

No. 1000⁴ (PJM Designated Entity Agreement Filing).⁵ In this order, the Commission conditionally accepts PJM's proposed *pro forma* Interconnection Coordination Agreement and *pro forma* Designated Entity Agreement effective September 13, 2014, and January 1, 2014, respectively, as requested, subject to a further compliance filing, as discussed below. In addition, in this order, the Commission finds that PJM's proposed *pro forma* Designated Entity Agreement complies with the Commission's directive in its May 2014 Order.

I. Background

2. In Order No. 1000, the Commission identified a minimum set of requirements that must be met to ensure that all transmission planning processes and cost allocation mechanisms subject to its jurisdiction result in Commission-jurisdictional services being provided at rates, terms, and conditions that are just and reasonable and not unduly discriminatory or preferential.⁶

3. Noting that federal rights of first refusal create a barrier to entry that discourages nonincumbent transmission developers⁷ from proposing alternative transmission solutions for consideration at the regional level,⁸ the Commission required public utility transmission providers to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for

⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

⁵ PJM, Intra-PJM Tariffs, [OATT ATT KK, OATT ATTACHMENT KK - Form of Designated Entity Agreement, 0.0.0.](#)

⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 13.

⁷ Order No. 1000 defined a nonincumbent transmission developer as either: (1) a transmission developer that does not have a retail distribution service territory or footprint; or (2) a public utility transmission provider that proposes a transmission project outside of its retail distribution service territory or footprint, where it is not the incumbent transmission owner for the purposes of that project. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 225.

⁸ *See, e.g.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 257.

purposes of cost allocation.⁹ Order No. 1000 concluded that such reforms were necessary to eliminate practices that have the potential to undermine the identification and evaluation of more efficient or cost-effective alternatives to regional transmission needs, which in turn can result in rates for Commission-jurisdictional services that are unjust and unreasonable, or otherwise result in undue discrimination by public utility transmission providers.¹⁰ Importantly, Order No. 1000 required “that a nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for the purposes of cost allocation.”¹¹

4. In a March 22, 2013 order, the Commission required PJM to submit the *pro forma* Designated Entity Agreement to the Commission for review to ensure that similarly situated Designated Entities would be processed in a non-discriminatory manner consistent with Order No. 1000, whether incumbent transmission owners or nonincumbent transmission developers.¹² As part of its compliance with the regional transmission planning and regional cost allocation requirements of Order No. 1000, PJM proposed revisions to Schedule 6 of its Operating Agreement (Schedule 6) which governs its regional transmission expansion planning (RTEP) process. The revisions require that an entity that accepts the designation as a “Designated Entity”¹³ in PJM’s RTEP process

⁹ *Id.* P 313.

¹⁰ *Id.* P 226. *See also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 286 (stating that “Indeed, the Supreme Court has said that ‘the history of Part II of the Federal Power Act indicates an overriding policy of maintaining competition to the maximum extent possible consistent with the public interest.’ In requiring the elimination of federal rights of first refusal from Commission-jurisdictional tariffs and agreements, we are acting in accordance with our duty to maintain competition.”).

¹¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 323.

¹² *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 280 (2013) (March 2013 Order).

¹³ A Designated Entity is defined as “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, Short-term Projects, Long-lead Projects, or Economic-based Enhancements or Expansions pursuant to Section 1.5.8 of Schedule 6 of [the Operating] Agreement.” PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (C-D), § 1.7A (3.1.0).

(RTEP project) execute an agreement “setting forth the rights and obligations related to being the Designated Entity for the project.”¹⁴ In the March 2013 Order, the Commission conditionally accepted PJM’s proposed revisions, subject to a further compliance filing. The Commission directed PJM to, *inter alia*, submit any *pro forma* Designated Entity Agreement that it developed with stakeholders for review by the Commission.¹⁵ Subsequently, in its May 2014 Order, the Commission directed PJM to file, *inter alia*, its *pro forma* Designated Entity Agreement within 60 days.¹⁶

5. PJM states that after receiving feedback from stakeholders during the development of the Designated Entity Agreement, it became apparent that there was a need for a coordination agreement between PJM, the Designated Entity, and the Transmission Owner(s)¹⁷ of facilities to which a Designated Entity’s project would interconnect, in order to establish the coordination obligation of all parties, as well as to ensure safe, reliable, and timely interconnection of the Designated Entity’s facilities to the existing transmission system.¹⁸

II. PJM Filings

A. Interconnection Coordination Agreement

6. PJM explains that currently, PJM Transmission Owners address interconnection issues consistent with their obligations under the Consolidated Transmission Owners Agreement (Transmission Owners Agreement). However, because some Designated Entities may not be signatories to the Transmission Owners Agreement at the time they are designated an RTEP project, the Transmission Owners Agreement will not apply to them. Therefore, PJM and its stakeholders determined that an agreement setting forth the coordination obligations of all affected parties was necessary to effectuate the interconnection of a Designated Entity’s project to the Transmission Owner’s facilities.

¹⁴ See PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(j) (Acceptance of Designation) (3.0.0).

¹⁵ March 2013 Order, 142 FERC ¶ 61,214 at P 280.

¹⁶ May 2014 Order, 147 FERC ¶ 61,128 at P 261.

¹⁷ PJM clarifies that in the event that a Designated Entity’s project interconnects to more than one Transmission Owner’s facilities, there will be a separate Interconnection Coordination Agreement for each Transmission Owner.

¹⁸ PJM Interconnection Coordination Agreement Filing at 2-3.

PJM states that this resulted in the creation of the Interconnection Coordination Agreement.¹⁹

7. PJM explains that the Interconnection Coordination Agreement clearly defines the rights and coordination responsibilities of each party. PJM asserts that the Interconnection Coordination Agreement will function in tandem with the proposed Designated Entity Agreement. Therefore, PJM states that many provisions in both agreements are similar or consistent. PJM further explains that the Interconnection Coordination Agreement will be terminated when the Designated Entity Agreement associated with the project expires.²⁰

8. PJM states that it will be a party to the Interconnection Coordination Agreement in order to facilitate the coordination process when needed, and because ensuring a safe, reliable, and timely interconnection of its transmission system is paramount to the reliability of the PJM transmission system.

9. PJM requests an effective date of September 13, 2014, for its proposed Interconnection Coordination Agreement.

B. Designated Entity Agreement

10. PJM states that the Designated Entity Agreement defines the rights and obligations of the Designated Entity with regard to the construction of an RTEP Project. PJM further states that, among other things, the Designated Entity Agreement sets forth security, milestones, insurance, and assignment requirements.²¹ In addition, PJM states that many of the provisions in the Designated Entity Agreement are consistent with, or similar to, other provisions in PJM's OATT, as well as provisions in Appendix 2 of PJM's

¹⁹ With regard to the capitalized terms used in the Interconnection Coordination Agreement, PJM states that they will have the meanings per the definition in the PJM OATT or the Interconnection Coordination Agreement. PJM explains that in the event of conflict with the PJM OATT as to the meaning of defined terms in the Interconnection Coordination Agreement, the Interconnection Coordination Agreement takes precedence.

²⁰ PJM Interconnection Coordination Agreement Filing at 3-4.

²¹ PJM Designated Entity Agreement Filing at 29 (referencing PJM, Intra-PJM Tariffs, OATT Attachment KK (Form Designated Entity Agreement), Article 11 (Assignment) (0.0.0)).

pro forma Interconnection Service Agreement,²² and the Transmission Owners Agreement.²³

11. PJM requests an effective date of January 1, 2014, which is the effective date granted for PJM's Order No. 1000 compliance revisions which were accepted in Docket No. ER13-198-000.

III. Notice of Filing and Responsive Pleadings

A. PJM Interconnection Coordination Agreement Filing (Docket No. ER14-2426-000)

12. Notice of the PJM Interconnection Coordination Agreement Filing was published in the *Federal Register*, 79 Fed. Reg. 42,782 (2014), with interventions and protests due on or before August 4, 2014. Motions to intervene were timely filed by Exelon Corporation, Atlantic Grid Holdings LLC (Atlantic Grid); Dominion Resources, Inc.; LSP Transmission Holdings, LLC, and NRG Companies.²⁴ Motions to intervene out of time were filed by American Municipal Power, ITC Mid-Atlantic Development LLC, and Public Service Electric and Gas Company.

13. Protests were filed by Atlantic Grid and by LSP Transmission Holdings, LLC and LS Power Transmission, LLC (jointly, LS Power). On August 22, 2014, PJM filed an answer to the protests. On September 8, 2014, Atlantic Grid filed a reply to PJM's answer. On September 8, 2014, Old Dominion Electric Cooperative (ODEC) filed a motion for leave to answer and answer to PJM's answer.

B. PJM Designated Entity Agreement Filing (Docket No. ER13-198-004)

14. Notice of the PJM Designated Entity Agreement Filing was published in the *Federal Register*, 79 Fed. Reg. 42,782 (2014), with interventions and protests due on or before August 4, 2014. A motion to intervene was timely filed by Atlantic Grid Holdings LLC (Atlantic Grid). A motion to intervene out of time was filed by ITC Mid-Atlantic Development LLC.

²² PJM Designated Entity Agreement Filing at 12 (citing PJM, Intra-PJM Tariffs, OATT, Attachment O, Appendix 2).

²³ PJM Designated Entity Agreement Filing at 12-13.

²⁴ For the purposes of this filing, NRG Companies consists of: NRG Power Marketing LLC and GenOn Energy Management, LLC.

15. Protests were filed by Atlantic Grid, LS Power, and ODEC. On August 22, 2014, PJM filed an answer to the protests.). On August 22, 2014, PJM filed an answer to the protests. On September 8, 2014, Atlantic Grid filed a reply to PJM's answer. On September 8, 2014, ODEC filed a motion for leave to answer and answer to PJM's answer.

IV. Discussion

A. Procedural Matters

1. PJM Interconnection Coordination Agreement Filing (Docket No. ER14-2426-000)

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant the late-filed motions to intervene of American Municipal Power, ITC Mid-Atlantic Development LLC, and Public Service Electric and Gas Company given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept PJM's answer because it has provided information that assisted us in our decision-making process. Because ODEC's answer addresses issues not related to either the Designated Entity Agreement or the Interconnection Coordination Agreement, we will defer consideration of ODEC's answer until we address the remaining issues in Docket No. ER13-198-004 in a future order on PJM's compliance with Order No. 1000.

2. PJM Designated Entity Agreement Filing (Docket No. ER13-198-004)

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

20. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant the late-filed motion to intervene of ITC Mid-Atlantic Development LLC given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept PJM's and Atlantic Grid's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

22. For the reasons discussed below, we conditionally accept PJM's proposed *pro forma* Interconnection Coordination Agreement and *pro forma* Designated Entity Agreement, effective September 13, 2014, and January 1, 2014, respectively, as requested, subject to a further compliance filing as discussed below. In addition, in this order, we find that PJM's proposed *pro forma* Designated Entity Agreement complies with the Commission directive in its May 2014 Order to file its *pro forma* Designated Entity for review by the Commission.²⁵ We direct PJM to file the compliance filing(s) within 30 days of the date of issuance of this order.

23. In addition, this order only addresses the issues raised in Docket No. ER13-198-004 that directly pertain to PJM's proposed *pro forma* Designated Entity Agreement. All other issues raised in protests and answers in Docket No. ER13-198-004 will be addressed in a future order on PJM's compliance with Order No. 1000.

1. Assignment Provisions in the Designated Entity Agreement and the Interconnection Coordination Agreement

a. Article 11 of the Designated Entity Agreement and Article 8 of Interconnection Coordination Agreement

24. Section 11.0 of Article 11 of the Designated Entity Agreement states "No Party may assign any of its rights or delegate any of its duties or obligations under this Agreement without prior written consent of the other Party." Further section 11.0 states that assignment by the Designated Entity is contingent upon, prior to the effective date of the assignment,

- (i) the Designated Entity or assignee demonstrating to the satisfaction of Transmission Provider that the assignee has the technical competence and financial ability to comply with the requirements of this Agreement and to construct the Project consistent with the assignor's cost estimates for the Project;
- and (ii) the assignee is eligible to be a Designated Entity for

²⁵ May 2014 Order, 147 FERC ¶ 61,128 at P 261.

the Project pursuant to Sections 1.5.8(a) and (f) of Schedule 6 of the Operating Agreement.^[26]

25. Section 11.0 of the Designated Entity Agreement also requires that the assignee assume in writing all rights, duties, and obligations of the assignor, and an assignment under section 11.0 will not relieve or discharge the assignor from any of its obligations absent the written consent of the other party. PJM states that the conditions in this section of the Designated Entity Agreement, as well as the requirement that assignments are valid only upon written consent of the other party, provide the protections necessary to ensure that an assignee can perform as well as the Designated Entity and that a reliability project will not be compromised by the assignment. PJM further states that it must have some control over entities that are constructing upgrades on the PJM system to ensure safety and reliability and, therefore, must have the ability to consent to all assignments.

26. Sections 11.1 and 11.1.2 of the Designated Entity Agreement provide the terms and conditions specifically applicable to assignment to and by “Project Finance Entities.”²⁷ PJM states that it recognizes that for a Designated Entity to obtain financing for transmission projects, the financing entity may require some assignment rights. Thus, these sections are intended to accommodate the need for assignment flexibility, while also protecting PJM from assignments that could result in entities that do not have the expertise or experience to construct, operate and maintain transmission projects, taking over RTEP projects. According to section 11.1.1, a Project Finance Entity may be assigned the Designated Entity Agreement or any associated rights, duties, or obligations by a Designated Entity, only with PJM’s written consent. Similarly, under section 11.1.2, a Project Finance Entity that has been assigned a Designated Entity Agreement may only assign the agreement or any associated rights, duties, or obligations to another entity not party to the agreement with the written consent of PJM. Further, assignments may only occur upon the Designated Entity’s breach of the Designated Entity Agreement.

27. PJM states that both sections 11.1.1 and 11.1.2 provide that under no circumstance will the assignment of the Designated Entity Agreement or any of the rights, duties, and

²⁶ PJM Designated Entity Agreement Filing at 29 (referencing PJM, Intra-PJM Tariffs, OATT Attachment KK (Form Designated Entity Agreement), Article 11.0 (Assignment) (0.0.0)).

²⁷ PJM states that a “Project Finance Entity” is defined in section 1.7 of the Designated Entity Agreement as a “holder, trustee or agent for holders, of any component of Project Financing.” *See* PJM Designated Entity Agreement Filing at 30 n.69. *See also* PJM, Intra-PJM Tariffs, OATT Attachment KK (Form Designated Entity Agreement), Article 1.0 (Definitions), § 1.7 (Project Finance Entity) (0.0.0).

obligations thereunder diminish PJM's rights under the agreement, PJM OATT, or the Operating Agreement. In addition, PJM states that section 11.1.2 requires that assignees that will construct, maintain, or operate the project are subject to, and will comply with, the terms of the Designated Entity Agreement, the PJM OATT and the Operating Agreement. PJM explains that this is an important provision because it ensures that assignments will not interfere with or hinder the RTEP process, including the competitive process set forth in section 1.5.8 of Schedule 6 of the Operating Agreement.

28. Meanwhile, section 8.0 of Article 8 of the Interconnection Coordination Agreement states that no party may assign or delegate its duties or obligation under the Interconnection Coordination Agreement without PJM's consent. PJM explains that its consent to an assignment of the Interconnection Coordination Agreement is necessary to ensure that proper coordination continues that facilitates the safe and reliable interconnection of the Transmission Owner's and Delegated Entity's facilities.

i. Protests

29. In its protest, Atlantic Grid asserts that the allowance of assignments only with the prior written consent of another party is a restriction that omits the normal commercial reasonableness standard for such consent. Atlantic Grid further asserts that PJM fails to explain why it should be able to prevent such assignment in its sole discretion.²⁸ Atlantic Grid notes that, although PJM proposed the Interconnection Coordination Agreement to provide a contractual framework to parallel the Transmission Owners Agreement, the Transmission Owners Agreement puts no restrictions on assignments of projects by incumbent transmission owners.²⁹ In addition, Atlantic Grid cites to the Trans-Allegheny project that was designated by PJM for construction by incumbent transmission owners who then assigned responsibility to complete the project to a newly created nonincumbent joint venture for financing and corporate risk management purposes. Similarly, Atlantic Grid contends that the Commission should require PJM to permit assignments to another entity with an equal or higher credit rating without PJM's consent, and PJM should require the *pro forma* agreement to specify that PJM may not otherwise unreasonably withhold its consent to an assignment.³⁰

30. LS Power states that, while it does not contest this requirement for assignment for a non-affiliate, such consent should not be required at all for an assignment to an affiliated entity that satisfies the PJM Designated Entity eligibility criteria, and consent

²⁸ Atlantic Grid Protest at 3.

²⁹ Atlantic Grid Protest at 3.

³⁰ Atlantic Grid Protest at 3-4.

should not be unreasonably withheld for assignments to unaffiliated entities that satisfy such criteria.³¹ LS Power also notes that the Transmission Owners Agreement puts no restriction on assignment of transmission construction obligations by incumbent transmission owners.³² LS Power asserts that its position is consistent with a recent Commission order in which the Commission directed South Carolina Electric & Gas Company to amend its *pro forma* agreement to provide that a party to that agreement “may assign the Coordination Agreement or the rights under it to an affiliated company that satisfies the Qualified Developer qualification criteria.”³³ LS Power further states that section 11.0 of the Designated Entity Agreement should specifically provide that consent to assignment, when required in all other circumstances, “shall not be unreasonably withheld, conditioned, or delayed.”³⁴

31. LS Power and Atlantic Grid both raise additional concerns about the requirement in the Designated Entity Agreement (sections 11.1.1 and 11.1.2) that PJM’s consent is necessary for assignment to and by Project Finance Entities.

32. LS Power avers that the Designated Entity Agreement needs to be clear that no consent is required for the granting of a collateral assignment or security interest and thus, should include a provision to this effect, similar to what the Commission required in *South Carolina Electric & Gas Company*.³⁵

33. LS Power and Atlantic Grid also assert that section 11.1.1 would require PJM’s consent even for transfers by a Designated Entity to a Project Finance Entity following an exercise by the Project Finance Entity of its rights under the relevant security arrangement.³⁶ Atlantic Grid urges the Commission to require PJM to make it clear that Designated Entities can make such assignments without PJM’s consent, and that the terms of the assignment must allow the financing entity to enforce its security interest

³¹ LS Power Protest at 4.

³² LS Power Protest at 4.

³³ LS Power Protest at 5 (citing *South Carolina Electric & Gas Company*, 147 FERC ¶ 61,126, at P 222 (2014)) (*South Carolina Electric & Gas Company Order*).

³⁴ LS Power Protest at 5 (citing *South Carolina Electric & Gas Company Order*, 147 FERC ¶ 61,126 at P 222).

³⁵ LS Power Protest at 5-6 (citing *South Carolina Electric & Gas Company Order*, 147 FERC ¶ 61,126 at P 222).

³⁶ LS Power Protest at 6; Atlantic Grid Protest at 4.

without PJM's approval.³⁷ LS Power states that such an assignment to a Project Finance Entity should only require notice to PJM rather than PJM's consent, because, it asserts, section 11.1.1 already addresses what LS Power understands to be PJM's concern that transmission development, unlike generator interconnection, is more critical in nature and that PJM needs to maintain control over the entities constructing these facilities.

34. LS Power further states that, its arguments notwithstanding, to the extent that the Commission agrees with PJM that PJM's consent should be required under section 11.1.1, the section should be revised to provide that such consent cannot be "unreasonably withheld, conditioned or delayed."³⁸ Atlantic Grid agrees that even if PJM's consent is necessary in some circumstances, it should not be "unreasonably withheld, conditioned or delayed."³⁹ LS Power goes a step farther and asserts that where it has been demonstrated to PJM's reasonable satisfaction that the Project Finance Entity meets the requirements of section 11.0 that the assignee has the technical competence and financial ability to comply with the Designated Entity Agreement, and otherwise meets the Designated Entity eligibility criteria, LS Power does not believe the withholding of consent by PJM would be reasonable or warranted. LS Power asserts that it would be appropriate for section 11.1.1 to provide as much.⁴⁰

35. With respect to section 11.1.2, which addresses assignment by a Project Finance Entity to another entity, LS Power states that the Designated Entity Agreement should specifically provide that consent cannot be unreasonably withheld, conditioned or delayed.⁴¹ LS Power continues that PJM should not be permitted to withhold consent if it is established that the Project Finance Entity or its designated assignee, or a combination of the two, meet the eligibility criteria of section 11.0.⁴² LS Power adds that, to the

³⁷ Atlantic Grid Protest at 4. Atlantic Grid further asserts in its Reply that the Commission must clarify whether it is reasonable for PJM to refuse to consent to a collateral assignment of these agreements to lenders for financial purposes. Atlantic Grid Reply at 2.

³⁸ LS Power Protest at 6.

³⁹ Atlantic Grid Protest at 4.

⁴⁰ LS Power Protest at 7.

⁴¹ LS Power Protest at 8.

⁴² LS Power Protest at 8.

extent that the Designated Entity has agreed to a cost cap, the assignee must assume that cost cap obligation.⁴³

36. Finally, LS Power objects to the provision in section 11.1.2 that allows a Project Finance Entity to assign the Designated Entity Agreement only upon the breach of the Designated Entity Agreement. LS Power asserts that this condition is unworkable and should be removed. LS Power further asserts that the circumstances of transfer of the rights, duties and obligations of the Designated Entity to the Project Finance Entity will be governed by the financing documents, not whether a breach of the Designated Entity Agreement has occurred. LS Power states that the Project Finance Entity needs to be able to exercise its rights and remedies against the borrower under the financing documents, including the right to take over the project, without waiting for a breach of the Designated Entity Agreement to occur. Rather, LS Power states, the goal should be to avoid a breach altogether.⁴⁴

37. Additionally, LS Power states that it does not object to the requirement in section 11.0 of the Designated Entity Agreement that the prospective assignee “be eligible to be a Designated Entity for the Project pursuant to sections 1.5.8(a) and (f) of Schedule 6 of the Operating Agreement” if the reference is only to the technical or financial requirements referenced in that section. However, LS Power wants PJM to confirm that the reference is not intended to suggest that assignment may be made only to entities that actually sponsored a particular project, as section 1.5.8(f) addresses only such entities, and the reference could be misconstrued.⁴⁵

ii. PJM Answer

38. With regard to Atlantic Grid’s and LS Power’s objection to the need for PJM’s written consent for assignments under Article 11 of the Designated Entity Agreement and Article 8 of the Interconnection Coordination Agreement, PJM states that its ultimate interest in the regional transmission planning process is to ensure that the needs of the PJM transmission system are met, and it has no interest in arbitrarily or unreasonably denying consents to an assignment that would facilitate the timely and reliable interconnection of a project. Therefore, PJM states that it does not oppose specifying in both the Designated Entity Agreement and the Interconnection Coordination Agreement that consent to assignment will not be “unreasonably withheld, conditioned or delayed.”⁴⁶

⁴³ LS Power Protest at 8 n.17.

⁴⁴ LS Power Protest at 9-10.

⁴⁵ LS Power Protest at 8-9.

⁴⁶ PJM Answer at 6.

PJM asserts that this should address most if not all of LS Power's and Atlantic Grid's concerns.

39. PJM emphasizes, however, that its ability to consent to assignments of both the Interconnection Coordination Agreement and the Designated Entity Agreement in all circumstances is imperative to ensure that projects selected through PJM's competitive process are completed competently, in a timely manner, and consistently with the parameters of the project proposal.⁴⁷ PJM states that a primary purpose of its RTEP process is to develop a plan that, in a safe and reliable way, meets the needs of the PJM region. Consistent with such plan is the selection of Designated Entities that demonstrate through specific qualification criteria that they can timely construct, own, finance, and maintain transmission facilities relative to the particular project for which they were chosen. According to PJM, it logically follows that a prospective assignee also must be able to demonstrate to PJM that it can meet the same qualification criteria as the Designated Entity. PJM maintains that the consent process provides the mechanism for such demonstration and assures PJM that a project will not be compromised by an assignment. PJM maintains that to ensure the integrity of the competitive process and the reliability of the transmission system, it must have the ability to evaluate both the assignee's qualifications and its ability to complete the project within the parameters of the original accepted proposal and be able to withhold consent to an assignment if the assignor cannot demonstrate to PJM's satisfaction that it meets both of these criteria.

40. PJM also argues that to allow an assignee to assume the RTEP project premised merely on the representations of the Designated Entity that the assignee is qualified would allow circumvention of the qualification process approved by the Commission and allow assignees to bypass the qualification process required of all other Designated Entities. It would not be sufficient to ensure that the assignee is qualified because it does not indicate that the assignee has the technical competence or experience to construct, own, or maintain the project.⁴⁸

41. PJM maintains that Atlantic Grid's and LS Power's reliance on the Transmission Owners Agreement and how assignments may have been handled prior to Order No. 1000 is irrelevant because Order No. 1000 reforms created a new paradigm that requires PJM to ensure that any entity that is selected to construct an RTEP upgrade is qualified to meet certain specific qualification criteria.⁴⁹

⁴⁷ PJM Answer at 10.

⁴⁸ PJM Answer at 10.

⁴⁹ PJM Answer at 10.

42. With respect to LS Power's and Atlantic Grid's reliance on the *South Carolina Electric & Gas Company Order* to support assignments without PJM's consent, PJM states that the protesters miss the important distinction that PJM is not an incumbent transmission provider and therefore does not compete in the same market space as a nonincumbent developer.⁵⁰ PJM explains that in the *South Carolina Electric & Gas Company Order* the Commission was concerned that a nonincumbent transmission developer must obtain the incumbent transmission providers' consent to assign the Coordination Agreement or any rights under it to another entity, which "may result in arbitrary and unreasonable decisions by the incumbent transmission providers to block assignments."⁵¹ In contrast, PJM's sole motivation is to ensure that an assignee is qualified and able to complete the project in a manner that meets the reliability needs of the PJM region. PJM further acknowledges that, should a Designated Entity believe that PJM is unreasonably withholding consent, it can file a complaint with the Commission.⁵²

43. In contrast to Atlantic Grid's and LS Power's request for clarification that section 11.1.1 of the Designated Entity Agreement does not require PJM's consent for the collateral assignment or exercise of a Financial Entity's security interest, PJM clarifies that an assignment does require its consent.⁵³ PJM states that this requirement is necessary given that PJM has an "interest in making sure that qualified contractors perform construction, maintenance or operation of a project."⁵⁴ PJM states that without the ability to consent, this interest is impeded, since an assignment to a Financing Entity carries with it the right to take over the project. PJM further states that like any other assignment, it must ensure that the Financing Entity has the capability of completing the project in a reliable and timely fashion. PJM asserts that neither Atlantic Grid nor LS Power provide a justification as to why PJM should allow more lenient treatment for Financial Entities than other entities that may be assigned.⁵⁵

44. PJM further states that, contrary to LS Power's objections, the restriction in section 11.1.2 of the Designated Entity Agreement that limits a Financing Entity's ability

⁵⁰ PJM Answer at 11 (referencing *South Carolina Electric & Gas Company*, 147 FERC ¶ 61,126 (2014)).

⁵¹ *South Carolina Electric & Gas Company Order*, 147 FERC ¶ 61,126 at P 222.

⁵² PJM Answer at 11.

⁵³ PJM Answer at 13.

⁵⁴ PJM Answer at 13-14 (citing Atlantic Grid Protest at 5).

⁵⁵ PJM Answer at 14.

to assign the Designated Entity Agreement only upon the breach of the Designated Entity Agreement by the Designated Entity does make sense in the context of PJM's competitive planning process. PJM notes that section 11.1.2 is intended to facilitate a Financing Entity's ability to cure a breach of the Designated Entity Agreement. PJM states that it recognizes that a Financing Entity that has the right to cure a Designated Entity's breach may be assigned a Designated Entity Agreement and subsequently need to reassign it to an entity qualified to complete the project. To accommodate this circumstance, the Designated Entity Agreement allows for such assignments with PJM's consent.⁵⁶ PJM avers that section 11.1.2 of the Designated Entity Agreement strikes the right balance between PJM's interests in ensuring that RTEP upgrades are being constructed by entities with the appropriate experience and expertise, and providing the Financing Entities sufficient flexibility to make the arrangements it needs to cure a breach of the Designated Entity Agreement by the Designated Entity.⁵⁷

iii. Commission Determination

45. The Commission conditionally accepts PJM's proposed assignment provisions in the Designated Entity Agreement, subject to PJM making a further compliance filing within 30 days of the date of issuance of this order as described below. We find that requiring PJM's consent for assignments, even to entities with higher credit ratings or for the limited purpose of financing a project, may be a reasonable mechanism for PJM to ensure system reliability. We agree with PJM that it is reasonable to require a prospective assignee to demonstrate, through specific qualification criteria, that the assignee can meet the qualification criteria applicable to Designated Entities, and therefore, a prospective assignee must also be able to demonstrate to PJM that it can meet the same qualification criteria as the original Designated Entity.⁵⁸ However, we also find reasonable LS Power's and Atlantic Grid's requests that we require that PJM clarify that its consent to assignment will not be unreasonably withheld, conditioned, or delayed. As indicated in its answer, PJM does not oppose such a request. Therefore, we require PJM

⁵⁶ PJM Answer at 14-15.

⁵⁷ PJM Answer at 15.

⁵⁸ Section 1.5.8(a) (Pre-Qualification Process) of Schedule 6 of PJM's Operating Agreement contains the criteria that PJM uses to determine whether an entity is financially and technically capable to construct, own, and/or operate the transmission project. Section 1.5.8(f) (Entity-Specific Criteria Considered in Determining the Designated Entity for a Project) of Schedule 6 of the Operating Agreement contains additional criteria to determine whether the entity has the financial, technical, and engineering experience to finance, and/or construct, own, and operate the transmission project.

to revise the Designated Entity Agreement to clarify that in every instance where consent is required from PJM to an assignment, such consent will not be unreasonably withheld, conditioned, or delayed.

46. With respect to protestors' concerns with the assignment provisions of the Designated Entity Agreement and the Interconnection Coordination Agreement and their assertion that the Transmission Owners Agreement does not place restrictions on assignments of projects by incumbent transmission owners, we note 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. By definition, a Designated Entity includes both incumbent transmission owner and a nonincumbent transmission developer.⁵⁹ Furthermore, we note that Article 2, section 2.1 (Term) of the Designated Entity Agreement states that

[The Designated Entity] Agreement shall continue in full force and effect from the Effective Date until: (i) the Designated Entity executes the [] Transmission Owners Agreement; *and* (ii) the Project (a) has been completed in accordance with the terms and conditions of this Agreement, (b) meets all relevant required planning criteria, and (c) is under Transmission Provider's operational dispatch; or (iii) the Agreement is terminated pursuant to Article 8 of this Agreement. (Emphasis added).

47. Although incumbent transmission owners in PJM are signatories of, and subject to, the Transmission Owners Agreement, we interpret the above provision as expressly providing that the Designated Entity Agreement and all of its terms and conditions apply in full to all Designated Entities, whether an incumbent transmission owner or a nonincumbent transmission developer, that are designated an RTEP project. Therefore,

⁵⁹ A Designated Entity is defined as "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, Short-term Projects, Long-lead Projects, or Economic-based Enhancements or Expansions pursuant to Section 1.5.8 of Schedule 6 of [the Operating] Agreement." PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (C-D), § 1.7A (3.1.0). *See also* Section 1.5.8(j) of Schedule 6 that states in relevant part that in order "[t]o retain its status as a Designated Entity...the Designated Entity (both existing Transmission Owners and Nonincumbent Developers) shall...return to the Office of the Interconnection an executed Designated Entity Agreement containing a mutually agreed upon development schedule ..." PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(j) (Acceptance of Designation) (3.0.0).

the Designated Entity Agreement treats both incumbent transmission owners and nonincumbent transmission developers comparably by requiring both to obtain consent from PJM for any assignment.

48. In addition, we note that Article 5, section 5.0 (Interconnection Coordination Agreement with Transmission Owner(s) of the Designated Entity Agreement states that

By the dates specified in the Development Schedule in Schedule C of this Agreement, Designated Entity shall execute or request to file unexecuted with the Commission: (a) an Interconnection Coordination Agreement; and (b) an interconnection agreement among and between Designated Entity, Transmission Provider, and the Transmission Owner(s) to whose facilities the Project will interconnect.

49. Therefore, consistent with our determination on the assignment provisions of the Designated Entity Agreement, we interpret the above provisions as expressly providing that the Interconnection Coordination Agreement and all of its terms and conditions apply in full to *all* Designated Entities that are designated by PJM to construct an RTEP project pursuant to PJM's competitive process set forth in Schedule 6. Therefore, we require PJM to revise the Interconnection Coordination Agreement to clarify that in every instance where consent is required from PJM to an assignment, such consent will not be unreasonably withheld, conditioned, or delayed.

b. Article 8, Section 8.1 of the Interconnection Coordination Agreement

i. Proposal

50. Section 8.0 of Article 8 states that no party may assign or delegate its duties or obligation under the Interconnection Coordination Agreement without PJM's consent. PJM explains that its consent to an assignment of the Interconnection Coordination Agreement is necessary to ensure that proper coordination continues that facilitates the safe and reliable interconnection of the Transmission Owner's and Delegated Entity's facilities.

51. Section 8.1 of the Interconnection Coordination Agreement provides that if a Designated Entity Agreement associated with a Project is assigned under Article 11 of the Designated Entity Agreement, the Interconnection Coordination Agreement will be contemporaneously assigned. PJM explains that this section is necessary because, if the Designated Entity Agreement is assigned, the assignee of that agreement takes over the project and would be the appropriate party to continue the coordination responsibilities pursuant to the Interconnection Coordination Agreement.

ii. Protests

52. LS Power proposes that section 8.1 be amended to read: “In the event that the Designated Entity Agreement associated with the Project is assigned pursuant to Article 11 of the Designated Entity Agreement, this Agreement also shall be assigned contemporaneously with that agreement, without the need for any consent under Section 8.0 above.” LS Power states that this edit will ensure to the extent that consent is not required by the Designated Entity Agreement, it will not be required in this section.

iii. PJM Answer

53. With respect to LS Power’s proposed revision to section 8.1 of the Interconnection Coordination Agreement, PJM states that it has no objection to this revision.

iv. Commission Determination

54. We accept LS Power’s proposed revision to section 8.1 of the Interconnection Coordination Agreement and require PJM to revise its section of the Interconnection Coordination Agreement accordingly. This will ensure that to the extent that consent is not required by the Designated Entity Agreement, consent will not be required in Section 8.1 of the Interconnection Coordination Agreement.

2. Section 4.3.1 of the Designated Entity Agreement

55. Section 4.3.1 of the Designated Entity Agreement (Consent of Transmission Provider to Project Modifications), states that the Designated Entity may not modify the Project without prior written consent of Transmission Provider, including but not limited to, modifications necessary to obtain siting approval or necessary permits.

a. Protests

56. LS Power states that, while it does not oppose the requirement to obtain consent, there should be a limitation on PJM’s ability to withhold consent. Therefore, LS Power asserts that as with other areas of the Designated Entity Agreement where PJM’s consent is required, the provisions should note that PJM’s consent shall not be unreasonably withheld, conditioned, or delayed.⁶⁰ Further, LS Power asserts that PJM should not be permitted to withhold consent if modification: (1) results in the project continuing to satisfy the need for which it was approved; (2) will not significantly change the costs of

⁶⁰ LS Power Protest at 12-13.

the project (taking into account any cost caps); and (3) will not delay the ability to energize the project beyond the date on which the project was found to be needed.⁶¹

b. PJM Answer

57. PJM objects to LS Power's proposal to restrict PJM's consent authority under section 4.3.1 of the Designated Entity Agreement over project modification. PJM states that, while the three conditions that LS Power lists in its proposal are certainly factors to consider, they alone do not guarantee that the proposed modification does not merit evaluation or disapproval.⁶² PJM further states that its planning process under the Order No. 1000 reforms is highly dependent on its selection of projects and those projects being completed as proposed. As a result, PJM states that every project modification has the potential to affect the planning process as well as the reliable operation of the transmission grid. Therefore, PJM asserts that, in order to ensure efficient and effective transmission planning as well as to protect the reliable operation of the transmission system, PJM must be able to approve all proposed modifications to projects selected for inclusion in the RTEP.⁶³

c. Commission Determination

58. With respect to LS Power's assertion that PJM should not be permitted to withhold consent in certain circumstances, we note our finding above that requires PJM to revise the Designated Entity Agreement to clarify that in every instance where consent is required from PJM to an assignment, such consent will not be unreasonably withheld, conditioned, or delayed. This finding applies with equal force to section 4.3.1, which requires PJM's consent to modify a project. Therefore, we require PJM to revise and the Designated Entity Agreement to clarify that in every instance where consent is required from PJM to modify a project, such consent will not be unreasonably withheld, conditioned, or delayed. We agree with PJM that it must be able to approve all proposed modifications to projects that are selected in the RTEP in order to ensure efficient and effective transmission planning as well as to protect the reliable operation of the transmission system. In addition, we expect that as part of its RTEP process, PJM would be actively involved in determining whether a modification would, among other things: (1) result in the project continuing to satisfy the need for which it was approved; (2) not significantly change the costs of the project (taking into account any cost caps); and

⁶¹ LS Power Protest at 13.

⁶² PJM Answer at 19.

⁶³ PJM Answer at 20.

(3) not delay the ability to energize the project beyond the date on which the project was found to be needed.

3. Coordination between the Interconnection Coordination Agreement and the Designated Entity Agreement

a. Protests

59. LS Power argues that there is a lack of coordination between the breach and *force majeure* provisions of the Interconnection Coordination Agreement and the termination and other provisions of the Designated Entity Agreement.⁶⁴ Similarly, Atlantic Grid states that default and *force majeure* provisions are not coordinated between the agreements.⁶⁵ LS Power and Atlantic Grid both assert that a breach of the Interconnection Coordination Agreement by an incumbent transmission owner's failure to perform, or a *force majeure* declaration by the incumbent transmission owner under the Interconnection Coordination Agreement, could cause a Designated Entity to fail to meet one or more milestones under the Designated Entity Agreement.⁶⁶ LS Power states that this failure could result in a declaration of breach and default against the Designated Entity and removal of the Designated Entity or reassignment of the project.⁶⁷ LS Power and Atlantic Grid argue that it would be inappropriate for PJM to declare an event of default under the Designated Entity Agreement under these circumstances.⁶⁸ LS Power states that both the Interconnection Coordination Agreement and the Designated Entity Agreement should be revised to include provisions that: (1) indicate the inter-relationship between the agreements; and (2) state the impact on the Designated Entity and Designated Entity Agreement of a breach, default, or *force majeure* declaration under the Interconnection Coordination Agreement.⁶⁹ Atlantic Grid requests that the Commission require PJM to revise the agreements to bring them into closer harmony and

⁶⁴ LS Power Protest at 16-17.

⁶⁵ Atlantic Grid Protest at 6.

⁶⁶ LS Power Protest at 17; Atlantic Grid Protest at 6.

⁶⁷ LS Power Protest at 17.

⁶⁸ LS Power Protest at 17; Atlantic Grid Protest at 6.

⁶⁹ LS Power Protest at 17.

include reasonable cure provisions to provide protection against unreasonable or unnecessary disputes over contract termination.⁷⁰

b. PJM Answer

60. PJM asserts that LS Power's and Atlantic Grid's concerns can be addressed without amending either agreement. PJM explains that if a Transmission Owner breaches or declares a *force majeure* event under the Interconnection Coordination Agreement, which causes the Designated Entity to be unable to perform under the Interconnection Coordination Agreement, this would be considered a *force majeure* event under the Designated Entity Agreement and would be treated as any other *force majeure* event. PJM also states that if the Designated Entity believes the transmission owner is not fulfilling its obligations under the Interconnection Coordination Agreement, it may seek appropriate remedies at the Commission or an appropriate forum.⁷¹

c. Commission Determination

61. PJM explains in its answer how the *force majeure* provisions of the Interconnection Coordination Agreement affect the Designated Entity Agreement's *force majeure* provisions. We believe that this explanation satisfactorily addresses LS Power's and Atlantic Grid's concerns over coordination between the Interconnection Coordination Agreement and the Designated Entity Agreement. In addition, we find that revising the agreements consistent with PJM's explanation would add clarity to the agreements as to the issue raised by protestors. Therefore, we require PJM to submit a compliance filing within 30 days of the date of issuance of this order to revise its Designated Entity Agreement and Interconnection Coordination Agreement consistent with its explanation as to how the *force majeure* provisions of the Interconnection Coordination Agreement affect the Designated Entity Agreement's *force majeure* provisions.

4. "Remedies" Provisions

a. Protests

62. LS Power notes that section 5.4 of the Interconnection Coordination Agreement and section 7.5 of the Designated Entity Agreement contain a sentence stating, "Nothing in this Section [applicable number] is intended in any way to affect the rights of a third

⁷⁰ Atlantic Grid Protest at 6.

⁷¹ PJM Answer at 22.

party to seek any remedy it may have in equity or at law from the Designated Entity resulting from Designated Entity's Default of this Agreement.”

63. LS Power argues that PJM does not explain the purpose of this sentence. LS Power asserts that it should be deleted and replaced with customary language making it clear that no third party beneficiaries are intended under either agreement, and are therefore unable to sue for breaches of either agreement.⁷²

64. LS Power states that if the above sentence is not deleted, it should be revised to reference third-party claims against any signatories to both agreements. LS Power further states that there is no reason to refer only to the Designated Entity, because a breach of either agreement by any party to the agreement could result in a third-party claim. LS Power reiterates that language should be included to make clear that this sentence is not intended to provide third parties with the ability to sue for breaches of either agreement.⁷³

b. PJM Answer

65. PJM states that the purpose of the sentence objected to by LS Power is to make clear that nothing in the provisions prescribing the remedies the parties may have under the Agreements in any way affects the rights of third parties that may result from the Designated Entity's breach. PJM states that LS Power's proposed revisions would eviscerate the protection to third parties intended by this section.⁷⁴

66. PJM states that referring only to the Designated Entity in the Designated Entity Agreement is appropriate, because PJM as the regional transmission organization is subject to the limited liability and indemnity provisions of the Designated Entity Agreement and Interconnection Coordination Agreement. However, PJM agrees that section 5.4 of the Interconnection Coordination Agreement should also refer to the transmission owner.⁷⁵

⁷² LS Power Protest at 14-15.

⁷³ LS Power Protest at 15.

⁷⁴ PJM Answer at 27.

⁷⁵ PJM Answer at 27-28.

c. Commission Determination

67. We accept PJM's proposed remedies provisions, subject to the revision described below. We find reasonable PJM's rationale for including the sentence to make it clear that the agreements do not intend to affect any rights that a third party may have as a result of a breach of either agreement.

68. We accept the proposal to add a reference to the transmission owner in section 5.4 of the Interconnection Coordination Agreement as agreed to by PJM. Accordingly, we require PJM to submit a compliance filing within 30 days of the date of issuance of this order to revise section 5.4 of the Interconnection Coordination Agreement to also refer to the Transmission Owner. However, we find that revising section 7.5 of the Designated Entity Agreement to also refer to the Transmission Owner is not appropriate. Unlike the Interconnection Coordination Agreement, a Transmission Owner is not a party to the Designated Entity Agreement.

5. "Whereas" Clauses

a. Protests

69. LS Power notes that the first "whereas" clause of both agreements contains a reference to Order No. 1000.⁷⁶ LS Power asserts that this reference is inaccurate in the

⁷⁶ While the Interconnection Coordination Agreement contains several "Whereas" Clauses, LS Power raises concern specifically with the mention of Order No. 1000 in the first clause, which states in full as follows:

WHEREAS, in accordance with FERC Order No. 1000 and Schedule 6 of the Operating Agreement, Transmission Provider is required to designate among candidates, pursuant to a FERC-approved process, an entity to develop and construct a specified project to expand, replace and/or reinforce the Transmission System operated by Transmission Provider;

Similarly, while the Designated Entity Agreement contains several "Whereas" Clauses, LS Power raise concern specifically with the mention of Order No. 1000 in the first clause, which states in full as follows:

WHEREAS, in accordance with FERC Order No. 1000 and Schedule 6 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement"), Transmission Provider is required to designate among candidates, pursuant to a FERC-approved process, an entity to develop and construct a specified project to expand, replace and/or reinforce the Transmission System operated by Transmission Provider;

context of the remainder of the clause and inappropriate for inclusion in a contractual agreement. LS Power points to the Commission's previous removal of a reference to its March 2013 Order.⁷⁷ Accordingly, LS Power requests that the Commission direct PJM to remove the reference to Order No. 1000.

b. Commission Determination

70. We decline to require PJM to remove the reference to Order No. 1000 from the "whereas" clauses in either agreement. In the case cited by LS Power, the Commission directed the PJM Transmission Owners to remove a reference to the March 2013 Order from Schedule 12 because of potential confusion regarding the validity of Schedule 12, section (a)(iv) under future Commission orders.⁷⁸ There is not a similar concern here since the Interconnection Coordination Agreement is a necessary part of PJM's implementation of Order No.1000 and the reference does not create any confusion. Moreover, under standard contract law, "a Whereas clause, while sometimes useful as an aid to interpretation, cannot create any right beyond those arising from the operative terms of the document."⁷⁹

6. Other Issues

a. Interconnection Coordination Agreement

i. Article 4

(a) Protests

71. LS Power and Atlantic Grid raise concerns with, and suggest revisions to, Article 4 of the Interconnection Coordination Agreement which governs the coordination between the Parties to this agreement.⁸⁰ In relevant part, section 4.0.1 states:

⁷⁷ LS Power Protest at 15-16 (citing May 2014 Order, 147 FERC ¶ 61,128 at P 305).

⁷⁸ May 2014 Order, 147 FERC ¶ 61,128 at P 305.

⁷⁹ *Grynberg v. FERC*, 71 F.3d 413, 416 (D.C. Cir. 1995).

⁸⁰ See PJM, Intra-PJM Tariffs, OATT, Attachment LL (Form Interconnection Coordination Agreement), Article 4 (Coordination) (0.0.0).

Transmission Owner shall coordinate with Designated Entity the interconnection of the Project to the Transmission Owner's transmission facilities including enhancements or expansions specified in the Regional Transmission Expansion Plan, identified as PJM Upgrade ID ____XX____ and designated by PJM to the Transmission Owner to make Transmission Owner's transmission facilities ready to receive the interconnection of the Project.

72. First, LS Power and Atlantic Grid assert that this section appears to automatically assign certain parts of a sponsored project to an incumbent transmission owner.⁸¹ Atlantic Grid asserts that any portion of a project that is a part of the inherent design of the one selected by PJM and awarded to the Designated Entity should be owned by the developer.⁸² LS Power is concerned that the provision appears inconsistent with the accepted Order No. 1000 compliance Tariff provisions on when projects are "upgrades" that automatically go to transmission owners.⁸³

73. Second, Atlantic Grid and LS Power assert that the language in section 4.1 of the Interconnection Coordination Agreement, which details the responsibilities of the Transmission Provider under this agreement, implies that PJM has a discretionary role in such coordination because the language states that "[PJM] *may* facilitate the coordination between the Designated Entity and [the] Transmission Owner required by this [a]greement."⁸⁴ LS Power asserts that it is unclear in what circumstances PJM would decline to facilitate coordination. Both protestors argue that PJM must have an affirmative duty to coordinate interconnection between the Designated Entity and the Transmission Owner.⁸⁵ To this end, LS Power suggests that the "may" in this provision should be changed to "shall" to indicate PJM must do more than simply participate.⁸⁶

⁸¹ LS Power Protest at 18; Atlantic Grid Protest at 6-7.

⁸² Atlantic Grid Protest at 6-7.

⁸³ LS Power Protest at 18.

⁸⁴ See PJM, Intra-PJM Tariffs, OATT, Attachment LL (Form Interconnection Coordination Agreement), Article 4 (Coordination), § 4.1 (Transmission Provider Responsibilities) (0.0.0).

⁸⁵ Atlantic Grid Protest at 7; LS Power Protest at 19.

⁸⁶ LS Power Protest at 19.

74. Third, Atlantic Grid and LS Power state that they oppose the last sentence of section 4.2 of the Interconnection Agreement, which states “[a]ny delays due to emergency, load or maintenance which affect the timing of outages as required or approved by the Transmission Provider may not be considered a Breach under Article 5.” Atlantic Grid asserts that allowing any delay to be a performance excuse is not reasonable because there is no connection between the delay and the event that caused it.⁸⁷ LS Power also asserts that the provision provides unlimited opportunity for delay and, therefore, should be limited to delays as a result of emergencies.⁸⁸

75. Fourth, Atlantic Grid contends that section 4.3.1 of the Interconnection Coordination Agreement, which provides that the Interconnection Coordination Agreement confers no rights upon either the Designated Entity or the Transmission Owner to enter the right-of-way or property of the other party is too restrictive and that some access on reasonable terms may be necessary to facilitate the coordination of the interconnection and construction.⁸⁹

(b) PJM Answer

76. In response to concerns as to section 4.0.1 of the Interconnection Coordination Agreement, PJM states that nothing in section 4.0.1 is intended to be used to “assign both construction and ownership of portions of sponsored projects to incumbent transmission owners beyond the [requirements of the OATT].”⁹⁰ PJM asserts that this section is intended only to identify the facilities that will be the subject of coordination under the Interconnection Coordination Agreement. To the extent that enhancements or expansions assigned to the incumbent Transmission Owner’s system are required to facilitate the interconnection of the sponsored project, PJM states that these facilities will be separately identified and classified as “Transmission Owner Upgrades” in the RTEP and treated as such under Schedule 6 of the Operating Agreement. PJM further explains that use of the Designated Entity Agreements for the Transmission Owner Upgrades in this section is inappropriate because the Transmission Owner will be issued a construction responsibility letter related to the Transmission Owner Upgrade that will outline its obligations consistent with Schedule 6 and the Transmission Owners Agreement.⁹¹

⁸⁷ Atlantic Grid Protest at 7-8.

⁸⁸ LS Power Protest at 19.

⁸⁹ Atlantic Grid Protest at 8.

⁹⁰ PJM Answer at 23.

⁹¹ PJM Answer at 23.

77. With regard to arguments that section 4.1 of the Interconnection Coordination Agreement should be revised to ensure that PJM has an affirmative duty to coordinate interconnection between the Designated Entity and Transmission Owner, PJM explains that its role under the Interconnection Coordination Agreement is one of facilitator, and therefore, PJM may provide coordination when necessary.⁹² PJM adds that, currently, Transmission Owners often work out transmission interconnection issues among themselves without the assistance of PJM. Therefore, it is not a matter of PJM declining to facilitate coordination pursuant to section 4.1, but rather whether PJM's assistance is needed that makes PJM's participation less than mandatory.

78. In response to the revisions proposed by LS Power and Atlantic Grid to section 4.2 of the Interconnection Coordination Agreement that would limit the types of delays that would not be considered a breach, PJM maintains that such revisions would unreasonably restrict PJM's ability to coordinate outages. PJM states that the plain language of this section makes clear that Transmission Owner outages are coordinated through PJM and that system conditions and reliability concerns drive outage scheduling. PJM states that it needs the flexibility to coordinate outages as it sees fit to preserve the reliability of the system, without the danger of the Interconnection Coordination Agreement being declared in breach. PJM further states that, despite protestors' concerns that this provision allows for unlimited delays, it has no interest in taking action that would negatively impact the reliability of the system, including unreasonably delaying outages that would affect the timely completion of a Designated Entity's project.⁹³

79. PJM asserts that Atlantic Grid's proposed revisions to section 4.3.1 of the Interconnection Coordination Agreement⁹⁴ to require the parties to enter into one or more agreements, including a construction agreement or interconnection agreement setting forth the terms and conditions for such access, are not necessary because Atlantic Grid's concerns are already addressed in section 4.3.2. Section 4.3.2 provides that, prior to the interconnection, the parties "shall enter into an interconnection agreement setting forth the terms and conditions for: (i) the interconnection of the Transmission Owner's and Designated Entity's facilities; and (ii) the ongoing relationship of the Transmission Owner and the Designated Entity with regard to the interconnection." However, PJM states that, to the extent that the Commission agrees that section 4.3.2 should be modified to require additional agreements, it should be clear that: (1) if an agreement is addressing

⁹² PJM Answer at 24-25.

⁹³ PJM Answer at 25-26.

⁹⁴ Section 4.3.1 provides that the Interconnection Coordination Agreement confers no rights upon either the Designated Entity or the Transmission Owner to enter the right-of-way or property of the other party.

only access issues between the Transmission Owner and the Designated Entity, PJM is not required to be a party; and (2) if PJM is to be a party to an additional agreement, its status under such agreement should be limited to that of an acknowledging party as it is today under interconnection agreements between two Transmission Owners.

(c) **Commission Determination**

80. With regard to section 4.0.1, we agree with PJM that this section does not automatically assign certain parts of a sponsored project to an incumbent transmission owner. This section is limited to projects required to prepare a transmission owner's existing facilities for the interconnection of the sponsored project. Furthermore, there is no language in section 4.0.1 that can be read to alter PJM's designation of the Designated Entity to develop, construct, maintain, and operate a sponsored project, which would occur prior to the negotiation of the Designated Entity Agreement.⁹⁵

81. We disagree with LS Power and Atlantic Grid that PJM should have an affirmative duty to facilitate coordination. We find it reasonable for PJM to facilitate coordination only in circumstances where facilitation is necessary. PJM has no reason to decline to facilitate coordination where its facilitation would enable parties to complete timely upgrades required to ensure the reliability and economic efficiency of the PJM system.

82. We find PJM's outage coordination provisions to be reasonable. PJM is required to coordinate outages in order to respond to system conditions and ensure the reliable operation of the transmission system.⁹⁶ That said, whether any particular outage, and any resulting delay, would be considered a breach or not of the agreement is contract and fact specific.

83. With regard to access rights, we agree with PJM that section 4.3.2 provides that, prior to the interconnection, the parties must enter into an interconnection agreement which should address parties' access rights. The appropriate agreement is the interconnection agreement between the Designated Entity and the Transmission Owner.

⁹⁵ See PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(i) (Notification of Designated Entity) (5.0.0).

⁹⁶ See PJM Operating Agreement, Schedule 1, § 1.9.1.

ii. **Request for a *Pro Forma* Interconnection Agreement under the Interconnection Coordination Agreement**

(a) **Protests**

84. LS Power asserts that the interconnection agreement required to be executed under the Interconnection Coordination Agreement should also be filed as a *pro forma* agreement, as it directly affects the Designated Entity's ability to meet its obligations and milestones under the Interconnection Coordination Agreement. LS Power believes that the Commission should require the filing of a *pro forma* interconnection agreement for competitively selected transmission project interconnection.⁹⁷

(b) **PJM Answer**

85. Regarding LS Power's assertion that the Commission should require PJM to file a *pro forma* Interconnection Agreement, PJM states that, currently, agreements facilitating transmission interconnections between Transmission Owners generally are not *pro forma* agreements. PJM understands that these agreements are fairly standardized, and are negotiated by Transmission Owners individually to meet the needs of a particular interconnection. PJM is only an acknowledging party in these agreements. PJM requests that, to the extent that the Commission determines that a *pro forma* Interconnection Agreement is required, PJM's status should remain only as an acknowledging party to any such agreement.⁹⁸

(c) **Commission Determination**

86. We decline to require PJM to file a *pro forma* Interconnection Agreement. There is insufficient evidence that a *pro forma* agreement is necessary to preserve a Designated Entity's ability to meet its obligations and milestones under the Interconnection Coordination Agreement. The absence of a *pro forma* Interconnection Agreement does not in and of itself render the Interconnection Coordination Agreement unjust and unreasonable.

⁹⁷ LS Power Protest at 16.

⁹⁸ PJM Answer at 28-29.

iii. Request for a National *Pro Forma* Agreement**(a) Protests**

87. LS Power notes that numerous agreements related to competitive procurement procedures have been filed with the Commission or are being developed. LS Power requests that these *pro forma* agreements be addressed by the Commission in a single procedure to adopt a set of uniform national *pro forma* agreement addressing all regional transmission planning processes. LS Power argues that multiple regional *pro forma* agreements addressing competitively solicited projects are inefficient and unnecessary. LS Power notes that to the extent there are legitimate regional differences, such variations could be addressed by the Commission in an individual filing.⁹⁹

(b) PJM Answer

88. PJM states that LS Power's proposal to adopt a national *pro forma* agreement is beyond the scope of either of the dockets considered here. In any event, PJM further states that a national *pro forma* agreement may be difficult to achieve, given the significantly different Order No. 1000 competitive processes adopted by the Commission.¹⁰⁰

(c) Commission Determination

89. We decline to require a national *pro forma* transmission developer agreement as beyond the scope of this proceeding and unnecessary at this time. 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 that entity is an incumbent transmission provider or a nonincumbent transmission developer.¹⁰¹ Appropriate criteria must not be unduly discriminatory or preferential and must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities.¹⁰² By requiring an

⁹⁹ LS Power Protest at 20-21.

¹⁰⁰ PJM Answer at 29.

¹⁰¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 225, 323.

¹⁰² *Id.* PP 323-324.

open and transparent transmission planning process that produces a regional transmission plan, “Order No. 1000 will provide the Commission and interested parties with a record that we believe will be able to highlight whether public utility transmission providers are engaging in undue discrimination against others.”¹⁰³ While we decline to adopt a national *pro forma* agreement at this time, we may assess in the future whether a standardized agreement is necessary.

b. Designated Entity Agreement

i. Proposed Revisions to Allow a Financial Entity to Cure A Breach

(a) Protests

90. LS Power and Atlantic Grid raise several other protests concerning specific provisions of the Designated Entity Agreement.

91. First, protestors assert that the Designated Entity Agreement should allow a Financing Entity to cure a Designated Entity’s default of the Designated Entity Agreement. LS Power states that during the stakeholder process it requested that PJM include customary language allowing a Financing Entity to cure default on behalf of the Designated Entity.¹⁰⁴ LS Power states that PJM declined, expressing concern that it should have some control of what entities perform work related to the construction, maintenance, or operation of the project. LS Power states that it responded to PJM’s concern by suggesting that it would be appropriate to require that any entity performing such work for a financing party be the same as an entity who performed work for the Designated Entity or otherwise be subject to PJM consent, which consent should not be unreasonably withheld, conditioned or delayed. LS Power requests that this concept be included in the Designated Entity Agreement.¹⁰⁵

92. Atlantic Grid adds that leaving PJM with sole discretion whether to waive a default so that the financing entity can cure a developer’s breach will make it far more difficult to obtain financing because lenders will require security interests in the project that give them the right to take ownership, cure the developer’s default, and complete the construction and commissioning of the project. Atlantic Grid asserts that providing a

¹⁰³ Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

¹⁰⁴ LS Power Protest at 10 (citing e.g., section 14.3 of the CAISO Draft *pro forma* Approved Project Sponsor Agreement).

¹⁰⁵ LS Power Protest at 10-11.

reasonable commercial pathway to complete designated projects without unreasonable delay is consistent with the public interest in obtaining reliable public utility service when it is needed and at a reasonable cost. Additionally, Atlantic Grid states that it recognizes PJM's interest in making sure that qualified contractors perform construction, maintenance or operation of a project. However, Atlantic Grid asserts that, as long as the same contractor will continue to perform the work, PJM should have no objection, and there should be no need to obtain PJM's consent. Atlantic Grid further asserts that, if the financing entity wishes to select a new contractor who is otherwise qualified, PJM's consent should not be unreasonably withheld or delayed.¹⁰⁶

(b) PJM Answer

93. PJM responds to arguments that a Financing Entity should be permitted to cure a Designated Entity's default by asserting that to do so would cause unnecessary and harmful delays to the planning process and would be unnecessary because Financing Entities already have the opportunity to cure Designated Entity breaches prior to defaults under the Designated Entity Agreement. PJM states that a default occurs *after* the period of time during which a breach must be cured; section 7.3 of the Designated Entity Agreement requires that a breach be cured within 30 days of receipt of the notice of a breach or another such date as determined by PJM that still enables the project to meet its required in-service date. Therefore, PJM asserts that, working together, the Designated Entity and the Financing Entity can facilitate the Financing Entity's ability to cure a breach during the breach period.¹⁰⁷

94. Moreover, PJM states that it is not appropriate to allow a Financing Entity to cure a default because such an opportunity would interfere with PJM's right to reevaluate the need for a project in the RTEP and determine whether to retain it in the RTEP and could result in unreasonable delays that could hinder PJM's ability to timely meet the reliability needs of the transmission system.¹⁰⁸ In addition, according to PJM, Designated Entities and other assignees do not have this opportunity to cure a breach, and neither LS Power nor Atlantic Grid provides any justification for why Financing Entities should be afforded this opportunity.

¹⁰⁶ Atlantic Grid Protest at 5.

¹⁰⁷ PJM Answer at 16.

¹⁰⁸ PJM Answer at 17 (citing PJM, Intra-PJM Tariffs, OATT Attachment KK (Form Designated Entity Agreement), Article 7 (Breach and Default), § 7.4 (Re-evaluation if Breach Not Cured) (0.0.0) and PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(k) (Failure of Designated Entity to Meet Milestones) (5.0.0)).

95. Further, PJM states that Atlantic Grid's and LS Power's contentions that PJM should have no objection to allowing a Financing Entity to cure a breach if the Financing Entity uses the same contractor as the Designated Entity fails to recognize a critical possibility that the contractor may be the reason for the breach. PJM further states that use of the Designated Entity's contractor alone does not demonstrate that the Financing Entity meets all of the qualification criteria to be the Designated Entity for the project. Therefore, PJM asserts that the use of an existing contractor simply is not enough of a safeguard to warrant allowing a Financing Entity to take over a project without PJM's consent.¹⁰⁹

(c) **Commission Determination**

96. We agree with PJM that permitting a Project Financing Entity to cure a Designated Entity's default of the Designated Entity Agreement is not appropriate in light of the opportunity that already exists for the Financing Entity to cure the breach and not delay the completion of the project. It is the responsibility of the Project Financing Entity and Designated Entity to cure a breach prior to default. Under the Designated Entity Agreement, no entity has the ability to cure a default outside the remedies defined in section 5.4.

ii. **Proposed Revisions to Termination Provisions**

(a) **Protests**

97. LS Power states that the termination provisions (sections 10.2 and 8.0 of the Designated Entity Agreement) are unreasonably stringent. LS Power notes that section 10.2 of the Designated Entity provides that "[i]n the event that Designated Entity is unable to perform any of its obligations under this Agreement because of an occurrence of Force Majeure, Transmission Provider may terminate this Agreement in accordance with Section 8.0 of this Agreement."

98. Additionally, LS Power notes that section 8.0 of the Designated Entity Agreement allows PJM to terminate the Designated Entity Agreement when "a Force Majeure or other event outside of the Designated Entity's control [occurs] that, with the exercise of Reasonable Efforts, Designated Entity cannot alleviate and which prevents the Designated Entity from satisfying its obligations under this Agreement . . .".

99. LS Power asserts that section 10.2 of the Designated Entity Agreement that refers to non-performance of "any" obligation providing PJM the option to terminate is overly stringent, provides too much discretion, and eliminates the entire purpose of a

¹⁰⁹ PJM Answer at 15.

force majeure provision, which, by definition is an event that prevents a Designated Entity from meeting an obligation. LS Power states that, at a minimum, the Commission should revise section 8.0 so that, if *force majeure* events create schedule delays, then, as long as the Designated Entity is using reasonable efforts to mitigate the impact of the *force majeure* event, no termination right will exist unless PJM reasonably determines that the date for energizing the project will be delayed beyond the date upon which the project was found to be needed and an alternative project is therefore reasonably necessary and appropriate. LS Power states that this would provide consistency between the Designated Entity Agreement and section 1.5.8(k) to Schedule 6 which allows PJM to re-evaluate the need for a project if a Designated Entity fails to meet a milestone that “causes a delay of the project’s in-service date”¹¹⁰

(b) **PJM Answer**

100. PJM disputes LS Power’s assertion that its proposed provisions in section 8.0 and 10.2 of the Designated Entity Agreement are too stringent. PJM states that these provisions permit PJM to move forward if it is clear that the Designated Entity cannot mitigate circumstances that are preventing it from performing. PJM further states that it needs the ability to terminate Designated Entity Agreements where a Designated Entity’s inability to perform cannot be overcome so that PJM can reevaluate system needs without the failed project and plan accordingly, in order to preserve reliability of the transmission system.¹¹¹

(c) **Commission Determination**

101. We find that the proposed termination provisions are just and reasonable, and not overly stringent. Section 10.2 provides PJM with an option, not an obligation, to terminate. Since the facts of any qualifying *force majeure* event will differ, whether the Designated Entity cannot perform due to a *force majeure* event or mitigate the *force majeure* event through reasonable efforts will necessarily be determined at the time of the *force majeure* event.

¹¹⁰ LS Power Protest at 11-12.

¹¹¹ PJM Answer at 18.

iii. **Revisions to Place Limitations on Declaration of a Breach**

(a) **Protests**

102. LS Power states that section 7.0 of the Designated Entity Agreement, which states that a “Breach” shall include “the failure to comply with *any* term or condition of this Agreement,” has no materiality limitation on the failure to comply with terms or conditions despite LS Power’s request during the stakeholder process that the provision be revised to include a materiality requirement much like the definition of Breach in the draft California Independent System Operator *pro forma* Approved Project Sponsor Agreement, which LS Power states was taken from the Large Generator Interconnection Agreement. LS Power requests that the Commission require PJM to amend the *pro forma* Designated Entity Agreement to include a materiality requirement related to a declaration of Breach and PJM’s exercise of remedies.¹¹²

(b) **PJM Answer**

103. PJM states that LS Power’s suggestion that section 7.0 of the Designated Entity Agreement should be revised to include a “materiality requirement” should be disregarded. PJM states that it did not include a “materiality” limitation because the breach of any obligation or milestone under the Designated Entity Agreement conceivably could delay or otherwise affect an RTEP project, thereby adversely impacting the planning process or the reliability of the transmission system. PJM notes, as an example, that determining “materiality” is fact specific. According to PJM, limiting breaches to the failure to perform “material” terms and conditions potentially could lead to disputes as to the meaning of “material,” which would not be resolved in a timely manner thus potentially delaying a project or the development of an alternative project needed for reliability. PJM states that it needs the ability to re-evaluate the project upon a default, regardless of the nature of the uncured breach, and determine whether to keep the project in the RTEP. PJM adds that this re-evaluation process is essential to ensuring the reliability of the transmission system.¹¹³

(c) **Commission Determination**

104. We agree with PJM that it is not necessary to add a “materiality” provision in the definition of a breach. The breach of any obligation or milestone under the Designated Entity Agreement has the potential to delay or otherwise affect an RTEP project, thereby

¹¹² LS Power Protest at 12.

¹¹³ PJM Answer at 18.

adversely impacting the planning process or the reliability of the transmission system. We believe it is important to ensure that PJM has the ability to evaluate the project upon a default, regardless of the nature of the uncured breach, and determine whether to keep the project in the RTEP.

iv. Technical Requirements and Standards

(a) Protests

105. LS Power states that section 4.2 of the Designated Entity Agreement requires the Designated Entity to meet the “technical requirements and standards of the incumbent Transmission Owner(s) to whose facilities the Project will interconnect.” LS Power notes that the phrase “technical requirements and standards” is not a defined term in the *pro forma* Designated Entity Agreement. Therefore, LS Power avers that, as written, the provision would allow constantly changing “technical requirements and standards.” LS Power asserts that the Commission should require PJM to include a definition to specifically identify what the phrase “Technical Requirements and Standards” in section 4.2 of the Designated Entity Agreement includes, and that this definition should specify that the obligation is to meet those requirements existing at the time of Designation, unless the change in Technical Requirements and Standards is required to meet changes in North American Electric Reliability Corporation (NERC) obligations. LS Power states that, without this understanding prior to sponsorship, the developer will not be able to fully identify its obligations at the time of sponsorship and the cost of meeting those obligations.¹¹⁴

(b) PJM Answer

106. PJM states that LS Power’s request that the term “technical requirements and standards” used in section 4.2 of the Designated Entity Agreement be defined is impractical because the requirements vary depending on the facilities being constructed and the project location. PJM asserts that it is clear from the plain language of section 4.2 that references to “applicable technical requirements and standards” are references to the standards of Transmission Owner(s) to which the project will interconnect. PJM states that it is the responsibility of the entity proposing the project to discern which Transmission Owner’s technical requirements and standards will apply to its project, as well as identify and understand any national standards (e.g., American National Standards Institute and NERC standards) that may be applicable to their projects. PJM states that, to the extent that the relevant standards are PJM standards, they are posted on the PJM website.

¹¹⁴ LS Power Protest at 13.

(c) **Commission Determination**

107. We agree with PJM that it would be impractical to define the term “Technical Requirements and Standards” in the Designated Entity Agreement. The requirements of each Transmission Owner will vary, but must in any case meet all applicable national standards. Furthermore, we would expect the specific technical requirements to be defined in the interconnection agreement between the Transmission Owner and the Designated Entity. Requiring PJM to specify the applicable technical requirements and standards in the Designated Entity Agreement, where the Transmission Owner is not even a party, would be premature.

v. **Revisions to Obligate PJM to Assist Designated Entity**

(a) **Protests**

108. Section 4.5 of the Designated Entity Agreement provides that the Designated Entity is “solely responsible for all planning, engineering, procurement, construction, installation, management . . . including but not limited to obtaining all necessary permits, siting, and other regulatory approvals.” LS Power states that the Designated Entity Agreement should place an obligation on PJM to assist the Designated Entity, particularly with its efforts to obtain regulatory approvals and permits. LS Power states that, as the independent entity evaluating and selecting the project to move forward, and selecting the Designated Entity to construct and own the project, PJM is in the best position to provide the necessary testimonial support to the Designated Entity’s effort to obtain regulatory approval for the selected project. Therefore, LS Power asserts that PJM should be obligated to do so.¹¹⁵

(b) **PJM Answer**

109. PJM disputes LS Power’s contention that PJM should be obligated to obtain the necessary regulatory approvals and permits to construct the project. PJM asserts that, while under certain circumstances it has participated in proceedings related to establishing the public convenience and necessity of transmission facilities, it should not be obligated to assist in any such proceeding. PJM states that it is willing to assist in areas within its expertise, but the handling of state permitting and siting processes is not an appropriate matter to be addressed through an exercise of federal jurisdiction. PJM offers that, to the extent an entity is seeking PJM’s help and for some unexplained reason is not receiving that assistance, there are state discovery mechanisms available to compel PJM witnesses to testify in state proceedings or otherwise respond to discovery. As a

¹¹⁵ LS Power Protest at 13-14.

result, PJM states that it is not an appropriate matter for the Commission to be opining on whether and how a regional transmission organization like PJM is to participate in a state proceeding. PJM avers that, in fact, opining on this matter would create a bad precedent from the point of view of federal/state relations. PJM concludes that having designated the entity to construct, PJM has no reason not to cooperate with that entity in receiving the necessary certificates so long as the entity is not asking PJM to undertake tasks more appropriately undertaken by the Designated Entity itself.

vi. **Commission Determination**

110. We decline LS Power'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. We find modifying the Designated Entity Agreement to add such an obligation is 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. Nevertheless, we note that PJM states that, to the extent an entity seeks PJM's help and for some unexplained reason is not receiving that assistance, there are state discovery mechanisms available to compel PJM witnesses to testify in state proceedings or otherwise respond to discovery.

The Commission orders:

(A) PJM's proposed *pro forma* Interconnection Coordination Agreement is conditionally accepted, subject to a further compliance filing within 30 days of the date of issuance of this order as discussed in the body of this order.

(B) PJM's proposed *pro forma* Designated Entity Agreement is conditionally accepted, subject to a further compliance filing within 30 days of the date of issuance of this order as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.