

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.)	Docket Nos.	ER06-826-000
)		ER06-826-001

**REQUEST FOR REHEARING OF THE
ORGANIZATION OF PJM STATES, INC.**

Pursuant to Rule 713 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.713, the Organization of PJM States ("OPSI") hereby requests rehearing of the Commission's Order issued in the above-captioned proceeding on July 14, 2006¹.

I. BACKGROUND

On July 14, 2006, the Commission issued an Order that generally accepted an April 3, 2006 filing by the PJM Interconnection, L.L.C., ("PJM") to amend Attachment M of its tariff relating to its market monitoring function.² The July 14 Order found that PJM's April 3 filing generally conforms with the general principles established by the Commission's Policy on Market Monitoring and that application of that policy to PJM is just and reasonable.³ On July 20, 2006, Commissioner Kelly issued a *dissent in part* raising concerns with certain aspects of the PJM's Market Monitoring Plan.

¹ The following members of OPSI join in this request: the West Virginia Public Service Commission, the Virginia Corporation Commission, the New Jersey Board of Public Utilities, the Indiana Utility Regulatory Commission, the Tennessee Regulatory Authority, the Public Service Commission of the District of Columbia, the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Michigan Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the North Carolina Utilities Commission. The following members of OPSI do not participate in this request: the Maryland Public Service Commission, and the Illinois Commerce Commission.

² *PJM Interconnection, L.L.C.*, 116 FERC ¶61,038 (2006), (July 14 Order), at 1

³ July 14 Order, at 1

OPSI is concerned about the level of independence that PJM's Market Monitoring Unit ("MMU") has from PJM management. MMU independence is critical to ongoing confidence in the MMU's performance and conclusions as the work undertaken by the PJM MMU serves to benefit all of our markets. OPSI emphasizes that the proposed suggestions contained in its previously-filed Comments in no way reflect negatively towards PJM's current MMU. The suggestions contained in our Comments and this request for rehearing are limited to process issues and the current internal reporting structure and relationship between PJM Management, PJM's Board and the PJM MMU. OPSI requests that the Commission reconsider OPSI's recommendations which are aimed at improving the MMU's ability to aide our market.

III. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS

After a careful review of the July 14 Order, OPSI respectfully asks that the Commission review its July 14 Order and grant rehearing for the following identified reasons further discussed herein:

- A. The Commission erred in dismissing OPSI's concerns about MMU independence and recommendations for improvement in MMU independence.
- B. With respect to Section IV.B of PJM's proposed Attachment M, the Commission erred in deciding that: (1) the existence of an MMU referral to the Commission shall not be made known to the general public; (2) the contents of the MMU's referral cannot or should not be made available to state regulators; (3) the MMU cannot or should not be informed about the Commission's dispensation of the referral and the findings and outcome of any investigation initiated by the Commission pursuant to an MMU referral; and (4) the MMU must cease all inquiries into a matter once a referral has been made to the Commission.
- C. The Commission erred in dismissing OPSI's requests to be informed about Attachment M activity.
- D. The Commission erred in not addressing OPSI's recommendation that Attachment M be modified to identify the references to the PJM Market Rules and Sections in the PJM Tariff that provide PJM with specific market power mitigation authority and

thereby make the referral provisions of Section IV.B of Attachment M inapplicable in those instances.

- E. The Commission erred in not ensuring the MMU's ability to obtain the information that it needs to perform its functions.

IV. ARGUMENT

A. The Commission Erred in Dismissing OPSI's Concerns About MMU Independence and Recommendations for Improvement in MMU Independence.

Under the usual Commission standards, PJM bears the burden of showing that its proposed Attachment M is both consistent with the Commission's policy on MMU independence and just and reasonable. By suggesting that OPSI use the Section 206 complaint mechanism to advance its concerns about the independence of PJM's MMU, the July 14 Order improperly attempts to shift the burden of proof from PJM to OPSI. Furthermore, PJM's April 3, 2006 filing fails to demonstrate that the MMU independence provisions of its proposed Attachment M are just and reasonable.

In its Comments filed on June 8, 2006, OPSI expressed concern regarding the level of independence that the MMU has with respect to PJM management.⁴ Specifically, OPSI recommended that Attachment M be modified to: (1) specify that the MMU will report to the PJM Board rather than to the PJM President; (2) specifically state the MMU's responsibility to monitor the conduct of PJM as a system operator; (3) create an environment where the MMU's inquiries, findings, conclusions, and reports can be conducted independent of influence by PJM management or other sources of external influence; (4) specify that the MMU budget will be developed separately from the rest of the PJM operations budget and that the budget be developed by the MMU, rather than by PJM management, and that the MMU budget be separately approved by the Commission; (5) establish that MMU staff will report exclusively to

⁴ OPSI Comments, at 4.

the market monitor who will have authority over human resource management decisions for the unit; (6) provide the market monitor with substantial job security; (7) provide the MMU with authority to select and retain its own legal counsel independent of counsel used by PJM; and (8) provide the MMU with authority to file comments and testimony in official proceedings without being required to obtain prior approval from PJM management.⁵ OPSI cited to various sections of Module D of the Midwest ISO tariff, which has been previously approved by the Commission, as providing precedent for most of these recommendations.

PJM appears to have responded to most, if not all of these reasonable OPSI proposals with the statement that,

PJM objects strenuously to the attempts of one group of stakeholders to hijack a proceeding intended to implement modest reforms to the Plan and thereby attempt to impose their vision on how PJM and its stakeholders should structure their arrangements for market monitoring.⁶

Presuming that the State Commission members of OPSI are the “one group of stakeholders” to which PJM refers, OPSI would point out that support for filing the June 8 OPSI Comments was unanimous by the fourteen OPSI states, including the District of Columbia. OPSI members are somewhat troubled by PJM’s characterization of our intent, as there was no intent on the part of OPSI to “hijack” this proceeding. Rather, as an obviously interested party, state regulators filed comments with the Commission and made recommendations on an issue of great import to them.

Despite the concerns raised in OPSI’s comment, the July 14 Order appears to have dismissed all of OPSI’s concerns about MMU independence and reasonable recommendations to improve that independence with the statement that:

⁵ OPSI Comments at 5-10

⁶ PJM Answer, at 7

Protestors whose [sic] seek changes regarding the independence of the MMU and its reporting obligations are making recommendations that are not raised in this filing and are therefore beyond the scope of this proceeding. We see no reason to institute a section 206 proceeding to address matters that are more global than the issues properly before us.⁷

However, the July 14 Order fails to explain what constitutes an issue that is “properly” before the Commission in these circumstances and what is not. Indeed, PJM’s April 3 Filing stated that the purpose of the filing in this case was “primarily to bring into conformity with Commission policy the PJM Market Monitoring Unit’s procedures to pursue corrective actions as necessary to enforce compliance with the PJM market rules.”⁸ The recommendations contained in OPSI’s June 8 Comments were designed to bring the MMU’s procedures into conformity with the Commission’s policy as well. MMU independence is still one of the Commission’s bedrock principles for market monitors and OPSI believes that this issue was indeed properly before the Commission.

Similarly, Commissioner Kelly’s July 20, 2006 dissent raises doubts as to the procedural appropriateness of the July 14 Order’s dismissal of the issues raised by OPSI. Specifically, Commissioner Kelly stated,

However, I disagree with this order to the extent that the Commission failed to initiate an FPA section 206 investigation to determine whether certain aspects of PJM’s Market Monitoring Plan are just and reasonable in light of concerns raised by protesters.⁹

and,

In my view, market monitors, whether internal or external, serve an important and unique role and have a duty to their respective ISO/RTOs, ISO/RTO stakeholders, the Commission and other governmental bodies. Therefore, their rights and obligations must be set forth in the tariff with utmost clarity and specificity. I believe the Commission should have investigated whether PJM should articulate clearer and more specific rules regarding the MMU’s independence and authority,

⁷ July 14 Order, at P 35

⁸ PJM’s April 3 Filing, at 1

⁹ Kelly Dissent, at 1

similar to those in the market monitoring provisions approved by the Commission in Module D of the Midwest ISO Tariff.¹⁰

and,

this filing presented the opportunity to explore such issues and I believe the Commission should have done so.¹¹

Under the usual Commission standards, PJM bears the burden of showing that its proposed Attachment M is both consistent with the Commission's policy on MMU independence and just and reasonable. By suggesting that OPSI use the Section 206 complaint mechanism to advance its concerns about the independence of PJM's MMU, the July 14 Order improperly attempts to shift the burden of proof from PJM to OPSI. Furthermore, PJM's April 3, 2006 filing fails to demonstrate that the MMU independence provisions of its proposed Attachment M are just and reasonable.

Accordingly, the Commission erred in dismissing OPSI's concerns about the independence of the PJM MMU and OPSI's recommendations for addressing those concerns.

B. With Respect to Section IV.B of PJM's Proposed Attachment M, the Commission Erred in Deciding That: (1) The Existence of an MMU Referral to the Commission Shall Not be Made Known to the General Public; (2) The Contents of the MMU's Referral Cannot or Should Not be Made Available to State Regulators; (3) The MMU Cannot or Should Not be Informed About the Commission's Dispensation of the Referral and the Findings and Outcome of Any Investigation Initiated by the Commission Pursuant to an MMU Referral and (4) The MMU Must Cease All Inquiries Into a Matter Once a Referral Has Been Made to the Commission.

In its June 8 Comments, OPSI noted that Section IV.B of PJM's proposed Attachment M provides for the MMU to make a referral to the Commission whenever the MMU has reason to believe, based on sufficient credible information, that a market participant has violated a PJM

¹⁰ Kelly Dissent, at 2

¹¹ Kelly Dissent, at 1

market rule or FERC market rule.¹² OPSI further noted that, in most, if not all cases, State Commissions will have a significant interest in matters that are referred to the Commission under Section IV.B.

Indeed, Section IV.A of PJM's proposed Attachment M envisions that, in some cases, the matter under referral "may require" "action" by "one or more State Commissions." OPSI pointed out, however, that PJM's proposed Section IV.B does not provide for notification of State Commissions when a referral is made to the Commission.¹³ Ultimately, OPSI concluded that it is unreasonable to expect State Commissions to take action when they are not notified about the MMU findings and not informed about the MMU's referrals to the Commission.¹⁴ Accordingly, OPSI recommended that Attachment M be modified to require the MMU to inform all State Commissions in the PJM Region whenever a referral is made by the MMU to the Commission under Section IV.B.¹⁵

In the July 14 Order, the Commission failed to directly address OPSI's observations about the State Commissions' role regarding PJM MMU referrals to the Commission. The July 14 Order also failed to address OPSI's recommendation that all State Commissions in the PJM region be informed whenever a referral is made by the MMU to the Commission. However, the July 14 Order did address PJM's referral proposal in the context of addressing the pleadings of other parties.¹⁶ Specifically, the Commission denied protestors' reasonable requests that the findings and outcome of investigations made by the Commission as a result of referrals from the MMU be made available to the MMU.¹⁷ The Commission stated that its investigations are non-

¹² OPSI Comments, at 13-14

¹³ OPSI Comments, at 14

¹⁴ OPSI Comments, at 14

¹⁵ OPSI Comments, at 14

¹⁶ July 14 Order, at P 13-20

¹⁷ July 14 Order, at P 19

public, pursuant to 18 C.F.R. §1b.9 (2005), unless otherwise directed by the Commission.¹⁸ The Commission then directed PJM to revise its proposal in a compliance filing to provide that all referrals made pursuant to Section IV.B of Attachment M be identified as “non-public.”¹⁹

OPSI requests rehearing on each of these Commission decisions for the following reasons: First, it is unclear what the Commission intended by its directive to PJM that referrals be identified as “non-public”. Indeed, it would be unreasonable for the Commission to require that a MMU referral to the Commission be treated as “non-public” by the MMU in all cases. The fact that an incident has been referred to the Commission is not an indictment of a market participant and does not, in and of itself, unduly risk damage to a market participant’s reputation. A referral merely means that the MMU has reason to believe, based on sufficient credible information, that a market participant has violated a PJM market rule or FERC market rule. A simple public notice of the fact that a referral has been made under Section IV.B of PJM’s Attachment M, should be made in most, if not all, cases.

A reasonable argument could be made that the contents of a referral may be sensitive and therefore, should not be made available to the general public. However, OPSI notes that the Commission did not attempt to make that argument in its July 14 Order, nor did the Commission make a distinction between the contents of a referral and the existence of a referral. Rather, the Commission simply made a sweeping reference to a section of its existing rules--18 C.F.R. §1b.9 (2005)--regarding Commission investigations. The Commission did not identify any particular part of 18 C.F.R. §1b.9 (2005) as supporting the Commission’s directive to PJM that referrals be identified as “non-public.”

¹⁸ July 14 Order, at P 19

¹⁹ July 14 Order, at P 20

Despite the Commission's reference to Section 1b.9 of its rules, that section does not appear to be applicable to the issue at hand - referral by the MMU, pursuant to Section IV.B of Attachment M. Specifically, Section 1b contains the Commission's "Rules Relating to Investigations" and Section 1b.9 addresses confidentiality of Commission investigations. In particular, OPSI notes that Section 1b.4 explains that Commission investigations may be formal or preliminary, and public or private and that Section 1b.1(a) and 1b.1(b) define a formal investigation and a preliminary investigation, respectively. In any event, the rules in Section 1b apply to Commission investigations, not to referrals by PJM's MMU under Section IV.B of Attachment M and are, therefore, not applicable to the issue at hand. In short, the Commission has failed to cite any applicable rule to support its ruling directing the MMU to identify all referrals under Section IV.B of Attachment M as "non-public."

Regardless of the applicability or inapplicability of the Commission's rule regarding Commission investigations to MMU referrals under Section IV.B of PJM's Attachment M, it is unreasonable for the Commission to block the MMU from informing State Commissions of either the existence of a referral to the Commission or the specific contents of the referral. Instead of requiring PJM to provide this information to the State Commissions, as requested by OPSI, the Commission's July 14 Order has effectively *prohibited* PJM from providing it to State Commissions. This action is clearly not reasonable.

Second, it would be reasonable for the Commission to inform the MMU, and State Commissions, whether or not the Commission has initiated an investigation pursuant to the MMU's referral. Similarly, it would be reasonable to inform the MMU and the State Commissions about the findings and outcome of the Commission's investigation. Providing that kind of information to the MMU will assist the MMU in future monitoring efforts and inform the MMU

in making future referrals. Indeed, Commissioner Kelly's July 20, 2006 dissent echoes OPSI's position on this issue. Commissioner Kelly stated:

Further, protesters raised the concern that the Commission should inform the MMU as to the outcome of cases referred by the MMU to the Commission, including when the Commission takes no formal action, in order to help the MMU adequately respond or evaluate similar circumstances in the future. I believe that the Commission should inform the MMU of the outcome of its referral, subject to appropriate confidentiality restrictions. This information would provide the MMU with invaluable feedback on cases it has referred to the Commission and the whole market would benefit as a result.²⁰

Finally, in its June 8 Comments, OPSI noted the provision of PJM's proposed Section IV.B that effectively prevents the MMU from further questioning a market participant with respect to a specific occurrence or activity once a referral on that subject matter has been made to the Commission.²¹ OPSI acknowledged that the source of PJM's proposed provision in this regard lies in the Commission's Policy Statement on Market Monitoring Units.²² However, OPSI stated that the provision "unnecessarily restricts the MMU and would prove to be counter-productive if implemented."²³

In its June 26 Answer, PJM characterized OPSI's remarks and recommendations concerning this issue as "attacks on the directives of the Policy Statement rather than PJM's efforts to comply with those directives."²⁴ PJM further claimed that OPSI's remarks and recommendations "represent [an] untimely application[s] for rehearing of the Policy

²⁰ Kelly Dissent, at 2

²¹ OPSI Comments, at 18

²² OPSI Comments at 19 citing *Market Monitoring in Regional Transmission Organizations and Independent System Operators*, Policy Statement on Market Monitoring Units, 111 FERC ¶61,267, Appendix A, at 2

²³ OPSI Comments, at 19

²⁴ PJM Answer, at 2

Statement.”²⁵ PJM’s position on this issue is not supportable, as it is established Commission case law that policy statements are not subject to rehearing.²⁶ For example:

Rehearing of policy statements does not lie because policy statements are not directly reviewable; rather, review is available when policy is applied in specific case.²⁷

and

A policy statement is not a rule, and objections to such a statement are not directly reviewable. Rather, such review must await implementation of the policy in a specific case.²⁸

It is notable that, despite PJM’s unsupported allegations that OPSI’s remarks and recommendations about the MMU’s post-referral actions constitute “attacks on the directives of the Policy Statement and “represent [an] untimely application[s] for rehearing of the Policy Statement”, even PJM acknowledges that a Policy Statement only “announces the agency’s tentative intentions for the future” and is “not determinative of the issues or rights to which it is addressed.”²⁹ Consequently, OPSI’s remarks and recommendations are neither an attack on the directives of the Policy Statement, nor an untimely application for rehearing of the Policy Statement. PJM’s allegations to the contrary must be soundly rejected.

OPSI requests rehearing of the Commission’s decision that the MMU should not have “any continued involvement once the Commission has received a referral.”³⁰ First, the Commission’s statement on this matter is not consistent with Protocol No. 5 in the Commission’s Policy Statement on Market Monitoring Units which gives the Commission Staff the authority to direct the MMU to continue with investigative steps, even after a referral has been made to the

²⁵ PJM Answer, at 3

²⁶ See, e.g., *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 75 FERC ¶ 61,026 (1996).

²⁷ *American Gas Assoc. v. FERC*, 888 F.2d 136, 151-2 (D.C. Cir. 1989) (policies are not ripe until applied in specific cases).

²⁸ *Certification of New Interstate Natural Gas Pipeline Facilities*, 92 FERC ¶61,094, at 61,375

²⁹ PJM Answer at footnote 13 citing *Pacific Gas & Electric Co. v. Federal Power Com.*, 506 F.2d 33 at 38-9 (D.C. Cir. 1974).

³⁰ July 14 Order, at P 16

Commission. Second, the Commission's Order does not address the practical circumstances and policy considerations cited in OPSI's June 8 Comments for allowing the MMU to proceed with continued investigations into a matter, even after a referral has been made to the Commission. The Commission cannot simply dismiss these practical circumstances and policy considerations by making reference to the Commission's previous Policy Statement on Market Monitoring Units.

Accordingly, with respect to Section IV.B of PJM's proposed Attachment M, the Commission erred in deciding that: (1) the existence of an MMU referral to the Commission cannot be made known to the general public; (2) the contents of the MMU's referral cannot, or should not, be made available to state regulators; (3) the MMU cannot, or should not, be informed about the Commission's dispensation of the referral and the findings and outcome of any investigation initiated by the Commission pursuant to an MMU referral; and (4) that the MMU must cease all inquiries into a matter once a referral has been made to the Commission.

C. The Commission Erred in Dismissing OPSI's Reasonable Requests to be Informed About Attachment M Activity.

In several sections of its June 8 Comments, OPSI requested that the Commission modify PJM's proposed Attachment M to permit, or require, PJM to inform affected State Commissions of particular actions taken under Attachment M. For example: (1) OPSI requested that Section IV.A of proposed Attachment M be modified to require the MMU to notify affected State Commissions when the MMU identifies a significant market problem or potential rule violation that may require action by one or more State Commissions³¹; (2) OPSI requested that Section IV.B of proposed Attachment M be modified to require the MMU to inform State Commissions

³¹ OPSI Comments, at 12-13

when a referral is made by the MMU to the Commission under Section IV.B³²; (3) OPSI requested that Section VII.B of proposed Attachment M be modified to make clear that State Commissions will be provided, upon request and with appropriate conditions for any needed confidentiality, with any report that the MMU provides to the PJM Board³³; (4) OPSI requested restoration of the provision of existing Section VII.B (that was struck without explanation or justification by PJM) that provides for the MMU to provide reports to State Commissions upon their request;³⁴ and (5) OPSI requested that Section IV.C.4 of proposed Attachment M be modified to require that State Commissions be informed whenever PJM does not follow MMU recommendations.³⁵

The Commission appears to have dismissed all of these reasonable requests with a single statement that “PJM has already implemented procedures, approved by the Commission, for providing this requested information, as well as preserving confidentiality.”³⁶ The Commission referenced its June 28, 2004 Order approving tariff sheets submitted by PJM to implement procedures by which PJM and the MMU may provide confidential information to State Commissions.³⁷

OPSI will not use the instant forum to address the failings of PJM’s policy for state regulator access to confidential information.³⁸ Rather, the immediate problem with the basis for the Commission’s dismissal of OPSI’s reasonable requests to be informed of Attachment M

³² OPSI Comments, at 13-14

³³ OPSI Comments, at 14-15

³⁴ OPSI Comments, at 15-16

³⁵ OPSI Comments, at 16-17

³⁶ July 14 Order, at P 34 citing *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,322 (2004).

³⁷ July 14 Order, at P 34

³⁸ PJM’s procedure for State Commissions to access confidential information is unworkable for some of the OPSI states. This un-workability was highlighted, for example, in the “Report on Security Constrained Economic Dispatch” submitted by the Joint Board for the PJM/MISO Region where state regulators described the shortcomings of the policy and stated that, “The RTOs’ policies for limited state regulator access to data should be revisited.”³⁸

activity is that the stated basis (PJM's existing policy for state regulator access to confidential information) does not apply. Setting aside all of the hurdles involved for a State Commission to become a qualified requester under PJM's provisions for state regulator access to information, a State Commission has to first know that information exists that may implicate its interests and that it could then proceed to request.

For example, a qualified State Commission requestor will not know to ask the MMU for a copy of any notification that the MMU makes to the Commission under Section IV.A of proposed Attachment M because the State Commission will not be aware that the MMU has made a notification. A similar logic holds for most of the other types of information that the OMS requested in its Comments on Attachment M. In short, one needs to know of the information to ask for it or about it, and this condition does not hold for the Attachment M information types discussed in OPSI's Comments.

In addition, the Commission's rulings in the July 14 Order with respect to OPSI's requests to be kept informed about PJM MMU activity are not consistent with the Commission's previous policy pronouncements in its Wholesale Power Market Platform White Paper which described an MMU reporting process for market problems which is to "include notification of the Commission, *the regional state committee*, and other appropriate state regulatory authorities of the nature of the problem and recommended solutions."³⁹

Accordingly, OPSI requests rehearing of the Commission's dismissal of OPSI's reasonable requests to be informed about Attachment M activity.

³⁹ Docket No. RM01-12-000 White Paper Wholesale Power Market Platform Appendix A (April 28, 2003) at 13

D. The Commission Erred in Not Addressing OPSI's Recommendation That Attachment M be Modified to Identify the References to the PJM Market Rules and Sections in the PJM Tariff that Provide PJM with Specific Market Power Mitigation Authority and Thereby Make the Referral Provisions of Section IV.B of Attachment M Inapplicable in Those Instances.

In its June 8 Comments, OPSI noted the following statement in Section IV.B of PJM's proposed Attachment M,

The foregoing [referral provisions] notwithstanding, a clear, 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 [referral] provisions of this section IV.B.

OPSI interpreted this statement to mean that when there is a PJM Market Rule that provides for an explicit remedy that has been accepted by the Commission and can be administered by PJM, then the provisions of Section IV.B that would require the MMU to refer a violation of PJM Market Rules to the Commission will not apply.⁴⁰ Rather, in such circumstances, PJM would simply implement the remedy that is specified in the applicable PJM Market Rule that has been previously approved by the Commission.

OPSI noted that proposed Attachment M does not provide cross-references to the specific PJM Market Rules and the specific sections of the PJM tariff that provide PJM with the clear Commission-approved market power mitigation authority that would lead to the inapplicability of the normal referral process in Section IV.B of Attachment M in those instances.⁴¹ The result of missing cross-references is that there is no way to know when the referral procedures in Section IV.B will apply and when they will not.

⁴⁰ OPSI Comments, at 22

⁴¹ OPSI Comments, at 22

Accordingly, in its June 8 Comments, OPSI recommended that the Commission direct PJM to modify Attachment M to provide cross-references to the specific PJM Market Rules for which the referral procedure of Section IV.B will not apply.⁴²

In its June 26 Answer, PJM noted OPSI's observation and recommendation regarding this issue.⁴³ In particular, PJM stated that, at this time, it has not determined that any provisions exist in PJM's tariff to qualify for the exception from referrals under Section IV.B of Attachment M.⁴⁴ Furthermore, PJM states that the exception in Section IV.B to the typical referral process is set forth in Attachment M "in contemplation of future enforcement of qualifying PJM Market Rules that PJM may later develop."⁴⁵

We disagree with PJM's Answer. OPSI is aware of PJM's "three pivotal supplier test" under which supplier bids may be mitigated. OPSI is also aware of PJM's "FTR forfeiture rule" that addresses manipulation in PJM's virtual markets. There appear to be numerous other such provisions in PJM's tariff that constitute PJM Market Rules which contain "an explicit remedy" for an "objectively identifiable violation" and for which the explicit remedy "has been accepted by the Commission" and is "administered by PJM." Given these facts, OPSI challenges PJM's answer. Given the counter-examples cited above, there are provisions in PJM's existing tariff to which the exception to the referral procedure set forth in Section IV.B of Attachment M would apply.

Commissioner Kelly appears to share the concern about the discrepancy in PJM's Answer that OPSI discusses above by stating in her dissent,

Although PJM's revised filing states that "a clear, objectively identifiable violation of a PJM Market Rule, where such rule provides for an explicit remedy

⁴² OPSI Comments, at 23

⁴³ PJM Answer, at 19

⁴⁴ PJM Answer, at 19

⁴⁵ PJM Answer, at 19

that has been accepted and can be administered by PJM” would not be subject to the referral provisions in the tariff, it is unclear whether PJM’s tariff actually contains any such sanctions or consequences to redress undesirable market participant behavior. I believe the Commission should have required PJM to specify sanction and appropriate appeal provisions in its tariff because of the need to redress undesirable market participant behavior in an expeditious manner and the difficulty of redressing such behavior *ex post*.⁴⁶

Other than an oblique reference in response to another party,⁴⁷ the Commission did not address this important issue or OPSI’s recommendation for cross-references in Section IV.B in its July 14 Order. Accordingly, OPSI requests rehearing for the Commission to address this issue as recommended by OPSI and as suggested by Commissioner Kelly.

E. The Commission Erred in Not Ensuring the MMU’s Ability to Obtain the Information that it Needs to Perform its Functions.

In its June 8 Comments, OPSI noted that Section VI.B.1 of Attachment M outlines the procedures by which the MMU may request needed information from “entities possessing such information” but that the provision of the requested information by such entities is voluntary.⁴⁸ OPSI argued that these constraints on the MMU’s ability to access needed information are unreasonable and in conflict with the Commission’s “Policy Statement on Market Monitoring Units” which makes clear that, “MMUs should have access to data and other resources to evaluate participant behavior and responses in these markets.”⁴⁹ OPSI described the contrast between PJM’s voluntary policy for compliance with MMU information requests and the Midwest ISO’s mandatory policy which has been previously approved by the Commission.⁵⁰

⁴⁶ Kelly Dissent, at 2

⁴⁷ July 14 Order at P 18 responding to a position of the Mirant Parties.

⁴⁸ OPSI Comments, at 10

⁴⁹ OPSI Comments at 11 citing *Market Monitoring in Regional Transmission Organizations and Independent System Operators*, Policy Statement on Market Monitoring Units, 111 FERC ¶61,267, at P 3

⁵⁰ OPSI Comments, at 11

Accordingly, OPSI recommended that PJM's proposed Attachment M be further modified to require PJM market participants to provide the MMU with information that is reasonably requested and that is not readily available from some other source, provided that the information requested falls within the bounds of a specified list of information types like that contained in Section 61.1 of the Midwest ISO's tariff.⁵¹

The Commission did not address this issue in its Order. Accordingly, OPSI requests rehearing on this issue.

V. CONCLUSION

Wherefore, for all of the aforementioned reasons, OPSI requests rehearing of the Commission's July 14 Order as described above.

Respectfully Submitted,

/s/
Dennis J. Buckley
Executive Director
Organization of PJM States, Inc.
P.O. Box 4421
Harrisburg, PA 17111

Dated: August 14, 2006

⁵¹ OPSI Comments, at 11

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.

/s/

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August 14, 2006

Document Content(s)

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