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Chairman Joseph T. Kelliher
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: *Allegheny Electric Cooperative, Inc. v. PJM Interconnection, LLC;*
Organization of PJM States v. PJM Interconnection, LLC, Docket
Nos. EL07-56-000 and EL07-58-000, 119 FERC ¶ 61,165

Dear Chairman Kelliher:

On behalf of Dr. Joseph E. Bowring, we submit Dr. Bowring's Affidavit and documents in response to the FERC Order dated May 18, 2007 ("the response").

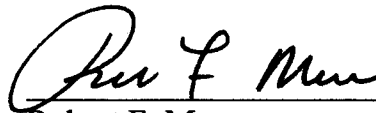
Consistent with the Order's instructions and the FERC Submission Guidelines, we state the following:

1. The response is comprised of a 46 page Affidavit by Dr. Bowring in which he responds under oath to each data request, and a set of the Bates-stamped documents to which Dr. Bowring's Affidavit refers.
2. The documents are Bates-stamped SMM-00001 to SMM- 01867 (documents numbered 00518-00613, 00718-00812, 00825-00907, and 00908-00982 are removed from the sequence).
3. The entire submission, including this letter, is contained in the enclosed CD.

Permit me to make one further observation. Dr. Bowring has attempted to provide a comprehensive response to the Commission's request. His Affidavit, as well as the responsive documents, no doubt will generate further questions and may require further explication. Likewise, a statement to be filed today by PJM may warrant a response by Dr. Bowring. He is prepared to submit such information in a timely and forthright manner. Dr. Bowring is also available to meet with the Commission or its staff in order to provide any information relevant to this inquiry.

Thank you for your consideration of these matters.

Respectfully,



Robert F. Muse
Joshua A. Levy
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Suite 1100
1100 Connecticut Avenue, N.W.
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cc: FERC Commissioner Jon Wellinghoff
FERC Commissioner Marc Spitzer
FERC Commissioner Sudeen G. Kelly
FERC Commissioner Phillip D. Moeller
Hon. Kimberly D. Bose, Secretary, FERC
FERC Chief Counsel, John Moot
FERC Director of the Office of Enforcement, Susan Court

Enclosure

**STATEMENT OF JOSEPH E. BOWRING
IN RESPONSE TO THE FEDERAL ENERGY REGULATORY COMMISSION'S
ORDER OF MAY 18, 2007**

I. Introduction

On April 5, 2007, I submitted written and oral statements at a FERC Technical Conference to Review Market Monitoring Policies. My statements included a review of the ways in which the PJM Market Monitoring Unit ("MMU") assists the Commission in enhancing the competitiveness of PJM markets, suggested enhancements to those functions, and identified the requirements of the MMU in order to meet the Commission's needs. In particular, I noted that in order to discharge its function, the MMU requires adequate resources and requires independence from both participants and PJM Interconnection, LLC ("PJM"). I stated that only the Commission can define the level of independence that it believes necessary for market monitors to perform the functions defined by the Commission. I also stated that "PJM management has taken a series of steps towards the MMU which I believe are inconsistent with independence and with the objectives of the MMU as defined in the tariff." I provided specific examples of those actions.

In its Order, the Commission recognized that market monitoring is a central function of RTOs. For a competitive and robust market, the MMU must be independent from both market participants and from the RTO. Without an independent MMU, FERC cannot get an independent, informed and unfiltered view of the markets over which it has jurisdiction and for which it holds the ultimate responsibility. Ceding the independence of the Market Monitoring function to RTO management, in effect, would diminish FERC's authority, as well as its ability to make informed decisions regarding market power abuse, the existence of market design issues and the non-discriminatory operation of markets. Absent an independent MMU, detection and reporting of market power abuse or market design flaws will rely on RTO management, which has proven reluctant to do so. All PJM market participants and stakeholders depend on the existence of an independent MMU that is free to provide objective analysis of both markets and the RTO's role in markets.

In this affidavit, I respond to the Commission's data request of May 18, 2007. Among other things, I provide evidence in support of my testimony on April 5 and respond to PJM's Answers of April 30 and May 3, 2007. As I stated on April 5, PJM has made it clear to me that the Market Monitor is first an employee of PJM "with all the duties of an employee including obeying management orders, i.e. following the chain of command."¹ This affidavit will, in response to the Commission's requests, demonstrate that PJM has taken actions to undermine the MMU's independence. It will also demonstrate that, while I obeyed PJM management orders, I have made it clear to PJM and FERC that I believed these PJM requirements were inconsistent with the

¹ Joseph E. Bowring, testimony before FERC technical conference on "Review of Market Monitoring Policies," Docket No. AD07-8-000, Apr. 5, 2007, at ¶ 10.

independence of the MMU. Finally, my affidavit will establish that senior management at PJM has been hostile to notions of independence so critical to the proper functioning of the MMU.

1. PJM Ordered the Removal of a Central Conclusion Regarding the Regulation Market from the MMU's 2005 State of the Market Report.

In February 2006, PJM ordered me to remove the following conclusion from the MMU's final draft of the 2005 State of the Market report:

However, the improvement in HHI and maximum market share metrics was not enough to overcome the fact that there are still dominant suppliers in the Combined Regulation Market that are frequently pivotal and that, therefore, have the ability to exercise market power, aggravated by the presence of inelastic demand. Consistent with the FERC's order affecting the offer capping of dominant suppliers in the Western Region Regulation Market, an effective means of reducing the probability of the exercise of market power would be to offer cap the dominant suppliers in the Combined Regulation Market. There is little downside to this approach in the presence of dominant suppliers.²

PJM ordered me to replace that conclusion with: "The MMU will make a recommendation in the near future as to whether the consolidation has resulted in a market that is structurally competitive."³

2. PJM Sought Changes to, Prevented the Issuance of, or Delayed the Release of Five MMU Reports on Regulation Markets.

From 2004 through the present, PJM sought changes to, prevented the issuance of or delayed the release of four MMU reports regarding the regulation market because PJM management disagreed with the conclusions.⁴ These changes by management were inconsistent with the views and analysis of the MMU.

3. PJM Management Prevented the MMU from Presenting Its Views to PJM Members.

² The original February 27, 2006 MMU draft of the 2005 State of the Market Report shows the inclusion of this conclusion. SMM – 01182. The February 28, 2006 red-line edits by PJM to page 7 of the MMU's draft of the 2005 State of the Market Report, show that this conclusion was removed. SMM – 01227. There is a corresponding significant red-line edit by PJM to page 22 of the MMU draft. SMM – 01242. (See also pages 22-23 of the original MMU draft. SMM – 01197-01198.) The final version of the 2005 State of the Market Report shows that PJM's edits were incorporated, as the conclusions from pages 7 and 22-23 of the original MMU draft are no longer there. SMM – 01273, 01288.

³ See *id.*

⁴ *Id.*

- In January 2007, PJM management prevented the MMU from making a presentation to a membership committee, the Markets Implementation Committee, on the exemption of certain interfaces from mitigation when PJM management disagreed with the MMU's analysis.
 - PJM management unilaterally removed the MMU's black start presentation from the Markets Implementation Committee ("MIC") agenda for its October 31, 2006 meeting. The MMU recommended that PJM file with FERC to inform the Commission that black start filings made by specific member companies were not consistent with the PJM tariff and that PJM modify its black start tariff. The result of the filings for black start service was to increase payments by members for black start service.
4. PJM Management Refused the MMU's Request to Submit a Section 205 Filing with FERC When an Exempt Unit Exercised Significant Market Power.

The MMU prepared a detailed report demonstrating that an exempt unit exercised market power that resulted in excess payments by market participants of about \$20 million during a two week period. The MMU requested that PJM submit a section 205 filing with FERC to remove the unit's exemption from offer capping. PJM required that its VP of Markets and the MMU meet with the owners of the unit before making such a submission. After the meeting, the MMU continued to recommend that PJM make such a filing, but PJM refused. The MMU then made a subsequent referral to the Commission regarding this matter. The unit remains exempt.

5. PJM Management Pressured the MMU to Modify Its Positions on the RPM Market Power Mitigation Rules.
- In November 2006, PJM management refused the MMU's request to include avoidable cost data in the PJM computer system constructed for RPM. PJM management stated that the MMU could do audits of individual companies if it did not believe the company submissions, and that only a single avoidable cost number was required for each unit, without detailed support.
 - At a meeting on December 1, 2006 regarding RPM, PJM management pressured the MMU to modify the avoidable cost template based on complaints from generators. The MMU refused, explaining that it had addressed generator complaints about complexity by including options in the template. PJM management also pressured the MMU to increase the proxy costs that the MMU had developed for optional use by market participants. The MMU refused, explaining that the proxy costs were based on its best available actual generator data.⁵

⁵ The tariff (Section 6.7 (c)) makes it clear that "The Market Monitoring Unit shall determine (subject to the procedures in section 6.2(c) of this Attachment), in its discretion, following stakeholder consultation,

- On December 8, 2006 PJM management ordered the transfer of the MMU's authority to make decisions on the implementation of avoidable costs and transferred that authority to the PJM Markets division. The VP of Markets subsequently informed the MMU that he would not be taking on this responsibility, as he did not have the staff or expertise to do so.
 - On December 13, 2006, PJM management informed the MMU that it was not to speak with PJM's external RPM lawyers about the RPM tariff, and that any MMU requests for interpretations of the tariff were to go through the PJM VP of Markets, who would have the opportunity to deny such requests, even if they originated from members and other stakeholders.
6. PJM Management Prevented the MMU from Analyzing the BGS Auction for the New Jersey BPU.

In December 2006, the New Jersey Board of Public Utilities ("NJ BPU") asked the MMU for its independent analysis of the BGS auction. PJM management told the MMU not to do the analysis. At a meeting with the NJ BPU on December 11, 2006, PJM management stated that its Markets Division, rather than the MMU, would conduct any requested analysis. The NJ BPU declined PJM's offer and continued to ask for the MMU to analyze the auction. The NJ BPU recently reiterated its request for an MMU analysis.

7. PJM Has Interfered with the MMU's Role as Chair of the Market Monitoring Advisory Committee.

The Market Monitoring Advisory Committee ("MMAC") is a committee chaired by the Market Monitor, the purpose of which is to gather member feedback on the MMU's analysis plans each year. In 2005, when the Members Committee was considering a PJM filing to modify the Market Monitoring Plan, PJM management ordered the MMU not to post the minutes of the recent MMAC meeting where the issue was discussed. In 2006, PJM management ordered the MMU not to discuss a recent FERC Order regarding market monitoring at the MMAC meeting and to remove it from the agenda.

8. PJM Management Unilaterally Removed the MMU from the Cost Development Task Force Chairmanship.

The Cost Development Task Force ("CDTF") is a group of members that "is responsible for developing, reviewing, and recommending to the [MRC] standard procedures for calculating the costs of products or services provided to PJM when those products or services are required to be provided to PJM at a cost-based

the resource classes and corresponding prices described in this subsection and shall identify such resource classes and prices in the posting required by section 6.2(a)."

rate.”⁶ Cost-based offers are used by PJM, rather than market-based rates, when there is a determination of market power. As such, cost-based rates are central to the market power mitigation rules in PJM’s tariff. In 2003, the CDTF was transferred to the MMU with the market monitor to serve as chairperson. On March 19, 2007, PJM removed the market monitor as chairperson and unilaterally transferred the CDTF to the PJM VP of Markets without consulting the members or informing them that the transfer was being made.

9. PJM Management Developed Confidential Internal Procedures That Authorized Management’s Prior Review of MMU Reports.

PJM management drafted internal and confidential procedures that, if adopted, would have permitted them to review and modify MMU reports prior to publication. The MMU opposed a number of these drafts. In March 2006, PJM management provided a final set of confidential procedures that would require the MMU to submit all of its reports to management prior to publication. These confidential procedures effectively modify Attachment M to the tariff.

10. PJM Has Targeted and Recruited MMU Staff to Transfer out of the MMU to Other PJM Divisions.

- PJM has targeted specific MMU employees for positions in the Markets Division and has been slow to post the vacant MMU job openings.
- PJM management told the MMU that PJM wants to replace the MMU staff with outside consultants.
- PJM management encouraged the MMU staff to seek open positions at other PJM divisions.
- PJM Management has threatened to eliminate MMU control over its data and its data management.

I made my April 5 statement to the Commission only after careful consideration. I have been the Market Monitor at PJM since March 8, 1999, and the efforts by PJM management to undermine the independence of the MMU developed only gradually. In each case, when PJM management sought to take some action to compromise the independence of the MMU, I addressed the issues directly with management. I raised similar issues in my statement to the Commission in March 2006 although in a more limited way. After that statement, PJM Management’s interference with MMU independence escalated. I periodically informed FERC staff of these issues. I then made my April 5 statement as a last resort because PJM management continued to take more

⁶ See “CDTF Mission,” PJM Manual M -15: Cost Development Guidelines, page 4. bates number

and more significant steps towards limiting the independence of the MMU and limiting the ability of the MMU to perform its tasks as defined in the PJM tariff.

My goal has been to provide information to the Commission that would permit it to evaluate these issues. It, of course, is for the Commission to reach its own conclusions and judgments. As I stated on April 5, "Ultimately, only the Commission can define the level of independence that it believes necessary for market monitors to perform the functions defined by the Commission and assist in enhancing the competitiveness of RTO markets. Only the Commission can ensure that the desired level of independence is achieved." Whatever the decision, I respectfully request that the Commission make clear its views on independence and include enforceable provisions governing independence in the PJM tariff.

II. ANSWERS TO INTERROGATORIES

The MMU, relying on the direction and advice of counsel, has made a diligent effort to provide full and responsive answers to the Commission's Data Requests. However, it is important to understand that this filing is not intended and time does not permit it to be an exhaustive explication of all of the circumstances under which PJM Management has interfered with or attempted to interfere with the independence of the MMU. I am prepared further to farther cooperate with the Commission's inquiry by responding to requests for interviews and/or additional documents. I will also respond to the PJM filing, to be submitted today.

1. **Based on the Prepared Statement of Joseph E. Bowring submitted at the Federal Energy Regulatory Commission's technical conference on market monitoring policies, held April 5, 2007 in Docket No. AD07-8-000 (Bowring Statement), the Organization of PJM States is concerned about the impairment of the PJM MMU and its ability to perform its functional responsibilities that may have or could occur from a loss or reduction in the capability and responsibilities of the PJM MMU and impairment of its personnel and resources. Please state the following:**
 - A. **Whether the MMU has been unable to perform its tariff obligations as a result of the loss of any employees from the MMU since the date of the meeting at which Mr. Harris made his statement.**
 - B. **The number of employees, with job title and function of each, who have left the MMU and taken a position elsewhere in PJM since the date of the meeting at which Mr. Harris made his statement.**
 - C. **Whether any or all such employees continue to perform MMU functions on a shared responsibility basis.**
 - D. **Whether the vacated MMU positions have been filled or posted.**
 - E. **Whether PJM management has ordered that any such vacated MMU positions not be filled. If so, provide the date of any statement conveying such an order, the person making the**

statement, details of the statement itself, and any and all documents relating to such statement.

As I stated on April 5, "PJM management has taken a series of actions towards the MMU which I believe are inconsistent with independence and with the objectives of the MMU as defined in the tariff." I have included supporting information and additional details in this affidavit. I made the statement on April 5 because of my concern then and now that PJM's actions are inconsistent with the objectives of the MMU as defined in the tariff. However, the Commission will ultimately make the judgment as to whether the MMU may not be able to fulfill its obligations under the tariff.

I am concerned that if left unchecked, such PJM actions will escalate to the point where PJM would violate the tariff. I am concerned that PJM actions could compromise the continued ability of the MMU to provide to stakeholders, members, and the Commission information and analysis, unfiltered by PJM. A conclusion that PJM has not yet violated the tariff should not end the Commission's inquiry into PJM's interference with the independence of the MMU.

PJM has had a negative impact on the MMU's ability to perform its functional responsibilities because:

- 1) PJM employees, including management, have failed to cooperate with the MMU;
- 2) PJM has threatened to deny the MMU access to data and information; and
- 3) PJM has targeted certain full-time staff of the MMU for transfer to the Markets Division of PJM.

In the answer to this question, I will address each of those three items in turn:

I. PJM Employees, Including Management, Have Not Cooperated with the MMU, Negatively Impacting the MMU's Ability to Perform Its Functional Responsibilities.

PJM has impaired the MMU's ability to perform its functional responsibilities, including but not limited to those responsibilities under the tariff, by failing to ensure the cooperation of all PJM employees, including but not limited to management, with the MMU.

It is critical to the independence of the MMU and the discharging of my obligations under the tariff that my staff report directly and exclusively to the Market Monitor. But PJM management has indicated dissatisfaction with that independent reporting structure. PJM management has informed me on numerous occasions that they would like part or all of the MMU staff to report jointly to the PJM Vice President of

Market Services and to me, rather than exclusively to me. A version of PJM's preferred reporting structure was included in the confidential internal procedures governing the MMU that became effective on February 21, 2006. (For a discussion of those confidential internal procedures, see my answers to Data Request Question #6.)

I informed PJM management during discussions on the confidential internal procedures and thereafter that I did not believe any form of joint reporting structure was consistent with independence. It is clear that it is the task of the MMU to analyze markets and to analyze PJM objectively and to report these results regardless of whether they were consistent with PJM's public relations goals or PJM's internal goals. Clearly, the MMU and PJM can have very different views on a variety of issues. PJM believes that senior PJM management has control over the contents of any report put out by PJM and the authority to direct its staff to do analysis in a particular way. As a result, it is critical that in order to maintain independence, the MMU staff should report only to the market monitor and have no reporting relationship to PJM management. (See also my answer to Data Request Question #6 regarding these procedures and their development.

This attempt to compromise the MMU's reporting structure is but one example of how PJM employees, including management, have not cooperated with the MMU, negatively impacting the MMU's ability to perform its functional responsibilities. Other such examples include, but are not limited to:

- PJM Sought Changes to, Prevented the Issuance of, or Delayed the Release of Five MMU Reports on Regulation Markets (including the 2005 State of the Market Report). (See my answers to Data Request Question #6 & #8.)
- PJM Ordered the Removal of a Conclusion Regarding the Regulation Market from the MMU's 2005 State of the Market Report. (See my answer to Data Request Question #6.)
- PJM Has Interfered with the MMU's Role as Chair of the Market Monitoring Advisory Committee. The Market Monitoring Advisory Committee ("MMAC") is a committee chaired by the Market Monitor, the purpose of which is to get member feedback on the MMU's analysis plans each year. In 2006, when the Members Committee was considering a PJM filing to modify the Market Monitoring Plan, PJM management ordered me not to post the minutes of the recent MMAC meeting during which the issue was discussed. In 2006, PJM management ordered me not to discuss a recent FERC Order regarding market monitoring at the MMAC meeting and to remove it from the agenda.
- PJM Management Pressured the MMU to Modify Its Positions on the RPM Market Power Mitigation Rules.
- In November 2006, PJM management refused the MMU's request to include avoidable cost data in the PJM computer system constructed for RPM. PJM management stated that the MMU could do audits of individual companies if

it did not believe the company submissions, and that only a single avoidable cost number was required for each unit, without detailed support.

- At a meeting on December 1, 2006 regarding RPM, PJM management pressured the MMU to modify the avoidable cost template based on complaints from generators. The MMU refused, explaining that it had addressed generator complaints about complexity by including options in the template. PJM management also pressured the MMU to increase the proxy costs that the MMU had developed for optional use by market participants. The MMU refused, explaining that the proxy costs were based on its best available actual generator data.⁷
- On December 8, 2006 PJM management ordered the transfer of the MMU's authority to make decisions on the implementation of avoidable costs and transferred that authority to the PJM Markets division. The VP of Markets subsequently informed the MMU that he would not be taking on this responsibility, as he did not have the staff or expertise to do so.
- On December 13, 2006, PJM management informed the MMU that it was not to speak with PJM's external RPM lawyers about the RPM tariff, and that any MMU requests for interpretations of the tariff were to go through the PJM VP of Markets, who would have the opportunity to deny such requests, even if they originated from members and other stakeholders.
- PJM Management Prevented the MMU from Presenting Its Views to PJM Members. (See my answer to Data Request Question #7.)
 - In January 2007, PJM management prevented the MMU from making a presentation to a membership committee, the Markets Implementation Committee, on the exemption of certain interfaces from mitigation when PJM management disagreed with the MMU's analysis.
 - PJM management unilaterally removed the MMU's black start presentation from the Markets Implementation Committee ("MIC") agenda for its October 31, 2006 meeting. The MMU recommended that PJM file with FERC to inform the Commission that black start filings made by specific member companies were not consistent with the PJM tariff and that PJM modify its black start tariff. The result of the filings for black start service was to increase payments by members for black start service.
- PJM Management Prevented the MMU from Analyzing the BGS Auction for the NJ BPU. In December 2006, the New Jersey Board of Public Utilities ("NJ

⁷ The tariff (Section 6.7 (c)) makes it clear that "The Market Monitoring Unit shall determine (subject to the procedures in section 6.2(c) of this Attachment), in its discretion, following stakeholder consultation, the resource classes and corresponding prices described in this subsection and shall identify such resource classes and prices in the posting required by section 6.2(a)."

BPU”) asked the MMU for its independent analysis of the BGS auction, but PJM management told me the MMU would not do the analysis. At a meeting with the NJ BPU on December 11, 2006, PJM management suggested that its Markets Division, rather than the MMU, conduct the analysis of the auction. The NJ BPU declined PJM’s offer and continued to ask for the MMU to analyze the auction. The NJ BPU recently reiterated its request for an MMU analysis.

- PJM Management Refused the MMU’s Request to Submit a Section 205 Filing with FERC When an Exempt Unit Exercised Significant Market Power. The MMU prepared a detailed report demonstrating that an exempt unit exercised market power that resulted in excess payments by market participants of about \$20 million during a two week period. The MMU requested that PJM submit a section 205 filing with FERC to remove the unit’s exemption from offer capping. PJM required that its VP of Markets and the MMU meet with the owners of the unit before making such a submission. After the meeting, the MMU continued to recommend that PJM make such a filing, but PJM refused. The MMU then made a subsequent referral to the Commission regarding this matter. The unit remains exempt.
- PJM Unilaterally Removed the MMU from the Cost Development Task Force Chairmanship. The Cost Development Task Force (“CDTF”) is a group of members that “is responsible for developing, reviewing, and recommending to the [MRC] standard procedures for calculating the costs of products or services provided to PJM when those products or services are required to be provided to PJM at a cost-based rate.”⁸ Cost-based offers are used by PJM, rather than market-based rates, when there is a determination of market power. As such, cost-based rates are central to the market power mitigation rules in PJM’s tariff. In 2003, the CDTF was transferred to the MMU under my chairmanship. On March 19, 2007, PJM removed me as chairperson and unilaterally transferred the CDTF to the PJM VP of Markets without consulting the members or informing them that the transfer was being made.
 - The CDTF is a group of PJM members who review current rules and propose new rules for defining costs that are “includable” in cost-based offers by generating units. The manual developed by CDTF (PJM Manual M-15: Cost Development Guidelines) defines what can and cannot be included in a unit’s cost-based offers. The MMU has an auditable procedure in place to track the process of developing and implementing changes to the existing rules.⁹
 - In 2003, the role of the CDTF was modified, and the CDTF was transferred to the MMU as a result of extensive discussion and

⁸ See “CDTF Mission,” PJM Manual M -15: Cost Development Guidelines, page 4. SMM – 01794.

⁹ PJM Manual 15, Revision 07, Effective Date: 08/03/2006. SMM – 01787 – 01852.

deliberation by members.¹⁰ Oversight by the MMU of the CDTF made sense given the MMU's responsibilities for monitoring: (a) compliance with the PJM Market Rules; (b) actual or potential design flaws in the PJM Market Rules; (c) structural problems in the PJM Market that may inhibit a robust and competitive market; and (d) the potential for a Market Participant to exercise market power or violate any of the FERC Market Rules.¹¹

- Since 2003, and until the recent action by PJM, the MMU, in its role as chair of the committee, has acted as an advisor in the discussions about acceptable costs components and the calculation of cost-based offers, mediated disputes over proposed rule changes and presented proposed changes to members on behalf of the CDTF. The MMU has played a central role in the application and interpretation of rules developed by the CDTF.¹² To the extent that participants or the PJM staff have questions regarding the cost development guidelines found in the CDTF manual, the MMU provides explanations of the rules that define acceptable components and calculation of cost-based offers.
- FERC set up the MMU function to assure that PJM markets are producing competitive outcomes. Prices are reasonable by the FERC standard when they are the result of a competitive market, or of a market with sufficient mitigation to allow a competitive outcome. A competitive market means, by definition, that suppliers submit offers at or close to their marginal costs. Oversight of the cost development process is an important part of the MMU's responsibility to monitor, evaluate and enhance the competitiveness of markets.
- The MMU needs concrete and reliable measures of incremental costs and the components of costs of every unit and every participant. Having oversight of the CDTF process by which rules are developed on defining costs and converting cost components to offers provides assurance of the relevance and accuracy of the central metric by which the MMU can examine and assess market participant behavior and market outcomes. Rules governing cost-based offers are key to ensuring that mitigation is effective while continuing to send appropriate economic signals. All cost definitions are subject to review by the members and approval by the PJM Board of Managers.

II. PJM's Threats to Deny the MMU Access to Required Information Would, If Fulfilled, Impact the MMU's Ability to Perform Its Functional Responsibilities.

¹⁰ SMM – 01664 – 01680; 01645 – 01647; 01681 – 01684.

¹¹ Attachment M, Subsection III. SMM – 01355.

¹² PJM Manual 15, Revision 07, Effective Date: 08/03/2006, pp. 11,13,15,16,17,19,21-22,26-27 & 29. SMM – 01801-01831.

To date, PJM has not denied the MMU access to required information, but PJM has threatened to do that. Were it successful, the MMU would not be able to provide an independent analysis of PJM markets. Without access to and control over the required information, namely, the market data that we have collected and maintained, the MMU cannot perform an independent analysis of the PJM market.

The tariff requires the MMU to collect and maintain information and data in a manner required to meet the MMU's objectives. We have learned the hard way that the only way to meet that objective is for the MMU to have direct stewardship and control of the data, from collecting the data from PJM, to maintaining it, to converting the data to information and to maintaining that value-added information.

The MMU data repository has been developed, structured and maintained by the MMU for the past four years in order to provide the basis for MMU analysis. Both operations and markets data is collected daily and loaded into the data repository which has been structured to facilitate specific market monitoring metrics and analytics. Ongoing development and maintenance of the data repository requires knowledge of market monitoring because the data repository is a dynamic structure, rather than a static one. Daily, ongoing interaction between MMU staff and the MMU Data and Management Supervisor is key to data repository structure, development and maintenance because MMU analysis changes due to improvements, changes in the markets or changes in participant behavior. When a new or modified analysis is undertaken, MMU analysts sometimes need new or augmented data. The central organizing factor of the MMU data repository is MMU analysis. It is not simply a historical markets database.

Everything we do turns on data and related information, and we need to have access to and control of it. The MMU is constantly improving our analytical capability. As we do so, we write software to implement new analyses, develop the software consistent with quality control procedures, automate the software, create processes to capture and save the required data and create processes to save the output of these processes, which is the information which we use to analyze and report on the markets.

However, PJM management has repeatedly made clear that it is their view that PJM management has the authority to control the ways in which the MMU collects and maintains information and data. PJM management determined that the MMU would no longer be permitted to directly collect and maintain information and data in the manner which the MMU determined to be necessary to meet the MMU's objectives; although PJM has yet to act on that determination. PJM CEO and President, Phillip Harris, first relayed this to me after my appearance in March 2006 at the annual market monitors' presentation to the Commission.

PJM wants to take over our data entirely, as well as the MMU personnel experienced in converting that data into information. PJM Chief Operating Officer, Audrey Zibelman, and PJM VP of Markets, Andrew Ott, have since reiterated that Mr.

Harris had determined that the MMU was to have its databases removed from its control, along with critical staff required for data collection and analysis. The data systems were to be transferred to Andy Ott's control.

Also, in December/January 2007, Toby Mannheimer, a PJM VP, presented slides to Mr. Ott, Ms. Zibelman, and me, recommending that PJM move MMU data and data personnel out of the MMU and to the Markets Service Division.

In their Answers to OPSI's Complaints, PJM states that it seeks to switch the "stewardship" of certain databases used by the MMU from me to Mr. Ott in Markets.¹³ This would have serious consequences for the ability of the Market Monitoring Unit to conduct independent analysis of the PJM market.

At present, the Market Services Division can read MMU data. What they cannot do is add to it or delete it or prevent the MMU from creating new types of data. That is because I have "stewardship" over the MMU data. Were I to relinquish that "stewardship" to Mr. Ott, then the Market Services Division would have the authority to collect and maintain our data. That would undermine the MMU's ability to render independent analysis of the market. (See my answer to Data Request Question #10.)

III. PJM's Targeting of MMU Staff for Transfer Has Made It More Difficult for the MMU to Perform Its Functional Responsibilities.

By successfully targeting for transfer specific Market Monitoring Unit ("MMU") salaried, full-time employees, PJM has impaired the MMU's ability to perform its functional responsibilities.

PJM has targeted MMU employees for transfer out of the unit to other divisions within the company. This has reduced the MMU's talent and institutional knowledge, and it has dampened morale. PJM management created new positions in Performance Compliance for two MMU employees and recruited them for such transfers.

PJM's active recruitment of these transfers is also inconsistent with PJM's suggestion in its Answers to OPSI's Complaints that these transfers were routine.¹⁴

Both transfers were hired within days of the March 29, 2007 meeting with PJM CEO Phillip Harris. The two transfers were key staff on whom others and I heavily relied. One of them is a supervisor with virtually irreplaceable industry experience, including four years in the MMU, who has played a critical role in the MMU's ability to monitor both the energy and capacity markets.

Further support for the proposition that PJM was actively targeting transfers out of the MMU is the PJM VP of Markets' active recruitment on March 20, 2007 of the PJM

¹³ PJM Answer of April 30, 2007, at 13-14. SMM – 01345-01346. PJM Answer of May 3, 2007, at 7. SMM – 01324.

¹⁴ PJM Apr. 30 Answer at 12-13. SMM – 01344-01345.

market behavior supervisor,¹⁵ who likely would not have transferred out of the MMU were it not for PJM's transfer of the CDTF from the MMU to the Market Services Division.¹⁶ When the targeted PJM market behavior supervisor spoke with HR about his potential transfer, he suggested to HR that he would want a junior MMU analyst, who reported directly to him, to transfer with him.¹⁷ This is significant because PJM then created a position for this junior analyst, and she transferred out of the MMU for that new position.

The following points illustrate the pressure PJM applied to the targeted employees to transfer out of the MMU:

- On March 20, 2007, Andrew Ott, PJM VP for Markets, told the MMU's market behavior supervisor that management would be announcing plans to disband the MMU as an internal entity at the meeting scheduled with the MMU for March 29, 2007.
- On March 29, 2007, PJM CEO and President, Phillip Harris, told the MMU that he intended to externalize the MMU from PJM, replacing the MMU with consultants. He stated that the "current structure was not working" and the OPSI states "wanted an external monitor."¹⁸ It was at this meeting that Phil Harris told the MMU staff that they were valued employees, and that they had lots of other opportunities within PJM.¹⁹
- The next day, on March 30, 2007, PJM posted two job openings in Performance Compliance specifically aimed at recruiting the two identified MMU staff.²⁰ Both job requisitions indicated that the postings would close after seven days, on April 6, 2007.
- The two identified full time staff applied for the posted positions in the first week of April. As of May 1 and May 23, the MMU market behavior supervisor and the MMU junior analyst transferred to the Operations Compliance department.²¹

¹⁵ Memorandum from Dionne Wright of PJM HR to Lindsey Johnson, PJM VP of HR, of March 21, 2007, at 1. SMM – 01766-01767. E-mail JB to AZ 2201 032007. SMM – 01742.

¹⁶ Memorandum from Dionne Wright of PJM HR to Lindsey Johnson, PJM VP of HR, of March 21, 2007, at 1. SMM – 01766-01767. E-mail JB to AZ 2201 032007. SMM – 01742.

¹⁷ Memorandum from Dionne Wright of PJM HR to Lindsey Johnson, PJM VP of HR, of March 21, 2007, at 1. SMM – 01766-01767. E-mail JB to AZ 2201 032007. SMM – 01742.

¹⁸ See appendix X for e-mail chain outlining the meeting invite for March 29, 2007 and meeting notes. SMM – 01744.

¹⁹ See notes outlining the meeting of March 29, 2007 and meeting notes. SMM - 01744.

²⁰ On March 30, 2007 two positions were posted to the PJM internal website and in the PJM Post (an internal PJM publication distributed daily via e-mail): Job req. 569 Sr. Lead Engineer – Performance Compliance Dept and Job req. 568 and Job req. 568 ANALYST/SR. ANALYST - Performance Compliance Dept. SMM – 01745-48; 01751 – 01755.

²¹ Job req. 569 outlined in great detail the 2007 job responsibilities and goals of the MMU market behavior supervisor. See appendix X for Job Req 569 and the 2007 annual goals of the MMU market behavior supervisor. SMM – 01745-01748; 01751-01755. The MMU market behavior supervisor interviewed with

- As of April 13, 2007 the MMU market behavior supervisor made it known that he had applied for Job req. 569, stating “I had to, it was my job” and “it was a transfer, I did not have a choice.”²² On April 10, 2007, he received and signed his offer letter.²³
- While Job req. 568 outlined a generic analyst position,²⁴ the three MMU analysts who applied for the job on April 6, 2007²⁵ were told that the ideal candidate was someone familiar with Probe software from PowerGem.²⁶ This matched the unique skill set of the identified junior MMU analyst. Both of these individuals transferred out of the MMU effective May 2007,

In addition, PJM management has told me that I should not hire full time staff to replace the lost staff but should hire outside contractors or consultants.

PJM delayed posting and filling MMU vacancies,²⁷ particularly when compared to its posting and filing of vacancies for other divisions. For example, openings in the Market Services, Finance, and Human Resources divisions have been posted to fill positions for employees who had not yet left their divisions. In contrast, when an MMU employee transferred to the Market Services Division in March 2007, the company took six weeks to post the job opening in the MMU and did so only after my repeated requests.

The foregoing staff reductions have made it more difficult for the MMU to perform its functional responsibilities because we have fewer resources to complete a growing level of work.

2. **In its Answer filed in Docket No. EL07-56-000, PJM states that it has implemented a retention plan for MMU employees, providing for a completion bonus to every MMU employee who remains with the MMU through the completion of the consideration of any alternative market monitor structure. State whether this statement of PJM’s is correct as far as you know, and provide all details of such plan as you understand them, including the date of the plan’s implementation. Provide any and all documents received by you or your employees relating to such plan.**

Although PJM has a retention plan in place for MMU employees today, the MMU was first briefed on a retention plan on April 19, 2007 and received the written version of that plan on April 24, 2007. The current retention plan was presented verbally to the

Performance Compliance on April 2, 2007 for the Sr Lead Engineer position in that group. See e-mail and attachment DW to HJH 1522 060607. SMM – 01756-01764.

²² See notes from conversations with the MMU market behavior supervisor. SMM – 01765.

²³ See e-mail and attachment DW to HJH 1522 060607. SMM – 01756-01764.

²⁴ Job Posting. SMM – 01751-01755.

²⁵ HR Response to Haas e-mail 6-7-2007. SMM – 01756-01764.

²⁶ See e-mail with attachment DW to HJH. SMM – 01756-01764.

²⁷ See e-mails. SMM – 0371-0372, 0374.

MMU staff on May 14, 2007 and received in writing May 18, 2007 in an e-mail from Toby Mannheimer.

The first time PJM presented the plan to the MMU staff was on April 19, 2007, and it required further improvement, resulting in a subsequent version that was presented to the MMU staff on May 14, 2007. This plan is very important to the MMU, but it was provided only after my continued insistence on creating a meaningful retention plan.²⁸

This retention plan was not part of PJM's initial strategy in March 2007.²⁹ On March 23, 2007, I met with Audrey Zibelman and Toby Mannheimer about MMU issues, in particular about what Audrey Zibelman planned to say to MMU staff regarding the Strategic Report and about my retention concerns during the study period. Audrey Zibelman indicated that she would have HR look into the retention issues and provide recommendations. On March 28, I followed up with HR, expressing my concerns about both hiring and retention.

Despite my repeated efforts, a retention plan was not part of PJM's initial communication to the MMU regarding the Strategic Report on March 29, 2007, when PJM's CEO, Phillip Harris, addressed the MMU staff. (Mr. Harris spoke in Ms. Zibelman's stead when she was unable to attend.) Mr. Harris made no mention of a retention plan but instead indicated that there were many positions at PJM that the MMU staff could apply for. This undermined the goal of retention of MMU staff during the study period.

When I met with Mr. Harris and PJM Chief Operating Officer, Audrey Zibelman, after the March 29 meeting, Ms. Zibelman indicated that PJM would let the MMU staff know that PJM would make a severance package available them. I responded that I would prefer she not make that statement to my staff because it would further undermine MMU staff's morale and was the opposite of a retention package as it suggested that PJM intended that the severance would actually occur.

On April 5, 2007, PJM Chief Operating Officer, Audrey Zibelman, while testifying before the Commission, was asked how to do a transition if one was needed. She replied that "You assure them that the normal processes, in terms of if in fact a decision is made to outsource and they wish to stay with the RTO and there are jobs available, they should be there, and you put in retention plans. So to the extent that you are worried about people migrating away, there's an economic reason for them to stay till the end of the program so they understand there may be a bonus if they stayed until the end, and just deal with it as a management issue." Ms. Zibelman responded to a follow up question from the Commission by stating: "The best you can do is to provide the right types of retention plan and assurances and continue to work with staff." To the best of my knowledge, Ms. Zibelman could only have been referring to the severance package she had discussed with me, as there was no other retention plan at that time.³⁰

²⁸ See e-mails. SMM – 00375-00376.

²⁹ See e-mails. SMM – 00367-00369.

³⁰ See e-mails. SMM – 00370, 00373, 00375-00380.

On April 9, 2007, four days after Ms. Zibelman testified before FERC, she met with the MMU staff “to discuss the status of the MMU organization during the study of the MMU.” During the meeting, MMU staff were told that even though PJM hoped to retain them PJM could not make them any promises regarding job opportunities after the conclusion of the study. “Reasonable retention bonuses” were mentioned as a possibility but no details were mentioned. We were also reminded that PJM had a standard “severance package” that is very generous. These statements, provided in vague terms, did nothing to alleviate the uncertainty and instead aggravated already severe MMU staff concerns about their jobs.

On April 16, 2007, PJM provided to employees a statement issued April 13, 2007 on MMU issues indicating that PJM management had communicated with the MMU staff and was committed to making sure that the MMU functioned during the study. Nevertheless there was no retention plan in place for MMU staff at that time.

On April 18, 2007, I sent an e-mail to PJM’s Vice President of Human Resources detailing my concerns and recommendations regarding employee retention, including the necessity of a retention bonus, immediate cessation of all efforts by PJM management to recruit MMU staff, a discontinuation of HR references to a “transition” in the absence of a FERC decision and provision of a guarantee of employment regardless of the outcome of the study. I believed all these actions were and are necessary in order to maintain the MMU staff ability to work effectively until the organizational issues are resolved.³¹

On April 19, 2007, PJM’s Vice President of Human Resources responded and indicated HR’s desire to meet my concerns.³² Later that day, HR met with the MMU to discuss the design of HR’s proposed MMU retention plan.³³ HR outlined a plan that addressed some, but not all, of the requirements and concerns I had raised in my e-mail of April 18, 2007.³⁴ HR promised a written summary of the retention plan at the end of the meeting. The initial draft summary of the meeting was supplied April 19 to Howard Haas.

On April 25, 2007, MMU employees received HR’s April 24 retention memo, with the MMU Retention Plan and PJM’s “Lack of Work Policy” attached.³⁵ This was 17 business days after PJM had posted two job openings in the Performance Compliance Department specifically aimed at recruiting two of the MMU’s full time staff and 12 business days after the two job openings closed.

The plan remained incomplete. MMU employees were still experiencing significant job uncertainty and I continued to advocate on their behalf with HR. The retention plan dated April 24 did not provide the guarantee of a job in the event that the

³¹ See e-mail. SMM – 00375-00376.

³² See e-mail. SMM – 00378-00380.

³³ See e-mail of Apr. 19, 2007. SMM – 01768.

³⁴ See Lindsay/Dionne Meeting notes of Apr. 19, 2007. SMM – 01769-01777..

³⁵ See MMU retention plan of Apr. 24, 2007. SMM – 01778-01783.

MMU function is outsourced, nor did it address the potential for a long period of uncertainty (more than six months).³⁶

On May 14, 2007, after ongoing negotiations with PJM management and HR, HR met with the MMU staff and presented an enhanced MMU retention plan. This enhanced plan made explicit a commitment by PJM, in the event that the internal MMU was transitioned to an external function as a result of the current restructuring study, to provide a guaranteed a job with either PJM or with any outsourced market monitoring company. PJM also announced an additional bonus to be made available if the process of study and resolution continued beyond December 31, 2007. This revised retention plan was provided to the MMU in an interoffice memo sent via email on May 18, 2007.³⁷

Employees of the MMU continue to experience fear and uncertainty regarding future employment as evidenced by the concern regarding retaliation they voiced on May 9, 2007 to the independent counsel retained by the PJM Board of Managers. To address this concern, MMU employees requested and received a letter from the Board that "there would be no retribution or retaliation to employees who are interviewed by Special Counsel or otherwise cooperate in the investigation."³⁸

- 3. State whether the MMU has been denied access to the MMU database or to any market or other data to which it previously had access. If so, provide all details surrounding such denial, including the following:**
- A. The date of the denial,**
 - A. The nature of the data to which the MMU was denied access,**
 - B. How the denial was accomplished,**
 - C. The name and job title of the person who denied the access,**
 - D. Any and all statements made in connection with such denial,**
 - E. Any documents received in connection with such denial.**

To date, PJM has not denied the MMU access to required information, but PJM has threatened to do that. Were it successful, the MMU would not be able to provide an independent analysis of PJM markets. Without access to and control over the required information, namely, the market and other data that we have collected and maintained, the MMU cannot perform an independent analysis of the PJM market.

(See my answer to Data Request Question #1.)

- 4. State whether PJM management is currently preventing the MMU from performing its tariff functions either by failing to provide appropriate staffing and resources, failing to provide access to required information, or failing to arrange for the cooperation of PJM employees with the MMU, all as required by the PJM Tariff. State with as much specificity as possible all**

³⁶ See e-mails. SMM – 00384-00390.

³⁷ See May 18, 2007 retention memorandum. SMM – 01784-01785.

³⁸ See May 14, 2007 Statement of the Board . SMM – 01786.

the reasons for your answer, the circumstances relied upon for your answer, and any and all documents that relate to such reasons and circumstances.

As I stated on April 5, "PJM management has taken a series of actions towards the MMU which I believe are inconsistent with independence and with the objectives of the MMU as defined in the tariff." I have included supporting information and additional details in this affidavit. I made the statement on April 5 because of my concern then and now that PJM's actions are inconsistent with the objectives of the MMU as defined in the tariff. However, the Commission will ultimately make the judgment as to whether the MMU may not be able to fulfill its obligations under the tariff.

I am concerned that if left unchecked, such PJM actions will escalate to the point where PJM would violate the tariff. I am concerned that PJM actions could compromise the continued ability of the MMU to provide to stakeholders, members, and the Commission information and analysis, unfiltered by PJM. A conclusion that PJM has not yet violated the tariff should not end the Commission's inquiry into PJM's interference with the independence of the MMU.

PJM has made it increasingly difficult for the MMU to perform its tariff functions through, as the question indicates, the lack of cooperation by PJM employees, including management, with the MMU; the threat by PJM to deny the MMU access to required information, and PJM's targeting of MMU staff for transfer out of the unit.

A. PJM's Failure to Ensure That Management Cooperates with the MMU Is Ongoing, Making It Difficult for the MMU to Perform Its Tariff Functions.

In my answer to Data Request Question #1, I cited a number of examples of how PJM's management has not cooperated with the MMU, thereby preventing the MMU from performing its functional responsibilities. This problem, as a general matter, is ongoing. Among the examples are the confidential procedures adopted on February 21, 2006 by PJM and discussed in my answer to Data Request Question #6 that have not been repealed and give management internal authority to review and delay MMU work-product. As a general matter, PJM is aware of the intense scrutiny as a result of this matter and has not taken specific new non-cooperative actions since the Commission's Order in this matter.

B. PJM's Threat to Deny Access to Required Information Is Ongoing, Making It Difficult for the MMU to Perform Its Tariff Functions.

As noted, PJM has not denied the MMU access to required information. However, PJM wants to change that by forcing the MMU to cede the "stewardship" of its data to the Market Services Division, thereby authorizing the Market Services Division to add to and delete from the MMU's data. (See my answers to Data Request Questions #1, #3, & #10.)

Were the stewardship to change hands to the Market Services Division, the MMU we would be denied access to required information – namely, the data that the MMU has collected and maintained.

C. PJM's Staff Reductions for the MMU Have Present-Day Effects on the MMU's Ability to Perform Its Tariff Functions.

As a result of the transfer of critical MMU staff (see my answer to Data Request Question #1 & #5), today, the MMU has fewer full time resources to complete a growing workload.

5. State how many employees are currently employed by the MMU. Provide MMU average employment levels for 2006, 2005, and 2004.

The salaried, full-time employees of the MMU have declined from 16 in 2004 to 13 in 2007.³⁹ In 2005, there were 15. In 2006, there were 16.

In addition, today, there are two “college student/co-ops” and two staff augmentation contractors who were hired to backfill full-time salaried positions due to PJM’s refusal to allow the MMU to hire salaried full-time employees to replace the salaried full-time employees who transferred out of the MMU. But the co-ops and contractors are not the equivalent of salaried, full-time employees. In the case of the co-ops, they are college students, who can only work six months out of a year, and require so much training that their net benefit to the MMU is negligible. In the case of contractors, they are typically seeking full-time employment and often find it, making them less reliable for long-term projects.

PJM has also transferred two salaried, full-time employees out of the MMU to the Market Services Division of PJM, and PJM has told them to expect to devote no more than 30% of their time to the MMU, with some flexibility.

In 2004, 2005, and 2006, there was a monthly annual average of 12.8, 15.5 and 15.3 full-time salaried MMU employees, respectively.

In 2004, 2005, and 2006, there was a monthly annual average college student/co-op count of 3, 2.5 and 1, respectively at the MMU.

In 2004, 2005 and 2006 there was a monthly average staff augmentation contractor count of 0, 0.1 and 1, respectively at the MMU.

It is my opinion that MMU staffing levels are not currently sufficient to meet the needs of both its FERC mandate and the increasing data and analysis requirements of the

³⁹ PJM Organizational Charts, June 2007, Dec. 2006, Dec. 1, 2005, and Dec. 1, 2004. SMM – 01375, SMM – 01396, SMM – 01413, SMM – 01442.

states. While still meeting its obligations to date, the MMU's resources are being increasingly stretched thin.

In the wake of deregulation and restructuring, the states are increasingly dependent on the data and the expertise that the PJM MMU has to offer in fulfilling their own regulatory obligations. The MMU's staffing levels have not kept pace with either these increasing demands, the rapid growth of the PJM market, or the growth in staffing in PJM's other market related divisions.

To put the MMU staff-levels in further perspective, the full-time salaried PJM Market Services Division employee counts was 57, 63, 69 and 76 for 2004, 2005, 2006 and 2007, respectively. From 2004 to 2007, this represents a 33% increase in full time salaried staff. The MSD employee count does not include the 15 staff transferred from Corporate Services to MSD in 2007, which results in an increase in MSD headcount of 60 percent. According to the PJM budgeting, PJM's 2007 budget allows for 592 full time salaried positions. This represents a 16% increase relative to the 512 salaried positions in 2004's budget.

6. In paragraph 10 of the Bowring Statement, you assert that PJM management ordered you to modify the State of the Market Report. Provide the following with respect to this assertion:
 - A. Details of the statement in which the order was given (whether oral or written),
 - B. The name of the person who made the statement,
 - C. The date, location and circumstances of the statement and persons present,
 - D. Any and all notes taken regarding such statement,
 - E. Any and all documents made in connection with such a statement.
 - F. State whether you modified the State of the Market report as allegedly ordered, and if so, in what respects.
 - G. If you did not modify the State of the Market report as allegedly ordered, state whether you were admonished or disciplined for failing to do so, and provide all details and documents regarding such admonishment or discipline.

Answer:

In my statement to the Commission on April 5, I cited, as an example of an action by PJM management that is inconsistent with the independence and objectives of the MMU as defined in the tariff, that PJM ordered me to modify the 2005 State of the Market Report. That statement was and is correct.

On January 27, 2006, the MMU presented its draft of the 2005 State of the Market Report to the Competitive Markets Committee ("the CMC") of the PJM Board of Managers for its review and comments, as is the standard operating procedure at PJM.

The MMU then reviewed the comments from the CMC and PJM management and, employing the MMU's independent analysis of those comments, modified the report. I accepted some, but not all of these comments as part of preparing subsequent drafts, culminating in the February 27, 2006 draft of the report.

On February 28, 2006, PJM's Chief Operating Officer, Audrey Zibelman, called me and ordered me to remove from the 2005 State of the Market Report an entire section of the report, regarding regulation markets, and return to the earlier version circulated to the Competitive Markets Committee of the PJM Board of Managers on January 27, 2006. That section incorporated improvements in the analysis of the regulation market and explicit conclusions based on that analysis. The conclusion was about the absence of structural competition in the regulation market and an appropriate approach to mitigation. The directions from PJM management were consistent with an ongoing effort by PJM management to require me to modify MMU views on the regulation market. (See my response to FERC Data Request Question #8.)

Ms. Zibelman ordered me to make this change during a telephone call. As far as I know, no one else was on the line. During that telephone call, Ms. Zibelman asked me directly whether I intended to comply with her order. I stated that I believed that it was wrong, but that I would do as ordered.

On the same date, Ms. Zibelman then repeated the order over e-mail to me, copying PJM officers, Phillip Harris, Andrew Ott, and Mike Kormos.⁴⁰ I responded, in an e-mail to Ms. Zibelman, that it was not possible to go back to the earlier version. Also on the same date, Mr. Ott met with me to reiterate management's order that I remove a conclusion from the report.⁴¹

I met with Mr. Ott on March 1, at Ms. Zibelman's direction, and Mr. Ott told me that the MMU should change the conclusions of the regulation section of the State of the Market Report, that such a change is what Ms. Zibelman wanted the MMU to make, and that a return to the earlier version of the regulation section would not be required. Mr. Ott confirmed this outcome in an e-mail to Ms. Zibelman on March 1.

Specifically, at Ms. Zibelman's direction, Mr. Ott told me to modify the 2005 State of the Market Report material in the "Ancillary Service Markets" section of the report and to remove the conclusions in that section regarding the lack of structural competition in the regulation market and a proposed approach to mitigating the resultant market power.

The first conclusion I was ordered to remove from the report was:

However, the improvement in HHI and maximum market share metrics was not enough to overcome the fact that there are still dominant suppliers in the Combined

⁴⁰ See e-mail from Ms. Zibelman to Dr. Bowring of Feb. 28, 2006. SMM – 01158-01162.

⁴¹ See e-mail from Mr. Ott to Ms. Zibelman and Dr. Bowring of Feb. 28, 2006. SMM – 01158-01162.

Regulation Market that are frequently pivotal and that, therefore, have the ability to exercise market power, aggravated by the presence of inelastic demand. Consistent with the FERC's order affecting the offer capping of dominant suppliers in the Western Region Regulation Market, an effective means of reducing the probability of the exercise of market power would be to offer cap the dominant suppliers in the Combined Regulation Market. There is little downside to this approach in the presence of dominant suppliers.⁴²

I was ordered to replace that conclusion with: "The MMU will make a recommendation in the near future as to whether the consolidation has resulted in a market that is structurally competitive."⁴³

The second conclusion I was ordered to replace in the report was:

Based on this analysis, the MMU recommends that PJM continue to operate the Regulation Market as a single Combined Regulation Market. This recommendation is based on improved operational results and on the increased competitiveness of the Combined Market. Nonetheless, based on these market structure results, the MMU concludes that the market structure of the PJM Combined Regulation Market was not consistent with a competitive outcome. For Phase 5-b, the PJM Combined Regulation Market was operated by PJM, with the two dominant suppliers offer-capped, as a price-based market with market-clearing prices. It would be reasonable, consistent with the results of the analysis and with FERC's actions regarding the Western Region Regulation Market, to offer cap only the two dominant market participants identified in the analysis of the Combined Regulation Market. These results are based on the first five months of operation of the combined market. The MMU will continue to analyze market outcomes and market structure for the Combined Regulation Market.⁴⁴

⁴² The original February 27, 2006 MMU draft of the 2005 State of the Market Report shows the inclusion of this conclusion. SMM – 01182. The February 28, 2006 red-line edits by PJM to page 7 of the MMU's draft of the 2005 State of the Market Report, show that this conclusion was removed. SMM – 01227. The final version of the 2005 State of the Market Report shows that PJM's edits were incorporated, as the conclusion from page 7 of the original MMU draft is no longer there. SMM – 01273.

⁴³ The February 28, 2006 red-line edits by PJM to page 7 of the MMU's draft of the 2005 State of the Market Report, show that this conclusion was removed. SMM – 01227. This new conclusion does not appear in the original, SMM – 01182, but does appear in the final. SMM – 01273.

⁴⁴ The original February 27, 2006 MMU draft of the 2005 State of the Market Report shows the inclusion of this conclusion at 22-23. SMM – 01197-98. The February 28, 2006 red-line edits by PJM to page 22 of

I was ordered to replace that conclusion with: "The MMU will make a recommendation to PJM members in the near future regarding the structural competitiveness of this market."⁴⁵

PJM's substantive justification for requiring me to modify a conclusion in the State of the Market Report was that PJM disagreed with the MMU's analysis and conclusions. However, I had been through discussions over a lengthy period of time with PJM management on this issue, and I did not find PJM's reasoning about the substance of the report to be convincing. But I complied with their order because I was a PJM employee, and PJM management had made it clear that refusal of a direct order constituted insubordination, punishable by dismissal. While the conclusions about the regulation market were removed from the report, the analytical results that led to that conclusion remained in the report. The basic conclusions about the competitiveness of the PJM markets in the 2005 State of the Market Report are accurate. The detailed conclusions of the 2005 State of the Market Report do not reflect the full conclusions of the MMU, but they remain accurate as stated.

PJM management's procedural justification for ordering me to remove a conclusion from my report relied on a misleading premise. PJM management ordered me to remove the conclusion because what appeared in the February final version was different from the draft I had circulated on January 31 to the Competitive Markets Committee of the PJM Board of Managers. PJM management stated that the existence of these differences showed I was "not adhering to the process [PJM] had outlined."⁴⁶ While those versions of the report were different, that outcome is anticipated by and in full compliance with the MMU process for publishing its State of the Market reports. Under that process, the MMU:

- Presents an initial completed draft of the report to the Competitive Markets Committee ("CMC") of the PJM Board of Managers. On the same day, the MMU circulates the draft SOM to about 50 internal PJM reviewers;
- Collects the proposed comments from the CMC and PJM staff reviewers, analyze the proposed comments, and make any appropriate modifications to the report;
- Schedules a conference call with the CMC for approximately two weeks after receipt of the draft copy to receive oral comments and to discuss any CMC issues; and

the MMU's draft of the 2005 State of the Market Report, show that this conclusion was removed. SMM – 01242. The final version of the 2005 State of the Market Report shows that PJM's edits were incorporated, as the conclusion from pages 22-23 of the original MMU draft is no longer there. SMM – 01288

⁴⁵ The February 28, 2006 red-line edits by PJM to 22 of the MMU's draft of the 2005 State of the Market Report, show that this conclusion was removed. SMM – 01242. This new conclusion does not appear in the original, SMM – 01197-98, but does appear in the final. SMM – 01288.

⁴⁶ See e-mail from Ms. Zibelman to Dr. Bowring of Feb. 28, 2006. SMM – 01158-01162.

- Makes any final modifications to the report that the MMU deems appropriate.

Also, pursuant to a 2001 FERC Order, the MMU is required to release its State of the Market report to FERC at the same time the report is released to PJM management.⁴⁷

It is made clear every year that the review by the CMC is part of the peer technical review process and does not constitute review of a final submission. Therefore, it does not violate the FERC Order requiring simultaneous submissions of the State of the Market report to PJM and FERC. I also make clear each year that the Board does not have the authority to require changes to the State of the Market report, which is the work-product of the independent MMU and reflects its view of the PJM markets. The Board has never disagreed with that statement and approach.⁴⁸

Contrary to the views expressed in Ms. Zibelman's e-mail of February 28, PJM management was barred from interfering with the MMU's drafting of the State of the Market report not only by the foregoing process and practice, but also by the confidential procedures that PJM management sought to adopt in February and March of 2006 to govern interactions between management and the MMU. Originally, PJM sought to give management the express authority through these procedures to censor what the MMU produces and to review every MMU report before it would be released outside of PJM. As prior drafts indicate,⁴⁹ these procedures, problematic as they ultimately would become, would have been far worse had I not argued strongly to management about changing and scaling them back.

PJM provided these confidential procedures to me via a memorandum, dated March 26, 2006.⁵⁰ The memorandum stated that the procedures became effective retroactively on February 21, 2006. I did not agree with certain substantive aspects of the internal procedures, and I did not agree that such procedures should be confidential because they modified a public document, Attachment M to the PJM tariff. Although I made my objections to management clear at the time, management prevented me from expressing my objections to the CMC prior to their review of the procedures. I then sent a memo detailing and clarifying my objections to management months later on December

⁴⁷ The 2005 State of the Market Report included the following statement from a FERC Order (96 FERC ¶ 61,061 July 12, 2001): "The Commission has the statutory responsibility to ensure that public utilities selling in competitive bulk power markets do not engage in market power abuse and also to ensure that markets within the Commission's jurisdiction are free of design flaws and market power abuse. To that end, the Commission will expect to receive the reports and analyses of an RTO's market monitor at the same time they are submitted to the RTO."

⁴⁸ See e-mails from the PJM Board, congratulating me for following through with their plan to put the release of the 2005 State of the Market Report on a fast track. SMM – 00280-00287.

⁴⁹ See Draft Market Monitor Procedures. SMM – 00302-00362.

⁵⁰ See memorandum from Audrey Zibelman to Joseph Bowring and Andrew Ott, Mar. 21, 2006. SMM – 00288-290. Ms. Zibelman attached the procedures, dated February 21, 2006, to that memorandum. SMM – 00291-00301. See also memorandum from Phillip Harris to Audrey Zibelman and Joseph Bowring, Mar. 21, 2006, authorizing Ms. Zibelman "to receive information and to consult with the Market Monitoring Unit on [Mr. Harris'] behalf and to respond in timely fashion to communications with the MMU," and requiring her to "implement appropriate protocols to administer the spirit and intent of the Procedures." SMM – 00363.

29, 2006, at the request of Audrey Zibelman.⁵¹

Contrary to Ms. Zibelman's statements about the process for producing the State of the Market Report and regardless of the appropriateness of having internal, confidential procedures that modified Attachment M, the procedures do not permit PJM management to order that I remove a conclusion from state of the market report in 2005, in 2006 or in any subsequent year. In fact, those procedures stated, at Section III.D, that:

The Market Monitoring Unit shall have exclusive responsibility to prepare and submit annual state-of-the-market reports as specified in Section VII.A of the Plan in accordance with the following procedures: The Market Monitoring Unit shall provide to the President a drafting and review schedule for preparation of the annual state-of-the-market report. The Market Monitoring Unit shall submit the completed state-of-the-market report to the Board and to the appropriate Board Committees in accordance with the allocation of responsibilities set forth in the then-current Board Governance Guidelines.

In short, PJM management knew the report would be different from the version I presented to the Board, and PJM management knew that I was not required to accept any or all of the recommendations and edits that the Board or management proposed. This has been the process and practice at PJM.

I adhered to the process for preparing and publishing the State of the Market Report. PJM management did not.

The significance of the State of the Market report and its conclusions lies in the fact that the report represents the views of the independent MMU without interference from PJM management. The fact that the independent MMU reaches these conclusions without interference from management is critical for the confidence of the markets. This fact is recognized by the Commission, by market participants and by PJM management. To that end, PJM Vice President for Markets, Andrew Ott, testified before FERC during its October 13, 2006 Technical Conference on The Transparency Provisions of the Energy Policy Act of 2005 that:

The PJM market monitor produces extensive analyses on the market, produces a state of the market report, and the conclusions of the market report are his own. Obviously, I don't anyone (sic) is questioning the independence of PJM, the organization, so I would take issue with Mr. Spinner saying that we need an independent entity doing an analysis

⁵¹ See memorandum from Joe Bowring to Audrey Zibelman (sent at Ms. Zibelman's request), Dec. 29, 2006. SMM – 00261-00263. Per Ms. Zibelman's request, I attached my proposed alternative procedures. SMM – 00264-00278.

of the competitiveness of the market. We have one.⁵²

7. In paragraph 10 of the Bowring Statement, you assert that PJM management prevented you from making a presentation to a membership committee on the exemption of certain interfaces from mitigation. Provide the following with respect to this assertion:
- A. Details of the incident,
 - B. The name and job title of the person preventing you from making the presentation,
 - C. The date, location and circumstances of any and all statements made regarding such prevention, and persons present when each of the statements was made,
 - D. Any and all notes taken regarding such statements,
 - E. Any and all documents made in connection with such statements.
 - F. State all bases for your assertion that PJM management disagreed with your analysis.
 - G. State whether you subsequently made the presentation, and provide the date and circumstances surrounding such presentation.

Answer:

In my statement to the Commission on April 5, I cited as an example of an action by PJM management that is inconsistent with independence and with the objectives of the MMU as defined in the tariff, that PJM prevented me from making a presentation to a membership committee on the exemption of certain interfaces from mitigation when PJM management disagreed with my analysis. That statement was and is correct.

On January 29, 2007, PJM's Chief Operating Officer, Audrey Zibelman, called me and informed me that she would not permit the posting or distribution to the PJM Markets Implementation Committee ("MIC"), a body of PJM's members, of my PowerPoint slides related to the exemption of certain interfaces from offer capping. The slides were to have been presented at an MIC meeting on January 31, 2007. Despite my subsequent requests, PJM management refused to permit the posting of these slides.

Some background to the dispute is necessary. In November 2005, PJM filed a settlement agreement with FERC in which PJM and PJM stakeholders agreed to a scarcity pricing mechanism and to the three pivotal supplier test, which is a market structure test for local markets which, when failed, means that the offers of pivotal suppliers are capped. The settlement agreement required modification of the PJM Operating Agreement. FERC approved the settlement agreement in January 2006.⁵³ Based on reports and a study pre-dating the agreement, FERC conferred blanket

⁵² In re Transparency Provisions of the Energy Policy Act of 2005, Docket Nos. AD06-11-000, FERC, testimony of Andrew Ott. SMM – 00365-00366.

⁵³ 114 FERC ¶ 61,076

exemptions from offer capping on four of the largest interfaces in PJM - Western, Central, Eastern, and APSouth.

The MMU is required by the PJM Operating Agreement, based on the settlement, to submit quarterly reports evaluating whether any changes in status are appropriate for the exempt and non-exempt interfaces:

Section 6.4.1(d)(ii) of Schedule 1 of the PJM Operating Agreement provides:

On a quarterly basis, using an analysis no less stringent than the test for suspending offer capping set forth in sections 6.4.1(e) and (f) below, the PJM Market Monitoring Unit will evaluate whether additional interfaces also should be exempt and whether any existing exemptions should be terminated. Considering the recommendations of the PJM Market Monitoring Unit, the Office of the Interconnection shall determine whether to make a filing with the FERC proposing that an additional interface should be exempt or an existing exemption should be terminated. Any change in the exempt status of the interface shall become effective upon FERC acceptance. The Office of the Interconnection shall post a summary of the results of the PJM Market Monitoring Unit's quarterly analyses and the Office of the Interconnection's determination whether to make a filing with the FERC.

Section 6.4.1(e) of the PJM Operating Agreement provides:

Notwithstanding the number of jointly pivotal suppliers in any hour, if the Market Monitoring Unit determines that a reasonable level of competition will not exist based on an evaluation of all facts and circumstances, it may propose to the Commission the removal of offer-capping suspensions otherwise authorized by this section. Such proposals shall take effect only upon Commission acceptance or approval.

The MMU provided the first such quarterly report to PJM on September 8, 2006.⁵⁴ PJM did not respond and did not post the report or a summary of the report. The MMU provided the second quarterly report to PJM on October 18, 2006.⁵⁵ In both reports, the MMU recommended the elimination of blanket exemptions and that offer capping be based on the application of the three pivotal supplier test to actual market structures for all constraints, including the exempt interfaces.

PJM did respond to the October report.⁵⁶ PJM disagreed with the MMU and recommended that the offer capping exemption for the East, West and Central interfaces remain in place, and that further analysis be conducted of the APSouth exemption. On

⁵⁴ SMM00001; SMM00055-00062; SMM00006-00008

⁵⁵ SMM00009-00014; SMM00063-00070

⁵⁶ SMM00173-00174

December 14, 2006, PJM posted the MMU October report and PJM's response to it on the PJM web site as part of the materials for the December 20 MIC meeting.⁵⁷ There were analytical errors in the document, some of which were corrected in the January 2007 slides that Andrew Ott, PJM Vice President of Markets, presented to the MIC.

At the MIC meeting of December 20, 2006, Mr. Ott critiqued the MMU report, and I pointed out errors in the PJM Markets staff analysis.⁵⁸ After the MIC meeting, PJM and the MMU engaged in only a limited exchange of information, until the last week of January 2007.

In the week prior to the MIC meeting of January 31, 2007, there were a number of interactions between Mr. Ott and MMU staff, primarily myself, Howard Haas, and Paul Scheidecker, including the following:

- On Thursday, January 25, 2007, I talked with Mr. Ott briefly at the Members Committee meeting about the general approach that I intended to take in a rebuttal to PJM's response to the MMU report. We agreed to continue the discussion later in the day. That afternoon, while working at home, I received a call from Mr. Ott demanding that I send him the MMU slides. I advised that they were not yet complete and that I had not yet discussed them with the MMU staff. Mr. Ott then went to the MMU area demanding that Howard Haas give him the slides and refusing Howard's suggestion that he talk to me in an effort to resolve the matter. Howard arranged a meeting in a vacant office with Paul Scheidecker, Tom Zadlo and me (by telephone) to discuss the slides so that we could get a draft out for Mr. Ott. During that meeting, Mr. Ott walked into that office and again demanded the slides. When informed that I was on the phone, Mr. Ott told Howard that he wanted the slides and threatened to involve Human Resources.
- On Friday, January 26, 2007, I met with Mr. Ott and Ms. Zibelman about the forthcoming presentation to the MIC on January 31, and we agreed to exchange slides on Sunday evening, January 28, 2007. During our discussion of my slides, Ms. Zibelman informed me that presenting the per MWh impact of the impact of the exemption for the APSouth interface was acceptable, but that it was not acceptable to calculate the total dollar impact of the exemption because it would be misleading. She used the analogy of a utility rate case where the utility focuses on the small increase per kwh while opponents focus on the total dollars that the company would receive. At this meeting, I also informed Ms. Zibelman of Mr. Ott's behavior the previous day with my staff and indicated that I considered it to be unacceptable. After the meeting, Mr. Ott insisted to me that he should be able to demand material from the MMU staff without my approval. I responded that I wanted a cooperative working

⁵⁷ SMM00019

⁵⁸ SMM00028

relationship, but that, in my view, his proposed approach would undermine MMU independence.

- On Sunday, January 28, 2007, Mr. Ott and I exchanged slides as agreed.⁵⁹
- On Monday morning, January 29, 2007, Ms. Zibelman called to inform me that PJM would not provide the MMU slides to the MIC for the meeting of January 31, 2007 and would not post the slides on the MIC web page. Ms. Zibelman stated that PJM would post Mr. Ott's slides on the company's web site and distribute them to the MIC. Ms. Zibelman informed me that my slides, especially the discussion of the mark up analysis, were "inflammatory." I considered this action to be an infringement of MMU independence and informed FERC staff of these events.⁶⁰
- On Wednesday, January 31, 2007, Ms. Zibelman called me while I was driving to the MIC meeting and instructed me again not to provide my slides to the MIC because the discussion of mark up was "inflammatory," and my analysis of the total dollar impact of the actual mark up presented in Mr. Ott's slides would be misused. Ms. Zibelman also said that I should not discuss the fact that PJM refused to post my slides.

At the MIC meeting of January 31, 2007, Mr. Ott presented his slides,⁶¹ and I responded orally but was unable to make use of the MMU slides and did not provide the results of the mark up analysis or the total dollar impact of the exemption.⁶² Thus, the MMU was not able to present its full position to PJM members and regulators on a critical issue.

Following the January 31 meeting, I requested that my slides be posted and distributed to the MIC. PJM informed me that the slides would not be posted, unless the material on mark up was removed. I briefly considered its proposal, but ultimately did not agree to that censorship of MMU material. I did not remove the material on mark up because it was central to the analysis and the slides have not been posted to the MIC web site.⁶³

On February 2, 2007 I held an MMU meeting at which I discussed Mr. Ott's behavior and its implications for MMU independence. In addition, I announced the promotions of four MMU staff members to supervisor status and the associated reorganization of the MMU.

⁵⁹ SMM00126- SMM00132;

⁶⁰ SMM00140

⁶¹ SMM00044-00054

⁶² SMM00029-00043

⁶³ SMM00143-00144; SMM00154-00155

I also note that, prior to these events, PJM unilaterally removed the MMU's black start presentation from the Markets Implementation Committee ("MIC") agenda for its October 31, 2006 meeting. The MMU recommended that PJM file with FERC to inform the Commission that black start filings made by specific member companies were not consistent with the PJM tariff. The result of the filings for black start service was to increase payments by members for black start service.

8. In paragraph 10 of the Bowring Statement, you assert that PJM management delayed the release of an MMU report regarding the regulation market. Provide the following with respect to this assertion:

- A. Details of the incident,**
- B. The name and job title of the person who delayed the release,**
- C. The date, location and circumstances of any and all statements made regarding the delayed release, and persons present when each of the statements was made,**
- D. Any and all notes taken regarding such statements,**
- E. Any and all documents made in connection with such statements.**
- F. State all bases for your assertion that PJM management disagreed with your conclusions.**
- G. State if and when the report was released, and provide the date and circumstances surrounding such release.**

Answer:

PJM management has sought changes to, prevented the issuance of, or delayed the issuance of five MMU reports on regulation markets (including the 2005 State of the Market Report – see my answer to Data Request Question #6) because they have disagreed with my analysis.

The first such report related to the regulation market and was my declaration, filed with the Commission on October 1, 2004. PJM attempted to induce me to change the conclusions regarding the competitiveness of the western regulation market. While I did not change the conclusions, I did modify the report in response to pressure from PJM management. (See detailed time line attached.)⁶⁴

The second such report was a declaration I sought to file with the Commission between November 24 and November 30, 2004. On November 24, 2004, I e-mailed the PJM Leadership Team seeking permission to file with FERC, the MMU's summary of the actual regulation market results for the month of October 2004 to support PJM's request in its October 1, 2004 filing for a decision from the Commission on December 1, 2004. The basis for PJM's support for price-based offers was based on the notion of excess supply. In its October 1, 2004 filing, PJM committed to the Commission that if the excess supply it relied on as support for its request did not bear out as expected in actual operations, either prior to or after the effective date of market-based rates, that the MMU

⁶⁴ See timeline. SMM – 01853-01867.

would inform PJM and the Commission and may request that the regulation market be cost-based. I was attempting to fulfill our stated obligation to FERC to provide information regarding the actual level of excess supply. The actual market results the MMU sought to provide the Commission in this report bore out the MMU's stated views regarding the lack of excess supply, and failure of the Commission's market power tests presented in the MMU's October 1, 2004 Affidavit. Ms. Zibelman responded via email on November 24, 2004 stating that I may not file until the matter was discussed at the upcoming PJM Cabinet Meeting on November 30, 2004, just one day prior to the date of PJM's requested decision from the Commission. At the November 30, 2004 PJM Cabinet meeting, PJM management decided that the MMU report would not be provided to the Commission. As a result of the decision rendered at the November 30 PJM Cabinet meeting, this report by the MMU was never provided to the Commission.

The third such report was the 2005 State of the Market report. (See my answer to Data Request Question #6.)

The fourth such report was my Declaration, filed with the Commission on April 25, 2006. On April 8, 2005, I emailed members of PJM management detailing my briefing of Mr. Harris and Ms. Zibelman on the MMU's conclusion regarding the competitiveness of the West/South Regulation Market. My conclusions were based upon actual market conditions evaluated since the October 1, 2004 integration of AEP. During this briefing, I conveyed my conclusion that the market was not structurally competitive and that my affidavit to the Commission would reflect this finding. Following this briefing, and up until the eventual filing of my affidavit on April 25, 2005, numerous attempts were made by PJM management to have me modify my conclusions. As a result of these attempts, the filing to the Commission was delayed until April 25, 2005, just 5 days prior to the scheduled integration of Dominion. PJM's filing requested Commission approval for price-based regulation offers in West/South market. The basis for PJM's support for price-based offers hinged on the notion of excess supply. In its October 1, 2004 filing, PJM committed to the Commission that if the excess supply it relied on as support for its request did not bear out as expected in actual operations, either prior to or after the granting of market-based rates, that the MMU would inform PJM and the Commission and that the MMU may request that the regulation market be cost-based. The potential economic consequence to PJM Markets could be significant should the Commission be denied timely and objective notification of concerns identified by the Market Monitor. Such delay could have the effect of not allowing the Commission sufficient time to consider the merits of the filing, or to allow public comment on the matter before issuing its determination. In spite of the fact that the MMU explicitly notified it that the excess supply upon which its October 1, 2004 petition to FERC relied upon did not bear out as expected in actual operations, and its commitment to FERC to notify it of such, PJM issued the following conclusion in its April 25, 2005 filing to FERC :

"PJM does not believe that there is any material change in the expected excess supply of regulation, which formed the factual bases for the requested market-based regulation authority in this docket, accepted by the Commission by notice

dated November 30, 2004” (PJM April 25, 2005 filing, FERC Docket No. ER-05-10, at page 2.)

The Commission in its April 29, 2005 response to PJM’s filing acknowledged the validity of the conclusions reached by the MMU in regard to excess supply. The Commission stated, “Again, the concerns of PJM’s Market Monitor in the regard have been confirmed by actual operating experience in the PJM West Regulation Market after the integration of AEP, DP&L and Duquesne.” (FERC’s April 29, 2005 response, ¶ 23.)

The fifth such report was the MMU report on the combined regulation markets. The markets were combined in August 2005, and I wanted to release a report based on three months of data in December 2005. But PJM management actions caused the release of the report to be delayed until October 2006, more than a year after the regulation markets were combined.

In its April 29, 2005 Order, the Commission concluded that “the concerns about the potential of certain suppliers to exercise market power expressed by PJM’s Market Monitor in the October 1 Filing have been substantiated by actual operation of the PJM West Regulation Market after the integration of AEP, DP&L and Duquesne, as discussed in the State of the Market Report.” (April 29, 2005 FERC Order at p. 22.) The Commission went on to conclude that, “Again, the concerns of PJM’s Market Monitor in the regard have been confirmed by actual operating experience in the PJM West Regulation Market after the integration of AEP, DP&L and Duquesne.” (FERC’s April 29, 2005 response, ¶ 23.) The Commission called for an assessment of the actual operating experience in the PJM West/South Regulation Zone for a period (e.g., six months) after the integration of Dominion. The Commission requested that the assessment include an independent confirmation, under actual operating conditions, of the amount of excess regulation supply in these regions. (April 29, 2005 FERC Order at p. 26.)

On July 26, 2005 PJM committed in an email to the MIC and EMC Committees to a six month combined regulation market trial during the period August 1, 2005 through January 31, 2006, with a report on the competitiveness of this market structure to stakeholders within 3 months. A report on the regulation market results following the May 1, 2005 integration of Dominion was committed to in the MMU Affidavit accompanying the April 25, 2005 West/South Regulation Market filing to the Commission. Further, PJM committed in a July 26, 2005 email to the MIC and EMC Committees to a six month combined regulation market trial during the period August 1, 2005 through January 31, 2006, with a report on the competitiveness of this trial construct to stakeholders within 3 months. On August 15, 2006, I emailed Mr. Ott and Mr. Bresler expressing my desire to release the Combined Regulation Market Report and asking to be placed on an upcoming PJM Committee meeting agenda to brief stakeholders. On August 15, 2006 Mr. Bresler (Chairman of the PJM MIC) emailed me and copied Mr. Ott stating that he recommended presenting the MMU findings at the upcoming PJM MRC and PJM MIC Committee meetings. Mr. Ott responded in an August 15, 2006 email stating that I had “never closed the loop” with him on a final

recommendation to be contained in the MMU report. I responded to Mr. Ott in an August 15, 2006 email stating that the report's recommendations had been under discussion with PJM for four months and that the MMU needed to release it to stakeholders. Mr. Ott emailed me with his response contending further that he is not yet satisfied with the analytical methods underlying the MMU recommendations and stated "don't want to create too much more email traffic on this...." I replied with an email asking that, "regardless of the disagreements over the results etc, do you agree that this is an MMU report, owed to membership per a vote at the MIC? I believe that we have provided you all the requested information. Let me know exactly what information you would like to see in addition to what has been provided."

As described above, the release of this assessment by the PJM Market Monitor was delayed for several months, until October 18, 2006, due to pressure applied by PJM to alter its conclusions and recommendations.

Through the adoption of confidential procedures (see my answer to Data Request Question #6) and otherwise, PJM management's effort to seek changes to, prevent the issuance of, or delay the release of the Market Monitor's reports on regulation markets have significantly influenced the foregoing reports. PJM tried to modify MMU conclusions in each of them. Where PJM failed to modify the content of these reports, it worked to delay their release to PJM's board, the stakeholders, and government agencies, including but not limited to FERC.

- 9. State whether, prior to April 5, 2007, PJM management prevented the MMU from performing its tariff functions either by failing to provide appropriate staffing and resources, failing to provide access to required information, or failing to arrange for the cooperation of PJM employees with the MMU, all as required by the PJM Open Access Transmission Tariff of PJM (PJM Tariff). State with as much specificity as possible all the reasons for your answer, the circumstances relied upon for your answer, and any and all documents that relate to such reasons and circumstances.**

PJM has made it increasingly difficult for me to perform my tariff functions through, as the question indicates, a lack of cooperation by PJM employees, including management, with the MMU; threats by PJM to deny the MMU access to required information; and PJM's targeted transfer of critical MMU employees. (See my answers to Data Request Questions #1 through #8.)

My testimony in response to the entirety of the Commission's data request goes into great detail about many of these steps taken by PJM that have made it hard for me to perform my functions under the tariff. However, it should be noted that these examples are not exhaustive.

As I stated on April 5, "PJM management has taken a series of actions towards the MMU which I believe are inconsistent with independence and with the objectives of the MMU as defined in the tariff." I have included supporting information and additional

details in this affidavit. I made the statement on April 5 because of my concern then and now that PJM's actions are inconsistent with the objectives of the MMU as defined in the tariff. However, the Commission will ultimately make the judgment as to whether the MMU may not be able to fulfill its obligations under the tariff.

I am concerned that if left unchecked, such PJM actions will escalate to the point where PJM would violate the tariff. I am concerned that PJM actions could compromise the continued ability of the MMU to provide to stakeholders, members, and the Commission information and analysis, unfiltered by PJM. A conclusion that PJM has not yet violated the tariff should not end the Commission's inquiry into PJM's interference with the independence of the MMU.

The following actions, among others, taken by PJM before April 5, 2007 have made it difficult for the MMU to meet its tariff obligations. This list, however, is not exhaustive:

- PJM Sought Changes to, Prevented the Issuance of, or Delayed the Release of Five MMU Reports on Regulation Markets. (See my answer to Data Request Question # 8].)
- PJM Tried to Bar the MMU from Independently Analyzing What Would Have Been the Largest Energy Merger in American History. (See my answer to Data Request Question #1.)
- PJM Ordered the Removal of a Conclusion Regarding the Regulation Market from the MMU's 2005 State of the Market Report. (See my answer to Data Request Question #6.)
- PJM Has Interfered with the MMU's Role as Chair of the Market Monitoring Advisory Committee. (See my answer to Data Request Question #1.)
- PJM Pressured the MMU to Modify Its Positions on the RPM Market Power Mitigation Rules. (See my answer to Data Request Question #1.)
- PJM Precluded the MMU from Presenting Its Views to PJM Members. (See my answer to Data Request Question #7.)
- PJM Has Prevented the MMU from Analyzing the BGS Auction for the NJ BPU. (See my answer to Data Request Question #1.)
- PJM Refused the MMU's Request to Submit a Section 205 Filing with FERC When an Exempt Unit Exercised Significant Market Power. (See my answer to Data Request Question #1.)
- PJM Unilaterally Removed the MMU from its Role in the Cost Development Task Force. (See my answer to Data Request Question #1.)

- PJM Has Attempted to Develop Confidential Procedures That Would Give It Prior Review over MMU Reports and the Authority to Delay Their Release. (See my answer to Data Request Question # 6.)

10. State whether you disagree with any of the factual statements made in the Answer of PJM Interconnection, L.L.C. to Complaint for a Show-Cause Order, filed in Docket No. EL07-56-000, or the Answer of PJM Interconnection, L.L. C. to Complaint and Motion for Interim Relief, filed in Docket No. EL07-58-000. If so, state with particularity with which statements you disagree and your reasons for such disagreement, and provide any and all supporting documentation.

Answer:

As a threshold matter, let me inform the Commission where I do agree with PJM's Answers.

I also agree with PJM that "the Commission should permit the PJM Board to investigate the facts and report to the Commission regarding its findings,"⁶⁵ and that as of the time PJM filed its Answer, PJM's Board, through the retention of outside counsel, began an independent investigation of my April 5, 2007 testimony. I agree that FERC's investigation does not preempt or obviate the need for the PJM Board of Managers' independent counsel to continue with its investigation.⁶⁶ Both investigations must continue, and I am cooperating fully with each.

In addition, I agree with PJM that my April 5, 2007 testimony was not the whole story.⁶⁷ My presentation was not meant to be an exhaustive statement, but to identify a problem. Clearly, I was identifying my concerns and providing some illustrative examples. Thus, I did not go into full detail about PJM's conduct on April 5. The Commission's data request, however, has given me the opportunity to provide greater detail and evidence in support of my April 5 testimony. Even in this context, there is a risk that some relevant facts may not be included. It is for that reason that I will be pleased to work with FERC and its investigators, as well as the independent counsel and other governmental investigators. Likewise, I will be responding to the PJM submission, which is to be filed at the same time as this document. Through these comprehensive processes, PJM's concern about "cursory and unsubstantiated comments"⁶⁸ will be eliminated.

I share PJM's expectation that: "[T]he market monitor and his staff ... continue to devote their full time and attention to their duties."⁶⁹

⁶⁵ PJM's Answer, Docket Nos. EL07-56, Apr. 30, 2007 ("PJM Apr. 30 Answer"), at 2. SMM – 01334.

⁶⁶ *Id.* at 5. SMM – 01337.

⁶⁷ PJM Apr. 30 Answer at 5. SMM – 01337.

⁶⁸ *Id.* at 2. SMM – 01334.

⁶⁹ *Id.* at 4. SMM – 01336.

I would reduce my disagreements with PJM's Answer in Docket No EL07-58-000, which includes their answer in Docket No. EL07-56-000 as an attachment, to the following three topics and will address these topics and PJM's statements in detail below:

A. PJM's Dismantling of the MMU – Staff and Budget

B. Phillip Harris' March 29, 2007 Meeting with the MMU

C. Database Stewardship

A. PJM's Dismantling of the MMU – Staff and Budget

I disagree with PJM's statement that: "Far from 'dismantling' the MMU, PJM has substantially expanded the MMU in the past several years, at a pace faster than the growth of PJM's other departments."⁷⁰

1. The Number of Full-Time MMU Employees Has Been Reduced through Transfers, and PJM Has Not Taken Appropriate Steps to Add New Full-Time Employees to the MMU, Despite the Need for an Increase.

PJM claims in its Answers to OPSI's complaints that "PJM has substantially expanded the MMU in the past several years, at a pace faster than the growth of PJM's other departments."⁷¹ But PJM's claim is incorrect.

The number of salaried full-time MMU employees was 15 in 2004, and is 13 in 2007, a 13 percent reduction at a time when an increase of salaried full-time MMU employees was warranted.⁷² Meanwhile, from December 2004 to December 2007, PJM grew from 512 to 592 employees (a 16% increase), and the Market Services Division grew from 57 to 76 full-time employees in the same amount of time (a 33% increase).⁷³

Full-time employees are the mainstay of the MMU, an operation that demands full-time attention and cannot rely on part-time assistance.

To create the impression that there is the equivalent of 19 full-time MMU employees at PJM in 2007, PJM's Answers to OPSI's Complaints reference include co-

⁷⁰ PJM's Answer, EL07-58-000, May 3, 2007, at 6 ("PJM May 3 Answer"). SMM – 01323.

⁷¹ PJM Apr. 30 Answer at 9. SMM – 01341.

⁷² PJM Organizational Charts, June 2007, Dec. 2006, Dec. 1, 2005, and Dec. 1, 2004. SMM – 01375, SMM – 01396, SMM – 01413, SMM - 01442.

⁷³ PJM Organizational Charts, June 2007, Dec. 2006, Dec. 1, 2005, and Dec. 1, 2004. SMM – 01381-01382, 01400-01401, 01428-01429, 01448-01449. (The total number of individuals who appear to be in Markets/Market Services in these documents is higher than what we represented because "Member Relations" was removed from Markets/Market Services; thus, the Member Relations employees do not count toward the total number of Markets/Market Services employees.)

ops and contractors,⁷⁴ who are not the equivalent of salaried, full-time MMU employees, as well as PJM employees who have transferred out of the unit and are no longer MMU employees.

The transferred employees no longer work for the MMU. The transition plans for both employees state that they may devote up to 30% of their time to MMU related tasks, with some flexibility, and these plans also indicate that in time these transfers will not work at all for the MMU.⁷⁵ The Market Monitor no longer manages employees who transferred out of the unit or their task and activities.

(See also my answer to Data Request Question #1.)

2. The MMU Is Not the Fastest Growing Division at PJM.

Contrary to PJM's assertion in its Answer, the MMU is not PJM's fastest growing division. To the contrary, the MMU is not growing in terms of staff. (See my answers to Data Request Questions #1, #5 and *supra* in #10.)

On a total approved budget basis, the MMU budget increased 38% between 2004 and 2006, 24% between 2004 and 2007, but it decreased 10% between 2006 and 2007. The Market Services Division, on the other hand, had a total approved budget increase of 52% between 2004 and 2006, an increase of 110% between 2004 and 2007, and an increase of 39% between 2006 and 2007. Based on this, it should be clear that the MMU has not earned the distinction as the fastest growing division in PJM in terms of both full time head count and in total budget.

It is clear that the growth of the Market Services Division has significantly exceeded that of the MMU in terms of dollars and staff. (See my answers to Data Request Questions #1, #5 and *supra* in #10.)

B. PJM Inaccurately Characterized Phillip Harris' Meeting with the MMU on March 29, 2007.

On March 29, 2007, PJM CEO and President, Phillip Harris, with PJM Human Resources ("HR") officials present, informed the MMU staff that, "the MMU function would be best provided by an external consultant rather than the current MMU."⁷⁶ Mr. Harris said this change arose because state public utility commissions ("PUCs") have been putting pressure on PJM to make the Market Monitor more independent.

Also at the same meeting, Mr. Harris informed MMU staff that:

⁷⁴ PJM May 3 Answer at 9-10 & nn. 11-12. SMM – 01341-01342.

⁷⁵ Memorandum from Lindsay Johnston, PJM VP of HR, to Frank Racioppi, Apr. 26, 2007. SMM – 01430; Memorandum from Lindsay Johnston to Brigid Cummings, Apr. 26, 2007. SMM – 01431.

⁷⁶ Joseph E. Bowring, testimony before FERC technical conference on "Review of Market Monitoring Policies," Docket No. AD07-8-000, Apr. 5, 2007, at ¶ 12.

- There were lots of open positions in other divisions at PJM for which they are qualified and that they could apply for.⁷⁷
- PJM would be removing the MMU's database from the MMU and transferring it elsewhere in PJM.⁷⁸
- The MMU's role with the Cost Development Task Force was an accident of history, and that the task force should be run by the Markets Division (*See supra* text and accompanying notes in response to FERC Data Request Question #4.)

The MMU staff and I left that meeting with Mr. Harris in fear that the MMU would lose more independence or be disbanded altogether, and the MMU staff feared that they would lose their jobs at the MMU or at PJM.

This stands in contrast to PJM's characterization of the same meeting in its Answer of April 30:

As to the referenced meeting between PJM management and the MMU, in the view of PJM management the underlying facts demonstrate only that PJM management properly visited MMU staff before the 2007 PJM Strategic Report was released, to advise them in advance of the report's recommendation to consider use of an external market monitor, and to send two messages: first, they should remain focused on their important duties; and second, PJM values them as employees and hopes to retain them regardless of the outcome of that review. This action hardly can be considered a tariff violation—to the contrary, it simply reflects good management practice and common courtesy.⁷⁹

I disagree that the meeting reflected “good management practice and common courtesy,” and, more importantly, what happened at the meeting did not reflect the stated purpose of the meeting, as PJM articulated it in the referenced paragraph.

Understanding why we did not feel “value[d]” by PJM after that meeting requires an understanding of the context in which the statements were made. I have addressed much of that context already in answering the preceding questions.

Mr. Harris began the meeting by mentioning the two issues from the Strategic Report that would impact the MMU: the PJM member-states' concerns regarding the independence of the MMU and Members' concerns regarding over-mitigation. He

⁷⁷ See e-mails. SMM – 00367-00369.

⁷⁸ Id.

⁷⁹ PJM Apr. 30 Answer at 11. SMM – 001343.

addressed the issue of independence first and stated that the only way to be independent is to be an external consultant. Mr. Harris stated that the “best practice” is an external market monitor with a contract with FERC. An MMU employee asked about RTOs with a combined internal and external MMU and Mr. Harris responded that hybrid structures could also be considered a “best practice.”

Mr. Harris then stated that the responsibility for the MMU databases would be taken away from the MMU. He stated that the database did not belong to the MMU and that I had volunteered to create a database for PJM. I disagree with both of these assertions.

Mr. Harris also talked about the movement of the Cost Development Task Force (“CDTF”) from the MMU to the Market Services Division. He erroneously stated that having the MMU responsible for the CDTF was simply a historical artifact resulting from my volunteering to take the lead. The responsibility for the CDTF was explicitly placed with the MMU to address issues, including antitrust, and the change was approved by members at both CDTF and Electricity Markets Committee (EMC) meetings in 2003. (See my answer to Data Request Question #1.)

Mr. Harris also mentioned that there were many positions at PJM that the MMU staff could apply for. He used the present tense, not the future tense, to convey that openings were currently available.

PJM’s press release stated that it recognized “that this type of organizational examination creates concerns among the affected employees.” Yet at the meeting, Mr. Harris gave no indication that PJM had considered a retention plan or transition plan, if needed. He gave no reassurances regarding ongoing employment at PJM, other than noting the available open positions MMU staff could apply for.

C. Database Stewardship

In its Answers, PJM explains – what Mr. Harris had announced at the March 29, 2007 meeting with MMU staff – that PJM seeks to transfer the “‘stewardship’ of certain databases used by the MMU to the Market Services Department. PJM then paints a sanguine picture of this transition. But I disagree.

Transferring the stewardship of MMU data to the Market Services Division would empower it to potentially limit the ability of the MMU to develop metrics and to continue to develop new independent analysis of the PJM market that stakeholders, states, and FERC rely on. It would also prevent us from discharging our duties under the tariff. Without this independent analysis, there would be no check on the potential exercise of market power and potentially resultant increases in electricity prices.

PJM states in the May 3, 2007 Answer on page 7:

The only potential change regarding data that PJM is

considering is changing the designated security “stewardship” of certain databases used by the MMU, solely to facilitate access by the Market Services Department to the data relating to the historical operation of PJM’s markets, not to “remove” or diminish access by the MMU to that data in any manner whatsoever.⁸⁰

Also on page 13 of the April 30, 2007 Answer:

The only potential change regarding data that PJM is considering is changing the designated security “stewardship” of certain databases used by the MMU from Mr. Bowring to Mr. Ott, PJM’s Vice President of Market Services. This change would have no bearing on access to any data. All PJM databases are maintained on secure servers in the physical custody of PJM’s Information and Technology Services Division, which supports all of PJM’s databases for use by the entire organization, including the MMU. No distinction is (or should be) made between “PJM” and “MMU” data. Each database has a designated “steward” with administrative responsibilities for security of PJM data and, as part of this responsibility, authorizing changes to access to the database by PJM personnel. Any change in “stewardship” of the subject database from Mr. Bowring to Mr. Ott would be intended solely to facilitate access by the Market Services Department to the data relating to the historical operation of PJM’s markets, not to “remove” or diminish access by the MMU to that data in any manner whatsoever. Even if this change occurred, the MMU would retain exactly the same access to that data, including to all datasets developed by the MMU from historic data for analytical and other purposes. Finally, even if this change occurred, the MMU would retain the same opportunity to analyze, organize, categorize, test and examine this data both during and after any change in security “stewardship.”⁸¹

Some background on the MMU data repository may help elucidate the issues surrounding data access, security stewardship and ownership/control of the MMU data repository. The MMU data repository has been developed, structured and maintained by the MMU for the past four years in order to provide the basis for MMU analysis. Both operations and markets data is collected daily and loaded into the repository which has been structured to facilitate specific market monitoring metrics and analytics. Ongoing

⁸⁰ PJM Answer May 3 at 7. SMM – 01324.

⁸¹ PJM Answer Apr. 30 at 13. SMM – 01345.

development and maintenance of the data repository requires knowledge of market monitoring because the data repository is a dynamic structure, rather than a static one. Daily, ongoing interaction between MMU staff and the MMU Data and Management Supervisor is key to repository structure, development and maintenance because MMU analysis changes due to improvements, changes in the markets or changes in participant behavior. When a new or modified analysis is undertaken, MMU analysts sometimes need new or augmented data. The central organizing factor of the MMU data repository is MMU analysis. It is not simply a historical markets database.

At present, the Market Services Division can read MMU data. The Market Services Division has never been denied access to MMU data. What they cannot do, and should not be able to do, is add data to or delete data from the MMU data. Nor can the Market Services Division limit our ability to gather new types of data or to develop new metrics based on new ways of looking at data. That is because I have “stewardship” over the MMU data, and were I to relinquish that “stewardship” to Mr. Ott, the Market Services Division would have the authority to do all those things. That would endanger the MMU’s ability to render independent analysis of the market.

PJM also incorrectly asserts: “No distinction is (or should be) made between ‘PJM’ and ‘MMU’ data.” At least two distinctions can be made between PJM and MMU data. The MMU collects data from PJM sources, but also adds data from other sources to it. When the MMU adds that external data to its subset of PJM data, the combined data form a unique set of MMU data. The MMU organizes and maintains this data to support MMU analyses. If other PJM departments were to add to or delete the MMU’s data, they would be influencing what would otherwise be an independent set of data.

These distinctions matter when considering another of PJM’s misrepresentations regarding the proposed change in data “stewardship.” PJM claims that “even if this change occurred, the MMU would retain the same opportunity to analyze, organize, categorize, test and examine this data both during and after any change.” Transferring the “stewardship” of the database from Mr. Bowring to Mr. Ott would in fact result in a significant change in the MMU’s ability to perform market analyses. Mr. Ott or his designee in the Markets Division would decide what data is kept or deleted, how it is organized and structured, and whether new or augmented data will be added. The Market Services Division would control what data is available to the MMU and by doing so, control the type and extent of analyses performed by the MMU. It is unacceptable for the market, which the MMU is charged with monitoring, to control the data used to monitor that market.

It is also important to address the following in PJM’s April 30 Answer:

There is no requirement that the market monitor have the “stewardship” responsibility for PJM data that he uses to monitor the markets. In fact, the tariff anticipates the very information-sharing that PJM management proposed. The PJM Tariff provides that the market monitor is to “rely

primarily upon data and information that is customarily gathered in the normal course of business of PJM,” and the President’s obligation is simply to assure that the MMU has “access to required information.” That is being done, and there is no claim by anyone, the MMU included, that this is not taking place.

Nonetheless, although PJM clearly is allowed to make this change, and it would have no effect on the MMU’s access to data, the change has not yet been implemented, and therefore PJM will defer any change, pending submission of the results of the Board’s investigation to the Commission. (Footnotes omitted.)⁸²

Ultimately, FERC will determine whether PJM’s interpretation of the tariff is accurate. But, so far as PJM has introduced this tariff language into the record, it is important to review the entire section of Attachment M, from which PJM has quoted, as well as the neighboring sections.

First, PJM selectively quotes from Section VI.A. of Attachment M to the tariff, which provides:

VI. A. Primary Information Sources: The Market Monitoring Unit shall rely primarily upon data and information that is customarily gathered in the normal course of business of PJM along with such publicly available data and information that may be helpful to accomplish the objectives of the Plan. The data and information available to the Market Monitoring Unit shall include, but not be limited to, information gathered or generated by PJM in connection with its scheduling and dispatch functions, its operation of the transmission grid in the PJM Region, its determination of Locational Marginal Prices, information required to be provided to PJM in accordance with the PJM Tariff, the PJM Operating Agreement, the PJM Reliability Assurance Agreements, the Reliability Assurance Agreement South and the Reliability Assurance Agreement West and any other information that is in the possession of PJM[.]

Because of the word, “sources,” in “Primary Information Sources,” the heading of Section VI.A, it appears clear that the MMU is to rely on PJM data as a source of data. It does not, however, state that PJM should have the authority to delegate stewardship of the MMU’s data to the Markets Services Division of PJM to add to and delete from the MMU’s data.

⁸² PJM Apr. 30 Answer at 14-15. SMM – 01346-01347.

In addition, the following sections of Attachment M to the tariff also provide relevant context within which to analyze PJM's interpretation of the tariff:

VI. D. Collection and Availability of Information: The Market Monitoring Unit shall regularly collect and maintain the information that it deems necessary for implementing the Plan. The Market Monitoring Unit shall make publicly available a detailed description of the categories of data collected by the Market Monitoring Unit. To the extent it deems appropriate and upon specific request, the Market Monitoring Unit may release other data to the public, consistent with PJM's obligations to protect confidential, proprietary, or commercially sensitive information; and

VI. F. Evaluation of Information: The Market Monitoring Unit shall evaluate, and shall refine on the basis of experience, the information it collects and maintains, or that it receives from other sources, regarding the operation of the PJM Market or other matters relevant to the Plan. As so evaluated, such information shall provide the basis for reports or other actions of the Market Monitoring Unit under this Plan.

PJM is not now denying the MMU access to its required information. But if PJM permits the Market Services Division to add to and delete from the MMU's data, then PJM will be denying the MMU access to its required information.

It cannot be that the President of PJM's responsibility terminates after providing the MMU with "access to required information." Were it otherwise, the President would be denying the MMU "adequate resources" in the form of independently collected and maintained information, as required by Section V.D., Attachment M to the tariff.

Attachment M, Section VI.D further supports my understanding of Section VI.A and explicitly contradicts PJM's assertion that the MMU is not required to have and control its own database. The tariff states that "The Market Monitoring Unit shall regularly collect and maintain the information that it deems necessary for implementing the Plan." This tariff section uses the word "shall," denoting a requirement, not merely a permitted action. When the MMU collects and maintains data, as required by the tariff, it must have some way to store it and that is the MMU data repository. "Collect and maintain" implies ownership or in PJM's terminology, "stewardship." Put another way, Section VI.D appears to bar PJM from handing the "stewardship" of the MMU data to the PJM VP of the Market Services Division.

The MMU's required ownership of its data repository is further supported by Attachment M, Section VI.F, where it states, "The Market Monitoring Unit shall

evaluate, and shall refine on the basis of experience, the information it collects and maintains, or that it receives from other sources, regarding the operation of the PJM Market or other matters relevant to the Plan.” The tariff requires the MMU to refine the information that it collects and maintains. In order to fulfill this requirement, the MMU must control its data repository so that it can make the refinements resulting from MMU experience monitoring the markets.

The importance of the MMU’s control over its data repository cannot be overstated. The ability to monitor the market and the credibility of MMU analyses are dependent on the quality, extent and organization of our data. The MMU allocates significant resources to the ongoing maintenance and development of our data repository so that MMU staff can rely on it and produce the analyses that stakeholders, states and FERC rely on. If the Markets Division or anyone else, whether PJM division or market participant, can control the type, amount, and quality of the MMU’s data, the MMU will not be able to produce the objective analyses required by the tariff and the Federal Power Act.

FURTHER THIS AFFIANT SAYETH NOT

Joseph E. Bowring
Joseph E. Bowring

DISTRICT OF COLUMBIA, ss:

SWORN To and subscribed before me this 12th day of June, 2007

Sandra L. Thayer
Notary Public for District of Columbia

My Commission Expires:

**SANDRA L. THAYER
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires June 30, 2011**