

155 FERC ¶ 61,079
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

New Jersey Energy Associates, a Limited Partnership Docket No. ER15-952-001

ORDER DENYING CLARIFICATION AND REHEARING

(Issued April 21, 2016)

1. New Jersey Energy Associates, a Limited Partnership (NJEA) seeks clarification or, in the alternative, rehearing of the Commission's September 4, 2015 order denying NJEA's petition for waiver of certain provisions in PJM Interconnection, L.L.C.'s (PJM) Amended and Restated Operating Agreement (Operating Agreement) and Open Access Transmission Tariff (OATT or Tariff). The waiver would have allowed NJEA to recover costs incurred to comply with scheduling instructions from PJM during the cold weather events in January 2014.¹ As discussed in the body of this order, we deny NJEA's request for clarification and rehearing.

I. Background

2. NJEA owns and operates the 290 MW South River combined cycle natural gas-fired power plant located in Sayreville, New Jersey (South River CC). On January 30, 2015, NJEA filed with the Commission a request to waive section 1.10.2 of Schedule 1 of the Operating Agreement and the mirror provisions of the PJM OATT, and any other provisions of the Operating Agreement and Tariff necessary, to allow for recovery of \$1,334,280 of unrecovered costs during the Polar Vortex weather events in January 2014. NJEA stated that the unrecovered costs related to out-of-market scheduling instructions by PJM with regards to the South River CC. NJEA stated that, despite assurances from PJM generation dispatchers that NJEA would be made whole for its loss, PJM later rejected NJEA's request for cost recovery, concluding that the Tariff and Operating Agreement restrict PJM's ability to compensate NJEA for the costs incurred to comply with PJM's changes to its out-of-market scheduling instructions. If the Commission declined to grant NJEA's requested waivers, NJEA requested that the Commission find

¹ *New Jersey Energy Associates, a Limited Partnership*, 152 FERC ¶ 61,181 (2015) (September 4 Order).

that the South River CC was a pool-scheduled resource and as such, eligible to recover start-up costs pursuant to section 1.10.2, despite it only being a fraction of its actual unrecovered costs.

3. In the September 4 Order, the Commission denied NJEA's waiver request, finding that granting waiver would violate the filed rate doctrine and the rule against retroactive ratemaking.² Regarding NJEA's alternative request, the Commission stated that, because the South River CC unit had been committed subsequent to Thursday's Day-ahead Energy Market, it was a "pool scheduled resource eligible for start-up cost recovery under section 1.10.2."³

4. On October 5, 2015, NJEA filed a request for clarification, and, in the alternative, rehearing of the September 4 Order.

II. Request for Clarification and Rehearing

5. In its request for clarification, NJEA requests that the Commission clarify its statement in the September 4 Order that the South River CC unit "is a pool scheduled resource eligible for start-up cost recovery under section 1.10.2." Specifically, NJEA requests that the Commission clarify that the natural gas losses at issue in this proceeding are "actual costs incurred" pursuant to section 1.10.2(d),⁴ and that PJM can compensate NJEA for such costs, subject to the cap.⁵

6. NJEA states that PJM denied its request for compensation on the grounds that no part of NJEA's \$1.3 million of unrecovered natural gas costs is eligible for recovery under section 1.10.2(d). NJEA explains that PJM informed it that natural gas balancing

² September 4 Order, 152 FERC ¶ 61,181 at P 19.

³ *Id.* P 23.

⁴ Section 1.10.2(d) of Schedule 1 of the Operating Agreement provides the following (emphasis added):

The Market Seller of a resource selected as a pool-scheduled resource shall receive payments or credits for energy, demand reductions or related services, or for start-up and no-load fees, from the Office of the Interconnection on behalf of the Market Buyers in accordance with Section 3 of this Schedule 1. *Alternatively, the Market Seller shall receive, in lieu of start-up and no-load fees, its actual costs incurred, if any, up to a cap of the resource's start-up cost, if the Office of the Interconnection cancels its selection of the resource as a pool-scheduled resource and so notifies the Market Seller before the resource is synchronized.*

⁵NJEA Clarification and Rehearing Request at 4-5.

costs such as those incurred by NEPM did not qualify as actual costs incurred and that PJM's long-standing view was that section 1.10.2(d) would only apply for fuel-related costs for fuel burned during the start-up process.

7. NJEA argues that PJM's interpretation is inconsistent with the plain language of section 1.10.2(d). NJEA argues that section 1.10.2(d) distinguishes between recovery of start-up costs and actual costs incurred *in lieu of* start-up costs.⁶ Based upon NJEA's discussions with PJM, NJEA explains that for PJM the same type of costs that would be recoverable as "start-up" costs under the first sentence of section 1.10.2(d) is recoverable as "actual" costs under the second sentence of section 1.10.2(d), with the first sentence applying when a resource has synchronized to the grid and the second applying when a resource's schedule is canceled prior to synchronization. NJEA argues that PJM's interpretation of this provision effectively rewrites the tariff language without Commission review or approval.⁷

8. NJEA argues that section 1.10.2(d) plainly states that a market participant shall receive its actual costs without qualification except for limiting payments to the amount of the resource's start-up costs (which PJM defines in its Manuals as the "appropriate start-up cost as specified in the generating resource's offer data").⁸ NJEA contends that PJM's interpretation effectively changes the words of section 1.10.2(d) from recovery of "actual costs incurred" to "costs actually incurred that would have been recoverable as a start-up cost had the resource synchronized." Accordingly, NJEA requests that the Commission clarify that its statement in the September 4 Order with respect to recovery under section 1.10.2(d) was not intended to categorically exclude all of NJEA's gas losses at issue in this proceeding from recovery as "actual costs incurred" within the meaning of section 1.10.2(d).⁹

9. In the event the Commission denies NJEA's requested clarification, NJEA requests that the Commission grant rehearing of its reference to start-up cost recovery in the September 4 Order and find that NJEA's \$1.3 million of gas losses are "actual costs incurred" within the meaning of section 1.10.2(d) of Schedule 1 to the Operating Agreement. NJEA argues that Commission erred in P 23 of the September 4 Order in finding that NJEA can only recover start-up costs under section 1.10.2(d). NJEA contends that this provision does not restrict the type of fuel costs that are recoverable as long as they are actually incurred and are below the resource's start-up costs. NJEA states

⁶ NJEA Clarification and Rehearing Request at 5 (emphasis added).

⁷ *Id.* at 5-6.

⁸ *Id.* at 6 (citing section 5.2.4 of PJM Manual 28).

⁹ *Id.* at 7-8.

that limiting recovery of this provision only to costs that would otherwise qualify as start-up costs would fail to align payments to sellers with the actual costs that sellers incur, which NJEA argues was the intent of the tariff language.¹⁰

III. Responsive Pleadings

10. On October 20, 2015, PJM filed a motion to leave to answer and answer in response to NJEA's request for clarification. On November 4, 2015, NJEA filed a request for leave to reply and reply to PJM's answer.

11. On November 5, 2015, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (IMM), filed a motion to intervene out of time and on November 18, 2015, the IMM filed comments in response to NJEA's request for clarification and, in the alternative, rehearing. On November 30, 2015, NJEA filed a request to leave an answer and answer to the IMM's comments.

IV. Commission Determination

A. Procedural Matters

12. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2015), prohibits answers to requests for rehearing. Although NJEA has styled its pleading as a request for clarification, we find it to be a request for rehearing and, on that basis, reject PJM's answer pursuant to Rule 713(d). As a result, we also dismiss NJEA's answer to PJM's answer.

13. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for the granting of such late intervention. The IMM has not met its burden of justifying late intervention. Accordingly, we deny the IMM's motion and comments. We also deny as moot NJEA's answer to the IMM's comments.

¹⁰*Id.* at 8-9 (citing *PJM Interconnection, L.L.C.*, 82 FERC ¶ 61,320 (1998)). NJEA states that it does not seek rehearing of the Commission's September 4 Order denying waiver, but notes that other rehearings denying similar waivers are pending before the Commission and NJEA wishes to retain its right to initiate a new waiver request consistent with the outcome of those proceedings. *Id.* n.20. On March 1, 2016, the Commission denied rehearing in both *Old Dominion Electric Cooperative*, 154 FERC ¶ 61,155 (2016) and *Duke Energy Corp. v. PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,156 (2016).

B. Substantive Matters

14. As discussed below, NJEA's request for clarification and, in the alternative, rehearing is denied. In its original filing, NJEA made two requests. First, NJEA requested a waiver of section 1.10.2 of Schedule 1 of the Operating Agreement and the mirror provisions of the OATT to allow for recovery of \$1,334,280 of unrecovered costs during the Polar Vortex weather events in January 2014. Second, NJEA requested that the Commission find that the South River CC was a pool-scheduled resource eligible to recover its start-up costs pursuant to section 1.10.2 of Schedule 1 of the Operating Agreement. As NJEA acknowledges, in its original filing, NJEA's second request was focused on the meaning of the phrase "pool-scheduled resource," as opposed to the level of cost recovery available under section 1.10.2(d).¹¹ The September 4 Order found that the South River CC was a "pool scheduled resource eligible for start-up cost recovery under section 1.10.2" since it was committed subsequent to Thursday's Day-ahead Energy market. The Commission made no finding as to which, if any, costs qualified for recovery under this section.

15. Now, for the first time, NJEA asks the Commission to interpret the phrase "actual costs incurred" in section 1.10.2(d) in order to determine how much NJEA is eligible to recover as a pool-scheduled resource. NJEA's request is beyond the scope of its original waiver request and inappropriately raised for the first time in a request for clarification and rehearing of the September 4 Order. Accordingly, we deny NJEA's request for clarification and rehearing.

The Commission orders:

NJEA's request for clarification and rehearing is denied, as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹¹ NJEA Clarification and Rehearing Request at 4.