

# Commonwealth of PA PJM Membership Application



Bureau of Procurement



## Agenda

- Why does the Commonwealth want to be a PJM member?
- Proposed Amendments to the PJM Operating Agreement
- How will it benefit the Commonwealth and the PJM member community?



## Why does the Commonwealth want to be a PJM member?

- The Commonwealth wishes to become a PJM member
  - The Commonwealth of PA (COPA) consumes over 1 million MWh of electricity annually
  - We own more than 4000 accounts located in all of the electric utilities in PA that are part of PJM.
- The Commonwealth spends over \$100 million annually on electricity
  - Need a method to better manage our loads and costs in areas of current and future un-capped utility generation rates



In order to be a Member of the PJM, the Commonwealth of Pennsylvania Department of General Services requires certain modifications to the PJM Operating Agreement.

The following is a summary of the changes required to meet Pennsylvania Law.



## PROPOSED AMENDMENTS TO THE PJM OPERATING AGREEMENT

- 1. The Commonwealth of Pennsylvania, Department of General Services proposes the following definition be placed in the appropriate section of the Operating Agreement to define the state agency that is seeking membership in the PJM:
  - “Department of General Services” or “DGS”: The agency of the Commonwealth of Pennsylvania that is authorized to act as the purchasing agency for state agencies as provided for by law.
  -
- 2. Section 5.1 (b) Working Capital and Capital Contributions: Add a new subparagraph (d) which states the following:
  - The provisions of 5.1 (b) do not apply to DGS.
  - Notes: The Department of General Services is requesting a waiver from the provisions of Sections 5.1(b) because the PA Constitution (Article 8, Section 8) contains a prohibition against the pledge or loan of the credit of the Commonwealth to any individual, corporation or association. Accordingly, it would be unconstitutional for DGS to incur debt on behalf of the state to contribute capital to the PJM Interconnection.



- 3. Section 15.2.2: Revise subparagraph (a) by adding “DGS” to the exclusions within the definition of N and Z.
- 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, DGS, and municipal electric system Members that have been granted a waiver under section 17.2 of this Agreement.
- Z = the sum of factor A for all members excluding *ex officio* Members, State Consumer Advocates, Emergency and Economic Load Response Program Special Members, DGS, and municipal electric system Members that have been granted a waiver under section 17.2 of this Agreement.
- Notes: The Department of General Services is requesting a waiver from the Default Allocation Assessment because a Commonwealth agency cannot indemnify third parties because of sovereign immunity and this PJM provision cannot be lawfully applied to it. The Department of General Services is seeking the same treatment that is afforded Municipal Electric Systems with regard to exemption from the Default Allocation Assessment calculation.
- 4. Section 16.1 Members: Add a new subparagraph (c) which states the following:
- The provisions of 16.1(a) and 16.1 (b) do not apply to DGS. Any Member not permitted by law to indemnify the other Members shall not be indemnified by the other Members.
- Notes: The purpose of this amendment is to waive the indemnification requirement for the Department of General Services. The PJM Operating Agreement provides such a waiver to Municipal Electric Systems in Section 17.2. The Commonwealth is prohibited from indemnifying third parties because of sovereign immunity and this PJM provision cannot be lawfully applied to it. Sovereign immunity is waived in only nine limited circumstances. The tort liability contained in the PJM Operating Agreement is outside of the scope of these limited waivers of sovereign immunity.



- 5. Schedule 5 PJM Dispute Resolution Procedures
- Add to Section 3.1 and to Section 4.1 the following language:
- Notwithstanding this provision, PJM Members who enter into a procurement contract with DGS that contains terms and conditions relating to contract dispute resolution procedures, the contractual dispute resolution procedures contained therein will take precedence over the PJM dispute resolution procedures.
- Notes: DGS requests a partial waiver of the dispute resolution procedures contained in Schedule 5 of the Operating Agreement. While DGS can agree to the use of the PJM dispute resolution procedures for matters related to DGS's membership in the PJM Interconnection, it is legally impermissible for DGS to agree to the PJM dispute resolution procedures with regard to disputes that arise related to energy procurement transactions engaged in between DGS and other PJM members. Chapter 17 of the Procurement Code, 62 Pa. C. S. § 1721.1 establishes the statutory dispute resolution procedures that apply to contract controversies between DGS and a contracting party. Under Section 1724 (a) (1) of the Procurement Code, the Board of Claims has the exclusive jurisdiction to arbitrate contract claims against a Commonwealth agency. In the event that DGS is granted membership with the PJM Interconnection, it is the intent of DGS to engage in energy procurement transactions with only those members who respond to competitive bidding opportunities made available through DGS's issuance of an invitation to qualify (ITQ). Those members who respond to the ITQ must agree to the terms and conditions contained therein, including the contract controversies provision required by Section 1721.1 of the Procurement Code. The DGS contract controversies procedures would take precedence over the PJM dispute resolution procedures for those PJM members who respond to and agree to the terms and conditions of the ITQ. Accordingly, DGS requests a waiver of the PJM dispute resolution procedures as it applies to procurement transactions between DGS and other PJM members.



## What are the benefits to COPA

- It will allow COPA to manage its loads and its total spend on electricity
  - Improved management of taxpayer funds in PJM's home state



PENNSYLVANIA DEPARTMENT OF  
**GENERAL SERVICES**

**Thank You!**