

132 FERC ¶ 61,123  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

PJM Interconnection, L.L.C.

Docket No. ER09-1063-003

ORDER ON COMPLIANCE FILING

(Issued August 12, 2010)

1. On March 18, 2010, PJM Interconnection, L.L.C. (PJM) submitted a compliance filing in response to a Commission order issued in this proceeding on December 18, 2009.<sup>1</sup> In the December 18 Order, the Commission accepted, subject to conditions, PJM's initial compliance filing addressing the market reform requirements of Order No. 719.<sup>2</sup> The December 18 Order required PJM to submit an additional compliance filing addressing various issues identified below. For the reasons discussed below, we accept, in part, and reject, in part, PJM's filing and require PJM to make a further compliance filing within 90 days of the date of this order.

**Background**

2. In Order No. 719, the Commission amended its regulations to improve the operation of organized wholesale electric power markets. On April 29, 2009, as amended on May 1, 2009, PJM submitted its initial compliance filing in response to Order No. 719. PJM's initial compliance filing included revisions to PJM's open access transmission tariff (OATT) and Amended and Restated Operating Agreement (Operating Agreement). PJM also requested that its compliance obligations be considered,

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,250 (2009) (December 18 Order).

<sup>2</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) (Order No. 719 or Final Rule), *order on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009) (Order No. 719-A), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

completely fulfilled, in part, through other filings that have been made, or will be made, in related proceedings.<sup>3</sup>

3. In the December 18 Order, the Commission accepted PJM's compliance filing, subject to conditions, to be made effective June 29, 2009, as requested. With respect to PJM's obligations regarding the participation and comparable treatment of demand response resources in its ancillary services markets, the Commission required PJM to submit an additional compliance filing to: (i) further support its Manual provision authorizing a floor of 0.5 MW for aggregators submitting demand response bids, while generators were required to submit bids at or higher than 1 MW; (ii) ensure that load reductions credited by PJM adequately capture end-use customer operations in a manner that will prevent demand response payments for load levels that would have occurred regardless of PJM's market opportunities; and (iii) revise its OATT and Operating Agreement to reflect the "normal operations review criteria" as posted on PJM's website.

4. With respect to market monitoring and mitigation matters, the Commission required PJM to submit: (i) revisions to its OATT regarding functions to be carried out by its external Marketing Monitoring Unit (MMU);<sup>4</sup> (ii) a further discussion of its position regarding the appropriate exceptions to and the data used for, the calculations of Minimum Generator Operating Parameters (section 6.6) of its Operating Agreement; (iii) revisions to its OATT to include, in its MMU Code of Ethics, the standards set forth in the Commission's regulations at 18 C.F.R. § 35.28(g)(3)(vi)(B), (D), (E) and (G); (iv) revisions to its OATT, at Attachment M, section VI, regarding the MMU's availability for regular conference calls with Commission staff and state commission staff, representatives of PJM, and market participants; (v) revisions to its website to provide a direct link to the MMU's annual and quarterly reports; (vi) revisions to its OATT to implement a four month lag time applicable to the release of offer and bid data; (vii) further support addressing its policies regarding the aggregation (or lack thereof) of offer and cost data and further support regarding the extent to which its policies avoid participant harm and the possibility of collusion, while fostering market transparency; (viii) revisions to its OATT and Operating Agreement specifying that the MMU may, at its discretion, produce information about general market trends and the performance of the wholesale markets in response to a state commission's tailored information request where the information would not violate confidentiality restrictions, is not designed to aid state enforcement actions, and does not contravene the Commission's confidentiality rules regarding referrals; (ix) revisions to its OATT and Operating Agreement affording

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<sup>3</sup> December 18 Order, 129 FERC ¶ 61,250 at P 2.

<sup>4</sup> PJM's external MMU is Monitoring Analytics, LLC, an intervenor in this proceeding.

market participants the opportunity to contest any data released by PJM that is specific to them and to provide context to such data; and (x) revisions to its OATT at Attachment M, section IV.I.2, to include Order No. 719's requirements regarding MMU referrals to the Commission.<sup>5</sup>

### **Notice of Filing and Responsive Pleadings**

5. Notice of PJM's filing was published in the *Federal Register*, 75 Fed. Reg. 15,702 (2010), with protests and interventions due on or before April 8, 2010. Motions to intervene were timely-filed by IPA Central, LLC (IPA Central), J.P. Morgan Ventures Energy Corporation, Hess Corporation (J.P. Morgan), Sempra Energy Trading LLC, and NextEra Energy Generators. In addition, a motion to intervene out-of-time was filed by American Electric Power Service Corporation (AEP) on May 10, 2010.

6. Comments were filed by the MMU, Maryland Public Service Commission; Constellation Energy Commodities Group, Inc. and its affiliates (Constellation); and American Municipal Power, Inc. (AMP). Protests were filed by Viridity Energy, Inc. (Viridity) and the PJM Industrial Customer Coalition (Industrial Customer Coalition). Answers to comments and/or protests were submitted on April 1, 2010 by IPA Central, J.P. Morgan, the PPL Parties,<sup>6</sup> and Shell Energy North America (collectively, IPA Central, *et al.*), April 23, 2010 by IPA Central and on May 4, 2010 by PJM. Answers to answers were submitted on April 6, 2010 by PJM, on May 13, 2010 by Viridity, and on May 28, 2010 by the MMU.

7. Finally, on March 24, 2010, the MMU filed a motion to cease and desist, requesting that the Commission issue an order barring PJM from implementing a PJM Manual provision addressing the release of certain cost data until such time as the Commission addresses PJM's policy on the merits. For the reasons discussed below, we dismiss the MMU's motion as moot.<sup>7</sup>

### **Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,

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<sup>5</sup> December 18 Order, 129 FERC ¶ 61,250 at P 6.

<sup>6</sup> The PPL Parties are PPL Energy Plus, PPL Electric Utilities Corporation, PPL Hollywood, LLC, PPL University Park, LLC, PL Brunner Island, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, PPL Martins Creek, LLC and PPL Lower Mount Bethel Energy LLC.

<sup>7</sup> See *infra* P 53.

18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, we grant the unopposed motion to intervene out-of-time submitted by AEP.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010) prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the above-noted answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

### **Discussion**

10. Unless otherwise discussed below, PJM's compliance filing is hereby accepted.

#### **A. Load Reductions**

11. The December 18 Order required, among other things, that PJM: (i) ensure that load reductions credited by PJM adequately capture end-use customer operations in a manner that will prevent demand response payments for load levels that would have occurred regardless of PJM's market opportunities;<sup>8</sup> and (ii) revise its OATT and Operating Agreement to reflect the "normal operations review criteria" as posted on PJM's website.<sup>9</sup>

#### **1. PJM's Filing**

12. With respect to the December 18 Order's requirement that PJM ensure that load reductions credited by PJM are responsive to price, PJM asserts that its existing tariff provisions generally provide this assurance.

13. In addition, PJM states that it has been engaged in discussions with its stakeholders to define the specific rules that will apply to price responsive demand in the wholesale market, including business rules applicable to PJM's load forecasting processes and reliability pricing model (RPM) protocols.<sup>10</sup> PJM states that it plans to

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<sup>8</sup> December 18 Order, 129 FERC ¶ 61,250 at P 92.

<sup>9</sup> *Id.*

<sup>10</sup> As PJM notes in its answer, price responsive demand is an additional option that participants may choose if they have: (i) appropriate metering technology; and (ii) a retail rate design that allows them to view the wholesale price and manage their energy consumption based on the cost of electricity on a real-time basis.

make a tariff filing addressing these proposed new rules by August 2010, with an October 2010 projected implementation date.<sup>11</sup>

14. With respect to the December 18 Order's requirement that PJM revise its OATT and Operating Agreement to reflect the "normal operations review criteria" posted by PJM on its website, PJM proposes to revise its OATT and Operating Agreement to include the provision that PJM will review an Economic Load Response Participant's registration when settlements are frequently submitted. The proposed tariff revisions include provisions addressing: (i) notice of a registration review; (ii) continued participation during the ensuing 30-day review process; (iii) verification that load reduction activity is in response to PJM market price signals; and (iv) possible registration review resolutions, including possible review of the appropriateness of customer baseline load calculations, (i.e., the rules relied upon by PJM for measuring and verifying the amount of power that might be used by an end-use customer absent a reduction in MWh usage).<sup>12</sup> PJM states that these proposed revisions also include specific criteria that PJM will use in determining whether to deny an Economic Load Response<sup>13</sup> participant's daily settlement submission.<sup>14</sup>

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<sup>11</sup> We note that PJM filed its scarcity pricing proposal on June 18, 2010 in Docket No. ER09-1063-004.

<sup>12</sup> See generally *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,257 (2008) (Customer Baseline Revisions Order) (order accepting, subject to conditions, PJM's proposed revisions to its customer baseline load calculations).

<sup>13</sup> The Economic Load Response Program is designed to enhance the ability and opportunity for reduction of consumption when PJM Locational Marginal Prices (LMP) are high.

<sup>14</sup> PJM's proposed tariff revisions also include certain criteria to determine whether to deny an Economic Load Response participant's daily settlement submission, i.e., a denial would be issued for: (i) a settlement for self-scheduled energy in the real-time energy market where only some of the self-scheduled hours have been included in the daily settlement submission; (ii) a daily settlement with an estimated value less than \$5.00; or (iii) a daily settlement with a significant number of uneconomic hours. In its answer, PJM clarifies that the term "uneconomic hours" refers to settlement hours in which the Locational Marginal Price is less than or equal to the generation plus the transmission portion of the end-use customer's retail rate or price. We note that under PJM's market rules economic load response participants participating in the day-ahead and real-time energy markets will be compensated by PJM at the LMP less an amount equal to the applicable retail generation and transmission charges (i.e., the retail

15. PJM notes that its proposed inclusion, in its tariff, of the normal operating review criteria previously posted on its website, intentionally omits a specified settlement frequency that would trigger registration reviews. PJM states that such a provision would signal to curtailment service providers a settlement threshold below which registrations would not be subject to a normal operations review. PJM states that, as such, including a specified settlement frequency as part of the review criteria provision may counter PJM's efforts to preserve the integrity of Economic Load Response participation in the energy market.

16. Additionally, PJM's proposal includes criteria for Load Serving Entities (LSEs) and Electric Distribution Companies (EDCs) regarding the review of demand response settlements. Under PJM's proposed market rules, the LSEs and EDCs may only deny settlements during the normal settlement review process for inaccurate data including, but not limited to: meter data, line loss factor, Customer Baseline Load (CBL) calculation, retail rate, interval meter owner and a known recurring end-use customer outage or holiday.

## **2. Protests and Comments**

17. The Industrial Customer Coalition argues that PJM's proposed tariff revisions did not include all the provisions of normal operations review posted on PJM's website, as required by the December 18 Order. Specifically, the Industrial Customer Coalition asserts that PJM's website provisions also include a statement that "[i]dentified registration will have all subsequent daily settlements denied until a review is conducted."<sup>15</sup>

18. The Industrial Customer Coalition argues that a lack of a precise threshold for settlement frequency would prevent market participants from having reasonable, tariff-based guidelines for denial, or acceptance, of their demand response settlements.

19. Viridity similarly argues that PJM's "frequently submitted settlements" criterion creates an unfounded presumption that frequent settlements reflect impropriety.

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generation and transmission charges are the retail charges the participant would have incurred absent the demand reduction). *See* sections 3.3A.4(a) (Market Settlements in Real-time Energy Market) and 3.3A.5(a) (Market Settlements in Day-ahead Energy Market) of the PJM OATT. We also note that PJM defines economic load response participant as a member or special member that qualifies under section 1.5A to participate in the PJM Interchange Energy Market through reductions in demand.

<sup>15</sup> Industrial Customer Coalition Protest at 5.

However, contrary to the Industrial Customer Coalition, Viridity states that it does not protest PJM's intentional omission of the threshold, and agrees with PJM that a specific numerical threshold would "telegraph to [curtail service providers (CSPs)] a settlement threshold below which registrations would not be subject to a normal operations review," thus countering PJM's efforts to preserve the integrity of economic load response participation in the energy market.<sup>16</sup> Viridity also proposes that PJM be required to provide an opportunity, at a participant's request in advance of submitting settlements, to undergo a review of the participant's proposed means of substantiating the load reductions that the participant expects to submit. Viridity argues that PJM should not be permitted to deny a settlement until after providing the participant with notice and an opportunity to establish that the settlements were based on load reductions in response to price.

20. Viridity also takes issue with PJM's proposed tariff language requiring a participant to provide information "to support that the settlements were submitted for load reduction activity done in response to price and not submitted based on the End-Use Customer's normal operations."<sup>17</sup> Viridity argues that this provision provides none of the specificity provided on PJM's website concerning what information is required to substantiate that settlements are based on load reduction in response to price.

### **3. PJM's Answer**

21. PJM rejects the argument raised by the Industrial Customer Coalition that PJM's proposed normal operating review criterion, as set forth in PJM's tariff, must include a settlement frequency threshold. PJM responds that its proposed omission of this frequency threshold is based on actual experience with economic demand resources in the market, not on mere speculation.

22. PJM also responds to Viridity's request that PJM institute a process to pre-approve Economic Load Response activity. PJM argues that this approach would not provide the necessary supporting information for PJM to determine that load reduction will be carried out in response to price because the resource would not have yet reduced the load reduction at issue, i.e., the resource would lack actual market experience. PJM states that, in addition, a mandatory pre-approved registration process could lead to additional administration for all resources and market participants, and potentially establish a barrier to entry where the overwhelming majority of resources cannot provide continuous load

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<sup>16</sup> Viridity Protest at 6.

<sup>17</sup> See PJM filing at Attachment A, proposed PJM OATT revision at Second Revised Sheet No. 388G.

reductions without disrupting their existing business operation.

23. PJM states that the normal operation review process can be accomplished on a timely basis if the curtailment service provider has the necessary supporting information for the load reduction submitted for settlement and payment. PJM states that, in addition, it encourages curtailment service providers to provide advance notification to market participants involved in the settlement review process.<sup>18</sup>

24. PJM also responds to Viridity's charge that PJM's proposed normal operations review process, and the material on which it will rely, lacks sufficient specificity. PJM states that, in addition to the specific criteria discussed in its filing (summarized above), PJM provides the curtailment service provider with additional relevant information. PJM notes that, when an economic registration has been identified as having a high frequency of settlement activity, PJM requests additional information from the curtailment service provider to validate that the demand response settlement activity represents load reductions made in response to price. PJM states that in that communication, PJM requests a copy of an effective contract between the curtailment service provider and the affected end-use customer, and also requests detailed information concerning the specific resource's capability, verification by the end-use customer, and communications between the curtailment service provider and the affected end-use customer.

#### **4. Additional Answers**

25. Viridity responds to PJM's argument that PJM's proposed tariff revisions, addressing PJM's authority to review settlements submitted by Economic Load Response participants, does not create an automatic presumption of impropriety for frequently submitted settlements. Viridity argues that while PJM's proposal does not use the word "impropriety," PJM would nonetheless be required to impose severe consequences on any Economic Load Response participant that submits settlements that PJM deems to be too frequent and that PJM will do so before it will have conducted any review of the settlements at issue.

26. Viridity also responds to PJM's argument that a process, as proposed by Viridity, to pre-approve Economic Load Response activity would not allow PJM to determine whether future load reductions will be carried out in response to price. Viridity clarifies that it has not proposed pre-approval as a matter of finality, but rather as an opportunity for a participant to review with PJM, in advance, how the participant plans to substantiate

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<sup>18</sup> PJM adds that to the extent the curtailment service provider is uncertain as to what specific actions qualify as demand response, the curtailment service provider should contact PJM for clarification prior to registration of the resource.

that its load reductions are in response to price. Viridity asserts that this proposed process is especially important in those circumstances where the participant anticipates that enough such load reductions will occur that PJM may consider them to be too frequent. Viridity adds that PJM would fully retain its ability to review settlements after-the-fact.

## 5. Commission Determination

27. We accept PJM's compliance filing. We find that PJM has complied with the December 18 Order's requirement that PJM ensure that load reductions credited by PJM are in response to price. We also accept PJM's proposed OATT and Operating Agreement revisions reflecting the normal operations review criteria previously posted on PJM's website. We agree with PJM that its proposed tariff provisions appropriately reflect the criteria on which PJM should rely in reviewing demand response settlements. Under PJM's revised rules, PJM will notify a participant when its registration is under review, and the participant will then have an opportunity to demonstrate that its settlements were submitted in response to a price signal and not based on the participant's normal operations. We find that this approach reasonably balances the market participant's interests with PJM's need to ensure that any given load reduction is based on a market price response.

28. We also find reasonable PJM's proposal to deny demand response settlements until it determines that the compensation being sought is based on load reductions taken in response to price.<sup>19</sup> PJM's proposal is consistent with the December 18 Order's requirement that load reductions be responsive to price<sup>20</sup> and the Commission's prior approval of PJM tariff language authorizing PJM to disallow demand response settlements that do not meet PJM's requirements.<sup>21</sup> In addition, disallowing settlements is consistent with PJM's existing market rules permitting PJM to limit such settlements to only those demand reductions that are taken in response to locational marginal prices in the real-time and day-ahead energy markets.<sup>22</sup>

29. Under PJM's proposal, a participant will be given 30 days to substantiate the load

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<sup>19</sup> See PJM filing at Attachment A, Operating Agreement revisions at Second Revised Sheet No. 119F and Original Sheet No. 119G.

<sup>20</sup> December 18 Order, 129 FERC ¶ 61,250 at P 92.

<sup>21</sup> Customer Baseline Revisions Order, 123 FERC ¶ 61,257 at P 2-10.

<sup>22</sup> See PJM Operating Agreement at Schedule 1 Section 3.3A.6.

reductions it has submitted for settlement.<sup>23</sup> If supporting information is provided, the settlements denied by PJM will be re-submitted for review.<sup>24</sup> Additionally, PJM may introduce an alternative customer baseline load if the existing customer baseline load does not adequately reflect what the customer load would have been absent a load reduction. As such, we find that PJM's proposal strikes a reasonable balance between providing participants an opportunity to substantiate load reductions for which compensation is sought and ensuring that settlements are denied to participants seeking compensation for reducing load based on a participant's normal operation.

30. We reject the Industrial Customer Coalition's proposal that PJM include, in its tariff, a settlement frequency threshold triggering PJM's obligation to review a given series of demand response settlements. We agree with PJM that a specific numerical threshold would "telegraph to CSPs a settlement threshold below which registrations would not be subject to a normal operations review," thus countering PJM's efforts to preserve the integrity of economic load response participation in the energy market. We

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<sup>23</sup> We note that PJM's existing OATT provision section 3.3A.7(b), provides that PJM will have thirty (30) days to conduct a review. PJM may refer the matter to the PJM MMU and/or the [Federal Energy Regulatory] Commission's Office of Enforcement if the review indicates the relevant Economic Load Response participant and/or relevant Electric Distribution Company (EDC) or Load Serving Entity (LSE) is engaging in activity that is inconsistent with the PJM Interchange Energy Market rules governing Economic Load Response Participants.

<sup>24</sup> PJM OATT, sections 3.3A.7(a)(i) and (ii) require the participant to provide information within 30 days to support that the settlements were submitted for load reduction activity done in response to price and not submitted based on the end-use customer's normal operations:

- (i) If the participant is unable to provide adequate supporting information to substantiate the load reductions submitted for settlement, PJM will terminate the registration and may refer the participant to either the Market Monitoring Unit or the [Federal Energy Regulatory] Commission for further investigation.
- (ii) If the participant does provide adequate supporting information, the settlements denied by PJM will be resubmitted by the participant for review according to existing PJM market rules. Further, PJM may introduce an alternative Customer Baseline Load if the existing Customer Baseline Load does not adequately reflect what the customer load would have been absent a load reduction.

also agree with PJM and Viridity that providing a precise threshold would signal to market participants the information they would need to avoid such a review.

31. We believe Viridity's proposal that PJM provide an opportunity, in advance of submitting demand response settlements, for participants to review with PJM their proposed means of substantiating that load reductions result from actions taken in response to day-ahead and real-time LMPs is consistent with PJM's existing market rules. PJM's market rules provide the opportunity for economic load response participants to propose an alternative CBL during the registration process.<sup>25</sup> PJM further states that it encourages CSPs to provide advanced notification to market participants involved in the settlement review process, which includes PJM and the relevant EDC and LSE, to foster open and clear communication. We expect that PJM will provide a participant an opportunity, in advance of submitting settlements, to review with PJM and interested entities information regarding the methodology it plans to use to substantiate load reductions. Such advance reviews could reduce the number of after-the-fact reviews that PJM would need to perform if it were to rely entirely on the "frequent settlements" trigger, while still permitting PJM to retain its ability to review settlements after-the-fact. An advance review, therefore, would allow PJM and the participant taking this opportunity to identify and resolve potential problems in substantiating load reductions in advance. This advance review process should mitigate submittal of problematic settlements that result in unresolved questions.

32. With regard to Viridity's and PJM ICC's concern that PJM's proposal lacks the specificity of the provisions on its website about the documentation required to demonstrate load reductions were in response to day-ahead and real-time LMPs, we find that PJM's existing market rules and practices provide a sufficient level of specificity regarding the actions that qualify as demand response. PJM explains that when an economic registration has been identified as having a high frequency of settlement activity, it sends the respective CSP a standard letter requesting additional information to validate that the demand response settlement activity represents load reductions in response to LMP. In that standard letter, PJM requests a copy of an effective contract between the CSP and affected end-use customer, and requests detailed information concerning the specific resource's capability, customer verification by the end-use customer.

33. We find reasonable PJM's proposed criteria for LSEs and EDCs review of demand response settlements. The proposed criteria provides that LSEs or EDCs may only deny settlements during the normal settlement review process for inaccurate data including, but

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<sup>25</sup> See PJM OATT Attachment K-Appendix, section 3.3A.2.01 (Alternative Customer Baseline Methodologies).

not limited to: meter data, line loss factor, CBL calculation, retail rate, interval meter owner and a known recurring end-use customer outage or holiday (e.g., plant outage or school break). As a result, settlements can not be denied by an EDC or LSE based on a determination that a load reduction action was not in response to price.<sup>26</sup>

34. With respect to PJM's proposed daily settlement screen, we agree with the MMU that the screen addresses a CBL calculation issue. When a high CBL results from high load days, a participant could submit settlements on a daily basis to block lower load days from CBL eligibility, creating an upward bias in measured CBL. Thus, when a customer submits low value settlements for the purpose of blocking the inclusion of low load days from the CBL, the daily review process will deny them if they fail one of the four identified screens.

35. As noted above, we find that the review process can be completed in a reasonable time period if the curtailment service provider has the necessary supporting information for the load reduction submitted for settlement and payment.

36. With regard to CBL rules, measurement and verification standards must be in place that estimate what metered load would have been absent the reduction. We recognize that demand response technologies in energy use are evolving and rules governing measurement and verification are not intended to limit entry. As a result, we encourage PJM to review its measurement and verification rules to ensure that they will be applicable to new technologies (e.g., advanced metering infrastructure and pre-programmed and automated interventions in energy use) used by economic load response participants that will enable customers to reduce load in response to price on a more frequent basis.<sup>27</sup> In addition, we require PJM to revise its OATT and Operating Agreement within 90 days of the date of this order to include the clarification for uneconomic hours provided in its answer.<sup>28</sup>

#### **B. Minimum Generator Operating Parameters**

37. The December 18 Order required PJM to incorporate, into its OATT and Operating Agreement its existing Manual 11 provisions addressing minimum generator

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<sup>26</sup> *Id.* at section 3.3A.7(a)(vi) (Economic Load Response Participant Review Process) Attachment K-Appendix of the OATT.

<sup>27</sup> We note that parties may file an FPA section 206 complaint to address concerns pertaining to PJM's CBL provisions.

<sup>28</sup> *See supra* note 14.

operating parameters and unit specific exceptions, i.e., the terms applicable to a generating facility's eligibility to receive operating reserve payments.<sup>29</sup> The December 18 Order also required PJM to review, with its stakeholders, PJM's Manual 11 provisions regarding unit specific exceptions to the parameter limited schedules and the default parameter schedule values.<sup>30</sup>

### 1. PJM's Filing

38. PJM proposes to include, in its OATT and Operating Agreement, its existing Manual 11 provisions addressing unit specific exceptions to the parameter limited schedules and the default parameter schedule values. PJM also states that these provisions have been discussed with its stakeholders.

### 2. Protests and Comments

39. The MMU characterizes as unnecessary the Manual 11 provision PJM proposes to include in its tariff stating that PJM "may engage the services of a consultant with technical expertise to evaluate [an] exceptions request." The MMU also objects to the Manual 11 provision allowing market participants to challenge PJM's denials of requested exceptions through the PJM dispute resolution process. The MMU asserts that this allowance could be construed as a prerequisite to a market participant's right to take a dispute over this matter to the Commission. Finally, the MMU argues that Manual 11 fails to clearly and objectively describe how exceptions to parameter limited schedules will be processed. The MMU asserts that the clarifications it proposed to include in response to PJM's initial compliance filing in this proceeding should be adopted.

### 3. Commission Determination

40. We accept PJM's proposal to incorporate into its OATT and Operating Agreement its Manual 11 rules concerning unit specific exceptions to the parameter limited schedules and the default parameter schedule values. PJM's proposed tariff language complies with the December 18 Order. PJM's proposal clarifies which functions are performed by the MMU and which by PJM. The MMU proposes changes that are substantially the same as the revisions proposed by the MMU earlier in this proceeding. There, the MMU proposed to perform exclusively the functions of the MMU Plan set

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<sup>29</sup> December 18 Order, 129 FERC ¶ 61,250 at P 175. The December 18 Order also accepted, for inclusion in PJM's OATT and Operating Agreement, certain of these Manual 11 provisions, including PJM's parameter limited schedule matrix. *Id.*

<sup>30</sup> *Id.*

forth in the PJM OATT. Therefore, we reject the MMU's proposed revisions to these provisions because it conflicts with Order No. 719's requirements that an RTO may not permit its external MMU, to participate in the administration of the tariff. For the above reasons, we find the MMU's proposed changes as beyond the scope of this compliance proceeding.

### **C. Must Offer Requirement**

41. The December 18 Order required PJM to revise its Reliability Pricing Model (RPM) must offer obligation to specify the standards the MMU applies in determining if a unit is subject to the must offer requirement.<sup>31</sup>

#### **1. PJM's Filing**

42. PJM proposes to include in its OATT, in addition to the existing criteria, three additional standards clarifying the circumstances in which a resource can be "reasonably expected to be physically unable to participate in the relevant auction."<sup>32</sup> Specifically, PJM proposes that a resource qualify for this must offer exception if: (i) the market seller has submitted a notice to PJM that it intends to retire the resource prior to or during the delivery year; (ii) the resource has significant physical operational restrictions that cause long-term or permanent changes to the installed capacity value of the resource, or the resource is under major repair that will extend in the applicable delivery year and that will result in the imposition of RPM performing penalties; and (iii) the market seller is involved in an ongoing regulatory proceeding that will result in the retirement of the resource.

#### **2. Protests and Comments**

43. The MMU argues that PJM's compliance proposal fails to specify what behavior would constitute physical withholding, which triggers a must offer obligation. The MMU therefore proposes that the PJM OATT be revised, at Attachment DD, section 6.6, to clarify when a supplier's behavior is physical withholding and to specify the circumstances under which the supplier's resources must be offered into PJM's RPM auctions. The MMU argues that in addition to the three standards proposed by PJM, a fourth standard should be adopted to specify the limited circumstances in which a retiring unit that is available on a partial-year basis will be required to participate in the RPM

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<sup>31</sup> *Id.* P 180.

<sup>32</sup> *See* PJM OATT Attachment K - Appendix Attachment M – Appendix at section II.C.4.

auction covering its partial-year availability. Specifically, the MMU proposes that such a resource be found to be reasonably expected to be physically unable to participate in the relevant auction (and thus be permitted to be withheld) *only* where, in the case of a resource with a documented plan to retire within the delivery year, RPM revenues net of penalties will not yield a profit. The MMU argues that such a rule constitutes a reasonable, easily administered approach for determining the applicability of the must offer requirement and is consistent with existing practice.

### **3. PJM's Answer**

44. PJM states that it agrees with the MMU that Attachment DD, section 6.6 should be revised as the MMU proposes, but that such a revision is beyond the scope of this proceeding.

### **4. Commission Determination**

45. We accept PJM's proposed criteria clarifying when a resource can reasonably be expected to be physically unable to participate in PJM's RPM auctions. We find these criteria reasonable, because they clarify the documentation that is provided to the MMU by a capacity market seller, that the MMU will consider in determining whether a resource meets the criteria to qualify for an exception to the must offer requirement, which better explains the roles of the external MMU and PJM with respect to such units.<sup>33</sup> We further direct PJM to clarify its OATT to incorporate its standards regarding a physical inability to participate in the capacity auction section 6.6 of Attachment DD of the OATT within 90 days of the date of this order.

46. Furthermore, we agree with PJM that a fourth criterion requiring a retiring unit that is available part of the year to participate in the RPM auction to the extent of its availability should be added to the OATT is beyond the scope of this proceeding. PJM explains that clarification to the must offer requirement are being revisited on its initiative through the stakeholder process. We recognize PJM's initiative to revisit clarifications to the must offer requirement through its stakeholder process<sup>34</sup> and encourage the MMU and stakeholders to continue discussions regarding the detailed

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<sup>33</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 378.

<sup>34</sup> See PJM's April 13, 2010 Market Implementation Committee Meeting (MIC) slides at: <http://www.pjm.com/~media/committees-groups/committees/mic/20100413/20100413-item-07-rpm-item.ashx>. See PJM's June 16, 2010 MIC Meeting slides at: <http://www.pjm.com/~media/committees-groups/committees/mic/20100616/20100616-item-0-rpm-items.ashx>.

circumstances under which resources must offer into RPM auctions, including resources with a documented plan in place to retire within the delivery year.

**D. MMU Code of Ethics**

47. The December 18 Order required PJM to revise its proposed MMU Code of Ethics to incorporate language consistent with the Commission's regulations.<sup>35</sup> Specifically, the December 18 Order required PJM to include, in its MMU Code of Ethics, standards: (i) prohibiting the MMU and its employees from serving as an officer, employee, or partner of a market participant; engaging in any market transactions other than the performance of their duties under the tariff; or being compensated, other than by PJM, for any expert witness testimony or other commercial services to the ISO/RTO or any other party, in connection with any legal or regulatory proceeding or commercial transactions relating to the ISO/RTO or the ISO/RTO's markets; and (ii) requiring the MMU and its employees to advise a supervisor if they seek employment with a market participant and disqualifying themselves from participating in any matter that would have an effect on the financial interest of the market participant.

**1. PJM's Filing**

48. PJM states that it has revised Attachment M, section XI.B of its OATT to include the necessary standards, as required by the December 18 Order.

**2. Protests and Comments**

49. The MMU requests that PJM be required to strike the word "other" as it appears before the term "commercial services" in the following standard: "[t]he [MMU] and its employees must not be compensated, other than by the [ISO or RTO] that retains or employs it, for any expert witness testimony or *other* commercial services, either to the [ISO or RTO] or to any other party, in connection with any legal or regulatory proceeding or commercial transaction relating to the [ISO or RTO] or to the [ISO's or RTO's] markets." The MMU explains that its offer of expert testimony in matters pertaining to PJM markets cannot be characterized as a "commercial service," but rather as a public service appropriately within its monitoring function, as covered under its existing budget.

**3. Commission Determination**

50. We accept PJM's compliance proposal, subject to the clarifying revision proposed by the MMU. We agree with the MMU that the proposed revision will add clarity,

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<sup>35</sup> December 18 Order, 129 FERC ¶ 61,250 at P 189, *citing* 18 C.F.R. § 35.28(g) (3)(vi)(B), (D), (E), and (G) (2010).

consistent with the MMU's duties and functions. Accordingly, we require PJM to revise section XI.B of Attachment M in its compliance filing.

**E. Release of Offer and Cost Data**

51. The December 18 Order found that PJM, in its initial compliance filing, failed to satisfy Order No. 719's requirement obligating RTOs and ISOs to justify their policies regarding the aggregation of offer and cost data and the extent to which these policies foster market transparency and avoid participant harm and the possibility of collusion.<sup>36</sup>

**1. PJM's Filing**

52. PJM states that, in the past, it made case-by-case determinations when considering requests to post market data, considering whether the requested data: (i) was market sensitive; or (ii) could be misused. PJM states that this approach was inadequate, lacked sufficient market transparency, and resulted in a substantial barrier to aggregated data posting. PJM states that to address these deficiencies it proposed to its stakeholders (and received broad stakeholder support) to revise Manual 33, effective as of March 18, 2010.<sup>37</sup>

53. PJM subsequently agreed to defer the implementation of this policy, following the MMU's submittal, on March 24, 2010, of a motion to cease and desist, in which the MMU requested that PJM's policy not be allowed to become effective prior to the Commission's review and acceptance of the policy. PJM agreed to this deferral, in a responsive pleading submitted April 6, 2010. PJM's response renders the MMU's motion moot. However, PJM noted that it continues to support its revised policy for the reasons stated in its compliance filing. As a result, PJM states that it will keep this data non-public for 6 months or until such time as the Commission directs otherwise in this docket.

54. In its compliance filing, PJM states that, under its policy, it will post aggregated market data on its web site to the extent it deems such information valuable to the public, or upon request, provided that: (i) the data for at least four participants in a particular category is aggregated; and (ii) the aggregated data covers a geographic area no smaller

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<sup>36</sup> *Id.* P 203.

<sup>37</sup> See PJM's Manual 33 (Administrative Services for the PJM Interconnection Operating Agreement) section 3.6 (Market Data Postings) at 22:  
<http://www.pjm.com/~media/documents/manuals/m33.ashx>

than a zone. PJM adds that the data to be posted must meet both of these two criteria, whether the data is considered on its own or with reference to previously posted data, unless such disclosure is deemed acceptable to PJM, the MMU and the participant(s) whose data will be released.

55. PJM states that its proposed policy will ensure that the identity of the participant submitting a bid or offer will remain masked and that the “four or more participants” rule ensures that no single participant’s data can be isolated and identified. PJM asserts that its geographic rule will ensure that small, localized, constrained regions will be protected from abuse.

## 2. Protests and Comments

56. The MMU notes that PJM, on March 19, 2010, pursuant to its new posting policy (and prior to its agreement to suspend the implementation of this policy), posted data on every RPM base residual auction that it has held, including a list of offer prices to the first decimal place and associated MW values. The MMU characterizes this data as resource specific and argues that PJM’s “aggregation” is, in fact, the simple tabulation of offers.<sup>38</sup>

57. The MMU argues that under PJM’s policy, PJM will post MW values as paired with their corresponding price values for each locational deliverability area (LDA) (even though PJM does not reveal the actual unit or its owner). The MMU notes, however, that if there is only one offer at the given price, then the data that PJM will be posting will reveal the actual offer of a unit. In addition, the MMU asserts that other publicly available data allows participants to identify the number of units (and their MW capacity) available by zone. The MMU argues that the result is that PJM, under its new policy, will be posting data on at least some individual offers that may be linked to specific units and owners.

58. The MMU argues that this is particularly true in the case of a small LDA, where there may be a relatively few large generation owners, a circumstance that increases the likelihood of correctly matching offers with units and/or owners. The MMU argues that, in this situation, one large generation owner might be able to identify its own offers, which increases the likelihood that the entity can correctly identify the offers of its competitors.

59. The MMU contends that PJM did not post aggregated data. PJM’s definition of

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<sup>38</sup> To date, PJM has not removed this data from its website. As discussed below, we direct its removal within five days of the date of this order.

data aggregation involved posting the total MW offered at each specific price offer, according to the MMU. The MMU argues that in some cases, a specific price offer includes multiple unit offers and in some cases it includes individual unit offers. The MMU asserts that it is not indicating the actual proportion of each so as not to make the situation worse. The MMU argues that PJM posted a second spreadsheet at the same location as the first spreadsheet that includes the name, MW, and zonal location for existing generation resources located in each zone, that qualify as capacity resources as of February 2, 2009. In other words, the MMU contends, the second posted spreadsheet shows each such generating unit in SW MAAC ZONE and its MW. The MMU contends that other publicly available data permit the identification of the owners of these units.

60. The MMU argues that the result is that PJM has posted data on at least some individual offers, that those offers may be linked to specific units and that those units may be linked to specific owners. The MMU explains that this does not mean that every individual unit offer has been posted and this does not mean that every offer can be linked to an individual unit. Nonetheless, the MMU argues, the result is that PJM has released a substantial amount of unmasked data, contrary to the Commission's policy on this issue and contrary to PJM's own stated intent for both its prior and newly adopted policy on data posting.

61. The MMU contends that the problem is exacerbated in a small LDA like SW MAAC, where there are a small number of large generation owners. The MMU states that the Reliability Assurance Agreement defines the SW MAAC ZONE as including the PEPCO Zone and the BGE Zone. Based on the spreadsheet, according to the MMU, there are 70 such units in these two zones. The MMU argues that the small number of large generation owners increases the probability of being able to correctly match offers with units and owners.

62. The MMU proposes that, in lieu of PJM's policy, that PJM provide a set of paired price and MW, that would each be consistent with the RTO-wide base residual auction supply curve, as based on the drawing of a line through each price and MW pair that makes up the supply curve, but which would not directly correspond to any actual discrete price and MW offer made by any one participant, or group, of participants, or provide information sufficient to derive these points. The MMU asserts that, under this approach, the provided price and MW pairs would correspond to points on the line segments that make up the actual base residual auction supply curve, but would be sufficiently spaced to prevent the calculation of specific slope inflection points in the line segments of the supply curve. The MMU argues that its approach would ensure that participant specific information is appropriately masked, while still providing information consistent with actual supply. The MMU adds that lagging the data by 13 months, in the case of the RPM-related data, would further limit the market sensitivity of this data.

63. The MMU requests that the Commission establish an orderly process for developing a coherent, prudent and tariff-defined policy for the release of data across of

PJM's markets. As of December 18, 2009, PJM consistently released the same data on the same schedule. PJM did not, as far as the MMU is aware, tailor its release on the basis of a request for particular information from a market participant or otherwise treat the release of information in an arbitrary or discriminatory manner. According to the MMU, most of the policies effective December 18, 2009, reflect due consideration and agreement between PJM staff and the MMU.

64. The MMU argues that the most productive course at this time would be to order PJM and MMU to develop and agree upon a coherent policy on data release for each PJM market, including the timing for release (such as the four-month lag approved for the energy markets) and the granularity. The MMU asserts that the rules that result from the process should be incorporated into the PJM tariff where any proposed alternations are subject to Commission review.

65. Constellation agrees with the MMU that PJM's posting policy would reveal confidential, unit-specific offers that, while not expressly linked to a given participant, nonetheless permit participants to identify their competitors' offers. Constellation argues that, as such, the predicate underlying PJM's posting policy – that the posted bid and offer data will be aggregated and thus masked – is a false predicate. Constellation further argues that PJM's policy violates its tariff's guarantee of confidentiality of offers and offer strategies.<sup>39</sup>

66. With respect to PJM's March 19, 2010 RPM data posting, Constellation argues that it has identified several instances in which its own unit offers are not aggregated with any other market participant's offers. Constellation argues that should any of these offers be of a quantity consistent with the publicly available output of one of Constellation's generating units, Constellation's competitors will be able to easily deduce Constellation's offers.

67. Constellation is concerned that the other large competitor in SW MAAC can now discern Constellation's confidential offers and offer strategy simply by identifying its own offers then isolating Constellation's offers by process of elimination. Constellation contends that where price/quantity pairs are not aggregated and the quantity of such pairs is so large that it cannot be explained by one's own offer or the sum of all other offers in the LDA, then a large market participant can reasonably deduce that the price/quantity pair was submitted by a competitor.

68. Constellation argues that two examples of new information that the tabular data

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<sup>39</sup> Constellation Comments at 5, *citing* PJM OATT at Attachment DD, section 4.5 and PJM Operating Agreement at sections 10.3 and 18.17.1(a).

provides can be observed. First, Constellation asserts that the table of the 2010/2011 SW MAAC Supply Data was posted despite the fact that the LDA was not transmission-constrained and thus cleared as part of the large MAAC zone. In fact, no graphic data was even posted for 2012/2013. Second, Constellation asserts that turning to the posted 2008/2009 SW MAAC Supply Data table, one can observe a series of 4.9 MW offers submitted in a general pattern of 21.9 MW intervals at the top of the supply curve. While the offers are too small to draw conclusions about the identity of the offeror, the tabular data specifically enables the identification of the pattern, according to Constellation. Constellation argues that such identification is challenging, if not impossible, by application of a ruler to the supply curve. Constellation contends that other patterns may be revealed in smaller concentrated LDAs, where concentrated ownership may enable isolation of competitor bidding strategies. Constellation argues that PJM purports to protect both the data and the strategies, but the new data posting policy fails to achieve that aim.

### **3. PJM's Answer**

69. PJM responds to the MMU's and Constellation's arguments that PJM's release of RPM data allows for unmasking by arguing that its policy allows for the release of aggregated data of the sort that PJM has provided for years in a supply curve in graphical form posted on PJM's web site. PJM further argues that, contrary to the MMU's and Constellation's claims, a market participant cannot discern the identity of the bidder based on the data released in tabular form. PJM argues that, in any event, Order No. 719 expressly permits the release of individual bid data on a four-month lag, which data is far more participant-specific than the data that PJM would release.

70. In response to Constellation's concerns about unmasking the RPM auction data that PJM posted on March 19, 2010, PJM maintains that there is no way to discern whether the data at any one pricing point is that of one market participant or thirteen market participants, except by the market participant who offered and cleared all of the megawatts at a particular pricing point. PJM adds that this release of data is permitted under its tariff, which allows PJM to post non-confidential and composite RPM market data. PJM states that it interprets the phrase "composite data," in this context, to be synonymous with the phrase "aggregate data," i.e., the combined masked data of at least two market participants.

71. PJM states that its OATT and Operating Agreement allow it to post non-confidential and composite RPM market data. PJM also states that it always interpreted the phrase "composite data" to be synonymous with the phrase "aggregate data." To PJM, composite data and aggregate data are one and the same – the combined, masked data of at least two market participants. Based on the foregoing, PJM determined that the RPM data posted on March 19, 2010 was composite/aggregate data because it was the masked offer data of no less than six market participants.

72. PJM argues that while the MMU might prefer its approach over PJM's, PJM regarded the MMU has having encroached on the RTO's role by publishing market data after having just objected to PJM plans to publish the same information. PJM asserts that providing supply curves is appropriate and helpful to market participants and regulators and compliant with the directive from the Commission. Nonetheless, PJM argues that the MMU has filed to object to PJM's release of aggregate supply curve data for RPM auctions, all of which occurred more than one year ago.

#### **4. Additional Answers**

73. The MMU responds to PJM's argument that PJM's new posting policy is consistent with Order No. 719's position on the release of individual bid data after four months. The MMU argues that Order No. 719 does not expressly require the release of individual bid data, only that the data that is being released only be released after four months. The MMU argues that "data," in this context, can be presented in unit-specific tabular form, as has been done in the energy market, or as a non unit-specific curve, which has been done in the RPM capacity market. The MMU argues that to whatever extent Order No. 719 implicitly contemplates the release of individual, unit-specific offer data; it does so only for the energy markets on a market-wide, non-LDA basis, and not with respect to capacity markets. The MMU argues that no RPM unit-specific data should be released on an LDA basis. The MMU also argues that nothing in Order No. 719 supersedes section 18.17 of the PJM Operating Agreement which protects the confidential information of members from disclosure.

74. Finally, the MMU argues that the nature of a unit's specific cost-based offer reveals information with persistent commercial sensitivity, i.e., the unit's going forward or avoidable costs. The MMU argues that while the offers are net of energy and ancillary services revenues, such revenues can be estimated from public market data. The MMU adds that unlike short run marginal cost data, which is revealed in energy offers, cost data in a capacity market offer has longer lasting relevance and thus a longer lasting impact on competition.

#### **5. Commission Determination**

75. We find that PJM's market rules for posting energy market bid and offer data in tabular form with four months lag is consistent with Order No. 719 and the December 18 Order's bid and offer data requirements. However, we do not find this methodology to be reasonable for posting bid and offer data for the capacity market, because the use of the tabular format creates the ability to identify suppliers.

76. Under PJM's proposed posting policy, PJM posts RPM auction results in a tabular format which includes in certain cases individual bids. The revised policy provides granular data that increases the likelihood that participants can determine the offers of other participants, contrary to PJM's stated intent to mask this data. As the comments

have shown, this approach to posting would result in disclosure of data on some individual offers (i.e., non-aggregated offers), which can be linked to specific units and those units to specific owners using publicly available data. We therefore agree with the MMU and Constellation that PJM's policy fails to strike the necessary balance required by Order No. 719, given that some of the released bid and offer data for the capacity markets, as discussed above, may allow the identification of specific market participants in an effectively unmasked format.

77. We find that the MMU's alternative approach using an algorithm to help mask individual company data presents price and MW pairs consistent with Order No. 719 without disclosing individual company data. Under the MMU's approach the price and MW pairs would correspond to points on the line segments that make up the actual base residual auction curve and are spaced to prevent the calculation of specific slope inflection points (which correspond to actual offers) in the line segments of the supply curve.<sup>40</sup> We agree with the MMU that the features of this "formulaic" approach ensure that participant-specific information is masked, while still providing information consistent with actual supply, which promotes the market transparency that Order No. 719 requires.

78. We therefore will require PJM to adopt, within 30 days of the date of this order, the posting methodology proposed by the MMU under which PJM will post the aggregated data graphically, but will not post participant specific information. We also will require PJM to include a 13 month delay in posting this information to further help limit the market sensitivity of these data. PJM and its stakeholders may develop and propose an alternative methodology under section 205 if they believe that such a methodology will provide more accurate data without unmasking the bid data of individual participants.

79. Finally, given the different methods of posting approved here for the energy and capacity markets, we direct PJM to revise its tariff to describe explicitly the posting methodology for energy and capacity bids and offers, consistent with this order. Specifically, we direct PJM to incorporate into its tariff the market data posting provisions adopted herein within 90 days of the date of this order.

#### **F. Commission Referrals**

80. The December 18 Order required PJM to revise its OATT, consistent with the Commission's rules regarding MMU referrals to the Commission.<sup>41</sup> The Commission

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<sup>40</sup> MMU Comments at 14-16.

<sup>41</sup> December 18 Order, 129 FERC ¶ 61,250 at P 217 (*citing* 18 C.F.R. § 35.28(g))

required PJM to revise its OATT, at Attachment M, section IV.2 to conform to the Commission's protocols for: (1) referral of suspected violations; and (2) referrals. Specifically, with respect to suspected market violations, the Commission required PJM to revise section IV.I.2 Attachment M of its OATT to incorporate therein the regulatory text language set forth at 18 C.F.R. § 35.28(g)(3)(iv)(D)(3) and (6), and 18 C.F.R. § 35.28(g)(3)(iv)(E). As to referrals to the Commission of perceived market design flaws and recommended tariff changes, the Commission required PJM to revise section IV.I.2 Attachment M of its OATT to incorporate therein the regulatory text language set forth at 18 C.F.R. § 35.28(g)(3)(iv)(A)-(E).

### **1. PJM's Filing**

81. PJM proposes to revise Section IV.I.1 of Attachment M, consistent with 18 C.F.R. § 35.28(g)(3)(iv) for referral of suspected violations. PJM also proposes to revise section IV.I.2 to incorporate a new procedure for the referral of perceived market design flaws, consistent with 18 C.F.R. § 35.28(g)(3)(v).

### **2. Commission Determination**

82. We find that PJM has complied with the Commission's directives by revising sections IV.I.1 and IV.I.2 of Attachment M to provide for MMU referrals to the Commission, as required by 18 C.F.R. § 35.28(g)(3)(iv) and (v). However, PJM has not provided additional guidance in its OATT regarding specific types of "traffic ticket" behavior that would be subject to correction by PJM without a referral by the MMU to the Commission, because they meet the following criteria: (i) the activity is expressly set forth in the tariff; (ii) the activity involves objectively identifiable behavior; and (iii) the activity does not subject the actor to sanctions or consequences other than those expressly approved by the Commission and set forth in the tariff, with the right of appeal to the Commission.

83. As described above, this type of "traffic ticket" behavior that would be exempt from referrals would include activities such as late payments and failure to notify PJM of an outage.<sup>42</sup> Thus, PJM may add a new provision to its OATT in which it lists the specific existing provisions in its OATT that it believes meet the three requirements for exclusion from the referral requirement, and state that these activities constitute "internally sanctionable infractions," or such other suitable term of PJM's choosing, and

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(iv) and (v)).

<sup>42</sup> See *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,164, at P 98 (2009).

are exempted from the requirement that they be referred to the Commission.<sup>43</sup> If PJM chooses to submit such a listing to the Commission, it must clearly set forth in its filing how any particular provision meets the necessary criteria. In the event PJM chooses not to provide such a listing, PJM referrals to the Commission must be made in accordance with section IV.I.1 of Attachment M in *all* instances where the MMU has reason to believe that a market violation has occurred.<sup>44</sup>

84. Accordingly, we require that PJM either add a new provision in its OATT listing the specific existing provisions that qualify for correction by PJM without a referral by the MMU to the Commission, or add a new provision stating that referrals to the Commission must be made in accordance with section IV.I.1 of Attachment M in all instances where the MMU has reason to believe that market violation has occurred, in a compliance filing within 90 days of the date of this order.

The Commission orders:

(A) PJM is hereby directed to remove, from its website, within five days of the date of this order, the base residual auction aggregated supply curve data, as posted on March 19, 2010, and forego any additional data postings for all PJM markets, as discussed in the body of this order.

(B) PJM is hereby directed to make a compliance filing within 90 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>43</sup> *Id.* at P 99.

<sup>44</sup> *Id.*