

1 MEETING OF THE PUBLIC UTILITIES COMMISSION OF OHIO

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3 In the Matter of: :
4 The FirstEnergy Service : Case No. 09-778-EL-UNC
5 Company to Modify its RTO :
6 Participation. :

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7 Meeting of the Public Utilities Commission of Ohio,
8 180 East Broad Street, Room 11-B, Columbus, Ohio,
9 called at 2:30 a.m. on Thursday, January 7, 2010.

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11 COMMISSION:

12 Commissioner Alan R. Schriber, Chair
13 Commissioner Paul A. Centolella
14 Commissioner Ronnie Hartman Fergus
15 Commissioner Valerie A. Lemmie
16 Commissioner Cheryl Roberto

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PUBLIC UTILITIES COMMISSION OF OHIO:

Mr. Paul Duffy
Ms. Kimberly Bojko

PRESENTERS:

Mr. Brian A. Farley
Director FERC & RTO Policy

Mr. Stanley F. Szwed, Vice President
and Chief FERC Compliance Officer,
FirstEnergy Corporation.

Mr. Robert P. Reffner
Vice President, Legal

Mr. Michael R. Beiting, Associate General
Counsel, FirstEnergy Corporation.

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1 Thursday Afternoon Session,
2 January 7, 2010.

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4 CHAIRMAN SCHRIBER: Let's reconvene
5 today's meeting. First of all, we would like those
6 who are here to present to introduce themselves for
7 the record.

8 MR. SZWED: I am Stan Szwed, vice
9 president of FERC policy and compliance for
10 FirstEnergy.

11 MR. REFFNER: I am Robert Reffner, vice
12 president of Legal for FirstEnergy.

13 MR. BEITING: I am Michael Beiting,
14 associate general counsel, head of the Federal
15 Regulatory Group at FirstEnergy.

16 MR. FARLEY: I'm Brian Farley. I'm the
17 director of FERC and RTO policy for FirstEnergy.

18 CHAIRMAN SCHRIBER: Thank you. This is
19 Case No. 09-778-EL-UNC.

20 Thank you all for making it down here
21 today. I think our request is fairly simple at the
22 outset. I'm sure there are subplots that will take
23 us perhaps a little bit deeper, but basically our
24 concern -- and I hope I speak for my colleagues. If
25 I don't, clearly they can weigh in. But our concern

1 is, first of all, we want to be assured that, at
2 worst, our consumers are not going to be worse off,
3 and at best, they will be much better off. I think
4 we need comfort in having that understanding.

5 And if you all have a presentation, did I
6 articulate that pretty fairly?

7 MR. REFFNER: Yes.

8 CHAIRMAN SCHRIBER: Thank you. Then, I
9 think you all had indicated you wanted to make a
10 presentation.

11 MR. REFFNER: I think it will be relevant
12 to that, Mr. Chairman. I think we have some
13 materials for you to lay out the benefits of moving
14 into PJM.

15 CHAIRMAN SCHRIBER: This is Mr. Reffner
16 speaking, for the record.

17 MR. REFFNER: So with that, why don't we
18 hand the materials out and get started. Stan Szwed
19 is going to speak to the first part of this and
20 Mr. Farley will speak to the second part. We thought
21 it would be helpful, knowing you want to get down to
22 business here, it would be helpful to cover just
23 briefly some of the headlines of the move that had
24 previously been presented to the Commission and are
25 expressed in our filings. We don't to intend to

1 spend a lot of time on it, but I think it is a
2 beneficial table setting for deeper discussions.

3 With that, Stan.

4 MR. SZWED: Mr. Chairman, Commissioners,
5 thank you again for the opportunity to come before
6 you. As Bob said, the first seven or eight pages of
7 the handout lay out our overall reasoning and
8 rationale for making the request to FERC to move our
9 ATSI transmission assets and so forth over into PJM.

10 In face, a lot of the material in the
11 first eight or nine pages is what I came here before
12 back on September 15, what I shared with all of you,
13 so I will not go through those pages in detail. But
14 I would like to make a couple of key points coming
15 out of it.

16 You know, we really do see benefits to
17 customers, as well as to the company, as a result of
18 this move from two major standpoints. The first is
19 our overall transmission operations. When you take a
20 look at several of the charts that are depicted here
21 involving -- that depict our 32 interconnections with
22 the PJM companies versus three with MISO and you look
23 at where FirstEnergy and our transmission system is
24 positioned along the MISO/PJM seam, consolidating all
25 of our transmission operations and those

1 interconnections into one RTO makes this more
2 efficient for us, more effective for us to offer a
3 transmission, more effective for the RTO to operate.

4 All that would be under one RTO operator,
5 PJM. All of that would be coordinated by one RTO
6 with one reliability coordinator to maintain
7 reliability across all of the FirstEnergy footprint.
8 And we believe it eliminates a significant amount of
9 coordination that has to take place relative to our
10 32 interconnections along the seam, as you look at
11 those pictures, in comparison to a simplified seam of
12 having coordination take place at the three points
13 between Ohio and Michigan

14 So that is significant for the long run
15 for both long-term and short-term operations of the
16 FirstEnergy transmission system, and we will see
17 those benefits passed along to customers. We see
18 savings from the standpoint of having to comport with
19 one set of reliability requirements and one set of
20 operating protocols as opposed to two. We see
21 ourselves operating and participating in one RTO
22 which has savings on people and so forth, and we can
23 get into a little more of the details of that in a
24 few minutes.

25 The second major point is -- and I said

1 the same thing when I was here on September 15 -- we
2 really see that participation in PJM for a company
3 that is structured like us, very limited, a retail
4 competitive environment, we really see that the
5 markets and structure of PJM and their processes and
6 protocols provide for retail choice in a better way
7 than what we see at PJM.

8 That includes their markets in terms of
9 how capacity is planned for and secured and acquired,
10 and it includes how to handle retail choice in
11 switching for customers and how all of that is
12 processed. We find that that is just a much better
13 position, as well as when you consider the footprint
14 itself, the makeup of all the participants, the
15 significant amount of retail choice that takes place,
16 and the number of competitive suppliers, we see all
17 of that providing benefits to customers.

18 So with that, you know, that was very
19 much the theme that when we came here back in
20 September, and that was the theme of what we put
21 before FERC. That was pretty much what we had said
22 before.

23 We will be turning towards page 9, and at
24 this point I will turn it over to Brian. And this is
25 going to get into a little bit more of the

1 quantification.

2 MR. REFFNER: Do you want to touch upon,
3 Stan, the energy price slide and the timetable?

4 MR. SZWED: Maybe just to back up real
5 quick, you recall that I know there was always a lot
6 of questions about energy price differentials between
7 the two footprints. I draw your attention again to
8 chart 6, which shows comparative annual average LMPs,
9 you know, MISO and PJM, and very specifically the
10 middle box talking about where the ATSI footprint is
11 in comparison to others in the region, like Cinergy,
12 AEP and Chicago, if you will, more on the western
13 side. As you can see, our energy prices compare very
14 favorably, and we expect that to continue, if not
15 improve.

16 Secondly, on chart 8, we just updated
17 that chart from what you previously saw when I came
18 here before just to recognize the FERC approving our
19 move to PJM and picking up on the dates that we had
20 included in the integration plan that was part of our
21 original filing.

22 So with that, I'd like to turn your
23 attention to chart 9, and then turn it over to Brian
24 to get more specific about what the impacts would be
25 to customers. Brian.

1 MR. FARLEY: Okay. Thank you, Stan.

2 MR. REFFNER: I should say that we have
3 prepared the customer impact analysis after having
4 conversations with Steve and others about your
5 interest to see it on per-customer basis. This was
6 prepared in preparation for this meeting in
7 connection with our rates departments.

8 MR. FARLEY: Right. What we did in here,
9 we have estimated the standard rate residential
10 customer typically using 750 kilowatt-hours per
11 month, as the case we are using, and the first line
12 of numbers say current monthly electric bill. And
13 all we did there is we said based on current prices,
14 assuming the May 2009 auction price, establishes the
15 generation price.

16 So that was our starting point, and a
17 typical 750 kilowatt-hour per month standard rate
18 residential customer pays \$89.25. From that we
19 subtract the benefits that we have been able to
20 quantify. And I will say the net benefits, so it's
21 benefits less the costs that we believe -- at least
22 what we have been able to quantify from the benefits
23 side, and we do think we've captured all of the costs
24 here, and there is list below as far as what benefits
25 we included.

1 And before I get to those, you can see
2 that in the first year that \$89.25 per month customer
3 would see a reduction in their bill of around 58
4 cents, and that goes across time through 2014 where
5 they still stay around 3 cents a month.

6 The benefits that we used to calculate
7 this are, one, the PJM administrative cost savings.
8 If you recall, PJM calculated an administrative
9 benefit to customers. PJM has lower administrative
10 costs than the Midwest ISO, and by us joining we
11 would share in those lower costs.

12 Second is PJM also performed a dispatch
13 calculation for the move, and basically PJM believes
14 that because of the strong interconnection between
15 FirstEnergy and PJM, there would be efficiencies
16 gained in the day-ahead unit commitment for
17 generation. And PJM calculated the savings
18 associated with that, specifically for the ATSI
19 footprint.

20 And finally, there are some internal
21 savings that FirstEnergy would realize from this
22 move. As Stan mentioned, just streamlined
23 operations. Those savings would be passed on to
24 customers through our formula rate filings at FERC,
25 our reduced transmission costs.

1 The costs that we included in this
2 analysis were the exit fees from the Midwest ISO.
3 Midwest ISO, we used Midwest ISO's number of
4 \$34.5 million; the PJM entry costs, which are
5 estimated at around \$5 million by PJM, and then
6 finally we included a projection of an annual revenue
7 requirement of the legacy RTEP costs for the
8 transmission expansion charges that would be applied
9 to FirstEnergy if we were unable to reduce those at
10 FERC.

11 And I will also say that the legacy RTEP
12 projects have an assumption that all of the projects
13 that are proposed today in PJM and approved in PJM
14 get billed. And the reality is there are a couple of
15 projects that have recently announced they will be
16 delayed by at least two years, so we didn't assume
17 any delays at this point.

18 As you can see, the quantified benefits
19 more than offset the estimated costs. And then I
20 have another bullet here that says there are also
21 many other benefits that we have not been able to
22 quantify at this point, for example, if PJM has many
23 competitors, and we would expect that with the move
24 we may see more competition in the ATSI footprint
25 associated with the move.

1 PJM has enhancements to their energy
2 efficiency and demand response programs that we
3 believe would result in savings, so we have that
4 quantified here. As Stan mentioned, PJM has software
5 systems that accompany retail choice at settlements.
6 We believe there are savings there for suppliers and
7 ultimately for customers.

8 And then finally we did not -- with the
9 PJM capacity market, suppliers, whether they are
10 retail for POLR suppliers, will know that capacity is
11 available at a specific price ahead of POLR auctions
12 or retail shopping, and we believe that will result
13 in reduced premiums that suppliers would add to the
14 retail price.

15 So at the end of day, we believe the
16 quantified benefits exceed the costs we have
17 submitted, and we believe there are even additional
18 benefits for customers above and beyond what we have
19 been able to quantify.

20 I will go on to say there are some backup
21 calculations for these numbers. Page 15 of your
22 presentation, it gives you an idea of the costs that
23 were used and the revenue -- I'm sorry, the benefits
24 that were used to come up with a net quantified
25 benefit.

1 With that, I can take some questions on
2 that. Would that be appropriate?

3 COMMISSIONER LEMMIE: Thank you. We
4 appreciate your being here on such a snowy day. But
5 I did want to ask, where are you reflecting your MISO
6 MTEP costs?

7 MR. FARLEY: We did not include the MISO
8 MTEP costs in this. I shouldn't say it is not in
9 this. Embedded in the \$89.25 customers are paying
10 today for MTEP costs, and we just assumed that for
11 this analysis they would be the same.

12 But however, though, speaking, if it is
13 okay, I have an additional. If you move ahead to
14 page 11 of the deck and page 12, I do have some
15 commentary on MISO transmission cost allocation. And
16 while in this analysis we've assumed that MISO
17 transmission cost allocation will stay the same, just
18 for ease of presentation, there are some significant
19 projects queuing up in MISO today.

20 And I've written a few of them here.
21 Pioneer and Green Power Express are two that have
22 already been approved for incentive rate treatment by
23 FERC. They have not been approved by the Midwest ISO
24 but are approved at FERC.

25 The annual revenue requirement associated

1 with those projects would be, well, we calculate
2 around \$22 million for Pioneer and another
3 \$270 million for the Green Power Express. Those
4 aren't included in these numbers, but we do believe
5 there's some significant costs out there if we remain
6 in MISO.

7 COMMISSIONER LEMMIE: My other question,
8 it is my understanding that the MISO Board approved a
9 queue of projects in December. They also approved
10 projects that have not started construction yet, and
11 I was under the impression that you have
12 responsibility to pay for all MTEP-approved projects
13 through your departure at the end of 2011.

14 MR. FARLEY: Yes. That's correct.
15 Again, that's not included with the new projects,
16 aren't in the 89 million. I did also include a chart
17 on page 12 which indicates our expectations of the
18 annual revenue requirements of the MTEP projects that
19 are approved and those that are pending approval.

20 MR. REFFNER: Brian, I think we ought to
21 explain here that in talking about the sizable
22 projects that are coming, it's our position that we
23 will be out of MISO at the time they are approved and
24 therefore they would not be flowed through to our
25 MTEP charges.

1 CHAIRMAN SCHRIBER: Are those revenue
2 requirements global, not specific to a particular
3 company?

4 MR. FARLEY: Yes. These would be the
5 revenue requirements just for the ATSI footprint.
6 That is our ATSI footprint share of it.

7 CHAIRMAN SCHRIBER: In the Midwest ISO.

8 MR. FARLEY: In the Midwest ISO, yes,
9 sir.

10 COMMISSIONER LEMMIE: The only reason I
11 ask so many questions about this is that there are
12 very expensive projects that have already been
13 approved and have not yet been funded, and as you
14 mentioned, MISO is also contemplating a change in the
15 cost allocation formula which could also have
16 impacts.

17 My real question is since some of that is
18 not calculated in your cost/benefit analysis, who is
19 going to pay for that cost and what ultimately do you
20 see as the measure of moving that through the
21 generation transmission and also into your
22 distribution cost?

23 MR. FARLEY: Well, given the schedule
24 that we've proposed, which is to exit the Midwest ISO
25 by June 1, 2011, the bulk of those projects will not

1 be approved while we are a member and so we would not
2 be subject to them. The --

3 COMMISSIONER LEMMIE: Not to disagree,
4 I'm only talking about the projects that have already
5 been approved that have been reflected that still
6 have a fairly high price tag for those of us in Ohio,
7 and then you are going to pay Ohio MTEP under MISO
8 and the RTEP, and I'm just curious as to, again, how
9 that is reflected in your cost/benefit analysis.

10 MR. FARLEY: Only the projects that are
11 already being recovered through the MTEP are included
12 in that. I don't have the numbers in front of me
13 here, but I think the projects that have been
14 approved by the Midwest ISO only amount to a couple
15 of million dollars per year. It's a fairly small
16 number for those that have been approved.

17 COMMISSIONER LEMMIE: We can talk about
18 this more. I don't want to spend a whole lot of time
19 on it. There are projects approved that haven't
20 gotten started that have a pretty high price tag.
21 There are some approved that haven't started that
22 have a low price tag. We can talk about those in
23 more detail at a different time.

24 MR. BEITING: Your Honor, I think from
25 what we looked at, I think those costs in total would

1 be about in the \$10 million range, so certainly not
2 in the order of magnitude of things like the Green
3 Power Express or the Pioneer project.

4 Our concern obviously is, you know, if we
5 were to remain in MISO, it's our belief that the MISO
6 cost allocation process starts to look a lot like the
7 PJM RTEP cost allocation price and that over time
8 those costs will converge.

9 COMMISSIONER CENTOLELLA: Just I want to
10 follow up on Ms. Lemmie's point. Mr. Reffner, you
11 indicated that you thought that Pioneer and Green
12 Power Express would not be approved by MISO prior to
13 June 2011.

14 MR. REFFNER: That's correct.

15 COMMISSIONER CENTOLELLA: This is not
16 something that is in FirstEnergy's control. What is
17 the basis for that conclusion?

18 MR. REFFNER: I'll let my FERC and MISO
19 expert speak to that, Commissioner, but let me give
20 you what I think and my feeling on it. These are
21 sizable projects. This is all about bringing energy
22 to the East. There will be a lot of debate about
23 both whether or not it should be done, how it's going
24 to be done, and who ought to pay for it. And all
25 those things come together to suggest that will not

1 be completed and approved by June 1, 2011.

2 MR. FARLEY: I would just add to that, I
3 think one of the other key items pending at the
4 Midwest ISO today is they are making a change in how
5 they allocate costs, and those changes are
6 specifically geared to be able to allocate the costs
7 of these large projects.

8 The Midwest ISO is planning to file
9 something in July of this year, and it will be a very
10 contentious filing, as we have already seen in the
11 Midwest ISO stakeholder process. So it's hard for me
12 to envision some of those projects getting approved
13 before they understand how the costs will be
14 allocated.

15 COMMISSIONER CENTOLELLA: If MISO files
16 cost allocation in July of this year, one would
17 certainly expect that case to at least have a FERC
18 decision prior to your departure from Midwest ISO.
19 Wouldn't you agree?

20 MR. BEITING: I think we do agree with
21 that, but I think there are two pieces to it. One is
22 the projects have to be included and approved as part
23 of the MTEP, which they are not today, in order to
24 meet the eligibility requirements for some kind of
25 socialization of the costs.

1 And the other would be is the approval of
2 some kind of, let's say, super highway type of
3 regional cost allocation process in the MISO filing.

4 COMMISSIONER CENTOLELLA: Now, it's my
5 understanding, and maybe I am incorrect, so please
6 correct me if I am wrong, that the only thing that is
7 required for this to become an obligation for ATSI is
8 really a vote of the MISO Board approving these
9 projects as part of MTEP.

10 And I guess my question is if the MISO
11 membership is seeing ATSI about to depart, don't they
12 have an incentive to accelerate that vote and make
13 sure it happens before you leave?

14 MR. REFFNER: All they will do with that
15 is buy a fight. If the basis of that vote is to tag
16 us and our ratepayers --

17 COMMISSIONER CENTOLELLA: Well, they
18 don't make that an explicit basis of the vote.

19 MR. REFFNER: I understand that, but we
20 have put MISO on notice we're leaving. They know
21 we're leaving. To put something through on the basis
22 of allocating costs to us on exit will not be
23 tolerated. We are not going to abide it. I think
24 all this points to the wisdom behind our plan to move
25 to PJM by June 1, 2011.

1 MR. SZWED: I think there is still a lot
2 of discussion about the aggregate larger regional
3 plan, this whole Eastern interconnection plan that is
4 underway. What are the right transmission projects
5 to be built? Granted, a few companies have proposed
6 these major ones, but are these the right ones to do
7 to achieve the goals that are trying to be set in
8 moving some of this from the West to the East? So
9 there's a real question there.

10 I guess I just really want to emphasize
11 one last time, this blue line is what we potentially
12 see in our estimate, the expectation what we think
13 could hit the customers in the ATSI zone with those
14 projects going forward as they've kind of laid them
15 out now. But that could mean substantial increases
16 for customers in the zone, given the fact when you
17 compare it to the PJM RTEP that many of these
18 projects are already underway, if you will.

19 MR. REFFNER: Brian, I'd like to take
20 just a minute and talk about those PJM RTEP projects
21 you had mentioned, that even that dotted green line
22 has adjustments to it, and I think that would be
23 worth our while to call the Commissioners' attention
24 to it.

25 MR. FARLEY: Yes. Slide 16 shows a list

1 of the major RTEP projects that went through what
2 I'll call the postage stamp treatment. Those are
3 high voltage projects that the costs will be
4 allocated on a low ratio share. And I think in red
5 there are two projects, MAPP and PATH.

6 Within the last week both of these
7 projects, there have been announcements where the
8 projects have been delayed, partially due to the drop
9 in load, due to both the economy and the bad
10 response.

11 And I'm trying to remember which. I
12 think the PATH project has already been announced it
13 will be delayed until at least 2016, and those
14 similar conversations are happening on the MAPP
15 project. You can see those two projects total
16 2.9 billion of the 6.5.

17 MR. REFFNER: Why don't you translate
18 that, Brian, into a revenue requirement.

19 MR. FARLEY: Well, I believe that that
20 would reduce the revenue requirement, which we
21 estimate to be for all of the projects once they are
22 all done, we are estimating that to be around
23 \$100 million. We believe that will reduce the
24 revenue requirement by 30 to 40 million.

25 MR. REFFNER: So what we are seeing on

1 the -- and I think this undoubtedly to be true and
2 perhaps in MISO, too, the economy is affecting the
3 launch of these projects, and when they're delayed,
4 it's obviously impacting our share, and that is true
5 on the RTEP's legacy side.

6 The RTEP legacy number, which I know has
7 been a source of consideration for the Commission as
8 well as us, is going to come down as these projects
9 are delayed. It could be a future project.

10 CHAIRMAN SCHRIBER: Let me raise this,
11 because from my point of view it's hearsay, although
12 others claim they had heard it, that had you failed
13 to get the waiver, which you failed to get on the
14 RTEP charges cost, that you would not consider the
15 move to PJM. Did anybody ever articulate that,
16 anybody else, or did that just get made up somewhere?

17 MR. REFFNER: No. I think we expressed a
18 view of a reluctance to proceed. That was a view at
19 one time. As you know, facts change. Circumstances
20 change.

21 I'd like to speak to our effort on RTEP,
22 if I may. We took on that issue, both in our
23 application and in a separate filing at FERC. We
24 upset a whole lot of PJM transmission owners with
25 that view. We knew going in that we were on the

1 right side of policy, but we were running against the
2 PJM tariff, and also there was some case precedent
3 out there in the Dusquesne case that could be a
4 problem for us.

5 In the end the FERC decided to abide by
6 the PJM tariff and we have to pay RTEP. In FERC's
7 view, RTEP is a transmission charge. FERC has
8 jurisdiction over transmission charges. They said
9 it's a FERC-approved tariff, pay it.

10 Now, In terms of the change in our
11 thinking, our CEO makes decisions. He's the CEO for
12 a reason, and he considered a number of different
13 factors that were in front of him. He was taking
14 input from both the head of the utilities, the head
15 of FES, our generation unit, competitive power unit.
16 I think we had other things unfold in this case that
17 presented special concerns for us.

18 I think if you read the filings -- I'm
19 not suggesting you should have. I know I had to and
20 at times that was difficult for me -- MISO was pretty
21 unhappy with us. They expressed that in ways that,
22 frankly, were offensive. So as we thought about
23 that, it was probably going to be difficult to stay
24 in MISO, given what had transpired there.

25 As Brian had mentioned, we had the

1 adoption of this OMS vote in December of this year to
2 move forward on a rules change for cost allocation of
3 projects that could move costs, the significant MTEP
4 costs we have been talking about our way. Waiting
5 would not help that.

6 And I think for the reasons that both
7 Brian and Stan have stated in terms of reliability,
8 capacity, retail choice, in the circumstances we find
9 ourselves in, Tony, and I'm sure he had other
10 thoughts on his mind, concluded it's the right
11 choice, and if not now, when? He decided to proceed.

12 CHAIRMAN SCHRIBER: The interesting thing
13 is that FERC said that transmission owners that seek
14 to change RTOs should be prepared to assume the costs
15 attributable to their decisions. It is your
16 decision, not ours, but it seems to me that implies
17 this is going to have to be resolved somewhere
18 between you and our customers, and I guess you've
19 assumed that that would be a charge to our customers,
20 basically.

21 MR. REFFNER: That's correct.

22 CHAIRMAN SCHRIBER: What was the
23 rationale there? Why, if this was your choice and
24 all things being equal, who knows what might have
25 been, in fact, you did make this change. That was on

1 your own and your decision, and now you're asking our
2 customers to bear the cost of that change.

3 MR. REFFNER: Well, of course, the
4 paragraph you are referring to in the order is
5 paragraph 113, and you are correct, Mr. Chairman, you
6 have quoted it to me properly, that FERC said that
7 the transmission owners that seek to change should be
8 prepared to assume the cost.

9 I think you have to put that in the
10 context of where it occurred. We have a respectful
11 disagreement with you as to the interpretation of
12 that. I think the FERC was clearly speaking to a
13 conclusion that if you are going to join PJM, you're
14 going to have to pay the cost.

15 That didn't mean absorb the cost. That
16 just meant incur them in accordance with the
17 FERC-approved tariff. As you know, both MTEP and
18 RTEP are authorized by FERC, both at MISO and PJM.
19 They are FERC-approved tariffs. They are clearly
20 transmission charges over which FERC has exclusive
21 jurisdiction and are passed through universally.

22 It is our view that that sentence that
23 you referred to -- and I'm not surprised, by the way,
24 that you did -- isn't making new law for the
25 proposition that if you change RTOs, you no longer

1 are eligible to pass those through on your tariffs.
2 In fact, we are delighted with you to seek
3 clarification from FERC on that count.

4 CHAIRMAN SCHRIBER: Again, I'm not
5 speaking for the others, but I assume that their
6 assumption is that the costs would be attributable to
7 you. But then I agree, it doesn't specifically say
8 what is going to pay those costs. It says you are
9 going to pay them but not where they will come from.

10 MR. REFFNER: I think it is speaking of
11 we are not going to avoid them here. They are costs
12 that come with the move.

13 CHAIRMAN SCHRIBER: Okay. One of the
14 other questions, in this whole proceeding, I'm not
15 sure, did your operating companies weigh in on this?

16 MR. REFFNER: Of course -- oh, in the
17 proceedings, the RTO proceedings?

18 CHAIRMAN SCHRIBER: Yes. Did they file
19 anything at the FERC?

20 MR. SZWED: As individual operating
21 companies, no, I do not believe they did.

22 MR. BEITING: The individual operating
23 companies were parties to the application and to the
24 complaint.

25 CHAIRMAN SCHRIBER: You were parties.

1 Were they adverse parties or --

2 MR. BEITING: No. It was a joint
3 application of the ATSI, the ATSI utilities, which,
4 of course, includes Penn Power and FirstEnergy
5 Solutions.

6 CHAIRMAN SCHRIBER: What about CEI and
7 Toledo Edison?

8 MR. BEITING: When I say ATSI utilities,
9 I am including Ohio Edison and Toledo Edison.

10 CHAIRMAN SCHRIBER: Okay.

11 COMMISSIONER CENTOLELLA: I want to
12 switch gears a little bit and turn to page 15 in your
13 presentation where you talk about the energy market
14 savings, and I think you reference this was based on
15 the 2009 modeling that PJM did; is that right?

16 MR. FARLEY: Yes, sir, that's correct.

17 COMMISSIONER CENTOLELLA: What figures
18 are you pulling out of those modeling results to
19 produce this figure?

20 MR. FARLEY: As far as the PJM model
21 results, they calculated an LMP for the ATSI zone,
22 and they also calculated a reduction in load payments
23 for FirstEnergy in the Midwest ISO versus FirstEnergy
24 in PJM. This 97 million represents the difference
25 between the two models. It's actually a reduction in

1 the gross load, so it becomes the ATSI zone.

2 COMMISSIONER CENTOLELLA: This is based
3 on the relative LMP for the ATSI zone within --
4 annualized for the two scenarios?

5 MR. FARLEY: Yes, sir. Yes, sir.

6 COMMISSIONER CENTOLELLA: I want to come
7 back to an issue that you raised, Mr. Szwed, and I
8 think it may have been mentioned elsewhere as well,
9 and that is this idea that the capacity markets in
10 PJM are better.

11 As I'm sure you're aware, there are a lot
12 of concerns on both behalf of state regulators with
13 the RPM mechanism in PJM, concerns about whether it
14 really is providing superior reliability, and
15 certainly concerns about whether or not it is overly
16 costly, and, in fact impeding the development of
17 customer choice and the ability of consumers to
18 actually see and respond to prices, which has been a
19 priority of this Commission in terms of empowering
20 consumers to better respond to the energy and
21 ancillary service prices as they vary over time, both
22 to empower consumers and get more efficient market
23 results.

24 I'm wondering if you can speak to what
25 FE's position will be with respect to the form of

1 RPMs and what its position will be with respect to
2 carrying out what FERC said of an approved RPM, that
3 his was a transitional mechanism and that we want to
4 be transitioning away from the way that capacity
5 markets are currently structured in PJM, and how you
6 propose, if you do, to help accelerate that
7 transition.

8 MR. FARLEY: We are active participants
9 in the PJM stakeholder process, and we do support the
10 reform of PJM from the reliability pricing model, and
11 we think it made some very good strides over the
12 recent years in accommodating additional demand
13 response and incorporating energy efficiency into
14 their model, and we expect that to continue. We will
15 support that through the stakeholder process.

16 Additionally, I think maybe what you are
17 speaking to is the idea that once there is enough
18 demand response in the markets that the need for a
19 capacity market isn't as great; in other words, you
20 have less of a need to assure there's resource
21 adequacy in the future if there is a demand response
22 in the market.

23 And, you know, we support that view,
24 though we think it's early to pull the plug on RPM.
25 We think the moves they are making to gradually

1 incorporate more demand response in the markets is
2 certainly directionally correct. We are not sure how
3 we will know exactly when the right time is to
4 abandon the capacity market and go with something
5 that is more scarcity type pricing. But we support
6 PJM's move towards scarcity pricing, and we do that
7 through this stakeholder process.

8 MR. SZWED: Commissioner, you know, it
9 may not be perfect today. And, in fact, you know
10 they have had experience, as Brian said, it's been
11 evolving and will probably continue to evolve. But
12 there are a number of good features about it, the way
13 we see it, particularly for a company structured like
14 us, particularly with the operating companies not
15 owning generation in a separate affiliate.

16 When you step back and think about a
17 forward looking situation, again with PJM's RPM
18 process, you are looking out three years. That gives
19 both suppliers and load a chance to look into the
20 future and have a better understanding of where
21 things are headed. People will know three years
22 ahead of time what capacity is available and at what
23 price.

24 And I think that's important. That's
25 important for companies to make decisions, like us,

1 about plants, whether to keep them, whether to retire
2 them. It's an important aspect to that.

3 So I think, you know, when you contrast
4 that to the position that now we see at MISO, MISO
5 doesn't have that kind of a marketplace. Again, many
6 of the utilities are very integrated. They're
7 regulated. Most of the plants are in rate base.
8 Most of that capacity is committed to meet their
9 reliability requirements and their planning reserves
10 and their footprints.

11 And to the extent there is capacity
12 available at the margin, to the extent that that
13 native load for those entities needs to be satisfied,
14 the question becomes: What kind of capacity is
15 available in MISO in the longer run?

16 In PJM, from our standpoint, is a better
17 prospect of having the ability to secure that supply,
18 and from our operating utilities' standpoint who need
19 to secure capacity to provide reliability to
20 customers, you know, that's a very important
21 dimension, and we believe PJM provides a better
22 opportunity for that, both from the standpoint of
23 meeting those obligations with generating capacity,
24 as well as through demand-side programs. You know,
25 PJM has been, you know, very successful in continuing

1 to proceed in that light as evidenced by what
2 transpired in the last set of auctions.

3 COMMISSIONER CENTOLELLA: Have you done
4 any quantitative analysis looking at either the
5 relative capacity positions of the two RTOs and/or
6 attempting to identify what capacity costs have been
7 in the two RTOs and what they might be going forward?

8 MR. REFFNER: I think yes. We look at
9 that on a regular basis because it's in both RTOs. I
10 mean, we are in both markets routinely.

11 COMMISSIONER CENTOLELLA: Is that
12 something you can share with us?

13 MR. BEITING: I think what we've
14 struggled with, your Honor, is in MISO there is no
15 centralized capacity. In PJM there is. PJM the
16 price is very transparent. We know what it is.
17 There's a capacity product that is obtained for a
18 year, three years in advance.

19 MISO is, frankly, not comparable, and so
20 we have not been able to incorporate those
21 differences into any meaningful dollars in order to
22 do the comparison. And, you know, frankly, if we had
23 been able to do that, we would have produced that.
24 The products are so different that it's just
25 impossible to put those together in a comparison in

1 any meaningful way.

2 COMMISSIONER CENTOLELLA: Well, even in
3 PJM we do have incremental auctions that are closer
4 in time than the three-year-out auction, and I'm sure
5 there are bilateral contracts being traded in MISO
6 that reflect some forward beyond the two-month
7 capacity requirement. Have you gathered any of that
8 data?

9 MR. BEITING: The bilateral contract
10 information tends not to be readily available to us.
11 You know, we, of course, do some business in MISO. I
12 think the problem we have had over the last year or
13 so is with the recession and the collapse of prices
14 in the wholesale markets that any comparison you do
15 is problematic.

16 COMMISSIONER ROBERTO: Just a follow-up
17 to that. I did understand that you were unable to do
18 the price differential in the capacity, and I'm just
19 wondering how you can conclude that it's a better
20 deal for consumers in Ohio to be in one RTO over
21 another if you don't know the price differential.

22 As you mentioned earlier, I'm sure your
23 CEO had in front of him some calculation that FES
24 thought it would be able to glean in revenues from
25 selling capacity in one market over the other, and

1 I'm puzzled as to why that translation can't be made
2 for the benefit of your distribution companies so
3 that we all will be able to judge whether or not it
4 is, in fact, better for the Ohio consumers to be in
5 one RTO over another.

6 MR. REFFNER: Well, we have had a lot of
7 conversations with Steve and his team, and there's
8 been a lot of discussion around capacity price. In
9 looking at the issue of price, I think it is
10 difficult to conclude which is going to be less
11 expensive. I don't know how that translates. Who
12 knows where MISO prices are going to be in three
13 years? Who knows where PJM prices are going to be in
14 three years?

15 Within SRAs you could have closing of
16 coal-fired power plants. In MISO, whether there is a
17 capacity market that's going to spur the development
18 of new ones in the short term, in our view there
19 isn't.

20 Frankly, I don't think it's a question of
21 what FES has paid. It earns by the way of capacity
22 revenue. The fact is that the PJM model allows a
23 revenue stream to suppliers for their available
24 capacity. That's determined on a market basis. It
25 assures it's there. It's a good thing, in our view,

1 that it's there, and it ultimately redounds to the
2 benefit of ratepayers because of the assurance of
3 reliability.

4 I think on this issue of capacity,
5 Commissioner, respectfully, that comparisons of a
6 MISO price or a PJM price and what those numbers are
7 going to be, and let's face it, everybody that bids
8 into a PJM footprint has some kind of model or number
9 that they are thinking that applies; that that
10 comparison is a false comfort or false inflection
11 point in a consideration of where to be.

12 This decision ultimately turns on
13 reliability, support for retail choice, the spurring
14 of new capacity, and what is the best way in a
15 competitive market for ratepayers to be assured that
16 the best price has been known.

17 In your wisdom and the Legislature's
18 wisdom, we moved forward in a competitive basis, a
19 deregulated environment. We saw tremendously the
20 benefit of that to ratepayers in May. On this
21 capacity issue I think the same principle holds, a
22 three-year forward look competitive capacity market
23 is in the best interest of our ratepayers to assure
24 themselves robust supply, robust competition, and
25 price, and the best price.

1 So I think the comparison, the desire,
2 and I too have thought a lot about this, too, the
3 desire to work through a calculation that arrives at
4 a net number at a given point in time, I don't think
5 it is helpful on this count. As I say, everybody in
6 both footprints is running models all the time trying
7 to anticipate where they ought to bid and how they
8 ought to bid. But I just don't see it as the issue
9 on defending this proposition to the people who pay
10 electric bills in the ATSI footprint, of which I and
11 my family are among.

12 CHAIRMAN SCHRIBER: There's a lot of
13 what-ifs and a lot of perceived benefits and costs,
14 prices. Would you be willing -- again, our concern
15 is holding our customers harmless for a reasonable
16 period. Would you all be inclined to grant us some
17 kind of assurance or a cap on a transitional period
18 that what you perceive to be of benefit to our
19 customers -- your customers, I should say -- really
20 are of benefit -- not our customers -- would be
21 beneficial to them, and, in fact, cap some sort of a
22 price for a period of time?

23 Again, if everyone is so convinced that
24 there are benefits and these numbers, in fact,
25 somehow come in as they're estimated to come in -- we

1 all know estimating you can do anything you want with
2 the numbers. But at the end of day, you know, we
3 just need to have that assurance, that we will be
4 held harmless.

5 Again, I ask you if -- maybe this is a
6 rhetorical question. I ask you if you cannot give us
7 that guarantee in a transitional period. Obviously,
8 three, four, five, six, years out we have no idea
9 what is going to happen, but in a reasonable
10 transitional period.

11 MR. REFFNER: A couple of different
12 thoughts. One of the challenges I think we have all
13 had in coming to this issue has been the question of
14 cost. And as we focused on cost in this together,
15 the difficulty with focusing solely on cost is that
16 once you get to a point where you're looking just at
17 the cost, any cost is too high.

18 We have to look at the benefits in this.
19 We have tried to quantify as many of those as we
20 could with good hard qualitative data. Brian spoke
21 to other benefits that are there. I want to give you
22 a story that is not quantified in this analysis but
23 is pertinent to it. I am going to get to answer your
24 question here, Mr. Chairman.

25 We have -- let's take one of our

1 250-megawatt plans. It has 100 employees, 8 to 10
2 million dollars of cost. It's not running to keep it
3 open. This last year it hasn't been open, hasn't
4 been working. We're working very hard to keep those
5 employees employed doing other things, keeping them
6 engaged.

7 In the PJM market the capacity price
8 would pay for that. Our generation is deregulated.
9 In our environment it is not. There are 10 to 12 of
10 those companies, 10 to 12 of those kind of plants in
11 this environment we are dealing with this.

12 That's a real live benefit. It is jobs.
13 It is tax base, and I submit to you that while this
14 is not as powerful a concept, something defensible in
15 the immediate short term, having those plants
16 available to us come the day when demand comes back
17 is going to be critical for our ratepayers. It's
18 going to be very, very important.

19 With the PJM capacity market, management
20 can see where prices are and make decisions on what
21 to do. With no transparency, management is left in
22 the dark, has to make those decisions. It would not
23 be a good thing to have Ohio or for our footprint not
24 to have that generation. That is a very powerful
25 attribute of the PJM model.

1 That brings me to my next point, not just
2 cost but benefits. While we have been focused on
3 cost, in your pleadings filed at FERC and the
4 conversation we have had in this proceeding before
5 this honorable Commission, has turned on these costs.
6 We have been a defender of the benefits. We very
7 much would like to put a fine pointer on all that,
8 put a bow on it and say, net-net, here it is. It is
9 not capable of that. We need your support in
10 defending these benefits. They are real and they are
11 significant.

12 Your question, would we be willing to
13 absorb some of these costs. Well, here's how I look
14 at that. This issue of transmission costs and
15 capacity costs, these are FERC-approved charges. We
16 are entitled to pass those through. I say that
17 respectfully. Steve and your legal team, we can have
18 arguments about that, but these are FERC
19 jurisdictional charges.

20 I think my counsel, as the vice president
21 of Legal, has been we are entitled to pass these
22 through. Discussions surrounding how those might be
23 handled, I'm not at liberty to say. But on the face
24 of it, the law on our side, these are recoverable
25 because these are appropriate, valid, reasonable, and

1 important charges.

2 CHAIRMAN SCHRIBER: How about the entry
3 and exit fees?

4 MR. REFFNER: The entry and exit fees,
5 similarly approved under MISO and PJM tariff, are
6 recoverable.

7 CHAIRMAN SCHRIBER: Okay. Again, I make
8 a distinction between cost and price, obviously.
9 But, again, I'm speaking directly about price, which
10 is something regardless of what the costs are. Costs
11 may be lower for you, and all we want, I believe, is
12 again some comfort knowing that the price is not
13 going to deviate significantly of what it might
14 otherwise be over a transitional period, which is
15 probably predictable, comparing to where you have
16 been regardless of costs.

17 MR. REFFNER: I know you know, you don't
18 have to explain to FirstEnergy the concept of
19 deviation in prices, given the outcome of the auction
20 in May. And that can go both ways, but at some
21 level, isn't the variability of that price the very
22 essence of a competitive market?

23 CHAIRMAN SCHRIBER: Right. But, again,
24 that can be taken into consideration. If you have an
25 auction that results in a price and one footprint

1 versus the price that is probably discernible in
2 another footprint, based upon other transactions,
3 taking everything together, the RTEP charges, the
4 MTEP charges, entrance fees, exit fees, everything
5 else, again, it will result in a price, the bottom
6 line, price on a bill, and I guess again what we
7 would like for you all to think about, because we're
8 going to be thinking about it -- is some idea of --
9 well, some assurance that, at least for a
10 transitional period, that prices would not deviate
11 that much.

12 MR. REFFNER: Of course, if you are
13 asking, we will think about it. But, again, I want
14 to be clear in terms of the strength of the legal
15 position in our view, respectfully, of the
16 recoverability of exit fees, transmission fees, and
17 capacity prices.

18 COMMISSIONER LEMMIE: Mr. Chairman, if
19 it's all right, I have two final points I'd like to
20 make. One is, for the record, you mentioned an
21 organization of MISO states cost allocation in
22 planning task force vote in December, and I do want
23 to acknowledge that Ohio voted no on that proposal
24 that would provide for the injection withdrawal
25 method for cost allocation as an alternative to the

1 current method. We did not support that.

2 And, secondly, I would just like to
3 respectfully disagree with you. I think your
4 business decision to move from one RTO to another is
5 your choice to make. I don't interpret what the FERC
6 has said or what history has shown, that those
7 business costs, might be MTEP costs which are far
8 more significant than the entrance fees, are
9 automatically something that can be passed on to the
10 end user.

11 Now, I personally will be looking very
12 closely at the prudence and the just and
13 reasonableness of those costs, because as I interpret
14 what the FERC has said -- and I am sure we will
15 spend a lot of time talking about this some more in
16 the future -- there is no guarantee that those costs,
17 as you believe, don't regulate the generation aspect
18 and are automatically rolled into the end users. I
19 will be looking for a much stronger justification.

20 MR. REFFNER: Your Honor, I respect your
21 view on that. Therein lies the discussion.

22 COMMISSIONER CENTOLELLA: A couple of
23 questions. Earlier in this process I think you had
24 given some assurances about FES's participation in
25 the FRR auctions. Do those assurances still apply,

1 and how are you willing to commit to that for us?

2 MR. FARLEY: The answer to that is yes.
3 In fact, I think -- I'm sure we committed to that at
4 FERC, and that commitment stands. And I'll just add
5 the market monitor at PJM is there to enforce that.

6 COMMISSIONER CENTOLELLA: I do want to
7 follow up, Mr. Reffner, on your legal question and
8 ask it a slightly different way. It seems to me this
9 issue if, in fact, there are additional costs
10 associated with your voluntary decision to move ATSI
11 from MISO to PJM, if there are additional costs, you
12 know, that will be litigated before this Commission.
13 It will come up in one of two ways.

14 It will either come as a version of the
15 Pike County Doctrine after the fact when you come in
16 to seek cost recovery with parties coming before this
17 Commission saying this was a voluntary choice to
18 purchase in one market rather than another. That is
19 squarely within the Pike County Doctrine, and we have
20 the authority to look at whether the decision on the
21 purchasing decision from supplier A versus supplier B
22 is a reasonable decision.

23 The other way in which it could be
24 handled is that this Commission I think at least
25 could entertain proceeding today under 4905.4(A) and

1 reviewing the reasonableness of your contract to
2 enter into PJM and whether or not this contract to
3 jointly operate your facilities with other Ohio
4 utilities is, in fact, a reasonable and lawful
5 contract under Ohio law, and we could have that
6 proceeding today, and, you know, reach some decision
7 about that.

8 Do you have a feeling or a position about
9 which would be preferable for us to do, have that
10 today, or wait for parties to raise this question
11 when you come in to seek cost recovery?

12 MR. REFFNER: Commissioner, I was told
13 sooner or later you would put me on the horns of a
14 dilemma here. Let's have some frank conversation
15 about that. That is putting the issue squarely on
16 the table. Pike County, a couple different thoughts.
17 First, Pike County predates the Federal Power Act.
18 We won't get into the legal niceties of all that.

19 COMMISSIONER CENTOLELLA: But it
20 certainly has been recognized by FERC and recognized
21 by courts of appeal as valid law since the Federal
22 Power Act.

23 MR. REFFNER: In some fashions, in some
24 ways. But the issue of choice, voluntary choice, of
25 RTOs is well-established. The issue of the

1 appropriateness of pass-through of transmission
2 charges is established clearly since New York versus
3 FERC. The issue of capacity charges is clearly
4 established after Connecticut PUCO versus FERC. So
5 the case law abundantly supports the pass-through of
6 those items.

7 The entrance and exit fees are
8 FERC-approved transmission -- FERC-approved charges
9 in the order of transmission charges over which FERC
10 has exclusive jurisdiction. Pike County does not
11 apply to these, and if at one time that Commonwealth
12 Court of Pennsylvania did, it's long since been set
13 aside by virtue of a long line of precedent
14 establishing the principles of the recovery of these
15 charges.

16 But you are correct, you could bring this
17 in a prudency review session, and then we would have
18 the discussion at that time after our entry into PJM
19 when we present those charges for recovery.

20 Let me take the other point. You asked
21 whether I thought it was advisable that you bring
22 this issue to the forefront now. I would submit to
23 you that the most important thing we need to preserve
24 here is certainty. The energy markets crave
25 certainty. We have laid out a process here starting

1 in August, August 17 and going forward that has set a
2 timetable for a move to PJM. Putting it in the end
3 of January, we have aligned that with the Ohio
4 procurement process. We have allowed for this
5 integration auction to occur in March of 2010 so that
6 there is abundant notice to bidders in that Ohio
7 procurement.

8 That process in that sequence has been
9 known, understood, discussed with FERC, put together
10 with PJM. We have had a PJM stakeholder process that
11 has considered that time line in 2009 throughout the
12 fall. There's going to be another one coming up
13 here. Both RTOs are aware of that plan, of the
14 timetable, and now of our move to PJM.

15 I submit to you it would be terribly
16 disruptive, terribly disruptive, to the energy
17 markets and harmful to the very interests that I know
18 you so earnestly serve, and we seek to serve, to
19 throw a monkey wrench in the works here of either
20 starting a proceeding that interferes with our move
21 to PJM, or just as bad, treats uncertainty over our
22 authority to go there and causes the myriad
23 suppliers, LSEs and other affected parties in both
24 RTOs to wonder what is going on.

25 I think we can have a conversation about

1 the merits, about the legal principles, and this
2 obviously isn't the forum to resolve those
3 discussions. In my book the worst thing that could
4 possibly happen here would be to suggest that this
5 transition is not going to occur.

6 COMMISSIONER CENTOLELLA: So if I take
7 your answer, given what you think are maybe two bad
8 outcomes, you would rather have us, if it is going to
9 be litigated, litigated after the fact than before.

10 MR. REFFNER: If I were going to pick
11 your battle to fight, I wouldn't pick the former. I
12 wouldn't pick the one to fight it on the front end.
13 I think it causes too much chaos for all.

14 COMMISSIONER LEMMIE: I want to add a
15 little clarity. You made the assumption we are
16 attempting not to allow you to move forward into PJM.
17 Certainly for me my issues are not whether or not you
18 move to PJM or not, because I believe that's a
19 voluntary decision. It is who pays for those
20 additional costs for the move to PJM. Is it a
21 stockholders' cost that they bear, or is it a
22 ratepayer cost? And that's the issue for me.

23 MR. REFFNER: I appreciate that, your
24 Honor. Note this point, however, the market will
25 consider that fact, too. Let's assume tomorrow you

1 issue an order that says: You shall not pass those
2 costs through. That suddenly raises a question of
3 the economic viability of the operating companies of
4 FirstEnergy. People looking to bid into the
5 procurement process will evaluate that uncertainty.
6 It will affect bidding behavior.

7 So my point on this is there are a lot of
8 intricate pieces that come together to make for
9 effective process and achieve our desired results.
10 Uncertainty surrounding these notions can have a
11 profound effect.

12 COMMISSIONER ROBERTO: I agree that
13 certainty is certainly something we would want to see
14 before a competitive auction, but I would have to
15 speak up so that I am clear as to my position on this
16 as well. I see no more likelihood that this
17 Commission cannot make a judgment on the voluntary
18 purchase of a distribution company's need -- the
19 distribution companies are making a voluntary choice,
20 just as they purchase coal or any other supply.

21 The purchase of the RTO services are in
22 this same measure. The fact that the FERC
23 establishes lawful purchases and establishes lawful
24 prices doesn't in any way remove our responsibility
25 to look at the judgments that are made by regulated

1 companies when they have choices as to where they can
2 acquire those services.

3 So I certainly hear FirstEnergy to be
4 saying that even if those prices were five times what
5 it cost in one RTO than another, as long as those are
6 FERC-approved, you believe they can be passed through
7 to Ohio consumers.

8 And I would respectfully disagree with
9 you, and I believe my colleagues do as well. If you
10 like to get to a place of certainty so we can go to a
11 competitive auction, maybe we need to get that
12 settled.

13 MR. REFFNER: A couple of different
14 thoughts on that. The case law holds -- you're
15 right, it is a voluntary choice. And the question
16 that would be on the table in any legal argument we
17 had on this would be the very issue you present,
18 Commissioner, what is the authority of a state
19 commission to evaluate this choice and the costs
20 associated with it?

21 As you know, FERC enjoys exclusive
22 jurisdiction over unbundled interstate transmission,
23 ATSI, and over wholesale energy transactions. It
24 preempts state authority on those counts. The
25 question that would be debated is the right of the

1 PUCO to reach back through its retail authority and
2 affect those matters. And I think that question --
3 we can talk about it. Again, this isn't the forum to
4 have this debate -- but that is clearly the issue on
5 the table.

6 I don't mean to suggest that those
7 notions of costs are ones that, hey, who cares what
8 it is. They can pay it. If that's the message
9 you're hearing from me, I don't mean to suggest
10 something that glibly. But those costs are ones
11 established as part of the interstate transmission
12 system, as part of that FERC process, after a lot of
13 debate and hearings and consideration, and those
14 rules, in our view, are there to permit the recovery.

15 But I understand your point, and your
16 objection is noted, and the path you would follow you
17 said very well.

18 COMMISSIONER CENTOLELLA: Follow up
19 briefly on that point. Do you see anywhere in FERC's
20 decision on this matter where FERC looked at the
21 benefits and costs or evaluated whether it would be
22 better for consumers for ATSI to be in one RTO rather
23 than another?

24 MR. REFFNER: I think the FERC found that
25 the benefits we had outlined in our application, they

1 agreed with them when they approved it.

2 COMMISSIONER CENTOLELLA: Where is that
3 in the first order?

4 MR. REFFNER: I think we laid out in our
5 original application the benefits of consolidation
6 along the line as Stan has discussed here in terms of
7 the seam that exists and improved operation and the
8 like.

9 If your question to me is did FERC get
10 into cost/benefits to our footprint of that type we
11 have been talking about here, I don't believe they
12 did. But I don't believe cost/benefits -- I know
13 that cost/benefits is not a relevant consideration in
14 FERC approving the decision to change RTOs.

15 COMMISSIONER CENTOLELLA: So you would
16 agree that FERC really does not have statutory
17 authority, at least as I read the Federal Power Act,
18 to look at the question of whether benefits outweigh
19 costs in terms of a transmission moving from one RTO
20 to another.

21 MR. REFFNER: No. I would say that FERC
22 is free to set a cost/benefit equation as part of
23 this process. They have not, and, therefore, FERC's
24 opinion on that preempts a state commission's right
25 to second-guess that position.

1 COMMISSIONER CENTOLELLA: And I don't
2 know whether you can cite me a specific provision
3 here, but where in the Federal Power Act do you see
4 FERC authority to conduct that kind of analysis?
5 That certainly isn't part of how FERC has interpreted
6 the statutory authority to this date, is it?

7 MR. REFFNER: Oh, I think on the
8 contrary, I think the Federal Power Act speaks
9 emphatically to its exclusive jurisdiction on
10 wholesale energy transactions and unbundled
11 interstate transmission.

12 COMMISSIONER CENTOLELLA: If anything, it
13 speaks to its authority on wholesale energy
14 transactions. I don't see anywhere where it speaks
15 to the exclusive authority about choice of a
16 purchaser as to where those purchases are made.
17 Where do you find that in the Federal Power Act?

18 MR. BEITING: Your Honor, I think what
19 the Commission has said and what we still have ahead
20 of us is that we have future filings that we have to
21 make where we show to the FERC's satisfaction that
22 the new arrangements for our customers are just and
23 reasonable and that those to customers receive
24 transmission service and the other related services
25 that they receive from RTOs on terms and conditions

1 that are comparable to the service they receive
2 today.

3 COMMISSIONER CENTOLELLA: But you could
4 certainly have a just and reasonable market over here
5 and another just and reasonable market over here, and
6 the second just and reasonable market could end up
7 being twice as expensive for a given purchaser if
8 they chose one over the other.

9 MR. BEITING: We certainly don't think
10 that is the case. We do know that our transmission
11 rates are going to be reviewed. We do know that the
12 RTEP costs are subject to a remand proceeding today,
13 and we know that capacity costs in the last phase
14 residual auction were \$16.50, which is not a high
15 price.

16 I mean, we talked very loosely about
17 costs, and I hope that we aren't starting from a
18 baseline of prices that were determined from an
19 auction held at the bottom of a recession, at very
20 low wholesale market prices, that anything above that
21 level, which is artificially low, is going to be, you
22 know, an unacceptable cost to customers.

23 I mean, that's a false premise. For all
24 we know, if FirstEnergy were to remain in MISO and
25 the Commission were to approve a similar auction,

1 prices would be 25 percent higher. I think we have
2 to keep that in mind when we do this kind of analysis

3 COMMISSIONER CENTOLELLA: I certainly
4 would agree that we have to look at this
5 prospectively rather than retrospectively. And we
6 may respectfully disagree, I don't see anywhere where
7 FERC has preempted the state authority to look at
8 from which source a purchaser buys energy or
9 capacity. It's simply not something that I see in
10 any of the statutes governing FERC's authority, and
11 where there is a gap, I don't see how there would be
12 preemption.

13 MR. REFFNER: I don't see a gap. I see
14 it as exclusively a matter of FERC jurisdiction and
15 from that flows the rest. I think we are touching
16 upon Pike County and the Final Rate Doctrine. We
17 have this conversation, does the state commission
18 have the authority to trap those costs that are
19 approved in a FERC-approved RTO under an approved
20 tariff? That's the debate that will follow,
21 Commissioners.

22 COMMISSIONER CENTOLELLA: I suspect at
23 some point it will.

24 CHAIRMAN SCHRIBER: You know, if we are
25 pretty much done, notwithstanding my fondness for my

1 colleagues, I was really hoping we wouldn't get to
2 the legal issue. That's why I brought up the
3 possibility of at least getting some comfort on a
4 going-forward basis that we are not going to be worse
5 off.

6 I understand, Mike, rates where we were
7 on the auction last time, we are all sophisticated
8 enough to know that markets go up and down. We have
9 to compare apples with apples. And that's what I am
10 hoping we can do. That's why I recommend a
11 transitional period where we can have that comfort
12 and assurance and try -- none of us want to get into
13 a big legal battle. That really serves no purpose
14 for anyone, other than getting a conclusion which may
15 or may not be helpful to one of the other parties.

16 MR. REFFNER: I think lawyers might be
17 excited about that, but I don't think anyone else
18 would be.

19 COMMISSIONER CENTOLELLA: I don't mean by
20 the last comment to preclude the fact that it would
21 be beneficial for you to be in PJM. That's the question
22 that the chairman is seeking assurance of.

23 But if, in fact, there is a case to be
24 made that it is not beneficial, then I would expect
25 we will see litigation here at some point about Pike

1 County and the implications of the Final Rate
2 Doctrine.

3 CHAIRMAN SCHRIBER: Again, not
4 withstanding my affection for my colleagues, I'm not
5 going there.

6 MR. REFFNER: I take it Commissioner
7 Centrolella's conversation of legal principles is
8 further encouragement to have conversations.

9 CHAIRMAN SCHRIBER: Yes, I think you
10 could take that.

11 MR. REFFNER: Am I misreading that
12 signal?

13 COMMISSIONER CENTOLELLA: Not at all
14 misreading that signal.

15 CHAIRMAN SCHRIBER: I think conversation
16 should be over what I'm suggesting, the comfort. I
17 don't know how else to describe it.

18 MR. REFFNER: You asked us to think about
19 it.

20 CHAIRMAN SCHRIBER: I asked you to think
21 about it, absolutely.

22 I guess we are concluded. I appreciate
23 you all coming in. Thank you very much.

24 MR. REFFNER: Thank you for this
25 opportunity to come.

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CHAIRMAN SCHRIBER: With that, we are
adjourned until next week.

(The hearing adjourned at 3:50 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, January 7, 2010, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson,
Professional Reporter and
Notary Public in and for
the State of Ohio.

My commission expires April 5, 2014.
(RFA-8382)

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Summary: Transcript Transcript for The First Energy Service Company Commission Hearing held on 01/07/10. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.