

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

PJM Interconnection, L.L.C.))	Docket No. ER09-1063-000, -001
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**MOTION FOR LEAVE TO ANSWER AND
ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rules 212 and 213 of the Commission’s Rules and Regulations, 18 CFR 385.212 & 385.213 (2008), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”),¹ moves for leave to answer and answers comments filed on June 26, 2009, to PJM’s filing in response to Order No. 719 and the Market Monitor’s Protest and Compliance Proposal (“IMM Compliance Proposal”) filed May 27, 2009, in the above captioned proceeding.²

The Market Monitor primarily seeks in this proceeding to preserve its ability to monitor the development of inputs to prospective mitigation free from interference by PJM and Market Participants acting through PJM. If that interference is not prevented, then there will be a new and unnecessary risk of the exercise of market power in PJM

¹ PJM Interconnection, L.L.C. is a FERC approved Regional Transmission Organization. Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”) or the PJM Operating Agreement (“OA”).

² *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶61,071 (2008) (“Order No. 719”), *order on reh’g*, Order No. 719-A, 128 FERC ¶61,059 (2009).

markets. A number of market sellers and their umbrella organizations have filed comments that resist this effort to curtail their ability to influence this process.³ It is clear, with some exceptions, that market sellers generally prefer PJM's approach to compliance, while others, including those whose primary responsibility is the public interest, prefer the IMM's approach.

This split is unfortunate because the efficient pricing of electricity and confidence in the integrity of wholesale electricity markets will serve both the interests of the public and the industry over the long run. The purpose of market monitoring and mitigation is to facilitate the Commission's carrying out its responsibility to ensure that the market as a whole is providing competitive results.

Most of the market sellers' arguments are based on an inaccurate representation of the Market Monitor's role, despite the Market Monitor's lengthy and detailed June 26th Filing and its similarly lengthy and detailed presentations over nearly six months of the stakeholder process for compliance with Order No. 719. Many of the market sellers'

³ PJM Power Providers Group, whose website identifies (as of July 2, 2009) members consisting of Conectiv Energy, Constellation Energy Group, DPL, Edison Mission Group, Exelon (Exelon Corporation filed separately to note (at 3 n.2) that it "participated in and agrees with" these comments), International Power, Mirant, NextEra Energy Resources, LLC, NRG Energy, and PSEG ("Power Providers"); Duke Energy Corporation, on behalf of its affiliates, Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., Duke Energy Kentucky, Inc. and Duke Energy Carolinas, LLC, as well as Duke Energy Business Services, LLC (collectively, Duke Energy); Shell Energy North America (US), L.P. ("Shell Energy"); Electric Power Supply Association ("EPSA"); The Dayton Power and Light Company ("DP&L").

comments attempt to defend PJM's unreasonable, inaccurate and absolutist legal position that it alone administers all aspects of its RTO tariff, including provisions that relate to monitoring the conduct of Market Participants and monitoring the conduct of PJM itself. In some cases, market sellers' comments ask, more reasonably, for some additional clarification of the Market Monitor's proposals and certain parties generally supportive of the Market Monitor's position raise certain limited objections, mostly of a procedural nature.

The Market Monitor endeavors to answer or respond to these points below, but the comments provided by market sellers are notable for a topic scrupulously avoided. Not one of the market sellers' comments explains how the Market Monitor's proposals do not "strengthen MMU independence" in PJM, which is the Commission's stated purpose for considering market monitoring issues in Order No. 719.⁴ Indeed, the repeatedly invoked mantra that the Market Monitor cannot administer any provisions of the RTO tariff, even those that relate to market monitoring, essentially holds that the law prohibits an independent market monitoring function. In fact, the law requires a strong and independent market monitoring function in support of competition-based pricing in the electric industry.⁵ In addition, market sellers fail to address the concerns,

⁴ Order No. 719 at P 361; *see also Id.* at PP 12, 315–16.

⁵ *See, e.g.,* IMM Compliance Proposal at 9–12 & nn.8&9, citing, *e.g., Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶31,092 (2000).

raised at length, about how PJM's proposal would weaken the independence of market monitoring in PJM.

It is also notable that there is some consensus that the current approach to market monitoring is working well.⁶ There is nothing to be gained from the pursuit of impractical ideologies or upsetting the current balance of incentives for voluntary and ex ante cooperation. What is needed is to ensure that the current approach is transparent and documented accurately and in detail in the tariff. The IMM Compliance Proposal accomplishes this, and it should serve as the basis for compliance in this proceeding.

I. ANSWER REGARDING MARKET MONITORING POLICY ISSUES

A. No Law, Regulation or Rule Prohibits the Market Monitor from Independently Administering the Provisions of the Tariff that Relate to Market Monitoring.

A number of market sellers echo PJM's extreme position on RTO prerogatives concerning tariff administration, but they, like PJM, fail to address its inherent contradiction.⁷ Attachment M of the PJM Open Access Transmission Tariff clearly assigns to the Market Monitoring Unit the responsibility to administer referrals of

⁶ In addition to generally supportive comments, *see* Constellation at 10 ("Constellation's experiences lend support to the PJM MMU's assertion that, generally, consultations between the MMU and market participants have occurred and progressed smoothly"); PSEG *passim*.

⁷ See Constellation at 10; Shell Energy at 5; EPSA (at 13–15); Power Providers at 18.

market misconduct by Market Participants with no role for PJM whatsoever.⁸ PJM may not ever know that a referral has occurred, or that the Market Monitoring Unit has undertaken additional investigative steps at the Commission's direction.

Nonetheless, Attachment M is part of PJM's tariff, and if, as PJM and market sellers insist, unspecified "core legal principles"⁹ prohibit the Market Monitoring Unit from administering these provisions without oversight by PJM and the ability for PJM to reverse decisions made in the course of administering them, then these provisions would also require revision. No one argues this because it is untenable, as is their underlying position on what the law prohibits.

In some cases market sellers misrepresent the IMM's Compliance Proposal. Duke Energy (at 3) argues that the Market Monitor lacks authority "to direct PJM to modify its implementation of market rules or operation" or "to modify PJM operational decisions." The Market Monitor agrees. The IMM Compliance Proposal explains at some length (at 38–39) that the Market Monitor has never had, and does not desire to have, any such role and is content with the Order No. 719 prohibition of MMUs' involvement in such activities. Duke Energy also complains (at 3) that "PJM and the stakeholders must have a role as well" in "the development of inputs." The Market Monitor agrees. Stakeholders, or more precisely, Market Participants should not only

⁸ See OATT, Attachment M § IV.I.

⁹ Constellation at 10.

play a role, but have the leading role in developing their own inputs,¹⁰ provided only that they do so within a tariff defined process that allows for an evaluation of those inputs by the Market Monitor. PJM does not need to be involved in this process, and such involvement is harmful if it dilutes a market seller's responsibility for its conduct or dilutes the Market Monitor's authority to independently evaluate that conduct. Market sellers know or should know their own costs, and the Market Monitor has the capability and independence to properly scrutinize market sellers' claims. The objective is that the market seller and the Market Monitor reach agreement on what is reasonable, when such agreement is possible. Only the Commission can impose an input level on a unwilling participant.

Duke Energy (at 4) argues that "the IMM's role and responsibilities should be limited to reviewing and monitoring what is established by the CDTF and should not be expanded to that of leader of this policy making group." The Market Monitor proposes no expansion of its authority here, only the confirmation of its historic role, and a role that continues to be specified in the CDTF's charter, though not observed in practice since March 2007, when the controversy over market monitoring in PJM had

¹⁰ This is an example of an aspect of tariff administration assigned to Market Participants and not subject to exclusive administration by the RTO.

begun to intensify.¹¹ The CDTF requires an unusual commitment on the part of participants to set aside narrow stakeholder interests in the pursuit of objective and reasonable rules for developing cost inputs for use in local market power mitigation, and the Market Monitor's ability to set the tone of CDTF proceedings has been instrumental in achieving this result. No one has explained why this proven and beneficial arrangement should change.

Duke Energy (at 5) opposes "the IMM's proposed usurpation of PJM's authority" to apply to the FERC for "an order ... directing ... [a] Capacity market seller to participate in the [capacity] auction" (i.e., monitoring the "must offer" obligation in RPM), claiming that this may "infringe on the Transmission Provider's authority to make section 205 filings." Duke Energy makes similar allegations (at 6-7) concerning the proposed codification of the Market Monitor's responsibility regarding market seller Offer Caps and Black Start Service/Deactivation Rates. These matters relate to compliance with the FERC and PJM Market Rules, not section 205 filings to change these rules. Order No. 719 directs (at P 378) revisions to RTO tariffs as needed to clarify exactly who performs which duties, and the IMM Compliance Proposal responds to that directive.

¹¹ See Cost Development Task Force-Team Charter, Administrative Item No. 3 ("The Chair must be the PJM Market Monitoring Unit (MMU) Market Monitor or a designated MMU representative"). This charter is posted on PJM's website at: <http://www.pjm.com/committees-and-groups/task-forces/~media/committees-groups/task-forces/cdtf/charter-03312006.ashx>.

Duke Energy (at 5) also objects that the Market Monitor oversteps its bounds when it proposes to assume “the obligation to ‘notify’ the Office of the Interconnection of any risk premium to which it and a nuclear generation resource agree or its determination if agreement is not obtained (emphasis added),” urging that this “should be PJM’s obligation, not the IMM’s.” Duke Energy’s objection does not make sense as formulated. Presumably, Duke Energy does not take issue with a requirement that the Market Monitor must notify PJM of the Market Monitor’s determinations.

RRI seems unable to distinguish PJM and the Market Monitor’s respective positions. RRI (at 5) praises “PJM’s efforts to revise its tariff to provide clarity to market participants and to further make clear that PJM has sole responsibility for its own tariff administration is appropriate” and objects to proposed changes as examples of confusing “shared” authority.” RRI’s praise is misplaced. In contradiction to PJM’s theory that compliance requires PJM to exclusively administer its tariff, what PJM actually proposes is that it jointly administer the market monitoring function with the Market Monitor, albeit with the Market Monitor in a subordinate role. It is the Market Monitor’s proposal that eliminates the shared implementation of the tariff’s monitoring provisions that RRI finds undesirable.

The Market Monitor cannot reconcile RRI’s objection (at 6–8) to changes supported by both PJM and the Market Monitor that clarify the IMM’s role in Deactivation Avoidable Cost Credit levels, Black Start Service requirements, and Regulation Service

opportunity costs as “burdensome” and “duplicative” with its claim that such provisions are “unnecessary because the IMM currently has the ability to perform many of these tasks as part of its general duties currently allowed for in the existing tariff.” PJM’s proposed changes, which the Market Monitor supports, merely present in specific language what the Market Monitor’s responsibilities have been to date. Clarity and transparency are goals of the Market Monitor’s proposals in this case.

Dayton Power raises the alarm a notch above other Market Participants (at 19–22) as it accuses the Market Monitor of attempting to “shift power” to itself. Dayton Power asks that the Commission ignore the Market Monitor’s pleading and then “summarizes” the IMM’s proposal in a manner suggesting that it has dutifully followed its own advice. In each case, DP&L describes a shift of an authority from PJM to the Market Monitor that neither PJM nor the Market Monitor possess or seek to possess, or incorrectly describes as a “change” what has been, in some case for years, the status quo. Dayton Power then comes to its real point, confessing its fear (at 22) that under the Market Monitor’s proposal “disputes between a supplier and the IMM go directly to the FERC.” Here Dayton confirms the Market Monitor’s contention that an undesirable consequence of PJM’s proposal is that it would provide market sellers with an intervening step in the process where they could lobby PJM to reverse or interfere with the Market Monitor’s determinations on what constitutes an exercise of market power or a failure to comply with the FERC Market Rules. This is precisely the problem that

the Market Monitor has explained would weaken rather than strength the market monitoring function in PJM.

The Market Monitor encourages a close reading of Dayton Power's pleading because it explicitly states the reasons for Dayton Power's positions on the role of market monitoring. As stated by Dayton Power, the issue is not who performs mitigation, but whether mitigation itself is desirable. Dayton Power's complaints about processes related to market monitoring fit into a larger unease that "PJM 'markets' appear to be incrementally edging closer to being merely a collection of prices established largely by regulatory fiat in the form of market structure rules and market mitigation tools." Dayton Power argues that "over and over again, the main parameters that establish price are either administratively established, or are subject to pervasive offer capping, or both." This "approach," Dayton Power concludes, "bears no resemblance to a free market." Dayton Power sums up (at 10) its frustration with PJM: "[T]here is an astounding amount of hand-wringing over the potential that some generation owner, somewhere, might make more money than some other stakeholder thinks is appropriate."

Dayton Power shows no appreciation for several key facts about the industry in which it operates, namely, that it is structurally noncompetitive, that the role of demand in price formation is severely undeveloped, and, most importantly, it is subject to regulation by multiple authorities both to ensure just and reasonable pricing and a high

standard for reliability. There is no “free market” solution that, if unleashed, would allow us to bypass these fundamental challenges.¹² All of the administrative rules, including mitigation, about which Dayton Power complains relate directly to realities that are not going to change and cannot be ignored.

In a market regulated through competition, it is crucial that the inputs into prospective mitigation ensure competitive outcomes and are calculated as accurately and efficiently as possible, and that the lessons from structurally competitive markets about cost and pricing incentives be properly applied. Regulation through competition requires great attention to the details. Making these markets work for the benefit of the public is possible, but it cannot be accomplished except by design.

B. Market Sellers Misunderstand What the Market Monitor Does.

A misunderstanding of what the Market Monitor does and what it is proposing motivates some of the objections to the IMM Compliance Proposal. That this confusion persists is perplexing in light of the weeks of presentations in the Task Force 719 Working Group, which included even more detailed discussion than what was included in the Market Monitor’s lengthy May 27th pleading.

¹² See, e.g., Joseph T. Kelliher, “Market Manipulation, Market Power, and the Authority of the Federal Energy Regulatory Commission, ENERGY L. J., Vol. 26, No. 1 at 11 (2005) (“It is important to note that the Commission’s policy was never intended to deregulate wholesale power markets. Notwithstanding great debates that have taken place in the United States over deregulation, our economic markets are not truly unregulated in the sense that they are completely free from rules.”).

The Market Monitor does not provide inputs to PJM other than certain default values that are intended to preclude the need for case by case evaluation. Market Participants desiring to submit offer caps based on their particular short run marginal costs (Energy Market) or avoidable costs (Capacity Market) have the responsibility to prepare those offer caps accurately so that they are not a vehicle for exercising market power in those markets.

The tariff provides a process that requires the Market Participants and the Market Monitor to take certain actions. The Market Participants play the leading role in this process, and they ultimately determine the offer cap that they will submit and for which they will have exclusive responsibility. The Market Monitor does not have “exclusive control of the key inputs to all of PJM’s markets” as the Power Providers allege (at 17). On the contrary, the Market Monitor has no control over anything other than its non binding assessments.

Arguments of the Power Providers (at 12–15) that “PJM has the right, but not the obligation, to utilize or not, any and all inputs that it receives from the Independent Market Monitor,” that the tariff leaves “the ultimate responsibility of determining the inputs and overall tariff provisions to the RTO or ISO” and that describe the Market Monitor as “turn[ing] the resulting inputs over to PJM” are not based on an accurate representation of either the status quo or the Market Monitor’s recommendations and contribute nothing but confusion to the Commission’s consideration of this issue.

The Market Monitor appreciates that it oversees a process for developing the inputs for prospective mitigation whose chief virtue is that it encourages self restraint. The Commission has asked for and the IMM Compliance Proposal has provided in detail a clear explanation in the tariff of the MMU's role. This process never in the past required constant, or even frequent, resort to direct regulatory intervention by the Commission. There is no reason why this efficient, proven and orderly process which has served the markets well cannot continue to do so.

C. The Commission's Policy Balances Concerns About RTOs' and MMUs' Conflicts of Interest.

The Commission has recognized in Order No. 719 (at P 372) why it should be at least as concerned about protecting the RTO from lobbying pressure applied by participants as it is with a possible conflict of interest on the part of an MMU performing this function. Moreover, the Commission recently reemphasized in Order No. 719-A (at P 133) that it intends that its policy regarding MMUs role in mitigation to account for the potential for RTO conflicts of interest:

Furthermore, contrary to that same petitioner's assertion, the Commission did take into account the argument that RTOs and ISOs have conflicts of their own in conducting mitigation. That consideration was, in fact, part of the basis for permitting a substantial degree of mitigation to be performed by the MMUs, both internal and external.

The Market Monitor believes that the Commission has struck a reasonable balance on MMUs' role in mitigation in Order No. 719, that it is consistent with current practice in PJM, and that this compliance proceeding should confirm rather than disrupt current practice.

When the Power Providers advocate a new process (at 15) where, "if the market participant is successful in convincing PJM that the IMM's calculation is in error or is otherwise inconsistent with the tariff, the market participant may bid into the market on that basis, but the IMM may report such behavior to FERC Enforcement Staff," they clearly corroborate the Market Monitor's position on the problem that PJM's proposal creates. Market Participants should take their case to the Commission if they cannot reach agreement with the Market Monitor and are unwilling to act without certainty on the Commission's views. Market Participants should not attempt to force PJM to stand in for them in order to lend their cause a patina of neutrality. This would undercut PJM's appropriately neutral role. The market rules should be designed to buttress PJM's neutrality rather than undermine it.

Power Providers assert (at 16) that they "do[] not believe that companies will make the decision to challenge the determinations of the IMM lightly, and the ability of the IMM to report behavior (even behavior endorsed by PJM) to FERC Enforcement Staff assures that this is the case." This ignores the fact that this proposal from PJM represents a dramatic departure from past practice and ignores recent actual experience

with this approach. Power Providers explain why they are not happy with the outcome of the process they support in discussing (at 16) the results of parallel and subordinate administration by the Market Monitor of rules regarding Parameter Limited Schedules:

[W]hen PJM and the IMM did not ultimately reach agreement, the generators were left without clear guidance as to how to bid their units. PJM's proposed process will provide clear guidance as to how the market participant may proceed, while at the same time providing adequate safeguards to consumers by providing the option for the IMM to make a referral to FERC.

The Market Monitor's guidance in this process was clear, unambiguous and documented. PJM inserted itself, for a time, into this process with a contradictory application of the same business rules, generating confusion and the opportunity for Market Participants to take advantage of PJM's interference with the Market Monitor's ability to evaluate their conduct. No similar confusion has occurred elsewhere when the Market Monitor's role in the development of inputs by Market Participants was unhindered.

This administratively inefficient and inappropriate result can be avoided in this and other matters if the Commission approves the objective and detailed rules included in the IMM Compliance Proposal.

D. Substantive Objections to Certain Proposed Revisions

Several protestors/commenters raise objections to specific aspects of the IMM Compliance Proposal. Duke (at 7) argues that the “FTR Forfeiture Rule” section is not “the appropriate section of the tariff to include discussions regarding settlements.” The basis for this objection is unclear. The purpose of this provision is not to discuss settlements, but to provide for a retrospective adjustment based on the application of an objective retroactive mitigation rule, exactly as is done currently. Specifically, it concerns whether an adjustment should be made on the basis of a retrospective determination that the Market Participant was not eligible for FTR payments due to certain virtual trading conducted by the Market Participant that influenced the value of the FTR.

Power Providers complain (at 22) that Section II of the Appendix to Attachment M “does not provide the standard that the Market Monitor will apply in determining whether a unit is subject to the must offer [for RPM] requirement or not.” The current tariff does not specify a standard, but the Market Monitor favors an additional stakeholder process to clarify this point. There is no reason, however, to delay making this provision effective in the interim, which provides for significantly more transparency to stakeholders about how this provision is being administered than is currently provided.

Protestors/commenters question the additional codification in the tariff of rules related to Parameter Limited Schedules. Duke Energy indicates (at 4) that it does not understand why these rules are included in the tariff. Power Providers point out (at 22) that “Paragraph 1 does not specify how or on what basis the Market Monitor will determine whether the revision of the Matrix is appropriate” or “reviews requests for exceptions to parameter limited schedules” (and, similarly, that “Section 6.7(c) of Attachment DD does not specify the bases upon which default ACR values will be calculated and simply includes a cross-reference back to the Appendix to Attachment M”). Although the Power Providers agree (at 24) “that it is appropriate to develop standards for exceptions to Parameter Limited Schedules,” they caution (at 24, 26) that “these standards, as well as any standard for updates to the Parameter Limited Schedule Matrix, must be developed through the stakeholder process” and that their inclusion exceeds the scope of compliance with Order No. 719.

The IMM Compliance Proposal accurately and objectively captures the process that the Market Monitor and PJM are currently applying, in accordance with stakeholder approved business rules, to their evaluations of Parameter Limited Schedules. Inclusion of these rules in the tariff makes them transparent and facilitates the ability of the Commission to review the rules pursuant to which these inputs to prospective mitigation are developed, but it does not introduce anything that is new or has not been

subject to extensive consideration and approved by stakeholders. This is consistent with the objectives of Order No. 719 (see P 379).

The implementation of these important rules, despite the years devoted to their carefully negotiated development, has not proceeded as smoothly as it should and could have, and it is evident that this is an example of where the additional transparency called for by Order No. 719 (at P 379) is needed. Nothing prevents stakeholders from revisiting this matter, if desired, and seeking to develop objective criteria governing the upkeep of the default tables for the Parameter Limited Schedule Matrix and ACR, but including this language is consistent with the scope of Order No. 719's requirements (at P 379) that compliance remove "the ability of either [the RTO or MMU] to act in a discriminatory manner" and "facilitate the monitoring and review of mitigation activities." The IMM Compliance Filing constitutes a clear improvement over the status quo and is consistent with the requirements of Order 719.

Constellation (at 11 n.30), RRI (at 9), and ODEC (at 14 (on procedural grounds only)) object to the inclusion in the IMM Compliance Proposal of, at OATT Attachment DD § 5.8(i),¹³ "a new ability to delay RPM auction results by 90 days."¹⁴ Although no language specifically addressing this possibility appears in the current tariff, such delays in

¹³ This section has a placeholder that should reference the proposed OATT, Attachment DD §§ 6.4(d) and 6.6(d) where this 90-day window of opportunity for the IMM to obtain a ruling from the Commission appears.

¹⁴ ODEC (at 14) also objects that this provisions has not been .

clearing RPM auctions have occurred for various reasons. The failure to include a specific time period leaves the practice undocumented and the time frame to the discretion of PJM. The reason to avoid posting RPM prices that are affected by an offer that may be unlawful is that a decision by the Commission affecting that offer and requiring the posting of revised auction prices would be disruptive to the market. The point is to give the Commission a reasonable window of opportunity to take action to ensure the integrity of the auction prices before releasing them.

Although specifying “90 days” seems to have been discomfiting to some, this provision actually replaces a discretionary and undocumented practice with a transparent and objective process consistent with Order No. 719 (at PP 378–79). In accordance with the logic above and in the absence of any rule, PJM and the Market Monitor can, under the current tariff, agree to a delay with no temporal limitation. The specification of “90 days” defines a reasonable period for the Commission to act on a request for relief from the Market Monitor, but reasonably narrows the range of the both PJM’s and the Market Monitor’s discretion. The 90 day period was proposed because the Commission typically takes sixty days to act on tariff revisions. If the Commission agrees that this period affords no more or less time than is reasonable for it to take necessary action, there is no reason not to approve 90 days or such other period that the Commission deems reasonable.

Duke asks (at 7) for clarification about what the IMM seeks to resolve with its proposed changes to “Opportunity Cost Calculations.” The IMM Compliance Proposal does nothing other than consolidate two similar tasks that the tariff assigns to the Market Monitor (OATT Attachment K–Appendix §§ 3.2.3(f-3) & 3.2.3B(h)) to a single provision located at proposed Attachment M–Appendix § V. Duke also requests (at 7) clarification regarding the “Forced Outage Rule.” This provision codifies without substantive change and relocates to the consolidated section of the tariff describing market monitoring duties, a provision currently codified at pages 22–23 of the PJM Manual M11 (Scheduling Operations). These changes consolidate market monitoring tasks to one section of the tariff consistent with Order No. 719 (P 392).

The ICC recommends (at 9) that “the PJM tariff should require the IMM’s quarterly reports to provide the number of instances where the IMM submitted a referral to the Commission for anticompetitive behavior or tariff violations during the reporting period and a summary of the publicly available data associated with each referral. The Market Monitor does not believe that this would serve any useful purpose.

E. Procedural Objections to Certain Proposed Revisions

Some parties challenge aspects of the IMM Compliance Proposal not on their substance, but with regard to whether, as a procedural matter, they are within the scope of compliance with Order No. 719. Generally, Order No. 719 requires the removal of ambiguity and subjectivity and requires enhanced transparency for the provisions that

set forth the market monitoring and mitigation functions (see P 378–79). The requirement cannot be met without reducing to writing and describing in reasonable detail tasks that the Market Monitor performs.

Power Providers (at 26) complain that the change in OATT, Attachment DD § 6.6(g) from “greater than five percent” to “an increase” exceeds the scope of compliance with Order No. 719. The current tariff requires that the Market Monitor raise the matter with the Commission when the market impact has a market impact of five percent. The revised version provides that the Market Monitor may raise the issue for an increase without specifying the threshold. The Market Monitor has no objection to restoring the five percent threshold for mandatory reporting, provided that nothing would interfere with the ability of the Market Monitor to call to the Commission’s attention a lesser but nonetheless significant market impact.

The Power Providers also complain (at 26) that the IMM Compliance Proposal revises OATT, Attachment DD § 6.5(a)(ii) to “apply mitigation to all Planned Generation Resources regardless of whether the preconditions contained in the current tariff are met” exceeds the scope of Order No. 719. The Market Monitor has not proposed to remove the preconditions for applying mitigation to Planned Generation Resources; it has relocated these criteria intact from Section 6.5(a)(ii)(C) of Attachment DD to Section II.F of Attachment M.

EPSA argues (at 12 n.32) that much of the IMM's "compliance proposal" consists of proposed tariff changes that go well beyond the scope of relief properly sought through a protest," but does not offer specifics that would help to evaluate this objection.¹⁵ RRI raises a similar objection (at 8), pointing to a number of provisions, such as defining "Incremental Costs," and codifying the Forced Outage Rule in the tariff rather than the PJM manuals. There is nothing unusual about the proposed definition of "Incremental Costs," but the tariff should define this concept, consistent with actual current practice, because it is central to market pricing under mitigation and is within the scope of the Commission's directive (at P 397) that "RTOs and ISOs [] review their mitigation tariff provisions with a view to making them as non-discretionary as possible... and to reflect any needed changes in their compliance filings." Likewise, including the Forced Outage Rule in the tariff meets this directive as well as Order No. 719's directive (at P 378) to "clearly state which functions are to be performed by MMUs, and which by the RTO or ISO."

¹⁵ EPISA cites *Otter Tail Power Co.*, 123 FERC ¶61,247 at P 14 (2008) and *Entergy Servs., Inc.*, 116 FERC ¶61,035 at P 10 (2006), but fails to appreciate that these cases deal with very specific proposed amendments to these utilities' Service Agreements with specific customers and do not concern, as does this proceeding, the compliance of an RTO with the Commission's generally applicable policies aimed at the strengthening the independence of MMUs, properly ordering the relationship of the RTO, its MMU and market participants in conducting market monitoring and mitigation, and ensuring that the related provisions are not discriminatory. Neither EPISA nor any other party have supported the assertion that the IMM Compliance Proposal does not fit squarely within these parameters.

ODEC (at 14) and NCEMC/Borough of Chambersburg (at 9–10) object to a requirement in section II.A.3 that a market seller submit an offer to the FERC for approval if there is no agreement between the market seller and the IMM. This process is not new. Section 6.4.2(a)(iv) of the current Schedule 1 to the OA provides for a market seller to submit disputed “rates, term and conditions of its proposed offer cap to the Commission for resolution.”

F. The IMM Compliance Proposal Continues to Provide for the Protection of Members’ Confidential Information

Power Providers (at 19–21) raise concerns that the Market Monitor preserve confidential information in the course of bringing matters to the attention of the Commission through referrals and other interaction. PJM included in its proposal, at the Market Monitor’s request, the confidentiality provisions currently in Section 18.17 of the PJM Operating Agreement to the Attachment M-Appendix. Existing confidentiality provisions will continue to apply to the Market Monitor’s interactions with the Commission, other regulatory authorities and the public, and there is no cause for concern about how confidential information will be treated under the IMM Compliance Proposal, if approved, going forward.

G. Reasonable Restrictions on the Release of Data Would Better Protect the Markets from Potential Collusion

The ICC proposes (at 10–14) to make all offer data public, including the names of offering companies, and DC Energy proposes (at 4–6) that virtual bid data be made

available on a disaggregated, bus specific basis, with company names masked. ICC (at 13), DC Energy (at 4) and American Municipal Power–Ohio, Inc. (at 10–11) support PJM’s proposal to accelerate release of participant offer data to three rather than four months. These parties suggest that their proposed modifications to the provision of offer data would improve transparency and enable market participants and regulators to carry out independent analyses, and thereby provide strengthened confidence in the market and improve the ability of participants and state regulators to detect gaming and the exercise of market power. The parties imply that there would be a net gain in efficiency through these changes.

Both proposals are based on the incorrect assumption that the revelation of the suggested participant offer data in the suggested time frames would improve market efficiency, net of any concerns regarding the facilitation of anticompetitive behavior.

Market efficiency requires the transparency and accuracy of market price information, but it does not follow that knowledge of competitors’ costs or bidding strategies would enhance efficiency. Improvements in price transparency do improve market efficiency. Providing underlying cost and offer data, on the other hand, would serve to facilitate the exercise of market power. This is particularly true in markets, such as wholesale electricity markets, with characteristics that make them prone to the exercise of market power, such as inelastic demand, a limited number of competitors and barriers to entry. When a regulatory decision is made to provide such data, the

timing of the data release to the market is critical from a market power perspective. The shorter the lag between the clearing of the market and the availability of information, the more relevant the data will be to the current market, and the greater the concern about its potential to facilitate anticompetitive behavior.

Recent information about competitors' actions enhances the relevance of the data to current market conditions and behaviors. The difference between three and four months is a particularly meaningful threshold. Knowledge of competitors' actions within the period of comparable seasonal conditions greatly increases its predictive value and thereby facilitates anticompetitive behavior. Significant protection can be gained using a release lag of four months rather than three months, without a concomitant loss of value for analytical purposes.

Any proposed reduction in the lag and any expansion of the type of data being provided to the market should be weighed against potential harm to the efficiency of the market. The cost of providing the information with a shorter lag time is that it increases the ability of market participants to engage in anticompetitive behavior.

PJM has argued (at 48) that a three month lag is really a three and a half month lag due to the practical delays in the actual time for release of information.¹⁶ It is not clear

¹⁶ PJM explains: "It is also important to note that for all intents and purposes, a three month lag in the release of data by PJM is effectively a three to four month lag given that PJM does not release bid

how PJM could comply with a tariff requirement to release data after three months if “for all intents and purposes,” it is really releasing it after “three to four months.” PJM is effectively agreeing that a three month lag is too short while providing no assurance that the lag would not be reduced to exactly three months after Commission action in this matter. Seasonal conditions do not strictly adhere to three month spans of time. It is not reasonable to expose the markets to enhanced risk of anticompetitive behavior every time there is hot weather in May or September and offer data retains its seasonal market relevance longer than three months. The better choice is to provide for an additional one month delay that will protect the market significantly and still provide a significant reduction in the current lag in the release of data. As PJM notes (at 47), a majority of PJM stakeholders voted for the four month lag.

Order No. 719 allows an RTO to provide for a four-month delay provided that “it demonstrates a potential collusion concern.”¹⁷ The Market Monitor demonstrated a potential collusion concern in a presentation to Task Force 719, which is included as an Attachment to this pleading. This potential collusion concern was also raised on multiple occasions by the Market Monitor in Task Force 719 meetings. The Market

data every day, but rather only releases bid data for the entire month after the last day of the month.”

¹⁷ Order No. 719 at P 398.

Monitor cannot prove how Market Participants will behave in advance of new opportunities for anticompetitive conduct, but the Market Monitor can anticipate the uses of data by rational participants. It would not serve the public interest to explain how such collusion could operate in detail.¹⁸ This presentation is nonetheless sufficient to meet the Commission's standard, which requires neither proof that collusion will occur nor documentation of its mechanics, but rather requires demonstration of a potential concern.

No countervailing public benefit for advancing the data release by one month has been demonstrated or convincingly asserted. Competitiveness is not improved via the public availability of competitors' underlying cost information. The result of the release of such data would be to undermine the competitiveness of the market rather than to improve its competitiveness. There is no incremental benefit from regulator access to this data through public channels because state and federal regulators already have access to this data.

No party has presented a credible theory of public benefit from an earlier release, much less any public need. No party has even demonstrated the use of the currently available public data for any purpose and further not asserted that any such purpose

¹⁸ One of the reasons that the release of data to the public facilitates collusion is that it allows for the tacit coordination of anticompetitive behavior. Without public release, a voluntary and selected exchange of data among Market Participants could constitute evidence of a violation of the antitrust laws.

could be more effectively served by a three month rather than a four month lag. The notion advanced by DC Energy (at 5) that such data is needed to “facilitate a public market monitoring role” is not credible. The Commission should not expect any market participant to timely share market issues that they identify and may benefit from. There are reasons for traders to want more detailed information about their competitors, but this does not establish either a need for such information nor a public benefit, and certainly does not offset the potential harm. No party has explained how a six month data lag prevented analyses aimed at the detection or timely prosecution of market abuse by participants or regulators, much less why use of a four month rather than a three month lag would have such an impact.

The Market Monitor would prefer the current six month lag in the offer data release date, if that were an option. Given the choice posed in Order No. 719 (at P 398) between an in season three month lag and an out of season four month lag, a choice that weighs real concerns about anticompetitive conduct adverse to the public interest against zero credible claims for a public benefit, the prudent choice is four months. Therefore, the Market Monitor recommends that the Commission direct that PJM release offer data no earlier than four months after the date of offer.

II. ANSWER REGARDING DEMAND RESPONSE ISSUES (SCARCITY PRICING)

The Market Monitor generally supports PJM’s proposed process for addressing the scarcity pricing issue. The Market Monitor agrees that scarcity pricing should be

implemented via reserve requirements modeled as constraints within the security constrained dispatch. Although this has been referred to as an operating reserve demand curve, that is not an accurate description of the approach. This constraint, or set of constraints, would be defined by reserve constraint penalty factor curves (RCPFC). The level of the penalty factor and the reserve targets would be determined by the severity of the reserve shortage in the real time energy market. When binding, the constraint's shadow price would provide, via the least cost dispatch solution, a scarcity signal consistent with economic dispatch, consistent with locational pricing and, where mitigation rules remain in place, consistent with competitive market outcomes. The Market Monitor recommends that the reserve requirements be modeled in areas of sufficient size as to limit opportunities to manufacture local shortages. While PJM's identification of PJM and the RFC portion of the Mid-Atlantic Region appear of sufficient market size to reduce such concerns, individual zones or areas with a small number of dominant suppliers, like SWMAAC, should not be used because of the risk of market power.

Any scarcity pricing mechanism in PJM's energy market must recognize PJM's overall market design and, in particular, PJM's Capacity Market (RPM). Scarcity related revenues can be collected in the energy market or in the capacity market or some combination. Scarcity pricing in the energy market is not required for revenue adequacy. Scarcity pricing in the energy market is relevant only to providing a more

accurate marginal signal to uncommitted resources. Failure to ensure that these aspects of the market work together will result in substantial overpayment for wholesale electric service in PJM. The scarcity pricing issue is not about revenue adequacy, but is an attempt to refine the pricing signals in PJM that should guide rational economic decisions by participants at the margin, including demand-side response providers.

This means that scarcity pricing in the energy market will require a complete and transparent revenue offset mechanism with RPM to ensure no double collection of scarcity revenues. In addressing this, PJM suggests (at 27) that “[t]o the extent that RPM revenues replace revenues that would accrue to generators during reserve shortages, any revenues earned by capacity resources during operating reserve shortages must offset RPM revenues.” In principle, this is the right general idea, but PJM has not provided any further implementation details. It would be a cleaner solution to simply eliminate the collection of scarcity rents during reserve shortages by capacity resources, rather than engage in an after the fact modification of RPM revenues. Such a mechanism is practical because modeling reserve requirements as constraints in the security constrained dispatch makes the locational effects of those constraints on bus prices known. This means that the contribution of reserve constraint shadow prices to bus LMP will be identifiable and can be removed at the time of settlement, thereby preserving efficient market signals in the context of the RPM construct.

III. MOTION FOR LEAVE TO ANSWER

This answer is necessary to resolve confusion raised by the indicated pleadings regarding the Market Monitor's position, to correct inaccuracies in the record and to provide for a more complete record that will facilitate the Commission's decision making process. The Commission has found good cause exists to accept an answer when the answer helps the Commission understand the issues, clarifies certain errors and misstatements, or provides useful and relevant information that will assist the Commission in its decision-making process.¹⁹ For these reasons, the Market Monitor requests that the Commission waive the rule against answers to protests²⁰ and consider the information herein as it resolves the issues raised in this proceeding.

¹⁹ See, e.g., *Public Service Company of New Mexico*, 128 FERC ¶61,017 at P 11 (2009) ("We will accept [various answers to protests] because they have provided information that assisted us in our decision-making process."); *Midwest Independent Transmission System Operator*, 128 FERC ¶61,007 at P 15 (2009).

²⁰ 18 CFR § 385.213(a)(2).

IV. CONCLUSION

The Market Monitor respectfully requests that the Commission accept this answer and afford it due consideration as it resolves the issues raised in this proceeding.

Respectfully submitted,



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Dated: July 22, 2009

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 22nd day of July, 2009.



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Attachment

Offer Data Lag

Howard J. Haas

719 TF

April 2, 2009



Monitoring Analytics

Data Availability Changes: Background

- **In NSTAR Services Company, 92 FERC ¶ 61,065 (2000) (the “NSTAR Order”), the Commission required as follows:**
 - **ISO-NE to disclose individual bid data with a six-month lag.**
 - **Required similar bid disclosure for PJM, the New York ISO, and the California ISO.**
 - **It is important for bid information to be released to the public in order to permit interested parties to monitor the market.**
 - **Keeping the information confidential for six months before releasing the data will sufficiently protect the commercial sensitivity of the data.**



Data Availability Changes: Background

- **On May 24, 2006, the Joint Board on Economic Dispatch for the Northeast (the “Joint Board”) issued its Study and Recommendations Regarding Security Constrained Economic Dispatch:**
 - **“ISO-NE ... should pursue, with market participant input, making market bid data available to the market with a shorter lag time.”**
- **In making this recommendation, the Joint Board noted:**
 - **“a shorter lag period would provide quicker public access to bid data, which would strengthen public monitoring of market behavior and help ensure confidence in the competitiveness of the markets; it would also enhance the ability of market participants to quickly identify inefficiencies.”**



Data Availability: Background

- **In NEISO a stakeholder process produced a proposal to go from six months to three months**
- **NEISO internal market monitor (Dr. Chao) concluded:**
 - **“three month period strikes a reasonable balance recognizing, among other factors, the value of enhanced market confidence and transparency as well as the concerns of the potential for collusive behavior facilitated by disclosure.” (ISONE’s Internal Market Monitoring Unit’s August 25, 2006)**



Data Availability: Background

- **Dr. Chao’s central point is that “the earlier release of bid data adds transparency that generally helps the public to better understand the wholesale electricity markets.”**
 - **“Improved market confidence”**
 - **Earlier detection of market power problems or flaws in the design of market rules or mitigation measures.**
 - **Earlier public release of bid data will allow market participants and state regulators to supplement the market monitoring functions carried out by the internal and external market monitoring functions of the ISO.**



Data Availability: Background

- **Dr. Chao recognized that the primary potential drawback of releasing data too early is that it could increase the chances that competitors could use the information to engage in collusive behavior or other forms of market manipulation.**
- **Less a concern to the extent that:**
 - **the market structure is competitive**
 - **market monitoring and mitigation procedures are effective**
 - **the bidding information becomes “stale” with time.**



Data Availability: Core Concepts

- **Market efficiency requires price and product characteristic transparency**
 - **Decisions to buy or sell should be based on price relative to marginal costs/benefits**
 - **Requires timely and relevant information regarding prices**
 - **In efficient markets 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.**



Data Availability: Core Concepts

- Improving *price* and product characteristic transparency tends to improve market efficiency
 - Important to look for markets/services where price transparency between marginal decision making and marginal effects is limited or absent
 - Operating reserve charges and credits



Data Availability: Core Concepts

- **Improving other data transparency does not improve market efficiency**
- **Information about underlying participant costs is not information that is needed to produce or maintain competitive market behavior or results**
 - **Providing this information will tend to reduce market efficiency, all else held equal**



Potential Collusion Concerns and Data Availability

- **Essential features of electricity markets make them prone to market power abuse:**
 - **Inelastic demand**
 - **Limited storage and intratemporal substitution opportunities**
 - **Markets operates as a repeated game with a relatively small number of key participants**
- **The data on the following slides provides supporting evidence**



**Table 2-4 PJM hourly Energy Market HHI (By segment):
Calendar year 2008**

	Minimum	Average	Maximum
Base	1225	1549	1984
Intermediate	683	2130	6216
Peak	632	5476	10000

Table 2-7 Three pivotal supplier results summary for three regional constraints: Calendar year 2008

Constraint	Period	Total Tests Applied	Tests with One or More Passing Owners	Percent Tests with One or More Passing Owners	Tests with One or More Failing Owners	Percent Tests with One or More Failing Owners
5004/5005 Interface	Peak	723	652	90%	149	21%
	Off Peak	535	467	87%	130	24%
Bedington - Black Oak	Peak	666	491	74%	296	44%
	Off Peak	425	301	71%	193	45%
Kammer	Peak	2,328	1,450	62%	1,111	48%
	Off Peak	4,740	3,302	70%	2,130	45%

Table 2-9 Three pivotal supplier results summary for the AP South and West interfaces: January 1, 2008, through May 16, 2008

Constraint	Period	Total Tests Applied	Tests with	Percent Tests	Tests with	Percent Tests
			One or More Passing Owners	with One or More Passing Owners	One or More Failing Owners	with One or More Failing Owners
AP South	Peak	634	464	73%	273	43%
	Off Peak	903	641	71%	414	46%
West	Peak	578	543	94%	64	11%
	Off Peak	455	420	92%	77	17%

Table 2-10 Three pivotal supplier results summary for the AP South and West interfaces: May 17, 2008, through December 31, 2008

Constraint	Period	Total Tests Applied	Tests with One or More Passing Owners	Percent Tests with One or More Passing Owners	Tests with One or More Failing Owners	Percent Tests with One or More Failing Owners
AP South	Peak	1,575	1,088	69%	766	49%
	Off Peak	1,053	643	61%	639	61%
West	Peak	334	325	97%	22	7%
	Off Peak	186	162	87%	38	20%

Table 2-17 Three pivotal supplier results summary for constraints located in the PSEG Control Zone: Calendar year 2008

Constraint	Period	Total Tests Applied	Tests with One or More Passing Owners	Percent Tests with One or More Passing Owners	Tests with One or More Failing Owners	Percent Tests with One or More Failing Owners
Athenia - Saddlebrook	Peak	79	5	6%	77	97%
	Off Peak	427	2	0%	426	100%
Branchburg - Readington	Peak	653	56	9%	646	99%
	Off Peak	195	3	2%	193	99%
Brunswick - Edison	Peak	536	0	0%	536	100%
	Off Peak	211	0	0%	211	100%
Cedar Grove - Clifton	Peak	772	106	14%	746	97%
	Off Peak	529	107	20%	484	91%
Cedar Grove - Roseland	Peak	117	37	32%	94	80%
	Off Peak	415	80	19%	381	92%

Table 2-19 Three pivotal supplier results summary for constraints located in the AP Control Zone: Calendar year 2008

Constraint	Period	Total Tests Applied	Tests with One or More Passing Owners	Percent Tests with One or More Passing Owners	Tests with One or More Failing Owners	Percent Tests with One or More Failing Owners
Bedington	Peak	1,147	7	1%	1,145	100%
	Off Peak	443	0	0%	443	100%
Bedington - Harmony	Peak	1,523	0	0%	1,523	100%
	Off Peak	427	0	0%	427	100%
Elrama - Mitchell	Peak	364	128	35%	326	90%
	Off Peak	657	136	21%	630	96%
Meadow Brook	Peak	847	0	0%	847	100%
	Off Peak	273	2	1%	271	99%
Mount Storm	Peak	705	422	60%	405	57%
	Off Peak	928	440	47%	632	68%
Mount Storm - Pruntytown	Peak	924	620	67%	476	52%
	Off Peak	1,678	1,097	65%	891	53%
Sammis - Wylie Ridge	Peak	1,158	756	65%	624	54%
	Off Peak	4,114	2,754	67%	2,094	51%

Table 2-21 Three pivotal supplier results summary for constraints located in the AEP Control Zone: Calendar year 2008

Constraint	Period	Total Tests Applied	Tests with One or More Passing Owners	Percent Tests with One or More Passing Owners	Tests with One or More Failing Owners	Percent Tests with One or More Failing Owners
Carnegie - Tidd	Peak	409	0	0%	409	100%
	Off Peak	353	0	0%	353	100%
Cloverdale - Lexington	Peak	1,044	736	70%	563	54%
	Off Peak	6,167	3,579	58%	3,996	65%
Kammer - Ormet	Peak	564	0	0%	564	100%
	Off Peak	816	0	0%	816	100%
Mahans Lane - Tidd	Peak	531	0	0%	531	100%
	Off Peak	247	0	0%	247	100%

Table 2-25 Three pivotal supplier results summary for constraints located in the PENELEC Control Zone: Calendar year 2008

Constraint	Period	Total Tests Applied	Tests with One or More Passing Owners	Percent Tests with One or More Passing Owners	Tests with One or More Failing Owners	Percent Tests with One or More Failing Owners
East Towanda	Peak	1,361	35	3%	1,353	99%
	Off Peak	452	1	0%	452	100%
Garman - Westover	Peak	628	0	0%	628	100%
	Off Peak	779	0	0%	779	100%
Homer City - Shelocta	Peak	319	4	1%	316	99%
	Off Peak	327	4	1%	326	100%

Table 2-27 Three pivotal supplier results summary for constraints located in the Dominion Control Zone: Calendar year 2008

Constraint	Period	Total Tests Applied	Tests with One or More Passing Owners	Percent Tests with One or More Passing Owners	Tests with One or More Failing Owners	Percent Tests with One or More Failing Owners
Beechwood - Kerr Dam	Peak	457	0	0%	457	100%
	Off Peak	70	0	0%	70	100%
Clover	Peak	321	144	45%	321	100%
	Off Peak	2	0	0%	2	100%
Danville - East Danville	Peak	87	9	10%	85	98%
	Off Peak	415	5	1%	415	100%
Halifax - Mount Laurel	Peak	444	31	7%	413	93%
	Off Peak	455	30	7%	425	93%

Table 2-29 Three pivotal supplier results summary for constraints located in the DPL Control Zone: Calendar year 2008

Constraint	Period	Total Tests Applied	Tests with	Percent Tests	Tests with	Percent Tests
			One or More Passing Owners	with One or More Passing Owners	One or More Failing Owners	with One or More Failing Owners
Keeney At5n	Peak	304	64	21%	284	93%
	Off Peak	196	24	12%	191	97%
North Seaford - Pine Street	Peak	255	0	0%	255	100%
	Off Peak	145	0	0%	145	100%

Table 2-31 Three pivotal supplier results summary for constraints located in the AECO Control Zone: Calendar year 2008

Constraint	Period	Total Tests Applied	Tests with One or More Passing Owners	Percent Tests with One or More Passing Owners	Tests with One or More Failing Owners	Percent Tests with One or More Failing Owners
Churchtown	Peak	170	0	0%	170	100%
	Off Peak	53	0	0%	53	100%
Monroe	Peak	1,132	0	0%	1,132	100%
	Off Peak	284	0	0%	284	100%
Quinton - Roadstown	Peak	80	0	0%	80	100%
	Off Peak	35	0	0%	35	100%

Table 2-33 Three pivotal supplier results summary for constraints located in the DLCO Control Zone: Calendar year 2008

Constraint	Period	Total Tests Applied	Tests with One or More Passing Owners	Percent Tests with One or More Passing Owners	Tests with One or More Failing Owners	Percent Tests with One or More Failing Owners
Cheswick - Evergreen	Peak	170	0	0%	170	100%
	Off Peak	26	0	0%	26	100%
Cheswick - Logans Ferry	Peak	283	0	0%	283	100%
	Off Peak	157	0	0%	157	100%
Cheswick - Universal	Peak	163	0	0%	163	100%
	Off Peak	34	0	0%	34	100%

Table 2-35 Three pivotal supplier results summary for constraints located in the ComEd Control Zone: Calendar year 2008

Constraint	Period	Total Tests Applied	Tests with One or More Passing Owners	Percent Tests with One or More Passing Owners	Tests with One or More Failing Owners	Percent Tests with One or More Failing Owners
Burnham - Munster	Peak	378	13	3%	366	97%
	Off Peak	633	223	35%	451	71%
Cherry Valley	Peak	117	0	0%	117	100%
	Off Peak	15	0	0%	15	100%
Crete - East Frankfort	Peak	18	0	0%	18	100%
	Off Peak	2,262	59	3%	2,238	99%

Table 2-37 Three pivotal supplier results summary for constraints located in the PECO Control Zone: Calendar year 2008

Constraint	Period	Total Tests Applied	Tests with One or More Passing Owners	Percent Tests with One or More Passing Owners	Tests with One or More Failing Owners	Percent Tests with One or More Failing Owners
Graceton - Peach Bottom	Peak	138	93	67%	84	61%
	Off Peak	492	269	55%	300	61%

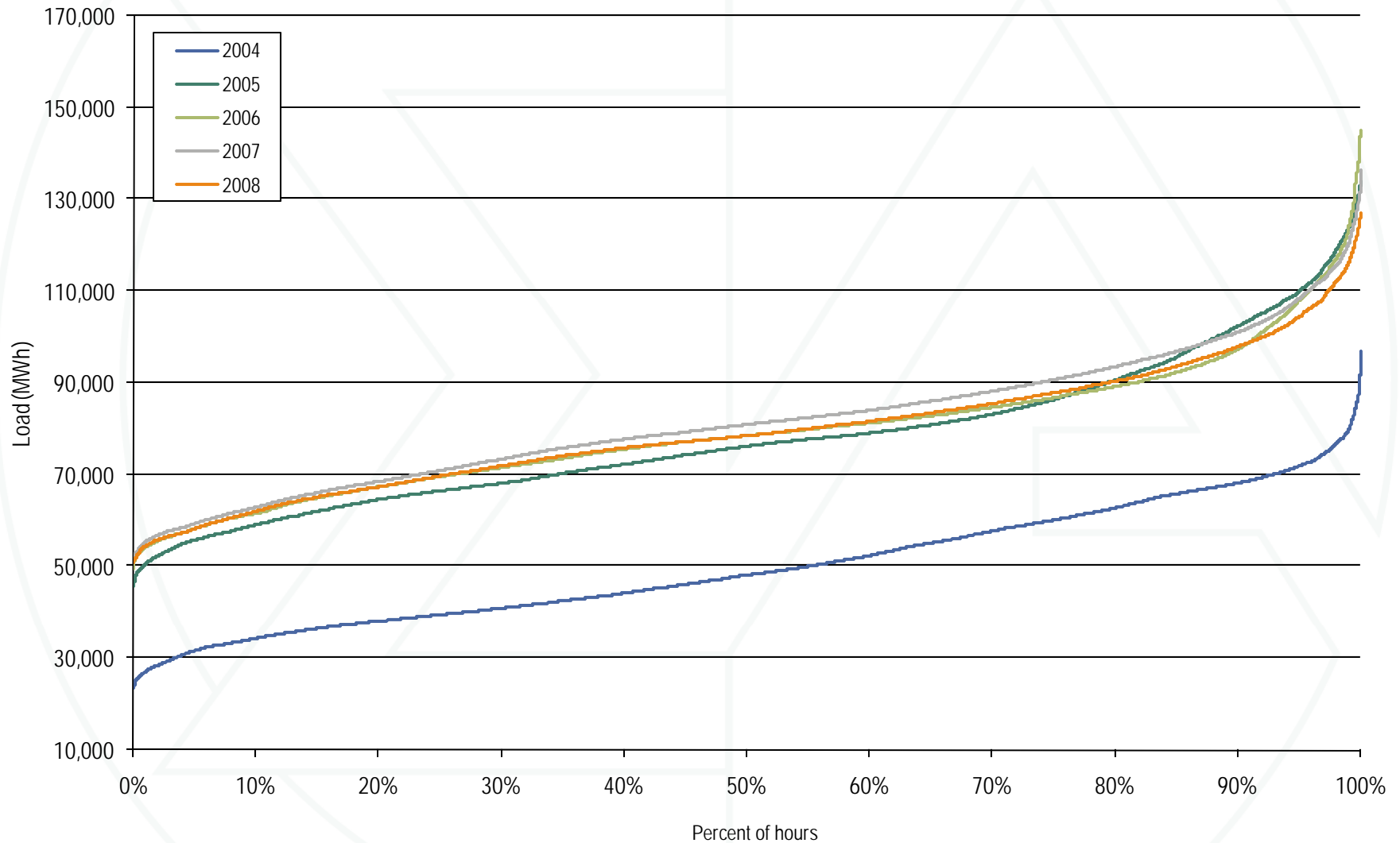
Table 2-39 Three pivotal supplier results summary for constraints located in the Pepco Control Zone: Calendar year 2008

Constraint	Period	Total Tests Applied	Tests with One or More Passing Owners	Percent Tests with One or More Passing Owners	Tests with One or More Failing Owners	Percent Tests with One or More Failing Owners
Dickerson - Pleasant View	Peak	592	472	80%	232	39%
	Off Peak	215	171	80%	86	40%

**Table 2-42 Frequently mitigated units and associated units
(By month): Calendar year 2008**

	FMUs and AUs			Total Eligible for Any Adder
	Tier 1	Tier 2	Tier 3	
January	19	15	69	103
February	30	12	81	123
March	27	21	75	123
April	26	26	72	124
May	23	25	76	124
June	27	26	75	128
July	27	28	73	128
August	28	37	63	129
September	18	45	53	116
October	31	35	61	127
November	36	30	64	130
December	28	51	61	140

Figure 2-4 PJM real-time load duration curves: Calendar years 2004 to 2008



**Table 2-43 Frequently mitigated units and associated units
total months eligible: Calendar year 2008**

Months Adder-Eligible	FMU & AU Count
1	16
2	15
3	8
4	3
5	3
6	3
7	4
8	5
9	2
10	13
11	25
12	74
Total	171

Data Availability: Core Concepts

- **Under the conditions that exist in PJM markets**
 - incentives to cooperate with rivals
 - Incentives to anticipate and react to the behavior of rivals
- **Competitiveness is not improved via the public availability of competitors' underlying cost information.**



Data Availability: Core Concepts

- **Such information is always more useful in undermining the competitiveness of a market than improving its competitiveness, particularly if the tool for efficiency improvement is via after the fact regulatory action.**



Data Availability: Core Concepts

- **In choosing the lag in availability of offer data need to balance:**
 - **First order inefficiencies caused by increases in unilateral or collusive behavioral effects over time**
 - **Third order improvements made possible by earlier participant or regulator detection of inefficient behavior**
 - **Strengthened confidence in the market**
 - **There is no evidence to support the claim that shortening the lag would improve market efficiency**
 - **There is no practical basis for the assertion that public detection of inefficient behavior will improve with a three month lag**



Data Availability: Recommendation

- **Offer data lag: 3 or 4 months?**
 - **A longer delay is preferable**
 - **4 months is preferable to 3 months**
 - **Limit seasonally relevant information**



Data Availability: Proposal

- **4 month lag for public provision of data**

