

Service Agreement No. []

**ENGINEERING AND PROCUREMENT
AGREEMENT**

**By and Among
PJM Interconnection, L.L.C.
And**

And

(Project Identifier #___)

- 1.0 This Engineering and Procurement Agreement (“E&P Agreement”), including the Specifications attached hereto and incorporated herein, is entered into by and among PJM Interconnection, L.L.C. (“Transmission Provider” or “PJM”), [_____] (“Project Developer” [OPTIONAL: or [“short name”]], and [_____] (“Transmission Owner” [OPTIONAL: or [“short name”]]). Transmission Provider, Project Developer and Transmission Owner are individually, a “Party” and together, the “Parties” and collectively are “Parties”. [Use as/when applicable: Project Developer and Transmission Owner constitute a Vertically Integrated Utility, subject to the Vertically Integrated Utility provisions in this E&P Agreement.] [Use as/when applicable: This E&P Agreement supersedes the _____ {insert details to identify the agreement being superseded, such as whether it is an E&P Agreement or Generation Interconnection Agreement, the effective date of the agreement, the service agreement number designation, and the FERC docket number, if applicable, for the agreement being superseded.}] For purposes of the Agreement, the terms “Generation Interconnection Procedures” or “GIP” will refer to the interconnection procedures set forth in {Instructions: use Tariff, Part VII if this is a transition period agreement, or use Tariff, Part VIII if this is a post-transition period agreement}.
- 2.0 The location and a description of the Generating Facility or Merchant Transmission Facility that Project Developer proposes to interconnect to the Transmission Provider’s Transmission System is attached hereto. In the event that Project Developer will not own the facilities, Project Developer represents and warrants that it is authorized by the owners of such facilities to enter into this E&P Agreement and to represent such control.
- 3.0 In order to advance the completion of its interconnection under the PJM Open Access Transmission Tariff (“Tariff”), Project Developer has requested an E&P Agreement and Transmission Provider has determined that Project Developer is eligible under the Tariff to obtain this E&P Agreement. This E&P Agreement is not intended to be used for the actual construction of any Interconnection Facilities or Transmission Upgrades.
- 4.0 (a) In accord with the GIP, Project Developer shall provide Transmission Provider (for the benefit of the Transmission Owner) with a letter of credit from an agreed provider or other form of security reasonably acceptable to Transmission Provider in the

amount of \$ _____, which amount equals the estimated costs, determined in accordance with the GIP, of the engineering and procurement activities described in section 2.0 of the Attached Specifications. Should Project Developer fail to provide such security in the amount or form required, this E&P Agreement shall be terminated.

~~Notwithstanding the foregoing, Project Developer shall be exempt from providing Security under this section where Project Developer and Transmission Owner are the same Vertically Integrated Utility. If at any time Project Developer and Transmission Owner no longer constitute the same Vertically Integrated Utility, Project Developer shall be required to provide Security at the earlier of any Tariff prescribed deadline, or at least thirty (30) Business Days prior to the effective date of the change in status of the Vertically Integrated Utility. Exempting Project Developer from any Security obligation under this E&P Agreement does not relieve Project Developer from cost responsibility for any Network Upgrade(s) under this E&P Agreement.~~ Project Developer acknowledges (1) that it will be responsible for the actual costs of the facilities described in the Specifications, whether greater or lesser than the amount of the payment security provided under this section, and (2) that the payment security under this section does not include any additional amounts that it will owe in the event that it executes a final Generator Interconnection Agreement, as described in section 7.0(a) below.

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20.1.4 Income Tax Gross-Up

20.1.4.1 Additional Security:

In the event that Project Developer does not provide the safe harbor documentation required under section 20.1.1 prior to execution of this E&P, within 15 days after such execution, Transmission Provider shall notify Project Developer in writing of the amount of additional Security that Project Developer must provide. The amount of Security that a Transmission Project Developer must provide initially pursuant to this E&P Agreement shall include any amounts described as additional Security under this section 20.1.4 regarding income tax gross-up. ~~Notwithstanding the foregoing, Project Developer shall be exempt from providing additional Security under this section where Project Developer and Transmission Owner are the same Vertically Integrated Utility. If at any time Project Developer and Transmission Owner no longer constitute the same Vertically Integrated Utility, Project Developer shall be required to provide Security at the earlier of any Tariff prescribed deadline, or at least thirty (30) Business Days prior to the effective date of the change in status of the Vertically Integrated Utility. Exempting Project Developer from any Security obligation under this E&P Agreement does not relieve Project Developer from cost responsibility for any Network Upgrade(s) under this E&P Agreement.~~

20.1.4.2 Amount:

The required additional Security shall be in an amount equal to the amount necessary to gross up fully for currently applicable federal and state income taxes the estimated Costs of Transmission Owner Interconnection Facilities, Distribution Upgrades and/or Network Upgrades for which Project Developer previously provided Security. Accordingly, the additional Security shall equal the amount necessary to increase the total Security provided to the amount that would be sufficient to permit the Transmission Owner to receive and retain, after the payment of all applicable income taxes ("Current Taxes") and taking into account the present value of future tax deductions for depreciation that would be available as a result of the anticipated payments or

property transfers (the "Present Value Depreciation Amount"), an amount equal to the estimated Costs of Transmission Owner Interconnection Facilities, Distribution Upgrades and/or Network Upgrades for which Project Developer is responsible under the Generator Interconnection Agreement. For this purpose, Current Taxes shall be computed based on the composite federal and state income tax rates applicable to the Transmission Owner at the time the additional Security is received, determined using the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting the Transmission Owner's anticipated tax depreciation deductions associated with such payments or property transfers by its current weighted average cost of capital.

20.1.4.3 Time for Payment:

Project Developer must provide the additional Security, in a form and with terms as required by the GIP, within 15 days after its receipt of Transmission Provider's notice under this section. The requirement for additional Security under this section shall be treated as a milestone included in the Generator Interconnection Agreement pursuant to the GIP.

20.1.5 Tax Status:

Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this E&P Agreement or the Tariff is intended to adversely affect any Transmission Owner's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

21 Breach, Cure and Default

21.1 Breach:

A Breach of this E&P Agreement shall include:

- (a) The failure to pay any amount when due;
- (b) The failure to comply with any material term or condition of this E&P Agreement, including but not limited to any material breach of a representation, warranty or covenant;
- (c) Assignment of the E&P Agreement in a manner inconsistent with its terms; or
- (d) Failure of a Party to provide information or data required to be determined under to another Party for such other Party to satisfy its obligations under this E&P Agreement.

21.2 Notice of Breach:

A Party not in Breach shall give written notice of an event of Breach to the Breaching Party, to Transmission Provider and to other persons that the Breaching Party identifies in writing to the other Party in advance. 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. In the event of a Breach by Project Developer, Transmission Provider or the Transmission Owner agree to provide notice of such Breach and in the same manner as its notice to Project Developer, to any Project Finance Entity provided that the Project Developer has provided the notifying Party with notice of an assignment to such Project Finance Entity(ies) and identifies such Project Finance Entity(ies).

21.3 Cure and Default:

A Party that commits a Breach and does not take steps to cure the Breach pursuant to this section 21.3 is automatically in Default of this E&P Agreement, and its project and this Agreement shall be deemed terminated and withdrawn. Transmission Provider shall take all necessary steps to effectuate this termination, including submitted the necessary filings with FERC.

24 Vertically Integrated Utilities

The following provisions shall apply where Project Developer and Transmission Owner under this E&P Agreement constitute a Vertically Integrated Utility.

24.1 Security:

The Parties recognize that the Project Developer is exempt from the Tariff requirement to provide Security as identified in this E&P Agreement, section 4.0(a), conditioned upon:

1. Project Developer and Transmission Owner under this E&P Agreement constituting a Vertically Integrated Utility; and
2. The required Network Upgrade(s) and Interconnection Facilities that form the basis for the Security reflected in this E&P Agreement, section 4.0(a) are entirely on a transmission system wholly owned by the Transmission Owner.

For the avoidance of doubt, exemption of the Tariff requirement to provide Security does not relieve Project Developer from any cost responsibility for the actual Costs for the facilities described in this E&P Agreement, including any cancellation Costs, arising from the termination or cancellation of this E&P Agreement. If at any time Project Developer and Transmission Owner no longer constitute a Vertically Integrated Utility, Project Developer shall be required to provide Security at the earlier of any Tariff prescribed deadline or at least thirty (30) Business Days prior to the effective date of the change in status of the Vertically Integrated Utility.

24.2 Default:

If Project Developer defaults under this E&P Agreement, PJM retains its right under Operating Agreement, section 14B.4(d) to set off any amount owed by Project Developer under this E&P Agreement and the Tariff against any amounts owed to Transmission Owner as a Member under this E&P Agreementthe Operating Agreement. Similarly, if Project Developer defaults under this E&P Agreement, PJM may net remittances of Transmission Owner, against any amounts owed by Project Developer, under the Tariff.

For avoidance of doubt, PJM's rights of setoff, recoupment, and netting, including in the event of bankruptcy, shall apply notwithstanding that the Vertically Integrated Utility is acting in different capacities under this E&P Agreement and PJM's governing documents. The Vertically Integrated Utility shall beis recognized as a single legal entity for purposes of all such rights and PJM may offset any amounts owed to the Vertically Integrated Utility (in any capacity) against any amounts owed by the Vertically Integrated Utility (in any capacity), including in any insolvency, receivership, or bankruptcy proceedings.

For purposes of PJM's rights of setoff, recoupment, and netting, the Vertically Integrated Utility's

obligations to PJM under this E&P Agreement and the Tariff, and any amounts payable to the Vertically Integrated Utility through PJM Settlement, Inc. under the Operating Agreement and Tariff, shall be deemed mutual obligations between the same parties, and shall be enforceable notwithstanding the role of PJM Settlement, Inc. as PJM's settlement and payment agent.

Notwithstanding the Breach provisions in this E&P Agreement, section 21, if Project Developer fails to pay an amount due within five days from the receipt of notice of the Breach and PJM must use the rights of setoff, recoupment, and netting described herein to cure such Breach, Project Developer shall be in automatic Default and its project and this Agreement shall be deemed terminated and withdrawn.

24.3 Assignment:

Assignment to parties other than the Vertically Integrated Utility.

A Project Developer or Transmission Owner constituting a Vertically Integrated Utility must provide PJM with at least sixty (60) days advance written notice prior to an assignment of this E&P Agreement and any related PJM service agreements, including NUCRAs, that would terminate the Vertically Integrated Utility status. Consistent with this E&P Agreement, Appendix III, section 12.2.1, any assignment herein shall not relieve or discharge Project Developer from any of its obligations hereunder absent prior written consent of PJM. Thus, the following conditions must be satisfied:

1. Project Developer shall not assign this E&P Agreement, in whole or in part, without the written consent of PJM. Any such assignment made without PJM's prior written consent shall be null and void.
2. The exemption from the requirement to provide Security shall become void thirty (30) days prior to the effective date of such assignment, at which point the Security requirements referenced in this E&P Agreement, section 5.0 and this E&P Agreement, Specifications, section 4.7 (and any adjustments thereof) shall apply.
3. PJM must receive the required Security in the amount required and form acceptable to PJM no later than thirty (30) days prior to the effective date of such assignment. Failure to timely provide such Security shall constitute a Breach of this E&P Agreement.
4. This E&P Agreement, any associated NUCRAs, and any other related service agreements will be amended to reflect the assignment and furnishing of Security and will be filed with FERC or reported in PJM's Electric Quarterly Reports, as necessary.

Subject to any necessary regulatory acceptance, the effective date of the amended E&P Agreement, any associated amended NUCRAs, and any other related service agreements subject to an assignment will be the same as the effective date of the assignment.