

Disclosure to Regulators of Confidential Data

Market Monitoring Unit
Advisory Committee
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Confidentiality Rules

- The Attachment M–Appendix § I contains the rules applicable to the treatment of confidential Member information, which continue to duplicate the provisions applicable to PJM included in the OA § 18.17.
- The rules apply differently to information provided to the FERC, State Commissions and other Federal Regulators, such as the Department of Justice, the FTC and the CFTC.



Nature of Data Transfer to Regulators

- MMU referrals generally require providing information to regulators, including confidential data held by Members not directly subject to investigation.
- The MMU may be required to provide information in connection with mergers or other market activities. The information will cover most or all market participants, not just the merging parties.
- The MMU cannot provide copies of the data provided to regulators to market participants.



Providing Data to the FERC

- The MMU interprets Attachment M–Appendix § I.C to allow the MMU to provide information to the FERC on a confidential basis without notice to any party.
- Attachment M–Appendix § I.C.1 allows, but does not require, the MMU to request confidential treatment of the data provided. The MMU has always requested such treatment.



Providing Data to the FERC

- Attachment M–Appendix § I.C.1 provides: “The Market Monitoring Unit shall notify any affected Member(s) when it is notified by FERC or its staff, that a request for disclosure of, or decision to disclose, confidential information has been received, at which time the Office of the Interconnection, the Market Monitoring Unit, and/or the affected Member may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112.”



Providing Data to the State Commissions (Authorized Commissions)

Background

- On June 29, 2004, rules for sharing data with State Commissions became effective.
- The rules were modified in 2007.
- The rules require states to provide the FERC with “a properly executed Certification in the form attached to the PJM Operating Agreement as Schedule 10A.”
- Indiana, Maryland, Ohio, Pennsylvania, and Virginia are now Authorized Commissions.



Providing Data to the State Commissions (Authorized Commissions)

Observations

- There is a mandatory period in which to allow Members to object to a data request from an Authorized Commission. An objection triggers a dispute resolution process with the state that is ultimately resolved, if necessary, by the FERC. Attachment M–Appendix § I.D.3(ii).
- It is the MMU’s view that the MMU may, prior to a formal request, work with the Authorized Commission to refine a request for information, avoiding requests that are burdensome or reveal more information than necessary.



Providing Data to the State Commissions

Providing Data to Other RTOs

- There are no general rules permitting disclosure of market information to other RTOs.
- Attachment M–Appendix § I.E allows for the MMU to share data with NYISO “to conduct joint investigations to ensure that gaming, abuse of market power, or similar activities do not take place with regard to power transfers under the contracts that are the subject of FERC Opinion No. 476.” Opinion No. 476 concerns two wheeling contracts between PSEG and ConEd.



Providing Data to the State Commissions

Providing Data to Other RTOs

- NYISO has made proposals, in its stakeholder process, for sharing NYISO data with other RTOs.
- NYISO has contacted the IMM and PJM about initiating a reciprocal process.
- Do the Members have opinions on this matter?



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