UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Energy Management Solutions, L.L.C.	)	
	)	
v.	)	**Docket No. EL24-90-000**
	)	
PJM Interconnection, L.L.C.	)	

MOTION FOR LEAVE TO ANSWER AND
ANSWER OF PJM INTERCONNECTION, L.L.C.

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,[1] PJM Interconnection, L.L.C. ("PJM") submits this Motion for Leave to Answer and Answer ("Second Answer") to the May 2, 2024 Motion for Leave to Answer and Answer of Energy Management Solutions, LLC ("EMS").

In its Answer, EMS, through its principal Lee Chen ("Chen"), again challenges the validity of PJM's bases for denying its application for membership. Chen raises two main arguments in rebuttal to PJM's Answer and Request for Confidential Treatment ("First Answer"). First, Chen argues that the reinstatement provisions of PJM's Open Access Transmission Tariff ("Tariff") and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement" or "OA") are irrelevant to the approval or disapproval of a new membership application.[2] Second, Chen argues that PJM needed to consider EMS's "anticipated market activity" alongside an idiosyncratic package of Chen-crafted "risk mitigation measures" before denying membership to EMS.[3] Chen denies that Hill Energy Resource & Services, LLC ("Hill

[1] 18 C.F.R. §§ 385.212 & .213 (2023).

[2] EMS, Motion for Leave to Answer and Answer of Energy Management Solutions, LLC, Docket No. EL24-90-000 at § V.A (May 2, 2024) ("EMS Answer").

[3] *Id.* § V.B.

Energy") and EMS are essentially alter-egos controlled by Chen, the manager, principal, and chief risk officer for Hill Energy who now presents himself as chief risk officer of EMS.[4] Finally, Chen requests that if the Commission is disinclined to grant the Complaint, it should nonetheless instruct PJM and EMS to enter into settlement negotiations.[5]

Chen's arguments are meritless. First, Chen's claim that the term "reinstatement" is not relevant to PJM's evaluation of membership applications is demonstrably false. The Operating Agreement uses the term "reinstatement" in several closely interrelated provisions, the headings of which clearly demonstrate that they are dedicated to this concept. These provisions include Operating Agreement, Schedule 1 section 1.4.8 (Re-entry of Defaulting Market Participant), which provides two distinct mandatory bars against a former Member's[6] re-entry into PJM—one for entities whose previous defaults "resulted in a loss to any PJM Market which was never cured" and another for entities who are "not eligible for reinstatement to PJM membership pursuant to Operating Agreement section 15.1."[7] Operating Agreement section 15.1.6.c(b) (Reinstatement of Member Following Default and Remedy) also requires PJM to exclude previous defaulters who caused a loss, and PJM has broad discretion to determine "whether an Applicant should be considered the same as a Member that previously defaulted" regardless of loss.[8] Chen cites Operating Agreement section 11.6(a) for the proposition that reinstatement is unrelated to membership application approval, but that section directly cites to the reinstatement provisions of section 1.4.8, which in turn refers to the reinstatement provisions of section 15.1.6.c.

[4] *See id.* at 14-15.

[5] *See id.* at 17.

[6] Capitalized terms not defined herein have the meaning set forth in the Tariff or Operating Agreement ("OA").

[7] OA sched. 1, § 1.4.8.

[8] OA § 15.6.1.c(b).

Second, Chen incorrectly argues that PJM was required to consider EMS's "anticipated market activity" alongside Chen's home-brewed "risk mitigation measures" before denying EMS's membership application. Tariff Attachment Q places no such requirements on PJM. Given Chen's past misrepresentations and market activities, PJM reasonably concluded that EMS was an unreasonable credit risk.[9] EMS's Answer only reinforces that conclusion.

Finally, Chen's Answer repeatedly and fatally undermines his original arguments. Chen not only concedes that Hill Energy's termination from PJM resulted in unremunerated costs to PJM[10]—i.e., a loss in connection to Hill Energy's default[11]—but Chen also gives further evidence that Hill Energy and EMS are alter-egos.[12] He further suggests that because PJM did not explicitly reference his denial of any relation between EMS and Hill Energy, despite knowing it existed, that Chen's misrepresentation was unimportant and did not justify denial of the membership application. Concessions such as these provide an ample record to reject EMS's Complaint.

I. MOTION FOR LEAVE TO ANSWER

The Commission has discretion to accept an answer for good cause when it will result in a more complete or accurate record, improve the Commission's understanding of the issues, clarify matters, or help the Commission reach its decision.[13] The Commission has good cause to accept

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[9] *See* PJM, Answer of PJM Interconnection, L.L.C., Docket No. EL24-90-000 at 27 (Apr. 15, 2024) ("PJM Answer"); *id.* Ex. A, Affidavit of Dr. Carl F. Coscia, Chief Risk Officer of PJM Interconnection, L.L.C. at P 14.

[10] *See* EMS Answer at 17 ("EMS offered to cover PJM's legal costs related to Hill Energy as '[t]hey also fully expect an agreed resolution of the present disputes to involve PJM being made whole.'").

[11] *See* OA § 15.1.6.c(b).

[12] *See* EMS Answer at 16-17 (confirming Chen's privity with Hill Energy's counsel, the same counsel representing EMS).

[13] 18 C.F.R. § 385.213(a)(2); *see, e.g.*, *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133, at P 12 (2017) (accepting answers to protests because they provided information that assisted in

PJM's Second Answer because PJM corrects a number of legal and factual assertions in EMS's Answer. PJM's clarification of these inaccuracies and misstatements will assist the Commission in reaching the correct decision in this matter.

II. ANSWER

A. Chen Fundamentally Misunderstands the Connection Between the Tariff's Membership Requirements and Reinstatement Provisions

Chen claims that "reinstatement is irrelevant in the context of a new membership application."[14] To reach this conclusion, Chen relies on certain provisions of the Operating Agreement in isolation (for example, Operating Agreement section 11.6(a)(iii)-(iv)), while ignoring other provisions that are critical to fully understand PJM's membership application approval processes (for example, Operating Agreement, Schedule 1, section 1.4.8 and Operating Agreement section 15.1.6.c). Chen's narrow focus oversimplifies a complex and multifaceted process. Contrary to Chen's contentions, policing the reinstatement of previously-terminated PJM Members is inextricably intertwined with the approval of a membership application.

Multiple provisions of the Operating Agreement deal with Member reinstatement and connect it directly to approval or disapproval of a membership application. Operating Agreement section 11.6(a) provides four things that an Applicant must do to qualify as a Member. Chen cherry-picks the last two items—subsections (iii) and (iv)—which require an Applicant to cure any prior defaults or the default of an entity that "should be treated as the same Member that experienced the outstanding default."[15] Chen's argument is both misguided and incomplete. Chen

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the Commission's decision-making process); *KO Transmission Co.*, 156 FERC ¶ 61,147, at n.5 (2016) (accepting an answer to a protest because it provided a better understanding of the issues and ensured a complete record); *TransColorado Gas Transmission Co.*, 111 FERC ¶ 61,208, at P 4 (2005) (accepting an answer to a protest because it clarified the issues).

[14] EMS Answer at 2, 6.

[15] OA sched. 1, § 1.4.8(iv).

apparently cites subsections (iii) and (iv) in the misplaced notion that he has cured Hill Energy's prior defaults, but that is incorrect, as detailed further below. In all events, Chen ignores that subsection (ii) explicitly provides that an Applicant must "[a]ccept the obligations set forth in this [Operating] Agreement" to qualify as a Member. Therefore, as a would-be Member of PJM, EMS must be bound by each provision of the Operating Agreement, including the reinstatement provisions of sections 1.4.8 and 15.1.6.c.

Chen's reliance on Operating Agreement section 11.6(a)(iv) to claim that PJM's membership requirements contain "no notion of 'reinstatement'" is clearly wrong. His position is immediately undermined by the plain text of section 1.4.8, which provides that "[a]n Applicant who previously defaulted on any obligations owed to PJM and/or PJMSettlement that resulted in a loss to any PJM Market which was never cured, or *who is not eligible for reinstatement to PJM membership pursuant to Operating Agreement, section 15.1*, shall not be allowed to re-enter the PJM Markets."[16] Section 15.1.6.c in turn provides two mandatory bars on reinstatement:

> 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*.[17]

A Member terminated under that section is "precluded from seeking future membership in PJM under this Agreement *whether in the name of the Member when it was terminated from PJM*

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[16] *Id*., § 1.4.8(ii) (emphasis added). Section 1.4.8 also states "PJM will evaluate relevant factors to determine if an Applicant seeking to participate in the PJM Markets under a different name, affiliation, or organization should be treated as the same Market Participant that experienced a previous default that resulted in a loss to the PJM Markets under this provision." *Id.*

[17] OA § 15.1.6.c (emphasis added).

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."[18]

PJM rightfully barred Hill Energy from membership under section 1.4.8 and section 15.1.6.c. As PJM has shown, Hill Energy did not cure its own defaults; rather, PJM drained Hill Energy's Restricted Collateral to pay off those defaults.[19] That use of collateral is "not allowable" under PJM's credit policy.[20] Terminating Hill Energy's membership imposed significant litigation and other expenses on PJM. In one of several fatal concessions, discussed further below, Chen admits that EMS offered to cover "PJM's legal costs related to Hill Energy."[21] Those legal costs are still unpaid.

Hill Energy is thus permanently ineligible for reinstatement unless it can show that it lifted the bar to reinstatement through the appeal process of Operating Agreement section 15.1.6.d.[22] Hill Energy never invoked this appeal process and, even if it had, Hill Energy would have failed all three mandatory reinstatement requirements under section 15.1.6.d.[23]

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[18] *Id.* § 15.1.6.c(b) (emphasis added).

[19] *See PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,018, at PP 13-14 ("Hill Energy Termination Order"), *reh'g denied by operation of law*, 183 FERC ¶ 62,137 (2023).

[20] *See* PJM Answer, Ex. S, January 18, 2023 EMS Membership Application Denial at 3.

[21] EMS Answer at 17; *accord* EMS Complaint, Attach. 4, EMS' Requests for Reconsideration & PJM's Responses at 8.

[22] OA § 15.1.6.d ("A Member may appeal a determination made pursuant to the foregoing procedures utilizing PJM's Dispute Resolution Procedures . . . 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.").

[23] *See supra* note 16 and accompanying text.

Because Hill Energy is ineligible for reinstatement, EMS is likewise prohibited from PJM membership if PJM determines, in its own discretion, that EMS "should be considered the same as a Member that previously defaulted."[24] As Chen acknowledges in another fatal concession, "EMS believes it is PJM's authority to determine if one entity is the 'same' under a different name or an affiliate of the other in accordance with PJM OA Schedule 1, section 1.4.8."[25] The factors PJM may consider under section 1.4.8 "include, *but are not limited to*, the interconnectedness of the business relationships, overlap in relevant personnel, similarity of business activities, overlap of customer base, and the business engaged in prior to the attempted re-entry."[26] PJM reasonably determined that, "based on the interconnectedness of the business relationships among Hill Energy and EMS, overlap in their relevant personnel/principal, and similarity of their business activities, . . . that EMS should be treated as Hill Energy for purposes of evaluating qualification for PJM membership."[27]

Chen has never seriously contended otherwise. His entire argument consists of the following bald assertion: "PJM claims that 'Hill Energy and EMS are alter-egos controlled by

[24] OA § 15.1.6.c(b); *see also id.*, sched. 1, § 1.4.8 (stating that a former Member who is not eligible for reinstatement under section 15.1 "shall not be allowed to re-enter the PJM Markets"). Unlike the first sentence of Operating Agreement, section 15.1.6.c(b), which mentions the prohibition of a new Member or Applicant if that Member or Applicant experienced a default that "resulted in a loss to the PJM Markets," the second sentence omits the language of a loss to the PJM Markets, stating only that "[w]hether an Applicant should be considered the same as a Member *that previously defaulted* will be determined based on the factors identified" in section 1.4.8. OA § 15.1.6.c(b) (emphasis added). Section 1.4.8, in contrast, retains the language of loss to the PJM Markets.

[25] EMS Answer at 15.

[26] OA sched. 1 § 1.4.8 (emphasis added); *accord* OA § 11.6.(c) (directing PJM to review the credit risk of an Applicant based on whether the Applicant should be treated as a former Member based on the same non-inclusive factors).

[27] PJM Answer, Ex. S at 3.

Chen'. This claim does not have any legal nor substance basis and is false."[28] Not only does he fail to explain this assertion, he concedes on the next page of his Answer that "EMS believes it is PJM's authority to determine if one entity is the 'same' under a different name or an affiliate of the other in accordance with PJM OA Schedule 1, section 1.4.8."[29]

Finally, Chen objects twice that "PJM essentially argues any entity who is ineligible for reinstatement is ineligible for a new PJM membership."[30] He states that is "completely false."[31] On the contrary, that statement is completely correct. The object of "reinstatement" is to secure a "new PJM membership." Stating that an entity is "ineligible for *reinstatement*" means precisely that the entity is "ineligible for *a new PJM membership*."[32]

B. EMS Poses an Unreasonable Credit Risk With or Without its Proposed Risk Mitigation Measures

Operating Agreement section 11.6(c) permits PJM to determine whether an Applicant presents an unreasonable credit risk under Tariff Attachment Q, section II.E.8.[33] PJM bases this determination on several factors, including "information and material provided to PJM during its ongoing risk evaluation process or in the Officer's Certification, and/or information gleaned by PJM from public and non-public sources."[34] The Commission summarized the breadth of PJM's discretion under Tariff Attachment Q as follows:

> In addition to using specific factors and indicators set forth in its tariff, PJM will use its discretion, *based on all circumstances at the time*, in determining whether there is an unreasonable credit risk. As the Commission has previously recognized, it is

[28] EMS Answer at 14.

[29] *Id.* at 15.

[30] *Id.* at 9.

[31] *Id.*

[32] *Id.* (emphasis added).

[33] OA § 11.6(c); *see also* Tariff, Attach. Q § II.E.8.

[34] Tariff, Attach. Q, § II.E.8.

> impractical to enumerate all of the examples that constitute an unreasonable credit risk, as doing so may unnecessarily limit when an RTO can act to protect its wholesale markets and market participants to only those specified instances enumerated in the tariff. Similar to previous Commission findings, we find that the instant proposal provides 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.[35]

Ignoring this broad discretion, Chen claims that PJM did not adequately consider EMS's "package of risk mitigation measures" based on its "anticipated market activity." Specifically, Chen argues that if PJM had interpreted EMS's monthly FTR Option transaction data in the same manner as Chen had, then PJM would have seen that EMS poses "practically zero credit risk."[36] Chen is simply incorrect.

The Operating Agreement only directs PJM to evaluate whether an Application "presents any unreasonable, inherent or material risks to PJM, including but not limited to unreasonable credit risk pursuant to Tariff, Attachment Q."[37] Neither the Operating Agreement nor the Tariff require PJM to make this determination only after attempting to accommodate an Applicant's bespoke risk-mitigation proposals. If PJM began developing custom procedures to control the individual Applicants' risks, instead of applying its Tariff uniformly, it would almost certainly be accused of applying the Tariff in an unduly preferential and discriminatory manner under FPA sections 205 and 206.[38] PJM made this argument plain in the First Answer, and Chen has entirely failed to engage with that significant legal problem.

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[35] *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,173, at P 36 (2020).

[36] EMS Answer at 10, 12.

[37] OA § 11.6(c).

[38] *See* 16 U.S.C. § 824d(b) ("No public utility shall . . . (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or

PJM is free to consider EMS's reputation for forthright business dealings, or the lack thereof, "based on all of the circumstances known at the time and relying on both public and non-public sources."[39] Chen mistakenly contends that PJM "must start with the anticipated activity, market or not, in order to properly assess any type of risk."[40] The unreasonable credit risk analysis begins with trust. Indeed, the Commission's regulations impose a duty of candor in communications with the Commission, market monitors, and regional transmission originations such as PJM.[41] In both its First Answer and here, PJM has shown that Chen has a history of making misrepresentations and false statements.[42] Among the numerous justifications PJM cited for its denial of EMS's membership application, PJM also cited EMS's withholding of material information and providing false, ambiguous, and insufficient responses to PJM's supplemental questions.[43] Given this history, PJM reasonably believed that EMS, as an entity operated by Chen, cannot be trusted when it promises that it will not take "risk lightly and in violation of its Risk Management Policy" or that it "will maintain the stated additional excess collateral at PJM . . . and will stay in compliance with its own Risk Management Policy."[44] As Mr. Coscia testified, "[n]o

in any other respect . . . ."); *id.* § 824e (requiring the Commission to fix " unduly discriminatory or preferential" rates).

[39] *See* Tariff, Attach. Q, § II.E.8.

[40] EMS Answer at 11.

[41] *See* 18 C.F.R. § 35.41(b) (2023) ("A Seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences.").

[42] *See, e.g.*, PJM Answer at 26-27, Ex. S at 2-3.

[43] PJM Answer at 26, Ex. S at 2-3.

[44] EMS Answer at 14.

amount of Collateral or credit support, or promises to limit market activity, is sufficient to 'pay off' an absence of trust,"[45] and "it would require a leap of faith on the part of PJM to trust that Chen would treat EMS's obligations to PJM with any greater seriousness."[46]

EMS claims that "FTR Options have limited downside risk because their revenue returns are never negative. It reduces EMS's risk to PJM to practically zero."[47] That argument makes no sense. The options credit requirement essentially equals FTR cost minus the FTR Historical Values.[48] The options credit requirement must be paid when the auction is cleared, and that options credit requirement will be lower than the FTR cost when the FTR historical value is higher than zero. This means that the FTR cost is not paid up front, and the difference between the FTR Option cost and the collateral requirement is an exposure risk to PJM. In addition, PJM calculates Mark-To-Auction ("MTA") for all FTR positions in a portfolio during each subsequent auction. The MTA includes all the FTR options marked to the most recent auction results. If the MTA is in an upward trend in subsequent auctions, the increased MTA can be used to meet the credit requirement. This book gain further reduces the FTR collateral held and could also be used to acquire additional FTR options, further amplifying the risk. If the settled payouts drop to 0 at the settlement, the risk to PJM is the options premium for all accumulated options positions. On the other hand, if the MTA is in a downward trend in subsequent auctions, the decreased MTA could immediately trigger additional collateral calls. It is simply not possible for Chen to eliminate risk

[45] PJM Answer, Ex. A, Coscia Aff. at P 14.

[46] *Id.* at P 9.

[47] EMS Answer at 12; *see id.* ("That means there will be practically zero risk from EMS to PJM Markets due to FTR Options' non-negative revenue returns.").

[48] The formula is Max {Max (IM – ARR – MTA, Ten Cent per Mwh Minimum) – Realized Gains and/or Losses, 0}. *See* Tariff Attach. Q, Part VI (Supplemental Credit Requirements for Screened Transactions), § C.2 (Financial Transmission Right Auctions, FTR Credit Requirement).

to PJM, even if he abides by the self-imposed trading constraints he has confected for EMS, which PJM does not trust Chen to observe in any event.

Lastly, EMS wrongly claims that its "package of risk mitigation measures" is "auto-enforced" by Tariff Attachment Q, section VI.C and mitigates any risk to PJM.[49] On the contrary, Chen's bespoke self-governance proposal clearly creates additional administrative burdens for PJM. But even if his special arrangements involved no additional effort, Chen continues to miss the point that PJM does not trust Chen himself to abide by any of the self-imposed constraints on trading activity that he has purported to undertake.

Chen purports to commit that EMS will (1) not "transact on other non permitted products or durations," (2) not fail "to maintain the specified additional excess collateral at PJM," and (3) not fail "to report to PJM as specified."[50] However, PJM has no way to police whether Chen will transact in "other non permitted products or durations," and by definition PJM cannot possibly police whether Chen has failed "to report to PJM as specified."[51] And while PJM can determine how much collateral a Member maintains, PJM's collateral determinations require accurate information, which, as PJM has just noted, it does not believe it will receive from Chen.

C. Chen's Final Statements Only Undermine EMS's Positions

Chen's Answer concludes with a collection of final "comments" that are simply wrong or undermine his own arguments.[52]

First, Chen concedes that he "believes it is PJM's authority to determine if one entity is the 'same' under a different name or an affiliate of the other in accordance with PJM OA Schedule 1,

[49] EMS Answer at 3, 11, 12.

[50] *Id.* at 13.

[51] *Id.*

[52] *See id.* at 14-17.

section 1.4.8."[53] PJM wholeheartedly agrees. As PJM has argued, "[i]f PJM determines that the Applicant 'should be considered the same as a Member that previously defaulted,'" as PJM found with EMS, "then that is the end of the matter and the EMS Application must be rejected."[54]

Second, Chen concedes that Hill Energy never fully cured its previous defaults and unpaid obligations to PJM. Specifically, Chen states that, in now-published privileged communications with PJM, "EMS offered to cover PJM's legal costs related to Hill Energy as '[t]hey [the principals of Hill Energy] also fully expect an agreed resolution of the present disputes to *involve PJM being made whole*.'"[55] This statement conclusively shows that Hill Energy not only caused a financial loss to PJM through legal expenses caused by Hill Energy's defaults and termination proceedings before the Commission,[56] but also that Chen/Hill Energy knew of those financial losses to PJM. To date, neither Chen, Hill Energy, nor EMS have made PJM entirely whole for the losses caused by Hill Energy.

Next, Chen claims "[t]here is no incentive or benefit for EMS to intentionally misstate an affiliation in the context of its membership application."[57] This statement is plainly false. EMS has an obvious incentive to conceal its affiliation with Hill Energy: that affiliation, with its history of defaults and public expulsion from the PJM Markets by the Commission, is fatal to its membership application. For example, EMS already conceded it and Hill Energy are responsible for, among other things, the legal expenses Hill Energy and EMS have failed to repay to PJM.[58]

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[53] *Id.* at 15.

[54] PJM Answer at 19 (citing PJM Answer, Ex. A., Coscia Aff. at P 11).

[55] EMS Answer at 17 (quoting EMS Complaint, Attach. 4 at 8) (emphasis added).

[56] *See* Hill Energy Termination Order, 183 FERC ¶ 61,018.

[57] EMS Answer at 15.

[58] *See id.* at 17, Attach. 4 at 8.

Chen takes issue with PJM's assertion that "Chen submitted a membership application under the name of Black Mountain Renewables" while Hill Energy was a Member of PJM,[59] arguing that the application of Black Mountain Renewables was merely "initiated," but not fully "submitted."[60] While PJM accepts that the Black Mountain Renewables application was initiated but not ultimately submitted, the broader point remains: despite being the principal and CEO of both Hill Energy (a then-current Member of PJM) and Black Mountain Renewables at the time, Chen still responded "no" to PJM's question as to whether Black Mountain Renewables was affiliated with any Member.[61] This is more evidence of the pattern of misrepresentations that persuaded PJM to deny EMS's membership application.

Then, turning to Chen's similarly inaccurate denial of EMS's affiliation with Hill Energy at issue in this proceeding, Chen defends his misstatements on the basis that "PJM saw the obvious error or conflicting answer with the facts . . . and determined that EMS is an affiliate of Hill Energy without needing any additional information."[62] But detection is not a defense to misrepresentation. Chen's lack of candor, as demonstrated here and throughout the application process, was pivotal to PJM's decision to deny EMS's membership application.[63]

Finally, Chen denies any error in submitting unredacted confidential settlement communications as part of the Complaint.[64] Chen does not have a full grasp of settlement and attorney-client privilege as evidenced by his statement that "EMS obtained permission from Hill

[59] EMS Answer at 16; *accord* PJM Answer at 27.

[60] EMS Answer at 15-16.

[61] *See* PJM Answer, Ex. S at 1-2.

[62] EMS Answer at 16.

[63] *See* PJM Answer, Ex. S at 1-3.

[64] *See* EMS Answer at 16-17.

Energy's legal counsel to include the unredacted message in its Complaint filing[.]"[65] First, the unredacted confidential settlement communication this statement refers to was made on behalf of EMS, yet Chen claims he requested Hill Energy's counsel's permission to share the unredacted communication.[66] This confirms again that EMS, Hill Energy, and Chen continue to operate in privity with one another and reaffirms PJM's conclusion that EMS and Hill Energy are affiliates. Second, it is PJM's settlement privilege that Chen violated when he published PJM's privileged communications, not his or EMS's privilege.[67] Any permission Chen received to publish EMS's privileged settlement communications—i.e., any permission Chen received from his own counsel—is irrelevant to PJM.

D. There is No Basis for the Commission to Grant Chen's Request for Settlement Negotiations

Chen asks the Commission to "instruct PJM and EMS to enter a negotiation for a negotiated settlement."[68] Settlement in this case is not a viable option because PJM will not grant the ultimate relief Chen requests—that is, allowing EMS to become a Member of PJM—absent a Commission order to that effect. For the reasons discussed above, PJM's rejection of the EMS membership application was not only consistent with, but required by, Operating Agreement Schedule 1, section 1.4.8 and Operating Agreement section 15.1.6.c. It was also entirely appropriate for PJM to exercise its discretion to conclude that EMS posed an unreasonable credit risk under Tariff Attachment Q. Chen's Complaint is devoid of merit and should be rejected entirely on the present record.

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[65] *Id.* at 16.

[66] *See* EMS Answer at 16-17; *see also* EMS Complaint, Attach. 4 at 6-8.

[67] *See* EMS Complaint, Attach. 4.

[68] EMS Answer at 17.

CONCLUSION

As PJM has again shown, it reasonably denied EMS's membership application per its obligations under the Tariff and Operating Agreement. Chen's attempts to separate the reinstatement provisions of the Operating Agreement from the membership requirements of the Operating Agreement and Tariff are facially erroneous, as are his arguments regarding PJM's alleged failure to consider EMS's anticipated market activity and risk mitigation measures as part of PJM's credit risk determination. Further, Chen has made multiple concessions that only reinforce PJM's conclusion that Hill Energy and EMS are alter-egos controlled by Chen. As explained here and in PJM's First Answer, PJM correctly rejected Chen's effort to restore Hill Energy to PJM membership under the guise of EMS. Therefore, PJM again respectfully requests that the Commission deny the Complaint.

Respectfully submitted,

/s/ John Lee Shepherd, Jr.

John Lee Shepherd, Jr.
Blake Grow
Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 955-1500
jshepherd@hunton.com
bgrow@hunton.com

Steven R. Pincus
Managing Counsel, Sr. Director
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Norristown, PA, 19403-2429
Tel: (610) 666-4370
steven.pincus@pjm.com

Ashley S. Lewis
Hunton Andrews Kurth LLP
600 Travis Street, Suite 4200
Houston, TX 77002
(713) 220-4200
ashleylewis@huntonak.com

Craig Glazer
Vice President-Federal Gov't Policy
PJM Interconnection, L.L.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 423-4743 (phone)
(202) 393-7741 (fax)
craig.glazer@pjm.com

Counsel for PJM Interconnection, L.L.C.

May 17, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be served a copy of the foregoing upon all parties on the service list in these proceedings in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2023).

Respectfully submitted,

/s/ Blake Grow

Blake Grow
Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 955-1500
bgrow@hunton.com

Counsel for PJM Interconnection, L.L.C.