



## **Organization of PJM States, Inc. (OPSI)**

President: **Mark C. Christie** (Commissioner, Virginia SCC)

Vice President: **Lula Ford** (Commissioner, Illinois CC)

Secretary: **Allen M. Freifeld** (Commissioner, Maryland PSC)

Treasurer: **Dallas Winslow** (Commissioner, Delaware PSC)

*Members: Delaware Public Service Commission, District of Columbia Public Service Commission, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Maryland Public Service Commission, Michigan Public Service Commission, New Jersey Board of Public Utilities, North Carolina Utility Commission, Public Utility Commission of Ohio, Pennsylvania Public Utility Commission, Tennessee Regulatory Authority, Virginia State Commerce Commission, and West Virginia Public Service Commission.*

Executive Director: Rajnish Barua, Ph.D.

P.O. Box 8906, Newark, DE 19714-8906

Email: opsi-ed@comcast.net; Tel: 302-266-0914

---

April 23, 2007

Kimberly D. Bose, Secretary  
Philis Posey, Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: **Organization of PJM States, District of Columbia Public Service Commission; Indiana Utility Regulatory Commission; Kentucky Public Service Commission; Maryland Public Service Commission; New Jersey Board of Public Utilities; North Carolina Utilities Commission; Pennsylvania Public Utility Commission; and the Virginia State Corporation Commission v. PJM Interconnection, L.L.C.; Complaint, Motion for Interim Relief, Request for Fast Track Processing and Shortened Response Time**

Dear Secretary Bose:

Please accept for filing in the above-referenced matter an electronically filed Complaint of the Organization of PJM States, Inc. ("OPSI") regarding actions by PJM Interconnection, L.L.C., a regional transmission organization, which impair the independence and effectiveness of its Market Monitoring Unit constituting violations of PJM's Market Monitoring Plan contained in its Open Access Transmission Tariff, Attachment M as well as the Commission's Orders and the Federal Power Act. OPSI requests Fast Track Processing.

This complaint is made pursuant to Sections 201, 206, 207, and 209 of the Federal Power Act, 16 U.S.C. § 824, 824e, 824f and 824g, and Rules 206 and 212 of the

Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.206 and 385.212, by OPSI and above listed State Commissions (collectively, the "Complainants").

The Complainants request a shortened response time of 10 days, pursuant to 18 CFR 385.206 (h) (3). Please note that this Complaint also moves for emergency interim relief in the form of an order from the Commission setting this matter for hearing, as well as ordering PJM to return the PJM Market Monitoring Unit to its *status quo ante* with regard to funding, resources and staffing and to take no action reducing the independence and scope of the PJM Market Monitoring Unit or eliminating the PJM Market Monitoring Unit, its funding, resources or staffing without express authorization by order of the Commission.

Service has been made in accordance with the Commission's rules as evidenced by the attached certificate of service.

Thank you for your attention to this matter. If you have any questions in reference to this filing, please contact me at 717-787-5978.

Sincerely,

s/ John A. Levin

John A. Levin

Assistant Counsel

Pennsylvania Public Utility Commission

For: The Organization of PJM States, Inc.

Enclosures

**Complaint Requesting Fast Track Processing**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Organization of PJM States, Inc.;</b>	:	
<b>District of Columbia Public Service</b>	:	
<b>Commission; Indiana Utility</b>	:	
<b>Regulatory Commission; Kentucky</b>	:	
<b>Public Service Commission;</b>	:	
<b>Maryland Public Service</b>	:	<b>Docket No. EL07-_____</b>
<b>Commission; New Jersey Board of</b>	:	
<b>Public Utilities; North Carolina</b>	:	
<b>Utilities Commission; Pennsylvania</b>	:	
<b>Public Utility Commission; and the</b>	:	
<b>Virginia State Corporation</b>	:	
<b>Commission</b>	:	
<b>                    Petitioners,</b>	:	
	:	
<b>                    v.</b>	:	
	:	
<b>PJM Interconnection, L.L.C.,</b>	:	
<b>                    Respondent</b>	:	

**COMPLAINT REQUESTING FAST TRACK PROCESSING  
AND MOTION FOR INTERIM RELIEF**

Pursuant to Sections 201, 206, 207, and 209 of the Federal Power Act, 16 U.S.C. § 824, 824e, 824f, and 824g, and Rules 206 and 212 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.206 and 385.212, the Organization of PJM States, Inc. (“OPSI”)<sup>1</sup>, the District of Columbia Public Service Commission; the Indiana Utility

---

<sup>1</sup> The members of OPSI are the: Delaware Public Service Commission; District of Columbia Public Service Commission; Illinois Commerce Commission; Indiana Utility Regulatory Commission; Kentucky Public Service Commission; Maryland Public Service Commission; Michigan Public Service Commission; New Jersey Board of Public Utilities; North Carolina Utilities Commission; Public Utilities Commission of Ohio; Pennsylvania Public Utility Commission; Tennessee Regulatory Authority; Virginia State Corporation Commission; and the Public Service Commission of West Virginia. All of these members support this filing, and in addition, as noted in this pleading, several are participating in their individual capacities.

Regulatory Commission; the Kentucky Public Service Commission; the Maryland Public Service Commission; the New Jersey Board of Public Utilities; the North Carolina Utilities Commission; the Pennsylvania Public Utility Commission; and the Virginia State Corporation Commission (collectively, the “Complainants”) hereby submit this Complaint against PJM Interconnection, L.L.C., (“PJM”), a public utility under the jurisdiction of the Commission, alleging apparent violations of Attachment M of the PJM Open Access Transmission Tariff (“PJM Market Monitoring Plan”) with regard to the independence and operation of the PJM Market Monitor and Market Monitoring Unit (“MMU”).

The complaint requests the Commission to order PJM to cease and desist from engaging in such alleged actions, and to return the Market MMU to the *status quo ante* with respect to funding, infrastructure, and staffing levels. In addition, the Complaint asks your Commission to direct the amendment of PJM’s Market Monitoring Plan to remove PJM management from all supervision of the MMU, to modify the reporting relationship of the MMU so that it rests either with a Joint Federal/State Board established pursuant to FPA §209, 16 U.S.C. §824h, or alternatively rests solely with the PJM Board of Managers (with notice and review of personnel actions by your Commission). Finally the Complainants ask the Commission to require that the Market Monitoring Plan be amended to provide “just cause” employment security to the Market Monitor and MMU personnel.

The Complainants are aware of a PJM announcement that it plans to retain counsel reporting directly to the Board of Managers to investigate some of the allegations recited

in this complaint. It is not clear from the announcement whether such counsel has actually been retained, what the Board's instructions to such counsel have been or will be, the scope of the inquiry, what freedom of inquiry and review of documents will be afforded to such counsel, or what level of transparency will be observed (i.e., whether the data, interviews and information reviewed by the counsel, and the counsel's reports to the Board will be made publicly available). It is also not clear what time frame is envisioned for the completion of this internal investigation. Moreover, the Complainants consider that any internal PJM investigation of this matter, however conducted, has no bearing on this complaint, cannot serve as a substitute for a full public investigation of these allegations by your Commission and should not delay the investigation and resolution of this complaint.

### **I. DESCRIPTION OF COMPLAINT**

The PJM Market Monitoring Unit has been a critical element of the structure of PJM markets during the creation of PJM as an independent system operator in 1998 and during its transformation into a regional transmission organization pursuant to the Commission's rules issued in Order 2000<sup>2</sup>.

Monitoring wholesale electricity markets to detect and deter unlawful market power and gaming is a highly complex information, labor and capital intensive process that requires the expertise of and diligent work by experienced and knowledgeable economists, engineers and information services personnel. Organized wholesale electric

---

<sup>2</sup> *Regional Transmission Organizations*, 89 FERC ¶ 61,285 (1999).

markets are characterized by thousands of daily transactions, multiple interrelated markets (i.e., energy, capacity, spinning reserve, regulation, black start, and other ancillary service products), and a complex, ever-changing transmission grid and generation fleet that alters the structure of the market on a minute-by-minute basis. In addition, monitoring organized markets such as PJM requires detailed, expert knowledge and understanding of ever-changing and complex tariffs and business rules that govern the conduct of buyers, sellers, transmission operators and the Regional Transmission Organization (“RTO”) itself. This mix of complex infrastructure and complex business rules is complicated by the necessity for interaction with other RTO and bilateral markets that do not operate under identical market rules.

The independence of the PJM MMU is of paramount importance because a wholesale market that is not competitive and not resistant to market power allows market participants to exercise market power and demand monopoly prices from customers to the detriment of the public. A market without effective safeguards against market power may be subject to control by unregulated monopolies demanding prices that cannot be “just and reasonable” under any construction of the Federal Power Act.

It is essential to the confidence of stakeholders and State Commissions in the PJM wholesale markets that the organized wholesale electric markets that have been developed at such great effort and cost over the last 10 years not be impaired by lack of effective market monitoring. Unless the PJM MMU is able to exercise its expert judgment and communicate its unbiased and unredacted views concerning the operation of the wholesale markets and the RTO’s tariff compliance, operational effectiveness and

market design initiatives to appropriate persons and entities without fear or favor, confidence in PJM's markets will be imperiled and the policies of the Commission seeking to further truly competitive wholesale markets will be similarly imperiled.

Testimony by the PJM Market Monitor, Mr. Joseph Bowring, at the Commission's April 5, 2007 technical conference on market monitoring, *Review of Market Monitoring Policies*, Docket No. AD07-8-000, establishes a *prima facie* case that PJM has violated provisions of its Market Monitoring Plan that protect the independence and operation of the internal PJM Market Monitoring Unit from interference. These allegations of interference, if true, seem to be motivated by a desire by senior PJM management to eliminate the internal MMU and transfer its functions to some other form of external market monitor utilizing some other set of market screens and some other approach to market power bid capping than that presently utilized by the existing MMU<sup>3</sup>. The actions complained of include alleged efforts to modify or censor MMU reports and other communications, efforts to induce MMU staff to leave their positions within the MMU for other PJM positions, refusals to fill vacant MMU positions, actions to deprive the MMU of its extensive database of market and generation data necessary to perform its market monitoring functions, and attempts to prevent the Market Monitor from expressing opinions or conclusions at variance with those of senior PJM management on a variety of topics.

---

<sup>3</sup> The Complainants express no opinion here about the advisability of such PJM senior management strategic initiatives, which are at present, properly the concern of and review by PJM stakeholders, State Commissions and the PJM Board of Managers.

Any single such action or combination of such actions, if proven, would constitute a violation of PJM's Market Monitoring Plan, and a departure from the essential duties and purposes of RTOs created by your Commission, as well as a serious breach of the trust and confidence placed in PJM by your Commission and the States<sup>4</sup>.

The Complainants therefore request specific interim and permanent relief, as detailed below, to restore the MMU to the *status quo ante*; to require PJM to comply with the terms of the Market Monitoring Plan; and to require PJM to cease and desist from further violations. In addition, Complainants request that the Commission direct that the Market Monitoring Plan be amended to provide structural and procedural safeguards to prevent future violations of MMU independence.

## II. PARTIES

The Complainants are:

The **Organization of PJM States, Inc.**, a non-profit Delaware Corporation established by its member State Commissions, whose Directors and Members are drawn from all 14 of the State and District utility regulatory commissions within the PJM footprint<sup>5</sup>. In addition, the following State Commissions (within the meaning of 18 CFR § 1.101 (k)) have also joined in this Complaint in their own capacity as State Commissions:

---

<sup>4</sup> Many of these concerns were brought to your Commission's attention by OPSI in its protest to PJM's Attachment M tariff 2006 filing in Docket No. ER06-826.

<sup>5</sup> These include the Delaware Public Service Commission; District of Columbia Public Service Commission; Illinois Commerce Commission; Indiana Utility Regulatory Commission; Kentucky Public Service Commission; Maryland Public Service Commission; Michigan Public Service Commission; New Jersey Board of Public Utilities; North Carolina Utilities Commission; Public Utilities Commission of Ohio; Pennsylvania Public Utility Commission; Tennessee Regulatory Authority; Virginia State Corporation Commission; and the Public Service Commission of West Virginia

The **District of Columbia Public Service Commission** (“DCPSC”), the Commission of the District of Columbia created by the District of Columbia Home Rule Charter (“Home Rule Charter”) to ensure that every public utility doing business within the District of Columbia provides service and facilities reasonably safe and adequate and in all respects just and reasonable. The Home Rule Charter also requires that the DCPSC ensure that public utility rates are just and reasonable. Further, the DCPSC has general supervision of all gas corporations and electric companies in the District of Columbia (*See* D.C. Official Code § 1-204.93; *See also*, D.C. Official Code § 34-301).

The **Public Service Commission of Maryland** (“MD-PSC”), an agency of the State of Maryland, organized and existing by virtue of the statutes enacted by the Maryland General Assembly, presently codified as Md. Public Utility Companies Code Ann., §§ 1-101 *et seq.* (1998) (“PUC Article”). Under § 2-113 of the PUC Article, the MD-PSC has the responsibility to supervise and regulate all Maryland public service companies (including electric companies), to assure their operation in the interest of the public and to promote adequate, economical and efficient delivery of utility services in the State.

The **New Jersey Board of Public Utilities**, a State regulatory Commission created by the Legislature of the State of New Jersey, pursuant to N.J.S.A. 48:2-1 *et seq.* and charged with the regulation of the rates, rules and practices of public utilities within the State.

The **Pennsylvania Public Utility Commission**, a State regulatory Commission created by the General Assembly of the Commonwealth of Pennsylvania, pursuant to 66 Pa. C. S. §101, *et seq.* and charged with the regulation of the rates, rules and practices of electric utilities and electric generation suppliers within the Commonwealth.

The **Indiana Utility Regulatory Commission**, a state public utility commission created by the Indiana Legislature under Indiana Code chapter 8-1-1, is charged with regulating all public electric utilities and service within the state of Indiana.

The **Kentucky Public Service Commission**, an agency of the Commonwealth of Kentucky, established pursuant to Chapter 278 of the Kentucky Revised Statutes and generally responsible for regulating the rates and services of jurisdictional utilities in Kentucky.

The **North Carolina Utility Commission**, a state regulatory commission created by the North Carolina General Assembly under Chapter 62 of the North Carolina General Statutes to regulate the rates and services of all public utilities in North Carolina, including electric, telephone (including payphone service and shared tenant service),

natural gas, water, wastewater, water resale, household goods transportation, busses, brokers, and ferryboats.

The **Virginia State Corporation Commission**, (“SCC”) established by the Virginia Constitution of 1902 to oversee the railroad and telephone and telegraph industries operating in the Commonwealth. The SCC's jurisdiction now includes supervision of electric utilities. The SCC's powers are derived from the Constitution of Virginia and state statutes. The SCC is charged with administering Virginia laws related to the regulation of public utilities, insurance, state-chartered financial institutions, investment securities, retail franchising, and utility and railroad safety.

The Respondent is:

**PJM Interconnection, L.L.C.**, a for-profit Delaware Corporation provisionally approved as a RTO by the Commission in *PJM Interconnection, et al*, 96 FERC 61,061 (2001) and finally approved as a RTO in *PJM Interconnection, et al*, 101 FERC ¶ 61, 345 (2002).

### III. SERVICE

All communications with respect to this matter should be addressed as follows:

John A. Levin  
Assistant Counsel  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5978  
[johlevin@state.pa.us](mailto:johlevin@state.pa.us)

Rajnish Barua, Executive Director  
Organization of PJM States, Inc.  
62 N. Chapel Street  
Suite 200  
Newark, DE 19711  
Tel 302-266-0914  
Cell 302-757-2441  
Email: [opsi-ed@comcast.net](mailto:opsi-ed@comcast.net)

For the Organization of PJM States, Inc.

For the Organization of PJM States, Inc.

Agnes A. Yates, Chair  
District of Columbia Public Service  
Commission  
1333 H Street, N.W.  
Washington, D.C. 20005  
(202) 626-5115  
Email: [ayates@psc.dc.gov](mailto:ayates@psc.dc.gov)

William G. Divine  
General Counsel  
Indiana Utility Regulatory Commission  
302 West Washington Street, Room E306  
Indianapolis, IN 46204  
317-232-6735  
[bdivine@urc.in.gov](mailto:bdivine@urc.in.gov)

For the District of Columbia Public Service  
Commission

For the Indiana Utility Regulatory  
Commission

Richard W. Bertelson, III  
Staff Attorney II  
Kentucky Public Service Commission  
211 Sower Boulevard, Post Office Box 615  
Frankfort, KY 40602-0615  
502-564-3940  
[Rick.bertelson@ky.gov](mailto:Rick.bertelson@ky.gov)

Miles M. Mitchell, Esq.  
Acting General Counsel  
Public Service Commission of Maryland  
6 Saint Paul Street  
Baltimore, Maryland 21202-6806  
(410) 767-8038  
[mmitchell@psc.state.md.us](mailto:mmitchell@psc.state.md.us)

For the Kentucky Public Service  
Commission

For the Public Service Commission of  
Maryland

John A. Levin  
Assistant Counsel  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5978  
[johlevin@state.pa.us](mailto:johlevin@state.pa.us)

Susan J. Vercheak  
Deputy Attorney General  
New Jersey Board of Public Utilities  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07101  
(973) 648-3510  
Email: [susan.vercheak@dol.lps.state.nj.us](mailto:susan.vercheak@dol.lps.state.nj.us)

For the Pennsylvania Public Utility  
Commission

For the New Jersey Board of Public  
Utilities

Louis S. Watson, Jr.  
Staff Attorney  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325  
[swatson@ncuc.net](mailto:swatson@ncuc.net)

William H. Chambliss  
General Counsel  
Virginia State Corporation Commission  
P.O. Box 1197  
Richmond, Virginia 23218-1197  
804-371-9671  
[William.Chambliss@scc.virginia.gov](mailto:William.Chambliss@scc.virginia.gov)

For the North Carolina Utilities  
Commission

For the Virginia State Corporation  
Commission

#### **IV. REQUEST FOR FAST TRACK PROCESSING**

The Complainants request that the Commission process this complaint in accordance with its Fast Track Procedures. Fast Track processing is appropriate because publicly available evidence suggests that senior PJM management has recently threatened to remove or actually has removed information systems and data from the MMU's custody and control. Further, this information suggests that PJM has recently attempted to abruptly downsize the MMU by repeatedly meeting with Market Monitoring Unit

personnel and representing that senior PJM management intends to eliminate and outsource the MMU's functions, and that unless MMU personnel expeditiously transfer to another department within PJM, future employment cannot be guaranteed.

Finally, this evidence suggests that an unknown number of MMU personnel have actually transferred out of the unit as a result of these management representations or have filed applications to transfer, leaving actual vacancies within the MMU. Repeated requests by the PJM market monitor for permission to fill these vacancies have either been received without a response, or met with a suggestion from management that consultants be retained to fill vacant positions.

As a result, and in order to avoid *de facto* destruction of the PJM MMU by PJM and loss of the market monitoring function with respect to the PJM wholesale markets over an extended period of time, the Complainants ask that the Commission act expeditiously to resolve this complaint to avoid irreparable harm to and loss of confidence in PJM wholesale markets.

## **V. PRIOR NEGOTIATIONS AND RELATED PROCEEDINGS**

On April 12, 2007 OPSI notified PJM and its Board of Managers by letter that it expected PJM to cease and desist from any actions in furtherance of any plan to eliminate or restructure the PJM MMU as described in its proposed strategic review issued April 2, 2007. The Complainants have also asked PJM to ensure that the *status quo* remains in place until OPSI, your Commission and other interested parties have had an adequate opportunity to review PJM's actions. OPSI has also asked PJM to communicate directly to the PJM Market Monitoring unit its intention to maintain the *status quo* so that the unit

can remain functional and effective while this issue is being investigated, both by the independent counsel retained by the PJM Board of Managers and by your Commission. On April 13, 2007, OPSI received a response from Mr. Philip Harris, PJM President and CEO, stating that he preferred that such issues be discussed in person or by telephone instead of by letter, denying that PJM had made any proposal to eliminate the PJM MMU, and stating that executive managers had met with PJM MMU personnel in order to “encourage them to maintain focus on the task at hand”<sup>6</sup>.

The Complainants do not believe that this matter can be resolved through the Commission’s Enforcement Hotline, Dispute Resolution Service, tariff based dispute resolution mechanisms or informal dispute resolution procedures.

## **VI. CURRENT PROCEEDINGS**

A complaint that addresses some of the subject matter of this Complaint was filed on April 17, 2006, against PJM entitled *Complaint of 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 The 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; PJM Industrial Customer Coalition; Southern Maryland Electric*

---

<sup>6</sup> Both the April 12<sup>th</sup> OPSI letter to Mr. Harris, and Mr. Harris’s April 13<sup>th</sup> response are attached at the Appendix.

*Cooperative, Inc.; State of Delaware, Division of The Public Advocate For A Show Cause Order, On a Fast Track Basis And Request For Shortened Response Time.* This filing was docketed by your Commission at EL07-56-000.

## **VII. COMPLAINT**

### **A. FACTS AND ACTIONS IN VIOLATION OF APPLICABLE STATUTORY STANDARDS AND REGULATORY REQUIREMENTS**

The Complainants allege that PJM has violated Attachment M of its Open Access Transmission Tariff (“Market Monitoring Plan”) by:

1. Asserting and exercising editorial control over PJM MMU statements, reports and publications with regard to matters solely within the expertise, professional judgment and responsibility of the PJM MMU.
2. Asserting and exercising control over staffing and information resources needed by the PJM MMU to carry out its core functions so as to deny the PJM MMU access to necessary resources.
3. Failing or refusing to fill authorized but vacant positions.
4. Undermining the MMU by representing to existing employees that the MMU would soon be disbanded by PJM and that, unless MMU employees quickly sought transfers to PJM positions outside the MMU, future employment could not be guaranteed.
5. Seeking to prevent the Market Monitor and the MMU from furnishing information to State Commissions and seeking to represent the opinions of senior PJM management as those of the PJM MMU or Market Monitor.

## 1. BACKGROUND

PJM filed its initial market monitoring plan (“1998 MMU Plan”) on June 29, 1998 in Docket ER98-3527 in response to Ordering Paragraph V of your Commission’s 1997 decision, *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997), setting forth the fundamental requirements for PJM to become an Independent System Operator (“ISO”). The 1997 order stressed the vital importance of market monitor independence from the outset. Your Commission directed the filing of a market monitoring plan that is substantially similar to Attachment M to PJM’s current Open Access Transmission Tariff:

### X. Monitoring Plan

PJM restructuring will significantly alter the operation of the electric power market within PJM and will implement a novel congestion pricing approach. The Commission is accepting this proposal but believes it is important to monitor its implementation to assess undue discrimination and market operation. A monitoring function will allow an evaluation of how the pool and non-pool markets and transmission pricing arrangements are working. Accordingly, within 90 days after issuance of this order, PJM-OI shall consult with the Commission Staff and submit to the Commission a proposed plan addressing the scope and informational requirements of the monitoring effort.

The Commission expects the PJM-OI to monitor and report on issues related to the determination of congestion costs and the potential to exercise market power within PJM. The plan should evaluate the operation of both pool and bilateral markets to detect either design flaws or structural problems that may need to be addressed in future filings. The plan should also evaluate any proposed enforcement mechanisms that are necessary to assure compliance with pool rules. Most importantly, the plan must ensure that the monitoring program will be conducted in an independent and objective manner. We may provide further guidance about monitoring when we address the pending requests for market-based pricing for sales through the Power Exchange.

*Pennsylvania-New Jersey-Maryland Interconnection*, at pp. 88-89.

PJM's 1998 MMU plan was approved by your Commission in *PJM Interconnection, L.L.C.*, 86 FERC 61,247 (1999). In that order, your Commission stressed:

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:

[T]he PJM 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, PJM Manuals, and the PJM Regional Practices document. [footnote omitted] 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.

*PJM Interconnection, L.L.C.*, 86 FERC 61,247 (1999) at p. 2 (1999).

On May 27, 2005, your Commission issued a general policy statement on market monitoring units, *Policy Statement on Market Monitoring Units*, 111 FERC ¶ 61,267 (2005). The Policy Statement was designed to clarify that your Commission (and not RTOs or their market monitoring units) has general enforcement authority with respect to statutes, rules and tariffs under the Commission's jurisdiction.

Therein, your Commission recites what it views as the core functions of RTO market monitors:

In order to achieve the stated purpose of enhancing the competitive structure of the ISO/RTO markets, MMUs perform several valuable tasks:

- To identify ineffective market rules and tariff provisions and recommend proposed rule and tariff changes to the ISO/RTO that promote wholesale competition and efficient market behavior.
- To review and report on the performance of wholesale markets in achieving customer benefits.
- To provide support to the ISO/RTO in the administration of Commission-approved tariff provisions related to markets administered by the ISO/RTO (e.g., day-ahead and real-time markets).
- To identify instances in which a market participant's behavior may require investigation and evaluation to determine whether a tariff violation has occurred, or may be a potential Market Behavior Rule violation, and immediately notify appropriate Commission staff for possible investigation.

*Market Monitoring in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267 (2005) at P. 2.

Moreover, your Commission has clearly stated on numerous occasions that the Market Monitor and MMU is required to exercise judgment and expertise independently from that of the RTO and is required to independently review and critique the operation of the market and barriers to competitiveness:

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.

*Id* at P. 7.

It is self-evident that the MMU cannot be “proactive in recommending changes to the ISO/RTO” if the RTO management treats the MMU as a mere employee subordinate to its own corporate objectives and market design policies. Nor can the advice of an mere employee whose opinion and expertise are treated as subordinate to PJM management objectives be considered to be independent or objective. If RTO senior management seeks to compel the MMU to conform its expert opinions and findings to the preconceived views of the RTO, it has violated the standard of independence required by tariff.

Another core duty of the MMU is to provide its independent expert and unbiased views on the state of the market to your Commission, State Commissions and market stakeholders:

The MMU should monitor and regularly report on performance and structure of the electricity market within the ISO/RTO region.

*Id* at P. 7.

It would not be possible for your Commission, the Complainants or market stakeholders to rely upon the reports of the RTO MMU if they simply parrot the opinions of RTO management.

On March 31, 2006, PJM filed proposed tariff changes to Attachment M of the PJM OATT, assertedly in response to the above statement of policy, which were docketed at ER06-826-000. According to PJM's filing in that proceeding, the proposed changes were designed to: (1) conform the MMU protocols to the Commission's Policy Statement on Market Monitoring ("Policy Statement")<sup>7</sup>; (2) better delineate the MMU's role in the development of specific recommendations for improvement of PJM's market design; and (3) implement various clarifications to reflect PJM practices and update certain provisions.<sup>8</sup> PJM requested that the proposed changes become effective July 17, 2006.

In that proceeding, OPSI advocated the need for a number of modifications to PJM's Market Monitoring Plan in order to afford the PJM MMU greater independence from senior PJM management, including, but not limited to the adoption of a provision that the MMU report directly to the PJM Board of Managers.

On July 14, 2006, the Commission issued an Order in Docket ER06-826-000 that generally accepted PJM's filing in that matter on the grounds that OPSI's MMU independence issues were outside of the scope of the proceeding, stating:

Protestors whose [sic] seek changes regarding the independence of the MMU and its reporting obligations are making recommendations that are not raised in this filing and are therefore beyond the scope of this proceeding. We see no reason to institute a section 206 proceeding to address matters that are more global than the issues properly before us.<sup>9</sup>

---

<sup>7</sup> *Market Monitoring in Regional Transmission Organizations and Independent System Operators, Policy Statement on Market Monitoring Units*, 111 FERC ¶ 61,267 (2005).

<sup>8</sup> References to "Filing Letter" in this Complaint refer to PJM's original filing letter in ER06-826 dated March 31, 2006. Filing Letter at 1.

<sup>9</sup> July 14 Order, at 9.

*PJM Interconnection*, 116 FERC ¶61,038, at P. 35 (2006)

Several parties, including OPSI, sought rehearing of the July 14 Order. By Order issued December 5, 2006, the Commission denied all rehearing requests but stated its intention to initiate a broad review of its Market Monitoring policies by conducting a Commission technical conference. *PJM Interconnection, L.L.C.*, 117 FERC ¶61,263 (2006), (December 5 Order), at P. 1.

Regarding MMU independence, the December 5 Order stated:

Further, we find that the requests made by OPSI, the PA PUC, and Indicated Parties for the Commission to initiate a section 206 proceeding are not supported by the record. In the July Order we found that the parties had not shown PJM's tariff to be unjust and unreasonable and unduly discriminatory. We reaffirm our ruling that the record in this docket does not establish a basis for initiating a section 206 proceeding. Specifically, the parties have failed to offer sufficient evidence to support their concerns that the MMU lacks adequate independence and authority to carry out its responsibilities and, thus, these parties have failed to meet their burden of proof under section 206.<sup>10</sup>

*Id* at P. 18.

However, the Commission recognized and acknowledged the widespread expressions of concern that there was a need to bolster MMU independence:

However, the Commission has received many comments in this proceeding about the need to safeguard and advance the independence of the MMU and the importance of assuring transparency and clarity to its functions. In addition, all the parties on rehearing argue that the PJM tariff should contain a clear statement of the MMU's independence, and that it should include all rules relevant to the responsibilities and functions of the MMU, possibly modeled upon the MISO tariff. These issues are of a

---

<sup>10</sup> December 5 Order at 6.

generic nature, and are not necessarily limited to the MMU within any one RTO or independent system operator (ISO).

*Id* at P. 19

Further, the comments received in this docket, while originating from PJM's filing to comply with the Policy Statement, indicate that entities who are regularly involved with or affected by the functions of MMUs are concerned about a range of issues and policies arising from the functions of MMUs. Therefore, the Commission intends to initiate a review of its MMU policies and hold a Commission technical conference, currently planned for early next year, to explore these and other generic issues.

*Id* at P. 6 – 7.

## **2. THE APRIL 5, 2007 MARKET MONITORING TECHNICAL CONFERENCE**

Your Commission subsequently scheduled a generic MMU technical conference for April 5, 2007. Part of the evidence supporting this complaint was provided as testimony during that technical conference.

On March 8, 2007, the PJM MMU released its *2006 State of the Market Report* (for the preceding calendar year) containing an extraordinary declaration amounting to a statement that it lacks sufficient independence necessary to fully carry out its duties.

Based on the experience of the MMU during its eighth year and its analysis of the PJM Markets, the MMU recognizes the need to continue to make the market monitoring function independent, well-organized, well-defined, clear to market participants and consistent with the policy of the FERC. The MMU recommends that the Market Monitoring Plan be modified consistent with these objectives.

PJM Market Monitoring Unit *2006 State of the Market Report*, at 8.

On April 2, 2007, senior PJM management released its *2007 Strategic Report*. This report had been in preparation by senior PJM management, assertedly at the request of the PJM Board of Managers, since August 2006. Although PJM had requested responses to an October 6, 2006 questionnaire during the PJM senior management's process leading to the development of the *2007 Strategic Report*, it refused repeated requests by OPSI and other market participants to make the questionnaire responses public until issuance of the report. According to PJM's current schedule, comments on the *2007 Strategic Report* are due on April 24, 2007, and will be the subject of discussion at the May 2, 2007 PJM Members Committee meeting. In no sense is the *2007 Strategic Report* a "stakeholder document", nor has it been formally approved by the PJM Board of Managers; it represents nothing more at this point than a statement of the views of PJM senior management.

The *2007 Strategic Report* contains a number of broad recommendations, the most pertinent to this Complaint being those relating to the PJM Market Monitor:

[Q]uestions have been raised about the independence of the MMU in its current form as an internal division of PJM. This requires PJM to continue to evaluate the appropriate structures for ensuring the independence of the MMU, including examining the development of an external monitoring function. With respect to market monitoring and mitigation, the Report calls for PJM to:

- Commission an evaluation of industry best practices for the definition of market power, methods for identifying market power abuse, the philosophies and approaches to price mitigation and the degree of information transparency, to be used as the starting point in establishing definitional criteria in the PJM tariff;

- Commission a review of the qualifications of independent external consultants to perform PJM's 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 functions.

*PJM 2007 Strategic Report*, at 7.

Regardless of the *Strategic Report's* call to "continue to evaluate" and "commission an evaluation" of the PJM MMU, it is apparent that senior PJM management may have already decided to eliminate the internal Market Monitoring Unit, and has already taken initial steps to execute that decision.

At the April 5, 2007 Technical Conference, held in connection with Commission Docket No. AD07-8, the PJM Market Monitor testified that senior PJM management had been and was continuing to take actions that interfere with MMU independence and operations:

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 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.

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. 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.

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.

Prepared Statement of Joseph E. Bowring, PJM Market Monitor at April 5, 2007  
Technical Conference, *Review of Market Monitoring Policies*, Docket No. AD07-8-000  
(April 5, 2007)

During the Technical Conference, Mr. Bowring amplified his written statement.

At Tr. 75 – 76<sup>11</sup>, Mr. Bowring testified:

[M]y experience at PJM is that we have not been permitted to be independent and there have been -- we've seen significant issues with conflicts with PJM, and where there were conflicts, our independence has at times -- not all the time, obviously -- but has, at times, been compromised.

PJM views us primarily as employees, as employees who are responsible to management, rather than being responsible to provide our independent views.

And just again, so you are aware, I believe the independence, in fact, the very viability of the PJM Market Monitoring Unit, has reached significant proportions at PJM. We were informed last week by PJM management, that in order to assure independence, the market monitoring function would best be provided by an external consultant, rather than the current Market Monitoring Unit.

At the meeting, my employees were told that there were other jobs in the organization for which they were qualified and could apply for. I was also told that our database, which is central to meeting our tariff obligations, would be removed from the Market Monitoring Unit's control.

This has had, to say the least, a negative impact on morale at the Market Monitoring Unit, although we're continue, I and my staff are continuing to do our work.

Mr. Bowring further indicated that it was of significant concern to him that the operations of the PJM Market Monitoring Unit, which he heads, not be degraded by senior PJM management's initiation of a "Strategic Review" of the PJM market monitoring function:

The first thing is to ensure the maintaining of the current structure during the discussion period. And the problem is that, based on PJM's strategic report, there's going to be a discussion period, although we've been told that management has a particular view about that.

---

<sup>11</sup> All transcript references that follow are from the April 5, 2007 Technical Conference hearing in *Review of Market Monitoring Policies*, Docket No. AD07-8-000.

But during the discussion period, it's critical that the resources be maintained for the market monitoring unit; that employees not be recruited away; and that we continue to be able to maintain our effectiveness.

In addition, unless there is a reason not to, I would think that the same staff be given the opportunity to be in whatever the new structure of the market monitoring unit turned out to be.

I mean, I think that the staff of the market monitoring unit in PJM has been doing excellent work for a number of years, but what makes sense, is to have a stable transition that everyone understands, rather than a process where the market monitoring unit and their staff feel that they're being attacked and subject to, really, an unacceptable degree of uncertainty.

Tr. 96 – 97.

Mr. Bowring's testimony suggested that part of the problem is a breakdown in personal relationships between PJM senior management and the PJM Market Monitor.

I wo[u]ld just add that in addition, things worked pretty well at PJM for the first three or four years I was there as well. I think it highlights an issue that someone else had raised, which is ultimately there have to be institutions to protect independence, regardless of whether everyone is getting along well or not. It shouldn't ultimately depend on personal relationships. It has to ultimately depend on institutions that can provide a framework for those.

Tr. 112.

**B. PJM's ACTIONS ALLEGED CONSTITUTE VIOLATIONS OF THE FEDERAL POWER ACT, THE RULES AND ORDERS OF YOUR COMMISSION AND THE PJM OPEN ACCESS TRANSMISSION TARIFF AND ORDER 2000**

The senior PJM management actions alleged by Mr. Bowring, if substantiated, are seemingly directed at a *de facto* elimination of the existing PJM market monitoring unit in advance of any stakeholder comment, PJM Members Committee endorsement, PJM Board of Managers vote, tariff filing or approval by your Commission of a tariff amendment embodying such a change. While such efforts to establish a *fait accompli*

may be sound tactically, they violate PJM's existing OATT, Attachment M. Section I of the Market Monitoring Plan states:

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.

*Market Monitoring Plan*, Section V, Subsections A – D state:

**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.

It is now evident that a reporting relationship that makes the MMU accountable to both the President of PJM and the PJM Board of Managers is problematic, given that one of the primary functions of the MMU, as specified in Section III.B of Attachment M, is to monitor for “actual or potential design flaws in the PJM Market.” It is senior PJM management, and ultimately, the PJM’s President and Board, subject to your Commission's approval, who are responsible for the design of the PJM markets and any flaws that may be inherent in that design. It would require a high degree of objectivity for PJM to accept criticism of its initiatives and objectives with equanimity. Available evidence indicates that senior PJM management may not have displayed such an attribute.

Complainants are particularly concerned by the suggestion that senior PJM management intends to remove the PJM MMU’s extensive market information database from the MMU. There can be no legitimate reason for such an action, which would cripple the MMU and could not be employed by PJM to replicate the market monitoring functions of the MMU.

Senior PJM management’s alleged actions are illuminated in the testimony of Audrey Zibelman, PJM Executive Vice President and Chief Operating Officer, who also appeared at the April 5, 2007 Technical Conference. Her prepared statement asserted:

Drilling down one level deeper, there appear to be two different approaches---an approach used in PJM up to this point in which, using a three pivotal

supplier analysis, the market or a subset of the market is deemed in that hour to be “structurally” noncompetitive as contrasted with a more outcome-based approach used in MISO, New York and New England, which focuses on both suppliers’ actions and their specific impact on the market including whether that impact is within or outside a zone of reasonable prices.

In order to move the ball forward, in its recently released Strategic Report, issued this week, PJM has indicated its intent to commission an evaluation of key definitions in this area with the goal of engaging in a member dialogue to define the terms for PJM so that they may ultimately be included in the PJM tariff. PJM will further examine other models of market mitigation, including those employed by ERCOT and other RTOs and ISOs with organized wholesale markets.

As has been noted above, the *2007 Strategic Report*, referred to in Ms. Zibelman’s prepared testimony, is a PJM-initiated and controlled document, not a stakeholder driven process. Although stakeholders have been invited to comment on the report, that comment period has not expired (initial comments are due April 24, 2007 – see Attachments 3, 4 and 5 to this Complaint). After that, PJM proposes to bring the report to the PJM Members Committee meeting on May 2, 2007 and thereafter discuss it with the PJM Board of Managers, which will presumably act thereafter to adopt some, all or none of the report. However, PJM senior management may not have waited for the stakeholders and the PJM Board of Managers to weigh in. Instead, Mr. Bowring’s testimony alleges facts that indicate that PJM Senior Management may have “jumped the gun” and are acting on their own proposals *now*.

In essence, senior PJM management, whether mistakenly or not, may believe that the PJM MMU is using market power screens that are too restrictive (i.e. result in over-mitigation of generation bids). Whether or not senior PJM management has a sufficient basis to justify forming such an opinion is open to question and inquiry.

However, regardless of the merits of this policy disagreement, senior PJM management should not act unilaterally to dismantle the independent market monitoring unit that exists as an integral part of the tariffs that have created PJM as a regional transmission organization.

Based upon the information available to the Complainants, senior PJM management may be seeking to change the “facts on the ground” by preemptively altering the structure and interfering with the independence of the PJM MMU, and by commandeering its key employees and data with the goal of eventually outsourcing the unit altogether. It is not unlawful for PJM to seek such an objective by making an appropriate filing with the Commission, but it *is unlawful for PJM management to attempt to achieve such a result unilaterally, without consultation with its stakeholders, without approval of its Board of Managers and without authorization by your Commission.*

PJM’s alleged actions with regard to its Market Monitor and MMU resources and personnel imperil the core functions and responsibilities of the PJM MMU and constitute violations of *Order 2000*<sup>12</sup> and the regulations promulgated thereunder<sup>13</sup>, the Orders of

---

<sup>12</sup> “[T]he 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

your Commission approving PJM's application for RTO status, and the PJM Open Access Transmission Tariff, Attachment M, as amended, and constitute inadequate and insufficient interstate service, all of the foregoing constituting inadequate interstate service and contrary to Section 207 of the Federal Power Act. 16 U.S.C. § 824f.

---

operates and administers also must be filed with the Commission and affected regulatory authorities. In developing its market monitoring plan, the RTO should identify the markets that will be monitored, i.e., transmission, ancillary services or any other market it may develop (e.g., congestion management). With regard to those markets, the monitoring plan should examine the structure of the market, compliance with market rules, behavior of individual market participants and the market as a whole, and market power and market power abuses. The monitoring plan should also address how information will be used and reported. The monitoring plan should indicate whether the RTO will only identify problems and/or abuses or whether it also will propose solutions to such problems....With regard to the reporting of market monitoring information, the monitoring plan should indicate the types and frequency of reports that will be made and to whom the reports will be sent. Under the FPA, the Commission has the primary responsibility to ensure that regional wholesale electricity markets served by RTOs operate without market power. An appropriate market monitoring plan must provide an objective basis to observe markets and, if appropriate, provide reports and/or market analyses. Market monitoring also will be a useful tool to provide information that can be used to assess market performance. This information will be beneficial to many parties in government as well as to power market participants. This includes state commissions that protect the interests of retail consumers, especially where they are overseeing the development of a competitive electric retail market.

*Order 2000, 89 FERC ¶ 61,285, at p.463— 465.*

<sup>13</sup> 18 CFR § 35.36 (k) (6):

*Market monitoring.* To ensure that the Regional Transmission Organization provides reliable, efficient and not unduly discriminatory transmission service, the Regional Transmission Organization must provide for objective monitoring of markets it operates or administers to identify market design flaws, market power abuses and opportunities for efficiency improvements, and propose appropriate actions. As part of its demonstration with respect to market monitoring, the Regional Transmission Organization must satisfy the standards listed in paragraphs (k)(6)(i) through (k)(6)(iii) of this section, or demonstrate that an alternative proposal is consistent with or superior to satisfying such standards.

(i) Market monitoring must include monitoring the behavior of market participants in the region, including transmission owners other than the Regional Transmission Organization, if any, to determine if their actions hinder the Regional Transmission Organization in providing reliable, efficient and not unduly discriminatory transmission service.

(ii) With respect to markets the Regional Transmission Organization operates or administers, there must be a periodic assessment of how behavior in markets operated by others ( e.g., bilateral power sales markets and power markets operated by unaffiliated power exchanges) affects Regional Transmission Organization operations and how Regional Transmission Organization operations affect the efficiency of power markets operated by others.

(iii) Reports on opportunities for efficiency improvement, market power abuses and market design flaws must be filed with the Commission and affected regulatory authorities.

## VIII. SPECIFIC RELIEF REQUESTED

### A. Interim Relief

The Complainants ask for the following interim relief to prevent impairment of the PJM MMU or its ability to perform its functional responsibilities, and to avoid grave and irreparable harm that would occur from a loss of or reduction in the capabilities and responsibilities of the PJM MMU, or impairment of its personnel and resources, including undetected and unrestrained exercises of market power in the PJM markets and loss of public and stakeholder confidence in the justness and reasonableness of the outcomes of such markets:

1. Immediately set this Complaint for Hearing.
2. Direct PJM to return the PJM Market Monitoring Unit to the *status quo ante* as of July 1, 2006, with respect to personnel, functional responsibilities, databases, information and other resources, staffing levels and access to PJM data and personnel, and further, direct PJM to take no action to modify such status without a full informational or tariff filing, with opportunity for public comment and order of the Commission.
- 2) Cease and desist from threatening to take or taking any action to interfere with the employment or independent judgment and monitoring duties of the MMU and its market monitor.
- 3) Cease and desist from removing, retaining or exercising control over any and all data or information systems utilized by the PJM MMU in the exercise of its duties or to relinquish such control if it has already done so.
- 4) Cease and desist from and disavow any action or communication that suggests that MMU staff will be penalized for declining to leave the MMU for another position within PJM or elsewhere and to communicate that disavowal directly and unambiguously to existing and future MMU personnel.
- 5) Immediately authorize the filling of vacant positions and any new positions created within the PJM market monitoring unit.

- 6) Refrain from taking any action to restrict or exercise editorial control over reports, issuances or communications by the MMU made to market participants, your Commission, state commissions or the public pursuant to the existing market monitoring plan.

#### B. Permanent Relief

The Organization of PJM States asks that your Commission initiate a full investigation of alleged and potential violations of the PJM Market Monitoring Plan and restore the *status quo ante* by directing PJM to permanently:

- 7) Cease and desist from threatening to take or taking any action to interfere with the employment or independent judgment and monitoring duties of the MMU and its market monitor.
- 8) Cease and desist from removing, retaining or exercising control over any and all data or information systems utilized by the PJM MMU in the exercise of its duties or to relinquish such control if it has already done so.
- 9) Cease and desist from and disavow any action or communication that suggests that MMU staff will be penalized for declining to leave the MMU for another position within PJM or elsewhere and to communicate that disavowal directly and unambiguously to existing and future MMU personnel.
- 10) Immediately authorize the filling of vacant positions and any new positions created within the PJM market monitoring unit.
- 11) Refrain from taking any action to restrict or exercise editorial control over reports, issuances or communications by the MMU made to market participants, your Commission, State Commissions or the public pursuant to the existing market monitoring plan.

If your Commission determines that it does not have the necessary legal authority to directly remedy such violations by order, the Complainants move that your Commission find that PJM is no longer in compliance with the terms of its Open Access Transmission Tariff and the Commission's orders designating it as an RTO. Your Commission should then issue an order revoking or suspending PJM's status as an RTO

until such time as PJM has fully remedied the conditions at issue in accordance with the terms of its tariff and your Commission's orders<sup>14</sup>.

In addition, the Complainants request that your Commission find that the existing PJM Market Monitoring Plan is inadequate to protect the future independence and effectiveness of the MMU, and is therefore not just and reasonable, and direct that the Commission direct that the Market Monitoring Plan be modified as follows (in the alternative):

12. Convene a Joint Federal State Board under Section 209 of the Federal Power Act, 16 USC 824h, to supervise the PJM MMU; or,
13. Direct PJM to file amendments to its Market Monitoring Plan to remove the PJM Market Monitoring Unit and its personnel from direct or indirect supervision by any officer or employee of PJM, requiring instead that the MMU be supervised directly by the PJM Board of Managers, and to mandate that any action by the Board of Managers regarding the discipline or discharge of MMU personnel be the subject of formal notice to and review by the Commission.

Complainants submit that your Commission should consider two alternative reporting structures:

---

<sup>14</sup> *California ISO v. FERC*, 372 F3d 395 at 404 (2004) strongly suggests that this is the primary tool available to your Commission when addressing structural deficiencies in RTO organization and structure:

If FERC concludes that CAISO lacks the independence or other necessary attributes to constitute an ISO for purposes of Order No. 888, then it need not approve CAISO as an ISO. ISO membership is not an end in itself; it is merely a method jurisdictional entities can use to comply with Order No. 888's mandate for those entities to file nondiscriminatory open access tariffs. Neither Order No. 888 nor the Commission decision we reviewed in *TAPS* requires participation in ISOs. We reminded FERC in an earlier case concerning ISOs that no matter how important the principle of ISO independence is to the Commission, "Order No. 888 is merely a regulation,"

***Alternative 1: MMU Reports to Joint Federal-State Board.***

The MMU should be responsible to a Federal-State Joint Board (“Joint Board”) on Market Monitoring and Enforcement. The Joint Board should consist of at least one FERC commissioner and a commissioner from each state in the RTO “footprint.” The Joint Board on Market Monitoring and Enforcement would supplant the role of the PJM Board as regards the accountability of the MMU. Upon reviewing recommendations from the MMU, the Joint Board would submit proposals as needed to FERC regarding how to better ensure and promote a competitive marketplace. At least once annually, the Joint Board, based on input from the MMU, should file with FERC a recommendation and proposal on how to better improve the operations and efficacy of PJM market operations and the MMU. The Joint Board’s annual operations improvements recommendation would be subject to FERC’s approval.

In support of its recommendation to establish a Joint Board, OPSI notes that both the states and the federal government share a common goal to ensure that PJM-operated generation markets operate effectively and that both stakeholders and the public have solid confidence in the fairness and efficacy of the PJM wholesale market.

End-user customers ultimately pay for generation and transmission services. Since retail service is subject to state jurisdiction, it is appropriate that the states should share an active role in broad MMU oversight. OPSI also observes that the Joint Board construct is not an uncommon federal-state relationship in those instances where both jurisdictions possess common interests in policies that significantly affect customers in both jurisdictions. For example, the Federal Communications Commission has established

Federal-State Joint Boards on the issues of universal service and separations of common costs between the two jurisdictions. These collaborations have enhanced relations between jurisdictions and have resulted in better decisions.

***Alternative 2: MMU Reports to Board of Managers***

The MMU, instead of reporting jointly to the PJM President and Board, would instead report directly to the PJM Board, or a subcommittee of the Board that does not include any member of PJM senior management, provided that budget, retention and discipline of personnel would be the subject of required notice to and approval by your Commission.

A necessary feature of a functionally independent MMU is a Market Monitor who is impervious to external influence and is protected from arbitrary removal from his or her position. As head of the MMU, the Market Monitor directs the work of the unit and publicly represents that work product to PJM, various PJM stakeholders, and the Commission and State Commissions. Conscientious market monitoring activities will inevitably generate MMU work product and actions that are at odds with the interests of any number of these parties. Without adequate job security, the Market Monitor would be exposed to efforts to circumscribe MMU activities or to achieve his or her removal. This potential has a chilling effect upon the quality of the MMU's work product, notwithstanding the implementation of other positive measures designed to impart genuine independence to the unit.

Specifically, termination of the Market Monitor or MMU personnel should only occur for demonstrable just cause: that is, a substantial failure to execute monitoring,

enforcement or reporting responsibilities specified in the PJM tariff. Accordingly, it is recommended that the Market Monitoring Plan be modified to afford the market monitor be afforded necessary job security by directing that PJM:

14. Revise the existing Market Monitoring Plan to provide that neither the Market Monitor, nor MMU personnel may be disciplined or discharged without just cause.
15. Revise the existing Market Monitoring Plan to require PJM to report in detail to the Commission and State Agencies when and why it fails or refuses to follow the recommendation of the MMU with regard to any existing or proposed aspect of the MMU structure or operation, the existing or proposed design or operation of the transmission facilities operated by PJM, the behavior or actions of any market participant or any aspect of PJM markets, either existing or proposed.
16. Revise the existing Market Monitoring Plan to restore the obligation of the MMU to provide reports to State Commissions with respect to PJM wholesale market issues.

A reporting relationship that makes the MMU's employment and resources subject to the oversight of the PJM President cannot provide the MMU with the requisite degree of independence from PJM that is needed for the MMU to thoroughly and effectively monitor and report on the performance of senior PJM management and of the competitiveness of PJM market operations in general.

In order to ensure that the MMU is insulated from pressure by senior PJM management, PJM members, or other parties with an interest in the direction or outcome of the MMU's work, the MMU staff should report directly and exclusively to the Market Monitor. Additionally, all human resource decision-making authority applicable to the unit, including the hiring, termination, and promotion of MMU staff, should reside with the Market Monitor. Such organizational structure would facilitate an efficient,

unencumbered execution of the MMU's responsibilities and enhance the accountability of the Market Monitor.

Further, the PJM MMU should have the option of being represented by separate legal counsel from that used by PJM. The Market Monitoring Plan should be modified to allow the MMU to select and employ separate counsel. OPSI notes that, in the case of the Midwest ISO, the tariff provides that, "The IMM may consult legal counsel for advice on antitrust, regulatory or other legal issues pertinent to this Plan."<sup>15</sup>

The MMU should have explicit authority to file comments and testimony in any proceeding before the Commission, or at any State Commission, without being required to obtain prior approval from PJM management.

The Market Monitoring Plan should also be modified so as to not impair important communications by the MMU to the Commission, and to permit the MMU to make formal filings or engage in formal communications with the Commission on any matter touching on competitive markets or market design.

The Market Monitoring Plan should be modified to provide the PJM MMU with specifically stated authority to monitor the conduct of PJM as system and market operator. Similarly, the MMU's role in crafting PJM Market Rules should not be overly constrained, and the MMU should be authorized to advocate and formally or informally propose changes to PJM market rules which, in the opinion of the MMU, are necessary to

---

<sup>15</sup> Section 53.2 of the Midwest ISO's tariff.

improve electric power markets or to remedy specific or structural problems related to such markets.

The extensive data bases and related programs developed by the MMU over the course of a number of years should remain under the exclusive control of the MMU and should not be subject to appropriation by any other organizational unit within PJM. The maintenance of and control over said data bases by the MMU is essential to the ongoing effectiveness of the MMU in executing its specified monitoring activities. The MMU should have the unencumbered ability to collect, synthesize and store data necessary to the execution of its functions and should not be required to rely upon outside sources for this essential element of market monitoring infrastructure.

## CONCLUSION

WHEREFORE, for the facts and reasons appearing in this Complaint, the Complainants respectfully request that the Commission to:

1. Immediately open a hearing and investigation on this Complaint, providing full right of discovery and opportunity to establish a record thereon.
2. Provide interim relief in the form of an Order to PJM to return the MMU to the *status quo ante* with respect to funding, organization, staffing and resources pending the resolution of this complaint.
2. Determine on the basis of the record that PJM has violated its Market Monitoring Plan, with respect to MMU independence and that the interstate service of PJM is inadequate or insufficient within the meaning of Section 207 of the Federal Power Act, 16 U.S.C. 824f.
3. Direct PJM to immediately remedy such violations as described above and as yet to be discovered, and to refrain from such violations in the future.
4. Direct PJM to modify its Market Monitoring Plan to modify its tariff as described above

If the Commission finds that it lacks sufficient statutory authority to direct PJM to modify its tariffs in accordance with the requested actions in this Complaint, it is requested that the Commission:

5. Declare that PJM no longer satisfies the requirements of a Regional Transmission Organization and revoke or suspend its status as a Regional Transmission Organization until such time as PJM is in compliance with the rules and orders of the Commission governing MMU independence.

Respectfully Submitted,

s/ John A. Levin

John A. Levin  
Assistant Counsel  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5978  
[johlevin@state.pa.us](mailto:johlevin@state.pa.us)

For the Organization of PJM States, Inc.

s/ William G. Divine

William G. Divine  
General Counsel  
Indiana Utility Regulatory Commission  
302 West Washington Street, Room E306  
Indianapolis, IN 46204  
317-232-6735  
[bdivine@urc.in.gov](mailto:bdivine@urc.in.gov)

For the Indiana Utility Regulatory  
Commission

s/ Miles M. Mitchell, Esq.

Miles M. Mitchell, Esq.  
Acting General Counsel  
Public Service Commission of Maryland  
6 Saint Paul Street  
Baltimore, Maryland 21202-6806  
(410) 767-8038  
[mmitchell@psc.state.md.us](mailto:mmitchell@psc.state.md.us)

For the Public Service Commission of  
Maryland

s/ Agnes A. Yates

Agnes A. Yates, Chair  
District of Columbia Public Service  
Commission  
1333 H Street, N.W.  
Washington, D.C. 20005  
(202) 626-5115  
Email: [ayates@psc.dc.gov](mailto:ayates@psc.dc.gov)

For the District of Columbia Public Service  
Commission

s/ Richard W. Bertelson, III

Richard W. Bertelson, III  
Staff Attorney II  
Kentucky Public Service Commission  
211 Sower Boulevard, Post Office Box 615  
Frankfort, KY 40602-0615  
502-564-3940  
[Rick.bertelson@ky.gov](mailto:Rick.bertelson@ky.gov)

David S. Sanford  
General Counsel  
502-564-3940  
[david.samford@ky.gov](mailto:david.samford@ky.gov)

For the Kentucky Public Service  
Commission

s/ Louis S. Watson, Jr.

Louis S. Watson, Jr.  
Staff Attorney  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325  
[swatson@ncuc.net](mailto:swatson@ncuc.net)

For the North Carolina Utilities  
Commission

s/ John A. Levin

John A. Levin  
Assistant Counsel  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5978  
[johlevin@state.pa.us](mailto:johlevin@state.pa.us)

For the Pennsylvania Public Utility  
Commission

s/ William H. Chambliss

William H. Chambliss  
General Counsel  
Virginia State Corporation Commission  
P.O. Box 1197  
Richmond, Virginia 23218-1197  
804-371-9671  
[William.Chambliss@scc.virginia.gov](mailto:William.Chambliss@scc.virginia.gov)

For the Virginia State Corporation  
Commission

s/ Susan J. Vercheak

Susan J. Vercheak  
Deputy Attorney General  
New Jersey Board of Public Utilities  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07101  
(973) 648-3510  
Email: [susan.vercheak@dol.lps.state.nj.us](mailto:susan.vercheak@dol.lps.state.nj.us)

Margaret Comes  
Deputy Attorney General  
973-648-4726  
[margaret.comes@dol.lps.state.nj.us](mailto:margaret.comes@dol.lps.state.nj.us)

Elise W. Goldblat,  
Senior Deputy Attorney General  
973-648-3709  
[elise.goldblat@dol.lps.state.nj.us](mailto:elise.goldblat@dol.lps.state.nj.us)

For the New Jersey Board of Public  
Utilities

Dated: April 23, 2007

## SUPPORTING DOCUMENTS

1. Current PJM Open Access Transmission Tariff, Attachment M (“Market Monitoring Plan”).
2. Excerpts, PJM 2006 State of the Market Report (issued March 8, 2007)
3. Excerpts, PJM 2007 Strategic Report (issued April 2, 2007)
4. Memorandum from Phil Harris to PJM Members Committee re: Annual Meeting General Session (dated March 6, 2007)
5. PJM 2007 Strategic Report Communications Timeline (undated, released April 2, 2007)
6. Letter from OPSI President Mark C. Christie to PJM President Mr. Philip Harris (dated April 12, 2007)
7. Letter from PJM President Mr. Philip Harris to OPSI President Mark C. Christie (dated April 13, 2007), without attachments

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document in accordance with the requirements of Rule 206 (c) of the Commission's Rules of Practice and Procedure.

Dated at Harrisburg, Pennsylvania this 23rd day of April, 2007.

s/ John A. Levin

John A. Levin

Assistant Counsel

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

(717) 787-5978

johlevin@state.pa.us

**1. Current PJM Open Access Transmission Tariff, Attachment M  
("Market Monitoring Plan").**

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.

**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.

Issued By: Craig Glazer  
 Vice President, Federal Government Policy  
 Issued On: April 27, 2006

Effective: July 17, 2006

PJM Interconnection, L.L.C.  
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.

Issued By: Craig Glazer  
Vice President, Federal Government Policy  
Issued On: April 27, 2006

Effective: July 17, 2006

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

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.

Issued By: Craig Glazer  
Vice President, Federal Government Policy  
Issued On: April 27, 2006

Effective: July 17, 2006

PJM Interconnection, L.L.C.  
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

Issued By: Craig Glazer  
Vice President, Federal Government Policy

Effective: July 17, 2006

Issued On: August 14, 2006

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos. ER06-826-000, 001, issued July 14, 2006, 116 FERC ¶ 61,038.

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

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.

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.

Issued By: Craig Glazer  
Vice President, Federal Government Policy

Effective: July 17, 2006

Issued On: August 14, 2006

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos. ER06-826-000, 001, issued July 14, 2006, 116 FERC ¶ 61,038.

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

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.

Issued By: Craig Glazer  
Vice President, Federal Government Policy  
Issued On: April 27, 2006

Effective: July 17, 2006

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

Substitute Third Revised Sheet No. 449  
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

Issued By: Craig Glazer  
Vice President, Federal Government Policy

Effective: July 17, 2006

Issued On: August 14, 2006

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos. ER06-826-000, 001, issued July 14, 2006, 116 FERC ¶ 61,038.

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:

Issued By: Craig Glazer  
 Vice President, Federal Government Policy  
 Issued On: April 27, 2006

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.

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.

Issued By: Craig Glazer  
Vice President, Federal Government Policy  
Issued On: April 27, 2006

Effective: July 17, 2006

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.

Issued By: Craig Glazer  
Vice President, Federal Government Policy  
Issued On: April 27, 2006

Effective: July 17, 2006

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.

Issued By: Craig Glazer  
Vice President, Governmental Policy  
Issued On: March 20, 2003

Effective: March 20, 2003

**2. Excerpts, PJM 2006 State of the Market Report  
(issued March 8, 2007)**

# 2006 State of the Market Report

---

**VOLUME I: INTRODUCTION**

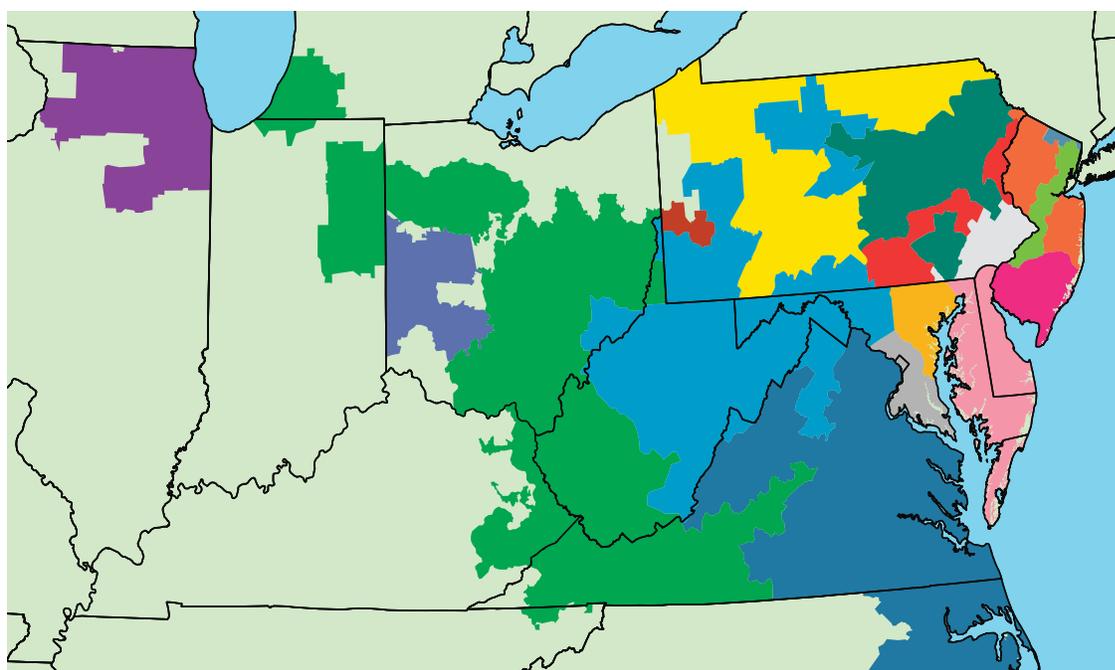
**MARKET MONITORING UNIT  
MARCH 8, 2007**

## INTRODUCTION

The PJM Interconnection, L.L.C. operates a centrally dispatched, competitive wholesale electric power market that in 2006 had average installed generating capacity of 162,571 megawatts (MW) and more than 450 market buyers, sellers and traders of electricity in a region including more than 51 million people in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland,

Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. (See Figure 1-1.)<sup>1</sup> As part of that function, PJM coordinates and directs the operation of the transmission grid and plans transmission expansion improvements to maintain grid reliability in this region.

*Figure 1-1 PJM's footprint and its zones*



### Legend

Allegheny Power Company (AP)	Jersey Central Power and Light Company (JCPL)
American Electric Power Co., Inc. (AEP)	Metropolitan Edison Company (Met-Ed)
Atlantic Electric Company (AECO)	PECO Energy (PECO)
Baltimore Gas and Electric Company (BGE)	PPL Electric Utilities (PPL)
The Commonwealth Edison Company (ComEd)	Pennsylvania Electric Company (PENELEC)
Dayton Power and Light Company (DAY)	Potomac Electric Power Company (PEPCO)
Delmarva Power and Light (DPL)	Public Service Electric and Gas Company (PSEG)
Dominion	Rockland Electric Company (RECO)
Duquesne Light (DLCO)	

<sup>1</sup> See 2006 State of the Market Report, Volume II, Appendix A, "PJM Geography" for maps showing the PJM footprint and its evolution.

## PJM Market Background

PJM operates the Day-Ahead Energy Market, the Real-Time Energy Market, the Daily Capacity Market, the Interval, Monthly and Multimonthly Capacity Markets, the Regulation Market, the Synchronized Reserve Markets and the Annual and monthly Balance of Planning Period Auction Markets in Financial Transmission Rights (FTRs).

PJM introduced energy pricing with cost-based offers and market-clearing nodal prices on April 1, 1998, and market-clearing nodal prices with market-based offers on April 1, 1999. PJM introduced the Daily Capacity Market on January 1, 1999, and the Monthly and Multimonthly Capacity Markets in mid-1999. PJM implemented an auction-based FTR Market on May 1, 1999. PJM implemented the Day-Ahead Energy Market and the Regulation Market on June 1, 2000. PJM modified the regulation market design and added a market in spinning reserve on December 1, 2002. PJM introduced an Auction Revenue Rights (ARR) allocation process and an associated Annual FTR Auction effective June 1, 2003.<sup>2</sup>

Analysis of 2006 market results requires comparison to prior years. During calendar years 2004 and 2005, PJM integrated five new control zones. When making comparisons to 2004 and 2005, the *2006 State of the Market Report* refers to three phases in calendar year 2004 and two phases in 2005 that correspond to those integrations.<sup>3</sup>

Volume I of the *2006 State of the Market Report* is the Introduction. More detailed analysis and results are included in Volume II.

<sup>2</sup> See also *2006 State of the Market Report*, Volume II, Appendix B, "PJM Market Milestones."

<sup>3</sup> Definitions of these phases are included in the *2006 State of the Market Report*, Volume II, Appendix A, "PJM Geography."

## Conclusions

This report assesses the competitiveness of the markets managed by PJM during 2006, including market structure, participant behavior and market performance. This report was prepared by and represents the analysis of PJM's independent Market Monitoring Unit (MMU).

The MMU concludes that in 2006:

- The Energy Market results were competitive;
- The Capacity Market results were competitive;
- The Regulation Market results cannot be determined to have been competitive or to have been noncompetitive;
- The Synchronized Reserve Markets' results were competitive; and
- The FTR Auction Market results were competitive.

## Recommendations

The MMU recommends retention of key market rules, specific enhancements to those rules and implementation of new rules that are required for continued competitive results in PJM markets and for continued improvements in the functioning of PJM markets. The recommendations are for continued action where PJM has already identified areas for improvement and for new action in areas where PJM has not yet identified a plan.

## Continued Action

- Retention and application of the improved local market power mitigation rules to prevent the exercise of local market power in the Energy Market while ensuring appropriate economic signals when investment is required.

PJM introduced a new test for local market power in 2006, the three pivotal supplier test. The three pivotal supplier test, as implemented, is consistent with the United States Federal Energy Regulatory Commission's (FERC's) market power tests, encompassed under the delivered price test. This is a flexible, targeted real-time measure of market structure which replaced the offer capping of all units required to relieve a constraint. The application of the three pivotal supplier test successfully limited offer capping in the Energy Market to situations where the local market structure was noncompetitive and where specific owners had structural market power.

- Retention of the \$1,000 per MWh offer cap in the PJM Energy Market and other rules that limit incentives to exercise market power.

The PJM market design includes a variety of rules that effectively limit the incentive to exercise market power and ensure competitive outcomes. These should be retained and every PJM market rule change should be evaluated for its impact on competitive outcomes.

- Implementation of the rules included in PJM's Reliability Pricing Model (RPM) Tariff to stimulate competition, to provide direct incentives for performance, to provide locational price signals, to provide forward auctions to permit competition from new entrants and to incorporate explicit market power mitigation rules.

Market power remains a serious concern in the PJM Capacity Market based on market structure conditions in this market including high levels of supplier concentration, frequent occurrences of pivotal suppliers, extreme inelasticity of demand and lack of market power mitigation measures under the market design in place during 2006. The RPM capacity market design explicitly provides that competitive prices can reflect local scarcity while not relying on the exercise of market power to achieve the design objective and

explicitly limiting the exercise of market power via the application of the three pivotal supplier test.

- Enhancements to PJM's rules governing operating reserve credits to generators to ensure that credits and corresponding charges to market participants are consistent with incentives for efficient market outcomes and to reduce gaming incentives.

PJM and the MMU have been working with the Reserve Market Working Group to develop a set of market design modifications to implement these goals. The process should be completed and the modifications implemented.

- Continued enhancements to the cost-benefit analysis of congestion and transmission investments to relieve that congestion, especially where that congestion may enhance generator market power and where such investments support competition.

PJM has significantly improved its approach to the cost-benefit analysis of transmission investments. PJM should continue to evaluate critically its approach, particularly as it applies to constraints with large and persistent market impacts. Developing an approach to weighting and evaluating the multiple metrics in the context of actual transmission projects will require substantial effort. New transmission projects and the lack of existing transmission can have significant impacts on the PJM markets and the goal of transmission planning should ultimately be the incorporation of transmission investment decisions into market-driven processes as much as is practicable.

- Continued enhancement of PJM's posting of market data to promote market transparency.

PJM has expanded the types and extent of data posted to the Web for public access. PJM should continue to expand data posting consistent with the goal of improving transparency and stimulating competition.

- Provision of data for external control areas to PJM to enable improved analysis of loop flows in order to enhance the efficiency of PJM markets.

PJM has only limited access to the data required for a complete analysis of loop flow in the Eastern Interconnection. Provision of such data access and completion of the loop flow analysis could significantly enhance the transparency and efficiency of energy markets in both market and non market areas and the efficiency of transactions between market and non market areas. Loop flows have negative impacts on the efficiency of market prices in markets with explicit locational pricing and can be evidence of attempts to game such markets. Loop flows also have poorly understood impacts on non market areas.

- Evaluation of additional actions to increase demand-side responsiveness to price in both Energy and Capacity Markets and of actions to address institutional issues which may inhibit the evolution of demand-side price response.

PJM and the MMU should continue to ensure that market power is not exercised on the demand side of the market. PJM has improved the design of the demand-side resource rules. The principal barriers to the further development of demand-side response are in the interface between wholesale and retail markets. PJM and the MMU should continue their efforts in that area.

- Based on the experience of the MMU during its eighth year and its analysis of the PJM markets, the MMU recognizes the need to continue to make the market monitoring function independent, well-organized, well-defined, clear to market participants and consistent with the policy of the FERC. The MMU recommends that the Market Monitoring Plan be further modified consistent with these objectives.<sup>4</sup>

<sup>4</sup> PJM, OATT, "Attachment M: PJM Market Monitoring Plan," Third Revised Sheet No. 452 (Effective July 17, 2006). Section VII.A. states: "The reports to the PJM Board shall include recommendations as to whether changes to the Market Monitoring Unit or the Plan are required."

## New Action

- Enhancements to PJM's scarcity pricing rules to create stages of scarcity and corresponding stages of locational scarcity pricing in order to ensure competitive prices when scarcity conditions exist in market regions.

The MMU reviewed the summer of 2006 for scarcity conditions and the market prices that resulted. Based on the results, the MMU suggests that PJM's scarcity pricing mechanism be reviewed and modified. The definition of scarcity should include several steps or states of scarcity, each with an associated price, rather than the single step now in the Tariff. Scarcity pricing should include stages, based on system conditions, with progressive impacts on prices. In addition, the actual market signal needs further refinement. Under the current rules, a scarcity pricing event sets prices for all generators in the defined area at the same level, equal to the highest accepted offer within a scarcity pricing region. The single scarcity price signal should be replaced by locational signals.

- Implementation of targeted, flexible real-time market power mitigation in the Regulation Market.

PJM consolidated its Regulation Markets into a single Combined Regulation Market, on a trial basis, effective August 1, 2005. The MMU concludes from the analysis of the 2006 data that the PJM Regulation Market in 2006 was characterized by structural market power in 26 percent of the hours, based on the results of the three pivotal supplier test.<sup>5</sup> The MMU also concludes that PJM's consolidation of its Regulation Markets resulted in improved performance and in increased competition compared to the PJM Mid-Atlantic Regulation

<sup>5</sup> This is the same conclusion reached in the MMU report on the first year of the Combined Regulation Market. See Market Monitoring Unit, "Analysis of the Combined Regulation Market: August 1, 2005 through July 31, 2006" (October 18, 2006) <<http://www.pjm.com/markets/market-monitor/downloads/mmu-reports/20061018-mmu-regulation-market-report.pdf>> (76.1 KB).

Market or the Western Region Regulation Market on a stand-alone basis.<sup>6</sup> The MMU concludes that it would be preferable to retain the existing, experimental single PJM Regulation Market as the long-term market if appropriate mitigation can be implemented. Such mitigation, in the form of the three pivotal supplier test, addresses only the hours in which structural market power exists and therefore provides an incentive for the continued development of competition. While suppliers have not provided data on their cost to regulate, an analysis of the Regulation Market based on the MMU's cost estimates indicates that offers above the competitive level set the clearing prices in about 30 percent of the hours. The combined market results include the effects of the current mitigation mechanism which offer caps the two dominant suppliers in every hour. The MMU also recommends that all suppliers be required to provide cost-based regulation offers, consistent with the practice in the energy market.

- Consistent application of local market power rules to all constraints.

The MMU recommends that the Commission terminate the exemption from offer capping currently applicable to generation resources used to relieve the western, central and eastern reactive limits in the Mid-Atlantic Area Council (MAAC) control zones and the AP South Interface. The MMU recommends that all constraints, including these interfaces, be subject to three pivotal supplier testing as specified in the PJM Amended and Restated Operating Agreement (OA). The exemptions for the identified interfaces are no longer necessary given PJM's dynamic implementation of the three pivotal supplier test based on actual market conditions in real time. It is not necessary to make an *ex ante* decision about the market structure associated with individual interface constraints that applies for an extended period. Prior to the implementation of

the three pivotal supplier test, all units required to resolve a constraint were offer capped. For the identified exempt interfaces, this could have resulted in the offer capping of a large number of units even when the relevant market was structurally competitive. That is no longer the case. Under the current PJM dynamic approach, offer capping will be applied only as necessary and will be applied on a non-discriminatory basis for all units operating for all constraints.

- Consideration by the FERC of ending the exemption from offer capping currently applicable to certain units, if those units exercise local market power.

PJM's offer-capping rules provide that specific units are exempt from offer capping, based on their date of construction. In a January 25, 2005, order, the FERC found "that the exemption for post-1996 units from the offer capping rules is unjust and unreasonable under section 206 of the Federal Power Act and that the just and reasonable practice under section 206 is to terminate the exemption, with provisions to grandfather units for which construction commenced in reliance on the exemption."<sup>7</sup> The FERC noted, however, that grandfathered units would "still be subject to mitigation in the event that PJM or its market monitor concludes that these units exercise significant market power."<sup>8</sup> A small number of exempt units accounted for a disproportionate share of markup in 2006. Eight exempt units accounted for 33 percent of the overall markup component of PJM prices in 2006.

6 2005 State of the Market Report (March 8, 2006), pp. 260-263.

7 110 FERC ¶ 61,053 (2005).

8 110 FERC ¶ 61,053 (2005).

**3. Excerpts, PJM 2007 Strategic Report (issued April 2, 2007)**

# PJM 2007 STRATEGIC REPORT - EXECUTIVE SUMMARY

April 2, 2007



## Market Monitoring and Mitigation

The PJM Market Monitoring Unit's annual State of the Market Reports for 2005 and 2006 found the results of PJM's energy markets to be competitive. Nevertheless, the concentration of generation supply requires an administrative mitigation method to ensure competitive market outcomes.

Many respondents to a strategic questionnaire raised concern about how market power is measured and mitigated in PJM and the need for appropriate scarcity pricing to stimulate new investment. Not surprisingly, with few exceptions, individual concerns over whether the markets were over or under-mitigated largely depended on whether the responding entity represented supply or load. At the same time, it was striking that both traditional generators and demand response providers agreed that accurate pricing, including scarcity pricing, was necessary to gain increased investment in generation and demand response participation. Several commentators suggested that PJM perform an audit of the market monitoring that occurs in the markets today.

At the same time, questions have been raised about the independence of the MMU in its current form as an internal division of PJM. This requires PJM to continue to evaluate the appropriate structures for ensuring the independence of the MMU, including examining the development of an external monitoring function.

With respect to market monitoring and mitigation, the Report calls for PJM to:

- Commission an evaluation of industry best practices for the definition of market power, methods for identifying market power abuse, the philosophies and approaches to price mitigation and the degree of information transparency, to be used as the starting point in establishing definitional criteria in the PJM tariff;
- Commission a review of the qualifications of independent external consultants to perform PJM's 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 functions.

## MARKET MONITORING AND MITIGATION

Market monitoring by the administrators of organized markets is a significant part of the FERC's shift from cost-based regulatory rate setting to the granting of market-based rate authority.<sup>71</sup> As noted by the FERC Chairman Kelliher:

"While the Commission's legal duty to prevent unjust and unreasonable rates . . . has remained constant, the policy means by which the Commission discharges these duties has changed significantly. Instead of setting rates for individual sellers and individual transmitting utilities, the Commission increasingly establishes rules of general application that regulate markets by enforcing market rules."<sup>72</sup>

In its seminal Order 2000 which established the criteria for RTOs, the FERC specified that market monitoring, which had earlier been instituted by PJM and other ISOs, "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."<sup>73</sup> Following on the crisis in California's energy markets, Federal and State regulators alike recognized the structural impediments to effective competition in electricity markets and the resulting need for careful market design and market monitoring in wholesale electricity markets, including implementation of market power mitigation measures in order to limit seller market power.<sup>74</sup> In its Policy Statement on Market Monitoring Units (MMU), the FERC reaffirmed the important role of ISO/RTO MMUs in assisting it in promoting competitiveness in organized markets and assuring that prices properly reflect supply and demand conditions.<sup>75</sup>

One problem in addressing the subject of market monitoring is the lack of common definitions of frequently-used terms and the resulting potential for miscommunications among PJM staff, market participants and other stakeholders. Recently, the PUCT codified a number of market monitoring terms that may serve as a starting point for stakeholder discussion of more definitive terms for eventual use in the PJM tariff. PUCT's definitions include:<sup>76</sup>

- **Market power** – The ability to control prices or exclude competition in a relevant market.
- **Market power abuse** – Practices by persons possessing market power that are unreasonably discriminatory or that tend to unreasonably restrict, impair or reduce the level of competition, including practices that tie unregulated products or services to regulated products or services or that unreasonably discriminate in the provision of regulated services. Market power abuses include predatory pricing, withholding of production, precluding entry and collusion.

71 The Strategic Questionnaire invited comments on mitigation practices under Markets Administration and on the Market Monitoring Unit's (MMU) structural relationship with PJM under Governance. Because of the close ties of these topics, they are treated together in this Report.

72 Chairman Joseph Kelliher, "Market Manipulation, Market Power and the Authority of the Federal Energy Regulatory Commission." *Energy Law Journal*, Vol. 26, pp 1, 14 (2005), available at Appendix 15.

73 See *infra* note 4.

74 See, e.g., U.S. Department of Energy, Office of Electric Transmission and Distribution. *A Review of Market Monitoring Activities at U.S. Independent System Operators*. January 2004, pp. 5-6, available at Appendix 16.

75 Market Monitoring in Regional Transmission Organizations and Independent System Operators, Policy Statement on Market Monitoring Units, 111 FERC ¶ 61,267 (2005).

76 16 Tex Admin Code §25,504, Substantive Rules Applicable to Electric Service Providers, Subchapter S Wholesale Markets.

### Scarcity Pricing and Mitigation

Although the PJM MMU's annual State of the Market Reports for 2005 and 2006 found the results of PJM's Energy markets to be competitive, the history of the industry and the resulting concentration of generation supply require an administrative mitigation component of the markets in order to assure competitive outcomes.<sup>77</sup> However necessary such measures may be at the current stage of development of the markets, it is recognized by all that administrative overlays on competitive markets may actually inhibit competitive outcomes with resulting loss of market effectiveness in providing transparent pricing signals and stimulating generation and infrastructure investment. On the other hand, removal of offer caps and introduction of unconstrained scarcity pricing may not be politically feasible, even in the absence of the exercise of market power by pivotal suppliers. Appropriate market design and mitigation practices in PJM's markets are important targets for scrutiny and continued improvement.<sup>78</sup>

### MMU Structure

In April 1999, PJM established its MMU as an internal division of the company, having direct access and substantive responsibility to the PJM Board and to the FERC, but reporting for administrative purposes to the President and Chief Executive Officer. In 2003, the PJM Board undertook a review of the market monitoring function, including its organizational structure, and, in November 2003, the PJM Board issued a report to the Members that discussed in detail the reasons why the PJM Board chose to retain the MMU as an internal division of PJM.<sup>79</sup> In May 2005, in response to the FERC's Policy Statement concerning the market monitoring function in ISOs and RTOs,<sup>80</sup> PJM filed revisions to its Market Monitoring Plan designed primarily to bring the Plan into conformity with the Policy Statement.<sup>81</sup> Numerous comments were filed in that docket, and a number of parties requested fundamental changes to the operations of PJM's MMU, including changes that would have the MMU report directly to the PJM Board or a committee of the PJM Board. On July 14, 2006, the FERC issued an order approving PJM's revised Market Monitoring Plan, subject to clarifying revisions, and on December 5, 2006, the FERC denied numerous parties' request for rehearing of its prior order.<sup>82</sup> In denying the requests for rehearing, the FERC held that the substantial revisions to the Market Monitoring Plan requested by those parties were beyond the limited scope of the proceedings and noted that the FERC intended to conduct a technical conference in early 2007 to review more broadly its market monitoring policies. PJM should continue to evaluate the appropriate structures for ensuring independence of the MMU and examine the development of an external market monitor functioning within a defined scope of engagement.

77 See *infra* note 54.

78 Ultimately, despite the FERC's stated concern over the stringency of the three pivotal supplier test, it accepted a global settlement of the parties in Docket No. EL03-236 that included continued application of the test. It did so by letter order in view of the uncontested nature of the settlement agreement, including support from the FERC Staff. PJM Interconnection, L.L.C. 114FERC¶61,076 (January 27, 2006). The decision to accept the settlement should not be construed to mean that the Commission's concern with the three pivotal supplier test has necessarily diminished. Again, (i) no party contested the settlement, (ii) the settlement included important revisions in a number of other market areas, notably scarcity, and (iii) acceptance of the test still represented, at least theoretically, a liberalization of what would otherwise have been PJM's blanket mitigation approach. Indeed, when approving recently "PJM-style" mitigation in California, the Commission restated its concern that the pivotal supplier test "may be overly stringent," and ordered the CAISO Market Surveillance Committee "to examine whether an alternative competitive screen . . . should be considered." *Cal. Indep. Sys. Operator Corp.*, 116FERC¶61,274, para.1032 (2006), reh'g pending.

79 See PJM Board of Managers Review of Market Monitoring Unit Organization at <http://www.pjm.com/committees/mmac/downloads/20050607-market-monitoring-unit-review.pdf>.

80 Market Monitoring Units in Regional Transmission Organizations and Independent System Operators, 111FERC¶61,267 (May 27, 2005).

81 PJM Interconnection, L.L.C., 117FERC¶61,263 (December 5, 2006).

82 *Id.*

## Members' Responses to the Strategic Questionnaire

### Market Power and Mitigation

Many respondents raised concern about how market power is measured and mitigated in PJM and the need for appropriate scarcity pricing to stimulate new investment. Not surprisingly, with few exceptions, individual concerns over whether the markets were over or under-mitigated largely depended on whether the responding entity represented supply or load. At the same time, it was striking that both traditional generators and demand response providers agreed that accurate pricing, including scarcity pricing, was necessary to gain increased investment in generation and demand response participation. Several commentators suggested that PJM perform an audit of the market monitoring that occurs in the markets today.

### MMU Structure

Respondents expressed a variety of concerns about PJM's governance structure as it relates to the MMU. One of the most prevalent concerns, voiced by a broad spectrum of market participants, relates to the need for the actual and apparent independence of the Market Monitor from influence by the PJM staff. Some respondents called generally for a more independent MMU, while others, including several State regulatory utility commissions and consumer advocates, argued that the MMU should report directly to a Committee of the PJM Board and should not be subject to review by the PJM staff.<sup>83</sup> Another major theme was that greater transparency is needed with respect to the MMU's activities and the basis for its decisions. These respondents called for greater access to the data the MMU uses to make its decisions and for reports from the MMU explaining the basis for its mitigation decisions. Finally, various respondents expressed the view that the MMU should be independently audited and that its conclusions, interpretations and mitigation practices should be independently evaluated and subject to peer review.

## Recommendations Regarding Market Monitoring and Mitigation

### Market Power and Scarcity Pricing

PJM believes that it is critical that the organization review how its markets are being mitigated in comparison to other organized markets. PJM is aware that other ISOs/RTOs and their market monitors deploy a conduct and impact test, while the PJM market design and market monitor employ a direct mitigation approach. Both methodologies are considered *ex ante* and have been accepted by the FERC. However, PJM has never commissioned a formal review of the appropriate definition of market power and the effectiveness of various methodologies for mitigating markets.<sup>84, 85</sup>

While PJM does not believe a traditional audit would be useful in this instance, in order to address the Members' concerns it will be necessary to obtain a more complete understanding of the alternative methods

83 Some of the respondents' objections to the current MMU structure and their suggested remedies paralleled those advanced by them in FERC proceedings regarding PJM's revised Market Monitoring Plan. See, e.g., the response of the New Jersey Board of Public Utilities, in Docket No. ER06-826. On December 5, 2006, FERC denied all requests for rehearing of its July 14, 2006 order approving PJM's revised Market Monitoring Plan. In the December 5 order, FERC stated its intention to hold a technical conference early in 2007 to review broadly its policies regarding market monitoring by ISOs and RTOs. This technical conference is scheduled for April 5, 2007, see Docket No. AD07-8-000.

84 For a summary and comparison of approaches to mitigation utilized by the seven United States ISOs/RTOs, see Susan Tierney PhD. and Paul J. Hibbard, Analysis Group, "Market Monitoring at U.S. RTOs: Structural Review" (February 2007), available at Appendix 17.

85 PJM Interconnection, L.L.C., 112FERC¶61,031 (July 5, 2005).

that are used to mitigate the various markets, how a change in the mitigation approach may or may not affect the current mitigation occurring in the PJM markets and an evaluation of what are considered best practices for mitigating organized markets. To that end, PJM recommends that a consultant be engaged to conduct such an examination and provide recommendations concerning appropriate modifications, if any, to PJM's market design and mitigation practices. Once this evaluation is concluded, PJM and its Members will be able to make a more informed determination of whether and to what extent changes should be made to the current mitigation methodology.

When that determination has been made, PJM recommends that the PJM tariff be amended in order to define "market power" and "market power abuse" and to clarify the objective standards that will be applied in measuring and mitigating the exercise of market power in the PJM markets.

### MMU Structure

Although a number of respondents to the Strategic Questionnaire and protesters in the FERC proceedings on PJM's revised Market Monitoring Plan stressed, appropriately, the need for independence of the MMU from staff or management interference in discharging its responsibilities under the Market Monitoring Plan, no one has cited any actual instances in which the MMU's independence was in fact abridged. In its December 5, 2006 Order, the FERC explicitly found that the protesters had failed to meet their burden of proof that the MMU lacked the independence and authority necessary to fulfill its responsibilities under the Market Monitoring Plan.<sup>86</sup>

In view of the concerns raised by respondents to the Strategic Questionnaire, PJM undertook a review of the alternative market monitoring structures utilized by other ISOs and RTOs. It is interesting to note that of the six ISOs/RTOs regulated by the FERC, only PJM has a wholly-internal market monitoring function and only Midwest ISO has a wholly-external monitoring function.<sup>87</sup> Each of the other four organizations has a "hybrid" structure utilizing both internal resources and external consultants or advisors, with varying degrees of responsibility being assigned to the internal and external organizations. None of the internal organizations reports exclusively to the ISO/RTO's board of directors.

As noted by the PJM Board in its November 2003 report, the MMU's reporting relationship to PJM's President and Chief Executive Officer is administrative in nature, and the PJM Board lacks the staff and other administrative resources that would be necessary to oversee a direct reporting relationship of the MMU to the PJM Board or a PJM Board committee.<sup>88</sup> Importantly, however, in order to preserve the substantive independence of the MMU, the Market Monitoring Plan provides the Market Monitor with direct access both to the FERC and to the PJM Board in the event that the Market Monitor believes that PJM management in any way interferes with the discharge of his responsibilities.<sup>89</sup>

86 See *Id.*, "Specifically, the parties have failed to offer sufficient evidence to support their concerns that the MMU lacks adequate independence and authority to carry out its responsibilities and, thus, these parties have failed to meet their burden of proof under section 206 [of the Federal Power Act]."

87 The ERCOT is regulated by the PUCT and the market monitoring function is performed by a Wholesale Market Group within the PUCT in conjunction with an independent market monitor. There is no internal market monitor at ERCOT.

88 See *infra* note 79.

89 See [Market Monitoring Plan](#), Section IV.C.7:

C. Additional Market Monitoring Unit Authority: In addition . . . , the Market Monitoring Unit may take the following actions, to the extent it deems necessary, as a result of its monitoring activities:

7. Report directly to the Commission staff on any matter.

See also Section V.E:

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.

Notwithstanding the absence of any evidence that the organizational structure of the MMU has in any way obstructed its independence and authority, PJM is constrained to recognize the strong feelings expressed by respondents to the Strategic Questionnaire about the need for structural independence of the market monitoring function. The concern over independence was raised most emphatically by the OPSI and by individual State regulatory agencies, both in response to the Strategic Questionnaire and in the context of PJM's recent FERC proceedings on modifications to PJM's Market Monitoring Plan.<sup>90</sup>

PJM recognizes that some of the Members and Stakeholders would prefer to have an internal market monitor that reports directly to the PJM Board and has a degree of organizational independence that is not shared by any other internal employee, including the Internal Auditor and President and CEO. Issues of good management and corporate oversight require that all employees be required to be subject to appropriate administrative oversight with regard to job performance, quality of work product, including peer review, adherence to corporate standards and goals and budget restrictions.

PJM does not believe that it is feasible to have an internal market monitor with the degree of institutional freedom, and lack of supervision and accountability, absence of peer review and auditability of work product that is suggested by at least some entities. For this reason PJM should commission a review of the qualifications of independent external consultants to perform PJM's 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 functions. As part of this inquiry, PJM would also review how it will ensure the market monitoring structure can provide the actual and perceived independence of the market monitor without compromising the information necessary for effective market monitoring.

90 See *infra* note 86.

PJM recommends the following actions with respect to market mitigation and market monitoring:

- Commission an evaluation of the industry best practices of the definition of market power, the methods for identifying market power abuse, the philosophies and approaches to price mitigation and the degree of information transparency. This evaluation would be the starting point establishing definitional criteria to be included in the PJM tariff;
- Commission a review of the qualifications of independent external consultants to perform PJM's 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 functions.

**4. Memorandum from Phil Harris to PJM Members Committee  
Re: Annual Meeting General Session (dated March 6, 2007)**



## MEMORANDUM

**Date:** March 6, 2007  
**To:** PJM Members Committee  
**From:** Phil Harris  
**Subject:** Annual Meeting General Session

Dear Members,

This email is to confirm key dates and events associated with the upcoming Report on management's recommendations to the PJM Board for a long-term strategic plan. PJM intends to distribute the Report to Members on April 2, 2007, and the distribution will include all written responses to the strategic questionnaire contributed by the Members and others in October 2006. Members are invited to submit written comments on the Report by April 24, 2007. Those comments will be posted on the PJM website for review prior to the Annual Meeting in May.

At the PJM Annual Meeting, the morning of Wednesday, May 2, will be dedicated to a general session during which Members may provide comments on the Report to the PJM Board. There will be three panels - one each on Governance / Market Monitoring, Markets, and System Operations / Technology - and time will be provided for Board members to pose questions to the panelists and for open microphone comments. Due to time constraints, there will be a maximum of seven presenters on each panel.

The Board will carefully review all written comments submitted prior to the Annual Meeting and looks forward to a meaningful dialogue on the Report with the Members, not only during the general session but throughout the Annual Meeting. The Board has scheduled a special meeting later in May to review the Report and the Members' comments and to advance further recommendations to the Members to be discussed at the June 14 Members Committee meeting.

PJM looks forward to sharing the Report with you and to working with you to develop a plan defining PJM's role in the electricity industry for the next five to ten years.

Sincerely,  
Phil Harris

**5. PJM 2007 Strategic Report Communications Timeline  
(undated, released April 2, 2007)**

**PJM 2007 Strategic Report  
Communications Timeline**

April 2 – 24, 2007	Submission of written comments to Vince Duane ( <a href="mailto:duanev@pjm.com">duanev@pjm.com</a> ) and Jennifer Bellwoar ( <a href="mailto:bellwj@pjm.com">bellwj@pjm.com</a> )
May 2, 2007	Panel discussions at the general session of PJM's 2007 Annual Meeting. The topics of the three general session panels are Governance and Board Communications, Markets, and System Operations / Technology. Please submit requests for participation on these panels to Vince Duane ( <a href="mailto:duanev@pjm.com">duanev@pjm.com</a> ) and Jennifer Bellwoar ( <a href="mailto:bellwj@pjm.com">bellwj@pjm.com</a> ) no later than April 20, 2007.
May 3 – 11, 2007	Submission of supplemental written comments to Vince Duane ( <a href="mailto:duanev@pjm.com">duanev@pjm.com</a> ) and Jennifer Bellwoar ( <a href="mailto:bellwj@pjm.com">bellwj@pjm.com</a> )
Late May 2007	PJM Board Special Meeting to focus on PJM's strategic direction
After June 14, 2007 Members Committee Meeting	Continuing dialogue with Members, states and industry participants during development of a final strategic plan

**6. Letter from OPSI President Mark C. Christie to  
PJM President Mr. Philip Harris (dated April 12, 2007)**



## **Organization of PJM States, Inc. (OPSI)**

President: **Mark C. Christie** (Commissioner, Virginia SCC)

Vice President: **Lula Ford** (Commissioner, Illinois CC)

Secretary: **Allen M. Freifeld** (Commissioner, Maryland PSC)

Treasurer: **Dallas Winslow** (Commissioner, Delaware PSC)

*Members: Delaware Public Service Commission, District of Columbia Public Service Commission, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Maryland Public Service Commission, Michigan Public Service Commission, New Jersey Board of Public Utilities, North Carolina Utility Commission, Public Utility Commission of Ohio, Pennsylvania Public Utility Commission, Tennessee Regulatory Authority, Virginia State Commerce Commission, and West Virginia Public Service Commission.*

Executive Director: Rajnish Barua, Ph.D.

P.O. Box 8906, Newark, DE 19714-8906

Email: [opsi-ed@comcast.net](mailto:opsi-ed@comcast.net); Tel: 302-266-0914

---

April 12, 2007

Philip G. Harris, President & CEO  
Audrey A. Zibelman, Exec. VP & COO  
PJM Interconnection, LLC  
955 Jefferson Avenue  
Norristown, PA 19428

### Re: PJM Market Monitoring Unit

Dear Mr. Harris and Ms. Zibelman:

The Board of Directors of the Organization of PJM States, Inc. (OPSI) has authorized this letter on behalf of OPSI.

First, to reiterate the letter that was sent to you on March 16, 2007, OPSI has not agreed to any specific plan to restructure the PJM Market Monitoring Unit (MMU). No written proposal was ever presented by you to OPSI for us even to consider. Thus any assertion or suggestion that OPSI had or has agreed to the proposal contained in your recently released 2007 Strategic Review to eliminate the existing MMU and outsource its function to an outside contractor is inaccurate.

Second, OPSI has serious concerns with the proposal that has just been announced in your 2007 Strategic Review. We are concerned that liquidating the MMU as an entity co-located within PJM could degrade or eliminate the ability of the MMU to provide real-time market monitoring, which is necessary to protect the integrity of, and confidence in, the PJM wholesale market, to protect consumers and to ensure that PJM wholesale market outcomes are just and reasonable, as required by federal law. We are concerned that an outside consultant acting under

contract with PJM as market monitor will be vulnerable to PJM management for access to essential data. We are also concerned that an outsourced contractor that is dependent on PJM management for obtaining and renewing its contract will obviously not be any more independent than an internal employee, which is the serious flaw in the current PJM structure. Furthermore, we believe that the market monitoring proposal in your 2007 Strategic Review likely would violate the provisions of Attachment M of your FERC tariff and this issue may well need to be resolved by FERC.

Third, we were extremely disturbed to hear and read the public testimony of the PJM Market Monitor, Dr. Bowring, before the FERC on April 5, 2007. If that testimony is accurate, it appears that you have embarked on personnel actions that could likely be damaging to the ability of the PJM MMU to perform its vital functions, certainly in the short term. If what Dr. Bowring says is true, you apparently intend to eliminate the PJM MMU as an internal unit even before giving OPSI or other interested parties any written explanation or meaningful opportunity to comment on your plan. These reported actions, if true, raise the prospect of leaving the PJM wholesale market without any effective market monitoring for a period that could extend to months or even longer.

We received from Mr. William Whitehead on April 9, 2007 an email sent “on behalf of Phil Harris” that indicates that the PJM Board of Managers intends to retain independent counsel for “the purpose of investigating *all* allegations raised by Mr. Bowring.”

We hope that the term “*all* allegations” means that the independent counsel will be investigating not just Dr. Bowring’s specific testimony last week at FERC, but also the broader issue of the structure of the PJM MMU and the issue of the independence of its operations, important issues that have been of deep concern to OPSI over the past year. We request to be informed whether the independent counsel will, in fact, be directed to address the broader issue of MMU independence within PJM’s structure, and, if so, whether the independent counsel will be directed to contact OPSI to gain our perspective on this issue as state officials. We would certainly hope and expect the independent counsel to seek our views in any serious investigation of the MMU’s independence.

Pending the outcome of the investigation referenced in the email forwarded to us by Mr. Whitehead, OPSI requests that you, and, by copy of this letter, the PJM Board of Managers, immediately cease and desist from any actions in furtherance of any plan to eliminate or restructure the PJM MMU as described in your 2007 Strategic Review. We ask that you ensure the *status quo* remains in place until after the proposal in your 2007 Strategic Review can be properly explained, studied and interested parties such as OPSI have a serious, not just perfunctory, opportunity to comment on it, and if necessary, that this issue can be fully vetted before the FERC. We also ask that you communicate your intention to cease and desist to the Market Monitoring Unit itself so that Unit can remain functional and effective while this issue is investigated by the independent counsel retained by the PJM Board of Managers and/or is resolved before FERC.

The Board and members of OPSI look forward to your response to the questions and issues raised in this letter.

Sincerely,

/s/ Mark C. Christie

Mark C. Christie  
President

Cc: PJM Board of Managers  
Members, Federal Energy Regulatory Commission  
FERC Office of Enforcement

**7. Letter from PJM President Mr. Philip Harris to  
OPSI President Mark C. Christie (dated April 13, 2007)  
without attachments**

¶



955 Jefferson Avenue  
Valley Forge Corporate Center  
Norristown, PA 19403-2497

Philip G. Harris  
President and CEO  
610.728.8803 fax 610.666.4281

Sent via E-mail and U.S. Mail

April 13, 2007

The Honorable Mark C. Christie  
Commissioner  
Virginia State Corporation Commission  
1300 East Main Street  
Richmond, Virginia 23219

Dear Commissioner Christie:

Thank you for your letter yesterday expressing positions on behalf of the *Organization of PJM States, Inc.* ("OPSI") regarding the PJM Market Monitoring Unit ("MMU"). Given the gravity of the matter, I wanted to respond promptly to your concerns. Let me state at the outset, however, that I would prefer PJM and OPSI work to improve opportunities to personally discuss issues such as those raised in your April 12, 2007 letter, over the telephone or in person. These discussions might minimize the risks of committing to writing assertions that rest on incomplete or inaccurate information, including media misstatements, that inevitably result when dealing with an open organization comprised of 450 or more members. On a related note, I am also enclosing a copy of a current press advisory that we are issuing to help clarify the erroneous information that has appeared in the press, a copy of Ms. Zibelman's testimony to the FERC, and the relevant pages of our Strategic Report.

Please appreciate that PJM's recently released Strategic Report does not contain a proposal to "eliminate the existing MMU and outsource its function". Instead, the Strategic Report calls for a "review" of the "risks and benefits" that would result in externalizing the function. In conducting this examination, PJM has requested that all stakeholders provide written comments by April 24, 2007 in order to permit the Board to consider this valuable input into its ultimate decision. All comments received will be published for public review prior to PJM's annual meeting. I look forward to hearing from OPSI in this process.

It appears from your stated concerns that OPSI has somehow concluded that the decision to externalize the function is a *fait accompli*. I know you share our insistence that the MMU function be performed vigorously and without compromise. I am sure you further appreciate how the above-described recommendation in the Strategic Report would create uncertainty and distraction for MMU staff. In order to anticipate the concerns of these employees, executive management scheduled meetings before the Strategic Report was released to provide them assurance as to their continued employment and to encourage them to maintain focus on the task at hand. In conjunction with those meetings, PJM began the process of establishing for these employees a retention program to further these objectives.

April 13, 2007  
Letter to M. C. Christie  
Page 2 of 2

PJM has been clear in its public comments that it has developed increasing doubt that the optimal organizational construct for the market monitoring function is one where the function wholly resides within the corporate organization of the regional transmission organization ("RTO"). We also believe, as other organized market examples show and as was positively testified to at the April 5, 2007 FERC Technical Conference by at least one monitor from another organized market, that an external MMU function can maintain a physical presence with the RTO and obtain the same level of access to information and personnel as one organized internally. The situation of a market monitor outside the RTO has proven effective in discharging the function.

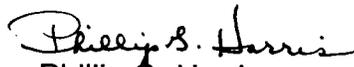
As evident from the testimony presented by Audrey Zibelman before FERC on April 5, 2007, we would like to engage the FERC, OPSI, and all interested stakeholders to examine the benefit that would result from clearly articulated principles and definitions of market power and market power mitigation particular to organized wholesale electricity markets. As clear from his prepared written statement before FERC, even Mr. Bowring agrees discussion of this sort would prove beneficial.

Due to the pending investigation, it would be inappropriate for me to respond here to the specific assertions made by Mr. Bowring that you reference in your letter. Rather, I look forward to a full and thorough independent investigation that the PJM Board will conduct to examine these assertions. You should be aware that I have decided that, as a member of the Board, it would be most proper and avoid any appearance of conflict to recuse myself from the investigation. The Board has accepted my decision.

You also raise a question as to the scope of this investigation. The Board will issue shortly a statement on the investigation's scope that it will share publicly with our members and other stakeholders, including OPSI. As previously noted, we will be proceeding separately to examine the structural and governance options as they relate to the MMU; and we look forward to your comments in that process.

In closing, we appreciated the time that the OPSI executive team spent with us to review the Strategic Report and other matters that are of great importance to PJM and the States. We felt that was an excellent meeting and reflects the manner in which we would like to collaborate and dialogue with OPSI. If you have any further questions or concerns feel free to contact me, Ms. Zibelman, or Mr. Whitehead. We will look forward to continuing to work with you.

Very truly yours,

  
Phillip G. Harris  
PGH/gks

cc: PJM Board of Managers  
R. Barua

Submission Contents

OPSIComplaint.pdf.....	1-45
Complaint_Attachments.pdf.....	46-85