

SCHEDULE E

Non-Standard Terms and Conditions

SECTION 1. Construction Cost Cap.

1.1 Designated Entity agrees that it will not seek recovery through its Annual Transmission Revenue Requirement of (a) any Construction Costs in excess of an amount equal to the lesser of (i) the Construction Cost Cap Amount or (ii) the aggregate amount of actual Construction Costs associated with the Project or (b) any amounts covered by clauses (i) (taxes) or (ii) (financing costs) of the definition of “Excluded Costs” insofar as such amounts relate or are attributable to Construction Costs that are in excess of the Construction Cost Cap Amount.

1.2 As used herein, the following terms have the following meanings:

(a) “Annual Transmission Revenue Requirement” means the rate determined by the FERC following a filing by the Designated Entity under Section 205 of the Federal Power Act and FERC’s rules and regulations thereunder and submitted to Transmission Provider for recovery pursuant to the Transmission Provider’s Open Access Transmission Tariff.

(b) “Construction Cost Cap Amount” means the product of (i) \$146 million times (ii) a fraction, the numerator of which is the Escalation Index Number published for the first January 1 or July 1 following the date on which a full notice to proceed has been issued for the construction of the Project and the denominator of which is the Escalation Index Number for July 1, 2014.

(c) “Construction Costs” means any and all costs and expenses directly or indirectly incurred by Designated Entity to develop, construct, complete, start-up and commission the Project and place the Project in service in accordance with the Scope of Work, including without limitation any costs and expenses incurred by Designated Entity in connection with the following, in each case as and to the extent contemplated by the Scope of Work: (i) obtaining permits and other governmental approvals for the Project, (ii) acquiring land and land rights for the Project, (iii) performing any environmental assessments or environmental mitigation activities in connection with the Project, (iv) designing and engineering the Project, (v) procuring any equipment, supplies and other materials required to complete construction of the Project and place the Project in service, (vi) otherwise performing or completing any and all development- and construction-related activities required in connection with the Project as part of the Scope of Work, including but not limited

to all site clearing, equipment assembly and erection, testing and commissioning activities contemplated by the Scope of Work, whether performed directly by Designated Entity or by one or more third parties retained by Designated Entity (without regard to whether such third parties are affiliated or non-affiliated), but excluding in all cases Excluded Costs.

(d) **“Escalation Index Number”** means, as of any January 1 or July 1, the number referenced in the Handy-Whitman Index for such date under Table E-1 “Cost Trends of Electric Utility Construction: North Atlantic Region”, line 33, “Total Transmission Plant”.

(e) **“Excluded Costs”** means (i) any taxes, (ii) any financing costs, including any approved return on equity, Allowance for Funds Used During Construction, or similar allowance or financing cost or charge earned or accrued in connection with the Project during the period of development and construction of the Project (or thereafter), (iii) any costs and expenses associated with any addition to or modification of the Scope of Work (but only if and to the extent such costs and expenses are in excess of the costs and expenses that would have been incurred but for such addition to or modification of the Scope of Work), (iv) any costs and expenses incurred as a result of an Uncontrollable Force (but only if and to the extent such costs and expenses are in excess of the costs and expenses that would have been incurred but for such Uncontrollable Force) and (v) any costs and expenses associated with the operation and maintenance of the Project.

(f) **“Scope of Work”** means the approved scope of work for the Project, as more particularly described in Schedule B to the Designated Entity Agreement.¹

(g) **“Uncontrollable Force”** means (i) any destruction of or damage to any portion of the Project, or any interruption, suspension or interference with Designated Entity’s (or any contractor’s or subcontractor’s) performance of activities required to complete the Project, which destruction, damage, interruption, suspension or interference is caused by landslides; lightning; earthquakes; hurricanes; tornadoes; typhoons; severe weather; fires or explosions; floods; epidemic; acts of a public enemy; acts or threats of terrorism; wars; blockades; riots; rebellions; sabotage; vandalism; insurrections; environmental contamination or damage not caused by Designated Entity (or any contractor or subcontractor); strike or labor disruption or civil disturbances (or governmental actions arising from any of the foregoing), (ii) any material change in the enforcement, interpretation or application of any statute, rule, regulation, order or other applicable law existing as of the Effective Date or the issuance or enactment of any of the foregoing on or after the Effective Date, (iii) any Breach or Default by Transmission Provider of its obligations under this

¹ It is anticipated that the Scope of Work attached as Schedule B to the DEA will be based on and consistent with Northeast Transmission’s November 4, 2013 Detailed Constructability Submittal and will be a comprehensive description of all key elements of the Project and all activities to be undertaken by Northeast Transmission in connection with the development and construction of the Project, such that all known and expected development/construction activities will be covered by the Construction Cost Cap.

Designated Entity Agreement or any request by Transmission Provider to delay or suspend any activities associated with the Project, or (iv) any breach, default, interference or failure to cooperate by any Transmission Owner under or in connection with the Interconnection Coordination Agreement or any interconnection agreement.²

SECTION 2. Uncontrollable Force. In the event the Project is impacted by an Uncontrollable Force, Designated Entity shall use commercially reasonable efforts to mitigate such impact. Designated Entity shall notify Transmission Provider within a reasonable time after the occurrence of an Uncontrollable Force, which notice shall describe, in reasonable detail, the actions Designated Entity plans to take to mitigate the impact of same.

SECTION 3. Priority. In the event of any conflict between the terms and conditions contained in this Schedule E and the other terms and conditions of this Designated Entity Agreement, the terms and conditions contained in this Schedule E shall prevail.

² The foregoing definition of “Uncontrollable Force” is intended to include only events and circumstances that are not possible to foresee or plan for and that therefore would clearly be beyond the control of Designated Entity (or any other person). Unlike the DEA’s definition of “Force Majeure” (which would include, in addition to the causes listed therein, “any cause beyond the control of” the Designated Entity), this definition of “Uncontrollable Force” is limited to the causes specified therein, and therefore this definition is much narrower than the definition of “Force Majeure.” If PJM would prefer to utilize the DEA’s definition of “Force Majeure” (with appropriate modifications), Northeast Transmission is open to considering such an approach.