

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

PJM Interconnection, L.L.C.

Docket Nos. ER06-826-002  
ER06-826-003

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued December 5, 2006)

1. On July 14, 2006, the Commission issued an order (July Order) accepting, subject to revision, PJM Interconnection, L.L.C.'s (PJM) proposal to revise Attachment M of its tariff, Sixth Revised Volume No. 1.<sup>1</sup> Attachment M governs the activities of the PJM Market Monitoring Unit (MMU), and was filed by PJM to conform its market monitoring functions with the policies set forth in the Commission's Policy Statement on Market Monitoring (Policy Statement).<sup>2</sup> PJM filed proposed revised tariff language in compliance with the July Order. Several parties seek rehearing of this order, as discussed below. In this order, we accept PJM's revised tariff language, effective July 17, 2006, subject to refiling, and deny all rehearing requests. However, we intend to initiate a review of our MMU policies more broadly by conducting a Commission technical conference currently planned for early next year.

**I. Background**

2. On April 3, 2006, PJM filed proposed revisions to Attachment M of its tariff, pursuant to section 205 of the Federal Power Act (FPA).<sup>3</sup> PJM's proposal adopts the Appendix A protocols of the Policy Statement, and makes other revisions to conform the

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 116 FERC ¶ 61,038 (2006).

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

<sup>3</sup> 16 U.S.C. § 824d.

PJM tariff to the Policy Statement. These revisions include changes to the corrective actions the MMU may take to enforce compliance with the PJM market rules. The revisions eliminate the MMU's authority to issue demand letters, or to make requests that market participants "discontinue actions". Other changes conform the PJM tariff to the Policy Statement's process for instances where the MMU makes a referral to the Commission, and clarify that the MMU is required to close its investigation upon making such a referral.

3. PJM's revisions also address structural and market design issues. With respect to the MMU's authority to address market rules, the revisions add authority for the MMU to make its views known to the PJM membership and the Commission staff in the event PJM does not accept the MMU's recommendations. The revisions also clarify certain language consistent with PJM's practices, and streamline and update certain provisions.

4. The Commission accepted PJM's proposed tariff sheets, subject to revisions. On August 14, 2006, PJM filed revised tariff sheets that make these changes. As filed, a proposed revision was made to section IV.A to indicate that the MMU should provide notices to the Office of Enforcement. Proposed revisions were also submitted to section IV.B clarifying the MMU's contact with Commission staff, and changing the tariff language regarding the curtailment of the MMU's investigative authority upon making a referral to the Commission. PJM also submitted proposed revisions clarifying that referrals be "non-public". Further, PJM proposed revised language to provide that referrals be forwarded to the Commission's Division of Investigation and that at IV.C3 "remedial measures" is revised to "appropriate action".

5. On August 14, 2006, the Organization of PJM States, Inc. (OPSI),<sup>4</sup> the Pennsylvania Public Utility Commission (PA PUC) and the Indicated Parties<sup>5</sup> filed requests for rehearing of the July Order. These protestors request that the Commission

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<sup>4</sup> The members of OPSI not participating in this request are the Maryland Public Service Commission and the Illinois Commerce Commission.

<sup>5</sup> The Indicated Parties include: Borough of Chambersburg, Pennsylvania, Delaware Municipal Electric Corporation, Inc., ElectricCities of North Carolina, Inc., Illinois Citizens Utility Board, Maryland Office of People's Counsel, Office of the People's Counsel for the District of Columbia, Ohio Consumers' Counsel, Old Dominion Electric Cooperative (ODEC), Pennsylvania Office of Consumer Advocate and the PJM Industrial Customer Coalition.

grant rehearing for the purpose of either directing PJM to revise Attachment M, or to establish under section 206 of the FPA an investigation to determine whether PJM's Attachment M is just and reasonable and not unduly discriminatory.

6. Each party on rehearing raises concerns about the sufficiency of PJM's proposal, and argues that the Commission erred when it denied their requests to initiate a section 206 investigation to determine the justness and reasonableness of PJM's proposal. These parties also argue that the Commission improperly shifted the burden of proof from PJM to them. Further, these parties raise concerns about the independence and structure of the MMU, and request notification to the states of referrals from the MMU to the Commission. These parties also seek notification to the states and the MMU of the outcome of these referrals. Finally, parties raise concerns regarding the delineation of the authority of the MMU in situations involving possible violations of market power or market rules.

7. PJM filed an Answer in which it comments that the parties on rehearing are fundamentally presenting challenges to the Commission's generic policies on market monitoring. PJM argues that the Commission's rules regarding market monitoring were promulgated in Order No. 2000,<sup>6</sup> and that many of the parties' concerns raised in this proceeding should instead be considered within a rulemaking applicable to all regional transmission organizations (RTOs). PJM also acknowledges that some of its stakeholder constituents have ongoing concerns about the role of the MMU. Finally, PJM cautions that communications between the MMU and the states is not a matter for the PJM tariff.

## **II. Procedural Issues**

8. Rule 213(a)(2) of the Commission's rule of Practice and Procedure, 18 C.F.R. § 385.213 (a)(2)(2006), prohibits an answer to a petition for rehearing unless otherwise ordered by the decisional authority. We will accept PJM's answer to the petitions for rehearing because it provides information that has assisted us in our decision-making process.

9. Notice of PJM's compliance filing was published in the *Federal Register*, 71 Fed. Reg. 50,407, with comments due on or before September 5, 2006. No comments were filed.

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<sup>6</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC States. & Regs., ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

### **III. MMU's Independence**

#### **A. PJM's Filing**

10. PJM did not propose any tariff revisions regarding the independence of the MMU. However, many protests were filed seeking to expand the role of the MMU beyond either PJM's existing tariff or the Policy Statement.

11. The Commission denied all these requests because the changes sought by the protestors went beyond the proposals of PJM's filing and were, therefore, beyond the scope of the instant proceeding. The Commission also commented that the record did not support initiating a section 206 proceeding "to address matters that were more global than the issues properly before us."<sup>7</sup>

#### **B. Rehearing Requests**

12. OPSI, the PA PUC and Indicated Parties argue on rehearing that the Commission erred by not requiring PJM to show that its revised Attachment M is both consistent with the Commission's policy on MMU independence, and is just and reasonable. Further, they contend that the MMU is not given sufficient independence from PJM's management to ensure its proper functioning. Finally, they insist that the Commission erred in its finding that the parties' specific requests to advance the independence of the MMU were outside the scope of PJM's section 205 filing.

13. All parties also contend that the MMU should report to the PJM Board of Managers, and not to the PJM President. OPSI and the PA PUC argue that the MMU should be responsible for monitoring the conduct of PJM as a system operator, that the MMU's inquiries, findings, conclusions and reports not be subject to influence by the PJM management, or by external influences, and that the MMU budget be developed separate from the PJM budget and be approved by the Commission. OPSI and the PA PUC also seek changes to Attachment M to ensure that the MMU staff report exclusively to the market monitor. These parties argue that the MMU should have substantial job security and authority over both human resource management decisions and the selection and retention of its own independent legal counsel. These parties also insist that the MMU must have authority under Attachment M to file comments and testimony in official proceedings without being required to have prior approval from PJM

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<sup>7</sup> July Order at P 35.

management. The PA PUC contends that the MMU should be authorized to advocate and propose changes to retain exclusive control of its data bases, and underlying programs, and that this information should not be available to other PJM organizational units.

14. Indicated Parties argue that the Commission committed error by limiting its review of PJM's filing to whether it complied with the letter of the Policy Statement. Indicated Parties also argue that the Commission erred by not initiating a section 206 investigation concerning the MMU's independence and authority. They contend that PJM's filing was not limited to revisions necessary to conform its tariff to the Policy Statement and, therefore, the Commission should have instituted a section 206 investigation into the justness and reasonableness of PJM's tariff revisions. The PA PUC makes a similar request for a section 206 investigation. Further, OPSI and Indicated Parties argue that PJM should be required to include a statement of independence in its tariff, akin to tariff provisions contained in the Midwest Independent Transmission System Organization, Inc. (MISO) tariff. Indicated Parties argue that such a statement of independence would provide the MMU with transparency and clarity.

15. PJM in its answer urges the Commission to deny requests on rehearing that constitute challenges to the Commission's generic policies on market monitoring, and are therefore beyond the scope of this proceeding. Further, PJM insists that Order No. 2000 established "standards" for market monitoring plans and that PJM's market monitoring plan was accepted by the Commission.<sup>8</sup> Therefore, PJM argues that any change to Order No. 2000 can only occur within the process of a new rulemaking, which would be applicable to all RTOs.

### C. Discussion

16. We are not persuaded that we erred by denying parties' requests to expand the scope of PJM's filing. The revisions proposed by PJM did not include any proposals concerning the independence of the MMU. However, parties on rehearing offer many proposals, as summarized above, to vest the MMU with greater authority and to create a more independent structure for the MMU than currently exists under the PJM tariff. Because these requested changes extend beyond the scope of the section 205 filing submitted by PJM, we properly denied these requests.

17. OPSI argues that in the July Order the Commission improperly shifted the burden of proof from PJM to the protestors by suggesting that the protestors use the section 206

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<sup>8</sup> *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345 (2002).

complaint process for expanding the independence of the MMU to include some of the provisions it is recommending. However, OPSI fails to identify proposals by PJM in this filing to which it is objecting. Rather, it is suggesting that PJM implement various new provisions not previously included by PJM in its tariff.<sup>9</sup> As the PA PUC and Indicated Parties recognize in their requests for rehearing,<sup>10</sup> these requested changes extend beyond the scope of the section 205 filing submitted by PJM and amount to requests that the Commission take action under section 206 to revise PJM's current tariff. We, therefore, conclude that we properly denied these requests as being beyond the scope of the PJM filing.

18. Further, we find that the requests made by OPSI, the PA PUC, and Indicated Parties for the Commission to initiate a section 206 proceeding are not supported by the record. In the July Order we found that the parties had not shown PJM's tariff to be unjust and unreasonable and unduly discriminatory. We reaffirm our ruling that the record in this docket does not establish a basis for initiating a section 206 proceeding. Specifically, the parties have failed to offer sufficient evidence to support their concerns that the MMU lacks adequate independence and authority to carry out its responsibilities and, thus, these parties have failed to meet their burden of proof under section 206.

19. However, the Commission has received many comments in this proceeding about the need to safeguard and advance the independence of the MMU and the importance of assuring transparency and clarity to its functions. In addition, all the parties on rehearing argue that the PJM tariff should contain a clear statement of the MMU's independence, and that it should include all rules relevant to the responsibilities and functions of the MMU, possibly modeled upon the MISO tariff. These issues are of a generic nature, and are not necessarily limited to the MMU within any one RTO or independent system operator (ISO).

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<sup>9</sup> For example, OPSI recommends the adoption of a number of new provisions not previously included in the PJM tariff, such as specifying that the MMU report to the PJM Board and not the PJM President, increasing the MMU authority to monitor the conduct of PJM as a system operator, authorizing the MMU budget be developed and approved separately from the PJM budget, granting the MMU authority over MMU human resource management decisions, providing the MMU with substantial job security, and authorizing the MMU to select and retain its own legal counsel, independent of the counsel used by PJM. (OPSI rehearing request at 3 and 4.)

<sup>10</sup> See Indicated Parties rehearing request at 2 and 6, and the PA PUC at 6.

20. Further, the comments received in this docket, while originating from PJM's filing to comply with the Policy Statement, indicate that entities who are regularly involved with or affected by the functions of MMUs are concerned about a range of issues and policies arising from the functions of MMUs. Therefore, the Commission intends to initiate a review of its MMU policies and hold a Commission technical conference, currently planned for early next year, to explore these and other generic issues.

#### **IV. Referrals to the Commission**

21. PJM submitted proposed changes to section IV.A of its existing tariff to clarify the MMU's authority to give notice to the Commission when the MMU identifies the possibility of a significant market problem or a possible violation of market rules by a market participant. PJM also proposed new tariff language specifying that the MMU may notify the Commission orally or in writing. Further, PJM proposed new tariff language for section IV.B to establish systematic procedures for referrals from the MMU to the Commission when the MMU believes that a market participant has violated market rules. For section IV.C of the PJM tariff, PJM proposed to revise the current language regarding the MMU identification of possible structural or market design issues. PJM's proposed revisions curtail the MMU's authority to be directly involved in tariff changes to this section. Instead, the proposed revised language eliminates the MMU's authority to use demand letters to request that market participants discontinue activity that the MMU believes violates the PJM tariff. Finally, PJM proposed revisions to authorize the MMU to bring its recommendations regarding market rules to the Commission and the PJM members should PJM not follow the MMU's recommendations. These proposed revisions change the previously existing language that authorizes the MMU to bring these recommendations to the Members Committee, other PJM Committees or the PJM Board.

22. In the July Order, the Commission accepted this language, subject to several revisions. The Commission instructed PJM to file revisions to its tariff sheets clarifying that the MMU is restricted from any involvement in a matter that has been referred to the Commission for investigation and that referrals were to be identified as "non-public".

##### **A. Investigative Authority**

23. In the July Order, the Commission conditionally accepted PJM's proposed revisions to section IV.B, subject to PJM submitting a compliance filing to further clarify that once the MMU has made a referral to the Commission, the MMU is to refrain from investigation of the referred matter. OPSI and the PA PUC seek rehearing of the Commission's directive to PJM to make this revision. They argue that this is an overly restrictive and counterproductive requirement. OPSI also argues that the Commission's July Order regarding the cessation of MMU investigative authority once a referral is made to the Commission is not consistent with Protocol No. 5 of the Policy Statement.

Under the Protocol, OPSI maintains that Commission staff has the authority to direct the MMU to continue with investigative steps, even after a referral has been made. OPSI also argues that this restriction ignores the practical circumstances and policy considerations that support the MMU continuing with investigations.

24. As we explained in the July Order, the Commission has the authority to investigate and determine whether violations of market rules, tariffs, regulations or statutes have occurred. It is also the Commission's responsibility to determine what further action is warranted where there is a violation. We continue to find PJM's proposal to permit the MMU to continue investigations after a referral to the Commission to be unreasonable. Once a referral is made, the Commission has the authority and responsibility to make determinations as to violations of the tariff or the FPA, and those responsibilities cannot be delegated to the MMU. Moreover, if the MMU were to continue its investigation after referral to the Commission, its efforts might be duplicative of the Commission's investigation and unduly burdensome on the subject of the investigation. Thus, once the MMU makes a referral to the Commission, the MMU's involvement in the referred matter ceases, except at the express direction of the Commission staff.

25. We disagree with parties on rehearing that we are requiring PJM to revise its tariff language to be more restrictive than that of Protocol No. 5 of the Policy Statement. PJM's proposed tariff sheets at section IV.B did not conform to Protocol No. 5 of the Policy Statement. In the July Order we instructed PJM to revise its tariff to include the language of Protocol No. 5, which states that "the MMU should not undertake any investigative steps regarding the referral except at the express direction of the Commission Staff." This is the language PJM submitted in its compliance filing, and which we accept herein.

#### **B. Public Notice of MMU Referrals to the Commission**

26. PJM proposed new language regarding the MMU's referrals to the Commission. On rehearing, OPSI and the PA PUC argue that the Commission erred by not expanding this language to include notice of the referral to the public or the states. Specifically, OPSI argues that the Commission should require "a simple public notice" of the fact that a referral has been made.<sup>11</sup> They also object to the Commission's denial of their request that the Commission inform the MMU of the dispensation of the referral findings and outcome of any investigation.

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<sup>11</sup> See OPSI Rehearing Request at 8.

27. PJM did not propose to provide notice of referrals to the public or the states, and we do not agree that section 206 action should be taken to require such notice. Under Commission regulations, investigations are non-public except to the extent that the Commission directs or authorizes public disclosure. 18 C.F.R. § 1b.9 (2006). The Commission is specifically authorized to keep all referrals non-public and to protect confidential information and sources. Confidentiality is central to the success of all Commission investigations. It provides reasonable protection to persons who become involved in these investigations and fosters cooperation with the Commission. Preserving confidentiality also protects innocent persons who might be erroneously alleged to have committed wrongdoing or otherwise be adversely affected by simply being associated with an investigation. For similar reasons, all aspects of an MMU referral, from its initiation to its conclusion, are deemed confidential unless the Commission authorizes disclosure. We, therefore, deny the rehearing request and will not require PJM to provide public notice of referrals.

28. OPSI also argues that the Commission's denial of its section 206 request to require notification to the states of a referral from the MMU, pursuant to section IV.B, creates a contradiction with the language in section IV.A(d). Under section IV.A(d), the MMU is required to notify the Commission whenever it has identified a possible market problem or potential rule violation that may require action by a state commission. OPSI argues that it is unreasonable to expect state commissions to take action when section IV.B of the PJM tariff does not authorize the MMU to inform a state commission of its referral to the Commission.

29. We do not agree that there is a contradiction between the two provisions of section IV at issue here. Section IV.B relates solely to referrals to the Commission when the MMU has reason to believe, based on sufficient credible information, that a market participant has violated the tariff, market rules, or FERC rules. As discussed above, such referrals relate solely to Commission enforcement activities. In contrast, section IV.A of the tariff relates solely to notice to the Commission of market problems or a potential violation of market rules, including a possible future referral to the Commission or action by the Commission or state Commissions. Thus, such notices do not constitute actual referrals to the Commission under section IV.B.

30. Therefore, we find no inconsistency between our decision to keep referrals of violations relating to federal responsibilities confidential and the notice provisions in section IV.A. There is nothing in the PJM filing that would prohibit the MMU from notifying a state commission of state regulatory action, as opposed to federal actions, the MMU may think is required under section IV.A. We would encourage the MMU to notify states of problems that may require state action.

### **C. Non-Public Designation**

31. Parties on rehearing object to the Commission's ruling in the July Order that the PJM tariff at section IV.B needed to be revised to require that all referrals be identified as "non-public". OPSI and the PA PUC contend that the Commission lacks authority to require this "non-public" designation and, further, that it is unreasonable to require that all MMU referrals to the Commission be treated as "non-public" by the MMU in all cases. They also argue that keeping the referral confidential is not necessary because the referral, in and of itself, is not an indictment of the market participant and does not unduly risk damage to the market participant's reputation. At the same time, OPSI acknowledges that the contents of a referral may contain sensitive information that may need to be kept confidential, but OPSI argues that the Commission's authority, pursuant to 18 C.F.R. § 1b.9 (2006) does not support the Commission's "sweeping" reliance upon this authority to keep confidential the existence of a referral.

32. We do not agree with OPSI's analysis of the Commission's authority and responsibilities. The Commission is charged with preserving confidentiality of all investigations and all aspects of these investigations. Pursuant to § 1b.9, "All information and documentation obtained during the course of an investigation . . . and all investigative proceedings shall be treated as non-public by the Commission and its staff except to the extent that the Commission directs or authorizes public disclosure. . . ." As we explained above, the Commission has a responsibility to protect the confidentiality of all referrals. This protects the confidentiality of persons who may be proven innocent of allegations of wrongdoing. This responsibility covers all "included information" received by the Commission, including the existence of the referral itself. Thus, while there may be cases in which the Commission authorizes public notice of referrals, the Commission rejects the requests by OPSI and PA PUC to make all referrals public.

### **V. Market Design Authority**

33. PJM proposed a number of tariff changes to section IV.C that clarify the existing language. PJM clarifies that the MMU may engage in discussions with market participants regarding possible violations of market rules, and substitutes the term "Market Rules" in accordance with its newly-added definition at section II of the revised tariff.<sup>12</sup> It also clarifies that the MMU may make recommendations requesting rule

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<sup>12</sup> The only change to this section was the substitution of the defined term Market Rules for the phrase "PJM Tariff, the PJM Operating Agreement, the PJM Reliability Assurance Agreement, the Reliability Assurance Agreement South, the Reliability Assurance Agreement West, the PJM Manuals, or other PJM rules standards practices and procedures." The term PJM Market Rules includes all of these documents.

changes or complaints in writing or orally. Further, PJM adds a section to allow the MMU, in the event PJM does not follow its recommendation, to make its views known to the Commission staff and PJM members. Finally, PJM adds new language authorizing the MMU to “report directly to the Commission staff on any matter.”

34. With respect to PJM’s proposed changes to section IV.C, on rehearing the PA PUC argues that the Commission should not permit PJM to overly constrain the MMU’s role in crafting market rules, and that the MMU should be authorized to advocate and propose changes to market rules affecting competitive markets or to remedy specific or structural problems. The PA PUC also contends that the PJM tariff should be modified so as not to impair communications between the MMU and the Commission, or to make filings or communicate with the Commission on any matter regarding competitive markets or market design. OPSI and the PA PUC also argue that the Commission erred when it denied its request to require the MMU to inform the states whenever PJM does not follow an MMU recommendation made pursuant to section IV.C.4.

35. We deny the rehearing request. PJM’s proposed changes to section IV.C clarify the existing language, but do not change the MMU’s ability to suggest changes in market rules. PJM’s tariff continues to permit the market monitor to “recommend to the appropriate entity (including if and as appropriate PJM Committees, the PJM Board, or the Commission) modifications to the PJM Market Rules.” Further, PJM added to its tariff, a provision that did not exist in its previous tariff which provides: “if PJM does not follow the Market Monitoring Unit’s recommendations by filing requested rule changes, or complaints with the Commission, the Market Monitoring Unit *shall* make its views known to the Commission staff and the PJM members, either orally or in writing.” (emphasis added).

36. We affirm our finding that these provisions are just and reasonable and provide the MMU with sufficient ability to seek changes to market rules to improve the markets. Moreover, the tariff mandates that the MMU notify the Commission and stakeholders in the event that PJM does not follow its proposals. Any stakeholder can, therefore, seek to petition the Commission for changes in markets that it deems necessary, or the Commission may do so on its own initiative or by instituting a section 206 proceeding.

37. The PA PUC is apparently referring to language in the PJM transmittal letter that this provision will change the MMU’s role such that the MMU will not have a “direct role in crafting specific tariff amendments and leading them through the stakeholder process.”<sup>13</sup> The existing tariff however makes no mention of such a role and PJM has not

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<sup>13</sup> Transmittal letter at 5.

sought to remove tariff provisions authorizing such a role. We see no need here to exercise our section 206 authority to require a more active role by the MMU in this process than the collaborative role previously authorized by the tariff and continued by PJM's proposed revisions here.

38. We also see no need to modify PJM's tariff to explicitly require the MMU to notify each state commission of its recommendations. Notice of the MMU's recommendations may be provided to members who can notify their respective state commissions.

## **VI. Cross-Reference of PJM Market Rules and Market Power Mitigation Authority**

39. As part of PJM's proposed new tariff language for referrals from the MMU to the Commission, PJM provided at section IV.B the following explanation as to when the MMU is exempted from making referrals to the Commission:

a clear, objectively identifiable violation of a PJM Market Rule, where such rule provides for an explicit remedy that has been accepted by the Commission and can be administered by PJM, shall not be subject to the provisions of this section IV.B.

40. OPSI and the PA PUC contend on rehearing that the Commission committed error by not requiring that the PJM tariff provide clear cross-references for when the MMU is not required to make a referral to the Commission, pursuant to section IV.B. They caution that this lack of cross-reference could lead to confusion about when the referral procedures in section IV.B will apply, and when they will not apply.

41. We find PJM's proposal to be just and reasonable. The tariff reasonably provides that the MMU is not required to make a referral of activity to the Commission of a violation of a market rule for which an explicit remedy already exists in the tariff. In this instance, there is no need for a referral to the Commission, and a Commission investigation, because the tariff itself provides for a specific remedy.<sup>14</sup> None of the parties has identified any provision of the PJM tariff that meets the market test of section IV.B exemption procedures. The provisions cited by OPSI, such as price mitigation procedures and the three-pivotal supplier test, are not remedies for violating market rules;

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<sup>14</sup> Policy Statement at P 5.

these are simply part of PJM's the overall market design. We, therefore find no reason to exercise our authority under section 206 to require PJM to provide a cross-reference to tariff provisions meeting the section IV.B exemption procedures.

## **VII. Reports to State Commissions**

### **A. Rehearing Requests**

42. OPSI seeks rehearing of the Commission's acceptance of PJM's proposed deletion, without explanation, of a tariff provision at section VII.B. that stated:

Subject to the same provision regarding confidentiality, the Market Monitoring Unit also shall submit to other Authorized Government Agencies the reports provided to the PJM Board pursuant to section VII.A. and other such reports, either as may be requested by such Agencies, or as may be deemed appropriate under section IV.B.5.

43. OPSI and the PA PUC contend that the Commission erred in allowing PJM to remove the provision providing reports to requesting state commissions of actions taken under Attachment M. OPSI offers as an example of the type of Attachment M situations where the MMU identifies significant market problems or potential rule violations. OPSI and the PA PUC also argue that the MMU should continue to be required under Attachment M to provide to state commissions a copy of any report that the MMU provides to the PJM Board, and that this requirement was improperly deleted by PJM. The PA PUC also seeks rehearing of the Commission's denial of its request that the PJM tariff be revised to include authority for the MMU, upon the request of a state commission, to conduct specific inquiries and provide state commissions with reports following investigations. Moreover, OPSI and PA PUC explain that before a state commission may request information under state procedures, it must be informed of the relevant activities. For this reason, OPSI and the PA PUC seek revision of Attachment M to require that the MMU provide notification to the states of its Attachment M activities. OPSI cites to the Commission's Wholesale Power Market Platform White Paper<sup>15</sup> as supporting its request that state commissions be notified of market problems.

44. In response to these comments regarding PJM's obligations to the states, PJM argues that reporting matters between a state and the RTO are not properly part of a tariff

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<sup>15</sup> Docket No. RM01-12-000, White Paper Wholesale Power Market Platform, Appendix A (April 28, 2003) (White Paper). We note that this White Paper was never adopted by the Commission and does not represent Commission policy.

filed with the Commission. PJM also explains that it considered the language of the tariff to be ambiguous, and was concerned that these provisions might lead to the Commission becoming involved with issues about the timing and scope of reports or the availability of witnesses at state proceedings.

**B. Commission Determination**

45. PJM merely substituted different language in section VII.B for the language it struck. The new language provides:

The Marketing Monitoring Unit shall contemporaneously submit to the Authorized Government Agencies the reports provided to the PJM Board pursuant to section VII.A. Subject to applicable law and regulation and any other applicable provisions of the PJM Operating Agreement or PJM Tariff, the Market Monitoring Unit shall, to the extent practicable, respond to reasonable requests by Authorized Government Agencies other than the Commission for reports provided to the PJM Board, subject to protection of confidential, proprietary and commercially sensitive information and the protection of the confidentiality of ongoing inquiries and monitoring activities.

This language continues to require PJM to provide states with the reports provided to the PJM Board.

46. OPSI and the PA PUC appear to be objecting to the deletion of the provision “and other such reports, either as may be requested by such Agencies ...” on the grounds that the prior tariff required the MMU to prepare special reports when requested by the states. We agree with PJM that the existing provision may be ambiguous.

47. Moreover, we find it just and reasonable for PJM to limit its provision of reports only to those reports provided by the MMU to the PJM Board. The PJM MMU reports to the PJM Board and ultimately to this Commission and it should not be required, without authorization from these entities, to prepare special reports requested by the states. The states, of course, can seek such reports by requesting them from the PJM Board or this Commission.

**VIII. Access to Information**

48. PJM did not propose any substantive changes to section VI of its tariff, which addresses sources of data and information for the MMU, and its authority to obtain it.

49. OPSI seeks rehearing of its section 206 request that section VI.B.1 of Attachment M be revised so that requests from the MMU to market participants for needed information will not be voluntary, as presently written. Instead, OPSI requests that this provision be modified to conform to the Policy Statement's language that the MMU "shall have access to" necessary information, and that such requests may be made to PJM market participants if the sought after information is not readily available from other sources. OPSI cites the MISO procedures to support this stronger provision.<sup>16</sup>

50. We do not see the necessity of exercising our section 206 authority to require a revision to the PJM tariff. Although section VI.B.I of the PJM tariff specifies that recipients of requests for additional data need only respond to the MMU on a voluntary basis, section VI.B.2 gives the MMU potential recourse, including the authority to petition the Commission for an order, if the recipient of the request is not cooperative and the information is essential to the MMU. We find that this provision provides the MMU with adequate ability to obtain information while providing the parties under investigation with protection against potentially overbroad requests. We, therefore, see no basis for requiring PJM to modify its tariff.

#### **IX. Technical Conference**

51. The Indicated Parties argue that the Commission erred by not granting ODEC's request to condition its review of this docket upon the outcome of the Commission's technical conference held on May 18, 2006. That conference addressed the role of market monitors in Docket No. AD06-7-000.

52. The filing by PJM in this case was made under section 205 to revise its tariff, and the Commission acted on that filing to determine whether the proposals were just and reasonable. Should the Commission change its regulations or policies regarding MMUs in the future, there will be opportunity for parties to seek appropriate changes to the PJM tariff at that time. Accordingly, there is no reason to condition this filing on the outcome of any other proceeding, such as Docket No. AD06-7-000. Moreover, as indicated earlier, the Commission intends to hold another conference to review its MMU policies.

#### **X. Compliance Filing**

53. PJM's compliance filing comported with the requirements of the July Order. However, in making the compliance filing, PJM omitted from First Revised Sheet

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<sup>16</sup> Section 61.1 of the MISO tariff .

No. 448B sections containing IV.C.1 and 2. PJM must file within 30 days revised tariff sheets to correct this provision.

The Commission orders:

(A) The requests for rehearing are denied, as discussed in the body of this order.

(B) PJM's compliance filing is accepted, effective July 17, 2006, subject to PJM making a compliance filing within 30 days, as discussed in the body of this order.

By the Commission. Commissioner's Kelly and Wellinghoff jointly concurring with a separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket Nos. ER06-826-002  
ER06-826-003

(Issued December 5, 2006)

KELLY and WELLINGHOFF, Commissioners, *concurring*:

We are pleased that the Commission will initiate a review of its Market Monitoring Unit (MMU) policies and hold a technical conference to explore generic issues related to the MMUs' functions and responsibilities. We think this technical conference provides an opportunity to explore the existing structures of MMUs within the various ISOs/RTOs, determine what are "best practices" among the MMUs, and discuss any possible improvements.

MMUs play an important and unique role with respect to the proper functioning of competitive wholesale electricity markets. They have a duty to serve their respective ISOs/RTOs, ISO/RTO stakeholders, the Commission, and other governmental bodies. In general, we would like to explore at the technical conference whether the MMUs are structured to allow them to carry out their responsibilities in the most effective manner. For example, as part of the deliberation of issues related to the MMU's independence and assuring the transparency and clarity of its functions, we would like to consider whether the Commission should establish a Code of Professional Responsibility for market monitors, similar to the codes that govern the behavior of lawyers and accountants.

In addition, parties in this proceeding raised the issue of whether the Commission should inform the MMU of the dispensation of referral findings and the outcome of investigations that have been referred to the Commission. We would like to consider on a generic basis whether the Commission should regularly authorize disclosure of such information to the MMU that has made the referral, subject to appropriate confidentiality restrictions.

Among other issues, we would like to explore at the technical conference the appropriate role of the MMU in assessing the impact on markets of demand response resources. We would also like to consider whether existing tariff provisions stating that the MMU "may make recommendations" regarding its annual state-of-the-market report, as is found in the current PJM tariff, could be made clearer by changing the language from "may" to "shall." Further, the order

notes that parties in this proceeding have not identified any provisions in the current PJM tariff that would exempt the MMU from making a referral to the Commission where there is a clear, objectively identifiable violation of a market rule with an explicit remedy that has been accepted by the Commission and can be administered by PJM. We believe the Commission should consider whether such provisions should be included in ISO/RTO tariffs in order to redress certain undesirable market behavior in an expeditious manner and because of the difficulty of redressing such behavior after the fact.

For these reasons, we respectfully concur with this order.

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Suedeem G. Kelly

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Jon Wellinghoff