

Summary of Risk Management Committee Bankruptcy Protections Package

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Members Committee
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Enhance certain provisions in PJM's Governing Documents to better protect the PJM membership in the event of a Member bankruptcy

**Approved by
RMC in July 2022
and MRC in
September 2022**

- One package created through the stakeholder process
- Solution package endorsed with no objections at RMC and MRC (11 abstentions at RMC, and 1 abstention at MRC)

Commercial bankruptcy cases take several forms: Usually voluntary by the debtor, but can be involuntary as well

Chapter 11: Debtor continues operating its business

- Can be a true reorganization or a liquidation through sale as a going concern
- Often well planned by debtor in advance of filing, but can have an emergency filing caused by unexpected crisis (“free fall” into bankruptcy)

Chapter 7: Liquidation of assets by a bankruptcy trustee; debtor operations cease immediately

Limitation on actions against debtor is a central feature of bankruptcy:

- **Automatic stay** – with limited exceptions, commencement or continuation of actions against a debtor and its assets are immediately and automatically prohibited upon start of bankruptcy case (absent bankruptcy court permission)
- **Notice and hearing** – creditors and other parties in interest, not only the debtor, are entitled to notice and an opportunity to be heard (on reasonable notice) on nearly all important issues
- **Oversight by Bankruptcy Court and others**

Package

This bankruptcy protections package is intended to mitigate the potential losses to PJM and its Members that may result from the delay and uncertainty that are part of the bankruptcy process.

Proposed Change:

Revise Tariff, Attachment Q, Section V.A language regarding cash deposits

Rationale

Clarifies:

- grant by Participant to PJM of first-priority security interest in cash deposit
- that Tariff and other agreements incorporating terms of Tariff constitute a security agreement
- PJM's rights in collateral by limiting Participant's investment discretion as to deposit

Proposed Change:

Add language to Tariff, Attachment Q, Section IX that requires Participant to address PJM’s rights immediately upon a bankruptcy filing

Rationale:

- Primes a bankruptcy court to appreciate potential negative impact to PJM Members and PJM Markets from uncertainty and delay that are intrinsic to bankruptcy process
- Requires “first day” motion by debtor Participant providing for:

- Prompt and full payment of all pre-petition obligations to PJM
- Continued performance of all post-petition obligations in the ordinary course of business, including additional collateral posting requirements

- PJM’s ability to hold and apply collateral and require additional collateral
- PJM’s ability to exercise setoff and/or recoupment rights

- Recognition of applicable agreements as a “forward contract,” “swap agreement,” or “master netting agreement” entitled to special protections under the Bankruptcy Code

Provides that, if debtor Participant fails to obtain the required assurances for PJM, such failure would be cause for the Bankruptcy Court to grant PJM relief from the automatic stay to exercise its rights and remedies

Proposed Change:

Revise Tariff, Attachment Q, Section X

Rationale

Further clarifies that FTR transactions are entitled to the special protections given to “forward contracts,” “swap agreements,” and “master netting agreements” under the Bankruptcy Code, including automatic stay exception, allowing for immediate termination and/or liquidation; proceeding against Collateral; setoff or recoupment; and suspension or limitation of Market Participant’s entry into future FTR transactions.

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Bankruptcy Protections



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