

August 17, 2005

Magalie R. Salas, Secretary
Federal Energy Regulatory
Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Generator Run Status Information
Docket No. RM05-16-000

Dear Secretary Salas:

Please find for electronic filing, the Joint Consumer Advocate's Motion to Intervene and Comments in the above-referenced proceeding. An electronic copy has been served on each person on the designated official service list.

Very truly yours,

/s/ filed electronically

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/s/ filed electronically

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Enclosure

cc: All parties of record
77025

/s/ filed electronically

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CERTIFICATE OF SERVICE

RE: Generator Run Status Information
Docket No. RM05-16-000

I hereby certify that I have this date served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-referenced proceeding. Copies of this document have been served upon all parties designated on the Commission's official service list, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated this 15th day of August, 2005.

Respectfully submitted,

/s/ filed electronically

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL REGULATORY COMMISSION

Generator Run Status Information : Docket No. RM05-16-000

JOINT CONSUMER ADVOCATES'
MOTION TO INTERVENE AND COMMENTS

Pursuant to Rules 211, 212 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212, and 385.214, the Pennsylvania Office of Consumer Advocate ("Pa. OCA"), the Maryland Office of People's Counsel ("MPC"), the Illinois Citizens Utility Board ("CUB") and the Office of the People's Counsel for the District of Columbia ("DC OPC") (herein designated as "Joint Consumer Advocates"), respectfully request leave to intervene in the above-captioned proceeding and file comments in support of the Federal Energy Regulatory Commission's ("FERC" or "Commission") need for access to generator run status information from all public utility generators on a confidential basis. In support of this Motion and Comments, the Joint Consumer Advocates state as follows.

1. The Pa. OCA is a state office empowered by state statute to represent the interests of retail consumers of utility services in the Commonwealth of Pennsylvania in proceedings before the Pennsylvania Public Utility Commission, similar federal agencies and state and federal courts. The name, address, telephone, facsimile and e-mail address of the Pa. OCA's representatives authorized to receive service are:

James A. Mullins
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2. MPC is an independent state agency established to represent the interests of residential consumers in utility cases. Pursuant to Maryland Public Utility Companies Article Section 2-205(b) (2003), the People's Counsel "may appear before any federal or state unit to protect the interests of residential...users [of gas, electricity, telephones, or water and sewage]." The name, address, telephone, facsimile and e-mail address of the MD OPC's designated representative for receipt of service are:

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3. DC OPC is an independent agency of the District of Columbia government and is the statutory representative of District of Columbia consumers in public utility issues in proceedings before the District of Columbia Public Service Commission, federal regulatory agencies and state and federal courts. The name, address, phone number, facsimile number and e-mail address of the DC OPC's designated recipients for service are as follows:

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4. Established by an act of the Illinois legislature in 1983, CUB represents the interests of residential and small business utility consumers before the Illinois Commerce Commission, state and federal courts, and federal agencies. The contact information for CUB's designated recipient of service is as follows:

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5. On May 27, 2005, FERC issued a Notice of Inquiry ("Notice") and request for Comments as to the Commission's need for access to generator run status information from all public utility generators on a confidential basis.

INTERVENTION

6. PJM Interconnection ("PJM") is a Regional Transmission Organization ("RTO") managing the transmission systems of electric utilities in Pennsylvania, New Jersey, Maryland, Delaware, and the District of Columbia, and through PJM West, portions of Virginia, West Virginia, Illinois, Michigan, Kentucky and Ohio.

7. Midwest ISO (“MISO”) is an RTO managing the transmission systems of electric utilities in 15 states, including Illinois.

8. The New York ISO (“NY ISO”) is a not-for-profit corporation established to facilitate the restructuring of New York State’s electric industry. In addition to administering the state’s wholesale energy markets, the NYISO operates the state’s high voltage electric transmission system.

9. The Pa. OCA represents the interests of retail consumers in Pennsylvania who receive their electric supply from wholesale markets operated by PJM, MISO and NY ISO. Similarly, CUB represents the interests of retail consumers in Illinois who receive their electric supply from wholesale markets operated by PJM and MISO. The MD OPC and DC OPC represent the interests of retail consumers in Maryland and the District of Columbia, respectively, who receive their electric supply from wholesale markets operated by PJM. These retail customers receive their energy from load serving entities within PJM, MISO and NY ISO who transport that power to retail consumers over the transmission systems owned by the PJM, MISO and NY ISO transmission owners and managed by PJM, MISO and NY ISO. Thus, the availability of generator run status information to the Commission—so that it can effectively and efficiently monitor these markets--affects the interests of the retail consumers the Joint Consumer Advocates represent.

10. No other party can adequately represent the interests of the Joint Consumer Advocates in this proceeding. The load serving entities such as utilities and alternative suppliers who supply retail service to retail consumers have a number of interests to protect, including the interests of the private investors who are shareholders in their corporations. The state utility commissions likewise have a number of interests to represent in this proceeding, including the broader public

interest. The wide array of interests represented by these other parties can, and sometimes does, conflict with the narrower array of consumer interests represented by the Joint Consumer Advocates.

11. The Commission's Notice was published in the Federal Register on June 14, 2005, requiring that all Motions to Intervene and Comments be filed by August 15, 2005.

12. This Motion to Intervene and these Comments are timely filed.

COMMENTS IN SUPPORT

The Joint Consumer Advocates respond to the Commission's Notice in order to support the routine submission of data to the Commission regarding generator run status. The Joint Consumer Advocates focus their comments in three areas: 1) necessity of the Commission to have access to the data indicated in the Notice, 2) feasibility of generation owners or operators to provide the data, and 3) the balance between keeping competitive and security information confidential and the need for the appropriate information in the marketplace. The Joint Consumer Advocates submit that the Commission needs this information in order to meet its regulatory obligation because, absent the provision of such data, an atmosphere conducive to undetected market manipulation will be created. Furthermore, there are no real obstacles to collecting and providing such data because most is already collected for other reasons. Finally, confidential treatment is necessary and will not present obstacles, but should be balanced with the need to provide this data to marketplace participants.

As set forth in paragraph 8 of the Notice, historic instances of manipulation of prices by those who own or control generation have, in some instances, involved strategic control of generation operations, including turning plants off or reducing output levels. Therefore, from an enforcement perspective, if generator run status is routinely available to the Commission,

investigation of suspected generation output manipulation will operate from a more sound and empirical basis, and will thus produce results that are less subject to challenge.

The Joint Consumer Advocates submit that the Commission's Request for data would not be unduly burdensome to generators as much of the data is already routinely collected or maintained. For example, the Commission has found that compliance with NERC's Reliability Standards, including the recently approved Version 0 Standards, are included under the general Open-Access Transmission Tariff ("OATT") provisions regarding good utility practice. See, Policy Statement on Matters Related to Bulk Power System Reliability, 110 FERC ¶61,096 (February 9, 2005). Among the Version 0 Standards are requirements that, directly or indirectly, require generation owners to provide specific data regarding plant operations. Taken as a whole, Version 0 clearly requires that data regarding many aspects of generation operations and capabilities be either available or routinely provided. In fact, without this data, it would be impossible to schedule transmission, balance generation to meet load, and monitor resources needed for reliability. Good utility practice dictates that much of the data identified in the Notice be routinely collected and available. Therefore, the provision of the data tentatively identified in the Notice will not impose significant costs or difficulties on generation owners and operators because such data is already supplied for use in other contexts. Consequently, no economic obstacles exist to establishing the data reporting proposed in the Notice.

Furthermore, given the information that generation owners will soon provide to Reliability Coordinators and Transmission Providers under NERC's proposed Phase III-IV Planning Standards, it appears that much of what is proposed in the Notice will not impose substantial additional costs on generation owners.

Consideration should also be given to the fact that RTOs like PJM, MISO, and ISO New England operate energy markets that rely on very frequent recording of information related to production of energy and some ancillary services. These entities must have this information in order to facilitate billing customers or paying generators. Additionally, in the process of the market functions, generators provide information to the market managers regarding the capabilities of all units available to the market, including those that are not called upon to operate. Therefore, making this information available or directly providing this information to the Commission will not be problematic.

The Joint Consumer Advocates agree with the Commission that due to the sensitive nature of generator run status information (from a competitive, as well as security, perspective), the treatment of such data will be of vital importance. However, as set forth in the Notice, the treatment of certain data as “confidential” must be considered in conjunction with the release of some data to market participants in order to ensure that market participants are aware of current market conditions.

Based on all of the above, the Joint Consumer Advocates conclude that there is a reasonable need for Commission access to the data indicated in the Notice and provision of such data would not be unduly burdensome on generators.

WHEREFORE, the Joint Consumer Advocates respectfully request that the Commission grant this Motion to Intervene and take these Comments under consideration.

Respectfully submitted,

/s/ filed electronically

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DATE: August 15, 2005
00085335

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