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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Proposal of)
FirstEnergy Service Company to) Case No. 09-778-EL-UNC
Modify Its RTO Participation)

Comments of FirstEnergy Service Company

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EXECUTIVE SUMMARY

Introduction

On September 4, 2009, the Public Utilities Commission of Ohio (Commission) opened this proceeding and directed interested stakeholders to submit written comments on September 25, 2009 regarding the impact of FirstEnergy Service Company's application to the Federal Energy Regulatory Commission (FERC) for authorization for certain of its operating affiliate companies to terminate their membership in the Midwest ISO and enter PJM (the "RTO realignment"). Our comments follow.

Customer Benefits

The RTO realignment will result in significant benefits for the Ohio Utilities and their Ohio customers, including the following:

- A. Alignment into an RTO that better implements Ohio's retail choice policies and provides better retail choice opportunities for consumers.
- B. Wholesale capacity procurement processes that shift risk from consumers to suppliers.
- C. Wholesale capacity markets where generation and demand response compete head-to-head based solely on price.
- D. Increased participation by and competition between suppliers in Ohio's SSO procurement processes.
- E. Increased numbers of retail suppliers of "retail choice" energy products in the Ohio Utilities' footprint.

F. Proven market design that fosters development of demand response and energy efficiency resources.

The PJM market includes more merchant generation and demand response than any organized market in North America. Virtually all of this generation and demand response is committed to PJM's forward-looking RPM auction, and is unavailable for capacity supply to the Ohio Utilities customers unless ATSI joins PJM. RTO realignment permits the Ohio Utilities to access these capacity resources, thus increasing the participation in and competitiveness of its SSO procurement process. PJM's market rules are designed to reflect more than a decade of customer choice in its footprint. These rules promote efficient participation by competitive retail electric suppliers (CRES) in retail markets and seamless customer switching. Because the capacity obtained by PJM follows load on a daily basis (settled monthly), generation reliability is assured. Consolidation of FirstEnergy's operations in PJM allows the Ohio Utilities to align physical and financial power supply delivery with the utilities' strong electrical ties to PJM, thus enhancing operating efficiency, and furthering Ohio's retail choice goals.

Timetable and Costs

FirstEnergy and PJM have developed an orderly and reasonable timetable for the project implementation plan to be accomplished, including a series of stakeholder meetings, commencing October 2, 2009, in Columbus, Ohio. A decision from FERC is expected on December 17, 2009, to permit the FirstEnergy Ohio Utilities to commit their load into the PJM May 2010 RPM Base Residual Auction for the 2013-14 delivery year and integration into PJM commencing June 1, 2011. A transitional capacity auction is scheduled to be conducted in April, 2010, in advance of when the Ohio Utilities will need to take delivery of supply under the next SSO procurement, the date energy will start flowing, so as to provide certainty to suppliers participating in that process.

ATSI is responsible for exit fees from Midwest ISO and integration fees with PJM. Recovery of these fees from customers rightfully can be considered only once the fees are determined and the utility requests rate recovery in a subsequent filing.

FirstEnergy Ohio Utilities have requested relief from PJM transmission expansion projects approved prior to entry into PJM, a fair and equitable solution designed to minimize the cost of integration to Ohio customers and recognizing that the FirstEnergy Ohio Utilities are obligated by tariff to pay similar Midwest ISO costs upon their exit from Midwest ISO.

Costs/Benefits, Reliability, ARRs/FTRs

FirstEnergy's application for FERC authorization to execute the RTO realignment includes an analysis –the ATSI Integration Simulation Analysis – that demonstrates production cost and congestion savings to customers of both RTOs, including customers in Ohio. This study shows that production costs for the 2 RTO's will fall by 0.08%, or about \$26 million, and that competition costs will decrease by 6.3%, or about \$91 million. No party expects significant impacts on energy prices, ATSI is proposing to carry over its existing Midwest ISO transmission rate into a PJM transmission rate, customers must pay for capacity in both the Midwest ISO and PJM and, absent a transparent capacity market in Midwest ISO, the true cost of capacity within the Midwest ISO is not available and therefore renders reliable apples-to-apples comparisons essentially impossible. A cost/benefit study is not required by FERC for changing RTOs, and, based on the foregoing, additional study will not add meaningfully to the result.

Reliability will not be adversely affected in any way by the RTO realignment, a point agreed with by both RTOs, involving only modest changes with NERC's mandatory Reliability Standards. On the contrary, PJM's RPM approach with its three year forward transparent capacity market should only serve to enhance reliability.

The allocation of ARRs and FTRs will be made pursuant to a transitional FTR allocation plan, supported by modeling based on known and well-understood data. Specific concerns about ARRs and FTRs can be accommodated during the stakeholder process, as has occurred in the ordinary course in other RTO realignments.

Discussion of Jurisdiction

There is no Ohio statute that provides for the Commission to pass on, approve or deny the RTO realignment. Other Ohio statutes, when considered in light of their intended purposes, similarly fail to establish jurisdiction:

- O.R.C. Section 4905.48 (governing transactions between utilities);
- O.R.C. Section 4905.31 (Commission jurisdictional non-tariff transactions);
- O.R.C. Section 4928.12 (governing qualifying transmission entities);
- O.R.C. Section 4904.04 et seq. (general supervisory powers); and
- O.R.C. Section 4909 (rates and charges).

O.R.C. Section 4928.12 was designed under S.B. 3 to ensure transmission access and reliability during the market development period under the electric distribution utilities' transition plans, which ended for the FirstEnergy Ohio Utilities in 2005, thus rendering the statutory purpose fulfilled. Even so, both Midwest ISO and PJM are recognized as qualifying transmission entities by the Commission, and, therefore, no regulatory compliance issue under Section 4928.12 is raised by ATSI's move to PJM.

Similarly, the Commission's general supervisory powers under O.R.C. Section 4905 are not triggered by the realignment. The Commission has full power and authority to participate in the FERC proceedings to protect the interests of Ohio consumers. The absence of an express approval requirement under Ohio law for the RTO realignment is telling, and, given the fulsomeness of the Commission's rights before the FERC, there is no need to take the extraordinary steps of attempting to apply those general supervisory powers here, even without considering federal preemption principles which may preclude such activity.

Conclusion

The RTO realignment eliminates a complicated transmission seam, moves the ATSI footprint into an RTO that advances Ohio's retail choice approach, delivers meaningful customer benefits and can be accomplished on a reasonable and thoughtful timetable that fits to the next Ohio SSO procurement process. By working within the FERC docket and PJM integration process, the Commission and other constituents can achieve the efficiency and regulatory certainty that is essential to the FirstEnergy companies, to consumers and to all other stakeholders all the while ensuring their interests will be heard and considered.

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COMMENTS OF FIRSTENERGY SERVICE COMPANY

FirstEnergy Service Company (FirstEnergy) appreciates this opportunity to describe the benefits that consolidating its Ohio operations into PJM will bring to Ohio's consumers.

As noted in the Entry dated September 4, 2009 in this case, certain of FirstEnergy's operating affiliate companies propose to terminate their respective memberships in the Midwest ISO and transfer their facilities and operations into PJM.¹ For convenience, this process is described as the "RTO realignment" and the affected FirstEnergy operating affiliate companies are described as the "Ohio Utilities," American Transmission Systems, Incorporated ("ATSI,") and FirstEnergy Solutions ("Solutions.")²

These Comments describe the benefits that the RTO realignment will bring to the Ohio Utilities and their Ohio customers. These benefits include, but are not limited to, at least the following:

- A. alignment into an RTO that better implements Ohio's retail choice policies and provides better retail choice opportunities for consumers;
- B. wholesale capacity procurement processes that shift risk from consumers to suppliers;
- C. wholesale capacity markets where generation and demand response compete head-to-head based solely on price;
- D. increased participation by and competition between suppliers in Ohio's SSO procurement processes;

¹ FERC Docket No. ER09-1589, *FirstEnergy Service Company*, Application (August 17, 2009) (hereinafter, the "Application").

² The Ohio Utilities are the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company. ATSI is American Transmission Systems, Inc. Solutions is FirstEnergy Solutions Corp.

- E. increased numbers of retail suppliers of “retail choice” energy products in the Ohio Utilities’ footprint; and
- F. proven market design that fosters development of demand response and energy efficiency resources.

These Comments are organized to address the following matters. Part I provides background information about FirstEnergy and its affiliates, and about the “seam” or boundary between the Ohio Utilities and the rest of the FirstEnergy utility service territories. Part II provides details about the consumer benefits that will result from the RTO realignment. Part III provides information about the schedule and process for completing the RTO realignment. Part IV provides additional information in response to questions that were raised in the September 15, 2009 Commission meeting concerning the RTO realignment. Part V provides contact information for FirstEnergy’s representatives.

I.

BACKGROUND

FirstEnergy Corp. is a public utility holding company³ that is headquartered in Akron, Ohio. Its operating subsidiaries⁴ include: Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Pennsylvania Power Company (Penn Power), ATSI,⁵ Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power & Light Company, and Solutions. FirstEnergy Service Company is a utility holding company service company and, in that role, provides certain non-power management and support services to its operating company affiliates.⁶

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “Ohio Utilities”) are electric distribution

³ 42 U.S.C. § 16451(8).

⁴ FirstEnergy Corp.’s operating subsidiaries are “electric utility companies” under the Public Utility Holding Company Act of 2005. 42 U.S.C. § 16451(5).

⁵ ATSI is an “independent transmission company.” O.R.C. § 4905.03.

⁶ 18 C.F.R. §366.1.

utilities⁷ that provide retail electric service to consumers located within their respective Ohio service territories. Penn Power is a wholly-owned subsidiary of The Ohio Edison Company and provides electric service to customers located in Pennsylvania. ATSI is a “Transmission Owner” as that term is defined in the Midwest ISO and PJM tariffs. Solutions, through wholly-owned subsidiaries, owns electric generating stations, including electric generating stations in Ohio. Solutions also purchases additional power in wholesale markets. Solutions sells electric energy products and services in wholesale and retail electric markets and transactions in PJM and the Midwest ISO, including within Ohio. In its role as seller of electric energy, Solutions provides competitive retail electric service (CRES)⁸ to consumers in Ohio, and in other states in PJM and the Midwest ISO. The Ohio Utilities, Penn Power, ATSI and Solutions currently are members of the Midwest ISO and operate within the Midwest ISO footprint.

Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power & Light Company are “Transmission Owners” as that term is defined in the PJM tariff, and provide retail electric service to consumers located in their respective Pennsylvania and New Jersey footprints. As noted above, Solutions sells electric energy products and services at both wholesale and retail within the PJM footprint.

FirstEnergy’s operating company affiliates operate in 2 Regional Transmission Organizations (RTOs),⁹ PJM and the Midwest ISO. The “border” between the RTOs often is referred to as a “seam.”¹⁰ Figure 1 depicts the seam that runs along the ATSI boundary with PJM.

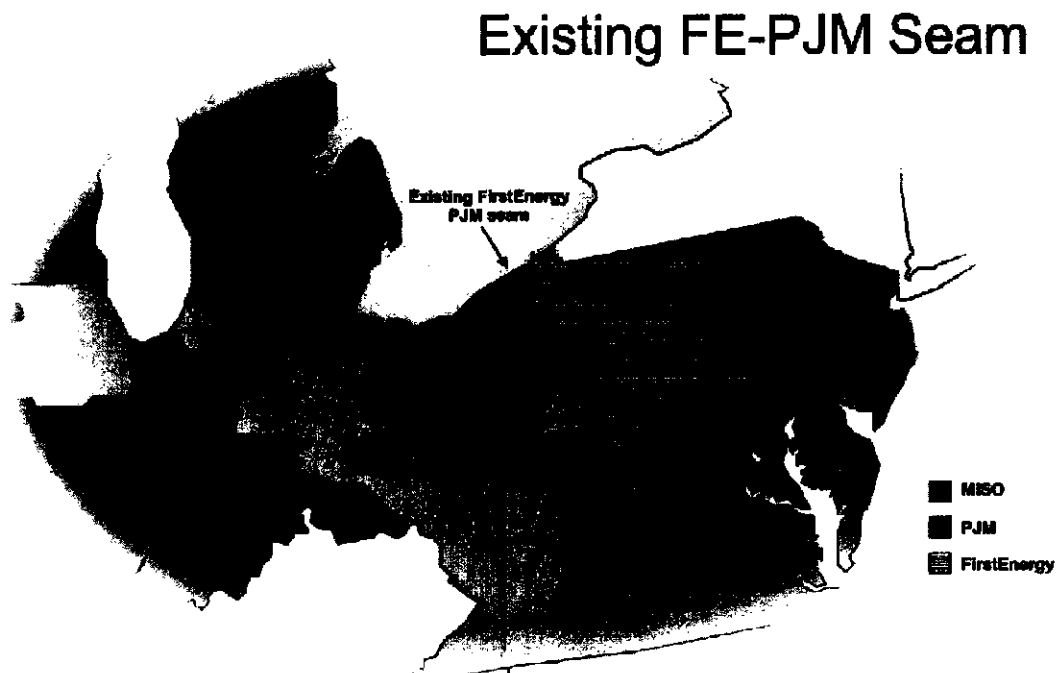
⁷ O.R.C. § 4928.01(A)(6).

⁸ O.R.C. § 4928.01(A)(4).

⁹ 18 C.F.R. § 35.34(b)(1).

¹⁰ *E.g., Joint Operating Agreement Between the Midwest ISO and PJM*, PJM Second Revised FERC Rate Schedule No. 38, approved FERC Docket No. ER04-375, *PJM et al.*, Order Modifying and Conditionally Accepting Joint Operating Agreement, 106 FERC ¶ 61,251 (2004), *et seq.*

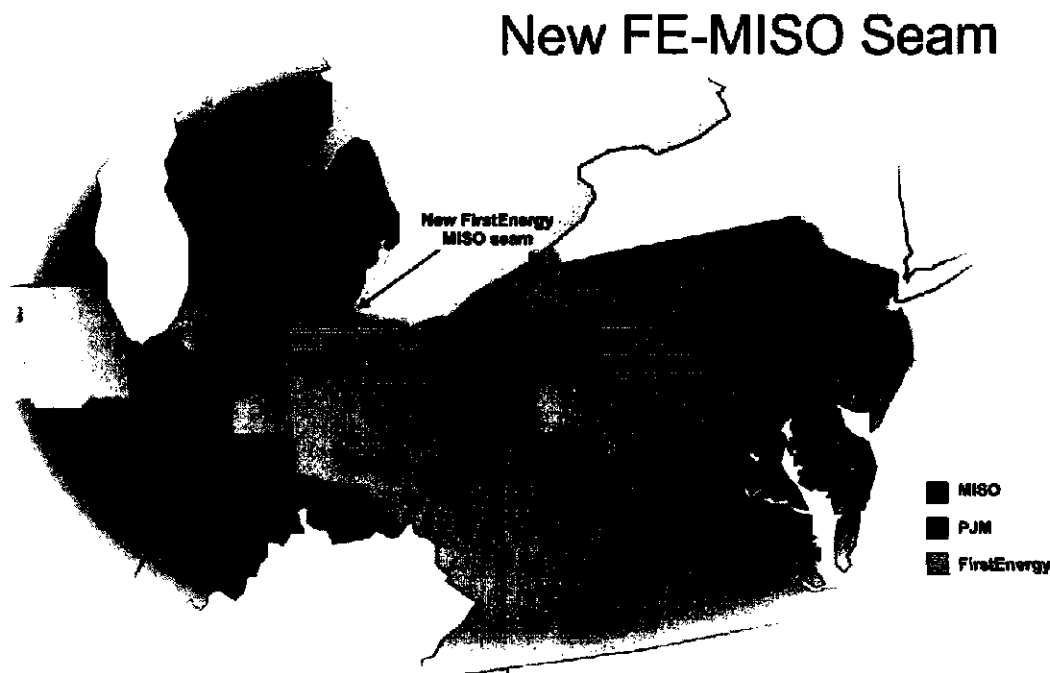
FIGURE 1 - EXISTING SEAM BETWEEN FIRSTENERGY'S PJM AND MIDWEST ISO ZONES



The RTO realignment will benefit the Ohio Utilities and their consumers by consolidating virtually all of the FirstEnergy transmission, generation and distribution facilities into a single RTO.¹¹ As figure 1 reflects, the seam divides the transmission, generation, and distribution facilities of the FirstEnergy companies, even though some of these facilities are electrically interconnected. Figure 2 depicts the “new” seam once the RTO realignment is complete.

¹¹ The 340 MW Sumpter plant is located in Michigan, and will remain within the Midwest ISO footprint.

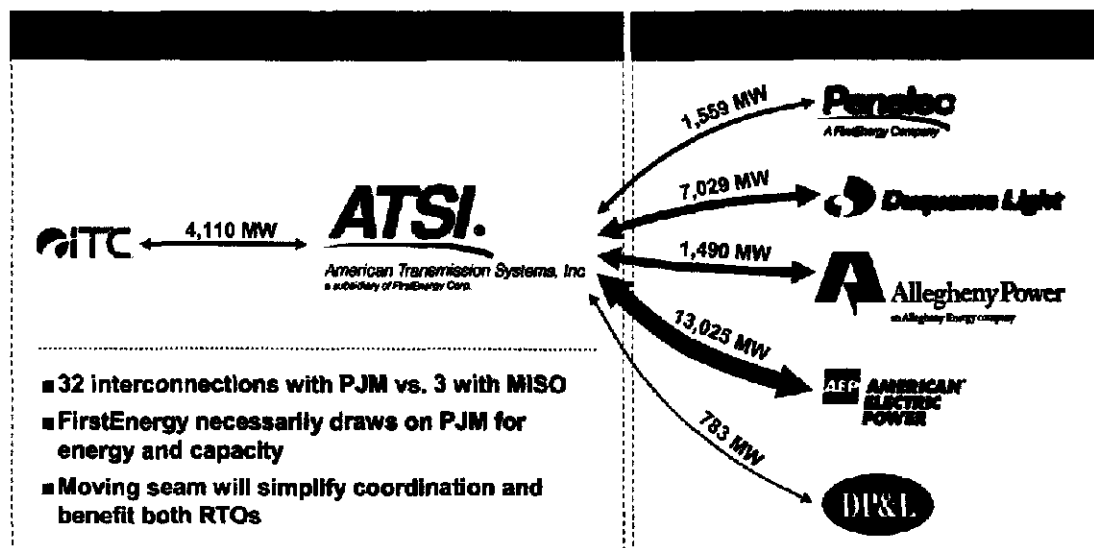
FIGURE 2 - NEW SEAM BETWEEN FIRSTENERGY AND THE MIDWEST ISO



Speaking from an “electrical interconnectivity” point of view, the ATSI footprint has much stronger interconnections with utilities that are within PJM than to utilities that are located in the Midwest ISO. Specifically, there are 32 transmission-voltage interconnections between ATSI and PJM, whereas there are only three transmission voltage interconnections between ATSI and the Midwest ISO. The result is that most of energy imports into the ATSI footprint originate in PJM.¹² Figure 3 depicts peak loading on the transmission lines between ATSI and utilities that are located in the Midwest ISO and in PJM.

¹² In fact, the Midwest ISO relies heavily on imports from adjacent areas, including PJM. For example, in 2008, the Midwest ISO imported almost 4.4 GW during peak hours and more than 2.1 GW during off-peak hours. The largest imports in real-time came from PJM (1.2 GW/hr) and from Manitoba (1.1 GW/hr). Potomac Economics, *2008 State of the Market Report for the Midwest ISO*, p. 130 (2009), available http://mktweb.midwestiso.org/publish/Document/7e7fdb_1225bf59491_7e090a48324a/2008%20State%20of%20the%20Market%20-%20Final%20text.pdf?action=download&_property=Attachment.

FIGURE 3 – ATSI TRANSMISSION CAPACITY INTO PJM AND THE MIDWEST ISO



In 2008, there was 12,910 MW of net generation capability and 12,972 MW of peak load in the ATSI zone, which includes Penn Power. As Figure 3 reflects, to the extent that energy must be imported into the ATSI zone, ATSI's Ohio consumers largely rely on energy supply that is located in PJM.

PJM and the Midwest ISO have implemented a Joint Operating Agreement (JOA) that is intended, among other things, to address "seams" issues. Operations under the JOA have addressed some of the burdens that formerly applied to scheduling energy across the seam. Specifically, the JOA has reduced many of the operational, financial and administrative burdens that apply to scheduling energy and transmission across the seam in real time. However, the JOA cannot *eliminate* these burdens.¹³

The JOA Day-Ahead Market Coordination is constrained in that it ensures that flows on reciprocal flow gates ("RCFs") are limited to no more than the Firm Flow entitlement for each RTO. The day-ahead flow above the Firm Flow level can be requested, but only under certain conditions. Furthermore, this protocol will be used rarely: only when the need for additional congestion relief assistance can be predicted

¹³ FERC specifically declined to institute a joint and common market between PJM and the Midwest ISO that included single system dispatch. FERC also declined certain requests to: (i) eliminate pancaked ancillary service

on a day-ahead basis. In fact, the JOA's Day-Ahead Market Coordination provision has never been implemented to date.¹⁴

The fact that the JOA does not coordinate for "day-ahead" transactions is significant because more load clears in the day-ahead markets than clears in real time. For example, during 2008 PJM cleared an average of 96.7% MWh each hour in the day-ahead markets, and an average 79,515 MWh each hour in the real time markets.¹⁵ In 2008, 99.2% of the load in the Midwest ISO was scheduled in the day-ahead market.¹⁶

Based on these data, the fact that the JOA has proven effective in real time does not resolve the issues of efficiency. Suppliers that serve FirstEnergy's Ohio loads may want or need to schedule their energy requirements from PJM. But, because the JOA does not coordinate for day-ahead markets, suppliers who would prefer to source their FirstEnergy Ohio loads in PJM's day-ahead markets must purchase power and transmission service at prices that reflect the inefficiencies caused by the seam¹⁷

Internalizing the existing seam by consolidating the ATSI footprint into PJM will eliminate the burdens that currently apply to scheduling energy and transmission from PJM into the ATSI footprint. Specifically, there will be no significant "seams" burden because ATSI will be within the PJM footprint. The result will be a larger supply of merchant electric energy and capacity – and a larger pool of wholesale and retail suppliers – for Ohio's consumers that are located in the ATSI footprint. These suppliers

rates; (ii) institute a single, integrated FTR-allocation process, or establish a single market portal for the two RTOs. FERC Docket No. EL06-97, *WPS v Midwest ISO*, Order Denying Rehearing, 120 FERC ¶ 61,269 (2007).

¹⁴ PUCO Case No. 09-778, *FirstEnergy Service Co.*, Transcript of September 15, 2009 Presentation, p. 16.

¹⁵ Monitoring Analytics, *2008 PJM State of the Market Report*, Volume II (2009), p. 48, available http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2008.shtml.

¹⁶ Potomac Economics, *2008 State of the Market Report for the Midwest ISO*, p. 36, available, [http://potomaceconomics.com/markets_monitored/midwest_ISO\(2009\)](http://potomaceconomics.com/markets_monitored/midwest_ISO(2009)).

¹⁷ PJM and the Midwest ISO examined the steps that would be needed for coordination of the day-ahead markets under the JOA. In 2006, the RTOs reported that the costs to achieve this coordination likely would exceed the financial benefits that would be realized. In addition, the RTOs identified serious doubts about whether current technology could achieve the desired results. On these grounds, the RTOs (with FERC's approval) dropped further efforts to directly coordinate across the seam on a day-ahead basis. See FERC Docket No. ER04-375, [*Midwest ISO/PJM*], Report, pp. 8-9 (June 28, 2006); FERC Docket No. EL06-97, *WPS v Midwest ISO*, Order Dismissing Complaint and Terminating Reporting Obligation, 118 FERC ¶ 61,089 (2007).

will have access to Ohio consumers under PJM market rules that facilitate retail competition and demand response in a fashion not available today.

At FirstEnergy's request, PJM ran energy market simulations to analyze the operational efficiency impact of the RTO realignment. PJM presented the results of these market simulations to FirstEnergy in a document titled "ATSI Integration Simulation Analysis," a copy of which is attached to the Application as Exhibit 2. As described in the PJM analysis, inclusion of ATSI zone load and generation in the PJM unit commitment and dispatch process resulted in reduction of annual system production costs across both RTOs by 0.08%, or about \$26 million, and reduction of total annual congestion costs across both RTOs by 6.3%, or about \$91 million. Even if possible to debate the level of realized benefit, this study establishes that there can be no question that simplifying the existing seam will provide tangible improvements.

II. CONSUMER BENEFITS

This part of the Comments demonstrates that the RTO realignment will open the ATSI territory to more suppliers and more energy supply. Consumers should benefit because, as more supply chases load, competition between suppliers should drive energy prices down.

A. Entry into PJM Will Benefit Consumers Because PJM's Market Structures and Philosophies Better Implements Ohio's Retail Choice Policies and Provides Better Retail Choice Opportunities for Consumers.

PJM and the Midwest ISO, and their respective states and electric utilities, have different market structures and philosophies. The current PJM footprint covers 13 states and the District of Columbia.¹⁸ Of these, 8 states and the District of Columbia

¹⁸ PJM, *PJM 2008 Annual Report*, p. 31, available <http://www.pjm.com/about-pjm/who-we-are/~media/about-pjm/newsroom/2008-annual-report.ashx>.

have implemented "retail choice" into their respective electric utility programs.¹⁹ As such, PJM and its members generally focus on "retail choice" policies and programs that enable the majority of electric consumers within PJM to choose among electric supply and suppliers.

Mr. Andy Ott, PJM Vice President for Marketing, shared his experience with the Commission. As Mr. Ott stated, PJM's commitment to retail choice market structures is demonstrated by the efforts that PJM took to ease administrative burdens for competitive suppliers. In order to do this, PJM created versatile systems that made retail switching more efficient and that lowered the competitive suppliers' overheads.²⁰

FirstEnergy's PJM Utilities gained firsthand experience with this innovation in New Jersey, where PJM changed its settlement process to accommodate the New Jersey "Basic Generation Service" POLR auction and retail choice customer switching program. According to Mr. Ott, changing the PJM systems to allow for daily switching of customers among suppliers, together with other administrative changes, reduced overhead for competitive suppliers by \$1/MWh.²¹ Mr. Ott believes that once the RTO realignment takes place, some of the competitors that currently operate in PJM but not in the Midwest ISO may come into the ATSI footprint and start competing to serve Ohio's consumers because they can provide service under PJM's rules without the need to "learn" another RTO's system.²²

Other evidence supports Mr. Ott's conclusion. Supporting evidence consists of, among other data, the fact that 14 utilities in PJM currently are holding or are preparing to hold competitive procurements for their SSO supply obligation.²³ Additional

¹⁹ U.S. Energy Information Administration, *Status of Electricity Restructuring by State*, available http://www.eia.doe.gov/cneaf/electricity/page/restructuring/restructure_elect.html.

²⁰ PUCO Case No. 09-778, *FirstEnergy Service Co.*, Transcript of September 15, 2009 Presentation, p. 76.

²¹ *Id.*

²² *See id.*, pp. 76-77.

²³ Based on data collected from agency webpage. *E.g.*, <http://www.icc.illinois.gov/electricity/ElectricityProcurement.aspx>; http://webapp.psc.state.md.us/intranet/ElectricInfo/SOSRFP_new.cfm;

evidence lies in the fact that roughly 60% of the generation in PJM is provided by merchant generators who compete against each other on the basis of price alone to sell energy products.²⁴ Finally, available data suggest that electric distribution utilities in PJM have greater numbers of competitive retail suppliers as compared to electric distribution utilities in the Midwest ISO.²⁵

In contrast, the Midwest ISO energy markets cover 15 states, only 4 of which are "retail choice" states.²⁶ Moreover, the Midwest ISO and an overwhelming number of its states and utilities generally focus on developing and implementing policies and programs that reflect a philosophy of vertically-integrated monopoly-service electric utilities.²⁷ Mr. Ott's counterpart at the Midwest ISO, Mr. Richard Doying, Midwest ISO Vice President of Market Operations, explained this difference to the FERC:

The Midwest ISO has also experienced reduced challenges to maintaining adequate Planning Resources because the vast majority (approximately 70%) of all Loads in the Midwest ISO Region are served by traditional vertically integrated transmission owners that have historically constructed adequate Generation Resources to serve their native load. In contrast, the majority of LSEs in Northeast RTOs are subject to state retail

<http://www.bpu.state.nj.us/bpu/divisions/energy/bgs.html>; <http://depsec.delaware.gov/sos.shtml>;
http://www.puc.state.pa.us/electric/electric_last_resort.aspx.

²⁴ As derived from the "Ventryx Velocity Suite" database.

²⁵ <http://www.icc.illinois.gov/electricity/ElectricityProcurement.aspx>, compare competitive retail suppliers operating in Com-Ed territory (24) and in Ameren territory (12).

²⁶ Midwest ISO, *Current Members by Sector*, p. 2, available http://mktweb.midwestiso.org/publish/Document/67519_1178907f00c_7fea0a48324a/Current%20Members%20by%20Sector%20August%202009.pdf?action=download&_property=Attachment; U.S. EIA, *Status of Electricity Restructuring by State*, available http://www.eia.doe.gov/cneaf/electricity/page/restructuring/restructure_elect.html.

²⁷ Those who would argue that the Midwest ISO can accommodate retail choice and competitive electric service policies eventually must acknowledge that the Midwest ISO recognizes that it cannot implement market-based programs that are opposed by its stakeholders. E.g., FERC Docket No. ER08-394, *Midwest ISO*, Motion for Leave to Answer and Answer of Midwest ISO, p. 38 (Midwest ISO not creating an RTO-managed capacity market because "many stakeholders" do not support the idea of formal capacity markets) (February 12, 2008). As such, while the Midwest ISO is to be commended for its efforts to accommodate retail choice and market-based programs for consumers, the scope and reach of these programs is and always will be subject to the competing viewpoints of those who prefer the vertically-integrated monopoly-service model.

choice provision and loads may no longer be served by vertically integrated utilities.²⁸

Additional supporting evidence consists of, among other data, the fact that only 1 Midwest ISO utility – other than the Ohio Utilities and Penn Power – is holding or is preparing to hold a competitive procurement for its SSO supply obligation.²⁹ Also, less than 20% of the generation in the Midwest ISO is provided by merchant generators who compete against each other on the basis of price alone to sell energy products.³⁰

Ohio is a “retail choice” state where, by law, consumers have the right to choose among competitive retail electric service and competing electric suppliers.³¹ In fact, this Commission’s mandate includes the obligation to ensure that Ohio’s retail choice policies are effectuated,³² and the Commission has a strong record of developing programs that implement this mandate.³³ FirstEnergy’s proposed RTO realignment is the next step. That is, moving the ATSI footprint into PJM will enable more than 2.1 million Ohio consumers to enjoy the benefits of PJM’s focus on retail choice and competition.

B. PJM’s RPM Program Shifts Risk from Consumers to Capacity Suppliers.

PJM’s Reliability Pricing Model (RPM) program places risk of failure to perform on capacity suppliers. PJM accomplishes this by requiring suppliers to comply with

²⁸ FERC Docket No. ER08-394 *Midwest ISO*, Midwest ISO RAR Filing, Doying Affidavit, p. 25 (December 28, 2008).

²⁹ Ameren is the only non-FirstEnergy-affiliated Midwest ISO utility that is conducting a SSO procurement process (<http://www.icc.illinois.gov/electricity/ElectricityProcurement.aspx>).

³⁰ As derived from the Ventryx Velocity Suite database.

³¹ O.R.C. § 4928.02.

³² O.R.C. § 4928.06(A).

³³ E.g., O.R.C. Chapter 4901:1-21, and the programs implemented thereunder.

PJM's credit and collateral requirements,³⁴ and then by charging replacement costs and penalties to any suppliers that fail to perform when called.³⁵ Regarding physical supply, capacity resources that offer into PJM's RPM markets must demonstrate, on a generating-unit specific or load-management basis, that they are capable of providing physical capacity three years in advance for the designated delivery year in an amount equal to any bids that "clear" in an RPM auction.³⁶ Generating resources that clear in the auction also "must offer" energy into the day-ahead market during the delivery year for which their unit was taken.³⁷ If a resource that is not on a planned or forced outage fails to perform when "called" by PJM, PJM will cover the physical shortfall out of its reserves (thereby preserving physical reliability), and then will charge significant penalties to the supplier.³⁸ In all cases, sufficient energy will flow (meaning that consumers will have generation reliability) and neither LSEs nor consumers will be responsible directly for financial penalties that are charged to non-performing suppliers.

In contrast, the Midwest ISO Resource Adequacy places all of the risk on load serving entities and, ultimately, on consumers.³⁹ The Midwest ISO's "Module E" capacity construct recognizes that many of the Midwest ISO LSEs are vertically-

³⁴ PJM, *FERC Electric Tariff No. 1 – Open Access Transmission Tariff*, (hereinafter PJM OATT) Attachment DD, § 5.6.2 (compliance with PJM Credit Policy).

³⁵ PJM, *OATT*, Attachment DD, Articles 8 (capacity resource deficiency charge), 9 (Peak Season Maintenance Compliance Penalty Charge), 10 (Peak-Hour Availability Charges), 11 (Demand Resource and ILR Compliance Penalty Charge), 12 (Qualifying Transmission Upgrade Compliance Penalty Charge), and 13 (Emergency Procedure Charge).

³⁶ PJM Manual 18, *PJM Capacity Market*, Section 8 Resource Performance Assessments.

³⁷ PJM, *OATT*, Attachment K-Appendix, § 1.10.1A(d).

³⁸ PJM Manual 18, *PJM Capacity Market*, Section 9 Deficiency and Penalty Charges.

³⁹ E.g., PUCO Case No. 08-935-EL-SSO, *[Ohio Unlites]*, Second Opinion and Order, ¶ B(2) (March 25, 2009), incorporating by reference, Stipulation and Recommendation, ¶ A(5) (February 19, 2009), incorporating by reference Master SSO Supply Agreement, § 8.1 (obligating "winning supplier" to deliver at FirstEnergy Ohio electric distribution utility nodes on the Midwest ISO system) available http://www.firstenergy-auction.com/files/MRO_Master_SSO_Supply_agreement_7.31.08_FINAL.pdf.

integrated monopoly-service utilities.⁴⁰ These LSEs can self-supply capacity resources out of generation or other qualifying resources. Other LSEs, such as the Ohio Utilities, that do not own significant generation resources must contract with other entities (suppliers – generation or load) to procure capacity resources in the amounts necessary to ensure compliance with their respective reserve requirements.⁴¹ These amounts are determined on a month-ahead, forecast basis, and only a month-ahead commitment is required.⁴² Capacity resources that are committed for a given month “must offer” into the Midwest ISO day-ahead market only for the designated month.⁴³ However, in the event that a supplier fails to perform, (i) the Midwest ISO will levy a charge against the LSE,⁴⁴ and (ii) the Midwest ISO will inform “applicable state authorities.”⁴⁵ As such, consumers – as customers of the LSE – bear the risk because the LSE will seek to recover Midwest ISO penalties costs from its customers.

Consumers in Midwest ISO retail choice states – e.g., the Ohio Utilities’ consumers – are subject to yet another risk, which is that suppliers in retail choice states are not tied to their loads on a long-term basis. That is, suppliers have no certainty of future sales upon which to base a decision to invest in purchasing or constructing generation or in procuring long-term power purchase contracts. As such, even relatively large suppliers, such as winners in utility-sponsored POLR auctions, do not have incentives to build or contract for generation. Rather, suppliers only have incentives to commit for the term of the supply obligation, which can be as short as 1

⁴⁰ FERC Docket No. ER08-394, *Midwest ISO*, Midwest ISO Resource Adequacy Requirement Filing, Doying Affidavit, p. 25.

⁴¹ Midwest ISO, *FERC Electric Tariff No. 1 – Open Access Transmission, Energy and Operating Reserve Markets Tariff* (hereinafter *Midwest ISO ASM Tariff*), Module E, § 69.1.3; Midwest ISO Manual No. 011, *Resource Adequacy*, § 4.1.

⁴² Midwest ISO Manual No. 011, *Resource Adequacy*, § 4.3 (monthly load forecast) and § 5.4.1 (monthly capacity resource plan).

⁴³ Midwest ISO Manual No. 011, *Resource Adequacy*, § 5.2.2.1.

⁴⁴ Midwest ISO Manual No. 011, *Resource Adequacy*, § 6.3.1.

⁴⁵ Midwest ISO, *ASM Tariff*, Module E, § 69.3.4; Midwest ISO Manual No. 011, *Resource Adequacy*, § 5.5.2.3.

month.⁴⁶ And there is no guarantee that retail choice loads will sign the long-term power supply agreements that are a prerequisite for suppliers to invest in generation or long-term power supply because by so doing, these loads will lose the opportunity to shop in future years. As such, consumers in the Midwest ISO's retail choice states bear the risk that the pool of available supply will decline over time.

C. PJM's RPM Auction Benefits Consumers Because Suppliers Compete Head-to-Head Based Solely On Price.

The RPM auction process is designed to procure all forward capacity requirements by means of transparent head-to-head competition among suppliers based solely on price. RPM is a three-year *forward* market with *locational* pricing. Both of these key components of RPM were designed to ensure transparency for consumers and market participants. As FERC has summarized:

The Reliability Pricing Model is PJM's resource adequacy construct that is used to develop a long-term pricing signal for capacity resources and load serving entity obligations that is consistent with the PJM Regional Transmission Planning Process. *The goal of the Reliability Pricing Model is to add stability and a locational nature to the pricing signal for capacity by aligning capacity pricing with system reliability requirements and to provide transparent information to all market participants far enough in advance for actionable response to the information.*⁴⁷

Transparency, in turn, permits robust competition to produce the most efficient capacity prices because, as excess supply chases consumer load, transparent competition between suppliers should lead to lower prices.

RPM uses forward auctions with clearly defined parameters, including the amount of capacity needed in each location. All prospective suppliers have equal access to data about the supply requirement, the supplier rights and obligations, and the auction process. Requirements to participate in the capacity market auction are defined clearly and in advance of the auction. The auction process and results are

⁴⁶ Midwest ISO, *ASM Tariff*, Module E, § 69.1.

⁴⁷ FERC Docket No. EC09-32 *Exelon Corp.*, 127 FERC ¶ 61,161 at P 43, n. 37 (2009) (*emphasis added*).

evaluated subject to rules that are provided to suppliers in advance of the auction. An independent third party, PJM, coordinates the auction, administers the bidding, and evaluates the results.⁴⁸ A separate independent entity, the Market Monitoring Unit, evaluates all bids and has the authority to mitigate bids to ensure competitive outcomes.

Most importantly, suppliers that qualify as capacity resources are selected solely on the basis of head-to-head competition on price.⁴⁹ This means that all prices are set by the lowest marginal cost of capacity in each location. Another benefit is that all stakeholders see the price and know the value of capacity in that location *in advance* – three years forward, with the result that suppliers and loads can factor stable capacity prices into their business plans. This will benefit customers because suppliers will reflect certainty about the forward cost of capacity in their offers/bids into the Ohio Utilities next SSO procurement.

Yet another benefit is that PJM's administrative processes provide that if a customer decides to switch providers, the capacity procured in the auction moves with the customer, on a daily basis.⁵⁰ By reflecting changes in the LSE's level of customer load being served on a daily basis, PJM provides clear financial outcomes to load serving entities and their customers. This transparency benefits retail access because load serving entities and their customers pay only for the capacity that they need.

FERC has recognized the benefits of a forward, locational market. In approving RPM, FERC explained the benefits of RPM over PJM's prior capacity construct:

[t]he RPM market design provides greater assurance of a stable and sustainable supply of capacity resources . . . by establishing locational pricing to reflect the actual costs of capacity resources within specific service areas and a forward procurement requirement to ensure stability for both capacity buyers and capacity sellers.⁵¹

⁴⁸ PJM, *PJM Manual No. 18: Capacity Market*, Sections 4 and 5.

⁴⁹ PJM, *PJM Manual No. 18: Capacity Market*, p. 65 (Auction Clearing Mechanism).

⁵⁰ See, e.g., PJM, *PJM Manual No. 18: Capacity*, p. 97; *id.* at 123 (Locational Reliability Charges are calculated daily and billed monthly during the Delivery Year).

⁵¹ FERC Docket No. ER05-1410, *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318 at P 2.

Thus the benefits of RPM's transparency include improved and more efficient incentives for demand response, energy efficiency, investment in new and existing generation and transmission when and where it is needed (and thereby reducing the need for reliability must-run agreements), increased reliability, improved price stability and lower overall capacity costs in the long term.

By contrast, the Midwest ISO's resource adequacy construct has none of the transparency that is a hallmark of RPM. Both FERC and the Midwest ISO have acknowledged that the Midwest ISO's RAR construct is designed around the vertically integrated utilities that serve most Midwest ISO load.⁵² Vertically integrated utilities do not need transparency to send price signals for construction or retirement of generation because they typically conduct long-term integrated resource planning that reflects that their costs are recovered in rate base.

The Midwest ISO's Module E capacity program facilitates such arrangements. Under Module E, most vertically integrated utilities will make their own load forecasts, "self-schedule" their own generation to fulfill a substantial portion of their own resource needs, and only turn to bilateral contracting to balance around the edges of their supply requirement.

While this system works well for the Midwest ISO's vertically integrated utilities, it does not serve as well in states like Ohio, where load and generation are disaggregated, and where resource procurement occurs in shorter increments, such as two years, that are shorter than the build-time of many generation-build options, and that provide no guarantee in any event that the supplier will "own" the load long

⁵² FERC Docket No. ER08-394, *Midwest ISO*, Filing Letter, Affidavit of Richard Doying at ¶ 25 (the Midwest ISO Region has also experienced reduced challenges in maintaining adequate Planning Resources because the vast majority (approximately 70%) of all Loads in the Midwest ISO Region are served by traditional vertically-integrated transmission owners that have historically constructed adequate Generation Resources to serve their native load. In contrast, the majority of LSEs in Northeast RTOs are subject to state retail choice provisions and loads may no longer be served by vertically-integrated utilities); *Midwest ISO*, 127 FERC ¶ 61,054 at P 25 (2009) (while the Midwest ISO's approach to resource adequacy is somewhat different than the resource adequacy programs developed by other regional transmission organizations, we nevertheless approved this approach because, as the Midwest ISO stated, it was consistent with a market that is predominantly managed by traditional, vertically-integrated utilities and spans multiple state and local jurisdictions).

enough to pay for a generation investment. Thus, in retail choice states like Ohio, resource developers do not make investment decisions based on the guarantee of a locked-in load; they make the decision based on a prediction that they can sell the output (or reduce output for demand resources and energy efficiency projects) based on expected market conditions.

Another core problem is that the Module E construct can lead to fluctuating and unpredictable prices. The Midwest ISO is cognizant of this problem, and has announced that it will rely on neighboring RTO markets to smooth prices in its own markets. Specifically, the Midwest ISO is on record as stating that the prices in neighboring markets should stabilize the Midwest ISO's voluntary capacity markets.⁵³ In other words, Module E does not by itself promote long-term price stability and predictability for consumers.

In sum, capacity prices under RPM are well known in advance. Without locational, forward pricing, by contrast, capacity costs frequently are not known, and certainly not in advance.⁵⁴ Transparency increases competition which leads to more efficient prices, all to the benefit of Ohio's consumers.

D. The RTO Realignment Will Benefit Consumers By Bringing More Suppliers Into Future SSO Procurement Processes

The Ohio Utilities are required to offer SSO electric generation service to customers that elect not to purchase from CRES retail suppliers.⁵⁵ However, the Ohio Utilities do not own generating assets. As such, they must purchase SSO supply from wholesale suppliers in order to have the energy necessary to offer firm electric service to their customers.

⁵³ Midwest ISO Compliance Filing at 5, Docket No. ER08-394-022 (June 17, 2009).

⁵⁴ Midwest ISO, *ASM Tariff*, Module E, § 69.3.3; FERC Docket No. ER08-394, *Midwest ISO*, Answer of the Midwest ISO, p. 34 (February 12, 2008).

⁵⁵ O.R.C., § 4928.141(A).

The accepted practice for obtaining the SSO supply requirement is to define the electric generation service product that is to be procured, and conduct a procurement process that is designed to require suppliers to deliver that product to a point called the "delivery point," which is where the electric distribution utility takes possession of the energy product.⁵⁶ The product often is "bundled" – meaning that suppliers may be required to provide numerous specific products for a single price. And the "bundled" product often includes capacity.⁵⁷ In fact, the Ohio Utilities recently conducted an SSO procurement that called for suppliers to provide a bundled energy product that includes capacity – as well as energy, ancillary services, and transmission service – to the point of delivery.⁵⁸

This practice makes sense because it puts the physical and financial risks of procuring and delivering the SSO supplier. That is, suppliers bear the risk for procuring the bundled energy product, any market based transmission service necessary to deliver the energy product to the delivery point, and any "additional costs" (such as RTO administrative fees) that are incidental to delivery of the product to the delivery point. The Midwest ISO relies heavily on imports from adjacent areas, including PJM. For example, in 2008, the Midwest ISO imported almost 4.4 GW during peak hours; 1.2 GW of which came from PJM.⁵⁹ The Midwest ISO's Reliance on imports is significant because the ATSI footprint is "short" on generation capacity when planning reserves are considered. As such, suppliers looking to bid into a future Ohio

⁵⁶ E.g., PUCO Case No. 08-935-EL-SSO, *[Ohio Utilities]*, Second Opinion and Order, ¶ B(2) (March 25, 2009), incorporating by reference, Stipulation and Recommendation, ¶ A(5) (February 19, 2009), incorporating by reference Master SSO Supply Agreement, § 8.1 (obligating "winning supplier" to deliver at FirstEnergy Ohio electric distribution utility nodes on the Midwest ISO system) available http://www.firstenergy-auction.com/files/MRO_Master_SSO_Supply_agreement_7.31.08_FINAL.pdf.

⁵⁷ E.g., New Jersey Board of Public Utilities, 2010 BGS-FP Supplier Master Agreement, definitions of BGS-CIEP Supply and BGS-FP Supply, available <http://bgs-auction.com/>.

⁵⁸ PUCO Case No. 08-935-EL-SSO, *[FirstEnergy]*, Master Standard Service Offer Supply Agreement, Article 1 (definition of SSO Supply includes "Capacity"), available http://www.firstenergy-auction.com/files/MRO_Master_SSO_Supply_agreement_7.31.08_FINAL.pdf.

⁵⁹ Potomac Economics, 2008 *State of the Market Report for the Midwest ISO*, p. 130.

Utilities SSO procurement will need to obtain at least some of their energy product requirement from resources that are “outside” of the ATSI footprint. These suppliers also will have to schedule all transmission service necessary to deliver “outside” supply to the delivery point(s) that are inside of the ATSI footprint and likely from outside of the Midwest ISO.

The RTO realignment will eliminate the “risk premium” that suppliers currently must address in order to participate in a future procurement of SSO supply for the Ohio Utilities. Moreover, integration into PJM should open the Ohio Utilities’ future SSO procurement processes to PJM suppliers who, were the seam otherwise to remain in place, might forego participating. In addition, by participating in PJM’s RPM process, the Ohio Utilities are able to access capacity resources that are foreclosed to them today by reason of being committed in PJM’s RPM markets. The result is that more suppliers and supply will compete on the basis of price alone in the Ohio Utilities future SSO procurement processes, with the benefit of an increased competition for supply.

E. Entry into PJM Will Benefit Ohio’s Consumers By Bringing Increased Numbers Of Competitive Retail Suppliers and Supply Into The ATSI Footprint.

Currently there are more than 120 retail suppliers in PJM.⁶⁰ These suppliers function as aggregators, power brokers, power marketers and certified electric services companies. In contrast, there are approximately 12 active retail suppliers in the Ohio Utilities’ footprint. As such, the Ohio Utilities entry into PJM will benefit retail choice consumers because more competitive retail suppliers will compete on the basis of price to serve Ohio’s retail choice customers.

⁶⁰ Based on data collected from agency webpages. E.g., <http://www.puc.state.pa.us/utilitychoice/listofsupp.aspx?ut=ec>; <http://www.state.nj.us/bpu/assistance/utility/index.html>; http://webapp.psc.state.md.us/intranet/supplierinfo/electricsupplier_new.cfm; <http://www.icc.illinois.gov/utility/list.aspx?type=ares>.

Ohio is a “retail choice” state, and this Commission has a mandate to ensure that Ohio’s retail choice policies are effectuated.⁶¹ PJM and its members generally focus on “retail choice” policies and programs that result in a robust market opportunities for competitive retail suppliers, as well as the fact that there simply is more uncommitted merchant generation that is seeking customers in PJM. As such, the RTO realignment will promote Ohio’s mandate to implement effective retail choice policies.

Finally, the RTO realignment will permit retail suppliers that operate in FirstEnergy’s Ohio footprint to take advantage of PJM programs that reduce administrative and financial burdens. For example, PJM promotes efficient allocation of capacity resources to CRES retail suppliers because PJM’s processes allow capacity to follow retail load that shops. PJM’s processes adjust LSE obligations to pay for capacity on a *daily* basis, meaning that CRES retail suppliers pay capacity charges only for the load that they actually serve.⁶² The result should be lower costs and risks for CRES suppliers, which should translate into lower cost for Ohio’s retail choice consumers. As explained by Mr. Ott, when PJM implemented its systems to administer retail suppliers processes, the suppliers reported that their overhead decreased by as much as \$1/MWh.⁶³

F. Entry into PJM Will Open Market Opportunities for Demand Response and Energy Efficiency That Currently Are Not Available.

PJM and the Midwest ISO each have demand response and energy efficiency programs. However, the RTOs’ different philosophies and market structures lead to vast differences in the number of customers that can participate directly in these programs, as well differences in the program volumes. The data reflects that more

⁶¹ O.R.C. § 4928.06(A).

⁶² PJM, *PJM Manual No. 18: PJM Capacity Market*, Section 9, p. 114.

⁶³ PUCO Case No. 09-778, *FirstEnergy Service Co.*, Transcript of September 15, 2009 Presentation, p. 76.

consumers participate directly in PJM's markets and more total demand response clears in PJM's markets. Consumers in the Ohio Utilities footprint will benefit by aligning into an RTO that offers demand response market opportunities and programs that reflect the customers' right and opportunity to participate directly in wholesale energy markets.

In 2008, there were more than 6,000 commercial and industrial sites, and more than 45,000 small commercial and residential sites, that participated directly in PJM's demand response programs.⁶⁴ During the same period, demand response resources provided more than 440,000 MWh of real time energy curtailment (receiving more than \$26.8 million in payments) and more than 530,000 MWh of reserves (for which more than \$5 million was paid).⁶⁵

PJM's robust RPM capacity markets also provided opportunities for demand response and load resources to participate directly in PJM's capacity market. Specifically, more than 9,800 MW of demand response was offered into the May 2009 Base Residual Auction (for the 2012-13 Delivery Year), and more 7,000 MW "cleared" (was taken).⁶⁶ A recent development is that Energy Efficiency Resources – which are defined as qualified resources that have installed more efficient devices or equipment that result in permanent, continuous reductions in energy usage – can offer into PJM's RPM auctions. In fact, 652 MW of Energy Efficiency Resources were offered into the May 2009 Base Residual Auction, and 568 MW of these resources cleared.⁶⁷

The Midwest ISO's demand response programs don't offer similar opportunities for consumers, who therefore do not (and cannot) participate directly in wholesale demand response programs. In 2008, for example, the Market Monitor noted that only

⁶⁴ PJM, *PJM Real Time Economic Demand Response Program*, available <http://www.pjm.com/markets-and-operations/demand-response/%7E/media/markets-ops/dsr/dsr-brochure.ashx>.

⁶⁵ PJM, *PJM 2008 Annual Report*, p. 28, available <http://www.pjm.com/about-pjm/who-we-are/~media/about-pjm/newsroom/2008-annual-report.ashx>.

⁶⁶ E.g., PJM, *2012/2013 RPM Base Residual Auction Results*, p. 1, available <http://www.pjm.com/markets-and-operations/rpm/~media/markets-ops/rpm/rpm-auction-info/2012-13-base-residual-auction-report-document-pdf.ashx>.

⁶⁷ *Id.*

345 MW (out of more than 8,900 total MW) of demand response participated directly in the Midwest ISO demand response programs.⁶⁸ One reason is that because the Midwest ISO's RAR auctions are thinly subscribed, there simply aren't many buyers for the demand response that is offered.

Representatives of the Midwest ISO recently advised this Commission that more than 8,000 MW of demand response is qualified to participate in the Midwest ISO's "Module E" capacity program.⁶⁹ However, they failed to explain that since the bulk of the Module E opportunity for demand response providers is via bilateral arrangements between utilities and their customers.⁷⁰ Demand response resources that are looking for wholesale capacity market opportunities in the Midwest ISO must chase the relatively thin monthly balancing auction – a "market opportunity" that seldom yields sufficient economic return.⁷¹ In other words, the Midwest ISO market structure is not designed to promote the large liquid markets needed to create opportunities for demand response independent from utility approved initiatives.

III.

PROCESS AND TIMING

FirstEnergy applied to the Federal Energy Regulatory Commission for authorization to execute the RTO realignment.⁷² The Application includes an agreement between the Ohio Utilities and PJM. The agreement describes, among other

⁶⁸ *Id.*

⁶⁹ PUCO Case No. 09-778, *FirstEnergy Service Co.*, Transcript of September 15, 2009 Presentation, p. 73.

⁷⁰ See FERC Docket No. ER08-394, *Midwest ISO*, Answer of Midwest ISO, pp. 33-34 (February 12, 2008).

⁷¹ Compare Potomac Economics, *2008 State of the Market Report for the Midwest ISO*, p. 125 (explaining that failure to set proper price signals can serve as a material economic barrier to demand response participation in the Midwest ISO programs) and Midwest ISO, *Voluntary Capacity Auction – Auction Summary*, (September 2009) available http://www.midwestmarket.org/mkt_reports/yearly_auction_summary/AuctionSummary_PY_2009-2010.xls (demonstrating thin markets and low market clearing prices for the Midwest ISO's monthly capacity auctions).

⁷² FERC Docket No. ER09-1589, *FirstEnergy Service Company*, Application (August 17, 2009) (hereinafter, the "Application").

things, a “project implementation plan” that identifies major milestones through June 1, 2011 – which is when ATSI will enter PJM and when PJM will assume operational control over the ATSI transmission system.⁷³

The project implementation plan outlines an orderly process for communicating key events and information to stakeholders. Specifically, the project implementation plan identifies that PJM will have a series of meetings with regulatory authorities (including this Commission), load serving entities, suppliers and other stakeholders. In addition, PJM has established an internet website where information about upcoming stakeholder events will be published.⁷⁴ Among other items, a detailed “Integration Whitepaper” will be posted on this website. The Integration Whitepaper provides technical information about stakeholder participation in PJM; including, for example, information about PJM’s metering and communications requirements, billing and settlements, compliance with NERC’s Reliability Standards, and process and requirements for becoming a member of PJM.

The first stakeholder meeting currently is scheduled for October 2, 2009 in Columbus, Ohio. There had been proposals to hold this meeting in Philadelphia, but FirstEnergy requested that the meeting be held in Columbus for the convenience of Ohio’s stakeholders, consumers and regulatory agency staff. The project implementation plan reflects that there will be many additional stakeholder meetings; all for the purpose of ensuring that stakeholders have the information and assistance required to integrate their facilities and operations into PJM as smoothly as possible.

The Application describes the Ohio Utilities’ proposal to satisfy PJM’s capacity requirements for the 2011-12 and 2012-13 delivery years.⁷⁵ The RPM Base Residual Auctions for these years already have occurred, and the Ohio Utilities therefore need to procure their capacity requirement by another process. Pursuant to a previously

⁷³ Application, Exhibit 1, pp. 19-21.

⁷⁴ <http://www.pjm.com/Calendar%20Events/PJM%20Calendars/Meeting%20Events/2009/October/02/fcisc.aspx>.

⁷⁵ Application, pp. 28-35.

established precedent in PJM , the Ohio Utilities propose to acquire capacity by means of an RPM-like auction that is to be held in approximately April, 2010. PJM will be the auction manager, and the auction will be conducted subject to the rules that apply to RPM auctions except to the extent that departures are needed to accommodate the fact that the auction is occurring apart from the “normal” RPM process. PJM and the PJM Market Monitor will exercise all of their respective rights and privileges that are described in the PJM tariffs and agreements and in FERC orders for the purpose of ensuring the integrity of the procurement process.

The project implementation plan does not address the relationship between the RTO realignment and the Ohio Utilities’ next SSO procurement. As this Commission is aware, the current Electric Security Plan for the Ohio Utilities provides that the existing energy supply agreements end on May 31, 2011.⁷⁶ As such, the Ohio Utilities will need to conduct a procurement process for firm electric generation supply for the period starting June 1, 2011. Subject to Commission approval, this procurement will occur at same point between June and December 2010. Suppliers who participate in the SSO procurement will have certainty on capacity costs because these costs will be known in April 2010, which is when the capacity transmission auction will be preformed.

Entry into PJM on the June 1, 2011 date provides administrative and financial certainty for suppliers and consumers that will be participating in RTO and SSO generation opportunities. June 1st is the start date for the PJM and Midwest ISO “delivery years.” Scheduling the RTO realignment to happen on that date provides certainty for suppliers and loads that participate in RTO programs because many of the annual RTO programs start and stop on that date. The June 1, 2001 RTO realignment date matches up with the date when energy will start flowing under new SSO supply agreements. The alignment in the start dates for the Ohio and PJM programs should promote greater participation by wholesale suppliers in the next SSO procurement

⁷⁶ PUCO Case No. 08-935-EL-SSO, *[FirstEnergy]*, Second Opinion and Order, ¶ II.B(2) (March 25, 2009).

because suppliers will be able to deal with requirements in both PJM and Ohio SSO procurement processes on a “program year” basis (as opposed to a “partial year” basis).

The following chart provides a broad schedule that depicts major milestones in the RTO realignment and the next SSO procurement process for the Ohio Utilities. This schedule is provided for the convenience of the Commission and affected stakeholders, and is for information purposes only.

Anticipated Alignment of the RTO Realignment with the Next SSO Procurement Process

Date	Event
August 17, 2009	Date of initial FERC filing (FERC Docket No. ER09-1589)
Sept. – Dec. 2009	FirstEnergy Ohio Utilities file proposed procurement plans (MRO/ESP) with The Public Utilities Commission of Ohio
December 17, 2009	Requested date for FERC approval of the RTO realignment into PJM
By January 31, 2010	FirstEnergy Ohio Utilities and Penn Power load committed into the May 2010 PJM RPM Base Residual Auction for the 2013-14 delivery year Once load is committed, PJM cannot unwind its process to exclude the load from May 2010 auction
April 2010	PJM conducts “out-of-time FRR” auctions for capacity supply for 2011- 12 and 2012-13 Delivery Years for ATSI footprint
May 2010	PJM conducts RPM Base Residual Auction for 2013-14 planning year ATSI load is included in auction
June - December 2010	Subject to Commission order, FirstEnergy Ohio Utilities may conduct procurement for firm electric generation service for delivery June 1, 2011 procurement may include multiple products with staggered delivery periods
May 2011	PJM RPM Base Residual Auction for 2014 -2015 delivery year
~ February 2011	ATSI makes FERC filing for proposed formula rates for “PJM” transmission service
May 31, 2011	FirstEnergy Ohio electric distribution utilities’ May 2009 ESP ends/participation in Midwest ISO ends
June 1, 2011	PJM Integration Date – Start of firm electric generation supply under the next rate plan for Ohio Utilities

IV. ADDITIONAL INFORMATION

FirstEnergy takes opportunity in this section of the Comments to address certain questions that were raised in the Commission's September 15, 2009 meeting.

A. Exit Fees

ATSI has committed to pay any exit fees that are due to the Midwest ISO upon exit from the Midwest ISO.⁷⁷ These exit fees represent payment for the start-up costs of the Midwest ISO organization, as well as the "Day 2" markets. Some parties have referenced this commitment, and have suggested that the question of "pass-through" of exit fees must be addressed now. However, the question of any pass-through of RTO exit fees is not ripe for adjudication until such time as a utility files a new rate or change to an existing rate for the purpose of recovering exit fees from ratepayers.⁷⁸

This approach makes sense. Neither the FERC, nor any other regulator, can rule on "exit fees" or similar costs until such time as the costs are known, and until the utility requests recovery of the costs. Here, the exit fees will not be negotiated and settled with the Midwest ISO until approximately May, 2011. And ATSI is not due to address any proposed rate treatment until at least February, 2011.⁷⁹ As such, the question of whether the exit fees should be passed through to consumers is not ripe and, even more compelling, the question is not at this time pending before any regulatory agency.

B. Legacy RTEP

In the Application, the FirstEnergy Ohio Utilities identified an unresolved policy issue regarding cost-allocation for RTO transmission expansion projects.⁸⁰ As this

⁷⁷ Application, p. 23.

⁷⁸ *E.g.*, FERC Docket Nos. ER06-20, *etc.*, *LG&E et al.*, Order Conditionally Approving Request to Withdraw from the Midwest ISO, 114 FERC ¶ 61,282, P 59 (2006).

⁷⁹ Application, Exhibit 1 (Project Implementation Plan), No. 41.

⁸⁰ Application, pp. 35-47.

Commission is aware, in recent years RTOs have been required to engage in regional transmission planning processes. RTOs and their stakeholders evaluate regional transmission needs, identify transmission solutions where needs are determined to exist, assign construction and financing responsibilities for approved regional transmission projects, and allocate the costs of the projects to consumers. Cost allocation methodologies and policies are subject to fierce debates – but almost all methodologies call for allocating costs beyond the zone(s) where a given transmission project is to be built. To date, most of the cost allocation takes place within RTO borders, although the JOA does provide for PJM and the Midwest ISO to allocate costs across the RTO border for certain projects.⁸¹

The unresolved policy issue is how to handle transmission expansion cost allocation when members enter and exit RTOs. This policy question is in play because as RTOs continue to identify transmission projects and assign costs, the costs could become a “financial wall” that would impede members from entering RTOs if, by so doing, the new member immediately becomes subject to cost allocations for projects that were planned and approved prior to the member’s entry into the RTO. By the same token, such costs could provide incentives to leave an RTO, thereby weakening the markets that are necessary to serve retail choice customers.

In both instances, the equities lie in the fact that transmission projects are planned based on the loads that are within each RTO. As such, projects generally will be approved only if necessary to provide reliability or other benefits to the loads that are within the RTO when the project is under consideration. Except in limited circumstances (an arrangement similar to the cross-border planning process described in the JOA⁸²), RTO transmission projects are not planned for the purpose of serving loads that are outside of an RTO.

⁸¹ JOA, § 9.4.3.

⁸² *E.g.*, JOA, § 9.4.3.

In the Application, the Ohio Utilities urge FERC to address the policy question by directing that transmission expansion costs that are allocated to utilities while a utility is a member of an RTO should follow that utility “out” of an RTO, and transmission expansion costs for projects that were planned and approved prior to a utility’s entry into an RTO should not be “spread” (allocated) to that utility upon its entry into the RTO.⁸³ The Ohio Utilities believe that this is a fair and equitable way to address this question. And, the Ohio Utilities ask FERC to resolve this issue prior to the date when the ATSI load is committed into the 2010 PJM Base Residual Auction for the 2013-14 delivery year.⁸⁴ Specifically, ATSI and the Ohio Utilities asked FERC to rule that because ATSI and the Ohio Utilities must pay for qualifying regional transmission facilities that were approved by the Midwest ISO Board while they were members of the Midwest ISO, they should not be forced to pay for PJM RTEP projects that were approved by PJM’s Board prior to June 1, 2011.

C. Further Obligations to the Midwest ISO

Some parties have suggested that ATSI’s withdrawal from the Midwest ISO could have cost or operational impacts on the Midwest ISO and that, on this basis, further proceedings are required.⁸⁵ Further proceedings are not required. The Ohio Utilities, ATSI and Penn Power have committed to pay “exit fees” and to honor other obligations that are *lawfully* owed to the Midwest ISO and its members.⁸⁶ As such, the Ohio Utilities, ATSI and Penn Power will be under no further legal obligation to pay the costs or expenses of the Midwest ISO, and neither the Midwest ISO nor its members have claim for further support. But even more compelling, the Midwest ISO is a growing, even thriving RTO. This is evidenced by the recent authorization for the

⁸³ *E.g.*, Application, pp. 41, 42.

⁸⁴ Application, p. 14.

⁸⁵ *E.g.*, FERC Docket No. ER09-1589, [*FirstEnergy*], Motion of the Iowa Utilities Board, p. 1 (September 8, 2009); *id.*, Intervention of Organization of Midwest ISO States, p. 1 (September 10, 2009); *id.*, Intervention of the Missouri Public Service Commission, p. 2 (September 11, 2009); *etc.*

⁸⁶ Application, p. 23.

“MidAmerican” utilities to join the Midwest ISO, and by the announcements of yet other utilities’ plans to join the Midwest ISO, even after FirstEnergy announced its plans to exit.⁸⁷ As such, FirstEnergy’s exit does not imperil the Midwest ISO’s viability, and the limited operational issues that may occur will be addressed “in the normal course” of the coordination that currently occurs between PJM and the Midwest ISO.

D. Cost/Benefit Study

FirstEnergy’s application for FERC authorization to execute the RTO realignment includes an analysis –the ATSI Integration Simulation Analysis – that demonstrates production cost and congestion savings to customers of both RTOs, including customers in Ohio. This study shows that production costs for the 2 RTO’s will fall by 0.08%, or about \$26 million, and that competition costs will decrease by 6.3%, or about \$91 million. Several categories of costs are described in the Application. For example, there is the obligation to pay “exit fees” to the Midwest ISO, the obligation to pay for MTEP project costs that have been allocated to the ATSI zone, and the obligation to pay certain costs associated with the entry into PJM. These costs share a common characteristic, which is that they can be quantified, if only by estimates.

Many categories of benefits are described in this pleading. These include, for example:

- SSO supply costs will decrease due to the expected increase in available supply and number of SSO suppliers that serve the Ohio Utilities’ customers;
- Suppliers no longer will have to navigate the seam in order procure energy to cover their supply obligations;
- Retail choice consumers should see lower supply costs as more suppliers and supply compete for consumers’ business;

⁸⁷ *E.g.*, FERC Docket No. ER09-1260, *MidAmerican Energy Co.*, Letter Order Authorizing MidAmerican to Join the Midwest ISO (July 16, 2009); Midwest ISO, *News Release*, Dairyland Power Cooperative Announces Intent to Join Midwest ISO (September 10, 2009), *available* http://mktweb.midwestiso.org/publish/Document/6b6059_1239ec7b046_-7fb20a48324a/Midwest%20ISO%20Dairyland%20091009.pdf?action=download&_property=Attachment.

- Opportunity for consumers to participate in PJM's demand response and energy efficiency markets;
- Certainty for SSO suppliers for capacity costs as they craft their bids in future SSO procurement processes.

More cost/benefit studies will not provide significant new information about the RTO realignment in this case. FirstEnergy and PJM agree that the RTO realignment should not cause significant impacts on energy prices,⁸⁸ so energy prices are not an issue. ATSI proposes to convert its existing Midwest ISO transmission rate to a PJM transmission rate, so the bulk of current transmission costs are not in play.⁸⁹ Customers must pay for capacity in both the Midwest ISO and PJM. Since, however, the Midwest ISO does not operate a transparent forward capacity market, and indeed structures its markets so that the overwhelming amount of capacity transactions are via confidential bilateral contracts,⁹⁰ the true cost of capacity within the Midwest ISO is not available and therefore cannot be compared with clearing prices in PJM's capacity markets. As such, a cost/benefit study would not be able to develop comparative data about the differences in capacity costs between the 2 RTOs. Thus a cost/benefit study will provide no meaningful insight. Cost/benefit studies are not required as a condition for exiting an RTO.⁹¹ A regulator cannot be required to examine each and every potential rate impact that may result from a decision regarding RTO membership, and that questions about cost are not ripe until the utility identifies the cost and files for recovery.

⁸⁸ Case No. 09-778, *FirstEnergy Service Co.*, Transcript of September 15, 2009 Presentation, pp. 9, 60.

⁸⁹ Application, p. 20.

⁹⁰ Midwest ISO, *ASM Tariff*, Module E, § 69.3.3; FERC Docket No. ER08-394, *Midwest ISO*, Answer of the Midwest ISO, p. 34 (February 12, 2008).

⁹¹ *E.g.*, FERC Docket No. EC06-4, *LG&E*, Order Conditionally Approving Request to Withdraw from the Midwest ISO, 114 FERC ¶ 61,282 at P 29 (2006); FERC Docket No. ER08-194, *Duquesne*, Order on Rehearing, 127 FEC ¶ 61,187 at PP 6, 8 (2009).

E. Reliability of the Bulk Power System

The RTO realignment will involve only modest changes associated with compliance with NERC's mandatory Reliability Standards, and reliability itself will be unaffected due to the seamless transfer between RTOs. The registered entities in the ATSI footprint will continue to be bound by NERC's Reliability Standards and will continue to operate within the ReliabilityFirst region. The primary changes will involve PJM becoming: (i) the Transmission Operator for the transmission facilities in the ATSI footprint (whereas today the Midwest ISO is not the Transmission Operator for transmission owners in its footprint), and (ii) the exclusive registrant for Balancing Authority, Transmission Planner, and Resource Planner for the ATSI footprint (whereas today both the Midwest ISO and ATSI both are registered for these responsibilities within the ATSI footprint).

The project implementation plan that is included in Exhibit 1 of the Application, describes a systematic approach to identifying and addressing changes in an ATSI-zone stakeholder's compliance posture under the Reliability Standards. This approach includes stakeholder meetings for the purpose of identifying and educating stakeholders regarding changes in registration and compliance with the Reliability Standards. Individual or specific customer concerns will be addressed in the course of this stakeholder process. The final point here is to note that even the Midwest ISO acknowledges, as it must, that RTO realignment should not result in any noticeable change in reliability.⁹²

F. Auction Revenue Rights and Financial Transmission Rights (ARRs/FTRs)

The Application describes PJM's tariffs and applicable FERC orders that describe future allocations of FTRs and ARRs.⁹³ In the case of new load zones, such as the ATSI zone, PJM conducts a "transitional FTR Allocation" covering "the period of time between the implementation of the new zone . . . and the next Annual ARR Allocation

⁹² Case No. 09-778, *FirstEnergy Service Co.*, Transcript of September 15, 2009 Presentation, p. 80.

⁹³ Application, pp. 20-22.

in which the new member elects to participate.”⁹⁴ During this transitional period, which may extend through “the succeeding two Annual FTR Auctions after the integration of the new zone,” transmission customers that receive and pay for service that sinks or sources in the new zone, at their election, may either receive a direct allocation of FTRs or obtain ARRs in accordance with the Annual ARR Allocation.⁹⁵ Such election must be made prior to each Annual FTR Auction. In furtherance of the LG&E requirement, the allocation of FTRs and ARRs among existing transmission service customers will take place as described in the PJM Tariff and in PJM Manual No. 6.⁹⁶

The project implementation plan that is included as part of Exhibit 1 of the Application reflects that PJM and the Ohio Utilities will conduct stakeholder meetings for the purpose of identifying and educating affected stakeholders about the transitional FTR Allocations. PJM’s representatives have advised this Commission that PJM can simulate FTR allocations for the purpose of providing consumers and stakeholders with information about likely outcomes of actual FTR allocations.⁹⁷ These simulations can be performed under various scenarios if necessary to assist stakeholders with planning for the RTO realignment. FirstEnergy expects that these simulations would occur in the course of the stakeholder process. Individual or specific customer concerns about ARR and FTR issues will be addressed in the course of this stakeholder process.

G. Discussion of Jurisdiction

A review of the applicable Ohio statutes reveals that no statute directly provides for the Commission to pass on, approve or deny the RTO realignment. And, as

⁹⁴ PJM Manual 6 at 30.

⁹⁵ *Id.*

⁹⁶ *LG&E Withdrawal Order*, 114 FERC ¶ 61,282 at P 47; PJM OATT, Attach. K App., Article 7; PJM Manual 6 at 30.

⁹⁷ Case No. 09-778, *FirstEnergy Service Co.*, Transcript of September 15, 2009 Presentation, p. 85.

explained below, the remaining statutes provide no basis for the Commission to assert this jurisdiction.⁹⁸ Efforts to address the issues of Commission and interested stakeholders can most efficiently be considered through the FERC proceedings.

Despite the lack of statutory authority requiring the Commission to approve the transaction, suggestions have been made that certain statutory provisions may indirectly provide approval authority to the Commission. However, no reasonable reading of the cited statutes supports this conclusion. For instance, a question has been raised as to whether O.R.C. Section 4905.48 provides the desired jurisdiction.⁹⁹ This provision permits utilities to purchase and sell facilities and equities between each other, and to jointly operate each other's lines subject to the Commission approval. But it is inapplicable to the RTO realignment because the Ohio Utilities are not proposing to enter into Commission-jurisdictional transactions with another public utility.

O.R.C. Section 4905.31 is another statute that has been suggested as creating jurisdiction.¹⁰⁰ Careful reading, however, establishes that this statute is structured in the negative, *i.e.*, that if an electric utility enters into a non-tariff transaction that is subject to the Commission's jurisdiction, that transaction must be filed with and approved by the Commission. But, the RTO realignment does not call for the Ohio Utilities to conduct any Commission-jurisdictional non-tariff transactions, so O.R.C. Section 4905.31 does not apply.¹⁰¹

⁹⁸ *Columbus Southern Power Co. v Commission*, 67 Ohio St.3d 535, 537 (1993); *Tongren v. Commission*, 85 Ohio St.3d 87, 88 (1999).

⁹⁹ Case No. 09-778, *FirstEnergy Service Co.*, Transcript of September 15, 2009 Presentation, p. 94.

¹⁰⁰ Case No. 09-778, *FirstEnergy Service Co.*, Transcript of September 15, 2009 Presentation, p. 94.

¹⁰¹ Any interpretation to the contrary – that the Ohio Utilities must file the Midwest ISO and PJM agreements that are in play with and obtain authorization from the Commission – would mean that FERC-jurisdictional RTO agreements and contracts would need to be filed with and approved by the Commission – a result that would fail in the face of preemption under the Federal Power Act.

O.R.C. Section 4928.12 is another statute mentioned as a possible source of Commission jurisdiction over the RTO realignment.¹⁰² This statute came into existence in 1999 as part of S.B. 3, and provides that no entity was at that time permitted to own or control transmission facilities unless that entity became a member of a qualified transmission entity and transferred control over those facilities was transferred to the qualified transmission entity. Further, the context of O.R.C Section 4928.12 reflects that its purpose and effect was tied to the electric distribution utilities' transition plan period, which for the Ohio Utilities terminated at the end of 2005. On that basis, purpose of 4928.12 has been achieved.

The Ohio Utilities complied with O.R.C. Section 4928.12 by transferring their transmission systems to ATSI, with Commission approval and ATSI's subsequent transfer of operational control of its transmission facilities to the Midwest ISO, an entity recognized by the Commission as being a qualifying transmission entity. The Commission has ruled that the Midwest ISO is a "qualifying transmission entity" as that term is defined in O.R.C. Section 4928.12. ATSI will move into PJM; and the Commission likewise has ruled that PJM is a "qualifying entity." There will be no gaps in membership in a qualifying transmission entity and, as a result, O.R.C. Section 4928.12 is not relevant.

Reference next is made to Sections 4905.03 and 4905.04(A) as a basis for asserting jurisdiction.¹⁰³ O.R.C. Sections 4905.04, 4905.05, and 4905.06 generally are referred to as the Commission's general supervisory powers. These statutes provide the Commission with general authority to supervise and regulate public utilities in Ohio. Under the reading that is urged by some, however, these statutes would apply without limitation; an outcome that clearly is not intended by state or federal law.

¹⁰² Case No. 09-778, *FirstEnergy Service Co.*, Transcript of September 15, 2009 Presentation, p. 93.

¹⁰³ Case No. 09-778, *FirstEnergy Service Co.*, Transcript of September 15, 2009 Presentation, pp. 93, 94.

Public utilities engage in a broad variety of activities and transactions which do not become subject to regulation simply under the theory that the Commission is statutorily vested with general supervisory authority. For instance, the statutes do not extend to areas that are regulated by the FERC under the Federal Power Act, such as the PJM Consolidated Transmission Owners Agreement. Further, the statutes do not extend to the Commission having specific approval authority over which vendors are selected by Ohio's electric distribution utilities for purchasing pencils, transformers, or myriad other goods and services. As such, theories that the Commission's general supervisory jurisdiction is to be construed broadly run into the reality that Ohio's Legislature has been careful to draft numerous specific statutes that set out detailed requirements for implementing the Commission's general supervisory powers. It follows that if the general supervisory statutes provided the Commission with unfettered jurisdiction over public utility actions, such detailed requirements (i.e. much of the rest of Title 49) would be superfluous.

The Commission's ratemaking authority under O.R.C. Chapter 4909 cannot serve as a foundation for Commission authority to approve the RTO Alignment. While those statutory provisions, specifically O.R.C. Sections 4909.17 and 4909.18, state that no rate or charge may become effective until the Commission determines it to be just and reasonable, and that such determination must be made as part of an application as set forth in O.R.C. Section 4909.18, such authority extends only to those rates and charges over which the Commission has jurisdiction. These sections also apply to a regulation or practice, or a change thereto, that affects any rate or charge. But the same limitation applies equally here as well, *i.e.*, the regulation or practice must be subject to the jurisdiction of the Commission, and the application to change to a regulation or practice that the Commission may determine as just and reasonable must affect a jurisdictional rate or charge. In the current situation, these standards are not met. Furthermore, these statutory provisions were not employed by the Commission to assert jurisdiction to

approve the transaction in which the Ohio Utilities joined Midwest ISO in 2003, or the Alliance RTO previous to that, despite these statutes being in effect in identical form during both transactions. As such, there is no basis to adopt a new interpretation of the statute.

The core of the RTO realignment is for the Ohio Utilities, Penn Power, Solutions and ATSI to move their transmission and wholesale market operations from one FERC-regulated RTO into another FERC-regulated RTO. There will be no “gap” in RTO membership and, as such, there is no need for Commission action. And, the courts’ ongoing recognition of FERC’s exclusive and preemptive jurisdiction over interstate transmission and wholesale energy transactions and terms of service¹⁰⁴ is such that the appropriate outcome is for the Commission, the Ohio Utilities, and all other stakeholders to work within the applicable FERC docket to obtain and lock-in the benefits to Ohio’s consumers that will flow from the RTO realignment.

The Commission has full authority and power to protect the interests of Ohio’s consumers by participating in the FERC proceedings. The Ohio Utilities therefore respectfully suggest that all of the Commission’s issues can be addressed in the FERC proceedings and, for this reason, submit that the Commission can work with FirstEnergy and other stakeholders within the FERC’s dockets to achieve the appropriate outcome for Ohio’s consumers. And, by working within the FERC’s dockets, the Commission will provide the efficiency and regulatory certainty that is essential to the FirstEnergy companies, to consumers, and to all other stakeholders.

¹⁰⁴ *New York v. FERC*, 535 U.S. at 23-34 (FERC’s preemptive jurisdiction over interstate transmission service) and at 21 (1935 passage of Part II of the Federal Power Act conferred preemptive jurisdiction on FERC over wholesale transactions that previously had been subject to state jurisdiction); *CT Dept. of Public Utility Control v. FERC*, 569 F.3d 477 (D.C. Cir. 2009), at 483 (FERC can require LSEs that participate in wholesale energy markets to purchase capacity) and 484 (FERC can allocate wholesale capacity costs among market participants).

V.

COMMUNICATIONS

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CONCLUSION

FirstEnergy Service Company appreciates this opportunity to submit these
Comments for the Commission's consideration.

Dated: Akron, Ohio
September 25, 2009

Respectfully submitted,

Michael R. Beiting
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CERTIFICATE OF SERVICE

I hereby certify that a copy of FirstEnergy Service Company's comments in Case No. 09-778-EL-UNC was delivered via regular U.S. mail, postage prepaid, this 25th day of September, 2009 to the parties of record in this proceeding.

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