AEP Complaint

Update to Planning Committee on 12/13/18

(added to Agenda at the start of the meeting)
3.2.3.2 General Conditions Applicable to Option:

In addition to the other terms and conditions applicable to the construction of facilities under this Appendix 2, the Option to Build is subject to the following conditions:

(a) The Interconnection Customer must obtain or arrange to obtain all necessary permits and authorizations for the construction and installation of the Transmission Owner Interconnection Facilities that it is building, provided, however, that when the Interconnected Transmission Owner’s assistance is required, the Interconnected Transmission Owner shall assist the Interconnection Customer in obtaining such necessary permits or authorizations with efforts similar in nature and extent to those that the Interconnected Transmission Owner typically undertakes in acquiring permits and authorizations for construction of facilities on its own behalf;

(b) The Interconnection Customer must obtain all necessary land rights for the construction and installation of the Transmission Owner Interconnection Facilities that it is building, provided, however, that upon Interconnection Customer’s reasonable request, the Interconnected Transmission Owner shall assist the Interconnection Customer in acquiring such land rights with efforts similar in nature and extent to those that the Interconnected Transmission Owner typically undertakes in acquiring land rights for construction of facilities on its own behalf;

(c) Notwithstanding anything stated herein, each Interconnected Transmission Owner shall have the exclusive right and obligation to perform the line attachments (tie-in work), and to calibrate remote terminal units and relay settings, required for the interconnection to such Interconnected Transmission Owner’s existing facilities of any Transmission Owner Interconnection Facilities that the Interconnection Customer builds;

(d) The Transmission Owner Interconnection Facilities built by the Interconnection Customer shall be successfully inspected, tested and energized pursuant to Sections 3.8 and 3.9 of this Appendix 2; and

(e) Interconnection Customer shall indemnify Interconnected Transmission Owner and Transmission Provider for claims arising from Interconnection Customer’s construction of Transmission Owner Interconnection Facilities under the terms and procedures applicable to Sections 12.1, 12.2, 12.3, and 12.4 of this Appendix 2;

3.8.4 Notification and Correction of Defects

3.8.4.1 If the Interconnected Transmission Owner, based on inspection or testing pursuant to Section 3.8.2 or 3.8.3 of this Appendix 2, identifies any defects or failures to comply with Applicable Standards in the Interconnection Facilities constructed by the Interconnection
Customer, the Interconnected Transmission Owner shall notify the Interconnection Customer and Transmission Provider of any identified defects or failures within 20 days after the Interconnected Transmission Owner’s receipt of the results of such inspection or testing. The Interconnection Customer shall take appropriate actions to correct any such defects or failure at its sole cost and expense, and shall obtain the Interconnected Transmission Owner’s acceptance of the corrections, which acceptance shall not be unreasonably delayed, withheld or conditioned. Such acceptance does not modify and shall not limit the Interconnection Customer’s indemnification obligations set forth in Section 3.2.3.2(e) of this Appendix 2.

6.1 Interconnection Customer Warranty:

The Interconnection Customer shall warrant that its work (or the work of any subcontractor that it retains) in constructing and installing the Transmission Owner Interconnection Facilities that it builds is free from defects in workmanship and design and shall conform to the requirements of this Interconnection Construction Service Agreement for one (1) year (the “Interconnection Customer Warranty Period”) commencing upon the date title is transferred to Interconnected Transmission Owner in accordance with Section 5.5 of this Appendix 2. The Interconnection Customer shall, at its sole expense and promptly after notification by the Interconnected Transmission Owner, correct or replace defective work in accordance with Applicable Technical Requirements and Standards, during the Interconnection Customer Warranty Period. The warranty period for such corrected or replaced work shall be the unused portion of the Interconnection Customer Warranty Period remaining as of the date of notice of the defect. The Interconnection Customer Warranty Period shall resume upon acceptance of such corrected or replaced work. All Costs incurred by Interconnected Transmission Owner as a result of such defective work shall be reimbursed to the Interconnected Transmission Owner by the Interconnection Customer on demand; provided that the Interconnected Transmission Owner submits the demand to the Interconnection Customer within the Interconnection Customer Warranty Period and provides reasonable documentation of the claimed costs. The Interconnected Transmission Owner’s acceptance, inspection and testing, or a third party’s inspection or testing, of such facilities pursuant to Section 3.8 of this Appendix 2 shall not be construed to limit in any way the warranty obligations of the Interconnection Customer, and this provision does not modify and shall not limit the Interconnection Customer’s indemnification obligations set forth in Section 3.2.3.2(e) of this Appendix 2.

12 Indemnity

12.1 Indemnity:

Each Constructing Entity shall indemnify and hold harmless the other Construction Parties, and the other Construction Parties’ officers, shareholders, stakeholders, members, managers, representatives, directors, agents and employees, and Affiliates, from and against any and all loss, liability, damage, cost or expense to third parties, including damage and liability for bodily injury to or death of persons, or damage to property of persons (including reasonable attorneys’ fees and expenses, litigation costs, consultant fees, investigation fees, sums paid in settlements of claims, penalties or fines imposed under Applicable Laws and Regulations, and any such fees and expenses incurred in enforcing this indemnity or collecting any sums due hereunder)
(collectively, “Loss”) to the extent arising out of, in connection with or resulting from (i) the
indemnifying Constructing Entity’s breach of any of the representations or warranties made in,
or failure of the indemnifying Constructing Entity or any of its subcontractors to perform any of
its obligations under, this Appendix 2, or (ii) the negligence or willful misconduct of the
indemnifying Constructing Entity or its contractors; provided, however, that neither Constructing
Entity shall have any indemnification obligations under this Section 12.1 in respect of any Loss to
the extent the Loss results from the negligence or willful misconduct of the Construction Party
seeking indemnity.

12.2 Indemnity Procedures:

Promptly after receipt by a Person entitled to indemnity (“Indemnified Person”) of any claim or
notice of the commencement of any action or administrative or legal proceeding or investigation
as to which the indemnity provided for in Section 12.1 above may apply, the Indemnified Person
shall notify the indemnifying Constructing Entity of such fact. Any failure of or delay in such
notification shall not affect a Constructing Entity’s indemnification obligation unless such failure
or delay is materially prejudicial to the indemnifying Constructing Entity. The Indemnified
Person shall cooperate with the indemnifying Constructing Entity with respect to the matter for
which indemnification is claimed. The indemnifying Constructing Entity shall have the right to
assume the defense thereof with counsel designated by such indemnifying Constructing Entity
and reasonably satisfactory to the Indemnified Person. If the defendants in any such action
include one or more Indemnified Persons and the indemnifying Constructing Entity and if the
Indemnified Person reasonably concludes that there may be legal defenses available to it and/or
other Indemnified Persons which are different from or additional to those available to the
indemnifying Constructing Entity, the Indemnified Person shall have the right to select separate
counsel to assert such legal defenses and to otherwise participate in the defense of such action on
its own behalf. In such instances, the indemnifying Constructing Entity shall only be required to
pay the fees and expenses of one additional attorney to represent an Indemnified Person or
Indemnified Persons having such differing or additional legal defenses. The Indemnified Person
shall be entitled, at its expense, to participate in any action, suit or proceeding, the defense of
which has been assumed by the indemnifying Constructing Entity. Notwithstanding the
foregoing, the indemnifying Constructing Entity (i) shall not be entitled to assume and control
the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the
Indemnified Person and its counsel, such action, suit or proceeding involves the potential
imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity
of interest between the Indemnified Person and the indemnifying Constructing Entity, in such
event the indemnifying Constructing Entity shall pay the reasonable expenses of the Indemnified
Person, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or
proceeding without the consent of the Indemnified Person, which shall not be unreasonably
withheld, conditioned or delayed.

12.3 Indemnified Person:

If an Indemnified Person is entitled to indemnification under this Section 12 as a result of a claim
by a third party, and the indemnifying Constructing Entity fails, after notice and reasonable
opportunity to proceed under Section 12.2, to assume the defense of such claim, such
Indemnified Person may at the expense of the indemnifying Constructing Entity contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

12.4 Amount Owing:

If an indemnifying Constructing Entity is obligated to indemnify and hold any Indemnified Person harmless under this Section 12, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person’s actual Loss, net of any insurance or other recovery.

12.5 Limitation on Damages:

Except as otherwise provided in this Section 12, the liability of a Construction Party under this Appendix 2 shall be limited to direct actual damages, and all other damages at law are waived. Under no circumstances shall any Construction Party or its Affiliates, directors, officers, employees and agents, or any of them, be liable to another Construction Party, whether in tort, contract or other basis in law or equity for any special, indirect, punitive, exemplary or consequential damages, including lost profits. The limitations on damages specified in this Section 12.5 are without regard to the cause or causes related thereto, including the negligence of any Construction Party, whether such negligence be sole, joint or concurrent, or active or passive. This limitation on damages shall not affect any Construction Party’s rights to obtain equitable relief as otherwise provided in this Appendix 2. The provisions of this Section 12.5 shall survive the termination or expiration of the Interconnection Construction Service Agreement.

12.6 Limitation of Liability in Event of Breach:

A Construction Party (“Breaching Party”) shall have no liability hereunder to any other Construction Party, and each other Construction Party hereby releases the Breaching Party, for all claims or damages it incurs that are associated with any interruption in the availability of the Customer Facility, the Interconnection Facilities, Transmission System or Construction Service or damages to a Construction Party’s facilities, except to the extent such interruption or damage is caused by the Breaching Party’s gross negligence or willful misconduct in the performance of its obligations under this Interconnection Construction Service Agreement.

12.7 Limited Liability in Emergency Conditions:

Except as otherwise provided in the Tariff or the Operating Agreement, no Construction Party shall be liable to any other Construction Party for any action that it takes in responding to an Emergency Condition, so long as such action is made in good faith, is consistent with Good Utility Practice and is not contrary to the directives of the Transmission Provider or the Interconnected Transmission Owner with respect to such Emergency Condition. Notwithstanding the above, Interconnection Customer shall be liable in the event that it fails to comply with any instructions of Transmission Provider or the Interconnected Transmission Owner related to an Emergency Condition.