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

*Re: PJM Interconnection, L.L.C., Docket No. EL22-____-000
Section 206 Filing to Resolve Ambiguous Use of Designated Entity*

Dear Secretary Bose:

Pursuant to sections 206, 306, and 309 of the Federal Power Act (“FPA”),¹ and Rule 206 of the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Rules of Practice and Procedure,² PJM Interconnection, L.L.C. (“PJM”) requests that the Commission revise Schedule 6, section 1.5.8 (“section 1.5.8”) of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), the overly broad and imprecise use of the term “Designated Entity” in section 1.5.8, and the definition of “Designated Entity.”³ As PJM demonstrates below, such imprecise language renders these provisions unjust and unreasonable. The Operating Agreement must be clarified so that all parties are properly on notice as to when an entity may be a Designated Entity and assume all the rights and obligations associated with that term.

PJM requests the Commission to grant the relief sought in this FPA sections 206, 306, and 309 pleading, find PJM’s Operating Agreement unjust and unreasonable as described herein and direct adoption of PJM’ replacement rate. PJM includes with this

¹ 16 U.S.C. §§ 824e, 825e & 825h.

² 18 C.F.R. § 385.206.

³ Terms not otherwise defined herein shall have the same meaning as set forth in the Operating Agreement.

filing as Attachment A a replacement rate that clarifies the provisions consistent with PJM's longstanding practice and original intent and ensures that PJM can effectively implement the provisions in that manner. Such replacement rate is just and reasonable because it is consistent with the Commission's directives under Order No. 1000,⁴ as well as PJM's original intent for which the term Designated Entities was proposed, PJM's authority under the Operating Agreement, and PJM's course of performance implementing its Commission-accepted Order No. 1000 competitive solicitation process.

I. EXECUTIVE SUMMARY

The imprecise and overly broad usage of the term "Designated Entity" in section 1.5.8 has created ambiguity, resulting in conflicting interpretations and a disagreement among certain parties as to which projects included in the regional transmission expansion plan ("RTEP") should require a *pro forma* Designated Entity Agreement.⁵ Such conflicting interpretations have led to claims as to how section 1.5.8 should be implemented and when Designated Entity Agreements are required. The ambiguities in section 1.5.8 and the definition of Designated Entity severely hinder PJM's ability to implement section 1.5.8, as PJM faces challenges under either interpretation. To be clear, the issue in this proceeding centers on which projects require a Designated Entity Agreement, not which entity must execute a Designated Entity Agreement. In addition, the interpretation being argued by various stakeholders (as embodied in the complaint filed

⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g & clarification*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁵ See PJM Open Access Transmission Tariff ("Tariff"), Attachment KK.

in Docket No. EL22-80⁶) leads to an application that is itself unjust and unreasonable as detailed in Section III.B below.

The crux of the issue is that, while section 1.5.8 details the competitive window process (in subsections (a) through (k) and (m)(2)), as a result of various orders of the Commission both in Order No. 1000 and in specific rulings on PJM section 205 filings related to implementing Order No. 1000's reforms, not every project planned in accordance with section 1.5.8 goes through the competitive window process, and not every project selected through a competitive proposal window is included in the RTEP for purposes of cost allocation. Many projects planned in accordance with the regional planning process in section 1.5.8 and included in the RTEP are local projects that are either designated outside the competitive solicitation process and/or 100 percent allocated to the local transmission zone.⁷

The regulatory context that governed PJM's filing, and the Commission's acceptance, of the Operating Agreement language at issue is highly instructive both as to its original intent as well as PJM's implementation of same. As discussed below, section 1.5.8, the term "Designated Entity," and the Designated Entity Agreement were added for the sole purpose of complying with Order No. 1000's directives. And, PJM has consistently interpreted the language of section 1.5.8 through the lens of complying with

⁶ *American Municipal Power, Inc. v. PJM Interconnection, L.L.C.*, Complaint Requesting Fast Track Processing of American Municipal Power, Inc., Office of the People's Counsel for the District of Columbia, and the PJM Industrial Customer Coalition, Docket No. EL22-80-000, at 2-3 (July 26, 2022) ("EL22-80 Complaint").

⁷ *See, e.g.*, Operating Agreement, Schedule 6, section 1.5.8(l). Order No. 1000 defined a local transmission facility to mean "a transmission facility located solely within a public utility transmission provider's retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation." Order No. 1000 at P 63. Supplemental Projects are not planned in accordance with section 1.5.8 and are not within the scope of this pleading.

Order No. 1000's directives. To now, years later and irrespective of the regulatory context and PJM's course of conduct in implementing the provision, interpret these provisions to apply more broadly than the scope of Order No. 1000's reforms would present a countervailing filed rate doctrine concern—due to limitations on PJM's authority to amend the Operating Agreement. No party was on notice that PJM *could* have had any intention other than strict compliance with Order No. 1000. Indeed, PJM stated in its compliance filing its intention to only comply with Order No. 1000. Moreover, the Commission has rejected attempts by certain stakeholders to expand PJM's Order No. 1000's compliance reforms to include matters beyond the scope of Order No. 1000.

Certain stakeholders, on the other hand, have advanced an interpretation that would require PJM to issue Designated Entity Agreements for projects that the Designated Entity Agreement was never intended to apply. Specifically, as exemplified by the EL22-80 Complaint,⁸ parties are advancing an interpretation of section 1.5.8 that would apply Order No. 1000's requirements, notably the Designated Entity Agreement, to *all* projects planned in accordance with section 1.5.8.⁹ But, such an interpretation would be incorrect, as it is inconsistent with the intent of the language and would lead to unjust and unreasonable results.

For the Commission to adopt the stakeholders' proffered interpretation, the Commission would need to find that all parties were operating *for nearly a decade* under

⁸ EL22-80-000 Complaint at 2-3.

⁹ EL22-80 Complaint at 3-4 (“The requirement to execute the Designated Entity Agreement explicitly applies to both incumbent Transmission Owners and non-incumbent transmission owners, and applies to all projects included in the Regional Transmission Expansion Plan (“RTEP”) pursuant to Schedule 6, Section 1.5.8 of the Operating Agreement, regardless of whether the project is selected through a competitive proposal window.”).

the wrong understanding, and indeed, that PJM has been wrongly implementing the Operating Agreement wrong *since the beginning*. Such an outcome would contradict PJM's actual and constructive intent, and the Commission's intent in adopting section 1.5.8 *to comply* with Order No. 1000. Moreover, such an interpretation would be unjust and unreasonable because it would almost uniformly increase costs customers will pay for projects through their transmission rates for no offsetting gain. The increased costs stem from the Designated Entity Agreement requirement that the Designated Entity post security equivalent to three percent of the estimated cost of the project, which would be reflected in the project's costs that are passed on to ratepayers.

The term "Designated Entity"¹⁰ and the Designated Entity Agreement were adopted in PJM's compliance with Order No. 1000.¹¹ As detailed below, Order No. 1000 directed PJM to remove the federal right of first refusal and adopt a competitive window process. In compliance with Order No. 1000, PJM's competitive window process uses Designated Entity Agreements for projects selected through that process to be included in PJM's RTEP for purposes of cost allocation.¹²

¹⁰ A Designated Entity is defined as the party "with the responsibility to construct, own, operate, maintain, and finance Immediate-need Reliability Projects, Short-term Projects, Long-lead Projects, or Economic-based Enhancements or Expansions pursuant to Operating Agreement, Schedule 6, section 1.5.8." Operating Agreement, Definitions C – D.

¹¹ See *PJM Interconnection, L.L.C.*, Compliance Filing of PJM Interconnection, L.L.C., Docket No. ER13-198-000 (Oct. 25, 2012) ("First Order No. 1000 Compliance Filing") (proposing, among other things, section 1.5.8 and the term Designated Entity); see *PJM Interconnection, L.L.C.*, 3rd Compliance Filing of PJM Interconnection, L.L.C., Docket No. ER13-198-004, at 11 (July 14, 2014) ("3rd Order No. 1000 Compliance Filing") (proposing, among other things, *pro forma* Designated Entity Agreement).

¹² PJM's *pro forma* Designated Entity Agreement (Tariff, Attachment KK) defines the rights and obligations of the Designated Entity with regard to the construction of a RTEP Project and sets forth security, milestones, insurance, and assignment requirements, among other things. See *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 10 (2014).

As discussed in Part IV below, PJM proposes a replacement rate that would make limited amendments to section 1.5.8 and the definition of Designated Entity to clarify that Designated Entity Agreements are required only for those projects (i) selected through PJM's Order No. 1000-directed competitive window process and (ii) included in the RTEP for purposes of cost allocation. Unlike the contrary notions that would broadly require Designated Entity Agreements outside its original competitive process purpose,¹³ PJM's proposed replacement rate is just and reasonable as it removes the ambiguities and ensures the Operating Agreement properly implements Order No. 1000's directives.

This filing is PJM's last option to remove the ambiguities hindering PJM from effectively implementing section 1.5.8. PJM has tried multiple times, through multiple avenues, to remove the ambiguities in the Operating Agreement resulting from the imprecise and overly broad use of the definitional term "Designated Entity." The Commission rejected on procedural grounds PJM's "Updated Compliance Filing" submitted in Docket No. ER13-198-008.¹⁴ Given that PJM's authority to amend the Operating Agreement under FPA section 205, including section 1.5.8, is limited to that required "by law" or as approved by the Members Committee,¹⁵ PJM sought stakeholder support for an FPA section 205 filing. Following rejection of the Updated Compliance Filing, PJM proposed through its "Quick Fix" stakeholder rules a solution consisting of

¹³ See EL22-80 Complaint at 3-4 ("The requirement to execute the Designated Entity Agreement explicitly applies to both incumbent Transmission Owners and non-incumbent transmission owners, and applies to all projects included in the Regional Transmission Expansion Plan ("RTEP") pursuant to Schedule 6, Section 1.5.8 of the Operating Agreement, regardless of whether the project is selected through a competitive proposal window").

¹⁴ See *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,083 (2022); *PJM Interconnection, L.L.C.*, Updated Compliance Filing of PJM Interconnection, L.L.C., Docket No. ER13-198-008 (Sept. 1, 2021) ("Updated Compliance Filing").

¹⁵ See Operating Agreement, section 18.6.

revisions to the Operating Agreement that would be filed pursuant to FPA section 205. Even though PJM received a sector-weighted vote with 2.517 in favor, the stakeholders rejected that “Quick Fix” approach.¹⁶ In addition, two separate stakeholder groups proposed alternative issue charges for endorsement at the July 27, 2022 Markets and Reliability Committee meeting to address this issue but withdrew their issue charges after PJM posted its information notice of an anticipated section 206 filing to set a refund effective date regarding this issue while the stakeholder process played out.¹⁷ Once those issue charges were withdrawn, PJM was left with no option but to submit this filing under FPA sections 206, 306, and 309.

Immediate Commission action is necessary to remove uncertainty and compliance concerns regarding those RTEP projects for which PJM must issue a Designated Entity Agreement.

PJM also requests an effective date of August 26, 2022, the date of this filing, to ensure the earliest possible refund effective date.

II. BACKGROUND

A. The Scope of Order No. 1000’s Reforms Excludes Projects Not Evaluated and Selected Through the Competitive Window Process for Purposes of Regional Cost Allocation

Order No. 1000 directed a number of reforms specific to the construction of transmission facilities selected in a regional transmission plan for purposes of cost

¹⁶ See Markets & Reliability Committee, *Minutes*, PJM Interconnection, L.L.C., 3 (May 25, 2022), <https://www.pjm.com/-/media/committees-groups/committees/mrc/2022/20220629/consent-agenda-a---draft-mrc-minutes-05252022.ashx>.

¹⁷ See <https://www.pjm.com/-/media/committees-groups/committees/mrc/2022/20220727/agenda.ashx>. The two issue charges were presented at the May 25, 2022 and June 29, 2022 Markets & Reliability Committee meetings and deferred for endorsement to the July 27 Markets and Reliability Committee meeting.

allocation.¹⁸ As relevant here, Order No. 1000 directed PJM, among other things, to revise its RTEP process to include qualification criteria and protocols to govern the submission and evaluation of project proposals (submitted by both incumbent transmission owners and nonincumbent transmission developers) “selected in the regional transmission plan for purposes of cost allocation.”¹⁹

Order No. 1000 is clear that the reforms directing implementation of the competitive window process “appl[y] only to transmission facilities that are selected in a regional transmission plan for purposes of cost allocation and not, for example, to transmission facilities in local transmission plans.”²⁰ Order No. 1000’s “requirements . . . distinguish between a ‘transmission facility in a regional transmission plan,’ and ‘a transmission facility selected in a regional transmission plan *for purposes of cost allocation.*’”²¹ “[T]his distinction is an essential component” of Order No. 1000, as only a subset of facilities within a regional transmission plan will be “selected, pursuant to a Commission-approved regional transmission planning process, as a more efficient or cost-effective solution to regional transmission needs,”²² and included for purposes of regional

¹⁸ See Order No. 1000 at P 225.

¹⁹ Order No. 1000 at P 318 (“The Commission’s focus here is on the set of transmission facilities that are evaluated at the regional level and selected in the regional transmission plan for purposes of cost allocation.”); see also *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 299 (“Order No. 1000 requires each public utility transmission provider to amend its [Open Access Transmission Tariff] to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.” (citing Order No. 1000 at P 328)).

²⁰ Order No. 1000 at P 7.

²¹ Order No. 1000 at P 5 (emphasis added) (quoting *id.* at P 63).

²² Order No. 1000 at P 5. The Commission recognized that transmission facilities selected through the competitive window process and included in the regional transmission plan for purposes of cost allocation “often will not comprise all of the transmission facilities in the regional transmission plan; rather, such transmission facilities may be a subset of the transmission facilities in the regional transmission plan.” *Id.* at P 63.

cost allocation.²³ The Commission clarified in Order No. 1000-A that “the term ‘selected in a regional transmission plan for purposes of cost allocation’ excludes a new transmission facility if the costs of that facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that new transmission facility is to be located.”²⁴ Accordingly, the scope of the reforms directed by Order No. 1000 “do[es] not include a transmission facility in the regional transmission plan but that has not been selected in the [competitive window process].”²⁵

B. In Compliance with Order No. 1000, PJM Revised the Operating Agreement to Include the Competitive Solicitation Window and the Defined Term “Designated Entity”

To comply with Order No. 1000, PJM proposed to add to its transmission planning process a sponsorship model with a competitive proposal window.²⁶ That process is set forth in Operating Agreement, Schedule 6, sections 1.5.8(a) through (k) and (m)(2). PJM’s competitive window process is designed to allow incumbent transmission owners and nonincumbent transmission developers to compete to be designated to construct and own and/or finance transmission projects included in the RTEP that are eligible for regional cost allocation.²⁷

²³ Order No. 1000 at P 63.

²⁴ Order No. 1000-A at P 423; *see also Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Notice of Proposed Rulemaking, 179 FERC ¶ 61,028, at P 339 (Apr. 21, 2022) (confirming the Commission’s clarification in Order No. 1000-A).

²⁵ Order No. 1000 at P 63.

²⁶ *See generally* PJM’s compliance filings in Docket No. ER13-198.

²⁷ *See* Operating Agreement, Schedule 6, sections 1.5.8(c) – (h). PJM’s competitive window process employs the “sponsorship” model, under which an entity who has pre-qualified to be a Designated Entity (whether an incumbent transmission owner or a nonincumbent transmission developer) may submit a project proposal in a competitive window and notify PJM whether or not such entity wishes to be designated rights to the project if the project is selected for inclusion in PJM’s RTEP for purposes of regional cost allocation. *See id.*, Schedule 6, section 1.5.8(a). PJM’s competitive window process also provides for entity-specific criteria to

In its compliance filing, PJM did not seek any deviation from Order No. 1000's requirements or that an "independent entity variation" or "regional reliability standard" would be required for the Commission to accept PJM's Order No. 1000 compliance filing.²⁸ Rather, PJM explained that its "specific reforms [] either meet the letter of Order No. 1000 or, due to the unique nature of PJM's operations and markets, satisfy the Commission's 'consistent with or superior to' standard recognized in Order No. 1000."²⁹ In other words, PJM's Order No. 1000 compliance filing did not intend to amend the Operating Agreement in any manner beyond the scope of what was required to satisfy the requirements of Order No. 1000.

While section 1.5.8 details the competitive window process, not every project planned in accordance with section 1.5.8 goes through the competitive window process. In fact, several project types are explicitly exempt from the Order No. 1000 competitive window process.³⁰ Additionally, while every project planned in accordance with section 1.5.8 is included in the RTEP, not every project is included for purposes of cost allocation. Many projects are local projects for which the incumbent transmission owner is assigned responsibility and costs are 100 percent allocated to the local transmission zone.

be used in determine whether the entity proposing a project for inclusion in the RTEP shall be designated the project. *See id.*, Schedule 6, section 1.5.8(f).

²⁸ The "independent entity variation" standard, is, "in recognition of regional differences, [] more flexible than the 'consistent with or superior to' standard." *See Pac. Gas & Elec. Co.*, 179 FERC ¶ 61,184, at P 10 n.16 (2022) (citing *N.Y. Indep. Sys. Operator, Inc.*, 114 FERC ¶ 61,271, at P 3 (2006)).

²⁹ First Order No. 1000 Compliance Filing at 2-3 (citing Order No. 1000 at P 149 & 18 C.F.R. § 35.28(c)(4)(ii)).

³⁰ The following three types of transmission projects are exempt by the terms of section 1.5.8 from the competitive window process: (i) Immediate-need Reliability Projects for which PJM determines a proposal window may not be feasible, *see* Operating Agreement, Schedule 6, section 1.5.8(m)(1); (ii) solutions addressing certain reliability violations on transmission facilities below 200 kilovolts, *see id.*, Schedule 6, section 1.5.8(n); and (iii) solutions addressing thermal reliability violations on substation equipment, *see id.*, Schedule 6, section 1.5.8(p).

Thus, “some categories of transmission projects that PJM must designate to the incumbent transmission owner under Schedule 6, section 1.5.8(l) of the Operating Agreement” are included “in the regional transmission plan for purposes of cost allocation.”³¹ But, “[n]ot all of the transmission projects that PJM must designate to the incumbent transmission owner under Schedule 6, section 1.5.8(l) of the Operating Agreement . . . are selected in a regional transmission plan for purposes of cost allocation.”³²

For each project selected through the competitive window process and approved by the PJM Board of Managers (“PJM Board”) for inclusion in the RTEP for purposes of cost allocation, PJM must “notify the entities that have been designated as the Designated Entities for projects included in the [RTEP] of such designations.”³³ The definitional term of “Designated Entity” originated in PJM’s initial Order No. 1000 compliance filing. The term was added to identify those entities (both incumbent transmission owners and nonincumbent transmission developers) that (i) meet applicable pre-qualification requirements and (ii) that compete in the competitive window to be the entity designated to construct, own and/or finance transmission projects selected through a competitive proposal window as the more efficient or cost effective solution to be included in the RTEP for purposes of cost allocation.³⁴ After PJM notifies an entity that it has been designated

³¹ *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 32 (2018).

³² *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 33 n.61 (qualifying its finding by stating that the Commission has made “no findings [] as to whether the transmission developer for such a project is similarly situated to transmission developers whose projects PJM has selected in its regional transmission plan for purposes of cost allocation,” and would therefore be required to execute a Designated Entity Agreement.). *Id.* In fact, on rehearing, the Commission stated that “[i]ts determinations in [164 FERC ¶ 61,021] applied only to those Transmission Owner Designated projects that were selected in the regional transmission plan as the more efficient or cost effective transmission solution for the purposes of cost allocation.” *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,121, at P 12 n.23 (2019) (citing 164 FERC ¶ 61,021, at P 33 n.61).

³³ Operating Agreement, Schedule 6, section 1.5.8(i).

³⁴ *See, e.g.*, PJM’s First Order No. 1000 Compliance Filing at 49-50.

as a Designated Entity for a project selected through the competitive proposal window and included in the RTEP for purposes of cost allocation, the incumbent transmission owner or nonincumbent developer must notify PJM of acceptance of such designation.³⁵ Upon the acceptance of the designation pursuant to section 1.5.8(i), the Designated Entity must execute a Designated Entity Agreement.³⁶

The Designated Entity Agreement was also added as part of PJM's Order No. 1000 process. In PJM's initial Order No. 1000 compliance filing, PJM included a provision providing that upon acceptance of the designation, the Designated Entity must, among other things, execute an "agreement with [PJM] setting forth the rights and obligations related to being the Designated Entity for the project."³⁷ The reference to the *pro forma* Designated Entity Agreement was added to Schedule 6, section 1.5.8(j) in PJM's second Order No. 1000 compliance filing.³⁸ In that filing, PJM stated that the further revisions to section 1.5.8(j) were necessary to "ensure that the timelines [were] workable and practical given PJM's need to ensure smooth implementation of *the new competitive solicitation process*."³⁹ PJM submitted revisions to its Tariff to add the *pro forma* Designated Entity Agreement with its 3rd Order No. 1000 Compliance Filing.

³⁵ Operating Agreement, Schedule 6, section 1.5.8(j).

³⁶ Operating Agreement, Schedule 6, section 1.5.8(j). Among other things, all Designated Entity Agreements require the Designated Entity to provide security and agree to a development schedule for each project. *See id.*

³⁷ First Order No. 1000 Compliance Filing, Attachment A, Schedule 6, section 1.5.8(j). As part of PJM's Order No. 1000 compliance filing obligations, the Commission "direct[ed] PJM to submit any . . . *pro forma* Designated Entity Agreement for review by the Commission." *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 280 (2013), *order on reh'g & compliance*, 147 FERC ¶ 61,128 (2014), *order on reh'g & compliance*, 150 FERC ¶ 61,038 (2015).

³⁸ *PJM Interconnection, L.L.C.*, Compliance Filing of PJM Interconnection, L.L.C., Docket No. ER13-198-002, at 44-45 (July 22, 2013) ("2nd Order No. 1000 Compliance Filing").

³⁹ 2nd Order No. 1000 Compliance Filing at 44 (emphasis added).

C. The Designated Entity Agreement Was Intended to Apply Only to Projects Selected in the Competitive Window and Included in the RTEP for Purposes of Cost Allocation

The Designated Entity Agreement unambiguously applies only to projects selected in PJM’s Order No. 1000 competitive window process. In submitting the *pro forma* agreement, PJM explained that “an entity accepting the designation, as the ‘Designated Entity,’ to construct a project *pursuant to the competitive process* set forth in section 1.5.8 of Schedule 6 must execute an agreement ‘setting forth the rights and obligations related to being the Designated Entity for the project.’”⁴⁰ In other words, PJM intended the Designated Entity Agreement to apply only to those projects selected in the competitive window process, and not broadly to any project planned in accordance with section 1.5.8. The Commission recognized this limited application, stating: “the Designated Entity Agreement defines the rights and obligations of *all Designated Entities that are designated by PJM to construct an RTEP project pursuant to PJM’s competitive process set forth in Schedule 6.*”⁴¹

Further, the Designated Entity Agreement itself states in the first “whereas” clause that PJM and the counterparty are entering into it “in accordance with Order No. 1000.”⁴² This whereas clause language withstood a protestor’s challenge that it should be removed on the grounds that the reference to Order No. 1000 “is both inaccurate in the context of the remainder of the clause and inappropriate for inclusion in a contractual agreement.”⁴³

⁴⁰ 3rd Order No. 1000 Compliance Filing at 11 (emphasis added).

⁴¹ *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 46 (emphasis added).

⁴² Tariff, Attachment KK.

⁴³ Protest of Compliance Filing of LS Power Transmission, LLC and LSP Transmission Holdings, LLC, Docket Nos. ER13-198-004 and ER14-2426-000, at 16 (Aug. 4, 2014).

The Commission rejected the request, noting that such a clause can be “useful as an aid to interpretation” of the agreement.⁴⁴

Finally, the Commission rejected a call to add a provision that would add “an obligation [] beyond the scope of the Designated Entity Agreement Filing proceeding, as neither Order No. 1000 or our directives to PJM to file a Designated Entity Agreement address PJM’s role in facilitating in a Designating Entity’s state permitting and siting process.”⁴⁵ Thus, the Commission viewed the Designated Entity Agreement as being adopted to fulfill the requirements of Order No. 1000, and no more. Order No. 1000 and the Commission’s directives regarding the development of the Designated Entity Agreement⁴⁶ defined the scope of the Designated Entity Agreement.

III. THE CURRENT OPERATING AGREEMENT LANGUAGE IS UNJUST AND UNREASONABLE AND HAS CREATED DISAGREEMENT OVER PJM’S ISSUANCE OF DESIGNATED ENTITY AGREEMENTS

Despite PJM’s clear intention and the Commission’s recognition that Designated Entity Agreements were required only for projects selected in the Order No. 1000 competitive window process, the Operating Agreement language is ambiguous regarding when PJM should use Designated Entity Agreements. The confusion stems from imprecise and casual usage of the definitional term “Designated Entity” in the language of the Operating Agreement, as it is used even for projects that are exempt from the Order No. 1000 competitive window process.⁴⁷ Given this imprecision and ambiguity, it is

⁴⁴ *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 70.

⁴⁵ *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 110.

⁴⁶ *See PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128, at PP 261, 306-309 (outlining Commission directives regarding the *pro forma* Designated Entity Agreement).

⁴⁷ *See, e.g.*, Operating Agreement, Schedule 6, sections 1.5.8(g), (h), (l), & (m)(1).

necessary to examine the regulatory context in which section 1.5.8 was adopted⁴⁸ and extrinsic evidence as to the meaning of section 1.5.8.⁴⁹ Such review reveals that PJM's intent, authority, and course of performance appropriately limit the use of Designated Entity Agreements to projects selected in the competitive window process and are regionally allocated. The conflict between the language interpretation, offered by certain stakeholders, and the regulatory context, relied on by PJM and certain transmission owners, makes the Operating Agreement susceptible to multiple interpretations and creates allegations of non-compliance when PJM issues Designated Entity Agreements.⁵⁰ Such circumstances hinder PJM's ability to implement the Operating Agreement without allegations of failing to comply with the terms of the Operating Agreement and, thereby, renders the Operating Agreement unjust and unreasonable.⁵¹

⁴⁸ See *Devon Power LLC v. ISO New England, Inc.*, 114 FERC ¶ 61,259, at P 24 (2006) (“In determining the meaning of an agreement, the Commission applies the traditional rules of contract construction. Pursuant to these rules, the Commission must ascertain the intent of the parties by considering the language of the document itself, its purpose, and the circumstances of its execution and performance. Thus, the Commission looks to the language of the agreement and its regulatory context.” (footnotes omitted)).

⁴⁹ See *Colo. Interstate Gas Co.*, 32 FERC ¶ 63,033, at 65,108 (1985) (“[E]xtrinsic evidence is admissible to remove and explain any ambiguity in the contract as applied.” (quoting *Pennzoil Co. v. FERC.*, 645 F.2d 360, 367 (5th Cir. 1981))).

⁵⁰ Consistent with the transmission owners' interpretation of the Operating Agreement language, certain transmission owners, who were notified pursuant to section 1.5.8(i) that PJM would be issuing them a Designated Entity Agreement for RTEP projects selected through the competitive proposal window process and allocated to a single zone, have challenged PJM's recent change in approach to tendering Designated Entity Agreements. On the other hand, certain stakeholders filed the EL22-80 Complaint challenging PJM's historical practices for issuing Designated Entity Agreements for projects selected through a competitive proposal window and included in the RTEP and regionally allocated.

⁵¹ See *PJM Interconnection, LLC*, 151 FERC ¶ 61,208, at P 95 (2015) (finding a tariff that is “inappropriately vague” to be unjust and unreasonable because the ambiguity prevented parties from foreseeing the impacts of their actions), *order on reh'g & compliance*, 155 FERC ¶ 61,157 (2016), *aff'd sub nom. Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656 (D.C. Cir. 2017); see, e.g., *TransColorado Gas Transmission Co.*, 144 FERC ¶ 61,175, at P 34 (2013) (“The Commission finds such an ambiguity [in the pipeline's tariff] to be unjust and unreasonable.”); *N. Natural Gas Co.*, 53 FERC ¶ 61,205, at 61,821 n.5 (1990) (“[T]he Commission determined pursuant to section 5 of the Natural Gas Act that the pipeline's provisions were unjust and unreasonable because they were ambiguous and provided the pipeline the opportunity to discriminate in deciding what and for whom facilities would be built.” (summarizing *Tx. Gas Transmission Corp.*, 53 FERC ¶ 61,110 (1990))).

Since the onset of implementing its competitive window process through February 2022, PJM has not issued, nor has it had the intent or authority to issue, Designated Entity Agreements for projects that fell outside the scope of Order No. 1000's reform directives. However, certain stakeholders recently have challenged PJM's practice and interpreted the Operating Agreement as requiring a Designated Entity Agreement for every project planned pursuant to section 1.5.8.⁵² After PJM attempted to implement a narrower version of this interpretation in February 2022 and began issuing Designated Entity Agreements for projects selected in the competitive window but *not* included in the RTEP for purposes of cost allocation (i.e., the project is allocated wholly to the incumbent transmission owner's zone), certain affected transmission owners have challenged this approach through PJM's alternative dispute procedures.

As noted, PJM attempted to clarify section 1.5.8 and remove these ambiguities through the Updated Compliance Filing. In February 2022, the Commission rejected PJM's Updated Compliance Filing on procedural grounds and did not reach the merits.⁵³ Following Commission rejection of the Updated Compliance Filing, PJM engaged with the FERC Office of Enforcement ("Enforcement") regarding the difficulty with complying with Operating Agreement, Schedule 6, section 1.5.8 given the imprecise language and differing interpretations of the language related to PJM's application of the Designated Entity Agreements. Enforcement indicated that PJM's continuing with its current practices of implementing Designated Entity Agreements could potentially be viewed as unfavorable. Based upon Enforcement's feedback, PJM adopted a more conservative

⁵² See, e.g., EL22-80 Complaint at 2-3.

⁵³ *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,083.

approach and notified impacted incumbent transmission owners of the switch to issue Designated Entity Agreements for *all* projects selected through section 1.5.8 competitive proposal windows, regardless of whether the projects were included in the RTEP for purposes of cost allocation. PJM has instituted this proceeding because clarification of the language, as requested herein, is the best way to end this dispute. However, efforts to make these changes with stakeholders and PJM's inability to utilize section 205 to amend provisions of the Operating Agreement, has left PJM with no choice other than to bring this section 206 filing to amend the Operating Agreement and finally end the ongoing disputes and litigation.

When the Commission finds that existing tariff terms are unjust, unreasonable, or unduly discriminatory under FPA section 206, it must establish the just and reasonable terms needed to replace the terms and conditions it found unlawful.⁵⁴ To that end, PJM is proposing a just and reasonable replacement rate as detailed in Part IV below.

A. The Operating Agreement is Ambiguous Regarding Use of the Term Designated Entity

As currently drafted, PJM cannot implement Operating Agreement, section 1.5.8 without being subject to challenge based on the imprecise language. It is clear that PJM intended Designated Entity Agreements to only be used "in accordance with Order No. 1000," and the Commission's recognized that Designated Entity Agreements apply to "Designated Entities that are designated by PJM to construct an RTEP project pursuant to PJM's competitive process set forth in Schedule 6."⁵⁵ Yet, the imprecise and overbroad

⁵⁴ See 16 U.S.C. § 824e.

⁵⁵ *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 46.

usage of “Designated Entity” has injected ambiguity into section 1.5.8 and led to conflicting interpretations of when a Designated Entity Agreement is required, subjecting PJM to challenge from either interpretation.

In sections 1.5.8(g), (h), (l), and (m)(1), the defined term “Designated Entity” is improperly being used as shorthand for the broader concept of the entity responsible for constructing RTEP projects that are either: (i) sponsored through a competitive proposal window but the costs are allocated solely to a single zone; or (ii) not sponsored through a competitive proposal window process but instead are selected by PJM and designated to the incumbent transmission owner. Such references are improper because the projects at issue were not selected through PJM’s competitive window process and included in the RTEP for purposes of cost allocation.

Sections 1.5.8(g) and (h) address those instances where PJM must select a project and designate it to the incumbent transmission owner where none of the project proposals submitted through a competitive proposal window were found to be the more efficient or cost-effective solution to resolve the posted violation or system condition, and PJM has determined there is insufficient time to convene another window.⁵⁶ Thus, for such projects which no entity proposes a project to meet the identified need and PJM must identify the project (i.e., “unsponsored projects”) that are selected outside a competitive proposal window, use of the term “Designated Entity” is imprecise and improper.

With regard to section 1.5.8(m)(1), the use of the term “Designated Entity” exceeds the intended scope of that term, as underscored by the fact that other Operating Agreement

⁵⁶ Such determination is based on specific criteria identified in Schedule 6, section 1.5.8(e)(1).

provisions correctly confine the “Designated Entity” term to the competitive window process. For example, section 1.5.8(m)(2) addresses Immediate-need Reliability Projects that are selected through the competitive window process. One important distinction between Immediate-need Reliability Projects selected through a competitive window process pursuant to section 1.5.8(m)(2) and Immediate-need Reliability Projects exempted from the competitive window process pursuant to section 1.5.8(m)(1) is that section 1.5.8(m)(2) explicitly provides that the Designated Entity “shall accept such designation in accordance with the Operating Agreement, Schedule 6, 1.5.8(j)” and section 1.5.8(m)(1) does not.

Further, section 1.5.8(l) broadly and indelicately is titled “Transmission Owners Required to be the Designated Entity” and provides that the incumbent transmission owner “will be the Designated Entity” for four distinct project types, “[n]otwithstanding anything to the contrary in this section 1.5.8” and regardless of who sponsored the proposal through a competitive proposal window. Such imprecise language implies that a Designated Entity Agreement must be issued to incumbent transmission owners for projects no party would allege is within the scope of Order No. 1000, e.g., such as a Transmission Owner Upgrade or a project located solely in a transmission owner’s zone and allocated solely to that zone.⁵⁷

Accordingly, PJM could not have intended the shorthand reference to “Designated Entity” in sections 1.5.8(g), (h), (l), and (m)(1) to have the same meaning (and thus require

⁵⁷ Under Order No. 1000, “[t]he Commission did not [] require public utility transmission providers to remove a federal right of first refusal for local transmission facilities or upgrades to an incumbent transmission provider’s own transmission facilities, and did not alter an incumbent transmission provider’s use and control of an existing right of way.” Order No. 1000-A at P 357; *see* Order No. 1000 at P 226.

Designated Entity Agreements) as the term applies to projects within the scope of Order No. 1000, i.e., to projects that are selected through PJM's competitive process and included in the RTEP for purposes of cost allocation. PJM explained in its third Order No. 1000 compliance filing that:

As part of PJM's Order No. 1000 tariff revisions, PJM included a requirement that an entity accepting the designation as the "Designated Entity," to construct a project *pursuant to the competitive process set forth in section 1.5.8 of Schedule 6* must execute an agreement "setting forth the rights and obligations related to being the Designated Entity for the project" [i.e., the Designated Entity Agreement].⁵⁸

It is no coincidence that PJM's stated intention that "Designated Entity" refer only to the "competitive process" and the Commission found that "the Designated Entity Agreement defines the rights and obligations of *all* Designated Entities that are designated by PJM to construct an RTEP project *pursuant to PJM's competitive process set forth in Schedule 6.*"⁵⁹ Yet, the imprecise, overuse of "Designated Entity" has injected ambiguity into section 1.5.8 and incorrectly suggested that a Designated Entity Agreement would be required outside the context of Order No. 1000 projects.

B. Alternate Interpretations Advanced by Certain Stakeholders Result in Unjust and Unreasonable Outcomes, Including Unnecessary Increases in End-Use Customer Costs

Certain stakeholders disagree with PJM's interpretation of section 1.5.8, arguing that Designated Entity Agreements should be required for all projects planned under section 1.5.8 "regardless of whether the project is selected through a competitive proposal

⁵⁸ 3rd Order No. 1000 Compliance Filing at 11 (emphasis added) (footnotes omitted).

⁵⁹ *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 46 (emphasis added).

window.”⁶⁰ They contend that the language in section 1.5.8 imposes an obligation to execute the Designated Entity Agreement on both transmission owners and nonincumbent transmission developers for all projects included in the RTEP regardless of whether the project is selected through a competitive proposal window, specifically including Immediate-need Reliability Projects approved through section 1.5.8(m)(1).⁶¹ The EL22-80 Complaint has put this interpretation squarely before the Commission.⁶²

However, such an expansion in the use Designated Entity Agreements would be unjust and unreasonable, and contrary to PJM’s and the Commission’s intent in adopting the section 1.5.8 language as it would expand the use of Designated Entity Agreements beyond the bounds of the reforms directed by Order No. 1000. Given that this Operating Agreement language was adopted to comply with Order No. 1000, it must necessarily be interpreted to give meaning to Order No. 1000, and no more.⁶³

Further, such a broad requirement would increase consumer costs without sufficient offsetting benefit. The increased costs stems from the Designated Entity Agreement

⁶⁰ Motion to Reject and Protest of LS Power, et al., Docket No. ER13-198-008, at 3 (Sept. 22, 2021) (“Stakeholder Protest”) (“The requirement to execute the Designated Entity Agreement explicitly applies to both incumbent transmission owners and non-incumbent transmission owners, with respect to all projects included in the [RTEP] pursuant to the Operating Agreement, Schedule 6, Section 1.5.8 regardless of whether the project is selected through a competitive proposal window, and specifically including Immediate-need Reliability Projects approved through Section 1.5.8(m)(1).”).

⁶¹ *See id.* at 2.

⁶² *See* EL22-80 Complaint at 3-4 (“The requirement to execute the Designated Entity Agreement explicitly applies to both incumbent Transmission Owners and non-incumbent transmission owners, and applies to all projects included in the Regional Transmission Expansion Plan (“RTEP”) pursuant to Schedule 6, Section 1.5.8 of the Operating Agreement, regardless of whether the project is selected through a competitive proposal window, and specifically applies to Immediate-need Reliability Projects approved through Operating Agreement Section 1.5.8(m)(1).”).

⁶³ *See Pennzoil Co. v. FERC*, 645 F.2d at 388 (5th Cir. 1981) (“When interpreting a contract, the question is what was the parties’ intent, since courts are compelled to give effect to the parties’ intentions. To determine this intent, the court must put itself in the position of the parties by considering the instrument itself, its purposes, and the circumstances of its execution and performance. In short, the court looks to the language of the contract and its commercial (or in this case, regulatory) context.”).

blanket requirement to post security equivalent to three percent of the estimated cost of the project.⁶⁴ The security provision was added to the Designated Entity Agreement to buffer the financial impact and risk to the incumbent transmission owner who must assume responsibility and costs in the event of a default or abandonment by the nonincumbent developer. Security was also included to protect customers in the event the nonincumbent developer defaulted or abandoned the project by ensuring that the incremental cost of construction resulting from having to reassign the project to the incumbent transmission owner were covered through the security paid for by the nonincumbent developer rather than by customers.

The Commission has recognized that the Designated Entity Agreement security requirement increases project costs for both incumbent transmission owners and nonincumbent developers⁶⁵ and absent default or abandonment by a nonincumbent developer, such costs are borne by consumers when the project goes into service.⁶⁶

However, for those projects that were not sponsored by any entity and where PJM selects the project and designates the incumbent transmission owner in the zone in which the facility will be located to construct and own and/or finance the project, the posting of security serves little purpose other than to increase customer costs.

⁶⁴ See Tariff, Attachment KK, section 3.0 (“In accordance with Section 1.5.8(j) of Schedule 6 of the Operating Agreement, Designated Entity shall provide Transmission Provider a letter of credit as acceptable to Transmission Provider (Designated Entity Letter of Credit) or cash security in the amount of \$_____, which is three percent of the estimated cost of the Project.”).

⁶⁵ See *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,121, at P 34.

⁶⁶ See *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,121, at P 22 (“[T]he security requirement in the Designated Entity Agreement . . . is necessarily reflected in the costs of a proposed project subject to that agreement.”).

Conversely, a nonincumbent developer, does not own transmission in the PJM region, is not subject to the any pre-existing contractual obligation to build (like under section 4.2 of the Consolidated Transmission Owners Agreement), and is not obligated by law to provide safe and reliable electric service. Consequently, if a nonincumbent developer becomes insolvent or decides not to construct the designated project, the nonincumbent developer is not prevented by law from abandoning its RTEP project.⁶⁷

For unsponsored projects under sections 1.5.8(g), (h), (l), and (m)(1), however, there is no defaulting entity as the incumbent transmission owner itself must follow through and build the project as required by the Operating Agreement and the Consolidated Transmission Owners Agreement.⁶⁸ There is no “default reassignment” mechanism in the Operating Agreement for an incumbent transmission owner failing to meet its obligations. In other words, the security was designed to provide the existing Consolidated Transmission Owners Agreement signatory with financial protection from having to pick up and complete a project that a new designated entity defaulted on. But in this case, there is no other defaulting entity as the initial designation and the obligation to build and complete the project all involve the same single entity. Thus, as a policy matter, the end result of the stakeholders’ claim would be to raise the costs of *all* transmission projects paid for by the customers without accomplishing the “default protection” that the security protection was designed to provide

⁶⁷ The remedy for abandoning the designated project is termination of the Designated Entity Agreement and loss of security. The security required under the Designated Entity Agreement, section 3.0 is a letter of credit or cash in the amount of three percent of the estimated cost of the project.

⁶⁸ See Operating Agreement, Schedule 6, section 1.7; see also Consolidated Transmission Owners Agreement, Rate Schedule FERC No. 42, section 4.2.

C. *The Operating Agreement Language Adopted to Implement Order No. 1000's Directives Must Be Read Consistent with that Regulatory Context and Intent*

Given the ambiguities in section 1.5.8, the Commission should look to extrinsic evidence of the intent of PJM in adopting section 1.5.8.⁶⁹ PJM's intent in implementing section 1.5.8 was only to comply with Order No. 1000's compliance directives and go no further.⁷⁰ Order No. 1000's reforms are limited to projects "selected in the regional transmission plan for purposes of cost allocation"⁷¹ and "do not include a transmission facility in the regional transmission plan but that has not been selected in the [competitive window process]."⁷² As approved in PJM's Order No. 1000 compliance proceeding, the Designated Entity Agreement was not required for projects selected outside the Order No. 1000-directed competitive window process,⁷³ and the Commission rejected calls to add provisions that would expand the agreement beyond Order No. 1000 or the Commission's specific directives to PJM regarding the *pro forma* agreement.⁷⁴

⁶⁹ See *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,053, at P 16 ("[T]he goal of interpreting an agreement is to decipher the intent of the parties to the contract."), *reh'g denied*, 176 FERC ¶ 61,158 (2021); *Mid-Continent Area Power Pool*, 92 FERC ¶ 61,229, at 61,755 (2000) ("Extrinsic evidence (which may include the parties' course of performance) is admissible to ascertain the intent of the parties when that intent has been imperfectly expressed in ambiguous contract language, but is not admissible either to contradict or to alter express terms." (emphasis added)).

⁷⁰ See First Order No. 1000 Compliance Filing at 2-3 (PJM explained that its "specific reforms [] either meet the letter of Order No. 1000 or, due to the unique nature of PJM's operations and markets, satisfy the Commission's 'consistent with or superior to' standard recognized in Order No. 1000." (citing Order No. 1000 at P 149 & 18 C.F.R. § 35.28(c)(4)(ii))).

⁷¹ Order No. 1000 at P 318 ("The Commission's focus here is on the set of transmission facilities that are evaluated at the regional level and selected in the regional transmission plan for purposes of cost allocation.").

⁷² Order No. 1000 at P 63.

⁷³ See *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 46.

⁷⁴ See *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 89 (declining a protestor's request that the Commission adopt a national *pro forma* agreement addressing all regional transmission planning processes as beyond the scope of this proceeding and stating "Order No. 1000 requires each public utility transmission provider to revise its OATT to demonstrate that the regional transmission planning process in which it participates has established appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, whether

The Operating Agreement contributes to the regulatory context, and was instrumental in shaping PJM's intent when submitting its Order No. 1000 compliance filings. That is, PJM's interpretation must be consistent with the scope of its authority under the Operating Agreement. PJM's regional transmission planning protocols are contained within Schedule 6 of the Operating Agreement. PJM's ability to amend the Operating Agreement is limited. PJM cannot amend the Operating Agreement except "by law," e.g., by order of the Commission, or "only upon . . . approval of the amendment . . . by the Members Committee."⁷⁵ In other words, PJM does not have FPA section 205 rights to change the Operating Agreement on its own motion. Rather, if PJM desires to amend the Operating Agreement, it must submit a section 206 filing (like this one).

To interpret the Operating Agreement to expand the meaning of provisions beyond PJM's authority when it submitted those provisions would present a countervailing filed rate doctrine problem. Operating Agreement, section 18.6 puts the world on notice that PJM's authority to amend the Operating Agreement is limited to only that directed by law or by the Members Committee. Further, PJM explained that its "specific reforms

that entity is an incumbent transmission provider or a nonincumbent transmission developer."); *see also id.* at P 110 (declining protestor's request that the Designated Entity Agreement be modified to obligate PJM to assist the Designated Entity in its efforts to obtain the necessary regulatory approvals and permits to construct a project and finding that modifying the Designated Entity Agreement to add such an obligation is beyond the scope of the Designated Entity Agreement proceeding, as neither Order No. 1000 nor the Commission's directives to PJM to file a Designated Entity Agreement address PJM's role in facilitating in a Designating Entity's state permitting and siting process.).

⁷⁵ Operating Agreement, section 18.6 ("Except as provided by law or otherwise set forth herein, this Agreement, including any Schedule hereto, may be amended, or a new Schedule may be created, only upon: (i) submission of the proposed amendment to the PJM Board for its review and comments; (ii) approval of the amendment or new Schedule by the Members Committee, after consideration of the comments of the PJM Board, in accordance with Operating Agreement, section 8.4, or written agreement to an amendment of all Members not in default at the time the amendment is agreed upon; and (iii) approval and/or acceptance for filing of the amendment by FERC and any other regulatory body with jurisdiction thereof as may be required by law.").

[including section 1.5.8] either meet the letter of Order No. 1000 or, due to the unique nature of PJM’s operations and markets, satisfy the Commission’s ‘consistent with or superior to’ standard recognized in Order No. 1000.’⁷⁶ Therefore, at the time of filing, constructive and actual notice were provided that PJM’s compliance filing was limited to only complying with Order No. 1000. To find today that section 1.5.8—as proposed by PJM—somehow extends beyond PJM’s authority to propose the language and PJM’s stated intent for the language would contradict the notice given at the time of filings in 2013 and 2014. Accordingly, the Operating Agreement’s limitation on PJM’s authority to amend the Operating Agreement necessarily shapes PJM’s intent and must inform the interpretation of Operating Agreement language.⁷⁷

Further, if specific language was added to comply with a Commission directive, then the language must necessarily be read in “its regulatory context” to implement that directive and no more broadly.⁷⁸ To read more meaning or scope into language added to comply with a specific Commission directive would violate the limitations in the Operating Agreement, as to do so would indirectly allow amendments that were neither directed by law (e.g., Commission order) nor approved by the Members Committee.

Moreover, if the language went beyond Order No. 1000’s compliance directive, the Commission would have rejected it, as “[t]he Commission has long established that

⁷⁶ First Order No. 1000 Compliance Filing at 2-3 (citing Order No. 1000 at P 149 & 18 C.F.R. § 35.28(c)(4)(ii)).

⁷⁷ See *Devon Power LLC*, 114 FERC ¶ 61,259, at P 24 (“In determining the meaning of an agreement, the Commission applies the traditional rules of contract construction. Pursuant to these rules, the Commission must ascertain the intent of the parties by considering the language of the document itself, its purpose, and the circumstances of its execution and performance. Thus, the Commission looks to the language of the agreement and its regulatory context.” (footnotes omitted)).

⁷⁸ *Id.*

compliance filings must be limited to the specific directives ordered by the Commission” and “[t]he purpose of a compliance filing is to make the directed changes and the Commission’s focus in reviewing them is whether they comply with the Commission’s previously stated directives.”⁷⁹

As such, the term Designated Entity as it relates to application of the Designated Entity Agreement in section 1.5.8 should, consistent with its regulatory context—and consistent with the Designated Entity Agreement, be interpreted in a manner consistent with Order No. 1000, and the Commission’s directives in PJM’s Order No. 1000 compliance proceeding. PJM’s application of the Designated Entity Agreement only to projects within the scope of Order No. 1000’s reforms is just and reasonable, lawful, and required by the terms of the Operating Agreement, section 18.6. In contrast, to read section 1.5.8 to require application of Order No. 1000’s reforms (i.e., Designated Entity Agreements) to projects outside the scope of the compliance directive would find no basis in the Commission’s directives regarding the language, PJM’s intentions in submitting the language, or the Commission’s orders adopting the language.

⁷⁹ *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079, at P 60 (2005); *see also, e.g., PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,244, at P 50 (2020) (“We reject as beyond the scope of this proceeding PJM’s proposal to provide additional uplift payments. . . . The Commission did not direct PJM to implement any of these proposed uplift payments in the Order on Paper Hearing. *Compliance filings must be limited to the specific directives ordered by the Commission.*” (emphasis added)); *Sea Robin Pipeline Co.*, 138 FERC ¶ 61,131, at P 32 (2012) (“A compliance filing may not include new proposed tariff provisions not addressed in the Commission’s order, and the Commission will reject a compliance filing that goes beyond the scope of the directives in the Commission’s order.”); *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,186, at P 28 (2010) (rejecting portions of a compliance filing that “exceed the scope of compliance and include material that should have been filed under section 205 of the FPA”); *Entergy Servs., Inc.*, 130 FERC ¶ 61,264, at P 54 (2010) (“The Commission has stated repeatedly that compliance filings are to address only the specific matters ordered by the Commission.”).

D. PJM’s Historic Course of Performance of Issuing Designated Entity Agreements Consistent with the Intent of the Order No. 1000’s Reforms Demonstrates the Intent of These Provisions

From the outset of PJM’s implementation of its Order No. 1000 compliant competitive solicitation process in 2014 through February 2022, PJM required Designated Entity Agreements only for those transmission projects that (i) were selected through a competitive proposal window *and* (ii) included in the RTEP for cost allocation purposes. PJM’s approach interpreted the language of Schedule 6, section 1.5.8 in a manner consistent with the Order No. 1000’s compliance directives. That is, because Order No. 1000 directed PJM to add the competitive solicitation process in section 1.5.8⁸⁰ and the Commission required PJM to include a *pro forma* Designated Entity Agreement as part of its Order No. 1000 competitive window process,⁸¹ PJM interpreted the accepted compliance language to apply only to projects within the scope of the compliance directive.⁸²

Consistent with this PJM’s intent and its Operating Agreement authority, PJM’s course of performance through February 2022 has been to only issue Designated Entity Agreements for those projects selected through PJM’s Order No. 1000-compliant competitive window process and included in the RTEP for regional cost allocation

⁸⁰ See Order No. 1000 at P 313.

⁸¹ See *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128, at P 261 (“We direct PJM to file its *pro forma* Designated Entity Agreement within 60 days of the date of issuance of this order.”). In addition, the first Whereas Clause of the *pro forma* Designated Entity Agreement invokes Order No. 1000 as a basis for the agreement.

⁸² See Order No. 1000 at P 318 n.299 (“In order for a transmission facility to be eligible for the regional cost allocation methods, the region must select the transmission facility in the regional transmission plan for purposes of cost allocation. For those facilities not seeking cost allocation, the region may nonetheless have those transmission facilities in its regional transmission plan for information or other purposes, and then having such a facility in the plan would not trigger regional cost allocation.”).

purposes.⁸³ Such longstanding course of performance clearly demonstrates that, from the outset, PJM did not intend, nor did Order No. 1000 or the Commission require,⁸⁴ that PJM tender a Designated Entity Agreement for projects that were not subject to the requirements of Order No. 1000 (*e.g.*, projects not selected through a competitive proposal window or not regionally allocated).⁸⁵

Thus, until February 2022, PJM's course of performance properly reflected the intent of the provisions as PJM did not issue Designated Entity Agreements for those projects that either were (i) unsponsored projects pursuant to sections 1.5.8(g) and (h) or Immediate-need Reliability Projects pursuant to section 1.5.8(m)(1) because there was not enough time to convene another window or (ii) exempt from the competitive window process, pursuant to sections 1.5.8(n)⁸⁶ and (p),⁸⁷ because the violation was exempted from

⁸³ By October 2021, PJM had issued Designated Entity Agreements to incumbent transmission owners for projects selected through the competitive proposal window that were included in the RTEP for purposes of cost allocation. *See* Answer of PJM Interconnection, L.L.C. to Motion to Reject and Protest, Docket No. ER13-198-008, at 13 n.49 (Oct. 14, 2021). To date, PJM has issued five Designated Entity Agreements, two of which were issued to incumbent transmission owners, while the other three were issued to nonincumbent transmission developers.

⁸⁴ *See* Updated Compliance Filing at 3-5 (detailing the projects subject to the reforms of Order No. 1000 under PJM's Commission-accepted compliance filings). In fact, The Commission has recognized that it is an open question "to whether the transmission developer for such a project is similarly situated to transmission developers whose projects PJM has selected in its regional transmission plan for purposes of cost allocation," and would therefore be required to execute a Designated Entity Agreement. *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 33 n.61 (2018).

⁸⁵ *See* Order No. 1000 at P 63 (explaining that "there is a distinction between a transmission facility in a regional transmission plan and a transmission facility selected in a regional transmission plan for purposes of cost allocation," and only those facilities "selected in a regional transmission plan for purposes of cost allocation are transmission facilities that have been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs" are subject to Order No. 1000's reforms).

⁸⁶ *See PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,132 (2016) (accepting, subject to condition, revisions to add section 1.5.8(n) to Operating Agreement, Schedule 6 to exempt reliability violations on transmission facilities operating below 200 kilovolts filed over two years after the effective date of PJM's Order No. 1000 competitive window process).

⁸⁷ *See PJM Interconnection, L.L.C.*, Letter Order, Docket No. ER17-1619-000 (Oct. 11, 2017) (accepting revisions to add section 1.5.8(p) to Operating Agreement, Schedule 6 to exempt thermal reliability violations

competition and the construction responsibility defaulted to the incumbent transmission owner in the zone in which the facility will be located.⁸⁸ PJM did not treat such projects as subject to the Order No. 1000 requirements, because they fall outside the scope of Order No. 1000's findings and regional planning reforms. Notably, PJM did not use the term "Designated Entity" in sections 1.5.8(n) and (p) in describing that such projects will be designated to the incumbent transmission owners. Nor did PJM add in those provisions that the incumbent transmission owner designated the project would be notified pursuant to Operating Agreement, Schedule 6, section 1.5.8(i) or accept such designations in accordance with Operating Agreement, Schedule 6, section 1.5.8(j).⁸⁹ Additionally, PJM did not issue a Designated Entity Agreement to incumbent transmission owners for projects selected for inclusion in the RTEP through a competitive proposal window process that are not regionally cost allocated.⁹⁰

identified on substation equipment filed over three years after the effective date of PJM's Order No. 1000 competitive window process).

⁸⁸ See Operating Agreement, Schedule 6, sections 1.5.8(g) & (h). In addition, when PJM designates an incumbent transmission owner responsibility to construct an RTEP reliability project, such transmission owner must accept such responsibility. See Operating Agreement, Schedule 6, section 1.7; see also Consolidated Transmission Owners Agreement, Rate Schedule FERC No. 42, section 4.2.

⁸⁹ See PJM Operating Agreement, Schedule 6, section 1.5.8(m)(2).

⁹⁰ Cf. *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 33 n.61 ("Not all of the transmission projects that PJM must designate to the incumbent transmission owner under Schedule 6, section 1.5.8(l) of the Operating Agreement, i.e., Transmission Owner Designated Projects, are selected in a regional transmission plan for purposes of cost allocation. For example, under Schedule 6, section 1.5.8(l), PJM must designate transmission solutions located solely within a transmission owner's zone to the incumbent transmission owner which are not selected in the RTEP for purposes of cost allocation. We make no findings here as to whether the transmission developer for such a project is similarly situated to transmission developers whose projects PJM has selected in its regional transmission plan for purposes of cost allocation."); see also *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,121, at P 12 n.23 (explaining that its determination in the July 2018 Order that incumbent transmission owners designated to develop Transmission Owner Designated Projects are similarly situated to the nonincumbent developers for other proposed regional transmission projects "applied only to those Transmission Owner Designated Projects that were selected in the [RTEP] as the more efficient or cost effective transmission solution for purposes of cost allocation.").

The Commission has rightly recognized that that such course of performance “is admissible to ascertain the intent of the parties when the intent has been imperfectly expressed in ambiguous contract language,”⁹¹ and courts have found “that course-of-performance evidence ‘of course is probative’ in the context of a FERC contract interpretation dispute.”⁹² The fact that, upon section 1.5.8 becoming effective in 2014, PJM interpreted section 1.5.8 as requiring Designated Entity Agreements only for those projects within the scope of Order No. 1000’s reforms (i.e., both (i) selected through PJM’s Order No. 1000-directed competitive window process and (ii) included in the RTEP for purposes of cost allocation) is probative of PJM’s intent behind section 1.5.8.

IV. PJM PROPOSES A JUST AND REASONABLE REPLACEMENT RATE TO CLARIFY THE USE OF DESIGNATED ENTITY IN THE OPERATING AGREEMENT

To resolve the unjust and unreasonable provisions described above, PJM proposes a replacement rate that clarifies: (i) the definition of Designated Entity so as to limit its application only to projects “sponsored by” an incumbent transmission owner or nonincumbent developer through the competitive proposal windows set forth in Schedule 6, section 1.5.8(c); and (ii) the use of the term Designated Entity in Schedule 6, sections 1.5.8(g), (h), (l), and (m)(1) so as to replace application of the term for RTEP projects that are not sponsored through a competitive proposal window process but, instead

⁹¹ *Sw. Power Pool, Inc.*, 160 FERC ¶ 61,115, at P 45 (2017); *see also Sw. Power Pool, Inc. v. FERC*, 736 F.3d 994, 999 (D.C. Cir. 2013); *Mid-Continent Area Power Pool*, 92 FERC ¶ 61,229, at 61,755 (2000) (“Extrinsic evidence (which may include the parties’ course of performance) is admissible to ascertain the intent of the parties when that intent has been imperfectly expressed in ambiguous contract language, but is not admissible either to contradict or to alter express terms.” (emphasis added)).

⁹² *Entergy Servs. Inc. v. FERC*, 568 F.3d 978, 984 (D.C. Cir. 2009) (quoting *S.D. Pub. Utils. Comm’n v. FERC*, 934 F.2d 346, 351 (D.C. Cir. 1991)).

are selected by PJM and designated to the incumbent transmission owner and are not regionally allocated.

As demonstrated below, PJM's proposed replacement rate brings the Operating Agreement language in section 1.5.8 and the definition of Designated Entity into alignment with PJM's intent, course of performance, and Order No. 1000 requirements. Further, PJM's replacement proposal eliminates the ambiguities supporting the different interpretations specific to the use of the term Designated Entity. Thus, accepting this replacement language would also help to eliminate any further confusion or disagreements with PJM's intended use of the Designated Entity Agreement, and allow PJM to implement the Operating Agreement effectively and with confidence.

An alternative means to remove the ambiguities would be to require use of Designated Entity Agreements for all projects planned in accordance with section 1.5.8. But, as detailed above, such an approach would be unreasonable, completely inconsistent with the scope of Order No. 1000's reforms, and therefore beyond the scope of what the current Operating Agreement language could possibly mean.

PJM includes in Attachment A to this filing *pro forma* Operating Agreement sections implementing the replacement rate. The revisions to the Operating Agreement, Schedule 6, section 1.5.8 and the definition of Designated Entity are shown in redline. PJM's revisions are narrowly targeted to only remove the ambiguities and clarify the language; PJM proposes no substantive changes.

A. *PJM Proposes to Clarify the Definition of “Designated Entity” to Apply Only to Projects Selected Through PJM’s Competitive Window Process*

As discussed, the term “Designated Entity” was added to the Operating Agreement as part of PJM’s Order No. 1000 compliance filing⁹³ to refer to an entity (either an incumbent transmission owner⁹⁴ or nonincumbent developer) designated by PJM to construct, own, operate, maintain, and finance projects selected through PJM’s competitive proposal window process.⁹⁵ However, the Designated Entity definition is inconsistent with the Order No. 1000 directive with which the definition was intended to comply, because it imprecisely refers broadly to Immediate-need Reliability Projects, without differentiating between those Immediate-need Reliability Projects that go through the competitive proposal window process pursuant to section 1.5.8(m)(2) and the Immediate-need Reliability Projects that are explicitly exempt from the competitive process pursuant to section 1.5.8(m)(1). The distinction is important. The term Designated Entity was not intended to apply to those unsponsored Immediate-need Reliability Projects in section 1.5.8(m)(1) exempted from the competitive proposal process that are identified and selected by PJM and designated to the incumbent transmission owner (in the zone in which the project will be located).⁹⁶

⁹³ First Order No. 1000 Compliance Filing at 49, n.144.

⁹⁴ See 2nd Order No. 1000 Compliance Filing at 38 (modifying the definition of Designated Entity to clarify that such qualification applies to both existing incumbent transmission owners and nonincumbent developers).

⁹⁵ The Operating Agreement defines Designated Entity as the party “with the responsibility to construct, own, operate, maintain, and finance Immediate-need Reliability Projects, Short-term Projects, Long-lead Projects, or Economic-based Enhancements or Expansions pursuant to Operating Agreement, Schedule 6, section 1.5.8.” Operating Agreement, Definitions C – D.

⁹⁶ Incumbent transmission owners when designated a reliability RTEP project must accept responsibility for the project. See Operating Agreement Schedule 6, section 1.7; Consolidated Transmission Owners Agreement, Rate Schedule FERC No. 42, section 4.2.

Accordingly, the reference to Immediate-need Reliability Projects in the definition of Designated Entity should be narrowed to reflect PJM's original intent. To clarify that the meaning of the term Designated Entity applies only to those entities submitting a project proposal through a competitive proposal window and seeking to be designated to construct, own and/or finance the project if its project is selected for inclusion in the RTEP for cost allocation purposes, PJM proposes to amend the definition of Designated Entity to clarify that the reference to Immediate-need Reliability Projects is limited to those "described in Operating Agreement, Schedule 6, section 1.5.8(m)(2)."⁹⁷ Such revision is just and reasonable as it aligns the definition with Order No. 1000's compliance directive and removes ambiguity over the scope of the term.

B. PJM Proposes to Remove Improper References to the Term Designated Entity, Which References Were Used as Shorthand for the Entity Responsible for Constructing RTEP Projects that Are Not Selected Through the Competitive Proposal Window Process

PJM proposes to revise Operating Agreement, Schedule 6, sections 1.5.8 (g), (h), (i), (l), and (m)(1) to bring them into alignment with PJM's intent and Order No. 1000 compliance requirements. As explained above, these sections improperly used "Designated Entity" as shorthand for the entity with responsibility for a project that was not selected through the competitive window process, allowing for the errant interpretation that PJM should issue Designated Entity Agreements for such projects. This is despite the fact that the term Designated Entity and the use of the Designated Entity Agreement were never intended to be used for projects selected by PJM outside the competitive proposal window process, nor was such use directed or required by Order No. 1000.

⁹⁷ Attachment A, *pro forma* Operating Agreement, Definitions C – D (definition of Designated Entity).

First, Schedule 6, section 1.5.8(m)(1) covers Immediate-need Reliability Projects exempted from the competitive proposal window process, which means that those projects are not sponsored by a pre-qualified entity through a competitive proposal window process. Rather, such projects are identified by PJM and must be designated to the incumbent transmission owner in the zone in which the facility will be located; hence a Designated Entity Agreement is inapplicable. Accordingly, PJM proposes to replace all references to the term “Designated Entity” in section 1.5.8(m)(1) with language clarifying that the incumbent transmission owner must be designated responsibility for an Immediate-need Reliability Project exempted from a proposal window.⁹⁸

PJM proposes to remove the references to “Designated Entity,” in Schedule 6, section 1.5.8(l). This section concerns projects for which an incumbent transmission owner is assigned responsibility by default or as a backstop. PJM proposes to rename the section from “Transmission Owners Required to be the Designated Entity” to “Transmission Owner Designated Project,” and replace internal references to “Designated Entity” with the incumbent transmission owner shall be “designated to construct, own and/or finance” the project.⁹⁹ These revisions are tailored only to clarify the provisions and eliminate the potential for misreading of this section to require a Designated Entity Agreement for all projects for which an incumbent transmission owners is designated to construct, own and/or finance a project by default or as a backstop.

⁹⁸ Attachment A, *pro forma* Operating Agreement, Schedule 6, section 1.5.8(m)(1).

⁹⁹ Attachment A, *pro forma* Operating Agreement, Schedule 6, section 1.5.8(l).

Similarly, Operating Agreement, Schedule 6, section 1.7(a) provides that, for projects the incumbent transmission owners were “obligated to build,”¹⁰⁰ a transmission owner could be treated as either an incumbent transmission owner or Designated Entity.¹⁰¹ Accordingly, the blanket use of Designated Entity for all the incumbent transmission owner projects listed in section 1.5.8(l) creates confusion as to which set of rules apply. The Commission has recognized this ambiguity, but declined to make any “findings [] as to whether the transmission developer for such a project is similarly situated to transmission developers whose projects PJM has selected in its regional transmission plan for purposes of cost allocation,” and would therefore be required to execute a Designated Entity Agreement.¹⁰²

In addition, sections 1.5.8(g) and (h) address certain unsponsored projects that are selected outside a competitive proposal window. To bring these provisions into alignment with PJM’s intent and remove ambiguity as to whether Order No. 1000’s reforms and the Designated Entity Agreement would apply, PJM proposes to replace the inaccurate language stating the incumbent transmission owner will be the “Designated Entity,” with

¹⁰⁰ See Operating Agreement, Schedule 6, section 1.5.8(l) (describing the projects that transmission owners are obligated to build).

¹⁰¹ See Operating Agreement, Schedule 6, section 1.7(a), which provides in pertinent part:

(a) Subject to the requirements of applicable law, government regulations and approvals, including, without limitation, requirements to obtain any necessary state or local siting, construction and operating permits, to the availability of required financing, to the ability to acquire necessary right-of-way, and to the right to recover, pursuant to appropriate financial arrangements and tariffs or contracts, all reasonably incurred costs, plus a reasonable return on investment, *Transmission Owners or Designated Entities designated as the appropriate entities to construct, own and/or finance enhancements or expansions specified in the Regional Transmission Expansion Plan shall construct, own and/or finance such facilities or enter into appropriate contracts to fulfill such obligations.*

(emphasis added).

¹⁰² *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 33 n.61.

language stating that the incumbent transmission owner will be “designated to construct, own and/or finance the project.”¹⁰³ Simply replacing the term Designated Entity with the tasks for which the incumbent transmission is already obligated to assume pursuant to section 4.2 of the Consolidated Transmission Owners Agreement is just and reasonable.

Finally, in the interest of eliminating any future confusion or disputes, PJM proposes to add clarifying language to section 1.5.8(i) explicitly stating that this provision applies only to those projects included in the RTEP “for regional cost allocation purposes.” While PJM believes this additional language is unnecessary as Order No. 1000 was clear that only projects included in a regional transmission plan for purposes of cost allocation were required to be subject to the Order No. 1000 compliance requirements, PJM proposes this additional language in the interest of avoiding any future disagreements.

C. PJM’s Replacement Rate Is Just and Reasonable as It Properly Clarifies the Operating Agreement to Be Consistent with Order No. 1000’s Scope and Compliance Directives and with PJM’s Authority to Make Changes to the Operating Agreement

PJM’s proposed replacement language is just and reasonable. It will resolve ambiguities and eliminate any conflicting interpretations of when PJM must issue Designated Entity Agreements. It will align the Operating Agreement language with the scope of Order No. 1000’s reforms, and properly reflect PJM’s authority to amend the Operating Agreement. In other words, PJM’s proposed replacement rate ensures that PJM will use Designated Entity Agreements in the manner PJM originally intended to use the Designated Entity Agreement, and how PJM consistently implemented its use since implementing its Order No. 1000 process. Acceptance of the replacement language under

¹⁰³ Attachment A, *pro forma* Operating Agreement, Schedule 6, sections 1.5.8(g) & (h).

FPA section 206 ensures that originally intended usage of the Designated Entity Agreement as required by Order No. 1000 is honored.

V. REQUEST FOR AN AUGUST 26, 2022 REFUND EFFECTIVE DATE

PJM respectfully requests that the Commission set a refund effective date of August 26, 2022, the date of this filing, to provide for the earliest possible refund effective date for the just and reasonable replacement rate—i.e., a clarification of the use of Designated Entity and thus a clarification of which projects approved under Operating Agreement, Schedule 6, section 1.5.8 require Designated Entity Agreements.

The PJM Board continues to approve new projects to be included in the RTEP that may (or may not) require execution of Designated Entity Agreements. Accordingly, PJM requests Commission action as soon as practicable to remove uncertainty and compliance concerns regarding those RTEP projects for which a Designated Entity Agreement may be required.

VI. COMMUNICATIONS

The following individuals are designated for inclusion on the official service list in this proceeding and for receipt of any communications regarding this filing:

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VII. COMPLIANCE WITH RULE 206

In compliance with Rule 206 of the Commission's Rules of Practice and Procedure,¹⁰⁴ PJM provides the following additional information:

A. Identification and Explanation of the Action/Inaction Violating Applicable Statutory and Regulatory Requirements (Rules 206(b)(1) and (b)(2))

This issue is addressed in Part II above.

B. Financial Impacts (Rules 206(b)(3) and (b)(4))

As discussed above, use of Designated Entity Agreements increase project costs, which increases costs borne by ratepayers.

C. Operational or Non-Financial Impacts (Rule 206(b)(5))

There are no operational impacts associated with the Operating Agreement provisions at issue in this filing.

D. Related Proceedings (Rule 206(b)(6))

Most of the issues presented in this filing are not pending in any existing Commission proceeding or a proceeding in any other forum. However, the issue of

¹⁰⁴ 18 C.F.R. § 385.206.

whether, among other things, a Designated Entity Agreement is required for all projects planned in accordance with Operating Agreement, Schedule 6, section 1.5.8(m)(1) is before the Commission in Docket No. EL22-80-000.

E. Relief Requested (Rule 206(b)(7))

PJM's requested relief is discussed in Part III above.

F. Supporting Documents (Rule 206(b)(8))

There are no supporting documents applicable to this filing.

G. Informal Dispute Resolution Procedures Used and Alternative Dispute Resolution (Rule 206(b)(9))

This requirement is not applicable to this filing.

H. Notice (Rule 206(b)(10))

PJM has appended a form of notice of this filing for publication in the Federal Register in accordance with the specifications in section 385.203(d) of the Commission's rules.

I. Request for Fast Track Processing (Rule 206(b)(11))

PJM does not request fast track processing for this filing.

J. Service (Rule 206(c))

PJM has served a copy of this filing on all PJM members and on all state utility regulatory commissions in the PJM Region by posting this filing electronically. In accordance with the Commission's regulations,¹⁰⁵ PJM will post a copy of this filing to the FERC filings section of its internet site, located at the following link: <https://www.pjm.com/library/filing-order.aspx> with a specific link to the newly filed

¹⁰⁵ See 18 C.F.R. §§ 35.2(e), 385.2010(f)(3).

document, and will send an email on the same date as this filing to all PJM members and all state utility regulatory commissions in the PJM Region alerting them that this filing has been made by PJM and is available by following such link. PJM also serves the parties listed on the Commission's official service list for this docket. If the document is not immediately available by using the referenced link, the document will be available through the referenced link within 24 hours of the filing. Also, a copy of this filing will be available on the FERC's eLibrary website located at the following link: <https://www.ferc.gov/ferc-online/elibrary> in accordance with the Commission's regulations and Order No. 714.¹⁰⁶

¹⁰⁶ *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008), *final rule*, Order No. 714-A, 147 FERC ¶ 61,115 (2014).

VIII. CONCLUSION

Accordingly, PJM respectfully requests that the Commission: (i) find PJM's Operating Agreement, Schedule 6, section 1.5.8 and the Operating Agreement definition of Designated Entity to be unjust and unreasonable, as discussed in this filing; (ii) establish a refund effective date of August 26, 2022; and (iii) accept as the just and reasonable replacement rate the enclosed revisions to Operating Agreement, Schedule 6, section 1.5.8 and the definition of Designated Entity..

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On behalf of
PJM Interconnection, L.L.C.

August 26, 2022

Attachment A

**Replacement Rate *Pro Forma* Revisions
to the Operating Agreement**

Definitions C - D

Capacity Resource:

“Capacity Resource” shall have the meaning provided in the Reliability Assurance Agreement.

Capacity Storage Resource:

“Capacity Storage Resource” shall mean any Energy Storage Resource that participates in the Reliability Pricing Model or is otherwise treated as capacity in PJM’s markets such as through a Fixed Resource Requirement Capacity Plan.

Catastrophic Force Majeure:

“Catastrophic Force Majeure” shall not include any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, or Curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, unless as a consequence of any such action, event, or combination of events, either (i) all, or substantially all, of the Transmission System is unavailable, or (ii) all, or substantially all, of the interstate natural gas pipeline network, interstate rail, interstate highway or federal waterway transportation network serving the PJM Region is unavailable. The Office of the Interconnection shall determine whether an event of Catastrophic Force Majeure has occurred for purposes of this Agreement, the PJM Tariff, and the Reliability Assurance Agreement, based on an examination of available evidence. The Office of the Interconnection’s determination is subject to review by the Commission.

Charge Economic Maximum Megawatts:

“Charge Economic Maximum Megawatts” shall mean the greatest magnitude of megawatt power consumption available for charging in economic dispatch by an Energy Storage Resource Model Participant in Continuous Mode or in Charge Mode. Charge Economic Maximum Megawatts shall be the Economic Minimum for an Energy Storage Resource in Charge Mode or in Continuous Mode.

Charge Economic Minimum Megawatts:

“Charge Economic Minimum Megawatts” shall mean the smallest magnitude of megawatt power consumption available for charging in economic dispatch by an Energy Storage Resource Model Participant in Charge Mode. Charge Economic Minimum Megawatts shall be the Economic Maximum for an Energy Storage Resource in Charge Mode.

Charge Mode:

“Charge Mode” shall mean the mode of operation of an Energy Storage Resource Model Participant that only includes negative megawatt quantities (i.e., the Energy Storage Resource Model Participant is only withdrawing megawatts from the grid).

Charge Ramp Rate:

“Charge Ramp Rate” shall mean the Ramping Capability of an Energy Storage Resource Model Participant in Charge Mode.

Closed-Loop Hybrid Resource:

“Closed-Loop Hybrid Resource” shall mean a Hybrid Resource that is physically or contractually incapable of charging from the grid.

Cold/Warm/Hot Notification Time:

“Cold/Warm/Hot Notification Time” shall mean the time interval between PJM notification and the beginning of the start sequence for a generating unit that is currently in its cold/warm/hot temperature state. The start sequence may include steps such as any valve operation, starting feed water pumps, startup of auxiliary equipment, etc.

Cold/Warm/Hot Start-up Time:

For all generating units that are not combined cycle units, “Cold/Warm/Hot Start-up Time” shall mean the time interval, measured in hours, from the beginning of the start sequence to the point after generator breaker closure, which is typically indicated by telemetered or aggregated State Estimator megawatts greater than zero for a generating unit in its cold/warm/hot temperature state. For combined cycle units, “Cold/Warm/Hot Start-up Time” shall mean the time interval from the beginning of the start sequence to the point after first combustion turbine generator breaker closure in its cold/warm/hot temperature state, which is typically indicated by telemetered or aggregated State Estimator megawatts greater than zero. For all generating units, the start sequence may include steps such as any valve operation, starting feed water pumps, startup of auxiliary equipment, etc. Other more detailed actions that could signal the beginning of the start sequence could include, but are not limited to, the operation of pumps, condensers, fans, water chemistry evaluations, checklists, valves, fuel systems, combustion turbines, starting engines or systems, maintaining stable fuel/air ratios, and other auxiliary equipment necessary for startup.

Cold Weather Alert:

“Cold Weather Alert” shall mean the notice that PJM provides to PJM Members, Transmission Owners, resource owners and operators, customers, and regulators to prepare personnel and facilities for expected extreme cold weather conditions.

Co-Located Resource:

“Co-Located Resource” shall mean a component of a Mixed Technology Facility that operates in the capacity, energy, and/or ancillary services market(s) as a separate resource from the other components of such facility.

Committed Offer:

The “Committed Offer shall mean 1) for pool-scheduled resources, an offer on which a resource was scheduled by the Office of the Interconnection for a particular clock hour for an Operating Day, and 2) for self-scheduled resources, either the offer on which the Market Seller has elected to schedule the resource or the applicable offer for the resource determined pursuant to Operating Agreement, Schedule 1, section 6.4, and the parallel provisions of Tariff, Attachment K-Appendix, section 6.4, or Operating Agreement, Schedule 1, section 6.6, and the parallel provisions of Tariff, Attachment K-Appendix, section 6.6, for a particular clock hour for an Operating Day.

Compliance Monitoring and Enforcement Program:

“Compliance Monitoring and Enforcement Program” shall mean the program to be used by the NERC and the Regional Entities to monitor, assess and enforce compliance with the NERC Reliability Standards. As part of a Compliance Monitoring and Enforcement Program, NERC and the Regional Entities may, among other things, conduct investigations, determine fault and assess monetary penalties.

Composite Energy Offer:

“Composite Energy Offer” for generation resources shall mean the sum (in \$/MWh) of the Incremental Energy Offer and amortized Start-Up Costs and amortized No-load Costs, and for Economic Load Response Participant resources the sum (in \$/MWh) of the Incremental Energy Offer and amortized shutdown costs, as determined in accordance with Operating Agreement, Schedule 1, section 2.4 and Operating Agreement, Schedule 1, section 2.4A and the PJM Manuals.

Congestion Price:

“Congestion Price” shall mean the congestion component of the Locational Marginal Price, which is the effect on transmission congestion costs (whether positive or negative) associated with increasing the output of a generation resource or decreasing the consumption by a Demand Resource, based on the effect of increased generation from or consumption by the resource on transmission line loadings, calculated as specified in Operating Agreement, Schedule 1, section 2, and the parallel provisions of Tariff, Attachment K-Appendix, section 2.

Consolidated Transmission Owners Agreement, PJM Transmission Owners Agreement or Transmission Owners Agreement:

“Consolidated Transmission Owners Agreement,” “PJM Transmission Owners Agreement” or “Transmission Owners Agreement” shall mean that certain Consolidated Transmission Owners Agreement, dated as of December 15, 2005, by and among the Transmission Owners and by and between the Transmission Owners and PJM Interconnection, L.L.C. on file with the Commission, as amended from time to time.

Continuous Mode:

“Continuous Mode” shall mean the mode of operation of an Energy Storage Resource Model Participant that includes both negative and positive megawatt quantities (i.e., the Energy Storage Resource Model Participant is capable of continually and immediately transitioning from withdrawing megawatt quantities from the grid to injecting megawatt quantities onto the grid or injecting megawatts to withdrawing megawatts). Energy Storage Resource Model Participants operating in Continuous Mode are considered to have an unlimited ramp rate. Continuous Mode requires Discharge Economic Maximum Megawatts to be zero or correspond to an injection, and Charge Economic Maximum Megawatts to be zero or correspond to a withdrawal.

Control Area:

“Control Area” shall mean an electric power system or combination of electric power systems bounded by interconnection metering and telemetry to which a common automatic generation control scheme is applied in order to:

- (a) match the power output of the generators within the electric power system(s) and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);
- (b) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;
- (c) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice and the criteria of NERC and each Applicable Regional Entity;
- (d) maintain power flows on transmission facilities within appropriate limits to preserve reliability; and
- (e) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

Control Zone:

“Control Zone” shall mean one Zone or multiple contiguous Zones, as designated in the PJM Manuals.

Coordinated External Transaction:

“Coordinated External Transaction” shall mean a transaction to simultaneously purchase and sell energy on either side of a CTS Enabled Interface in accordance with the procedures of Operating Agreement, Schedule 1, section 1.13 and the parallel provisions of Tariff, Attachment K-Appendix, section 1.13.

Coordinated Transaction Scheduling:

“Coordinated Transaction Scheduling” or “CTS” shall mean the scheduling of Coordinated External Transactions at a CTS Enabled Interface in accordance with the procedures of Operating Agreement, Schedule 1, section 1.13, and the parallel provisions of Tariff, Attachment K-Appendix, section 1.13.

Counterparty:

“Counterparty” shall mean PJMSettlement as the contracting party, in its name and own right and not as an agent, to an agreement or transaction with a Market Participant or other entities, including the agreements and transactions with customers regarding transmission service and other transactions under the PJM Tariff and this Operating Agreement. PJMSettlement shall not be a counterparty to (i) any bilateral transactions between Members, or (ii) any Member’s self-supply of energy to serve its load, or (iii) any Member’s self-schedule of energy reported to the extent that energy serves that Member’s own load.

Credit Breach:

“Credit Breach” shall mean (a) the failure of a Participant to perform, observe, meet or comply with any requirements of Tariff, Attachment Q or other provisions of the Agreements, other than a Financial Default, or (b) a determination by PJM and notice to the Participant that a Participant represents an unreasonable credit risk to the PJM Markets; that, in either event, has not been cured or remedied after any required notice has been given and any cure period has elapsed.

CTS Enabled Interface:

“CTS Enabled Interface” shall mean an interface between the PJM Control Area and an adjacent Control Area at which the Office of the Interconnection has authorized the use of Coordinated Transaction Scheduling (“CTS”). The CTS Enabled Interfaces between the PJM Control Area and the New York Independent System Operator, Inc. Control Area shall be designated in Joint Operating Agreement Among and Between New York Independent System Operator Inc. and PJM Interconnection, L.L.C. (PJM Rate Schedule FERC No. 45) Schedule A. The CTS Enabled Interfaces between the PJM Control Area and the Midcontinent Independent System Operator, Inc. shall be designated consistent with Joint Operating Agreement between Midcontinent Independent System Operator, Inc. and PJM Interconnection, L.L.C, Attachment 3, section 2.

CTS Interface Bid:

“CTS Interface Bid” shall mean a unified real-time bid to simultaneously purchase and sell energy on either side of a CTS Enabled Interface in accordance with the procedures of Operating Agreement, Schedule 1, section 1.13, and the parallel provisions of Tariff, Attachment K-Appendix, section 1.13.

Curtailed Service Provider:

“Curtailment Service Provider” or “CSP” shall mean a Member or a Special Member, which action on behalf of itself or one or more other Members or non-Members, participates in the PJM Interchange Energy Market, Ancillary Services markets, and/or Reliability Pricing Model by causing a reduction in demand.

Day-ahead Congestion Price:

“Day-ahead Congestion Price” shall mean the Congestion Price resulting from the Day-ahead Energy Market.

Day-ahead Energy Market:

“Day-ahead Energy Market” shall mean the schedule of commitments for the purchase or sale of energy and payment of Transmission Congestion Charges developed by the Office of the Interconnection as a result of the offers and specifications submitted in accordance with Operating Agreement, Schedule 1, section 1.10, and the parallel provisions of Tariff, Attachment K-Appendix, section 1.10.

Day-ahead Energy Market Injection Congestion Credits:

“Day-ahead Energy Market Injection Congestion Credits” shall mean those congestion credits paid to Market Participants for supply transactions in the Day-ahead Energy Market including generation schedules, Increment Offers, Up-to Congestion Transactions, import transactions, and Day-ahead Pseudo-Tie Transactions.

Day-ahead Energy Market Transmission Congestion Charges:

“Day-ahead Energy Market Transmission Congestion Charges” shall be equal to the sum of Day-ahead Energy Market Withdrawal Congestion Charges minus [the sum of Day-ahead Energy Market Injection Congestion Credits plus any congestion charges calculated pursuant to the Joint Operating Agreement between the Midcontinent Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C. (PJM Rate Schedule FERC No. 38), plus any congestion charges calculated pursuant to the Joint Operating Agreement Among and Between New York Independent System Operator Inc. and PJM Interconnection, L.L.C. (PJM Rate Schedule FERC No. 45), plus any congestion charges calculated pursuant to agreements between the Office of the Interconnection and other entities, as applicable)].

Day-ahead Energy Market Withdrawal Congestion Charges:

“Day-ahead Energy Market Withdrawal Congestion Charges” shall mean those congestion charges collected from Market Participants for withdrawal transactions in the Day-ahead Energy Market from transactions including Demand Bids, Decrement Bids, Up-to Congestion Transactions, Export Transactions, and Day-ahead Pseudo-Tie Transactions.

Day-ahead Loss Price:

“Day-ahead Loss Price” shall mean the Loss Price resulting from the Day-ahead Energy Market.

Day-ahead Prices:

“Day-ahead Prices” shall mean the Locational Marginal Prices resulting from the Day-ahead Energy Market.

Day-Ahead Pseudo-Tie Transaction:

“Day-Ahead Pseudo-Tie Transaction” shall mean a transaction scheduled in the Day-ahead Energy Market to the PJM-MISO interface from a generator within the PJM balancing authority area that Pseudo-Ties into the MISO balancing authority area.

Day-ahead Scheduling Reserves:

“Day-ahead Scheduling Reserves” shall mean thirty-minute reserves as defined by the ReliabilityFirst Corporation and SERC.

Day-ahead Scheduling Reserves Market:

“Day-ahead Scheduling Reserves Market” shall mean the schedule of commitments for the purchase or sale of Day-ahead Scheduling Reserves developed by the Office of the Interconnection as a result of the offers and specifications submitted in accordance with Operating Agreement, Schedule 1, section 1.10, and the parallel provisions of Tariff, Attachment K-Appendix, section 1.10.

Day-ahead Scheduling Reserves Requirement:

“Day-ahead Scheduling Reserves Requirement” shall mean the sum of Base Day-ahead Scheduling Reserves Requirement and Additional Day-ahead Scheduling Reserves Requirement.

Day-ahead Scheduling Reserves Resources:

“Day-ahead Scheduling Reserves Resources” shall mean synchronized and non-synchronized generation resources and Demand Resources electrically located within the PJM Region that are capable of providing Day-ahead Scheduling Reserves.

Day-ahead Settlement Interval:

“Day-ahead Settlement Interval” shall mean the interval used by settlements, which shall be every one clock hour.

Day-ahead System Energy Price:

“Day-ahead System Energy Price” shall mean the System Energy Price resulting from the Day-ahead Energy Market.

Decrement Bid:

“Decrement Bid” shall mean a type of Virtual Transaction that is a bid to purchase energy at a specified location in the Day-ahead Energy Market. A cleared Decrement Bid results in scheduled load at the specified location in the Day-ahead Energy Market.

Default Allocation Assessment:

“Default Allocation Assessment” shall mean the assessment determined pursuant to Operating Agreement, section 15.2.2.

Demand Bid:

“Demand Bid” shall mean a bid, submitted by a Load Serving Entity in the Day-ahead Energy Market, to purchase energy at its contracted load location, for a specified timeframe and megawatt quantity, that if cleared will result in energy being scheduled at the specified location in the Day-ahead Energy Market and in the physical transfer of energy during the relevant Operating Day.

Demand Bid Limit:

“Demand Bid Limit” shall mean the largest MW volume of Demand Bids that may be submitted by a Load Serving Entity for any hour of an Operating Day, as determined pursuant to Operating Agreement, Schedule 1, section 1.10.1B, and the parallel provisions of Tariff, Attachment K-Appendix, section 1.10.1B.

Demand Bid Screening:

“Demand Bid Screening” shall mean the process by which Demand Bids are reviewed against the applicable Demand Bid Limit, and rejected if they would exceed that limit, as determined pursuant to Operating Agreement, Schedule 1, section 1.10.1B, and the parallel provisions of Tariff, Attachment K-Appendix, section 1.10.1B.

Demand Resource:

“Demand Resource” shall have the meaning provided in the Reliability Assurance Agreement.

Designated Entity:

“Designated Entity” shall mean an entity, including an existing Transmission Owner or Nonincumbent Developer, designated by the Office of the Interconnection with the responsibility to construct, own, operate, maintain, and finance Immediate-need Reliability Projects [described in Operating Agreement, Schedule 6, section 1.5.8\(m\)\(2\)](#), Short-term Projects, Long-lead Projects, or Economic-based Enhancements or Expansions pursuant to Operating Agreement, Schedule 6, section 1.5.8(c).

Direct Charging Energy:

“Direct Charging Energy” shall mean the energy that an Energy Storage Resource purchases from the PJM Interchange Energy Market and (i) later resells to the PJM Interchange Energy Market; or (ii) is lost to conversion inefficiencies, provided that such inefficiencies are an unavoidable component of the conversion, storage, and discharge process that is used to resell energy back to the PJM Interchange Energy Market.

Direct Load Control:

“Direct Load Control” shall mean load reduction that is controlled directly by the Curtailment Service Provider’s market operations center or its agent, in response to PJM instructions.

Discharge Economic Maximum Megawatts:

“Discharge Economic Maximum Megawatts” shall mean the maximum megawatt power output available for discharge in economic dispatch by an Energy Storage Resource Model Participant in Continuous Mode or in Discharge Mode. Discharge Economic Maximum Megawatts shall be the Economic Maximum for an Energy Storage Resource in Discharge Mode or in Continuous Mode.

Discharge Economic Minimum Megawatts:

“Discharge Economic Minimum Megawatts” shall mean the minimum megawatt power output available for discharge in economic dispatch by an Energy Storage Resource Model Participant in Discharge Mode. Discharge Economic Minimum Megawatts shall be the Economic Minimum for an Energy Storage Resource in Discharge Mode.

Discharge Mode:

“Discharge Mode” shall mean the mode of operation of an Energy Storage Resource Model Participant that only includes positive megawatt quantities (i.e., the Energy Storage Resource Model Participant is only injecting megawatts onto the grid).

Discharge Ramp Rate:

“Discharge Ramp Rate” shall mean the Ramping Capability of an Energy Storage Resource Model Participant in Discharge Mode.

Dispatch Rate:

“Dispatch Rate” shall mean the control signal, expressed in dollars per megawatt-hour, calculated and transmitted continuously and dynamically to direct the output level of all generation resources dispatched by the Office of the Interconnection in accordance with the Offer Data.

Dispatched Charging Energy:

“Dispatched Charging Energy” shall mean Direct Charging Energy that an Energy Storage Resource Model Participant receives from the electric grid pursuant to PJM dispatch while providing one of the following services in the PJM markets: Energy Imbalance Service pursuant to Tariff, Schedule 4; Regulation; Tier 2 Synchronized Reserves; or Reactive Service. Energy Storage Resource Model Participants shall be considered to be providing Energy Imbalance Service when they are dispatchable by PJM in real-time.

Dynamic Schedule:

“Dynamic Schedule” shall have the same meaning set forth in the NERC Glossary of Terms Used in NERC Reliability Standards.

Dynamic Transfer:

“Dynamic Transfer” shall mean a Pseudo-Tie or Dynamic Schedule.

1.5 Procedure for Development of the Regional Transmission Expansion Plan.

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1.5.8 Development of Long-lead Projects, Short-term Projects, Immediate-need Reliability Projects, and Economic-based Enhancements or Expansions.

(a) Pre-Qualification Process.

(a)(1) On September 1 of each year, the Office of the Interconnection shall open a thirty-day pre-qualification window for entities, including existing Transmission Owners and Nonincumbent Developers, to submit to the Office of the Interconnection: (i) applications to pre-qualify as eligible to be a Designated Entity; or (ii) updated information as described in the Operating Agreement, Schedule 6, section 1.5.8(a)(3). Pre-qualification applications shall contain the following information: (i) name and address of the entity; (ii) the technical and engineering qualifications of the entity or its affiliate, partner, or parent company; (iii) the demonstrated experience of the entity or its affiliate, partner, or parent company to develop, construct, maintain, and operate transmission facilities, including a list or other evidence of transmission facilities the entity, its affiliate, partner, or parent company previously developed, constructed, maintained, or operated; (iv) the previous record of the entity or its affiliate, partner, or parent company regarding construction, maintenance, or operation of transmission facilities both inside and outside of the PJM Region; (v) the capability of the entity or its affiliate, partner, or parent company to adhere to standardized construction, maintenance and operating practices; (vi) the financial statements of the entity or its affiliate, partner, or parent company for the most recent fiscal quarter, as well as the most recent three fiscal years, or the period of existence of the entity, if shorter, or such other evidence demonstrating an entity's or its affiliate's, partner's, or parent company's current and expected financial capability acceptable to the Office of the Interconnection; (vii) a commitment by the entity to execute the Consolidated Transmission Owners Agreement, if the entity becomes a Designated Entity; (viii) evidence demonstrating the ability of the entity or its affiliate, partner, or parent company to address and timely remedy failure of facilities; (ix) a description of the experience of the entity or its affiliate, partner, or parent company in acquiring rights of way; and (x) such other supporting information that the Office of Interconnection requires to make the pre-qualification determinations consistent with this Operating Agreement, Schedule 6, section 1.5.8(a).

(a)(2) No later than October 31, the Office of the Interconnection shall notify the entities that submitted pre-qualification applications or updated information during the annual thirty-day pre-qualification window, whether they are, or will continue to be, pre-qualified as eligible to be a Designated Entity. In the event the Office of the Interconnection determines that an entity (i) is not, or no longer will continue to be, pre-qualified as eligible to be a Designated Entity, or (ii) provided insufficient information to determine pre-qualification, the Office of the Interconnection shall inform that the entity it is not pre-qualified and include in the notification the basis for its determination. The entity then may submit additional information, which the Office of the Interconnection shall consider in re-evaluating whether the entity is, or will continue to be, pre-qualified as eligible to be a Designated Entity. If the entity submits additional information by November 30, the Office of the Interconnection shall notify the entity

of the results of its re-evaluation no later than December 15. If the entity submits additional information after November 30, the Office of the Interconnection shall use reasonable efforts to re-evaluate the application, with the additional information, and notify the entity of its determination as soon as practicable. No later than December 31, the Office of the Interconnection shall post on the PJM website the list of entities that are pre-qualified as eligible to be Designated Entities. If an entity is notified by the Office of the Interconnection that it does not pre-qualify or will not continue to be pre-qualified as eligible to be a Designated Entity, such entity may request dispute resolution pursuant to the Operating Agreement, Schedule 5.

(a)(3) In order to continue to pre-qualify as eligible to be a Designated Entity, such entity must confirm its information with the Office of the Interconnection no later than three years following its last submission or sooner if necessary as required below. In the event the information on which the entity's pre-qualification is based changes with respect to the upcoming year, such entity must submit to the Office of the Interconnection all updated information during the annual thirty-day pre-qualification window and the timeframes for notification in the Operating Agreement, Schedule 6, section 1.5.8(a)(2) shall apply. In the event the information on which the entity's pre-qualification is based changes with respect to the current year, such entity must submit to the Office of the Interconnection all updated information at the time the information changes and the Office of the Interconnection shall use reasonable efforts to evaluate the updated information and notify the entity of its determination as soon as practicable.

(a)(4) As determined by the Office of the Interconnection, an entity may submit a pre-qualification application outside the annual thirty-day pre-qualification window for good cause shown. For a pre-qualification application received outside of the annual thirty-day pre-qualification window, the Office of the Interconnection shall use reasonable efforts to process the application and notify the entity as to whether it pre-qualifies as eligible to be a Designated Entity as soon as practicable.

(a)(5) To be designated as a Designated Entity for any project proposed pursuant to the Operating Agreement, Schedule 6, section 1.5.8, existing Transmission Owners and Nonincumbent Developers must be pre-qualified as eligible to be a Designated Entity pursuant to this Operating Agreement, Schedule 6, section 1.5.8(a). This Operating Agreement, Schedule 6, section 1.5.8(a) shall not apply to entities that desire to propose projects for inclusion in the recommended plan but do not intend to be a Designated Entity.

(b) **Posting of Transmission System Needs.** Following identification of existing and projected limitations on the Transmission System's physical, economic and/or operational capability or performance in the enhancement and expansion analysis process described in this Operating Agreement, Schedule 6 and the PJM Manuals, and after consideration of non-transmission solutions, and prior to evaluating potential enhancements and expansions to the Transmission System, the Office of the Interconnection shall publicly post on the PJM website all transmission need information, including violations, system conditions, and economic constraints, and Public Policy Requirements, including (i) federal Public Policy Requirements; (ii) state Public Policy Requirements identified or agreed-to by the states in the PJM Region, which could be addressed by potential Short-term Projects, Long-lead Projects or projects determined pursuant to the State Agreement Approach in the Operating Agreement, Schedule 6,

section 1.5.9, as applicable. Such posting shall support the role of the Subregional RTEP Committees in the development of the Local Plans and support the role of the Transmission Expansion Advisory Committee in the development of the Regional Transmission Expansion Plan. The Office of the Interconnection also shall post an explanation regarding why transmission needs associated with federal or state Public Policy Requirements were identified but were not selected for further evaluation.

(c) **Project Proposal Windows.** The Office of the Interconnection shall provide notice to stakeholders of a 60-day proposal window for Short-term Projects and a 120-day proposal window for Long-lead Projects and Economic-based Enhancements or Expansions. The specifics regarding whether or not the following types of violations or projects are subject to a proposal window are detailed in the Operating Agreement, Schedule 6, section 1.5.8(m) for Immediate-need Reliability Projects; Operating Agreement, Schedule 6, section 1.5.8(n) for reliability violations on transmission facilities below 200 kV; and Operating Agreement, Schedule 6, section 1.5.8(p) for violations on transmission substation equipment. The Office of Interconnection may shorten a proposal window should an identified need require a shorter proposal window to meet the needed in-service date of the proposed enhancements or expansions, or extend a proposal window as needed to accommodate updated information regarding system conditions. The Office of the Interconnection may shorten or lengthen a proposal window that is not yet opened based on one or more of the following criteria: (1) complexity of the violation or system condition; and (2) whether there is sufficient time remaining in the relevant planning cycle to accommodate a standard proposal window and timely address the violation or system condition. The Office of the Interconnection may lengthen a proposal window that already is opened based on or more of the following criteria: (i) changes in assumptions or conditions relating to the underlying need for the project, such as load growth or Reliability Pricing Model auction results; (ii) availability of new or changed information regarding the nature of the violations and the facilities involved; and (iii) time remaining in the relevant proposal window. In the event that the Office of the Interconnection determines to lengthen or shorten a proposal window, it will post on the PJM website the new proposal window period and an explanation as to the reasons for the change in the proposal window period. During these windows, the Office of the Interconnection will accept proposals from existing Transmission Owners and Nonincumbent Developers for potential enhancements or expansions to address the posted violations, system conditions, economic constraints, as well as Public Policy Requirements.

(c)(1) All proposals submitted in the proposal windows must contain: (i) the name and address of the proposing entity; (ii) a statement whether the entity intends to be the Designated Entity for the proposed project; (iii) the location of proposed project, including source and sink, if applicable; (iv) relevant engineering studies, and other relevant information as described in the PJM Manuals pertaining to the proposed project; (v) a proposed initial construction schedule including projected dates on which needed permits are required to be obtained in order to meet the required in-service date; (vi) cost estimates and analyses that provide sufficient detail for the Office of Interconnection to review and analyze the proposed cost of the project; and (vii) with the exception of project proposals submitted with cost estimates of \$5 million or less, a \$5,000 non-refundable deposit must be included with each project proposal submitted by a proposing entity that indicates an intention to be the Designated Entity.

(c)(1)(i) In addition, any proposing entity indicating its intention to be the Designated Entity will be responsible for and must pay all actual costs incurred by the Transmission Provider to evaluate the submitted project proposal. To the extent the Transmission Provider incurs costs to evaluate multiple submitted project proposals where such costs are not severable by individual project proposal, the Transmission Provider shall invoice equal shares of the non-severable costs among the project proposals that cause such non-severable costs to be incurred. Notwithstanding this method of invoicing non-severable costs, non-severable costs will be jointly and severally owed by the proposing entities that cause such costs to be incurred.

(c)(1)(ii) All non-refundable deposits will be credited towards the actual costs incurred by the Transmission Provider as a result of the evaluation of a submitted project proposal.

(c)(1)(iii) Following the close of a proposal window but before the Transmission Provider incurs any third-party consultant work costs to evaluate a submitted project proposal, the Transmission Provider will issue to the proposing entity an initial invoice seeking payment of estimated costs to evaluate each submitted project proposal. The estimated costs will be determined by considering the: potential cost of consultant work, historical estimates for project proposals of similar scope, complexity and nature of the need, and/or technology and nature of the project proposal. The Transmission Provider may issue additional invoices to the proposing entity prior to the completion of the evaluation activities associated with a project proposal if the Transmission Provider receives updated actual cost information and/or upon consideration of the factors specified in this section.

(c)(1)(iv) At the completion of the evaluation activities associated with a project proposal, the Transmission Provider will reconcile the actual costs with monies paid and, to the extent necessary, issue either a final invoice or refund.

(c)(1)(v) The proposing party must pay any invoiced costs within fifteen (15) calendar days of the Transmission Provider sending the invoice to the proposing entity or its agent. For good cause shown, this fifteen (15) calendar day time period may be extended by the Transmission Provider. If the proposing entity fails to pay any invoice within the time period specified and/or extended by the Transmission Provider in accordance with this section, the proposing entity's pre-qualification status may be suspended and the proposing entity will be ineligible to be a Designated Entity for any projects that do not yet have an executed Designated Entity Agreement. Such a suspension and/or ineligibility will remain in place until the proposing entity pays in full all outstanding monies owed to the Transmission Provider as a result of the evaluation of the proposing entity's project proposal(s).

(c)(2) Proposals from all entities (both existing Transmission Owners and Nonincumbent Developers) that indicate the entity intends to be a Designated Entity, also must contain information to the extent not previously provided pursuant to the Operating Agreement, Schedule 6, section 1.5.8(a) demonstrating: (i) technical and engineering qualifications of the entity, its affiliate, partner, or parent company relevant to construction, operation, and

maintenance of the proposed project; (ii) experience of the entity, its affiliate, partner, or parent company in developing, constructing, maintaining, and operating the type of transmission facilities contained in the project proposal; (iii) the emergency response capability of the entity that will be operating and maintaining the proposed project; (iv) evidence of transmission facilities the entity, its affiliate, partner, or parent company previously constructed, maintained, or operated; (v) the ability of the entity or its affiliate, partner, or parent company to obtain adequate financing relative to the proposed project, which may include a letter of intent from a financial institution approved by the Office of the Interconnection or such other evidence of the financial resources available to finance the construction, operation, and maintenance of the proposed project; (vi) the managerial ability of the entity, its affiliate, partner, or parent company to contain costs and adhere to construction schedules for the proposed project, including a description of verifiable past achievement of these goals; (vii) a demonstration of other advantages the entity may have to construct, operate, and maintain the proposed project, including any binding cost commitment proposal the entity may wish to submit; and (viii) any other information that may assist the Office of the Interconnection in evaluating the proposed project. To the extent that an entity submits a cost containment proposal the entity shall submit sufficient information for the Office of Interconnection to determine the binding nature of the proposal with respect to critical elements of project development. PJM may not alter the requirements for proposal submission to require the submission of a binding cost containment proposal, in whole or in part, or otherwise mandate or unilaterally alter the terms of any such proposal or the requirements for proposal submission, the submission of any such proposals at all times remaining voluntary.

(c)(3) The Office of the Interconnection may request additional reports or information from an existing Transmission Owner or Nonincumbent Developers that it determines are reasonably necessary to evaluate its specific project proposal pursuant to the criteria set forth in the Operating Agreement, Schedule 6, sections 1.5.8(e) and 1.5.8(f). If the Office of the Interconnection determines any of the information provided in a proposal is deficient or it requires additional reports or information to analyze the submitted proposal, the Office of the Interconnection shall notify the proposing entity of such deficiency or request. Within 10 Business Days of receipt of the notification of deficiency and/or request for additional reports or information, or other reasonable time period as determined by the Office of the Interconnection, the proposing entity shall provide the necessary information.

(c)(4) The request for additional reports or information by the Office of the Interconnection pursuant to the Operating Agreement, Schedule 6, section 1.5.8(c)(3) may be used only to clarify a proposed project as submitted. In response to the Office of the Information's request for additional reports or information, the proposing entity (whether an existing Transmission Owner or Nonincumbent Developer) may not submit a new project proposal or modifications to a proposed project once the proposal window is closed. In the event that the proposing entity fails to timely cure the deficiency or provide the requested reports or information regarding a proposed project, the proposed project will not be considered for inclusion in the recommended plan.

(c)(5) Within 30 days of the closing of the proposal window, the Office of the Interconnection may notify the proposing entity that additional per project fees are required if the

Office of the Interconnection determines the proposing entity's submittal includes multiple project proposals. Within 10 Business Days of receipt of the notification of insufficient funds by the Office of the Interconnection, the proposing entity shall submit such funds or notify the Office of the Interconnection which of the project proposals the Office of the Interconnection should evaluate based on the fee(s) submitted.

(d) **Posting and Review of Projects.** Following the close of a proposal window, the Office of the Interconnection shall post on the PJM website all proposals submitted pursuant to the Operating Agreement, Schedule 6, section 1.5.8(c). All proposals addressing state Public Policy Requirements shall be provided to the applicable states in the PJM Region for review and consideration as a Supplemental Project or a state public policy project consistent with the Operating Agreement, Schedule 6, section 1.5.9. The Office of the Interconnection shall review all proposals submitted during a proposal window and determine and present to the Transmission Expansion Advisory Committee the proposals that merit further consideration for inclusion in the recommended plan. In making this determination, the Office of the Interconnection shall consider the criteria set forth in the Operating Agreement, Schedule 6, sections 1.5.8(e) and 1.5.8(f). The Office of the Interconnection shall post on the PJM website and present to the Transmission Expansion Advisory Committee for review and comment descriptions of the proposed enhancements and expansions, including any proposed Supplemental Projects or state public policy projects identified by a state(s). Based on review and comment by the Transmission Expansion Advisory Committee, the Office of the Interconnection may, if necessary conduct further study and evaluation. The Office of the Interconnection shall post on the PJM website and present to the Transmission Expansion Advisory Committee the revised enhancements and expansions for review and comment. After consultation with the Transmission Expansion Advisory Committee, the Office of the Interconnection shall determine the more efficient or cost-effective transmission enhancements and expansions for inclusion in the recommended plan consistent with this Operating Agreement, Schedule 6.

(e) **Criteria for Considering Inclusion of a Project in the Recommended Plan.** In determining whether a Short-term Project or Long-lead Project proposed pursuant to the Operating Agreement, Schedule 6, section 1.5.8(c), individually or in combination with other Short-term Projects or Long-lead Projects, is the more efficient or cost-effective solution and therefore should be included in the recommended plan, the Office of the Interconnection, taking into account sensitivity studies and scenario analyses considered pursuant to the Operating Agreement, Schedule 6, section 1.5.3, shall consider the following criteria, to the extent applicable: (i) the extent to which a Short-term Project or Long-lead Project would address and solve the posted violation, system condition, or economic constraint; (ii) the extent to which the relative benefits of the project meets a Benefit/Cost Ratio Threshold of at least 1.25:1 as calculated pursuant to the Operating Agreement, Schedule 6, section 1.5.7(d); (iii) the extent to which the Short-term Project or Long-lead Project would have secondary benefits, such as addressing additional or other system reliability, operational performance, economic efficiency issues or federal Public Policy Requirements or state Public Policy Requirements identified by the states in the PJM Region; and (iv) the ability to timely complete the project, and project development feasibility; and (v) other factors such as cost-effectiveness, including the quality and effectiveness of any voluntary-submitted binding cost commitment proposal related to Transmission Facilities which caps project construction costs (either in whole or in part), project

total return on equity (including incentive adders), or capital structure. In scrutinizing the cost of project proposals, the Office of Interconnection shall determine for each project finalist's proposal, including any Transmission Owner Upgrades, the comparative risks to be borne by ratepayers as a result of the proposal's binding cost commitment or the use of non-binding cost estimates. Such comparative analysis shall detail, in a clear and transparent manner, the method by which the Office of Interconnection scrutinized the cost and overall cost-effectiveness of each finalist's proposal, including any binding cost commitments. Such comparative analysis shall be presented to the TEAC for review and comment. In evaluating any cost, ROE and/or capital structure proposal, PJM is not making a determination that the cost, ROE or capital structure results in just and reasonable rates, which shall be addressed in the required rate filing with the FERC. Stakeholders seeking to dispute a particular ROE analysis utilized in the selection process may address such disputes with the Designated Entity in the applicable rate proceeding where the Designated Entity seeks approval of such rates from the Commission. PJM may modify the technical specifications of a proposal, as outlined in the PJM Manuals, which may result in the modified proposal being determined to be the more efficient or cost-effective proposal for recommendation to the PJM Board. Neither PJM, the Designated Entity nor any stakeholders are waiving any of their respective FPA section 205 or 206 rights through this process. Challenges to the Designated Entity Agreements are subject to the just and reasonable standard.

(f) Entity-Specific Criteria Considered in Determining the Designated Entity for a Project. In determining whether the entity proposing a Short-term Project, Long-lead Project or Economic-based Enhancement or Expansion recommended for inclusion in the plan shall be the Designated Entity, the Office of the Interconnection shall consider: (i) whether in its proposal, the entity indicated its intent to be the Designated Entity; (ii) whether the entity is pre-qualified to be a Designated Entity pursuant to Operating Agreement, Schedule 6, section 1.5.8(a); (iii) information provided either in the proposing entity's submission pursuant to the Operating Agreement, Schedule 6, section 1.5.8(a) or 1.5.8(c)(2) relative to the specific proposed project that demonstrates: (1) the technical and engineering experience of the entity or its affiliate, partner, or parent company, including its previous record regarding construction, maintenance, and operation of transmission facilities relative to the project proposed; (2) ability of the entity or its affiliate, partner, or parent company to construct, maintain, and operate transmission facilities, as proposed, (3) capability of the entity to adhere to standardized construction, maintenance, and operating practices, including the capability for emergency response and restoration of damaged equipment; (4) experience of the entity in acquiring rights of way; (5) evidence of the ability of the entity, its affiliate, partner, or parent company to secure a financial commitment from an approved financial institution(s) agreeing to finance the construction, operation, and maintenance of the project, if it is accepted into the recommended plan; and (iv) any other factors that may be relevant to the proposed project, including but not limited to whether the proposal includes the entity's previously designated project(s) included in the plan.

(g) Procedures if No Long-lead Project or Economic-based Enhancement or Expansion Proposal is Determined to be the More Efficient or Cost-Effective Solution. If the Office of the Interconnection determines that none of the proposed Long-lead Projects received during the Long-lead Project proposal window would be the more efficient or cost-effective solution to resolve a posted violation, or system condition, the Office of the Interconnection may re-evaluate

and re-post on the PJM website the unresolved violations, or system conditions pursuant to the Operating Agreement, Schedule 6, section 1.5.8(b), provided such re-evaluation and re-posting would not affect the ability of the Office of the Interconnection to timely address the identified reliability need. In the event that re-posting and conducting such re-evaluation would prevent the Office of the Interconnection from timely addressing the existing and projected limitations on the Transmission System that give rise to the need for an enhancement or expansion, the Office of the Interconnection shall propose a project to solve the posted violation, or system condition for inclusion in the recommended plan and shall present such project to the Transmission Expansion Advisory Committee for review and comment. The Transmission Owner(s) in the Zone(s) where the project is to be located shall be designated to construct, own and/or finance~~the Designated Entity(ies) for~~ such project. In determining whether there is insufficient time for re-posting and re-evaluation, the Office of the Interconnection shall develop and post on the PJM website a transmission solution construction timeline for input and review by the Transmission Expansion Advisory Committee that will include factors such as, but not limited to: (i) deadlines for obtaining regulatory approvals, (ii) dates by which long lead equipment should be acquired, (iii) the time necessary to complete a proposed solution to meet the required in-service date, and (iv) other time-based factors impacting the feasibility of achieving the required in-service date. Based on input from the Transmission Expansion Advisory Committee and the time frames set forth in the construction timeline, the Office of the Interconnection shall determine whether there is sufficient time to conduct a re-evaluation and re-post and timely address the existing and projected limitations on the Transmission System that give rise to the need for an enhancement or expansion. To the extent that an economic constraint remains unaddressed, the economic constraint will be re-evaluated and re-posted.

(h) **Procedures if No Short-term Project Proposal is Determined to be the More Efficient or Cost-Effective Solution.** If the Office of the Interconnection determines that none of the proposed Short-term Projects received during a Short-term Project proposal window would be the more efficient or cost-effective solution to resolve a posted violation or system condition, the Office of the Interconnection shall propose a Short-term Project to solve the posted violation, or system condition for inclusion in the recommended plan and will present such Short-term Project to the Transmission Expansion Advisory Committee for review and comment. The Transmission Owner(s) in the Zone(s) where the Short-term Project is to be located shall be designated to construct, own and/or finance~~the Designated Entity(ies) for~~ the Project.

(i) **Notification of Designated Entity.** Within 15 Business Days of PJM Board approval of the Regional Transmission Expansion Plan, the Office of the Interconnection shall notify the entities that they have been designated as the Designated Entities for projects included in the Regional Transmission Expansion Plan for purposes of cost allocation~~of such designations~~. In such notices, the Office of the Interconnection shall provide: (i) the needed in-service date of the project; and (ii) a date by which all necessary state approvals should be obtained to timely meet the needed in-service date of the project. The Office of the Interconnection shall use these dates as part of its on-going monitoring of the progress of the project to ensure that the project is completed by its needed in-service date.

(j) **Acceptance of Designation.** Within 30 days of receiving notification of its designation as a Designated Entity, the existing Transmission Owner or Nonincumbent Developer shall notify the Office of the Interconnection of its acceptance of such designation and submit to the Office of the Interconnection a development schedule, which shall include, but not be limited to, milestones necessary to develop and construct the project to achieve the required in-service date, including milestone dates for obtaining all necessary authorizations and approvals, including but not limited to, state approvals. For good cause shown, the Office of the Interconnection may extend the deadline for submitting the development schedule. The Office of the Interconnection then shall review the development schedule and within 15 days or other reasonable time as required by the Office of the Interconnection: (i) notify the Designated Entity of any issues regarding the development schedule identified by the Office of the Interconnection that may need to be addressed to ensure that the project meets its needed in-service date; and (ii) tender to the Designated Entity an executable Designated Entity Agreement setting forth the rights and obligations of the parties. To retain its status as a Designated Entity, within 60 days of receiving an executable Designated Entity Agreement (or other such period as mutually agreed upon by the Office of the Interconnection and the Designated Entity), the Designated Entity (both existing Transmission Owners and Nonincumbent Developers) shall submit to the Office of the Interconnection a letter of credit as determined by the Office of Interconnection to cover the incremental costs of construction resulting from reassignment of the project, and return to the Office of the Interconnection an executed Designated Entity Agreement containing a mutually agreed upon development schedule. In the alternative, the Designated Entity may request dispute resolution pursuant to the Operating Agreement, Schedule 5, or request that the Designated Entity Agreement be filed unexecuted with the Commission.

(k) **Failure of Designated Entity to Meet Milestones.** In the event the Designated Entity fails to comply with one or more of the requirements of the Operating Agreement, Schedule 6, section 1.5.8(j); or fails to meet a milestone in the development schedule set forth in the Designated Entity Agreement that causes a delay of the project's in-service date, the Office of the Interconnection shall re-evaluate the need for the Short-term Project or Long-lead Project, and based on that re-evaluation may: (i) retain the Short-term Project or Long-lead Project in the Regional Transmission Expansion Plan; (ii) remove the Short-term Project or Long-lead Project from the Regional Transmission Expansion Plan; or (iii) include an alternative solution in the Regional Transmission Expansion Plan. If the Office of the Interconnection retains the Short-term or Long-term Project in the Regional Transmission Expansion Plan, it shall determine whether the delay is beyond the Designated Entity's control and whether to retain the Designated Entity or to designate the Transmission Owner(s) in the Zone(s) where the project is located as Designated Entity(ies) for the Short-term Project or Long-lead Project. If the Designated Entity is the Transmission Owner(s) in the Zone(s) where the project is located, the Office of the Interconnection shall seek recourse through the Consolidated Transmission Owners Agreement or FERC, as appropriate. Any modifications to the Regional Transmission Expansion Plan pursuant to this section shall be presented to the Transmission Expansion Advisory Committee for review and comment and approved by the PJM Board.

(l) **Transmission Owners ~~Required to be the Designated Entity~~ Projects.** Notwithstanding anything to the contrary in this Operating Agreement, Schedule 6, section 1.5.8, in all events, the Transmission Owner(s) in whose Zone(s) a project proposed pursuant to the

Operating Agreement, Schedule 6, section 1.5.8(c) is to be located will be designated to construct, own and/or finance~~the Designated Entity for~~ the project, when the Short-term Project or Long-lead Project is: (i) a Transmission Owner Upgrade; (ii) located solely within a Transmission Owner's Zone and the costs of the project are allocated solely to the Transmission Owner's Zone; (iii) located solely within a Transmission Owner's Zone and is not selected in the Regional Transmission Expansion Plan for purposes of cost allocation; or (iv) proposed to be located on a Transmission Owner's existing right of way and the project would alter the Transmission Owner's use and control of its existing right of way under state law. Transmission Owner shall be designated to construct, own and/or finance the project~~the Designated Entity~~ when required by state law, regulation or administrative agency order with regard to enhancements or expansions or portions of such enhancements or expansions located within that state.

(m) **Immediate-need Reliability Projects:**

(m)(1) Pursuant to the expansion planning process set forth in Operating Agreement, Schedule 6, sections 1.5.1 through 1.5.6, the Office of the Interconnection shall identify immediate reliability needs that must be addressed within three years or less. For those immediate reliability needs for which PJM determines a proposal window may not be feasible, PJM shall identify and post such immediate need reliability criteria violations and system conditions for review and comment by the Transmission Expansion Advisory Committee and other stakeholders. Following review and comment, the Office of the Interconnection shall develop Immediate-need Reliability Projects for which a proposal window pursuant to the Operating Agreement, Schedule 6, section 1.5.8(m)(2) is infeasible. The Office of the Interconnection shall consider the following factors in determining the infeasibility of such a proposal window: (i) nature of the reliability criteria violation; (ii) nature and type of potential solution required; and (iii) projected construction time for a potential solution to the type of reliability criteria violation to be addressed. The Office of the Interconnection shall post on the PJM website for review and comment by the Transmission Expansion Advisory Committee and other stakeholders descriptions of the Immediate-need Reliability Projects for which a proposal window pursuant to the Operating Agreement, Schedule 6, section 1.5.8(m)(2) is infeasible. Stakeholders shall be afforded no less than ten days to review Immediate-need Reliability Project materials prior to providing comments at stakeholder meetings. However, PJM may review Immediate-need Reliability Project materials with stakeholders without the requisite ten-day notice so long as: (i) stakeholders do not object to reviewing the materials or (ii) PJM identifies in its posting to the meeting materials extenuating circumstances identified by PJM that require review of the materials at the stakeholder meeting. The descriptions shall include an explanation of the decision to designate ~~the Transmission Owner as the Designated Entity for~~ the Immediate-need Reliability Project to the Transmission Owner rather than conducting a proposal window pursuant to the Operating Agreement, Schedule 6, section 1.5.8(m)(2), including an explanation of the time-sensitive need for the Immediate-need Reliability Project, other transmission and non-transmission options that were considered but concluded would not sufficiently address the immediate reliability need, the circumstances that generated the immediate reliability need, and why the immediate reliability need was not identified earlier. After the descriptions are posted on the PJM website, stakeholders shall have reasonable opportunity to provide comments to the Office of the Interconnection. All comments received by the Office of the Interconnection shall

be publicly available on the PJM website. Based on the comments received from stakeholders and the review by Transmission Expansion Advisory Committee, the Office of the Interconnection shall, if necessary, conduct further study and evaluation and post a revised recommended plan for review and comment by the Transmission Expansion Advisory Committee. The PJM Board shall approve the Immediate-need Reliability Projects for inclusion in the recommended plan. In January of each year, the Office of the Interconnection shall post on the PJM website and file with the Commission for informational purposes a list of the Immediate-need Reliability Projects for which an existing Transmission Owner was designated ~~responsibility for the-an Immediate-need Reliability Project~~ in the prior year ~~as the Designated Entity~~ in accordance with this Operating Agreement, Schedule 6, section 1.5.8(m)(1). The list shall include the need-by date of Immediate-need Reliability Project and the date the Transmission Owner actually energized the Immediate-need Reliability Project.

(m)(2) If, in the judgment of the Office of the Interconnection, there is sufficient time for the Office of the Interconnection to accept proposals in a shortened proposal window for Immediate-need Reliability Projects, the Office of the Interconnection shall post on the PJM website the violations and system conditions that could be addressed by Immediate-need Reliability Project proposals, including an explanation of the time-sensitive need for an Immediate-need Reliability Project and provide notice to stakeholders of a shortened proposal window. Proposals must contain the information required in the Operating Agreement, Schedule 6, section 1.5.8(c) and, if the entity is seeking to be the Designated Entity, such entity must have pre-qualified to be a Designated Entity pursuant to the Operating Agreement, Schedule 6, section 1.5.8(a). In determining the more efficient or cost-effective proposed Immediate-need Reliability Project for inclusion in the recommended plan, the Office of the Interconnection shall consider the extent to which the proposed Immediate-need Reliability Project, individually or in combination with other Immediate-need Reliability Projects, would address and solve the posted violations or system conditions and other factors such as cost-effectiveness, the ability of the entity to timely complete the project, and project development feasibility in light of the required need. After PJM Board approval, the Office of the Interconnection, in accordance with the Operating Agreement, Schedule 6, section 1.5.8(i), shall notify the entities that have been designated as Designated Entities for Immediate-need Projects included in the Regional Transmission Expansion Plan of such designations. Designated Entities shall accept such designations in accordance with the Operating Agreement, Schedule 6, section 1.5.8(j). In the event that (i) the Office of the Interconnection determines that no proposal resolves a posted violation or system condition; (ii) the proposing entity is not selected to be the Designated Entity; (iii) an entity does not accept the designation as a Designated Entity; or (iv) the Designated Entity fails to meet milestones that would delay the in-service date of the Immediate-need Reliability Project, the Office of the Interconnection shall develop and recommend an Immediate-need Reliability Project to solve the violation or system needs in accordance with the Operating Agreement, Schedule 6, section 1.5.8(m)(1).

(n) **Reliability Violations on Transmission Facilities Below 200 kV.** Pursuant to the expansion planning process set forth in the Operating Agreement, Schedule 6, sections 1.5.1 through 1.5.6, the Office of the Interconnection shall identify reliability violations on facilities below 200 kV. The Office of the Interconnection shall not post such a violation pursuant to the Operating Agreement, Schedule 6, section 1.5.8(b) for inclusion in a proposal window pursuant

to the Operating Agreement, Schedule 6, section 1.5.8(c) unless the identified violation(s) satisfies one of the following exceptions: (i) the reliability violations are thermal overload violations identified on multiple transmission lines and/or transformers rated below 200 kV that are impacted by a common contingent element, such that multiple reliability violations could be addressed by one or more solutions, including but not limited to a higher voltage solution; or (ii) the reliability violations are thermal overload violations identified on multiple transmission lines and/or transformers rated below 200 kV and the Office of the Interconnection determines that given the location and electrical features of the violations one or more solutions could potentially address or reduce the flow on multiple lower voltage facilities, thereby eliminating the multiple reliability violations. If the reliability violation is identified on multiple facilities rated below 200 kV that are determined by the Office of the Interconnection to meet one of the two exceptions stated above, the Office of the Interconnection shall post on the PJM website the reliability violations to be included in a proposal window consistent with the Operating Agreement, Schedule 6, section 1.5.8(c). If the Office of the Interconnection determines that the identified reliability violations do not satisfy either of the two exceptions stated above, the Office of the Interconnection shall develop a solution to address the reliability violation on below 200 kV Transmission Facilities that will not be included in a proposal window pursuant to the Operating Agreement, Schedule 6, section 1.5.8(c). The Office of Interconnection shall post on the PJM website for review and comment by the Transmission Expansion Advisory Committee and other stakeholders descriptions of the below 200 kV reliability violations that will not be included in a proposal window pursuant to the Operating Agreement, Schedule 6, section 1.5.8(c). The descriptions shall include an explanation of the decision to not include the below 200 kV reliability violation(s) in Operating Agreement, Schedule 6, section 1.5.8(c) proposal window, a description of the facility on which the violation(s) is found, the Zone in which the facility is located, and notice that such construction responsibility for and ownership of the project that resolves such below 200 kV reliability violation will be designated to the incumbent Transmission Owner. After the descriptions are posted on the PJM website, stakeholders shall have reasonable opportunity to provide comments for consideration by the Office of the Interconnection. With the exception of Immediate-need Reliability Projects under the Operating Agreement, Schedule 6, section 1.5.8(m), PJM will not select an above 200 kV solution for inclusion in the recommended plan that would address a reliability violation on a below 200 kV transmission facility without posting the violation for inclusion in a proposal window consistent with the Operating Agreement, Schedule 6, section 1.5.8(c). All written comments received by the Office of the Interconnection shall be publicly available on the PJM website.

(o) **[Reserved]**

(p) **Thermal Reliability Violations on Transmission Substation Equipment.** Pursuant to the regional transmission expansion planning process set forth in the Operating Agreement, Schedule 6, sections 1.5.1 through 1.5.6, the Office of the Interconnection shall identify thermal reliability violations on existing transmission substation equipment. The Office of the Interconnection shall not post such thermal reliability violations pursuant to the Operating Agreement, Schedule 6, section 1.5.8(b) for inclusion in a proposal window pursuant to the Operating Agreement, Schedule 6, section 1.5.8(c) if the Office of the Interconnection determines that the reliability violations would be more efficiently addressed by an upgrade to replace in kind transmission substation equipment with higher rated equipment, excluding power transmission transformers, but including station service transformers and instrument

transformers. If the Office of the Interconnection determines that the reliability violation does not meet the exemption stated above, the Office of the Interconnection shall post on the PJM website the reliability violations to be included in a proposal window consistent with the Operating Agreement, Schedule 6, section 1.5.8(c). If the Office of the Interconnection determines that the identified thermal reliability violations satisfy the above exemption to the proposal window process, the Office of the Interconnection shall post on the PJM website for review and comment by the Transmission Expansion Advisory Committee and other stakeholders descriptions of the transmission substation equipment thermal reliability violations that will not be included in a proposal window pursuant to Operating Agreement, Schedule 6, section 1.5.8(c). The descriptions shall include an explanation of the decision to not include the transmission substation equipment thermal reliability violation(s) in Operating Agreement, Schedule 6, section 1.5.8(c) proposal window, a description of the facility on which the thermal violation(s) is found, the Zone in which the facility is located, and notice that such construction responsibility for and ownership of the project that resolves such transmission substation equipment thermal violations will be designated to the incumbent Transmission Owner. After the descriptions are posted on the PJM website, stakeholders shall have reasonable opportunity to provide comments for consideration by the Office of the Interconnection. All written comments received by the Office of the Interconnection shall be publicly available on the PJM website.

1.5.9 State Agreement Approach.

(a) State governmental entities authorized by their respective states, individually or jointly, may agree voluntarily to be responsible for the allocation of all costs of a proposed transmission expansion or enhancement that addresses state Public Policy Requirements identified or accepted by the state(s) in the PJM Region. As determined by the authorized state governmental entities, such transmission enhancements or expansions may be included in the recommended plan, either as a (i) Supplemental Project or (ii) state public policy project, which is a transmission enhancement or expansion, the costs of which will be recovered pursuant to a FERC-accepted cost allocation proposed by agreement of one or more states and voluntarily agreed to by those state(s). All costs related to a state public policy project or Supplemental Project included in the Regional Transmission Expansion Plan to address state Public Policy Requirements pursuant to this Section shall be recovered from customers in a state(s) in the PJM Region that agrees to be responsible for the projects. No such costs shall be recovered from customers in a state that did not agree to be responsible for such cost allocation. A state public policy project will be included in the Regional Transmission Expansion Plan for cost allocation purposes only if there is an associated FERC-accepted allocation permitting recovery of the costs of the state public policy project consistent with this Section.

(b) Subject to any designation reserved for Transmission Owners in the Operating Agreement, Schedule 6, section 1.5.8(l), the state(s) responsible for cost allocation for a Supplemental Project or a state public policy project in accordance with the Operating Agreement, Schedule 6, section 1.5.9(a) may submit to the Office of the Interconnection the entity(ies) to construct, own, operate and maintain the state public policy project from a list of entities supplied by the Office of the Interconnection that pre-qualified to be Designated Entities pursuant to the Operating Agreement, Schedule 6, section 1.5.8(a).

1.5.10 Multi-Driver Project.

(a) When a proposal submitted by an existing Transmission Owner or Nonincumbent Developer pursuant to Operating Agreement, Schedule 6, section 1.5.8(c) meets the definition of a Multi-Driver Project and is designated to be included in the Regional Transmission Expansion Plan for purposes of cost allocation, the Office of the Interconnection shall designate the Designated Entity for the project as follows: (i) if the Multi-Driver Project does not contain a state Public Policy Requirement component, the Office of the Interconnection shall designate the Designated Entity pursuant to the criteria in the Operating Agreement, Schedule 6, section 1.5.8; or (ii) if the Multi-Driver Project contains a state Public Policy Requirement component, the Office of the Interconnection shall evaluate potential Designated Entity candidates based on the criteria in the Operating Agreement, Schedule 6, section 1.5.8, and provide its evaluation to and elicit feedback from the sponsoring state governmental entities responsible for allocation of all costs of the proposed state Public Policy Requirement component (“state governmental entity(ies)”) regarding its evaluation. Based on its evaluation of the Operating Agreement, Schedule 6, section 1.5.8 criteria and consideration of the feedback from the sponsoring state governmental entity(ies), the Office of the Interconnection shall designate the Designated Entity for the Multi-Driver Project and notify such entity consistent with the Operating Agreement, Schedule 6, section 1.5.8(i). A Multi-Driver Project may be based on proposals that consist of (1) newly proposed transmission enhancements or expansions; (2) additions to, or modifications of, transmission enhancements or expansions already selected for inclusion in the Regional Transmission Expansion Plan; and/or (3) one or more transmission enhancements or expansions already selected for inclusion in the Regional Transmission Expansion Plan.

(b) A Multi-Driver Project may contain an enhancement or expansion that addresses a state Public Policy Requirement component only if it meets the requirements set forth in the Operating Agreement, Schedule 6, section 1.5.9(a) and its cost allocations are established consistent with the Tariff, Schedule 12, section (b)(xii)(B).

(c) If a state governmental entity(ies) desires to include a Public Policy Requirement component after an enhancement or expansion has been included in the Regional Transmission Expansion Plan, the Office of the Interconnection may re-evaluate the relevant reliability-based enhancement or expansion, Economic-based Enhancement or Expansion, or Multi-Driver Project to determine whether adding the state-sponsored Public Policy Requirement component would create a more cost effective or efficient solution to system conditions. If the Office of the Interconnection determines that adding the state-sponsored Public Policy Requirement component to an enhancement or expansion already included in the Regional Transmission Expansion Plan would result in a more cost effective or efficient solution, the state-sponsored Public Policy Requirement component may be included in the relevant enhancement or expansion, provided all of the requirements of the Operating Agreement, Schedule 6, section 1.5.10(b) are met, and cost allocations are established consistent with the Tariff, Schedule 12, section (b)(xii)(B).

(d) If, subsequent to the inclusion in the Regional Transmission Expansion Plan of a Multi-Driver Project that contains a state Public Policy Requirement component, a state governmental entity(ies) withdraws its support of the Public Policy Requirement component of a

Multi-Driver Project, then: (i) the Office of the Interconnection shall re-evaluate the need for the remaining components of the Multi-Driver Project without the state Public Policy Requirement component, remove the Multi-Driver Project from the Regional Transmission Expansion Plan, or replace the Multi-Driver Project with an enhancement or expansion that addresses remaining reliability or economic system needs; (ii) if the Multi-Driver Project is retained in the Regional Transmission Expansion Plan without the state Public Policy Requirement component, the costs of the remaining components will be allocated in accordance with the Tariff, Schedule 12; (iii) if more than one state is responsible for the costs apportioned to the state Public Policy Requirement component of the Multi-Driver Project, the remaining state governmental entity(ies) shall have the option to continue supporting the state Public Policy component of the Multi-Driver Project and if the remaining state governmental entity(ies) choose this option, the apportionment of the state Public Policy Requirement component will remain in place and the remaining state governmental entity(ies) shall agree upon their respective apportionments; (iv) if a Multi-Driver Project must be retained in the Regional Transmission Expansion Plan and completed with the State Public Policy component, the state Public Policy Requirement apportionment will remain in place and the withdrawing state governmental entity(ies) shall continue to be responsible for its/their share of the FERC-accepted cost allocations as filed pursuant to the Tariff, Schedule 12, section (b)(xii)(B).

(e) The actual costs of a Multi-Driver Project shall be apportioned to the different components (reliability-based enhancement or expansion, Economic-based Enhancement or Expansion and/or Public Policy Requirement) based on the initial estimated costs of the Multi-Driver Project in accordance with the methodology set forth in the Tariff, Schedule 12.

(f) The benefit metric calculation used for evaluating the market efficiency component of a Multi-Driver Project will be based on the final voltage of the Multi-Driver Project using the Benefit/Cost Ratio calculation set forth in the Operating Agreement, Schedule 6, section 1.5.7(d) where the Cost component of the calculation is the present value of the estimated cost of the enhancement apportioned to the market efficiency component of the Multi-Driver Project for each of the first 15 years of the life of the enhancement or expansion.

(g) Except as provided to the contrary in this Operating Agreement, Schedule 6, section 1.5.10 and Operating Agreement, Schedule 6, section 1.5.8 applies to Multi-Driver Projects.

(h) The Office of the Interconnection shall determine whether a proposal(s) meets the definition of a Multi-Driver Project by identifying a more efficient or cost effective solution that uses one of the following methods: (i) combining separate solutions that address reliability, economics and/or public policy into a single transmission enhancement or expansion that incorporates separate drivers into one Multi-Driver Project (“Proportional Multi-Driver Method”); or (ii) expanding or enhancing a proposed single driver solution to include one or more additional component(s) to address a combination of reliability, economic and/or public policy drivers (“Incremental Multi-Driver Method”).

(i) In determining whether a Multi-Driver Project may be designated to more than one entity, PJM shall consider whether: (i) the project consists of separable transmission elements, which are physically discrete transmission components, such as, but not limited to, a

transformer, static var compensator or definable linear segment of a transmission line, that can be designated individually to a Designated Entity to construct and own and/or finance; and (ii) each entity satisfies the criteria set forth in the Operating Agreement, Schedule 6, section 1.5.8(f). Separable transmission elements that qualify as Transmission Owner Upgrades shall be designated to the Transmission Owner in the Zone in which the facility will be located.

