**UNITED STATES OF AMERICA**

**BEFORE THE**

**FEDERAL ENERGY REGULATORY COMMISSION**

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| FirstEnergy Solutions Corporation | : | EL14-36-000 |

**COMMENTS**

**SUBMITTED ON BEHALF OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**April 18, 2014**

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Pursuant to Rule 211 of the Federal Energy Regulatory Commission’s (Commis­sion) Rules of Practice and Procedure, 18 C.F.R. 385.211 and the notice issued by the Commission on April 8, 2014, setting the comment date of April 18, 2014, the Public Utilities Commission of Ohio (Ohio Commission) hereby submits the following com­ments and limited protest in response to FirstEnergy Solutions Corporation’s (FirstEnergy) *Petition for Declaratory Order and Request for Expedited Action* (Petition) filed on April 7, 2014, in the above-captioned docket. The Ohio Commission intervened in this matter on April 9, 2014, and consequently is a party to this proceeding.

# I. INTRODUCTION

In its Petition, FirstEnergy seeks to review the calculation of Market Seller Offer Caps in PJM Interconnection, L.L.C.’s (PJM) Reliability Pricing Model (RPM). Cur­rently, for each RPM auction, the Independent Market Monitor (IMM) for PJM calculates a Market Seller Offer Cap for each existing generation capacity resource in accordance with Section 6.8 of attachment DD to the PJM Open Access Transmission Tariff (Tariff). Specifically, the IMM calculates net market energy revenues for the Market Seller Offer Cap by utilizing the lower of the unit’s cost-based offer and market-based offer that is submitted into the energy market as the best indicator of marginal cost in the competitive energy market. FirstEnergy asserts that the Tariff requires the IMM to use cost-based offers to determine its net energy revenues, even when a unit clears on market-based offers lower than cost-based offers in the energy market. FirstEnergy requests a Com­mission order by May 9, 2014, prior to the May 2014 Base Residual Auction (BRA).

# II. COMMENTS

Contrary to FirstEnergy’s arguments, the Tariff does not prohibit the use of mar­ket-based offers to be used in determining the Market Seller Offer Caps for each capacity resource. As a declaratory order cannot accomplish FirstEnergy’s request to narrow PJM’s Tariff revision, the Commission should deny FirstEnergy’s Petition. If the Peti­tion is granted, the Ohio Commission is concerned that capacity prices may artificially increase as the Market Seller Offer Cap would not reflect true energy market marginal costs, and could potentially cause market power concerns in the 2017/2018 BRA. In order to avoid such an outcome through an unnecessary “rush to judgment” as requested by FirstEnergy, the Commission should deny this petition, or in the alternative, allow FirstEnergy to refile its new proposal under a Rule 206 complaint proceeding.

## A. FirstEnergy’s narrow interpretation of the Tariff is inconsistent with the actual Tariff language.

The Tariff provision in dispute, Section 6.8(d), provides that:

Projected PJM Market Revenues for any Generation Capacity Resource to which the Avoidable Cost Rate is applied shall include all actual unit-specific revenues from PJM energy markets, ancillary services, and unit-specific bilateral con­tracts from such Generation Capacity Resource, net of mar­ginal costs for providing such energy (i.e., costs allowed under cost-based offers pursuant to Section 6.4 of Schedule 1 of the Operating Agreement) and ancillary services from such resource.

It is unreasonable to assume that the intent of the Tariff was to limit the calcula­tion of energy market marginal costs to strictly cost-based offers. Absent an explicit pro­vision in the Tariff stating that the net of energy market marginal costs *must* be derived from the cost-based offers, a more broad interpretation of the Tariff, consistent with the IMM’s practice since 2007, prevails. Marginal costs should be calculated in the most appropriate manner possible, which dictates the use of market-based energy offers in the Market Seller Offer Cap for RPM auction offers.

FirstEnergy’s narrow interpretation of PJM’s Tariff would force the IMM to ignore the most accurate information that is available at the time. The best information should always be used to calculate marginal costs. Accordingly, as the Tariff does not contain an explicit provision or methodology that would prohibit the use of market-based offers that are below the cost-based offers in calculating the Market Sell Offer Cap, FirstEnergy’s Petition should be rejected.

## B. As the language contained within the Tariff is broad, FirstEnergy’s interpretation requires a Tariff revi­sion.

As the Tariff provision is broadly written and provides the IMM with discretion to calculate the net energy revenue by using the best available unit marginal cost infor­mation, FirstEnergy’s request that cost-based offers be exclusively used in calculating marginal costs would require a PJM Tariff revision. A declaratory order in accordance with Rule 207 does not provide an avenue to change or revise PJM’s Tariff language which is necessary to eliminate any perceived ambiguity.

While the Ohio Commission strongly maintains that the language of the Tariff does not prohibit the IMM’s long-standing interpretation of using the best available information, if the Commission finds that the meaning of the Tariff is unclear, we respectfully request that the Commission either allow FirstEnergy to refile its new pro­posal under a Rule 206 complaint proceeding or hold this proceeding in abeyance and consider additional evidence.

## C. If FirstEnergy’s petition is granted, there may be unin­tended market power consequences.

If FirstEnergy’s Petition is granted, the Ohio Commission is concerned that the IMM will be unable to use the best information available when calculating net energy reve­nues. Market participants could submit artificially inflated cost-based Market Seller Offer Caps for their capacity resources that no longer account for actual net energy reve­nues that result from market-based offers that are below cost-based offers and would be better indicators of the marginal costs of the resources. An order granting First­Energy’s petition may impact the capacity market by raising capacity costs to customers as a result of higher BRA clearing prices without economic justification or corresponding reliability benefits. This creates an opportunity for sellers to exercise market power, as an order adopting FirstEnergy’s interpretation would allow all market participants to cal­culate their Market Seller Offer Cap in the same manner. Accordingly, the Ohio Com­mission requests that the Commission deny FirstEnergy’s Petition.

# III. CONCLUSION

The Ohio Commission respectfully requests that the Commission deny First­Energy’s Petition, as PJM’s current Tariff provision provides the IMM with the discre­tion to calculate net energy revenues in the most accurate manner and is consistent with the current practice. FirstEnergy’s request to limit the calculation to cost-based offers is a new interpretation of the current Tariff and requires a revision that cannot be accom­plished in this proceeding. Further, if FirstEnergy’s Petition is granted, there may be market power consequences that could artificially inflate customer prices, and prohibit the competitive results from the 2017/2018 BRA and any Incremental Auction or BRA thereafter. Should the Commission determine that the Tariff language is unclear, the Ohio Commission requests that the Commission consider holding FirstEnergy’s petition in abeyance to consider additional evidence to determine the intent of the Tariff provision or allow FirstEnergy to refile its request under Rule 206. Therefore, for the reasons set forth herein, the Ohio Commission requests that FirstEnergy’s Petition be denied.

Respectfully submitted,

/s/ Jonathan J. Tauber

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**On behalf of**

**The Public Utilities Commission of Ohio**

# IV. 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 18th day of April, 2014.