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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Establishment of
Electronic Data Exchange Standards
and Uniform Practices for the Electric
Utility Industry

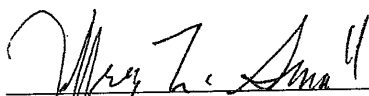
Case No. 00-813-EL-ED1

PUCO

MOTION TO STRIKE OF AMERICAN
MUNICIPAL POWER - OHIO, INC. AND CITY OF CLEVELAND,
AND REPLY COMMENTS PURSUANT TO THE COMMISSION'S
ENTRY DATED MAY 18, 2000

Now comes American Municipal Power-Ohio, Inc. (hereinafter "AMP-Ohio"), and,
pursuant to Section 4901-1-12 O.A.C., respectfully moves to strike the first full paragraph, page
12 of FirstEnergy Corporation's Initial Comments¹ filed in this docket on May 25, 2000 for the
reasons set forth in the following Memorandum in Support. AMP-Ohio's Memorandum also
contains its Reply Comments that are filed pursuant to the Commission's Entry dated May 18,
2000, as later modified to extend the date upon which reply comments are due to June 2, 2000.

Respectfully submitted,



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¹ Because pagination can differ when documents are served using e-mail, the paragraph in question is further identified as stating: "The Consolidated Scheduling provision was inserted"

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Establishment of)	
Electronic Data Exchange Standards)	Case No. 00-813-EL-EDI
and Uniform Practices for the Electric)	
Utility Industry)	

**MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE BY AMERICAN MUNICIPAL
POWER - OHIO, INC. AND THE CITY OF CLEVELAND, AND
REPLY COMMENTS PURSUANT TO THE COMMISSION'S
ENTRY DATED MAY 18, 2000**

I. Support of Motion to Strike

By way of background, the Operational Support Working Group (hereinafter, "Group") was organized to address standard interchange protocols and uniform business rules. This Group's activities have run since December of 1999 on subjects that overlap with topics that are at issue in the transition plans cases of Ohio's investor-owned electric utilities. Any success for the Group's activities depended upon the kind of frank discussion that is rarely encountered in litigation outside the confines of confidential settlement discussions. Recognizing this fact and the pendency of the transition plan cases, participants in the Group agreed that the discussions would take place under the rules embodied in Rule of Evidence 408 concerning compromise and offers to compromise. *See* Evid. R. 408.

The first tangible evidence of the Group's progress came in the form of a Stipulation and Recommendation ("Stipulation"), dated May 15, 2000, that was filed in the above captioned case as well as in the transition plan cases for each of Ohio's investor-owned electric utilities. That Stipulation states that it is the product of compromise in the midst of litigation and proposes the "opening of a generic proceeding by the Commission" (*see* Stipulation at 6) in

which parties would submit “comments and reply comments on the issues” which would be followed by a Commission order. *See* Stipulation at 7. The Stipulation also anticipates the continuance of Group meetings at least quarterly to refine operational support plans. *See* Stipulation at 7. The Commission’s May 18, 2000 also anticipates the need for “modifications necessary to foster an efficient and reliable market.” *See* Order (May 18, 2000) at 3. It is essential for any success of further Group meetings that frank discussions take place, and such frank discussions can only result from adherence to agreements concerning the confidentiality of discussions.

The Commission established a “paper hearing” procedure in its May 18, 2000 Order that permitted interested parties to submit evidence in the form of comments and reply comments on operational support issues. Parties were free to craft their submissions to the Commission on the merits of the Stipulation, its attached *pro forma* tariff, and other operational support issues. However, parties were not entitled to comment on the confidential settlement discussions that resulted in the Stipulation in this case. “Evidence of conduct or statements made in compromise negotiations is ... not admissible.” Evid. R. 408. Despite this rule and the agreement of counsel for FirstEnergy to abide by its provisions, FirstEnergy’s Initial Comments attack the Stipulation’s contents concerning consolidated scheduling based on the process by which those provisions were discussed by Group members and incorporated into the Stipulation. *See* FirstEnergy Initial Comments at 12 (“The Consolidated Scheduling provision was inserted....”). This paragraph should be stricken from the record in this case and FirstEnergy counsel should be warned that such comment is detrimental to the process desired by the Commission to foster frank discussion concerning the need for later modifications to operational support procedures.

Finally, AMP-Ohio wants to make it clear that the contents of the paragraph that are the subject of AMP-Ohio's Motion to Strike are false, or intentionally misleading and essentially false. FirstEnergy essentially states in its offending paragraph that it was taken off guard by the provisions of the "Consolidated Scheduling" paragraph in the *pro forma* tariff that is attached to the Stipulation. Without doing further violence to the confidentiality of the Group's discussions, AMP-Ohio points out that FirstEnergy was made aware of an interest in consolidated scheduling at least as far back as the technical conference in the FirstEnergy transition plan case. Now that FirstEnergy chooses to comment on consolidated scheduling, it accepts consolidated scheduling procedures for a region served by the different operating companies of FirstEnergy that serve Northern Ohio. *See* FirstEnergy Initial Comments at 13 (recommended consolidated scheduling language). The Stipulation's recommendation concerning consolidated scheduling differs from the plan submitted by FirstEnergy in its transition plan. Thus, FirstEnergy recognizes the value of a provision for consolidated scheduling despite its unjustified attack on the process by which that provision was included in the proposed *pro forma* tariff.

For the foregoing reasons, the paragraph contained in FirstEnergy's Initial Comments that has been identified above must be stricken.

II. Reply Comments

A. Consolidated Scheduling and Coordination Services

FirstEnergy expressed its agreement to the provisions of the *pro forma* supplier tariff, but objected to portions of provisions for consolidated scheduling and coordination services.²

² [This footnote is submitted on behalf of only AMP-Ohio.] FirstEnergy states that it seeks clarification in order to "accommodate the transfer of the FirstEnergy companies' transmission assets to American Transmission System, Inc. ("ATSI"). AMP-Ohio's position, as a party to the Commission's ATSI case, is that FirstEnergy has not

See FirstEnergy Initial Comments at 2. The purpose of the consolidated scheduling provision in the *pro forma* tariff is to foster a market for electricity that is as seamless and efficient as possible under current institutional constraints and to provide flexibility for anticipated changes to control of transmission systems by regional transmission organizations. Consolidated scheduling recognizes the existence of dispatch centers in Ohio that control more than one of the investor-owned electric utilities that have made transition plan filings because some of these utilities are affiliated with one another and conduct many of their operations in common. The initial filings in the transition plan cases treat all utilities as separate and distinct operational entities when this is not the case. There is no good reason for alternative suppliers to separate their schedules for submission to dispatch centers when those centers eventually re-consolidate those schedules in order to conduct their operations. As noted above, even non-signatory FirstEnergy accepts the consolidation of schedules for sales to retail customers off the distribution lines that are operated by the FirstEnergy operating companies.

The *pro forma* provision concerning consolidated scheduling also recognizes that, from a scheduling standpoint, there is no distinction between a two megawatt industrial customer and an two megawatt municipal customer. The *pro forma* tariff therefore permits the combined scheduling of retail and wholesale loads under specified circumstances. Those circumstances recognize possible administrative obstacles to the consolidation of retail and wholesale loads. Consolidation is conditioned upon use a “single class of transmission service” and the

satisfied the conditions set by the Commission for approval of the ATSI transactions. The Commission stated that “the approval in this [ATSI] case is subject to this Commission’s ultimate identification of the facilities involved through the demarcation process as required in the company’s transition plan filing.” See *In re ATSI* (February 17, 2000), PUCO Case No. 98-1633-EL-UNC at 5-6. FirstEnergy did not submit information concerning the FERC’s seven-factor test as part of its transition plan case. While that failure may not effect the course of the transition plan case itself, FirstEnergy has not satisfied the Commission’s condition and the ATSI transactions have not been approved by the PUCO.

applicability of the “same method of calculating energy imbalance settlements.” *See Pro Forma Supplier Tariff* at IV.C. These circumstances may prevent the consolidation of retail and wholesale scheduling in the immediate-term. However, the consolidated scheduling provision provides added flexibility to address changes in circumstances under which loads are scheduled and imbalances are settled. One such widely anticipated change is the consolidation of scheduling in the hands of regional transmission organizations under a single transmission tariff for multiple operating companies. The provision for consolidated scheduling is not a “back door attempt by the wholesale suppliers [sic] leverage FERC to change the OATT.” *See FirstEnergy Initial Comments* at 12-13. As noted in other comments in this docket, the application of the FERC’s comparability principals has been a “front door” issue for a considerable period of time without any need for reference to any provision for consolidated scheduling. FirstEnergy’s inflexibility on the subject should be rejected.

FirstEnergy also objects to the definition of coordination services that is contained in the *pro forma* tariff. *See FirstEnergy Initial Comments* at 2 and 14. The proposed definition states that such services “includ[e] load forecasting, certain scheduling related functions and reconciliation.” *See FirstEnergy Initial Comments* at 14 (stricken portion in FirstEnergy recommendation). FirstEnergy’s objection is based upon its intent to provide “load forecasts in accordance with current practice” (*see FirstEnergy Initial Comments* at 14), but not “load forecasting to suppliers for their specific customers or customer groups.” *Id.* There is no conflict between FirstEnergy’s current intent and the definition of coordination services because the term “load forecasting” is not specific to the forecast of loads for specific customers or customer groups. The *pro forma* tariff should not be modified as proposed by FirstEnergy.

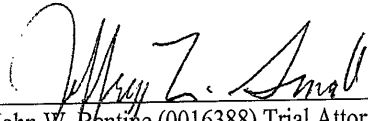
B. DP&L's "Experiences" Are Inapplicable

DP&L states that energy imbalance provisions must be stringent to encourage alternative suppliers to schedule properly. *See* DP&L Comments at 6. DP&L's "experience" with improper scheduling is inapplicable to the circumstances under consideration. DP&L reasons that energy imbalance provisions in tariffs for the competitive supply of electricity to retail customers is "essentially the same" as "regulation service" that is provided for under "special contracts" between DP&L and municipal customers. *See* DP&L Comments at 7. There is a difference between tariff provisions governing service to retail customers in a regulated setting and provisions contained in specific bargains that have been negotiated at arms length between participants in the wholesale market. The proper interpretation of provisions regarding "regulation power" between municipal systems in Ohio and DP&L is currently a matter before FERC. DP&L's "experience" in the matter, as related in its Comments, is its litigation position that confuses the tariff and the contract settings. The Commission should not permit penalty provisions to become a barrier to entry based on situations that are inapplicable to the issues under consideration.

III. Conclusion

The Commission should not confuse DP&L's litigation position before the FERC concerning the "regulation power" provisions of a separate wholesale agreement with the current debate concerning settlements for imbalances. The Commission should also reject the arguments made by FirstEnergy against the adoption of the Stipulation and its attached *pro forma* tariff. The Commission should also strike the paragraph in FirstEnergy's Initial Comments that has been identified as containing improper and false statements.

Respectfully submitted,

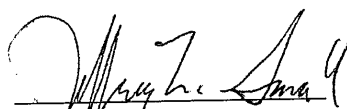
A handwritten signature in cursive script, appearing to read "Jeffrey L. Small", is positioned above a horizontal line.

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and the City of Cleveland

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion to Strike and Reply Comments* of American Municipal Power-Ohio, Inc. and the City of Cleveland has been served upon the parties listed on the operational support e-mail list this 2nd day of June, 2000.



Jeffrey L. Small