

LAW OFFICES
STEIN, MITCHELL & MEZINES
L.L.P.

1100 CONNECTICUT AVE., N.W., STE. 1100
WASHINGTON, D. C. 20036

GLENN A. MITCHELL
JACOB A. STEIN
GERARD E. MITCHELL
ROBERT F. MUSE
DAVID U. FIERST
RICHARD A. BUSSEY
PATRICK A. MALONE
ROBERT L. BREDHOFF
CHRISTOPHER H. MITCHELL
ANDREW M. BEATO
LAURIE A. AMELL
DENIS C. MITCHELL
ARI S. CASPER
JOSHUA A. LEVY

OF COUNSEL
GEORGE ANTHONY FISHER
RETIRED
BASIL J. MEZINES

TELEPHONE: (202) 737-7777
TELECOPIER: (202) 296-8312
www.SteinMitchell.com

August 22, 2007

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: *Allegheny Elec. Coop. Inc. et al v. PJM Interconnection, LLC*, Docket
Nos. EL07-56-000 and EL07-58-000

Dear Ms. Bose:

This submission by Dr. Joseph E. Bowring responds to the Offer of Settlement, filed by PJM Interconnection, LLC ("PJM") on August 2, 2007.

To the extent that this is a settlement process, Dr. Bowring invokes the strictures of Rule 408 of the Federal Rules of Evidence and other similar statutory and common law rules governing settlement negotiations.

PJM's Offer of Settlement was filed in an attempt to resolve its dispute with OPSI and the other complainants in the above-captioned matters. This is an encouraging sign. Dr. Bowring is pleased to participate in this settlement process, and is confident he can contribute to the settlement negotiations. It is his hope that the settlement process will result in a Market Monitoring Unit ("MMU") at PJM that can operate independently, objectively, and effectively.

Dr. Bowring also hopes this settlement process will result in an institutional framework that will eliminate the interference with the independence of the MMU about which he testified before the Commission on April 5, 2007 and then elaborated upon in his June 12, 2007 affidavit and July 10, 2007 supplemental response. In large part, his

testimony can serve as the prism through which the settlement is seen because, as market monitor, he has firsthand experience with the issues that will be discussed in the negotiations.

Optimistic as Dr. Bowring may be, he also understands that even the best intended negotiations may not resolve all of his concerns or address every aspect of his testimony. Should the settlement process not address or resolve any aspect of his testimony, the unresolved issues will come before the Commission.

This letter in the main addresses the settlement proposal offered by PJM. It does not address the legal position advanced by PJM, except to note that this case is not appropriate for summary disposition for PJM. If settlement negotiations are not successful, Dr. Bowring is fully prepared to participate in the Commission's processes, including investigations and hearings.

This submission will first discuss the purpose, principles, and functions of the MMU that must be preserved in any settlement. It will then examine some of the features of PJM's proposed offer of settlement, which Dr. Bowring finds to be unacceptable. Finally, this submission will include Dr. Bowring's preliminary proposal for the MMU, based on the existing market monitoring plan contained in Attachment M of the PJM tariff.

Market Monitoring: Purpose, Principles, and Functions.

The basic purpose, principles, and functions of market monitoring must be clear before any detailed proposal for the structure of the MMU can be evaluated.

A. The Purpose

The purpose of the market monitoring function is to assist the Commission in making the markets more competitive and to bring increased transparency to the markets and to the operations of the RTO/ISO.

In its "Policy Statement on Market Monitoring Units," the Commission wrote:

MMUs perform an important role in assisting the Commission in enhancing the competitiveness of ISO/RTO markets. Competitive markets benefit customers by assuring that prices properly reflect supply and demand conditions. MMUs monitor organized wholesale markets to identify ineffective market rules and tariff provisions, identify potential anticompetitive behavior by market participants, and provide the comprehensive market analysis critical for informed policy decision making.¹

¹ 111 FERC ¶ 61,267 (2005) at ¶ 1.

In achieving this purpose, the MMU must be accountable to the Commission. This accountability must be made explicit in the MMU plan.

Any settlement must ensure that the MMU is able to meet the purpose of the market monitoring function.

B. The Principles

The principles of market monitoring are independence and objectivity. The purpose of market monitoring cannot be achieved without ensuring the independence and objectivity of the MMU.

In approving PJM's market monitoring plan ("Attachment M to the PJM tariff"), the Commission stated: "An objective of the Plan is that the MMU independently and objectively monitor and report on the operation of the PJM Market."² Any settlement must adhere to these principles.

C. The Functions

To independently and objectively accomplish the purpose of market monitoring, the MMU must:

1. Broadly and effectively monitor and investigate the PJM market and the RTO;³
2. Identify actual or potential anticompetitive behavior;
3. Evaluate the operation of markets to detect design flaws or structural problems;
4. Report any market-related issues to the Commission immediately;
5. Recommend changes to market rules to enhance competition;
6. Provide reports and information to the Commission, state commissions, market participants, and the RTO on a regular basis and as requested;
7. Collect, maintain and control the information and data required to monitor the markets and the RTO; and
8. Have access to adequate resources including financial, staff and data resources.

² "Order Approving Market Monitoring Plan as Modified," 86 FERC ¶ 61,247 (1999) at p. 2.

³ *Id.* at 61,887 n.4 (citing Atlantic City Elec. Co., 86 FERC ¶ 61,248 (1999)) ("the MMU's ability to effectively and broadly monitor and investigate the PJM Market is essential"). *See also* "Order Approving Market Monitoring Plan as Modified," 86 FERC ¶ 61,247 (1999) at pp. 2-3.

The market monitoring plan must ensure that the purpose, principles and functions can be achieved in an effective manner. Although the purpose, principles and functions are, in a general sense, already reflected in Attachment M to the PJM tariff, modifications to Attachment M are required in order to ensure that the market monitoring purpose, principles, and functions are guaranteed and enforceable by the Commission.

Essential MMU Features

Independence and objectivity, as well as the authority to monitor and investigate effectively and broadly, must govern the design of any MMU plan. The structure and functions of the MMU follow from these principles and purposes. Some of these features merit further elaboration, as follows.

Independence

To carry out its functions, the MMU must be independent of and therefore free from interference by all the organizations it is charged to monitor, including the RTO and market participants. As the Commission stated “An objective of the Plan is that the MMU independently and objectively monitor and report on the operation of the PJM Market.”⁴

The market monitoring plan must include the organizational and structural safeguards of the independence of the MMU, providing clear and specific criteria enforceable by the Commission. These rules must specify and clarify the relationships between the MMU and PJM management, the PJM Board of Managers, the state public utility commissions, market participants and the Commission, respectively.

Independent and Objective Analysis of the PJM Market

The MMU must have the authority to analyze independently and objectively any and all aspects of the PJM market. In a 1997 order approving the comprehensive restructuring of the PJM marketplace, the Commission emphasized the broad role and independence of the market monitoring function.⁵

The Commission retains “the statutory responsibility...to ensure that markets within the Commission’s jurisdiction are free of design flaws and market power abuse.”⁶ Accordingly, the Commission stated, when approving the Market Monitoring Plan (Plan) in PJM, “In view of our contemporaneous decision to approve market-based pricing authority in a related proceeding, the MMU’s ability to effectively and broadly monitor and investigate the PJM Market is essential.”⁷ More generally, the Commission required that the market monitoring function be part of any RTO so as to provide the Commission assurance that “markets within a region covered by an RTO do not result in wholesale

⁴ “Order Approving Market Monitoring Plan as Modified,” 86 FERC ¶ 61,247 (1999) at p. 2.

⁵ 81 FERC ¶ 61,257 (1997) at pp. 88-89.

⁶ “Order Provisionally Granting RTO Status,” 96 FERC ¶ 61,061 (2001) at p. 28.

⁷ “Order Approving Market Monitoring Plan as Modified,” 86 FERC ¶ 61,247 (1999) at pp. 2-3.

transactions or operations that are unduly discriminatory or preferential or provide for the exercise of market power.”⁸

The MMU should have a clear responsibility to review and analyze any factors that may impact competition, market power or compliance with PJM or FERC market rules. As reiterated in the Commission’s Policy Statement, “ISO/RTO markets are operationally complex.”⁹ RTO or participant actions can have complex or unintended consequences that may impact competition. Such factors include, among other things, dispatch, settlement, cost allocation, cost development and price formation for all PJM markets and services. The MMU should continue to have the responsibility to review and analyze the competitive or other market impacts of any RTO or participant actions, including operation of the market, affecting PJM markets and related services or cost.

Independent Recommendations Regarding the PJM Market and the RTO

The MMU should have the authority to recommend changes to the market rules, including enforcement/mitigation mechanisms, and to play an active role in the internal and participant processes associated with formulating and implementing market rule changes.¹⁰

The Commission explicitly mandated this responsibility in its April 7, 2005 “Guidance Order on Expedited Tariff Revisions for Regional Transmission Organizations and Independent System Operators,” ordering that:

“Where an RTO MMU identifies a flawed tariff provision or rule meeting the criteria above, it should: develop a proposal to remedy the tariff or rule flaw, advise the RTO of its finding; and request that the RTO make a section 205 filing proposing a revision. If, however, the RTO does not choose to follow the MMU’s advice and file the proposal with the Commission, the MMU should make its views known to the Commission and the RTO stakeholders.”¹¹

While it is clear that it is the RTO, and not the MMU, that has the authority to make a section 205 filing, it is also clear that the MMU has the responsibility to ensure that significant design flaws are brought to the attention of the RTO and, if necessary, directly to the attention of the Commission and the stakeholders. The MMU role is that of a monitor, reporter, and adviser to the RTO, the RTO stakeholders and the Commission.¹²

⁸ Order No. 2000, 89 FERC ¶ 61,285 (1999) at p. 462.

⁹ 111 FERC ¶ 61,267 (2005) at ¶ 3.

¹⁰ 111 FERC ¶ 61,009 (2005) and 111 FERC ¶ 61,267 (2005).

¹¹ 111 FERC ¶ 61,009 (2005) at ¶ 3.

¹² In the case of MISO, while the Market Monitor does not make a 205 filing, the MISO tariff states that the RTO will take the Market Monitor’s proposal to the Commission: “If the IMM identifies any such conduct, the Transmission Provider *shall make a filing under § 205* of the Federal Power Act, 16 U.S.C. § 824d (1999) (“§ 205”) with the Commission requesting authorization to apply appropriate Mitigation Measures.” Module D Section III 62.c.

The Commission's Policy Statement on Market Monitoring was issued on May 27, 2005, "to provide guidance on the coordinated roles and responsibilities of the Commission and the MMUs."¹³ In the Policy Statement, the Commission states that "MMUs perform an important role in assisting the Commission in enhancing the competitiveness of ISO/RTO markets," and that the MMU shall "identify ineffective market rules and tariff provisions and recommend proposed rule and tariff changes to the ISO/RTO that promote wholesale competition and efficient market behavior."¹⁴

In this Policy Statement, the Commission also wrote:

It is critical that the MMU provide the ISO/RTO and the Commission with its perspective and expertise in the development of market rules and tariff provision. It is also essential that the MMU work proactively in identifying market design flaws, and provide assistance to the ISO/RTO in developing appropriate rules changes that will promote reliable and efficient operation of the wholesale markets."¹⁵

The MMU should not only be authorized to carry out those functions, but should also – consistent with other statements by the Commission – be able to do so without interference from the RTO or market participants.

Independent Reports and Presentations

The MMU should have the authority and resources needed to publish reports or make presentations, including an annual state of the market report, that cover all matters under MMU purview, including recommendations for improvements of the markets.¹⁶ The MMU should have the independent authority to produce additional periodic and ad hoc reports or presentations including reports or presentations for the Commission, state regulatory commissions, affected market participants and the PJM Board of Managers.¹⁷ The scope, method of analysis, development, conclusions and presentation of such reports and presentations must be independent of interference by any person, party or agent, including market participants and the RTO.

The MMU should be able to set its schedule for the publication and release of reports, without interference from the RTO or market participants. Responsibility for the content and viewpoints expressed in these reports should rest exclusively with the MMU. Neither the RTO nor market participants should be able to modify the content or viewpoints in MMU reports. The MMU may submit its reports and presentations to the

¹³ 111 FERC ¶ 61,267 (2005) at ¶ 1.

¹⁴ *Id.* at ¶ 2 (emphasis added).

¹⁵ *Id.* at ¶ 4 (emphasis added).

¹⁶ Offer of Settlement and Explanatory Statement, Attachment 2, Section 4.2 August 2, 2007, at p. 4

¹⁷ *Id.*

RTO and others for peer review, but peer review does not imply either the authority to modify the MMU reports or a requirement to comply with outside recommendations.

Access to RTO

To meet its purposes and carry out its functions, the MMU needs continued and reasonable access to all relevant RTO personnel, software, and data.

Independent Control of Data and Data Access

As the Commission has stated, “MMUs should have access to data and other resources to evaluate participant behavior and responses in these markets. As such, MMUs should evaluate the market-specific responses of individual market participants to existing or proposed market rules and tariff provisions.”¹⁸

In order to carry out its responsibilities, the MMU must have the authority to independently collect, maintain and control the information and data required to monitor the markets and the RTO. These requirements are included in the current market monitoring plan.¹⁹ This, like other provisions of the plan, must be made explicit and enforceable by the Commission.

The MMU must have the independent and exclusive authority to maintain the integrity of its database. This means that no one outside of the MMU shall have the authority to add to, delete from, or modify the MMU database. This, like other provisions of the plan, must be enforceable by the Commission.

The MMU must have access to all data or other information gathered or generated by PJM in the course of its operations as necessary to carry out its Commission-defined market monitoring functions, as well as exclusive control over the data and information systems that it develops and uses for market monitoring.

¹⁸ 111 FERC ¶ 61,267 (2005) at ¶ 3.

¹⁹ For example, Section VI.A of Attachment M to the PJM tariff states:

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.

Section VI.D states: “The Market Monitoring Unit shall regularly collect and maintain the information that it deems necessary for implementing the Plan.” Section VI.F 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 MMU must also have the ability to develop new analysis and metrics using expanded sets of data over time. The MMU must have the authority to require PJM to provide identified data that is gathered or generated by PJM if required by the MMU for implementing its responsibilities.

The MMU must be able to replicate market results. PJM should provide the MMU with complete and current system solution and operation software.

Resources

An independent and objective MMU cannot effectively monitor the markets without adequate resources and control over those resources. Such resources include staff, financial and data resources.

Independence and effectiveness are enhanced when the MMU is comprised of professionals with full time careers in market monitoring rather than contractors, whose commitment is short-term. The skill set for effective market monitoring is unique and, while the prerequisites are substantial, is developed in significant part over a substantial period of time through on-the-job training. Providing market monitoring staff with a career path will enhance the effectiveness of monitoring by permitting the development of professional staff whose fundamental interest is in monitoring and who will not need to be concerned about job termination at the end of a contract.

The Commission should approve the MMU budget. The MMU should manage its expenditures within its approved budget, and the MMU should have the authority to report to the Commission if its approved budget is insufficient to carry out its Commission-defined functions. The MMU should employ and supervise all MMU staff, with authority to make all human resource decisions, and the market monitor and MMU staff should be afforded job security, including the requirement that the market monitor may be dismissed only by the Commission and only if there is demonstrable just cause based on the documented failure to perform the specified duties of the job.

Market Monitoring: Internal or External

The discussions about how to ensure the independence of the MMU has become confused because of the labels, “external” and “internal.” Rather than focus on these labels, decisions about the MMU should be made in the context of ensuring the protection of the purpose, principles, functions and features of the MMU.

The labels, “internal” or “external,” are not clearly defined. Internal and external have been defined differently based on the reporting relationship, physical location and corporate structure. As an alternative to the use of these labels, the following elements must be required if the MMU is to be independent and effective.

Reporting and Accountability: The MMU should report and be accountable to an entity outside the management and Board of Managers of the RTO. This is a necessary, but not sufficient condition for MMU independence. The MMU’s independence from

members and the RTO cannot be assured unless it is guaranteed and enforced by the Commission.

Physical Location: The MMU should be physically situated inside the RTO in order to ensure the routine access to staff and data that is essential to fulfill the purpose of market monitoring. Physical location does not assure independence. Without enforceable independence, an MMU at an external physical location could be just as subject to management pressure as an MMU located on site.

Corporate Structure: The MMU should be part of PJM. A separate corporate structure does not ensure independence. Without enforceable independence, a separate MMU corporation could be subject to the same financial pressures brought to bear on an MMU that is part of PJM. The Commission has made the establishment of the independent market monitor a requirement for all RTOs and ISOs, and the RTO should carry the burden to preserve the independence and functions of the MMU, including their responsibility to provide adequate resources for the MMU.

Shared Resources: The relationship between the MMU and the RTO should be for administrative convenience and efficiency only (shared HR and IT resources). This limited administrative relationship between the MMU and the RTO should be explicit, public, and subject to review by the Commission, and any substantive, unresolved disagreements between them should be subject to review and resolution by the Commission.

PJM's Offer of Settlement

Dr. Bowring is encouraged by PJM's initiation of a settlement process and is cautiously optimistic that progress on these important issues can be made. However, while PJM's proposed offer of settlement attempts to address some of the points raised by Dr. Bowring and others in these proceedings, PJM's proposal would significantly weaken the ability of the MMU to fulfill its purpose compared to the provisions of the current Attachment M. On balance, the proposal inadequately addresses the concerns raised by Dr. Bowring and would weaken both the independence and efficacy of the MMU.

PJM's proposed offer of settlement is ultimately not acceptable because it does not adequately protect the purpose, principles, functions, and essential features of the MMU. The following highlights some key shortcomings of PJM's offer. For example, the offer of settlement:

- Fails to ensure MMU independence;²⁰

²⁰ See, e.g., PJM Offer of Settlement § 5.1 (ceding what should be oversight of the MMU by the Commission to PJM by endowing PJM with exclusive oversight and administration of the retention agreement through a subcommittee of the PJM Board of Managers); § 3.4 (requiring the Commission to consider the PJM Board of Managers' recommendation, based on vague criteria, regarding replacement of the MMU); § 5.5 (providing for a Market Monitoring Advisory Panel with a PJM staff member to review,

- Undermines the independence and efficacy of the MMU by proposing that it be subject to a short-term contract as a separate company;²¹
- Fails to ensure that MMU staff are treated as career professionals;²²
- Fails to ensure full access to data and information;²³
- Limits the ability of the MMU to identify and propose solutions to market design issues;²⁴
- Fails to ensure the ability of the MMU to adequately monitor the RTO;²⁵
- Fails to ensure adequate resources;²⁶ and
- Lacks adequate safeguards to protect the MMU from interference with its independence by the RTO or market participants.²⁷

The foregoing list of criticisms is not exhaustive, but illustrative of how the proposal fails to ensure that the MMU will achieve its purpose and execute its functions independently, objectively, effectively, and broadly.

prior to publication, all Commission-required periodic reports by the MMU, including the annual State of the Market Report).

²¹ Offer of Settlement, § 2.1 (MMU shall be a separate corporate entity); § 3.1 (term of retention agreement shall be two years).

²² Offer of Settlement, § 2.3 (MMU may request PJM employees to leave PJM for employment by MMU as separate entity under two year retention agreement); § 3.1 (term of retention agreement shall be two years).

²³ Offer of Settlement, § 5.2 (requiring the MMU to “interface” exclusively with a PJM designated liaison as the sole source of data and information for the MMU).

²⁴ Offer of Settlement, § 4.7 (prohibits MMU from attending “lower level committee or working group meetings where the formation of proposals or design of market rules are under development by PJM and its membership”). This limitation on the MMU’s interaction with members and member committees during the market rule development process would, among other things, also deny the MMU the opportunity to participate in certain committees where the MMU has had a significant leadership role, such as the Market Monitoring Advisory Committee and the Cost Development Task Force.

²⁵ Offer of Settlement, § 4.8 (providing for “exclusions from MMU monitoring activity”). This section prohibits the MMU from participating in “(1) the implementation of market rules, (2) the implementation of the PJM tariff and Operating Agreement or any market rules stated therein, or (3) PJM operations.” Section 4.8 also limits the MMU’s ability to address issues with PJM’s compliance with the Tariff, requiring that all corrective action take place via the non-public referral process described in section 4.3.

²⁶ Offer of Settlement, § 6.1 (providing for PJM role in MMU budget process and requiring Finance Committee approval of MMU budget when the Committee includes representatives of the PJM Board and members both of which are subject to monitoring by the MMU).

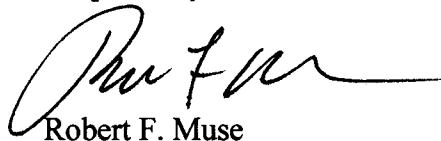
²⁷ For example, section 4.6 states that PJM can respond to requests from the Commission and state commissions, but it does not include an explicit prohibition on PJM or market participants from interfering with PJM’s authority to respond to such requests.

Dr. Bowring's Proposal

Dr. Bowring finds the current market monitoring plan for PJM, memorialized in Attachment M of the PJM tariff, to be a superior starting point for the negotiations because it already sets forth many of the MMU's essential functions and requires relatively few revisions to preserve the MMU's critical principals of independence and objectivity.

We have therefore attached to this submission a copy of Attachment M with Dr. Bowring's proposed edits to it in red-line (Ex. A).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. F. Muse", with a long horizontal flourish extending to the right.

Robert F. Muse
Joshua A. Levy

EXHIBIT A

ATTACHMENT M

PJM MARKET MONITORING PLAN

I. OBJECTIVES

The objectives of this Market Monitoring Plan are to independently, objectively and comprehensively: (1) monitor, investigate and report on issues relating to the operation of the PJM Market, including the determination of transmission congestion costs or the potential of any Market Participant(s) to exercise market power within the PJM Region; (2) evaluate the operation of both pool and bilateral markets to detect either design flaws in the PJM Market operating rules, standards, procedures, or practices as set forth in the PJM Tariff, the PJM Operating Agreement, the PJM Reliability Assurance Agreement, The Reliability Assurance Agreement-South, the Reliability Assurance Agreement-West, the PJM Manuals, or PJM Regional Practices Document or to detect structural problems in the PJM Market that may need to be addressed in future filings; (3) evaluate any proposed enforcement mechanisms that are necessary to assure compliance with pool rules; and (4) ensure that the monitoring program will be conducted in an independent and objective manner. The Plan also prescribes reporting procedures that the Market Monitoring Unit will use to inform governmental agencies and others concerning its market monitoring activities.

Deleted: PJM

Consistent with the PJM Operating Agreement, the Market Monitoring Unit will carry out these objectives in a manner consistent with the safe and reliable operation of the PJM Region, the creation and operation of a robust, competitive, and non-discriminatory electric power market in the PJM Region, and the principle that a Member or group of Members shall not have undue influence over the operation of the PJM Market.

Deleted: PJM

This Plan applies to PJM, the Market Monitoring Unit, Market Participants, and all entities that take service under the PJM Tariff.

II. DEFINITIONS

Unless the context otherwise requires, for purposes of this Plan, capitalized terms shall have the meanings given below or in Section I of the PJM Tariff.

(a) “**Authorized Government Agency**” means a regulatory body or government agency, with jurisdiction over PJM, the PJM Market, or any entity doing business in the PJM Market, including, but not limited to, the Commission, state utility commissions, and state and federal attorneys general.

(b) “**Corrective Action**” means an action set forth in section IV of this Plan.

(c) “**FERC Market Rules**” means the market behavior rules and the prohibition against electric energy market manipulation codified by the Commission in its Rules and Regulations at 18 CFR §§ 1c.2 and 35.37, respectively; the Commission-approved PJM Market Rules and any related proscriptions or any successor rules that the Commission from time to time may issue, approve or otherwise establish.

Issued By: Craig Glazer
Vice President, Federal Government Policy
Issued On: April 27, 2006

Effective: July 17, 2006

(d) **“Market Monitoring Unit”** means the organization within PJM that is responsible for implementing this Plan.

(e) **“Market Participant”** means an entity that generates, transmits, distributes, purchases, or sells electricity or provides ancillary services with respect to such services (or contracts to perform any of the foregoing activities) within, into, out of, or through the PJM Region.

Issued By: Craig Glazer
Vice President, Federal Government Policy
Issued On: April 27, 2006

Effective: July 17, 2006

- (f) **“PJM”** means PJM Interconnection, L.L.C., including the Office of the Interconnection as referenced in the PJM Operating Agreement.
- (g) **“PJM Board”** means the Board of Managers of PJM or its designated representative.
- (h) **“PJM Entities”** means PJM, including the Market Monitoring Unit, the PJM Board, and PJM’s officers, employees, representatives, advisors, contractors, and consultants.
- (i) **“PJM Manuals”** means those documents produced by PJM that describe detailed PJM operating and accounting procedures that are made publicly available in hard copy and on the Internet.
- (j) **“PJM Market”** means the PJM Interchange Energy Market together with all bilateral or other electric power and energy transactions, ancillary services transactions, and transmission transactions within the PJM Region.
- (k) **“PJM Market Rules”** mean the rules, standards, procedures, and practices of the PJM Market set forth in the PJM Tariff, the PJM Operating Agreement, the PJM Reliability Assurance Agreements, the PJM Consolidated Transmission Owners Agreement, the PJM Manuals, the PJM Regional Practices Document and the PJM-Midwest Independent Transmission System Operator.
- (l) **“PJM Operating Agreement”** means the Amended and Restated Operating Agreement of PJM on file with the Commission.
- (m) **“PJM Regional Practices Document”** means the document of that title that compiles and describes the practices in the PJM Market and that is made available in hard copy and on the Internet.
- (n) **“PJM Reliability Assurance Agreements”** means the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area, the PJM South Reliability Assurance Agreement among Load Serving Entities in the PJM South Region, and the PJM West Reliability Assurance Agreement among Load Serving Entities in the PJM West Region, each on file with the Commission.
- (o) **“PJM Tariff”** means the Open Access Transmission Tariff of PJM on file with the Commission.
- (p) **“PJM Transmission Owners Agreement”** means the PJM Consolidated Transmission Owners Agreement on file with the Commission.
- (q) **“Plan”** means the PJM market monitoring plan set forth in this Attachment M.
- (r) **“President”** means the President and Chief Executive Officer of PJM.

Issued By: Craig Glazer
Vice President, Federal Government Policy
Issued On: April 27, 2006

Effective: July 17, 2006

III. MONITORED ACTIVITIES

The Market Monitoring Unit shall be responsible for monitoring the following:

- 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.
- D. The potential for a Market Participant to exercise market power or violate any of the FERC Market Rules or the actual exercise of market power or the violation of any of the FERC Market Rules by a Market Participant.
- E. PJM's implementation of the PJM Market Rules.

IV. CORRECTIVE ACTIONS

A. **Required Notice to Commission:** Immediately upon determining that it has identified a significant market problem or a potential violation by a Market Participant of the PJM Market Rules or any of the FERC Market Rules that may require (a) a change in the PJM Market Rules, (b) further inquiry by the Market Monitoring Unit, (c) referral for investigation by the Commission and/or (d) action by the Commission or one or more state commissions, the Market Monitoring Unit shall notify the Commission's Office of Enforcement (or any successor), either orally or in writing. Nothing in this Section IV.A shall limit the ability of the Market Monitoring Unit to engage in discussions with any such Market Participant as provided in Section IV.C.1.

B. **Required Referral to Commission:** In addition to the notification provided in section IV.A. above, where the Market Monitoring Unit has reason to believe, based on sufficient credible information, that a Market Participant has either violated (a) a PJM Market Rule, or (b) any of the FERC Market Rules, the Market Monitoring Unit will refer the matter to the Commission's Division of Investigations (or any successor) in the manner described below. The foregoing notwithstanding, a clear, objectively identifiable violation of a PJM Market Rule, where such rule provides for an explicit remedy that

Issued By: Craig Glazer
Vice President, Federal Government Policy

Effective: July 17, 2006

Issued On: August 14, 2006

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos. ER06-826-000, 001, issued July 14, 2006, 116 FERC ¶ 61,038.

has been accepted by the Commission and can be administered by PJM, shall not be subject to the provisions of this section IV.B.

Such a referral to the Commission shall be in writing, shall be non-public and should include, but need not be limited to, the following information:

1. The name(s) of and, if possible, the contact information for, the market participants that allegedly took the action(s) that constitute that alleged Market Violation(s);
2. The date(s) or time period during which the alleged Market Violation(s) occurred and whether the alleged wrongful conduct is ongoing;
3. The specific FERC Market Rule(s) and/or tariff provision(s) that were allegedly violated;
4. The specific act(s) or conduct that allegedly violated the FERC Market Rules or tariff;
5. The consequences in the market resulting from the act(s) or conduct, including, if known, an estimate of economic impact on the market;
6. If the Market Monitoring Unit believes that the act(s) or conduct constituted manipulative behavior in violation of the FERC Market Rules, a description of the alleged manipulative effect on market prices, market conditions, or market rules; and
7. Any other information that the Market Monitoring Unit believes is relevant and may be helpful to the Commission.

Following the submission of such a referral, the Market Monitoring Unit will continue to inform the Commission's staff of any information relating to the referral that it discovers within the scope of its regular monitoring function, but it shall not undertake any investigative steps regarding the referral except at the express direction of the Commission's staff.

Issued By: Craig Glazer
Vice President, Federal Government Policy

Effective: July 17, 2006

Issued On: August 14, 2006

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos. ER06-826-000, 001, issued July 14, 2006, 116 FERC ¶ 61,038.

C. **Additional Market Monitoring Unit Authority:** In addition to notifications and referrals under Sections IV.A and IV.B, respectively, the Market Monitoring Unit may take the following additional actions, to the extent it deems necessary, as a result of its monitoring activities:

1. Engage in discussions with Market Participants regarding issues relating to their possible violations of the FERC Market Rules, in order to understand such issues and to attempt to resolve informally such issues or other issues with Market Participants.
2. Recommend to the appropriate entity (including, if and as appropriate, PJM committees, the PJM Board, or the Commission) modifications to the PJM Market Rules. This recommendation may be made in the form of a written or oral report to the appropriate entity.

Issued By: Craig Glazer
Vice President, Federal Government Policy
Issued On: April 27, 2006

Effective: July 17, 2006

3. ~~File reports or complaints with Authorized Government Agencies or make other appropriate regulatory filings to address design flaws, structural problems, compliance, market power, or other issues, and seek such appropriate action or make such recommendations as the Market Monitoring Unit shall deem appropriate.~~

Deleted: With the approval of the PJM Board, f

4. If PJM does not follow the Market Monitoring Unit's recommendations by filing requested rule changes or complaints with the Commission, the Market Monitoring Unit shall make its views known to the Commission or the Commission staff and the PJM Members, either orally or in writing.

5. Consult with Authorized Government Agencies concerning the need for specific investigations or monitoring activities.

6. Consider and evaluate a broad range of additional enforcement mechanisms that may be necessary to assure compliance with the PJM Market Rules. As part of this evaluation process, the Market Monitoring Unit shall consult with Authorized Government Agencies and other interested parties.

7. Report directly to the Commission or the Commission staff on any matter.

D. Confidentiality:

1. All discussions between the Market Monitoring Unit and Market Participants concerning the informal resolution of compliance issues initially shall remain confidential, subject to the provisions in subsection IV.D.3.

2. Except as provided in subsection IV.D.3, in exercising its authority to take Corrective Actions, the Market Monitoring Unit shall observe the confidentiality provisions of the PJM Operating Agreement.

3. Notwithstanding anything to the contrary in this Plan or the PJM Operating Agreement, the Market Monitoring Unit: (a) may disclose any information to the Commission in connection with the reporting required under sections IV.A and IV.B of the Plan, provided that any written submission to

Issued By: Craig Glazer
Vice President, Federal Government Policy

Effective: July 17, 2006

Issued On: August 14, 2006

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos. ER06-826-000, 001, issued July 14, 2006, 116 FERC ¶ 61,038.

the Commission that includes information that is confidential under the PJM Operating Agreement shall be accompanied by a request that the information be maintained as confidential, and (b) may make reports, complaints, or other regulatory filings pursuant to section IV.C or VII of this Plan if accompanied by a request that information that is confidential under the PJM Operating Agreement be maintained as confidential.

V. MARKET MONITORING UNIT

A. **Establishment:** PJM shall establish, and provide appropriate staffing and resources to, the Market Monitoring Unit, an organization within PJM that shall be responsible for implementing this Plan, so that the Market Monitoring Unit can discharge its duties effectively under this Plan.

Deleted: ing

B. **Composition:** The Market Monitoring Unit shall be comprised of full-time employees of PJM having the experience and qualifications necessary to implement this Plan. In carrying out its responsibilities, the Market Monitoring Unit may retain such consultants and experts as it deems necessary, subject to its budget.

Deleted: the oversight of the President and/or the PJM Board

C. **Accountability and Responsibilities:** The Market Monitoring Unit shall be accountable to the Commission regarding the implementation of this Plan.

Deleted: President and the PJM Board

D. **Resources:** The President shall ensure that the Market Monitoring Unit has adequate resources, access to required information, and cooperation of PJM for the effective functioning of the Market Monitoring Unit. The Market Monitoring Unit shall submit an annual budget for the Market Monitoring Unit to the Commission for approval each year adequate for the effective functioning of the Market Monitoring Unit.

E. **Referral by Market Monitoring Unit:** The Market Monitoring Unit shall have independent authority to refer any matters governed by this Plan to the Commission or the PJM Board for review or approval.

Deleted: President and

Deleted: To the extent that they deem desirable, the President and

Deleted: each

Formatted: Font: Bold

Formatted: Font: Not Bold

F. **Independence:** The Market Monitoring Unit shall be independent of PJM management, the PJM Board and Market Participants. Neither PJM management, nor the PJM Board nor Market Participants shall have the authority to interfere in the Market Monitoring Unit's implementation of this Plan.

G. **Enforcement:** The provisions of this Plan are enforceable by the Commission.

Formatted: Font: Bold

Formatted: Font: Not Bold

Formatted: Font: Bold

VI. SPECIFIC MONITORING FUNCTIONS

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

Issued By: Craig Glazer
Vice President, Federal Government Policy
Issued On: April 27, 2006

Effective: July 17, 2006

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.

B. Other Information Requests: If other information is required, the Market Monitoring Unit shall comply with the following procedures:

Issued By: Craig Glazer
Vice President, Federal Government Policy
Issued On: April 27, 2006

Effective: July 17, 2006

1. **Request for Additional Data:** If the Market Monitoring Unit determines that additional information is required to accomplish the objectives of the Plan, the Market Monitoring Unit may request the entities possessing such information to provide the information on a voluntary basis. Any such request for additional information will be accompanied by an explanation of the need for the information and the Market Monitoring Unit's inability to acquire the information from alternate sources.

2. **Failure to Comply with Request:** The information request recipient shall provide the Market Monitoring Unit with all information that is reasonably requested. If an information request recipient does not provide requested information within a reasonable time, the Market Monitoring Unit may initiate such regulatory or judicial proceedings to compel the production of such information as may be available and deemed appropriate by the Market Monitoring Unit, including petitioning the Commission for an order that the information is necessary and directing its production. An information request recipient shall have the right to respond to any such petitions and participate in the proceedings thereon.

3. **Information Concerning Possible Undue Preference:** Notwithstanding subsection B.1, if the Market Monitoring Unit requests information relating to possible undue preference between Transmission Owners and their affiliates, Transmission Owners and their affiliates must provide requested information to the Market Monitoring Unit within a reasonable time, as specified by the Market Monitoring Unit; provided, however, that an information request recipient may petition the Commission for an order limiting all or part of the information request, in which event the Commission's order on the petition shall determine the extent of the information request recipient's obligation to comply with the disputed portion of the information request.

4. **Confidentiality:** Except as provided in section IV.D.3 of this Plan, the Market Monitoring Unit shall observe the confidentiality provisions of the PJM Operating Agreement with respect to information provided under this section if an entity providing the information designates it as confidential.

C. **Complaints:** Any Market Participant or other interested entity may at any time submit information to the Market Monitoring Unit concerning any matter relevant to the Market Monitoring Unit's responsibilities under the Plan, or may request the Market Monitoring Unit to make inquiry or take any action contemplated by the Plan. Such submissions or requests may be made on a confidential basis. The Market Monitoring Unit may request further information from such Market Participant or other entity and make such inquiry that the Market Monitoring Unit considers appropriate. The Market Monitoring Unit shall not be required to act with respect to any specific complaint unless the Market Monitoring Unit determines action to be warranted.

Deleted: Neither t

Deleted: nor PJM Board

Deleted: or, if appropriate, the PJM Board,

Issued By: Craig Glazer
Vice President, Federal Government Policy
Issued On: April 27, 2006

Effective: July 17, 2006

D. Collection and Availability of Information: The Market Monitoring Unit shall regularly collect and maintain under its sole control 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 the obligations of the Market Monitoring Unit and PJM to protect confidential, proprietary, or commercially sensitive information.

Deleted: 's obligations

E. Market Monitoring Indices: The Market Monitoring Unit shall develop, and shall refine on the basis of experience, indices or other standards to evaluate the information that it collects and maintains. Prior to using any such index or standard, the Market Monitoring Unit shall provide PJM Members, Authorized Government Agencies, and other interested parties an opportunity to comment on the appropriateness of such index or standard. Following such opportunity for comments, the decision to use any index or standard shall be solely that of the Market Monitoring Unit.

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.

VII. REPORTS

A. Reports: The Market Monitoring Unit shall prepare and submit to the Commission, the PJM Board and to the PJM Members Committee, annual state-of-the-market reports on the state of competition within, and the efficiency of, the PJM Market. In such reports, the Market Monitoring Unit may make recommendations regarding any matter within its purview. The reports shall include recommendations as to whether changes to the Market Monitoring Unit or the Plan are required. In addition, the Market Monitoring Unit shall provide to the PJM Board, in a timely manner, copies of any reports submitted to Authorized Government Agencies pursuant to Section VII.B. The Market Monitoring Unit may from time-to-time prepare and submit additional reports to the Commission, the PJM Board and to the PJM Members Committee, as the Market Monitoring Unit may deem appropriate in the discharge of its responsibilities under Section III and IV hereof.

Deleted: to the PJM Board

Deleted: to the PJM Board

B. Reports to Government Agencies: The Marketing Monitoring Unit shall contemporaneously submit to the Authorized Government Agencies the reports provided to the PJM Board pursuant to Section VII.A. Subject to applicable law and regulation and any other applicable provisions of the PJM Operating Agreement or PJM Tariff, the Market Monitoring Unit shall, to the extent practicable, respond to reasonable requests by Authorized Government Agencies other than the Commission for reports, subject to protection of confidential, proprietary and commercially sensitive information and the protection of the confidentiality of ongoing inquiries and monitoring activities.

Deleted: provided to the PJM Board

Issued By: Craig Glazer
Vice President, Federal Government Policy
Issued On: April 27, 2006

Effective: July 17, 2006

C. **Public Reports:** The Market Monitoring Unit shall prepare a detailed public annual report about the Market Monitoring Unit's activities, subject to protection of confidential, proprietary, and commercially sensitive information and the protection of the confidentiality of ongoing investigations and monitoring activities. The Market Monitoring Unit may, instead of filing a separate report, include the referenced material in a report filed pursuant to Section VII.A hereof.

VIII. AUDIT

The activities of the Market Monitoring Unit shall be audited in accordance with procedures adopted from time to time by the Commission.

Deleted: PJM Board

Issued By: Craig Glazer
Vice President, Federal Government Policy
Issued On: April 27, 2006

Effective: July 17, 2006

IX. LIABILITY

Any liability of PJM arising under or in relation to this Plan shall be subject to this Section IX. The PJM Entities shall not be liable to any Market Participant, any party to the PJM Operating Agreement, any customer under the PJM Tariff, or any other person subject to this Plan in respect of any matter described in or contemplated by this Plan, as the same may be amended or supplemented from time to time, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual or consequential damages of any kind resulting from or attributable to any act or omission of any of the PJM Entities under this Plan.

X. OTHER RELIEF NOT FORECLOSED

A. Preservation of Rights: Nothing herein shall prevent PJM or any other person from asserting any rights it may have under the Federal Power Act or any other applicable law, statute, or regulation, including the filing of a petition with or otherwise initiating a proceeding before the Commission regarding any matter which is the subject of this Plan.

B. Alternate Dispute Resolution: Notwithstanding any provision of the PJM Tariff or the PJM Operating Agreement, PJM and the Market Monitoring Unit shall not be required to use the dispute resolution procedures in the PJM Tariff or the PJM Operating Agreement in carrying out its duties and responsibilities under this Plan. However, nothing herein shall prevent PJM or any other person from requesting the use of the dispute resolution procedure set forth in the PJM Tariff or the PJM Operating Agreement, as applicable.

XI. EFFECTIVE DATE

This Plan shall be effective as of the date it is accepted for filing by the Commission.

Issued By: Craig Glazer
Vice President, Governmental Policy
Issued On: March 20, 2003

Effective: March 20, 2003

Issued By: Craig Glazer
Vice President, Governmental Policy
Issued On: March 20, 2003

Effective: March 20, 2003