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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Proposal of FirstEnergy Service Company to Modify its RTO Participation.	)))	Case No. 09-778-EL-UNC

COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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On August 17, 2009, First Energy Service Company ("FirstEnergy"), acting on behalf of six of its affiliates, requested that the Federal Energy Regulatory Commission ("FERC") approve the termination of American Transmission Systems, Incorporated's ("ATSI") status as a transmission operator, owner, and local balancing authority in the Midwest Independent Transmission System Operator, Inc. ("MISO") as well as several other related requests. FirstEnergy's proposal would consolidate its transmission operations into the PJM Interconnection ("PJM"). FirstEnergy's proposal also includes a timeline for the aforementioned withdrawal and consolidation, timelines for certain regulatory approvals, proposals for settling its obligations with both MISO and PJM, and proposed allocations for regional transmission planning costs.

On September 4, 2009, the Public Utilities Commission of Ohio ("Commission") issued an Entry in this proceeding seeking public comment upon the impact of the proposed regional transmission organization ("RTO") realignment on interested stakeholders in this state, and requesting written comments from stakeholders by September 25, 2009.

On September 18, 2009, the Industrial Energy Users-Ohio ("IEU-Ohio") filed a motion to intervene in this proceeding.

Pursuant to the September 4, 2009 Entry, IEU-Ohio submits its written comments for the Commission's consideration.[1]

I. INTRODUCTION

FirstEnergy is requesting that FERC approve two elements of its application by December 17, 2009. The first element is an integration plan for transitioning FirstEnergy into PJM's Reliability Pricing Model ("RPM"). The second element addresses cost allocation and responsibility for regional transmission expansion projects that have been approved by MISO or PJM. FirstEnergy indicates that a decision by December 17, 2009 will allow its board to have adequate time to decide whether to proceed with the RTO migration in advance of February 1, 2010, which is the deadline for submitting load and generation data to PJM for the May 2010 RPM Base Residual Auction ("BRA") for planning year 2013-2014.[2]

FERC's precedent is that RTO participation is voluntary. As such, IEU-Ohio believes that as long as FirstEnergy satisfies any contractual obligation to exit MISO and join PJM, satisfies any outstanding merger conditions, and demonstrates that its proposed transition plan is just and reasonable, FERC will be inclined to support FirstEnergy's RTO election. However, as proposed, aspects of FirstEnergy's transition plan to transfer to PJM are unreasonable and must be modified. Specifically, FirstEnergy's transition plan to integrate into RPM is flawed, does not recognize Ohio's statutory requirements to achieve energy efficiency improvements and peak demand reductions, and will not result in just and reasonable prices. Simultaneously with this

[1] IEU-Ohio is filing a Protest at the Federal Energy Regulatory Commission on September 25, 2009 jointly with the Coalition of Midwest Transmission Customers and the PJM industrial Customer Coalition that reflects many of the issues addressed in these comments.

[2] *FirstEnergy Service Company,* Application at 13, FERC Docket No. ER09-1589-000 (August 17, 2009) ("FERC Application").

filing, IEU-Ohio is requesting that FERC direct FirstEnergy to amend its application to address these concerns and structure the integration auctions to ensure just and reasonable prices. IEU-Ohio's specific concerns regarding FirstEnergy's proposal are detailed herein.

II. COMMENTS

A. FirstEnergy's Proposed FRR Integration Plan is Vague.

FirstEnergy requests approval to fully participate in the PJM May 2010 BRA that will be used for planning year 2013-2014, and for approval of a transitional mechanism to apply for planning years 2011-2012 and 2012-2013.[3] Under this "transitional mechanism," what FirstEnergy refers to as the Fixed Resource Requirement ("FRR") Integration Plan, PJM will conduct separate "one-off" integration auctions for both planning years by no later than April 20, 2010.

FirstEnergy's FRR Integration Plan is vague and offers little in the way of specifics for how the plan will be implemented. It appears that the capacity requirements during the term of the FRR Integration Plan are based on PJM's calculation of a "Forecast Pool Requirement" for each of the 2011-12 and 2012-13 delivery years. FirstEnergy states that the "Forecast Pool Requirement" will be calculated pursuant to PJM's Resource Adequacy Agreement guidelines. Presumably, the results of PJM's calculations drive the amount of capacity required for the auctions. FirstEnergy's proposal is absent any further explanation of how the capacity is determined, including how statutory requirements for FirstEnergy's Ohio electric distribution companies to achieve energy efficiency improvements and peak demand reductions will be recognized.

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[3] *Id.* at 28.

B. FirstEnergy's Proposed Integration Plan Fails to Recognize Ohio Statutory Requirements to Achieve Energy Efficiency Improvements and Peak Demand Reductions.

The integration auctions proposed for 2011-12 and 2012-13 do not recognize the obligation on Ohio distribution utilities to achieve peak demand reductions and energy efficiency improvements.[4] By failing to recognize these requirements in its proposed integration auctions, which will result in lower overall demand, FirstEnergy is artificially increasing the amount of capacity to be procured in the incremental auctions. This will increase both the overall quantity and price of all capacity cleared in the incremental auctions, resulting in prices that are not just and reasonable.[5]

The Ohio electric distribution companies of FirstEnergy (Cleveland Electric Illuminating Company, Ohio Edison Company and The Toledo Edison Company), as parties to this application, have a responsibility to ensure that the integration auctions adhere to Ohio's statutory requirements to achieve energy efficiency improvements and peak demand reductions. The failure of the Ohio distribution companies to make the necessary modifications to the integration auctions to recognize Ohio's statutory requirements may lead to future state level proceedings regarding the prudency of such

[4] Ohio Rev. Code Ann. §4928.66 requires electric distribution utilities to implement energy efficiency and peak demand reduction plans beginning in 2009. In 2009, energy efficiency initiatives must reduce kilowatt-hours sales by three tenths of one percent relative to historical baselines. The savings requirement increases an additional five-tenths of one percent in 2010, seven-tenths of one percent in 2011, eight-tenths of one percent in 2012, nine-tenths of one percent in 2013, one percent from 2014 to 2018, and two percent each year thereafter, achieving a cumulative, annual energy savings in excess of twenty-two percent by the end of 2025. Beginning in 2009, an electric distribution utility is required to implement peak demand reduction programs designed to achieve a one percent reduction in peak demand in 2009 and an additional seventy-five hundredths of one percent reduction each year through 2018. If an electric distribution company fails to meet these requirements, Ohio Rev. Code Ann. §4928.66(C) requires the Commission to impose a forfeiture.

[5] FERC has recognized that demand response directly affects wholesale rates. Therefore, reducing barriers to demand response is a necessary part of fulfilling responsibilities under Sections 205 and 206 of the Federal Power Act to ensure just and reasonable rates. *Wholesale Competition in Regions with Organized Electric Markets, Order 719-A,* 128 FERC ¶ 61,059 (2009) at P 47.

actions.[6] IEU-Ohio has identified these concerns to FirstEnergy and is engaged in discussions to determine whether these concerns can be resolved. However, given that the incremental auctions would not result in just and reasonable prices for the reasons discussed, IEU-Ohio is requesting that FERC not accept FirstEnergy's application at this time. Instead, IEU-Ohio is requesting that FERC direct FirstEnergy to amend its application to address these concerns and structure the integration auctions to ensure just and reasonable prices.

In this proceeding, IEU-Ohio requests that the Commission provide FirstEnergy notice that the failure of its Ohio distribution companies to take action to appropriately recognize statutory requirements to achieve energy efficiency and peak demand reductions may be subject to future review by the Commission.

IEU-Ohio believes there are modifications to the integration auctions that could be adopted by FirstEnergy and PJM to recognize Ohio's statutory requirements. For example, to the extent that FirstEnergy can point to specific and known demand response resources that will meet PJM's requirement to be a Capacity Resource, the FRR forecast could be reduced by the amount of demand response that will be provided by those resources. Maintaining PJM's Interruptible Load for Reliability ("ILR") option for planning year 2011-2012 would also provide a vehicle through which FirstEnergy's Ohio distribution companies could commit additional resources to reduce peak demand. Energy efficiency improvements planned to comply with Ohio's requirements could also serve to explicitly reduce the RPM load forecast. In any event, the FRR forecast should be reduced to recognize the full statutory obligation on Ohio distribution utilities to achieve peak demand reductions and energy efficiency improvements.

[6] It appears that the terms of the integration auctions were based upon bilateral discussions between FirstEnergy and PJM.

FirstEnergy's request for approval to participate in the May 2010 and May 2011 BRA (for the 2013-2014 and 2014-2015 delivery years, respectively) as a buyer of capacity suffers from many of the same shortcomings as its FRR Integration Plan. FirstEnergy identifies that the three year forward nature of PJM's RPM requires participation in the May 2010 BRA, which will occur before FirstEnergy's proposed June 1, 2011 integration date. However, FirstEnergy's application is silent on how its Ohio electric distribution companies, as buyers in the BRA, will reflect their statutory obligations to reduce peak demand.[7]

IEU-Ohio believes that FirstEnergy's Ohio distribution companies are responsible to ensure that the amount of capacity obtained through the BRA is not artificially inflated as a result of excluding peak demand reductions and energy efficiency savings that are obligatory under Ohio law. However, IEU-Ohio does not believe that any explicit modifications are required to the May 2010 BRA to allow the peak demand reductions obligation of FirstEnergy's Ohio distribution companies to be recognized. To the extent that FirstEnergy can identify specific demand response resources that meet PJM's RPM definition of a Capacity Resource, these resources can be offered by FirstEnergy into the BRA.[8] If FirstEnergy is not able to identify specific demand response resources that meet PJM's definition of a Capacity Resource it could, nevertheless, offer planned demand response into the BRA in a quantity sufficient to reflect its Ohio distribution company statutory obligations. IEU-Ohio is requesting that FERC confirm that such actions are permitted by FirstEnergy. To the extent that FERC does not provide such

[7] As previously noted, by calendar year 2013, Section 4928.66, Revised Code, requires electric distribution companies to reduce peak demand by four percent from historical baseline levels.

[8] This would require FirstEnergy to have a service relationship with the customer, either through a contract or rate schedule that would permit FirstEnergy to offer the demand response as a capacity resource. Section 4928.66(A)(2)(c), Revised Code, allows mercantile customers to commit their ability to reduce peak demand towards the distribution company's obligation.

confirmation, alternative approaches will be required in order to allow Ohio's statutory obligations to be respected.

In the course of identifying steps that must be taken in order to ensure that PJM's RPM process and FirstEnergy's integration plan appropriately address Ohio's statutory requirements, it is important that this Commission recognize that it has unfinished business that creates impediments towards a constructive resolution of these issues. The Commission's rules to implement Ohio's energy efficiency and peak demand requirements remain a work in progress with an uncertain timeline for completion. The initial rules proposed by the Commission lack practicality and are in some instances inconsistent with the law.[9] For example, the Commission has suggested that in order to count a customer's load towards its peak demand reduction obligation, the Ohio distribution company must physically interrupt the load. IEU-Ohio and others have identified that this requirement is fundamentally inconsistent with requirements such as PJM's RPM structure. Resolving concerns on how FirstEnergy's integration plan for RPM will produce just and reasonable rates and comply with Ohio's statutory requirements requires that the Commission bring some closure and certainty on how Ohio electric distribution companies can comply. Inaction by the Commission may lead to outcomes that result in higher costs to Ohio customers.

[9] For the sake of brevity, IEU-Ohio does not plan to reiterate its position regarding the proposed rules, but incorporates by reference its May 15, 2009 Application for Rehearing and Memorandum in Support in Case No. 08-888-EL-ORD.

C. There Should Be No Determination that any Exit Fees Incurred by FirstEnergy are Prudent.

In its application, FirstEnergy acknowledges that it will be required to pay MISO an exit fee.[10] However, FirstEnergy does not estimate the amount of the exit fee and indicates it plans to work with MISO to confirm the exit fee. FirstEnergy plans to make a supplemental filing once it has negotiated an exit fee with MISO. The application is silent on whether ATSI plans to seek cost recovery of the exit fee from customers.

In similar proceedings, FERC has held that it will address the issue of whether any RTO exit fees can be recovered from customers in any subsequent Section 205 proceeding specifically seeking cost recovery. Consistent with that precedent, IEU-Ohio is requesting that FERC not make any determination with regard to the prudence or reasonableness of exit fees or other costs resulting from the proposed withdrawal.[11] Such costs, and whether or not they were prudently incurred and/or are reasonable can be determined in subsequent proceedings.

D. The Proposed Cost Allocation for Regional Transmission Projects is Flawed.

FirstEnergy proposes a plan to address issues with respect to costs for regional transmission expansion projects in MISO and PJM due to differences in how the RTOs allocate these costs. FirstEnergy seeks FERC approval for an alternative cost allocation methodology to apply only to FirstEnergy, for a transitional period.[12] In the case of MISO, the costs associated with regional transmission projects are allocated on

[10] FERC Application at 23.

[11] *Duquesne Light Co.*, 126 FERC ¶ 61,074 at P 39 (Jan. 29, 2009).

[12] FERC Application at 35.

a one-time basis at the time the MISO board approves the project.[13] A formula is applied to calculate each transmission owner's allocation share of the cost of the project, and this cost allocation remains fixed for the life of the facility.

PJM allocates the costs of regional transmission projects differently, allocating costs on an annual basis based on each utility's annual load ratio share.[14] In PJM, if a transmission owner exits the RTO, the departing member's share of the cost of regional transmission projects is reallocated to the remaining members in the following year. On the other hand, if a transmission owner joins an RTO, the typical practice is to include that new transmission owner's load as part of the load ratio share calculation.

FirstEnergy claims the differences in cost allocation methodology would result in an inequitable situation for ATSI and for other load serving entities ("LSEs") in its zone, likely causing ATSI to be responsible for regional transmission projects in two different RTOs planned during the same time period.[15] To avoid the potential for double-payment, FirstEnergy is requesting FERC to allow ATSI to pay its share of regional transmission projects costs that were approved while it was a MISO member, but not require ATSI to pay any share of PJM projects approved before ATSI becomes a member of PJM.[16] In order to implement this cost allocation approach, FirstEnergy suggests that FERC consider granting ATSI a waiver of legacy PJM regional transmission expansion planning ("RTEP") charges. In the alternative, if FERC is not willing to grant a waiver, FirstEnergy would submit a specific application at FERC prior to integration into PJM that would identify specific RTEP projects for which ATSI should

[13] *Id.* at 39; Midwest ISO Ancillary Services Market Tariff, Attach. FF § III.A.2.C.ii.

[14] *Id.* at 40.

[15] *Id.*

[16] *Id.* at 42-43.

not have cost responsibility. A third option proposed by FirstEnergy would be for ATSI to file a formal complaint at FERC seeking relief from otherwise applicable charges.[17]

The allocation of the costs of regional transmission projects is a matter subject to FERC jurisdiction. FirstEnergy has raised a legitimate concern on the allocation of the costs of regional transmission projects. However, IEU-Ohio believes FirstEnergy's proposed remedy is flawed. From a planning perspective, expansion projects will need to recognize FirstEnergy's RTO status once a FERC decision is rendered. Thus, IEU-Ohio believes it would be more appropriate for ATSI to assume responsibility for PJM projects approved on and after the date of a FERC order approving ATSI's migration into PJM, rather than waiting until June 1, 2011 for that obligation to start. Likewise, ATSI should no longer be responsible for MISO projects approved after the date of a FERC order approving ATSI's migration into PJM. At a minimum, the cutover date for transmission planning and transmission cost allocation should be the date on which FirstEnergy confirms, in writing, its intent to move from MISO to PJM. This common sense approach recognizes that MISO should not plan for ATSI and PJM should plan for ATSI as if FirstEnergy will be transferring operational control effective June 1, 2011. The RTOs should not wait until that date to reflect the move in their planning processes. The proposal also recognizes the fact that ATSI should not pay for costs for which it receives no benefit, but does not permit it to escape its obligations to pay for projects once it has become a member of PJM.

III. CONCLUSION

For the reasons explained above, IEU-Ohio urges the Commission to provide FirstEnergy notice that the failure of its Ohio distribution companies to take action to

[17] *Id.* at 45.

appropriately recognize statutory requirements to achieve energy efficiency and peak demand reductions may be subject to future review by the Commission. Additionally, IEU-Ohio urges the Commission to work with FirstEnergy and stakeholders to address the necessary modifications to the integration plan that will meet RPM requirements and simultaneously satisfy Ohio's energy efficiency and peak demand requirements.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 25th day of September 2009, via first class mail, postage prepaid.

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