

October 1, 2018

The Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: *PJM Interconnection, L.L.C.*, Docket No. ER19-23-000  
Default Allocation Assessment Clarifying Revisions

Dear Ms. Bose:

PJM Interconnection, L.L.C. (“PJM”), pursuant to section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d, hereby submits revisions to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), section 15.2.2. PJM’s revisions amend the Operating Agreement to clarify that a Member’s per capita portion Default Allocation Assessment<sup>1</sup> will not exceed \$10,000 per Member per calendar year, cumulative of all defaults, or more than once per each Member’s ongoing default if Default Allocation Assessment charges for a Member’s ongoing default span multiple calendar years. These revisions are a simple clarification that accounts for any event where a Member may default on a portfolio of Financial Transmission Right (“FTR”) positions or any other obligations that span two or more years, and do not otherwise change PJM’s Operating Agreement.

PJM presented this proposal to its Members at the Markets and Reliability Committee (“MRC”) and Members Committee (“MC”) meetings held on September 27, 2018. Specifically, the MRC endorsed this proposal with a sector-weighted vote of 3.73 out of 5.00 and the MC endorsed this proposal with a sector-weighted vote of 4.01 out of 5.00. PJM seeks Federal Energy Regulatory Commission (“Commission”) action on this proposal by November 30, 2018. PJM intends to implement this proposal pursuant to FPA section 205 on December 1, 2018.

---

<sup>1</sup> All capitalized terms that are not otherwise defined herein shall have the same meaning as they are defined in the PJM Open Access Transmission Tariff, Operating Agreement, or the Reliability Assurance Agreement among Load Serving Entities in the PJM Region.

## **I. BACKGROUND**

On June 21, 2018, PJM declared GreenHat Energy, LLC (“GreenHat”) to be in payment default of its financial obligations associated with GreenHat’s sizable FTR portfolio, which extends from June 2018 through May 2021. Since that June declaration of default, PJM has assessed almost \$42,500,000 in Default Allocation Assessment charges to PJM members for GreenHat’s ongoing payment default in accordance with the provisions of Operating Agreement, section 15.2.2. Under those provisions, ten percent of the charges have been assessed on a per-Member basis, resulting in a total per-Member charge of \$4,283 to date. The Operating Agreement provides that the per-member assessment “shall not exceed \$10,000 per Member per calendar year, cumulative of all defaults,” with any excess being reallocated through the other provisions of the Default Allocation Assessment calculation.<sup>2</sup> The original intent of the per-Member charge was to provide that all eligible members should share in defaults, because all Members benefit from their PJM membership. However, the charge was limited both in percentage allocated and in dollar amount to reflect the fact that default exposure arises from payment obligations which themselves arise from market activity, rather than membership. Accordingly, the large majority of a Default Allocation Assessment is borne by those Members who are also active in PJM’s markets through the activity portion of the Default Allocation Assessment.

Although it is not possible to quantify the size of an FTR default before it settles or is liquidated, PJM and the PJM Members are concerned that it is possible that the extent of the GreenHat default could be sufficient in size and duration that this single default could, by itself, cause the \$10,000 per-Member charge to be reached or exceeded, but because the default is ongoing through May 2021, the Members could be exposed to up to \$10,000 for the current calendar year plus each of the next three calendar years stemming from this one Member’s ongoing default. That is, PJM and its Members have agreed that it would be just and reasonable to extend the \$10,000 cap to apply not just to each calendar year, but also to each ongoing Member default as well, even if the default extends over two or more calendar years. This clarification will preserve the intent of the existing provision, which was to limit exposure to PJM Members without market activity.

GreenHat’s default brought to light an ambiguity in the Operating Agreement regarding the maximum assessment value applicable to Members for a default when the default in question is an ongoing default, such as on a portfolio of FTR positions that span more than one calendar year. The goal of these Operating Agreement revisions is to resolve this ambiguity.

---

<sup>2</sup> Operating Agreement, section 15.2.2.

## **II. THE PROPOSED TARIFF AND OPERATING AGREEMENT REVISIONS ARE JUST AND REASONABLE**

PJM's proposal revises the Operating Agreement to clarify that a Member's Default Allocation Assessment will not exceed \$10,000 per Member per calendar year, cumulative of all defaults, or more than once per each Member's ongoing default if Default Allocation Assessment charges for a Member's ongoing default span multiple calendar years. This clarification will help ensure that Members are not assessed extra Default Allocation Assessment charges for a Member's ongoing default simply due to the timing of the assessment, which may span multiple calendar years.

## **III. EFFECTIVE DATE**

PJM proposes to implement these revisions on December 1, 2018, which is more than sixty days after the date of this filing and is the same date PJM has requested as the effective date for three other concurrently submitted Tariff filings related to Member defaults and their effect on PJM's FTR market.<sup>3</sup>

## **IV. CORRESPONDENCE**

The following individuals are designated for inclusion on the official service list in this proceeding and for receipt of any communications regarding this filing:<sup>4</sup>

Craig Glazer  
Vice President–Federal Government Policy  
PJM Interconnection, L.L.C.  
1200 G Street, N.W., Suite 600  
Washington, D.C. 20005  
(202) 423-4743 (phone)  
(202) 393-7741 (fax)  
*craig.glazer@pjm.com*

Paul M. Flynn  
Victoria M. Lauterbach  
Wright & Talisman, P.C.  
1200 G Street, N.W., Suite 600  
Washington, D.C. 20005  
(202) 393-1200 (phone)  
(202) 393-1240 (fax)  
*flynn@wrightlaw.com*  
*lauterbach@wrightlaw.com*

---

<sup>3</sup> PJM is filing contemporaneously with this filing three other filings related to the treatment of FTR positions held by Members declared to be in default. Although these four filings are interrelated, each filing is a standalone filing and can and should be accepted on its own merits.

<sup>4</sup> To the extent necessary, PJM requests waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3), to permit all persons listed to be placed on the official service list for this proceeding.

Jennifer Tribulski  
Associate General Counsel  
PJM Interconnection, L.L.C.  
2750 Monroe Boulevard  
Audubon, PA 19403  
(610) 666-4363  
(610) 666-4281 (fax)  
*jennifer.tribulski@pjm.com*

## **V. DOCUMENTS ENCLOSED**

This filing consists of the following:

1. This transmittal letter; and
2. Revisions to the Operating Agreement (in redlined and non-redlined format (as Attachments A and B, respectively) and in electronic tariff filing format as required by Order No. 714<sup>5</sup>).

## **VI. SERVICE**

PJM has served a copy of this filing on all PJM members and on all state utility regulatory commissions in the PJM Region by posting this filing electronically. In accordance with the Commission's regulations,<sup>6</sup> PJM will post a copy of this filing to the FERC filings section of its internet site, located at the following link: <http://www.pjm.com/documents/ferc-manuals/ferc-filings.aspx> with a specific link to the newly filed document, and will send an email on the same date as this filing to all PJM members and all state utility regulatory commissions in the PJM Region<sup>7</sup> alerting them that this filing has been made by PJM and is available by following such link. PJM also serves the parties listed on the Commission's official service list for this docket. If the document is not immediately available by using the referenced link, the document will be available through the referenced link within twenty-four hours of the filing. Also, a copy of this filing will be available on the FERC's eLibrary website located at the following link: <http://www.ferc.gov/docs-filing/elibrary.asp> in accordance with the Commission's regulations and Order No. 714.

---

<sup>5</sup> Electronic Tariff Filings, Order No. 714, 2008–2013 FERC Stats. & Regs., Regs. Preambles ¶ 31,276 (2008), final rule, Order No. 714-A, III FERC Stats. & Regs., Regs. Preambles ¶ 31,356 (2014).

<sup>6</sup> See 18 C.F.R. §§ 35.2(e), 385.2010(f)(3).

<sup>7</sup> PJM already maintains, updates, and regularly uses email lists for all PJM members and affected state commissions.

## VII. CONCLUSION

Accordingly, PJM requests that the Commission accept the enclosed Operating Agreement revisions effective December 1, 2018.

Respectfully submitted,

Craig Glazer  
Vice President–Federal Government Policy  
PJM Interconnection, L.L.C.  
1200 G Street, N.W., Suite 600  
Washington, D.C. 20005  
(202) 423-4743 (phone)  
(202) 393-7741 (fax)  
*craig.glazer@pjm.com*

Jennifer Tribulski  
Associate General Counsel  
PJM Interconnection, L.L.C.  
2750 Monroe Boulevard  
Audubon, PA 19403  
(610) 666-4363  
(610) 666-4281 (fax)  
*jennifer.tribulski@pjm.com*

/s/ Victoria M. Lauterbach

Paul M. Flynn  
Victoria M. Lauterbach  
Wright & Talisman, P.C.  
1200 G Street, N.W., Suite 600  
Washington, D.C. 20005  
(202) 393-1200 (phone)  
(202) 393-1240 (fax)  
*flynn@wrightlaw.com*  
*lauterbach@wrightlaw.com*

***Attorneys for  
PJM Interconnection, L.L.C.***

October 1, 2018

# Attachment A

## Revisions to the PJM Operating Agreement

(Marked/Redline Format)

## **15.2 Enforcement of Obligations.**

If the Office of the Interconnection sends a notice to the PJM Board that a Member has failed to perform an obligation under this Agreement, the PJM Board, on behalf of the LLC and PJMSettlement, shall initiate such action against such Member to enforce such obligation as the PJM Board shall deem appropriate. Subject to the procedures specified in Section 15.1, a Member's failure to perform such obligation shall be deemed to be a default under this Agreement. In order to remedy a default, but without limiting any rights the LLC or PJMSettlement may have against the defaulting Member, the PJM Board may assess against, and collect from, the Members not in default, in proportion to their Default Allocation Assessment, an amount equal to the amount that the defaulting Member has failed to pay to PJMSettlement or the LLC (less amounts covered by Financial Security, held by PJMSettlement, on behalf of itself and as agent for the LLC, or indemnifications paid to the LLC or PJMSettlement), along with appropriate interest. Such assessment shall in no way relieve the defaulting Member of its obligations. In addition to any amounts in default, the defaulting Member shall be liable to the LLC and PJMSettlement for all reasonable costs incurred in enforcing the defaulting Member's obligations.

### **15.2.1 Collection by the Office of the Interconnection.**

PJMSettlement is authorized to pursue collection through such actions, legal or otherwise, as it reasonably deems appropriate, including but not limited to the prosecution of legal actions and assertion of claims on behalf of the affected Members in the state and federal courts as well as under the United States Bankruptcy Code. Prior to initiating formal legal action in state or federal court to pursue collection, PJMSettlement shall provide to the Members Committee an explanation of its intended action. Upon the duly seconded motion of any Member, the Members Committee may conduct a vote to afford PJMSettlement a sense of the membership as regards to PJMSettlement's intended action to pursue collection. PJMSettlement shall consider any such vote before initiating formal legal action and at all times during the course of any collection effort evaluate the expected benefits in pursuing such effort in light of any changed circumstances. After deducting the costs of collection, any amounts recovered by PJMSettlement shall be distributed to the Members who have paid their Default Allocation Assessment in proportion to the Default Allocation Assessment paid by each Member.

### **15.2.2 Default Allocation Assessment.**

(a) "Default Allocation Assessment" shall be equal to  $(0.1(1/N) + 0.9(A/Z))$ , where:

N = the total number of Members, calculated as of five o'clock p.m. eastern prevailing time on the date PJM declares a Member in default, excluding ex officio Members, State Consumer Advocates, Emergency and Economic Load Response Program Special Members, and municipal electric system Members that have been granted a waiver under section 17.2 of this Agreement.

A = for Members comprising factor "N" above, the Member's gross activity as determined by summing the absolute values of the charges and credits for each of the Activity

Line Items identified in section 15.2.2(b) of this Agreement as accounted for and billed pursuant to section 3 of Schedule 1 of this Agreement for the month of default and the two previous months.

$Z =$  the sum of factor A for all Members excluding ex officio Members, State Consumer Advocates, Emergency and Economic Load Response Program Special Members, and municipal electric system Members that have been granted a waiver under section 17.2 of this Agreement.

The assessment value of  $(0.1(1/N))$  shall not exceed \$10,000 per Member per calendar year, cumulative of all defaults, or more than once per Member default if Default Allocation Assessment charges for a single Member default span multiple calendar years. For this purpose, a default by an individual Member that spans multiple billing periods without cure shall be considered a single default. If one or more defaults arise that cause the value to exceed \$10,000 per Member, then the excess shall be reallocated through the gross activity factor.

(b) Activity Line Items shall be each of the line items on the PJM monthly bills net of load reconciliation adjustments and adjustments applicable to activity for the current billing month appearing on the same bill.



# Attachment B

## Revisions to the PJM Operating Agreement

(Clean Format)

## **15.2 Enforcement of Obligations.**

If the Office of the Interconnection sends a notice to the PJM Board that a Member has failed to perform an obligation under this Agreement, the PJM Board, on behalf of the LLC and PJMSettlement, shall initiate such action against such Member to enforce such obligation as the PJM Board shall deem appropriate. Subject to the procedures specified in Section 15.1, a Member's failure to perform such obligation shall be deemed to be a default under this Agreement. In order to remedy a default, but without limiting any rights the LLC or PJMSettlement may have against the defaulting Member, the PJM Board may assess against, and collect from, the Members not in default, in proportion to their Default Allocation Assessment, an amount equal to the amount that the defaulting Member has failed to pay to PJMSettlement or the LLC (less amounts covered by Financial Security, held by PJMSettlement, on behalf of itself and as agent for the LLC, or indemnifications paid to the LLC or PJMSettlement), along with appropriate interest. Such assessment shall in no way relieve the defaulting Member of its obligations. In addition to any amounts in default, the defaulting Member shall be liable to the LLC and PJMSettlement for all reasonable costs incurred in enforcing the defaulting Member's obligations.

### **15.2.1 Collection by the Office of the Interconnection.**

PJMSettlement is authorized to pursue collection through such actions, legal or otherwise, as it reasonably deems appropriate, including but not limited to the prosecution of legal actions and assertion of claims on behalf of the affected Members in the state and federal courts as well as under the United States Bankruptcy Code. Prior to initiating formal legal action in state or federal court to pursue collection, PJMSettlement shall provide to the Members Committee an explanation of its intended action. Upon the duly seconded motion of any Member, the Members Committee may conduct a vote to afford PJMSettlement a sense of the membership as regards to PJMSettlement's intended action to pursue collection. PJMSettlement shall consider any such vote before initiating formal legal action and at all times during the course of any collection effort evaluate the expected benefits in pursuing such effort in light of any changed circumstances. After deducting the costs of collection, any amounts recovered by PJMSettlement shall be distributed to the Members who have paid their Default Allocation Assessment in proportion to the Default Allocation Assessment paid by each Member.

### **15.2.2 Default Allocation Assessment.**

(a) "Default Allocation Assessment" shall be equal to  $(0.1(1/N) + 0.9(A/Z))$ , where:

N = the total number of Members, calculated as of five o'clock p.m. eastern prevailing time on the date PJM declares a Member in default, excluding ex officio Members, State Consumer Advocates, Emergency and Economic Load Response Program Special Members, and municipal electric system Members that have been granted a waiver under section 17.2 of this Agreement.

A = for Members comprising factor "N" above, the Member's gross activity as determined by summing the absolute values of the charges and credits for each of the Activity

Line Items identified in section 15.2.2(b) of this Agreement as accounted for and billed pursuant to section 3 of Schedule 1 of this Agreement for the month of default and the two previous months.

$Z =$  the sum of factor A for all Members excluding ex officio Members, State Consumer Advocates, Emergency and Economic Load Response Program Special Members, and municipal electric system Members that have been granted a waiver under section 17.2 of this Agreement.

The assessment value of  $(0.1(1/N))$  shall not exceed \$10,000 per Member per calendar year, cumulative of all defaults, or more than once per Member default if Default Allocation Assessment charges for a single Member default span multiple calendar years. For this purpose, a default by an individual Member that spans multiple billing periods without cure shall be considered a single default. If one or more defaults arise that cause the value to exceed \$10,000 per Member, then the excess shall be reallocated through the gross activity factor.

(b) Activity Line Items shall be each of the line items on the PJM monthly bills net of load reconciliation adjustments and adjustments applicable to activity for the current billing month appearing on the same bill.