. Fuel cost policies must be verifiable and systematic so that the Market Monitor can reproduce the fuel cost based on the information available to the market seller at the time the cost-based offer was calculated. Fuel cost policies include information about the market seller's units, the market sources of fuel cost information for the units, and applicable conditions for using various market sources based on the time of day, market liquidity metrics, and contract provisions. If a market seller submits a cost-based offer that does not adhere to its fuel cost policy, or to other rules for the development of cost-based offers, PJM issues a financial penalty. The PJM market rules include no exceptions to the fuel cost policy requirement or to penalties for inaccurate cost-based offers. The Commission found these rules to be necessary to create incentives for market sellers to submit accurate cost-based offers.

III. REQUEST FOR REHEARING

1. The July 28th Order Is Arbitrary and Capricious Because It Exempts Compliance with Fuel Cost Policies Exactly When Compliance Is Most Needed.

Fuel supply restrictions expose the energy market to heightened risk for the exercise of market power. Adherence to fuel cost policies is needed to protect the market during both normal market conditions and restricted fuel supply conditions. The rules for offer flexibility and the closely associated rules for fuel cost policies were designed so that, together, the rules would better address fuel supply restrictions. Under the July 28th Order, offer flexibility that benefits market sellers during restricted conditions continues while the associated market power mitigation rules that protect the public interest are removed.

While framed as exempting unit owners from penalties, the actual effect of the force majeure provisions is to permit abrogation of fuel cost policies when they are most needed, e.g. under extreme weather conditions. The July 28th Order arbitrarily and capriciously removes the requirement to follow the approved fuel cost policy and instead allows application of a vague and unenforceable standard, applied only ex post, that fuel costs must be just and reasonable and be based on the best available information. Fuel cost policies were introduced and approved by the Commission precisely to replace such vague standards, applied with ex post review in an undefined process. Fuel cost policies are just and reasonable and based on the best available information and are verifiable and systematic.

The July 28th Order states (at PP 42–43):

We agree with PJM that it could be difficult for Market Sellers to foresee every potential scenario that may occur and therefore, we find that it is just and reasonable for PJM to include a provision in its Fuel Cost Policy to eliminate the use of penalties for events that fall under the force majeure category...

... Monitoring Analytics argues that the existing Fuel Cost Policies cover all such events so there is no need to eliminate penalties for non-compliant cost-based offers. We disagree. ...We find that

PJM's Fuel Cost Policy is designed to ensure that resources have the proper incentive to submit accurate cost-based offers, it cannot address every possible circumstance that a Market Seller may face, especially if those circumstances are outside of any commercial experience to date.¹¹

This finding is unsupported. Neither PJM nor any market participant provided or could provide for the record a single example of such an unforeseen event that could not be, and is not, addressed in multiple actual fuel cost policies. Unforeseen circumstances may arise, but the need to purchase fuel to run a natural gas-fired resource or any other resource is foreseen. Any fuel available for purchase has a price defined by the seller, regardless of whether the exact circumstances of the sale are foreseen. The Commission does not provide or reference a single example of a possible circumstance in which a fuel price could not be established, even if outside any commercial experience to date. The July 28th Order appears to misunderstand the nature of fuel cost policies which include the option, in the absence of a liquid market, to rely on bilateral arrangements. If fuel can be purchased, it is purchased either in an organized market or bilaterally. Therefore, fuel cost policies cover all possible ways to purchase fuel and therefore all possible circumstances.

While it appears to be common sense to assert that it is impossible to foresee or address all possible circumstances, that is not the issue. No one can foresee all possible circumstances. But it is possible to define the ways in which fuel will be purchased under all possible circumstances. That is what fuel cost policies do. No one has indicated that there any options other than organized markets or bilateral arrangements. If there are such options they can be included in fuel cost policies.

¹¹ The Market Monitor is a party to this proceeding acting in its capacity as the Independent Market Monitor for PJM in order to represent the public interest in competitive power markets, not to represent the business interest of Monitoring Analytics, LLC. The Market Monitor respectfully requests continuance of the long standing practice of using an abbreviated reference such as "Market Monitor" or "PJM Market Monitor," or a similar identification.

It is logically impossible to specify a circumstance in which, if fuel can be purchased, a fuel cost policy cannot address the determination of fuel cost in a verifiable and systematic manner.

The July 28th Order does not explain the sudden departure from the policy, requiring market sellers to adhere to fuel cost policies, established in the FCP Order less than two years ago.

In addition to the fundamental misunderstanding of fuel cost policies, the July 28th Order relies on a conception of force majeure that the PJM market rules specifically avoid.¹² The FCP Order and FCP Compliance Order rejected excuses for noncompliance with fuel cost policies, including the vague excuses that are now approved in the July 28th Order.¹³

¹² Cf. July 28th Order at P 42 (“the penalty exemption ... mirrors the force majeure standards developed by NAESB.”); OA § 1 Definitions C–D (Catastrophic Force Majeure) (“Catastrophic Force Majeure” shall not include any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, or Curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, unless as a consequence of any such action, event, or combination of events, either (i) all, or substantially all, of the Transmission System is unavailable, or (ii) all, or substantially all, of the interstate natural gas pipeline network, interstate rail, interstate highway or federal waterway transportation network serving the PJM Region is unavailable. The Office of the Interconnection shall determine whether an event of Catastrophic Force Majeure has occurred for purposes of this Agreement, the PJM Tariff, and the Reliability Assurance Agreement, based on an examination of available evidence. The Office of the Interconnection’s determination is subject to review by the Commission.”); see *PJM Interconnection, L.L.C. v. PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at P 464 (2015) (“Multiple intervenors argue that PJM’s proposed definition of the new term, Catastrophic Force Majeure, is unnecessarily narrow and improperly assigns risk to capacity suppliers without compensation for bearing that risk. We disagree. As the Commission stated in the ISO-NE Capacity Performance Order, the risk of capacity resource non-performance must be borne by either capacity suppliers or consumers, and capacity suppliers are in the best position to assess and price the performance risk associated with their resources, including performance risks beyond a resource owner’s control, such as weather-related outages.[...147 FERC ¶ 61,172 at P 64.] Under PJM’s proposed definition of Catastrophic Force Majeure, a resource will be excused from its performance in the event that all, or substantially all, of the electric transmission or fuel delivery infrastructure in the PJM region is incapacitated. We find this definition consistent with the principle that risk should be borne by the party that is best able to assess and price it.”).

¹³ See FCP Order at P 63.

For example, the FCP Compliance Order accepts the verifiable and systematic standard, rejecting the algorithmic standard, so that fuel cost policies are flexible enough to cover stressed conditions in the natural gas market.¹⁴

The July 28th Order asserts that it is acceptable to allow excuses to evade penalties for not complying with fuel cost policies because capacity performance penalties do not permit such excuses and may continue to apply.¹⁵ The inconsistent application of penalties created by the July 28th Order is not a defense. On the contrary, the introduction of inconsistent application of penalties by the July 28th Order exposes its findings as arbitrary and capricious, and as an unexplained departure from existing policy.

The July 28th Order states at (P 43):

We disagree with Monitoring Analytics' assertion that the proposed force majeure penalty exemption is inconsistent with the Commission's adoption of the standard that Fuel Cost Policies must be verifiable and systematic. [footnote omitted] PJM will still require each Market Seller to submit sufficient information to verify its fuel cost, and the Market Seller may be subject to a non-compliance penalty depending on PJM's findings.[footnote omitted]

The term force majeure suggests events that could not be anticipated, and, therefore, events that could not be anticipated in a fuel cost policy. Of course NAESB force majeure circumstances have occurred before and will occur again. NAESB provides a list. More importantly, the term force majeure creates a misleading conception of how fuel cost policies actually operate. Force majeure is irrelevant to compliance with fuel cost policies. A market seller is never prevented from compliance, even by extreme or unexpected events.

¹⁴ See FCP Compliance Order at P 57.

¹⁵ July 28th Order at P 43 n.17 (“In addition to PJM’s determination of whether a penalty applies for failing to comply with a Fuel Cost Policy, we note that the proposed exemption does not excuse any other penalties that may apply, such as non-performance penalties for committed Capacity Resources that are not available during a Performance Assessment Interval.”).

There are only two possible outcomes, whatever the event was anticipated or not: Either fuel can be purchased or fuel cannot be purchased. If fuel can be purchased, the market value or the purchase price can be defined in a fuel cost policy. If fuel cannot be purchased, the unit follows PJM outage rules. Whether an exact event is anticipated is irrelevant. The fact that the cost of fuel is out of the generator's control is irrelevant; the markets for natural gas are always outside generators' control. The only relevant question is what is the market price, or purchase price, of fuel under any and all circumstances.

A well designed fuel cost policy defines the cost of fuel with reference to transparent market indicators, like prices on ICE. When clearing prices are not available, the market indicators may be the bid-ask spread on ICE. Fuel cost policies can and do rely on multiple sources including published fuel indices, commodity exchanges, contracts, actual purchases, and inventory costs to develop their fuel costs. Individual fuel cost policies provide for market sellers to specify the market data that they intend to rely on. But ultimately, every well constructed fuel cost policy also defines the cost of fuel when there are no available market data. In that case, the cost of fuel is defined by a documented, independent third party bilateral transaction or quote. This is well known, included in many approved fuel cost policies and in the fuel cost policy template developed by the Market Monitor.

It is well understood that fuel cost policies for most days of the year are uninteresting. There is a transparent market price by location with little variation from day to day or hour to hour. A primary reason for the existence of fuel cost policies is to address what happens when the weather is cold, markets are tight and nontransparent, yet PJM generators must make an offer in the energy market. That is a critical time to have a fuel cost policy and a fuel cost policy that addresses market realities. That is when generators rely more heavily on independent third party bilateral transactions or quotes.

If a market participant is able to purchase gas, it has a purchase price. Any fuel cost policy can include provisions for actual purchase prices, regardless of the source, so any fuel cost policy can cover all foreseeable circumstances under which the unit is able to

purchase fuel. If a market participant is not able to purchase gas or receive a quote for the purchase of gas, PJM's outage rules apply.

Fuel cost policies permit unit owners to define the market price of fuel rather than the delivered price of fuel. That is a critical difference. The market price of fuel at a point on the system is not a function of the actual delivery method or of the terms of a delivery contract. The market price of fuel is what others in the market are willing to buy or sell the fuel for at that time and at that place. Fuel cost policies use the market value of natural gas, almost without exception.

The July 28th Order asserts that the concerns about abuse of the force majeure exemption are misplaced because of certain limitations on how force majeure may be invoked. The July 28th Order states (at P 44):

In response to concerns raised by Monitoring Analytics regarding incentives, we note that PJM's proposal has certain safeguards to prevent a Market Seller from abusing the force majeure penalty exemption. For example, PJM asserts that a force majeure event must be declared by a third party, not by a Market Seller, or affiliated fuel suppliers. Also, as PJM explains, the proposed penalty exemption is not automatic but instead is subject to input from the Market Monitor and a determination by PJM that the unforeseen force majeure event directly impacted the Market Seller's ability to submit a conforming cost-based offer.[footnote omitted] Finally, we note that a Market Seller would still be obligated to use the best available information to develop fuel costs during a force majeure event in order to avail itself of this penalty exemption; it could not simply offer any price in the cost-based offer if an unforeseeable force majeure event were to occur.

The asserted limitations do not justify approving the proposed weakening of the provisions for protecting against market power required under the FCP Order. Fuel cost policies are designed to require an ex ante statement of the market data or source that will be relied upon to price fuel, not to determine ex post whether such market data or source could have been included in an approved fuel cost policy. Allowing for input from the Market Monitor in no way mitigates excusing application of the rule in the circumstances

where it is most needed. Allowing ex post rationalizations of market behavior that are opportunistic and unverifiable renders fuel cost policies unenforceable.

The rules approved by the July 28th Order provide no guidance, no standard, and no requirement about the type of evidence that market sellers will have to provide in order to not follow their fuel cost policies. The only standards in Schedule 2 of the Operating Agreement about developing a fuel cost are included in the fuel cost policy standards. The force majeure provisions make no reference to those standards and create an exemption from the use of those standards.

2. The July 28th Order Fails to Support Allowing a Temporary Cost Offer Method to Substitute for Approved Fuel Cost Policies or Explain How Such Method Is Consistent with Its Prior Orders.

The July 28th Order approved a temporary cost offer method that a market seller may use before agreeing with PJM and the Market Monitor to a verifiable and systematic fuel cost policy through the review process. The temporary cost offer allows substitution of an inaccurate cost-based calculation in place of an accurate cost-based offer. The temporary cost offer method does not substitute for a fuel cost policy. Including the temporary method removes incentives for market sellers to cooperate in the review process. The method exposes the markets to the potential exercise of market power for an indeterminate period. Temporary fuel cost policies do not meet the requirements of the FCP Compliance Order.

The July 28th Order states (at PP 19):

We note that a Market Seller may use the temporary cost offer methodology only while it is developing a Fuel Cost Policy in good faith for the following reasons: (1) it is participating in the PJM energy market for the first time, (2) its generation resource is transferred from one Market Seller to another, or (3) it has an expired Fuel Cost Policy.[footnote omitted] Thus, PJM's proposal provides reasonable accommodation to Market Sellers in these limited situations where they are working in good faith with PJM and the Market Monitor to develop an acceptable long-term Fuel Cost Policy. Further, PJM's proposal provides an economic incentive to Market Sellers to not rely on the temporary cost offer methodology in lieu of submitting a long-term Fuel Cost Policy

because it specifies a conservative estimate that does not include any adders for a particular resource.¹⁶

The assertion that the temporary cost is a “conservative estimate” is unsupported. Whether the estimate is a “conservative estimate” is unknowable when the circumstances of future offers are unknown. While the temporary cost calculation may exclude valid emissions, operating, and maintenance costs, it may include an overstated fuel cost that exceeds, even vastly exceeds, the excluded cost components. Allowing for an inaccurate temporary cost calculation instead of accurate fuel cost policies contradicts the fundamental requirements and goals of the FCP Compliance Order and of offer flexibility.

The July 28th Order states (at P 20):

We disagree with Monitoring Analytics’ argument that the proposed approach should be rejected because it would significantly weaken market power mitigation in PJM by allowing Market Sellers to make offers without an approved Fuel Cost Policy. We find PJM’s proposal to be consistent with PJM’s market power mitigation regime because it does not alter the Market Monitor’s ability to review a resource’s fuel costs; it only allows a resource to use the temporary cost offer methodology in certain, limited circumstances; and is consistent with mitigation in that it is a conservative value based only on the heat rate of the resource and pre-determined fuel price indices. As discussed above, we find that PJM’s proposal is just and reasonable because it is intended to allow Market Sellers to offer a non-zero, cost-based offer only while their revised Fuel Cost Policy is under review. Thus, contrary to the Market Monitor’s assertion, PJM is not proposing to allow a Market Seller to operate without an approved Fuel Cost Policy. A Market Seller without a PJM-approved Fuel Cost Policy that does not elect to use the temporary cost offer methodology will only be allowed a zero cost-based offer[footnote omitted]

This finding is illogical and contradictory. The purpose of the temporary cost offer method is to allow market sellers “to operate without an approved Fuel Cost Policy.”

¹⁶ Filing at 8-9.

Temporary cost offers do not provide the accuracy that is needed to detect and deter the exercise of market power. A temporary policy that supports a fuel cost that exceeds the known market value of fuel for a resource undermines the market seller's incentive to engage in the process to establish a valid fuel cost policy. The July 28th Order improperly relies on the unsupported assumption that the markets would be exposed to the exercise of market power for only a short time. The July 28th Order fails to explain why even that undefined short time is an acceptable deviation from a competitive market. Past success in establishing verifiable and systematic fuel cost policies for the overwhelming majority of market sellers in a highly efficient and cooperative manner resulted from the incentives for cooperation that existed in the rules. Creating a mechanism for avoiding the fuel cost policy review process undermines the incentives to comply with the rules. It is illogical to presume that the duration of fuel cost policy reviews will remain short when the rules promoting an efficient process have been undermined.

The FCP Compliance Order specifically declined (at P 42) a market seller's request that it "direct PJM to supplement its Fuel Cost Policy proposal with a mechanism that will allow new resources to establish an interim approval of a simplified fuel cost policy until the new resource has sufficient operational experience to complete a full Fuel Cost Policy." The FCP Compliance Order accepted the requirement (at P 56) that: "a Marker Seller may only submit a non-zero cost-based offer into the PJM Interchange Energy Market for a generation resource if it has a PJM-approved Fuel Cost Policy for such generation resource." The July 28th Order does not explain why the Commission changed course.

In order to ensure accurate offers, preserve market power mitigation and protect an efficient cooperative review process, rehearing should be granted.

IV. CONCLUSION

For the reasons provided above, the Market Monitor respectfully requests that the Commission grant rehearing.

Respectfully submitted,



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Dated: August 27, 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 27th day of August, 2020.



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