



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

December 18, 2013

## Process

- First Draft of DEA Provided on (Nov 18, 2013)
- Comments Received and posted:
  - LS Power
  - Atlantic Grid
  - PHI (Security only)
  - Dominion (security only)
  - AEP (security)
- Posting of Revised DEA
- Review of Comments and PJM Approach

*Topic #1---Missed Milestones: Impact re: Breach, Letter of Credit, Basis for PJM Extensions vs. Contract Termination etc.*

*PJM Approach:*

- Process and grounds for extensions of milestones vs. termination of DEA set forth in the DEA and tariff
- Application of those processes left to particular facts and circumstances
- Not appropriate to “hard wire” in the DEA specific circumstances mandating extensions or termination when milestones missed

- Missed milestone that delays Required Project In-Service Date triggers re-evaluation under Section 1.5.8(k) of Schedule 6 of the OA.

Topic #2---Force Majeure---Definition of force majeure events (e.g. does failure to obtain siting approval, economic conditions or rate recovery status constitute force majeure?)

PJM Approach:

DEA should not “hard-wire” specific facts and circumstances into force majeure provision. Force majeure definition is broad enough to address issues beyond Designated Entity’s control which interfere with project completion.

Topic #3---Assignment of Obligations: Should the DEA permit assignment to financial entities without PJM approval?

PJM Approach:

- Blanket approval of assignment undoes pre-qualification and company evaluation processes.
- Assignments may be acceptable but should be addressed on case by case basis, not “pre-approved” in the DEA.

Topic #4---Liability to Third Parties: Requests for inclusion in DEA provisions limiting the liability of Designated Entity to third parties

PJM Approach:

- DEA should not be used as a shield against third party lawsuits—not appropriate role of DEA
- Designation does not change liability of designated entities to safely construct facilities and meet all legal obligations

Topic #5---Letter of Credit Issues—When is LOC released? How are proceeds disbursed, impact of siting processes etc.?

PJM Approach

- Contract clarified to affirm PJM obligation to release LOC upon the project being placed in service or terminated in absence of a breach (e.g. reconsideration of need)
- Delays to obtaining siting approvals may or may not be beyond entity's control, so address on case by case basis subject to force majeure legal standard
- Distribution of LOC proceeds to be subject to filing at FERC



Topic #6---Governing Law: Clarify that Federal Power Act applies along with Delaware Law for non-FPA issues.

PJM Approach

- Agree with comment. DEA language clarified to so indicate.

## Topic #7---Role of Schedule C: Proposals to Change Specific Language

### PJM Approach:

- Draft Schedule C is a template which can be supplemented with project-specific requirements such as varying dates for permits etc.
- Maintain flexibility for individual designated entity milestone submissions to PJM

Topic #8---Security: Proposals to change the amount of security, consider alternatives to Letter of Credit, consider adjustments to amount over life of project

PJM Approach:

- PJM has revised the percentage to 3% of project cost and will remain fixed for the term of the agreement.
- Fixed percentage at 3% balances multiple factors including: cost to rate payers, adequate protection in event of default, range of reasonableness of cost, administrative practicality, similar practices

## *PJM Approach on security (continued):*

- Letter of credit must meet requirements for LOCs specified in Attachment Q of the Tariff
- Cash will be an acceptable form of security

## Topic #9---Treatment of Confidential Information

### PJM Approach:

- PJM must balance need to maintain confidentiality of information with need to monitor and report on progress of project

## Next Steps:

- Finalize DEA
- Post Draft CIA
- Incorporate comments on CIA
- Finalize CIA
- File DEA and CIA at the FERC