

166 FERC ¶ 61,115
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. ER19-664-000

ORDER REJECTING TARIFF FILING

(Issued February 19, 2019)

1. On December 21, 2018, pursuant to section 205 of the Federal Power Act (FPA),¹ PJM Interconnection, L.L.C. (PJM), submitted proposed revisions to its Open Access Transmission Tariff (Tariff), Attachment K – Appendix, and to the Amended and Restated Operating Agreement (Operating Agreement), Schedule 1, to implement a mechanism by which Market Sellers can pursue cost recovery for certain gas contingency switching costs associated with a fuel switching instruction from PJM. As discussed below, we reject PJM’s filing without prejudice.

I. Details of Filing

2. PJM states that, even though its stakeholders have developed and approved specific gas contingency protocols in its manuals, the PJM Tariff and Operating Agreement currently lack any rate recovery mechanism by which entities can recover costs associated with a gas infrastructure contingency-related operating instruction to temporarily switch to an alternative fuel or alternative fuel source, or by which PJM stakeholders can be given statutorily-compliant prior notice of such costs prior to recovery.²

3. PJM states that the gas infrastructure contingencies addressed in the manuals are pre-defined contingencies identified through simulations of component failures. PJM asserts these component failures may include “pipeline breaks, or the loss of critical pipeline compressor stations, and may be caused by weather events or cyber/physical

¹ 16 U.S.C. § 824d (2012).

² PJM Transmittal at 2 (citing 16 U.S.C. § 824d(c)). *See also* Manual 13: Emergency Operations.

attacks, among other things.”³ PJM explains that the manuals establish protocols pursuant to which PJM will coordinate with capable gas-fired generation resources to switch to an alternative fuel or fuel source in response to a potential electric system contingency that could result from the loss of generation resources due to a failure or potential developing failure of the gas infrastructure.⁴

4. PJM states that the proposed revisions to its Tariff and Operating Agreement set forth terms and conditions by which a Market Seller can receive compensation for “Gas Contingency Switching Costs” if one of its generation resources is instructed by PJM to switch to an alternative fuel source or fuel type. PJM states that the proposed revisions would provide an avenue for cost recovery that is consistent with the statutory notice requirements of the FPA by providing two levels of notice to ratepayers. First, PJM explains that the proposed revisions identify specific cost categories that may be recovered, and provide prospective notice that Market Sellers may seek eventual recovery of such costs.⁵ Second, PJM explains that the proposed revisions establish the terms and conditions of the filed rate by which Market Sellers may elect to pursue cost recovery through individual FPA section 205 filings with the Commission.⁶

5. PJM contends that the cost categories identified in the proposed revisions and the manuals provide sufficient clarity and specificity to meet the requirements of the FPA. Specifically, PJM’s filing identifies and describes nine cost categories that PJM avers permissibly constitute Gas Contingency Switching Costs. The Gas Contingency Switching Costs categories where PJM contends recovery may be appropriate include: Park and Loan Service Charges; Overrun Charges; Exceeding Maximum Daily Quantity; Exceeding Minimum/Maximum Storage Balance; Imbalance Cash Out Charges; Disposal of Gas & Related Products Costs; Other Gas Balancing Costs; Start-up Costs; and Alternate Fuel Costs.⁷

6. In addition, PJM asserts that its proposed revisions are clear in that they prescribe that any penalties that may be associated with a Market Seller switching fuel type or fuel

³ PJM Transmittal at 4 (citing Attachment C, Affidavit of Christopher Pilog at ¶ 8).

⁴ PJM Transmittal at 4. *See* PJM Manual 13: Emergency Operations at Section 3.8; PJM Manual 03: Transmission Operations at Section 5.

⁵ PJM Transmittal at 6.

⁶ *Id.* at 6-7.

⁷ *Id.* at 7-8.

source may be filed with the Commission.⁸ PJM maintains that its proposal draws a clear line between costs and penalties, and provides a Market Seller the ability to pursue compensation with the Commission for either. PJM contends that the gas contingency procedures identified in PJM Manuals 03 and 13 contain specific protocols and steps that minimize room for interpretation on the part of PJM or Market Sellers in their implementation. PJM states that these procedures describe the specific circumstances under which the switching to an alternate fuel type or alternate fuel source would occur, and by extension when any corresponding Gas Contingency Switching Costs might be incurred.⁹

7. PJM argues that its proposed revisions are just and reasonable, because they remove a monetary disincentive for Market Sellers responding to gas infrastructure contingencies to follow PJM's dispatch instructions.¹⁰

8. Lastly, PJM requests waiver of the Commission's prior notice requirements¹¹ to permit an effective date of December 22, 2018, one day after the filing of the proposed revisions, subject to refund. PJM argues that good cause exists to grant the waiver as the requested effective date would allow its proposed compensation mechanism to be available to Market Sellers as soon as possible during the upcoming winter season, when PJM states Gas Contingency Switching Costs are most likely to be incurred. PJM notes that any compensation under its proposed Tariff provision prior to a Commission ruling would be subject to refund with associated interest under the Commission's rules.¹²

II. Notice of Filing and Responsive Pleadings

9. Notice of PJM's December 21, 2018 filing was published in the *Federal Register*, 83 Fed. Reg. 67,720 (2018), with interventions and protests due on or before January 11, 2019. Timely motions to intervene were submitted by the following: AES Corp., American Electric Power Service Corp., American Municipal Power, Inc., American Petroleum Institute, Calpine Corp., Delaware Division of the Public Advocate, Direct Energy, Dominion Energy Service, Inc., Duke Energy Corp., East Kentucky Power Cooperative, Exelon Corp., the Independent Market Monitor for PJM (IMM), LS Power Associates, L.P., NRG Power Marketing LLC, Old Dominion Electric Cooperative

⁸ *Id.* at 9.

⁹ *Id.*

¹⁰ *Id.* at 9-10.

¹¹ 18 C.F.R § 35.3 (2018).

¹² PJM Transmittal at 15-16.

(ODEC), the PJM Industrial Customer Coalition (PJM ICC), the PJM Power Providers Group (P3), Public Citizen, Inc., and Southern Maryland Electric Cooperative, Inc. Comments in support of PJM's proposal were filed by ODEC. Protests were filed by the IMM and Direct Energy. The PJM ICC, P3, and East Kentucky Power Cooperative and Duke Energy Corporation (collectively, EKPC/Duke) filed comments and limited protests. On January 30, 2019, PJM filed an Answer. On February 14, 2019, Direct Energy filed an answer to PJM's Answer.

10. In its comments, ODEC states that it supports PJM's filing as a "proactive measure to prevent the unreasonable circumstance where generation owners comply with an Operating Instruction to switch to an alternative fuel or an alternative fuel source...[but] then are prevented from recovering their legitimate costs associated with...compliance."¹³ ODEC argues that the Commission should grant PJM's request for the earliest possible effective date to provide clarity for generation owners and to remove any disincentive for generation owners to comply with PJM's Operating Instructions.¹⁴

11. In support of PJM's proposal to recover penalties, P3 states that, if a generator would not have incurred penalties but for following PJM's direction, the generator should be able to recover these penalties.¹⁵ In contrast, the IMM argues that PJM's Tariff should not include potential compensation for gas pipeline penalties. The IMM argues that contrary to PJM's claims that its proposal clearly delineates between costs and penalties, the only demarcation between the two that PJM's proposal makes is that PJM will compensate costs prior to the Commission's approval and penalties after the Commission's approval.¹⁶

12. Regarding PJM's cost categories, the PJM ICC contends that the terms used in the definition of "Other Gas Balancing Costs" are broad, and the definition does not provide clear limits to the scope of charges for which Market Sellers might seek recovery.¹⁷ While EKPC/Duke generally support PJM's filing, they do not believe that PJM's proposal captures all gas contingency switching costs.¹⁸ EKPC/Duke state that they are

¹³ ODEC Comments at 3.

¹⁴ *Id.* at 3-4.

¹⁵ P3 Protest at 4.

¹⁶ IMM Protest at 9.

¹⁷ PJM ICC Protest at 3.

¹⁸ EKPC/Duke Protest at 4-5.

concerned that the categories of Gas Contingency Switching Costs that PJM has included in its proposal are insufficient to remove financial disincentives and to provide just and reasonable compensation following a fuel-switching Operating Instruction..¹⁹

13. The IMM and the PJM ICC assert that the Commission must consider the potential unintended economic consequences of PJM's proposal for gas-electric coordination.²⁰ The IMM explains that PJM's gas-electric coordination process is mainly an information-sharing process, and thus PJM does not, and cannot, provide operational instructions to gas pipelines.²¹ The PJM ICC explains that an operating instruction could necessitate moving customers with firm contracts off gas pipelines, while some customers with lower levels of service might be unaffected and allowed to continue operating. Thus, the PJM ICC argues that PJM's proposal could discourage Market Sellers with the highest level of firm service from taking steps to obtain reliable back-up fuel sources if those Market Sellers have generation resources that are more likely to be called upon by PJM during emergency conditions.²²

14. PJM asserts in its Answer that its proposal does not unreasonably infringe on gas-electric coordination or gas market related contracts. In response to the PJM ICC's and the IMM's concerns, PJM asserts that any actions to temporarily switch gas-fired generation resources to an alternative fuel or alternative fuel source would only be necessary "during extraordinary operational circumstances" so that PJM could maintain compliance with applicable NERC reliability standards and preserve reliability of the PJM system.²³ PJM argues, however, that if such switching for specific generators were ever necessary, "the fact that such actions may have some impact on natural gas-related markets and contracts does not make PJM's proposal unjust and unreasonable."²⁴ PJM reiterates that it will take actions necessary to safeguard the reliability of its system,

¹⁹ As examples, EKPC/Duke assert that 'Underburn charges' – for consuming less than the scheduled quantity of gas – and the costs to purchase energy in real-time also ought to be recoverable. *Id.* at 5-7.

²⁰ IMM Protest at 7-8; PJM ICC Comments at 6-8.

²¹ IMM Protest at 7-8. For example, the IMM states that PJM cannot instruct a gas pipeline to stop taking nominations after a PJM generator switches to a different fuel source.

²² *Id.*

²³ PJM Answer at 11.

²⁴ *Id.*

pursuant to its federally-mandated requirements as a NERC-registered Reliability Coordinator (RC), Balancing Authority (BA), and Transmission Operator (TOP). PJM concludes that the Commission has previously found recovery of costs incurred at the direction of RTOs/ ISOs to respond to critical reliability needs appropriate.²⁵

15. Direct Energy objects to the underlying definition of gas contingency being defined in the manuals instead of PJM's Tariff.²⁶ Direct Energy argues that under the Commission's "rule of reason" standard, provisions that "significantly affect rates, terms and conditions" of service, that are susceptible to specification, and that are not generally understood in a contractual agreement must be reflected in a FERC-approved tariff.²⁷ PJM disagrees in its Answer, taking issue with Direct Energy's interpretation of the Commission's "rule of reason" standard, which governs the types of documents that must be filed for Commission approval.²⁸ PJM emphasizes that its gas contingency operating procedures are operating procedures, to be implemented for the explicit purpose of preserving reliability. PJM argues that it requires some degree of flexibility regarding the implementation of these procedures so that they may be revised by PJM stakeholders from time to time, without necessitating a separate FPA section 205 filing with the Commission.²⁹

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³⁰ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure³¹ prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority.

²⁵ *Id.* at 12.

²⁶ Direct Energy Protest at 11-13.

²⁷ *Id.* at 11.

²⁸ PJM Answer at 6.

²⁹ *Id.* at 7.

³⁰ 18 C.F.R. § 385.214 (2018).

³¹ 18 C.F.R. § 385.213(a)(2) (2018).

We accept PJM's and Direct Energy's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

18. As discussed below, we reject PJM's proposal without prejudice.

19. First, PJM's proposed tariff revisions do not address the conditions or events that could result in PJM's issuing an instruction to a Market Seller to switch to an alternate fuel type or to an alternate fuel source and thereby entitle the Market Seller to seek recovery of costs related to following such PJM instructions. PJM's Manuals 03 and 13 outline the situations in which PJM may request or direct a generator to switch fuel sources under a declared gas contingency. In particular, Manual 13 provides that "[u]nder certain system conditions or events affecting either the electric or gas infrastructure, PJM will operate to reflect the impact of gas infrastructure contingencies on the PJM RTO due to their potential impact on natural gas generators within the PJM footprint." Manual 13 also lists cold or hot weather alerts and capacity emergency procedures as electric system conditions that may result in the initiation of the gas infrastructure contingency assessment process.³² In addition, Manual 13 provides that pipeline operational flow orders, significant pipeline maintenance outages, significant force majeure events, and credible cyber/physical threats to the gas infrastructure are gas infrastructure events that may result in the initiation of the gas infrastructure contingency assessment process.³³

20. We find that the conditions or events that would trigger a Market Seller's ability to seek to recover costs associated with following PJM's instruction to switch to an alternate fuel type or to an alternate fuel source significantly affect rates, terms, and conditions, and therefore, must be included in PJM's Tariff.³⁴ In addition, we find that PJM has not supported its proposal to permit Market Sellers to seek cost recovery as a result of conditions or events that do not involve an unforeseeable contingency on a natural gas pipeline. For example, PJM has not explained why cost recovery or compensation

³² See PJM Manual 13: Emergency Operations at Section 3.8.

³³ See *Id.*

³⁴ *Energy Storage Assoc. v. PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,296, at P 103 (2018) ("[P]rovisions that 'significantly affect rates, terms, and conditions' of service, are readily susceptible of specification, and are not generally understood in a contractual agreement must be included in the tariff, while items better classified as implementation details may be included only in the business practice manual."). See also *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271, at P 16 (2008).

related to events involving stresses on the electrical system due to weather or the loss of a transmission line are not already addressed through PJM's existing procedures and market design, such as Capacity Performance.

21. Second, PJM's proposal distinguishes between pipeline penalties and Gas Contingency Switching Costs, which include Gas Balancing Costs and Other Balancing Costs. Specifically, PJM proposes to allow crediting of non-penalty Gas Contingency Switching Costs prior to Commission approval, subject to refund, while PJM would credit Market Sellers for any penalty costs only after such penalties are accepted by the Commission. PJM also proposes that any penalties that are not "explicitly authorized" by the pipeline or local distribution company will not be reimbursed.³⁵ PJM proposes to define penalties as those costs "that are designated as 'penalties' in the pipeline or local distribution gas company tariff, and imposed by the applicable pipeline or local distribution gas company."³⁶

22. We find that PJM's proposed definition of penalty is unreasonably narrow and unsupported, as PJM has not reasonably justified treating all Gas Contingency Switching Costs differently from "penalties" when certain of such costs may be considered a penalty in certain pipeline tariffs. First, not all pipeline penalties are specifically identified as "penalties" in pipeline and local distribution gas company tariffs.³⁷ Second, due to variations in pipeline and local distribution gas company tariffs, certain of the costs that PJM identifies as Gas Contingency Switching Costs may actually be considered "penalties" in certain pipeline tariffs. For example, PJM lists overrun charges for taking gas in excess of scheduled quantity as Gas Contingency Switching Costs, but these charges are considered penalties by interstate pipelines.³⁸ PJM also includes "exceeding

³⁵ Proposed Tariff, Attachment K-Appendix, section 3.2.3(s)(iii) and the parallel provision of Operating Agreement, Schedule 1, section 3.2.3(s)(iii) ("Any pipeline or LDC penalties as the result of using an alternative pipeline or fuel source beyond what was explicitly authorized by such pipeline or LDC will not be reimbursed.").

³⁶ See proposed Tariff revisions at Section 3.2.3(s)(i)(D).

³⁷ For instance, unauthorized overrun charges may be termed "penalties" (see Algonquin Rate Schedule AFT-1, 10.0.0), but are sometimes called charges (see CIG, Part III: Rate Schedules, Section 1 - Rate Schedule TF-1, 7.0.0).

³⁸ See, e.g., *Columbia Gas Transmission Corp.*, 124 FERC ¶ 61,122, at PP 3,10 (2008) (scheduling penalties apply to the difference between a shipper's scheduled deliveries at a delivery point and gas quantities the shipper actually takes at the point each day and can either be minimal or substantial depending on whether they incur on a peak day).

maximum daily quantity” as a Gas Balancing Cost. However, when such costs are unauthorized, they are considered penalties by interstate pipeline tariffs, with even higher charges during periods when they threaten reliable operation of the pipeline system.³⁹ Thus it is unclear from PJM’s filing whether such a charge would be considered a Gas Contingency Switching Cost and therefore would not require explicit authorization from the pipeline to be eligible for cost recovery, or whether it would be considered a “penalty” to the extent it is identified by the applicable pipeline tariff as such, and would therefore require explicit authorization from the pipeline to be eligible for cost recovery. The same could be said of imbalance cash-out charges, which are listed under Gas Balancing Costs in PJM’s proposed Tariff revisions, but which may be considered penalties by certain pipelines.⁴⁰

23. It is also unclear to what extent, if any, PJM intended its specifically enumerated categories of Gas Contingency Switching Costs and its definition of penalties as only those costs “designated as ‘penalties’”⁴¹ to bind or otherwise to inform the Commission’s determination regarding cost recovery in the individual FPA section 205 filings. In other words, PJM’s proposed tariff revisions do not make clear whether the specifically enumerated categories of Gas Contingency Switching Costs and PJM’s definition of penalties apply only to PJM’s initial credit to the generator, or whether they are intended to inform or to circumscribe the Commission’s ability to disallow recovery of costs that would otherwise fit into these categories.

24. Finally, as noted above, proposed section 3.2.3(s)(iii) requires that “[a]ny pipeline or [local distribution gas company] penalties as the result of using an alternative pipeline or [alternative] fuel source beyond what was explicitly authorized by such pipeline or

³⁹ *Colorado Interstate Gas Co.*, 122 FERC ¶ 61,256, at P 86 (2008) (unauthorized overrun penalties differ depending on whether they occur during critical or non-critical periods).

⁴⁰ *See Alliance Pipeline L.P.*, 99 FERC ¶ 61,289, at 62,228 (2002) (imbalance penalty applied only on days when the imbalance threatens reliable service). *See also, Questar Pipeline Co.*, 98 FERC ¶ 61,159, at 61,581-82 (2002) (treating upper-tiered imbalance charges incurred at the end of the month as penalties). PJM also has not addressed in this filing why end of the month imbalance charges should be recoverable since they do not relate to the direction to change pipelines, but to a failure to true-up imbalances.

⁴¹ *See* PJM’s Proposed Tariff, Attachment K-Appendix, section 3.2.3(s)(i) and the parallel provision of Operating Agreement, Schedule 1, section 3.2.3(s)(i).

[local distribution gas company] will not be reimbursed.”⁴² It is unclear, however, what “explicitly authorized” means. Specifically, it is unclear whether this means that PJM is required to coordinate with the affected pipeline prior to issuing a fuel switching instruction, or if this language means that the gas-fired generator is required to coordinate with the affected pipeline after receiving a fuel switching instruction from PJM.⁴³ As the Commission previously stated in *CAISO*, continuous communication and coordination between the RTO, the gas pipeline operator, and the relevant generation owners can be critical to ensure the reliable operation of both systems.⁴⁴ Given this lack of clarity, PJM’s proposal does not reasonably ensure that coordination occurs prior to a generator’s switching to an alternate pipeline.

The Commission orders:

We reject PJM’s filing, without prejudice, 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.

⁴² Proposed Tariff, Attachment K-Appendix, section 3.2.3(s)(iii) and the parallel provision of Operating Agreement, Schedule 1, section 3.2.3(s)(iii).

⁴³ See *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, Order No. 787, 145 FERC ¶ 61,134, at P 8 (2013) (“Communication between interstate natural gas pipelines and electric transmission operators can be invaluable to help ensure that electric transmission operators maintain grid reliability and that interstate natural gas pipelines can meet contractual and operational obligations to all of their shippers.”).

⁴⁴ *Cal. Indep. Sys. Operator Corp.*, 155 FERC ¶ 61,224, at P 93 (2016) (*CAISO*).