

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

FirstEnergy Service Company.

: Docket No: ER09-1589-000

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**PROTEST OF THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

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**INTRODUCTION**

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's (FERC's or Commission's) Rules of Practice and Procedure, 18 C.F.R. § 385.211, the Combined Notice of Filings issued on August 17, 2009, and the Notice of Extension of Time issued on September 11, 2009, lengthening the comment or protest date to September 25, 2009, the Public Utilities Commission of Ohio (PUCO or Ohio Commission) hereby submits its protest responding to the FirstEnergy Service Company's (FirstEnergy's, Applicant's or the Company's)<sup>1</sup> August 17, 2009 filing in the above-captioned proceeding. The Ohio Commission filed a timely notice of intervention on August 28, 2009, and is a party to this docket.

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FirstEnergy Service Company filed this application on behalf of several affiliate companies. American Transmission Systems, Inc., the Cleveland Electric Illuminating Company, Ohio Edison, and Toledo Edison are public utilities subject to the jurisdiction of the Public Utilities Commission of Ohio.

## BACKGROUND

On July 31, 2009, FirstEnergy announced its intent to consolidate all of its transmission assets into a single RTO.<sup>2</sup> FirstEnergy's plan calls for withdrawing its transmission assets from the Midwest ISO, Inc. (Midwest ISO) and merging these assets into the PJM Interconnection, Inc. (PJM) network. FirstEnergy believes that aligning all of its transmission assets with PJM will provide customers with the benefits of a more fully developed retail choice market and enhanced long-term planning that supports construction of new generation when and where it is needed. In addition, FirstEnergy submits that its transmission entity, American Transmission Systems, Inc. ("ATSI"), is a better fit operationally with PJM. FirstEnergy's intends to consolidate its transmission assets and operations into PJM on June 1, 2011. The company indicates that this date synchronizes with the conclusion of current, state-approved generation procurements for Provider of Last Resort ("POLR") service for Ohio Edison, the Illuminating Company and Toledo Edison.<sup>3</sup>

FirstEnergy asserts that it must only satisfy three requirements to obtain this Commission's approval of its withdrawal plan: (1) it must satisfy the terms of its

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<sup>2</sup> FirstEnergy Corp., *FirstEnergy to Consolidate Transmission Assets into PJM Interconnection*, July 31, 2009, available at <http://www.firstenergycorp.com/NewsReleases/2009-07-31%20RTO.pdf>.

<sup>3</sup> See *Ohio Edison Co.*, Nos. 08-935-EL-SSO, *et al.*, Second Opinion and Order (P.U.C.O. March 25, 2009).

contractual obligations as they relate to RTO withdrawal; (2) the replacement arrangement must comply with Order No. 888 (and Order No. 890) and the standard of review under Order No. 888 for proposed tariff provisions that differ from the pro forma Open Access Transmission Tariff; and (3) the replacement arrangement must be just, reasonable, and not unduly discriminatory.

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## DISCUSSION

### A. Federal and State Jurisdiction

On September 4, 2009, the PUCO initiated a proceeding to examine the proposed move of FirstEnergy's Ohio affiliates to PJM from the Midwest ISO (Case No. 09-778-EL-UNC, *In the Matter of the Proposal of FirstEnergy Company to Modify Its RTO Participation*) under its state authority. Oral presentations by various invited stakeholders were heard by Ohio's five Commissioners on September 15, 2009. The PUCO also solicited public comment on the impacts of the proposed RTO realignment. Those comments are due to the Ohio Commission on September 25, 2009. Because of this investigation, the Ohio Commission is requesting that FERC delay its decision concerning FirstEnergy's application until the Ohio Commission has had adequate time to resolve the issues before us and determine the reasonableness of the company's request. Specifically, the Ohio Commission believes that the state issues should be resolved before the FERC acts. This will provide the Ohio Commission with the opportunity to consider whether it is reasonable and consistent with state law for the FirstEnergy companies to

transfer operational control from the Midwest ISO to PJM and whether it would be reasonable for FirstEnergy's Ohio LSEs to purchase energy, ancillary services, and capacity in the PJM markets as opposed to the markets of the Midwest ISO. These questions are separate and distinct from the issues which FirstEnergy has asked the FERC to decide.<sup>4</sup> Thus, consideration of these questions by the PUCO would supplement

FERC's review of this application. Prior consideration of these issues in the state proceeding would provide FirstEnergy the opportunity to demonstrate to the State and affected stakeholders that its proposal is reasonable and could narrow the issues before the FERC, facilitate settlement, or lead to definition conditions under which any transfer might proceed. For these reasons, the Ohio Commission believes that it would promote administrative economy and a reasoned consideration of the issues for a resolution of state concerns to precede consideration of this application at FERC and that it would be premature for FERC to issue a decision on this application until the PUCO has determined whether the proposal is reasonable and consistent with the requirements of Ohio law. There is no legal or factual urgency to this change of RTOs. To the contrary, there are potentially significant consequences in this docket that have not been addressed.

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<sup>4</sup> FirstEnergy's position in the Ohio proceeding is that, with respect federal statutory requirements, the decision to withdraw or join an RTO is purely voluntary and that FERC's authority to review these decisions has been curtailed by *Atlantic City Electric Company v. Federal Energy Regulatory Commission*, 295 F. 3d 1(2002) and 329 F. 3d 856 (2003).

The PUCO requests that, in the event that it grants FirstEnergy's application, this Commission distinguish its findings from the issues of whether the decisions to transfer control of transmission assets from MISO to PJM and to purchase energy, ancillary services, and capacity in the PJM markets instead of the markets of the Midwest ISO, were reasonable decisions. Consistent with *Duquesne*, 126 FERC ¶61,074, the PUCO does not anticipate that the Commission will address the prudence of the Applicant's decision to change from Midwest ISO to PJM, and asks that this Commission specifically note that it does not make such a finding. Further, the PUCO requests that the Commission clarify that any decision to grant FirstEnergy's application is not a determination that costs resulting from the decisions at issue in the state proceeding are recoverable from retail ratepayers.<sup>5</sup>

Applicant has represented to this Commission that no state law approvals are required for its application. This is incorrect. In addition to being a utility for this Commission's purposes, ATSI is also a public utility subject to the regulation of the Public Utilities Commission of Ohio. ATSI has acknowledged its status as an Ohio public utility subject to PUCO regulation, and the PUCO has made formal declarations of that status. See, *In re American Transmission Systems*, PUCO Case No. 08-1264-EL-AIS (Opinion and Order) (December 19, 2008); *In re American Transmission Systems*, PUCO

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<sup>5</sup> *Pike County Light and Power Co. v. Pennsylvania Public Utility Commission*, 77 Pa. Cmwlth. 268, 465 A. 2d 735 (1983); *Palisades Generating Co.*, 48 F.E.R.C. ¶61,144 (1989); *Pacific Gas & Electric Co. v. Lynch*, F. Supp. 2d 1016 (N. Dist. CA 2002).

Case No. 07-1193-EL-AIS, *et seq.* (Finding and Order) (December 19, 2007); *In re American Transmission Systems*, PUCO Case No. 06-1384-EL-AIS (Finding and Order) (December 13, 2006); *In re American Transmission Systems*, PUCO Case No. 05-1426-EL-AIS, (Finding and Order) (December 14, 2005). FirstEnergy Services Company also filed this application on behalf of Cleveland Electric Illuminating, Ohio Edison, and

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Toledo Edison which are public utilities regulated by the Ohio Commission. Public utility status under Ohio law brings with it a wide array of legal obligations, including a requirement to obtain PUCO approval before entering into certain contracts, a requirement to transfer control of transmission facilities to a state-approved transmission entity and many others. FirstEnergy's proposal raises questions which have not been previously addressed by the Ohio Commission. We anticipate receiving comments on September 25<sup>th</sup> regarding the appropriate applications of state requirements to FirstEnergy's proposed actions and will seek to proceed in reasonable and timely manner to address the state law questions and related concerns raised by their proposal. See: PUCO Case No. 09-778-EL-UNC, *In the Matter of the Proposal of FirstEnergy Company to Modify Its RTO Participation*. Until these matters can be resolved, it is not possible to know if the Applicant even has the legal ability to make the commitment proposed in the instant application.

It is clear that the PUCO has authority over the: the Toledo Edison Company, Ohio Edison Company and the Cleveland Electric Illuminating Company. The PUCO

will have to review the reasonableness of whatever actions are taken by these LSEs. As the LSE's are Applicants in this case, the PUCO is concerned that this Commission may take an action that might compromise the PUCO's ability to regulate LSE retail rates. Acting now could create an entirely unnecessary state-federal dispute. The issues and concerns in the state proceeding should be resolved before the FERC acts. The PUCO is currently endeavoring to address these questions.

In sum, it is incorrect to claim that no state law approval or action is required for the Applicant's proposal to go forward. A state proceeding to investigate the participation of the four Ohio public utilities in the proposed transfer has been initiated by the PUCO. While the PUCO will not speculate on the outcome of this proceeding, FERC should not move forward on the application until it is clear that the Ohio Applicants have the ability to complete the proposed transaction.

## **B. Reliability**

The Ohio Commission maintains that FirstEnergy fails to demonstrate that the reliability of electrical service will not be compromised by moving from the Midwest ISO to PJM. The proposed move to PJM may have an impact on several RTOs, as each has a unique set of market structures and dispatching algorithms for complying with reliability standards. For this reason, among others, a thorough understanding of the possible reliability impacts of FirstEnergy's proposed move is essential.

**1. One-Day-in-Ten-Years Planning Reserves**

Although the resource adequacy provisions in the PJM and Midwest ISO either require each LSE or group of LSEs to carry planning reserves or set a default planning reserve based on a loss-of-load probability of no more than one-day-in-ten-years, the tariff provisions may not have comparable impacts.

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One-day-in-ten-year planning reserves translates into a requirement of about 15 percent in planning reserves for the Midwest ISO footprint, but can translate to more than 15 percent in planning reserves for PJM. Consequently, the proposed move to PJM may increase the amount of planning reserves that each LSE or group of LSEs in the ATSI zone will have to carry.

The application states that the ATSI zone had a peak load of 12,972 MW and a net capability of 12,910 MW during 2008. As there appears to be more load in the ATSI zone than there are generation resources to cover both the load and the required planning reserves, a realignment of load and generation into PJM may negatively impact PJM's current reserve margin. FirstEnergy does not clearly elaborate on how it intends to resolve this deficiency between load and generation, or whether it would be even feasible to recover such a deficiency and the required planning reserves by firm capacity either from resources in PJM or from resources in the Midwest ISO. FirstEnergy simply states that it will procure capacity through a Fixed Resource Requirement (FRR) Integration Plan for the first two years and through the Reliability Pricing Model after May 31, 2013.



However, FirstEnergy has not demonstrated that there even will be sufficient uncommitted capacity available to meet its proposed FRR requirements. Additionally, FirstEnergy does not clarify in its application whether the increase in reserve requirements for the LSEs in ATSI will require any new transmission system upgrades.

## **2. Lake Erie Loop Flows**

The Ohio Commission notes that the unscheduled power flows that create the Lake Erie loop flows have caused reliability concerns for years, and there have been numerous studies and plans to resolve these concerns. Since power physically flows over the path of least impedance, rather than the scheduled path, the Lake Erie loop flows routinely change direction over the course of a day. The magnitude of these flows can vary by 1000 MW or more in a single day.<sup>6</sup> This volatility has caused system reliability problems in the past.

ATSI is directly interconnected with tie lines between Niagara Mohawk and the Erie East and Warren substations, and is directly affected by the loop flows over the NYISO borders. These loop flows affect the ATSI system and can cause a re-dispatch of the generation resources connected to the ATSI system in order to avoid an overloading of the ATSI transmission lines. Lake Erie loop flows impact Ohio retail consumers.

They cause additional congestion and, more importantly, variability in these flows may compromise reliability and shorten the asset life of the ATSI transmission infrastructure. The proposed realignment does not to resolve the Lake Erie loop flow problem. The seams between NYISO, PJM, and the Midwest ISO will continue to be impacted by the Lake Erie loop flow problems.

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Managing congestion in general, and around Lake Erie in particular, is enhanced with shorter dispatching periodicities. The Midwest ISO balances supply and demand every five minutes, while PJM dispatches power in 15-minute intervals. Given the volatility in direction and the magnitude of load flow around Lake Erie, it is the Ohio Commission's opinion that the move to PJM's longer dispatching interval may aggravate the Lake Erie loop flow problems.

FirstEnergy's application does not include any detailed reliability simulation studies that measure the possible effects of the proposed move on the Midwest ISO, PJM and the remaining neighboring ISOs. The Ohio Commission recommends that an objective and independent engineering organization such as NERC or RFC review this application and opine concerning the reliability of the Eastern Interconnect either prior to the approval of or as a condition to approval of the application. The development of data and opinions are necessary for establishing a comprehensive understanding of the impacts of ATSI's proposed move to PJM.

### 3. RTO Shopping

In the absence of a limit on how frequently a transmission provider can change RTOs and a requirement that sufficient notice be provided to permit market participants to adjust their investment plans and long-term contracts, FERC must address the potential long-term consequences that relatively frequent changing of RTOs will have on the planning process and reliability. In reviewing this application, the Ohio Commission maintains that FERC must consider the effect that ATSI's migration to a different RTO will have on LSEs not affiliated with FirstEnergy (*e.g.*, companies serving load located in various municipalities throughout Ohio, such as AMP-Ohio). These companies plan the construction of generation facilities based on their RTO membership and the deliverability of generation to their load. For these companies, it is uncertain what the proposed change in RTO membership will have on the deliverability of generation to load.

The ambiguity associated with when transmission providers will choose to change RTOs creates further uncertainty. Uncertainty translates into increased risk, increased risk translates into higher costs of capital, a significant determinant in the construction of generation facilities. Generation construction has a direct bearing on reliability, and is necessarily a significant aspect of this application.

FERC must also consider the chilling effect that RTO shopping could have on customers. Energy users also would need to consider the uncertainty created by frequent

and unpredictable moves when making the investments needed to create jobs and grow the economy. It is not in customers' best interests to allow casual RTO migration based on a determination that a different RTO may be more advantageous and/or more lucrative than another.

The Ohio Commission believes that FERC should take immediate action to enhance stability and predictability in the marketplace. FERC should commission NERC and/or RFC to determine the effect ASTI's proposal will have on generation deliverability and the corresponding impact on reliability. It should hear from affected parties regarding the uncertainty created by FirstEnergy's proposal and consider whether additional notice or lead time should be required before any transfer takes effect. In the longer term, FERC should also initiate a comprehensive rulemaking to develop standards for RTO migration and establish rules limiting companies' ability to change RTOs.

### **C. Unsubstantiated Customer Benefits**

FirstEnergy's application notes that the decision to realign with PJM is simply a better fit for the Company and its customers.<sup>7</sup> FirstEnergy claims that realignment will allow customers to take advantage of elements of PJM's market design that are well suited to a retail access environment.<sup>8</sup> Among other things, FirstEnergy notes that PJM's reliability pricing model (RPM) holds the benefit of soliciting long-term commitments

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<sup>7</sup> FirstEnergy Service Company Application at Page 4.

<sup>8</sup> *Id.*

from capacity resources to ensure resource adequacy that will enhance the long-term service reliability.<sup>9</sup> FirstEnergy appears to rely on these claimed benefits to support the accelerated consideration and granting of its application.

However, there are material issues of fact regarding whether there would be net benefits to consumers. And, the Company does not show specifically how the purported consumer benefits will be realized. Specifically, while FirstEnergy points frequently to alleged customer benefits, it neither identifies nor quantifies these benefits. Lacking any empirical evidence, the application must be rejected in total as it cannot be determined to be just and reasonable. Alternatively, a hearing could be scheduled to develop the information necessary to make these determinations.

The application does not demonstrate how customers would fair better under PJM's capacity construct than under the Midwest ISO capacity model. Both have been approved by this Commission. The Company should have to demonstrate and quantify how additional charges (if any) to customers under the PJM's capacity construct will result in enhanced reliability.

The application also claims that moving operations into a single RTO will eliminate inefficiencies involved with having its operations in two different RTOs. FirstEnergy maintains that, on balance, the long-run benefits to the Company and its

customers point to realignment of its operations to PJM.<sup>10</sup> The application merely assumes that significant economies can be realized. No demonstration is offered. In addition, the application fails to show how any tangible efficiencies or cost savings will benefit ratepayers, or how costs associated with the transfer will be recovered on a region-wide basis.

There will be cost associated with a move to PJM.<sup>11</sup> Among other things, FirstEnergy will be obligated to pay an exit fee under the Midwest ISO Transmission Expansion Plan (MTEP).<sup>12</sup> FirstEnergy's states that it will work with the Midwest ISO to confirm the appropriate fees and develop a payment plan. The application reflects that ATSI will pay the fees for its entire footprint in the Midwest ISO and that FirstEnergy will make a supplemental filing when the exit fee is finalized.<sup>13</sup> The Company makes no effort to provide even a back-of-the-envelope estimate to quantify these charges or the potential impact such charges could have on transmission rates. In addition, the application is silent as to how any integration fees rendered by PJM would be paid by ATSI and not its customers.

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<sup>10</sup> FirstEnergy Service Company Application at Page 14.

<sup>11</sup> FirstEnergy Service Company Application at Page 5.

<sup>12</sup> *Id.*

<sup>13</sup> FirstEnergy Service Company Application at Page 23.

The application requests that ATSI LSE's be permitted to continue to pay for Midwest ISO facilities planned and approved before June 1, 2011, but not pay for PJM legacy regional transmission expansion plan (RTEP) projects that were approved prior to ATSI's entry into PJM. The application reflects that ATSI's LSEs will pay for qualifying RTEP projects planned and approved by the PJM Board after June 1, 2011, when their load is integrated into PJM.<sup>14</sup>

This request may be a departure from prior FERC decisions. If FERC does not accept the Company's proposed RTEP relief as just and reasonable, the application should be denied in its entirety. FERC should not undertake a piecemeal approach to approval of FirstEnergy's application by amending certain sections of the Company's proposal. If the specific relief is not granted, it will likely have a significant detrimental impact on the Company's purported customer benefits.

The Company's application is also silent as to the effect that the proposed transfer would have on financial transmission rights (FTRs). The Company should explain in detail how it plans to effectuate the transfer to PJM as it concerns FTRs. FirstEnergy must demonstrate the effect its proposed transfer to PJM will have on the allocation (or reallocation) of FTRs from the involved RTOs. Likewise, FirstEnergy must demonstrate and/or provide supporting studies on the effect that the proposed transfer would have on

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<sup>14</sup>

FirstEnergy Service Company Application at Page 35.

the current allocation of LSEs' FTRs in both the Midwest ISO and PJM, and the effect on congestion and customers' prices. The Applicant should demonstrate whether there will be a negative effect on current FTR holdings. To this end, FirstEnergy should be required to submit a hold harmless plan for all involved LSEs (including FirstEnergy's local distribution company affiliates) if any reallocation or transfer of FTRs has a negative impact on current FTR holdings and/or a subsequent negative impact on customers' rates.

FirstEnergy's application does not support its claims as to customer benefits. The application is plainly deficient, and must be denied in its entirety since it can not be determined to be just and reasonable.

**D. Order 888 and 890 Compliance**

FERC's approval is necessary for: (1) FirstEnergy's termination of its participation in the Midwest ISO transmission owners' (TO) Agreement; and (2) FirstEnergy's replacement arrangements for interstate transmission service. In accordance with FERC precedent, FirstEnergy's replacement arrangements for this interstate transmission service must both comply with Order No. 888 (as modified more recently by Order No. 890), and be just, reasonable, and not unduly discriminatory under the Federal Power Act.<sup>15</sup> In order to reach these determinations, this Commission must answer some fundamental questions.

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<sup>15</sup> *Louisville Gas & Electric Co.*, 114 FERC ¶ 61,282 at P 14, *order on reh'g*, 116 FERC ¶ 61,020 (2006).



**1. What is the amount of the exit fees?**

The application is devoid of basic information on the amount of the exit fees. For that reason alone, the application violates the reasonable notice requirement of the FPA,<sup>16</sup> and should be rejected as void for vagueness. FERC cannot lawfully fulfill its duty under the FPA to determine whether the termination of FirstEnergy's participation in the Midwest ISO TO Agreement is just and reasonable if FERC has not even been provided with the amount of the exit fees associated with that termination. The PUCO therefore respectfully requests that FERC reject the application and require FirstEnergy to submit a new application once these costs are known and measurable.

If FERC does not reject the application outright, the Ohio Commission urges FERC set it for an evidentiary hearing so that discovery and cross-examination can be conducted on the specific amount of the exit fees and the support for the specific costs included in those exit fees. To the extent it would be helpful to resolve this dispute consensually, without imposing litigation burdens on FERC, the PUCO would support a temporary suspension of the evidentiary hearing procedures for purposes of conducting settlement negotiations facilitated by a FERC settlement judge. Such process would be consistent with procedures adopted by FERC in other proceedings.<sup>17</sup>

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<sup>16</sup> 16 U.S.C. § 824d.

<sup>17</sup> See, e.g., *State of California v. British Columbia Power Exchange Corp., et al.*, 122 FERC ¶ 61,260 at P 36 (2008).

**2. What specific actions will be taken to mitigate the amount of the exit fees?**

The Ohio Commission understands that the Midwest ISO must mitigate the amount of exit fees it assesses and renegotiate “obligations” owed by FirstEnergy to the Midwest ISO, as a condition of FirstEnergy’s withdrawal. This requirement is consistent with the terms of the Midwest ISO TO Agreement,<sup>18</sup> fundamental principles of contract law, the FPA,<sup>19</sup> and FERC rulings in other proceedings.<sup>20</sup> If the Midwest ISO also can mitigate any of the costs it proposes to assess, it should be expressly required by FERC to do so. Failing this, the exit fees cannot lawfully be declared “just and reasonable” under Section 205 of the FPA.<sup>21</sup> Appropriate mitigation measures should be addressed in the renegotiation of FirstEnergy’s obligations and submitted to FERC in a compliance filing before any final authorization of FirstEnergy’s termination is given by FERC.

**3. What specific mechanism(s) will be used to enforce ATSI’s commitment to itself pay exit fees and hold transmission customers harmless from added costs associated with ATSI’s withdrawal?**

The Application also fails to delineate any specific mechanism that will be used to implement ATSI’s commitment to pay the exit fees itself, and to not receive more in

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<sup>18</sup> Midwest ISO TO Agreement, Art. Five § II. C. & D.

<sup>19</sup> 16 U.S.C. § 824d (requiring all charges to be just and reasonable).

<sup>20</sup> *Duquesne Light & Power Company*, 122 FERC ¶ 61,039, at PP 95-96 (2008).

<sup>21</sup> See, e.g., *State of California v. British Columbia Power Exchange Corp., et al.*, 122 FERC ¶ 61,260 at P 36 (2008).

revenues from users of its transmission facilities than ATSI would have received had it not withdrawn from the Midwest ISO. Applicants committed that “ATSI will pay the fees for its entire footprint in the Midwest ISO.”<sup>22</sup> When ATSI signed the Midwest ISO TO Agreement, ATSI also agreed previously that if ATSI withdrew, ATSI would “receive no more in revenues” from users of its transmission facilities “than if there had been no withdrawal by such Owner.”<sup>23</sup> ATSI should be held firmly to these commitments.

Vague statements in the application, standing alone, simply are not enough to ensure that ATSI actually does not receive more in revenues from users of its transmission facilities (including, on a non-discriminatory basis, the Ohio LSEs) than it would have received had it not withdrawn from the Midwest ISO. For example, the application only vaguely refers to potential replacement arrangements for transmission service, including new transmission prices that may possibly “track existing ATSI zonal rate formula closely, *with changes* made only to the extent necessary to accommodate PJM billing practices such as the utilization of transmission pricing based on a 1 Coincident Peak (“CP”) versus a 12 CP methodology that is employed by the Midwest ISO.”<sup>24</sup> The application lacks support for these changes in transmission prices, including

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<sup>22</sup> Filing at 23. *Accord* Filing at 24 (“ATSI will satisfy its obligations”).

<sup>23</sup> Midwest ISO TO Agreement, Art. Five § II. A.

<sup>24</sup> Filing at 20 (emphasis added).

any information on the amount of the transmission prices customers would pay or the amount of revenues ATSI would receive as a result of the switch from a 1 CP to a 12 CP methodology. Applicants propose no mechanism to ensure that, as a result of this switch in rate methodology, ATSI will not receive more in revenues than it would have received if ATSI had not withdrawn from the Midwest ISO.

Exit fees that must be paid to the Midwest ISO following mitigation are certainly charges that would not have been incurred had ATSI not withdrawn from the Midwest ISO. The Ohio Commission agrees that ATSI is the entity that must pay those exit fees,<sup>25</sup> rather than its corporate affiliates. ATSI signed the TO Agreement and contractually committed itself to pay exit fees. The Ohio LSEs did not. ATSI also decided to withdraw from the Midwest TO Agreement and transfer control over its independently owned transmission facilities to PJM. Shifting those costs to ATSI's corporate affiliates would be unduly discriminatory, in violation of the FPA,<sup>26</sup> singling out LSEs in Ohio from all other transmission customers for payment of exit fees.<sup>27</sup> Accordingly, a mechanism should be developed to hold all transmission customers (including, on a non-

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<sup>25</sup> Filing at 23.

<sup>26</sup> 16 U.S.C. §§ 825d, 824e.

<sup>27</sup> In this regard, the Filing is fatally flawed to the extent it proposes that the "ATSI LSEs" be singled out to make ongoing payments to the Midwest ISO. Filing at 35.

discriminatory basis, the Ohio LSEs) harmless from exit fees that ATSI itself committed to pay.

This mechanism should be included in a compliance filing submitted to FERC, following collaboration with the PUCO and other affected transmission customers. Like the procedure followed in *American Electric Power Service Corp.*, 103 FERC ¶ 61,009, at P 21 (2003), the Ohio Commission believes it is important for FERC to encourage ATSI to cooperatively develop the compliance filing with input from others. FERC could facilitate this collaboration by instituting settlement procedures, as FERC often does.

**4. How will the proposal to exit the Midwest ISO and join PJM affect loop flows and congestion and what specific mechanism(s) will be implemented to hold utilities in Ohio harmless from the operational and financial impacts relating to changes in loop flows and congestion?**

The application also lacks critical information about how the proposal will affect loop flows and congestion, including information on the operational and financial impacts resulting from changes in loop flows and congestion. Consequently, it is premature for FERC to authorize ATSI to terminate its participation in the Midwest ISO and join PJM. Consistent with FERC's prior ruling in *Alliance Companies, et al.*, 100 FERC ¶ 61,137, at P 54 (2002):

... at a minimum, PJM ... must analyze changes in loop flows and congestion (FTRs/TLRs) and post the expected financial and operational impacts (in addition to all underlying studies) prior to adding new members and provide adequate time for market participants to digest the impact and make alternative business arrangements, to the extent possible.

In accordance with FERC's own precedent, PJM should be required to post this information on its website within 45 days.<sup>28</sup> Once the information posted, FERC should direct ATSI to make a compliance filing containing a mechanism that will effectively hold all utilities in Ohio harmless from any loop flows or congestion that results from the shift to PJM.<sup>29</sup> As FERC has ruled previously, not only must the Ohio utilities be held harmless from any adverse operational impacts, but they also must be held harmless from any adverse financial impacts related to changes in loop flows and congestion arising from ATSI's choice to join PJM.<sup>30</sup>

#### REQUEST FOR A HEARING AND CONCLUSION

As discussed above, the application is so lacking in supporting detail that it cannot be fairly evaluated. The application should simply be rejected. Alternatively, a hearing should be scheduled pursuant to Section 205(e) of the Federal Power Act 16 USC § 824d(e) and Rules 212 and 502 of the Rules of Practice of the FERC, 18C.F.R. §§ 385.212, 385.502 to allow development of sufficient facts for the Commission to make a decision. For this reason, the Ohio Commission requests an evidentiary hearing. Affidavits are attached to this Protest.

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<sup>28</sup> *Alliance Companies, et al.*, 100 FERC ¶ 61,137, at P 54 (2002).

<sup>29</sup> *Id.* at P 53.

<sup>30</sup> *Alliance Companies, et al.*, 102 FERC ¶ 61,214, at P 7 (2003).

Respectfully submitted,

/s/ Thomas W. McNamee

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**Attorney for the  
Public Utilities Commission of Ohio**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Thomas W. McNamee

**Thomas W. McNamee**  
Assistant Attorney General

Dated at Columbus, Ohio this 25<sup>th</sup> day of September 2009.

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

First Energy Service Company.

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Docket No: ER09-1589-000

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**AFFIDAVIT OF  
DANIEL SHIELDS**

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After being sworn, Daniel Shields states:

1. I am the Federal Energy Advocate of the Public Utilities Commission of Ohio (Ohio Commission).
2. I have a Bachelor of Business Administration degree (BBA) and a Masters of Business Administration degree (MBA).
3. I have been involved with a variety of utility matters for over 26 years, including those involving electric utilities and Regional Transmission Organizations (RTOs). In the most recent years, I have concentrated on energy matters before federal agencies, principally the Federal Energy Regulatory Commission (FERC).
4. Ohio law, Ohio Revised Code Section 4298.24, requires that I examine the value of Ohio's electric utilities' participation in RTOs, and report to the Ohio Commission on whether the utilities' continued participation is in the interest of retail electric service customers.
5. I am knowledgeable about the Midwest Independent System Operator (MISO) and PJM Interconnection, Inc. (PJM) RTOs and their members.



6. I have reviewed the application filed in this docket by First Energy Service Company (FirstEnergy).
7. Customer benefits are not substantiated in FirstEnergy's application, as shown by a number of factors identified in the following paragraphs.
8. FirstEnergy points frequently to customer benefits, but it fails to make evident and explicitly quantify such benefits. The Company does not demonstrate how customers will benefit by effectuating its proposed migration to PJM from the Midwest ISO. As it is not supported by fact or evidence a hearing must be held as the application cannot be determined to be just and reasonable.
10. A hearing must be held because the Company's application does not demonstrate how customers would fair better under PJM's capacity construct as opposed to the Midwest ISO capacity model. At hearing, the Company should demonstrate and quantify how additional charges (if any) to customers under the PJM's capacity construct will result in enhanced reliability as compared to that of the Midwest ISO.
11. A hearing must be held as the Company's application is deficient because it is asking FERC to assume there will be significant economies realized that will take effect to the benefit of customers.
12. A hearing must be held since the application is deficient because it does not establish how costs associated with the transfer will be recovered on a region-wide basis.
12. A hearing must be held because the application is deficient since it does not quantify exit fees and the recovery of such fees.
13. FirstEnergy's application requests relief in that ATSI load serving entities (LSEs) should be permitted to continue to pay for Midwest ISO facilities planned and approved before June 1, 2011, but not pay for PJM legacy regional transmission

expansion plan (RTEP) projects that were approved prior to ATSI's entry into PJM.

If the specific relief is not granted, the application should be rejected.

15. A hearing must be held because the application fails to address the impact the proposed move to PJM could have on load serving entities' financial transmission rights and the corresponding potential negative impact on customers.
16. Taking these issues into consideration, a hearing must be held in that FirstEnergy's application is deficient because there are unresolved material issues of fact as

outlined in the Ohio Commission's protest in this proceeding.

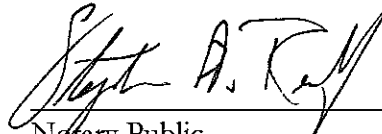
Affiant says nothing further.

So stated,



**Daniel Shields**

Sworn and subscribed before me on September 23, 2009.



Notary Public

*My Commission does not have an expiration date*

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

First Energy Service Company : Docket No: ER09-15890000

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**AFFIDAVIT OF  
HISHAM M. CHOUEIKI, Ph.D., P.E.**

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After being sworn, Hisham M. Choueiki states:

1. I am a Senior Energy Specialist with the Ohio Public Utilities Commission. In this position, I develop and apply empirically valid, logically consistent, and historically accurate analytical models for assessing and characterizing the behavior of energy and economic systems in utility service areas in Ohio, and in the United States.
2. I have a Philosophy Doctorate degree, a Master of Science degree and a Bachelor of Science degree in Industrial and Systems Engineering from the Ohio State University.
3. I am a Registered Professional Engineer in Ohio.
4. I am the Chair of Modeling Workgroup for the Organization of Midwest ISO States and have served on several workgroups for the Organization of Midwest ISO States and the Organization of PJM States.
5. I have taught/developed several engineering courses and have co-authored and published a number of scientific papers in peer-reviewed journals and conferences. I also

serve as a reviewer for several journals; such as IEEE *Transaction on Power Systems* and IEEE *Transactions on Neural Networks*.

6. I am familiar with the Midwest Independent System Operator (Midwest ISO), the PJM Regional Transmission Operator (RTO), and with their members.

7. I have reviewed the RTO Realignment Application (application) filed in this docket by First Energy Service Company (First Energy).

8. We believe First Energy failed to demonstrate that the reliability of electrical service will not be compromised by its proposed move of American Transmission Systems, Inc. (ATSI) from Midwest ISO to PJM.

9. As we all know, the Eastern Interconnect is all integrated into one electrical transmission system. First Energy's proposed ATSI move to PJM may have an impact on several RTOs as each has its own unique set of market structures and dispatching algorithms for complying with reliability standards. For this reason, among others, establishing an *a priori* comprehensive understanding of the possible impacts of First Energy's proposed ATSI move on the Eastern Interconnect is essential.

#### **One-Day-in-Ten-Years Planning Standard**

10. In order to maintain a one-day-in-ten-years probability of an outage event, planning coordinators; such as Midwest ISO and PJM, have generally required each load serving entity (LSE) or group of LSEs to carry a specified amount of reserves<sup>1</sup>. Additionally, ReliabilityFirst Corporation (RFC) is currently preparing to file at the FERC its one-day-in-

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<sup>1</sup> PJM's Reliability Pricing Model and MISO's Resource Adequacy - Module E

ten-years standard<sup>2</sup> which, if approved by FERC, will formalize this planning reserves standard.

11. This planning standard translates to a requirement of about 15% in planning reserves for the Midwest ISO footprint. This planning standard, however, may translate to more than 15% in planning reserves for the PJM footprint due to congestion and deliverability constraints. Hence, it appears that First Energy's proposed move to PJM may increase the amount of planning reserves that each LSE, or group of LSEs, in the ATSI zone would have to carry.

12. To further complicate matters, First Energy states in its application that during 2008, the ATSI zone had a peak load of 12,972 MW and a net capability of 12,910 MW. This realignment of load and generation into PJM, therefore, may negatively impact PJM's current reserve margin as there appears to be more load in the ATSI zone than there are generation resources to cover this load and the required planning reserves.

13. First Energy does not clearly elaborate how it intends to resolve this deficiency between load and generation and whether it would be feasible to recover such a deficiency and the required amount of planning reserves by firm capacity from resources in PJM or from resources in MISO. First Energy simply states that it will procure capacity through a Fixed Resource Requirement Integration Plan for the first two years and through the Reliability Pricing Model after May 31, 2013. Additionally, First Energy does not clarify in its application whether the possible increase in planning reserve requirements for the LSEs in the ATSI zone will cause any new transmission system upgrades.

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<sup>2</sup> Proposed RFC Standard BAL-502-RFC-01

### **Lake Erie Loop Flows**

14. The unscheduled power flows that create the Lake Erie loop flows have caused reliability concerns for years, and there have been numerous studies and plans to resolve these concerns.

15. Since power physically flows over the path of least resistance, rather than the scheduled path, the Lake Erie loop flows routinely change direction over the course of a day.

Further, the magnitude of these flows can vary by more than 1000 MW in a single day<sup>3</sup>. This volatility in load magnitude and direction has caused system reliability problems in the past.

16. The ATSI system is directly interconnected with tie lines between Niagara Mohawk and the Erie East and Warren substations, and is directly affected by the loop flows over the NYISO borders. These loop flows affect the ATSI system and can cause a re-dispatch of the generation resources connected to the ATSI system in order to avoid an overloading of the ATSI transmission lines.

17. These loop flows, in our opinion, impact Ohio retail consumers. This is because the operational and reliability issues caused by the Lake Erie loop flows tend to cause additional congestion and, more importantly, may shorten the asset life of the ATSI transmission infrastructure<sup>4</sup>.

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<sup>3</sup> Lake Erie Loop Flow Mitigation, A Report from the New York Independent System Operator, November 2008.

<sup>4</sup> ER08-1281-000, Motion for Leave to Intervene Out of Time and Comment of the First Energy Companies

18. The proposed realignment of ATSI from Midwest ISO to PJM does not appear to resolve the Lake Erie loop flow problem. The seams between NYISO, PJM, and Midwest ISO will continue to be impacted by the Lake Erie loop flow problems.

19. MISO balances its supply and demand in five-minute intervals while PJM dispatches power in 15-minute intervals. It is our opinion that managing congestion, in general, and around Lake Erie, in specific, would be enhanced with shorter dispatching periodicities.

Given the volatility in the direction and magnitude of the load flow around Lake Erie, it is our belief that PJM's longer dispatching periodicity may rather aggravate the Lake Erie loop flow problems. First Energy does not provide any documentation in its application as to how the Lake Erie loop flow problems will not be exacerbated after ATSI is realigned with PJM.

### **Recommendations**

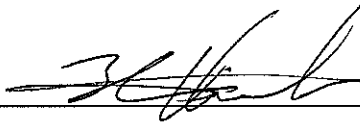
20. First Energy's application does not include any detailed reliability simulation studies that measure the possible effects of the proposed move on Midwest ISO, PJM and the remaining neighboring ISOs. Accordingly, the reliability concerns stated above with respect to the reserve deficiencies and the Lake Erie loop flows remain unresolved.

21. It is our recommendation that an objective, and independent engineering organization; such as the North American Electric Reliability Council or RFC, review this realignment application and opine concerning the reliability of the Eastern Interconnect prior to the approval of the application or as a condition to the approval. We further believe that any organization that could financially benefit by this proposed move would not have

the requisite objectivity, and accordingly, should not be the entity that conducts this technical review.

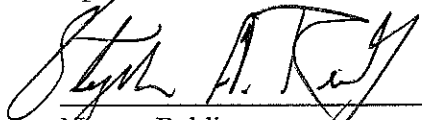
22. The development of data and opinions are, therefore, necessary for establishing a comprehensive understanding of the impacts of First Energy's proposed ATSI move from Midwest ISO to PJM.

Further affiant sayeth naught.



Hisham M. Choueiki, Ph.D., P.E.

Sworn and subscribed before me on September 23, 2009.

  
Notary Public  
*My Commission does not  
have an expiration date.*



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**Case No(s). 93-7000-EL-FAD**

Summary: Comments Protest of the Public Utilities Commission of Ohio electronically filed by Ms. cora g peterson on behalf of Public Utilities Commission of Ohio