

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Organization of PJM States, Inc.;)	
Delaware Public Service Commission;)	
District of Columbia Public Service)	
Commission; Indiana Utility Regulatory)	
Commission; Kentucky Public Service)	
Commission; Maryland Public Service)	
Commission, New Jersey Board of)	
Public Utilities; North Carolina Utilities)	
Commission; Public Utilities Commission)	
of Ohio; Pennsylvania Public Utility)	
Commission; and the Virginia State)	Docket Nos. EL07-56-000
Corporation Commission)	EL07-58-000

Complainants,

v.

PJM Interconnection, L.L.C.,

Respondent.

**COMMENTS OF THE ELECTRICITY CONSUMERS RESOURCE COUNCIL
ON SETTLEMENT OFFER OF PJM INTERCONNECTION, L.L.C.**

The Electricity Consumers Resource Council (“ELCON”), an intervenor in this proceeding, submits the following comments on the Settlement Offer that PJM Interconnection L.L.C. (“PJM”) filed with the Federal Energy Regulatory Commission (“FERC” or “the Commission”) on August 2, 2007 in consolidated dockets EL07-56 and EL07-58.

I. PROCEDURAL BACKGROUND

The Complaints filed in these dockets by two groups, the Organization of PJM States (“OPSI”) and several electric cooperatives, arise out of very troublesome charges by Joseph

Bowring that PJM has been undermining the independence of its market monitoring unit (“MMU”). Bowring has charged that PJM has deprived the MMU of adequate resources, lured away its employees, exercised editorial control over MMU reports and interfered with MMU data systems. The complaints request that FERC issue a declaration that PJM has violated its tariff and that PJM should be required to return MMU staffing and resources to the *status quo ante*.

ELCON, the PJM Industrial Consumers Coalition and numerous others filed interventions urging that FERC investigate these serious charges. FERC granted fast-track processing and submitted detailed data demands both to PJM and Bowring requiring that each provide information to enable the Commission to investigate the accusations. Allegheny Elec. Coop. v. PJM, 119 FERC ¶ 61,165 (May 18, 2007). PJM hired outside counsel to conduct an “independent investigation” of these charges. FERC noted in its May 18 decision that the Commission’s investigation would proceed notwithstanding PJM’s own internal investigation, but that the report of PJM’s investigation would be entered in the public docket.

Both Bowring and PJM filed responses to FERC’s data demands in June 2007. Bowring’s counsel subsequently filed comments noting that the documents do not so much indicate disagreement as to what factually occurred as they reflect PJM’s refusal to recognize the independence of the market monitor.

In a related development, FERC issued an ANOPR addressing “Wholesale Competition in Regions with Organized Markets,” 119 FERC ¶ 61,306 (June 22, 2007) (Docket RM07-19, AD07-7). The ANOPR has as one of its principal topics solicitation of comments on the optimal structure of MMUs and how to assure their independence.

II. PJM'S SETTLEMENT OFFER

PJM's August 2 Settlement Offer provides for establishment of an external MMU, modeled in large part on the MISO structure. PJM maintains that an external MMU will eliminate complaints that PJM management could interfere with the MMU. PJM proposes that Bowring be retained as MMU and that the PJM Board would not be able to replace him without FERC approval. The MMU will have control over its own data systems. The MMU will give PJM 10 days notice before it files a report with FERC but, while PJM can comment on the proposed report, PJM would not be able to screen, alter or delay the MMU's findings. In addition, the MMU would establish a Market Monitoring Advisory Panel to review the annual state of the market report. The Advisory Panel will consist of a PJM employee, an OPSI economist and an independent economist selected by the Panel members. The MMU would have its own budget and if it believed it was under funded by PJM, the MMU could bring its concerns to the Commission. Procedures would also be adopted to prevent PJM from raiding MMU employees. PJM then provides a side-by-side chart designed to show that the proposal would address each and every concern about MMU independence raised in the complaints.

III. SUMMARY OF COMMENTS

ELCON has several concerns with the Settlement Offer:

--PJM's Settlement Offer purports to resolve the proceeding and to obviate the need for further FERC proceedings. Given the nature of the charges and the need for the Commission to send a message to RTO's about the independence and integrity of MMUs, it is critical that the Commission issue a final decision evaluating the RTO's conduct vis-à-vis the MMU. The Settlement Offer should not enable PJM to hide its conduct behind a curtain; transparency is important to the credibility of the RTO structure and the organized markets.

--For similar reasons, PJM should be required to file the report of the “independent investigation” that it commissioned to examine Bowring’s charges. PJM should not be allowed to short-circuit the investigation or to suppress the conclusions that its outside counsel would otherwise file on the public record.

--PJM should not be allowed to avoid the requirements that FERC may impose by rule on all RTOs with respect to MMU independence in the ANOPR. Whatever structural changes and safeguards the Commission adopts at the close of this proceeding with respect to RTOs generally should apply *a fortiori* to PJM in light of evidence that the RTO has stripped the MMU of needed resources and attempted to undermine its independence.

--With respect to the specifics of PJM’s settlement proposal, it appears that the “two tier” proposal advanced by PJM falls far short of the more muscular MMU structure adopted by California ISO. Under the CAISO approach, much greater authority is given to an external three-person advisory panel.

--From a procedural perspective, this proceeding illustrates the importance of a liberal intervention policy. The outcome here will have nationwide implications for RTO-MMU relationships. The structure that other RTOs and ISOs have adopted with respect to MMUs (notably CAISO) provide a useful model to test the adequacy of PJM’s Settlement Offer.

IV. SPECIFIC COMMENTS

A. PJM’s Settlement Offer Should Not Be Allowed To Short Circuit The FERC Review Process.

The charges that were made against PJM with respect to the MMU are very serious, e.g.: PJM insisted that Dr. Bowring remove key conclusions from the 2005 State of the Markets Report; barred the MMU from presenting its views on various reports on Regulation Markets; prevented the MMU from analyzing the BGS auction for the New Jersey BPU; pressured the

MMU to modify its positions on implementation of RPM market power mitigation rules; and reduced the MMU staff.

In a typical rate case, the dispute is about dollars and it is logical that settlement would terminate the proceeding. In contrast, in this proceeding, the independence of the MMU, perceptions of the integrity of the RTO process, and confidence in the PJM markets are at stake. It is important that stakeholders and the public have the benefit of the Commission's fact findings concerning the events that occurred and legal conclusions concerning the RTO's actions vis-à-vis the MMU.

FERC decisions typically note the deterrence aspect of FERC's findings when complaints are filed. From a deterrence perspective, it is important that the Commission send a message that it will strictly police RTO actions with respect to independence of the RTO.

B. What Happened To The Independent Investigative Report?

PJM's immediate reaction to the complaints filed in the consolidated docket was to ask FERC to defer to PJM's own "independent investigation." ELCON's comments pointed out the need for vigilant Commission oversight because the accusations made by Bowring went to the core of the RTO-MMU relationship. FERC's May 2007 decision stated that while the Commission would not abdicate its review role, PJM could file in the record of the proceeding the conclusions of the "independent investigation."

It is difficult not to be perplexed and skeptical about a Settlement Offer, which would deprive stakeholders and the public of the benefit of the findings of the outside counsel whom PJM hired for this investigation. This report should be completed, provided for the record and reflected in the Commission's decision in this matter. In a proceeding where the Market Monitor has charged that PJM attempted to undermine the Monitor's independence by altering

conclusions of a report, it is quite troubling that PJM via the Settlement Offer proposes to evade scrutiny of the findings of the investigation.

C. ELCON's Comments On Specific Elements Of The PJM Settlement Proposal.

ELCON advocates a two-tier CAISO structure rather than the MISO structure. The virtue of the two-tier MMU structure is that it combines an internal MMU close to the data/operational staff plus a three-member panel of outside advisors. The PJM settlement offer proposes an external market monitor and proposes to add a three-person advisory committee with members of mixed allegiances.

ELCON's specific concerns with the PJM MMU Proposal include:

--The MMU will interface on a day-to-day basis with a Market Monitoring Liaison (PJM employee) identified by PJM. The MMU must obtain any data and information it needs through this Liaison. There is a potential for mischief if the PJM employee restricts the data and information from the MMU.

-- PJM's proposed Market Monitoring Advisory Panel is made up of three people -- one of whom is an employee of PJM. This gives PJM far too much oversight. While the settlement says that this proposal is "similar to an advisory panel used by the California ISO...", PJM's proposal actually is significantly different. There are no CAISO employees on its advisory panel. All three individuals on the CAISO advisory panel are part-time, independent market experts.

--The MMU should report directly to the Board and be assured of retaining current personnel and budgeting.

-- Other problems include lack of participation in lower committees and working groups which effectively cuts off access by MMU to PJM staff and members, and no role in tariff administration when the market monitor is supposed to enforce the rules.

D. PJM Should Not Be Allowed To End Run The Conclusion Of The ANOPR With Respect To The Appropriate MMU Organization And Requirements.

It would indeed be an ironic result if the RTO with the most serious concerns about MMU independence were allowed to escape the protocol and requirements that FERC establishes in the generic rulemaking docket, RM07-19. A logical approach would be to impose interim independence requirements, with the additional requirement that PJM make a compliance filing when a final rule is adopted to conform the interim conditions to the MMU standards imposed on other RTOs.

Just as FERC has imposed periodic reporting requirements on other RTO initiatives (e.g., demand curve), it may be appropriate to have periodic reporting and review of the PJM RTO-MMU relationship.

E. This Docket Represents Another Example Of The Need For Liberal Interventions In FERC Proceedings.

As it happens ELCON intervened from the outset of this proceeding; however, we would observe, as a general comment on FERC procedures, that the instant docket illustrates the need for a liberal intervention policy. This docket has evolved into a precedent-setting proceeding on the nationwide policy issue of RTO-MMU relationships.

Recently ELCON and several other associations wrote the Commission to protest a statement in a recent FERC decision that appears to represent a wrong turn in the Commission's previously liberal policy on interventions. The statement, made in the context of July 18, 2007 decision in American Electric Power Services Corp. et al., Docket QM 07-4-000, 120 FERC ¶ 61,052 singled out membership organizations and associations, suggesting that their

interventions will not be permitted if they focus on precedent-setting arguments. ELCON and other signatories protested this statement because it appeared to discriminate against membership organizations and attempt to restrict the scope of their comments.

ELCON believes that the Commission's frequent utilization of the adjudicatory vehicle to announce and implement new policy requires that the Commission grant broad intervention rights. FERC may make policy in a proceeding that is relatively "obscure" or has limited geographic scope that will become an important precedent. Without the intervention of national membership organizations FERC could inadvertently issue a sweeping decision apparently logical on the facts of a specific case without being advised that the issue is under consideration in other regions where markets or reliability or local regulations require a different solution.

The instant docket is a good example why there is need for liberal intervention policy. In a docket involving charges that PJM has compromised the independence of its MMU and deprived it of needed resources, membership organizations and other stakeholders whose primary operations are in California likely will not intervene. As the proceeding has evolved, however, it turns out that the docket will be a test case for the future structure of the market monitor and the ground rules on how to assure RTO-MMU independence. At this stage of the proceeding, comments from membership organizations and other stakeholders familiar with CAISO are of direct relevance.

The comments of membership organizations on the broader the implications of FERC policies will help the Commission to improve its regulation and encourage stakeholder participation. Apart from the value of specific comments, an open and encouraging comment process should improve the quality of Commission decision-making as well as improve stakeholder acceptance of FERC decisions.

V. **NOTICES AND COMMUNICATIONS**

Notices and communications with regard to these proceedings should be addressed to:

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Respectfully submitted,

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Dated: August 22, 2007

Certificate of Service

I hereby certify that I have this day served the foregoing documents upon each person designated on the official service list compiled by the Secretary of this proceeding.

Dated at Washington, D.C.: August 22, 2007

/s/ Sara D. Schotland
Sara D. Schotland