



of collusion, while fostering market transparency.” Rather than provide such justification, PJM changed its policies in response to a request from a Market Participant and revised its manuals to include new criteria for evaluating “aggregated” data, and, without an opportunity for deliberation by this Commission in this proceeding and despite strong expressions of concern by the Market Monitor about the consequences, posted on its website data on March 19, 2010 (“March 19<sup>th</sup> Posting”), harmful to the competitiveness of PJM’s capacity market. Despite claims to the contrary, this data was not aggregated under any reasonable definition of that term, and PJM’s newly adopted criteria are flawed and should not be adopted.

The issues involved on this point have been raised in a motion to cease and desist, and a subsequent answer, filed by the Market Monitor, respectively on March 24, 2010 (“March 24<sup>th</sup> Motion”) and April 2, 2010 (“April 2<sup>nd</sup> Answer”).<sup>4</sup> In those pleadings, the Market Monitor indicated that it would further explain its concern in these comments about the

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<sup>4</sup> PJM filed in this proceeding an answer on March 30, 2010 (“PJM Answer”) and a supplemental answer on April 6, 2010 (“PJM Supp. Answer”). In the PJM Supp. Answer, PJM pledges (at 2) to refrain from posting data on the Base Residual Auction for the 2013/2014 Delivery Year that it will conduct in May 2010. PJM further claims that this renders moot the Market Monitor’s motion. The Market Monitor welcomes PJM’s pledge of restraint as a positive first step towards a process that would allow due consideration of its policies on data release but disagrees that the matter is moot. Future harm can still be prevented by withdrawal of the March 19<sup>th</sup> Posting. PJM has not shown that all or even most Market Participants have actually accessed the data during the short period it has been posted. Accordingly, the Market Monitor re-affirms its request that the Commission grant the requested relief as soon as possible. Moreover, the Commission should direct PJM not to release any other data concerning any other markets administered by PJM that is not identical in format, granularity and vintage to information previously, released until the Commission has addressed disclosure issues in this proceeding or in a process that follows upon this proceeding.

release of the data and explain an alternative approach for providing an aggregate supply curve that would serve all legitimate market purposes without compromising the competitiveness of PJM's markets. Accordingly, the Market Monitor further develops its position on these issues below.

Although most of PJM's proposed tariff revisions appropriately respond to the Commission's directives, in some cases they do not completely satisfy the Commission's stated concern. Certain proposed revisions to the Attachment M–Appendix unnecessarily weaken the must offer obligation in RPM and fail to go as far as they should towards clarification of this critical rule. Other issues include the lack of provisions that specify how the Market Monitor processes requests for exceptions to Parameter Limited Schedules (“PLS”) and the inclusion of certain language from the applicable manual that is more likely to confuse than clarify the PLS process. The Market Monitor also requests certain minor revisions to the ethics rules to clarify that the Market Monitor does not receive special payment to cover the costs of providing expert witness testimony in the PJM Region.

## **I. COMMENTS**

### **A. The Rules for the Release of Aggregated Market Data Must Provide Adequate Protection from Collusive and/or Anticompetitive Behavior and Market Manipulation.**

#### ***1. Inappropriate Release of Data Can Harm Competition, Especially in the Context of PJM's Markets***

There is a common misconception that unfettered access to all market data enhances the competitiveness of markets, and that when less than all data is provided, there is

harm to competition. This misconception leads to a presumption that additional disclosure of data in the possession of market administrators is always desirable. A more sophisticated understanding of the social benefits and harm associated with the release of market sensitive data, particularly for the markets administered by PJM, is necessary to inform the deliberate process of creating policies that will enhance competition and preserve the integrity of PJM's markets.

Competitive markets require that competitors possess only two essential types of information about: prevailing and relevant market prices and their own costs. Transparent and accurate information about prices and one's own costs are the basis upon which rational, competitive market conduct depends and market efficiency is dependent. Information about one's own costs is one's own. Market prices are the only data in the possession of the system administrator that has to be provided to the market to promote competitive outcomes. This is the only information that the Commission should accord a strong presumption that its release is a social benefit and promotes transparency. The Market Monitor recognizes that additional data about the PJM infrastructure, including for example transmission outages should be provided and does enhance competition.

That many Market Participants may recognize commercial advantages in acquiring additional market data, does not mean that markets are more competitive as a result.

Additional data mainly is of value to the public for considering whether the markets are functioning competitively and efficiently.

***2. The Release of Data on Resource-Specific Costs Harms the Market and Meets No Legitimate Need***

The data most damaging to competition is information about the costs of individual competitors. This information is damaging because it allows for the development of an offer strategy not based on one's own costs, but on the basis of the costs of one's competitors relative to one's own in the supply stack. A low cost new entrant, for example, that knows the lowest rational offer that an inefficient competitor can submit can prepare an offer just below that inefficient competitor's best rational offer even though a competitive offer based on the new entrant's costs would be much lower. When the market clears at the resulting higher price, that price indicates the exercise of market power, not the competitive price. It is plain why the new entrant would want such information, and it is plain why other Market Participants in the same market that will benefit from higher prevailing prices would want the new entrant to have that information. It should be equally plain why parties interested in efficient and competitive outcomes and/or lower electricity prices would object to the release of such information. The targeted incumbent also has good reason to preserve its commercially

sensitive data, and is entitled to such protection under the PJM Tariff.<sup>5</sup> The only information that would be needed by the potential entrant would be the prevailing price in that market and whether or not it exceeds its own costs.

Uncertainty about competitors's costs and likely offers enhances competition. With such uncertainty, a market participant has the incentive to offer at a competitive level, its marginal costs. Knowledge of competitors' costs can only make offers less competitive; there is no possible benefit.

When competitors have information about rivals' costs, they, as another example of non-competitive behavior, have opportunity to engage in predatory pricing tactics. This means attempting to drive a competitor out of business by competing with below cost offers, and then, when the competitor is shut down or bought out, recovering those losses and securing additional gains in the newly tightened market. The substantial barriers to entry to the electric sector make this strategy easier to execute than it is in industries where barriers to entry are less significant.

Access to competitors' costs also facilitates implicit collusion.. The Commission has recognized the danger posed by the "possibility of collusion" in the December 18<sup>th</sup> Order (at P 203).

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<sup>5</sup> OA § 18.17.

Consequently, the Market Monitor, PJM and the Commission should, consistent with their respective responsibilities, act to prevent the disclosure of resource specific cost information even if a Market Participant requests such information, and even if all or most Market Participants support that request in the name of greater transparency.

Neither the protections afforded by the mitigation rules nor the fact that irreversible damage has been done means that it is too late to act. A strong signal regarding the seriousness of this issue would be helpful on its own, but there is no reason to assume at this point that some amelioration of the situation is not possible.

### ***3. The March 19<sup>th</sup> Posting Released Data on Resource Specific Costs***

On March 19, 2010, PJM posted data on every Base Residual Auction that it has held (“March 19<sup>th</sup> Posting”).<sup>6</sup> Unlike prior postings that show pictures of supply curves, PJM included a list of offer prices to the first decimal place and associate MW. To explain this action and its consistency with past practice and the newly approved rule in PJM Manual 11, PJM has made a series of demonstrably inaccurate assertions regarding the nature of the March 19<sup>th</sup> Posting, particularly regarding whether it is aggregated, rather than resource specific data:

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<sup>6</sup> The data is posted on PJM’s website at: <<http://www.pjm.com/markets-and-operations/rpm/rpm-auction-user-info.aspx>>.

- The March 19<sup>th</sup> Posting “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.”<sup>7</sup>
- “In this case, the data that PJM posts is aggregate (composite) market data, *not* individual bid and offer data of Market Participants” (emphasis in original).<sup>8</sup>
- “[T]his 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” (emphasis in original).<sup>9</sup>
- “PJM again reiterates that the [March 19<sup>th</sup> Posting] 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.”<sup>10</sup>

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 “aggregation” is, in fact, the simple tabulation of offers.

PJM’s definition of aggregation, if accepted, would mean that individual unit offers can be revealed if they are simply included in a list that includes 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

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<sup>7</sup> PJM Answer at 3.

<sup>8</sup> PJM Answer at 7.

<sup>9</sup> *Id.*

<sup>10</sup> PJM Answer at 8.



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 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 March 19<sup>th</sup> Posting reveals sets of MW and price pairs.

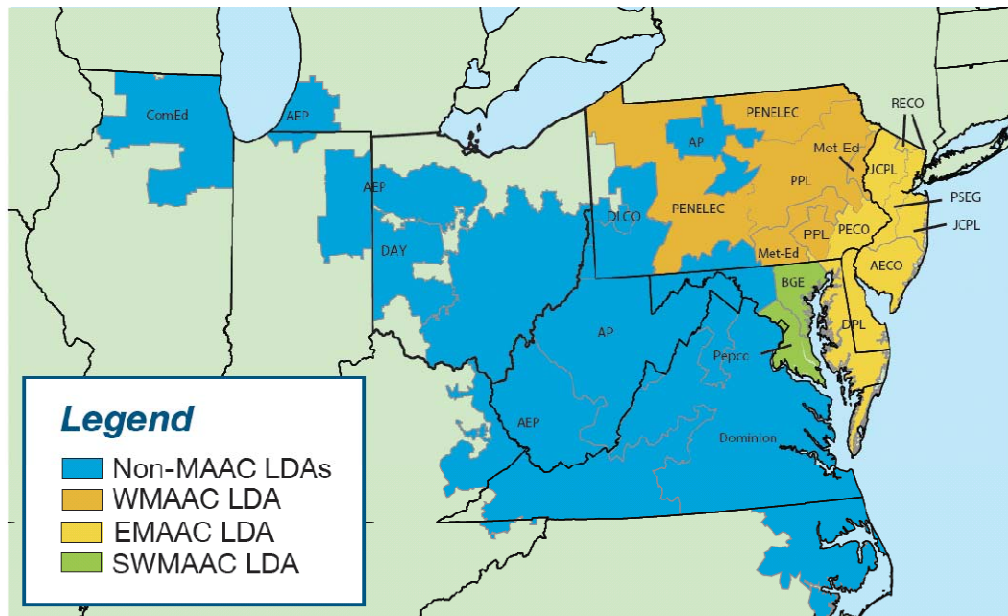
The spreadsheet posted by PJM for the 2012/2013 BRA contains tabs for the RTO, MAAC, EMAAC and SWMAAC LDAs. Examining the SWMAAC tab, there are sets of MW and price pairs. Table 2 shows the first ten rows from that spreadsheet. For example, the fourth point is an offer of 629.7 MW at a price of \$13.24 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, an offer level includes multiple unit offers and in some cases it includes 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 that includes the name, MW and zonal location 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.<sup>11</sup> Table 3 shows the first ten rows from that spreadsheet. Based on the spreadsheet, there are 70 such units in these two zones. Other publicly available data permit the identification of the owners of these units.

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<sup>11</sup> See PJM's website at: <<http://www.pjm.com/markets-and-operations/rpm/~media/markets-ops/rpm/rpm-auction-info/2012-2013-rpm-resource-model.ashx>>.

*Table 3*

RESOURCE NAME	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 for both its prior and newly adopted policy on data posting.

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.

The Commission should assume that Market Participants have the resources and incentives to extract whatever information can be extracted from data provided to them.<sup>12</sup>

***4. The March 19<sup>th</sup> Posting Was Inconsistent with Prior Practice and Inconsistent with the Intent of the Criteria Included in its New Rules***

PJM based its March 19<sup>th</sup> Posting on a significant revision to the rules in its manuals approved just two days earlier in a meeting of the PJM Markets and Reliability Committee (“MRC”). , Yet PJM insists that its actions constitute no significant departure from past practice. PJM claims (at 8) that it has merely released “the same data in tabular form that PJM previously released in graphical form.”<sup>13</sup> PJM further claims (at 8) that, “[a]ny 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.” PJM concludes (at 8), “Therefore, prior to March

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<sup>12</sup> However, the Commission should not assume that every Market Participant has accessed this information, and even more importantly, that a directive to Market Participants from the Commission that they destroy any and all copies of such data that they have acquired would not seriously compromise the ability of Market Participants to make effective use of this data for anticompetitive purposes. Many Market Participants have effective compliance departments, risk management personnel and legal counsel who would understand the potential consequences of failing to adhere to any such order of the Commission.

<sup>13</sup> PJM Answer at 8.

19, 2010, Market Participants already had access to the aggregate price and offer data at a particular price point.”

This is clearly not correct. If it were correct, market participants would not have persisted in requesting that PJM post the actual data, as they did.

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>14</sup>

***5. The Market Monitor Has Offered a Compromise Proposal That Would Meet Any Legitimate Social Need Without Releasing Harmful Resource-Specific Data.***

In the March 9, 2010 meeting of the PJM Markets Implement Committee (“MIC”) and March 17, 2010, meeting of the MRC, the Market Monitor provided an alternative to PJM’s proposal of providing each and every discrete price and MW pair for each LDA specific supply curve from each RPM BRA auction, for which there were four or

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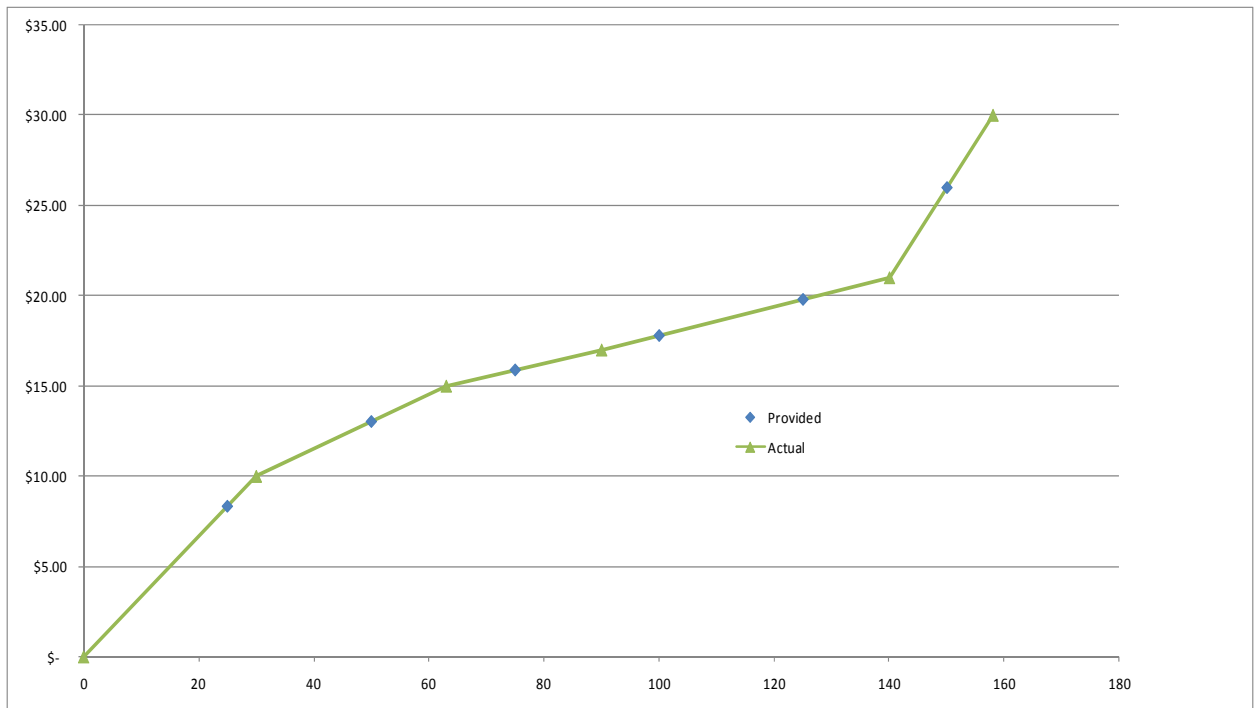
<sup>14</sup> Even if this can be done, that is a reason to post only smoothed supply curves and not a reason to post the data.

more suppliers. The purpose of the MMU's proposal was to provide information consistent with the RTO-wide BRA curve, but in a way that would eliminate the provision of market sensitive and resource specific information. The Market Monitor's counter proposal would provide a set of price and MW pairs that would each be consistent with the RTO-wide BRA supply curve that would result from drawing a line through each actual discrete price and MW pair that made up the supply curve, but would not directly correspond to any actual discrete price and MW offer made by any one, or group, of participants, nor would provide information sufficient to derive those points.

Under the Market Monitor's proposal, the provided price and MW pairs would correspond to points on the line segments that make up the actual BRA supply curve, but would be sufficiently spaced to prevent the calculation of specific slope inflection points (which correspond to actual offers) in the line segments of the supply curve. Figure 2 provides a depiction of the information that the algorithm would provide, relative to the data points that would make up a supply curve. The green triangles represent discrete price-MW pairs that make up the supply curve. As in the case of the data provided by PJM, the points in the actual supply curve may correspond with discrete offers by specific market participants. The green line connecting these points is the supply curve. The blue diamond points represent the points that would be provided by the algorithm. Note that each price and MW pair provided by the algorithm is

consistent with the supply curve drawn between the discrete points made up by actual offers in the market, but none of the provided points correspond to specific participant offers. Further, there are insufficient points to derive the discrete points of inflection in slope between segments of the supply curve and there are an insufficient number of points to determine the slopes on a majority of the segments. In combination, these features ensure that participant specific information is masked, yet information consistent with actual supply is provided. Lagging the data by 13 months, in the case of BRA related data, would further limit the market sensitivity of the data.

**Figure 2 Depiction of Actual versus Provided Data Points on a BRA supply Curve**





6. *The Market Monitor Requests That the Commission Establish an Orderly Process for Developing a Coherent, Prudent and Tariff-Defined Policy for the Release of Data Across All of PJM's of Markets.*

In the December 18<sup>th</sup> Order (at P 203), the Commission directed PJM to “provide .... a justification of its policies” on the disclosure of aggregated data. PJM has failed to offer any justification of its policies in effect on December 18, 2009, nor has it offered any justification for its policies as they were modified some 17 days ago. Vague references to “limited market transparency,” the most that has been offered to date, do not meet any reasonable standard for “justification.”<sup>15</sup> Indeed, for the reasons discussed above, the only data entitled to a presumption in favor of disclosure are prices. The bright-line standard for all additional disclosure should be that data are not posted absent a social benefit to disclosure that is not offset by a compelling reason to avoid disclosure.

As of December 18, 2009, PJM consistently released the same data on the same schedule. PJM did not, as far as the Market Monitor is aware, tailor its release on the basis of a request for particular information from a Market Participant or otherwise treat the release of information in an arbitrary or discriminatory manner. Most of the policies effective December 18, 2009, reflect due consideration and agreement between PJM staff and the Market Monitor.

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<sup>15</sup> March 18<sup>th</sup> Filing at 19. *See also* PJM Answer at 9 and PJM Supp. Answer at 1.

Regardless of how PJM's data policies were put into place, the policies were not administered in an arbitrary and discriminatory manner, and they cannot be fairly characterized as subjective. These standards were established practice, and they constituted an objective basis for determining what data are to be released.

The change in data policy effective March 19, 2010, sets forth certain criteria, but due in part to PJM's inability to appropriately define "aggregation," the result has been the subjective release of data, as explained above, driven by requests from Market Participants rather than longstanding practice. The immediate and recent result of this criteria has been the release of data that has damaged, potentially for years to come, competition in PJM's capacity markets. There is no acceptable justification for this approach.

The most productive course at this time would be to order PJM and the Market Monitor to develop and agree upon a coherent policy on data released for each PJM market, including the timing for release (such as the four-month lag approved for the energy markets<sup>16</sup>) and the granularity. The rationale for adopting a particular policy for a particular market should be explicit. The Market Monitor would welcome the participation of the Commission's dispute resolution service and technical staff in that

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<sup>16</sup> See March 18<sup>th</sup> Filing at 17–19, citing December 18<sup>th</sup> Order at P 201.

process. Market Participants should be afforded full notice and opportunity to comment on rules that emerge from that process. The Commission could assist the progress of any such process that it chooses to establish by setting forth the following guidelines for a satisfactory agreement:

- Prices are the only information which it is presumptively beneficial to disclose.
- Additional information is only disclosed to the extent that a specific competitive benefit can be identified and articulated, and no materially offsetting detriment to such disclosure can be identified and articulated.
- PJM's practices as of December 18, 2009, shall be accorded deference in the evaluation process.
- PJM's criteria implemented March 19, 2010 shall receive no deference.
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- Data that would allow for a more in depth analysis of how well competitive markets are functioning may be disclosed to state regulators that have signed confidentiality agreements.

The rules that result from this process should be incorporated into the PJM tariff where any proposed alternations are subject to Commission review. These rules are too essential to the proper functioning of markets, which are regulated through enforced competition, to be delegated to the industry.

## **B. The Proposed Revisions Do Not Adequately Clarify the Must Offer Rule.**

### **1. The Proposed Revisions Avoid Clarification of the Critical Question of What Constitutes Physical Withholding in RPM Auctions.**

In the December 18<sup>th</sup> Order, the Commission directed PJM to clarify the standards for determining whether a resource in PJM is subject to the must offer requirement. Specifically, the Commission found (at P 181):

We agree with P3 that Appendix II.C of Attachment M fails to provide the standards to be applied in determining whether a unit is subject to the must offer requirement for RPM. Although section II.C.4 discusses exceptions to the must offer requirement, and section 6.6 of Attachment DD further discusses the offer requirement, PJM's proposed provision, at the Attachment M – Appendix, lacks a description of the standards that will be used to determine if a generation capacity resource is subject to the must offer requirement. Accordingly, we require PJM to revise its provisions, in its 90-day compliance filing, to address this matter.<sup>17</sup>

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<sup>17</sup> In its Motion to Intervene And Comments of the PJM Power Providers Group filed in Docket No. ER09-1063-000 at 22 (June 26, 2009), P3 had suggested that the Commission clarify the basis for determining which resources had an obligation to offer:

Several provisions of the Appendix to Attachment M in the PJM Compliance Filing would benefit from additional clarity regarding the standard applicable to the Market Rules or the process that the IMM will employ in performing its responsibilities. For example, paragraph 1 under Section II.C (“RPM Must Offer Obligation”) provides that “[t]he Market Monitoring Unit shall maintain, post on its website, provide to the Office of the Interconnection and file with the Commission for informational purposes (updated as necessary, on at least a quarterly basis), a list of existing Generation Capacity Resources located in the PJM Region that are subject to the “must offer” obligation set forth in Section 6.6 of Attachment DD.”[citation omitted] Yet Section II.C does not provide the standard that the Market Monitor will apply in determining whether a unit is subject to the must offer requirement or not.[n29: P3 notes that Attachment DD

Although this directive focuses on the criteria specified in section II.C.4 of the Attachment M-Appendix, the question itself is broader: When does the must offer requirement apply and when does it not? The current language in the tariff in section II.C.4, but also in section 6.6 of Attachment DD of the OATT is insufficient to answer this basic question. Recent experience interpreting these provisions for the FRR Integration Auctions run to integrate American Transmission Services, Inc. into the PJM Region have highlighted the inadequacy of this language.<sup>18</sup> The central problem is that section 6.6 of Attachment DD imposes a “must offer” requirement and imposes penalties for behavior that is presumed to be physical withholding of capacity. This section, however, covers a scope of behavior significantly less than the scope of behavior that would constitute an attempt to exercise market power, which is subject to monitoring and potential referral to the Commission under Attachment M of the OATT. In order to appropriately address P3’s request and to fully comply with the Commission’s directive, it is necessary to revise section 6.6 to more appropriately capture the scope of behavior that would constitute physical withholding, which the “must offer” obligation is intended to address.

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to the PJM OATT does not currently provide for the posting of such a list, but that PJM’s practice has been to make such a posting.]

<sup>18</sup> See *American Transmission Systems, Inc., et al.*, 129 FERC ¶61,249 (2009); *order on reh’g*, 130 FERC ¶61,171 (2010).

PJM interpreted this directive much more narrowly than the Market Monitor. PJM took the view that the Commission intended PJM to limit its compliance filing to the standard applicable to a resource “reasonably expected to be unable to participate in the relevant auction” included in section II.C.4 of the Attachment M–Appendix.<sup>19</sup> The Market Monitor considers the must offer obligation a critical feature of the market design of RPM and finds, particularly on the basis of recent experience, that the existing language is inadequate. Transparent rules require a clear and complete communication to suppliers when their behavior could be determined to be physical withholding and when it is compliant. The section of the PJM tariff directly addressing the must offer requirement, section 6.6 of Attachment DD, can and should incorporate all potential market misconduct or manipulation. Accordingly, the Commission should require PJM, the Market Monitor and stakeholders to revisit section 6.6 to specify the detailed circumstances under which resources must offer into RPM auctions.

## **2. The Proposed Revisions Inappropriately Exempt Resources Retiring During Any Portion of the Delivery Year.**

In addressing the narrower question of when a resource is reasonably expected to be physically unable to participate in the relevant auction as it relates to the must offer commitment, PJM and the Market Monitor developed the following four criteria:

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<sup>19</sup> March 18<sup>th</sup> Filing at 15.

In order to establish that a resource is reasonably expected to be physically unable to participate in the relevant auction ... the Market Seller must demonstrate that:

- A. It has a documented plan in place to retire the resource prior to the Delivery Year, and has submitted a notice of Deactivation to the Office of the Interconnection consistent with Section 113.1 of the PJM Tariff;
- B. It has a documented plan in place to retire the resource during the Delivery Year, has submitted a notice of Deactivation to the Office of the Interconnection consistent with Section 113.1 of the PJM Tariff, and any offer submitted in the relevant auction would not provide it with enough revenue prior to retirement to exceed the resource's avoidable costs for the Delivery Year less any anticipated penalties for the part of the Delivery Year when the resource would not be available;
- C. Significant physical operational restrictions that cause long term or permanent changes to the installed capacity value of the resource, or the resource is under major repair that will extend into the applicable Delivery Year, that will result in the imposition of RPM performance penalties pursuant to Attachment DD of the PJM Tariff; or,
- D. The Market Seller is involved in an ongoing regulatory proceeding (e.g. – regarding potential environmental restrictions) specific to the resource and has received an order, decision, final rule, opinion or other final directive from the regulatory authority that will result in the retirement of the resource.

PJM posted these criteria on March 3, 2010, and they were the basis for PJM's discussion of its plans for compliance at the March 9, 2010 meeting of the MIC.<sup>20</sup>

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<sup>20</sup> PJM posts these proposed tariff revisions at: <http://www.pjm.com/~media/committees-groups/committees/mic/20100309/20100309-item-04-oatt-sheets-for-order-719-march-2010-compliance-filing.ashx>.

The second of the four criteria set forth above applied to a resource planning to retire within the Delivery Year. This criterion provided that a Market Participant need not offer a unit in an RPM auction if RPM revenues net of penalties did not yield a profit. Shortly after the March 9<sup>th</sup> meeting of the MIC, a Market Participant called the Market Monitor inquiring about the applicability of the must offer requirement to a resource retiring during the Delivery Year, and the Market Monitor responded consistent with these criteria. On March 24, 2010, without any further discussion with the Market Monitor, PJM posted tariff language that dropped the second criterion applying to a resource retiring during the Delivery Year.

PJM explains the basis for its determination to drop the second criterion from its filing in its transmittal letter (at 15):

First, the correct price signal for the market given the planned retirement of a generating unit can only be determined by not including such a unit in the applicable auction. Including a unit in an auction when it will be retiring midway through the Delivery Year only serves to delay the production of price signals associated with such retirement for an additional year. Second, PJM questions the validity of a policy which assumes or requires that a unit's owner incur penalties associated with clearing a unit in an RPM auction for an entire Delivery Year and then retiring that unit part way through.

PJM's alleged concern about delaying the appropriate economic signal is misplaced. A premature pricing signal is inherently uneconomic. It is appropriate to require load to acquire only the amount of capacity needed to meet the Reliability Requirement applicable to each Delivery Year. It should be permitted to meet that requirement with a resource that will be around for all of part of the Delivery Year. If such a unit is withheld from the



auction, then load will have to buy capacity from another unit even though capacity from the retiring unit remains available to cover this need. The result is that the rules compel load to purchase more capacity than it needs. The underlying logic of the market rules matters. Each element must be refined as necessary and practical to achieve as closely as possible the correct result.

PJM's concern about requiring a unit owner to assume "penalties" confuses process with substance. PJM can rename "penalties" using a less pejorative term. The point of this proposal is to balance revenues and penalties to establish an objective and economic basis for determining when the must offer requirement should no longer apply.

The Delivery Year starts June 1<sup>st</sup>, and within three months thereafter the most critical summer peak period hours have passed. At the end of February, the winter peak period hours have also passed, yet three months remain in the Delivery Year. Under the rule proposed by PJM, a resource retiring on May 31<sup>st</sup>, the last day of the Delivery Year, is exempt from a requirement that it offer into RPM auctions. This is unreasonable. It is especially unreasonable when suppliers retain discretion about whether or not to submit an offer. Resources should not be offered for a Delivery Year when it suits the supplier's interest, but withheld when it does not. If PJM were to develop a complete rule, consistent with what they have filed, PJM would prohibit any resource from offering into a capacity auction if it planned to retire at any point during the Delivery Year.

The rule initially developed by PJM and the Market Monitor constitutes a reasonable, easily administered mechanism for determining the applicability of the must offer

requirement during a Delivery Year. This approach also is consistent with existing practice to date. Thus far, retiring resources have been subject to the must offer when, evaluated on a stand-alone basis, the resource would make a profit doing so. In this case, a resource retiring on the last day of the Delivery Year clearly must offer, while a resource retiring on the first day of the Delivery Year clearly does not have to offer.

The December 18<sup>th</sup> Order (at P 181) did not direct PJM to change the rules, but to fully incorporate the rule into the tariff. Accordingly, the Commission should direct PJM to include the second criterion for resources retiring during the Delivery Year and limit application of the first criterion to resources retiring prior to the commencement of the Delivery Year.

**C. The Commission Should Direct Certain Improvements to PJM’s Proposed Language.**

- 1. PJM’s Proposal Includes Unnecessary and Confusing Language Relating to Processing Requests for Exceptions to Parameter Limited Schedules Solely on the Basis of Consistency with PJM Manual 11.**

In its December 18<sup>th</sup> Order, the Commission required (at P 175)that PJM incorporate more of its rules in the tariff regarding exceptions to Parameter Limited Schedules applicable to generating facilities and their eligibility to receive operating reserve payments:

In Order No. 719, the Commission directed RTOs and ISOs to review their mitigation requirements with a view to making them as non-discretionary as possible and to reflect any needed changes in their compliance filings.[citation omitted] We find that PJM and the MMU’s proposed standards accurately characterize PJM’s existing practices and would benefit from further discussion at the stakeholder level. Therefore, we require PJM to review the specific rules in Manual 11 (Scheduling Operations) regarding unit specific exceptions to the parameter limited schedules and the

default parameter schedule values using the stakeholder process. We also require PJM, in its 90 day compliance filing, to incorporate the Manual 11 rules and the parameter limited schedule matrix (i.e., the default values) into the PJM OATT and Operating Agreement.

The Market Monitor understands this passage to mean that the Commission wanted PJM stakeholders to take PJM's and the Market Monitor's proposals and the rules included in Manual 11, to develop a set of clear and objectives provisions based on the sources, and file revisions consistent with that process. PJM has taken this directive to mean that it must not do more than convert the text of Manual 11 into tariff language by rote and desist from any changes that would better integrate those provisions into the tariff framework or provide the best possible statement of the applicable rules.

Specifically, the proposed tariff revisions transfer two items from Manual 11 that inject unnecessary confusion and potential delay. First, PJM proposes to state that, "[t]he Office of the Interconnection may engage the services of a consultant with technical expertise to evaluate the exceptions request."<sup>21</sup> Both PJM and the Market Monitor are free to engage technical consultants for assistance in performing their duties, including those related to Parameter Limited Schedules. However, this point is not reaffirmed throughout the tariff wherever a technical consultant could be needed. There is no reason specifically to affirm it here. There is ample reason, however, not to affirm it here. Because this passage relates to

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<sup>21</sup> Proposed OA Schedule 1 § 6.6(e), Sheet No. 132a.03.

an area where PJM's duties of tariff administration overlap, future parsing of this language could result in a false reading of the intent of this passage.

Likewise, PJM proposes to allow Market Participants to challenge PJM's denials of requested exceptions to the PJM Dispute Resolution Process. Although this language was included in Manual 11, PJM has not required Market Participants to take such matters through its internal processes prior to taking the matter to the Commission. Market Participants may or may not seek to use the PJM Dispute Resolution Process in the manner proposed, but there should be no implication that this is a prerequisite to taking the matter immediately to the Commission to obtain relief.

Accordingly, the Market Monitor requests that the Commission clarify its intentions requiring the transfer of text from Manual 11 to tariff and require the excision of both these provisions.

**2. The Proposal Fails to Include Fully Detailed Provisions for Processing Requests for Exceptions to Parameter Limited Schedules.**

PJM's strict adherence to the words currently included in Manual 11 also lead it to conclude that it could not include in its filing rules extrapolated from but not included in Manual 11 that clearly and objectively describes how requested exceptions to Parameter Limited Schedules are processed. The Market Monitor proposed such revisions in its filing

of May 26, 2009 in this proceeding.<sup>22</sup> The Market Monitor includes substantively the same changes in order for the Commission to determine whether the inclusion of these rules would assist its meeting its objectives set forth in the December 18<sup>th</sup> Order (at P 175).

The proposed changes to section II.B.2 of the Attachment M–Appendix are as follows:

The Market Monitoring Unit shall notify Generation Capacity Resources no later than March 15 and September 15 each year of its determination regarding each request for an exception to a value specified in the Parameter Limited Schedule Matrix or the parameters defined ~~below in Section 6.6 of Schedule 1 of the Operating Agreement and the PJM Manuals~~, provided that the Market Monitoring Unit receives such request by no later than February 28 or August 31, respectively. The Market Monitoring Unit's determination for an exception shall continue for a period of no less than six months, and, if requested, for such longer period as the Market Monitoring Unit may determine is supported by the data.

The Market Monitoring Unit shall first determine whether any of the provisions below apply, and, if so, then determine whether and to what extent historical operating data relevant to such provisions exist in support of an exception under the applicable criteria. The Market Monitoring Unit shall agree to permit the least flexible exception that it determines to be supported by the historical operating data.

(i) With the sole exception of combustion turbine units (which shall have an assumed turn down ratio value equal to 1.0), the Market Monitoring Unit shall calculate on the basis of historical offer data the minimum acceptable turn down ratio parameter as the greater of (A) the ratio calculated on the basis of the minimum of the economic minima and the maximum of the economic maxima submitted by such unit over the prior 24 months or (B) 90

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<sup>22</sup> See Protest and Compliance Proposal of the Independent Market Monitor for PJM.

percent of the unit class turn down ratio from the Parameter Limited Schedule Matrix.

- (ii) The submitted minimum run time may not exceed the level defined in the Parameter Limited Schedule Matrix.
- (iii) For all units, the Market Monitoring Unit shall calculate on the basis of historical offer data the minimum down time parameter as the minimum of the minimum down times submitted over the prior 24 months up to a maximum value equal to 110 percent of the value specified in the Parameter Limited Schedule Matrix.
- (iv) The maximum starts per week may not be less than the level defined in the Parameter Limited Schedule Matrix.
- (v) The maximum starts per day may not be less than the level defined in the Parameter Limited Schedule Matrix.
- (vi) For steam units only, the Market Monitoring Unit shall calculate parameters that may be used in place of values from the parameter limited schedule matrix on the basis of market-based offers from units making market based offers and on the basis of cost-based offers for units which made only cost-based offers using the 2006 historical offer average parameters.
- (vii) For combined cycle units only, if the Market Monitoring Unit calculates that the unit's 2006 average historical market-based offer parameters are within the limits in the parameter matrix, the unit will be limited to that 2006 historical average. If the unit is not limited on the foregoing basis, then the Market Monitoring Unit shall determine whether the unit was offered with market-based offer parameters for ten percent or more of the days (36 days minimum) at a level at or more flexible than the values in the parameter limited schedule matrix, and, if so, the unit will be limited at that level. If the unit is not limited on the foregoing basis, then the Market Monitoring Unit shall determine whether the 2006 average historical market based offer parameters exceed the limits in the matrix (less flexible than the parameters in the matrix), and, if so, the unit shall be limited to the level at which the market-based parameter was bid to the most

flexible level for ten percent or of the days (36 days minimum) at that level.

In the event that a generation unit believes that a physical operational limitation prevents such unit from meeting the minimum parameters or the parameters defined in (i) through (vii) above, the Market Monitoring Unit shall, upon request, analyze the historical operating data of such unit and shall agree to a value that is no less flexible than a value that it determines is supported on the basis of the actual historical operating data of the unit (inclusive of any data provided on a timely basis by the generating unit). A “physical operational limitation” shall include, but not be limited to, metallurgical restrictions due to age and long term degradation, physical design modifications performed as part of a life extension program, or environmental permit limitations under non-emergency conditions. The Market Monitoring Unit shall not consider a value supported for the foregoing determination if the historical operating data show that the generating unit can operate as or more flexibly than the value included in the Parameter Limited Schedule Matrix for ten percent or more of its run time. If the historical operating data show that the unit operated at or less flexibly than that defined in the matrix ten percent or less of its run time, but more flexibly than the requested exception, then the Market Monitoring Unit shall consider the exception request as supported at a level equal to the most flexible level at which such unit has operated for at least ten percent of its run time. The Market Monitoring Unit shall not agree to any value less flexible than the level supported by the historical operating data unless section II.B.4 below applies. The Market Monitoring Unit shall notify the Office of the Interconnection of any exception to which it and the Generation Resource agree or its determination if agreement is not obtained. If a Generation Resource submits a Parameter Limited Schedule value inconsistent with its agreement or inconsistent with the Market Monitoring Unit’s determination regarding such value, the Market Monitoring Unit may petition the Commission for an order that would require the Generation Resource to submit an appropriate value.

Generation Resources that are expecting to undergo major operating configuration changes may submit requests for exceptions pursuant to Section II.B.3 above based upon those changes. The Generation Resource shall submit all relevant

**technical information supporting such operational limitations and an explanation of the derivation of the resulting Parameter Limited Schedule values. The Market Monitoring Unit shall review such requests based on historical data after at least 12 months of operating history becomes available.**

The above rules are admittedly complicated, but this is a necessary result of crafting language that objectively codifies rules that apply to the operational circumstances of units of the many differing types and vintages in the PJM footprint. These rules have been successfully applied without controversy by the Market Monitoring Unit through several cycles, and these rules appropriately balance the need for objectivity and non-discriminatory application with the occasional need for flexibility to ensure a fair and appropriate result. Accordingly, the Market Monitor requests that the Commission direct PJM to incorporate this proposed language into section II.B.2 of the Attachment M–Appendix, consistent with the Commission’s directive.

**D. The Commission Should Order Clarifying Revisions to the Ethics Rules Pertaining to Reimbursement of the Market Monitor’s Provision of Expert Testimony**

PJM proposes, as required by the March 18th Order, to incorporate language pertaining to the compensation of the Market Monitor for providing expert testimony. PJM incorporates the text of Section 35.28(vi)(E) of the Commission’s Regulations, except that it appropriately replaces the generic “RTO” with “PJM”. The Market Monitor did not discuss this provision with PJM prior to filing, but the Market Monitor’s recent experience relating to the provision of expert testimony have sensitized it to the need for additional precision in



this language, as applied in the PJM context, even though these changes would deviate slightly from the language set forth in Part 35 of the Commission's Regulations.<sup>23</sup>

The Market Monitor is fully compensated under Schedule 9-MMU for its PJM market monitoring services, including providing expert testimony at the request of PJM or other PJM stakeholders as it relates to matters concerning PJM 's markets. The Market Monitor does not require any additional payments for this service. PJM or other PJM stakeholders can determine whether to call the Market Monitor as an expert witness, but once called to testify, the Market Monitor should provide its complete, objective and independent testimony in that matter. Accordingly, the Market Monitor requests that the Commission delete the word "other" where it appears before "commercial services." The Market Monitor does not regard providing expert testimony in matters pertaining to PJM markets as a "commercial service," but rather, as described above, a public service appropriately within its core monitoring function and covered under its existing budget.

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<sup>23</sup> 18 CFR § 35.28(g)(3)(vi)(E) ("The Market Monitoring Unit and its employees must not be compensated, other than by the Commission-approved independent system operator or regional transmission organization that retains or employs it, for any expert witness testimony or *other* commercial services, either to the Commission-approved independent system operator or regional transmission organization or to any other party, in connection with any legal or regulatory proceeding or commercial transaction relating to the Commission-approved independent system operator or regional transmission organization or to the Commission-approved independent system operator's or regional transmission organization's markets" (emphasis added)).

## II. CONCLUSION

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

Respectfully submitted,



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Jeffrey W. Mayes

Joseph E. Bowring

Independent Market Monitor for PJM  
President  
Monitoring Analytics, LLC  
2621 Van Buren Avenue, Suite 160  
Valley Forge Corporate Center  
Eagleville, Pennsylvania 19403  
(610) 271-8051  
*joseph.bowring@monitoringanalytics.com*

General Counsel  
Monitoring Analytics, LLC  
2621 Van Buren Avenue, Suite 160  
Valley Forge Corporate Center  
Eagleville, Pennsylvania 19403  
(610) 271-8053  
*jeffrey.mayes@monitoringanalytics.com*

Dated: April 8, 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 8<sup>th</sup> day of April, 2010.



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Jeffrey W. Mayes

General Counsel

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Valley Forge Corporate Center

Eagleville, Pennsylvania 19403

(610) 271-8053

*jeffrey.mayes@monitoringanalytics.com*