

**Market Participation Risk Evaluation  
Enhancements**

**For MRC/MC Vote**

**March 26, 2020**

**Operating Agreement, Membership Provisions**

## 11.6 Membership Requirements.

- (a) To qualify as a Member, an Applicantentity shall:
- (i) Be a Transmission Owner, a Generation Owner, an Other Supplier, an Electric Distributor, or an End-Use Customer; ~~and~~
  - (ii) Accept the obligations set forth in this Agreement;
  - (iii) Cure any default, including but not limited to paying all outstanding and unpaid obligations due to PJM and/or PJMSettlement by any former Member that is an Affiliate of the Applicant, if any, as required by PJM and/or PJMSettlement based on its evaluation of the membership application; and
  - (iv) Cure any default, including but not limited to paying all outstanding and unpaid obligations due to PJM and/or PJMSettlement by any former Member, and for which Applicant should be treated as the same Member that experienced the outstanding default, pursuant to the factors identified in Operating Agreement, Schedule 1, section 1.4.8, and the parallel provisions of Tariff, Attachment K-Appendix, section 1.4.8, if any, as required by PJM and/or PJMSettlement based on its evaluation of the membership application.
- (b) Certain Members that are Load Serving Entities are parties to the Reliability Assurance Agreement. Upon becoming a Member, any Applicantentity that is a Load Serving Entity in the PJM Region and that wishes to become a Market Buyer shall also simultaneously execute the Reliability Assurance Agreement.
- (c) An Applicantentity that wishes to become a PJM Member and party to this Agreement shall apply, in writing, to the President of PJM setting forth its request, its qualifications for membership, its agreement to supply data and information as specified in this Agreement and any additional data or information reasonably requested by PJM and/or PJMSettlement, its agreement to pay all costs and expenses in accordance with Operating Agreement, Schedule 3, and providing all additional information specified pursuant to the ~~Schedules to this Agreements~~ for entities that wish to become Market Participants. Among other things, PJM will evaluate the application to determine whether the entity seeking to become a Member (i) is qualified for membership, (ii) satisfies the requirements for participation in one of the sectors in accordance with Operating Agreement, section 8.1, and/or (iii) presents any unreasonable, inherent or material risks to PJM, including but not limited to unreasonable credit risk pursuant to Tariff, Attachment Q that cannot be cured by posting Collateral or credit support commensurate with the risk of the anticipated market activity of the Applicant to the PJM Markets and PJM Members. Such review shall include an examination of whether the Applicant should be treated as a former Member that experienced an outstanding default in PJM, including but not limited to the interconnectedness of the business relationships, overlap in relevant personnel, similarity of business activities, overlap of customer base, and the business engaged in prior to the attempted re-entry, and other relevant factors. PJM and PJMSettlement will reviewAny such applications to determine whether they satisfy that meets all applicable requirements. The determination whether an application for membership is approved shall be made within ninety (90) days after receipt of all documentation and information required by the Agreements and/or requested by

PJM and/or PJMSettlement in the consideration of the application for membership. If an application for membership is not approved by the President of PJM, the Applicant will be provided a written notice explaining the basis for non-approval. An Applicant may appeal the non-approval of its application for membership to the Federal Energy Regulatory Commission. shall be approved by the President within sixty (60) days.

(d) Nothing in Operating Agreement, section 11 is intended to remove, in any respect, the choice of participation by other utility companies or organizations in the operation of the PJM Region through inclusion in the System of a Member.

(e) An Applicantentity whose application is accepted by the President of PJM pursuant to section 11.6(c) above shall execute a supplement to this Agreement in substantially the form prescribed in Operating Agreement, Schedule 4, which supplement shall be countersigned by the President of PJM or the President's authorized designee. The entity-Applicant shall become a Member effective on the date the supplement is countersigned by the President of PJM or the President's authorized designee.

(f) ApplicantsEntities whose applications contemplate expansion or rearrangement of the PJM Region may become Members promptly as described in sections 11.6(c) and 11.6(e) above, but the integration of the aApplicant's system into all of the operation and accounting provisions of the is Agreements and the Reliability Assurance Agreement, shall occur only after completion of all required installations and modifications of metering, communications, computer programming, and other necessary and appropriate facilities and procedures, as determined by the Office of the Interconnection. The Office of the Interconnection shall notify the other Members when such integration has occurred.

(g) ApplicantsEntities that become Members will be listed in Operating Agreement, Schedule 12.

(h) In accordance with this Agreement, Members agree that PJMSettlement shall be the Counterparty with respect to certain transactions under the PJM Tariff and this Agreement.

## 15.1 Failure to Meet Obligations.

### 15.1.1 ~~Suspension and~~ Termination of Market ~~Participant~~Buyer Rights.

~~The Office of the Interconnection~~PJM may limit, suspend or~~shall~~ terminate a Market Participant's~~Buyer's~~ right to ~~make purchases from~~ participate in the PJM Interchange Energy Market, the PJM Capacity Credit Market or any other PJM Mmarket operated by PJM if it determines that the Market ~~Buyer-Participant~~ does not continue to meet the obligations set forth in ~~any of these~~ Agreements, including but not limited to the obligation to be in compliance with ~~the terms, or operating characteristics of any of its prior scheduled transactions in any market operated by PJM, PJM's~~ the creditworthiness requirements ~~set forth in Tariff, Attachment Q~~ and/or the obligation to make timely payment, provided that ~~PJM and/or PJMSettlement~~ ~~the Office of the Interconnection~~ has notified the Market ~~Buyer-Participant~~ of any such deficiency and afforded the Market ~~Buyer-Participant~~ a reasonable opportunity to cure pursuant to section 15.1.3 below, ~~or Tariff, Attachment Q, as applicable.~~ ~~The Office of the Interconnection~~PJM shall reinstate a Market ~~Participant's~~Buyer's right to ~~make purchases from the PJM Interchange Energy Market and PJM Capacity Credit Market~~ participate in any PJM Market upon a ~~determination by PJM and/or PJMSettlement that~~ demonstration by the Market ~~Participant has satisfied the applicable requirements and is~~Buyer that it has come into compliance with the obligations set forth in ~~these~~ Agreements.

### 15.1.2 ~~[Reserved for Future Use]~~Termination of Market Seller Rights.

~~The Office of the Interconnection shall not accept offers from a Market Seller that has not complied with the prices, terms, or operating characteristics of any of its prior scheduled transactions in the PJM Interchange Energy Market, unless such Market Seller has taken appropriate measures to the satisfaction of the Office of the Interconnection to ensure future compliance.~~

### 15.1.3 Payment of Bills.

~~A~~Members and Participants shall make full and timely payment, in accordance with the terms specified by ~~the Office of the Interconnection~~PJM, of all bills rendered in connection with or arising under or from ~~any of these~~ Agreements, any service or rate schedule, any tariff, or any services performed by ~~the Office of the Interconnection~~PJM or transactions with PJMSettlement, notwithstanding any disputed amount, but any such payment shall not be deemed a waiver of any right with respect to such dispute. Any Member ~~or Participant~~ that fails to make full and timely payment to PJMSettlement (of amounts owed either directly to PJMSettlement or PJMSettlement as agent for ~~the LLC~~PJM) or otherwise fails to meet its financial or other obligations to a Member, PJMSettlement, or ~~the LLC~~ PJM under ~~any of these~~ Agreements, shall, in addition to any requirement set forth in ~~Operating Agreement, this~~ section 15.1 and upon expiration of the ~~2-day-cure~~ period specified below, be in default.

### 15.1.4 Breach Notification and Remedy

If ~~PJM or PJMSettlement~~the Office of the Interconnection concludes, upon its own initiative or

the recommendation of or complaint by the Members Committee or any Member, that a Member or Participant is in breach of any of its obligation under any of these Agreements, including, but not limited to, the obligation to make timely payment and the obligation to meet PJM's creditworthiness standards and to otherwise comply with PJM's credit policies, PJM and/or PJMSettlement~~the Office of the Interconnection~~ shall so notify such Member or Participant. The notified Member or Participant may remedy such asserted breach by: (i) paying all amounts assertedly due, along with interest on such amounts calculated in accordance with the methodology specified for interest on refunds in FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii); and (ii) demonstration to the satisfaction of PJM and/or PJMSettlement~~the Office of the Interconnection~~ that the Member or Participant has taken appropriate measures to meet any other obligation of which it was deemed to be in breach; provided, however, that any such payment or demonstration may be subject to a reservation of rights, if any, to subject such matter to the PJM Dispute Resolution Procedures; and provided, further, that any such determination by PJM and/or PJMSettlement~~the Office of the Interconnection~~ may be subject to review by the PJM Board upon request of the Member or Participant involved or PJM and/or PJMSettlement~~the Office of the Interconnection~~.

### 15.1.5 Default Notification and Remedy

If a Member or Participant has not remedied a breach, as described in section 15.1.4 above, by 4:00 p.m. Eastern Prevailing Time on the first Business Day following PJM's or PJMSettlement's issuance of a written notice of breach or Collateral Call, the notice of which is issued before 1:00 p.m. Eastern Prevailing Time, or by 4:00 p.m. Eastern Prevailing Time on the 2nd second Business Day following PJM's or PJMSettlement's receipt issuance to the Member or Participant of a written the Office of the Interconnection's notice of breach or Collateral Call, the notice of which is issued at or after 1:00 p.m. Eastern Prevailing Time, or receipt of the PJM Board's decision on review, if applicable, then the Member or Participant shall be in default and, in addition to such other remedies as may be available to PJM~~the LLC~~ or PJMSettlement:

- i) A defaulting Market Participant shall be precluded from buying or selling in ~~the PJM Interchange Energy Market, the PJM Capacity Credit Market, or any other~~ market operated by PJM until the default is remedied as set forth above;
- ii) A defaulting Member shall not be entitled to participate in the activities of any committee or other body established by the Members Committee or PJM~~the Office of the Interconnection~~; and
- iii) A defaulting Member shall not be entitled to vote on the Members Committee or any other committee or other body established pursuant to this Agreement.
- iv) PJM shall notify all other M~~m~~embers of the default.

### 15.1.6 Reinstatement of Member Following Default and Remedy

a. A Member that has been declared in default, solely of PJM's creditworthiness standards,

or fails to otherwise comply with PJM's credit policies as more fully described in Tariff, Attachment Q, once within any 12 month period may be reinstated in full after remedying such default and satisfying any requirements imposed upon the Member as a result of the default.

b. A Member that has been declared in default of any of these Agreements for failing to: (i) make timely payments when due once during any prior 12 month period, or (ii) adhere to PJM's creditworthiness standards and credit policies, twice during any prior 12 month period, may be subject to the following restrictions:

- a) Loss of stakeholder privileges, including voting privileges, for 12 months following such default; and
- b) Loss of the allowance of unsecured credit for 12 months following such default

c. A Member that has been declared in default of this Agreement for failing to: (i) make timely payments when due twice during any prior 12 month period, or (ii) adhere to PJM's creditworthiness standards and credit policies, three times during any prior 12 month period, shall, except as provided for in section 15.1.6(d) below, not be eligible to be reinstated as a Member to this Agreement and its membership rights pursuant to this Agreement shall be terminated in accordance with Operating Agreement, section 4.1(c)-, notwithstanding whether such default has been remedied. Furthermore:

- a) -PJMSettlement shall close out and liquidate all of the Member's current and forward positions in accordance with the provisions of this Agreement and the PJM Tariff; and
- b) -A Member terminated in accordance with these provisions shall be precluded from seeking future membership in PJM under this Agreement whether in the name of the Member when it was terminated from PJM membership or as a new Applicant under a different name, affiliation, or organization if the Member or new Applicant experienced a previous default that resulted in a loss to the PJM Markets and was terminated from membership. Whether an Applicant should be considered the same as a Member that previously defaulted will be determined based on the factors identified in Operating Agreement, Schedule 1, section 1.4.8, and the parallel provisions of Tariff, Attachment K-Appendix, section 1.4.8.;

d. A Member may appeal a determination made pursuant to the foregoing procedures utilizing PJM's Dispute Resolution Procedures as set forth in Operating Agreement, Schedule 5, (provided, however, that a Member's decision to utilize these procedures shall not operate to stay the ability of PJM to exercise any and all of its rights under this Agreement and the PJM Tariff) and may be reinstated provided that the Member can demonstrate the following:

- a) that it has otherwise consistently complied with its obligations under this Agreement and the PJM Tariff; and
- b) the failure to comply was not material; and

- c) the failure to comply was due in large part to conditions that were not in the common course of business.

## 15.2 Enforcement of Obligations.

If ~~the Office of the Interconnection~~ PJM sends a notice to the PJM Board that a Member has failed to perform an obligation under any of these Agreements, the PJM Board, on behalf of ~~the LLC~~ PJM and PJMSettlement, shall initiate such action against such Member to enforce such obligation as the PJM Board shall deem appropriate. Subject to the procedures specified in ~~s~~Section 15.1 above, a Member's failure to perform such obligation shall be deemed to be a default under this Agreement. In order to remedy a default, but without limiting any rights ~~the LLC~~ PJM or PJMSettlement may have against the defaulting Member, the PJM Board may assess against, and collect from, the Members not in default, in proportion to their Default Allocation Assessment, an amount equal to the amount that the defaulting Member has failed to pay to PJMSettlement or ~~the LLC~~ PJM (less amounts covered by ~~Financial Security Collateral~~, held by PJMSettlement, on behalf of itself and as agent for ~~the LLC~~ PJM, or indemnifications paid to ~~the LLC~~ PJM or PJMSettlement), along with appropriate interest. Such assessment shall in no way relieve the defaulting Member of its obligations. In addition to any amounts in default, the defaulting Member shall be liable to ~~the LLC~~ PJM and PJMSettlement for all reasonable costs incurred in enforcing the defaulting Member's obligations.

### 15.2.1 Collection by ~~the Office of the Interconnection~~ PJM.

PJM and PJMSettlement ~~are~~ authorized to pursue collection through such actions, legal or otherwise, as it reasonably deems appropriate, including but not limited to the prosecution of legal actions and assertion of claims on behalf of the affected Members in the state and federal courts as well as under the United States Bankruptcy Code. Prior to initiating formal legal action in state or federal court to pursue collection, PJM and PJMSettlement shall provide to the Members Committee an explanation of its intended action. Upon the duly seconded motion of any Member, the Members Committee may conduct a vote to afford PJM and PJMSettlement a sense of the membership as regards to PJM's or PJMSettlement's intended action to pursue collection. PJM and PJMSettlement shall consider any such vote before initiating formal legal action and at all times during the course of any collection effort evaluate the expected benefits in pursuing such effort in light of any changed circumstances. After deducting the costs of collection, any amounts recovered by PJM and PJMSettlement shall be distributed to the Members who have paid their Default Allocation Assessment in proportion to the Default Allocation Assessment paid by each Member.

### 15.2.2 Default Allocation Assessment.

(a) "Default Allocation Assessment" shall be equal to  $(0.1(1/N) + 0.9(A/Z))$ , where:

N = the total number of Members, calculated as of five o'clock p.m. eastern prevailing time on the date PJM declares a Member in default, excluding ex officio Members, State Consumer Advocates, Emergency and Economic Load Response Program Special Members, and municipal electric system Members that have been granted a waiver under Operating Agreement, section 17.2.



A = for Members comprising factor “N” above, the Member's gross activity as determined by summing the absolute values of the charges and credits for each of the Activity Line Items identified in section 15.2.2(b) below as accounted for and billed pursuant to Operating Agreement, Schedule 1, section 3 for the month of default and the two previous months.

Z = the sum of factor A for all Members excluding ex officio Members, State Consumer Advocates, Emergency and Economic Load Response Program Special Members, and municipal electric system Members that have been granted a waiver under Operating Agreement, section 17.2.

The assessment value of  $(0.1(1/N))$  shall not exceed \$10,000 per Member per calendar year, cumulative of all defaults, or more than once per Member default if Default Allocation Assessment charges for a single Member default span multiple calendar years. For this purpose, a default by an individual Member that spans multiple billing periods without cure shall be considered a single default. If one or more defaults arise that cause the value to exceed \$10,000 per Member, then the excess shall be reallocated through the gross activity factor.

(b) Activity Line Items shall be each of the line items on the PJM monthly bills net of load reconciliation adjustments and adjustments applicable to activity for the current billing month appearing on the same bill.

**15.3 Obligations to a Member or Participant in Default.**

The Members have no continuing obligation to provide the benefits of interconnected operations to a Member or Participant in default.

**15.4 Obligations of a Member or Participant in Default.**

A Member or Participant found to be in default shall take all possible measures to mitigate the continued impact of the default on the Members not in default, including, but not limited to, loading its own generation to supply its own load to the maximum extent possible.

### **15.5 No Implied Waiver.**

A failure of a Member, the PJM Board, PJMSettlement, or ~~the LLC~~PJM to insist upon or enforce strict performance of any of the provisions of this Agreement shall not be construed as a waiver or relinquishment to any extent of such entity's right to assert or rely upon any such provisions, rights and remedies in that or any other instance; rather, the same shall be and remain in full force and effect.

## 15.6 Limitation on Claims.

No adjustment in the billing for any service, transaction, or charge under this Agreement may be asserted by ~~the Transmission Provider~~ PJM, PJMSettlement, or any Member or Participant with respect to a month, if more than two years has elapsed since the first date upon which the billing for that month occurred. PJMSettlement, on behalf of itself or as agent for PJM, may make no adjustment to a Member's or Participant's bill with respect to a month for any service, transaction, or charge under this Agreement, if more than two years have elapsed since the first date upon which the billing for that month occurred, unless 1) a claim made by a Member or Participant in writing and addressed to the President of PJMSettlement seeking such adjustment has been received by PJMSettlement prior thereto or 2) ~~the Transmission Provider~~ PJM and/or PJMSettlement have notified the Member or Participant in writing of the need to make such an adjustment prior thereto.