

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

FirstEnergy Solutions Corp.	:	
Allegheny Energy Supply Company, LLC,	:	
Complainants	:	
	:	Docket No. EL13-47-000
v.	:	
	:	
PJM Interconnection, L.L.C.,	:	
Respondent	:	

**COMMENTS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

March 15, 2013

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On February 19, 2013, the Federal Energy Regulatory Commission (“FERC”) issued a Notice of Complaint establishing March 7, 2013, as the due date for comments in the above-captioned docket. The due date was later extended by FERC to March 18, 2013. On March 15, 2013, the Public Utilities Commission of Ohio (“PUCO” or “Ohio Commission”) filed its motion to intervene in this docket and hereby submits its comments.

BACKGROUND

On February 15, 2013, FirstEnergy Solutions Corp. (“FirstEnergy Solutions”) and Allegheny Energy Supply Company, LLC (“AE Supply”) (collectively “FirstEnergy Companies” or “Companies” or “Complainant”) submitted a Complaint and Request for Fast

Tracking (“Complaint”)¹ requesting that FERC modify provisions within PJM’s Open Access Transmission Tariff (“OATT” or “PJM Tariff”)² which govern financial transmission rights (“FTRs”).³

Among other things, the Complaint states that historic holders of firm transmission service “agreed to convert to FTRs in reliance upon promises that such FTRs would provide a hedge against day-ahead congestion.”⁴ The Complaint also states that the outcomes over the most recent three funding years have not been sufficient to provide the “promised hedge against day-ahead congestion”⁵ because of the provisions of the PJM Tariff. The Complaint goes on to explain that for the 2010/2011 planning period, PJM experienced a \$254.3 million FTR revenue shortfall, and for the 2011/2012 planning period PJM underwent a revenue inadequacy equal to \$192 million, which represent FTR payout ratios of 85 percent and 81 percent, respectively. During the 2012/2013 planning period, the payout ratio has continued to decline.

¹ *Complaint and Request for Fast Track Processing of the FirstEnergy Companies*, FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC v. PJM Interconnection, L.L.C., Docket No. EL12-19-000 (Dec. 28, 2011).

² Complainant seeks to modify Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, LLC as well as the parallel provisions of the PJM Open Access Transmission Tariff.

³ FTRs are the right to transmit electricity through the PJM operated transmission system purchased through a market auction. The tariff requires that FTR holders bear congestion costs incurred in the real-time market that are unrelated to hedging congestion in the day-ahead market. FTR holders that are receiving congestion revenues are paying for any revenue shortfalls in the real-time market and funding the uplift payments. The complaint further observes that the revenue shortfalls caused by balancing congestion are extremely volatile, and FTR holders have no ability to control or predict them. For this reason, the complaint notes that FTR holders are faced with significantly increased risk for as long as they are required to fund such congestion.

⁴ *Complaint*, at p. 2-3.

⁵ *Id.* at p. 3.

The Complainant requests that FERC direct the PJM Interconnection, LLC (“PJM”) to make modifications to its tariff so that FTRs are “funded as intended.” The Complaint suggests that the funding issue can be addressed by requiring that the PJM Tariff be amended “so that FTR holders are no longer responsible for funding real-time congestion.” The Complainant maintains that, if a single cause or beneficiary of a cost cannot reasonably be determined, it is most efficient to spread that cost out as broadly as possible to all retail transmission customers. That is, the Complaint requests that the responsibility for real-time congestion costs (or surpluses) be allocated to all retail transmission system customers on a *pro rata* basis, rather than any particular market participant or class of market participant.

DISCUSSION

The Ohio Commission agrees that underfunding of FTRs is a significant issue that FERC should address. However, the Ohio Commission strongly disagrees with the Complainants attestation that short-falls in the FTR markets should be shifted to retail transmission customers. Retail transmission customers are not the cause of deficiencies in the FTR markets and should not be burdened with paying the costs.

The focus of Complainants efforts and that of the PJM should be to make reasonable FTR market fixes. The Ohio Commission submits that it is PJM’s responsibility to ensure that wholesale markets, including the FTR market, are operating as intended and as described in its Tariff so that FTR holders are not unfairly or unreasonably underfunded and so that retail transmission customers are not burdened with additional payments for market revenue shortfalls caused by deficient market design and operation. Therefore, the Ohio Commission recommends that, instead of approving Complainants’ request to establish a new nonbypassable charge to be

assessed to retail transmission customers, FERC should direct PJM, with input from its Independent Market Monitor, to address each market design and operational deficiency and provide a set of solutions to be considered and approved by FERC after appropriate due process for other interested parties, including the Ohio Commission. In response to a 2011 complaint filed by Complainants, the Independent Market Monitor proposed that market solutions (rather than a change in the funding mechanism) should be used to correct the problem of FTR underfunding. Specifically, the Independent Market Monitor recommended a reduction in the sale of FTRs. He explained that a decline in the value of FTRs can be expected when they are oversold. As a result, in order to meet the goal of full funding, fewer FTRs should be sold to reflect the reduced capability of the transmission system.⁶

The proposed charge unfairly shifts the burden of market deficiencies to retail transmission customers. While the Ohio Commission agrees that underfunding is a significant issue and is one that FERC should address by fixing underlying market deficiencies, we do not support the Complainants' proposed solution to create a new non-bypassable charge on retail transmission customers. The Complainant is making an unreasonable attempt to shift the burden of deficiencies on the FTR markets to retail transmission customers. These customers are not the cause of the underfunding and should not pay the price. Placing the result of market deficiencies solely on retail transmission customers unfairly shifts a burden which should be addressed by PJM and its stakeholders. Such a charge when assessed to retail transmission

⁶ *Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM*, Docket No. EL12-19-000 at 5 (February 2, 2012).

customers without addressing market deficiencies would set a precarious precedent for which the Ohio Commission would have serious concern.

Rather than shifting the burden of market flaws and deficiencies to retail transmission consumers, the focus of Complainant and PJM should be to fix the FTR market so that underfunding is less likely to occur or in the event underfunding does occur, participants in the FTR market and not retail transmission customers bear the risk.

CONCLUSION

The Ohio Commission thanks FERC for the opportunity to provide comments on the FirstEnergy Companies' FTR 206 filing and respectfully requests that FERC deny FirstEnergy Companies' Complaint.

Respectfully submitted,

/s/Thomas W. McNamee

Thomas W. McNamee

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**On behalf of 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

Dated at Columbus, Ohio this 15th day of March, 2013.

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

Summary: Comments submitted by Assistant Attorney General Thomas McNamee to the Federal Energy Regulatory Commission of Ohio in FERC Docket No. EL13-47-000 on March 15, 2013 on behalf of the Public Utilities Commission of Ohio. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio