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OHIO CONSUMERS AND POWER SUPPLIERS STRONGLY SUPPORT FERC REVIEW OF ABUSIVE AEP AND FIRSTENERGY AFFILIATE CONTRACTS

On January 27, 2016, the Electric Power Supply Association and its members with market-based assets in Ohio filed two separate Complaints with the Federal Energy Regulatory Commission (“FERC”) seeking to ensure that abusive affiliate power sales contracts (the “Affiliate PPAs”) involving subsidiaries of Ohio utility companies FirstEnergy and AEP do not evade full FERC review. The Complaints urge FERC to rescind waivers granted to FirstEnergy and AEP from federal affiliate power sales restrictions under circumstances that would no longer exist should the Public Utilities Commission of Ohio approve the pending Affiliate PPAs. The request is for the waivers not to apply to the Affiliate PPAs so that FERC could review the substance of the contracts under the standards in *Boston Edison Co. Re: Edgar Electric Energy Co. and Allegheny Energy Supply Co., LLC (“Edgar”)* designed to prevent self-dealing between monopoly utilities and their affiliates that harms consumers and the wholesale marketplace – harm that would occur should the Affiliate PPAs go into effect. In an unprecedented display of unity across a wide spectrum of consumers, competitive suppliers, and independent entities including another state’s commission, as well as PJM and separately the PJM Market Monitor, a diverse array of affected entities have weighed in with comments to FERC in support of the relief sought by the Complaints. Here is but an initial sampling:

- **OFFICE OF THE OHIO CONSUMERS’ COUNSEL:** “These expansive programs, if not rejected, are likely to open the door to additional utility filings in Ohio to recover costs, from Ohioans, that are associated with uneconomic generation. This result could occur notwithstanding the Commission’s expressed policy that the cost of uneconomic generation is a risk that should be borne by market participants other than consumers.” *FERC Comments in Support of the Office of the Ohio Consumers’ Counsel, January 27, 2016, p. 18.*
- **NORTHWEST OHIO AGGREGATION COALITION:** “The FirstEnergy PPA will cost each working family and retiree household \$800 to \$1100 over eight years. When all the jargon is stripped away, the FirstEnergy PPA requires regular people to pay an extra month’s electric bill each year for eight years. It is not for the electric that they use. Instead, the money that people need for school clothes and medical co-pays will go solely to bail out the Company’s aged and inefficient coal and nuclear plants. This economic damage is scaled up for businesses. In a competitive market place, employers need every dollar to pay a competitive work force and to fund modernization and new equipment. The money that our businesses need to compete will instead go to subsidize FirstEnergy so it can avoid competition.” *Northwest Ohio Aggregation Coalition (NOAC is the umbrella organization for ten Northwest Ohio communities are home to the bulk of the residents, businesses and industry in the Toledo Edison territory), FERC Comments, February 16, 2016, p. 2.*
- **PJM INDEPENDENT MARKET MONITOR:** “The Market Monitor has filed testimony in the Ohio proceedings that explains why the companies’ proposals effectively remove the resources subject to Non-Bypassable Charges from competitive retail markets in Ohio and interferes with the efficient operation of wholesale markets in the PJM Region..... Accordingly, the waiver should be revoked as it applies to any agreement that imposes the Non-Bypassable Charges. Indeed, in addition to granting the narrow relief requested by EPSA et al., a general policy should exclude from all such waivers power purchase agreements that includes non-bypassable charges.” *FERC Comments of the Independent Market Monitor for PJM, February 23, 2016, p 3.*

- **PJM INTERCONNECTION:** “PJM urges the Commission to review the prior waiver given the changed circumstances associated with the Affiliate PPA, should they be approved by the Ohio Commission. Such a review is appropriate in accordance with the standards for evaluating proposed affiliate power sales set forth in [Edgar]... [PJM] likewise requests expeditious action by the Commission to require that Respondents submit, for Commission review, the Affiliate PPA to ensure that agreement is evaluated in accordance with the Edgar/Allegheny standards and to afford the Commission opportunity to consider potential effects the Affiliate PPA may have on wholesale market competitiveness.” *FERC Motion to Intervene and Comments in Support of Complaint of PJM Interconnection, February 23, 2016, pp 1-2.*
- **OHIO MANUFACTURERS’ ASSOCIATION ENERGY GROUP:** “Without the Commission’s necessary oversight, the Affiliate PPA contemplated between [FirstEnergy affiliates] threatens to not only harm the competitive power markets subject to the Commission’s exclusive jurisdiction but also steeply raise customers’ cost. OMAEG has vigorously advocated before the PUCO that the Affiliate PPA is an anticompetitive subsidy flowing from a regulated distribution utility to its generating affiliate.” *FERC Comments in Support of Complaint Submitted on Behalf of Ohio Manufacturers’ Association Energy Group (OMAEG), February 23, 2016, p 4.*
- **SHEOGA:** “Our company consumes approximately 2,122,000 kWh/year. We estimate the additional costs of this new rider to be \$105,834 over the eight-year term of the case. That is real money that could be used on more productive purposes updating our equipment, increasing our inventories and building a new finishing plant for our hardwood flooring products ---- ALL OF WHICH BRING MORE TAXABLE INCOME TO THE STATE OF OHIO. The costs being passed through to the consumer by the utility companies are driving businesses away from our state, which in turn drives away prospective homeowners, retail establishments and other industries, thus hurting Ohio’s economy statewide.” *Sheoga, (hardwood flooring and paneling), correspondence sent to PUCO and FERC opposing the AEP and FirstEnergy proposals, February 17, 2016.*
- **OHIO CITIZEN ACTION:** “Ohio Citizen Action is Ohio’s largest consumer organization, with over 30,000 members. We support the complaints as electricity consumers in Ohio will be harmed unless FERC exercises its jurisdiction to review any [PPAs] for affiliate abuse between the AEP and FirstEnergy regulated utilities and their wholesale generation affiliates. Various groups and studies have determined the proposals will lead to significant increased costs for Ohio consumers.” *Ohio Citizen Action FERC Letter, February 23, 2016, p 1.*
- **PENNSYLVANIA PUBLIC UTILITY COMMISSION:** “[T]he PAPUC contends that its involvement in this case is solely predicated on a concern that the AEP affiliate PPA, as currently structured, represents a potential threat to the continued efficient function of PJM’s wholesale capacity markets beginning with the upcoming Base Residual Auction (BRA). More precisely, AEP’s affiliate PPA presents the risk of potential subsidization of generation facilities that may otherwise be retired, resulting in conveyance of incorrect price signals in the next and subsequent capacity market auctions. The PAPUC is likewise concerned that the very nature of this affiliate PPA represents the exact type of abuse of the affiliate relationship that should be subject to FERC review under FPA Section 205 and the Edgar/Allegheny standard. As such, the PAPUC’s support for the EPSA Complaint is narrowly predicated on the issue of appropriate FERC review of the affiliate PPA and no other reason.” *FERC Comments of Pennsylvania Public Utility Commission (PAPUC), February 23, 2016, p 4.*
- **OREGON CLEAN ENERGY and TALEN:** “[T]he Affiliate PPA, reflecting a price tag of a whopping \$2.5 billion above another supplier’s offer to supply AEP Ohio with a comparable level of generation output, is a quintessential example of the affiliate preferences the Commission’s affiliate restrictions were intended to capture. Such a contract would be economically irrational for any non-affiliates to execute.” *Comments of Oregon Clean Energy, LLC and the Talen PJM Companies in Support of the AEP complaint, February 23, 2016, p 3.*