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FEDERAL ENERGY
REGULATORY COMMISSION

August 16, 2010

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.
Docket No. ER10-[____]-000

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act ("FPA"),[1] and Part 35 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission[2] (the "Commission" or "FERC"), Duke Energy Ohio, Inc. ("DEO") and Duke Energy Kentucky, Inc. ("DEK") hereby tender this filing ("FRR Plan Filing") as the next step of their proposed move from the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") to PJM Interconnection, L.L.C. ("PJM") (the "RTO Realignment"), following the filing made on June 25, 2010 in Docket No. ER10-1562-000 (the "Initial Filing"). Consistent with the terms of the Midwest ISO TO Agreement[3] and the PJM

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1 16 U.S.C. § 824d.

2 18 C.F.R. Part 35 (2010).

3 Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation, Second Revised Rate Schedule FERC No. 1, initially approved by *Midwest Independent Transmission System Operator, Inc., et al.*, 84 FERC ¶ 61,231 (1998).

Operating Agreement,[4] and upon receipt of applicable regulatory approvals, DEO and DEK expect to withdraw from the Midwest ISO and join PJM effective January 1, 2012.

I. INTRODUCTION

On June 25, 2010, DEO and DEK submitted the Initial Filing requesting that the Commission issue an order by November 1, 2010 (i) determining that the proposed RTO Realignment meets the standard for withdrawal from an RTO (subject to the future filings described below), and (ii) approving the first step of DEO and DEK toward joining PJM: participation of load and resources in the DEO/DEK footprint, *i.e.*, the Duke Energy Zone, in the PJM Reliability Pricing Model ("RPM") auctions to be held by PJM in the Spring of 2011, resulting in capacity procurement and delivery commitments for the delivery year commencing June 1, 2014.[5] Comments and protests were due in that proceeding on July 26, 2010. The FRR Plan Filing should not be consolidated with the Initial Filing if doing so would cause a delay in the November 1, 2010 requested date for action on the Initial Filing.

This FRR Plan Filing is the next step in the series of filings required to complete DEO and DEK's proposed RTO Realignment. This filing concerns the process by which DEO and DEK plan to satisfy their zonal capacity procurement commitments and obligations under the Reliability Assurance Agreement Among Load-Serving Entities in

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4 Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Third Revised Rate Schedule FERC No. 24, initially conditionally accepted by *Pennsylvania-New Jersey-Maryland Interconnection, et al.*, 81 FERC ¶ 61,257 (1997).

5 The technical implementation plan for integration into PJM was set forth in the Agreement to Implement Expansion of PJM Region for Duke Energy Ohio and Duke Energy Kentucky ("Integration Agreement"), which was executed on June 11, 2010 and was submitted as Exhibit 1 to the Initial Filing.

the PJM Region ("RAA") and the obligations under Attachment DD of the PJM Open Access Transmission Tariff ("OATT")[6] with respect to all load within the Duke Energy Zone in the period between integration of the DEO and DEK transmission facilities into PJM (January 1, 2012) and full integration of resources and load into RPM (June 1, 2014). This filing requests approval for the aspects of DEO and DEK's Out of Time Fixed Resource Requirement ("FRR") Integration Plan (the "Duke FRR Plan") that are different from PJM's ordinary FRR process. Such differences are largely due to the out-of-time, integration-related nature of our proposal, and are based upon the similar proposal, approved by the Commission, of Duquesne Light Co. ("Duquesne") when it withdrew its request to terminate its membership in PJM to join the Midwest ISO.[7]

As discussed in greater detail below, key features of the proposal include:

- allowing wholesale loads to choose to implement their own FRR plans (to the extent permitted under the RAA) or take service from DEO;
- obtaining supply to meet resource adequacy requirements on a bilateral basis, without an auction or associated generator "must offer" requirement; and
- pricing the provision of Unforced Capacity to wholesale load (*i.e.*, alternative retail LSEs taking service as wholesale load as well as other

6 PJM Interconnection, L L.C FERC Electric Tariff, Sixth Revised Volume No. 1, Sixth Revised Sheet No 562, Superseding Fifth Revised Sheet No 562; *PJM Interconnection, L.L.C*, Order Denying Rehearing and Approving Settlement Subject to Conditions, 117 FERC ¶ 61,331 (2006), Order on Rehearing and Clarification and Accepting Compliance Filing, 119 FERC ¶ 61,318 (2007), Order Denying Rehearing, 121 FERC ¶ 61,173.

7 *Duquesne Light Co.*, Order Approving Settlement Agreement, 126 FERC ¶ 61,074 at P 33; Order on Rehearing, 127 FERC ¶ 61,187 (2009) ("*Duquesne Settlement Order*").

wholesale loads) at the market-determined RPM price for the time period in question, consistent with the RAA.

As the Commission noted in its order regarding the planned move of certain FirstEnergy companies from the Midwest ISO to PJM, "there are a number of steps involved in proceeding with an orderly withdrawal from an RTO."[8] This filing is the second such step. Thus, as with the Initial Filing, this filing does not address remaining issues, including the calculation of Midwest ISO exit fees, any issues regarding pass-through of exit fees, and rates for transmission service for the Duke Energy Zone, including recovery of transmission expansion costs and any so-called "hold harmless" issues.

We committed in the Initial Filing to coordinate closely with PJM and the PJM Independent Market Monitor ("PJM IMM") to hold stakeholder meetings and otherwise address stakeholder concerns, and we reiterate this commitment here. We have begun the process of reaching out to stakeholders to discuss the issues that were raised in the Initial Filing, this FRR Plan Filing, and that will be addressed in subsequent filings. We reiterate the offer to stakeholders with questions relating to this proceeding to contact us by calling James B. Gainer, Vice President for Federal Regulatory Policy, at (704) 382-5618.

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8 *American Transmission Sys., Inc.*, Order Addressing RTO Realignment Request and Complaint, 129 FERC ¶ 61,249 at P 29 (2009) (citing *Duquesne Light Co.*, Order Addressing Conditional RTO Withdrawal Request, 122 FERC ¶ 61,039 at P 29 (2008)) ("*FirstEnergy Withdrawal Order*"), Order Addressing Expedited Partial Requests for Clarification and Rehearing, 130 FERC ¶ 61,171 (2010) ("*FirstEnergy Rehearing Order*").

II. BACKGROUND

As described in the Initial Filing, the RTO Realignment will consist, in the first instance, of withdrawal by DEO and DEK of their transmission facilities from the Midwest ISO and transfer of operational control of such facilities to PJM. As a practical matter, the move will trigger the need for generation and load connected to the DEO and DEK transmission facilities to realign their operations from the Midwest ISO to PJM.[9] The "RTO Realignment" is the movement of the transmission, load and generation in the Duke Energy Zone to PJM.

A. Duke Participation in the Midwest ISO

1. Pre-Merger Cinergy Participation in the Midwest ISO

Cinergy Corp. ("Cinergy") joined the Midwest ISO in 1997 as a transmission owner on behalf of its then three utility operating companies, Duke Energy Ohio (f/k/a The Cincinnati Gas & Electric Company), Duke Energy Kentucky (f/k/a The Union Light Heat & Power Company), and Duke Energy Indiana (f/k/a PSI Energy). Cinergy was an active participant in the initial formation of the Midwest ISO as well as subsequent development of Day 2 markets and other developments in the market.

9 Generation or load would not be required to move to PJM if the generation or load makes alternative arrangements for pseudo-tying back into the Midwest ISO. It is currently contemplated that the Madison generating facility owned by Duke Energy Indiana ("DEI"), which is interconnected to DEO's transmission system, will remain under the dispatch control of the Midwest ISO via a pseudo-tie

2. The Duke-Cinergy Merger

The Commission approved the merger of Duke Energy Corporation ("Duke Energy") and Cinergy by order issued December 20, 2005.[10] The Duke-Cinergy merger closed on April 3, 2006.[11] Subsequently, the three Cinergy Operating Companies changed their corporate names. On October 1, 2006, PSI Energy, Inc. became Duke Energy Indiana, Inc. and The Union Light, Heat and Power Company became DEK. On September 19, 2006, The Cincinnati Gas & Electric Company became DEO.

3. Duke Energy Ohio

Transmission. The DEO transmission system consists of approximately 403 circuit miles of 345 kV and 724 circuit miles of 138 kV transmission. DEO is interconnected with the transmission systems of American Electric Power ("AEP"), Dayton Power & Light ("DP&L"), East Kentucky Power, Ohio Valley Electric Company, LGE Energy, and Duke Energy Indiana ("DEI"). Of these, only DEI is a member of the Midwest ISO.

Generation. The DEO transmission system is connected to approximately 5,007 MW of installed commercial generation capacity, consisting of coal-fired steam units and combustion turbines. Of this generation, DEO owns 2,484 MW of capacity, and DEK owns 1,077 MW of capacity. The remaining generation is owned by DP&L, AEP, DEI, and Smart Paper Holdings LLC.

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10 *Duke Energy Corp., Cinergy Corp.*, Order Authorizing Merger, 113 FERC ¶ 61,297 (2005) ("*Duke Merger Order*"), Order Denying Rehearing, 118 FERC ¶ 61,077 (2007).

11 Notice of Consummation, filed April 6, 2006 in Docket No. EC05-103-000.

Load. The maximum measured load plus losses served by the DEO transmission system for one hour was 5,783 MW. This occurred on July 25, 2005. This load consists of DEO's native retail load as well as load served by several municipalities, electric cooperatives, and certified retail electric service providers doing business under Ohio's Electric Customer Choice Program. This load also includes 877 MW served in that hour by DEK.

Generation and Transmission Jointly Owned with PJM Utilities. In addition to the generation asset capacity mentioned above, DEO is co-owner of generating resources, and an associated transmission system, that are physically located in PJM. Specifically, DEO owns 1,410 MW of capacity that is associated with jointly-owned units operated by PJM members DP&L and AEP. This capacity is located at Stuart, Killen and Conesville Stations, and currently is pseudo-tied into the Midwest ISO via transmission that is jointly owned by DEO, DP&L, and AEP. The jointly-owned transmission system extends into the DEO footprint within the Midwest ISO, where it serves additional generation located at Walter C. Beckjord, W.H. Zimmer, Miami Fort, and East Bend Stations, which are jointly owned by DEO, DEK, DP&L, and AEP in various combinations (that additional jointly-owned generation located in the Midwest ISO is included within the total figure for generation in the DEO footprint given above). Thus, the transition of DEO and DEK to PJM will consolidate operation of these facilities within a single RTO.

Additional DEO Generation in PJM. DEO also owns (without co-owners) 3,104 MW of gas-fired capacity within PJM at the Washington, Lee, Hanging Rock, and

Fayette Stations. All of the capacity from these units is fully committed to RPM for the years of the Duke FRR Plan, and so would not participate in the Duke FRR Plan.

4. Duke Energy Kentucky

DEO and DEK together serve the greater Cincinnati region, with DEK representing the part of that region that is located across the Ohio River in Kentucky. DEK is a wholly-owned subsidiary of DEO.

Generation and Load. DEK owns three generation assets with a total of 1,077 MW of capacity (summer rating). These generation assets are connected to DEO's transmission system, and so would move to PJM with DEO whether DEK moved or not. One of these units is co-owned with PJM member DP&L. There is no generation interconnected to DEK's transmission system, and there is no third-party load. DEK's all time peak load is 912 MW and occurred on August 23, 2007.

Transmission. DEK owns and operates a 69 kV distribution and transmission system to serve its retail load. DEK also owns limited transmission facilities consisting solely of eighteen 138 kV "high side" connections including breakers and switches ("138 kV Connections"). DEO owns and operates the 138 kV and above transmission delivery system by which DEK is currently connected to the Midwest ISO. The eighteen 138 kV Connections serve as bridges between the DEO transmission system and the high side of DEK transformers that step down to serve the DEK distribution system.

5. Duke Energy Indiana

DEI will remain in the Midwest ISO. DEI owns the Madison generating facility, a 576 MW (summer rating) facility interconnected to DEO's transmission system. DEI is pursuing plans for Madison to remain under the dispatch control of the Midwest ISO via a pseudo-tie arrangement.

6. Affected Third Parties

The following Transmission Customers currently serve load from the DEO system (by class):

Certified Retail Electric Providers:[12]
- Champion Energy Services
- Constellation New Energy
- Dominion Resources Inc.
- DPL Energy Resources
- First Energy Solutions
- Glacial Energy
- Sempra Energy Solutions
- Smart Paper Holdings
- DTE Energy
- Direct Energy
- Integrys Energy Services
- Duke Energy Retail Sales
- MidAmerican Energy

Wholesale Load Customers:
- City of Hamilton Ohio
- Village of Blanchester Ohio
- City of Lebanon Ohio
- City of Williamstown Kentucky
- Village of Bethel Ohio
- Village of Georgetown Ohio
- Village of Hamersville Ohio
- Village of Ripley Ohio

Electric Cooperatives:
- Buckeye Power Inc.
- East Kentucky Power Cooperative (pre-OATT).

12 This is a current list of transmission customers on the DEO transmission system as of August 1, 2010.

The following third party wholesale generators are currently connected to the DEO system:

AEP (joint-owned with DEO)
DEK
DP&L (joint-owned with DEO or DEK)
Smart Paper Holdings
Madison Generating Station (DEI owned).

III. The Initial Filing

As the Initial Filing was the first in the series of steps associated with DEO and DEK's move from the Midwest ISO to PJM, the approvals sought in that filing were limited. The Initial Filing addressed the three requirements that must be met for an RTO withdrawal request to be approved. The Initial Filing also requested authorization for pre-integration participation of the Duke Energy Zone in RPM. Specifically, we sought authorization by November 1, 2010, for all load and generation in the Duke Energy Zone to participate in the May 2011 Base Residual Auction (for the 2014-15 Delivery Year). Although participation in the auction would precede integration into PJM, this timing is appropriate given the three-year forward nature of RPM, and the fact that base residual auctions for the 2011-12, 2012-13 and 2013-14 delivery years already have occurred. The Commission authorized similar prior participation in *FirstEnergy* and in the *Duquesne Settlement Order*.[13] The proposed November 1, 2010 date will help to ensure that all affected parties have sufficient time to understand the process, resolve any open issues, and submit the data that must be submitted before February 1, 2011,

[13] *See FirstEnergy Withdrawal Order*, 129 FERC ¶ 61,249 at P 78; *Duquesne Settlement Order*, 126 FERC ¶ 61,074 at P 35 ("The Settlement Agreement permits Duquesne to participate in PJM's upcoming RPM auctions and to otherwise satisfy PJM's capacity commitment protocols as they apply to future delivery years."); Duquesne Settlement § II.C.2.

so that they can be included in the RPM base residual auction.[14] Thus, it would not be appropriate for the FRR Plan proceeding to be consolidated with the proceeding on the Initial Filing unless the approval timing requested in the Initial Filing would still be met.

IV. The FRR Plan Filing

This FRR Plan Filing requests approval of DEO and DEK's proposal to meet PJM resource adequacy requirements from the date of transmission system integration (January 1, 2012) through the date of full participation in RPM (June 1, 2014). We are authorized to state that PJM and the PJM IMM have reviewed this filing and do not object to the proposals contained herein.

Much like Duquesne did when it cancelled its plans to leave PJM to join the Midwest ISO, DEO proposes to adhere to the existing RAA provisions governing FRR plans except in certain limited respects related primarily to the out-of-time nature of the RTO-integration context. DEO seeks approval for the limited provisions of the Duke FRR Plan that depart from the Fixed Resource Requirement Alternative contemplated by Schedule 8.1 of the RAA.[15] Pursuant to the Duke FRR Plan, DEO will obtain firm capacity from qualified Capacity Resources[16] in an amount that would satisfy the criteria

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14 *See* PJM Manual 18: PJM Capacity Market at 57.

15 DEO is the entity with FRR obligations, rather than both DEO and DEK, because only DEO has an integrated transmission system. DEK owns discrete limited transmission assets, as described above, but is essentially a transmission dependent utility of DEO, and thus will be subject to the requirements for wholesale loads on the DEO system. As of the date of this filing, DEK has not determined whether it would submit an independent FRR plan to PJM, as it will be entitled to do under the options for wholesale loads discussed here.

16 Capacity Resources are defined in the RAA as megawatts of (i) net capacity from existing or Planned Generation Capacity Resources meeting the requirements of Schedules 9 and 10 [of the RAA] that are or will be owned by or contracted to a Party and that are or will be committed to satisfy that Party's obligations under [the RAA], or to satisfy the reliability requirements of the PJM Region, for a Delivery Year; (ii) net capacity from existing or Planned Generation Capacity

for a FRR Alternative Capacity Plan, under Schedule 8.1 of the RAA and PJM's applicable rules and manuals, with respect to the load of the entire Duke Energy Zone.[17] Thus, after factoring in LSE decisions whether to, in effect, self-supply, as described below, DEO will procure such Capacity Resources in amount sufficient to satisfy the remaining requirements of (a) DEO's default retail load; (b) alternative retail electric suppliers serving switched retail load, and (c) other wholesale loads, including DEK.

Per Schedule 8.1 of the RAA, DEO is required to fulfill the FRR capacity needs of alternative retail electric suppliers serving switched load.[18] DEO will serve such load at

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Resources within the PJM Region not owned or contracted for by a Party which are accredited to the PJM Region pursuant to the procedures set forth in Schedules 9 and 10; and (iii) load reduction capability provided by Demand Resources, Energy Efficiency Resources, or ILR [Interruptible Load for Reliability] that are accredited to the PJM Region pursuant to the procedures set forth in Schedule 6. Reliability Assurance Agreement Among Load Serving Entities in the PJM Region, Rate Schedule FERC No. 44, at section 1.8 ("RAA").

17 According to the comments of Buckeye Power, Inc. ("Buckeye") in response to the Initial Filing, Buckeye

> already has a Commission-approved plan to satisfy its capacity requirements in the Duke Energy Zone (as well as the ATSI Zone), as recognized in the Portability Agreement. Accordingly, Buckeye has been excused from inclusion in the ATSI FRR Plan for the 2011-12 and 2012-13 delivery years, as described in Docket No. ER09-1589-000, and expects that it will similarly be excused from inclusion in the DEO/DEK FRR Integration Plan for those delivery years. As to the final year to be covered by the DEO/DEK Integration Plan, *i.e.*, the 2013-14 delivery year, Buckeye should have the same rights and options as any other load-serving entity in the transferred Duke Energy Zone.

In the Matter of Duke Energy Ohio and Duke Energy Kentucky, Motion for Leave to Intervene and Comments of Buckeye Power, Inc., Docket No. ER10-1562-000 at 8-9 (filed July 23, 2010). Based on discussions with PJM, we agree with Buckeye's characterization.

18 Section D.8 of Schedule 8.1 of the RAA applies specifically to retail choice states such as Ohio: "In a state regulatory jurisdiction that has implemented retail choice, the FRR Entity must include in its FRR Capacity Plan all load, including expected load growth, in the FRR Service Area, notwithstanding the loss of any such load to or among alternative retail LSEs. In the case of load reflected in the FRR Capacity Plan that switches to an alternative retail LSE, where the state regulatory jurisdiction requires switching customers or the LSE to compensate the FRR Entity for its FRR capacity obligations, such state compensation mechanism will prevail. In the absence of a state compensation mechanism, the applicable alternative retail LSE shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff, provided that the FRR Entity may, at any time, make a filing with FERC under Sections 205 of the Federal Power Act proposing to change the

the RPM price,[19] as provided for in Section D.8 of Schedule 8.1, unless the alternative retail LSE supplies its own capacity pursuant to an election and commitment made under Section D.9 of Schedule 8.1.[20] Other wholesale load eligible to enter into its own FRR plan[21] can choose to take supply from DEO at the RPM price, or alternatively can choose from among two "self-serve" options:

1) They can enter into a traditional FRR plan, per the terms of the RAA (*e.g.*, with the minimum five year term contemplated by the RAA); or

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basis for compensation to a method based on the FRR Entity's cost or such other basis shown to be just and reasonable, and a retail LSE may at any time exercise its rights under Section 206 of the FPA."

19 To be consistent with the Capacity price paid by other load within the PJM region, the price paid by wholesale load under the Duke FRR Plan will be the Final Zonal Capacity Price for the unconstrained portions of the PJM region. *See* PJM Interconnection, L.L.C. FERC Electric Tariff Sixth Revised Volume No. 1, Attachment DD, Section 5.14(e) ("In accordance with the Reliability Assurance Agreement, each LSE shall incur a Locational Reliability Charge (subject to certain offsets as described in sections 5.13 and 5.15) equal to such LSE's Daily Unforced Capacity Obligation in a Zone during such Delivery Year multiplied by the applicable Final Zonal Capacity Price in such Zone.").

20 Section D.9 of Schedule 8.1 provides: "Notwithstanding the foregoing, in lieu of providing the compensation described above, such alternative retail LSE may, for any Delivery Year subsequent to those addressed in the FRR Entity's then-current FRR Capacity Plan, provide to the FRR Entity Capacity Resources sufficient to meet the capacity obligation described in paragraph D.2 for the switched load. Such Capacity Resources shall meet all requirements applicable to Capacity Resources pursuant to this Agreement and the PJM Operating Agreement, all requirements applicable to resources committed to an FRR Capacity Plan under this Agreement, and shall be committed to service to the switched load under the FRR Capacity Plan of such FRR Entity. The alternative retail LSE shall provide the FRR Entity all information needed to fulfill these requirements and permit the resource to be included in the FRR Capacity Plan. The alternative retail LSE, rather than the FRR Entity, shall be responsible for any performance charges or compliance penalties related to the performance of the resources committed by such LSE to the switched load. For any Delivery Year, or portion thereof, the foregoing obligations apply to the alternative retail LSE serving the load during such time period. PJM shall manage the transfer accounting associated with such compensation and shall administer the collection and payment of amounts pursuant to the compensation mechanism."

21 Per RAA Schedule 8.1, Section B.1, "a Party [that did not previously select FRR status under another now-expired eligibility option] is eligible to select the FRR Alternative if it (a) is an IOU, Electric Cooperative, or Public Power Entity; and (b) demonstrates the capability to satisfy the Unforced Capacity obligation for all load in an FRR Service Area, including all expected load growth in such area, for the term of such Party's participation in the FRR Alternative."

2) They can (with the Commission's permission, which permission we seek here on their behalf) enter into an out-of-time FRR Plan designed to see them through the approximately 2.5 years before they can participate in RPM, with all of the waivers and adjustments that we seek in this filing to make such an out-of-time FRR Plan possible, but otherwise the same as a traditional FRR plan.

Under either of these options, the wholesale load would become directly responsible to PJM for its own resource adequacy requirement. DEO would not have any residual responsibility to PJM in the event that such a load failed to meet its requirement.[22]

Schedule 8.1 of the RAA provides a price for providing capacity to alternative retail suppliers equal to "the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM OATT,"[23] but it does not specify the price for providing capacity to the remaining wholesale load that DEO is obligated to serve, i.e., wholesale load that is eligible for, but does not select, one of the above self-serve-type options. The need to maintain reliability pertains equally to all wholesale loads within the footprint, and accordingly we submit that the cost of serving that load should be allocated equally among all loads by having all loads pay the price established by Schedule 8.1 of the RAA for each applicable delivery year. Because our pricing proposal is to benchmark the price paid by load against the market-determined RPM price for the same time period, and because the product being

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22 *FirstEnergy Rehearing Order,* 130 FERC ¶ 61,171 at P 41.

23 RAA, Schedule 8.1, Section D.8.

obtained by load will be used to satisfy the same resource adequacy requirement that is satisfied via RPM, we submit that the proposal is presumptively just and reasonable.[24]

PJM rules and procedures otherwise applicable to FRR plans will apply to the Duke FRR Plan, with the exception that: (1) eligible wholesale loads who elect to enter into their own FRR plans per one of the two options above ("Independent FRR Entities") and alternative retail LSEs who elect to supply capacity in lieu of payment per Section D.9 of Schedule 8.1 of the RAA ("Opt-out Entities") must notify DEO and PJM of their choice no later than March 31, 2011;[25] (2) DEO and Independent FRR Entities will be

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24 FirstEnergy held separate "integration auctions" to procure capacity for the load in its footprint. *See American Transmission Sys., Inc.*, 132 FERC ¶ 61,056 at P 2 (2010) ("While the FRR alternative ordinarily requires that the capacity be acquired through self-supply and bilateral agreements, ATSI proposed that the ATSI zone LSEs be required to acquire this capacity through special auctions."). These auctions provided a transparent market test, and provided for the first time a data point showing that the market price for Capacity in an integration context is likely to be very similar to the RPM price, since all the FirstEnergy auctions cleared within a few dollars of the RPM price for the period in question, sometimes a few dollars above, and sometimes a few dollars below. *See* http://www.pjm.com/markets-and-operations/rpm/~/media/markets-ops/rpm/rpm-auction-info/atsi-frr-integration-auction-results.ashx; http://www.pjm.com/markets-and-operations/rpm/~/media/markets-ops/rpm/rpm-auction-info/20080515-2011-2012-bra-report.ashx; http://www.pjm.com/markets-and-operations/rpm/~/media/markets-ops/rpm/rpm-auction-info/2012-13-base-residual-auction-report-document-pdf.ashx.

Economic theory also supports DEO's proposal, suggesting that most low-cost supply available in PJM will be committed to RPM, and that what remains would tend to have carrying costs resulting in offers above the RPM price. DEO's proposal is to take advantage of the market test provided by FirstEnergy and conserve resources required by an auction and obtain a comparable result by charging the RPM price. Because DEO will obtain supply bilaterally, there will not be an auction-driven must-offer requirement. DEO, in the course of procuring supply to pass on to load, will have the option – which is always available to market participants – of referring matters to FERC or to the market monitor if it perceives bilateral activity that appears anti-competitive. In any event, DEO reserves its right, pursuant to Section 205 of the FPA, to return to the Commission to seek authorization to amend the rates, terms and conditions set forth in this filing.

25 Opt-out Entities also must provide PJM and DEO with evidence on or before March 31, 2011 that they meet the requirements of Section D.9 of Schedule 8.1 of the RAA, and must enter into an agreement with DEO reflecting the commitments and obligations of that provision. Loads that do not Opt-out or select an Independent FRR Option also will be required to enter into an appropriate agreement with DEO. To the extent necessary, such contracts will be entered into pursuant to an appropriate market-based rate or other authorization, and will be reflected in EQR filings. DEO plans to have draft copies of contracts available for discussion at an FRR Plan stakeholder meeting being planned for September.

required to submit their FRR plans independently to PJM by December 15, 2011; (3) the FRR Plans of DEO and Independent FRR Entities who elect to enter into their own FRR plans solely for the pre-RPM integration period per option 2 above ("Limited Term Independent FRR Entities") will be applicable only for the January 1, 2012—May 31, 2014 time frame; and (4) Capacity Resources supplied by DEO under the Duke FRR Plan will be supplied at the RPM Final Zonal Capacity Price for the unconstrained region of PJM for the applicable delivery year for all wholesale load, not just alternative retail LSEs.[26]

Also, DEO requests several waivers. First, DEO requests, on behalf of itself and any Independent FRR Entities, that the Commission waive Section C.1 of Schedule 8.1 of the RAA, and any corresponding or related provisions of any PJM Manual to the extent these provisions would have required DEO and DEK to submit a FRR plan prior to the Base Residual Auctions for the period including January 1, 2012—May 31, 2014 or would otherwise restrict DEO and DEK's compliance with the RAA and the PJM tariff through the FRR Plan.

Second, we seek waiver of Section C.2 of Schedule 8.1 of the RAA regarding notice of termination, on behalf of DEO and the Limited Term Independent FRR Entities, to the extent that such waivers are necessary given the pre-determined termination date for the FRR plans of DEO and any Limited Term Independent FRR Entities.

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[26] This pricing will only apply to Capacity Resources supplied by DEO. In other words, it will not apply to Independent FRR Entities or Opt-out Entities, which will be responsible for their own supply arrangements.

Third, DEO seeks waiver of the provisions of Section D.1 of Schedule 8.1 of the RAA regarding updating the FRR Plan one month prior to the Base Residual Auction, since the Base Residual Auctions for the years in question have already occurred.

Fourth, DEO seeks waiver of Section D.2 of Schedule 8.1 of the RAA regarding the Preliminary Peak Load Forecast used, so that DEO can use a Preliminary Peak Load Forecast that is based on the preliminary forecast peak load of the Duke Energy Zone that takes into account summer 2010 peaks.

Fifth, DEO seeks waiver of the Schedule 8.1, Section E.2 limit on the sale of Capacity Resources above the Threshold Quantity into auctions conducted under Attachment DD to the PJM OATT, solely to the extent necessary to exclude from calculation of that limit Capacity Resources of DEO or any Independent FRR Entity that have already cleared in an RPM auction conducted before the RTO Realignment was announced.

Sixth, we request waiver of the requirements regarding summer compliance period testing of Demand Resources and measurement and verification of Energy Efficiency Resources referenced in Schedule 8.1, Section E.4, solely for the partial year period from January 1, 2012 to May 31, 2012, to permit participation of such resources in the FRR Plan of DEO or any Independent FRR Entity, for that time period, to the extent deemed appropriate by PJM, in its reasonable judgment.

Seventh, DEO seeks waiver of the provisions of Section F.2 of Schedule 8.1 of the RAA to the extent that it would impose a FRR Capacity Deficiency Charge on a Demand Resource Provider when its resources are no longer available to support the

Demand Resource Provider's capacity obligation because of the permanent departure of the load resource associated with the obligation, consistent with a similar waiver provided in the FirstEnergy proceeding.[27]

All other requirements applicable to FRR plans generally will apply fully to the FRR Plans of DEO and any Independent FRR Entities, absent a further filing with the Commission.

V. Communications

We request that all communications and correspondence with respect to this filing be directed to the following individuals and that these individuals be included on the Commission's official service list for this proceeding.

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Federal Regulatory Policy
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27 *See American Transmission Sys., Inc.*, 132 FERC ¶ 61,056 at PP 9-10.

VI. Service and Request for Waiver of any Additional Requirements

We have served a copy of this filing, electronically or by first class mail, with attachments, upon the Public Utilities Commission of Ohio, the Kentucky Public Service Commission, the Indiana Utility Regulatory Commission, the Midwest ISO, PJM, the Independent Market Monitors for the Midwest ISO and PJM, and the full service list for the proceeding on the Initial Filing, Docket No. ER10-1562-000.

We respectfully request waiver of any requirements of 18 C.F.R. § 35.13 that have not been fulfilled by this filing. In addition, we request waiver of any other Commission rule or regulation as may be necessary to permit the Commission to grant the requested relief, including any waiver of the Commission's prior notice requirements needed to permit issuance of an order in the time frame requested. Good cause exists to permit such waiver because this is one of the "number of steps involved in proceeding with an orderly withdrawal from an RTO."[28] We note as well that AMP-Ohio has requested, in its comments on our Initial Filing, that, "[w]hatever construct Applicants propose to implement their proposed FRR Integration Auction, AMP recommends that, to assist in ensuring an orderly process for such auction, Applicants build into their FRR Integration Plan a timeline adequate to allow Applicants and any affected entities to work through issues and negotiate, finalize and execute any relevant

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28 *FirstEnergy Withdrawal Order*, 129 FERC ¶ 61,249 at P 29.

documentation in connection with the FRR Integration Auction, prior to the beginning of any auction or capacity procurement process."[29]

VII. Conclusion

For the reasons set forth herein, we request that the Commission issue an order by December 1, 2010 approving the above-proposed modifications to the FRR process to reflect the out-of-time nature of the RTO integration context.

Respectfully Submitted,

/s/ Noel Symons

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29 *In the Matter of Duke Energy Ohio and Duke Energy Kentucky*, Motion to Intervene and Comments of American Municipal Power, Inc., Docket No. ER10-1562-000 at 8 (filed July 26, 2010).

CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be served a copy of the foregoing upon the entities identified in this FRR Integration Plan Filing in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

/s/ Andrea R. Kells
Andrea R. Kells

August 16, 2010

Case No.

2010-00203