

127 FERC ¶ 61,188  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

PJM Interconnection, L.L.C.

Docket No. EL08-47-003

ORDER ON CLARIFICATION

(Issued May 28, 2009)

1. In this order, the Commission grants a request for clarification by the Mirant Parties.<sup>1</sup>

**I. Background**

2. The Maryland Public Service Commission (Maryland PSC) filed a complaint against PJM regarding market rule provisions that exempted certain generation resources from energy offer price mitigation. On May 16, 2008, the Commission granted Maryland PSC's complaint in part, and eliminated the interface and new construction mitigation exemptions.<sup>2</sup> In addition, the Commission established a Federal Power Act section 206 proceeding to examine whether the continued use of the three-pivotal-supplier test and its related mitigation procedures results in unjust and unreasonable rates.<sup>3</sup>

3. On February 19, 2009, the Commission found insufficient evidence to show that the three-pivotal-supplier test is unjust and unreasonable as it relates to assessing the structural competitiveness of the PJM energy market.<sup>4</sup> However, the Commission found

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<sup>1</sup> Mirant Energy Trading, LLC; Mirant Potomac River, LLC; Mirant Chalk Point, LLC; and Mirant Mid-Atlantic, LLC (Mirant Parties).

<sup>2</sup> *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,169, *order on reh'g*, 125 FERC ¶ 61,340 (2008).

<sup>3</sup> 16 U.S.C. § 824e (2006).

<sup>4</sup> *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,145 (2009) (February 19, 2009 Order).

that the application of the related price mitigation measures was unjust and unreasonable because they do not clearly define and fully account for the inclusion of unit-specific opportunity costs in mitigated offer prices. PJM already had in place a stakeholder process considering opportunity costs, and the Commission directed PJM to submit a compliance filing on or before July 31, 2009 that proposes an approach for addressing the incorporation of opportunity costs in mitigated offers. The Commission also established a procedure to provide an opportunity for comments by other parties, and responsive comments by PJM.

## II. Request for Clarification

4. Mirant Parties have requested clarification, or in the alternative, rehearing of the February 19, 2009 Order. Mirant Parties point out that at times in the order the Commission referred to opportunity costs related to energy and environmentally-limited resources,<sup>5</sup> and request clarification that the requirement of the order was not limited to these two types of opportunity cost. Mirant Parties argue that suppliers face other legitimate and verifiable opportunity costs that should be considered in their mitigated offer prices. Mirant Parties contend that the February 19, 2009 Order failed to provide any reasoned basis for deviating from Commission precedent holding that suppliers should be entitled to include all of their legitimate and verifiable opportunity costs in mitigated offers and, in the event that the Commission does not grant clarification, request rehearing.

5. Maryland PSC, Concerned Customers,<sup>6</sup> PJM IMM,<sup>7</sup> and PJM filed answers to Mirant's request. Maryland PSC contends that the February 19, 2009 Order is clear, and that the Commission has established a process for comments and alternative proposals, and therefore, Mirant Parties' request for clarification is groundless and premature. Concerned Customers contend that Mirant Parties' request for clarification circumvents the process established in the February 19, 2009 Order. PJM IMM contends that opportunity costs is a general concept, and it is not possible to debate the complex issues

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<sup>5</sup> February 19, 2009 Order, 126 FERC ¶ 61,145, at P 28, 42.

<sup>6</sup> Pennsylvania Office of Consumer Advocate; Borough of Chambersburg; North Carolina Electric Membership Corporation; American Municipal Power-Ohio, Inc.; PJM Industrial Customer Coalition; Old Dominion Electric Cooperative; Southern Maryland Electric Membership Corporation; and Maryland Office of People's Counsel (Concerned Customers).

<sup>7</sup> Monitoring Analytics, LLC, filing as PJM's independent market monitor (PJM IMM).

raised by Mirant Parties' request within the timeframe established by the February 19, 2009 Order. While not believing that any clarification of the February 19, 2009 Order is necessary, to the extent the Commission offers additional guidance, PJM IMM recommends the July 31, 2009 compliance filing address only those opportunity costs that result from run times restricted by regulatory authority for environmental reasons. PJM contends that the February 19, 2009 Order does not limit the scope of opportunity costs, and states that it intends to focus on opportunity costs related to energy and environmental limitations in the July 31, 2009 compliance filing and include a plan in the compliance filing for developing additional market rules for other types of opportunity costs.

### **III. Discussion**

6. Rule 713(d) of the Commission's Rules of Practice and Procedure prohibits answers to requests for rehearing.<sup>8</sup> Here, Mirant Parties have submitted a request for clarification, or in the alternative, rehearing, and we will permit the answers because they have assisted us in our decision-making process.

7. We will grant Mirant Parties' request for clarification that the scope of PJM's compliance filing is not limited to opportunity costs related to energy and environmentally-limited resources. As PJM recognizes, the references to these two types of cost in the order were by way of example, and PJM needs to consider all legitimate and verifiable opportunity costs as part of its stakeholder process and its compliance filing.<sup>9</sup> We also find it reasonable for PJM to focus on opportunity costs related to energy and environmental limitations in the July 31, 2009 compliance filing and to include in that filing a plan for developing additional market rules for other types of opportunity costs. Parties will have an opportunity to comment on that compliance filing.

#### The Commission orders:

- (A) Clarification is hereby granted, as discussed in the body of this order.

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<sup>8</sup> 18 C.F.R. § 385.713(d) (2008).

<sup>9</sup> While using those two types of costs are good examples of opportunity costs, the requirement to consider opportunity costs was broader February 19, 2009 Order, 126 FERC ¶ 61,145 at P 48 ("On or before July 31, 2009, PJM is to make a compliance filing that proposes an approach for addressing the incorporation of opportunity costs in mitigated offers").

(B) Mirant Parties' request for rehearing, in the alternative, is dismissed as moot.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.