

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

First Energy Service Company

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Docket No: ER09-1589-000

COMMENTS OF THE ORGANIZATION OF MISO STATES

The Organization of MISO States (OMS) respectfully requests that the Federal Energy Regulatory Commission (FERC) set this matter for hearing or technical conferences. While the FirstEnergy (FE) proposal to leave the Midwest ISO and join the PJM may be consistent with the concept that membership in RTOs is voluntary, here FE has requested conditions and waivers that raise the concern for states in the Midwest ISO footprint. These issues may be of concern to states in the PJM footprint as well.

FE's filing raises policy issues that have not been addressed by the FERC and have important implications for OMS states. Since the Louisville G&E¹ case, FERC has new authorities over reliability and an expanded public policy agenda that make the proposals by FE more concerning. Because the issues are so different than those presented in the Louisville G&E case or the more recent Duquesne case², the FERC would not have to fear that a more deliberative process would affect its decisions that RTOs are voluntary organizations.

The issues raised in FE's filing and in statements before the Public Utilities Commission of Ohio³ and the concerns raised by the Ohio Commission and others in this docket should be resolved by the FERC through a fully deliberative process. Indeed, FERC has the opportunity to create a more complete record with greater opportunity to scrutinize the issues raised. The concerns raised by several OMS member states highlight the need for a more deliberative process. A variety of these concerns are outlined below.

1. **Others could pay for FirstEnergy's business decision(s).** At the September 15 hearing conducted by the Ohio Commission, FE stated its intent to collect Exit and Entrance fees through Formula Rates. FE seeks to have the FERC approve this proposal without a finding that the decision to leave the Midwest ISO and join the PJM is prudent and consistent with good public policy. Using FE's

¹ *Louisville Gas and Electric Company, et al.*, 114 FERC ¶ 61,282 (2006), reh. denied *sub nom. E.ON U.S. LLC, et al.*, 116 FERC ¶61,020 (2006).

² *Midwest Independent Transmission System Operator, Inc. and Duquesne Light Company*, 124 FERC ¶ 61,219 (2008)

³ Public Hearing September 15, 2009, webcast available at <http://www.puco.ohio.gov/apps/Webcast/index.cfm>.

transmission rates to pass through the costs of FE's business decisions – including potential mistakes – could have significant negative impacts for others in the MISO footprint.

2. **FE might avoid paying a fair share of transmission costs.** At the Ohio hearing, FE remarked that it should not have to pay twice for transmission costs in the Midwest ISO and the PJM. The possibility is only occasioned by its business decision to change RTOs. As the Illinois Commission correctly noted in this docket, it is not a question of “paying twice” as FE would have the FERC believe, it is rather the fair assignment of costs associated with FE's prior and prospective business decisions. To put a finer point on it, FE could be seen as a free rider by avoiding transmission costs in both RTOs, yet benefiting from expanded transmission in both RTOs. The ability to avoid transmission cost allocations may be a significant incentive for others to also switch RTOs.

3. **There may be adverse ramifications for resource planning and construction of new resources.** As the Missouri Commission notes in its filing, if FE is successful in avoiding legitimate costs of constructing new infrastructure, other utilities are certain to follow with the same intention. The resulting increased uncertainty could make planning of new infrastructure extraordinarily conservative and could have a chilling effect on investment in infrastructure.

FE's proposal, if applied to FE or others that might follow, could have adverse affects on inter-RTO, and Interconnection-wide long-term resource planning. As the Ohio Commission correctly noted, for planning purposes it is important that the planning reserve margin be predictable. FE's proposal may hinder the predictability of forecasting and create instability in planning which may ultimately lead to reduced investment in transmission infrastructure needed to connect generation with load.

4. **FE's proposal threatens the OMS's Cost Allocation and Regional Planning process and the Eastern Interconnection planning process.** FE's proposal comes at a time when FERC, the states, utilities, and others are considering a fundamental change in the way electric infrastructure is constructed and the costs are allocated. For the Midwest and beyond, there is increasing recognition that we are going to need more renewable energy and increased access to no or low carbon emitting generation. Additionally, it is likely that the location of any new coal-fired units will be constrained by the availability of carbon capture and storage. These factors will require modifications (likely significant ones) to the transmission system to deliver this energy to customers.

Attempts to address the transmission grid necessary to fulfill changing energy policy have already begun. There are several examples of collaborative efforts to consider and potentially develop new regional planning processes and cost allocation methodologies. These efforts range in scope, including OMS's Cost Allocation and Regional Planning (CARP) which is looking at the Midwest ISO states, and the newly formed Eastern Interconnection States' Planning Council (EISPC) which looks at all states in

the entire eastern interconnection. These ongoing and important planning efforts could be frustrated if planning assumptions must be built on constantly shifting RTO memberships.

5. **FE's move could adversely affect reliability.** Since the Louisville G&E decision, Congress, through the Energy Policy Act of 2005, gave the FERC substantial responsibilities over reliability. The Ohio Commission raised concerns that FE's proposal may frustrate the resolution of the Lake Erie loop flow problem. FE even noted that there will be reliability implications to work through to effectuate its move to PJM. It is critical that these issues be investigated and considered by FERC now.

6. **Seams issues may be exacerbated by FE's move to PJM.** FE alleged that seams issues and tighter electrical ties to PJM were an important factor in its decision to change RTOs. Of course, the only thing that would change is the location of the seam since the transmission typology is not changed. Therefore, the areas of persistent congestion will not be altered by changing RTO membership. Notably, state commissions have been repeatedly assured by the PJM and the Midwest ISO that the Joint Operating Agreement (JOA) provisions for seams management and congestion relief was working seamlessly. FE's filing indicates otherwise. If the JOA is not working this is a matter of great concern to the states and, we trust, to the FERC.

FE's assertions in this regard were based on preliminary study, apparently by the PJM (although FE does not identify the author(s)). The FERC, as part of a full hearing or technical conference may wish to consider having the Midwest ISO and the PJM conduct a joint study on this issue. Moreover, since the seams issues implicate both reliability and commerce, the Market Monitors for the PJM and Midwest ISO ought to be involved in such a study. The involvement of the Market Monitors would have the added benefit of providing states with a higher degree of assurance that the study of seams issues was objective.

7. **Preferential Treatment of FE is inconsistent with the Power Act and Prior FERC Rulings.** The conditions and waivers sought by FE appear to seek preferential and discriminatory treatment as compared to other RTO members. This appears to be the same type of treatment that FERC rejected when the Midwest ISO sought to provide incentives that would encourage utilities outside the Midwest ISO to join. The Midwest ISO's 2008 market expansion proposal was declined because FERC found the terms and conditions to be preferential, unfair, unduly discriminatory, and unjust, and potential destabilizing to the RTO.⁴ Additional investigation is necessary to determine whether the conditions and waivers sought here run counter to prior FERC decisions.

8. **FERC should provide for meaningful state participation.** As the Pennsylvania Commission notes in its filing, "FE's filing proposes a fast track deliberation and approval and Commission order by December 17, 2009. FE and PJM had adequate time to prepare this application during the summer, but

⁴ *Midwest Independent Transmission System Operator, Inc. and Transmission Owners of the Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,029 (2008).

state commissions were not part of the process, nor were state commissions given a preview of the application prior to filing. There is no allegation in the Application that speedy Commission action is required for reliability purposes; indeed, the only reason for speed appears to be business related, and to conform to PJM's business requirements for such a large integration of FE's transmission grid. Given the variety of factors identified here and in the filings made by OMS member states, it is critical that states have the opportunity to provide deliberate input on all matters relating to the FE proposal.

III. CONCLUSION

For the reasons explained above, the OMS requests that the Commission set this matter for hearing or technical conference. The OMS submits these comments because a majority of the members have agreed to generally support them. Individual OMS members reserve the right to file separate comments regarding the issues discussed in these comments. The following members generally support these comments.

Indiana Utility Regulatory Commission
Iowa Utilities Board
Michigan Public Service Commission
Minnesota Public Utilities Commission
North Dakota Public Service Commission
Public Utilities Commission of Ohio
Pennsylvania Public Utility Commission
South Dakota Public Utilities Commission
Wisconsin Public Service Commission

The Illinois Commerce Commission, the Kentucky Public Service Commission, the Missouri Public Service Commission, and the Montana Public Service Commission abstained from the vote on these comments. The Manitoba Public Utilities Board did not participate in this pleading.

The Iowa Office of Consumer Advocate and the Minnesota Office of Energy Security, as associate members of the OMS, participated in these comments and generally support these comments.

Respectfully Submitted,
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Dated: September 25, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Des Moines, Iowa, this 25th day of September 2009.

William H. Smith, Jr.
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