

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

American Municipal Power, Inc., Office of)
the People’s Counsel for the District of)
Columbia, and the PJM Industrial)
Customer Coalition,)
Complainants)

v.)

PJM Interconnection, L.L.C.,)
Respondent.)

Docket No. EL22-____-000

COMPLAINT REQUESTING FAST TRACK PROCESSING

Pursuant to Sections 206, 306, and 309 of the Federal Power Act (“FPA”)¹ and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),² American Municipal Power, Inc., Office of the People’s Counsel for the District of Columbia, and the PJM Industrial Customer Coalition (“Complainants”) submit this Complaint opposing PJM Interconnection, L.L.C.’s (“PJM”) ongoing failure to comply with provisions of Schedule 6 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”) that require PJM to execute with each entity designated to construct a

¹ 16 U.S.C. §§ 824e, 825e, 825h.

² 18 C.F.R. § 385.207(a)(2).

regionally planned project³ (the “Designated Entity”)⁴ a Designated Entity Agreement.⁵ The Designated Entity Agreement is a *pro forma* agreement set forth in the PJM Open Access Transmission Tariff (“Tariff”) that specifies the rights and obligations of each Designated Entity on a project-specific basis and addresses the obligation of the Designated Entity to provide credit support and meet performance milestones, among other things. Operating Agreement Section 1.5.8 unambiguously requires each Designated Entity to execute a Designated Entity Agreement for each Regionally Planned Project that it is designated to build. However, to date, PJM has only marginally complied with these requirements.

Until recently, PJM has only required execution of a Designated Entity Agreement in the limited cases where Regionally Planned Projects are selected through a competitive window *and* projects costs are regionally allocated.⁶ In February 2022, PJM revised its practice and began issuing a Designated Entity Agreement to “transmission owners designated projects selected through the proposal window that were not regionally allocated.”⁷ However, PJM persists in only partially complying with Operating Agreement Section 1.5.8 because PJM is not requiring execution of a Designated Entity Agreement for all Regionally Planned Projects, including

³ Regionally planned projects include Immediate-need Reliability Projects, Short-term Projects, Long-lead projects and Economic-based Enhancements or Expansions as they are defined in the PJM Operating Agreement and referred to herein as “Regionally Planned Projects.”

⁴ Designated Entity is defined as “an entity, including an existing Transmission Owner or Nonincumbent Developer, designated by the Office of the Interconnection with the responsibility to construct, own, operate, maintain, and finance Immediate-need Reliability Projects, Short-term Projects, Long-lead Projects, or Economic-based Enhancements or Expansions pursuant to Operating Agreement, Schedule 6, section 1.5.8.” Operating Agreement, Definitions.

⁵ On July 14, 2014, PJM filed the *pro forma* Designated Entity Agreement as part of its Third Order No. 1000 compliance filing in response to a Commission directive in *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 280 (2013).

⁶ See PJM, Designated Entity Agreement Frequently Asked Questions at 2 (posted May 9, 2022), <https://www.pjm.com/-/media/committees-groups/committees/pc/2022/20220510/item-07f---designated-entity-agreement-faq---05092022.ashx> (“February DEA FAQ”).

⁷ *Id.*

Immediate-need Reliability Projects and those resulting from needs that are not posted in a competitive window. PJM's failure to execute a Designated Entity Agreement with the Designated Entity for each Regionally Planned Project violates the PJM Operating Agreement.

Complainants request a Commission order finding that PJM is not complying with the Operating Agreement provisions that require Designated Entities, including incumbent and nonincumbent transmission developers, to execute a Designated Entity Agreement, and directing PJM to immediately comply with those provisions. The Commission also should direct PJM to immediately execute Designated Entity Agreements with Designated Entities designated to build Regionally Planned Projects that have been approved by the PJM Board and are still under construction. Complainants estimate that this would affect approximately 494 projects (based on Project ID).⁸ Complainants are not challenging the justness and reasonableness of the existing Operating Agreement under Section 206 of the Federal Power Act; Complainants seek only to compel PJM's compliance with the Operating Agreement. Accordingly, Complainants request that the Commission grant this Complaint and require PJM to: (1) execute Designated Entity Agreements for all previously approved Regionally Planned Projects that are under construction; and (2) execute Designated Entity Agreements for all Regionally Planned Projects going forward.

I. EXECUTIVE SUMMARY

The PJM Operating Agreement requires that each Designated Entity designated to build a Regionally Planned Project⁹ execute a Designated Entity Agreement.¹⁰ The requirement to

⁸ Information regarding approved projects is available on PJM's website, <https://www.pjm.com/planning/project-construction>.

⁹ Regionally Planned Projects include Immediate-need Reliability Projects, Short-term Projects, Long-lead Projects, and Economic-based Expansions or Enhancements and are approved pursuant to Section 1.5.8 of Schedule 6 of the Operating Agreement.

¹⁰ See PJM, Attachment KK (Form of Designated Entity Agreement). The Commission accepted the Designated Entity Agreement as part of PJM's compliance with Order No. 1000. *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 10 (2014). The Commission has found that the Designated Entity Agreement "sets forth security,

execute the Designated Entity Agreement explicitly applies to both incumbent Transmission Owners and non-incumbent transmission owners, and applies to all projects included in the Regional Transmission Expansion Plan (“RTEP”) pursuant to Schedule 6, Section 1.5.8 of the Operating Agreement, regardless of whether the project is selected through a competitive proposal window, and specifically applies to Immediate-need Reliability Projects approved through Operating Agreement Section 1.5.8(m)(1).

PJM has steadfastly refused to fully comply with the express terms of the Operating Agreement even though PJM Members have repeatedly brought the issue to PJM’s attention.¹¹ In fact, since the effective date of PJM’s Order No. 1000-compliant regional planning process, PJM has approved hundreds of Regionally Planned Projects, but according to the February DEA FAQ, PJM has only executed five Designated Entity Agreements; two of these were with incumbent Transmission Owners and three were with nonincumbent developers designated as the Designated Entities.¹² Instead of complying with existing Commission-approved requirements, PJM has now twice attempted to change the Operating Agreement through filings with the Commission.¹³ The Commission rejected these PJM filings.¹⁴ But instead of altering its practices to conform to the

milestones, insurance, and assignment requirements, among other things” and in several instances is more stringent than the requirements in the Consolidated Transmission Owners Agreement. *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 1 n.6, P 35 (2018) (“2018 Rejection Order”), *order denying reh’g and compliance*, 168 FERC ¶ 61,121 (2019) (“2019 Rejection Rehearing Order”).

¹¹ See Letter from Sharon K. Segner, Vice President, LS Power, to Chris O’Hara, Vice President, General Counsel, PJM (July 22, 2021), <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20210726-ls-power-letter-regarding-designated-entity-agreements.ashx>.

¹² February DEA FAQ at 2-3; see also PJM Answer, Docket No. ER13-198, at 13 n.49 (filed October 14, 2021). The February DEA FAQ indicates that PJM has issued another four Designated Entity Agreements. February DEA FAQ at 3.

¹³ PJM, Filing, Docket No. ER18-1647 (filed May 16, 2018); PJM, Filing, Docket No. ER13-183-008 (filed Sept. 1, 2021) (citation omitted).

¹⁴ 2018 Rejection Order at P 1; *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,083, at P 1 (2022).

Operating Agreement,¹⁵ PJM recently tried to once again to change the Operating Agreement—through an abbreviated stakeholder process that PJM Members rejected.¹⁶ Given PJM’s persistent and ongoing attempts to change the Operating Agreement instead of complying it, Complainants respectfully request that the Commission direct PJM to comply with all of the Designated Entity Agreement requirements set forth in the Operating Agreement and Tariff.

II. SERVICE AND COMMUNICATION INFORMATION

All correspondence and communications in this docket should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Commission’s Secretary in these proceedings:

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¹⁵ See Letter from Manu Asthana, Chief Executive Officer, PJM Interconnection, L.L.C., to Sharon K. Segner, Vice President, LS Power, *et al.* (August 24, 2021), <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20210825-pjm-president-ceo-response-letters-re-designated-entity-agreements.ashx>.

¹⁶ See PJM’s Issue Charge for revising the application of the requirement to execute the Designated Entity Agreement. PJM indicated that it would use the Quick Fix Process to push through the revisions. According to Manual 34, the Quick Fix Process is for issues that are “urgent and/or very simple or straightforward to correct, and require no stakeholder engagement.” PJM Manual 34: PJM Stakeholder Process at 56 (effective October 20, 2021).

III. DESCRIPTION OF PARTIES AND STANDING

American Municipal Power, Inc. (“AMP”) is a non-profit Ohio corporation organized in 1971. AMP has 134 members, including 133 municipal electric systems in Ohio, Pennsylvania, Michigan, Virginia, Kentucky, West Virginia, Indiana, and Maryland, and the Delaware Municipal Electric Corporation, a joint action agency with nine members. AMP provides wholesale energy supply and related services to its members. To meet those members’ load service responsibilities, AMP purchases transmission and related services from PJM and also purchases and sells electricity products in the markets operated by PJM. AMP and its members are directly and adversely affected by PJM’s non-compliance with the Designated Entity requirements in the Operating Agreement because such non-compliance eliminates one of the many tools that should be employed to discipline extraordinary levels of transmission spending.

Office of the People’s Counsel for the District of Columbia (“DC OPC”) is an independent agency of the District of Columbia (“District”) that pursuant to D.C. Code §34804(d) is statutorily authorized to “represent and appeal for the people of the District of Columbia” in proceedings before FERC when those proceedings “involve the interests of users of the products of or services furnished by” the District’s public utilities. DC OPC participates actively in District of Columbia and federal regulatory and judicial proceedings to represent the interest of the District’s ratepayers and consumers. DC OPC is a member of PJM Interconnection, LLC (“PJM”) and participates actively in PJM stakeholder activities. The District falls within PJM’s service territory and District ratepayers are directly affected by the actions of PJM and its members.

PJM Industrial Customer Coalition (“PJMICC”) is an *ad hoc* association made up of large industrial and commercial customers with facilities located in all zones in the PJM Region. PJMICC members pay transmission rates, whether as a result of flow-through in competitively sourced contracts, stated-approved public utility rate riders, or bundled retail rates. Transmission

rates comprise a significant portion of PJMICC members' overall electricity costs. PJMICC members are directly and adversely affected by PJM's non-compliance with Operating Agreement provisions because such non-compliance eliminates one of the many tools that should be employed to discipline extraordinary levels of transmission spending.

IV. BACKGROUND

PJM's responsibility for regional transmission planning for all Transmission Facilities¹⁷ under its operational control began when the Commission first approved it as a regional transmission organization.¹⁸ The regional planning process is contained in PJM Operating Agreement Schedule 6. In 2012, following issuance of Order No. 1000, PJM and its stakeholders developed Order No. 1000 compliance proposals. According to PJM's Order No. 1000 Compliance Filing, the Regional Planning Process Task Force held approximately forty-eight meetings to develop these proposals, which were posted for review.¹⁹ PJM's regional transmission planning process is outlined below.

A. PJM's Regional Selection and Designation Process

PJM's regional planning process begins with PJM conducting reliability and economic studies to identify transmission needs.²⁰ Depending on when a solution is required to address the

¹⁷ The Operating Agreement defines "Transmission Facilities" as "facilities that: (i) are within the PJM Region; (ii) meet the definition of transmission facilities pursuant to FERC's Uniform System of Accounts or have been classified as transmission facilities in a ruling by FERC addressing such facilities; and (iii) have been demonstrated to the satisfaction of the Office of the Interconnection to be integrated with the PJM Region transmission system and integrated into the planning and operation of the PJM Region to serve all of the power and transmission customers within the PJM Region." Operating Agreement, Definitions, <https://www.pjm.com/directory/merged-tariffs/oa.pdf>. The definition of Transmission Facilities in Section 1.27 of the Consolidated Transmission Owners Agreement is virtually identical to the Operating Agreement definition, with the addition of the following clause at the end: "regardless of whether the facilities are listed in the PJM Designated Facilities List contained in the PJM Manual of Transmission Operations or successor thereto."

¹⁸ See PJM Order No. 1000 Compliance Filing, Docket No. ER13-198, at 2-3 (filed October 25, 2012).

¹⁹ *Id.* at 73-74.

²⁰ See Operating Agreement, Schedule 6, Section 1.5.6.

identified need (*i.e.*, the need-by date) the project may be a Long-lead, Short-term, Immediate-need Project, or an Economic-based Expansion or Enhancement. If the project is a Long-lead or Short-term Project, then the transmission need is posted in an “open window.”²¹ During an open window, qualified developers may submit proposals for solving the posted needs.²² PJM reviews project proposals and determines which, if any, is the more efficient or cost-effective solution.²³ If the proposing entity is a qualified developer that indicated it would accept designation as the Designated Entity, then PJM will evaluate the proposing developer and likely designate it as the Designated Entity.²⁴

There are exceptions to the open window process. If a transmission need identified by PJM through the regional planning process is considered to be: an immediate reliability need;²⁵ a reliability violation on a transmission facility below 200 kV;²⁶ or a thermal reliability violation on transmission substation equipment, then the transmission need is not posted in an open window.²⁷ Instead, PJM will specify a project and designate the incumbent transmission owner as the Designated Entity.

In addition, under circumstances defined in Section 1.5.8(*l*), the incumbent transmission owner will be the Designated Entity for projects that are: a Transmission Owner Upgrade;²⁸ located solely within an incumbent transmission owner’s zone and all the costs of the project are allocated

²¹ *Id.* Section 1.5.8(b).

²² *Id.* Section 1.5.8(c).

²³ *Id.* Section 1.5.8(d) & (e).

²⁴ *Id.* Section 1.5.8(f).

²⁵ *Id.* Section 1.5.8(m)(1).

²⁶ *Id.* Section 1.5.8(n).

²⁷ *Id.* Section 1.5.8(p).

²⁸ *Id.* Section 1.5.8(*l*).

solely to that zone;²⁹ located within the incumbent transmission owner's zone and not selected in the regional plan for purposes of cost allocation;³⁰ located on an incumbent transmission owner's existing right of way and would alter the use and control of the right of way under state law;³¹ or located in a state with a law, regulation or administrative agency order requiring the incumbent transmission owner to be the Designated Entity.³²

Under Section 1.5.8(i), within fifteen days of the PJM Board's approval of the RTEP, PJM must issue a notification to the Designated Entity that it has been designated and provide "(i) the needed in-service date of the project; and (ii) a date by which all necessary state approvals should be obtained to timely meet the needed in-service date of the project."³³ Within thirty days, the

Designated Entity, the existing Transmission Owner or Nonincumbent Developer shall notify the Office of the Interconnection of its acceptance of such designation and submit to the Office of the Interconnection a development schedule, which shall include, but not be limited to, milestones necessary to develop and construct the project to achieve the required in-service date, including milestone dates for obtaining all necessary authorizations and approvals, including but not limited to, state approvals.³⁴

Within fifteen days of receipt of the Designated Entity's acceptance of such designation, the Office of the Interconnection shall "(i) notify the Designated Entity of any issues regarding the development schedule identified by the Office of the Interconnection that may need to be addressed to ensure that the project meets its needed in-service date; and (ii) tender to the Designated Entity an executable Designated Entity Agreement setting forth the rights and obligations of the

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* Section 1.5.8(i).

³⁴ *Id.* Section 1.5.8(j).

parties.”³⁵ To retain its status as the Designated Entity, the developer, whether an incumbent or nonincumbent, must:

within 60 days of receiving an executable Designated Entity Agreement (or other such period as mutually agreed upon by the Office of the Interconnection and the Designated Entity), the Designated Entity (both existing Transmission Owners and Nonincumbent Developers) shall submit to the Office of the Interconnection *a letter of credit* as determined by the Office of Interconnection to cover the incremental costs of construction resulting from reassignment of the project, and return to the Office of the Interconnection an *executed Designated Entity Agreement containing a mutually agreed upon development schedule*.³⁶

If the Designated Entity does not return the Designated Entity Agreement within the prescribed or agreed-to period or provide a letter of credit, then PJM may decide not to retain the Designated Entity.³⁷ If the Designated Entity is the incumbent transmission owner, then PJM will seek recourse through the Consolidated Transmission Owners Agreement or before the Commission.³⁸

B. Designated Entity Agreement

The *pro forma* Designated Entity Agreement “facilitates the construction (and not the operation) of an RTEP upgrade.”³⁹ It was developed through the Regional Transmission Planning Process Task Force over the course of eleven meetings.⁴⁰ The Commission has found that its requirements are more stringent than the Consolidated Transmission Owners Agreement.⁴¹ It includes provisions that set milestones for project development, provide remedies if a developer does not stay on schedule, and require PJM to act if a developer misses a milestone.

³⁵ *Id.*

³⁶ *Id.* (emphasis added).

³⁷ *Id.* Section 1.5.8(k).

³⁸ *Id.*

³⁹ PJM Third Order No. 1000 Compliance Filing, Docket No. ER13-198-004, at 14 (filed July 14, 2014).

⁴⁰ *Id.* at 12.

⁴¹ 2018 Rejection Order at P 33; 2019 Rejection Rehearing Order.

Designated Entity Agreement Article 3 prescribes the security requirements applicable to the Designated Entity. The Designated Entity must provide a letter of credit or cash security in an amount equal to 3% of the estimated cost of the Regionally Planned Project. The Designated Entity Agreement requires that the letter of credit remain in effect for the duration of the agreement. According to PJM, the security requirement achieves “an appropriate balance . . . between protecting PJM and its members from risk and imposing a security requirement that is reasonable and not overly burdensome for the Designated Entity.”⁴² If PJM must access the security, it will distribute it as determined by FERC.⁴³

Article 4 sets out the construction standards and milestones for the Regionally Planned Project. The milestones are meant to ensure that the project is timely completed. The specific milestones are listed in Designated Entity Agreement Schedule C and include:

- Executing the Interconnection Coordination Agreement;
- Demonstrating adequate project financing;
- Acquiring all necessary federal, state, county, and local site permits;
- Completing substantial site work (*i.e.*, demonstrating that at least 20% of the site construction is completed);
- Receiving delivery of major electric equipment;
- Demonstrating required rates;
- Demonstrating that the project is in-service and under PJM’s operational dispatch; and
- Meeting any additional milestones necessary for the project.

Section 4.1.0 states that “Failure to meet any of the milestones specified in Schedule C, or as extended . . . , shall constitute a Breach of this Agreement.” Section 4.4 requires project tracking through “regular, quarterly construction status reports . . . [that] contain . . . updates and information specified in the PJM Manuals regarding: (i) current engineering and construction status of the Project; (ii) Project completion percentage, including milestone completion; (iii)

⁴² PJM Third Order No. 1000 Compliance Filing at 16.

⁴³ PJM Tariff, Attachment KK, Designated Entity Agreement, Article 3.1.

current target Project or phase completion date(s); (iv) applicable outage information; and (v) cost expenditures to date and revised projected cost estimates for completion of the Project.” The Designated Entity Agreement provides customer protections through requirements that the Designated Entities coordinate with other Transmission Owners (Article 5) and carry applicable liability insurance and require subcontractors to do the same (Article 6).

Article 7 of the Designated Entity Agreement defines a breach of the agreement as including: “The failure to meet a milestone or milestone date set forth in the Development Schedule in Schedule C of this Agreement, or as extended in writing as described in Sections 4.1.0 and 4.3.0 of this Agreement” Remedies for breaching the Designated Entity Agreement include:

Upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to: (i) commence an action to require the Defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof; (ii) suspend performance hereunder; and (iii) exercise such other rights and remedies as it may have in equity or at law. *Upon Default by Designated Entity, Transmission Provider may draw upon the Designated Entity Letter of Credit.* Nothing in this Section 7.5 is intended in any way to affect the rights of a third-party to seek any remedy it may have in equity or at law from the Designated Entity resulting from Designated Entity’s Default of this Agreement.⁴⁴

Thus, the Designated Entity Agreement provides important protections for consumers, who ultimately pay for the transmission projects, in the form of security, milestones, and interaction between PJM and the Designated Entity.

C. PJM Has Failed to Follow Mandatory Operating Agreement Provisions

Although the Designated Entity Agreements are not filed with the Commission unless they contain non-conforming terms, it is Complainants’ understanding that PJM has approved hundreds

⁴⁴ PJM Tariff, Attachment KK, Designated Entity Agreement, Article 7 (emphasis added).

of Regionally Planned Projects but executed only a handful of Designated Entity Agreements.⁴⁵ Stakeholders have raised the issue publicly through a letter to PJM staff⁴⁶ and informally through meetings with PJM Staff. PJM’s response has been that the Operating Agreement is “inartful” and ambiguous and that it is complying with the “intent” of Operating Agreement.⁴⁷ According to PJM, the intent was to require a Designated Entity Agreement only for projects that are both selected in the regional plan through a competitive window and regionally cost allocated.⁴⁸

PJM has twice tried to modify the Designated Entity Agreement requirements to limit when an incumbent Transmission Owner must execute the Designated Entity Agreement. In 2018, PJM filed under FPA section 205 in Docket No. ER18-1647 to revise the Operating Agreement to exempt PJM Transmission Owners designated as the Designated Entity pursuant to Section 1.5.8(I) from the requirement to execute the Designated Entity Agreement.⁴⁹ Consistent with PJM’s recent responses to Stakeholder concerns, PJM argued that the requirement to execute the Designated Entity Agreement would be redundant because the Consolidated Transmission Owners Agreement contains similar requirements. The Commission rejected the filing, finding that provisions of the Designated Entity Agreement are more stringent than provisions of the Consolidated Transmission Owners Agreement.⁵⁰ The Commission concluded that the security, milestones, development schedule, and assignment provisions are more stringent than the Consolidated Transmission

⁴⁵ February DEA FAQ at 2-3.

⁴⁶ See Letter from Sharon K. Segner, Vice President, LS Power, to Chris O’Hara, Vice President, General Counsel, PJM (July 22, 2021), <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20210726-ls-power-letter-regarding-designated-entity-agreements.ashx>.

⁴⁷ February DEA FAQ at 1-3.

⁴⁸ PJM Transmittal Letter at 5, Docket No. ER13-198-008 (filed Sept. 1, 2021).

⁴⁹ See PJM Transmittal Letter, Docket No. ER18-1647-000 (filed May 16, 2018). In addition to exempting transmission owners from executing the Designated Entity Agreement for Section 1.5.8(I) projects, PJM proposed to extend the deadline for negotiating the Designated Entity Agreement.

⁵⁰ 2018 Rejection Order at P 2.

Owners Agreement provisions.

Regarding the security requirement, the Commission noted that the Consolidated Transmission Owners Agreement does not include a security requirement.⁵¹ The Commission found that

PJM does not provide sufficient explanation why comparable customer protections such as security requirements for abandoning designated projects should not exist for incumbent transmission owners that are designated projects. While incumbent transmission owners may have an obligation to build, there still exists the possibility that they will not construct the project by the in-service date or otherwise default.⁵²

Regarding the milestones, development schedule, and breach, the Commission noted that the Designated Entity Agreement requires the Designated Entity to submit a project development schedule that includes milestones.⁵³ As the Commission recognized, there are more milestones listed in Schedule C of the Designated Entity Agreement than are required by the Consolidated Transmission Owners Agreement.⁵⁴ Furthermore, under the Consolidated Transmission Owners Agreement, only failure to meet the in-service date constitutes a breach, while under the Designated Entity Agreement, missing *any* milestone constitutes a breach.⁵⁵ In addition, unlike the Consolidated Transmission Owners Agreement, a breach of the Designated Entity Agreement may result in the loss of security, in addition to other remedies in the event of breach.⁵⁶ Finally, the Commission noted that the Consolidated Transmission Owners Agreement's assignment

⁵¹ *Id.* P 36.

⁵² *Id.* P 41.

⁵³ *Id.* PP 43-44.

⁵⁴ *Id.* P 47.

⁵⁵ *Id.* P 48.

⁵⁶ *Id.*

provision is less stringent than the assignment provision in the Designated Entity Agreement.⁵⁷

On September 1, 2021, PJM again attempted to revise the Operating Agreement to excuse incumbent Transmission Owners from executing the Designated Entity Agreement through an “updated compliance filing” in its closed Order No. 1000 compliance docket in a transparent effort to avoid the PJM stakeholder process. PJM argued that its filing was intended simply to “clarify apparent ambiguities in the PJM compliance language previously filed in this docket,” and that “[t]his updated compliance filing does not substantively change PJM’s Order No. 1000 compliance obligations or PJM’s practice but instead conforms the tariff language so as to avoid ambiguities with the current language.”⁵⁸ The Commission rejected this second attempt to change the Operating Agreement and explained that PJM was seeking to unlawfully revise FERC-approved tariff provisions through a closed docket.⁵⁹

V. COMPLAINT

PJM’s current practice is to require the Designated Entity to execute a Designated Entity Agreement only when a Regionally Planned Project has been selected through a competitive window.⁶⁰ PJM’s practice does not comply with the plain language of Section 1.5.8 and the definition of Designated Entity in the PJM Operating Agreement. Those provisions, which comprise the filed rate that the Commission approved and found just and reasonable,

⁵⁷ *Id.* P 50 (The Commission noted that “the assignment provisions of the Designated Entity Agreement could limit the opportunities for a transmission developer to assign its rights and obligations to an affiliate limited liability company or C-corporation should it choose to organize such ventures jointly or individually as financing vehicles, or to satisfy legal requirements for public utility status within the state that the developer is proposing to build after it has submitted its proposal. Such prohibition could inhibit the developer’s ability to seek siting approval from that state, particularly if the state requires that the developer be incorporated as a public utility under state law.”).

⁵⁸ PJM, Filing, Docket No. ER13-198-008, at 1 (filed Sept. 1, 2021) (citation omitted).

⁵⁹ 2022 Rejection Order at P 25.

⁶⁰ February DEA FAQ at 2. Prior to its change in February 2022, PJM only required the execution of a Designated Entity Agreement when a project was selected through a competitive window and regionally allocated. *Id.* at 3.

unambiguously require PJM and the Designated Entity to execute a Designated Entity Agreement for each Regionally Planned Project. Based on the claims raised in this Complaint, the Commission should find that PJM is violating the Operating Agreement and require PJM to execute Designated Entity Agreements for each Regionally Planned Project that has been approved and is still under construction, and for all future Regionally Planned Projects.⁶¹

A. The Operating Agreement Requires that PJM and the Designated Entity Execute a Designated Entity Agreement for All Regionally Planned Projects.

There is no ambiguity in the Operating Agreement about when and for which projects a developer must execute the Designated Entity Agreement. Every Designated Entity must execute a Designated Entity Agreement when designated as responsible “to construct, own, operate, maintain, and finance Immediate-need Reliability Projects, Short-term Projects, Long-lead Projects, or Economic-based Enhancements or Expansions.”⁶²

Section 1.5.8 of the Operating Agreement requires PJM to designate a developer that is responsible for constructing, owning, operating, maintaining and financing each Regionally Planned Project, including each Immediate-need Reliability Project,⁶³ Short-term Project,⁶⁴ Long-

⁶¹ Complainants are not arguing that the existing Operating Agreement is unjust and unreasonable or unduly discriminatory or preferential and therefore are not seeking any changes to the current requirements.

⁶² *See, e.g., N. Carolina E. Mun. Power Agency*, 172 FERC ¶ 61,249, at P 33 (2020) (finding that provisions, when read together, did not include limitations on how utility could manage or reduce its demand or loads through energy and load-shape modifying activities), *order on reh'g*, 173 FERC ¶ 61,235 (2020), *aff'd sub nom. Duke Energy Progress, LLC v. FERC*, 23 F.4th 1008 (2022).

⁶³ An Immediate-need Reliability Project is defined as “a reliability-based transmission enhancement or expansion that the 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.” Operating Agreement, Definitions.

⁶⁴ A Short-term Project is defined as “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.” Operating Agreement, Definitions.

lead Project,⁶⁵ or Economic-based Enhancement or Expansion.⁶⁶ After the PJM Board approves a Regionally Planned Project, which includes approval of the Designated Entity, PJM must notify the Designated Entity within fifteen days.⁶⁷ The Designated Entity then has thirty days to accept the designation and submit a development schedule.⁶⁸ PJM then has fifteen days to notify the Designated Entity of any concerns with the development schedule and provide an executable Designated Entity Agreement.⁶⁹ In order for a developer to retain its Designated Entity status, Section 1.5.8(j) of the Operating Agreement requires the Designated Entity, whether an incumbent or nonincumbent developer, to execute the Designated Entity Agreement and provide a letter of credit.⁷⁰ There are no carve-outs or alternative processes in Sections 1.5.8(j) for Regionally Planned Projects designated pursuant to Sections 1.5.8(l), 1.5.8(m)(1), 1.5.8(n), or 1.5.8(p) for incumbent Transmission Owners who are parties to the Consolidated Transmission Owners Agreement.

PJM has tried to informally create a distinction between “Order No. 1000 Projects,” which it defines as projects selected through an open window and regionally cost-allocated, and “non-Order No. 1000 Projects,” not selected through an open window or selected through an open window but cost-allocated solely to the zone where the project is located.⁷¹ These distinctions do

⁶⁵ A Long-lead Project is defined as “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.” Operating Agreement, Definitions.

⁶⁶ An Economic-based Enhancement or Expansion is defined as “an enhancement or expansion described in Operating Agreement, Schedule 6, section 1.5.7(b) (i) – (iii) that is designed to relieve transmission constraints that have an economic impact.” Operating Agreement, Definitions.

⁶⁷ Operating Agreement, Schedule 6, Section 1.5.8(i).

⁶⁸ *Id.* Section 1.5.8(j).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ PJM, Filing, Docket No. ER13-198-008, at 8 (filed September 1, 2021).

not exist within the Operating Agreement project categories. Projects are either Long-lead Projects, Short-term Projects, Immediate-need Reliability Projects, or Economic-based Enhancements or Expansions. The Operating Agreement definitions of these project categories do not distinguish between projects selected through an open window or projects regionally cost-allocated.

Similarly, the definition of Designated Entity includes “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.”⁷² The Operating Agreement definition of Designated Entity does not include any carve-outs for projects not selected through an open window or not regionally cost allocated. These definitions and provisions were accepted by the Commission in Docket No. ER13-198 and comprise the filed rate.⁷³ PJM must adhere to the terms of the Operating Agreement.

B. PJM’s Order No. 1000 Compliance Filings Confirm That All Designated Entities Are Required to Execute the Designated Entity Agreement.

PJM’s Order No. 1000 Compliance Filings demonstrate that the intent of the current, Commission-approved version of the Operating Agreement is to require developers designated to develop a transmission project included in the RTEP pursuant to Operating Agreement Section 1.5.8 to execute a Designated Entity Agreement. In its Order No. 1000 Compliance Filing, PJM explained that even for projects that do not go through an open window and the incumbent Transmission Owner is the default entity designated to develop and build a project, PJM would

⁷² Operating Agreement, Definitions (emphasis added).

⁷³ See, e.g., *PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,192, at P 22 (2011) (In a proceeding to establish provisions for determining opportunity cost adders for mitigation, PJM made statements regarding how it would classify certain outages. The Commission determined that “PJM must apply its current Tariff, *i.e.*, the filed rate, in determining forced outages,” not whatever statements PJM made in its transmittal letter.)

“designate the *Transmission Owner(s) in the Zone(s) where the project is located* to be the Designated Entity.”⁷⁴ In other words, PJM recognized that incumbent Transmission Owners would also be Designated Entities and, therefore, be required to execute a Designated Entity Agreement.

For additional clarity, in PJM's Second Order No. 1000 Compliance Filing, PJM discussed the requirement to execute the Designated Entity Agreement and unequivocally stated that all Designated Entities must execute the Designated Entity Agreement:

In the March 22 Order, the Commission interpreted the requirement in section 1.5.8(j) for a Designated Entity to submit an executed agreement to PJM “within 60 days of receiving notification of its designation as Designated Entity to apply equally to incumbent transmission developers.” This interpretation is correct. To clarify this point, PJM amends section 1.5.8(j) to state: “within 60 days of receiving notification of its designation (or other such period as mutually agreed upon by the Office of the Interconnection and the Designated Entity), the Designated Entity (*both existing Transmission Owners and Nonincumbent Developers*) shall . . . return to the Office of the Interconnection an executed Designated Entity Agreement”⁷⁵

The language requiring both an incumbent Transmission Owner and a competitive developer to execute Designated Entity Agreements if selected as the Designated Entity remains in the PJM Operating Agreement today. It does not contain any limitations on the applicability of the requirement to execute the Designated Entity Agreement. PJM clearly understood when making its compliance filings that the Designated Entity Agreement requirements did not include the limitations that it is now applying in practice.

⁷⁴ *Id.* at 70-71 (emphasis added).

⁷⁵ PJM Second Order No. 1000 Compliance Filing, Docket No. ER13-168-002, at 44-45 (filed July 22, 2013) (emphasis in original).

C. Designated Entity Agreements Provide Important Consumer Protections and Are Good Policy.

The Designated Entity Agreement provides important protections for consumers, including, among others, requirements to provide and adhere to the milestones in Schedule C, the delineation of events that can lead to breach, and the requirement to provide security. As the Commission recognized in 2019, the failure to meet these consumer protection measures is a breach of the Designated Entity Agreement and can result in more significant consequences than a Transmission Owner faces for the same failures under the Consolidated Transmission Owners Agreement.⁷⁶

The Designated Entity Agreement is particularly relevant for time-sensitive projects, such as Immediate-need Reliability Projects. In PJM's 2021 informational filing on Immediate-need Reliability Projects, roughly fifty projects were anticipated to be in-service *after* the alleged need-by date.⁷⁷ If there were Designated Entity Agreements in place for these projects, then PJM would be required to reevaluate the projects to determine whether a different project is needed.

In addition, the Designated Entity Agreement can provide cost transparency. For example, at an April 2021 PJM Transmission Expansion Advisory Committee meeting, Alleghany Power Systems revised the cost estimate for an Immediate-need Reliability Project assigned to it from \$41.4 million⁷⁸ to \$143.4 million, an increase of \$102 million or 246%.⁷⁹ Contrary to the express provisions of the currently effective Operating Agreement, there is no Designated Entity

⁷⁶ 2018 Rejection Order at P 49.

⁷⁷ PJM 2021 Informational Filing, Docket No. ER13-198-000, (filed January 29, 2021) (Annual filing detailing Immediate-need Reliability Projects approved in 2020 and a status update of Immediate-need Reliability Projects that were approved before 2020 that are not in-service (or entered service since the prior report)).

⁷⁸ The project was originally approved in 2018 with an in-service date of 2019.

⁷⁹ See PJM Reliability Analysis Update at 6-10 (April 6, 2021), <https://www.pjm.com/-/media/committees-groups/committees/teac/2021/20210406/20210406-item-08-reliability-analysis-update.ashx>.

Agreement in place for this project. If there was, PJM likely would have had reevaluate the project earlier, and revised the project at that time and perhaps identified a less costly solution that would not have increased the price tag by \$102 million.

D. PJM is Violating the Express Terms of Schedule 6 of the Operating Agreement and its Intent.

In spite of clear language in the Operating Agreement and PJM's demonstrated understanding of its intent, as evidenced through compliance filings, PJM is not complying with the Operating Agreement provisions that require executing Designated Entity Agreements. Since the effective date of its Order No. 1000-compliant regional planning process, PJM has approved hundreds of Regionally Planned Projects, but executed only a handful of Designated Entity Agreements.⁸⁰

When questioned about its failure to require Designated Entities to execute and comply with the *pro forma* Designated Entity Agreements in the PJM Tariff, PJM responded:

Upon review, PJM determined that the Operating Agreement language could be read in a way *that is not fully aligned with PJM's practice for the last seven years* or, in PJM's view, the rationale behind issuing a DEA in the first instance. That is, the DEA was developed to apply only to projects that are selected through PJM's Order No. 1000-compliant competitive window process and included in the Regional Transmission Expansion Plan (RTEP) for regional cost allocation purposes. As such, *the practice has been not to issue DEAs to incumbent Transmission Owners for: (1) RTEP projects exempted from the competitive proposal process; and (2) RTEP projects selected through a competitive proposal window that are not regionally allocated (i.e., allocated to a single zone).*⁸¹

In other words, PJM's practice has been to not execute a Designated Entity Agreement with incumbent Transmission Owners for particular projects regardless of the Operating Agreement

⁸⁰ February DEA FAQ at 2-3.

⁸¹ Letter from Manu Asthana, Chief Executive Officer, PJM Interconnection, L.L.C., to Sharon K. Segner, Vice President, LS Power, *et al.* (August 24, 2021) (emphasis added), <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20210825-pjm-president-ceo-response-letters-re-designated-entity-agreements.ashx>.

requirements. Unless and until the Operating Agreement is modified, either through a FPA section 205 filing, which requires PJM stakeholder approval, or a FPA section 206 filing, which requires PJM to demonstrate that the existing rate is unjust and unreasonable, PJM is obligated to comply with the filed rate. PJM is not doing so.

E. A Stakeholder Process May Address Substantive DEA Issues But Does Not Obviate The Need For Prompt Commission Action to Remedy Non-Compliance.

Stakeholders have repeatedly raised the issue of non-compliance with PJM.⁸² PJM has not altered its practices to conform to the Operating Agreement⁸³ and instead tried to change the Operating Agreement, first, without stakeholder approval,⁸⁴ and later, by attempting to push revisions through an abbreviated stakeholder process.⁸⁵ Various stakeholder advocates have questioned PJM about its current compliance with the Operating Agreement and would welcome the opportunity to provide input into possible solutions to the extent that there are issues with the current requirements in the Operating Agreement, which would best be addressed through the PJM stakeholder process. However, unless and until there are changes to the Operating Agreement, PJM must comply with the existing requirements in the Operating Agreement.

⁸² See Letter from Sharon K. Segner, Vice President, LS Power, to Chris O’Hara, Vice President, General Counsel, PJM (July 22, 2021), <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20210726-ls-power-letter-regarding-designated-entity-agreements.ashx>.

⁸³ See Letter from Manu Asthana, Chief Executive Officer, PJM Interconnection, L.L.C., to Sharon K. Segner, Vice President, LS Power, *et al.* (August 24, 2021), <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20210825-pjm-president-ceo-response-letters-re-designated-entity-agreements.ashx>.

⁸⁴ PJM’s 2021 filing was made without approval by the PJM Member Committee, which has sole authority to modify the PJM Operating Agreement.

⁸⁵ See PJM’s Issue Charge for revising the application of the requirement to execute the Designated Entity Agreement. PJM indicated that it would use the Quick Fix Process to push through the revisions. According to Manual 34, the Quick Fix Process for “urgent and/or very simple or straightforward to correct, and require no stakeholder engagement.” PJM Manual 34: PJM Stakeholder Process at 56 (effective October 20, 2021). Stakeholders rejected PJM’s proposed use of the Quick Fix Process.

F. Prompt Commission Action is Necessary.

Complainants respectfully request, pursuant to Rule 206(b)(11) of the Commission's Rule of Practice and Procedure,⁸⁶ expedited processing and review by the Commission and issuance of an order on merits of this Complaint. PJM has failed to comply with the requirements for eight years despite stakeholders repeatedly raising the issue. In the meantime, PJM is moving forward with its planning process and, again, has made it clear that it will not execute a Designated Entity Agreement for Regionally Planned Projects. Therefore, Complainants request that the Commission act expeditiously on this Complaint.

VI. COMPLIANCE WITH RULE 206

In the paragraphs below, Complainants demonstrate compliance with the specific requirements for complaints in Rule 206 of FERC's Rules of Practice and Procedure:

A. Description of Alleged Violation and Quantification of Financial Impact and Burden.⁸⁷

Complainants have provided the information and available documents required by Rule 206(b)(1)-(5) in Parts I-V of this Complaint. In the absence of PJM's compliance with Operating Agreement Schedule 6, millions of dollars in security have not been retained by PJM. The language of PJM's Operating Agreement is explicit and clear. The requirement that Designated Entities, including incumbent and nonincumbent developers, execute a Designated Entity Agreement and provide security for each Regionally Planned Project that they are designated to build must be enforced. There are currently 494 Regionally Planned Projects underway that are non-compliant due to PJM's failure to enforce Operating Agreement Schedule 6. The immediate

⁸⁶ 18 C.F.R. § 385.206(b)(11).

⁸⁷ 18 C.F.R. § 385.206(b)(1)-(5).

impact is substantial and will be even more significant in the long term if the Commission does not act and require PJM to become compliant immediately.

B. Other Proceedings.⁸⁸

Complainants are not aware of any other ongoing proceedings that address the issues raised herein.

C. Specific Relief or Remedy Requested.⁸⁹

Complainants request that the Commission find, consistent with Order No. 1000, that PJM is not complying with the Operating Agreement provisions that require Designated Entities, including incumbent and nonincumbent developers, to execute a Designated Entity Agreement, and direct PJM to become compliant with those provisions immediately. Complainants request that the Commission act as soon as practicable.

D. Supporting Documents.⁹⁰

The documents supporting this Complaint are identified throughout the Complaint and are publicly available.

E. Prior Efforts to Resolve this Dispute and Statement Regarding the Use of Alternative Dispute Resolution.⁹¹

The Enforcement Hotline, Dispute Resolution Service, and tariff-based dispute resolution mechanisms were not used in this proceeding. As noted above, Complainants have had informal discussions with PJM staff urging them to comply with the terms of the Operating Agreement and

⁸⁸ 18 C.F.R. § 385.206(b)(6).

⁸⁹ 18 C.F.R. § 385.206(b)(7).

⁹⁰ 18 C.F.R. § 385.206(b)(8).

⁹¹ 18 C.F.R. § 385.206(b)(9).

sent letters to PJM Staff. PJM acknowledged non-compliance but indicated that PJM preferred to modify the Operating Agreement rather than comply. To that end, in April 2022, PJM tried to change the Operating Agreement through an abbreviated stakeholder process that was rejected by the PJM Members.⁹² Accordingly, ongoing discussion has not produced a resolution to the legal issues raised by this Complaint. Thus, the Commission is best positioned to resolve this dispute.

F. Form of Notice.⁹³

A form of notice is attached and submitted in electronic form.

G. Fast Track Processing.⁹⁴

Expedient resolution of the legal issues raised herein would help ensure that all developers, whether incumbent transmission owners or non-incumbent developers, designated to build a Regionally Planned Project execute a Designated Entity Agreement. Granting this Complaint would encourage PJM to execute Designated Entity Agreements for existing Regionally Planned Projects not yet in service and discourage future non-compliance. PJM's violations of the filed rate are ongoing. There should be no disputed facts and the complaint seeks only enforcement of the filed rate. Accordingly, there should be no need for a formal hearing and Complainants request Fast Track processing.

⁹² See PJM's Issue Charge for revising the application of the requirement to execute the Designated Entity Agreement. PJM indicated that it would use the Quick Fix Process to push through the revisions. According to Manual 34, the Quick Fix Process is for "urgent and/or very simple or straightforward to correct, and require no stakeholder engagement." PJM Manual 34: PJM Stakeholder Process at 56 (effective October 20, 2021).

⁹³ 18 C.F.R. § 385.206(b)(10).

⁹⁴ 18 CFR § 385.206(b)(11).

H. Service on Respondents and Interested Parties⁹⁵

Complainants certify that copies of this Complaint are being served by email to the contacts for PJM that are listed on the Commission's list of Corporate Officials:

Dennis Hough
Assistant General Counsel
PJM Interconnection, L.L.C
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* * *

⁹⁵ 18 C.F.R. § 385.206(c).

VII. CONCLUSION

WHEREFORE, Complainants respectfully request the Commission grant this Complaint and issue an order compelling PJM to comply with the filed rate.

Respectfully submitted,

/s/ Robert A. Weishaar, Jr.

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Dated: July 26, 2022

/s/ Lisa G. McAlister

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Counsel for American Municipal Power, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing document and attachments to be served electronically on PJM Interconnection, L.L.C, to the individuals listed on the Commission's Corporate Officials List, in accordance with 18 C.F.R. § 385.206(c).

/s/ Lisa G. McAlister

Lisa G. McAlister
Senior Vice President & General
Counsel for Regulatory Affairs
American Municipal Power, Inc.

Dated at Columbus, Ohio this 26th day of July, 2022.

ATTACHMENT A

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

American Municipal Power, Inc.,
Office of the People's Counsel for
the District of Columbia, and the
PJM Industrial Customer Coalition,
Complainants

v.

PJM Interconnection, L.L.C.,
Respondent

Docket No. EL22-____-000

NOTICE OF COMPLAINT REQUESTING FAST TRACK PROCESSING

Take notice that on July 26, 2022, American Municipal Power, Inc., Office of the People's Counsel for the District of Columbia, and the PJM Industrial Customer Coalition filed a formal complaint against PJM Interconnection, L.L.C. pursuant to Sections 206, 306, and 309 of the Federal Power Act, and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, alleging that PJM Interconnection, L.L.C. ("PJM") has failed to comply with provisions of Schedule 6 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.

American Municipal Power, Inc., Office of the People's Counsel for the District of Columbia, and the PJM Industrial Customer Coalition certify that copies of the complaint were served on the contacts for PJM Interconnection, L.L.C. as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online

service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose,
Secretary.