



Organization of PJM States, Inc. (OPSI)

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May 9, 2008

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(By Electronic Filing)

**Re: Wholesale Competition in Regions with Organized Electric Markets,
Docket Nos. RM07-19-000 and AD07-7-000; Comments of the Organization of
PJM States, Inc. on Notice of Proposed Rulemaking**

Dear Ms. Bose:

Please accept for filing in the above-referenced matter electronically filed Comments of the Organization of PJM States, Inc. (OPSI), on the Commission's Notice of Proposed Rulemaking. Service has been made upon the service list as evidenced by the attached certificate of service.

Thank you for your attention to this matter. If you have any questions in reference to this filing, please contact me at (302) 757-2441.

Sincerely,
/s/Rajnish Barua
Rajnish Barua, Ph.D.
Executive Director
Organization of PJM States, Inc.
62 N. Chapel Street, Suite 203
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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Wholesale Competition in Regions with Organized Electric Markets))	Docket Nos. RM07-19-000 AD07-7-000
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COMMENTS OF THE ORGANIZATION OF PJM STATES, INC.

I. INTRODUCTION

The Organization of PJM States, Inc. (OPSI),¹ hereby submits the following comments in response to the Commission's Notice of Proposed Rulemaking (NOPR) on *Wholesale Competition in Regions with Organized Electric Markets*, Docket Nos. RM07-19-000 and AD07-000, issued on February 22, 2008.² The deadline for comment was April 21, 2008, and OPSI urges the Commission to accept this late filing for reasons it had provided in an earlier request for an extension of the filing date.³ In response to the Commission's earlier Advanced Notice of Proposed Rulemaking (ANOPR) in these same dockets,⁴ OPSI filed extensive comments on September 18, 2007.

¹ The Organization of PJM States, Inc. (OPSI) is a Delaware non-stock corporation whose membership consists of all 14 state regulatory commissions within the footprint of PJM Interconnection, LLC (PJM). OPSI was organized for the purpose of providing a regional forum for state regulatory authorities on issues affecting the transmission system functions performed and wholesale electricity markets operated by PJM. No vote of, or resolution passed by, the Board of Directors has any binding effect upon any state regulatory authority or any individual member thereof in the exercise of such authority's powers. Actions or positions taken by OPSI do not constitute official actions or positions of any individual member regulatory authority.

² 122 FERC ¶ 61,167 (2008).

³ OPSI filed its request for extension on April 17, 2008, but the Commission has yet to act on it.

⁴ 119 FERC ¶ 61,306 (2007).

OPSI is an organization of the utility regulatory commissions created pursuant to the laws of their respective states⁵ and charged with the regulation of electric utilities and/or of generation suppliers in jurisdictions where retail electric generation competition has been authorized. OPSI, pursuant to its obligation to further the public interest in safe, adequate and reliable electric service at just and reasonable rates, submits these comments in the above-captioned matter. As an organization comprising all of the state utility regulatory agencies within the PJM footprint, OPSI has a unique interest in this proceeding. Each of OPSI's member commissions has a vital interest in the reliability of the transmission system and the efficacy of the wholesale electric markets that any rules adopted in this proceeding will affect. Each of OPSI's member commissions has been delegated specific statutory responsibilities with respect to the provision of retail electric service within its boundaries and has a statutory obligation to ensure the provision of safe, adequate and reliable electric service at just and reasonable rates. As part of their obligation to ensure the provision of reasonably priced electric service, OPSI member commissions are vitally interested in the establishment and operation of effective and fair wholesale electric markets. No other party is able to adequately represent OPSI's unique interests in this proceeding.

⁵ State commissions members of OPSI include the Delaware Public Service Commission; District of Columbia Public Service Commission; Illinois Commerce Commission; Indiana Utility Regulatory Commission; Kentucky Public Service Commission; Maryland Public Service Commission; Michigan Public Service Commission; New Jersey Board of Public Utilities; North Carolina Utilities Commission; Public Utilities Commission of Ohio; Pennsylvania Public Utility Commission; Tennessee Regulatory Authority; Virginia State Corporation Commission; and Public Service Commission of West Virginia.

All communications with respect to this matter should be addressed as follows:

Rajnish Barua, Ph.D.
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II. DISCUSSION

A. Demand Response

In general, OPSI supports the concepts set forth in the NOPR regarding demand response (DR). Several OPSI member commissions have filed comments on this issue as members of other groups.⁶

(i) Ancillary Services Provided by Demand Response Resources

The Commission proposes that DR resources be treated comparably to other generating resources if they are technically capable of performing the required function. The NOPR also recognizes the authority of a state commission's laws or regulations regarding participation in a retail (distribution) program.⁷ OPSI supports the Commission's proposal and believes that it will help customers realize the necessary benefits of DR programs.

⁶ e.g., Organization of MISO States (OMS) and Mid-Atlantic Distributed Resources Initiative (MADRI).

⁷ NOPR at P. 47; 62-64.

(ii) Deviation Charges

The Commission proposes to eliminate deviation charges assessed against a buyer for taking less electric energy in the real-time market during a real-time market period under certain conditions.⁸ OPSI agrees with the Commission's proposal and believes that eliminating the deviation charge in situations other than those involving system emergencies may also result in increased levels of DR. OPSI suggests that the RTOs/ISOs explore this issue in more detail, particularly examining any possible unintended consequences of such market rule changes.

(iii) Aggregation of Retail Customers

The Commission proposes to require RTOs/ISOs to permit an Aggregation of Retail Customers (ARC) provider to bid DR on behalf of retail (distribution) customers as long as that relevant state commission allows such conduct.⁹ OPSI supports this proposal, but cautions the Commission that there may be certain problems in the alignment of wholesale and retail prices/rates that may make it difficult for participants to realize the full potential of DR. Therefore, it is important that RTOs/ISOs and ARC providers coordinate the design elements of specific DR programs with appropriate state commissions.

⁸ NOPR at P. 72.

⁹ NOPR at P. 86.

(iv) Future DR Reforms

The Commission proposes that the reforms included in the NOPR proceed while the Commission and stakeholders study and develop a record to support further DR reforms and has announced the intention to direct its staff to hold a technical conference to consider such additional reforms.¹⁰ OPSI is unsure if some of the proposals discussed in the NOPR should be implemented if all relevant DR issues have not been examined; partial implementation may result in the full potential of DR programs not being realized.

(v) Price Formation during Periods of Operating Reserve Shortage

The Commission believes that existing market rules relating to price formation during periods of operating reserve shortage appear to be unjust, unreasonable and unduly discriminatory or preferential.¹¹ The Commission recognizes that this is a difficult issue and, therefore, proposes requiring each RTO/ISO to undertake a further study of this issue and make a compliance filing addressing this problem within six months of a final rule in this proceeding. While OPSI believes that the RTOs/ISOs would have to establish procedures for vigorous monitoring and prevention of market power abuse, OPSI is concerned about the Commission's concluding that current rules are unjust or unreasonable solely based on comments filed at the ANOPR and not based on an evidentiary hearing that examines factual information. This concern also reflects

¹⁰ NOPR at P. 94-95.

¹¹ NOPR at P. 107.

OPSI's recognition that substantial market design changes may be necessary and OPSI looks forward to participating in the PJM RTO's study process.

B. Long-Term Power Contracting in Organized Markets

The Commission proposes a bulletin board on each RTO/ISO web site to permit the exchange of information needed to facilitate long-term contracts.¹² While OPSI believes this bulletin board requirement is a good first step, the availability of reasonably-priced long-term contracts depends on various other factors that may not be transparent to anyone other than the contracting parties. Furthermore, individual state commissions may have imposed requirements on their jurisdictional distribution utilities that might affect such contracts. Therefore, OPSI suggests that the Commission strive for improvements in market design beyond the bulletin board requirement in the NOPR that are intended to facilitate the formation of long-term contracts.

C. Market Monitoring Policies

On March 21, 2008, the Commission approved an Uncontested Settlement (Settlement) in *Allegheny Electric Cooperative, Inc., et al. v. PJM Interconnection, L.L.C.* and *Organization of PJM States, Inc., et al. v. PJM Interconnection, L.L.C.*, Docket Nos. EL07-56 and EL07-58 (consolidated). As the Commission is aware, OPSI, on behalf of its member commissions, and several specific OPSI member commissions

¹² NOPR at P. 155.

representing themselves, were principal parties in the dockets and major participants in the discussions leading to the development of the Settlement proposal that the Commission approved. Commissioners and the staffs of OPSI's member commissions, along with PJM, its market monitor, and numerous other interested parties expended considerable time and effort in reaching the Settlement. Therefore, OPSI opposes any changes to market monitoring policies in these instant rulemaking dockets that would have the effect of altering the Settlement as approved in Docket Nos. EL07-56 and EL07-58 (consolidated). Subject to that understanding, OPSI offers the following additional comments on market monitoring policies.

The Commission acknowledges that, for market monitoring purposes, one size does not fit all. OPSI agrees with this statement and wants to indicate its support for the changes made in PJM in which the market monitoring unit (MMU) will become a separate entity operating under a contractual relationship with PJM. OPSI also supported the provisions of the Settlement providing for the creation of an OPSI Advisory Committee that "would provide advice to the Commission, MMU, PJM Board and PJM stakeholders regarding any matter concerning the MMU, market monitor, or the Market Monitoring Plan."¹³ Under the Settlement, the MMU will become an independent entity with a separate budget. The PJM Board shall have the authority and responsibility to review the MMU budget, but that review has to be coordinated with the PJM Finance

¹³ 122 FERC ¶ 61,257 (2008) at p.6.

Committee and the OPSI Advisory Committee and is subject to challenge before the Commission.

OPSI agrees that the MMU should advise the Commission and state commissions about any recommendation for rule and/or tariff changes. The Commission proposes that the MMUs be removed from tariff administration, including mitigation. OPSI opposes this proposal; under the Settlement, the MMU may initiate and propose market design changes and may recommend specific mitigation action but has no authority to modify PJM's operational decisions. OPSI recommends that this approach be adopted in any rule adopted in this proceeding. Additionally, the MMU continues to implement market power mitigation under specified conditions in the PJM energy markets and in the RPM capacity market, pursuant to PJM's tariff. OPSI supports continuation of this FERC-authorized mitigation role for the PJM MMU as opposed to transferring this function to the RTO. As the progenitor of market designs, the RTO should not be in the potentially conflicting position of implementing market power mitigation, which implicitly acknowledges flaws in the very market designs and/or structures instigated by the RTO. Monitoring for market power potential and abuse, and implementing mitigation when prescribed, are more prudently left to an independent MMU whose only consideration in effecting mitigation is the empirical evidence that warrants it.¹⁴

¹⁴ The Maryland PSC further states that, at a minimum, any proposed regulations should include an explicit role for the MMU in conjunction with the RTO's/ISO's development of new markets.

The Settlement also requires the MMU to provide certain reports contemporaneously to the Commission, state commissions, PJM members and its management. This Settlement provision is important to OPSI because the Commission and the states share the responsibility for ensuring the existence of a well-functioning energy market. The Settlement allows the MMU to provide confidential information to the relevant state commission(s) through a self-certification process. OPSI does not agree with the Commission's proposal to have the state commissions petition the Commission on a case-by-case basis for access to information from the RTO, and recommends that any rules adopted in this proceeding reflect the data availability practices established in the Settlement.

D. Responsiveness of RTOs/ISOs to Stakeholders and Customers

The Commission proposes new criteria to ensure that RTO/ISO boards are responsive to the RTO's/ISO's customers and other stakeholders. OPSI supports proposals to increase the responsiveness of an RTO/ISO board; such a board must have the ability to act independently in the best collective interests of system reliability and market operations. OPSI does not support proposals for hybrid RTO/ISO boards that include stakeholders as RTO/ISO board members. Stakeholders such as generation and transmission owners already have substantial clout and voting rights within many of the various committees that develop RTO/ISO policies. Board membership would only

strengthen stakeholder clout at a crucial stage in the process without providing for effective counterweights.

III. CONCLUSION

In general, OPSI supports the Commission's efforts to improve energy markets in RTO/ISO service areas and reiterates that OPSI member state commissions are willing to work in collaboration with the Commission to improve the operation of RTO/ISO markets. OPSI agrees that a successful wholesale electricity market is an important precondition for the availability of cost-effective and reasonably reliable retail service, regardless of whether such service is provided in restructured markets or by traditionally-regulated utilities. OPSI appreciates having had the opportunity to comment on the NOPR and respectfully requests that the Commission accept these comments despite the fact that they have been filed late.

Respectfully Submitted,
/s/Rajnish Barua
Rajnish Barua, Ph.D.
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Dated: May 9, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list compiled by the Secretary in Docket Nos. RM07-19-000 and AD07-7-000 in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated this 9th day of May, 2008.

/s/Rajnish Barua

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Document Content(s)

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