

Correcting the current implementation to adhere to the Operating Agreement is not out of scope of the February 4th Filing, as PJM argues, because the scope of the filing is PJM's entire flawed interpretation of Section 6.6 of the Operating Agreement.⁴

I. ANSWER

A. Status Quo

PJM asserts that the February 4th Filing merely maintains and clarifies the status quo rules for market power mitigation of operating parameters.⁵ PJM fails to address the fact that the status quo implementation is not consistent with the status quo Operating Agreement language. PJM seeks to codify the status quo implementation rather than change the implementation to adhere to the Operating Agreement.

It is clear that PJM has not followed the Operating Agreement and has not ensured that flexible parameters are used when required. The status quo implementation is inconsistent with the Operating Agreement. The divergence is significant.

For example, Table 1 shows that in 2019, 27.0 percent of unit hours cleared the Day-Ahead Energy Market using less flexible parameters than the defined limits (PLS) during hot and cold weather alerts. The analysis includes all units that offered price, price PLS and cost schedules located in the zones where hot and cold weather alerts were declared in 2019.⁶

⁴ PJM at 7-8.

⁵ PJM at 2.

⁶ Units that offer in the energy market are required to submit cost based offers and may submit price-based offers. If a unit only submits cost-based offers and price PLS offers, there is no need for parameter mitigation.

Table 1 Parameter mitigation during hot and cold weather alerts: 2019

Day-ahead unit hours during hot and cold weather alerts	Percent
Committed on price schedule less flexible than PLS	27.0%
Committed on price schedule as flexible as PLS	32.0%
Total committed on price schedule without parameter limits	59.0%
Committed on cost (cost capped)	1.8%
Committed on price PLS	39.2%
Total committed on PLS schedules (cost or price PLS)	41.0%

For example, Table 2 shows that in 2019, 37.3 percent of unit hours cleared the Day-Ahead Energy Market using less flexible parameters than the defined limits (PLS) when the unit failed the Three Pivotal Supplier test. This analysis includes all units that cleared the day-ahead market, failed the TPS test, and made at least one price-based offer and a cost-based offer.⁷

Table 2 Parameter mitigation under three pivotal supplier test failures: 2019

Day-ahead unit hours for units that failed TPS test	Percent
Committed on price schedule less flexible than cost	37.3%
Committed on price schedule as flexible as cost	14.4%
Total committed on price schedule without parameter limits	51.7%
Committed on cost (cost capped)	46.3%
Committed on price PLS	1.9%
Total committed on PLS schedules (cost or price PLS)	48.3%

Exercise of market power using operating parameters has not been and is not properly mitigated because PJM does not require the use of the more flexible parameters as it is required to do under the Operating Agreement.

⁷ If a unit offers only cost-based offers and no price-based offers, there is no need to mitigate regardless of the TPS test outcome.

B. PJM Misunderstands the History

PJM misunderstands the excerpt which it provides from the *2010 State of the Market Report for PJM*, which makes clear that units must follow their parameter limits under the defined circumstances.⁸

PJM includes the original 2008 language for Section 6.6(a) of Schedule 1 to the Operating Agreement, which states: “Generation resources shall be subject to pre-determined limits on non-price offer parameters (“parameter limited schedules”) under the following circumstances: ...”⁹ The original language was unambiguous. The requirement was to use the more flexible parameters whenever the stated conditions were met. There was no option to use inflexible parameters for price-based offers, as PJM asserts.

C. The Operating Agreement is Not Ambiguous.

PJM asserts that Section 6.6(a) of the Operating Agreement is ambiguous. Based on PJM’s December 2019 presentation to the Markets and Reliability Committee, the asserted ambiguity depends entirely on PJM’s unsupported assumption that financial offer parameters (start, no load, and incremental energy offers) must be uniquely linked to a set of physical operating parameters through offer schedules.¹⁰ Neither the current Operating Agreement nor the 2008 Operating Agreement requires this link. To the contrary, consistency between Section 6.6 of the Operating Agreement and Section 6.4.1 of the Operating Agreement depends on financial offer parameters and physical operating parameters not being linked.

PJM confuses the issue in arguing that the edits to Section 6.6(a) of Schedule 1 to the Operating Agreement made with the 2014 Capacity Performance filing created ambiguity in

⁸ PJM at 3.

⁹ PJM at 4.

¹⁰ “Tariff/Operating Agreement Changes for Parameter Limited Schedules Compliance Issue,” PJM Presentation to the Markets and Reliability Committee (December 19, 2019).

the parameter mitigation process.¹¹ PJM's modifications to the Operating Agreement, effective June 1, 2016, did not create the ambiguity in the parameter mitigation rules that PJM asserts as a justification for PJM's proposed changes.

In the 2014 Capacity Performance filing, PJM changed the introduction of Section 6.6(a) by replacing the term "nonprice offer parameters" with "cost-based offers" and "market-based offers." The term "nonprice offer parameters" referred to the nonfinancial parameters of an energy offer that were limited under Section 6.6, which are distinguished from the financial parameters including start, no load and incremental offer curves. This change was not the cause of PJM's inconsistent implementation of Section 6.6(a). The implementation has been inconsistent with the Operating Agreement since 2008. The ambiguity that PJM appears to be referencing is the fact that the Operating Agreement clearly distinguishes between financial and nonfinancial parameters. The Operating Agreement clearly requires that the most flexible nonfinancial parameters be associated with the prevailing offer and its financial parameters. But PJM has been treating what it refers to as schedules, the combination of price parameters and nonprice parameters as inseparable. PJM has created its own ambiguity through its choice of implementation strategy.

PJM uses the asserted ambiguity as the rationale for changing the substance of the 2008 language in its current filing and treating the combination of price parameters and nonprice parameters as inseparable even when that means not using the most flexible parameters as required by the Operating Agreement. Even if the ambiguity were to exist, which it does not, that is not a reason to reverse what even PJM apparently believes is the unambiguously clear 2008 Operating Agreement language. If the Commission determines that the change in 2014 created ambiguity, it should direct PJM to revert to the 2008 language in Section 6.6(a) to resolve it.

¹¹ PJM at 6.

D. Not a Clarification

Rather than eliminating the asserted ambiguity, PJM proposes to weaken the current market power mitigation rules. PJM's proposal would eliminate the requirement to use the most flexible parameters under the defined conditions. Instead, PJM would only be required to "consider" use of the most flexible parameters. Rather than recognizing the existing, logical separation between the nonprice parameters and the price parameters, PJM would permit the use of inflexible parameters if they are attached to a price-based offer that the software evaluates as less than the cost-based offer.¹² PJM cannot guarantee that use of the lower price-based offer with inflexible parameters will result in lower costs, including uplift, than use of the cost-based offers. In fact, use of the lower price-based offer with the most flexible parameters, as the Operating Agreement requires, would result in lower costs.

PJM's approach likely increases revenues for the individual generator through uplift but, by using a lower price-based offer, reduces prices overall for other generators. This would be an inefficient and noncompetitive outcome.

The February 4th Filing would codify the exercise of market power by market participants who submit less flexible parameters with price-based offers that are less than cost-based offers (and/or less than parameter limited price offers) over at least part of their operating range. In submitting such offers, market participants indicate that they believe that such offers are more profitable than cost-based offers (or parameter limited price offers) with flexible parameters. Market participants are able to completely avoid PJM ever committing their units using flexible parameters by making slightly lower price-based offers for the lower end of their operating range.¹³

¹² February 4th Filing at 4.

¹³ See *2019 State of the Market Report for PJM*, Volume II, Section 3: Energy Market at p. 200-202. The same strategies that allow a unit to avoid offer capping allow the unit to avoid commitment using a price-based parameter limited schedule.

PJM seeks to codify the current, noncompliant implementation by creating a new relationship between Section 6.6(a) of Schedule 1 to the Operating Agreement (operating parameter mitigation) and Section 6.4.1 of Schedule 1 to the Operating Agreement (offer mitigation). The February 4th Filing inserts the concept of cost-based offers and market-based parameter limited schedules with linked financial and physical operating parameters without explicitly defining that link. PJM's addition of the "shall be considered" sentence in Section 6.6(a) conditions parameter mitigation on the determination of which offer schedule is deemed to have a lower cost. These new conditions have never been part of Section 6.6(a) of Schedule 1 to the Operating Agreement. These new conditions are not clarifications.

Adding these prerequisite conditions, that reduce the applicability of parameter mitigation, to Section 6.6(a) of Schedule 1 to the Operating Agreement has never been approved as just and reasonable by the Commission. Therefore, the February 4th Filing is clearly not a clarification. It is a proposed change to the tariff that requires PJM to provide arguments and supporting evidence that it is just and reasonable.

E. Adequate compensation

In the March 9th filing, PJM introduces a new argument that mitigating parameters to the less limiting of the defined parameter limits or the submitted offer parameters may result in inadequate compensation for generators, because generators require higher compensation for operating flexibly. Cost-based offers in the energy and capacity markets provide adequate compensation consistent with flexible operating parameters. Generators are not required to submit market-based offers less than their cost-based offers. Generators may submit any price-based offer they choose. When the rules are clarified, generators will continue to be able to submit any price-based offer they choose. Presumably generators will recognize that they no longer have the opportunity to avoid the use of flexible parameters when there is an emergency or they fail the market power screen. Furthermore, PJM has never made this argument as support for the existing or proposed language in Section 6.6(a) or any other part of the Operating Agreement. PJM engages in extreme and unsupported

hyperbole when they suggest that enforcing the Operating Agreement would be equivalent to a constitutional taking.¹⁴ Given PJM's overblown assertion, it is ironic that the higher revenues for an individual unit, including uplift, may mean lower market prices and revenues for other market participants.

The reason for having operating parameter mitigation rules is to ensure that market power is not exercised through the use of inflexible parameters. The fact that generators can increase profits by exercising market power through the use of inflexible parameters is not a reason to allow such behavior. Allowing market sellers to charge customers a premium to operate flexibly when the system most needs their resources defeats the purpose of parameter limits, which is to mitigate market power.

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.¹⁵ 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.

¹⁴ PJM at 8.

¹⁵ 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,



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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 24th day of March, 2020.



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