UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

FirstEnergy Solutions Corporation	)	Docket No. EL14-36-000

ANSWER AND MOTION FOR LEAVE TO
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 for PJM[2] ("Market Monitor"), submits this answer and motion for leave to answer the comments filed in this proceeding by FirstEnergy Solutions Corporation ("FirstEnergy") on April 23, 2014, and by the PJM Providers Group and the Electric Power Supply Association ("P3/EPSA") on April 18, 2014. FirstEnergy does not argue that its cost-based offers reflect the marginal costs of its units. Neither P3/EPSA nor any other party to this proceeding argues that cost-based offers rather than lower non-zero price-based offers always represent a unit's marginal cost. FirstEnergy is the only participant who takes issue with the longstanding use of lower non-zero price-based offers to calculate marginal cost, in its petition filed in this proceeding on April 7, 2014 ("Petition"). These omissions are telling because the clause in Section 6.8(d) of Attachment DD to the OATT at issue in this proceeding concerns the measurement of marginal cost.

FirstEnergy and P3/EPSA repeat arguments that rely solely on a faulty and superficial reading of section 6.8(d) that ignores the core objective of the tariff provision, which is to calculate marginal costs, and reads the tariff to require that all participants use

---

1 18 CFR § 385.212 & 385.213 (2012).

2 Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT").

cost-based offers regardless of whether such offers represent marginal costs. The Market Monitor's protest filed on April 18, 2014, addresses these arguments.

FirstEnergy and P3/EPSA also raise new arguments and misrepresent the Market Monitor's position. On the one hand, FirstEnergy argues (at 4–7) that the Market Monitor's position is that the tariff requires the use of price-based offers. The Market Monitor's position is that the tariff means what it says when it states "marginal cost," and that any relevant information about marginal cost can be considered, excluding only those costs that are not allowed in cost-based offers. On the other hand, FirstEnergy asserts (at 7–10) that the Market Monitor's position is that the Market Monitor requires "broad discretion" to calculate marginal costs. That is completely false. It is the sole responsibility of the generation owner to calculate and submit all elements of its offer caps including marginal costs.

Accordingly, the answer is necessary to address these new arguments and to correct such misrepresentations, and it should be accepted in order to facilitate the Commission's decision-making process.

I. ANSWER

A. FirstEnergy Misrepresents the Market Monitor's Plain Reading of Section 6.8(d).

FirstEnergy argues (at 4–5), "the Tariff language in question makes no reference whatsoever to market-based offers, but rather links marginal cost exclusively to the cost-based offers as defined in Section 6.4 of Schedule 1 of the Operating Agreement." On this basis FirstEnergy claims (at 5) that "the IMM's reading is inconsistent with any 'plain meaning' interpretation of the Tariff."

FirstEnergy misrepresents the Market Monitor's argument. The Market Monitor does not claim that the tariff references price-based offers. The tariff does require an accurate calculation of "marginal costs" for providing energy that allows inclusion of costs permitted in cost-based offers, but does not allow costs that are not permitted in cost-based

offers. A non-zero market-based offer cap lower than a cost-based offer is strong evidence for what the participant believes is its own marginal cost. But if FirstEnergy had provided evidence that the price-based offer did not accurately reflect its marginal costs, the Market Monitor would have considered such evidence. FirstEnergy has not claimed in discussions with the Market Monitor or elsewhere in this proceeding that the specific price-based offers from its units that gave rise to this proceeding do not reflect FirstEnergy's determination of its own marginal cost. No other participant even addresses the question of whether FirstEnergy's offers reflect actual marginal costs.

The point of the rule, as expressed in the plain language of the rule, is to subtract actual marginal costs from Projected PJM Market Revenues, and thereby obtain an accurate Market Seller Offer Cap. The point of the rule is not to use the cost-based offer regardless of whether it accurately reflects marginal costs. In addition to the price-based offer, other evidence may also factor into an accurate calculation of marginal cost. The Market Monitor and the participant attempt to come to an agreement in that case. This has also occurred. FirstEnergy, despite knowing the Market Monitor's approach at least since November 2012, and despite repeated discussions about the issue leading up to the submission of offer caps for this auction, never indicated that the cost-based offer correctly represented marginal costs and never offered evidence that the price-based offer did not accurately reflect actual marginal costs. In every case, the participant and not the Market Monitor determines what the participant offers. It is the responsibility of the Market Monitor to take any disputes about the accurate calculation of marginal costs to the Commission for resolution if the failure to do so would risk allowing an exercise of market power.[3] The Commission has the authority and discretion to determine whether a calculation of marginal cost is accurate under the rules and to require a participant to offer accurate marginal costs based on that determination.

---

[3] *See*, *e.g.*, OATT Attachment M § IV.E-1.

The only costs excluded from consideration are those costs that have been excluded from the calculation of cost-based offers under Schedule 2 to the Operating Agreement and the Cost Development Guidelines. The language in the parenthetical in Section 6.8(d) resolves a discrete issue about how to properly calculate marginal cost under the PJM market rules. The Cost Development Guidelines exclude various costs that are not marginal costs. The language does not mandate the use of any particular input, such as a cost-based offer, without regard to whether that value represents actual marginal cost.

The Market Monitor's reading of the tariff is fully consistent with a plain reading of the tariff, as it explicitly recognizes both the term "marginal cost" and the subordinate parenthetical statement.

To support a plain reading, it is not necessary to show that the language expresses the rule in the best and most comprehensive possible way. The requirement to interpret a provision in accordance with its plain reading does not mean that such a reading must avoid careful parsing of the language or ignore its subtlety. A plain reading must give meaning to the text as it is drafted and should not include references to extrinsic evidence.[4] Regardless of whether some alternative tariff wording might or might not express with greater clarity and precision the Market Monitor's reading of Section 6.8(d), the Market Monitor's reading gives full meaning to every element of the tariff language at issue.[5]

---

[4] *See* Petition at 10 n.28 ("The Commission has acknowledged in other circumstances that it must first attempt to resolve a dispute on the face of the contract, and cannot look to extrinsic evidence to give meaning to the parties' intent in its pursuit. If the contract is free of ambiguity, the Commission has held that it need not examine such extrinsic evidence." *City of Lebanon, Ohio v. Cincinnati Gas & Elec. Co.*, 62 FERC ¶ 61,056, at 61,291 (1993)).

[5] *See*, *e.g.*, Marx v. Gen. Revenue Corp., 133 S. Ct 1166, 1181–1182 (2013) ("Under this 'most basic of interpretative canons, . . . ' '[a] statute should be constructed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant", citing Corley v. United States, 556 U.S. 303, 314 (2009) (*quoting* Hibbs v. Winn, 542 U.S. 88, 101 (2004)).

In contrast, FirstEnergy's reading ignores the inclusion of the term "marginal cost" and deprives it of its meaning consistent with its ordinary usage. FirstEnergy's reading gives no effect to the phrase "costs allowed under cost-based offers," and instead takes "cost-based offers" out of its context and gives meaning to these words alone. The only element of Section 6.8(d) that FirstEnergy parses with care is "i.e." As FirstEnergy concedes (at 4), FirstEnergy and the Market Monitor do not dispute the plain meaning of "i.e." What is in dispute is how the subordinate parenthetical operates with respect to the principal term, "marginal cost." Under the Market Monitor's reading, the purpose of the parenthetical is to limit what can be included in marginal costs. Under FirstEnergy's reading, the term "marginal cost" is rendered superfluous and is superseded by the subordinate parenthetical. Within the parenthetical, FirstEnergy's reading ignores the phrase, "the costs allowed under cost-based offers" and focuses on "cost-based offers" out of context. FirstEnergy's argument falls far short of what is required when relying on a plain reading.

B. Long Experience with Implementation of Market Monitor's Interpretation of Section 6.8(d) Demonstrates That Such Interpretation Can Be Practically Applied.

FirstEnergy claims (at 5) that the Market Monitor's interpretation is "inconsistent with the practical application of the Tariff" because "Market-based offers … do not contain *any* cost detail or explanation of the derivation of the offer price." To the contrary, the longstanding implementation of the Market Monitor's interpretation of section 6.8(d) without controversy demonstrates that such interpretation can be practically applied. The Market Monitor has detailed information about the marginal costs of units, as do unit owners. Given the detailed discussions that occur in determining appropriate Market Seller Offer Caps, reaching agreement about marginal costs can be done and has been done. FirstEnergy's claim that a review of marginal costs cannot be accomplished is demonstrably incorrect. Contrary to FirstEnergy's claim, actual practice demonstrates that it is practical to implement the tariff as the Market Monitor suggests. That is exactly how the tariff has been

implemented by the Market Monitor and participants. The Market Monitor believes that the practicality and clarity of the approach explains why it has not been controversial prior to the Petition and why no other participant has filed in support of the Petition.

C. The Plain Language of Section 6.8(d) Excludes the Ten Percent Adder.

FirstEnergy argues (at 5–6), "[I]f the drafters of Section 6.8(d) had intended to exclude the 10% adder—which has long been understood to account for difficult to quantify costs in cost-based offers[footnote omitted]—from the definition of marginal costs, the parenthetical would have specifically addressed the issue rather than simply referencing cost-based offers." Another way to address the same issue is to use the actual tariff language of "the costs allowed under cost-based offers" rather than FirstEnergy's truncated version of "cost-based offers." The drafters used the phrase "costs allowed under cost-based offers." When this phrase is read according to its plain meaning, in conjunction with the referenced language in the tariff and the manuals on the nature of the ten percent adder, the Market Monitor's interpretation works and FirstEnergy's does not. The actual approach in the tariff is better than FirstEnergy's hypothetical approach because the tariff excludes the ten percent adder and any other costs that are not allowed.

Section 6.4.2 (a)(ii) of Schedule 1 to the Operating Agreement states: "The incremental operating cost of the generation resource as determined in accordance with Schedule 2 of the Operating Agreement and the PJM Manuals ("incremental cost"), plus 10% of such costs." The chosen wording plainly excludes the adder from the definition of cost. FirstEnergy refers to extrinsic evidence on the nature of the ten percent adder only because its argument on the best straightforward reading of the applicable tariff language fails.

FirstEnergy has never claimed that, for the units that lead to the filing of the Petition ("FE Units"), the ten percent adder represents actual costs.

D. The Market Monitor's Flexible Approach Does Not Conflate Price-Based Offers with Marginal Cost; FirstEnergy's Inflexible Approach Does Conflate Cost-Based Offers with Marginal Cost.

FirstEnergy argues (at 6–7) that the "IMM's proffered interpretation of the Tariff wrongly conflates 'marginal cost' with 'market-based offers.'" FirstEnergy misrepresents the Market Monitor's argument (at 4) to state that "a market-based offer that is below the cost-based offer … *must* reflect a unit's marginal cost" [emphasis in the original]. P3/EPSA similarly misrepresent the Market Monitor's position to require use of non-zero price-based offers lower than cost-based offer even in circumstances where this would inaccurately calculate marginal costs, and conclude (*Id.*), "the IMM's interpretation has the potential of financially penalizing a seller, especially for submitting a Market-Based Offer below a unit's marginal cost, thus prohibiting the seller from recovering its appropriate revenues from the market to cover its unit's fixed and variable costs." FirstEnergy argues (at 6–7) that in some cases a unit may submit an offer lower than its marginal cost in order to address what it terms "cycling risk."

The Market Monitor has not argued that the tariff requires the use of any specific offer or method that would produce an inaccurate result and fail to determine actual marginal cost. The language in Section 6.8(d) requires an accurate calculation of marginal costs without attempting to resolve in advance every issue that may be relevant to an accurate calculation of marginal costs for specific units, and it does not require the use of any specific offer or method that would produce an inaccurate result. It is FirstEnergy who argues that the tariff is inflexible, and that Section 6.8(d) requires the use of the cost-based offers for the calculation of Projected PJM Market Revenues even when that approach would not result in accurate marginal costs.

The Market Monitor has consistently argued that the calculation of Projected PJM Market Revenues under Section 6.8(d) should be based on accurate and actual marginal costs. The tariff includes a flexible approach that allows for consideration of all of the

evidence on marginal costs subject to the constraint that marginal costs are limited to those cost allowed for inclusion in cost-based offers.

FirstEnergy has not claimed to the Market Monitor or in the Petition that its non-zero price-based offers for the FE Units do not reflect those units' actual marginal costs. FirstEnergy has instead argued that Section 6.8(d) requires it to calculate Projected PJM Market Revenues based on its cost-based offers regardless of whether they reflect its actual marginal cost. FirstEnergy has not claimed that the actual price-based offers for the FE Units are lower than the cost-based offers for those units in order to account for "cycling risk" despite making a hypothetical argument about cycling risk. When and if FirstEnergy supports an assertion that the price-based offers for specific units are less than marginal costs as a result of "cycling risk" or for any other reason, the Market Monitor will consider the issue, and, one way or another, it can be resolved.

The issue before the Commission now is whether the tariff requires the calculation of Projected PJM Market Revenues based on cost-based offer in all cases, regardless of whether such offers accurately reflect actual marginal cost. FirstEnergy has not demonstrated that Section 6.8 mandates the substitution of cost-based offers for marginal costs regardless of whether an accurate calculation of marginal costs results. The Market Monitor has not attempted to demonstrate that the tariff requires use of price-based offers or any specific input if there is credible evidence that such input would not produce an accurate result. The Market Monitor's opinion in this case of the FE Units is that the price-based offers do represent the marginal costs of the units in question. FirstEnergy has never directly disagreed with that view, despite the lengthy review process and discussions that took place.

Accordingly, the relief requested in the Petition should be rejected, and the tariff should be interpreted to require the calculation of marginal costs consistent with the plain text and express intent of Section 6.8(d) and not to require the use of cost-based offers when there is better evidence of actual marginal cost.

E. Section 6.8(d) Does Not Accord Discretion to the Market Monitor.

FirstEnergy raises a new argument in its answer, that the Market Monitor's reading of section 6.8(d) would accord the Market Monitor excessive discretion to calculate marginal cost. FirstEnergy states (at 8), "Contrary to the Commission's clear precedent on this issue, the relief requested by the IMM would allow for broad discretion in setting Market Seller Offer Caps."

The relief requested by the Market Monitor would preserve in place the same approach to determining marginal cost that has been implemented successfully and without controversy. No participant other than FirstEnergy has taken issue with the approach or has taken issue with the transparency of this process.

FirstEnergy's new argument that misrepresents the Market Monitor's position as an assertion of the Market Monitor's broad discretion is inconsistent with FirstEnergy's other argument that misrepresents the Market Monitor's position as an assertion of a requirement to always use price-based offers when they are lower than cost-based offers. (FirstEnergy incorrectly asserts (at 4) that the Market Monitor's position is: "a market-based offer that is below the cost-based offer … *must* reflect a unit's actual marginal cost.") FirstEnergy does consistently seek to avoid the Market Monitor's actual position that the tariff requires the calculation of Projected PJM Market Revenues based on actual marginal cost.

Most importantly, FirstEnergy's claim that the Market Monitor can require FirstEnergy to use the Market Monitor's calculation is inconsistent with the facts. The Market Monitor explained in its protest (at 5 & n.7) that it did not set FirstEnergy's or any other seller's Market Seller Offer Caps. Under the PJM market rules, Capacity Market Sellers have exclusive responsibility to calculate Market Seller Offer Caps.[6] Capacity Market Sellers have the responsibility to perform those calculations consistent with the rules. The

---

[6] *See* OATT § 12A; OATT Attachment DD § 6.4; OATT Attachment M–Appendix § II.E.

tariff also establishes a review process by the Market Monitor concerning market power issues and by PJM concerning tariff compliance.[7] Capacity Market Sellers have the exclusive responsibility to defend their calculations in Commission proceedings.[8] The Market Monitor has the responsibility to bring market power issues to the Commission's attention and to take a position on the proper interpretation and implementation of the rules, particularly regarding mitigation.[9] This is exactly what the Market Monitor has done in this proceeding.

FirstEnergy voluntarily submitted Market Seller Offer Caps calculated at a level that does not raise market power concerns with the Market Monitor for the Base Residual Auction scheduled for May 12, 2014, for the 2017/2018 Delivery Year. FirstEnergy initially submitted Market Seller Offer Caps calculated at a level that raised market power concerns with the Market Monitor. FirstEnergy also obtained assurance that PJM would not reject those caps in the course of its administration of the tariff.

Had FirstEnergy persisted in that course, PJM would have accepted the Market Seller Offer Caps that FirstEnergy calculated and the Market Monitor would have filed a complaint with the Commission seeking to prevent it. Only if the Commission had granted the Market Monitor's complaint would FirstEnergy have been required to use the Market Monitor's calculations. This framework does not allow the Market Monitor to set Market Seller Offer Caps. Sole discretion to direct the actions of public utilities under the Federal Power Act remains where it belongs, with the Commission.

FirstEnergy voluntarily agreed not to submit offer caps higher than those calculated by the Market Monitor in exchange for the Market Monitor's agreement to allow FirstEnergy to present the issues raised in the Petition before the Commission in the

---

7 *Id*.

8 *Id*.

9 *See* OATT Attachment M § IV.

manner that FirstEnergy preferred. Consistent with this agreement, FirstEnergy submitted Market Seller Offer Caps on March 7, 2014, revised to be consistent with the net revenue values calculated by the Market Monitor. PJM has authorized the Market Monitor to confirm that PJM will apply the Market Seller Offer Caps that FirstEnergy submitted on March 7.

II. MOTION FOR LEAVE TO ANSWER

The Commission's Rule 213 does not permit answers to answers or protests unless otherwise ordered by the decisional authority.[10] The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.[11] 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.

---

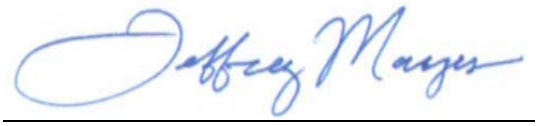
[10] 18 CFR § 385.213(a)(2).

[11] *See, e.g., N.Y. Indep. Sys. 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); *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).

III. CONCLUSION

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

Respectfully submitted,



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

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

Dated: April 25, 2014

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 April, 2014.

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