

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**PJM Interconnection, L.L.C. and                    )**                    **Docket No. ER21-520-000**  
**PJM Settlement, Inc.                                )**

**ANSWER OF PJM INTERCONNECTION, L.L.C.  
TO COMMENTS OF THE INDEPENDENT MARKET MONITOR**

PJM Interconnection, L.L.C. and PJM Settlement, Inc. (collectively “PJM”), pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213, hereby answer the comments of Monitoring Analytics, LLC, the Independent Market Monitor for PJM (“IMM”)<sup>1</sup> concerning PJM’s November 30, 2020 filing<sup>2</sup> proposing revisions to the PJM Open Access Transmission Tariff (“Tariff”) and Amended and Restated Operating Agreement of PJM (“Operating Agreement”) (the “Proposed Tariff Revisions”) to modify PJM’s treatment of Financial Transmission Rights (“FTRs”)<sup>3</sup> positions held by Members declared to be in default.<sup>4</sup> PJM proposes to shift from

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<sup>1</sup> Comments of the Independent Market Monitor for PJM, Docket No. ER21-520-000 (Dec. 21, 2020) (“IMM Comments”).

<sup>2</sup> Financial Transmission Rights Default Disposition Tariff and Operating Agreement Revisions of PJM Interconnection, L.L.C., Docket No. ER21-520-000 (Nov. 30, 2020) (“FTR Disposition Filing”).

<sup>3</sup> All capitalized terms that are not otherwise defined herein shall have the same meaning as they are defined in the Tariff, Operating Agreement, or the Reliability Assurance Agreement among Load Serving Entities in the PJM Region.

<sup>4</sup> PJM seeks leave to answer the protests and comments to its November 30, 2020, filing to assist the Commission’s decision-making process and clarify the issues. The Commission regularly allows answers in such cases. *See, e.g., PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,165, at P 24 (2012) (accepting answers to a protest because “they have provided information that assisted [the Commission] in [its] decision-making process”); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,031, at P 10 (2003) (accepting answer because “it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will [e]nsure a complete record upon which the Commission may act”); *Ne. Utils. Serv.*

uniformly allowing defaulted Members' positions to go to settlement to an approach that provides a framework for PJM to tailor its approach to addressing each defaulted Member's positions based on the facts and circumstances surrounding the default, according to criteria and transparency requirements also provided for in the Tariff in order to mitigate the harm to PJM's members, and ultimately consumers. As set forth below and in PJM's initial transmittal letter in this docket, these Proposed Tariff Revisions are overwhelmingly supported by the PJM Members and are just and reasonable in compliance with Federal Power Act ("FPA") section 205, and should be accepted effective February 1, 2021.

The sole comment or protest filed in response to the Proposed Tariff Revisions was that of the IMM. The IMM's comments seek rejection of the Proposed Tariff Revisions because the IMM would prefer a more rigid approach to addressing defaulted Members' FTR positions. However, the IMM's comments overlook the many merits of PJM's proposal and the fact that in an FPA section 205<sup>5</sup> proceeding, a commenter's assertion that it prefers a different approach does not render the filed approach unjust or unreasonable.

## **I. THE IMM'S ARGUMENTS LACK MERIT**

### **A. PJM's Broadly Supported Proposed Tariff Revisions Appropriately Balance Practical Flexibility and Transparency to Enable PJM to Take Reasonable Actions Associated with FTR Portfolios of Defaulted Members.**

The IMM's comments erroneously conflate the guided flexibility given to PJM under the Proposed Tariff Revisions with unbounded discretion for PJM to address defaulted Members' FTR positions however it pleases. As PJM explained in the FTR

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*Co.*, 86 FERC ¶ 61,161, at 61,568 (1999) (accepting an answer to a pleading that sought affirmative relief and because the response aided in the Commission's analysis and disposition).

<sup>5</sup> 16 U.S.C. § 824d.

Disposition Filing, and as provided in the Proposed Tariff Revisions themselves, PJM's approach to each default must amount to "an appropriate course of action . . . based on the specific circumstances of the default" and may include liquidating the defaulting Member's FTR positions, allowing the FTR positions to go to settlement, or another course of action that must be "appropriate under the circumstances" and "designed to minimize potential losses" to PJM Members.<sup>6</sup> This approach to mitigating financial harm to Members combines practical flexibility with transparency of process while reflecting the realities of needing to respond to specific fact situations. The IMM's claims fail to reflect the realities of balancing transparency as to tools and standards PJM would use with needed flexibility to avoid a "cookie cutter" approach given the myriad of different fact-specific circumstances that may arise.

As illustrated below, the Commission has previously accepted as just and reasonable under FPA section 205 tariff language that provides the tariff administrator flexibility in administering tariffed services, particularly where the service is the operation of an organized wholesale market and especially where issues of credit and default are involved. Put simply, the Commission recognizes that where issues of credit, default, and market integrity are concerned, there are so many variables at play such that tariff rules should generally have a degree of flexibility and not be overly prescriptive in order to

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<sup>6</sup> FTR Disposition Filing at 5-6, proposed Tariff, Attachment K-Appendix, section 7.3.9(b). All references herein to the Tariff, Attachment K-Appendix, section 7.3 or any subsection thereof also are intended to encompass the identical, parallel provisions in Operating Agreement, Schedule 1, section 7.3. PJM will refer generally to the Tariff throughout this letter to also include the Operating Agreement. As discussed *infra* Section I.D, the proposed language in Tariff, Attachment K-Appendix, section 7.3.9(b)(4) referencing minimizing losses to PJM (rather than Members) in that section was included in error and should be deleted on compliance.

efficiently address the portfolio of a defaulted PJM Member. As the proposed Tariff language makes clear, PJM’s actions will be taken with the objective of mitigating the losses of PJM Members, and an overly prescriptive approach could result in ignoring market events outside of PJM, a “fire sale,” liquidity issues, market participant credit constraints, or even market-distorting outcomes—any of which could increase the magnitude of losses suffered by PJM Members, and in many cases ultimately consumers.

For example, the Commission recently accepted revisions to the Tariff, Attachment Q that provide flexibility in evaluating credit risk and protecting market participants from financial losses resulting from defaults. In fact, the Commission explicitly accepted the Tariff revisions on the basis that they “provide[] 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.”<sup>7</sup> The Commission has made similar findings in relation to the credit risk policies of other independent system operators (“ISOs”) and regional transmission organizations (“RTOs”), such as in a recent case where the Commission praised credit policy changes by the New York Independent System Operator, Inc. (“NYISO”) as providing that ISO “with the needed flexibility to protect the integrity of the NYISO-administered markets.”<sup>8</sup> In other

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<sup>7</sup> *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,173, at P 36 (2020) (emphasis added).

<sup>8</sup> *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,054, at P 32 (2020) (“[W]e find that it is impractical and undesirable to list all examples that constitute an unreasonable credit risk and limit NYISO to act to protect the wholesale markets only in specific instances enumerated in the tariff. We find that the proposed tariff language provides NYISO with the needed flexibility to protect the integrity of the NYISO-administered markets.”); *see also Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,257, at P 8 (2020) (“The proposed revisions will allow MISO to

words, the Commission recognizes that overly prescriptive rules may cause customers (i.e., market participants) to suffer. The Proposed Tariff Revisions are fully consistent with this previously adopted rationale for accepting flexibility in tariff revisions addressing credit and default issues in organized markets, including the fact that PJM has included multiple provisions providing for transparency and specific criteria to be used when discerning an appropriate approach to a particular Member default.<sup>9</sup>

There are also other times, outside the credit context, where the Commission has acknowledged the need for tariff provisions that provide a flexible approach. This includes the Commission's recent acceptance of a proposal enabling NYISO to exercise discretion in determining which resource retirements should qualify as Incremental Regulatory Requirements.<sup>10</sup> The Commission also accepted ISO New England Inc. ("ISO-NE") tariff revisions that, among other things, allowed ISO-NE to use its own judgment to assess and provide reasons for rejecting de-list bids (i.e., the lowest price a resource is willing to take)

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improve the protection of its market participants from financial losses that result from unreasonable credit risks and defaults while also providing additional clarity and transparency to market participants.”).

<sup>9</sup> See FTR Disposition Filing at proposed Tariff, Attachment K-Appendix, sections 7.3.9(b), (c) & (d).

<sup>10</sup> *N.Y. Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,058, at P 58 (concluding NYISO's tariff revisions struck “an appropriate balance between specifying the retirements eligible for NYISO's consideration and the burden placed on NYISO to determine which retirements should qualify as Incremental Regulatory Retirements,” and stating, “we note that NYISO's *proposal properly enables NYISO to use its discretion as tariff administrator* and determine which retirements should be considered Incremental Regulatory Retirements” (emphasis added)), *reh'g denied*, 172 FERC ¶ 61,152 (2020).

for reliability reasons, finding that the tariff revisions provided the ISO with a “reasonable level of discretion” included appropriate information disclosure provisions.<sup>11</sup>

Like these past tariff changes, the Proposed Tariff Revisions do not give PJM unfettered discretion to address an FTR default. Rather, the Proposed Tariff Revisions pair practical flexibility with the release of pertinent information to ensure transparency of process, i.e., the Proposed Tariff Revisions give PJM a reasonable level of discretion as tariff administrator to address the default in a manner that is most appropriate based on the facts and circumstances surrounding the default, according to criteria and transparency requirements also provided for in the Tariff, with the objective of mitigating potential losses” to PJM Members. Although the IMM would have the Commission believe otherwise, as illustrated by the cases discussed above, there is nothing particularly unique or notable about allowing PJM options for responding to a Member default that affects the FTR market based on criteria published in the Tariff and using PJM’s reasonable judgment in the furtherance of mitigating Member losses.

During the stakeholder process, PJM guided stakeholders through several hypothetical examples of how PJM might address Member defaults in the FTR market based on specific theoretical fact circumstances.<sup>12</sup> These examples demonstrate why a

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<sup>11</sup> *ISO New Eng. Inc.*, 140 FERC ¶ 61,088, at P 30 (2012) (stating “The Commission agrees with ISO-NE that the proposed Tariff Revisions *provide a reasonable level of discretion* regarding which one-year de-list bids are included in the Needs Assessments, while providing for appropriate release and evaluation of information” (emphasis added)).

<sup>12</sup> See Brian Chmielewski, *FTR Liquidation Illustrative Examples*, PJM Interconnection, L.L.C., 5-8 (Oct. 15, 2020), <https://pjm.com/-/media/committees-groups/task-forces/frmstf/2020/20201015/20201015-item-07-ftr-liquidation-examples.ashx>.

degree of flexibility is important for properly addressing Member defaults in the FTR market, but also illustrate that PJM's approach will include appropriate information disclosures and not amount unbridled discretion. PJM published these examples in stakeholder materials provided for an October 2020 meeting of the PJM Financial Risk Mitigation Senior Task Force, which also oversaw the crafting of the Proposed Tariff Revisions.<sup>13</sup>

The IMM's argument that the Proposed Tariff Revisions amount to an impermissible subdelegation of Commission authority misses the mark for all the reasons listed above, and because the IMM relies on court and Commission opinions that have no bearing on this proceeding.<sup>14</sup> Moreover, nothing in 18 C.F.R. § 35.47, which the IMM

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<sup>13</sup> *Id.*

<sup>14</sup> Specifically, the IMM cites to *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,244, at P 26 (2021), to support the proposition that “the Commission has rejected proposed rules that afford excessive discretion to the RTO administering them,” IMM Comments at 6. This is, of course, an accurate statement, but the order itself provides no basis for concluding that the Proposed Tariff Revisions afford excessive discretion to PJM. That order, which was issued less than a month ago and thus is not yet considered a final order, addressed technical physical eligibility requirements for pricing for fast-start resources, not any matters related to creditworthiness or financial default. It is thus not instructive in this case, where there is other more applicable guidance from the Commission that accepts the necessity of flexibility for PJM to address issues of credit and default in the administration of its markets. *See PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,173, at P 36. The IMM, at 6-7, also cites to *City of Tacoma v. FERC*, 331 F.3d 106, 115 (D.C. Cir. 2003), but that court case rejected the Commission's delegation of authority to other federal agencies over which it has no oversight, whereas in this case, by accepting the Proposed Tariff Revisions the Commission would be accepting revisions to a tariff over which it has direct regulatory supervision both regarding the tariff text and its administration. Finally, the IMM, at 6-7, cites to *Perot v. FEC*, 97 F.3d 553 (D.C. Cir. 1996), which actually declined to find any impermissible subdelegation of authority in a case where the Federal Election Commission had provided significant discretion to private, non-profit organizations tasked with hosting presidential debates, and is, if anything, supportive of the practical wisdom of allowing PJM some discretion and flexibility in crafting its own market rules. Perhaps more

cites and which contains basic credit requirements that organized markets must adopt before allowing parties to participate in those markets, is inconsistent with or contradicted by the Proposed Tariff Revisions. To the contrary, PJM’s Tariff, Attachment Q continues to meet the requirements of 18 C.F.R. § 35.47 and the IMM has not alleged or demonstrated otherwise.

The IMM implies that the processes outlined in the Proposed Tariff Revisions will be beyond Commission oversight and review once they are accepted,<sup>15</sup> but that is not true. As PJM noted in its initial filing, the advance notice provisions of the Proposed Tariff Revisions “may allow interested parties to provide their input on PJM’s planned course of action through, for example, stakeholder processes, dispute resolution procedures, or through making filings at the Commission.”<sup>16</sup> The Commission has oversight authority over PJM’s markets, whether PJM’s Tariff provisions provide flexibility or not. While PJM does administer its own markets, it remains subject to FPA section 206<sup>17</sup> and the Commission’s enforcement authority, and nothing about the FTR Disposition Filing changes that oversight or seeks to delegate that authority to PJM.<sup>18</sup>

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importantly, the IMM cites to the *Perot* case to support its argument that PJM must base its decisions on “objective criteria,” IMM Comments at 7, but the exhortation to use “objective criteria” in that case was based entirely on a court interpretation of the specific language in a Federal Election Commission regulation that does not apply to FERC or to PJM.

<sup>15</sup> IMM Comments at 7 (“The FTR Default Proposal fails the standard because it does not establish objective criteria for implementation of and review of the exercise of the subdelegated authority.”).

<sup>16</sup> FTR Disposition Filing at 3 n.7.

<sup>17</sup> 16 U.S.C. § 824e.

<sup>18</sup> PJM administers its Tariff in accordance with the standards set forth in the FPA and the Commission’s regulations. In accordance with the Proposed Tariff Revisions, in the event a Member holding FTR positions experiences a financial



Finally, the IMM's criticism that PJM's proposal should not be accepted because FTR Participants are not as sophisticated as those in other financial markets and because the FTR market is not regulated by the Commodity Futures Trading Commission ("CFTC") is an invalid critique. The CFTC itself has acknowledged that RTO/ISO markets are complex and their participants sophisticated, noting in its order granting RTOs and ISOs exemption from the CFTC's Dodd-Frank Act regulations that "RTO and ISO markets are complex and not geared to unsophisticated traders" and that the CFTC's regulatory exemption for RTO and ISO markets relies on the understanding that parties that qualify to be market participants in such markets are "sophisticated entities that are able to, from a financial standpoint, understand and manage the risks associated with such Transactions."<sup>19</sup> As PJM explained in the FTR Disposition Filing, the FTR market, which is supported by robust participation requirements including credit standards, has many functional similarities to other complex financial markets and should be allowed to have similar procedures in place for addressing occasional market participant defaults, which are known to occur from time to time in all such markets.<sup>20</sup>

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default, PJM will exercise its reasonable judgment to "determine and execute an appropriate course of action for addressing such Financial Transmission Rights position" based on the circumstances at hand and "will provide reasonable advance notice to PJM Members of the approach or course of action it has determined to be appropriate prior to implementing that approach or course of action." FTR Disposition Filing at proposed Tariff, Attachment K-Appendix, section 7.3.9(b). Upon receipt of that notice, any party wishing to challenge PJM's actions may file a complaint under FPA section 206 to challenge that course of action and seek prospective relief.

<sup>19</sup> *ISO/RTO Exemption Order*, 78 Fed. Reg. 19,880, 19,899-900 (April 2, 2013) (internal quotation marks and citations omitted).

<sup>20</sup> FTR Disposition Filing at 6, 10 & Attachment F (Affidavit of Nigeria Bloczynski ("Bloczynski Aff.")) ¶¶ 7-8.

**B. The IMM's Preference for a More Rigid Approach Does Not Negate the Just and Reasonable Nature of PJM's Proposal.**

The IMM's comments advocate for a more rigid "systematic" approach to addressing the FTR positions of Members in default,<sup>21</sup> but the IMM's preference for a different approach does not render PJM's proposed approach unjust or unreasonable. As the Commission has frequently acknowledged, since there can be more than one possible just and reasonable approach, the utility making an FPA section 205 filing need only demonstrate that its proposal is just and reasonable, not that it is the only just and reasonable option.<sup>22</sup> This is true even when the IMM prefers a different approach.<sup>23</sup> In

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<sup>21</sup> IMM Comments at 5.

<sup>22</sup> See *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) ("In the past FERC has interpreted its authority to review rates under this provision of the Act as limited to an inquiry into whether the rates proposed by a utility are reasonable -- and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs."); *Calpine Corp. v. PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,061, at P 256 (2020) ("While we acknowledge that there may be more than one just and reasonable choice, that does not make PJM's proposal unjust and unreasonable . . ."), *appeals pending*; *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 14 (2007) ("The initial burden of showing that the tariff proposal is just and reasonable is on the party making the FPA section 205 filing. . . . [W]e note that there can be more than one just and reasonable proposal, and the proposal under consideration will be selected unless it is found unjust and unreasonable."); *S. Cal. Edison Co.*, 73 FERC ¶ 61,219, at ¶ 61,608 n.73 (1995) ("Having found the Plan to be just and reasonable, there is no need to consider in any detail the alternative plans proposed by the Joint Protesters.").

<sup>23</sup> See *PJM Interconnection, L.L.C.*, 172 FERC ¶ 61,094, at PP 19-20, 25-26, 42-43 ("While Monitoring Analytics contends that the replacement of the revocation provisions is unnecessary, Monitoring Analytics fails to articulate its specific concerns with the proposed new revocation provisions and why such concerns render the proposal unjust and unreasonable."), *reh'g denied*, 172 FERC ¶ 62,177 (2020); *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,084, at P 44 (2019) ("We agree with PJM and find that the IMM has not shown that PJM's proposal to provide a longer time period for review and approval of new generation resources is unjust and unreasonable nor has the IMM supported its recommendation . . ."); *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,153, at P 59 (2017) ("The

addition, since Members (not the IMM) bear the costs of such defaults, the Commission should afford a certain degree of deference to the Members' overwhelming preference for PJM's proposal.

The IMM conflates the issues of transparency and rigidity of process, seeking to force PJM to adopt rigid rules in the name of "transparency" when PJM's proposed flexible approach already would help protect Members and the financial integrity of the PJM markets in a reasonable and transparent manner. The IMM's critique that PJM's proposed process for addressing the FTR positions of a defaulting member is not "verifiable or systematic" is an unfair one, and the Commission has previously rejected similar arguments from the IMM because they fail to appreciate that a tariff policy cannot reasonably be expected to "address every possible circumstance that a [market participant] may face, especially if those circumstances are outside of any commercial experience to date."<sup>24</sup> As the Commission, PJM, and stakeholders have seen time and again, no party—not PJM and not the Commission—can predict the future or what the circumstances are likely to be of a Member default. PJM's approach is suitable precisely because it provides PJM, as the market administrator, the flexibility to pursue an appropriate approach based on the facts and circumstances before it, and based on a list of criteria provided in the Tariff.

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Commission declines to adopt the Market Monitor's alternative cost verification proposal because, for reasons explained above, we find PJM's proposed verification method to be just and reasonable and in compliance with Order No. 831.').

<sup>24</sup> See *PJM Interconnection, L.L.C.*, 172 FERC ¶ 61,094, at P 43 (rejecting the IMM's critique that a *force majeure* penalty exemption in PJM's fuel cost policy was inconsistent with the need for fuel cost policy to be systematic and verifiable, and agreeing with PJM that the policy appropriately needed some degree of flexibility to facilitate appropriate responses to unexpected events).

Beyond that, the IMM seeks a level of specificity here that is impractical and unnecessary. Consistent with the proposed Tariff revisions, PJM will reasonably act to mitigate losses to Members, considering the factors outlined in proposed Tariff, Attachment K-Appendix, section 7.3.9(c), thereby meeting its obligation to implement its Tariff in accordance with federal law.

**C. The Proposed Tariff Revisions Should Enable PJM to Effectively Administer Its Tariff and Reduce PJM’s Need to Seek Future Expedited Changes and/or Waivers.**

One strength of PJM’s proposal is that it will allow PJM to respond to a Member default in a way appropriate under the circumstances rather than a single uniform approach that may not be well-suited to that default (as was the case, for example, in the GreenHat Energy, LLC default where PJM’s then-mandatory liquidation provision resulted in a large magnitude of Member losses that might have been avoidable under a more flexible approach). While PJM has requested waivers in the past, it is always its preference to follow the provisions of its Tariff whenever possible, and PJM would rather rely on a revised Tariff that facilitates a flexible approach than a rigid status quo with the occasional waiver, where the status quo is inadequate for PJM Members’ needs.

**D. The Proposed Tariff Reference to “PJM Losses” Was an Administrative Oversight and Can Be Deleted.**

The IMM’s comments brought to PJM’s attention that two words PJM intended to delete from its draft Proposed Tariff Revisions were inadvertently included in its filing. Those two words, “and its,” contained in proposed Tariff, Attachment K-Appendix, section 7.3.9(b)(4), and identical Operating Agreement, Schedule 1, section 7.3.9(b)(4), should be deleted, and PJM consents to made such revisions in an compliance filing if the Commission so directs. The resulting language will read (provided in blackline):

“(4) another course of action the Office of the Interconnection determines to be appropriate under the circumstances that is designed to minimize potential losses to PJM ~~and its~~ Members.” This will bring this language into conformance with the rest of the Proposed Tariff Revisions, which reference minimizing Member losses only.

## II. CONCLUSION

For the reasons set forth in this answer and the FTR Disposition Filing, PJM asks that the Commission accept the Tariff and Operating Agreement revisions proposed in the FTR Disposition Filing, with the minor modification described herein, effective February 1, 2021.

Respectfully submitted,

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January 11, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 11th day of January 2021.

/s/ Victoria M. Lauterbach

*Attorney for  
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