

# Concerns over a DEA Quick Fix process

Market Reliability Committee

May 25, 2022

Greg Poulos

This topic is not appropriate for a quick fix – stakeholders should vote “no” on the proposal.

### 8.6.1 “Quick Fix”

From time to time, there may be issues identified by PJM, FERC, the Market Monitor, or Stakeholders that are urgent and/or very simple or straightforward to correct, and require no stakeholder engagement. Issues that meet these criteria may be brought before the appropriate committee in the form of a Problem Statement and Issue Charge along with a documented solution and implementation schedule, and may be voted upon at first read if timing requires it.

<https://www.pjm.com/-/media/documents/manuals/m34.ashx>. (Emphasis added.)

# This topic is complicated

PJM included some Q&As as part of the PC presentation. Some of the responses create more questions. For example, PJM Q&A May #5, below:

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

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

<https://www.pjm.com/-/media/committees-groups/committees/pc/2022/20220510/item-07f---designated-entity-agreement-faq---05092022.ashx>

# A comprehensive process is needed

- The Advocates have questions;
- The Advocates would like input into the possible solutions;
- This process has been on PJM's radar for at least a year, yet, it has avoided stakeholder process; and
- Stakeholder have expressed significant concerns around this process – over seventy voters said “no” to the quick fix process at the PC.

# Consumers have questions

## **Advocates need more information regarding the following:**

1. Provide further education sessions on the status quo policies and expectations for DEAs and the ambiguities that might exist.
2. Provide a comparison of the application of any ambiguities in the rules for existing and planned resources.
3. Provide further education on the relevant FERC filings – include the Order 1000 compliance filing, July 13, 2018 Order Accepting Tariff Revisions in Part and Rejecting Tariff Revisions in Part (Docket No. ER18-1647-000), and the 2021 compliance filing material. For example, the July 13, 2018 FERC order found the DEAs to include more stringent:
  - Security requirements (paragraphs 36-42 of the 2018 Order)
  - Milestones/Development Schedule (paragraphs 43-49) – including the reporting of quarterly progress (paragraph 47)
  - Assignment (paragraphs 50 – 55)
4. Provide education on the relevant past stakeholder discussions where the current DEA policy was developed and any information regarding those discussions. (E.g. Why was three percent established as the appropriate amount for the letter of credit?)

Consumers would like to have input into the solutions

- Why is change necessary and important?
- What is the cost benefit analysis for the current process and changes?
- How will the proposals impact competition in the wholesale transmission space?
- Ensuring oversight of the grid is important. How do any proposals impact the expected oversight?.

# Timeline of key events

- I initially raised questions about this language on May 11th, 2021 after discussions with concerned advocates. I received significant aspects of the answers in April, 2022. While helpful, some of those answers do not match answers from specific transmission owners.
- Timeline:
  - 1. May 11<sup>th</sup> – initial concerns raised by me.**
  2. June TOA\_AC – PJM presents the issues at a TOA-AC meeting
  1. August PC – informational item (virtually the same as the TOA-AC)
  2. September PC - informational - this is what PJM will be doing
  3. PJM files solution at FERC as a compliance filing on September 1, 2021
    - Procedural and substantive objections were raised
    - FERC rejected the filing on procedural grounds on February 8, 2022
  4. April 12 – truncated - educational session focused on PJM’s Order no. 1000 compliance filing specific to the DEA and PJM’s use of the DEA. *Session was only two hours long and discussion had to be cut off.*
  5. PJM decides to go with a quick fix with their solution – the exact same solution filed on September 1, 2021:
    1. May PC meeting - almost an hour discussion prior to the vote.
    2. Seventy-two “no” votes were cast against a quick fix process during that vote.

# DE Public Advocate Issue Charge

## Quick Fix

- Leaves questions on the table.
- Leaves frustrations with implementation
- Ignores direct language from a FERC filing
- Provides a solution that would modify stakeholder positions without stakeholder engagement
- Provides a solution that impacts competition

## Proposed Issue Charge

- Allows for further education to provide an understanding of the process and milestones
- Preserves competition in the transmission space
- Provides an opportunity for the stakeholder process to be utilized
- Encourages a swift process by utilizing a Sr. Task Force



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# Appendix

Slides to consider adding

# Answers from PJM contradict FERC Order

## 2018 FERC order on the subject

### PJM statement at April MRC

33. We find that the terms and conditions of the Consolidated Transmission Owners Agreement are less stringent than those of the Designated Entity Agreement, and accordingly, we find that PJM's proposal would provide an advantage to incumbent transmission owners that are the Designated Entity responsible for developing a transmission project selected in the RTEP for purposes of cost allocation pursuant to Schedule 6, section 1.5.8(1).<sup>61</sup>

<sup>58</sup> *Id.* P 12.

<sup>59</sup> *Id.* (internal citations omitted).

<sup>60</sup> Under the PJM tariff, incumbent and nonincumbent transmission developers may submit their proposed regional transmission solutions, including, for example, Transmission Owner Designated Projects, to address a regional transmission need in a PJM competitive proposal window. PJM uses the same process and criteria to select the more efficient or cost-effective transmission solution from the submitted proposed transmission solutions. If PJM selects a Transmission Owner Designated Project as the more efficient or cost-effective transmission solution, PJM then designates it to the incumbent transmission owner under Schedule 6, section 1.5.8(1). PJM Transmittal at 5; PJM Interconnection, L.L.C., Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8 (Development of Long-lead Projects, Short-term Projects, Immediate-need Reliability Projects, and Economic-based Enhancements or Expansions) (16.0.0).

<sup>61</sup> Not all of the transmission projects that PJM must designate to the incumbent transmission owner under Schedule 6, section 1.5.8(1) of the Operating Agreement, i.e.,


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34. PJM asserts that any different treatment of incumbent and nonincumbent transmission developers caused by its proposal occurs only after project proposals have been evaluated against each other and after applying the same criteria to select the more efficient or cost-effective solution. However, the less stringent requirements in the Consolidated Transmission Owners Agreement that would apply to an incumbent transmission owner that proposes a Transmission Owner Designated Project could provide the incumbent transmission owner with an advantage in PJM's evaluation process. The less stringent requirements in the Consolidated Transmission Owners Agreement also could spare an incumbent transmission owner from a breach (and the associated remedies) that would otherwise be triggered if it executed the Designated Entity Agreement.<sup>62</sup> Although PJM argues that the proposal to exempt incumbent transmission owners from the requirement to execute a Designated Entity Agreement in certain cases will further administrative efficiency, any such benefits do not overcome



Rationale for PJM's Approach

- The DEA does not provide additional protection to consumers beyond that already covered under the provisions of the Consolidated Transmission Owners Agreement (CTOA).

PJM Planning Committee Meeting, May 10, 2022, Item 7a.  
Application of Designated Entity Agreement, slide 3.

# Answers from PJM contradict FERC Order, Cont'd

## **b. Milestones/Development Schedule**

43. We find that the Consolidated Transmission Owners Agreement's milestones requirement are less stringent than the milestones requirements in the Designated Entity Agreement and could disadvantage a nonincumbent transmission development when

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<sup>69</sup> PJM Interconnection, L.L.C., Intra-PJM Tariffs, OA Schedule 6, § 1.7 (Obligation to Build) (2.0.0)) (covering exceptions and conditions of this obligation); Schedule 6, Section 1.5.8(k) (Failure of Designated Entity to Meet Milestones) (covering incumbent transmission owners failure to meet milestones); and PJM, Rate Schedules, TOA (Rate Schedule 42), Article 4, section 9.7.1. (0.0.0) (covering incumbent transmission owner breach and default).

<sup>70</sup> NYISO 2015 Order, 153 FERC ¶ 61,341 at P 40 (additional citation omitted).

<sup>71</sup> *Id.* PP 45-46.

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competing for transmission projects. The Designated Entity Agreement requires a Designated Entity to submit a project development schedule that includes milestone dates.<sup>72</sup>

44. As noted in Article 4.1 of the Designated Entity Agreement, failure to meet any milestone date shall constitute a breach under the agreement.<sup>73</sup> Under the Designated Entity Agreement, PJM has the option to reasonably extend the milestone date. Also, under the Breach and Default provisions of the Designated Entity Agreement, after providing an opportunity to cure the breach, PJM may conduct a reevaluation of the project, and PJM may retain both the project in the RTEP and the breaching party as the Designated Entity.<sup>74</sup> In all other cases, including where PJM decides to reassign the project to the transmission owner in whose zone the project is located, the breaching party will be in default,<sup>75</sup> and PJM may then draw upon the Designated Entity's letter of security.<sup>76</sup>

45. In contrast, the Consolidated Transmission Owners Agreement only requires that a transmission owner provide "an acknowledgement of such designation or reasons why

# Answers from PJM contradict FERC Order

## 2018 FERC order on the subject

### PJM statement at April MRC

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

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

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

34. PJM asserts that any different treatment of incumbent and nonincumbent transmission developers caused by its proposal occurs only after project proposals have been evaluated against each other and after applying the same criteria to select the more efficient or cost-effective solution. However, the less stringent requirements in the Consolidated Transmission Owners Agreement that would apply to an incumbent transmission owner that proposes a Transmission Owner Designated Project could provide the incumbent transmission owner with an advantage in PJM's evaluation process. The less stringent requirements in the Consolidated Transmission Owners Agreement also could spare an incumbent transmission owner from a breach (and the associated remedies) that would otherwise be triggered if it executed the Designated Entity Agreement.<sup>62</sup> Although PJM argues that the proposal to exempt incumbent transmission owners from the requirement to execute a Designated Entity Agreement in certain cases will further administrative efficiency, any such benefits do not overcome undue discrimination concerns.<sup>63</sup> Accordingly, we reject PJM's proposal as unjust, unreasonable, and unduly discriminatory or preferential.