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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Commission's
Investigation into the Value of
Continued Participation in Regional
Transmission Organizations.

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Case No. 09-90-EL-COI

REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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On March 4, 2009, the Public Utilities Commission of Ohio ("PUCO" or "Commission") issued an entry ("March 4 Entry") seeking comments on regional transmission organizations ("RTOs"). The March 4 Entry indicated the comments would be considered by Ohio's federal energy advocate in the preparation of a report, pursuant to Section 4928.34, Revised Code, on whether continued participation by the State's electric utilities in RTOs is in the interest of Ohio's consumers.

On May 22, 2009, initial comments were submitted by the Electric Power Supply Association ("EPSA"), PJM Power Providers Group ("P3 Group"), COMPETE Coalition ("COMPETE") and The Citizens Coalition ("Citizens"). On May 26, 2009, initial comments were submitted by the Midwest Independent Transmission System Operator, Inc. ("MISO"), American Municipal Power, Inc. ("AMP-Ohio"), Citizen Power, Dayton Power & Light Company ("DP&L"), Columbus Southern Power Company and Ohio Power Company ("AEP"), the Industrial Energy Users-Ohio ("IEU-Ohio"), the Office of the Ohio Consumers' Counsel ("OCC"), Duke Energy Ohio, Inc. ("Duke"), and FirstEnergy Service Company ("FirstEnergy"). Integrys Energy Services, Inc. ("Integrys"), Constellation NewEnergy, Inc. ("CNE") and Constellation Energy

Commodities Group, Inc. ("CCG") did not submit initial comments but reserved the right to submit reply comments.

On June 9, 2009, FirstEnergy, AEP, Duke and DP&L filed a motion requesting the Commission extend the deadline to file reply comments. On June 15, 2009, the Commission issued an entry ("June 15 Entry") extending the deadline for reply comments to July 24, 2009.

Pursuant to the June 15 Entry, IEU-Ohio submits its reply comments for the Commission's and federal energy advocate's consideration. IEU-Ohio's failure to specifically respond to any issues raised in another party's initial comments should not be construed as agreement with that position.

REPLY

The initial comments submitted by parties in the proceeding suggest a wide range of divergent views on the core question of whether continued participation by the State's electric utilities in RTOs is in the interest of Ohio's consumers. Perhaps not surprisingly, the views of consumers on this core question are markedly different from those of power suppliers and the RTOs.

Parties that represent power sellers cast unwavering support for RTOs and suggest there can be no doubt RTOs are benefiting consumers. For example, COMPETE suggests that RTO markets are saving customers hundreds of millions of dollars annually,¹ and that RTO markets such as PJM and MISO enjoy broad customer support.²

¹ COMPETE Initial Comments at 3.

² *Id.* at 5.

Similarly, EPSA states that the goals of Order 2000, promoting market efficiency and performance, ensuring that customers pay the lowest cost for electricity, eliminating unduly discriminatory practices and ensuring reliability, have largely come to fruition in both PJM and MISO.³

P3 Group shares the view that PJM's market is saving customers billions of dollars annually.⁴ P3 Group attributes high RTO power costs to increased fuel costs and suggests that this condition is not unique to RTO markets.⁵

A common fallacy among the initial comments by COMPETE, EPSA and P3 Group is their selective reliance upon studies that support their conclusions, while ignoring studies that reach contrary results. As noted in IEU-Ohio's initial comments, there is a lack of consensus among regulatory officials and industry participants about whether RTOs are, in fact, benefiting consumers, and various studies have reached contrary results.⁶ Further, the Federal Energy Regulatory Commission ("FERC") has not conducted empirical analysis on whether RTOs are benefiting consumers, and has ignored repeated requests by consumers to undertake an in-depth analysis of RTO performance.⁷ There has been no specific analysis undertaken on the question of whether Ohio consumers have economically benefited from RTO participation by the state's electric utilities.

In contrast to the views of powers sellers, the initial comments filed by Ohio electric distribution utilities ("EDUs") reflected some divergence of views on whether continued RTO participation was in the interest of Ohio's consumers. While Duke and

³ EPSA Initial Comments at 2.

⁴ P3 Group Initial Comments at 4.

⁵ *Id.* at 3-4.

⁶ IEU-Ohio Initial Comments at 31-35.

⁷ *Id.* at 35-36.

FirstEnergy support continued RTO participation, AEP and DP&L expressed some concern on whether PJM market rules and FERC policies are adversely impacting Ohio customers.

Duke is generally supportive of participation in MISO and does not believe that alternatives to RTO participation would be cost effective given the current structure of the MISO region.⁸ Conspicuously absent from Duke's initial comments is any recognition or acknowledgement that Duke Energy Carolinas does not participate in an RTO, but rather contracts with an independent entity (MISO) to perform key functions under Duke's open access transmission tariff, including approving transmission requests, calculating available transfer capability, performing system planning and administering OASIS.⁹ Duke Energy Carolinas agreed to transfer operational control of its transmission facilities to an independent administrator as a merger condition when Duke Energy acquired Cinergy Corp. Apparently, in the case of Duke, what is good for the goose is not good for the gander.

FirstEnergy supports RTO participation and claims RTO participation is a necessity for states that have adopted retail choice.¹⁰ FirstEnergy claims that viable alternatives to RTO participation do not exist as any alternative would need to perform at least these functions:

- ensure non-discriminatory access to transmission service, including appropriate load and generation interconnection tariffs;
- eliminate circumstances that lead to pancaked rates;
- provide for (regional) transmission scheduling;

⁸ Duke Initial Comments at 34.

⁹ Duke Press release announcing it had retained MISO to function as an independent operator of its transmission facilities is posted on Duke's OASIS at: <http://www.oatiaoasis.com/DUK/DUKdocs/IRElease.pdf>.

¹⁰ FirstEnergy Initial Comments at 2.

- provide for (regional) tariff administration;
- provide for and administer wholesale electric energy markets (including locational pricing) and economically-valid settlement of the same;
- provide for financial and other hedging to occur in the wholesale electric energy markets and in markets for transmission service;
- provide for enhanced reliability;
- provide for improved (optimized) scheduling and utilization of transmission assets;
- provide for improved management of transmission congestion;
- provide for (regional) economic dispatch of generating units;
- provide for (regional) procurement and administration of ancillary services, including balancing and regulation services;
- provide for (regional) transmission planning (including appropriate cost-allocation);
- provide for generating resource adequacy (capacity planning);
- provide for market monitoring functions, including effective mitigation of potential market power;
- provide for transmission interconnection and integration of qualified demand-side management resources into the wholesale energy, capacity, and ancillary services markets;
- provide for transmission interconnection and integration of qualified renewable energy resources into the wholesale energy, capacity, and ancillary services markets;
- provide for short-term reliability on the interconnected grid;
- provide for identification and effective resolution of "seams issues" with neighboring RTOs; and
- provide all of the above in a cost-effective and efficient manner that is superior to the existing RTO construct.

FirstEnergy Initial Comments at 24. FirstEnergy also suggests any RTO alternative would need to satisfy the requirements of FERC's *Louisville Gas & Electric*¹¹ decision.¹²

While FirstEnergy correctly identifies functions that are presently being performed by PJM or MISO, these activities are well in excess of what is required under Ohio law. These functions provide evidence of the scope creep that RTOs have embarked upon at the behest of FERC and supplier interests. There is nothing in Ohio law that requires utilities to be members of a FERC Order 2000 compliant RTO. In fact, the effective date of Amended Substitute Senate Bill 3 ("Am. Sub. S.B. 3"), which created the requirement for Ohio utilities to transfer control of their transmission facilities to a "qualifying transmission entity," predates the issuance of Order 2000.

Ohio's statute prescribes nine specifications that a qualifying transmission entity must demonstrate. These include:

- (1) The transmission entity is approved by the federal energy regulatory commission.
- (2) The transmission entity effects separate control of transmission facilities from control of generation facilities.
- (3) The transmission entity implements, to the extent reasonably possible, policies and procedures designed to minimize pancaked transmission rates within this state.
- (4) The transmission entity improves service reliability within this state.
- (5) The transmission entity achieves the objectives of an open and competitive electric generation marketplace, elimination of barriers to market entry, and preclusion of control of bottleneck electric transmission facilities in the provision of retail electric service.

¹¹ *Louisville Gas & Electric Co. et al.*, 114 FERC ¶ 61,282 (2006), *order on rehearing*, 116 FERC ¶ 61,020 (2006).

¹² FirstEnergy Initial Comments at 24.

(6) The transmission entity is of sufficient scope or otherwise operates to substantially increase economical supply options for consumers.

(7) The governance structure or control of the transmission entity is independent of the users of the transmission facilities, and no member of its board of directors has an affiliation, with such a user or with an affiliate of a user during the member's tenure on the board, such as to unduly affect the transmission entity's performance. For the purpose of division (B)(7) of this section, a "user" is any entity or affiliate of that entity that buys or sells electric energy in the transmission entity's region or in a neighboring region.

(8) The transmission entity operates under policies that promote positive performance designed to satisfy the electricity requirements of customers.

(9) The transmission entity is capable of maintaining real-time reliability of the electric transmission system, ensuring comparable and nondiscriminatory transmission access and necessary services, minimizing system congestion, and further addressing real or potential transmission constraints.

Section 4828.12(B), Revised Code. Although there are similarities between the functionality required by Section 4928.12(B) and the functions defined in FERC Order 2000, the requirements are not identical. Thus, Ohio law does not require the qualifying transmission entity to provide the full range of Order 2000 functionality suggested by FirstEnergy.¹³

FirstEnergy offers no citation support for its claim that any RTO alternative must satisfy requirements of FERC's *Louisville Gas & Electric* decision. If anything, that case, in which a utility with a merger condition requiring its transmission assets be operated by an independent entity successfully withdrew from MISO, reinforces that

¹³ In fact, the list of RTO functions identified by FirstEnergy in its initial comments goes well beyond the eight RTO functions required under Order 2000. For example, there is no mention in Order 2000 of having RTOs undertake generation resource planning (capacity planning). FERC thrust Eastern RTOs into this role when it became evident that regional electricity markets were not performing to expectations and regulatory intervention was required.

RTO participation is voluntary.¹⁴ FirstEnergy also ignores that FERC has increasingly looked at non-RTO options to further regional transmission coordination. For example, FERC has approved regional transmission planning consortiums to comply with Order 890,¹⁵ such as the Northern Tier Transmission Group.¹⁶ FERC has also approved non-RTO regional transmission pricing arrangements to eliminate rate pancaking.¹⁷

AEP suggests that RTOs have produced some very real but hard to quantify benefits, but at the same time have produced some results that are adverse to the interest of AEP's customers.¹⁸ As examples of results that are adverse to its customers, AEP cites higher reserve margins,¹⁹ PJM's treatment of marginal losses,²⁰ and FERC's regional transmission pricing policies.²¹ AEP concludes that it is not clear that PJM's regional economic dispatch is providing any incremental value to AEP's customers.²²

DP&L believes that membership in an RTO provides benefits, but that many of these benefits are not inherently related to the structure of RTOs and could have been obtained through other means.²³ However, as a practical matter for an Ohio utility, because both PJM and MISO are now RTOs, DP&L believes there are limited opportunities to capture such benefits in the absence of RTO participation.²⁴ DP&L is concerned about increasing costs associated with regional cost allocation for new high

¹⁴ Louisville Gas and Electric satisfied the requirement for independent operation of its transmission facilities after exiting MISO by contracting with two other parties to independently perform operational and reliability functions.

¹⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

¹⁶ *Idaho Power Company, et al.*, 124 FERC ¶ 61,053 (2008).

¹⁷ *WestConnect*, 126 FERC ¶ 61,105 (2009).

¹⁸ AEP Initial Comments at 6.

¹⁹ *Id.* at 11.

²⁰ *Id.* at 13.

²¹ *Id.* at 19.

²² *Id.* at 10-11.

²³ DP&L Initial Comments at 5-6.

²⁴ *Id.* at 6.

voltage transmission facilities, and DP&L worries that it may face significant costs but receive no discernable benefit.²⁵ DP&L requests that the Commission take no immediate action in this proceeding, but urges the Commission to allow Ohio utilities to reserve the right to withdraw from their existing RTOs and pursue alternative arrangements should this be advantageous to the utility and its customers at some point in the future.²⁶

PJM and MISO filed extensive comments describing how they believe the markets they operate provide benefits. PJM asserts that RTO benefits from reliability and scale economies are regional in nature and do not lend themselves to allocation on a state or specific geographic regional level.²⁷ MISO, likewise, suggests that the nature of its markets makes it impossible to predict to whom individual benefits accrue.²⁸ However, both RTOs contend that FERC's Order 2000 goals are being realized.²⁹

There is a profound difference on how Ohio customers, and to a lesser extent Ohio EDUs, view the performance of RTOs versus how the RTOs themselves gauge their performance. The Citizens Coalition believes RTOs do not adequately represent its interests.³⁰ Citizen Power, while recognizing RTOs have increased reliability, believes the markets operated by RTOs have increased electricity prices for consumers.³¹ Citizen Power recommends a return to traditional cost-based regulation, or otherwise examining the feasibility of transitioning to an Ohio-only RTO with adoption

²⁵ *Id.* at 8-9.

²⁶ *Id.* at 10-11.

²⁷ PJM Initial Comments at 5.

²⁸ MISO Initial Comments at 11.

²⁹ PJM suggests the PCO take judicial notice of FERC's determination in Order 890. PJM Initial Comments at 10. MISO states that "[t]here is no question that FERC's Order 2000 goals of promoting wholesale electric market efficiency and ensuring lowest possible electric prices have been realized and continue to be improved upon in the Midwest ISO." MISO Initial Comments at 7.

³⁰ Citizens Coalition Initial Comments at 4-5.

³¹ Citizen Power Initial Comments at 4-6.

of the American Public Power Association's ("APPA") Competitive Market Plan to reform RTO markets.³² OCC does not believe that there are cost effective alternatives to RTO participation.³³ However, OCC does not believe RTOs place appropriate emphasis on retail customer value.³⁴ Therefore, OCC urges the Commission to consider several RTO reforms.³⁵ IEU-Ohio urged the Commission to find that continued participation in RTO markets was not in the interest of Ohio's consumers.³⁶

The disconnect between RTO and customer perceptions and expectations can be explained, in part, by contrasting RTO goals and mission statements against FERC's expectations in Order 2000. FERC promulgated Order 2000 based upon anticipating that RTOs would lower electricity costs for retail customers:

Regional institutions can address the operational and reliability issues now confronting the industry, and eliminate any residual discrimination in transmission services that can occur when the operation of the transmission system remains in the control of a vertically integrated utility. Appropriate regional transmission institutions could: (1) improve efficiencies in transmission grid management; (2) improve grid reliability; (3) remove remaining opportunities for discriminatory transmission practices; (4) improve market performance; and (5) facilitate lighter handed regulation.

Thus, we believe that appropriate RTOs could successfully address the existing impediments to efficient grid operation and competition and could consequently benefit consumers through lower electricity rates resulting from a wider choice of services and service providers. In addition, **substantial cost savings are likely to result from the formation of RTOs.**

Regional Transmission Organizations, 89 FERC ¶ 61,285 (December 20, 1999) at 3 (emphasis added) (footnotes omitted). FERC quantified that its best estimate of

³² *Id.* at 2.

³³ OCC Initial Comments at 42-44.

³⁴ *Id.* at 44-46.

³⁵ *Id.* at 8-10.

³⁶ IEU-Ohio Initial comments at 8 and 51.

savings to ultimate customers from lower electricity prices was \$2.4 billion annually, and that it could range as high as \$5.1 billion, representing 1.1 to 2.4 percent of total electricity costs.³⁷

In their initial comments in this proceeding, both PJM and MISO identified their perceived roles. PJM stated:

PJM administers a set of rules and market clearing procedures that govern how participants can buy and sell energy and related services in the wholesale market. PJM's goal is to be sure, to the extent possible within reliability constraints, that at any moment in time the least expensive set of generating resources is operating to serve the regional electricity demand.

PJM Initial Comments at 4.

MISO conveyed its formal mission statement:

The Midwest ISO will provide our customers with valued services, reliable systems and operations, dependable and transparent pricing, open access to markets, and planning for long-term efficiency.

MISO Initial Comments at 1.

In contrast to Order 2000, neither PJM nor MISO identify as a goal or objective reducing electricity costs for ultimate retail customers. Both PJM and MISO convey a task-oriented management philosophy, rather than an objective-based approach.

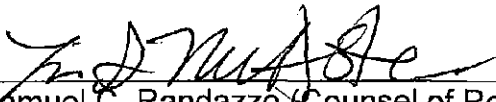
As IEU-Ohio noted in its initial comments:

The Commission and the federal energy advocate have been statutorily tasked with examining the value of RTO participation and whether continued participation by Ohio utilities is *in the interest of consumers*. Answering this question will require the Commission to examine the objectives of RTOs to see if they are designed to serve the interest of consumers. If the RTOs are not designed and operated to this end, then any positive relationship between RTOs and the interest of consumers is purely happenstance.

³⁷ *Id.* at 95.

IEU-Ohio Initial Comments at 49. The task-oriented management philosophy of PJM and MISO has rendered the organizations oblivious to the impact their markets are having on ultimate customers. In their comments in this proceeding, Ohio consumer representatives have stated that RTO market performance is not proving of value to Ohio customers. Therefore, IEU-Ohio reiterates that the Commission should find that it is not in the public's or the customers' interest to continue to permit (1) participation in RTOs, as such participation may relate to "Day 2" market structures; and, (2) EDUs to pass on the cost of RTO participation to Ohio retail customers until they make an affirmative demonstration that the direct customer benefits of the RTO selections (made by the EDUs or their affiliates) exceed the costs.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO* was served upon the following parties of record this 24th day of July, 2009, via electronic transmission, hand-delivery or ordinary U.S. mail, postage prepaid.



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