

Because the release of this data harms the PJM capacity markets due to enhanced opportunity for anticompetitive behavior, the Market Monitor requests that the Commission direct PJM to continue to adhere to PJM's posting policies as they existed prior to March 18, 2010 and that the Commission allow for orderly consideration of proposals for a new policy in this or another proceeding before the Commission. The Market Monitor also requests that PJM be directed to cease and desist from implementing the new rule on data disclosure in PJM Manual 33 and from releasing any additional data until the Commission has had an opportunity to rule on this matter. Because the capacity market information is currently public and because PJM could make additional data public under their interpretation of the Manual rule, the Market Monitor requests that the Commission shorten its time frame for answers to this motion to no more than one business day and issue an order as soon as possible thereafter.

In its order of December 18, 2009,² the Commission noted (at P 203) that "Order No. 719 requires RTOs and ISOs to justify their policies regarding the aggregation or lack thereof of offer and cost data, and to discuss the extent to which these policies avoid participant harm and the possibility of collusion, while fostering market transparency." The Commission observed, "PJM does not otherwise explain its policies on offer and cost data," and therefore, the Commission required "PJM to provide, in its 90-day compliance filing, a justification of its policies, as required by Order No. 719." *Id.*

² *PJM Interconnection, L.L.C.*, 129 FERC ¶61,250 (2009).

On March 18, 2010, PJM filed the following statement in compliance with this directive:

To address this issue, PJM hereby advises the Commission that until March 17, 2010 PJM did not have a formalized policy that it follows when considering the appropriate level of aggregated data to make publicly available on its Web site, other than its policy for posting virtual bid and offer data. Prior to March 17, 2010 when PJM considered a request to post market data, it makes a case by case determination of whether the data in question is market sensitive and whether making the data publicly available could lead to misuse of the data. However, PJM has recognized the inadequacy of this approach because it resulted in a substantial barrier to aggregated data posting which limited market transparency.

In that regard, PJM has proposed revisions to PJM Manual 33 to incorporate a clear policy for posting aggregated market data, based on a bright-line test, as follows. PJM proposes that to the extent that PJM deems information relative to the operation of its electricity markets valuable for public dissemination, or upon request by one or more PJM stakeholders, PJM will post aggregated market data on its public Web site. In order to ensure that market sensitive data is not revealed and to prevent potential misuse of such data, PJM will only post aggregated market data to the extent that it meets the following criteria: (a) more than three Market Participants' data in a particular category is being aggregated for posting, e.g., if the data being considered for posting is load data, more than three LSEs' data must be aggregated; and (b) the data to be posted is aggregated over a geographic area no smaller than a PJM transmission zone. The data to be posted may not violate these criteria on its own or when used in combination with other previously posted data. Data that was posted before the approval of this guideline is assumed to be appropriate and acceptable. Further, data that does not meet these guidelines may still be posted if such disclosure is deemed acceptable by PJM, the IMM, and the members whose data will be posted.

PJM believes that the two referenced criteria are appropriate because they are necessary to ensure that the identity of the Market Participant who submitted the bid or offer remains masked. The requirement that the data of at least four Market Participants be aggregated before data can be posted is sufficient to ensure that no single participant's data can be isolated and identified by other participants, which will prevent potential abuse or manipulation concerns. Additionally, the purpose of requiring that the aggregated data to be posted be over a geographic area no smaller than a PJM transmission zone is to seek to ensure that small, localized, constrained regions of the market are protected from potential abuse.

PJM proposed the above criteria to its stakeholders at the February 17, 2010 Market Implementation Committee and the February 24, 2010 Markets and Reliability Committee. At its March 9, 2010 meeting, the Market Implementation Committee endorsed moving the proposed criteria to the Markets and Reliability Committee for potential approval. On March 17, 2010, the Markets and Reliability Committee approved the criteria for inclusion in PJM Manual 33, with a 4.65/5.00 sector weighted vote in favor and only 0.35/5.00 opposed to the revisions. Therefore, PJM has implemented this approach as of March 18, 2010. The IMM did not support the implementation of the referenced criteria and opined, among other things, that PJM should incorporate a “market concentration” criteria, particularly for congested transmission zones. However, the IMM did not offer specific “bright line” criteria and there was disagreement on whether that “market concentration” criteria should be a specified percentage, or whether the market concentration determination would be a more involved determination. Although stakeholders did not support the IMM’s position, PJM will encourage continued discussion on the issue to determine if the “bright line” criteria should be further refined based on a “market concentration” criteria.

Additionally, PJM’s justification for why it aggregates bid and offer data is to protect the market sensitive nature of Market Participants’ data from being gleaned by third parties who are seeking to ascertain their bidding strategies to gain an unfair advantage therefrom. PJM’s policy on aggregation seeks to protect the data from being manipulated by others in such a manner.³

The Commission has determined a comment date in this proceeding of April 8, 2010.⁴

On March 22, 2010, and without any further indication from PJM that new data would be released prior to reviewing the comments of the Market Monitor and Market Participants in this matter and prior to Commission action in this proceeding, the Market Monitor received the following notice to the distribution list of the Markets Implementation Committee:

³ PJM compliance filing in Docket No. ER09-1063 at 19–20.

⁴ Combined Notice of Filings #1, March 23, 2010.

As discussed at previous MIC meetings, and as enabled by last week's MRC approval of the M-33 language regarding aggregate data postings, PJM has posted the aggregate supply curve data for the RTO and the MAAC, MAAC+APS, EMAAC and SWMAAC LDAs (to the extent each LDA was binding in a given auction) for the RPM Base Residual Auctions conducted to date. The data is posted in Excel spreadsheet format, and appears on the RPM Auction User Information page under the Delivery Year to which it applies.

This posting at the provided link includes a list of offer prices and MW, and the resource's location in RPM locational delivery areas. A Market Participant can now compare the new data to the already posted list that identifies all units in PJM, their zone and their available ICAP, its own offer information, and other publicly available information about generating facilities located in PJM.⁵ In the Market Monitor's judgment, a Market Participant could determine the offers by unit and owner of its major competitors for every PJM Base Residual Auction held to date by PJM. This means that PJM has effectively released offer data in an unmasked form, regardless of whether they intended to do so. For example, in the SWMAAC LDA, each of the two major participants can now determine the offer strategy of its competitor.

The Commission specifically found in its Order of December 18 (at P 202): "Although unmasking bid and offer data may enhance transparency and allow market participants to assess the functioning of the market, we agree with the MMU that such a policy also poses a risk of increasing the ability of market participants to exercise market power."

⁵ See PJM's website at <http://www.pjm.com/markets-and-operations/rpm/~//media/markets-ops/rpm/rpm-auction-info/2012-2013-rpm-resource-model.ashx>.

As a result of this data posting, the ability of Market Participants in PJM to exercise market power has increased. Because the relevance of the data associated with the market offer strategies of individual generating units may persist for many years, the damage already inflicted could be significant. To allow this posting to persist will compound and extend that damage. The release of additional data without due consideration could further aggravate the harm. Consequently, the Market Monitor requests that the Commission act expeditiously to grant this request.

The Market Monitor plans to file comments in this proceeding, due April 8, 2010. These comments will explain and justify the data release policy in place in PJM prior to March 18, 2010. This explanation will comply with the Commission's directive in this proceeding, and will also explain why that standard does constitute an objective, "bright line" standard. The Market Monitor will also explain an alternative approach that could reveal the supply curve in RPM auctions, provide more information than is currently provided, and fully satisfy the needs of any socially productive analysis of the "functioning of the market" without directly revealing offer data. The IMM's comments will provide further information on why PJM's proposal would inflict significant harm to the markets. The Commission will then have an opportunity to evaluate those arguments on the merits and determine a just and reasonable policy on the release of aggregated data.

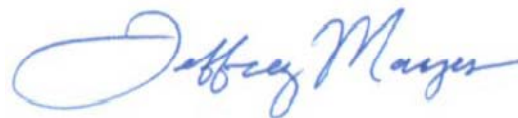
The PJM Operating Agreement provides a process which PJM must satisfy prior to releasing the confidential data provided to it by Market Participants. The posted data may constitute confidential data to which a Market Participant may object to disclosure. PJM

Members, the Market Monitor and PJM should have an opportunity to evaluate and confirm that PJM has met its obligations under this provision prior to continued posting of this information.

In order to afford notice and opportunity for the Market Monitor and other parties to make their case against this disclosure and the associated Manual rule;⁶ to allow PJM and stakeholders supporting this action to make their case justifying this disclosure; and to allow the Commission a reasonable opportunity to duly consider this matter, it would serve the public interest for the Commission to issue an order to cease and desist as expeditiously as possible.

Accordingly, the Market Monitor respectfully requests that the Commission shorten the period to respond to this motion to no more than one day and issue as soon as possible thereafter an order that PJM cease and desist posting the referenced data on RPM auctions, suspend implementation of the new market rule on data disclosure in PJM Manual 33 and refrain from posting any additional data under that rule until the Commission has had an opportunity to address on the merits arguments pertaining to this issue.

Respectfully submitted,



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⁶ The Market Monitor provides as an attachment to this pleading a copy of its presentation at the March 17, 2010 meeting of the PJM Markets and Reliability Committee that outlines its position.

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Dated: March 24, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,
this 24th day of March, 2010.



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Attachment