

September 14, 2007

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

Re: Enhancing Competition in Wholesale Organized Electric Markets under AD07-7

Dear Ms. Bose:

The Market Monitoring Unit of PJM (“MMU”) is pleased to submit comments on the Commission’s June 22, 2007 Advanced Notice of Proposed Rulemaking (ANOPR) regarding proposals to improve markets in RTOs and ISOs.

The comments we are filing today represent solely the opinions and recommendations of the MMU and should not be construed as representing the views of PJM Interconnection, L.L.C. (“PJM”). The filing was prepared independently by the MMU without input or review from PJM and the MMU is solely responsible for the contents.

1 Demand Response and Pricing

The PJM MMU agrees with the Commission’s position that markets require both a price responsive supply side and a price responsive demand side to function effectively. Currently the price responsiveness of the demand side of wholesale electricity markets is underdeveloped. It is widely recognized that wholesale electricity markets will work better when a significant level of potential demand-side response is available in the market. As noted by the Commission, the PJM wholesale market demand-side programs, and the programs in other RTO/ISOs should be understood as one relatively small part of a transition to a fully functional demand side for its energy market. A fully developed demand side will include retail programs and an active, well-articulated interaction between wholesale and retail markets.

A functional, price responsive demand side of the electricity market does not mean that all customers curtail usage at specified levels of price. A fully functional, price responsive demand side of the electricity market does mean that the default energy price for all customers will be the day-ahead or real-time hourly LMP. Customers will be able to choose to pay the real-time prices or to hedge their exposure to those prices using an intermediary. A fully functional, price responsive demand side of the electricity market

does mean that all or most customers, or their designated intermediaries, will have the ability to see real-time prices in real time, will have the ability to react to real-time prices in real time and will have the ability to receive the direct benefits or costs of changes in real-time energy use, based on real-time energy prices. If these conditions are met, customers can decide for themselves the relationship between the price of power and the value of particular activities, from operating a production plant to running a commercial building to running a residential air conditioner. The true goal of demand-side programs is to ensure that customers can make informed decisions about energy consumption. Customers can and will make investments in demand-side management technologies based on their own evaluations of the tradeoffs among the price of power, the value of particular activities and the costs of those technologies.¹

A functional, price responsive demand side of wholesale energy market does not necessarily mean that prices will be lower than they otherwise would be. A functional, price responsive demand side of these markets does mean, however, that customers will have the ability to make decisions about levels of power consumption based both on the value of the uses of the power and the actual cost of that power.

A functional, price responsive demand side of the wholesale electricity market would also send explicit price signals to suppliers, inducing more competitive behavior among suppliers and providing a market-based limit to suppliers' ability to exercise market power. If customers had the essential tools to respond to prices, then suppliers would have the incentive to deliver power on a cost-effective basis, consistent with their customers' evaluations.

Participation of Demand Resources in Certain Ancillary Services Markets

The MMU agrees with the Commission's proposal that RTO or ISOs include "demand resources in its markets for certain ancillary services, similar to any other resources, if the resources meet the necessary technical requirements and the resources submit a bid under the generally-applicable bidding rules at or below the market-clearing price" and the inclusion of such resources would improve market efficiency and reliability.² Demand resources can, and do, play a role in several of PJM's markets for "energy imbalance, spinning reserves, and supplemental reserves, as defined in the pro forma OATT, or their functional equivalents in an RTO or ISO tariff."³ As recognized by the

¹ The material in this section draws heavily from: PJM Market Monitoring Unit, *2006 State of the Market Report*, Volume II, pp. 89 – 101.

² 119 FERC ¶ 61,306 (2007) (ANOPR) at ¶ 59.

³ ANOPR at ¶ 59.

Commission, demand resources, which meet minimum technical and volumetric requirements, can provide certain operating reserves in PJM.⁴

Elimination of Deviation Charges for Demand Response

The Commission proposes that RTOs consider eliminating demand related deviation charges in the energy market for using less energy in the real-time market than purchased in the day-ahead market. The Commission asks for consideration of this change both in the presence and the absence of system emergency circumstances. The stated intent of the proposals is “to eliminate a disincentive for demand response in the real-time market.”⁵ While the MMU agrees that there are substantive, and in some cases, unjustified barriers to effective and efficient participation by price responsive demand in the wholesale market, the MMU does not agree that demand related deviation charges are among them, nor does the MMU believe that the eliminations of such charges would improve the efficiency of the wholesale market.

PJM currently does not apply a deviation charge for a load reduction from day-ahead to real-time during a system emergency.

A participant’s deviation in demand or supply, between day ahead and real time, affects system costs. Day ahead demand and supply schedules result in day ahead generation unit commitments and scheduling. PJM charges both demand and supply participants when they deviate from day-ahead schedules or from real-time dispatch because such deviations cause operating reserves charges or “uplift.” These charges serve as an incentive for accurate scheduling and to encourage compliance with dispatch instructions.

Role of Demand Side Aggregators

The Commission stated:

The Commission is considering a proposal to require RTOs and ISOs to amend their market rules as necessary to permit an ARC to bid a demand reduction on behalf of retail customers directly into the RTO’s or ISO’s organized markets. This proposal is intended to remove a barrier to demand response in some RTO and ISO energy markets by allowing an ARC to act as an intermediary for many small retail loads that cannot individually participate in the organized market because they lack

⁴ ANOPR at ¶ 59.

⁵ ANOPR at ¶ 62.

standing as an LSE or because they individually cannot meet a requirement that a demand response bid be of minimum size.”⁶

PJM currently allows such aggregation.

Demand Side Compensation and Double Counting

The Commission requested comments on “whether aggregation of retail customers allows inappropriate compensation when a retail customer is paid for wholesale demand reduction and also saves in its retail bill from the same demand reduction.”⁷ As reported in the MMU’s August 2006 report to the Commission, these payments, if properly structured, provide an appropriate price signal to load, in the absence of real time wholesale signals at the retail meter.⁸ As stated in the report, the goal of the incentives associated with economic load response programs should be to replicate the price signal to load that would exist if load were exposed to the real-time wholesale price. The real-time hourly LMP is the appropriate price signal as it reflects the incremental value of each MWh consumed.⁹ The hourly LMP would replace only the generation component of retail rates in order to provide the appropriate wholesale market price signal to load. To the extent that economic load response programs are wholesale programs, the goals of these programs should be to ensure that the appropriate wholesale price signal is provided to load. These programs should not address retail rate issues. The design of retail incentives is a matter for state public utility commissions.

In the absence of an LMP related payment program for economic load response, for an individual customer on a standard fixed retail rate, the savings that result from a load reduction equal the applicable retail rate. If the customer pays a total retail rate of \$150 per MWh, the customer saves exactly \$150 when consumption is reduced by 1 MWh. Standard retail rates include payments for generation, transmission and distribution. If the customer paid the LMP for each MWh used, rather than the generation component of retail rates, the savings to the customer, including both wholesale and retail components, would equal the LMP plus the transmission and distribution component of

⁶ ANOPR at ¶ 69.

⁷ ANOPR at ¶ 73

⁸ PJM Market Monitoring Unit, Assessment of PJM Load Response Programs, Docket No. ER02-1326-006, August 29, 2006. (<http://www.pjm.com/markets/market-monitor/downloads/mmu-reports/dsr-report-2005-august-29-%202006.pdf>)

⁹ This does not mean that every retail customer should literally be required to pay the real-time LMP. However, it would provide the appropriate price signal if every retail customer were obligated to pay the real-time LMP as a default. That risk could be hedged via a contract with an LSE or other intermediary.

retail rates for a 1 MWh reduction. From a wholesale market perspective, the savings to the customer would equal the LMP. This is the appropriate price signal and this is the price signal that an economic load response program should be designed to replicate.

The situation is somewhat different, from a wholesale market perspective, if the LSE pays the LMP to purchase the energy required to serve the customer at a fixed retail rate. In this case, the savings to the LSE from a reduction of 1 MWh by the customer equal the difference between the avoided cost to the LSE, or the LMP, and the generation component of the retail rate. Thus, if the LSE pays the LMP to purchase energy to serve the customer, the wholesale-related savings received by the customer, paying a fixed retail rate, will be less than the amount saved by the LSE when the LMP is greater than the generation component of the retail rate. In the absence of an LMP related payment to the customer, the difference between the savings to the LSE and the savings to the customer equal the difference between the LMP and the generation component of retail rates.

It is this difference between the actual market price, LMP, and the price signal faced by the retail customer that creates the need for demand side programs of the type created by PJM. The programs, when designed properly, match the benefits from reducing load with the value of the load reduction, as measured by the market price.

The design of PJM's Economic Program reflects a compromise between the benefits that would be received by a customer paying LMP plus a fixed retail rate covering transmission and distribution charges and the benefits received by an LSE serving a retail customer under a fixed retail rate covering generation, transmission and distribution.

The optimal payment under PJM's Economic Program whether LMP is above or below the \$75 per MWh threshold would be the LMP less the generation component of retail rates, because the generation component of retail rates is a substitute for the LMP. If a customer is paying \$40 per MWh for energy (generation component) in retail rates but by reducing load eliminates the need to purchase a MWh at \$900 per MWh, the benefit is \$900 per MWh. The customer receives \$40 per MWh of that benefit by not paying the generation component of the retail rate and should receive the balance, \$860 in this example, from the LSE payment.

The result of the payment structure in PJM's Economic Program is that the LSE serving the curtailing load pays that load the LMP less the generation and transmission component of retail rates. The LSEs in the zone where the curtailing load resides pay the generation and transmission component of rates to the curtailing load when the LMP is greater than \$75 per MWh. The result, when LMP is greater than \$75 per MWh, is that load receives payments from both sources under the Economic Program and the total payment equals the LMP. Given that the optimal payment to curtailing loads would be

the LMP, adjusted only for the generation component of retail rates, the payments by zonal LSEs represent a subsidy to curtailing loads to the extent that they cover the generation component of retail rates, but do not represent a subsidy to the extent that they cover the transmission component of retail rates. This assumes that the transmission and generation components of retail rates can be unbundled, which is a reasonable assumption.

The goal of PJM's Economic Program incentives is to ensure that customers on retail rates with an embedded generation component that is not linked to the market LMP see the appropriate price signal. The Economic Program provides an accounting mechanism, managed by PJM, that requires the payment of the real savings that result from load reductions, or a share of them under a contract, to the load reducing customer. Such a mechanism is required because of the complex interaction between the wholesale market and the incentive and regulatory structures faced by LSEs and customers.

The broader goal of the Economic Program is to transition to a structure where customers do not require mandated payments but where customers see and react to real-time wholesale market signals or enter into contracts with intermediaries to provide that service. The optimal design would be related solely to wholesale market incentives and would not distinguish between load reductions above or below \$75 per MWh. Even as currently structured, the Economic Program represents a minimal and relatively efficient intervention into the markets.

Modify Market Power Mitigation Rules to Improve Demand Side Response

The Commission seeks comment on four potential ways to modify market power mitigation rules to allow the market price to "better reflect the value of lost load in an emergency situation, and to thereby provide an incentive for load to respond during emergencies." In short, each proposal outlines ways that prices could be raised in real time wholesale markets in times of emergency.

As a general matter, the PJM MMU agrees that market power mitigation rules should be designed to allow scarcity pricing when and where appropriate. Scarcity exists when the total demand for power approaches the generating capability of the system. Scarcity pricing means that market prices reflect the fact that the system is close to its available capacity and that competitive prices may exceed accounting short-run marginal costs. Under the current PJM rules, administrative scarcity pricing, based on the scarcity pricing provisions in the Tariff, results when PJM takes identified emergency actions and is based on the highest offer of an operating unit. As noted in its 2006 State of the

Market Report, the PJM MMU has recognized that PJM's administrative scarcity program needs further refinement.

While scarcity pricing is a legitimate feature of competitive markets, it is not clear that the Commission's proposals would achieve the goal of having market prices "better reflect the value of lost load in an emergency situation, and to thereby provide an incentive for load to respond during emergencies."

First, the Commission proposes raising energy bid caps and market-wide caps during system emergencies. Specifically, the Commission notes that while, in defined periods of tight supply, PJM's market rules remove sellers' bid caps (which allows scarcity pricing) "the market-wide \$1,000 per MWh offer cap" is retained. The Commission asks whether it makes sense to raise this market-wide cap so that "the real-time market could clear at a price above the current cap (and) customers could decide whether to purchase energy at this higher price, and those who place a higher value on energy could continue to buy it while those who do not value it as highly could reduce their demand."

The problem with such an approach is that at present customers do not have the tools or information to make, implement and be compensated for these decisions. As noted, the goal is to ensure that every customer sees a market price signal, has the ability to react to that price signal and can benefit from reacting to that price signal. In the absence of retail rates that expose customers to real time prices, these conditions do not exist. In the absence of a wide deployment of advanced meters, these conditions do not exist. Without these conditions, higher prices will result in a transfer of wealth but not increased efficiency. Without these conditions, customers do not have the incentive to and cannot express their willingness or unwillingness to pay market prices.

The same issues exist with the Commission's proposal to raise offer caps on demand bids only as a way "to reduce demand during an emergency."¹⁰ In addition, it is not consistent with fundamental market logic to permit demand to increase price but not supply. This approach also creates new opportunities to exercise market power.

The Commission's third proposal addresses the use of administrative tools to raise prices during conditions of scarcity. The intent would be to provide market signals to assure reliability "by reducing demand significantly during a shortage."¹¹ This proposal is a form of administrative scarcity pricing. The MMU agrees that such approaches to scarcity pricing are appropriate and consistent with market efficiency with or without reference to encouraging demand side participation.

¹⁰ ANOPR at ¶ 78.

¹¹ ANOPR at ¶ 79.

2 Market Monitoring Policies

The Commission states:

Indeed, since the very beginnings of market monitoring, the Commission has emphasized the importance of independence and objectivity on the part of market monitors, and has required that MMUs analyze and report on any inefficiencies and structural flaws they detect in the market.¹²

Independence and Function¹³

The purpose of the market monitoring function is to assist the Commission in making the markets more competitive and to bring increased transparency to the markets and to the operations of the RTO.^{14 15}

The principles of market monitoring are independence and objectivity. Independence and objectivity, as well as the authority to monitor and investigate effectively and broadly, must govern the design of any MMU plan. The structure and functions of the MMU follow from these principles and purposes.

While the importance of independence and objectivity have been recognized since the inception of market monitoring, the current challenge facing the Commission, RTOs, stakeholders and market monitors is how best to provide structural safeguards for independence so that objective analysis and reports result. The independence and objectivity of market monitoring should be defined in the RTO tariff and be enforceable by the Commission.

Structure and Tools

We support the Commission's policy of flexibility regarding the structural relationships between RTOs and their MMUs. "The Commission therefore declines to impose a 'one

¹² ANOPR at ¶ 107.

¹³ For a more complete statement of the views of the PJM MMU regarding MMU independence and function, please see filings on June 12, 2007, July 10, 2007 and August 22, 2007 by Joseph E. Bowring in *Allegheny Elec. Coop. Inc. et al v. PJM Interconnection, L.L.C.*, Docket Nos. EL07-56-000 and EL07-58-000 (consolidated).

¹⁴ 111 FERC ¶ 61,267 (2005) at ¶ 1.

¹⁵ For convenience, we use the term RTO to refer to both RTOs and ISOs.

size fits all' approach toward the structure of MMUs."¹⁶ Consistent with this approach, our comments are, in significant part, informed by our experience at PJM and some of our recommendations refer to issues related to PJM and, by extension, to comparable RTOs.

It is our view that, based on eight years of experience in PJM, more specific conclusions can be reached in the case of market monitoring at PJM. Specific structural elements are required if market monitoring at PJM is to be independent and effective:¹⁷

The MMU should be part of PJM. The PJM MMU's functionality has evolved as an organization within but independent of PJM. That independence must be explicitly stated in the tariff and enforceable by the Commission. A separate corporate structure does not ensure independence. Without enforceable independence, a separate MMU corporation could be subject to the same financial pressures brought to bear on an MMU that is part of PJM. The Commission has made the establishment of an independent market monitor a requirement for all RTOs and ISOs, and the RTO should carry the burden, subject to oversight and enforcement by the Commission, to preserve the independence and functions of the MMU, including the RTO's responsibility to provide adequate resources for the MMU.

The existence of an internal, independent MMU will not create confusion about the respective roles of the MMU and the RTO. When the roles of the MMU and the RTO are clearly defined, all market participants will understand it when the MMU and the RTO take different positions on an issue and when they take the same positions on an issue. The issue is not about the corporate structure of the MMU but about clearly defined roles. Presumably, based on the explicit disclaimer at the beginning of this document, there is no confusion about the fact that this filing represents only the views of the PJM MMU and does not represent the views of PJM. This is an issue about letterheads and clear statements of responsibility and not about fundamental matters of corporate structure.

Regardless of corporate organization, the MMU should be physically situated inside the RTO in order to ensure the routine access to staff and data that is essential to fulfill the purpose of market monitoring. Separate physical location does not assure independence and does attenuate effectiveness. Without enforceable independence, an MMU at an external physical location could be just as subject to management pressure as an MMU located on site.

¹⁶ ANOPR at ¶ 110.

¹⁷ *Allegheny Elec. Coop. Inc. et al v. PJM Interconnection, L.L.C.*, Docket Nos. EL07-56-000 and EL07-58-000 (consolidated), Dr. Joseph E. Bowring's Comments on Offer of Settlement, August 22, 2007, pp. 8-9.

The relationship between the MMU and the RTO should be structured for administrative convenience and efficiency only (shared HR and IT resources). This limited administrative relationship between the MMU and the RTO should be explicit, public, and subject to review by the Commission, and any substantive, unresolved disagreements between them should be subject to review and resolution by the Commission.

As the Commission states: “It is axiomatic that independence can be achieved only if MMUs have adequate tools with which to perform their job.”¹⁸ The Commission proposes in the ANOPR to require an RTO to include tariff provisions regarding the RTO’s obligation to provide adequate resources for its MMU and a reporting process for disputes with the RTO regarding access to or sufficiency of resources. We agree that explicit tariff provisions are an important part of ensuring independence, if the tariff provisions are directly enforceable by the Commission.

PJM’s current tariff includes examples of explicit provisions regarding resources of the type the Commission is proposing. For example, PJM’s tariff currently requires that PJM “provide appropriate staffing and resources” and that the “President shall ensure that the Market Monitoring Unit has adequate resources, access to required information, and cooperation of PJM for the effective functioning of the Market Monitoring Unit.”¹⁹ However, recent filings by the MMU with the Commission (Docket Nos. EL07-56-000 and EL07-58-000 consolidated) demonstrate that there can be significant disagreements about interpretation and implementation. Our experience with PJM’s tariff causes us to urge the Commission to require explicit enforceability by the Commission, provision for expedited review by the Commission of MMU complaints about these matters, as well as regular, periodic implementation reviews by the Commission to ensure that the tariff intent is realized.

While allowing for flexibility on certain procedures or tariff provisions, we believe the Commission should require two specific provisions to ensure that independence and effectiveness are not compromised: MMU control of its resources and an explicit budget process for proposal, review and approval of an MMU’s budget.

Access to data and resources is important. However, independence and objectivity cannot be ensured if the MMU does not control its own data and resources. The MMU must control its own data repository. The ability to monitor the market and the

¹⁸ ANOPR at ¶ 111

¹⁹ PJM OATT, Attachment M, Sections V.A and V.D.

credibility of MMU analyses are dependent on the quality, extent and organization and therefore control of our data.²⁰

The same principle applies to resources, particularly staffing. Tariff provisions should explicitly state that MMU staff are accountable to the head of the MMU alone so that RTO management cannot compromise the MMU's independence through interference with MMU staff.

Resources are constrained by budgets and the MMU's control over its resources will be balanced by its budget process. To ensure independence and objectivity, we believe that the "Commission should approve the MMU budget. The MMU should manage its expenditures within its approved budget, and the MMU should have the authority to report to the Commission if its approved budget is insufficient to carry out its Commission-defined functions."²¹

We support the Commission's proposal to require tariff provisions for MMUs to report concerns regarding access to data, resources or personnel. We urge the Commission to provide for expedited processing of such reports given that RTOs may store some data for as little as a week prior to deletion and delays could risk the loss of critical data.

Oversight

We agree with the Commission's assessment in the ANOPR that:

It can be difficult for an MMU to discharge these oversight and reporting obligations effectively unless it has some degree of independence from RTO/ISO management. Such a reporting relationship can create a conflict of interest because the MMU may temper its opinions out of deference to management, or those opinions may be overruled by management.²²

Based on this, "the Commission proposes that each RTO and ISO, in addition to maintaining a market monitoring function, be required to have its MMU report either

²⁰ *Allegheny Elec. Coop. Inc. et al v. PJM Interconnection, L.L.C.*, Docket Nos. EL07-56-000 and EL07-58-000 (consolidated), Statement of Joseph E. Bowring in Response to the Federal Energy Regulatory Commission's Order of May 18, 2007, July 12, 2007, p. 45.

²¹ *Allegheny Elec. Coop. Inc. et al v. PJM Interconnection, L.L.C.*, Docket Nos. EL07-56-000 and EL07-58-000 (consolidated), Dr. Joseph E. Bowring's Comments on Offer of Settlement, August 22, 2007, p. 8.

²² ANOPR at ¶ 112.

directly to the RTO's or ISO's board of directors or directly to a committee of independent board directors."²³

In addition to agreeing with the Commission's assessment of the conflicts inherent in reporting to management, we believe that the difficulties encountered when MMUs report to RTO management are not resolved by reporting to the RTO Board, unless the reporting is defined very precisely. RTO boards are required to be independent of RTO membership but the fundamentals of board responsibility and function requires the interdependence of the Board and management. This is true not only of RTO boards but of all boards, whether corporate or non-profit.^{24 25 26}

An RTO Board is responsible for ensuring that RTO management fulfills its business obligations and objectives and the conflict of interest identified by the Commission is not resolved by requiring the MMU to report to the Board, unless reporting is clearly defined.²⁷

The issue can be addressed in part by clearly defining the reporting function. If the reporting function exists to ensure that the MMU informs the Board of its concerns and findings without creating the ability for the Board to direct the analysis or conclusions of the MMU, then reporting to the Board in the manner suggested by the Commission could work. This is our understanding of the relevant portions of the MISO tariff. In addition, the MMU should report and be accountable to an entity outside the

²³ ANOPR at ¶ 113.

²⁴ See for example: McNamara, Carter, "Overview of Roles and Responsibilities of Corporate Board of Directors," at <http://www.managementhelp.org/boards/brdrspon.htm>).

²⁵ See also The National Association of Corporate Directors (NACD) list of best practices for boards, which includes "reviewing and approving management's strategic and business plans," "constructive engagement" in strategy and "reviewing and approving the corporation's financial objectives, plans, and actions, including significant capital allocations and expenditures." <http://www.nacdonline.org/FAQ/details.asp?faq=1#4>.

²⁶ PJM's By-Laws also explain the alignment of Board and management interests: "The PJM Board shall manage the business and affairs of the Company and may exercise all such powers and do all such acts and things as may be directed or required by law." See <http://www.pjm.com/documents/downloads/corp-documents/by-laws.pdf>.

²⁷ In a recent letter to the Joint Complainants in Docket Nos. EL07-56-000 and EL07-58-000 (consolidated), the Chairman of the PJM Board referred to the day-to-day negotiations and said, "We leave that in the capable hands of Management, in whom we have every confidence and who will carry out our policy directives." See <http://www.pjm.com/documents/downloads/corp-documents/20070829-pjm-response-to-joint-complainants-letter-20070822.pdf>.

management and Board of Managers of the RTO. This is a necessary, but not sufficient condition for MMU independence. The MMU's independence from members and the RTO cannot be assured unless it is guaranteed and enforced by the Commission. As the purpose of the MMU is to assist the Commission in making the markets more competitive, the MMU would report to the Commission, in that sense.²⁸ The MMU would be accountable to the Commission. Accountability would be provided via budget review authority, termination authority and authority to modify the required functions of the MMU.

Functions

We support the Commission's provision of explicit yet broad definitions of the functions MMUs are required to perform. While the Commission has granted considerable flexibility in how market monitoring is achieved, the Policy Statement provided important and necessary clarity to roles and responsibilities of MMUs. We encourage the Commission to continue its history of balancing flexibility in implementation with specificity in objectives and functions.

We encourage the Commission to adopt the proposed requirement that "the MMUs also advise the Commission and other interested entities, which would include relevant state commissions and market participants,"²⁹ when recommending proposed rule and tariff changes. This requirement would help ensure transparency and will also help prevent RTOs from suppressing recommendations with which they do not agree. This requirement would strengthen MMU independence and support objective reporting, while ensuring that MMUs are accountable for their recommendations through public review and feedback, both by the Commission and all interested participants.

We also support the Commission's proposal that MMUs "refer any suspected violations of other Commission-approved rules and regulations, such as Codes of Conduct and Standards of Conduct."³⁰ MMUs may encounter suspected violations of any FERC rule or regulations in the course of ongoing monitoring and providing for referrals of all such alleged violations provides important clarity for the Commission, MMUs and market participants.

As our experience has shown, it is essential that the required MMU functions be included explicitly in the tariff and be enforceable by the Commission. For example, in order for the MMU to perform the function of identifying ineffective market rules and

²⁸ Reporting and accountability could also be to a FERC-state joint board, if the Commission approved such an arrangement.

²⁹ ANOPR at ¶ 115.

³⁰ ANOPR at ¶ 116 (footnote omitted).

tariff provisions and recommending proposed rule and tariff changes, the RTO cannot be permitted to create arbitrary rules about MMU participation in public membership meetings in ways that would frustrate the Commission's policy.

Mitigation and Operations

The Commission highlights one of the functions identified in the Policy Statement: "The function in question is that of providing support to the RTO or ISO in the administration of its tariff, which usually takes the form of MMU-conducted market power mitigation."³¹ The Commission "is concerned that an MMU's performance of these mitigation functions can compromise its independence in evaluating and reporting on market performance."³² The Commission states that a conflict is created by MMU reporting on market outcomes that the MMU has influenced. "This conflict is of particular concern where the MMU has significant discretion in affecting offers, bids, and prices."³³

The Commission identifies real potential issues related to this function. The identified "inherent conflict" is also faced by the RTO itself, on a regular basis, when the RTO reports on market outcomes that the RTO has influenced. With respect to the MMU role, we suggest that there is a better solution than to remove MMUs from all support of tariff administration. As the Commission notes elsewhere in the ANOPR in the context of enforcement, MMUs can take direct action when it is governed by clear, objective criteria and such criteria are explicitly included in the tariff.³⁴

It is important to take a nuanced approach to the issue in order to preserve an appropriate role for market monitoring and to permit the application of market monitoring expertise while ensuring that the identified conflicts do not arise. As a general matter, the PJM MMU does not have "significant discretion in affecting offers, bids and prices."³⁵ In addition, the MMU does not generally conduct market power mitigation. The MMU is engaged in supporting PJM's administration of the tariff, consistent with clear and objective criteria.

PJM's mitigation practices and the MMU's experience in supporting tariff administration may help illustrate how such clear, objective criteria can work. In the PJM energy market, the primary rule governing market power is the local market power

³¹ ANOPR at ¶ 117.

³² ANOPR at ¶ 118.

³³ ANOPR at ¶ 118.

³⁴ ANOPR at ¶ 100.

³⁵ ANOPR at ¶ 118.

provision of the Operating Agreement. The RTO is responsible for implementing local market power rules in real time while the MMU has the authority to review and report on that implementation. The MMU has no discretion in the mitigation process. Mitigation only occurs when and where local market power occurs and is mitigated by the substitution of the generator's cost offer for the generator's price offer. There is no MMU discretion and there is no MMU intervention in the test or the clearing of the market. But the MMU had a clear and appropriate role in defining the market power test that was reviewed and accepted by PJM members, approved by the Commission and applied by PJM. The MMU has a clear and appropriate role in defining the rules which generators must follow to develop the components of generators' costs used in cost offers, again without discretion and subject to a clear role for members, PJM and the Commission. The MMU has a clear and appropriate rule in reviewing the way in which the RTO applies the local market power test to ensure that it works.

Some MMUs are involved in market power mitigation, generally in the determination of whether a specific situation warrants mitigation and/or setting reference price levels. It would appear reasonable to permit an appropriate division of labor between market power mitigation and operating the market, as long as the discretion to affect offers, bids and prices by the RTO or MMU is constrained by clear, objective rules in the RTO tariff.

The PJM MMU does support tariff administration in a number of specific ways, in addition to the day-to-day interaction and sharing of expertise between MMU and RTO staff. The following are examples of such support. The MMU determines on a monthly basis, following clear rules in the tariff, which units qualify for frequently mitigated or associated unit status, the MMU calculates FTR forfeiture amounts, following the clear rules in the Operating Agreement and the MMU responds to state commission requests for confidential information, following clear tariff rules. With respect to RPM, the MMU collects and verifies unit offers and provides these to PJM, the MMU calculates unit-specific net revenues and the MMU calculates default avoidable offer caps for RPM. In each case, the tariff provides objective criteria governing MMU actions and the MMU does not have discretion.

The Commission also states that: "There is significant potential for conflict between an MMU maintaining independence of RTO and ISO management and supporting tariff administration in a subordinate capacity."³⁶

With respect to the Commission's issue of supporting tariff administration in a subordinate role, if MMU independence is adequately defined and enforceable in the tariff and if the MMU is following clear, objective criteria, the MMU will be able to

³⁶ ANOPR at ¶ 118.

properly perform these functions in such a way that the Commission need not be concerned about influence from the RTO.

We urge the Commission to continue to allow MMUs to support RTO tariff administration where the supporting activities are governed by clear, objective criteria in the RTO's tariff. This addresses Commission concerns regarding potential conflicts while at the same time providing a balanced and flexible approach.

Ethics

We support the Commission's proposals regarding standardizing provisions regarding "conflict of interest or standard of conduct" and "requiring their inclusion in the tariffs themselves."³⁷ Prohibiting an MMU employee, their spouse and dependent children from financial interest in a market participant is a good starting point. We recommend also adopting conflict of interest provisions regarding personal gain, entertainment or gifts and future employment.

PJM's Standards of Conduct, most recently filed with the Commission in April 2002, state that:

The Board Members, Officers and employees of PJM and their spouses and dependent children shall not have a direct financial interest in, or stand to be financially benefited by, any transaction with any Member, Eligible Customer or Market Participant. Each Board Member, Officer and employee of PJM shall certify in writing that neither he or she nor his or her spouse or dependent children have a direct financial interest in any Member, Eligible Customer or Market Participant and that a conflict of interest does not exist.³⁸

PJM's Code of Conduct also provides guidelines regarding the receipt of gifts or entertainment and steps to be taken when seeking future employment with a member company.³⁹

Conflicts of interest can arise beyond financial situations and there are broader ethical issues for market monitors. So we also encourage the Commission to consider a professional code of ethics, as previously suggested by Commissioner Kelly, to be developed collaboratively by Commission staff and market monitors.

³⁷ ANOPR at ¶ 120.

³⁸ *PJM Interconnection, L.L.C.*, "Amended FERC Order 889 Standards of Conduct," Docket No. OA02-5-000, April 4, 2002.

³⁹ <http://www.pjm.com/about/downloads/code-of-conduct.pdf>, approved 12/12/06.

Tariff Provisions

We agree with the Commission that transparency and clarity of function, as well as safeguards of MMU independence, would be enhanced by requiring that all MMU provisions be consolidated into one tariff section.⁴⁰ We ask the Commission to clarify that the MMU provisions may also be included elsewhere in the tariff as required by context, as long as they are all in the MMU section.

Information Sharing

Information Needs

“The Commission favors both a fuller sharing of information and identification of the relevant information desired, so that the needs of the Commission, the state commissions, market participants, and the public may be satisfied.”⁴¹ We agree and suggest that this statement applies to both MMUs and RTOs, subject to resource limitations.

We agree that state commissions may require confidential data and that the requirements of state commissions are different than and must be distinguished from the requirements of market participants.⁴² For example, state commissions might require confidential data regarding offers in real time while the provision of such data to market participants would not be appropriate.

As an example of cases where MMU analysis and data can be productively provided to state commissions, the MMU recently, at the request of the New Jersey Board of Public Utilities, performed an analysis of the impact of a proposed merger on the wholesale power markets. The MMU was uniquely positioned to perform the analysis as the MMU had access to the underlying data about the wholesale power markets as well as the analytical background and expertise to undertake the analysis in a comprehensive and efficient manner. The MMU performed the analysis without taking any policy positions.

Information to Be Provided

“The Commission proposes that MMUs be required to report comprehensively on aggregate market and RTO/ISO performance on a regular basis, no less frequently than quarterly, to the Commission staff, to staff of interested state commissions, and to the management and board of directors of the RTOs and ISOs. The MMUs would be

⁴⁰ ANOPR at ¶ 121.

⁴¹ ANOPR at ¶ 123.

⁴² ANOPR at ¶ 122.

required to deliver materials supporting their conclusions, and make one or more of their staff members available for a conference call attended by representatives of these constituencies.”⁴³

We agree with the Commission’s proposal that MMUs be required to report quarterly, recognizing the resource requirements associated with such a requirement. It is a core MMU function to ensure that the Commission, state commissions and RTOs are kept apprised of market issues. It is also a core MMU function to ensure that all market participants are equally kept apprised of market issues, except in cases where confidential data is at issue. We caution only that the required development of “any further materials which might be useful to the Commission, to the state commissions and to the RTOs and ISOs” is a broad mandate and that resource constraints must be recognized.⁴⁴ We recommend that a process be created for defining and providing relevant materials, under the jurisdiction of the Commission.

The MMU recommends continuing the current six-month lag on the provision of anonymous, unit level offer data, in order to limit tacit collusion and gaming opportunities among participants.

Information transparency tends to improve market efficiency. Transparency also enables market participants to carry out independent analyses resulting in a strengthened confidence in the market and an increased ability to detect gaming and the exercise of market power. The MMU agrees that more and better data should be provided to the market. However, the lag time for the provision of offer data should still account for the associated costs and benefits. The cost of providing the information with a shorter lag time is primarily the impact on the ability of market participants to collude. The benefits of providing the data with a shorter lag are unclear.

Essential features of electricity markets make them prone to market power abuse, including inelastic demand and the need to have supply equal demand, instantaneously, at every bus at every moment in time. The PJM wholesale energy market, like other similar markets, operates as a repeated game with a relatively small number of key participants. These market participants have incentives to cooperate with rivals or to anticipate and react to the behavior of rivals rather than engaging in competitive behavior. Where a market is less than perfectly competitive (differentiated products, small number of producers, imperfect price information, less than perfectly elastic demand faced by producers), the availability of underlying cost, offer and output data provides a basis for the effective exercise of market power. Competitiveness is not improved via the public availability of competitors’ underlying cost information. Any

⁴³ ANOPR at ¶ 125.

⁴⁴ ANOPR at ¶ 125.

potential impacts made possible by earlier participant or regulator detection of inefficient behavior, that had not been detected, would be substantially outweighed by the impacts of the increased exercise of market power. The availability of real time, or closer to real time, underlying cost and offer data will tend to facilitate both the unilateral exercise of market power and tacit collusion. In dynamic price competition, the shorter the lag between the time of market clearing and the availability of unit specific information about competitors' behavior, the greater the issue.

Rather than requiring earlier public disclosure of underlying offer data, competitive markets require price and characteristic transparency in the goods market itself, i.e. the market price of the good and the characteristics of the good being offered. Participants make their decisions to buy, sell, expand production, and to enter or exit the market on the basis of market prices and their own costs. PJM provides good market price transparency, posting detailed bus prices in real time. Information about underlying participant costs is not information that is needed to produce or maintain competitive market behavior or results.

The MMU's position is that additional market information regarding market characteristics should be provided to improve market transparency. For example, aggregate and unit specific generator performance data or metrics could be publicly provided, with a six month lag. The provision of generator performance data or scorecard metric, both aggregate and/or unit specific, could provide valuable information to financial markets, market participants, and regulators as to the behavior, reliability, and performance of individual generation units, individual generation companies, and the market as a whole.

Tailored Requests for Information

The MMU supports the Commission's proposal that state commissions may make requests for additional information from MMUs. We recommend that such requests be governed by explicit tariff provisions that would include protection of confidential information

Commission Referrals

The Commission does not intend to share the "result of its activities that are initiated based upon a MMU referral, on a generic basis" as a result of Commission rules.⁴⁵ We respect the Commission rules but note that more specific feedback and collaboration would be helpful to MMUs and to the Commission staff and would facilitate the Commission staff's analysis.

⁴⁵ ANOPR at ¶ 130.

Pro forma tariff section

The MMU attaches PJM's current Market Monitoring Plan, redlined with suggested changes, for the Commission's consideration in developing a pro forma tariff on market monitoring.

Respectfully submitted,

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ATTACHMENT 1

ATTACHMENT M
PJM MARKET MONITORING PLAN

I. OBJECTIVES

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

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

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

II. DEFINITIONS

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

(a) “**Authorized Government Agency**” means a regulatory body or government agency, with jurisdiction over PJM, the PJM Market, or any entity doing business in the PJM Market, including, but not limited to, the Commission, state utility commissions, and state and federal attorneys general.

(b) “**Corrective Action**” means an action set forth in section IV of this Plan.

(c) “**FERC Market Rules**” means the market behavior rules and the prohibition against electric energy market manipulation codified by the Commission in its Rules and Regulations at 18 CFR §§ 1c.2 and 35.37, respectively; the Commission-approved PJM Market Rules and any related proscriptions or any successor rules that the Commission from time to time may issue, approve or otherwise establish.

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- (d) **“Market Monitoring Unit”** means the organization within PJM that is responsible for implementing this Plan.
- (e) **“Market Participant”** means an entity that generates, transmits, distributes, purchases, or sells electricity or provides ancillary services with respect to such services (or contracts to perform any of the foregoing activities) within, into, out of, or through the PJM Region.

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

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III. MONITORED ACTIVITIES

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

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

IV. CORRECTIVE ACTIONS

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

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

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

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

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

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

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

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

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3. ~~File reports or complaints with Authorized Government Agencies or make other appropriate regulatory filings to address design flaws, structural problems, compliance, market power, or other issues, and seek such appropriate action or make such recommendations as the Market Monitoring Unit shall deem appropriate.~~

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4. If PJM does not follow the Market Monitoring Unit's recommendations by filing requested rule changes or complaints with the Commission, the Market Monitoring Unit shall make its views known to the Commission or the Commission staff and the PJM Members, either orally or in writing.

5. Consult with Authorized Government Agencies concerning the need for specific investigations or monitoring activities.

6. Consider and evaluate a broad range of additional enforcement mechanisms that may be necessary to assure compliance with the PJM Market Rules. As part of this evaluation process, the Market Monitoring Unit shall consult with Authorized Government Agencies and other interested parties.

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

D. Confidentiality:

1. All discussions between the Market Monitoring Unit and Market Participants concerning the informal resolution of compliance issues initially shall remain confidential, subject to the provisions in subsection IV.D.3.

2. Except as provided in subsection IV.D.3, in exercising its authority to take Corrective Actions, the Market Monitoring Unit shall observe the confidentiality provisions of the PJM Operating Agreement.

3. Notwithstanding anything to the contrary in this Plan or the PJM Operating Agreement, the Market Monitoring Unit: (a) may disclose any information to the Commission in connection with the reporting required under sections IV.A and IV.B of the Plan, provided that any written submission to

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

V. MARKET MONITORING UNIT

A. **Establishment:** PJM shall establish, and provide appropriate staffing and resources to, the Market Monitoring Unit, an organization within PJM that shall be responsible for implementing this Plan, so that the Market Monitoring Unit can discharge its duties effectively under this Plan.

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

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

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D. **Resources:** The President shall ensure that the Market Monitoring Unit has adequate resources, access to required information, and cooperation of PJM for the effective functioning of the Market Monitoring Unit. The Market Monitoring Unit shall submit an annual budget for the Market Monitoring Unit to the Commission for approval each year adequate for the effective functioning of the Market Monitoring Unit.

E. **Referral by Market Monitoring Unit:** The Market Monitoring Unit shall have independent authority to refer any matters governed by this Plan to the Commission or the PJM Board for review or approval.

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F. **Independence:** The Market Monitoring Unit shall be independent of PJM management, the PJM Board and Market Participants. Neither PJM management, nor the PJM Board nor Market Participants shall have the authority to interfere in the Market Monitoring Unit's implementation of this Plan.

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G. **Enforcement:** The provisions of this Plan are enforceable by the Commission.

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VI. SPECIFIC MONITORING FUNCTIONS

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

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accordance with the PJM Tariff, the PJM Operating Agreement, the PJM Reliability Assurance Agreements, the Reliability Assurance Agreement South and the Reliability Assurance Agreement West and any other information that is in the possession of PJM.

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

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

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

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

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

C. **Complaints:** Any Market Participant or other interested entity may at any time submit information to the Market Monitoring Unit concerning any matter relevant to the Market Monitoring Unit's responsibilities under the Plan, or may request the Market Monitoring Unit to make inquiry or take any action contemplated by the Plan. Such submissions or requests may be made on a confidential basis. The Market Monitoring Unit may request further information from such Market Participant or other entity and make such inquiry that the Market Monitoring Unit considers appropriate. ~~The Market Monitoring Unit shall not be required to act with respect to any specific complaint unless the Market Monitoring Unit determines action to be warranted.~~

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

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

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

VII. REPORTS

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

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

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

VIII. AUDIT

The activities of the Market Monitoring Unit shall be audited in accordance with procedures adopted from time to time by the ~~Commission,~~

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IX. LIABILITY

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

X. OTHER RELIEF NOT FORECLOSED

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

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

XI. EFFECTIVE DATE

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

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