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PUCO

October 12, 2007

Ms. Renee J. Jenkins, Secretary
Public Utilities Commission of Ohio
180 East Broad Street, 9th Floor
Columbus, Ohio 43215

Re: Public Utilities Commission of Ohio's Staff Comments on
FirstEnergy Companies' Proposed Competitive Bid Process
Case Nos. 07-796-EL-ATA and 07-797-EL-ATA

Dear Ms. Jenkins:

The Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") wishes to respond to the Public Utilities Commission of Ohio's ("PUCO") Staff Comments dated September 21, 2007 regarding the Competitive Bid Process ("CBP") proposed by FirstEnergy Companies in PUCO Docket Nos. 07-796-EL-ATA and 07-797-EL-ATA. In particular, the Midwest ISO would like to address several points raised by the Staff concerning the wholesale Energy Markets administered by the Midwest ISO.

The Federal Energy Regulatory Commission ("FERC") has recognized the Midwest ISO as an independent entity¹ equipped to manage transmission facilities placed under its functional control in accordance with an Open Access Transmission Tariff ("OATT"),² and as a Regional Transmission Organization ("RTO")³ that meets FERC's criteria for a regional entity with greater ability to ensure the fairness of transmission access.⁴ The Midwest ISO

¹ Midwest Independent Transmission System Operator, Inc., 84 FERC ¶ 61,231 (1998).

² Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000) (TAPS v. FERC), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

³ Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,326 (2001).

⁴ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (February 25, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), petitions for review dismissed, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

Midwest Independent Transmission System Operator, Inc.

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currently operates Day-Ahead and Real-Time Energy Markets pursuant to an Open Access Transmission and Energy Markets Tariff ("EMT") accepted by FERC.⁵

In accepting the EMT, FERC acknowledged the reliability and economic benefits of centralized security-constrained economic dispatch ("SCED"), and market-based congestion management using Locational Marginal Price ("LMP") and Financial Transmission Rights ("FTRs").⁶ FERC likewise deemed the Midwest ISO's Independent Market Monitor ("IMM") an effective means of market monitoring and mitigation.⁷ Under Module D of the EMT, the IMM has the responsibility to: (1) identify market design flaws, and recommend improvements; (2) detect and mitigate attempts to exercise market power or to manipulate market outcomes; and (3) identify operating actions or procedures that distort market outcomes or otherwise undermine market efficiency. The IMM applies conduct and impact tests to determine the existence and extent of potential market power, particularly in constrained areas described by the EMT as Broad Constrained Areas ("BCAs") and Narrow Constrained Areas ("NCAs").

The Midwest ISO respectfully disagrees with the Staff Comments to the extent that they cast doubt on the adequacy of the Midwest ISO's IMM mechanism due to the Staff's professed "Uncertainty About the Market Monitoring Paradigm."⁸ For example, the Staff claims that "[i]t is not apparent that FERC effectively responds to the market monitors' reports of market failures."⁹ However, the Staff has not identified any market "failures" in the Midwest ISO. Moreover, it is a matter of record that FERC has acted promptly on the IMM's request to implement measures (such as BCA and NCA mitigation) to *prevent* potential market failures. For example, FERC duly granted the request of the Midwest ISO's IMM to establish an NCA in 2004,¹⁰ and another one in 2006.¹¹ FERC also granted the IMM's requests to extend, and then to permanently establish, the BCA mitigation measures.¹² The Staff also states, in a critical tone, that the monitoring system "depends on the independence of market monitors and their free access to data and information,"¹³ but the Staff does not mention any problem with the independence and data access of the Midwest ISO's IMM. Indeed, the Midwest ISO

⁵ *Midwest Independent Transmission System Operator, Inc., et al.*, 108 FERC ¶ 61,163 (2004) ("August 6, 2004 Order"), *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043 (2005). Capitalized terms shall have the meaning ascribed to them by the EMT's definitions, unless otherwise indicated herein.

⁶ *E.g.*, August 6, 2004 Order at P 2-3, 135.

⁷ *Id.* at P 242-67.

⁸ PUCO Staff Comments at 15-16.

⁹ *Id.* at 15.

¹⁰ August 6, 2004 Order at P 295-98.

¹¹ *Midwest Independent Transmission System Operator, Inc.*, 118 FERC ¶ 61,020 (2007).

¹² *Midwest Independent Transmission System Operator, Inc.*, 120 FERC ¶ 61,250 (2007).

¹³ PUCO Staff Comments at 15.

notes that PUCO itself has been granted access to Confidential Information of the Midwest ISO and the IMM pursuant to the EMT.¹⁴

The Midwest ISO, likewise, does not agree with the Staff's claim that the "breadth and scope" of the Advanced Notice of Proposed Rulemaking ("ANOPR") in FERC Docket No. RM07-19-000, *et al.*¹⁵ indicates FERC's uncertainty about the adequacy of market monitoring, and that such uncertainty also applies to the Midwest ISO.¹⁶ The ANOPR did not express any concern about the Midwest ISO's IMM in particular. On the contrary, FERC *commended* existing RTOs and ISOs – clearly including the Midwest ISO – for their efforts to promote wholesale competition and non-discriminatory transmission access:

...The Commission is not seeking to fundamentally redesign organized markets or to appropriate jurisdiction from our state colleagues. Our goal is to make incremental improvements to the operation of organized markets without undoing or upsetting the significant efforts that have already been made in providing demonstrable benefits to wholesale customers. In particular, we *acknowledge and commend the ISOs and RTOs and their respective transmission owners and stakeholders for their work over the past several years in fulfilling the Commission's policies supporting wholesale competition and non-discriminatory access to transmission.*¹⁷

Accordingly, the ANOPR contemplates, not the abandonment of market monitoring and mitigation, but rather the development of *pro forma* tariff provisions on these subjects in order to achieve improvements.¹⁸

As required by the EMT, as well as the Midwest ISO's earlier OATT, the IMM has filed annual reports that have consistently affirmed the viability of the Midwest ISO's Transmission System and Energy Markets. For example, the IMM's 2006 State of the Market Report confirmed that the Energy Markets are competitive, and any items of concern were few and readily addressed:

Overall, we found that the market performed competitively in 2006. Although a number of individual suppliers throughout the Midwest ISO region have substantial local market power

¹⁴ Section 38.9.4 of EMT ("Disclosure to Authorized Requestors").

¹⁵ Advanced Notice of Proposed Rulemaking: Wholesale Competition in Regions with Organized Electric Markets, 119 FERC ¶ 61,306 (2007).

¹⁶ PUCO Staff Comments at 16.

¹⁷ *Id.* at P 3 (emphasis added).

¹⁸ ANOPR at P 131-32.

associated with specific transmission constraints, there was little evidence of attempts to withhold supply and exercise market power. Hence, the mitigation measures that are designed to prevent abuses of market power were employed relatively infrequently.¹⁹

With regard to the Staff's concern about prices,²⁰ the Midwest ISO also wishes to point out that the IMM found a downward price trend in the Midwest ISO's footprint in 2006:

In fact, electricity prices in Midwest ISO markets declined in 2006 by nearly 20 percent when compared to average Midwest ISO prices in 2005. We attribute the decline primarily to lower fuel prices, which trended down in 2006 after the relatively high price levels of late 2005. Generally lower load levels in 2006 also contributed to the lower power prices.²¹

The Midwest ISO's Transmission System and Energy Markets, therefore, are being operated reliably, and monitored effectively. The Midwest ISO further notes that for purposes of FirstEnergy's CBP proposal, the relevant market is not the local area of FirstEnergy, but rather the Midwest ISO's far larger regional Energy Markets. The Staff's concerns about potential local constraints associated with the Midwest ISO's proposed Ancillary Service Markets ("ASM")²² do not warrant shying away from wholesale markets. As indicated above, the EMT authorizes the Midwest ISO's IMM to designate and mitigate BCAs and NCAs, and the IMM has exercised such authority in appropriate situations. In fact, as pointed out by the Staff,²³ the IMM has itself identified the possible local constraint in the ASM-related zone to which FirstEnergy belongs – thereby confirming the diligence and vigilance with which the IMM can be expected to exercise its monitoring and mitigation functions in the Midwest ISO's proposed ASM markets. Similar considerations also apply to seams,²⁴ as to which the IMM has found that the Midwest ISO has achieved substantial coordination, and the IMM itself has identified potential areas and means of improvement.²⁵ But again, to improve is not to disapprove. The Midwest ISO's Energy Markets are working properly, and the Midwest ISO remains committed to work with its IMM and all appropriate parties, including the PUCO, to continue with its improvement efforts.

¹⁹ Midwest ISO IMM's 2006 State of the Market Report at i.

²⁰ PUCO Staff Comments at 7.

²¹ Midwest ISO IMM's 2006 State of the Market Report at i and 85-105.

²² PUCO Staff Comments at 14, citing the September 14, 2007 re-filing of the Midwest ISO's ASM proposal in FERC Docket No. ER07-1372-000.

²³ *Id.*, citing Dr. David B. Patton's Affidavit filed by the Midwest ISO in the ASM proceeding.

²⁴ PUCO Staff Comments at 16.

²⁵ Midwest ISO IMM's 2006 State of the Market Report at 112-23.

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In light of the foregoing, the Midwest ISO submits that the PUCO Staff's Comments on the Midwest ISO's Energy Markets, in particular, and on the wholesale energy markets, in general, do not provide valid reasons for rejecting FirstEnergy's proposed CBP process.

Thank you for this opportunity to communicate with you concerning this matter.

Very truly yours,

/s/ Stephen G. Kozey

Stephen G. Kozey

cc: Alan R. Schriber, Chairman
Hon. Ronda Hartman Fergus, Commissioner
Donald L. Mason, Commissioner
Valerie A. Lemmie, Commissioner
Paul A. Centolella, Commissioner
James W. Burk, FirstEnergy