PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Energy Management Solutions, L.L.C.	)	
	)	
v.	)	**Docket No. EL24-90-000**
	)	
PJM Interconnection, L.L.C.	)	

ANSWER AND REQUEST FOR CONFIDENTIAL TREATMENT OF PJM INTERCONNECTION, L.L.C.

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ANSWER OF PJM INTERCONNECTION, L.L.C.

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure,[1] PJM Interconnection, L.L.C. ("PJM") submits this answer to the March 15, 2024 Complaint of Energy Management Solutions, LLC ("EMS").

EMS challenges PJM's January 18, 2023 denial of EMS's application for membership in PJM ("Membership Application") on the basis that PJM's justifications for rejecting the Membership Application are "invalid or no longer valid."[2] PJM found that "EMS shares the same principal and management" as Hill Energy Resource & Services, LLC ("Hill Energy"), an entity whose history of defaults in 2022 required its termination as a PJM Member[3] in 2023 with the Commission's approval.[4] The companies' common principal is Lee Chen ("Chen"), the manager, principal, and chief risk officer for Hill Energy who now presents himself chief risk officer of EMS. As PJM explained to EMS, these facts compelled PJM to deny the EMS Membership

[1] 18 C.F.R. § 385.213 (2023).

[2] *See* EMS, Complaints of Energy Management Solutions, LLC and Request the Commission to Issue an Order to PJM Interconnection, L.L.C. for it to Accept EMS' Membership Application and to Allow EMS to Participant in PJM Markets, Docket No. EL24-90-000 at 2, 5 (Mar. 15, 2024) ("Complaint").

[3] Capitalized terms not defined herein have the meaning set forth in the PJM Open Access Transmission Tariff ("Tariff") or the PJM Operating Agreement ("OA").

[4] *See PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,018 ("Hill Energy Termination Order"), *reh'g denied by operation of law*, 183 FERC ¶ 62,137 (2023).

Application for at least two reasons. First, "PJM was required pursuant to Operating Agreement, section 15.1 to terminate Hill Energy's membership with no right of re-entry as either Hill Energy or under a different name, affiliation, or organization."[5] Second, PJM found that EMS presented an "unmanageable risk" under Tariff Attachment Q because it "is an entity controlled by its principal with no oversight and inadequate risk controls" and that principal, Chen, has "demonstrated a history of withdrawing funds from PJM and impoverishing [his] entity to make it unable to meet collateral calls thus resulting in defaults."[6] The attached affidavit of Dr. Carl F. Coscia, PJM's Chief Risk Officer, ratifies PJM's continued determination that EMS presents an "unreasonable credit risk" under Attachment Q.[7]

EMS contends that PJM's denial of the Membership Application "erects unjust, unreasonable, and unduly discriminatory barriers to entry to PJM's markets."[8] EMS further claims that PJM has misread the bar to readmission in Operating Agreement section 15.1.6.c (Reinstatement of Member Following Default and Remedy) because EMS has not caused a "loss" to PJM.[9] According to EMS, neither EMS nor Hill Energy caused any loss to PJM's markets because Hill Energy cured its defaults in January and February 2022.[10] EMS also claims that PJM wrongly determined that EMS is "not a manageable risk" under Attachment Q section II.E.8 (Unreasonable Credit Risk).[11]

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[5] Complaint at 9 (quoting Complaint Attach. 2 ("PJM Notification Letter") at 1).

[6] *Id.*

[7] Ex. A, Affidavit of Dr. Carl F. Coscia, Chief Risk Officer of PJM Interconnection, L.L.C.

[8] Complaint at 4.

[9] *Id.* at 3.

[10] *Id*.

[11] *Id.*

The positions advanced by Chen through EMS have no merit. As an initial matter, it is beyond legitimate dispute that EMS is substantively identical to Hill Energy, which engaged in a series of defaults and failed collateral calls in 2022 that caused the Commission to terminate Hill Energy as a Member effective January 17, 2023.[12] Chen makes no serious attempt to argue otherwise. Once that mutual identity is established, applying PJM's Operating Agreement and Tariff provisions concerning Member readmission becomes relatively straightforward.

First, Chen's interpretation of the Operating Agreement is fundamentally flawed. The Operating Agreement requires PJM to reject any Applicant who "experienced a previous default that resulted in a loss to the PJM Markets."[13] EMS claims that is "the *only* subsection under section 15.1 that handles how to treat a new membership application of a defaulted former member or a new entity under a different name but deemed the same as the former member by PJM."[14] EMS further claims this rule does not bar EMS because "[a]ll of Hill Energy's defaults were cured in January and February 2022 and it has not resulted in any loss to PJM."[15] Both claims are incorrect.

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[12] *See* Hill Energy Termination Order, 183 FERC ¶ 61,018 at P 24 (2023) ("The PJM Operating Agreement provides that if, during any 12-month period, a Member fails to make timely payments when due twice, then its membership shall be terminated . . . . As such, we find that Hill Energy failed to adhere to its Tariff obligation to make timely payment of its bills and failed to do so at least twice during the 12 months prior to PJM's filing for termination. Thus, we accept PJM's filing for termination of Hill Energy as a PJM Member as just and reasonable and consistent with its Tariff.") (footnotes omitted),; *see also* Complaint, Attach. 2 at 3 ("Hill Energy incurred three payment defaults and three credit defaults in the months of January and February of 2022. Breach and default notifications were sent for all occurrences which resulted in no initial response or acknowledgement from Hill Energy. While PJM eventually received a response from you, there was no effort made in such response to address the outstanding financial obligations outside of requesting that PJM use the collateral on any and all future invoices, which is not allowable."). PJM's letter to EMS at Complaint, Attachment 2 actually understates Hill Energy's defaults—instead of three payment and three credit defaults, Hill Energy incurred five payment and three credit defaults. *See* Hill Energy Termination Order, 183 FERC ¶ 61,018, at PP 5, 15.

[13] OA § 15.1.6.c(b).

[14] Complaint at 3 n.14 (emphasis added); *id.* at 3 ("proper and exact subsection").

[15] *Id*. at 3; *accord id*. at 2 n.4; *id.* at 3 n.8; *id*. at 5 n.11; *id*. at 6 n.14; *id*. at 11; *id*. at 11 n.23.

EMS cannot rescue its Membership Application even if Hill Energy is deemed to have avoided a market loss by curing Hill Energy's prior defaults in 2022.[16] That is because Operating Agreement section 15.1.6.c establishes a separate bar to admission that, based on Hill Energy's demonstrated history of defaults and failed collateral calls, makes EMS "*not eligible to be reinstated as a Member … notwithstanding whether such default has been remedied*."[17] Moreover, Operating Agreement section 11.6 makes it plain that curing past defaults is a *necessary precondition* for seeking re-admission to PJM, but is *not sufficient* in itself to justify re-admission.[18] Moreover, nothing in Operating Agreement section 15.6.1 limits PJM's ongoing duty to prevent the admission of an "unreasonable credit risk" under Attachment Q. On the contrary, Operating Agreement section 15.1.6 repeatedly instructs PJM to evaluate compliance with "PJM's credit policies as more fully described in Tariff, Attachment Q."[19]

Second, PJM reasonably determined that EMS presented an "unreasonable credit risk" under Attachment Q, section II.E.8. The EMS Membership Application was afforded robust

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[16] As discussed below, Hill Energy did not cure its own defaults in 2022. Those defaults were paid by draining Hill Energy's Restricted Collateral, which PJM had prudently raised to cover Hill Energy's risk exposure and avoid a default cost allocation to other Members.

[17] OA § 15.1.6.c (emphasis added). Operating Agreement section 1.4.8 confirms that there are two distinct mandatory bars against re-entry. One mandatory bar applies to entities whose previous defaults "resulted in a loss to any PJM Market which was never cured" and a separate bar for entities who are "not eligible for reinstatement to PJM membership pursuant to Operating Agreement, section 15.1." OA § 1.4.8. This distinction is also recognized in the structure of Operating Agreement subsection 15.6.1.c(b). The first sentence of that subsection requires mandatory exclusion of previous defaulters who caused a loss; the second sentence directs PJM to determine "[w]hether an Applicant should be considered the same as a Member that previously defaulted" regardless of loss. OA § 15.1.6.c(b).

[18] Operating Agreement section 11.6(a) provides that a new Applicant must "pay[] all outstanding and unpaid obligations due to PJM and/or PJMSettlement by any former Member that is an Affiliate of the Applicant" or by "any former Member … for which Applicant should be treated as the same Member." OA § 11.6(a)(iii) & (iv).

[19] OA § 15.1.6.a; *see id.* § 15.1.6.b (requiring adherence to PJM's "creditworthiness standards and credit policies"); *id.* § 15.1.6.c (same).

review under Attachment Q and PJM thoroughly memorialized its rationale for rejecting the Membership Application through at least one meeting, information requests, and other correspondence over the course of several months. EMS complains that PJM did not answer questions posed by EMS,[20] but that claim is belied by the extensive correspondence provided in the Complaint's own attachments.[21] PJM now augments that record by submitting new supporting documents, as well as complete copies of attachments that EMS chose to redact, in Exhibits A-Y. In short, PJM did respond to the questions EMS raised about its rejected Application; EMS simply did not like PJM's answers.

In particular, EMS objects that the reasons PJM gave for determining that EMS constitutes an "unreasonable credit risk" under Attachment Q "are invalid or no longer valid."[22] The basis for that claim is that EMS proposed certain unique limits on its own trading activities and collateral requirements, which EMS contends would have allowed EMS to participate in trading with "practically zero credit and other material risks from EMS to PJM Markets."[23] PJM properly declined the self-control mechanisms that EMS devised (and revised) because those proposals

[20] *See* Complaint at 7 ("PJM gives no answer to EMS' request."); *id.* at 8 ("EMS receives no answer to the request."); *id.* at 11 n.24 ("PJM did not provide any answer to EMS' inquiry.").

[21] *See, e.g.*, Complaint Attachs. 2, 4, 6 (presenting correspondence between PJM and EMS regarding PJM's reasons for denying the Membership Application). In terms of unusual redactions, the EMS edits to Attachment 1 are so extensive as to deprive the document of any useful meaning or context. Attachment 6 similarly presents a curiously manufactured document that blends an email from PJM with extensive new responsive commentary from EMS that was not part of the original communication.

[22] *Id.* at 2; *accord id*. at 3; *id.* at 4.

[23] *Id.* at 3 (contending that EMS could reduce its risk to "practically zero" if EMS were "to engage only in Monthly FTR Option transactions in PJM Markets with additional $2,000,000 excess collateral maintained at and controlled by PJM at all times"); *accord id.* at 6; *id*. at 7; *id*. at 12; *id*. at 14; *id*. at 15; *id.* Attach. 3 at 1; *id*. at 2; *id*. Attach. 4 at 7 (proposing self-imposed trading and collateral constraints); *id.* Attach. 4 at 9 (questioning rejection of self-imposed trading constraints); *id.* Attach. 4 at 12 (same).

were empty and unenforceable. EMS did not make the concrete personnel and compliance changes necessary to distinguish itself from its predecessor, Hill Energy. At the end of the day, EMS has no "bench" of personnel depth to meet those commitments. PJM's close examination of EMS over the better part of a year indicated "that no one performs the functions of a general counsel/chief legal officer or chief financial officer for EMS," that Chen was performing "the function of chief risk officer" in addition to his other duties, and that this situation "poses a risk for PJM which cannot be mitigated because it calls into question whether there are sufficient staff/Principals to oversee required day to-day activities of EMS."[24]

For these reasons, as further detailed herein, PJM respectfully requests that the Commission reject the Complaint.

I. BACKGROUND

A. The Hill Energy Termination Proceedings

Chen was the manager, principal, and chief risk officer for Hill Energy and is the current chief risk officer of EMS.[25] As a PJM Member, Hill Energy participated in PJM's Financial Transmission Rights ("FTR") market and acquired a sizeable FTR portfolio. But, as FERC previously found, the valuation of Hill Energy's FTR portfolio was, in part, dependent on the Lanexa-Dunnsville transmission line in the Northern neck region of Virginia, which was scheduled for construction with planned outages to facilitate certain upgrades ("Line 224 Project").[26] However, with the Line 224 project looming in December 2021, Mr. Chen requested a withdrawal

[24] *Id.* Attach. 2, PJM Notification Letter, at 3; *accord* PJM Ex. S (same) at 3; *see* PJM Ex. A, Coscia Aff. at P 12-13.

[25] *See* PJM Ex. O, EMS Answers to PJM's First Supplemental Information Requests, August 2022.

[26] *See* Hill Energy Termination Order, 183 FERC ¶ 61,018 at P 1.

of $1,898,000 from Hill Energy's PJM collateral account, followed by another requested withdrawal of $16,998,000.[27] By the end of 2021, those requested sums, totaling almost $19 million, were deposited in the same account Hill Energy used for PJM's Automated Clearing House debit, which was accessible by Chen.[28]

In January 2022, the Line 224 Project began, and the extended planned outage resulted in a regional power supply constraint and the application of the Transmission Constraint Penalty Factor.[29] This impacted the FTRs in Hill Energy's portfolio, which began to settle at considerable losses.[30]

On January 10, 2022, PJM notified Chen that, due to the losses in Hill Energy's FTR portfolio, Hill Energy had a collateral shortfall of $921,402.67. As a result, PJM issued a collateral call for $921,500.[31] However, while Chen acknowledged receipt of the collateral call, Hill Energy failed to otherwise respond in any substantive way and did not post the requested collateral. PJM then declared Hill Energy in default of its credit obligations on January 11, 2022.[32]

On January 13, 2022, PJM notified Chen that Hill Energy's obligations further exceeded its credit limit, requiring a second collateral call for $178,800.[33] Given Hill Energy's collateral withdrawals, its FTR portfolio positions, and the Line 224 Project construction start, PJM also

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[27] *See* 1 PJM Ex. B, December 1, 2021 Hill Energy Collateral Return Request; PJM Ex. C, December 22, 2021 Hill Energy Collateral Return Request.

[28] *See* PJM Ex. O, EMS Answers to PJM's First Supplemental Information Requests, August 2022.

[29] *See* Hill Energy Termination Order, 183 FERC ¶ 61,018 at PP 1-2.

[30] PJM Ex. F, Maximum Possible Losses from FTR Options.

[31] Hill Energy Termination Order, 183 FERC ¶ 61,018 at P 3.

[32] *See id.*

[33] *See id.*

determined that Hill Energy posed an unreasonable credit risk.[34] PJM notified Chen of that determination, and issued a third, but restricted, collateral call to Hill Energy, in the amount of $17,000,000.[35]

On January 14, 2022, Chen finally substantively responded to PJM's notices. Yet, without making reference to the nearly $19 million Chen had withdrawn just weeks before, and with several collateral calls looming, Chen noted he was awaiting an additional payment to Hill Energy of $300,000.[36] With Hill Energy's failing to provide any additional collateral deposits in response to the collateral calls, PJM declared Hill Energy in default of its credit obligations for the second time on January 14, 2022, and for a third time on January 20, 2022.[37]

Hill Energy's credit defaults were just the beginning. As Hill Energy's FTRs continued to settle at a loss, Hill Energy continued to default, this time on its payment obligations. PJM sent month-to-date invoices to Hill Energy, as described below, but no payments. PJM then had to declare Hill Energy in payment default on: (i) January 25, 2022, for failing to pay its January 1 to January 12, 2022 month-to-date invoice in the amount of $1,007,628.33 when due and payable on January 21, 2022; (ii) February 1, 2022, for failing to pay its January 1 to January 19, 2022 month-to-date invoice in the amount of $1,730,226.81 when due and payable on January 28, 2022; (iii) February 8, 2022, for failing to pay its January 1 to January 26, 2022 month-to-date invoice in the amount of $396,125.51 when due and payable on February 4, 2022; (iv) February 15, 2022, for failing to pay its January 2022 monthly invoice, and February 1 to February 2, 2022 month-to-

[34] *See* PJM Ex. H, January 13, 2022 PJM - Hill Energy Unreasonable Credit Risk Determination.

[35] *See* Hill Energy Termination Order, 183 FERC ¶ 61,018 at P 3.

[36] *See* PJM Ex. G, January 11, 2022 Hill Energy Declaration of Default.

[37] *See* Hill Energy Termination Order, 183 FERC ¶ 61,018 at P 3.

date invoice in the amount of $334,119.68 when due and payable on February 11, 2022; and (v) February 23, 2022, for failing to pay its February 1 to February 9, 2022 month-to-date invoice in the amount of $833,133.63 when due and payable on February 18, 2022.[38]

Having declared Hill Energy in credit default three times and payment default five times, PJM utilized its authority under the Operating Agreement to liquidate Hill Energy's FTR positions, which it completed by April 7, 2022.[39] Additionally, because of Hill Energy's defaults, on November 14, 2022, PJM filed revisions to PJM's Operating Agreement with the Commission to reflect the permanent termination of Hill Energy as a Member.[40] Following multiple rounds of responsive filings, the Commission issued an order accepting PJM's termination of Hill Energy's membership on April 14, 2023, effective January 17, 2023.[41]

B. EMS Submits its Membership Application

Following Hill Energy's defaults, Chen anticipated Hill Energy's fate as a Member. On April 22, 2022, Chen applied for PJM membership through a "new" entity, EMS. But EMS is merely a repackaging of Hill Energy, which Chen does not dispute in his current Complaint. Chen, as "Authorized representative" of EMS, submitted the Membership Application to participate in PJM's financial and virtual products markets.[42] As part of its review of the Membership Application, PJM asked whether EMS was affiliated with any "current PJM Member," to which

[38] *See id.*

[39] *See id.*

[40] *See id*. at P 1.

[41] *Id.*

[42] PJM Ex. I, EMS Membership Application.

Chen responded in the negative. Yet, at that time, Hill Energy was still a PJM Member, and Chen intentionally chose to withhold material information about EMS's affiliation.[43]

Nor was this the first time Chen behaved deceptively when attempting to create a new PJM membership. In November 2021, Chen submitted an application for Black Mountain Renewables, which, like Hill Energy, was controlled by Chen.[44] Chen, however, inaccurately indicated a lack of affiliation "with any current PJM Member even though [Chen was] the principal and CEO for both Hill Energy and Black Mountain" at that time.[45] After filing that inaccurate application, Chen later abandoned the full application process.[46]

Because of PJM's justifiable concerns over the risks posed by Chen's involvement, PJM conducted additional due diligence, as permitted by its governing documents. On June 22, 2022, PJM submitted follow-up questions to Chen relating to the structure and governance of EMS and Hill Energy.[47] **BEGIN CUI//PRIV-HC** [redacted]

[43] *Id.*

[44] *See* Complaint Attach. 2, PJM Notification Letter, at 1-2; *accord* PJM Ex. S (same).

[45] *Id.* at 2.

[46] *Id.*

[47] Chen's characterization of "substantive and procedural" issues with those questions in fact related to concerns Chen's then-lawyer had with how the answers to those questions could be used in a lawsuit pending in Texas state court, not concerns that the questions were improper for purposes of reviewing the Membership Application.

[redacted]

[redacted] **END CUI//PRIV-HC**

PJM notified EMS that its responses were insufficient for PJM to accept EMS's Membership Application at that time and, in accordance with the Operating Agreement, PJM sent a second round of requests to EMS for supplemental information and clarification.[50] **BEGIN CUI//PRIV-HC** [redacted] **END CUI//PRIV-HC**

PJM, having found that EMS's responses were still insufficient for PJM to accept the Membership Application, nevertheless went on to give Chen (and EMS) a third bite at the apple. PJM sent third supplemental requests for information in an effort to better understand why Hill Energy (again, an entity affiliated with EMS) **BEGIN CUI//PRIV-HC** [redacted]

[redacted]

[redacted] **END CUI//PRIV-HC** Chen responded to those questions with account information, but, given Chen's access and control over some of those accounts, PJM's concerns were not assuaged.

C. PJM Denies the Membership Application

Ultimately, PJM denied EMS's Membership Application and described its reasons in PJM's notification letter on January 18, 2023.[54] PJM stated that:

> Following several defaults by Hill Energy Resources, LLC ("Hill Energy") PJM was required pursuant to Operating Agreement, section 15.1 to terminate Hill Energy's membership with no right of re-entry as either Hill Energy or under a different name, affiliation, or organization. Because EMS shares the same principal and management as Hill Energy, upon acceptance of the termination filing by FERC EMS is ineligible as a matter of law for PJM membership.
>
> As more fully supported below, EMS is an entity controlled by its principal with no oversight and inadequate risk controls. EMS shares the same organizational structure, principal, management, and governance deficiencies as Hill Energy. In your management of Hill Energy, you have demonstrated a history of withdrawing funds from PJM and impoverishing your entity to make it unable to meet collateral calls thus resulting in defaults. Such behavior is not a manageable risk and thus membership is denied on that basis. *See* Operating Agreement, section 11.6.[55]

PJM's letter went on to describe the supporting reasons warranting PJM's denial, which, while not exhaustive, included: (1) EMS's failure to disclose material information and insufficient responses to PJM's supplemental questions; (2) Chen's failure to exercise prudent control over EMS's and Hill Energy's finances; (3) Chen's inability, as principal of EMS, to cause EMS to satisfy its financial obligations to PJM; (4) EMS's lack of general counsel, chief legal officer and chief financial officer; (5) Chen acting as the chief risk officer; (6) EMS's lack of established

[redacted]

[54] *See* PJM Ex. S, January 18, 2023 EMS Membership Application Denial, at 1.

[55] *Id.*

financials; and (7) Chen's past history of non-responsiveness.[56] PJM also rightly concluded that, given the interconnectedness between Hill Energy and EMS, EMS should be treated as Hill Energy for purposes of evaluating qualification for PJM membership.[57] Notably, in the Complaint, EMS and Chen do not contest that relationship and affiliation.

PJM also "determined that EMS presents an unreasonable credit risk pursuant to PJM Tariff, Attachment Q, Section II.E.8 that cannot be cured by posting Collateral or credit support commensurate with the risk of the anticipated market activity of EMS to the PJM Markets and PJM Members."[58] Chen and EMS waited until three months after receiving this letter to begin proposing alternatives to try to address those risks, but Chen's proposals were insufficient. "PJM evaluated EMS'[s] application to determine whether EMS [was] qualified to become a Member in accordance with the Operating Agreement and . . . determined that [Chen's] history with PJM as principal of Hill Energy indicate[d] that [Chen's] re-entry into the PJM markets through EMS would present unreasonable, inherent, and material risks to PJM."[59] Nothing Chen or EMS could offer then or now could change that determination.

II. ARGUMENT

A. PJM Properly Rejected the EMS Membership Application under Operating Agreement Section 15.1.6.c

Chen contends that the only "proper and exact" basis for denying a membership application occurs under Operating Agreement section 15.1.6.c(b) when "the Member or new Applicant experienced a previous default that resulted in a loss to the PJM Markets and was terminated from

[56] *Id.* at 2-3.

[57] *See id.* at 1.

[58] *Id*. at 3.

[59] *Id.*

membership."[60] Chen asserts that EMS cannot be excluded under section 15.1.6.c(b) because "[a]ll of Hill Energy's defaults were cured in January and February 2022" and thus "[n]either EMS nor Hill Energy resulted in a loss to the PJM Markets."[61] Chen's claim rests on a fundamental misreading of the Operating Agreement.

Contrary to Chen's reading, Operating Agreement section 15.1.6 (Reinstatement of Member Following Default and Remedy) establishes *two* distinct mandatory bars on readmission of PJM Members who have been habitual defaulters in the past. The Complaint misreads one of those provisions, and it ignores the other one. Both require PJM to deny the EMS Application.

The first mandatory exclusion, which Chen ignores, is in the main body of Operating Agreement section 15.1.6.c. It directs PJM to terminate a Members after a specified number of defaults or credit violations and further declares that defaulting former Members shall "*not be eligible to be reinstated as a Member … notwithstanding whether such default has been remedied.*"[62] This is the directive that the Commission applied in the Hill Energy Termination Order.[63]

That bar to reinstatement cannot be removed "except as provided for in section 15.1.6(d)," which is an appeal thorough PJM's Alternative Dispute Resolution Process set forth in Operating Agreement, Schedule 5. The appeal process allows PJM to readmit a defaulting former Member that demonstrates all three of the following requirements: "(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

[60] Complaint at 2 (quoting OA § 15.1.6.c(b)).

[61] Complaint at 3;

[62] OA § 15.6.1.c.

[63] Hill Energy Termination Order, 183 FERC ¶ 61,018 at P 24.

were not in the common course of business."[64] Hill Energy did not bring an appeal under Operating Agreement section 15.1.6.d.[65] And, if Hill Energy had made such an appeal, then it could not satisfy *any* of the three bases for excusal, much less *all* of them. Those facts alone are sufficient for the Commission to deny the Complaint because EMS would be incurably barred from reinstatement to PJM by Operating Agreement section 15.1.6.c even if Chen could prove, as the Complaint attempts to argue, that Hill Energy's "default has been remedied."[66]

In the instant Complaint, Chen focuses his attention exclusively on the second mandatory bar to reinstatement in subsection 15.1.6.c(b), which provides that a "Member terminated" for repeated defaults under section 15.1.6c "shall be precluded from seeking future membership in PJM . . . 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.*"[67] Chen's claim for reinstatement hinges entirely on his repeated assertion that EMS should not be barred from Membership because "[a]ll of Hill Energy's defaults were cured in January and February 2022 and it has not resulted in any loss to PJM."[68] Essentially, EMS concludes that if Hill Energy repaid its defaults to PJM, then PJM has suffered no "loss" and EMS must automatically be made a Member. That position is unsustainable.

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[64] OA § 15.1.6.c (emphasis added).

[65] *See* Hill Energy Termination Order, 183 FERC ¶ 61,018 at P 17.

[66] OA § 15.6.1.d.

[67] OA § 15.1.6.c(b) (emphasis added).

[68] *Id*. at 3; *accord id*. at 2 n.4; *id.* at 3 n.8; *id*. at 5 n.11; *id*. at 6 n.14; *id*. at 11; *id*. at 11 n.23.

1. Operating Agreement Section 15.1.6.c Requires Rejection of the EMS Membership Application, Regardless of Loss Under Subsection 15.1.6.c(b)

EMS argues that PJM has no discretion to deny its Membership Application if EMS can show that Hill Energy's repeated defaults did not cause PJM to suffer a "loss" within the meaning of subsection 15.1.6.c(b). That is incorrect. The Operating Agreement imposes no obligation on PJM to show that PJM has suffered "loss" before terminating that Member or excluding an Applicant from membership. On the contrary, Operating Agreement section 15.1.6.c provides that a defaulting former Member "shall, *except as provided for in section 15.1.6(d) below*, *not be eligible to be reinstated as a Member . . . notwithstanding whether such default has been remedied*."[69] That provision bars EMS from readmission into PJM because Hill Energy, the alter ego of EMS, did not and could not satisfy the procedural requirements or substantive conditions to restore eligibility through an appeal to PJM under Operating Agreement section 15.1.6.d.

EMS misunderstands the function of the "loss" language in sub-section 15.1.6.c(b). The addition of that term does not relax the standard for reinstatement under section 15.1.6.c, but rather hardens the standard against reinstatement by clarifying that termination is *both mandatory and without recourse* to an appeal under section 15.1.6.d when a Member's termination for non-payment or credit violations also results in a "loss" to the PJM Markets. The distinction between these two bars against reinstatement—one of which cannot be cured—is recognized in Operating Agreement section 1.4.8 (Re-entry of Defaulting Market Participant). Furthermore, Operating Agreement section 11.6 (Membership Requirements) makes curing a prior default a *precondition* to re-admission under Operating Agreement section 11.6. It therefore cannot be true that curing a default is *sufficient* on its own to allow a former Member (Hill Energy) to re-enter PJM through

[69] OA § 15.1.6.c (emphasis added).

its corporate doppelganger (EMS). If that were true, the appeal procedure and substantive reinstatement standards set forth in Operating Agreement section 15.1.6.d would serve no purpose.

Operating Agreement section 15.1.6.c does not include any requirement that the PJM Markets must experience a "loss" before PJM must terminate a defaulting Member. A Member may be terminated under Operating Agreement, section 15.1.6.c 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."[70] This provision does not qualify these conditions, except to provide that a defaulting Member may appeal its termination. Thus, all that the Operating Agreement requires for mandatory termination is that a Member fails to satisfy either of those two conditions. Neither Member termination nor Applicant rejection require that defaults cause a "loss" to PJM. The Hill Energy Termination Order clearly holds that failure to make timely payments is sufficient in itself to require the termination of a Member.[71] Hill Energy was terminated notwithstanding the fact that Hill Energy claimed it had "paid all of its outstanding invoices."[72]

Once terminated, a Member defaulting under section 15.1.6c is not eligible for re-admission unless it first meets the requirements of Operating Agreement Schedule 1, section 1.4.8 (Re-entry of Defaulting Market Participant) and section 11.6 (Membership Requirements). The EMS Application does not satisfy those requirements.

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[70] *Id*.

[71] Hill Energy Termination Order, 183 FERC ¶ 61,018 at P 24 n.48 (citing OA §§ 4.1(c), 15.1.6.c).

[72] *Id.* P 13.

a. The Theory of the Complaint Conflicts with Operating Agreement Schedule 1, Section 4.1.8, Which Distinguishes Between Curable and Non-Curable Member Termination Conditions

Operating Agreement Schedule 1, section 1.4.8 states that "[a]n Applicant who previously defaulted on any obligations owed to PJM and/or PJMSettlement that resulted in a loss to any PJM Market which was never cured, *or* who is not eligible for reinstatement to PJM membership pursuant to Operating Agreement, section 15.1, *shall not be allowed to re-enter the PJM Markets*."[73] The first disjunctive clause addresses the mandatory and permanent bar for Members whose "defaults resulted in a loss" under subsection 15.1.6.c(b); the second disjunctive clause addresses the broader bar in 15.1.6.c against readmission of defaulting Members who are not "eligible to be reinstated as a Member . . . notwithstanding whether such default has been remedied."[74] The reason for the distinction is that a Member whose "default has been remedied" under section 15.6.1.c may appeal to PJM to restore its eligibility for membership if the former Member meets all three requirements for readmission under section 15.1.6.d.[75] That is something Hill Energy never did and that fact alone should be the end of the EMS Complaint.[76]

Moreover, Operating Agreement section 1.4.8 authorizes PJM to evaluate several factors to determine if an Applicant seeking to participate in PJM under a different name, affiliation, or

[73] OA § 1.4.8 (emphasis added).

[74] *Id.*

[75] OA § 15.6.1.d (describing the standards to be applied in an appeal under PJM's Alternative Dispute Resolution procedures).

[76] Many of the reasons Chen gave to justify the admission of EMS echo and appear to relitigate arguments Chen raised earlier in the Hill Energy matter. *Compare* Ex. H, EMS Membership Application, Response to Supplemental Questions at 3-4 (arguing against the denial of the EMS Application based on asserted flaws in Hill Energy's termination) *and* Complaint, Attach. 6 (inserting similar new written responses to a PJM message) *with* Hill Energy Termination Order, 183 FERC ¶ 61,018 at PP 11-13, 16-17 (describing Hill Energy's defenses against termination and arguing Hill Energy was not an "unreasonable credit risk").

organization should be treated as an equivalent entity to a previously-defaulting Member. These considerations include, but are 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."[77] If PJM determines that the Applicant "should be considered the same as a Member that previously defaulted," as PJM found here,[78] then that is the end of the matter and the EMS Application must be rejected.

b. The Theory of the Complaint Conflicts with Operating Agreement Section 11.6(a), Which Makes Curing Prior Defaults a Necessary Precondition, Not A Sufficient Condition, For Member Readmission

The theory of the Complaint also conflicts with Operating Agreement section 11.6(a), which describes the minimum requirements for Member readmission following default. That section requires that an Applicant must first "[c]ure 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," or "by any former Member . . . for which Applicant should be treated as the same Member."[79] That section makes curing prior defaults a *necessary precondition* for seeking readmission to PJM, but it does not make curing past defaults *sufficient* to justify readmission. Hill Energy's termination for multiple defaults in 2022 was mandatory under Operating Agreement section 15.1.6.c.[80] It therefore cannot be true that curing Hill Energy's past defaults would be sufficient, standing alone, to allow a former Member (Hill Energy) to re-enter PJM through its corporate doppelganger (EMS).

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[77] *Id.* Sched. 1 § 1.4.8.

[78] *See, e.g.*, PJM Ex. A, Coscia Aff., at P 11 ("EMS did not make the concrete personnel and compliance changes necessary to distinguish itself in any meaningful way from its predecessor, Hill Energy. . . . Ultimately, Chen *is* EMS, as he *was* Hill Energy.").

[79] OA § 11.6(a)(iii)-(iv).

[80] *See* Hill Energy Termination Order, 183 FERC ¶ 61,018 at P 24.

If curing a former Member's prior defaults were sufficient to warrant readmission to PJM, as the Complaint argues, then it would make no sense for section 15.1.6.c to add the specific requirement that a defaulting former Member *shall not* be readmitted "*except* as provided for in section 15.1.6(d) . . . *notwithstanding whether* such default has been remedied."[81] The Complaint's reading of the Operating Agreement would deny any function to the appeal procedure in Operating Agreement section 15.1.6.d, which is required for the readmission of a Member terminated for serial defaults under 15.1.6.c regardless of whether past defaults resulted in a "loss." Defaults that cause a "loss" under subsection 15.1.6.c(b) are subject to the more severe and permanent bar against readmission without recourse to an appeal under section 15.1.6.d.

2. EMS Makes a Poor Claim to "Loss" Avoidance Under Operating Agreement Subsection 15.1.6.c(b)

The Complaint makes out a poor claim that EMS must be admitted into PJM on the ground that Hill Energy's prior defaults in 2022 did not cause a "loss" to the PJM markets within the meaning of Operating Agreement subsection 15.1.6.c(b). The Tariff does not define what a "loss" means in this context, but the Complaint appears to equate the term "loss" with the assessment of a default cost allocation to other PJM Members. There is no basis for that limited reading. Hill Energy did not cure its own defaults in 2022. Those defaults were paid by draining Hill Energy's Restricted Collateral, which PJM had prudently raised to cover Hill Energy's risk exposure and avoid a default cost allocation to other Members.[82] As PJM explained to Chen when it rejected the EMS Application, it was improper for Chen to demand that "PJM use the collateral on any and

[81] OA § 15.1.6.c (emphasis added).

[82] *See* Hill Energy Termination Order, 183 FERC ¶ 61,018 at PP 13-14 (discussing the reasons for "PJM's Restricted Collateral Call of $17 million").

all future invoices" from PJM.[83] In any event, Hill Energy's previous defaults were not corrected at no cost to PJM or its other Members. PJM incurred significant expenses in connection with the termination of Hill Energy's membership, including litigation costs to prosecute Hill Energy's termination before the Commission. Indeed, PJM is continued incurring litigation costs arising from Hill Energy's termination in Texas state court through April 8, 2024,[84] as well as new litigation costs in answering the instant Complaint. Those expenses deplete PJM's budget and are ultimately covered by PJM's Members (and/or PJM Members' ratepayers) even when a special assessment is not required to make a default cost allocation to Members.[85] The fact PJM can carry such expenses for a short period of time does not indicate that those expenses do not represent "losses" to PJM or its Members.

B. PJM Properly Rejected the EMS Membership Application as an Unreasonable Credit Risk Under Attachment Q, Section II.E.8

Even if PJM accepted that Hill Energy had cured its defaults in a manner that satisfied the "loss" prevention requirement of Operating Agreement subsection 15.1.6.c(b), PJM properly rejected the EMS Application because PJM has an independent and ongoing duty under Operating Agreement section 11.6(c) to determine whether any Applicant "presents any unreasonable,

[83] PJM Ex. S, January 18, 2023 EMS Membership Application Denial at 3.

[84] *See* PJM Ex. X, *PJM Interconnection, L.L.C. & PJM Settlement, Inc. v. Hill Energy Resource & Servs., LLC*, No. D-1-GN-22-000396, Counter-Plaintiff Hill Energy Resource & Services, LLC's Notice of Nonsuit Without Prejudice (Apr. 8, 2024) (electing to nonsuit and dispose of all claims by Hill Energy against PJM).

[85] *See* PJM Tariff, § 3B ("The Transmission Provider shall recover the costs of the operation of PJM Interconnection, L.L.C. and the Office of the Interconnection from Transmission Customers, and from other users of the various PJM services, under Tariff, Schedule 9 'PJM Interconnection, L.L.C. Administrative Services.'").

inherent or material risks to PJM, including but not limited to unreasonable credit risk pursuant to Tariff, Attachment Q."[86]

Attachment Q, in turn, provides PJM broad flexibility to assess whether an Applicant poses an unreasonable credit risk. The Commission's order approving recent revisions to Operating Agreement section 15.1.6c, among other provisions governing termination and reinstatement, underscores the breadth of PJM's flexibility in this regard:

> In addition to using specific factors and indicators set forth in its tariff, PJM will use its discretion, based on all circumstances at the time, in determining whether there is an unreasonable credit risk. As the Commission has previously recognized, it is impractical to enumerate all of the examples that constitute an unreasonable credit risk, as doing so may unnecessarily limit when an RTO can act to protect its wholesale markets and market participants to only those specified instances enumerated in the tariff. Similar to previous Commission findings, we find that the instant proposal provides PJM flexibility to protect the integrity of the PJM-administered markets, as well as protect market participants from financial losses that result from unreasonable credit risks and defaults, while also providing additional clarity and transparency to market participants.[87]

In short, PJM has broad discretion to reject the EMS Membership Application based on creditworthiness assessment alone even if Hill Energy were deemed to have cured its defaults in a manner sufficient to avoid causing a "loss" under Operating Agreement subsection 15.1.6.c(b). As explained below, PJM correctly "determined that EMS presents an unreasonable credit risk pursuant to Attachment Q, Section II.E.8 that cannot be cured by posting Collateral or credit support commensurate with the risk of the anticipated market activity of EMS to the PJM Markets and PJM Members."[88]

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[86] OA § 11.6(c).

[87] *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,173, at P 36 (2020).

[88] PJM Ex. A, Coscia Aff., at P 13 (quoting PJM Ex. S, January 18, 2023 EMS Membership Application Denial, at 3).

1. PJM Properly Declined to Entertain Purported Commitments by EMS to Observe Self-Imposed Trading Constraints

Chen objects that PJM's rejection of the Membership Application "erects unjust, unreasonable, and unduly discriminatory barriers to entry to PJM Markets" because, in his view, PJM did not give adequate consideration to Chen's claim that PJM's reasons for rejecting the EMS Membership Application "are invalid or no longer valid."[89] PJM's rejection of the Membership Application did not erect unreasonable "barriers to entry,"[90] but instead enforced a reasonable precaution to protect the market from a previous Member with a disturbing history of irregular and dishonest conduct.

Chen's assertion that PJM's reasons for rejecting the Membership Application "are invalid or no longer valid" turns on a series of self-imposed constraints EMS offered to control its own trading activity. Specifically, Chen asserts that "there will be practically zero credit and other material risks from EMS to PJM Markets *when* [1] EMS is to engage only in Monthly FTR Option transactions in PJM Markets *with* [2] additional $2,000,000 excess collateral maintained at and controlled by PJM at all times."[91] EMS subsequently limited its excess collateral proposal, stating that it will only apply if EMS's "actual transacted financial volume is higher than currently estimated."[92] EMS also proposed to "retain and compensate a risk management professional acceptable to PJM,"[93] but that never occurred. And, in any event, EMS later backed away from that proposal, instead suggesting that "in lieu of an independent risk manager paid for by EMS"

[89] Complaint at 3.

[90] *Id*. at 4; *accord id.* at 16.

[91] *Id.* at 3 (emphasis added).

[92] *Id.* at 3 n.9.

[93] *Id.* Attach. 4 at 7.

PJM could generate compliance reports "without very much difficulty" and that EMS would pay some unspecified fee for that oversight work.[94]

These self-imposed trading conditions were proposed to PJM as a purported "Confidential Settlement Communication" on September 8, 2023, which EMS strangely chose to publish without redaction in Complaint Attachment 4.[95] In addition to undermining the record and unilaterally destroying any claim to settlement privilege,[96] the self-discipline measures proposed by EMS are unavailing for several reasons.

First, PJM is not required to establish special accommodations to control idiosyncratic and unmanageable risks that are presented by new or re-named applicants, particularly when the Applicant's proposals are constantly evolving. Rather, the Operating Agreement directs PJM to evaluate whether any Application "presents any unreasonable, inherent or material risks to PJM, including but not limited to unreasonable credit risk pursuant to Tariff, Attachment Q."[97] The Commission has explained this gives "PJM flexibility to protect the integrity of the PJM-administered markets, as well as protect market participants from financial losses that result from

[94] *Id*. Attach. 4 at 12.

[95] *See id.* Attach. 4 at 6-8.

[96] *See* 18 C.F.R. § 385.602 ("Any discussion of the parties with respect to an offer of settlement that is not approved by the Commission is not subject to discovery or admissible in evidence."). Rule 602 is probably best read to apply to settlement offers filed during the course of a proceeding that is already pending before the Commission, but the text states that the rule applies to "written offers of settlement [which is what EMS called its proposal] filed in *any* proceeding pending before the Commission [which Complaint initiated]." *Id.* § 602(a) (emphasis added). Either way, the unilateral disclosure by EMS of purported settlement communications was poor form and illustrates the same lack of internal compliance controls that justified the termination of Hill Energy as well as PJM's denial of the Membership Application. *See, e.g.*, *infra* note 100 (quoting Complaint Attach. 2 at 3).

[97] *Id.* § 11.6(c) (emphasis added).

unreasonable credit risks and defaults."[98] PJM's Tariff and Governing Documents must apply uniformly to be fair to Members and to their existing or potential competitors. Indeed, if PJM were to develop *ad hoc* procedures to control the particular risks presented by EMS, then PJM would expose itself to complaints of unduly preferential treatment in favor of EMS under FPA sections 205 and 206.[99]

Second, PJM properly declined to accept the unique trading self-constraints EMS proposed and subsequently altered. Those artificial constraints are meaningless because they are not enforceable in the context of a business entity owned and operated, in part, by the same person responsible for a previous Member's defaults and termination from PJM. At bottom, EMS continues to suffer from the same defects that plagued its predecessor, Hill Energy: EMS has no independent risk management or compliance oversight and no board to evaluate the prudence of Chen's decisions.[100] And Chen has improved nothing by designating himself as the Risk Manager of EMS.[101] As Dr. Coscia explains in his attached Affidavit:

> These self-control mechanisms that EMS has devised, however, are empty and unenforceable. EMS did not make the concrete personnel and compliance changes necessary to distinguish itself in any meaningful way from its predecessor, Hill Energy. Regardless of what EMS might be willing to write to appease PJM and

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[98] *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,173, at P 36 (2020).

[99] *See* 16 U.S.C. § 824d(b) ("No public utility shall . . . (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect . . . ."); *id.* § 824e (requiring the Commission to fix " unduly discriminatory or preferential" rates).

[100] *See* Complaint Attach. 2 at 3 ("The responses to PJM's requests for additional and supplemental information show that no one performs the functions of a general counsel/chief legal officer or chief financial officer for EMS. Also, you perform the function of chief risk officer and given your past history with Hill Energy, this poses a risk for PJM which cannot be mitigated because it calls into question whether there are sufficient staff/Principals to oversee required day to-day activities of EMS.").

[101] *Id.* Attach. 4 at 12.

have the Membership Application approved, EMS could not show that it has the personnel depth to meet those commitments. Ultimately, Chen *is* EMS, as he *was* Hill Energy.[102]

And third, exacerbating PJM's concerns with inadequate oversight, Chen has repeatedly demonstrated a lack of candor, timeliness, and attention to detail in his prior dealings with PJM.[103]

2. The EMS Membership Application Was Afforded Robust Review Under Attachment Q and PJM Thoroughly Memorialized Its Rationale for Rejecting the Membership Application

Attachment Q governs the information sharing process by which PJM performs its ongoing duty to determine whether "a Participant represents unreasonable credit risk to the PJM Markets."[104] The record EMS submitted with the Complaint demonstrates that PJM thoroughly considered and explained its reasons for denying the EMS Membership Application. The process afforded to EMS by PJM more than satisfied the notice and communication requirements of Attachment Q.[105] PJM has augmented the record with new or more complete documents, many of which are filed under seal, to provide additional context for its conclusions.

PJM's investigation of the Membership Application provided the following justifications for rejecting the EMS Membership Application, each supported by the record: (1) EMS withheld material information and provided false, ambiguous, and insufficient responses to PJM's supplemental questions; (2) Chen consistently failed to exercise prudent control over EMS's and

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[102] PJM Ex. A, Coscia Aff., at P 11.

[103] *See, e.g.*, Complaint Attach. 2 at 1-2 (describing Chen's inaccurate representations in prior membership applications); *id*. at 3 (discussing untimely responses default notifications).

[104] *See* Tariff, Attach. Q, § I.

[105] *See id.* § II.E.8 ("PJM's determination will be based on, but not limited to, information and material provided to PJM during its ongoing risk evaluation process or in the Officer's Certification, and/or information gleaned by PJM from public and non-public sources. PJM will communicate its concerns, if any, in writing to the Market Participant and attempt to better understand the circumstances surrounding the Market Participant's financial and credit position before making its determination.").

Hill Energy's finances; (3) it was doubtful that Chen, as principal to EMS, would cause EMS to satisfy its financial obligations to PJM; (4) EMS lacked a general counsel, a chief legal officer and a chief financial officer; (5) Chen acting as the chief risk officer raised questions as to whether there was sufficient staff or principals to oversee the day-to-day activities of EMS; (6) EMS lacked a bank account and established financials; and (7) Chen failed to respond to PJM requests regarding Hill Energy's payment and credit defaults.[106] Each of these justifications individually provide a sufficient basis for PJM's rejection of the Membership Application; combined they provide irrefutable support for PJM's decision. As Dr. Coscia summarized at the conclusion of his Affidavit, "No amount of Collateral or credit support, or promises to limit market activity, is sufficient to 'pay off' an absence of trust."[107]

The first reason for denying the Membership Application—Chen's history of submitting false or misleading statements—merits particular attention. In November 2021, while Hill Energy was still a Member of PJM, Chen submitted a membership application under the name of Black Mountain Renewables.[108] On that application, despite being the principal and CEO of both Black Mountain Renewables and Hill Energy at that time, Chen responded "no" to PJM's question as to whether Black Mountain Renewables had any affiliation with a Member.[109] When asked the exact same question regarding EMS during PJM's review of the Membership Application, Chen again responded "no" even though Hill Energy was still a Member.[110] PJM cited both of these false

[106] *See* PJM Ex. S, January 18, 2023 EMS Membership Application Denial, at 1-3.

[107] PJM Ex. Ex. A, Coscia Aff., at P 14.

[108] PJM Ex. S, January 18, 2023 EMS Membership Application Denial, at 1-2.

[109] *Id.*

[110] *Id.* at 2.

representations in its rejection of the Membership Application.[111] Credibility is essential to maintaining creditworthiness, and given Chen's repeated lack of candor, PJM correctly rejected the Membership Application on that basis alone.

Chen's habitual lack of candor has larger implications. Submitting false or misleading information, or omitting material information, concerning RTO membership is a serious violation of the Commission's Market Behavior Rules[112] that is punishable by civil penalties.[113] Ultimately, with these facts in mind, PJM's denial of the Membership Application was not only justifiable, but also required for the stability of the market and the security of its Members.

III. STATEMENTS PURSUANT TO 18 C.F.R. § 385.213(C)(2)

A. Admissions and Denials

Pursuant to 18 C.F.R. § 385.213(C)(2)(i), PJM affirms that any allegation in the Complaint that is not specifically and expressly admitted above is denied.[114]

B. Affirmative Defenses

Pursuant to 18 C.F.R. § 385.213(C)(2)(ii), PJM's affirmative defenses are in this Answer.

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[111] *Id.* at 1-2.

[112] *See* 18 C.F.R. § 35.41(b) ("A Seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences."); *cf. Duty of Candor*, Notice of Proposed Rulemaking, 180 FERC ¶ 61,052 (2022) (proposing to broaden the existing the duty of candor to include, *inter alia*, communications with "jurisdictional transmission or transportation providers … where such communication relates to a matter subject to the jurisdiction of the Commission").

[113] *See Kourouma v. FERC*, 723 F.3d 274, 278-79 (D.C. Cir. 2013) (affirming $50,000 civil penalty for making misleading RTO membership filings in violation of 18 C.F.R. § 35.41(b)).

[114] 18 C.F.R. § 385.213(c)(2)(1).

IV. REQUEST FOR CONFIDENTIAL TREATMENT

PJM respectfully requests, pursuant to 18 C.F.R. § 388.112, non-public treatment of identified portions of this answer and its exhibits that are exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and that should be withheld from public disclosure. Specifically, non-public treatment is requested for certain market sensitive information provided to PJM by EMS and other Market Participants as confidential under PJM Operating Agreement, section 18.17, which fall within the FOIA public disclosure exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential."[115]

In accordance with 18 C.F.R. § 388.112(b)(2)(i), PJM includes with this filing, as Exhibit Y, a proposed form of protective agreement by which parties to this proceeding can obtain access to the non-public version of this answer and its exhibits. PJM is submitting a non-public version of this answer and its attachments that is marked "**CUI//PRIV-HC NON-PUBLIC VERSION – CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION – DO NOT RELEASE**" in accordance with Paragraph 11 of the proposed Protective Agreement and the Commission's regulations. PJM asks that the marked version of this answer and its exhibits be placed in the Commission's non-public files. PJM is also submitting a public version of this answer and its exhibits with the relevant confidential material redacted pursuant to section 388.112 of the Commission's regulations.

CONCLUSION

Membership in PJM is a privilege, not a right. To maintain that privilege, Members must conduct their Commission-jurisdictional business with candor using generally-accepted

[115] *See* 5 U.S.C. § 552(b)(4).

accounting and compliance procedures, and they must satisfy their payment and collateral obligations under PJM's Tariff and Governing Documents. The Commission confirmed that Hill Energy was properly terminated as a PJM Member effective January 17, 2023 and denied rehearing of the Hill Energy Termination Order by operation of law. That decision is no longer subject to judicial review. It is undisputed that Hill Energy and EMS are alter-egos controlled by Chen. As explained herein, it was entirely consistent with PJM's obligations under the PJM Tariff and Operating Agreement for PJM to reject Chen's effort to circumvent PJM's membership requirements by effectively restoring Hill Energy to PJM membership under a new name. Therefore, PJM respectfully requests that the Commission deny the Complaint.

Respectfully submitted,

/s/ John Lee Shepherd, Jr.

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April 15, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be served a copy of the foregoing upon all parties on the service list in these proceedings in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2023).

/s/ Blake Grow

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PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Exhibit A
Affidavit of Carl F. Coscia

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Energy Management Solutions, L.L.C.	)	
	)	
v.	)	**Docket No. EL24-90-000**
	)	
PJM Interconnection, L.L.C.	)	

AFFIDAVIT OF DR. CARL F. COSCIA

CHIEF RISK OFFICER OF PJM INTERCONNECTION, L.L.C.

1. My name is Carl F. Coscia, Ph. D. Since September 2022, I have served as the Vice President and Chief Risk Officer of PJM Interconnection, L.L.C. (PJM). My business address is 2750 Monroe Boulevard, Audubon, PA 19403. My role at PJM involves ensuring that adequate risk management tools and policies are in place to protect PJM members.
2. I hold a Ph.D. in economics from the University of Minnesota, as well as a Bachelor of Science in economics and a Bachelor of Arts in mathematics from the University of Kansas.
3. My background includes more than 20 years of experience in commodity and financial markets, most recently as Global Head of Risk Management for German-based energy company, EnBW, where my responsibilities included market risk, enterprise risk, credit risk, compliance and approval for all master trading agreements. I previously served as Chief Business Officer and Chief Risk Officer for Hartree Partners, LP. Additionally, I worked as Vice President of Federal Energy Policy for Constellation Energy, Director of Wholesale Power Fundamentals for TXU Wholesale Power Trading, and Branch Chief for the Federal Energy Regulatory Commission's Office of Enforcement.
4. The purpose of this Affidavit is to support the Answer of PJM Interconnection, L.L.C. to the March 15, 2024 Complaint of Energy Management Solutions, LLC ("EMS") in the above-

captioned proceeding. My Affidavit discusses a number of the reasons for PJM's denial of EMS's application for membership in PJM ("Membership Application").

5. PJM considered the Membership Application carefully, and in the course of doing so PJM identified several, persistent "red flags" that, from a risk management perspective, could not be overlooked and which made the approval of EMS as a PJM Member infeasible.

6. PJM found that EMS was not a manageable risk under Attachment Q of the PJM Tariff, because it "is an entity controlled by its principal with no oversight and inadequate risk controls" and that principal, Lee Chen ("Chen"), has "demonstrated a history of withdrawing funds from PJM and impoverishing [his] entity to make it unable to meet collateral calls thus resulting in defaults." [1]

7. EMS shares the same principal and management as Hill Energy Resource & Services, LLC ("Hill Energy"), an entity whose history of defaults in 2022 culminated in its termination as a PJM Member in 2023 with the Commission's approval.[2]

8. The companies' common principal, Chen, previously presented himself as the manager, principal, and chief risk officer for Hill Energy and he now presents himself as chief risk officer of EMS.

9. Hill Energy incurred five payment defaults and three credit defaults in the months of January and February of 2022, and PJM sent breach and default notifications for all of these occurrences.[3] Hill Energy made no effort to address its outstanding financial obligations

[1] Complaint at 9 (quoting Complaint, Attach. 2 ("PJM Notification Letter") at 1).

[2] *See PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,018, at PP 24-25 (terminating Hill Energy membership effective Jan. 17, 2023), *reh'g denied by operation of law*, 183 FERC ¶ 62,137 (2023).

[3] *See id.* at PP 5, 15.

outside of requesting that PJM use the collateral on any and all future invoices, which is not allowable. In light of Hill Energy's breach of its obligations to PJM, it would require a leap of faith on the part of PJM to trust that Chen would treat EMS's obligations to PJM with any greater seriousness.

10. I recognize that EMS has attempted to overcome these facts, which EMS does not appear to dispute, by proposing to self-impose certain unique limits on its own trading activities and collateral requirements, which EMS contends would allow EMS to participate in trading with "practically zero credit and other material risks from EMS to PJM Markets."[4]

11. These self-control mechanisms that EMS has devised, however, are empty and unenforceable. EMS did not make the concrete personnel and compliance changes necessary to distinguish itself in any meaningful way from its predecessor, Hill Energy. Regardless of what EMS might be willing to write to appease PJM and have the Membership Application approved, EMS could not show that it has the personnel depth to meet those commitments. Ultimately, Chen *is* EMS, as he *was* Hill Energy.

12. PJM's close examination of EMS over the better part of a year indicated "that no one performs the functions of a general counsel/chief legal officer or chief financial officer for EMS," that Chen was performing "the function of chief risk officer" in addition to his other duties, and that this situation "poses a risk for PJM which cannot be mitigated because it calls into question whether there are sufficient staff/Principals to oversee required day to-day activities of EMS."[5] In response to numerous requests by PJM for information, Chen confirmed that no outside consultant performed the function of general counsel or chief legal officer for either EMS or

[4] Complaint at 3.

[5] *Id.*, Attach. 2, PJM Notification Letter at 3.

Hill Energy and that EMS lacked a chief financial officer or outside consultant who would fulfill the role of chief financial officer. Instead, Chen would perform treasury and accounting functions as well as hold the title of "Risk Manager," just as he had done for Hill Energy.

13. Given the history of defaults by Hill Energy, the demonstrated willingness by Chen to walk away from Hill Energy's obligations to PJM, the fact that EMS similarly is controlled by Chen with no oversight and inadequate risk controls, and the fact that EMS shares the same organizational structure, principal, management, and governance deficiencies as Hill Energy, PJM "determined that EMS presents an unreasonable credit risk pursuant to Attachment Q, Section II.E.8 that cannot be cured by posting Collateral or credit support commensurate with the risk of the anticipated market activity of EMS to the PJM Markets and PJM Members."[6]

14. As Chief Risk Officer of PJM, I cannot subscribe to the notion that, because PJM and its Members managed to avoid significant losses notwithstanding the history with Hill Energy, PJM must extend Chen another opportunity to place the market at risk through EMS – which, again, is set up to be essentially Hill Energy, only with a different name. No amount of Collateral or credit support, or promises to limit market activity, is sufficient to "pay off" an absence of trust. PJM's lack of trust in EMS and its principal, Chen, is well-founded for reasons stated here and in PJM's Answer.

15. This concludes my Affidavit.

[6] *Id.*

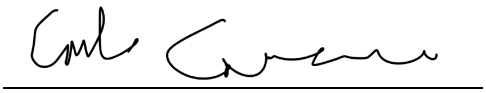
PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Energy Management Solutions, L.L.C.	)	
	)	
v.	)	**Docket No. EL24-90-000**
	)	
PJM Interconnection, L.L.C.	)	

VERIFICATION

I, **Carl F. Coscia**, state, under penalty of perjury, that I am the Carl F. Coscia referred to in the foregoing document entitled "Affidavit of Carl F. Coscia Chief Risk Officer of PJM Interconnection, L.L.C.," that I have read the same and am familiar with the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge, information, and belief.



Carl F. Coscia

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Exhibit B
December 1, 2021 Hill Energy Collateral Return Request

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Exhibit C
December 22, 2021 Hill Energy Collateral Return Request

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Exhibit D
Hill Energy Billing & Collateral Activity – 2022

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Exhibit E
Hill Energy Billing & Collateral Activity – 2023

Exhibit F
Maximum Possible Losses from FTR Options

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Exhibit G
January 11, 2022 Hill Energy Declaration of Default

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Exhibit H
January 13, 2022 PJM - Hill Energy Unreasonable Credit Risk Determination

Exhibit I
EMS Membership Application

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Exhibit J
April 14, 2022 PJM Response Terms

Exhibit K
April 2022 EMS Membership Enrollment

Exhibit L
EMS Affiliate Disclosure

Exhibit M
EMS Communication Regarding Bank Activity

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Exhibit N
PJM - EMS Credit Risk Analysis

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Exhibit O
EMS Answers to PJM's First Supplemental Information Requests, August 2022

Exhibit P
Second Supplemental Information Requests to EMS, September 2022

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Exhibit Q
September 30, 2022 EMS Responses to Second Supplemental Information Requests

Exhibit R
Third Supplemental Information Requests to EMS, October 2022

Exhibit S
January 18, 2023 EMS Membership Application Denial

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Asim Haque
VP, State & Member Services
Asim.Haque@pjm.com
610.666.4520

PJM Interconnection
2750 Monroe Blvd.
Audubon, PA 19403

January 18, 2023

VIA ELECTRONIC MAIL

Mr. Lee Chen
Energy Management Solution, LLC
8911 North Capital Highway, #4200
Austin, Texas 78759

Re: Energy Management Solution, LLC's PJM Membership Application

Dear Mr. Chen:

In accordance with PJM Interconnection, L.L.C. ("PJM") Operating Agreement, section 11.6 (c), PJM hereby notifies you that Energy Management Solution, LLC's ("EMS") application to become a PJM Member is not approved. This decision is based on the following separate but interrelated reasons:

1. Following several defaults by Hill Energy Resources, LLC ("Hill Energy") PJM was required pursuant to Operating Agreement, section 15.1 to terminate Hill Energy's membership with no right of re-entry as either Hill Energy or under a different name, affiliation, or organization. Because EMS shares the same principal and management as Hill Energy, upon acceptance of the termination filing by FERC EMS is ineligible as a matter of law for PJM membership.

2. As more fully supported below, EMS is an entity controlled by its principal with no oversight and inadequate risk controls. EMS shares the same organizational structure, principal, management, and governance deficiencies as Hill Energy. In your management of Hill Energy, you have demonstrated a history of withdrawing funds from PJM and impoverishing your entity to make it unable to meet collateral calls thus resulting in defaults. Such behavior is not a manageable risk and thus membership is denied on that basis.[1]

In further support of the foregoing reasons for denying EMS's membership application:

- You failed to disclose material information in your EMS and Black Mountain membership applications.

[1] *See* Operating Agreement, section 11.6.

- EMS is a newly formed entity which applied to become a PJM Market Participant trading FTRs/virtual products. Upon review of the membership application, PJM determined that the CEO/Principal of EMS, Lee Chen, is also the principal of Hill Energy. You, however, responded "no" to PJM's question on whether EMS was or is affiliated with any current PJM Member even though Hill Energy was a PJM Member at the time of EMS's membership application.

- In November 2021, you initiated a new PJM membership application under a different entity named Black Mountain Renewables with an interest in participating in FTRs. At the time, you responded "no" to PJM's question on whether you are affiliated with any current PJM Member even though you are the principal and CEO for both Hill Energy and Black Mountain. Black Mountain did not complete the next steps to start the full application process.

- Upon receiving EMS's membership application in June 2022, PJM determined that for PJM to be able to review the application under PJM's Membership and Market Participant application requirements, EMS would need to clarify its initial responses to PJM's questions and provide information that was missing from those responses. In July 2022, PJM sent additional questions to EMS (the "First Supplemental Information Requests") to request such clarification and information. After receiving several extensions from PJM, EMS submitted the responses to the First Supplemental Information Requests on August 10, 2022.

- On September 16, 2022, PJM notified EMS that your responses to the First Supplemental Requests were insufficient for PJM to accept EMS's membership application because several of the questions were not fully or clearly answered. As a result, PJM again sent requests to EMS for supplemental information and clarification (the "Second Supplemental Information Requests"). On September 30, 2022, EMS submitted responses to the Second Supplemental Information Requests.

- On October 11, 2022, PJM notified EMS that its responses to the Second Supplemental Information Requests were insufficient for PJM to accept EMS's membership application because several of the questions were not fully or clearly answered. As a result, PJM again sent requests to EMS for supplemental information and clarification (the "Third Supplemental Information Requests"). On October 21, 2022, EMS submitted responses to the Third Supplemental Information Requests.

- While EMS ultimately provided responses to PJM's additional and supplemental requests for information, EMS was not forthcoming with the information required to support its membership application. Moreover, the information that EMS provided demonstrates that you do not exercise prudent control over your

companies' finances, and calls into question your ability, as principal of EMS, to cause EMS to satisfy its financial obligations to PJM.

- The responses to PJM's requests for additional and supplemental information show that no one performs the functions of a general counsel/chief legal officer or chief financial officer for EMS. Also, you perform the function of chief risk officer and given your past history with Hill Energy, this poses a risk for PJM which cannot be mitigated because it calls into question whether there are sufficient staff/Principals to oversee required day to-day activities of EMS.

- PJM determined that EMS did not initially establish a bank account, has no cash resources and financials, appropriate trade and bank references, etc. (EMS has since opened an online bank account).

- Based on the interconnectedness of the business relationships among Hill Energy and EMS, overlap in their relevant personnel/principal, and similarity of their business activities, PJM determined that EMS should be treated as Hill Energy for purposes of evaluating qualification for PJM membership (see Operating Agreement, section 11.6, and Operating Agreement, Schedule 1, section 1.4.8).

- Hill Energy incurred three payment defaults and three credit defaults in the months of January and February of 2022. Breach and default notifications were sent for all occurrences which resulted in no initial response or acknowledgement from Hill Energy. While PJM eventually received a response from you, there was no effort made in such response to address the outstanding financial obligations outside of requesting that PJM use the collateral on any and all future invoices, which is not allowable.

- PJM has determined that EMS presents an unreasonable credit risk pursuant to PJM Tariff, Attachment Q, Section II.E.8 that cannot be cured by posting Collateral or credit support commensurate with the risk of the anticipated market activity of EMS to the PJM Markets and PJM Members.

In summary, PJM evaluated EMS' application to determine whether EMS is qualified to become a Member in accordance with the Operating Agreement and has determined that your history with PJM as principal of Hill Energy indicates that your re-entry into the PJM markets through EMS would present unreasonable, inherent and material risks to PJM. The membership application of EMS therefore is not approved.

Sincerely,

Asim Z. Haque

Exhibit T
Lee Chen Request for Reconsideration of Membership Application

Exhibit U
July 31, 2023 Lee Chen Request for Remaining Excess Collateral

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Exhibit V
September 20, 2023 Request for Reconsideration

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

Exhibit W
October 11, 2023 Letter from Lee Chen to Manu Asthana

Exhibit X
Hill Energy Notice of Nonsuit Without Prejudice

4/8/2024 2:37 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-22-000396
Rosa Oneal

CAUSE NO. D-1-GN-22-000396

PJM INTERCONNECTION, L.L.C., and PJM SETTLEMENT, INC.,	§	**IN THE DISTRICT COURT**
Counter-defendants,	§	**TRAVIS COUNTY, TEXAS**
v.	§	
HILL ENERGY RESOURCE & SERVICES, LLC,	§	
Counter-plaintiff.	§	**201ST JUDICIAL DISTRICT**

COUNTER-PLAINTIFF HILL ENERGY RESOURCE & SERVICES, LLC'S NOTICE OF NONSUIT WITHOUT PREJUDICE

Pursuant to Texas Rule of Civil Procedure 162, Counter-Plaintiff Hill Energy Corporation ("Hill Energy") gives this written notice that it elects to nonsuit, without prejudice, all of its claims in the above-referenced matter against Counter-Defendants PJM Interconnection, L.L.C., and PJM Settlement, Inc. This nonsuit disposes of all claims by Hill Energy against Counter-Defendants in this cause and is effective upon filing.

Respectfully submitted,

By: */s/ Scott D. Powers*

Scott D. Powers
Texas Bar No. 24027746
401 South 1st Street, Suite 1300
Austin, Texas 78704-1296
Telephone: 512-322-2678
Facsimile: 512-322-8392
scott.powers@bakerbotts.com

ATTORNEYS FOR HILL ENERGY RESOURCE & SERVICES, LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2024, a true and correct copy of the foregoing was served electronically on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ Scott D. Powers
Scott D. Powers

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Michelle Wyman on behalf of Scott Powers
Bar No. 24027746
michelle.wyman@bakerbotts.com
Envelope ID: 86409955
Filing Code Description: FINAL OR PARTIAL DISPOSITION ORDER
Filing Description: COUNTER-PLAINTIFF HILL ENERGY RESOURCE & SERVICES, LLC'S NOTICE OF NONSUIT WITHOUT PREJUDICE
Status as of 4/9/2024 10:28 AM CST

Associated Case Party: HILL ENERGY RESOURCE & SERVICES LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Scott Powers		scott.powers@bakerbotts.com	4/8/2024 2:37:36 PM	SENT
Raylynn Howell		raylynn.howell@bakerbotts.com	4/8/2024 2:37:36 PM	SENT

Associated Case Party: PJM INTERCONNECTION, L.L.C

Name	BarNumber	Email	TimestampSubmitted	Status
Ashley Lewis	24079415	AshleyLewis@huntonak.com	4/8/2024 2:37:36 PM	SENT
Greg Waller		gregwaller@huntonak.com	4/8/2024 2:37:36 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Marlene Rangel		mrangel@huntonak.com	4/8/2024 2:37:36 PM	SENT
Becky Young		youngb@huntonak.com	4/8/2024 2:37:36 PM	SENT
ALLISON ANDERS		andersa@huntonak.com	4/8/2024 2:37:36 PM	ERROR

Exhibit Y
Form of Protective Agreement

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Energy Management Solutions, L.L.C.	)	
	)	
v.	)	**Docket No. EL24-90-000**
	)	
PJM Interconnection, L.L.C.	)	

PROTECTIVE AGREEMENT

THIS PROTECTIVE AGREEMENT ("Protective Agreement") is made and entered into by and between PJM Interconnection L.L.C. ("PJM"), respondent in the above-captioned Proceeding, and each Participant in this Proceeding that indicates its agreement hereto by and to the extent its Reviewing Representatives execute Non-Disclosure Certificates in the form attached hereto.
WHEREAS, PJM submitted documents to the Federal Energy Regulatory Commission ("Commission") in the above captioned docket ("Proceeding");

WHEREAS, pursuant to Section 388.112(b) of the Commission's regulations, 18 C.F.R. § 388.112(b), this Protective Agreement applies to requests for access to the non-public version of any document or portion of a document filed or produced by PJM in this Proceeding;

WHEREAS, Participant desires to obtain access to non-public information in this Proceeding;

WHEREAS, Participant has provided a signed Non-Disclosure Certificate and agrees to comply with all terms of this Protective Agreement and the Commission's Regulations; and

WHEREAS, without waiving any claims of privilege or objections to any request for disclosure of documents, PJM agrees to disclose to Participant certain non-public information designated as privileged and/or CEII, or other Protected Materials (as defined below), pursuant to the terms of this Protective Agreement.

NOW, THEREFORE, PJM and Participant agree as follows:

1. This Protective Agreement shall govern the use of all Protected Materials filed or produced by, or on behalf of, PJM in the Proceeding. Notwithstanding any order terminating this Proceeding, this Protective Agreement shall remain in effect until terminated or modified by mutual written agreement of the Parties, by order of the Commission or court of competent jurisdiction, or by order of a Presiding Administrative Law Judge (including the Chief Judge) in a proceeding set for hearing pursuant to 18 C.F.R. § 385 Subpart E.

2. This Protective Agreement applies to the following categories of materials, all constituting Protected Materials (as defined in Paragraph 3):

(a) all materials filed or produced by PJM in the Proceeding and designated as (i) privileged, or (ii) privileged and not available to Competitive Duty Personnel (as defined below), or otherwise as Protected Materials which are customarily treated as sensitive or proprietary or if disclosed could risk of competitive disadvantage or other business injury;

(b) all materials produced by PJM in the Proceeding and designated as CEII, and

(c) all materials filed or produced in the Proceeding which reflect or disclose Protected Materials.

3. For the purposes of this Protective Agreement, the listed terms are defined as follows:

A. Participant(s): As defined at 18 C.F.R. § 385.102(b), which definition includes PJM as the respondent in this Proceeding.

B. Protected Material:[1]

i. Material (including depositions) provided by a Participant in response to discovery requests or filed with the Commission, and that is designated as Protected Material by such Participant;[2]

ii. Material provided by a Participant in the course of settlement negotiations before a settlement judge pursuant to 18 C.F.R. § 385.603, including materials provided in response to informal discovery requests, and designated by such Participant as protected;

iii. Material that is privileged under federal, state, or foreign law, such as work-product privilege, attorney-client privilege, or governmental privilege, and that is designated as Protected Material by such Participant;[3]

iv. Any information contained in or obtained from such designated material;

[1] The Commission's regulations state that "[f]or the purposes of the Commission's filing requirements, non-CEII subject to an outstanding claim of exemption from disclosure under FOIA will be referred to as privileged material." 18 C.F.R. § 388.112(a). The regulations further state that "[f]or material filed in proceedings set for trial-type hearing or settlement judge proceedings, a participant's access to material for which privileged treatment is claimed is governed by the presiding official's protective order." 18 C.F.R. § 388.112(b)(2)(v).

[2] *See infra* P 11 for the procedures governing the labeling of this designation.

[3] The Commission's regulations state that "[a] presiding officer may, by order . . . restrict public disclosure of discoverable matter in order to . . . [p]reserve a privilege of a participant. . . ." 18 C.F.R. § 385.410(c)(3). To adjudicate such privileges, the regulations further state that "[i]n the absence of controlling Commission precedent, privileges will be determined in accordance with decisions of the Federal courts with due consideration to the Commission's need to obtain information necessary to discharge its regulatory responsibilities." 18 C.F.R. § 385.410(d)(1)(i).

v. Any other material which is made subject to this Protective Agreement by the Presiding Administrative Law Judge (Presiding Judge) or the Chief Administrative Law Judge (Chief Judge) in the absence of the Presiding Judge or where no presiding judge is designated, the Federal Energy Regulatory Commission (Commission), any court, or other body having appropriate authority, or by agreement of the Participants (subject to approval by the relevant authority);

vi. Notes of Protected Material (memoranda, handwritten notes, or any other form of information (including electronic form and audio recordings) which copies or discloses Protected Material);[4] or

vii. Copies of Protected Material.

viii. Protected Material does not include:

a. Any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be privileged by such agency or court;

b. Information that is public knowledge, or which becomes public knowledge.

ix. Additional Subcategory of Protected Material:

a. Highly Confidential Protected Material: A Participant may use this designation for those materials that are of such a commercially sensitive nature among the Participants or of such a private, personal nature that the producing Participant is able to justify a heightened level of confidential protection with respect to those materials. Highly Confidential Protected Material includes materials designated confidential pursuant to section 18.17 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement"). Participants disclosing such information in accordance with the terms of this Protective Agreement will be deemed to not have contravened the prohibitions of this Operating Agreement provision, including

[4] Notes of Protected Material are subject to the same restrictions for Protected Material except as specifically provided in this Protective Agreement.

without limitation the disclosure and notification requirements of Operating Agreement, Section 18.17.2,. Except for the more limited list of persons who qualify as Reviewing Representatives for purposes of reviewing Highly Confidential Privileged Materials, such materials are subject to the same provisions in the Protective Agreement as other Protected Materials.

b. Notes of Highly Confidential Protected Material (memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Highly Confidential Protected Material);[5] or

c. Copies of Highly Confidential Protected Material.

C. Critical Energy/Electric Infrastructure Information (CEII): As defined at 18 C.F.R. §§ 388.113(a), (c).

D. Non-Disclosure Certificate: The certificate attached to this Protective Agreement, by which Participants granted access to Protected Material and/or CEII must certify their understanding that such access to such material is provided pursuant to the terms and restrictions of this Protective Agreement, and that such Participants have read the Protective Agreement and agree to be bound by it. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for this proceeding.

E. Reviewing Representative: A person who has signed a Non-Disclosure Certificate and who is:

i. Commission Trial Staff designated as such in this proceeding;

ii. An attorney who has made an appearance in this proceeding for a Participant;

iii. Attorneys, paralegals, and other employees associated for purposes of this case with an attorney who has made an appearance in this proceeding on behalf of a Participant;

[5] Notes of Highly Confidential Protected Material are subject to the same restrictions for Highly Confidential Protected Material except as specifically provided in this Protective Agreement.

iv. An expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for, submitting evidence or testifying in this proceeding;

v. A person designated as a Reviewing Representative by order of the Presiding Judge, the Chief Judge, or the Commission; or

vi. Employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

F. The term "Reviewing Representative" for purposes of reviewing Highly Confidential Protected Material defined in Paragraph 3(B)(viii)(a) shall mean a person who has signed a Non-Disclosure Certificate and who is:

i. Commission Trial Staff designated as such in this proceeding;

ii. Outside counsel of a Participant, i.e., an attorney who is not employed by the Participant but is retained by a Participant, who has made an appearance in this proceeding for a Participant, and their partners, associates, and staff of such outside counsel;

iii. In-house counsel, i.e., an attorney who is employed by the Participant, who has made an appearance in this proceeding for a Participant and who is not Competitive Duty Personnel as defined in Paragraph 3(G);

iv. An expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for, submitting evidence or testifying in this proceeding; provided, however, such individual is not Competitive Duty Personnel as defined in Paragraph 3(G);

v. A person designated as a Reviewing Representative and is otherwise eligible to review Highly Confidential Protected Material by order of the Presiding Judge, the Chief Judge, or the Commission.

vi. A "Reviewing Representative" for purposes of reviewing Highly Confidential Protected Material does not include Competitive Duty Personnel as defined in Paragraph 3(G).

G. The term "Competitive Duty Personnel" shall mean any individual(s), including in-house counsel, whose scope of employment or engagement includes the marketing, sale, or purchase of electric energy or capacity (collectively, "Covered Marketing"), the direct or indirect supervision of any employee or employees whose duties include Covered Marketing, the provision of consulting services, including legal consultation or advice, to

any person whose duties include Covered Marketing, or other Covered Marketing services in competition with the producing Participant, all of which are considered "Competitive Duties;" except that Competitive Duty Personnel shall not include employees of the Federal Energy Regulatory Commission, and/or any state utilities commission which is a Participant, outside counsel.

4. Protected Material, Highly Confidential Protected Material, and/or CEII shall be made available under the terms of this Protective Agreement only to Participants and only to their Reviewing Representatives as provided in Paragraphs 6-10 of this Protective Agreement. The contents of Protected Material, Highly Confidential Protected Material, CEII, or any other form of information that copies or discloses such materials shall not be disclosed to anyone other than in accordance with this Protective Agreement and shall be used only in connection with this specific proceeding.

5. All Protected Material, Highly Confidential Protected Material, and/or CEII must be maintained in a secure place. Access to those materials must be limited to Reviewing Representatives specifically authorized pursuant to Paragraphs 7-9 of this Protective Agreement.

6. Protected Material, Highly Confidential Protected Material, and/or CEII must be handled by each Participant and by each Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9 of this Protective Agreement. Protected Material, Highly Confidential Protected Material, and/or CEII shall not be used except as necessary for the conduct of this proceeding, nor shall they (or the substance of their contents) be disclosed in any manner to any person except a Reviewing Representative who is engaged in this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Material, Highly Confidential Protected Material, and/or CEII, but such copies automatically become Protected Material, Highly Confidential Protected Material, and/or CEII. Reviewing Representatives may make notes of Protected Material and Highly Confidential Protected Material, which shall be treated as Notes of Protected Material if they reflect the contents of Protected Material. A Reviewing Representative shall not disclose Highly Confidential Protected Material to a Reviewing Representative that does not meet the qualifications in Paragraph 3(F).

7. If a Reviewing Representative's scope of employment includes any of the activities listed under this Paragraph 7, such Reviewing Representative may not use information contained in any Protected Material, Highly Confidential Protected Material, and/or CEII obtained in this proceeding for a commercial purpose (e.g. to give a Participant or competitor of any Participant a commercial advantage):

A. Covered Marketing;

B. Direct or indirect supervision of any employee or employees whose duties include Covered Marketing; or

C. The provision of consulting services, including legal consultation or advice, to any person whose duties include Covered Marketing.

8. If a Participant wishes to designate a person not described in Paragraph 3(E) above as a Reviewing Representative, the Participant must seek agreement from the Participant providing the Protected Material and/or CEII. If an agreement is reached, the designee shall be a Reviewing Representative pursuant to Paragraph 3(D) of this Protective Agreement with respect to those materials. If no agreement is reached, the matter must be submitted to the Presiding Judge, the Chief Judge, or the Commission for resolution. If a Participant wishes to designate a person not described in Paragraph 3(F) above as a Reviewing Representative for the purposes of reviewing Highly Confidential Protected Material, the Participant must request an order from the Presiding Judge, the Chief Judge, or the Commission granting such designation.

9. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Material, Highly Confidential Protected Material, and/or CEII pursuant to this Protective Agreement until three business days after that Reviewing Representative first has executed and served the applicable Non-Disclosure Certificate.[6] However, if an attorney qualified as a Reviewing Representative has executed a Non-Disclosure Certificate, any participating paralegal, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. Attorneys designated Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Agreement, and must take all reasonable precautions to ensure that Protected Material, Highly Confidential Protected Material, and/or CEII are not disclosed to unauthorized persons. Reviewing Representatives that are eligible to review Highly Confidential Protected Materials pursuant to Paragraph 3(F) must execute a Non-Disclosure Certificate for Highly Confidential Protected Material in the form attached hereto. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for the proceeding.

10. Any Reviewing Representative may disclose Protected Material, Highly Confidential Protected Material, and/or CEII to any other Reviewing Representative as long as both Reviewing Representatives have executed the appropriate Non-Disclosure Certificate. In the event any Reviewing Representative to whom Protected Material, Highly Confidential Protected Material, and/or CEII are disclosed ceases to participate in

[6] During this three-day period, a Participant may file an objection with the Presiding Judge or the Commission contesting that an individual qualifies as a Reviewing Representative, and the individual shall not receive access to the Protected Material, Highly Confidential Protected Material, and/or CEII, as applicable, until resolution of the dispute.

this proceeding, or becomes employed or retained for a position that renders him or her ineligible to be a Reviewing Representative under Paragraph 3(E) or ineligible to review Highly Confidential Protected Material under Paragraph 3(F), access to such materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Agreement and the Non-Disclosure Certificate for as long as the Protective Agreement is in effect.[7]

11. All Protected Material, Highly Confidential Protected Material, and/or CEII in this proceeding filed with the Commission, submitted to the Presiding Judge, or submitted to any Commission personnel, must comply with the Commission's *Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff*.[8] Consistent with those requirements:

A. Documents that contain Protected Material must include a top center header on each page of the document with the following text: CUI//PRIV or CUI//PRIV-HC for Highly Confidential Protected Material. Any corresponding electronic files must also include this text in the file name.

B. Documents that contain CEII must include a top center header on each page of the document with the following text: CUI//CEII. Any corresponding electronic files must also include this text in the file name.

C. Documents that contain both Protected Material and CEII must include a top center header on each page of the document with the following text: CUI//CEII/PRIV. Any corresponding electronic files must also include this text in the file name.

D. The specific content on each page of the document that constitutes Protected Material and/or CEII must also be clearly identified. For example, lines or individual words or numbers that include both Protected Material and CEII shall be prefaced and end with "BEGIN CUI//CEII/PRIV" and "END CUI//CEII/PRIV".

12. If any Participant desires to include, utilize, or refer to Protected Material, Highly Confidential Protected Material, or information derived from such material in testimony or other exhibits during the hearing in this proceeding in a manner that might require disclosure of such materials to persons other than Reviewing Representatives, that Participant first must notify both counsel for the disclosing Participant and the Presiding Judge (or the Commission in the absence of a Presiding Judge), and identify all such Protected Material or Highly Confidential Protected Material. Thereafter, use of such

[7] *See infra* P 19.

[8] 82 Fed. Reg. 18,632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

Protected Material or Highly Confidential Protected Material will be governed by procedures determined by the Presiding Judge (or the Commission in the absence of a Presiding Judge).

13. Nothing in this Protective Agreement shall be construed as precluding any Participant from objecting to the production or use of Protected Material, Highly Confidential Protected Material, and/or CEII on any appropriate ground.

14. Nothing in this Protective Agreement shall preclude any Participant from requesting the Presiding Judge (or the Chief Judge in the Presiding Judge's absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority, to find this Protective Agreement should not apply to all or any materials previously designated Protected Material or Highly Confidential Protected Material pursuant to this Protective Agreement. The Presiding Judge (or the Chief Judge in the Presiding Judge's absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority may alter or amend this Protective Agreement as circumstances warrant at any time during the course of this proceeding.

15. Each Participant governed by this Protective Agreement has the right to seek changes in it as appropriate from the Presiding Judge (or the Chief Judge in the Presiding Judge's absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority.

16. Subject to Paragraph 18, the Presiding Judge (or the Chief Judge in the Presiding Judge's absence or where no presiding judge is designated), or the Commission shall resolve any disputes arising under this Protective Agreement pertaining to Protected Material (or Highly Confidential Protected Material) according to the following procedures. Prior to presenting any such dispute to the Presiding Judge, the Chief Judge or the Commission, the Participants to the dispute shall employ good faith best efforts to resolve it.

A. Any Participant that contests the designation of material as Protected Material (or Highly Confidential Protected Material) shall notify the Participant that provided the Protected Material (or Highly Confidential Protected Material) by specifying in writing the material for which the designation is contested.

B. In any challenge to the designation of material as Protected Material (or Highly Confidential Protected Material), the burden of proof shall be on the Participant seeking protection. If the Presiding Judge, the Chief Judge, or the Commission finds that the material at issue is not entitled to the designation, the procedures of Paragraph 17 shall apply.

C. The procedures described above shall not apply to material designated by a Participant as CEII. Material so designated shall remain subject to the provisions of this Protective Agreement, unless a Participant requests and obtains a determination from the Commission's CEII Coordinator that such material need not retain that designation.

17. The designator will have five (5) days in which to respond to any pleading requesting disclosure of Protected Material (or Highly Confidential Protected Material). Should the Presiding Judge, the Chief Judge, or the Commission, as appropriate, determine that the information should be made public (or should not be subject to the restrictions applicable to Highly Confidential Protected Material), the Presiding Judge, the Chief Judge, or the Commission will provide notice to the designator no less than five (5) days prior to the date on which the material will become public. This Protective Agreement shall automatically cease to apply to such material on the sixth (6th) calendar day after the notification is made unless the designator files a motion with the Presiding Judge, the Chief Judge, or the Commission, as appropriate, with supporting affidavits, demonstrating why the material should continue to receive the requested protection. Should such a motion be filed, the material will remain confidential until such time as the interlocutory appeal or certified question has been addressed by the Motions Commissioner or Commission, as provided in the Commission's regulations, 18 C.F.R. §§ 385.714, .715. No Participant waives its rights to seek additional administrative or judicial remedies after a Presiding Judge or Chief Judge decision regarding Protected Material (or Highly Confidential Protected Material) or the Commission's denial of any appeal thereof or determination in response to any certified question. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act (5 U.S.C. § 552) for Protected Material, Highly Confidential Protected Material, and/or CEII in the files of the Commission.

18. Protected Material, Highly Confidential Protected Material, and/or CEII shall remain available to Participants until the later of 1) the date an order terminating this proceeding no longer is subject to judicial review, or 2) the date any other Commission proceeding relating to the Protected Material and/or CEII is concluded and no longer subject to judicial review. After this time, the Participant that produced the Protected Material and/or CEII may request (in writing) that all other Participants return or destroy the Protected Material and/or CEII. This request must be satisfied with within fifteen (15) days of the date the request is made. However, copies of filings, official transcripts and exhibits in this proceeding containing Protected Material, or Notes of Protected Material, may be retained if they are maintained in accordance with Paragraph 5 of this Protective Agreement. If requested, each Participant also must submit to the Participant making the request an affidavit stating that to the best of its knowledge it has satisfied the request to return or destroy the Protected Material and/or CEII. To the extent Protected Material and/or CEII are not returned or destroyed, they shall remain subject to this Protective Agreement.

19. Regardless of any order terminating this proceeding, this Protective Agreement shall remain in effect until specifically modified or terminated by the Presiding Judge, the Chief Judge, or the Commission. All CEII designations shall be subject to the "[d]uration of the CEII designation" provisions of 18 C.F.R. § 388.113(e).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Energy Management Solutions, L.L.C.	)	
	)	
v.	)	**Docket No. EL24-90-000**
	)	
PJM Interconnection, L.L.C.	)	

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Material and/or Critical Energy/Electric Infrastructure Information (CEII) is provided to me pursuant to the terms and restrictions of the Protective Agreement filed by PJM Interconnection, L.L.C. on April 15, 2024 in this proceeding, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Protected Material and/or CEII, any notes or other memoranda, or any other form of information that copies or discloses such materials, shall not be disclosed to anyone other than in accordance with the Protective Agreement. I acknowledge that I do not meet the qualifications to review Highly Confidential Protected Materials pursuant to Paragraph 3(F) of the Protective Order and my duties and responsibilities may include "Competitive Duties" as described in the Protective Agreement. As such, I understand that I shall neither have access to, nor disclose, the contents of the Highly Confidential Protected Materials that are marked as "CUI//PRIV-HC," any notes or other memoranda, or any other form of information that copies or discloses Highly Confidential Protected Materials that are marked as "CUI//PRIV-HC."

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____

PUBLIC VERSION
PRIVILEGED AND CONFIDENTIAL INFORMATION AND PROTECTED MATERIALS HAVE BEEN REMOVED PURSUANT TO 18 C.F.R. § 388.112

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Energy Management Solutions, L.L.C.	)	
	)	
v.	)	**Docket No. EL24-90-000**
	)	
PJM Interconnection, L.L.C.	)	

NON-DISCLOSURE CERTIFICATE
FOR HIGHLY CONFIDENTIAL PROTECTED MATERIALS

I hereby certify my understanding that access to Protected Materials, and Highly Confidential Protected Materials and/or Critical Energy/Electric Infrastructure Information (CEII) in the above-captioned case is provided to me pursuant to the terms and restrictions of the Protective Agreement filed by PJM Interconnection, L.L.C. on April 15, 2024 in this proceeding, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, Highly Confidential Protected Materials and/or Critical Energy/Electric Infrastructure Information (CEII), any notes or other memoranda, or any other form of information that copies or discloses Protected Materials, Highly Confidential Protected Materials, and/or Critical Energy/Electric Infrastructure Information (CEII) shall not be disclosed to anyone other than in accordance with that Protective Agreement and shall be used only in connection with this proceeding. I affirm that I meet the qualifications to review Highly Confidential Protected Materials pursuant to Paragraph 3(F) of the Protective Order and my duties and responsibilities do not include "Competitive Duties" as described in the Protective Agreement.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____