

135 FERC ¶ 61,198
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

PJM Interconnection, L.L.C.

Docket Nos. ER11-2814-000
ER11-2815-000

ORDER ON PROPOSED TARIFF REVISIONS

(Issued May 31, 2011)

1. On February 1, 2011, pursuant to section 205 of the Federal Power Act (FPA),¹ PJM Interconnection, L.L.C. (PJM) and American Transmission Systems, Inc. (ATSI) jointly submitted modifications to the PJM Open Access Transmission Tariff (OATT), the Amended and Restated Operating Agreement (OA), the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region (RAA) and the Consolidated Transmission Owners Agreement (TOA) in connection with ATSI's integration into PJM, effective June 1, 2011. As discussed below, the Commission accepts PJM's proposed ministerial revisions to the PJM OATT, OA, RAA, and TOA, effective June 1, 2011. The Commission also accepts and suspends ATSI's formula rate tariff provisions proposed to be included in the PJM OATT, effective June 1, 2011, subject to refund and ATSI making a compliance filing within 30 days of the date of this order removing from its formula rates: (1) the costs incurred by PJM in connection with ATSI's integration and billed to ATSI; (2) ATSI's deferred internal integration costs; and (3) Midwest Independent Transmission System Operator, Inc. (MISO) exit fees, including Legacy MISO Transmission Expansion Plan (MTEP) costs.² Finally, the Commission sets ATSI's proposed formula rate protocols for hearing and settlement judge proceedings and grants PJM's request for a limited waiver.

¹ 16 U.S.C. § 824d (2006).

² ATSI defines Legacy MTEP costs as the costs of certain transmission projects identified in the MTEP and approved by the MISO Board of Directors prior to ATSI's integration into PJM.

I. Background

2. ATSI is a wholly-owned subsidiary of FirstEnergy Corporation and an affiliate of FirstEnergy Service Company (FirstEnergy). ATSI is a transmission-only utility, which owns, operates, and maintains transmission facilities in Ohio and western Pennsylvania. ATSI owns no generation and provides no retail utility service. ATSI is currently a member of the MISO, and makes its transmission facilities available under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO ASM Tariff). ATSI's current customers include wholesale and retail energy suppliers and wholesale and retail load-serving entities. ATSI is also an affiliate of utilities that are currently members of PJM, including Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company, West Penn Power Company, Monongahela Power Company, and The Potomac Edison Company.

3. On August 17, 2009, ATSI submitted a filing, pursuant to section 205 of the FPA, requesting Commission approval of its proposal to withdraw from the MISO and join PJM, subject to ATSI making additional filings. One of the components of ATSI's proposal was a request for waiver of the PJM regional transmission expansion plan (RTEP) charges for costs associated with facilities planned and approved before June 1, 2011 (Legacy PJM RTEP costs). On October 19, 2009, FirstEnergy filed a complaint against PJM as an alternative to ATSI's request for waiver of the RTEP charges, contending that assignment of cost responsibility to the ATSI zone load for projects approved by PJM prior to ATSI's proposed date of integration was unjust, unreasonable, and unduly discriminatory.

4. On December 17, 2009, the Commission issued an order authorizing ATSI to terminate its existing obligations to the MISO, subject to conditions.³ The conditions included, *inter alia*: (1) the submission of ATSI's proposed replacement rates in a separate filing; (2) the submission of a separate filing addressing ATSI's exit fee obligations; (3) the submission of a separate filing addressing ATSI's obligations to construct new facilities; and (4) ATSI's receipt of all applicable federal and state regulatory approvals. The December 17, 2009 Order also addressed ATSI's proposed integration of the ATSI zone into PJM's capacity markets. Finally, the December 17, 2009 Order rejected ATSI's request for waiver of the Legacy PJM RTEP charges and dismissed FirstEnergy's complaint.

³ *American Transmission Systems, Inc. and FirstEnergy Service Co. v. PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,249 (2009) (December 17, 2009 Order).

5. In the December 17, 2009 Order, the Commission stated that an applicant proposing to withdraw from a Regional Transmission Organization (RTO) is required to satisfy three requirements: (1) the withdrawal proposal is required to satisfy the terms of the applicant's contractual obligations as they relate to RTO withdrawal; (2) the proposed replacement arrangements must comply with the Commission's *pro forma* OATT and/or the standard of review applicable to proposed tariff provisions that differ from the *pro forma* OATT; and (3) the replacement arrangements must be just, reasonable, and not unduly discriminatory.⁴ The Commission found that, subject to conditions, ATSI had satisfied or will satisfy the requirements for withdrawal from the MISO, as established under the Agreement of Transmission Facilities Owners to Organize the MISO (MISO TOA). In particular, the Commission found that, subject to the outcome of future proceedings, ATSI's plans met the hold harmless obligation under Article V, Section II.A of the MISO TOA, and ATSI's existing customers would be entitled to enjoy the same service and pricing to which they would have been entitled absent ATSI's withdrawal from the MISO.⁵ The Commission stated that it could not determine at that time whether, or to what extent, ATSI's anticipated replacement arrangements comply, or will comply, with the Commission's *pro forma* OATT or the standard of review applicable to deviations from the *pro forma* OATT.⁶ The Commission also stated that it would not address or prejudge issues relating to the justness and reasonableness of ATSI's anticipated replacement arrangements.⁷

6. With respect to ATSI's request for waiver of the requirement to pay for Legacy PJM RTEP costs, the Commission found that it was not unjust and unreasonable or unduly discriminatory to allocate a portion of PJM RTEP costs to a new entrant.⁸ In response to ATSI's argument that it is not just and reasonable for the MISO to require payment of system-wide costs as an exit fee while PJM requires transmission owners entering PJM to pay for system-wide costs when they enter, the Commission explained that: "Each of the PJM and Midwest ISO cost allocation methodologies has been accepted by the Commission as just and reasonable and not unduly discriminatory

⁴ December 17, 2009 Order, 129 FERC ¶ 61,249 at P 27.

⁵ *Id.* P 48, 50.

⁶ *Id.* P 29.

⁷ *Id.* P 136.

⁸ *Id.* P 111.

methodologies for allocating the costs among the members of each RTO. ATSI's voluntary choice to move from one RTO to another does not cause either of these methodologies to no longer be just and reasonable or not unduly discriminatory simply because each produces a different result."⁹

7. Various parties submitted requests for clarification and/or rehearing of the December 17, 2009 Order. On March 10, 2010, the Commission issued an order addressing certain of these requests for rehearing.¹⁰ The Commission stated that it would address all other issues raised on rehearing in a separate order. Among the issues to be addressed in the subsequent Commission order is an assertion that the Commission erred by finding that ATSI must pay for both Legacy MTEP and PJM RTEP costs.

II. Details of the Filing

8. On February 1, 2011, PJM and ATSI jointly submitted modifications to the PJM OATT, OA, RAA, and TOA, in connection with ATSI's integration into PJM effective June 1, 2011.¹¹ ATSI submitted modifications to the PJM OATT related to the establishment and recovery of ATSI's revenue requirements, rate design and provisions of the PJM OATT governing the recovery of transmission-related costs incurred by ATSI.¹² PJM also requests a waiver of the PJM application fee for Market Buyers applying for PJM membership as a direct result of the ATSI integration into PJM.

A. Ministerial Revisions to the PJM OATT, OA, RAA, TOA

9. PJM states that various ministerial revisions to the PJM OATT, OA, RAA and TOA are needed to implement the integration of the ATSI Zone into the PJM Region on June 1, 2011, in accordance with the December 17, 2009 Order. PJM contends these

⁹ *Id.* PP 112 – 114 (footnotes omitted).

¹⁰ *American Transmission Systems, Inc., et al.*, 130 FERC ¶ 61,171 (2010).

¹¹ The PJM TOA modifications were filed by PJM on behalf of the PJM Transmission Owners Agreement Administrative Committee.

¹² Agreement to Implement Expansion of PJM Region for FirstEnergy Service Company set forth in Exhibit 1 to ATSI's August 17, 2009 filing in Docket No. ER09-1589-000. The division between PJM and ATSI of filing responsibilities herein are consistent with filing rights allocated to PJM and the PJM transmission owners pursuant to Section 9 of the PJM OATT and Article 7 of the PJM TOA.

changes are ministerial in that they add, where needed, the ATSI Zone and/or the ATSI Transmission Owner to the PJM OATT, OA, RAA, and TOA.¹³

B. Substantive Revisions to the PJM OATT

1. Transmission Rates

10. ATSI states that it is proposing to incorporate rates for four transmission services under the PJM OATT. These are: (1) Network Integration Transmission Service (NITS) (PJM OATT, Attachment H-21); (2) Transmission Owner Scheduling, System Control and Dispatch Service (PJM OATT, Schedule 1A); (3) Long-Term Firm and Short-Term Firm Point-To-Point (PTP) Transmission Service (PJM OATT, Schedule 7); and (4) Non-Firm Point-To-Point Transmission Service (PJM OATT, Schedule 8). ATSI explains that it is proposing to base its new transmission rates in PJM on its existing formula rate template set forth in Attachment O to the MISO ASM Tariff, with modifications necessary to implement the move into PJM.¹⁴

11. According to ATSI, transmission owners in PJM include their NITS rates in Attachment H of the PJM OATT with each transmission owner having its own Attachment H. ATSI states that the NITS formula for the ATSI Zone will be included in new Attachment H-21, and will be used to calculate not only the NITS rates, but also the firm and non-firm PTP rates under PJM OATT Schedules 7 and 8 and Schedule 1A - Scheduling, System Control and Dispatch Service rate under the PJM OATT.¹⁵

12. To calculate the rates for Transmission Owner Scheduling, System Control and Dispatch service under the PJM OATT, ATSI proposes to continue a formula rate approach. The revenue requirement for Schedule 1A service will be calculated under Appendix A of Attachment H-21 using the same expenses currently used in the calculation of the MISO rates from ATSI's FERC Form 1. In addition, ATSI states a provision in the Schedule 1A rate calculation has been added for a credit for revenues stemming from non-zonal transactions.¹⁶

¹³ *Id.* at 3.

¹⁴ *Id.* at 10.

¹⁵ *Id.* at 11.

¹⁶ *Id.*

13. ATSI states that the revenue requirement for PJM OATT Schedule 1A service will be determined annually under Attachment H-21A using the same expenses currently used in the calculation of MISO's Schedule 1 and Schedule 24. ATSI explains that the MWh information will be based on calendar year settlement records provided to the MISO for the months ATSI remains in the region, and then on PJM settlement records for the months ATSI is integrated into PJM.¹⁷

14. ATSI proposes that the ATSI rates for firm and non-firm PTP service under Schedules 7 and 8 of the PJM OATT be based on the zonal revenue requirement calculated under ATSI's Attachment H-21 and argues that this is consistent with how PTP rates are calculated for all transmission owners in PJM.

2. Changes to Conform to PJM Practices & Address Transitional Issues

15. ATSI states that it is proposing changes to its formula rate to reflect differences between the PJM and MISO tariffs and practices, and to reflect ATSI's integration into PJM. For the NITS rate, ATSI states it has changed the denominator from 12 CP to 1 CP consistent with Section 34 of the PJM OATT, which requires the use of a 1 CP denominator and load reductions caused by behind-the-meter generation. For the PTP rates, ATSI states that it has also eliminated adjustments between PTP contract demand and loads served using PTP service, and it will use the 12 CPs for the 12 months ending October 31 prior to the rate year as the denominator for deriving PTP rates.¹⁸ ATSI states that it has eliminated non-firm PTP revenues in its revenue credit in deriving the net revenue requirements used for zonal rate-making purposes. It states that this change is appropriate because, after integration, PJM will directly credit these revenues to transmission customers, rather than ATSI doing so.¹⁹

16. ATSI states that it has eliminated two existing adjustments to the formula rate that will no longer be needed after integration. ATSI states that it has removed the Vegetation Management Enhancement Project adjustment because recovery of the costs under this adjustment will be completed prior to ATSI's integration into PJM. ATSI also states that it has removed the Revenue Credit Correction mechanism, because the purpose of the mechanism was to recognize the loss of revenue streams resulting from the elimination of

¹⁷ *Id.* at 12.

¹⁸ *Id.* at 13.

¹⁹ *Id.*

certain transitional rates in establishing zonal rates. ATSI argues that while final settlements related to the recent Commission order in the SECA proceeding (Docket No. EL02-111-000) and settlement agreements previously reached in the proceeding have not been completed, any residual increases that will serve to reduce net zonal revenue requirements, or decreases to ATSI's revenues that will serve to increase net zonal revenue requirements, will be included in non-zonal PTP revenues in deriving ATSI's zonal rates. Therefore the Revenue Credit Correction mechanism is no longer needed.²⁰

17. ATSI explains that it is proposing a transitional adjustment to the firm PTP revenues used as a credit in the calculation of the net zonal revenue requirement for the rate years beginning June 1, 2012 and June 1, 2013. ATSI contends that under ATSI's formula rate, ATSI's share of firm PTP service revenues for loads sinking outside its zone for the prior calendar year is used to reduce revenue requirements to be recovered through the application of zonal rates. However, ATSI argues that its share of firm PTP revenues is expected to change after its migration to PJM, creating a potentially significant mismatch of revenues derived from sources outside of ATSI's zone and the credit utilized for these revenues for zonal rate-making purposes. It states that the adjustment calculations will be shown in Appendix G to Attachment H-21, along with a supporting workpaper. Moreover, ATSI states that the adjustment will not change its formula rate or the derivation of the gross revenue requirements needed to support ATSI's facilities.²¹

3. Changes Related to PJM RTEP Projects

18. ATSI explains that once it joins PJM, it will be responsible for constructing new PJM RTEP projects in its zone consistent with Schedule 12 of the PJM OATT. Additionally, ATSI explains that costs for such RTEP projects (i.e., Transmission Enhancement Charges) shall be allocated to transmission customers as provided for under Schedule 12 of the PJM OATT. ATSI states that, in Appendix D to its formula rate (Attachment H-21), ATSI has included a formula for deriving the annual revenue requirement for these RTEP projects. ATSI contends that the mechanism proposed for the recovery of RTEP costs is just and reasonable and that it constitutes a conforming rate modification that is necessary to incorporate ATSI's existing formula transmission rate to the operations, practices, and requirements of PJM.²²

²⁰ *Id.* at 13-14.

²¹ *Id.* at 15-16.

²² *Id.* at 13-14.

4. Changes Related to Legacy MTEP Projects

19. ATSI proposes to recover the costs of Legacy MTEP projects, which are certain transmission projects previously identified in the MTEP and approved by the MISO Board of Directors prior to ATSI's integration into PJM. ATSI argues that after integration into PJM, remaining MISO transmission owners will continue to be obligated to construct certain projects, and transmission customers serving load in the ATSI Zone will continue to be obligated to pay a portion of the costs of certain of those projects. Likewise, ATSI states that transmission customers serving load in the remaining MISO zones will continue to be responsible for the costs of previously identified MTEP projects that ATSI has constructed or remains obligated to construct in the ATSI Zone.²³

20. ATSI contends that the December 17, 2009 Order directed ATSI and the MISO to submit an agreement regarding the construction of new facilities.²⁴ ATSI proposes to recover the costs of Legacy MTEP projects constructed by the remaining MISO transmission owners that are allocated to transmission customers serving load in the ATSI Zone under Attachment H-21. ATSI states that it will credit the amounts received from the MISO zones for their share of the Legacy MTEP projects constructed by ATSI in its Attachment H-21 zonal revenue requirement. ATSI states that new Attachment II sets forth the method by which transmission customers taking service for deliveries in the ATSI Zone are charged for MTEP projects constructed by remaining MISO transmission owners, the method by which PJM will transmit the revenues received from transmission customers to the MISO for distribution to MISO transmission owners,²⁵ and the manner in which PJM will distribute revenues received from loads in the MISO to ATSI for MTEP projects constructed in the ATSI Zone.²⁶

²³ *Id.* at 14.

²⁴ December 17, 2009 Order, 129 FERC ¶ 61,249 at P 54.

²⁵ On December 16, 2010 in Docket No. ER10-1791-000, the Commission issued an order concerning the allocation of the costs of MVP projects in the MISO. *Midwest Independent Transmission System Operator, Inc.*, 133 FERC ¶ 61,221 (2010). That order is subject to rehearing and appeal. ATSI states that, upon final resolution of that proceeding and other related or pending proceedings, it may be necessary to modify Attachment II to address residual MVP obligations or other similar matters, if any.

²⁶ The manner in which the revenue requirements for MTEP projects constructed by transmission owners other than ATSI will be recovered through Attachment II is

(continued...)

5. Additional Formula Rate Matters

21. ATSI contends that under a settlement in Docket No. ER05-285-000, ATSI's affiliates and non-affiliated transmission customers are subject to voltage differentiated rates for customers using 138 kV and above transmission facilities and those using both 138 kV and above transmission facilities and below 138 kV transmission facilities. ATSI states that the rates are differentiated by voltage so that transmission customers delivering only at higher voltages (138 kV and above) pay a rate that excludes the cost of lower voltage facilities.²⁷ ATSI argues that a shift of the ATSI transmission facilities from the MISO to PJM does not require a change in this arrangement, and therefore proposes to continue the dual-voltage rate design.²⁸

22. ATSI states that it has included in its filing the loss factors to be used in determining peak loads for transmission service settlements. It contends that the loss factors are identical to the ones included in ATSI's current OATT, accepted by the Commission in Docket No. ER05-1493-000.²⁹

23. ATSI explains that, consistent with the practice of other PJM transmission owners that use formula rates to establish their revenue requirements under the PJM OATT, ATSI has added a protocol to its formula rate to set forth a process through which ATSI will, among other things, provide an opportunity for ATSI transmission customers to annually review the components of ATSI's formula rate prior to the commencement of the rate year on June 1.³⁰

24. According to ATSI, on December 16, 2010 in Docket No. EC10-68-000, the Commission authorized the merger of FirstEnergy and Allegheny Energy, Inc.

described in the Ziegler Testimony at 11-15.

²⁷ The dual voltage rate design mechanism and the rate calculation and billing mechanics under the dual voltage rate design are described in detail in the Ziegler Testimony at 27-28.

²⁸ Filing at 16-17.

²⁹ *Id.* at 17.

³⁰ *Id.* (ATSI states that the formula rate protocol is similar to the formula rate protocols accepted by the Commission for the other PJM transmission owners and is described in detail in the Ziegler Testimony at 29-30.)

(Allegheny),³¹ and held that, if the merger applicants seek to recover transaction-related costs through their wholesale power or transmission rates, they must submit a compliance filing that details how they are satisfying the hold harmless requirement described in the merger application and order.³² ATSI argues that, in the context of formula rates, the Commission has found that the hold harmless commitment is enforceable and administratively manageable if customers have the opportunity to scrutinize costs before they are included in the formula rate, and therefore are able to alert the Commission to costs that might be merger-related. ATSI contends that as long as customers are given this opportunity, no change is required to the formula rate in order to implement the hold harmless commitment.³³ ATSI contends that its proposed rates satisfy these requirements because, under its proposed formula rate implementation protocol, customers will have the opportunity to review the costs that will be included in the formula rate prior to the annual effective date.³⁴

6. Deferred Internal Integration Costs

25. ATSI states that it proposes to recover through its formula rates internal integration costs incurred by the company while transitioning to PJM and that these expenses total \$2,710,488.³⁵ ATSI explains that it has deferred recovery of these costs to provide a better match between these costs and the anticipated benefits to be realized by customers with ATSI's integration into PJM. ATSI proposes to recover them as an O&M expense in the June 1, 2011 – May 31, 2012 rate year after its integration into PJM.

³¹ *FirstEnergy Corp., et al.*, 133 FERC ¶ 61,222 (2010) (Merger Order).

³² *Id.* P 63. In such filing, the applicants will have to: (1) specifically identify the transaction-related costs they are seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the transaction, in addition to any requirements associated with filings made under FPA section 205. *Id.*

³³ *WPS Resources Corp. and Peoples Energy Corp.*, 117 FERC ¶ 61,335, at P 33 (2006) (citing *ITC Holdings Corp., et al.*, 116 FERC ¶ 61,271, at P 48 (2006)).

³⁴ Filing at 17-18. ATSI states that it reserves the right to submit a future filing that complies with the requirements of the Merger Order seeking to recover some or all merger-related costs it has incurred.

³⁵ *Id.* at 17.

7. PJM Integration Costs

26. ATSI proposes to recover through its formula rate PJM integration costs (PJM Integration Costs) which are costs incurred by PJM in connection with ATSI's integration into PJM that do not benefit other zones within the PJM footprint. ATSI contends that, as PJM and ATSI agreed in their integration agreement, PJM has periodically billed ATSI for these incurred costs since the integration was announced, and ATSI has deferred these costs for future recovery. ATSI states that the final total of the PJM Integration Costs will not be known until integration is completed, however, the total is expected to be approximately \$3 million.³⁶

8. MISO Exit Fees

27. ATSI states that under Article Five, Section II.B of the MISO TOA, ATSI is required to pay an amount in connection with its withdrawal from the MISO to be determined through negotiations between the MISO and ATSI. The testimony of Richard A. Ziegler explains that the MISO withdrawal obligation consists of the MISO's long-term liabilities that are normally collected through rate schedules designed to recover financial obligations incurred by the MISO to support transmission service, firm transmission rights and the energy market.³⁷ ATSI contends that a portion of the charges under Schedules 10, 16, and 17 of the MISO ASM Tariff,³⁸ are currently paid for by transmission customers, including transmission customers in the ATSI zone.

28. ATSI explains that it has been engaged in negotiations with the MISO, but the parties have not yet reached agreement. Consequently, ATSI is proposing to establish a rate mechanism in its formula rate for the recovery of the costs associated with the MISO withdrawal obligation, but cannot precisely specify the final amount it seeks to recover.

³⁶ *Id.* at 20.

³⁷ *Id.* at 19.

³⁸ Schedule 10 (ISO Cost Recovery Adder) provides for the recovery of the costs associated with operating the MISO, exclusive of those costs recovered under Schedules 1, 16, and 17. Schedule 16 (Financial Transmission Rights (FTR) Administrative Service Cost Recovery Adder) provides for the recovery of the costs associated with administering the MISO's FTR market. Schedule 17 (Energy Market Support Administrative Service Cost Recovery Adder) provides for the recovery of the costs associated with administering the MISO's energy markets.

ATSI states that based on information provided by the MISO during the negotiations, ATSI estimates its obligation is approximately \$35 million.³⁹

9. RTO Realignment Cost Adjustment

29. ATSI proposes to recover the MISO withdrawal obligation and PJM Integration Costs through the RTO Realignment Cost Adjustment as provided on page 1 of 5, line 5c of Attachment H-21A. ATSI states that since the costs are not known with certainty at this time, instead of projecting expenditures with a known end date and then adjusting the amounts included in the associated revenue requirements, it proposes to implement Appendix C using an initial amortized expense, assuming a 5-year amortization period, with an adjusted amortization period once all costs are known with certainty. The proposed initial amortization amount is estimated to be \$627,608 per month, which was calculated by adding the estimated MISO withdrawal obligation (\$34,656,487) and the estimated PJM Integration Costs (\$3 million), and dividing the resultant sum by 60 months.⁴⁰ ATSI argues that the recovery of these costs through its transmission rates is just and reasonable and consistent with Commission precedent.⁴¹

C. RTO Withdrawal Requirements

30. ATSI states that, in the December 17, 2009 Order, the Commission explained that ATSI's submission of replacement rates and terms for transmission service would provide the appropriate venue for the Commission's consideration of whether ATSI's existing customers will have access to continued transmission service as described in Article Five, Section II.A of the MISO TOA.⁴² ATSI contends that its replacement rates satisfy the requirement set forth in the MISO TOA that transmission customers continue to receive transmission service at the same rates, terms and conditions that would have been applicable had ATSI not withdrawn from the MISO.⁴³ ATSI states that the Commission has held that this obligation extends only to "existing transmission

³⁹ *Id.* at 20. *See* Exhibit No. FE-102 (providing calculation of the \$34,656,487 million estimate using information received from the MISO).

⁴⁰ *Id.*

⁴¹ *Id.* at 21.

⁴² *Id.* at 18.

⁴³ *Id.* (citing MISO TOA, Article Five, Section II.A).

arrangements, including grandfathered agreements.”⁴⁴ ATSI states that, with respect to PTP service, existing arrangements include executed transmission service agreements under the MISO ASM Tariff that cover specific transactions, or any confirmed reservation on the MISO Open-Access Same-Time Information System (OASIS) in existence as of the notice date, which in this case was July 31, 2009.⁴⁵ ATSI argues that the terms and conditions of service on ATSI’s system under the PJM OATT are comparable to the terms and conditions of service currently provided under the MISO ASM Tariff.

31. ATSI acknowledges that Commission precedent with respect to RTO withdrawals requires that an applicant proposing to withdraw from an RTO demonstrate that its proposed replacement arrangements comply with the Commission’s *pro forma* OATT and/or the standard of review applicable to proposed tariff provisions that differ from the *pro forma* OATT. ATSI argues that the PJM OATT is a Commission-approved open access transmission tariff that complies with the Commission’s *pro forma* OATT and any provisions that differ from the *pro forma* OATT have been approved by the Commission.

32. ATSI also acknowledges that the applicant’s replacement arrangements must be just, reasonable and not unduly discriminatory.⁴⁶ ATSI argues that recovery of RTO transition costs is just and reasonable and consistent with Commission precedent because it is proposing to transfer its existing formula rate, subject only to modifications that reflect the costs to transition into PJM and are consistent with Commission precedent permitting transmission owners that join an RTO to recover transition costs.⁴⁷ ATSI

⁴⁴ *Id.* at 12 (citing December 17, 2009 Order, 129 FERC ¶ 61,249 at P 50).

⁴⁵ *Id.* at 12.

⁴⁶ *Louisville Gas and Electric Co.*, 114 FERC ¶ 61,282, at P 12 (2006); *see also Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.*, 133 FERC ¶ 61,058, at P 14 (2010); *Duquesne Light Co.*, 122 FERC ¶ 61,039, at P 28, *order on reh’g and compliance*, 124 FERC ¶ 61,219 (2008).

⁴⁷ Filing at 21 (citing, *e.g.*, *Virginia Electric and Power Co.*, 125 FERC ¶ 61,391 (2008), *reh’g denied*, 128 FERC ¶ 61,026 (2009) (*VEPCO*); *New York Independent System Operator, Inc.*, 92 FERC ¶ 61,180 (2000); *PJM Interconnection, L.L.C. and Allegheny Power*, 96 FERC ¶ 61,060, at 61,222-23 (2001), *order approving uncontested settlement*, 100 FERC ¶ 61,088 (2002) (*Allegheny*); *American Electric Power Service Corp.*, 113 FERC ¶ 63,031, *order approving uncontested settlement*, 113 FERC ¶ 61,294 (2005), *as corrected*, 115 FERC ¶ 61,114 (2006)).

asserts that its proposed 5-year amortization period is consistent with Commission precedent. ATSI also asserts that transition costs were incurred for the purpose of providing continuing Commission-approved service in the ATSI Zone and that there are no new costs as a result of ATSI's withdrawal from the MISO because the MISO withdrawal obligation comprises the MISO's long-term liabilities that are normally collected through the MISO ASM Tariff.

D. Waiver Request

33. PJM requests waiver of the \$1,500 PJM application fee for Market Buyers applying for PJM membership as a direct result of ATSI's integration into PJM. PJM and ATSI state that this limited waiver would not apply to Market Buyers joining PJM after June 1, 2011 and will not apply to Market Buyer or other PJM membership applicants seeking PJM membership for reasons unrelated to the ATSI integration. ATSI argues that this waiver is appropriate because the costs that the application fee is intended to cover have already been paid by ATSI as part of ATSI's integration costs, such that there is no need to charge Market Buyers this fee.

III. Notice of Filing and Responsive Pleadings

34. Notice of PJM's filing was published in the *Federal Register*, 76 Fed. Reg. 7555 (2011), with protests and interventions due on or before February 22, 2011. Motions to intervene were filed by Duke Energy Corporation, Public Utilities Commission of Ohio, and Exelon Corporation. Motions to intervene and protests were filed by the Office of the Ohio Consumers' Counsel, Inc. (OCC); Buckeye Power, Inc. (Buckeye); American Municipal Power, Inc. (AMP); and Cleveland Public Power. MISO Transmission Owners filed a motion for leave to intervene out-of-time. On March 3, 2011, ATSI filed an answer to the protests, and AMP filed an answer to Buckeye's protest. On March 17, 2011, Buckeye filed an answer to AMP's and ATSI's answers. On March 24, 2011, OCC filed an answer to ATSI's answer. On April 1, 2011, AMP filed an answer to Buckeye's answer.

A. Protests

35. OCC argues that ATSI has not shown that the costs resulting from ATSI's move to PJM are just and reasonable and in accordance with the FPA.⁴⁸ OCC asserts that the rates resulting from the switch may be as much as 38 percent higher. OCC contends the Commission should find that it is unjust and unreasonable for ATSI's customers to bear these costs, which result from a unilateral business decision to switch RTOs in order to

⁴⁸ OCC Protest at 9 (citing 16 U.S.C. § 824e).

benefit generation interests. OCC also asks the Commission to rule at the outset how it will address the issue of the prudence of ATSI's decision to switch RTOs and asserts that the costs at issue cannot be found just or reasonable unless there has been a prudence investigation.

36. OCC argues that ATSI has not shown that the decision to switch RTOs was driven by the need to provide better service to ATSI's transmission customers, and therefore ATSI has failed to show that transmission customers should bear the burden of Legacy MTEP costs, PJM Integration Costs, and other RTO realignment costs and fees. OCC contends that the Commission has not held that ATSI can properly pass those costs through to its transmission customers. OCC also contends that while ATSI claims that its transmission customers will benefit from the RTO switch, it supplies almost no new testimony or exhibits on this point. OCC asserts that the case law cited by ATSI to support imposing RTO transition costs on its customers is inapposite, and OCC states that it is unaware of any circumstance in which the Commission has found that it is appropriate for a utility's transmission customers to bear the costs associated with a utility's decision to switch RTOs.

37. OCC argues that the following costs should be borne by ATSI's shareholders, along with any other costs that result from ATSI's decision to switch RTOs: 1) Legacy MTEP Costs, 2) Legacy RTEP Costs, 3) MISO exit fees, 4) PJM integration-related costs, and 5) costs to compensate remaining MISO transmission owners for adverse impacts to their long-term transmission rights. OCC states ATSI would be responsible for MTEP projects approved even after it has withdrawn from the MISO, even though ATSI's customers, once moved to PJM, will no longer benefit from these projects. OCC contends ATSI's customers should not have to pay substantial costs for projects located in another RTO to which their utility is not a member, and therefore the Commission should follow principles of cost causation and find that ATSI's shareholders should fund all of the Legacy MTEP costs. OCC asserts that, absent a showing that ATSI customers are better off by paying Legacy RTEP costs, the Commission cannot find this aspect of the proposed RTO shift to be prudent, just, or reasonable. OCC states that, alternatively, the Commission should, at a minimum, require that ATSI's shareholders be responsible for 75 percent of the Legacy RTEP costs and ATSI's customers be responsible for 25 percent of the Legacy RTEP costs. Similarly, OCC asserts that absent a showing that transmission customers will benefit from the switch, it would be unjust and unreasonable to allow ATSI to recover MISO exit fees and PJM integration-related costs from transmission customers. Further, OCC states that the Commission is currently considering tariff provisions proposed by the MISO that could require withdrawing transmission owners to compensate remaining MISO transmission owners for any

adverse impacts on long-term transmission rights.⁴⁹ OCC contends that if the Commission finds that ATSI must compensate remaining MISO transmission owners, the Commission should find that those costs are not recoverable from ATSI's customers because ATSI has not shown that incurrence of these costs results in any benefits to customers.

38. OCC states that if the Commission does not find that ATSI's shareholders should bear the costs of the realignment, then the Commission should state expressly that it is not preempting the Public Utilities Commission of Ohio (PUCO) from making a determination as to the propriety of the recovery of these costs in retail rates. Alternatively, OCC states that the Commission should reconsider its finding in the December 17, 2009 Order that it is appropriate for ATSI to be subject simultaneously to Legacy MTEP costs and PJM RTEP costs. OCC also argues that the Commission should require ATSI to amend the proposed rate schedules to state that ATSI and PJM are precluded from recovering in PJM transmission rates any FirstEnergy-Allegheny merger-related costs. Finally, OCC states that if the Commission does not allocate all realignment costs to shareholders and does not leave the prudence issue to PUCO, the Commission should at a minimum set the prudence issue for hearing and suspend the effective date of the rate schedules for five months.

39. Buckeye asserts that ATSI's proposal is not just and reasonable, and that the annual cost increase to transmission customers is far more than any potential savings in PJM administrative charges.⁵⁰ Buckeye contends that ATSI customers should not be held responsible for costs of measures that serve only the interests of ATSI and FirstEnergy rather than transmission customers, and that ATSI should be required to itemize the PJM Integration Costs and deferred internal integration costs that are charged to ATSI customers and demonstrate that all relate directly to transmission service. Buckeye states that, if the Commission determines that transmission customers are required to bear PJM Integration Costs and deferred internal integration costs, the costs should be spread on a PJM region-wide basis. In addition, Buckeye argues that, because the choice to incur MISO obligations and the responsibility to limit them through

⁴⁹ OCC Protest at 19 (citing *Midwest Indep. Transmission System Operator, Inc.*, Docket No. ER11-2059).

⁵⁰ Buckeye states that the total cost of MISO exit fees, PJM integration costs, internal integration costs, and loss of PTP Credits would result in ATSI Zone NITS customers paying an additional \$70.7 million over the next five years, an average of \$14.4 million per year. Buckeye Protest at 25.

negotiations rests solely with FirstEnergy, FirstEnergy and its subsidiaries should bear the cost of the withdrawal obligations.⁵¹

40. Buckeye contends that charging customers for both Legacy MTEP projects and PJM RTEP projects amounts to double exposure that is fundamentally unfair and should not be permitted.⁵² Buckeye argues that ATSI and FirstEnergy should be required to hold non-affiliated ATSI Zone customers harmless from RTO expansion charges in excess of those they would have incurred absent the decision to realign, such as by not requiring these customers to pay for PJM RTEP projects planned before the realignment.

41. Buckeye also argues that ATSI's proposed voltage-differentiated rate design produces rates that are unjust, unreasonable, unduly discriminatory, and preferential. Buckeye contends Commission policy and precedent require that the costs of transmission facilities that are integrated to any degree, regardless of voltage, should be rolled into a single rate for rate design purposes. Buckeye asserts that the 69 kV transmission facilities for which ATSI proposes to charge a separate rate are integrated with its 138 kV and above transmission facilities, and therefore should be rolled in with those facilities for purposes of pricing ATSI's transmission service. Buckeye argues that if ATSI is permitted to introduce its voltage-differentiated rates into the PJM OATT, it will continue to be overcharged for transmission service by a margin in the range of 45-50 percent, as it has been for the past three years.⁵³ Buckeye argues that ATSI makes no attempt to justify its proposed voltage-differentiated rate design, other than pointing out that voltage-differentiated rates have been included in the MISO ASM Tariff pursuant to a settlement agreement. Buckeye states that ATSI and has not satisfied its burden with respect to the just and reasonableness of the proposed rates, even if ATSI is not proposing to change the rate design. Buckeye submits that its protest makes a *prima facie* case for the conclusion that the rate design is unjust and unreasonable and that a rolled-in rate would be just and reasonable. Finally, Buckeye states that if the Commission is not prepared to act as requested on any of the issues raised by Buckeye, the Commission should set the issues for hearing.

42. AMP asserts that it would be unjust and unreasonable to allow ATSI to pass through to wholesale transmission customers the costs it incurs as a result of the RTO realignment decision, particularly where the decision to switch appears to have been

⁵¹ *Id.* at 29 (citing Bethel Affidavit at P 21).

⁵² *Id.* at 30 (citing Bethel Affidavit at PP 17-18, 22).

⁵³ *Id.* at 20 (citing Bethel Affidavit at P 12 and Attachment 10).

motivated by FirstEnergy's opportunity to realize higher returns on its generation portfolio and not dissatisfaction with the quality of service.⁵⁴ AMP asserts that the Commission's cost causation policy requires that ATSI alone bear the costs of the realignment.

43. AMP contends that cases cited by ATSI do not manifest a Commission policy favoring recovery of costs incurred in switching from one functioning RTO to another. AMP further asserts that the policy factors that led the Commission to allow recovery of costs incurred to form an RTO or join one anew are absent in the case of a transmission owner switching from one functioning RTO to another for its own competitive reasons. AMP notes that any benefits from RTO participation are already being realized through ATSI's participation in the MISO and there is reason to believe that ATSI's customers may actually be worse off with the switch to PJM. Furthermore, AMP states that ATSI's transmission customers have already shouldered the cost of ATSI's original integration into the MISO. AMP also notes that the Ohio customers of ATSI affiliates will largely be spared the burden of paying realignment costs due to a stipulation filed with PUCO, which could have competitive effects.

44. AMP states that if the Commission declines to reject ATSI's proposal, the Commission should at a minimum prohibit ATSI from recovering both MISO exit fees and PJM administrative fees because this would result in an unreasonable double-charge for administrative fees. AMP also states that, if the Commission declines to reject ATSI's proposed recovery of transition costs, then the Commission should limit the transition cost recovery in any year to the amount of demonstrated and supported RTO administrative charge savings in the same year and require ATSI to file the savings calculations with the Commission each year during the amortization period. AMP also contends that ATSI's description of "internal integration costs" is vague, and the Commission should reject ATSI's proposal to recover such costs unless sufficient additional support is provided. In addition, AMP argues that the Commission should not approve tariff changes regarding Legacy MTEP costs before ATSI files the agreement with the MISO that will govern financial responsibility for Legacy MTEP projects. Furthermore, AMP argues that the Commission should reject these tariff changes because billing customers for Legacy MTEP and PJM RTEP project costs would violate the ratemaking prohibition against double-charges to customers.

⁵⁴ Cleveland Public Power states that it endorses and adopts as its own the positions set forth in Part III ("Protest") and requests for relief set forth in Part IV ("Request for Suspensions and Hearings") of the AMP Protest.

45. AMP contends that ATSI's proposed formula rate protocols feature a number of deficiencies, including impermissible restrictions on prudence challenges, impermissible time limits on the initiation of formula rate challenges, unlawful burden of proof language, and failure to address potential changes in Commission accounting policies. AMP also requests that the Commission require ATSI to provide clarification as to how it intends to handle merger-related costs and fulfill its hold harmless commitment. Finally, AMP requests that the Commission suspend the proposed tariff provisions and set for hearing all issues pertaining to the justness and reasonableness of the proposed tariff changes.

B. Answers

46. In its answer, ATSI responds to protestors' contention that the Commission's approval of the recovery of transition costs for utilities joining an RTO does not extend to the costs of changing RTO membership by arguing that there is no principled basis for distinguishing between the transition costs associated with a utility's initial entry into an RTO and the transition costs associated with changing RTOs. ATSI states that the Commission has permitted utilities joining an RTO to recover costs of joining an RTO as well as costs related to a failed effort to join a different RTO. ATSI reiterates that the Commission has authorized utilities joining an RTO to recover RTO integration costs. ATSI further argues that there is no requirement for ATSI to make a specific demonstration of benefits of PJM membership as a prerequisite to the recovery of transmission costs. ATSI states that, in any event, ATSI has already listed some of the benefits of ATSI's integration into PJM in this and other proceedings, including lower administrative costs at the outset, reduced congestion costs, and improved access to PJM's markets.

47. ATSI responds to OCC's claim that the proposed rates will produce a 38 percent rate increase by asserting that this purported increase is attributable entirely to OCC's assumption about the impact of the facilities planned and approved in the PJM RTEP process before June 1, 2011 (Legacy RTEP projects). ATSI argues that there is no basis to condition the recovery of transition costs on the amount of administrative savings in the same year. ATSI also argues that rate settlements that some transmission customers may have made at the retail level have no bearing on the appropriateness of ATSI's recovery of costs. ATSI also states that its proposed formula rate protocols are consistent with the protocols included with the formula rates of other PJM transmission owners.

48. ATSI argues that protestors' claims regarding "double charges" ignore the fact that charges for Legacy RTEP projects are a product of existing Commission approved rates and are not the product of ATSI's filing. ATSI also argues that whether

transmission customers in the ATSI zone will have to pay both Legacy MTEP and Legacy RTEP costs depends upon the outcome of several proceedings pending before the Commission.⁵⁵ ATSI asserts that no matter how these proceedings are decided, customers in the ATSI zone will only be charged the portion of the costs of Legacy RTEP projects that the Commission finds is just and reasonable for them to pay under Schedule 12 of the PJM OATT. With respect to Legacy MTEP costs, ATSI asserts that customers in the ATSI zone are paying these charges today under Commission-approved tariffs and ATSI's filing simply provides a vehicle through new Attachment II to the PJM OATT to implement the cost recovery that the Commission has already authorized.

49. ATSI responds to protestors' arguments regarding exit fees by asserting that ATSI's payment of exit fees satisfies its obligation under Article Five, Section II.B of the MISO TOA and that these costs are appropriately paid by transmission customers, just as they were required to pay a portion of the MISO costs under the administrative cost recovery schedules of the MISO ASM Tariff and would have continued to do so if ATSI had remained in the MISO. ATSI asserts that parties were on notice that the MISO TOA permits transmission owners to withdraw by satisfying certain conditions, including committing to pay exit fees. ATSI also argues that AMP's assertion that recovery of both MISO exit fees and future PJM administrative costs would amount to impermissible double charging is groundless and a collateral attack on the Commission's orders accepting the MISO and PJM rate schedules.

50. ATSI responds to Buckeye's challenge to ATSI's continuation of the dual-voltage rate design by asserting that ATSI has not proposed to change the rate design that is part of the filed rate, and therefore ATSI is not obligated to defend the reasonableness of the existing rate design. ATSI also clarifies that it is not seeking to recover merger-related costs under its formula rate proposal in this proceeding. ATSI asserts that OCC's claim that the Commission should investigate the prudence from the standpoint of Ohio ratepayers of ATSI's decision to realign its RTO participation, or authorize OCC to pursue that challenge before PUCO, is misleading, unfounded, and out of place. Finally,

⁵⁵ ATSI Answer at 8-9. ATSI cites the pending rehearing of the December 17, 2009 Order and the remand by the United States Court of Appeals for the Seventh Circuit of Opinion No. 494 to the Commission for further proceedings. In Opinion No. 494, the Commission addressed the allocation of the costs of PJM RTEP projects, approving a postage-stamp allocation methodology for new transmission facilities that operate at or above 500 kV. December 17, 2009 Order, 129 FERC ¶ 61,249; *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *order on reh'g and compliance filing*, Opinion No. 494-A, 122 FERC ¶ 61,082, *order denying reh'g*, 124 FERC ¶ 61,033 (2008); *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470 (7th Cir. 2009).

ATSI asserts that the Commission should deny OCC's request for a five-month suspension of ATSI's filing.

51. ATSI asserts that it has no obligation to shield customers against any and all increased charges under the PJM OATT. ATSI argues that it is obligated solely to ensure continuation of service to users taking service pursuant to existing transmission contracts. ATSI contends that protestors' attempt to impose upon ATSI a continuity of service obligation beyond that specified in the MISO TOA is contrary to Commission precedent.

52. In its answer, OCC argues that a finding that ATSI's proposed formula rates are unjust and unreasonable to the extent that they would allow ATSI to recover costs of switching RTOs does not expand the proper bounds of the proceeding. OCC states that this issue is properly decided in this proceeding and reiterates that the Commission should determine that ATSI's shareholders, not its customers, must bear the costs of its business decision to switch RTOs. Finally, OCC asserts that it is likely that Legacy RTEP costs will be charged to the ATSI Zone, and therefore the Commission should act now to protect customers from having to bear such costs and should not defer action because of other pending proceedings.

53. In its answer to Buckeye's protest, AMP argues that Buckeye's protest violates the Commission's policy prohibiting complaints within protests. AMP argues that Buckeye's protest amounts to a complaint because Buckeye claims that the existing rate design is unjust and unreasonable. AMP asserts that if Buckeye wishes to attack ATSI's existing rate design, then it must make a complaint pursuant to FPA section 206. AMP also asserts that ATSI does not bear the burden in proving that its rate design is just and reasonable because it has not proposed a change in rate design. Regardless, AMP asserts that ATSI's rate design is consistent with Commission policy. Finally, AMP argues that Buckeye should be estopped from arguing that ATSI's voltage differentiated rate design should be eliminated and argues that acceptance of Buckeye's position would unjustly enrich Buckeye and its members.

54. In its answer to the answers filed by AMP and ATSI, Buckeye argues that, even if the Commission finds that ATSI has no burden to support the justness and reasonableness of the voltage-differentiated rate design under FPA section 205, there are grounds and precedent for the Commission to require an investigation under FPA section 206 without requiring a complaint proceeding. Buckeye also argues that the settlement agreement in which the voltage-differentiated rate design was accepted stated explicitly that the settlement shall not be deemed to have established a "settled practice." Buckeye further argues that there are sufficient facts to warrant a finding that an investigation of rate design is necessary and that the voltage-differentiated rate design does not fit within the spectrum of acceptable designs. Accordingly, Buckeye states that if the Commission cannot decide summarily that the rate design is unjust and unreasonable, or set the matter

for hearing, then it urges the Commission to establish an investigation and hearing pursuant to FPA section 206.

55. In its answer to Buckeye's answer, AMP urges the Commission to reject the answer because it provides no new information or analysis. AMP reiterates that, by including its complaint within a protest, Buckeye failed to comply with the requirements for pursuing relief based on a claim that the existing rate is unjust and unreasonable. AMP argues that, regardless, the evidence Buckeye has provided does not amount to a *prima facie* showing that ATSI's existing rate design is unjust and unreasonable. In response to Buckeye's claim that ATSI's voltage-differentiated rate design does not fit within the spectrum of acceptable designs, AMP asserts that Buckeye ignores the numerous instances in which the Commission has accepted voltage-based differences.

IV. Discussion

A. Procedural Matters

56. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵⁶ the timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,⁵⁷ the Commission will grant MISO Transmission Owners' late-filed motion for leave to intervene out-of-time given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

57. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁵⁸ prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept ATSI's, Buckeye's, OCC's, and AMP's answers because they have aided us in our decision-making.

⁵⁶ 18 C.F.R. § 385.214 (2011).

⁵⁷ 18 C.F.R. § 385.214(d) (2011).

⁵⁸ 18 C.F.R. § 385.213(a)(2) (2011).

B. Substantive Matters**1. Ministerial Revisions to the PJM OATT, OA, RAA, and TOA**

58. We accept PJM's proposed ministerial revisions to the PJM OATT, OA, RAA, and TOA as just and reasonable, subject to PJM correcting two typographical errors.⁵⁹ These ministerial changes add the ATSI Zone and/or the ATSI Transmission Owner to the PJM OATT, OA, RAA, and TOA where necessary to reflect the integration of ATSI into PJM. Accordingly, we will accept PJM's proposed revisions to these documents, effective June 1, 2011, as set forth in the Appendix, subject to PJM making a compliance filing within 30 days of the date of this order to make the two corrections.

2. Substantive Revisions to the PJM OATT

59. We find that ATSI has not demonstrated that its proposed changes to the PJM OATT to recover the costs of the RTO realignment decision through its formula rate from its wholesale transmission customers are just and reasonable. Specifically, ATSI proposes to recover the following costs resulting from the RTO realignment decision from its wholesale transmission customers: PJM Integration Costs, deferred internal integration costs, and MISO exit fees, including Legacy MTEP costs. ATSI argues that its proposed recovery of RTO transition costs from its wholesale transmission customers is just and reasonable. However, multiple protestors assert that ATSI's proposed recovery of RTO transition costs from its wholesale transmission customers is unjust and unreasonable because the decision to switch RTOs will impose substantial costs on those customers without demonstrated, offsetting benefits. OCC alleges that rates resulting from the switch could be significantly higher than existing rates. ATSI responds that there is no requirement for ATSI to make a specific demonstration of benefits of PJM membership as a prerequisite to the recovery of transition costs, but nonetheless offers a listing of a few benefits, including lower administrative costs, reduced congestion costs and improved access to PJM's markets. However, ATSI makes general assertions of the benefits without a demonstration of why it would be just and reasonable for ATSI's wholesale transmission customers to bear the RTO transition costs, particularly in light of claims that the realignment produces higher rates without offsetting benefits. We therefore find that ATSI fails to provide sufficient information or support that would

⁵⁹ Attachment J to the OATT contains two typographical errors. Jersey Central Power and Light Company is identified with a short name of PSEG. The correct short name is JCPL. Additionally, the full name of Public Service Electric and Gas Company is missing and should have a short name of PSEG.

enable the Commission to find that it is just and reasonable for ATSI's transmission customers to bear the costs arising from the decision to switch RTOs.⁶⁰

60. Accordingly, we will accept and suspend ATSI's proposed revisions to the PJM OATT to add its formula rate for the ATSI zone, effective June 1, 2011, as set forth in the Appendix, subject to refund and ATSI making a compliance filing within 30 days of the date of this order removing from its formula rates the following costs: (1) PJM Integration Costs; (2) ATSI's deferred internal integration costs; and (3) MISO exit fees, including Legacy MTEP costs. Our finding is without prejudice to ATSI submitting a new section 205 filing seeking recovery of these costs. If ATSI makes such a filing, it should specifically identify the benefits of the RTO realignment decision with respect to its wholesale transmission customers and include a cost-benefit analysis showing that the benefits to wholesale transmission customers exceed the costs of the realignment, *i.e.*, the PJM Integration Costs, deferred integration costs, and MISO exit fees, including Legacy MTEP costs.

61. ATSI cites various cases for the proposition that the Commission has permitted the pass through of costs of joining an RTO to customers.⁶¹ Multiple protestors respond by arguing that these cases are inapplicable to the instant case because they involve a transmission owner joining a new RTO, not switching RTOs. While the Commission has previously authorized utilities joining a new RTO to recover integration costs from wholesale transmission customers, the Commission did so by considering whether

⁶⁰ See 5 U.S.C. § 556(d) (2006) ("Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof."). *Cf.* 16 U.S.C. § 824d (2006) ("At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility"); 18 C.F.R. § 35.13(e)(3) (2011) ("Any utility that files a rate increase shall be prepared to go forward at a hearing on reasonable notice on the data submitted under this section, to sustain the burden of proof under the Federal Power Act of establishing that the rate increase is just and reasonable and not unduly discriminatory or preferential or otherwise unlawful within the meaning of the Act.").

⁶¹ Filing at 21 (citing, *e.g.*, *Virginia Electric and Power Co.*, 125 FERC ¶ 61,391 (2008), *reh'g denied*, 128 FERC ¶ 61,026 (2009) (*VEPCO*); *New York Independent System Operator, Inc.*, 92 FERC ¶ 61,180 (2000); *PJM Interconnection, L.L.C. and Allegheny Power*, 96 FERC ¶ 61,060, at 61,222-23 (2001), *order approving uncontested settlement*, 100 FERC ¶ 61,088 (2002) (*Allegheny*); *American Electric Power Service Corp.*, 113 FERC ¶ 63,031, *order approving uncontested settlement*, 113 FERC ¶ 61,294 (2005), *as corrected*, 115 FERC ¶ 61,114 (2006)).

recovery of such costs was just and reasonable based on the specific facts of those cases.⁶² Thus, regardless of whether the applicant is joining a new RTO or switching RTOs, the applicant must demonstrate that the proposed rates are just and reasonable. As discussed above, we find that ATSI has not made such a showing in this case.

62. We will permit ATSI to recover its proposed Legacy PJM RTEP costs subject to the outcome of the pending rehearing of the December 17, 2009 Order and Opinion No. 494 remand proceedings.⁶³ Schedule 12 of the PJM Tariff sets forth the assignment of cost responsibility for PJM RTEP projects, and ATSI's customers must pay the just and reasonable rates and charges incident to taking service from PJM. We find that it is appropriate for ATSI's customers to be responsible for costs associated with belonging to PJM. However, we are accepting ATSI's proposed recovery of Legacy PJM RTEP costs subject to the outcome of the rehearing of the December 17, 2009 Order and Opinion No. 494 remand proceedings. The December 17, 2009 Order addresses the issue of whether ATSI should be held responsible for both PJM RTEP and Legacy MTEP costs.

63. AMP contends that ATSI's proposed formula rate protocols feature a number of deficiencies, including impermissible restrictions on prudence challenges, impermissible time limits on the initiation of formula rate challenges, unlawful burden of proof language, and failure to address potential changes in Commission accounting policies. Upon review of the filing and pleadings, we find that AMP's claims regarding the proposed formula rate protocols raise genuine issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Specifically, we accept and

⁶² See e.g., *VEPCO*, 125 FERC ¶ 61,391 at P 28 (“The costs Dominion proposes to recover here, including its ongoing administrative fee costs, are related to its initially-failed but ultimately successful effort to join an RTO... We find that Dominion has sufficiently demonstrated both the nature of these costs and how they were incurred in furtherance of its RTO commitments. We further note that the prudence of Dominion's costs has not been challenged. Hence, we find that Dominion's costs are recoverable through the surcharge proposed by Dominion.”) (footnotes omitted); *Allegheny*, 96 FERC ¶ 61,060 at 61,222 (“[W]e will provisionally approve Allegheny's entitlement to recover lost revenues associated with its membership in the PJM RTO through transitional surcharges, and the proposed design of these surcharges. Beyond this conditional entitlement to recover these surcharges, however, Allegheny has not demonstrated the reasonableness of the specific surcharges it proposes.”) (footnotes omitted).

⁶³ See *supra* note 55.

suspend and set this portion of the filing for hearing to determine whether the proposed formula rate protocols are just and reasonable.

64. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶⁴ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁶⁵ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

65. Buckeye argues that ATSI should be required to hold non-affiliated ATSI Zone customers harmless from paying combined MTEP/RTEP costs in excess of those they would have incurred absent the decision to realign, such as by not requiring these customers to pay for RTEP projects planned before the realignment. As discussed above, while we find that ATSI has not demonstrated that its proposal to recover Legacy MTEP costs is just and reasonable, we do find it appropriate for ATSI customers to pay for the costs associated with participation in the PJM markets pursuant to the PJM tariff. While we find ATSI has not justified recovery of the integration and exit costs of leaving MISO and joining PJM, its customers can be assessed whatever the just and reasonable costs are of belonging to PJM, the RTO from which these customers will be receiving service. Furthermore, Buckeye does not provide any legal basis for imposing or enforcing a hold harmless requirement beyond existing contractual requirements.

66. Buckeye also argues that ATSI's voltage-differentiated rate design produces rates that are unjust, unreasonable, unduly discriminatory, and preferential. As ATSI states in its answer, ATSI has not proposed to change the rate design that is part of its filed rate. ATSI is simply transferring the existing rate design to the PJM OATT. Therefore, we reject Buckeye's protest regarding ATSI's voltage-differentiated rate design because it is

⁶⁴ 18 C.F.R. § 385.603 (2011).

⁶⁵ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

outside the scope of the instant proceeding. Furthermore, by requesting that the Commission find that ATSI's rate design is unjust and unreasonable, Buckeye's request is, in effect, a complaint. The Commission has established that complaints should be separately filed and should not be included as part of a protest.⁶⁶ If Buckeye believes that the filed rate is unjust and unreasonable, then it may file a complaint pursuant to FPA section 206. We decline to establish an investigation pursuant to section 206 in this proceeding, as Buckeye requests.

67. AMP requests that the Commission require ATSI to provide clarification as to how it intends to handle merger-related costs and fulfill its hold harmless commitment. OCC also argues that the Commission should require ATSI to amend the proposed rate schedules to state that ATSI and PJM are precluded from recovering in PJM transmission rates any FirstEnergy-Allegheny merger-related costs. ATSI clarifies in its answer that it is not seeking to recover merger-related costs under its formula rate proposal in this proceeding. ATSI states that, in the order authorizing the merger between FirstEnergy and Allegheny, the Commission held that ATSI may not recover merger transaction-related costs through wholesale transmission rates unless it submits a compliance filing that details how it is satisfying the hold harmless requirement.⁶⁷ ATSI states that, while it reserves the right to submit a future filing that complies with the requirements of the Merger Order, it has not submitted such a compliance filing in this proceeding and thus it is not seeking to recover merger-related costs. We therefore find it unnecessary to require ATSI to provide further clarification at this time regarding merger-related costs.

68. OCC states that, if the Commission approves tariff provisions proposed by the MISO in Docket No. ER11-2059-000 that could require withdrawing transmission owners to compensate remaining MISO transmission owners for any adverse impacts on long-term transmission rights, the Commission should find that those costs are not recoverable from ATSI's customers. We find that this is outside the scope of this proceeding. If the Commission approves the tariff provisions and ATSI submits a filing to the Commission seeking to recover those costs from its customers, the Commission will address the issue at that time; we will not prejudge the outcome of Docket No. EL11-2059-000 in this proceeding.

⁶⁶ See, e.g., *Entergy Services, Inc.*, 104 FERC ¶ 61,084, at P 13 (2003).

⁶⁷ ATSI Answer at 26 (citing Merger Order, 133 FERC ¶ 61,222 at P 62).

3. RTO Withdrawal Requirements

69. ATSI argues that the rates and terms of service proposed in this filing fulfill the requirement set forth in the December 17, 2009 Order that ATSI's existing customers have access to continued transmission service as required by the MISO TOA. As stated in the December 17, 2009 Order, ATSI's commitment extends only to existing transmission arrangements, including transmission agreements.⁶⁸ We find that ATSI's filing meets this obligation.

70. ATSI also contends that it satisfies the requirement set forth in the December 17, 2009 Order that an applicant proposing to withdraw from an RTO demonstrate that its proposed replacement arrangements comply with the Commission's *pro forma* OATT and/or the standard of review applicable to proposed tariff provisions that differ from the *pro forma* OATT. ATSI, upon its integration, will be subject to the terms and conditions of the PJM OATT, a Commission-authorized RTO tariff. As such, we find that ATSI's integration plan, as conditioned, complies with the Commission's *pro forma* OATT and/or the standard of review applicable to proposed tariff provisions that differ from the *pro forma* OATT.

4. Waiver Request

71. Finally, we will grant PJM's request for waiver of the \$1,500 application fee for Market Buyers applying for PJM membership as a direct result of the ATSI integration into PJM. We find that there is good cause to grant this waiver because ATSI states that the costs which the application fee is intended to cover have already been paid by ATSI as part of its integration costs.

The Commission orders:

(A) PJM's proposed ministerial tariff revisions to the PJM OATT, OA, RAA, TOA, and OATT, are hereby accepted, effective June 1, 2011, subject to a compliance filing, as discussed in the body of this order.

(B) ATSI's proposed tariff revisions to the PJM OATT to implement its formula rate for the ATSI zone, are hereby accepted and suspended, subject to refund and condition, to become effective on June 1, 2011, as discussed in the body of this order.

⁶⁸ December 17, 2009 Order, 129 FERC ¶ 61,249 at P 50.

(C) ATSI's proposed formula rate protocols are accepted, suspended, and set for hearing and settlement judge procedures, as discussed in the body of this order.

(D) ATSI is hereby directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(E) PJM's request for waiver of Market Buyer application fees is granted, as discussed in the body of this order.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the issues identified as being set for hearing in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (G) and (H) below.

(G) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(H) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(I) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

**PJM Interconnection, LLC
Docket No. ER11-2814-000
Rate Schedules**

Tariff Sections Accepted Effective June 1, 2011

TOA-42, 7.3.5
TOA-42, ATTACHMENT A TO THE CONSOLIDATED TRANSMISSION OWNERS

**PJM Interconnection, LLC
Docket No. ER11-2815-000
Intra-PJM Tariffs**

Tariff Sections Accepted Effective June 1, 2011

OATT ATTACHMENT J
OATT SCHEDULE 10-NERC
OATT SCHEDULE 10-RFC
OATT ATTACHMENT C-1
OATT ATTACHMENT DD.5.10 Auction Clearing Requirements
OATT Attachment K Appendix 3.2 Market Buyers
OATT Attachment K Appendix 7.4 Allocation of Auction Revenues
OATT ATTACHMENT L
OA Schedule 1 - 3.2 Market Buyers
OA Schedule 1 - 7.4 Allocation of Auction Revenues
OA SCHEDULE 12
RAA SCHEDULE 10.1
RAA SCHEDULE 15
RAA SCHEDULE 17

Tariff Sections Accepted & Suspended Effective June 1, 2011

OATT ATTACHMENT C-1
OATT SCHEDULE 7
OATT SCHEDULE 8
OATT Attachment II - MTEP Project Cost Recovery ATSI Zone
OATT Attachment H-21 – ATSI
OATT Attachment H-21 - ATSI

OATT Attachment H-21A - ATSI
OATT Attachment H-21A Appendix A - ATSI
OATT Attachment H-21A Appendix B - ATSI
OATT Attachment H-21A Appendix C - ATSI
OATT Attachment H-21A Appendix C - ATSI (RCCA)
OATT Attachment H-21A Appendix D - ATSI
OATT Attachment H-21A Appendix E - ATSI
OATT Attachment H-21A Appendix F - ATSI
OATT Attachment H-21A Appendix F - ATSI (MTEP)
OATT Attachment H-21A Appendix G- ATSI
OATT Attachment H-21A Appendix G - ATSI (Credit Adj)

Tariff Sections Accepted & Suspended Effective June 1, 2011 & Set for Hearing

OATT Attachment H-21B - ATSI Protocol