COMMENTS OF DC ENRGY, LLC
Regarding PJM's "Market Participant Risk Evaluation Enhancements"
January 6, 2020

Focus Should Remain on Credit Risk

PJM's Credit Policy should focus on the risk that a Market Participant will fail to meet a PJM-administered market financial obligation. This risk should drive all efforts to better know and monitor Market Participants. PJM should have a more uniform standard for when to take action to mitigate this risk – namely, when a Market Participant poses an unreasonable credit risk to a PJM-administered market (i.e., PJM Markets). All related measures, such as requiring more collateral, limiting market participation, suspending a Market Participant, and/or denying an Applicant, should be designed to mitigate the risk that a Market Participant will fail to meet a PJM Market financial obligation.

PJM's proposed Attachment Q uses "unreasonable credit risk" as the standard for determining whether to take action in several places, including proposed Attachment Q section V, which states that if a Market Participant poses an unreasonable credit risk, then PJM "may include requiring additional Collateral or Restricted Collateral commensurate to the risk to the PJM Markets." Similarly, PJM's proposed Material Adverse Change provision at Attachment Q section II.B.3, premises "tak[ing] steps to mitigate the financial exposure to the PJM Markets" on an evaluation that first "identifies unreasonable credit risk to the PJM Markets."

In other provisions, however, PJM's proposed language uses divergent standards that would grant PJM the authority to take action without a finding that a Market Participant poses an unreasonable credit risk to the PJM Markets. In Attachment Q section IX, PJM proposes to impose position limits and includes a finding that a Market Participant poses an unreasonable credit risk as just one of a number of factors in this decision. Instead, a finding that a Market Participant poses an unreasonable credit risk to a PJM Market should be an explicit prerequisite to imposing special position limits; this finding could be based on the other factors listed in the proposed provision. Proposed Attachment Q section II.C. states that PJM "may" require Restricted Collateral without reference to a standard. This proposed provision should be further amended to condition any requirement to post Restricted Collateral on a finding that the market participant poses an unreasonable credit risk.

Proposed Operating Agreement provisions would grant PJM the ability to take drastic action based on unacceptably vague and inconsistent language. Instead, the proposed Operating Agreement language should be consistent with and cite to the "unreasonable credit risk" standard in Attachment Q. Specifically, proposed Operating Agreement, Schedule 1, section 1.4.4 authorizes PJM to reject any Applicant that "poses a credit risk or other unacceptable risk." Every applicant, however, "poses a credit risk" to some extent and "other unacceptable risk" is not defined. "Unreasonable credit risk" provides a more uniform standard and carries with it the requirement that PJM provide a written explanation and an opportunity to respond. (*See* proposed Attachment Q section II.A.8.) Similarly, proposed Operating Agreement section 15.1.1 authorizes PJM to limit, suspend, or even terminate an existing Market Participant without reference to the "unreasonable credit risk" standard. Also, proposed Operating Agreement section 11.6 states that PJM will evaluate whether an Applicant "is qualified or presents any material risks to PJM" and then includes "unreasonable credit risk or other unacceptable risk" in a later statement on the review of Applicants. Instead, the standard of review for Applicants under Operating Agreement section 11.6 should be a straightforward reliance on “unreasonable credit risk” with a cite to the standard in Attachment Q.

Instead of focusing on identifying and mitigating unreasonable credit risks in order to avoid uncovered defaults in the PJM Markets, at times, the proposed Tariff and Operating Agreement language seems to cast as wide a net as possible in order to grant PJM the discretion to respond to any potential infraction, regardless of whether it relates to credit risk. For example, the proposed definition of “Credit Breach” adds language to the existing definition that would encompass any “failure of a Participant to preform, observe or comply with any term or condition of the Agreements.” The term “the Agreements” includes the entire Operating Agreement, the OATT, and many other voluminous documents, all with very specific terms and conditions that a Market Participant may inadvertently fail to satisfy without increasing the risk that it may fail to make a payment to PJM or satisfy a financial obligation in a PJM Market. For example, a Market Participant may fail to notify PJM of a new affiliate completely unrelated to its activity in PJM within the allotted time. Under PJM’s proposed definition of Credit Breach, this could trigger an Event of Default, resulting in the termination of the Market Participant’s participation in PJM and the liquidation of its portfolio.

Unreasonable Credit Risk Provisions

The proposed “unreasonable credit risk” standard itself requires clarification. The determination that a Market Participant poses an unreasonable credit risk should be based solely on the risk that a Market Participant will default on an obligation stemming from its participation in a PJM Market. For example, the relevant inquiry is not whether an Applicant or Market Participant faces an allegation of manipulation in another market, which may not pose a potential material impact on its ability to meet its obligations stemming from its participation in the PJM Markets. Rather, the relevant inquiry for PJM should be whether the Applicant or Market Participant currently faces a reasonably likely future material financial liability, which could stem from an allegation of market manipulation, pending litigation, or another source. Actions taken in response to a determination that a Market Participant poses an unreasonable credit risk should be to the extent and for the time-period necessary to mitigate the unreasonable credit risk to the PJM Markets. Attachments A and B to these comments provide redline changes to PJM's proposed unreasonable credit risk provisions consistent with this perspective.

In addition, PJM's proposed unreasonable credit risk provisions state that PJM will communicate its concerns and attempt to better understand the circumstance prior to making a determination that a Market Participant is an unreasonable credit risk. This language is a welcome addition but should be strengthened to ensure that Market Participants have access to "expedited arbitration" to challenge any determination quickly, as well as acknowledge that Market Participants have the right to challenge any such determination before the Federal Energy Regulatory Commission.

Material Adverse Change Provision

Similarly, the proposed Material Adverse Change provision at Attachment Q section II.B.3 should be clarified and refined. Reporting obligations should be limited to circumstances reasonably likely to materially increase the risk of non-payment of obligations stemming from participation in a PJM Market. Otherwise, the reporting obligation is overly broad and will prove unduly burdensome to market participants and result in the overcollection of irrelevant information, at best, and may result in unnecessary risk mitigation measures that could unfairly restrict otherwise financially robust Market Participants, thus limiting liquidity.

For example, many financial Market Participants may routinely experience a quarterly or annual "decline in earnings of ten percent or more compared to the prior period." A financial market participant that makes $500,000 one quarter and $400,000 the next, has experienced a 20% drop in earnings compared to the prior period, but may still be doing very well. Fluctuations like this are routine for a subset of participants in PJM Markets. Those Market Participants would not view such a fluctuation as particularly material or even necessarily adverse, depending on the circumstances. It would be unduly discriminatory to penalize Market Participants for experiencing and reporting (or failing to report) such a fluctuation as a Material Adverse Change because the burden would fall disproportionately on one subset of Market Participants and is not a meaningful metric. Ultimately, the reporting obligation is overly proscriptive and redundant because Market Participants also must report adverse changes in financial condition that would likely materially increase the risk of non-payment to PJM.

In addition, the proposed Material Adverse Change language should be edited to focus on changes or occurrences that "would likely materially" affect a Market Participant's ability to pay its obligations as they come due, rather than any event or occurrence that "could" have an adverse effect on the Market Participant's financial condition. Also, it is redundant and potentially ambiguous to require reporting changes or occurrences that could have a "Material adverse impact" on "any current or future financial result." By definition a "Material" adverse impact includes those events or occurrences that are considered material by a Market

Participant's auditors or that decrease its tangible net worth by 5% or more, so a simple reference to "Material adverse impact [on] financial condition" should suffice.[1]

In PJM's proposed language, its action in response to a Material Adverse Change is premised on an "evaluation [that] identifies unreasonable credit risk to the PJM Markets." The Material Adverse Change provision should further clarify that such action will be limited to the extent and for the time-period necessary to mitigate the unreasonable credit risk and that suspension will be used only as a last resort. These and other suggested changes are reflected in Attachment C to these comments.

Events of Default Provision

The proposed Events of Default language is overly broad and overly sensitive because it includes events that are not actual defaults or even breaches of a PJM Market obligation. Given the severe consequences for the Market Participant and the PJM Markets as a whole, Events of Default should be limited to failures to cure material breaches of payment obligations stemming from participation in PJM Markets. Anything short of failure to cure a material breach stemming directly from an obligation arising from participation in a PJM Market is better understood as a Material Adverse Change that may warrant mitigating action by PJM to the extent necessary to address an unreasonable credit risk.

For example, a default on a payment obligation outside the PJM Markets is better treated as a Material Adverse Change. There has been no actual failure to meet a payment

[1] *See* Attachment C to these comments, particularly section II.B.3(h). "Any current or future financial result" should also be removed from the proposed definition of Material Adverse Change in the proposed definitions section of the Tariff.

obligation arising from participation in a PJM Market, and the Market Participant may have the means and the intent to continue to satisfy its obligations related to PJM, despite the issue it faces in another market. A PJM Market Participant may dispute a payment obligation in another organized electricity market, for example arising from the resettlement of the day-ahead market, and be declared in breach of a payment obligation as part of the dispute. The same may be true for a dispute with a contractual counterparty, for instance related to a bilateral over-the-counter swap. In fact, alleging and providing notice of an uncured breach of contract may be a prerequisite for a claim or counterclaim in a contractual dispute. In other circumstances, a counterparty may waive certain defaults as a matter of course. Market Participants should not be penalized by PJM in these contexts, particularly if there is no unreasonable credit risk to the PJM Markets. Instead, PJM should aim to mitigate and prevent Events of Default rather than declaring them before a Market Participant has breached an obligation arising in a PJM Market.

In addition, a bankruptcy filing is better understood as a Material Adverse Change, because a Market Participant may pursue reorganization via bankruptcy due to obligations arising outside of its activity in PJM, and have the means and the intent to continue to satisfy its obligations arising from its participation in PJM Markets. If bankruptcy filings remain an Event of Default, there should be an exception for third-party filings that are dismissed within 90 days. Otherwise, an aggressive creditor with an ultimately unsuccessful, or even spurious, bankruptcy filing against a Market Participant could trigger an Event of Default in PJM.

Also, PJM should retain the currently effective exception from an Event of Default due to failure to comply with the Credit Policy in Attachment Q for failing "to notify PJM of a

Material Adverse Change." Given the expansion and potential ambiguity of what constitutes a Material Adverse Change, this exception will be more necessary after PJM's proposed changes than it was before. For example, imagine that a Market Participant is threatened with litigation that could be material if successful but the Market Participant does not report the threat as a Material Adverse Change under PJM's expanded Material Adverse Change provision, because it does not believe that the threatened suit has merit and doubts it will be filed. Now imagine that the suit is filed and PJM learns of the litigation from the Market Participant or some other source. Under PJM's proposed language, an Event of Default could be declared for not reporting the potential litigation within five business days of the first threat.

Furthermore, a failure to post additional collateral immediately following an FTR auction related to portfolio diversification, should not be considered an Event of Default. Given the vagaries of the portfolio diversification adder, Market Participants cannot accurately forecast when their bid collateral may spike exponentially. When such a spike occurs and the Market Participant does not post the additional bid collateral, PJM rejects the Market Participant's bids in that round of that FTR auction without declaring a Collateral Call or a breach of PJM's Credit Policy. This approach isolates the instance and mitigates the potential harm that could be caused by declaring a wider Event of Default. Attachment D to these comments includes suggested changes to the proposed Events of Default language consistent with these comments and PJM's current practices.

Bankruptcy Provision

Proposed Attachment Q section VII.C. is designed to put PJM in a better position in the event that an FTR holder enters bankruptcy. The proposed language includes two redundant paragraphs claiming the authority to act in the event of a bankruptcy. The first paragraph beginning, "Pursuant to this Attachment Q" should be deleted and the second beginning "For the avoidance of doubt," should be retained. The second paragraph is preferable to the first because it clarifies that PJM's claimed authority is contingent "upon the commencement of" a bankruptcy proceeding.

Litigation Commitments and Contingencies Reporting

Proposed Attachment Q section II.A.5 is overly broad because it requires reporting any threatened litigation that "could" have a Material adverse impact. This provision should be limited as follows so as not to include suits that have not been (and may never be) filed, as well as, frivolous and other non-material litigation.

> "any ~~threatened~~ litigation, arbitrations, investigations, proceedings concerning or involving the Applicant, Guarantor, Guaranteed Affiliate, its predecessors, subsidiaries, Affiliates and/or top five (5) Principals concerning any violations of any federal or state regulations or laws regarding energy commodities or the U.S. Securities and Exchange Commission ("SEC"), U.S. Commodity Futures Trading Commission ("CFTC"), FERC or Office of the Comptroller of the Currency ("OCC") requirements by the SEC, CFTC, FERC, any exchange monitored by the National Futures Association, any entity responsible for regulating activity in energy markets, or any other governing, regulatory, or standards body which ~~could~~ would likely have a Material adverse impact on its financial condition and would likely materially affect the risk of non-payment by the Applicant, Guarantor or Guaranteed Affiliate, unless prohibited by law . . . "

Default History Reporting

Proposed Attachment Q section II.A.6 should include the same conditions on reportable defaults for Principals as it does for Applicants. Otherwise, the language could be read as requiring Principals to report every time a dispute with a home contractor results in an alleged event of default on a contract for home improvements and other personal litigation. The provision should be amended as follows:

> Each Applicant, each Guarantor and/or Guaranteed Affiliate shall be required to disclose its current default status and default history for any energy related generation or transmission project (e.g. generation, solar, development), and within any wholesale or retail energy market, including but not limited to within PJM, any Independent System Operator or Regional Transmission Organization, and exchange that has not been cured within the past five (5) years. Applicants that are not publicly traded corporate entities shall also be required to disclose the current default status and default history of its Principals for any energy related generation or transmission project (e.g. generation, solar, development), and within any wholesale or retail energy market, including but not limited to within PJM, any Independent System Operator or Regional Transmission Organization, and exchange that has not been cured within the past five (5) years. ~~Addtionally~~ Additionally, PJM will utilize public and non-public information related to confirmed evidence of fraud and market manipulation, as well as information derived from the application or officer certification.

Posting Requirements Provision

Proposed Attachment Q section X regarding "posting requirements" includes potentially troubling language that:

> PJM may post on PJM's web site, and may reference on OASIS, a supplementary document which contains additional business practices (such as algorithms for credit scoring) that are not included in this document.

Proposed Attachment Q section X further provides for stakeholder "review and comment" but does not require stakeholder approval of supplemental requirements and provides just 15 days' notice before supplemental requirements may become effective.

Federal Energy Regulatory Commission ("Commission") precedent requires that Commission-reviewed tariff language state all "key terms and conditions, or the criteria by which they are determined," rather than leave them to PJM's "unilateral discretion to adopt or modify" without Commission review. *See PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,121 at P 23 (2013) (ordering PJM to specify eligible source and sink points for Up-to-Congestion transactions in its Commission-approved tariff rather than only in its manuals). PJM should be mindful of this precedent and not attempt to circumvent it by implementing requirements via supplemental postings. If there are proposed provisions that PJM believes require further detail regarding their terms, conditions, or the criteria by which they are determined, then PJM should work with stakeholders now to ensure these provisions are sufficiently clear prior to filing its proposed Tariff changes with the Commission, rather than planning to rely on supplemental postings.

Annual Certification Deadline for FTR Auction Participants

Proposed Attachment Q section III.A regarding the timing of the annual certification appears to create an unrealistic January deadline for participants in the February Balance of Planning Period Auction held each year in mid-January. The proposed language states:

> After the initial submission, the annual certification must be submitted each calendar year by all Market Participants during a period beginning on January 1 and ending April 30, or five (5) Business Days in advance of submitting any bids or offers in the any FTR auction, whichever occurs first.

It would be more reasonable to specify that an earlier deadline applies to participants in the first round of the annual FTR auction for the next Planning Year, which takes place each March. This approach is consistent with the Midcontinent Independent System Operator which requires FTR auction participants to submit annual certifications prior to an annual FTR auction in early April. Therefore, the proposed language should state:

> After the initial submission, the annual certification must be submitted each calendar year by all Market Participants during a period beginning on January 1 and ending April 30, or five (5) Business Days in advance of submitting any bids or offers in the ~~any~~ annual FTR auction for the next Planning Year, whichever occurs first.

Banning Market Participation

PJM proposes to grant itself authority to ban a Market Participant or an individual trader or Principal from participating in its markets "or any bilateral transactions related thereto" based on:

> "violations of the Agreements as well as a confirmed imposition of a ban from participating in Energy Markets or other markets, including but not limited to a ban imposed by [regulators]" (Proposed Operating Agreement section 15.1.2).

This is a significant expansion of PJM's claimed authority that, in practice, could exceed the authority exercised by any relevant regulator. Regulators are independent, dispassionate entities that afford the accused certain procedural rights and undertake a thorough adjudication of the facts prior to imposing bans that are informed by formal agency guidelines or at least precedent. In many instances, regulators arrive at temporary bans. PJM proposes to grant itself authority to impose bans of indeterminant length on entities or individuals that are subject to a ban in another market that could be longer than the ban imposed by the regulator and without the benefit of all the relevant facts, let alone an adjudication. Bans instituted by PJM based on those imposed by a regulator should be limited to the same duration as that imposed by the regulator.

Also, as previously discussed, "the Agreements" include the entire Operating Agreement, the OATT, and other voluminous documents, each with many specific terms and conditions that a Market Participant may inadvertently violate. At a minimum, PJM should limit bans to uncured Events of Default and other material breaches of the Agreements. Otherwise, PJM should not ban an entity or individual unless a regulator imposes a ban, and in that event, the ban should last for the same duration as that imposed by the regulator.

Readmitting Market Participants and Members

Proposed Operating Agreement, Schedule 1, section 1.4.8 regarding "Re-Entry of Defaulting Market Participant" and section 15.1.6 "Reinstatement of Member Following Default and Remedy" use very different language for what should essentially be the same test. PJM should adopt the language proposed in Schedule 1 section 1.4.8 as the test in section 15.1.6 in order to ensure consistency within PJM's Operating Agreement and with the language that the New York Independent System Operator recently filed with FERC regarding the same issue. (See *New York Independent System Operator*, Tariff Filing, Docket No. ER20-483-000 (filed Nov. 26, 2019). The language in Schedule 1 section 1.4.8 identifies the circumstances in which it is appropriate and the relevant factors to determine whether an ostensibly new Applicant should be treated as the same entity as one that previously defaulted.

Increase Minimum Capitalization for FTR Market Participants

PJM's proposed credit policy enhancements and related Operating Agreement changes rely almost exclusively on PJM's increased discretion to take action to mitigate risk on a case-by-case basis, as the need arises, including excluding Market Participants. It would be more transparent and systematic to uniformly increase the minimum capitalization standard for all FTR auction participants. Currently, and under PJM's proposed credit policy enhancements, the minimum capitalization standard for any FTR market participant is $10 million dollars in gross assets or $1 million dollars in tangible net worth. This standard is based on the Eligible Contract Participant ("ECP") standard used in CFTC-jurisdictional markets, but with one key change that makes the standard applied by PJM much lower.

The ECP standard used in CFTC-jurisdictional markets is $10 million in gross assets with the $1 million tangible net worth test only available as a limited exception for market participants that limit their activity to hedging. (7 U.S.C. § 1a(18) (2019)). PJM should more faithfully apply the ECP standard in its FTR market and make the $1 million tangible net worth test only available as a limited exception for those entities that use FTRs solely to hedge their load service obligations. This application of the ECP standard would better reflect the Commission's understanding when it approved PJM's Order No. 741 compliance filing. *See PJM Interconnection, L.L.C.*, 136 FERC ¶ 61,190 (2011) (Accepting PJM compliance filing following Order No. 741, and paraphrasing PJM's reliance on the ECP standard: "PJM states that commodity futures and options markets generally require that a person qualify as an 'eligible commercial entity' or 'eligible contract participant' before trading, which requires a participant to have (1) total assets exceeding $10 million, if the entity is speculating, or (2) net worth exceeding $ 1 million, if the entity is hedging.")

PJM proposes to replace a currently effective exception from its minimum capitalization standard for any FTR auction participant that posts $500,000 in additional collateral and an additional 10% on any further collateral, with a less transparent requirement to post an unspecified amount of Restricted Collateral. There should be no exception from the $10 million gross asset test other than the $1 million tangible net worth test for those entities that use FTRs solely to hedge their load service obligations. PJM should rely on additional Restricted Collateral only when a Market Participant that otherwise meets the $10 million in gross assets test presents an unreasonable credit risk that can be mitigated via this method.

ATTACHMENT A

ATTACHMENT Q, SECTION II.A.8

8. Unreasonable Credit Risk

If PJM determines that an Applicant poses an unreasonable credit risk to PJM Markets, PJM may require additional Collateral or Restricted ~~, increase the amount of~~ Collateral commensurate with the Applicant's risk of financial default or~~required, reject an application,~~ limit or deny the Applicant's participation in ~~the~~ PJM Markets to~~if it determines~~ the extent and for the time-period necessary to mitigate the unreasonable credit risk to the PJM Markets. Denying an Applicant will only occur if additional Collateral or Restricted Collateral or other more limited restrictions on the Applicant cannot address the unreasonable credit risk.

~~Applicant presents an unreasonable credit risk.~~ Unreasonable credit risk may be determined based on, but not limited to, information and material provided to PJM during its risk evaluation process, and the material provided in an application including responses from the Officer's Certification and information gleaned from public and non-public sources.

The level of required Collateral or Restricted Collateral or other limitations on an Applicant's participation in PJM Markets will be commensurate with the credit risk to the PJM Markets. Unreasonable credit risk shall be determined by the likelihood that an Applicant will default on a financial obligation arising from its participation in a PJM Market. Indicators~~An example~~ of potentially unreasonable credit risk include~~may be determined by, but not limited to, market manipulation,~~ a history of uncured financial defaults in other contexts, ~~market manipulation, market indicators, or~~ a history of bankruptcy or insolvency, or a combination of current financial risk factors, such as, low capitalization, a reasonably likely future material financial liability, and a low internally or externally derived Credit Risk Score~~defaults~~. PJM will communicate its concerns, if any, in writing with the Applicant and attempt to better understand the circumstances surrounding that Applicant's financial and credit position before making its determination. Any determination that an Applicant poses an unreasonable credit risk may be challenged via expedited arbitration. Applicants retain all rights under the Federal Power Act, the Operating Agreement, and the PJM Tariff to appeal a determination that they pose an unreasonable credit risk and the actions taken by PJM as a result of that determination to the Federal Energy Regulatory Commission.

ATTACHMENT B

ATTACHMENT Q, SECTION II.B.8

8. Unreasonable Credit Risk

If PJM determines that a Market Participant poses an unreasonable credit risk, PJM may require additional Collateral or Restricted ~~, increase the amount of~~ Collateral commensurate with the Applicant's risk of financial default or ~~required,~~ limit or deny the Applicant's participation in ~~the~~ PJM Markets to the extent~~, FTR markets~~ and for the time-period necessary to mitigate the unreasonable credit risk to the PJM Markets. PJM will only suspend a Market Participant if additional Collateral or Restricted Collateral or~~any~~ other more limited restrictions on~~markets operated by PJM if it or PJM determines~~ the Market Participant cannot address the~~presents an~~ unreasonable credit risk.

Unreasonable credit risk may be determined based on, but not limited to, abnormal position taking, increased concentration around illiquid constraints, volatile market events, information and material provided to PJM during its risk evaluation process, including responses from the Officer's Certification and information gleaned from public and non-public sources. ~~officer's certification and information gleaned from public and non-public sources. Additional Collateral will be commensurate with the current and future credit risk to the PJM Markets, FTR markets and any other markets operated by PJM. A Market Participant may be limited from participating in the PJM Markets, FTR markets and any other markets operated by PJM and from requesting any other services, in accordance with Operating Agreement, section 15, unless and until the Market Participant is determined not to present unreasonable credit risk. An example of unreasonable credit risk may be determined by, but not limited to, Material Adverse Change, market manipulation, a history of market manipulation, market indicators, or a history of non-cured defaults. PJM will communicate its concerns to the Market Participant, each Guarantor and/or Guaranteed Affiliate to better understand the circumstances surrounding that Market Participant's financial and credit position before making its determination.~~

The level of required Collateral or Restricted Collateral or other limitations on a Market Participant's participation in PJM Markets will be commensurate with the credit risk to the PJM Markets. Unreasonable credit risk shall be determined by the likelihood that a Market Participant will default on a financial obligation arising from its participation in a PJM Market. Indicators of potentially unreasonable credit risk include an event or circumstance reported as a Material Adverse Change pursuant to section II.B.3 of this Credit Policy or a combination of current financial risk factors, such as, low capitalization, abnormal position taking, exposure to excessive market risk, a reasonably likely future material financial liability, and a low internally or externally derived Credit Risk Score. PJM will communicate its concerns, if any, in writing with the Market Participant and attempt to better understand the circumstances surrounding the Market Participant's financial and credit position before making its determination.

The Market Participant or its Guarantor may provide supplemental information to PJM during the consultation that would allow PJM to consider reducing the additional Collateral requested or reducing the severity of position limits or other restrictions designed to mitigate the Market Participant's credit risk.~~to a lower amount.~~ Such information shall include, but not be limited to: (i) the Market Participant's estimated exposure, (ii) explanations for any recent change in the Market Participant's market activity, (iii) any relevant new load or unit outage information; or (iv) any default or supply contract expiration, termination or suspension.

The Market Participant shall have two (2~~one (1~~) Business Days~~Day~~ to respond to PJM's request. If the requested information is provided in full to PJM's satisfaction during said period, the additional collateral requirement, position limits or other restrictions designed to mitigate the Market Participant's credit risk shall reflect the Market Participant's anticipated exposure based on the information provided. Any additional Collateral requested shall be provided by the Market Participant by the applicable cure period.

Any determination that a Market Participant poses an unreasonable credit risk may be challenged via expedited arbitration. Market Participants retain all rights under the Federal Power Act, the Operating Agreement, and the PJM Tariff to appeal a determination that they pose an unreasonable credit risk and the actions taken by PJM as a result of that determination to the Federal Energy Regulatory Commission.

ATTACHMENT C

ATTACHMENT Q, SECTION II.B.3

3. Material Adverse Changes

Each Participant, and each Guarantor and Guaranteed Affiliate, is responsible for informing PJM ~~immediately~~, in writing, of any Material Adverse Change in its financial condition (or the financial condition of its Guarantor or any Guaranteed Affiliates) within ten (10~~five (5~~) Business Days of becoming aware~~the occurrence~~ of the Material Adverse Change. However, PJM may also independently establish from available information that a Participant, or its~~each~~ Guarantor(s) or ~~and~~ Guaranteed Affiliate(s),~~,~~ has experienced a Material Adverse Change in its financial condition without regard to whether such Participant, each Guarantor and Guaranteed Affiliate, has informed PJM of the same.

For the purposes of this Policy, a Material Adverse Change in financial condition may include, but is not be limited to, any of the following to the extent they would likely materially affect the likelihood of non-payment by the Participant:

(a) a downgrade of any debt rating by any Rating Agency;
(b) being placed on a credit watch with negative implications by any Rating Agency;
(c) a bankruptcy filing;
(d) insolvency;
(e)
(f) ~~(e) a report of a quarterly or annual loss or a decline in earnings of ten percent or more compared to the prior period;~~
~~(f)~~ restatement of prior financial statements;
(g) the resignation or removal of key officer(s) or director(s) unless there is a new key officer or director appointed or expected to be appointed, a transition plan in place pending the appointment of a new key officer or director, or a planned restructuring of such roles;
(h) the filing of a lawsuit or initiation of an arbitration, investigation or other proceeding that would likely have a~~could~~ Material adverse~~adversely~~ impact on the Participant's~~any current or future financial results or~~ financial condition and would likely materially~~or~~ increase the likelihood of non-payment;
(i) a Material financial default in another organized wholesale electric market, futures exchange or clearing house that has not been cured;
(j) a revocation of a license or other authority by any Federal or State regulatory agency; where such license or authority is necessary or important to the Participants continued business for example, FERC market-based rate authority, or State license to serve retail load;
(k) a Material Adverse Change~~significant change~~ in credit default swap spreads~~,~~ ~~market capitalization,~~ or other market-based risk measurement criteria, such as a recent increase in Moody's KMV Expected Default Frequency (EDFtm) that is noticeably greater than the increase in its peers' EDFtm rates, or a collateral

default swap (CDS) premium normally associated with an entity rated lower than investment grade;

(l) a Material financial default in a bilateral arrangement with another ~~Market~~ Participant that has not been cured;

(m) a Material Adverse Change in the outlook of any debt rating;

(n) any adverse changes in financial condition which, individually, or in the aggregate, are Material and would likely materially affect the likelihood of non-payment by the Participant;~~;~~

(o) any adverse changes, events or occurrences which, individually or in the aggregate, would likely materially~~could~~ affect the ability of the entity to pay its debts as they become due or would likely~~could~~ have a Material adverse effect on its~~any current or future financial results or~~ financial condition;

(p) ~~disclosure of conflict of interest issues;~~

(q) a significant decrease in market capitalization that would likely materially affect the likelihood of non-payment by the Participant; and~~; and~~

(r) an event or circumstance indicating that the Participant may present an unreasonable credit risk to the PJM Markets, ~~FTR markets and any other markets operated by PJM, or Members,~~ which may be identified based on the information it provides to PJM pursuant to this Policy.

Upon identification of a Material Adverse Change, PJM shall evaluate the financial strength and risk profile of the ~~Market~~ Participant, and its~~each~~ Guarantor(s) and/or Guaranteed Affiliate(s), at that time and on a more frequent basis going forward. If the result of such evaluation identifies unreasonable credit risk to the PJM Markets, ~~FTR markets and any other markets operated by~~ PJM ~~as further described below, PJM~~ will take steps to mitigate the financial exposure~~expsoure~~ to the PJM Markets.~~, FTR markets and any other markets operated by PJM.~~ These steps include, but are not limited to requiring the ~~Market~~ Participant, each Guarantor and/or Guaranteed Affiliate, to provide additional Collateral or ~~additional~~ Restricted Collateral that is commensurate with the amount of risk in which the Market Participant wants to engage, and/or limiting the ~~Market~~ Participant's ability to participate in the PJM Markets to the extent~~,~~ ~~FTR markets~~ and for the time-period necessary to mitigate the unreasonable credit risk to the~~any other markets operated by~~ PJM Markets.

In the event PJM determines that a Material Adverse Change in the financial condition or risk profile of a Market Participant, each Guarantor and/or Guaranteed Affiliate, warrants some action to mitigate risk~~a requirement to provide Collateral of any type~~, PJM shall provide the Market Participant, each Guarantor and/or Guaranteed Affiliate, a written explanation of why such a determination was made.

Suspension~~Conversely, in the event PJM determines there has been an improvement in the financial condition or risk profile~~ of a Market Participant will only occur if additional Collateral or Restricted Collateral, more stringent credit requirements or other more limited restrictions on the Participant, its~~,~~ Guarantor(s) ~~and/~~or Guaranteed Affiliate(s), cannot address~~such that~~ the unreasonable credit risk. Suspension~~amount~~ of a~~Collateral needed for that~~ Market

Participant will~~, Guarantor and/or Guaranteed Affiliate can~~ be used only as a last resort~~reduced, PJM shall provide a written explanation why such determination was made, including the amount of the Collateral reduction and indicating~~ when necessary to mitigate an unreasonable credit risk to the PJM Markets.

~~and how the reduction will be made.~~

ATTACHMENT D

VIII. Events of Default

If PJM determines that a Market Participant is in Credit Breach of its requirements, including payment requirements, or Financial Default, PJM may issue to the Market Participant a breach notice or Collateral Call.~~, and PJM may limit the Market Participant's privileges to participate in the PJM Markets, FTR markets and any other markets operated by PJM under the Agreements.~~ Failure to remedy the Credit Breach, Financial Default or satisfy a Collateral Call within the applicable cure period described in Operating Agreement, section 15.1.5, shall be considered an Event of Default. If a Participant fails to meet the requirements of this Attachment Q but then remedies the Credit Breach, Financial Default or satisfies a Collateral Call within the applicable cure period, then the Participant shall be deemed to have complied with this Attachment Q.

Only one cure period shall apply to a single event giving rise to a Credit Breach or Credit Breach default. Application of Collateral towards a non-payment shall not be considered a satisfactory cure of such Credit Breach or Financial Default if the Participant fails to meet all requirements of this Attachment Q after such application.

Events of Default by a Market Participant under the Agreements include, but are not limited to:

(a) failure to comply with any provision of this Attachment Q (except for the responsibility of a Market Participant to notify PJM of a Material Adverse Change);~~and specifically including but not limited to the failure to remit the required amount of Collateral within the time period required and failure to provide data, information and documentation required and/or requested by PJM by the requested deadline;~~

(b) pursuant to Operating Agreement, section 15.1.3 and Tariff, Part I, section 7.3, non-compliance with this Attachment Q under those respective Agreements;

(c) ~~a bankruptcy filing;~~

(d) insolvency;

(e) failure~~inability~~ to meet financial obligations to PJMSettlement when due, subject to the above cure period provisions and specifically not including a failure to post additional collateral immediately following an FTR auction related to portfolio diversification, in which case PJM rejects the Participant's bids in that round of that FTR auction (to avoid any ambiguity, such failure shall not be deemed an Event of Default under this Attachment Q or result in a Collateral Call or Credit Breach);~~;~~

(f) Merger Without Assumption; and

(g)

(h) material financial default in a PJM-based ~~another organized wholesale electric market, futures exchange or clearing house ; and~~

~~(h) financial default in a~~ bilateral FTR arrangement with another PJM Participant.

When an Event of Default under this Attachment Q or one or more of the Agreements has been declared, PJM~~, in coordination with PJM,~~ will take such actions as may be required or permitted under the Agreements, including but not limited to: (a) suspension and/or termination of the Participant's ongoing Transmission Service, (b) limitation, suspension and/or termination of participation in the PJM Markets, (c) close out and liquidate the Market Participant's market portfolio, exercising judgment in the manner in which this is achieved, and (d) demand Adequate Assurance of Performance upon reasonable grounds for insecurity regarding the performance of any Material obligation or Material Adverse Change to include unreasonable credit risk to the PJM Markets or FTR auctions. PJM has the right to liquidate all or a portion of a Participant's Collateral at its discretion to satisfy Total Net Obligations to PJM as a result of an Event of Default under this Attachment Q or one or more of the Agreements.

In the event a Market Participant has failed to satisfy the demand for Adequate Assurance of Performance, PJM may retain payments due to a Market Participant up to the amount of such Market Participant's unsatisfied Adequate Assurance of Performance, as a cash deposit security such party's obligations under the Agreements; provided, however, that a Market Participant will not be deemed to have satisfied its Adequate Assurance of Performance because PJM is retaining amounts due the Market Participant unless such party has satisfied all the Collateral requirements with respect to such amounts. No remedy for an Event of Default is or shall be deemed to be exclusive of any other available remedy or remedies. Each such remedy shall be distinct, separate and cumulative, shall not be deemed inconsistent with or in exclusion of any other available remedy, and shall be in addition to and separate and distinct from every other remedy.

In Event of ~~breach or~~ Default by a Participant, PJM may exercise any remedy or action allowed or prescribed by this Attachment Q immediately upon identification of the Event of Default or following a reasonable time after identification in order to properly investigate and to orderly exercise such remedy or action. Delay in exercising any allowed or prescribed remedy or action shall not preclude PJM from exercising such remedy or action at a later time.

PJM may hold a defaulting Participant's Collateral for as long as such party's positions exist and consistent with this Attachment Q, in order to protect PJM's membership from the impacts of such default.

No payments shall be due to a Participant, nor shall any payments be made to a Participant, while the Participant is in default or has been declared in Credit Breach or Financial Default of this Attachment Q or the Agreements, or while a Collateral Call is outstanding. PJM may apply towards an ongoing default any amounts that are held or later become available or due to the defaulting Participant through PJM's markets and systems.

In order to cover Obligations, PJM may hold a Participant's Collateral through the end of the billing period which includes the 90th day following the last day a Participant had activity, open positions, or accruing obligations (other than reconciliations and true-ups), and until such Participant has satisfactorily paid any obligations invoiced through such period. Obligations incurred or accrued through such period shall survive any withdrawal from PJM. In event of non-payment by a Participant, PJM may apply any Collateral to such Participant's Obligations, even if Participant had previously announced and effected its withdrawal from PJM.