

188 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Mark C. Christie and David Rosner.

Energy Management Solutions, L.L.C.

Docket No. EL24-90-000

v.

PJM Interconnection, L.L.C.

ORDER DENYING COMPLAINT

(Issued July 31, 2024)

1. On March 15, 2024, pursuant to sections 306 and 309 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission’s Rules of Practice and Procedure,² Energy Management Solutions, LLC (EMS) filed a complaint against PJM Interconnection, L.L.C. (PJM) alleging that PJM baselessly rejected its application for membership in PJM (Complaint). EMS asks the Commission to direct PJM to accept its membership application. As discussed below, we deny the Complaint.

I. Background

2. The Amended and Restated Operating Agreement of PJM (Operating Agreement) provides that if during any rolling 12-month period a member fails to make timely payments when due twice, or adhere to any of its credit obligations to PJM three times, then it shall “not be eligible to be reinstated as a Member” and its membership rights shall be terminated.³ The Operating Agreement states that a member that is terminated under this provision is precluded from seeking future membership either in the name of

¹ 16 U.S.C. §§ 825e, 825h.

² 18 C.F.R. § 385.206 (2023).

³ PJM, Intra-PJM Tariffs, Operating Agreement, § 15.1 (Failure to Meet Obligations) (8.1.0), § 15.1.6.c.

the member or as new applicant under a different name, if it experienced a previous default that resulted in a loss to the PJM markets:⁴

c. A Member that has been declared in default of this Agreement . . . 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.*⁵

* * *

(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 1.4.8.⁶

The parties dispute whether, under these provisions of the Operating Agreement, an entity qualifies to become a PJM Member when the applicant is related to a former PJM Member who previously defaulted and was terminated under this section of the Operating Agreement, but the defaults of the terminated related Member did not lead to a default cost allocation to other PJM Members.

3. Separately, Operating Agreement section 11.6.c also requires PJM to determine, among other things, whether the applicant “presents any unreasonable, inherent or material risks to PJM, including but not limited to unreasonable credit risk pursuant to the PJM Open Access Transmission Tariff (Tariff), Attachment Q that cannot be cured by

⁴ *Id.* § 15.1.6.c(b).

⁵ *Id.* § 15.1.6.c (emphasis added).

⁶ *Id.* § 15.1.6.c(b) (emphasis added).

posting Collateral or credit support commensurate with the risk of the anticipated market activity of the applicant to the PJM markets and PJM Members.”⁷

4. Also relevant, on April 14, 2023, the Commission accepted PJM’s filing terminating the PJM membership of Hill Energy Resource & Services, LLC (Hill Energy). Hill Energy was a PJM Member that participated in PJM’s Financial Transmission Right (FTR) market. Between January 2022 and February 2022, PJM declared Hill Energy in credit default three times and payment default five times.⁸ The Commission found that Hill Energy had failed to adhere to its Tariff obligation to make timely payment of its bills and thus accepted PJM’s filing seeking termination of Hill Energy as a PJM member as just and reasonable and consistent with PJM’s Tariff.⁹

II. Complaint

5. EMS states that it applied for PJM membership in April 2022.¹⁰ EMS asserts that PJM requested supplementary information and data from EMS in July, September, and October 2022, which EMS provided. EMS states PJM issued its decision to deny its application for membership on January 18, 2023.

6. EMS notes that PJM provided two bases for denying its membership application: (1) EMS is ineligible as a matter of law for membership pursuant to PJM Operating Agreement section 15.1; and (2) EMS is not a manageable risk.¹¹ EMS states that PJM treats EMS the same as Hill Energy.¹²

7. EMS argues that, while Operating Agreement section 15.1 may have provided PJM with the authority to terminate Hill Energy’s membership, it does not provide support to deny Hill Energy or EMS re-entry.¹³ EMS asserts that PJM could have inadvertently confused the notion of “reinstatement” of an existing suspended

⁷ PJM, Intra-PJM Tariffs, Operating Agreement, OA 11.6 (Membership Requirements) (4.0.0), § 11.6.

⁸ *PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,018, at PP 2, 4-5 (2023).

⁹ *Id.* P 24.

¹⁰ Complaint at 5.

¹¹ *Id.* at 5, 9.

¹² *See id.* at 2 n.4.

¹³ *Id.* at 9-10.

membership with “right of re-entry” of a new membership application.¹⁴ EMS states that whether an existing member can “be reinstated as a Member to this Agreement” is governed by Operating Agreement section 15.1.6.c, while whether a terminated former member “shall be precluded from seeking future membership” is governed by Operating Agreement section 15.1.6.c(b).

8. EMS contends that the key factor is whether the member or new applicant experienced a previous default that resulted in a loss to PJM markets.¹⁵ EMS states that neither EMS nor Hill Energy¹⁶ has ever resulted in a loss to PJM markets. Thus, EMS asserts, PJM inadvertently misinterpreted, misapplied, and is in violation of its Operating Agreement section 15.1.6.c(b), and therefore, its first basis for denying EMS’s application is invalid.

9. EMS asserts that PJM’s second basis for denying its application, that EMS is not a manageable credit risk, is also not valid or no longer valid.¹⁷ EMS states that it is to engage only in Monthly FTR Option transactions in PJM markets and is to provide an additional \$2 million or more, or an amount deemed proper by PJM, in excess collateral.¹⁸

10. EMS states that PJM’s assessment was based on EMS’s initial application, in which EMS planned on trading all types and durations of FTRs, including Long Term, Annual and Monthly FTR Obligations, Annual and Monthly FTR Options, and other virtual products.¹⁹ EMS states that, to address PJM’s concerns, it revised its risk management policy to restrict itself to engage only in Monthly FTR Option transactions in PJM markets with at least an additional \$2 million (or an amount deemed proper by PJM) in excess collateral maintained at and controlled by PJM at all times. EMS

¹⁴ *Id.* at 10.

¹⁵ *Id.* at 11.

¹⁶ EMS contends that all of Hill Energy’s defaults were cured in February 2022 and it has not resulted in any loss to PJM markets. *Id.* at 11 n.23.

¹⁷ *Id.* at 12.

¹⁸ *Id.*

¹⁹ *Id.*

contends that, unlike other types of FTR obligations, Monthly FTR Options have limited downside risks because their value can never be negative.²⁰

11. EMS contends that it provided PJM with a risk analysis to show that, even without counting or relying on any of the revenue returns of the respective Monthly FTR Option portfolio, there was practically no credit risk to PJM markets from a PJM market participant trading or counting only its Monthly FTR Options with additional \$2 million excess collateral support.²¹ EMS asserts that the hypothetical maximum possible risk to PJM markets from any PJM market participant trading or counting only Monthly FTR Option transactions being more than \$166,690 per month and \$2,000,280 per 12 consecutive months is 0.15% and 0.00%, respectively. EMS contends that it is reasonable to conclude that EMS, which will engage only in Monthly FTR Option transactions in PJM markets with \$2 million additional collateral maintained at and controlled by PJM at all times, will present practically zero risk to PJM markets.²² EMS states that PJM did not raise any question or cast any doubt about the validity of this risk analysis.²³

12. EMS states that it will ensure that its total collateral, including additional excess collateral, at PJM will “be the higher of total collateral requirements based on [the] PJM Tariff or the total purchase cost of its portfolio of open positions, minus (plus) the firm’s unrealized trading profits (losses) to guarantee zero credit and other material risks to PJM Markets” at all times.²⁴ EMS states that it will report to PJM on a monthly basis its compliance with its risk management policy and will be subject to disciplinary actions for any noncompliance at the discretion of PJM.

13. EMS states that PJM bases its conclusion that EMS is not a manageable risk on the perceived weaknesses of EMS’s organizational structure, principal, management, and governance along with other procedural and peripheral arguments in its decision letter.²⁵ EMS does not agree with many of the supporting arguments claimed by PJM, but regardless of the merit of those arguments, EMS asserts that all of those perceived

²⁰ *Id.* at 12-13.

²¹ *Id.* at 13.

²² *Id.* at 13-14.

²³ *Id.* at 14.

²⁴ *Id.* (quoting attach. 5, EMS Risk Management Policy Energy Market Risk Management Guidelines - PJM Market Section B5, C8 and C11, at 2).

²⁵ *Id.*

weaknesses can be removed from the equation because EMS's risk to the PJM markets is practically zero if it only transacts in Monthly FTR Options and maintain at least \$2 million in excess collateral.²⁶

14. EMS contends that, accordingly, both of the two bases PJM used to deny EMS's application are invalid, and PJM's denial of EMS's membership application is baseless and that EMS is fully qualified for PJM membership pursuant to Operating Agreement section 11.6.²⁷

III. Notice of Filing and Responsive Pleadings

15. Notice of EMS's Complaint was published in the *Federal Register*, 89 Fed. Reg. 20,466 (Mar. 22, 2024), with interventions and protests due on or before April 4, 2024. The Commission subsequently issued a notice extending the deadline to April 14, 2024. Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (IMM) and American Electric Power Service Corporation filed timely motions to intervene. On April 15, 2024, PJM filed an answer. On May 2, 2024, EMS filed an answer in response to PJM's answer. On May 6, EMS submitted an errata to the Complaint to correct typographical errors. On May 17, 2024, PJM filed another answer in response to EMS's answer. On May 24, 2024, EMS filed another answer in response to PJM's May 17 Answer. On June 5, 2024, PJM filed another answer in response to EMS's May 24 Answer, arguing that the Commission should not accept that answer because it did not provide any new information.

IV. Parties' Positions

16. Below, we first summarize the arguments regarding whether EMS is an unreasonable credit risk and then turn to summarizing arguments regarding whether Operating Agreement, section 15.1.6.c bars EMS's membership.

A. Unreasonable Credit Risk

17. PJM notes that Hill Energy had a sizeable FTR portfolio with PJM, but that the valuation of that portfolio was, in part, dependent on the Lanexa-Dunnsville transmission line in the Northern Neck region of Virginia, which was scheduled for construction with planned outages to facilitate certain upgrades.²⁸ PJM states that in December 2021, with this outage looming, Lee Chen, the manager, principal, and chief risk officer for Hill

²⁶ *Id.* at 14-15; EMS Errata at 1.

²⁷ Complaint at 15.

²⁸ PJM Answer at 6.

Energy, requested withdrawals from Hill Energy’s collateral account totaling almost \$19 million.²⁹ PJM notes that when the planned outage occurred in January 2022, Hill Energy’s portfolio began settling at considerable losses, and Hill Energy failed to satisfy several collateral calls and subsequently defaulted on its payment obligations.³⁰ PJM filed to terminate Hill Energy’s membership in PJM, and the Commission accepted this termination, effective January 17, 2023.³¹

18. Concurrently, PJM states that EMS applied for PJM membership on April 22, 2022, which PJM reviewed.³² PJM states that because it had concerns with the risks posed by Mr. Chen’s involvement with EMS, it conducted additional due diligence and followed up with several rounds of supplemental questions.³³ PJM states that, given the interconnectedness between Hill Energy and EMS, it determined that EMS should be treated as Hill Energy for purposes of evaluating qualification for PJM membership and ultimately denied EMS’s application.³⁴

19. PJM asserts that, even if Operating Agreement, section 15.1.6.c(b) does not bar EMS’s admittance, PJM nonetheless properly rejected EMS’s application because PJM has an independent and ongoing duty under Operating Agreement, section 11.6(c) to determine whether any applicant “presents any unreasonable, inherent or material risks to PJM, including but not limited to unreasonable credit risk pursuant to Tariff, Attachment Q.”³⁵ PJM argues that, by rejecting EMS’s membership application, it did not erect “unreasonable barriers to entry,” but rather enforced a reasonable precaution to protect the market from a previous member with a history of irregular and dishonest conduct.³⁶

20. PJM states that EMS’s assertion that PJM’s reasons for rejecting the membership application “are invalid or no longer valid” turns on a series of self-imposed constraints

²⁹ *Id.* at 6-7.

³⁰ *See id.* at 7-8.

³¹ *Id.* at 9.

³² *Id.* at 9-10

³³ *See id.* at 10-12.

³⁴ *Id.* at 12-13.

³⁵ *Id.* at 22.

³⁶ *Id.* at 23.

EMS offered that EMS will only engage in Monthly FTR Option transactions and will provide an additional \$2 million in collateral.³⁷ PJM asserts that EMS subsequently limited its excess collateral proposal, stating that the restrictions will only apply if EMS's "actual transacted financial volume is higher than currently estimated."³⁸ PJM notes that, though EMS also proposed to "retain and compensate a risk management professional acceptable to PJM," that never occurred.³⁹

21. PJM states that these measures are unavailing for several reasons.⁴⁰ First, PJM states that it is not required to establish special accommodations to control idiosyncratic and unmanageable risks that are presented by new or re-named applicants, particularly when the applicant's proposals are constantly evolving.⁴¹ PJM contends that the Operating Agreement requires it to evaluate whether any application presents credit risks. PJM asserts that its Tariff and governing documents must apply uniformly to be fair to members and to their existing or potential competitors, and if PJM were to develop ad hoc procedures to control the particular risks presented by EMS, then PJM would expose itself to complaints of unduly preferential treatment in favor of EMS under FPA sections 205 and 206.⁴²

22. Second, PJM argues that these artificial constraints cannot be enforced.⁴³ PJM argues that EMS suffers from the same defects as Hill Energy: no independent risk manager or compliance oversight and no board to evaluate the prudence of Mr. Chen's decisions. PJM notes that Mr. Chen appointing himself as risk manager does not improve

³⁷ *Id.*

³⁸ *Id.* (quoting Complaint at 3 n.9).

³⁹ *Id.* (quoting Complaint, attach. 4 at 7). PJM states that EMS later backed away from this commitment and suggested "in lieu of an independent risk manager paid for by EMS" PJM could generate compliance reports "without very much difficulty" and that EMS would pay some unspecified fee for that oversight work. *Id.* at 23-24.

⁴⁰ *Id.* at 24.

⁴¹ *Id.*

⁴² *Id.* at 24-25.

⁴³ *Id.* at 25.

the situation, and PJM asserts that EMS does not have the personnel depth to meet its commitments.⁴⁴

23. Third, PJM contends that Mr. Chen has repeatedly demonstrated a lack of candor, timeliness, and attention to detail in his prior dealings with PJM.⁴⁵

24. PJM asserts that it thoroughly considered the application and explained its reasons for denying EMS membership.⁴⁶ PJM states that it more than satisfied the notice and communication requirements of Attachment Q. PJM states that it provided the following justifications for rejecting EMS's membership application: (1) EMS withheld material information and provided false, ambiguous, and insufficient responses to PJM's supplemental questions; (2) Mr. Chen consistently failed to exercise prudent control over EMS's and Hill Energy's finances; (3) it was doubtful that Mr. Chen, as principal to EMS, would cause EMS to satisfy its financial obligations to PJM; (4) EMS lacked a general counsel, a chief legal officer, and a chief financial officer; (5) Mr. Chen acting as the chief risk officer raised questions as to whether there was sufficient staff or principals to oversee the day-to-day activities of EMS; (6) EMS lacked a bank account and established financials; and (7) Mr. Chen failed to respond to PJM requests regarding Hill Energy's payment and credit defaults.⁴⁷ PJM states that each of these justifications, individually, provide a sufficient basis for PJM's rejection of the membership application, and combined they provide irrefutable support for PJM's decision.⁴⁸

25. Regarding Mr. Chen's false or misleading statements, PJM states that, while Hill Energy was still a member of PJM, Mr. Chen submitted a membership application under the name of Black Mountain Renewables and responded "no" to PJM's question as to whether Black Mountain Renewables had any affiliation with a member.⁴⁹ PJM asserts that when asked the exact same question regarding EMS during PJM's review of the membership application, Mr. Chen again responded "no" even though Hill Energy was still a member of PJM at the time. PJM argues that credibility is essential to maintaining

⁴⁴ *Id.* at 25-26 (quoting Ex. A, *Coscia Aff.*, at P 11).

⁴⁵ *Id.* at 26.

⁴⁶ *Id.*

⁴⁷ *Id.* at 26-27 (citing PJM Ex. S, January 18, 2023 EMS Membership Application Denial, at 1-3).

⁴⁸ *Id.* at 27.

⁴⁹ *Id.*

creditworthiness, and given Mr. Chen’s repeated lack of candor, PJM correctly rejected the membership application on that basis alone.⁵⁰

26. In its initial answer, EMS argues that the Operating Agreement requires PJM to determine that it is an unreasonable credit risk “that cannot be cured by posting Collateral or credit support commensurate with the risk of the anticipated market activity.”⁵¹ EMS contends that PJM has provided no evidence to demonstrate that it based its consideration on EMS’s anticipated market activity – Monthly FTR Options.

27. EMS states that “[i]t is built with EMS’[s] anticipated market activity – Monthly FTR Option only – as its core in accordance with the central principle of PJM Tariff Attachment Q.”⁵² EMS argues that its risk mitigation measures are not empty and that FTR options have limited downside risk because their revenue returns are never negative.⁵³

28. EMS argues that its mitigation measures are concrete and “auto-enforced” by PJM Tariff Attachment Q, section VI.C.⁵⁴ EMS contends that little to no special arrangement is needed from PJM, and it is not “unavailing” as PJM asserts.⁵⁵ EMS also contends that,

⁵⁰ *Id.* at 28.

⁵¹ EMS Answer at 10 (quoting PJM Answer at 13, 21, 22).

⁵² *Id.* at 11.

⁵³ *Id.* at 12.

⁵⁴ *Id.* at 11-12. EMS explains the “auto-enforcement” as follows:

In accordance with PJM Tariff Attachment Q, section VI.C and using Hill Energy’s 10 year monthly FTR Option transaction history as a benchmark, to purchase monthly FTR Options EMS must first establish at PJM collateral in the amount of more than 100% total purchase cost. The same amount collateral of more than 100% total purchase cost must also be maintained at and controlled by PJM at all time[s] before the purchased FTR Options are closed out. That means there will be practically zero risk from EMS to PJM Markets due to FTR Options’ non-negative revenue returns.

Id. at 12 (footnotes omitted).

⁵⁵ *Id.*

because its mitigation measures are auto-enforced by Attachment Q, PJM's concerns about EMS's lack of a Chief Legal Officer, Chief Financial Officer, depth of personnel, etc., as well as PJM's credit and other material risk concerns, are alleviated.⁵⁶ EMS contends that Hill Energy was a risk averse market participant and EMS will be as well. EMS contends that if the bar for membership in PJM is raised too high, and there is no amount of collateral sufficient to "pay off" an absence of trust," then there will only be a few deep pocketed participants left in PJM.⁵⁷

29. EMS states that only way it could deviate from its package of risk mitigation measures is to transact on other non-permitted products or durations, or not to maintain the specified additional excess collateral at PJM, or not to report to PJM as specified.⁵⁸ EMS contends that any deviation will subject EMS to PJM's disciplinary actions. EMS asserts that such deviations cannot be done lightly as any such transactions will require extensive research, preparatory work, and the investment of other resources.⁵⁹ EMS states that it will provide the additional collateral, though it believes it is not needed, and file its monthly report with PJM.

30. EMS argues that it did not intentionally hide its affiliation with Hill Energy and argues that the primary concern with affiliations in the context of a membership application is to ensure there are no uncured defaults and to mitigate market power concerns.⁶⁰ EMS contends that an application was never "submitted" for Black Mountain, and only a one-page web form was filled out to initiate an application.⁶¹ EMS further notes that it had previously offered to cover PJM's legal costs related to Hill Energy, and did so before it was aware that PJM would later cite litigation costs as a reason to continue to deny EMS's membership application.⁶²

31. In PJM's May 17 Answer, PJM argues that, though EMS contends that PJM did not adequately examine its risk mitigation measures, neither the Operating Agreement nor the Tariff require PJM to make unreasonable credit risk determinations only after

⁵⁶ *Id.* at 13.

⁵⁷ *Id.* (quoting PJM Answer at 27).

⁵⁸ *Id.*

⁵⁹ *Id.* at 13-14.

⁶⁰ *See id.* at 15.

⁶¹ *Id.* at 15-16.

⁶² *Id.* at 17.

attempting to accommodate an applicant's bespoke risk-mitigation proposals.⁶³ PJM states that EMS failed to respond to its assertion that if PJM developed custom procedures to control an individual applicant's risks, instead of applying its Tariff uniformly, PJM would almost certainly be accused of applying the Tariff in an unduly preferential and discriminatory manner under FPA sections 205 and 206.

32. PJM argues that unreasonable credit risk analysis begins with trust, and Mr. Chen has a history of making misrepresentations and false statements.⁶⁴ PJM states that it reasonably believed that EMS, as an entity operated by Mr. Chen, cannot be trusted when it promises that it will not violate its self-imposed risk mitigation measures.

33. PJM states that EMS's claim that FTR Options have no downside risk makes no sense.⁶⁵ PJM contends that, for these products, 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. PJM also asserts that it calculates Mark-To-Auction for all FTR positions in a portfolio during each subsequent auction, which can result in changes to collateral requirements. PJM asserts that this presents another potential risk, and it is simply not possible for EMS to eliminate risk to PJM, even if it abides by its restraints.⁶⁶

34. PJM asserts that Mr. Chen's "bespoke" self-governance proposal is not "auto-enforced" and creates additional administrative burdens for PJM.⁶⁷ PJM contends that even if EMS's special arrangements involved no additional effort, EMS continues to miss the point that PJM has concerns regarding the reliability of EMS to abide by any of the self-imposed constraints on trading activity that it has proposed to undertake. PJM states that it has no way to police whether Mr. Chen will transact in other non-permitted products and, by definition, PJM cannot possibly police whether Mr. Chen has failed to report to PJM as specified. PJM states that, while it can determine how much collateral a member maintains, PJM's collateral determinations require accurate information, which PJM does not believe it will receive from EMS.

35. Regarding EMS's claim that it had no incentive to conceal its affiliation with Hill Energy, PJM argues that this claim is plainly false as such affiliation is fatal to its

⁶³ PJM May 17 Answer at 9.

⁶⁴ *Id.* at 10.

⁶⁵ *Id.* at 11.

⁶⁶ *Id.* at 11-12.

⁶⁷ *Id.* at 12.

membership application.⁶⁸ PJM states that, although PJM saw that EMS was indeed affiliated with Hill Energy, detection is not a defense to misrepresentation.⁶⁹

36. In its May 24 Answer, EMS argues that PJM’s determination of EMS as an unreasonable credit risk is invalid because it contradicts Tariff Attachment Q, Section II.D, which states that “[u]nreasonable credit risk shall be determined by the likelihood that an Applicant will default on a financial obligation arising from its participation in any PJM Markets.”⁷⁰ EMS also states that PJM does not contest that EMS’s anticipated market activity – monthly FTR Option only transactions in PJM markets – along with EMS’s package of risk mitigation measures will reduce EMS’s credit and other material risks to PJM to practically zero.⁷¹ EMS argues that it is unfounded to use Hill Energy’s defaults in January and February 2022 to project them as EMS’s expected future business conduct.

37. EMS reiterates that PJM’s standard and uniform risk monitoring is sufficient to manage EMS’s risk.⁷² While EMS concedes that the options credit requirement may be higher than zero, EMS states that its risk analysis shows that, at the monthly portfolio level, the expected rate of collateral requirements relative to the FTR Option portfolio purchase cost will exceed 100%, up to 285%, resulting in a fully collateralized FTR Option portfolio.⁷³ EMS also states that its risk mitigation measures do not rely on any revenue from PJM’s Option “FTR Historical Values,” ensuring a conservative approach.

B. Operating Agreement, Section 15.1

38. PJM argues that it properly rejected the EMS membership application under Operating Agreement section 15.1.6.c.⁷⁴ PJM states that Operating Agreement section 15.1.6 establishes two distinct mandatory bars on readmission of PJM members who have

⁶⁸ *Id.* at 13.

⁶⁹ *Id.* at 14.

⁷⁰ EMS May 24 Answer at 5.

⁷¹ *Id.* at 6.

⁷² *Id.*

⁷³ *Id.* at 7.

⁷⁴ PJM Answer at 13.

defaulted in the past.⁷⁵ PJM contends that the first provision directs it to terminate a member after a specified number of defaults or credit violations and further declares that defaulting former members shall “not be eligible to be reinstated as a Member ... notwithstanding whether such default has been remedied.”⁷⁶ PJM states that EMS focuses exclusively on the second bar to reinstatement in subsection 15.1.6.c(b).⁷⁷ PJM agrees that this provision requires “a previous default that resulted in a loss.”⁷⁸ But, PJM states, the first provision applies notwithstanding the second provision. PJM argues that the first provision provides a right to appeal under section 15.1.6(d), whereas the second hardens the standard by prohibiting members who caused a loss from appealing.⁷⁹ According to PJM, “reinstatement” is equivalent to a “new membership,” and therefore to be ineligible for reinstatement also makes one ineligible for a new PJM membership.⁸⁰ PJM argues that, by EMS conceding to be bound by the Tariff and the Operating Agreement, EMS nullifies its argument that the Operating Agreement’s “reinstatement” provisions are irrelevant to new membership applications because EMS has agreed to be bound by the Operating Agreement’s reinstatement provisions.⁸¹

39. PJM argues that, even under the second provision, EMS is barred from membership because Hill Energy did cause a loss to the PJM markets. While EMS claims that it did not cause a “loss” to the PJM markets, PJM states that Hill Energy did not cure its own defaults in 2022, but rather, the defaults were paid by draining Hill Energy’s Restricted Collateral.⁸² PJM further contends that Hill Energy’s previous

⁷⁵ *Id.* at 14.

⁷⁶ *Id.* at 14, 16 (quoting PJM, Intra-PJM Tariffs, Operating Agreement, OA 15.1 (Failure to Meet Obligations) (8.1.0), § 15.1.6.c).

⁷⁷ *Id.* at 15.

⁷⁸ *Id.* (quoting PJM, Intra-PJM Tariffs, Operating Agreement, OA 15.1 (Failure to Meet Obligations) (8.1.0), § 15.1.6.c(b)).

⁷⁹ *Id.* at 14-15.

⁸⁰ PJM May 17 Answer at 7-8.

⁸¹ PJM June 5 Answer at 4; *see also* PJM May 17 Answer at 4-5.

⁸² PJM Answer at 20; PJM May 17 Answer at 6.

defaults were corrected at a cost to PJM and its other members, as PJM incurred litigation costs associated with Hill Energy's actions.⁸³

40. EMS argues that “reinstatement” is irrelevant in the context of a new membership application.⁸⁴ EMS asserts that section 15.1.6 “Reinstatement of Member Following Default and Remedy” deals with qualifications and conditions, i.e., eligibility, for reinstatement of a defaulted existing member, which is generally irrelevant for a new membership application.⁸⁵ EMS states that section 15.1.6.c(b) addresses under what circumstances a terminated member shall be further precluded from seeking future PJM membership by filing a new membership application for which it is described in section 15.1.6.c(b).⁸⁶ EMS contends that there is no support in the Tariff or Operating Agreement for PJM's argument that “[to be] ineligible for reinstatement is [also to be] ineligible for a new PJM membership.”⁸⁷

41. EMS states that PJM's claims that it never fully cured its defaults and unpaid obligations is false and misleading.⁸⁸ EMS asserts that neither EMS nor Hill Energy currently has any uncured defaults or unpaid obligations.⁸⁹

V. Discussion

A. Procedural Matters

42. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2023), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

43. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2023), prohibits an answer to a protest or answer unless otherwise

⁸³ PJM Answer at 21.

⁸⁴ EMS Answer at 6.

⁸⁵ *Id.*

⁸⁶ *Id.* at 8.

⁸⁷ EMS May 24 Answer at 4-5 (quoting PJM May 17 Answer at 8).

⁸⁸ *Id.* at 2.

⁸⁹ *Id.* at 3.

ordered by the decisional authority. We accept the answers of EMS and PJM as they have provided information that assisted us in our decision-making process.

B. Substantive Matters

44. We deny the complaint. Although the parties dispute whether EMS's application is outright barred under section 15.1.6.c of the Operating Agreement, they do not dispute that PJM must also consider an applicant's credit risk under section 11.6.c of the Operating Agreement. We find that PJM reasonably exercised its discretion in determining that EMS presents an unreasonable credit risk. Because this is sufficient reason alone to deny EMS membership in PJM, we decline to address the competing interpretations of the language in section 15.1.6.c of the Operating Agreement.

45. In evaluating membership applications, section 11.6 of the Operating Agreement requires PJM to evaluate whether the applicant "presents any unreasonable, inherent or material risks to PJM, including but not limited to unreasonable credit risk pursuant to Tariff, Attachment Q that cannot be cured by posting Collateral or credit support commensurate with the risk of the anticipated market activity of the applicant to the PJM Markets and PJM Members."⁹⁰

46. Here, in reaching its determination that EMS presents an unreasonable credit risk, PJM explained in a letter to Mr. Chen that:

EMS shares the same organizational structure, principal, management, and governance deficiencies as Hill Energy. In your management of Hill Energy, you have demonstrated a history of withdrawing funds from PJM and impoverishing your entity to make it unable to meet collateral calls thus resulting in defaults. Such behavior is not a manageable risk and thus membership is denied on that basis.⁹¹

47. The Commission has previously recognized that "it is impractical to enumerate all of the examples that constitute an unreasonable credit risk" and that PJM therefore has flexibility to "use its discretion, based on all circumstances at the time, in determining whether there is an unreasonable credit risk."⁹² We find that here – where there is

⁹⁰ PJM, Intra-PJM Tariffs, Operating Agreement, OA 11.6 (Membership Requirements) (4.0.0), § 11.6(c).

⁹¹ Complaint, attach. 6 at 2.

⁹² *PJM Interconnection, LLC*, 171 FERC ¶ 61,173, at P 36 (2020) (citing *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,054, at P 32 (2020)).

significant overlap in personnel and business activities between Hill Energy and EMS, as Mr. Chen, who was the manager, principal, and chief risk officer for Hill Energy, is the principal and chief risk officer for EMS⁹³ – PJM has reasonably exercised its discretion in determining that EMS is not a manageable credit risk based on Hill Energy’s prior conduct as a PJM Member.⁹⁴

48. EMS primarily contends that it is not an unreasonable credit risk because, subsequent to its initial application, it revised its risk management policy, modifying its “anticipated market activity” to limit itself only to trading in Monthly FTR Options and requiring itself to provide an additional \$2 million in excess collateral. EMS presents a risk analysis that it asserts shows that there is “practically zero credit and other material risks” under these circumstances. EMS, however, points to no part of the Tariff that requires PJM to re-evaluate a market participant’s credit risk after it has substantially modified its “anticipated market activity” from that set forth in its membership application. As noted above, we agree that PJM reasonably exercised its discretion in determining that EMS is not a manageable credit risk and we similarly agree with PJM that it is not required to establish ad hoc procedures to control risks that are presented by new or re-named applicants.⁹⁵

49. While we agree that PJM is not required to establish such ad hoc procedures, even if PJM was required to do so, we also agree with PJM regarding the unenforceability of EMS’s self-imposed restrictions. PJM states that it has no way to police whether EMS will transact only in the permitted products.⁹⁶ Though EMS claims that it is “auto-enforced” by Attachment Q, section VI.C, there does not appear to be anything in this provision that would “automatically” limit EMS to trading only in Monthly FTR Options. Furthermore, while this provision does contain some collateral requirements, the Tariff would not “auto-enforce” an additional \$2 million in collateral “over and above, the normal required collateral requirements calculated in accordance with relevant PJM

⁹³ PJM Answer, Ex. A, Aff. of Carl F. Coscia, at P 8. PJM has stated that it concluded that EMS should be treated the same as Hill Energy given overlap in their relevant personnel/principal, and similarity of their business activities.

⁹⁴ Although EMS offers several arguments contending that Hill Energy was not improperly managed, Complaint, attach. 6 at 2-4, these arguments largely relitigate arguments raised during the Hill Energy proceeding, where the Commission ultimately accepted the termination of Hill Energy’s membership for failing to pay its invoices. *PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,018 at PP 11-13, 16-17, 24-25.

⁹⁵ See PJM Answer at 24-25; PJM May 17 Answer at 9.

⁹⁶ PJM May 17 Answer at 12.

Tariff provisions.”⁹⁷ We also agree with PJM that EMS’s offer to “report [its compliance with these measures] to PJM as specified” places additional administrative burdens on PJM that it is not required to undertake under the Tariff. We further agree with PJM that relying on such reports would necessitate accurate reporting from EMS, and we find that PJM has reasonably concluded that, due to prior misrepresentations from EMS, PJM cannot be confident in the credibility of such reports.

50. PJM reasonably exercised its discretion and determined that EMS is not a manageable credit risk and points to several other factors that support that determination, including that: (1) Mr. Chen failed to disclose his relationship with Hill Energy in the EMS and Black Mountain membership applications; (2) EMS repeatedly failed to fully respond to supplemental questions asked by PJM, and in particular, failed to respond to requests regarding Hill Energy’s payment and credit defaults; (3) EMS has no general counsel/chief legal officer or chief financial officer; (4) the role of chief risk officer is performed by Mr. Chen, and given the history with Hill Energy, this poses a risk to the PJM market that cannot be mitigated; (5) Mr. Chen’s acting as the chief risk officer raises questions as to whether there is sufficient staff or principals to oversee the day-to-day activities of EMS; and (6) EMS lacked a bank account and established financials.⁹⁸

51. EMS’s representations that it either has remedied or can remedy many of these concerns do not provide a basis for granting EMS’s complaint. Although EMS appears to have obtained a bank account and stated that it would retain a general counsel or chief financial officer, if necessary, EMS provides no evidence that it has taken steps to fill these roles. Indeed, EMS also argues that the risk mitigation measures it subsequently proposed make a general counsel or chief financial officer or any other additional personnel unnecessary.⁹⁹ Moreover, as noted above, PJM is not required to accept the ad hoc restrictions proposed by EMS and, even if PJM were required to do so, these restrictions are unenforceable because as PJM states, PJM has no way to police whether EMS will transact in other non-permitted products nor, by definition, can PJM police whether EMS fails to report to PJM as specified.¹⁰⁰

⁹⁷ See Complaint at 3 n.9.

⁹⁸ See PJM Answer at 26-27 (citing PJM Ex. S, January 18, 2023 EMS Membership Application Denial, at 1-3).

⁹⁹ See EMS Answer at 13 (“It is auto-enforced by Tariff Attachment Q, Section VI.C, so PJM’s concerns of EMS’ lack of Chief Legal Officer, Chief Financial Officer, depth of personnel, etc. can also all be alleviated as well, or at least relegated to much less importances [*sic*].”).

¹⁰⁰ PJM May 17 Answer at 12.

52. EMS also attempts to downplay its failure to disclose its relationship to Hill Energy in its membership application. EMS contends that such affiliations are not important in this context, and that Black Mountain never “submitted” a full application and only “filled out” an internet form. We find that PJM has reasonably interpreted EMS’s (and Black Mountain’s)¹⁰¹ failure to disclose its relationship with Hill Energy as a misrepresentation. Though EMS notes that PJM eventually uncovered the relationship between EMS/Black Mountain and Hill Energy, this discovery does not assuage the concerns that these entities misrepresented the relationship in the first place. To the contrary, the fact that PJM had to discover the discrepancy only serves to reinforce the identified risk to the PJM markets.

53. Based on the foregoing, we find that PJM reasonably exercised its discretion in determining that EMS is an unmanageable credit risk and in denying its membership application on that basis.¹⁰² We therefore deny the Complaint.

The Commission orders:

The Complaint is hereby denied, as discussed in the body of the order.

By the Commission. Commissioner See is not participating.
Commissioner Chang is not participating.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

¹⁰¹ We also disagree that, because Black Mountain never submitted a full application, its misrepresentation on the initial form is irrelevant.

¹⁰² See PJM, Intra-PJM Tariffs, Operating Agreement, OA 11.6 (Membership Requirements) (4.0.0), § 11.6; PJM, Intra-PJM Tariffs, Tariff, attach. Q (60.0.0).