

168 FERC ¶ 61,134
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

PJM Interconnection, L.L.C.

Docket No. EL19-8-002

ORDER ACCEPTING COMPLIANCE FILING

(Issued August 29, 2019)

1. On May 10, 2019, PJM Interconnection, L.L.C. (PJM) submitted proposed revisions to Schedule 2 of the Amended and Restated Operating Agreement of PJM (Operating Agreement) in compliance with a Commission order issued on April 15, 2019.¹ In the April 15 Order, the Commission acted on a filing made by PJM pursuant to Federal Power Act (FPA) section 206 of its Operating Agreement, in which PJM contended that its Operating Agreement was unjust and unreasonable because it permitted disparate treatment of similarly situated combined cycle and combustion turbine resources with respect to the permissible costs they could include in their energy market cost-based offers.² In the April 15 Order, the Commission found the Operating Agreement unjust and unreasonable, and required PJM to submit a compliance filing. On May 10, 2019, PJM submitted the revisions to its Operating Agreement to meet the directives of the April 15 Order, as well as a few minor revisions to further clarify components of cost-based offers. We accept PJM's proposed revisions, effective April 15, 2019, as requested,³ subject to a further compliance filing, as discussed below.

I. Background

2. On October 29, 2018, as amended on February 14, 2019, PJM submitted two concurrent filings: a set of revisions to its Open Access Transmission Tariff (Tariff)

¹ *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,030 (2019) (April 15 Order).

² *Id.* P 22. PJM filed the Operating Agreement provisions pursuant to section 206 because its proposal did not receive the two-thirds majority sector vote of the Members Committee required to authorize a filing under FPA section 205, 16 U.S.C. § 824d (2012).

³ PJM Interconnection, L.L.C., Intra-PJM Tariffs, Operating Agreement, (7.0.0) OA Schedule 2.

pursuant to FPA section 205 and a set of Operating Agreement amendments pursuant to FPA section 206. The proposed section 205 Tariff revisions clarified that variable operating and maintenance costs that are directly attributable to the production of electricity shall be excluded from a Market Seller's Avoidable Cost Rate in the capacity market. The proposed revisions to the Operating Agreement sought to remove the purported disparate treatment of combined cycle and combustion turbine resources in PJM's Manual 15⁴ by explicitly defining the Maintenance Adders and Operating Costs that a Market Seller can include in its cost-based offers in the energy market for all resource types.

3. In the April 15 Order, the Commission accepted PJM's proposed Tariff revisions under section 205 and found PJM's Operating Agreement unjust and unreasonable under section 206. In considering the just and reasonable provisions for the Operating Agreement, the Commission concluded that PJM's proposed Operating Agreement revisions were insufficient to render the Operating Agreement just and reasonable because they did not provide sufficient clarity.⁵ The Commission therefore established just and reasonable provisions to clarify the permissible components of cost-based offers and to specify, in the Operating Agreement, expenses that are allowed in cost-based offers. The Commission directed PJM to submit a compliance filing reflecting these changes to Schedule 2 of the Operating Agreement.⁶

II. Filing

4. PJM states that the revisions to its Operating Agreement adopt the redlined amendments directed by the Commission in the April 15 Order. PJM asserts that the revisions clarify the permissible components of cost-based offers and specify in the Operating Agreement expenses that are allowed in cost-based offers. PJM states that, to provide further clarity on the permissible components of cost-based offers, it is proposing minor clarifications to the Commission's directives.

5. First, PJM proposes to not include the definitions of "Start-Up Costs," "No-load Cost," and "Incremental Energy Offer" in Section 1.3, Schedule 2 of the Operating Agreement. PJM states that these terms are already defined in Section 1 of the Operating Agreement and that excluding these definitions from Schedule 2 of the Operating

⁴ PJM, *PJM Manual 15: Cost Development Guidelines*, Rev. 32, §2.6.5 (effective May 13, 2019) (Manual 15), <https://www.pjm.com/-/media/documents/manuals/m15.ashx>.

⁵ *Id.* PP 22, 60.

⁶ *Id.* PP 7, 62, 66-67.

Agreement is consistent with its efforts to move all definitions into the main definition section rather than being dispersed throughout the governing documents.⁷ PJM states that, instead, Section 1.3, Schedule 2 includes a statement that the definitions for these three terms are as defined in Operating Agreement, Section 1.⁸

6. Second, the April 15 Order required PJM to create a new section, “1.2 Application of Cost Components to Three-Part Cost-Based Offers,” as Schedule 2 does not detail to which part of the three-part offer costs should be applied.⁹ PJM proposes to include the list of components of the three-part cost-based offers in a new Section 1.3, Schedule 2 of the Operating Agreement, rather than in Section 1.2, because Section 1.2 already describes PJM’s method of determining cost components.¹⁰

7. Third, PJM proposes to amend Section 4.1 of the Operating Agreement to clarify that, for resources with less than 10 years of actual maintenance history, the Maintenance Adder will be calculated based on the average cost of that resource’s available maintenance history. PJM argues that the clarification is necessary because the redline language directed by the Commission in the April 15 Order only appears to contemplate resources with more than 10 years of maintenance history and does not explicitly address how Maintenance Adders would be calculated for newer resources.¹¹

8. Fourth, PJM proposes to include contractor labor and plant personnel overtime labor associated with maintenance activities in allowable labor costs. PJM states that plant personnel straight time labor is already included in a Market Seller’s capacity market Sell Offer, thus PJM does not allow cost of labor performed by plant personnel during those hours to be included in the calculation of a resource’s Maintenance Adder. However, PJM argues, there are times when maintenance activities directly related to

⁷ PJM Compliance Filing at 3.

⁸ The first sentence under the new Schedule 2, Section 1.3 states: “A cost-based offer, as defined in Operating Agreement, Schedule 1, Section 1.2, is a three-part offer consisting of Start-up Costs, No-load Costs, and the Incremental Energy Offer. These terms are as defined in Operating Agreement, Section 1.”

⁹ April 15 Order, 167 FERC ¶ 61,030 at P 62.

¹⁰ PJM Compliance Filing at 2, n.7.

¹¹ *Id.* at 3.

electric production are performed by plant personnel overtime or contracted labor and therefore these costs should be labor costs allowable in cost-based offers.¹²

III. Notice of Filing and Responsive Pleadings

9. Notice of PJM's filing was published in the *Federal Register*, 84 Fed. Reg. 25,252 (2019), with interventions and protests due on or before May 31, 2019. No interventions were filed. On May 31, 2019, Monitoring Analytics, LLC, acting in its capacity as PJM's Independent Market Monitor (IMM), filed comments (IMM Comments). On June 14, 2019, PJM filed an answer (PJM Answer). On July 1, 2019, the IMM filed an answer to PJM's Answer (IMM Answer).

10. The IMM argues that PJM's proposal does not include provisions specifying the inclusion of any particular type of maintenance costs in certain parts of the offer. The IMM claims that it is not just and reasonable to allow Market Sellers to arbitrarily assign maintenance costs among the three parts of the cost-based offer. The IMM argues that a Market Seller could manipulate market outcomes by arbitrarily assigning a resource's maintenance costs to a single part of the three-part offer. The IMM requests that the Commission require PJM to assign all aspects of maintenance costs in the three-part offer.¹³

11. In response, PJM argues that the IMM does not appear to contest PJM's additional clarification of includable labor costs, but rather how it complied with the April 15 Order. PJM contends that the IMM's comment in this regard amounts to a request for rehearing that should be rejected because it is beyond the scope of the compliance filing.¹⁴ PJM asserts that the particular language on the three-part energy offer, in Section 1.3, Schedule 2, of the Operating Agreement, is copied *verbatim* from the Commission-directed redlines in the April 15 Order.¹⁵

12. PJM further argues that the IMM's protest ignores the variety of ways that individual resource owners may construct their maintenance contracts with third-party contractors, adding a level of rigidity that may hinder accurate recovery of costs for Market Sellers. PJM asserts that it would be unjust and unreasonable to create a

¹² *Id.* at 4.

¹³ IMM Comments at 1-2.

¹⁴ PJM Answer at 1-3.

¹⁵ *Id.* at 3 (citing April 15 Order, 167 FERC ¶ 61,030 at Attachment A) (emphasis added).

standardized rule that makes specific Maintenance Adder components includable only in certain portions of the three-part offer for all resources. Further, PJM claims that, contrary to the IMM's assertion, Market Sellers are required to submit Maintenance Adders to PJM and the IMM for review on at least an annual basis, and thus the thorough review process would ensure that no maintenance cost component is double counted. In addition, PJM states that this review process would ensure that "Market Sellers do not manipulate market outcomes because the approved Maintenance Adder would only be included in the corresponding component of the three-part energy offer."¹⁶

13. In its answer, the IMM argues that its comments are entirely within the scope of the compliance directive and that PJM has not clarified what systems it has in place to support the claim that maintenance costs will not be double counted. The IMM reiterates its earlier statements that, without its requested clarification, Market Sellers could manipulate market outcomes because they would be able to allocate maintenance costs to any of the three-part cost-based offers without any required criteria or rationale.¹⁷

IV. Discussion

A. Procedural Matters

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest and answer unless otherwise ordered by the decisional authority. We accept PJM's and the IMM's answers because they have provided information that has assisted us in our decision-making process.

B. Substantive Matters

15. As discussed below, we accept PJM's compliance filing, effective April 15, 2019, subject to modifications. The April 15 Order required PJM to revise Schedule 2 of its Operating Agreement in accordance with the tariff provisions adopted by the Commission in its order, and we find that PJM has complied with the Commission's directives in its compliance filing.

16. We also accept PJM's proposed minor amendments to those provisions. PJM's proposal includes the categories of costs applicable to a Market Seller's three-part cost-based offer and provides clarity to market participants about how to account for each cost component.

¹⁶ *Id.* at 4-5.

¹⁷ IMM Answer at 1-2.

17. We also accept PJM's proposal to not include the definitions of "Start-Up Costs," "No-load Cost," and "Incremental Energy Offer" in Section 1.3, Schedule 2 of the Operating Agreement. Although the April 15 Order required these provisions to be included in Schedule 2, Section 1.3 of the Operating Agreement, we agree that because these terms are already included in the Definitions section of the Operating Agreement, the terms will be incorporated into the new Schedule 2 provision.

18. With respect to the Commission's directive regarding permissible components of cost-based offers, we note that PJM omitted "Fuel Cost" from the permissible components of cost-based offers for all resources in Operating Agreement, Schedule 2, Section 1.1. We also note that the April 15 Order, while adding "Fuel Cost" to this section, failed to redline the addition of "Fuel Cost" in the list of permissible components of cost-based offers term. We clarify that the April 15 Order requires PJM to include "Fuel Cost" in this section. We also note that this section should include appropriate subsections, consistent with the April 15 Order, including "(a) For generating units powered by boilers," "(b) For generating units powered by machines," and "(c) For all generating units."¹⁸ We therefore direct PJM to submit a compliance filing within 30 days of the date of this order, to add "Fuel Cost" to Section 1.1, Schedule 2, of the Operating Agreement and to revise the appropriate subsection headings.

19. We accept PJM's proposal to include sections "4.1 Maintenance Adders" and "4.2 Operating Costs" in Schedule 2 of the Operating Agreement, including the expanded definitions of Maintenance Adder and Operating Costs. We find that these provisions are consistent with the requirements of the April 15 Order.¹⁹ We also accept PJM's proposal to clarify in Schedule 2, Section 4.1, of the Operating Agreement that a Market Seller will use all available maintenance history if a resource has less than 10 years of operational history. We find that this proposed revision provides a reasonable way for newer resources to calculate Maintenance Adders. We also find that PJM's proposal is consistent with its existing practice.²⁰

20. We also accept PJM's proposal to include contractor labor and plant personnel overtime labor associated with maintenance activities in allowable labor costs under Schedule 2, Section 4.3, of the Operating Agreement. These labor costs are directly related to electric production and are not included as straight time labor costs. We agree

¹⁸ April 15 Order, 167 FERC ¶ 61,030 at Appendix A.

¹⁹ *Id.* P 63, Appendix A.

²⁰ *See* Manual 15 §2.6.5.

with PJM that it is appropriate to allow these costs to be included in cost-based offers in the energy market.

21. We reject the IMM's argument that PJM's filing fails to include provisions specifying the inclusion of any particular type of maintenance costs in the specific parts of the three-part offer. The April 15 Order did not direct PJM to specify which maintenance costs need to be included in which part of the three-part cost-based offer.²¹

The Commission orders:

(A) PJM's compliance filing is hereby accepted, effective April 15, 2019, subject to compliance, as discussed in the body of this order.

(B) PJM is hereby required to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²¹ The Commission has stated on numerous occasions that “the sole relevant issue in reviewing [a] compliance filing is whether it complies with the directions in the [order]” requiring the compliance filing. *Delmarva Power & Light Co.*, 63 FERC ¶ 61,321, at 63,160 (1993). *See also New York Indep. Sys. Operator, Inc.*, 127 FERC ¶ 61,042, at P 28 (2009); *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079, at P 60 (2005) (citing *Pacific Gas and Electric Co.*, 109 FERC ¶ 61,226, at P 5 (2004); *Midwest Indep. Transmission Sys. Operator, Inc.*, 99 FERC ¶ 61,302, at 62,264 (2002); *ISO New England, Inc.*, 91 FERC ¶ 61,016, at 61,060 (2000); *Sierra Pacific Power Co.*, 80 FERC ¶ 61,376, at 62,271 (1997).