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**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 As of the implementation dates as set forth in § 1003(b)(1) and (2) of this title [repealed], there shall be no exclusive service territories for the supply of electricity, except as otherwise herein provided.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

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