

## ATTACHMENT M

### PJM MARKET MONITORING PLAN

#### I. OBJECTIVES

The objectives of this PJM Market Monitoring Plan are to maintain an independent Market Monitoring Unit that will objectively monitor, investigate, evaluate and report on the PJM Markets, including, but not limited to, structural, design or operational flaws in the PJM Markets or the exercise of market power or manipulation in the PJM Markets. The Market Monitoring Unit shall have exclusive responsibility for administering the Plan. The Market Monitoring Unit shall pursue these objectives in a manner consistent with this Attachment M and all applicable PJM Market Rules, PJM Manuals, and PJM committee procedures. This Plan shall apply to PJM, the Market Monitor, the Market Monitoring Unit, Market Participants and all entities that take service under the PJM Tariff. In the event of any conflict between a provision in the Plan and a provision of any other PJM Market Rule the provision of the Plan shall control.

#### 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 Commissions, and state and federal attorneys general.

(b) **“Commission”** means the Federal Energy Regulatory Commission.

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

(c-1) “Cost Development Guidelines” means the manual that includes the detailed method for determining the costs entering into the components of cost for operating capacity in accordance with Schedule 2 of the Operating Agreement.

(d) **“FERC Market Rules”** mean 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.

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- (e) **“Market Monitor”** means the head of the Market Monitoring Unit.
- (f) **“Market Monitoring Unit” or “MMU”** means the organization that is responsible for implementing this Plan, including the Market Monitor.
- (g) **“Market Monitoring Unit Advisory Committee” or “MMU Advisory Committee”** means the committee established under Section III.H.
- (h) **“Market Participant”** means an entity that generates, transmits, distributes, purchases, or sells electricity, ancillary services, or any other product or service provided under the PJM Tariff or Operating Agreement within, into, out of, or through the PJM Region. “Market Participant” shall not include an Authorized Government Agency that consumes energy for its own use but does not purchase or sell energy at wholesale.

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- (i) **“OPSI Advisory Committee”** means the committee established under Section III.G.
- (j) **“PJM”** means PJM Interconnection, L.L.C., including the Office of the Interconnection as referenced in the PJM Operating Agreement.
- (k) **“PJM Board”** means the Board of Managers of PJM or its designated representative, exclusive of any members of PJM Management.
- (l) **“PJM Entities”** mean PJM, including the Market Monitoring Unit, the PJM Board, and PJM’s officers, employees, representatives, advisors, contractors, and consultants.
- (m) **“PJM Liaison”** means the liaison established under Section III.I.
- (n) **“PJM Management”** means the officers, executives, supervisors and employee managers of PJM.
- (o) **“PJM Manuals”** mean those documents, including business rules, produced by PJM that describe detailed PJM operating and accounting procedures that are made publicly available in hard copy and on the Internet.
- (p) **“PJM Markets”** mean the PJM Interchange Energy and Capacity Markets, including the RPM auctions, together with all bilateral or other wholesale electric power and energy transactions, capacity transactions, ancillary services transactions (including black start service), transmission transactions and any other market operated under the PJM Tariff or Operating Agreement within the PJM Region.
- (q) **“PJM Market Rules”** mean the rules, standards, procedures, and practices of the PJM Markets set forth in the PJM Tariff, the PJM Operating Agreement, the PJM Reliability Assurance Agreement, the PJM Consolidated Transmission Owners Agreement, the PJM Manuals, the PJM Regional Practices Document, the PJM-Midwest Independent Transmission System Operator Joint Operating Agreement or any other document setting forth market rules.
- (r) **“PJM Operating Agreement”** means the Amended and Restated Operating Agreement of PJM on file with the Commission.
- (s) **“PJM Regional Practices Document”** means the document of that title that compiles and describes the practices in the PJM Markets and that is made available in hard copy and on the Internet.

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- (t) **“PJM Reliability Assurance Agreement”** means the Reliability Assurance Agreement among Load Serving Entities in the PJM Region on file with the Commission.
- (u) **“PJM Tariff”** means the Open Access Transmission Tariff of PJM on file with the Commission.
- (v) **“PJM Transmission Owners Agreement”** means the PJM Consolidated Transmission Owners Agreement on file with the Commission.
- (w) **“Plan”** means the PJM market monitoring plan set forth in this Attachment M.
- (x) **“State”** means the District of Columbia and any state or commonwealth in the PJM Region.
- (y) **“State Commission”** means any state regulatory agency having jurisdiction over retail electricity sales in any State in the PJM Region.

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### **III. MARKET MONITORING UNIT**

**A. Establishment:** PJM shall establish or retain a Market Monitoring Unit to perform exclusively the functions set forth in this Plan.

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

**C. Independence:** The Market Monitoring Unit shall be independent from, and not subject to, the direction or supervision of any person or entity, with the exception of the PJM Board as specified in Section III.D, and the Commission. No person or entity shall have the right to preview, screen, alter, delete, or otherwise exercise editorial control over or delay Market Monitoring Unit actions or investigations or the findings, conclusions, and recommendations developed by the Market Monitoring Unit that fall within the scope of market monitoring responsibilities contained in this Plan. Nothing in this section shall be interpreted to exempt the Market Monitoring Unit from any applicable provision of state or federal law.

#### **D. Role of PJM Board:**

1. The PJM Board shall have the authority and responsibility:
  - a. To review the budget of the Market Monitoring Unit, consistent with the budget processes and requirements set forth in Section III.E.
  - b. To propose to terminate, retain by contract renewal or replace the Market Monitoring Unit, consistent with the requirements of Section III.F.
2. The PJM Board and the Market Monitor shall meet and confer from time to time on matters relevant to the discharge of the PJM Board's and the Market Monitoring Unit's duties under this Plan.
3. Other than the matters set forth in Sections III.D.1 and D.2, the PJM Board shall have no responsibility for, or authority over, the Market Monitoring Unit.

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**E. Budget:**

**1. Preparation:** The Market Monitor shall prepare a budget each year of its expenses on an accrual basis in accordance with generally accepted accounting principles that is sufficient to cover the anticipated actual costs to perform the services under this Plan, including, but not limited to, salary and benefits, rent and utilities, interest, depreciation and other operating expenses.

**2. Review:** The Market Monitor shall, not later than September 15, submit a draft budget to the Finance Committee, OPSI Advisory Committee, and PJM Board for review and comment. The draft budget shall include total labor compensation, non-employee labor expense, current full-time employee and contractor head count, depreciation expense, interest expense, technology expense, other expense and capital spending, including a level of supporting detail consistent with that provided by PJM in its annual budget review to the Finance Committee. The draft budget shall also be made available for inspection by the PJM members. The Finance Committee, OPSI Advisory Committee, and PJM Board shall have until October 15 to request changes in the budget. The Market Monitor shall consider those requests and, if they are not accepted by the Market Monitor, it shall provide, in writing, to the foregoing and to PJM members, an explanation of the reasons they are not acceptable. If, after discussing requested changes with such entities, there is no remaining dispute over such requested changes, the mutually agreeable budget shall go into effect on January 1 of the subsequent year.

**3. Commission Action:** If despite the foregoing process, there remains a dispute regarding the budget, PJM shall, not later than November 1, file the Market Monitor's proposed budget with the Commission for resolution of the dispute. PJM shall accompany such filing with an explanation of the nature of the dispute and any position of the PJM Board on such dispute. Any interested person may also file comments on such dispute. The fact that PJM is submitting the dispute for Commission review shall not be deemed to provide the views of the PJM Board any special weight, nor subject them to any special burden of proof. If the Commission has not taken action by December 31, the Market Monitor's proposed budget, filed by PJM, shall take effect, subject to any subsequent Commission order.

**4. Intra-year Amendments to the Budget:** If the Market Monitor requires an intra-year amendment to the budget to perform its functions under the Plan, it shall provide the proposed amendment, the reasons for the proposed amendment and reasonable supporting detail to the Finance Committee, OPSI Advisory Committee and the PJM Board for review and comment, and if any dispute regarding such proposed amendment remains 30 days thereafter, PJM shall file the proposed budget amendment with the Commission for resolution of the dispute. The proposed budget amendment and supporting explanation shall also be made available for inspection by the PJM members.

**5. Rates:** The Market Monitor's approved budget shall be collected pursuant to Schedule 9-MMU of the PJM Tariff.

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**F. Term and Termination:**

**1. Term:** Upon the effective date of this revised Attachment M, there shall be a contract between PJM and the Market Monitoring Unit that has an initial term of six (6) years. Upon the expiration of that initial six (6) year term, the contract may be renewed for subsequent term(s) of three (3) years if both parties agree. If the PJM Board does not agree to renew the contract at the end of its term, it may propose to terminate the contract pursuant to the standards and processes set forth below.

**2. Standards for Proposed Termination:**

a. Termination During Contract Term. During the term of any contract with the Market Monitoring Unit, the PJM Board may propose to terminate the contract as follows:

(1) During the first three (3) years following the effective date of this revised Attachment M, the PJM Board may propose to terminate the contract with the Market Monitoring Unit upon a determination of willful misconduct or gross negligence by the Market Monitoring Unit.

(2) Following the expiration of this initial three (3) year period, the PJM Board may, during the term of any contract with the Market Monitoring Unit (or any successor Market Monitoring Unit), propose to terminate the contract with the Market Monitoring Unit upon a determination that the Market Monitoring Unit has not adequately performed its functions set forth in this Plan.

b. Termination at End of Contract Term. At the end of the term of any contract with the Market Monitoring Unit, the PJM Board may propose to terminate the contract with the Market Monitoring Unit (or any successor Market Monitoring Unit) (1) upon a determination that the Market Monitoring Unit has not adequately performed the functions set forth in this Plan, or (2) pursuant to an open, nondiscriminatory and transparent request for proposals.

**3. Process for Proposed Termination and Replacement:**

a. Notice. If the PJM Board proposes to terminate the contract with the Market Monitoring Unit pursuant to the standards set forth in Section III.F.2, it shall provide one hundred twenty (120) days prior notice to the Market Monitoring Unit, the OPSI Advisory Committee, MMU Advisory Committee and the PJM members.

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b. Contents of Notice. The notice shall include the following information:

(1) If the PJM Board proposes to terminate the contract with the Market Monitoring Unit based on willful misconduct or gross negligence, it shall set forth in detail the conduct that supports such determination and shall propose an open and transparent process (such as a request for proposals) for selecting a new Market Monitoring Unit.

(2) If the PJM Board proposes to terminate the contract with the Market Monitoring Unit because it has not adequately performed its functions under this Plan, it shall set forth in detail the performance deficiencies that support that determination and shall propose an open and transparent process (such as a request for proposals) for selecting a new Market Monitoring Unit.

(3) If the PJM Board proposes to conduct a request for proposals to determine whether to replace the Market Monitoring Unit at the end of a contract term, it shall propose an open, nondiscriminatory and transparent request for proposals and shall allow the existing Market Monitoring Unit to submit a bid or proposal in that process. Any such notice shall set forth in detail the criteria applicable to such request for proposals. Such criteria shall be subject to comment as provided in Section III.F.3.c and subject to approval by the Commission.

c. Comments on the Notice. Within forty-five (45) days of any such notice, the Market Monitoring Unit, the OPSI Advisory Committee, MMU Advisory Committee, any PJM member or any stakeholder may provide advice or comment to the PJM Board regarding the proposed termination and/or the proposed process for selecting a new Market Monitoring Unit. The PJM Board shall take such advice or comment into account in reaching a final determination as to whether to propose to terminate the contract with the Market Monitoring Unit and, if so, the process for selecting a new Market Monitoring Unit.

d. FERC Filing. Upon the expiration of the one hundred twenty (120) day prior notice period, the PJM Board may, after considering the advice and comment provided pursuant to Section III.F.3.c, propose in a filing to FERC that the contract with the Market Monitoring Unit be terminated. Any such proposal shall include a detailed explanation of the reasons therefor, including an explanation of why the standards set forth in Section III.F.2 have been satisfied, and an open, nondiscriminatory and transparent process for selecting a new

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Market Monitoring Unit. The Market Monitoring Unit, OPSI Advisory Committee and any interested stakeholder may submit to FERC such comments, protests or other documents and advice as appropriate on such filing.

e. Termination. The contract with the Market Monitoring Unit shall not be terminated until (1) FERC has reviewed a termination proposal by the PJM Board and any comments or protests submitted by interested parties thereon (including the OPSI Advisory Committee), (2) FERC has made a finding that the PJM Board has demonstrated that termination is justified pursuant to the standards set forth in Section III.F.2 above, (3) FERC has approved a process for selecting a new Market Monitoring Unit, and (4) a new Market Monitoring Unit has been selected pursuant to such FERC-approved process.

**G. OPSI Advisory Committee:** There shall be an OPSI Advisory Committee comprised of five (5) representatives appointed by the Organization of PJM States, Inc. The OPSI Advisory Committee shall meet with the Market Monitoring Unit on a regular basis and as otherwise necessary to receive and discuss information relevant to this Plan. In addition to the specific responsibilities regarding budget and termination set forth in Sections III.E and III.F, the OPSI Advisory Committee may provide advice to the Commission, Market Monitor, the PJM Board, stakeholder committees, and stakeholder working groups regarding any matter concerning the Market Monitor, Market Monitoring Unit or Market Monitoring Plan. Any formal advice shall be in writing and, subject to confidentiality provisions, shall be made publicly available.

**H. Market Monitoring Unit Advisory Committee:** There shall be an MMU Advisory Committee, chaired by the Market Monitor, that is open to all stakeholders and representatives of Authorized Government Agencies. The MMU Advisory Committee shall act as a liaison between stakeholders and the MMU and shall provide advice from time to time on matters relevant to the MMU's responsibilities under this Plan. The MMU Advisory Committee shall have no authority to direct, supervise, review, or otherwise interfere with the functions of the MMU under this Plan, nor any authority to terminate or propose to terminate the Market Monitor.

**I. PJM Liaison:** PJM may appoint an employee to act as liaison with the Market Monitoring Unit. The function of the liaison will be to facilitate communications between PJM employees and the Market Monitoring Unit, as defined in Section V.E.

#### **IV. MARKET MONITORING UNIT FUNCTIONS AND RESPONSIBILITIES**

**A. General:** The Market Monitoring Unit shall objectively monitor the competitiveness of PJM Markets, investigate violations of FERC or PJM Market Rules, recommend changes to PJM Market Rules, prepare reports for the Authorized Government Agencies and take such other actions as are specified in this Plan.

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**B. Monitored Activities:** The Market Monitoring Unit shall be responsible for monitoring the following:

1. Compliance with the PJM Market Rules.
2. Actual or potential design flaws in the PJM Market Rules.
3. Structural problems in the PJM Markets that may inhibit a robust and competitive market.
4. The potential for a Market Participant to exercise market power or violate any of the PJM or FERC Market Rules or the actual exercise of market power or violation of the PJM or FERC Market Rules.
5. PJM's implementation of the PJM Market Rules or operation of the PJM Markets, as further set forth in Section IV.C.
6. Such matters as are necessary to prepare the reports set forth in Section VI.

**C. Monitoring of PJM:** The Market Monitoring Unit shall monitor PJM's implementation of the PJM Market Rules and operation of the PJM Markets. If the Market Monitoring Unit disagrees with the implementation of the PJM Market Rules or the operation of the PJM Markets, the Market Monitoring Unit may so advise PJM. Excepting matters governed by Section IV.I, if the disagreement cannot be resolved informally, the Market Monitoring Unit may inform the Commission, Authorized Government Agencies, or the PJM members. The Market Monitoring Unit shall have no authority to direct PJM to modify its operation of the PJM Markets or implementation of the PJM Market Rules.

**D. Market Design:** PJM is responsible for proposing for approval by the Commission, consistent with tariff procedures and applicable law, changes to the design of the PJM Markets. If the Market Monitoring Unit detects a design flaw or other problem with the PJM Markets, the Market Monitoring Unit may initiate and propose, through the appropriate stakeholder processes, changes to the design of such market. In support of this function, the Market Monitoring Unit may engage in discussions with stakeholders, State Commissions, PJM Management, or the PJM Board; participate in PJM stakeholder meetings or working groups regarding market design matters; publish proposals, reports or studies on such market design issues; and make filings with the Commission on market design issues.

**E. Mitigation:** [The Market Monitoring Unit shall have exclusive authority to administer the provisions for retrospective mitigation and the development of inputs for use in prospective mitigation described in the Appendix to Attachment M.](#) The Market Monitoring Unit may, consistent with the PJM Market Rules, recommend to PJM that it take specific mitigation action that PJM is authorized to take under the PJM Market Rules to address market behavior or conditions. The Market Monitoring Unit shall not, however, have authority to require

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modification of PJM operational decisions, including dispatch instructions. If PJM does not  
accept the Market Monitoring Unit's

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recommendations regarding mitigation actions, the Market Monitoring Unit may report its mitigation recommendation to the Authorized Government Agencies, Commission staff, State Commissions or the PJM members, as the Market Monitoring Unit deems appropriate. Nothing in this Plan shall be deemed to supersede any authority the Market Monitoring Unit may have under the PJM Market Rules, nor shall anything in this Plan preclude any person or entity from seeking to modify such authority in a filing with the Commission.

**F. Studies or Reports for State Commissions:** Upon request in writing by the OPSI Advisory Committee, the Market Monitoring Unit may, in its discretion, provide such studies or reports on wholesale market issues, including wholesale market transactions occurring under a state-administered auction process, as may affect one or more states within the PJM area. Any such request for such a study or report, as well as any resulting study or report, shall be made simultaneously available to the public, with simultaneous notice to PJM members, subject to the protection of confidential information.

**G. Participation in Stakeholder Processes:** The Market Monitoring Unit may, as it deems appropriate or necessary to perform its functions under this Plan, participate (consistent with the rules applicable to all PJM stakeholders) in stakeholder working groups, committees or other PJM stakeholder processes.

**H. Referrals to State Commissions:** If during the ordinary course of its activities the Market Monitoring Unit discovers evidence of wrongdoing (other than minor misconduct) that the Market Monitor reasonably believes to be within a State Commission's jurisdiction, the Market Monitoring Unit shall report such information to the State Commission(s).

**I. Corrective Actions**

**1. Required Notice to Commission:** Immediately upon determining that it has identified a significant market problem or a potential violation by a Market Participant or PJM 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, 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.I.1 shall limit the ability of the Market Monitoring Unit to engage in discussions with any such Market Participant as provided in Section IV.J.1.

**2. Required Referral to Commission:** In addition to the notification provided in section IV.I.1. above, where the Market Monitoring Unit has reason to believe, based on sufficient credible information, that a Market Participant or PJM 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,

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objectively identifiable violation of a PJM Market Rule, where such rule provides for an explicit remedy that has been accepted by the Commission and can be administered by PJM, shall not be subject to the provisions of this section IV.I.2.

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

- a. 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);
- b. The date(s) or time period during which the alleged market violation(s) occurred and whether the alleged wrongful conduct is ongoing;
- c. The specific PJM Market Rules, FERC Market Rule(s) and/or tariff provision(s) that were allegedly violated;
- d. The specific act(s) or conduct that allegedly violated the PJM Market Rules or the FERC Market Rules;
- e. The consequences in the market resulting from the act(s) or conduct, including, if known, an estimate of economic impact on the market;
- f. If the Market Monitoring Unit believes that the act(s) or conduct constituted manipulative behavior in violation of the FERC Market Rules and/or PJM Market Rules, a description of the alleged manipulative effect on market prices, market conditions, or market rules; and
- g. 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 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 staff.

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**J. Additional Market Monitoring Unit Authority:** In addition to notifications and referrals under Sections IV.I.1 and IV.I.2, respectively, the Market Monitoring Unit shall have the additional authority described in this section, as follows:

1. Engage in discussions regarding issues relating to the PJM Market Rules or FERC Market Rules, in order to understand such issues and to attempt to resolve informally such issues or other issues.
2. Excepting matters governed by Section IV.I, file reports and make appropriate regulatory filings with Authorized Government Agencies 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. The Market Monitoring Unit shall make such filings or reports publicly available and provide simultaneous notice of the existence of reports to the PJM members and PJM, subject to protection of confidential information.
3. Consult with Authorized Government Agencies concerning the need for specific investigations or monitoring activities.
4. 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.
5. Report directly to the Commission staff on any matter.

**K. 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.K.3.
2. Except as provided in subsection IV.K.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.I.1 and IV.I.2 of this Plan, provided that any written submission to

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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 or other regulatory filings pursuant to Section IV.J or V of this Plan if accompanied by a request that information that is confidential under the PJM Operating Agreement be maintained as confidential.

**V. INFORMATION AND DATA**

**A. Primary Information Sources:** The Market Monitoring Unit shall rely primarily upon data and information that are customarily gathered in the normal course of business of PJM and such publicly available data and information that may be helpful to accomplish the objectives of the Plan, including, but not limited to, (1) information gathered or generated by PJM in connection with its scheduling and dispatch functions, its operation of the transmission grid in the PJM Region or its determination of Locational Marginal Prices, (2) information required to be provided to PJM in accordance with the PJM Market Rules and (3) any other information that is generated by, provided to, or in the possession of PJM. The foregoing information shall be provided to the Market Monitoring Unit as soon as practicable, including, but not limited to, real-time access to scheduling, dispatch and other operational data.

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

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**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 make reasonable requests of the entities possessing such information to provide the information. 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 V.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.K.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 as 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.

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Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos. EL07-56 et al., issued May 30, 2008, 123 FERC ¶ 61,235.

**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. [A Market Participant shall have sole responsibility to make available any information that the Market Monitoring Unit deems necessary to document, verify or investigate a claim or request by such Market Participant. All load reduction data are subject to audit by the PJM Market Monitoring Unit.](#) 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 [as provided in the Appendix to Attachment M.](#)

**E. Access to Personnel and Facilities:** The Market Monitoring Unit shall have access to PJM personnel and facilities as necessary to perform the functions set forth in this Plan. If the Market Monitoring Unit seeks data or other information from PJM personnel, it may contact the appropriate personnel that may be in possession of such data or information. If the Market Monitoring Unit seeks a formal opinion or position on a matter from PJM, it shall contact the PJM Liaison or appropriate senior management official to provide such opinion or position.

**F. 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.

**G. 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 Markets 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.

## **VI. REPORTS**

**A. Reports:** The Market Monitoring Unit shall prepare and submit contemporaneously to the Commission, the State Commissions, the PJM Board, PJM Management and to the PJM Members Committee, annual state-of-the-market reports on the state of competition within, and the efficiency of, the PJM Markets, [and quarterly reports that update selected portions of the annual report and which may focus on certain topics of particular interest to the Market Monitoring Unit. The quarterly reports shall not be as extensive as the annual reports.](#) In ~~such reports~~ [its annual, quarterly and other reports](#), the Market Monitoring Unit may make recommendations regarding any matter within its purview. These ~~annual~~ reports shall, [and the quarterly reports may](#), address, among other things, the extent to which prices in the PJM Markets reflect competitive outcomes, the structural competitiveness of the PJM Markets, the

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effectiveness of bid mitigation rules, and the effectiveness of the PJM Markets in signaling infrastructure investment. The annual reports shall, and the quarterly reports may, 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 VI.B. The Market Monitoring Unit may from time-to-time prepare and submit additional reports to the Commission, the PJM Board and PJM Members Committee as the Market Monitoring Unit may deem appropriate in the discharge of its responsibilities under the Plan.

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**B. Reports to Authorized Government Agencies:** The Market Monitoring Unit shall contemporaneously submit to the Authorized Government Agencies the reports provided to the PJM Board pursuant to Section VI.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, the protection of the confidentiality of ongoing inquiries and monitoring activities, and the availability of resources.

**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 VI.A hereof.

## VII. AUDIT

The activities and expenditures of the Market Monitoring Unit for the prior year shall be audited annually by a nationally recognized independent third party auditor selected by the Market Monitor no later than March 15. The audit shall include, but not be limited to, a review of whether MMU expenditures were for purposes consistent with the functions set forth in this Plan and shall include documentation at a level of supporting detail consistent with that required in Section III.E.2 above. The audit report shall be provided to the PJM Board, Market Monitoring Unit, OPSI, OPSI Advisory Committee and PJM members subject to the protection of confidential information. The Market Monitoring Unit further shall provide annually to PJM and the Finance Committee audited financial statements of revenues and expenses related solely to the service provided to PJM.

**Comment [sk1]:** This replaces and merges the auditing requirements now included in para.(e) of Schedule 9-MMU.

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### VIII. LIMITATION OF LIABILITY

Any liability of PJM arising under or in relation to this Plan shall be subject to this Section VIII. 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. Neither the OPSI Advisory Committee nor any State Commission (including commissioners and staff persons) shall be liable to any person under this Plan for any financial loss, loss of economic advantage, opportunity cost, or actual or consequential damages associated with performing any of its functions or duties under this Plan.

### IX. ALTERNATIVE 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.

### X. EFFECTIVE DATE CODE OF ETHICS

~~This Plan shall be effective as of August 1, 2008.~~

The Market Monitoring Unit and its employees, as applicable shall adhere to the following Code of Ethics.

#### A. Conflicts of Interest:

1. The Market Monitoring Unit will use its best efforts to assure that all of its employees comply with this Code of Ethics and shall take appropriate disciplinary actions against employees who violate the policy.
2. The Market Monitoring Unit and its employees assisting on market monitoring matters for PJM, and their spouses and dependent children, may not have a direct equity or other financial interest in a Market Participant or in a parent, subsidiary, or affiliate of a Market Participant. (The term "direct" is meant to exclude investments such as mutual funds in which a person has no direct control, with the exception of sector-specific mutual funds.)

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3. The Market Monitoring Unit and its employees assisting on market monitoring matters for PJM, may not undertake a matter for a third party where such representation would require disclosure of market-sensitive or proprietary information of PJM.

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**B. Prohibited Engagements and Conduct by the Market Monitoring Unit:**

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1. Neither the Market Monitoring Unit nor its employees will be engaged to provide advice, or undertake a matter for or on behalf of, any entity on any entity's participation in the PJM Markets, except as otherwise authorized under subparagraphs (iii) and (v).

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2. Neither the Market Monitoring Unit nor its employees will be engaged by any entity in any litigation, open regulatory docket, alternative dispute resolution procedure, or arbitration with PJM, except as otherwise authorized under subparagraphs (iii) and (v).

3. Neither the Market Monitoring Unit nor its employees will be engaged to appear on behalf of or against any entity before a state regulatory commission within the PJM Region in any new engagement in the electricity business (after the date of this Agreement) except as authorized under the PJM Tariff, as requested by a state regulatory commission, or as otherwise required by law.

4. Neither the Market Monitoring Unit nor its employees shall accept any engagement by any Market Participant outside of the PJM Region that would require the Market Monitoring Unit to take a position adverse to any PJM Member or inconsistent with any position taken by the Market Monitoring Unit in the PJM Region.

5. Neither the Market Monitoring Unit nor its employees will be engaged to appear on behalf of or against any entity before the Commission on any matter within the PJM Region in any new engagement in the electricity business (after the date of this Agreement) except as authorized under the PJM Tariff, as requested by the Commission, or as otherwise required by law.

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6. Before the Market Monitoring Unit accepts any engagement on behalf of or against an Interested Party, it must inform the PJM General Counsel and the PJM Board of such potential engagement and provide the PJM Board with an opportunity to state its objection to such representation on the ground the engagement would present a conflict of interest or result in the material appearance of conflict. At the discretion of the Market Monitoring Unit, the Market Monitoring Unit may notify the PJM General

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Counsel that the proposed engagement is confidential and request that the General Counsel disclose the proposed engagement only to a PJM Board subcommittee in a manner which limits the disclosure of nonpublic information. Within seven (7) business days of being informed of the potential engagement by the Market Monitoring Unit, the PJM Board shall state any objection to such potential engagement. If the Market Monitoring Unit disagrees with the PJM Board's determination regarding the potential engagement by the Market Monitoring Unit, the Parties shall jointly engage the Commission's Dispute Resolution Service to determine whether the engagement would present a conflict of interest or result in the material appearance of a conflict. Unless the Commission's Dispute Resolution Service finds no conflict of interest the Market Monitoring Unit shall be precluded from accepting the challenged engagement. For these purposes, the term "Interested Party" means (x) a Market Participant; (v) a state regulatory commission within the PJM Region; or (z) a person or entity with a significant direct financial interest in the organization, governance or operation of PJM but shall not include PJM itself.

7. Employees of the Market Monitoring Unit shall not accept gifts, payments, favors, meals, transportation, entertainment, or services (individually, "Gift," and collectively, "Gifts"), of other than nominal value within a calendar year from PJM, Authorized Government Agencies, any Market Participant, contractor, supplier or vendor to the Market Monitoring Unit. Except that "Gifts" shall not include any of the foregoing that is generally provided to the attendees of business meetings (e.g. PJM stakeholder meetings). Gifts not exceeding One Hundred Fifty Dollars (\$150) shall be deemed to be of "nominal value." Similarly, neither the Market Monitoring Unit nor any employee of the Market Monitoring Unit shall offer any Gift to any public official or Market Participant unless such Gifts: are legal; not offered for specific gain or reciprocal action; follow generally accepted ethical standards; and are of nominal value.

**C. Compliance with All Applicable Laws:** The Market Monitoring Unit will use its best efforts to assure the compliance of the Market Monitoring Unit and its employees with all applicable laws, including but not limited to those referenced in the PJM Code of Conduct.

## APPENDIX

[SEE SEPARATE DOCUMENT PROVIDED BY THE IMM]

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