



## Office of the People's Counsel District of Columbia

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**Elizabeth A. Noël**  
People's Counsel

April 17, 2007

Magalie Roman Salas, Secretary  
Federal Energy Regulatory  
Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: EL07-\_\_\_\_\_

Dear Secretary Salas:

Please find for e-filing, a Complaint for a Show Cause Order, on a Fast Track Basis and Request for Shortened Response Time of Joint Complainants. Copies of this document have been served upon all parties designated on the Commission's official service list, in accordance with Rule 206 and 2010 of the Commission's Rules of Practice and Procedure.

Very truly yours,

- Filed electronically -

Lopa B. Parikh  
Assistant People's Counsel  
District of Columbia Office of the People's Counsel

Enclosure



Pursuant to Sections 205 and 206 of the Federal Power Act, 16 U.S.C. §824d and §824e (2006) and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. § 385.206, Allegheny Electric Cooperative, Inc; Borough of Chambersburg, Pennsylvania; Cities and Towns of Hagerstown, Thurmont, and Williamsport, Maryland; District of Columbia Office of the People's Counsel; Illinois Citizens Utility Board; Indiana Office of Utility Consumer Counsel; Maryland Office of People's Counsel; New Jersey Division of Rate Counsel; Office of the Attorney General of Virginia, Division of Consumer Counsel; Office of the Ohio Consumers' Counsel; Old Dominion Electric Cooperative; Pennsylvania Office of Consumer Advocate; the PJM Industrial Customer Coalition; Southern Maryland Electric Cooperative, Inc.; and the State of Delaware, Division of the Public Advocate ( hereafter "Joint Complainants") file this Complaint for a Show Cause Order, on a Fast Track basis, requesting verification and assurances from PJM Interconnection, L.L.C. ("PJM") that it has not violated, and will not violate, its tariff requirements pertaining to market monitoring. By this complaint, Joint Complainants request from the Commission a Show Cause Order that directs PJM to demonstrate its current compliance with tariff provisions requiring it to maintain its market monitoring resources; directs PJM to verify that it has not taken or will not take steps to dismantle its market monitoring unit ("MMU") or interfere with its functions, as alleged by PJM Market Monitor, Joseph E. Bowring, on April 5, 2007 during the Technical Conference conducted by the Commission; and directs the PJM Market Monitor to submit written reports to the Commission every 15 days about the status of its functionality. In addition, considering the need for Fast Track Processing discussed above, Joint Complainants further request that the period for filing an answer to this complaint be shortened from twenty to ten days as provided for in Rule 206(h).

In support of this Complaint and request for expedited action, Joint Complainants state as follows:

## **I. EXECUTIVE SUMMARY**

The Commission has long recognized the important role that the market monitor plays in the Regional Transmission Organizations (“RTO”) in improving market efficiencies, monitoring the market, helping the Commission meet its obligation to ensure just and reasonable rates and in creating confidence in the markets. As required by the Commission, PJM embodied these roles for the market monitor in its Open Access Transmission Tariff (“Tariff”). Recent actions by PJM and statements made by the PJM Market Monitor at the Commission’s April 5, 2007 Technical Conference in Docket No. AD07-8-000 raises serious concerns about the PJM MMU’s ability to meet its obligations and PJM’s willingness to meet its obligations under the Tariff.

PJM is a stakeholder-driven institution and the Commission has long recognized the importance of the stakeholder process within PJM and the necessity for PJM to engage in a stakeholder process when making changes to its operational structure or its Tariff. Recent unilateral statements by PJM that it would use an external market monitor rather than the current internal market monitor provided for in its Tariff and statements by the PJM Market Monitor that the MMU was already being deprived of resources and personnel necessary to meet its obligations creates exigent circumstances, compelling action by the Commission. In addition, considering the need for Fast Track Processing discussed above, Joint Complainants further request that the period for filing an answer to this complaint be shortened from twenty to ten days as provided for in Rule 206(h).

In light of the concerns raised, Joint Complainants request that the Commission direct PJM to:

- show cause why it should not be found to have actively attempted to undermine the ability of the PJM Market Monitor to effectively monitor the PJM markets in accordance with its Tariff;
- show cause why it should not be found to be in violation of Attachment M to its Tariff requiring that it provide the Market Monitor adequate resources and access to data necessary to effectively monitor PJM's markets;
- comply with the requirements in Attachment M of its Tariff by requiring PJM to
  - provide the Market Monitor with full access to all data the Market Monitor determines is necessary to effectively monitor the markets;
  - fully staff the Market Monitoring unit at least at the 2006 staff level;
  - ensure that the Market Monitor has sufficient independence to present any and all reports, including the state of the market report and recommendations on market rule changes directly to PJM committees, task forces and working groups, the PJM Board of Managers, relevant state commission and agencies and this Commission; and
  - ensure that the Market Monitor has sufficient independence to meet all its obligations under the Tariff;
  - direct the PJM Market Monitor to file reports every two weeks on the sufficiency of its resources and staff, access to data needed to effectively monitor the PJM markets, and its independence from PJM management.

These actions are necessary to ensure that the Commission is able to satisfy its statutory obligation to ensure just and reasonable rates, to actively monitor the wholesale markets and sellers with market-based rate authority, and to ensure that the public does not lose confidence in wholesale electricity markets.

## **II. COMMUNICATIONS**

Allegheny Electric Cooperative, Inc. ("Allegheny") is a cooperative corporation, incorporated under the Electric Cooperative Law of the Commonwealth of Pennsylvania. Allegheny is a generation and transmission cooperative and is the exclusive wholesale supplier of its 14 members. Thirteen of Allegheny's members are located in Pennsylvania, and one is located in New Jersey. Allegheny is an existing transmission owner and member of PJM. Allegheny also receives transmission service under the PJM Tariff. Allegheny serves load in

five PJM zones, including PJM West. The names and post office addresses of persons upon whom service of pleadings, documents or communications in this proceeding should be made are:

David J. Dulick  
Corporate Counsel  
Allegheny Electric Cooperative, Inc.  
P.O. Box 1266  
Harrisburg, PA 17108  
(717) 901-4432  
FAX: (717) 234-1309  
E-mail: [david\\_dulick@ccsenergy.com](mailto:david_dulick@ccsenergy.com)

Vincent F. Kaminski  
Manager of Planning  
Allegheny Electric Cooperative, Inc.  
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(717) 901-4496  
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E-mail: [rw@dwgp.com](mailto:rw@dwgp.com)  
[bkm@dwgp.com](mailto:bkm@dwgp.com)

The Borough of Chambersburg is a political subdivision of the Commonwealth of Pennsylvania, with a population of approximately 17,000. Chambersburg owns and operates a not-for-profit electric utility system, which currently includes 29.2 MW diesel generating facilities, serving more than 10,000 retail customers within the corporate limits of the Borough of Chambersburg. Chambersburg is interconnected to the Allegheny Power transmission grid at three points and takes service at 69 kV. Chambersburg is interconnected only with, and entirely

dependent upon, the Allegheny Power transmission system for the delivery of wholesale power. Chambersburg is a PJM Interconnection, L.L.C. (“PJM”) member and purchases transmission services from PJM over Allegheny Power’s transmission facilities to serve its load. Communications and service with respect to this matter should be addressed to the following:

Mr. Richard Hamsher  
Superintendent of Electric Department  
Borough of Chambersburg  
100 South Second Street  
Chambersburg, PA 17201  
717-261-3238  
717-264-0224 (fax)

John Michael Adragna, Esquire  
Denise C. Goulet, Esquire  
Miller, Balis & O’Neil, P.C.  
1140 Nineteenth Street, N.W.  
Suite 700  
Washington, D.C. 20036  
202-296-2960  
202-296-0166 (fax)  
e-mail: [jadragna@mbolaw.com](mailto:jadragna@mbolaw.com)  
[dgoulet@mbolaw.com](mailto:dgoulet@mbolaw.com)

The City and Towns of Hagerstown, Thurmont, and Williamsport, Maryland each own and operate facilities for the distribution and sale of electric energy. Each municipality is incorporated under the laws of Maryland and is vested with all the rights, privileges and benefits, and is entitled to all of the immunities and exemptions, granted to municipalities and political subdivisions under the Constitution and laws of the State of Maryland, as appropriate, and the United States. Each city and town qualifies as a “municipality” as defined in Section 3(7) of the FPA, 16 U.S.C. § 796(7), and is a political subdivision of Maryland within the meaning of such term as defined in Section 201(f) of the FPA, 16 U.S.C. § 824(f). The Municipalities are members of PJM and transmission service customers under the PJM OATT.

The name, address, telephone, facsimile and e-mail address of Maryland Municipalities designated representatives for receipt of service in this proceeding are:

Karl Kohler, Electric Operations Manager  
City of Hagerstown Light Department  
425 East Baltimore St.  
Hagerstown, MD 21740-6105  
(301) 790-2600  
Fax (301) 739-7958

Richard May  
Clerk-Treasurer  
10 Frederick Road  
Thurmont, MD 21788  
(301) 271-7313  
Fax (301) 271-2155

James Castle  
Town of Williamsport  
P. O. Box 307  
Williamsport, MD 21795  
(301) 223-7711  
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Tanja M. Shonkwiler  
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Washington, D.C. 20036  
(202) 467-6370  
Fax (202) 467-6379  
[www.tms@dwgp.com](http://www.tms@dwgp.com)

The District of Columbia Office of People's Counsel is an independent agency of the District of Columbia government and is the statutory representative of District of Columbia consumers in public utility issues in proceedings before the District of Columbia Public Service Commission, federal regulatory agencies, and state and federal courts. The District of Columbia Office of People's Counsel is also a voting member at PJM. The name, address, telephone,

facsimile and e-mail address of the District of Columbia Office of People's Counsel's designated representatives for receipt of service in this proceeding are:

Sandra Mattavous-Frye  
Deputy People's Counsel  
Lopa B. Parikh  
Assistant People's Counsel  
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(202) 727-3071  
(202) 727-1014 (facsimile)  
E-mail: [lparikh@opc-dc.gov](mailto:lparikh@opc-dc.gov)

Established by an act of the Illinois Legislature in 1983, the Illinois Citizens Utility Board represents the interests of residential and small business utility consumers the State of Illinois before the Illinois Commerce Commission, state and federal courts, and federal agencies. The name, address, telephone, facsimile and e-mail address of Illinois Citizens Utility Board's representative authorized to receive service are:

Julie Soderna  
Director of Litigation  
Citizens Utility Board  
208 S. LaSalle St., Ste. 1760  
Chicago, IL 60604  
312-263-4282 (voice)  
312-263-4329 (fax)  
Email: [jsoderna@citizensutilityboard.org](mailto:jsoderna@citizensutilityboard.org)

The Indiana Office of Utility Consumer Counsel is an agency of the State of Indiana duly authorized to represent all Indiana ratepayers in state and federal proceedings. Indiana Code 8-1-1.1-9.1 specifically provides for the appointment of the undersigned deputy consumer counselor, whose specific responsibility is the representation of Indiana ratepayers' interests before federal agencies, including the Commission. The name, address, phone number, facsimile number, and email address of the designated recipient for service is as follows:

Robert G. Mork, Esq.  
Deputy Consumer Counselor for Federal Affairs  
Indiana Office of Utility Consumer Counselor  
100 N. Senate Avenue, Room N501  
Indianapolis, Indiana 46204-2215  
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facsimile: (317) 232-5923  
E-mail: [rmork@oucc.IN.gov](mailto:rmork@oucc.IN.gov)

The Maryland Office of People's Counsel is an independent state agency that was established to represent the interests of residential consumers in utility cases. Maryland Public Utility Companies Code Annotated, Section 2-205(b)(1999). The People's Counsel "may appear before any federal or state agency as necessary to protect the interests of residential...users of [gas, electricity or other regulated services]." The name, address, telephone, facsimile and e-mail address of the Maryland Office of People's Counsel designated representative for receipt of service in this proceeding is:

William F. Fields  
Assistant People's Counsel  
Maryland Office of People's Counsel  
6 St. Paul Street, Suite 2102  
Baltimore, MD 21202  
(410) 767-8150  
(410) 333-3616 (facsimile)  
E-mail: [BillF@opc.state.md.us](mailto:BillF@opc.state.md.us)

On February 9, 1999, New Jersey Governor Whitman signed into law the Electric Discount and Energy Competition Act ( P.L. 1999, c.23; codified at N.J.S.A. 48:3-49 et seq.). This Act, effective immediately, permitted competition for retail electric and natural gas service. New Jersey retail customers purchase electricity from suppliers that operate in the PJM market. The New Jersey Department of the Public Advocate, Division of the Rate Counsel (formerly the New Jersey Division of the Ratepayer Advocate), is the administrative agency charged under New Jersey Law with the general protection of the interests of utility ratepayers. *N.J.S.A.*

52:27E-50 *et seq.* The name, address, telephone, facsimile and e-mail address of the New Jersey Rate Counsel's designated representative for receipt of service are:

Felicia Thomas-Friel, Esq.  
Deputy Public Advocate  
Henry M. Ogden, Esq.  
Assistant Deputy Public Advocate  
New Jersey Division of Rate Counsel  
31 Clinton Street  
P.O. Box 46005  
Newark, New Jersey 07101  
Telephone: (973) 648-2690  
Facsimile: (973) 624-1047  
Email: [fthomas@rpa.state.nj.us](mailto:fthomas@rpa.state.nj.us)  
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The Division of Consumer Counsel of the Office of the Attorney General of Virginia was established by act of the Virginia General Assembly in 1970 to represent the interests of the people as consumers. Its statutory duties include appearing “before governmental commissions, agencies, and departments . . . to represent and be heard on behalf of consumers’ interests. . . .” Virginia Code § 2.2-517. The Virginia Division of Consumer Counsel is also a voting member at PJM. The name, address, telephone, facsimile and e-mail address of the Virginia Division of Consumer Counsel's designated representatives for receipt of service are:

C. Meade Browder, Jr.  
Senior Assistant Attorney General  
D. Mathias Roussy, Jr.  
Assistant Attorney General  
Office of the Attorney General of Virginia  
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The Office of the Ohio Consumers' Counsel is Ohio's residential utility consumer advocate, empowered under Chapter 4911, Ohio Rev. Code Ann. (Anderson 2000), to represent

the interests of Ohio residential utility consumers in proceedings before state and federal administrative agencies and courts. The Ohio Consumers' Counsel has actively participated in numerous regulatory proceedings at the state and federal level. The name, address, telephone, facsimile and e-mail address of the Ohio Consumers' Counsel designated representative for receipt of service in this proceeding is:

Jacqueline Lake Roberts  
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Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215  
(614) 466-4207  
(614) 466-9475 (facsimile)  
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Old Dominion is a not-for-profit power supply electric cooperative, organized and operating under the laws of Virginia and subject to Commission jurisdiction. Old Dominion supplies capacity and energy to its twelve electric distribution cooperative members, all of which are located within the PJM control area. Old Dominion is a network transmission customer of PJM. Old Dominion is also a PJM Transmission Owner. Old Dominion is a generation-owning utility, dependent upon use of the transmission facilities of PJM under its OATT to deliver the output of Old Dominion's generation facilities located within PJM and to deliver periodic power purchases from third party sellers to the load of its member systems in PJM's footprint. The names, titles and offices of persons to whom correspondence in regard to this proceeding should be addressed are as follows:

Edward D. Tatum, Jr.  
Assistant Vice President, Rates and Regulation  
Old Dominion Electric Cooperative  
4201 Dominion Boulevard  
Glen Allen, Virginia 23060  
Email: [ETatum@odec.com](mailto:ETatum@odec.com)

Glen L. Ortman  
Adrienne E. Clair  
Stinson Morrison Hecker LLP  
1150 18<sup>th</sup> Street, NW – Suite 800  
Washington, D.C. 20036  
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Email: [gortman@stinsonmoheck.com](mailto:gortman@stinsonmoheck.com)  
[aclair@stinsonmoheck.com](mailto:aclair@stinsonmoheck.com)

The Pennsylvania Office of Consumer Advocate is a state office administratively located within the Office of Attorney General and empowered by statute to represent the interests of consumers of utility services in the Commonwealth of Pennsylvania before the Pennsylvania Public Utility Commission, similar federal regulatory agencies, and state and federal courts. The name, address, telephone number, fax number and e-mail address of the persons designated to receive service in this proceeding is:

Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street  
Fifth Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
Telephone: (717) 783-5048  
Facsimile: (717) 783-7152  
E-Mail address: [tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)

PJM Industrial Customer Coalition is an *ad hoc* coalition consisting exclusively of large commercial and industrial end-users of electricity. PJM Industrial Customer Coalition members operate manufacturing and institutional facilities throughout the expanded PJM footprint, which encompasses all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia. PJM Industrial Customer Coalition member companies consume approximately 10 billion kilowatt-hours of electricity annually. Several PJM Industrial Customer Coalition members are

also currently voting participants of the PJM Members Committee and actively participate in the PJM committee structure. The name, address, telephone number, fax number and e-mail address of the persons designated to receive service in this proceeding are:

Robert A. Weishaar, Jr.  
McNees Wallace & Nurick LLC  
777 North Capitol Street, NE  
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Washington, D.C. 20002  
Phone: (202) 898-5700  
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David M. Kleppinger  
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Southern Maryland Electric Cooperative, Inc. (“SMECO”) is a cooperative, nonprofit membership corporation, incorporated under the Electric Cooperative Act of Maryland. Its headquarters are in Hughesville, Maryland. It was organized in 1937 by people in rural areas to obtain electric service because they were unable to obtain such service from any other supplier. It is owned and controlled by its members, who elect the board of directors. Not only does the Electric Cooperative Act, under which it is incorporated, require SMECO to operate on a non-profit basis, but, in addition, its bylaws insure that it does operate on a nonprofit basis. The bylaws constitute a contract between the Cooperative and its members. They provide that all amounts paid in by consumers under the applicable rate schedules, over and above the cost of

furnishing electric service, are paid to the Cooperative not for the electric service, but as capital. The bylaws further provide that at the end of each calendar year, the amounts paid in, pursuant to the rate schedules, over and above the cost furnishing service, must be credited on the books of the Cooperative to the individual consumers on the basis of the consumers' patronage. Such amounts credited to the consumers are referred to as "capital credits". Whenever the Cooperative is in a financial position to do so, the capital credits are retired by cash payments or electric bill invoice credits. At the present time, SMECO operates over 9,100 miles of line to serve over 135,000 consumers, located in the Maryland counties of Calvert, Charles, St. Mary's, and Prince George's. SMECO is a network transmission customer taking service under the PJM Open Access Transmission Tariff. The name, address, telephone number, fax number and e-mail address of the persons designated to receive service in this proceeding are:

Mark A. MacDougall  
Vice President, Legal, Regulatory, and  
Government Affairs and General Counsel  
Southern Maryland Electric  
Cooperative, Inc.  
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The State of Delaware, Division of the Public Advocate is a state office empowered by state statute (29 Delaware Code §8716) to represent the interests of utility consumers in the State of Delaware in proceedings before the Delaware Public Service Commission, similar federal regulatory agencies and state and federal courts. The name, address, phone number, facsimile number and e-mail address of Delaware's designated recipient for service is as follows:

John Citrolo, Deputy Director  
State of Delaware  
Division of the Public Advocate  
820 N. French Street, 4<sup>th</sup> Floor  
Wilmington, DE 19801  
Telephone: (302) 577-5077  
Facsimile: (302) 577-3297  
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### **III. BACKGROUND**

The Commission has long recognized the importance of market monitoring within RTOs and the electricity markets both in recommending improvements to the markets and in increasing stakeholder confidence in the markets. In Order 2000, the Commission articulated the important role that market monitoring plays in protecting the electricity markets when it stated that:

Market monitoring is an important tool for ensuring that markets within the region covered by an RTO do not result in wholesale transactions or operations that are unduly discriminatory or preferential or provide opportunity

for the exercise of market power. In addition, market monitoring will provide information regarding opportunities for efficiency improvements.<sup>1</sup>

In order to ensure that the market monitoring plans developed by the RTOs contained the elements necessary to monitor the market and meet the goals as stated in Order 2000, the Commission outlined the standards that needed to be included in the RTO market monitoring plans:

Although we decline at this time to prescribe a particular market monitoring plan or the specific elements of such a plan, the RTO must propose a monitoring plan that contains certain standards. The monitoring plan must be designed to ensure that there is objective information about the markets that the RTO operates or administers and a vehicle to propose appropriate action regarding any opportunities for efficiency improvement, market design flaws, or market power identified by that information. The monitoring plan also must evaluate the behavior of market participants, including transmission owners, if any, in the region to determine whether their behavior adversely affects the ability of the RTO to provide reliable, efficient and nondiscriminatory transmission service. Because not all market operations in a region may be operated or administered by the RTO (e.g., there may be markets operated by unaffiliated power exchanges), the monitoring plan must periodically assess whether behavior in other markets in the RTO's region affect RTO operations and, conversely, how RTO operations affect the efficiency of markets operated by others. Reports on opportunities for efficiency improvement, market design flaws and market power abuses in the markets the RTO operates and administers also must be filed with the Commission and affected regulatory authorities.<sup>2</sup>

PJM's MMU was created by Commission Order on March 10, 1999 when the Commission felt that the objectives outlined in Order 2000 had been met. In its Order approving the creation of the PJM MMU, the Commission summarized PJM's market monitoring plan as follows:

An objective of the Plan is that the MMU independently and objectively monitor and report on the operation of the PJM Market, which the Plan defines as:

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<sup>1</sup> *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. and Regs., Regulations Preambles 1996-2000 ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. and Regs., Regulations Preambles 1996-2000 ¶ 31,092 (2000), *aff'd*, *Public Utility Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001) ("Order No. 2000") at 31,155.

<sup>2</sup> *Id.* at 463.

The PJM Interchange Energy Market together with all bilateral or other electric power and energy transactions, ancillary services transactions, and transmission transactions within the PJM Control Area.

Within the MMU's ambit of monitoring responsibilities are the duty to monitor matters relating to transmission congestion pricing, exercise of market power, structural problems in the PJM Market, design flaws in the operating rules, and compliance with the standards, procedures or practices as set forth in the PJM OATT, Operating Agreement, Reliability Agreement, PJM Manuals, and the PJM Regional Practices Document. The MMU will monitor and report on these issues consistent with safe and reliable operations within the PJM control area, creation and operation of a robust, competitive and non-discriminatory electric power market, and the principle that no member of PJM will have undue influence over the PJM Market.<sup>3</sup>

The Commission went on to explain the importance of the MMU in PJM's markets at a time when participants were no longer restricted to cost-based sales, stating:

In view of our contemporaneous decision to approve market-based pricing authority in a related proceeding, the MMU's ability to effectively and broadly monitor and investigate the PJM Market is essential.<sup>4</sup>

In accepting PJM's market monitoring plan the Commission stated in part that "PJM proposes such broad responsibilities, believing they are critical if entities are to have market-based pricing authority in markets that PJM oversees."<sup>5</sup> Thus, at the time that PJM's MMU was created, both PJM and the Commission recognized the importance of having an independent market monitor with broad responsibilities.

The Commission has also recently reaffirmed its view of the important role that the market monitor plays in the markets. In its May 27, 2005 Policy Statement on Market Monitoring Units ("Policy Statement"), the Commission established protocols for referrals for

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<sup>3</sup>*PJM Interconnection, L.L.C.*, 86 FERC ¶ 61,247 (1999) at 61,887.

<sup>4</sup>*Id.* at 2 (footnote 4).

<sup>5</sup>*Id.* at 61,886.

enforcement, reaffirmed the important role of market monitoring within the RTO and in assisting the Commission in ensuring just and reasonable rates. Specifically, the Commission stated that:

It is critical that the MMU provide the ISO/RTO and the Commission with its perspective and expertise in the development of market rules and tariff provisions....While the Commission is responsible for ensuring just and reasonable rates, the Commission does benefit from the experience of the ISO/RTO to provide the tariff filings to the Commission that help ensure that the market rules in place work effectively and to ensure that customers receive the full benefits of competitive wholesale markets.<sup>6</sup>

The Policy Statement also reaffirmed the role that the market monitor plays in maintaining markets for the benefit of end use customers when the Commission stated:

The MMU should monitor and regularly report on performance and structure of the electricity market within the ISO/RTO region. Since these markets ultimately exist for the benefit of customers, the MMU should focus on how efficiently the markets are responding to customers' needs for reliable electricity supply at the lowest long run cost to customers. An in-depth review should include an evaluation of market prices of ISO/RTO-administered products (e.g., real-time and day ahead energy markets, locational marginal prices, and ancillary services) and specifically determine the extent to which the prices reflect competitive outcomes, not market power abuses. The MMU should also be responsible for providing an analysis of the structural competitiveness of the wholesale markets and a determination of effectiveness of bid mitigation rules to remedy potential exercise of market power. In addition, the MMU should evaluate the effectiveness of the markets in signaling needed investment in generation, transmission, and demand response infrastructure. Market signals for additional investment are only valuable to customers to the extent that the signals can reasonably result in the needed market investment response. Thus, it is imperative that the MMU also identify any potential barriers that may impede the market's ability to provide needed investments. In all instances, the MMU should be proactive in recommending changes to the ISO/RTO.<sup>7</sup>

The Commission opened Docket No. ER06-826 when PJM submitted its compliance filing on the Policy Statement. Numerous parties, including several of the parties filing today as Joint Complainants, filed comments, in response to the compliance filing, expressing concerns about the seeming erosion of the market monitor's role within PJM. Several parties also filed

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<sup>6</sup> Policy Statement on Market Monitoring Units, 111 FERC ¶ 61, 267 (2005)(“Policy Statement”) at P 4.

<sup>7</sup> *Id.* at P 7.

comments indicating that PJM's filing went beyond complying with FERC's Policy Statement and that the proposed Tariff changes reduced the independence of the market monitor.<sup>8</sup>

The Commission continued its review of market monitoring policies on May 18, 2006 when it heard presentations from the market monitors on their role in regional markets; and on April 5, 2007, when it held a technical conference to review the Commission's general policies on market monitoring. Statements made at that technical conference give rise to this Complaint.

#### **IV. COMPLAINT AND REQUEST FOR RELIEF**

Joint Complainants submit that the Commission's assessment of the need for effective and broad MMU oversight is as valid today, if not more so, than it was in 1999 when the Commission first outlined the crucial role of market monitoring within the RTO and electricity markets. At a time when wholesale markets are becoming more complex, when retail and wholesale electric rates are dramatically increasing in large sections of the PJM footprint, when the adoption of the Reliability Pricing Model ("RPM") has greatly increased the need for an effective MMU, and when states are questioning the reasonableness of setting retail rates based on PJM wholesale market prices, it is essential that market participants have confidence that the market monitor is independent, has unfettered access to data, and is able to give objective reports on the markets. This independence is essential to the functioning of the market and to the confidence that market participants have in the market. Recent actions by PJM, as corroborated by the PJM Market Monitor's statement at the April 5 technical conference (attached hereto as Attachment A), raise serious concerns about the viability of PJM's market monitor, the independence of the PJM market monitor from PJM management, and PJM's compliance with its Tariff.

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<sup>8</sup> See e.g. Joint Consumer Advocates Motion to Intervene and Protest filed April 24, 2006 in Docket No. ER06-826-000.

**A. The Commission should thoroughly investigate whether PJM is dismantling its MMU.**

Joint Complainants agree with the Commission's statement about the importance of the market monitor in the proper functioning of the markets and believe that the market monitor as required by PJM's Tariff must have the resources required to enable it to meet its obligations. Recent actions by PJM and statements made by PJM's Market Monitor, Joseph E. Bowring, have raised concerns about the current staffing and resources available to the PJM MMU. On April 2, 2007 PJM issued its 2007 Strategic Report. It contained a discussion regarding the issue of an internal versus external market monitor. From the text, it was not clear whether PJM had made a decision on this issue, or if PJM was going to evaluate the issue and then make a decision. Specifically, the Strategic Report recommended that PJM:

Commission a review of the qualifications of independent external consultants to perform PJM market monitoring functions and report back to the PJM Board on the benefits and risks of implementing a structural separation of market monitoring from internal PJM staff function.<sup>9</sup>

A webcast was held on April 3, 2007, during which stakeholders submitted questions to Phil Harris, the President and CEO of PJM, attempting to clarify whether or not PJM had already made its decision to use an external market monitor. Unfortunately, Mr. Harris' answer lacked sufficient specificity for stakeholders to discern PJM's intent and what actions had been taken. Additional uncertainty was created when Mr. Harris suggested that the decision to use an external market monitor was in response to input from stakeholders, such as the consumer advocate offices or the state commissions,<sup>10</sup> even though the state consumer advocates and state

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<sup>9</sup> PJM Strategic Report at 56, The Strategic Report is available at <http://www.pjm.com/documents/strategic-report.html>.

<sup>10</sup> During the web cast Mr. Harris stated: "In the structure [of the MMU] we had comments principally from some of the states and the consumer advocates that they felt it was the appearance that the market monitoring unit truly wasn't independent because PJM is the only MMU that reports internally. So we have a study, and the study is in the appendix of the [Strategic Planning] report, that when we looked at how the others worked within PJM as a

commissions had made no such request for an external market monitor. The consumer advocate offices had clarified this position only 3 weeks earlier in meetings at PJM.<sup>11</sup> In addition, to the knowledge of Joint Complainants, despite Commission precedent regarding the importance of stakeholder input in the decision making process,<sup>12</sup> stakeholders were not involved in any discussion regarding the recommendation in the Strategic Report and certainly had not approved any interim measures to begin restructuring of the MMU.

On April 5, 2007, the PJM Market Monitor's testimony in front of the Commission at a Technical Conference in Docket No. AD07-8-000 indicated that a decision on going to an external market monitor had indeed been made, that this had been discussed with the market monitoring unit employees and that these employees had been encouraged to seek employment elsewhere in PJM. Specifically, the market monitor stated:

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notional thing and we found out that there's external throughout the RTO and ISO world, and in those other areas where there's an external market monitor there's no question about the appearance of independence, the question doesn't even come up. And we had serious talk with the states and I think Mark Christie was very helpful in our thinking when we met with him and Mark talked with the full Board of PJM and said while they can't recognize any issue that Mark felt very strongly that just the appearance of it was something we need to address and so we have committed to address that. And the only way to address it that we see is practical is that PJM should have an external market monitor. This comports with what appears to be best practice, it comports with what happens in the other areas, and we do need to deal with the external market monitor as we move forward." April 3, 2007 at 58:40. <http://events.streamlogics.net/pmtv/pjm/apr03-07/index.asp>

<sup>11</sup> On March 12, 2007, PJM stakeholders identified as the Public Interest and Environmental Organizations User Group ("PIEOUG") met at PJM with Audrey Zibelman, Executive Vice President and COO. During this meeting Ms. Zibelman indicated that PJM was listening to the concerns of states and therefore would be investigating an external MMU structure. PIEOUG members, primarily consumer advocates, clarified for Ms. Zibelman that they had never and did not now support an external market monitor as being responsive to their independence concerns.

<sup>12</sup> See, e.g. *PJM Interconnection, L.L.C.*, 113 FERC ¶ 61,292 (2005) where the Commission stated that "we find that the advisory input from all stakeholders, including OPSI, is essential to the development of transmission arrangements and competitive markets in the PJM region. Well-functioning markets benefit all market participants including load." *PJM Interconnection, L.L.C.*, 87 FERC ¶ 61,054 (1999), where the Commission found that while the PJM Companies' FTR proposal "has promise", the proposal nevertheless lacked clarity and, therefore, the Commission rejected the proposal and directed PJM to develop, with stakeholder input, another FTR auction proposal that addressed the Commission's concerns, within 90 days. *PJM Interconnection, L.L.C. et al.*, 116 FERC ¶ 61, 260 (2006)(The Commission directed Midwest ISO and PJM to explain, in a compliance filing, the joint RTO planning model and to make the details of its use transparent to the stakeholders and the Commission.); *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61, 079 (2006); *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61, 122 (2004).

Very recently, the issue of independence and, in fact, the viability of the PJM MMU, has reached very significant proportions at PJM. Last week, Mr. Harris, CEO of PJM, informed the MMU staff that it was PJM management's view that, in order to ensure independence, the MMU function would be best provided by an external consultant rather than the current MMU. At that meeting, Mr. Harris informed MMU staff that there were lots of open positions in other divisions at PJM for which they were qualified and that they could apply for. Mr. Harris stated that PJM would be **removing the MMU's database from the MMU** and transferring it elsewhere in PJM....<sup>13</sup>

Page 2, paragraph 10 of Mr. Bowring's written statement, raised additional concerns about management infringement on the role of the MMU in the RTO when Mr. Bowring stated:

...PJM management has taken a series of actions towards the MMU which I believe are inconsistent with independence and with the objectives of the MMU as stated in the tariff. As examples, these include ordering me to modify the State of the Market Report, preventing me from making a presentation to a membership committee on the exemption of certain interfaces from mitigation when PJM management disagreed with my analysis and delaying the release of an MMU report regarding the regulation market based on management disagreements with our conclusions.<sup>14</sup>

These conflicting statements between PJM and the Market Monitor, along with PJM Management's apparent intent to seek restructuring of the MMU, suggest that PJM has preemptively and prematurely initiated the dismantling of the present MMU structure without stakeholder input or approval, and in apparent violation of its Tariff. In addition, these actions raise grave concerns about the independence of the market monitoring unit and its ability to meet the requirements specified by the Commission in Order No. 2000 and subsequent orders. These statements also corroborate concerns that stakeholders previously raised with the Commission and with PJM.

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<sup>13</sup> Prepared Statement of Joseph E. Bowring PJM Market Monitor, page 3, paragraph 12; Attachment A (emphasis added).

<sup>14</sup> In *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61, 079 (2006), the Commission used statements in technical conferences and in briefs to find that PJM's current capacity structure is not just and reasonable to and find aspects of PJM's Reliability Pricing Model ("RPM") reasonable.

On April 9, 2007, PJM issued a written statement on behalf of Mr. Harris (attached hereto as Attachment B), in which it announced that the Board of Managers would retain independent counsel and investigate the matter, while at the same time ensuring that oversight of the market is not compromised (attached hereto as Attachment B). PJM reaffirmed this sentiment in a press release issued on April 13, 2007 (attached hereto as Attachment C). Joint Complainants are encouraged by the Board's decision to commence an investigation and are hopeful that the investigation will go beyond Mr. Bowring's statements at the Technical Conference and will encompass all concerns that have been raised about the independence from management of the MMU and the continued viability of the market monitor. However, the statement or the press release did not indicate what the Board would actually do to ensure that oversight of the market was not compromised, and Joint Complainants' continue to have immediate concerns about the present state of the MMU and the likelihood that it has already been marginalized by management's actions which deny the MMU sufficient resources and/or access to necessary data to perform its crucial functions. This concern is heightened by differing statements made by Audrey Zibelman, Executive Vice-President and Chief Operating Officer of PJM, at the April 5 Technical Conference and PJM's April 13 press release. In response to a question from Commissioner Wellinghoff, Ms. Zibelman stated: "The processes that they've used are really the best I think we can do. What we're intending to do is to tell the employees it's under consideration, which we've told our employees..."<sup>15</sup> In the April 13, 2007 press release, PJM stated: "Finally, it has been erroneously asserted that PJM has already informed the Market Monitoring Unit that it

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<sup>15</sup> *In the Matter of Review of Market Monitoring Policies*, Docket No. AD07-8-000, Transcript of April 5, 2007 Technical Conference at page 153, lines 19-22.

intends to disband the group.”<sup>16</sup> Based on the different characterizations that PJM has placed on the issue, it is unclear what the PJM MMU was told and this creates additional uncertainty.

Moreover, PJM’s anticipated investigation will likely take considerable time to plan and implement. To date, stakeholders have not been advised as to the manner of such investigation, the identity of the likely independent firm to mount the investigation, or even the target, scope and focus of that investigation. This uncertainty creates a need for the Commission to direct PJM to maintain the MMU resources and personnel at least at 2006 levels and to institute a requirement that the PJM market monitor publicly report to FERC every two weeks that it has sufficient resources, sufficient staff, and sufficient access to information to accomplish the objectives laid out by the Commission and required by PJM’s Tariff. The Commission should also verify that the Market Monitor has sufficient independence so that the MMU is not being unduly influenced by PJM management. At a minimum, this requirement should be in place until the Board has finished its investigation and instituted any recommended changes, with Commission oversight.

**B. The Commission should thoroughly investigate the PJM MMU’s ability to meet its obligations under the Tariff.**

The PJM MMU is an essential part of the operation of PJM. Its objectives, responsibilities, and authority are clearly set forth in the PJM Market Monitoring Plan (“Plan”), embodied as Attachment M in the Commission-accepted PJM Tariff. The objectives of the MMU are elements essential to the operation of a regional energy market and open transmission network with respect to the following:<sup>17</sup>

- (1) monitor and report on issues relating to the operation of the PJM Market, including the determination of transmission congestion costs or

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<sup>16</sup> PJM April 13, 2007 Press Release, Attachment C.

<sup>17</sup> PJM OATT, Attachment M, Part I, Sheet 446 (eff. 7/17/06).

- the potential of any Market Participant(s) to exercise market power within the PJM Region;
- (2) evaluate the operation of both pool and bilateral markets to detect either design flaws in the PJM Market operating rules, standards, procedures, or practices...or to detect structural problems in the PJM Market that may need to be addressed in future filings;
  - (3) evaluate any proposed enforcement mechanisms that are necessary to assure compliance with pool rules; and
  - (4) ensure that the monitoring program will be conducted in an independent and objective manner.

Similarly, the MMU's monitoring responsibilities are essential to the operation of a regional energy market and open transmission network:<sup>18</sup>

- A. Compliance with the PJM Market Rules.
- B. Actual or potential design flaws in the PJM Market Rules.
- C. Structural problems in the PJM Market that may inhibit a robust and competitive market.
- D. The potential for a Market Participant to exercise market power or violate any of the FERC Market Rules.

The PJM Market Monitoring Plan reflects the essential role of the MMU, as contemplated by the Commission, in the operation of the energy market and transmission network. In addition to providing the MMU with a degree of independence, the Plan requires PJM to provide the MMU with "appropriate staffing and resources."<sup>19</sup> The Plan also requires PJM to staff the MMU with "full-time employees of PJM having the experience and qualifications necessary to implement this Plan."<sup>20</sup> Access to information is a key element of the effectiveness of the MMU, and the PJM Tariff sets forth with some degree of specificity the types of data that are required to be made available to the MMU. With respect to access to the data and information necessary for the MMU to fulfill its function, the Plan is quite specific:<sup>21</sup>

<sup>18</sup>PJM OATT, Attachment M, Part III, Sheet 448 (eff. 7/17/06).

<sup>19</sup>PJM OATT, Attachment M, Part V. A., Sheet 450, (eff. 7/17/06).

<sup>20</sup>PJM OATT, Attachment M, Part V. A., Sheet 450, (eff. 7/17/06).

<sup>21</sup>PJM OATT, Attachment M, Part VI A., Sheets 450 (eff. 7/17/06)]

The Market Monitoring Unit shall rely primarily upon data and information that is customarily gathered in the normal course of business of PJM along with such publicly available data and information that may be helpful to accomplish the objectives of the Plan. The data and information available to the Market Monitoring Unit shall include, but not be limited to, information gathered or generated by PJM in connection with its scheduling and dispatch functions, its operation of the transmission grid in the PJM Region, its determination of Locational Marginal Prices, information required to be provided to PJM in accordance with the PJM Tariff, the PJM Operating Agreement, the PJM Reliability Assurance Agreements, the Reliability Assurance Agreement South and the Reliability Assurance Agreement West and any other information that is in the possession of PJM.

In addition to setting forth the primary sources of information relied upon by the MMU, the Plan requires the MMU to collect and maintain information necessary for its implementation.<sup>22</sup>

Notably, in order to ensure the effectiveness of the MMU, the Plan also places certain requirements on PJM's President:<sup>23</sup>

The President shall ensure that the Market Monitoring Unit has adequate resources, access to required information, and cooperation of PJM for the effective functioning of the Market Monitoring Unit.

Joint Complainants have reason to believe that the relevant provisions of the PJM Tariff governing market monitoring are not being adhered to by PJM management. The recent actions of PJM management described in Mr. Bowring's statement at the April 5 technical conference call into question PJM Management's compliance with the provisions of its Tariff:<sup>24</sup>

...Mr. Harris stated that PJM would be removing the MMU's database from the MMU and transferring it elsewhere in PJM. Not surprisingly these statements from the CEO had a negative impact on the morale of the MMU staff, although staff continues to focus on our monitoring responsibilities. In addition, PJM management has aggressively attempted to hire key staff away.... Unless PJM management takes a constructive approach to maintaining the current MMU until the Commission has time to make a decision about the appropriate structure to ensure the

<sup>22</sup>PJM OATT, Attachment M, Part VI D., Sheet 452 (eff. 7/17/06).

<sup>23</sup>PJM OATT, Attachment M, Part V D., Sheet 450 (eff. 2/17/06).

<sup>24</sup> Prepared Statement of Joseph E. Bowring PJM Market Monitor, page 3, paragraph 12; Attachment A.

independence as you define it, PJM's actions threaten the existence of the current MMU.

Mr. Bowring's statement raises the question of whether PJM Management is meeting its obligations under PJM's Tariff to appropriately staff the MMU and to provide the MMU with access to the data required to fulfill its market monitoring function.

Reducing the resources available to the MMU can only adversely affect the ability of the MMU to carry out its functions relating to the operation of PJM's energy market and transmission network. The MMU must be appropriately staffed by full-time qualified employees of PJM, with access to PJM data and information, as well as have the resources necessary to develop and maintain its own information database. Without access to data, appropriate staffing, sufficient resources and independence to perform market monitoring, confidence in the PJM markets could erode. As recognized by the Commission in Order 2000, even the appearance of impropriety is a significant concern. The Commission stated:

Finally, we continue to believe that perceptions of discrimination are significant impediments to competitive markets. Efficient and competitive markets will develop only if market participants have confidence that the system is administered fairly.<sup>25</sup>

Thus, an effective MMU is necessary to give market participants and stakeholders confidence in the market activities of PJM. Joint Complainants respectfully submit that the importance of market monitoring to the effective functioning of the market requires the Commission to take steps to ensure that PJM is complying with its Tariff.

- C. An MMU that is able to meet his obligation under the Tariff is necessary to assist the Commission in meeting its obligation to ensure just and reasonable rates.**

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<sup>25</sup>Order No. 2000 at 31,017.

The Federal Power Act (“FPA”) requires the Commission to ensure that “all rates and charges ... for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission... shall be just and reasonable.”<sup>26</sup> Just and reasonable rates are defined as rates that are neither “less than compensatory' nor 'excessive.”<sup>27</sup> Just and reasonable rates strike a “fair balance between the financial interests of the regulated company and 'the relevant public interests, both existing and foreseeable.”<sup>28</sup> The FPA’s emphasis on just and reasonable rates underscores that the Commission’s “primary task” is to “guard the consumer from exploitation by non-competitive electric power companies.”<sup>29</sup> As referenced above, the Commission, in its Policy Statement, recognized the important role that the market monitor plays in the development of market rules and tariff provisions and in investigating whether market participants are in violation of these rules. As stated by the Commission in Order 2000, market monitoring is an additional tool that can be used by the Commission to meet its statutory obligation to ensure just and reasonable rates. The Commission recognized the important role that the market monitor plays in detecting market abuses when it stated:

In response to commenters' arguments that RTO market monitoring results in an impermissible shift of Commission authority to other entities, we emphasize that performance of market monitoring by RTOs is not intended to supplant Commission authority. Rather it will provide the Commission with an additional means of detecting market power abuses, market design flaws and opportunities for improvements in market efficiency. Further, because market monitoring plans will be required to be filed with and approved by the Commission as part of an RTO proposal, we will retain the ability to determine what, how and by whom activities will be performed in the first instance.<sup>30</sup>

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<sup>26</sup> 16 U.S.C. § 824d(a).

<sup>27</sup> *Farmers Union Cent. Exch. v. FERC*, 734 F.2d 1486, 1502 (D.C. Cir. 1984).

<sup>28</sup> *Id.*

<sup>29</sup> *NAACP v. FPC*, 520 F.2d 432, 438 (D.C. Cir. 1975), *cert. granted* 425 U.S. 662 (1976); *see also Electrical District No. 1 v. FERC*, 774 F.2d 490, 492-493 (D.C. Cir. 1985) (stating that customer protection is the FERC's primary purpose under the FPA); *Lockyer*, 383 F.3d at 1017.

<sup>30</sup> Order No. 2000 at 31,156-157.

*California ex rel. Lockyer v. FERC*, 383 F.3d 1006, 10\_(9th Cir. 2004) also imposes on the Commission a proactive responsibility to monitor markets where market-based rates are in place. The Court reasoned that "[I]f the ability to monitor the market, or gauge the “just and reasonable” nature of the rates is eliminated, then effective federal regulation is removed altogether." The Ninth Circuit found the quarterly reporting requirements an important market monitoring tool and an "integral part of a market-based tariff."

Thus, the Commission bears a responsibility to ensure that market monitors in RTO regions with organized markets and market-based rate tariffs, such as PJM, have adequate resources and access to data to effectively monitor those markets, especially where the Commission, as here, acknowledges that the important role those market monitors play in identifying potential market abuses in the first instance. Any concerns about a market monitor's ability to meet the obligations set out in its tariff and in Commission orders should be addressed by the Commission and the Commission should take steps to ensure that the market monitor has sufficient resources, adequate staff, and adequate access to information in order to perform its duties, and that the market monitor can do so without interference from PJM management or market participants. This assurance will assist the Commission in ensuring that rates are just and reasonable.

**V. FAST-TRACK PROCESSING OF THIS COMPLAINT IS WARRANTED.**

Commission regulations provide for “fast-track” processing of complaints if complainants adequately demonstrate “why the standard processes will not be adequate for expeditiously resolving the complaint.”<sup>31</sup> This complaint is ideal for fast-track processing.

**First**, the circumstances that prompted the filing of this complaint, and the evidentiary basis for this complaint, indicate that the safeguards in place for PJM markets are being rapidly

eroded and, if left uncorrected, will soon reach a state where the Commission's ability to ensure just and reasonable prices in PJM markets will be compromised. The PJM Market Monitor has very recently testified to this Commission that "Unless PJM management takes a constructive approach to maintaining the current MMU until the Commission has time to make a decision about the appropriate structure to ensure independence as you define it, PJM's actions threaten the existence of the current MMU."<sup>32</sup> The Market Monitor goes on to state that "I believe that if PJM management continues on its current path with respect to the MMU, within a very short time we will not have adequate resources to meet our tariff defined responsibilities [and] . . . we will not be able to collect and maintain information as we are required to do under the tariff."<sup>33</sup> The Market Monitor's statement that a non-compliant arrangement will exist "within a very short time" if corrective actions are not undertaken justifies fast-track processing of this complaint. This is particularly worrisome considering the up-coming peak summer period and PJM's planned implementation of the annual RPM auction for the 2008/2009 period, especially considering that the results produced by the recently implemented 2007/2008 RPM auction are significantly higher priced than anticipated by PJM in the RPM development process.

**Second**, and related to the first, prompt action by the Commission would reduce potential claims that the MMU's impaired functional ability requires refunds from PJM markets, revocation of market-based rate authority, or other more invasive remedial actions. A stitch in time now to ensure adequate MMU staffing and resources would save more than nine stitches in the form of refund proceedings. To that end, fast-track processing would be a prudent use of Commission resources.

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<sup>31</sup> See 18 C.F.R. § 385.205(b)(11)

<sup>32</sup> See Prepared Statement of Joseph E. Bowring PJM Market Monitor, page 3, P. 12; Attachment A.

<sup>33</sup> See *id.* P. 14.

**Third**, the relief requested in this complaint has been narrowly tailored to facilitate prompt Commission action. The scope of the requested relief consists primarily of an order directing PJM to do what it is already obligated to do under the PJM Tariff and establishing reporting procedures to ensure ongoing compliance. While changes ensuring MMU independence must be undertaken by the Commission on a generic basis, Joint Complainants have not sought those changes in this complaint so that fast-track processing can ensure there are “boots on the ground” and that qualified and experienced individuals are filling those boots while such issues are being addressed. Fast-track processing on this relatively narrow request for relief will not interfere with the Commission’s broader and more generic inquiry into market monitoring. The relief requested in this complaint is fully consistent with a request for fast-track processing.

**Fourth**, had this issue come to the fore last September, fast-track processing might not have been as imperative. However, it is now mid-April and PJM is a summer-peaking region. During the Summer, PJM’s system is often stressed unlike at any other time of the year, and the need for MMU resources and MMU vigilance reaches its own annual peak. The Commission should not place customers in a position of heading into the Summer peak season without adequate assurances that the MMU has the necessary tools and resources to do its job. Consequently, the mere six weeks between now and the start of the Summer peak season on June 1 warrants fast-track processing of this Complaint.

For these reasons, the Commission should grant the request for fast-track processing of this complaint and shorten the period for filing an answer to this complaint from twenty to ten days as provided for in Rule 206(h).

## **VI. ADDITIONAL INFORMATION REQUIRED BY THE COMMISSION**

Joint Complainants have provided information above to comply with the requirements of Rule 206(b) of the Commission's Rules of Practice and Procedure, with the exception of Sections 206(b)(4)(quantification of financial impact), 206(b)(6)(related proceedings) and 206(b)(9)(alternative dispute resolution). Joint Complainants provide this information below.

### **A. Financial impact of interference with the PJM MMU**

The financial impact or other ramifications of interfering with the independence of the market monitor cannot be quantified at this time. Where the PJM MMU is operating without adequate personnel and resources to meet its obligations under the PJM Tariff, exercise of market power or other attempts to manipulate the market may go undetected and could have enormous adverse and irreparable financial consequences to retail and wholesale consumers in the PJM region and as stated above may affect the Commission's ability to ensure just and reasonable rates. Even if there are no identifiable financial consequences, dismantling the PJM MMU will reduce confidence in the market at a time when it is becoming more complex. Moreover, with the implementation of RPM concerns about the competitiveness of the market and whether it is functioning properly are justifiably heightened. In addition to its general market monitoring responsibilities, the MMU also has other specific responsibilities that may have an acute financial impact. For example, the MMU is responsible for reviewing compensation offers for the opportunity cost attributable to reductions or suspensions in generator output in accordance with PJM dispatch instructions<sup>34</sup> and the MMU has certain oversight responsibilities with respect to offer price caps on must-run generation.<sup>35</sup>

**B. Related Proceedings**

The issues in this filing have been previously raised by various members of Joint Complainants and others but are not currently pending before the Commission. Many of the statements referenced in this Complaint were made in the context of a FERC Technical Conference so the Commission may be launching its own investigation into the allegation. Joint Complainants are raising the issues in this Complaint to ensure that the concerns of PJM retail and wholesale customers in this matter are brought before the Commission as quickly as possible.

**C. Informal Dispute Resolution**

Various members of Joint Complainants have raised the issue of MMU independence with PJM, without success. Such communications have taken various forms including written correspondence and face-to-face communications with PJM Management and the PJM Board of Managers. Considering the gravity of the concerns raised by Mr. Bowring's testimony, the need to ensure effective market monitoring while PJM undertakes its investigation and until the broader issue of the proper structure for market monitoring in PJM is resolved, Joint Complainants believe that expediency in getting this issue before the Commission without the delay attendant to informal dispute resolution is essential. Immediate Commission intervention is necessary to ensure that resources are maintained and that the issues outlined herein are adequately investigated.

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<sup>34</sup> See PJM OATT, Attachment M, Sheets 380B, 380B.03 (eff. 7/18/03).

<sup>35</sup> See PJM OATT, Attachment M, Sheets 402, 402A.01 (eff. 1/27/06).

#### **D. Documents Included With This Filing**

Exhibit A	Prepared Statement of Joseph E. Bowring, delivered April 5, 2007, Docket No. AD07-8-000,
Exhibit B	Notice of investigation from PJM to its stakeholders
Exhibit C	PJM's April 13, 2007 Press Release
Exhibit D	Attachment M to PJM's tariff

#### **VII. CONCLUSION**

In order to ensure that the PJM Market Monitor is able to effectively monitor the PJM markets while the PJM Board of Managers investigates the PJM Market Monitor's allegations and the Commission considers the broader issue of the most appropriate monitoring structure, Joint Complainants respectfully request that the Commission, pursuant to its authority under Sections 205 and 206 of the FPA and under Sections 205 and 209 of the Commission's Rules of Practice and Procedure:

- direct PJM to show cause why it should not be found to have actively attempted to undermine the ability of the PJM Market Monitor to effectively monitor the PJM markets;
- direct PJM to show cause why it should not be found to be in violation of Attachment M to its Tariff requiring that it provide the Market Monitor with adequate resources, adequate staff, and adequate access to data to effectively monitor PJM's markets;
- direct PJM to comply with the requirements in Attachment M of its Tariff by requiring PJM to
  - provide the Market Monitor with full access to all data the Market Monitor determines is necessary to effectively monitor the markets in accordance with its Tariff;
  - fully staff the Market Monitoring unit at least at its 2006 staff level;
  - ensure that the Market Monitor has sufficient independence to present any and all reports, including the state of the markets and recommendations on market rule changes to PJM committees, task forces and working groups; the PJM Board of Managers, relevant state commission and agencies and this Commission;

- o ensure that the Market Monitor has sufficient independence to meet all its obligations under the Tariff; and
- o direct the PJM Market Monitor to file reports every two weeks on the sufficiency of its resources, staff, access to data to effectively monitor the PJM markets as well as its independence from PJM management.

In addition, the Commission should grant the request for fast-track processing of this complaint and shorten the period for filing an answer to this complaint from twenty to ten days as provided for in Rule 206(h)

Respectfully Submitted,

*/s/ filed electronically*

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Counsel to PJM Industrial Customer  
Coalition

Prepared Statement of Joseph E. Bowring  
PJM Market Monitor  
Technical Conference – Federal Energy Regulatory Commission  
Review of Market Monitoring Policies  
Docket No. AD07-8-000  
April 5, 2007

1. Good morning. I appreciate the opportunity to participate in today's Technical Conference on the Review of Market Monitoring Policies.
2. The PJM MMU performs a number of functions in assisting the Commission in enhancing the competitiveness of PJM markets. Based both on the PJM tariff and the Commission's Policy Statement, the PJM MMU monitors compliance with market rules, identifies actual or potential flaws in the market rules, identifies potential anticompetitive behavior and provides comprehensive market analysis. Based on this analysis, the MMU recommends rule changes, identifies market participants who may be violating the PJM tariff or FERC rules, provides support to PJM in the administration of the tariff and provides analysis of market performance and issues. The MMU, in addition to monitoring market participants, also monitors PJM. The actions of PJM may also have significant impacts on market performance.
3. The MMU also regularly communicates both formally and informally with market participants from all market sectors from generators to loads to state regulators. Market participants rely upon the MMU for objective analysis of markets. That objective analysis helps provide confidence to all market participants that competitive markets are working and that issues will be identified when they arise.
- 200704175061 Received FERC 03/04/2007 10:07 AM: 40011111 Docket# EL07-56000  
4. The role of market monitors has been clearly defined by the Commission. Enforcement authority lies with the Commission as does the authority to require changes in participant behavior and the authority to implement or modify market rules. The role of market monitors is advisory and informational.
5. Representatives of the PJM MMU meet regularly with FERC staff from the Office of Enforcement and other parts of the Commission. I believe that it would be beneficial for the MMU to also meet regularly with senior staff from the Office of Enforcement and other interested Commission staff to provide status reports on monitoring activities, market issues and pending issues and also to get feedback from the OE about the interests of the Commission and how the MMU could be of additional assistance. While relatively informal contacts are critical, I believe that more structured interactions could also be helpful to the Commission. In addition, I believe that it would be beneficial if the MMU provided more structured reports or presentations on a regular basis to staff, based on Commission and staff requirements.
6. I believe that it would also be beneficial to initiate and sustain an ongoing discussion among all monitors and Commission staff about theoretical and practical approaches to the definition and mitigation of market power. Systematic discussion and review of

approaches and results can contribute to continued improvements in monitoring and mitigation practices.

7. In order to effectively assist the Commission, the MMU needs resources. In particular, the MMU needs staff resources, IT resources, hardware resources, data resources and the ability to call on external expertise when needed. In order to be effective, the MMU needs diverse staff expertise including engineering, economics and database management as well as hands on expertise in all aspects of the industry from transmission through generation.
8. In order to effectively assist the Commission, the MMU needs independence. I would define that as independence from market participants and independence from the RTO. It is clear that market participants have varied financial interests and that the MMU must be independent from market participants. It is equally clear that the MMU must be independent from PJM. While PJM is itself independent from market participants, PJM as an organization has specific interests which may differ, at times, from the MMU objective of providing objective, critical evaluations of markets, of market participants and of PJM itself. While PJM has a variety of objectives, the MMU has only one objective, to assist the Commission in enhancing the competitiveness of RTO markets.
9. Ultimately, only the Commission can define the level of independence that it believes necessary for market monitors to perform the functions defined by the Commission and assist in enhancing the competitiveness of RTO markets. Only the Commission can ensure that the desired level of independence is achieved.
10. Given the experience of the MMU at PJM, I believe that the MMU needs stronger assurance that the MMU is independent from PJM management so that the Commission and market participants can be assured that MMU analysis and recommendations are independent. PJM has made it clear that, from management's perspective, the market monitor is first an employee of PJM with all the duties of an employee including obeying management orders, i.e. following the chain of command. I do not believe that this is consistent with independence of market monitoring or with meeting the tariff defined objectives of market monitoring. PJM management has taken a series of actions towards the MMU which I believe are inconsistent with independence and with the objectives of the MMU as defined in the tariff. As examples, these include ordering me to modify the State of the Market Report, preventing me from making a presentation to a membership committee on the exemption of certain interfaces from mitigation when PJM management disagreed with my analysis and delaying the release of an MMU report regarding the regulation market based on management disagreements with our conclusions.
11. Based on my experience, it is not possible, as a practical matter, to maintain the independence of the MMU while leaving the control of personnel decisions, including hiring, firing, reviews and promotions with RTO management. It is not possible to maintain the independence of the MMU while leaving the control of the budget with RTO management, including the ability to fund specific analytical projects or to hire

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consultants. It is not possible to maintain the independence of the MMU if RTO management has the authority to prevent the MMU from collecting and maintaining information and data in the manner required to meet the MMU's objectives. It is not possible to maintain the independence of the MMU under the current system of reporting and accountability. It is not possible for the MMU to meet its responsibilities to the Commission without independence.

12. Very recently, the issue of independence and, in fact, the viability of the PJM MMU, have reached very significant proportions at PJM. Last week, Mr. Harris, CEO of PJM, informed the MMU staff that it was PJM management's view that, in order to ensure independence, the MMU function would be best provided by an external consultant rather than the current MMU. At that meeting, Mr. Harris informed MMU staff that there were lots of open positions in other divisions at PJM for which they are qualified and that they could apply for. Mr. Harris stated that PJM would be removing the MMU's data base from the MMU and transferring it elsewhere in PJM. Not surprisingly, these statements from the CEO had a negative impact on the morale of the MMU staff, although staff continues to focus on our monitoring responsibilities. In addition, PJM management has aggressively attempted to hire key MMU staff away. A job description was posted this week that precisely matches the market monitoring duties of one of the MMU supervisors, a person with specific, virtually irreplaceable monitoring skills and knowledge developed both in prior jobs and while working at the MMU. PJM does not perform these functions. Another job was posted on Monday consistent with the credentials of the MMU's junior analysts with a required application date of Friday. Unless PJM management takes a constructive approach to maintaining the current MMU until the Commission has time to make a decision about the appropriate structure to ensure independence as you define it, PJM's actions threaten the existence of the current MMU. \*

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13. While these issues may appear to be an internal personnel matter entirely within the purview of PJM management, that view does not reflect the fact that the MMU is ultimately responsible to the Commission, based on the tariff. Nor does that view reflect the possibility of independence. If PJM management is permitted to remove the current MMU without cause and in response to the MMU doing its job, then the potential for independent market monitoring will be severely damaged.
14. PJM management has informed me that PJM does not want the MMU to replace experienced staff with new hires but that we should hire consultants. I have informed management that the use of replacement consultants will not work and that the effect of their actions, taken together, will be to substantially weaken the ability of the MMU to fulfill our responsibilities to the Commission and to the markets. I believe that if PJM management continues on its current path with respect to the MMU, within a very short time we will not have adequate resources to meet our tariff defined responsibilities. I also believe that if PJM management continues on its current path, within a very short time we will not be able to collect and maintain information as we are required to do under the tariff.

15. It is my view that the optimal structure for an MMU is to be on site at the RTO with regular interactions with RTO management and staff but not reporting to RTO management. The MMU would be staffed by full time employees with a range of skill sets who understand that their job is a full time job that will not end after two or three years. There are very substantial benefits to being on site including access to and regular interactions with RTO staff from all areas including markets, operations, planning and IT. The MMU must be able to collect and maintain information and data in order to analyze the markets, independently of the RTO. The tariff requires this. Real markets cannot be understood without a detailed understanding of market data. The volume and complexity of the required data is significant. In addition, data must be analyzed and intermediate metrics created and those metrics analyzed in turn.
16. Thank you for the opportunity to discuss these critical issues with you today.

----- Original Message -----

**Subject:**[Pjm-pieo-ug] Special Notice - MMU

**Date:**Mon, 9 Apr 2007 09:47:10 -0400

**From:**<[filipov@pjm.com](mailto:filipov@pjm.com)>

**To:**<[pjm-pieo-ug@lists.pjm.com](mailto:pjm-pieo-ug@lists.pjm.com)>

Sent on behalf of Phil Harris:

On April 5, 2007, Joseph Bowring of the PJM Market Monitoring Unit (MMU) provided an oral and written statement to the Federal Energy Regulatory Commission in which he asserted that the independence of the MMU had been compromised. He made a specific allegation of interference with the preparation of the "State of the Market Report," leaving an impression that the MMU no longer stood by the conclusions and recommendations in the recently released 2006 State of the Market Report.

On April 6, 2007, at the request of the PJM Board of Managers for clarification, Mr. Bowring confirmed in writing that the Market Monitoring Unit "stands behind the conclusions and recommendations presented in the 2006 State of the Market Report."

Today, at a special Board meeting, the Board determined to exercise all due diligence to investigate the matter while at the same time ensuring oversight of the market is not compromised. To address the allegations the Board decided to select and retain independent counsel for the purpose of investigating *all* allegations raised by Mr. Bowring. This counsel will report directly and exclusively to the PJM Board. The Board will request that this investigation be thorough and exacting but proceed expeditiously to a conclusion. Upon completion, the Board will report on the results and any actions that it intends to take regarding this matter.

(Valley Forge, Pa. – April 13, 2007) – *PJM Interconnection today issued the following statement regarding the April 5 assertions by PJM's Market Monitor.:*

Since we announced to our members on April 6 that the Board of Managers decided to retain outside legal counsel to investigate assertions by the PJM Market Monitor that his independence has been infringed, we have received a number of queries requesting clarification.

First and foremost, we want to make it clear that PJM takes these assertions very seriously. The Board is acting expeditiously, and the Board and management are committed to a comprehensive and thorough investigation into the Market Monitor's assertions that the independence of the division was compromised. To ensure that the investigation is above any reproach, Chairman of the Board Phillip G. Harris, who in his role as president and CEO supervises the Market Monitor, recused himself from the investigation. The outside counsel will report directly to the Board.

Second, PJM is committed to the integrity of all of its operations, including the assurance to our members, regulators other stakeholders that the all reports and analyses produced by the organization are accurate and complete. With regard to the Market Monitoring division itself, PJM is committed to ensuring that its responsibilities are performed independently of the organization and, at the same time, reflect the same level of integrity and accuracy as all other PJM efforts.

We intend to cooperate fully in the investigation and ensure our stakeholders have absolute confidence in the veracity, completeness and accuracy of all reports and analysis of PJM and its Market Monitor. At the same time, PJM wants to make it clear that it believes the Market Monitoring Unit has been independent in fulfilling its obligation under our Federal Energy Regulatory Commission (FERC) tariff.

Finally, it has been erroneously asserted that PJM has already informed the Market Monitoring Unit that it intends to disband the group. As part of its recently published Strategic Report, PJM noted that a number of its stakeholders and regulators raised a concern that because the Market Monitoring Unit is an internal division to the organization, it does not have sufficient independence from the RTO. In response to these concerns, PJM is examining the "benefits and risks" of alternate structures in place in the other RTOs. PJM recognizes that this type of organizational examination creates concerns among the affected employees of the Market Monitoring Unit.

Prior to the issuance of the report, management met with the Market Monitor separately and with his staff to explain the nature of the examination and to voice commitment and support to the employees of the division so that they may continue to concentrate on their vital work as the organizational evaluation proceeds. Subsequent to the assertions of the Market Monitor and the announcement of the investigation, PJM met and will continue to meet with the employees of the division to further ensure that these valued employees can continue to perform their critical work for the RTO, its members, stakeholders and regulators.

PJM Interconnection, L.L.C.  
FERC Electric Tariff  
Sixth Revised Volume No. 1

Fifth Revised Sheet No. 446  
Superseding Third Revised Sheet No. 446

**ATTACHMENT M**  
**PJM MARKET MONITORING PLAN**

**I. OBJECTIVES**

The objectives of this Market Monitoring Plan are to: (1) monitor and report on issues relating to the operation of the PJM Market, including the determination of transmission congestion costs or the potential of any Market Participant(s) to exercise market power within the PJM Region; (2) evaluate the operation of both pool and bilateral markets to detect either design flaws in the PJM Market operating rules, standards, procedures, or practices as set forth in the PJM Tariff, the PJM Operating Agreement, the PJM Reliability Assurance Agreement, The Reliability Assurance Agreement-South, the Reliability Assurance Agreement-West, the PJM Manuals, or PJM Regional Practices Document or to detect structural problems in the PJM Market that may need to be addressed in future filings; (3) evaluate any proposed enforcement mechanisms that are necessary to assure compliance with pool rules; and (4) ensure that the monitoring program will be conducted in an independent and objective manner. The Plan also prescribes reporting procedures that PJM will use to inform governmental agencies and others concerning its market monitoring activities.

Consistent with the PJM Operating Agreement, PJM will carry out these objectives in a manner consistent with the safe and reliable operation of the PJM Region, the creation and operation of a robust, competitive, and non-discriminatory electric power market in the PJM Region, and the principle that a Member or group of Members shall not have undue influence over the operation of the PJM Market.

This Plan applies to PJM, Market Participants, and all entities that take service under the PJM Tariff.

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**II. DEFINITIONS**

Unless the context otherwise requires, for purposes of this Plan, capitalized terms shall have the meanings given below or in Section I of the PJM Tariff.

- (a) **“Authorized Government Agency”** means a regulatory body or government agency, with jurisdiction over PJM, the PJM Market, or any entity doing business in the PJM Market, including, but not limited to, the Commission, state utility commissions, and state and federal attorneys general.
- (b) **“Corrective Action”** means an action set forth in section IV of this Plan.
- (c) **“FERC Market Rules”** means the market behavior rules and the prohibition against electric energy market manipulation codified by the Commission in its Rules and Regulations at 18 CFR §§ 1c.2 and 35.37, respectively; the Commission-approved PJM Market Rules and any related proscriptions or any successor rules that the Commission from time to time may issue, approve or otherwise establish.

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Vice President, Federal Government Policy  
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FERC Electric Tariff  
Sixth Revised Volume No. 1

First Revised Sheet No. 446A

(d) **“Market Monitoring Unit”** means the organization within PJM that is responsible for implementing this Plan.

(e) **“Market Participant”** means an entity that generates, transmits, distributes, purchases, or sells electricity or provides ancillary services with respect to such services (or contracts to perform any of the foregoing activities) within, into, out of, or through the PJM Region.

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Fourth Revised Sheet No. 447  
Superseding Second Revised Sheet No. 447

- (f) **“PJM”** means PJM Interconnection, L.L.C., including the Office of the Interconnection as referenced in the PJM Operating Agreement.
- (g) **“PJM Board”** means the Board of Managers of PJM or its designated representative.
- (h) **“PJM Entities”** means PJM, including the Market Monitoring Unit, the PJM Board, and PJM’s officers, employees, representatives, advisors, contractors, and consultants.
- (i) **“PJM Manuals”** means those documents produced by PJM that describe detailed PJM operating and accounting procedures that are made publicly available in hard copy and on the Internet.
- (j) **“PJM Market”** means the PJM Interchange Energy Market together with all bilateral or other electric power and energy transactions, ancillary services transactions, and transmission transactions within the PJM Region.
- (k) **“PJM Market Rules”** mean the rules, standards, procedures, and practices of the PJM Market set forth in the PJM Tariff, the PJM Operating Agreement, the PJM Reliability Assurance Agreements, the PJM Consolidated Transmission Owners Agreement, the PJM Manuals, the PJM Regional Practices Document and the PJM-Midwest Independent Transmission System Operator.
- (l) **“PJM Operating Agreement”** means the Amended and Restated Operating Agreement of PJM on file with the Commission.
- (m) **“PJM Regional Practices Document”** means the document of that title that compiles and describes the practices in the PJM Market and that is made available in hard copy and on the Internet.
- (n) **“PJM Reliability Assurance Agreements”** means the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area, the PJM South Reliability Assurance Agreement among Load Serving Entities in the PJM South Region, and the PJM West Reliability Assurance Agreement among Load Serving Entities in the PJM West Region, each on file with the Commission.
- (o) **“PJM Tariff”** means the Open Access Transmission Tariff of PJM on file with the Commission.
- (p) **“PJM Transmission Owners Agreement”** means the PJM Consolidated Transmission Owners Agreement on file with the Commission.
- (q) **“Plan”** means the PJM market monitoring plan set forth in this Attachment M.
- (r) **“President”** means the President and Chief Executive Officer of PJM.

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FERC Electric Tariff  
Sixth Revised Volume No. 1

Substitute Third Revised Sheet No. 448  
Superseding Third Revised Sheet No. 448

### III. MONITORED ACTIVITIES

The Market Monitoring Unit shall be responsible for monitoring the following:

- A. Compliance with the PJM Market Rules.
- B. Actual or potential design flaws in the PJM Market Rules.
- C. Structural problems in the PJM Market that may inhibit a robust and competitive market.
- D. The potential for a Market Participant to exercise market power or violate any of the FERC Market Rules.

### IV. CORRECTIVE ACTIONS

A. **Required Notice to Commission:** Immediately upon determining that it has identified a significant market problem or a potential violation by a Market Participant of the PJM Market Rules or any of the FERC Market Rules that may require (a) a change in the PJM Market Rules, (b) further inquiry by the Market Monitoring Unit, (c) referral for investigation by the Commission and/or (d) action by the Commission or one or more state commissions, the Market Monitoring Unit shall notify the Commission's Office of Enforcement (or any successor), either orally or in writing. Nothing in this Section IV.A shall limit the ability of the Market Monitoring Unit to engage in discussions with any such Market Participant as provided in Section IV.C.1.

B. **Required Referral to Commission:** In addition to the notification provided in section IV.A. above, where the Market Monitoring Unit has reason to believe, based on sufficient credible information, that a Market Participant has either violated (a) a PJM Market Rule, or (b) any of the FERC Market Rules, the Market Monitoring Unit will refer the matter to the Commission's Division of Investigations (or any successor) in the manner described below. The foregoing notwithstanding, a clear, objectively identifiable violation of a PJM Market Rule, where such rule provides for an explicit remedy that

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FERC Electric Tariff  
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Substitute First Revised Sheet No. 448A  
Superseding First Revised Sheet No. 448A

has been accepted by the Commission and can be administered by PJM, shall not be subject to the provisions of this section IV.B.

Such a referral to the Commission shall be in writing, shall be non-public and should include, but need not be limited to, the following information:

1. The name(s) of and, if possible, the contact information for, the market participants that allegedly took the action(s) that constitute that alleged Market Violation(s);
2. The date(s) or time period during which the alleged Market Violation(s) occurred and whether the alleged wrongful conduct is ongoing;
3. The specific FERC Market Rule(s) and/or tariff provision(s) that were allegedly violated;
4. The specific act(s) or conduct that allegedly violated the FERC Market Rules or tariff;
5. The consequences in the market resulting from the act(s) or conduct, including, if known, an estimate of economic impact on the market;
6. If the Market Monitoring Unit believes that the act(s) or conduct constituted manipulative behavior in violation of the FERC Market Rules, a description of the alleged manipulative effect on market prices, market conditions, or market rules; and
7. Any other information that the Market Monitoring Unit believes is relevant and may be helpful to the Commission.

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Following the submission of such a referral, the Market Monitoring Unit will continue to inform the Commission's staff of any information relating to the referral that it discovers within the scope of its regular monitoring function, but it shall not undertake any investigative steps regarding the referral except at the express direction of the Commission's staff.

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First Revised Sheet No. 448B

**C. Additional Market Monitoring Unit Authority:** In addition to notifications and referrals under Sections IV.A and IV.B, respectively, the Market Monitoring Unit may take the following additional actions, to the extent it deems necessary, as a result of its monitoring activities:

1. Engage in discussions with Market Participants regarding issues relating to their possible violations of the FERC Market Rules, in order to understand such issues and to attempt to resolve informally such issues or other issues with Market Participants.
2. Recommend to the appropriate entity (including, if and as appropriate, PJM committees, the PJM Board, or the Commission) modifications to the PJM Market Rules. This recommendation may be made in the form of a written or oral report to the appropriate entity.

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FERC Electric Tariff  
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Superseding Third Revised Sheet No. 449

3. With the approval of the PJM Board, file reports or complaints with Authorized Government Agencies or make other appropriate regulatory filings to address design flaws, structural problems, compliance, market power, or other issues, and seek such appropriate action or make such recommendations as the Market Monitoring Unit shall deem appropriate.
4. If PJM does not follow the Market Monitoring Unit's recommendations by filing requested rule changes or complaints with the Commission, the Market Monitoring Unit shall make its views known to the Commission staff and the PJM Members, either orally or in writing.
5. Consult with Authorized Government Agencies concerning the need for specific investigations or monitoring activities.
6. Consider and evaluate a broad range of additional enforcement mechanisms that may be necessary to assure compliance with the PJM Market Rules. As part of this evaluation process, the Market Monitoring Unit shall consult with Authorized Government Agencies and other interested parties.
7. Report directly to the Commission staff on any matter.

**D. Confidentiality:**

1. All discussions between the Market Monitoring Unit and Market Participants concerning the informal resolution of compliance issues initially shall remain confidential, subject to the provisions in subsection IV.D.3.
2. Except as provided in subsection IV.D.3, in exercising its authority to take Corrective Actions, the Market Monitoring Unit shall observe the confidentiality provisions of the PJM Operating Agreement.
3. Notwithstanding anything to the contrary in this Plan or the PJM Operating Agreement, the Market Monitoring Unit: (a) may disclose any information to the Commission in connection with the reporting required under sections IV.A and IV.B of the Plan, provided that any written submission to

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PJM Interconnection, L.L.C.  
FERC Electric Tariff  
Sixth Revised Volume No. 1

Fifth Revised Sheet No. 450  
Superseding Third Revised Sheet No. 450

the Commission that includes information that is confidential under the PJM Operating Agreement shall be accompanied by a request that the information be maintained as confidential, and (b) may make reports, complaints, or other regulatory filings pursuant to section IV.C or VII of this Plan if accompanied by a request that information that is confidential under the PJM Operating Agreement be maintained as confidential.

## V. MARKET MONITORING UNIT

A. **Establishment:** PJM shall establish, and provide appropriate staffing and resources to, the Marketing Monitoring Unit, an organization within PJM that shall be responsible for implementing this Plan.

B. **Composition:** The Market Monitoring Unit shall be comprised of full-time employees of PJM having the experience and qualifications necessary to implement this Plan. In carrying out its responsibilities, the Market Monitoring Unit may retain such consultants and experts as it deems necessary, subject to the oversight of the President and/or the PJM Board.

C. **Accountability and Responsibilities:** The Market Monitoring Unit shall be accountable to the President and the PJM Board regarding the implementation of this Plan.

D. **Resources:** The President shall ensure that the Market Monitoring Unit has adequate resources, access to required information, and cooperation of PJM for the effective functioning of the Market Monitoring Unit.

E. **Referral by President and Market Monitoring Unit:** To the extent that they deem desirable, the President and Market Monitoring Unit shall each have independent authority to refer any matters governed by this Plan to the PJM Board for review or approval.

## VI. SPECIFIC MONITORING FUNCTIONS

A. **Primary Information Sources:** The Market Monitoring Unit shall rely primarily upon data and information that is customarily gathered in the normal course of business of PJM along with such publicly available data and information that may be helpful to accomplish the objectives of the Plan. The data and information available to the Market Monitoring Unit shall include, but not be limited to, information gathered or generated by PJM in connection with its scheduling and dispatch functions, its operation of the transmission grid in the PJM Region, its determination of Locational Marginal Prices, information required to be provided to PJM in accordance with the PJM Tariff, the PJM Operating Agreement, the PJM Reliability Assurance Agreements, the Reliability Assurance Agreement South and the Reliability Assurance Agreement West and any other information that is in the possession of PJM.

B. **Other Information Requests:** If other information is required, the Market Monitoring Unit shall comply with the following procedures:

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Vice President, Federal Government Policy  
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Effective: July 17, 2006

1. **Request for Additional Data:** If the Market Monitoring Unit determines that additional information is required to accomplish the objectives of the Plan, the Market Monitoring Unit may request the entities possessing such information to provide the information on a voluntary basis. Any such request for additional information will be accompanied by an explanation of the need for the information and the Market Monitoring Unit's inability to acquire the information from alternate sources.

2. **Failure to Comply with Request:** The information request recipient shall provide the Market Monitoring Unit with all information that is reasonably requested. If an information request recipient does not provide requested information within a reasonable time, the Market Monitoring Unit may initiate such regulatory or judicial proceedings to compel the production of such information as may be available and deemed appropriate by the Market Monitoring Unit, including petitioning the Commission for an order that the information is necessary and directing its production. An information request recipient shall have the right to respond to any such petitions and participate in the proceedings thereon.

3. **Information Concerning Possible Undue Preference:** Notwithstanding subsection B.1, if the Market Monitoring Unit requests information relating to possible undue preference between Transmission Owners and their affiliates, Transmission Owners and their affiliates must provide requested information to the Market Monitoring Unit within a reasonable time, as specified by the Market Monitoring Unit; provided, however, that an information request recipient may petition the Commission for an order limiting all or part of the information request, in which event the Commission's order on the petition shall determine the extent of the information request recipient's obligation to comply with the disputed portion of the information request.

4. **Confidentiality:** Except as provided in section IV.D.3 of this Plan, the Market Monitoring Unit shall observe the confidentiality provisions of the PJM Operating Agreement with respect to information provided under this section if an entity providing the information designates it as confidential.

C. **Complaints:** Any Market Participant or other interested entity may at any time submit information to the Market Monitoring Unit concerning any matter relevant to the Market Monitoring Unit's responsibilities under the Plan, or may request the Market Monitoring Unit to make inquiry or take any action contemplated by the Plan. Such submissions or requests may be made on a confidential basis. The Market Monitoring Unit may request further information from such Market Participant or other entity and make such inquiry that the Market Monitoring Unit considers appropriate. Neither the Market Monitoring Unit nor PJM Board shall be required to act with respect to any specific complaint unless the Market Monitoring Unit or, if appropriate, the PJM Board, determines action to be warranted.

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PJM Interconnection, L.L.C.  
FERC Electric Tariff  
Sixth Revised Volume No. 1

Third Revised Sheet No. 452  
Superseding First Revised Sheet No. 452

**D. Collection and Availability of Information:** The Market Monitoring Unit shall regularly collect and maintain the information that it deems necessary for implementing the Plan. The Market Monitoring Unit shall make publicly available a detailed description of the categories of data collected by the Market Monitoring Unit. To the extent it deems appropriate and upon specific request, the Market Monitoring Unit may release other data to the public, consistent with PJM's obligations to protect confidential, proprietary, or commercially sensitive information.

**E. Market Monitoring Indices:** The Market Monitoring Unit shall develop, and shall refine on the basis of experience, indices or other standards to evaluate the information that it collects and maintains. Prior to using any such index or standard, the Market Monitoring Unit shall provide PJM Members, Authorized Government Agencies, and other interested parties an opportunity to comment on the appropriateness of such index or standard. Following such opportunity for comments, the decision to use any index or standard shall be solely that of the Market Monitoring Unit.

**F. Evaluation of Information:** The Market Monitoring Unit shall evaluate, and shall refine on the basis of experience, the information it collects and maintains, or that it receives from other sources, regarding the operation of the PJM Market or other matters relevant to the Plan. As so evaluated, such information shall provide the basis for reports or other actions of the Market Monitoring Unit under this Plan.

## **VII. REPORTS**

**A. Reports to the PJM Board:** The Market Monitoring Unit shall prepare and submit to the PJM Board and to the PJM Members Committee, annual state-of-the-market reports on the state of competition within, and the efficiency of, the PJM Market. In such reports, the Market Monitoring Unit may make recommendations regarding any matter within its purview. The reports to the PJM Board shall include recommendations as to whether changes to the Market Monitoring Unit or the Plan are required. In addition, the Market Monitoring Unit shall provide to the PJM Board, in a timely manner, copies of any reports submitted to Authorized Government Agencies pursuant to Section VII.B. The Market Monitoring Unit may from time-to-time submit additional reports to the PJM Board as the Market Monitoring Unit may deem appropriate in the discharge of its responsibilities under Section III hereof.

**B. Reports to Government Agencies:** The Marketing Monitoring Unit shall contemporaneously submit to the Authorized Government Agencies the reports provided to the PJM Board pursuant to Section VII.A. Subject to applicable law and regulation and any other applicable provisions of the PJM Operating Agreement or PJM Tariff, the Market Monitoring Unit shall, to the extent practicable, respond to reasonable requests by Authorized Government Agencies other than the Commission for reports provided to the PJM Board, subject to protection of confidential, proprietary and commercially sensitive information and the protection of the confidentiality of ongoing inquiries and monitoring activities.

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PJM Interconnection, L.L.C.  
FERC Electric Tariff  
Sixth Revised Volume No. 1

First Revised Sheet No. 452A

C. **Public Reports:** The Market Monitoring Unit shall prepare a detailed public annual report about the Market Monitoring Unit's activities, subject to protection of confidential, proprietary, and commercially sensitive information and the protection of the confidentiality of ongoing investigations and monitoring activities. The Market Monitoring Unit may, instead of filing a separate report, include the referenced material in a report filed pursuant to Section VII.A hereof.

**VIII. AUDIT**

The activities of the Market Monitoring Unit shall be audited in accordance with procedures adopted from time to time by the PJM Board.

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PJM Interconnection, L.L.C.  
FERC Electric Tariff  
Sixth Revised Volume No. 1

Substitute Original Sheet No. 453  
Superseding Original Sheet No. 453

**IX. LIABILITY**

Any liability of PJM arising under or in relation to this Plan shall be subject to this Section IX. The PJM Entities shall not be liable to any Market Participant, any party to the PJM Operating Agreement, any customer under the PJM Tariff, or any other person subject to this Plan in respect of any matter described in or contemplated by this Plan, as the same may be amended or supplemented from time to time, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual or consequential damages of any kind resulting from or attributable to any act or omission of any of the PJM Entities under this Plan.

**X. OTHER RELIEF NOT FORECLOSED**

**A. Preservation of Rights:** Nothing herein shall prevent PJM or any other person from asserting any rights it may have under the Federal Power Act or any other applicable law, statute, or regulation, including the filing of a petition with or otherwise initiating a proceeding before the Commission regarding any matter which is the subject of this Plan.

**B. Alternate Dispute Resolution:** Notwithstanding any provision of the PJM Tariff or the PJM Operating Agreement, PJM and the Market Monitoring Unit shall not be required to use the dispute resolution procedures in the PJM Tariff or the PJM Operating Agreement in carrying out its duties and responsibilities under this Plan. However, nothing herein shall prevent PJM or any other person from requesting the use of the dispute resolution procedure set forth in the PJM Tariff or the PJM Operating Agreement, as applicable.

**XI. EFFECTIVE DATE**

This Plan shall be effective as of the date it is accepted for filing by the Commission.

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### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties in accordance with Rule 206 and 210 of the Commission's Rules of Practice and Procedure.

Dated at Washington D.C. this 17<sup>th</sup> day of April 2007.

Filed electronically

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Submission Contents

Complaint of Joint Complainants for Show Cause Order on a Fast Track Basis and Short Response Time  
MMComplaint.pdf..... 1-57