

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

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|--|---|--------------------------|
| PJM Interconnection, L.L.C.            | ) |                          |
| Complainant,                           | ) |                          |
|  | ) |                          |
| v.                                     | ) | Docket No. EL08-____-000 |
|  | ) |                          |
| Accord Energy LLC                      | ) |                          |
| BJ Energy LLC                          | ) |                          |
| Franklin Power LLC                     | ) |                          |
| GLE Trading LLC                        | ) |                          |
| Ocean Power LLC                        | ) |                          |
| Pillar Fund LLC                        | ) |                          |
| Power Edge LLC                         | ) |                          |
| Tower Research Capital LLC             | ) |                          |
| Tower Research Capital Investments LLC | ) |                          |
| Respondents.                           | ) |                          |

**COMPLAINT  
OF PJM INTERCONNECTION, L.L.C.  
AGAINST ACCORD ENERGY LLC, BJ ENERGY LLC, FRANKLIN POWER  
LLC, GLE TRADING LLC, OCEAN POWER LLC, PILLAR FUND LLC,  
POWER EDGE LLC, TOWER RESEARCH CAPITAL LLC, AND  
TOWER RESEARCH CAPITAL INVESTMENTS LLC**

Pursuant to sections 206, 222, and 306 of the Federal Power Act, 16 U.S.C. §§ 824e, 824v, and 825e, and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.206, PJM Interconnection, L.L.C. (“PJM”) submits this Complaint against Accord Energy LLC (“Accord”), BJ Energy LLC (“BJ Energy”), Franklin Power LLC (“Franklin Power”), GLE Trading LLC (“GLE Trading”), Ocean Power LLC (“Ocean Power”), Pillar Fund LLC (“Pillar”), Power Edge LLC (“Power Edge”) (collectively “Fund Companies”), Tower Research Capital LLC (“TRC”), and Tower Research Capital Investments LLC

(“TRCI”) (collectively “Tower Companies” or “Respondents”) concerning their manipulation of the PJM market.

In this Complaint, PJM shows that:

1. The Fund Companies manipulated the PJM financial transmission rights (“FTR”) market and day-ahead energy market, distorting energy prices and payments to FTR holders, in violation of the Commission’s regulations prohibiting market manipulation, 18 C.F.R. § 1c.2.
2. One of the Fund Companies, Power Edge, which experienced substantial losses in the PJM market, may have fraudulently distributed monies out of Power Edge, and otherwise intentionally withheld cash on hand that could have been used to pay its obligations, choosing instead to default and have other PJM members cover its losses, effecting a fraud upon the PJM market participants in violation of 18 C.F.R. § 1c.2.
3. In view of these violations of the Commission’s market manipulation rule, the Commission should order the Fund Companies to disgorge all of their unjust revenues and profits resulting from their market manipulations, to PJM and its adversely affected members.
4. In view of these violations, the Commission also should impose civil penalties upon the Fund Companies in connection with their manipulation of the markets.
5. The Commission further should issue a remedial order prohibiting the Tower Companies (and their affiliates, including future affiliates) from participating in the PJM markets.
6. The Commission should institute an investigation, including holding a public hearing, and providing interested parties, including PJM, an opportunity for discovery, regarding the Fund Companies’ manipulative and fraudulent conduct.<sup>1</sup>

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<sup>1</sup> In a separate proceeding, PJM has sought generic changes to the Restated and Amended Operating Agreement of PJM Interconnection, L.L.C., Third Revised Rate Schedule FERC No. 24 (“Operating Agreement”) to address certain defaults on FTR counterflow positions, which would require certain of the Tower Companies’ current revenues associated with FTR positions to be used to offset Power Edge’s default. See PJM Filing, Docket No. ER08-455-000 (Jan. 18, 2008). The instant Complaint seeks disgorgement of all unjust revenues and profits of the Funds Companies commencing June 2007, not just current FTR revenues, and seeks additional remedies.

## **I. EXECUTIVE SUMMARY.**

1. As shown in this Complaint, the Tower Companies have violated the Commission's prohibition against energy market manipulation. The Tower Companies have knowingly or recklessly used a device, scheme, or artifice to defraud, and engaged in acts, practices, or courses of business that operate as a fraud or deceit in connection with the purchase or sale of electric energy or transmission of electric energy subject to the Commission's jurisdiction. The Tower Companies' actions impaired and obstructed PJM's day-ahead energy and FTR markets. In particular, among other things, the Tower Companies engaged in fraudulent trading activities to benefit the financial position of some affiliates, by creating congestion and distorting the value of FTRs and locational marginal prices ("LMPs"), while adversely affecting the financial position of another affiliate, Power Edge, that the Tower Companies knew would default on its obligations to PJM, causing all other members to bear the cost of the default.

2. The Tower Companies' manipulative and fraudulent conduct falls into four categories of manipulation: (1) collusion among affiliates so as to purchase offsetting FTR positions for the gain of one or more affiliates, while maintaining and continuing a large loss in another affiliate known to be unable to pay its obligations; (2) virtual bidding in the day-ahead energy market, intentionally increasing congestion in order to enhance the financial value of one affiliate's FTRs, while at the same time enlarging the known default of another affiliate's counterflow FTR position, adversely affecting all other PJM members that have to cover the default; (3) the apparent intentional and fraudulent distribution of funds out of one of the Fund Companies, Power Edge, at a time when the company had no earnings and had only experienced, or

expected to experience, near-term losses from its large portfolio of counterflow FTRs, thereby reducing the cash available to pay its obligations and increasing the amount of the default that the PJM members will have to cover; and (4) the intentional and fraudulent withholding of payment on counterflow FTR obligations by one of the Fund Companies, Power Edge, even though it had cash on hand from which it could pay, thereby creating greater default obligations for PJM members to cover.

*Coordinated Offsetting Positions*

3. Through their concerted efforts, at least two of the Fund Companies coordinated to purchase offsetting FTR positions. One such affiliate, Power Edge, purchased counterflow FTR positions in the annual FTR auction, ran into serious financial difficulty from losses on the positions, and then defaulted, and likely will continue to default, on its past and continuing obligations in the tens of millions of dollars, all of which will have to be covered by the other PJM members. After running into this financial difficulty, the same trader, on behalf of another affiliate, BJ Energy, purchased offsetting FTR positions in PJM's monthly FTR auctions. Based on PJM's analysis, at least approximately 50% of the FTRs purchased by BJ Energy are in locations known to provide offset to Power Edge's poor performing counterflow FTRs. Had the BJ Energy FTR positions been held by Power Edge, then they would have hedged and offset the losses of Power Edge reducing the default the PJM members must cover. By taking counter positions in BJ Energy, managed by the same company and trader, and probably with the same or similar investors as Power Edge, the Tower Companies profited from the BJ Energy positions with the intent to keep those profits, while Power Edge continued its large defaults, which the PJM members must cover.

4. Through January 2008 activity, Power Edge's default is approximately \$37 million, and through the end of the 12 months for which its FTRs were purchased is expected to be over \$50 million. Its affiliate, BJ Energy, has earned approximately \$10.4 million in net revenues from its activities in PJM FTR markets for June 2007 through February 2008, much of which is attributable to the offsetting FTR positions it purchased.<sup>2</sup> If the common trader for these companies had placed all of the FTR positions in Power Edge, its default would have been less. Therefore, BJ Energy's unjust profits should be disgorged and used to offset Power Edge's default, decreasing the amount of the default the PJM members must cover.

5. Through their coordinated conduct, the Fund Companies knowingly or recklessly violated the Commission's anti-manipulation rules. The common portfolio manager and trader for both Power Edge and BJ Energy, likely acting on behalf of the same or similar investors, raises the clear inference of intentional and coordinated actions to defraud PJM and the PJM members. As Commissioner Moeller recently stated, "market participants are not entitled to structure their transactions with the expectation that they could default and impose a burden on other market participants (and ultimately, the ratepayers) to cover their outstanding charges and losses."<sup>3</sup> With further investigation, the Commission also can determine whether other Tower Companies

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<sup>2</sup> As discussed below, BJ Energy is required to forfeit approximately \$2.4 million of this amount pursuant to section 5.2.1(b) of the Appendix to Attachment K of the PJM Open Access Transmission Tariff, FERC Electric Tariff, Sixth Revised Volume No. 1 ("PJM Tariff"). See also Schedule 1 of the Operating Agreement, which is identical to the Appendix to Attachment K of the PJM Tariff.

<sup>3</sup> New England Power Pool, 122 FERC ¶ 61,189 (2008) (Moeller, P., concurring).

trading through the same individual trader, or in concert with other traders, similarly produced additional unjust profits which should be disgorged.

*Manipulative Virtual Trading*

6. During December 2007 and January 2008, BJ Energy submitted increment and decrement bids (so called “virtual bids”) in the day-ahead energy market which appear to have been purchased intentionally to increase congestion on FTR paths for which BJ Energy had purchased prevailing flow FTRs. As a result, BJ Energy distorted LMP prices and unjustly profited on its FTR positions. Moreover, because BJ Energy’s prevailing flow FTRs were offsetting to Power Edge’s counterflow FTRs, BJ Energy’s virtual bids exacerbated the level of the Power Edge default – a default which now must be paid by other PJM members. Through these actions, the Fund Companies fraudulently distorted the values of LMPs and FTRs such that the prices in the FTR and day-ahead energy markets were not set solely by legitimate market forces.

7. Based on a representative ten-day sample during December 2007 and January 2008, BJ Energy’s virtual bidding at only two nodes produced increased congestion from which BJ Energy earned unjust FTR profits of \$183,000, which is equivalent (based on the sample) to unjust profits of more than half a million dollars a month. During the same ten days, BJ Energy’s virtual bidding devalued Power Edge’s counterflow FTR positions by \$480,253, or the equivalent (based on the sample) of nearly \$1.5 million a month, which other PJM members now must bear. The Commission should order the disgorgement of all unjust profits of the Tower Companies to PJM and its members to ameliorate the effects of this manipulation.

8. BJ Energy’s virtual bidding also decreased the value of all other counterflow FTRs on paths opposite to FTRs held by BJ Energy. Over the ten-day

period, the increased losses to other holders of counterflow FTRs amounted to approximately \$600,000, which is equivalent (based on the sample) to over \$1.8 million a month.

9. BJ Energy's virtual bidding in order to benefit its FTR positions also distorted LMP values in the day-ahead energy market, increasing energy prices in several load zones. For the ten-day sample period, the resulting rise in zonal prices in the day-ahead energy market for the Jersey Central Power and Light Company ("JCPL"), Pennsylvania Electric Company ("PENELEC"), Public Service Electric and Gas Company ("PSEG"), and Rockland Electric Company ("RECO") zones caused purchasers to pay over \$1.3 million, or the equivalent (based on the sample) of close to \$4 million a month, which they would not have had to pay absent BJ Energy's manipulative bids. Fortunately, the PJM Market Monitoring Unit detected this conduct and PJM informed the Tower Companies, which appeared necessary in order to bring an end after two months to the conduct and the continuing harm to the market. Otherwise, the increased prices to energy purchasers might be continuing today. The Commission should investigate all virtual trading by the Tower Companies to determine the full extent of the manipulative trading, determine the profits of the Tower Companies and the harm to the markets, and order disgorgement of all unjust profits.

*Fraudulent Distribution of Capital*

10. On information and belief, Power Edge may have distributed funds to its investors or shareholders, reducing the cash available to pay its obligations on its counterflow FTRs, which PJM members now must cover. On information and belief, Power Edge may have returned several million dollars of funds to its investors, even though it had no earnings and had only experienced, or expected to experience, near-term

losses on its positions in the PJM markets. If Power Edge had used these funds to pay its obligations, rather than distributing the money out of the company, the amount of its default would have been reduced, and the amount the PJM members would have to cover would be significantly reduced. The Commission should find that Power Edge's transfer of assets out of the company, rather than paying its bills, was a fraud and deceit upon the PJM market.

*Intentional Non-Payment*

11. Finally, Power Edge intentionally withheld payment on its counterflow FTR obligations, notwithstanding holding funds from which it could pay, thereby fraudulently defaulting and creating greater obligations for PJM members to cover in connection with the default. Upon information and belief, Power Edge had cash on hand, yet it refused to make any payment on a bill from PJM for November of only \$2.3 million. Thus, Power Edge purposefully defaulted on the November bill, effectively transferring the obligation to the PJM members. This intentional non-payment, when funds were available, was a fraud and deceit upon PJM and its members.

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12. As a result of their manipulative and fraudulent conduct, PJM believes the Tower Companies to date have caused harm to the PJM members exceeding \$20 million. Investigation by the Commission may reveal further manipulation and the full extent of the harm to the PJM members.

13. Accordingly, the Commission should (i) find that the Fund Companies violated the Commission's anti-manipulation rules; (ii) direct BJ Energy to disgorge its unjust profits and refund, at a minimum, the known approximately \$10.4 million it has earned to date in unjust profits (less any previously forfeited amounts) resulting from its

manipulative behavior during the current planning year; (iii) following investigation, direct the Fund Companies to disgorge any other unjust profits that are determined and refund them to affected entities; (iv) initiate an enforcement investigation, and order a public hearing, to investigate the conduct and behavior of the Tower Companies and determine all violations of the Commission's anti-manipulation rule; (v) allow discovery by PJM and others to fully determine the extent of the coordinated activities of the Tower Companies and their manipulative and fraudulent conduct;<sup>4</sup> (vi) assess civil penalties upon the Tower Companies; and (vii) issue a remedial order prohibiting the Tower Companies (and any of their future affiliates) from future participation in the PJM markets.

## **II. BACKGROUND**

### **A. Description Of The Parties.**

#### **1. PJM**

14. PJM is the independent regional transmission organization ("RTO") for 13 states and the District of Columbia.<sup>5</sup> PJM is authorized by the Commission to administer an open access transmission tariff, operate energy and other markets, and otherwise conduct the day-to-day operations of a multi-state bulk power system. Among other

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<sup>4</sup> The Tower Companies are private investment companies or hedge funds. See note 6 and accompanying text, infra. Information as to the business operations, ownership, financial structure, and interlocking relationships of these companies is notoriously limited and non-public. In order for PJM to begin to understand the full extent of impropriety at issue here, PJM must be permitted to conduct discovery.

<sup>5</sup> PJM is an approved RTO. PJM Interconnection, L.L.C., 101 FERC ¶ 61,345 (2002).

things, PJM operates a day-ahead energy market, a real-time energy market, markets for ancillary services, and markets for the sale and purchase of FTRs.

## 2. Tower Companies

15. The Tower Companies are a group of affiliated companies. According to the Fund Companies, each is a private investment fund.<sup>6</sup> Additionally, each of the Fund Companies is a PJM member and trades in the PJM markets. Specifically, each is or has been active in the day-ahead energy market, through the submission of so-called “virtual” bids and offers, and several have been active in purchasing FTRs through PJM’s annual quarterly, and monthly FTR auctions.<sup>7</sup> TRC manages BJ Energy and Power Edge, while TRCI manages Accord Energy, Franklin Power, and Ocean Power.<sup>8</sup> The Fund Companies have conceded that they have some common management and each of the Fund Companies are affiliates of the other Fund Companies.<sup>9</sup> Some of the Fund Companies may have substantially identical investors.<sup>10</sup> As discussed below, the same trader conducted all transactions on behalf of multiple affiliates in PJM’s markets.

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<sup>6</sup> Protest of the Tower Companies, Docket No. ER08-455-000, at 10 (Feb. 15, 2008) (“Tower Companies’ February 15 Filing”). In the Affiliate Disclosure Forms they submitted to PJM, several of the Fund Companies identified themselves as affiliates and TRCI is their ultimate parent.

<sup>7</sup> Five of the Fund Companies trade in FTRs: Accord, BJ Energy, Franklin Power, Ocean Power, and Power Edge.

<sup>8</sup> See Motion to Intervene and Motion for Extension of Time of TRC, TRCI, Accord Energy, BJ Energy, Franklin Power, and Ocean Power, Docket No. ER08-455-000, at 2 (Feb. 6, 2008).

<sup>9</sup> Tower Companies February 15 Filing at 10.

<sup>10</sup> Tower Companies have refused to reveal their investors to PJM. Discovery will be necessary to learn the full extent of the commonality of investors in the Fund Companies.

## **B. Description Of The Markets.**

### **1. FTRs and Counterflow FTRs**

16. FTRs are rights to receive transmission congestion credits.<sup>11</sup> The holder of an FTR is entitled to credits of transmission congestion charges for the period specified in the corresponding auction.<sup>12</sup> FTRs are identified by term, megawatt quantity, and receipt and delivery points. The hourly economic value of an FTR obligation is based on the difference between the day-ahead congestion price at the delivery and receipt points.

17. PJM holds annual, quarterly, and monthly auctions to allow market participants to purchase and sell FTRs.<sup>13</sup> The annual auction covers each of the 12 months comprising the annual planning period (June through May). Additional monthly and quarterly auctions are held throughout the year for individual or strips of months within the planning period.

18. An FTR is a prevailing flow FTR when its source price is lower than its sink price, indicating that the FTR consumes valuable transmission flow capability relative to projected transmission constraints. A prevailing flow FTR has a positive purchase price, or charge, that the purchaser commits to pay in the FTR auction. A prevailing flow FTR is expected to yield a positive revenue stream to the FTR holder.

19. By contrast, an FTR is a counterflow FTR when its source price is higher than its sink price, indicating that the FTR releases valuable transmission flow capability

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<sup>11</sup> See PJM Tariff, Attachment K-Appendix, §§ 1.3.5, 5.2.2.

<sup>12</sup> Id. § 7.1.3.

<sup>13</sup> Id. § 7.1.

by providing flow in the opposite direction relative to a transmission constraint. A counterflow FTR has a negative purchase price, reflecting that the auction participant will be paid to take on the costs and risks of holding a counterflow FTR. A counterflow FTR is expected to result in a negative revenue stream, i.e., a payment obligation, to the FTR holder.

20. A prevailing flow FTR holder will incur a monthly charge for purchasing an FTR in the annual or monthly auction. The FTR holder then expects to receive revenues in the day-ahead energy market based on the value of the FTR as determined by LMP differences between the FTR source and sink. For load-serving entities, these FTR revenues will in turn offset congestion charges that may be paid by the market participant for delivering energy to its load in the day-ahead energy market. Similarly, a counterflow FTR holder can use a forward purchase of an FTR to hedge a counterflow energy delivery in the day-ahead energy market. In this case, the FTR holder will receive a monthly credit for acquiring a counterflow FTR in the annual or monthly auction. This FTR holder then expects to pay congestion charges in the day-ahead energy market based on the value of the FTR as determined by LMP differences between the FTR source and sink. For load-serving entities, these FTR-based congestion charges will in turn be offset by any congestion credits that may be paid to the market participant for delivering energy to its load that results in flow opposite the constrained flow in the day-ahead energy market.

21. Companies that purchase and sell FTRs solely to arbitrage the price differences between FTR auctions or between the FTR auction and the day-ahead energy market tend to be financial market participants with sophisticated risk management departments to control their financial exposure. These market participants are not

motivated to match energy deliveries with FTR positions because they have no load serving responsibility. Rather, their open FTR positions will generate revenue if their forward FTR purchases are well managed. Since FTRs and transmission congestion charges are quite volatile and their FTR positions may not be matched with energy deliveries, most financial participants maintain a balanced portfolio of prevailing flow and counterflow FTRs to manage their risk appropriately.

22. Prevailing flow FTR positions tend to be profitable when actual congestion charges in the day-ahead energy market are higher than the expected congestion charges. Counterflow FTR positions tend to be profitable when actual congestion charges in the day-ahead energy market are lower than the expected congestion charges. Since actual congestion charges can be impacted by unexpected events, most financial participants have diverse portfolios of both prevailing flow and counterflow FTRs, coupled with virtual energy positions, in order to limit their financial exposure and manage their overall risk.

## **2. Increment and Decrement Bids in the Day-ahead Energy Market**

23. The day-ahead energy market is a forward market in the sense that hourly clearing prices are calculated for each hour of the next operating day based on generation offers, demand bids, and bilateral transaction schedules submitted into the day-ahead energy markets.<sup>14</sup> The price calculations are based on LMP in the day-ahead energy market. The day-ahead energy market provides price certainty and gives market participants the ability to lock in prices in the day-ahead energy market. All day-ahead

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<sup>14</sup> PJM Tariff, Attachment K-Appendix, §§ 1.3.1C, 1.10 through 1.12.

purchases and sales are settled at day-ahead prices. The results of the day-ahead energy market are binding financial commitments of market participants. In addition, all payments arising from FTR positions are settled in the day-ahead energy market.

24. The real-time market (balancing market) includes prices based on actual system operating conditions. Market participants pay balancing prices (real-time LMP) for any demand that exceeds or generation that is below their day-ahead schedule, but will receive revenue (real-time LMP) for demand deviations below or generation above their day-ahead scheduled amounts. Transmission customers pay congestion charges (or receive congestion credits) for bilateral transaction quantity deviations from day-ahead schedules. All spot purchases and sales in the balancing market are settled at the balancing prices.

25. Market participants also may submit “increment” and “decrement” bids, so-called virtual bidding,<sup>15</sup> in the day-ahead energy market. Decrement bids are bids to purchase energy at a specified location in the day-ahead energy markets, and accepted decrement bids result in scheduled load at the specified location in the day-ahead energy market.<sup>16</sup> An increment bid is an offer to sell energy at a specified location in the day-ahead energy market, and an accepted increment bid results in scheduled generation at the specified location in the day-ahead energy market.<sup>17</sup>

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<sup>15</sup> Id. § 1.10.1A(i).

<sup>16</sup> Id. § 1.3.1E.

<sup>17</sup> Id. § 1.3.9A.

### 3. Prohibition of FTR Manipulation Through Increment and Decrement Bidding

26. The PJM Tariff and Operating Agreement also include provisions to address the potential for market manipulation using increment and decrement bids. These anti-manipulation provisions, a part of the market rules since December 2000,<sup>18</sup> were added to eliminate any “incentive [for market participants] to use Increment and Decrement Bids in the Day-ahead Market to increase congestion and artificially raise the value of the FTRs.”<sup>19</sup> Because a holder of an FTR receives as a transmission congestion credit a share of the transmission congestion charges between the source and sink points of the FTRs, it has an incentive to make virtual bids that affect congestion. To eliminate such potential gaming in the day-ahead energy market, the market rules provide that, in certain circumstances, revenues an FTR holder receives because its increment or decrement bid increased congestion are required to be forfeited.

27. Specifically, the PJM Tariff provides:

If a holder of a Financial Transmission Right between specified delivery and receipt buses acquired the Financial Transmission Rights in a Financial Transmission Rights Auction . . . and (i) had an Increment Bid and/or Decrement Bid that was accepted by the Office of Interconnection for an applicable hour in the Day-ahead Energy Market for delivery or receipt at or near delivery or receipt buses of the Financial Transmission Right; and (ii) the result of the acceptance of such Increment Bid or Decrement Bid is that the difference in locational marginal prices in the Day-ahead Energy Market between such delivery and receipt buses is greater than the difference in locational marginal prices between such delivery and receipt buses in the Real-time Energy Market, then the

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<sup>18</sup> PJM Interconnection, L.L.C., Letter Order, Docket No. ER01-773-000 (Jan. 26, 2001) (letter order accepting tariff revisions incorporating section 5.2.1(b) and (c) in the Appendix to Attachment K of the PJM Tariff and Schedule 1 of the Operating Agreement).

<sup>19</sup> PJM Filing, Docket No. ER01-773-000, at 3 (Dec. 22, 2000).

Market Participant shall not receive any Transmission Congestion Credit, associated with such Financial Transmission Right in such hour, in excess of one divided by the number of hours in the applicable month multiplied by the amount that the Market Participant paid for the Financial Transmission Right in the Financial Transmission Rights Auction.

PJM Tariff, Attachment K-Appendix, § 5.2.1(b). For purposes of this section, “a bus shall be considered at or near the Financial Transmission Right delivery or receipt bus if seventy-five percent or more of the energy injected or withdrawn at that bus and which is withdrawn or injected at any other bus is reflected in the constrained path between the subject Financial Transmission Right delivery and receipt busses that were acquired in the Financial Transmission Rights Auction.” Id. § 5.2.1(c).

**C. Power Edge Default.**

28. Power Edge holds a net short portfolio consisting of over 14,000 MW of counterflow FTRs that require it to make payments to PJM when congestion occurs between identified PJM nodes. Power Edge undertook this obligation in the PJM FTR auctions, and by purchasing bilaterally FTR positions another market participant undertook in the auctions, and as a result receives a specified payment stream from its FTR holdings. Power Edge receives approximately one-twelfth of its auction payment stream each month from PJM, less the amounts Power Edge must pay each month on the counterflow FTRs when there is congestion on the paths. Presumably, Power Edge anticipated that the payment streams it would receive from the auction clearing prices would exceed the amounts it would pay on its counterflow FTR positions. In other words, it believed that congestion would be less than the market, in the FTR auctions, expected on the acquired FTR paths.

29. Power Edge seriously miscalculated. As a consequence of warmer weather than typical this past fall and, more importantly, an extended planned

transmission outage that commenced in late November, Power Edge's position deteriorated significantly and it defaulted on its obligations to PJM. Power Edge was billed in December 2007, approximately \$2.3 million for its November 2007 market activity, and defaulted on that payment obligation. Power Edge also defaulted on its payment obligation of approximately \$19.9 million for market activity pertaining to December 2007 (billed in January 2008), and defaulted again on its payment obligation of approximately \$16.0 million for its market activity pertaining to January 2008 (billed in February 2008). PJM estimates that Power Edge will be liable for substantial additional amounts on its counterflow positions pertaining to the remainder of the planning period for which it holds FTR positions, i.e., through May 31, 2008.

30. Under current Operating Agreement provisions, all PJM members are required to pay for Power Edge's default. These payments by other PJM members, however, do not alleviate Power Edge's responsibility for the amount it owes PJM.<sup>20</sup>

### **III. THE COMMISSION'S PROHIBITION OF ELECTRIC ENERGY MARKET MANIPULATION.**

31. Section 222(a) of the Federal Power Act, 16 U.S.C. § 824v(a), added by the Energy Policy Act of 2005,<sup>21</sup> sets forth the prohibition of market manipulation. It states:

It shall be unlawful for any entity . . . directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance . . . in contravention of such rules and regulations as the Commission may

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<sup>20</sup> Operating Agreement, §§ 5.2, 5.2.2.

<sup>21</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, § 1283 (2005).

prescribe as necessary or appropriate in the public interest or for the protection of electric ratepayers.

16 U.S.C. § 824v(a).

32. In Order No. 670,<sup>22</sup> Prohibition of Energy Market Manipulation, the Commission promulgated new regulations on market manipulation to implement section 222 of the Federal Power Act. Specifically, a new section 1c.2(a) of the Commission's regulations provides:

It shall be unlawful for any entity, directly or indirectly, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission,

(1) To use or employ any device, scheme, or artifice to defraud,

\* \* \*

(3) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity.

18 C.F.R. § 1c.2(a).

33. In Order No. 670, the Commission clarified it will act on a claim of manipulation where an entity:

(1) uses a fraudulent device, scheme or artifice . . . or engages in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity;

(2) with the requisite scienter;

(3) in connection with the purchase or sale of . . . electric energy or . . . transmission of electric energy subject to the jurisdiction of the Commission.

Order No. 670 at P 49; see also Amaranth Advisors L.L.C., 120 FERC ¶ 61,085, at P 44, reh'g denied, 121 FERC ¶ 61,224 (2007) ("Amaranth").

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<sup>22</sup> Prohibition of Energy Market Manipulation, Order No. 670, III FERC Stats. & Regs., Regs. Preambles ¶ 31,202, reh'g denied, 114 FERC ¶ 61,300 (2006).

34. In Amaranth, the Commission provided guidance with respect to the three elements required for the Commission to find that an entity has violated the Commission’s prohibition on market manipulation. The Commission defined fraud “generally to include ‘any action, transaction, or conspiracy for the purpose of impairing, obstructing or defeating a well-functioning market.’”<sup>23</sup> Further, in Amaranth, the Commission explained that “energy market participants may be deceived or defrauded where one market participant trades with the intent to artificially affect the price of a physical or financial energy product” with the result that “the price is no longer set solely by the legitimate forces of supply and demand.”<sup>24</sup> Additionally, while the Commission has recognized that “[f]raud is a question of fact that is to be determined by all the circumstances of the case[,]”<sup>25</sup> it explained that its rule prohibiting market manipulation “is an intentionally broad proscription against all kinds of deception, manipulation, deceit and fraud.”<sup>26</sup>

35. Regarding scienter, the Commission explained in Order No. 670 that both knowing and intentional misconduct, and recklessness, satisfy the scienter element.<sup>27</sup> As the Commission explained in Amaranth, “for the Anti-Manipulation Rule to apply ‘the

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<sup>23</sup> Amaranth, 120 FERC ¶ 61,085, at P 45 (citing Order No. 670 at P 50).

<sup>24</sup> Amaranth, 120 FERC ¶ 61,085, at P 45.

<sup>25</sup> Order No. 670 at P 50.

<sup>26</sup> Amaranth, 120 FERC ¶ 61,085, at P 45 (citing Order No. 670 at P 50).

<sup>27</sup> Order No. 670 at PP 52-53.

entity must have intended to affect, or have acted recklessly to affect, a jurisdictional transaction.”<sup>28</sup>

36. The Commission further explained in Order No. 670 that “any entity may be subject to [Part 1c] if its fraudulent or manipulative conduct is ‘in connection with’ a purchase or sale of . . . electric energy . . . or transmission service that is subject to the Commission’s jurisdiction.”<sup>29</sup> The Commission “views the ‘in connection with’ element in the energy context as encompassing situations in which there is a nexus between the fraudulent conduct of an entity and a jurisdictional transaction.”<sup>30</sup> “[I]n committing fraud, the entity must have intended to affect, or have acted recklessly to affect, a jurisdictional transaction.”<sup>31</sup> The Commission clarified that “any entity engaging in a non-jurisdictional transaction through a Commission-regulated RTO/ISO market, that acts with intent or with recklessness to affect the single price auction clearing price (which sets the price of both non-jurisdictional and jurisdictional transactions), would be engaging in fraudulent conduct with a jurisdictional transaction and, therefore, would be in violation of [Part 1c.]”<sup>32</sup>

37. The Commission also explained that “where a firm uses some combination of market power and trading activity, against economic interest in one sector, in order to

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<sup>28</sup> Amaranth, 120 FERC ¶ 61,085, at P 50 (citing Order No. 670 at P 22).

<sup>29</sup> Order No. 670 at P 21.

<sup>30</sup> Id. at P 22; see also Amaranth, 120 FERC ¶ 61,085, at P 110; Amaranth, 121 FERC ¶ 61,224, at PP 34-43 (Congress intended to cover a wide range of conduct with the prohibition against market manipulation).

<sup>31</sup> Order No. 670 at P 22.

<sup>32</sup> Id.

benefit its position in a related financial instrument by artificially moving the price, the firm likely crosses the line into the realm of manipulation.”<sup>33</sup>

38. Following the promulgation of Part 1c of the Commission regulations, the Commission, in an effort to avoid regulatory uncertainty while assuring that customers are properly safeguarded from acts of market manipulation, rescinded prior Market Behavior Rule 2.<sup>34</sup> The Commission, however, also made clear in Order No. 670 that activities such as wash trades, transactions predicated on false information, creating and relieving artificial congestion, and collusion for the purpose of market manipulation that were prohibited under Market Behavior Rule 2 are examples of deceptive devices or contrivances and continue to be prohibited under Part 1c of the Commission’s regulations.<sup>35</sup>

39. In Order No. 670, the Commission also made clear that parties could bring complaints directly under Part 1c of its regulations. The Commission explained that Congress provided the Commission “anti-manipulation authority that is independent of other provisions of the NGA and FPA, including NGA section 5 and FPA section 206.”<sup>36</sup> Accordingly, the Commission rejected a “suggestion that complaints alleging manipulation necessarily would rely on NGA section 5 or FPA section 206.”<sup>37</sup> However, the Commission rejected requests for special procedures for such complaints as

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<sup>33</sup> Amaranth, 120 FERC ¶ 61,085, at P 58.

<sup>34</sup> Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 114 FERC ¶ 61,165 (2006).

<sup>35</sup> Order No. 670 at P 59.

<sup>36</sup> Id. at P 70.

<sup>37</sup> Id.

unnecessary, explaining that complaints alleging manipulation should be filed following the procedures already set forth in Rule 206 of the Rules of Practice and Procedure.<sup>38</sup> In Order No. 670, the Commission also declined to “urge parties first to bring concerns and potential complaints to the Hotline,” reasoning that “[a]ggrieved entities should be free to choose the approach best suited to their circumstances.”<sup>39</sup>

#### **IV. RESPONDENTS, ACTING INDIVIDUALLY AND/OR TOGETHER, VIOLATED THE COMMISSION’S PROHIBITION OF ELECTRIC ENERGY MARKET MANIPULATION.**

40. As detailed in this section, the Tower Companies have engaged in conduct that violates the Commission’s prohibition of electric energy market manipulation. The Fund Companies contravened the Commission’s regulations by (i) using or employing a device, scheme or artifice to defraud the PJM market participants and manipulate the market for their benefit, and (ii) engaging in acts, practices, or courses of business that operated as a fraud or deceit upon PJM market participants. The Tower Companies violated the anti-manipulation regulations in each of the following ways (all described more fully below).

41. First, the Tower Companies colluded to purchase offsetting FTR positions in different affiliates, such that the default of Power Edge, which must be paid by the PJM members, was greater than it otherwise would have been, while one or more other affiliates received unjust profits.

42. Second, BJ Energy submitted increment and decrement bids in the day-ahead energy market, intentionally increasing congestion such that BJ Energy received

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<sup>38</sup> Id. at P 70 (citing 18 C.F.R. § 385.206).

<sup>39</sup> Order No. 670 at P 73 (citing 18 C.F.R. § 1b.21).

more for its FTRs, while causing Power Edge to owe more for its counterflow FTRs, thereby unjustly enriching BJ Energy while exacerbating Power Edge's default, which must be paid by other PJM members.

43. Third, on information and belief, Power Edge may have fraudulently distributed funds to its investors and/or shareholders, reducing the cash available to pay its counterflow FTR obligations, causing defaults which PJM members are now forced to pay.

44. Fourth, Power Edge withheld payment on its counterflow FTR obligations notwithstanding its holding funds from which it could pay, thereby fraudulently creating greater obligations for PJM members to cover in connection with Power Edge's default.

**A. The Fund Companies Colluded To Purchase Offsetting FTR Positions That Manipulated The Market.**

45. The Fund Companies manipulated the market through their coordinated purchases of positions in FTRs in different affiliates. By acting in a coordinated manner to hold hedged positions through different affiliates, the Fund Companies could reap the benefits in one affiliate, BJ Energy, while another affiliate, Power Edge, defaulted on its obligations and effectively transferred its obligations to the market participants as a whole. Had the positions all been in the same company, the Power Edge default on its counterflow FTR position in part would have been hedged by the profits on the offsetting FTR positions, reducing the harm to PJM members.

46. Power Edge and BJ Energy are both managed by TRC and the same trader made the trades and bid in the FTR auctions for both companies. Power Edge and BJ Energy also may have substantially the same investors.<sup>40</sup>

47. In the annual FTR auction for the 2007/2008 planning year, Power Edge purchased 5,037.5 MW of counterflow FTRs at a negative cost of \$55.1 million, i.e. Power Edge was to be paid \$55.1 million (over twelve months) for purchasing the counterflow FTRs. In each of the 12 months of the planning year, Power Edge then must pay the costs of congestion on these FTR paths.

48. Power Edge further purchased bilaterally 8,931.7 MW of counterflow FTRs from Exel Power Sources LLC (“Exel”), which had purchased them at a negative cost of \$96.8 million in the annual auction. As a result of this purchase, Power Edge would be paid by PJM \$96.8 million over 12 months, while being obligated to pay the costs of congestion on these FTR paths.<sup>41</sup> Power Edge also purchased some prevailing flow FTRs during the 2007/2008 annual auction and monthly auctions for June, July, and September 2007, for a total of 5,602.6 MW of prevailing flow FTRs.

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<sup>40</sup> As noted, the Tower Companies have not revealed their investors and discovery will be necessary to determine these facts. The facts described above give rise to an inference that common investors may be involved.

<sup>41</sup> Power Edge also purchased additional counterflow FTRs in monthly FTR auctions for June and July. Power Edge, therefore, holds a total of 13,969.2 MW of counterflow FTRs purchased through the annual auctions and 634 MW of counterflow FTRs purchased for June and July 2007 in monthly auctions.

49. Based on the expected values of the FTRs, and their clearing prices in the auction, overall Power Edge holds an overwhelmingly counterflow FTR position, as the chart below shows.<sup>42</sup>

| Auctions                        | Power Edge FTR Purchases |                                     |                         |  |
|---------------------------------|--------------------------|-------------------------------------|-------------------------|--|
|                                 | Counterflow FTR MWs      | Counterflow FTR Costs <sup>43</sup> | Prevailing Flow FTR MWs | Prevailing Flow FTR Cost <sup>44</sup> |
| 2007/2008 Annual Auction        | 5,037.5                  | \$(55,110,490)                      | 3,628.1                 | \$6,997,132                            |
| Bilateral Transaction with Exel | 8,931.7                  | \$(96,817,744)                      |                         |  |
| June 2007 Auction               | 619                      | \$(441,931)                         | 1,777.6                 | \$1,026,891                            |
| July 2007 Auction               | 15                       | \$(2,494)                           | 81.4                    | \$35,927                               |
| September 2007 Auction          |                          |                                     | 115.5                   | \$190,976                              |
| Total                           | 14,603                   | \$(152,372,659)                     | 5,602.6                 | \$8,250,926                            |

50. Following Power Edge’s acquisitions of primarily counterflow FTRs, its affiliate, BJ Energy, purchased FTRs in monthly auctions commencing with the auction for August 2007. Most of BJ Energy’s FTR purchases were prevailing flow FTRs, and were for all months from September through May of the current planning year. BJ

<sup>42</sup> Affidavit of Andrew L. Ott on behalf of PJM Interconnection, L.L.C. (“Ott Affidavit”) ¶¶ 5-6. The Ott Affidavit is included as Attachment A to this Complaint. The above figures do not include subsequent limited FTR sales and therefore PowerEdge’s actual holdings for any particular month may vary somewhat from the above.

<sup>43</sup> These amounts are amounts paid to Power Edge (over 12 months) for acquiring and holding the counterflow FTRs, in return for Power Edge’s obligations to pay the costs of congestion on the counterflow FTR paths.

<sup>44</sup> These are amounts paid by Power Edge for the FTR positions, in return for payments Power Edge receives when there is congestion on the FTR paths.

Energy purchased the following quantities of prevailing flow FTRs in August 2007 through February 2008 auctions.<sup>45</sup>

| Auctions              | BJ Energy Purchased     |                          |
|-----------------------|-------------------------|--------------------------|
|                       | Prevailing Flow FTR MWs | Prevailing Flow FTR Cost |
| August 2007 Auction   | 143                     | \$94,770                 |
| October 2007 Auction  | 225.3                   | \$59,794                 |
| November 2007 Auction | 306.5                   | \$929,184                |
| December 2007 Auction | 503.7                   | \$272,327                |
| January 2008 Auction  | 317.8                   | \$176,587                |
| February 2008 Auction | 202.2                   | \$102,263                |
| Total                 | 1,698.5                 | \$1,634,926              |

51. The year to date profit positions of the Fund Companies for their FTR holdings is estimated to be as reflected in the chart below.<sup>46</sup>

| Participant                                  | FTR<br>June 1, 2007 –<br>February 29, 2008 |
|--|--|
| Accord Energy                                | -\$11,455                                  |
| BJ Energy                                    | \$10,458,440 <sup>47</sup>                 |
| Franklin Energy                              | \$4,962,143                                |
| Ocean Power                                  | \$4,374,215                                |
| Power Edge (FTRs acquired from Exel)         | -\$31,353,690                              |
| Power Edge (FTRs purchased through auctions) | -\$29,722,114                              |

<sup>45</sup> Ott Affidavit ¶ 7.

<sup>46</sup> Ott Affidavit ¶ 9.

<sup>47</sup> BJ Energy is required to forfeit approximately \$2.4 of this amount pursuant to section 5.2.1(b) of the Appendix to Attachment K of the PJM Tariff. See note 51, infra.

Additional profits and losses will accrue on the Tower Companies' FTR positions over the remaining months of the planning period (i.e., through May 2008), as the companies hold FTRs for all remaining months.<sup>48</sup>

52. The same trader was identified to PJM as the authorized trader for Accord, BJ Energy, Ocean Power, and Power Edge in the FTR auctions.

53. Based on PJM's analysis, approximately 50% of the FTRs purchased by BJ Energy during the monthly auctions sank in locations known to provide offset to Power Edge's poor performing counterflow FTRs.<sup>49</sup> Further investigations and analysis may demonstrate that other FTRs held by BJ Energy and the other Fund Companies also may have provided additional offset to Power Edge's position.

54. Had BJ Energy's offsetting FTRs been held by Power Edge, they would have directly offset Power Edge's counterflow position, thereby reducing Power Edge's defaults. It appears that the Fund Companies were trying to hedge against the Power Edge counterflow position, by having an affiliate, BJ Energy, which likely has the same or similar investors, taking the hedge position. By having BJ Energy, rather than Power Edge, take these positions, the Tower Companies and these investors could profit from the BJ Energy positions and retain those profits, while Power Edge defaults remain, with the PJM members having to pay for them.

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<sup>48</sup> The Fund Companies also had charges and revenues in other non-FTR markets. The amounts listed in the above chart do not reflect the non-FTR activity.

<sup>49</sup> Ott Affidavit ¶¶ 10-11. Prevailing flow and counterflow FTRs do not have to have precisely equal and opposite paths to offset each other, or to act as a hedge against each other. A prevailing flow FTR that sinks at the same or nearby source point of a counterflow FTR may act as a hedge against the counterflow position. Similarly, a prevailing flow FTR on a path known to have congestion characteristics opposite to the counterflow FTR also could act as a hedge.

55. Upon information and belief, the Fund Companies undertook their positions in separate affiliates at a time when Power Edge was experiencing financial difficulty and knew it may default. Because the same trader acted on behalf of Power Edge and BJ Energy, this trader acted knowingly to benefit Power Edge's affiliate, BJ Energy, instead of benefiting Power Edge and reducing the default PJM members have to cover. If Power Edge and BJ Energy had not acted in such a coordinated manner, and Power Edge had held the hedge position rather than BJ Energy, then Power Edge's ultimate default would have been less. This would have resulted in the PJM members having to pay less to cover Power Edge's default.

56. Absent the Power Edge default and the manipulative behavior, these trades, taken together, would be irrational. The trader for these companies would be knowingly hurting Power Edge, on whose behalf he also traded, every time a BJ Energy trade was profitable. Absent a default, there is no rational reason for the trader to hurt Power Edge and its investors in this manner. However, to the extent the investors in Power Edge and BJ Energy were similar, it would be profitable to manipulatively place the profitable hedge position in BJ Energy rather than Power Edge, if the expectation was that the defaults of Power Edge would be avoided and "insured" without cost by the larger PJM membership. In this manner, the investors could retain the profits, instead of just reducing Power Edge's substantial defaults.

57. Accordingly, the Fund Companies violated the Commission's prohibition of market manipulation. The Fund Companies knowingly or recklessly used a "device, scheme or artifice" to defraud. The Fund Companies' actions were a "course of business that operates or would operate as a fraud or deceit upon" PJM and the PJM members by producing gains for BJ Energy that it will realize, while continuing losses for Power Edge

that the other PJM members must cover. The fact that there was both a common manager and common trader for both Power Edge and BJ Energy indicates these companies knowingly coordinated their actions to defraud PJM and the PJM members.

**B. The Fund Companies' Submission Of Increment And Decrement Bids Artificially Created Congestion In The Day-Ahead Energy Market Thereby Enhancing Their FTR Profits, While Worsening Power Edge's FTR Default.**

58. The Fund Companies used virtual bidding in the day-ahead energy market to enhance the profits of one or more affiliates' FTR positions, while worsening Power Edge's obligations on its counterflow FTR position, thereby increasing the default the PJM members have to cover. Further, by knowingly and actively increasing congestion in the day-ahead energy market for their own FTR financial gain, the Fund Companies affected the financial positions of other third-party FTR holders, with the resulting FTR settlements "no longer set solely by the legitimate forces of supply and demand."<sup>50</sup> Furthermore, the Fund Companies' virtual bidding distorted LMPs in the day-ahead energy market resulting in higher prices for energy in several PJM load zones.

59. Based on a sample of ten days during December and January, PJM has observed that BJ Energy submitted decrement bids in the day-ahead energy market at the Atlantic node. These virtual bids resulted in increased congestion on the Atlantic-Larrabee circuit, thereby increasing the payments to BJ Energy for FTRs it held that benefited by increased congestion on that circuit.<sup>51</sup> At the same time, the increased

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<sup>50</sup> Amaranth, 120 FERC ¶ 61,085, at P 45.

<sup>51</sup> As explained in Part II.B.3, infra, section 5.2.1 of the Appendix to Attachment K of the PJM Tariff anticipates that FTR holders might inappropriately enter virtual trades to affect the value of their FTRs, and requires such FTR holders to forfeit profits on the affected FTRs. Accordingly, BJ Energy, in subsequent settlement  
(Continued. . .)

congestion created by BJ Energy's virtual bids degraded the value of Power Edge's counterflow FTR position on the same path and thereby inflated the amount of its default, which the PJM members will have to cover.

60. BJ Energy's manipulative virtual bidding behavior occurred during December 2007 and January 2008, ending on or about January 25, 2008.<sup>52</sup> Based on an evaluation of BJ Energy's entire FTR portfolio, during the ten-day sample period, the value of BJ Energy's portfolio increased by \$183,000, while Power Edge's FTR portfolio decreased by \$480,253.<sup>53</sup> As shown in the chart below, BJ Energy's manipulative virtual bidding conduct, based on the ten-day sample, therefore likely produced a profit increase of over half a million dollars per month on BJ Energy's FTRs, while simultaneously producing an additional loss on Power Edge's counterflow FTRs of approximately \$1.5 million per month, which will have to be covered by the PJM members. Likewise, other holders of counterflow FTRs were adversely affected by BJ Energy's virtual bidding. As a result of BJ Energy's impermissible virtual bids, based on the ten-day sample, other holders of counterflow FTRs lost over \$1.8 million per month.<sup>54</sup>

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( . . . continued)

of its bills, forfeited \$1.3 million of December 2007 FTR revenues and \$1.1 million of January 2008 FTR revenues. BJ Energy apparently was not aware of this rule, as its behavior was obviously undertaken to manipulate the energy market LMPs in order to benefit its FTR holdings.

<sup>52</sup> It appears that the conduct ended when PJM informed the Tower Companies that the PJM Market Monitoring Unit had detected it.

<sup>53</sup> Ott Affidavit ¶13.

<sup>54</sup> Ott Affidavit ¶¶ 14-15. BJ Energy's virtual bids, of course, benefitted other holders of prevailing flow FTRs like BJ Energy held. Notably, this included two other affiliated Fund Companies, Franklin Power and Ocean Power.

|  | <b>Affect of BJ Energy Increment and Decrement Bids</b> |  |
|--|---|--|
|  | <b>Over 10 Day Sample Period</b>                        | <b>Per Month (based on a 31 day month)</b> |
| <b>Increase in BJ Energy FTR Portfolio Value</b>                           | \$183,000   | \$567,300                                  |
| <b>Decrease in Power Edge FTR Portfolio Value</b>                          | (\$480,253)   | (\$1,488,784)                              |
| <b>Decreases in Value to FTR Holders' Portfolios that Experienced loss</b> | (\$603,500)   | (\$1,870,850)                              |

61. In addition to the effect on FTR portfolios, BJ Energy's manipulative virtual bidding for its own gain distorted LMPs in the day-ahead energy market. Based on a ten-day sample, PJM determined that the BJ Energy virtual bids increased LMPs significantly in the following four zones:

| <b>Zone</b>                             | <b>Average Increase in LMP due to BJ Energy Virtual Bidding (per MWh)</b> |
|---|---|
| Jersey Central Power and Light Company  | \$1.17  |
| Pennsylvania Electric Company           | \$0.44  |
| Public Service Electric and Gas Company | \$0.45  |
| Rockland Electric Company               | \$0.61  |

Ott Affidavit ¶ 16.<sup>55</sup>

62. For the ten-day sample period, the zonal price changes in the day-ahead energy market in the four zones that experienced the largest impact – JCPL, PENELEC, PSEG, and RECO – produced increased payments for energy of \$1,363,600 (\$136,360

<sup>55</sup> In some other zones, distorted LMPs reduced prices and correspondingly produced distortedly lower prices to generators in those zones.

per day).<sup>56</sup> Based on the sample, this equates to nearly \$4 million per month in increased energy charges in the day-ahead energy market in these zones.

63. BJ Energy's conduct creating congestion for the purpose of enhancing its FTR position was a "device, scheme or artifice" to defraud PJM and the PJM members and constitutes a "course of business that operates or would operate as a fraud or deceit upon" PJM and the PJM members. BJ Energy's actions, through the same trader as its affiliate Power Edge, worsened the amount of Power Edge's defaults that PJM members have to cover. BJ Energy knew at the time it made the virtual bids that Power Edge would default on any further obligations and so could trade in a manner that benefited affiliates and harmed Power Edge.<sup>57</sup> Moreover, BJ Energy's behavior increased certain LMPs, requiring many customers to pay more for day-ahead energy than they would have had BJ Energy not submitted its manipulative virtual bids.

64. BJ Energy's manipulative behavior is explicitly the type of conduct the Commission intended its anti-manipulation rule to cover. In Order No. 670, the Commission emphasized that section 1c.2 of the Commission's regulations is intended to prohibit parties from knowingly or recklessly "creating and relieving artificial congestion, and collusion for the purpose of market manipulation."<sup>58</sup> BJ Energy

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<sup>56</sup> Ott Affidavit ¶ 17. On a per day basis, the impact on each of the 4 zones is \$63,072 from the JCPL zone, \$21,545 for the Penelec zone, \$49,415 for the PSEG zone, and \$2,328 for the RECO zone.

<sup>57</sup> The above facts give rise to the very strong inference that the investors in Power Edge and BJ Energy were substantially the same. Otherwise, TRC and the trader would have been violating their fiduciary duties to Power Edge's investors every time they submitted a virtual bid designed to profit BJ Energy and, by definition, harm the investors in Power Edge, which held opposite positions.

<sup>58</sup> Order No. 670 at P 59.

knowingly created congestion to benefit its FTR position, while acting in concert with its affiliate whose FTR position was worsened, at the expense of other market participants.

65. Accordingly, the Commission should find that BJ Energy violated the prohibition of market manipulation through its virtual bidding and order BJ Energy to disgorge its unjust profits and refund them to PJM and affected market participants. The Commission also should investigate all of BJ Energy and the other affiliates' trading to determine whether there was any other manipulative conduct.

**C. Power Edge May Have Fraudulently Distributed Funds, Avoiding Its Payment Obligations.**

66. Power Edge also appears to have fraudulently distributed funds to investors or shareholders that could have been used to pay its obligations on its counterflow FTRs. Upon information and belief, Power Edge was initially capitalized with over \$18 million. However, upon information and belief, Power Edge distributed millions of dollars to its investors before it defaulted, even though at the time Power Edge had no earnings and had only experienced, or expected to experience, near-term losses in the PJM market.

67. As discussed, counterflow FTRs are expected to produce losses throughout the summer months. For the month of June 2007, Power Edge accrued a total amount owing to PJM of \$5.8 million. In July and August 2007, losses on Power Edge's FTR positions were \$7.1 million and \$4.2 million, respectively. In September 2007, Power Edge's losses were \$1.4 million. Only in October 2007 did Power Edge have earnings on its FTR positions, and the earnings were only \$2.6 million.

68. Notwithstanding its expected financial obligations to PJM, on information and belief, Power Edge nonetheless distributed millions of dollars to investors. On May

31, 2007, at Power Edge's request, PJM returned \$7 million of collateral to Power Edge that was not then required by PJM's credit rules. Yet, several weeks later, when it came time to pay its very first bills, Power Edge represented to PJM that it was short on capital and had to use collateral to pay its bills, otherwise it would be unable to make its payments. Apparently, Power Edge had distributed all or a substantial part of the \$7 million which PJM had returned, and this distribution, and continuing losses, caused Power Edge's capitalization to become extremely thin such that it could not pay its bills. Had Power Edge not depleted its cash assets to its investors, Power Edge would have had additional assets to cover its ultimate defaults. There was no apparent legitimate basis for distributions to investors when Power Edge had no earnings and had reason to believe it would continue to incur financial obligations to PJM in the immediate future.

69. Power Edge's actions and course of business in failing to maintain available funds to pay its bills, including the timing and amounts of apparent distributions, operate as a fraud or deceit upon PJM and the PJM members. Power Edge's apparent actions resulted in Power Edge avoiding obligations it could have met, at least to a partial extent, and instead shifting these obligations to the PJM members through an intentional default. Power Edge's apparent actions in distributing funds appear to have been for the purpose of avoiding its payment obligations and therefore, impairing, obstructing or defeating Power Edge's ability to meet its obligations to PJM and the PJM members.

**D. Power Edge Intentionally Did Not Pay Its Bills When It Still Had Funds.**

70. When Power Edge defaulted, upon information and belief, Power Edge still had cash on hand which it could have used to pay its bills. In November 2007, PJM

disbursed \$2.6 million to Power Edge for its October market activity. Nonetheless, Power Edge refused to pay its very next bill from PJM for November activity of only \$2.3 million. Thus, Power Edge intentionally engaged in transactions in the PJM market and then intentionally failed to pay its obligations to PJM and the PJM members, despite having the financial wherewithal, in whole or in part, to do so.

71. There is no basis for engaging in market transactions and refusing to pay their costs, when funds are available to do so. Power Edge's intentional failure to pay PJM, when Power Edge did not dispute the bill and had funds to pay, constitutes an artifice and a course of business that operate as a fraud or deceit upon PJM and its members.

**V. RELIEF REQUESTED.**

72. PJM respectfully requests the Commission to:

1. Find that the Fund Companies manipulated the FTR and day-ahead energy markets.
2. Investigate the conduct of the Tower Companies to determine all violations of the rules prohibiting market manipulation.
3. Direct the Fund Companies to disgorge their unjust revenues and profits and refund them to PJM and to affected PJM members.
4. Prohibit trading by all of the Tower Companies in the PJM markets.
5. Impose civil penalties for the manipulative behavior of the Fund Companies.
6. Initiate an expedited public hearing, with discovery, to address the issues raised in this Complaint.
7. Grant such other and further relief as the Commission deems appropriate to address the market manipulation of the Fund Companies.

## **VI. RULE 206 REQUIREMENTS.**

73. Action or Inaction Alleged to Violate Statutory Standards or Regulatory Requirements (Rule 206(b)(1)) — The violation is stated above in Part IV.

74. How Action or Inaction Violates Applicable Statutory Standards or Regulatory Requirements (Rule 206(b)(2)) — The violation of statutory and regulatory requirements are described in Part IV.

75. Issues Presented as They Relate to or Affect the Complainant (Rules 206(b)(3)) — The issues presented are set forth in Part IV.

76. Good Faith Effort to Quantify the Financial Impact or Burden Created for Complainant (Rule 206(b)(4)) — The financial impacts are described in Part IV and are expected to exceed \$20 million.

77. Practical, Operational, or other Nonfinancial Impacts on Complainant (Rule 206(b)(5)) — The actions of Respondents, if left unpunished, will injure market participants' faith in PJM's markets. Prompt action by the Commission addressing the manipulative conduct will help to restore faith in PJM's markets.

78. Related Proceedings (Rule 206(b)(6)) — In Docket No. ER08-455, PJM has sought Operating Agreement changes related to counterflow FTR defaults like that of the Power Edge defaults. See note 1, supra.

79. Specific Relief Requested (Rule 206(b)(7)) — The specific relief requested is set forth in Part V of the Complaint.

80. Documents that Support the Complaint (Rule 206(b)(8)) — The affidavit of Andrew L. Ott is attached to this Complaint. Other documents supporting the Complaint are in the possession of Respondents and must be obtained through discovery.

81. Dispute Resolution (Rule 206(b)(9)) — PJM has attempted, unsuccessfully, to resolve this dispute informally through telephone conferences and meetings with representatives of Respondents. Based on these discussions, it does not appear that a settled resolution is achievable.

82. Form of Notice (Rule 206(b)(10)) — PJM has included a Form of Notice suitable for publication in the Federal Register.

83. Service on Respondent (Rule 206(c)) — PJM is serving a copy of this Complaint, simultaneously with filing at the Commission, by email and first-class mail on Respondents as follows:

Sandy S. Choi  
General Counsel  
Tower Research Capital LLC  
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schio@tower-research.com

Stephen C. Palmer  
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Washington, DC 20004  
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Mark Gorton  
Tower Research Capital LLC  
377 Broadway, 11th Floor  
New York, NY 10013

PJM also has provided a copy of the Complaint to all state commissions in the PJM region, and all PJM members.

## VII. COMMUNICATIONS.

84. Correspondence and communications with respect to this filing should be sent to, and PJM requests the Secretary to include on the official service list, the following:

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Vice President – Federal Government Policy  
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**VIII. CONCLUSION.**

85. For the reasons stated above, the Commission should grant the Complaint and issue an order granting the relief requested above.

Respectfully submitted,



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**Attorneys for  
PJM Interconnection, L.L.C.**

March 7, 2008

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**ATTACHMENT A**

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

|  |   |                          |
|--|---|--------------------------|
| PJM Interconnection, L.L.C.            | ) |                          |
| Complainant,                           | ) |                          |
|  | ) |                          |
| v.                                     | ) | Docket No. EL08-____-000 |
|  | ) |                          |
| Accord Energy LLC                      | ) |                          |
| BJ Energy LLC                          | ) |                          |
| Franklin Power LLC                     | ) |                          |
| GLE Trading LLC                        | ) |                          |
| Ocean Power LLC                        | ) |                          |
| Pillar Fund LLC                        | ) |                          |
| Power Edge LLC                         | ) |                          |
| Tower Research Capital LLC             | ) |                          |
| Tower Research Capital Investments LLC | ) |                          |
| Respondents.                           | ) |                          |

**AFFIDAVIT OF ANDREW L. OTT  
ON BEHALF OF PJM INTERCONNECTION, L.L.C.**

Andrew L. Ott, being duly sworn, deposes and says as follows:

1. My name is Andrew L. Ott, and my business address is PJM Interconnection, L.L.C., 955 Jefferson Avenue, Valley Forge Corporate Center, Norristown, Pennsylvania 19403-2497. I am employed by PJM as Vice President of the Markets Division. In that capacity, I am responsible for the management of the PJM Market Operations and Market Settlements. I have been employed in PJM's Market Services Division since October, 1996. In that time period, I have been responsible for implementation of the current PJM locational marginal pricing ("LMP") system, the PJM financial transmission rights ("FTR") auction, and the PJM day-ahead energy market. Prior to joining PJM, I worked extensively in developing electricity market models and

power system analysis applications. I hold a Bachelor of Science degree in Electrical Engineering from Pennsylvania State University and a Master of Science degree in Applied Statistics from Villanova University.

2. My affidavit is submitted in support of PJM's Complaint against Accord Energy LLC ("Accord"), BJ Energy LLC ("BJ Energy"), Franklin Power LLC ("Franklin Power"), GLE Trading LLC, ("GLE Trading"), Ocean Power LLC ("Ocean Power"), Pillar Fund LLC ("Pillar"), Power Edge LLC ("Power Edge") (collectively "Fund Companies"), and Tower Research Capital LLC ("TRC"), and Tower Research Capital Investments LLC ("TRCI") (collectively "Tower Companies" or "Respondents") regarding their manipulation of the PJM market.

#### **I. RESPONDENTS FTR POSITIONS**

3. I have analyzed the FTR positions of the Tower Companies during the current planning year (June 2007 through May 2008), and in particular BJ Energy and Power Edge.

4. The Fund Companies have participated in the annual FTR auction for the 2007/2008 planning year and various monthly FTR auctions during the planning year. Power Edge also acquired FTRs through a bilateral transaction. The Fund Companies hold various amounts of both prevailing flow FTRs and counterflow FTRs.

##### **A. Power Edge FTR Position**

5. Power Edge purchased, through the FTR auctions and its bilateral purchase, a total of 14,603 MW of counterflow FTRs and 5,602.6 MW of prevailing flow FTRs. These counterflow FTRs consist of: (i) 5,037.5 MW that Power Edge purchased in the annual FTR auction for the 2007/2008 planning year; (ii) 619 MW purchased in the June 2007 auction; (iii) 15 MW purchased in the July 2007 auction; and (iv) 8,931.7 MW

that Power Edge purchased bilaterally from Exel Power Sources LLC (“Exel”). Power Edge purchased prevailing flow FTRs consist of: (i) 3,628.1 MW purchased in the 2007/2008 annual auction; and (ii) 5,602.6 MW purchased during the June 2007, July 2007, and September 2007 monthly FTR auctions.

6. The following chart summarizes Power Edge’s FTR positions and the associated costs of the FTR purchases during the auctions. The counterflow FTR costs are negative meaning that Power Edge will be paid that amount in approximately equal amounts each month during the planning year, while the prevailing FTR costs are positive meaning that Power Edge will pay those amounts in approximately equal amounts each month during the planning year.

| Auctions                        | Power Edge FTR Purchases |                                    |                         |                                       |
|---------------------------------|--------------------------|------------------------------------|-------------------------|---------------------------------------|
|                                 | Counterflow FTR MWs      | Counterflow FTR Costs <sup>1</sup> | Prevailing Flow FTR MWs | Prevailing Flow FTR Cost <sup>2</sup> |
| 2007/2008 Annual Auction        | 5,037.5                  | \$(55,110,490)                     | 3,628.1                 | \$6,997,132                           |
| Bilateral Transaction with Exel | 8,931.7                  | \$(96,817,744) <sup>3</sup>        |                         |                                       |
| June 2007 Auction               | 619                      | \$(441,931)                        | 1,777.6                 | \$1,026,891                           |
| July 2007 Auction               | 15                       | \$(2,494)                          | 81.4                    | \$35,927                              |
| September 2007 Auction          |                          |                                    | 115.5                   | \$190,976                             |
| Total                           | 14,603                   | \$(152,372,659)                    | 5,602.6                 | \$8,250,926                           |

<sup>1</sup> These amounts are amounts paid to Power Edge (over 12 months) for acquiring and holding the counterflow FTRs, in return for Power Edge’s obligations to pay the costs of congestion on the counterflow FTR paths.

<sup>2</sup> These are amounts paid by Power Edge for the FTR positions, in return for payments Power Edge receives when there is congestion on the FTR paths.

<sup>3</sup> This is the amount that was to be paid to Exel as a result of its auction purchases, and now is paid to Power Edge as a result of its bilateral purchase from Exel.

**B. Other Fund Companies FTRs**

7. BJ Energy purchased FTRs in monthly auctions commencing with the August 2007 auction. BJ Energy purchased primarily prevailing flow FTRs, which were for all months from August through May of the current planning year with the exception of September. The following chart summarizes the amounts of and costs for the prevailing flow FTRs that BJ Energy purchased in the FTR auctions from August 2007 through February 2008.

| <b>Auctions</b>       | <b>BJ Energy Purchased</b>     |                                 |
|-----------------------|--------------------------------|---------------------------------|
|                       | <b>Prevailing Flow FTR MWs</b> | <b>Prevailing Flow FTR Cost</b> |
| August 2007 Auction   | 143                            | \$94,770                        |
| October 2007 Auction  | 225.3                          | \$59,794                        |
| November 2007 Auction | 306.5                          | \$929,184                       |
| December 2007 Auction | 503.7                          | \$272,327                       |
| January 2008 Auction  | 317.8                          | \$176,587                       |
| February 2008 Auction | 202.2                          | \$102,263                       |
| Total                 | 1698.5                         | \$1,634,926                     |

8. Appendix A to this Affidavit includes a summary chart, summarizing the purchased FTRs for Accord, Franklin Power, and Ocean Power, in addition to BJ Energy and Power Edge.

9. In analyzing the planning year to date, I determined the year to date profit position for the FTR positions for each of the Fund Companies' FTR positions during the planning year. These values take into account the auction cost of the FTRs and the actual value of the position each month, which is the amount of congestion costs paid to the Fund Companies on its prevailing flow FTRs or the amount of congestion costs paid by the Fund Companies on its counterflow FTRs. The chart below summarizes these profit positions.

| <b>Participant</b>                                 | <b>FTR Profit<br/>June 1, 2007 –<br/>February 29, 2008<sup>4</sup></b> |
|--|--|
| Accord Energy                                      | -\$11,455  |
| BJ Energy  | \$10,458,440   |
| Franklin Energy                                    | \$4,962,143  |
| Ocean Power  | \$4,374,215  |
| Power Edge (FTRs<br>acquired from Exel)            | -\$31,353,690  |
| Power Edge (FTRs<br>purchased through<br>auctions) | -\$29,722,114  |

10. Prevailing flow and counterflow FTRs can act as hedges against each other in a market participant's portfolio. For prevailing flow and counterflow FTRs to offset each other, or for one to act as a hedge against the other, they do not need to have precisely equal and opposite paths. A prevailing flow FTR sinking at the same or nearby source point of a counterflow FTR may act as a hedge against the counterflow position, as could a prevailing flow FTR on a path known to have congestion characteristics opposite to the counterflow FTR.

11. Based on analysis of the paths for the FTRs held by BJ Energy and Power Edge, I have identified that at least approximately 50% of the FTRs purchased by BJ Energy sink at locations where Power Edge's counterflow FTRs source. These BJ Energy FTRs provide a financial offset to the Power Edge counterflow FTRs. Further analysis would need to be done to determine whether additional FTRs held by BJ Energy and the FTR positions of the other Fund Companies similarly sank in locations that financially offset the Power Edge counterflow FTRs.

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<sup>4</sup> The monthly and year-to-date profits are calculated using FTR cost estimates based on using  $\frac{1}{12}$  of the value of the FTR from the annual auction. In PJM settlements, the FTR cost is billed based on number of days in the month divided by total days in a year. Therefore, these profit estimates may differ slightly from actual billing amounts.

## **II. BJ ENERGY INCREMENT AND DECREMENT BIDS**

12. I reviewed and analyzed a ten-day sample of BJ Energy's increment offers and decrement bids in the day-ahead energy market. The ten days were during December 2007 and January 2008. The specific dates analyzed were December 25, 28, and 31, and January 6, 7, 8, 9, 15, 18, and 22. These dates were chosen as a representative sample of days where BJ Energy's virtual trading occurred at BJ Energy's FTR source and sink locations.

### **A. Effect on FTR Portfolios**

13. During the ten sample days, along with most other days in December 2007 and January 2008, BJ Energy placed decrement bids at the Atlantic node. These bids had the effect of increasing congestion on the Atlantic-Larrabee circuit. BJ Energy held FTRs that benefitted from increased congestion on this circuit, and the increased congestion increased the payments to BJ Energy for these FTRs. Evaluating BJ Energy's entire FTR portfolio over the ten-day sample period shows that BJ Energy's FTR portfolio increased in value by \$183,000 over the ten-day sample period because of its increment and decrement bids. The evaluation also showed that BJ Energy's increment and decrement bids during the ten-day sample period produced additional losses on Power Edge's counterflow FTRs of \$480,253 during that time frame.

14. The evaluation of the ten-day sample, further showed that BJ Energy's virtual bids also decreased the value of the FTR portfolios of some other market participants. Over the ten-day sample period, the FTR portfolios of others that decreased in value experienced a total decrease of \$603,500.

15. To estimate a monthly change in value due to BJ Energy's virtual bidding, I calculated an average daily value for the ten-day sample by dividing the ten-day amount

by ten and then multiplied that average daily value by 31. The results are summarized in the table below.

|  | <b>Affect of BJ Energy Increment and Decrement Bids</b> |  |
|--|---|--|
|  | <b>Over 10 Day Sample Period</b>                        | <b>Per Month (based on a 31 day month)</b> |
| <b>Increase in BJ Energy FTR Portfolio Value</b>                             | \$183,000   | \$567,300                                  |
| <b>Decrease in Power Edge FTR Portfolio Value</b>                            | (\$480,253)   | (\$1,488,784)                              |
| <b>Decreases in Value to FTR Holders' Portfolios that experienced losses</b> | (\$603,500)   | (\$1,870,850)                              |

**B. Effect on LMP**

16. BJ Energy's virtual bidding also affected the LMP's in the day-ahead energy market. Evaluation of the day-ahead market with BJ Energy's virtual bidding removed for a ten-day sample shows that the impact of the virtual bids during those ten days increased the LMPs in several zones. The chart below summarizes the four zones that had the highest increases in LMP as a result of BJ Energy's virtual bids.

| <b>Zone</b>                             | <b>Average Increase in LMP due to BJ Energy Virtual Bidding per MWh</b> |
|---|---|
| Jersey Central Power and Light Company  | \$1.17  |
| Pennsylvania Electric Company           | \$0.44  |
| Public Service Electric and Gas Company | \$0.45  |
| Rockland Electric Company               | \$0.61  |

17. I calculated the impact of the increased LMPs in the four zones that had the highest increase in LMP (JCPL, Penelec, PSEG, and RECO) for the ten-day sample period. The impact on energy purchasers in the day-ahead energy market for these four

zones is \$136,360 per day for a total of \$1,363,600 for the four zones for the ten-day sample period. The daily impact for the four zones is \$63,072 for the JCPL zone, \$49,415 for the PSEG zone, \$21,545 for the Penelec zone, and \$2,328 for the RECO zone. Because I have no reason to expect the effects in the ten-day sample to differ from the effects generally, these calculations show that the monthly impact on these zones is increased costs to energy purchasers of approximately \$4.2 million per month.

**Appendix A**  
**Summary Fund Company Purchased FTRs**

| Fund Company           | Auction              | Purchased FTR MWs |                 |               | Purchased FTR Cost   |                    |                      |
|------------------------|----------------------|-------------------|-----------------|---------------|----------------------|--------------------|----------------------|
|                        |                      | Counter Flow      | Prevailing Flow | Total         | Counter Flow         | Prevailing Flow    | Total                |
| <b>Accord</b>          | SEP 2007 Auction     | 25                | 30.3            | 55.3          | (\$519)              | \$3,315            | \$2,796              |
|                        | OCT 2007 Auction     |                   | 64              | 64            |                      | \$5,051            | \$5,051              |
|                        | NOV 2007 Auction     |                   | 21              | 21            |                      | \$462              | \$462                |
|                        | DEC 2007 Auction     |                   | 0.3             | 0.3           |                      | \$239              | \$239                |
|                        | JAN 2008 Auction     |                   | 10              | 10            |                      | \$13,271           | \$13,271             |
|                        | FEB 2008 Auction     | 15                | 10              | 25            | \$0                  | \$271              | \$271                |
| <b>Accord Total</b>    |                      | <b>40</b>         | <b>135.6</b>    | <b>175.6</b>  | <b>(\$519)</b>       | <b>\$22,609</b>    | <b>\$22,090</b>      |
| <b>BJ Energy</b>       | AUG 2007 Auction     | 184               | 143             | 327           | (\$921,417)          | \$94,770           | (\$826,647)          |
|                        | OCT 2007 Auction     | 251.2             | 225.3           | 476.5         | (\$57,925)           | \$59,794           | \$1,869              |
|                        | NOV 2007 Auction     | 24                | 306.5           | 330.5         | (\$551)              | \$929,184          | \$928,633            |
|                        | DEC 2007 Auction     | 50                | 503.7           | 553.7         | (\$630)              | \$272,327          | \$271,697            |
|                        | JAN 2008 Auction     | 20                | 317.8           | 337.8         | (\$2,521)            | \$176,587          | \$174,066            |
|                        | FEB 2008 Auction     | 50.4              | 202.2           | 252.6         | (\$9,588)            | \$102,263          | \$92,675             |
| <b>BJ Energy Total</b> |                      | <b>579.6</b>      | <b>1698.5</b>   | <b>2278.1</b> | <b>(\$992,633)</b>   | <b>\$1,634,926</b> | <b>\$642,293</b>     |
| <b>Franklin</b>        | 07/08 Annual Auction | 2294.7            | 406.3           | 2701          | (\$3,193,834)        | \$127,903          | (\$3,065,932)        |
|                        | JUN 2007 Auction     | 2951              | 1001.2          | 3952.2        | (\$133,689)          | \$201,125          | \$67,436             |
|                        | JUL 2007 Auction     | 981.4             | 920.2           | 1901.6        | (\$58,267)           | \$228,254          | \$169,987            |
|                        | AUG 2007 Auction     | 3270              | 921.1           | 4191.1        | (\$503,799)          | \$109,060          | (\$394,739)          |
|                        | SEP 2007 Auction     | 7839.2            | 1648.1          | 9487.3        | (\$346,766)          | \$115,165          | (\$231,602)          |
|                        | OCT 2007 Auction     | 7972.3            | 1746.3          | 9718.6        | (\$268,073)          | \$67,185           | (\$200,888)          |
|                        | NOV 2007 Auction     | 6623.2            | 2154.5          | 8777.7        | (\$229,770)          | \$553,899          | \$324,129            |
|                        | DEC 2007 Auction     | 210               | 868.9           | 1078.9        | (\$39,038)           | \$476,487          | \$437,450            |
|                        | JAN 2008 Auction     | 685.8             | 726.6           | 1412.4        | (\$255,066)          | \$557,712          | \$302,646            |
|                        | FEB 2008 Auction     | 2808.9            | 1394.2          | 4203.1        | (\$122,714)          | \$664,411          | \$541,697            |
|                        | MAR 2008 Auction     | 1133              | 313.1           | 1446.1        | (\$45,573)           | \$242,314          | \$196,741            |
| <b>Franklin Total</b>  |                      | <b>36769.5</b>    | <b>12100.5</b>  | <b>48870</b>  | <b>(\$5,196,589)</b> | <b>\$3,343,515</b> | <b>(\$1,853,074)</b> |

| Fund Company  | Auction              | Purchased FTR MWs |                 |                | Purchased FTR Cost    |                    |                       |
|---|----------------------|-------------------|-----------------|----------------|-----------------------|--------------------|-----------------------|
|   |                      | Counter Flow      | Prevailing Flow | Total          | Counter Flow          | Prevailing Flow    | Total                 |
| Ocean Power   | JUL 2007 Auction     | 416.6             |                 | 416.6          | (\$5,160,822)         |                    | (\$5,160,822)         |
|   | AUG 2007 Auction     | 431.4             | 301.7           | 733.1          | (\$2,829,335)         | \$47,485           | (\$2,781,849)         |
|   | SEP 2007 Auction     | 116.5             | 240             | 356.5          | (\$1,800,560)         | \$220,090          | (\$1,580,471)         |
|   | OCT 2007 Auction     | 218               |                 | 218            | (\$1,268,777)         |                    | (\$1,268,777)         |
|   | NOV 2007 Auction     | 321               | 635.3           | 956.3          | (\$30,955)            | \$153,920          | \$122,966             |
|   | DEC 2007 Auction     | 135               | 299             | 434            | (\$85,280)            | \$171,216          | \$85,936              |
|   | JAN 2008 Auction     | 142.8             | 754.4           | 897.2          | (\$132,002)           | \$1,230,027        | \$1,098,025           |
|   | FEB 2008 Auction     | 118               | 256.2           | 374.2          | (\$512,164)           | \$368,928          | (\$143,236)           |
| <b>Ocean Power Total</b>                            |                      | <b>1899.3</b>     | <b>2486.6</b>   | <b>4385.9</b>  | <b>(\$11,819,895)</b> | <b>\$2,191,667</b> | <b>(\$9,628,228)</b>  |
| <b>Power Edge (FTRs acquired from Exel)</b>         |                      |                   |                 |                |                       |                    |                       |
|   | 07/08 Annual Auction | 8931.7            |                 | 8931.7         | (\$96,817,744)        |                    | (\$96,817,744)        |
|   | AUG 2007 Auction     |                   |                 | 0              |                       |                    | \$0                   |
|   | SEP 2007 Auction     |                   |                 | 0              |                       |                    | \$0                   |
|   | OCT 2007 Auction     |                   |                 | 0              |                       |                    | \$0                   |
|   | NOV 2007 Auction     |                   |                 | 0              |                       |                    | \$0                   |
|   | DEC 2007 Auction     |                   |                 | 0              |                       |                    | \$0                   |
| <b>Power Edge (FTRs acquired from Exel) Total</b>   |                      | <b>8931.7</b>     |                 | <b>8931.7</b>  | <b>(\$96,817,744)</b> |                    | <b>(\$96,817,744)</b> |
| <b>Power Edge (purchased through auctions)</b>      |                      |                   |                 |                |                       |                    |                       |
|   | 07/08 Annual Auction | 5037.5            | 3628.1          | 8665.6         | (\$55,110,490)        | \$6,997,132        | (\$48,113,358)        |
|   | JUN 2007 Auction     | 619               | 1777.6          | 2396.6         | (\$441,931)           | \$1,026,891        | \$584,959             |
|   | JUL 2007 Auction     | 15                | 81.4            | 96.4           | (\$2,494)             | \$35,927           | \$33,433              |
|   | AUG 2007 Auction     |                   |                 | 0              |                       |                    | \$0                   |
|   | SEP 2007 Auction     |                   | 115.5           | 115.5          |                       | \$190,976          | \$190,976             |
| <b>Power Edge (purchased through auction) Total</b> |                      | <b>5671.5</b>     | <b>5602.6</b>   | <b>11274.1</b> | <b>(\$55,554,916)</b> | <b>\$8,250,926</b> | <b>(\$47,303,990)</b> |

Norristown )  
 ) 55  
Pennsylvania )

**AFFIDAVIT OF ANDREW L. OTT**

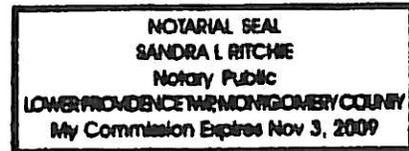
Andrew L. Ott, being first duly sworn, deposes and says that he has read the foregoing "Affidavit of Andrew L. Ott on behalf of PJM Interconnection, L.L.C.," that he is familiar with the contents thereof, and that the matters and things set forth therein are true and correct to the best of his knowledge, information, and belief.

s/s   
Andrew L. Ott

Subscribed and sworn to before me this 7<sup>th</sup> day of March, 2008.

s/s   
Notary Public

My Commission expires: Nov. 3, 2009



**FORM OF NOTICE  
SUITABLE FOR PUBLICATION IN THE FEDERAL REGISTER**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

|  |   |                          |
|--|---|--------------------------|
| PJM Interconnection, L.L.C.            | ) |                          |
| Complainant,                           | ) |                          |
|  | ) |                          |
| v.                                     | ) | Docket No. EL08-____-000 |
|  | ) |                          |
| Accord Energy LLC                      | ) |                          |
| BJ Energy LLC                          | ) |                          |
| Franklin Power LLC                     | ) |                          |
| GLE Trading LLC                        | ) |                          |
| Ocean Power LLC                        | ) |                          |
| Pillar Fund LLC                        | ) |                          |
| Power Edge LLC                         | ) |                          |
| Tower Research Capital LLC             | ) |                          |
| Tower Research Capital Investments LLC | ) |                          |
| Respondents.                           | ) |                          |

NOTICE OF COMPLAINT

(March \_\_, 2008)

Take notice that on March 7, 2008, PJM Interconnection, L.L.C. (“PJM”) filed a formal complaint against Accord Energy LLC, BJ Energy LLC, Franklin Power LLC, GLE Trading LLC, Ocean Power LLC, Pillar Fund LLC, Power Edge LLC, Tower Research Capital LLC, and Tower Research Capital Investments LLC pursuant to sections 206, 222, and 306 of the Federal Power Act, 16 U.S.C. §§ 824e, 824v, and 825e, and 18 C.F.R. § 385.206, alleging that the Respondents engaged in conduct and committed actions to manipulate the PJM market in violation of the Commission’s prohibitions against market manipulation, and that Respondents should be required to disgorge unjust revenues and provide refunds, and be investigated for civil penalties.

PJM Interconnection, L.L.C. certifies that copies of the complaint were served on the contacts for Accord Energy LLC, BJ Energy LLC, Franklin Power LLC, GLE Trading LLC, Ocean Power LLC, Pillar Fund LLC, Power Edge LLC, Tower Research Capital LLC, and Tower Research Capital Investments LLC.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions, or protests must be filed on or

before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose  
Secretary