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October 8, 2024

Debbie-Anne A. Reese, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: *PJM Interconnection, L.L.C.* Docket Nos. EL22-80-000 and EL22-85-000
Responses to Question 2

Dear Secretary Reese:

PJM Interconnection, L.L.C. ("PJM") submits the following responses to the series of questions about the costs and benefits of requiring Designated Entity Agreements for in-progress Regional Transmission Expansion Plan ("RTEP") projects[1] set forth in Question 2 in the Appendix to the Federal Energy Regulatory Commission's ("Commission") July 25, 2024 order in these dockets.[2] As discussed below, when considering the record in this proceeding, including the data provided in PJM's responses to the July 25 Order's Question 1,[3] on balance, the costs and burdens outweigh the limited benefits associated with requiring Designated Entity Agreements for projects that have already been selected for inclusion in the RTEP. Thus, in exercising its remedial discretion, the Commission should decline to require Designated Entity Agreements for the 241 in-progress RTEP projects.

[1] For purposes of this proceeding, "in-progress RTEP projects" refer to RTEP projects that were approved by the PJM Board of Managers ("PJM Board" or "Board") since January 1, 2014 (i.e., since PJM's Order No. 1000-compliant planning provisions became effective) through July 25, 2024, that had not yet gone into service as of July 25, 2024 (i.e., projects that are currently in progress), but for which there is no executed Designated Entity Agreement.

[2] *Am. Mun. Power, Inc. v. PJM Interconnection, L.L.C.*, 188 FERC ¶ 61,055 (2024) ("July 25 Order"). Capitalized terms not defined herein shall have the meaning as contained in the PJM Open Access Transmission Tariff ("Tariff") or Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement").

[3] *PJM Interconnection, L.L.C.*, Responses to Question 1, Docket Nos. EL22-80-000 & EL22-85-000 (Sept. 9, 2024) ("PJM Responses to Question 1").

I. RESPONSES TO QUESTION 2

2. Please identify and explain your position and any relevant proposals or considerations relating to whether PJM and the Designated Entities for the in-progress RTEP projects identified in PJM's response to Question 1 should be required to execute Designated Entity Agreements.

PJM does not believe that Designated Entity Agreements should be required for any of the 241 in-progress RTEP projects identified in PJM's September 9, 2024 response to Question 1. The costs and burdens outweigh the limited benefits associated with requiring Designated Entity Agreements for projects that have already been selected for inclusion in the RTEP.

As PJM explained, to the extent the Commission were to require a Designated Entity Agreement for each of the 241 in-progress RTEP projects, the 241 separate projects would require at least 93 Designated Entity Agreements.[4] The negotiation and execution of a Designated Entity Agreement impose significant costs and burdens on PJM and likely significant costs and burdens on the Designated Entity as well. PJM's responses to Question 1 show that negotiating and executing a *pro forma* Designated Entity Agreement would impose a significant burden on PJM: approximately 61 work hours of employee time across a wide range of departments, at a cost of over $6,400 per Designated Entity Agreement.[5] In light of a Commission order that was issued after PJM submitted its response to Question 1, PJM anticipates most Designated Entity Agreements would be conforming.[6] However, to the extent the agreements are non-conforming, the burden increases to an estimated 88 work hours and would cost over $9,900 per agreement.[7] The cumulative resources required to negotiate the PJM-estimated 93 Designated Entity Agreements would equate to several full-time employee equivalents working a full year on nothing but negotiating Designated Entity Agreements. These estimates relate solely to PJM and do not include the burden on the Designated Entity.

On the notion of benefits, it is important to keep in mind why the Designated Entity Agreement was developed. PJM intended for the Designated Entity Agreement, which was developed as part of PJM's Order No. 1000 implementing reforms, to address the risk of non-performance and provide terms and conditions for constructing a transmission project selected in the competitive window process where the Designated Entity is not a signatory to the Consolidated Transmission Owners Agreement ("CTOA"), i.e., a Nonincumbent Developer.[8] To apply the Designated Entity Agreement in a not unduly

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[4] *See* PJM Responses to Question 1(a) at 4-9, Table 1 and Question 1(d) at 15.

[5] PJM Responses to Questions 1(b) and 1(c) at 10-14, Table 2.

[6] *See PJM Interconnection, L.L.C.*, 188 FERC ¶ 61,206, at P 39 (2024) (rejecting non-conforming Designated Entity Agreements because the non-conforming terms were not "due to specific reliability concerns, novel legal issues, or other unique factors.").

[7] PJM Responses to Questions 1(b) and 1(c) at 10-14, Table 2.

[8] Operating Agreement, Definitions M-N ("'Nonincumbent Developer' shall mean: (1) a transmission developer that does not have an existing Zone in the PJM Region as set forth in Tariff, Attachment J; or (2) a

discriminatory manner, the Commission held that all Designated Entities, regardless of whether they are Nonincumbent Developers or Transmission Owners,[9] must enter into a Designated Entity Agreement.[10] The overarching purpose behind this is "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."[11] That is, a Designated Entity Agreement acts to ensure that both incumbent Transmission Owners and Nonincumbent Developers would "be subject to comparable rules for the entirety of that *competitive process*."[12]

Given this, the majority of the Commission-recognized benefits brought by a Designated Entity Agreement with an incumbent Transmission Owner diminish appreciably when applied to in-progress RTEP projects that have already been selected for inclusion in the RTEP. The primary benefits the Commission has identified for requiring an incumbent Transmission Owner to execute a Designated Entity Agreement arise *prior* to the selection of the project in the competitive window process. Specifically, the Commission has determined that an incumbent Transmission Owner's foreknowledge that it will be required to execute a Designated Entity Agreement for a project can affect its competitive project proposal, and therefore not requiring the Designated Entity Agreement's terms "could disadvantage a nonincumbent transmission developer when competing for transmission projects."[13] Put another way, the Commission has effectively

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Transmission Owner that proposes a transmission project outside of its existing Zone in the PJM Region as set forth in Tariff, Attachment J.").

[9] Operating Agreement, Definitions S-T ("'Transmission Owner' shall mean a Member that owns or leases with rights equivalent to ownership Transmission Facilities and is a signatory to the PJM Transmission Owners Agreement. Taking transmission service shall not be sufficient to qualify a Member as a Transmission Owner.").

[10] In the July 25 Order, the Commission determined that a Designated Entity Agreement is required any time PJM designates an entity to construct, own, operate, maintain, and finance any Immediate-need Reliability Projects, Short-term Projects, and Long-lead Projects and Economic-based Enhancements or Expansions, regardless of whether the project is proposed through a competitive solicitation window, and regardless of whether it is included in the RTEP for purposes of cost allocation. *See* July 25 Order at PP 63-66. The Commission further determined that a Designated Entity Agreement is not required with respect to specific project types governed by Operating Agreement, Schedule 6, section 1.5.8(n) (i.e., Reliability Violations on Transmission Facilities Below 200 kV) and section 1.5.8(p) (Thermal Reliability Violations on Transmission Substation Equipment). *Id*. at P 76.

[11] *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 4 (2014); *see also PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 31 (2018) (the purpose of requiring incumbent Transmission Owners to execute a Designated Entity Agreement is to ensure that "similarly situated transmission developers [ ] be treated comparably.").

[12] *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,121, at P 19 (2019) (emphasis added).

[13] *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 36 (not requiring the Designated Entity Agreement's security provision from an incumbent Transmission Owner "could disadvantage a nonincumbent transmission developer when competing for transmission projects."); *id*. at P 43 (not requiring the Designated Entity Agreement's milestone provision from an incumbent Transmission Owner "could disadvantage a nonincumbent transmission developer when competing for transmission projects."); *id*. at P 50 (not requiring the Designated Entity Agreement's assignment provision from an incumbent

found the Designated Entity Agreement's terms may affect how an entity may develop the cost estimates or business plan for a proposal submitted in PJM's competitive window process, and determined that "what matters most is a level playing field between incumbent transmission owners and nonincumbent transmission developers when those entities compete for the same opportunity subject to the same set of criteria."[14]

As a result, looking at the 241 in-progress RTEP projects at issue in this proceeding, the competitive process, if applicable, has passed. The projects have been selected. Requiring the Designated Entity Agreement at this stage would not further the competitive objective. This is particularly true for those in-progress RTEP projects that were selected outside the competitive window process–i.e., unsponsored PJM-selected projects selected pursuant to sections 1.5.8(g) and (h)[15] and Immediate-need Reliability Projects selected pursuant to section 1.5.8(m)(1). Requiring a Designated Entity Agreement at this point for these projects would not serve the overarching competitive purpose of requiring a Designated Entity Agreement.

As discussed in responses to Questions 2(a) and (b) below, beyond this competitive purpose, requiring Designated Entity Agreements for in-progress RTEP projects would offer little benefit. Further, given that these projects have been selected, the extent to which any other benefit would accrue may depend on whether the Designated Entity is an incumbent Transmission Owner in whose Zone the project is being constructed. PJM treats all RTEP projects the same regardless of whether they are being constructed under a Designated Entity Agreement or the CTOA.[16] PJM routinely reevaluates the need for each project included in the RTEP, and PJM provides the same level of transparency as to project status, regardless of whether a Designated Entity Agreement is in place.[17]

Transmission Owner "could disadvantage a nonincumbent transmission developer when competing for transmission projects.").

[14] July 25 Order at P 104 (citing *PJM Interconnection, L.L.C*, 168 FERC ¶ 61,121 at PP 18-19 (explaining that "when transmission developers, here both incumbent 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.")).

[15] *See* Operating Agreement, Schedule 6, section 1.5.8(g) (PJM-proposed unsponsored Long-lead Project); *id.*, section 1.5.8(h) (PJM-proposed unsponsored Short-term Project).

[16] Historically and prior to implementation of Order No. 1000's reforms all transmission projects in PJM were constructed pursuant to the CTOA's terms and conditions. Now, depending on how the project is included in the RTEP, a transmission projects may be constructed under a Designated Entity Agreement (e.g., projects selected through the competitive window process) or under the CTOA (e.g., projects to address reliability violations on transmission facilities below 200 kV). *See* July 25 Order at PP 64-77.

[17] *See, e.g.*, *PJM Interconnection, L.L.C.*, Answer of PJM Interconnection, L.L.C., Docket No. EL22-80-000, at 25-26 (Aug. 29, 2022) ("August 29 Answer"); *PJM Interconnection, L.L.C.*, Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C. to Protest, Comments, Motion to Consolidate, and Answer, Docket Nos. EL22-80-000 & EL22-85-000, at 18-20 (Oct. 11, 2022) ("October 11 Answer"). PJM maintains a webpage that provides—for every RTEP project—project status, projected in-service date and cost estimates. *See Project Status & Cost Allocation*, PJM Interconnection, L.L.C., https://www.pjm.com/planning/m/project-construction (last visited Oct. 7, 2024).

Even if there were a benefit to requiring PJM and the relevant developer to execute Designated Entity Agreements for in-progress RTEP projects, any benefit would be undermined by imposing new terms and conditions to govern the development and construction of a project that is actively being developed or constructed, as would be the case for 220 of the in-progress RTEP projects.[18] That is, logic dictates that requiring the project developer to allocate resources away from project development/construction to negotiate new terms and conditions with PJM is very likely to slow the development of the project. As a result, while PJM cannot estimate at this time the potential effect such negotiation would have on each project (and it would likely vary depending on a number of project-specific factors), requiring Designated Entity Agreements for these projects would necessitate a tradeoff of some inherent delay in project development in favor of the benefits that would accrue.

Finally, to the extent any party may suggest that the overall cost of the 241 projects at issue is a relevant consideration in weighing the costs and benefits, PJM disagrees. PJM estimates that the costs associated with the 241 in-progress RTEP projects are approximately $3.36 billion, while, as set forth in PJM's responses to Question 1, it would cost PJM between approximately $600,000 and $1 million to process Designated Entity Agreements for in-progress RTEP projects.[19] The considerations the Commission must balance, however, is not whether PJM is expending between approximately $600,000 and $1 million to obtain Designated Entity Agreements for the estimated $3.36 billion in transmission upgrades for in-progress RTEP projects, but rather the limited benefits such Designated Entity Agreements would achieve relevant to the costs associated with their execution and review by the Commission. That is, the Commission must balance expending between approximately $600,000 and $1 million and several full-time equivalent PJM employees (plus the cost and burden on the Designated Entity)—and where all costs will be passed through to load—against the limited benefits associated with imposing a Designated Entity Agreement with a project that has already been selected and is being developed.

[18] *See* PJM Responses to Question 1(a) at 9, Figure 4 (showing that 220 projects are either under construction or in the engineering and procurement phase, while 21 projects are on hold or suspended).

[19] PJM Responses to Questions 1(b) and 1(c) at 11, Table 2 shows that PJM's estimated total cost and burden associated with negotiating and executing a conforming *pro forma* Designated Entity Agreement to be 61 work hours and $6,402.94. Thus, given that PJM estimates a total of 93 Designated Entity Agreements would be required for the 241 in-progress RTEP projects, to negotiate and execute 93 conforming *pro forma* Designated Entity Agreement would cost about $595,473.42 (93 * 6402.94) and require approximately 5,673 work hours—i.e., approximately three full-time equivalent employees.

a. Whether, and if so, how, entities beyond the parties to Designated Entity Agreements, such as transmission customers, stakeholders, and the public would derive value from the Commission requiring that incumbent transmission owners of in-progress RTEP projects sign Designated Entity Agreements.

As discussed, the Commission has made clear that it views the underlying purpose in requiring Designated Entity Agreements for incumbent Transmission Owners as to foster competition and provide a level playing field *during the project evaluation and selection process*.[20] As each of the projects at issue have already been selected for inclusion in the RTEP, that purpose cannot be served by imposing Designated Entity Agreements at this stage. As such, there would be no meaningful value in requiring Designated Entity Agreements for the 241 in-progress RTEP projects. Further, because PJM provides substantially the same level of transparency, accountability, and reevaluation to all projects included in the RTEP, there would be little, if any, value added by requiring PJM and the Designated Entity to negotiate a new governing agreement mid-project development.

Such an outcome is consistent with—and a natural extension of—the Commission's determination that security is not required for certain projects *after* they have been selected for inclusion in the RTEP. In the July 25 Order, the Commission held that imposing a security requirement for projects for which there was no competition in the competitive window process and were assigned to the incumbent Transmission Owner would be "unjust and unreasonable because" it would not serve to meet the two rationales of requiring the security: (1) "insur[ing] against the incremental costs of reassigning a transmission project designated to a nonincumbent transmission developer" and (2) "ensur[ing] comparability between incumbent transmission owners and nonincumbent transmission developers."[21]

Likewise, requiring Designated Entity Agreements for the in-progress RTEP projects would not serve to ensure comparability—the primary purpose of requiring a Designated Entity Agreement for an RTEP project assigned to an incumbent Transmission Owner. That is, as discussed, the Commission should similarly decline to impose Designated Entity Agreements for in-progress projects as they are not required to ensure comparability, and the CTOA provides an adequate alternative terms and conditions to govern the development and construction of these projects.

Further, application of the three aspects of a Designated Entity Agreement the Commission found to be more stringent than the CTOA (security, project milestones, and assignment[22]) *after* project selection would not confer a value that outweighs the costs and burdens associated with negotiating and executing 93 Designated Entity Agreements.

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[20] *See* July 25 Order at P 104.

[21] July 25 Order at P 95.

[22] *See PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021.

1. The Designated Entity Agreement's Security Requirement Offers Little Benefit for These Projects.

Neither of the Commission's two rationales for the security requirement (i.e., ensuring comparability between incumbent transmission owners and nonincumbent transmission developers and insuring against the cost of reassigning a transmission project designated to a nonincumbent transmission developer) support a decision to require Designated Entity Agreements for the 241 in-progress RTEP projects. The comparability requirement does not apply, as it would be too late for the Transmission Owner to price the cost of the security in the proposed project, and, in any event, the project has already been selected.

The other rationale—buffering the costs of reassigning the project to the incumbent Transmission Owner in which zone the project is to be located—does not apply here either. Of the 241 in-progress RTEP projects, 239 are already assigned to the incumbent Transmission Owner in whose zone the projects are to be constructed. Therefore, as Commission held in the July 25 Order, "where the Designated Entity is the incumbent transmission owner, including for PJM-chosen unsponsored projects and incumbent-proposal only projects, there is no reasonable risk of reassignment to another entity"[23] for these projects. The remaining two projects – both assigned to one Nonincumbent Developer (Transource Pennsylvania, LLC ("Transource")), were Immediate-need Reliability Projects that were expansions upon an existing project for which the developer already had a Designated Entity Agreement in place. In the case of these two projects, PJM developed the solution to address the Immediate-need Reliability violations, and designated the Nonincumbent Developer to construct, own, operate, maintain, and finance the projects. As such, these projects are PJM-chosen unsponsored projects which the Commission has determined are exempt from security requirements in any event.

2. The Designated Entity Agreement's Project Milestone Provisions Add Little Value, As PJM's Practice Is to Provide Accountability and Reevaluation for All RTEP Projects.

The Commission has found that the Designated Entity Agreement's milestone requirements are more stringent than the CTOA's in-service date requirement, and therefore they "could disadvantage a nonincumbent transmission develop[er] *when competing for transmission projects*."[24] Such comparability concern is not applicable given that the projects have already been selected.

Moreover, any value imposing such requirements after selection, particularly during development, would not be significant. The record in this proceeding shows that PJM stays in regular contact with the developer of each project, whether a Transmission Owner or Nonincumbent Developer, to discuss project status, and other aspects of its

[23] July 25 Order at P 101.

[24] *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 43 (emphasis added).

development.[25] PJM reflects the information received on a webpage it maintains detailing project status and cost allocation for every RTEP project.[26] On this webpage, PJM provides the estimated cost for each project, plus each project's current construction "status" and "required" date, as well as its "projected" and "actual" in-service dates.[27] PJM updates the information on this webpage quarterly. PJM regularly reports on the status of ongoing projects and cost changes in its stakeholder process, e.g., the Transmission Expansion Advisory Committee.[28] In short, PJM updates that webpage on a quarterly basis, detailing, for every project, the transparency and accountability PJM requires for every RTEP project, regardless of whether the project is being constructed under a Designated Entity Agreement or the CTOA.[29]

PJM has explained that "even with a Designated Entity Agreement in place, project milestones and deadlines can be missed, through no fault of the developer and can be (and in fact have been) extended to accommodate issues that may arise."[30] Indeed, while the *pro forma* Designated Entity Agreement provides that failure to meet any milestone would constitute a breach,[31] which if not cured,[32] would result in a revaluation for the need of the project,[33] the *pro forma* Designated Entity Agreement provides PJM "the option to

[25] *See, e.g.*, October 11 Answer at 19 ("[A]ll project developers are required to submit regular updates to PJM regarding the project status, projected in-service date and cost estimates.").

[26] *See Project Status & Cost Allocation*, PJM Interconnection, L.L.C., https://www.pjm.com/planning/m/project-construction (last visited Oct. 7, 2024).

[27] *See Project Status & Cost Allocation*, PJM Interconnection, L.L.C., https://www.pjm.com/planning/project-construction (last visited Oct. 7, 2024).

[28] *See* August 29 Answer at 25-26; October 11 Answer at 18-19.

[29] Further, PJM also has a webpage dedicated to providing additional detailed information on Immediate-need Reliability Projects. *See https://www.pjm.com/planning/project-construction/immediate-need-projects.* Finally, every year, PJM submits an informational report regarding Immediate-need Reliability Projects in its Order No. 1000 compliance Docket No. ER13-198. Not only does the report detail the past year's Immediate-need Reliability Projects exempted from a competitive proposal window, it also provides an update of each outstanding Immediate-need Reliability Project until each project is energized. *See, e.g., PJM Interconnection, L.L.C.*, Informational Filing Regarding Immediate-need Reliability Projects of PJM Interconnection, L.L.C., Docket No. ER13-198 (Jan. 31, 2024).

[30] October 11 Answer at 23.

[31] *See* Tariff, Attachment KK, section 4.1.0 ("Failure to meet any of the milestone dates specified in Schedule C, or as extended as described in this Section 4.1.0 or Section 4.3.0 of this Agreement, shall constitute a Breach of this Agreement.").

[32] *See* Tariff, Attachment KK, section 7.3 ("The breaching Party may: (i) cure the Breach within thirty days from the receipt of the notice of Breach or other such date as determined by Transmission Provider to ensure that the Project meets its Required Project In-Service Date set forth in Schedule C; or, (ii) if the Breach cannot be cured within thirty days but may be cured in a manner that ensures that the Project meets the Required Project In-Service Date for the Project, within such thirty day time period, commences in good faith steps that are reasonable and appropriate to cure the Breach and thereafter diligently pursue such action to completion.").

[33] *See* Tariff, Attachment KK, section 7.4 ("In the event that a breaching Party does not cure a Breach in accordance with Section 7.3 of this Agreement, Transmission Provider shall conduct a re-evaluation pursuant to Section 1.5.8(k) of Schedule 6 of the Operating Agreement.").

reasonably extend the milestone date."[34] For example, the Artificial Island project, designated to a Nonincumbent Developer, was suspended,[35] and due to a scope of work change directed by PJM, various milestones set forth in the Designated Entity Agreement were extended by one year, including the in-service date.[36]

Further, while it is true that failure to cure a breach (e.g., missing a milestone) that affects the ability of the developer to meet the in-service date may lead to PJM reevaluating the need for a given project with a Designated Entity Agreement,[37] PJM regularly reevaluates the need *for all other RTEP projects* as part of its regional planning processes. PJM reevaluates the need for RTEP projects as part of its usual transmission planning process. If a project is found to no longer be needed or is not progressing towards timely completion, PJM has the authority to replace or terminate the project, and has done so in the past.[38]

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[34] *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 44; *see also* Tariff, Attachment KK, section 4.1.0 ("Transmission Provider reasonably may extend any such milestone date, in the event of delays not caused by the Designated Entity that could not be remedied by the Designated Entity through the exercise of due diligence, or if an extension will not delay the Required Project In-Service Date specified in Schedule C of this Agreement").

[35] *See* Transmission Expansion Advisory Committee, *Reliability Analysis Update, Artificial Island Update*, PJM Interconnection, L.L.C. (Dec. 15, 2016), https://www.pjm.com/-/media/committees-groups/committees/teac/20161215/20161215-artificial-island-update.ashx (providing stakeholders an update on temporary suspension of Artificial Island Project, in-depth analyses of Artificial Island Project, and next steps in the process, including evaluation of cost and schedule impacts of suspension).

[36] *See PJM Interconnection, L.L.C.*, Letter Order, Designated Entity Agreement, Service Agreement No. 4310, Docket No. ER19-1981-000 (July 16, 2019). PJM has also extended the milestone and in-service dates four times for the Transource Independence Energy Connection 9A Project, to accommodate delays in obtaining necessary permits. *See* Nick Dumitriu, Principal Engineer, Transmission Expansion Advisory Committee, *Market Efficiency Update*, PJM Interconnection, L.L.C., 18 (Nov. 30, 2021), https://www.pjm.com/-/media/committees-groups/committees/teac/2021/20211130/20211130-item-02-market-efficiency-update.ashx (informing stakeholders the PJM Board endorsed PJM's recommendation to suspend the Transource Independence Energy Connection 9A, due to permitting risks, in order to remove it from the models pending future updates).

[37] *See pro forma* Designated Entity Agreement, section 7.4; Operating Agreement, Schedule 6, section 1.5.8(k) (explaining that failure to cure a breach can also lead to the project being reassigned to the incumbent Transmission Owner).

[38] PJM has historically reevaluated the need for an RTEP project regardless of whether a Designated Entity Agreement is in place, and if a project was found to no longer be needed or progressing towards timely completion, PJM has replaced or terminated the project. *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,156, at P 6 (2013) ("PJM staff reviewed results of analyses showing reliability drivers no longer exist for the MAPP Project throughout the 15-year planning cycle. After considering PJM staff's recommendation resulting from additional reliability analyses and communications received from PJM stakeholders, on August 24, 2012, the PJM Board terminated the MAPP Project and removed it from the PJM RTEP.") (footnote omitted); *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,177, at P 6 ("In 2011 PJM conducted additional analyses and concluded that due to decreasing customer load growth, increasing participation in demand response, and the expected addition of new generation in the region, the need for the PATH Project no longer existed throughout PJM's 15 year planning horizon."), *modified by*, 141 FERC ¶ 63,019 (2012).

If the Designated Entity has failed to cure the breach affecting its ability to complete the project by the in-service date and the project is still needed, PJM may reassign the project, but only to the incumbent Transmission Owner in whose zone the project is located. Given that the Designated Entity for nearly all of the in-progress RTEP projects is the incumbent Transmission Owner in whose zone the project is located, such reassignment provision would likely have little relevance.

In sum, PJM's practices applicable to all RTEP projects requiring regular project status updates and regular reevaluation instill accountability on the part of the project developer. Such accountability and reevaluation are present regardless of whether a Designated Entity Agreement is in place.

3. The Designated Entity Agreement's Assignment Provision Offers Little Benefit to In-Progress RTEP Projects.

The Commission has found that the Designated Entity Agreement's assignment provision is more stringent than the CTOA's in-service date requirement, and therefore "could disadvantage a nonincumbent transmission development *when competing for transmission projects*."[39] Such comparability concern is not applicable given that the projects have already been selected.

4. The Designated Entity Agreement Provides No Additional Benefits Related to Cost Transparency or Cost Containment.

In addition, the record in this proceeding shows that a Designated Entity Agreement does not provide any additional value with respect to cost transparency or cost control/containment. As discussed, PJM provides the same cost transparency benefits for *all* projects included in the RTEP through its website, where PJM details the estimated project cost and the allocation of cost responsibility for each project.[40] On cost control/containment, a Designated Entity Agreement only provides such measures to the extent they were voluntarily proposed *by the developer* and PJM selected the project with such conditions in place.[41] Given that the projects at issue have already been selected, there is no new opportunity for a developer to propose cost containment as an incentive for PJM to select the project. Moreover, there is no incentive for a developer to propose or agree to cost containment at the post-selection stage. And, none of the 241 in-progress RTEP projects have any cost control or containment restrictions, as PJM has already issued

[39] *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 43.

[40] *See Project Status & Cost Allocation*, PJM Interconnection, L.L.C., https://www.pjm.com/planning/m/project-construction (last visited Oct. 7, 2024).

[41] Operating Agreement, Schedule 6, section 1.5.8(c)(2) provides: "To the extent that an entity submits a cost containment proposal the entity shall submit sufficient information for the Office of Interconnection to determine the binding nature of the proposal with respect to critical elements of project development. PJM may not alter the requirements for proposal submission to require the submission of a binding cost containment proposal, in whole or in part, or otherwise mandate or unilaterally alter the terms of any such proposal or the requirements for proposal submission, the submission of any such proposals at all times remaining voluntary."

or executed Designated Entity Agreements for all RTEP projects that are subject to cost commitments.[42]

Finally, whether a project is being constructed under a Designated Entity Agreement or the CTOA does not affect whether PJM will reevaluate the need for a given project. While it is true that PJM will reevaluate projects with a Designated Entity Agreement under certain conditions,[43] PJM continuously reevaluates the need for all projects as part of its regional planning processes.[44]

[42] Where a proposal contains cost containment language, and the proposed project is approved for inclusion in the RTEP, the cost commitment language must be included in the relevant Designated Entity Agreement as a non-standard term that is filed with the Commission. *See* PJM, *Manual 14F: Competitive Planning Process*, § 8.1.5 (rev. 9, Apr. 27, 2022), https://www.pjm.com/-/media/documents/manuals/m14f.ashx.

[43] *See* Operating Agreement, Schedule 6, section 1.5.8(k).

[44] *See supra* n.38.

b. If the Commission were to require incumbent transmission owners to sign Designated Entity Agreements for in-progress RTEP projects, whether there would be any benefit, including to the transmission customers that will ultimately pay such costs, in requiring that security be provided at this point for in-progress RTEP projects.

If the Commission were to require Designated Entity Agreements for any in-progress RTEP projects, the Commission should not require security for such projects. Such a requirement would impose unnecessary costs on consumers without commensurate benefit.

As an initial matter, to properly implement the July 25 Order, the Commission should not impose security requirements for the in-progress RTEP projects that are "incumbent-proposal only projects" and "PJM-chosen unsponsored projects," as those terms are defined by the July 25 Order.[45] As PJM explained in response to Question 1(f), PJM has not yet identified which of the 241 projects would fall in these two categories.[46]

With respect to the remaining in-progress RTEP projects, the Commission should not impose a security requirement, as such would only serve to increase customer cost. As discussed, neither the comparability rationale nor the rationale of buffering the reassignment costs supports a security requirement for any of the 239 projects not assigned to Transource. With respect to those two in-progress RTEP projects assigned to Transource, to the extent the Commission determines it is necessary to require Designated Entity Agreements for such projects, it should refrain from requiring security as those two projects are PJM-chosen unsponsored projects. As discussed above, PJM developed these projects to address immediate need reliability violations, and the projects are expansions upon an existing project for which Transource already has a Designated Entity Agreement in place.

Requiring security now likely would be a change in circumstances from when those projects were considered for selection in the RTEP. That is, the costs associated with security likely were not considered by the developer in its cost estimate or by PJM when selecting these projects for inclusion in the RTEP. In this respect, it is important to keep in mind that the selection of these in-progress RTEP projects predates the July 25 Order. Thus, given the prevailing practices at the time of proposal submission, which were based on PJM's understanding of the Operating Agreement requirements, it would have been reasonable to assume that no security would be required for these projects, and therefore such costs would not have been priced into these projects' costs prior to their selection into

[45] *See* July 25 Order at PP 7, 79.

[46] *See* PJM Responses to Question 1(f) at 19-20 ("Although identifying whether a project is a 'PJM-chosen unsponsored project' selected pursuant to Operating Agreement, Schedule 6, sections 1.5.8(g), 1.5.8(h), or 1.5.8(m)(1), would not be overly burdensome, the administrative effort required to identify whether a project is an 'incumbent-proposal only project' would be significant. To do so, PJM would need to review the selection process for each project that is not a 'PJM-chosen unsponsored project' to see if a Nonincumbent Developer competed to address the same need identified by PJM." (citation omitted)).

the RTEP. Accordingly, requiring security now, without prior consideration of such costs, would only act to increase project costs. Such a requirement would be unjust and unreasonable because it would almost uniformly increase costs customers will pay for projects through their transmission rates for no offsetting gain.

Finally, as PJM mentioned in response to Questions 1(b) and (c),[47] negotiating a security for the remaining unconstructed portion of a project's costs when the project is in the development process (i.e., after some costs have already been incurred) would increase the complexity of the Designated Entity Agreement negotiation, without offsetting benefit.

[47] *See* PJM Responses to Questions 1(b) and 1(c) at 11.

c. Whether among in-progress RTEP projects there are reasonable distinctions (e.g., by project type, approval date, progress towards completion, or administrative cost and burden for agreement execution) between those that should be required to have executed Designated Entity Agreements and those that should not.

For the reasons stated, PJM does not see a benefit to requiring Designated Entity Agreements for in-progress RTEP projects. However, to the extent the Commission determines that such projects require a Designated Entity Agreement, the Commission should decline to extend such determination to projects selected to address near-term reliability needs. Such approach would exclude projects selected to address Immediate-need Reliability Projects, which may be related to reliability issues driven by generator deactivations. As provided in response to Question 1(a), of the 241 in-progress RTEP projects, 102 were selected to meet immediate needs (81 projects) and to resolve reliability issues caused by generator deactivations (21 projects).[48] These projects are needed in the near term to maintain reliability and imposing a Designated Entity Agreement after the project has been selected will only serve to increase the project's complexity and timeline for completion. In no event would imposing a requirement to negotiate a Designated Entity Agreement speed up the project's completion date.[49]

[48] *See* PJM Responses to Question 1(a) at 7, Figure 1. As noted above, the generator deactivation projects include the two projects for which Transource is the Designated Entity.

[49] To the extent there is a concern about the need to reevaluate the need for these projects, the Operating Agreement already provides a mechanism for PJM to reevaluate the need for generator deactivation need-driven projects. *See* Operating Agreement, Schedule 6, section 1.5.3.

d. Why and how does your position strike an appropriate balance between the benefits and the costs of executing Designated Entity Agreements for in-progress RTEP projects?

PJM's position that no Designated Entity Agreement should be required for the in-progress RTEP projects strikes an appropriate balance between the benefits of having a Designated Entity Agreement in place for the construction of the project and the costs and burdens of negotiating and executing 93 Designated Entity Agreements.

As explained, the Commission has found that the primary rationale for requiring incumbent Transmission Owners to execute Designated Entity Agreements is not to establish the terms and conditions for constructing transmission projects, but to provide comparability in the competitive window process. Such objective clearly cannot be met by requiring Designated Entity Agreements for these in-progress RTEP projects.

Whether a Designated Entity Agreement serves any other purpose at this point is a question of what benefits would such a Designated Entity Agreement bring to load in exchange for the extra costs, time, and other resources (for negotiating a Designated Entity Agreement) associated with imposing a Designated Entity Agreement for an already selected and in-progress project.[50] Above, PJM demonstrated that little, if any, benefit would accrue to imposing a Designated Entity Agreement after the project has been selected, and that imposing a Designated Entity Agreement at the development or construction stage would undermine any benefit. To recap:

- Requiring security (to the extent applicable) would add cost without commensurate benefit (see responses to 2(a) and (b));
- No additional benefit from requiring milestones as PJM works with all RTEP project developers to address issues as they arise (see response to 2(a));
- No benefit to be derived from the assignment provision to the extent the Designated Entity is the incumbent Transmission Owner in whose zone the project will be located and only minimal benefit for the two Transource projects (see response to 2(a));
- No additional transparency is provided through a Designated Entity Agreement (see response to 2(a));
- No additional cost containment is provided through a Designated Entity Agreement (see response to 2(a)); and
- A Designated Entity Agreement does not affect whether PJM will reevaluate the need for a given project, and in fact, PJM continuously reevaluates the need for all RTEP projects (see response to 2(a)).

[50] As explained, the total project cost is not a relevant consideration.

In addition, given that the Designated Entity Agreement was designed to mitigate and manage the high risk of non-performance associated with assigning the development of needed transmission projects to Nonincumbent Developers, to the extent such non-performance risk is not present, the relative need for a Designated Entity Agreement is lessened. Thus, in balancing the benefits a Designated Entity Agreement may provide against the costs and burdens, the Commission should weigh the relative non-performance risk level presented by the Designated Entity. In making that determination, the Commission should consider whether the Designated Entity for an in-progress RTEP project has a(n):

- Demonstrated track record of successful RTEP project construction;
- Obligation to serve, whether under the CTOA, a contractual obligation to provide full requirements service, or a state requirement;
- Is well capitalized such that the cost to construct the project is not material relative to the Designated Entity's balance sheet; and
- Investment grade debt rating.

While such data may not be present in the record of this proceeding, as a general matter, each of the incumbent Transmission Owners designated to build the 239 projects meets each of these requirements.

Respectfully submitted,

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October 8, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 8th day of October 2024.

/s/ Ryan J. Collins
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