

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

PJM Interconnection, L.L.C.

Docket Nos. ER06-826-000
ER06-826-001

ORDER ACCEPTING TARIFF FILING, SUBJECT TO REVISIONS

(Issued July 14, 2006)

1. On April 3, 2006, *PJM Interconnection, L.L.C.*, (PJM) filed under section 205 of the Federal Power Act (FPA) to amend Attachment M of its tariff, Sixth Revised Volume No. 1, relating to its market monitoring function.¹ As discussed below, we accept PJM's filing to become effective July 17, 2006, subject to revisions. The filing generally conforms with the general principles established by the Commission's Policy on Market Monitoring (Policy Statement),² and we find that application of that policy to PJM is just and reasonable.

Background

2. PJM explains in its filing that it is seeking to modify Attachment M to revise the enforcement powers of its Market Monitoring Unit (MMU) and to conform with the Commission's Policy Statement. PJM explains that its proposal reflects the appropriate allocation of policing and enforcement authority between the market monitor and the Commission. It proposes to eliminate the MMU's authority to issue demand letters or make requests that market participants "discontinue actions." This proposal, according to

¹ On April 27, 2006, PJM re-submitted these proposed tariff revision with a new effective date to accommodate intervenors' requests for extensions of time.

² Market Monitoring in Regional Transmission Organizations and Independent System Operators, Policy Statement on Market Monitoring Units, 111 FERC ¶ 61,267 (2005).

PJM, also authorizes additional action by the MMU to respond to market design or market rule issues. These actions include filing tariff changes, reports or complaints with the approval of the PJM Board. If PJM does not agree with any MMU recommendation for market rule or market design changes, the MMU may make its views known to Commission staff and PJM members.

Notice of Filings and Responsive Pleadings

3. Notice of PJM's filing was published in the *Federal Register*, 71 Fed. Reg. 23,913, with comments due on or before April 21, 2006. The Commission granted the requests for extension of time, and notice of the comment deadline was published in the *Federal Register*, 71 Fed. Reg. 27,488, with comments due on or before June 8, 2006. A joint protest was filed by Old Dominion Electric Cooperative, the Borough of Chambersburg, Pennsylvania, Delaware Municipal Electric Corporations, Inc., and ElectriCities of North Carolina (Joint Protestors), and the City and Towns of Hagerstown, Thurmont and Williamsport, Maryland (Maryland Municipalities). Protests were also filed by the Joint Consumer Advocates (representing Pennsylvania, Maryland, Ohio, the District of Columbia, Illinois and Indiana), Mirant Energy Trading, LLC, Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC and Mirant Potomac River, LLC, (collectively, the Mirant Parties), the Organization of PJM States, Inc. (OPSI), the PJM Industrial Consumer Coalition (PJM ICC), the Public Service Commission of Maryland (Maryland Commission), jointly by the Public Utilities Commission of Ohio, the Virginia State Corporation Commission and the Delaware Public Service Commission (collectively, the Joint State Commissions) and by the Commonwealth of Pennsylvania (Pennsylvania Commission).

4. Motions to intervene were filed by the Public Utilities Commission of Ohio, the Maryland Commission, OPSI, Joint Protestors, American Municipal Power-Ohio, Inc., PJM ICC, Exelon Corporation, Blue Ridge Power Agency, North Carolina Electric Membership Corporation, Maryland Municipalities, Williams Power Company, Inc., NRG Companies (NRG Power Marketing Inc., Conemaugh Power LLC, Indian River Power LLC, Keystone Power LLC, NRG Energy Center Dover LLC, NRG Rockford LLC, NRG Rockford II LLC, and Vienna Power LLC), Dominion Resources Services, Inc., Constellation Energy Group Companies (Constellation Energy Commodities Group, Inc., Constellation Generation Group, LLC, Baltimore Gas & Electric Company, Constellation NewEnergy, Inc), PHI Companies (Potomac Electric Power Company, Delmarva Power & Light Company, Atlantic City Electric Company, and Conectiv Energy Supply, Inc.), North Carolina Utilities Commission, Illinois Commerce Commission, Virginia State Corporation Commission, Pennsylvania Public Utility Commission, and Delaware Public Service Commission. Motions to intervene out of time were filed by Coral Power LLC, American Electric Power Service Corporation, and

PPL Companies (PPL Electric Utilities Corporation, PPL EnergyPlus, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, PPL University Park, LLC, and Lower Mount Bethel Energy, LLC).

5. On June 23, 2006, a joint response to OPSI's comments was filed by PHI Companies, PPL Companies, The Dayton Power and Light Company, The Williams Companies, Inc., and NRG Companies (hereinafter, the Pepco/PPL/NRG Parties).

6. On June 26, 2006, PJM filed a motion for leave to file an Answer and an Answer to the protestors' comments.

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Also, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2005), we will grant any motion to intervene out-of-time filed before the issuance date of this order.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2005), prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept PJM's answer because it provides information that assisted us in our decision-making process.

Discussion

9. The Commission accepts the tariff sheets filed by PJM to become effective July 17, 2006, subject to revisions discussed below. PJM must make a compliance filing within 30 days of the date of this order. We will discuss those areas in which PJM must file revisions and the issues raised by the protests.

A. Objectives of the Market Monitoring Plan

10. PJM does not propose any changes to its tariff language that establishes the objectives of its market monitoring plan and the areas of responsibility for the MMU.

1. Protests

11. The Joint Protestors argue that this section should be revised to allow the MMU to make recommendations to PJM, the PJM members and to the Commission.

2. Commission Conclusion

12. While we address issues regarding communication herein, we conclude that the Joint Protestors have not shown PJM's tariff language to be unjust and unreasonable.

B. Referral

13. Section IV.B describes the process the MMU is to follow to make a referral to the Commission. PJM explains that it has incorporated verbatim into its proposed revisions the Policy Statement's standard that the MMU should make a written referral to the Commission when it has gathered "sufficient credible information to warrant further investigation." In section IV.C, PJM proposes to eliminate the use of demand letters by the MMU and the MMU's authority to make requests that market participants "discontinue actions" that the MMU believes violate the PJM tariff. In circumstances where the MMU does make a referral to the Commission, PJM's revised tariff provisions require the MMU to close its investigation. Thereafter, the MMU is to continue with its normal monitoring functions, during the course of which the MMU may provide to the Commission additional information relevant to the subject matter of the referral. PJM would change the language of Protocol No. 5 of the Policy Statement to read that after a referral, the MMU "shall not directly question any Market Participant with regard to the specific occurrence or activity that was the subject matter of the referral."

1. Protests

14. The Joint Consumer Advocates protest the PJM tariff provisions that restrict the MMU from further questioning market participants once the MMU makes a referral. The Joint Consumer Advocates argue that this restriction prohibits the MMU from further questioning and information gathering of market participants, which may be necessary for the MMU to fulfill its obligation to recommend market rule changes. They also contend that these restrictions upon the MMU may interfere with the MMU's ability to detect other problems or violations, or to determine whether violations are ongoing. The Joint Consumer Advocates request that the Commission establish procedures to keep the MMU informed as to the findings and outcome of referred cases, including when the Commission takes no formal action. The Joint Consumer Advocates also protest the elimination of demand letters, which the MMU issued to request that a market participant discontinue actions that the MMU believes constitute a violation. The Joint Consumer Advocates and OPSI object to the proposed restriction upon the MMU to question market participants about potential violations after a matter has been referred.

15. The Mirant Parties protest PJM's proposal because the tariff revisions do not include a right of appeal to the Commission of sanctions imposed by PJM or the MMU

for “objectively identifiable behavior,” pursuant to PJM Market Rules. The Mirant Parties argue that this right of appeal is required by the Policy Statement.

2. Commission Conclusion

16. As the Commission found in the Policy Statement, the Commission has the authority to investigate and determine whether violations of market rules, tariffs, regulations or statutes have occurred. While Market Monitors can assist in providing information and analysis to the Commission, under the FPA, the Commission has responsibility to determine whether a violation has occurred and what further action should be taken in response. Such authority should not be delegated to a market monitor, nor should the MMU have any continued involvement once the Commission has received a referral. However, this does not preclude the MMU from notifying the Commission’s Office of Enforcement staff of new violations or actions that take place after the referral, unless directed by Commission staff. PJM’s proposed revision to limit the scope of the market monitor’s enforcement authority generally reflects this concern and is just and reasonable.

17. However, PJM has not offered an explanation as to why it is departing from the language of Protocol No. 5 which directs that “the MMU should not undertake any investigative steps regarding the referral except at the express direction of the Commission Staff.” The intent of the language seems to be similar to that expressed in Protocol No. 5, but could be read narrowly so as to inadequately limit the actions of the MMU. Therefore, the Commission will accept PJM’s proposed tariff provision, subject to PJM filing to revise the provision to include the language in Protocol No. 5.

18. The Mirant Parties protest PJM’s proposal because the tariff revisions do not include a right of appeal to the Commission of sanctions imposed by PJM or the MMU for “objectively identifiable behavior,” pursuant to PJM Market Rules. This issue is outside the scope of this filing because PJM has proposed no sanctions or consequences for identifiable behavior. We agree that the Policy Statement indicates that there is a right to appeal to the Commission when there are such sanctions or consequences.³ If Mirant believes there are existing provisions of the PJM tariff that impose such sanctions

³ The Policy Statement provides that ISOs/RTOs may administer compliance with tariff provisions if they are expressly set forth in the tariff, involve objectively identifiable behavior, and do not subject the seller 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. Policy Statement, 111 FERC ¶ 61,267 at P 5.

or consequences, necessitating a right of appeal, it may file a complaint under section 206 of the FPA. Similarly, PJM may file under FPA section 205 to establish a right of appeal.

19. We deny protestors' request that the findings and outcome of referrals from the MMU to the Commission be made available to the MMU. The Commission's investigations are non-public, pursuant to 18 C.F.R. §1b.9 (2005), unless otherwise directed by the Commission.

20. We note that section IV.B requires referrals to the Commission. We direct PJM to revise this language to require that these referrals be identified as "non-public" and that they be forwarded to the Commission's Division of Investigations.

C. Market Problem

21. PJM proposes to revise section IV.C, consistent with the Policy Statement, to provide greater organizational transparency and administrative coordination for situations where the MMU identifies structural or market design issues, not involving current potential misconduct. Therefore, PJM proposes that the MMU have a collaborative and consulting role in market design, instead of its present more direct role in crafting specific tariff amendments and taking them through the shareholder process. PJM proposes to continue to allow the MMU to have full authority to recommend changes to the PJM market rules. The MMU will continue to submit proposals, including reports and complaints, to rectify market problems, with authorized governmental agencies, subject to the approval of the PJM Board. However, if the PJM Board does not approve of the MMU's proposal, PJM has added new language to specifically allow the MMU to convey its views to the PJM membership and to the Commission staff.

22. PJM explains that it has also added the term "Commission staff" to clarify that recommendations submitted by the MMU under this provision are not filings pursuant to FPA section 205 or 206, even where the MMU proposes to revise the PJM tariff.

1. Protests

23. The Joint Protestors object to PJM's proposed tariff revisions that curtail communication between the MMU and the Commission, PJM members and PJM market participants. The Joint Protestors and Joint Consumer Advocates request that the tariff proposal be revised to allow the MMU to communicate directly with the Commission, Commission staff and PJM members. The Joint Protestors also request that the Commission direct PJM to include in Attachment M all rules that will govern the relationship between the MMU and PJM so that the MMU's independence and authority will be protected.

24. The PJM ICC argues that this revised language does not require PJM to act on the MMU's recommendations within a timely manner, and that without such a requirement, the Commission may not receive information from the MMU quickly enough to allow the Commission to respond in an effective manner. The PJM ICC also contends that PJM's proposed distinction between Commission and Commission staff is an inappropriate attempt to preclude the MMU from making informational filings with the Commission. For this reason, the PJM ICC recommends that new language be added to specifically allow the MMU to make informational Commission filings.

2. Commission Conclusion

25. We find that PJM's proposal tariff revisions to section IV.C.1, allowing the MMU to discuss an issue with market participants following a notice, but not a referral, in an effort to understand a matter, is just and reasonable, and consistent with the Policy Statement. The Commission recognizes the value of on-going communication between the MMU and market participants to improve understanding of participant behavior and market design and market rule issues. In particular, such communication may be useful in framing issues that would benefit from further discussion with stakeholders and allow the MMU to remain well-informed of on-going market developments in a timely manner.

26. We note that a limitation on the MMU's communication with the Commission or Commission staff arises upon the docketing of a contested proceeding. In accordance with the *ex-parte* rule,⁴ all communication regarding the docketed matter must cease between the MMU and decisional members of the Commission staff.

27. The restrictions protestors contest regarding the MMU's communication with the Commission only arise where there is a docketed proceeding. Under these limited circumstances, PJM is proposing that the MMU, as an employee of PJM, have the approval of the PJM Board before filing any statements in a contested proceeding. We find it reasonable for the MMU to have the approval of the PJM Board, which is an independent entity, before making a filing with the Commission. We conclude that this requirement is just and reasonable, and we accept this provision.

⁴ 18 C.F.R. § 385.2201 (2004); *see also* *EPSA v. FERC*, 391 F.3d 1255 (D.C. Cir. 2004).

28. We clarify that in non-docketed proceedings, when the MMU files reports with the Commission, the report is to be forwarded to the staff of the Office of Enforcement.

29. Further, we seek clarification of the MMU's authority, as explained at section IV.C.3, regarding its authority to file reports or complaints that "address design flaws, structural problems, compliance, market power, or other issues, and seek such remedial measures or make such recommendations as the Market Monitoring Unit shall deem appropriate." The term "remedial measures" seems to refer to the phrase "appropriate action" in the Policy Statement. To promote clarity, PJM should use "appropriate action" in its compliance filing

D. Independence

30. While PJM has not made any proposed tariff revisions regarding the independence of the MMU, many protests were filed on this subject.

1. Protests

31. The Joint Protestors argue that the MMU must be independent of the PJM Board and management. They also contend that the MMU is only able to provide consistent and impartial evaluations of existing RTO rules and tariff provisions if the MMU is independent from the PJM Board, management and market participants.

32. The Joint Consumer Advocates also dispute the requirement that the MMU have permission from the PJM Board prior to making regulatory filings to address design flaws, structural problems, compliance, market power and to seek remedial measures or make recommendations. The Joint Consumer Advocates and OPSI argue that to maintain independence, the MMU must be able to bring its concerns directly to the Commission and the Commission staff, and to file comments and testimony in proceedings without the prior approval of PJM management

33. OPSI protests this filing by offering a series of changes intended to provide the MMU with increased independence. OPSI's protest is supported by the Pennsylvania Commission and the Joint State Commissions. The Maryland Commission also endorses greater independence for the MMU. OPSI argues that the MMU's budget should be developed by the MMU and approved by the Commission. It also argues that the MMU staff should report exclusively to the Market Monitor. Further, OPSI contends that the Market Monitor should have substantial job security and should only be removed for "just cause." OPSI and the Maryland Commission request that PJM's filing be modified to require the MMU to notify state commissions when the MMU identifies a market problem that may require state commission action. Similarly, the Maryland Commission

would like a time frame established for the MMU to provide information to state commissions.

34. PJM in its answer and the Pepco/PPL/NRG Parties argue that many protestors are seeking to greatly expand the role of the MMU beyond what is contemplated by PJM's tariff revisions or the Policy Statement. PJM also argues that many protestors seek to bring about changes to PJM's internal structure that are outside the authority of the Commission. The Pepco/PPL/NRG Parties also explain that, in response to protests that the MMU should be required to provide greater information to state commissions, PJM has already implemented procedures, approved by the Commission, for providing this requested information, as well as preserving confidentiality.⁵

2. Commission Conclusion

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

E. MMU's Accountability

1. Protests

36. A number of protestors oppose PJM's existing tariff provision that the MMU report to the President of PJM and the PJM Board, and argue that the MMU should report only to the PJM Board. The Joint Protestors and Joint Consumer Advocates argue that the MMU should report to a separate committee of the PJM Board whose only responsibilities would be to address market monitoring issues. OPSI argues that in order for the MMU to objectively evaluate the RTO, the MMU should report to the PJM Board.

37. The State Commissions protest this reporting requirement, and recommend that the MMU should be accountable to a federal-state joint board on market monitoring and enforcement that would consist of at least one FERC Commissioner and one commissioner from each of the PJM states.

2. Commission Conclusion

38. PJM does not propose any changes to its tariff regarding the MMU's obligation to report to both the PJM President and the PJM Board. The protesters have offered no

⁵ *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,322 (2004).

convincing reason for finding that PJM's proposal to have the MMU report to the PJM President, as well as the PJM Board, is unjust and unreasonable. The PJM President is responsible for running the organization and is responsible to the PJM Board. We reject the recommendation for establishing a section 206 investigation of whether a joint board should be required. The MMU is composed of employees of PJM, and it is therefore appropriate for it to report only to PJM, not to federal or state boards. The PJM tariff provides sufficient ability for the MMU to provide information both to Commission staff and to the states.

F. Notice to Office of Enforcement

39. Section IV of Attachment M governs the enforcement procedures the MMU is to follow when it observes a significant market problem, or a potential violation by a market participant of the PJM market rules. The heading of section IV, however, states that notice should be provided to the Commission.

40. This notice should be provided to the Office of Enforcement, rather than the Commission. PJM is directed to revise the provision to make clear that such notices will be provided to the Office of Enforcement.

The Commission orders:

(A) PJM's proposed revisions to Attachment M are hereby accepted, subject to revision, as discussed in the body of this order, effective July 17, 2006.

(B) Within thirty (30) days of the date of this order, PJM is to file revisions to its proposed tariff sheets, as directed in the body of this order.

By the Commission. Commissioner Kelly dissent in part with a separate statement to be issued later.

(S E A L)

Magalie R. Salas,
Secretary.