



Organization of PJM States, Inc. (OPSI)

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July 17, 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 Utilities Commission of Ohio; Pennsylvania Public Utility Commission; and the Virginia State Corporation Commission v. PJM Interconnection; Answer Of The Organization Of PJM States, Inc. To PJM's July 2, 2007 Letter / Motion to Dismiss**

Dear Secretary Bose:

Please accept for filing in the above-referenced matter an electronically filed *Answer Of The Organization Of PJM States, Inc. To PJM's July 2, 2007 Letter / Motion To Dismiss* 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.

Enclosure

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

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Organization of PJM States, Inc.;	:	
Delaware Public Service	:	
Commission; District of Columbia	:	
Public Service Commission; Indiana	:	
Utility Regulatory Commission;	:	
Kentucky Public Service	:	Docket Nos. EL07-56-000
Commission; Maryland Public	:	EL07-58-000
Service Commission; New Jersey	:	
Board of Public Utilities; North	:	
Carolina Utilities Commission;	:	
Public Utilities Commission of Ohio;	:	
Pennsylvania Public Utility	:	
Commission; and the Virginia State	:	
Corporation Commission	:	
Petitioners,	:	
	:	
v.	:	
	:	
PJM Interconnection, L.L.C.,	:	
Respondent	:	

**ANSWER OF THE ORGANIZATION OF PJM STATES, INC. TO
PJM’S JULY 2, 2007 LETTER / MOTION TO DISMISS**

Pursuant to Rules 101(e), 212 and 213 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure¹, the Organization of PJM States, Inc. (“OPSI”) hereby submits its Answer in response to a letter/motion to dismiss filed by PJM with your Commission in this on July 2, 2007. Despite PJM’s baldly dismissive and insupportable assertions to the contrary, it appears that PJM *has* committed numerous violations of its market monitoring tariff and

¹ 18 C.F.R. §§385.101(e) and 385.213.

Commission Orders and further that PJM management has repeatedly abused its discretion by seeking to modify or suppress the findings of the independent Market Monitor and to conceal its actions from PJM's stakeholders and your Commission. PJM has chosen to address the issues in this case in personal terms – a reflection, perhaps, of the personal involvement of PJM senior management in the improper and unlawful actions that are the subject of the Complaint. It is also clear that that much investigative work that remains to be done, particularly with respect to the actions of and communications by and between PJM senior management concerning the facts at issue that could shed considerable light on the issues. Therefore your Commission should immediately set this matter for hearing so that the stakeholders and State Commissions may commence discovery and assist meaningfully with the investigation.

PJM has asserted that the June 12, 2007 data responses provided by PJM and PJM Market Monitor Dr. Joseph Bowring to the questions posed by the Commission in its May 18, 2007 Order demonstrate that PJM has not violated its tariff, that its actions with respect to the PJM Market Monitor were and continue to be solely an exercise of management discretion not reviewable by your Commission and that when and if PJM believes that any changes to its tariffed Market Monitoring Plan are needed, it will file them².

² Leaving aside the tone of PJM's letter, certain portions of it were so objectionable that it would be entirely appropriate for the Commission to strike portions as containing impertinent and scandalous matter (e.g., PJM's statement on page 8 of its letter that OPSI "falsely claims" that PJM threatened to or did remove information systems and data from MMU custody and control, as well as a PJM assertion that both OPSI's complaint and the associated complaint of PJM market participants at EL07-56 make "panicked assertions" of imminent injury to the PJM market monitoring function). As your Commission will see upon review of the record to date, there is ample evidence that PJM actually did threaten such an intention, and that the Market Monitoring Unit's functions were

In essence, PJM has filed a motion to dismiss both complaints.

OPSI disagrees with PJM's assertion, and believes that, to the contrary, the data responses highlight the concerns OPSI raised in its original complaint and provide additional compelling evidence that further investigation is required.

As described below, an initial review quickly reveals several key areas in which PJM has apparently violated the independence requirements of its Market Monitoring Plan³:

- PJM management secretly drafted and implemented a special set of procedures subjecting the Market Monitoring Unit to extensive bureaucratic and editorial control over MMU investigation and reporting duties
- PJM management allowed other PJM division chiefs to review, edit and demand changes in PJM MMU findings and conclusions prior to public release
- PJM interfered with MMU staff resources, putting pressure on key MMU staff to transfer to other PJM divisions, and failing to authorize timely replacement of such key personnel
- PJM threatened repeatedly to remove key databases and computer programs developed by the MMU, and primarily or solely useful to market monitoring and supervision from MMU custody and control
- PJM management summarily removed the PJM market monitor from chairmanship of the PJM Cost Development Task Force, a key PJM/stakeholder group that reviewed the generator cost data collection that was essential to MMU analysis of the competitiveness of generator bids

It is not clear from the data filed thus far exactly *why* PJM senior management has sought to muzzle its MMU and to restrict MMU communications with stakeholders and

actually curtailed and frustrated by PJM senior management's actions and statements. OPSI believes, however that it is more beneficial to the record to leave PJM's July 2nd letter intact in the record and compare its assertions with the facts of record already adduced.

³ This is by no means a comprehensive list of PJM management violation of the PJM market monitoring plan, but is a more than sufficient basis to deny PJM's motion to dismiss the consolidated Complaint proceeding.

state regulators, but the transcript of a PJM recorded June 27, 2007 speech by PJM President Philip Harris to his employees at a PJM corporate celebration reflects PJM senior management's animosity towards its Market Monitor and the Market Monitoring Unit established by tariff:

A few years ago we're trying to modify the RTEP [Regional Transmission Expansion Plan] and we had no idea about how do you do generation interconnection. The members couldn't agree. So we stood up and said, this is what we're going to do and how we're going to do the interconnection [process] unless you make a decision in a certain period of time. Big hurrah over that. A lot of complaints, a lot of discussion. PJM is going off the board, things won't happen, the world is going to end. You work for us, et cetera, et cetera. And it went on and on and on, but in four months we had solved the problem, we made a filing on how the interconnection policy would be shared. It was absolutely tremendous. But if we hadn't taken the heat, we hadn't stepped up, it would have never got done. And if you look in the rest of the U.S., you look at the other RTOs that debate is still going on about how generation interconnection costs are being shared. So we stood up again and we stood the test of time.

And we're in another era now as we move forward to continue to have debates and discussions about the governance and why is that? One, it's a restructured industry. It's an industry being restructured by governance. Okay, by the government. Now, think about that. What business enterprise that you know of has their governance shaped by the federal government[?]. Can you think of a worst recipe[?]. It's kind of like I'm a government, I'm here to help you. But that's what we're stuck with. There's an old saying you play the game with the cards you get dealt, and for us a group of people that were operating the pool and learning how to operate markets and doing our job well, what we've been handed is a federal government saying this is what you ought to do in principle without a lot of detail. If you look at the fact that we've got nearly 500 members now it won't be long we will have more members than we do employees, but with 500 members we all have different views and different economic interests. You know we don't have that normal economic incentive you have that shapes your government like a typical corporation. So it's just ripe for dispute and debate about who does what and how things are derived and who has that. That's just the heat of the kitchen that we have to deal with in doing what we're doing in our role in the electric industry. And it will probably be some time before all of that is sorted out. [Each] RTO and ISO has got a different complexion and boards have different

committees, different way of interfacing. That's just part of what we do as we do our jobs every day. It's a big topic. The current MMU debate is another one. **You know, we didn't ask for [a] market monitor. FERC made us have a market monitor, and all they said was, "Here's some general rules." So over time that's evolved to the point now that there's an actual dispute over what the role versus the accountability is.**

It's a shame that that dispute got turned into a public debate and which led to litigation. But the genesis of it, as Vince [Duane, PJM General Counsel] was saying, is something we should expect. You're in a transition industry, things haven't been formed. You have the federal government trying to say what it should be, which isn't how you turn process, so you're just ripe for dispute and debate. That will be worked out through the litigation, and we'll move ahead with that. Indeed, FERC issued a NOPR, an Advanced NOPR, actually where some of that was debated at the federal level, but it won't end. I mean it's governance, what we are and how we are is just something that's with us as we move forward over time, and we have to anticipate that.

SMM 2240 – 2247 [Emphasis supplied].

The above quoted remarks demonstrate a remarkable level of hostility in PJM senior management toward lawful government regulation of PJM by your Commission, as well as toward the very concept of a market monitor. The remarks also show surprising contempt by senior management for the PJM stakeholder advisory process and open, transparent discussion and debate. It appears that the senior PJM management view of reality is that FERC has merely and negligently merely provided general principles, thereby abrogating its responsibility and leaving PJM with the weighty responsibility of filling in all the necessary details to do the necessary tasks of creating wholesale electricity markets.

On the contrary, the detail is in the tariffs, *Order 2000*, and your Commission's various orders creating PJM as a Regional Transmission Organization cited in OPSI's original Complaint. PJM is a federal public utility and a creature of FERC tariffs that

govern PJM's lawful structure and operations in detail, including the market monitoring organization and function. It should be of grave concern to your Commission that PJM senior management has operated and continues to operate with a fundamentally incorrect view of its role and responsibilities under its tariff and under the Federal Power Act.

From a review of both PJM's and the PJM MMU's responses, a dismaying picture emerges of a senior RTO management that has been engaged in a longstanding and covertly organized campaign to restrict the independence of the PJM market monitor. Evidence exists that PJM senior management has sought to prevent the MMU from communicating candidly and freely with market participants and state commissions about matters of legitimate wholesale market design, exercise of market power and other relevant issues, as required by tariff. The evidence of record provides a dismaying picture of concerted effort by PJM senior management to substitute its inexpert judgment on economic issues for that of the Market Monitoring unit. Further, the data responses depict (despite PJM's assertions to the contrary) a longstanding, covertly organized and covertly conducted campaign to deprive the MMU of critical staff and resources. We don't know the motive for these actions yet, but we know that they have occurred and will continue to occur unless your Commission ends these practices. Although PJM may have put its plans on hold temporarily, had the PJM Market Monitor not alerted your Commission to these matters in his April 5, 2007 technical conference comments, it is likely that PJM would have continued to erode the capabilities and effectiveness of the PJM MMU, to the great detriment to the public policy of the United States, the interests of market

participants and the general public. It is now time for your Commission to act forcefully to halt the actions which are the subject of the consolidated complaints.

Your Commission should not permit itself to be sidetracked by PJM's personal attacks upon the Market Monitor, whose expertise in wholesale market monitoring and wholesale electricity market economics is unchallenged. Nothing less than a full, open, thorough and transparent investigation of the allegations and events at issue can allay further injury to PJM's standing with its stakeholders, state commissions and the public interest. The market monitor's actions appear from the record to have been consistently devoted to making PJM's wholesale markets more competitive, more transparent and more efficient. By contrast, PJM senior management has been at odds with its tariffed market monitoring plan and at odds with PJM's often and publicly stated commitment to transparency, openness and operation of wholesale markets consistent with the public interest. For the sake of public confidence in wholesale markets, these issues must be investigated all the way to the end, no matter how embarrassing and inconvenient that might be to some individuals or to PJM's institutional culture.

Generally, the proponent of a motion to dismiss a complaint must carry the difficult burden of showing that there is no material contested issue of fact or law that exists supporting the complaint⁴. *Louisiana PSC v. FERC*, 184 F.3d 892, 895 (D.C. Cir. 1999). Similarly, your Commission has recently held in *Public Service Co. of New Mexico v. Southwestern Public Service Co.*, 113 FERC ¶ 61,153, at P 23 (2005) that a motion to dismiss a complaint must fail if "the matters raised by [the complainant] in its

⁴ Fed. R. Civ. P. 12(b) (6). FERC Rule 206 (18 C.F.R. Section 385.206) is based on Federal Rules of Civil Procedure ("FRCP") Rule 12. See Preamble to Rule 206.

complaint present issues of material fact that cannot be resolved based on the record before [the Commission]”. *See also, ISO New England*, 115 FERC ¶61,332 (2006) at P. 1. Thus, PJM’s letter/motion suggesting that this serious matter be dismissed without hearing must be rejected. There is both ample evidence already in the record that PJM has committed numerous violations of its tariff and Commission orders, and there are numerous disputed facts and issues remaining which must be the subject of further discovery and trial-type hearing.

The Commission’s rules permit an answer to a motion to dismiss. Rule 213(a)(2) only precludes an answer to “a protest, an answer, a motion for oral argument, or a request for rehearing, unless otherwise ordered by the decisional party.” The facts contained in the actual data responses by PJM and the Market Monitor to paint a completely different picture than that painted by PJM. It is a picture of constant PJM management interference with the independent judgment and communications of the Market Monitoring Unit, in violation of both the letter and the spirit of PJM’s tariffs and your Commission’s rules.

PJM claims that it engaged only in ordinary managerial supervision and “peer review” in dictating how and when the MMU could make reports and presentations. In expert disciplines such as economics peer review is conducted in the open by others with similar expertise in an open dialog. A manager with a different set of qualifications is not a “peer” for peer review purposes. Expertise in one area does not constitute qualification in all other areas of expertise. Nothing in the data responses filed thus far indicates that PJM management possesses any economics expertise superior or equal to that of the PJM

market monitor. Nothing in the data responses indicates that there was any publicly aired management disagreement with PJM MMU positions based upon any legitimate professional or technical economic analysis and dialogue. Hence, nothing indicates that the documented interference with the MMU constituted “peer review.”

The Secret “Communications Protocol”

According to the affidavit of Dr. Bowring and its supporting documentation, PJM in March 2006 implemented a secret internal set of procedures (“Internal Procedures”) retroactive to an effective date of February 21, 2006, prescribing the terms under which the MMU would henceforth implement the PJM Market Monitoring Plan set forth in Attachment M of the OATT.⁵ These procedures were specifically aimed at muzzling the Market Monitor and the Market Monitoring Unit. The PJM Market Monitor protested internally to PJM senior management that the Internal Procedures were in apparent violation of PJM’s then existing Market Monitoring Plan, but to no avail. (SMM 261 – 278, SMM 288 – 363). An examination of these detailed procedures indicates that they effectively subjected the PJM MMU to detailed supervision, oversight and review, not only by PJM Senior Management, but by the PJM manager in charge of the “Markets Division.” The following is but one example of the extensive list of detailed procedures which prevented the MMU from communicating freely with PJM members and State Commissions s listed under the procedures section labeled “Other Committees.”

Representatives of the Market Monitoring Unit may attend as observers the meetings of other PJM committees, working groups and task forces, but may not chair any such body without the express approval from the

⁵ Bowring Affidavit at 5.

Executive Vice President. The Market Monitoring Unit may, upon request by a PJM division chief or committee chairman, provide a formal presentation on a matter, provided that the Market Monitoring Unit submits for review and approval any materials or presentations to the requesting PJM division chief or chairman in advance.

(SMM 360)

As employed by PJM, and as the data responses indicate, the Internal Procedures were actively employed by PJM senior management to covertly change or suppress the expert conclusions of the Market Monitor *before* the MMU issued its findings to market participants, Federal and State regulatory authorities and the public. Such actions are wholly incompatible with any notion of market monitoring unit independence and subjected the PJM Market Monitor to detailed day to day review, objection and the exercise of editorial powers by PJM senior management in the smallest matters.

In addition to being secret prior to the recent disclosure by the PJM Market Monitor, the Internal Procedures are densely bureaucratic and placed the PJM Market Monitor directly under the day to day control of the PJM Executive Vice President, and required the Market Monitor to seek prior approval for almost any significant action or communication. This reality is directly at odds with the impression that PJM has tried to convey to your Commission and the public. In an October 13, 2006 technical conference, PJM Markets Division Chief Andrew Ott testified:

The PJM Market Monitor produces extensive analysis on the market, produces a state of the market report, and the conclusions of the market report are his own. Obviously, I don't hear anyone questioning the independence of PJM, the organization, so I would take issue with Mr. Spinner saying that we need an independent entity doing an analysis of the competitiveness of the market. We have one.

SMM 366

The Internal Procedures represent an extra-tariff diminution of the MMU's independence, authority and responsibilities specified in Attachment M and therefore constitute a violation of the Commission-approved PJM OATT. The Internal Procedures both deprive the MMU of some of the market monitoring responsibilities and authority provided under the tariff, such as the provision that the MMU shall have access to "any other information that is in the possession of PJM," and include restrictions on MMU authority not provided in the tariff approved by the Commission, and are replete with extra-tariff requirements that the MMU "shall notify," "shall consult with," "shall inform," "shall submit," and "shall provide ... in advance" to the PJM President nearly all contemplated reports and intended activities prior to engaging the same.

These requirements cover the gamut of MMU tariff duties - from notification and referrals to your Commission to the MMU's responsibilities to assess and recommend modifications to PJM market rules - and directly impinge upon the independence of action afforded the MMU under the PJM tariff.⁶ This is especially the case given the current absence of job security for the Market Monitor and the now-evident willingness of PJM management to threaten Dr. Bowring with insubordination and termination for not complying with management orders.⁷

⁶ SMM 00291 to 00301; PJM OATT, Attachment M at Section VI. A. See SM 00261 to 00278, Bowring memo dated December 29, 2006, detailing the Internal Procedures' modifications of the PJM Market Monitoring Plan, Attachment M to the OATT.

⁷ Bowring Affidavit, June 12, 2007, at p. 24.

Undue Senior Management Editorial Control of MMU publications

Moreover, it appears that PJM has used its editorial control over the MMU in inappropriate ways. It is beyond dispute that PJM edited the 2005 State of the Market Report to remove conclusions about market concentrations in the regulation market over the Market Monitor's protest at the specific instruction of the PJM Executive Vice President. There is much we do not yet know about this incident, but we do know that it happened. SMM 364.

We also know that it was not a recent phenomenon. A series of emails between the market monitor, PJM attorneys, engineers and governmental relations representatives in 2005 over the draft text of the PJM market monitor's declaration to your Commission on the PJM regulation market demonstrates that the market monitor's attempted to educate the other PJM employees in the basics of the three pivotal supplier test for market power, but this appears ultimately to have resulted in the Market Monitor removing his expert recommendations from the document. SMM 395 – 501.

The censorship of the MMU also extended to MMU communications in stakeholder committees. In an email to a staff member of your Commission, the Market Monitor attempted in late February, 2007 to alert your Commission to PJM's senior management editorial interference and violation of tariff:

Alan,

Just a heads up that the MMU prepared slides for the MIC meeting on Wednesday on the issue of the application of the TPS test to exempt interfaces. Andy and I both prepared slides over the weekend and exchanged them Sunday evening. **Audrey told me that she would not permit the MMU slides to be posted.** One of the areas that she deemed

“inflammatory” is that we prepared two graphs showing the mark up of units that were included in the supply stack for the APSouth interface. This seems to me to be a clear infringement of MMU independence and a violation of the tariff Attachment M. Nonetheless, Andy Ott has posted his slides presenting what to me is misleading analysis of our results and the application of the TPS test.

- Joe

SMM – 00140 [Emphasis supplied].

PJM Interference with MMU Staffing and Retention

PJM continues to insist that the repeated attempts of its senior management to recruit key MMU staff out of the unit and PJM’s failure to approve the hiring of replacements was an entirely innocent exercise of management discretion and concern for employee welfare. We do not yet have the testimony of the involved MMU employees directly affected by the repeated efforts by PJM senior management to raid the MMU’s employees, but the cannibalization of the MMU certainly occurred and occurred in a way that (had it continued) appears to have been calculated to reduce or eliminate the effectiveness of the MMU as an ongoing independent entity. SMM 375 – 379.

The PJM senior management posture towards MMU employees (at least until the April 5 technical conference testimony) was apparently not necessarily one of benevolent concern for employee welfare but frankly threatening:

“Andy Ott (PJM Markets Division Chief) had Frank Racioppi, one of my recently promoted supervisors, summoned to his office this morning. Andy proceeded to threaten Frank in forceful terms, demanding that he transfer from the MMU to Markets, stating that Frank would not have a job with PJM if he should refuse and stating that Frank would not have a job with PJM if he should refuse and stating that you would be announcing the disbanding of the MMU at the MMU meeting to which I invited you next week.”

SMM 1685.

While this account of the interview may be disputed by PJM, that is another example of an issue of disputed fact which must be resolved by discovery. PJM followed these threats with overt manipulation of the internal PJM hiring procedures, creating positions within Market Services for the MMU employees to transfer to and tailoring the job descriptions to meet the qualifications of the targeted MMU employees. SMM 1767. The result was a net loss of two key employees from the MMU, leaving their positions vacant for an extended period, at a time of increasing work load. *Your Commission needs to hear from these employees directly.*

PJM Interference with MMU Information Systems

PJM has attempted to characterize its intention to transfer the “stewardship” – i.e., *managerial control* - of the MMU’s database to the Market Services Division as a mere effort to “enhance intra-organizational coordination and efficient use of resources,” an effort that it believes should be commended.⁸ Dr. Bowring’s explanation of the importance of MMU control over its database proffers a somewhat different perspective on the concept of efficiency:

Some background on the MMU data repository may help elucidate the issues surrounding data access, security stewardship and ownership/control of the MMU data repository. The MMU data repository has been developed, structured and maintained by the MMU for the past four years in order to provide the basis for MMU analysis. Both operations and market data is collected daily and loaded into the repository which has been structured to facilitate specific market monitoring metrics and analytics. Ongoing development and maintenance of the data repository requires knowledge of market monitoring because the data repository is a dynamic structure, rather than a static one. *Daily, ongoing interaction between the*

⁸ PJM Supplemental Response to June 12 PJM Response to Commission Data Requests, July 2, 2007, at p. 6.

*MMU staff and the MMU Data and Management Supervisor is key to repository structure, development and maintenance because MMU analysis changes due to improvements, changes in the markets or changes in market participant behavior. When a new or modified analysis is undertaken, MMU analysts need new or augmented data. The central organizing feature of the MMU data repository is MMU analysis. It is not simply a historical markets database.*⁹

Dr. Bowring describes the MMU database as “a unique set of MMU data,” which is “organized and maintained to support MMU analyses.” He further indicates that, “[if] other PJM departments were to add or delete the MMU’s data, they would be influencing what would otherwise be an independent set of data.”¹⁰ Placing this database under even joint control by the Market Services Division presents a threat adverse not merely to the efficiency of MMU operations, minimally including inadvertent mistakes of data corruption, but to its very efficacy. Control by Market Services over the MMU database could produce the type of aggressive intrusions into MMU data collection and processing that the Vice President of Market Services exhibited in attempts to censor and thwart MMU reporting activities. Dr. Bowring starkly laid this threat and its consequences bare in his affidavit:

Transferring the stewardship of MMU data to the Market Services Division would empower it to potentially limit the ability of the MMU to develop metrics and to continue to develop new independent analysis of the PJM market that stakeholders, states, and FERC rely on. It would also prevent us from discharging our duties under the tariff. Without this independent analysis, *there would be no check on the potential exercise of market power and potentially resultant increases in electricity prices.*¹¹

⁹ Id. at 41-42 (emphasis supplied).

¹⁰ Bowring Affidavit at p. 41-42. Dr. Bowring has stated on a number of occasions that Market Services should be afforded access to the MMU database, but not control over it.

¹¹ Id. at 40 (emphasis supplied).

MMU control over a database so intrinsic to its daily and long-term operations must be guaranteed if confidence in the MMU's capabilities to analyze complex market and participant behavior is to be ensured, and market power exercise prevented. The threat of diminishing in any way complete MMU control over this database constitutes a clear and present danger to basic market monitoring functions within PJM, and is contrary to your Commission's prescriptions of MMU duties and responsibilities contained in the afore-referenced sections of the Market Monitoring Plan. The fact that PJM concedes that it is actively pursuing such a change in database control is a shot over the bow of your Commission which, OPSI respectfully submits, should result in your Commission's implementation of the interim relief requested by OPSI and the establishment of a full hearing in this matter to determine permanent remediation.

PJM has already executed the transfer of staff and duties attendant to the vital function of cost development away from the MMU to the Market Services division. On March 19, 2007, PJM transferred responsibility for the Cost Development Task Force (CDTF) and the chair of the CDTF from the MMU to the Market Services division. The CDTF is charged in part with the development and constitution of cost-based offers applicable when there is a determination of market power. The MMU is responsible for determining the presence of market power in the PJM market and for determining whether price offers from market participants are competitive, that is, determining whether the price offers approximate the marginal cost of the commodity or service offered into the market. The markup above marginal cost is a critical barometer of competitiveness of the market; the costs comprising the cost offer are thus an essential

component necessary to determining competitive outcomes. Dr. Bowring succinctly summarized the critical importance of MMU involvement in the CDTF in his affidavit:

FERC set up the MMU function to assure that PJM markets are producing competitive outcomes.... A competitive market means, by definition, that suppliers submit offers at or close to their marginal costs. Oversight of the cost development process is an important part of the MMU's responsibility to monitor, evaluate and enhance the competitiveness of Markets.

The explanation offered by PJM for the transfer of CDTF responsibilities from the MMU back to the Market Services division is that the Market Services division is responsible for leading the development of PJM market rules, including those applicable to cost-based offers.¹² This explanation would have the parties and your Commission believe that PJM has just awoken to find that for the past four years it has erroneously allowed the MMU to perform duties that were all along properly within the tariffed purview of the Market Services division. This *oops-we-made-a-mistake* explanation is on its face implausible. Further, PJM's justification for arbitrarily removing the MMU's CDTF-related responsibilities without consulting the PJM Board, its stakeholders or the Commission is entirely without merit. PJM claims that the 2003 PJM Board recommendation that "working groups charged with setting rules to solve structural problems should be led by the Market Services division" supports unilaterally removing the MMU as chair of the CDTF. The CDTF, however, is not charged with setting rules to solve structural problems, but rather makes recommendations for procedures to be used

¹² PJM Supplemental Response to June 12 PJM Response to Commission Data Requests, July 2, 2007, at p. 19.

in setting the marginal cost inputs for PJM's calculations of cost-based rates.

Further, PJM provides no justification for relying four years later on a 2003 Board recommendation to remove responsibility from the MMU explicitly granted by the Board in 2003. The Board transferred the chair of the CDTF to the MMU; thus the Board, not PJM management, should have determined when a change to the Board policy was required.

CONCLUSION

There is a lot of smoke and quite a bit of fire already evident in the record. The facts and issues raised by the two complaints in this consolidated docket cannot be explained away as resulting from ordinary managerial discretion or garden variety differences of opinion; the record to date raises serious concerns about tariff violations and managerial abuse of discretion that must be fully explored and resolved.

In addition, your Commission's recent issuance of an advance notice of proposed rulemaking in *Wholesale Competition in Regions with Organized Electric Markets*, 119 FERC ¶ 61,306 (Issued June 22, 2007) indicates that market monitoring independence is a front burner concern. The facts of this case, both known and as-yet-unknown may well prove to be one of the most important source of data and lessons learned in the development of new rules to improve RTO market monitoring effectiveness and independence.

Your Commission should not solely rely upon extraordinary acts of individual market monitors to ensure that the essential market monitoring function is faithfully carried out. Market monitoring is a bedrock principle of wholesale market supervision

and must not be allowed to be eroded, much less completely subverted by RTO senior management with conflicting goals.

Rather, your Commission should expeditiously set this matter for full hearing, permit comprehensive discovery including document and deposition requests.

WHEREFORE, OPSI respectfully requests your Commission to deny PJM's motion to dismiss the instant complaints, set the matter for hearing and permit the Complainants to commence discovery.

Respectfully submitted,

s/ John A. Levin

John A. Levin

Assistant Counsel

Pennsylvania Public Utility Commission

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**For the Organization of PJM States,
Inc.**

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 17th day of July, 2007.

s/ John A. Levin

John A. Levin

Assistant Counsel

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Document Content(s)

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