MEETING OF THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of: :
: Case No. 09-778-EL-UNC
The FirstEnergy Service :
Company to Modify its RTO :
Participation. :

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Meeting of the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-B, Columbus, Ohio, called at 2:30 a.m. on Thursday, January 7, 2010.

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COMMISSION:

Commissioner Alan R. Schriber, Chair
Commissioner Paul A. Centolella
Commissioner Ronnie Hartman Fergus
Commissioner Valerie A. Lemmie
Commissioner Cheryl Roberto

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PUBLIC UTILITES COMMISSION OF OHIO:

Mr. Paul Duffy
Ms. Kimberly Bojko

PRESENTERS:

Mr. Brian A. Farley
Director FERC & RTO Policy

Mr. Stanley F. Szwed, Vice President
and Chief FERC Compliance Officer,
FirstEnergy Corporation.

Mr. Robert P. Reffner
Vice President, Legal

Mr. Michael R. Beiting, Associate General
Counsel, FirstEnergy Corporation.

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Thursday Afternoon Session,
January 7, 2010.

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CHAIRMAN SCHRIBER: Let's reconvene today's meeting. First of all, we would like those who are here to present to introduce themselves for the record.

MR. SZWED: I am Stan Szwed, vice president of FERC policy and compliance for FirstEnergy.

MR. REFFNER: I am Robert Reffner, vice president of Legal for FirstEnergy.

MR. BEITING: I am Michael Beiting, associate general counsel, head of the Federal Regulatory Group at FirstEnergy.

MR. FARLEY: I'm Brian Farley. I'm the director of FERC and RTO policy for FirstEnergy.

CHAIRMAN SCHRIBER: Thank you. This is Case No. 09-778-EL-UNC.

Thank you all for making it down here today. I think our request is fairly simple at the outset. I'm sure there are subplots that will take us perhaps a little bit deeper, but basically our concern -- and I hope I speak for my colleagues. If I don't, clearly they can weigh in. But our concern is, first of all, we want to be assured that, at worst, our consumers are not going to be worse off, and at best, they will be much better off. I think we need comfort in having that understanding.

And if you all have a presentation, did I articulate that pretty fairly?

MR. REFFNER: Yes.

CHAIRMAN SCHRIBER: Thank you. Then, I think you all had indicated you wanted to make a presentation.

MR. REFFNER: I think it will be relevant to that, Mr. Chairman. I think we have some materials for you to lay out the benefits of moving into PJM.

CHAIRMAN SCHRIBER: This is Mr. Reffner speaking, for the record.

MR. REFFNER: So with that, why don't we hand the materials out and get started. Stan Szwed is going to speak to the first part of this and Mr. Farley will speak to the second part. We thought it would be helpful, knowing you want to get down to business here, it would be helpful to cover just briefly some of the headlines of the move that had previously been presented to the Commission and are expressed in our filings. We don't to intend to spend a lot of time on it, but I think it is a beneficial table setting for deeper discussions.

With that, Stan.

MR. SZWED: Mr. Chairman, Commissioners, thank you again for the opportunity to come before you. As Bob said, the first seven or eight pages of the handout lay out our overall reasoning and rationale for making the request to FERC to move our ATSI transmission assets and so forth over into PJM.

In face, a lot of the material in the first eight or nine pages is what I came here before back on September 15, what I shared with all of you, so I will not go through those pages in detail. But I would like to make a couple of key points coming out of it.

You know, we really do see benefits to customers, as well as to the company, as a result of this move from two major standpoints. The first is our overall transmission operations. When you take a look at several of the charts that are depicted here involving -- that depict our 32 interconnections with the PJM companies versus three with MISO and you look at where FirstEnergy and our transmission system is positioned along the MISO/PJM seam, consolidating all of our transmission operations and those interconnections into one RTO makes this more efficient for us, more effective for us to offer a transmission, more effective for the RTO to operate.

All that would be under one RTO operator, PJM. All of that would be coordinated by one RTO with one reliability coordinator to maintain reliability across all of the FirstEnergy footprint. And we believe it eliminates a significant amount of coordination that has to take place relative to our 32 interconnections along the seam, as you look at those pictures, in comparison to a simplified seam of having coordination take place at the three points between Ohio and Michigan

So that is significant for the long run for both long-term and short-term operations of the FirstEnergy transmission system, and we will see those benefits passed along to customers. We see savings from the standpoint of having to comport with one set of reliability requirements and one set of operating protocols as opposed to two. We see ourselves operating and participating in one RTO which has savings on people and so forth, and we can get into a little more of the details of that in a few minutes.

The second major point is -- and I said

the same thing when I was here on September 15 -- we really see that participation in PJM for a company that is structured like us, very limited, a retail competitive environment, we really see that the markets and structure of PJM and their processes and protocols provide for retail choice in a better way than what we see at PJM.

That includes their markets in terms of how capacity is planned for and secured and acquired, and it includes how to handle retail choice in switching for customers and how all of that is processed. We find that that is just a much better position, as well as when you consider the footprint itself, the makeup of all the participants, the significant amount of retail choice that takes place, and the number of competitive suppliers, we see all of that providing benefits to customers.

So with that, you know, that was very much the theme that when we came here back in September, and that was the theme of what we put before FERC. That was pretty much what we had said before.

We will be turning towards page 9, and at this point I will turn it over to Brian. And this is going to get into a little bit more of the quantification.

MR. REFFNER: Do you want to touch upon, Stan, the energy price slide and the timetable?

MR. SZWED: Maybe just to back up real quick, you recall that I know there was always a lot of questions about energy price differentials between the two footprints. I draw your attention again to chart 6, which shows comparative annual average LMPs, you know, MISO and PJM, and very specifically the middle box talking about where the ATSI footprint is in comparison to others in the region, like Cinergy, AEP and Chicago, if you will, more on the western side. As you can see, our energy prices compare very favorably, and we expect that to continue, if not improve.

Secondly, on chart 8, we just updated that chart from what you previously saw when I came here before just to recognize the FERC approving our move to PJM and picking up on the dates that we had included in the integration plan that was part of our original filing.

So with that, I'd like to turn your attention to chart 9, and then turn it over to Brian to get more specific about what the impacts would be to customers. Brian.

MR. FARLEY: Okay. Thank you, Stan.

MR. REFFNER: I should say that we have prepared the customer impact analysis after having conversations with Steve and others about your interest to see it on per-customer basis. This was prepared in preparation for this meeting in connection with our rates departments.

MR. FARLEY: Right. What we did in here, we have estimated the standard rate residential customer typically using 750 kilowatt-hours per month, as the case we are using, and the first line of numbers say current monthly electric bill. And all we did there is we said based on current prices, assuming the May 2009 auction price, establishes the generation price.

So that was our starting point, and a typical 750 kilowatt-hour per month standard rate residential customer pays $89.25. From that we subtract the benefits that we have been able to quantify. And I will say the net benefits, so it's benefits less the costs that we believe -- at least what we have been able to quantify from the benefits side, and we do think we've captured all of the costs here, and there is list below as far as what benefits we included.

And before I get to those, you can see that in the first year that $89.25 per month customer would see a reduction in their bill of around 58 cents, and that goes across time through 2014 where they still stay around 3 cents a month.

The benefits that we used to calculate this are, one, the PJM administrative cost savings. If you recall, PJM calculated an administrative benefit to customers. PJM has lower administrative costs than the Midwest ISO, and by us joining we would share in those lower costs.

Second is PJM also performed a dispatch calculation for the move, and basically PJM believes that because of the strong interconnection between FirstEnergy and PJM, there would be efficiencies gained in the day-ahead unit commitment for generation. And PJM calculated the savings associated with that, specifically for the ATSI footprint.

And finally, there are some internal savings that FirstEnergy would realize from this move. As Stan mentioned, just streamlined operations. Those savings would be passed on to customers through our formula rate filings at FERC, our reduced transmission costs.

The costs that we included in this analysis were the exit fees from the Midwest ISO. Midwest ISO, we used Midwest ISO's number of $34.5 million; the PJM entry costs, which are estimated at around $5 million by PJM, and then finally we included a projection of an annual revenue requirement of the legacy RTEP costs for the transmission expansion charges that would be applied to FirstEnergy if we were unable to reduce those at FERC.

And I will also say that the legacy RTEP projects have an assumption that all of the projects that are proposed today in PJM and approved in PJM get billed. And the reality is there are a couple of projects that have recently announced they will be delayed by at least two years, so we didn't assume any delays at this point.

As you can see, the quantified benefits more than offset the estimated costs. And then I have another bullet here that says there are also many other benefits that we have not been able to quantify at this point, for example, if PJM has many competitors, and we would expect that with the move we may see more competition in the ATSI footprint associated with the move.

PJM has enhancements to their energy efficiency and demand response programs that we believe would result in savings, so we have that quantified here. As Stan mentioned, PJM has software systems that accompany retail choice at settlements. We believe there are savings there for suppliers and ultimately for customers.

And then finally we did not -- with the PJM capacity market, suppliers, whether they are retail for POLR suppliers, will know that capacity is available at a specific price ahead of POLR auctions or retail shopping, and we believe that will result in reduced premiums that suppliers would add to the retail price.

So at the end of day, we believe the quantified benefits exceed the costs we have submitted, and we believe there are even additional benefits for customers above and beyond what we have been able to quantify.

I will go on to say there are some backup calculations for these numbers. Page 15 of your presentation, it gives you an idea of the costs that were used and the revenue -- I'm sorry, the benefits that were used to come up with a net quantified benefit.

With that, I can take some questions on that. Would that be appropriate?

COMMISSIONER LEMMIE: Thank you. We appreciate your being here on such a snowy day. But I did want to ask, where are you reflecting your MISO MTEP costs?

MR. FARLEY: We did not include the MISO MTEP costs in this. I shouldn't say it is not in this. Embedded in the $89.25 customers are paying today for MTEP costs, and we just assumed that for this analysis they would be the same.

But however, though, speaking, if it is okay, I have an additional. If you move ahead to page 11 of the deck and page 12, I do have some commentary on MISO transmission cost allocation. And while in this analysis we've assumed that MISO transmission cost allocation will stay the same, just for ease of presentation, there are some significant projects queuing up in MISO today.

And I've written a few of them here. Pioneer and Green Power Express are two that have already been approved for incentive rate treatment by FERC. They have not been approved by the Midwest ISO but are approved at FERC.

The annual revenue requirement associated with those projects would be, well, we calculate around $22 million for Pioneer and another $270 million for the Green Power Express. Those aren't included in these numbers, but we do believe there's some significant costs out there if we remain in MISO.

COMMISSIONER LEMMIE: My other question, it is my understanding that the MISO Board approved a queue of projects in December. They also approved projects that have not started construction yet, and I was under the impression that you have responsibility to pay for all MTEP-approved projects through your departure at the end of 2011.

MR. FARLEY: Yes. That's correct. Again, that's not included with the new projects, aren't in the 89 million. I did also include a chart on page 12 which indicates our expectations of the annual revenue requirements of the MTEP projects that are approved and those that are pending approval.

MR. REFFNER: Brian, I think we ought to explain here that in talking about the sizable projects that are coming, it's our position that we will be out of MISO at the time they are approved and therefore they would not be flowed through to our MTEP charges.

CHAIRMAN SCHRIBER: Are those revenue requirements global, not specific to a particular company?

MR. FARLEY: Yes. These would be the revenue requirements just for the ATSI footprint. That is our ATSI footprint share of it.

CHAIRMAN SCHRIBER: In the Midwest ISO.

MR. FARLEY: In the Midwest ISO, yes, sir.

COMMISSIONER LEMMIE: The only reason I ask so many questions about this is that there are very expensive projects that have already been approved and have not yet been funded, and as you mentioned, MISO is also contemplating a change in the cost allocation formula which could also have impacts.

My real question is since some of that is not calculated in your cost/benefit analysis, who is going to pay for that cost and what ultimately do you see as the measure of moving that through the generation transmission and also into your distribution cost?

MR. FARLEY: Well, given the schedule that we've proposed, which is to exit the Midwest ISO by June 1, 2011, the bulk of those projects will not be approved while we are a member and so we would not be subject to them. The --

COMMISSIONER LEMMIE: Not to disagree, I'm only talking about the projects that have already been approved that have been reflected that still have a fairly high price tag for those of us in Ohio, and then you are going to pay Ohio MTEP under MISO and the RTEP, and I'm just curious as to, again, how that is reflected in your cost/benefit analysis.

MR. FARLEY: Only the projects that are already being recovered through the MTEP are included in that. I don't have the numbers in front of me here, but I think the projects that have been approved by the Midwest ISO only amount to a couple of million dollars per year. It's a fairly small number for those that have been approved.

COMMISSIONER LEMMIE: We can talk about this more. I don't want to spend a whole lot of time on it. There are projects approved that haven't gotten started that have a pretty high price tag. There are some approved that haven't started that have a low price tag. We can talk about those in more detail at a different time.

MR. BEITING: Your Honor, I think from what we looked at, I think those costs in total would be about in the $10 million range, so certainly not in the order of magnitude of things like the Green Power Express or the Pioneer project.

Our concern obviously is, you know, if we were to remain in MISO, it's our belief that the MISO cost allocation process starts to look a lot like the PJM RTEP cost allocation price and that over time those costs will converge.

COMMISSIONER CENTOLELLA: Just I want to follow up on Ms. Lemmie's point. Mr. Reffner, you indicated that you thought that Pioneer and Green Power Express would not be approved by MISO prior to June 2011.

MR. REFFNER: That's correct.

COMMISSIONER CENTOLELLA: This is not something that is in FirstEnergy's control. What is the basis for that conclusion?

MR. REFFNER: I'll let my FERC and MISO expert speak to that, Commissioner, but let me give you what I think and my feeling on it. These are sizable projects. This is all about bringing energy to the East. There will be a lot of debate about both whether or not it should be done, how it's going to be done, and who ought to pay for it. And all those things come together to suggest that will not be completed and approved by June 1, 2011.

MR. FARLEY: I would just add to that, I think one of the other key items pending at the Midwest ISO today is they are making a change in how they allocate costs, and those changes are specifically geared to be able to allocate the costs of these large projects.

The Midwest ISO is planning to file something in July of this year, and it will be a very contentious filing, as we have already seen in the Midwest ISO stakeholder process. So it's hard for me to envision some of those projects getting approved before they understand how the costs will be allocated.

COMMISSIONER CENTOLELLA: If MISO files cost allocation in July of this year, one would certainly expect that case to at least have a FERC decision prior to your departure from Midwest ISO. Wouldn't you agree?

MR. BEITING: I think we do agree with that, but I think there are two pieces to it. One is the projects have to be included and approved as part of the MTEP, which they are not today, in order to meet the eligibility requirements for some kind of socialization of the costs.

And the other would be is the approval of some kind of, let's say, super highway type of regional cost allocation process in the MISO filing.

COMMISSIONER CENTOLELLA: Now, it's my understanding, and maybe I am incorrect, so please correct me if I am wrong, that the only thing that is required for this to become an obligation for ATSI is really a vote of the MISO Board approving these projects as part of MTEP.

And I guess my question is if the MISO membership is seeing ATSI about to depart, don't they have an incentive to accelerate that vote and make sure it happens before you leave?

MR. REFFNER: All they will do with that is buy a fight. If the basis of that vote is to tag us and our ratepayers --

COMMISSIONER CENTOLELLA: Well, they don't make that an explicit basis of the vote.

MR. REFFNER: I understand that, but we have put MISO on notice we're leaving. They know we're leaving. To put something through on the basis of allocating costs to us on exit will not be tolerated. We are not going to abide it. I think all this points to the wisdom behind our plan to move to PJM by June 1, 2011.

MR. SZWED: I think there is still a lot of discussion about the aggregate larger regional plan, this whole Eastern interconnection plan that is underway. What are the right transmission projects to be built? Granted, a few companies have proposed these major ones, but are these the right ones to do to achieve the goals that are trying to be set in moving some of this from the West to the East? So there's a real question there.

I guess I just really want to emphasize one last time, this blue line is what we potentially see in our estimate, the expectation what we think could hit the customers in the ATSI zone with those projects going forward as they've kind of laid them out now. But that could mean substantial increases for customers in the zone, given the fact when you compare it to the PJM RTEP that many of these projects are already underway, if you will.

MR. REFFNER: Brian, I'd like to take just a minute and talk about those PJM RTEP projects you had mentioned, that even that dotted green line has adjustments to it, and I think that would be worth our while to call the Commissioners' attention to it.

MR. FARLEY: Yes. Slide 16 shows a list

of the major RTEP projects that went through what I'll call the postage stamp treatment. Those are high voltage projects that the costs will be allocated on a low ratio share. And I think in red there are two projects, MAPP and PATH.

Within the last week both of these projects, there have been announcements where the projects have been delayed, partially due to the drop in load, due to both the economy and the bad response.

And I'm trying to remember which. I think the PATH project has already been announced it will be delayed until at least 2016, and those similar conversations are happening on the MAPP project. You can see those two projects total 2.9 billion of the 6.5.

MR. REFFNER: Why don't you translate that, Brian, into a revenue requirement.

MR. FARLEY: Well, I believe that that would reduce the revenue requirement, which we estimate to be for all of the projects once they are all done, we are estimating that to be around $100 million. We believe that will reduce the revenue requirement by 30 to 40 million.

MR. REFFNER: So what we are seeing on

the -- and I think this undoubtedly to be true and perhaps in MISO, too, the economy is affecting the launch of these projects, and when they're delayed, it's obviously impacting our share, and that is true on the RTEP's legacy side.

The RTEP legacy number, which I know has been a source of consideration for the Commission as well as us, is going to come down as these projects are delayed. It could be a future project.

CHAIRMAN SCHRIBER: Let me raise this, because from my point of view it's hearsay, although others claim they had heard it, that had you failed to get the waiver, which you failed to get on the RTEP charges cost, that you would not consider the move to PJM. Did anybody ever articulate that, anybody else, or did that just get made up somewhere?

MR. REFFNER: No. I think we expressed a view of a reluctance to proceed. That was a view at one time. As you know, facts change. Circumstances change.

I'd like to speak to our effort on RTEP, if I may. We took on that issue, both in our application and in a separate filing at FERC. We upset a whole lot of PJM transmission owners with that view. We knew going in that we were on the right side of policy, but we were running against the PJM tariff, and also there was some case precedent out there in the Dusquesne case that could be a problem for us.

In the end the FERC decided to abide by the PJM tariff and we have to pay RTEP. In FERC's view, RTEP is a transmission charge. FERC has jurisdiction over transmission charges. They said it's a FERC-approved tariff, pay it.

Now, In terms of the change in our thinking, our CEO makes decisions. He's the CEO for a reason, and he considered a number of different factors that were in front of him. He was taking input from both the head of the utilities, the head of FES, our generation unit, competitive power unit. I think we had other things unfold in this case that presented special concerns for us.

I think if you read the filings -- I'm not suggesting you should have. I know I had to and at times that was difficult for me -- MISO was pretty unhappy with us. They expressed that in ways that, frankly, were offensive. So as we thought about that, it was probably going to be difficult to stay in MISO, given what had transpired there.

As Brian had mentioned, we had the

adoption of this OMS vote in December of this year to move forward on a rules change for cost allocation of projects that could move costs, the significant MTEP costs we have been talking about our way. Waiting would not help that.

And I think for the reasons that both Brian and Stan have stated in terms of reliability, capacity, retail choice, in the circumstances we find ourselves in, Tony, and I'm sure he had other thoughts on his mind, concluded it's the right choice, and if not now, when? He decided to proceed.

CHAIRMAN SCHRIBER: The interesting thing is that FERC said that transmission owners that seek to change RTOs should be prepared to assume the costs attributable to their decisions. It is your decision, not ours, but it seems to me that implies this is going to have to be resolved somewhere between you and our customers, and I guess you've assumed that that would be a charge to our customers, basically.

MR. REFFNER: That's correct.

CHAIRMAN SCHRIBER: What was the rationale there? Why, if this was your choice and all things being equal, who knows what might have been, in fact, you did make this change. That was on your own and your decision, and now you're asking our customers to bear the cost of that change.

MR. REFFNER: Well, of course, the paragraph you are referring to in the order is paragraph 113, and you are correct, Mr. Chairman, you have quoted it to me properly, that FERC said that the transmission owners that seek to change should be prepared to assume the cost.

I think you have to put that in the context of where it occurred. We have a respectful disagreement with you as to the interpretation of that. I think the FERC was clearly speaking to a conclusion that if you are going to join PJM, you're going to have to pay the cost.

That didn't mean absorb the cost. That just meant incur them in accordance with the FERC-approved tariff. As you know, both MTEP and RTEP are authorized by FERC, both at MISO and PJM. They are FERC-approved tariffs. They are clearly transmission charges over which FERC has exclusive jurisdiction and are passed through universally.

It is our view that that sentence that you referred to -- and I'm not surprised, by the way, that you did -- isn't making new law for the proposition that if you change RTOs, you no longer are eligible to pass those through on your tariffs. In fact, we are delighted with you to seek clarification from FERC on that count.

CHAIRMAN SCHRIBER: Again, I'm not speaking for the others, but I assume that their assumption is that the costs would be attributable to you. But then I agree, it doesn't specifically say what is going to pay those costs. It says you are going to pay them but not where they will come from.

MR. REFFNER: I think it is speaking of we are not going to avoid them here. They are costs that come with the move.

CHAIRMAN SCHRIBER: Okay. One of the other questions, in this whole proceeding, I'm not sure, did your operating companies weigh in on this?

MR. REFFNER: Of course -- oh, in the proceedings, the RTO proceedings?

CHAIRMAN SCHRIBER: Yes. Did they file anything at the FERC?

MR. SZWED: As individual operating companies, no, I do not believe they did.

MR. BEITING: The individual operating companies were parties to the application and to the complaint.

CHAIRMAN SCHRIBER: You were parties.

Were they adverse parties or --

MR. BEITING: No. It was a joint application of the ATSI, the ATSI utilities, which, of course, includes Penn Power and FirstEnergy Solutions.

CHAIRMAN SCHRIBER: What about CEI and Toledo Edison?

MR. BEITING: When I say ATSI utilities, I am including Ohio Edison and Toledo Edison.

CHAIRMAN SCHRIBER: Okay.

COMMISSIONER CENTOLELLA: I want to switch gears a little bit and turn to page 15 in your presentation where you talk about the energy market savings, and I think you reference this was based on the 2009 modeling that PJM did; is that right?

MR. FARLEY: Yes, sir, that's correct.

COMMISSIONER CENTOLELLA: What figures are you pulling out of those modeling results to produce this figure?

MR. FARLEY: As far as the PJM model results, they calculated an LMP for the ATSI zone, and they also calculated a reduction in load payments for FirstEnergy in the Midwest ISO versus FirstEnergy in PJM. This 97 million represents the difference between the two models. It's actually a reduction in the gross load, so it becomes the ATSI zone.

COMMISSIONER CENTOLELLA: This is based on the relative LMP for the ATSI zone within -- annualized for the two scenarios?

MR. FARLEY: Yes, sir. Yes, sir.

COMMISSIONER CENTOLELLA: I want to come back to an issue that you raised, Mr. Szwed, and I think it may have been mentioned elsewhere as well, and that is this idea that the capacity markets in PJM are better.

As I'm sure you're aware, there are a lot of concerns on both behalf of state regulators with the RPM mechanism in PJM, concerns about whether it really is providing superior reliability, and certainly concerns about whether or not it is overly costly, and, in fact impeding the development of customer choice and the ability of consumers to actually see and respond to prices, which has been a priority of this Commission in terms of empowering consumers to better respond to the energy and ancillary service prices as they vary over time, both to empower consumers and get more efficient market results.

I'm wondering if you can speak to what FE's position will be with respect to the form of

RPMs and what its position will be with respect to carrying out what FERC said of an approved RPM, that his was a transitional mechanism and that we want to be transitioning away from the way that capacity markets are currently structured in PJM, and how you propose, if you do, to help accelerate that transition.

MR. FARLEY: We are active participants in the PJM stakeholder process, and we do support the reform of PJM from the reliability pricing model, and we think it made some very good strides over the recent years in accommodating additional demand response and incorporating energy efficiency into their model, and we expect that to continue. We will support that through the stakeholder process.

Additionally, I think maybe what you are speaking to is the idea that once there is enough demand response in the markets that the need for a capacity market isn't as great; in other words, you have less of a need to assure there's resource adequacy in the future if there is a demand response in the market.

And, you know, we support that view, though we think it's early to pull the plug on RPM. We think the moves they are making to gradually incorporate more demand response in the markets is certainly directionally correct. We are not sure how we will know exactly when the right time is to abandon the capacity market and go with something that is more scarcity type pricing. But we support PJM's move towards scarcity pricing, and we do that through this stakeholder process.

MR. SZWED: Commissioner, you know, it may not be perfect today. And, in fact, you know they have had experience, as Brian said, it's been evolving and will probably continue to evolve. But there are a number of good features about it, the way we see it, particularly for a company structured like us, particularly with the operating companies not owning generation in a separate affiliate.

When you step back and think about a forward looking situation, again with PJM's RPM process, you are looking out three years. That gives both suppliers and load a chance to look into the future and have a better understanding of where things are headed. People will know three years ahead of time what capacity is available and at what price.

And I think that's important. That's important for companies to make decisions, like us, about plants, whether to keep them, whether to retire them. It's an important aspect to that.

So I think, you know, when you contrast that to the position that now we see at MISO, MISO doesn't have that kind of a marketplace. Again, many of the utilities are very integrated. They're regulated. Most of the plants are in rate base. Most of that capacity is committed to meet their reliability requirements and their planning reserves and their footprints.

And to the extent there is capacity available at the margin, to the extent that that native load for those entities needs to be satisfied, the question becomes: What kind of capacity is available in MISO in the longer run?

In PJM, from our standpoint, is a better prospect of having the ability to secure that supply, and from our operating utilities' standpoint who need to secure capacity to provide reliability to customers, you know, that's a very important dimension, and we believe PJM provides a better opportunity for that, both from the standpoint of meeting those obligations with generating capacity, as well as through demand-side programs. You know, PJM has been, you know, very successful in continuing to proceed in that light as evidenced by what transpired in the last set of auctions.

COMMISSIONER CENTOLELLA: Have you done any quantitative analysis looking at either the relative capacity positions of the two RTOs and/or attempting to identify what capacity costs have been in the two RTOs and what they might be going forward?

MR. REFFNER: I think yes. We look at that on a regular basis because it's in both RTOs. I mean, we are in both markets routinely.

COMMISSIONER CENTOLELLA: Is that something you can share with us?

MR. BEITING: I think what we've struggled with, your Honor, is in MISO there is no centralized capacity. In PJM there is. PJM the price is very transparent. We know what it is. There's a capacity product that is obtained for a year, three years in advance.

MISO is, frankly, not comparable, and so we have not been able to incorporate those differences into any meaningful dollars in order to do the comparison. And, you know, frankly, if we had been able to do that, we would have produced that. The products are so different that it's just impossible to put those together in a comparison in any meaningful way.

COMMISSIONER CENTOLELLA: Well, even in PJM we do have incremental auctions that are closer in time than the three-year-out auction, and I'm sure there are bilateral contracts being traded in MISO that reflect some forward beyond the two-month capacity requirement. Have you gathered any of that data?

MR. BEITING: The bilateral contract information tends not to be readily available to us. You know, we, of course, do some business in MISO. I think the problem we have had over the last year or so is with the recession and the collapse of prices in the wholesale markets that any comparison you do is problematic.

COMMISSIONER ROBERTO: Just a follow-up to that. I did understand that you were unable to do the price differential in the capacity, and I'm just wondering how you can conclude that it's a better deal for consumers in Ohio to be in one RTO over another if you don't know the price differential.

As you mentioned earlier, I'm sure your CEO had in front of him some calculation that FES thought it would be able to glean in revenues from selling capacity in one market over the other, and

I'm puzzled as to why that translation can't be made for the benefit of your distribution companies so that we all will be able to judge whether or not it is, in fact, better for the Ohio consumers to be in one RTO over another.

MR. REFFNER: Well, we have had a lot of conversations with Steve and his team, and there's been a lot of discussion around capacity price. In looking at the issue of price, I think it is difficult to conclude which is going to be less expensive. I don't know how that translates. Who knows where MISO prices are going to be in three years? Who knows where PJM prices are going to be in three years?

Within SRAs you could have closing of coal-fired power plants. In MISO, whether there is a capacity market that's going to spur the development of new ones in the short term, in our view there isn't.

Frankly, I don't think it's a question of what FES has paid. It earns by the way of capacity revenue. The fact is that the PJM model allows a revenue stream to suppliers for their available capacity. That's determined on a market basis. It assures it's there. It's a good thing, in our view, that it's there, and it ultimately redounds to the benefit of ratepayers because of the assurance of reliability.

I think on this issue of capacity, Commissioner, respectfully, that comparisons of a MISO price or a PJM price and what those numbers are going to be, and let's face it, everybody that bids into a PJM footprint has some kind of model or number that they are thinking that applies; that that comparison is a false comfort or false inflection point in a consideration of where to be.

This decision ultimately turns on reliability, support for retail choice, the spurring of new capacity, and what is the best way in a competitive market for ratepayers to be assured that the best price has been known.

In your wisdom and the Legislature's wisdom, we moved forward in a competitive basis, a deregulated environment. We saw tremendously the benefit of that to ratepayers in May. On this capacity issue I think the same principle holds, a three-year forward look competitive capacity market is in the best interest of our ratepayers to assure themselves robust supply, robust competition, and price, and the best price.

So I think the comparison, the desire, and I too have thought a lot about this, too, the desire to work through a calculation that arrives at a net number at a given point in time, I don't think it is helpful on this count. As I say, everybody in both footprints is running models all the time trying to anticipate where they ought to bid and how they ought to bid. But I just don't see it as the issue on defending this proposition to the people who pay electric bills in the ATSI footprint, of which I and my family are among.

CHAIRMAN SCHRIBER: There's a lot of what-ifs and a lot of perceived benefits and costs, prices. Would you be willing -- again, our concern is holding our customers harmless for a reasonable period. Would you all be inclined to grant us some kind of assurance or a cap on a transitional period that what you perceive to be of benefit to our customers -- your customers, I should say -- really are of benefit -- not our customers -- would be beneficial to them, and, in fact, cap some sort of a price for a period of time?

Again, if everyone is so convinced that there are benefits and these numbers, in fact, somehow come in as they're estimated to come in -- we all know estimating you can do anything you want with the numbers. But at the end of day, you know, we just need to have that assurance, that we will be held harmless.

Again, I ask you if -- maybe this is a rhetorical question. I ask you if you cannot give us that guarantee in a transitional period. Obviously, three, four, five, six, years out we have no idea what is going to happen, but in a reasonable transitional period.

MR. REFFNER: A couple of different thoughts. One of the challenges I think we have all had in coming to this issue has been the question of cost. And as we focused on cost in this together, the difficulty with focusing solely on cost is that once you get to a point where you're looking just at the cost, any cost is too high.

We have to look at the benefits in this. We have tried to quantify as many of those as we could with good hard qualitative data. Brian spoke to other benefits that are there. I want to give you a story that is not quantified in this analysis but is pertinent to it. I am going to get to answer your question here, Mr. Chairman.

We have -- let's take one of our

250-megawatt plans. It has 100 employees, 8 to 10 million dollars of cost. It's not running to keep it open. This last year it hasn't been open, hasn't been working. We're working very hard to keep those employees employed doing other things, keeping them engaged.

In the PJM market the capacity price would pay for that. Our generation is deregulated. In our environment it is not. There are 10 to 12 of those companies, 10 to 12 of those kind of plants in this environment we are dealing with this.

That's a real live benefit. It is jobs. It is tax base, and I submit to you that while this is not as powerful a concept, something defensible in the immediate short term, having those plants available to us come the day when demand comes back is going to be critical for our ratepayers. It's going to be very, very important.

With the PJM capacity market, management can see where prices are and make decisions on what to do. With no transparency, management is left in the dark, has to make those decisions. It would not be a good thing to have Ohio or for our footprint not to have that generation. That is a very powerful attribute of the PJM model.

That brings me to my next point, not just cost but benefits. While we have been focused on cost, in your pleadings filed at FERC and the conversation we have had in this proceeding before this honorable Commission, has turned on these costs. We have been a defender of the benefits. We very much would like to put a fine pointer on all that, put a bow on it and say, net-net, here it is. It is not capable of that. We need your support in defending these benefits. They are real and they are significant.

Your question, would we be willing to absorb some of these costs. Well, here's how I look at that. This issue of transmission costs and capacity costs, these are FERC-approved charges. We are entitled to pass those through. I say that respectfully. Steve and your legal team, we can have arguments about that, but these are FERC jurisdictional charges.

I think my counsel, as the vice president of Legal, has been we are entitled to pass these through. Discussions surrounding how those might be handled, I'm not at liberty to say. But on the face of it, the law on our side, these are recoverable because these are appropriate, valid, reasonable, and important charges.

CHAIRMAN SCHRIBER: How about the entry and exit fees?

MR. REFFNER: The entry and exit fees, similarly approved under MISO and PJM tariff, are recoverable.

CHAIRMAN SCHRIBER: Okay. Again, I make a distinction between cost and price, obviously. But, again, I'm speaking directly about price, which is something regardless of what the costs are. Costs may be lower for you, and all we want, I believe, is again some comfort knowing that the price is not going to deviate significantly of what it might otherwise be over a transitional period, which is probably predictable, comparing to where you have been regardless of costs.

MR. REFFNER: I know you know, you don't have to explain to FirstEnergy the concept of deviation in prices, given the outcome of the auction in May. And that can go both ways, but at some level, isn't the variability of that price the very essence of a competitive market?

CHAIRMAN SCHRIBER: Right. But, again, that can be taken into consideration. If you have an auction that results in a price and one footprint versus the price that is probably discernible in another footprint, based upon other transactions, taking everything together, the RTEP charges, the MTEP charges, entrance fees, exit fees, everything else, again, it will result in a price, the bottom line, price on a bill, and I guess again what we would like for you all to think about, because we're going to be thinking about it -- is some idea of -- well, some assurance that, at least for a transitional period, that prices would not deviate that much.

MR. REFFNER: Of course, if you are asking, we will think about it. But, again, I want to be clear in terms of the strength of the legal position in our view, respectfully, of the recoverability of exit fees, transmission fees, and capacity prices.

COMMISSIONER LEMMIE: Mr. Chairman, if it's all right, I have two final points I'd like to make. One is, for the record, you mentioned an organization of MISO states cost allocation in planning task force vote in December, and I do want to acknowledge that Ohio voted no on that proposal that would provide for the injection withdrawal method for cost allocation as an alternative to the current method. We did not support that.

And, secondly, I would just like to respectfully disagree with you. I think your business decision to move from one RTO to another is your choice to make. I don't interpret what the FERC has said or what history has shown, that those business costs, might be MTEP costs which are far more significant than the entrance fees, are automatically something that can be passed on to the end user.

Now, I personally will be looking very closely at the prudency and the just and reasonableness of those costs, because as I interpret what the FERC has said -- and I am sure we will spend a lot of time talking about this some more in the future -- there is no guarantee that those costs, as you believe, don't regulate the generation aspect and are automatically rolled into the end users. I will be looking for a much stronger justification.

MR. REFFNER: Your Honor, I respect your view on that. Therein lies the discussion.

COMMISSIONER CENTOLELLA: A couple of questions. Earlier in this process I think you had given some assurances about FES's participation in the FRR auctions. Do those assurances still apply, and how are you willing to commit to that for us?

MR. FARLEY: The answer to that is yes. In fact, I think -- I'm sure we committed to that at FERC, and that commitment stands. And I'll just add the market monitor at PJM is there to enforce that.

COMMISSIONER CENTOLELLA: I do want to follow up, Mr. Reffner, on your legal question and ask it a slightly different way. It seems to me this issue if, in fact, there are additional costs associated with your voluntary decision to move ATSI from MISO to PJM, if there are additional costs, you know, that will be litigated before this Commission. It will come up in one of two ways.

It will either come as a version of the Pike County Doctrine after the fact when you come in to seek cost recovery with parties coming before this Commission saying this was a voluntary choice to purchase in one market rather than another. That is squarely within the Pike County Doctrine, and we have the authority to look at whether the decision on the purchasing decision from supplier A versus supplier B is a reasonable decision.

The other way in which it could be handled is that this Commission I think at least could entertain proceeding today under 4905.4(A) and reviewing the reasonableness of your contract to enter into PJM and whether or not this contract to jointly operate your facilities with other Ohio utilities is, in fact, a reasonable and lawful contract under Ohio law, and we could have that proceeding today, and, you know, reach some decision about that.

Do you have a feeling or a position about which would be preferable for us to do, have that today, or wait for parties to raise this question when you come in to seek cost recovery?

MR. REFFNER: Commissioner, I was told sooner or later you would put me on the horns of a dilemma here. Let's have some frank conversation about that. That is putting the issue squarely on the table. Pike County, a couple different thoughts. First, Pike County predates the Federal Power Act. We won't get into the legal niceties of all that.

COMMISSIONER CENTOLELLA: But it certainly has been recognized by FERC and recognized by courts of appeal as valid law since the Federal Power Act.

MR. REFFNER: In some fashions, in some ways. But the issue of choice, voluntary choice, of RTOs is well-established. The issue of the appropriateness of pass-through of transmission charges is established clearly since New York versus FERC. The issue of capacity charges is clearly established after Connecticut PUCO versus FERC. So the case law abundantly supports the pass-through of those items.

The entrance and exit fees are FERC-approved transmission -- FERC-approved charges in the order of transmission charges over which FERC has exclusive jurisdiction. Pike County does not apply to these, and if at one time that Commonwealth Court of Pennsylvania did, it's long since been set aside by virtue of a long line of precedent establishing the principles of the recovery of these charges.

But you are correct, you could bring this in a prudency review session, and then we would have the discussion at that time after our entry into PJM when we present those charges for recovery.

Let me take the other point. You asked whether I thought it was advisable that you bring this issue to the forefront now. I would submit to you that the most important thing we need to preserve here is certainty. The energy markets crave certainty. We have laid out a process here starting in August, August 17 and going forward that has set a timetable for a move to PJM. Putting it in the end of January, we have aligned that with the Ohio procurement process. We have allowed for this integration auction to occur in March of 2010 so that there is abundant notice to bidders in that Ohio procurement.

That process in that sequence has been known, understood, discussed with FERC, put together with PJM. We have had a PJM stakeholder process that has considered that time line in 2009 throughout the fall. There's going to be another one coming up here. Both RTOs are aware of that plan, of the timetable, and now of our move to PJM.

I submit to you it would be terribly disruptive, terribly disruptive, to the energy markets and harmful to the very interests that I know you so earnestly serve, and we seek to serve, to throw a monkey wrench in the works here of either starting a proceeding that interferes with our move to PJM, or just as bad, treats uncertainty over our authority to go there and causes the myriad suppliers, LSEs and other affected parties in both RTOs to wonder what is going on.

I think we can have a conversation about the merits, about the legal principles, and this obviously isn't the forum to resolve those discussions. In my book the worst thing that could possibly happen here would be to suggest that this transition is not going to occur.

COMMISSIONER CENTOLELLA: So if I take your answer, given what you think are maybe two bad outcomes, you would rather have us, if it is going to be litigated, litigated after the fact than before.

MR. REFFNER: If I were going to pick your battle to fight, I wouldn't pick the former. I wouldn't pick the one to fight it on the front end. I think it causes too much chaos for all.

COMMISSIONER LEMMIE: I want to add a little clarity. You made the assumption we are attempting not to allow you to move forward into PJM. Certainly for me my issues are not whether or not you move to PJM or not, because I believe that's a voluntary decision. It is who pays for those additional costs for the move to PJM. Is it a stockholders' cost that they bear, or is it a ratepayer cost? And that's the issue for me.

MR. REFFNER: I appreciate that, your Honor. Note this point, however, the market will consider that fact, too. Let's assume tomorrow you issue an order that says: You shall not pass those costs through. That suddenly raises a question of the economic viability of the operating companies of FirstEnergy. People looking to bid into the procurement process will evaluate that uncertainty. It will affect bidding behavior.

So my point on this is there are a lot of intricate pieces that come together to make for effective process and achieve our desired results. Uncertainty surrounding these notions can have a profound effect.

COMMISSIONER ROBERTO: I agree that certainty is certainly something we would want to see before a competitive auction, but I would have to speak up so that I am clear as to my position on this as well. I see no more likelihood that this Commission cannot make a judgment on the voluntary purchase of a distribution company's need -- the distribution companies are making a voluntary choice, just as they purchase coal or any other supply.

The purchase of the RTO services are in this same measure. The fact that the FERC establishes lawful purchases and establishes lawful prices doesn't in any way remove our responsibility to look at the judgments that are made by regulated companies when they have choices as to where they can acquire those services.

So I certainly hear FirstEnergy to be saying that even if those prices were five times what it cost in one RTO than another, as long as those are FERC-approved, you believe they can be passed through to Ohio consumers.

And I would respectfully disagree with you, and I believe my colleagues do as well. If you like to get to a place of certainty so we can go to a competitive auction, maybe we need to get that settled.

MR. REFFNER: A couple of different thoughts on that. The case law holds -- you're right, it is a voluntary choice. And the question that would be on the table in any legal argument we had on this would be the very issue you present, Commissioner, what is the authority of a state commission to evaluate this choice and the costs associated with it?

As you know, FERC enjoys exclusive jurisdiction over unbundled interstate transmission, ATSI, and over wholesale energy transactions. It preempts state authority on those counts. The question that would be debated is the right of the

PUCO to reach back through its retail authority and affect those matters. And I think that question -- we can talk about it. Again, this isn't the forum to have this debate -- but that is clearly the issue on the table.

I don't mean to suggest that those notions of costs are ones that, hey, who cares what it is. They can pay it. If that's the message you're hearing from me, I don't mean to suggest something that glibly. But those costs are ones established as part of the interstate transmission system, as part of that FERC process, after a lot of debate and hearings and consideration, and those rules, in our view, are there to permit the recovery.

But I understand your point, and your objection is noted, and the path you would follow you said very well.

COMMISSIONER CENTOLELLA: Follow up briefly on that point. Do you see anywhere in FERC's decision on this matter where FERC looked at the benefits and costs or evaluated whether it would be better for consumers for ATSI to be in one RTO rather than another?

MR. REFFNER: I think the FERC found that the benefits we had outlined in our application, they agreed with them when they approved it.

COMMISSIONER CENTOLELLA: Where is that in the first order?

MR. REFFNER: I think we laid out in our original application the benefits of consolidation along the line as Stan has discussed here in terms of the seam that exists and improved operation and the like.

If your question to me is did FERC get into cost/benefits to our footprint of that type we have been talking about here, I don't believe they did. But I don't believe cost/benefits -- I know that cost/benefits is not a relevant consideration in FERC approving the decision to change RTOs.

COMMISSIONER CENTOLELLA: So you would agree that FERC really does not have statutory authority, at least as I read the Federal Power Act, to look at the question of whether benefits outweigh costs in terms of a transmission moving from one RTO to another.

MR. REFFNER: No. I would say that FERC is free to set a cost/benefit equation as part of this process. They have not, and, therefore, FERC's opinion on that preempts a state commission's right to second-guess that position.

COMMISSIONER CENTOLELLA: And I don't know whether you can cite me a specific provision here, but where in the Federal Power Act do you see FERC authority to conduct that kind of analysis? That certainly isn't part of how FERC has interpreted the statutory authority to this date, is it?

MR. REFFNER: Oh, I think on the contrary, I think the Federal Power Act speaks emphatically to its exclusive jurisdiction on wholesale energy transactions and unbundled interstate transmission.

COMMISSIONER CENTOLELLA: If anything, it speaks to its authority on wholesale energy transactions. I don't see anywhere where it speaks to the exclusive authority about choice of a purchaser as to where those purchases are made. Where do you find that in the Federal Power Act?

MR. BEITING: Your Honor, I think what the Commission has said and what we still have ahead of us is that we have future filings that we have to make where we show to the FERC's satisfaction that the new arrangements for our customers are just and reasonable and that those to customers receive transmission service and the other related services that they receive from RTOs on terms and conditions that are comparable to the service they receive today.

COMMISSIONER CENTOLELLA: But you could certainly have a just and reasonable market over here and another just and reasonable market over here, and the second just and reasonable market could end up being twice as expensive for a given purchaser if they chose one over the other.

MR. BEITING: We certainly don't think that is the case. We do know that our transmission rates are going to be reviewed. We do know that the RTEP costs are subject to a remand proceeding today, and we know that capacity costs in the last phase residual auction were $16.50, which is not a high price.

I mean, we talked very loosely about costs, and I hope that we aren't starting from a baseline of prices that were determined from an auction held at the bottom of a recession, at very low wholesale market prices, that anything above that level, which is artificially low, is going to be, you know, an unacceptable cost to customers.

I mean, that's a false premise. For all we know, if FirstEnergy were to remain in MISO and the Commission were to approve a similar auction, prices would be 25 percent higher. I think we have to keep that in mind when we do this kind of analysis

COMMISSIONER CENTOLELLA: I certainly would agree that we have to look at this prospectively rather than retrospectively. And we may respectfully disagree, I don't see anywhere where FERC has preempted the state authority to look at from which source a purchaser buys energy or capacity. It's simply not something that I see in any of the statutes governing FERC's authority, and where there is a gap, I don't see how there would be preemption.

MR. REFFNER: I don't see a gap. I see it as exclusively a matter of FERC jurisdiction and from that flows the rest. I think we are touching upon Pike County and the Final Rate Doctrine. We have this conversation, does the state commission have the authority to trap those costs that are approved in a FERC-approved RTO under an approved tariff? That's the debate that will follow, Commissioners.

COMMISSIONER CENTOLELLA: I suspect at some point it will.

CHAIRMAN SCHRIBER: You know, if we are pretty much done, notwithstanding my fondness for my colleagues, I was really hoping we wouldn't get to the legal issue. That's why I brought up the possibility of at least getting some comfort on a going-forward basis that we are not going to be worse off.

I understand, Mike, rates where we were on the auction last time, we are all sophisticated enough to know that markets go up and down. We have to compare apples with apples. And that's what I am hoping we can do. That's why I recommend a transitional period where we can have that comfort and assurance and try -- none of us want to get into a big legal battle. That really serves no purpose for anyone, other than getting a conclusion which may or may not be helpful to one of the other parties.

MR. REFFNER: I think lawyers might be excited about that, but I don't think anyone else would be.

COMMISSIONER CENTOLELLA: I don't mean by the last comment to preclude the fact that it would beneficial for you to be in PJM. That's the question that the chairman is seeking assurance of.

But if, in fact, there is a case to be made that it is not beneficial, then I would expect we will see litigation here at some point about Pike

County and the implications of the Final Rate Doctrine.

CHAIRMAN SCHRIBER: Again, not withstanding my affection for my colleagues, I'm not going there.

MR. REFFNER: I take it Commissioner Centrolella's conversation of legal principles is further encouragement to have conversations.

CHAIRMAN SCHRIBER: Yes, I think you could take that.

MR. REFFNER: Am I misreading that signal?

COMMISSIONER CENTOLELLA: Not at all misreading that signal.

CHAIRMAN SCHRIBER: I think conversation should be over what I'm suggesting, the comfort. I don't know how else to describe it.

MR. REFFNER: You asked us to think about it.

CHAIRMAN SCHRIBER: I asked you to think about it, absolutely.

I guess we are concluded. I appreciate you all coming in. Thank you very much.

MR. REFFNER: Thank you for this opportunity to come.

CHAIRMAN SCHRIBER: With that, we are adjourned until next week.

(The hearing adjourned at 3:50 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, January 7, 2010, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson,
Professional Reporter and
Notary Public in and for
the State of Ohio.

My commission expires April 5, 2014.

(RFA-8382)

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