

# Options to Address Uninsured Liability Risk

## Liability Frameworks of North American System Operators

This table contains excerpts from the Independent System Operator tariffs relating to liability.

Entity	Governing Document	Relevant Provisions
Midcontinent Independent System Operator (MISO)	Tariff – section 10.3	<p>10.3</p> <p>Limitation of Liability Regarding Transmission Owner</p> <p>(b) The Transmission Provider shall not be liable, whether based on contract, indemnification, warranty, equity, tort, strict liability or otherwise, to any Transmission Customer, Coordination Customer, Market Participant, User, Interconnection Customer, Interconnecting Transmission Owner or any third party or other person for any damages whatsoever, including, without limitation, direct, incidental, consequential (including, without limitation, attorneys’ fees and litigation costs), punitive, special, multiple, exemplary or indirect damages arising or resulting from any act or omission in any way associated with service provided under this Tariff, including, but not limited to, any act or omission that results in an interruption, deficiency or imperfection of service, except to the extent that the Transmission Provider is found liable for gross negligence or intentional misconduct, in which case the Transmission Provider will only be liable for direct damages. Nothing in this section, however, is intended to affect obligations otherwise provided in agreements between the Transmission Provider and Transmission Owner.</p> <p>(c) Neither the Transmission Owner nor the Transmission Provider shall be liable for damages arising out of services provided under this Tariff, including, but not limited to, any act or omission that results in an interruption, deficiency or imperfection of service, occurring as a result of conditions or circumstances beyond the control of the Transmission Owner or Transmission Provider, as applicable, or resulting from electric system design common to the domestic</p>

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		<p>electric utility industry or electric system operation practices or conditions common to the domestic electric utility industry. Transmission Owner shall not be liable for acts or omissions done in compliance or good faith attempts to comply with directives of Transmission Provider.</p> <p>Definitions: Transmission Provider: MISO or any successor organization.</p> <p>10.7 Limitations of Liability Regarding Market Participants</p> <p>The provisions on limitation of liability and damages, and on indemnification, set forth in Sections 10.2, 10.3 and 10.6 shall be applicable to Market Participants and Generation Owners acting in good faith to implement or comply with the directives of the Transmission Provider.</p> <p>Definitions: Market Participant: An entity that (i) has successfully completed the registration process with the Transmission Provider and is qualified by the Transmission Provider as a Market Participant, (ii) is financially responsible to the Transmission Provider for all of its Market Activities and obligations, and (iii) has demonstrated the capability to participate in its relevant Market Activities. Generation Owner: An entity that owns, leases with rights equivalent to ownership in, and controls the output of or operates Generation Resources.</p>
Pennsylvania-New Jersey-Maryland Interconnection (PJM)	Open Access Transmission Tariff – s. 10.2	<p>10.2 Liability: Neither the Transmission Provider, a Transmission Owner, PJMSettlement, nor a Generation Owner acting in good faith to implement or comply with the directives of the Transmission Provider shall be liable, whether based on contract, indemnification, warranty, tort, strict liability or otherwise, to any Transmission Customer, third party or other person for any damages whatsoever, including, without limitation, direct, incidental, consequential, punitive, special, exemplary, or indirect damages arising or resulting from any act or omission in any way associated with service provided under this Tariff or any Service Agreement hereunder, including, but not limited to, any act or omission that results in an interruption, deficiency or imperfection of service, except to the extent that the damages are direct damages that arise or result from the gross negligence or intentional misconduct of the Transmission Provider, the Transmission Owner, PJMSettlement, or the Generation Owner, as the case may be.</p>

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		<p>To the extent that a Transmission Customer, third party or other person has a claim against the Transmission Provider, PJMSettlement, a Transmission Owner, or a Generation Owner acting in good faith to implement or comply with the directives of the Transmission Provider the amount of any judgment or arbitration award on such claim entered in favor of the Transmission Customer, third party or other person shall be limited to the value of the Transmission Provider's PJM Net Assets or the Transmission Owner's assets or the Generation Owner's assets, as the case may be. The Transmission Customer, third party or other person may not seek to enforce any claims against the directors, managers, members, shareholders, officers or employees of 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 who shall have no personal liability for obligations of the Transmission Provider, a Transmission Owner, or a Generation Owner by reason of their status as directors, managers, members, shareholders, officers or employees of the Transmission Provider or a Transmission Owner or a Generation Owner; provided, however, that nothing herein contained shall affect the obligations of any member of the Transmission Provider or PJMSettlement under the Operating Agreement or this Tariff or any schedule hereunder.</p> <p>Definitions:</p> <p>Office of the Interconnection: "Office of the Interconnection" shall mean the employees and agents of PJM Interconnection, L.L.C. subject to the supervision and oversight of the PJM Board, acting pursuant to the Operating Agreement.</p> <p>Generation Owner:</p> <p>"Generation Owner" shall mean a Member that owns, leases with rights equivalent to ownership, or otherwise controls and operates one or more operating generation resources located in the PJM Region. The foregoing notwithstanding, for a planned generation resource to qualify a Member as a Generation Owner, such resource shall have cleared an RPM auction, and for Energy Resources, the resource shall have a FERC-jurisdictional interconnection agreement or wholesale market participation agreement within PJM. Purchasing all or a portion of the output.</p> <p>Transmission Owner:</p> <p>"Transmission Owner" shall mean a Member that owns or leases with rights equivalent to ownership Transmission Facilities and is a signatory to the PJM Transmission Owners Agreement. Taking transmission service shall not be sufficient to qualify a Member as a Transmission Owner.</p>

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California Independent System Operator (CAISO)	Open Access Transmission Tariff – s. 14.5	<p>PJM Settlement: "PJM Settlement" or "PJM Settlement, Inc." shall mean PJM Settlement, Inc. (or its successor), established by PJM as set forth in Operating Agreement.</p> <p>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:</p> <p>(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;</p> <p>(b) Each Transmission Owner shall physically operate and maintain all of the facilities that it owns; and</p> <p>(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 the Consolidated Transmission Owners Agreement to construct, own, and finance the needed facilities or enhancements or modifications to facilities.</p>
		<p>14.5 Limitation on Liability</p> <p>14.5.1 Limitation on Damages</p> <p>Except as provided for in Section 13.3.14, the CAISO shall not be liable in damages to any Market Participant for any losses, damages, claims, liability, costs or expenses (including legal expenses) arising from the performance or non-performance of its obligations under this CAISO Tariff, including but not limited to any adjustments made by the CAISO in Inter-SC Trades, except to the extent that they result from gross negligence or intentional wrongdoing on the part of the CAISO.</p> <p>14.5.2 Exclusion of Certain Types of Loss</p> <p>The CAISO shall not be liable to any Market Participant under any circumstances for any consequential or indirect financial loss including but not limited to loss of profit, loss of earnings or revenue, loss of use, loss of contract or loss of goodwill except to the extent that it results from the gross negligence or intentional wrongdoing on the part of the CAISO.</p>

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New York Independent System Operator, Inc. (NYISO)	Open Access Transmission Tariff – s. 2.11.3	<p data-bbox="610 205 902 228">2.11.3 Limitation of Liability</p> <p data-bbox="610 285 1446 825">(b) The ISO shall not be liable, whether based on contract, indemnification, warranty, equity, tort, strict liability or otherwise, to any Transmission Customer, Market Participant, User, Interconnection Customer, Interconnecting Transmission Owner or any third party or other person for any damages whatsoever, including, without limitation, direct, incidental, consequential (including, without limitation, attorneys’ fees and litigation costs), punitive, special, multiple, exemplary or indirect damages arising or resulting from any act or omission in any way associated with service provided under this Tariff, including, but not limited to, any act or omission that results in an interruption, deficiency or imperfection of service, except to the extent that the ISO is found liable for gross negligence or intentional misconduct, in which case the ISO will only be liable for direct damages. Nothing in this section, however, is intended to affect obligations otherwise provided in agreements between the ISO and Transmission Owner.</p> <p data-bbox="610 882 1446 1224">(c) Neither the Transmission Owner nor the ISO shall be liable for damages arising out of services provided under this Tariff, including, but not limited to, any act or omission that results in an interruption, deficiency or imperfection of service, occurring as a result of conditions or circumstances beyond the control of the Transmission Owner or ISO, as applicable, or resulting from electric system design common to the domestic electric utility industry or electric system operation practices or conditions common to the domestic electric utility industry. The Transmission Owner shall not be liable for acts or omissions done in compliance or good faith attempts to comply with directives of the ISO.</p> <p data-bbox="610 1297 1446 1797">(a) The Transmission Owner shall not be liable, whether based on contract, indemnification, warranty, equity, tort, strict liability or otherwise, to any Transmission Customer, Market Participant, User, Interconnection Customer, Interconnecting Transmission Owner or any third party or other person for any damages whatsoever, including, without limitation, direct, incidental, consequential (including, without limitation, attorneys’ fees and litigation costs), punitive, special, multiple, exemplary or indirect damages arising or resulting from any act or omission in any way associated with service provided under this Tariff, including, but not limited to, any act or omission that results in an interruption, deficiency or imperfection of service, except to the extent that the Transmission Owner is found liable for gross negligence or intentional misconduct, in which case the Transmission Owner will only be liable for direct damages. Nothing in this section, however, is intended to affect obligations.</p>

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		<p>2.11.4 Applicability to Generators: The provisions on limitation of liability and damages, and on indemnification, set forth in Sections 2.11.2 and 2.11.3 shall be applicable to Generators acting in good faith to implement or comply with the directives of the Transmission Owner or the ISO.</p> <p>Definition Generator: A facility, including the Generator of a BTM:NG Resource, capable of supplying Energy, Capacity and/or Ancillary Services that is accessible to the NYCA. A Generator comprised of a group of generating units at a single location, which grouped generating units are separately committed and dispatched by the ISO, and for which Energy injections are measured at a single location, and each unit within that group, shall be considered a Generator</p>
Electric Reliability Council of Texas (ERCOT)	ERCOT Nodal Protocols – Section 22(a): Standard Form Market Participant Agreement	<p>Section 9. Limitation of Damages and Liability and Indemnification.</p> <p>A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE ERCOT PROTOCOLS, ERCOT OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE ERCOT PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.</p> <p>B. With respect to any dispute regarding a Default or breach by ERCOT of its obligations under this Agreement, ERCOT expressly waives any Limitation of Liability to which it may be entitled under the Charitable Immunity and Liability Act of 1987, Tex. Civ. Prac. &amp; Rem. Code §84.006, or successor statute.</p> <p>C. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection of this Agreement, regardless of any contrary provisions that may be</p>

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		<p>included in or subsequently added to the ERCOT Protocols (outside of this Agreement).</p> <p>D.The Independent Market Monitor (IMM), and its directors, officers, employees, and agents, shall not be liable to any person or Entity for any act or omission, other than an act or omission constituting gross negligence or intentional misconduct, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect, or consequential damages of any kind resulting from or attributable to any such act or omission of the IMM, as long as such act or omission arose from or is related to matters within the scope of the IMM’s authority arising under or relating to PURA §39.1515 and PUC SUBST. R. 25.365, Independent Market Monitor.</p> <p>Definitions:</p> <p>Independent Market Monitor (IMM) The Entity selected to monitor the wholesale electric market pursuant to the Public Utility Regulatory Act (PURA), TEX. UTIL. CODE ANN. § 39.1515 (Vernon 1998 &amp; Supp. 2007) and P.U.C SUBST. R. 25.365, Independent Market Monitor.</p> <p>Electric Reliability Council of Texas, Inc. (ERCOT) A Texas nonprofit corporation that has been certified by the PUCT as the Independent Organization for the ERCOT Region.</p> <p>Entity Any natural person, partnership, municipal corporation, cooperative corporation, association, governmental subdivision, or public or private organization.</p>
Southwest Power Pool (SPP)	SPP Tariff – s. 10.2	<p>10.2 Liability:</p> <p>(a) The Transmission Provider shall not be liable for money damages or other compensation to any Transmission Customer or Users for actions or omissions by the Transmission Provider or Transmission Owner in performing its obligations under this Tariff or any Service Agreement thereunder, except to the extent such act or omission by the Transmission Provider is found to result from its gross negligence or intentional wrongdoing.</p> <p>(b) A Transmission Owner shall not be liable for money damages or other compensation to any Transmission Customer or Users for actions or omissions by such Transmission Owner or Transmission Provider in performing its</p>

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		<p>obligations under this Tariff or any Service Agreement thereunder, except to the extent such act or omission by such Transmission Owner is found to result from its gross negligence or intentional wrongdoing.</p> <p>(c) A Transmission Customer or Users may not seek to enforce any claims against the directors, members, shareholders, officers, employees or agents of the Transmission Provider or a Transmission Owner or Affiliate of either solely by reason of their status as directors, members, shareholders, officers, employees or agents of the Transmission Provider or a Transmission Owner or Affiliate of either. Notwithstanding the foregoing, a Transmission Customer or Users shall be liable to the Transmission Provider for all amounts owed for the full term of any Service Agreement under the Tariff.</p> <p>(d) In no event shall the Transmission Provider, a Transmission Owner or any Transmission Customer or Users be liable for any incidental, consequential, punitive, special, exemplary or indirect damages, attorney's fees and costs, loss of revenues or profits, arising out of, or connected in any way with the performance or non-performance under this Tariff or any Service Agreement thereunder.</p> <p>10.4 Further Limitation of Liability: Neither the Transmission Owner nor the Transmission Provider shall be liable for damages arising out of services provided under this Tariff including, but not limited to any act or omission that results in an interruption, deficiency or imperfection of service, occurring as a result of conditions or circumstances beyond the control of the Transmission Owner or Transmission Provider, as applicable, or resulting from electric system design common to the domestic electric utility industry or electric system operation practices or conditions common to domestic electric utility industry. Transmission Owners shall not be liable for acts or omissions done in compliance or good faith attempts to comply with directives of Transmission Provider.</p> <p>10.5 Transmission Provider Recovery: To the extent that the Transmission Provider is required to pay any money damages or compensation or pay amounts due to its indemnification of any other party, the Transmission Provider shall be allowed to recover any such amounts (subject to crediting all amounts recovered by Transmission Provider through insurance or through any indemnification it receives) under Schedule 1 of this Tariff as part of the Administrative Charges, provided that the cap in Schedule 1, Section 1 shall not apply to or prohibit the recovery of these amounts.</p>

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		<p>Definitions:</p> <p>Transmission Customer: Any Eligible Customer (or its Designated Agent) that (i) executes a Service Agreement, or (ii) requests in writing that the Transmission Provider file with the Commission, a proposed unexecuted Service Agreement to receive transmission service under Part II of the Tariff. This term is used in the Part I Common Service Provisions to include customers receiving transmission service under Part II and Part III of this Tariff.</p> <p>Transmission Owner: Each Member of SPP that has executed an SPP Membership Agreement as a Transmission Owner and therefore has the obligation to construct, own, operate, and maintain transmission facilities as directed by the Transmission Provider and: (i) whose Tariff facilities (in whole or in part) make up the Transmission System; or (ii) who has accepted a Notification to Construct but does not yet own transmission facilities under SPP's functional control. Those Transmission Owners that are not regulated by the Commission shall not become subject to Commission regulation by virtue of their status as Transmission Owners under this Tariff; provided, however, that service over their facilities classified as transmission and covered by the Tariff shall be subject to Commission regulation.</p> <p>Transmission Provider: The Southwest Power Pool, Inc., acting in its role as administrator of this Tariff.</p> <p>Market Participant: An entity that generates, transmits, distributes, purchases, or sells electricity or provides Ancillary Services with respect to such services (or contracts to perform any of the foregoing activities) within, into, out of, or through the Transmission System or an Upgrade Sponsor electing to receive Incremental LTCRs. Market Participant expressly includes: (a) Transmission Owner(s) and any of their Affiliates including Transmission Owners providing transmission service to: (i) bundled retail load for which such Transmission Owners are taking neither Network Integration Transmission Service nor Firm Point-To-Point Transmission Service under this Tariff; and (ii) load being served under Grandfathered Agreements for which such Transmission Owners are taking neither Network Integration Transmission Service nor Firm Point-To-Point Transmission Service under this Tariff, (b) Transmission Customers, (c) Network Customers, (d) Generation Interconnection Customers, (e) any Eligible Customer offering Resources for sale into the Energy and Operating Reserve Markets that executes the Service Agreement specified in Attachment AH, or on whose behalf an unexecuted Service Agreement has been filed at the Commission, (f) any retail customer or eligible person that is not precluded under the laws or regulations of the relevant electric retail regulatory authority</p>

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ISO New England	The IESO Tariff – Section I - General Terms and Conditions	<p>including state-approved retail tariff(s) from participating directly in wholesale demand response programs in the Energy and Operating Reserve Markets and that is technically qualified to offer Demand Response Load (as defined in Attachment AE of this Tariff) into the Energy and Operating Reserve Markets or an aggregator of such retail customers that offers qualified Demand Response Load into the Energy and Operating Reserve Markets under Section 2.8 of Attachment AE, (g) an entity that executes the Service Agreement specified in Attachment AH and registers the assets of one or more Asset Owners, and (h) an Upgrade Sponsor that executes the Service Agreement specified in Attachment AH.</p> <p>Users: Transmission Customers or other entities that are parties to transactions under the Tariff.</p> <p>I.5.2. Liability:</p> <p>The ISO shall not be liable for money damages or other compensation to the Customer for actions or omissions by the ISO in performing its obligations under this Tariff or any Service Agreement thereunder, except to the extent such act or omission by the ISO is found to result from its gross negligence or willful misconduct. A Transmission Owner shall not be liable for money damages or other compensation to the Customer for acts or omissions by such Transmission Owner in performing its obligations under this Tariff or any Service Agreement thereunder, except to the extent such act or omission by such Transmission Owner is found to result from its gross negligence or willful misconduct. A Schedule 20A Service Provider shall not be liable for money damages or other compensation to the Customer for action or omissions by such Schedule 20A Service Provider in performing its obligations under this Tariff or any Service Agreement thereunder, except to the extent such act or omission by such Schedule 20A Service Provider is found to result from its gross negligence or willful misconduct. To the extent the Customer has claims against the ISO, a Transmission Owner or Schedule 20A Service Provider, the Customer may only look to the assets of the ISO, a Transmission Owner or Schedule 20A Service Provider (as the case may be) for the enforcement of such claims and may not seek to enforce any claims against the directors, members, shareholders, officers, employees or agents of the ISO, a Transmission Owner or Schedule 20A Service Provider or Affiliate who, the Customer acknowledges and agrees, have no personal or other liability for obligations of the ISO, a Transmission Owner or Schedule 20A Service Provider by reason of their status as directors, members, shareholders, officers, employees or agents of the ISO, a Transmission Owner, Schedule 20A Service Provider or Affiliate. In no event shall the ISO, a Transmission Owner, Schedule 20A Service Provider or any</p>

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		<p>Customer be liable for any incidental, consequential, multiple or punitive damages, loss of revenues or profits, attorneys fees or costs arising out of, or connected in any way with the performance or non-performance under this Tariff or any Service Agreement thereunder Notwithstanding the foregoing, nothing in this section shall diminish a Customer’s obligations under Section I.5.3 of this Tariff or under Schedules 18, 20 and 21 of the OATT.</p> <p>Definitions:</p> <p>Customer is a Market Participant, a Transmission Customer or another customer of the ISO.</p>