

July 14, 2021

The PJM Board of Managers  
c/o Mark Takahashi  
PJM Interconnection, L.L.C.  
2750 Monroe Boulevard  
Audubon, Pennsylvania 19408

**Re: Designated Entity Agreement Implementation**

Dear Chairman Takahashi and PJM Board of Managers,

I am writing on behalf of the PJM Transmission Owners Agreement – Administrative Committee (“TOA-AC”) to express our support for PJM’s efforts to address confusion and/or ambiguity regarding the use of Designated Entity Agreements (“DEA”). We would like to thank PJM staff for briefing the TOA-AC, at our June 25, 2021 meeting on PJM’s established procedures surrounding the use of DEAs. As explained, the impetus for the briefing was PJM’s concern with the view held by two PJM stakeholders that PJM should apply its DEA procedures to transmission projects that are not included in the RTEP for the purposes of cost allocation. PJM concluded the briefing by encouraging the TOA-AC to share any thoughts or views by July 14th.

Please allow this correspondence to confirm that the TOA-AC believes that since the DEA inception seven years ago, PJM has correctly implemented its DEA procedures in a manner consistent with PJM’s Operating Agreement (“OA”) as well as FERC’s orders with respect to DEAs. However, the TOA-AC also agrees with PJM staff that it would be beneficial to clarify and revise the applicable provisions of the OA in the manner outlined by PJM staff during the briefing. Recognizing that PJM is evaluating OA changes, the TOA-AC would appreciate PJM continuing to keep the TOA-AC informed, while also bringing these clarifications to the broader PJM stakeholders for consultation so as to efficiently move forward with a supplemental compliance filing at FERC to incorporate additional clarifications as soon as practicable.

As PJM acknowledged, the Transmission Owners (“TOs”) are the most impacted by the OA provisions at issue and therefore very much appreciated the courtesy briefing by PJM staff. During the briefing, PJM made the TOA-AC aware that there are two entities (including a TO) that have raised concern with the way in which PJM is using the DEA. Please be advised that after careful review, consideration and vote of the Administrative Committee, the overwhelming majority of the TOA-AC do not share this concern.

In compliance with Order No. 1000, PJM, together with stakeholders, developed the *pro forma* DEA that closely modeled the Consolidated Transmission Owners Agreement (“CTOA”) in compliance with its Order No. 1000 competitive solicitation process. As PJM noted, the DEA requirement was added in compliance with Order No. 1000 as part of PJM’s competitive proposal

window process (OA Schedule 6, sections 1.5.8(c) – (l)) and is applicable to both incumbent TOs and non-incumbent developers who were designated an Order No. 1000 Project. Order No. 1000 was clear that projects not regionally cost allocated (i.e. zonally allocated) are not Order No. 1000 Projects. Moreover, other subsequent FERC Orders confirmed that the obligation for a TO to execute a DEA for TO Designated Projects applied only to projects included in the Regional Transmission Expansion Plan (“RTEP”) for the purposes of cost allocation.<sup>1</sup> In addition to discussing the increased legal and administrative burdens imposed on TOs through the DEA process, PJM staff and the TOA-AC also discussed the fact that there are added costs to customers (including a 3% security on DEAs) associated with execution of DEAs that does not exist for projects that are subject to the commitments in the CTOA.

In an attempt to put to rest any confusion and, more importantly, avoid needless and costly litigation, the TOA-AC would encourage PJM to move forward with PJM stakeholder consultation followed by a supplemental compliance filing at FERC that efficiently clarifies (1) the definition of “designated entity” such that it is both implicitly and explicitly clear that immediate need reliability projects determined by PJM to be exempt from competitive windows are not built by designated entities and thus do not require execution of DEAs; and (2) the DEA requirement is only applicable to open window regional projects competitively proposed and included in the RTEP for purposes of cost allocation.

In closing, again the TOA-AC greatly appreciates the June 25<sup>th</sup> briefing by PJM staff. We concur with PJM that a supplemental compliance filing by PJM to clarify the matter should resolve the issues that have been raised in an efficient and transparent manner while also avoiding needless confusion, litigation and expense.

Respectfully,

*Alexander C. Stern*

Alexander C. Stern, Chair

PJM Transmission Owners Agreement – Administrative Committee

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021 (2018) (July 2018 Order).