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August 29, 2014

VIA FEDERAL EXPRESS

The Honorable Curtis L. Wagner, Jr.
Chief Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Status Report – Artificial Island Solicitation
Appointment of Facilitator
Docket No. MD14-1**

Dear Chief Judge Wagner:

Pursuant to Rule 604(d) of the Commission’s Rules of Practice and Procedure,¹ this submittal will provide an outline of the requested scope of a dispute resolution proceeding, for which PJM Interconnection, L.L.C. (“PJM”) seeks ALJ-ADR assistance from your office.²

Following PJM’s request to Your Honor to engage the Commission’s non-evaluative Alternative Dispute Resolution (“ADR”) process and your appointment of Administrative Law Judge Steven L. Sterner, PJM has spoken with Judge Sterner regarding PJM’s request.³ During that discussion, PJM explained its desire to have an Administrative Law Judge (“ALJ”) present in a non-decisional role to ensure the fairness and due process surrounding PJM’s discussions with the four final bidders of the Artificial Island Proposal Window regarding the supplemental material submitted by each bidder, with the final terms of their project costs. This correspondence provides a summary of the matter and outlines PJM’s expectations with regard to Judge Sterner’s role as a neutral, non-decisional observer.

I. Background

As part of PJM’s compliance with Order No. 1000, PJM proposed to implement a proposal window process to permit both incumbent transmission owners and non-incumbent developers the opportunity to submit project proposals through a proposal window. If the project is included in the regional transmission expansion plan (“RTEP”) and the “proposer” meets the qualification

¹ 18 C.F.R. § 604(d) (2013).

² This communication is submitted under Rule 604(d). *See* 18 CFR § 385.604(d) (2013).

³ Judge Sterner shall serve as a “neutral” consistent with Rule 604(c).

criteria, the proposer may be designated construction, ownership and financial responsibility for its proposed project.

In April 2013, PJM opened a 60-day proposal window⁴ to solicit projects from stakeholders to address operational performance issues around Artificial Island.⁵ PJM received 26 proposals from seven different entities. The proposals ranged in cost from just over \$100 million to over \$1,500 million. The proposals included flexible alternating current transmission system (“FACTS”) devices, high-voltage direct current (“HVDC”) lines, new overhead and underground/underwater 230 kV lines and new overhead 500 kV lines. For over a year, PJM staff completed extensive technical evaluations of each proposal. Based on the results of the analytical screening and the estimated cost of each proposal, PJM began to focus on a subset of proposals. The subset of proposals included both southern Delaware River crossings (overhead and submarine) that terminated at the existing 230 kV system in Delaware and new 500 kV lines from either Hope Creek or Salem substations to the Red Lion 500 kV substation in Delaware. On May 19, 2014, PJM presented to the stakeholders in the context of the Transmission Expansion Advisory Committee (“TEAC”), a detailed summary of PJM’s evaluation of the submitted proposals. At the June 2, 2014 TEAC, PJM presented the project proposal (a new 500 kV line from the Hope Creek substation to Red Lion substation) and the name of the designated entity (Public Service Electric and Gas Company) it planned to recommend to the PJM Board of Managers (“PJM Board”) at the July Board meeting.

At the July Board meeting, PJM briefed the PJM Board on PJM’s evaluation of the Artificial Island proposals. In addition, the PJM Board reviewed ten (10) letters submitted from proposers, state commissions and stakeholders commenting on PJM’s proposed recommendation. Included in those letters was a late-filed submission by Northeast Transmission Development, LLC (“LS Power”) proposing to cap construction costs associated with its project. Based on its review, the PJM Board determined to take the matter under advisement and deferred selection of the Artificial Island project solution pending PJM staff gathering additional information from the following four final bidders: Virginia Electric and Power Company, Transource Energy, LLC, LS Power and Public Service Electric and Gas Company.

II. The ADR Process:

By letter dated August 12, 2014, each bidder was notified of their status and invited to supplement their submissions with the final terms of their project costs only. PJM will evaluate the details of each bidder’s cost proposal, including the specific details surrounding any cost cap that a bidder may wish to submit. In anticipation of the variability of the responses PJM expects to receive and the complexity of evaluating cost submittals (particularly the terms of any

⁴ The proposal window process was proposed and accepted by the Commission as part of PJM’s compliance with Order No. 1000, effective January 1, 2014. See *PJM Interconnection, L.L.C., et al.*, 147 FERC ¶ 61,128 (May 15, 2014); *PJM Interconnection, L.L.C., et al.*, 146 FERC ¶ 61,030 (Jan. 16, 2014); *PJM Interconnection, L.L.C., et al.*, 142 FERC ¶ 61,214 (Mar. 22, 2013).

⁵ Artificial Island is the area in Southern New Jersey where the Salem and Hope Creek nuclear generation is located. Historically, the area has been constrained. Stability of the generation has been ensured through the use of operating procedures.

proposed cost caps), PJM has requested to engage an ALJ through the Commission's Dispute Resolution Services to serve in a non-decisional role to ensure due process and fairness as PJM undertakes the final discussions with the finalists on their proposals prior to final submission of PJM staff's recommendation to the PJM Board. To that end, Judge Sterner has invited PJM to outline the process requested, including the PJM's expectations regarding Judge Sterner's role in that process. PJM appreciates the Judge's thoughtful suggestion and has prepared, in consultation with Judge Sterner, the following scope for Your Honor's consideration:

- PJM anticipates Judge Sterner's role as a neutral, non-decisional observer of the *process* PJM utilizes in discussing with the four final bidders the supplemental proposals submitted on September 12, 2014. Judge Sterner's presence either through direct attendance at meetings (either at FERC or an offsite location) or reviewing of agendas and proposed questions, if personal attendance at a particular meeting is not possible, would ensure that PJM's line of inquiry is consistent with each of the bidders and that no bidder is given an undue advantage in their presentation to PJM.
- Judge Sterner will not serve in a decision-making role nor is this process intended to be conducted as a settlement conference or a matter for traditional dispute resolution. Judge Sterner will be observing and commenting on PJM's process but not attempting to bring parties together to seek common ground or otherwise drive toward any particular substantive outcome.
- Judge Sterner will observe and comment upon, as described below, the fairness of the process undertaken by PJM through these final negotiations but not attempt to influence PJM staff's substantive recommendation or the final PJM Board decision in any way. To that end, PJM will seek Judge Sterner's timely feedback throughout the process, as appropriate, regarding PJM's comparable treatment and dissemination of information to all bidders. Given this role, Judge Sterner's comments on the process will be directed solely to PJM as PJM crafts or undertakes these meetings and will not be simultaneously reported to the developers in attendance or those not in attendance.
- PJM will not be required to follow the Judge's recommendations.
- Judge Sterner will provide a report to PJM and will publish the final report on eLibrary under Docket No. MD14-1 upon completion of the process or earlier, as mutually agreed upon by Judge Sterner and PJM. The Judge's report will help inform the PJM Board on the fairness of the process and serve as a valuable tool for guiding such future negotiations undertaken in implementing Order No. 1000's call for competitive solicitation processes. PJM's goal is to submit its recommendation to the PJM Board for consideration at the Board's December 2014 meeting.
- It is understood that Judge Sterner accepts the process to date and will oversee only these final information sessions. His presence may not be used by any participant as a judgment on any of the steps undertaken by PJM as part of this competitive solicitation prior to his formal involvement in this matter in overseeing the meetings referenced above.
- Because the discussions will involve a review of proprietary cost information, it is understood that the discussions of each party's September 12 submittal will be treated as

confidential. Accordingly, all communications and information provided under this process shall be treated in accordance with Rule 606 of the Commission's Rules of Practice and Procedure.⁶

- The involvement of Judge Sterner and the Commission's ADR process in this matter does not provide any party with rights of discovery or rights to be in attendance at meetings where confidential information of other parties is being discussed.
- All finalists will be asked to sign a letter agreeing to engage in fact finding sessions in the presence of Judge Sterner and OALJDR staff regarding the supplemental information provided by them in response to PJM's August 12, 2014 letter. Should any party refuse to sign a letter, PJM will decide the merits of that party's submittal based solely on the submitted documentation without any additional communications.
- PJM will prepare a meeting schedule that will attempt as much as possible to accommodate Judge Sterner's availability either in person or by telephone.
- Pursuant to 18 CFR §385.604(f), Judge Sterner will provide Your Honor with periodic Status Reports, as needed. The reports shall advise Your Honor of the progress and developments in this matter. In order to maintain the confidentiality of the matters herein, the reports will not be filed in FERC's eLibrary. Upon conclusion of the process, Judge Sterner shall issue a notice ending this alternative dispute resolution proceeding.

In addition to the above, PJM anticipates the following guidelines governing the conduct of any discussions undertaken with the four finalists:

- Each finalist will be asked to attend non-public fact finding sessions to answer questions by PJM staff or its consultant(s), (if a consultant is retained by PJM) in the presence of Judge Sterner and his staff. PJM shall determine whether to meet with finalists, individually or collectively, in the presence of Judge Sterner to maintain the confidentiality of proprietary information.
- The purpose of the fact finding sessions will be to ask questions regarding the terms of each bidder's project costs, including specific details about their cost cap, if applicable.
- At PJM's discretion, such fact-finding sessions may be conducted either as face-to-face meetings or teleconference calls.
- Nothing in these procedures prevents PJM from gaining additional information from other entities who have not submitted proposals, such as state commissions and the Nuclear Regulatory Commission. To the extent any additional non-confidential information impacts the PJM staff's recommendation, the results of those discussions will be reported by PJM to all stakeholders through PJM's report to the TEAC.
- The procedures outlined above governing meetings relative to the developer's September 12 submittals (and their underlying submittal) do not prohibit incidental procedural and administrative communications with individual bidders throughout this process.

⁶ 18 C.F.R. § 385.606 (2013).

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- PJM requests that this matter be lodged as a non-public docket.
- Following completion of this process, PJM Staff will prepare a final report for presentation to the TEAC and the PJM Board with a final recommendation.

We look forward to working with Judge Sterner and your OALJDR staff in this unique structure. We appreciate your consideration. To the extent any additional authorizations are needed for us to engage Judge Sterner in this helpful role as we implement the first-in-the-nation competitive solicitation process, pursuant to the Commission's Order No. 1000, we would seek your assistance in obtaining same.

Should you wish to discuss this further or need additional information, please contact Craig Glazer at 202-423-4743 or by e-mail at craig.glazer@pjm.com or PJM Counsel, Pauline Foley, at 610-666-8248 and pauline.foley@pjm.com.

Thank you.

Sincerely,



Pauline Foley
Assistant General Counsel

cc: Hon. Steven L. Sterner (*via email @ steven.sterner@ferc.gov*)
Mr. Thomas Kirby (*via email @ thomas.kirby@ferc.gov*)
Mr. Cyrus Zarraby (*via email @ cyrus.zarraby@ferc.gov*)