UNITED STATES OF AMERICA
BEFORE
THE FEDERAL ENERGY REGULATORY COMMISSION

American Transmission Systems, Inc.	**)**	
Transmission Formula Rate Modifications	**)**	
Revisions to Attachment H-21 and	**)**	**Docket No. ER20-1740**
And Attachment II of PJM Tariff	**)**	

COMMENTS AND LIMITED PROTEST SUBMITTED ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO'S OFFICE OF THE FEDERAL ENERGY ADVOCATE

Pursuant to the Federal Energy Regulatory Commission's (Commission or FERC) Rules of Practice and Procedure, 18 C.F.R. § 385.211, the Public Utilities Commission of Ohio's Office of the Federal Energy Advocate (Ohio FEA) submits the following comments and limited protest in response to American Transmission Systems, Inc's (ATSI) application to modify its formula rate mechanism pursuant to Section 205 of the Federal Power Act, and Part 35 of the regulations of the Commission, as set forth in Attachment H-21 of the PJM Open Access Transmission Tariff (PJM Tariff) and revisions to Attachment II of the PJM Tariff.

The Ohio FEA, on behalf of Ohio's retail customers,[1] provides comments and limited protest of this application to the extent, as described more fully below, that it does

[1] The Ohio FEA advocates on behalf of the interests Ohio retail electric customers pursuant to Ohio Rev. Code §4928.24.

not fully demonstrate the costs and benefits of ATSI's Regional Transmission Organization (RTO) realignment and, therefore, produces an unjust and unreasonable outcome to Ohio retail customers of ATSI's transmission services. The Ohio FEA intervened in these dockets on May 15, 2020. Comments were due in this docket on or before May 22, 2020, however, on May 19, 2020, FERC issued a Notice of Extension of Time to file comments until May 29, 2020.

I. Background

Among other changes related to federal tax changes and vegetation management, ATSI is proposing transmission formula rate recovery of certain costs related to its realignment from the Midcontinent Independent System Operator, Inc. (MISO) to the PJM Interconnection, LLC (PJM) in 2011. ATSI references these transmission projects as Legacy MISO Transmission Expansion Plan (MTEP) that ATSI incurred prior to its exit from MISO that continue to benefit customers in the ATSI transmission zone. ATSI proposes to recover these costs from customers over a ten-year period, or longer in some instances, but utilizes 2030 as the end period for its cost-benefit analysis.

Additionally, ATSI is proposing modifications to its formula rate for the recovery of other costs related to ATSI's integration into PJM. ATSI references these costs as RTO Transition Costs. The costs incurred by ATSI in this category include payments to PJM to prepare for ATSI's integration; deferred internal integration costs that ATSI incurred; MISO exit fees; and MISO Long-Term Transmission Rights (LTTR Settlement Costs).

ATSI proposes to amortize and recover these costs over a ten-year period beginning in 2021.

According to ATSI, the Commission previously determined that in order to recover both Legacy MTEP Costs and RTO Transition Costs, ATSI must provide a cost-benefit analysis that demonstrates that the benefits to ATSI's wholesale transmission customers of ATSI's RTO realignment exceed both these categories of costs.[2] ATSI states that it included a cost-benefit analysis in its filing, which demonstrates that since ATSI's RTO realignment took effect in 2011, the net benefits to wholesale transmission customers in the ATSI Zone have totaled $1.16 billion ($1.19 billion in net present value). ATSI projects that by 2030, its wholesale transmission customers will ultimately receive total net benefits of almost $4.0 billion ($3.5 billion in net present value). According to ATSI, the current and projected net benefits substantially exceed the $154 million ($98 million in net present value) in total Legacy MTEP Costs and RTO Transition Costs that ATSI proposes to recover from its wholesale transmission customers through 2030.

II. Summary

The Ohio FEA believes that ATSI should recover just and reasonable legacy MTEP costs and RTO transition costs in its transmission formula rate only to the extent ATSI provides adequate demonstration that the current and projected net benefits exceed those costs to its wholesale transmission customers. The Ohio FEA supports FERC's previous direction to ATSI that it should specifically identify the benefits of the RTO realignment

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[2] ATSI Application at 2-3 (May 1, 2020).

decision with respect to its wholesale transmission customers and include a cost-benefit analysis showing that the benefits to wholesale transmission customers exceed the costs of the realignment, *i.e.*, the PJM Integration Costs, deferred integration costs, and MISO exit fees, including Legacy MTEP costs.[3]

Additionally, the Ohio FEA agrees with ATSI that it is required to "include the full range of costs and benefits to which . . . customers will be exposed" and that "any such demonstration of net benefits needs to include a consideration of costs and benefits beyond expected transmission expansion costs, including, but not limited to, RTO administrative costs, energy, capacity, and ancillary service costs resulting from the move from one RTO to another."[4]

However, the Ohio FEA points out that there are flaws in a benchmarking approach. This approach assumes that ATSI can recover the cost of its RTO realignment if benefits exceed costs. It does not consider how much more customers could have/would have saved if operations and performance were improved by ATSI during the recovery period. It also fails to recognize that the costs are picked up by a different population than the population that benefits (i.e., wholesale and retail transmission customers pick up the transmission formula rate costs while generators and suppliers in ATSI benefit from PJM's organized markets and transmission upgrades).

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[3] Testimony of Dr. John Morris, Exhibit ATS-5, at 7 of 74 citing *PJM Interconnection, L.L.C.,* 135 FERC ¶ 61,198 at P 60 (2011), *reh'g denied*, 154 FERC ¶ 61,217 (2016).

[4] ATSI Application at 5 citing *PJM Interconnection, LLC, et al*., 139 FERC ¶ 61,068 at P 78 (2012).

The Ohio FEA urges FERC to ensure that ATSI's recovery of costs of its voluntary decision to move to PJM from MISO is less than the benefits received and that it has adequately provided a full demonstration of both the costs and benefits of its realignment with PJM including operation and performance improvement savings, if any. Otherwise, ATSI's Ohio wholesale and retail transmission customers are unfairly shouldering the risk and costs of the company's move from MISO to PJM with a formula rate that provides ATSI with a full and guaranteed recovery of its costs. Accordingly, the Ohio FEA recommends that ATSI provide further demonstration in support of its application through a FERC hearing process to ensure that the proposed transmission formula rate increase is just and reasonable.

III. Comments

A. Capacity and Energy Costs

ATSI provides the written testimony of Dr. John Morris to support its required cost-benefit analysis to prove that the net benefits exceed the costs of ATSI's move from MISO to PJM. Dr. Morris explains that his analysis includes RTO transmission costs including PJM's Regional Transmission Expansion Plan (RTEP), MISO's MTEP, and joint PJM/MISO interregional planning projects. He also examines RTO administration costs associated with MISO and PJM operating expenses and non-transmission related costs (generation capacity, ancillary services and energy costs). He summarizes his findings to state that in his estimation the net benefits of the ATSI realignment exceed the RTO

Transition and Legacy MTEP costs that ATSI seeks to recover through its revised formula rate filing in this docket.

First, with regard to generation capacity prices, Dr. Morris states that there is a significant difference between MISO's and PJM's capacity markets. Dr. Morris explains that MISO's capacity prices are for one-year and are voluntary in nature and, thus, remain very low. However, because of the residual nature of MISO's capacity auctions, Dr. Morris indicates that generators earn revenues through alternative funding sources such as bilateral contracts and plant ownership arrangements thus raising the ultimate price for MISO capacity ultimately exceeding the cost of capacity in PJM.

It is noteworthy that Dr. Morris is extolling the benefits of PJM's capacity market and the "lower" capacity prices in PJM but ATSI's affiliate FirstEnergy has been very public over the last few years about its dissatisfaction with the PJM and "distorted" and "volatile" price signals from its organized capacity and energy markets resulting in retirement or sale of FirstEnergy power plants.[5] While noting higher capacity prices in certain years in ATSI related to transmission constraints, Dr. Morris does not provide much detail regarding the PJM capacity auctions where the ATSI zone separated on three

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5 Jeff Fick, *FirstEnergy critiques PJM market's reliance on natural gas generation*, S&P Global Platts (Sept. 5, 2016), https://www.spglobal.com/platts/en/market-insights/latest-news/electric-power/090516-firstenergy-critiques-pjm-markets-reliance-on-natural-gas-generation; FirstEnergy Solutions Corp.'s Request for Emergency Order Pursuant to Federal Power Act Section 202(c) (March 29, 2018), available at https://statepowerproject.files.wordpress.com/2018/03/fes-202c-application.pdf.

occasions since the 2015/2016 Delivery Year[6] and the resulting billion dollars of upgrades[7] PJM found necessary to remedy the ATSI transmission constraints that contributed to a capacity price of $357/MW-day in the 2015/2016 Delivery Year in the ATSI zone. In order to address this situation, PJM proposed a new Cleveland LDA within the ATSI zone and FERC approved it effective January 4, 2013 citing limited import capability and reliability concerns related to voltage and stability limitations.[8] While it is impossible to know whether, and to what extent, these issues would have been experienced if ATSI had remained in MISO, it is possible to know the cost impacts to customers from the very high capacity prices and resulting transmission upgrades unique to PJM.

Furthermore, Dr. Morris provides little analysis, and this application requests cost recovery until 2030, of how the current upheaval cause by PJM's Minimum Offer Price Rule (MOPR) will affect PJM's capacity construct and capacity prices in the ATSI zone from the 2022/2023 Delivery Year onward. It is not possible to know all of the effects of the new and currently mysterious MOPR and the associated rate impact but several industry analysts point to higher PJM capacity prices.[9] Additionally, PJM rule changes regarding

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6 PJM Markets and Operation, Capacity Markets, https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/20120518-2015-16-base-residual-auction-report.ashx?la=en; https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2016-2017-base-residual-auction-report.ashx?la=en; and https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2021-2022/2021-2022-base-residual-auction-report.ashx?la=en

7 John Funk, *FirstEnergy will spend $1 billion on high-voltage transmission lines and substations*, The Cleveland Plain Dealer (Updated Jan 12, 2019; Posted May 18, 2012), https://www.cleveland.com/business/2012/05/firstenergy_will_spend_1_billi.html.

8 *PJM Interconnection, LLC*, 142 FERC ¶ 61,008 (2013).

9 Catherine Morehouse, *PJM MOPR could cost market consumers up to $2.6B annually, report finds*, Utility Dive (May 19, 2020), https://www.utilitydive.com/news/pjm-mopr-could-cost-market-consumers-up-to-26b-annually-report-finds/578183/.

operating reserves and the energy and ancillary services offset to capacity prices were recently approved by FERC and are estimated to cost an additional $2 billion dollars.[10] ATSI must accurately account for the reality of PJM's increasingly administratively complex capacity "market" in its cost-benefit analysis both past and future.

Next, Dr. Morris acknowledges PJM's higher energy or locational marginal prices (LMP) in the early years of ATSI's transition to PJM as compared to energy prices in MISO. Dr. Morris indicates that the energy costs in PJM for the last 7 months in 2011 were lower than if ATSI had been in MISO, producing a net benefit of $2.4 million. He explains that in 2012-2015, energy costs rose in PJM relative to MISO. Dr. Morris stated that, "Energy costs with ATSI in PJM exceeded those with ATSI in MISO by $79.7 million in 2012, and the difference continued to grow until it reached $146.4 million in 2015."[11] Dr. Morris further explained that lower energy prices in PJM continue from 2016 to 2020 (with the exception of 2018) until the end of the modeling period in 2024 and that overall net benefits exist in PJM energy prices from 2011 to 2030.

The Ohio FEA notes that the higher relative LMPs in PJM cited by Dr. Morris generally correspond to the years with higher capacity prices for customers in the ATSI zone. As the Commission is aware, transmission congestion is a component of LMP and can lead to higher energy prices due to constraints in delivering power on the transmission system. The Ohio FEA references the new PJM operating reserve rules mentioned

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10 Catherine Morehouse, *FERC approves PJM reserve overhaul with $2B price tag, critics say move ignores overcapacity,* Utility Dive (May 21, 2020), https://www.utilitydive.com/news/ferc-approves-pjm-reserve-overhaul-with-2b-pricetag-critics-say-move-igno/578469/.

11 Testimony of Dr. John Morris, Exhibit ATS-5, at 69 of 74.

previously that will also raise energy prices in the future such that it cannot be determined that lower energy prices will persist in PJM until the end of 2024 and beyond.

Furthermore, the energy benefits claim advanced by Dr. Morris ignores the contribution of lower natural gas prices in the PJM footprint to lower wholesale energy prices and rewards ATSI for benefits that have no connection to PJM or ATSI. The Ohio FEA believes lower fuel costs should benefit customers regardless of RTO participation and the LMP's uniform clearing price tied to the marginal unit (most expensive unit that clears) works to reduce the benefit of lower fuel costs that customers would receive if generators were compensated for energy either at their offer price or their actual cost of fuel.

The Ohio FEA urges FERC to consider the historical and future capacity prices, the actual and projected LMPs including fuel costs during the recovery period, and the robust transmission spend, as discussed in further detail below, when determining whether ATSI has fully demonstrated that the net benefits exceed the costs of ATSI's move from MISO to PJM and the resulting transmission formula rate increase is just and reasonable.

B. Transmission Incentives

The Ohio FEA reminds FERC that ATSI currently receives a generous transmission incentive for RTO membership in PJM. ATSI's application, including Dr. Morris's testimony, fail to include transmission incentives as part of a demonstration of "the full range of benefits and costs to which customers will be exposed." As FERC is aware, the transmission landscape has greatly grown in size and scope and RTO membership has become the rule rather than the exception in much of the country. The Ohio FEA notes that PJM has robust transmission planning processes that address reliability and allow projects to be built for economic reasons, including reduced congestion. It is clear that there is no longer a need to incent voluntary participation by the Company in an RTO. What is more, under state law in Ohio, utilities were required to join an RTO.[12] It makes no sense to incent an activity that has already been accomplished and is unavoidable under applicable law.

Furthermore, in January 2018, the US Court of Appeals for the 9th Circuit, in *CPUC v. FERC*, 879 F.3d 966 (2018), held that FERC was arbitrary and capricious in awarding Pacific Gas & Electric ("PG&E") an RTO participation adder. The court explained that the Commission has "a longstanding policy that incentives should only be awarded to induce future behavior" and that awarding an RTO-Participation incentive to a utility that is required to remain in an RTO conflicted with that policy. In its order on remand,[13] FERC approved PG&E's RTO participation adder because it determined that PG&E's participation in CAISO was voluntary. Nevertheless, as Commission Glick states in his concurring opinion, "FERC's reasoning—particularly its decision to resolve this proceeding based entirely on an inquiry into whether PG&E is required to remain in CAISO—suggests that if state law actually required PG&E to remain in CAISO, an RTO-Participation incentive might well be inappropriate."[14]

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[12] Ohio Rev. Code §4928.12.

[13] *PG&E,* 168 FERC ¶ 61,038 (2019).

[14] *Id*., Concurring Opinion of Commissioner Richard Glick at P 4.

C. Supplemental Transmission Project Costs

Dr. Morris states that he did not include in his cost-benefit analysis certain transmission upgrades where the costs would have been allocated to customers in the ATSI zone exclusively, regardless of, whether ATSI was a member of PJM or MISO.[15] The Ohio FEA assumes that this would include transmission upgrades known in PJM as "supplemental projects." In 2019, supplemental projects in the ATSI zone totaled $204 million dollars with only $14 million in baseline projects;[16] in 2018, there were $511 million dollars in supplemental projects with $23 million in baseline projects[17] in the ATSI zone. The Ohio FEA believes that excluding these projects and providing "net zero" for these significant transmission costs does not provide an accurate representation of the costs of transmission in the ATSI zone. The Ohio FEA is not aware of a supplemental project category in MISO that allows for the planning of non-NERC criteria violation projects without oversight and verification of need by state or federal regulating authorities.

The Ohio FEA submits that the uptick in transmission projects in PJM is unique to the category of PJM supplemental projects and has created additional costs for transmission customers that might not have otherwise occurred but for ATSI's membership in PJM. Regardless, the Ohio FEA urges FERC to find ATSI's application deficient in that it does

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15 Application, Testimony of Dr. John Morris, Exhibit ATS-5, at 19-20 of 74.

16 2019 Project Statistics, Transmission Expansion Advisory Committee (May 12, 2020), https://www.pjm.com/-/media/committees-groups/committees/teac/2020/20200512/20200512-item-10-2019-project-statistics.ashx.

17 2018 Project Statistics, Transmission Expansion Advisory Committee (Feb. 7, 2019), https://www.pjm.com/-/media/committees-groups/committees/teac/20190207/20190207-2018-project-statistics-update.ashx.

not address the costs of supplemental projects and other transmission projects where the costs were allocated exclusively to ATSI's wholesale transmission customers. The Ohio FEA urges FERC to correct this deficiency by requiring ATSI to include the costs associated with these projects as part of its cost-benefit analysis.

Furthermore, the Ohio FEA renews its request for FERC to directly address the question of PJM's authority over supplemental projects and its obligation to review transmission plans just as it does today as the regional planner for other transmission projects. As FERC is aware, transmission service and pricing are under its exclusive jurisdiction. PJM's uncertainty as to its authority leaves a "regulatory gap" between state and federal jurisdiction that results in, practically speaking, no regulatory supervision over actions taken by transmission owners that are causing a large uptick in investment and prices for transmission service in ATSI and other PJM transmission zones. The direct result is an increase to transmission costs in the ATSI zone that fall under the "net zero" classification that are not properly accounted for in the cost-benefit analysis and demonstration included with this application.

IV. Conclusion

The Ohio FEA urges the Commission to require further demonstration from ATSI consistent with comments herein to ensure that the net benefits exceed the costs of ATSI's move from PJM to MISO and, therefore, its proposed transmission formula rate increase is just and reasonable. Ohio FEA recommends that the docket be set for hearing and settlement procedures to accomplish this objective. The Ohio FEA thanks the Commission for the opportunity to comment in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 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 May 29, 2020.

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Summary: Comments and Limited Protest Submitted on Behalf of The Public Utilities Commission of Ohio’s Office of The Federal Energy Advocate electronically filed by Mrs. Kimberly M Naeder on behalf of Ohio's Office of the Federal Energy Advocate