

Designated Entity Agreement (DEA) Frequently Asked Questions (FAQ)

1. What is the purpose of a DEA?

- The requirement that an entity execute an agreement and provide a letter of credit was included in PJM's initial Order No. 1000 compliance filing submitted in Docket No. ER13-198 on October 25, 2012. The requirement stemmed from concerns that designating a non-incumbent developer, without the same obligations to serve as an incumbent transmission owner with a franchise territory, might present greater risk of failing to complete construction of the designated project.
- The DEA was developed through the PJM stakeholder process to provide a means by which to memorialize the rights and obligations of an entity designated construction responsibility for an RTEP project selected through the competitive process who is not eligible to execute the Consolidated Transmission Owners Agreement. While incumbent transmission owners are parties to the CTOA, non-incumbent developers are not eligible to execute the CTOA until they own an energized transmission facility in the PJM Region. Many of the DEA provisions were modeled after similar provisions in the CTOA.
- Consistent with the Commission's directive, both incumbent transmission owners and non-incumbent developers are required to execute a DEA for projects selected through the competitive proposal process and included in the RTEP for purposes of regional cost allocation (i.e., costs allocated to more than one zone).

2. What projects are subject to PJM's FERC Order 1000 competitive process?

- Projects selected for inclusion in the RTEP for regional cost allocation (more than one zone) and not exempted from a competitive proposal window through a FERC accepted exemption (as detailed in response to Question #3) below are subject to PJM's FERC Order 1000 process. The Designated Entity Agreement is intended for use with such projects.

3. How has PJM used the DEA?

- PJM has issued DEAs to both incumbent transmission owners and non-incumbent developers designated construction responsibility for a project selected through PJM's competitive process and included in the RTEP for purposes of regional cost allocation
- In the past, PJM has not issued DEAs to incumbent transmission owners for the following RTEP Projects:
 - RTEP projects selected through a competitive proposal window that were allocated solely to one zone;
 - RTEP Projects exempted from a competitive proposal window:
 - Immediate-need Reliability Projects exempted from competitive proposal window pursuant to OA Schedule 6, Sec. 1.5.8(m)(1). ("m(1) projects");
 - Below 200 kV Projects pursuant to OA Schedule 6, Sec. 1.5.8(n); and
 - Substation Equipment Projects pursuant to OA Schedule 6, Sec. 1.5.8(p)

4. What is the issue with the existing Operating Agreement provisions for the Designated Entity Agreement?

- The issue is that the Operating Agreement language can be interpreted in a number of ways due to imprecise use of the term Designated Entity.

- First, the definition of Designated Entity, which is too broad, was intended to apply only to projects proposed by either an incumbent transmission owner or non-incumbent developer and selected through the competitive proposal window process set forth in Schedule 6, section 1.5.8(c) and included in the regional transmission expansion plan (RTEP) for purposes of cost allocation. PJM’s reference to Immediate-need Reliability Projects in this definition failed to differentiate between Immediate-need Reliability Projects selected through the competitive proposal window process and those projects exempted from the competitive proposal process.
- Second, the term Designated Entity is used imprecisely in certain limited provisions of Schedule 6, section 1.5.8. For example, the term Designated Entity is included in sections 1.5.8(g) and (h), which require PJM to designate the incumbent transmission owner if no project proposal submitted through a competitive proposal window resolves a posted violation or system condition and there is not enough time to convene another window.
- Third, the term Designated Entity should not be used in section 1.5.8(l), as some of those projects referenced in that provision are not necessarily regionally allocated and, therefore, would not necessarily be issued a DEA.

5. Is PJM in compliance with the Operating Agreement DEA provisions today?

- Since issuance of the February 8 Order, PJM has been in communication with FERC Enforcement and FERC policy staff.
- In addition to projects selected through a proposal window and regionally allocated, PJM has begun the process set forth in OA Schedule 6, section 1.5.8(j) to issue DEAs to transmission owners designated projects selected through the proposal window that were not regionally allocated.
- PJM is proposing a Quick Fix approach because the current language is not sustainable.

6. How many DEAs has PJM issued?

- As of today, PJM issued and executed DEAs for 5 RTEP projects, which are publicly posted on PJM’s competitive planning page.

RTEP Upgrade ID(s)	Description	Competitive Window	Designated Entity	Posting Location
b2633	Artificial Island Solution	Artificial Island Proposal Window (2014)	Silver Run Electric	https://www.pjm.com/-/media/planning/rtep-dev/expand-plan-process/ferc-order-1000/rtep-proposal-windows/b2633-artificial-island-dea.ashx
b2609	Thorofare Creek - Goff Run - Powell Mountain 138 kV	2014 RTEP Proposal Window 2	Transource Energy	https://www.pjm.com/-/media/planning/rtep-dev/expand-plan-process/b2609-thorofare-dea.ashx
b2743 & b2752	AP-South Congestion Improvement	2014/15 Long-Term Window 1	Transource Energy	https://www.pjm.com/-/media/planning/rtep-dev/expand-plan-process/ferc-order-1000/rtep-proposal-windows/2014-2015-b2743-and-b2752-ap-south-congestion-improvement-project-dea.ashx
b3145	Hunterstown - Lincoln 115 kV (962) Line Rebuild	2018/19 Long-Term Window 1	MAIT	https://www.pjm.com/-/media/planning/rtep-dev/expand-plan-process/ferc-order-1000/rtep-proposal-windows/pjm-rtep-project-b3145-rebuild-hunterstown-lincoln-115kv-line.ashx
b3247	Doubs-Goose Creek 500 kV (514) Line Rebuild	2020 RTEP Proposal Window 2	VEPCO	https://www.pjm.com/-/media/planning/rtep-dev/expand-plan-process/ferc-order-1000/rtep-proposal-windows/pjm-rtep-project-b3247-rebuild-goose-creek-doubs-500-kv-line-514-designated-entity-agreement.ashx

- As part of the February 16, 2022 PJM Board RTEP approval, PJM has issued an additional 4 DEAs for execution for projects that were selected as part of a competitive proposal window and regionally allocated. The total estimate cost of those four RTEP projects is \$84.4 million, resulting in letters of credit totaling \$2.5 million.
- Following issuance of the February 8 Order and communication with FERC Enforcement, PJM initiated notice relevant to the DEA process for an additional 10 RTEP projects selected through the competitive proposal window that were not regionally allocated. Costs for the 10 RTEP projects were allocated solely to single zones in which the projects will be located. The estimated costs of the 10 RTEP projects total approximately \$221.4 million, resulting in letters of credit requirements totaling \$6.4 million.

● **Has PJM ever extended milestones or modified scope of work for Projects issued a DEA?**

- PJM has extended milestones for two projects (Artificial Island and AP South).
- PJM has modified scope of work for two projects (Artificial Island and Thorofare Creek - Goff Run).
- Neither schedule nor scope of work revisions triggered the breach provisions under the DEA.

7. Why doesn't PJM just follow the OA as written and issue DEAs to all RTEP Projects?

- None of the interpretations (i.e., issuing DEAs for RTEP projects (i) selected through the competitive proposal process that were regionally allocated or allocated solely to one zone or (ii) exempted from the competitive proposal process) of the OA language (based on the original intent) are sufficiently clear, which is why PJM seeks to clarify the OA language as soon as possible.

8. Why is security (LOCs) required for projects with DEAs?

- For projects that are issued a DEA, the designated entity must furnish security equal to 3% of the estimated cost of the project.
- The DEA was developed through the RPPTF stakeholder process at which time stakeholders agreed upon the 3% security requirement.
- The security can be provided in the form of cash or a letter of credit. The actual cost to ratepayers for the security will depend on a number of factors, including how long the designated entity must hold security, i.e., the amount of time required to construct the project. The actual cost of an LOC may also vary by entity and the nature of the project.

9. What are the costs of maintaining LOC's by the Designated Entity?

- The chart below illustrates total project costs, total LOC requirement, and associated LOC Cost that would be billed to load. The LOC cost is based upon a London Interbank Offered Rate (LIBOR) of 150 basepoints (bps) or an annual rate of 2.2%. In general, LOC are secured for a range of 3 to 8 years, the range in which baseline upgrades are placed into service. The LOC is required from the date the DEA is returned to PJM until several months after the project is placed into service.

Type	Total Project Cost (\$M)	LOC Requirement (\$M)	Range of Estimated LOC Maintenance Costs (\$M)
Competitive Window Regionally Cost Allocated	165	4.95	0.33 – 0.87

Competitive Window not Regionally Cost Allocated	2,162	64.86	4.28 – 11.42
Total RTEP	32,385	971.55	64.12 – 170.99

10. What is the purpose of the LOC?

- The purpose of an LOC is to protect ratepayers from *incremental* costs should the designated entity *be found in default of its designated* project and PJM must reassign the project to an incumbent transmission owner. Consistent with the terms of the DEA, a designated entity would not be in default of the DEA due to matters outside its control, such as a delay in obtaining siting approval. In addition, the DEA permits a designated entity to request an extension of time regarding any milestone date included in the Development Schedule.
- If PJM were to seek to draw upon the LOC (or retain the cash security) in the event of default, a filing to FERC would be required to request such funds. The funds would then be distributed as determined by FERC.
- In the event of a project must be re-designated, the LOC covers incremental costs of re-designation, not the cost of the project. Load in the zones allocated cost responsibility remain the responsible entities for the cost of the project.

11. What are the administrative steps taken by PJM to issue a DEA?

- The following administrative steps are taken by PJM Planning Engineers, Finance, and Legal:
 - PJM issues a DEA notice of construction responsibility to the Designated Entity (DE)
 - Upon receipt of acceptance of construction responsibility and designated entity’s development schedule, PJM drafts and tenders an executable DEA to the Designated Entity
 - The DE executes the DEA and returns it to PJM with the LOC (3% of the estimated project costs) to PJM
 - PJM files non-conforming DEAs with FERC and reports conforming DEAs in the FERC Electric Quarterly Report (EQR)
 - PJM posts DEAs on the PJM website
 - PJM monitors the project construction consistent with the DEA and with Manual 14C
 - Upon confirmation of project completion, PJM terminates the DEA and returns the LOC.
 - PJM updates the FERC EQR to reflect termination of conforming DEA or files a notice of cancellation of a non-conforming DEA.
 - PJM returns the LOC to the DE.

12. Are DEAs and their costs/requirements a factor in selecting a project through the Competitive Planning Process?

- In evaluating project proposals submitted by proposing entities, the DEA is not a decisional factor in selecting the project.
- When considering the project cost and cost commitments submitted by proposing entities, PJM does not include the cost of a letter of credit. The cost evaluation is based on the project cost estimate and any cost commitment, if submitted.

- When evaluating a project, the determination of whether or not a DEA is required occurs only after the project is selected and the cost allocation is determined and presented to the PJM Board for review and approval.
- All RTEP projects are subject to the same project oversight during the construction phase, which is detailed in Manual 14C, regardless of whether the project is subject to a DEA or not.

13. What are the obligations of incumbent and non-incumbents for participation in the competitive planning process?

- Incumbents with a service territory are obligated to provide safe and reliable service under their state statutes. For this reason, incumbents are also required to submit proposed solutions for any system need in their service territory identified and posted by PJM.
- Non-incumbent developers are not obligated to provide solutions, even if they are signatories to the CTOA. However, if a non-incumbent has a zone or owns transmission facilities in the PJM Region, it is obligated to provide solutions to violations identified in its zone or on its transmission facility(ies).
- Under the CTOA, the incumbent has an obligation to accept designation of reliability projects in its service territory, while a designated entity does not have the same obligation.

14. What role does the IMM play in the DEA process?

- The IMM does not have a role under the OA specific to DEAs. See OA, Schedule 6, section 1.5.8 and Manual 14F. The IMM's role is specific to the review of a project proposal's costs. See Manual 14F, section 8.4.4 (providing that the IMM has access to all data submitted to PJM through the competitive proposal window process and may, at its discretion, perform an independent financial analysis of projects submitted to PJM through PJM's competitive proposal window process).

15. What if a Designated Entity cannot meet its obligation to complete the designated project pursuant to the DEA? What happens? Would customers or PJM Members - or PJM - be held (financially) responsible to remedy the situation?

- The DEA details the breach provisions applicable to either the transmission owner or non-incumbent developer who executed the DEA. If the designated entity is unable to meet its obligations (within its control) set forth in the DEA, Schedule 6, section 1.5.8(k) of the OA allows PJM to re-evaluate the need for the project and determine whether at that point in time the RTEP project continues to be the more efficient or cost effective solution.
- If circumstances justified drawing on an LOC, the DEA at section 3.1 provides that before PJM may distribute such funds, a FERC filing would be required and the distribution would be determined by the Commission.
- Alternatively, in the event that a transmission owner is designated and obligated to construct a project pursuant to the Consolidated Transmission Owners Agreement (CTOA) and it is determined that the incumbent transmission owner has not met its obligations under the CTOA, PJM could seek recourse through the CTOA or a FERC filing, as appropriate.
- All entities that are designated to construct a PJM project and seek recovery for those projects through the PJM Tariff must file their rates with FERC for approval. Any party with an interest can seek to intervene in a rate proceeding.

16. What is the difference between DEA provisions and CTOA provisions?

- In Docket No. ER18-1647, the Commission identified that the following DEA provisions were more stringent than the CTOA: (i) security to cover the incremental cost of construction resulting from reassignment of an RTEP

project; (ii) milestones/development schedule and breach provisions tied to the milestone dates; and (iii) assignment provision.

17. Didn't FERC reject PJM's attempt to exempt incumbent TOs from the requirement to execute a DEA for TO Designated Projects in the July 13, 2018 Order?

- In Docket No. ER18-1647, PJM proposed a blanket exemption for incumbent transmission owners required to be the designated entity under OA Schedule 6, section 1.5.8(l) (Transmission Owner Designated Projects). Specifically, the exemption would apply even if the project was selected through a competitive proposal window and included in the RTEP for purposes of regional cost allocation.
- The revisions proposed under the Quick Fix are not seeking a blanket exemption for incumbent transmission owners; rather, PJM proposes revisions to clarify the OA language specific to the use of the Designated Entity Agreement consistent with Order No. 1000.

18. For entities that are already signatories to the CTOA, are there any additional protections provided to consumers by having them also execute a DEA for a project for which they are designated, as suggested by some stakeholders based on FERC's July 13, 2018 order (Docket No. ER18-1647 Paragraph 34)?

- In Paragraph 34 (see excerpt below), FERC was simply addressing the issue of treating similarly situated entities in a competitive process the same. It was not discussing consumer protection.
- In regards to consumer protection, all RTEP projects, are subject to the same project oversight by PJM during construction (see Manual 14C) to ensure that projects achieve their required in-service dates.
- Regardless of the breach provisions in the DEA, if PJM determines that (a) a project is no longer needed, or (b) a project is not progressing towards completion, PJM can reevaluate the need for the project, and replace it or terminate it. E.g. PATH, and MAPP.

ER18-1647 Paragraph 34:

34. PJM asserts that any different treatment of incumbent and nonincumbent transmission developers caused by its proposal occurs only after project proposals have been evaluated against each other and after applying the same criteria to select the more efficient or cost-effective solution. However, the less stringent requirements in the Consolidated Transmission Owners Agreement that would apply to an incumbent transmission owner that proposes a Transmission Owner Designated Project could provide the incumbent transmission owner with an advantage in PJM's evaluation process. The less stringent requirements in the Consolidated Transmission Owners Agreement also could spare an incumbent transmission owner from a breach (and the associated remedies) that would otherwise be triggered if it executed the Designated Entity Agreement.^[1] **Although PJM argues that the proposal to exempt incumbent transmission owners from the requirement to execute a Designated Entity Agreement in certain cases will further administrative efficiency, any such benefits do not overcome undue discrimination concerns.**^[63] Accordingly, we reject PJM's proposal as unjust, unreasonable, and unduly discriminatory or preferential.

n. 63 The Commission has found that "treating similarly situated developers differently without justification is unduly discriminatory and preferential." NYISO 2018 Order, 162 FERC ¶ 61,124 at P 12. The Commission has also stated that "less stringent requirements represent an advantage for [incumbent transmission owners developing transmission solutions] that would result in undue discrimination against similarly situated developers of [alternative transmission solutions]." NYISO 2015 Order, 151 FERC ¶ 61,040 at P 46.