

**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,)	Docket No. EL22-80-000
Complainant,)	
)	
v.)	
)	
PJM Interconnection, L.L.C.,)	
Respondent.)	

ANSWER OF PJM INTERCONNECTION, L.L.C.

PJM Interconnection, L.L.C. (“PJM”), pursuant to Rule 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,¹ submits this Answer to the Complaint filed by American Municipal Power, Inc., Office of the People’s Counsel for the District of Columbia, and the PJM Industrial Customer Coalition (“Complainants”) on July 26, 2022.² The Commission should dismiss the Complaint.

The competitive window process, as set forth in Schedule 6, section 1.5.8 (“section 1.5.8”) of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), was submitted in compliance with Order No. 1000.³ Consistent with Order No. 1000, PJM has interpreted the Operating

¹ 18 C.F.R. § 385.213.

² *American Municipal Power, Inc. v. PJM Interconnection, L.L.C.*, Complaint Requesting Fast Track Processing of American Municipal Power, Inc., Office of the People’s Counsel for the District of Columbia, and the PJM Industrial Customer Coalition, Docket No. EL22-80-000 (July 26, 2022) (“Complaint”).

³ *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

Agreement language to require issuance of Designated Entity Agreements only for projects selected in PJM’s Order No. 1000 competitive solicitation process and with costs allocated to more than one zone. PJM has not, since the approval of the language by the Commission, expanded its meaning to encompass more than its historic roots and original intent. Complainants seek a Commission Order “re-interpreting” the language in a manner inconsistent with PJM’s course of conduct since 2014.

Notwithstanding PJM’s long-standing course of conduct in implementing this section, PJM recognizes that the section 1.5.8 provisions at the center of the Complaint are not as clearly drafted as they could have been. As a result and given that (i) stakeholders were unwilling to revise the language in a timely manner and (ii) the Commission’s rejection on procedural grounds of PJM’s attempt to remove ambiguities through an “updated compliance filing,” PJM was left with no choice but to file its own Federal Power Act (“FPA”) section 206⁴ pleading in Docket No. EL22-85-000,⁵ requesting the Commission to remove the ambiguities in section 1.5.8 and the definition of the term “Designated Entity.”⁶ Grant of PJM’s requested relief in Docket No. EL22-85-000 would moot this Complaint and end what has been a distracting and resource-intensive disagreement of this relatively narrow issue. Accordingly, PJM respectfully requests that the Commission address these issues through action on the PJM 206 Filing.

¶ 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).

⁴ 16 U.S.C. § 824e.

⁵ *PJM Interconnection, L.L.C.*, Section 206 Filing to Resolve Ambiguous Use of Designated Entity, Docket No. EL22-85-000 (Aug. 26, 2022) (“PJM 206 Filing”).

⁶ *See* PJM 206 Filing at 6-7.

However, should the Commission decide to entertain the Complaint, as explained below, there is no basis for a finding that PJM has violated the Operating Agreement. Rather, contrary to Complainants' assertions, the language of the Operating Agreement is at worst ambiguous and therefore could be interpreted in manner at odds with its regulatory context, PJM's stated intent at the time of its compliance filings, and PJM's subsequent course of conduct. This ambiguity has rendered the Operating Agreement susceptible to multiple interpretations—a point which PJM has raised repeatedly in attempting to refine the language through the stakeholder process. Rather than acknowledge this ambiguity, Complainants unfairly request that the Commission suddenly find that the language is crystal clear and direct enforcement of their interpretation without consideration of any other interpretation, let alone the impact of such a finding both on implementation feasibility and ultimate cost to customers. As explained below, Complainants' interpretation would increase costs for consumers with no commensurate benefit. Through the PJM 206 Filing, PJM is already addressing the ambiguity and asking the Commission to approve a just and reasonable replacement rate consistent with PJM's original intent and that PJM can effectively implement.

I. THE COMPLAINT

The Complaint alleges that PJM is not properly implementing and “only partially complying” with the provisions of Operating Agreement, Schedule 6, section 1.5.8, and requests the Commission to direct PJM to require execution of Designated Entity Agreements for each Immediate-need Reliability Project, Short-term Project, Long-lead Project, and Economic-based Enhancements or Expansions (which the Complaint

collectively calls “Regionally Planned Projects”).⁷ The Complaint asserts that section 1.5.8 “unambiguously requires” PJM to reach back and issue a Designated Entity Agreement for each Regionally Planned Project,⁸ including such projects that “are still under construction.”⁹ Thus, the Complaint asks the Commission to require Designated Entity Agreements for “all projects” included in the Regional Transmission Expansion Plan (“RTEP”) pursuant to Section 1.5.8, “regardless of whether the project is selected through a competitive proposal window”¹⁰ or regionally allocated.

The Complaint bases these assertions on three grounds: (i) “there is no ambiguity in the Operating Agreement about when and for which projects a developer must execute the Designated Entity Agreement;”¹¹ (ii) PJM’s Order No. 1000 Compliance Filings “demonstrate that the intent of the current, Commission-approved 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,”¹² regardless of whether the project was selected through a competitive proposal window or regionally allocated; and (iii) requiring Designated Entity Agreements is “good policy.”¹³

None of these arguments has merit. As demonstrated below and in the PJM 206 Filing, the Operating Agreement is ambiguous with regard to when a Designated Entity

⁷ Complaint at 1-2.

⁸ Complaint at 2.

⁹ Complaint at 3.

¹⁰ Complaint at 3-4.

¹¹ Complaint at 16.

¹² Complaint at 18.

¹³ Complaint at 20.

Agreement is required.¹⁴ PJM’s Order No. 1000 Compliance Filing demonstrates PJM’s intent *to limit* application of its Order No. 1000-compliant reforms, including the Designated Entity Agreement, to the scope of Order No. 1000’s directives.¹⁵ Finally, requiring Designated Entity Agreements when they are not needed to establish a level playing field in the competitive window process is unjust and unreasonable, as such practice would unnecessarily increase the cost of hundreds of projects (that is passed through to ratepayers) without sufficient offsetting benefit. Moreover, as demonstrated in Sections II.C.1 and II.C.2 below and contrary to Complainant’s unsupported argument, the DEA does not provide any additional level of transparency or cost control. Rather, PJM provides the same level of transparency of costs for *all projects*, whether or not they have a Designated Entity Agreement.

As demonstrated below, PJM has properly implemented section 1.5.8 since 2014 in manner consistent with PJM’s actual and constructive intent, and the Commission’s intent in adopting section 1.5.8 to comply with Order No. 1000. Therefore, the Commission should find that PJM has not been “violating” the terms of its Operating Agreement, Schedule 6, section 1.5.8¹⁶ and dismiss the Complaint.

II. ANSWER TO COMPLAINT

A. Contrary to Complainants’ Assertions, the Operating Agreement Is Ambiguous with Respect to Designated Entity Agreements.

The Complaint’s primary argument is that “there is no ambiguity in the Operating Agreement about when and for which projects a developer must execute the Designated

¹⁴ PJM 206 Filing at 14.

¹⁵ *PJM Interconnection, L.L.C.*, Compliance Filing of PJM Interconnection, L.L.C., Docket No. ER13-198-002, at 45 (July 22, 2013).

¹⁶ Complaint at 21.

Entity Agreement.”¹⁷ Complainants are mistaken. Complainants do little to show that section 1.5.8 is not ambiguous. Rather, they paraphrase and summarize the planning process set forth in section 1.5.8 and do not engage with the actual text of the provisions.¹⁸ However, as shown below, a textual analysis clearly demonstrates ambiguities applicable to either interpretation where the Complainants assert there are none. Further, because a proper interpretation exercise looks at all relevant parts of an agreement,¹⁹ the Designated Entity Agreement is unambiguous that it applies only “in accordance with FERC Order No. 1000,”²⁰ (and Complainants do not allege otherwise), underscoring the ambiguities present in section 1.5.8.²¹

In fact, the Commission has recognized that it is unresolved 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,” and would therefore be required to execute a Designated Entity Agreement.²² Further, the Commission stated that “[i]ts determinations in [ER18-1647 that incumbent transmission owners must execute Designated Entity Agreements] applied only to those

¹⁷ Complaint at 16.

¹⁸ See Complaint at 16-18.

¹⁹ See *Fort Sumter Tours, Inc. v. Babbitt*, 202 F.3d 349, 358 (D.C. Cir. 2000) (citing *United States v. Insurance Co. of N. Am.*, 83 F.3d 1507, 1511 (D.C. Cir. 1996) (noting the “cardinal principle of contract construction: that a document should be read to give effect to all its provisions”) (quoting *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63 (1995))).

²⁰ Open Access Transmission Tariff (“Tariff”), Attachment KK (first “whereas” clause of the *pro forma* Designated Entity Agreement).

²¹ PJM 206 Filing also demonstrates the ambiguity in section 1.5.8. See PJM 206 Filing at 17-20. PJM also demonstrated these ambiguities in Docket No. ER13-198-008, where PJM submitted an “Updated Compliance Filing” to remove these ambiguities. The Commission rejected the Updated Compliance Filing on procedural grounds without reaching the merits. See *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,083 (2022); *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”).

²² *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 33 n.61 (2018).

Transmission Owner Designated Projects²³ that were selected in the regional transmission plan as the more efficient or cost effective transmission solution for the purposes of cost allocation.”²⁴ This open question is at the heart of the Complaint and the PJM 206 Filing.

1. *Section 1.5.8’s imprecise usage of the term “Designated Entity” renders the language ambiguous.*

A review of the text of section 1.5.8 shows that subsections (g), (h), (l), and (m)(1) imprecisely use the defined term “Designated Entity” as shorthand for the broader concept of the entity responsible for constructing RTEP projects that are either: (i) sponsored through a competitive proposal window, designated to the incumbent transmission owner where costs allocated solely to a single zone; or (ii) not sponsored through a competitive proposal window process but instead are selected by PJM and designated to the incumbent transmission owner. Such references are improper because the projects at issue were not selected through PJM’s competitive window process and/or included in the RTEP for purposes of cost allocation.²⁵

Sections 1.5.8(g) and (h) address those instances where PJM must select a project and designate it to the incumbent transmission owner where none of the project proposals submitted through a competitive proposal window were found to be the more efficient or cost-effective solution to resolve the posted violation or system condition, and PJM has

²³ The term “Transmission Owner Designated Projects” was used by the Commission to describe RTEP projects that PJM must designate to the incumbent transmission owner under Schedule 6, section 1.5.8(l). See *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 1.

²⁴ *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,121, at P 12 n.23 (2019) (citing *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 33 n. 61).

²⁵ 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.

determined there is insufficient time to convene another window.²⁶ Thus, for projects under section 1.5.8(g), (h), (l), and (m)(1) for which no entity proposes a project to meet the identified need and PJM must identify the project (i.e., an “unsponsored project”) that are selected outside a competitive proposal window, use of the term “Designated Entity” is imprecise and improper.

With regard to section 1.5.8(m)(1), the use of the term “Designated Entity” exceeds the intended scope of that term, as underscored by the fact that other Operating Agreement provisions correctly confine the “Designated Entity” term to the competitive window process. For example, section 1.5.8(m)(2) addresses Immediate-need Reliability Projects that are selected through the competitive window process. One important distinction between Immediate-need Reliability Projects selected through a competitive window process pursuant to section 1.5.8(m)(2) and Immediate-need Reliability Projects exempted from the competitive window process pursuant to section 1.5.8(m)(1) is that section 1.5.8(m)(2) explicitly references the Designated Entity Agreement provision at sections 1.5.8(i) and (j),²⁷ and section 1.5.8(m)(1) does not.

Further, section 1.5.8(l) broadly and indelicately is titled “Transmission Owners Required to be the Designated Entity” and provides that the incumbent transmission owner “will be the Designated Entity” for four distinct project types, “[n]otwithstanding anything to the contrary in this section 1.5.8” and regardless of who sponsored the proposal through a competitive proposal window. Such imprecise language implies that

²⁶ Such determination is based on specific criteria identified in Schedule 6, section 1.5.8(e)(1).

²⁷ Operating Agreement, Schedule 6, section 1.5.8(m-2) provides in pertinent part: “After PJM Board approval, the Office of the Interconnection, in accordance with the Operating Agreement, Schedule 6, section 1.5.8(i), shall notify the entities that have been designated as the Designated Entities for Immediate-need Projects included in the [RTEP] of such designations. Designated Entities shall accept such designations *in accordance with the Operating Agreement, Schedule 6, section 1.5.8(j).*” (emphasis added).

for projects no party would allege is within the scope of Order No. 1000, e.g., such as a Transmission Owner Upgrade or a project located solely in a transmission owner's zone and allocated solely to that zone.²⁸

Accordingly, PJM could not have intended the shorthand reference to "Designated Entity" in sections 1.5.8(g), (h), (l), and (m)(1) to have the same meaning (and thus require Designated Entity Agreements) as the term applies to projects within the scope of Order No. 1000, i.e., projects that are selected through PJM's competitive window process and included in the RTEP for purposes of cost allocation. PJM explained in its third Order No. 1000 compliance filing that:

As part of PJM's Order No. 1000 tariff revisions, PJM included a requirement that an entity accepting the designation as the "Designated Entity," to construct a project pursuant to the *competitive process* set forth in section 1.5.8 of Schedule 6 must execute an agreement "setting forth the rights and obligations related to being the Designated Entity for the project" [i.e., the Designated Entity Agreement].²⁹

It is no coincidence that PJM's stated intention that "Designated Entity" refer only to the "competitive process" and the Commission found that "the Designated Entity Agreement defines the rights and obligations of *all* Designated Entities that are designated by PJM to construct an RTEP project *pursuant to PJM's competitive process* set forth in Schedule 6."³⁰ Yet, the imprecise, overuse of "Designated Entity" has injected ambiguity

²⁸ Under Order No. 1000, "[t]he Commission did not [] require public utility transmission providers to remove a federal right of first refusal for local transmission facilities or upgrades to an incumbent transmission provider's own transmission facilities, and did not alter an incumbent transmission provider's use and control of an existing right of way." Order No. 1000-A at P 357; *see also* Order No. 1000 at P 226.

²⁹ *PJM Interconnection, L.L.C.*, 3rd Compliance Filing of PJM Interconnection, L.L.C., Docket No. ER13-198-004, at 11 (July 14, 2014) ("3rd Order No. 1000 Compliance Filing") (emphasis added) (footnotes omitted)..

³⁰ *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 46 (2014) (emphasis added).

into section 1.5.8 and incorrectly suggests that a Designated Entity Agreement would be required outside the context of Order No. 1000 projects.

2. *Designated Entity Agreements unambiguously apply to projects selected in PJM's competitive window, underscoring the ambiguities in section 1.5.8 on when such agreements are required.*

Complainants correctly do not allege that the Designated Entity Agreement is ambiguous. However, because whether a Designated Entity Agreement is required for a given project is objective of the interpretation question posed here, whether the *pro forma* Designated Entity Agreement is ambiguous is informative in evaluating section 1.5.8.

A review of the Designated Entity Agreement and the context in which it was approved shows that it unambiguously applies only to projects selected in PJM's Order No. 1000 competitive window process. First, the Designated Entity Agreement itself states in the first "whereas" clause that PJM and the counterparty are entering into it "in accordance with Order No. 1000."³¹ This whereas clause withstood a protestor's challenge that it should be removed as the reference to Order No. 1000 "is both inaccurate in the context of the remainder of the clause and inappropriate for inclusion in a contractual agreement."³² The Commission rejected the request, noting that such a clause can be "useful as an aid to interpretation" of the agreement.³³

Second, in submitting the *pro forma* agreement, PJM explained that "an entity accepting the designation, as the 'Designated Entity,' to construct a project *pursuant to the competitive process* set forth in section 1.5.8 of Schedule 6 must execute an

³¹ Tariff, Attachment KK.

³² *PJM Interconnection, L.L.C.*, Protest of Compliance Filing of LS Power Transmission, LLC and LSP Transmission Holdings, LLC, Docket Nos. ER13-198-004 & ER14-2426-000, at 16 (Aug. 4, 2014).

³³ *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 70.

agreement ‘setting forth the rights and obligations related to being the Designated Entity for the project.’”³⁴ In other words, PJM intended the Designated Entity Agreement to apply only to those projects selected in the competitive window process, and not broadly to any project planned in accordance with section 1.5.8. The Commission recognized this limited application, stating: “the Designated Entity Agreement defines the rights and obligations of *all Designated Entities that are designated by PJM to construct an RTEP project pursuant to PJM’s competitive process set forth in Schedule 6.*”³⁵

Finally, the Commission rejected a call to add a provision that would add “an obligation [] beyond the scope of the Designated Entity Agreement Filing proceeding, as neither Order No. 1000 or our directives to PJM to file a Designated Entity Agreement address PJM’s role in facilitating in a Designating Entity’s state permitting and siting process.”³⁶ Thus, the Commission viewed the Designated Entity Agreement as being adopted to fulfill the requirements of Order No. 1000, and no more. Order No. 1000 and the Commission’s directives regarding the development of the Designated Entity Agreement³⁷ defined the scope of the Designated Entity Agreement.

The clarity regarding the Designated Entity Agreement’s application underscores the muddiness and confusion present in section 1.5.8 with regard to when the term Designated Entity is (and ultimately a Designated Entity Agreement) required. If the Designated Entity Agreement itself states that parties are entering into it “in accordance with Order No. 1000,” then necessarily the project that is the subject of the agreement

³⁴ 3rd Order No. 1000 Compliance Filing at 11 (emphasis added).

³⁵ *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 46 (emphasis added).

³⁶ *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 110.

³⁷ See *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128, at PP 261, 306-309 (2014) (outlining Commission directives regarding the *pro forma* Designated Entity Agreement).

must be within the scope of Order No. 1000's reforms. Yet, as discussed extensively above, section 1.5.8 incorrectly uses the term "Designated Entity" for projects outside the scope of Order No. 1000.³⁸

B. Given the Ambiguities in Section 1.5.8, the Commission Must Look to Extrinsic Evidence to Interpret the Operating Agreement Language, Including Evidence Regarding PJM's Intent and the Regulatory Context in Which the Language was Adopted.

Because section 1.5.8 is ambiguous, the Commission must look to extrinsic evidence of the intent of PJM in adopting section 1.5.8.³⁹ Complainants, despite their unsupported claims that section 1.5.8 is not ambiguous, also looked to extrinsic evidence of PJM's intent and the regulatory context in which section 1.5.8 was adopted—i.e., Order No. 1000 and PJM's Order No. 1000 compliance proceedings.⁴⁰ However, their proffered extrinsic evidence is inapposite. Specifically, Complainants quote PJM's first and second compliance filing transmittal letters to prove that "PJM recognized that incumbent Transmission Owners would also be Designated Entities and, therefore, be required to execute a Designated Entity Agreement."⁴¹ But this is beside the point. The issue in this proceeding centers on which projects require a Designated Entity Agreement, not which entity must execute a Designated Entity Agreement. If a project is selected through the competitive window and is included in the RTEP for purposes of

³⁸ See Order No. 1000 at P 318 ("The Commission's focus here is on the set of transmission facilities that are evaluated at the regional level and selected in the regional transmission plan for purposes of cost allocation.").

³⁹ See *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,053, at P 16 ("[T]he goal of interpreting an agreement is to decipher the intent of the parties to the contract.") *reh'g denied*, 176 FERC ¶ 61,158 (2021); *Mid-Continent Area Power Pool*, 92 FERC ¶ 61,229, at 61,755 (2000) ("Extrinsic evidence (which may include the parties' course of performance) is admissible *to ascertain the intent of the parties* when that intent has been imperfectly expressed in ambiguous contract language, but is not admissible either to contradict or to alter express terms.") (emphasis added).

⁴⁰ See Complaint at 18-19.

⁴¹ Complaint at 19.

cost allocation, then whoever the Designated Entity is must execute a Designated Entity Agreement, regardless of whether the Designated Entity is an incumbent transmission owner or a new nonincumbent transmission developer.

A closer look at Order No. 1000, PJM's compliance filings, and Commission action on those filings demonstrates that PJM's intent in adopting section 1.5.8 was only to comply with Order No. 1000's compliance directives and to go no further.⁴² PJM's interpretation in implementing section 1.5.8 has been consistent with this intent.

1. Order No. 1000 and PJM's Order No. 1000 compliance proceedings provide the regulatory context for the Operating Agreement language at issue.

As discussed, section 1.5.8, the term "Designated Entity," and the Designated Entity Agreement all originated in PJM's Order No. 1000 compliance proceedings. Therefore, it is informative to understand the scope of that compliance proceeding—to see which transmission projects fit within the scope of Order No. 1000's reforms, and which do not.

Briefly, Order No. 1000 directed a number of reforms specific to the construction of transmission facilities selected in a regional transmission plan for purposes of cost allocation.⁴³ Order No. 1000 directed PJM, among other things, to revise its RTEP process to include qualification criteria and protocols to govern the submission and evaluation of project proposals (submitted by both incumbent transmission owners and

⁴² See *PJM Interconnection, L.L.C.*, Compliance Filing of PJM Interconnection, L.L.C., Docket No. ER13-198-000, at 2-3 (Oct. 25, 2012) ("First Order No. 1000 Compliance Filing") (PJM explained that its "specific reforms [] either meet the letter of Order No. 1000 or, due to the unique nature of PJM's operations and markets, satisfy the Commission's 'consistent with or superior to' standard recognized in Order No. 1000." (citing Order No. 1000 at P 149 & 18 C.F.R. § 35.28(c)(4)(ii))).

⁴³ See Order No. 1000 at P 225.

nonincumbent transmission developers) “selected in the regional transmission plan for purposes of cost allocation.”⁴⁴

Order No. 1000’s reforms are limited to projects “selected in the regional transmission plan for purposes of cost allocation”⁴⁵ and “do not include a transmission facility in the regional transmission plan but that has not been selected in the [competitive window process].”⁴⁶ Order No. 1000 acknowledged that the transmission facilities subject to its reforms “may be a subset of the transmission facilities in the regional transmission plan,”⁴⁷ and does not include a transmission facility in the regional transmission plan that has not been selected through a competitive process, such as a local transmission facility.⁴⁸ In addressing the scope of the reforms, the Commission clarified that “the term ‘selected in a regional transmission plan for purposes of cost allocation’ excludes a new transmission facility if the costs of that facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that new transmission facility is to be located.”⁴⁹

⁴⁴ Order No. 1000 at P 318 (“The Commission’s focus here is on the set of transmission facilities that are evaluated at the regional level and selected in the regional transmission plan for purposes of cost allocation.”); *see also PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 299 (“Order No. 1000 requires each public utility transmission provider to amend its [Open Access Transmission Tariff] to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.” (citing Order No. 1000 at P 328)).

⁴⁵ Order No. 1000 at P 318 (“The Commission’s focus here is on the set of transmission facilities that are evaluated at the regional level and selected in the regional transmission plan for purposes of cost allocation.”).

⁴⁶ Order No. 1000 at P 63.

⁴⁷ Order No. 1000 at P 63.

⁴⁸ Order No. 1000 defined a local transmission facility to mean “a transmission facility located solely within a public utility transmission provider’s retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation.” Order No. 1000 at P 63.

⁴⁹ Order No. 1000-A at P 423.

2. *PJM’s singular intent in proposing section 1.5.8’s competitive window process, the term “Designated Entity,” and the Designated Entity Agreement was to comply with Order No. 1000.*

To comply with Order No. 1000, PJM proposed to add to its transmission planning process a sponsorship model with a competitive proposal window.⁵⁰ That process is set forth in Operating Agreement, Schedule 6, sections 1.5.8(a) through (k) and (m)(2). PJM’s competitive window process is designed to allow incumbent transmission owners and nonincumbent transmission developers to compete to be designated to construct and own and/or finance transmission projects included in the RTEP that are eligible for regional cost allocation.⁵¹ An entity identified to construct a project selected in the competitive window process and included in the RTEP for purposes of cost allocation are called a “Designated Entity” and must execute a Designated Entity Agreement.

In its compliance filing, PJM did not seek any deviation from Order No. 1000’s requirements or that an “independent entity variation” or “regional reliability standard” would be required for the Commission to accept PJM’s Order No. 1000 compliance filing.⁵² Rather, PJM explained that its “specific reforms [] either meet the letter of Order

⁵⁰ See generally PJM’s compliance filings in Docket No. ER13-198.

⁵¹ See Operating Agreement, Schedule 6, sections 1.5.8(c) – (h). PJM’s competitive window process employs the “sponsorship” model, under which an entity who has pre-qualified to be a Designated Entity (whether an incumbent transmission owner or a nonincumbent transmission developer) may submit a project proposal in a competitive window and notify PJM whether or not such entity wishes to be designated rights to the project if the project is selected for inclusion in PJM’s RTEP for purposes of regional cost allocation. See Operating Agreement, Schedule 6, section 1.5.8(a). PJM’s competitive window process also provides for entity-specific criteria to be used in determining whether the entity proposing a project for inclusion in the RTEP shall be designated the project. See Operating Agreement, Schedule 6, section 1.5.8(f).

⁵² The “independent entity variation” standard, is, “in recognition of regional differences, [] more flexible than the ‘consistent with or superior to’ standard. See *Pac. Gas & Elec. Co.*, 179 FERC ¶ 61,184, at P 10 n.16 (2022) (citing *N.Y. Indep. Sys. Operator, Inc.*, 114 FERC ¶ 61,271, at P 3 (2006)).

No. 1000 or, due to the unique nature of PJM’s operations and markets, satisfy the Commission’s ‘consistent with or superior to’ standard recognized in Order No. 1000.”⁵³ In other words, PJM’s Order No. 1000 compliance filing did not intend to amend the Operating Agreement in any manner beyond the scope of what was required to satisfy the requirements of Order No. 1000.

The definitional term of “Designated Entity” was added as part of PJM’s competitive window process. Specifically, Designated Entities are those entities (both incumbent transmission owners and nonincumbent transmission developers) that: (i) meet applicable pre-qualification requirements and (ii) that compete in the competitive window to be the entity designated to construct, own and/or finance transmission projects selected through a competitive proposal window as the more efficient or cost effective solution to be included in the RTEP for purposes of cost allocation.⁵⁴ For projects selected in the competitive window process and included in the RTEP for purposes of cost allocation, PJM designates the entity responsible for seeing that such project gets built as the “Designated Entity” and tenders a Designated Entity Agreement to that entity.⁵⁵

The Designated Entity Agreement was also added as part of PJM’s Order No. 1000 process. As approved in PJM’s Order No. 1000 compliance proceeding, the Designated Entity Agreement was not required for projects selected outside the Order

⁵³ PJM’s First Order No. 1000 Compliance Filing at 2-3 (citing Order No. 1000 at P 149 & 18 C.F.R. § 35.28(c)(4)(ii)).

⁵⁴ *See, e.g.*, First Order No. 1000 Compliance Filing at 49-50.

⁵⁵ Operating Agreement, Schedule 6, section 1.5.8(j).

No. 1000-directed competitive window process,⁵⁶ and the Commission rejected calls to add provisions that would expand the scope of the agreement beyond Order No. 1000 or the Commission’s specific directives to PJM regarding the *pro forma* agreement.⁵⁷

In short, PJM’s compliance filing reforms (e.g., the competitive process and Designated Entity Agreement) applied to projects “selected in the regional transmission plan for purposes of cost allocation”⁵⁸ and did not extend to “a transmission facility in the regional transmission plan but that has not been selected in the [competitive window process].”⁵⁹

3. *Because any amendment to the Operating Agreement is limited to that required “by law” or approved by the Member’s Committee, PJM could not have intended to make changes beyond to scope of the compliance directive.*

In addition to following Order No. 1000’s directives, PJM’s interpretation was consistent with the scope of its authority under the Operating Agreement. That is, PJM’s regional transmission planning protocols are contained within Schedule 6 of the

⁵⁶ See *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 46. In addition, the first whereas clause of the *pro forma* Designated Entity Agreement invokes Order No. 1000 as a basis for the agreement. Tariff, Attachment KK.

⁵⁷ See *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 89 (declining a protestor’s request that the Commission adopt a national *pro forma* agreement addressing all regional transmission planning processes as beyond the scope of this proceeding and stating “Order No. 1000 requires each public utility transmission provider to revise its OATT to demonstrate that the regional transmission planning process in which it participates has established appropriate qualification criteria for determining an entity’s eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, whether that entity is an incumbent transmission provider or a non-incumbent transmission developer”); see also *id.* at P 110 (declining protestor’s request that the Designated Entity Agreement be modified to obligate PJM to assist the Designated Entity in its efforts to obtain the necessary regulatory approvals and permits to construct a project and finding that modifying the Designated Entity Agreement to add such an obligation is beyond the scope of the Designated Entity Agreement proceeding, as neither Order No. 1000 nor the Commission’s directives to PJM to file a Designated Entity Agreement address PJM’s role in facilitating in a Designating Entity’s state permitting and siting process.).

⁵⁸ Order No. 1000 at P 318 (“The Commission’s focus here is on the set of transmission facilities that are evaluated at the regional level and selected in the regional transmission plan for purposes of cost allocation.”).

⁵⁹ Order No. 1000 at P 63.

Operating Agreement, and PJM’s ability to amend the Operating Agreement is limited. PJM cannot amend the Operating Agreement except “by law,” e.g., by order of the Commission, or “only upon . . . approval of the amendment . . . by the Members Committee.”⁶⁰ In other words, PJM does not have FPA section 205 rights to change the Operating Agreement on its own motion. Rather, if PJM desires to amend the Operating Agreement, it must submit a section 206 filing (like the PJM 206 Filing).

Accordingly, to interpret the Operating Agreement as requested by Complainants so as to expand the meaning of the provisions beyond PJM’s authority when it submitted those provisions would present a countervailing filed rate doctrine problem. Section 18.6 puts the world on notice that PJM’s authority to amend the Operating Agreement is limited to only that directed by law or by the Members Committee. Further, PJM explained that its “specific reforms [including section 1.5.8] either meet the letter of Order No. 1000 or, due to the unique nature of PJM’s operations and markets, satisfy the Commission’s ‘consistent with or superior to’ standard recognized in Order No. 1000.”⁶¹ Therefore, at the time of filing, constructive and actual notice were provided that PJM’s compliance filing was limited to only complying with Order No. 1000. To now find that section 1.5.8—as proposed by PJM—somehow extends beyond PJM’s authority to

⁶⁰ Operating Agreement, section 18.6 (“Except as provided by law or otherwise set forth herein, this Agreement, including any Schedule hereto, may be amended, or a new Schedule may be created, only upon: (i) submission of the proposed amendment to the PJM Board for its review and comments; (ii) approval of the amendment or new Schedule by the Members Committee, after consideration of the comments of the PJM Board, in accordance with Operating Agreement, section 8.4, or written agreement to an amendment of all Members not in default at the time the amendment is agreed upon; and (iii) approval and/or acceptance for filing of the amendment by FERC and any other regulatory body with jurisdiction thereof as may be required by law.”).

⁶¹ First Order No. 1000 Compliance Filing at 2-3 (citing Order No. 1000 at P 149 & 18 C.F.R. § 35.28(c)(4)(ii)).

propose the language and PJM's stated intent for the language would contradict the notice given at the time of filing.

Accordingly, the Operating Agreement's limitation on PJM's authority to amend the Operating Agreement necessarily shapes PJM's intent at the time of filing and must inform the interpretation of Operating Agreement language.⁶² If specific language was added to comply with a Commission directive, then the language must necessarily be read in "its regulatory context" to implement that directive and no more broadly.⁶³ To read more meaning or scope into language added to comply with a specific Commission directive would violate the limitations in the Operating Agreement, as to do so would indirectly allow amendments that were neither directed by law (e.g., Commission order) nor approved by the Members Committee. Moreover, if the language went beyond the Order No. 1000's compliance directive, the Commission would have rejected it, as "[t]he Commission has long established that compliance filings must be limited to the specific directives ordered by the Commission" and "[t]he purpose of a compliance filing is to make the directed changes and the Commission's focus in reviewing them is whether they comply with the Commission's previously stated directives."⁶⁴

⁶² See *Devon Power LLC v. ISO New England, Inc.*, 114 FERC ¶ 61,259, at P 24 (2006) ("In determining the meaning of an agreement, the Commission applies the traditional rules of contract construction. Pursuant to these rules, the Commission must ascertain the intent of the parties by considering the language of the document itself, its purpose, and the circumstances of its execution and performance. Thus, the Commission looks to the language of the agreement and its regulatory context." (footnotes omitted)).

⁶³ *Id.*

⁶⁴ *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079, at P 60 (2005); see also, e.g., *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,244, at P 50 (2020) ("We reject as beyond the scope of this proceeding PJM's proposal to provide additional uplift payments. . . . The Commission did not direct PJM to implement any of these proposed uplift payments in the Order on Paper Hearing. *Compliance filings must be limited to the specific directives ordered by the Commission.*" (emphasis added)); *Sea Robin Pipeline Co.*, 138 FERC ¶ 61,131, at P 32 (2012) ("A compliance filing may not include new proposed tariff provisions not addressed in the Commission's order, and the Commission will reject a compliance filing that goes beyond the scope of the directives in the Commission's order."); *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,186, at P 28 (2010) (rejecting portions of a compliance filing that

Because Order No. 1000 directed PJM to add the competitive solicitation process in section 1.5.8⁶⁵ and the Commission required PJM to include a *pro forma* Designated Entity Agreement as part of its Order No. 1000 competitive window process,⁶⁶ the compliance language can only apply to projects within the scope of the compliance directive.⁶⁷ PJM cannot have added provisions to the Operating Agreement beyond what was necessary to comply with Order No. 1000. PJM could not have meant for projects under sections 1.5.8 (g), (h), (l) and (m)(1) to require a Designated Entity Agreement because they are outside of the scope of Order No. 1000, i.e., not selected within a competitive window process and not regionally allocated. Such interpretation of these provisions would indirectly allow amendments that were neither directed by law (e.g., Commission order) nor approved by the Members Committee, in violation of Operating Agreement, section 18.6.

In contrast, Complainants proffered reading of section 1.5.8 to require application of Order No. 1000's reforms (i.e., Designated Entity Agreements) to projects outside the scope of the compliance directive would find no basis in the Commission's directives regarding the language, PJM's intentions in submitting the language, or the

"exceed the scope of compliance and include material that should have been filed under section 205 of the FPA"); *Entergy Servs., Inc.*, 130 FERC ¶ 61,264, at P 54 (2010) ("The Commission has stated repeatedly that compliance filings are to address only the specific matters ordered by the Commission.").

⁶⁵ See Order No. 1000 at P 313.

⁶⁶ See *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128, at P 261 ("We direct PJM to file its *pro forma* Designated Entity Agreement within 60 days of the date of issuance of this order."). In addition, the first clause of the *pro forma* Designated Entity Agreement invokes Order No. 1000 as a basis for the agreement. Tariff, Attachment KK.

⁶⁷ See Order No. 1000 at P 318 n.299 ("In order for a transmission facility to be eligible for the regional cost allocation methods, the region must select the transmission facility in the regional transmission plan for purposes of cost allocation. For those facilities not seeking cost allocation, the region may nonetheless have those transmission facilities in its regional transmission plan for information or other purposes, and then having such a facility in the plan would not trigger regional cost allocation.").

Commission's orders adopting the language, and would be inconsistent with PJM's obligations as to how Operating Agreement changes beyond compliance changes are to be approved by the Members. Thus, Complainants' interpretation should be rejected.

4. *PJM's consistent course of performance since the outset of implementing the competitive window process further demonstrates PJM's intent to only comply with Order No. 1000.*

The Commission has rightly recognized that a party's course of performance "is admissible to ascertain the intent of the parties when the intent has been imperfectly expressed in ambiguous contract language,"⁶⁸ and courts have found "that course-of-performance evidence 'of course is probative' in the context of a FERC contract interpretation dispute."⁶⁹ The Complaint acknowledges that PJM's course of performance for the past eight years, "since the effective date of PJM's Order No. 1000-compliant regional planning process," has required Designated Entity Agreements only for those transmission projects that (i) were selected through a competitive proposal window *and* (ii) included in the RTEP for cost allocation purposes.⁷⁰ This consistency provides an important context within which to interpret the provisions of the Operating Agreement. Such longstanding course of performance clearly demonstrates that from the outset PJM did not intend, nor did Order No. 1000 or the Commission require,⁷¹ that PJM tender a Designated Entity Agreement to incumbent transmission owners for projects that

⁶⁸ *Sw. Power Pool, Inc.*, 160 FERC ¶ 61,115, at P 45 (2017); *see also Sw. Power Pool, Inc. v. FERC*, 736 F.3d 994, 999 (D.C. Cir. 2013); *Mid-Continent Area Power Pool*, 92 FERC ¶ 61,229, at 61,755 (2000) ("Extrinsic evidence (which may include the parties' course of performance) is admissible to ascertain the intent of the parties when that intent has been imperfectly expressed in ambiguous contract language, but is not admissible either to contradict or to alter express terms." (emphasis added)).

⁶⁹ *Entergy Servs. Inc. v. FERC*, 568 F.3d 978, 984 (D.C. Cir. 2009) (quoting *S.D. Pub. Utils. Comm'n v. FERC*, 934 F.2d 346 (D.C. Cir. 1991)).

⁷⁰ Complaint at 4, 22.

⁷¹ *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).

were not subject to the requirements of Order No. 1000 (e.g., projects not selected through competitive window).⁷²

For the Commission to adopt the Complainants' proffered interpretation, the Commission would need to find that all parties were operating *for nearly a decade* under the wrong understanding, and find that PJM has been wrongly implementing the Operating Agreement *since the beginning*. As explained above, such an outcome would contradict PJM's actual and constructive intent, and the Commission's intent in adopting section 1.5.8 *to comply* with Order No. 1000.

C. Contrary to the Complaint, Expanding the Applicability of Designated Entity Agreements Beyond the Scope of Order No. 1000 is Not "Good Policy," but Rather Unjustly and Unreasonably Raises Consumer Costs Without Sufficient Offsetting Benefit.

Contrary to Complainants, applying a Designated Entity Agreement to "all projects included in the [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"⁷³ is not "good policy."⁷⁴ Instead, such a sweeping, unanticipated application of Designated Entity Agreements would increase consumer costs without sufficient offsetting benefit.

⁷² 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).

⁷³ Complaint at 4.

⁷⁴ Complaint at 20.

1. *The Designated Entity Agreement security requirement increases consumer costs.*

The Commission has recognized that the Designated Entity Agreement security requirement increases project costs for both incumbent transmission owners and nonincumbent developers⁷⁵ and absent default or abandonment by a nonincumbent developer, such costs are borne by consumers when the project goes into service.⁷⁶

The increased costs stems from the Designated Entity Agreement blanket requirement to post security equivalent to three percent of the estimated cost of the project.⁷⁷ The security provision was added to the Designated Entity Agreement to buffer the financial impact and risk to the incumbent transmission owner who must assume responsibility and costs in the event of a default or abandonment by the nonincumbent developer. Security was also included to protect customers in the event the nonincumbent developer defaulted or abandoned the project by ensuring that the incremental cost of construction resulting from having to reassign the project to the incumbent transmission owner were covered through the security paid for by the nonincumbent developer rather than by customers.

The Designated Entity Agreement defines the rights and obligations of the Designated Entity with regard to the construction of an RTEP project that is selected in a competitive window process and regionally cost allocated. The requirements of the

⁷⁵ See *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,121, at P 34.

⁷⁶ See *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,121, at P 22 (“[T]he security requirement in the Designated Entity Agreement . . . is necessarily reflected in the costs of a proposed project subject to that agreement.”).

⁷⁷ See Tariff, Attachment KK, section 3.0 (“In accordance with Section 1.5.8(j) of Schedule 6 of the Operating Agreement, Designated Entity shall provide Transmission Provider a letter of credit as acceptable to Transmission Provider (Designated Entity Letter of Credit) or cash security in the amount of \$_____, which is three percent of the estimated cost of the Project.”).

Designated Entity Agreement are substantial, imposing time, resource, and expense burdens on both PJM and the Designated Entity, increasing the cost of building transmission, with these additional costs passed on to customers. The agreement's security, milestone, and assignment requirements, among other things, are designed to mitigate perceived risk from nonincumbents, but is required for both incumbents and nonincumbents when they are similarly situated, i.e., when they are competing for projects in the competitive window process.⁷⁸ This extra cost is not necessary for projects selected outside a competitive window process and not regionally cost allocated because such projects are not up for competition. Thus, nonincumbent transmission owners are not able to compete in those circumstances and the requirement to treat them similarly is does not apply. Therefore, there are no benefits to requiring a Designated Entity Agreement in this circumstance that would justify the additional costs. Imposing a Designated Entity Agreement obligation on additional projects in PJM will only raise the cost of required to construct transmission projects, to the detriment of consumers.

Further, a nonincumbent developer is not subject to the any contractual obligation to build a reliability project (like under section 4.2 of the Consolidated Transmission Owners Agreement) and is not obligated by law to provide safe and reliable electric service to customers. Consequently, if a nonincumbent developer becomes insolvent or

⁷⁸ *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021, at P 28. The Commission has made “no findings . . . 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,” and would therefore be required to execute a Designated Entity Agreement. *Id.* at P 33 n.61. The Commission stated that “[i]ts determinations in the July 2018 Order [finding that incumbents and nonincumbents were similarly situated] 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.” *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,121, at P 12 n.23.

decides not to construct the designated project, the nonincumbent developer is not prevented by law from abandoning its RTEP project.⁷⁹

For unsponsored projects under section 1.5.8(g), (h), (I), and (m)(1), however, there is no defaulting entity as the incumbent transmission owner itself must follow through and build the reliability project as required by the Operating Agreement and the Consolidated Transmission Owners Agreement.⁸⁰ There is no “default reassignment” mechanism in the Operating Agreement for an incumbent transmission owner failing to meet its obligations. In other words, the security was designed to provide the existing Consolidated Transmission Owners Agreement signatory with financial protection from having to pick up and complete a project that a new designated entity defaulted on. But in this case, there is no other defaulting entity as the initial designation and the obligation to build and complete the project all involve the same single entity. Thus, as a policy matter, the end result of effectuating the Complainants’ section 1.5.8 interpretation would be to raise the costs of *all* transmission projects paid for by the customers without accomplishing the “default protection” that security was designed to provide.

2. *Contrary to Complainants, Designated Entity Agreements do not provide any additional “cost transparency.”*

Complainants also contend Designated Entity Agreements “can provide cost transparency.”⁸¹ Not so. Cost transparency is the same for all projects, and a Designated

⁷⁹ The remedy for abandoning the designated project is termination of the Designated Entity Agreement and loss of security. The security required under the Designated Entity Agreement, section 3.0 is a letter of credit or cash in the amount of three percent of the estimated cost of the project. Tariff, Attachment KK, section 3.0.

⁸⁰ See Operating Agreement, Schedule 6, section 1.7; see also Consolidated Transmission Owners Agreement, Rate Schedule FERC No. 42, section 4.2.

⁸¹ See Complaint at 20.

Entity Agreement adds no additional layer of cost transparency. PJM maintains a webpage dedicated to “Project Status and Cost Allocation,” which provides the estimated cost for each project, plus each project’s “required” date, as well as its “projected” and “actual” in-service dates.⁸² PJM updates the information on this webpage quarterly. In addition, as noted in the Complaint,⁸³ PJM regularly reports on the status of ongoing projects and cost changes in its stakeholder process, e.g., the Transmission Expansion Advisory Committee. No special “cost transparency” treatment is given for projects constructed pursuant to a Designated Entity Agreement or the Consolidated Transmission Owners Agreement; i.e., cost changes for projects associated with a Designated Entity Agreement are not reported any sooner or in any different manner. Further, most Designated Entity Agreements are conforming and, therefore, reported in the PJM’s Electric Quarterly Report. Only Designated Entity Agreements with non-conforming terms and conditions are filed with the Commission. In sum, as a rule, there is no “extra” cost transparency provided by Designated Entity Agreements nor have Complainants laid out facts to prove this sweeping but unsubstantiated claim.

III. ADMISSIONS AND DENIALS PURSUANT TO 18 C.F.R. § 385.213(c)(2)(i)

Pursuant to Rule 213(c)(2)(i) of the Commission’s rules of Practice and Procedure,⁸⁴ PJM affirms that any allegation in the Complaint is not specifically and expressly admitted above is denied.

⁸² See *Project Status & Cost Allocation*, PJM Interconnection, L.L.C., <https://www.pjm.com/planning/project-construction> (last visited Aug. 29, 2022).

⁸³ See Complaint at 20.

⁸⁴ 18 C.F.R. § 385.213(c)(2)(i).

IV. AFFIRMATIVE DEFENSES PURSUANT TO 18 C.F.R. § 385.213(c)(2)(ii)

PJM's affirmative defenses are set forth above in this answer, and include the following, subject to amendment and supplementation.

1. The Complainants have failed to satisfy its burden of proof under FPA section 206 (16 U.S.C. § 824e), and have not demonstrated that PJM violated any Commission order, the Tariff, the Operating Agreement, Reliability Assurance Agreement, the Consolidated Transmission Owners Agreement, or any other Commission-jurisdictional governing document.

V. COMMUNICATIONS AND SERVICE

PJM requests that the Commission place the following individuals on the official service list for this proceeding:⁸⁵

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⁸⁵ To the extent necessary, PJM requests a waiver of Commission Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3), to permit more than two persons to be listed on the official service list for this proceeding.

VI. CONCLUSION

For the reasons set forth in this answer, the Commission should dismiss the Complaint for the reasons provided herein.

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August 29, 2022

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 29th day of August 2022.

/s/ Uju Okasi

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