



PJM Interconnection
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December 5, 2011

Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20426

Re: *PJM Interconnection, L.L.C.*, Docket No. ER12-529-000

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and the Federal Energy Regulatory Commission's ("FERC" or "Commission") Regulations, 18 C.F.R. Part 35, PJM Settlement, Inc ("PJM Settlement") and PJM Interconnection, L.L.C. ("PJM LLC") (collectively, "PJM") hereby submits for filing a revision to the PJM Amended and Restated Operating Agreement ("PJM Operating Agreement")¹ to make a ministerial correction. As set forth in greater detail below, the purpose of the proposed revisions is to remove the word "terminated" from Section 15.1.6.c (a)² in relation to characterizing a Member who, upon an event of default, will have their forward positions liquidated in accordance with PJM Open Access Transmission Tariff ("PJM Tariff") and/or PJM Operating Agreement. PJM respectfully requests that the Commission accept the proposed Tariff revisions for filing, allowing them to become effective February 6, 2012.³

¹ Capitalized terms not otherwise defined herein have the meaning specified in the PJM Operating Agreement or PJM Tariff, as appropriate.

² eTariff Record – Section 15.1 – Failure to Meet Obligations.

³ As the independent regional transmission organization ("RTO") and administrator of the PJM Tariff, PJM LLC has the authority to submit these Tariff revisions pursuant to Section 205 of the Federal Power Act. *See*, Tariff § 9.2. (providing PJM with exclusive and unilateral Section 205 filing rights regarding changes to the term and conditions of the Tariff, except for those provided to the Transmission Owners as specified in Section 9.1); Operating Agreement § 18.6(a) (providing the procedures for amending the Operating Agreement, consisting of review by the PJM Board and approval by the Members Committee).

I. Background

In the latter part of 2009, PJM applied updated credit provisions which, among other things, established rules at Section 15.1.6 of the PJM Operating Agreement related to the reinstatement of Members that fail to meet their payment and/or collateral obligations to PJM.⁴ Specifically, those rules specified that a Member who realizes a collateral default once in any rolling twelve-month period will be reinstated with no impact whatsoever on its transactional or voting rights as a PJM Member.⁵ However, those Members that realize either one payment default and one collateral default, or two collateral defaults in any rolling twelve-month period, upon cure, will be regain their transactional rights in PJM Markets, but will not be permitted to participate, or vote, on the Members Committee or any other committee or body established pursuant to the Operating Agreement for a period of one year.⁶ Finally, those Members that realize two payment defaults, or three defaults of any type in any twelve-month rolling period will not be eligible for continued PJM Membership and will not, except as otherwise permitted, be eligible to re-apply for Membership under the Operating Agreement.⁷

In an Order issued on December 30, 2009, the Commission accepted these provisions to become effective as requested, but conditioned its acceptance on PJM filing clarifications that the proposed reinstatement provisions would only apply to payment and collateral defaults, and that PJM could not terminate membership without making a Federal Power Act Section 205 filing with the Commission.⁸ As directed, PJM provided these clarifications and the proposal was unconditionally approved by the Commission thereafter.⁹

However, as an unintended consequence of that clarification, PJM actually diminished its ability to minimize any potential financial impact that could arise in the event of Member defaults. As set forth in Section 15.1.6(c) (a) of the PJM Operating Agreement, in the event that, through repeated defaults, the Member is not eligible for continued PJM Membership, PJM Settlement shall have the authority to close out and liquidate any and all of the *terminated* PJM Member's current and forward positions in an attempt to diminish any potential negative financial implications to PJM and the Membership as a whole. The intention of this provision as originally drafted was to provide PJM with the immediate authority to liquidate the Member's current and forward positions upon the occurrence of the final default, when its transaction ability had been "terminated." However, with the clarification provided to the Commission in the prior proceeding, the proviso is limited in application to only those PJM Members that have

⁴ See, *PJM Interconnection, L.L.C.*, Docket No. ER10-168-000 (October 30, 2009).

⁵ PJM Operating Agreement § 15.1.6(a).

⁶ PJM Operating Agreement § 15.1.6(b).

⁷ PJM Operating Agreement § 15.1.6(c).

⁸ *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,294 (2009).

⁹ See, *PJM Interconnection, L.L.C.*, Transmittal Letter dated January 29, 2010, Docket No. ER10-168-000.

been *terminated* (i.e., following the submittal, and acceptance, of a Section 205 filing with the Commission). As a result, PJM and its membership could potentially be exposed to increased financial risk pending the regulatory processing of the Member's termination.

II. The Proposed Revisions

In order to clarify PJM's ability to liquidate and close-out a Member's current and forward positions immediately upon the incidence of default, PJM has proposed to remove the qualifying word *terminated* from Section 15.1.6(c) (a).

III. Stakeholder Support

On November 18, 2010, the PJM Members Committee met and endorsed the proposed Operating Agreement revisions by acclamation.

IV. Effective Date

Consistent with the Commission's notice requirements, PJM requests an effective date of February 6, 2012, which is at least 60 days from the date of this filing.

V. Documents Submitted

Along with this transmittal letter, PJM submits electronic versions of the revisions to the Operating Agreement in both marked (showing the changes) and clean forms.

VI. Correspondence and Communication

The following individuals are designated for inclusion on the official service list in this proceeding and for receipt of any communication regarding this filing:

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VII. Service

PJM has served a copy of this filing on all PJM Members and on all state utility regulatory commissions in the PJM Region by posting this filing electronically. Electronic service is permitted as of November 3, 2008, under the Commission's regulations¹⁰ pursuant to Order No. 714¹¹ and the Commission's Notice of Effectiveness of Regulations issued on October 28, 2008, in Docket No. RM01-5-000. In compliance with those regulations, PJM will post a copy of this filing to the FERC filings section of the its internet site, located at the following link: <http://www.pjm.com/documents/ferc-manuals/ferc-filings.aspx> with a specific link to the newly filed document, and will send an e-mail on the same date as this filing to all PJM Members and all state utility regulatory commissions in the PJM Region¹² alerting them that this filing has been made by PJM today and available by following such link. If the document is not immediately available by using the referenced link, the document will be available through the referenced link within 24 hours of the filing. Also, a copy of this filing will be available on the Commission's eLibrary website located at the following link: <http://www.ferc.gov/docs-filing/elibrary.asp> in accordance with the Commission's regulations and Order No. 714.

Respectfully submitted,



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¹⁰ See, 18 C.F.R. §§ 35.2, 154.2, 154.208 and 341.2.

¹¹ *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270

¹² PJM already maintains updates and regularly uses e-mail lists for all PJM Members and affected commissions.

PJM Operating Agreement
Marked Version
(Redline)

15.1 Failure to Meet Obligations.

15.1.1 Termination of Market Buyer Rights.

The Office of the Interconnection shall terminate a Market Buyer's right to make purchases from the PJM Interchange Energy Market, the PJM Capacity Credit Market or any other market operated by PJM if it determines that the Market Buyer does not continue to meet the obligations set forth in this Agreement, including but not limited to the obligation to be in compliance with PJM's creditworthiness requirements and the obligation to make timely payment, provided that the Office of the Interconnection has notified the Market Buyer of any such deficiency and afforded the Market Buyer a reasonable opportunity to cure pursuant to Section 15.1.3. The Office of the Interconnection shall reinstate a Market Buyer's right to make purchases from the PJM Interchange Energy Market and PJM Capacity Credit Market upon demonstration by the Market Buyer that it has come into compliance with the obligations set forth in this Agreement.

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.

15.1.2A Close Out and Liquidation of Member Financial Transmission Rights

The Office of the Interconnection shall close out and liquidate all of a Member's current and forward Financial Transmission Rights positions if it determines the Member (i) no longer meets PJM's creditworthiness requirements, or (ii) fails to make timely payment when due under the PJM Operating Agreement or PJM Tariff, in each case following any opportunity given to cure the deficiency. Financial Transmission Rights shall be closed out and liquidated pursuant to Schedule 1, Section 7.3.9 of the PJM Operating Agreement and the Appendix to Attachment K, Section 7.3.9 of the PJM Tariff.

15.1.2A(1): Allocation of Costs and Proceeds Resulting from Liquidation

The liquidation of the defaulting Member's Financial Transmission Rights portfolio shall result in a final liquidated settlement amount. The final liquidated settlement amount may be aggregated with any other amounts owed by the defaulting Member to the Office of the Interconnection and may be set off by the Office of the Interconnection against any amounts owed by the Office of the Interconnection to the defaulting Member for purposes of determining the proper Default Allocation Assessment pursuant to the provisions of Section 15.2.2. Any payments made to a party purchasing some or all of a liquidated portfolio shall be net of that party's charge resulting from a Default Allocation Assessment.

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, of all bills rendered in connection with or arising under or from this Agreement, any service or rate schedule, any tariff, or any services performed by the Office of the Interconnection 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) or otherwise fails to meet its financial or other obligations to a Member, PJMSettlement, or the LLC under this Agreement, shall, in addition to any requirement set forth in Section 15.1 and upon expiration of the 2-day period specified below be in default.

15.1.4 Breach Notification and Remedy

If the Office of the Interconnection concludes, upon its own initiative or the recommendation of or complaint by the Members Committee or any Member, that a Member is in breach of any obligation under this Agreement, 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 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 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 may be subject to review by the PJM Board upon request of the Member involved or the Office of the Interconnection.

15.1.5 Default Notification and Remedy

If a Member has not remedied a breach by the 2nd business day following receipt of the Office of the Interconnection's notice, 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 or PJMSettlement:

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

- iv) PJM shall notify all other 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.

b. A Member that has been declared in default of this Agreement 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 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 Section 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 ~~terminated~~ Member's current and forward positions in accordance with the provisions of this Agreement; and
- b) A Member terminated in accordance with these provisions shall be precluded from seeking future membership under this Agreement;

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 Agreement, (provided, however, that a Member's decision to utilize these procedures shall not operate to stay the ability of PJM to exercise any and all of its rights under this Agreement and the PJM Tariff) and may be reinstated provided that the Member can demonstrate the following:

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

PJM Operating Agreement
Clean Version

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- 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; 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.

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b. A Member that has been declared in default of this Agreement 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:

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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 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 Section 4.1(c) of this Agreement, notwithstanding whether such default has been remedied. Furthermore:

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- b) A Member terminated in accordance with these provisions shall be precluded from seeking future membership under this Agreement;

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 Agreement, (provided, however, that a Member's decision to utilize these procedures shall not operate to stay the ability of PJM to exercise any and all of its rights under this Agreement and the PJM Tariff) and may be reinstated provided that the Member can demonstrate the following:

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