

129 FERC ¶ 61,249
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

American Transmission Systems, Inc.

Docket No. ER09-1589-000

FirstEnergy Service Company

v.

Docket No. EL10-6-000

PJM Interconnection, L.L.C.

ORDER ADDRESSING RTO REALIGNMENT REQUEST
AND COMPLAINT

(Issued December 17, 2009)

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I. Introduction

1. On August 17, 2009, American Transmission Systems, Inc. (ATSI) submitted a filing, pursuant to section 205 of the Federal Power Act (FPA),¹ requesting that the Commission: (1) conditionally approve, subject to the submission of related filings, the termination of its status as a transmission operator, owner and local balancing authority in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), effective June 1, 2011; and (2) make two additional findings regarding ATSI's planned integration into the PJM Interconnection, L.L.C. (PJM) regional transmission organization (RTO).

2. Specifically, ATSI seeks a finding that its commitment to withdraw from the Midwest ISO and join PJM will be authorized by the Commission subject to: (1) the integration of the ATSI-zone load into PJM's capacity markets and processes, pursuant to the Implementation Agreement submitted by ATSI in its filing,² and the utilization of PJM's fixed resource requirement (FRR) alternative;³ (2) the waiver of PJM's annual allocation of regional transmission expansion plan (RTEP) costs, under Schedule 12 of the PJM open access transmission tariff (OATT), for transmission expansion projects approved by PJM prior to ATSI's proposed integration into PJM, i.e., prior to June 1, 2011;⁴ and (3) the submission of related filings, including ATSI's proposed replacement arrangements.⁵

3. On October 19, 2009, FirstEnergy filed a related complaint, naming PJM as the respondent. In its complaint, FirstEnergy seeks an alternative remedy in the event the

¹ 16 U.S.C. § 824d (2006).

² See ATSI's filing at Exhibit 1. The parties to the Implementation Agreement are FirstEnergy Services Company (FirstEnergy), ATSI's parent company, and PJM. The agreement was executed on August 12, 2009.

³ See PJM Reliability Assurance Agreement (RA Agreement) at Schedule 8.1.A.

⁴ Under the PJM OATT, at Schedule 12, PJM transmission owners are required to pay for the costs attributable transmission projects where: (1) the voltage levels at issue exceed 500 kV; or (2) in the case of a lower-voltage upgrade, the upgrade is necessary to support regional facilities. These payment obligations are apportioned according to the percentage of load each customer serves in PJM, *i.e.*, on an annual load-ratio share basis.

⁵ See *infra* P 111. We note that these related filings will also address issues regarding FirstEnergy's generation assets, a matter not before us here.

RTEP waiver request noted above is denied. Specifically, FirstEnergy seeks an alternative finding, if necessary, that the assignment of cost responsibility to the ATSI zone load under PJM's existing RTEP protocols, for projects approved by PJM prior to ATSI's proposed date of integration, is unjust, unreasonable, and unduly discriminatory. FirstEnergy asks the Commission to require PJM to revise its OATT to recognize that ATSI's entry into PJM will not require that the ATSI zone pay RTEP charges for projects approved prior to June 1, 2011.

4. For the reasons discussed below, we authorize ATSI to terminate its existing obligations to the Midwest ISO, subject to: (1) the submission of ATSI's proposed replacement rates in a separate filing and, in the context of that filing, our consideration of whether ATSI's existing customers will have access to continued transmission service, as required under Article Five, Section II.A of the Agreement of Transmission Facilities Owners to Organize the Midwest ISO (Midwest ISO TO Agreement)⁶; (2) the submission of a separate filing addressing ATSI's exit fee obligations under Article Five, Section II.B of the Midwest ISO TO Agreement; (3) the submission of a separate filing addressing ATSI's obligations under Article Five, Section II.C of the Midwest ISO TO Agreement regarding the construction of new facilities; and (4) ATSI's receipt of all applicable federal and state regulatory approvals, including our determination that ATSI's proposed replacement arrangements comply with the Commission's *pro forma* OATT, satisfy the Commission's standards regarding deviations to the *pro forma* OATT, and are otherwise just, reasonable, and not unduly discriminatory.

5. We also authorize ATSI, upon receipt of Commission approval for ATSI to remove its transmission facilities from the functional control of the Midwest ISO, to terminate its existing obligations to the Midwest ISO under the Agreement Between the Midwest ISO and the Midwest ISO Balancing Authorities (Midwest ISO BA Agreement).

6. We also address ATSI's proposed integration of the ATSI zone into PJM's capacity markets. For the reasons discussed below, we accept ATSI's proposed FRR plan and requested waivers, subject to conditions.

7. Finally, we reject ATSI's requested waiver of PJM's tariff provision allocating RTEP charges, and dismiss FirstEnergy's complaint raising this same issue. We cannot find based on PJM's current design of its markets that allocating a portion of RTEP costs

⁶ Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation, Midwest ISO, FERC Electric Tariff, First Revised Rate Schedule No. 1 (Midwest ISO TO Agreement).

to new entrants is unjust and unreasonable, or unduly discriminatory or preferential.⁷ However, if sufficient cost savings will result, the PJM transmission owners should have both a will and an incentive to facilitate ATSI's realignment on a mutually beneficial basis and may submit a tariff amendment reflecting the value of these savings, e.g., as a reduction in ATSI's RTEP obligation. RTO participation is voluntary and the parties are free to negotiate an allocation of costs resulting from ATSI's transfer that recognizes any benefits that ATSI's integration provides to the PJM system.

II. Background

A. FirstEnergy, ATSI, and Their Affiliates

8. FirstEnergy was formed in 1997 through the merger of the Ohio Edison Company (Ohio Edison) and Centerion Energy Corporation, a transaction that brought, under common control, the ATSI Utilities -- namely, The Cleveland Electric Illuminating Company (The Illuminating Company), Ohio Edison, the Toledo Edison Company (Toledo Edison), and Pennsylvania Power Company (Penn Power).⁸ In 1999, ATSI was established as a consolidation of the ATSI Utilities' transmission assets.⁹ At that time, ATSI proposed to form the Alliance RTO. In an order issued December 20, 2001, the Commission declined to approve Alliance as an RTO, but encouraged ATSI and the other Alliance companies to consider joining the Midwest ISO.¹⁰ ATSI joined the Midwest ISO, effective October 1, 2003.¹¹

⁷ As ATSI recognizes, the United States Court of Appeals for the Seventh Circuit recently remanded a Commission order addressing PJM's current allocation of RTEP costs. *Illinois Commerce Commission v. FERC*, Nos. 08-1306, *et al.* 2009 WL 239983 (7th Cir. Aug. 6, 2009). Our findings here do not prejudge the Commission's actions on remand of that proceeding; today, rather, our decision is limited to our finding, below, that PJM's current allocation of RTEP costs to new entrants has not been shown to be unjust and unreasonable, or unduly discriminatory or preferential.

⁸ *Ohio Edison Co.*, 85 FERC ¶ 61,849 (1998).

⁹ *FirstEnergy Operating Cos.*, 89 FERC ¶ 61,090, at 61,260 (1999).

¹⁰ *Alliance Cos.*, 97 FERC ¶ 61,327 (2001).

¹¹ *Midwest Independent Transmission System Operator, Inc.* 113 FERC ¶ 61,086 (2005).

9. ATSI's transmission assets consist of approximately 7,300 circuit miles of transmission lines and include 35 bulk electric system interconnections with six neighboring utilities, primarily in PJM. ATSI states that of these 35 interconnections, only three ties, running north to Michigan, are with a Midwest ISO transmission owner. ATSI asserts that measured on the basis of total line capacity, using a normal summer rating, approximately 85 percent of ATSI's bulk electric system interconnections are to PJM transmission owners.

10. The majority of load within the ATSI footprint is directly connected to ATSI Utilities' load-serving entities, located in Ohio and western Pennsylvania. ATSI states that, among the other load-serving entities doing business in the ATSI zone, American Municipal Power, Inc. (AMP) delivers 920 MW of peak load within the ATSI footprint, while Buckeye Power, Inc. (Buckeye) delivers approximately 170 MW. In 2008, the combined peak load of the ATSI zone was 12,972 MW.

11. The ATSI Utilities' historic nuclear and non-nuclear generation assets are now owned by its subsidiary, FirstEnergy Solutions Corp (Solutions).¹² ATSI states that, accordingly, the ATSI Utilities procure their energy and capacity through competitive procurement processes pursuant to retail rate proceedings filed with the Ohio and Pennsylvania public utility commissions. ATSI adds that, within the ATSI footprint, the aggregate net generation capability is 12,910 MW, of which Solutions controls and operates approximately 10,760 MW.

12. ATSI states that, in addition to the ATSI Utilities, it is affiliated with additional utilities that are currently members of PJM (FirstEnergy PJM Utilities); specifically, GPU, Inc., the parent company of Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company. ATSI states that, in 2008, the combined peak load of the FirstEnergy PJM Utilities was 12,028 MW. ATSI states that these utilities also own transmission assets in PJM, consisting of approximately 6,159 miles of transmission lines.

B. ATSI's Existing RTO Commitments

13. ATSI is a party to the Midwest ISO TO Agreement and the Midwest ISO BA Agreement. In addition, ATSI states that, under Attachment FF to the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (ASM Tariff), ATSI is obligated to participate in the Midwest ISO Transmission Expansion Plan (MTEP). For the reasons addressed more fully below, in sections IV.C and IV.D of this

¹² *FirstEnergy Corp.*, 112 FERC ¶ 61,243 (2005); *FirstEnergy Corp.*, 94 FERC ¶ 61,179 (2001).

order, ATSI asserts that it has satisfied, or will satisfy, the requirements to withdraw from these obligations.

14. ATSI states that ATSI's integration into PJM, if approved by the Commission, will be undertaken in part pursuant to an Implementation Agreement.¹³ ATSI states that the Implementation Agreement includes a project implementation plan to accommodate the integration of ATSI's transmission facilities into PJM and specifies the timing sequence and amount of costs to be paid to PJM for the services PJM will be required to perform in conjunction with ATSI's planned realignment.

C. Realignment Request

15. As noted above, ATSI seeks to integrate ATSI into PJM effective June 1, 2011. ATSI asserts that this proposed timetable takes into account the conclusion of current, state-approved generation procurements for Provider of Last Resort (POLR) service for each of the ATSI Utilities, i.e., for Penn Power, Ohio Edison, The Illuminating Company and Toledo Edison, in Pennsylvania and Ohio. ATSI states that, under its proposed integration timetable, new POLR procurements can be undertaken with the assurance that the winning bidders will be able to supply the ATSI Utilities' load under the rules of a single RTO from day one. ATSI adds that ATSI's proposed integration date also takes into account the annual, June 1 allocation of Auction Revenue Rights (ARRs) and Financial Transmission Rights (FTRs) for both RTOs.

16. ATSI seeks the following preliminary determinations in connection with its proposed realignment: (i) a finding that its commitment to withdraw from the Midwest ISO and join PJM will be authorized by the Commission subject to the integration of the ATSI-zone load into PJM's capacity markets and processes, pursuant to both the Implementation Agreement and certain waivers discussed below; and (ii) a waiver of PJM's annual allocation of RTEP costs, under Schedule 12 of the PJM OATT, for transmission expansion projects approved by PJM prior to ATSI's proposed integration into PJM.

D. Reasons Cited By ATSI in Support of its Proposed Realignment

17. ATSI states that, because the ATSI Utilities and the FirstEnergy PJM Utilities operate today in two different RTOs, operational inefficiencies exist for both the utilities involved and their customers. ATSI asserts that realigning these utilities into a single RTO, as requested, will eliminate these inefficiencies by improving day-ahead unit commitment and reducing the number of reciprocal flowgates that need to be managed by

¹³ *See supra* note 2.

the two RTOs.¹⁴ ATSI adds that its proposed realignment will help relieve congestion to a greater extent than is currently possible because the ATSI zone generation and load are located closer to PJM's system constraints than they are to the Midwest ISO's system constraints.

18. ATSI states that, at its request, PJM ran energy market simulations to identify and quantify the operational efficiency impact of moving ATSI to PJM, based on the transmission ties between the ATSI system and the existing PJM system.¹⁵ ATSI states that these study results revealed that the inclusion of ATSI zone load and generation in the PJM unit commitment and dispatch process will produce a \$26 million (or 0.08 percent) annual system production cost reduction and a \$91 million (or 6.3 percent) annual congestion cost reduction across both RTOs.¹⁶

19. ATSI states that its proposed realignment will allow ATSI's customers in Ohio and Pennsylvania to take advantage of PJM's programs that offer market-based opportunities, including demand response opportunities relating to PJM's RPM auctions. ATSI states that PJM's RPM auctions would also enhance the long-term reliability of service to ATSI's customers.

¹⁴ ATSI notes that, typically, there are 77 reciprocal coordinated flowgates within the ATSI footprint, representing approximately 22 percent of the total number of reciprocal coordinated flowgates on the Midwest ISO side of the Midwest ISO/PJM border.

¹⁵ *See* ATSI filing at Exhibit 2 (ATSI integration simulation analysis, as conducted by PJM using its modeling and simulation software). PJM states, in its analysis, that it conducted energy market simulations using two different scenarios regarding the inclusion of the ATSI footprint in a particular RTO. PJM states that, in the first scenario, ATSI footprint generation and load was considered to be a part of the Midwest ISO commitment and dispatch process. PJM states that, in the second scenario, ATSI footprint generation and load was considered to be a part of the PJM commitment and dispatch process. Two additional simulations were conducted based on the same two scenarios, but with a differing assumption regarding the economic energy transfer between control areas in order to examine the sensitivity of the results to scheduled interchange. The simulations were conducted using a software program, PROMOD, that models the hourly security-constrained commitment and dispatch of generation over an annual period. *Id.*

¹⁶ *Id.* at Exhibit 2, p. 1.

E. FirstEnergy's Complaint

20. If the Commission does not grant the RTEP waiver request noted above, then FirstEnergy seeks, through its complaint, an alternative finding that PJM's RTEP allocation methodology is unjust, unreasonable and unduly discriminatory as applied to ATSI's planned entry into PJM.

21. FirstEnergy explains that PJM's methodology allocates RTEP costs annually, based on the load that is within PJM as of the date of the allocation, while the Midwest ISO allocates its corollary MTEP costs based on a different methodology, *i.e.*, based on a one-time allocation at the time that the projects at issue are approved. FirstEnergy asserts that, as such, ATSI would be required to pay twice in conjunction with its planned realignment, *i.e.*, to pay under both allocations, for projects planned and approved in separate RTOs over the same period.

22. FirstEnergy concludes that while Schedule 12 of the PJM OATT works, as intended, as applied to a static RTO footprint, this provision must be modified to apply to ATSI's RTO entry. Specifically, FirstEnergy requests that Schedule 12(b)(i)(A), if not waived as FirstEnergy requests in its RTO realignment request, should be amended, pursuant to FPA section 206, to exempt load serving entities in the ATSI zone from an obligation to pay for PJM RTEP projects that were approved by PJM prior to ATSI's integration.

III. Notice of Filings and Responsive Pleadings

23. Notice of ATSI's filing in Docket No. ER09-1589-000 was published in the *Federal Register*, 74 Fed. Reg. 42,888 (2009), with interventions and protests due on or before September 25, 2009.¹⁷ Notices of timely-filed notices of intervention and protests were submitted by the entities listed in Appendix A to this order. On October 6, 2009, a motion to intervene out-of-time was filed by the Citizens Coalition. Answers to protests were submitted by ATSI, PJM, RRI Energy, Inc. (RRI), and AMP.

24. Notice of FirstEnergy's complaint was published in the *Federal Register*, 74 Fed. Reg. 56,606 (2009), with interventions and protests due on or before November 4, 2009. PJM submitted a timely-filed answer. On November 12, 2009, the Illinois Commerce Commission (Illinois Commission) submitted comments out-of-time. Timely-filed motions to intervene, comments and protests were submitted by the entities listed in Appendix B to this order.

¹⁷ The comment date was later extended to September 15, 2009, and then to September 25, 2009.

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the above-noted proceedings. In addition, given its interest, the early stage of these proceedings, and the absence of undue prejudice or delay, we grant the unopposed late-filed intervention and accept the comments submitted by the Citizens Coalition in Docket No. ER09-1589-000.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by ATSI, PJM, RRI, and AMP in Docket No. ER09-1589-000, because they have provided information that assisted us in our decision-making process. We also accept the late-filed comments submitted by the Illinois Commission in Docket No. EL10-6-000.

B. Standard of Review

27. An applicant proposing to withdraw from an RTO is required to satisfy three requirements. First, the applicant's withdrawal proposal is required to satisfy the terms of the applicant's contractual obligations as they relate to RTO withdrawal. Second, the applicant's 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.¹⁸ Third, the applicant's replacement arrangements must be just, reasonable and not unduly discriminatory.¹⁹

¹⁸ See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part and rev'd in part sub nom.*, *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom.*, *New York v. FERC*, 535 U.S. 1 (2002). See also *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats & Regs., ¶ 31,241 (2007).

¹⁹ *Louisville Gas & Electric Co.*, 114 FERC ¶ 61,282 at P 12 (*LG&E Withdrawal Order*), *order on reh'g*, 116 FERC ¶ 61,020 (2006). See also *Duquesne Light Co.*, 122

28. ATSI states that it has satisfied certain of these requirements, as discussed below, relating principally to its right to withdraw from the Midwest ISO and its commitment, pursuant to the Implementation Agreement, to execute PJM's operating agreements. ATSI further states that it will satisfy all remaining requirements applicable to its realignment, including the payment of an exit fee, as required by the Midwest ISO TO Agreement. ATSI also will submit its PJM replacement arrangements, following the Commission's guidance, in this order, regarding two preliminary matters addressing: (1) the ATSI zone's satisfaction of PJM's capacity requirements, as of the integration date proposed by ATSI, i.e., by June 1, 2011, and (2) ATSI's RTEP obligations (a financial liability issue affecting ATSI's commitment to proceed with its proposed realignment).

29. As the Commission has previously acknowledged, there are a number of steps involved in proceeding with an orderly withdrawal from an RTO.²⁰ Accordingly, we will address herein each of the preliminary matters presented by ATSI's realignment request, including the manner by which ATSI can begin to satisfy, prior to its planned integration into PJM, its future, post-integration capacity obligations. While we make certain additional findings below and address certain concerns raised by intervenors, we cannot make any final determinations regarding ATSI's right to withdraw from the Midwest ISO. Nor can we determine, at this time, whether, or to what extent, applicant'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. However, with the preliminary guidance we provide below, ATSI should have the information it will need to decide its future plans.

FERC ¶ 61,039 at P 28 (*Duquesne Withdrawal Order*), *order on reh'g and compliance*, 124 FERC ¶ 61,219 (2008). An additional consideration addressed by the Commission in the *LG&E Withdrawal Order* was whether the applicants had satisfied the conditions applicable to their previously authorized merger. This consideration is not at issue here.

²⁰ See *Duquesne Withdrawal Order*, 122 FERC ¶ 61,039 at P 29 (addressing prong one of the Commission's RTO withdrawal standard, i.e., the applicant's satisfaction of its contractual obligations, while leaving for a future order the applicant's satisfaction of prongs two and three).

C. Whether ATSI's Withdrawal Proposal Has Satisfied, Or Will Satisfy, ATSI's Midwest ISO TO Agreement Obligations

1. ATSI's Proposal

30. ATSI asserts that its withdrawal from the Midwest ISO is permitted, subject to the following requirements of the Midwest ISO TO Agreement: (1) written notice, pursuant to Article Five, Section I; (2) availability of continued transmission service for ATSI's existing customers, pursuant to Article V, Section II.A; (3) payment of all financial obligations, pursuant to Article Five, Section II.B; (4) negotiated resolution, as between ATSI and the Midwest ISO, regarding ATSI's obligations to construct new facilities, pursuant to Article Five, Section II.C; and (5) receipt of all applicable federal and state regulatory approvals, pursuant to Article Five, Section III.

31. ATSI asserts that it has satisfied its notice of withdrawal obligations under the Midwest ISO TO Agreement.²¹ ATSI asserts that these requirements have been satisfied by: (1) a written notice submitted by ATSI to the Midwest ISO on July 31, 2009, identifying a proposed withdrawal date of June 1, 2011;²² and (2) ATSI's completion of its five-year initial commitment to remain in the Midwest ISO.

32. ATSI also asserts that it will be able to satisfy its obligations regarding the availability of continued transmission service for ATSI's existing customers.²³ ATSI

²¹ ATSI states that, under Article Five, Section I, "[a] Member who is also an Owner may, upon submission of a written notice of withdrawal to [the Midwest ISO], commence a process of withdrawal of its facilities from the Transmission System." Article Five, Section 1 further provides that "[s]uch withdrawal shall not be effective until December 31 of the calendar year following the calendar year in which notice is given, nor shall any such notice of withdrawal become effective any earlier than five (5) years following the date that the Owner signed this Agreement except as provided for in Article Five, Section IV and Article Seven of the Agreement."

²² *See* ATSI filing at Exhibit 4.

²³ Article V, section II.A provides as follows:

Users taking service which involves the withdrawing Owner and which involves transmission contracts executed before the Owner provided notice of its withdrawal shall continue to receive the same service for the remaining term of the contract at the same rates, terms, and conditions that would have been applicable if there were no withdrawal. The withdrawing Owner shall agree to continue providing service to such Users and shall

(continued ...)

states that it will be able to satisfy this requirement, principally, by maintaining the same approach to zonal transmission rate design as it has today. In addition, ATSI states that the allocation of flowgate capacity and real-time management of loop flows will continue to be ensured by way of the Joint Operating Agreement between PJM and the Midwest ISO (PJM/Midwest JOA), pursuant to which the two RTOs coordinate dispatch on their systems with the objective of managing loop flow and congestion in the most cost-effective manner.

33. ATSI also asserts that it will satisfy its financial obligations under the Midwest ISO TO Agreement. ATSI notes that, under Article Five, Section II.B, “[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of [the withdrawing Owner's] withdrawal shall be honored by the Midwest ISO and the withdrawing Owner.” ATSI further notes that, under Article Five, Section II.D, “[o]ther obligations between the Midwest ISO and the withdrawing Owner shall be renegotiated as between the Midwest ISO and the withdrawing Owner.” ATSI commits that it will work with the Midwest ISO to confirm the appropriate fees and a plan for payment of these fees, as well as credits for ATSI against future incurrence of fees under schedules 10, 16 and 17 of the Midwest ISO ASM Tariff. ATSI states that it will make a separate filing when the exit fee is finalized with the Midwest ISO.

34. ATSI states that it will satisfy its obligations under the Midwest ISO TO Agreement regarding ATSI's construction of new facilities. ATSI notes that, under Article Five, Section II.C, “obligations relating to the construction of new facilities pursuant to an approved plan of the Midwest ISO shall be renegotiated between the Midwest ISO and the withdrawing Owner.”²⁴ ATSI states that these negotiations remain pending.

35. ATSI also asserts that it will satisfy all applicable regulatory approval obligations under the Midwest ISO TO Agreement. ATSI notes that, under Article Five, Section III, “the withdrawal by an Owner of its facilities from the Midwest ISO shall be subject to applicable federal and state regulatory approvals or procedures[.]” ATSI asserts that this requirement will be satisfied by the Commission's approval of the instant filing.

receive no more in revenues for that service than if there had been no withdrawal by such Owner.

²⁴ *See also* Midwest ISO ASM Tariff at Attachment FF, Section III.A.2.i (“A party that withdraws from the Midwest ISO shall remain responsible for all financial obligations incurred pursuant to this Attachment FF while a Member of the Midwest ISO[.]”).

36. Finally, ATSI states that, under Schedule 3.2.5 of the Implementation Agreement, ATSI and PJM commit to conducting a stakeholder process for the purpose of identifying and educating customers required to execute new or modified transmission and interconnection service agreements for the period beginning June 1, 2011. ATSI states that customers taking transmission from that point forward, other than customers with grandfathered transmission agreements, will be required to do so under the PJM OATT.²⁵ ATSI adds that customers in the queue for the Midwest ISO transmission or interconnection service will be transitioned to the PJM queue. ATSI states that each customer's position in the PJM queue will be based on the receipt of its initial request to the Midwest ISO.

2. Protests and Comments

37. The Midwest ISO asserts that ATSI has satisfied, or will satisfy, the terms of its contractual obligations as they relate to RTO withdrawal. PJM concurs.

38. With respect to ATSI's exit fee obligation, Detroit Edison, the Michigan Commission and NextEra request that ATSI be required to conduct its negotiations with the Midwest ISO with full transparency *vis-a-vis* Midwest ISO stakeholders. Indianapolis Power & Light Company (IPL) concurs, noting that the Midwest ISO transmission owners should be permitted to participate in these negotiations.

39. IPL requests clarification that the costs of transmission projects that ATSI is currently constructing, or seeking to construct, will be borne by PJM's stakeholders, regardless of whether these costs are currently included in the MTEP. Specifically, IPL requests clarification that: (i) ATSI will not be permitted to recover construction work in progress (CWIP) from Midwest ISO load on transmission facilities not yet placed into service; and (ii) any exit fee payable by ATSI, under the Midwest ISO TO Agreement, will take into account the amount of CWIP already included in ATSI's Midwest ISO transmission revenue requirement for facilities not yet placed into service.

40. The Michigan Commission agrees with IPL and adds that ATSI should be required to refund its recovery of CWIP from Midwest ISO customers because the benefit of these charges will only be realized when the construction of ATSI's facilities is completed and the facilities are placed into service.

²⁵ ATSI states that it will work with customers that have grandfathered transmission agreements that are listed in Attachment P to the Midwest ISO ASM Tariff to modify or replace these customers' arrangements with comparable service in PJM.

41. The Midwest ISO notes that ATSI's exit fee is likely to be in the range of \$35 million. Northeast Ohio Public Energy Council (NOPEC) seeks clarification regarding whether and how this exit fee would be allocated among customers. The Ohio Commission argues that this exit fee should be absorbed by ATSI alone and that ATSI should not be permitted to pass through this exit fee in its transmission rates.²⁶

42. AMP argues that ATSI should be required to bear the costs attributable to its RTO switch, including the specific costs that would be incurred by AMP and other third parties. AMP asserts that, without this protection, the Commission's policy of imposing costs on the parties that create them would be violated. AMP further asserts that mitigation of these impacts is required for load-serving entities to be able to plan economically to meet their customers' needs. The Ohio Consumers Counsel argues that ATSI shareholders should be held responsible for all costs and charges associated with its realignment.

43. With respect to specific costs, AMP requests that it not be required to pay for the through-and-out, point-to-point transmission service it is currently purchasing service from PJM to the Midwest ISO-operated ATSI zone, asserting that these through-and-out reservations will be unnecessary after ATSI's integration into PJM. AMP asserts that these reservations should either be terminated or converted to network service under the PJM OATT. AMP argues, in the alternative, that any continuing payments for these reservations should be credited against AMP's network service charges payable to PJM. AMP further requests that its NITS service agreement with the Midwest ISO for service to members in the ATSI footprint be terminated as of the effective date of ATSI's realignment, with the network service rights available under that agreement made available under the network service agreement AMP will be required to execute with PJM. AMP also argues that ATSI should be required to pay any fees and costs associated with integration into PJM, because AMP and other customers have already paid for ATSI's entry into the Midwest ISO.

44. With respect to grandfathered agreements, AMP asserts that ATSI's filing fails to include sufficient details. Cleveland Public Power argues that its right under the grandfathered agreements to which it is a party must not be diluted, or eliminated, and may not be transferable to PJM. Cleveland Power submits that, until the issue of grandfathered contracts can be addressed, it cannot be determined whether ATSI's realignment is just, reasonable and not unduly discriminatory.

²⁶ See also Michigan Commission comment at 6-7; AMP protest at 26-27; Indiana Commission protest at 2-3.

3. ATSI's Answer

45. With respect to intervenors' arguments regarding ATSI's hold harmless requirement under the Midwest ISO TO Agreement, ATSI responds that this requirement is narrower than some intervenors apparently assume, applying only to "existing" transmission arrangements and only for the remaining term of the existing contract. ATSI asserts that, as such, this requirement does not extend to all Midwest ISO customers and market participants, nor does it encompass the provision of future service. ATSI adds that a withdrawing transmission owner's obligation, in this regard, does not require it to pay future operating costs of the RTO or to protect remaining RTO members from the possible reallocation of future revenues.

46. ATSI asserts that the relevant time requirement governing the filing of its proposed PJM rates, under the Commission's regulations, spans a 60- to 120-day period prior to ATSI's anticipated June 1, 2011 integration date – a deadline that is well over a year away. ATSI asserts that under these circumstances, with no new rate to compare to the old rate, it would be fruitless to seek to evaluate whether existing customers will receive service at the same rates, level of service, and quality of service that they would have received absent its withdrawal.

47. Regarding intervenors' exit fee arguments, ATSI responds that these issues need not be addressed here, given the fact that the exit fee has yet to be finalized. ATSI asserts that intervenors' arguments that it should not be permitted to recover the costs of its exit fee in its transmission rates is also unripe for consideration. ATSI also responds to intervenors' argument that the negotiations between ATSI and the Midwest ISO regarding its exit fee obligation should be open or transparent to input from others. ATSI asserts that negotiations between the withdrawing transmission owner and the Midwest ISO are required by, and subject to, the Midwest ISO TO Agreement. ATSI concludes that, as such, other entities have no legitimate role in these negotiations.

4. Commission Determination

48. We find that, subject to conditions, ATSI has satisfied, or will satisfy, the requirements for withdrawal from the Midwest ISO, as established under the Midwest ISO TO Agreement. Withdrawal from the Midwest ISO TO Agreement, as ATSI notes in its filing, requires: (i) written notice; (ii) the availability of continued transmission service for ATSI's existing customers; (iii) payment of all financial obligations; (iv) negotiated resolution, as between ATSI and the Midwest ISO, regarding ATSI's obligations to construct new facilities; and (v) receipt of all applicable federal and state regulatory approvals. We discuss each of these requirements below.

49. First, we find that ATSI has satisfied the written notice requirement applicable to its withdrawal request, under Article V, Section 1 of the Midwest ISO TO Agreement.²⁷ ATSI provided the required written notice to the Midwest ISO on July 31, 2009.²⁸

50. We also find that, subject to the outcome of future proceedings, ATSI's plans to maintain the same approach to zonal transmission rate design in PJM that it has in the Midwest ISO and ATSI's commitment to honor "hold harmless" claims²⁹ meet the "Users Held Harmless" obligation under Article V, Section II.A of the Midwest ISO TO Agreement.³⁰ As the Commission has previously found, this commitment extends to existing transmission arrangements, including grandfathered agreements.³¹ ATSI's existing customers therefore will be entitled to enjoy the same service and pricing to which they would have been entitled absent ATSI's withdrawal. While intervenors raise additional concerns regarding these obligations, including the manner in which these obligations will, or may, be honored, we will not prejudge these issues here or otherwise speculate on matters not before us at this time. Rather, these issues, should they arise in the context of ATSI's anticipated future submittals, should be addressed in these proceedings. Similarly, we will not address, here, AMP's assertion that it should not be required to pay for the through-and-out, point-to-point transmission service it currently receives from PJM, following ATSI's realignment. This issue will be ripe for our

²⁷ As noted above, under Article V, Section 1, "[a] Member who is also an Owner may, upon submission of a written notice of withdrawal to [the Midwest ISO], commence a process of withdrawal of its facilities from the Transmission System."

²⁸ *See* ATSI filing at Exhibit 4.

²⁹ ATSI answer at 23.

³⁰ Article V, Section 2(A) states:

Users taking service which involves the withdrawing Owner and which involves transmission contracts executed before the Owner provided notice of its withdrawal shall continue to receive the same service for the remaining term of the contract at the same rates, terms, and conditions that would have been applicable if there were no withdrawal. The withdrawing Owner shall agree to continue providing service to such Users and shall receive no more in revenues than if there had been no withdrawal by such Owner.

³¹ *LG&E Withdrawal Order*, 114 FERC ¶ 61,281 at P 44-46, 49-50.

consideration once ATSI's proposed replacement arrangements have been submitted for our review.³²

51. We find, subject to the outcome of a proceeding considering ATSI's exit fee proposal, that ATSI will meet the financial obligations required of Article V, Section II.B of the TO Agreement.³³ ATSI acknowledges this obligation as a requirement to pay an exit fee to the Midwest ISO. ATSI also states that it is currently engaged in discussions with the Midwest ISO regarding this matter and that it will file an exit fee proposal with the Commission once an agreement has been finalized. We agree that this approach is an appropriate basis on which to proceed with ATSI's proposed withdrawal and that any specific issues or concerns relating to ATSI's exit fee need not be addressed here.

52. We reject intervenors' argument that the negotiations currently being held by ATSI and the Midwest ISO should be open to other parties and should be fully transparent. As the Commission stated in the *LG&E Withdrawal Order*, the Midwest ISO TO Agreement does not require that an exit fee be negotiated, in the first instance, with entities other than the withdrawing entity and the Midwest ISO.³⁴ However, the exit fee must be filed with, and approved by, the Commission. At that time, intervenors will be given an opportunity to address this matter.

53. Similarly, with respect to the Ohio Commission's argument that ATSI should not be permitted to pass through an exit fee in its transmission rates, we note that ATSI does not propose to recover any costs associated with an exit fee. As such, the appropriate time to raise this concern would be when ATSI files proposed transmission rates. With respect to the Michigan Commission's assertion that ATSI should be required to refund any CWIP recovered from Midwest ISO customers, we find no evidence presented here that any Midwest ISO customers have paid for CWIP, nor is there any evidence that customers that may have paid such costs will not benefit from the projects associated with these costs.

³² We note, in this regard, AMP's representation, in its protest, that this and other transition issues are currently the subject of negotiation between AMP, ATSI and PJM. *See* AMP protest at 6.

³³ Article V, Section 2(B) of the Midwest ISO TO Agreement states that "[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by the Midwest ISO and the withdrawing Owner."

³⁴ *LG&E Withdrawal Order*, 114 FERC ¶ 61,281 at P 60.

54. Regarding ATSI's obligations to construct new facilities, under Article V, Section 2(C) of the Midwest ISO TO Agreement, ATSI has committed to satisfy its obligations.³⁵ We find that this commitment satisfies the requirements of the TO Agreement, subject to ATSI and Midwest ISO formalizing a negotiated agreement and subject to the outcome of a proceeding on such a filing. We note, as discussed above, that the only parties entitled to participate in any negotiations are ATSI and Midwest ISO.

55. Finally, we agree with ATSI that it will have satisfied applicable regulatory approvals pursuant to Article V, Section 3 of the TO Agreement with our approval of the instant filing, subject to ATSI meeting the conditions discussed herein.

D. Whether ATSI's Withdrawal Proposal Has Satisfied, Or Will Satisfy, Its Midwest ISO BA Agreement Obligations

1. ATSI's Proposal

56. ATSI asserts that its right to withdraw from the Midwest ISO is subject to Section 13.5 of the Midwest ISO BA Agreement.³⁶ ATSI states that upon receipt of

³⁵ Article V, Section 2(C) provides that “[o]bligations relating to the construction of new facilities pursuant to an approved plan of the Midwest ISO shall be renegotiated as between the Midwest ISO and the withdrawing Owner.”

³⁶ Section 13.5 provides in relevant part as follows:

- (a) [A Local Balancing Authority (LBA)] may withdraw from this Amended Agreement if (i) there are no transmission facilities or there will no longer be transmission facilities subject to the Midwest ISO's functional control located with the [Local Balancing Authority Area (LBAA)] of that entity, or for a generation-only LBA, there are no direct interconnections with any portion of the transmission system subject to the Midwest ISO's function control; . . . (iv) the entity obtains or receives an order to withdraw from the Midwest ISO by a regulatory authority with jurisdiction over that entity . . . (b) the LBA shall provide at least one hundred eighty (180) days notice (or a shorter time period if required by a regulatory authority with jurisdiction, or by law, or as agreed to by the Midwest ISO) to the Midwest ISO of such withdrawal, which withdrawal may not be effective any earlier than the date upon which the applicable conditions set forth in this Section 13.5 are fully satisfied.

Commission approval for it to remove its transmission facilities from the functional control of the Midwest ISO and place them under the PJM OATT, ATSI will have met the requirements of Section 13.5(a)(i) and (iv). ATSI further states that its above-noted notice of withdrawal, as applicable to the Midwest ISO TO Agreement, also meets the withdrawal requirement under the Midwest ISO BA Agreement.

2. Protests and Comments

57. No protests or comments were filed.

3. Commission Determination

58. In light of its timely notice of withdrawal from the Midwest ISO, and our approval of its RTO realignment proposal, we agree that ATSI has satisfied its withdrawal obligations under the Midwest ISO BA Agreement.

E. The ATSI Utilities' Integration Into PJM's Capacity Markets

1. ATSI's Proposal

59. ATSI states that while ATSI's integration into PJM is planned for June 1, 2011, participation in PJM's RPM processes cannot occur as of that date because the RPM base residual auctions covering the first two years of this post-integration period (i.e., covering the 2011-12 and 2012-13 delivery years) have already occurred.³⁷ Accordingly, ATSI proposes that the ATSI zone load serving entities satisfy their capacity obligations for this interim post-integration period by utilizing a modified version of PJM's FRR alternative.³⁸ Specifically, ATSI proposes that the ATSI zone load serving entities satisfy their capacity obligations for the interim period based on the same model approved by the Commission in authorizing the recent re-integration of the Duquesne Light Company (Duquesne) into PJM's capacity markets.³⁹

³⁷ The RPM auctions at issue were held during the months of May 2008 for the 2011-2012 Delivery Year and May 2009 for the 2012-2013 Delivery Year.

³⁸ See PJM RA Agreement at Schedule 8.1.A ("The [FRR] Alternative provides an alternative means, under the terms and conditions of this Schedule, for an eligible Load-Serving Entity to satisfy its obligation hereunder to commit Unforced Capacity to ensure reliable service to loads in the PJM Region.").

³⁹ See *Duquesne Light Co.*, 126 FERC ¶ 61,074 (2009) (*Duquesne Settlement Order*).

60. Under the FRR procedure, the ATSI zone load serving entities would be required to obtain sufficient capacity during the first two years of the integration period to meet their reliability requirement. While the FRR requirement ordinarily requires that this requirement be met through bilateral agreements, ATSI proposes that the ATSI zone load serving entities be required to acquire this capacity through special auctions, which will utilize a vertical demand curve, rather than the downward sloping demand curve generally used in PJM auctions. ATSI requests waivers of the Schedule 8.1 FRR procedures to: (i) permit the use of the FRR option on an out-of-time basis, subject to the submission of an FRR plan on or before December 2010; and (ii) authorize the utilization of two special integration auctions, as discussed below.⁴⁰

61. ATSI states that ATSI zone load serving entities, other than the ATSI Utilities, will have the right to opt-out of having their loads included in these integration auctions (and thus being required to purchase capacity from the ATSI Utilities for one or both of the 2011-12 and 2012-13 delivery years), subject to a demonstration that any such load serving entity satisfies the requirements of Section B.1 of Schedule 8.1 of the PJM RA Agreement.⁴¹

62. ATSI proposes that ATSI's load be included in PJM's RPM auctions as applicable to all post 2012-13 delivery years, including those auctions which are scheduled to occur prior to ATSI's full integration into PJM on June 1, 2011. Finally, ATSI proposes to address any remaining issues relating to its proposal in consultation with PJM's stakeholders.

2. Protests and Comments

63. PJM requests clarification regarding the applicability of the must offer requirements under Attachment DD, Section 6.6(e) of the PJM OATT, as they relate to capacity resources under the FRR alternative outlined by ATSI in its filing.⁴² PJM

⁴⁰ ATSI states that if either, or both, of the integration auctions do not procure all of the forecast pool requirement, the ATSI Utilities would be required to procure the remaining balance through bilateral contracts. The integration auctions, as proposed, would be held on or before April 20; approval deadlines for ATSI to submit its FRR integration plan to PJM would be extended to December 15, 2010.

⁴¹ Section B.1 addresses the eligibility of entities to participate in FRR alternative. Load serving entities choosing to opt out would be required to provide written notice to ATSI by not later than January 31, 2010.

⁴² Section 6.6.(e) provides that "[a]ny existing Generation Capacity Resource located in the PJM Region that is offered into the Base Residual Auction for a Delivery

asserts that while its must-offer requirement is applicable to all capacity resources that qualify to participate in the incremental auction, ATSI's proposal states that all capacity resources that qualify to participate in an incremental auction *may* participate in the FRR integration. Accordingly, PJM requests clarification that PJM's must offer requirements applicable to all qualifying capacity resources in the PJM region, including all capacity resources in the ATSI footprint, will also apply to the FRR integration plan to the same extent they would apply to the incremental auctions.⁴³

64. PJM also states that, with regard to the application of the demand curve rules in the incremental auctions, it will apply the rules in effect as of the date of the ATSI integration filing. Accordingly, a variable resource requirement (VRR) curve will not be applicable for the integration auctions because, prior to the 2012-13 delivery year, demand curves that are created and used in the clearing of the incremental auctions (specifically the second incremental auction) are not based on the VRR curve concept.⁴⁴ PJM submits that a vertical demand curve is necessary and appropriate for the integration auction because the purpose of these auctions is to obtain a reliable supply of capacity resources to be included in the ATSI FRR plan.⁴⁵

Year, but that does not clear in such auction, shall be offered in the . . . Incremental Auctions."

⁴³ Monitoring Analytics, LLC, acting in its capacity as the independent market monitor for PJM (PJM MMU) raises the same concern. The PJM MMU recommends that all uncommitted generation capacity in the ATSI zone and in PJM be required to be offered in the transition auctions at prices less than their offer caps. The PJM MMU asserts that this requirement would appropriately recognize the symmetry fundamental to the just and reasonable operation of the centralized capacity procurement model. Specifically, the PJM MMU notes that load is required to procure adequate capacity at competitive prices, while supply is required to offer its available capacity at competitive prices.

⁴⁴ PJM notes that, on September 1, 2009, it filed with the Commission, in Docket No. ER09-412-000, revisions to the PJM OATT that include the application of the VRR curve to the incremental auctions. The change would result in the use of the VRR curve in the first incremental auction for the 2012-13 delivery year in June 2010. On October 30, 2009, we issued an order approving these revisions, subject to conditions. *See PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,090 (2009).

⁴⁵ PJM adds that because an FRR plan is constructed to meet a fixed reserve margin requirement above the peak load of the area covered by the plan, utilizing a VRR curve to clear these auctions, where the amount of capacity committed is variable, based

(continued ...)

65. The Ohio Commission argues that ATSI's filing fails to demonstrate that there will be sufficient uncommitted capacity available to meet its FRR requirements. RRI argues that because details relating to the FRR plan may be revised by ATSI and/or by PJM, any such revision should be filed with the Commission. AMP and Industrial Energy Consumers seek assurances that behind-the-meter generation, demand response and energy efficiency will be allowed to participate in ATSI's FRR integration auctions.

66. RRI also seeks clarification that ATSI-zone generators will be considered "internal" PJM capacity resources for purposes of participating in PJM's RPM auctions. RRI also seeks clarification that should ATSI not join PJM, or ATSI delay its integration after ATSI-zone generators have incurred capacity obligations, ATSI-zone generators will be able to obtain transmission to PJM from the Midwest ISO to honor their RPM obligations, or otherwise will be held harmless by ATSI for any additional transmission costs or penalties that may be incurred.

67. AMP, NextEra and NOPEC argue that ATSI's proposed opt-out deadline of January 31, 2010 requires the load serving entity to make its opt-out election before knowing essential details relating to the auctions. AMP requests that ATSI be required to provide this information so that load serving entities will be able to understand how and when their capacity obligations will be determined.⁴⁶ AMP further requests that the proposed opt-out allowance not be treated as an all or nothing right, i.e., ATSI-zone load serving entities should be permitted to self supply a portion of their loads, while making up the rest in the auction.

68. AMP and NOPEC also object to ATSI's proposed role in reviewing opt-out eligibility and the adequacy of both the resources and resource plans of load serving entities in the ATSI zone. AMP asserts that no justification is given by ATSI as to why a load serving entity exercising the FRR option should not provide its resource plans

on the intersection of supply and demand, would not satisfy the very purpose of the auctions. PJM states that this is so because the quantity of capacity committed in the auctions would not necessarily equal the amount required to meet the fixed reliability requirement. PJM concludes that a vertical demand curve is required to ensure that the quantity of capacity procured is consistent with the design and intent of the ATSI FRR plan.

⁴⁶ In particular, AMP seeks clarification regarding its entitlement to certain Midwest ISO capacity arising under an October 14, 2008 settlement agreement (Toledo Edison Settlement), in Docket Nos. ER08-1010-000 and EL08-65-000, between Toledo Edison Company and AMP. *See Toledo Edison Company*, 125 FERC ¶ 61,348 (2008) (*Toledo Settlement Order*).

directly to PJM. NOPEC adds that ATSI's proposed involvement in this determination creates the potential for a conflict of interest, to the extent ATSI's decision on whether a load serving entity can opt out affects the amount of capacity that ATSI's affiliate, Solutions, and other suppliers, may bid in the integration auctions.

69. AMP argues that dispatch communications for resources under the ATSI FRR plan should be between PJM and the resource owner. Finally, AMP argues that ATSI should not be allowed to allocate resource deficiency penalties to load serving entities in the ATSI zone.

3. ATSI's Answer

70. ATSI responds to intervenors' requests for additional details regarding ATSI's proposal to use the FRR alternative to integrate the ATSI zone load and capacity resources into PJM's capacity markets and processes. ATSI asserts that while certain of these details remain to be resolved, ATSI's efforts, in this regard, are on track and generally mirror the process approved by the Commission in the *Duquesne Settlement Order*. ATSI notes that, as planned, the first stakeholder integration session was held on October 2, 2009, and that a white paper, answering many of the questions raised by intervenors, has been posted on PJM's web site. ATSI asserts that no additional details are necessary for the Commission to approve ATSI's requested integration framework, including its requested waivers from PJM's FRR rules.

71. With respect to PJM's and the PJM MMU's requests for clarification, regarding uncommitted generation capacity at prices less than the applicable offer cap, ATSI concurs that these clarifications should be granted. ATSI also concurs with PJM's recommendation that a vertical demand curve be utilized with respect to ATSI's FRR integration auctions.

72. ATSI also responds to the requested clarifications sought by AMP and the Industrial Energy Consumers that behind-the-meter generation, demand response, and energy efficiency will be allowed to fully participate in ATSI's FRR integration auctions. ATSI concurs with these views, noting that any entity should be permitted to participate in the integration auctions if it has met the capacity resource criteria set forth in the PJM OATT.

73. ATSI also responds to AMP's requested clarification regarding its capacity rights and the value of its capacity under the Toledo Edison Settlement. ATSI commits that it will work with AMP to preserve its rights under the settlement.

74. With respect to intervenors' concerns regarding the deadline for opting out of the FRR integration auction, ATSI asserts that its proposed deadlines (both the opt-out deadline applicable to eligible auction participants and the March 15, 2010 deadline for PJM to complete its forecast calculations for the auctions) were set in consultation with

PJM. ATSI argues that these deadlines are necessary for ATSI and PJM to complete all of the planning and preparation necessary to hold the integration auctions, as scheduled.

75. ATSI also responds to AMP's and NOPEC's objections regarding ATSI's proposed role in reviewing opt-out eligibility. ATSI submits that the asserted market power concerns that underlie intervenors' protest arguments are unfounded. ATSI submits that, in fact, the PJM MMU will ensure that ATSI does not exercise market power. ATSI adds, however, that because it will be responsible to PJM if an opt-out resource fails to perform,⁴⁷ it has a right to seek assurance that a load serving entity opt-out resource can and will fulfill its obligations.

4. Additional Answers

76. RRI responds to PJM's and the PJM MMU's requested clarifications that all capacity resources in the PJM region that have uncommitted capacity (including all capacity resources in the ATSI footprint) must offer this capacity into the RPM integration auction. RRI does not object to the application of this must-offer requirement to ATSI's integration auctions, provided that the market seller offer cap for capacity resources is determined under the same rules that the Commission recently approved for RPM third incremental auctions in Docket No. EL08-8-000.⁴⁸

77. RRI also responds to the PJM MMU's request that the Commission require that all uncommitted generation capacity in the ATSI zone and in PJM be required to submit offers into the integration auctions at prices less than their offer caps. RRI argues that the PJM MMU's characterization of the current RPM rules as requiring existing generation capacity resources to submit sell offers at prices less than their offer caps is mistaken. RRI asserts that, in fact, PJM's RPM rules do not require existing PJM generation capacity resources to offer their available capacity at prices less than their offer caps. RRI argues that, instead, such resources may generally submit sell offers at prices they deem appropriate and will be mitigated only where the applicable market structure test, i.e., the three pivotal supplier test, requires. RRI adds that, in such circumstances, if the sell offer is greater than the market seller offer cap applicable to such resource and

⁴⁷ See PJM RA Agreement at Schedule 8.1, Section F.2.

⁴⁸ *Mirant Energy Trading, LLC*, 124 FERC ¶ 61,140 (2008) (*Mirant Settlement Order*) (finding that setting the offer cap at the selling generator's avoided cost rate failed to appropriately reflect the risk of having to sell all of its remaining capacity in the third incremental auction and, subsequently, incurring deficiency charges because the generator becomes unable to deliver that capacity and has no opportunity to purchase replacement capacity in a subsequent incremental auction.).

would, absent mitigation, increase the capacity resource clearing price in the relevant auction, then the sell offer is mitigated to the resource's market seller offer cap.⁴⁹

5. Commission Determination

78. For the reasons discussed below, we accept ATSI's proposed FRR plan and requested waivers, subject to conditions. As a general proposition, we agree that use of the FRR alternative proposed by ATSI provides an appropriate basis for the ATSI zone to be integrated into PJM's capacity markets. Under this plan, the ATSI zone load serving entities will acquire sufficient capacity to meet their reliability requirements. As discussed below, we also find that the special auctions proposed by ATSI as a means to acquire this capacity are reasonable, subject to certain conditions. We agree that this FRR plan is generally consistent with our authorizations granted in the case of Duquesne's recent re-integration into PJM's capacity markets.⁵⁰

79. Intervenors raise no fundamental challenges regarding the eligibility of the ATSI zone load serving entities to meet their capacity obligations through the use of the FRR alternative. However, intervenors assert, and we agree, that clarifications are required.

80. PJM and the PJM MMU request clarification regarding the obligations to offer generation into the transition auction under Attachment DD, Section 6.6 of the PJM OATT. While PJM and the PJM MMU recognize that FirstEnergy has committed to offer its generation into the transition auction, PJM and the PJM MMU request clarification regarding the obligation of other generation in the ATSI zone and in PJM to offer capacity into the transition auction consistent with the requirements of Section 6.6.

81. We agree with PJM and the PJM MMU that Section 6.6(e) should be applied to all generation that was offered into the base residual auction for the delivery year. Under Section 6.6(e), generators that offered into a base residual auction are required to offer uncommitted capacity into all incremental auctions and we agree that the transitional auction is sufficiently similar to the incremental auctions to require such offers in that auction as well. However, we will not require that all generators in the ATSI zone be required to offer into the transition auction. The RPM rules do not require all generators within the PJM footprint to offer into a base residual auction or an initial auction. Section 6.6, rather, deals with different issues, i.e., the ability of a generator to withhold capacity from the initial base residual auction and then offer such capacity in incremental auctions and the ability of a generator that has already manifested its desire to participate

⁴⁹ RRI answer at 7, *citing* PJM OATT at Attachment DD, Section 6.5(a)(i).

⁵⁰ *See Duquesne Settlement Order*, 126 FERC ¶ 61,074 at P 37.

in an auction to withhold uncommitted capacity in a later auction. These requirements, however, do not obligate all generators within PJM to participate in capacity auctions. Moreover, neither PJM nor the PJM MMU provides a basis upon which PJM could require a generator to participate in the capacity market of the RTO in which its zone is located.⁵¹

82. We also clarify that the PJM MMU will be required to play the same role and exercise the same authority with respect to the ATSI zone integration auctions as it does in the case of an RPM auction. All current RPM market power mitigation rules will apply for the integration auctions. In accordance with the PJM OATT, the PJM MMU's role, in this regard, is to monitor, analyze, and report on the performance of PJM's markets, in order to ensure market competitiveness and efficiency.

83. We further agree with PJM that the use of the vertical demand curve is appropriate for these special auctions. PJM explains that under its tariff, for delivery years occurring prior to the 2012-13 delivery year, vertical demand curves are to be used in the clearing of the incremental auctions (specifically, in the second incremental auction), and therefore a vertical demand curve should be used in the FRR integration auctions for the ATSI zone.⁵² We agree with PJM that a vertical demand curve is required to ensure that the quantity of capacity procured is consistent with the RPM design and allows the ATSI zone to meet its reliability requirement.

84. AMP, NextEra, and NOPEC assert that load serving entities, under ATSI's FRR plan, may be required to make their opt-out elections before knowing the relevant details relating to these elections. We agree that to the extent feasible, load serving entities should be entitled to know their transition period capacity obligations prior to the imposition of ATSI's proposed opt-out deadline. Accordingly, we require ATSI to address this entitlement in a compliance filing to be made within 15 days of the date of its proposed January 31, 2010 opt-out deadline. Specifically, we require ATSI to address

⁵¹ For example, in the *Duquesne Withdrawal Proceeding*, the Commission made clear that even if Duquesne moved to the Midwest ISO, generators within the Duquesne zone could continue to participate in PJM's RPM auctions. *See Duquesne Light Company*, 123 FERC ¶ 61,060 at P 15 (2008).

⁵² PJM filed revisions to its OATT, in Docket No. ER09-412-000, applying the VRR curve to the incremental auctions, a revision that will apply to the first incremental auction for the 2012-13 delivery year. *See PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,090 (2009) (order approving proposed tariff revisions, subject to conditions).

the means by which load serving entities will be able to determine their capacity obligations prior to making their opt-out decisions, or otherwise explain why the lack of this right will not impose any undue uncertainty or burden on these entities.

85. AMP asserts that, under ATSI's FRR plan, an entity should be permitted to self-supply a portion of its capacity obligations, if it so chooses, while having the right to procure the remainder of its obligations in the ATSI integration auctions. We agree that load serving entities participating in the ATSI integration auction should have this right, consistent with incremental auction rights applicable under PJM's Manuals.⁵³ Accordingly, we require ATSI to address this right in its FRR plan.

86. We also agree with AMP that ATSI's proposal fails to address additional details regarding its FRR plan, including: (i) the allocation of penalties for the failure of resources to respond to PJM's dispatch communications, or for other performance rules; and (ii) the communications protocols applicable to resources under the FRR plan. ATSI acknowledges that work remains to be done with respect to its FRR plan and commits to submitting a revised plan to PJM by December 15, 2010. However, we find that details sought by AMP can and should be provided at an earlier date. Accordingly, we require ATSI to address, in its 60-day compliance filing, the manner in which resource deficiency penalties will be allocated, under its FRR plan, and the communications protocols that will apply for resources subject to the FRR plan. If resources under the FRR plan cannot communicate directly with PJM, ATSI must explain why this option would not be feasible.

87. AMP and Industrial Energy Consumers raise concerns regarding the participation of behind-the-meter generation, demand response, and energy efficiency resources in the ATSI zone integration auctions. ATSI states in its answer that these resources will be entitled to participate in the ATSI integration auctions so long as they meet the PJM OATT criteria applicable to qualified capacity resources, i.e., subject to the same rules as apply to PJM's incremental auctions.⁵⁴ We agree that these resources should have the ability to participate in the integration auctions subject to PJM rules and procedures as applicable to incremental auctions.⁵⁵

⁵³ See PJM Manual 18.

⁵⁴ ATSI answer at 8.

⁵⁵ The Commission made a similar determination with respect to Duquesne's re-integration into PJM's capacity markets. See *Duquesne Settlement Order*, 126 FERC ¶ 61,074 at P 38.

88. AMP also seeks clarification regarding its entitlement to certain Midwest ISO capacity arising under the Toledo Edison Settlement.⁵⁶ ATSI commits that it will work with AMP to preserve its rights under the settlement. We accept ATSI's commitment to ensure that AMP's capacity rights and the value of its capacity under the Toledo Edison Settlement are preserved upon integration.

89. The PJM MMU states at one point that generators offering into the transition auctions should be required to offer "at prices less than their offer caps," although it later states that their offers should be at their "avoidable cost rates." In its answer, RRI takes issue with the statement that generators should be obligated to offer at prices lower than their offer cap. It further argues that the appropriate mitigation to be applied should be the recently approved settlement regarding offer caps for the third incremental auction. It argues that these offer caps reflect the risk to a generator in committing to the last auction before the delivery year, because the generator has no further opportunity to purchase replacement capacity or otherwise adjust its capacity commitment prior to the delivery year. RRI maintains that the transition auction is similar because a generator has no opportunity to purchase replacement capacity prior to the delivery year.⁵⁷

90. Although the MMU's comment is unclear, we do not interpret the MMU as suggesting that generators submit offers *below* their offer caps. Rather, based on the rest of the pleading the MMU is recommending only that generators be subject to the standard avoidable cost rates in the PJM OATT.⁵⁸ In any event, we agree with RRI that the standard mitigation procedures are to be applied to the transitional auctions. Further, we agree with RRI that because a generator will not have the opportunity to obtain replacement capacity in the transitional auction, the offer cap options for the third incremental auction approved in the *Mirant Settlement Order* are appropriate for the transition auction. We also require FirstEnergy's FRR plan to conform to recent

⁵⁶ See *Toledo Settlement Order*, 125 FERC ¶ 61,348 at P 4.

⁵⁷ Section 6.4 of Attachment DD to the Tariff, provides that, for the third incremental auction only, the Market Seller Offer Cap for an existing *Generation Capacity* Resource shall be, at the election of such resource, (a) the ACR; (b) the documented price available to an existing generation resource in a market external to PJM; or (c) 1.1 times the Capacity Resource Clearing Price in the Base Residual Auction for the relevant LDA and Delivery Year.

⁵⁸ If the MMU did not intend that the offer prices must be less than the offer caps, it offered no justification for this proposal, nor did it propose an alternative.

authorized tariff revisions applicable to the design and structure of the RPM incremental auctions.⁵⁹

91. RRI also seeks clarification that ATSI-zone generators will be considered "internal" PJM capacity resources for purposes of participating in PJM's RPM auctions. RRI also requests clarification regarding the process to be followed in the event that a generator is accepted in the transitional auction but ATSI thereafter decides not to join PJM. In particular, RRI is concerned with obtaining transmission to PJM in the event that ATSI does not join PJM.

92. We agree that ATSI-zone generators will be considered internal to PJM. As the Commission discussed in the *Duquesne Withdrawal Order*, if a generator is selected in the transitional auction, PJM will be obligated to pay that generator based on the auction.⁶⁰ PJM also would have the right to dispatch that generator. Should ATSI renege on its commitment to join PJM, the generator would continue to be entitled to payment based on the RPM auction. PJM and the Midwest ISO would have to coordinate any transmission issues that arise, but the generator would not be required to obtain any additional transmission from the Midwest ISO.

93. Finally, AMP and NOPEC argue that ATSI's role in reviewing opt-out eligibility could result in ATSI using this role to exercise market power.⁶¹ We reject intervenors' argument. The performance of an opt-out resource is ultimately ATSI's responsibility, and thus we find that ATSI has a need to obtain assurance that a resource can perform. PJM's MMU, meanwhile, will be required to perform its duly-authorized functions under PJM's OATT to ensure that ATSI does not exercise market power in this regard.

⁵⁹ See *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,275 (2009), *order on clarification and reh'g*, 128 FERC ¶ 61,157 (2009), *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,090 (2009).

⁶⁰ *Duquesne Withdrawal Order*, 122 FERC ¶ 61,039 at PP 91-97.

⁶¹ As noted above, ATSI proposes that ATSI zone load serving entities, other than the ATSI Utilities, be given the right to opt-out of having their loads included in the integration auctions, subject to the submission of written notice to ATSI, that these entities satisfy the requirements of Section B.1 of Schedule 8.1 of the PJM RA Agreement (a provision addressing the eligibility of entities to participate in the FRR alternative).

F. ATSI's RTEP Obligations

1. ATSI's Waiver Request and FirstEnergy's Related Complaint

94. With respect to ATSI's obligations to pay RTEP charges applicable to high voltage projects (i.e., 500Kv or above) approved prior to its proposed integration date,⁶² ATSI asserts that absent a waiver of this obligation (or revision of the applicable tariff provision, as discussed below), ATSI-zone load serving entities will be required to pay the postage stamp transmission rates of both the Midwest ISO and PJM, representing the socialized cost of high voltage regional facilities planned and approved during the very same time period. Accordingly, ATSI proposes that ATSI-zone load serving entities continue to pay for qualifying Midwest ISO regional facilities planned and approved before June 1, 2011, but not be required to pay for PJM RTEP costs covering this same period. ATSI asserts that this waiver is fair to all affected interests, appropriately matches cost responsibility with cost incurrence, provides more efficient cost signals, and is consistent with the Commission's policy of encouraging RTO membership and new transmission construction.

95. Specifically, ATSI asserts that as new transmission infrastructure is upgraded and more costs are rolled into RTO postage-stamp rates, there may be perverse incentives on RTO membership. ATSI argues that if existing members can shed these costs for loads in their zones by leaving the RTO, they will have an incentive to do so. ATSI adds that, similarly, if new members' zones are required to pay these historic costs, they will have a disincentive to join. ATSI argues that the Midwest ISO ASM Tariff accomplishes this result by allocating regional project costs on a postage-stamp basis only once, not resetting this allocation every year, and by providing that costs follow a departing member out of the RTO.

96. ATSI also distinguishes the Commission's comment in the *Duquesne Withdrawal Rehearing Order*, that "a new transmission owner joining PJM would become subject to charges [for regional facilities], because it would be a zone in PJM with a zonal annual peak load, regardless of when the projects were approved and regardless of who these projects may have previously benefited."⁶³ ATSI asserts that the Commission's interpretation of the PJM OATT, while appropriate in the abstract, should not be applied here if doing so would undermine the stability and growth of RTOs and unfairly burden the same load serving entities with two RTO postage-stamp rates for the same time period. ATSI adds that the Commission's interpretation of PJM OATT's was made in the

⁶² See PJM OATT at Schedule 12(b)(i)(A).

⁶³ 124 FERC ¶ 61,219 at P 164.

context of interpreting that provision, as it was drafted, not in the context of a policy debate.

97. FirstEnergy, in its complaint, requests that if ATSI's RTEP waiver request is denied, in the alternative, the Commission should find that PJM's RTEP allocation methodology is unjust, unreasonable and unduly discriminatory as applied to ATSI's planned entry into PJM.

98. FirstEnergy states that, under PJM's cost allocation methodology, RTEP costs are allocated annually, based on the load that is within PJM as of the date of the allocation. FirstEnergy states that, by contrast, the Midwest ISO allocates its MTEP costs based on a one-time allocation at the time that the projects at issue are approved. FirstEnergy asserts that, as such, without the relief it requests, ATSI would be required to pay twice in conjunction with its planned realignment, i.e., to pay under both PJM's and the Midwest ISO's allocations for projects planned and approved in separate by each over the same period. FirstEnergy therefore requests that Schedule 12(b)(i)(A), if not waived as requested by ATSI, should be amended to provide that applicable zonal loads used to derive rates for ATSI's zone exclude the peak load for ATSI zone for regional facilities and necessary lower voltage facilities identified under Schedule 12 that were planned and approved in any RTEP prior to the date when the ATSI zone is integrated into PJM.

2. Protests and Comments

99. PJM agrees with ATSI that the intent underlying PJM's allocation methodology addresses the expected dynamics of organic load growth, load loss, load switching, etc., as it relates to the proportional responsibility for these costs among PJM's existing transmission zones. PJM adds that this cost allocation methodology was not designed in contemplation of a new transmission zone being integrated into PJM.⁶⁴

100. Other intervenors disagree, arguing that if ATSI becomes a member of PJM, it should be subject to costs associated with RTEP projects previously approved by PJM on the same basis as any other PJM transmission owner, pursuant to the allocation

⁶⁴ Additional intervenors also support ATSI's position on this issue. *See* AMP protest at 19-20; Ohio Consumers Counsel protest at 7; and Industrial Energy Consumers protest at 9.

methodology ultimately approved by the Commission on remand of Opinion No. 494.⁶⁵ Dayton argues that the amount of costs potentially involved is sizable.⁶⁶

101. The Illinois Commission points out that were ATSI to be granted the express exemption it requests, it would be provided a measure of certainty that is not provided to other PJM transmission owners or loads within PJM that remain subject to the Opinion No. 494 remand proceeding. The Illinois Commission asserts that such an accommodation could distort the marketplace and be discriminatory.⁶⁷ The Indiana Commission asserts that approval of ATSI's requested waiver would allow ATSI to benefit from the projects at issue as a free rider at a time when the Commission is attempting to promote the construction of new transmission capacity. The Indiana Commission argues that such an exemption would serve as an unwarranted incentive to switch RTOs.⁶⁸

102. The NJ Rate Counsel argues that ATSI should not be granted any exemption from PJM's RTEP cost allocations because the planned projects included in these allocations, including four projects representing approximately \$5.5 billion in planned transmission investment, will undoubtedly benefit ATSI's transmission customers.

⁶⁵ See Buckeye comments at 8; Dayton limited protest at 6; Illinois Commission comments at 7.

⁶⁶ Specifically, Dayton asserts that there are approximately \$6 billion in new, high-voltage transmission facilities operating at 500 kV or higher that PJM has approved for construction but are not yet constructed. Dayton submits that ATSI's allocated share of these costs, under PJM's existing allocation methodology, could be as much as \$500 million, assuming that ATSI's load would be equal to 8 percent to 8.5 percent of PJM's total load. Compare NJ Rate Counsel comments at 3 (estimating a load ratio share of approximately 10 percent).

⁶⁷ See also BGE comments at 4 (arguing that PJM has not shown that its disparate rate treatment is just and reasonable, and not unduly discriminatory or preferential) and Buckeye comments at 4 ("As a matter of nondiscriminatory treatment, as well as simple equity and sound policy, a transmission owner that seeks the benefits of PJM membership should shoulder the same burdens, in appropriate proportion, as any existing transmission-owning member, in accordance with the PJM OATT as it exists).

⁶⁸ See also OMS comments at 2 (arguing that ATSI could be seen as a free rider, under these circumstances, by avoiding transmission costs in both RTOs while benefitting from the expanded transmission expansions at issue).

103. AEP asserts that ATSI's proposed waiver request is not the proper procedural vehicle to be considered here. The Indicated PJM Transmission Owners agree, noting that the tariff provision for which waiver is sought (Schedule 12 of the PJM OATT) is not a regulation that can be waived by the Commission as a discretionary matter, but rather a filed rate. AEP argues that resolution of ATSI's RTEP obligations should be addressed either by: (i) considering a collective section 205 proposal made by ATSI and the PJM transmission owners, acting pursuant to the PJM transmission owners' existing filing rights (a process not undertaken by ATSI);⁶⁹ or (ii) addressing FirstEnergy's complaint on the merits.

104. Dayton and NextEra assert that a final Commission determination regarding ATSI's RTEP obligations require additional information, regarding the relative burden of ATSI's asserted Midwest ISO transmission project liability versus the PJM RTEP obligation.

3. PJM's Answer to FirstEnergy's Complaint

105. PJM, in its answer to FirstEnergy's complaint, refers to and reiterates its comments filed in response to FirstEnergy's requested waiver of Schedule 12 of the PJM OATT. PJM asserts that FirstEnergy raises sound policy arguments to support its requested relief. PJM agrees that the inequitable result of paying twice for socialized costs of high voltage regional facilities planned and approved during the same time period should be remedied. PJM add that Schedule 12 was not designed to address the facts presented here, involving an altogether new transmission zone joining PJM.

4. ATSI's Answer

106. ATSI responds to intervenors' arguments that granting FirstEnergy's requested RTEP exemption would be discriminatory vis a vis PJM's other transmission owners. ATSI argues that the Commission's rule against undue discrimination prohibits only differential treatment of customers who are similarly situated. ATSI asserts that, here, ATSI is not similarly situated to PJM's existing transmission owners because the specific RTEP costs ATSI would be permitted to avoid were planned and approved for existing transmission owners' loads, not for ATSI's customers' loads.

107. ATSI also responds to the arguments raised by the Indiana Commission and OMS that ATSI's requested exemption, if granted, would permit ATSI to shift costs for which

⁶⁹ See PJM OATT at Section 9 and PJM TO Agreement at Sections 7.2.1 and 8.5.1 (providing that only the PJM transmission owners, with a two-thirds affirmative vote, have the right to unilaterally file changes to the PJM regional rate design).

it shares a responsibility and thus benefit from the transmission projects at issue as a “free rider.” ATSI argues that these arguments rest on a mistaken premise, i.e., that ATSI is currently bearing RTEP costs that it wants to shift to others. ATSI asserts that PJM’s transmission owners and their ratepayers will be no worse off under the exemption it proposes.

108. ATSI also responds to intervenors’ arguments regarding the proper procedural options available in this proceeding to consider ATSI’s RTEP exemption proposal. With respect to intervenors’ argument that the Commission may not waive a filed rate, ATSI argues that the Commission has, on numerous occasions, waived tariff provisions of this sort, including tariff provisions addressing RTO integration matters.⁷⁰

109. With respect to ATSI’s options under section 205, ATSI acknowledges that a single transmission owner does not have the power, under FPA section 205, to propose changes to regional rate design.⁷¹ However, ATSI argues that, here, it is not seeking to change the costs allocated to, or revenues earned by, PJM’s existing transmission owners. ATSI asserts, to the contrary, that it seeks only to maintain the *status quo ante* by proposing that PJM not reallocate costs that were previously assigned to PJM’s existing transmission owners.

110. ATSI adds that there is a difference between proposing wholesale changes to rate design and adjustments in the implementation of tariff language to reflect unanticipated circumstances. ATSI submits that it should be authorized to propose, under section 205, a new application to existing tariff language to address unanticipated circumstances.

⁷⁰ ATSI answer at 19, *citing* Duquesne Settlement Order, 126 FERC ¶ 61,074 at P 37 (approving waivers to the PJM OATT to implement Duquesne’s proposed FRR plan); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007) (granting waiver of ISO New England’s Market Rule 1 to permit the Vermont companies to receive credits for import capability in the forward capacity market); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007) (granting waivers of ISO New England’s deposit deadline under Market Rule 1, as applicable to forward capacity auction).

⁷¹ *Id.* at 17, *citing* *PJM Interconnection, L.L.C. and Virginia Electric & Power Co.*, 109 FERC ¶ 61,012, at P 20 (2004) (“[N]o public utility . . . has the statutory right to seek to change another public utility’s rates under section 205 of the FPA.”).

5. Commission Determination

111. We deny ATSI's request for waiver and dismiss FirstEnergy's related complaint.⁷² Section 206 of the FPA requires a complainant to show that the rate or practice currently in effect is unjust, unreasonable, or unduly discriminatory or preferential.⁷³ 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.⁷⁴

112. ATSI asserts that PJM should not be permitted to apply to ATSI PJM's current tariff provision that allocates system-wide costs (upgrades 500 KVs or greater) approved through its RTEP process to all PJM zones based on the zone's load ratio share. ATSI maintains that it is not just and reasonable for the Midwest ISO 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. We disagree. Each of the PJM and Midwest ISO cost allocation methodologies has been accepted by the Commission as just and reasonable and not unduly discriminatory 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.

113. Transmission owners that seek to change RTOs should be prepared to assume the costs attributable to their decisions. ATSI is permitted to balance the benefits it associates with its decision to join PJM under its existing tariff against the costs it anticipates it will incur in exiting the Midwest ISO and joining PJM to determine whether such a move is cost-justified. While we have held that companies are free to join and exit RTOs, we have applied the existing tariffs for each RTO in determining the costs to be allocated to the transmission owners seeking to exit and/or enter.⁷⁵ We see no basis to

⁷² Because ATSI's waiver request is contested, we will treat the request as a request to find that application of the PJM OATT to ATSI, under the circumstances presented here, is unjust and unreasonable.

⁷³ 16 U.S.C. § 824e (2006).

⁷⁴ *See also supra* note 6.

⁷⁵ *See Duquesne Light Co.*, 122 FERC ¶ 61,039 (2008). Notwithstanding PJM's assertion that its allocation methodology was not designed in contemplation of a new transmission zone being integrated into PJM, the plain language of the tariff governs the allocation of costs in such circumstances.

modify the existing RTO rules simply because a particular cost allocation makes a transmission owner's business decision more expensive. Nor can we find on an *a priori* basis that, as ATSI argues, allocating system-wide costs to those leaving an RTO is necessarily preferable to charging such costs upon entry or that any particular cost allocation will create more stable RTOs. As this case demonstrates, the exit costs imposed on ATSI under the Midwest ISO TO Agreement did not create a disincentive for ATSI to leave the Midwest ISO.⁷⁶

114. 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 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.⁷⁷ The PJM transmission owners indicate that they are open to such negotiation.⁷⁸ 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.

G. Remaining Issues

1. ATSI's Proposal

115. In addition to the authorizations requested by ATSI in its filing, ATSI states that its integration into PJM will also require: (i) a revised market power analysis to support a "change of status" filing within 60 days of the integration date, as required by 18 C.F.R. § 35.42(a); (ii) PJM zonal transmission rates for the ATSI footprint, to be filed on or

⁷⁶ If, as ATSI posits, network upgrades are not allocated to new entrants, an incentive would be created for transmission owners to delay their request to enter until the RTO approves large projects.

⁷⁷ PJM comments at 2-3 (claiming that ATSI's strong electrical ties with the PJM transmission system "should reduce congestion costs, increase efficiency across both RTOs and result in more optimal day-ahead commitment of generation when included with the remainder of the PJM footprint").

⁷⁸ See Indicated PJM Transmission Owners comments at 3.

about February 1, 2011;⁷⁹ (iii) the execution of certain required PJM agreements, including the PJM RA Agreement, the PJM Consolidated Transmission Owners Agreement and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (PJM Operating Agreement); (iv) execution or modification of various network integration transmission service agreements among PJM and the appropriate transmission customers in the ATSI footprint; (v) execution or modification of various point-to-point transmission service agreements among ATSI, PJM and affected transmission customers; and (vi) execution of new generator and load interconnection agreements among PJM, ATSI, and third-party generators and loads.

116. ATSI states that filings will also be made to address transition of generator and load interconnection queues, and grandfathered agreements.

2. Protests and Comments

117. With respect to the integration timing sequence outlined by ATSI, in its filing, NOPEC asserts that the Commission should not authorize the implementation of changes that may be difficult to unwind on the basis of an initial, non-final determination that may be modified or revised on rehearing. The Ohio Commission argues that state issues should be resolved before the Commission acts on ATSI's filing.⁸⁰ PJM, on the other hand, asserts that ATSI's implementation plan is workable and that it stands ready and able to meet the integration schedule proposed by ATSI.

118. A number of intervenors agree that ATSI's integration into PJM is justified.⁸¹ Buckeye notes that ATSI's existing configuration in the Midwest ISO carves up the state of Ohio between the Midwest ISO and PJM in an odd gerrymander-like configuration that has the effect of virtually bifurcating PJM's presence in the state. Constellation asserts that ATSI's integration into PJM will likely result in important benefits to

⁷⁹ ATSI asserts that these rates are expected to largely mirror rates established through the current Midwest ISO Attachment O transmission rate formula (a two-tiered voltage differentiated rate), with changes made only to the extent necessary to accommodate PJM billing practices (e.g., the utilization of transmission pricing based on a 1 coincident peak (CP) versus a 12 CP methodology, as used by the Midwest ISO).

⁸⁰ See Ohio Commission protest at 3, citing Case No. 09-778-EL-UNC, In the Matter of the Proposal of FirstEnergy Company to Modify its RTO Participation.

⁸¹ See Buckeye comments at 6; Constellation comments at 2; Exelon comments at 2; PJM comments at 2.

wholesale market participants, retail suppliers and end-use consumers. Exelon argues that ATSI's integration into PJM will eliminate existing seams between the two RTOs.

119. Other intervenors raise concerns regarding the viability of ATSI's proposed migration to PJM. The Michigan Commission asserts that there may be reliability concerns associated with this move, due to the fact that the ATSI zone load serving entities do not have sufficient capacity to meet their reserve requirements with internal capacity.⁸² The Michigan Commission argues that, while it is true that ATSI's departure from the Midwest ISO could provide a corresponding improvement to the Midwest ISO's operating and planning reserves, any benefits stemming from such improvement could be offset by the reliability implications attributable to changes in flows and congestion, particularly the Lake Erie loop flows as well as the creation of new seams between the Midwest ISO and PJM within certain interconnections along Michigan's southern boundary.⁸³ The Michigan Commission concludes that a hearing, or a technical conference, is required to address these reliability issues.

120. AMP argues that ATSI's filing fails to address the process contemplated for load serving entities, in the ATSI zone, to obtain auction revenue rights. AMP proposes that ATSI and/or PJM be required to provide AMP with a list of the historic resources that will be assigned to AMP for the purposes of post-realignment auction revenue rights allocations.

121. Intervenors also address the asserted justness and reasonableness of ATSI's proposed integration into PJM. The Midwest ISO asserts that the justness and reasonableness of the ATSI zone rates that would be charged by PJM do not hinge on comparison of the relative dispatch and congestion costs of the two RTOs. The Midwest ISO argues that, as such, the PJM study submitted by ATSI, in its filing (addressing,

⁸² *See also* Ohio Commission protest at 7 (noting that PJM and the Midwest ISO have unique market structures and dispatching algorithms for complying with reliability standards).

⁸³ *See also* Ohio Consumers Counsel protest at 10 (arguing that if ATSI is permitted to migrate to PJM, the Commission should require a resolution of the loop flow issue that holds Ohio utilities and their customers harmless from any loop flows or congestion that may result); Ohio Commission protest at 9.

among other things, unit commitment policies, reciprocal flowgates, and seams), is largely irrelevant.⁸⁴

122. The Michigan Commission challenges ATSI's asserted cost savings attributable to its move from the Midwest ISO to PJM. The Michigan Commission asserts that if, as contemplated by the PJM/Midwest ISO JOA, costs on both sides of the RTO seams are equalized, the savings that could be claimed by ATSI would be insignificant. NOPEC asserts that ATSI's claim, that its affiliate's participation in two RTOs is inefficient, is not supported or quantified in any meaningful way. The Ohio Consumers Counsel agrees, arguing that ATSI should be required to prove that total economic costs (congestion as well as other costs) associated with its proposed realignment will be reduced such that rates based on these costs can be said to be just and reasonable.⁸⁵

123. With respect to resource deliverability, AMP asserts that ATSI's filing fails to discuss how PJM will perform its aggregate deliverability analysis for existing resources in the ATSI footprint. AMP seeks assurance that existing resources that the Midwest ISO has deemed deliverable to AMP in ATSI will be deemed deliverable in the PJM following ATSI's realignment. AMP adds that if PJM determines that transmission upgrades in the ATSI zone are necessary to render AMP's resources deliverable, the costs of these upgrades should not be allocated to AMP by either ATSI or PJM. In addition, AMP argues that any of its planned resources found to be deliverable as capacity in the Midwest ISO but not yet in operation should not be subject to two additional rounds of deliverability evaluations (this time, by the Midwest ISO for point-to-point, through and out service and by PJM for network service).

124. IPP questions whether its 712 MW peaking facility, in Luckey, Ohio, in the ATSI zone, will be able to deliver its full capacity and energy into PJM. IPP expresses concern, in this regard, with ATSI's representation that a deliverability study may not be available until after December 17, 2009.

125. AMP also asserts that ATSI's filing raises unanswered questions regarding AMP's ability to use its Midwest ISO-area resources to satisfy the new obligations it would have in PJM. Specifically, AMP seeks clarification regarding its rights to receive point-to-point

⁸⁴ On the merits, the Midwest ISO challenges ATSI's analytical assumptions and characterizes ATSI's asserted cost savings as overstated. NOPEC asserts that these issues, if relevant, raise factual questions that would require hearing procedures.

⁸⁵ *See also* Ohio Commission protest at 14 (“[T]he application fails to show how any tangible efficiencies or cost savings will benefit ratepayers, or how costs associated with the transfer will be recovered on a region-wide basis.”).

service across the Midwest ISO and whether it will be required to pay for system upgrades that would not have been necessary had the loads remained in the Midwest ISO.

126. AEP argues that, as a condition to the approval of ATSI's realignment request, ATSI and PJM should be required to disclose the integration impacts by zone as well as new, modified, or expected operational or other special agreements with neighboring RTOs that result from the proposed integration. AEP also requests that the Midwest ISO and PJM be required to reevaluate the current list of coordinated flowgates allocated between the two RTOs, pursuant to the PJM/Midwest ISO JOA.

3. ATSI's Answer

127. ATSI characterizes intervenors' rate arguments and issues relating to the mechanics of ATSI's integration into PJM as unripe for consideration here and/or irrelevant and largely extraneous to the two issues the Commission is required to address in this order, i.e., the issue of ATSI's planned integration into the PJM capacity market and the issue of ATSI's RTEP obligations.

128. ATSI also responds to the Ohio Commission's request that the Commission defer its rulings, herein, pending the Ohio Commission's rulings regarding ATSI's required state determinations. ATSI asserts that the Ohio Commission cannot deny a Commission-jurisdictional transmission owner, such as ATSI, the ability to make voluntary choices regarding membership in a Commission-jurisdictional RTO. ATSI adds that the Commission, in the past, has addressed RTO membership proposals without waiting for the outcome of state commission action on the same RTO membership proposal.

129. ATSI also responds to intervenors' arguments that the net benefits of ATSI's move to PJM have not been adequately demonstrated. ATSI concurs with the Midwest ISO that a cost/benefit analysis is not a required showing in connection with its proposed RTO realignment. ATSI adds that while it discussed the benefits of ATSI's move, in its filing, it did only by way of background. FirstEnergy further asserts that while its proposed replacement arrangements must be determined to be just and reasonable, when filed, such a showing does not require a demonstration that ATSI's departure will be a "benefit" that exceeds the "cost" of its current membership in the Midwest ISO.⁸⁶ ATSI argues that, regardless, it would be illogical to conclude that ATSI's migration to PJM is unjust and unreasonable when PJM's rate structure has already been found to be just and

⁸⁶ ATSI answer at 31, *citing LG&E Withdrawal Order*, 114 FERC ¶ 61,282 at P 29.

reasonable for its 24 existing transmission owning members, including ATSI's eastern affiliates.

4. Additional Answers

130. PJM responds to intervenors' arguments that ATSI's move to PJM could adversely affect reliability, long-term planning and RTO operations. PJM argues that a change in a zone from one RTO to another will not disrupt long-term planning given the forward-looking nature of PJM's RTEP and RPM protocols. PJM adds that it does not anticipate any adverse impacts on reliable operations flowing from the ATSI zone RTO realignment because PJM and the Midwest ISO will continue to operate their respective systems at the seam as they have for years under the PJM/Midwest JOA. PJM further asserts that it does not anticipate that the ATSI zone integration will create significant changes in loop flow around Lake Erie, and it contends that the integration will not adversely impact management of loop flows under the PJM/Midwest ISO JOA.

131. PJM also responds to intervenors' concerns regarding resource deliverability. PJM states that all existing capacity resources in the ATSI zone will remain deliverable after they integrate into PJM and that any issues that PJM identifies will be considered baseline upgrade issues that will not be the responsibility of any generator to fix. PJM adds that the costs associated with any required upgrades will not be allocated to ATSI zone generators.

132. PJM also responds to AMP's request that ATSI and/or PJM be required to provide AMP with a list of the historic resources that will be assigned to AMP for the purposes of post-realignment auction revenue rights allocations. PJM states that it has already conducted a mock allocation utilizing PJM's best approximation of the ATSI zone stage resources and that PJM saw no need to prorate auction revenue rights post-realignment. PJM states that this is so because all of the requests in the mock allocation were deemed feasible. PJM states that it is also in the process of obtaining the historic resource that the Midwest ISO used and that, once it does so, PJM will work with market participants to ensure that it is complete. PJM states that it will then continue to analyze the feasibility of stage 1 auction revenue rights requests, conduct a mock allocation with the actual complete list, and inform market participants of the results.

5. Commission Determination

133. We reject NOPEC's argument that the Commission should decline to authorize preliminary determinations, in this order, that may be difficult to unwind. ATSI, as a transmission owner, has the right to voluntarily participate in an RTO, subject to the fulfillment of its contractual obligations and the additional RTO withdrawal requirements discussed above. As we have also acknowledged above, there is a legitimate need and basis for ATSI to pursue its RTO membership interests on an orderly, phased-in time sequence. Among other things, this time sequence is made necessary given the operation

of PJM's capacity markets. For this same reason, we also reject the Ohio Commission argument that state issues should be resolved before the Commission acts on ATSI's filing.

134. We also dismiss, as unripe, the Michigan Commission's speculation regarding the existence of potential, future reliability problems attributable to ATSI's realignment. These concerns, should they materialize, may be renewed at that time in the context of a specific occurrence or dispute. Regardless, we agree with PJM's statement, in its answer, that a change in a zone from one RTO to another should not disrupt long-term planning, given the forward-looking nature of PJM's RTEP and RPM protocols. In addition, we note that the JOA between PJM and Midwest ISO should serve to address the Michigan Commission's reliability concerns, as this agreement was developed to coordinate market operations and ensure there are no impediments between the two RTOs.

135. We will also not address, here, AMP's request that ATSI be required to: (i) address the process contemplated for load serving entities, in the ATSI zone, to obtain auction revenue rights; and (ii) provide a listing of the historic resources that will be assigned to AMP for the purposes of post-realignment auction revenue rights allocations. These issues may be renewed at the time that FirstEnergy submits its proposed replacement arrangements. In addition, we note that PJM, in its answer, states that it conducted a mock allocation that found all requests to be feasible. PJM also stated that it was in the process of obtaining the historic resource that the Midwest ISO used and that, once it does so, it will work with market participants to ensure that it is complete. We accept PJM's commitment to continue to work with market participants regarding these matters.

136. Finally, we will not address here, or otherwise prejudge, issues relating to the justness and reasonableness of ATSI's anticipated replacement arrangements. These determinations must await the submission of the filings that will make these determinations possible.

The Commission orders:

(A) ATSI's realignment request is hereby granted, in part, and denied, in part, as discussed in the body of this order, subject to ATSI's submission of certain filings discussed herein, the outcome of proceedings on these filings, the submission of a compliance filing within 60 days of the date of this order, and the submission of a status report within 15 days of the date of ATSI's proposed FRR opt-out election.

(B) FirstEnergy's complaint is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

List of Intervenors
In Docket No. ER09-1589-000

Allegheny Electric Cooperative, Inc.
American Electric Power Service Corporation *
Allegheny Energy Supply Company Allegheny Power
Ameren Services Company American Municipal Power, Inc.*
ArcelorMittal USA Inc.
Baltimore Gas and Electric Company *
Buckeye Power, Inc. *
Citizens Coalition **
Cleveland Public Power *
Coalition of Midwest Transmission Customers
Consolidated Edison Energy, Inc., *et al.*
Constellation Energy Commodities Group, Inc.
 and Constellation NewEnergy, Inc. *
Consumers Energy Company Dayton Power and Light Company *
Detroit Edison Company *
Direct Energy Business, LLC
Dominion Resources Services, Inc.
Duquesne Light Company
Edison Mission Energy
Electric Power Supply Association
EnerNOC, Inc.
Exelon Corporation *
Illinois Commerce Commission *
Indiana Office of Utility Consumer Counselor *
Indiana Utility Regulatory Commission *
Indianapolis Power & Light Company *
Indicated PJM Transmission Owners *
Industrial Energy Users-Ohio International Power America, Inc. and
 Troy Energy, LLC *
Iowa Utilities Board
JP Morgan Ventures Energy Corporation
Michigan Public Service Commission *
Midwest Independent Transmission System Operator, Inc.
Midwest ISO Transmission Owners Mirant Parties
Missouri Public Service Commission
Monitoring Analytics, LLC *
NRG Companies

New Jersey Board of Public Utilities New Jersey Division of Rate Counsel *
Nextera Energy Resources, LLC *
Northeast Ohio Public Energy Council *
Nucor Steel Marion
Office of the Ohio Consumers' Counsel *
Ohio Energy Group
Ohio Partners for Affordable Energy
Old Dominion Electric Cooperative *
Organization of MISO States *
Organization of PJM States, Inc.
Pennsylvania Office of Consumer Advocate
Pennsylvania Public Utility Commission
Pepco Holdings Inc.*
PJM Industrial Customer Coalition PJM Interconnection, L.L.C. *
PJM Power Providers Group
PPL Electric Utilities Corporation
PPL EnergyPlus, LLC, *et al.*
PSEG Companies *
Public Service Commission of Maryland *
Public Utilities Commission of Ohio *
Shell Energy North America (US), L.P.
Rockland Electric Company
Royal Bank of Scotland PLC
RRI Energy, Inc. *

* Protests and/or Comments

** Motion to intervene out-of-time

Appendix B

List of Intervenors
In Docket No. EL10-6-000

American Electric Power Service Corporation *
Allegheny Power
American Municipal Power, Inc. and
Cleveland Public Power *
Baltimore Gas and Electric Company
Borough of Chambersburg, PA
Buckeye Power, Inc.
Constellation Energy Commodities Group, Inc.
and Constellation NewEnergy, Inc.
Consumers Energy Company
Dayton Power and Light Company *
Dominion Resources Services, Inc.
Duke Energy Corporation
Duquesne Light Company
Exelon Corporation
Illinois Commerce Commission *
Indiana Utility Regulatory Commission *
Indianapolis Power & Light Company *
Long Island Power Authority and LIPA
MidAmerican Energy Company
Midwest Independent Transmission System Operator, Inc. *
New Jersey Board of Public Utilities
North Carolina Electric Membership Corporation *
Office of the Ohio Consumers' Counsel
Old Dominion Electric Cooperative *
Pennsylvania Public Utility Commission
Pepco Holdings Inc.
PJM Industrial Customer Coalition, *et al.*
PJM Interconnection, L.L.C.
PPL Companies
PSEG Companies
Public Service Commission of Maryland
Public Utilities Commission of Ohio
Rockland Electric Company
RRI Energy, Inc.

* Protests and/or Comments