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Via Electronic Mail: juliea.smith@hq.doe.gov
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Office of Electricity Delivery and Energy Reliability
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U.S. Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585

Re: Department of Energy - Improving Performance of Federal Permitting and Review of Infrastructure Projects. Request for Information (“RFI”) 78 Fed. Reg. 53436 (August 29, 2013)

Dear Ms. Smith:

Please accept the following comments submitted on behalf of PJM Interconnection, L.L.C. (“PJM”) in response to the RFI issued in the above captioned matter. This letter responds to the Request for Information (“RFI”) issued by the Department of Energy’s Office of Electricity Delivery and Energy Reliability (“Department”) on August 29, 2013,¹ seeking comments on a draft Integrated, Interagency Pre-application Process (“IIP”) for significant onshore electric transmission projects requiring Federal Authorization(s). Although PJM supports the goals of the proposed process to help better coordinate the federal permitting process, PJM is concerned that the proposal, as written, is not synchronized or coordinated with the competitive procurement processes for new transmission projects which the Federal Energy Regulatory Commission (“FERC”) just ordered implemented through its Order No. 1000. PJM proposes that any proposal integrate the Department process with the FERC Order No. 1000-mandated processes so as to ensure harmony between the two. PJM stands ready to meet with Department officials to further explore this admittedly complex interaction.

¹ On September 25, 2013, The Office of Electricity Delivery and Energy Reliability extended the comment date to October 31, 2013. *See* Improving Performance of Federal Permitting and Review of Infrastructure Projects, 78 Fed. Reg. 59011 (Sept. 25, 2013).

I. Background

PJM is a FERC-established independent system operator and Regional Transmission Organization ("RTO").² PJM is the administrator of, the PJM Open Access Transmission Tariff ("PJM Tariff"). As a FERC-approved Regional Transmission Organization, PJM is charged with planning the expansion of the transmission grid pursuant to open stakeholder processes as mandated by FERC's Order Nos. 890 and 2000. Pursuant to FERC's recently issued Order No. 1000, the Commission has required a competitive procurement process for the bulk of large transmission projects and has eliminated, as a matter of federal law, incumbent transmission owners serving as the exclusive developers of such projects.

In its Order No. 1000 compliance filing, PJM proposed to modify its regional transmission expansion plan ("RTEP") process to provide for greater participation by nonincumbent transmission developers. Specifically, PJM proposed to add a process by which a nonincumbent transmission developer could submit a project proposal and receive a designation from PJM to build their proposed project if that project is deemed by PJM to be the more cost effective or efficient solution to the identified reliability or market need.³

The following is a brief description of PJM's Commission-approved project proposal process, which was developed to provide for competitive solicitation for new transmission projects consistent with Order No. 1000. Upon completion of its analytical RTEP analysis, PJM announces the opening of a project proposal window. PJM posts on its website the proposed reliability violations, system conditions, economic constraints and/or public policy requirements for which transmission solutions are needed.⁴ The length of a proposal window is based on the urgency and need for the project(s) as determined by system need. For example, for a long-lead project requiring reliability or market efficiency driven upgrades in year six or beyond, PJM opens a 120-day proposal window.⁵ For short-term projects with reliability driven upgrades needed in years four or five, PJM opens a 30-day proposal window.⁶ For immediate need reliability projects with reliability driven upgrades needed in service in three years or less, PJM will determine whether there is sufficient time to hold a shortened proposal window.⁷ Following the close of the proposal window, PJM evaluates the project proposal packages against the system needs, including the constructability and company evaluation information. If a nonincumbent transmission developer's proposed project is selected in the RTEP and the project

² *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,252 (1997), *reh'g denied*, 92 FERC ¶ 61,282 (2000); *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345 (2002).

³ See PJM Compliance Filing, *PJM Interconnection, L.L.C.*, at 52 Docket No. ER13-198-000 (Oct. 25, 2012) ("PJM Compliance Filing").

⁴ PJM Amended and Restated Operating Agreement, Schedule 6 ("Schedule 6"), section 1.5.8(e).

⁵ PJM Compliance Filing at 54, 55. See Schedule 6, section 1.5.8(c).

⁶ PJM Compliance Filing at 56. See Schedule 6, section 1.5.8(c).

⁷ PJM Compliance Filing at 57. See Schedule 6, section 1.5.8(m)(2).

proposer meets the pre-qualification and qualification criteria,⁸ the nonincumbent transmission developer could be designated to construct, own and assume financial responsibility for its proposed project.

Once the project is identified, submitted to the PJM Board of Managers for review and approval, designated to and accepted by the Designated Entity (either nonincumbent transmission developer or incumbent transmission owner), a "right" to construct, own and finance attaches to such Designated Entity for the approved RTEP project. Any changes to the project could affect the Designated Entity's rights and potentially result in time-consuming litigation to the potential detriment to the reliability of the PJM transmission system. Moreover, significant changes could impact the cost estimates and effectiveness of the selected project and thus its relative ranking with competitive alternatives that were considered and rejected.

II. Comments

A. *The IIP Process Must Work in Concert with FERC-Approved Regional Planning Processes adopted under Order No. 1000.*

Timing and Severability Issues -- PJM is concerned that the IIP Process does not sync up with PJM's Order No. 1000 RTEP process. The RFI appears to contemplate working with a single developer on a single project proposal. Under the RFI, the developer would presumably not submit to a pre-application process until after an RTO has conducted a proposal window, selected and approved a project and designated construction, ownership and financing responsibility to a project proposer. However, this creates a circular problem as the developer, as part of its initial proposal to PJM in the PJM competitive procurement process, is supposed to include a proposed initial construction schedule, including projected dates on which needed permits are required to be obtained in order to meet the project's required in-service date.⁹ Moreover, the developer is required to *explain to PJM in its proposal the siting challenges it faces and its plans to address such issues*.¹⁰ Finally, the developer is supposed to submit cost estimate proposals to PJM which *take into account* the costs and delays related to the siting process.¹¹ In reviewing the various proposals, PJM is allowed to take into account the relative ability of the developer to site that particular proposal as compared to other proposals which may propose other routes where the siting issues may be less challenging (or where there may be no federal siting issues).¹² In short, the kind of input that the RFI seeks to provide developers is

⁸ Part of the project proposal window process requires the project proposer to satisfy both a pre-qualification process and project-specific qualification process to qualify to be the proposed project's Designated Entity in order to provide for timely completion of the project. PJM Compliance Filing at 63-64, 68. See Schedule 6, sections 1.5.8(a) and (f).

⁹ PJM Amended and Restated Operating Agreement, Schedule 6, section 1.5.8(c)(1) ("Schedule 6").

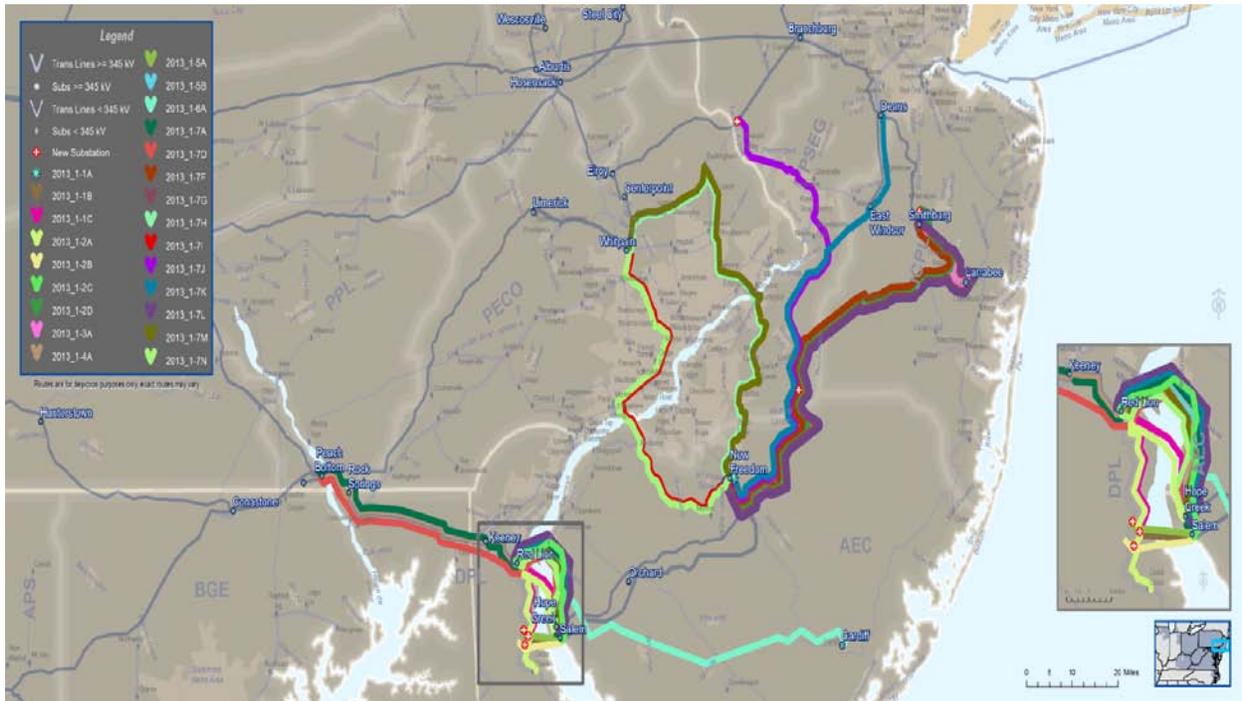
¹⁰ Schedule 6, section 1.5.8(c)(1).

¹¹ Schedule 6, section 1.5.8(c)(1).

¹² Schedule 6, section 1.5.8(c)(1).

input which, to a certain degree, is information that developers should obtain before they submit a proposal to PJM for consideration. On the other hand, the RFI process itself requires a level of detail and cost that is not reasonable to expect from all prospective developers before they know if their proposal has actually been chosen by PJM as the more cost effective or efficient alternative.

PJM's FERC-approved Order No. 1000 planning process required PJM to take these issues into account in its determination of which project, among those submitted, more efficiently cost effectively and timely meets the identified reliability or market efficiency need. By way of illustration, PJM has already received over 26 different proposals in response to its "pilot" proposal window dubbed Artificial Island which opened on April 29, 2013 and closed on June 28, 2013.¹³ The project proposals each contain separate and distinct routes for addressing the need identified through the PJM FERC-accepted RTEP process. The proposed projects routes are illustrated on the map below.



The IIP process, as contemplated, creates a sequencing problem as between the IIP process and the Order No. 1000 competitive procurement process. For example, were the IIP process only open to developers that were finally chosen by PJM to build the project in question, then the developer's proposal itself, upon which PJM must make its designation decision, will lack the kind of information on deadlines and siting complexities that PJM has indicated must be filed by an entity seeking such a designation. Thus, by definition the type of dialogue and

¹³ See <http://www.pjm.com/~media/committees-groups/committees/teac/20130912/20130912-reliability-analysis-update.ashx> at Slides 101 - 108.

information sharing as to the complexity of siting a given proposal will not find its way into the developer's proposal leaving PJM with less than a complete record to judge whether the proposed timeline and cost estimates submitted by the developer are realistic.

On the other hand, if the process were open at an earlier stage to any entity simply thinking of submitting a proposal to PJM, then the Department could find itself in the middle of multiple processes and duplicative work. Moreover, under such a rule, multiple developers will have to go through a costly and time consuming process without knowing whether, at the end of the day, which one of them has been designated by PJM as the entity to go forward. This will only create wasted time and resources for all involved and the imposition of pre-development stranded costs which, pursuant to Order No. 1000, can then be assessed against ratepayers.

PJM believes that the IIP process should be restructured to recognize at least two stages to the competition solicitation process to avoid the circularity which the Department's proposed IIP process creates given its lack of synchronization with the Order No. 1000 processes. One means to address this issue would be to divide the proposed process itself. For example, the Initial Meeting process should be designed to allow *any developer* qualified under an RTO process to submit a proposal, who plans to submit a project for consideration under an RTO's Order No. 1000 process, to utilize the IIP process in order to develop a more informed preliminary construction schedule, and cost estimate for its proposed project submitted to the Planning Authority for designation of its project. Then, if a developer's proposal were accepted by the RTO and the developer became the "designated entity" to build its proposed project, then that developer could initiate the next phase of the process in order to streamline the siting of the project as designated by the Planning Authority. This bifurcation and severing of the IIP process would allow for better synchronization between an IIP process with the different stages of a FERC-approved Order No. 1000 competitive procurement process.¹⁴

Project Scope Change Issues -- By the same token, under PJM's Order 1000 compliance filing, designation of a particular entity to build a project is tied to its specific proposal as submitted in the competitive procurement process. Although changes to the original proposal are certainly contemplated to meet the requirements of the public and siting authorities, the designated entity does not receive a blanket right to build a wholly different project than the project it submitted even if deemed desirable from the point of view of siting authorities. The IIP process needs to take into account that any whole scale changes to a project cannot simply be effectuated between the federal agencies and the developer without potentially triggering a review by the planning authority as to whether the developer has significantly departed from the terms of its original designation by the Planning Authority or impinges on the ROFR rights

¹⁴ It should be noted that FERC has authorized the transmission providers to designate incumbent transmission owners to build certain smaller reliability projects without going through a competitive procurement process. For those projects the proposed bifurcation for the IIP process might not be needed as there is no requirement that the transmission provider weigh competing proposals, cost estimates or discussions of siting challenges for such projects. Nevertheless, most of these smaller projects are not the ones which would be impacted by the IIP process in any event as they most likely would not require the kind of extensive federal permitting generally required by larger projects.

associated with an incumbent transmission owner's facilities. The IIP process should recognize this limitation on the developer's unilateral flexibility to effectuate whole scale change their project through the proposed IIP process or commit to such changes. Absent such recognition, the IIP process could effectively trump the entire competitive selection process by allowing a designated entity to redesign its proposal entirely and potentially adopt a route that another entity had proposed in the competitive procurement process. Although this may not be prohibited *per se*, a Designated Entity cannot utilize the IIP process to undermine a FERC-accepted competitive solicitation process and trump the terms of its designation to build. PJM is working to address these issues in its Designated Entity Agreement but urges the Department to recognize, on a national level, the limitations of a developer's ability to vary from the cost estimates and timelines submitted in response to the Planning Authorities' Order No. 1000 competitive procurement process.

B. PJM Is Concerned that the IIP Process, as Proposed, Will Not Improve Efficiency or Promote Predictability As Intended by the Department.

According to the RFI, the goals of the IIP Process are to:

1. Enhance early communication and coordination;
2. Enhance public engagement and outreach;
3. Promote predictability; and
4. Ultimately reduce the time required to reach a decision to approve or deny a project while also ensuring compliance with environmental laws.¹⁵

PJM supports such goals as well as the efforts of both the Administration and the Department to try to find a way to improve the efficiency and predictability of the permitting process that requires interagency and intergovernmental coordination to site and permit interstate transmission projects. However, PJM is concerned that the IIP Process timeline proposed in this RFI will hinder rather than enhance the permitting process for transmission development.

An estimated tally of the timeframe proposed in the RFI totals a minimum of 615 days -- approximately three months shy of two years -- just to walk through a pre-application process. PJM proposes that for 2 years for a pre-application is much too long for a process that purports to assist developers to preliminarily identify potential areas of concern and ensure complete siting applications. While such a lengthy process might be acceptable if, in fact, it reduced the amount of time for the actual permit process commensurate with the pre-application, it would be problematic if it adds time on to an already difficult and time consuming process. Instead, PJM proposes that findings or decisions made during the IIP Process could possibly substitute for certain steps required under the permit process. It appears in the RFI that some of the work required under the permitting process may be duplicative of work already performed under the IIP Process. Moreover, the determination of need for a particular project and the record

¹⁵ RFI at 53438.

supporting same has already been developed through the Planning Authorities' FERC-approved planning process. It should not be wholly duplicated in the IIP process. Rather, it should be given deference in the IIP process. PJM urges the Department to re-evaluate its proposed process and eliminate steps either from the IIP Process or the actual permitting processes in order to avoid wasting time and resources and incurring unnecessary expense. PJM believes that the IIP Process should serve to encourage the exchange of information as early as possible in order to aid developer in addressing potential concerns in order to timely complete the project.

C. Clarification Needed Regarding the Scope of the IIP Process

Although the IIP process is certainly triggered by a project which seeks to cross federal lands, it is unclear as to the scope of the proposed process affecting projects that require a federal permit, such as an Army Corps of Engineers permit to cross wetlands. In some cases, those permits represent only a minor part of the overall permitting process. Nevertheless, the IIP process appears quite expansive and does not outline a ready means to "scale" the scope of federal review to the extent of the federal permit sought and the extent of review already underway through a state siting process. The scope of the IIP process and its impact on permits which may only form a more minor part of the project scope should be clarified in the Final Rule.

III. Conclusion

PJM appreciates the opportunity to submit these comments on the draft IIP process. While PJM supports a pre-application process that includes participation by all relevant federal and governmental agencies with permitting authority, PJM urges the Department to work with the FERC and the transmission providers to make sure that the proposed process is synchronized with and adds value to the Order No. 1000 planning process. PJM stands ready to meet and work with the Department to ensure this needed coordination.

Respectfully submitted,

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