



Market Monitoring Unit

**REPORT
TO
THE FEDERAL ENERGY REGULATORY COMMISSION**

ENFORCING DATA REQUESTS

**Market Monitoring Unit
PJM Interconnection, L.L.C.**

April 1, 2000

PJM’s Market Monitoring Plan

On November 25, 1997, the Commission approved the comprehensive restructuring of the PJM marketplace, establishing PJM as an Independent System Operator (“ISO”).¹

The Commission further authorized PJM to administer the PJM Power Exchange (“PJM PX”), which has become one of the most active spot energy markets in North America.

In its order, the Commission found that the restructuring of PJM “will significantly alter the operation of the electric power market within PJM” and that, as a result, “it is important to monitor its implementation to assess undue discrimination and market operation” and to evaluate “how the pool and non-pool markets and transmission pricing arrangements are working.”² The Commission directed PJM to submit a proposed market monitoring plan that would allow PJM to monitor and report to the Commission on the potential to exercise market power within PJM.³ The Commission stated that the plan should evaluate the operation of both pool and bilateral markets to detect either design flaws or structural problems.⁴

On June 29, 1998, PJM filed a Market Monitoring Plan (“Plan”) in compliance with the Commission’s Order. The Plan was filed as an amendment to the PJM Tariff in order to ensure the PJM Board’s independence in administering and revising the Plan.⁵ By order issued March 10, 1999, the Commission accepted the Plan filed by PJM as part of the

¹ Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶ 61,257 (1997) (“November 25 Order”).

² 81 FERC at 62,282

³ Id.

⁴ Id.

⁵ The Plan appears in the PJM Tariff at Original Sheet No. 184 through First Revised Sheet No. 190. Section references herein are to Sections of the Plan.

PJM Tariff to be effective April 1, 1999.⁶ The Commission found that the ability of the Market Monitoring Unit (“MMU”) to effectively and broadly monitor and investigate the PJM Market to be essential in view of its contemporaneous decision to approve market-based pricing authority on offers to sell energy into the PJM-PX.⁷

The March 10 Order requires the MMU to report to the Commission by April 1, 2000 on: (1) the issue of enforcing requests for data and other information made during the course of its investigations and monitoring operations under the Plan;⁸ (2) the efficiency of PJM’s ancillary service markets, the pricing in these markets, and potential exercises of market power; and (3) its monitoring of bilateral transactions.⁹ By order issued September 21, 1999, the Commission denied requests for rehearing, reiterating that its approval of the Plan “established a broad range of monitoring responsibilities.”¹⁰ By notice issued March 17, 2000 in Docket No. EL00-42-000, the Commission granted an extension of time for the MMU’s report on bilateral transactions “to and including 90 days from the issuance of a Commission order” on PJM’s petition in that docket.

This Report is filed in response to item (1) above in the Commission’s March 10 Order.

The Plan establishes the MMU as a separate market monitoring unit of PJM with a broad range of monitoring responsibilities. Among other responsibilities, under the Plan, the

⁶ See PJM Interconnection, L.L.C., 86 FERC ¶ 61,247 (1999) (“March 10 Order”).

⁷ Id. at 61,887 n.4 (citing Atlantic City Elec. Co., 86 FERC ¶ 61,248 (1999)).

⁸ In requiring this report, the Commission noted that while PJM was not being given authority to self-enforce such requests under the Plan, the Commission might revisit the issue if PJM or other parties believe that enforcement of such requests is ineffective. 86 FERC at 61,891.

⁹ 86 FERC at 61,891.

¹⁰ 88 FERC ¶ 61,274, at 61,853.

MMU is to monitor the activities of participants in the PJM PX for the potential exercise of market power, monitor all bilateral and other electric power transactions, and monitor participants for their compliance with the rules, standards, procedures, and practices of PJM.

Under the Plan, the MMU relies primarily on data and information customarily available to PJM during the normal course of business.¹¹ However, the MMU has authority to request that market participants provide additional information voluntarily if the MMU determines that such information “is required to accomplish the objectives of the Plan.”¹² If an information request recipient fails to provide requested information within a reasonable time, the Plan provides that the MMU may enforce the information requests by initiating regulatory or judicial proceedings, including petitioning the Commission for an order directing production of the information.¹³ PJM must protect, to the extent appropriate, confidential, proprietary or commercially sensitive information provided in response to information requests.¹⁴

As noted, the MMU has relied primarily upon data that are customarily gathered in the normal course of business at PJM. The MMU has pursued seventeen data intensive investigations since April 1, 1999, yet only requested additional information from market participants as part of two of those investigations.

¹¹ Section VI.A.
¹² Section VI.B.1.
¹³ Section VI.B.2.
¹⁴ Section VI.B.3.

Specifically, pursuant to the Plan, the MMU sent formal data requests in two subject areas between April 1, 1999 and December 31, 1999. These data requests were in the areas of combustion turbine condenser cost data and bilateral contracts. This report covers the MMU's experience with data requests in these two areas during the period from April 1, 1999 to March 31, 2000.

Condenser Cost Data

The MMU began an investigation of the costs associated with the provision of spinning reserves from condensing combustion turbines ("CTs") in May, 1999. On June 8, 1999 the MMU sent a discovery request to the two PJM Member companies which provide spinning reserves from condensing CTs. The purpose of the discovery was to assist the MMU in understanding the basis for the recent increase in costs associated with synchronous condensing combustion turbines used to provide spinning reserves. These costs comprised a large portion of total operating reserves costs, which had increased significantly during the prior two years. The questions were intended to elicit information on exactly how the companies calculated the costs of condensing and what was the basis for those calculations. This information was not otherwise available to the MMU and was critical in order for the MMU to determine if the appropriate costs were being charged. The letter requested responses by June 25, 1999.

One company initially provided responses to discovery by letter on June 24, 1999. The MMU indicated orally to the company that the responses were not adequate and the company provided additional information by letter on July 8. The written responses were not complete, in the view of the MMU. The MMU sent follow up discovery by letter on

August 12. The company responded by letter on August 25. The company's responses satisfied the MMU's request for information.

The MMU met with the other company on August 12, 1999 to discuss the discovery questions and some oral responses were provided by the company. The responses were not complete, in the view of the MMU. The MMU sent follow up discovery requests to ensure complete answers to certain questions when no response was provided. The company subsequently provided responses on August 30, 1999. The responses to the follow up questions were complete, and, when combined with meetings to discuss the responses, they satisfied the MMU's request for information.

In general, the experience with the condenser data request indicated that the subject companies did not feel compelled to respond by the deadline which the MMU established in its initial data requests, but were ultimately, when pressed, forthcoming with the requested data.

Bilateral Contract Data

The MMU is required, by the Plan, to prepare an analysis of the state of competition in PJM. As part of that analysis, the MMU began to develop an analysis of the PJM bilateral markets in accordance with the Commission's orders approving the Plan. In the process of that development, the MMU determined that additional, non-public data would be required in order to complete an analysis of the bilateral markets.

As a result, on November 22, 1999, the MMU sent requests for certain specified contracts and related information regarding bilateral transactions involving exports from and/or imports to the PJM Market of greater than 50 megawatts which took place on selected high demand days during the period from June 1, 1999 to September 30, 1999. The November 22, 1999 requests explained that the specified information was required for the MMU to fully monitor and report on bilateral markets consistent with the Commission's orders approving the Plan and that the information was not available from any other source. Specifically, in the November 22, 1999 letter, the recipients were asked to provide:

[A] copy of the contract associated with each contract (transaction) identification number on the attached list. To the extent that the contracts refer to other documents or agreements that are required in order to fully understand the contracts, please provide those documents or agreements. To the extent that the contracts do not contain explicit pricing information, please provide that information. In particular, we would like the detailed pricing provided under the contracts for the period from June 1, 1999 to September 30, 1999.

The November 22, 1999 requests noted the MMU's obligation to report to the Commission on bilateral transactions by April 1, 2000, and asked that responses be provided on or before December 10, 1999. The requests stated that PJM and the MMU would protect confidential, proprietary or commercially sensitive information provided by the recipients consistent with the approved provisions of the Plan.

The data request was based on the analysis of PJM markets performed by the MMU to that date. The data request was structured so as to give the MMU the ability to answer a set of defined questions which had arisen in the analysis. In total, the requests covered

384 contracts covering external bilateral transactions which were in place on June 8, July 6, and July 26-30, 1999. The sample represented approximately 8.5 percent of the 4,529 contracts which were in effect during the summer period.

Most recipients of the MMU's November 22, 1999 requests have either complied by providing documentation of contracts or complied by advising the MMU that their contracts priced the associated energy imports and exports at current spot prices.

However the responses were not always within the requested time frame. When contracts are at spot market prices, the buyers and sellers are "price takers" and there is no concern about market power associated with contract terms. However, while one company provided certain summary information regarding only export contracts, the company refused, by letter dated December 16, 1999, to provide all of the requested contracts and related information for its bilateral transactions. Another company also refused to provide any of the requested contracts and related information for their bilateral transactions by letter dated December 10, 1999.

The MMU sent follow-up requests explaining in even greater detail the need for the requested information in order to analyze and monitor the bilateral market consistent with the Commission's orders by letters dated January 14 and January 13, 2000, respectively. Specifically, the MMU explained why it needed the complete bilateral contracts (and any related documents) for both exports from and/or imports to the PJM market. The MMU also explained its inability to obtain the requested information from other sources because the information is neither gathered in the normal course of PJM's business nor publicly available. In this regard, the MMU pointed out that, contrary to one

company's assertion, the requested information was not available from quarterly reports filed at the Commission. Finally, the MMU explained why confidentiality concerns raised by the companies were unwarranted in view of the numerous protections afforded under the Plan for proprietary or commercially sensitive information like that requested. The MMU also pointed out that reliance on such concerns was inconsistent with Commission orders requiring the filing of similar contracts in unredacted, non-confidential form.

Despite these explanations and assurances, the two companies, by letters dated January 21, 2000, continued to refuse to provide the requested information. One company did attach certain summary information, copies of its standard form of Power Sales Agreement, its cost-based tariff and the WSPP Agreement. The other company stated that it would not provide the requested information until the MMU receives "further clarification from the Federal Energy Regulatory Commission ("FERC") that you are in fact entitled to receive and review this information."

As a result of the continued failure of these two companies to comply with the MMU's requests, PJM filed a Petition with the Commission on February 2, 2000 requesting an order directing the production of all of the requested information. The two companies filed Answers opposing PJM's request on February 17 and 22, 2000, respectively. PJM

filed a Response on March 8, 2000. The matter remains pending before the Commission in Docket No. EL00-42-000.¹⁵

Conclusion and Recommendation

Based on the experience of PJM's MMU with data requests to PJM Member companies described above, the MMU concludes that the data request/information gathering process, established in the Plan and approved by the Commission, does not provide for the acquisition of all the data required by the MMU and is not working as effectively as had been expected. While most Member companies have responded to data requests in a generally cooperative manner, when Member companies refuse to respond to data requests, the MMU's only alternative is to seek enforcement of the requests by petitioning the Commission. As evidenced by the facts presented to the Commission in Docket No. EL00-42-000 with regard to bilateral contract data, this process necessarily is slow and drawn-out and tends to reduce the ability of the MMU to accomplish the objectives of the Plan in a timely manner.

Moreover, even if the Commission eventually grants PJM's pending petition in Docket No. EL00-42-000, the delay in obtaining responses to the MMU's data requests will have prevented the MMU from obtaining the information required to meet its reporting obligations on bilateral transactions under the Plan in a timely manner. This is evidenced by the Commission's necessary extension of the April 1, 2000 reporting deadline for

¹⁵ All the underlying documents referenced in this Report relating to bilateral contract data requests are attached to the original Petition of PJM and the Response of PJM filed with the Commission in Docket No. EL00-42-000.

bilateral market transactions until 90 days after the Commission acts on PJM's petition in Docket No. EL00-42-000.

In the March 10 Order, the Commission indicated that it might be necessary to revisit the issue of whether the MMU should have authority to self-enforce data and other information requests under the Plan if PJM believed that enforcement of such requests was not working effectively.¹⁶ In light of the refusal of certain member companies to voluntarily provide information requested by the MMU in accordance with the existing provisions of the Plan, the attendant adverse impact on the MMU's ability to accomplish the objectives of the Plan, and the unavoidable delay in the submission of required reports when Commission enforcement of data or other information requests is required, the MMU will consider whether it may be necessary, in the future, for it to have authority to self-enforce its data requests under the Plan.

The MMU intends to continue its evaluation of this issue and to monitor closely the impact of the foregoing on its ability to perform its functions effectively. The MMU may, in light of all surrounding circumstances, including, specifically the future voluntary cooperation it receives from its Members, seek appropriate revisions to the Plan to provide additional authority through a separate filing under section 205 of the Federal Power Act.

¹⁶ 86 FERC at 61,891.