



State of Delaware
PUBLIC SERVICE COMMISSION
861 Silver Lake Blvd, Suite 100
Dover, Delaware 19904

Telephone: (302) 736-7500
Fax: (302) 739-4849

September 4, 2014

TO: The Chair and Members of the Commission

FROM: Robert J. Howatt, Executive Director 

SUBJECT: IN THE MATTER OF PETITION OF NORTHEAST TRANSMISSION DEVELOPMENT, LLC FOR EXPEDITED DECLARATORY ORDER (FILED AUGUST 29, 2014) – PSC DOCKET NO. 14-0297

Background:

In 2013, PJM, the regional transmission operator, identified a reliability issue related to the Artificial Island nuclear complex in New Jersey that prevented the nuclear units from operating at full capacity during certain specific conditions. In compliance with PJM policy, PJM opened a proposal window to identify and select a transmission approach to resolve the reliability issue. The process resulted in 26 different proposals and has continued to be refined, ultimately resulting in a final four (4) potential projects. Each of these projects will require some transmission line and station construction in Delaware.

On May 23, 2014, PJM released a consultant study entitled, "Constructability Analysis of Artificial Island Delmarva Peninsula Project Proposals," provided by UC Synergetic LLC, dated April 30 2014. Page 19 of the report identified the highest risk for construction as right-of-way acquisition in Delaware. Page 23 of the report noted that the Delaware PSC approval is not needed for this project.

To ensure that PJM had a full appreciation of the Delaware risk, the Executive Director met with Staff Attorney, Kathleen Makowski to review the Delaware statutes regarding the ability to build electric transmission in Delaware. It was determined that there could be a

statutory issue related to electric transmission construction in Delaware depending on the interpretation of 26 *Del. C.* §203B(g). As a result of that meeting, the Executive Director e-mailed (Attachment 1) Steve Herling, Vice President PJM, to alert PJM to potential added Delaware risk, not identified in the UC Synergetic, LLC report.

To clarify the issue, the PSC Staff proposed a legislative change to the current Delaware code which would clearly permit other qualified transmission companies to build transmission in Delaware, pending a CPCN permit process. On June 5, 2014, House Bill 387 (Attachment 2) was introduced and assigned to the Transportation/Land Use and Infrastructure Committee in the House. After discussion amongst Committee members, PSC Staff, LS Power and Delmarva Power representatives, the Committee tabled the Bill without action.

On August 12, 2014, PJM mailed each of the four (4) transmission project finalists a letter (Attachment 3) notifying them of the opportunity to supplement their proposals. In its last paragraph, PJM notes that, "it has been brought to PJM's attention that the State of Delaware public utility regulations may restrict the ability of a developer to site and construct new transmission in Delaware if the Proposer does not currently have a service territory as established by the state commission in the area of the project." PJM further requested, "that all Proposers who have submitted projects that require construction within the State of Delaware, provide a detailed response, including legal references, as well as confirmation from the Delaware Public Service Commission or the Office of the Delaware Attorney General regarding the Proposer's legal ability to site and construct transmission in the State of Delaware consistent with its project proposal." As a result of PJM's requirements, Northeast Transmission Development, LLC filed a motion on Friday, August 29, 2014 for an expedited declaratory order.

Issue

The "Electric Utility Restructuring Act of 1999" added 26 *Del. C.*, Chapter 10 for the purpose of deregulating electric supply in the State of Delaware. At that time, it appeared there was little to no concern with respect to transmission and distribution references in the Delaware code. Consequently, in several areas the code continues to reference transmission and distribution as if they are provided as a single element of the public utility business.

In the meantime, under evolving FERC transmission regulations, there has been a growth of independent transmission companies (ITCs) with the ability to provide transmission services outside of the historic vertically integrated T&D utilities. Northeast Transmission Development, LLC is one of those companies. The issue for Commission resolution is whether the current Delaware statutes permit an ITC to site, construct, own and operate electric transmission in Delaware within the exclusive retail service territory of Delmarva Power and under what circumstances it could be allowed.

Delaware Code

It appears that Northeast Transmission Development, LLC would meet the "Public Utility" definition of 26 *Del. C.* §102(2).

(2) "Public utility" includes every individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this state, (however, electric cooperatives shall not be permitted directly or through an affiliate to engage in the production, sale or distribution of propane gas or heating oil), any natural gas, electric (excluding electric suppliers as defined in § 1001 of this title), water, wastewater (which shall include sanitary sewer charge), telecommunications (excluding telephone services provided by cellular technology or by domestic public land mobile radio service) service, system, plant or equipment.

26 *Del. C.* §203A(a)(1) appears to require a CPCN before any corporation can begin the business of a public utility.

(a)(1) Subject to the provisions of subsection (b) of this section and §§ 102, 201, 202 and Chapter 10 of this title, and excluding electric suppliers, no individual, copartnership, association, corporation, joint stock company, agency or department of the State, cooperative, or the lessees, trustees or receivers thereof, shall begin the business of a public utility nor shall any public utility begin any extension of its regulated public utility business or operations without having first obtained from the Commission a certificate that the present or future public convenience and necessity requires or will require the operation of such regulated public utility business or extension.

26 *Del. C.* §203B(a), entitled "Service territories for electric utilities", provides for the creation of service territories where public utilities are providing retail service.

(a) Subject to the provisions of § 202 of this title, the Commission shall, upon notice and after hearing, establish boundaries throughout the State within which public utilities providing retail electric service shall have the obligation and authority to provide retail electric service. All certificates of public convenience and necessity granted by the Commission shall be issued or amended to reflect such boundaries.

26 *Del. C.* §203B(g) appears to indicate that the exclusive retail electric service territories established by the Commission are exclusive territories for the **transmission and distribution** of electricity [bold emphasis added].

(g) The exclusive retail electric service territories heretofore established by the Commission pursuant to this section shall continue as exclusive service territories for the transmission and distribution of electricity. Except as otherwise provided herein, each electric distribution company shall have the exclusive right to furnish transmission and distribution services to all electricity-consuming facilities located within its service territory and shall not furnish, make available, render or extend its transmission and distribution services to a consumer located within the service territory of another electric distribution company; provided that any electric distribution company may extend or construct its facilities in or through the service territory of another electric distribution company, if such extension or construction is necessary for such company to connect any of its facilities or to serve its customers within its own service territory. As of the implementation dates as set forth in § 1003(b)(1) and (2) of this title [repealed], there shall be no exclusive service territories for the supply of electricity, except as otherwise herein provided.

Staff Position

While 26 *Del. C.* §203B deals primarily with retail service territories, it appears that 26 *Del. C.* §203B(g) has retained those retail territories as exclusive areas for the transmission and distribution of electricity. LS Power has argued that 26 *Del. C.* §203B is limited strictly to retail service and as such does not create any exclusive territory for existing wholesale transmission service providers.

The question for the Commission is whether §203B(g) should be interpreted as limiting transmission siting, construction, ownership and operation of transmission to the holder of the current retail service territory or whether §203B(g) applies only for retail service considerations and does not limit the potential for independent transmission companies to build in Delaware.

With Delaware House Bill 387, Staff attempted to provide changes to permit independent transmission companies to build in Delaware, but received support only from LS Power during Committee discussion. While Staff believes it to be in the ratepayer's best interest to permit qualified independent transmission companies to site, construct, own and operate transmission in Delaware, Staff takes no position with respect to the current statutes or any statutory interpretations.

Howatt, Robert (DOS)

From: Howatt, Robert (DOS)
Sent: Wednesday, June 11, 2014 10:00 AM
To: 'Steve.Herling@pjm.com'
Cc: Denise.Foster@pjm.com; 'Info@lmlconsultingllc.net'; Dillard, Janis L (DOS); Farber, John (DOS)
Subject: Delaware PSC Staff Legal Opinion

Steve,

I wanted to make PJM aware of potential added risk with respect to the current Artificial Island project review that is underway. I don't see this impacting the review process that PJM is currently pursuing, but it may add potential risk to the completion of any of the projects that might be selected.

Our staff attorney reviewed the current Delaware statute provided below. It is Staff's opinion that only Delmarva Power has the right to furnish transmission and distribution services within its retail jurisdiction. The construction and operation of an Independent Transmission Company in Delaware seems to be foreclosed by statute. Obviously everyone will have their own interpretation.

26 Del. C. §203B(g) The exclusive retail electric service territories heretofore established by the Commission pursuant to this section shall continue as exclusive service territories for the transmission and distribution of electricity. Except as otherwise provided herein, each electric distribution company shall have the exclusive right to furnish transmission and distribution services to all electricity-consuming facilities located within its service territory and shall not furnish, make available, render or extend its transmission and distribution services to a consumer located within the service territory of another electric distribution company; provided that any electric distribution company may extend or construct its facilities in or through the service territory of another electric distribution company, if such extension or construction is necessary for such company to connect any of its facilities or to serve its customers within its own service territory. As of the implementation dates as set forth in § 1003(b)(1) and (2) of this title [repealed], there shall be no exclusive service territories for the supply of electricity, except as otherwise herein provided.

However, with that being said, we have already introduced House Bill 387 to rectify this concern and to permit ITCs or other utilities to build transmission in Delaware subject to a CPCN requirement. It is currently being considered by the House Transportation/Land Use and Infrastructure Committee which I understand will be meeting on Thursday. There is only about 2 weeks left of the current session and I don't necessarily see this making it through all the committees and getting a vote before the end of the session so we may be stuck with the current wording.

I just wanted to make you aware of this issue as we work toward making changes that we feel will improve Delaware opportunities for continued reliable cost-effective transmission service.

Bob

Robert J. Howatt
Executive Director



SPONSOR: Rep. Kowalko & Sen. Henry
Rep. Keeley

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 387

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATED TO PUBLIC UTILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 203A, Title 26 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 203A. Certificate of public convenience and necessity; abandonment or discontinuance of business, operations
4 or service.

5 (a)(1) Subject to the provisions of subsection (b) of this section and §§ 102, 201, 202 and Chapter 10 of this title,
6 and excluding electric suppliers, no individual, copartnership, association, corporation, joint stock company, agency or
7 department of the State, cooperative, or the lessees, trustees or receivers thereof, shall begin the business of a public utility
8 nor shall any public utility begin any extension of its regulated public utility business or operations without having first
9 obtained from the Commission a certificate that the present or future public convenience and necessity requires or will
10 require the operation of such regulated public utility business or extension.

11 (2) Notwithstanding any other provision of law, no Commission approval shall be required for any transfer of a
12 certificate of public convenience between public utility companies providing telecommunications services that operate
13 under common ownership.

14 (3) This section shall not be construed to require any public utility to secure such a certificate for any extension
15 or modification upgrade within the perimeter of any territory already served by it.

16 (4) The Commission, after hearing, on the complaint of any public utility claiming to be adversely affected by
17 any proposed extension, or modification upgrade, may make such order and prescribe such terms and conditions with
18 respect to the proposed extension as may be required by the public convenience and necessity.

19 (5) Public utility electric transmission service providers must have a certificate of public convenience and
20 necessity for the construction and operation of any new electric transmission lines operating at 100KV or greater and
21 located in the State or offshore waters and integrated with the State electric transmission grid. In granting such certificate,
22 the Commission shall consider:

- 23 a. the need for the proposed transmission line;
24 b. the impact on the reliability of the transmission grid
25 c. the long term viability of the public utility proposing the line;
26 d. the technical engineering and operating expertise of the public utility;
27 e. the technology and design proposed for the new transmission line; and
28 f. the economic and safety impact of the proposed transmission line.

29 Section 2. Amend Title 26 § 203B, Title 26 of the Delaware Code by making deletions as shown by strike through
30 and insertions as shown by underline as follows:

31 § 203B. Service territories for electric utilities.

32 (g) The exclusive retail electric service territories heretofore established by the Commission pursuant to this
33 section shall continue as exclusive service territories for the ~~transmission and~~ distribution of electricity. Except as otherwise
34 provided herein, each electric distribution company shall have the exclusive right to furnish ~~transmission and~~ distribution
35 services to all electricity-consuming facilities located within its service territory and shall not furnish, make available,
36 render or extend its ~~transmission and~~ distribution services to a consumer located within the service territory of another
37 electric distribution company; provided that any electric distribution company may extend or construct its facilities in or
38 through the service territory of another electric distribution company, if such extension or construction is necessary for such
39 company to connect any of its facilities or to serve its customers within its own service territory. As of the implementation
40 dates as set forth in § 1003(b)(1) and (2) of this title [repealed], there shall be no exclusive service territories for the supply
41 of electricity, except as otherwise herein provided.

42 (j) Pursuant to § 203A of this title, the exclusive retail electric service territories heretofore established by the
43 Commission pursuant to this section shall not restrict independent transmission companies from obtaining a certificate of
44 public convenience and necessity for the construction and operation of new transmission lines.

SYNOPSIS

This bill updates Title 26, Chapter 1, Subchapter II by recognizing the potential for independent transmission companies to construct transmission facilities within the State and by providing for a new transmission line CPCN requirement. Current Delaware law arguably does not provide for such companies and does not provide any guidance on safety or how such a company would integrate into the current grid.



2750 Monroe Boulevard
Audubon, PA 19403

Virginia Electric and Power Company
Ronnie Bailey
701 East Cary Street
Richmond, VA 23219

Transource Energy, LLC
Takis Laios
1 Riverside Plaza,
Columbus Ohio, 43215

LS Power Development, LLC
Sharon Segner
400 Chesterfield Center, Suite 110
St. Louis, MO 63017

Public Service Electric and Gas Company
Kim C. Hanemann
4000 Hadley Road
South Plainfield NJ 07080

August 12, 2014

RE: Artificial Island Supplemental Proposal Request

Project P2013_1-1A - Two (2) Thyristor Controlled Series Compensation (TCSC) Devices near New Freedom¹ (Dominion)

Proposal P2013_1-1C - Install a new 500kV line from Hope Creek - Red Lion without Salem Hope Creek 2nd Tie (Dominion)

Proposal P2013_1-2B - Two (2) 500/230 transformers near Salem and loop in Red Lion - Cartanza 230 and Red Lion - Cedar Creek 230 kV (Transource)

Proposal P2013_1-5A - New 230 kV station that taps existing Cedar Creek - Red Lion 230kV and Cartanza - Red Lion 230kV, submarine and overhead (LS Power)

Proposal P2013_1-7K New 500kV Hope Creek - Red Lion Line, without Salem-Hope Creek 2nd Tie (PSE&G)

Dear Proposer,

At the July Board meeting, the PJM Board deferred selection for the Artificial Island project solution in order to obtain additional information. PJM staff will be gathering additional information from those entities that have proposed projects that have passed the various levels of analysis undertaken by staff as laid out at the May 19 TEAC meeting. As described in the July 23rd letter to the TEAC, finalist bidders will have the opportunity to supplement their proposals.

¹ Based on Dominion's July 16th letter, PJM has determined that it would be appropriate to seek additional information as outlined above regarding the Dominion 1A project.

PJM is inviting you as a "finalist" bidder (Proposer) to submit final terms of project costs. We reiterate that cost is only one of several considerations that will be a factor in the final selection for the AI Project Proposal Window. This request is not open for Proposers to make changes to the project scope. The scope of a submission must be limited to factors that specifically address project cost. If a Proposer wishes to supplement its proposal in terms of cost, the Proposer must include sufficient detail for PJM to evaluate the details of its cost proposal, including the specific details surrounding any cost cap that a proposer wishes to submit. Submission of a cost cap is not required but if a Proposer wishes to submit a cost cap, the Proposer must be explicit in identifying the scope of the work that is included and excluded from the project cost or cost cap. Any contractual terms and conditions that would apply to the proposed project cost or cost cap must also be specified in the submission.

Each project's scope of work under consideration is that which was studied by PJM with respect to performance criteria including PJM modifications as noted on the attached diagrams and as discussed at the May 19 TEAC meeting. Any supplemental proposal must be consistent with the attached diagrams. Proposers must affirm the project schedule based on scope with PJM modifications and projected in-service date.

Further, it has been brought to PJM's attention that the State of Delaware public utility regulations may restrict the ability of a developer to site and construct new transmission in Delaware if the Proposer does not currently have a service territory as established by the state commission in the area of their project. Therefore, PJM requests that all Proposers who have submitted projects that require construction within the state of Delaware, provide a detailed response, including legal references, as well as confirmation from the Delaware Public Service Commission or the Office of the Delaware Attorney General regarding Proposer's legal ability to site and construct transmission in the State of Delaware consistent with its project proposal.

If you wish to supplement your proposal, the submission must be sent to PJM at RTEP@pjm.com no later than close of business on September 12, 2014 for consideration.

We appreciate your continued cooperation as we move forward on the Artificial Island competitive solicitation process.

Very truly yours,



Steven Herling
Vice President – Planning

Attachment

CC:

Terry Boston
Mike Kormos
Paul McGlynn
Mark Sims
Suzanne Glatz
Pauline Foley