

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

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October 6, 2008

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(By Electronic Filing)

*Re: Maryland Public Service Commission v. PJM Interconnection, L.L.C.,
EL08-34-000; PJM Interconnection, L.L.C., EL08-47-000;
Comments of the Organization of PJM States, Inc.*

Dear Ms. Bose:

Please accept for filing in the above-referenced matter electronically filed Comments of the Organization of PJM States, Inc. (OPSI). Service has been made upon the service list 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 (302) 757-2441.

Sincerely,
/s/Rajnish Barua
Rajnish Barua, Ph.D.
Executive Director
Organization of PJM States, Inc.
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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Maryland Public Service Commission

v.

PJM Interconnection, L.L.C.

PJM Interconnection, L.L.C.

Docket No. EL08-34-000

Docket No. EL08-47-000

COMMENTS OF THE ORGANIZATION OF PJM STATES, INC.

The Organization of PJM States, Inc. (“OPSI”)¹ files these comments on the Three Pivotal Supplier (“TPS”) test, having previously intervened in this proceeding on September 4, 2008, pursuant to the Commission’s May 16, 2008 Order in the above case,² as supplemented by the Commission’s July 25, 2008 Letter-Order extending the time for filing comments until thirty days after the filing of a status report on the results of the PJM stakeholder process:

I. SUMMARY OF COMMENTS

The Organization of PJM States, Inc. strongly supports retention of the current Three Pivotal Supplier screen and *ex ante* market mitigation offer price cap procedures

¹ The Member Regulatory Agencies of OPSI are the: 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 Utilities Commission; Public Utilities Commission of Ohio; Pennsylvania Public Utility Commission; Tennessee Regulatory Authority; Virginia State Corporation Commission; and the Public Service Commission of West Virginia. [The Illinois Commerce Commission was not able to join these comments at this time as it did not have a public meeting scheduled this month for consideration prior to today’s filing date; it will consider these comments at its next scheduled meeting.]

² *Maryland Public Service Commission v. PJM Interconnection, L.L.C. and PJM Interconnection L.L.C.*, 123 FERC ¶ 61,169.

contained in the current PJM tariff³ as just and reasonable and in the public interest. The Commission must find, as PJM states, that the Three Pivotal Supplier Test is not unjust and unreasonable,⁴ and must reject suggestions by some other stakeholders to the contrary.

II. COMMENTS

As instructed by your Commission, PJM filed its *Report of PJM Interconnection, L.L.C.* on its perception of the result of the Three Pivotal Supplier stakeholder process on September 5, 2008. PJM is correct in reporting that the stakeholder process did not result in a consensus view. PJM is *incorrect* in asserting that the stakeholders collectively concluded that the tariff definition of market power should be revised to encompass “a definition that includes the duration for and magnitude by which a participant can alter the market clearing price” because such a revision “ may be more useful in making a market power mitigation process operational”.⁵ The current clear definition of market power contained in the PJM tariff has proven itself both practical and workable and should be retained.

This is not merely an academic argument among stakeholders and economists – mitigation of market power lies at the heart of public confidence in competitive

³ *PJM Open Access Transmission Tariff*, § 6.4.

⁴ *Report of PJM Interconnection, L.L.C., Docket Nos. EL08-34-000 and EL08-47-000, September 5, 2008, p. 15.*

⁵ PJM asserted at page 8 of its *Report* that “As a result of that discussion, the task force generally agreed that while a black and white definition of market power as proposed by the MMU (“the ability to increase/decrease the market clearing price above/below competitive price level”) may be the simplest and clearest definition by which to evaluate potential market power mitigation mechanisms, a definition that includes the duration for and magnitude by which a participant can alter the market clearing price may be more useful in making a market power mitigation process operational. Thus, the task force recognized stakeholders may need to work within ranges of what can be considered workably competitive, as opposed to mitigating to the point of hoping to achieve markets that are perfectly competitive.” While that is what PJM may have written in its summary notes, there was no such general agreement of the task force and OPSI does not agree with that statement.

wholesale markets. The future of public support for wholesale markets and competitive solutions depends on the extent that your Commission resists the siren call by generation owners' interests to weaken TPS protections or to substitute less effective or ineffective market mitigation measures.

The PJM TPS mitigation screen is consistent with accepted economic theory, predictable in application and straightforward in administration, applied dynamically in the relevant market, on a real time basis. Indeed, the TPS screen meshes well with the physics of the wholesale market. Market power is the ability to raise the price of a commodity in a defined market above its marginal cost. In wholesale electricity markets, "defined markets" may exist for a few minutes, or much longer, as load pockets form and disappear as a result of the changing characteristics of the transmission grid and generation fleet. The fleeting nature of such markets does not make the exercise of market power less damaging. Such market power, unless restrained on an *ex ante* basis, may never be remedied or may only be partially remedied with great difficulty, providing powerful incentives for generation suppliers to create and maintain concentrations of ownership in such regions.

Your Commission has previously recognized its responsibility to act decisively to remedy the threat that market power presents to competition:

Where a market-based rate applicant is found to have market power, it is incumbent upon the Commission to either reject such rates or to ensure that adequate mitigation measures are in place to ensure that the rates are just and reasonable.

AEP Power Marketing, Inc., et al., Order on Rehearing, 107 FERC ¶ 61,018, (2004).

Indeed, as late as March 2005 PJM itself has recognized the value of the TPS based tariff that has worked effectively for competitive PJM markets for years:

As Mr. Bowring explains in his declaration, the three-pivotal supplier test is “an explicit derivation, within the context of the Delivered Price Test, of how to weigh the various structural features of a particular type of local market.” It is consistent with the Commission’s market power screens and represents the practical application of those screens in real time. The three-pivotal supplier test incorporates a balance of considerations consistent with the Commission’s AEP Order and does so in a way that can be applied in a real-time, dynamic setting. The AEP Order tests are used to determine whether to allow market-based rates for a supplier under all market conditions and typically for a considerable period of time.⁶ In contrast, the determination of whether to suspend offer capping in PJM must be based on actual market conditions and the actual potential to exercise market power in real time, or in specific hours of the day-ahead market. The three-pivotal supplier test permits the suspension of offer-capping on a dynamic basis when market conditions permit and is a reasonable derivation of the Commission’s AEP Order tests. As Mr. Bowring explains more fully in his declaration, the three-pivotal supplier test incorporates “all the relevant aspects of market structure represented in the tests specified in the AEP Order in a single test that can be applied dynamically.”

PJM Interconnection, L.L.C., PJM Cover Letter to Compliance Filing, Docket No. EL03-236-006 (March 4, 2005) (in response to Commission Order at *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053 (2005) (footnotes omitted) at 2-3.)

Your Commission has recognized the importance of uniformly applied mitigation to prevent the distortions created by the exercise of market power when it eliminated all bid cap exemptions in previously exempt interfaces. Your Commission also has recognized the need to consider other market constructs such as “Scarcity Pricing” and the Reliability Pricing Model, that enhance the ability of generators to receive market payments, in determining if any exception or enhancements to market mitigation rules are warranted.

Your Commission has ordered the implementation of special tariff rules exempting units from TPS bid caps for special purposes, such as in tariff-defined scarcity pricing regions, but that such exemptions should be for specific purposes and strictly limited.⁶

While PJM has apparently shifted its position on TPS recently for reasons that are not clear, the fundamental structure of the PJM wholesale market has not shifted, and the need to forestall the exercise of market power remains constant. PJM explains as much in its summary of the results of the Three Pivotal Supplier Task Force, stating that participants in the Task Force “generally agreed that the TPS test likely is effective at minimizing the exercise of market power in the PJM energy markets.”⁷ We trust that the Commission recognizes the risk that eliminating the Three Pivotal Supplier screen and *ex ante* market mitigation offer price cap procedures could undermine any effectiveness of these measures and thereby weaken confidence in the PJM markets.

⁶ *PJM Interconnection, L.L.C.*, 114 FERC ¶ 61,302 (2006).

⁷ *Report of PJM Interconnection, L.L.C., Docket Nos. EL08-34-000 and EL08-47-000, September 5, 2008, p. 20.*

CONCLUSION

For the above reasons, OPSI fully supports the existing TPS tariff provisions and urges your Commission to reaffirm that PJM's existing tariff remains just and reasonable and in the public interest.

Respectfully Submitted,

/s/Rajnish Barua

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/s/ John A. Levin

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Dated: October 6, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list compiled by the Secretary in Docket Nos. EL08-34-000 and EL08-47-000 in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated this 6th day of October, 2008.

/s/ Rajnish Barua
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