



## Organization of PJM States, Inc. (OPSI)

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*Members: Delaware Public Service Commission, District of Columbia Public Service Commission, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Maryland Public Service Commission, Michigan Public Service Commission, New Jersey Board of Public Utilities, North Carolina Utility Commission, Public Utility Commission of Ohio, Pennsylvania Public Utility Commission, Tennessee Regulatory Authority, Virginia State Commerce Commission, and West Virginia Public Service Commission.*

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May 15, 2007

Kimberly D. Bose, Secretary  
Philis Posey, Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: Organization of PJM States, Delaware Public Service Commission; District of Columbia Public Service Commission; Indiana Utility Regulatory Commission; Kentucky Public Service Commission; Maryland Public Service Commission; New Jersey Board of Public Utilities; North Carolina Utilities Commission; Public Utility Commission of Ohio; Pennsylvania Public Utility Commission; and the Virginia State Corporation Commission v. PJM Interconnection; Motion for Leave to Answer and Answer**

Dear Secretary Bose:

Please accept for filing in the above-referenced matter an electronically filed *Motion for Leave to Respond to Answer and Answer of Organization of PJM States, Inc. and Listed State Commissions* in the above captioned matter.

Service of this motion has been made in accordance with the Commission's rules as evidenced by the attached certificate of service.

Thank you for your attention to this matter. If you have any questions in reference to this filing, please contact me at 717-787-5978.

Sincerely,

s/ John A. Levin

John A. Levin

Assistant Counsel

Pennsylvania Public Utility Commission

For: The Organization of PJM States, Inc.

Enclosures

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

<b>Organization of PJM States, Inc.;</b>	:	
<b>Delaware Public Service</b>	:	
<b>Commission; District of Columbia</b>	:	
<b>Public Service Commission; Indiana</b>	:	
<b>Utility Regulatory Commission;</b>	:	
<b>Kentucky Public Service</b>	:	<b>Docket No. EL07-58-000</b>
<b>Commission; Maryland Public</b>	:	
<b>Service Commission; New Jersey</b>	:	
<b>Board of Public Utilities; North</b>	:	
<b>Carolina Utilities Commission;</b>	:	
<b>Public Utilities Commission of Ohio;</b>	:	
<b>Pennsylvania Public Utility</b>	:	
<b>Commission; and the Virginia State</b>	:	
<b>Corporation Commission</b>	:	
<b>Petitioners,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>PJM Interconnection, L.L.C.,</b>	:	
<b>Respondent</b>	:	

**MOTION FOR LEAVE TO RESPOND TO ANSWER  
AND ANSWER OF ORGANIZATION OF PJM STATES, INC.  
AND LISTED STATE COMMISSIONS**

Pursuant to Rules 101(e) and 213 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure<sup>1</sup>, the Organization of PJM States, Inc., and certain state commissions (collectively, “OPSI”) hereby submit this Answer to the Answer of PJM Interconnection, L.L.C. (“PJM”) filed in the above-captioned proceeding on May 3, 2007 (“PJM Answer”). For the reasons

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<sup>1</sup> 18 C.F.R. §§385.101(e) and 385.213.

discussed herein, OPSI respectfully moves for leave to file this response to the PJM Answer.

By way of brief background, OPSI filed on April 23, 2007 a complaint regarding actions by PJM that impair the independence and effectiveness of its Market Monitoring Unit and that constitute violations of PJM Market Monitoring Plan contained in its Open Access Transmission Tariff, Attachment M as well as the Commission's Orders and the Federal Power Act. PJM filed its Answer arguing that the Commission should either dismiss the complaint or hold it in abeyance until PJM itself completes an "independent" investigation of the allegations giving rise to the Complaint. For the reasons discussed herein, PJM's claims warrant the Commission's acceptance of OPSI's response.

### **I. MOTION FOR LEAVE TO RESPOND TO ANSWER**

The Commission's Rules of Practice and Procedure prohibit answers to answers, unless otherwise authorized by the Commission.<sup>2</sup> This prohibition may be waived only for good cause pursuant to Rule 101-(e).<sup>3</sup> The Commission has found good cause to waive Rule 213 in a number of circumstances, such as when a pleading provides new information or new facts;<sup>4</sup> provides clarification of the issues at stake;<sup>5</sup> or facilitates development of the record.<sup>6</sup> OPSI respectfully moves for leave to file this response to the PJM Answer. A response is necessary to provide new facts to the Commission, provide

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<sup>2</sup> See 18 C.F.R. §§385.713 (d) and 385.213(a)(2).

<sup>3</sup> Id. §101(e).

<sup>4</sup> See, e.g., New York Independent System Operator, Inc., 92 FERC ¶61,051 at 61, 132 (2000).

<sup>5</sup> See, e.g., Wrightsville Power Facility, L.L.C. v. Entergy Arkansas, Inc., 102 FERC ¶61, 212 at P14 (2003).

<sup>6</sup> See, e.g., New York Independent System Operator, Inc., 92 FERC ¶61,073 at p.61,298 (2000).

clarification of the issues at stake, and to ensure development of the record, reasons which constitute good cause under the Commission's rules.

## **II. RESPONSE**

### **A. New Facts Underscore the Need for Swift Action by the Commission.**

OPSI seeks the Commission's immediate and decisive action to ensure the independence and effectiveness of the PJM Market Monitoring Unit. In addition to arguing for dismissal of the complaint itself, PJM urges the Commission to defer action until completion of its own internal investigation, PJM Answer at 7. PJM's abeyance proposal would unquestionably delay resolution of this critical matter. Common sense dictates the strong likelihood that no matter the result of PJM's own investigation, there will be a challenge thereto. An internal, private investigation, of course, also lacks the transparency and procedural safeguards intrinsic to the public hearing these allegations demand. Thus, abeyance for this proceeding only delays the inevitability of formal consideration of the issues presented for the Commission.

The harm of such delay is not merely a theoretical concern. The ability of state commissions within PJM to do their jobs is directly undermined by PJM's proposal to delay the Commission's investigation and resolution while PJM investigates itself. OPSI recently became aware of a proceeding before the Public Service Commission of Maryland in which Dr. Joseph Bowring, the PJM Market Monitor, was called as a witness. Before he could speak, counsel for PJM warned the Maryland Public Service

Commissioners that PJM would not permit Dr. Bowring to speak on any issues which implicated the investigation.

*In Baltimore Gas and Electric Company's Proposal to Implement a Rate Stabilization Plan Pursuant to Section 7-548 of the Public Utility Companies Article and the Commission's Inquiry into Factors Impacting Wholesale Electricity Prices*, MDPSC Case No. 9099, the Commission initiated proceedings to address an expected 50% increase in Standard Offer Service electricity supply prices for customers of Baltimore Gas and Electric Company.

The integrity of the wholesale power markets that produced these prices was reasonably subject to inquiry in the Maryland proceeding. On April 19, 2007, before Dr. Bowring testified, however, William Mogel representing PJM, stated:

While Mr. Bowring is getting set up, Mr. Chairman and Commission, there's a very serious issue that has come up this morning in connection with Mr. Bowring. . . . [W]e are going to have a continuing objection to certain lines of questioning. . . . This came up this morning. We received a directive from the board of directors of PJM, what has transpired, many of you who are in the room may know this, in connection with certain allegations that Mr. Bowring made on April 5 before the Federal Regulatory Commission, PJM's board of directors has hired independent counsel to investigate the merits or lack of merits of a range of allegations that Mr. Bowring made.

As a result of that investigation, we have been instructed as counsel that he cannot testify to matters that may be covered by this investigation. And we will have a continuing objection. I'm not going to stand up each time the question is raised. But this is a very serious matter because we do not want in any way to interfere or impinge on the independent investigation that the board has authorized to look into these matters.

So I wanted to advise you of that. Mr. Bowring is obviously here voluntarily. PJM has proffered him as a witness. There's much you can ask him about. And when the investigation is completed, we hope it will be

completed in fairly short order, it it's the desire of the Commission, Mr. Bowring will be offered again as a witness with the limitations of what he can speak to.

(Transcript, April 19, pages 639-641).

When questioned by the Maryland commissioners as to the legal basis for this direction, Mr. Mogel agreed he was not claiming privilege nor offering any other legal basis for his position. *Id.* at 642-643. Mr. Mogel stated that “[t]his issue, as I understand it, FERC has deferred to the investigation of independent counsel on these kinds of allegations.” *Id.* at 642. Responding to Chairman Larsen’s query as to what he meant by FERC’s deferral, Mr. Mogel answered: *“They’re going to await the outcome of the independent investigation to see if they need to proceed, as I understand it.”* [emphasis supplied] *Id.* at 642. Presumably this colloquy did not reflect the Commission’s decision at that time and was mere supposition on Mr. Mogel’s part.

Dr. Bowring was summoned to the Maryland Commission to testify regarding the integrity of the PJM markets that resulted in the proposed Maryland rates. Hence the efficacy of the MMU in policing those markets must also be subject to reasonable inquiry. PJM interposed its objections before he was able to opine on these issues. It is thus not surprising that although Dr. Bowring sought to be responsive to cross-examination, the full development of the record was hampered. For example, Mr. Mogel directed Dr. Bowring not to answer questions, *Id.* at 699, and sought to limit the Commission’s inquiry, *Id.* at 727. Mr. Mogel stated that he would direct Dr. Bowring not to answer a question if the Commissioners did not sustain an objection. *Id.* at 650-651. In another exchange between Mr. Mogel and the Chairman Larsen concerning a line of

inquiry, in response to Chairman Larsen's question, Dr. Bowring was compelled to seek direction from Mr. Mogel. *Id.* at 689-690.

**B. By Seeking Dismissal or Abeyance of the Complaint,  
PJM Is Asking the Commission to Relinquish  
Its Fundamental Jurisdiction over PJM.**

In its effort to deter the Commission from exercising its proper jurisdictional role by suggesting this issue is novel or difficult, PJM appears to forget that it is a public utility governed by a tariff, which includes the Market Monitoring Unit Plan, as a fundamental component of the exercise of its functions. Repeatedly using phrases like "need not struggle," (Answer at 4), "unique and untested" (Answer at 8), "need not confront" (Answer at 13), PJM appears to hope that the Commission will overlook that the issue here implicates a fundamental tenet of PJM's operation which requires firm and swift resolution by the Commission. Indeed, none of the cases relied upon by PJM to support rejecting OPSI's so-called novel interference with PJM's internal operations has anything whatsoever to do with Market Monitoring Units as a component of an RTO's tariff. *E.g., California Independent System Operator Corporation v. Federal Energy Regulatory Commission*, 362 U.S. App. D.C. 28, 372 F.3d 395 (D.C. Cir. 2004).

What is instead evident is that PJM does not wish the participation in or scrutiny of the state commissions on this most critical element of its operations.<sup>7</sup> OPSI and ten states have filed a Complaint in this matter in large part due to the public statements of

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<sup>7</sup> When OPSI expressed concerns last summer in PJM's tariff amendment of Attachment M, the Commission urged OPSI to raise concerns in a Section 206 filing. PJM now seeks dismissal of this Complaint, urging the Commission to await yet another tariff filing. It is plain that PJM has a plan of its own for the Market Monitoring Unit and will not be slowed by the public concerns of the state utility commissions.

Dr. Bowring. These statements, contrary to PJM's characterizations, must not be minimized or ignored. Dr. Bowring's public statements must be taken with the greatest degree of gravity at the most appropriate level, that is, by your Commission.

### **CONCLUSION**

**WHEREFORE**, the Organization of PJM States, Incorporated and the below listed state commissions respectfully request that the Commission grant the request to accept this Answer, and make findings consistent with OPSI's response to PJM's Answer.



Respectfully submitted,

s/ John A. Levin

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**For the Public Utility Commission of  
Ohio**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document in accordance with the requirements of the Commission's Rules of Practice and Procedure.

Dated at Harrisburg, Pennsylvania this 15<sup>th</sup> day of May, 2007.

s/ John A. Levin

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