



## I. COMMENTS

### A. The Commission Should Have an Opportunity to Evaluate the Data Released by PJM and PJM's Proposed New Policy for the Release of Data Prior to a Continued Period of Release or the Release of Additional Data That May Have Damaged and Potentially Will Damage the Competitiveness of PJM's Markets, Possibly for Years to Come.

#### 1. The Definition of Aggregation

PJM makes a series of demonstrably inaccurate assertions regarding the nature of its recent data posting.

PJM "aggregates bid and offer data to protect the market sensitive nature of Market Participants' data from being gleaned by third parties who are seeking to ascertain their bidding strategies to gain an unfair advantage therefrom." (page 3)

"In this case, the data that PJM posts is aggregate (composite) market data, *not* individual bid and offer data of Market Participants." (page 7)

"...this aggregate market data does not reveal the identity or the terms and conditions of any individual offer, the posting of this type of aggregate data is specifically *permitted* by the confidentiality provisions of PJM's Operating Agreement." (page 7)

"PJM again reiterates that the data that it posted on March 19, 2010 on its Web site at <http://www.pjm.com/markets-and-operations/rpm/rpm-auction-user-info.aspx> was not individual offer data. The data posted is aggregated, masked market data – aggregate supply curves – for certain of PJM's Locational Deliverability Areas in which no individual offers are identified." (page 8)

PJM’s suggestion that “aggregation” means “composite” is not correct. PJM’s assertion that its approach to aggregation means that individual bid data are not revealed is not correct.

PJM’s definition of aggregation, if accepted, would mean that individual unit offers can be revealed, if they are simply included in a list of other individual unit offers. For example, Table 1 shows hypothetical data for the four owners in an LDA and each of their units. If this were the data, under PJM’s definition of aggregation, PJM would post the data in the third and fourth columns (highlighted). In other words, the individual unit offers would be posted, although not directly identified in this spreadsheet as a specific unit or owner.

**Table 1**

Owner	Unit	MW	Price
1	A	10	17.50
2	B	15	26.75
3	C	12	34.60
4	D	8	118.13

A cursory examination of the data posted by PJM shows that there are sets of MW and price pairs: <http://www.pjm.com/markets-and-operations/rpm/~media/markets-ops/rpm/rpm-auction-info/2012-2013-bra-aggregated-supply-curve-data.ashx>

The spreadsheet for the 2012/2013 BRA contains tabs for the RTO, MAAC, EMAAC and SWMAAC LDAs. Examining the SWMAAC tab, there are sets of MW and price

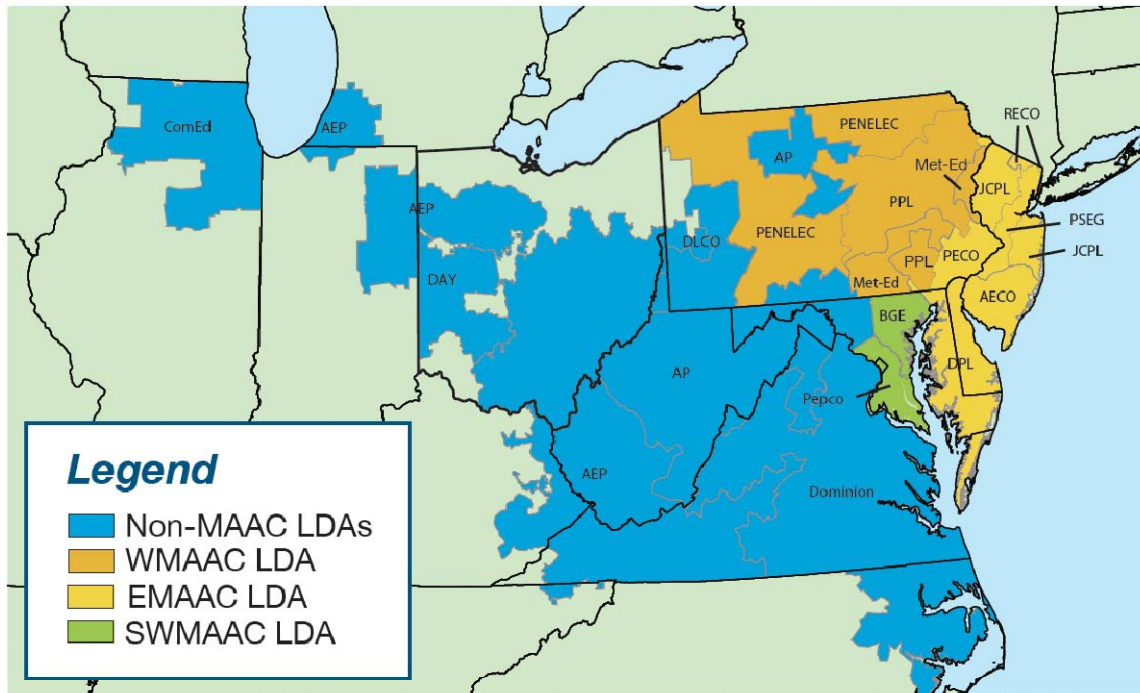
pairs. Table 2 shows the first ten rows from that spreadsheet. For example, the fourth point is an offer of 629.7 MW at a price of \$13.24 per MW-day. The issue is exactly that identified in the hypothetical example. If there is only one offer at \$13.24, then the data does reveal the actual offer of a unit. It is also true that at a price of \$0, there are undoubtedly multiple offers. PJM's approach does not distinguish between the two cases. PJM's approach does reveal actual unit offer data when there is only one unit at a single price point. Even in this subset of data, it is clear that offer prices are quite unique, increasing the probability that individual offers are revealed.

**Table 2**

Price (\$ per MW-Day)	MW
0	7000.7
10.63	14
12.39	14
13.24	629.7
15.62	134
16.54	121
20	34
20.72	115
25.33	51.7
30.38	14

PJM did not post aggregated data. PJM posted total MW offered at each specific price offer. In some cases, that included multiple unit offers and in some cases it included individual unit offers. The Market Monitor is not indicating the actual proportion of each so as not to make the situation worse.

Figure 1



The RAA defines SWMAAC as including the PEPCO zone and the BGE zone (see Figure 1). PJM posted a second spreadsheet, at the same location as the first spreadsheet, which includes unit names, unit MW and the zonal location of each unit, for existing generation resources located in each zone, that qualify as Capacity Resources as of 2/10/2009. In other words, the second posted spreadsheet shows each such generating unit in SWMAAC and its MW: <http://www.pjm.com/markets-and-operations/rpm/~media/markets-ops/rpm/rpm-auction-info/2012-2013-rpm-resource-model.ashx>. Table 3 shows the first 10 rows from that spreadsheet. Based on the spreadsheet, there are 70 such units in these two zones. Other publicly available data permits the identification of the owners of these units.

**Table 3**

RESOURCENAME	ICAP	ZONENAME
AES BEAVER	124.0	DUQ
ALBRIGHT 1	73.0	APS
ALBRIGHT 2	73.0	APS
ALBRIGHT 3	137.0	APS
ALLEG L/D 5	3.0	APS
ALLEG L/D 6	3.0	APS
ALLEGHENY RIDGE WF	12.0	PENELEC
ALLENTOWN 1	14.0	PPL
ALLENTOWN 2	14.0	PPL
ALLENTOWN 3	14.0	PPL

The result is that PJM has posted data on at least some individual offers, that those offers may be linked to specific units and that those units may be linked to specific owners. This does not mean that every individual unit offer has been posted and this does not mean that every offer can be linked to an individual unit. Nonetheless, the result is that PJM has released a substantial amount of unmasked data, contrary to FERC's policy on this issue and contrary to PJM's own stated intent.

This problem is exacerbated in a small LDA like SWMAAC, where there is a small number of large generation owners. The small number of large generation owners increases the probability of being able to correctly match offers with units and owners. But of equal or greater significance for competition, in cases where there is a small number of large generation owners, providing this data means that one large generation owner will be able to identify its own offers and thus increase the probability of being able to correctly identify the offers of its primary competitor.

## 2. The Significance of Supply Curve Pictures and Supply Curve Data

“In fact, the data that PJM releases is the same data in tabular form that PJM previously released in graphical form.” (page 8)

“Any experienced analyst in the energy industry can use a ruler to determine from the posted graphical supply curve data both the megawatts and prices offered at each data point on the supply curve.” (page 8)

“Therefore, prior to March 19, 2010, Market Participants already had access to the aggregate price and offer data at a particular price point.” (page 8)

Both PJM and the MMU publish RPM supply curves for relevant LDAs that clear separately in each RPM auction. These published supply curves are pictures in PDF documents and not spreadsheets. It is incorrect to assert that publishing such curves is equivalent to posting the individual data points on the curve, as PJM suggests. It is impossible to derive the detailed data posted by PJM from the published supply curves. We would challenge PJM or anyone else to demonstrate that this can be done.<sup>3</sup>

If, as PJM appears to suggest, the only issue is to make it easier for analysts to work with the supply curves shown in the pictures, the MMU specifically proposed a way to do exactly that, without revealing the detailed underlying offer data. The Market Monitor offered repeatedly at the MIC meeting of March 9, 2010, to provide a

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<sup>3</sup> If it can be done, then that is a reason to post only smoothed supply curves and not a reason to post the data.

mathematical representation of the curve that analysts could use in lieu of creating a curve based on the supply curve pictures, but that would not reveal the actual data points. That offer was repeated, with a corresponding slide, at the MRC meeting of March 17, 2010, where the vote occurred. This offer by the Market Monitor was specifically and explicitly rejected precisely because it did not include the exact data points for RPM sell offers.

PJM's assertions about the significance of the posted aggregate supply curve pictures are factually incorrect. If it were possible, then the participant that requested the data posting would not have had to do so.

**B. The Motion Requests Only that the Commission Direct PJM to Cease and Desist Posting Data Until the Commission Has Had an Opportunity to Address the Issues Raised by this Release on the Merits.**

A number of parties make false assumptions that the Market Monitor's motion to cease and desist means that this has foreclosed other options available to pursue this matter, such as PJM's concern (at 6) that the Market Monitor does not intend to continue its dialogue with PJM and stakeholders on this issue and Hess's concern (at 2) that Market Monitor will not be filing comments on April 8, 2010. The Market Monitor affirms here its intent to continue the dialogue with PJM and stakeholders on this issue, to file comments on April 8, 2010 in this proceeding, as well as continue to evaluate all of its obligations and options under Attachment M.



The purpose of this cease and desist motion is to allow the Commission to stop continuing damage to the markets, and foreclose the possibility of additional damage to markets prior to the Commission having a fair opportunity to evaluate on the merits the issues raised by the release of this information. For this reason, the Market Monitor requested (at 2) that the Commission issue an order as soon as possible after the comment date. No party has identified any interest that would be harmed by the Commission granting this request even if the Commission does not ultimately agree with the Market Monitor's position.

### **C. This Motion Is Not Improper.**

The Commission has received and acted on motions to cease and desist before.<sup>4</sup> For example, the Commission denied a motion from certain suppliers of electric power to the markets administered by the California Independent System Operator ("CAISO") to cease and desist, finding that certain interim steps taken by the CAISO to protect its markets constituted reasonable short term measures.<sup>5</sup> The Commission granted a motion to cease

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<sup>4</sup> See, e.g., Emergency Motion of Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC for a Cease and Desist Order Against the California Independent System Operator's Arbitrary and Capricious Implementation of its Waiver Policy under the Must-Offer Obligation and Request for a Shortened Comment Period and Expedited Resolution, filed in EL00-95-040, et al. (September 7, 2001); *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*, 97 FERC ¶ 61,293 *mimeo* at 8 (2001).

<sup>5</sup> *Id.* ("We also find that the ISO's proposal to grant exemption of the must-offer obligation under certain conditions is reasonable. As proposed by the ISO under its interim operating procedures, generators must submit to the ISO a request for an exemption from the must-offer obligation. If the exemption of the must-offer obligation is granted, the generator will not qualify for minimum load

and desist in a case where the movants had shown that a natural gas pipeline improperly changed its practice of using Operational Flow Orders to establish long-term gas quality standards by revising policies posted on its website rather than revising its filed tariff.<sup>6</sup> In this case, PJM has changed its policies on posting data on its website even though it was already involved in a proceeding and subject to an order of the Commission requiring it to justify, not revise, the policies at issue.<sup>7</sup> Moreover, the pipeline in question had at least raised a defense that reliability concerns justified its proposed changes.<sup>8</sup> PJM has no defense, other than the popularity of its proposal. There is nothing improper about this motion, and the Market Monitor has more than met its burden to show the seriousness of the issues raised and to justify its limited request for relief.

The Market Monitor moved to intervene in this proceeding on May 4, 2009, which the Commission granted by order issued December 18, 2009.<sup>9</sup> PJM apparently believes that, uniquely among the parties to the proceeding, the Market Monitor should not have an

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costs during the period the exemption is in effect. In accordance with our decision to permit the ISO to use its exemption procedure for the must-offer obligation, we will deny Duke's motion to cease and desist.").

<sup>6</sup> *Indicated Shippers v. Trunkline Gas Company, LLC, et al.*, 105 FERC ¶61,394 at P 17, 25 (2003) ("Trunkline's and ANR's practice of making their gas quality standards more restrictive through posting notices on their websites is contrary to Section 4(d) of the NGA. Consequently, the Commission holds Trunkline and ANR have improperly used OFOs or Critical Notices to make permanent changes to their tariffs.").

<sup>7</sup> December 18<sup>th</sup> Order at P 203.

<sup>8</sup> *Id.* at 10.

<sup>9</sup> *See* Motion to Intervene and for Extension of Time of the Independent Market Monitor for PJM filed in ER09-1063-000; *PJM Interconnection, L.L.C.*, 129 FERC ¶61,250 at P 18.

opportunity to request relief available to other “persons” as defined in the Regulations.<sup>10</sup> PJM has in the past taken an analogous position about the ability of the Market Monitor to participate in the PJM stakeholder processes.<sup>11</sup> No one questions the right of Market Participants, such as the suppliers identified above, to publicly act to protect their interests even to the point of requesting the Commission to direct an ISO to cease and desist practices that the ISO intended to protect its markets in the middle of a crisis. Yet PJM objects to the Market Monitor publicly requesting the Commission to direct that it cease and desist posting information that it posted without due deliberation. Simple prudence would dictate removal of this information before the Commission acts on the matter (the natural gas pipeline discussed above removed its posting prior to Commission action), yet, to date, PJM continues to post the information at issue.

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<sup>10</sup> PJM Answer at 10. 18 CFR § 385.102(d) (“*Person* means an individual, partnership, corporation, association, joint stock company, public trust, an organized group of persons, whether incorporated or not, a receiver or trustee of the foregoing, a municipality, including a city, county, or any other political subdivision of a State, a State, the District of Columbia, any territory of the United States or any agency of any of the foregoing, any agency, authority, or instrumentality of the United States (other than the Commission), or any corporation which is owned directly or indirectly by the United States, or any officer, agent, or employee of any of the foregoing acting as such in the course of his or her official duty. The term also includes a foreign government or any agency” (emphasis in original).).

<sup>11</sup> See Offer of Settlement submitted August 2, 2007, by PJM Interconnection, L.L.C. in EL07-56-000 and EL07-58-000 (PJM proposed (at 11) to exclude the Market Monitor from offering timely input to market design, providing that the “the MMU will not attend lower level committee or working group meetings where the formation of proposals or design of market rules is under development” and to significantly circumscribe the Market Monitor’s opportunity to participate in senior committee meetings). If PJM’s proposal had been adopted, the Market Monitor would have had less access to the PJM governance process than the general public.

PJM has never explained how according the Market Monitor status in this proceeding inferior to other persons facilitates the Commission's resolution of issues such as those raised here, or would help PJM achieve its goals to promote efficient and competitive markets. PJM has explained to the Commission in this proceeding that "any position PJM may take contrary to the IMM is not to suggest PJM is rendering any judgment on questions of market power; opinions of this sort are the province of the IMM and judgments of this sort ultimately rest with the Commission."<sup>12</sup> PJM further explained that should "any such disagreement occur," the Market Monitor "has all resources at its disposal as market monitor to air its concerns."<sup>13</sup> It is puzzling, in light of that reasonable and conciliatory statement, why, in this matter, a matter directly implicating the potential exercise of market power and the continued integrity of PJM markets, PJM deems an (at 5) "overwhelming[]" vote (but not a unanimous vote) of a senior committee sufficient to ignore very strong concerns raised by the Market Monitor, and to deny the Commission a reasonable opportunity to act on those concerns in a proceeding currently and actively addressing that very issue. The Commission should reject the suggestion that this is a matter where a head count is the appropriate way to resolve the issue and reject the specious claim that the only entity specifically charged with monitoring and bringing to the attention of the Commission

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<sup>12</sup> Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C. to Protests and Comments, filed in Docket No. ER09-1063-000 at 8 (July 2009).

<sup>13</sup> *Id.*

issues relating to market power should have uniquely limited rights of participation in this forum.<sup>14</sup>

PJM argues that the only venue available to the Market Monitor for injunctive relief is the Commission Office of Enforcement. PJM does not know what confidential actions the Market Monitor may or may not have taken, or will eventually take, in this matter. However, a referral is not well suited to obtain the immediate protection sought for PJM's market under the circumstances of this cease and desist motion. The requirement to issue a referral triggers once the Market Monitor "has reason to believe, based on sufficient credible information" that a Market Participant or PJM has violated a market rule.<sup>15</sup> PJM does not explain how this standard is met. Moreover, the Market Monitor understands that PJM intends for discussions on this matter to continue.<sup>16</sup> When the Market Monitor refers a matter, this concludes the Market Monitor's investigation.<sup>17</sup> A motion to cease and desist is, in contrast, procedurally consistent with continued discussion.

PJM has not specified the market rule violation that should be referred. PJM represents that it is conducting itself according to its rules, and the Market Monitor has not alleged that PJM takes this position in bad faith. The Market Monitor does not understand that

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<sup>14</sup> Hess argues (at 1–2) that the Market Monitor action is procedurally improper, because "[t]he IMM is an important part of PJM ensuring the functioning of its markets by objectively monitoring the competitiveness of PJM Markets" and it follows that this important function must not have the ability to participate on an equal footing with Hess in regulatory proceedings before this Commission.

<sup>15</sup> OATT Attachment M § IV.I.2.

<sup>16</sup> PJM Answer at 6.

<sup>17</sup> OATT Attachment M § IV.I.2.

either the Commission or its Office of Enforcement expects the Market Monitor to treat presumably honest differences over the interpretation of market rules and the soundness of the underlying policies in a manner akin to a prosecutorial investigation. Furthermore, despite its occasional differences over policy matters with PJM, the Market Monitor believes that the institutional independence of PJM, as a Commission-approved Regional Transmission Organization, entitles it to a degree of deference regarding referrals of its potential market misconduct. If PJM disagrees and has sufficient credible information that a market rule violation has occurred, nothing prevents it from self-reporting.

PJM's apparent preference that the Office of Enforcement investigate it rather than cease and desist posting market sensitive data pending Commission action in this proceeding is a mystery. PJM does, however, observe (at 10) that such investigations may be resolved "non-publicly." This dispute was very public prior to the cease and desist motion. Indeed, PJM has sought to justify its actions partly on the basis of the popularity of its actions. No valid reputational interest is at stake here that requires secrecy. It is difficult to reconcile PJM's release of the data in question on the basis of a stakeholder vote with its apparent interest in having the Commission resolve this dispute over policy behind closed doors. The only aspect of this matter that should not be public is the market sensitive data that PJM is posting on its website.

## **II. MOTION FOR LEAVE TO ANSWER**

The Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), do not permit answer to answers or protests unless otherwise ordered by the decisional authority.

The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.<sup>18</sup> In this answer, the Market Monitor provides the Commission with information useful to the Commission’s decision-making process and which provides a more complete record. Therefore, this answer should be permitted.

### III. CONCLUSION

The Market Monitor respectfully requests that the Commission grant this motion for leave to answer and afford its answer due consideration as it resolves the issues raised in this proceeding.

Respectfully submitted,



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<sup>18</sup> See, e.g., *PJM Interconnection, L.L.C.*, 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that “provided information that assisted ... decision-making process”); *California Independent System Operator Corporation*, 110 FERC ¶61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process).

Dated: April 1, 2010



## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,  
this 1<sup>st</sup> day of April, 2010.



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