

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION 86 FERC ¶ 61,247

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hébert, Jr.

PJM Interconnection, L.L.C.) Docket No. ER98-3527-000

ORDER APPROVING MARKET MONITORING PLAN AS MODIFIED

(Issued March 10, 1999)

On June 29, 1998, PJM Interconnection, L.L.C. (PJM) filed a market monitoring plan (Plan) pursuant to Ordering Paragraph (V) of the Commission's order in Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶ 61,257 (1997), reh'g pending (PJM). The Plan establishes a market monitoring unit (MMU) of PJM that has a broad range of monitoring responsibilities. PJM proposes such broad responsibilities, believing they are critical if entities are to have market-based pricing authority in markets that PJM oversees. Among other responsibilities, the MMU will monitor the activities of participants in the Pennsylvania-New Jersey-Maryland Power Exchange (PJM PX) for the potential exercise of market power, will monitor all bilateral and other electric power transactions, and will monitor participants for their compliance with the rules, standards, procedures and practices of PJM. PJM filed the Plan as an amendment to the Pennsylvania-New Jersey-Maryland Interconnection Open Access Transmission Tariff (PJM OATT). Originally, PJM requested an effective date of September 1, 1998 for The Plan. 1/ We accept the the Plan with the modifications discussed below.

I. **Background**

1/ By letter dated February 19, 1999, filed in Docket No. ER97-3729-000, PJM cited the need for additional time to modify its computer software to accommodate market-based bids of energy into the PJM PX by certain member companies if the Commission were to grant their request in that case for such authority. PJM requested an effective date no earlier than April 1, 1999, in the letter. We deem this request for the April 1, 1999, effective date applicable to this proceeding as well.

On November 25, 1997, the Commission issued PJM, an order accepting a comprehensively restructured Pennsylvania-New Jersey-Maryland centrally dispatched power pool to operate as an Independent System Operator (PJM ISO) and PJM PX. Among the documents accepted in PJM were the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement), the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area (Reliability Agreement), and the PJM OATT. The Operating Agreement established the Pennsylvania-New Jersey-Maryland Office of Interconnection (PJM-OI) as an independent body to operate the PJM ISO, to administer the PJM OATT, to operate the PJM PX, and to administer certain aspects of the Reliability Agreement. In Ordering Paragraph (V) of PJM, the Commission directed PJM-OI to file a monitoring plan within 90 days of the date of issuance of the order. The Commission eventually extended the due date to June 30, 1998, 90 days after the effective date of the PJM OATT, which was April 1, 1998. ^{1/}

Market Monitoring Plan

An objective of the Plan is that the MMU independently and objectively monitor and report on the operation of the PJM Market, which the Plan defines as:

[T]he PJM Interchange Energy Market together with all bilateral or other electric power and energy transactions, ancillary services transactions, and transmission transactions within the PJM Control Area.

Within the MMU's ambit of monitoring responsibilities are the duty to monitor matters relating to transmission congestion pricing, exercise of market power, structural problems in the PJM Market, design flaws in the operating rules, and compliance with the standards, procedures or practices as set forth in the PJM OATT, Operating Agreement, Reliability Agreement, PJM

^{2/} Pennsylvania-New Jersey-Maryland Interconnection, L.L.C., 81 FERC ¶ 61,379 at 62,786 (1997), reh'g pending.

Manuals, and the PJM Regional Practices Document. 1/ The MMU will monitor and report on these issues consistent with safe and reliable operations within the PJM control area, creation and operation of a robust, competitive and non-discriminatory electric power market, and the principle that no member of PJM will have undue influence over the PJM Market. 1/

3/ Plan at Original Sheets 183, 185.

4/ Id. 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. See Atlantic City Electric Company, et al., 86 FERC ¶ _____ (1999).

The MMU, which is accountable to the PJM Board and President but not to PJM Members, has authority under the Plan to pursue corrective actions. They include discussions with market participants, recommendations to change the principal PJM documents like the PJM OATT and Operating Agreement, demand letters to market participants requesting the discontinuance of violative actions, recommendations for actions to the PJM Board and other groups of PJM, reports and complaints to state and federal agencies, pursuit of remedial measures with the approval of the PJM Board, and evaluation of enforcement mechanisms to assure compliance with PJM's rules. The Plan does not authorize the MMU to impose sanctions; however, the MMU will continue to evaluate the need for further enforcement mechanisms, as it gains experience with the PJM Market. The MMU's discussions about informal resolution of compliance issues and all demand letters sent to participants initially will remain confidential. The MMU also is obligated, to the extent appropriate, to maintain the confidentiality of confidential, proprietary or commercially sensitive information. 1/

While the MMU will rely on data and information customarily available to PJM, the MMU has authority, with the proper showing of necessity, to request that market participants provide additional information voluntarily. The MMU may enforce reasonable requests by initiating regulatory or judicial proceedings, including petitioning the Commission for an order directing production of the information. Recipients of the requests have the right to respond to petitions and the right to participate in any proceedings about the petitions. 1/

5/ Id. at Original Sheets 185-86.

6/ Id. at Original Sheet 187.

The MMU may investigate complaints, including confidential complaints, of interested entities. In addition, the MMU will regularly collect information needed to implement the Plan, and must publish the categories of data it collects. The MMU may refine the standards by which it evaluates the data and information it collects, and, after consultation with PJM members, the MMU is the sole determiner whether to use those refined standards. The MMU will prepare periodic reports to the PJM Board about the state of competition in and efficiency of the PJM Market, and the MMU may provide such reports to the PJM Members Committee. The MMU may submit reports in response to requests from state and federal agencies, or as approved by the PJM Board. State and federal agencies may require the MMU to publish reports the MMU submits to them subject to confidentiality protections. ^{1/} The MMU is not required to use the dispute resolution procedures of the PJM OATT or the Operating Agreement in executing its duties under the Plan. ^{1/}

The MMU will consist of full-time employees with, according to the filing, the experience and qualifications to implement the Plan. In addition, the MMU may retain consultants and experts as needed. The President of PJM will provide appropriate staffing for the MMU and is obligated to ensure that the MMU has adequate resources, information and cooperation from PJM to effectively do its job. ^{1/}

II. Notice, interventions and protests

^{7/} Id. at Original Sheet 188. It should be noted that the procedures set forth at 18 C.F.R. § 388.112 are available to any party who claims that information which it files with the Commission should be treated confidentially.

^{8/} Id. at Original Sheet 189.

^{9/} Plan at Original Sheet 186.

Notice of the filing was published in the Federal Register, 63 Fed. Reg. 37,377 (1998), with comments, protests and motions to intervene due on or before July 17, 1998. Four state commissions filed notices of intervention, but none raised any substantive issue. 1/ Subsequently, on July 28, 1998, the DC Commission and the Maryland Commission (Mid-Atlantic Commissions) filed a joint motion requesting the Commission to accept their joint comments about the Plan.

10/ The four state commissions were: District of Columbia Public Service Commission (DC Commission), Maryland Public Service Commission (Maryland Commission), New Jersey Board of Public Utilities (New Jersey Board) and Pennsylvania Public Utility Commission (Pennsylvania Commission).

Four entities filed timely, unopposed motions to intervene, but raised no substantive issues. 1/ Subsequently, on July 30, 1998, Pennsylvania Office of Consumer Advocate, Maryland People's Counsel, Delaware Office of Public Advocate, and New Jersey Division of Ratepayer Advocate (collectively, Joint Consumer Advocates) filed a joint motion to accept late filed comments and interventions because their original filing was misaddressed. 1/

Electric Clearinghouse, Inc. (Clearinghouse), the Project for Sustainable FERC Energy Policy (Project), PJM Industrial Customer Coalition (PJM Industrials) and PECO Energy Company (PECO) filed timely, unopposed motions to intervene with comments and protests.

Intervenors' issues

PJM Industrials, an ad hoc coalition of 54 large industrial consumers of electricity, does not object to the Plan. It does contend that PJM should furnish quarterly reports to the Commission on the MMU's activities, market power matters and structural development of the PJM Market. PJM Industrials also request that the Commission clarify the conflict between PJM

11/ The four were: Old Dominion Electric Cooperative (Old Dominion), Public Power Association of New Jersey (PPANJ), Maryland People's Counsel, and, jointly, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, PP&L, Inc., Potomac Electric Power Company and Public Service Electric and Gas Company (PJM Intervenors).

12/ Joint Consumer Advocates' Motion at 2.

and its Members Committee, whether the Plan should have been filed as an amendment to the PJM OATT or to the Operating Agreement. 1/

Project, representing environmental and consumer organizations, contends that PJM properly filed the Plan as an amendment to the PJM OATT. Project maintains, though, that the Commission should modify the Plan to require PJM to file an annual public report concerning competition and efficiency in the PJM Market. 1/

13/ PJM Industrials Motion at 4-5. As noted above, the Plan was filed as an amendment to the PJM OATT.

14/ Project Motion at 3-4.

Clearinghouse contends that the MMU's activities should be limited to data collection and monitoring only. 1/ Apparently, it believes enforcement should be the Commission's responsibility and not the MMU's. 1/ Clearinghouse believes that the MMU should not be permitted to control market prices or to implement unilaterally changes to market rules, and that the PJM President should have authority to force the MMU to disclose data received as confidential, to protect the integrity of the market. 1/ Clearinghouse maintains that the MMU should be subject to alternate dispute resolution under the Operating Agreement. Moreover, Clearinghouse suggests that the language describing the MMU's investigative authority is too broad, but that the MMU should be charged with monitoring the activities of PJM-OI. 1/ Finally, Clearinghouse indicates that PJM correctly filed the Plan as an amendment to the PJM OATT. 1/

PECO does not object to the contents of the Plan, but it does maintain that PJM erred by filing the Plan as an amendment to the PJM OATT, and not to the Operating Agreement. 1/ While PECO notes that the members of PJM had the opportunity to express their views on the Plan, PECO believes that PJM was obligated to yield to the members' view that the Operating Agreement and not the PJM OATT was the proper vehicle for establishing the Plan. PECO apparently sees ". . . a schism within the PJM governance structure", and it asks the Commission to settle the matter. 1/

Joint Consumer Advocates strongly support the Plan as an amendment to the PJM OATT. They suggest that, if the Plan had been an amendment to the Operating Agreement, it would have given members of PJM, themselves entities subject to the monitoring activity of the MMU, significant control over the criteria by which PJM may determine whether market power has been exercised. Joint Consumer Advocates say also that, if the Plan amended the Operating Agreement, it would have given the PJM members more control in general over decisions whether to file proposed changes to the Plan with the Commission. 1/

15/ Clearinghouse Motion at 5.

16/ Id. at 3-4.

17/ Id. at 6.

18/ Clearinghouse at 8-9.

19/ Id. at 10.

20/ PECO Motion at 2-3.

21/ Id. at 5-6.

22/ Joint Consumer Advocates' Motion at 4, 9.

Joint Consumer Advocates do propose three modifications to the Plan, however. First, they advocate setting a definite time by which the MMU must refine standards for evaluating data and information the MMU collects. Second, filing a public report of the MMU's activities must be mandatory for the MMU. Third, the MMU must determine within two years what additional enforcement mechanisms, including financial sanctions, the MMU needs to assure compliance. 1/

23/ Id. at 14.

Mid-Atlantic Commissions also agree that the Plan should amend the PJM OATT. They propose that the Plan be modified, however, to require the MMU to provide to federal and state agencies the specific reports and data cited in paragraph VIIA of the Plan when requested by such agencies. ^{1/} In addition, they would require the MMU generally to furnish reports to federal and state agencies on matters within their jurisdiction upon request, subject to confidentiality protections. Mid-Atlantic Commissions would require, as well, that any future enforcement mechanisms be developed in concert with them, and that demand letters be provided to them. Mid-Atlantic Commissions request that the MMU send to them its data collection categories each year, and they request the same opportunity to comment upon market conduct evaluation indices as that afforded PJM members. They also would require that the MMU file an annual report on its monitoring and enforcement activities with them and the Commission. Finally, Mid-Atlantic Commissions request that the Commission in its order assure them that the Commission has procedures for expeditiously issuing subpoenas in support of the MMU's data requests or that the Commission will modify the Plan so that the MMU may enforce its own data requests. ^{1/}

III. Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1998), the notices of intervention and the timely, unopposed motions to intervene serve to make the state commissions and movants, respectively, parties to this proceeding.

Amending the PJM OATT rather than the Operating Agreement

^{24/} These reports are the periodic reports to the PJM Board about the state of competition in and efficiency of the PJM Market. Plan at Original Sheet 188.

^{25/} Mid-Atlantic Commissions' Comments at 6-8.

With respect to the issue whether PJM correctly filed the Plan as an amendment to the PJM OATT rather than as an amendment to the Operating Agreement, we agree with PJM's decision to file the Plan as a tariff amendment. ^{1/} The PJM Members Committee must approve proposed amendments to the Operating Agreement. On the other hand, PJM may file a proposed amendment to the PJM OATT without obtaining the Members Committee's prior approval. ^{1/} The MMU is charged with investigating and monitoring activities of market participants, including those of PJM members, to ensure that competition in the PJM market is robust and efficient, goals that benefit the public interest. As a consequence, greater control over the process of changing the monitoring and investigative rules of the MMU better lies with the PJM Board than with the PJM members, who will be subject to the MMU's monitoring and investigations. In sum, we think that filing as an amendment to the PJM OATT was a reasonable course in light of our concern in PJM that those who monitor the PJM Market must be independent and objective. ^{1/} We also note that notwithstanding PJM's choice to present the Plan as an amendment to the PJM OATT, this matter was openly and thoroughly discussed among PJM stakeholders.

At the same time, because of the importance of the MMU's independence and objectivity, the MMU may report directly to the Commission at the MMU's discretion.

Comments of state utility commissions about the MMU

In their comments, the Mid-Atlantic Commissions expressed a concern that the Plan should provide for greater coordination and cooperation between the MMU and state governmental authorities, particularly as states undertake retail competition. We agree. Given legitimate state interest in the operation of the PJM Market, we direct PJM to change certain aspects of the Plan.

^{26/} Plan Transmittal Letter at 5.

^{27/} Operating Agreement § 18.6; PJM, 81 FERC ¶ 61,257 at 62,261.

^{28/} PJM, 81 FERC at 62,282. As noted, the MMU is accountable to the PJM Board and President, and not to the PJM Members Committee.

First, PJM should change the Plan to require that periodic reports which the MMU provides to the PJM Board about the status of competition in and efficiency of the PJM Market also be provided to Authorized Government Agencies, as that term is defined in the Plan. ^{1/} Second, PJM should change the Plan to permit Authorized Government Agencies, and indeed all stakeholders, an opportunity to comment upon the appropriateness of market monitoring indices, standards and evaluation criteria the MMU may propose. ^{1/} Third, PJM should change the Plan to require the MMU to prepare a detailed, public annual report about the MMU's activities (but one that does not compromise appropriate confidentiality concerns, particularly as to ongoing investigations and monitoring operations). Fourth, with respect to the Plan's confidentiality requirement for bid and related data, we note that the commercial sensitivity of such data decreases over time. Consistent with an earlier order concerning the New York Independent System Operator, we direct PJM to make available to the public, bid and other data after 6 months. ^{1/} The purpose of such disclosure is to allow interested parties to monitor market activities, including the possibility that market participants have engaged in anti-competitive actions.

We also will grant the Mid-Atlantic Commissions' request that the MMU be required to provide its demand letters to the relevant state utility commissions and other Authorized Government Agencies, taking into account appropriate confidentiality considerations.

With regard to the MMU's future evaluation of proposed enforcement mechanisms, including any proposed appropriate sanctions or restrictive bidding rules, the MMU's evaluation should consider a broad range of enforcement mechanisms. We believe that the MMU should, as part of this evaluation process, consult with Authorized Government Agencies and other

^{29/} The term "Authorized Government Agency" means:

. . . a regulatory body or government agency, with jurisdiction over PJM LLC, 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.
[Plan at Original Sheet 183.]

^{30/} As we have noted supra at 3, under the Plan, the MMU is the sole determiner relative to the other units of the PJM of which standards it will use in monitoring and evaluating the market.

^{31/} See Central Hudson Electric & Gas Corporation, et al., 86 FERC ¶ 61,062 at _____ (1999).

interested parties. The MMU should also consult with Authorized Government Agencies concerning the need for specific investigations or monitoring activities.

We believe that the kind of disclosure of information we order the MMU to make today to Authorized Government Agencies, and the cooperation we urge the MMU to employ in its dealings with state utility commissions, in particular, will help ensure that the PJM Market operates in a robust and competitive manner.

Finally, Mid-Atlantic Commissions raised concerns about the way in which data and other information requests that the MMU makes during the course of its investigations and monitoring operations, would be enforced under the Plan. ^{1/} We do not believe at this time, and PJM has not asked, that the MMU should have authority to self-enforce such requests under the Plan. ^{1/} It may be necessary, however, to revisit this issue if PJM or other parties believe that enforcement of data and information requests is not working effectively. We direct the MMU to report to the Commission on this issue of enforcing data requests one year after the effective date of this order, April 1, 1999.

Response to concerns of other intervenors

We have addressed many of intervenors' concerns in our discussion above. Certain matters remain outstanding. PJM Industrials contend that the MMU should file quarterly reports with the Commission. We disagree and believe that, at this time, the frequency of the reporting requirements we have discussed previously is adequate and reasonable. We note, though, that the MMU should have the resources and freedom to produce reports --for example, on market disturbances, or problems with market rules -- as events warrant.

^{32/} Mid-Atlantic Commissions' Comments at 8.

^{33/} We note that under various provisions of the Federal Power Act, this Commission has broad authority to undertake investigations, which includes the use of its subpoena power, to enforce that Act, or to enforce any rule, regulation or order thereunder. See, 16 U.S.C. §§ 824e, 825c, 825e, 825f (1994). This authority allows the Commission to ensure that participants in the PJM markets do not violate or thwart the Federal Power Act.

Joint Consumer Advocates state that the Commission should direct the MMU to complete its evaluation of other enforcement mechanisms within two years. They also argue that the Commission should require the MMU to complete its assessment of the standards, indices and criteria by which it will evaluate data and information collected within a fixed time period. We agree. Our approval of market-based rates in PJM in an order considered concomitantly relies in part on implementation of an adequate monitoring plan and the ability to promptly remedy any market power problems that the MMU may detect. Therefore, it is important for the MMU to evaluate whether additional remedies, if any, are needed to address detected market power problems. ^{1/} Although we recognize that the MMU faces difficult tasks with respect to both of these issues, we nevertheless believe that two years is sufficient time within which the MMU should complete its evaluations. We therefore direct the MMU to file both the MMU's standards assessment and its evaluation of additional enforcement remedies, if any, within two years of the effective date of this order, April 1, 1999. We direct the MMU to provide copies of its filing to the PJM Board and state commissions by that time as well.

Clearinghouse noted its concern that the MMU's monitoring and investigating activities not interfere with the operation of the markets. We believe the Plan represents a measured market oversight mechanism. It ensures independence and objectivity for the MMU, and, with the modifications we require in this order, it ensures that important information about the functioning of the PJM Market is available to the Commission, to appropriate state and federal authorities and to the public. With this information, interested members of the public can evaluate the performance of the MMU, if they so desire, and bring their views to the attention of the Commission in accordance with the Federal Power Act.

As a general matter, we note the importance of monitoring ancillary services markets. The provision of ancillary services is critical to efficient and reliable operations. Because such markets are complex and relatively new, an initial market design may contain unintended flaws. ^{1/} We therefore direct the MMU to monitor closely the efficiency of its ancillary services markets, the pricing in these markets, and potential exercises of market power, and we direct the MMU to file a report on its conclusions within one year of the effective date of this order.

Finally, we note that the MMU has responsibility for monitoring all bilateral transactions in the PJM Market. We direct it to report to us within one year of the effective date of this order about its monitoring of bilateral transactions.

The Commission orders:

^{34/} We note that any additional enforcement remedies proposed to be adopted may require Commission approval before they become effective.

^{35/} See, e.g., New England Power Pool, 85 FERC ¶ 61,379 (1998).

(A) PJM's filing is hereby accepted for filing, as modified as directed in Ordering Paragraph (B) below, to be effective on April 1, 1999, as requested.

(B) MMU is hereby directed to make filings in accordance with the discussion in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.