

## **Draft Revisions to Operating Agreement, section 15.1**

### **15.1 Failure to Meet Obligations.**

#### **15.1.1 Suspension and Termination of Market Participant Rights.**

PJM may limit, suspend or terminate a Market Participant's right to participate in any PJM Market if it determines that the Market Participant does not continue to meet the obligations set forth in any of the Agreements, including but not limited to the obligation to be in compliance with the terms, or operating characteristics of any of its prior scheduled transactions in any market operated by PJM, the creditworthiness requirements set forth in Tariff, Attachment Q and/or the obligation to make timely payment, provided that PJM and/or PJMSettlement has notified the Market Participant of any such deficiency and afforded the Market Participant a reasonable opportunity to cure pursuant to section 15.1.5 below, or Tariff, Attachment Q, as applicable. PJM shall reinstate a Market Participant's right to participate in any PJM Market upon a determination by PJM and/or PJMSettlement that the Market Participant has, within the parameters of its opportunity to cure provided pursuant to section 15.1.5 below, or Tariff, Attachment Q, as applicable, satisfied the applicable requirements and is in compliance with the obligations set forth in the Agreements.

#### **15.1.2 [Reserved for Future Use]**

#### **15.1.3 Payment of Bills.**

Members and Participants shall make full and timely payment, in accordance with the terms specified by PJM, of all bills rendered in connection with or arising under or from any of the Agreements, any service or rate schedule, any tariff, or any services performed by PJM or transactions with PJMSettlement, notwithstanding any disputed amount, but any such payment shall not be deemed a waiver of any right with respect to such dispute. Any Member or Participant that fails to make full and timely payment to PJMSettlement (of amounts owed either directly to PJMSettlement or PJMSettlement as agent for PJM) or otherwise fails to meet its financial or other obligations to a Member, PJMSettlement, or PJM under any of the Agreements, shall, in addition to any requirement set forth in Operating Agreement, section 15.1 and upon expiration of the cure period specified in section 15.1.5 below, be in default.

#### **15.1.4 Breach Notification and Remedy**

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

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demonstration may be subject to a reservation of rights, if any, to subject such matter to the PJM Dispute Resolution Procedures; and provided, further, that any such determination by PJM and/or PJMSettlement may be subject to review by the PJM Board upon request of the Member or Participant involved or PJM and/or PJMSettlement.

### 15.1.5 Default Notification and Remedy

If a Member or Participant has not remedied a breach, as described in section 15.1.4 above, by 4:00 p.m. Eastern Prevailing Time on the first Business Day following PJM's or PJMSettlement's issuance of a written notice of breach or Collateral Call, the notice of which is issued ~~by~~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 PJMSettlement'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 PJMSettlement:

- i) In the case of a payment default, a defaulting Market Participant shall be precluded from buying or selling in any market operated by PJM until ~~the its~~ payment default is remedied as set forth above, unless PJM or PJMSettlement seeks a FERC waiver of this requirement on a case by case basis. For a collateral default or any other failure to comply with the PJM Governing Agreements by any Market Participant, PJM may limit or suspend that Market Participant's market participation, as further described in Tariff, Attachment Q, 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.

### 15.1.6 Reinstatement of Member Following Default and Remedy

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

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

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

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

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

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

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

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### **15.1.7 Allocation of Costs and Proceeds Resulting from Addressing Defaulting Member Financial Transmission Rights Positions.**

Addressing a defaulting Member's Financial Transmission Rights positions pursuant to Operating Agreement, Schedule 1, section 7.3.9, and Tariff, Attachment K-Appendix, section 7.3.9, shall result in a final settlement amount. The final settlement amount may be aggregated with any other amounts owed by the defaulting Member to PJM and/or PJMSettlement and may be set off by PJM and/or PJMSettlement against any amounts owed by PJM and/or PJMSettlement to the defaulting Member for purposes of determining the Default Allocation Assessment pursuant to the provisions of section 15.2.2 below. Any payments made to a Member purchasing some or all of a liquidated Financial Transmission Rights portfolio shall be net of that Member's charge resulting from a Default Allocation Assessment.