

157 FERC ¶ 61,162
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Virginia Electric and Power Company

Docket No. EL16-109-000

v.

PJM Interconnection, L.L.C. and
PJM Settlement, Inc.

ORDER DENYING COMPLAINT AND REQUEST FOR WAIVER

(Issued November 30, 2016)

1. On August 29, 2016, Dominion Resources Services, Inc., on behalf of Virginia Electric and Power Company (VEPCo), pursuant to Sections 206 and 306 of the Federal Power Act (FPA)¹ and Rules 206 and 207(a)(5) of the Commission's Rules of Practice and Procedure,² filed a complaint (Complaint) against PJM Interconnection, L.L.C. and PJM Settlement, Inc.³ (collectively PJM). VEPCo argues that PJM violated its Open Access Transmission Tariff (Tariff) and Amended and Restated Operating Agreement (Operating Agreement) by denying VEPCo's request for a fuel cost adjustment. VEPCo asks the Commission to direct PJM to make VEPCo whole with respect to its actual fuel costs. In the alternative, VEPCo seeks waiver of applicable provisions of PJM's Tariff and Operating Agreement to ensure it is made whole (Waiver Request). As discussed below, we deny both the Complaint and Waiver Request.

¹ 16 U.S.C. §§ 824e, 825e (2012).

² 18 C.F.R. §§ 385.206, 385.207(a)(5) (2016).

³ PJM Settlement, Inc. is a subsidiary of PJM established to act as the public utility counterparty for all transactions in the PJM Market.

I. Background

2. VEPCo owns the Ladysmith Power Station (Ladysmith), located in Ladysmith, Virginia, which consists of five dual fuel combustion-turbine (CT) generating units with a total net generating capacity of 783 MW that primarily operate with natural gas as a fuel source, but that can also operate on fuel oil. VEPCo states that PJM relies on CT resources like Ladysmith to quickly relieve unexpected transmission constraints, outages, and load increases.⁴

3. PJM operates a day-ahead market for the sale or purchase of energy at binding prices one day ahead of the operating day. Generation resources participating in the day-ahead market are required to submit a cost-based offer and also may submit a market-based offer.⁵ As discussed below, Market Sellers can submit multiple cost-based offers for a single resource through PJM's Markets Gateway,⁶ and can make one cost-based offer per fuel type "available" for use by PJM for any given time. After the results of the day-ahead market are posted, Market Sellers that own generation resources that have not cleared the market may adjust their offers during a rebidding period which closes at 2:15 p.m.⁷

4. Under the PJM rules in place in June 2016, the month during which the events at issue in this Complaint took place, day-ahead offers from generation resources could not vary by hour and could not be updated during the operating day. Market Sellers could only update the availability of a cost-based offer in Markets Gateway based on a four-

⁴ Complaint at 5.

⁵ The terms "offer" and "schedule" are often used interchangeably. Offers submitted in the day-ahead market include three key cost components: (1) startup cost; (2) no-load cost; and (3) incremental energy offer, which consists primarily of the cost of fuel. PJM Manual 11, Energy & Ancillary Services Market Operations, Version 81 (PJM Manual 11) at 16, § 2.3.3.

⁶ Markets Gateway is PJM's online tool that allows PJM members to submit information and conduct business in the day-ahead and other markets. PJM Answer, Affidavit of Stanley Williams (Williams Aff.) ¶ 5.

⁷ See *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,209, at PP 18, 35 (2016); PJM Manual 11 at 13, § 2.3.1.

hour sliding window in advance of the operating hour and could only make one offer available per fuel type.⁸

5. In June 2015, in Docket No. EL15-73-000, the Commission instituted a proceeding to examine the offer flexibility provided under PJM's Tariff and Operating Agreement. The Commission found that the Tariff and Operating Agreement were unjust, unreasonable, unduly discriminatory or preferential because they do not permit Market Sellers to submit day-ahead offers that vary by hour or allow market participants to update their offers in real time, including in emergency situations.⁹ In response, PJM proposed tariff revisions to implement additional offer flexibility in Docket No. ER16-372-002, which is currently pending before the Commission.

6. Under PJM market rules, uplift credits may be provided to generation resources to ensure they do not operate at a loss when following PJM dispatch instructions.¹⁰ In addition, Attachment C of PJM's Manual 11¹¹ specifies a process for Market Sellers to report differences between cost-based offers and actually incurred costs for resettlement purposes if they are asked by PJM to operate outside of a day-ahead commitment and have documented in their fuel cost policy the conditions under which they cannot accurately estimate intraday costs.

⁸ PJM Market Gateway User Guide (User Guide) at 66, § 9.14, Select Schedules to be Available in Real-Time. The User Guide is <http://www.pjm.com/~media/etools/emkt/markets-gateway-user-guide.ashx>. PJM appended relevant portions of the User Guide to its Answer as Attachment B.

⁹ *Duke Energy Corp. v. PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,206, at P 69 (2015) (*Duke*) (order instituting the proceeding pursuant FPA section 206), *order on reh'g*, 154 FERC ¶ 61,156 (2016); *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,282, at P 2 (2016) (June 17 Order) (order rejecting tariff revisions PJM proposed in response to the Commission's findings, and directing another compliance filing). This pending proceeding is herein referred to as the Offer Flexibility Proceeding.

¹⁰ *E.g.*, PJM Operating Agreement, Schedule 1, § 3.2.3, Operating Reserves (30.1.1).

¹¹ PJM Manual 11 at Attachment C, PJM Procedure for Cost Adjustment (Attachment C).

II. Complaint

7. VEPCo states that on June 24, 2016, it submitted day-ahead cost-based and market-based offers for the Ladysmith units for the June 25, 2016 Operating Day.¹² VEPCo's cost-based offers assumed that the units would operate on natural gas. The units did not clear in the day-ahead market, and VEPCo did not update its offers in the rebidding period. VEPCo states that after the close of the rebidding period, it learned of a natural gas pipeline constraint that rendered it unable to operate the units with natural gas. At approximately 11:00 a.m. on June 25, 2016, PJM directed VEPCo to operate four of the units beginning at 12:00 p.m. to address a reliability issue.¹³ VEPCo states that it informed PJM of its need to operate on more expensive fuel oil, and PJM reaffirmed its dispatch instruction. VEPCo operated three units for ten hours and one unit for eleven hours on June 25, 2016.¹⁴ PJM compensated VEPCo based on its cost-based offers for natural gas.

8. VEPCo states that on June 27, 2016, it submitted a request to PJM pursuant to Attachment C to increase its uplift payment for its operation of the Ladysmith units on June 25, 2016. VEPCo sought increased compensation to reflect the difference between the fuel-cost component of its cost-based offer, which was based on natural gas, and the fuel costs it actually incurred to operate on higher cost fuel oil. VEPCo explains that PJM denied the request on grounds that VEPCo had not submitted a cost-based offer for fuel oil in PJM's Markets Gateway.¹⁵ In the Complaint, VEPCo seeks \$387,587.83 for costs it claims were unrecoverable due to PJM's actions.¹⁶

9. In support of its claim, VEPCo asserts that generation resources that are scheduled by PJM and that follow PJM's dispatch instructions are entitled to fully recover their costs of operation under PJM's market rules. VEPCo explains that PJM makes resources whole through uplift payments when market revenues are insufficient to cover a Market Participant's incurred costs.¹⁷ VEPCo avers that Attachment C is a mechanism to make resources whole, noting that the stated aim of the Attachment C procedure is to enable

¹² Complaint at 8 (citing Affidavit of Charles L. Bonner (Bonner Aff.) ¶ 10).

¹³ Complaint at 6.

¹⁴ *Id.*

¹⁵ *Id.* at 7 (citing Bonner Aff. Ex. 3).

¹⁶ *Id.* at 19.

¹⁷ *Id.* at 7 (citing PJM Operating Agreement, Schedule 1, § 3.2.3).

resources “that are requested to operate by PJM System Operations outside of a day-ahead commitment and cannot accurately estimate intraday costs as described in the Generation Owner’s fuel cost policy”¹⁸ to recover these intraday costs.

10. VEPCo asserts that its offers for June 25, 2016, were appropriately based on the use of the units’ primary fuel, natural gas. VEPCo argues that, given the size of its generation fleet, it is not always practical to develop and submit cost-based offers based on alternative fuel types, such as fuel oil, in the event of an unforeseen supply issue with the primary fuel.¹⁹ VEPCo argues that Attachment C does not require resources to keep multiple cost-based offers for different fuels on file with PJM in order to be eligible for a cost adjustment,²⁰ and avers its natural gas cost-based offer was the “most applicable” schedule for June 25, 2016.

11. According to VEPCo, the fact it had not submitted a cost-based offer for fuel oil is irrelevant, because it must be made whole based on its actual costs pursuant to Attachment C.²¹ VEPCo claims that if, due to a natural gas pipeline constraint, it had incurred higher natural gas costs than those in its cost-based offer, PJM would allow cost recovery pursuant to Attachment C. VEPCo asserts that PJM has imposed an additional procedural hurdle not supported by its governing documents, and thus PJM has violated its filed rate²² and is required to correct all prices that do not reflect market rules.²³

12. VEPCo also asserts that, in the past, when VEPCo’s cost-based offers assumed use of fuel oil but its units actually operated on cheaper natural gas, VEPCo has requested, and PJM has implemented, a downward adjustment to its uplift payment. According to

¹⁸ *Id.* at 7-8 (citing PJM Manual 11 at Attachment C).

¹⁹ *Id.* at 9 (citing Bonner Aff. ¶ 16).

²⁰ *Id.* (citing PJM Manual 11 at Attachment C, “Offers”).

²¹ *Id.* at 9-10.

²² *Id.* at 10 (citing *City of Vernon*, 109 FERC ¶ 61,369, at P 27 (2004); *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,212, at P 90 (2007); and *Preventing Undue Discrimination and Preference in Transmission Serv.*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 806 (2007)).

²³ *Id.* (citing *ISO New England, Inc.*, 90 FERC ¶ 61,141, at 61,425 (2000) (*ISO New England*); *NRG Power Mktg., Inc. v. NYISO*, 91 FERC ¶ 61,346, at 62,166 & n.7 (2000) (*NRG Power Marketing*) (both involving price miscalculations due to technical errors, such as software or data entry errors)).

VEPCo, PJM did so regardless of whether VEPCo had submitted a cost-based offer for natural gas.²⁴ VEPCo characterizes this as a “heads I win, tails you lose” approach and argues that, to the extent it is reasonable for PJM to exercise discretion, PJM may not do so in an unduly discriminatory manner.²⁵

13. VEPCo also claims that the Commission’s findings in the Offer Flexibility Proceeding—namely, that PJM’s Tariff and Operating Agreement were unjust and unreasonable because they did not permit day-ahead offers that vary by hour or allow Market Sellers to update their offers in real time—support its requested relief.²⁶ VEPCo claims that it was not able to reflect its fuel oil costs in its offers due to PJM’s offer limitations and argues that, in light of the Commission’s findings and the fact that PJM has not yet implemented offer flexibility, the Commission should grant the requested relief.

III. Waiver Request

14. In the alternative, VEPCO requests that, if the Commission finds that PJM has not violated its Tariff, Operating Agreement, or manuals, the Commission grant waiver of any provisions that prevent the requested cost adjustment. VEPCo argues that it has satisfied the Commission’s criteria for granting waiver because the request is made in good faith; is of limited scope; addresses a concrete problem that will be remedied; and does not have undesirable consequences.²⁷

²⁴ *Id.* at 10-11 (citing Bonner Aff. ¶¶ 18-19).

²⁵ *Id.* at 11 (citing *Indep. Energy Producers Ass’n v. Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,276, at P 46 (2007); and *Sw. Power Pool, Inc.*, 114 FERC ¶ 61,222, at P 78, *order on reh’g*, 116 FERC ¶ 61,162 (2006), *order on reh’g*, 118 FERC ¶ 61,035 (2007)).

²⁶ *Id.* at 12-13 (citing *Duke*, 151 FERC ¶ 61,206 at P 69; June 17 Order, 155 FERC ¶ 61,282 at P 32; and PJM’s pending compliance filing in Docket No. ER16-372-002, *et al.*)).

²⁷ *Id.* at 14 (citing *Calpine Energy Servs., Inc.*, 154 FERC ¶ 61,082, at P 12 (2016); *Indianapolis Power & Light Co.*, 149 FERC ¶ 61,047, at P 64 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078, at P 38 (2014); *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,184, at P 18 (2014); *Sw. Power Pool, Inc.*, 148 FERC ¶ 61,013, at P 13 (2014); and *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,132, at P 8 (2014)).

15. VEPCo argues that its Waiver Request is made in good faith because it seeks only to be made whole for its actual costs for responding to a dispatch directive, which is “clearly contemplated” by PJM’s Operating Agreement and Manual 11.²⁸ VEPCo distinguishes its Waiver Request from those the Commission has denied as prohibited under the filed-rate doctrine and the rule against retroactive ratemaking in *Duke* and *ODEC*, due to the presence of adequate prior notice.²⁹ VEPCo also asserts that its Waiver Request is limited in scope because it applies only to VEPCo and the unique facts presented in this case. VEPCo argues that, unlike in *Duke* and *ODEC*, its Waiver Request does not involve “tariff provisions of general applicability.”³⁰

16. Moreover, VEPCo asserts that its Waiver Request, if granted, would remedy the concrete problem of VEPCo not being made whole for the actual fuel costs it incurred to respond to a reliability dispatch instruction from PJM. VEPCo argues that the Commission has granted previous waiver requests to permit sellers who submit cost-based offers into the PJM energy markets to receive a make-whole payment covering the difference between their costs and the clearing price, and the Commission has determined in other wholesale electricity markets that it is imperative to provide resources an adequate opportunity to recover costs incurred to comply with reliability directives.³¹

²⁸ *Id.*

²⁹ See *Duke*, 151 FERC ¶ 61,206 at PP 66-68; *Old Dominion Elec. Coop.*, 151 FERC ¶ 61,207, at PP 45-48 (2016) (*ODEC*), *order on reh’g*, 154 FERC ¶ 61,155 (2016). More specifically, VEPCo asserts that the filed-rate doctrine and rule against retroactive ratemaking do not bar its requested cost adjustment, because *Duke* and the June 17 Order provided market participants with adequate notice that the Commission had found certain tariff provisions to be unjust and unreasonable in the Offer Flexibility Proceeding and a rate adjustment with refunds may take effect prior to a filing under FPA section 205. Complaint at 15-16.

³⁰ Complaint at 16.

³¹ *Id.* at 17 (citing *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041 (2014) (*PJM*) (granting a PJM request for waiver to permit make-whole payments to cover actual fuel costs, where fuel costs spiked due to extreme weather and but offers were constrained by the offer cap); and *Dominion Energy Mktg., Inc.*, 143 FERC ¶ 61,233, at P 25, *order on reh’g*, 145 FERC ¶ 61,109 (2014) (*Dominion Energy*) (directing tariff revisions to permit cost recovery under certain circumstances, including where a resource is dispatched for reliability beyond its day-ahead schedule without opportunity to refresh its offer price)).

17. Finally, VEPCo argues that its Waiver Request will not have undesirable consequences, as the Operating Agreement and Tariff contemplate generators' recovery of their actual costs.³² VEPCo asserts that denying a waiver under these circumstances "will signal to generators that they may not be made whole when responding to a PJM directive to run for reliability, even where the Commission found that an inability to reflect updated costs in real-time offers is unjust and unreasonable."³³

IV. Notice of Filing and Responsive Pleadings

18. Notice of the Complaint was published in the *Federal Register*, 81 Fed. Reg. 61,676 (2016), with answers, interventions, and comments due on September 19, 2016. In response to a September 9, 2016 motion for extension filed by Monitoring Analytics, LLC, in its capacity as the Independent Market Monitor for PJM (IMM), the Commission issued a notice extending the date to submit answers, interventions, and comments to September 30, 2016.³⁴

19. Timely motions to intervene in this proceeding were filed by American Electric Power Service Corporation,³⁵ American Municipal Power, Inc., Exelon Corporation,³⁶ FirstEnergy Service Company, the IMM, LS Power Associates, L.P., North Carolina Electric Membership Corporation, NRG Power Marketing LLC and GenOn Energy Management, LLC, Old Dominion Electric Cooperative, and the Retail Electric Supply Association (RESA).

20. On September 19, 2016, PJM filed its answer. On September 30, 2016, the IMM filed comments opposing the Complaint and Waiver Request, and RESA filed a protest. On October 5, 2016, VEPCo filed a motion for leave to answer and an answer to the

³² *Id.* at 17.

³³ *Id.* at 17-18.

³⁴ *Notice Granting Extension of Time*, Docket No. EL16-109-000 (issued Sept. 15, 2016).

³⁵ American Electric Power Service Corporation intervened on behalf of its affiliates AEP Generation Resources Inc., Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

³⁶ Exelon styled its motion as a motion to intervene out of time; however, the motion was timely, as it was submitted before September 30, 2016.

filings of PJM, the IMM, and RESA. On November 1, 2016, the IMM filed a motion for leave to answer and an answer to VEPCo's answer.

A. PJM's Answer

21. PJM asks the Commission to deny the Complaint and Waiver Request. PJM largely agrees with the underlying facts as set forth in the Complaint.³⁷ PJM explains that the PJM Markets Gateway User Guide (User Guide) provides Market Sellers with detailed instructions on how to submit and make changes to offers, select available offers, and create and modify real-time offer availability.³⁸ PJM asserts that a Market Seller can provide up to 79 cost-based offers for a generating unit. According to PJM, the User Guide sets forth how Market Sellers can communicate their units' dual fuel capability to PJM and make the appropriate cost-based offers "available" in real-time during an Operating Day.³⁹ PJM explains that if a Market Seller has cost-based offers for more than one fuel type available in Markets Gateway for an operating hour, there is no delay in the time period for which a second cost-based offer could be applied.⁴⁰

22. PJM asserts that the Complaint should be denied because PJM is neither required nor authorized to compensate VEPCo for its fuel oil costs for operating the Ladysmith units on June 25, 2016. PJM agrees that Market Sellers generally are made whole through PJM market rules, but asserts that PJM must comply with its currently effective Operating Agreement in determining whether a Market Seller is entitled to be made whole for its costs.⁴¹ PJM cites various Operating Agreement provisions to support its claim that VEPCo's requested cost adjustment is prohibited.

³⁷ PJM Answer at 3-4. PJM states that it lacks sufficient independent knowledge to respond to VEPCo's assertions regarding costs incurred.

³⁸ PJM Answer at 4-5 (citing the User Guide).

³⁹ *Id.* at 5 (citing User Guide §§ 9.10, 9.14). The term "available" refers to a Market Seller's indication in Markets Gateway that an offer schedule is available for PJM to choose for the operating day. User Guide § 9.13 (providing instructions for selecting schedules to be available). The User Guide at section 9.14 provides, among other things, that "Availability may only be changed for cost schedules and only for those schedules that were present in the Day-Ahead"; and there "may only be one cost schedule per fuel type made Available during any given hour." PJM Answer at 5-6 (quoting User Guide § 9.14).

⁴⁰ PJM Answer at 6.

⁴¹ *Id.* at 7-8.

23. According to PJM, Schedule 1, section 1.10.1A of the PJM Operating Agreement, describes the required components of day-ahead offers and establishes the finality of such offers. PJM explains that the Offer Data submitted establishes the parameters and prices at which the Market Seller offers to provide energy and other services to PJM.⁴² PJM further explains that the Operating Agreement, Schedule 1, section 1.7.1 specifies that “Market Sellers shall comply with the prices, terms, and operating characteristics of all Offer Data submitted to and accepted by the PJM Interchange Energy Market.”⁴³ PJM also points to the PJM Operating Agreement, Schedule 1, section 6.4.2(d), which makes Market Participants responsible for submitting compliant offers based on accurate information.⁴⁴ PJM explains that it can only dispatch resources and calculate clearing prices based on resource offers on file and available in Markets Gateway.⁴⁵ Thus, PJM argues that VEPCo is required to comply with its submitted offer, which was based on natural gas, and that VEPCo is only entitled to be paid based on that offer.⁴⁶

24. PJM asserts that Attachment C of Manual 11 is not a “catch-all” that allows PJM to compensate Market Sellers for their actual costs regardless of applicable market rules. PJM states that, contrary to VEPCo’s assertions, if a Market Seller were to incur natural gas costs higher than those set forth in its cost-based offer due to a natural gas pipeline constraint, PJM would make the Market Seller whole only to the costs indicated in the “available” offer in Markets Gateway—not to its actual costs.⁴⁷ Moreover, PJM asserts

⁴² *Id.* at 8-10 (quoting and discussing PJM Operating Agreement § 1 (definition of “Offer Data”) and PJM Operating Agreement, Schedule 1, § 1.10.1A, Day-ahead Energy Market Scheduling). Offer Data is defined as the scheduling, operations planning, dispatch, new resource, and other data and information necessary to schedule and dispatch generation resources and Demand Resource(s) for the provision of energy and other services and the maintenance of the reliability and security of the transmission system in the PJM Region, and specified for submission to the PJM Interchange Energy market for such purposes by the Office of the Interconnection.

⁴³ *Id.* at 10.

⁴⁴ *Id.* at 11-12.

⁴⁵ *Id.* at 11 (citing Williams Aff. ¶ 17).

⁴⁶ *Id.* at 10. PJM explains that VEPCo’s day-ahead offers for the Ladysmith units remained open as its final offer for the June 25, 2016 real-time energy market. *Id.*

⁴⁷ *Id.* at 13 (citing Williams Aff. ¶¶ 18-21). According to PJM, the “most applicable” cost-based schedule for the Ladysmith units that should have been available in Markets Gateway was for fuel oil.

that Attachment C does not apply in the instant proceeding, noting the eligibility requirement that the generation resource “has documented in the generation resource’s fuel cost policy the conditions under which the resource cannot accurately estimate intraday costs and therefore will be allowed to be compensated using this procedure.”⁴⁸ PJM asserts that VEPCo should have been able to accurately estimate its fuel oil costs, but “chose not to do the work necessary” to submit an offer to reflect those costs, which PJM characterizes as an “ill-advised” business decision.⁴⁹

25. According to PJM, the fact that VEPCo did not become aware of the natural gas pipeline constraint until after the rebidding period had closed is not determinative here. PJM claims that if VEPCo had an available cost-based offer for fuel oil in Markets Gateway, PJM could have dispatched the units using that cost for the units.⁵⁰ PJM asserts that the vast majority of dual fuel units being offered in PJM’s markets as of June 24 and June 25, 2016 (118 of 124 units) had an offer in Markets Gateway for each of the two fuel types on which they could operate.⁵¹

26. In response to VEPCo’s argument that PJM must correct prices that do not reflect operation of the PJM market rules, which are the filed rate, PJM asserts that there are no price errors to correct because PJM calculated clearing prices taking into consideration VEPCo’s only available cost schedule. Relying on the PJM Operating Agreement, Schedule 1, at sections 1.7.6(a), 1.10.2(a), and 2.2., PJM asserts that Market Sellers’ offers must form the basis of its schedule and dispatch decisions, selection of pool-scheduled resources, and determinations regarding the least cost security-constrained economic dispatch.⁵² PJM argues that, unlike the cases on which VEPCo relies to assert that a price correction is required, there was no PJM technical or computational error that resulted in prices that were inconsistent with the market rules.⁵³ PJM also asserts it

⁴⁸ *Id.* at 17-18 (citing Attachment C, “Eligibility”).

⁴⁹ *Id.* at 18.

⁵⁰ *Id.* at 16.

⁵¹ *Id.* at 17 (citing Williams Aff. ¶¶ 24-25).

⁵² *Id.* at 19-20. PJM emphasizes the importance of Market Sellers’ accurately calculating costs and ensuring that prices and operating characteristics are up to date in Markets Gateway.

⁵³ *Id.* at 20-22 (distinguishing *ISO New England* and *NRG Power Marketing*, see *supra* n.23, on grounds that, here, there was no technical implementation, data-input, or computational error to correct).

would be unfair to other Market Sellers and load if, after PJM schedules one resource based on a natural gas cost-based offer rather than a second resource that is operating on a more expensive fuel, PJM allows the scheduled resource to increase its cost offer after-the-fact, because PJM might have scheduled the second resource if it had known the scheduled resource was planning to operate on a more expensive fuel.⁵⁴

27. PJM also counters VEPCo's argument that PJM inconsistently applies its rules when it allows a Market Seller that incurred lower fuel costs than those assumed in its cost-based offers to later make downward cost adjustments, without regard to the offers submitted in Markets Gateway. PJM explains that when a Market Seller reports that it operated on less expensive fuel, at the Market Seller's request, PJM will reduce its compensation consistent with the requirement that cost-based offers not exceed the resource's variable production cost.⁵⁵

28. PJM argues that VEPCo's inability to recover its costs from operating on fuel oil did not result from the real-time offer limitations at issue in the Offer Flexibility Proceeding. Rather, PJM asserts that VEPCo cannot recover its costs because it failed to submit a fuel oil cost-based offer in Markets Gateway.⁵⁶ PJM emphasizes that Attachment C provides a mechanism to allow Market Sellers to update the availability of their submitted offers when a unit was not committed in the day-ahead market (which mechanism VEPCo did not use).⁵⁷ Specifically, Attachment C states that a Market Seller with no prior commitment that is asked to run:

may elect to make its market-based schedule unavailable and update their cost-based schedule availability in real time. . . . [T]he Market Seller must update the availability of their submitted schedules in Markets Gateway[] to ensure their actual cost is reflected. . . . The PJM operator will evaluate

⁵⁴ *See id.* at 20.

⁵⁵ *Id.* at 24 (relying on the PJM Operating Agreement, Schedule 1, section 1.2, which specifies that cost-based offers "shall not exceed the variable cost of producing such energy . . ."). PJM also quotes the Operating Agreement, Schedule 2, and PJM Manual 15: Cost Development Guidelines, section 1.7 in support of its assertion that it processes these negative adjustments consistent with PJM market rules. *Id.* at 24-26.

⁵⁶ *Id.* at 26-27.

⁵⁷ *Id.* at 28-29 (citing PJM Manual 11 at Attachment C, "Operations").

whether the specified cost-based schedule is economic and if so, will log and dispatch the unit on the applicable schedule.⁵⁸

29. With respect to VEPCo's alternative Waiver Request, PJM urges the Commission to reject it as a matter of policy. PJM again asserts that VEPCo made a deliberate business decision not to submit an offer for fuel oil and thus is not entitled to recover its fuel oil costs. PJM also states that the waiver should be denied because it will have undesirable consequences,⁵⁹ including: (1) burdening load with additional, unexpected costs; (2) conferring special treatment on a Market Seller that made its own business decisions; and (3) creating potential negative impact on bidding behavior if a Market Seller has a risk-free ability to offer a unit on lower-cost fuel to clear the market, but later is paid based on higher costs.⁶⁰

B. Other Responsive Pleadings

30. The IMM agrees with PJM that VEPCo should have submitted a cost-based offer based on fuel oil and that PJM did not violate its Tariff in refusing VEPCo's requested cost adjustment. According to the IMM, the "decisive fact" in this proceeding is that VEPCo did not submit a cost-based offer in Market Gateways on which an uplift payment could be based.⁶¹ The IMM rejects as unpersuasive VEPCo's claim that it was not practical to submit two cost-based offers, one based on natural gas and another based on fuel oil.⁶² The IMM asserts that a lack of offer flexibility did not create VEPCo's problem, asserting that PJM Manual 11, Attachment C "specifies procedures that permit resources to update their cost-based schedule during the operating day if PJM asks the unit to run for a period for which it has not been committed" and that if VEPCo "had simply followed the rules in Manual 11, it would not have had this issue."⁶³

⁵⁸ PJM Manual 11 at Attachment C, "Operations."

⁵⁹ PJM concedes that VEPCo's Waiver Request was made in good faith, is of limited scope, and addresses a concrete problem. PJM Answer at 31.

⁶⁰ *Id.* at 31-32.

⁶¹ IMM Comments at 2-3.

⁶² *Id.* at 3.

⁶³ *Id.* at 4.

31. The IMM also argues that the Waiver Request is not justified. The IMM asserts that VEPCo's Waiver Request was not in good faith because VEPCo "should submit accurate and complete offers rather than litigate the resulting problems."⁶⁴ The IMM also asserts that the Waiver Request is not limited in scope because it will invite similar requests whenever a Market Seller wants to reconstruct an offer. Additionally, the IMM argues there is no "concrete problem" with the rules that needs to be addressed; rather, VEPCo failed to follow the rules.⁶⁵ The IMM also argues that granting the waiver could have undesirable consequences such as significant financial impacts for load and negative impacts on Market Sellers' bidding behavior.

32. In its protest, RESA supports PJM's Answer and urges the Commission to deny the Complaint and Waiver Request based on PJM's arguments.⁶⁶ RESA asserts that load should not bear the costs of VEPCo's error and that unhedgeable uplift payments should be minimized in competitive markets.⁶⁷ RESA also argues that VEPCo's Waiver Request was not in good faith, emphasizing that the problem to be remedied is solely the fault of VEPCo.

C. VEPCo's Answer

33. VEPCo asserts that PJM failed to address the threshold question raised in the Complaint, which is whether it is entitled to recover its actual costs when dispatched out of merit order for reliability purposes. VEPCo claims that PJM "elevates form over substance," and that PJM's rigid interpretation of its rules undermines the fact that the uplift provisions of the PJM Operating Agreement, Schedule 1 at section 3.2.3, and Attachment C of Manual 11 are exceptions to the general rule that a resource's costs are limited to those costs included in its offer.⁶⁸ VEPCo also claims that PJM's rigid interpretation of its rules is inconsistent with the Commission's determinations in *Dominion Energy*, in which the Commission found that it "is imperative to 'provide resources an adequate opportunity to recover costs incurred to comply with [RTO] directives to ensure reliability.'"⁶⁹

⁶⁴ *Id.* at 5.

⁶⁵ *Id.* at 6.

⁶⁶ RESA Protest at 6.

⁶⁷ *Id.* at 6-7.

⁶⁸ VEPCo Answer at 3-4.

⁶⁹ *Id.* at 7 (citing *Dominion Energy*, 143 FERC ¶ 61,233 at P 25).

34. VEPCo asserts that, because the Ladysmith units were dispatched for reliability purposes and were offer-capped, its lack of a cost-based offer for fuel oil had no impact on clearing prices or PJM's ability to set prices. VEPCo also avers that because a cost-based offer does not necessarily establish the actual cost of a resource, Attachment C enables compensation based on actual costs, and should apply here.⁷⁰ VEPCo further claims that PJM cannot rely on its User Guide to justify its actions, claiming that a user guide cannot supplant the applicable tariff provisions or manuals.⁷¹

35. With respect to its Waiver Request, VEPCo challenges the claims made by PJM, the IMM, and RESA that undesirable consequences would result from granting waiver, arguing that no Market Seller could or would devise an offer scheme that is dependent upon the circumstances present here, such as a pipeline constraint and the need to operate on fuel oil.⁷² Moreover, VEPCo claims that the Commission's consideration of a waiver request is necessarily limited to the facts and circumstances of each individual case.⁷³ VEPCo reiterates that a waiver is appropriate because Market Participants are on notice of potential refunds because the Commission found unjust and unreasonable those PJM Tariff provisions that do not currently allow Market Sellers to update their offers in real-time to reflect changes in costs.⁷⁴

D. The IMM's Answer

36. The IMM counters VEPCo's assertion that the PJM Operating Agreement at Schedule 1, section 3.2.3, is an exception to the rule that a resource is only eligible to receive uplift for costs included in its offer. The IMM asserts that it is irrelevant if a resource's actual costs differ from the costs in its offer because "[c]ompensation based on costs that are not known to PJM at the time of commitment and dispatch would make it impossible to have a least cost dispatch" and "[a]llowing generators to submit one offer and receive compensation based on another, regardless of the commitment reason, would expose the market to manipulation."⁷⁵ The IMM also takes issue with VEPCo's assertion that its lack of a cost-based offer for fuel oil is irrelevant and had no impact on clearing

⁷⁰ *Id.* at 5-7.

⁷¹ *Id.* at 8-9.

⁷² *Id.* at 11.

⁷³ *Id.* at 10.

⁷⁴ *Id.* at 12.

⁷⁵ IMM Answer at 2.

prices. The IMM asserts that all resource offers can affect clearing prices, uplift, and unit commitment decisions in PJM.⁷⁶

V. Discussion

A. Procedural Matters

37. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

38. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept VEPCo's and the IMM's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Complaint Determination

39. For the reasons discussed below, we deny VEPCo's Complaint. We find that the PJM Operating Agreement makes Market Sellers responsible for submitting accurate offers⁷⁷ and requires Market Sellers to "comply with the prices, terms, and operating characteristics of all Offer Data submitted to and accepted by" PJM.⁷⁸ The PJM Operating Agreement also establishes the finality of offers⁷⁹ and requires PJM to use submitted offers as the basis for scheduling and dispatch decisions.⁸⁰ These rules exist to

⁷⁶ *Id.* at 3. The IMM explains that all offers affect clearing prices, whether by directly setting the clearing price, "by providing an infra-marginal offer as part of the supply curve or by offering high enough to not be dispatched." *Id.*

⁷⁷ PJM Operating Agreement, Schedule 1, § 6.4.2(d), Offer Price Caps, Level (9.0.1).

⁷⁸ *Id.* § 1.7.1, Market Sellers (14.0.0).

⁷⁹ *Id.* § 1.10.1A(d)(vii), Day-ahead Energy Market Scheduling (23.1.1) (providing that offers "[s]hall be final as to the price or prices at which the Market Seller proposes to supply energy or other services to [PJM], such price or prices being guaranteed by the Market Seller for the period extending through the end of the following Operating Day").

⁸⁰ *Id.* §1.7.6(a), Scheduling and Dispatching (14.0.0); *id.* § 1.10.2(a), Pool-Scheduled Resources (23.1.1).

provide PJM with clear and reliable information to schedule, dispatch, and ultimately compensate resources.⁸¹ Here, VEPCo chose to submit an offer that only reflected the costs of natural gas operation at the Ladysmith units and to *not* submit an offer that reflects the cost of fuel-oil. As a result, PJM dispatched the units for reliability purposes based on the natural gas offers VEPCo provided, and PJM correctly compensated VEPCo based on these offers. Accordingly, we find that VEPCo's requested cost adjustment is contrary to the PJM Tariff and Operating Agreement and find that PJM's denial of the requested cost adjustment was appropriate.

40. VEPCo cites the PJM Operating Agreement, Schedule 1, section 3.2.3 as general support for its requested relief. However, this provision specifically provides for the calculation of Operating Reserves credits "based on *the prices offered* for the operation of such resource, provided that the resource was available for the entire time specified in the Offer Data for such resource."⁸² VEPCo, in contrast, requests a credit based on fuel-oil costs that were not reflected in its natural gas cost-based offers. Moreover, VEPCo's assertion that a price correction is required under the filed rate doctrine is misplaced. VEPCo alleges no technical or other errors on June 25, 2016 that caused prices to be inconsistent with the PJM Tariff and applicable rules (other than, as discussed above, the fact that, having submitted an offer based on the costs of natural gas rather than fuel oil, VEPCo now seeks cost recovery based on the costs of fuel oil), and PJM likewise states that there have been no such errors. Thus, we find that a price correction is neither required nor warranted.

41. PJM, in fact, provides Market Sellers with the opportunity to submit multiple cost-based offers to reflect, among other things, operation on alternate fuels. Indeed, according to PJM, of the 124 dual-fuel units being offered into PJM's markets as of June 24 and June 25, 2016, 118 units had offers in Markets Gateway for each fuel type.⁸³ VEPCo did not, however. If VEPCo had submitted cost-based offers for fuel oil, it could have updated the availability of its cost-based offers in real-time in order to be

⁸¹ VEPCo incorrectly asserts that, because the units were dispatched for reliability, its cost-based offers for fuel oil are irrelevant. We agree with the IMM that all offers can impact clearing prices, unit commitment decisions, and uplift payments, such as credits contemplated under Attachment C.

⁸² PJM Operating Agreement, Schedule 1, § 3.2.3(a) (30.1.1) (emphasis added); *see also id.* § 3.2.3(e) (describing the calculation of credits).

⁸³ PJM Answer at 17 (citing Williams Aff. ¶¶ 24-25).

compensated for operating on fuel oil.⁸⁴ But VEPCo made a business decision not to submit a cost-based offer for fuel oil. As a result, PJM did not and could not take VEPCo's fuel oil costs into account in informing its dispatch decisions when it scheduled the Ladysmith units. Thus, we find that VEPCo's inability to recover its fuel oil costs for the Ladysmith units resulted from its own business decisions regarding which cost-based offers to submit, and is not the result of the offer limitations that the Commission addressed in the Offer Flexibility Proceeding.

42. Moreover, we find that VEPCo has not demonstrated that it meets the eligibility requirements for a cost adjustment pursuant to PJM Manual 11, Attachment C. Specifically, Attachment C states that to be eligible for a cost adjustment pursuant to the procedures therein, the resource is required to have documented, in its fuel cost policy, the conditions under which the resource cannot accurately estimate intraday costs. VEPCo does not assert that its fuel cost policy meets this requirement, nor does VEPCo assert that it could not have accurately estimated its fuel oil costs.

43. Finally, we disagree with VEPCo's claim that PJM applies its rules in an inconsistent or unduly discriminatory manner because PJM will implement a downward cost adjustment at a Market Seller's request regardless of the cost-based schedule on file. Such adjustments are consistent with PJM's Operating Agreement at Schedule 1, section 1.2, which specifies that cost-based offers shall not exceed the variable cost of producing such energy.

2. Waiver Request Determination

44. We also deny VEPCo's Waiver Request, finding that it does not satisfy the Commission's criteria for granting waiver and is prohibited by the filed rate doctrine. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁸⁵ We find that granting waiver under the facts and circumstances of this

⁸⁴ PJM Manual 11 at 15, § 2.3.3; *id.* at Attachment C, "Operations"; PJM, Report of PJM Interconnection, L.L.C. at 2-3, Docket No. EL15-73-000 (filed July 10, 2015) (explaining that PJM has provided Market Sellers with flexibility to "toggle between the multiple cost-based schedules that it submitted day-ahead" when a unit has no day-ahead commitment but operates in real-time at PJM instruction, enabling them "to more accurately reflect their costs in real-time").

⁸⁵ *E.g.*, *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

case will cause undesirable consequences in the form of harm to third parties, because load would be assessed unanticipated additional charges inconsistent with the current PJM Tariff and Operating Agreement on file and without adequate prior notice. Granting waiver here would send the wrong signal to Market Sellers, namely, that a resource can submit an offer that PJM uses to dispatch the resource, and then seek to increase that offer after-the-fact to receive additional compensation.

45. We disagree that the Offer Flexibility Proceeding put ratepayers on notice of the relief requested here. In *Duke*, which instituted the Offer Flexibility Proceeding and established a refund effective date, the Commission addressed how resources are not permitted, under current market rules, to submit day-ahead offers that vary by hour or to update those offers in real-time. The relief requested here, in contrast, stems from VEPCo's failure to submit cost-based offers *for each fuel type* and to update the availability of such offers, which is permitted under current market rules. Because ratepayers did not have prior notice of the requested relief, we find that granting waiver to permit the requested make-whole payment is prohibited by the filed rate doctrine and the rule against retroactive ratemaking.⁸⁶

46. We are also not persuaded by VEPCo's argument that *PJM* and *Dominion Energy* support granting waiver here.⁸⁷ In *PJM*, the Commission found that waiver of the PJM Tariff was necessary to address reliability concerns posed by sustained extreme weather, because resources were constrained by the \$1,000/MWh offer cap in effect at the time and thus Market Sellers could not reflect their legitimate costs of operating in their offers. In *Dominion Energy*, the Commission directed tariff revisions to provide resources an adequate opportunity for cost recovery when dispatched for reliability purposes under certain circumstances. Here, in contrast, VEPCo had the opportunity under PJM's market rules to submit offers that reflected its costs for both natural gas and fuel oil (and to update the availability of these offers in real-time), but VEPCo chose not to do so.

47. VEPCo made the business decision to not submit cost-based offers for both natural gas and fuel oil to operate its Ladysmith units on June 25, 2016. PJM asserts, and we agree, that it would be unjust to Market Sellers (especially those Market Sellers that were

⁸⁶ *Old Dominion Elec. Coop.*, 151 FERC ¶ 61,207, at PP 45-48 (2015), *order on reh'g*, 154 FERC ¶ 61,155, at P 19 (2016); *Duke Energy Corp. v. PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,206, at PP 66-68 (2015), *order on reh'g*, 154 FERC ¶ 61,156, at P 45 (2016) (both denying a request for waiver that presented the "classic situation" addressed by the filed rate doctrine and the prohibition against retroactive ratemaking, namely, a utility seeking to impose on ratepayers an additional surcharge for services already performed).

⁸⁷ See *supra* n.31 and accompanying text.

not scheduled because they submitted a higher cost-based offer than the units that PJM scheduled) to allow a scheduled resource to increase its cost-based offer after-the-fact and receive additional compensation when the tariff does not allow a Market Seller to do so. In addition to being unjust, permitting such after-the-fact cost adjustments could expose the market to potential manipulation and cause market harm in the form of higher production costs, by providing Market Sellers with an incentive to submit inaccurate offers in order to be scheduled by PJM and then seek to receive additional compensation after-the-fact. For these reasons, we deny the Waiver Request.

The Commission orders:

- (A) VEPCo's complaint is denied, as discussed in the body of this order.
- (B) VEPCo's request for waiver is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.