

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

**PJM Interconnection, L.L.C.  
(Compliance Filing)**

**Docket No. ER09-1063-000, et al.**

**MOTION TO INTERVENE AND COMMENTS OF  
THE PJM POWER PROVIDERS GROUP**

Pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission's ("FERC or Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214, the PJM Power Providers Group ("P3")<sup>1</sup> respectfully files this motion to intervene and comments in the above-captioned proceeding. These comments supplement those previously submitted by P3 in both the Advance Notice of Proposed Rulemaking ("ANOPR") and Notice of Proposed Rulemaking ("NOPR") issued by the Commission on June 22, 2007 and February 22, 2008, respectively, in Docket Nos. RM07-19-000 and AD07-7-000, which preceded Order No. 719.<sup>2</sup>

P3's comments are in response to both PJM Interconnection L.L.C.'s April 29, 2009, and as amended on May 1, 2009, Compliance Filing ("PJM Compliance Filing") and the Protest and Compliance Proposal of the Independent Market Monitor for PJM

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<sup>1</sup> P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM region. The views expressed in this testimony do not necessarily reflect the views of individual P3 members. For more information on P3, visit [www.p3powergroup.com](http://www.p3powergroup.com)

<sup>2</sup> *Order No. 719: Wholesale Competition in Regions with Organized Electric Markets*, 18 CFR Part 35, 125 FERC ¶ 61,071, Docket Nos. RM07-19-000 and AD07-7-000 (October 17, 2008).

(“IMM Proposal”). The PJM Compliance Filing addressed the four areas for possible reforms identified by Order 719 – demand response and price formation, long-term contracts, market monitoring policies, and RTO responsiveness. The IMM’s Proposal addresses only one area – market monitoring. P3’s comments focus on scarcity pricing, RTO governance, and market monitoring.

## **I. MOTION TO INTERVENE**

### **A. Communications**

All service and correspondence with respect to this proceeding should be sent to the following P3 representative:

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### **B. Description of Movant**

P3 is a nonprofit Delaware Corporation with a mission to promote policies at the federal and state level that will allow the PJM region to fulfill the promise of its competitive wholesale electricity markets. P3 strongly believes that properly designed and well-functioning competitive markets are the most effective means of ensuring a reliable supply of power to the PJM region, facilitating investments in alternate energy and demand response technology, and promoting prices that will allow consumers to enjoy the benefits of competitive electricity markets. P3 membership is comprised of energy providers that are members of PJM, conduct business in the PJM control area, and are signatories to various PJM agreements. Combined, P3 members own over 70,000

megawatts of power and over 56,000 miles of transmission lines in the PJM region, serve nearly 14 million customers and employ over 60,000 people in the PJM region, representing 13 states and the District of Columbia.

### **C. Basis for Intervention**

As noted above, P3 has been an active participant in this proceeding since its inception. Furthermore, individual P3 member companies have extensively participated in PJM's Task Force 719 meetings, held between December, 2008 and April, 2009. Given that P3 as an organization is dedicated to ensuring properly constructed wholesale energy markets, P3 has a vital stake in the outcome of these proceedings. Consequently, P3 is an interested party within the meaning of §308(a) of the Federal Power Act (16 U.S.C. ¶825g), and its intervention and participation will be in the public interest.

## **II. COMMENTS**

### **A. P3 supports PJM's request for a limited extension of its stakeholder process to create a Formal Scarcity Pricing Proposal. P3 continues to believe that the most meaningful integration of demand response resources will occur given accurate and transparent price signals, using an agreed-upon operating reserve demand curve.**

P3 has commented extensively in this proceeding on the virtues of price responsive demand and scarcity pricing. Well-functioning wholesale markets require a mature demand side that responds rationally to price signals: reducing consumption when prices are high and increasing consumption when prices are low. For economic and reliability reasons, demand response must be a meaningful component of the PJM markets.

Effective demand response requires a market structure that produces prices that reflect scarcity of physical supply in the relevant market. Prices that inform the consumer that supply is running out send a critically important message to those consumers to reduce consumption. Moreover, these price signals send the right short-term signal to generators to respond to the immediate needs of the system while supporting the long-term decision necessary to keep critical units on line and available.

PJM has indicated a preference for an administratively determined, co-optimized energy and reserves pricing mechanism for periods of supply scarcity. Overall, P3 supports PJM's preferred approach and asks that the stakeholder process focus specifically on establishing an operating reserve demand curve for the PJM Region. Increasing prices during times of shortage based on a demand curve that has been agreed to in advance will allow for a smooth and predictable means of responding to these shortages.

P3's members have actively participated in the PJM stakeholder process regarding scarcity pricing. P3 agrees with PJM that a disciplined stakeholder process is necessary to insure that appropriate changes are made in time for implementation in the summer of 2010. To that end, P3 conditionally endorses the timeline for development of a reformed scarcity pricing mechanism, based on an operating reserves demand curve concept that PJM published to the PJM Scarcity Pricing Working Group.<sup>3</sup> The proffered timeline imposes sufficient discipline on the stakeholder process to assure that PJM and stakeholders develop the market rules and structure in time for PJM to file and implement

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<sup>3</sup> *Work Plan for the Scarcity Pricing Working Group* (May 21, 2009), (<http://www.pjm.com/committees-and-groups/working-groups/~media/committees-groups/working-groups/spwg/20090521/20090521-item-02-work-lan.ashx>)

them, after Commission consideration. P3 suggests one modification to the timeline. PJM proposes to file tariff modifications in December 2009; P3 suggests that a more specific deadline – December 1, 2009 – is required. Accordingly, P3 requests that the Commission order PJM to maintain the proposed timeline for developing the scarcity pricing mechanism based on an operating reserves demand curve concept and that tariff revisions resulting from the development process be submitted to the Commission no later than December 1, 2009.

In order for FERC to have confidence that the stakeholder process is advancing toward a December 1 tariff filing, P3 suggests that PJM provide an informational filing to the Commission by September 1, 2009 identifying the type of Operating Reserve Demand Curve (“ORDC”) proposed for pricing energy rents during periods of supply scarcity. The proposed informational filing should describe the progress in developing the scarcity pricing mechanism, should affirm that PJM will meet the December 1, 2009 filing deadline, and should identify any impediment to meeting the deadline.

As part of the September 1 filing, if not sooner, PJM should post and provide the Commission with a definition of “Operating Reserves” that will serve as the basis for its preferred approach. PJM needs to define what constitutes *operating reserves* and, by extension, an *operating reserve shortage*. These definitions should clearly identify what resources are eligible to be counted as reserves (e.g., all resources available within 10 or 30 minutes), as well as what resources should not be counted (e.g., neither capacity designated for Maximum Emergency events nor an assumption of 100% unit availability when PJM Operations has assumed a lesser amount).<sup>4</sup> Similar to energy and capacity,

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<sup>4</sup> PJM Manual 13 permits PJM to adjust unit availability if recent unit performance has shown a significant increase in unit unavailability. Similarly, PJM publishes an Operational Summary Data report daily and

these parameters should be defined in the tariff and these tariff terms must be objectively administered, transparent and non-discretionary. While P3 recognizes that it is appropriate for PJM and its stakeholders to consider all viable proposals for pricing energy and reserves during periods of scarcity, administrative efficiency demands that PJM promptly select the type of ORDC proposal that will be best for the market and focus stakeholder efforts on developing that mechanism. It would be a waste of resources for PJM and the stakeholder to divide their time and effort on developing parallel proposals for filing, and the Commission would be presented with inferior, less developed proposals. Therefore, P3 urges the Commission to encourage PJM to quickly settle on a single type of ORDC proposal to develop in the stakeholder process. After careful consideration of many alternatives, P3 is convinced that an operating reserve demand curve as described above is the preferred approach and looks forward to a properly focused stakeholder process, as proposed by PJM, which addresses the critically important details.

**B. P3 supports the Commission’s goal of establishing and reinforcing RTO and ISO responsiveness to stakeholder concerns. But in order to adequately ensure the integrity of the voting process and to be responsive to members, PJM must more equitably reflect the legal rights and responsibilities of participating stakeholders.**

P3 continues to support the goals of this Commission to further enhance stakeholder input to and processes within an RTO or ISO. Specifically, P3 has stated in prior filings on this issue that it supports the Commission’s determinations that the

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capacity adjustments are routinely made to account for decreased unit availability.

decision-making process for an RTO or ISO should be inclusive, fair in balancing divergent interests while respectful of member market equity issues, reflect due consideration of minority views, and be responsive to stakeholders. In particular, P3 appreciates the Commission's refusal to accept a "one-size fits all" solution for various governance issues. P3 agrees with the Commission that each RTO or ISO is unique in many ways, including their individual processes aimed at providing meaningful input and involvement of its unique stakeholder groups.

P3 members are actively involved in various stakeholder groups within PJM, and commend PJM for instituting many of the governance changes that the Commission has ordered. Since the issuance of the NOPR in this proceeding, PJM has worked diligently with its stakeholders to institute several timely working groups and to make important changes to its Tariff. Among others, P3 members participated with PJM in its implementation of the new "PJM Strawman Proposal for Addressing Compliance Filings." This new protocol allows stakeholders to participate in certain Commission compliance directives much earlier in the process and in a more meaningful manner.

P3 knows, understands and appreciates that a well-structured stakeholder process will ultimately reflect the views of its members and accurately communicate those views to the Board. Unfortunately, P3 does not believe such a process exists in PJM and is not in complete agreement with PJM's conclusion that "*PJM's Stakeholder Process Satisfies the Four Responsiveness Criteria.*" Most of the current stakeholder concern within PJM regarding responsiveness revolves around governance structure, with a particular focus on examining the voting process within the various sectors to determine if it is fairly

instituted and whether that process is sufficiently responsive to the needs of its members and instructive to Board members.

PJM correctly notes that PJM’s Task Force 719 did agree on certain proposals regarding the voting methodology for certain committees and working groups. These proposals are currently pending before the PJM Members Committee. But as explained by PJM at pages 53-55 of PJM’s Compliance Filing, a number of members have significant concerns over the broader “sector-weighted voting” process in the Members Committee. In PJM’s Task Force 719, these concerns were **not** addressed directly. Instead, the PJM members agreed to assign these issues to a new group, the Governance Assessment Special Team (“GAST”). P3 supports the GAST effort and is hopeful that it will lead to the reforms that will result in changes to governance that fairly reflect the interests of PJM members – particularly those transmission and generation owners who have invested billions of dollars in the system.

At its current stage, the GAST is charged with retaining a consultant to conduct a governance assessment and bringing that assessment and an action plan back to the PJM members for review. So far, the process is progressing well. But unless the members authorize GAST to continue the process, it will end in September when the governance assessment comes back to PJM. By such decision, PJM members could end this important PJM governance reform effort before the transmission and generation owners in PJM will have an opportunity to have their concerns addressed.

As this Commission has clearly indicated, a fair and balanced governance structure that informs an independent board is a fundamental necessity of any successful organization. As a means of ensuring that the “decision-making process for an RTO or

ISO is inclusive,” voting mechanisms must be structurally designed and implemented to not only be inclusive, but to also provide that no one member or sector encompasses a disproportionate share of its membership, as reflected through the weight of its vote.

P3 members, representing the transmission and generation sectors, do not believe that the current voting structure at the Members Committee level is fair, balanced or accurately reflects the views of the overall PJM membership, as some sectors have a disproportionate share of the weight of the vote. Because the Members Committee is the highest level stakeholder committee within PJM, and is the one that most fundamentally impacts the policy direction and structure of the RTO itself, generation and transmission asset owners, including many P3 members, have grown increasingly concerned that their vote is not properly weighted or structured. In addition, various allocation methods in PJM exacerbate this weighted voting problem. For instance, the PJM default allocation has asset owners, such as the generation and transmission owners, paying a grossly disproportionate share of defaults when compared to their modest voting interests.

One needs only to examine the data gathered by PJM Staff to see the disproportionate nature of PJM cost allocations compared to voting strength. The chart below shows, as of June 2006 (the last time PJM staff produced such information), the voting strength under sector-weighted voting (Column 1), the allocation to the sectors under the PJM Weighted Interest Calculation (WIC) methodology, and the PJM Default Allocation Analysis (DAA) methodology<sup>5</sup>

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<sup>5</sup> Source: PJM Interconnection Data Response, PJM Governance Working Group, July 7, 2006.

**Table 1 – Summary of Weighted Sector Voting vs. WIC and DAA in PJM**

	<b>Current Sector-Weighted Voting Protocol</b>	<b>Weighted Interest Calculation</b>	<b>Default Allocation Analysis</b>
<b>End Use Customers</b>	20.0%	1.0%	1.1%
<b>Other Suppliers</b>	20.0%	9.4%	16.4%
<b>Transmission Owners</b>	20.0%	76.3%	59.0%
<b>Generation Owners</b>	20.0%	8.6%	17.8%
<b>Electric Distributors</b>	20.0%	4.8%	5.7%

This data shows that transmission and generation owners have only 40.0% of the relative voting strength in the current sector-weighted voting protocol. But those same transmission and generation owners bear 84.9% of the costs allocated under the PJM WIC and 76.8% of the costs allocated under the PJM DAA. These amounts borne by transmission and generation owners are paid by their customers and shareowners and are grossly disproportionate to their relative voting strength in PJM.

This Commission understands that it is the generation and transmission asset owners who provide the billions of dollars of generation and transmission assets necessary to make PJM, the public utility, possible. There is no provision in the Federal Power Act for anyone other than the owners of those generation and transmission assets to be given veto power over what a public utility may propose for rates over those assets. This reality is recognized by the Commission in the section of Order No. 719 dealing with responsiveness.

Moreover, there is concern that, over time, unless the PJM Board of Managers is provided with a clearer understanding of the views of the generation and transmission

asset owners, unencumbered by the views of other sectors with vastly different and disparate goals and objectives, it could become increasingly difficult for PJM to successfully pursue its three-part mission of reliability, operations and competitive markets. The current sector-weighted voting rules result in skewed voting outcomes that misinform the Board, primarily due to the substantial influence of small coalitions of industrial end users, other suppliers and municipal utilities. While these stakeholders have an important role in developing PJM policy, their voices are amplified by the ability to dominate multiple sectors which taken together carries greater weight than the sector votes of electric asset owners. Ultimately, such a structure is a disservice to the PJM members, the PJM Board and FERC, as policy decisions are based on incomplete and inaccurate assessments of stakeholder opinions.

P3 members will continue to actively participate in the newly-constituted GAST in its efforts to craft modifications to the voting protocols as it affects the senior committees within PJM. It should be noted that P3 has no pre-determined notion of the ultimate steps that should be taken to address the concerns raised by its members, and many different types of steps could be taken to address the concerns of the transmission and generation owners. P3 is encouraged by PJM's handling of this important issue, and by the constructive dialogue in the GAST to date. However, as noted above, the GAST's initial mission is simply to undertake a "PJM member governance assessment," to be provided within the next few months to the Members Committee. For now, P3 members remain optimistic that PJM and its stakeholders may be able to take actual concrete steps that can address the currently unbalanced voting structure. However, any decision by the

wider PJM membership to terminate discussions prior to their conclusions on such a critical issue is ill-advised and may have significant adverse consequences for PJM.

P3 therefore recommends that this Commission encourage PJM and its members not to stop at the assessment stage, but to complete their work. The GAST should continue to work toward concrete steps to address these concerns – especially relating to Members Committee governance – in order to adequately reflect the weight of its membership and the actual and substantial investments and responsibilities of transmission and generation providers. Addressing the significant concerns of the transmission and generation owners will go a long way toward satisfying this Commission’s goal of appropriate responsiveness of RTOs and ISOs to their customers and stakeholders. In its decision on PJM’s Compliance Filing, this Commission should encourage PJM and all PJM members to complete the important effort they have begun in the GAST.

**C. P3 supports the Commission’s “Compromise Approach” regarding a Market Monitoring Unit’s (MMU) role in tariff administration. P3 believes that PJM’s filing, with clarifications, complies with Order No. 719.**

**1. Function of Market Monitoring Units**

P3 supports the Commission’s “compromise approach” to address the MMU’s role in tariff administration, including mitigation. Specifically, with regard to an external IMM, such as that which exists in PJM, the Commission restricted the MMU’s mitigation efforts to solely retrospective mitigation. The Commission further determined that an RTO “may permit its MMU to provide the inputs required by the RTO or ISO to conduct prospective mitigation, including determining reference levels, identifying system

constraints, cost calculations and the like.”<sup>6</sup> In that regard, P3 supports PJM’s conclusion that PJM has the right, but not the obligation, to utilize or not, any and all inputs that it receives from the Independent Market Monitor, based on its reading of Order No. 719, which explicitly uses the permissive “may” instead of the obligatory “shall” with respect to use of the MMU’s determined inputs.<sup>7</sup>

First and foremost, the Commission correctly found that the MMU “*may*” provide the inputs required by the RTO or ISO to conduct prospective mitigation. There is no mandatory requirement that the MMUs provide inputs, or that RTOs or ISOs accept such inputs; nor could there be. To require the RTO or ISO to take specified inputs and place them in a tariff would effectively be to allow a third-party to have control – however great or small – over utility tariffs.

Since its passage of the Federal Power Act (FPA) in 1935, Congress has clearly stated that “public utility” regulation rests squarely with the Commission. The Commission, being a statutory institution, can only exercise the authority it is granted by statute. Section 205(a) of the FPA grants the Commission the authority to regulate “public utilities.” Public utilities, in turn, are the only entities specifically required to file tariffs for the Commission’s approval. Approved “public utility” tariffs include “rates” and “charges,” as well as “classifications, practices and regulations affecting (or) relating to” rates.<sup>8</sup> These tariffs must ultimately be deemed “just and reasonable” by the Commission.<sup>9</sup> There simply is no legal authority that would require an RTO or ISO – the

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<sup>6</sup> Order No. 719 at 375; p. 200.

<sup>7</sup> *Id.*, see also 18 CFR § 35.28 (g)(3)(iii)(B) (2008).

<sup>8</sup> 16 USC Sec. 824d(c).

<sup>9</sup> 16 USC Sec. 824d(a).

“public utility” that is responsible for formulating and filing tariffs with the Commission and complying with the FPA – to accept an independent third party’s findings regarding implementation of their tariffs. The FPA governs the rates of public utilities, and public utilities alone must be responsible for implementing their tariffs, regardless of the expertise of its MMU, or the usefulness of the MMU’s suggested inputs.

Rather, P3 believes that the Commission strikes the correct balance in its mitigation approach by allowing the MMU to assist the RTO or ISO in the latter’s responsibility to implement and administer its tariff, including the use of prospective mitigation, while leaving the ultimate responsibility of determining the inputs and overall tariff provisions to the RTO or ISO. By allowing the MMU to provide inputs as requested by the RTO or ISO, the Commission left open the option for the RTO or ISO to utilize the MMU’s expertise, where needed, to efficiently meet the requirements of its tariffs, while maintaining the legal integrity of the tariff-setting requirements. As PJM has stated, the MMU provides valuable information to the mitigation function, and “PJM has no intention of duplicating the IMM’s efforts, re-running every calculation that the IMM performs, or trying to encroach on the IMM’s responsibility to make market power determinations.”<sup>10</sup> P3 agrees with PJM that while the Commission has the ultimate authority to approve rates, the responsibility to implement the PJM Tariff (including the mitigation functions) rests with PJM, subject to review and comment by the MMU.

P3 views the Commission’s approach as a constructive means for RTOs and ISOs to gain the necessary inputs and information it needs for tariff administration. P3 believes that this result, at the very least, will avoid any potential bias in the formulation

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<sup>10</sup> PJM Compliance Filing at p. 44.

and administration of tariffs. The Commission correctly designed the proposal “to remove the bias that might arise from the MMU’s analyzing the health of the markets they themselves [have] affected,”<sup>11</sup> thereby finding a reasonable balance.

## **2. PJM’s compliance filing properly reflects the “Compromise Approach”**

PJM has proposed the following general process to implement the “compromise approach”:

- First, the IMM will continue to conduct the initial analysis and perform the initial calculations in those areas designated in PJM’s tariff.
- Second, the IMM will turn the resulting inputs over to PJM.
- Third, if a market participant disagrees with the IMM’s calculation, or PJM on its own accord concludes that a determination made by the IMM is inaccurate, incorrect or otherwise inappropriate, PJM has the right to make its own determination of what calculation to utilize in assessing whether to accept an offer proffered by a market participant.
- Finally, if the IMM disagrees with any of PJM’s determinations, the IMM will have full, timely access to all salient data and has the right to make a referral to the Commission.

As discussed above, this compromise approach is not only the proper determination for legal reasons, but it also is a reasonable approach to resolve differences between market participants and the IMM over bid cap calculations and other bidding parameters. If the market participant is successful in convincing PJM that the IMM’s calculation is in error or is otherwise inconsistent with the tariff, the market participant may bid into the market on that basis, but the IMM may report such behavior to FERC Enforcement Staff.

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<sup>11</sup> Order No. 719 at 361.

P3 does not believe that companies will make the decision to challenge the determinations of the IMM lightly, and the ability of the IMM to report behavior (even behavior endorsed by PJM) to FERC Enforcement Staff assures that this is the case. However, this proposal provides useful guidance for situations that have recently arisen, such as when PJM has accepted a market participant's Parameter Limited Schedule exception request, but the IMM denies it or vice versa. In March 2009, PJM presented to the Reserve Markets Working Group a Review of Balancing Operating Reserve Rule Changes.<sup>12</sup> In particular, PJM analyzed the disposition of exception requests submitted by generators in the fall of 2008 for the bid period of December 1, 2008 through March 31, 2009.<sup>13</sup> PJM's analysis revealed that while exceptions were only requested by 114 units out of 1264 total PJM units (or only 9% of the PJM Fleet), and the IMM and PJM agreed on whether to approve or reject the vast majority of exceptions (almost 75%), there were 125 instances in which PJM and the IMM disagreed. In those instances, the market participants were allowed to initially bid in accordance with PJM's determination while PJM and the IMM continued to resolve their differences. However, when PJM and the IMM did not ultimately reach agreement, the generators were left without clear guidance as to how to bid their units. PJM's proposed process will provide clear guidance as to how the market participant may proceed, while at the same time providing adequate safeguards to consumers by providing the option for the IMM to make a referral to FERC.

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<sup>12</sup> See <http://www.pjm.com/Media/committees-groups/working-groups/rmwg/20090319/20090319-item-02a-2009-review-bor-changes-updated.pdf>

<sup>13</sup> See *id.* at 29.

**3. The IMM Proposal is not consistent with Federal Power Act precedent, Order No. 719 or the 2007 PJM/MMU settlement.**

In contrast to the FPA precedent concerning the responsibilities of public utilities and the Commission’s specific guidance in Order No. 719, the IMM Proposal asserts that significant swaths of the PJM’s Tariffs should be moved to Attachment M, over which the IMM proposes to have exclusive authority.<sup>14</sup> This proposal stands in direct conflict to the clear directive reflected in 18 CFR § 35.28(g)(3)(iii)(A) that “[an RTO] may not permit its Market Monitoring Unit, whether internal or external, to participate in the administration of the [RTO’s] tariff, or, except as provided in paragraph (g)(3)(iii)(D) of this section, to conduct prospective mitigation.”<sup>15</sup> The exception – paragraph (g)(3)(iii)(D) – applies to RTOs with hybrid internal and external market monitoring structures and is therefore inapplicable to PJM. Despite the IMM’s protestations to the contrary, exclusive control of the key inputs to all of PJM’s markets constitutes the conduct of prospective mitigation and is prohibited by Order No. 719.

Nor can the IMM Proposal be justified on the grounds that it preserves the intent of the 2007 PJM/MMU Settlement.<sup>16</sup> First, the currently effective Attachment M, which was filed as part of the 2007 PJM/MMU Settlement, states that “[t]he objectives of this PJM Market Monitoring Plan are to maintain an independent Market Monitoring Unit

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<sup>14</sup> See e.g., IMM Proposal, Section III, Attachment M to Open Access Transmission Tariff (“OATT”), Tariff Sheet No. 448 (“PJM shall establish or retain a Market Monitoring unit to perform exclusively the functions set forth in this [Market Monitoring] Plan”); see also IMM Proposal, Section III.E., Attachment M to OATT, Tariff Sheet 448.05a (“the Market Monitoring Unit shall have the exclusive authority to administer the provisions for retrospective mitigation and the development of inputs for use in the prospective mitigation described in the Attachment M – Appendix”).

<sup>15</sup> 18 CFR § 35.28 (g)(3)(iii)(A)(2008).

<sup>16</sup> Settlement Agreement and Explanatory Statement of the Settling Parties in *Allegheny Electric Cooperative, Inc., et al. v. PJM Interconnection, L.L.C.*, Docket Nos. EL07-56-000, -001, -002 and EL07-58-000, -001, -002 (December 19, 2007) (“2007 PJM/MMU Settlement”).

that will objectively monitor, investigate, evaluate and report on the PJM Markets, including, but not limited to, structural design or operational flaws in the PJM Markets or the exercise of market power or manipulation in the PJM Markets.”<sup>17</sup> Section IV of currently effective Attachment M, entitled “Market Monitoring Unit Functions and Responsibilities,” provides generally that the Market Monitoring Unit’s functions are to objectively monitor the competitiveness of PJM Markets, investigate violations of FERC or PJM Market Rules, recommend changes to PJM Market Rules, prepare reports for the Authorized Government Agencies and take such other actions as are specified in this Plan.<sup>18</sup> In sum, the Attachment M agreed to in the 2007 PJM/MMU Settlement outlines the responsibilities of the MMU, which are to monitor, investigate and recommend changes, and report on the PJM Markets, but not to develop bid caps or inputs for mitigation.

Second, the currently effective Attachment M makes clear that it is PJM’s responsibility to implement its market rules. Section IV.B.5. of Attachment M provides that the Market Monitoring Unit is responsible for monitoring “*PJM*’s implementation of the PJM Market Rules or operation of the PJM Markets,”<sup>19</sup> while Section IV.C states that

[t]he Market Monitoring Unit shall monitor PJM’s implementation of the PJM Market Rules and operation of the PJM Markets. If the Market Monitoring Unit disagrees with the implementation of the PJM Market Rules or the operation of the PJM Markets, the Market Monitoring Unit may so advise PJM. Excepting matters governed by Section IV.I. [pertaining to corrective actions], if the disagreement cannot be resolved informally, the Market Monitoring Unit may inform the Commission,

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<sup>17</sup> See Section I “Objectives”, Attachment M to PJM OATT, Sixth Revised Tariff Sheet No. 446.

<sup>18</sup> See Section IV “Market Monitoring Unit Functions and Responsibilities”, Attachment M to PJM OATT, Sixth Revised Tariff Sheet Nos. 448.04-448.05.

<sup>19</sup> *Id.* at Sixth Revised Tariff Sheet No. 448.05.

Authorized Government agencies or the PJM Members. The Market Monitoring Unit shall have no authority to direct PJM to modify its operation of the PJM Markets or implementation of the PJM Market Rules.<sup>[20]</sup>

Thus, the 2007 PJM/MMU Settlement clearly delineates the respective responsibilities – PJM is to implement its tariff and, if the Market Monitoring Unit disagrees with PJM’s implementation, it can report such matters to FERC. That is essentially the same process which the PJM Compliance Filing proposes. It is the IMM that proposes to alter Attachment M in a manner that is inconsistent with the 2007 PJM/MMU Settlement.

**4. Clarifications as to process and the confidentiality of the IMM’s referrals to FERC are needed.**

P3 requests that the following limited clarifications be made with respect to the PJM Compliance Filing. First, the Commission should direct that in the event that the market participant and the IMM disagree as to the appropriate bid calculation or bidding parameter(s), the IMM should provide a timely, written explanation of the reasons why the IMM disagrees simultaneously to the market participant and PJM. This will aid the market participant and PJM in determining how to proceed. Second, with respect to any IMM referral to the Commission, P3 believes that any such referral should be made in compliance with PJM’s confidentiality policy, *i.e.*, the IMM’s referral should be made on a confidential basis if it contains information covered by PJM’s confidentiality policy. P3 believes that this is PJM’s intent, but language such as that proposed in paragraph 17 Schedule 6A of PJM’s OATT, with respect to revenue requirements for Black Start units, on its face suggests otherwise. There, the tariff language proposed by PJM states that “. .

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<sup>20</sup> *Id.*

. if the Office of Interconnection accepts the Black Start Service revenues requirement submitted by the Black Start Service generator owner in such case, the Market Monitoring Unit may petition the Commission for an order that would require the Black Start Service generator to utilize the values determined by the Market Monitoring unit or such other values as determined by the Commission. . . .”<sup>21</sup> On its face, the language contained in paragraph 17 suggests that the dispute over a Black Start Provider’s revenue requirement can be publicly presented by the Market Monitor to FERC despite the confidentiality requirements that would otherwise generally apply to generator specific cost or bidding data. P3 believes that this language may simply be an oversight in the haste of drafting such a large compliance filing.

P3’s concern about the confidentiality of referrals is heightened by various provisions contained in the IMM’s Proposal. For example, the IMM Proposal states that the IMM has the right to file a petition with FERC seeking an expedited determination of whether a particular offer or component of an offer complies with either the FERC Market Rules or the IMM’s determination, respectively.<sup>22</sup> This aspect of the IMM Proposal directly conflicts with the new regulations adopted by Order No. 719, which specify that a Market Monitoring Unit is to make a non-public referral to the Commission

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<sup>21</sup> PJM Compliance Filing, \_Schedule 6A to OATT, Third Revised Sheet No. 241.

<sup>22</sup> *See e.g.*, IMM Proposal, Section II. C.3 of the Appendix to Attachment M to OATT (“If the Capacity Market Seller submits an EFORD inconsistent with the determination of the Market Monitoring Unit, the Market Monitoring [Unit] may file a petition with FERC seeking on an expedited basis a determination of whether the EFORD compliance with the FERC Market Rules.”)(Original Sheet No. 453L); *see also* IMM Proposal, Section II.C.5. of the Appendix to Attachment M to OATT (“If a Generation Capacity Resource submits . . . a Market Seller Offer Cap inconsistent with Market Monitoring Unit’s determination . . . the Market Monitoring Unit may petition the Commission . . .”)(Original Sheet No. 453M); IMM Proposal, Section IV 2 of the Appendix to Attachment M to OATT (“If a generation owner includes a cost component inconsistent with its agreement or inconsistent with the Market Monitoring Unit’s determination regarding such cost components, the Market Monitoring Unit may petition the Commission for an order. . . .”)(Original Sheet No. 453Q).

in all instances where the Market Monitoring Unit has reason to believe that a Market Violation has occurred.<sup>23</sup> The regulations define “Market Violation” as “a tariff violation, violation of a Commission-approved order, rule or regulation, market manipulation, or inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies” and plainly include both violations of FERC Market Rules and PJM Market Rules.<sup>24</sup> In approving PJM’s Compliance Filing, the Commission should clarify and confirm that any IMM referrals concerning possible market violations must be made to the Commission on a confidential basis.

**5. The Commission should direct a stakeholder process to develop the standards applicable to certain market rules.**

PJM’s Compliance Filing includes as a new Appendix to Attachment M language that appears to generally summarize the IMM responsibilities with respect to the “Development of Inputs for Prospective Mitigation.” While P3 understands that the intent of the new Appendix may be to comply with the Commission’s requirement that RTOs state clearly in their tariffs which functions will be performed by the RTO and which functions will be performed by their MMUs, P3 is concerned with the lack of specificity in some of the proposed language and believes that the IMM’s Proposal to clearly define the standards applicable to various mitigation functions is a good one.<sup>25</sup> The Commission has already made clear in Order No. 719 and other orders that

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<sup>23</sup> 18 C.F.R. Section 35.28(g)(3)(iv)(2008).

<sup>24</sup> 18 CFR § 35.28(b)(8)(2008).

<sup>25</sup> IMM Proposal, Transmittal Letter at pp. 63-64.

“mitigation tariff provisions should be as non-discretionary as possible.”<sup>26</sup> According to the terms of Attachment M, which states “in the event of any conflict between a provision in the Plan and a provision of the PJM Market Rules, the provision of the Plan shall control,”<sup>27</sup> the language of the Plan and the Appendix should not provide broad discretion to the IMM to perform its responsibilities. Moreover, additional clarity as to the “rules of the road” should reduce, if not eliminate, areas of PJM and IMM differences.

Several provisions of the Appendix to Attachment M in the PJM Compliance Filing would benefit from additional clarity regarding the standard applicable to the Market Rules or the process that the IMM will employ in performing its responsibilities. For example, paragraph 1 under Section II.C (“RPM Must Offer Obligation”) provides that “[t]he Market Monitoring Unit shall maintain, post on its website, provide to the Office of the Interconnection and file with the Commission for informational purposes (updated as necessary, on at least a quarterly basis), a list of existing Generation Capacity Resources located in the PJM Region that are subject to the “must offer” obligation set forth in Section 6.6 of Attachment DD.”<sup>28</sup> Yet Section II.C does not provide the standard that the Market Monitor will apply in determining whether a unit is subject to the must offer requirement or not.<sup>29</sup>

Along similar lines, in Section II.H.1 of the Appendix to Attachment M of the PJM Compliance Filing, the Market Monitoring Unit “shall annually review the table of

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<sup>26</sup> Order No. 719 at 379. See *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 at 115 (2006), *reh’g denied*, 119 FERC ¶ 61,318(2007).

<sup>27</sup> PJM Compliance Filing, Attachment M to OATT, Eighth Revised sheet No. 446.

<sup>28</sup> PJM Compliance Filing, Section II.C., Appendix to Attachment M of the OATT, Original Sheet No. 453L.

<sup>29</sup> P3 notes that Attachment DD to the PJM OATT does not currently provide for the posting of such a list, but that PJM’s practice has been to make such a posting.

default Avoidable cost Rates included in Section 6.7(c) of Attachment DD and calculated on the bases set forth therein, and determine whether the values included therein need to be updated.”<sup>30</sup> Section 6.7(c) of Attachment DD does not specify the bases upon which such values will be calculated and simply includes a cross-reference back to the Appendix to Attachment M. The manner in which the default values should be updated has been subject to some dispute<sup>31</sup> and it is appropriate for a method for updates to be incorporated in the Appendix to Attachment M or Attachment DD and cross-referenced.

Another example of this ambiguity is found in the PJM Compliance Filing at Section II.B (“Minimum Generator Operating Parameters”) of the Appendix to Attachment M. Paragraph 1 of Section II.B. provides that “. . . The Market Monitoring Unit shall review the Parameter Limited Schedule Matrix twice yearly, and, in the event it determines that revision is appropriate, shall provide a revised matrix to [PJM] by no later than December 31 and June 30, respectively, prior to the bi-annual enrollment periods for the submission of start-up and no-load costs on April 1 and October 1.”<sup>32</sup> Paragraph 1 does not specify how or on what basis the Market Monitor will determine whether revision of the Matrix is appropriate. The same holds true for Paragraph 2 of Section II.B, under which the Market Monitor performs reviews of requests for exceptions to parameter limited schedules.<sup>33</sup> P3 notes that the IMM Proposal contains new language establishing a standard for granting exceptions that the MMU proposes to

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<sup>30</sup> PJM Compliance Filing, Section II.H.1., Appendix to Attachment M of the OATT, Original Sheet No. 453O.

<sup>31</sup> See April 29, 2009 Letter from the IMM concerning default ACRs filed in Docket Nos. ER09-412, EL05-148 and ER05-1410 and Commission’s May 19, 2009 Notice regarding same.

<sup>32</sup> PJM Compliance Filing, Section II.B., Appendix to Attachment M to OATT, Original Sheet No. 453K.

<sup>33</sup> *Id.*

be adopted via this compliance proceeding. While these proposals are outside the scope of this proceeding, P3 agrees with the IMM that it is appropriate to develop standards for exceptions to Parameter Limited Schedules. However, these standards, as well as any standard for updates to the Parameter Limited Schedule Matrix, must be developed through the stakeholder process.<sup>34</sup> Following the stakeholder process, they could then be incorporated into the Appendix to Attachment M either directly or by cross-reference to the PJM Operating Agreement.

In any event, it would be inconsistent with the Commission's prior guidance, both in Order No. 719 and other contexts, for the IMM to possess unfettered discretion in the context of Parameter Limited Schedules or other areas. P3 urges the Commission, as part of its order approving the PJM Compliance Filing, to direct that standards or processes for the above-noted market rules be developed through the stakeholder process and filed with the Commission in a timely fashion. P3 strongly believes that all PJM stakeholders will benefit from more clearly defined rules and such clarity will minimize the possible areas of disagreement between PJM and the IMM.

**6. Substantive changes to existing market rules contained in the IMM Proposal should be rejected as outside the scope of a compliance proceeding.**

Finally, in the event that the Commission agrees with the IMM's Proposal for dividing the market mitigation responsibilities between the IMM and PJM, the Commission should not accept the IMM's proposed tariff sheets without requiring them to conform to the existing PJM Market Rules. The Commission's regulations require that

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<sup>34</sup> Absent generator technical and operation input it is unlikely that PJM or the IMM could develop reasonable parameter limits that fully consider the operating characteristics and constraints of unique and varied generating units. Stakeholder participation would ensure that generators' unit operation modifications and complexities, PJM operations modeling and reliability considerations, and market mitigation measures are appropriately considered and balanced.

“[f]ilings made to comply with Commission orders must include only those changes required to comply with the order. Such compliance filings may not be combined with other rate or tariff change filings.”<sup>35</sup> Careful review of the Tariff Sheets contained in the IMM Proposal reveal that in certain instances the IMM has altered the existing PJM Market Rules, and in so doing has exceeded the proper scope of this proceeding. For example, with respect to Reliability Pricing Model (“RPM”) mitigation, current Section 6.6 (g) of Attachment DD of the OATT states that:

In addition to the remedies set forth in subsections (c), (d), (e), and (f), if the Market Monitoring Unit determines that one or more Capacity Market Sellers’ failure to offer part or all of one or more existing generation resources into an auction would result in an increase of *greater than five percent in any Zonal Capacity Price* determined through such auction, the Office of the Interconnection shall apply to FERC for an order, on an expedited basis, directing such Capacity Market Seller to participate in the auction, or for other appropriate relief, and PJM will postpone clearing the auction pending FERC’s decision on the matter.<sup>[36]</sup>

The IMM Proposal strikes that language from Attachment DD and inserts the following language in Section II.C.4 of the Appendix to Attachment M:

If the Market Monitoring Unit determines that a Capacity Market Sellers’ failure to offer part or all of one or more existing generation resources into an auction has not been supported on the basis of the foregoing criteria, the Market Monitoring Unit may apply to FERC for an order, on an expedited basis, directing such Capacity Market Seller to participate in the auction, or for other appropriate relief. If such failure would result in *an increase in Zonal Capacity Prices* determined at auction, and the Market Monitoring Unit determines to petition the FERC for appropriate relief, it shall notify the Office of Interconnection.”<sup>[37]</sup>

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<sup>35</sup> 18 C.F.R. §154.203(b)(2008). See *California Independent System Operator Corporation*, 127 FERC ¶ 61,233 at 36 (2009); *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,251 at 19 (2009).

<sup>36</sup> Attachment DD to OATT, Second Revised Sheet No. 609 (emphasis added).

<sup>37</sup> IMM Proposal, Section II.C.4. of the Appendix to Attachment M to the OATT, Original Sheet No. 453M.

Setting aside the issue of who has the right to petition FERC for relief, the five percent standard contained in the existing tariff has been inappropriately deleted. The IMM Proposal contains a similar change in Section II.C.3 of the Appendix to Attachment M.<sup>38</sup>

The IMM Proposal also alters the standard for mitigation of planned generation resources in RPM. Section 6.5(a)(ii) of the currently existing Attachment DD of PJM's OATT provides in essence that offers from Planned Generation Resources are assumed to be competitive and will not be subject to mitigation if there is adequate new supply (i.e., the quantity of offers is equal to or exceed two times the amount of capacity needed) and adequate competition (i.e., at least two unaffiliated suppliers have submitted offers in the LDA). Mitigation would only be applied where the conditions above are not met or the supplier is pivotal.<sup>39</sup> The IMM Proposal revises this market rule such that the IMM will apply mitigation to all Planned Generation Resources regardless of whether the preconditions contained in the current tariff are met.<sup>40</sup>

Finally, the Market Monitor includes in the new Appendix to Attachment M entirely new language to govern requests for exceptions from parameter limited schedule requirements.<sup>41</sup> While, as discussed above, P3 believes that it is important to develop and codify the standards for granting such exception requests, the PJM stakeholder process is the appropriate forum for their development. The IMM cannot revise or propose new PJM Market Rules via a protest to a PJM compliance filing.

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<sup>38</sup> IMM Proposal, Section II.C.3. of the Appendix to Attachment M to the OATT, Original Sheet No. 453L (“If such submittal would result in an *increase in Zonal Capacity Prices* determined at auction and the Market Monitoring Unit determines to petition the FERC for appropriate relief, it shall notify the Office of Interconnection”)(emphasis added).

<sup>39</sup> Section 6.5(a)(ii) of Attachment DD to OATT, Third Revised Sheet No. 607.

<sup>40</sup> IMM Proposal, Section 6.5(a)(ii) of Attachment DD to OATT, Fourth Revised Sheet No. 607.

<sup>41</sup> IMM Proposal, Section II.B.2., Appendix to Attachment M to OATT, Original Sheet No. 453L.

The examples discussed above reflect only some of the instances in which the IMM Proposal changes the wording and thus the substance of existing PJM Market Rules. As described herein, these changes go beyond the fundamental area of dispute between PJM and the MMU over which entity has the responsibility to implement and administer these market rules and exceed the scope of a proper compliance filing. The Commission should reject all such changes to the substance of the market rules that are not required to comply with Order No. 719.

### **III. CONCLUSION**

P3 requests that the Commission grant its timely motion to intervene with all the rights of a party to this proceeding and approve the PJM Compliance Filing, conditioned as requested herein.

Respectfully submitted,

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On behalf of the PJM Power  
Providers Group

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. §385.2010).

Dated this 26<sup>th</sup> day of June 2009, at Washington, D.C.

/s/ Glen Thomas  
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