



Innovation and Investment in Energy

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Dear Chris,

Thank you for the opportunity to outline some of LS Power's views on the PJM Designated Entity Agreement ("DEA").

The PJM Operating Agreement requires all Designated Entities to execute the DEA for all Immediate Need, Short-Term, and Long-lead Projects included in the Regional Transmission Expansion Plan ("RTEP") and approved by the PJM Board. This is also consistent with PJM representations to FERC in its original 2012 and 2014 transmittal letters to FERC. LS Power does not believe Supplemental Projects or Attachment M-3 Projects are required to sign a DEA under the existing Operating Agreement.

There is no ambiguity in the PJM Operating Agreement, as the definition of Designated Entity states:

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

The Projects referenced above are defined in the PJM Operating Agreement as follows:

Immediate-need Reliability Project shall mean a reliability-based transmission enhancement or expansion that the Office of the Interconnection has identified to resolve a need that must be addressed within three years or less from the year the Office of the Interconnection identified the existing or projected limitations on the Transmission System that gave rise to the need for such enhancement or expansion pursuant to the study process described in Operating Agreement, Schedule 6, section 1.5.3.

Short-term Project shall mean a transmission enhancement or expansion with an in-service date of more than three years but no more than five years from the year in which, pursuant to Operating Agreement, Schedule 6, section 1.5.8(c), the Office of the Interconnection posts the violations, system conditions, or Public Policy Requirements to be addressed by the enhancement or expansion.



Long-lead Project shall mean a transmission enhancement or expansion with an in-service date more than five years from the year in which, pursuant to Operating Agreement, Schedule 6, section 1.5.8(c), the Office of the Interconnection posts the violations, system conditions, or Public Policy Requirements to be addressed by the enhancement or expansion.

Economic-based Enhancement or Expansion shall mean an enhancement or expansion described in Operating Agreement, Schedule 6, section 1.5.7(b) (i) – (iii) that is designed to relieve transmission constraints that have an economic impact.

There is no Designated Entity Agreement carve-out for projects designated pursuant to Sections 1.5.8(l), (m)(2), (n) or (p) under these definitions of Designated Entity, Immediate Need Projects, Short-term Projects, Long-Lead Projects, or Economic-based Enhancement or Expansion. Upgrades, Section 1.5.8(l) projects, Immediate Need Projects, unsponsored projects, and Projects under 200 kV – all should be executing Designated Entity Agreements today, in addition to other Short-term and Long-lead Projects.

Similarly, Sections 1.5.8(i) and (j), which set forth the process for designating an entity as the Designated Entity, contain no carve-outs. The Operating Agreement at Section 1.5.8(i) requires PJM to “notify the entities that have been designated as the Designated Entities for projects included in the Regional Transmission Expansion Plan of such designations.” The notification must include the needed in-service date and date by which all necessary state approvals should be obtained. Section 1.5.8(j) requires an entity, including an existing transmission owner or nonincumbent developer, notified of its Designated Entity status to execute the DEA within 60 days of receiving it from PJM. **This DEA execution is required under Section 1.5.8(j) for an entity to be able to retain its Designated Entity status.**

The broad applicability of the requirement to execute the DEA is also consistent with PJM’s statements in its Order No. 1000 compliance filings. In its transmittal letter to FERC, PJM specifically addressed “what if” scenarios for Designated Entities in its original Order No. 1000 Filing. For instance, on pages 70-71 of PJM’s First Compliance Filing, filed on October 5, 2012 in Docket No. ER13-198, PJM stated that if there is insufficient time to hold a competitive window to solve an immediate need, then PJM will propose a solution. If that solution is included in the RTEP, then **“PJM shall designate the Transmission Owner(s) in the Zone(s) where the project is located to be as a Designated Entity.”** PJM also stated in its filing on page 70 that unsponsored Short-Term Projects and Long-lead Projects (as designed by PJM) would be a Designated Entity. In PJM’s Second Compliance Filing on pages 44-45, filed on July 22, 2013, PJM discussed the requirement to execute the DEA. PJM unequivocally stated that all Designated Entities must execute the DEA. There is no discussion of limitations on the applicability of the requirement to execute the DEA.

The stakeholder process to design and formulate the PJM Designated Entity “was fully vetted in the PJM stakeholder process”, as PJM stated in its July 14, 2014 Transmittal Letter on the Designated Entity Agreement (page 12). PJM further stated on Page 12:

Between September 2013 and June 2014, the Agreement was discussed at the Regional Transmission Planning Process Task Force (“RPPTF”) at eleven meetings. In addition, stakeholders were provided and took advantage of ample opportunities to provide written comments and suggested revisions to the terms and conditions of the Agreement. A straw poll was conducted at the RPPTF between May 9-16, 2014 and revealed that 75 out of 91 companies



responding could support the version of the Designated Entity Agreement being filed today.¹ The Agreement was submitted to the Markets and Reliability Committee on May 29, 2014 for review and comment and subsequently endorsed by the Members Committee at the June 26, 2014 meeting.

With eleven stakeholder meetings on the DEA, it was a thorough and thoughtful process.

The clarity of PJM's filings and the Operating Agreement provisions noted should have put this issue to rest, but if not, any question was resolved in 2018. In 2018, in Docket No. ER18-1647, PJM proposed revisions to the Operating Agreement that would exempt from executing the DEA transmission owners required to be designated under Section 1.5.8(l) to build certain transmission additions included in the RTEP. Section 1.5.8 (l) projects specifically include in the PJM Operating Agreement: a Transmission Owner Upgrade, a project located solely within a Transmission Owner's Zone and the costs of the projects are cost allocated solely to the Transmission Owner's Zone, or located solely within a Transmission Owner's zone and is not selected in the RTEP for purposes of cost allocation. **In 2018, all of these categories of Section 1.5.8(1) Projects were proposed to FERC to not be required to execute a DEA.**

PJM argued that the Consolidated Transmission Owners Agreement ("CTOA") is comparable to the DEA, so that executing the DEA is duplicative. **The Commission rejected PJM's proposal that Section 1.5.8 (l) Projects not sign a DEA. Clearly in LS Power's view, upgrades and regionally planned projects but cost allocated 100% to the local zone require a DEA today, because FERC did not approve the 2018 PJM Filing exempting them from the DEA requirements; these category of PJM projects are explicitly listed under Section 1.5.8(l).**

In their rejection, FERC found that certain terms of the DEA are more stringent than the CTOA, including the requirement to provide security and a project development schedule with milestones, and the limitations on assignment. *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,021 (2018). As for the requirement to provide milestones, the Commission noted that the DEA requires more detailed milestones throughout the development of the transmission projects included in the RTEP pursuant to Section 1.5.8 and that the consequences for failing to meet a milestone in the DEA could result in the project being reassigned, the DEA terminated, and the loss of security. *Id.* at PP 47-48. On rehearing, over a year later, the Commission affirmed its findings and determination. *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,121 (2019). The result of the proceeding is that the *status quo* remained in place – and FERC specifically stated that the *status quo* remained in place in that Order and very clearly rejected the notion that any Designated Entity notifications under Section 1.5.8(l) are exempt from the DEA requirement.

Therefore, all developers, whether incumbent transmission owner or non-incumbent developer, designated to build a transmission project included in the RTEP and approved by the PJM Board pursuant to Section 1.5.8 must execute the DEA. **If a project meets the OA definition of Short-Term Project, Long-lead Project, or Immediate Need Project, it must execute a DEA.** Credit support of 3 percent is required pursuant to Section 3 of the Designated Entity Agreement, and this requirement is part of the pro-forma, FERC approved Designated Entity Agreement. If PJM wishes to require different or no credit support requirements associated with a given DEA, the non-conforming DEA must be filed at FERC for approval. The Operating Agreement allows this flexibility on credit support (Section 1.5.8(j)), but each Project DEA

¹ LS Power would note that this version of the DEA contained the mandatory 3 percent credit support requirements.



must be filed at FERC for approval, as a non-conforming DEA term and condition if it is not 3% credit support required under the pro-forma Agreement.

In recent presentations, PJM Staff has suggested that those seeking PJM compliance with its obligations to require a DEA for all transmission projects included in the RTEP pursuant to Section 1.5.8, seek to expand the requirement to projects not selected in the RTEP for regional cost allocation. This assertion is inaccurate. First, all transmission projects included in the RTEP pursuant to Section 1.5.8 and approved by the PJM Board are selected in the RTEP for regional cost allocation. In some instances the regional cost allocation methodology, when applied pursuant to its terms, results in cost allocation to a single transmission owner's zone. This does not change the fact that the transmission projects included in the RTEP pursuant to Section 1.5.8, which are projects subject to PJM's regional planning and PJM Board approval, are transmission facilities selected in the RTEP for regional cost allocation. *See*, Section 1.5.8(l)(ii).

In addition, even if such projects could be said to be projects "not selected in the Regional Transmission Expansion Plan for purposes of cost allocation" under Section 1.5.8(l)(iii), PJM Staff's assertion that this is an expansion of the DEA requirement under the Operating Agreement was rejected by FERC. When PJM sought to exclude projects from signing a DEA if referenced in 1.5.8(l), FERC rejected the exemption proposal in 2018 notwithstanding that 1.5.8(l)(iii) specifically references "located solely within a Transmission Owner's Zone and is **not selected in the Regional Transmission Expansion Plan for purposes of cost allocation.**" Thus, there is simply no viability to PJM's position that the call for compliance with the Operating Agreement is an effort to expand the DEA requirement.

This Designated Entity designation is to be contrasted with Supplemental Projects or Attachment M-3 projects, which are added to the RTEP but not selected for regional cost allocation and not approved by the PJM Board. To be clear, LS Power does not believe Supplemental Projects or Attachment M-3 Projects are required to sign a DEA under the existing Operating Agreement. Rather, the scope of Long-lead Projects and Short-term Projects is restricted in their OA definitions to the projects where the Office of the Interconnection posts the violations, system conditions, or Public Policy Requirements to be addressed by the enhancement or expansion. **Under the Short-term or Long-lead Project definitions, the DEA test is not whether the need was "competitive", rather the DEA test is whether the violation, system condition or Public Policy Requirement is posted by PJM.**

As steward of ratepayer investments, the DEA increases transmission owner accountability and transparency in the development of transmission projects included in the RTEP pursuant to Section 1.5.8, particularly Immediate-need Reliability Projects. PJM's 2012 transmittal letter to FERC specifically stated that non-competitive Immediate Need Projects have the Transmission Owner as the Designated Entity under one of its "what if" scenarios outlined to FERC, along with other PJM-planned Short Term and Long-lead Projects. Therefore, a Designated Entity Agreement **MUST** be executed for non-competitive Immediate Need Projects.²

The DEA has public interest merit. The DEA requires transmission developers to commit to a development schedule approved by PJM, holds the developer accountable for missing set deadlines, and allows PJM to re-evaluate a project or collect posted credit support for missing milestones, including an

² The PJM Operating Agreement definition of Immediate need Reliability Project definition also points to no difference in DEA treatment between Immediate Need competitive and non-competitive projects.



Immediate-need Reliability Project, and determine whether there is an alternative. Non-competitive Immediate-need Reliability Projects continue to enter service well after the projected need by date with costs and scopes ballooning over time. For instance, at a recent Transmission Expansion Advisory Committee meeting, APS revised the cost estimate for an Immediate-need Reliability Project assigned to it, without a DEA as required, from \$41.4 million to \$143.4 million, an increase of \$102 million.³

LS Power believes that it is in all stakeholder's interests that PJM studiously adhere to its Operating Agreement and has been surprised that PJM sees the current Operating Agreement as a problem. The solution is to require compliance with the existing DEA requirement: all entities designated to construct, own, operate, maintain, and finance transmission projects included in the RTEP pursuant to Section 1.5.8 must execute a DEA. This includes: all Immediate Need Projects⁴, Projects under 200 kV⁵, Upgrades,⁶ all competitive window projects, and all PJM-planned projects that are 100% cost allocated to the local zone.⁷ **Designated Entities with projects not yet in-service should be required to execute a DEA now (within 30 days), in compliance with the Operating Agreement requirements.**

After full compliance, to the extent that PJM Staff decide to move forward with a proposal to revise the existing Operating Agreement requirements, potential OA Schedule 6 changes could be vetted through a stakeholder process under the direction of the PJM Members Committee. Stakeholders should have the opportunity to weigh the benefits of requiring a DEA for all transmission projects included in the RTEP pursuant to Section 1.5.8 with the alleged benefits, if any, of limiting the applicability of the DEA requirement. In that open stakeholder process related to the potential changes, LS Power would advocate that acceptable future policy could be that PJM-planned and PJM-Board approved Projects under a capital cost estimate of \$20 million could be eligible for an exception from the Designated Entity Agreement requirement. This position is consistent with the \$20 million threshold established on the Market Efficiency Project side, as a \$20 million project is de minimis in size and does not need to be re-evaluated.⁸

We very much appreciate your attention to this pressing compliance issue.

Respectfully,

A handwritten signature in blue ink that reads "Sharon K. Segner".

Sharon K. Segner | Vice President

³ See pages 6-10, <https://www.pjm.com/-/media/committees-groups/committees/teac/2021/20210406/20210406-item-08-reliability-analysis-update.ashx>

⁴ PJM's Order No. 1000 transmittal letter was clear on Immediate Need Projects.

⁵ These violations are posted by PJM.

⁶ FERC rejected the Section 1.5.8(I) DEA exclusion in 2018. Upgrades are a Section 1.5.8(I) exclusion.

⁷ FERC rejected the Section 1.5.8(I) DEA exclusion in 2018. This is also a Section 1.5.8(I) exclusion.

⁸ Please see PJM Operating Agreement, Section 1.5.7(f).