

# Designated Entity Agreement Issue Charge



PJM MRC

July 27, 2022

- ❖ Since the May MRC, sponsors have worked in good faith in an attempt to reach consensus with all parties on a DEA review.
- ❖ Objectives discussed:
  1. Help PJM efficiently address FERC enforcement concern
  2. Respect FERC Orders and PJM Governing Documents
- ❖ The proposed stakeholder deliberation would include:
  1. A comprehensive review of the terms and conditions of the DEA, and the opportunity to update the DEA given the collective experience since the implementation of Order 1000
  2. Desired examination of the application of the DEA
- ❖ In response to concerns heard in prior PC & MRC discussion during the Quick Fix process, this deliberation includes full CBIR process and extensive education.

Sponsors support a DEA discussion. The Issue Charge is intended to demonstrate that support and openness.

We share the perspective that transmission projects must be efficiently constructed in a manner that ensures reliability.

We also recognize that any potential changes should not create any costs or burdens that are not commensurate with the benefits they provide.

**Delineating changes to procedures governed by the CTOA as out of scope was only element of disagreement during discussions held over the past month.**

*“Any revisions that would change the rights and responsibilities of PJM and the Transmission Owners under the CTOA.”*

Sponsors request your support of our issue charge to ensure a more efficient stakeholder process that promotes solutions while respecting foundational agreements, rights and responsibilities.

# APPENDIX

## Concerns with DE/NJ Advocates DEA Issue Charge:

- Does not address the problem FERC enforcement identified regarding OA ambiguity needing clarification.
- Instead, focuses on raising a new issue regarding how to broadly apply “more stringent” DEA provisions to all RTEP projects
- *An issue in search of a problem:* Application of the DEA outside the Order No. 1000 competitive solicitation framework has never been envisioned, and there is no data supporting there is a problem that requires it. FERC has never raised this issue as a concern and, in fact, has consistently supported the CTOA as well as the processes PJM and TOs have utilized for RTEP projects outside the scope of competitive solicitations.

# What the 2018 FERC Order Said

164 FERC ¶ 61,021  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;  
Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

PJM Interconnection, L.L.C.

Docket No. ER18-1647-000

ORDER ACCEPTING TARIFF REVISIONS IN PART AND REJECTING TARIFF  
REVISIONS IN PART

(Issued July 13, 2018)

- The 2018 docket focused on **projects resulting from competition, not all RTEP projects**.
  - Commission found at paragraph 50 *“that the Consolidated Transmission Owners Agreement’s assignment provision is less stringent than the assignment provision in the Designated Entity Agreement and could disadvantage a nonincumbent transmission developer **when competing for transmission projects.**”* See PJM Interconnection, L.L.C. 164 FERC ¶ 61,021 (July 13, 2018).
- Incumbent TOs and PJM have respected FERC’s decision since it was issued three years ago and EKPC, PSEG and Exelon are committed to ensuring equal treatment to non-incumbent developers with respect to DEA obligations when competing for transmission projects.

# Guidance Provided by FERC on Rehearing

168 FERC ¶ 61,121  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

PJM Interconnection, L.L.C.

Docket Nos. ER18-1647-001  
ER18-1647-002

## ORDER ON REHEARING AND COMPLIANCE

(Issued August 27, 2019)

In denying rehearing requests made by PJM and Indicated TOs, the Commission acknowledged the distinctions between the use of DEAs for projects selected through a competitive process and construction responsibility letters consistent with CTOA provisions for projects advancing through the RTEP outside that process. Of note, it specifically observed :

*To the extent that PJM and the parties to the Consolidated Transmission Owners Agreement later determine that modifications to either the Designated Entity Agreement or the Consolidated Transmission Owners Agreement are appropriate to further harmonize the agreements, the appropriate filing may be made for acceptance by the Commission pursuant to FPA section 205. Consistent with the Commission's framework for considering agreements for transmission projects selected in the regional transmission planning process,<sup>120</sup> if PJM demonstrates that the terms and conditions of the Consolidated Transmission Owners Agreement are comparable to the terms and conditions of the Designated Entity Agreement, only nonincumbent transmission developers will be required to execute the Designated Entity Agreement. (paragraph 46)*

*In rejecting PJM's proposal to eliminate the requirement for Transmission Owners to execute the Designated Entity Agreement, the Commission is not modifying the Consolidated Transmission Owners Agreement, it is retaining the status quo. (paragraph 47)*

EKPC-PSEG-Exelon have recognized the Commission's observations within its Issue Charge coupled with the FERC enforcement concerns PJM has expressed.

## Commitment to Abiding by FERC Orders and PJM Governing Documents

- When incumbent TOs are not competing for transmission projects through a competitive solicitation all signatories to the CTOA abide by CTOA section 4.2.2 pursuant to FERC Orders and PJM governing documents.
- This obligation applies to all TOs that have executed the CTOA, including TOs that previously were non-incumbent developers but are now incumbent TOs. It is FERC-approved and not subject to an issue charge.
- Moreover, PJM applies consistent level of oversight to all projects they assign – those subject to the CTOA and a construction responsibility letter and those subject to a DEA. (See, Manual 14C, Section 6.1.2)



## CTOA sec 4.2.2

Within ninety (90) days of receiving notification from PJM pursuant to Section 1.6 of the Regional Transmission Expansion Planning Protocol, that the PJM Board has approved a Regional Transmission Expansion Plan designating a Party to construct and own or finance specified enhancements or expansions applicable to the PJM Region, such Party shall provide to PJM and the Administrative Committee: (1) an acknowledgement of such designation or the reasons why the Party disagrees with such designation or any aspect thereof, and (2) a proposed preliminary schedule for such enhancements or expansion

*CTOA process respected and explained further in M14C at 6.1.*

The DE/NJ Advocates IC raises a fundamental conflict with the CTOA. CAPS is factually incorrect that whether the Designated Entity (DE) is an incumbent transmission owner or a non-incumbent developer, they both must sign a designated entity agreement (DEA) and comply with the terms of the DEA if they are responsible for building a project approved in the RTEP. Fortunately, the DEA issue of concern to FERC Enforcement can be handled without unnecessarily raising such a conflict.