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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan.	:	Case No. 10-388-EL-SSO

POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF
OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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INTRODUCTION

This case presents the Commission with a highly beneficial alternative to the MRO proposed in Case Number 09-906-EL-SSO. The Stipulation would preserve the market rate benefits of the MRO proposal while creating many new advantages not the least of which is the preservation of the ESP structure. It retains the vital flexibility that this Commission needs to address the complex problems, anticipated and unanticipated, that the future of the electric industry in Ohio holds. Approval would give the stakeholders what is sorely needed, stability today and predictability for tomorrow.

DISCUSSION

A. THE THREE PART TEST

This Commission is very familiar with the three part test used to review partial stipulations. It consists of determining whether the stipulation was the result of serious bargaining among knowledgeable, capable parties, furthers the public interest and does not violate any important regulatory principle. These prongs will be examined in the sections that follow.

1. Serious Bargaining

The meeting process that lead to the Stipulation was open and available to all parties.[1] Meetings were noticed and well attended.[2] Those non-signatories who were parties during the discussions participated.[3] The list of signatory parties is a compendium of those with significant history and involvement with the industry in Ohio. The City of Cleveland, with its hundreds of thousands of electricity using citizens, has itself been in the electricity business for more than a century. The signatories are a listing of the major users of power in the territory.[4] It is abundantly clear that the stipulation is the result of serious bargaining among knowledgeable parties.

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1 ESP Staff Ex. 2.

2 ESP Company Ex. 4 at 9.

3 *Id.*

4 *Id.* at 10.

Although the conclusion that the stipulation results from serious bargaining among knowledgeable parties is obvious, that does not prevent several parties from challenging it.

The Natural Resources Defense Council (NRDC) witness claims that the stipulation is not the product of lengthy, serious bargaining.[5] The witness of course has no basis for this claim. He did not attend the settlement discussions.[6] His real argument is that no one who agrees with him signed the Stipulation so it could not be the result of serious negotiations. Apparently to be "serious" one must agree with the NRDC witness. This "argument" has no merit.

EnerNOC objects that the settlement discussions were not open. Its reasoning is difficult to understand. EnerNOC chose not to intervene in the case. It now wants to blame the company for EnerNOC's own decision. EnerNOC takes the position that, because the MRO application did not include an extension of the ELR and OLR tariffs, it properly concluded that an extension of the ELR and OLR tariffs would not be considered in this ESP application case.[7] The fact that these programs, the ELR and OLR tariffs, were included in the Stipulation when the Company was not advocating them is an example of the seriousness of the bargaining that went on during the settlement talks. The reality is that ESP proceedings are remarkably broad. Those who are interested in

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5 ESP NRDC Ex. 1 at 6.

6 Tr. __ at __. (This document contains citations in the form "Tr. ___ at __". The transcripts of the hearing were not available prior to the deadline for submission of this brief. It was not, therefore, possible to include specific citations. The implications that various statements are included in the transcript are based on the recollection of the drafter and any errors are inadvertent.)

7 ESP EnerNOC Ex. 1 at 3.

the electric industry but elect not to participate, do so at their own risk. EnerNOC's effort to somehow blame the company for its own unilateral choice is meaningless and should be ignored.

The Ohio Consumers' Counsel (OCC) presents an argument that is baseless. It claims that the signatory parties did not have sufficient information so that they were not "knowledgeable" when they were discussing the terms.[8] OCC simply has no basis to assess the information that was available to other parties and no ability to speak for them. The parties are quite capable of speaking for themselves and they have spoken, by endorsing the Stipulation. Certainly the Staff had plenty of information to use in assessing the Stipulation. That was exactly why the Staff signed the document. A lack of knowledge was shown only by the OCC whose witness, for example, was unaware that the Staff has access to any information from any utility at any time pursuant to R.C. 4905.06.[9]

OCC provides a second argument that is really addressed to the General Assembly. OCC suggests that, because the utility can unilaterally withdraw an ESP application after the Commission has modified and approved that application, the company's bargaining position is so strong that there cannot be serious negotiations. The General Assembly established the structure as it is. OCC's quarrel is there not here. It is interesting to note that, were the OCC correct, there could never be a stipulation of any ESP case because the company always is in the position of strength that the General

[8] ESP OCC Ex. 2 at 10.

[9] Tr. __ at __.

Assembly assigned it. This would be a very poor policy result indeed and certainly not one intended by the General Assembly.

In sum, the Stipulation is the product of serious negotiations among knowledgeable parties. The criticisms have no merit.

2. Public Interest

The benefits of the proposed stipulation to the public are large and broad. It provides:

- A reasonable bid process to procure generation based on the last auction for the current electric security plan (ESP) but providing a staggered set of solicitations and delivery periods. This will protect customers by mitigating market price fluctuations.
- PIPP customers will receive a 6% discount off their price-to-compare (PTC).
- The generation cost reconciliation rider (GCR) is bypassable (with some limitations). This is a change from the current ESP, and ensures generation costs are truly bypassable for all customers who choose to shop.
- No new accounting deferrals.
- A base rate distribution freeze through May 31, 2014.
- A distribution rider (Delivery Capital Recovery Rider (DCR)) to recover costs (subject to revenue requirement caps each year) associated with actual investments in its distribution system. All revenue associated with Rider

DCR will be included as revenue in the return on equity calculation for purposes of the SEET calculation and be eligible for refund.

- Funding by shareholders of approximately $300 million in MISO exit fees, PJM integration costs, and RTEP charges for the five year period beginning June 1, 2011 through May 31, 2016. This represents approximately $300 million of benefits that ratepayers would not receive under an MRO.
- Provisions and credits in the Economic Development Rider (EDR) help domestic automaker facilities and provide funding for the Cleveland Clinic, one of the largest employers in Ohio to implement a major plant expansion.
- Funding for energy efficiency goals is provided to further the mandates addressed in SB 221.
- $3,000,000 in shareholder funding to support economic development and job retention activities within the Companies service areas. For customer assistance and to aid low income customers in Ohio, $1.5 million dollars in shareholder dollars will be made available to Ohio Partners for Affordable Energy for continuance of a fuel fund from the prior ESP.[10]

These benefits touch many customers and are self-explanatory.[11] They are not associated with the MRO and show, therefore, that not only is this plan in the public interest but it is

[10] ESP Staff Ex. 2 at 3-6.

[11] Various intervenors attempt to deflect the obvious advantages of the Stipulation. Their arguments will be disposed in subsequent sections by party.

also more favorable than the MRO alone would have been.[12] This ESP-based stipulation is, in a financial sense, superior to the MRO from the perspective of the ratepayer.[13] Further the Stipulation provides additional, less tangible benefits. Simply having an overall *plan* that promotes enhancements in the distribution system, saves ratepayers millions in transmission costs, promotes energy efficiency, provides rate stability, promotes economic development with specific, tangible commitments and supporting low income ratepayers is an advantage.[14] Even if some of these attributes could have been done separately, achieving them in one group is advantageous by enhancing the perception of stability in the state. Likewise, the preservation of the ESP form of regulation is an advantage in itself.[15] While the future is always unknown, it appears particularly threatening from the current vantage point. Maintaining the regulatory flexibility of an ESP is particularly wise when the future appears so very threatening.

3. Public Policy

The final prong of the test is passed with ease. The Stipulation furthers important regulatory policies, it does not violate them. The General Assembly has been quite clear about the policies it means to foster through electric regulation restructuring. It has provided a list in R.C. 4928.02.

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12 Ohio Rev. Code Ann. § 4928.143(C)(1) (West 2010).

13 ESP Company Ex. 4 at 26.

14 ESP Staff Ex. 2 at 8.

15 *Id.*

The Commission is charged to "...Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service."[16] The Stipulation furthers these goals in multiple ways. The enhancements in the competitive bid structure improve upon the successful prior auction and increase the assurance of reasonable prices in the auction. It provides a mechanism, the DCR, to speed the funding for reliability enhancements. The mechanism is subject to audit and will be used in the SEET calculation to assure that customers benefit. Energy efficiency is directly benefitted. Transmission costs are avoided leading to more reasonably priced electricity. It provides for no distribution rate case for the term of the plan, holding down costs for consumers.

The Commission is charged to "...Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs."[17] The Stipulation accomplishes this by preserving the ELR rate which is very important to customers who are large customers. Additionally, the Stipulation provides the PIPP customers with a discounted rate while preserving the option of the Department of Development to acquire an alternative supply if it so chooses.

The Commission must "...Facilitate the state's effectiveness in the global economy."[18] The Stipulation does this quite directly by providing necessary support for the

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16 Ohio Rev. Code Ann. § 4928.02(A) (West 2010).

17 Ohio Rev. Code Ann. § 4928.02(B) (West 2010).

18 Ohio Rev. Code Ann. § 4928.02(N) (West 2010).

automakers and the Cleveland Clinic. Further other, non-earmarked shareholder money is provided for economic development.

The Commission must "...Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource."[19] The continued funding for OPAE helps protect at risk populations.

The Commission must "...Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers."[20] The Stipulation furthers this goal by making the GCR avoidable, enabling more shopping.

OCC argues that there are violations of good regulatory policy in the Stipulation. It is wrong. It argues that the provision permitting colleges to be treated as mercantile customers, if they have sufficient load to qualify, is discriminatory. It is nothing of the sort. The provision merely eliminates ambiguities about the meaning of "nonresidential" and "multiple facilities" in R.C. 4928.01(A)(19), determining, sensibly, that colleges are not residences and their multiple buildings are multiple facilities. The OCC witness even seemed to agree that a college campus could be a mercantile customer.[21]

OCC argues that a rate case should be held instead of using the DCR as proposed in the Stipulation. It objects to single issue ratemaking. This fight is over. The General

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19 Ohio Rev. Code Ann. § 4928.02(L) (West 2010).

20 Ohio Rev. Code Ann. § 4928.02(C) (West 2010).

21 Tr. ___ at ___.

Assembly has determined that single issue ratemaking is permissible.[22] This is exactly the sort of flexible approach that the General Assembly contemplated.[23] It is a reasonable way to obtain improvements in the distribution system quickly to the benefit of all customers. It will be subject to continuing review and oversight and should be approved.

In sum, these are a few of the vast benefits provided by the Stipulation. These benefits further the important policy goals of the General Assembly and show that the Stipulation meets the third prong of the three part test.

4. Approval

As has been shown, the Stipulation meets all prongs of the three part test. Further it is better in the aggregate than the MRO. On these bases, the Commission should adopt the Stipulation as its order in this case.

B. OBJECTIONS

Several parties have submitted testimony challenging aspects of the Stipulation. As will be shown, these objections have no merit. They will be considered in the following sections, divided by party.

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22 Ohio Rev. Code Ann. § 4928.143(B)(2)(h) (West 2010).

23 Ohio Rev. Code Ann. § 4928.02(G) (West 2010).

1. Ohio Environmental Council

The OEC makes a fairly simple argument. It claims that solar development in Ohio is being hampered by a lack of credit.[24] This lack of credit would be reduced if utilities would enter into long term, ten to fifteen year contracts to purchase solar RECs.

There are many problems with this idea. Essentially, OEC wants this Commission to create a new industry. Staff suggests that the better course of action is to allow market forces a chance to work first and only intervene if the market does not provide what is needed. This "wait and see" approach has several advantages. If a decision is to be taken to create a new industry, that decision needs to be vetted industry-wide rather than limited to FirstEnergy. The idea should be vetting industry-wide before any adoption. Additionally, waiting to see if there is a problem avoids the complications which accompany the OEC proposal. There is no assurance that utilities will need solar RECs ten or fifteen years into the future. A simple change in the auction process, requiring winners to provide their own RECs, eliminates the need. There is no reason to make a decision today about how auctions ten years away should be structured. Further, such long term agreements raise complicated questions about what price to pay, who owns the RECs, what to do with excess and other matters, none of which need to be addressed currently but for the OEC proposal. In sum, the OEC proposal is much more complicated than it appears on the surface. While it may become necessary to do what OEC suggests in the future, it is not advisable now.

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[24] ESP OEC Ex. 1.

2. Natural Resources Defense Council (NRDC)

The NRDC objects to the lost revenue collection provided in the Stipulation.[25] It would prefer some undefined kind of "decoupling" mechanism instead. NRDC does not make any specific proposal in this regard. This is particularly unhelpful in that, statutorily in Ohio, lost revenue collection is a decoupling mechanism. This can be seen in R.C. 4928.66(D) which states:

> The commission may establish rules regarding the content of an application by an electric distribution utility for commission approval of a revenue decoupling mechanism under this division. Such an application shall not be considered an application to increase rates and may be included as part of a proposal to establish, continue, or expand energy efficiency or conservation programs. The commission by order may approve an application under this division if it determines both that the revenue decoupling mechanism provides for the recovery of revenue that otherwise may be foregone by the utility as a result of or in connection with the implementation by the electric distribution utility of any energy efficiency or energy conservation programs and reasonably aligns the interests of the utility and of its customers in favor of those programs.

The General Assembly recognizes lost revenue collection for what it is, a means to decouple revenues from sales. It is a method, as the General Assembly notes, which aligns the interests of the utility in favor of the programs. The method is sensible. NRDC offers no alternative. Its objection should be ignored.

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[25] ESP NRDC Ex. 1.

3. EnerNOC

EnerNOC is a curtailment service provider (CSP).[26] That is an entity that contractually gathers customers who are willing to curtail their demand on request. EnerNOC pays these customers under proprietary terms for this commitment. This aggregated curtailment is then offered into the PJM capacity auctions as a resource.

EnerNOC's position in this case is not easy to understand. It appears upset with the recent ATSI capacity auctions. It believes that it was mislead into believing that the existing ELR and OLR rates would not be extended past the end of the current ESP. This misunderstanding resulted in a distortion in the ATSI capacity auction in EnerNOC's view. If this were true, the recourse would be to file a complaint with the regulator, the FERC. EnerNOC has not done this. This omission is perhaps because there is no basis for EnerNOC's claim. It believes that it was mislead by relying on information submitted by ATSI[27] when the auction rules themselves indicate that there is no warranty that the information is correct.[28] The PJM market monitor, who is charged to assure market fairness, found no problem with the ATSI capacity auction.[29]

Whether the ELR rate continued mattered to EnerNOC because there are approximately 400 MW of demand on the existing ELR rate. If that rate were to expire, the customers with that 400 MW of curtailable demand who were on the ELR rate would

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26 It has other functions as well but the CSP role is relevant here.

27 The information appears to have been correct at all relevant times in any event. Tr. __ at ___.

28 ESP Co. Ex. 6.

29 ESP IEU Ex. 1.

become potential customers for EnerNOC (it is not possible to do both as the demand reduction can only be committed once). EnerNOC assumed that, because FirstEnergy had not sought to extend the ELR rate in its MRO application, the ELR rate would expire and not be replaced. Assumptions are dangerous.

Essentially EnerNOC made a bet (or is concerned that other participants in the ATSI capacity auction made a bet). It wagered that there would be more capacity available (in the form of demand reduction) in the ATSI auction than there actually was.[30] That EnerNOC gambled[31] and lost (or is concerned that others did) is not this Commission's problem. It asks this Commission to eliminate a program that is very popular with customers, that fills important economic development and state mandated demand reduction needs so that CSPs would have a chance to sign up those customers to use their demand reductions to meet PJM capacity requirements. The position is nonsense.

The Commission should approve the Stipulation as proposed and retain the ELR program.

4. Demand Response Coalition (DRC)

The DRC is a group of CSPs similar to EnerNOC.[32] It would like the Commission to alter the terms of the ELR and OLR offerings to fit better with the DRC members'

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30 If EnerNOC was correct and CSPs did overestimate how much business they might be able to do, the effect would, obviously, be to lower the capacity price in the auction. A lower capacity price is beneficial to ratepayers in Ohio and an outcome that the Commission should support.

31 It is not clear in the public record how EnerNOC's behavior in the ATSI auction was changed, or even if it was changed, by the misinformation that it alleges but this detail is not important for purposes of this discussion.

32 *ESP DRC Ex. 1.*

business models. Simply put, there is no reason to do this. The OLR and ELR rates are offerings that provide "...consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs" exactly as R.C. 4928.02(B) calls for. To upset this so that the DRC members can participate in PJM markets is not reasonable.

5. OCC

The OCC presented a broad attack on the stipulation through the testimony of two witnesses. As many issues are addressed, the discussion will be presented one at a time below.

a. Automakers and Cleveland Clinic

The OCC witness objects to the rates provided for automakers and the Cleveland Clinic not on their merits. Rather he objects that he did not have the same information that would have been available to him if these proposals had been submitted in the form of applications for a reasonable arrangement pursuant to R.C. 4905.31.[33] The observation is irrelevant. Statute permits an ESP to include:

> Provisions under which the electric distribution utility may implement economic development, job retention, and energy efficiency programs, which provisions may allocate program costs across all classes of customers of the utility and those of electric distribution utilities in the same holding company system.[34]

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33 ESP OCC Ex. 1.

34 Ohio Rev. Code Ann. § 4928.143(B)(2)(i) (West 2010).

This is an entirely separate authorization and the rules governing R.C. 4905.31 have no application.

Having identified the correct law, we now turn to the merits of the proposals and the proposals have great merit. Even the OCC witness recognizes the pivotal role played by auto manufacturing in Ohio.[35] The great problems faced by automakers in the current economic situation are known to all and have lead to all citizens being partial owners of several companies. The Cleveland Clinic is contemplating a $1.4 billion expansion, creating 1000 jobs.[36] This will not happen without the small concession made to improve the electric infrastructure to allow the project to go forward.[37]

In short, the record is quite clear that these two mechanisms are much needed and will benefit the region. They should be approved.

b. PIPP

The Stipulation provides that electricity will be provided to PIPP customers at 6% less than the results of the auction. The Department of Development is not obligated to accept this power. It could, if it chose, aggregate the PIPP load and arrange for service from another source Although it might seem unlikely that anyone would object to an unalloyed benefit being offered to PIPP customers, OCC, remarkably tries.

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35 Tr. ___ at ___.

36 ESP Clinic Ex. 1.

37 Tr. ___ at ___.

OCC's claim is that the price is not low enough.[38] Why is 6% below the market price not low enough? Well, that is not very clear. The witness seems to think that the 6% must be too little because it was negotiated. All one needs to do is ask for more in the market and it will appear.[39] It would be a wonderful world for buyers indeed if all they had to do was ask for lower prices and they would appear. In the real world of course, a market price is a market price and this Stipulation puts the PIPP customers in a better than market situation.

Ironically, even if OCC were correct and below market supplies were available for the asking, the Department of Development can still get those prices. The Stipulation establishes a *floor* for PIPP savings. If DOD can do better than 6% less than market prices, it still can.

OCC's argument has no merit and should be rejected.

c. RTO Change Costs

There are three kinds of costs created by the movement of ATSI from MISO to PJM, entrance fees to join PJM, exit fees to leave MISO and transmission development costs imposed on all PJM members (termed "RTEP"). MISO transmission development costs already borne by ATSI will continue pursuant to contract, but this would be true whether or not ATSI changed RTOs.

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38 ESP OCC Ex. 2 at 27.

39 Tr. ___ at ___.

In the absence of the Stipulation, these costs would be imposed on ATSI and ATSI in turn would charge its customers, the FE operating companies. Pursuant to statute, transmission charges imposed by the FERC are passed on to the ultimate consumer.[40] This pass through is not optional.[41]

The Stipulation would change this and ratepayers would pay none of the entrance or exit fees and would be shielded from RTEP costs for five years.[42] The Staff takes the position, and the record supports, that, in the absence of the Stipulation, it is virtually certain that the FERC would impose all these costs on ATSI.[43] As noted above, once these costs are imposed, they must be collected (in the absence of the Stipulation).

To understand why these costs would be imposed by the FERC it is useful to look at the problem from the perspective of the FERC. The FERC has approved both the MISO and the PJM methods of administering RTOs, determining that both result in just and reasonable rates. The entrance and exit fees are simply components of these structures that the FERC has deemed reasonable. To imagine that the FERC would determine that these charges, which would be reasonable for anyone else, are not reasonable for FE, strains credulity.

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40 Ohio Rev. Code Ann. § 4928.05(A)(2) (West 2010).

41 *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 106 S. Ct. 2349, 90 L. Ed. 2d 943; *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 108 S. Ct. 2428, 101 L. Ed. 2d 322.

42 It is very questionable what these costs might be after five years in any event. The entire mechanism for allocating these costs is subject to revision.

43 Staff Ex. 1 at 8.

The RTEP costs are even more troubling. The justification for imposing the RTEP costs in the first place is that these projects provide system benefits for everyone who uses the PJM system. To allow FE to join PJM and derive the benefits of this new investment, but not pay for it, means that the other PJM members are being overcharged. There is no ability to avoid the existing MTEP charges as those are fixed by contract. The FERC is, thus, sandwiched. It cannot choose between the two systems that it has approved.

There is no need to guess about this. The FERC has spoken to the matter. When faced with a request to waive the RTEP costs for ATSI, the FERC refused. It stated:

> However, we cannot find based on PJM's current design of its markets that allocating a portion of RTEP costs to new entrants is unjust and unreasonable, or unduly discriminatory or preferential.[44]

This is consistent with the earlier FERC determination in *Duquesne Light Co.*, 122 FERC ¶ 61,039 (2008). The PJM tariff will apply. That this means ATSI would be paying for transmission in PJM and MISO simultaneously does not concern the FERC at all. It says:

> With respect to the issue of having to pay both RTOs for system-wide costs, ATSI and the PJM transmission owners are free to negotiate the terms of ATSI's entrance into PJM. These negotiations should reflect the benefits that ATSI may

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[44] *ATSI* 129 FERC ¶ 61,249 (2009) at 36.

> bring to the PJM system. PJM predicts that ATSI's integration "is likely to reduce production cost" and result in a more efficient use of the transmission system. The PJM transmission owners indicate that they are open to such negotiation. If sufficient cost savings will result, we expect that the PJM transmission owners will have both a will and an incentive to facilitate ATSI's realignment on a mutually beneficial basis and to submit a tariff amendment to reflect the value of those savings as a reduction in ATSI's RTEP obligation. We find that given the voluntary nature of RTOs, such a collaborative effort is the most appropriate manner of resolving such cost issues, and we would encourage the PJM transmission owners to pursue such negotiations. The Commission's Alternative Dispute Resolution and Settlement Judge procedures are available to the parties.[45]

In response to the request that ATSI not pay for transmission in two RTO's at the same time, the FERC cavalierly says "go work something out". Having approved two incompatible systems for operating RTOs, it does not appear that the FERC is at all interested in fixing the incompatibility. The Staff recognizes this situation for what it is and believes that it is very likely indeed that these costs would be imposed on the operating companies.[46] The FERC will not determine that it is unreasonable for a company to move from one FERC-approved structure to another. That would be tantamount to the FERC admitting that one system is better than the other.

The OCC takes a different view. It claims that there is no chance whatever that the FERC would impose these costs.[47] This is not an argument, it is whistling past the graveyard. The FERC has now twice indicated that it will follow existing tariffs. The

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45 *ATSI* 129 FERC ¶ 61,249 (2009) at 37.

46 ESP Staff Ex. 1 at 8.

47 Tr. ___ at ___.

status quo means that these charges will be imposed. Staff wishes it were otherwise, but it is not.

OCC also questions the actual computation of the value of the charges that would be imposed associated with the move from MISO to PJM. In fact each of the charges, entrance, exit, and RTEP fees are estimates.[48] Estimates are always subject to a degree of doubt. The OCC witness himself appears to have a great deal of difficulty tracking the status of PJM transmission projects.[49] While the details of these charges will certainly change, the order of magnitude certainly will not. The simple fact is that avoiding these charges, whether they ultimately turn out to be $300 million or $330 or $270 is a tremendous benefit to the Stipulation. It is a benefit that could have been obtained in no other way and is another powerful reason the Stipulation should be adopted by the Commission in this case.

d. Auction Design

OCC criticizes the auction design but there is no reason to credit this. The auction design tracks the successful pattern used last year. The only departures are intended to slightly improve the process. The OCC's primary concern seems to be that there is too much time between the auction and the delivery date. The previous auction was criticized for having too little time between these dates. Ultimately there is no "best" time. The schedule that is presented is a reasonable approach and should be approved.

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48 ESP Staff Ex. 1 at 3-8.

49 ESP Co. Ex. 11.

CONCLUSION

The question presented to the Commission is whether the Stipulation presents an ESP that is in the aggregate more favorable than an MRO would have been. Clearly the answer is yes. The Stipulation provides the same market advantages that the MRO would as it uses the same auction approach but it does much more. The Stipulation provides hundreds of millions in avoided transmission costs. It provides clarity in regulation by resolving a number of other cases. It assures the Commission will have flexibility in the future to deal with problems as they arise in the industry. It provides much needed economic development support and help for the PIPP customers. The list goes on and on. The Stipulation is better than the MRO and the Commission should adopt it as its order in this case.

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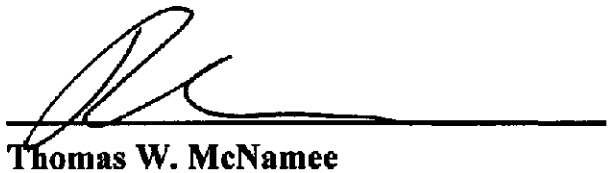
PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 30th day of April, 2010.



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