UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
Eagle Point Generation, LLC	)	Docket No. ER14-2075-000
	)	

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 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 these comments responding to the request for waiver filed by Eagle Point Generation, LLC ("Eagle Point") on May 30, 2014 ("May 30th Filing").

Eagle Point seeks waiver of tariff provisions so that it can collect approximately $268,000 from customers of PJM Interconnection, L.L.C. ("PJM") in order to recover losses resulting from the sale of gas that it purchased in order to run at PJM's request on January 28, 2014, but did not use. Eagle Point asserts (at 1) that its losses resulted from PJM's decision to cancel its instruction to run for reliability reasons.

Eagle Point does not correctly characterize the reasons for its losses, and it has not supported its request for a waiver even if its characterization were correct. In fact, Eagle Point seeks to shift losses to customers that resulted from its failure to operate its unit in accordance with PJM dispatch in emergency conditions. Eagle Point seeks to shift costs for procuring gas for its unit for January 28, 2014, to PJM customers which it would have recovered had it operated as PJM requested. If Eagle Point had operated as PJM requested there would be no unrecovered gas costs. The unrecovered gas costs are entirely the responsibility of Eagle Point and Eagle Point's claim should be rejected for that reason.

---

1 18 CFR § 385.211 (2011).

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

Eagle Point also fails to account for the fact that the plant received substantial uplift payments in excess of its costs for the time it ran which makes its claim for unrecovered gas costs even more egregious.

Procuring gas to run its resource when it is needed is Eagle Point's obligation, not its customers. Eagle Point has been appropriately compensated under the PJM market rules. Eagle Point is not guaranteed recovery of its costs to provide capacity or energy. When operating in markets, suppliers are at risk for losses and may experience losses from time to time.

Eagle Point has not shown good cause to grant its request for waiver. Granting the requested relief would be inconsistent with the proper assignment of risks in markets regulated through competition and inconsistent with the obligations assumed by Generation Capacity Resources. Eagle Point is asking that market rules be waived because they allegedly had large negative consequences for Eagle Point on one specific day. In fact, the claimed losses were the direct result of Eagle Point's failure to operate as PJM requested. But even if that were not true, such a waiver would violate a basic precept of markets and open the door to an unlimited set of such requests. PJM customers are not, and should not be, a source of funds to offset market risks for suppliers. Accordingly, the May 30th Filing request for waiver should be denied.

I. COMMENTS

A. Background

PJM operates a wholesale power market in which competition results in compensation to suppliers and payments by loads. FERC's decision to use competition in order to produce just and reasonable results meant that compensation would be left to the market, operating consistent with a set of rules defined in the tariff, rather than to regulatory decisions about individual unit's required returns or the specific costs of fuel.[3] Since the inception of full market-based LMP markets in PJM on April 1, 1999, energy market and capacity market prices have been high and energy market and capacity market prices have been low. Suppliers have been aggrieved at times and load has been aggrieved at times.

In markets, generation suppliers assume sole responsibility for the risks and rewards of owning and operating generating units and all the decisions that come with owning and operating generating units. When costs decrease, suppliers' profits increase and when costs increase, suppliers' profits decrease. PJM market rules assign risks to those best situated to manage them. Suppliers are best situated to manage operational risks. Suppliers are best situated to manage risks associated with the availability of resources to meet market and reliability obligations. Suppliers are best situated to manage energy and fuel price risks. Suppliers receive the benefits when the results are favorable; suppliers must accept the consequences when the results are unfavorable.

Eagle Point owns a combined-cycle, natural gas-fired generating facility (two combustion turbines (CT) and one steam generator (ST)) with a PJM Summer Installed Capacity Rating (ICAP) of 185.6 MW but offered with an Economic Maximum of 206.9 MW during January, 2014. It is located in Westville, New Jersey ("Westville Unit").[4]

Eagle Point has to purchase natural gas to run the Westville Unit. Eagle Point is responsible for long and short term decisions about fuel procurement, including the firmness of its gas supply and the availability of a dual fuel. In its filing, Eagle Point does

---

3 *See*, *e.g.*, *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs.¶ 31,089 (1999), , 89 FERC ¶ 61,285 (1999) (The Commission determined that competition is the best way to protect the public interest and ensure that electricity customers pay the lowest price possible.); *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

4 The Market Monitor does not know the basis for Eagle Point's statement that the capacity rating of the unit is approximately 220 MW. *See* Eagle Point at 2.

not provide any details about those decisions. But Eagle Point did make such economic decisions as part of its choices about how to participate in markets. It is inappropriate for Eagle Point to ask PJM customers to hold it harmless from such decisions, from which Eagle Point has benefitted. It is also unfair to Eagle Point's competitors, who may have made different choices about fuel supply.

The Westville Unit is a Generation Capacity Resource for the 2013/2014 Delivery Year, which runs from June 1, 2013 through May 30, 2014. Eagle Point received capacity revenues for the Westville Unit during that Delivery Year. Like all Generation Capacity Resources, the Westville Unit is required to offer into the PJM Day-Ahead Energy Market every day and the Westville Unit has an obligation to provide energy whenever it is needed for the duration of the Delivery Year.[5] Eagle Point manages all aspects of ensuring the Westville Unit is ready to run, including procuring the necessary fuel. In managing fuel procurement risk, Eagle Point may make money or lose money relative to expected costs. If Eagle Point enjoys gains as a result of successful fuel cost management, it does not share the gains with PJM customers. If Eagle Point suffers losses from fuel cost management, Eagle Point does not share the losses with PJM customers. There is nothing in the facts of this case that supports a different approach. Eagle Point should not be allowed to share its losses with PJM customers.

Generation Capacity Resources are required to be available at their rated capacity value unless on an approved scheduled outage or a forced outage.[6] No scheduled or forced outage applied to the Westville Unit on January 28th. Gas was available to the Westville Unit for purchase by Eagle Point for operating on January 28th, and Eagle Point did purchase gas for the Westville Unit. Eagle Point did the right thing in purchasing gas and acted consistent with its capacity obligations.

---

5 *See, e.g.*, OATT Attachment DD § 8.1; PJM Operating Agreement Schedule 1 § 1.10.1A(d).

6 *See* OATT Attachment DD § 8.1; PJM Reliability Assurance Agreement § 9.1(c).

Energy offers are comprised of three components, start, incremental energy and no load.[7] Gas costs that are incurred in the process of starting a unit may be included in the start component.[8] Daily cost-based offers include the actual incremental costs for each component, including the incremental cost of fuel. Daily price-based offers may include the cost-based start costs and the cost-based no load costs plus an incremental offer selected by the seller.[9] But if the seller does not elect to use cost-based start and no load components as part of its price-based offer, the seller must define the level of start and no load components twice a year and cannot change them during the following six month period for its price-based offer. These rules were introduced in order to limit the exercise of market power and prevent market manipulation by sellers in extreme market conditions.[10]

The issue here is not the result of an aborted start. The unit started and ran. Thus there can be no reasonable claim for start costs. There is no reasonable interpretation of the rules defining start costs which would include the costs of gas required to operate a unit and generate power. Those costs belong in the incremental offers and in the no load offers, following the rules for each, and are recoverable only if a unit operates subject to specific rules.

The Westville Unit did not clear the Day-Ahead Energy Market for January 28, 2014 ("January 28th"). Eagle Point states (at 2) that PJM contacted it first at 6:42 p.m. on January 27, 2014, and "instructed it to have the facility on line and able to follow a PJM dispatch instruction by 3:00 a.m."; and later at approximately 10:30 p.m., PJM "instructed it to have one gas turbine online by 3:00 a.m. and both turbines online by 5:00 a.m." Eagle Point states

---

7 *See* PJM Operating Agreement Schedule 1 § 1.10.1A(d).

8 For cost-based start offers, this means the cost of gas incurred in the process of bringing the unit on-line. *See* PJM Manual 15 (Cost Development Guidelines) § 2.4.1 at 12.

9 See PJM Operating Agreement Schedule 1 § 1.10.1A.

10 *See* PJM Operating Agreement Schedule 1 § 1.9.7(b).

(*id*.) that "PJM informed Eagle Point that it should expect to operate all day." Eagle Point also notes (at 3) that at approximately 8:30 p.m. PJM issued a Maximum Emergency Generation Alert for January 28th.[11]

Eagle Point states (at 3) that it prepared the Westville Unit to run, including purchasing gas, and commenced starting the unit on January 28th at 3:00 a.m. Eagle Point states that "PJM instructed Eagle Point to bring the Facility offline" at 10:36 a.m. Eagle Point states (at 3–4): "Because Eagle Point was instructed to bring the Facility offline, Eagle Point did not use most of the natural gas that it had procured to operate in accordance with PJM's instructions. Eagle Point resold this unused gas at a loss." Eagle Point states (at 4) that it lost an amount "just shy of $268,000."

Eagle Point mischaracterizes events, Eagle Point's own actions and PJM's instructions in several critical ways. Eagle Point does not explain that it failed to run the Westville Unit according to PJM's dispatch instructions. PJM had requested that one CT and the ST should come on line at 3:00 am and that the other CT should come on line by 5:00 am.[12] At 6:54 am on January 28th Eagle Point informed PJM they had started only one of the two combustion turbines at the Westville Unit and could not start the steam turbine.[13] At 8:30 am on January 28th PJM cancelled the Maximum Emergency Generation Alert.[14] At 8:39 am Eagle Point informed PJM that the ST was finally on line and that the other CT could be brought on line.[15] PJM told Eagle Point that the second CT would not be needed.

---

11 Eagle Point did not provide a transcript of recorded conversations in support of their assertions.

12 *Id*.

13 Transcripts of telephone conversations between PJM dispatch and Eagle Point dated January 27–28, 2014. The Market Monitor has not attached these transcripts due to concerns about confidentiality, but the Market Monitor can make them available to the Commission upon request.

14 *Id*.

15 *Id*.

PJM did not direct Eagle Point to shut the unit down. At 10:13 am Eagle Point informed PJM the ST had tripped off leaving only one CT running.

Had Eagle Point been able to bring the ST and two CTs on line at the times requested by PJM, Eagle Point could have used the entire 4,000 MBtu of gas for which it claims unrecovered costs, before PJM released it at 10:36 am.[16] Although PJM released the Westville Unit at 10:36 am, PJM did not direct Eagle Point to go offline. Eagle Point could have chosen to continue operating. Whether to continue operating and receive the locational marginal price for energy or to resell the unused gas was Eagle Point's decision.

B. Eagle Point's Unrecovered Gas Costs Result from Eagle Point's Failure to Start the Unit as PJM Requested.

Eagle Point did not operate the Westville Unit as PJM instructed. Eagle Point did not bring one CT plus the ST on line at 3 a.m. and did not have the two CTs and the ST on line at 5 a.m. Had the two CTs and the ST been on line, Eagle Point could have used all of the gas that it purchased to meet PJM dispatch instructions. Had Eagle Point done so, it would have received compensation through a combination of energy market revenues and uplift. Such uplift would have been calculated based on Eagle Point's offer, as was the uplift paid to Eagle Point for the period that the Westville Unit was on line. Even with output reduced to a single CT, Eagle Point received significant uplift payments for its January 28th operation. These uplift payments exceeded costs, yet Eagle Point has failed to account for this excess in its accounting.

Granting the waiver requested by Eagle Point would transfer to PJM customers the operational risks associated with keeping the Westville Unit in service. Eagle Point has the responsibility to operate its unit in accordance with PJM dispatch. Eagle Point bears the risk of loss for outages and failure to follow PJM dispatch. Indeed, the Westville Unit should be

---

[16] *Id.*

required to take a forced outage based on its failure to respond to PJM dispatch.[17] Because Eagle Point's unrecovered gas costs can be attributed to its failure to operate the Westville Unit consistent with PJM's dispatch instructions, and the unrecovered gas costs have nothing to do with the level of Eagle Point's offer, the basic premise of the requested waiver, that Eagle Point was unable to include its gas costs in its offer, is false. Accordingly the request for waiver should be denied.

C. PJM Customers Are Not Responsible for Fuel Procurement for the Westville Unit.

1. Generation Capacity Resources Such As the Westville Unit Have an Obligation to Provide Energy When Needed.

Generation Capacity Resources such as the Westville Unit have an obligation to provide energy when it is needed.[18] Eagle Point characterizes PJM communications with it as "instructions," but it does not recognize and appropriately take into account that, regardless of how PJM's communications on January 27, 2014, are characterized, the Westville Unit is a Capacity Resource, and, as such, it is obligated to be ready to provide energy whenever it is needed.[19] On January 27, 2014, PJM issued a Maximum Emergency Generation Alert. PJM market rules explain, "The intent of the alerts is to keep all affected

---

[17] *See* PJM Operating Agreement Schedule 1 § 1.3.7. Designating a force outage would factor into the calculation of the units EFORd rating, the amount of capacity the unit is able to sell to PJM. *See* PJM Reliability Assurance Agreement Schedule 5. A forced outage would also factor into the calculation of Peak-Hour Period Penalties. OATT Attachment DD § 10.

[18] *See New England Power Generators Association, Inc. v. ISO New England, Inc.*, 144 FERC ¶ 61,157 at P 47–59 (2013) ("*NEGPA v ISO-NE*") ("The Commission agrees with ISO-NE that the Tariff imposes a strict performance obligation on capacity resources and that capacity resources may not take economic outages, including outages based on economic decisions not to procure fuel or transportation. However, … we find that a demonstrated inability to procure fuel or transportation, as opposed to an economic determination not to procure fuel or transportation, may legitimately affect whether a capacity resource is physically available under the Tariff, and therefore may excuse nonperformance."), *order on reh'g*, 145 FERC ¶ 61,206 (2013).

[19] Eagle Point at 2–4.

system personnel aware of the forecast and/or actual status of the PJM RTO… Alerts are issued in advance of a scheduled load period to allow sufficient time for members to prepare for anticipated initial capacity shortages."[20]

Before and after PJM issued a Maximum Emergency Generation Alert, PJM contacted Eagle Point so that Westville Unit would be ready to provide energy when needed.[21] PJM compensated Eagle Point for its start up and output. Such compensation included uplift calculated on the basis of an offer that was greater than the cost of the fuel consumed. Once PJM determined that the Westville Unit was no longer needed, PJM released it. Under the PJM market rules, PJM does not compensate Generation Capacity Resources for the cost of fuel that generators do not use to provide energy. The market rules are designed to avoid that result, which would be fundamentally inconsistent with a competitive market design. The more fundamental point in this case is that the fuel for which compensation is requested would have been used at the plant had Eagle Point followed PJM's dispatch instructions.

The Westville Unit is a Generation Capacity Resource for the 2013/2014 Delivery Year. The Westville Unit is paid to be ready throughout the year to provide energy when it is needed. The Westville Unit has an obligation to provide the service for which they are paid every day.[22]

PJM and PJM customers are entitled to expect that Eagle Point will procure fuel for the Westville Unit so that it is ready to run when it is called and that it will be available when called. This leaves decisions about a resource's readiness in the hands of the owner, and the owner is entirely responsible for the attendant risks and rewards.

---

[20] PJM Manual 13 § 2 at 16.

[21] *Id*.

[22] *See*, *e.g.*, OATT Attachment DD § 8.1; PJM Operating Agreement Schedule 1 § 1.10.1A(d).

2. Precedent Relied on by Eagle Point Does Not Support Its Claim for Relief.

Eagle Point cites *Dominion Energy Mktg., Inc.*,[23] which concerns cost recovery for resources "in circumstances where for reliability reasons a resource is dispatched: (1) beyond its day-ahead schedule, where there is no opportunity to refresh the offer price to reflect current costs; or (2) after the results of the day-ahead market schedule are published, where the resource did not receive a day-ahead market schedule."[24] Although Eagle Point did not receive a day-ahead schedule, it has not demonstrated that its offer did not equal or exceed the applicable "current costs." The holding in *Dominion Energy Marketing, Inc.*, presumes that the day-ahead offer needed to be changed. The offer submitted by Eagle Point for January 28th was more than high enough to cover Eagle Point's gas costs. Eagle Point did not lose money because of the level of its offer. Eagle Point lost money on gas procured because it was unable to run as PJM requested.

Eagle Point also cites the waivers granted in PJM and the New York System Operator, Inc. ("NYISO") granted in connected with the application of system offer price caps.[25] Waiver was appropriately granted in those cases because the rules for system offer caps prevented participants from including fuel-related costs in their offers in day-ahead energy markets. Payment of uplift to participants was appropriate because the rules prevented the submittal of competitive offers. Relief was limited to out of pocket expenses that resulted from application of the system-wide offer caps. Waiver was appropriate in

---

23 143 FERC ¶ 61,233 (2013)*("Dominion"), on reh'g*, 145 FERC ¶ 61,109 (2013).

24 *NEGPA* at P 59, citing and clarifying *Dominion*.

25 *See, e.g.*, *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041(2014); *NYISO*, 146 FERC ¶ 61,061 at P 21 (2014) ("Granting the requested waiver is consistent with the Commission's recent order granting PJM waiver of certain tariff provisions to permit PJM to compensate a generator through a make whole payment that covers its costs above the $1,000/MWh cap.").

these cases, and the Market Monitor supported waivers in the PJM proceeding.[26] In this case, Eagle Point's energy offer was more than it needed to cover its gas costs. The Eagle Point case is about shifting operational risks and fuel procurement risks from suppliers to customers when the rules worked as intended. Waiver should not be granted to Eagle Point in these circumstances.

D. The Standards to Grant a Waiver Request Are Not Met.

Eagle Point seeks a waiver of the PJM market rules so that it can obtain payment for asserted losses on its gas purchases on January 28th. Eagle Point states the applicable standard for evaluating a waiver request: "(1) The underlying error (assuming one is made) was made in good faith; (2) The waiver is of limited scope; (3) granting the waiver would remedy a concrete problem; and (4) Granting the waiver will not have undesirable consequences, such as harming third parties."[27] The request for waiver fails under each element of the standard that applies.

Regardless, Eagle Point would like PJM customers to pay it for gas it purchased but which it did not burn to serve them. The various provisions suggested for waiver are all in place for good reasons and waiving the rules for Eagle Point would open the floodgates for others to ask for waivers when market decisions have negative consequences and/or assets fail.

1. There is No Error.

The criterion that any error was in good faith does not apply because no error has been identified. Consistent with its capacity obligations, Eagle Point purchased gas for the

---

[26] *See* Motion for Clarification and/or Reconsideration, or, in the Alternative, Rehearing, of the Independent Market Monitor for PJM, Docket No. ER14-1144-000 (January 29, 2014).

[27] Eagle Point at 18, citing *North Carolina Elec. Membership Corp.*, 143 FERC ¶ 61,037 at P 6 (2013); *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,140 at P 13 (2010).

Westville Unit so that the unit could run. There is no reason to suppose that Eagle Point (or PJM) should have acted any differently.

2. The Request Is Not Limited in Scope.

Eagle Point's requested waiver is not limited in scope. Eagle Point's request for waiver does not identify a discrete rule and request waiver of that rule and does not provide reasons why the rules should not apply in its particular circumstances. Eagle Point really seeks waiver of whatever provisions prevent it from receiving a make-whole payment. There are many such provisions. They are all in place for good reasons. Provisions for make-whole payments appropriately limit when make-whole payments are appropriate, and they do not apply to Eagle Point's circumstances. A waiver is not limited in scope when granting it requires broad revisions of the PJM market rules and incorporates significant changes to those market rules, as would Eagle Point's request.

Market Participants must manage their risks all of the time. There is nothing extraordinary about continuing to assign to Eagle Point responsibility for managing its risks under the circumstances on January 28th. Peak days are not the norm, but they are expected to happen, and participants are expected to manage the risks when they happen. Market rules are not waived during cold weather or hot weather. Many other resource owners also had to manage risks on January 28th in decisions made on or just before January 28th and in decisions made long before January 28th. Some did so more successfully than others. PJM customers are not required to shoulder the consequences of unsuccessful risk management and/or failing assets. PJM customers do not receive the benefits when risks are successfully managed.

a. Waiving the Provisions Requested by Eagle Point Does Not Allow Eagle Point Any Cost Recovery.

Eagle Point specifies Sections 1.9.7(b)(i) and 1.10.2(d) as the provisions that must be waived in order to grant the requested relief. Waiving these two provisions does not provide the relief sought by Eagle Point. These provisions pertain to the recovery of start up costs. Eagle Point's unrecovered gas costs are not start costs under any possible interpretation of market rules or of the way units operated. Granting the relief sought by Eagle Point would require the waivers of additional unspecified provisions sufficient to alter the competitive market paradigm assumed by the PJM market rules.

b. The Commission Has Rejected Waivers in Similar Circumstances Where Suppliers Requested Significant Changes to Market Rules in Order to Create Eligibility for Make-Whole Payments.

The Commission recently rejected a waiver in similar circumstances because the requested waiver was not limited in scope. On March 14, 2014, the Commission denied a request for waiver of the market rules of the California Independent System Operator, Inc. ("CAISO) from certain market suppliers who sought an order that would require CAISO to "reimburse generators for the cost of natural gas procured in response to CAISO dispatch directives," including "the cost of disposing of natural gas when CAISO later elects not to dispatch units for which natural gas was procured."[28] The Commission found that the request was "overly broad in scope and did not meet the Commission's requirements for a tariff waiver." Consistent with this precedent, Eagle Point's request for waiver of PJM market rules should also be denied.

The Commission found (at P 22): "Specifically, Suppliers' request does not identify specific provisions of the CAISO tariff for which they seek waiver. Rather, Suppliers' waiver request seeks broad revisions of the CAISO tariff that appears to incorporate significant changes to the CAISO current market rules." Eagle Point attempts to correct the technical oversight by specifying two provisions, but it fails in that attempt because waiver of those provisions is not enough to establish eligibility for make-whole payments for Eagle Point's asserted unrecovered gas costs. Waiver of additional unspecified provisions would need to be waived in order to grant the requested relief. Granting the requested relief by Eagle Point would require a broad change to the applicable market rules, not just a discrete

---

[28] *Indicated CAISO Suppliers*, 146 FERC ¶ 61,183 at P 1.

change to a stand-alone provision, and it was on the basis of this substantive concern that the Commission denied waiver in *Indicated CAISO Suppliers*.

c. *The Market Consequences of Eagle Point's Decisions About the Basis for Start Up Offers Appropriately Belong with Eagle Point.*

One provision that Eagle Point requests be waived is Section 1.9.7(b) of the PJM Operating Agreement. Section 1.9.7(b) requires that participants elect whether to use a cost-based or price-based calculation for start costs for specified six month periods.[29] While Eagle Point has elected to be silent on the specifics of their offers for the plant, the issue here has absolutely nothing to do with whether the start costs were cost-based or price-based.

PJM market rules to protect against market power and manipulation require participants to elect price-based or cost-based start cost offers for six-month periods.[30] Eagle Point had the option to include a cost-based start component in its offer. But a cost-based start component can include only those gas costs associated with actually starting the unit in its cost-based start costs. Had PJM released the unit during the start process, start costs actually incurred would have been covered, but the plant started and operated. As a result, this issue is not relevant to why Eagle Point lost money on its gas purchases.

Eagle Point's cost-based start costs could not have included the asserted $268,000 of unrecovered gas costs because that gas was acquired in order to actually operate the unit

---

29 Section 1.9.7(b) of the PJM Operating Agreement provides: "Market Sellers authorized to request market-based start-up and no-load fees may choose to submit such fees on either a market or a cost basis. Market Sellers must elect to submit both start-up and no-load fees on either a market basis or a cost basis and any such election shall be submitted on or before March 31 for the period of April 1 through September 30, and on or before September 30 for the period October 1 through March 31. The election of market-based or cost-based start-up and no-load fees shall remain in effect without change throughout the applicable periods." Section 1.9.7(b)(i) provides further: "The Office of the Interconnection shall reject any request for start-up and no-load fees in a Market Seller's Offer Data that does not conform to the Market Seller's specification on file with the Office of the Interconnection."

30 PJM Operating Agreement Schedule 1 § 1.10.1A(d).

and produce power. Eagle Point actually recovered 100 percent of the start costs included in its offer.

The request to receive approximately $268,000 is not actually a request for a waiver of the start cost rule, but is a request for a new rule allowing generation owners to charge customers for all fuel costs purchased in order to operate. This would constitute a dramatic change in market rules and an associated, inappropriate shift in the costs and risks of the market to customers.

d. Start Up Costs Are the Costs Actually Incurred In Order to Start a Unit.

Another provision that Eagle Point requests be waived is Section 1.10.2(d) of the PJM Operating Agreement. Section 1.10.2(d) caps make-whole payments for start and no load based on the "actual costs incurred" to a cost-based cap on start up costs. Eagle Point seeks to waive the provision to include approximately $268,000 of uncovered gas costs on January 28th. It is appropriate to cap start costs at the actual cost of starting a unit. A cap is needed to prevent the exercise of market power and manipulation.

Eagle Point's cost-based start costs could not have included the asserted $268,000 of gas costs because these were costs incurred to operate the unit and generate energy and do not meet the definition of start costs.

The request to receive approximately $268,000 is not actually a request for a waiver of the start cost rule, but is a request for a new rule allowing generation owners to charge customers for all fuel costs purchased in anticipation of operating. This would constitute a dramatic change in market rules and an associated, inappropriate shift in the costs and risks of the market to customers.

3. The Request Does Not Establish a Concrete Problem with the PJM Market Rules That Needs to Be Remedied.

Eagle Point has not identified a concrete problem with the PJM market rules for which it seeks waiver.[31] Eagle Point should not be allowed to recover losses that resulted from buying gas but being unable to burn it due to their own failure to follow PJM dispatch instructions. Even if Eagle Point's unrecovered costs were related to the costs it was allowed to include in its offers under the rules, and Eagle Point had demonstrated a connection, it still would not have identified a concrete problem. Eagle Point has the responsibility to manage its fuel procurement risks. Each of the provisions that Eagle Point seeks to change operates as it is intended to operate, and no changes to provisions are needed. No changes to these rules have been proposed.

The answer to Eagle Point's problems on January 28th is not to shift the costs and risks of similar future events to PJM customers. It is not the responsibility of PJM customers in a competitive market to manage the risks of owning and operating Generation Capacity Resources. The risks and rewards of such decisions appropriately lie with the owners of Capacity Resources.

4. The Request Cannot Be Granted Without Harm to Third Parties.

Eagle Point's request clearly does not meet the third requirement for a waiver. Waiving the rules for Eagle Point's benefit means harming third parties. Granting Eagle Point's requested waiver would require customers to pay Eagle Point's gas costs.

E. Any Relief Awarded Eagle Point Should Be Conditional on Process for Calculating and Verifying the Correct Amount.

If, contrary to the Market Monitor's arguments raised here, the market rules are waived so that Eagle Point can receive a make-whole payment, then the Commission should reserve the decision on the specific amount of make-whole payment. In that event, a

---

31 *See* Eagle Point at 19.

separate process would be needed to calculate and verify Eagle Point's costs and to otherwise ensure proper application of whatever principles the Commission determines to apply. The current record is not adequate for this purpose. For example, the Market Monitor believes that Eagle Point's calculation of its unrecovered gas costs is skewed by an assumption that the gas burned was the least expensive block of the blocks of gas procured at different prices. Eagle Point did not provide invoices to support a substantial portion of their claimed gas costs. Eagle Point did not account for the uplift payments received in excess of costs for the time the Westville units did operate on January 28th. The Market Monitor is ready to assist with such calculation and verification, if necessary.

II. CONCLUSION

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

Respectfully submitted,

Jeffrey Mayes

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

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

Dated: June 20, 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 20th day of June, 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