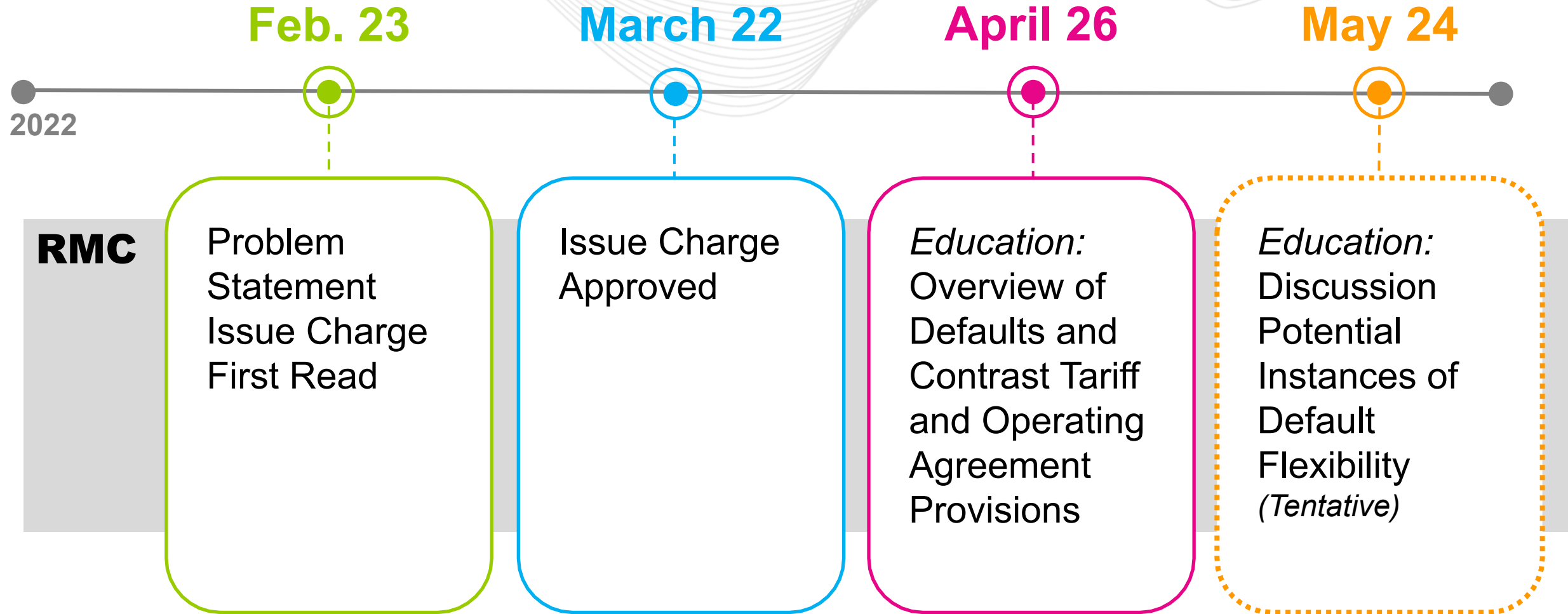




# Market Participant Default Flexibility

Risk Management Committee  
April 26, 2022



**Operating Agreement, Section 15.1.5** specifies actions PJM must take in the case of a Member default. One such action is to limit buying or selling by a Market Participant in a PJM market. Under certain limited circumstances, PJM believes it may be beneficial to have limited flexibility to allow continued market participation in the best interest of PJM membership. These situations may include, but are not limited to, when the Member has the ability to generate revenues or has the ability to provide additional collateral.

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- 1** Provide education in the following areas:
    - a) Review permissive language in Tariff, Attachment Q, for comparison and contrast with language in the Operating Agreement section 15.1.5
    - b) Overview of defaults
- 
- 2** Explore potential enhancements to define the circumstances in which a Market Participant may be permitted to continue participating in the PJM markets after a Default

## Overview

- Default provisions are generally found in Operating Agreement (OA) Section 15 and PJM Open Access Tariff (PJM Tariff) Attachment Q Section IX
- PJM's Tariff defines 3 types of Events of Default: Financial Default, Credit Breach, and Credit Support Default.
- A default can occur under PJM Tariff, OA, Reliability Assurance Agreement or any other agreement with PJM or another Member.

## Overview

- OA 15.1.5 language uses *mandatory* language to describe the actions that PJM must take upon the occurrence of an Event of Default.
- PJM's Tariff generally uses *permissive* language to describe that actions PJM may take upon an Event of Default.

# Tariff Provisions

## Tariff Definition

### **Event of Default :**

“Event of Default,” as that term is used in PJM’s Tariff, Attachment Q, shall mean a Financial Default, Credit Breach or Credit Support Default.

**PJM’s Tariff defines three types of Events of Default with potential to be treated differently under PJM’s Tariff and OA**



Type

Definition

**Financial Default**

Financial Defaults include failure to pay an invoice, the filing of a bankruptcy, inability to meet financial obligations or merger without assumption of liabilities.

***Examples include payment default, bankruptcy, merger without assumption or failure to pay any amount due***

Type

Definition

**Credit Breach**

Credit Breach includes failure to comply with Attachment Q (other than Financial Default) or Determination of Unreasonable Credit Risk that has not been cured or remedied after notice and cure period.

***Examples of Credit Breach include failure to timely post collateral, failure to provide necessary documentation or breach of representations.***

Type

Definition

**Credit  
Support  
Default**

Includes failure or impairment of Guarantor and/or guaranty instrument.

***Examples include refusal of Guarantor to honor a letter of credit, invalid credit support or decline in the financial health of guarantor***

## PJM Tariff Attachment Q, Section IX

- If PJM determines that a Market Participant is in Credit Breach, or that a Financial Default or Credit Support Default exists, PJM *may* issue to the Market Participant a breach notice and/or a Collateral Call or demand for additional documentation or assurances.
- At such time, PJM *may* also suspend payments of any amounts due to the Participant and limit, restrict or rescind the Market Participant's privileges to participate in any or all PJM Markets under the Agreements during any such cure period.
- In Event of Default by a Participant, PJM *may* exercise any remedy or action allowed or prescribed by this Attachment Q immediately or following investigation and determination of an orderly exercise of such remedy or action. .

**PJM's Tariff uses permissive language to describe actions to be taken**

# Operating Agreement

## OA Section 15 Failure to Meet Obligations

### *A Market Participant :*

- *Shall* be precluded from buying or selling in market until default is cured OA 15.1.5(i)
- *Shall* not be permitted to participate in Committees OA 15.1.5(ii)
- *Shall* not be entitled to vote OA 15.1.5(iii)
- PJM is required to notify Members of a Default OA 15.1.5(iv)
- FTR positions *shall* be addressed pursuant to OA7.3.9 OA15.1.5(v)

### *PJM*

- May limit, suspend or terminate rights of MP if PJM determines it does not meet its obligations OA15.1.1

**Operating Agreement generally contains mandatory language following an Event of Default**

## Observations

- OA 15.1.5 language uses *mandatory* language to describe the actions that PJM must take upon the occurrence of an Event of Default.
- PJM Tariff Att Q Section IX uses *permissive* language to describe the actions that PJM must take upon the occurrence of an Event of Default.
- PJM would like to reconcile language.
- PJM would like to continue education to discuss and solicit feedback on circumstances under which Market Participant flexibility under default situations could benefit the membership.

# Appendix

*(Tariff and Operating Agreement Text for Reference)*



## OA 15.1 Failure to Meet Obligations

### 15.1.5 Default Notification and Remedy

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

- i. A defaulting Market Participant **shall** be precluded from buying or selling in any market operated by PJM until the default is remedied as set forth above;
- ii. A defaulting Member **shall** not be entitled to participate in the activities of any committee or other body established by the Members Committee or PJM; and
- iii. A defaulting Member **shall** not be entitled to vote on the Members Committee or any other committee or other body established pursuant to this Agreement.
- iv. PJM **shall** notify all other Members of the default.
- v. The Financial Transmission Rights positions of a Member in default **shall** be addressed as provided in Operating Agreement, Schedule 1, section 7.3.9 and the parallel provisions of Tariff, Attachment K-Appendix, section 7.3.9.

## Type

## Definition

### **Financial Default**

"Financial Default" shall mean (a) the failure of a Member or Transmission Customer to make any payment for obligations under the Agreements when due, including but not limited to an invoice payment that has not been cured or remedied after notice has been given and any cure period has elapsed, (b) a bankruptcy proceeding filed by a Member, Transmission Customer or its Guarantor, or filed against a Member, Transmission Customer or its Guarantor and to which the Member, Transmission Customer or Guarantor, as applicable, acquiesces or that is not dismissed within 60 days, (c) a Member, Transmission Customer or its Guarantor, if any, is unable to meet its financial obligations as they become due, or (d) a Merger Without Assumption occurs in respect of the Member, Transmission Customer or any Guarantor of such Member or Transmission Customer.

## Type

## Definition

### **Credit Breach**

“Credit Breach” shall mean (a) the failure of a Participant to perform, observe, meet or comply with any requirements of Tariff, Attachment Q or other provisions of the Agreements, other than a Financial Default, or (b) a determination by PJM and notice to the Participant that a Participant represents an unreasonable credit risk to the PJM Markets; that, in either event, has not been cured or remedied after any required notice has been given and any cure period has elapsed.

## Type

## Definition

### **Credit Support Default**

“Credit Support Default,” shall mean (a) the failure of any Guarantor of a Market Participant to make any payment, or to perform, observe, meet or comply with any provisions of the applicable Guaranty or Credit Support Document that has not been cured or remedied, after any required notice has been given and an opportunity to cure (if any) has elapsed, (b) a representation made or deemed made by a Guarantor in any Credit Support Document that proves to be false, incorrect or misleading in any material respect when made or deemed made, (c) the failure of a Guaranty or other Credit Support Document to be in full force and effect prior to the satisfaction of all obligations of such Participant to PJM, without PJM's consent, or (d) a Guarantor repudiating, disaffirming, disclaiming or rejecting, in whole or in part, its obligations under the Guaranty or challenging the validity of the Guaranty.

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## Market Participant Default Flexibility



### Member Hotline

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**PROTECT THE  
POWER GRID  
THINK BEFORE  
YOU CLICK!**



Be alert to  
malicious  
phishing emails.

**Report suspicious email activity to PJM.**  
(610) 666-2244 / [it\\_ops\\_ctr\\_shift@pjm.com](mailto:it_ops_ctr_shift@pjm.com)

