

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

Duke Energy Ohio, Inc., et al.

)

Docket Nos. ER10-1562-000

**MOTION TO INTERVENE OUT OF TIME AND COMMENTS
OF THE
MIDWEST ISO'S INDEPENDENT MARKET MONITOR**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.212 and 214 (2007), Potomac Economics respectfully moves to intervene in the above-captioned proceeding concerning the June 25, 2010 Section 205 filing by Duke Energy Ohio, Inc. (“DEO”) and Duke Energy Kentucky, Inc. (“DEK”).

Potomac Economics is the Independent Market Monitor (“IMM”) for the Midwest Independent Transmission System Operator (“Midwest ISO”). In support of its late-filed intervention and comments, Potomac Economics submits the following.

I. NOTICE AND COMMUNICATIONS

All correspondence and communications in this matter should be addressed to:

Dr. David B. Patton
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9990 Fairfax, Boulevard, Suite 560
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(703) 383-0720

II. NATURE OF THE PROCEEDING AND MOTION TO INTERVENE

On June 25, 2010, DEO and DEK submitted an initial filing regarding their proposed move from the Midwest ISO to PJM Interconnection, L.L.C. (“PJM”). Intervention is appropriate where the movant may be directly affected by the outcome of the proceeding and has a direct interest in the same that cannot adequately be represented by any other party.¹ Potomac Economics’ intervention and participation is in the public interest.

As the Midwest ISO’s IMM, assuming the market monitoring responsibility within the Midwest ISO region, Potomac Economics is required under the provisions of the Midwest ISO’s Open Access Transmission and Energy Markets Tariff (“EMT”) to monitor and evaluate the market outcomes and market rules to promote the efficiency and competitiveness of the Midwest ISO markets. Potomac Economics may also be bound or adversely affected by the Commission’s actions herein. For these reasons, Potomac Economics respectfully requests that it be permitted to intervene in this proceeding with full rights as a party hereto.

Good cause also exists to permit Potomac Economics motion to intervene out of time as it has a significant interest in this proceeding.² Permitting Potomac Economics to intervene at this time will not prejudice any party in the proceeding as the Commission has not yet acted on the Midwest ISO’s filing. Potomac Economics agrees to accept the record in this case as developed to date. For these reasons, Potomac Economics respectfully requests that the Commission grant this motion for leave to intervene out of time in this proceeding.

¹ See 18 C.F.R. § 385.214(b)(2)(ii).

² See, e.g., 18 C.F.R. § 385.214(d) (2007) (requirements for motion for late intervention); *Consolidated Gas Supply Corp.*, 20 FERC ¶ 61,305, at 61,599 (1992) (factors considered by Commission in determining whether good cause exists to permit late intervention).

III. COMMENTS

A. Summary of Comments

The configuration change proposed by Duke is unlikely to be just and reasonable or in the public interest because it would:

- Further degrade the configuration of the RTOs along the eastern border of the Midwest ISO, the economic efficiencies of which can be only partially mitigated by the current market-to-market process.
- Result in substantial externalities to existing participants that have made investments and other commitments based on the reasonable expectation of DEO and DEK's continued participation in the Midwest ISO;
- Retard future investment and other long-term decisions by increasing the economic risks and market instability associated with significant configuration changes.

We submit that the decision by DEO and DEK to withdraw from the Midwest ISO is largely due to seams issues between the Midwest ISO and PJM that can and should be resolved by the RTOs. Furthermore, the withdrawal by DEO and DEK will likely exacerbate the seams issues between PJM and the Midwest ISO.

In short, because the Commission relies on competitive wholesale markets to ensure that wholesale electricity prices are just and reasonable under the Federal Power Act ("FPA"), it must be cognizant of proposals that would undermine the efficiency and stability of the wholesale markets. On this basis, the Commission should find that the configuration change proposed by Duke is not just and reasonable, and should alternatively order PJM and the Midwest ISO to work together to resolve the current seams issues.

B. Effects of Duke's Proposed Migration

In a number of preceding cases, the Commission has articulated its responsibility and authority regarding approval of RTO membership elections. This is perhaps best summarized in the following determination by the Commission:

In considering the justness and reasonableness of any filing made under section 205, including an RTO withdrawal filing, the Commission is required to consider its policies and precedents, as may be relevant to the issues presented for our review. Although participation in an RTO is voluntary, a transmission owner's withdrawal can have a substantial impact on other market participants and the markets themselves. In these circumstances, the policies enunciated in Order No. 2000 would be relevant and must be considered.³

This determination is not only reasonable, it is inescapable. If the Commission has an obligation to review the scope and configuration of RTOs at the time of their formation to determine whether the RTO will likely produce competitive and efficient market outcomes, it simply cannot be permissive in allowing subsequent withdrawals that would retroactively undermine the scope and configuration of an RTO. As the Commission noted above, the withdrawal of an existing RTO member can “have a substantial impact on other market participants and the markets themselves”. We believe that the proposed withdrawal of DEO and DEK is a prime example of this. Therefore, we recommend that FERC amend its standards of review to explicitly consider the effects of a withdrawal on other RTO members and the market itself, and apply this standard in the review of Duke's proposal.

The decision by a participant to withdraw from an RTO is fundamentally different than the decision to enter or not enter an RTO. Specifically, other members of the RTO make a wide array of investment and contracting decisions that are premised on the continued presence of critical existing RTO members. Not only are past decisions undermined by the withdrawal of

³ *ISO New England, Inc.*, 109 FERC ¶ 61,147, at P 41 (2004).

key members, but such costs increase the risks associated with future investments, long-term contracts, and other long-term commitments. Ultimately, this would erode a primary source of long-term benefits that RTOs promise. While we are not arguing that RTO membership be mandatory for existing RTO members, we do believe that the Commission must consider these costs in determining whether the proposed withdrawal of an existing RTO member is just and reasonable under the FPA.

The decision by DEO and DEK to withdraw appears motivated principally by the desire to receive higher capacity market revenues in PJM, as outlined in the Midwest ISO's comments filed on July 26, 2010.⁴ The Midwest ISO's Voluntary Capacity Auction continues to clear at prices close to zero due to the prevailing excess capacity on the Midwest ISO system, while RPM capacity market revenues for DEO and DEK in PJM are estimated to be \$352 million annually.⁵ However, such differences would not exist absent substantial barriers preventing the import and export of capacity between PJM and the Midwest ISO. We identified this concern in the 2009 State of the Market Report for the Midwest ISO and it was the basis for one of the recommendations of the report.⁶ If these seams issues are resolved (which is critical with or without DEO and DEK's withdrawal) then no existing member of one RTO should expect higher capacity or energy revenues as a result of migrating to an adjacent RTO. Furthermore, removing barriers to trading capacity and energy between markets is likely much less costly and disruptive to the market than substantial membership changes.

Finally, migration would degrade the configuration of the Midwest ISO and PJM systems. Although the market-to-market process would partially mitigate the harm to the

⁴ "Intervention and Comments of the Midwest Independent Transmission System Operator, Inc.", filed July 26, 2010 in Docket No. ER10-1562-000.

⁵ *Id.*

⁶ Potomac Economics, Ltd. "2009 State of the Market Report," dated June 2010.

market, the change in configuration will likely generate significant inefficiencies, including inefficiencies in the day-ahead commitment and scheduling of resources, as well as the real-time dispatch of generation and management of transmission congestion. Over the longer-term, to the extent that such withdrawals de-stabilize the market, it places at risk the \$700 to \$900 million in annual net economic benefits and other reliability benefits provided by the Midwest ISO's markets.⁷ Consideration of these potential longer-term costs would further support a determination that the proposed change in configuration would not be just and reasonable.

IV. CONCLUSION

Wherefore, Potomac Economics respectfully requests that the Commission grant its motion to intervene out of time in the above-captioned proceeding to permit Potomac Economics to become a party with full rights thereto for all intents and purposes. Given that Potomac Economics has an interest in this proceeding, Potomac Economics respectfully requests the Commission to consider these comments in its decision-making process with regard to the filing by DEO and DEK to withdraw as transmission-owning members of the Midwest ISO in order to join PJM.

Respectfully submitted,

/s/ David B. Patton

David B. Patton, President
Potomac Economics
Midwest ISO Independent Market Monitor

Dated: August 19, 2010

⁷ Midwest ISO, "Value Proposition" dated December 4, 2009.

CERTIFICATE OF SERVICE

I hereby certify that I have this day e-served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 19th day of August, 2010, in Fairfax, VA.

/s/ David B. Patton
