

August 2, 2024

Honorable Debbie-Anne A. Reese, Acting Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE, Room 1A  
Washington, DC 20426

Re: *PJM Interconnection, L.L.C., Docket No. ER24-\_\_\_\_-000,*  
*Compliance Filing*

Dear Acting Secretary Reese:

PJM Interconnection, L.L.C. (“PJM”), pursuant to section 206 of the Federal Power Act (“FPA”),<sup>1</sup> hereby submits proposed changes to the PJM Open Access Transmission Tariff (“Tariff”)<sup>2</sup> to comply with the Federal Energy Regulatory Commission’s (“Commission”) directive in its December 20, 2023 order in Docket Nos. EL24-26-000, *et al.*, to “explain what changes to its Tariff it believes would remedy the identified concerns if the Commission were to determine that the Tariff has . . . become unjust and unreasonable or unduly discriminatory or preferential and, therefore, were to proceed to establish a replacement Tariff.”<sup>3</sup> In support of its compliance filing, PJM also submits proposed revisions to Parts VII, VIII, and IX of its Tariff to clarify responsibility for the procurement

---

<sup>1</sup> 16 U.S.C. § 824e.

<sup>2</sup> The Tariff is currently located under PJM’s “Intra-PJM Tariffs” eTariff title. *See PJM Interconnection, L.L.C. - Intra-PJM Tariffs*, Federal Energy Regulatory Commission, <https://etariff.ferc.gov/TariffBrowser.aspx?tid=1731> (last visited July 24, 2024). Terms not otherwise defined herein shall have the same meaning as set forth in the Tariff, the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., or the Reliability Assurance Agreement among Load Serving Entities in the PJM Region.

<sup>3</sup> *PJM Interconnection, L.L.C.*, 185 FERC ¶ 61,202, at P 41 (2023) (“Show Cause Order”). *See also PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,126, at P 32 (2024) (“May 31 Order”) (requiring PJM to respond to the Show Cause Order or make a filing proposing Tariff revisions on or before August 2, 2024).

of third-party land and land rights in the context of the Site Control requirements for Generator Interconnection Requests.<sup>4</sup> Specifically, PJM proposes to (1) tie third-party land acquisition obligations to the Site Control requirements in Tariff, Part VII, Subpart A, section 302, and Tariff, Part VIII, Subpart A, section 402,<sup>5</sup> (2) require that the Transmission Owner acquire the necessary land or land rights at the Project Developer's expense, rather than have the Project Developer assume responsibility for engaging in those efforts;<sup>6</sup> and (3) allow Project Developers and Transmission Owners the flexibility to negotiate an alternative arrangement for the procurement of additional land and land rights.<sup>7</sup>

These proposed Tariff revisions, as explained herein, resolve the Commission's concerns identified in the Show Cause Order. The proposed Tariff changes should therefore be accepted as just and reasonable and compliant with the directives of the Show Cause Order. PJM requests an effective date as of the date the Commission issues an order accepting the changes proposed herein.<sup>8</sup>

---

<sup>4</sup> Contemporaneously with this filing, PJM is submitting a notice of filing in the established EL24-26-000 docket in which the Show Cause Order was issued. *See Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 15 (2010) (providing service requirements for compliance filings that are issued new root dockets).

<sup>5</sup> *See* proposed Tariff, Part VII, Subpart A, section 302; proposed Tariff, Part VIII, Subpart A, section 402.

<sup>6</sup> *See* proposed Tariff, Part VII, Subpart A, section 302(B); proposed Tariff, Part VIII, Subpart A, section 402(B).

<sup>7</sup> *See* proposed Tariff, Part VII, Subpart A, section 302(B); proposed Tariff, Part VIII, Subpart A, section 402(B).

<sup>8</sup> PJM designated 12/31/9998 in the eTariff filing system, to be updated upon the Commission issuing an order accepting this compliance filing.

## I. BACKGROUND

### A. *PJM's Reformed Generation Interconnection Process*

On November 22, 2022, the Commission issued the order accepting PJM's interconnection process reforms, which included new Site Control rules for which the Commission granted PJM an independent entity variation to depart from Order No. 2003.<sup>9</sup> On July 10, 2023, PJM began its transition to the new interconnection rules, including the new Site Control rules, as detailed below.<sup>10</sup> The Show Cause Order was issued approximately six months later.<sup>11</sup>

Under PJM's new interconnection rules set forth in Tariff, Parts VII and VIII, Project Developers are required to demonstrate Site Control for land that is necessary to complete a New Service Request.<sup>12</sup> Project Developers are responsible for obtaining Site Control from the Generating Facility to the Point of Interconnection, including in circumstances where the path to the Point of Interconnection crosses over third-party land or where the Generating Facility requires a new substation.<sup>13</sup> As set forth in the Tariff, Site Control is evidence provided by a Project Developer to PJM demonstrating the Project Developer's interest in, control over, and right to utilize the Site for the purpose of constructing a Generating Facility,

---

<sup>9</sup> *PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,162 (2022) (“ER22-2110 Order”) *order on reh'g*, 184 FERC ¶ 61,006 (2023), *appeal pending*, Petition for Review, *Hecate Energy LLC v. FERC*, Nos. 23-1089, et al. (D.C. Cir. Mar. 31, 2023).

<sup>10</sup> *See PJM Interconnection, L.L.C.*, Notification of Occurrence of Transition Date of PJM Interconnection, L.L.C., Docket Nos. ER22-2110-000, -001 (July 11, 2023).

<sup>11</sup> *See* Show Cause Order at P 41.

<sup>12</sup> Tariff, Part VII, Subpart A, section 302; Tariff, Part VIII, Subpart A, section 402.

<sup>13</sup> *See* Tariff, Part VII, Subpart C, section 306(B)(5) (requiring demonstration of Site Control at the time of application for “100 percent of the Generating Facility Site including the location of the high-voltage side of the Generating Facility's main power transformer”); Tariff, Part VIII, Subpart B, section 403(B)(5) (same).

Interconnection Facilities, and, if applicable, the Transmission Owner's Interconnection Facilities and/or Network Upgrades at the Point of Interconnection.<sup>14</sup> A Project Developer is obligated to demonstrate increasing levels of Site Control, from the time an Application and Studies Agreement is submitted, through and including Decision Points I,<sup>15</sup> II,<sup>16</sup> and III<sup>17</sup> in the New Service Request process, as a condition of retaining its position in a Cycle.<sup>18</sup> Site Control requires demonstration of conveyance, term, and exclusivity,<sup>19</sup> the extent of the demonstration required is related to the nature of the facilities that will be placed on the Site.<sup>20</sup>

When it proposed these Site Control requirements as part of its package of interconnection process reforms filed with the Commission in 2022, PJM explained that requiring evidence of Site Control at several stages of the New Service Request process is critical to reducing the number of speculative projects entering the interconnection queue.<sup>21</sup> Requiring Site Control throughout the Cycle process discourages Project Developers from tying up existing capability on the Transmission System with projects that may not be viable, thereby harming other Project Developers that have done their due diligence to procure the

---

<sup>14</sup> See Tariff, Part VII, Subpart A, section 302; Tariff, Part VIII, Subpart A, section 402.

<sup>15</sup> Tariff, Part VII, Subpart D, section 309(A)(1)(b); Tariff, Part VIII, Subpart C, section 406(A)(1)(b).

<sup>16</sup> Tariff, Part VII, Subpart D, section 311(A)(2); Tariff, Part VIII, Subpart C, section 408(A)(2).

<sup>17</sup> Tariff, Part VII, Subpart D, section 313(A)(1)(c); Tariff, Part VIII, Subpart C, section 410(A)(1)(c).

<sup>18</sup> As used in this compliance filing, "Cycle" includes Transition Cycles 1 and 2.

<sup>19</sup> See Tariff, Part VII, Subpart A, section 302(A)(8); Tariff, Part VIII, Subpart A, section 402(A)(8).

<sup>20</sup> For example, during Decision Point I, Project Developers must demonstrate 100 percent Site Control of land needed for Generating Facilities and 50 percent Site Control of land needed for Interconnection Facilities. See Tariff, Part VII, Subpart D, section 309(A)(1)(b); Tariff, Part VIII, Subpart C, section 406(A)(1)(b).

<sup>21</sup> See *PJM Interconnection, L.L.C.*, Tariff Revisions for Interconnection Process Reform, Request for Commission Action by October 3, 2022, and Request for 30-Day Comment Period, Docket No. ER22-2110-000, at 28 (June 14, 2022) ("ER22-2110 Filing").

necessary land to build their facility, and thus having more viable projects.<sup>22</sup> The Commission agreed, holding that while Site Control demonstrations “will add to the burden of prospective interconnection customers, we find that those burdens will be outweighed by the benefits associated with decreasing the number of speculative interconnection requests entering the interconnection queue, such as improving PJM’s ability to timely process viable interconnection requests.”<sup>23</sup>

***B. Concerns Identified in the Show Cause Order.***

*1. Procedural Background*

On September 26, 2022,<sup>24</sup> as supplemented on September 30, 2022,<sup>25</sup> PJM filed an unexecuted Interconnection Service Agreement (“ISA”) and an unexecuted Interconnection Construction Service Agreement (“ICSA”), both among PJM, New Market Solar, LLC, (“New Market Solar” or “Interconnection Customer”) and Delmarva Power & Light Company (“DPL” or “Interconnected Transmission Owner”) (the “New Market Solar ISA” and “New Market Solar ICSA,” respectively; together, the “New Market Solar Agreements”). PJM filed the New Market Solar Agreements unexecuted at New Market Solar’s request, due to the Interconnection Customer’s concerns regarding the AC1-190 Facilities Study Report (dated May 2022).<sup>26</sup> The Interconnection Customer’s concerns

---

<sup>22</sup> *See id.* at 47.

<sup>23</sup> ER22-2110 Order at P 99.

<sup>24</sup> *PJM Interconnection, L.L.C.*, Original Service Agreement Nos. 6612 and 6613; Queue No. AC1-190, Docket No. ER22-2931-000 (Sept. 26, 2022) (“September 26 Filing”).

<sup>25</sup> *PJM Interconnection, L.L.C.*, Supplemental Filing, Original Service Agreement Nos. 6612 and 6613; Queue No. AC1-190, Docket No. ER22-2931-000 (Sept. 30, 2022).

<sup>26</sup> *See* Generation Interconnection Facilities Study Report for PJM Generation Interconnection Request Queue Position AC1-190, PJM Interconnection, L.L.C. (May 2022), [https://www.pjm.com/pub/planning/project-queues/facilities/ac1190\\_fac.pdf](https://www.pjm.com/pub/planning/project-queues/facilities/ac1190_fac.pdf).

included, but were not limited to, the Network Upgrades identified as necessary to accommodate the interconnection of its project, the cost estimates associated with such upgrades, and responsibility for the acquisition of certain land and land rights from a third party to accommodate the needed expansion of an existing Network Upgrade beyond the Site.<sup>27</sup>

## 2. *Show Cause Order and Subsequent Procedural History*

On December 20, 2023, the Commission issued the Show Cause Order, finding that PJM had not adequately supported the requirement that the Interconnection Customer acquire the additional land and associated permits and easements necessary to construct the expansion of an existing Network Upgrade.<sup>28</sup> The Commission pointed to the requirements of the *pro forma* Large Generator Interconnection Agreement in Order No. 2003, which obligate the transmission provider or the transmission owner—not the interconnection customer—to “use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its affiliates, to procure land rights and permits necessary to construct, operate, and maintain Network Upgrades on property owned by persons other than the interconnection customer, transmission provider, or transmission owner,”<sup>29</sup> and noted that PJM had not cited any Tariff provision that would permit deference to a transmission owner’s preference as to which party is obligated to obtain third-party land

---

<sup>27</sup> September 26 Filing at 4.

<sup>28</sup> Show Cause Order at P 38.

<sup>29</sup> Show Cause Order at P 38 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh’g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh’g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh’g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff’d sub nom. Nat’l Ass’n of Regul. Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008)).

rights.<sup>30</sup> The Commission clarified that, “the issue in the record before us is not who will pay for the ‘efforts’ to acquire the third-party land, but rather who will be responsible for engaging in those efforts.”<sup>31</sup>

As relevant to this compliance filing, the Show Cause Order initiated a proceeding pursuant to section 206 of the FPA, requiring PJM to show cause as to why “the default position, the prior rate” remains just and reasonable.<sup>32</sup> The Show Cause Order further directed PJM to “(1) show cause as to why its *pro forma* ICSA under its Tariff is just and reasonable and not unduly discriminatory or preferential; or (2) explain what changes to its Tariff it believes would remedy the identified concerns if the Commission were to determine that the Tariff has, in fact, become unjust and unreasonable or unduly discriminatory or preferential and, therefore, were to proceed to establish a replacement Tariff.”<sup>33</sup>

On January 19, 2024, PJM filed a motion to hold the show cause proceeding in Docket No. EL24-26-000 in abeyance for 180 days, to allow PJM adequate time to consider whether revisions to its currently effective Tariff should be made, engage with stakeholders, and develop and submit any necessary Tariff revisions for the Commission’s consideration.<sup>34</sup> On February 2, 2024, the Commission granted PJM’s motion, extending

---

<sup>30</sup> Show Cause Order at P 38.

<sup>31</sup> Show Cause Order at P 39 n.91 (describing the Interconnection Customer’s cost responsibility for land, rights of use, licenses, rights of way, and easements).

<sup>32</sup> Show Cause Order at P 40 (citing *W. Res., Inc. v. FERC*, 9 F.3d 1568, 1579 (D.C. Cir. 1993) (interpreting parallel provisions of the Natural Gas Act); *Tenn. Gas Pipeline Co. v. FERC*, 860 F. 2d 446, 453-56 (D.C. Cir. 1988) (in a remedial order under section 4 of the Natural Gas Act, the Commission must show the “the presumptively just and reasonable existing rate is no longer just and reasonable”)).

<sup>33</sup> Show Cause Order at P 41. The Commission consolidated Docket Nos. EL24-26-000 (show cause proceeding) and ER22-2931-000 (New Market Solar Agreement filings).

<sup>34</sup> *PJM Interconnection, L.L.C.*, Response of PJM Interconnection, L.L.C. to Show Cause Order and Motion to Hold Proceedings in Abeyance and for Expedited Consideration and a Shortened Comment Period, Docket Nos. ER22-2931-000 & EL24-26-000, at 4 (Jan. 19, 2024).

the deadline to respond to the Show Cause Order to April 2, 2024.<sup>35</sup>

On April 2, 2024, PJM filed to hold the show cause proceeding in Docket No. EL24-26-000 in further abeyance for an additional four months, until August 2, 2024, to afford a reasonable opportunity for stakeholder education and engagement on PJM's proposal to resolve the drawbacks identified in the current Tariff<sup>36</sup> and provide PJM sufficient time to submit a filing to propose Tariff changes to clarify the issue of third-party land rights on a prospective basis.<sup>37</sup> PJM noted that, while the show cause directive applies to *the pro forma* ICSA, the applicable form of interconnection-related service agreement(s) to be tendered after July 10, 2023, is the Generator Interconnection Agreement ("GIA") or the stand-alone Construction Service Agreement under Tariff, Part IX, Subparts B and J, respectively.<sup>38</sup> Therefore, any prospective Tariff changes would apply to the agreements contained in Tariff, Part IX, Subparts B and J.<sup>39</sup>

On May 31, 2024, the Commission issued an order directing PJM to respond to the Show Cause Order by the earlier of August 2, 2024, or the date on which PJM makes its filing to make any necessary revisions to the current interconnection process to clarify third-party land rights and obligations.<sup>40</sup>

---

<sup>35</sup> *PJM Interconnection, L.L.C.*, Notice Granting Extension of Time, Docket Nos. ER22-2931-000 & EL24-26-000 (Feb. 2, 2024).

<sup>36</sup> *PJM Interconnection, L.L.C.*, Motion to Hold Section 206 Proceeding in Continued Abeyance, Docket Nos. ER22-2931-000, et al. (Apr. 2, 2024) ("April 2 Abeyance Filing").

<sup>37</sup> April 2 Abeyance Filing at 3-4; *PJM Interconnection, L.L.C.*, Answer to Motion for Summary Disposition and Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C., Docket Nos. ER22-2937-000 & EL24-26-000, at 8 n.25 (Apr. 29, 2024) (explaining that any changes would not be applied retroactively to agreements that have been executed).

<sup>38</sup> April 2 Abeyance Filing at 3-4 n.13.

<sup>39</sup> See *supra* note 10.

<sup>40</sup> May 31 Order at P 32. PJM informed stakeholders of its compliance filing obligations during the April 22, 2024 and June 21, 2024, Interconnection Process Subcommittee meeting. See Vicki Karandrikas &



## II. COMPLIANCE WITH ORDER TO SHOW CAUSE DIRECTIVE

### A. *Explanation of Proposed Tariff Changes.*

For land and other land rights that must be obtained from third parties to construct Network Upgrades or Transmission Owner Interconnection Facilities associated with a Generator Interconnection Request on the Site, PJM's *pro forma* GIA currently addresses a Project Developer's obligation to obtain the necessary land and land rights from the third party.<sup>41</sup> Per the *pro forma* GIA, upon Project Developer's request, the Transmission Owner is obligated to "assist the Project Developer in acquiring such land rights with efforts similar in nature and extent to those that the Transmission Owner typically undertakes in acquiring land rights for construction of facilities on its own behalf."<sup>42</sup> The *pro forma* GIA's requirements generally mirror the requirements for acquisition of third-party land rights under the form of Interconnection Construction Service Agreement, Tariff, Attachment P, Appendix 2, section 5.3, which was the subject of the Show Cause Order and has been superseded by the GIA for projects studied under Tariff, Parts VII and VIII.<sup>43</sup>

After evaluating the Site Control requirements under the new interconnection rules and the related provisions under the *pro forma* GIA, PJM determined that its Tariff may not be sufficiently clear as to the party responsible for engaging in the efforts to secure third-

---

AJ Lambert, *FERC Show Cause Order*, PJM Interconnection, L.L.C. (June 21, 2024), <https://pjm.com/-/media/committees-groups/subcommittees/ips/2024/20240621/20240621-item-10---ferc-show-cause-order---docket-no-el24-26-000.ashx>.

<sup>41</sup> See Tariff, Part IX, Subpart B, Appendix II, section 23.3.3 (including a cross-reference to 23.1 [sic] which addresses land and land rights over the Site).

<sup>42</sup> *Id.*

<sup>43</sup> Show Cause Order at P 41. Because Tariff, Attachment P, Appendix 2, section 5.3 has been superseded by the GIA, PJM is not proposing any changes to the Interconnection Construction Service Agreement in this compliance filing.

party land and other land rights in instances where an interconnection requires the expansion of Transmission Owner's existing Interconnection Facilities or Network Upgrade beyond the Site. Specifically, the Tariff does not clearly provide the level of detail to satisfy the Commission's concerns set forth in the Show Cause Order, nor does the *pro forma* GIA reflect the changes to the Site Control provisions in PJM's new interconnection process. As discussed in more detail below, the proposed Tariff changes set forth in this filing, including proposed changes to the *pro forma* GIA, are designed to identify the entity responsible for engaging in the efforts to acquire land and other land rights from third parties when land or land rights in addition to those identified and secured by Project Developer pursuant to Tariff, Part VII, Subpart A, section 302(A) or Tariff, Part VIII, Subpart A, section 402(A) are identified as necessary for the expansion of Transmission Owner's existing Interconnection Facilities and/or Network Upgrades. Furthermore, the proposed Tariff changes integrate this clarification within the Site Control provisions of PJM's new interconnection process rules.

In compliance with the Commission's directive to identify changes to the Tariff that would remedy the concerns identified in the Show Cause Order, PJM proposes to (1) tie third-party land acquisition obligations to the Site Control requirements in Tariff, Part VII, Subpart A, section 302, and Tariff, Part VIII, Subpart A, section 402,<sup>44</sup> and (2) require that the Transmission Owner acquire the necessary land or land rights at the Project Developer's expense, rather than have the Project Developer assume responsibility for engaging in those

---

<sup>44</sup> See proposed Tariff, Part VII, Subpart A, section 302(B); proposed Tariff, Part VIII, Subpart A, section 402(B).

efforts. PJM further proposes to allow Project Developers and Transmission Owners to negotiate an alternative arrangement for the procurement of additional land and land rights.<sup>45</sup>

As explained above, PJM's reformed interconnection process requires Project Developers to acquire Site Control from the Generating Facility to the Point of Interconnection, including Site Control over required third-party land, in order to promote efficiency and discourage speculative projects from remaining in the queue.<sup>46</sup> However, during the Facilities Study Procedures stage of a Cycle, including a Transition Cycle, a Transmission Owner may identify the need to expand its existing Interconnection Facilities or substation to accommodate the interconnection of a proposed Generating Facility, and such expansion may require the acquisition of land or land rights in addition to the land and land rights procured by a Project Developer per the Tariff's Site Control requirements. The need for this land or these land rights would not have been known or foreseeable to the Project Developer at the time it submitted its New Services Request. To ensure that Project Developers are not unduly burdened by the unanticipated need to acquire land or land rights arising during the late stages of the interconnection process, PJM proposes to revise its Site Control requirements to require Transmission Owners to engage in the efforts to procure, at Project Developer's expense, third-party land and land rights for Transmission Owner Interconnection Facilities and/or Network Upgrades identified first during Facilities Study Procedures.

---

<sup>45</sup> See proposed Tariff, Part VII, Subpart A, section 302(B); proposed Tariff, Part VIII, Subpart A, section 402(B).

<sup>46</sup> See ER22-2110 Filing at 47.

Specifically, PJM proposes to add new subsection (B) to Tariff, Part VII, Subpart A, section 302, and Tariff, Part VIII, Subpart A, section 402, to clarify the entity responsible for securing additional land or land rights identified during the Facilities Study Procedures:

B. Procurement of Additional Land or Land Rights

During the course of the Facilities Study Procedures set forth in Tariff, Part VII, section 307(A)(7), if land or land rights in addition to those identified and secured by Project Developer pursuant to Tariff, Part VII, section 302(A) are determined to be necessary to install any part of the Transmission Owner Interconnection Facilities and/or Network Upgrades, and such land is property owned or controlled by persons other than Project Developer or Transmission Owner, then Transmission Owner shall, at Project Developer's expense, use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such person any land, rights of use, licenses, rights of way, and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner Interconnection Facilities and/or Network Upgrades upon such property.<sup>47</sup>

During the course of the Facilities Study Procedures, if land or land rights in addition to those identified and secured by Project Developer pursuant to the Tariff's Site Control requirements are determined to be necessary to install any part of the existing Transmission Owner's facilities (*i.e.*, Transmission Owner Interconnection Facilities and/or Network Upgrades), and the necessary land or land rights are owned or controlled by persons other than the Project Developer or the Transmission Owner, then the Transmission Owner would be required to "use efforts, similar in nature and extent to those that it typically undertakes

---

<sup>47</sup> Proposed Tariff, Part VII, Subpart A, section 302(B); *see* Proposed Tariff, Part VIII, Subpart A, section 402(B). Facilities Study Procedures are set forth in Tariff, Part VII, Subpart D, section 307(A)(7), and Tariff, Part VIII, Subpart C, section 404(A)(7), respectively.

for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law,” to procure the necessary land or other land rights.<sup>48</sup> The Project Developer would be responsible for posting Security that would include the estimated costs associated with the Transmission Owner’s acquisition of third-party land and land rights set forth in a project’s Facilities Study, and the amount of such Security would be memorialized in the GIA.<sup>49</sup>

PJM recognizes that this proposal may not be suitable in every circumstance in which the need for third-party land or land rights (such as easements) is identified first during Facilities Study Procedures. For example, as demonstrated in the case of New Market Solar, a Project Developer may prefer to undertake responsibility for procuring third-party land or land rights when it can do so more efficiently and/or cost-effectively than the Transmission Owner.<sup>50</sup> PJM therefore proposes to include the following language in new subsection (B) of Tariff, Part VII, Subpart A, section 302, and Tariff, Part VIII, Subpart A, section 402, that would allow the Project Developer and Transmission Owner to negotiate, over the 20 Business Day period following the start of the Final Agreement Negotiation Phase,<sup>51</sup> an

---

<sup>48</sup> Proposed Tariff, Part VII, Subpart A, section 302(B); proposed Tariff, Part VIII, Subpart A, section 402(B).

<sup>49</sup> See, e.g., Show Cause Order at P 38 (noting that Order No. 2003 requires Transmission Owners to procure land rights necessary to construct Network Upgrades “at the interconnection customer’s expense”).

<sup>50</sup> See, e.g., *PJM Interconnection, L.L.C.*, Comments of SunEnergy1, LLC, Docket Nos. ER22-2931-000, et al., at 6-7 (June 10, 2024) (“SunEnergy1 Comments”) (“[New Market Solar and DPL] did indeed discuss the potential of DPL undertaking efforts to procure the land rights at issue in Docket No. ER22-2931 and that are applicable to the New Market Solar Facility. However, upon evaluating the requisite timeline for DPL to acquire such land rights and to undertake applicable associated tasks (e.g., environmental due diligence) and the estimated costs of doing so, including the impact on Security, **[New Market Solar] determined that it would prefer to be the party primarily responsible for undertaking efforts to acquire the land rights and undertake the associated tasks in question because it believed (and still believes) that it could do so in a more efficient and timely manner.**” (emphasis added)).

<sup>51</sup> Parties’ obligations during the Final Agreement Negotiation Phase are set forth in Tariff, Part VII, Subpart D, section 314 and Tariff, Part VIII, Subpart D, section 411, respectively.

alternative arrangement for procuring land and other land rights to be reflected in the terms and conditions of the GIA:<sup>52</sup>

Notwithstanding the foregoing, Transmission Owner and Project Developer may negotiate an alternative arrangement to procure the additional land and land rights determined to be necessary to install any part of the Transmission Owner Interconnection Facilities and/or Network Upgrades during the course of the Facility Study Procedures set forth in Tariff, Part VII, section 307(A)(7). Transmission Owner and Project Developer shall have no more than 20 Business Days following the start of the Final Agreement Negotiation Phase to conduct such negotiations and reflect the terms of any negotiated arrangement in the draft service agreement.<sup>53</sup>

In addition to the changes described above, PJM proposes to modify the third-party land rights language in section 23.3.3 of the *pro forma* GIA<sup>54</sup> to reflect the Site Control requirements in Tariff, Part VII, Subpart A, section 302, and Tariff, Part VIII, Subpart A, section 402, Site Control:

**23.3.3 Acquisition of Additional Land and/or other Land Rights from Third Parties:**

If any land and/or other land rights must be obtained from a third party, acquisition of such land and/or land rights shall be subject to the requirements of Tariff, Part VII, Subpart A, section 302 and Tariff, Part VIII, Subpart A, section 402, as applicable.<sup>55</sup>

---

<sup>52</sup> See proposed Tariff, Part VII, Subpart A, section 302(B); proposed Tariff, Part VIII, Subpart A, section 402(B).

<sup>53</sup> Proposed Tariff, Part VII, Subpart A, section 302(B); see proposed Tariff, Part VIII, Subpart A, section 402(B).

<sup>54</sup> As part of this filing, PJM proposes a ministerial change to Tariff, Part IX, Subpart B, Appendix II, section 23.3.2 to correct the cross-reference contained therein.

<sup>55</sup> Proposed Tariff, Part IX, Subpart B, Appendix 2, section 23.3.3.

This proposed revision will ensure that PJM's Site Control requirements govern with respect to acquisition of land or land rights.

To the extent the Commission determines that this proposal does not meet the requirements of Order No. 2003, PJM requests an independent entity variation to allow this proposal.<sup>56</sup> The proposal to tie the land acquisition obligations to the Tariff's Site Control requirements and require Transmission Owners to acquire, at Project Developers' expense, land or land rights that were not known to be necessary or could not have been foreseen to be necessary at the time the New Service Request was submitted is consistent with the intent of Order No. 2003, and is just and reasonable.

***B. The Proposed Tariff Changes Are Just and Reasonable and Resolve the Issues in the Show Cause Order.***

The Commission should find that PJM's proposed Tariff changes prospectively resolve the issue raised in the Show Cause Order of whether the existing Tariff is just and reasonable and not unduly discriminatory.<sup>57</sup> The proposed changes clearly identify the party responsible "for engaging in . . . efforts" to obtain necessary third-party land and land rights.<sup>58</sup> The proposed changes also provide the Project Developer and Transmission Owner with the option to negotiate a just and reasonable alternative procurement proposal within the established Final Agreement Negotiation Phase provisions.

The proposed changes reasonably require Project Developers to obtain and demonstrate Site Control for land and land rights that is known or foreseeable to be needed

---

<sup>56</sup> ER22-2110 Order at P 2; *see Midcontinent Indep. Sys. Operator, Inc.*, 185 FERC ¶ 61,231, at P 9 (2023); *ISO New England Inc.*, 170 FERC ¶ 61,218, at P 26 (2020).

<sup>57</sup> Show Cause Order at P 41.

<sup>58</sup> Show Cause Order at P 39 n.91.

at the time the Project Developers submit their New Service Requests, while requiring Transmission Owners to acquire land or land rights beyond those a Project Developer procures per the Tariff's Site Control rules and that are unknown or unforeseeable as necessary prior to the Facilities Study Procedures. These proposed Tariff changes support the intent of the Site Control requirements while not unduly burdening Project Developers—a balance that the Commission found to be just and reasonable in the ER22-2110 Order.<sup>59</sup>

The proposed revisions further provide Project Developers with greater clarity regarding their responsibility for engagement in efforts to procure land or land rights, from the time they submit their New Service Requests through and including Decision Point III. The proposal also increases efficiency in the interconnection process by integrating and aligning the acquisition of additional third party land and land rights requirements with existing Site Control demonstrations, thereby eliminating potential ambiguities and avoiding future “New Market Solar” scenarios.

PJM's proposed alternative to allow the Project Developer and Transmission Owner to negotiate an alternative land procurement arrangement is similarly just and reasonable. The purpose of the Final Agreement Negotiation Phase is to “negotiate, execute and enter into a final interconnection related service agreement.”<sup>60</sup> Thus, allowing the parties to utilize the initial 20 Business Day period of the Final Agreement Negotiation Phase to negotiate an alternative procurement arrangement would permit the terms of any negotiation to be reflected in the final GIA among the parties and avoid delays or unintended consequences

---

<sup>59</sup> See ER22-2110 Order at P 99.

<sup>60</sup> Tariff, Part VII, Subpart D, section 314(A); Tariff, Part VIII, Subpart D, section 411(A).



that could negatively impact other projects within a Cycle.<sup>61</sup> The opportunity to negotiate an alternative arrangement also promotes the timely and cost-effective development of new generation resources within the PJM footprint.<sup>62</sup>

For all these reasons, PJM's proposal complies with the directives of the Show Cause Order, fully resolves the issues raised in that proceeding, and therefore should be accepted as a just and reasonable resolution of the show cause proceeding.

### III. COMMUNICATIONS

PJM requests that all communications regarding this filing be directed to the following persons:

Craig Glazer  
Vice President – Federal Government Policy  
PJM Interconnection, L.L.C.  
1200 G Street, N.W.  
Suite 600  
Washington, D.C. 20005  
(202) 423-4743  
Craig.Glazer@pjm.com

Christopher B. Holt  
Managing Counsel  
PJM Interconnection, L.L.C.  
2750 Monroe Blvd.  
Audubon, PA 19403  
610-666-2368  
christopher.holt@pjm.com

Wendy B. Warren  
Elizabeth P. Trinkle  
Wright & Talisman, P.C.  
1200 G Street, N.W., Suite 600  
Washington, D.C. 20005  
(202) 393-1200 (phone)  
(202) 393-1240 (fax)  
warren@wrightlaw.com  
trinkle@wrightlaw.com

---

<sup>61</sup> See Tariff, Part VII, Subpart D, section 314(B)(4); Tariff, Part VIII, Subpart D, section 411(B)(4).

<sup>62</sup> SunEnergy1 Comments at 6-7.

Vasiliki Karandrikas  
Assistant General Counsel  
PJM Interconnection, L.L.C.  
2750 Monroe Blvd.  
Audubon, PA 19403  
(610) 666-4780  
vasiliki.karandrikas@pjm.com

#### **IV. ADDITIONAL INFORMATION**

In accordance with section 35.13(a)(1) of the Commission's regulations, 18 C.F.R. § 35.13(a)(1), PJM provides the following information:

This filing consists of the following:

1. This transmittal letter;
2. Attachment A – Revisions to the PJM Tariff (marked); and
3. Attachment B – Revisions to the PJM Tariff (clean).

#### **V. EFFECTIVE DATE**

As discussed above, PJM proposes to apply the Tariff changes requested herein on a prospective basis to agreements contained in Tariff, Part IX, Subparts B and J.<sup>63</sup> Therefore, PJM requests an effective date as of the date the Commission issues an order accepting the changes proposed in this filing as compliant with the directives of the Show Cause Order.

#### **VI. SERVICE**

PJM has served a copy of this filing on all PJM Members and on all state utility regulatory commissions in the PJM Region by posting this filing electronically. In accordance with the Commission's regulations,<sup>64</sup> PJM will post a copy of this filing to the

---

<sup>63</sup> See *supra* note 10.

<sup>64</sup> See 18 C.F.R. §§ 35.2(e) and 385.2010(f)(3).

Commission filings section of its internet site, located at the following link: <https://www.pjm.com/library/filing-order.aspx>, with a specific link to the newly-filed document, and will send an email on the same date as this filing to all PJM Members and all state utility regulatory commissions in the PJM Region<sup>65</sup> alerting them that this filing has been made by PJM today, and is available by following that link.

---

<sup>65</sup> PJM already maintains, updates, and regularly uses email lists for all PJM Members and affected commissions.

## VII. CONCLUSION

For the reasons provided herein, PJM respectfully requests that the Commission accept this compliance filing.

Respectfully submitted,

/s/ Elizabeth P. Trinkle  
Wendy B. Warren  
Elizabeth P. Trinkle  
Wright & Talisman, P.C.  
1200 G Street, N.W., Suite 600  
Washington, D.C. 20005  
(202) 393-1200 (phone)  
(202) 393-1240 (fax)  
warren@wrightlaw.com  
trinkle@wrightlaw.com

Craig Glazer  
Vice President – Federal Government Policy  
PJM Interconnection, L.L.C.  
1200 G Street, N.W.  
Suite 600  
Washington, D.C. 20005  
(202) 423-4743  
Craig.Glazer@pjm.com

Christopher B. Holt  
Managing Counsel  
PJM Interconnection, L.L.C.  
2750 Monroe Blvd.  
Audubon, PA 19403  
610-666-2368  
christopher.holt@pjm.com

Vasiliki Karandrikas  
Assistant General Counsel  
PJM Interconnection, L.L.C.  
2750 Monroe Blvd.  
Audubon, PA 19403  
(610) 666-4780  
vasiliki.karandrikas@pjm.com

*Attorneys for PJM Interconnection, L.L.C.*

# Attachment A

## Revisions to the PJM Open Access Transmission Tariff

(Marked/Redline Format)

**Tariff, Part VII, Subpart A, section 302**  
**Site Control**

A. Site Control Evidentiary Requirements

Site Control is evidence provided by the Project Developer to Transmission Provider in relation to Project Developer's New Service Request demonstrating Project Developer's interest in, control over, and right to utilize the Site for the purpose of constructing a Generating Facility, Merchant Transmission Facilities, Interconnection Facilities, and, if applicable, the Transmission Owner's Interconnection Facilities and/or Network Upgrades at the Point of Interconnection. Specific Site Control phase requirements are set forth in the following Tariff, Part VII, Subpart C, section 306, and Subpart D, sections 309 and 312. Except as provided in subsection (B), Project Developer shall retain sole responsibility to demonstrate Site Control during all phases of the New Service Request.

1. Site Control consistent with the requirements herein is required for a project to have a valid position within a Cycle.
2. Proof of Site Control can be in the form of one of the following: (1) deed; (2) lease; (3) option to lease or purchase; or (4) as deemed acceptable by the Transmission Provider, any other contractual or legal right to possess, occupy and control the Site.
  - a. Memorandums are not acceptable.
  - b. Documentation solely evidencing an intent to purchase or control the Site is not acceptable.
  - c. Rights of Way are only acceptable for Project Developer Interconnection Facilities up to the Point of Interconnection.
  - d. Notwithstanding the foregoing, for a New Service Request, all or a portion of which requires the use of Sites owned or physically controlled by a state and/or federal governmental entity, and authorization for such use is subject to environmental and other state and/or federal governmental permitting requirements, including 42 U.S.C. § 4331 et seq. and any succeeding statutes, acceptable evidence of Site Control can be in any form the governmental entity issues. For Decision Point I and Decision Point III, Project Developers shall provide evidence that the Project Developer is taking identifiable steps acceptable to the Transmission Provider in furtherance of the issuance of such authorization by the state and/or federal governmental entity, including documentation sufficiently describing and explaining the source of and effects of such regulatory requirements, including a description of any conditions that must be met in order to satisfy the regulatory requirements and the anticipated time by which the Project Developer expects to satisfy the regulatory requirements. For Decision Point I and Decision Point III, Project

Developers shall also identify any additional property rights for the portion of the Site that is not owned or physically controlled by a state and/or federal governmental entity but which cannot be secured until the regulatory requirements have been met and authorization has been provided by the requisite state and/or federal governmental entity.

3. Demonstration of Site Control must include verification, to PJM's satisfaction, that the total feet or acreage ("acreage") of the Site is adequate for the resource-specific technology and MWs requested for a proposed Generating Facility or Merchant Transmission Facility, as set forth in the PJM Manuals.
  - a. The Project Developer must submit a Geographic Information System (GIS) Site Plan map and data files acceptable to PJM demonstrating the arrangement of the resource-specific proposed facilities for the amount of MW requested.
  - b. Any GIS Site Plan map and data files submitted in accordance with this section must be consistent with all other modeling data submitted in connection with Project Developer's New Service Request.
  - c. In the event of a disagreement between the Transmission Provider and the Project Developer over whether the total acreage of the Site is fully sufficient for the resource-specific technology and MWs requested for a proposed Generating Facility or Merchant Transmission Facility, Transmission Provider will accept a Professional Engineer (PE) stamped site plan drawing (licensed in the state of the facility location) that depicts the proposed generation arrangement and specifies the Maximum Facility Output for that arrangement.
    - i. Failure to verify to Transmission Provider's satisfaction that the total acreage of the Site is adequate for the resource-specific technology and MWs requested for a proposed Generating Facility or Merchant Transmission Facility shall result in the New Service Request being deemed terminated and withdrawn.
4. Site Control must be in the name of the Project Developer identified on the corresponding New Service Request. Otherwise, the Project Developer must demonstrate to PJM's satisfaction the relationship between the entity owning or controlling the Site ("landowner" or "owner") with Site Control and the Project Developer identified on the New Service Request.
5. Project Developers are prohibited from submitting evidence of Site Control that utilizes the same Site for multiple New Service Requests unless the total acreage amount of such Site is adequate to support all such New Service Requests.
  - a. To the extent that multiple New Service Requests are submitted by a Project Developer using the same Site Control evidence and the total

acreage amount of such Site is not adequate to support all such New Service Requests, all such New Service Requests shall be deemed terminated and withdrawn.

- b. To the extent that a Project Developer submits a New Service Request with Site Control evidence utilizing the Site that is also the subject of Site Control in New Service Requests submitted by other Project Developer's, such Project Developer shall include with its New Service Request evidence, to Transmission Provider's satisfaction, demonstrating that the project referenced in the Project Developer's New Service Request is concurrently feasible with the development of any other projects that will share the Site identified in the Site Control. Such proof of concurrent feasibility shall include:
  - i. Identification of any other New Service Requests that will share all or a portion of the Site identified in the Site Control; and
  - ii. Identification of the proposed location and space utilization of all projects that will share the Site, including acreage and boundaries for all projects sharing the Site identified in the Site Control; and
  - iii. Any related technical information required by the Transmission Provider to enable the Transmission Provider to determine that development of the project referenced in the submitted New Service Request is not inconsistent with development of any of the other New Service Requests that will share all or a portion of the same Site.
6. Multiple projects may share Project Developer Interconnection Facilities. A shared facilities agreement is required if jointly owned common Interconnection Facilities are proposed.
7. Project Developers are prohibited from submitting evidence of Site Control for the Site which is also the subject of an interconnect request submitted in an adjacent Regional Transmission Organization, Independent System Operator, or other system. To the extent that Project Developers submit evidence of Site Control for the Site which is also the subject of an interconnection request submitted in an adjacent Regional Transmission Organization, Independent System Operator, or other system, the relevant New Service Request submitted to Transmission Provider shall be deemed terminated and withdrawn.
8. Site Control must demonstrate three key elements: conveyance, term, and exclusivity:
  - a. Term



Term is the minimum duration required to evidence Site Control. The Term requirements vary, and are established in the following Tariff, Part VII rules, at various points within a Cycle. The Term cannot be satisfied by an agreement with an initial term shorter than the requisite required term that has extensions, including unilateral extensions, unless those extensions have been exercised and any requisite conditions fulfilled, including any payment obligations, by the Project Developer at the time evidence of Site Control is provided to the Transmission Provider.

b. Exclusivity

With the exception of Tariff, Part VII, Subpart A, section 302(A)(5)(b), exclusivity is evidenced by written acknowledgement from the land owner provided to the Transmission Provider by the Project Developer as part of the Site Control that, for the Term, the Project Developer has exclusive use of the Site for the purpose of constructing a Generating Facility, Merchant Transmission Facilities, Interconnection Facilities, and, if applicable, the Transmission Owner's Interconnection Facilities and/or Network Upgrades, and the landowner cannot make the Site Control identified for the Site available for purchase or lease, to any person or entity other than the Project Developer for any purpose or use that will interfere with the rights granted to Project Developer.

c. Conveyance

The Site Control evidence submitted by the Project Developer must demonstrate that the subject Site is or will be conveyed to the Project Developer, e.g., through a deed or an option to purchase or lease or other form of property rights acceptable to PJM, or that the Project Developer is guaranteed a right to future conveyance at Project Developer's sole discretion, e.g., through a deed or an option to purchase or lease or other forms of property rights acceptable to PJM, consistent with the Site Control Evidentiary Requirements provisions in Tariff, Part VII, Subpart C, section 302(A)(2), above.

9. At each point within a Cycle where a Project Developer is required to provide Site Control, the Project Developer shall also provide Site Control certification in a form set forth in PJM Manual 14G, executed by an officer or authorized representative of Project Developer, verifying that the Site Control requirements are met. At PJM's request, Project Developer shall provide copies of landowner attestations, county recordings, or other similar documentation acceptable to PJM to validate such Site Control certifications.

B. Procurement of Additional Land or Land Rights

During the course of the Facilities Study Procedures set forth in Tariff, Part VII, section 307(A)(7), if land or land rights in addition to those identified and secured by Project Developer pursuant to Tariff, Part VII, section 302(A) are determined to be necessary to

install any part of the Transmission Owner Interconnection Facilities and/or Network Upgrades, and such land is property owned or controlled by persons other than Project Developer or Transmission Owner, then Transmission Owner shall, at Project Developer's expense, use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such person any land, rights of use, licenses, rights of way, and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner Interconnection Facilities and/or Network Upgrades upon such property.

Notwithstanding the foregoing, Transmission Owner and Project Developer may negotiate an alternative arrangement to procure the additional land and land rights determined to be necessary to install any part of the Transmission Owner Interconnection Facilities and/or Network Upgrades during the course of the Facility Study Procedures set forth in Tariff, Part VII, section 307(A)(7). Transmission Owner and Project Developer shall have no more than 20 Business Days following the start of the Final Agreement Negotiation Phase to conduct such negotiations and reflect the terms of any negotiated arrangement in the draft service agreement.

**Tariff, Part VIII, Subpart A, section 402**  
**Applications for Cycle Process**  
**Site Control**

A. Site Control Evidentiary Requirements

Site Control is evidence provided by the Project Developer to Transmission Provider in relation to Project Developer's New Service Request demonstrating Project Developer's interest in, control over, and right to utilize the Site for the purpose of constructing a Generating Facility, Merchant Transmission Facilities, Interconnection Facilities, and, if applicable, the Transmission Owner's Interconnection Facilities and/or Network Upgrades at the Point of Interconnection. Specific Site Control phase requirements are set forth in the following Tariff, Part VIII, Subpart B, section 403, and Subpart C, sections 406 and 410. Except as provided in subsection (B), Project Developer shall retain sole responsibility to demonstrate Site Control during all phases of the New Service Request.

1. Site Control consistent with the requirements herein is required for a project to have a valid position within a Cycle.
2. Proof of Site Control can be in the form of one of the following: (1) deed; (2) lease; (3) option to lease or purchase; or (4) as deemed acceptable by the Transmission Provider, any other contractual or legal right to possess, occupy and control the Site.
  - a. Memorandums are not acceptable.
  - b. Documentation solely evidencing an intent to purchase or control the Site is not acceptable.
  - c. Rights of Way are only acceptable for Project Developer Interconnection Facilities up to the Point of Interconnection.
  - d. Notwithstanding the foregoing, for a New Service Request, all or a portion of which requires the use of Sites owned or physically controlled by a state and/or federal governmental entity, and authorization for such use is subject to environmental and other state and/or federal governmental permitting requirements, including 42 U.S.C.A. § 4331 et seq. and any succeeding statutes, acceptable evidence of Site Control can be in any form the governmental entity issues. For Decision Point I and Decision Point III, Project Developers shall provide evidence that the Project Developer is taking identifiable steps acceptable to the Transmission Provider in furtherance of the issuance of such authorization by the state and/or federal governmental entity, including documentation sufficiently describing and explaining the source of and effects of such regulatory requirements, including a description of any conditions that must be met in order to satisfy the regulatory requirements and the anticipated time by which the Project Developer expects to satisfy the regulatory requirements. For Decision Point I and Decision Point III, Project

Developers shall also identify any additional property rights for the portion of the Site that is not owned or physically controlled by a state and/or federal governmental entity but which cannot be secured until the regulatory requirements have been met and authorization has been provided by the requisite state and/or federal governmental entity.

3. Demonstration of Site Control must include verification, to PJM's satisfaction, that the total feet or acreage ("acreage") of the Site is adequate for the resource-specific technology and MWs requested for a proposed Generating Facility or Merchant Transmission Facility, as set forth in the PJM Manuals.
  - a. The Project Developer must submit a Geographic Information System (GIS) Site Plan map and data files acceptable to PJM demonstrating the arrangement of the resource-specific proposed facilities for the amount of MW requested.
  - b. Any GIS Site Plan map and data files submitted in accordance with this section must be consistent with all other modeling data submitted in connection with Project Developer's New Service Request.
  - c. In the event of a disagreement between the Transmission Provider and the Project Developer over whether the total acreage of the Site is fully sufficient for the resource-specific technology and MWs requested for a proposed Generating Facility or Merchant Transmission Facility, Transmission Provider will accept a Professional Engineer (PE) stamped Site plan drawing (licensed in the state of the facility location) that depicts the proposed generation arrangement and specifies the Maximum Facility Output for that arrangement.
    - i. Failure to verify to Transmission Provider's satisfaction that the total acreage of the Site is adequate for the resource-specific technology and MWs requested for a proposed Generating Facility or Merchant Transmission Facility shall result in the New Service Request being deemed terminated and withdrawn.
4. Site Control must be in the name of the Project Developer identified on the corresponding New Service Request. Otherwise, the Project Developer must demonstrate to PJM's satisfaction the relationship between the entity owning or controlling the Site ("landowner" or "owner") with Site Control and the Project Developer identified on the New Service Request.
5. Project Developers are prohibited from submitting evidence of Site Control that utilizes the same Site for multiple New Service Requests unless the total acreage amount of such Site is adequate to support all such New Service Requests.
  - a. To the extent that multiple New Service Requests are submitted by a Project Developer using the same Site Control evidence and the total acreage amount of such Site is not adequate to support all such New Service Requests, all such New Service Requests shall be deemed terminated and withdrawn.

- b. To the extent that a Project Developer submits a New Service Request with Site Control evidence utilizing the Site that is also the subject of Site Control in New Service Requests submitted by other Project Developer's, such Project Developer shall include with its New Service Request evidence, to Transmission Provider's satisfaction, demonstrating that the project referenced in the Project Developer's New Service Request is concurrently feasible with the development of any other projects that will share the Site identified in the Site Control. Such proof of concurrent feasibility shall include:
  - i. Identification of any other New Service Requests that will share all or a portion of the Site identified in the Site Control; and
  - ii. Identification of the proposed location and space utilization of all projects that will share the Site, including acreage and boundaries for all projects sharing the Site identified in the Site Control; and
  - iii. Any related technical information required by the Transmission Provider to enable the Transmission Provider to determine that development of the project referenced in the submitted New Service Request is not inconsistent with development of any of the other New Service Requests that will share all or a portion of the same Site.
- 6. Multiple projects may share Project Developer Interconnection Facilities. A shared facilities agreement is required if jointly owned common Interconnection Facilities are proposed.
- 7. Project Developers are prohibited from submitting evidence of Site Control for the Site which is also the subject of an interconnect request submitted in an adjacent Regional Transmission Organization, Independent System Operator, or other system. To the extent that Project Developers submit evidence of Site Control for the Site which is also the subject of an interconnection request submitted in an adjacent Regional Transmission Organization, Independent System Operator, or other system, the relevant New Service Request submitted to Transmission Provider shall be deemed terminated and withdrawn.
- 8. Site Control must demonstrate three key elements: conveyance, term, and exclusivity:
  - a. Term

Term is the minimum duration required to evidence Site Control. The Term requirements vary, and are established in the following Tariff, Part VIII rules, at various points within a Cycle. The Term cannot be satisfied by an agreement with an initial term shorter than the requisite required term that has extensions, including unilateral extensions, unless those extensions have been exercised and any requisite conditions fulfilled, including any payment obligations, by the Project Developer at the time evidence of Site Control is provided to the Transmission Provider.

b. Exclusivity

With the exception of Tariff, Part VIII, Subpart A, section 402(A)(5)(b), exclusivity is evidenced by written acknowledgement from the land owner provided to the Transmission Provider by the Project Developer as part of the Site Control that, for the Term, that the Project Developer has exclusive use of the Site for the purpose of constructing a Generating Facility, Merchant Transmission Facilities, Interconnection Facilities and, if applicable, the Transmission Owner's Interconnection Facilities and/or Network Upgrades, and the landowner cannot make the Site Control identified for the Site available for purchase or lease, to any person or entity other than the Project Developer for any purpose or use that will interfere with the rights granted to Project Developer.

c. Conveyance

The Site Control evidence submitted by the Project Developer must demonstrate that the subject Site is or will be conveyed to the Project Developer, e.g., through a deed or an option to purchase or lease or other form of property rights acceptable to PJM, or that the Project Developer is guaranteed a right to future conveyance at Project Developer's sole discretion, e.g., through a deed or an option to purchase or lease or other forms of property rights acceptable to PJM, consistent with the Site Control Evidentiary Requirements provisions in Tariff, Part VIII, Subpart A, section 302(A)(2), above.

9. At each point within a Cycle where a Project Developer is required to provide Site Control, the Project Developer shall also provide Site Control certification in a form set forth in PJM Manual 14G, executed by an officer or authorized representative of Project Developer, verifying that the Site Control requirements are met.

a. At PJM's request, Project Developer shall provide copies of landowner attestations, county recordings, or other similar documentation acceptable to PJM to validate such Site Control certifications.

B. Procurement of Additional Land or Land Rights

During the course of the Facilities Study Procedures set forth in Tariff, Part VIII, section 404(A)(7), if land or land rights in addition to those identified and secured by Project Developer pursuant to Tariff, Part VIII, section 402(A) are determined to be necessary to install any part of the Transmission Owner Interconnection Facilities and/or Network Upgrades that were not previously identified and acquired by Project Developer pursuant to subsection (A) above, and such land is property owned or controlled by persons other than Project Developer or Transmission Owner, then Transmission Owner shall, at Project Developer's expense, use efforts, similar in nature and extent to those that it

typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such person any land, rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner Interconnection Facilities and/or Network Upgrades upon such property.

Notwithstanding the foregoing, Transmission Owner and Project Developer may negotiate an alternative arrangement to procure the additional land and land rights determined to be necessary to install any part of the Transmission Owner Interconnection Facilities and/or Network Upgrades during the course of the Facility Study Procedures set forth in Tariff, Part VIII, section 404(A)(7). The Transmission Owner and Project Developer shall have no more than 20 Business Days following the start of the Final Agreement Negotiation Phase to conduct such negotiations and reflect the terms of any negotiated arrangement in the draft service agreement.

## **23 Representations and Warranties**

### **23.1 General:**

Each Interconnected Entity hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Interconnected Entity during the time the Generation Interconnection Agreement is effective:

#### **23.1.1 Good Standing:**

Such Interconnected 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 and operates as stated in the Generation Interconnection Agreement.

#### **23.1.2 Authority:**

Such Interconnected Entity has the right, power and authority to enter into the Generation Interconnection Agreement, to become a party hereto and to perform its obligations hereunder. The Generation Interconnection Agreement is a legal, valid and binding obligation of such Interconnected Entity, enforceable against such Interconnected 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).

#### **23.1.3 No Conflict:**

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

#### **23.1.4 Consent and Approval:**

Such Interconnected Entity has sought or obtained, or, in accordance with the Generation Interconnection Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of the Generation Interconnection Agreement and it will provide to any Governmental Authority notice of any actions under this Appendix 2 that are required by Applicable Laws and Regulations.

### **23.2 Transmission Outages:**

#### **23.2.1 Outages; Coordination:**



The Construction Parties acknowledge and agree that certain outages of transmission facilities owned by the Transmission Owner, as more specifically detailed in the Scope of Work, may be necessary in order to complete the process of constructing and installing all Interconnection Facilities and Transmission Owner Upgrades. The Construction Parties further acknowledge and agree that any such outages shall be coordinated by and through the Transmission Provider.

### **23.3 Land Rights; Transfer of Title:**

In the event activities under Schedule L of this GIA are required, the following provisions will apply, in addition to the provisions set forth above:

#### **23.3.1 Grant of Easements and Other Land Rights:**

Project Developer at its sole cost and expense, shall grant such easements and other land rights to the Transmission Owner over the Site at such times and in such a manner as the Transmission Owner may reasonably require to perform its obligations under the GIA and/or to perform its operation and maintenance obligations under the Generation Interconnection Agreement.

#### **23.3.2 Construction of Facilities on Project Developer Property:**

To the extent that the Transmission Owner is required to construct and install any Transmission Owner Interconnection Facilities and Transmission Owner Upgrades on land owned by the Project Developer, the Project Developer, at its sole cost and expense, shall legally transfer to the Transmission Owner all easements and other land rights required pursuant to section 23.3.1~~4~~ above prior to the commencement of such construction and installation.

#### **23.3.3 Acquisition of Additional Land and/or other Land Rights from Third Parties:**

~~If any land of the easements and/or other land rights described in section 23.1 above must be obtained from a third party, acquisition of such land and/or land rights shall be subject to the requirements of Tariff, Part VII, Subpart A, section 302 and Tariff, Part VIII, Subpart A, section 402, as applicable. the Transmission Owner's obligation for completing its construction responsibilities in accordance with the Schedule of Work set forth in Schedule L hereto, to the extent of the facilities that it is responsible for constructing for which such easements and land rights are necessary, shall be subject to Project Developer's acquisition of such easements and other land rights at such times and in such manner as the Transmission Owner may reasonably require to perform its obligations under this Appendix 2, and/or to perform its operation and maintenance obligations under the Generation Interconnection Agreement, provided, however, that upon Project Developer's request, the Transmission Owner shall assist the Project Developer in acquiring such land rights with efforts similar in nature and extent to those that the Transmission Owner typically undertakes in acquiring land rights for construction of facilities on its own behalf. The terms of easements and land rights acquired by Project Developer shall not unreasonably impede the Transmission Owner's timely completion of construction of the affected facilities.~~

#### **23.3.4 Documentation:**

Project Developer shall prepare, execute and file such documentation as the Transmission Owner may reasonably require to memorialize any easements and other land rights granted pursuant to this section 23.3. Documentation of such easements and other land rights, and any associated filings, shall be in a form acceptable to the Transmission Owner.

### **23.3.5 Transfer of Title to Certain Facilities Constructed by Project Developer:**

Within 30 days after the Project Developer's receipt of notice of acceptance following Stage Two energization of the Interconnection Facilities and Transmission Owner Upgrades, the Project Developer shall deliver to the Transmission Owner, for the Transmission Owner's review and approval, all of the documents and filings necessary to transfer to the Transmission Owner title to any Transmission Owner Interconnection Facilities and Transmission Owner Upgrades constructed by the Project Developer, and to convey to the Transmission Owner any easements and other land rights to be granted by Project Developer in accordance with section 23.3.1 above that have not then already been conveyed. The Transmission Owner shall review and approve such documentation, such approval not to be unreasonably withheld, delayed, or conditioned. Within 30 days after its receipt of the Transmission Owner's written notice of approval of the documentation, the Project Developer, in coordination and consultation with the Transmission Owner, shall make any necessary filings at the FERC or other governmental agencies for regulatory approval of the transfer of title. Within 20 days after the issuance of the last order granting a necessary regulatory approval becomes final (i.e., is no longer subject to rehearing), the Project Developer shall execute all necessary documentation and shall make all necessary filings to record and perfect the Transmission Owner's title in such facilities and in the easements and other land rights to be conveyed to the Transmission Owner. Prior to such transfer to the Transmission Owner of title to the Transmission Owner Interconnection Facilities and Transmission Owner Upgrades built by the Project Developer, the risk of loss or damages to, or in connection with, such facilities shall remain with the Project Developer. Transfer of title to facilities under this section shall not affect the Project Developer's receipt or use of the interconnection rights related to Network Upgrades, Distribution Upgrades, Stand Alone Network Upgrades, or Transmission Owner Interconnection Facilities which it otherwise may be eligible as provided in the GIP.

### **23.3.6 Liens:**

The Project Developer shall take all reasonable steps to ensure that, at the time of transfer of title in the Transmission Owner Interconnection Facilities built by the Project Developer to the Transmission Owner, those facilities shall be free and clear of any and all liens and encumbrances, including mechanics' liens. To the extent that the Project Developer cannot reasonably clear a lien or encumbrance prior to the time for transferring title to the Transmission Owner, Project Developer shall nevertheless convey title subject to the lien or encumbrance and shall indemnify, defend and hold harmless the Transmission Owner against any and all claims, costs, damages, liabilities and expenses (including without limitation reasonable attorneys' fees) which may be brought or imposed against or incurred by Transmission Owner by reason of any such lien or encumbrance or its discharge.

## **23.4 Warranties:**

### **23.4.1 Project Developer Warranty:**

The Project Developer shall warrant that its work (or the work of any subcontractor that it retains) in constructing and installing the Transmission Owner Interconnection Facilities or Stand Alone Network Upgrades that it builds is free from defects in workmanship and design and shall conform to the requirements of this GIA for one year (the “Project Developer Warranty Period”) commencing upon the date title is transferred to Transmission Owner in accordance with section 23.3.5 of this Appendix 2. The Project Developer shall, at its sole expense and promptly after notification by the Transmission Owner, correct or replace defective work in accordance with Applicable Technical Requirements and Standards, during the Project Developer Warranty Period. The warranty period for such corrected or replaced work shall be the unused portion of the Project Developer Warranty Period remaining as of the date of notice of the defect. The Project Developer Warranty Period shall resume upon acceptance of such corrected or replaced work. All Costs incurred by Transmission Owner as a result of such defective work shall be reimbursed to the Transmission Owner by the Project Developer on demand; provided that the Transmission Owner submits the demand to the Project Developer within the Project Developer Warranty Period and provides reasonable documentation of the claimed costs. The Transmission Owner’s acceptance, inspection and testing, or a third party’s inspection or testing, of such facilities pursuant to Schedule L, section 11.9 of this GIA shall not be construed to limit in any way the warranty obligations of the Project Developer, and this provision does not modify and shall not limit the Project Developer’s indemnification obligations set forth in Appendix 2, section 14.0 of this GIA.

### **23.4.2 Manufacturer Warranties:**

Prior to the transfer to the Transmission Owner of title to the Transmission Owner Interconnection Facilities built by the Project Developer, the Project Developer shall produce documentation satisfactory to the Transmission Owner evidencing the transfer to the Transmission Owner of all manufacturer warranties for equipment and/or materials purchased by the Project Developer for use and/or installation as part of the Transmission Owner Interconnection Facilities and Stand Alone Network Upgrades built by the Project Developer.

# Attachment B

Revisions to the  
PJM Open Access Transmission Tariff

(Clean Format)

**Tariff, Part VII, Subpart A, section 302**  
**Site Control**

A. Site Control Evidentiary Requirements

Site Control is evidence provided by the Project Developer to Transmission Provider in relation to Project Developer's New Service Request demonstrating Project Developer's interest in, control over, and right to utilize the Site for the purpose of constructing a Generating Facility, Merchant Transmission Facilities, Interconnection Facilities, and, if applicable, the Transmission Owner's Interconnection Facilities and/or Network Upgrades at the Point of Interconnection. Specific Site Control phase requirements are set forth in the following Tariff, Part VII, Subpart C, section 306, and Subpart D, sections 309 and 312. Except as provided in subsection (B), Project Developer shall retain sole responsibility to demonstrate Site Control during all phases of the New Service Request.

1. Site Control consistent with the requirements herein is required for a project to have a valid position within a Cycle.
2. Proof of Site Control can be in the form of one of the following: (1) deed; (2) lease; (3) option to lease or purchase; or (4) as deemed acceptable by the Transmission Provider, any other contractual or legal right to possess, occupy and control the Site.
  - a. Memorandums are not acceptable.
  - b. Documentation solely evidencing an intent to purchase or control the Site is not acceptable.
  - c. Rights of Way are only acceptable for Project Developer Interconnection Facilities up to the Point of Interconnection.
  - d. Notwithstanding the foregoing, for a New Service Request, all or a portion of which requires the use of Sites owned or physically controlled by a state and/or federal governmental entity, and authorization for such use is subject to environmental and other state and/or federal governmental permitting requirements, including 42 U.S.C. § 4331 et seq. and any succeeding statutes, acceptable evidence of Site Control can be in any form the governmental entity issues. For Decision Point I and Decision Point III, Project Developers shall provide evidence that the Project Developer is taking identifiable steps acceptable to the Transmission Provider in furtherance of the issuance of such authorization by the state and/or federal governmental entity, including documentation sufficiently describing and explaining the source of and effects of such regulatory requirements, including a description of any conditions that must be met in order to satisfy the regulatory requirements and the anticipated time by which the Project Developer expects to satisfy the regulatory requirements. For Decision Point I and Decision Point III, Project

Developers shall also identify any additional property rights for the portion of the Site that is not owned or physically controlled by a state and/or federal governmental entity but which cannot be secured until the regulatory requirements have been met and authorization has been provided by the requisite state and/or federal governmental entity.

3. Demonstration of Site Control must include verification, to PJM's satisfaction, that the total feet or acreage ("acreage") of the Site is adequate for the resource-specific technology and MWs requested for a proposed Generating Facility or Merchant Transmission Facility, as set forth in the PJM Manuals.
  - a. The Project Developer must submit a Geographic Information System (GIS) Site Plan map and data files acceptable to PJM demonstrating the arrangement of the resource-specific proposed facilities for the amount of MW requested.
  - b. Any GIS Site Plan map and data files submitted in accordance with this section must be consistent with all other modeling data submitted in connection with Project Developer's New Service Request.
  - c. In the event of a disagreement between the Transmission Provider and the Project Developer over whether the total acreage of the Site is fully sufficient for the resource-specific technology and MWs requested for a proposed Generating Facility or Merchant Transmission Facility, Transmission Provider will accept a Professional Engineer (PE) stamped site plan drawing (licensed in the state of the facility location) that depicts the proposed generation arrangement and specifies the Maximum Facility Output for that arrangement.
    - i. Failure to verify to Transmission Provider's satisfaction that the total acreage of the Site is adequate for the resource-specific technology and MWs requested for a proposed Generating Facility or Merchant Transmission Facility shall result in the New Service Request being deemed terminated and withdrawn.
4. Site Control must be in the name of the Project Developer identified on the corresponding New Service Request. Otherwise, the Project Developer must demonstrate to PJM's satisfaction the relationship between the entity owning or controlling the Site ("landowner" or "owner") with Site Control and the Project Developer identified on the New Service Request.
5. Project Developers are prohibited from submitting evidence of Site Control that utilizes the same Site for multiple New Service Requests unless the total acreage amount of such Site is adequate to support all such New Service Requests.
  - a. To the extent that multiple New Service Requests are submitted by a Project Developer using the same Site Control evidence and the total

acreage amount of such Site is not adequate to support all such New Service Requests, all such New Service Requests shall be deemed terminated and withdrawn.

- b. To the extent that a Project Developer submits a New Service Request with Site Control evidence utilizing the Site that is also the subject of Site Control in New Service Requests submitted by other Project Developer's, such Project Developer shall include with its New Service Request evidence, to Transmission Provider's satisfaction, demonstrating that the project referenced in the Project Developer's New Service Request is concurrently feasible with the development of any other projects that will share the Site identified in the Site Control. Such proof of concurrent feasibility shall include:
  - i. Identification of any other New Service Requests that will share all or a portion of the Site identified in the Site Control; and
  - ii. Identification of the proposed location and space utilization of all projects that will share the Site, including acreage and boundaries for all projects sharing the Site identified in the Site Control; and
  - iii. Any related technical information required by the Transmission Provider to enable the Transmission Provider to determine that development of the project referenced in the submitted New Service Request is not inconsistent with development of any of the other New Service Requests that will share all or a portion of the same Site.
6. Multiple projects may share Project Developer Interconnection Facilities. A shared facilities agreement is required if jointly owned common Interconnection Facilities are proposed.
7. Project Developers are prohibited from submitting evidence of Site Control for the Site which is also the subject of an interconnect request submitted in an adjacent Regional Transmission Organization, Independent System Operator, or other system. To the extent that Project Developers submit evidence of Site Control for the Site which is also the subject of an interconnection request submitted in an adjacent Regional Transmission Organization, Independent System Operator, or other system, the relevant New Service Request submitted to Transmission Provider shall be deemed terminated and withdrawn.
8. Site Control must demonstrate three key elements: conveyance, term, and exclusivity:
  - a. Term

Term is the minimum duration required to evidence Site Control. The Term requirements vary, and are established in the following Tariff, Part VII rules, at various points within a Cycle. The Term cannot be satisfied by an agreement with an initial term shorter than the requisite required term that has extensions, including unilateral extensions, unless those extensions have been exercised and any requisite conditions fulfilled, including any payment obligations, by the Project Developer at the time evidence of Site Control is provided to the Transmission Provider.

b. Exclusivity

With the exception of Tariff, Part VII, Subpart A, section 302(A)(5)(b), exclusivity is evidenced by written acknowledgement from the land owner provided to the Transmission Provider by the Project Developer as part of the Site Control that, for the Term, the Project Developer has exclusive use of the Site for the purpose of constructing a Generating Facility, Merchant Transmission Facilities, Interconnection Facilities, and, if applicable, the Transmission Owner's Interconnection Facilities and/or Network Upgrades, and the landowner cannot make the Site Control identified for the Site available for purchase or lease, to any person or entity other than the Project Developer for any purpose or use that will interfere with the rights granted to Project Developer.

c. Conveyance

The Site Control evidence submitted by the Project Developer must demonstrate that the subject Site is or will be conveyed to the Project Developer, e.g., through a deed or an option to purchase or lease or other form of property rights acceptable to PJM, or that the Project Developer is guaranteed a right to future conveyance at Project Developer's sole discretion, e.g., through a deed or an option to purchase or lease or other forms of property rights acceptable to PJM, consistent with the Site Control Evidentiary Requirements provisions in Tariff, Part VII, Subpart C, section 302(A)(2), above.

9. At each point within a Cycle where a Project Developer is required to provide Site Control, the Project Developer shall also provide Site Control certification in a form set forth in PJM Manual 14G, executed by an officer or authorized representative of Project Developer, verifying that the Site Control requirements are met. At PJM's request, Project Developer shall provide copies of landowner attestations, county recordings, or other similar documentation acceptable to PJM to validate such Site Control certifications.

B. Procurement of Additional Land or Land Rights

During the course of the Facilities Study Procedures set forth in Tariff, Part VII, section 307(A)(7), if land or land rights in addition to those identified and secured by Project Developer pursuant to Tariff, Part VII, section 302(A) are determined to be necessary to



install any part of the Transmission Owner Interconnection Facilities and/or Network Upgrades, and such land is property owned or controlled by persons other than Project Developer or Transmission Owner, then Transmission Owner shall, at Project Developer's expense, use efforts, similar in nature and extent to those that it typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such person any land, rights of use, licenses, rights of way, and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner Interconnection Facilities and/or Network Upgrades upon such property.

Notwithstanding the foregoing, Transmission Owner and Project Developer may negotiate an alternative arrangement to procure the additional land and land rights determined to be necessary to install any part of the Transmission Owner Interconnection Facilities and/or Network Upgrades during the course of the Facility Study Procedures set forth in Tariff, Part VII, section 307(A)(7). Transmission Owner and Project Developer shall have no more than 20 Business Days following the start of the Final Agreement Negotiation Phase to conduct such negotiations and reflect the terms of any negotiated arrangement in the draft service agreement.

**Tariff, Part VIII, Subpart A, section 402**  
**Applications for Cycle Process**  
**Site Control**

A. Site Control Evidentiary Requirements

Site Control is evidence provided by the Project Developer to Transmission Provider in relation to Project Developer's New Service Request demonstrating Project Developer's interest in, control over, and right to utilize the Site for the purpose of constructing a Generating Facility, Merchant Transmission Facilities, Interconnection Facilities, and, if applicable, the Transmission Owner's Interconnection Facilities and/or Network Upgrades at the Point of Interconnection. Specific Site Control phase requirements are set forth in the following Tariff, Part VIII, Subpart B, section 403, and Subpart C, sections 406 and 410. Except as provided in subsection (B), Project Developer shall retain sole responsibility to demonstrate Site Control during all phases of the New Service Request.

1. Site Control consistent with the requirements herein is required for a project to have a valid position within a Cycle.
2. Proof of Site Control can be in the form of one of the following: (1) deed; (2) lease; (3) option to lease or purchase; or (4) as deemed acceptable by the Transmission Provider, any other contractual or legal right to possess, occupy and control the Site.
  - a. Memorandums are not acceptable.
  - b. Documentation solely evidencing an intent to purchase or control the Site is not acceptable.
  - c. Rights of Way are only acceptable for Project Developer Interconnection Facilities up to the Point of Interconnection.
  - d. Notwithstanding the foregoing, for a New Service Request, all or a portion of which requires the use of Sites owned or physically controlled by a state and/or federal governmental entity, and authorization for such use is subject to environmental and other state and/or federal governmental permitting requirements, including 42 U.S.C.A. § 4331 et seq. and any succeeding statutes, acceptable evidence of Site Control can be in any form the governmental entity issues. For Decision Point I and Decision Point III, Project Developers shall provide evidence that the Project Developer is taking identifiable steps acceptable to the Transmission Provider in furtherance of the issuance of such authorization by the state and/or federal governmental entity, including documentation sufficiently describing and explaining the source of and effects of such regulatory requirements, including a description of any conditions that must be met in order to satisfy the regulatory requirements and the anticipated time by which the Project Developer expects to satisfy the regulatory requirements. For Decision Point I and Decision Point III, Project

Developers shall also identify any additional property rights for the portion of the Site that is not owned or physically controlled by a state and/or federal governmental entity but which cannot be secured until the regulatory requirements have been met and authorization has been provided by the requisite state and/or federal governmental entity.

3. Demonstration of Site Control must include verification, to PJM's satisfaction, that the total feet or acreage ("acreage") of the Site is adequate for the resource-specific technology and MWs requested for a proposed Generating Facility or Merchant Transmission Facility, as set forth in the PJM Manuals.
  - a. The Project Developer must submit a Geographic Information System (GIS) Site Plan map and data files acceptable to PJM demonstrating the arrangement of the resource-specific proposed facilities for the amount of MW requested.
  - b. Any GIS Site Plan map and data files submitted in accordance with this section must be consistent with all other modeling data submitted in connection with Project Developer's New Service Request.
  - c. In the event of a disagreement between the Transmission Provider and the Project Developer over whether the total acreage of the Site is fully sufficient for the resource-specific technology and MWs requested for a proposed Generating Facility or Merchant Transmission Facility, Transmission Provider will accept a Professional Engineer (PE) stamped Site plan drawing (licensed in the state of the facility location) that depicts the proposed generation arrangement and specifies the Maximum Facility Output for that arrangement.
    - i. Failure to verify to Transmission Provider's satisfaction that the total acreage of the Site is adequate for the resource-specific technology and MWs requested for a proposed Generating Facility or Merchant Transmission Facility shall result in the New Service Request being deemed terminated and withdrawn.
4. Site Control must be in the name of the Project Developer identified on the corresponding New Service Request. Otherwise, the Project Developer must demonstrate to PJM's satisfaction the relationship between the entity owning or controlling the Site ("landowner" or "owner") with Site Control and the Project Developer identified on the New Service Request.
5. Project Developers are prohibited from submitting evidence of Site Control that utilizes the same Site for multiple New Service Requests unless the total acreage amount of such Site is adequate to support all such New Service Requests.
  - a. To the extent that multiple New Service Requests are submitted by a Project Developer using the same Site Control evidence and the total acreage amount of such Site is not adequate to support all such New Service Requests, all such New Service Requests shall be deemed terminated and withdrawn.

- b. To the extent that a Project Developer submits a New Service Request with Site Control evidence utilizing the Site that is also the subject of Site Control in New Service Requests submitted by other Project Developer's, such Project Developer shall include with its New Service Request evidence, to Transmission Provider's satisfaction, demonstrating that the project referenced in the Project Developer's New Service Request is concurrently feasible with the development of any other projects that will share the Site identified in the Site Control. Such proof of concurrent feasibility shall include:
  - i. Identification of any other New Service Requests that will share all or a portion of the Site identified in the Site Control; and
  - ii. Identification of the proposed location and space utilization of all projects that will share the Site, including acreage and boundaries for all projects sharing the Site identified in the Site Control; and
  - iii. Any related technical information required by the Transmission Provider to enable the Transmission Provider to determine that development of the project referenced in the submitted New Service Request is not inconsistent with development of any of the other New Service Requests that will share all or a portion of the same Site.
- 6. Multiple projects may share Project Developer Interconnection Facilities. A shared facilities agreement is required if jointly owned common Interconnection Facilities are proposed.
- 7. Project Developers are prohibited from submitting evidence of Site Control for the Site which is also the subject of an interconnect request submitted in an adjacent Regional Transmission Organization, Independent System Operator, or other system. To the extent that Project Developers submit evidence of Site Control for the Site which is also the subject of an interconnection request submitted in an adjacent Regional Transmission Organization, Independent System Operator, or other system, the relevant New Service Request submitted to Transmission Provider shall be deemed terminated and withdrawn.
- 8. Site Control must demonstrate three key elements: conveyance, term, and exclusivity:
  - a. Term

Term is the minimum duration required to evidence Site Control. The Term requirements vary, and are established in the following Tariff, Part VIII rules, at various points within a Cycle. The Term cannot be satisfied by an agreement with an initial term shorter than the requisite required term that has extensions, including unilateral extensions, unless those extensions have been exercised and any requisite conditions fulfilled, including any payment obligations, by the Project Developer at the time evidence of Site Control is provided to the Transmission Provider.

b. Exclusivity

With the exception of Tariff, Part VIII, Subpart A, section 402(A)(5)(b), exclusivity is evidenced by written acknowledgement from the land owner provided to the Transmission Provider by the Project Developer as part of the Site Control that, for the Term, that the Project Developer has exclusive use of the Site for the purpose of constructing a Generating Facility, Merchant Transmission Facilities, Interconnection Facilities and, if applicable, the Transmission Owner's Interconnection Facilities and/or Network Upgrades, and the landowner cannot make the Site Control identified for the Site available for purchase or lease, to any person or entity other than the Project Developer for any purpose or use that will interfere with the rights granted to Project Developer.

c. Conveyance

The Site Control evidence submitted by the Project Developer must demonstrate that the subject Site is or will be conveyed to the Project Developer, e.g., through a deed or an option to purchase or lease or other form of property rights acceptable to PJM, or that the Project Developer is guaranteed a right to future conveyance at Project Developer's sole discretion, e.g., through a deed or an option to purchase or lease or other forms of property rights acceptable to PJM, consistent with the Site Control Evidentiary Requirements provisions in Tariff, Part VIII, Subpart A, section 302(A)(2), above.

9. At each point within a Cycle where a Project Developer is required to provide Site Control, the Project Developer shall also provide Site Control certification in a form set forth in PJM Manual 14G, executed by an officer or authorized representative of Project Developer, verifying that the Site Control requirements are met.

a. At PJM's request, Project Developer shall provide copies of landowner attestations, county recordings, or other similar documentation acceptable to PJM to validate such Site Control certifications.

B. Procurement of Additional Land or Land Rights

During the course of the Facilities Study Procedures set forth in Tariff, Part VIII, section 404(A)(7), if land or land rights in addition to those identified and secured by Project Developer pursuant to Tariff, Part VIII, section 402(A) are determined to be necessary to install any part of the Transmission Owner Interconnection Facilities and/or Network Upgrades that were not previously identified and acquired by Project Developer pursuant to subsection (A) above, and such land is property owned or controlled by persons other than Project Developer or Transmission Owner, then Transmission Owner shall, at Project Developer's expense, use efforts, similar in nature and extent to those that it

typically undertakes for its own or affiliated generation, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such person any land, rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner Interconnection Facilities and/or Network Upgrades upon such property.

Notwithstanding the foregoing, Transmission Owner and Project Developer may negotiate an alternative arrangement to procure the additional land and land rights determined to be necessary to install any part of the Transmission Owner Interconnection Facilities and/or Network Upgrades during the course of the Facility Study Procedures set forth in Tariff, Part VIII, section 404(A)(7). The Transmission Owner and Project Developer shall have no more than 20 Business Days following the start of the Final Agreement Negotiation Phase to conduct such negotiations and reflect the terms of any negotiated arrangement in the draft service agreement.

## **23 Representations and Warranties**

### **23.1 General:**

Each Interconnected Entity hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Interconnected Entity during the time the Generation Interconnection Agreement is effective:

#### **23.1.1 Good Standing:**

Such Interconnected 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 and operates as stated in the Generation Interconnection Agreement.

#### **23.1.2 Authority:**

Such Interconnected Entity has the right, power and authority to enter into the Generation Interconnection Agreement, to become a party hereto and to perform its obligations hereunder. The Generation Interconnection Agreement is a legal, valid and binding obligation of such Interconnected Entity, enforceable against such Interconnected 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).

#### **23.1.3 No Conflict:**

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

#### **23.1.4 Consent and Approval:**

Such Interconnected Entity has sought or obtained, or, in accordance with the Generation Interconnection Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of the Generation Interconnection Agreement and it will provide to any Governmental Authority notice of any actions under this Appendix 2 that are required by Applicable Laws and Regulations.

### **23.2 Transmission Outages:**

#### **23.2.1 Outages; Coordination:**

The Construction Parties acknowledge and agree that certain outages of transmission facilities owned by the Transmission Owner, as more specifically detailed in the Scope of Work, may be necessary in order to complete the process of constructing and installing all Interconnection Facilities and Transmission Owner Upgrades. The Construction Parties further acknowledge and agree that any such outages shall be coordinated by and through the Transmission Provider.

### **23.3 Land Rights; Transfer of Title:**

In the event activities under Schedule L of this GIA are required, the following provisions will apply, in addition to the provisions set forth above:

#### **23.3.1 Grant of Easements and Other Land Rights:**

Project Developer at its sole cost and expense, shall grant such easements and other land rights to the Transmission Owner over the Site at such times and in such a manner as the Transmission Owner may reasonably require to perform its obligations under the GIA and/or to perform its operation and maintenance obligations under the Generation Interconnection Agreement.

#### **23.3.2 Construction of Facilities on Project Developer Property:**

To the extent that the Transmission Owner is required to construct and install any Transmission Owner Interconnection Facilities and Transmission Owner Upgrades on land owned by the Project Developer, the Project Developer, at its sole cost and expense, shall legally transfer to the Transmission Owner all easements and other land rights required pursuant to section 23.3.1 above prior to the commencement of such construction and installation.

#### **23.3.3 Acquisition of Additional Land and/or other Land Rights from Third Parties:**

If any land and/or other land rights must be obtained from a third party, acquisition of such land and/or land rights shall be subject to the requirements of Tariff, Part VII, Subpart A, section 302 and Tariff, Part VIII, Subpart A, section 402, as applicable.

#### **23.3.4 Documentation:**

Project Developer shall prepare, execute and file such documentation as the Transmission Owner may reasonably require to memorialize any easements and other land rights granted pursuant to this section 23.3. Documentation of such easements and other land rights, and any associated filings, shall be in a form acceptable to the Transmission Owner.

#### **23.3.5 Transfer of Title to Certain Facilities Constructed by Project Developer:**

Within 30 days after the Project Developer's receipt of notice of acceptance following Stage Two energization of the Interconnection Facilities and Transmission Owner Upgrades, the Project Developer shall deliver to the Transmission Owner, for the Transmission Owner's review and approval, all of the documents and filings necessary to transfer to the Transmission Owner title to any Transmission Owner Interconnection Facilities and Transmission Owner Upgrades



constructed by the Project Developer, and to convey to the Transmission Owner any easements and other land rights to be granted by Project Developer in accordance with section 23.3.1 above that have not then already been conveyed. The Transmission Owner shall review and approve such documentation, such approval not to be unreasonably withheld, delayed, or conditioned. Within 30 days after its receipt of the Transmission Owner's written notice of approval of the documentation, the Project Developer, in coordination and consultation with the Transmission Owner, shall make any necessary filings at the FERC or other governmental agencies for regulatory approval of the transfer of title. Within 20 days after the issuance of the last order granting a necessary regulatory approval becomes final (i.e., is no longer subject to rehearing), the Project Developer shall execute all necessary documentation and shall make all necessary filings to record and perfect the Transmission Owner's title in such facilities and in the easements and other land rights to be conveyed to the Transmission Owner. Prior to such transfer to the Transmission Owner of title to the Transmission Owner Interconnection Facilities and Transmission Owner Upgrades built by the Project Developer, the risk of loss or damages to, or in connection with, such facilities shall remain with the Project Developer. Transfer of title to facilities under this section shall not affect the Project Developer's receipt or use of the interconnection rights related to Network Upgrades, Distribution Upgrades, Stand Alone Network Upgrades, or Transmission Owner Interconnection Facilities which it otherwise may be eligible as provided in the GIP.

#### **23.3.6 Liens:**

The Project Developer shall take all reasonable steps to ensure that, at the time of transfer of title in the Transmission Owner Interconnection Facilities built by the Project Developer to the Transmission Owner, those facilities shall be free and clear of any and all liens and encumbrances, including mechanics' liens. To the extent that the Project Developer cannot reasonably clear a lien or encumbrance prior to the time for transferring title to the Transmission Owner, Project Developer shall nevertheless convey title subject to the lien or encumbrance and shall indemnify, defend and hold harmless the Transmission Owner against any and all claims, costs, damages, liabilities and expenses (including without limitation reasonable attorneys' fees) which may be brought or imposed against or incurred by Transmission Owner by reason of any such lien or encumbrance or its discharge.

#### **23.4 Warranties:**

##### **23.4.1 Project Developer Warranty:**

The Project Developer shall warrant that its work (or the work of any subcontractor that it retains) in constructing and installing the Transmission Owner Interconnection Facilities or Stand Alone Network Upgrades that it builds is free from defects in workmanship and design and shall conform to the requirements of this GIA for one year (the "Project Developer Warranty Period") commencing upon the date title is transferred to Transmission Owner in accordance with section 23.3.5 of this Appendix 2. The Project Developer shall, at its sole expense and promptly after notification by the Transmission Owner, correct or replace defective work in accordance with Applicable Technical Requirements and Standards, during the Project Developer Warranty Period. The warranty period for such corrected or replaced work shall be

the unused portion of the Project Developer Warranty Period remaining as of the date of notice of the defect. The Project Developer Warranty Period shall resume upon acceptance of such corrected or replaced work. All Costs incurred by Transmission Owner as a result of such defective work shall be reimbursed to the Transmission Owner by the Project Developer on demand; provided that the Transmission Owner submits the demand to the Project Developer within the Project Developer Warranty Period and provides reasonable documentation of the claimed costs. The Transmission Owner's acceptance, inspection and testing, or a third party's inspection or testing, of such facilities pursuant to Schedule L, section 11.9 of this GIA shall not be construed to limit in any way the warranty obligations of the Project Developer, and this provision does not modify and shall not limit the Project Developer's indemnification obligations set forth in Appendix 2, section 14.0 of this GIA.

#### **23.4.2 Manufacturer Warranties:**

Prior to the transfer to the Transmission Owner of title to the Transmission Owner Interconnection Facilities built by the Project Developer, the Project Developer shall produce documentation satisfactory to the Transmission Owner evidencing the transfer to the Transmission Owner of all manufacturer warranties for equipment and/or materials purchased by the Project Developer for use and/or installation as part of the Transmission Owner Interconnection Facilities and Stand Alone Network Upgrades built by the Project Developer.