

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

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

ORDER NO. 8632

**AND NOW**, this 9<sup>th</sup> day of September, 2014, the Public Service Commission (the "Commission") determines and orders as follows:

**WHEREAS**, on August 29, 2014, Northeast Transmission Development, LLC ("Petitioner") filed a Petition for Expedited Declaratory Order confirming that neither Delaware public utility law nor prior orders of the Commission prohibit nonincumbent transmission providers such as the Petitioner from siting, constructing and owning electric transmissions facilities used in interstate commerce, upon receipt of necessary approvals; and

**WHEREAS**, PJM Interconnection L.L.C. ("PJM") is the regional transmission organization that coordinates the movement of wholesale electricity in the State of Delaware and all or parts of 12 other states and the District of Columbia; and

**WHEREAS**, in April, 2013, PJM issued a request for proposals pursuant to its Regional Transmission Expansion Plan for transmissions solutions to improve operational performance in the Artificial Island area; and

**WHEREAS**, Petitioner is a finalist sponsor of a proposed transmission project in the Artificial Island RFP; and

**WHEREAS**, PJM has raised a question of whether Delaware law restricts the ability of nonincumbent transmission developers to site,

construct or own new transmission facilities in this State, and directed finalists to provide confirmation from the Delaware Public Service Commission or the Delaware Attorney General's Office by September 12, 2014, of the finalist's legal ability to site and construct transmission in the State of Delaware; and

**WHEREAS**, the Artificial Island RFP represents PJM's first competitive bid solicitation for transmission under the Federal Energy Regulatory Commission's Order 1000 requiring, subject to state law, *inter alia*, competition and coordinated regional planning in the construction of new electric transmission; and

**WHEREAS**, the Commission has determined, as a matter of public importance and its exclusive original jurisdiction to regulate public utilities in the State of Delaware, that it should clarify and confirm that Delaware public utility law does not prohibit nonincumbent transmission developers from siting, constructing and owning in the State of Delaware electric transmission facilities used in interstate commerce, upon receipt of necessary approvals.

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE  
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. The Petition of Northeast Transmission Development, LLC for a declaratory order is hereby **GRANTED**. Subject to all requirements of Delaware law, including the requirement, if any, that nonincumbent transmission developers obtain a Certificate of Public Convenience and Necessity from the Commission prior to beginning the business of a public utility in this State, nothing in Delaware public utility law or any prior order of the Commission prohibits nonincumbent

transmission developers from siting, construction and owning in the State of Delaware transmission facilities used in interstate commerce.

**BY ORDER OF THE COMMISSION:**

/s/ Dallas Winslow  
Chair

/s/ Jaymes B. Lester  
Commissioner

/s/ Harold B. Gray  
Commissioner

/s/ Joann T. Conaway  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

Attest:

/s/ Alisa Carrow Bentley  
Secretary