

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

American Municipal Power, Inc. Office of)	
the People’s Counsel for the District of)	
Columbia, and the PJM Industrial)	
Customer Coalition,)	
Complainants)	
)	
v.)	Docket No. EL22-80
)	
PJM Interconnection, L.L.C.,)	
Respondent)	

**COMMENTS OF THE ORGANIZATION OF PJM STATES, INC.
IN SUPPORT OF COMPLAINT**

Pursuant to Rules 212 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.212, the Organization of PJM States, Inc. (“OPSI”),¹ respectfully files these Comments urging the Commission to grant the relief requested in the Complaint.²

I. COMPLAINT

Complainants argue that PJM’s practice of requiring each entity designated to construct a regionally planned transmission project (“Designated Entity”) to execute a Designated Entity Agreement (“DEA”) only when a regionally planned project has been selected through a competitive window does not comply with the plain language of PJM’s Operating Agreement

¹ OPSI’s fourteen members unanimously support these comments. OPSI’s members are the Delaware Public Service Commission, Public Service Commission of the District of Columbia, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Maryland Public Service Commission, Michigan Public Service Commission, New Jersey Board of Public Utilities, North Carolina Utilities Commission, Public Utilities Commission of Ohio, Pennsylvania Public Utility Commission, Tennessee Public Utility Commission, Virginia State Corporation Commission, and Public Service Commission of West Virginia.

² *American Municipal Power, et al. v. PJM Interconnection L.L.C.*, “Complaint Requesting Fast Track Processing,” Docket No. EL22-80-000 at 2 (July 26, 2022) (“Complaint”) (“Complainants request that the Commission grant this Complaint and require PJM to: (1) execute Designated Entity Agreements for all previously approved Regionally Planned Projects that are under construction; and (2) execute Designated Entity Agreements for all Regionally Planned Projects going forward.”).

“OA”).³ They argue that the current OA requires PJM to execute a DEA with *all* Designated Entities including those selected to build “Immediate-need Reliability Projects and those resulting from needs that are not posted in a competitive window.”⁴ Complainants describe how PJM has “approved hundreds of Regionally Planned projects but executed only a handful of [DEAs].”⁵ The Complaint describes how PJM has sought to change what it claims is the “inartful” language in the OA that contradicts its reading and how PJM has asked the Commission and stakeholders to approve changes to conform with its interpretation of the OA to no avail.⁶

For instance, on July 13, 2018, the Commission, in considering a series of proposals by PJM, “reject[ed PJM’s] proposal to exempt the Designated Entity for Transmission Owner Designated Projects from the requirement to execute a Designated Entity Agreement.”⁷ This Order was clear that the requirements applicable if the DEA is not executed are “less stringent” than the DEA, and, in the context of discussing consumer benefits of the DEA,⁸ FERC found PJM’s proposed exemption for incumbents to be “unjust, unreasonable, and unduly discriminatory or preferential.”⁹

Then, in September 2021, PJM made a compliance filing with FERC “to clarify apparent ambiguities” in the OA.¹⁰ Specifically, PJM asserted that the term “Designated Entity” had been used imprecisely in the OA and that it should be permitted to change the language to effectuate an

³ Complaint at § V citing PJM Interconnection, L.L.C., Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8 (“PJM OA”)

⁴ *Id.* at 3.

⁵ *Id.* at 12-13 and 21.

⁶ *Id.* at § IV.C.

⁷ *PJM Interconnection, LLC*, 164 FERC ¶ 61,021, at P 2 (2018).

⁸ *Id.* at P 23 and n. 62.

⁹ *Id.* at P 34.

¹⁰ PJM Interconnection, L.L.C., “Updated Compliance Filing”, Docket No. ER13-198 at 1 (September 1, 2021).

exemption for certain incumbent projects from the DEA requirement.¹¹ FERC rejected the compliance filing on procedural grounds,¹² but PJM’s transmission planning process remained largely unchanged. Therefore, the language in PJM’s OA remains the language that FERC approved in PJM’s Order No. 1000 compliance filings, which the Commission has already found to be just and reasonable.¹³ Complainants ask the Commission to require PJM to execute DEAs with all entities constructing regionally planned projects now and going forward.

II. COMMENTS IN SUPPORT OF THE COMPLAINT

A. DEAs provide important protections for electric consumers.

OPSI urges the Commission to ensure that PJM is interpreting the language in its OA accurately so that consumers can benefit from the important protections DEAs provide.¹⁴ For example, DEAs require PJM to reevaluate projects and potentially identify other projects in cases where the approved projects are not completed timely or economically.¹⁵ The DEA also requires a Designated Entity to accomplish a list of project milestones by dates specified in each DEA.¹⁶ Failure to meet the deadlines can lead to a breach and the requirement to provide security.¹⁷

Complainants cite examples of the harm to consumers from the noncompliance, both in the timing and cost of projects:

- “In PJM’s 2021 informational filing on Immediate-need Reliability Projects, roughly fifty projects were anticipated to be in-service *after* the alleged need by

¹¹ *Id.* at 6 and 9-16.

¹² PJM Interconnection, L.L.C. 178 FERC ¶ 61,083 at P 25 (2022).

¹³ PJM Interconnection, L.L.C., 148 FERC ¶ 61,187, at P 22 (2014)

¹⁴ Complaint at § V.C.

¹⁵ *Id.* at 9-11; PJM OA, Schedule 6, 1.5.8(k); PJM OATT, Attachment KK, 7.4 (Form Designated Entity Agreement).

¹⁶ Form Designated Entity Agreement at Schedule C.

¹⁷ *Id.*

date. If there were DEAs in place for these projects, PJM would be required to reevaluate the projects to determine whether a different project is needed.”¹⁸

- “The DEA also provides cost transparency. At the April 2021 PJM Transmission Expansion Advisory Committee meeting, Alleghany Power Systems revised the cost estimate for an Immediate-need Reliability Project assigned to it from \$41.4 million to \$143.4 million, an increase of \$102 million or 246%. If there were a DEA in place for this project, PJM would be required to reevaluate the project.”¹⁹
- “The DEA also requires a Designated Entity to provide security for a project in the form of a Letter of Credit.”²⁰

OPSI believes, as Complainants argue, that the OA is clear in its requirement for the execution of DEAs for all non-local projects included in the RTEP. The OA states that a Designated Entity encompasses “both existing Transmission Owners and Nonincumbent Developers,” and that both must execute a DEA to maintain their status as a Designated Entity.²¹ This requirement is grounded in clear FERC precedent that recognizes the consumer benefits of DEAs. Even where ambiguity exists, FERC should prefer to resolve ambiguities in the OA in such a way that they protect consumers. After all, the FPA is a *consumer protection* statute.²²

B. PJM must follow its FERC-approved OA.

PJM, as a FERC-regulated public utility, must comply with FERC’s orders. To change the terms of the OA, PJM must modify the OA through an FPA section 205 filing (requiring PJM stakeholder approval), or an FPA section 206 filing, where PJM must demonstrate that the current terms of the OA are unjust and unreasonable. As of the date of this filing, PJM has done neither.

¹⁸ Complaint at p. 20 (citation omitted).

¹⁹ *Id.*

²⁰ *Id.* at 11.

²¹ Schedule 6, Section 1.5.8(j).

²² See, e.g., Pa. Water & Power Co. v. FPC, 343 U.S. 414, 418 (1952); New England Power Generators Ass’n v. ISO New England Inc., 146 FERC ¶ 61,038 at P 26 & n.33 (2014); See Atlantic Refining Co. v. Public Service Comm’n, 360 U.S. 378, 388-389, 79 S.Ct. 1246 (1959); FPC v. Hope Natural Gas Co., 320 U.S. 591, 610-612, 64 S.Ct. 281, (1944); Mun. Light Boards of Reading & Wakefield, Mass. v. Fed. Power Comm’n, 450 F.2d 1341, 1348 (D.C. Cir. 1971) (“Its primary aim is the protection of consumers from excessive rates and charges.”).

PJM should not abandon a tool for safeguarding grid reliability and protecting customers against unjust and unreasonable rates. Executing DEAs with incumbent transmission owners for all non-local projects included in the RTEP is required by the clear language of the OA, as well as FERC precedent, and would help ensure that the best projects available are the ones that are actually constructed. To not require PJM to follow the just and reasonable provisions of its OA would harm consumers and jettison an important tool that preserves grid reliability, reduces operational risk, and controls costs. It would also allow deference to certain stakeholders where PJM claims the language in its OA is “inartful,” raising concerns of a systemic misalignment with the principles in Order No. 2000 that foster lighter-handed regulations.²³ This misalignment speaks further to the arguments presented by the Complainants.

C. OPSI supports the request for Fast Track Processing.

Lastly, OPSI supports Complainants’ request for Fast Tracking this Complaint pursuant to Rule 206(b)(11) of the Commission’s Rules of Practice and Procedure²⁴ because the longer the Commission waits to require PJM to enforce its OA, the longer consumers will miss out on the cost containment benefits DEAs provide consumers. Complainants estimate that there are currently 494 projects where PJM has not executed DEAs that the OA requires.²⁵ As time passes, this list will dwindle as construction is completed and more projects will be proposed. If the Commission does not take action, PJM has indicated that it intends to continue to interpret its OA in a way that is harmful to consumers and will seek to memorialize that interpretation.²⁶

²³ Regional Transmission Organizations, Order No. 2000, 89 FERC ¶ 61,285 at 96-99 (1999), order on reh’g, Order No. 2000-A at 99-101 (2000).

²⁴ 18 C.F.R. § 385.206(b)(11).

²⁵ See Complaint at p. 3 and n. 8 (“Information regarding approved projects is available on PJM’s website, <https://www.pjm.com/planning/projectconstruction>.”).

²⁶ PJM, Designated Entity Agreement FAQ (May 10, 2022) (“DEA FAQ”) (“**Is PJM in compliance with the Operating Agreement DEA provisions today?** Since issuance of the February 8 Order, PJM has been in
(continued)

Therefore, it is important that the Commission act quickly to ensure no more unjust and unreasonable costs are passed onto customers, to ensure that customers receive the benefits of security (Letters of Credit), and to mitigate completion-date overruns.

III. CONCLUSION

OPSI agrees with Complainants that the Commission should direct PJM to immediately comply with its OA and execute DEAs with Designated Entities for regionally planned projects that have been approved by the PJM Board and are still under construction. PJM should be utilizing all the tools at its disposal to ensure transmission reliability at reasonable costs, and no RTO should be permitted to interpret its governing documents in a way that contravenes Commission precedent and harms consumers.

For the foregoing reasons, OPSI recommends that FERC fast track the Complaint and grant the relief sought by Complainants in this case.

Respectfully Submitted,

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communication with FERC Enforcement and FERC policy staff. In addition to projects selected through a proposal window and regionally allocated, PJM has begun the process set forth in OA Schedule 6, section 1.5.8(j) to issue DEAs to transmission owners designated projects selected through the proposal window that were not regionally allocated. PJM is proposing a Quick Fix approach because the current language is not sustainable.”) Available at: <https://www.pjm.com/-/media/committees-groups/committees/pc/2022/20220510/item-07f---designated-entity-agreement-faq---05092022.ashx>.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Gregory V. Carmean
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Dated at Newark, Delaware this August 19, 2022.