UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	Docket No. ER13-198-008

ANSWER OF PJM INTERCONNECTION, L.L.C.
TO MOTION TO REJECT AND PROTEST

PJM Interconnection, L.L.C. ("PJM"), pursuant to Rules 212 and 213 of the Rules of Practice and Procedure[1] of the Federal Energy Regulatory Commission ("Commission"), submits this answer to the Motion to Reject and Protest[2] filed in response to PJM's September 1, 2021 updated compliance filing[3] to clarify its response to the Commission's Order No. 1000[4] compliance directives and avoid ambiguities in the overlap of PJM's Order No. 1000 transmission planning process and its other transmission planning processes.

I. MOTION FOR LEAVE TO ANSWER

While PJM's answer to the Motion to Reject is permitted under Rule 213, PJM seeks leave to answer the issues raised in the Protest to the Updated Compliance Filing.

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[1] 18 C.F.R. §§ 385.212, 385.213.

[2] The Motion to Reject and Protest was filed by LSP Transmission Holdings II, LLC, Central Transmission, LLC, American Municipal Power, Inc., Public Power Association of New Jersey, PJM Industrial Customer Coalition, Indiana Office of Utility Consumer Counselor, and Office of the People's Counsel for the District of Columbia. *PJM Interconnection, L.L.C.*, Motion to Reject Filing and Protest of LSP Transmission Holdings II, LLC, Docket No. ER13-198-008 (Sept. 22, 2021) ("Protest").

[3] *PJM Interconnection, L.L.C.*, Updated Compliance Filing of PJM Interconnection, L.L.C., Docket No. ER13-198-008, (Sept. 1, 2021) ("Updated Compliance Filing").

[4] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g & clarification*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

Although Commission Rule 213(a)(2) does not generally permit answers to answers,[5] the Commission permits answers for good cause shown, such as when an answer contributes to a more accurate and complete record or provides useful information that assists the Commission's deliberative process.[6] This answer will complete the record and aid the Commission's decision-making process to by responding to arguments newly raised in the Protest. PJM therefore asks that the Commission accept this answer.

II. ANSWER TO MOTION TO REJECT

A. An Updated Compliance Filing Is Proper in This Context

The Protest asks that the Updated Compliance Filing be rejected based on the form of the filing,[7] but the Protest cites no precedent showing that an updated compliance filing is prohibited or improper in this context. More to the point, the Protest cannot claim that *the Commission* is barred from revisiting a prior compliance filing issue to ensure the Tariff conforms to the intent and expectation of the Commission's earlier compliance orders. At bottom, this procedural argument only serves to distract from the undeniable fact that projects not required to go through a competitive window process and not included in the Regional Transmission Expansion Plan ("RTEP") for cost allocation purposes are not Order No. 1000 projects, and thus were never intended to be within the scope of PJM's

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[5] 18 C.F.R. § 385.213(a)(2).

[6] *See, e.g.*, *N.Y. State Pub. Serv. Comm'n v. N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,137, at P 29 (2017) ("We will accept the Companies' and the Complainants' answers because they have provided information that assisted us in our decision-making process."); *Colonial Pipeline Co.*, 157 FERC ¶ 61,173, at P 23 (2016) ("In the instant case, the Commission will accept the Protestors' Answers and Colonial [Pipeline Co.]'s Answer because they have provided information that assisted us in our decision-making process.").

[7] Protest at 4-5.

Order No. 1000 compliance changes in this proceeding. The Protest argues[8] that there may be consumer benefits to treating such projects *as if* they were Order No. 1000 projects; but this is beside the point (as well as factually incorrect, as shown in section III.C below). This Order No. 1000 compliance filing proceeding has only ever been about complying with Order No. 1000, and not about exploring other endeavors, beyond the scope of Order No. 1000's requirements that some may perceive as beneficial.

The Protest's only suggestion that the Commission lacks authority to consider this filing is its claim[9] that the appeal of the Commission's earlier orders in this docket divested the Commission of the ability to address those prior orders. But this misstates the law. The Federal Power Act ("FPA") provides only that when the Commission files the record in the review proceeding, the court's jurisdiction to affirm, modify, or set aside the Commission's order becomes exclusive.[10] The Protest's argument overlooks that the court no longer has the case. The court's role ended when it dismissed the petitions because the court itself lacked jurisdiction to consider them,[11] and then issued its mandate in the review proceeding.[12] The argument that this proceeding is closed also overlooks that PJM, at the Commission's express direction in this Order No. 1000 compliance proceeding,[13] has

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[8] Protest at 17-18.

[9] Protest at 8.

[10] FPA section 313(b), 16 U.S.C §825*l*(b).

[11] *Am. Transmission Sys. Inc. v FERC,* 2016 U.S. App. LEXIS 12308 (D.C. Cir. July 1, 2016) (per curiam).

[12] *See N. Cal. Power Agency v. Nuclear Regulatory Comm'n*, 393 F.3d 223, 224 (D.C. Cir. 2004) ("[I]ssuance of the mandate formally marks the end of appellate jurisdiction.").

[13] *PJM Interconnection, L.L.C.,* 142 FERC ¶ 61,214, at P 248 (2013) (PJM "must . . . file[] with the Commission as an informational filing" each year "a list of prior year designations of all projects in the limited category of transmission projects for which the incumbent transmission owner was designated as the entity responsible for construction and ownership of the project . . . covering the designations of the prior

submitted informational filings to the Commission in this proceeding every year for the last five years.[14]

Thus, despite the Protest's suggestion to the contrary, nothing in the FPA provides that the Commission is barred from resolving an ambiguity in language accepted in an earlier phase of the proceeding that was the subject of a completed court review, for the very reason of ensuring consistency with the earlier orders. It is well settled that the Commission's "interpretation of the parameters set by [its] own orders" should be accorded "substantial deference."[15]

Indeed, FPA section 309[16] gives the Commission broad authority to take actions the Commission finds necessary or appropriate to carry out other provisions of the FPA. Specifically, section 309 expressly empowers the Commission "to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter [i.e., the FPA]."[17] The remedial discretion conferred by section 309 has long been understood to "authorize [FERC] to use means of regulation not spelled out in" the FPA, "provided the agency's action conforms [to] the purposes and policies of Congress and does not

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calendar year."), *order on reh'g,* 147 FERC ¶ 61,128 (2014), *order on reh'g & compliance*, 150 FERC ¶ 61,038 (2015) .

[14] *See, e.g.*, *PJM Interconnection, L.L.C.*, 2021 Informational Filing of PJM Interconnection, L.L.C., Docket No. ER13-198-000 (Jan. 29, 2021).

[15] *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 533 (D.C. Cir. 2010).

[16] 16 U.S.C. § 825h.

[17] *Id.*

contravene any terms of the Act."[18] The Commission has held that section 309 provides it "with broad remedial authority. . . to correct unjust situations and to ensure that what 'should have been done' is done."[19]

Here, it is entirely "appropriate" under FPA section 309 for the Commission to revisit an earlier phase of this compliance proceeding and ensure that what should have been done is done, given that questions of ambiguity have only recently arisen about Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement") language previously submitted on compliance in this proceeding. If such ambiguity had been raised at the time PJM submitted its compliance filing, the Commission certainly would have required PJM to submit a compliance filing to clarify that language.

As PJM made clear in the Updated Compliance Filing, the filing has a very narrow scope and purpose. PJM emphasized that the 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."[20] The Commission's acceptance of a resolution to an ambiguity in the previous compliance filing, in a manner consistent with the Commission's prior orders, "carr[ies] out the provisions of [the FPA]" in accordance with FPA section 309. Specifically, the requested Commission action fulfills the Commission's purposes under FPA section 206, which authorizes this compliance proceeding, by eliminating the ambiguity that has

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[18] *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 158 (D.C. Cir. 1967); *accord, e.g.*, *TNA Merch. Projects, Inc. v. FERC*, 857 F.3d 354, 359 (D.C. Cir. 2017).

[19] *Black Oak Energy, LLC v. PJM Interconnection, L.L.C,* 167 FERC ¶ 61,250, at P 16 (2019).

[20] Updated Compliance Filing at 1 (footnote omitted).

recently arisen as to the previously accepted language that was supposed to have complied with Order No. 1000 and the Commission's prior directives in this compliance proceeding.

The Protest also argues that the Updated Compliance Filing must be rejected because PJM does not have the authority under FPA section 205 to file these provisions.[21] The Commission need not address that argument. This is an FPA section 206 proceeding, instituted by the Commission and specifically directed at PJM as the jurisdictional public utility responsible for the PJM Open Access Transmission Tariff ("Tariff") and Operating Agreement. The Commission does not need prior approval from PJM or from any stakeholders or market participants for the Commission to carry out its statutory authorities and obligations under the FPA, including taking action it finds necessary and appropriate to ensure that the Operating Agreement complies with Order No. 1000.

Indeed, contrary to the Protest, PJM could not have intended to, and could not have imposed, Designated Entity Agreement ("DEA") execution obligations on sponsors of projects that are outside the scope of Order No. 1000 because such a tariff change would have exceeded the scope of this compliance proceeding. PJM's action now, to correct the prior compliance filing *that PJM itself submitted*, is part and parcel of PJM's public utility obligations as the subject of this Order No. 1000 compliance proceeding. In particular, as the subject public utility, PJM, submitted the Updated Compliance Filing to ensure that the compliance tariff language does not impose unintended obligations that are inconsistent with this compliance proceeding's objective to establish rules for projects that must go

[21] Protest at 5.

through the competitive window process and are in the RTEP for purposes of cost allocation.

The record provided by the Updated Compliance Filing is more than adequate for the Commission to exercise its unquestioned FPA section 206 authority. The Commission in 2015 had the authority to ensure that the language submitted in compliance with Order No. 1000 was not susceptible to two conflicting interpretations; it has that same authority today when such ambiguities in the previously submitted language are brought to the Commission's attention.

B. The Operating Agreement Is Ambiguous Regarding Implementation of Designated Entity Agreements

Contrary to the Protest's claims,[22] the Operating Agreement is ambiguous on when PJM should require Designated Entity Agreements for projects not selected in the competitive window process.[23] The confusion stems from overuse of the term "Designated Entity" in the Operating Agreement, being inserted even when the context is projects that were not selected through the Order No. 1000 competitive window process.[24]

The DEA defines the rights and obligation of an entity accepting the designation to construct a project pursuant to the competitive window process in Operating Agreement, Schedule 6, section 1.5.8.[25] The Commission required PJM to include a *pro forma* DEA

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[22] *See* Protest at 8-11.

[23] *See* Updated Compliance Filing at 5-6.

[24] *See* Updated Compliance Filing at 5-6.

[25] *See* Operating Agreement, Schedule 6, section 1.5.8(j)(ii) (requiring, as a condition of acceptance of being the Designated Entity for a competitive window project, that the project developer return to PJM an executed DEA that "set[s] forth the rights and obligations of the parties.").

as part of its Order No. 1000 competitive window process.[26] Thus, as approved in PJM's Order No. 1000 compliance proceeding, the DEA is not required for projects selected outside the Order No. 1000-directed competitive window process.

Consistent with this understanding, PJM did not intend, nor did Order No. 1000 require,[27] that PJM tender DEA to incumbent transmission owners for projects that were not subject to the requirements of Order No. 1000, i.e., projects not selected through a competitive solicitation window and included in the RTEP for purposes of regional cost allocation.[28] Regardless, both sections 1.5.8(*l*) (obligating incumbent Transmission Owner to build certain projects), and 1.5.8(m)(1) (Immediate-need Reliability Projects for which "a proposal window may not be feasible") refer to the incumbent transmission owner as a Designated Entity, even if projects consistent with section 1.5.8(*l*) are not regionally allocated and projects consistent with section 1.5.8(m)(1) are exempted from PJM's Order No. 1000 competitive proposal windows. In context, therefore, the term "Designated Entity" is being used in these instances as shorthand for the broader concept of the entity

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[26] *See PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128, at P 261 (2014), *order on reh'g & compliance*, 150 FERC ¶ 61,038 (2015). In addition, the first clause of the *pro forma* Designated Entity Agreement invokes Order No. 1000 as a basis for the agreement.

[27] *See* Updated Compliance Filing at 3-5 (detailing the projects subject to the reforms of Order No. 1000 under PJM's Commission-accepted compliance filings).

[28] *See* Order No. 1000 at P 63 (explaining that "there is a distinction between a transmission facility in a regional transmission plan and a transmission facility selected in a regional transmission plan for purposes of cost allocation," and only those facilities "selected in a regional transmission plan for purposes of cost allocation are transmission facilities that have been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs" are subject to Order No. 1000's reforms).

that will construct or own the project. This imprecise, overuse of the term "Designated Entity" outside the context of Order No. 1000 projects has spawned confusion.[29]

Underscoring that these uses of "Designated Entity" exceed the intended scope of that term, other Operating Agreement provisions correctly confine the "Designated Entity" term to the competitive window process. For example, Operating Agreement, Schedule 6, section 1.5.8(m)(2), addresses Immediate-need Reliability Projects that are selected through the competitive window process. That provision states that "Designated Entities shall accept such designations in accordance with the Operating Agreement, Schedule 6, section 1.5.8 (j)."[30] No such language is present in Operating Agreement, Schedule 6, section 1.5.8(m)(1),[31] which addresses projects for which there is insufficient time to go through the competitive window process.

Similarly, Operating Agreement, Schedule 6, section 1.7(a) provides that, for projects[32] the incumbent transmission owners were "obligated to build," a transmission owner could be treated as either an incumbent transmission owner or Designated Entity.[33]

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[29] *See* Updated Compliance Filing at 5-7 (explaining that while "PJM intended to use the Designated Entity Agreement for those projects sponsored by a pre-qualified entity seeking to be a Designated Entity selected through a competitive proposal window and included in the RTEP for regional cost allocation purposes," stakeholders have raised concern about PJM's practice for when a Designated Entity Agreement may be required).

[30] Operating Agreement, Schedule 6, section 1.5.8 (m)(2).

[31] Moreover, the Commission found that "it is just and reasonable to include a class of transmission projects that are *exempt from the competitive solicitation*," such as Immediate-need Reliability Projects selected, pursuant to Operating Agreement, Schedule 6, section 1.5.8(m)(1). *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 247.

[32] *See* Operating Agreement, Schedule 6, section 1.5.8(*l)* describing the projects that transmission owners are obligated to build.

[33] *See* Operating Agreement, Schedule 6, section 1.7(a), which provides in pertinent part:

B. The Updated Compliance Filing Is Not Barred by the Commission's Decision in Docket No. ER18-1647

Contrary to allegations in the Protest,[34] the Updated Compliance Filing is not a collateral attack on the Commission's decision in Docket No. ER18-1647. There, the Commission's holdings were limited to projects selected in the competitive window process and included in the RTEP for purposes of cost allocation.[35] Here, in direct contrast, the Updated Compliance Filing addresses only projects *not* selected in the competitive window process and *not* included in the RTEP for purposes of cost allocation.

In Docket No. ER18-1647, the Commission found that "some categories of transmission projects that PJM must designate to the incumbent transmission owner under Schedule 6, section 1.5.8(*l*) of the Operating Agreement" are included "in the regional transmission plan for purposes of cost allocation."[36] However, the Commission explained that "[n]ot all of the transmission projects that PJM must designate to the incumbent transmission owner under Schedule 6, section 1.5.8(*l*) of the Operating Agreement . . . are selected in a regional transmission plan for purposes of cost allocation."[37] The

> (a) Subject to the requirements of applicable law, government regulations and approvals, including, without limitation, requirements to obtain any necessary state or local siting, construction and operating permits, to the availability of required financing, to the ability to acquire necessary right-of-way, and to the right to recover, pursuant to appropriate financial arrangements and tariffs or contracts, all reasonably incurred costs, plus a reasonable return on investment, *Transmission Owners or Designated Entities designated as the appropriate entities to construct, own and/or finance enhancements or expansions specified in the Regional Transmission Expansion Plan shall construct, own and/or finance such facilities or enter into appropriate contracts to fulfill such obligations* . . . . .

[34] Protest at 12.

[35] *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021 (2018).

[36] 164 FERC ¶ 61,021 at P 32.

[37] 164 FERC ¶ 61,021 at P 33 n.61

Commission explicitly made "no findings here as to whether the transmission developer for such a project is similarly situated to transmission developers whose projects PJM has selected in its regional transmission plan for purposes of cost allocation,"[38] and would therefore be required to execute a Designated Entity Agreement. In fact, on rehearing, the Commission stated that "[i]ts determinations . . . applied only to those Transmission Owner Designated projects that were selected in the regional transmission plan as the more efficient or cost effective transmission solution for the purposes of cost allocation."[39]

III. ANSWER TO PROTEST

A. Contrary to the Protest's Assertions, Order No. 1000 Does Not Require Designated Entity Agreements for Projects Evaluated Outside the Competitive Window Process Directed by Order No. 1000

The Protest asserts that *any* transmission project eligible for regional cost allocation falls within the scope of Order No. 1000's reforms.[40] In support, the Protest quotes a single sentence from Order No. 1000 that summarizes the scope of Order No. 1000 when discussing the Commission's legal authority to require cost allocation between parties not in contractual privity.[41] These arguments about the scope of Order No. 1000's reforms, aside from their thin support, are misplaced.

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[38] *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021 at P 33 n.61.

[39] *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,121, at P 12 n.23 (2019) (citing July 13 Order at P 33 n. 61.

[40] *See* Protest at 19-20.

[41] *See* Protest at 19-20 (quoting Order No. 1000 at P 539 ("[T]o be eligible for regional cost allocation, a proposed new transmission facility first must be selected in a regional transmission plan for purposes of cost allocation . . . .").

As the Updated Compliance Filing made clear,[42] Order No. 1000's "requirements . . . distinguish between a 'transmission facility in a regional transmission plan,' and 'a transmission facility selected in a regional transmission plan *for purposes of cost allocation*.'"[43] Order No. 1000 explained that "[t]ransmission facilities selected in a regional transmission plan for purposes of cost allocation are transmission facilities that have been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs,"[44] i.e., selected through the competitive window process. The Commission went on to emphasize that "this distinction is an essential component" of Order No. 1000, as *only a subset of facilities* within a regional transmission plan will be "selected, pursuant to a Commission-approved regional transmission planning process, as a more efficient or cost-effective solution to regional transmission needs,"[45] and included for purposes of regional cost allocation.[46] Thus, the scope of the reforms "do[es] not include a transmission facility in the regional transmission plan but that has not been selected in the [competitive window process]."[47]

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[42] *See* Updated Compliance Filing at 3-4.

[43] Order No. 1000 at P 5 (emphasis added).

[44] Order No. 1000 at P 63.

[45] Order No. 1000 at P 5. The Commission recognized that transmission facilities selected through the competitive window process and included in the regional transmission plan for purposes of cost allocation "often will not comprise all of the transmission facilities in the regional transmission plan; rather, such transmission facilities may be a subset of the transmission facilities in the regional transmission plan." *Id*. at P 63.

[46] Order No. 1000 at P 63.

[47] Order No. 1000 at P 63.

In short, Order No. 1000 did not direct application of Designated Entity Agreements for projects accepted outside the competitive window process, and the Updated Compliance Filing appropriately clarifies the Operating Agreement to be consistent with the scope of Order No. 1000.

B. The Protest's Allegations of Violations of the Operating Agreement Are Wide of the Mark

Contrary to the Protest's allegations,[48] PJM has not been violating the Operating Agreement; rather, PJM's practice of requiring a DEA only for those projects sponsored by a pre-qualified entity seeking to be a Designated Entity selected through a competitive proposal window and included in the RTEP for regional cost allocation purposes is consistent with the Operating Agreement, Order No. 1000, and PJM's Order No. 1000 compliance proceedings.

The Updated Compliance Filing clarifies present ambiguities in the filed rate, to ensure it is consistent with the directives of Order No. 1000. That the Operating Agreement language may be read in multiple ways does not mean that PJM is violating it. PJM has applied the Operating Agreement consistent with the intended usage[49] of the DEA for purposes of compliance with Order No. 1000.[50]

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[48] Protestors at 15-17.

[49] Contrary to the Protest, PJM has issued DEAs to incumbent transmission owners for projects selected through the competitive solicitation window that were included in the RTEP for purposes of cost allocation. To date, PJM has issued five (5) DEAs. Two DEAs were issued to incumbent transmission owners and three DEAs were issued to non-incumbent transmission developers.

[50] PJM notes that, out of an abundance of caution, it has self-reported these circumstances to the Commission's Office of Enforcement. The issue in this compliance proceeding is not any such enforcement question, but rather the need to correct the tariff language prospectively.

C. Contrary to the Protest, Clarifying the Operating Agreement to Be Consistent with Order No. 1000 Would Not Weaken Consumer Protections

The Protest alleges that the Updated Compliance Filing's clarification that DEAs would be required only for those transmission projects evaluated and selected in the competitive window process and included in the RTEP for cost allocation purposes would "weaken" consumer protections.[51] Specifically, the Protest asserts that the DEA provides consumer protections by way of transparency regarding changes to development milestones and project costs.[52] But, as detailed below, that transparency is already provided through PJM's open and transparent planning process, consistent with Order No. 1000. A DEA adds nothing to the scope and timeliness of project timeline and cost reporting.

1. The Protest Result Would Simply Increase Customer Costs

At the outset, PJM would note that the impact of requiring DEAs for projects not selected through a competitive window or subject to regional cost allocation is to increase, not decrease, customer costs. This occurs because a DEA requirement also carries with it a requirement to post security. The Commission has recognized that the DEA security requirement increases project costs of both incumbent transmission owners and non-incumbent developers.[53] Such project costs are borne by consumers when the project goes into service.

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[51] Protest at 17-18.

[52] Protest at 17-18.

[53] *See PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,121, at P 34 (2019).

Moreover, the posting of security by incumbent transmission owners is appropriate when they are competing against non-incumbent developers so as to ensure a level playing field. However, there is no competitive window process for the projects at issue in the Updated Compliance Filing. In this situation, the posting of security only works to increase customer costs because the incumbent transmission owner, unlike a non-incumbent developer, cannot refuse to build PJM-directed RTEP projects.[54] In addition, the security obligation was designed to protect customers if a developer defaults and fails to complete a project, leading to increased costs to the incumbent transmission owner to complete the project. For the projects relevant here, however, there is no defaulting entity as the incumbent transmission owner itself is required to follow through and build the project as required by the Operating Agreement and the Consolidated Transmission Owners Agreement. There is no 'default reassignment' mechanism in the Operating Agreement for an incumbent transmission owner failing to meet its obligations. Thus, as a policy matter, the end result of the Protest's claim is to raise the costs of *all* transmission projects. PJM doubts that this was the Commission's intention, but that would be the practical result of requiring PJM to secure DEAs on all projects, whether they are under Order No. 1000 or not.

2. The "Increased Visibility" Argument Ignores that the Desired Visibility and Transparency Is Achieved through PJM's Existing Open and Transparent Stakeholder Processes, and Not Through the DEA

In addition, contrary to the Protest, the DEA does not afford stakeholders any greater visibility regarding project development than the visibility PJM already provides to

[54] *See* Operating Agreement, Schedule 6, section 1.7.

stakeholders through PJM's construction status page as well as in the context of the Transmission Expansion Advisory Committee ("TEAC") meetings. On a quarterly basis PJM requests updates on the project construction status, expected completion date, and cost updates and shares this information on the PJM Construction Status page. Additionally, for significant changes in scope or cost, PJM will present such changes in the context of the TEAC meetings, regardless of whether there is an executed DEA for the project. In fact, scope changes, e.g., changes to reinforcements included in the project, are vetted through the TEAC for every project included in the RTEP regardless of whether there is an executed DEA for the project.

Nonetheless, the Protest seems to argue that the DEA is particularly pertinent for Immediate-need Reliability Projects, which according to the Protest, are "subject to cost overruns." In support of its position, the Protest points to significant change in an Immediate-need Reliability Project's cost estimate and states "[i]t appears there is no Designated Entity Agreement in place for this project." To be clear, the transparency afforded stakeholders was not as a result of a DEA. Rather, as the Protest clearly acknowledges, it was due to PJM's open and transparent stakeholder process, which in that case did what it was intended to do, *i.e.*, provide notice through monthly TEAC meetings of changes to the scope and costs of RTEP Projects for stakeholder review and comment.[55] As demonstrated by the example contained in the Protest, those updates were not tied to

[55] *See* Protest at 18 n.52 (citing April 6, 2021 TEAC presentation materials, *available at*: https://www.pjm.com/-/media/committees-groups/committees/teac/2021/20210406/20210406-item-08-reliability-analysis-update.ashx).

whether a DEA had been executed. Had there been an executed DEA, stakeholders may not have been made aware of the cost change any earlier, if at all.

In particular, whether (i) a Designated Entity is constructing a project selected through the competitive window process and included in the RTEP for purposes of cost allocation, or (ii) an incumbent transmission owner is constructing a project, such as a local upgrade, that is not selected through the competitive window process and included in the RTEP for purposes of cost allocation, all project developers are required to submit regular updates to PJM regarding the project status, projected in-service date and projected costs. That information is regularly updated and publicly available on the PJM website.[56] In other words, a DEA is not necessary to address the consumer protection concerns identified by the Protest.[57]

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[56] *See PJM Manual 14C: Generation and transmission Interconnection Facility Construction*, PJM Interconnection, L.L.C., section 6.1.2 (Jan. 27, 2021), https://www.pjm.com/-/media/documents/manuals/m14c.ashx; *see also Project Status and Cost Allocation*, PJM Interconnection, L.L.C., https://www.pjm.com/planning/project-construction (last visited Oct. 14, 2021).

[57] In addition, Protestors' comparison of when similar development agreements are required in NYISO is inapposite. In that region, when a non-incumbent is designated to construct a project through the competitive window, an incumbent transmission owner also is assigned to develop a parallel replacement project to protect against the non-incumbent failing to place its project in service. *See N.Y. Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044, at PP 18-20 (2014), *order on reh'g & compliance*, 151 FERC ¶ 61,040 (2015). Thus, in NYISO, both the project assigned to the non-incumbent and the incumbent transmission owner are projects consistent with Order No. 1000.

IV. CONCLUSION

PJM asks that the Commission deny the motion to reject PJM's Updated Compliance Filing, consider this answer, and accept the Updated Compliance Filing effective November 1, 2021, as requested.

Respectfully submitted,

/s/ Paul M. Flynn

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On behalf of
PJM Interconnection, L.L.C.

October 14, 2021

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, D.C., this 14th day of October 2021.

/s/ Paul M. Flynn
Attorney for
PJM Interconnection, L.L.C.

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