

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

)))
Panda Stonewall LLC) Docket No. ER17-1821-002
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To: The Honorable Suzanne Krolikowski
Presiding Administrative Law Judge

ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 213 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM² (“Market Monitor”), submits this answer to the Notice Regarding Panda Stonewall’s Motion for Partial Summary Disposition filed by Panda Stonewall, LLC (“Panda”) on August 29, 2018. This answer responds to Panda’s argument for a dispositive finding that: “Panda is entitled to seek cost recovery for reactive power pursuant to Schedule 2 of PJM’s Open Access Transmission Tariff using the cost-of-service approach to rate setting embodied in the AEP methodology, which does not include any offset for any revenue received by generators in PJM’s energy, ancillary services or capacity markets,” and that “any inquiry, or issue, sought to be raised by any party to this proceeding regarding whether, or how, PJM’s markets provide generators compensation for reactive power in addition to the monthly cost-of-service payment generators receive from a transmission provider pursuant to Schedule 2 is irrelevant to this proceeding and will not be entertained by this tribunal.”

¹ 18 CFR § 385.213 (2017).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”) or the PJM Operating Agreement (“OA”).

Panda effectively substitutes a new motion for its prior motion for summary disposition filed August 21, 2018 (“Prior Motion”).

Panda cites no law addressing either the issue of whether an offset to the requested revenue requirement based on market revenues for the same service, or the issue of whether market revenues for the same service are relevant to the determination of the requested costs and offsetting revenues, despite requesting disposition as a matter of law. Nor is any case cited by Panda in support of its Prior Motion relevant. Panda misstates the Market Monitor’s position. Accordingly, the motion should be denied.

I. ANSWER

A. Panda Offers No Legal Support for a Motion for Summary Disposition.

In order to sustain a motion for summary judgment as a matter of law, it is necessary to cite to law that supports the requested ruling. Panda apparently believes that it has a basis for summary disposition even if the Market Monitor can demonstrate that Panda has the opportunity to recover under its market based rates and the existing PJM market rules a portion of the revenue requirement associated with the costs included in its proposed reactive rates in PJM markets. Panda offers no legal support for its claim that the level of a reactive rate does not need to account “for any revenue received by generators in PJM’s energy, ancillary services or capacity markets.” None of the cases cited in support of Panda’s Prior Motion support the finding Panda seeks.³ The AEP method, which Panda claims to apply or mostly apply in developing a rate in this case, was developed in a context that did not involve a competitive market, did not include the current PJM capacity market design and did not, and could not, include any rule for an offset designed to

³ None of the decisions cited in Panda’s prior motion, such as *Bluegrass Generation Company, L.L.C.*, 121 FERC ¶ 61,018, at P 12 (2007), apply to or are relevant to the PJM market design, particularly after the implementation of a functional capacity market in PJM in April 2007.

prevent double recovery of investment in a power plant based on the interaction between the AEP method and the PJM Capacity Market.⁴

Precedent contradicts Panda's assertion that it is "entitled to seek cost recovery" without including "any offset for any revenue received by generators in PJM's energy, ancillary service or capacity markets," i.e. double recovery. The Commission's 2016 *Wabash Valley Power Association* decision denied the double recovery of costs for heating losses.⁵ Given the Commission's long history of denying double recovery of costs through rates at the Commission, there is more support for an order finding that cost of service rates cannot as a matter of law include costs that are recovered in PJM markets through other rates.⁶

⁴ See *American Electric Power Service Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999) (AEP).

⁵ See *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,246 at P 24 (2016) ("Allowing recovery of fixed costs related to heating losses as part of the variable heating loss component would amount to double recovery of fixed costs for heating losses because those fixed costs are already included in the reactive power portion of the production plant investment."); see also, e.g., *United Airlines, Inc. v. FERC*, 827 F.3d 122, 134 (2016) ("because FERC failed to demonstrate that there is no double-recovery of taxes for partnership, as opposed to corporate, pipelines, we hold that FERC acted arbitrarily or capriciously"); *Transwestern Pipeline Company*, 52 FERC ¶ 61,100 (1990) ("held that Transwestern could not file to recover costs incurred after market-based GIC rates were in effect"); see also, e.g., *State of Alaska v. BP Pipelines, et al.*, 119 FERC ¶ 63,007 (2007) ("The crux of the matter is that the Carriers must recognize the previous recoveries of their investment, otherwise there will be an unjust and unreasonable double recovery. The Carriers have presented no fact in the case that calls for an opposite conclusion. The Carriers' theory that Opinion 154-B analysis has to start from the beginning of TAPS as if the TSA/TSM had never occurred, or that the revenues recovered until now cannot be considered is not given any weight. Furthermore, Staff's commonsensical argument that just and reasonable rates cannot result where any double recovery is allowed simply cannot be ignored. Staff IB at 39. Accordingly, it is found that the inputs into the Opinion 154-B presentation must reflect the actual amounts collected by the Carriers even if that means using amounts other than those found in Form 6. This is consistent with the Commission precedent which disallows the double recovery of investment. Moreover, this is not a small matter since the differences between Anadarko/Tesoro's and the Carriers' total revenue requirement is significant.").

⁶ See, e.g., *United Airlines, Inc. v. FERC*, 827 F.3d 122, 134 (2016) ("because FERC failed to demonstrate that there is no double-recovery of taxes for partnership, as opposed to corporate, pipelines, we hold that FERC acted arbitrarily or capriciously").

In addition, Panda ignores the Commission approved PJM OATT, which includes a rule in the form of an explicit offset (\$2,199 per MW-year) designed to avoid double recovery of reactive revenues in the PJM capacity market in the presence of Schedule 2 and the associated nonmarket reactive revenues. By approving this rule, the Commission acknowledged that the market design must account for the potential double recovery of costs in cost of service rates for ancillary services and avoid such double recovery.

Prices in the PJM Capacity Market result from the intersection of the demand curve (VRR curve) established pursuant to the Quadrennial Review process, and the supply curve which is the total of all offers to sell capacity in the PJM market. The shape and location of the VRR curve are a function, among other things, of the net cost of new entry (net CONE). The offer cap for each individual unit, including the Panda unit in this case, equals Net CONE * B.

Net CONE equals gross CONE minus revenues from the energy and ancillary services markets. Gross CONE is the cost to build a new reference unit, a combustion turbine (CT) in PJM. Energy market revenues are determined by dispatching the CT against historical PJM prices and fuel costs. Ancillary services net revenues, in contrast, are set in the OATT.⁷ The ancillary service net revenue for reactive is set in the OATT at \$2,199 per MW-year.⁸

⁷ OATT 3. Ancillary Services P.1 The Transmission Provider is required to provide (or offer to arrange with the local Control Area operator as discussed below), and the Transmission Customer is required to purchase, the following Ancillary Services (i) Scheduling, System Control and Dispatch, and (ii) Reactive Supply and Voltage Control from Generation or Other Sources. The Transmission Provider is required to offer to provide (or offer to arrange with the local Control Area operator as discussed below) the following Ancillary Services only to the Transmission Customer serving load within the Transmission Provider's Control Area (i) Regulation and Frequency Response, (ii) Energy Imbalance, (iii) Operating Reserve - Synchronized, and (iv) Operating Reserve - Supplemental."

⁸ OATT Attachment DD § 5.10(a)(v)(A).

This means that the owners of all generating units, including Panda, receive, or have the opportunity to recover, reactive costs exceeding \$2,199 per MW-year in the capacity market. Assuming that Panda can support its rate request of \$6,737.29 per MW-year or other amount, Panda has the opportunity to receive \$4,538.29 per MW-year which is \$6,737.29 per MW-year minus \$2,199 per MW-year, in compensation for reactive power through the PJM Capacity Market. This occurs indirectly through the impact on the VRR curve and directly through the impact on the offer cap for individual units. If Panda wants to increase the amount recovered through cost of service rates under Schedule 2, and reduce the amount recovered through market based rates in the PJM Capacity Market, then Panda needs to seek changes to the offset. Panda has an opportunity to seek such changes now in the Quadrennial Review process.

Panda's proposed rate does not properly coordinate with the existing PJM market rules pursuant to which its filing is submitted, and, if it is not rejected, the result will be an unjust and unreasonable double recovery of the reactive related costs.

In addition, to the extent that units fail to include the cost of service compensation for reactive capability in unit specific net revenues when calculating unit specific offer caps in the capacity market based on net avoidable cost (net ACR), the offers of such units are overstated by the amount of such out of market reactive compensation.

Panda should not be allowed to recover costs related to reactive capability that it is already recovering or has the opportunity to recover under the current PJM market rules. Panda does not directly state that it is entitled to double recovery of costs. Panda cannot assert that double recovery is allowed. Panda's argument that it should be permitted to recover through reactive rates some of the same costs that it is recovering through PJM markets is an implicit argument that the PJM market rules should be changed. This proceeding should be limited to an evaluation of Panda's support for its rate under Schedule 2 of the OATT under the PJM market rules as they now exist. The motion should be denied.

B. The Market Monitor Does Not Seek Changes to the PJM Market Design in This Proceeding.

Panda asserts that it is really the Market Monitor who seeks to change the PJM market design. Specifically, Panda states:

The IMM believes there is a flaw in the Reliability Pricing Model for the PJM Region, which Model is a part of PJM's Tariff. More specifically, the IMM believes the flaw is in that portion of the Reliability Pricing Model that governs PJM's calculation of the Cost of New Entry for the PJM Region. The IMM believes that this flaw results in PJM's capacity market clearing prices being too high, which he, in turn, believes is an unjust and unreasonable outcome. The IMM further believes that this unjust and unreasonable outcome should be remedied by requiring PJM's generators, including Panda, to deduct from their cost-of-service annual revenue requirements for reactive power the amount of money he calculates is the difference between the actual capacity market clearing prices and what they would have been but for the "flaw" in PJM's method of calculating Net CONE. The IMM then leaps to conclude that not adopting his proposed solution to the tariff flaw "will be an unjust and unreasonable double recovery of the cost of reactive investment."

Panda misstates the Market Monitor's position. The Market Monitor has not argued and does not intend to argue here that there is a "'flaw' in PJM's method of calculating Net CONE," as it relates to reactive power filings such as the one that is the subject of this case. But if the Market Monitor were to argue that point, Panda has the implication backwards. Capacity market prices would increase rather than decrease under the Market Monitor's preferred market design. But as long as Schedule 2 continues to be part of the OATT, and continues to provide for cost of service rates for some or all of the costs of providing reactive service, the PJM market rules are as stated. The Market Monitor does not seek to eliminate or change the offset in this case. In the appropriate proceeding, the Market Monitor would propose to change the market rules and to eliminate the offset, making capacity market prices higher and thus increasing the level of reactive capability costs recoverable through markets, if and only if Schedule 2 cost of service reactive capability

rates were also removed. That is not an issue in this proceeding. This issue is pending in Docket No. AD16-17-000. The Market Monitor's concern here is limited to establishing the level of Panda's revenue requirement associated with the provision of reactive so that the resultant rate does not recover revenues that Panda has the opportunity to recover through PJM markets.

Panda's misstatement of the Market Monitor's position should be disregarded. Panda's motion should be denied. The Market Monitor should be permitted a fair opportunity to present its own case in the ordinary course of this proceeding.

II. CONCLUSION

The Market Monitor respectfully requests that the Presiding Judge afford due consideration to this answer as your Honor resolves the issues raised in this matter.

Respectfully submitted,



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Dated: September 6, 2018

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 6th day of September, 2018.



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