

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

9/24/03

To: PJM Interconnection, L.L.C.

Docket No. ER03-1143-000

Re: Acceptance of an Interconnection Service Agreement and a Construction Service Agreement among PJM Interconnection L.L.C., Meyersdale Windpower, L.L.C. and Pennsylvania Electric Company a FirstEnergy Company.

Pursuant to authority delegated to the Director, Division of Tariffs and Market Development - East, under 18 C.F.R. 375.307, your submittal in the above referenced docket, along with the proposed designations, are accepted for filing and made effective July 17, 2003.

Under 18 C.F.R. 385.210, interventions are timely if made within the time prescribed by the Secretary. Under 18 C.F.R. 385.214, the filing of a timely motion to intervene makes the movant a party to the proceeding, if no answer in opposition is filed within fifteen days. The filing of a timely notice of intervention makes a State Commission a party to the proceeding.

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against any of the applicant(s).

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

Sincerely,

Alice Fernandez, Director  
Division of Tariffs and Market  
Development - East

ATTORNEYS AT LAW

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July 31, 2003

Honorable Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E. Room 1A  
Washington, D.C. 20426

Re: PJM Interconnection L.L.C., Docket No. ER03-\_\_\_\_\_

Dear Ms. Salas:

**Description of Filing**

Pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d, part 35 of the Commission's regulations, 18 C.F.R. part 35, and Part IV of the PJM Open Access Transmission Tariff ("PJM Tariff"), PJM Interconnection, L.L.C. ("PJM") submits for filing an interconnection service agreement ("ISA") and a construction service agreement ("CSA") among PJM and Meyersdale Windpower, L.L.C. ("Meyersdale Windpower" or "Interconnection Customer") and Pennsylvania Electric Company a FirstEnergy Company ("Pennsylvania Electric" or "Interconnected Transmission Owner").

***ISA with Meyersdale Windpower and Pennsylvania Electric:*** The ISA among PJM, Meyersdale Windpower, and Pennsylvania Electric facilitates the Interconnection Customer's request for the ability to inject 48 MW into the PJM transmission system from a generating facility located in Summit Township, Somerset County, Pennsylvania.

See Interconnection Service Agreement Between PJM Interconnection, L.L.C. And Meyersdale Windpower, L.L.C. And Pennsylvania Electric Company a FirstEnergy Company Specifications §§ 1.0-2.1 (“Original Service Agreement No. 937”). The generating facility to be interconnected will be an Energy Resource able to inject 48 MW to the transmission system and will receive no Capacity Interconnection Rights. Id. Specifications § 2.1. The Attachment Facilities Charge is \$869,000. Id. Specifications § 4.1. The Network Upgrades Charge is \$460,000. The total cost of \$1,329,000 consists of \$315,000 in direct labor costs, \$276,000 in direct material costs, \$483,000 in indirect labor costs, \$117,000 in indirect material costs, and \$138,000 in return. Id. Specifications § 4.6. Schedule G of Original Service Agreement No. 936 provides non-standard terms and conditions. Id. Schedule G.

*CSA with Meyersdale Windpower and Pennsylvania Electric:* The CSA among PJM, Meyersdale Windpower and Pennsylvania Electric facilitates the construction of facilities necessary for the interconnection of the generating facility that is the subject of Original Service Agreement No. 937, described above. See Construction Service Agreement Among PJM Interconnection, L.L.C. And Meyersdale Windpower, L.L.C. And Pennsylvania Electric Company a FirstEnergy Company § 3.0 (“Original Service Agreement No. 938”). The parties have chosen the standard option where the Transmission Owner Interconnection Facilities will be constructed by the Interconnected Transmission Owner. Id. at § 6.0. The Interconnection Customer has not exercised its option to build pursuant to Section 83.2.3 of the PJM Tariff. Id.

**Effective Date**

PJM requests a waiver of the Commission's 60-day prior notice requirement to allow the effective date of July 17, 2003 for both Original Service Agreement No. 937 and Original Service Agreement No. 938. See Original Service Agreement No. 937 § 4.0; see Original Service Agreement No. 938 § 4.0. Waiver is appropriate because the agreements are being filed within thirty days of their effective date. See Prior Notice Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139, at 61,983-84 (1993).

**Documents Enclosed**

PJM encloses the original and five copies of the following:

1. Transmittal Letter.
2. Original Service Agreement No. 937 and Original Service Agreement No. 938.
3. Federal Register Notice (also enclosed on diskette).

**Correspondence and Communications**

Correspondence and communications with respect to this filing should be sent to, and PJM requests the Secretary to include on the official service list, the following:

Craig Glazer  
Vice President - Governmental Policy  
PJM Interconnection, L.L.C.  
1200 G Street, N.W.  
Suite 600  
Washington, D.C. 20005  
(202) 393-7756

Barry S. Spector  
Carrie L. Bumgarner  
Wright & Talisman, P.C.  
1200 G Street, N.W.  
Suite 600  
Washington, D.C. 20005  
(202) 393-1200

**Service and Federal Register Notice**

PJM has served a copy of this filing on Meyersdale Windpower, Pennsylvania Electric, First Energy Service Company, and the state regulatory commissions within the

Honorable Magalie R. Salas  
July 31, 2003  
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PJM region. A form of notice suitable for publication in the Federal Register is attached and enclosed on diskette.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barry S. Spector", written over a horizontal line.

Barry S. Spector  
Carrie L. Bumgarner  
Deborah C. Brentani

Counsel for  
PJM Interconnection L.L.C.

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## **Construction Service Agreement**

## CONSTRUCTION SERVICE AGREEMENT

- 1.0 Parties. This Construction Service Agreement ("CSA") dated as of June 30, 2003, including the Schedules and Appendices attached hereto and incorporated herein, is entered into by and between PJM Interconnection, L.L.C. ("Transmission Provider") and the following Interconnection Customer and Interconnected Transmission Owner:

Interconnection Customer:

Meyersdale Windpower, L.L.C.

~~Interconnected Transmission Owner:~~

Pennsylvania Electric Company

All capitalized terms herein shall have the meanings set forth in the appended definitions of such terms as stated in Part I or Part IV of the Tariff.

- 2.0 Authority. This CSA is entered into pursuant to Part IV of the Tariff. The standard terms and conditions for construction as set forth in Subpart F of Part IV of the Tariff as of the date of this CSA are attached at Appendix 2 to this CSA and are hereby specifically incorporated as provisions of this agreement. Transmission Provider, the Interconnection Customer and the Interconnected Transmission Owner agree to and assume all of their respective rights and obligations as set forth in the appended provisions of Subpart F. Further, Interconnection Customer and the Interconnected Transmission Owner each agrees to and assumes all of the rights and obligations of a Constructing Entity with respect to the facilities that each of them is responsible for constructing, as set forth in Subpart F and in this CSA.

- 3.0 Customer Facility. This CSA specifically relates to the following Customer Facility at the following location:

- a. Name of Customer Facility:

Meyersdale Windpower  
(a/k/a PJM Queue # G21)

- b. Location of Customer Facility:

Summit Township, Somerset County, Pennsylvania

Issued By: Craig A. Glazer  
Vice President, Governmental Policy  
Issued On: July 31, 2003

Effective: July 17, 2003

4.0 Effective Date. This CSA shall become effective on the date this CSA is executed by the Transmission Provider and shall terminate on such date as provided under Section 94.1.1 of the appended Subpart F of Part IV of the Tariff, unless earlier terminated in accordance with other terms of the appended Subpart F. Construction shall commence as provided in the attached Schedule of Work.

5.0 Construction Responsibility for

a. Customer Interconnection Facilities. Interconnection Customer is responsible for designing and constructing the Customer Interconnection Facilities described on the attached Schedule E to this CSA.

b. Construction of Transmission Owner Interconnection Facilities.

1. The Transmission Owner Interconnection Facilities regarding which Interconnected Transmission Owner shall be the Constructing Entity are described on the attached Schedule C to this CSA.

2. Election of Construction Option. Specify below whether the Constructing Entities have mutually agreed to construction of the Transmission Owner Interconnection Facilities that will be built by the Interconnected Transmission Owner pursuant to the Standard Option or the Negotiated Contract Option. (See Section 83.2 of the appended Subpart F.)

☒ Standard Option.

☐ Negotiated Contract Option.

If the parties have mutually agreed to use the Negotiated Contract Option, the permitted, negotiated terms on which they have agreed and which are not already set forth as part of the Scope of Work, Schedule of Work and/or Schedule of Payments attached to this CSA, shall be as set forth in Schedule D attached to this CSA.

3. Exercise of Option to Build. Has Interconnection Customer timely exercised the Option to Build in accordance with Section 83.2.3 of the appended Subpart F with respect to some or all of the Transmission Owner Interconnection Facilities?

☐ Yes

☒ No

If Yes is indicated, Interconnection Customer shall build, in accordance with and subject to the conditions and limitations set forth in Section



83.2.3 of the appended Subpart F, those portions of the Transmission Owner Interconnection Facilities described on Schedule F attached to this CSA.

- 7.0 Scope of Work. The Scope of Work for all construction pursuant to this CSA shall be as set forth in the attached Schedule G.
- 8.0 Schedule of Work. The Schedule of Work for all construction pursuant to this CSA shall be as set forth in the attached Schedule H.
- 9.0 Schedule of Payments. The Schedule of Payments associated with the construction of the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades that the Interconnected Transmission Owner is responsible for constructing shall be as set forth in the attached Schedule I.
- 10.0 Technical Requirements. Technical requirements for construction of Facilities described in this Agreement shall be as set forth in the attached Schedule J
- 11.0 Notices. Any notice or request made to or by any party regarding this CSA shall be made in accordance with the appended Subpart F to the representatives of the other parties, as indicated below:

Transmission Provider:

PJM Interconnection, L.L.C.  
955 Jefferson Avenue  
Valley Forge Corporate Center  
Norristown, PA 19403-2497

Interconnection Customer:

Meyersdale Windpower, L.L.C.  
c/o Zilkha Renewable Energy  
1001 McKinney, Suite 1740  
Houston, TX 77002

Interconnected Transmission Owner:

Pennsylvania Electric Company a FirstEnergy company  
76 South Main Street  
Akron, OH 44308  
Att: Robert Martinko

Copy to:

FirstEnergy Service Company  
Legal Department

Att: Cortlandt C. Choate Jr. Esq.

- 11.0 Waiver. No waiver by any party of one or more defaults by another in performance of any of the provisions of this CSA shall operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character.
- 12.0 Amendment. This CSA or any part thereof, may not be amended, modified, assigned, or waived other than by a writing signed by all parties.
- 13.0 Incorporation of Other Documents. All portions of the Tariff and the Operating Agreement pertinent to the subject of this CSA and not otherwise made a part hereof are hereby incorporated herein and made a part hereof.

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

PJM Interconnection LLC:

By: Joseph S. Davis General Manager 7/17/03  
Name Title Date

Interconnection Customer:

By: Robert L. Crowell Authorized Representative 7/2/03  
Name Title Date

Interconnected Transmission Owner:

By: ET Rany VP 7-1-03  
Name Title Date

**APPENDICES:**

- **APPENDIX 1 - DEFINITIONS**
- **APPENDIX 2 - SUBPART F TERMS AND CONDITIONS**

**SCHEDULES:**

- **SCHEDULE A - SITE PLAN**
- **SCHEDULE B - SINGLE-LINE DIAGRAM OF INTERCONNECTION FACILITIES**
- **SCHEDULE C - TRANSMISSION OWNER INTERCONNECTION FACILITIES TO BE BUILT BY INTERCONNECTED TRANSMISSION OWNER**
- **SCHEDULE D - TRANSMISSION OWNER INTERCONNECTION FACILITIES TO BE BUILT BY INTERCONNECTION CUSTOMER PURSUANT TO OPTION TO BUILD**
- **SCHEDULE E - CUSTOMER INTERCONNECTION FACILITIES**
- **SCHEDULE F - NEGOTIATED CONTRACT OPTION TERMS**
- **SCHEDULE G - SCOPE OF WORK**
- **SCHEDULE H - SCHEDULE OF WORK**
- **SCHEDULE I - SCHEDULE OF PAYMENTS**
- **SCHEDULE J - APPLICABLE TECHNICAL REQUIREMENTS AND STANDARDS**

- **SCHEDULE K - INTERCONNECTION CUSTOMER'S AGREEMENT TO CONFORM WITH IRS SAFE HARBOR PROVISIONS FOR NON-TAXABLE STATUS**

**APPENDIX 1**  
**DEFINITIONS**

**Tariff Section****Definition**

- 50.1** "Abnormal Condition" shall mean any condition on the Interconnection Facilities which, determined in accordance with Good Utility Practice, is: (i) outside normal operating parameters such that facilities are operating outside their normal ratings or that reasonable operating limits have been exceeded; and (ii) could reasonably be expected to materially and adversely affect the safe and reliable operation of the Interconnection Facilities; but which, in any case, could reasonably be expected to result in an Emergency Condition. Any condition or situation that results from lack of sufficient generating capacity to meet load requirements or that results solely from economic conditions shall not, standing alone, constitute an Abnormal Condition.
- 50.2** "Affiliate" shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.
- 1.1** **Ancillary Services:** Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.
- 50.3** "Applicable Laws and Regulations" shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the relevant parties, their respective facilities, and/or the respective services they provide.
- 50.4** "Applicable Reliability Council" shall mean (MAAC) in the case of the PJM Control Area and ECAR with respect to PJM West Region.
- 50.5** "Applicable Standards" shall mean the requirements and guidelines of NERC, the Applicable Reliability Council and the Control Area in which the Customer Facility is electrically located, the PJM Manuals and Applicable Technical Requirements and Standards.
- 50.6** "Applicable Technical Requirements and Standards" shall mean those certain technical requirements and standards applicable to interconnections of generation and/or transmission facilities with the facilities of an Interconnected Transmission Owner, as published by Transmission Provider in a PJM Manual. Such Applicable Technical Requirements and Standards shall be publicly available through postings on Transmission Provider's internet website.
- 1.3A** **Attachment Facilities:** The facilities necessary to physically connect a Customer Facility to the Transmission System or interconnected distribution facilities.
- 50.7** "Breach" shall mean the failure of a party to perform or observe any material term or condition of the applicable Subpart of Part IV of the Tariff or an agreement entered into thereunder as described in the relevant provisions of Subpart E or Subpart F.

<b>Tariff Section</b>	<b>Definition</b>
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- 50.8 "Breaching Party" shall mean an Interconnected Entity or a Construction Party that is in Breach of the applicable Subpart and/or an agreement entered into thereunder.
- 50.9 "Cancellation Costs" shall mean the Costs and liabilities incurred in connection with: (a) cancellation of supplier and contractor written orders and agreements entered into to design, construct and install the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades; and/or (b) completion of some or all of the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades, or specific unfinished portions and/or removal of any or all of such facilities which have been installed, to the extent required for the Transmission Provider and/or Interconnected Transmission Owner to perform their respective obligations under Part IV of the Tariff.
- 1.3C **Capacity Interconnection Rights:** The rights to input generation as a Capacity Resource or Available Capacity Resource into the Transmission System at the bus where the generating facilities connect to the Transmission System.
- 1.3E **Capacity Transmission Injection Rights:** The rights to schedule energy and capacity deliveries at a Point of Interconnection (as defined in Section 50.44) of a Merchant Transmission Facility with the Transmission System. Capacity Transmission Injection Rights may be awarded only to a Merchant D.C. Transmission Facility that connects the Transmission System to another control area. Deliveries scheduled using Capacity Transmission Injection Rights have rights similar to those under Firm Point-to-Point Transmission Service or, if coupled with a generating unit external to the combined PJM Control Area and PJM West Region that satisfies all applicable criteria specified in the PJM Manuals, similar to Capacity Interconnection Rights.
- 50.10 "Commencement Date" shall mean the date on which Interconnection Service commences in accordance with Section 51.2 of Subpart E.
- 1.4 **Commission:** The Federal Energy Regulatory Commission.
- 50.11 "Confidential Information" shall mean any confidential, proprietary, or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy, or compilation relating to the present or planned business of an Interconnection Party or Construction Party, which is designated as confidential by the party supplying the information, whether conveyed verbally, electronically, in writing, through inspection, or otherwise, and shall include, without limitation, all information relating to the producing party's technology, research and development, business affairs and pricing, and any information supplied by any Interconnection Party or Construction Party to another such party prior to the execution of an Interconnection Service Agreement or a Construction Service Agreement.
- 50.12 "Constructing Entity" shall mean either the Interconnected Transmission Owner or the Interconnection Customer, depending on which entity has the construction responsibility pursuant to Subpart F, and shall also be used to refer to an Interconnection Customer with respect to the construction of the Customer Interconnection Facilities.

Tariff Section	Definition
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| 50.13  | "Construction Party" shall mean the Interconnection Customer, the Interconnected Transmission Owner, or Transmission Provider. "Construction Parties" shall mean all of them.  |
| 50.14  | "Construction Service Agreement" shall mean that agreement entered into by Interconnection Customer, Interconnected Transmission Owner and Transmission Provider, applicable to the Customer Facility and implementing the terms and conditions of Subpart F of Part IV of the Tariff.   |
| 50.15  | "Costs" shall mean costs and expenses, including, but not limited to, capital expenditures, if applicable, and overhead, return, and the costs of financing and taxes and any Incidental Expenses as defined below. Costs are calculated on a time and materials basis, including overhead.  |
| 1.7A   | <b>Customer Facility:</b> Generation facilities or Merchant Transmission Facilities interconnected with or added to the Transmission System pursuant to an Interconnection Request under Subparts A or B of Part IV of the Tariff.   |
| 50.15A | "Customer Interconnection Facilities" shall mean all facilities and equipment owned and/or controlled, operated and maintained by Interconnection Customer on Interconnection Customer's side of the Point of Interconnection identified in the appropriate appendices to the Interconnection Service Agreement and to the Construction Service Agreement, including any modifications, additions, or upgrades made to such facilities and equipment, that are necessary to physically and electrically interconnect the Customer Facility with the Transmission System.   |
| 50.16  | "Default" shall mean the failure of a Breaching Party to cure its Breach in accordance with the applicable provisions of Subpart E or Subpart F.   |
| 50.17  | "ECAR" shall mean East Central Area Reliability Council Agreement, a regional reliability council of NERC, or its successor.   |
| 50.18  | "Emergency Condition" shall mean a condition or situation (i) that in the judgment of any Interconnection Party is imminently likely to endanger life or property; or (ii) that in the judgment of the Interconnected Transmission Owner or Transmission Provider is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Transmission System, the Interconnection Facilities, or the transmission systems or distribution systems to which the Transmission System is directly or indirectly connected; or (iii) that in the judgment of Interconnection Customer is imminently likely (as determined in a non-discriminatory manner) to cause damage to the Customer Facility or to the Customer Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions, provided that a Generation Interconnection Customer is not obligated by Subpart E of Part IV of the Tariff to possess black start capability. Any condition or situation that results from lack of sufficient generating capacity to meet load requirements or that results solely from economic conditions shall not constitute an Emergency Condition, unless one or more of the enumerated conditions or situations identified in this definition also exists. |
| 1.11A  | <b>Energy Resource:</b> A generating facility that is not a Capacity Resource or Available Capacity Resource.  |



Tariff Section	Definition
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| 1.11B | <b>Energy Transmission Injection Rights:</b> The rights to schedule energy deliveries at a specified point on the Transmission System. Energy Transmission Injection Rights may be awarded only to a Merchant D.C. Transmission Facility that connects the Transmission System to another control area. Deliveries scheduled using Energy Transmission Injection Rights have rights similar to those under Non-Firm Point-to-Point Transmission Service.  |
| 50.19 | <b>"Environmental Laws"</b> shall mean Applicable Laws or Regulations relating to pollution or protection of the environment, natural resources or human health and safety.   |
| 50.20 | <b>"Facilities Study"</b> shall mean that certain Generation Interconnection Facilities Study or Transmission Interconnection Facilities Study conducted by Transmission Provider (or at its direction) to determine the design and specification of the Interconnection Facilities necessary to accommodate the interconnection of the Customer Facility with the Transmission System in accordance with Section 36.6 or Section 41.5 of the Tariff, as applicable.  |
| 50.21 | [Reserved]  |
| 50.22 | <b>"Federal Power Act"</b> shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a, et seq.   |
| 50.23 | <b>"FERC"</b> shall mean the Federal Energy Regulatory Commission or its successor.   |
| 1.13A | <b>Firm Transmission Withdrawal Rights:</b> The rights to schedule energy and capacity withdrawals from a Point of Interconnection (as defined in Section 50.44) of a Merchant Transmission Facility with the Transmission System. Firm Transmission Withdrawal Rights may be awarded only to a Merchant D.C. Transmission Facility that connects the Transmission System with another control area. Withdrawals scheduled using Firm Transmission Withdrawal Rights have rights similar to those under Firm Point-to-Point Transmission Service.   |
| 50.24 | <b>"Force Majeure"</b> shall mean any cause beyond the control of the affected Interconnection Party or Construction Party, including but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, acts of public enemy, explosions, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, which, in any of the foregoing cases, by exercise of due diligence such party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it has been unable to overcome. Force Majeure does not include (i) a failure of performance that is due to an affected party's own negligence or intentional wrongdoing; (ii) any removable or remediable causes (other than settlement of a strike or labor dispute) which an affected party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected party. |
| 50.25 | [Reserved]  |
| 1.13B | <b>Generation Interconnection Customer:</b> An entity that submits an Interconnection Request to interconnect a new generation facility or to increase  |

Tariff Section	Definition
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the capacity of an existing generation facility interconnected with the Transmission System in the PJM Control Area or PJM West Region.

**1.13C Generation Interconnection Facilities Study:** A Facilities Study related to a Generation Interconnection Request.

**1.13D Generation Interconnection Feasibility Study:** A study conducted by the Transmission Provider (in coordination with the affected Transmission Owner(s)) in accordance with Section 36.2 of this Tariff.

**1.13E Generation Interconnection Request:** A request by a Generation Interconnection Customer pursuant to Subpart A of Part IV of the Tariff to interconnect a generating unit with the Transmission System or to increase the capacity of a generating unit interconnected with the Transmission System in the PJM Control Area or PJM West Region.

**1.14 Good Utility Practice:** Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

**50.26 "Governmental Authority"** means any federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, arbitrating body, or other governmental authority having jurisdiction over any Interconnection Party or Construction Party or regarding any matter relating to Subpart E or Subpart F, as applicable.

**50.27 "Hazardous Substances"** shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

**50.28 "Incidental Expenses"** shall mean those expenses incidental to the performance of construction pursuant to Subpart F, including, but not limited to, the expense of temporary construction power, telecommunications charges, Interconnected Transmission Owner expenses associated with, but not limited to, document preparation, design review, installation, monitoring, and construction-related operations and maintenance for the Customer Facility and for the Interconnection Facilities.

**Tariff Section****Definition**

- 1.14B Incremental Auction Revenue Rights:** The additional Auction Revenue Rights (as defined in Section 1.3.1 of Attachment K to the Tariff), not previously feasible, created by the addition of Merchant Transmission Facilities, or a new transmission facility or upgrade resulting from the accommodation of an Interconnection Request pursuant to Part IV of the Tariff.
- 1.14C Incremental Available Transfer Capability Revenue Rights:** The rights to revenues that are derived from incremental Available Transfer Capability created by the addition of a Merchant Transmission Facility or a new transmission facility or upgrade resulting from the accommodation of an Interconnection Request(s) pursuant to Part IV of the Tariff.
- 1.14D Incremental Deliverability Rights (IDRs):** The rights to the incremental ability, resulting from the addition of a Merchant Transmission Facility, to inject energy and capacity at a point on the Transmission System, such that the injection satisfies the deliverability requirements of a Capacity Resource. Incremental Deliverability Rights may be obtained by a generator or a Generation Interconnection Customer, pursuant to an IDR Transfer Agreement, to satisfy, in part, the deliverability requirements necessary to obtain Capacity Interconnection Rights.
- 50.29** "Initial Operation" shall mean the commencement of operation of the Customer Facility and Customer Interconnection Facilities after satisfaction of the conditions of Section 51.4.
- 50.30** "Interconnected Entity" shall mean either the Interconnection Customer or the Interconnected Transmission Owner; "Interconnected Entities" shall mean both of them.
- 50.31** "Interconnected Transmission Owner" shall mean the Transmission Owner to whose transmission facilities the Customer Interconnection Facilities are, or as the case may be, the Customer Facility is, being directly connected. As used in Subpart F, the term also includes a Transmission Owner whose facilities must be upgraded pursuant to the Facilities Study, but whose facilities are not directly interconnected with those of the Interconnection Customer.
- 50.32 [Reserved]**
- 1.14E Interconnection Customer:** A Generation Interconnection Customer and/or a Transmission Interconnection Customer.
- 50.33** "Interconnection Facilities" shall mean the Transmission Owner Interconnection Facilities and the Customer Interconnection Facilities.
- 50.34** "Interconnection Party" shall mean Transmission Provider, Interconnection Customer, or the Interconnected Transmission Owner. "Interconnection Parties" shall mean all of them.
- 50.35 [Reserved]**
- 1.14H Interconnection Request:** A Generation Interconnection Request, a Transmission Interconnection Request and/or an IDR Transfer Agreement.

Tariff Section	Definition
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| 50.36 | "Interconnection Service" shall mean the physical and electrical interconnection of the Customer Facility with the Transmission System pursuant to the terms of Part IV of the Tariff and the Interconnection Service Agreement entered into pursuant thereto by Interconnection Customer, the Interconnected Transmission Owner and Transmission Provider.  |
| 50.37 | "List of Approved Contractors" shall mean a list developed by each Transmission Owner and published in a PJM Manual of (a) contractors that the Transmission Owner considers to be qualified to install or construct new facilities and/or upgrades or modifications to existing facilities on the Transmission Owner's system, provided that such contractors may include, but need not be limited to, contractors that, in addition to providing construction services, also provide design and/or other construction-related services, and (b) manufacturers or vendors of major transmission-related equipment (e.g., high-voltage transformers, transmission line, circuit breakers) whose products the Transmission Owner considers acceptable for installation and use on its system. |
| 1.17A | <b>Local Upgrades:</b> Modifications or additions of facilities to abate any local thermal loading, voltage, short circuit, stability or similar engineering problem caused by the interconnection and delivery of generation to the Transmission System.  |
| 50.38 | "MAAC" shall mean the Mid Atlantic Area Council, a regional reliability council of NERC, or its successor.   |
| 50.39 | "Maximum Facility Output" shall mean the maximum net electrical power output in megawatts, specified in the Interconnection Service Agreement, after supply of any parasitic or host facility loads, that the Customer Facility is expected to produce.  |
| 1.18B | <b>Merchant A.C. Transmission Facilities:</b> Merchant Transmission Facilities that are alternating current (A.C.) transmission facilities.  |
| 1.18C | <b>Merchant D.C. Transmission Facilities:</b> Merchant Transmission Facilities that are direct current (D.C.) transmission facilities.   |
| 1.18D | <b>Merchant Network Upgrades:</b> Merchant A.C. Transmission Facilities that are additions to, or modifications or replacements of, physical facilities of the Interconnected Transmission Owner (as defined in Section 50.31 below) that, on the date of the pertinent Transmission Interconnection Customer's Interconnection Request, are part of the Transmission System or are included in the Regional Transmission Expansion Plan.  |
| 1.18E | <b>Merchant Transmission Facilities:</b> A.C. or D.C. transmission facilities that are interconnected with or added to the Transmission System pursuant to Subpart B of Part IV of the Tariff and that are so identified on Attachment T to the Tariff, provided, however, that Merchant Transmission Facilities shall not include (i) any Customer Interconnection Facilities (as defined in Section 50.15A), (ii) any physical facilities of the Transmission System that are in existence on the date this provision is filed with the Commission; (iii) any expansions or enhancements of the Transmission System that are not identified as Merchant Transmission   |

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Facilities in the Regional Transmission Expansion Plan and Attachment T to the Tariff, or (iv) any transmission facilities that are included in the rate base of a public utility and on which a regulated return is earned.

- 50.40 "Metering Equipment" shall mean all metering equipment installed at the metering points designated in the appropriate appendix to an Interconnection Service Agreement.
  
- 50.41 "NERC" shall mean the North American Electric Reliability Council, or its successor agency assuming or charged with similar responsibilities related to the operation and reliability of the North American interconnected electric transmission grid.
  
- 1.26 **Network Upgrades:** Modifications or additions to transmission-related facilities that are integrated with and support the Transmission Provider's overall Transmission System for the general benefit of all users of such Transmission System.
  
- 50.42 "Nominal Rated Capability" shall mean the nominal maximum rated capability in megawatts of a Transmission Interconnection Customer's Customer Facility or the nominal increase in transmission capability in megawatts of the Transmission System resulting from the interconnection or addition of a Transmission Interconnection Customer's Customer Facility, as determined in accordance with pertinent Applicable Standards and specified in the Interconnection Service Agreement.
  
- 1.27A **Non-Firm Transmission Withdrawal Rights:** The rights to schedule energy withdrawals from a specified point on the Transmission System. Non-Firm Transmission Withdrawal Rights may be awarded only to a Merchant D.C. Transmission Facility that connects the Transmission System to another control area. Withdrawals scheduled using Non-Firm Transmission Withdrawal Rights have rights similar to those under Non-Firm Point-to-Point Transmission Service.
  
- 1.28A **Operating Agreement of the PJM Interconnection, L.L.C. or Operating Agreement:** That agreement dated as of April 1, 1997 and as amended and restated as of June 2, 1997 and as amended from time to time thereafter, among the members of the PJM Interconnection, L.L.C.
  
- 50.43 "Option to Build" shall mean the option of the Interconnection Customer to build certain Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades, as set forth in, and subject to the terms of, Section 83.2.3 of Subpart F.
  
- 1.29 **Part I:** Tariff Definitions and Common Service Provisions contained in Sections 2 through 12.
  
- 1.30 **Part II:** Tariff Sections 13 through 27 pertaining to Point-To-Point Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.

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| 1.31  | <b>Part III:</b> Tariff Sections 28 through 35 pertaining to Network Integration Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.   |
| 1.31A | <b>Part IV:</b> Tariff Sections 36 through 112 pertaining to generation or merchant transmission interconnection to the Transmission System in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.   |
| 1.32B | <b>PJM Control Area:</b> The Control Area that is recognized by NERC as the PJM Control Area.   |
| 1.32D | <b>PJM Manuals:</b> The instructions, rules, procedures and guidelines established by the Transmission Provider for the operation, planning, and accounting requirements of the PJM region and the PJM Interchange Energy Market.   |
| 1.32F | <b>PJM West Region:</b> The aggregate of the zone of the West Transmission Owners.  |
|       |   |
| 50.44 | <b>"Point of Interconnection"</b> shall mean the point or points, shown in the appropriate appendix to the Interconnection Service Agreement and the Construction Service Agreement, where the Customer Interconnection Facilities and/or Merchant Network Upgrade(s) interconnect with the Transmission Owner Interconnection Facilities or the Transmission System.   |
| 50.45 | <b>"Project Financing"</b> means:   |
|       | (a) one or more loans, leases, equity and/or debt financings, together with all modifications, renewals, supplements, substitutions and replacements thereof, the proceeds of which are used to finance or refinance the costs of the Customer Facility, any alteration, expansion or improvement to the Customer Facility, the purchase and sale of the Customer Facility or the operation of the Customer Facility; |
|       | (b) a power purchase agreement pursuant to which Interconnection Customer's obligations are secured by a mortgage or other lien on the Customer Facility; or  |
|       | (c) loans and/or debt issues secured by the Customer Facility.  |
| 50.46 | <b>"Project Finance Entity"</b> means (a) a holder, trustee or agent for holders, of any component of Project Financing, or (b) any purchaser of capacity and/or energy produced by the Customer Facility to which Interconnection Customer has granted a mortgage or other lien as security for some or all of Interconnection Customer's obligations under the corresponding power purchase agreement.              |
| 50.47 | <b>"Reasonable Efforts"</b> shall mean, with respect to any action required to be made, attempted, or taken by an Interconnection Party under Subpart E or by a Construction Party under Subpart F, such efforts as are timely and consistent with Good Utility Practice and with efforts that such party would undertake for the protection of its own interests.  |
| 1.37A | <b>Regional Transmission Expansion Plan:</b> The plan prepared by the Office of the Interconnection pursuant to Schedule 6 of the Operating Agreement for the   |

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enhancement and expansion of the Transmission System in order to meet the demands for firm transmission service in the PJM region

**50.48 [Reserved]**

**50.49** "Schedule of Payments" shall mean that schedule, as revised from time to time as necessary for correlation with the Schedule of Work, attached to the Construction Service Agreement and setting forth the payments due and owing by the Interconnection Customer pursuant to Subpart F.

**50.50** "Schedule of Work" shall mean that schedule, as revised from time to time and attached to the Construction Service Agreement, setting forth the timing of work to be performed by the Constructing Entity pursuant to Subpart F and based upon the Facilities Study.

**50.51** "Scope of Work" shall mean that scope of the work attached as a schedule to the Construction Service Agreement and to be performed by the Constructing Entity(ies) pursuant to Subpart F.

**50.52** "Secondary Systems" shall mean control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers.

**50.53** "Security" shall mean the security provided by the Interconnection Customer pursuant to Section 36.8.4 or Section 47.7.4 of the Tariff to secure the Interconnection Customer's responsibility for Costs under Subpart F and Section 37 or Section 42 of the Tariff.

**50.54** "Site" shall mean all of the real property, including but not limited to any leased real property and easements, on which the Customer Facility is situated and/or on which the Customer Interconnection Facilities are to be located.

**(Attachment K - Appendix)**

**1.3.33B Station Power.**

"Station Power" shall mean energy used for operating the electric equipment on the site of a generation facility located in the PJM Control Area or for the heating, lighting, air-conditioning and office equipment needs of buildings on the site of such a generation facility that are used in the operation, maintenance, or repair of the facility. Station Power does not include any energy used to power synchronous condensers, used for pumping at a pumped storage facility, or used in association with restoration or black start service.

**50.55** "Subpart E" shall refer to Subpart E of Part IV of the Tariff and, where the context so requires, to the Interconnection Service Agreement.

**50.56** "Subpart F" shall refer to Subpart F of Part IV of the Tariff, and, where the context so requires, to the Construction Service Agreement.

**50.57** "Switching and Tagging Rules" shall mean the switching and tagging procedures of Interconnected Transmission Owners and Interconnection Customer, as set

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forth in an appendix to the Interconnection Service Agreement, and as they may be amended from time to time.

- 50.58** "System Protection Facilities" shall mean the equipment required to protect (i) the Transmission System, other delivery systems and/or other generating systems connected to the Transmission System from faults or other electrical disturbance occurring at or on the Customer Facility, and (ii) the Customer Facility from faults or other electrical system disturbance occurring on the Transmission System or on other delivery systems and/or other generating systems to which the Transmission System is directly or indirectly connected. System Protection Facilities shall include such protective and regulating devices as are identified in the Applicable Technical Requirements and Standards or that are required by Applicable Laws and Regulations or other Applicable Standards, or as are otherwise necessary to protect personnel and equipment and to minimize deleterious effects to the Transmission System arising from the Customer Facility.
- 1.45A Transmission Injection Rights:** Capacity Transmission Injection Rights and Energy Transmission Injection Rights.
- 1.45B Transmission Interconnection Customer:** An entity that submits an Interconnection Request to interconnect or add Merchant Transmission Facilities to the Transmission System or to increase the capacity of Merchant Transmission Facilities interconnected with the Transmission System in the PJM Control Area or PJM West Region.
- 1.45C Transmission Interconnection Facilities Study:** A Facilities Study related to a Transmission Interconnection Request.
- 1.45D Transmission Interconnection Feasibility Study:** A study conducted by the Transmission Provider in accordance with Section 41.2 of the Tariff.
- 1.45E Transmission Interconnection Request:** A request by a Transmission Interconnection Customer pursuant to Part IV of the Tariff to interconnect or add Merchant Transmission Facilities to the Transmission System or to increase the capacity of existing Merchant Transmission Facilities interconnected with the Transmission System in the PJM Control Area or PJM West Region.
- 1.45F Transmission Owner:** Each entity that owns, leases or otherwise has a possessory interest in facilities used for the transmission of electric energy in interstate commerce under the Tariff. The Transmission Owners are listed in Attachment L.
- 50.59** "Transmission Owner Attachment Facilities" shall mean that portion of the Transmission Owner Interconnection Facilities comprised of all Attachment Facilities on the Interconnected Transmission Owner's side of the Point of Interconnection.
- 50.60** "Transmission Owner Interconnection Facilities" shall mean all Interconnection Facilities that are not Customer Interconnection Facilities and that, after the transfer under Section 85.5 below to the Interconnected Transmission Owner of title to any Transmission Owner Interconnection Facilities that the Interconnection Customer constructed, are owned, controlled, operated and maintained by the Interconnected Transmission Owner on the Interconnected



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Transmission Owner's side of the Point of Interconnection identified in appendices to the Interconnection Service Agreement and to the Construction Service Agreement, including any modifications, additions or upgrades made to such facilities and equipment, that are necessary to physically and electrically interconnect the Customer Facility with the Transmission System or interconnected distribution facilities

- 1.46 Transmission Provider:** The Transmission Provider shall be the Office of the Interconnection for all purposes, provided that the Transmission Owners will have the responsibility for the following specified activities:
- (a) The Office of the Interconnection shall direct the operation and coordinate the maintenance of the Transmission System, except that the Transmission Owners will continue to direct the operation and maintenance of those transmission facilities that are not listed in the PJM Designated Facilities List contained in the PJM Manual on Transmission Operations;
  - (b) Each Transmission Owner shall physically operate and maintain all of the facilities that it owns; and
  - (c) When studies conducted by the Office of the Interconnection indicate that enhancements or modifications to the Transmission System are necessary, the Transmission Owners shall have the responsibility, in accordance with the applicable terms of the Tariff, Operating Agreement and/or Transmission Owners Agreement or West Transmission Owners Agreement, to construct, own, and finance the needed facilities or enhancements or modifications to facilities.
- 1.49 Transmission System:** The facilities controlled or operated by the Transmission Provider within the PJM Control Area and PJM West Region that are used to provide transmission service under Part II and Part III of the Tariff.
- 1.49A Transmission Withdrawal Rights:** Firm Transmission Withdrawal Rights and Non-Firm Transmission Withdrawal Rights.

**APPENDIX 2**  
**SUBPART F - TERMS AND CONDITIONS**

## **Subpart F – STANDARD CONSTRUCTION TERMS AND CONDITIONS**

### **Preamble**

The construction of any Interconnection Facilities required to interconnect a Customer Facility with the Transmission System shall be in accordance with the following Standard Construction Terms and Conditions, which terms and conditions shall be incorporated by reference into and made a part of all Construction Service Agreements executed under this Subpart F of Part IV of the Tariff.

### **80 Effective Date and Term**

**80.1 Effective Date:** The Effective Date of a Construction Service Agreement entered into pursuant to this Subpart F shall occur upon the latest of the following: (i) the execution of an Interconnection Service Agreement among the Construction Parties; (ii) the execution of the appropriate Construction Service Agreement by the Construction Parties; (iii) acceptance by the FERC of such Construction Service Agreement; and (iv) the Interconnection Customer's delivery of Security to the Transmission Provider, provided, however, that if the Construction Service Agreement is filed unexecuted, the Effective Date shall be the date specified by the FERC. The Interconnected Transmission Owner shall have no obligation to begin construction of the Transmission Owner Interconnection Facilities prior to the Effective Date.

**80.2 Term:** A Construction Service Agreement shall continue in full force and effect from the Effective Date until the termination thereof pursuant to Section 94 of this Subpart F.

**80.3 Survival:** A Construction Service Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments, including billings and payments pursuant to Section 89 and/or Section 94 of this Subpart F, and to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while the Construction Service Agreement was in effect.

**81 Facilitation by Transmission Provider:** Transmission Provider shall keep itself apprised of the status of the Constructing Entities' construction-related activities and, upon request of either of them, Transmission Provider shall meet with the Constructing Entities separately or together to assist them in resolving issues between them regarding their respective activities, rights and obligations under this Subpart F. Each Constructing Entity shall cooperate in good faith with the other Construction Parties in Transmission Provider's efforts to facilitate resolution of disputes.

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## **82 Construction Obligations**

### **82.1 Interconnection Customer Obligations:**

**82.1.1 Generally.** Interconnection Customer shall, at its sole cost and expense, design, procure, construct, own and install the Customer Facility and the Customer Interconnection Facilities in accordance with this Subpart F, Applicable Standards, Applicable Laws and Regulations, Good Utility Practice, the Scope of Work and the Facilities Study (to the extent that design of the Customer Interconnection Facilities is included therein), provided, however, that, in the event and to the extent that the Customer Facility is comprised of or includes Merchant Network Upgrades, subject to the terms of Section 83.2.3, the Interconnected Transmission Owner, shall design, procure, construct and install such Merchant Network Upgrades.

**82.1.2 Interconnection Customer Drawings:** On or before the applicable date specified in the Schedule of Work, Interconnection Customer shall submit to the Interconnected Transmission Owner and Transmission Provider initial drawings, certified by a professional engineer, of the Customer Interconnection Facilities. Interconnected Transmission Owner and Transmission Provider shall review the drawings to assess the consistency of Interconnection Customer's design of the Customer Interconnection Facilities with Applicable Standards and, to the extent that design of the Customer Interconnection Facilities is included in the Facilities Study, also shall assess the consistency of Interconnection Customer's design with the Facilities Study. After consulting with the Interconnected Transmission Owner, Transmission Provider shall provide comments on the drawings to Interconnection Customer within forty-five (45) days after its receipt thereof, after which time any drawings not subject to comment shall be deemed to be approved. All drawings provided hereunder shall be deemed to be Confidential Information.

**82.1.3 Effect of Review:** Interconnected Transmission Owner's and Transmission Provider's reviews of Interconnection Customer's initial drawings of the Customer Interconnection Facilities shall not be construed as confirming, endorsing or providing a warranty as to the fitness, safety, durability or reliability of such facilities or the design thereof. At its sole cost and expense, Interconnection Customer shall make such changes to the design of the Customer Interconnection Facilities as may reasonably be required by Transmission Provider, in consultation with the Interconnected Transmission Owner, to ensure that the Customer Interconnection Facilities meet Applicable Standards and, to the extent that design of the Customer Interconnection Facilities is included in the Facilities Study, to ensure that such facilities conform with the Facilities Study.

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**82.2 Transmission Owner Interconnection Facilities and Merchant Network Upgrades:**

**82.2.1 Generally:** (a) All Transmission Owner Interconnection Facilities necessary for the interconnection of the Customer Facility and (b) any Merchant Network Upgrades shall be designed, procured, installed and constructed in accordance with this Subpart F, Applicable Standards, Applicable Laws and Regulations, Good Utility Practice, the Facilities Study and the Scope of Work attached as a schedule to the Construction Service Agreement(s).

**82.2.2 Cost Responsibility:** Responsibility for the Costs of the Transmission Owner Interconnection Facilities and any Merchant Network Upgrades shall be assigned in accordance with Section 37 or Section 42 of the Tariff, as applicable, and shall be stated in the Interconnection Service Agreement.

**82.2.3 Construction Responsibility:** Except as otherwise permitted under, or as otherwise agreed upon by the Interconnection Customer and the Interconnected Transmission Owner pursuant to, Section 83 below, the Interconnected Transmission Owner shall be responsible for the design, procurement, construction and installation of the Transmission Owner Interconnection Facilities or any Merchant Network Upgrades. In the event that there are multiple Interconnected Transmission Owners, the Transmission Provider shall determine how to allocate the construction responsibility among them unless they have reached agreement among themselves on how to proceed.

**82.2.4 Ownership of Transmission Owner Interconnection Facilities and Merchant Network Upgrades:** The Interconnected Transmission Owner shall own all Transmission Owner Interconnection Facilities and Merchant Network Upgrades that it builds. In addition, the Interconnection Customer will convey to the Interconnected Transmission Owner, as provided in Section 85.5 of this Subpart F, title to all Transmission Owner Interconnection Facilities and Merchant Network Upgrades built by the Interconnection Customer pursuant to the terms of Section 83.2 below. Nothing in this section shall affect the interconnection rights otherwise available to a Transmission Interconnection Customer under Subpart D of Part IV of the Tariff.

**82.2A Scope of Applicable Technical Requirements and Standards:** Applicable Technical Requirements and Standards shall apply to the design, procurement, construction and installation of the Interconnection Facilities and Merchant A.C. Transmission Facilities only to the extent that the provisions thereof relate to the design, procurement, construction and/or installation of such facilities. Such provisions relating to the design, procurement, construction and/or installation of facilities shall be appended to the Construction Service Agreement. The Interconnection Parties shall mutually agree upon, or in the absence of such agreement, Transmission Provider shall determine, which provisions of the Applicable Technical Requirements and Standards should be appended to the

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Construction Service Agreement. In the event of any conflict between the provisions of the Applicable Technical Requirements and Standards that are appended to the Construction Service Agreement and any later-modified provisions that are stated in the pertinent PJM Manual, the provisions appended to the Construction Service Agreement shall control.

**82.3 Construction By Interconnection Customer:**

**82.3.1 Construction Prior to Execution of Construction Service Agreement:**

If the Interconnection Customer procures materials for, and/or commences construction of, the Customer Interconnection Facilities, any Transmission Owner Interconnection Facilities, or any Merchant Network Upgrades that it has elected to construct by exercising the Option to Build under Section 83.2.3 below, or for any subsequent modification thereto, prior to the execution of the Construction Service Agreement or, if the Construction Service Agreement has been executed, before the Interconnected Transmission Owner and Transmission Provider have accepted the Interconnection Customer's initial design, or any subsequent modification to the design, of such Interconnection Facilities and/or Merchant Network Upgrades, such procurement and/or construction shall be at the Interconnection Customer's sole risk, cost and expense.

**82.3.2 Monitoring and Inspection:** The Interconnected Transmission Owner may monitor construction and installation of Interconnection Facilities and/or Merchant Network Upgrades that the Interconnection Customer is constructing. Upon reasonable notice, authorized personnel of the Interconnected Transmission Owner may inspect any or all of such Interconnection Facilities and/or Merchant Network Upgrades to assess their conformity with Applicable Standards.

**82.3.3 Notice of Completion:** The Interconnection Customer shall notify the Transmission Provider and the Interconnected Transmission Owner in writing when it has completed construction of (i) the Customer Facility; (ii) the Customer Interconnection Facilities; and (iii) any Transmission Owner Interconnection Facilities and/or any Merchant Network Upgrades for which it has exercised the Option to Build under Section 83 below.

**82.4 Tax Liability:**

**82.4.1 Safe Harbor Provisions:** Provided that Interconnection Customer agrees to conform to all requirements of the Internal Revenue Service ("IRS") (e.g., the "safe harbor" provisions of IRS Notices 2001-82 and 88-129) that would confer nontaxable status on some or all of the transfer of property, including money, by Interconnection Customer to the Interconnected Transmission Owner for payment of the Costs of construction of the Transmission Owner Interconnection Facilities and/or any Merchant Network Upgrades, the Interconnected Transmission Owner, based on such agreement and on current law, shall treat such transfer of property to it as nontaxable income and, except as provided in Section 82.4.2 below, shall not include income taxes in the Costs of Transmission Owner Interconnection Facilities or Merchant Network

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Upgrades that are payable by Interconnection Customer under this Subpart. Interconnection Customer shall document its agreement to conform to IRS requirements for such non-taxable status in a writing separate from the Construction Service Agreement and delivered to the Interconnected Transmission Owner and Transmission Provider prior to execution of the Construction Service Agreement.

**82.4.2 Tax Indemnity:** Interconnection Customer shall indemnify the Interconnected Transmission Owner for any costs that Interconnected Transmission Owner incurs in the event that the IRS and/or a state department of revenue (State) determines that the property, including money, transferred by Interconnection Customer to the Interconnected Transmission Owner with respect to the construction of the Transmission Owner Interconnection Facilities and/or any Merchant Network Upgrades is taxable income to the Interconnected Transmission Owner. Interconnection Customer shall pay to the Interconnected Transmission Owner, on demand, the amount of any income taxes that the IRS or a State assesses to the Interconnected Transmission Owner in connection with such transfer of property and/or money, plus any applicable interest and/or penalty charged to the Interconnected Transmission Owner. In the event that the Interconnected Transmission Owner chooses to contest such assessment, either at the request of Interconnection Customer or on its own behalf, and prevails in reducing or eliminating the tax, interest and/or penalty assessed against it, the Interconnected Transmission Owner shall refund to Interconnection Customer the excess of its demand payment made to the Interconnected Transmission Owner over the amount of the tax, interest and penalty for which the Interconnected Transmission Owner is finally determined to be liable. Interconnection Customer's tax indemnification obligation under this section shall survive any termination of the Construction Service Agreement.

**82.5 Safety:**

**82.5.1 General:** Each Construction Party shall perform all work hereunder that may reasonably be expected to affect any other Construction Party in accordance with Good Utility Practice, Applicable Standards and Applicable Laws and Regulations pertaining to the safety of persons or property. A Construction Party performing work within an area controlled by another Construction Party must abide by the safety rules applicable to the area.

**82.5.2 Environmental Releases:** Each Construction Party shall notify each other Construction Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Customer Facility or the Interconnection Facilities, any of which may reasonably be expected to affect another Construction Party. The notifying Construction Party shall (i) provide the notice as soon as possible, (ii) make a good faith effort to provide the notice within twenty-four hours after the Construction Party becomes aware of the occurrence, and (iii) promptly furnish to each other

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Construction Party copies of any publicly available reports filed with any governmental agencies addressing such events.

**82.6 Construction-Related Access Rights:** The Interconnected Transmission Owner and the Interconnection Customer herein grant each other at no charge such rights of access to areas that it owns or otherwise controls as may be necessary for performance of their respective obligations, and exercise of their respective rights, pursuant to this Subpart F, provided that either of them performing the construction will abide by the safety, security and work rules applicable to the area where construction activity is occurring.

**82.7 Coordination Among Construction Parties:** The Transmission Provider, the Interconnection Customer, and all Interconnected Transmission Owners shall communicate and coordinate their activities as necessary to satisfy their obligations under this Subpart F and the Construction Service Agreement(s) applicable to the Interconnection Facilities and any Merchant Network Upgrades.

### **83 Schedule Of Work**

**83.1 Construction by Interconnection Customer:** The Interconnection Customer shall use Reasonable Efforts to design, procure, construct and install the Customer Interconnection Facilities and any Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades that it elects to build by exercise of the Option to Build (defined in Section 83.2.3.1 below) in accordance with the Schedule of Work.

#### **83.2 Construction by Interconnected Transmission Owner:**

**83.2.1 Standard Option:** The Interconnected Transmission Owner shall use Reasonable Efforts to design, procure, construct and install the Transmission Owner Interconnection Facilities and/or any Merchant Network Upgrades that it is responsible for constructing in accordance with the Schedule of Work.

**83.2.2 Negotiated Contract Option:** As an alternative to the Standard Option set forth in Section 83.2.1, the Interconnected Transmission Owner and the Interconnection Customer may mutually agree to a Negotiated Contract Option for the Interconnected Transmission Owner's design, procurement, construction and installation of the Transmission Owner Interconnection Facilities and/or any Merchant Network Upgrades. Under the Negotiated Contract Option, the Interconnection Customer and the Interconnected Transmission Owner may agree to terms different from those included in the Standard Option of Section 83.2.1 above and the corresponding standard terms set forth in the applicable provisions of Subparts A or B, as applicable, and Subpart F of Part IV of the Tariff. Under the Negotiated Contract Option, negotiated terms may include the work schedule applicable to the Interconnected Transmission Owner's construction activities and changes to same (Section 83.3 of Subpart F); payment provisions, including the schedule of payments; incentives, penalties and/or liquidated damages related to timely completion of construction (Section 83.2.1 of Subpart F); use of third party contractors;

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and responsibility for Costs, but only as between the Interconnection Customer and the Interconnected Transmission Owner that are parties to the relevant Construction Service Agreement; no other Interconnection Customer's responsibility for Costs may be affected (Section 37 or Section 42 of the Tariff). No other terms of the Tariff shall be subject to modification under the Negotiated Contract Option. The terms and conditions of the Tariff that may be negotiated pursuant to the Negotiated Contract Option shall not be affected by use of the Negotiated Contract Option except as and to the extent that they are modified by the parties' agreement pursuant to such option. All terms agreed upon pursuant to the Negotiated Contract Option shall be stated in full in an appendix to the Construction Service Agreement.

### **83.2.3 Option to Build:**

**83.2.3.1 Option:** In the event that the Interconnected Transmission Owner and the Interconnection Customer are unable to agree upon the terms of a Construction Service Agreement (a) on or before the date that is 30 days after Interconnection Customer's execution of the Interconnection Service Agreement, or (b) by such earlier date as is reasonable in the light of the schedule for construction of, as the case may be, the Transmission Owner Interconnection Facilities or Merchant Network Upgrades, as set forth in the Facilities Study, and subject to the terms and conditions set forth in Sections 82 and 83 of this Subpart F, the Interconnection Customer shall have the right, but not the obligation ("Option to Build"), to design, procure, construct and install all or any portion of the Transmission Owner Interconnection Facilities and/or any Merchant Network Upgrades. In order to exercise this Option to Build, the Interconnection Customer must provide Transmission Provider and the Interconnected Transmission Owner with written notice of its election to exercise the option by no later than seven days after the date that is 30 days after Interconnection Customer's execution of the Interconnection Service Agreement, provided, however, that the Interconnection Customer and the Interconnected Transmission Owner may by mutual agreement extend the time period for exercise of the option.

**83.2.3.2 General Conditions Applicable to Option:** In addition to the other terms and conditions applicable to the construction of facilities under this Subpart, the Option to Build is subject to the following conditions:

- (a) The Interconnection Customer must obtain or arrange to obtain all necessary permits and authorizations for the construction and installation of the Transmission Owner Interconnection Facilities and/or any Merchant Network Upgrades that it is building, provided, however, that when the Interconnected Transmission Owner's assistance is required, the Interconnected Transmission Owner shall assist the Interconnection Customer in obtaining such necessary permits

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or authorizations with efforts similar in nature and extent to those that the Interconnected Transmission Owner typically undertakes in acquiring permits and authorizations for construction of facilities on its own behalf;

- (b) The Interconnection Customer must obtain all necessary land rights for the construction and installation of the Transmission Owner Interconnection Facilities and/or any Merchant Network Upgrades that it is building, provided, however, that upon Interconnection Customer's reasonable request, the Interconnected Transmission Owner shall assist the Interconnection Customer in acquiring such land rights with efforts similar in nature and extent to those that the Interconnected Transmission Owner typically undertakes in acquiring land rights for construction of facilities on its own behalf;
- (c) Notwithstanding anything stated herein, each Interconnected Transmission Owner shall have the exclusive right and obligation to perform the line attachments (tie-in work), and to calibrate remote terminal units and relay settings, required for the interconnection to such Interconnected Transmission Owner's existing facilities of any Transmission Owner Interconnection Facilities and/or any Merchant Network Upgrades that the Interconnection Customer builds; and
- (d) The Transmission Owner Interconnection Facilities and/or any Merchant Network Upgrades built by the Interconnection Customer shall be successfully inspected, tested and energized pursuant to Sections 83.8 and 83.9 of this Subpart F.

**83.2.3.3 Additional Conditions Regarding Network Facilities:** To the extent that the Interconnection Customer utilizes the Option to Build for design, procurement, construction and/or installation of (a) any Merchant Network Upgrades, (b) any Transmission Owner Interconnection Facilities that are Local Upgrades or Network Upgrades to Transmission System facilities that are in existence or under construction by or on behalf of the Interconnected Transmission Owner on the date that the Interconnection Customer solicits bids under Section 83.2.3.7 below, or (c) Merchant Network Upgrades or Transmission Owner Interconnection Facilities that are to be located on land or in right-of-way owned or controlled by the Interconnected Transmission Owner, and in addition to the other terms and conditions applicable to the design, procurement, construction and/or installation of facilities under this Subpart F, all work shall comply with the following further conditions:

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- (i) All work performed by or on behalf of the Interconnection Customer shall be conducted by contractors, and using equipment manufacturers or vendors, that are listed on the Interconnected Transmission Owner's List of Approved Contractors;
- (ii) The Interconnected Transmission Owner shall have full site control of, and reasonable access to, its property at all times for purposes of tagging or operation, maintenance, repair or construction of modifications to, its existing facilities and/or for performing all tie-ins of Interconnection Facilities and/or Merchant Network Upgrades built by or for the Interconnection Customer; and for acceptance testing of any equipment that will be owned and/or operated by the Interconnected Transmission Owner;
- (iii) The Interconnected Transmission Owner shall have the right to have a reasonable number of appropriate representatives present for all work done on its property/facilities or regarding the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades, and the right to stop, or to order corrective measures with respect to, any such work that reasonably could be expected to have an adverse effect on reliability, safety or security of persons or of property of the Interconnected Transmission Owner or any portion of the Transmission System, provided that, unless circumstances do not reasonably permit such consultations, the Interconnected Transmission Owner shall consult with the Interconnection Customer and with Transmission Provider before directing that work be stopped or ordering any corrective measures;
- (iv) The Interconnection Customer and its contractors, employees and agents shall comply with the Interconnected Transmission Owner's safety, security and work rules, environmental guidelines and training requirements applicable to the area(s) where construction activity is occurring and shall provide all reasonably required documentation to the Interconnected Transmission Owner, provided that the Interconnected Transmission Owner previously has provided its safety, security and work rules and training requirements applicable to work on its facilities to Transmission Provider and the Interconnection Customer within 20 business days after a request therefor made by Interconnection Customer following its receipt of the Facilities Study;

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- (v) The Interconnection Customer shall be responsible for controlling the performance of its contractors, employees and agents; and
- (vi) All activities performed by or on behalf of the Interconnection Customer pursuant to its exercise of the Option to Build shall be subject to compliance with Applicable Laws and Regulations, including those governing union staffing and bargaining unit obligations, and Applicable Standards.

**83.2.3.4 Administration of Conditions:** To the extent that an Interconnected Transmission Owner exercises any discretion in the application of any of the conditions stated in Sections 83.2.3.2 and 83.2.3.3, it shall apply each such condition in a manner that is reasonable and not unduly discriminatory and it shall not unreasonably withhold, condition, or delay any approval or authorization that the Interconnection Customer may require for the purpose of complying with any of those conditions.

**83.2.3.5 Approved Contractors:** (a) Each Transmission Owner shall develop and shall provide to Transmission Provider a List of Approved Contractors. Each Transmission Owner shall include on its List of Approved Contractors no fewer than three contractors and no fewer than three manufacturers or vendors of major transmission-related equipment, unless a Transmission Owner demonstrates to Transmission Provider's reasonable satisfaction that it is feasible only to include a lesser number of construction contractors, or manufacturers or vendors, on its List of Approved Contractors. Transmission Provider shall publish each Transmission Owner's List of Approved Contractors in a PJM Manual and shall make such manual available on its internet website.

(b) Upon request of an Interconnection Customer, a Transmission Owner shall add to its List of Approved Contractors (1) any design or construction contractor regarding which the Interconnection Customer provides such information as the Transmission Owner may reasonably require which demonstrates to the Transmission Owner's reasonable satisfaction that the candidate contractor is qualified to design, or to install and/or construct new facilities or upgrades or modifications to existing facilities on the Transmission Owner's system, or (2) any manufacturer or vendor of major transmission-related equipment (e.g., high-voltage transformers, transmission line, circuit breakers) regarding which the Interconnection Customer provides such information as the Transmission Owner may reasonably require which demonstrates to the Transmission Owner's reasonable satisfaction that the candidate entity's major transmission-related equipment is acceptable for installation and

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use on the Transmission Owner's system. No Transmission Owner shall unreasonably withhold, condition, or delay its acceptance of a contractor, manufacturer, or vendor proposed for addition to its List of Approved Contractors.

**83.2.3.6 Construction by Multiple Interconnection Customers:** In the event that there are multiple Interconnection Customers that wish to exercise an Option to Build with respect to Interconnection Facilities of the types described in Section 83.2.3.3, the Transmission Provider shall determine how to allocate the construction responsibility among them unless they reach agreement among themselves on how to proceed.

**83.2.3.7 Option Procedures:**

- (a) Within 10 days after notifying Transmission Provider and the Interconnected Transmission Owner of its election to exercise the Option to Build, Interconnection Customer shall solicit bids from one or more Approved Contractors named on the Interconnected Transmission Owner's List of Approved Contractors to procure equipment for, and/or to design, construct and/or install, the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades that the Interconnection Customer seeks to build under the Option to Build on terms (i) that will meet the Interconnection Customer's proposed schedule; (ii) that, if the Interconnection Customer seeks to have an Approved Contractor construct or install Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades, will satisfy all of the conditions on construction specified in Sections 83.2.3.2 and 83.2.3.3; and (iii) that will satisfy the obligations of a Constructing Entity (other than those relating to responsibility for the costs of facilities) under this Subpart F.
- (b) Any additional costs arising from the bidding process or from the final bid of the successful Approved Contractor shall be the sole responsibility of the Interconnection Customer.
- (c) Upon receipt of a qualifying bid acceptable to it, the Interconnection Customer shall contract with the Approved Contractor that submitted the qualifying bid. Such contract shall meet the standards stated in paragraph (a) of this section.
- (d) In the absence of a qualifying bid acceptable to the Interconnection Customer in response to its solicitation, the Interconnected Transmission Owner(s) shall be responsible for the design, procurement, construction and installation of the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades in accordance with the Standard Option described in Section 83.2.1.

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**83.2.3.8 Interconnection Customer Drawings:** Interconnection Customer shall submit to the Interconnected Transmission Owner and Transmission Provider initial drawings, certified by a professional engineer, of the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades that Interconnection Customer arranges to build under the Option to Build. The Interconnected Transmission Owner and Transmission Provider shall review the drawings to assess the consistency of Interconnection Customer's design of the pertinent Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades with Applicable Standards and the Facilities Study. After consulting with the Interconnected Transmission Owner, Transmission Provider shall provide comments on such drawings to Interconnection Customer within sixty days after its receipt thereof, after which time any drawings not subject to comment shall be deemed to be approved. All drawings provided hereunder shall be deemed to be Confidential Information.

**83.2.3.9 Effect of Review:** Interconnected Transmission Owner's and Transmission Provider's reviews of Interconnection Customer's initial drawings of the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades that the Interconnection Customer is building shall not be construed as confirming, endorsing or providing a warranty as to the fitness, safety, durability or reliability of such facilities or the design thereof. At its sole cost and expense, Interconnection Customer shall make such changes to the design of the pertinent Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades as may reasonably be required by Transmission Provider, in consultation with the Interconnected Transmission Owner, to ensure that the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades that Interconnection Customer is building meet Applicable Standards and conform with the Facilities Study.

**83.3 Revisions to Schedule of Work:** The Schedule of Work may be revised from time to time by mutual agreement of the Construction Parties, which agreement shall not be unreasonably withheld, conditioned or delayed.

**83.4 [Reserved]**

**83.5 Right to Complete Transmission Owner Interconnection Facilities:** In the event that, at any time prior to successful Stage Two energization of the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades pursuant to Section 83.9, the Interconnection Customer terminates its obligations under this Subpart F pursuant to Section 94.1.2 below due to a Default by the Interconnected Transmission Owner, the Interconnection Customer may elect to complete the design, procurement, construction and installation of the Transmission Owner Interconnection Facilities and/or Merchant Network

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**Upgrades.** The Interconnection Customer shall notify the Interconnected Transmission Owner and Transmission Provider in writing of its election to complete the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades within 10 days after the date of Interconnection Customer's notice of termination pursuant to Section 94.1.2. In the event that the Interconnection Customer elects to complete the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades, it shall do so in accordance with the terms and conditions of the Option to Build under Section 83.2.3 and shall be responsible for paying all costs of completing the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades incurred after the date of its notice of election to complete the facilities. Interconnection Customer may take possession of, and may use in completing the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades, any materials and supplies and equipment (other than equipment and facilities that already have been installed or constructed) acquired by the Interconnected Transmission Owner for construction, and included in the Costs, of the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades, provided that Interconnection Customer shall pay Transmission Provider, for the benefit of the Interconnected Transmission Owner and upon presentation by Interconnected Transmission Owner of reasonable and appropriate documentation thereof, any amounts expended by the Interconnected Transmission Owner for such materials, supplies and equipment that Interconnection Customer has not already paid. Title to all Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades constructed by Interconnection Customer under this Section 83.5 shall be transferred to the Interconnected Transmission Owner in accordance with Section 85.5.

- 83.6 Suspension of Work Upon Default:** Upon the occurrence of a Default by Interconnection Customer as defined in Section 93 of this Subpart F, the Transmission Provider or the Interconnected Transmission Owner may by written notice to Interconnection Customer suspend further work associated with the construction and installation of the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades that the Interconnected Transmission Owner is responsible for constructing. Such suspension shall not constitute a waiver of any termination rights under this Subpart F. In the event of a suspension by Transmission Provider or Interconnected Transmission Owner, the Interconnection Customer shall be responsible for the Costs incurred in connection with any suspension hereunder in accordance with Section 94.3.
- 83.7 Construction Reports:** Each Constructing Entity shall issue reports to each other Construction Party on a monthly basis, and at such other times as reasonably requested, regarding the status of the construction and installation of the Interconnection Facilities and/or any Merchant Network Upgrades. Each Construction Party shall promptly identify, and shall notify each other Construction Party of, any event that the Construction Party reasonably expects may delay completion, or may significantly increase the cost, of the Interconnection Facilities and/or of any Merchant Network Upgrades. Should a Construction Party report such an event, Transmission Provider shall, within fifteen days of such notification, convene a technical meeting of the Construction Parties to evaluate schedule alternatives.

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**83.8 Inspection and Testing of Completed Facilities:**

**83.8.1 Coordination:** Interconnection Customer and the Interconnected Transmission Owner shall coordinate the timing and schedule of all inspection and testing of the Interconnection Facilities.

**83.8.2 Inspection and Testing:** Each Constructing Entity shall cause inspection and testing of the Interconnection Facilities and/or any Merchant Network Upgrades that it constructs in accordance with the provisions of this section. The Construction Parties acknowledge and agree that inspection and testing of facilities may be undertaken as facilities are completed and need not await completion of all of the facilities that a Constructing Entity is building.

**83.8.2.1 Of Interconnection Customer-Built Facilities:** Upon the completion of the construction and installation, but prior to energization, of any Interconnection Facilities and/or Merchant Network Upgrades constructed by the Interconnection Customer and related portions of the Customer Facility, the Interconnection Customer shall have the same inspected and/or tested by an authorized electric inspection agency or qualified third party reasonably acceptable to the Interconnected Transmission Owner to assess whether the facilities substantially comply with Applicable Standards. Said inspection and testing shall be held on a mutually agreed-upon date, and the Interconnected Transmission Owner and Transmission Provider shall have the right to attend and observe, and to obtain the written results of, such testing.

**83.8.2.2 Of Interconnected Transmission Owner-Built Facilities:** Upon the completion of the construction and installation, but prior to energization, of any Interconnection Facilities and/or Merchant Network Upgrades constructed by the Interconnected Transmission Owner, the Interconnected Transmission Owner shall have the same inspected and/or tested by qualified personnel or a qualified contractor to assess whether the facilities substantially comply with Applicable Standards. Subject to Applicable Laws and Regulations, said inspection and testing shall be held on a mutually agreed-upon date, and the Interconnection Customer and Transmission Provider shall have the right to attend and observe, and to obtain the written results of, such testing.

**83.8.3 Review of Inspection and Testing by Interconnected Transmission Owner:** In the event that the written report, or the observation of either Constructing Entity or Transmission Provider, of the inspection and/or testing pursuant to Section 83.8.2 reasonably leads the Transmission Provider or Interconnected Transmission Owner to believe that the inspection and/or testing of some or all of the Interconnection Facilities and/or Merchant Network Upgrades built by the Interconnection Customer

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was inadequate or otherwise deficient, the Interconnected Transmission Owner may, within 20 days after its receipt of the results of inspection or testing and upon reasonable notice to the Interconnection Customer, perform its own inspection and/or testing of such Interconnection Facilities and/or Merchant Network Upgrades to determine whether the facilities are acceptable for energization, which determination shall not be unreasonably delayed, withheld or conditioned.

#### **83.8.4 Notification and Correction of Defects:**

**83.8.4.1** If the Interconnected Transmission Owner, based on inspection or testing pursuant to Section 83.8.2 or 83.8.3, identifies any defects or failures to comply with Applicable Standards in the Interconnection Facilities and/or Merchant Network Upgrades constructed by the Interconnection Customer, the Interconnected Transmission Owner shall notify the Interconnection Customer and Transmission Provider of any identified defects or failures within 20 days after the Interconnected Transmission Owner's receipt of the results of such inspection or testing. The Interconnection Customer shall take appropriate actions to correct any such defects or failure at its sole cost and expense, and shall obtain the Interconnected Transmission Owner's acceptance of the corrections, which acceptance shall not be unreasonably delayed, withheld or conditioned.

**83.8.4.2** In the event that inspection and/or testing of any Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades built by the Interconnected Transmission Owner identifies any defects or failures to comply with Applicable Standards in such facilities, Interconnected Transmission Owner shall take appropriate action to correct any such defects or failures within 20 days after it learns thereof. In the event that such a defect or failure cannot reasonably be corrected within such 20-day period, Interconnected Transmission Owner shall commence the necessary correction within that time and shall thereafter diligently pursue it to completion.

**83.8.5 Notification of Results:** Within 10 days after satisfactory inspection and/or testing of Interconnection Facilities and/or Merchant Network Upgrades built by the Interconnection Customer (including, if applicable, inspection and/or testing after correction of defects or failures), the Interconnected Transmission Owner shall confirm in writing to the Interconnection Customer and Transmission Provider that the successfully inspected and tested facilities are acceptable for energization.

#### **83.9 Energization of Completed Facilities:**

(A) Unless otherwise provided in the Schedule of Work, energization of the Interconnection Facilities related to interconnection of a Generation Interconnection Customer and, when applicable as determined by Transmission

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Provider, of the Interconnection Facilities and/or Merchant Network Upgrades related to interconnection of a Transmission Interconnection Customer, shall occur in two stages. Stage One energization shall consist of energization of the Customer Interconnection Facilities and of the Transmission Owner Attachment Facilities and will occur prior to initial energization of the Customer Facility. Stage Two energization shall consist of (1) initial synchronization to the Transmission System of any completed generator(s) at the Customer Facility of a Generation Interconnection Customer, or of applicable facilities, as determined by the Transmission Provider, associated with Merchant Transmission Facilities of a Transmission Interconnection Customer, and (2) energization of the remainder of the Transmission Owner Interconnection Facilities and/or of any Merchant Network Upgrades. Stage Two energization shall be completed prior to Initial Operation of the Customer Facility.

(B) In the case of Interconnection Facilities and/or Merchant Network Upgrades related to interconnection of a Transmission Interconnection Customer for which the Transmission Provider determines that two-stage energization is inapplicable, energization shall occur in a single stage, consisting of energization of the Interconnection Facilities and the Customer Facility. Such a single-stage energization shall be regarded as Stage Two energization for the purposes of the remaining provisions of this Section 83.9 and of Section 85.5.

**83.9.1** Stage One energization of the Interconnection Facilities and/or, as applicable, Merchant Network Upgrades may not occur prior to the satisfaction of the following additional conditions:

- (a) The Interconnection Customer shall have delivered to the Interconnected Transmission Owner and Transmission Provider a writing transferring to the Interconnected Transmission Owner and Transmission Provider operational control over any Transmission Owner Attachment Facilities that Interconnection Customer has constructed; and
- (b) The Interconnection Customer shall have provided a mark-up of construction drawings to the Interconnected Transmission Owner to show the "as-built" condition of all Transmission Owner Attachment Facilities that Interconnection Customer has constructed.

**83.9.2** As soon as practicable after the satisfaction of the conditions for Stage One energization specified in Sections 83.8 and 83.9.1, the Interconnected Transmission Owner and the Interconnection Customer shall coordinate and undertake the Stage One energization of facilities.

**83.9.3** Stage Two energization of the Interconnection Facilities and/or, as applicable, Merchant Network Upgrades may not occur prior to the satisfaction of the following additional conditions:

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- (a) The Interconnection Customer shall have delivered to the Interconnected Transmission Owner and Transmission Provider a writing transferring to the Interconnected Transmission Owner and Transmission Provider operational control over any Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades that Interconnection Customer has constructed and operational control of which it has not previously transferred pursuant to Section 83.9.1; and
- (b) The Interconnection Customer shall have provided a mark-up of construction drawings to the Interconnected Transmission Owner to show the "as-built" condition of all Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades that Interconnection Customer has constructed and which were not included in the Stage One energization, but are included in the Stage Two energization.
- (c) Telemetry systems shall be operational and shall be providing Transmission Provider and the Interconnected Transmission Owner with telemetered data as specified pursuant to Section 58.5.2.

**83.9.4** As soon as practicable after the satisfaction of the conditions for Stage Two energization specified in Sections 83.8 and 83.9.3, the Interconnected Transmission Owner and the Interconnection Customer shall coordinate and undertake the Stage Two energization of facilities.

**83.9.5** To the extent defects in any Interconnection Facilities are identified during the energization process, the energization will not be deemed successful. In that event, the Constructing Entity shall take action to correct such defects in any Interconnection Facilities and/or Merchant Network Upgrades that it built as promptly as practical after the defects are identified. The affected Constructing Entity shall so notify the other Construction Parties when it has corrected any such defects, and the Constructing Entities shall recommence efforts, within 10 days thereafter, to energize the appropriate Interconnection Facilities and/or Merchant Network Upgrades in accordance with Section 83.9; provided that the Interconnected Transmission Owner may, in the reasonable exercise of its discretion and with the approval of Transmission Provider, require that further inspection and testing be performed in accordance with Section 83.8.

**83.10 Interconnected Transmission Owner's Acceptance of Facilities Constructed by Interconnection Customer:** Within five days after determining that Interconnection Facilities and/or Merchant Network Upgrades have been successfully energized, the Interconnected Transmission Owner shall issue a written notice to the Interconnection Customer accepting the Interconnection

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Facilities and/or Merchant Network Upgrades built by the Interconnection Customer that were successfully energized. Such acceptance shall not be construed as confirming, endorsing or providing a warranty by the Interconnected Transmission Owner as to the design, installation, construction, fitness, safety, durability or reliability of any Interconnection Facilities and/or Merchant Network Upgrades built by the Interconnection Customer, or their compliance with Applicable Standards.

**84 Transmission Outages**

**84.1 Outages; Coordination:** The Construction Parties acknowledge and agree that certain outages of transmission facilities owned by the Interconnected 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/or Merchant Network Upgrades. The Construction Parties further acknowledge and agree that any such outages shall be coordinated by and through the Transmission Provider.

**85 Land Rights; Transfer of Title**

**85.1 Grant of Easements and Other Land Rights:** Interconnection Customer at its sole cost and expense, shall grant such easements and other land rights to the Interconnected Transmission Owner over the Site at such times and in such a manner as the Interconnected Transmission Owner may reasonably require to perform its obligations under this Subpart F and/or to perform its operation and maintenance obligations under Subpart E of Part IV of the Tariff.

**85.2 Construction of Facilities on Interconnection Customer Property:** To the extent that the Interconnected Transmission Owner is required to construct and install any Transmission Owner Interconnection Facilities on land owned by the Interconnection Customer, the Interconnection Customer, at its sole cost and expense, shall legally transfer to the Interconnected Transmission Owner all easements and other land rights required pursuant to Section 85.1 above prior to the commencement of such construction and installation.

**85.3 Third Parties:** If any of the easements and other land rights described in Section 85.1 above must be obtained from a third party, the Interconnected Transmission Owner's obligation for completing its construction responsibilities in accordance with the Schedule of Work attached to the Construction Service Agreement, 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 Interconnection Customer's acquisition of such easements and other land rights at such times and in such manner as the Interconnected Transmission Owner may reasonably require to perform its obligations under this Subpart F, and/or to perform its operation and maintenance obligations under Subpart E, of Part IV of the Tariff, provided, however, that upon Interconnection Customer's request, the Interconnected Transmission Owner shall assist the Interconnection Customer in acquiring such land rights with efforts similar in nature and extent to those that the Interconnected Transmission Owner typically undertakes in acquiring land rights for construction of facilities on its own behalf. The terms of easements and

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land rights acquired by Interconnection Customer shall not unreasonably impede the Interconnected Transmission Owner's timely completion of construction of the affected facilities.

**85.4 Documentation:** Interconnection Customer shall prepare, execute and file such documentation as the Interconnected Transmission Owner may reasonably require to memorialize any easements and other land rights granted pursuant to this Section 85. Documentation of such easements and other land rights, and any associated filings, shall be in a form acceptable to the Interconnected Transmission Owner.

**85.5 Transfer of Title to Certain Facilities Constructed By Interconnection Customer:** Within thirty (30) days after the Interconnection Customer's receipt of notice of acceptance under Section 83.10 following Stage Two energization of the Interconnection Facilities, the Interconnection Customer shall deliver to the Interconnected Transmission Owner, for the Interconnected Transmission Owner's review and approval, all of the documents and filings necessary to transfer to the Interconnected Transmission Owner title to any Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades constructed by the Interconnection Customer, and to convey to the Interconnected Transmission Owner any easements and other land rights to be granted by Interconnection Customer in accordance with Section 85.1 that have not then already been conveyed. The Interconnected 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 Interconnected Transmission Owner's written notice of approval of the documentation, the Interconnection Customer, in coordination and consultation with the Interconnected Transmission Owner, shall make any necessary filings at the FERC or other governmental agencies for regulatory approval of the transfer of title. Within twenty (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 Interconnection Customer shall execute all necessary documentation and shall make all necessary filings to record and perfect the Interconnected Transmission Owner's title in such facilities and in the easements and other land rights to be conveyed to the Interconnected Transmission Owner. Prior to such transfer to the Interconnected Transmission Owner of title to the Transmission Owner Interconnection Facilities built by the Interconnection Customer, the risk of loss or damages to, or in connection with, such facilities shall remain with the Interconnection Customer. Transfer of title to facilities under this section shall not affect the Interconnection Customer's receipt or use of the interconnection rights related to Network Upgrades, Local Upgrades and/or Merchant Network Upgrades for which it otherwise may be eligible as provided in Subpart D of Part IV of the Tariff.

**85.6 Liens:** The Interconnection Customer shall take all reasonable steps to ensure that, at the time of transfer of title in the Transmission Owner Interconnection Facilities built by the Interconnection Customer to the Interconnected Transmission Owner, those facilities shall be free and clear of any and all liens and encumbrances, including mechanics' liens. To the extent that the Interconnection Customer cannot reasonably clear a lien or encumbrance prior to

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the time for transferring title to the Interconnected Transmission Owner, Interconnection Customer shall nevertheless convey title subject to the lien or encumbrance and shall indemnify, defend and hold harmless the Interconnected 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 Interconnected Transmission Owner by reason of any such lien or encumbrance or its discharge.

## **86 Warranties**

**86.1 Interconnection Customer Warranty:** The Interconnection Customer shall warrant that its work (or the work of any subcontractor that it retains) in constructing and installing the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades that it builds is free from defects in workmanship and design and shall conform to the requirements of this Subpart F and the Construction Service Agreement for one (1) year (the "Interconnection Customer Warranty Period") commencing upon the date title is transferred to Interconnected Transmission Owner in accordance with Section 85.5. The Interconnection Customer shall, at its sole expense and promptly after notification by the Interconnected Transmission Owner, correct or replace defective work in accordance with Applicable Technical Requirements and Standards, during the Interconnection Customer Warranty Period. The warranty period for such corrected or replaced work shall be the unused portion of the Interconnection Customer Warranty Period remaining as of the date of notice of the defect. The Interconnection Customer Warranty Period shall resume upon acceptance of such corrected or replaced work. All Costs incurred by Interconnected Transmission Owner as a result of such defective work shall be reimbursed to the Interconnected Transmission Owner by the Interconnection Customer on demand; provided that the Interconnected Transmission Owner submits the demand to the Interconnection Customer within the Interconnection Customer Warranty Period and provides reasonable documentation of the claimed costs. The Interconnected Transmission Owner's acceptance, inspection and testing, or a third party's inspection or testing, of such facilities pursuant to Section 83.8 shall not be construed to limit in any way the warranty obligations of the Interconnection Customer.

**86.2 Manufacturer Warranties:** Prior to the transfer to the Interconnected Transmission Owner of title to the Transmission Owner Interconnection Facilities built by the Interconnection Customer, the Interconnection Customer shall produce documentation satisfactory to the Interconnected Transmission Owner evidencing the transfer to the Interconnected Transmission Owner of all manufacturer warranties for equipment and/or materials purchased by the Interconnection Customer for use and/or installation as part of the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades built by the Interconnection Customer.

**87-88 [Reserved]**

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**89 Security, Billing And Payments:** The following provisions shall apply with respect to Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades that the Interconnected Transmission Owner is responsible for constructing.

**89.1 Security for Payment:** No later than sixty (60) days after the date of the Interconnection Customer's receipt of the Facilities Study, Interconnection Customer shall provide the Transmission Provider with Security in an amount that is equal to the estimated Costs, determined in accordance with Section 37 or Section 42 of the Tariff, of the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades that the Interconnected Transmission Owner is responsible for constructing and of any other Transmission Owner Interconnection Facilities for which the Transmission Provider determines that another Interconnection Customer also has cost responsibility under Section 37 or Section 42 of the Tariff.

**89.2 Invoice:** The Interconnected Transmission Owner shall provide Transmission Provider a monthly statement of the Interconnected Transmission Owner's prior month's expenditures for the design, engineering and construction of, and/or for other charges related to, construction of the Interconnection Facilities and/or Merchant Network Upgrades for which the Interconnected Transmission Owner is responsible under Subpart F and the Construction Service Agreement. Transmission Provider shall bill Interconnection Customer on behalf of the Interconnected Transmission Owner, for the Interconnected Transmission Owner's Costs each month. Interconnection Customer shall pay each bill within 15 days after receipt thereof. Upon receipt of each of Interconnection Customer's payments of such bills, Transmission Provider shall reimburse the Interconnected Transmission Owner.

**89.3 Final Invoice:** Within 45 days after the Interconnected Transmission Owner completes construction and installation of the Interconnection Facilities and/or Merchant Network Upgrades for which the Interconnected Transmission Owner is responsible under Subpart F and the Construction Service Agreement, Transmission Provider shall provide Interconnection Customer with an accounting of, and the appropriate Construction Party shall make any payment to the other that is necessary to resolve, any difference between (a) Interconnection Customer's responsibility under the Tariff for the actual Cost of such facilities, and (b) Interconnection Customer's previous aggregate payments to Transmission Provider for the Costs of such facilities. Notwithstanding the foregoing, however, Transmission Provider shall not be obligated to make any payment to either the Interconnection Customer or the Interconnected Transmission Owner that the preceding sentence requires it to make unless and until the Transmission Provider has received the payment that it is required to refund from the Construction Party owing the payment.

**89.4 Disputes:** In the event of a billing dispute between any of the Construction Parties, Transmission Provider and the Interconnected Transmission Owner shall continue to perform their respective obligations pursuant to this Subpart F so long as (a) Interconnection Customer continues to make all payments not in dispute, and (b) the Security held by the Transmission Provider while the dispute is pending exceeds the amount in dispute, or (c) Interconnection Customer pays to

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Transmission Provider or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet any of these requirements, then Transmission Provider shall so inform the other Construction Parties and Transmission Provider or the Interconnected Transmission Owner may provide notice to Interconnection Customer of a Breach pursuant to Section 93.

**89.5 Interest:** Interest on any unpaid, delinquent amounts shall be calculated in accordance with the methodology specified for interest on refunds in the FERC's regulations at 18 C.F.R. Section 35.19a(a)(2)(iii) and shall apply from the due date of the bill to the date of payment.

**89.6 No Waiver.** Payment of an invoice shall not relieve Interconnection Customer from any other responsibilities or obligations it has under this Subpart, nor shall such payment constitute a waiver of any claims arising hereunder.

**90 Assignment**

**90.1 Assignment with Prior Consent.** Except as provided in Section 90.2, no Construction Party shall assign its rights or delegate its duties, or any part of such rights or duties, under the Construction Service Agreement without the written consent of the other Construction Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Any such assignment or delegation made without such written consent shall be null and void. A Construction Party may make an assignment in connection with the sale, merger, or transfer of a substantial portion or all of its properties, including the Interconnection Facilities which it will own upon completion of construction and the transfer of title required by Section 85, so long as the assignee in such a sale, merger, or transfer assumes in writing all rights, duties and obligations arising under this Subpart and the Construction Service Agreement. In addition, the Interconnected Transmission Owner shall be entitled, subject to Applicable Laws and Regulations, to assign the Construction Service Agreement to any Affiliate or successor that owns and operates all or a substantial portion of the Interconnected Transmission Owner's transmission facilities.

**90.2 Assignment Without Prior Consent.**

**90.2.1 Assignment to Owners.** Interconnection Customer may assign the Construction Service Agreement without the Interconnected Transmission Owner's or Transmission Provider's prior consent to any Affiliate or person that purchases or otherwise acquires, directly or indirectly, all or substantially all of the Customer Facility and the Customer Interconnection Facilities, provided that prior to the effective date of any such assignment, the assignee shall demonstrate that, as of the effective date of the assignment, the assignee has the technical competence to comply with the requirements of this Subpart and assumes in a writing provided to the Interconnected Transmission Owner and Transmission Provider all rights, duties, and obligations of Interconnection Customer arising under this Subpart. However, any assignment described herein shall not relieve or discharge the Interconnection Customer from any of its

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obligations hereunder absent the written consent of the Interconnected Transmission Owner, such consent not to be unreasonably withheld, conditioned or delayed.

**90.2.2 Assignment to Lenders.** Interconnection Customer may, without the consent of the Transmission Provider or the Interconnected Transmission Owner, assign the Construction Service Agreement to any Project Finance Entity(ies), provided that such assignment shall not alter or diminish Interconnection Customer's duties and obligations under this Subpart F or the Construction Service Agreement. If Interconnection Customer provides the Interconnected Transmission Owner with notice of an assignment to any Project Finance Entity(ies) and identifies such Project Finance Entities as contacts for notice purposes pursuant to Section 100 of this Subpart, the Transmission Provider or Interconnected Transmission Owner shall provide notice and reasonable opportunity for such entity(ies) to cure any Breach under this Subpart in accordance with this Subpart. Transmission Provider or Interconnected Transmission Owner shall, if requested by such lenders, provide such customary and reasonable documents, including consents to assignment, as may be reasonably requested with respect to the assignment and status of the Construction Service Agreement, provided that such documents do not alter or diminish the rights of the Transmission Provider or Interconnected Transmission Owner under this Subpart, except with respect to providing notice of Breach to a Project Finance Entity. Upon presentation of the Transmission Provider's and/or the Interconnected Transmission Owner's invoice therefor, Interconnection Customer shall pay the Transmission Provider and/or the Interconnected Transmission Owner's reasonable documented cost of providing such documents and certificates. Any assignment described herein shall not relieve or discharge the Interconnection Customer from any of its obligations hereunder absent the written consent of the Interconnected Transmission Owner and Transmission Provider.

**90.3 Successors and Assigns.** This Subpart F and all of its provisions are binding upon, and inure to the benefit of, the Construction Parties and their respective successors and permitted assigns.

## **91 Insurance**

**91.1 Required Coverages:** Each Constructing Entity shall maintain, at its own expense, insurance as described in paragraphs A through E below. All insurance shall be procured from insurance companies rated "A-" or better by AM Best and authorized to do business in a state or states in which the Interconnection Facilities will be located. Failure to maintain required insurance shall be a Breach of the Construction Service Agreement.

A. Workers Compensation Insurance with statutory limits, as required by the state and/or jurisdiction in which the work is to be performed, and employer's liability insurance with limits of not less than one million dollars (\$1,000,000.00).

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- B. Commercial General Liability Insurance including coverage for premises, contractual liability, products/completed operations, personal injury, independent contractors, broad form property damage coverage and coverage for the explosion, collapse and underground hazard (XCU), with minimum limits of one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage, two million dollars (\$2,000,000.00) per occurrence for products/completed operations and two million dollars (\$2,000,000.00) in the general aggregate.
- C. Automobile liability insurance for owned, non-owned, and hired vehicles used in performing services under this Subpart at and away from the job site, including mobile equipment if not covered under the above required general liability insurance, with minimum limits of not less than one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- D. Excess / Umbrella Liability Insurance with a limit of liability of twenty million dollars (\$20,000,000.00) per occurrence. These limits apply in excess of the employer's liability, commercial general liability and automobile liability coverages described above.
- E. Professional Liability, including Contractors Legal Liability, providing errors, omissions and/or malpractice coverage with an extended reporting period of at least one year. Coverage shall be provided for the Constructing Entity's duties, responsibilities and performance outlined in this Subpart or the Construction Service Agreement, with limits of liability as follows:

\$10,000,000 each occurrence  
\$10,000,000 aggregate

**91.2 Additional Insureds:** The Commercial General Liability, Automobile liability and Excess/Umbrella liability policies procured by each Constructing Entity (the "Insuring Constructing Entity") shall include each other Construction Party (the "Insured Construction Party"), its officers, agents and employees as additional insureds, providing all standard coverages and covering liability of the Insured Construction Party arising out of bodily injury and/or property damage (including loss of use) in any way connected with the operations, performance, or lack of performance under this Subpart or the Construction Service Agreement.

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**91.3 Other Required Terms:** The above-mentioned insurance policies (except workers' compensation) shall provide the following:

- A. Be primary to any other insurance carried by the Insured Construction Party.
- B. Contain standard cross-liability provisions.
- C. Provide for a waiver of all rights of subrogation which the Insuring Constructing Entity's insurance carrier might exercise against the Insured Construction Party.

**91.4 Self-Insurance:** At its option, a Constructing Entity may, with adequate credit assurance in conformance with established electric industry practices provided to the other Construction Parties, self-insure all or part of its insurance obligations under this Subpart. A Constructing Entity's election to self-insure shall not in any manner result in a reduction of rights and/or benefits otherwise available to the other Construction Parties through formal insurance policies and endorsements customary in the electric utility industry.

**91.5 Notices; Certificates of Insurance:** Prior to the commencement of work pursuant to this Agreement, the Constructing Entities agree to furnish each other Construction Party with certificates of insurance evidencing the insurance coverage obtained in accordance with this Section 91. All certificates of insurance shall indicate that the certificate holder is included as an additional insured under the Commercial General Liability, Automobile liability and Excess/Umbrella liability coverages, and that this insurance is primary with a waiver of subrogation included. All policies of insurance shall provide for thirty days prior written notice of cancellation or material adverse change.

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

## **92 Indemnity**

**92.1 Indemnity.** Each Constructing Entity shall indemnify and hold harmless the other Construction Parties, and the other Construction Parties' officers, shareholders, stakeholders, members, managers, representatives, directors, agents and employees, and Affiliates, from and against any and all loss, liability, damage, cost or expense to third parties, including damage and liability for bodily injury to or death of persons, or damage to property of persons (including reasonable attorneys' fees and expenses, litigation costs, consultant fees, investigation fees, sums paid in settlements of claims, penalties or fines imposed under Applicable Laws and Regulations, and any such fees and expenses incurred

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in enforcing this indemnity or collecting any sums due hereunder) (collectively, "Loss") to the extent arising out of, in connection with or resulting from (i) the indemnifying Constructing Entity's breach of any of the representations or warranties made in, or failure of the indemnifying Constructing Entity or any of its subcontractors to perform any of its obligations under, this Subpart, or (ii) the negligence or willful misconduct of the indemnifying Constructing Entity or its contractors; provided, however, that neither Constructing Entity shall have any indemnification obligations under this Section 92.1 in respect of any Loss to the extent the Loss results from the negligence or willful misconduct of the Construction Party seeking indemnity.

- 92.2 Indemnity Procedures.** Promptly after receipt by a Person entitled to indemnity ("Indemnified Person") of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Section 92.1 may apply, the Indemnified Person shall notify the indemnifying Constructing Entity of such fact. Any failure of or delay in such notification shall not affect a Constructing Entity's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Constructing Entity. The Indemnified Person shall cooperate with the indemnifying Constructing Entity with respect to the matter for which indemnification is claimed. The indemnifying Constructing Entity shall have the right to assume the defense thereof with counsel designated by such indemnifying Constructing Entity and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the indemnifying Constructing Entity and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the indemnifying Constructing Entity, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the indemnifying Constructing Entity shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses. The Indemnified Person shall be entitled, at its expense, to participate in any action, suit or proceeding, the defense of which has been assumed by the indemnifying Constructing Entity. Notwithstanding the foregoing, the indemnifying Constructing Entity (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the indemnifying Constructing Entity, in such event the indemnifying Constructing Entity shall pay the reasonable expenses of the Indemnified Person, and (ii) shall not settle or consent

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to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be unreasonably withheld, conditioned or delayed.

- 92.3 Indemnified Person.** If an Indemnified Person is entitled to indemnification under this Section 92 as a result of a claim by a third party, and the indemnifying Constructing Entity fails, after notice and reasonable opportunity to proceed under Section 92.2, to assume the defense of such claim, such Indemnified Person may at the expense of the indemnifying Constructing Entity contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.
- 92.4 Amount Owing.** If an indemnifying Constructing Entity is obligated to indemnify and hold any Indemnified Person harmless under this Section 92, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.
- 92.5 Limitation on Damages.** Except as otherwise provided in this Section 92, the liability of a Construction Party under this Subpart F shall be limited to direct actual damages, and all other damages at law are waived. Under no circumstances shall any Construction Party or its Affiliates, directors, officers, employees and agents, or any of them, be liable to another Construction Party, whether in tort, contract or other basis in law or equity for any special, indirect, punitive, exemplary or consequential damages, including lost profits. The limitations on damages specified in this Section 92.5 are without regard to the cause or causes related thereto, including the negligence of any Construction Party, whether such negligence be sole, joint or concurrent, or active or passive. This limitation on damages shall not affect any Construction Party's rights to obtain equitable relief as otherwise provided in this Subpart. The provisions of this Section 92.5 shall survive the termination or expiration of the Construction Service Agreement.
- 92.6 Limitation of Liability in Event of Breach.** A Construction Party ("Breaching Party") shall have no liability hereunder to any other Construction Party, and each other Construction Party hereby releases the Breaching Party, for all claims or damages it incurs that are associated with any interruption in the availability of the Customer Facility, the Interconnection Facilities, Transmission System or Construction Service or damages to a Construction Party's facilities, except to the extent such interruption or damage is caused by the Breaching Party's gross negligence or willful misconduct in the performance of its obligations under this subpart of the Tariff and/or the Construction Service Agreement.
- 92.7 Limited Liability in Emergency Conditions.** Except as otherwise provided in the Tariff or the Operating Agreement, no Construction Party shall be liable to any other Construction Party for any action that it takes in responding to an Emergency Condition, so long as such action is made in good faith, is consistent with Good Utility Practice and is not contrary to the directives of the Transmission Provider or the Interconnected Transmission Owner with respect to such Emergency Condition. Notwithstanding the above, Interconnection

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Customer shall be liable in the event that it fails to comply with any instructions of Transmission Provider or the Interconnected Transmission Owner related to an Emergency Condition.

**93 Breach, Cure And Default**

**93.1 Breach:** A Breach of the Construction Service Agreement shall include:

- (a) The failure to pay any amount when due;
- (b) The failure to comply with any material term or condition of this Subpart of the Tariff including but not limited to any material breach of a representation, warranty or covenant (other than in Sections 93.1(a) and (c)-(e) hereof) made in this Subpart;
- (c) Assignment of the Construction Service Agreement in a manner inconsistent with the terms of this Subpart of the Tariff;
- (d) Failure of a Constructing Entity to provide access rights, or a Constructing Entity's attempt to revoke or terminate access rights, that are provided under this Subpart of the Tariff; or
- (e) Failure of any Construction Party to provide information or data required to be provided to another Construction Party under this Subpart F for such other Construction Party to satisfy its obligations under this Subpart F, and/or the Construction Service Agreement.

**93.2 Notice of Breach:** A Construction Party not in Breach of this Subpart of the Tariff shall give written notice of an event of Breach to the Breaching Construction Party, to the third Construction Party, and to any other persons that the Breaching Construction Party identifies in writing to the other Construction Parties in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach. In the event of a Breach by Interconnection Customer, Transmission Provider and the Interconnected Transmission Owner agree to provide notice of such Breach, at the same time and in the same manner as its or their notice to Interconnection Customer, to any Project Finance Entity, provided that the Interconnection Customer has provided Transmission Provider and the Interconnected Transmission Owner with notice of an assignment to such Project Finance Entity(ies) and has identified such Project Finance Entities as contacts for notice purposes pursuant to Section 100 of Subpart F.

**93.3 Cure and Default:** A Construction Party that commits a Breach and does not take steps to cure the Breach pursuant to this Section 93.3 is in Default of this Subpart F and the Construction Service Agreement.

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**93.3.1 Cure of Breach:** The Breaching Construction Party (a) may cure the Breach within thirty days from the receipt of such notice; or, (b) if the Breach cannot be cured within thirty days, may commence in good faith all steps that are reasonable and appropriate to cure the Breach within such thirty day time period and thereafter diligently pursue such action to completion.

**93.4 Right to Compel Performance:** Upon the occurrence of an event of Default, a non-Defaulting Construction Party shall be entitled to (a) commence an action to require the Defaulting Construction Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof, (b) withhold payments, (c) suspend performance hereunder, and (d) exercise such other rights and remedies as it may have in equity or at law.

**93.5 Remedies Cumulative.** Subject to Section 99.1, no remedy conferred by any provision of this Subpart is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

#### **94 Termination**

##### **94.1 Termination:**

**94.1.1 Upon Completion of Construction:** The Construction Service Agreement shall terminate upon the later of the following: (i) completion of construction of all Interconnection Facilities and/or Merchant Network Upgrades; (ii) transfer of title under Section 85 of this Subpart; (iii) final payment of all Costs due and owing under this Subpart F; and (iv) the delivery to the Interconnected Transmission Owner of final "as-built" drawings of any Interconnection Facilities and/or Merchant Network Upgrades built by the Interconnection Customer.

**94.1.2 Upon Default By Either Constructing Entity:** Either Constructing Entity may terminate its obligations hereunder in the event of a Default by the other Constructing Entity as defined in Section 93.3.

**94.1.3 By Interconnection Customer:** Subject to its payment of Cancellation Costs as explained in Section 94.3 below, the Interconnection Customer may be relieved of its obligations hereunder upon sixty (60) days written notice to Transmission Provider and the Interconnected Transmission Owner.

##### **94.2 [Reserved]**

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**94.3 Cancellation By Interconnection Customer:**

**94.3.1 Applicability:** The following provisions shall apply in the event that Interconnection Customer terminates the Construction Service Agreement pursuant to Section 94.1.3.

**94.3.1.1 Cancellation Cost Responsibility:** Upon the cancellation of a Construction Service Agreement by the Interconnection Customer, the Interconnection Customer shall be liable to pay to the Interconnected Transmission Owner or Transmission Provider all Cancellation Costs in connection with Construction Service for the Interconnection Customer pursuant to this Subpart C, including Section 94.3.1.2 below, and the Construction Service Agreement. In the event the Interconnected Transmission Owner incurs Cancellation Costs, it shall provide the Transmission Provider, with a copy to the Interconnection Customer, with a written demand for payment and with reasonable documentation of such Cancellation Costs. The Interconnection Customer shall pay the Transmission Provider each bill for Cancellation Costs within thirty (30) days after, as applicable, the Interconnected Transmission Owner's or Transmission Provider's presentation to the Interconnection Customer of written demand therefor, provided that such demand includes reasonable documentation of the Cancellation Costs that the invoicing party seeks to collect. Upon receipt of each of Interconnection Customer's payments of such bills of the Interconnected Transmission Owner, Transmission Provider shall reimburse the Interconnected Transmission Owner for Cancellation Costs incurred by the latter.

**94.3.1.2 Disposition of Facilities Upon Cancellation:** Upon cancellation of a Construction Service Agreement by an Interconnection Customer, Transmission Provider, after consulting with the Interconnected Transmission Owner, may, at the sole cost and expense of the Interconnection Customer, authorize the Interconnected Transmission Owner to (a) cancel supplier and contractor orders and agreements entered into by the Interconnected Transmission Owner to design, construct, install, operate, maintain and own the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades, provided, however, that Interconnection Customer shall have the right to choose to take delivery of any equipment ordered by the Interconnected Transmission Owner for which Transmission Provider otherwise would authorize cancellation of the purchase order; or (b) remove any Transmission Owner Interconnection

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Facilities and/or Merchant Network Upgrades built by the Interconnected Transmission Owner or any Transmission Owner Interconnection Facilities (only after title to the subject facilities has been transferred to the Interconnected Transmission Owner) and/or Merchant Network Upgrades built by the Interconnection Customer; or (c) partially or entirely complete the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades as necessary to preserve the integrity or reliability of the Transmission System, provided that Interconnection Customer shall be entitled to receive any rights associated with such facilities and upgrades as determined in accordance with Subpart D of Part IV of the Tariff; or (d) undo any of the changes to the Transmission System that were made pursuant to this Subpart F and the Construction Service Agreement. To the extent that the Interconnection Customer has fully paid for equipment that is unused upon cancellation or which is removed pursuant to subsection (b) above, the Interconnection Customer shall have the right to take back title to such equipment; alternatively, in the event that the Interconnection Customer does not wish to take back title, the Interconnected Transmission Owner may elect to pay the Interconnection Customer a mutually agreed amount to acquire and own such equipment.

**94.3.2 Termination Upon Default:** In the event that Interconnection Customer exercises its right to terminate under Section 94.1.2, and notwithstanding any other provision of this Subpart F, the Interconnection Customer shall be liable for payment of the Interconnected Transmission Owner's Costs incurred up to the date of Interconnection Customer's notice of termination pursuant to Section 94.1.2 and the costs of completion of some or all of the Transmission Owner Interconnection Facilities and/or Merchant Network Upgrades or specific unfinished portions thereof, and/or removal of any or all of such facilities which have been installed, to the extent that Transmission Provider determines such completion or removal to be required for the Transmission Provider and/or Interconnected Transmission Owner to perform their respective obligations under Part IV of the Tariff, provided, however, that Interconnection Customer's payment of such costs shall be without prejudice to any remedies that otherwise may be available to it under this Subpart F for the Default of the Interconnected Transmission Owner.

**94.4 Survival of Rights:** The obligations of the Construction Parties hereunder with respect to payments, Cancellation Costs, warranties, liability and indemnification shall survive termination to the extent necessary to provide for the determination and enforcement of said obligations arising from acts or events that occurred while the Construction Service Agreement was in effect. In addition, applicable provisions of the Construction Service Agreement will continue in effect after expiration, cancellation or termination to the extent necessary to provide for final billings, payments, and billing adjustments.

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**95 Force Majeure**

- 95.1 Notice:** A Construction Party that is unable to carry out an obligation imposed on it by this Subpart F due to Force Majeure shall notify each other Construction Party in writing or by telephone within a reasonable time after the occurrence of the cause relied on.
- 95.2 Duration of Force Majeure:** A Construction Party shall not be responsible for any non-performance or considered in Breach or Default under this Subpart F, for any non-performance, any interruption or failure of service, deficiency in the quality or quantity of service, or any other failure to perform any obligation hereunder to the extent that such failure or deficiency is due to Force Majeure. A Construction Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Construction Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Construction Party is able to resume performance of its obligations excused because of the occurrence of Force Majeure, such Construction Party shall resume performance and give prompt notice thereof to each other Construction Party.
- 95.3 Obligation to Make Payments:** Any Construction Party's obligation to make payments for services shall not be suspended by Force Majeure.

**96 Subcontractors**

- 96.1 Use of Subcontractors:** Nothing in this Subpart shall prevent the Construction Parties from utilizing the services of subcontractors as they deem appropriate to perform their respective obligations hereunder, provided, however, that each Construction Party shall require its subcontractors to comply with all applicable terms and conditions of this Subpart in providing such services.
- 96.2 Responsibility of Principal:** The creation of any subcontract relationship shall not relieve the hiring Construction Party of any of its obligations under this Subpart. Each Construction Party shall be fully responsible to each other Construction Party for the acts and/or omissions of any subcontractor it hires as if no subcontract had been made.
- 96.3 Indemnification by Subcontractors:** To the fullest extent permitted by law, a Construction Party that uses a subcontractor to carry out any of the Construction Party's obligations under this Subpart shall require each of its subcontractors to indemnify, hold harmless and defend each other Construction Party, its representatives and assigns from and against any and all claims and/or liability for damage to property, injury to or death of any person, including the employees of any Construction Party or of any Affiliate of any Construction Party, or any other liability incurred by another Construction Party or any of its Affiliates, including all expenses, legal or otherwise, to the extent caused by any act or omission, negligent or otherwise, by such subcontractor and/or its officers, directors, employees, agents and assigns, that arises out of or is connected with the design, procurement, construction or installation of the facilities of either Constructing Entity described in this Subpart; provided, however, that no Construction Party or Affiliate thereof shall be entitled to indemnity under this Section 96.3 in respect

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of any injury, loss, or damage to the extent that such loss, injury, or damage results from the negligence or willful misconduct of the Construction Party or Affiliate seeking indemnity.

- 96.4 Subcontractors Not Beneficiaries:** No subcontractor is intended to be, or shall be deemed to be, a third-party beneficiary of the Construction Service Agreement.

**97 Confidentiality**

- 97.1 Scope:** Confidential Information shall not include information that the receiving Construction Party can demonstrate (i) is generally available to the public other than as a result of a disclosure by the receiving Construction Party; (ii) was lawfully available to the receiving Construction Party on a non-confidential basis before receiving it from the disclosing Construction Party; (iii) was supplied to the receiving Construction Party without restriction by a third party, who, to the knowledge of the receiving Construction Party, after due inquiry, was under no obligation to the disclosing Construction Party to keep such information confidential; (iv) was independently developed by the receiving Construction Party without reference to Confidential Information of the disclosing Construction Party; (v) is, or becomes, publicly known, through no wrongful act or omission of the receiving Construction Party or breach of this Subpart; or (vi) is required, in accordance with Section 97.6 of this Subpart, to be disclosed to any Governmental Authority as long as such information is made available to the public, is otherwise required to be disclosed by Applicable Laws and Regulations or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Subpart. Information designated as Confidential Information shall no longer be deemed confidential if the Construction Party that designated the information as confidential notifies the other Construction Parties that it no longer is confidential.

- 97.2 Duration of Obligations:** During the term of the Construction Service Agreement, and for a period of three (3) years after the expiration or termination of the Construction Service Agreement, except as otherwise provided in this Section 97, each Construction Party shall hold in confidence, and shall not disclose to any person, Confidential Information provided to it by another Construction Party.

- 97.3 Use of Confidential Information:** A Construction Party shall not use Confidential Information of any other Construction Party for any purpose other than to fulfill its obligations under this Subpart or to comply with Applicable Laws and Regulations. No Construction Party shall release or disclose Confidential Information of another Construction Party to any other person, except to its employees, representatives, or agents on a need-to-know basis (and only after advising such persons of the confidentiality provisions of this Section 97 and obtaining their agreement to comply with such provisions), unless compelled to disclose by judicial or administrative process or Applicable Laws and Regulations. Notwithstanding the foregoing, a Construction Party that provides Confidential Information of another Construction Party to any person pursuant to this Section 97.3 shall remain primarily responsible for any release of Confidential Information in contravention of this Section 97.

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- 97.4 Standard of Care:** Each Construction Party shall use at least the same standard of care to protect Confidential Information of the other Construction Parties as the Construction Party uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination.
- 97.5 Rights:** Each Construction Party retains all rights, title, and interest in the Confidential Information that it discloses to any other Construction Party. A Construction Party's disclosure to another Construction Party of Confidential Information shall not be deemed a waiver by either Construction Party or any other person or entity of the right to protect the Confidential Information from public disclosure.
- 97.6 Order of Disclosure:** If a Governmental Authority with the right, power, and apparent authority to do so requests or requires a Construction Party, by subpoena, oral deposition, interrogatories, requests for production of documents, data request, administrative order, or otherwise, to disclose Confidential Information, that Construction Party shall provide the Construction Party that provided the information with prompt prior written notice to the extent possible of such request(s) or requirement(s) so that the providing Construction Party may seek an appropriate protective order or agreement, or waive compliance with the terms of this Subpart. Notwithstanding the absence of a protective order or agreement, or waiver, the Construction Party subjected to the request or order may disclose such Confidential Information which, in the opinion of its counsel, the Construction Party is legally compelled to disclose. Each Construction Party shall use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.
- 97.7 Remedies:** The Construction Parties expressly agree that monetary damages would be inadequate to compensate a Construction Party for another Construction Party's Breach of its obligations under this Section 97. Each Construction Party accordingly expressly agrees that each other Construction Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Construction Party breaches or threatens to breach its obligations under this Section 97, which equitable relief shall be granted without bond or proof of injury, and the receiving Construction Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed to be an exclusive remedy for the breach of this Section 97, but shall be in addition to all other remedies available at law or in equity. The Construction Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Construction Party, however, shall be liable for indirect, incidental, consequential, or punitive damages of any nature or kind resulting from or arising in connection with a Breach of any obligation under this Section 97.
- 97.8 Return or Destruction of Confidential Information:** If any Construction Party provides any Confidential Information to another Construction Party in the course of an audit or inspection, the providing Construction Party may request the other party to return or destroy such Confidential Information after the termination of the audit period and the resolution of all matters relating to that audit. Each Construction Party shall make Reasonable Efforts to comply with any such

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requests for return or destruction within ten days after receiving the request and shall certify in writing to the requesting Construction Party that it has complied with such request.

**97.9 Upon Termination of Interconnection Service.** Upon termination of the Construction Service Agreement for any reason, each Construction Party shall, at the party's option, within ten (10) days after receipt of a written request from another Construction Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure and deletion certified in writing to the requesting party) or to return to the requesting party, without retaining copies thereof, any and all written or electronic Confidential Information received from the requesting Construction Party.

**98 Information Access And Audit Rights**

**98.1 Information Access:** Subject to Applicable Laws and Regulations, each Construction Party shall make available to each other Construction Party information necessary (i) to verify the costs incurred by the other Construction Party for which the requesting Construction Party is responsible under this Subpart of the Tariff and (ii) to carry out obligations and responsibilities under this Subpart of the Tariff. The Construction Parties shall not use such information for purposes other than those set forth in this Section 98.1 and to enforce their rights under this Subpart of the Tariff.

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

**98.3 Audit Rights:** Subject to the requirements of confidentiality under Section 97 of this Subpart of the Tariff, each Construction Party shall have the right, during normal business hours, and upon prior reasonable notice to the pertinent Construction Party, to audit at its own expense the other Construction Party's accounts and records pertaining to such Construction Party's performance and/or satisfaction of obligations arising under this Subpart of the Tariff. Any audit authorized by this Section shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Subpart of the Tariff. Any request for audit shall be presented to the other Construction Party not later than twenty-four months after the event as to which the audit is sought. Each Construction Party shall preserve all records held by it for the duration of the audit period.

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**99 Disputes**

- 99.1 Submission:** Any claim or dispute that any Construction Party may have against another Construction Party arising out of this Subpart of the Tariff may be submitted for resolution in accordance with the dispute resolution provisions of Section 12 of the Tariff.
- 99.2 Rights Under The Federal Power Act:** Nothing in this Section shall restrict the rights of any Construction Party to file a complaint with FERC under relevant provisions of the Federal Power Act.
- 99.3 Equitable Remedies:** Nothing in this Section shall prevent any Construction Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations.

**100 Notices**

- 100.1 General:** Any notice, demand or request required or permitted to be given by either Construction Party to another and any instrument required or permitted to be tendered or delivered by either Construction Party in writing to another may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Construction Party, or personally delivered to the Construction Party, at the address specified in the Construction Service Agreement. If agreed to in advance by the Construction Parties, notices may be communicated via electronic means, so long as there is e-mail confirmation of delivery.
- 100.2 Operational Contacts:** Each Construction Party shall designate, and shall provide to each other Construction Party contact information concerning, a representative to be responsible for addressing and resolving operational issues as they arise during the term of the Construction Service Agreement.

**101 Miscellaneous**

- 101.1 Regulatory Filing:** The Transmission Provider shall file the executed Construction Service Agreement on behalf of itself and the Interconnected Transmission Owner, and any amendment to such Agreement, with FERC as a service schedule under this Subpart within fifteen days after execution. An Interconnection Customer shall have the right, with respect to any Construction Service Agreement tendered to it, to request (a) dispute resolution under Section 12 of the Tariff or, if concerning the Regional Transmission Expansion Plan, consistent with Schedule 5 of the Operating Agreement, or (b) that Transmission Provider file the agreement unexecuted with the Commission. With the filing of any unexecuted Construction Service Agreement, Transmission Provider may, in its discretion, propose to FERC a resolution of any or all of the issues in dispute between any Construction Parties.

Issued By: Craig Glazer  
Vice President, Governmental Policy  
Issued On: March 20, 2003

Effective: March 20, 2003

- 101.2 Waiver:** Any waiver at any time by any Construction Party of its rights with respect to a Breach or Default under this Subpart of the Tariff, or with respect to any other matters arising in connection with this Subpart of the Tariff, shall not be deemed a waiver or continuing waiver with respect to any other Breach or Default or other matter.
- 101.3 Amendments and Rights under the Federal Power Act:** Except as set forth in this Section, the Construction Service Agreement may be amended, modified, or supplemented only by written agreement of the Construction Parties. Such amendment shall become effective and a part of the Construction Service Agreement upon satisfaction of all Applicable Laws and Regulations. Notwithstanding the foregoing, nothing contained in the Construction Service Agreement shall be construed as affecting in any way any of the rights of any Construction Party with respect to changes in applicable rates or charges under Section 205 of the Federal Power Act and/or FERC's rules and regulations thereunder, or any of the rights of any Interconnection Party under Section 206 of the Federal Power Act and/or FERC's rules and regulations thereunder. The terms and conditions of this Subpart, the Construction Service Agreement and every appendix referred to therein shall be amended, as mutually agreed by the Construction Parties, to comply with changes or alterations made necessary by a valid applicable order of any Governmental Authority having jurisdiction hereof.
- 101.4 Binding Effect:** The Construction Service Agreement, including the rights and obligations incorporated by reference therein from this Subpart F, shall be binding upon, and shall inure to the benefit of, the successors and assigns of the Construction Parties.
- 101.5 Regulatory Requirements:** Each Construction Party's performance of any obligation under this Subpart of the Tariff for which such party requires approval or authorization of any Governmental Authority shall be subject to its receipt of such required approval or authorization in the form and substance satisfactory to the receiving Construction Party, or the Construction Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Construction Party shall in good faith seek, and shall use Reasonable Efforts to obtain, such required authorizations or approvals as soon as reasonably practicable.

## **102 Representations and Warranties**

- 102.1 General:** Each Constructing Entity hereby represents, warrants and covenants as follows, with these representations, warranties, and covenants effective as to the Constructing Entity during the full time the Construction Service Agreement is effective:
- 102.1.1 Good Standing:** Such Constructing 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 preamble of the Construction Service Agreement.

**102.1.2 Authority:** Such Constructing Entity has the right, power and authority to enter into the Construction Service Agreement, to become a party thereto and to perform its obligations thereunder. The Construction Service Agreement is a legal, valid and binding obligation of such Constructing Entity, enforceable against such Constructing 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).

**102.1.3 No Conflict:** The execution, delivery and performance of the Construction Service Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Constructing Entity, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Constructing Entity or any of its assets.

**102.1.4 Consent and Approval:** Such Constructing Entity has sought or obtained, or, in accordance with the Construction Service 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 such Agreement and it will provide to any Governmental Authority notice of any actions under such Agreement that are required by Applicable Laws and Regulations.



## **Schedule A**

### **Site Plan**

**Address**  
U.S. & International Business  
Development, Inc.  
Washington, DC

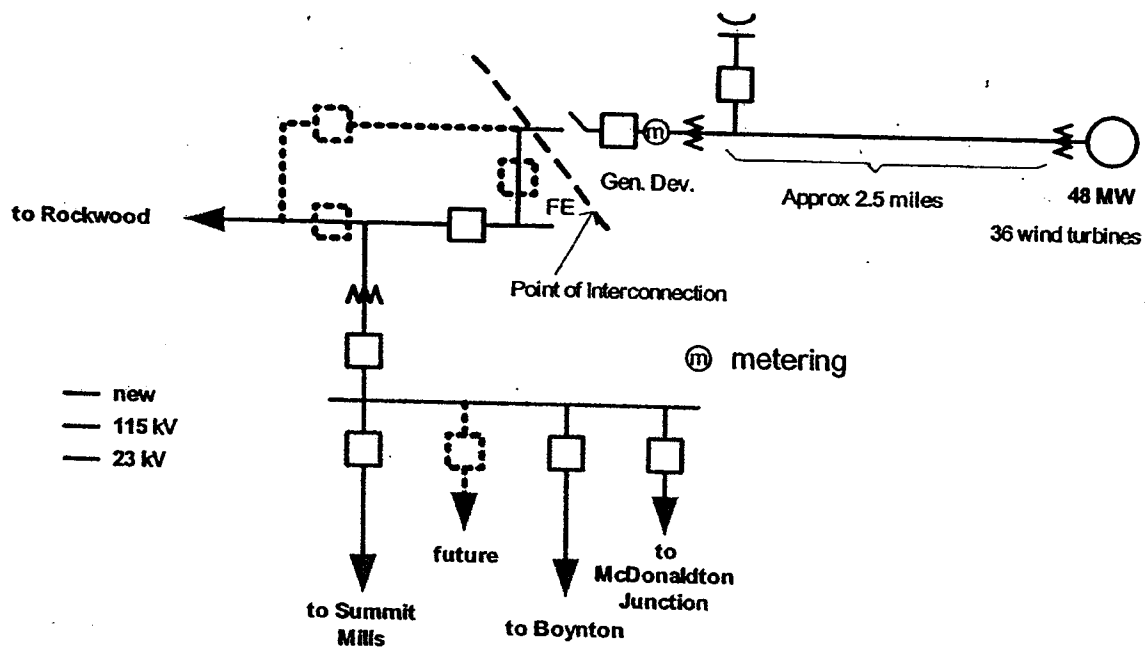
[illegible]

Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100
1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	



**Schedule B**  
**Single Line Diagram of Interconnection Facilities**

**G21 Myersdale North**



**Schedule C**  
**Facilities to be Built by Interconnected Transmission Owner**

Interconnected Transmission Owner shall design, furnish and install the following direct connection equipment at Meyersdale North 115 kV Substation:

- One 115 kV circuit breaker, one 115kV transmission line termination structure, three 115 kV disconnect switches, three 115 kV capacitor voltage transformers and associated electrical bus, structure, foundation additions.
- Remove and relocate the existing 115 kV line termination.
- New bus relaying and control and relaying associated with the generator interconnection.
- Grading and site development activities as required at the Interconnected Transmission Owner side of the Meyersdale North substation to accommodate the new 115 kV circuit breaker, disconnect switches and bus including permitting, earthwork, fencing, access drives, and storm water management facilities.

Interconnected Transmission Owner shall design, furnish and install the following system upgrade equipment at Rockwood 115 kV Substation:

- One 115 kV circuit breaker with disconnect switches in the existing Penn Mar 115kV circuit exit with associated electrical bus, structure, foundation additions.
- New and relocated line terminal relaying including direct transfer trip to the Meyersdale Windpower L.L.C. and Arnold REC generator interconnections.

Interconnected Transmission Owner shall design, furnish and install the following system upgrade equipment at the Arnold 115kV substation at Meyersdale Windpower LLC expense:

- Dedicated communication circuit and receiver for direct transfer trip relaying from the Interconnected Transmission Owners 's Rockwood Substation.

## **Schedule D**

**Transmission Owner Interconnection Facilities to be Built by Interconnection Customer  
Pursuant to Option to Build**

**Not Applicable**

## **Schedule E**

### **Customer Interconnection Facilities**

**Meyersdale Windpower L.L.C. will design, furnish and/or install:**

- A new 34.5 kV interconnection line between new wind turbine generator facilities and Interconnected Transmission Owner's existing Meyersdale North 115 kV Substation. The 34.5 kV interconnection line will have an approximate length of 2.5 miles.
- New generation relaying, control, interconnection metering, and supervisory control and data acquisition (SCADA) equipment.
- Dedicated communication circuits for direct transfer trip relaying from Interconnected Transmission Owner's Rockwood Substation, for SCADA communication to the transmission system control center, and for dialup access to revenue metering.
- A new control building to contain generation interconnection and substation relaying, control, and SCADA equipment as required at Meyersdale North 115 kV Substation.
- New 115/34.5 kV line terminal additions at Meyersdale North 115 kV Substation including the addition of one 115/34.5 kV power transformer, one 115 kV circuit breaker, one 115 kV motor operated disconnect switch, two 34.5 kV circuit breakers, one cable terminator structure, one 8-10 MVAR capacitor bank (if required), and associated 115 kV and 34.5 kV electrical bus, structure, foundation, oil containment system, grounding, conduit, and cable networks.
- Grading and site development activities at Interconnection Customer side of the Meyersdale North 115 kV Substation as required to accommodate the new 115/34.5 kV line terminal additions, including permitting, earthwork, fencing, access drives, and storm water management facilities as required.
- Easements and parcel acquisitions for the 34.5 kV line and for the substation facilities located on the Interconnected Transmission Owner's property at Meyersdale North 115 kV Substation.

## **Schedule F**

### **Negotiated Contract Option Terms**

**Not Applicable**

## **Schedule G**

### **Scope of Work**

#### **Interconnected Transmission Owner Scope of Work:**

Interconnected Transmission Owner shall design, furnish and install the following direct connection equipment at Meyersdale North 115 kV Substation:

- One 115 kV circuit breaker, one 115kV transmission line termination structure, three 115 kV disconnect switches, three 115 kV capacitor voltage transformers and associated electrical bus, structure, foundation additions.
- Remove and relocate the existing 115 kV line termination.
- New bus relaying and control and relaying associated with the generator interconnection.
- Grading and site development activities as required at the Interconnected Transmission Owner side of the Meyersdale North substation to accommodate the new 115 kV circuit breaker, disconnect switches and bus including permitting, earthwork, fencing, access drives, and storm water management facilities.

Interconnected Transmission Owner shall design, furnish and install the following system upgrade equipment at Rockwood 115 kV Substation

- One 115 kV circuit breaker with disconnect switches in the existing Penn Mar 115kV circuit exit with associated electrical bus, structure, foundation additions.
- New and relocated line terminal relaying including direct transfer trip to the Meyersdale Windpower L.L.C. and Arnold REC generator interconnections.

Interconnected Transmission Owner shall design, furnish and install the following system upgrade equipment at the Arnold 115kV substation at Meyersdale Windpower LLC expense:

- Dedicated communication circuit and receiver for direct transfer trip relaying from PE's Rockwood Substation.

#### **Interconnection Customer Scope of Work:**

**Interconnection Customer will design, furnish and/or install:**

- A new 34.5 kV interconnection line between new wind turbine generator facilities and Pennsylvania Electric Company's existing Meyersdale North 115 kV Substation. The 34.5 kV interconnection line will have an approximate length of 2.5 miles.



- New generation relaying, control, interconnection metering, and supervisory control and data acquisition (SCADA) equipment.
- Dedicated communication circuits for direct transfer trip relaying from Pennsylvania Electric Company's Rockwood Substation, for SCADA communication to the transmission system control center, and for dialup access to revenue metering.
- A new control building to contain generation interconnection and substation relaying, control, and SCADA equipment as required at Meyersdale North 115 kV Substation.
- New 115/34.5 kV line terminal additions at Meyersdale North 115 kV Substation including the addition of one 115/34.5 kV power transformer, one 115 kV circuit breaker, one 115 kV motor operated disconnect switch, two 34.5 kV circuit breakers, one cable terminator structure, one 8-10 MVAR capacitor bank (if required), and associated 115 kV and 34.5 kV electrical bus, structure, foundation, oil containment system, grounding, conduit, and cable networks.
- Grading and site development activities at the Interconnection Customer side of the Meyersdale North 115 kV Substation as required to accommodate the new 115/34.5 kV line terminal additions, including permitting, earthwork, fencing, access drives, and storm water management facilities as required.
- Easements and parcel acquisitions for the 34.5 kV line and for the substation facilities located on Pennsylvania Electric Company's property at Meyersdale North 115 kV Substation.

## Schedule H

### Schedule of Work

<u>Activity</u>	<u>Start</u>	<u>Finish</u>
Conceptual design	2/01/03	4/01/03
Detailed engineering design and procurement	3/15/03	10/15/03
Construction	8/01/03	11/15/03
115 kV transmission – Pennsylvania Electric Company, a FirstEnergy company tie-in outage	10/01/03	10/15/03
115 kV substation energization	11/15/03	11/15/03
Project commercial operation	12/15/03	12/15/03

## **Schedule I**

### **Schedule of Payments**

**Not Applicable**



## **Schedule J**

### **Applicable Technical Requirements**

**The interconnection facilities and network upgrades will meet the Technical Requirements described in the Facilities Study report dated April 2003 for the Queue #G21 Meyersdale North project.**

## Schedule K

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between Pennsylvania Electric Company a FirstEnergy company, a Pennsylvania corporation, and \_\_\_\_\_, a \_\_\_\_\_ (the "Interconnection Customer").

As provided in Section 82.4.1 of the PJM Tariff and subject to the requirements thereof, the Parties intend that none of the payments or property transfers made by Interconnection Customer pursuant to the Parties' Construction Service Agreement in connection with the construction and installation of the TO Interconnection Facilities will constitute taxable contributions in aid of construction under Section 118(b) of the Internal Revenue Code of 1986, as amended and as interpreted by the Internal Revenue Service ("IRS") in Notice 88-129, 1988-2 CB 541, as amplified and modified in Notices 90-60, 1990-2 C.B. 345, and 2001-82, IRB 2001-19 (the "IRS Notices"), and under any applicable state Income Tax laws.

Interconnection Customer agrees to conform with all requirements of the Safe Harbor provisions specified in the IRS Notices, as they may be amended, as required to confer such non-taxable status, including but not limited to the requirement that to the extent the TO Interconnection Facilities constitute a "dual-use intertie," Interconnection Customer will not use the TO Interconnection Facilities to be used such that more than 5% of the total power generated over the TO Interconnection Facilities flow to the Interconnection Customer's generating facility.

Interconnection Customer shall provide the Interconnected Transmission Owner with an Independent Engineering Certification (i.e., the professional engineer's seal shall be affixed), as required in IRS Notice 88-129, attesting that the anticipated power flows through the TO Interconnection Facilities to the Interconnection Customer for the first ten years commencing with the taxable year in which the Interconnection Facilities are placed in service, (or alternatively, for the first nine years ignoring the year such facilities are placed in service) will not exceed no more than 5% of the projected total power flows over the Interconnection Facilities. The Independent Engineering certification will be provided to the Interconnected Transmission Owner within (90) days of the execution of this Agreement. In the event this certification is not provided to the Interconnected Transmission Owner, the Interconnected Transmission Owner shall have the right to include the tax gross-up in the final billing for the actual costs of the TO Interconnection Facilities. In the event the 5% test, as specified in IRS Notice 88-129, is violated during any measuring period, described in section 4(A) of Notice 88-129 (a "qualifying event"), Interconnection Customer agrees to make the Interconnected Transmission Owner whole for any increase in the Interconnected Transmission Owner's Federal and State Income tax liabilities, including penalties and interest thereon, arising from this violation. This increase in the Interconnected Transmission Owner's Federal and State income tax liabilities, including penalties and interest thereon, will be determined in accordance with the provisions of IRS Notice 90-60, as amended or supplemented.