



Tariff Harmonization Senior Task Force THSTF

2.27.15

- [Problem Statement](#)
- [Issue Charge](#)
- The Tariff Harmonization Problem Statement was brought forward by PJM and approved by the MRC on December 18, 2014.

- Issue History

Portion 1

- Indemnification
- Alternative Dispute Resolution
- Limitation of Liability

Portion 2

- 2,000 +/- Definitions

- THSTF is set up as a unique stakeholder group to bring alignment and clarity to PJM governing documents due to inconsistencies and ambiguities
- Why unique?
 - The THSTF will adhere, but not entirely, to the rules and protocols presented in the PJM Stakeholder Process Manual (M-34)
- What does not apply?
 - Given the group's objective, the THSTF will not be implementing:
 - Interest Identification
 - Development of a Matrix

THSTF - 2015 Work Plan																				
Last updated: 2/12/2015																				
	2/27	3/19	3/26	4/15	4/23	5/28	5/29	6/15	6/25	7/23	7/24	8/19	8/27	9/16	9/24	10/15	10/22	11/13	11/19	
Charter Development & Approval	X	X																		
Develop Work Plan	X	X																		
Education & Joint Fact-Finding	X	X		X			X	X			X	X		X		X			X	
Indemnification	X	X																		
Alternative Dispute Resolution	X	X																		
Limitation of Liability	X	X																		
Definitions		X		X			X	X			X	X		X		X			X	
Consensus		X						X				X							X	
MRC - Reporting (1st & 2nd Read)			X		X	X			X	X			X		X		X			X
MRC Vote					X				X				X							X

Review / edit/ approve draft THSTF Charter



Tariff Harmonization Senior Task Force Education

- The THSTF will work to alleviate any inconsistencies and inaccurate provisions that cause confusion within these governing documents:
 - Operating Agreement (OA) – 1997
 - The Tariff – 1997
 - Reliability Assurance Agreement (RAA) - 1997

The **Operating Agreement** must be signed by all organizations wishing to become a member of PJM. It contains provisions that establish how PJM operates as a regional transmission organization. It defines the roles and responsibilities of the PJM Board of Managers, the Members Committee and the Office of the Interconnection (PJM management and staff), which carries out the provisions of the governing documents in managing PJM's operations, markets and planning.

The **PJM Open Access Transmission Tariff** is the document that governs the operations of PJM. The tariff includes the provisions governing transmission service within the PJM region. The tariff and revisions to it and the other governing documents are subject to acceptance by the Federal Energy Regulatory Commission, the agency that regulates PJM and the other regional grid organizations.

The **Reliability Assurance Agreement**, signed by all the organizations in PJM that sell electricity to end-use customers, establishes obligations and standards for maintaining the reliable operation of the electric grid. It includes provisions that deal with ensuring adequate capacity resources, providing assistance during emergencies and planning for the future needs of the system.

- Indemnity is:
 - To compensate for damage or loss sustained, expense incurred, etc.
 - To guard or secure against anticipated loss; give security (future damage or liability).
 - To guarantee against any loss which another might suffer.
 - Example: Two parties settle a dispute over a contract, and one of them may agree to pay any claims which may arise from the contract, holding the other party harmless

- These provisions describe when PJM or certain classes of PJM Members (i.e. Transmission Customers) must or must not indemnify other entities for monetary losses that are sustained, and under what circumstances
- Indemnification is discussed in the following sections:
 - Tariff: **Section 10.3** (addresses indemnification by Transmission Customers when providing transmission service); Attachment O, Appendix 2 (Interconnection); Attachment P, Appendix 2 (Construction); Attachment GG, Appendix 3 (Transmission upgrades).
 - OA: 16.1 (addresses indemnification between Members); 16.2 (addresses when PJM will indemnify certain parties)
 - RAA: **Article 12** (addresses indemnification by Parties under the RAA)

- **Alternative dispute resolution ("ADR")** includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement short of litigation. It is a collective term for the ways that parties can settle disputes, with (or without) the help of a third party.
- Current clauses concerning ADR are as follows – the full verbiage can be found in the posted materials:
- **Section 12. 1 of the OATT - Alternative Dispute Resolution**
- **Section 3.1 of Schedule 5 of the Operating Agreement– Negotiation and Mediation**
- **Section 4.1 of Schedule 5 of the Operating Agreement– Arbitration**

- **Section 12.1 of the OATT - Alternative Dispute Resolution**
- Current language does not specify that legal interpretations of the Tariff cannot be mediated by ADR. Such an exclusion is required as the Commission has jurisdiction over such matters.
- **Section 3.1 of Schedule 5 of the Operating Agreement– Negotiation and Mediation**
- Current Language is overly broad and does not have any exclusions to what matters can be mediated by ADR – “any dispute as to a matter governed by one of the Related PJM Agreements”

- **Operating Agreement – Section 4.1 of Schedule 5 – Arbitration**
- Current Language is overly broad and does not have any exclusions to what matters must go to binding arbitration if mediation fails– all matters under \$1,000,000 covered by Section 3.1 are required to go to binding arbitration with no carve outs.

- **Section 12. 1 of the OATT - Alternative Dispute Resolution**
- Any dispute between a Transmission Customer, an affected Transmission Owner, or the Transmission Provider involving transmission service under the Tariff (excluding **disputed legal interpretations of the Tariff or** applications for rate changes or other changes to the Tariff, or to any Service Agreement entered into under the Tariff, which shall be presented directly to the Commission for resolution)

- **Section 3.1 and 4.1 of Schedule 5 of the Operating Agreement–
Negotiation and Mediation**

Addition of:

- Notwithstanding the foregoing, any dispute involving differing legal interpretations of the Related PJM Agreements or involving applications for rate changes or other changes to the Related PJM Agreements or Service Agreements entered into under the Tariff shall be presented directly to the Commission for resolution.

A “Limitation of Liability” is a written statement which serves as a disclaimer to limit conditions or instances which the disclaiming party may be held liable for loss or damage.

Current Wording: Section 10.2 of the OATT (“Liability”) “Neither the Transmission Provider, a Transmission Owner, or a Generation Owner acting in good faith to implement or comply with the directives of the Transmission provider...” (Full section language provided in posted materials)

- Wording of Section 10.2 of the OATT (“Liability”) is currently sequenced in a way that could be interpreted to mean the LOL applies to the Transmission Provider, acting in accordance with their own directives, or the Transmission Owner acting in accordance with the Transmission Provider’s directives.
- PJM Settlement was not in existence when the language was drafted, so needs to be added to the parties covered by the LOL clause.
- Remedies under an indemnification obligation can include specific performance of a duty, current language does not include such a reference.
- Current language does not specify in what capacity the Parties’ provision of services is covered by the LOL clause.

- The current language specifies any arbitration award or judgment is limited to the Transmission Provider's assets. Such assets are not defined. As PJM is funded by its stakeholder's clarity is required as to what should be considered PJM "assets".

- The intent of the section is to identify only the Generation Owner “acting in good faith to implement or comply with the directives of the Transmission Provider” as a party to whom the LOL applies.
- The LOL will still apply to the Transmission Owner and the Transmission Provider, but the reorganization of wording will make it clear their coverage is not contingent on them “acting in good faith to implement or comply with the directives of the Transmission Provider”

- To the extent a “Transmission Customer, third party or other person” brings a claim against the “Generation Owner (**acting in good faith to implement or comply with the directives of the Transmission Provider-**), the Transmission Provider, PJMSettlement, or a Transmission Owner, **related to the provision of transmission service...**”, the claim will be limited to the value of the Defendant’s assets.
- Addition of **PJM Settlement** as a party covered by the LOL.
- Addition of “shall be liable **for money damages, other compensation or an act of specific performance**”

- Judgments or arbitration awards “shall be limited to the value of the Transmission Provider’s assets (excluding deposits on hand and study and interconnection receivables)...”

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Definitions		x		x			x	x			x	x		x		x			x
Consensus		x						x				x							x
MRC - Reporting (1st & 2nd Read)			x		x	x			x	x			x		x		x		x
MRC Vote					x				x				x						x

Thursday, March 19
1:00 – 4:30 p.m.

- Finalize Charter
- Review Work Plan
- Review: Indemnification, Alternative Dispute Resolution, Limitation of Liability
 - Begin work on definitions