



# Revised Designated Entity Agreement: Overview of PJM Approach In Response to Stakeholder Comments

February 20, 2014



- *Process*

- First draft of DEA provided on November 18, 2013
- First round of comments received and posted
- Posting of revised DEA on December 16, 2013
- Second round of comments received and posted:

AEP

ITC

Atlantic Wind Connection

LS Power

Dominion Virginia Power

PHI

Duquesne

- Review of comments and PJM approach

- Article 8 Early Termination
  - Question raised around Section 8.1 termination language and other references to termination outside of Article 8

## PJM Response:

- The question focused on the language ‘may result in termination of this Agreement’ found in Sections 3.1 and 4.1.0 which could imply that there are different termination processes outside of Article 8, which is not the case. PJM has removed the language in question from Sections 3.1 and 4.1.0 to be more precise.

- Coordination with the CIA

- A scenario was posed where a breach or force majeure event under the CIA caused a milestone breach of the DEA.

PJM Response:

- There is an obligation for the DE to execute a CIA
- It is critical that the parties identify their obligations and responsibilities under the CIA and clearly set forth in the project schedules those dates that will align with the DEA.
- Failure to meet a milestone under the DEA will be addressed on a case by case basis.

- Section 4.1.0 Milestone Dates
  - Commenters have proposed to modify the language in Section 4.1.0 Milestone Dates to include the following: **‘It is the intent of the Parties that the extension of Milestone date(s) as described in this Section 4.1.0 or Section 4.3.0 of this Agreement will not in and of itself give rise to any FERC filing.’**

## PJM Response:

- PJM will amend the DEA to extend or change milestones in the cases where PJM deems it appropriate based upon the circumstances and will make a FERC filing if necessary.

- Section 4.4 Project Tracking
  - A request has been made to change the construction status report periodicity be changed from a monthly to a quarterly basis.

## PJM Response:

- PJM has modified the agreement to indicate quarterly meetings and this is consistent with current practice on backbone reliability projects. This would not preclude entities to mutually agree to meet more frequently if appropriate.

## Section 4.1.1 Right to Inspect

- A request was made to add the following language to the Section : ‘**provided, however, that after any such inspection, Transmission Provider shall inform Designated Entity of any design or construction practices or standards issues it becomes aware of. ...**’.

### PJM Response:

- The requirement that the Transmission Provider notify the Designated Entity of any standards or construction practice issue that they become aware of creates an implicit approval by the Transmission Provider, which is in direct conflict with the previous sentence in the Section that states: ‘Such inspection shall not be deemed as review or approval by Transmission Provider of any design or construction practices or standards used by the Designated Entity’.
- As stated in Section 4.1.1, the inspection is ‘for the purposes of assessing the progress of the Project and satisfaction of milestones.’

- Section 2.1 Term
  - A question was posed asking how the agreement will recognize projects with multiple phases and in-service dates.

## PJM Response:

- The milestones in Schedule C can be written to recognize multiple project phases with different in-service dates. Those project portions that come on line prior to the total project completion would be required to meet the provisions of Section 16.1 Partial Operation.



## Section 3.0 Obligation to Provide Security

- Multiple questions and comments were raised on Section 3.0:
  - What if the Designated Entity has signed the CTOA?

PJM Response:

- There is an obligation under the DEA to provide security.

- PJM should support recovery of the letter of credit costs at FERC

PJM Response:

- Transmission rate filings are under the jurisdiction of FERC. Nothing in the DEA should be considered a prudence review by PJM or in any way affect the DE's ability to file for or obtain cost recovery of the costs for the project.

## Section 3.0 Obligation to Provide Security (continued)

- PJM needs to provide alternatives for when the credit markets dry-up for reasons unrelated to issues with the Designated Entity

PJM Response:

- The DEA provides for cash security alternative.

- Section 5.0 Coordination and Interconnection Agreement with Transmission Owner(s)
  - Is ‘Commission’ a defined term:

PJM Response:

- All Tariff definitions have been included by reference and ‘Commission’ is defined there.

## PJM Approach

- The DE must be responsible for their actions under the DEA and responsible for protecting PJM from any third party actions
- PJM cannot assume risk on behalf of the DE
- PJM cannot relieve the DE's obligations to PJM
  - Any risk assumed would be passed onto PJM members

## PJM Approach (continued)

- What DEA provisions apply?
  - Limitation of Liability (Section 9.0)
  - Indemnity (Section 9.1)
  - Insurance (Article 6)

- Review the remaining open DEA and CIA questions and comments
- Finalize DEA
- Finalize CIA or CIA alternative approach
- File agreements at the FERC