UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	))	Docket Nos. ER06-826-000 and ER06-826-001

SUPPLEMENT TO PROTEST
OF JOINT PROTESTERS
AND JOINT CONSUMER ADVOCATES

Pursuant to the Commission's Notice issued in the above-referenced proceedings on May 3, 2006, Old Dominion Electric Cooperative ("Old Dominion"), the Borough of Chambersburg, Pennsylvania ("Chambersburg"), Delaware Municipal Electric Corporation ("DEMEC"), ElectriCities of North Carolina, Inc. ("ElectriCities"), collectively ("Joint Protesters") and Pennsylvania Office of Consumer Advocate ("Pa. OCA"), the Maryland Office of People's Counsel ("MPC"), the Office of the Ohio Consumers' Counsel ("OCC"), the D.C. Office Of People's Counsel ("D.C. OPC"), and the Illinois Citizens Utility Board ("IL CUB") (collectively referred to as "Joint Consumer Advocates") together file this Supplement to the Protests filed in these proceedings on April 24, 2006 ("Protests").[1] Joint Protesters maintain their position and requests as stated in the Protests, and provide this supplement to address limited issues in light of the Commission's recent conference on the role of Market Monitors.

As discussed herein, Joint Protesters urge the Commission to grant their request that PJM Interconnection, L.L.C. ("PJM") be directed to engage in a comprehensive

[1] The Joint Protesters and Joint Consumer Advocates each filed a *Motion to Intervene and Protest* in this proceeding on April 24, 2006. Therefore, neither the Joint Protesters nor the Joint Consumer Advocates are seeking leave to intervene here.

stakeholder review of its Market Monitoring Unit's ("MMU") role and submit to the Commission a complete tariff filing that provides the PJM MMU with the authority and independence that are essential to permit the MMU to meet the fundamentally important goals established by the Commission. In the alternative, in light of Market Monitor presentations at the conference concerning the role of Market Monitors in ISOs and RTOs ("Conference"), Joint Protesters and Joint Consumer Advocates reiterate that the Commission should direct PJM to revise its Market Monitoring Plan to ensure that the MMU has sufficient authority and independence to meet those goals.[2] Further, Joint Protesters urge the Commission to consider PJM's filing in this docket in the context of its review of the role of MMUs in ISOs and RTOs in Docket No. AD06-7-000.

In support of this filing, Joint Protesters and the Joint Consumer Advocates state as follows:

I. RELEVANT BACKGROUND

On March 31, 2006, PJM filed proposed revisions to its Plan, Attachment M to the PJM Open Access Transmission Tariff ("OATT"). While PJM explained its filing as making changes to the OATT to bring it into compliance with the Commission's Policy Statement and accommodating certain "housekeeping" matters, the filing went well beyond what was called for in the Policy Statement. On April 24, 2006, Joint Protesters filed a motion to intervene and protest in which they requested that the Commission defer consideration of PJM's proposal pending the outcome of the Commission's review of the MMU in Docket No. AD06-7-000, direct PJM to engage in a stakeholder process to consider comprehensive review and revisions to Attachment M, or, in the alternative, direct PJM to make specific revisions to its OATT to provide the MMU with the level of

[2] *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267 (2005)("Policy Statement")

authority and independence needed by the MMU to ensure the integrity of PJM's markets. The Joint Protesters and Joint Consumer Advocates included with their filing suggestions for revisions to the PJM OATT to provide the MMU with the requisite level of authority and independence.

Several parties filed requests for extension of the comment date for PJM's March 31 filing. On April 26, 2006, PJM filed revised tariff sheets to accommodate a 45-day extension of the comment period. On May 3, 2006, the Commission issued (1) a Notice of PJM's April 26 filing and (2) an Order granting the request for an extension of time. In the Order, the Commission stated that parties that had already filed pleadings in these proceeding can supplement their previous filings. The instant filing is such a supplement.

II. SUPPLEMENT TO PROTEST

A. The Commission Should Direct PJM to Adopt Tariff Provisions Akin to the MISO Statement of Independence

Because the PJM MMU is neither functionally nor physically separate from the RTO, there must be special assurances that the MMU can appropriately perform its role in monitoring markets. In their Protest, the Joint Protesters urged the Commission to ensure that the PJM MMU is independent from undue influence by the PJM Board, management and or market participants in performing its assigned functions. The Joint Protesters also requested that the Commission direct PJM to make a clear statement in its Plan clarifying that the MMU will have complete independence in performing its core market monitoring function, with a responsibility to ultimately report to the Board so that the Board can make decisions whether to propose changes in the PJM OATT, Operating Agreement or rules consistent with the recommendations of the MMU. In support of this

request, Joint Protesters noted that such a statement of independence is not novel, and quoted as an example the independence provision for the MISO MMU. Protest at 13 n. 6. Specifically, the MISO OATT provides as follows:

> **50.2** The Independent Market Monitor [IMM] shall be granted complete independence to perform those activities necessary to provide impartial and effective market monitoring within the scope of the Plan. No person, party or agent, including the Transmission Provider, State Regulatory Commission, or any other administrative oversight group responsible for the administration of the IMM activities, shall be granted authority to screen, alter, delete or delay IMM investigations or the preparation of findings, conclusions, and recommendations developed by the IMM that fall within the scope of market monitoring responsibilities contained in the Plan.

MISO OATT, Module D. During the May 18 Conference, Commissioner Kelly asked the Market Monitors for their views on whether the Commission should mandate an MMU that is internal to the ISO or RTO, an external market monitor, or some mixture of the two. Dr. Joseph Bowring, the head of PJM's internal Market Monitoring Unit, responded that he believes that a sort of hybrid where an internal MMU has the institutional guarantees of independence through clear, transparent rules that are approved by the Commission, similar to those of the MISO IMM, "is a very attractive model."[3]

For the reasons stated in the Protest submitted on March 31 by the Joint Protesters, we again urge the Commission to direct PJM to adopt a statement of independence similar to, or the same as, the MISO statement. The Joint Protesters realize that some oversight by the PJM Board, such as over the budget and in making decisions whether to implement changes recommended by the MMU, might still be necessary and

[3] Transcript of the May 18 conference on the Role of RTO/ISO Market Monitors, at 59. Dr. Bowring stated that "the institutional guarantees of David's [the MISO IMM] independence . . . are actually a very useful model" and that he "think[s] a hybrid model which incorporated those kinds of guarantees of independence with benefits remaining internal is a very attractive model." Tr. at 58:5-8, 59:15-18.

we address that necessity in Section B, below. However, as with the MISO, the MMU should be able to conduct its core market monitoring functions without influence by, or subject to the approval of, the PJM Board, management, or market participants. Moreover, given that the PJM Market Monitor also has endorsed the MISO independence statement as an example of the necessary level of MMU independence, it would be unreasonable for the Commission not to require PJM to adopt such a statement.

B. The Market Monitoring Unit Should Report Directly to the PJM Board

As Joint Protesters and Joint Consumer Advocates explained in their Protests, the Commission must ensure that the MMU is independent and free from impairment or influence. To achieve these goals, the MMU must report directly to the Board and not to PJM management. This is a key aspect of "independence." Joint Protesters Protest at 13-15; Joint Consumer Advocates Protest at 10-11. Additionally, the Board, not the PJM President, should have the authority to approve the budget and objectives of the MMU.

During the Conference, several of the Market Monitors agreed that independence from RTO/ISO management is essential to the effectiveness of any market monitoring body. For his part, the head of PJM's MMU said that the views and opinions of the market monitor should be transparent to all affected parties, so that "neither the members nor the RTO can limit the ability of the market monitoring unit to perform the mandated functions by requiring or changing [the MMU's] recommendations."[4]

[4] Tr. at 59:13-16.

While the Commission evaluates how to support the MMU in fulfilling its mandate, there are several other corporate functions that have developed procedures for insuring independence, objectivity and minimizing management influence on parties and outcomes. For example, Internal Auditors are charged with evaluating the material reporting and operations of corporations. The Institute of Internal Auditors ("IIA"), through its professional standards (Attribute Standard 1110) and practices, the IIA provides for the internal audit group to report (functionally) to the Board Audit Committee (IIA, 2002d):

> The *functional reporting* line for the internal audit function <u>is the ultimate source of its independence and authority.</u> As such, the IIA recommends that the CAE [Chief Audit Executive] report functionally to the audit committee, board of directors, or other appropriate governing authority. (Emphasis Supplied).

The American Institute of Certified Public Accountants ("AICPA") as well as the Securities and Exchange Commission ("SEC") both recognized that the desired "independence" is impaired by certain situations of "influence" including when the evaluator – here the MMU – reports to management:

Individuals who are in a position to influence (here the MMU) are those who:

- Evaluate performance or recommend compensation of engagement partner [MMU];
- Directly supervise engagement partner [MMU] and all successively senior levels through the firm's chief executive; Consult with the engagement team [MMU] during the engagement on technical or industry specific issues, transactions or events;
- Provide quality control or other oversight of the engagement [MMU],including internal monitoring.

The SEC rule is similar. Influence occurs through the **Chain of Command**; or persons who:

- Supervise or have direct management responsibility for the audit [MMU], including at all successively senior levels through the firm's chief executive;

- Evaluate performance or recommend compensation of the audit engagement partner [MMU]; or
- Provide quality control or other oversight of the audit [MMU].

SEC, AICPA Rules 101.

As filed, the proposed revisions to the PJM Tariff fail to provide the appropriate assurance of independence and absence of influence of PJM management on the MMU function. This can only be accomplished with the MMU reporting directly to the Board, who will have sole responsibility for the hiring, firing, and operations (including budgeting) of the MMU. Failure to implement these provisions requires that the PJM MMU be functionally separate from PJM.

Clearly, a requirement that the MMU report directly to the RTO's senior management official creates, at a minimum, an appearance that PJM management is able to influence the activities of the MMU and even could prevent the MMU from performing its "mandated functions" as set forth in the Policy Statement. Therefore, Joint Protesters repeat their request that the Commission direct PJM to revise Attachment M to its OATT to provide the MMU with complete independence from PJM management, as well as full authority in those areas that are essential to ensuring the integrity of PJM's markets.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, Joint Protesters request that the Commission: (1) grant their pending motions to intervene; (2) defer consideration of PJM's proposal pending the outcome of Docket No. AD06-7-000; (3) direct PJM to make the tariff changes requested herein, and in the Protests filed April 24, 2006 (through establishment of a Section 206 proceeding, if necessary); and (4) grant such other relief as the Commission deems appropriate.

Respectfully submitted,

/s/ *filed electronically*
Glen L. Ortman
Adrienne E. Clair
Stinson Morrison Hecker LLP
1150 18th Street NW, Suite 800
Washington, D.C. 20036
(202) 785-9100
E-mail: aclair@stinsonmoheck.com

Counsel to Old Dominion Electric Cooperative

/s/ *filed electronically*
John Michael Adragna
Phyllis G. Kimmel
Miller, Balis & O'Neil, P.C.
1140 Nineteenth Street, N.W.
Suite 700
Washington, D.C. 20036
(202) 296-2960 (voice)
(202) 296-0166 (fax)
E-mail: jadragna@mbolaw.com
pkimmel@mbolaw.com

Attorneys for the Borough of Chambersburg, Pennsylvania

/s/ *filed electronically*
Gary J. Newell, Esq.*
Thompson Coburn LLP
1909 K Street, N.W.
Washington, DC 20006
Telephone: 202-585-6900
E-mail: gnewell@thompsoncoburn.com

Counsel to ElectriCities of North Carolina, Inc.

/s/ *filed electronically*
Thomas L. Rudebusch
DUNCAN, WEINBERG, GENZER & PEMBROKE, P.C.
1615 M Street, N.W., Suite 800
Washington, D.C. 20036
E-mail: tlr@dwgp.com

Counsel for the Delaware Municipal Electric Corporation, Inc.

/s/ *filed electronically*
Aron J. Beatty
Assistant Consumer Advocate
Tanya McCloskey
Senior Assistant Consumer Advocate
Counsel for:
Irwin A. Popowsky, Consumer Advocate
Pennsylvania Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152

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

/s/ filed electronically
Sandra Mattavous-Frye
Deputy People's Counsel
Lopa Parikh
Assistant People's Counsel
D.C. Office of the People's Counsel
1133 15th St., N.W.
Suite 500
Washington, D.C. 20005
(202) 727-3071
(202) 727-1014 (facsimile)
E-mail: smfrye@opc-dc.gov
lparikh@opc-dc.gov

/s/ filed electronically
Robert J. Kelter
Director of Litigation
Citizens Utility Board
208 S. LaSalle, Suite 1760
Chicago, IL 60604
(312) 263-4282
(312) 263-4329 fax
robertkelter@citizensutilityboard.org

/s/ filed electronically
Jacqueline Lake Roberts
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
(614) 466-4207
(614) 466-9475 (facsimile)
E-mail: roberts@occ.state.oh.us

/s/ filed electronically
Robert G. Mork
Deputy C.C. for Federal Affairs
Indiana Attorney No. 19146-49
INDIANA OFFICE OF UTILITY
CONSUMER COUNSELOR
Indiana Government Center North
100 North Senate Avenue, Room N501
Indianapolis, Indiana 46204-2215
phone: (317) 232-2494
facsimile: (317) 232-5923
rmork@oucc.IN.gov

Dated: June 8, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2006, I have caused a copy of the foregoing to be served upon those parties designated on the Official Service List in this proceeding, compiled by the Secretary of the Federal Energy Regulatory Commission.

_/S – filed electronically/____
Adrienne E. Clair