State of Delaware
Department of State
Division of the Public Advocate

www.publicadvocate.delaware.gov
1.888.607.2427

820 N. French Street, 4th Floor
Wilmington, Delaware 19801
(302) 577-5077

29 South State Street
Dover, Delaware 19901
(302) 241-2555

March 28, 2017

VIA ELECTRONIC DELIVERY

PJM Board of Managers
c/o Mr. Howard Schneider, Chairman
PJM Interconnection, LLC
2750 Monroe Boulevard
Audubon, PA 19403

RE: Artificial Island Project

Dear Chairman Schneider:

Thank you for the opportunity to submit this letter regarding the Artificial Island Project ("Project"). The Delaware Division of the Public Advocate ("DPA") is charged with ensuring the most reasonable rates for residential, small commercial, and at times large commercial entities. In early April, you will have before you the recommendation of PJM Staff to lift the suspension on the PJM Board approved project. Delaware has long been concerned that the vast majority of the cost burden will be borne by Delmarva ratepayers even though they will receive minimal benefit from the Project. Indeed, this Board suspended the Project in light of concerns about its cost and directed the PJM Staff to reevaluate it.

Delaware has two requests: (1) we ask the PJM Board to consider the uniqueness of the Project in determining how the Project costs will be allocated; and (2) we ask the PJM Board to support the requests for rehearing currently pending before the Federal Regulatory Commission ("FERC") in Docket No. EL15-95. We discuss each of these requests below.

1. The Uniqueness of the Project

Since the inception of PJM's Regional Transmission Expansion Planning ("RTEP") process, the PJM Board has approved over 1,200 transmission projects in seven different categories. The Project is the *only* project in the category of generator stability that PJM has ever approved. Moreover, PJM's Steven Herling has admitted that under the Solution-Based Distribution Factor ("SBDFAX") allocation approach, the brunt of the costs will be borne by the ratepayers in whatever transmission zone the end point of the transmission line happens to fall.[1] Because PJM has chosen to locate the end point in Delaware, ratepayers in the Delmarva Zone bear the majority of the costs; but if PJM had chosen to locate the end point in Pennsylvania, some other utility's ratepayers would bear the majority of the costs. Thus, under the SBDFAX, equally sound solutions to the same stability violations would have dramatically different impacts on power flows under the flow-based SBDFAX approach and would result in widely disparate cost allocation results based solely on the end point of the line.

Applying SBDFAX into a stability-driven project such as this Project produces an arbitrary result, and therefore unjust and unreasonable rates. Cost responsibility should not be decided solely because of where a transmission line ends; rather, costs and benefits must be reasonably aligned.[2] Our appellate courts have held that "approved rates must reflect to some degree the costs actually caused by the customer who must pay them,"[3] and the courts "evaluate compliance with this unremarkable principle by comparing the costs assessed against a party to the burdens impose or benefits drawn by that party."[4] PJM is bound by these legal principles as much as FERC is. And it is clear that the SBDFAX cost allocation approach does not reasonably align the costs of the Project to the benefits of the Project to the ratepayers who will pay the vast majority of its costs. In fact, we have heard there would be a $170 million regional load savings, yet the Delmarva Zone will receive only 10 percent of the yearly savings. We believe that PJM's procedures provide for Board consideration of the beneficiaries of the Project,[5] and indeed Mr. Herling believes that PJM could craft a solution that recognizes the uniqueness of the Project without rendering the SBDFAX approach unusable for the vast majority of other RTEP projects:

> MR. HERLING: That's one additional beneficiary. It's not the only beneficiary. But it's an additional beneficiary. You got to decide whether that's a big enough issue to solve. We're talking about a couple of projects here. I realize it's a lot of money, but if we never have another stability problem ever again, okay, we can create a different solution, a different cost allocation solution, okay. I would like to keep it reasonably simple, but we could come up with a different approach that blends in other types of beneficiaries. But honestly I wouldn't expect it to be used very often.
>
> MS. MARTIN: Because you could come up with it yourself?

---

[1] FERC January 12, 2016 Technical Conference, Second Revised Transcript, at 109.

[2] *FirstEnergy Serv. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014); *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009).

[3] *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009), *citing Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1320-21 (D.C. Cir. 2004), *Transmission Access Policy Study Group v. FERC*, 225 FR.3d 667, 708 (D.C. Cir. 2000), and *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992).

[4] *Illinois Commerce Commission*, *supra* at 476.

[5] *See, e.g.*, PJM Operating Agreement, Section 1.4(d)(ii): "The [RTEP] *shall* … (ii) avoid the imposition of unreasonable costs on any Transmission Owner or any user of Transmission Facilities … ." (emphasis added).

MR. HERLING: Oh, sure."[6]

FERC Docket No. EL15-95

As the Board is probably aware, a rehearing request is currently pending before the FERC, in which the FERC will determine whether the SBDFAX cost allocation for the Project reasonably aligns costs and benefits. While we understand that the PJM Board believed it was bound to apply the SBDFAX approach to the Project (a belief with which we disagree), it would not be inconsistent for the Board to acknowledge that applying SBDFAX in this situation does not produce just and reasonable rates. Delaware respectfully requests the Board to advise FERC that it supports the request for rehearing. Moreover, in the event that PJM files a new cost allocation proposal for the Project, or files to reaffirm its prior cost allocation proposal, Delaware asks the Board to state in its filing that although it perceives a contractual obligation to apply SBDFAX to the Project, it does not view the SBDFAX approach as producing a just and reasonable cost allocation outcome under the unique circumstances of this Project. We respectfully ask that in such a filing PJM include its analysis of alternative cost allocation approaches, as it suggested it could do during the FERC Technical Conference.[7]

* * *

We thank the Board for its consideration of Delaware's continuing concerns about the cost allocation for the Project. If you need further information or have any questions, please do not hesitate to contact me. Thank you again for your consideration of our request on behalf of the ratepayers of the State of Delaware.

Sincerely,

/s/ *Andrew Slater*
Andrew Slater
Public Advocate for the State of Delaware

ACS/rai

cc: Mr. Vincent Duane, Esq., General Counsel, PJM (via electronic mail)
Mr. Craig Glazer, Vice President-Federal Government Policy, PJM (via electronic mail)

---

[6] FERC January 12, 2016 Technical Conference, Second Revised Transcript, at 139-40.
[7] FERC January 12, 2016 Technical Conference, Second Revised Transcript, at 139-40.

Mr. Steve Herling, Vice President-Planning, PJM (via electronic mail)
Mr. Paul McGlynn, Chair, Transmission Expansion Advisory Committee, PJM (via electronic mail)
Commissioners, Delaware Public Service Commission (via electronic mail)
Mr. David Anders, Director, PJM Stakeholder Affairs (via electronic mail)
Mr. Robert Howatt, Executive Director, Delaware Public Service Commission (via electronic mail)
Mr. Matthew Hartigan, Deputy Director, Delaware Public Service Commission (via electronic mail)