

Proposed Operating Agreement Revisions for Discussion at FRMSTF Meeting on
December 17, 2019 and MRC Meeting on December 19, 2019

15. ENFORCEMENT OF OBLIGATIONS

15.1 Failure to Meet Obligations.

15.1.1 Limitation, Suspension and Termination of Market Buyer-Participant Rights.

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

Commented [OB1]: This is way too broad. Assume that my power plant was scheduled to provide regulation for a given hour. If 5 minutes after the start of the hour my plant breaks a widget that prevents it from responding to the regulation signal as quickly as it thought it would be able to respond, this provision gives PJM a right to terminate my power plant's Market Participation status.

15.1.2 Termination of Market Seller Rights.

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

15.1.2 Banning Market Participation.

PJM shall also be authorized to permanently ban a Market Participant, and any of the Market Participant's traders and/or Principals, from participating in the PJM Markets and FTR markets, and any bilateral transactions related thereto, based upon violations of the Agreements as well as a confirmed imposition of a ban from participating in Energy Markets or other markets, including but not limited to a ban imposed by the Commodities Futures Trade Commission, Securities Exchange Commission, Federal Energy Regulatory Commission, Financial Industry Regulatory Authority or National Futures Association. Given that banning a Market Participant or party from participating in the PJM Markets and FTR markets is a severe penalty, Market Participants, Market Participant's traders and Market Participant's Principals, maintain all rights

Commented [OB2]: No. Bans based on actions taken by listed regulators should be permissible but only for the term of the regulator's ban. Any other ban, including any ban for which the subject has not been afforded full due process rights, should require the express action of a federal court.

~~they have under the Federal Power Act, this Agreement and the PJM Tariff to appeal to the Federal Energy Regulatory Commission a determination by PJM to impose such a ban.~~

Commented [OB3]: I am concerned that there is no such authority under the FPA.

~~PJM shall have the discretion to determine whether to impose a broad ban from participation in all of the PJM Markets, FTR markets and any other market operated by PJM, or only some of the PJM Markets, FTR markets or any other market operated by PJM, based upon the specific facts and circumstances involved, whether the Market Participant has any must-offer requirements upon which PJM or its Members rely, whether the Market Participant serves load or generates energy, and any other relevant factors, to ensure that any such ban does not create an adverse impact on the operation of the bulk power system in the PJM Region.~~

Commented [OB4]: This is necessary but it should not give PJM an opportunity to ban real persons in lieu of banning the legal entity.

15.1.3 Payment of Bills.

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

15.1.4 Breach Notification and Remedy

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

15.1.5 Default Notification and Remedy

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

- i) A defaulting Market Participant shall be precluded from buying or selling in the PJM ~~Markets~~ Interchange Energy Market, the PJM Capacity Credit Market, FTR markets, or any other market operated by PJM until the default is remedied as set forth above;
- ii) A defaulting Member shall not be entitled to participate in the activities of any committee or other body established by the Members Committee or ~~the Office of the Interconnection~~ 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 ~~M~~ members of the default.

15.1.6 Reinstatement of Member Following Default and Remedy

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

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

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

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

terminated in accordance with Operating Agreement, sSection 4.1(c)-of this Agreement, notwithstanding whether such default has been remedied. Furthermore:

- a) ~~PJM~~Settlement shall close out and liquidate all of the Member's current and forward positions in accordance with the provisions of this Agreement and the PJM Tariff; and
- b) ~~A Member~~ terminated in accordance with these provisions, and all of its Principals, shall be precluded from seeking future membership in PJM under this Agreement in the name of the Member when it was terminated from PJM membership and/or through another entity or the same entity using a different name.

Commented [OB5]: Concern about the broad definition of Principal

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

Commented [OB6]: Same as other refernces

- a) that it has otherwise consistently complied with its obligations under this Agreement and the PJM Tariff; and
- b) the failure to comply was not material; and
- c) the failure to comply was due in large part to conditions that were not in the common course of business.

15.2 Enforcement of Obligations.

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

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

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

15.2.2 Default Allocation Assessment.

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

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

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

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

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

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

15.3 Obligations to a Member in Default.

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

15.4 Obligations of a Member in Default.

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

15.5 No Implied Waiver.

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

15.6 Limitation on Claims.

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