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Mr. Terry Boston  
CEO, PJM Interconnection LLC  
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Gentlemen:

We write on behalf of the Commission and Maryland People’s Counsel (Maryland Agencies) in further support of our strong objection to the process employed to develop PJM Interconnection LLC’s (PJM) October proposed changes in the Minimum Offer Price Rule (MOPR) component of PJM's Reliability Pricing Model (RPM). As stated more fully below, we urge the PJM Board of Managers (Board) to terminate this Stakeholder process and order a new, full and fair Stakeholder process in this matter. We note that a resolution raising similar objections to this process has been passed by the Organization of PJM States, Inc., and we understand you will be receiving separate letters from the New Jersey Board of Public Utilities and Rate Counsel requesting the same action.

The core issue presented by these modifications is whether the Federal Energy Regulatory Commission (FERC) should revise again the MOPR provision of PJM’s tariff—barely a year after last revising it—to further restrict State sponsored generation development “to meet long-term, anticipated demand in the state for standard offer service and other electricity supply.”¹ From the very beginning, States have held the primary responsibility for ensuring the reliability of electric supply—the Federal Power Act has always recognized our role, and nothing about organized markets or RPM has changed or diminished it.

In addition to the serious concerns about the proposed revisions that we will raise separately, we object here to the process through which the newly proposed revisions were developed. The

¹ Maryland Code Ann., Public Utilities Art. § 7-510(c)(6).
proposal was not developed through a stakeholder process that complies with PJM’s well-understood rules. Instead, this proposal was developed through negotiations – in which PJM Staff and the Independent Market Monitor participated – that included only a specifically-positioned group of parties. These exclusive discussions took place over more than three months of meetings and telephonic conferences, producing on October 19 a 12-page tariff program that PJM Staff is recommending for adoption. The participating stakeholders were required to treat the process in accordance with FERC’s confidentiality provisions, which normally are reserved for contested case settlement discussions and do not apply to this new initiative. None of the safeguards and procedures designed to encourage full and fair participation by interested PJM Stakeholders to provide fair process were implemented by PJM in this matter. And the resulting proposal is directed entirely at the parties who were excluded from the secret negotiations, i.e., State regulators and Consumer Advocates because it would subject to MOPR mitigation (and thus may render uneconomic) any generation produced by “any procurement process sponsored or mandated by any state legislature or agency” while exempting identical resources developed by public power and vertically integrated utilities, who were invited to the secret talks.  

This process violated PJM’s internal rules and mandatory procedures for facilitating Stakeholder processes. Despite the requirements of PJM Manual 34 – PJM Stakeholder Process, no notice of these Stakeholder discussions was provided to either of our agencies 3  to the contrary, the invited parties were sworn to secrecy. This process ignored Manual 34’s objective that “all stakeholders will participate in the . . . [Stakeholder] . . . process beginning at the lowest level stakeholder group” to assure that “the most comprehensive solutions will be generated,” as well as PJM’s “recognition of the importance of transparency of the stakeholder process to all those affected by it.” 4  The net effect of this exclusion has been to deprive a substantial body of our citizens and

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2 See Proposed PJM Tariff, Attachment DD, Section 5.14(h)(6)(i) & (7)(iii).
3 There could be no serious doubt that we and other States are deeply interested in the MOPR and that we have participated fully in discussions and litigation over its terms. See, e.g., PJM Power Providers Group v. PJM Interconnection, LLC, 135 FERC ¶ 61,022 (April 12 Order), order on rehearing, 137 FERC ¶ 61,145 (November 17 Order), order on rehearing, 138 FERC ¶ 61,194, order on compliance filing, 139 FERC ¶ 61,011 (2012); New Jersey Board of Public Utilities Commission, et al. v. Federal Energy Regulatory Commission, Nos. 11-4245, et al. (3rd Cir. 2012).
4 See Section 3 – Purpose of the Stakeholder Process at p. 5 & Section 4.5 - Code of Conduct at p. 8. PJM Manual 34 defines two Stakeholder processes which could have been implemented by these discussions, i.e. “User Groups” (See paragraph 5.5 at p. 14) or a “Consensus Based Issue Resolution Process” directed by a PJM Standing Committee (See Paragraph 7.1.1 at p. 29). However, Manual 34 expressly requires that “Notification of the formation of a User Group shall be provided to all Members of the Members Committee,” notices and meeting agendas for the Group are to be provided all Members, any Member may attend a User Group Meeting, and Meeting Notes for all User Group meetings are to be posted on PJM.com. The procedures provided in Paragraph 7.1.1 are to be pursued only following approval by the Standing Committee of a Problem Statement and Charge, which would similarly provide notice to interested Stakeholders of the process being pursued, and further provides that that process “shall be open to all stakeholders.” State Commissions are expressly recognized as “participants in the stakeholder process” with the opportunity to “participate, deliberate, give input and engage at all levels of PJM Stakeholder Groups.” See Manual 34, Section 4 – Roles and Responsibilities & Section 4.4 (at pp. 6 & 8).
ratepayers a voice on enormously important changes to the market rules. Although some interested
parties legitimately may or may not agree with the proposal itself, few, if any, can argue credibly
that the process by which the proposal was developed was either transparent or fair.

We thank PJM for meeting with us on this matter earlier today, and for suggesting further
discussions and a process by which it may be resolved. We found the meeting helpful and look
forward to engaging with you and the other Commissions and Consumer Advocates. We
acknowledge as well that PJM has scheduled further Stakeholder meetings to take place over an
approximate 30-day period, although the arbitrary 30-day limit on this process renders it
inadequate. There is no need for haste at the expense of inclusion: with the exception of one
unit, there is at present no active program by any State in PJM to support the development of
new generation projects. Of even greater importance, this procedure has denied our agencies that
same opportunity the other parties had to organize and prepare positions on this matter. As PJM
Management well knows, procurement laws prevent State agencies from obtaining consultant
and other assistance on complex and highly important matters such as this on short notice. And
even if we had the full range of resources at the ready, PJM’s process allows us less than half the
time to react than the favored parties took to develop the objectionable proposal now under
consideration.

For all of these reasons, we ask the PJM Board not to file the proposed MOPR revisions
with the FERC, and instead to order a new, full, fair and prospective Stakeholder process to
address the MOPR and all related issues, such as new entry pricing, in an inclusive and
transparent manner. PJM must allow adequate time for all parties to vet these proposed changes
and fully consider the alternatives that are sure to be, and already are, being presented.
Alternatively, PJM should reject the 2012 Proposed Revisions to PJM’s MOPR Tariff Rules in
recognition of the serious errors made in the Stakeholder process, which cannot be unmade given
the prejudgment exhibited on these matters.

Very truly yours,

Paula M. Carmody,
People’s Counsel
Maryland Office of People’s Counsel

Douglas R. M. Nazarian, Chairman
Maryland Public Service Commission

cc: Mr. Dave Anders, PJM
Vincent Duane, Esq., PJM
PJM Board of Managers
Mr. Gregory V. Carmean, OPSI
Mr. Michael Borgatti, NJ BPU
Ms. Stefanie A. Brand, NJ Div. of Rate Counsel