

May 22, 2018

The PJM Board of Managers  
c/o Ake Almgren, Ph.D.  
PJM Interconnection, L.L.C.  
2750 Monroe Boulevard  
Audubon, Pennsylvania 19408

**Re: Planning Committee Consideration of Cost Containment for Evaluation of Competitive Transmission Proposals**

Dear Chairman Almgren and PJM Board of Managers,

Following up on last week's TOA-AC discussion regarding the need for a simplified Order 1000 process to complement PJM's sponsorship model, the undersigned PJM Transmission Owners ("TO") are writing to bring to the attention of the Board of Managers ("Board") a potential serious violation of the Consolidated Transmission Owners Agreement ("CTOA"), Section 9 of the PJM Tariff and the Settlement Agreement between PJM and the Transmission Owners that ended the *Atlantic City v. FERC* litigation ("*Atlantic City*"), as well as the TO's rights' under Section 205 of the Federal Power Act ("FPA"). Proposals to amend the PJM Operating Agreement creating binding cost commitments to cap project total costs, return on equity, or capital structure, and directing PJM to scrutinize rate impacts associated with Transmission Owner Upgrades as well as commitments to cap Order 1000 project construction costs have only recently emerged from the stakeholder process and are before the May 24<sup>th</sup> Markets and Reliability Committee ("MRC") meeting for a vote. A vote by the MRC to adopt these proposals in their current form would infringe upon the rights of the Transmission Owners.<sup>1</sup> We therefore request that the Board inform the MRC that the currently pending proposals may not move forward at the MRC and that further consideration of such proposals must take place through a stakeholder process that allows for any proposals implicating transmission cost recovery or transmission rate design to be advanced through the Transmission Owners Agreement Administrative Committee ("TOA-AC"), which must approve any filing that relates to the recovery of transmission-related costs incurred by the Transmission Owners.

For the past two years, the undersigned Transmission Owners have been participating in the Special Planning Committee – Consideration of Cost Commitment for Evaluation of Competitive Transmission Proposals initiative. We understand that cost is one of several important considerations in the selection of projects in the FERC Order 1000 process and we

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<sup>1</sup> For example, the LS Power proposal proposes to add to Section 1.5.8(e) of Schedule 6 of the Operating Agreement, the following language: "In scrutinizing the cost of project proposals, the Office of Interconnection shall determine, for each project finalist's proposal, including any Transmission Owner Upgrades, the comparative risks to be borne by ratepayers as a result of the proposal's binding cost commitment or the use of non-binding cost estimates."

have been and continue to be committed to working with stakeholders toward an appropriate outcome that considers cost in the solution evaluation that can be achieved consistent with the proper exercise of the *Atlantic City* division of filing rights and responsibilities. In addition, there are important issues of policy as well as issues of practical application relating to PJM's assumption of new roles in connection with rate proposals in the Order 1000 context. These issues need to be examined carefully from the standpoint of achieving a cost-effective and efficient planning process. Unfortunately, some proposals to be considered by the MRC have not received sufficient careful analysis, including a legal assessment that proposals before the MRC need to be directed to the TOA-AC for approval for filing by the TOA-AC rather than acted on within the MRC to ensure that actions are consistent with and do not infringe upon the rights of Transmission Owners under Section 205 of the FPA.

Neither the Office of the Interconnection nor PJM stakeholder bodies are authorized to file to amend any PJM governing document in any way that relates to the establishment and recovery of the Transmission Owners' transmission revenue requirements, the transmission rate design under the PJM Tariff, or any provisions governing the recovery of transmission-related costs incurred by the Transmission Owners. Consideration and filing of any such changes is reserved to the Transmission Owners, either individually or collectively acting pursuant to CTOA Section 8.5.1. The proposals as modified last week and now due to be presented at the May 24<sup>th</sup> MRC may not proceed consistent with these Transmission Owners' *Atlantic City* rights. PJM committed to respect the Transmission Owners' exclusive and unilateral rights under the FPA regarding transmission cost recovery when it entered into the *Atlantic City* Settlement. We trust that PJM intends to continue to honor its commitment.

These rights are clearly established. Under PJM's originally proposed structure, the Transmission Owners, acting through the Transmission Owners Agreement, retained full filing rights under Section 205 of the FPA with respect to both transmission cost recovery and tariff terms and conditions, with limited PJM Board ability to veto proposed changes. FERC attempted to require the Transmission Owners to give up all Tariff filing authority to PJM in its initial Order approving PJM as an independent system operator, but the court overruled FERC in the *Atlantic City I* decision, holding that FERC lacks the authority to require the Transmission Owners to cede their right under section 205 of the FPA. In the *Atlantic City II* decision, the Court affirmed this determination.<sup>2</sup>

Desiring to support PJM's independence and assuage FERC's concerns following the court's decision, the Transmission Owners agreed to a practical allocation of Tariff filing responsibility in the Settlement. The Settlement gave PJM authority over Tariff terms and conditions, but retained Transmission Owner authority to file for changes in rates and rate design

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<sup>2</sup> The prevailing *Atlantic City* Transmission Owners went back to court to enforce the court's mandate. *Atlantic City II*. ("we reaffirm and clarify our prior decision that FERC has no jurisdiction to enter limitations requiring utilities to surrender their rights under § 205 of the FPA to make filings to initiate rate changes.").

and any other provision that relates “to the establishment and recovery of the Transmission Owners’ transmission revenue requirements or the transmission rate design under the PJM Tariff, or encompass any provisions of the PJM Tariff governing the recovery of transmission-related costs incurred by the Transmission Owners.” Tariff, § 9.1(f). The Settlement terms were approved by FERC and incorporated into Section 9 of the Tariff and into the CTOA, to which PJM became a party for the purpose of establishing its rights and commitments. The Settlement requires that notice be given when the Transmission Owners and PJM, respectively, are about to make Section 205 filings and contains provisions for resolving filing authority disputes. It also includes a *Mobile-Sierra* clause that requires it be treated as if it were a fixed rate provision.

The instant proposals before the MRC are designed to have an impact on the manner and process for recovering the cost of transmission by a PJM Transmission Owner and therefore would constitute a change “in or relating to the establishment and recovery of the Transmission Owners’ transmission revenue requirements or the transmission rate design under the PJM Tariff.” Tariff, §9.1(a). The fact that certain of the MRC proposals for the submission of such a “binding cost commitment” purport to be voluntary or only one of several criteria to be considered by the Office of the Interconnection is irrelevant to the issue of whether any such rate design proposal must be approved by the Transmission Owners.<sup>3</sup> Any proposal addressed to the recovery of the Transmission Owners’ transmission revenue requirements or the design of transmission rates is within their exclusive filing rights, regardless of whether the proposal is mandatory or any other details. Nor is the fact that the proposed change is in the Operating Agreement rather than the Tariff material. The scope of Tariff section 9.1(a) may not be evaded by inserting provisions relating to transmission cost recovery in the Operating Agreement. There is no authority in the Operating Agreement for the Members to make filings affecting the recovery of transmission costs and none was contemplated when PJM agreed that the Transmission Owners filing rights “shall also encompass any provisions of the PJM Tariff governing the recovery of transmission-related costs incurred by the Transmission Owners.” *Id.*<sup>4</sup> Given our long mutual history of cooperation in addressing rate filing responsibility, the undersigned PJM Transmission Owners have shared these concerns with PJM staff.

Regardless of the breadth of support for measures such as those discussed above among PJM Members and other stakeholders, PJM is obligated to honor its contractual and legal obligations to the Transmission Owners. The Transmission Owners voluntarily joined together to form PJM based on the mutual commitments to each other and with PJM. As the Court of

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<sup>3</sup> Indeed, any proposal, such as the LS Power proposal, that requires PJM to perform a comparative analysis that details “in a clear and transparent manner, the method by which the Office of Interconnection scrutinized the cost and overall cost-effectiveness of each finalist’s proposal, including any binding cost commitments” cannot truly be voluntary, but can only serve to handicap any Transmission Owner declining to propose a binding cost commitment. There is no other possible purpose when such a proposal is directed to Transmission Owner Upgrades.

<sup>4</sup> The *Atlantic City* court certainly made no distinction between the PJM Tariff and the Operating Agreement when it ruled that FERC may not force the Transmission Owners to surrender their rights under the FPA.

Appeals confirmed in another part of its holding in *Atlantic City I*, that relationship remains one governed by voluntary contract.

If the Board informs the MRC that the pending proposals may not move forward in their current form, the Transmission Owners commit to an open and fair consideration of such proposals, including a continuation of the stakeholder process. However, if the pending proposals move forward in their current form, the Transmission Owners reserve all legal rights and will be compelled to pursue all actions required to protect their legal rights.

As noted above, PJM and the Transmission Owners have had a productive and cooperative working relationship since entering into the *Atlantic City* Settlement. We very much hope that can continue and that this important issue is addressed consistent with PJM's and the TO's respective rights and responsibilities. We look forward to your response.

Respectfully,

American Electric Power Service Corporation, on behalf of its affiliates,  
Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, and AEP West Virginia Transmission Company

The Dayton Power and Light Company

Duke Energy Business Services, LLC, on behalf of  
Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.

Duquesne Light Company

Exelon Corporation

FirstEnergy Service Co., on behalf of its transmission owning entities

PPL Electric Utilities Corporation

Public Service Electric & Gas Company

Rockland Electric Company

Virginia Electric Power Company