190 FERC ¶ 61,173
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman;
Willie L. Phillips, David Rosner,
and Judy W. Chang.

American Municipal Power, Inc., Office of the People's Counsel for the District of Columbia, and the PJM Industrial Customer Coalition	Docket Nos. EL22-80-001
v.	
PJM Interconnection, L.L.C.;	
PJM Interconnection, L.L.C.	EL22-85-001

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued March 20, 2025)

1. On July 26, 2022, in Docket No. EL22-80-000, American Municipal Power, Inc., the Office of the People's Counsel for the District of Columbia, and the PJM Industrial Customer Coalition (Complainants), pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA),[1] filed a complaint against PJM Interconnection, L.L.C. (PJM) regarding PJM's implementation of its Regional Transmission Expansion Plan (RTEP) process and associated requirements (Complaint). Complainants alleged that PJM failed to execute Designated Entity Agreements with each entity designated to construct a transmission project that PJM has selected as the more efficient or cost-effective transmission project in its RTEP (Designated Entity)[2] in all instances required by Schedule 6 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement), regardless of whether that transmission project is selected

[1] 16 U.S.C. §§ 824e, 825e, 825h.

[2] "Designated Entity" shall mean an entity, including an existing Transmission Owner or Nonincumbent Developer, designated by the Office of the Interconnection with the responsibility to construct, own, operate, maintain, and finance Immediate-need Reliability Projects, Short-term Projects, Long-lead Projects, or Economic-based Enhancements or Expansions pursuant to Operating Agreement, Schedule 6, section 1.5.8. *See* PJM, Intra-PJM Tariffs, OA, Definitions, OA Definitions C - D (28.2.0).

in the RTEP for purposes of cost allocation.[3] On August 26, 2022, in Docket No. EL22-85-000, pursuant to sections 206, 306, and 309 of the FPA and Rule 206 of the Commission's Rules of Practice and Procedure,[4] PJM filed a request asking the Commission to revise Schedule 6, section 1.5.8 of the Operating Agreement, which governs PJM's RTEP process and associated requirements for Designated Entity Agreements (PJM 206 Filing). Both the Complaint and the PJM 206 Filing raised issues regarding the interpretation of Schedule 6, section 1.5.8, that section's usage of the term "Designated Entity," and PJM's implementation of these provisions.

2. On July 25, 2024, the Commission issued an order on the Complaint and FPA section 206 filing.[5] The Commission granted the Complaint, in part, and denied the Complaint, in part.[6] The Commission also granted the PJM 206 Filing, in part, and denied the PJM 206 Filing, in part.[7] Additionally, the Commission established paper hearing procedures to develop a further record to help determine PJM's going-forward responsibilities regarding Designated Entity Agreement requirements for certain in progress RTEP projects.[8] On August 26, 2024, Indicated PJM Transmission Owners (ITOs) filed a request for rehearing.[9]

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[3] This order refers collectively to these transmission projects as "RTEP projects."

[4] 18 C.F.R. § 385.206 (2023).

[5] *Am. Mun. Power, Inc. v. PJM Interconnection, L.L.C.*, 188 FERC ¶ 61,055 (2024) (Complaint Order).

[6] *Id.* P 2.

[7] *Id.*

[8] *Id.*

[9] ITOs include: American Electric Power Service Corporation on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., and AEP West Virginia Transmission Company, Inc.; The Dayton Power and Light Company; Duke Energy Corporation on behalf of its affiliates Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Business Services LLC; Duquesne Light Company; East Kentucky Power Cooperative, Inc.; Exelon Corporation on behalf of its affiliates Atlantic City Electric Company, Baltimore Gas and Electric Company, Commonwealth Edison Company, Delmarva Power & Light Company, PECO Energy Company, and Potomac Electric Power Company; The

3. Pursuant to *Allegheny Defense Project v. FERC*,[10] the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the FPA,[11] we are modifying the discussion in the Complaint Order and continue to reach the same result in this proceeding, as discussed below.[12]

I. Background

A. Order No. 1000

4. In Order No. 1000, the Commission adopted a transmission planning framework that required public utility transmission providers to develop criteria and protocols to govern the submission and evaluation of proposals for transmission facilities to be evaluated in the regional transmission planning process.[13] The Commission stated that "[t]o meet such requirements more efficiently and cost-effectively, the regional transmission plan must reflect a fair consideration of transmission facilities proposed by

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FirstEnergy Transmission Companies, including American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic Interstate Transmission LLC, Keystone Appalachian Transmission Company, The Potomac Edison Company, Monongahela Power Company, and Trans-Allegheny Interstate Line Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; UGI Utilities Inc.; and Virginia Electric and Power Company.

[10] 964 F.3d 1 (D.C. Cir. 2020) (en banc).

[11] 16 U.S.C. § 825*l*(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

[12] *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Complaint Order. *See Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

[13] *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051, at P 225 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth.* v. *FERC*, 762 F.3d 41 (D.C. Cir. 2014).

nonincumbents."[14] The regional cost allocation reforms in Order No. 1000 applied to transmission facilities "selected in a regional transmission plan for purposes of cost allocation," meaning those "transmission facilities that have been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs."[15] The Commission clarified that "selected in a regional transmission plan for purposes of cost allocation" excludes a new transmission facility if the costs of that facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that new transmission facility is to be located, and therefore, the competitive transmission development requirements of Order No. 1000 do not apply to such a facility.[16]

B. PJM's Competitive Proposal Window Process under Schedule 6, Section 1.5.8

5. To comply with Order No. 1000's regional transmission planning and cost allocation requirements, in 2013, PJM proposed revisions to its RTEP process. Specifically, PJM proposed including a competitive proposal window process under Schedule 6, section 1.5.8[17] of its Operating Agreement through which an entity who is pre-qualified as eligible to be a Designated Entity (either an incumbent transmission owner or nonincumbent transmission developer[18]) may submit a project proposal and may notify PJM if it desires to be designated rights to the transmission project if the

[14] Order No. 1000, 136 FERC ¶ 61,051 at P 11.

[15] *Id.* PP 9, 63.

[16] Order No. 1000-A, 139 FERC 61,132 at P 423.

[17] PJM, Intra-PJM Tariffs, OA Schedule 6 Sec 1.5, OA Schedule 6 Sec 1.5 Procedure for Development of the Regi (28.0.0), § 1.5.8, https://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=300495 (referred to throughout as OA Schedule 6 Sec. 1.5).

[18] 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, 136 FERC ¶ 61,051 at P 225.

transmission project is selected for inclusion in the RTEP.[19] PJM relies on this competitive proposal window process to evaluate and select the more efficient or cost-effective transmission project in its regional transmission plan for purposes of cost allocation,[20] and then identifies the Designated Entity that will construct, own, operate, maintain, and finance the selected transmission project.[21] The Commission found that PJM's revised RTEP process complied with Order No. 1000.[22]

1. PJM-Chosen Sponsored and PJM-Chosen Unsponsored Projects

6. As relevant here, through its RTEP process, PJM identifies regional transmission needs and opens competitive proposal windows to solicit project proposals that address those needs. PJM describes three time-based categories of transmission projects[23] to address identified reliability transmission needs:[24] Long-lead Projects;[25] Short-term

[19] *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 194 (2013) (PJM First Compliance Order), *order on reh'g & compliance*, 147 FERC ¶ 61,128 (2014), *order on reh'g & compliance*, 150 FERC ¶ 61,038, and *order on reh'g & compliance*, 151 FERC ¶ 61,250 (2015).

[20] *See* PJM First Compliance Order, 147 FERC ¶ 61,128 at P 236.

[21] *See PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 3 (2018) (2018 DEA Order), *order on reh'g & compliance*, 168 FERC ¶ 61,121 (2019) (2019 DEA Rehearing Order).

[22] *See supra* note 19.

[23] Schedule 6, section 1.5.8 of the Operating Agreement refers interchangeably to the projects proposed to address identified transmission needs in the PJM RTEP process as "projects" and "solutions." For consistency, this order refers to these projects as "transmission projects."

[24] *See, e.g.*, *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 194. One additional category of transmission project is Economic-based Enhancements or Expansions, which address identified economic transmission needs via the competitive proposal window process.

[25] "Long-lead Project" shall mean a transmission enhancement or expansion with an in-service date more than five years from the year in which, pursuant to Operating Agreement, Schedule 6, section 1.5.8(c), the Office of the Interconnection posts the violations, system conditions, or Public Policy Requirements to be addressed by the enhancement or expansion. *See* PJM, Intra-PJM Tariffs, OA, Definitions I-L, OA

Projects;[26] and Immediate-need Reliability Projects.[27] PJM opens competitive proposal windows to address immediate reliability needs only when it is feasible to do so.[28] PJM's RTEP process has two additional categories of specific reliability violations for which PJM may, under certain circumstances, open a competitive proposal window: Reliability Violations on Transmission Facilities Below 200 kV[29] and Thermal Reliability Violations on Transmission Substation Equipment.[30]

Definitions I – L (20.0.0); *see also* PJM, Intra-PJM Tariffs, OA Schedule 6 Sec 1.5 (28.0.0), § 1.5.8(c) (Project Proposal Windows).

[26] "Short-term Project" shall mean a transmission enhancement or expansion with an in-service date of more than three years but no more than five years from the year in which, pursuant to Operating Agreement, Schedule 6, section 1.5.8(c), the Office of the Interconnection posts the violations, system conditions, or Public Policy Requirements to be addressed by the enhancement or expansion. *See* PJM, Intra-PJM Tariffs, OA, S–T, OA Definitions S – T (22.0.0); *see also* PJM, Intra-PJM Tariffs, OA Schedule 6 Sec 1.5 (28.0.0), § 1.5.8(c) (Project Proposal Windows).

[27] "Immediate-need Reliability Project" means a reliability-based transmission enhancement or expansion that PJM's Office of the Interconnection has identified to resolve a need that must be addressed within three years or less from the year the Office of the Interconnection identified the existing or projected limitations on the Transmission System that gave rise to the need for such enhancement or expansion pursuant to the study process described in Operating Agreement, Schedule 6, section 1.5.3. *See* PJM, Intra-PJM Tariffs, OA, Definitions I-L, OA Definitions I – L (20.0.0); *see also* PJM, Intra-PJM Tariffs, OA, Schedule 6 Sec. 1.5 (28.0.0), § 1.5.8(c) (Project Proposal Windows).

[28] *See* PJM, Intra-PJM Tariffs, OA, Schedule 6 Sec. 1.5 (28.0.0), § 1.5.8 (m)(2) (Immediate-need Reliability Projects).

[29] *See PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,132, at P 18 (2016) ("PJM states it intends that the process for planning transmission projects to address reliability violations on transmission facilities operating below 200 kV will interact with Schedule 6 of PJM's Operating Agreement the same as the process for planning Immediate-need Reliability Projects does."); *see also* PJM, Intra-PJM Tariffs, OA Schedule 6 Sec 1.5, (28.0.0), § 1.5.8(n) (Reliability Violations on Transmission Facilities Below 200 kV).

[30] *See PJM Interconnection, L.L.C.*, Deficiency Response, Docket No. ER16-1719-001, at 4 (filed Aug. 14, 2017) at 4 (stating that its proposal for Thermal Reliability Violations on Transmission Substation Equipment is modeled after the processes for Immediate-need Reliability Projects and the Reliability Violations on Transmission Facilities Below 200 kV, which were previously accepted by the Commission); *see also*

7. Once a competitive proposal window has closed, PJM analyzes the submitted transmission projects and then selects the more efficient or cost-effective transmission solution in its regional transmission plan for purposes of cost allocation.[31] In this order, we refer to these projects as "PJM-chosen sponsored projects."

8. As noted above, under Schedule 6, section 1.5.8, there are certain circumstances in which PJM does not open a competitive proposal window. Instead, PJM itself identifies the more efficient or cost-effective transmission project to resolve an identified transmission need and selects that transmission project in the regional transmission plan for purposes of cost allocation.[32] Specifically, these circumstances include: (1) when PJM determines that none of the transmission projects proposed in a previous, closed competitive proposal window would be the more efficient or cost-effective transmission solution to resolve the transmission need;[33] (2) when PJM determines that it is not feasible to open a competitive proposal window for an Immediate-need Reliability Project;[34] and (3) for projects that do not require PJM to open a competitive proposal window for certain Reliability Violations on Transmission Facilities Below 200 kV or for certain Thermal Reliability Violations on Transmission Substation Equipment.[35] In each of these circumstances, PJM is required to designate the incumbent transmission owner as the entity to construct, own, operate, maintain, and finance transmission projects

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PJM Interconnection, L.L.C., Docket No. ER17-1619 (Oct. 11, 2017) (delegated order); PJM, Intra-PJM Tariffs, OA, Schedule 6 Sec 1.5 (28.0.0), § 1.5.8(p) (Thermal Reliability Violations on Transmission Substation Equipment).

[31] *See* PJM Interconnection, L.L.C., Intra-PJM Tariffs, OA, Schedule 6 Sec 1.5 (28.0.0), § 1.5.8(a)-(e); s*ee also id.* § 1.5.8(m)(2).

[32] *See* PJM, Intra-PJM Tariffs, OA, Schedule 6 Sec 1.5. (28.0.0), §§ 1.5.8(g)-(h), (m)(1), (n), (p).

[33] *See* PJM, Intra-PJM Tariffs, OA, Schedule 6 Sec 1.5 (28.0.0), § 1.5.8(g) (Procedures if No Long-lead Project or Economic-based Enhancement or Expansion Proposal is Determined to be the More Efficient or Cost-Effective Solution); *id.* § 1.5.8(h) (Procedures if No Short-term Project Proposal is Determined to be the More Efficient or Cost-Effective Solution).

[34] *See* PJM, Intra-PJM Tariffs, OA, Schedule 6 Sec 1.5 (28.0.0), § 1.5.8 (m)(1) (Immediate-need Reliability Projects).

[35] *See* PJM, Intra-PJM Tariffs, OA, Schedule 6 Sec 1.5 (28.0.0), §§ 1.5.8(n) (Reliability Violations on Transmission Facilities Below 200 kV) and (p) (Thermal Reliability Violations on Transmission Substation Equipment).

chosen by PJM for inclusion in the regional transmission plan. In this order, we refer to these projects as "PJM-chosen unsponsored projects."

9. For all PJM-chosen sponsored projects and PJM-chosen unsponsored projects that PJM identifies as the more efficient or cost-effective transmission projects to resolve identified transmission needs, PJM recommends those projects to the PJM Board of Managers (PJM Board) for approval and selection in the RTEP for purposes of cost allocation.[36]

2. "Designated Entity" Designations

10. For each PJM-chosen unsponsored project and PJM-chosen sponsored project, PJM also identifies, for the PJM Board's approval, a Designated Entity that is responsible for constructing, owning, operating, maintaining, and financing the project. Throughout PJM's governing documents, the term Designated Entity applies to both incumbent transmission owners and nonincumbent transmission developers alike.[37] Under Schedule 6, section 1.5.8, PJM identifies the incumbent transmission owner in whose zone the project is located as the Designated Entity for all PJM-chosen unsponsored projects. Under section 1.5.8(*l*), PJM must identify the incumbent transmission owner as the Designated Entity for certain PJM-chosen sponsored projects as well, (i.e., Transmission Owner Designated Projects) regardless of which transmission developer

[36] PJM, Intra-PJM Tariffs, OA, Schedule 6 Sec 1.6 (4.0.0), § 1.6(a) (Approval of the Final Regional Transmission Expansion Plan) ("Based on the studies and analyses performed by the Office of the Interconnection under Operating Agreement, Schedule 6, the PJM Board shall approve the Regional Transmission Expansion Plan in accordance with the requirements of Operating Agreement, Schedule 6. The PJM Board shall approve the cost allocations for transmission enhancements and expansions consistent with Tariff, Schedule 12. Supplemental Projects shall be integrated into the Regional Transmission Expansion Plan approved by the PJM Board but shall not be included for cost allocation purposes.").

[37] *See, e.g.*, PJM, Intra-PJM Tariffs, OA, Definitions (C - D), OA Definitions C – D (32.0.0) ("'Designated Entity' shall mean an entity, *including an existing Transmission Owner or Nonincumbent Developer . . .*" (emphasis added)); PJM, Intra-PJM Tariffs, OA, Schedule 6 Sec 1.5 (28.0.0), § 1.5.8(j) (Acceptance of Designation) ("Within 30 days of receiving notification of its designation as a Designated Entity, *the existing Transmission Owner or Nonincumbent Developer* shall notify the Office of the Interconnection of its acceptance of such designation . . ." (emphasis added)).

proposed the project.[38] For all other PJM-chosen sponsored projects, PJM will often identify the entity who proposed the project as the Designated Entity, whether that entity is the incumbent transmission owner or a nonincumbent transmission developer.[39]

11. Notably, within 60 days of receiving notification of its designation, the Designated Entity must submit to PJM the executed Designated Entity Agreement and a letter of credit to cover the incremental costs of construction that would result if the selected transmission project was reassigned.[40] Attachment KK to the PJM Open Access Transmission Tariff (OATT) is PJM's Commission-approved *pro forma* Designated Entity Agreement.[41] That agreement sets forth the rights and obligations between PJM and the Designated Entity that PJM designates, in accordance with Schedule 6, section 1.5.8(i) of the Operating Agreement, with the responsibility to construct, own, operate, maintain, and finance a project. The *pro forma* Designated Entity Agreement includes terms and conditions related to project construction, including construction milestones, coordination with third parties, insurance, breach, and default, among others. Relevant here, it also includes provisions, in accordance with section 1.5.8(j) of the Operating Agreement, that require the Designated Entity to provide security to PJM in an amount equal to 3% of the estimated cost of the project.[42]

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[38] Transmission Owner Designated Projects include a "Short-term Project or Long-lead Project [that is]: (i) a Transmission Owner Upgrade; (ii) located solely within a Transmission Owner's Zone and the costs of the project are allocated solely to the Transmission Owner's Zone; (iii) located solely within a Transmission Owner's Zone and is not selected in the Regional Transmission Expansion Plan for purposes of cost allocation; or (iv) proposed to be located on a Transmission Owner's existing right of way and the project would alter the Transmission Owner's use and control of its existing right of way under state law." PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(*l*) (Transmission Owners Required to be the Designated Entity) (28.0.0).

[39] PJM, Intra-PJM Tariffs, OA, Schedule 6 Sec 1.5 (28.0.0), § 1.5.8(f) (Entity-Specific Criteria Considered in Determining the Designated Entity for a Project).

[40] PJM, Intra-PJM Tariffs, OA, Schedule 6 Sec 1.5 (28.0.0), § 1.5.8(j) (Acceptance of Designation).

[41] PJM, Intra-PJM Tariffs, OATT Attachment KK (0.1.0) (Form of Designated Entity Agreement).

[42] *Id.* (referring to Article 3, section 3.0, entitled "Obligation to Provide Security").

C. Subsequent PJM Proposals to Revise the Designated Entity Agreement Requirement

12. In a September 2014 order, the Commission interpreted the Designated Entity Agreement, and all of its terms and conditions, as applying in full to all Designated Entities, including both incumbent transmission owners and nonincumbent transmission developers.[43] Since then, the Commission has rejected two PJM filings, each of which sought, under certain circumstances, to exempt incumbent transmission owners from having to execute a Designated Entity Agreement when designated by PJM as the Designated Entity for an RTEP project selected by PJM as the more efficient or cost-effective solution in the regional transmission plan.

13. First, in July 2018, the Commission rejected as unjust, unreasonable, and unduly discriminatory or preferential PJM's FPA section 205[44] filing to exempt an incumbent transmission owner from having to execute a Designated Entity Agreement for Transmission Owner Designated Projects.[45] PJM argued that the terms of the Consolidated Transmission Owners Agreement, to which all incumbent transmission owners are parties, are comparable to the terms of the Designated Entity Agreement. The Commission disagreed. The Commission explained that "[i]n order for similarly situated transmission developers to be treated comparably, . . . the terms of the agreement to which the incumbent [transmission] owner [is] subject should not be 'less stringent' than those contained in the designated development agreement" applicable to nonincumbent transmission developers.[46]

14. Second, in February 2022, the Commission rejected PJM's attempt to make a revised compliance filing in response to Order No. 1000 that would have specified that incumbent transmission owners are considered Designated Entities only for transmission projects that are included in the regional transmission plan *for purposes of cost allocation*, and therefore incumbent transmission owners would be required to execute a Designated Entity Agreement only for those projects.[47] PJM argued that Order No. 1000 did not require competitive proposal windows unless the transmission project is selected in the regional transmission plan for purposes of cost allocation and, therefore, an

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[43] *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 47 (2014).

[44] 16 U.S.C. § 824d.

[45] 2018 DEA Order, 164 FERC ¶ 61,021 at P 27.

[46] *Id.* PP 29-33.

[47] *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,083 (2022) (2022 DEA Rejection Order).

incumbent transmission owner need not sign a Designated Entity Agreement for those projects whose costs are allocated 100% to the incumbent transmission owner. The Commission rejected PJM's filing on procedural grounds, explaining that PJM had improperly filed revisions to its Operating Agreement as a compliance filing in response to an order that was final and required no compliance.[48] The Commission explained that, because PJM's proposed revisions would have changed the filed rate, PJM must file its proposed revisions in a separate docket under FPA section 205 (or section 206, if appropriate) and meet the requisite evidentiary burden.[49]

II. Complaint and the PJM 206 Filing

15. The Complaint alleged that PJM failed to execute a Designated Entity Agreement with Designated Entities in all instances required by Schedule 6, section 1.5.8 of the Operating Agreement.[50] Complainants argued that each Designated Entity, whether an incumbent transmission owner or nonincumbent transmission developer, designated to build an RTEP project approved pursuant to section 1.5.8 must execute a Designated Entity Agreement.[51] Complainants argued further that this requirement applies regardless of whether the project is chosen through a competitive proposal window or whether the project is selected in the regional transmission plan for purposes of cost allocation.[52]

16. The PJM 206 Filing asserted that Schedule 6, section 1.5.8's use of the defined term Designated Entity is "overly broad and imprecise." PJM contended that this imprecise and overly broad usage makes section 1.5.8 and the definition of Designated Entity ambiguous, which, in turn, severely hinders PJM's ability to implement section 1.5.8's requirements.[53] Therefore, PJM argued that the Commission should find PJM's Operating Agreement to be unjust and unreasonable and revise section 1.5.8 and the Designated Entity definition accordingly.[54]

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[48] *Id.* PP 25-31.

[49] 2022 DEA Rejection Order, 178 FERC ¶ 61,083 at PP 27, 30.

[50] Complaint at 3-4.

[51] *Id*.

[52] *Id*.

[53] PJM 206 Filing at 1-2.

[54] *Id.* at 1-2.

III. Complaint Order

17. The Commission granted the Complaint, in part, and denied the Complaint, in part, and also granted the PJM 206 Filing, in part, and denied the PJM 206 Filing, in part.[55]

18. With respect to the Complaint, the Complaint Order found that the Operating Agreement was not ambiguous as to when and for what RTEP projects Designated Entity Agreements were required and that the Operating Agreement was not unjust and unreasonable.[56] With two exceptions,[57] the Commission found that the Operating Agreement required that incumbent transmission owners designated as Designated Entities by PJM to construct Immediate-need Reliability Projects, Short-term Projects, Long-lead Projects, and Economic Based Enhancements or Expansions sign a Designated Entity Agreement and provide security to PJM.[58] To the extent that PJM had not executed Designated Entity Agreements in situations required by the Operating Agreement, the Commission found that PJM violated the Operating Agreement's requirements.[59]

19. With respect to the PJM 206 Filing, except in two circumstances discussed below, the Commission disagreed with PJM and ITOs that signing Designated Entity Agreements was so burdensome that it makes the requirement to execute one unjust, unreasonable, or unduly discriminatory or preferential.[60]

20. The Commission found that PJM demonstrated that its existing Operating Agreement is unjust and unreasonable only with respect to the requirement for incumbent transmission owners to provide Designated Entity Agreement-related security in two

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[55] Complaint Order, 188 FERC ¶ 61,055 at P 62.

[56] *Id*.

[57] *Id*. PP 72-73. These are projects governed under Schedule 6, section 1.5.8(n) (Reliability Violations on Transmission Facilities Below 200 kV Projects) and section 1.5.8(p) (Thermal Reliability Violations on Transmission Substation Equipment Projects). *Id.*

[58] *Id*. P 71.

[59] *Id.*

[60] *Id*. P 108.

specific circumstances: (1) for PJM chosen-unsponsored projects, and (2) for projects designated to an incumbent transmission owner or to more than one incumbent transmission owner that were chosen through a competitive proposal window during which no nonincumbent transmission developer submitted a competing proposal (incumbent-proposal only projects).[61] However, the Commission disagreed with PJM and ITOs that signing Designated Entity Agreements with the security-related terms and conditions removed in these circumstances is so burdensome that it made the requirement to execute one unjust, unreasonable, or unduly discriminatory or preferential.[62] Thus, the requirement to execute Designated Entity Agreements with the remaining, non-security-related terms was not removed for these projects.[63]

21. The Commission established a paper hearing proceeding to develop a record on which to determine what, if any, remedial actions are required or appropriate to address the Operating Agreement violations.[64]

IV. ITOs' Rehearing Request

22. As discussed in greater detail below, on rehearing, ITOs contend that the Commission erred by: (1) requiring PJM incumbent transmission owners to execute "partial" Designated Entity Agreements (i.e., Designated Entity Agreements without security-related terms and conditions) without appropriately considering the rights and obligations set forth in the Consolidated Transmission Owners Agreement; (2) requiring incumbent transmission owners to execute Designated Entity Agreements for transmission projects that are not selected for inclusion in the RTEP for purposes of regional cost allocation; and (3) interpreting the relevant Operating Agreement provisions to impose a requirement that all entities, including incumbent transmission owners, execute Designated Entity Agreements for all Short-term Projects, Long-lead Projects, Immediate-need Reliability Projects, and Economic Based Enhancements or Expansions.[65]

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[61] *Id.* P 79.

[62] *Id.* P 108.

[63] *Id.*

[64] *Id.* PP 117-121. The paper hearing remains pending.

[65] Request for Rehearing at 3-4.

V. Discussion

23. We sustain the result of the Complaint Order. We continue to find that the Operating Agreement is not ambiguous as to when and for what RTEP projects that Designated Entity Agreements are required and that PJM failed to meet its FPA section 206 burden to demonstrate that the provisions of the Operating Agreement are unjust and unreasonable, except certain provisions as applied to PJM-chosen unsponsored projects or incumbent-proposal only projects. Specifically, we continue to find that PJM has met its FPA section 206 burden to show that Designated Entity Agreement-related security requirements, as applied to PJM-chosen unsponsored projects or incumbent-proposal only projects, are unjust and unreasonable, but that the security requirements are not unjust and unreasonable with respect to projects subject to competition. We also continue to find that PJM has violated the Operating Agreement because PJM has not executed Designated Entity Agreements in all situations required by the Operating Agreement. As discussed in more detail below, none of the issues raised in the rehearing requests persuade us that the Commission's conclusions were in error.

24. We emphasize that the findings in the Complaint Order and below are based on the record before us, and that PJM's burden in the PJM 206 Filing was to demonstrate that the existing requirements to execute Designated Entity Agreements under the Operating Agreement are unjust, unreasonable, or unduly discriminatory or preferential. As noted in the 2022 DEA Rejection Order, if PJM believes that revisions to the definition of "Designated Entity" and to certain provisions of Schedule 6, section 1.5.8 would also be consistent with Order No. 1000, it should proceed by following its tariff procedures for submitting a section 205 filing.[66]

A. Unsponsored Projects and Incumbent-Proposal Only Projects

1. Background

25. In the PJM 206 Filing, PJM argued that interpreting the Operating Agreement to apply the Designated Entity Agreement-related security requirements to all projects governed by section 1.5.8 is unjust, unreasonable, or unduly discriminatory because it would increase costs without sufficient offsetting benefits.[67] As noted above, in the Complaint Order, the Commission found that PJM demonstrated that its existing

[66] 2022 DEA Rejection Order, 178 FERC ¶ 61,083 at P 30.

[67] PJM 206 Filing at 21.

Operating Agreement is unjust and unreasonable only with respect to PJM-chosen unsponsored projects and incumbent-proposal only projects.[68]

26. More specifically, the Commission found that imposing Designated Entity Agreement-related security requirements on the Designated Entity for PJM-chosen unsponsored projects was unjust and unreasonable because such requirements were not necessary to ensure comparability between incumbent transmission owners and nonincumbent transmission developers nor to insure against the incremental costs of reassigning a transmission project designated to a nonincumbent transmission developer and, therefore, Designated Entity Agreement-related security requirements increase costs to customers without providing commensurate benefits.[69] Similarly, the Commission found that imposing Designated Entity Agreement-related security requirements on incumbent-proposal only projects is unjust and unreasonable for the same reasons.[70]

27. The Commission disagreed with PJM and ITOs that signing Designated Entity Agreements with the security-related terms and conditions removed is so burdensome that it makes the requirement to execute one unjust, unreasonable, or unduly discriminatory or preferential and instead found that the allegations of administrative burden were insufficiently supported to satisfy PJM's statutory burden under FPA section 206.[71] The Commission noted that there would likely be transparency benefits and other benefits resulting from the Designated Entity Agreement's non-security related requirements.[72]

2. Request for Rehearing

28. ITOs argue that no Designated Entity Agreements should be required from incumbent transmission owners for PJM-chosen unsponsored projects or incumbent-proposal only projects given that the Commission found that no comparability or reassignment concerns existed with respect to these projects.[73] ITOs contend that it does not matter whether PJM provided adequate evidence of cost burdens with respect to entering into non-security-related Designated Entity Agreement terms for such projects

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[68] Complaint Order, 188 FERC ¶ 61,055 at P 79.

[69] *Id.* P 95.

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] Request for Rehearing at 5.

because the fundamental purposes of requiring a Designated Entity Agreement are not present in such scenarios.[74] ITOs suggest that, even if PJM was required to provide evidence of costs to meet its burden under FPA section 206, ITOs and PJM both pointed to increased administrative and staffing burdens associated with negotiating the additional agreements.[75] ITOs disagree with the Commission's finding that "unsupported allegations of administrative burden are insufficient to satisfy PJM's statutory burden under FPA section 206,"[76] arguing that the absence of discriminatory treatment concerns make such a showing unnecessary.[77] ITOs state that the Commission failed to explain an adequate justification for requiring Designated Entity Agreements in these circumstances beyond a vague reference to benefits.[78]

29. ITOs suggest that the Commission failed to consider the requirements already imposed on incumbent transmission owners through the Consolidated Transmission Owners Agreement, which contains milestone requirements including penalties for missing an in-service date.[79] ITOs acknowledge that in the 2018 DEA Order, the Commission determined that the Consolidated Transmission Owners Agreement requirements were not comparable to Designated Entity Agreements requirements, but ITOs suggest that this precedent is not applicable in scenarios involving PJM-chosen unsponsored projects or incumbent-proposal only projects where comparability concerns are not present.[80]

3. Discussion

30. We are not persuaded by ITOs' argument that it is unreasonable to require incumbent transmission owners that are designated as the Designated Entities to construct PJM-chosen unsponsored projects or incumbent-proposal only projects to execute partial Designated Entity Agreements with non-security-related terms and conditions. We continue to find that PJM and ITOs failed to meet their FPA section 206 evidentiary

[74] *Id*. at 6.

[75] *Id.* (citing PJM Second Answer to Complaint, Docket No. EL22-80-000, at 12 n. 54; ITOs Comments in Support of PJM 206 Filing at 17).

[76] Complaint Order, 188 FERC ¶ 61,055 at P 108.

[77] Request for Rehearing at 6-7.

[78] *Id.* at 7 (quoting Complaint Order, 188 FERC ¶ 61,055 at P 108).

[79] *Id.* at 7-8.

[80] *Id.* at 8 (citing 2018 DEA Order, 164 FERC ¶ 61,021 at PP 28-55).

burden to show that executing a Designated Entity Agreement is so onerous that it makes the requirement to execute one unjust, unreasonable, or unduly discriminatory or preferential.[81] As the Commission found in the Complaint Order, the requirements in the Designated Entity Agreement provide stakeholders with relevant and timely information about whether Designated Entities are progressing with the project and meeting their designated milestones.

31. We disagree with ITOs' contention that it does not matter whether PJM provided adequate evidence of cost burdens with respect to entering into non-security-related Designated Entity Agreement terms for PJM-chosen unsponsored projects or incumbent-proposal only projects because the fundamental purposes of requiring Designated Entity Agreements are not present in such scenarios.[82] While comparability and reassignment rationales may support requiring transmission owners to post security with respect to Designated Entity Agreements, PJM's Tariff does not limit the requirement to sign Designated Entity Agreements to situations that presented comparability and reassignment concerns—but rather section 1.5.8 provides without limitation that Designated Entities are required to sign Designated Entity Agreements in all cases.[83] Moreover, we disagree with ITOs that our analysis is necessarily limited to considering whether requiring Designated Entity Agreements serves the purpose of addressing comparability and reassignment concerns when considering whether requiring such agreements in the disputed circumstances remains just and reasonable. Rather, PJM had the burden under section 206 of the FPA to show that the costs of requiring such agreements make the continued execution of these agreements unjust and unreasonable.

32. PJM did not make such a showing. The marginal administrative and staffing burdens associated with negotiating the agreements required by the Operating Agreement are not a sufficient reason for the Commission to find that the burden on the parties is unjust and unreasonable.[84] As discussed in the Complaint Order, ITOs' generalized claim of "administrative burden" does not justify exempting incumbent transmission owners from having to execute Designated Entity Agreements.[85] We also note that

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[81] Complaint Order, 188 FERC ¶ 61,055 at P 108.

[82] Request for Rehearing at 6.

[83] *See* PJM, Intra-PJM Tariffs, OA, Schedule 6 Sec 1.5 (28.0.0), § 1.5.8(j) (Acceptance of Designation) (PJM "shall . . . tender to the Designated Entity an executable Designated Entity Agreement").

[84] Request for Rehearing at 6 (citing PJM Second Answer to Complaint, Docket No. EL22-80-000, at 12 n. 54; ITOs Comments in Support of PJM 206 Filing at 17).

[85] Complaint Order, 188 FERC ¶ 61,055 at P 108; *see also* 2018 DEA Order, 164 FERC ¶ 61,021 at P 34 ("Although PJM argues that the proposal to exempt incumbent

addressing comparability concerns and reassignment possibilities are not the only interests that may be served by requiring such transmission owners to sign a Designated Entity Agreement; such agreements also provide increased informational and transparency benefits from the adoption of express milestones/development schedules.[86]

33. Relatedly, we disagree with ITOs' claim that the benefits of signing a Designated Entity Agreement in this context are illusory because the Consolidated Transmission Owners Agreement already includes certain overlapping obligations.[87] As discussed in the precedent relied on in the Complaint Order, the Consolidated Transmission Owners Agreement and the *pro forma* Designated Entity Agreement contain materially different requirements that do not overlap.[88] Thus, there are transparency benefits and informational benefits from the requirement that incumbent transmission owners that are the Designated Entities for PJM-chosen unsponsored projects and incumbent-proposal only projects execute partial Designated Entity Agreements.

B. RTEP Projects Not Selected for Purposes of Cost Allocation

1. Background

34. In the PJM 206 Filing, PJM noted that under Schedule 6, section 1.5.8(*l*), PJM must designate certain transmission projects located solely within a transmission owner's zone whose costs are allocated solely to that zone to the incumbent transmission owner, even if that transmission solution was proposed by a nonincumbent transmission developer during a competitive proposal window.[89] PJM argued that these transmission

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transmission owners from the requirement to execute a Designated Entity Agreement in certain cases will further administrative efficiency, any such benefits do not overcome undue discrimination concerns.").

[86] *See* Complaint Order, 188 FERC ¶ 61,055 at P 108*; see also id.* (explaining that "the reasons for providing security and *its* associated benefits are context-specific" (emphasis added)).

[87] Request for Rehearing at 7.

[88] Complaint Order, 188 FERC ¶ 61,055 at P 108 nn.262-263 (citing 2018 DEA Order, 164 FERC ¶ 61,021 at PP 24, 34, 41).

[89] *See* PJM 206 Filing at 11 n.31; PJM Second Answer, Docket Nos. EL22-80-000 and EL22-85-000, at 15-16; *see also* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(*l*) (Transmission Owners Required to be the Designated Entity) (28.0.0) ("[T]he Transmission Owner(s) in whose Zone(s) a project proposed pursuant to the Operating Agreement, . . . is to be located will be the Designated Entity for the project, when the Short-term Project or Long-lead Project is: . . . (ii) located solely within a Transmission

projects were outside of the scope of Order No. 1000's reforms and so Designated Entity Agreements should not be required to be signed by incumbent transmission owners in this circumstance.[90]

35. In the Complaint Order, the Commission disagreed and found that when PJM opens a competitive proposal window, under PJM's currently effective Operating Agreement, PJM does not know which of the proposals that it receives will be identified as the more efficient or cost-effective solution to the transmission need.[91] The Commission found that it is only after the competitive proposal window has closed and after PJM has analyzed the submitted transmission projects and identified the more efficient or cost-effective transmission solution that PJM determines the project's cost allocation.[92] Thus, the Commission found that PJM failed to show that it was unjust and unreasonable to require the incumbent transmission owner to sign a Designated Entity Agreement and provide security in this circumstance. In such a circumstance, the incumbent transmission owner and at least one nonincumbent transmission developer competed during the competitive proposal window before PJM determined the cost allocation for the project, and the same requirements must apply to all transmission developers to ensure comparability.[93]

2. Request for Rehearing

36. ITOs argue that the Commission erred by requiring Designated Entity Agreements for projects that are not selected in the RTEP for purposes of cost allocation.[94] ITOs note that Order No. 1000 does not require that its nonincumbent transmission developer reforms apply to projects that have all costs allocated exclusively to transmission owner

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Owner's Zone and the costs of the project are allocated solely to the Transmission Owner's Zone."). PJM has not been requiring the incumbent transmission owners in this circumstance to execute Designated Entity Agreements. *See* PJM 206 Filing at 30.

[90] *See* PJM Answer to Complaint in Docket No. EL22-80-00, at 9 (reiterating contention that the scope of Order No. 1000 is limited to transmission projects that are selected through PJM's competitive window process and included in the RTEP for purposes of cost allocation).

[91] Complaint Order, 188 FERC ¶ 61,055 at P 109.

[92] *Id.* (citing PJM Interconnection, L.L.C., Intra-PJM Tariffs, OA, Schedule 6 Sec 1.5 (28.0.0), § 1.5.8(a)-(e)).

[93] *Id.*

[94] Request for Rehearing at 9.

zones.[95] ITOs disagree with the Commission's reasoning that comparability concerns exist in such scenarios because PJM does not allocate costs until after project selection occurs.[96] In fact, ITOs argue, a transmission owner will need to take into account the possibility that it will be required to execute a Designated Entity Agreement in making its proposal because it does not know if it will be exempt from executing a Designated Entity Agreement until after the project is selected and PJM determines the cost allocation.[97] As a result, ITOs claim no competitive advantage exists that would create comparability concerns.[98]

3. Discussion

37. We continue to find that PJM has not demonstrated that it is unjust and unreasonable to require Designated Entity Agreements for projects that are not selected in the RTEP for purposes of cost allocation.[99] Importantly, ITOs contend that "there is no rationale for imposing DEA obligations" at all on the development of such projects.[100] However, as noted in the Complaint Order, regarding projects subject to Operating Agreement section 1.5.8(*l*), when PJM opens a competitive proposal window, PJM does not know which of the proposals that it receives will be identified as the more efficient or cost-effective solution to the transmission need.[101] This means that comparability concerns still exist where the incumbent transmission owner and at least one nonincumbent transmission developer in fact compete during the competitive proposal window before PJM identifies a solution and determines the cost allocation for the

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[95] *Id.*

[96] *Id.*

[97] *Id.* at 9-10.

[98] *Id.*

[99] *Id.* at 9.

[100] *See id.* at 10.

[101] Complaint Order, 188 FERC ¶ 61,055 at P 109; *see also id.* P 104 (explaining that "*at the outset* of each competitive proposal window, comparability requires that both incumbent transmission owners and nonincumbent transmission developers face the same expected Designated Entity Agreement-related security requirements" even if there is the "possibility that Designated Entity Agreement-related security requirements may later be relieved if it turns out that an incumbent transmission owner is the only entity to submit a proposal during a competitive proposal window" (emphasis added)).

project.[102] Under the approach taken by the PJM Operating Agreement, it is "only after the competitive proposal window has closed and after PJM has analyzed the submitted transmission projects and identified the more efficient or cost-effective transmission solution that PJM determines the project's cost allocation."[103] And as the Commission explained, "when transmission developers, here both incumbent transmission owners and nonincumbent transmission developers, are competing for the same opportunity subject to the same set of criteria, those developers should be subject to comparable rules *for the entirety of that competitive process*."[104] The only requirement that may be relieved after the competitive proposal window closes is the requirement to provide security related to a Designated Entity Agreement for PJM-chosen unsponsored projects or incumbent-proposal only projects, which, as discussed above, increases costs to customers without providing commensurate benefits.[105]

38. We are not persuaded by ITOs' suggestion that no comparability issue exists because a "Transmission Owner will not know if it will be exempt from executing a DEA until after the project is selected and PJM determines the cost allocation, [therefore] it will have to take into account the possibility that it will be required to execute a DEA in making its proposal."[106] ITOs' argument misunderstands what comparability requires in this context; it ignores the fact that, at the outset of a competitive proposal window, incumbent transmission owners must be on the same footing with nonincumbent transmission developers.[107] Importantly, comparability is undermined if an incumbent transmission owner knows that it may eventually not need to sign a Designated Entity Agreement if its project is ultimately not selected in the RTEP for purposes of cost allocation while a competing nonincumbent transmission developer knows that for any

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[102] *Id.*

[103] *Id.* P 109.

[104] *Id.* P 98 (quoting 2019 DEA Rehearing Order, 168 FERC ¶ 61,121 at P 19).

[105] Complaint Order, 188 FERC ¶ 61,055 at PP 104, 108.

[106] Request for Rehearing at 10.

[107] *See* Complaint Order, 188 FERC ¶ 61,055 at PP 98, 104, 109; 2019 DEA Rehearing Order, 168 FERC ¶ 61,121 at PP 18-19; Order No. 1000-A, 139 FERC ¶ 61,132 at P 454 ("Public utility transmission providers in a transmission planning region *must use* the same process to evaluate a new transmission facility proposed by a nonincumbent transmission developer as it does for a transmission facility proposed by an incumbent transmission developer." (emphasis added)).

competing project it develops, it will always need to meet all Designated Entity Agreement requirements.[108]

C. Violation of PJM's Tariff

1. Background

39. The Complaint Order found that the Operating Agreement requires incumbent transmission owners to sign a Designated Entity Agreement for all projects for which an incumbent transmission owner is the Designated Entity.[109] In reaching this conclusion, the Commission noted that the Operating Agreement explains when Designated Entity Agreements are required for RTEP projects subject to Schedule 6, section 1.5.8.[110]

40. First, the Commission found that the Operating Agreement defines "Designated Entity" as including both incumbent transmission owners and nonincumbent transmission developers who are designated by PJM with the responsibility to construct, own, operate, maintain, and finance projects pursuant to section 1.5.8.[111] Second, the Commission found that these provisions require PJM to choose a "Designated Entity" for every Long-lead Project, Short-term Project, or Immediate-need Reliability Project.[112] The Commission found that nothing in the text of these provisions limited their applicability to only a subset of projects within each type.[113] Third, the Commission found that the Operating Agreement did not support PJM's argument that the requirement to sign a Designated Entity Agreement and submit a letter of credit was dependent on whether PJM chose a transmission project through a competitive proposal window, or whether the

[108] As noted in the Complaint Order, the reasons for requiring security are context-specific, and PJM failed to carry its burden to support the removal of other Designated Entity Agreement requirements beyond the provision of security in certain limited circumstances. Complaint Order, 188 FERC ¶ 61,055 at PP 106, 108.

[109] Complaint Order, 188 FERC ¶ 61,055 at P 63.

[110] *Id.* (citing PJM, Intra-PJM Tariffs, OA, Definitions (C - D), OA Definitions C – D (32.0.0)).

[111] *Id.*

[112] *Id.* P 64 (citing PJM, Intra-PJM Tariffs, OA, Schedule 6 Sec 1.5 (28.0.0), §§ 1.5.8(f), (g), (h), (l), (m)).

[113] *Id.*

transmission project was selected in the regional transmission plan for purposes of cost allocation.[114]

41. Finally, the Commission found that Schedule 6, section 1.5.8 of the Operating Agreement is clear in its use of the term "Designated Entity" to refer to the entity designated by PJM with the responsibility to construct, own, operate, maintain, and finance a transmission project, whether that transmission project is a PJM-chosen sponsored project or PJM-chosen unsponsored project.[115]

2. Request for Rehearing

42. ITOs argue that the Commission erred in finding that PJM violated its Operating Agreement in its application of the Designated Entity Agreement rules with respect to all but two types of projects.[116] ITOs disagree with the Complaint Order's finding that "where Schedule 6, section 1.5.8 uses the term 'Designated Entity,' the relevant 'Designated Entity(ies)' must sign a Designated Entity Agreement and provide security under section 1.5.8(j)."[117] ITOs state the Commission ignored examples provided by PJM and ITOs of how the term Designated Entity is used imprecisely and inconsistently throughout the Operating Agreement.[118] ITOs point to section 1.5.8(m)(2) addressing Immediate-need Reliability Projects that do not go through a competitive window.[119] ITOs claim that this provision is strong evidence that there was no intent to require a Designated Entity Agreement in such instances, regardless of the Operating Agreement using the term "Designated Entity."[120]

43. ITOs claim that because the Operating Agreement is ambiguous the Commission should have looked at PJM's past practice and the legal and regulatory context of the provisions.[121] ITOs state that Schedule 6, section 1.5.8, the term "Designated Entity,"

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[114] *Id.* P 65.

[115] *Id.* P 66.

[116] Request for Rehearing at 10-14.

[117] Complaint Order, 188 FERC ¶ 61,055 at P 65; Request for Rehearing at 11.

[118] Request for Rehearing at 11.

[119] *Id.*

[120] *Id.*

[121] *Id.* at 13.

and the *pro forma* Designated Entity Agreement were all introduced to comply with Order No. 1000.[122] ITOs note that, when submitting its pro forma Designated Entity Agreement proposal, PJM explained "an entity accepting the designation, as the 'Designated Entity,' to construct a project pursuant to the competitive process set forth in section 1.5.8 of Schedule 6 must execute a DEA."[123] ITOs claim this suggests PJM intended the Designated Entity Agreement requirements to apply only to projects selected in a competitive process, and not broadly to any project planned in accordance with section 1.5.8.[124]

44. ITOs argue that the Complaint Order incorrectly found that PJM's Order No. 1000 filing proposed a "consistent with or superior" variant that imposes broader Designated Entity Agreement requirements than those strictly required by Order No. 1000.[125] ITOs claim PJM did not seek to amend the Operating Agreement in any manner beyond the scope of what was required to satisfy the requirements of Order No. 1000, and that the Commission's interpretation goes against PJM's intent.[126]

45. Finally, ITOs contend that the Commission's alternate interpretation would unnecessarily increase administrative costs that ultimately will be reflected in customers' transmission rates.[127]

3. Discussion

46. We continue to find that PJM violated its Operating Agreement in its application of the Designated Entity Agreement rules with respect to all but two types of projects.[128]

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[122] *Id.*

[123] *Id.* (quoting PJM, Compliance Filing of PJM Interconnection, L.L.C., Docket No. ER13-198-004, at 11 (filed July 14, 2014) (PJM Third Order No. 1000 Compliance Filing)).

[124] *Id.*

[125] *Id.* at 13-14 (citing Complaint Order, 188 FERC ¶ 61,055 at P 69).

[126] *Id.* at 14 (citing PJM, Compliance Filing, Docket No. ER13-198-000, at 2-3 (filed Oct. 25, 2012) (First PJM Order No. 1000 Compliance Filing)).

[127] *Id.*

[128] *Id.* at 10-14.

As discussed in the Complaint Order,[129] the Operating Agreement unequivocally requires that all "Designated Entit[ies] (both existing Transmission Owners and Nonincumbent Developers) . . . shall submit . . . an executed Designated Entity Agreement."[130] While ITOs seek to create ambiguity in the wording of the Operating Agreement, ITOs point to no countervailing provisions in the Operating Agreement that state that a Designated Entity's obligation to sign a Designated Entity Agreement is dependent on whether PJM chooses a transmission project through a competitive proposal window or whether the transmission project is selected in the regional transmission plan for purposes of cost allocation.

47. We find that the language of section 1.5.8(m) does not create ambiguity regarding how the term Designated Entity is used in the Operating Agreement.[131] Section 1.5.8(m)(2) relates to procedures for Immediate-need Reliability Projects where PJM determines that a shortened proposal window is possible; it contains a cross-reference to section 1.5.8(j)'s requirements regarding accepting designation as a Designated Entity.[132] Section 1.5.8(m)(1) relates to procedures for Immediate-need Reliability Projects where PJM determines it is not feasible to open a full or shortened competitive proposal window; it does not contain a cross-reference to section 1.5.8(j)'s requirements regarding accepting designation as a Designated Entity. ITOs argue that the fact of a discrepancy between the subsections is "strong evidence" that there was no intent to require a DEA for projects subject to section1.5.8.(m)(1), regardless of its use of the term "Designated Entity" (and that, more generally, the Operating Agreement is therefore ambiguous in its use of that term).[133] But as discussed in the Complaint Order, shortened proposal windows for Immediate-need Reliability Projects under section 1.5.8(m)(2) differ from

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[129] Complaint Order, 188 FERC ¶ 61,055 at PP 63-68.

[130] PJM, Intra-PJM Tariffs, OA, OA Schedule 6 Sec 1.5 (28.0.0), § 1.5.8(j) (Acceptance of Designation).

[131] Request for Rehearing at 11 (noting, in part, that while the text of 1.5.8(m)(2) contains a cross-reference to 1.5.8(j), the text of section 1.5.8(m)(1) does not).

[132] PJM, Intra-PJM Tariffs, OA, OA Schedule 6 Sec 1.5 (28.0.0), § 1.5.8(m)(2) ("After PJM Board approval, [PJM], in accordance with . . . section 1.5.8(i), shall notify the entities that have been designated as *Designated Entities* for Immediate-need Projects included in the Regional Transmission Expansion Plan of such designations. Designated Entities shall accept such designations in accordance with the Operating Agreement, Schedule 6, section 1.5.8(j) (Acceptance of Designation)").

[133] Request for Rehearing at 11.

the competitive proposal window process outlined under section 1.5.8(c).[134] Thus, the Complaint Order found that the reference to section 1.5.8(j) in section 1.5.8(m)(2) is to make clear which provisions of section 1.5.8 apply to "a shortened proposal window for Immediate-need Reliability Projects," if one is held.[135] We acknowledge that the Operating Agreement would have been more symmetrical if section 1.5.8(m)(1) also referenced section 1.5.8(j)'s requirements—therefore mirroring section 1.5.8(m)(2). However, in light of the explicit language in section 1.5.8(j) requiring all Designated Entities to execute Designated Entity Agreements, the absence of a reiteration of this requirement in section 1.5.8(m)(1) alone is insufficient to create doubt as to whether projects subject to section 1.5.8(m)(1) were also required to execute a Designated Entity Agreement and post the required security. Indeed, ITOs point to no language in the Operating Agreement expressly relieving Designated Entities for section 1.5.8(m)(1) Immediate-need Reliability Projects of these requirements. Thus, we continue to find that the additional reference to section 1.5.8(j) in section 1.5.8(m)(2) does not create ambiguity regarding when Designated Entity Agreement requirements apply under the Operating Agreement.

48. We are not convinced by ITOs' contention that the Commission's interpretation would unnecessarily increase administrative costs.[136] As discussed in the Complaint Order, outside of the exceptions discussed above, concerns related to comparability and reassignment justify imposing Designated Entity Agreement requirements on the Designated Entity for the projects where the Operating Agreement requires a Designated Entity.[137]

49. We continue to find that ITOs' reference to extrinsic evidence regarding PJM's intent and course of performance—including the content of its filings made in compliance with Order No. 1000—should not be considered because the plain language of section 1.5.8 is not ambiguous in describing when Designated Entity Agreement requirements apply.[138]

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[134] Complaint Order, 188 FERC ¶ 61,055 at P 68.

[135] *Id.*

[136] Request for Rehearing at 14.

[137] Complaint Order, 188 FERC ¶ 61,055 at P 109.

[138] *See Iberdrola Renewables, Inc. v. FERC*, 597 F.3d 1299, 1304 (D.C. Cir. 2010) ("Iberdrola finds ambiguity outside the contract in the previously discussed language from Alliance's Certificate Application, which indicated that Alliance would seek FERC's approval before adjusting the negotiated rate. This argument fails as a matter of law. 'If a contract is not ambiguous, extrinsic evidence cannot be used as an aid to

interpretation.'" (quoting *Consol. Gas Transmission Corp. v. FERC*, 771 F.2d 1536, 1544 (D.C. Cir. 1985)); *see also Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 827 (D.C. Cir. 2021) (considering "whether the relevant language unambiguously addresses the matter at issue, and if so, we apply that unambiguous meaning" and noting that a "tariff provision must be understood according to its plain meaning, which we draw from its text and context" (cleaned up and citations omitted)).

The Commission orders:

In response to ITOs' request for rehearing, the Complaint Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission. Commissioner See is not participating.

(S E A L)

Carlos D. Clay,
Deputy Secretary.