

March 23, 2023

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

*Re: PJM Interconnection, L.L.C., Docket No. ER23-1058-001
Response to Commission Deficiency Letter
Request for Action No Later Than April 7, 2023, and Effective Date of April 8, 2023
Request for Shortened 5-Day Comment Period*

Dear Secretary Bose:

PJM Interconnection, L.L.C. (“PJM”), pursuant to the Commission’s March 21, 2023 letter requesting additional information in this proceeding,¹ encloses its written responses to the questions listed in the letter. These responses concern PJM’s February 6, 2023 filing² of revisions under section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d, to the PJM Open Access Transmission Tariff (“Tariff”) and Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”) to reconcile certain inconsistencies between the two documents and to add language to the Tariff and Operating Agreement that identifies four circumstances where PJM may authorize a Market Participant to continue participation in PJM’s markets notwithstanding the occurrence of an Event of Default. In the March 21 Letter, the Commission posed two questions regarding the proposed Tariff and Operating Agreement language adding the four circumstances. PJM’s responses are enclosed as Attachment 1.

Request for Action No Later Than April 7, 2023, and Effective Date of April 8, 2023

In the February 6 Filing, PJM requested an effective date of April 8, 2023, and that the Commission issue an order on the proposed revisions by April 7, 2023.³ PJM requested these dates purposefully. PJM is required to issue the March monthly bill by April 7, 2023. Those monthly bills will include any Non-Performances Charges related to Winter Storm Elliott. The aggregate Non-Performances Charge will be between one to two billion dollars. While PJM has proactively acted to reduce the risk of Capacity Market Seller default by proposing to amend the

¹ *PJM Interconnection, L.L.C.*, Deficiency Letter, Docket No. ER23-1058-000 (Mar. 21, 2023) (“March 21 Letter”).

² *PJM Interconnection, L.L.C.*, Alignment of PJM Authority upon a Market Participant Event of Default, Docket No. ER23-1058-000 (Feb. 6, 2023) (“February 6 Filing”).

³ See February 6 Filing at 12.

manner in which the Winter Storm Elliott Non-Performance Changes may be billed,⁴ the risk of default will remain, even if those revisions are accepted. PJM believes that the flexibility provided in the proposed revisions is critical to preserving the availability of resources needed to maintain reliability.

To mitigate the impact of any default, PJM proposed the Tariff and Operating Agreement revisions in this docket to provide PJM with the ability to ensure grid reliability and resiliency even if a seller defaults, “by ensuring that supply resources needed to meet reliability needs do not automatically become unavailable [due to an Event of Default] at the very time they may be most needed.”⁵ As PJM explained in the February 6 Filing, “[t]he explicit identification of these four circumstances in the Tariff and Operating Agreement will provide a legal avenue through which physically available capacity resources can continue to operate.”⁶ Accordingly, Commission action on the proposed Tariff and Operating Agreement revisions by April 7, 2023, with an April 8, 2023 effective date is appropriate to provide additional certainty to market participants and to avoid any reliability challenges that could arise from placing into default units that are needed for reliability in a given circumstance.

Request for Shortened 5-Day Comment Period

To facilitate Commission action by April 7, 2023, PJM requests a shortened comment period of 5 days, i.e., March 28, 2023. A shortened comment period is warranted given, as explained above, the urgent need for these revisions. Moreover, a shortened comment period will not harm other parties, as the scope of issues here is very limited. As explained in the responses to the March 21 Letter in Attachment A, PJM inadvertently included the phrase “in a limited manner” in the proposed Operating Agreement revisions, and PJM is including in this filing a revised Operating Agreement section that omits that phrase. Thus, PJM is not proposing to include that phrase in the Operating Agreement. Moreover, upon receipt of the March 21 Letter, PJM explained this error to the PJM membership at the PJM Members Committee meeting of March 22, 2023 to provide transparency and an airing of this issue with the PJM membership prior to the filing of this response. The only other issue discussed is that PJM confirms that the proposed four circumstances where PJM may authorize a Market Participant to continue participation in PJM’s markets notwithstanding the occurrence of an Event of Default is exhaustive.

In short, a 5-day comment period is appropriate here given the narrow scope of issues discussed in PJM’s responses and the urgency of the proposed changes.

⁴See *PJM Interconnection, L.L.C.*, Revisions to the Billing of Non-Performance Charges, Docket No. ER23-1038-000 (February 2, 2023).

⁵ February 6 Filing at 12.

⁶ *Id.* at 8.

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In accordance with the foregoing, PJM respectfully requests that the Commission accept the proposed revisions to the Operating Agreement and the Tariff effective as of April 8, 2023, and issue an order on this FPA section 205 submission by no later than April, 7, 2023, as proposed in the February 6 Filing.

Respectfully submitted,

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CC (via email): Tyler Stoff, FERC

March 23, 2023

Attachment 1

PJM Responses To March 21 Letter

PJM Interconnection, L.L.C.
Docket No. ER23-1058-001
March 23, 2021 Response of PJM to
FERC Staff's March 21 Information Request

1. PJM states that it is proposing “identical revisions” to the Tariff and Operating Agreement.⁷ PJM proposes to add the following language to section 15.1.5 (vi) of the Operating Agreement:

“vi) PJM may permit a defaulting Market Participant to continue to participate in PJM Markets in a limited manner: (a) in support of grid reliability, (b) when such Market Participant is a net market seller, (c) when such Market Participant has the ability to post collateral, or (d) to enable certain customers to continue to receive service prior to PJM receiving regulatory and or legal approval to terminate.”⁸

PJM proposes to add the same language to Attachment Q, section IX of the Tariff, except that the Tariff change omits the phrase “in a limited manner.”⁹

- a. Please explain the meaning of the phrase “in a limited manner” as used in PJM’s change to the Operating Agreement.

Answer:

The inclusion in the proposed Operating Agreement provisions of the phrase “in a limited manner” was inadvertent and in error. Preliminary drafts of the proposed Operating Agreement and Tariff revisions included the phrase “in a limited manner,” but the phrase ultimately was determined to be too vague and removed. Unfortunately, this removal extended only as far as the proposed Tariff revisions, and PJM inadvertently retained the phrase in the proposed Operating Agreement.

Accordingly, PJM includes a revised proposed Operating Agreement, section 15.1.5 that omits the phrase “in a limited manner” but otherwise includes all the revisions proposed in the February 6 Filing.

⁷ February 6 Filing at 8.

⁸ *Id.*

⁹ *Id.*

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- b. Please explain PJM's purpose for (i) including the phrase "in a limited manner" in its change to section 15.1.5 of the Operating Agreement, while (ii) omitting the phrase "in a limited manner" in its change to section IX of Attachment Q to the Tariff.

Answer:

As discussed in the response to Request 1(a) above, the phrase was inadvertently included in the proposed Operating Agreement revisions, and PJM is submitting a revised proposed Operating Agreement, section 15.1.5 that omits the phrase.

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2. PJM's proposed revisions to both the Operating Agreement and Attachment Q to the Tariff list four circumstances in which PJM may permit a defaulting Market Participant to continue to participate in PJM markets.¹⁰
 - a. Are these four circumstances intended to be an exclusive list of the circumstances in which PJM may permit a defaulting Market Participant to continue to participate in PJM markets under both the Operating Agreement and Attachment Q to the Tariff? If not, please explain.

Answer:

In this proceeding, PJM proposes that the four circumstances be an exhaustive list of the circumstances in which PJM may permit a defaulting Market Participant to continue to participate in PJM markets under both the Operating Agreement and Attachment Q to the Tariff. However, as with any tariff provision, circumstances may change, and pursuant to Federal Power Act sections 205 and/or 206, PJM (or another entity) may propose in the future to change that list or make it non-exhaustive. Indeed, as discussed in PJM's March 13, 2023 answer in this docket, PJM may propose to refine the language proposed in this docket in the future as a result of PJM's and the Independent Market Monitor's broader review of the Tariff's and Operating Agreement's default and remedy provisions.¹¹ However, the proposal before the Commission through this Section 205 proceeding is limited to identifying these four circumstances as just and reasonable grounds for permitting a default Market Participant to continue to participate in the PJM markets.

¹⁰ February 6 Filing at 8.

¹¹ See *PJM Interconnection, L.L.C.*, Motion for Leave to Answer and Limited Answer of PJM Interconnection, Docket No. ER23-1058-000, at 7-8 (March 13, 2023).

Attachment 2

Revisions to the
PJM Operating Agreement

(Marked / Redline Format)

15.1 Failure to Meet Obligations.

15.1.1 Suspension and Termination of Market Participant Rights.

PJM may limit, suspend or terminate a Market Participant's right to participate in any PJM Market if it determines that the Market Participant does not continue to meet the obligations set forth in any of the Agreements, including but not limited to the obligation to be in compliance with the terms, or operating characteristics of any of its prior scheduled transactions in any market operated by PJM, the creditworthiness requirements set forth in Tariff, Attachment Q and/or the obligation to make timely payment, provided that PJM and/or PJMSettlement has notified the Market Participant of any such deficiency and afforded the Market Participant a reasonable opportunity to cure pursuant to section 15.1.5 below, or Tariff, Attachment Q, as applicable. PJM shall reinstate a Market Participant's right to participate in any PJM Market upon a determination by PJM and/or PJMSettlement that the Market Participant has, within the parameters of its opportunity to cure provided pursuant to section 15.1.5 below, or Tariff, Attachment Q, as applicable, satisfied the applicable requirements and is in compliance with the obligations set forth in the Agreements.

15.1.2 [Reserved for Future Use]

15.1.3 Payment of Bills.

Members and Participants shall make full and timely payment, in accordance with the terms specified by PJM, of all bills rendered in connection with or arising under or from any of the Agreements, any service or rate schedule, any tariff, or any services performed by PJM or transactions with PJMSettlement, notwithstanding any disputed amount, but any such payment shall not be deemed a waiver of any right with respect to such dispute. Any Member or Participant that fails to make full and timely payment to PJMSettlement (of amounts owed either directly to PJMSettlement or PJMSettlement as agent for PJM) or otherwise fails to meet its financial or other obligations to a Member, PJMSettlement, or PJM under any of the Agreements, shall, in addition to any requirement set forth in Operating Agreement, section 15.1 and upon expiration of the cure period specified in section 15.1.5 below, be in default.

15.1.4 Breach Notification and Remedy

If PJM or PJMSettlement concludes, upon its own initiative or the recommendation of or complaint by the Members Committee or any Member, that a Member or Participant is in breach of any of its obligation under any of the Agreements, including, but not limited to, the obligation to make timely payment and the obligation to meet PJM's creditworthiness standards and to otherwise comply with PJM's credit policies, PJM and/or PJMSettlement shall so notify such Member or Participant. The notified Member or Participant may remedy such asserted breach by: (i) paying all amounts assertedly due, along with interest on such amounts calculated in accordance with the methodology specified for interest on refunds in FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii); and (ii) demonstration to the satisfaction of PJM and/or PJMSettlement that the Member or Participant has taken appropriate measures to meet any other obligation of which it was deemed to be in breach; provided, however, that any such payment or

demonstration may be subject to a reservation of rights, if any, to subject such matter to the PJM Dispute Resolution Procedures; and provided, further, that any such determination by PJM and/or PJMSettlement may be subject to review by the PJM Board upon request of the Member or Participant involved or PJM and/or PJMSettlement.

15.1.5 Default Notification and Remedy

If a Member or Participant has not remedied a breach, as described in section 15.1.4 above, by 4:00 p.m. Eastern Prevailing Time on the first Business Day following PJM's or PJMSettlement's issuance of a written notice of breach or Collateral Call, the notice of which is issued before 1:00 p.m. Eastern Prevailing Time, or by 4:00 p.m. Eastern Prevailing Time on the second Business Day following PJM's or PJMSettlement's issuance to the Member or Participant of a written notice of breach or Collateral Call, the notice of which is issued at or after 1:00 p.m. Eastern Prevailing Time, or receipt of the PJM Board's decision on review, if applicable, then the Member or Participant shall be in default and, in addition to such other remedies as may be available to PJM or PJMSettlement:

- i) A defaulting Market Participant ~~shall~~may be precluded from buying or selling in any market operated by PJM until the default is remedied as set forth above;
- ii) A defaulting Member shall not be entitled to participate in the activities of any committee or other body established by the Members Committee or PJM; and
- iii) A defaulting Member shall not be entitled to vote on the Members Committee or any other committee or other body established pursuant to this Agreement.
- iv) PJM shall notify all other Members of the default.
- v) The Financial Transmission Rights positions of a Member in default shall be addressed as provided in Operating Agreement, Schedule 1, section 7.3.9 and the parallel provisions of Tariff, Attachment K-Appendix, section 7.3.9.
- vi) PJM may permit a defaulting Market Participant to continue to participate in PJM Markets: (a) in support of grid reliability, (b) when such Market Participant is a net market seller, (c) when such Market Participant has the ability to post collateral, or (d) to enable certain customers to continue to receive service prior to PJM receiving regulatory and or legal approval to terminate.

15.1.6 Reinstatement of Member Following Default and Remedy

a. A Member that has been declared in default, solely of PJM's and PJMSettlement's creditworthiness standards, or fails to otherwise comply with PJM's credit policies as more fully described in Tariff, Attachment Q, once within any 12 month period may be reinstated in full after remedying such default and satisfying any requirements imposed upon the Member as a result of the default.

b. A Member that has been declared in default of any of the Agreements for failing to: (i) make timely payments when due once during any prior 12 month period, or (ii) adhere to PJM's creditworthiness standards and credit policies, twice during any prior 12 month period, may be subject to the following restrictions:

- a) Loss of stakeholder privileges, including voting privileges, for 12 months following such default; and
- b) Loss of the allowance of unsecured credit for 12 months following such default

c. A Member that has been declared in default of this Agreement for failing to: (i) make timely payments when due twice during any prior 12 month period, or (ii) adhere to PJM's creditworthiness standards and credit policies, three times during any prior 12 month period, shall, except as provided for in section 15.1.6(d) below, not be eligible to be reinstated as a Member to this Agreement and its membership rights pursuant to this Agreement shall be terminated in accordance with Operating Agreement, section 4.1(c), notwithstanding whether such default has been remedied. Furthermore:

- a) PJM and PJMSettlement shall address all of the Member's current and forward positions in accordance with the provisions of this Agreement and the PJM Tariff; and
- b) A Member terminated in accordance with these provisions shall be precluded from seeking future membership in PJM under this Agreement whether in the name of the Member when it was terminated from PJM membership or as a new Applicant under a different name, affiliation, or organization if the Member or new Applicant experienced a previous default that resulted in a loss to the PJM Markets and was terminated from membership. Whether an Applicant should be considered the same as a Member that previously defaulted will be determined based on the factors identified in Operating Agreement, Schedule 1, section 1.4.8, and the parallel provisions of Tariff, Attachment K-Appendix, section 1.4.8.

d. A Member may appeal a determination made pursuant to the foregoing procedures utilizing PJM's Dispute Resolution Procedures as set forth in Operating Agreement, Schedule 5, (provided, however, that a Member's decision to utilize these procedures shall not operate to stay the ability of PJM to exercise any and all of its rights under this Agreement and the PJM Tariff) and may be reinstated provided that the Member can demonstrate the following:

- a) that it has otherwise consistently complied with its obligations under this Agreement and the PJM Tariff; and
- b) the failure to comply was not material; and
- c) the failure to comply was due in large part to conditions that were not in the common course of business.

15.1.7 Allocation of Costs and Proceeds Resulting from Addressing Defaulting Member Financial Transmission Rights Positions.

Addressing a defaulting Member's Financial Transmission Rights positions pursuant to Operating Agreement, Schedule 1, section 7.3.9, and Tariff, Attachment K-Appendix, section 7.3.9, shall result in a final settlement amount. The final settlement amount may be aggregated with any other amounts owed by the defaulting Member to PJM and/or PJMSettlement and may be set off by PJM and/or PJMSettlement against any amounts owed by PJM and/or PJMSettlement to the defaulting Member for purposes of determining the Default Allocation Assessment pursuant to the provisions of section 15.2.2 below. Any payments made to a Member purchasing some or all of a liquidated Financial Transmission Rights portfolio shall be net of that Member's charge resulting from a Default Allocation Assessment.

Attachment 3

Revisions to the
PJM Operating Agreement

(Clean Format)

15.1 Failure to Meet Obligations.

15.1.1 Suspension and Termination of Market Participant Rights.

PJM may limit, suspend or terminate a Market Participant's right to participate in any PJM Market if it determines that the Market Participant does not continue to meet the obligations set forth in any of the Agreements, including but not limited to the obligation to be in compliance with the terms, or operating characteristics of any of its prior scheduled transactions in any market operated by PJM, the creditworthiness requirements set forth in Tariff, Attachment Q and/or the obligation to make timely payment, provided that PJM and/or PJMSettlement has notified the Market Participant of any such deficiency and afforded the Market Participant a reasonable opportunity to cure pursuant to section 15.1.5 below, or Tariff, Attachment Q, as applicable. PJM shall reinstate a Market Participant's right to participate in any PJM Market upon a determination by PJM and/or PJMSettlement that the Market Participant has, within the parameters of its opportunity to cure provided pursuant to section 15.1.5 below, or Tariff, Attachment Q, as applicable, satisfied the applicable requirements and is in compliance with the obligations set forth in the Agreements.

15.1.2 [Reserved for Future Use]

15.1.3 Payment of Bills.

Members and Participants shall make full and timely payment, in accordance with the terms specified by PJM, of all bills rendered in connection with or arising under or from any of the Agreements, any service or rate schedule, any tariff, or any services performed by PJM or transactions with PJMSettlement, notwithstanding any disputed amount, but any such payment shall not be deemed a waiver of any right with respect to such dispute. Any Member or Participant that fails to make full and timely payment to PJMSettlement (of amounts owed either directly to PJMSettlement or PJMSettlement as agent for PJM) or otherwise fails to meet its financial or other obligations to a Member, PJMSettlement, or PJM under any of the Agreements, shall, in addition to any requirement set forth in Operating Agreement, section 15.1 and upon expiration of the cure period specified in section 15.1.5 below, be in default.

15.1.4 Breach Notification and Remedy

If PJM or PJMSettlement concludes, upon its own initiative or the recommendation of or complaint by the Members Committee or any Member, that a Member or Participant is in breach of any of its obligation under any of the Agreements, including, but not limited to, the obligation to make timely payment and the obligation to meet PJM's creditworthiness standards and to otherwise comply with PJM's credit policies, PJM and/or PJMSettlement shall so notify such Member or Participant. The notified Member or Participant may remedy such asserted breach by: (i) paying all amounts assertedly due, along with interest on such amounts calculated in accordance with the methodology specified for interest on refunds in FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii); and (ii) demonstration to the satisfaction of PJM and/or PJMSettlement that the Member or Participant has taken appropriate measures to meet any other obligation of which it was deemed to be in breach; provided, however, that any such payment or demonstration

may be subject to a reservation of rights, if any, to subject such matter to the PJM Dispute Resolution Procedures; and provided, further, that any such determination by PJM and/or PJMSettlement may be subject to review by the PJM Board upon request of the Member or Participant involved or PJM and/or PJMSettlement.

15.1.5 Default Notification and Remedy

If a Member or Participant has not remedied a breach, as described in section 15.1.4 above, by 4:00 p.m. Eastern Prevailing Time on the first Business Day following PJM's or PJMSettlement's issuance of a written notice of breach or Collateral Call, the notice of which is issued before 1:00 p.m. Eastern Prevailing Time, or by 4:00 p.m. Eastern Prevailing Time on the second Business Day following PJM's or PJMSettlement's issuance to the Member or Participant of a written notice of breach or Collateral Call, the notice of which is issued at or after 1:00 p.m. Eastern Prevailing Time, or receipt of the PJM Board's decision on review, if applicable, then the Member or Participant shall be in default and, in addition to such other remedies as may be available to PJM or PJMSettlement:

- i) A defaulting Market Participant may be precluded from buying or selling in any market operated by PJM until the default is remedied as set forth above;
- ii) A defaulting Member shall not be entitled to participate in the activities of any committee or other body established by the Members Committee or PJM; and
- iii) A defaulting Member shall not be entitled to vote on the Members Committee or any other committee or other body established pursuant to this Agreement.
- iv) PJM shall notify all other Members of the default.
- v) The Financial Transmission Rights positions of a Member in default shall be addressed as provided in Operating Agreement, Schedule 1, section 7.3.9 and the parallel provisions of Tariff, Attachment K-Appendix, section 7.3.9.
- vi) PJM may permit a defaulting Market Participant to continue to participate in PJM Markets: (a) in support of grid reliability, (b) when such Market Participant is a net market seller, (c) when such Market Participant has the ability to post collateral, or (d) to enable certain customers to continue to receive service prior to PJM receiving regulatory and or legal approval to terminate.

15.1.6 Reinstatement of Member Following Default and Remedy

a. A Member that has been declared in default, solely of PJM's and PJMSettlement's creditworthiness standards, or fails to otherwise comply with PJM's credit policies as more fully described in Tariff, Attachment Q, once within any 12 month period may be reinstated in full after remedying such default and satisfying any requirements imposed upon the Member as a result of the default.

b. A Member that has been declared in default of any of the Agreements for failing to: (i) make timely payments when due once during any prior 12 month period, or (ii) adhere to PJM's creditworthiness standards and credit policies, twice during any prior 12 month period, may be subject to the following restrictions:

- a) Loss of stakeholder privileges, including voting privileges, for 12 months following such default; and
- b) Loss of the allowance of unsecured credit for 12 months following such default

c. A Member that has been declared in default of this Agreement for failing to: (i) make timely payments when due twice during any prior 12 month period, or (ii) adhere to PJM's creditworthiness standards and credit policies, three times during any prior 12 month period, shall, except as provided for in section 15.1.6(d) below, not be eligible to be reinstated as a Member to this Agreement and its membership rights pursuant to this Agreement shall be terminated in accordance with Operating Agreement, section 4.1(c), notwithstanding whether such default has been remedied. Furthermore:

- a) PJM and PJMSettlement shall address all of the Member's current and forward positions in accordance with the provisions of this Agreement and the PJM Tariff; and
- b) A Member terminated in accordance with these provisions shall be precluded from seeking future membership in PJM under this Agreement whether in the name of the Member when it was terminated from PJM membership or as a new Applicant under a different name, affiliation, or organization if the Member or new Applicant experienced a previous default that resulted in a loss to the PJM Markets and was terminated from membership. Whether an Applicant should be considered the same as a Member that previously defaulted will be determined based on the factors identified in Operating Agreement, Schedule 1, section 1.4.8, and the parallel provisions of Tariff, Attachment K-Appendix, section 1.4.8.

d. A Member may appeal a determination made pursuant to the foregoing procedures utilizing PJM's Dispute Resolution Procedures as set forth in Operating Agreement, Schedule 5, (provided, however, that a Member's decision to utilize these procedures shall not operate to stay the ability of PJM to exercise any and all of its rights under this Agreement and the PJM Tariff) and may be reinstated provided that the Member can demonstrate the following:

- a) that it has otherwise consistently complied with its obligations under this Agreement and the PJM Tariff; and
- b) the failure to comply was not material; and
- c) the failure to comply was due in large part to conditions that were not in the common course of business.

15.1.7 Allocation of Costs and Proceeds Resulting from Addressing Defaulting Member Financial Transmission Rights Positions.

Addressing a defaulting Member's Financial Transmission Rights positions pursuant to Operating Agreement, Schedule 1, section 7.3.9, and Tariff, Attachment K-Appendix, section 7.3.9, shall result in a final settlement amount. The final settlement amount may be aggregated with any other amounts owed by the defaulting Member to PJM and/or PJMSettlement and may be set off by PJM and/or PJMSettlement against any amounts owed by PJM and/or PJMSettlement to the defaulting Member for purposes of determining the Default Allocation Assessment pursuant to the provisions of section 15.2.2 below. Any payments made to a Member purchasing some or all of a liquidated Financial Transmission Rights portfolio shall be net of that Member's charge resulting from a Default Allocation Assessment.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 23rd day of March 2023.

/s/ Ryan J. Collins
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