

COMMENTS OF ATLANTIC GRID DEVELOPMENT, LLC ("AGD") ON THE ATTACHMENT H TRANSMISSION OWNERS ("TOs") COST ALLOCATION

On June 13, 2012, PJM Interconnection, L.L.C. ("PJM"), at the request of the TOs, posted to its website the TOs' proposed cost allocation principles ("Proposed Principles"). According to PJM's June 13th notice, the Proposed Principles will form the basis of the TOs' proposed section 205 filing for compliance with the requirements of Order No. 1000¹ for the allocation of the costs of new PJM Board-approved Regional Transmission Expansion Plan ("RTEP") projects. On August 29, 2012, PJM gave notice of TO revisions to the Proposed Principles and the TOs' willingness to accept further written comments on or before September 19, 2012. AGD, the developer of the Atlantic Wind Connection Project ("AWC"), hereby provides comments on the Proposed Principles.

I. THE TOs SHOULD FILE THEIR PROPOSED PRINCIPLES IN THE PJM ORDER NO. 1000 COMPLIANCE PROCEEDING

PJM has been conducting stakeholder meetings for close to two years with regard to the upcoming Order No. 1000 compliance filing, due on October 11, 2012. Those discussions have taken place as part of the Regional Planning Process Task Force ("RPPTF"). About a year into that RPPTF process, PJM informed the stakeholders that cost allocation would not be part of that process because PJM had agreed with the TOs that, under the *Atlantic City Electric Company v. FERC*² decision ("Atlantic City"), the TOs have the exclusive right to make cost allocation filings under Section 205 and, therefore, the TOs' Proposed Principles as they are ultimately filed will form the basis of Order No. 1000 compliance for PJM. On that occasion, as well as many times since, AWC informed PJM that Atlantic City dealt only with the rights of the TOs to make Section 205 filings. It does not in any way limit the Commission's authority to act under Section 206 or PJM's obligation to comply with a FERC Section 206 order. Atlantic City in no way precludes PJM from complying with a FERC Section 206 finding nor does it authorize the TOs to preclude PJM from doing so. Indeed, heretofore, PJM has always emphasized its independent authority to comply with all FERC orders.

In Order No. 1000 and 1000-A, FERC made Section 206 findings, including findings with respect to transmission cost allocation principles that require PJM to revise its tariff in order to comply by October 11, 2012. *See* Order No. 1000 PP 482-745. Order No. 1000 contemplates that PJM will work with its stakeholders to reach consensus on cost allocation. *Id.* At P 607. In the event that consensus on cost allocation is not reached, PJM must document in its compliance filing "the steps they have taken to reach consensus on a cost allocation method or set of methods to comply with this Final Rule, as thoroughly as practicable and provide whatever information they view as necessary for the Commission to make a determination of the

¹*Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 77 Fed. Reg. 32,184 (May 31, 2012), 139 FERC ¶ 61,132 (2012).

² 295 F.3d. 1, 353 U.S. App. D.C. 1.

appropriate cost allocation method or methods.” *Id.* PJM is also obligated to file “its own proposed method or set of methods of allocating costs and explain how it believes its method or methods satisfy the cost allocation principles...” *Id.* Other parties will be able to comment, “thereby creating a record on which the Commission could develop an appropriate cost allocation method or methods...” *Id.* at P 608.

Here PJM has not allowed stakeholder discussion on cost allocation in its RPPTF stakeholder process, and its proposed compliance filing will be incomplete and silent on cost allocation. As discussed below, the PJM filing will be patently deficient and non-compliant. Moreover, the TOs’ Proposed Principles are equally deficient and non-compliant.

II. BOTH PJM’S COMPLIANCE FILING AND THE TOs’ PROPOSED PRINCIPLES ARE DEFICIENT

Both PJM’s stakeholder process and resulting compliance filing are deficient because they do not deal with cost allocation at all. Moreover, the TOs’ Proposed Principles expressly decline to deal with cost allocation for transmission projects that are intended to address state or federal public policy requirements. PJM’s filing is severely deficient in that it will only provide for participant funded projects that will address public policy requirement. Order No. 1000 is very clear that:

[A] transmission facility proposed to address a Public Policy Requirement must be eligible for selection in a regional transmission plan for purposes of cost allocation and must not be designated as a type of transmission facility for which the cost allocation method must be determined only on a project-specific basis. . . . If a regional transmission plan determines that a transmission facility serves several functions . . . the regional cost allocation method must take the benefits of these functions of the transmission facility into account in allocating costs roughly commensurate with benefits.

Order No. 1000 at P 690.

Order No. 1000-A expressly affirms “Order No. 1000’s determination that participant funding is permitted, but not as a regional or interregional cost allocation method.” Order No. 1000-A at P 726.

III. THE TOs SHOULD FILE THEIR PROPOSED PRINCIPLES IN PJM’S COMPLIANCE FILING DOCKET

Unless and until FERC acts on PJM’s proposed compliance filing, any Section 205 filing by the TOs is inappropriate. FERC cannot entertain proposed cost allocation changes until it resolves the changes that it has already ordered. In light of PJM’s failure to even address cost allocation in its compliance filing, all parties (including the TOs) should file their own cost allocation proposals in the PJM compliance docket so that FERC can decide the appropriate

method or methods required by Order No. 1000 for allocating the costs of transmission projects, including those designed to address public policy requirements.