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Craig Glazer
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December 24, 2003

Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Remediating Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Docket No. RM01-12-000, Status Report re: State Access to Confidential Market Data

Dear Ms. Salas:

At the August 28, 2003 PJM Regional Conference in Wilmington, Delaware sponsored by the Commission and in response to state commissioner requests, Chairman Wood and Commissioner Brownell requested that PJM, its members and the state commissions work together to address ways to provide state commissions in the PJM footprint access to confidential market data while still preserving confidentiality. The Commissioners requested a status report on their request within 120 days.

PJM initiated a stakeholder working group, comprised of representatives of the state commissions in the Mid-Atlantic and the expanded PJM region, PJM Members and PJM staff to address this matter. That process resulted in the adoption by the PJM Members Committee, by acclamation, of a motion that "generally endorses" the principles set forth in the attached document as a basis for the drafting of revisions to the PJM Operating Agreement and related documents and a nondisclosure agreement pursuant to its terms. Three open and unresolved issues were also referred to the drafting committee for resolution:

- a. Use of the oral briefing provisions in paragraph 5 in lieu of written requests pursuant to paragraph 6;
- b. Revision of the procedural schedule in paragraph 7 by reasonable adjustments to enable PJM and the PJM Market Monitor to respond to written requests without undue burden; and
- c. Consideration of changes to the notice and appeal process in Paragraph 7.

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The draft documents are intended to be submitted for final consideration and approval by the PJM Members Committee in January of 2004 and subsequent filing with this Commission. A drafting committee made up of representatives of the state commissions, PJM and the PJM membership will be appointed to prepare appropriate Operating Agreement revisions and a pro forma Non-Disclosure Agreement.

This report has been approved by representatives of the state commissions and representatives of the PJM Members Committee. Questions on this matter may be directed to Craig Glazer at 202-393-7756 on behalf of PJM, Commissioner Glen Thomas at 717-787-4301 on behalf of the state commissions in the PJM footprint and Ms. Ellen Cavanaugh at 215-841-5200 on behalf of the PJM Members Committee.

Very truly yours,

A handwritten signature in black ink that reads "Craig Glazer" followed by a stylized flourish.

Craig Glazer
Vice President, Government Policy
PJM Interconnection, L.L.C.

Attachments (2): Members Committee Motion and Statement of Principles

K://PJM/ Status Report State Access to Confidential Market Data

Motion – PJM Members Committee – December 17, 2003

The PJM Members Committee generally endorses the principles set forth in “State Access to Confidential Information” as amended and presented to the PJM Members Committee on December 18, 2003 as a basis for the drafting of revisions to the PJM Operating Agreement and related documents and the drafting of a nondisclosure agreement pursuant to its terms, which will be submitted for final consideration and approval by the Members Committee.

The drafting committee shall consider and resolve the following open issues with respect to these principles:

- a) Use of the oral briefing provisions in Paragraph 5 in lieu of written requests pursuant to paragraph 6.
- b) Revision of the procedural schedule in Paragraph 7 by reasonable adjustments to enable PJM and the PJM Market Monitor to respond to written requests without undue burden.
- c) Consideration of changes to the notice and appeal process in Paragraph 7.

State Access to Confidential Information
November 10, 2003 State Conference Call
December 16, 2003 State-PJM Conference Call

These principles relate to provisions dealing with access to non-public data in the possession of PJM or its Market Monitoring Unit (PJM MMU) and subject to the confidentiality provisions of the PJM Open Access Transmission Tariff (PJM OATT) and/or the PJM Operating Agreement, and similar agreements or successors as they may be amended from time to time (“confidential data”). Confidential data includes, without limitation, any non-public data related to PJM markets, operations, transmission planning and siting, and generation planning and siting.

The purpose of these principles is to serve as a basis for drafting amendments to the existing provisions of the PJM OATT and PJM Operating Agreement that prevent PJM and the PJM MMU from sharing and/or discussing confidential data with state public utility commissions or regional state committees in states located within the PJM market footprint that are responsible for monitoring wholesale and retail markets for exercise of market power, gaming of tariff rules, operating agreements and/or business rules, and market dysfunction.

Such provisions should permit the broadest possible access to PJM confidential data by state public utility commissions or regional state committees, while appropriately protecting the confidential or proprietary nature of information. Access to confidential data under these principles is in addition to and not a substitute for other methods of obtaining data which may apply, either through discovery or through compulsory legal process according to the laws of the United States and the States.

1. Authorized State Public Utility Commissions shall include state public utility commissions within the geographic limits of PJM’s territory and regional state committees that comprise multiple state public utility commissions within the geographic limits of PJM territory.
2. Authorized State Public Utility Commissions will designate in writing to PJM those persons authorized (“authorized persons”) to receive and discuss confidential data by providing written notice to PJM. Authorized persons shall include attorneys representing an Authorized State Public Utility Commission, consultants and/or contractors directly employed by an Authorized State Public Utility Commission, provided however that consultants or contractors may not initiate requests for confidential data from PJM or the PJM MMU.
3. Each authorized person must execute an appropriate non-disclosure agreement, as defined under these principles, prior to receiving confidential data. A non-disclosure agreement will not be required in order to review or discuss non-confidential data or confidential data which has been edited or aggregated by PJM so as to make it non-confidential and posted on the PJM web site (PJM shall be responsible for posting such

edited or aggregated data on PJM's web site as appropriate). The list of authorized persons that have signed the non-disclosure agreement shall be publicly available.

4. An appropriate non-disclosure agreement will be drafted to adequately protect confidential data that is disclosed and to establish procedures for the return or destruction of such confidential by the authorized person after a suitable period of time.

5. Any authorized person may request or receive oral briefings regarding wholesale market activities, RTO operations, or RTO planning from the PJM MMU or PJM operating personnel, during the course of which confidential data required to understand and analyze such activities may be discussed. Information which is confidential data will be specifically identified as such, and confidential data provided in such discussions will be subject to the terms of the non-disclosure agreement. PJM shall not, in the course of such an oral briefing, specifically identify the market participants whose confidential data is discussed until 24 hours have elapsed. Within those 24 hours, PJM shall notify those members of PJM whose confidential data has been disclosed in the course of such oral briefings.

6. In the event that an Authorized State Public Utility Commission wishes to obtain confidential data from PJM or the PJM MMU, it will submit a request in writing or electronically to the PJM Market Monitor, with a copy to the PJM General Counsel, which details the following:

Any such request shall: (i) describe with particularity the information sought; (ii) identify the person(s) who will have access to the information; (iii) designate a person who will be the custodian of the information; and (iv) provide a description of the purpose of the request. Such requests shall be specific with respect to the time period for which information is requested.

7. Within two business days of a written request made by an Authorized State Public Utility Commission for confidential data, PJM shall notify those member(s) of PJM that have submitted confidential data to PJM which would be required to be released to satisfy the request, and provide such members with copies or appropriate references to the confidential data to be released. Within three business days of notification, the affected member or PJM may file an objection to such request with the Federal Energy Regulatory Commission (FERC) submitted pursuant to the FERC's "fast track" filing procedures. If no such objection has been filed with the FERC within three days of notification, PJM shall deliver the requested confidential data to the requesting Authorized State Public Utility Commission within two business days thereafter.

8. Release of confidential data to an Authorized State Public Utility Commission by PJM under these procedures shall not be construed to create a waiver or abandonment of any legal privilege that may be asserted against subsequent disclosure or discovery in any formal proceeding or investigation.

9. Authorized persons in receipt of confidential data may discuss such confidential data with the PJM MMU and request that the PJM MMU provide assistance in analysis or review of such confidential data. Authorized persons in receipt of confidential data may

discuss such confidential data with any other authorized persons that have requested and received the same confidential data under these provisions. PJM and/or the PJM MMU shall be responsible for immediately notifying authorized persons that have requested confidential data that another authorized person has requested the same confidential data.