

PJM Advisory Opinion Procedures

1. Introduction.

As an aid to Market Participants, the Board of Managers of PJM Interconnection has authorized procedures whereby Market Participants may submit requests for issuance of an Advisory Opinion to be used as a guide in prospective market activities. As more fully set forth in the following procedures, the issuance of an Advisory Opinion is within the sole discretion of PJM. An Advisory Opinion will represent the considered judgment of PJM as of the date that it is issued, and in the ordinary course, Advisory Opinions will be posted on the PJM website to provide guidance to Market Participants. The Requesting Party may act in reliance upon an Advisory Opinion unless and until it is withdrawn by PJM. In order to preserve PJM's ability to respond in appropriate fashion to unforeseen developments in the electricity markets, an Advisory Opinion shall not be binding upon PJM, the PJM Board of Managers or the PJM Market Monitor, but neither PJM nor the PJM Market Monitor will take action against a Requesting Party which acts in strict conformity with an Advisory Opinion prior to its withdrawal. Before posting an Advisory Opinion, the identity of the Requesting Party and all confidential information will be redacted, and PJM may elect in its discretion not to post the Advisory Opinions. In the event Advisory Opinions are posted, they shall not constitute precedent as to the matters addressed therein and they may be revoked by PJM at any time.

2. Definitions.

(a) "Advisory Opinion" means a written advisory opinion issued by PJM in accordance with the Advisory Opinion Procedures.

(b) "Advisory Opinion Procedures" means these procedures for the request and issuance of an Advisory Opinion.

(c) "Confidentiality Application" means a request that an Advisory Opinion and the accompanying Request (or specified portions thereof) be kept confidential.

(d) "Confidentiality Application Procedures" means the procedures set forth in **Appendix A** attached hereto relating to a Confidentiality Application.

(e) "Division" means a division or department of PJM, including without limitation the PJM Market Monitoring Unit.

(f) "Market Participant" means a market participant as defined in the Plan.

(g) "Market Rules" mean the PJM market rules set forth in:

(i) The Amended and Restated Operating Agreement of PJM;

(ii) The Open Access Transmission Tariff of PJM;

(iii) The Reliability Assurance Agreements of PJM; and

- (iv) The Manuals of PJM.
- (h) "PJM" means PJM Interconnection, L.L.C., a regional transmission organization.
- (i) "Plan" means the PJM Market Monitoring Plan included as Attachment M to the Open Access Transmission Tariff of PJM.
- (j) "Proposed Advisory Opinion" means a detailed description of the conclusions that the Requesting Party and/or its Representative seeks to have issued by PJM in an Advisory Opinion.
- (k) "Representative" means an individual or entity who files a Request on behalf of a Requesting Party.
- (l) "Request" means a request for an Advisory Opinion.
- (m) "Requesting Party" means the party on whose behalf the Advisory Opinion is requested.

3. **Subject Matter; Requesting Party.**

(a) A Request may be submitted as to matters set forth in "III. Monitored Activities" of the Plan. A Request shall be submitted in good faith to seek guidance on the application of Market Rules to market activities which the Requesting Party believes not to be prohibited by the Market Rules and which it intends to conduct. Advisory Opinions shall have prospective effect only and shall not be deemed to express approval or disapproval of past market activities.

(b) An Advisory Opinion shall not address:

- (i) The effect of proposed legislation, regulations, or amendments to the Market Rules that have not yet been approved by the Federal Energy Regulatory Commission;
- (ii) Portions of larger transactions; or
- (iii) Activities of any entity other than the Requesting Party.

(c) Only a Market Participant may be a Requesting Party.

4. **PJM's Discretion.** PJM shall have the sole discretion to determine whether to:

- (a) Issue an Advisory Opinion;
- (b) Issue an Advisory Opinion that reaches a different conclusion from that set forth in the Proposed Advisory Opinion;
- (c) Require additional information and/or analyses, or require participation in a telephonic or in-person conference with PJM, as a condition to issuing an Advisory Opinion or otherwise condition the issuance of an Advisory Opinion;

(d) Interpret, amend or make exceptions to the Advisory Opinion Procedures and the Confidentiality Application Procedures; and

(e) Revoke any prior Advisory Opinion.

5. **Reliance upon an Opinion; No Binding Effect.**

(a) An Advisory Opinion shall be issued by PJM and not by any specific Division of PJM, and it shall constitute the considered judgment of PJM as of the date that the Advisory Opinion is issued, based on the facts and circumstances and other matters set forth in the Advisory Opinion. The Requesting Party may act in reliance upon an Advisory Opinion, as limited to the facts and circumstances and other matters set forth therein, unless and until notice is given by PJM that the Advisory Opinion is withdrawn.

(b) The foregoing notwithstanding, an Advisory Opinion is not an official expression of the views of the PJM Board of Managers. In order to preserve the ability of PJM, the PJM Board of Managers and the PJM Market Monitor to fulfill their responsibilities in the event of unforeseen market developments, an Advisory Opinion shall not be binding on PJM, the PJM Board of Managers or the PJM Market Monitor with respect to the Requesting Party or any other entity, and an Advisory Opinion may not be relied upon as precedent by any party; provided, however, that neither PJM nor the PJM Market Monitor shall 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. Nothing in these Advisory Opinion Procedures shall be deemed to alter the reporting responsibilities of the PJM Market Monitor set forth in law or in the Plan.

(c) **An Advisory Opinion shall not purport to represent the views of the Federal Energy Regulatory Commission nor shall it be binding upon the Commission.**

6. **Requirements With Respect to Requests.** Each Request shall be in the form set forth in **Appendix B** attached hereto and shall comply with the following requirements:

(a) The Request shall be in writing and signed on behalf of the Requesting Party by a duly authorized agent or officer.

(b) The Request shall be submitted by registered mail or recognized overnight courier addressed to PJM Interconnection, L.L.C., 955 Jefferson Avenue, Valley Forge Corporate Center, Norristown, PA 19403-2497, Attention: General Counsel. The Requesting Party shall supply PJM with five (5) copies of the Request (at least one of which shall contain an original signature), five (5) copies of all accompanying documents and one (1) copy of the Request and all accompanying documents electronically on a disk.

(c) A Request shall contain the name, main business address and main telephone number of the Requesting Party; and, if the Request is made by a Representative, the name, main business address and main telephone number of the Representative.

(d) The Request shall provide the name, address, e-mail address, fax number and telephone number of a contact person from whom PJM may obtain additional information if necessary.

(e) The Request shall set forth, as completely as practicable, all of the material facts and circumstances that give rise to the Request, including without limitation whether there is any dispute pending or threatened between the Requesting Party (or any of its affiliates) and another party, the prosecution or outcome of which might reasonably be expected to be affected by the requested Advisory Opinion.

(f) The Request shall clearly explain why the requested Advisory Opinion is necessary.

(g) The Request shall contain a Proposed Advisory Opinion. The Proposed Advisory Opinion shall identify all relevant legal, theoretical, and factual issues and discuss the legal, theoretical, and public policy bases supporting the issuance of the Proposed Advisory Opinion. The Proposed Advisory Opinion shall also cite and distinguish or refute all legal, theoretical and public policy bases that are contrary to the conclusions advanced therein.

(h) The Request shall clearly state the assumptions and theories, including but not limited to economic and market theories, upon which the Proposed Advisory Opinion is based.

(i) The Request shall contain references to all relevant authorities, including applicable provisions of the Plan, Market Rules, judicial decisions, administrative decisions, relevant statutory interpretations, and policy statements, including without limitation any rules in other organized markets that would have a bearing upon the subject of the Request were the contemplated activity to be conducted in such markets. Adverse authority shall be cited and discussed.

(j) The Request shall contain an affirmation or disclaimer that the conduct that is the subject of the Request is, to the knowledge of the Requesting Party, presently being performed by another participant in the PJM markets or the markets of any other independent system operator or regional transmission organization.

(k) Relevant documents shall be described in and attached to the Request.

(l) The Request shall be accompanied by a certification of a person with knowledge of the facts. Such certification shall be in substantially the form included as part of **Appendix B**.

7. Actions by PJM Upon Receipt of a Request.

(a) Upon receipt of a Request, PJM shall promptly forward the Request to the appropriate Division or Divisions for analysis and response and shall notify the Requesting Party or its Representative that PJM has received the Request.

(b) PJM shall endeavor to determine within thirty (30) days of receipt of a Request whether it will undertake a review in anticipation of issuing an Advisory Opinion.

(c) In the event that PJM determines not to issue an Advisory Opinion, either initially or after the review process has begun, PJM shall promptly notify the Requesting Party or its Representative of that determination and the reasons for that determination.

(d) In the event that PJM determines to undertake a review in anticipation of issuing an Advisory Opinion, it shall promptly notify the Requesting Party or its Representative of that determination. After undertaking a review, PJM shall proceed in a reasonably expeditious manner, but shall not be subject to any time limitations.

(e) Notifications by PJM to a Requesting Party or its Representative pursuant to these Advisory Opinion Procedures and the Confidentiality Application Procedures may be by mail, overnight courier, fax or e-mail.

8. **Duty to Inform PJM of Changes.** The Requesting Party and its Representative have a duty to ensure that all material facts contained within the Request remain true and complete throughout the evaluation process. Should any of the material facts cease to be true or should new material information become available, the Requesting Party or its Representative shall promptly inform PJM of such changes. The obligation of a Requesting Party to inform PJM of material changes in the facts or circumstances on which an Advisory Opinion is based shall continue for a period of twelve (12) months following the date of issuance of the Advisory Opinion.

9. **Additional Information.** PJM may request that the Requesting Party or its Representative provide additional information that is deemed necessary or desirable by PJM to facilitate its analysis of the Request. The Requesting Party or its Representative shall have thirty (30) days to respond to a request for additional information from PJM. Failure to respond in timely fashion will be grounds for PJM to discontinue its analysis of the Request without a refund to the Requesting Party of any fees.

10. **Conference Request.** The Requesting Party or its Representative may request that PJM participate in telephonic or in-person conferences prior or subsequent to the filing of a Request. The granting of a conference is within PJM's sole discretion.

11. **Expedited Issuance of Advisory Opinion.** The Requesting Party or its Representative, for good cause shown, may request expedited issuance of an Advisory Opinion. The granting or denial of a request for an expedited issuance of an Advisory Opinion is within PJM's sole discretion.

12. **Withdrawal of Request.** The Requesting Party or its Representative may withdraw a Request at any time.

13. **Issuance of Advisory Opinion; No Right to Reconsideration.**

(a) For a period of five (5) business days following the date of issuance of an Advisory Opinion, the Requesting Party may request further consideration by PJM of its conclusions for good cause shown, which may include without limitation demonstrated factual inaccuracies in the Advisory Opinion. PJM shall in its sole discretion determine whether to

reconsider or withdraw its Advisory Opinion based upon such further consideration and shall promptly notify the Requesting Party of its determination.

(b) Except as provided in subsection 13(a) above, neither the Requesting Party nor its Representative shall have a right to reconsideration of a conclusion reached in an Advisory Opinion. However, PJM, in its sole discretion, may at any time reconsider any matter relating to an Advisory Opinion, either on its own initiative or upon the request of the Requesting Party.

14. **Withdrawal or Modification of Advisory Opinion.** PJM may modify or withdraw an Advisory Opinion in whole or in part at any time.

15. **Confidentiality.**

(a) Except as otherwise provided herein, PJM shall post Advisory Opinions on the PJM website in a redacted form which shall eliminate the Requesting Party's identity and all confidential information. Such posting shall generally occur within thirty (30) days after the Advisory Opinion is rendered. A copy of the proposed text of the posting shall be provided to the Requesting Party and/or its Representative for comment, along with the planned posting date, not less than fifteen (15) days prior to the planned posting date.

(b) Not later than five (5) days prior to the planned posting date, the Requesting Party or its Representative may file a Confidentiality Application in compliance with the Confidentiality Application Procedures. The approval of a Confidentiality Application is within PJM's sole discretion.

(c) PJM, in its sole discretion, may determine that it will not post the Request and Advisory Opinion on its website, in which event PJM shall notify the Requesting Party or its Representative, if any, of such determination and the Requesting Party and its Representative, if any, shall maintain the confidentiality of the Advisory Opinion.

(d) In the event that an Advisory Opinion is not issued for any reason, the Request shall remain on file with PJM and PJM shall maintain the confidentiality of the Request, subject to applicable legal requirements.

(e) PJM shall maintain the confidentiality of documents submitted with or pursuant to the Request, subject to applicable legal requirements.

(f) Any provision of the Advisory Opinion Procedures or the Confidentiality Application Procedures to the contrary notwithstanding, PJM shall preserve the confidentiality of a Market Participant's confidential information in accordance with the provisions of the PJM Amended and Restated Operating Agreement and the Plan, as each may from time to time be amended.

16. **Fees.** The filing of a Request shall be accompanied by a non-refundable filing fee in the amount of \$2,000 (the "Filing Fee"). If PJM undertakes to render an Advisory Opinion, an initial review fee of \$15,000 will be charged as a precondition of PJM's undertaking further review (the "Initial Review Fee"). When PJM is prepared to issue an Advisory Opinion, it will

calculate an adjusted review fee based on time charges (including overhead) and expenses reasonably incurred in the review (the "Adjusted Review Fee").

(a) The Initial Review Fee shall be credited towards the Adjusted Review Fee. If the Initial Review Fee is in excess of the Adjusted Review Fee, the Requesting Party shall be refunded the difference promptly after the Advisory Opinion is issued. If the Adjusted Review Fee is in excess of the Initial Review Fee, the Requesting Party shall be obligated to pay PJM the amount of such excess. PJM shall notify the Requesting Party of the excess balance due and the Advisory Opinion shall only be released upon the payment of such excess amount by the Requesting Party. In the event that time charges and expenses incurred in the review exceed the Initial Review Fee, PJM may elect to render periodic statements of fees and expenses to be credited against the Adjusted Review Fee, payment of which periodic statements shall be a condition of PJM's continuing the review.

(b) If PJM undertakes to render an Advisory Opinion, but fails to do so, the Initial Review Fee and any periodic payments (but not the Filing Fee) shall be refunded to the Requesting Party. Such a refund shall be subject to the Requesting Party's having adhered to all of the requirements of the Advisory Opinion Procedures.

(c) In the event that PJM undertakes to render an Advisory Opinion and the Requesting Party or its Representative subsequently withdraws the Request, the Requesting Party shall be obligated to pay PJM an Adjusted Review Fee in the amount, if any, of PJM's time charges and expenses expended or incurred through the date of PJM's receipt of notice of such withdrawal in excess of the Initial Review Fee actually paid by the Requesting Party.

APPENDIX A

Confidentiality Application Procedures

1. **Definitions.** Terms used in these Confidentiality Application Procedures that have been defined in the Advisory Opinion Procedures shall have the meanings specified in the Advisory Opinion Procedures.

(a) “Confidentiality Determination” means the document issued by PJM that sets forth its determination with respect to a Confidentiality Application.

(b) “Relevant Information” means the portions of the Request and/or Advisory Opinion for which the Submitting Party is seeking confidential treatment in its Confidentiality Application.

(c) “Submitting Party” means a Requesting Party or Representative that submits a Confidentiality Application. If a Representative submits the Confidentiality Application, the Submitting Party means both the Representative and the Requesting Party.

2. **Justification.** A Submitting Party may request, in writing, within the time period specified in subsection 15(b) of the Advisory Opinion Procedures, that PJM afford confidential treatment to its Request and/or Advisory Opinion (or specified portions thereof). The Submitting Party shall specify the justifications for the requested confidential treatment. Confidential treatment may be requested without limitation on the grounds that disclosure:

(a) would reveal the Requesting Party's trade secrets, proprietary business information, proprietary market information, or market strategy; or

(b) would violate applicable law or breach agreements to which the Requesting Party is a party or by which it is bound.

3. **Submission.** The Confidentiality Application shall be submitted in accordance with subsection 6(b) of the Advisory Opinion Procedures.

4. **Duration.** A Confidentiality Application shall state the length of time for which confidential treatment is being sought.

5. **Verification.** The Confidentiality Application shall be in writing and signed by a duly authorized agent or officer of the Submitting Party.

6. **Identification of Relevant Information.** The Confidentiality Application shall clearly identify all portions of the Request and/or Advisory Opinion (as proposed to be redacted by PJM) that the Submitting Party believes are Relevant Information and shall specify, if applicable, further redactions that would address the Submitting Party's confidentiality concerns.

7. **Duty of Submitting Party.** The Submitting Party has a duty to ensure that all material facts contained within the Confidentiality Application remain true and complete throughout the

evaluation process. Should any of the material facts cease to be true or should new material information become available, the Submitting Party shall promptly inform PJM of such changes.

8. **Additional Information**. The Submitting Party shall promptly respond to a request for additional information from PJM. Failure to so respond shall be grounds for PJM to deny a Confidentiality Application.

9. **Confidentiality Determination**. It is within PJM's sole discretion to approve or disapprove a Confidentiality Application or to determine not to post an Advisory Opinion on the PJM website pursuant to subsection 15(c) of the Advisory Opinion Procedures, subject always to the provisions of the PJM Amended and Restated Operating Agreement and the Plan relating to confidential information of a Market Participant. PJM may grant a Confidentiality Application in whole or in part. PJM's determination shall be embodied in a Confidentiality Determination. The Confidentiality Determination shall be final, but PJM may, at any time and in its sole discretion, review and revise a Confidentiality Determination. If the Submitting Party is not satisfied with the Confidentiality Determination, it may withdraw its Request.

APPENDIX B

Form for a Request under PJM's Advisory Opinion Procedures¹

Request for an Advisory Opinion

I. Requesting Party's Information

This section shall contain the name, main business address, and main telephone number of the Requesting Party.

II. Representative's Information

This section shall contain the name, main business address, and main telephone number of the Representative, if any.

III. Contact Person's Information

This section shall contain the name, address, e-mail address, fax number and telephone number of a contact person from whom PJM may obtain additional information if necessary.

IV. Reason for Request

This section shall contain an explanation for why the requested Advisory Opinion is necessary.

V. Material Facts and Circumstances

This section shall contain, as completely as practicable, all of the material facts and circumstances giving rise to the Request.

VI. Proposed Advisory Opinion

This section shall contain a Proposed Advisory Opinion drafted by the Requesting Party or its Representative. The Proposed Advisory Opinion may be submitted as an attachment to the Request.

VII. Assumptions and Theories

This section shall contain the assumptions and theories upon which the Proposed Advisory Opinion is based.

¹ All definitions contained in Section 2 of the Advisory Opinion Procedures are deemed to be incorporated into this form.

VIII. Relevant Authority

This section shall list and discuss all relevant authorities, including applicable provisions of the Plan, judicial decisions, administrative decisions, relevant statutory interpretations, and policy statements. Adverse authority shall be cited and discussed in this section.

IX. Attached Documents

This section shall list and describe of all documents that are material to the Request. Listed documents shall be attached to the Request. This section shall appear as follows:

<u>Label</u>	<u>Title</u>	<u>Description</u>
(ex. Exhibit 1)	(Ex. XYZ Agreement)	(Description of the contents of the XYZ Agreement)

X. Certification and Signature

I hereby certify the following:

I have knowledge of the material facts relevant to this request for an advisory opinion and the facts set forth in this request for an advisory opinion are true and complete in all materials respects to the best of my knowledge and after due inquiry.

The behavior for which the advisory opinion is sought represents specific market behavior that _____ (the "Requesting Party") is currently seriously contemplating in good faith.

This request is made in the good faith belief that there is a legitimate question regarding how the Requesting Party's intended behavior will be treated under [**Requesting Party or its Representative shall specifically reference the Market Rule or other issues for which the Advisory Opinion is sought**].

I am authorized, on behalf of the Requesting Party, to agree to comply with the Advisory Opinion Procedures and Confidentiality Application Procedures (including without limitation to comply with the obligation to maintain the confidentiality of an Advisory Opinion as set forth in subsection 15(c) and the duty to provide PJM with continuing information as set forth in section 8 of the Advisory Opinion Procedures) and hereby agree, on behalf of the Requesting Party, to do so.

(name and title of signatory)