

## **ADVISORY OPINION PROCEDURES**

### **Summary of Proposal to Members Committee on 3/25/04**

#### **Introduction**

In its review of PJM's market monitoring function that was delivered to the Members in November 2003, the PJM Board of Managers stated its intention to establish a mechanism for market participants to obtain a written interpretation from PJM of the application of its rules and market power concerns to a market participant's planned future conduct. The proposed Procedures are being circulated to the Members in advance of the Members Committee meeting on March 25, 2004, for discussion at that meeting. No approval by the Members Committee will be required. The proposed Procedures will then be brought before the PJM Board for consideration and approval.

#### **Summary of Procedures**

1. Any PJM market participant may request an Advisory Opinion with regard to planned future market behavior that implicates any matter within the scope of Article III ("Monitored Activities") of the Market Monitoring Plan:
  - a. Compliance with rules, standards, procedures and practices of the PJM Market as set forth in the Tariff, the Operating Agreement, the Reliability Assurance Agreements and the PJM Manuals;
  - b. Actual or potential market design flaws; and
  - c. The potential of any market participant to exercise undue market power.
2. An Advisory Opinion will not address:
  - a. The effect of proposed legislation, regulations, or amendments to the Market Rules that have not yet been approved by the Federal Energy Regulatory Commission;
  - b. Portions of larger transactions; or
  - c. Activities of any entity other than the requesting party.
3. The request for an Advisory Opinion will be referred to the appropriate PJM department(s) (which may include but shall not be limited to the Market Monitoring Unit) for consideration, but an Advisory Opinion will be issued in the name of PJM and not of any specific department.
4. An Advisory Opinion may affirm, modify or deny the conclusion requested by the requesting party. PJM will also have discretion to decline to issue an Advisory Opinion. PJM may withdraw an Advisory Opinion at any time upon notice to the requesting party.

5. An Advisory Opinion will represent the considered judgment of PJM as of the date that it is issued.
  - a. The requesting party may act in reliance upon an Advisory Opinion unless and until PJM gives notice of withdrawal of the Advisory Opinion.
  - b. The foregoing notwithstanding, in order to preserve PJM's ability to respond in appropriate fashion to anticompetitive developments in the electricity markets, an Advisory Opinion will not be binding upon PJM, the PJM Board of Managers or the PJM Market Monitor; provided, however, that neither PJM nor the Market Monitor will initiate action against a requesting party for market behavior executed in strict accordance with an Advisory Opinion prior to the requesting party's receipt of notice from PJM that the Advisory Opinion has been withdrawn.
  - c. Advisory Opinions will not purport to represent the position of FERC and shall not be binding upon FERC.
6. In the ordinary course, PJM will post its Advisory Opinions on its website, after redacting confidential information and the identity of the requesting party, but PJM will retain the right not to post an Advisory Opinion, either on its own motion or upon application of the requesting party.
7. All information designated as "confidential" by the requesting party will be afforded confidential treatment by PJM as required by the Operating Agreement.
8. In order to avoid socializing the cost of preparing an Advisory Opinion, fees will be charged to the requesting party:
  - a. A non-refundable filing fee in the amount of \$2,000 to defray the cost of determining whether a request for an Advisory Opinion will be acted upon; and
  - b. A review fee to compensate PJM's time, overhead and expenses in the preparation of an Advisory Opinion. An initial review fee in the amount of \$15,000 will be payable when PJM undertakes to issue an Advisory Opinion. The initial review fee will be credited against the actual review fee, the balance of which will be payable upon completion of the Advisory Opinion and prior to its issuance; any excess of the initial review fee over the final review fee will be refunded to the requesting party.