

**DRAFT – FOR REVIEW AND COMMENT – DATED 5-25-2018**

**Surety Bond No.** \_\_\_\_\_

**SURETY BOND**

KNOW ALL PERSONS BY THESE PRESENTS that we, *[Insert Name of Market Participant Here]* \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_, as Principal (the “Principal”), and *[Insert Name of Surety Here]* \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_, as surety (the “Surety”), are held and firmly bound unto PJM Settlement, Inc., a Pennsylvania Non-Profit Corporation (“PSI” or “Obligee”), on behalf of itself and as agent for PJM Interconnection, L.L.C., a Delaware limited liability company (“PJM”), in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in lawful money of the United States of America (the “Amount”) well and truly to be paid to the Obligee, and we bind ourselves, our permitted successors, and permitted assigns, jointly and severally, firmly by the terms set forth in this Surety Bond (the “Surety Bond” or “Bond”).

WHEREAS, Principal may from time to time enter into power and/or related purchase and sale transactions in the PJM wholesale markets pursuant to, and subject to the terms of, the PJM Open Access Transmission Tariff (“Tariff”), Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. and Reliability Assurance Agreement Among Load-Serving Entities in the PJM Region, the PJM Manuals, and the Credit Overview and Supplement to the PJM Credit Policy, and other documents referenced therein (the “Governing Documents,” as the same may be amended, supplemented, or modified from time to time);

WHEREAS, PJM is authorized to require Transmission Customers and PJM Members to provide and maintain in effect appropriate creditworthiness arrangements; and

WHEREAS, Principal seeks to participate in the wholesale markets administered by PJM and to schedule transmission service in the PJM Region [Control Area]; and

WHEREAS, Principal must satisfy the credit requirements established in the Tariff to participate in the wholesale markets administered by PJM or to schedule transmission service in the PJM Region [Control Area];

WHEREAS, Surety, an insurer authorized to do business in the Commonwealth of Pennsylvania and State of Delaware, is United States Treasury-listed with a minimum “A” rating as further established herein and has agreed, in exchange for compensation provided by Principal, the receipt and sufficiency of which are hereby acknowledged,, to provide this Surety Bond on behalf of Principal in accordance with PJM’s credit requirements;

WHEREAS, it is expressly agreed and understood by and among Principal, PSI and Surety that: (1) the execution and delivery to PSI of this Bond is a condition precedent to PJM allowing Principal to participate in its wholesale markets, a condition precedent to the continuation of transactions with Principal pursuant to the Governing Documents, and a condition precedent to the extension of credit to Principal pursuant to the Tariff, (2) PSI and PJM have relied, and will continue to rely, upon this Bond and the terms and representations set forth herein in entering into transactions contemplated by the Governing Documents, and (3) PJM would not continue transactions with Principal, without this Bond or other acceptable form of credit under the Tariff.

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NOW THEREFORE, in consideration of the premises and mutual covenants contained in this Bond and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Principal and Surety agree as follows:

**Section 1. Definitions.** Each capitalized term used herein and not otherwise defined in this Bond shall have the meaning assigned to it in the Governing Documents.

**Section 2. The Bond.**

2.01 The Bond. Surety hereby unconditionally, absolutely, and irrevocably guarantees to PSI and its successors and assigns the full punctual payment and performance by the Principal of all of the Principal’s payment obligations to PSI and PJM under the Governing Documents (the “Obligation(s)”) in an aggregate amount that is not greater than Amount of this Bond in accordance with the terms of this Surety Bond. As used in this Surety Bond, the term Obligations or Obligation means, collectively, the following:

(a) any and all indebtedness, liabilities and sums of money now or hereafter due and owing by Principal to PSI or PJM pursuant to, or arising under, the Governing Documents, including (without limitation) all scheduling, operating, planning, reliability and settlement policies, rules, guidelines and procedures established from time to time by PJM and/or PSI;

(b) any and all interest and out-of-pocket expenses (including reasonable attorneys’ fees) now or hereafter due and owing by Principal pursuant to the Governing Documents, in each instance whether or not allowed under any Debtor Relief Law (including all post-petition interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Principal, whether or not allowed in such proceeding), and all other amounts that would be part of the Obligations but for the operation of Debtor Relief Laws;

(c) all assessments and other amounts required to be paid by Principal to PSI and/or PJM in order to maintain the ability to conduct business with PJM notwithstanding the continuing right of Principal to dispute, contest or pursue rights of setoff of such assessments and other amounts pursuant to the alternative dispute resolution provisions of the Governing Documents; and

(d) all reasonable costs, expenses and fees, including, without limitation, court costs and attorneys’ fees, arising in connection with the collection of any or all amounts, indebtedness, obligations and liabilities of Principal to PSI and/or PJM described in clauses (a) through (c) above.

For purposes of this Bond, the term “Debtor Relief Laws” shall mean Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or other debtor relief, or similar laws affecting the rights of creditors.

2.02 Obligations Unconditional. This Surety Bond is not conditioned upon PJM first attempting to collect payment, resorting to any other means of security or collateral, or pursuing any other remedies it may have. The obligations of Surety hereunder are independent of the obligations of Principal, and PJM may bring an action against Surety without bringing an action against Principal. PJM

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~~may from time to time, without notice or demand, and without affecting Surety's liability hereunder, take and hold other security for Principal's obligations to PJM, and exchange, waive, release, or apply such security as PJM deems appropriate in its sole discretion. Surety's liability under this Surety Bond is not conditioned upon the validity or enforceability of Principal's obligations to PJM. The Obligations (including, without limitation, the Bond) of the Surety under Section 2.01 of this Bond are a guarantee for payment not of collection, and are absolute and unconditional irrespective of (i) the value, genuineness, validity, regularity or enforceability of the Governing Documents, (ii) any substitution, release or exchange of any other guaranty or security for any of the Obligations, (iii) the existence or terms of any other agreements between Surety and any party, including the Principal, and, (iv) to the fullest extent permitted by applicable law, irrespective of any other circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety, it being the intent of this Section 2.02 that the Obligations of the Surety under this Bond shall be absolute and unconditional under any and all circumstances. The Surety Bond is not condition upon PSI or PJM first attempting to collect payment, resorting to any other means of security or collateral, or pursuing any other remedies it may have. The Obligations of Surety hereunder are independent of the obligations of Principal. PSI and PJM may from time to time, without notice or demand, and without affecting Surety's liability hereunder, take and hold other security for Principal's obligations to PSI and PJM and exchange, waive, release, or apply such security as PSI or PJM deem appropriate in their sole discretion. Surety's liability under this Surety Bond is not conditioned upon the validity or enforceability of Principal's obligations to PSI or PJM. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of Surety under this Bond (which shall remain absolute and unconditional as described above):~~

~~(a) if at any time or from time to time, without notice to Surety, the Governing Documents, or the Principal's Obligations thereunder are amended, increased, supplemented, or modified; or~~

~~(b) if at any time or from time to time, without notice to Surety, the time for any performance of, or compliance with, any of the Obligations shall be extended, renewed, modified or supplemented, or such performance or compliance shall be waived.~~

2.03 Payment. Surety is responsible for and shall pay to PSI all or any portion of the Obligations, in an aggregate amount that is not greater than Amount of this Bond, and shall make any and all required payments in full, on or before 5:00 p.m. Eastern Prevailing Time on the first (1<sup>st</sup>) Business Day after receiving written notice from PSI or PJM that Principal has failed to meet any of the Obligations or a breach or default has occurred under the one of the Governing Documents.

It is a condition of this Bond that Surety shall maintain a corporate debt rating not less than that required by the Governing Documents as of the Date of Issuance of this Bond. In the event that Surety does not maintain the minimum corporate debt rating required by the Governing Documents, PSI or PJM may demand payment up to the entire Amount of this Bond upon presentation of a demand for payment similar to that shown in Exhibit A to this Bond. No other documents and/or information whatsoever is required to effectuate payment on this Bond by Surety other than the demand for payment in form similar to that set forth in Exhibit A to this Bond. The demand rights in this paragraph are in addition to any other rights under this Bond.

A demand by the Obligees for payment that is not based on Surety's failure to maintain the minimum corporate debt rating required by the Governing Documents shall be presented to the Surety in the form of a demand for payment similar to that shown in Exhibit B to this Bond. No other documents and/or information whatsoever is required to effectuate payment on this Bond by Surety other than the demand

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for payment in form similar to that set forth in Exhibit B to this Bond. The demand rights in this paragraph are in addition to any other rights under this Bond.

~~Surety furthermore expressly waives any right to investigate or verify any matter, including factual matters, related to a demand for payment under this Bond.~~

PSI or PJM may, but shall have no obligation to, make demand for payment under this Bond at any time coincident with or after the time for payment of all or part of the Obligations or an event of default or breach, and such demand(s) may be made from time to time with respect to the same or different items of the Obligations, or an event of default or breach. Such demand(s) may be made, given and received in accordance with the notice provisions hereof; provided, however, the failure to make, give or receive any such demand (or any failure of any such demand to be made in accordance with the notice provisions hereof) shall not relieve, limit or discharge Surety in any respect of its Obligations under this Bond.

Funds may be demanded by PSI or PJM under this Bond, from time to time, in one or more demands or draws, in amounts not exceeding in the aggregate the Amount specified above. Partial demands are permitted and shall reduce the Amount thereafter available for demand under this Bond.

All sums payable due by Surety under this Bond shall be by Fed wire transfer of immediately available funds, without offset, in lawful money of the United States of America, which shall at the time of payment be legal tender for the payment of public and private debts. All payments shall be remitted to PSI's or PJM's account as designated by written notice to Surety in the demand for payment.

2.04 Reinstatement. The Obligations (including, without limitation, the Bond) of Surety under this Section 2 shall be automatically reinstated if and to the extent that, for any reason, any payment or performance by or on behalf of the Principal in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any bankruptcy, reorganization, receivership, insolvency or other debtor-relief proceeding, and Surety agrees that it will indemnify PSI or PJM on demand for all reasonable costs and expenses (including, without limitation, attorneys' fees) incurred by PSI or PJM in connection with such rescission or restoration, including, without limitation, any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

2.05 Subrogation. Surety hereby agrees that until the payment and satisfaction in full of all Obligations, it shall not exercise any right or remedy arising by reason of any performance by it of its obligations in Section 2.01 of this Bond, whether by subrogation or otherwise, against the Principal or any other surety of any of the Obligations.

2.06 Remedies.

(a) Surety agrees that, as between Surety and PSI, the Obligations may be declared to be forthwith due and payable as provided in the Governing Documents for purposes of Section 2.01 of this Bond notwithstanding any stay, injunction or other prohibition preventing such declaration (or such Obligation from becoming automatically due and payable) as against the Principal and that, in the event of such declaration (or such Obligations being deemed to have become automatically due and payable), such Obligations (whether or not due and payable by the Principal) shall forthwith become due and payable by Surety for purposes of such Section 2.01.

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(b) Without limitation on the rights, remedies, powers and privileges of PSI and PJM under section 2, if any breach or default shall occur under the Governing Documents the Obligations shall be declared to be forthwith due and payable by Surety for purposes of Section 2.01.

2.07 Term, Surety Nonrenewal, and PSI Termination. This Bond shall be effective upon the Date of Issuance set forth below. The initial term of this Bond shall be for a period of one (1) year, commencing on the Date of Issuance and expiring one (1) year later.

Notwithstanding the foregoing, this Bond shall be automatically renewed and extended without amendment for one (1) year from the expiration date hereof, or one (1) year from any future expiration date, and shall continue in full force and effect until Principal ceases to be either a PJM Member or Transmission Customer and all amounts owed by Principal under the Governing Documents, and any other related agreements are paid in full, including any amounts owed as a result of true-ups or other corrections to previous settlements, unless at least sixty (60) days prior to the expiration date the Surety sends written notice to PSI stating that Surety elects not to renew and extend this Bond. If Surety notifies PSI in writing that Surety elects to terminate this Bond and Principal fails to provide an acceptable form of replacement security to PSI at least thirty (30) days prior to the termination of this Bond, Surety shall, upon demand, without any notice other than such demand, and without any further action by PSI deliver cash collateral to PSI not later than the next business day in the amount of the full remaining value of this Bond as security for Principal's Obligations. Cash collateral provided to PSI by Surety and not applied by PSI to satisfy unpaid Obligations shall be returned to Surety at such time as: (i) Principal provides adequate replacement security to PSI in an amount sufficient to satisfy all credit obligations of Principal at that time, or (ii) Principal ceases to be either a PJM Member or Transmission Customer and all amounts owed by Principal to PSI and PJM are paid in full, including amounts owed as a result of true-ups or other corrections to previous settlements.

Notwithstanding the foregoing, PSI shall have the immediate right, but not the obligation, to terminate this Bond upon written notice to Surety and Principal (a) if any of the representations and warranties of the Surety contained in Section 4 are no longer true and correct, or (b) upon the Surety's failure to promptly deliver any information requested pursuant to Section 5.

2.08 Surety Continuing Liability. If Surety elects not to renew this Bond or PSI terminates this Bond, Surety agrees and acknowledges that it shall remain liable for any Obligations arising before the effective date of Surety's nonrenewal or PSI's termination of this Bond. Surety agrees and acknowledges that this Bond applies to all Obligations arising or committed prior to the effective date of Surety's nonrenewal or PSI's termination.

**Section 3. Acknowledgements, Waivers and Consents.** In full recognition and in furtherance of the foregoing, the Surety agrees that:

3.01 Without affecting the enforceability or effectiveness of this Bond in accordance with its terms and without affecting, limiting, reducing, discharging or terminating the liability of the Surety, or the rights, remedies, powers and privileges of the Obligees under this Bond, the Obligees may, at any time and from time to time and without notice or demand of any kind or nature whatsoever to Surety:

(a) amend, supplement, modify, extend, renew, waive, accelerate or otherwise change the time for payment or performance of, or the terms of, all or any part of the Principal's Obligations (including without limitation any increase or decrease in the rate or rates of interest);

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(b) amend, supplement, modify, extend, renew, waive or otherwise change, or enter into or give, any agreement, security document, guarantee, approval, consent or other instrument relating to all or any part of the Principal's Obligations;

(c) accept or enter into new or additional agreements, security documents, guarantees (including without limitation letters of credit) or other instruments in addition to, in exchange for or relative to the Governing Documents or any document now or in the future evidencing or serving as collateral provided by the Principal in accordance with the Governing Documents;

(d) accept or receive partial payments or performance on the defaulting Principal's Obligations (whether as a result of the exercise of any right, remedy, power or privilege or otherwise);

(e) accept, receive and hold any additional collateral for all or any part of the defaulting Principal's Obligations;

(f) release, reconvey, terminate, waive, abandon, allow to lapse or expire, fail to perfect, subordinate, exchange, substitute, transfer, foreclose upon or enforce any collateral, security documents or guarantees (including without limitation letters of credit) for or relative to all or any part of the defaulting Principal's Obligations;

(g) apply any collateral or the proceeds of any Principal-specific collateral or other collateral to all or any part of the defaulting Principal's Obligations in such manner and extent as the Obligor may in its discretion determine;

(h) release any Entity from any personal liability with respect to all or any part of the defaulting Principal's Obligations;

(i) settle, compromise, release, liquidate or enforce upon such terms and in such manner as the Obligor may determine or as applicable law may dictate all or any part of the defaulting Principal's Obligations or any collateral on or guarantee of (including without limitation any letter of credit issued with respect to) all or any part of such Principal's Obligations;

(j) consent to the merger or consolidation of, the sale of substantial assets by, or other restructuring or termination of the corporate existence of the defaulting Principal; and

(k) enter into such other transactions or business dealings with the defaulting Principal (or any of its affiliates) or any other guarantor or Surety of all or any part of such Principal's Obligations as the Obligor may desire.

3.02 The enforceability and effectiveness of this Bond and the liability of the Surety, and the rights, remedies, powers and privileges of the Obligor, under this Bond shall not be affected, limited, reduced, discharged or terminated, and the Surety hereby expressly waives to the fullest extent permitted by law any defense now or in the future arising, by reason of:

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(a) the illegality, invalidity or unenforceability of all or any part of the defaulting Principal's Obligations, such Principal's Principal-specific collateral or any agreement, security document, guarantee or other instrument relative to all or any part of the defaulting Principal's Obligations;

(b) any disability or other defense (including, without limitation, the defense of force majeure, breach of contract, breach of warranty, and fraud) with respect to all or any part of the Principal's Obligations or any of their guarantors;

(c) any defense due to the Surety's failure to review or understand the activities of Principal or any changes in the Governing Documents (it being acknowledged and agreed that Surety bears all responsibility for monitoring the activities of the Principal and changes in the Governing Documents);

(d) the cessation, for any cause whatsoever, of the liability of the Principal or any guarantor of all or any part of the Principal's Obligations (other than, subject to Section 2.03, Reinstatement, by reason of the full payment and performance of all Obligations of the Principal);

(e) any failure of the Obligee to exhaust any cash collateral for all or any part of the Obligations, to pursue or exhaust any right, remedy, power or privilege it may have against Principal, any other guarantor of all or any part of the Obligations (including without limitation any issuer of any letter of credit), or any other Entity or to take any action whatsoever to mitigate or reduce the Surety's liability under this Bond, the Obligee is not under any obligation to take any such action notwithstanding the fact that all or any part of such Principal's Obligations may be due and payable and that such Principal may be in default of its Obligations;

(f) any failure of the Obligee to comply with applicable laws in connection with the disposition of any cash collateral for all or any part of the defaulting Principal's Obligations;

(g) any act or omission of the Obligee or any other Entity that directly or indirectly results in or aids the discharge or release of all or any part of the defaulting Principal's Obligations or any security or guarantee (including without limitation any letter of credit) for all or any part of such Obligations by operation of law or otherwise;

(h) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal's obligation;

(i) any and all rights to which Surety may be entitled by virtue of the laws of the Commonwealth of Pennsylvania (or any other state) governing suretyship and guarantees, as any or all of the same may be amended or construed from time to time, or the common law of the Commonwealth of Pennsylvania (or any other state) at all relevant times;



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(j) the possibility that the Obligations of the defaulting Principal to the Obligee may at any time and from time to time exceed the aggregate liability of the Surety under this Bond;

(k) any counterclaim, set-off (including as permitted by 11 U.S.C. § 362) or other claim which the defaulting Principal has or alleges to have with respect to all or any part of its Obligations;

(l) any action or inaction of the Obligee in any bankruptcy or other proceeding with respect to any Entity, including Principal;

(m) the avoidance of any lien in favor of the Obligee for any reason;

(n) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any Entity, including any discharge of, or bar or stay against collecting, all or any part of the defaulting Principal's Obligations (or any interest on all or any part of the defaulting Principal's Obligations) in or as a result of any such proceeding;

(o) Principal's breach of any obligation owed to Surety, whether by contract or otherwise, including, without limitation, Principal's failure to pay any premiums due Surety;

(p) any action taken by the Obligee that is authorized in this Bond or by any other provision of the Governing Documents or any omission to take any such action;

(q) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, including by reason of existing law and any future judicial decisions or legislation or of any provisions of the laws of any other jurisdiction; or

(r) any and all other demands and notices to Surety or Principal, and any and all other formalities of any kind, the omission of or delay in performance of which might but for the provisions of this section constitute legal or equitable grounds for relieving or discharging Surety in whole or in part from its irrevocable, absolute and continuing obligations hereunder.

In furtherance of the foregoing, Surety agrees that (i) it is not necessary for PSI, in order to enforce Surety's payment Obligations hereunder, first to proceed against Principal or resort to any other collateral, security or other guarantors or obligors, if any, or pursue any other remedy available to PSI or PJM with respect to the Obligations, and (ii) the Governing Documents, and any collateral, security or obligations of any guarantors or obligors, if any, may be renewed, extended, amended, modified, supplemented, sold, released, surrendered, exchanged, settled, compromised, waived, subordinated or modified, in each case without consideration and on any terms or conditions, without notice to, or further assent from, the Surety and without in any way affecting the Obligations of Surety under this Bond.

3.03 The Surety expressly waives, for the benefit of the Obligee, all rights to set-off amounts due by the Obligee to the Principal, all counterclaims, and all promptness, diligence, presentment, protest, notice of protest, notice of dishonor, notice of nonpayment or nonperformance, notice of any default, demand of payment, notice of intent to accelerate, notice of acceleration, and all other notices of any kind



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or nature whatsoever with respect to the Principal's Obligations, and all notices of acceptance of this Bond or of the existence, creation, incurring or assumption of new or additional Obligations.

3.04 Nothing in this Bond will, or will be construed or applied to, modify the Principal's Obligations under the Governing Documents.

3.05 Principal shall pay all commissions, charges, costs and fees for this Bond. The Principal's failure to pay any such commissions, charges, costs and fees shall not be grounds for termination of this Bond except as otherwise provided herein. All rights of Surety to proceed against Principal in respect of payment hereunder, by subrogation or otherwise:

(a) are hereby subordinated and deferred to and until the full and final payment and discharge of the Obligations; and

(b) Surety may not exercise any rights it may acquire by way of subrogation under this Bond, by payment made hereunder or otherwise, until all of the Obligations then due and payable have been fully and finally paid.

**Section 4. Representations and Warranties.** Surety represents and warrants to PSI that it is authorized to engage in the Surety business in Pennsylvania and Delaware and:

4.01 Credit Rating. As of the Date of Issuance and for so long as this Bond shall remain in effect, the Surety has, and expects to continue to satisfy and maintain, a minimum senior unsecured (or, if none, an equivalent or derived equivalent in PJM's sole discretion) credit rating of "A" with S&P, "A" with Fitch, "A2" with Moody's, or "A" with AM Best, or as otherwise required under the Governing Documents, and shall have no such rating lower than such minimum. Surety shall notify Obligees immediately if its credit rating is decreased.

4.02 Corporate Existence. The Surety (a) is a corporation duly organized and validly existing under the laws of the jurisdiction of its incorporation, such jurisdiction being within one of the 50 states of the United States or the District of Columbia, (b) has all requisite corporate power and authority necessary to own its assets and carry on its business as now being or as proposed to be conducted, and (c) is qualified to do business in Pennsylvania and Delaware and all jurisdictions in which the nature of the business conducted but it makes such qualification necessary and where failure to so qualify would have a material adverse effect on the consolidated financial condition, operations, business or prospects, taken as a whole, of Surety and its subsidiaries.

4.03 Litigation. There are no legal or arbitral proceedings or any proceedings by or before any governmental or regulatory authority, or agency, now pending or (to the best knowledge of Surety) threatened against Surety or any of its subsidiaries that, if adversely determined, could (either individually or in the aggregate) have a material adverse effect on the consolidated financial condition, operations, business or prospects, taken as a whole, of Surety and its subsidiaries.

4.04 No Breach. Neither the execution and delivery of this Bond, nor consummation of the transactions contemplated in this Bond, nor compliance with the terms and provisions of this Bond, will conflict with, result in a breach of, or require any consent under, the charter or by-laws of Surety, any applicable law or regulation, any order, writ, injunction or decree of any court or governmental authority or agency, any agreement or instrument to which Surety or any of its subsidiaries is a party or by which any of them is bound or to which any of them is subject, or constitute a default under any such agreement

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or instrument, or result in the creation or imposition of any lien upon of the revenues or assets of Surety or any of its subsidiaries pursuant to the terms of any such agreement or instrument.

4.05 Corporate Action. Surety has all necessary legal and corporate power and authority to execute, deliver and perform its Obligations under this Bond; the execution, delivery and performance by Surety of this Bond has been duly authorized by all necessary corporate action on its part; this Bond is binding upon and enforceable against Surety; the person executing this Bond on behalf of the Surety has full power and authority to bind the Surety to this Bond; and this Bond has been duly and validly executed and delivered by Surety and constitutes a legal, valid and binding obligation of Surety, enforceable in accordance with its terms.

4.06 Approvals. No authorizations, approvals or consents of, and no filings or registrations with, any governmental or regulatory authority or agency including, but not limited to, the Pennsylvania Commissioner of Insurance, or any securities exchange, are necessary for the execution, delivery or performance by Surety of this Bond or for the validity or enforceability of this Bond. In this regard, Surety warrants and represents that it has all necessary authorizations, approvals, and consents of all governmental or regulatory authorities or agencies including, but not limited to, the Pennsylvania Commissioner of Insurance, or any securities exchange, for the execution, delivery and performance by Surety of this Bond.

4.07 No Defaults. To the best of its knowledge Surety is not in default or breach under any agreements or contracts which may adversely affect Surety's ability to fulfill its Obligations under this Bond. Furthermore, Surety is not aware of any fact that would adversely affect Surety's ability to perform its Obligations under this Bond.

4.08 Independent Review. Surety has, independently and without reliance upon PSI or PJM, and based upon such documents and information as Surety has deemed appropriate, made its own analysis and decision to enter into this Bond.

4.09 No Duty by PSI or PJM to Advise Surety about Principal. Surety will keep itself fully apprised of Principal's financial and business condition, and Surety shall be solely responsible, to the extent deemed necessary or advisable by Surety, for obtaining for itself information regarding Principal, the Governing Documents, and Surety acknowledges and agrees that PSI and PJM shall have no duty at any time to notify Surety of any information which PSI and PJM may have or acquire concerning Principal or to investigate or inform Surety of the financial or business condition or affairs of Principal or any change therein.

4.10 No Reliance on PSI or PJM. NEITHER PSI, PJM NOR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF PSI OR PJM HAS MADE ANY REPRESENTATION, WARRANTY OR STATEMENT TO SURETY IN ORDER TO INDUCE SURETY TO EXECUTE THIS BOND, AND SURETY HEREBY EXPRESSLY WAIVES ANY CLAIM OF MISREPRESENTATION OR FRAUDULENT INDUCEMENT TO EXECUTE THIS BOND AND FURTHER DISCLAIMS ANY RELIANCE ON STATEMENTS OR REPRESENTATIONS OF PSI, PJM OR ANY AFFILIATE, EMPLOYEE, AGENT, OR REPRESENTATIVE OF PSI OR PJM IN WAIVING SUCH A CLAIM.

Surety's representations, warranties, covenants, waivers and agreements set forth in this Bond are a material inducement to PSI and PJM to extend credit to Principal and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Principal, Surety, any other person, or any security for all or any part of the Obligations.

**Section 5. Delivery of Information.** Surety shall deliver to PSI:

(a) promptly after Surety knows or has reason to believe that any breach or default by it under this Bond or by the Principal under the Governing Documents has occurred, a notice of such breach or default describing the same in reasonable detail and, together with such notice or as soon thereafter as possible, a description of the action that Surety has taken or proposes to take with respect thereto;

(b) promptly after Surety knows or has reason to believe, but no later than the next Business Day, that the representations or warranties of the Surety contained in this Bond are no longer true and correct; and

(c) from time to time, such other information regarding the financial condition, operations, or business of Surety or the Principal as PSI or PJM may reasonably request.

**Section 6. Miscellaneous.**

6.01 Dispute Resolution. Except as otherwise set forth herein, Surety acknowledges and agrees that any dispute under this Bond shall be resolved in accordance with the Alternative Dispute Resolution Provisions set forth in the Governing Documents as they may be amended, supplemented or modified from time to time.

6.02 No Waiver. No failure on the part of PSI or PJM to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy under this Bond shall operate as a waiver thereof, nor shall any single or partial exercise by PSI or PJM of any right, power or remedy under this Bond preclude any other or further exercise thereof or the exercise of any other rights, power or remedy. The remedies in this Bond are cumulative and are not exclusive of any remedies provided by law.

6.03 Notices. All notices, requests, consents and demands under this Bond shall be in writing and faxed, hand delivered by courier or sent via overnight mail, with receipt of delivery, to the intended recipient as set forth below or at such other address as shall be designated by Surety or PSI, as appropriate. Except as otherwise provided in this Bond, all such communications shall be deemed to have been duly given when transmitted by facsimile or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

Notice to PSI: PJM Settlement, Inc.  
2750 Monroe Blvd.  
Audubon, PA 19403  
Attention: Finance  
Facsimile: (610) 666-\_\_\_\_

Notice to Surety: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Notice to Principal: \_\_\_\_\_  
\_\_\_\_\_

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\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

6.04 Costs and Expenses. Surety agrees to pay all of PSI's costs and expenses (including, without limitation, reasonable attorneys' fees) which may be incurred in connection with the collection or enforcement of the Obligations or any part of them or any term of this Bond, including all such costs and expenses incurred by PSI in any legal action, reference or dispute resolution proceeding. The recovery of such costs and expenses incurred by PSI in connection with the enforcement of this Bond against Surety shall be in addition to Surety's Obligations under Section 2.01.

6.05 Amendments and Waivers. This Bond represents the entire agreement between Surety and PSI and supersedes all prior agreements. There are no oral agreements. The terms of this Bond may be waived, altered or amended only by an instrument in writing duly executed by Surety and PSI. Any waiver or consent given shall be effective only in the specific instance and for the specific purpose for which it was given. Any such amendment or waiver shall be binding upon PSI, each holder of any of the Obligations and Surety.

6.06 Successors and Assigns. This bond shall be binding upon and inure to the benefit of the respective successors and assigns of Surety, PSI and each subsequent holder of any of the Obligations; provided, however, that Surety shall not be permitted to assign or transfer its rights and Obligations under this Bond without the prior written consent of PSI. PSI and PJM shall be permitted to assign their rights and remedies hereunder, in whole or in part, without the consent of Principal or Surety without in any way diminishing Surety's obligations hereunder.

6.07 Captions. The captions and section headings appearing in this Bond are included solely for convenience of reference and shall in no way alter, modify, define, limit, amplify or be used in construing the text, scope or intent of any provisions hereof. Furthermore, words used in the singular shall include the plural and vice-versa, and any gender shall be deemed to include the other. Further, each party hereby acknowledges that such party and its counsel have reviewed and considered the effect of this Bond. As such, the terms of this Bond shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Bond or any amendments, modifications, or exhibits.

6.08 Governing Law and Venue. **This Bond is executed and delivered as an incident to a transaction(s) negotiated and consummated in Montgomery County, Pennsylvania, and shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict of laws principles. Surety, for itself and its successors and assigns, hereby irrevocably (i) submits to the non-exclusive jurisdiction of the state and federal courts in the Commonwealth of Pennsylvania, (ii) waives, to the fullest extent permitted by law, any objection that may now or in the future have as to the venue of any action, proceeding or litigation arising out of or in connection with this Bond brought in the Common Pleas Court of Montgomery County, Pennsylvania, or in the United States District Court for the Eastern District of Pennsylvania, and (iii) agrees that any legal action or proceeding against Surety arising out of or in connection with this Bond may be brought in any one of the foregoing courts. Surety hereby agrees that service of process upon Surety may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of PSI or PJM to serve process in any other manner permitted by law or shall limit the right of PSI or PJM to bring any action or proceeding against Surety or with respect to any of Surety's property in courts in other**

jurisdictions. Any action or proceeding by Surety against PSI shall be brought only in a court located in Montgomery County, Pennsylvania. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Surety acknowledges that these waivers are a material inducement to PSI's agreement to accept this Bond, that PSI has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in this section are irrevocable on the part of both Surety and PSI and may not be modified without the agreement of both Surety and PSI in writing; these waivers apply to any future renewals, extensions, amendments, modifications, replacements or renewals of this Bond.

6.09 Severability. If any provision or any part of any provision of this Bond or the application thereof to any person or circumstance shall, for any reason and to any extent, be judicially declared to be invalid or unenforceable, then neither the remaining provisions of this Bond nor the application of such provision to any other person or circumstance shall be affected thereby, and the remaining provisions of this Bond, or the applicability of such provision to other persons or circumstances, as the case may be, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

6.10 Correction Documents. From time to time, at the reasonable request of PSI, Surety will (a) promptly correct any ministerial or administrative defect, error or omission which may be discovered in the contents of this Bond; (b) execute, acknowledge and deliver (or cause to be executed, acknowledged and delivered) such further documents and instruments and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in PSI's opinion, (i) to carry out more effectively the purposes of this Bond and the transactions contemplated hereunder, or (ii) to confirm the continuation of the rights created under this Bond for the benefit of PSI.

6.11 Waiver of Jury Trial. **EACH OF SURETY AND PSI, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY, IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY, WITH, AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS BOND OR ANY CONDUCT, ACT, FAILURE TO ACT OR OMISSION OF OR BY PSI OR SURETY, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH PSI OR SURETY, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, OR IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS BOND. IT IS AGREED AND UNDERSTOOD BY EACH OF SURETY AND PSI THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS BOND. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY SURETY AND PSI, AND EACH OF SURETY AND PSI HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH OF SURETY AND PSI FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS BOND AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED**

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**OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the “Date of Issuance”).

**PRINCIPAL:**

By: \_\_\_\_\_ (Seal)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SURETY:**

By: \_\_\_\_\_ (Seal)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**AGREED:**

PJM Settlement, Inc.

By: \_\_\_\_\_ (Seal)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DRAFT**

**EXHIBIT A**

(Form of Demand for Payment)

(Date)

(Name and Address of Surety)

Re: *Surety Bond Number* \_\_\_\_\_  
*Demand for Payment*

To the above named Surety:

This letter constitutes a Demand for Payment under Surety Bond Number \_\_\_\_\_ dated \_\_\_\_\_ (“Surety Bond”) issued on behalf of PJM Settlement, Inc. (“PSI”), as defined in the Surety Bond.

The Surety has not maintained a corporate debt rating required by the PJM Governing Documents, and the Principal has failed to replace the Surety Bond in a manner acceptable to PSI or provide replacement collateral acceptable to PSI in accordance with the PJM Open Access Transmission Tariff (“Tariff”), Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. and Reliability Assurance Agreement Among Load-Serving Entities in the PJM Region, the PJM Manuals, and the Credit Overview and Supplement to the PJM Credit Policy, and other documents referenced therein, as the same may be amended, supplemented, or modified from time to time.

The amount of unpaid Obligations as of the date hereof is \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$\_\_\_\_\_.\_\_\_\_). PSI hereby demands payment in that amount in accordance with the following instructions:

*[Insert Wiring Instructions]*

PJM Settlement, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT B**

(Form of Demand for Payment)

(Date)

(Name and Address of Surety)

Re: *Surety Bond Number* \_\_\_\_\_  
*Demand for Payment*

To the above named Surety:

This letter constitutes a Demand for Payment under Surety Bond Number \_\_\_\_\_ dated \_\_\_\_\_ (“Surety Bond”) issued on behalf of PJM Settlement, Inc. (“PSI”), as defined in the Surety Bond.

A breach or event of default has occurred under the PJM Open Access Transmission Tariff (“Tariff”), Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. and Reliability Assurance Agreement Among Load-Serving Entities in the PJM Region, the PJM Manuals, and the Credit Overview and Supplement to the PJM Credit Policy, and other documents referenced therein, as the same may be amended, supplemented, or modified from time to time (“Governing Documents”), as referenced in the Surety Bond.

[Choose one of the following two paragraphs:

The undersigned hereby certifies to Surety that Principal has failed to make remittance or payment in accordance with the terms of the Governing Documents, or any other related agreement between PSI and/or PJM and Principal.

OR

The undersigned hereby certifies to Surety that, as of the close of business on [**date less than thirty (30) days prior to the expiration of the Surety Bond**], Principal has failed to renew, replace, or amend this Surety Bond in satisfaction of the credit requirements established pursuant to the Governing Agreements.]

The amount of unremitted or unpaid Obligations as of the date hereof is \_\_\_\_\_ Dollars and \_\_\_\_ Cents (\$ \_\_\_\_). PSI hereby demands payment of that amount in accordance with the following instructions:

*[Insert Wiring Instructions]*

PJM Settlement, Inc.

By: \_\_\_\_\_

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Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DRAFT**