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April 24, 2006

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

Re: PJM Interconnection, L.L. C.
Docket No. ER06-826-000

Dear Secretary Salas:

Please find for e-filing, the Motion to Intervene and Protest of the Joint Consumer Advocates 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.

Very truly yours,

/s/ filed electronically

Aron J. Beatty
Assistant Consumer Advocate

Enclosure

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C. : Docket No. ER06-826-000

**JOINT CONSUMER ADVOCATES'
MOTION TO INTERVENE
AND PROTEST**

Pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214, the Pennsylvania Office of Consumer Advocate (Pa. OCA), the Maryland Office of People's Counsel (MPC), the Office of the Ohio Consumers' Counsel (OCC), the District of Columbia Office Of People's Counsel (D.C. OPC), the Illinois Citizens Utility Board (IL CUB), and the Indiana Office of Utility Consumer Counsel (IN OUCC) (collectively referred to as Joint Consumer Advocates) respectfully request leave to intervene jointly and individually, and to file this Protest in opposition to the proposed revisions of Attachment M to the PJM FERC Electric Tariff filed by the PJM Interconnection, L.L.C. (PJM) at the above-captioned docket. In support of this Motion and Protest, the Joint Consumer Advocates submit the following:

I. INTERVENTION

1. The Pa. OCA is a state office administratively located within the Office of Attorney General and empowered by statute to represent the interests of consumers of utility services in the Commonwealth of Pennsylvania before the Pennsylvania Public Utility

Commission, similar federal regulatory agencies, and state and federal courts. The name, address, telephone number, fax number and e-mail address of the persons designated to receive service in this proceeding are:

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2. The Maryland Office of People's Counsel is an independent state agency that was established to represent the interests of residential consumers in utility cases. Maryland Public Utility Companies Code Annotated, Section 2-205(b)(1999). The People's Counsel "may appear before any federal or state agency as necessary to protect the interests of residential...users of [gas, electricity or other regulated services]."

3. The name, address, telephone, facsimile and e-mail address of the Maryland Office of People's Counsel designated representative for receipt of service in this proceeding is:

William F. Fields
Assistant People's Counsel
Maryland Office of People's Counsel
6 St. Paul Street, Suite 2102
Baltimore, MD 21202
(410) 767-8150
(410) 333-3616 (facsimile)
E-mail: BillF@opc.state.md.us

4. The D.C. Office of People's Counsel 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.

5. The name, address, telephone, facsimile and e-mail address of the D.C. OPC's designated representatives for receipt of service in this proceeding are:

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Deputy People's Counsel
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6. The Ohio Consumers' Counsel is Ohio's residential utility consumer advocate, empowered under Chapter 4911, Ohio Rev. Code Ann. (Anderson 2000), to represent the interests of Ohio residential utility consumers in proceedings before state and federal administrative agencies and courts. The OCC has actively participated in numerous regulatory proceedings at the state and federal level.

7. The name, address, telephone, facsimile and e-mail address of the OCC's designated representative for receipt of service in this proceeding is:

Jacqueline Lake Roberts
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
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(614) 466-4207
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8. Established by an act of the Illinois Legislature in 1983, the Illinois Citizens Utility Board represents the interests of residential and small business utility consumers the State of Illinois before the Illinois Commerce Commission, state and federal courts, and federal agencies.

9. The name, address, telephone, facsimile and e-mail address of Illinois CUB's representative authorized to receive service are:

Christopher C. Thomas
Policy Director
Citizens Utility Board
208 S. LaSalle, Suite 1760
Chicago, IL 60604
(312) 263-4282
(312) 263-4329 fax
E-mail: cthomas@citizensutilityboard.org

10. The Indiana Office of Utility Consumer Counsel is an agency of the State of Indiana duly authorized to represent all Indiana ratepayers in state and federal proceedings. Indiana Code 8-1-1.1-9.1 specifically provides for the appointment of the undersigned deputy consumer counselor, whose specific responsibility is the representation of Indiana ratepayers' interests before federal agencies, including the Commission.

11. The name, address, phone number, facsimile number, and email address of the designated recipient for service are as follows:

Robert G. Mork, Esq.
Deputy Consumer Counselor for Federal Affairs
Indiana Office of Utility Consumer Counselor
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12. On March 31, 2006, PJM Interconnection, L.L.C. (PJM), pursuant to Section 205 of the Federal Power Act (FPA), submitted revisions to the PJM FERC Electric Tariff, Sixth Revised Volume No. 1 (PJM Tariff). These revisions were submitted for the primary purpose of bringing the PJM Tariff "into conformity with Commission policy" with regard to the

operations and procedures of the PJM Market Monitoring Unit (MMU). Additional proposed revisions were designed to clarify certain language to be consistent with PJM practice.

13. The Pennsylvania General Assembly passed a statute in December, 1996, opening up the Pennsylvania retail electric supply market to competition beginning January 1, 1999. 66 Pa. C.S. §§ 2801 et seq. (1999). By January of 2001, all Pennsylvania retail electric consumers, including all of the retail electric consumers served by the Pennsylvania electric utilities operating in PJM, obtained the right to choose their electric generation supplier.

14. In January 1999, the Maryland General Assembly passed the Electric Customer Choice and Competition Act of 1999. Maryland Public Utility Companies Code Annotated, Section 7-501, *et. seq.* (1999). This act institutes competition for retail electric service beginning July 1, 2000. The majority of retail customers in Maryland purchase electricity from suppliers that operate in the PJM market.

15. In December 1999, the City Council of the District of Columbia passed the Retail Electric Competition and Consumer Protection Act of 1999. D.C. Code section 34-1501, *et. seq.* (2001). The Act provides for implementation of competition for retail electric service in the District of Columbia no later than January 1, 2004, leaving the precise date for implementation to be set by the Public Service Commission of the District of Columbia. By Order No. 11796, the Public Service Commission set January 1, 2001 as the implementation date for retail competition in the District of Columbia. Suppliers operating in the PJM market will serve all retail customers in the District of Columbia.

16. In July 1999, the Ohio General Assembly's Am. Sub. Senate Bill No. 3 became effective. Ohio Revised Code Chapter 4928. This legislation provided for competition for retail generation service in Ohio beginning January 1, 2001.

17. The Illinois Legislature passed The Electric Service Customer Choice and Rate Relief Law of 1997 (The Restructuring Act) with the goal of developing an effectively competitive electricity market in Illinois. 220 ILCS 5/16-101. The Restructuring Act established a bundled rate freeze that expires on January 1, 2007. Most Illinois utilities sold or spun off their generating assets and entered into long-term supply contracts that terminate on or around January 1, 2007. Unbundled customers already purchase electricity from suppliers that operate in the PJM markets.

18. Indiana remains a traditionally regulated state, where utilities remain vertically integrated. However, Indiana customers benefit from wholesale markets when Indiana utilities are able to purchase power for their ratepayers when it is more economical than the utilities' own generation. Moreover, even when Indiana ratepayers are served by their vertically integrated utilities' own generation, they are dependent upon PJMs' coordination of such generation within the market.

19. PJM is a Regional Transmission Organization (RTO) managing the transmission systems of all or portions of Pennsylvania, New Jersey, Maryland, Delaware, Ohio, Virginia, West Virginia, Illinois, Indiana, Kentucky, Michigan, North Carolina, Tennessee and the District of Columbia.

20. The Joint Consumer Advocates represent the interests of retail consumers in Pennsylvania, Maryland, the District of Columbia, Ohio, Illinois and Indiana who receive their energy from load serving entities within PJM. PJM's filing directly impacts oversight of the wholesale markets that provide the foundation for the retail price of electricity in much of PJM. These markets have a direct impact on the retail consumers the Joint Consumer Advocates represent.

21. 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 service to retail consumers have a number of interests to protect, including the interests of the 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 do, conflict with the narrower array of consumer interests represented by the Joint Consumer Advocates.

22. The Joint Consumer Advocates do not support the PJM filing. PJM's proposed revisions would reduce oversight of the PJM wholesale market by the PJM MMU at a time when wholesale market prices are rising considerably and have exhibited considerable price variability. The Joint Consumer Advocates represent end-use customers who pay rates, or will soon pay rates, that are largely dependent on PJM's markets. For the Joint Consumer Advocates, there is no reason to reduce the level of oversight and authority that the MMU has in PJM's ever-expanding markets. On the contrary, the Commission needs to ensure the absolute independence of the PJM MMU and ensure that the MMU has the full authority and resources needed to effectively monitor the markets.

23. The Commission noticed PJM's filing on April 12, 2006, establishing a Comment Date of April 24, 2006.

24. The Joint Consumer Advocates seek timely intervention in this proceeding and file this timely Protest in opposition to PJM's filing.

II. PROTEST

A. INTRODUCTION

The current PJM Market Monitoring Unit was created by Commission Order entered March 10, 1999. PJM's markets went "live" on April 1, 1999. In its March 10, 1999 Order approving the creation of the PJM MMU, the Commission stated:

Within the MMU's ambit of monitoring responsibilities are the duty to monitor matters relating to transmission congestion pricing, exercise of market power, structural problems in the PJM Market, design flaws in the operating rules, and compliance with the standards, procedures or practices as set forth in the PJM OATT, Operating Agreement, Reliability Agreement, PJM Manuals, and the PJM Regional Practices Document. The MMU will monitor and report on these issues consistent with safe and reliable operations within the PJM control area, creation and operation of a robust, competitive and non-discriminatory electric power market, and the principle that no member of PJM will have undue influence over the PJM Market.

86 FERC ¶61,247 (Order at 2). The Commission further explained the importance of the MMU's independence in PJM's markets where participants were no longer restricted to cost-based sales, stating:

In view of our contemporaneous decision to approve market-based pricing authority in a related proceeding, the MMU's ability to effectively and broadly monitor and investigate the PJM Market is essential.

Id. at 2 (footnote 4).

The Joint Consumer Advocates submit that the Commission's assessment of the need for effective and broad MMU authority is as valid today as it was in 1999. At a time when retail electric rates are dramatically increasing in large sections of the PJM footprint, and states are questioning the reasonableness of setting retail rates based on PJM wholesale market prices, it is inappropriate to weaken the oversight provided by the PJM MMU that presently exists in the

PJM market. If anything, now is the time to ensure that the PJM MMU is fully independent, has full authority to monitor the markets, and has all tools and resources necessary for effective oversight of the markets.

PJM's proposed modifications are related to the Commission's Policy Statement of May 27, 2005 that was issued in order to "provide guidance on the role of market monitoring units associated with Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs)...This policy statement provides guidance on the coordinated roles and responsibilities of the Commission and the MMUs." Policy Statement at P.1. Importantly, however, there has been no showing that the PJM MMU and the Commission's oversight efforts are not coordinated or that they cannot operate in a complementary manner. Any action to diminish the PJM MMU's oversight authority, efforts, resources, or actions jeopardizes the foundation of market-based rates and competitive wholesale electric markets. The Commission ultimately must be responsible for ensuring workably competitive markets, but at the same time, the Commission must ensure effective independent market monitoring by the MMU as a critical resource in the developing wholesale markets. Joint Consumer Advocates submit, however, that the tariff revisions proposed by PJM to conform to the Policy Statement, and the Policy Statement itself in certain respects, do not achieve these objectives.

In this Protest, the Joint Consumer Advocates will identify the modifications in the PJM filing that are detrimental to the effectiveness of PJM's MMU. In addition, while the Joint Consumer Advocates oppose the PJM filing, the Joint Consumer Advocates would support revisions that clarify and strengthen the existing obligations, functions and operations of the PJM MMU and that ensure that the MMU is able to independently and impartially evaluate and monitor the markets.

B. ANY REVISIONS TO THE PJM MARKET MONITORING TARIFF PROVISIONS SHOULD BE PART OF A COMPREHENSIVE REVIEW

To the extent revisions to the existing PJM MMU tariff provisions are needed, such consideration may be more appropriate in the Commission's recently implemented proceeding to review all aspects of ISO/RTO market monitoring. The Commission issued a *Notice of Presentations on the Role of ISO/RTO Market Monitors* on April 12, 2006 at this Docket and in Docket AD06-7-000, which is the same date that the Commission issued its notice of this PJM filing. In its Notice, the Commission called for a presentation of the totality of issues relating to market monitoring in ISOs and RTOs. This is consistent with the concept that market monitoring issues should be reviewed in the context of the overall effectiveness of market monitoring in organized wholesale markets. These concerns are critical to a full evaluation of the present filing.

Thus, the Joint Consumer Advocates urge the Commission to incorporate any review of PJM tariff changes into the more general consideration of market monitoring at Docket Number AD06-7-000.

C. ANY MODIFICATIONS TO THE PJM MARKET MONITORING TARIFF THAT LIMIT OR REDUCE THE OVERSIGHT FUNCTIONS, TOOLS OR RESPONSIBILITIES OF PJM'S MARKET MONITORING UNIT MUST BE REJECTED.

1. Introduction

The Joint Consumer Advocates seek in this Intervention and Protest, to address their concerns both with the PJM Interconnection LLC (PJM) filing of a revised tariff Attachment M and with certain implications of the Commission's Policy Statement on Market Monitoring Units (Policy Statement) (PL05-1) that the tariff revisions seek to implement. The Joint Consumer Advocates did not vote in support of PJM's proposed modifications to

Attachment M of the PJM OATT and oppose these modifications here. PJM's filing raises concerns with some of the fundamental roles and responsibilities that the Market Monitor has exercised in PJM, and illustrates problems with certain aspects of the Commission's Policy Statement as applied. Whether intended or not, the provisions of the Policy Statement that PJM has sought to implement through its filing would have the effect of unduly restricting the operations of the PJM MMU. The Joint Consumer Advocates submit that now is not the time to limit market monitoring in PJM. Of critical importance in this time of market changes and volatility is that the PJM MMU retains authority and independence to effectively monitor the markets and that it have all tools necessary to effectively meet its obligations.

2. Proposed Section IV.B: Required Referral to Commission

a. The PJM MMU Should Not Be Constrained From Continued Investigation Of Market Behavior After It Has Developed "Credible Evidence" That Such Behavior Occurred.

In the May 2005 Policy Statement on market monitoring units, the Commission set forth the procedures for the enforcement of market rules under the Energy Policy Act of 2005 and other Commission Orders. The Policy Statement provides an extensive explanation of the standards and processes through which coordination between the MMU and the Commission is established. The Policy Statement gives formal recognition to the value that Market Monitors bring to the consideration of existing and proposed rules. Also, the Policy Statement defines how referrals of potential violations of market rules, and enforcement actions from the MMU, are presented to the Commission.

While the Joint Consumer Advocates support the Commission's efforts to receive timely notification and referral of potential violations, the Joint Consumer Advocates are concerned that the Policy Statement, and PJM's proposed Tariff Rule IV.B. are too restrictive on

the MMU. Proposed Rule IV.B. requires that once the MMU has sufficient credible evidence that a market rule has been broken, the MMU must refer the matter to the Commission. The relevant section of PJM's proposed tariff change of concern to the Joint Consumer Advocates provides:

IV. B.:...Following the submission of such a referral, the Market Monitoring Unit will continue to inform the Commission of any information relating to the referral that it discovers within the scope of its regular monitoring function, but it shall not directly question any Market Participant with regard to the specific occurrence or activity that was the subject matter of the referral except at the express direction of Commission staff.

Proposed Section IV.B. While this section seems to track the Commission's Policy Statement, the Joint Consumer Advocates submit that restricting the PJM MMU from any further questioning of Market Participants could deny the Commission valuable information and insight into potential violations of market rules. At the time of referral, the MMU has already obtained information about potential violations and may be best positioned to quickly follow up on these matters in an expeditious manner. Joint Consumer Advocates would also note that further questioning of market participants and information gathering may be necessary in order for the MMU to meet its obligation to recommend necessary market rule changes, an obligation retained in the Commission's Policy Statement. See, May 2005 Policy Statement, Protocol 5.

The Joint Consumer Advocates submit that Tariff provision IV.B. should not be adopted. The MMU needs to retain the authority to continue gathering information and investigating potential market violations for numerous reasons, including the need to determine if changes to the market rules are necessary. Restricting the MMU in this matter could also result in an inability of the MMU to detect other problems or violations, or an inability to determine whether violations are continuing.

Rather than restrict the MMU, the MMU and Commission Staff should develop procedures to work in concert to obtain and exchange information about potential violations. If any tariff changes are made, the changes should be directed towards coordinating efforts to gather all necessary information rather than towards restricting inquiries by the PJM MMU into potential market rules violations or market abuse. The tariff changes proposed by PJM in Section IV.B. should be rejected.

- b. The PJM MMU Should Remain Informed With Regard To Commission Actions That Result From An MMU Referral To The Commission.

The Policy Statement and the Tariff do not allow the PJM MMU to have access to any information, analysis or conclusions drawn by the Commission staff following a referral. The Joint Consumer Advocates submit that there is a strong need for the MMU to remain informed about investigations of possible market power and violations of electricity market rules conducted based on referrals made by the MMU just as there is a need for Commission staff to be updated on MMU findings. Without such information, the MMU may not be in a position to adequately respond or evaluate similar circumstances in the future.

Under the Policy Statement, only if the Commission's Office of Market Oversight and Investigations (OMOI) determines that formal Commission action is needed will the MMU, which originally identified and documented the problem, be provided any information that the original problem identified was valid. If no formal action is taken by the OMOI, the MMU will have no information about the behavior that was the focus of the referral. This deprives the MMU of information that may be necessary to evaluate similar behavior in other cases. This exclusion also deprives the MMU of important information about market behavior, about the methods and source used by OMOI to evaluate the referral, and about the OMOI staff

perspective on market rules. This is particularly problematic if the MMU is not permitted to further investigate the matter following a referral, as proposed in the PJM filing and the Policy Statement. The MMU will not receive information that may be needed in the ongoing activities of the MMU and, without the information, the MMU cannot improve its operations to better conform to the Commission's operational standards.

The Joint Consumer Advocates submit that the practice of isolating the MMU from information about ongoing investigations and about investigations that conclude without formal Commission action is inconsistent with several objectives articulated in the Policy Statement. This information can add materially to the MMU's knowledge of the level of concern with which the Commission views various behaviors. As to concerns that may be raised regarding confidentiality, it must be pointed out that the MMU routinely deals with extensive, market sensitive information. Thus, the Joint Consumer Advocates asks that the Commission establish procedures to keep the PJM MMU informed as to the findings and outcome of referred cases.

3. Elimination of Existing Sections IV.B.3 and 4: Demand Letters

- a. The PJM MMU's Existing Authority To Issue Demand Letters And Provide Such Demand Letters To State Utility Commissions And Both State And Federal Attorney General Offices Is Necessary And Must Be Retained At This Time.

The PJM filing would eliminate the ability of the PJM MMU to issue demand letters. The following provisions of the PJM Tariff is eliminated in PJM's filing:

The Market Monitoring Unit may take the following additional actions, to the extent it deems necessary, as a result of its monitoring activities:

3. Through demand letter, request a Market Participant(s) to discontinue actions that the Market Monitoring Unit believes violate the 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 rules, standards, practices, or procedures concerning the operation of the PJM Market.

4. If unable to achieve sufficient correction action on matters through informal discussions or demand letter, and if appropriate and necessary, bring matters to the attention of, and make appropriate recommendations for action to, the Members Committee, other PJM Committees, or the PJM Board.

Existing PJM Tariff at IV.B.3 and 4. Currently, once the PJM MMU issues a demand letter, it is required to submit that information to the appropriate agencies as follows:

The Market Monitoring unit shall provide such demand letters to the relevant Authorized Government Agencies, subject to the protection of confidential, proprietary, and commercially sensitive information.

Existing PJM Tariff at IV.B.3. Authorized Government Agencies includes the Commission, state utility commissions, and state and federal attorneys general. PJM Tariff, Attachment M, II(a).

The proposed PJM filing removes all of the above-quoted language regarding demand letters and reporting to the appropriate state and federal agencies. The Joint Consumer Advocates submit that the existing tariff language ***must*** remain. The Joint Consumer Advocates submit that the removal of this language is not explicitly called for under the Policy Statement nor is it consistent with the Policy Statement. Demand letters and the required submission of those letters to the appropriate governmental agencies are vital tools for the PJM MMU authority in day to day operations in PJM. Demand Letters provide the PJM MMU with a valuable tool to notify market participants of questionable behavior and seek quick resolution of the problem.

The Joint Consumer Advocates submit that the provisions of the PJM's existing tariff regarding demand letters must remain.¹

4. Proposed Section IV.C.1

In its filing, PJM modifies the language of existing Section IV.B.1 in what would become Section IV.C.1. The existing language of IV.B.1 allows the MMU, to the extent it deems necessary, to:

Engage in discussions to bring issues concerning PJM Market operating rules, standards, procedures, or practices to the attention of Market Participants and attempt to resolve informally compliance or other issues with Market Participants.

Under the existing tariff, the MMU can bring a wide array of issues to the attention of all PJM Market Participants. This section of the existing tariff has allowed the MMU to communicate issues with all participants, providing a valuable resource for participants who would otherwise be unaware of problems that may exist in the PJM markets.

PJM has proposed to re-write this language in a manner that limits the ability of the MMU to bring issues to the attention of all market participants. PJM proposed language would limit the MMU to:

Engage in discussions with Market Participants regarding issues relating to ***their*** possible violations of the FERC Market Rules, in order to understand such issues and to attempt to resolve informally such issues or other issues with Market Participants.

Proposed Section IV.C.1. (Emphasis added).

Under the proposed language, the MMU could only discuss violations of FERC Market Rules, not all PJM Market Rules, and only with the violators themselves. The Joint

¹ If the Commission finds the elimination of demand letters to be consistent with the Commission's May 2005 Policy Statement, the Joint Consumer Advocates submits that the Policy Statement should not be implemented. However, the Joint Consumer Advocates submits that the Demand Letter standard does not necessarily meet the "sufficient credible information" standard for Commission referrals under the Policy Statement.

Consumer Advocates submit that modifications proposed by PJM create an unnecessary restraint on the MMU's ability to openly discuss pressing issues concerning PJM's markets with all stakeholders. There is no reason to limit the MMU's ability to approach all market participants with important issues. The Joint Consumer Advocates submit that the Commission must reject PJM's proposed tariff revision to existing Section IV.B.1 could restrict the free flow of information to Market Participants that the PJM MMU deems necessary.

5. Conclusion

The current operations of the PJM MMU provide protection from market abuses throughout PJM on an on-going basis. There is no reason during this time of high prices and price volatility to limit the PJM MMU's ability to monitor the market by requiring it to stop as soon as it determines a violation has taken place and made a referral to Commission Staff. In addition, there is no reason at this time to eliminate the PJM MMU's ability to notify market participants of PJM violations through Demand Letters. Finally, there is no reason to restrict the MMU from communicating with all PJM Market Participants regarding problems in the market.

The Joint Consumer Advocates submit that the existing Market Monitoring tariff is an important consumer protection that should not be modified in a manner that reduces oversight or restricts the PJM MMU from effectively monitoring the markets and taking necessary actions. PJM's proposed tariff modifications impose unwarranted restrictions on the authority of the PJM MMU and the tools available to the MMU to effectively monitor the markets. As such, PJM's proposed modifications should be rejected.

D. THE PJM MMU MUST OPERATE INDEPENDENTLY WITHIN PJM

1. Introduction

The Commission's Policy Statement emphasizes that "It is...critical that the MMU consistently and impartially evaluate the existing ISO/RTO rules and tariff provisions."² The PJM MMU's independence from influence of stakeholders, including other portions of PJM itself, is a vital aspect of RTO market monitoring. Independence must be such that no entity scrutinized by the PJM MMU can unduly influence its scope of review; its analysis of behaviors and impacts; and its findings and conclusions.

Nor should the MMU be subject to the undue influence by PJM management. Critically, one key function of the MMU is to evaluate programs, activities, and market operations undertaken at the direction of PJM management. Such areas include reliability planning, transmission planning, and market operations. To critically review these programs, activities and operations, the PJM MMU must be independent of these decision makers.

The PJM MMU must also be able to communicate directly and independently with the Commission so that it can directly inform the Commission about any information or assessment regarding the markets. The authority and ability to report directly to the Commission as well as to Commission staff is critical to the functioning and independence of the MMU.

While making changes to "conform" to the Policy Statement, PJM did not make changes that may be necessary to ensure that the MMU is sufficiently independent so that the "MMU consistently and impartially evaluates the existing ISO/RTO rules and tariff provisions" as called for in the Policy Statement. Policy Statement at P.3. PJM did, however, make changes that could be interpreted to restrict the MMU's communications with the Commission. As detailed herein, changes that potentially restrict PJM MMU's communications with the

² Policy Statement on Market Monitoring Units, PL05-1-000, Para. 3.

Commission should be rejected. Additionally, further changes to ensure independence of the MMU should be made.

As PJM notes in its filing, members have raised issues regarding the MMU's scope of activities and relationship to the PJM organizational structure when issues related to this filing were brought before the members. The Joint Consumer Advocates submit that in considering tariff changes necessary to implement the Policy Statement, one consideration must be whether the tariff requirements related to the MMU result in an MMU that is sufficiently independent to "consistently and impartially evaluate the existing ISO/RTO." Policy Statement at P.3.

The independence of the MMU to perform the necessary evaluations of the market takes on an additional level of urgency in light of the current turmoil surrounding state-level default retail generation service auctions and the resulting significant rate increases being experienced by retail customers. In this environment, the independence of the market monitor is essential to ensuring the proper functioning of the markets.

The Joint Consumer Advocates submit that the following principles and tariff language changes should be incorporated into the PJM tariff to fully reflect the needed independence of the MMU.

2. Optimizing Independence and Efficiency for the PJM MMU

The Joint Consumer Advocates suggest that in order to properly ensure the independence needed to objectively evaluate the RTO, the PJM MMU should report directly to the PJM Board of Managers, which may wish to designate a Market Monitoring Subcommittee

for this purpose.³ Additionally, rules setting forth the relationship between PJM and the MMU should be transparent, and fully included in the tariff. Currently, the PJM Market Monitoring Plan in Attachment M, however, may not fully reflect this necessary independence.

The Joint Consumer Advocates submit that the following sections of Attachment M require modification to fully ensure the independence of the MMU and proper authority of the MMU:

- Section V.C. Accountability and Responsibilities: The Joint Consumer Advocates submit that the independence of the MMU will be better assured by clearly stating that the MMU is accountable to the Board, rather than PJM management.⁴ While MMU staff must work closely and collaboratively with PJM management, accountability must be to the PJM Board to ensure independence. To reflect the needed independence, the Joint Consumer Advocates recommend that Section V.C. read as follows:

“C. Accountability and Responsibilities: The Market Monitoring Unit shall be accountable to the PJM Board regarding the implementation of this plan.”

- Section V.D. Resources: The PJM MMU must have adequate resources and staffing to ensure that it can properly perform its monitoring functions. PJM MMU’s resource needs should not be subject to any undue restrictions or conflicts. To avoid any potential conflicts and ensure independence, Section V.D. should be modified to assure that the PJM Board is directly responsible for assuring that the MMU has adequate resources to effectively perform

³ The Joint Consumer Advocates have long maintained that the PJM MMU should be internal to the PJM RTO while being independent from PJM management. An MMU that operates within the PJM organization operates from a perspective that provides important insights and information. An internal, physical location makes it possible for the MMU to routinely interact with PJM’s grid operations, market operations and planning staffs. This enables the MMU staff to directly pose questions to and engage in dialogue with the PJM staff.

⁴ As noted, the PJM Board may wish to designate a subcommittee for this purpose. The subcommittee, however, should not include any representatives of PJM management to ensure independence.

its functions. The Joint Consumer Advocates recommend that the language of Section V.D. read as follows:

“D. Resources: The PJM Board shall ensure that the Market Monitoring Unit has adequate resources, access to required information, and cooperation of PJM for the effective functioning of the Market Monitoring Unit.”

- Section V.A. (Establishment) and B.(Composition): The current language of Attachment M provides that the MMU shall have “appropriate staffing and resources” (in A.), that MMU staff shall be full-time employees of PJM and that the MMU “may retain such consultants and experts as it deems necessary” (in B.). However, V.B. also conditions the MMU staff and retention of consultants and experts as “subject to the oversight of the President and/or the PJM Board.” Consistent with the discussion above, the Joint Consumer Advocates urge the Commission to modify this language to clarify that the PJM Board should have direct authority over such matters. The Joint Consumer Advocates submit that the relevant portions of Sections V.A. and V.B. should read:

“A. . . . The PJM Board shall establish, and provide appropriate staffing and resources to, the Market Monitoring Unit, an organization within PJM that shall be responsible for implementing this Plan.”

“B...the Market Monitoring Unit may retain such consultants and experts as it deems necessary, subject to the oversight of the PJM Board.”

- Proposed Section IV.C.3.: The language of this Section sets forth the MMU’s authority to file reports or complaints with Authorized Government Agencies or make other appropriate regulatory filings to address design flaws, structural problems, compliance, market power, or other issues, and seek remedial measures or make recommendations as the MMU deems appropriate. The introductory phrase, however, suggests that the MMU must have the authority of the PJM Board before it can take such actions. The Joint Consumer Advocates

submit that the MMU ought to be able to respond directly to Authorized Government Agencies and make reports, file complaints or make other regulatory filings that it deems necessary. The MMU should not need to seek permission of the PJM management or the Board to take such actions. Any delay or restriction that might result from having to seek any permission would be inconsistent with the obligations of the MMU and with its independence. The Joint Consumer Advocates submit that Proposed Section IV.C.3. should read as follows:

“C. In addition to notifications and referrals under Sections IV.A and IV.B, respectively, the Market Monitoring Unit may take the following additional actions, to the extent it deems necessary, as a result of its monitoring activities:

3. File reports or complaints with Authorized Government Agencies or make other appropriate regulatory filings to 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.”

With these changes to Attachment M, the Joint Consumer Advocates submit that the independence of the PJM MMU will be better secured. As such, the Joint Consumer Advocates submit that Attachment M should be modified as recommended herein.

3. The PJM MMU Must Have The Authority To Report Directly To The Commission.

Changes in the proposed tariff language were also made that appear to restrict the MMU’s direct access to the Commission. PJM modifies the tariff in a manner that calls for reporting to Commission Staff, not the Commission. PJM acknowledges in its Transmittal Letter that this could have different implications and asserts that it is not trying to interfere with the MMU’s critical ability to communicate with the Commission. The proposed language, however, could have just such a result.

To be independent, the MMU must be able to bring its concerns directly to the Commission as well as the Commission staff, without interference, delay or the need for consent by PJM or its management. The proposed language, however, appears to restrict the MMU's ability to communicate directly to the Commission without the involvement of PJM management by limiting the PJM MMU communications to Commission staff. The Joint Consumer Advocates submit that there is a substantive difference when reporting directly to the Commission.

It is consistent with an objective perspective of market operations and market rules that the MMU be substantially independent from PJM management, and that it be afforded the same access to the Commission as PJM. The MMU must be able to let the Commission know directly, without going through PJM itself, its concerns regarding the markets.

The Joint Consumer Advocates have identified the following sections to which modifications are appropriate in order to ensure that the MMU's critical ability to communicate with the Commission is not impaired. The changes are as follows:

- Proposed Section IV.C.4: The proposed language states if "PJM does not follow the MMU's recommendations by filing requested rule changes . . ." then the MMU will make its views known to the Commission staff and the PJM members.⁵ The Joint Consumer Advocates submit that MMU must also be able to report its views to the Commission, not just to Commission Staff. The Joint Consumer Advocates view this as a substantial reduction in the impact of this report and a substantial restriction on the MMU's independent ability to bring

⁵ It is the Joint Consumer Advocate's understanding that after the proposed tariff changes were concurred in by the PJM Members Committee on January 26, 2006, the language was modified so that the MMU now reports to the Commission staff, rather than directly to the Commission, if PJM does not follow a MMU recommendation to file a rule change.

its concerns to the Commission. The Joint Consumer Advocates submit that the language in Section IV.C.4 should read as follows:

“4. 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, the Commission staff and the PJM Members, either orally or in writing.”

- Proposed Section IV.C.7.: PJM also proposed language that gives the MMU authority to report directly to Commission staff, but does not include the Commission. As in Proposed Section IV.C.4., this language lowers the visibility and importance of information of concern to the MMU.⁶ The Joint Consumer Advocates recommend that proposed Section IV.C.7 read as follows:

“7. Report directly to the Commission and/or the Commission staff on any matter.”

The Joint Consumer Advocates submit that the authority of the PJM MMU to report directly to the Commission as well as Commission Staff must be ensured so that MMU reports are given the same level of importance as PJM communications with the Commission. The changes proposed by PJM restrict the MMU’s access directly to the Commission, which restricts the MMU’s authority. As such, the proposed changes should be modified as recommended herein.

E. CONCLUSION

For the foregoing reasons, the Joint Consumer Advocates oppose PJM’s filing of March 31, 2006. The PJM Market Monitoring Unit provides essential safeguards to the PJM market. PJM has not justified the proposed tariff changes which will reduce the ability of the PJM MMU to perform its oversight responsibilities. While the Commission has increased its own monitoring capabilities, there is no justification to reduce or limit the PJM MMU’s existing

⁶ PJM also modified this language from what was concurred in by the Members Committee on January 26, 2006.

oversight responsibilities. The PJM MMU is located within PJM and has an intimate understanding of the PJM markets which provides the insight necessary to effectively monitor the PJM Markets. The Commission should reject the PJM filing as an unnecessary step at this time. The Commission should, however, adopt the changes outlined in Section D, above, to strengthen and ensure the proper independence of the PJM MMU.

WHEREFORE, Joint Consumer Advocates respectfully request that their Motion to Intervene be granted, that PJM's modifications be rejected, and that modifications to strengthen and ensure the independence of the MMU be approved.

Respectfully submitted,

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DATED: April 24, 2006

CERTIFICATE OF SERVICE

Re: PJM Interconnection, L.L.C.
Docket No. ER06-826-000

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 at Harrisburg, Pennsylvania this 24th day of April, 2006.

Respectfully Submitted,

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