

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

PJM Interconnection, L.L.C.
Docket No. ER19-1981-000

Issued: 7/16/19

Pauline Foley
PJM Interconnection, L.L.C.
2750 Monroe Boulevard
Audubon, PA 19403-2497

Reference: Designated Entity Agreement, Service Agreement No. 4310

On May 24, 2019, PJM Interconnection, L.L.C. (PJM) submitted for filing an executed designated entity agreement entered into between PJM and Silver Run Electric, LLC (SRE), designated as Service Agreement No. 4310 (Agreement).¹ PJM states that it is submitting the Agreement because it contains non-standard terms and conditions not included the designated entity agreement form in Attachment KK of PJM's Open Access Transmission Tariff. PJM states that the non-standard terms and conditions are necessary to accommodate the designation of construction responsibility for baseline upgrade projects b2633.1 and b2633.2 to SRE.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation – East, under 18 C.F.R. § 375.307, your submittal is accepted for filing, effective April 25, 2019, as requested.

The filing was noticed on May 24, 2019, with comments, interventions and protests due on or before June 14, 2019. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2018)), to the extent that any timely filed motions to intervene and any motion to intervene out-of-time were filed before the issuance date of this order, such interventions are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

¹ PJM Interconnection, L.L.C., PJM Service Agreements Tariff, [PJM SA No. 4310, PJM SA No. 4310 between PJM and Silver Run Electric, 1.0.0.](#)

This acceptance for filing shall not be construed as constituting approval of the referenced filing or of any rate, charge, classification, or any rule, regulation, or practice affecting such rate or service contained in your filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against PJM.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Issued by: Kurt M. Longo, Director, Division of Electric Power Regulation – East

Document Content(s)

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DESIGNATED ENTITY AGREEMENT

Between

PJM Interconnection, L.L.C.

And

Silver Run Electric, LLC

(PJM Upgrade Project b2633.1 and b2633.2 Artificial Island)

DESIGNATED ENTITY AGREEMENT

Between

PJM Interconnection, L.L.C.

And

Silver Run Electric, LLC

This Designated Entity Agreement, including the Schedules attached hereto and incorporated herein (collectively, "Agreement") is made and entered into as of the Effective Date between PJM Interconnection, L.L.C. ("Transmission Provider" or "PJM"), and Silver Run Electric, LLC (successor by merger with Northeast Transmission Development, LLC) ("Designated Entity" or "SRE"), referred to herein individually as "Party" and collectively as "the Parties." This Agreement supersedes the Designated Entity Agreement between PJM Interconnection, L.L.C. and Northeast Transmission Development, LLC, effective October 29, 2015 (the "Original Effective Date"), filed with and accepted by the Federal Energy Regulatory Commission in Docket No. ER16-429-000 (the "Original DEA").

WITNESSETH

WHEREAS, in accordance with FERC Order No. 1000 and Schedule 6 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement"), Transmission Provider is required to designate among candidates, pursuant to a FERC-approved process, an entity to develop and construct a specified project to expand, replace and/or reinforce the Transmission System operated by Transmission Provider;

WHEREAS, pursuant to Section 1.5.8(i) of Schedule 6 of the Operating Agreement, the Transmission Provider notified Designated Entity that it was designated as the Designated Entity for the Project (described in Schedule A to this Agreement) to be included in the Regional Transmission Expansion Plan;

WHEREAS, pursuant to Section 1.5.8(j) of Schedule 6 of the Operating Agreement, Designated Entity accepted the designation as the Designated Entity for the Project and therefore has the obligation to construct the Project;

WHEREAS, Transmission Provider directed certain changes to the Project and Scope of Work included in the Original DEA that were presented and agreed to by Designated Entity;

and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, together with other good and valuable consideration, the receipt and sufficiency is hereby mutually acknowledged by each Party, the Parties mutually covenant and agree as follows:

Article 1 – Definitions

1.0 Defined Terms.

All capitalized terms used in this Agreement shall have the meanings ascribed to them in Part I of the Tariff or in definitions either in the body of this Agreement or its attached Schedules. In the event of any conflict between defined terms set forth in the Tariff or defined terms in this Agreement, including the Schedules, such conflict will be resolved in favor of the terms as defined in this Agreement.

1.1 Confidential Information.

Any confidential, proprietary, or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy, or compilation relating to the Project or Transmission Owner facilities to which the Project will interconnect, which is designated as confidential by the party supplying the information, whether conveyed verbally, electronically, in writing, through inspection, or otherwise, and shall include, but may not be limited to, information relating to the producing party's technology, research and development, business affairs and pricing, land acquisition and vendor contracts relating to the Project.

1.2 Designated Entity Letter of Credit.

Designated Entity Letter of Credit shall mean the letter of credit provided by the Designated Entity pursuant to Section 1.5.8(j) of Schedule 6 of the Operating Agreement and Section 3.0 of this Agreement as security associated with the Project.

1.3 Development Schedule.

Development Schedule shall mean the schedule of milestones set forth in Schedule C of this Agreement.

1.4 Effective Date.

Effective Date shall mean the date this Agreement becomes effective pursuant to Section 2.0 of this Agreement.

1.5 Initial Operation.

Initial Operation shall mean the date the Project is (i) energized and (ii) under Transmission Provider operational dispatch.

1.6 Project.

Project shall mean the enhancement or expansion included in the PJM Regional Transmission Expansion Plan described in Schedule A of this Agreement.

1.7 Project Finance Entity.

Project Finance Entity shall mean holder, trustee or agent for holders, of any component of Project Financing.

1.8 Project Financing.

Project Financing shall mean: (a) one or more loans, leases, equity and/or debt financings, together with all modifications, renewals, supplements, substitutions and replacements thereof, the proceeds of which are used to finance or refinance the costs of the Project, any alteration, expansion or improvement to the Project, or the operation of the Project; or (b) loans and/or debt issues secured by the Project.

1.9 Reasonable Efforts.

Reasonable Efforts shall mean such efforts as are consistent with ensuring the timely and effective design and construction of the Project in a manner, which ensures that the Project, once placed in service, meets the requirements of the Project as described in Schedule B and are consistent with Good Utility Practice.

1.10 Required Project In-Service Date.

Required Project In-Service Date shall mean the date the Project is required to: (i) be completed in accordance with the Scope of Work in Schedules B this Agreement, (ii) meet the criteria outlined in Schedule D of this Agreement and (iii) be under Transmission Provider operational dispatch.

Article 2 – Effective Date and Term

2.0 Effective Date.

Subject to regulatory acceptance, this Agreement shall become effective on the date the Agreement has been executed by all Parties, or if this Agreement is filed with FERC for acceptance, rather than reported only in PJM's Electric Quarterly Report, upon the date specified by FERC.

2.1 Term.

This Agreement shall continue in full force and effect from the Effective Date until: (i) the Designated Entity executes the Consolidated Transmission Owners Agreement; and (ii) the Project (a) has been completed in accordance with the terms and conditions of this Agreement, (b) meets all relevant required planning criteria, and (c) is under Transmission Provider's operational dispatch; or (iii) the Agreement is terminated pursuant to Article 8 of this Agreement.

Article 3 – Security

3.0 Obligation to Provide Security.

In accordance with Section 1.5.8(j) of Schedule 6 of the Operating Agreement, Designated Entity shall provide Transmission Provider a letter of credit as acceptable to Transmission Provider (Designated Entity Letter of Credit) or cash security in the amount of \$5,830,050, which is three percent of the estimated cost of the Project. Designated Entity is required provide and maintain the Designated Entity Letter of Credit, as required by Section 1.5.8(j) of Schedule 6 of the Operating Agreement and Section 3.0 of this Agreement. The Designated Entity Letter of Credit shall remain in full force and effect for the term of this Agreement and for the duration of the obligations arising therefrom in accordance with Article 17.0.

3.1 Distribution of Designated Entity Letter of Credit or Cash Security.

In the event that Transmission Provider draws upon the Designated Entity Letter of Credit or retains the cash security in accordance with Sections 7.5, 8.0, or 8.1, Transmission Provider shall distribute such funds as determined by FERC.

Article 4 – Project Construction

4.0 Construction of Project by Designated Entity.

Designated Entity shall design, engineer, procure, install and construct the Project, including any modifications thereto, in accordance with: (i) the terms of this Agreement, including but not limited to the Scope of Work in Schedule B and the Development Schedule in Schedule C; (ii) applicable reliability principles, guidelines, and standards of the Applicable Regional Reliability Council and NERC; (iii) the Operating Agreement; (iv) the PJM Manuals; and (v) Good Utility Practice.

4.1 Milestones.

4.1.0 Milestone Dates.

Designated Entity shall meet the milestone dates set forth in the Development Schedule in Schedule C of this Agreement. Milestone dates set forth in Schedule C only may be extended by Transmission Provider in writing. Failure to meet any of the milestone dates specified in Schedule C, or as extended as described in this Section 4.1.0 or Section 4.3.0 of this Agreement, shall constitute a Breach of this Agreement. Transmission Provider reasonably may extend any such milestone date, in the event of delays not caused by the Designated Entity that could not be remedied by the Designated Entity through the exercise of due diligence, or if an extension will not delay the Required Project In-Service Date specified in Schedule C of this Agreement; provided that a corporate officer of the Designated Entity submits a revised Development

Schedule containing revised milestones and showing the Project in full operation no later than the Required Project In-Service Date specified in Schedule C of this Agreement.

4.1.1 Right to Inspect.

Upon reasonable notice, Transmission Provider shall have the right to inspect the Project for the purposes of assessing the progress of the Project and satisfaction of milestones. 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.

4.2 Applicable Technical Requirements and Standards.

For the purposes of this Agreement, applicable technical requirements and standards of the Transmission Owner(s) to whose facilities the Project will interconnect shall apply to the design, engineering, procurement, construction and installation of the Project to the extent that the provisions thereof relate to the interconnection of the Project to the Transmission Owner(s) facilities.

4.3 Project Modification.

4.3.0 Project Modification Process.

The Scope of Work and Development Schedule, including the milestones therein, may be revised, as required, in accordance with Transmission Provider's project modification process set forth in the PJM Manuals, or otherwise by Transmission Provider in writing. Such modifications may include alterations as necessary and directed by Transmission Provider to meet the system condition for which the Project was included in the Regional Transmission Expansion Plan.

4.3.1 Consent of Transmission Provider to Project Modifications.

Designated Entity may not modify the Project without prior written consent of Transmission Provider, including but not limited to, modifications necessary to obtain siting approval or necessary permits, which consent shall not be unreasonably withheld, conditioned, or delayed.

4.3.2 Customer Facility Interconnections And Transmission Service Requests.

Designated Entity shall perform or permit the engineering and construction necessary to accommodate the interconnection of Customer Facilities to the Project and transmission service requests that are determined necessary for such interconnections and transmission service requests in accordance with Parts IV and VI, and Parts II and III, respectively, of the Tariff.

4.4 Project Tracking.

The Designated Entity shall provide regular, quarterly construction status reports in writing to Transmission Provider. The reports shall contain, but not be limited to, updates and information specified in the PJM Manuals regarding: (i) current engineering and construction status of the

Project; (ii) Project completion percentage, including milestone completion; (iii) current target Project or phase completion date(s); (iv) applicable outage information; and (v) cost expenditures to date and revised projected cost estimates for completion of the Project. Transmission Provider shall use such status reports to post updates regarding the progress of the Project.

4.5 Exclusive Responsibility of Designated Entity.

Designated Entity shall be solely responsible for all planning, design, engineering, procurement, construction, installation, management, operations, safety, and compliance with applicable laws and regulations associated with the Project, including but not limited to obtaining all necessary permits, siting, and other regulatory approvals. Transmission Provider shall have no responsibility to manage, supervise, or ensure compliance or adequacy of same.

Article 5 – Coordination with Third-Parties

5.0 Interconnection Coordination Agreement with Transmission Owner(s).

By the dates specified in the Development Schedule in Schedule C of this Agreement, Designated Entity shall execute or request to file unexecuted with the Commission: (a) an Interconnection Coordination Agreement; and (b) an interconnection agreement among and between Designated Entity, Transmission Provider, and the Transmission Owner(s) to whose facilities the Project will interconnect.

5.1 Connection with Entities Not a Party to the Consolidated Transmission Owners Agreement.

Designated Entity shall not permit any part of the Project facilities to be connected with the facilities of any entity which is not: (i) a party to Consolidated Transmission Owners Agreement without an interconnection agreement that contains provisions for the safe and reliable interconnection and operation of such interconnection in accordance with Good Utility Practice, and principles, guidelines and standards of the Applicable Regional Reliability Council and NERC or comparable requirements of an applicable retail tariff or agreement approved by appropriate regulatory authority; or (ii) a party to a separate Designated Entity Agreement.

Article 6 – Insurance

6.0 Designated Entity Insurance Requirements.

Designated Entity shall obtain and maintain in full force and effect such insurance as is consistent with Good Utility Practice. The Transmission Provider shall be included as an Additional Insured in the Designated Entity's applicable liability insurance policies. The Designated Entity shall provide evidence of compliance with this requirement upon request by the Transmission Provider.

6.1 Subcontractor Insurance.

In accord with Good Utility Practice, Designated Entity shall require each of its subcontractors to maintain and, upon request, provide Designated Entity evidence of insurance coverage of types, and in amounts, commensurate with the risks associated with the services provided by the subcontractor. Bonding and hiring of contractors or subcontractors shall be the Designated Entity's discretion, but regardless of bonding or the existence or non-existence of insurance, the Designated Entity shall be responsible for the performance or non-performance of any contractor or subcontractor it hires.

Article 7 – Breach and Default

7.0 Breach.

Except as otherwise provided in Article 10, a Breach of this Agreement shall include:

(a) The failure to comply with any term or condition of this Agreement, including but not limited to, any Breach of a representation, warranty, or covenant made in this Agreement, and failure to provide and maintain security in accordance with Section 3.0 of this Agreement;

(b) The failure to meet a milestone or milestone date set forth in the Development Schedule in Schedule C of this Agreement, or as extended in writing as described in Sections 4.1.0 and 4.3.0 of this Agreement;

(c) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement; or

(d) Failure of any Party to provide information or data required to be provided to another Party under this Agreement for such other Party to satisfy its obligations under this Agreement.

7.1 Notice of Breach.

In the event of a Breach, a Party not in Breach of this Agreement shall give written notice of such Breach to the breaching Party, and to any other persons, including a Project Finance Entity, if applicable, that the breaching Party identifies in writing prior to the Breach. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

7.2 Cure and Default.

A Party that commits a Breach and does not take steps to cure the Breach pursuant to Section 7.3 shall be in Default of this Agreement.

7.3 Cure of Breach.

The breaching Party may: (i) cure the Breach within thirty days from the receipt of the notice of Breach or other such date as determined by Transmission Provider to ensure that the Project meets its Required Project In-Service Date set forth in Schedule C; or, (ii) if the Breach cannot be cured within thirty days but may be cured in a manner that ensures that the Project meets the Required Project In-Service Date for the Project, within such thirty day time period, commences in good faith steps that are reasonable and appropriate to cure the Breach and thereafter diligently pursue such action to completion.

7.4 Re-evaluation if Breach Not Cured.

In the event that a breaching Party does not cure a Breach in accordance with Section 7.3 of this Agreement, Transmission Provider shall conduct a re-evaluation pursuant to Section 1.5.8(k) of Schedule 6 of the Operating Agreement. If based on such re-evaluation, the Project is retained in the Regional Transmission Expansion Plan and the Designated Entity's designation for the Project also is retained, the Parties shall modify this Agreement, including Schedules, as necessary. In all other events, Designated Entity shall be considered in Default of this Agreement, and this Agreement shall terminate in accordance with Section 8.1 of this Agreement.

7.5 Remedies.

Upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to: (i) commence an action to require the Defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof; (ii) suspend performance hereunder; and (iii) exercise such other rights and remedies as it may have in equity or at law. Upon Default by Designated Entity, Transmission Provider may draw upon the Designated Entity Letter of Credit. Nothing in this Section 7.5 is intended in any way to affect the rights of a third-party to seek any remedy it may have in equity or at law from the Designated Entity resulting from Designated Entity's Default of this Agreement.

7.6 Remedies Cumulative.

No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

7.7 Waiver.

Any waiver at any time by any Party of its rights with respect to a Breach or Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any other Breach or Default or other matter.

Article 8 – Early Termination

8.0 Termination by Transmission Provider.

In the event that: (i) pursuant to Section 1.5.8(k) of Schedule 6 of the Operating Agreement, Transmission Provider determines to remove the Project from the Regional Transmission Expansion Plan and/or not to retain Designated Entity's status for the Project; (ii) Transmission Provider otherwise determines pursuant to Regional Transmission Expansion Planning Protocol in Schedule 6 of the Operating Agreement that the Project is no longer required to address the specific need for which the Project was included in the Regional Transmission Expansion Plan; or (iii) an event of force majeure, as defined in section 10.0 of this Attachment KK, or other event outside of the Designated Entity's control that, with the exercise of Reasonable Efforts, Designated Entity cannot alleviate and which prevents the Designated Entity from satisfying its obligations under this Agreement, Transmission Provider may terminate this Agreement by providing written notice of termination to Designated Entity, which shall become effective the later of sixty calendar days after the Designated Entity receives such notice or other such date the FERC establishes for the termination. In the event termination pursuant to this Section 8.0 is based on (ii) or (iii) above, Transmission Provider shall not have the right to draw upon the Designated Entity Letter of Credit or retain the cash security and shall cancel the Designated Entity Letter of Credit or return the cash security within thirty days of the termination of this Agreement.

8.1 Termination by Default.

This Agreement shall terminate in the event a Party is in Default of this Agreement in accordance with Sections 7.2 or 7.4 of this Agreement. Upon Default by Designated Entity, Transmission Provider may draw upon the Designated Entity Letter of Credit or retain the cash security.

8.2 Filing at FERC.

Transmission Provider shall make the appropriate filing with FERC as required to effectuate the termination of this Agreement pursuant to this Article 8.

Article 9 – Liability and Indemnity

9.0 Liability.

For the purposes of this Agreement, Transmission Provider's liability to the Designated Entity, any third-party, or any other person arising or resulting from any acts or omissions associated in any way with performance under this Agreement shall be limited in the same manner and to the same extent that Transmission Provider's liability is limited to any Transmission Customer, third-party or other person under Section 10.2 of the Tariff arising or resulting from any act or omission in any way associated with service provided under the Tariff or any Service Agreement thereunder.

9.1 Indemnity.

For the purposes of this Agreement, Designated Entity shall at all times indemnify, defend, and save Transmission Provider and its directors, managers, members, shareholders, officers and employees harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third-parties, arising out of or resulting from the Transmission Provider's acts or omissions associated with the performance of its obligations under this Agreement to the same extent and in the same manner that a Transmission Customer is required to indemnify, defend and save Transmission Provider and its directors, managers, members, shareholders, officers and employees harmless under Section 10.3 of the Tariff.

Article 10 – Force Majeure

10.0 Force Majeure.

For the purpose of this section, an event of force majeure shall mean any cause beyond the control of the affected Party, including but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightening, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, acts of public enemy, explosions, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, which in any foregoing cases, by exercise of due diligence, it has been unable to overcome. An event of force majeure does not include: (i) a failure of performance that is due to an affected Party's own negligence or intentional wrongdoing; (ii) any removable or remedial causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.

10.1 Notice.

A Party that is unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing within a reasonable time after the occurrence of the cause relied on.

10.2 Duration of Force Majeure.

A Party shall not be responsible for any non-performance or considered in Breach or Default under this Agreement, for any deficiency or failure to perform any obligation under this Agreement to the extent that such failure or deficiency is due to Force Majeure. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused because of the occurrence of Force Majeure, such Party shall resume performance and give prompt notice thereof to the other Party. In the event that Designated Entity is unable to perform any of its

obligations under this Agreement because of an occurrence of Force Majeure, Transmission Provider may terminate this Agreement in accordance with Section 8.0 of this Agreement.

10.3 Breach or Default of or Force Majeure under Interconnection Coordination Agreement

If either of the following events prevents Designated Entity from performing any of its obligations under this Agreement, such event shall be considered a Force Majeure event under this Agreement and the provisions of this Article 10 shall apply: (i) a breach or default of the Interconnection Coordination Agreement associated with the Project by a party to the Interconnection Coordination Agreement other than the Designated Entity; or (ii) an event of Force Majeure under the Interconnection Coordination Agreement associated with the Project.

Article 11 – Assignment

11.0 Assignment.

A Party may assign all of its rights, duties, and obligations under this Agreement in accordance with this Section 11.0. Except for assignments described in Section 11.1 of this Agreement that may not result in the assignment of all rights, duties, and obligations under this Agreement to a Project Finance Entity, no partial assignments will be permitted. No Party may assign any of its rights or delegate any of its duties or obligations under this Agreement without prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment or delegation made without such written consent shall be null and void. Assignment by the Designated Entity shall be contingent upon, prior to the effective date of the assignment: (i) the Designated Entity or assignee demonstrating to the satisfaction of Transmission Provider that the assignee has the technical competence and financial ability to comply with the requirements of this Agreement and to construct the Project consistent with the assignor's cost estimates for the Project; and (ii) the assignee is eligible to be a Designated Entity for the Project pursuant to Sections 1.5.8(a) and (f) of Schedule 6 of the Operating Agreement. Except as provided in an assignment to a Finance Project Entity to the contrary, for all assignments by any Party, the assignee must assume in a writing, to be provided to the other Party, all rights, duties, and obligations of the assignor arising under this Agreement. Any assignment described herein shall not relieve or discharge the assignor from any of its obligations hereunder absent the written consent of the other Party. In no circumstance, shall an assignment of this Agreement or any of the rights, duties, and obligations under this Agreement diminish the rights of the Transmission Provider under this Agreement, the Tariff, or the Operating Agreement. Any assignees that will construct, maintain, or operate the Project shall be subject to, and comply with the terms of this Agreement, the Tariff and the Operating Agreement.

11.1 Project Finance Entity Assignments

11.1.1 Assignment to Project Finance Entity

If an arrangement between the Designated Entity and a Project Finance Entity provides that the Project Finance Entity may assume any of the rights, duties and obligations of the Designated Entity under this Agreement or otherwise provides that the Project Finance Entity may cure a Breach of this Agreement by the Designated Entity, the Project Finance Entity may be assigned this Agreement or any of the rights, duties, or obligations hereunder only upon written consent of the Transmission Provider, which consent shall not be unreasonably withheld, conditioned, or delayed. In no circumstance, shall an assignment of this Agreement or any of the rights, duties, and obligations under this Agreement diminish the rights of the Transmission Provider under this Agreement, the Tariff, or the Operating Agreement.

11.1.2 Assignment By Project Finance Entity

A Project Finance Entity that has been assigned this Agreement or any of the rights, duties or obligations under this Agreement or otherwise is permitted to cure a Breach of this Agreement, as described pursuant to Section 11.1.1 above, may assign this Agreement or any of the rights, duties or obligations under this Agreement to another entity not a Party to this Agreement only: (i) upon the Breach of this Agreement by the Designated Entity; and (ii) with the written consent of the Transmission Provider, which consent shall not be unreasonably withheld, conditioned, or delayed. In no circumstance, shall an assignment of this Agreement or any of the rights, duties, and obligations under this Agreement alter or diminish the rights of the Transmission Provider under this Agreement, the Tariff, or the Operating Agreement. Any assignees that will construct, maintain, or operate the Project shall be subject to, and comply with the Tariff and Operating Agreement.

Article 12 – Information Exchange

12.0 Information Access.

Subject to Applicable Laws and Regulations, each Party shall make available to the other Party information necessary to carry out each Party's obligations and responsibilities under this Agreement, the Operating Agreement, and the Tariff. Such information shall include but not be limited to, information reasonably requested by Transmission Provider to prepare the Regional Transmission Expansion Plan. The Parties shall not use such information for purposes other than to carry out their obligations or enforce their rights under this Agreement, the Operating Agreement, and the Tariff.

12.1 Reporting of Non-Force Majeure Events.

Each Party shall notify the other Party when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Section 12.1 shall not entitle the receiving Party to allege a cause of action for anticipatory Breach of this Agreement.

Article 13 – Confidentiality

13.0 Confidentiality.

For the purposes of this Agreement, information will be considered and treated as Confidential Information only if it meets the definition of Confidential Information set forth in Section 1.1 of this Agreement and is clearly designated or marked in writing as “confidential” on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is “confidential.” Confidential Information shall be treated consistent with Section 18.17 of the Operating Agreement. A Party shall be responsible for the costs associated with affording confidential treatment to its information.

Article 14 – Regulatory Requirements

14.0 Regulatory Approvals.

Designated Entity shall seek and obtain all required government authority authorizations or approvals as soon as reasonably practicable, and by the milestone dates set forth in the Development Schedule of Schedule C of this Agreement, as applicable.

Article 15 – Representations and Warranties

15.0 General.

Designated Entity hereby represents, warrants and covenants as follows, with these representations, warranties, and covenants effective as to the Designated Entity during the full time this Agreement is effective:

15.0.1 Good Standing

Designated Entity is duly organized or formed, as applicable, validly existing and in good standing under the laws of its State of organization or formation, and is in good standing under the laws of the respective State(s) in which it is incorporated.

15.0.2 Authority

Designated Entity has the right, power and authority to enter into this Agreement, to become a Party thereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of Designated Entity, enforceable against Designated Entity in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors’ rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

15.0.3 No Conflict.

The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of Designated Entity, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon Designated Entity or any of its assets.

Article 16 – Operation of Project

16.0 Initial Operation.

The following requirements shall be satisfied prior to Initial Operation of the Project:

16.0.1 Execution of the Consolidated Transmission Owners Agreement

Designated Entity has executed the Consolidated Transmission Owners Agreement and is able to meet all requirements therein.

16.0.2 Execution of an Interconnection Agreement

Designated Entity has executed an Interconnection Agreement with the Transmission Owner(s) to whose facilities the Project will interconnect, or such agreement has been filed unexecuted with the Commission.

16.0.3 Operational Requirements

The Project must meet all applicable operational requirements described in the PJM Manuals.

16.0.4 Parallel Operation

Designated Entity shall have all necessary systems and personnel in place to allow for parallel operation of its facilities with the facilities of the Transmission Owner(s) to which the Project is interconnected consistent with the Interconnection Coordination Agreement associated with the Project.

16.0.5 Synchronization

Designated Entity shall have received any necessary authorization from Transmission Provider and the Transmission Owner(s) to whose facilities the Project will interconnect to synchronize with the Transmission System or to energize, as applicable, per the determination of Transmission Provider, the Project.

16.1 Partial Operation.

If the Project is to be completed in phases, the completed part of the Project may operate prior to completion and Required Project In-Service Date set forth in Schedule C of this Agreement,

provided that: (i) Designated Entity has notified Transmission Provider of the successful completion of the Project phase; (ii) Transmission Provider has determined that partial operation of the Project will not negatively impact the reliability of the Transmission System; (iii) Designated Entity has demonstrated that the requirements for Initial Operation set forth in Section 16.0 of this Agreement have been met for the Project phase; and (iv) partial operation of the Project is consistent with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice.

Article 17 – Survival

17.0 Survival of Rights.

The rights and obligations of the Parties in this Agreement shall survive the termination, expiration, or cancellation of this Agreement to the extent necessary to provide for the determination and enforcement of said obligations arising from acts or events that occurred while this Agreement was in effect. The Liability and Indemnity provisions in Article 9 also shall survive termination, expiration, or cancellation of this Agreement.

Article 18 – Non-Standard Terms and Conditions

18.0 Schedule E – Addendum of Non-Standard Terms and Conditions.

Subject to FERC acceptance or approval, the Parties agree that the terms and conditions set forth in the attached Schedule E are hereby incorporated by reference, and made a part of, this Agreement. In the event of any conflict between a provision of Schedule E that FERC has accepted and any provision of the standard terms and conditions set forth in this Agreement that relates to the same subject matter, the pertinent provision of Schedule E shall control.

Article 19 – Miscellaneous

19.0 Notices.

Any notice or request made to or by any Party regarding this Agreement shall be made by U.S. mail or reputable overnight courier to the addresses set forth below:

Transmission Provider:
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Audubon, PA 19403
Attention: Manager, Infrastructure Coordination

Designated Entity:
Silver Run Electric, LLC

16150 Main Circle Drive, Suite 310
Chesterfield, MO 63017
Attention:
Project Manager

19.1 No Transmission Service.

This Agreement does not entitle the Designated Entity to take Transmission Service under the Tariff.

19.2 No Rights.

Neither this Agreement nor the construction or the financing of the Project entitles Designated Entity to any rights related to Customer-Funded Upgrades set forth in Subpart C of Part VI of the Tariff.

19.3 Standard of Review.

Future modifications to this Agreement by the Parties or the FERC shall be subject to the just and reasonable standard and the Parties shall not be required to demonstrate that such modifications are required to meet the “public interest” standard of review as described in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

19.4 No Partnership.

Notwithstanding any provision of this Agreement, the Parties do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit.

19.5 Headings.

The Article and Section headings used in this Agreement are for convenience only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

19.6 Interpretation.

Wherever the context may require, any noun or pronoun used herein shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

19.7 Severability.

Each provision of this Agreement shall be considered severable and if for any reason any provision is determined by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force

and effect and shall in no way be affected, impaired or invalidated, and such invalid, void or unenforceable provision shall be replaced with valid and enforceable provision or provisions which otherwise give effect to the original intent of the invalid, void or unenforceable provision.

19.8 Further Assurances.

Each Party hereby agrees that it shall hereafter execute and deliver such further instruments, provide all information and take or forbear such further acts and things as may be reasonably required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms hereof.

19.9 Counterparts.

This Agreement may be executed in multiple counterparts to be construed as one effective as of the Effective Date.

19.10 Governing Law

This Agreement shall be governed under the Federal Power Act and Delaware law, as applicable.

19.11 Incorporation of Other Documents.

The Tariff, the Operating Agreement, and the Reliability Assurance Agreement, as they may be amended from time to time, are hereby incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officials.

Transmission Provider: PJM Interconnection, L.L.C.

DocuSigned by:
By: Mark Sims Manager, Inf. Coordination 4/25/2019
7A1EA2149B7D4FE... Name Title Date

Printed name of signer: Mark Sims

Designated Entity: Silver Run Electric, LLC

DocuSigned by:
By: Casey Carroll Director, Project Development 4/25/2019
131ABBC3717247A... Name Title Date

Printed name of signer: Casey Carroll

SCHEDULE A

Description of Project

b2633.1:

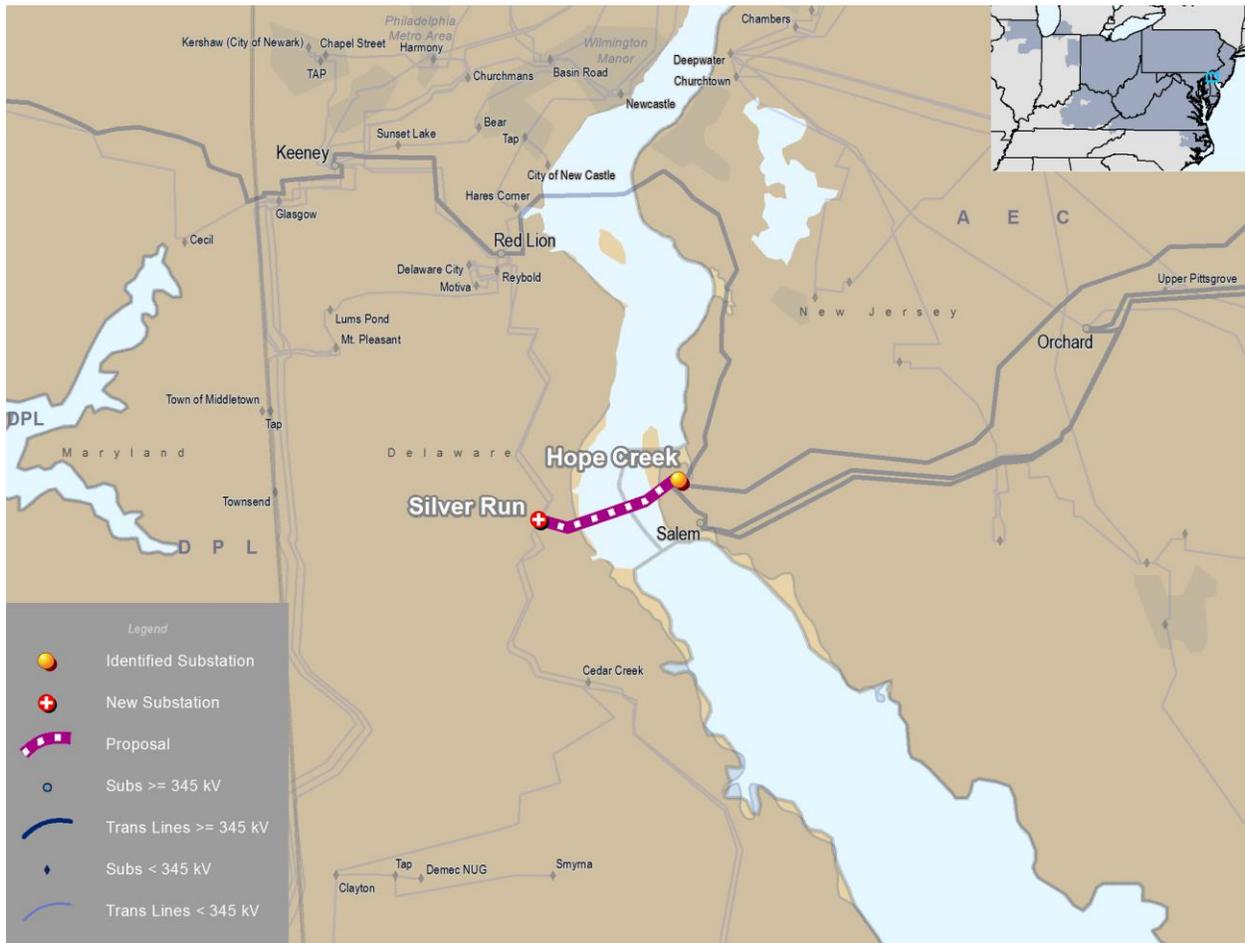
- New 230 kV transmission line between Hope Creek and the new Silver Run substation

b2633.2:

- Construct the new Silver Run 230 kV substation

To support compliance with the Facilities' Nuclear Operating License, SRE shall coordinate with PSEG Nuclear and PSE&G.

Note: Work required to interconnect the new Silver Run substation to the 230kV transmission system in Delaware will be covered under a separate RTEP upgrade. Additionally, the installation of the new bay and auto-transformer in the Hope Creek substation will be covered under separate RTEP upgrades.



SCHEDULE B

Scope of Work

b2633.1:

- Develop, construct, complete, commission and place in service a new, single circuit 230 kV transmission line between Hope Creek and the new Silver Run substation.
 - The SRE Cost Commitment detailed in Schedule E of this Agreement was designed and intended to cover all work necessary to implement and complete the Project, including, but not limited to an overhead or submarine (via jet plow and/or horizontal directional drilling) crossing of the Delaware River and cofferdams, if necessary; an overhead 230 kV transmission line from the river to the new Silver Run substation; and an overhead 230 kV transmission line from the river to the Hope Creek substation.

b2633.2:

- Develop, construct, complete, commission and place in service the new Silver Run 230 kV substation interconnecting the existing Red Lion – Cedar Creek 230 kV transmission line, existing Red Lion – Cartanza 230 kV transmission line, and new Hope Creek – Silver Run 230 kV transmission line.

Note: Work required to interconnect the new Silver Run substation to the 230kV transmission system in Delaware will be covered under a separate baseline upgrade. Additionally, the installation of the new bay and auto-transformer in the Hope Creek substation will be covered under separate baseline upgrades.

SCHEDULE C

Development Schedule

Designated Entity shall ensure and demonstrate to the Transmission Provider that it timely has met the following milestones and milestone dates and that the milestones remain in good standing:

Milestones and Milestone Dates
Execute Interconnection Coordination Agreement. On or before February 1, 2016, Designated Entity must execute the Interconnection Coordination Agreement with Public Service Electric & Gas Company or request the agreement be filed unexecuted.
Execute Interconnection Coordination Agreement. On or before February 1, 2016, Designated Entity must execute the Interconnection Coordination Agreement with Delmarva Power & Light Company or request the agreement be filed unexecuted.
Complete a feasibility study. On or before March 1, 2016, Designated Entity must complete an engineering feasibility study of the Delaware river crossing utilizing horizontal directional drilling installation.
Demonstrate adequate Project financing. On or before October 1, 2019, Designated Entity must demonstrate that adequate project financing has been secured. Project financing must be maintained for the term of this Agreement.
Submit applications for all necessary federal, state, county, and local site permits. On or before September 1, 2018, Designated Entity must demonstrate that the application for the US Army Corps of Engineers permits under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act has been submitted.
Acquisition of all necessary federal, state, county, and local site permits. On or before September 1, 2019, Designated Entity must demonstrate that all required federal, state, county and local site permits have been acquired. For purposes of this milestone federal, state, county and local site permits include, but are not limited to the following pre-construction permits: <ul style="list-style-type: none"><input type="checkbox"/> US Army Corps of Engineers permits under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act;<input type="checkbox"/> Delaware River Basin Commission docket approval;<input type="checkbox"/> Section 7 consultation under the Endangered Species Act;<input type="checkbox"/> Section 401 Water Quality Certification;<input type="checkbox"/> Federal Consistency Certification under the Coastal Zone Management Act; and<input type="checkbox"/> Certificate of Public Convenience and Necessity. In the event that the Designated Entity identifies other major permits necessary for the development and completion of the Project that were not previously identified, the Designated Entity shall immediately notify PJM of such permit and coordinate with PJM to add an appropriate milestone to the development schedule regarding submission of the

application and acquisition of such permit.

Substantial Site Work Completed: On or before January 1, 2020, Designated Entity must demonstrate that at least 20% of Project site construction is completed. Additionally the Designated Entity must submit updated ratings and the final project drawings to the Transmission Provider.

Delivery of major electrical equipment. On or before December 1, 2019, Designated Entity must demonstrate that all major electrical equipment has been delivered to the project site.

Demonstrate required ratings. On or before March 31, 2020, Designated Entity must demonstrate that the project meets all required electrical ratings.

Required Project In-Service Date. On or before June 1, 2020, Designated Entity must: (i) demonstrate that the Project is completed in accordance with the Scope of Work in Schedules B of this Agreement; (ii) meets the criteria outlined in Schedule D of this Agreement; and (iii) is under Transmission Provider operational dispatch.

SCHEDULE D

PJM Planning Requirements and Criteria and Required Ratings

- b2633.1
 - New 230 kV transmission line between Hope Creek and the new Silver Run substation
 - 940 / 1150 MVA summer normal / emergency
 - 230kV line across the Delaware River:
 - $R = 0.00013$
 - $X = 0.00180$
 - $B = 0.372$
 - 230kV overhead line segments collectively (i.e., from the Delaware River to the new Silver Run substation and from the Delaware River to the Hope Creek substation)
 - $R = 0.00025$
 - $X = 0.00302$
 - $B = 0.013$

- b2633.2:
 - Construct the new Silver Run 230 kV substation to not limit the existing 230kV line ratings:
 - Red Lion to Cartanza 650 / 790 MVA summer normal / emergency
 - Red Lion to Cedar Creek 550 / 678 MVA summer normal / emergency

The above impedance and rating values were provided by SRE. It is recognized that the final impedance values included in this Schedule may change with the final line routing and detailed design. SRE shall promptly notify PJM of changes to parameters and provide supporting information as needed for PJM's analysis and approval.

SCHEDULE E

Non-Standard Terms and Conditions

SECTION 1. Construction Cost Cap

- 1.1 SRE agrees that it will not seek recovery through its Annual Transmission Revenue Requirement of (a) any Construction Costs in excess of an amount equal to the lesser of (i) the Construction Cost Cap Amount or (ii) the aggregate amount of actual Construction Costs associated with the Project or (b) any amounts covered by clauses (i) (taxes) or (ii) (financing costs) of the definition of “Excluded Costs” insofar as such amounts relate or are attributable to Construction Costs that are in excess of the Construction Cost Cap Amount.
- 1.2 As used herein, the following terms have the following meanings:
- (a) “Annual Transmission Revenue Requirement” means the rate determined by the FERC following a filing by SRE under Section 205 of the Federal Power Act and FERC’s rules and regulations thereunder and submitted to Transmission Provider for recovery pursuant to the Transmission Provider’s Open Access Transmission Tariff.
 - (b) “Construction Cost Cap Amount” means the product of (i) \$146 million times (ii) a fraction, the numerator of which is the Escalation Index Number published for the first January 1 or July 1 following the earlier of (A) the date on which a notice to proceed letter is issued by the Designated Entity to its construction contractor indicating the date on which the construction contractor can begin project work; or (B) December 1, 2018, and the denominator of which is the Escalation Index Number for July 1, 2014.
 - (c) “Construction Costs” means any and all costs and expenses directly or indirectly incurred by SRE to develop, construct, complete, start-up and commission the Project and place the Project in service in accordance with Schedule B, including without limitation any costs and expenses incurred by SRE in connection with the following, in each case as and to the extent contemplated by the Schedule B: (i) obtaining permits and other governmental approvals for the Project, (ii) acquiring land and land rights for the Project, (iii) performing any environmental assessments or environmental mitigation activities in connection with the Project, (iv) designing and engineering the Project, (v) procuring any equipment, supplies and other materials required to complete construction of the Project and place the Project in service, (vi) otherwise performing or completing any and all development and construction-related activities required in connection with the Project as part of the Schedule B, including but not limited to all site clearing, equipment assembly and erection, testing and commissioning activities contemplated by the Schedule B, whether performed directly by SRE or by one or more third parties retained by SRE (without regard to whether such third parties are affiliated or non-affiliated), but excluding in all cases Excluded Costs.
 - (d) “Escalation Index Number” means, as of any January 1 or July 1, the number referenced in the Handy-Whitman Index for such date under Table E-1 “Cost Trends of Electric Utility Construction: North Atlantic Region”, line 33, “Total Transmission Plant”.
 - (e) “Excluded Costs” means (i) any taxes, (ii) any financing costs, including any approved return on equity, Allowance for Funds Used During Construction, or similar allowance or financing cost or charge earned or accrued in connection with the Project during the

period of development and construction of the Project (or thereafter), (iii) any costs and expenses associated with any PJM directed additions to or modifications of the Scope of Work (but only if and to the extent such costs and expenses are in excess of the costs and expenses that would have been incurred but for such addition to or modification of the Scope of Work), (iv) any costs and expenses incurred as a result of an Uncontrollable Force (but only if and to the extent such costs and expenses are in excess of the costs and expenses that would have been incurred but for such Uncontrollable Force) and (v) any costs and expenses associated with the operation and maintenance of the Project.

- (f) "Scope of Work" means the approved scope of work for the Project, as more particularly described in Schedule B to this Agreement.
- (g) "Uncontrollable Force" means (i) any destruction of or damage to any portion of the Project, or any interruption, suspension or interference with SRE's (or any contractor's or subcontractor's) performance of activities required to complete the Project, which destruction, damage, interruption, suspension or interference is caused by landslides; lightning; earthquakes; hurricanes; tornadoes; typhoons; severe weather; fires or explosions; floods; epidemic; acts of a public enemy; acts or threats of terrorism; wars; blockades; riots; rebellions; sabotage; vandalism; insurrections; environmental contamination or damage not caused by SRE (or any contractor or subcontractor); strike or labor disruption or civil disturbances (or governmental actions arising from any of the foregoing), (ii) any material change in the enforcement, interpretation or application of any statute, rule, regulation, order or other applicable law existing as of the Original Effective Date or the issuance or enactment of any of the foregoing on or after the Original Effective Date, (iii) any Breach or Default by Transmission Provider of its obligations under this Designated Entity Agreement or any request by Transmission Provider to delay or suspend any activities associated with the Project, or (iv) any Breach or Default, by any Transmission Owner under or in connection with an Interconnection Coordination Agreement or any interconnection agreement.

SECTION 2. Security

The amount of security required under this Designated Entity Agreement is based upon the cost estimate developed independently by PJM and considered in evaluating the project pursuant to section 1.5.8(e) of Schedule 6 of the Operating Agreement, not the cost commitment amount proposed by SRE.

SECTION 3. Uncontrollable Force.

For purposes of the construction cap detailed in Section 1 of Schedule E of this DEA, in the event the Project is impacted by an Uncontrollable Force, SRE shall use Reasonable Efforts to mitigate such impact. SRE shall notify Transmission Provider within a reasonable time after the occurrence of an Uncontrollable Force, which notice shall describe, in reasonable detail, the actions SRE plans to take to mitigate the impact of same.