

ATLANTIC WIND CONNECTION'S COMMENTS ON MAY 21, 2012- RPPTF PRESENTATIONS

Rights of First Refusal (ROFR)

1. Order No. 1000 outlaws all ROFR's with respect to any project that would qualify for regional cost allocation, except in very limited instances, but did not create any ROFR's in any instances. (See Order No. 1000-A at PP 392-393, 415)
2. In *Primary Power, LLC*, FERC ruled that there are no ROFR's in PJM's transmission planning tariff. "Sections 1.5.7(c)(iii) and 1.5.6(f) of the PJM Operating Agreement permit PJM to designate an entity other than an incumbent transmission owner to build a project." (131 FERC ¶ 61,015 at P 63 (2010))
3. PJM's proposal to create a ROFR for incumbent transmission owners with respect to any project that would be in service in less than 5 years violates Order No. 1000's prohibition against ROFRs. (See, Section 1.5.8(j))
4. PJM's proposal to award any long lead time (more than 5 years) to the incumbent transmission owners unless PJM determines that another entity has proposed a solution that is clearly superior to all other proposals would violate Order No. 1000. (See, Section 1.5.8 (g))
5. PJM's proposal to grant a ROFR to incumbent transmission owners any time a selected sponsor fails to accept the sponsorship designation or fails to complete construction would violate the Order No. 1000 prohibition against ROFRs. (See Section 1.5.8 (j)).

6. PJM's proposal in Sec. 1.5.8 to grant a ROFR to the incumbent transmission owner(s) if at any time PJM determines that the project sponsor is not qualified to construct, own, or finance all or any part of the proposed project violates the Order No. 1000 prohibition against ROFRs.

Sponsorship Qualification

1. Section 1.5.8 (f) would violate Order No. 1000-A by unduly discriminating against non-incumbents to the extent it bases qualification on the ability to obtain state siting. “[I]t would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it either has, or can obtain, state approvals necessary to operate in a state, including state public utility status and the right to eminent domain, to be eligible to propose a transmission facility.” (Order No. 1000-A at P 441)
2. PJM's proposal, in Sec. 1.5.8, that at any time PJM can determine that the project sponsor is not qualified to construct, own, or finance all or any part of the proposed project would create a barrier to non-incumbent entry into the PJM transmission planning process. No investor is going to spend tens of millions of dollars with the potential for PJM to declare it unqualified to sponsor the project at any time and for any reason and with no cure period. This provision is unduly discriminatory and at odds with both the letter and spirit of Order No. 1000. The Commission has said that the “ability of an incumbent transmission provider to discourage or preclude participation of new transmission developers...can have the effect of limiting the identification and evaluation of potential solutions to regional transmission needs...[which in turn] can directly increase the cost of new transmission development that is recovered from jurisdictional customers through rates.” (Order No. 1000-A at PP 358, 431)

3. PJM must include: a) objective non-discriminatory qualification criteria in its tariff; b) render upfront qualification determinations on a timely basis; c) allow project sponsors to remedy any identified deficiencies on a time-table that reflects the point the project is in the long-lead time process whether the deficiency is identified up-front in the qualification process or later down the road. (Order No. 1000-A at P 431)

State Agreement Approach

1. AWC supports the SAA and urges that it be included in the compliance filing. However, the SAA, to the extent it is a participant funded approach, cannot be the sole means of responding to the public policy requirements (PPRs) of Order No. 1000. “[The Commission] affirm[s] 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)
2. Order No. 1000 provides that all stakeholders must be able to identify PPRs and propose transmission solutions for evaluation. “[W]ith respect to the identification of transmission needs driven by Public Policy Requirements, the process must [provide] stakeholders with an opportunity to provide input and offer proposals...” (Order No. 1000-A, at P 320) Therefore, Section 1.5.8 c and e are not consistent with Order No. 1000 to the extent that they limit identification, evaluation or selection of projects designed to meet PPRs only in accordance with the SAA.
3. Order No. 1000 requires a beneficiary pays based cost allocation methodology to be included in PJM’s tariff as part of the compliance filing. And, to the extent a PPR project addresses other needs, the cost allocation methodology must

allocate costs to those other needs. (Order No. 1000-A at P 690)

Planning and Cost Allocation Based on Multiple Drivers

1. AWC agrees with the paper on this topic submitted by AEP, Exelon and Duke with respect to the need for PJM to allow projects to be proposed to meet multiple needs and to extent it calls for the costs of projects to be allocated among multiple needs or drivers.
2. AWC will submit a separate paper/presentation on this method for implementing this approach.