



Organization of PJM States, Inc. (OPSI)

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May 5, 2023

David E. Mills
Chair, Competitive Markets Committee
Dr. Jonathan Raab
PJM Interconnection, L.L.C.
2750 Monroe Boulevard
Audubon, Pennsylvania 19408

Dear Mr. Mills and Dr. Raab,

Thank you for your participation in the OPSI Advisory Committee (AC) meeting on April 18, 2023, and for the transparency into the PJM Board's effort to seek feedback from stakeholders related to the Independent Market Monitor's (IMM's) Contract. The Board's effort was communicated to stakeholders via Mr. Mills' letter dated March 6, 2023. Specifically, the letter requested feedback on the IMM's contractual terms and service agreement, including, budget, data confidentiality, ownership of intellectual property, and succession planning. The letter further stated that the Board was not seeking input on the scope of the IMM's duties or performance.

At the AC meeting, Mr. Mills reiterated the intended scope of the PJM Board's review and stressed that it in no way related to duties or performance of the IMM. Despite this clear delineation of the type of limited feedback sought by the Board, the AC understands that through soliciting feedback from stakeholders, many comments received fell outside of the intended scope of interest.

In keeping with Mr. Mills' assurances that comments outside of the scope of the specified topics will not be considered for any near-term action, and to help the PJM Board focus on the issue at hand, the AC will limit its comments accordingly. Should the Board feel the need to open an investigation into the IMM's performance and scope of duties, we trust that any such action would be formally announced and that any consideration and ultimate action stemming from that input would be conducted through a clear and transparent process.

Budget

The AC acknowledges and appreciates the PJM Board's continued support for a strong, robust, and independent Market Monitor. The AC agrees with the Board that the IMM's ability to function

independently is absolutely essential to ensuring that the PJM market remain competitive, non-discriminatory, and free of market manipulation. As stated in previous communications with Mr. Mills,¹ the AC is concerned about any move to circumvent this independence by efforts to unreasonably restrict the IMM's budget. The IMM budget should hold sufficient funds to enable the IMM to fully engage and participate with stakeholders through various proceedings, including any and all emergency proceedings as they arise at PJM. As articulated in the AC's letter dated November 28, 2022, unnecessary restrictions on the IMM's budget will ultimately cost all stakeholders in the long run if the IMM is forced to balance his efforts based on limited funds. The PJM Board should continue to make all efforts to uphold the IMM's independence and maintain its current contractual budgeting and reporting practices, in accordance with Schedule M.

Property Rights and Succession Planning

Initially, as it relates to contractual terms, none of the comments herein should be construed as advocating for amendments to the current contract between Monitoring Analytics and PJM. The current contract is silent on the IMM's intellectual property. However, it is clear that the IMM developed its intellectual property to carry out the independent reviews and analyses entrusted to it under a contract within its approved budget, but it is not implied that this material belongs to PJM rather than the IMM. In no instance should the IMM be expected to relinquish its intellectual property rights (IPRs) at some later date without receiving full compensation for its value. The AC appreciates comments raised with concern that retaining ownership of such intellectual property may guarantee Monitoring Analytics as the IMM in perpetuity. The AC also understands the unique position that Monitoring Analytics holds given its ownership of intellectual property that is likely necessary to perform the market monitoring function in PJM, generally, and equally appreciates the IMM's desire to maintain its own property. The AC believes that greater contractual clarity regarding intellectual property rights may be beneficial in the event an IMM no longer provides market monitoring services, including ensuring that the IMM's intellectual property is fully valued and compensated. Any such future contract contemplated by the Board can rightfully include contract terms specifying a formal process for the transfer of intellectual property in the event of contract termination. Additionally, any future Board action around addressing stakeholder concerns regarding IPRs must fully weigh the intricate nature of succession planning and intellectual property rights. Should the Board wish to discuss IPRs in relation to development of a succession plan, the AC would avail itself in providing counsel.

Monitoring Analytics offers true value to stakeholders, including the institutional knowledge from being PJM's first and only IMM. Much of that benefit is provided to stakeholders through active participation in the stakeholder process, engagement with OPSI and the consumer advocates, consistent analysis and modeling which produces data that is easily comparable year-over-year, and which is adjusted as market rules evolve. Joe Bowring has advocated for Monitoring Analytics' contract to be indefinite, rather than on defined length terms; he offers this as a solution to both the intellectual property rights concern and the succession planning effort. While the AC is not ready to take a position on an evergreen contract, noting however that any discussion regarding Requests for Proposals for future market monitoring services is explicitly outside the scope of this investigation and thus comments on the issue should be summarily dismissed, we do urge the PJM Board to consider the integral relationship between intellectual property rights and succession planning in discussions on future contracts.

General Concerns

In addition to the areas in which feedback was requested, the AC must express concern for the very nature of this process, which was initiated midway through the IMM's current contract. Depending on the feedback

¹ OPSI Advisory Committee Letter to David Mills, dated November 28, 2023.

it receives, the PJM Board may ultimately decide that it must attempt negotiations with the IMM to amend the contract. While the AC appreciates the Board's intent to appropriately respond to stakeholder concerns and to perform its due diligence, this timing creates a concern that the IMM will feel political pressure to accept any proposed contractual amendments in order to have a better chance of contract renewal. Or, if the IMM rejects such amendments, this increases the likelihood the PJM Board will choose a different direction at the end of this term. If nothing else, much of the feedback received by the PJM Board to this point in the investigation vindicates our concerns at the outset – stakeholders hostile to the current IMM will use the opportunity provided by the investigation to advance their interests in ways contrary to the rules set forth by the PJM Board. Given this inappropriate engagement by stakeholders, we ask the PJM Board to steadfastly maintain its intended direction in initiating this endeavor, even if contrary to the comments and expectations some stakeholders have expressed.

The AC both appreciates and supports the PJM Board's acceptance of written comments especially for stakeholders who did not want to provide feedback in a public forum. However, the AC would also appreciate further transparency as this effort moves forward and would benefit greatly from another summary of the written comments received. The AC hereby requests that Mr. Mills report such information to the AC and allow for proper deliberation, prior to any future Board action that derives from this effort.

We appreciate our continued dialogue on all matters related to the IMM. We take our FERC-approved role in these matters seriously and look forward to continued engagement.

Sincerely,



Joseph L. Fiordaliso
Chair
OPSI Advisory Committee