

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

Reliability Technical Conference

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:
:

Docket No. AD12-1-000

**COMMENTS
SUBMITTED ON BEHALF OF
THE PUCO**

**Cheryl Roberto, Commissioner
Panel IV
November 30, 2011**

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EXECUTIVE SUMMARY

Ohio must be a principle architect of its own destiny when it comes to mitigating the reliability risk presented by impending and expected power plant closures. The Public Utilities Commission of Ohio (PUCO) has the authority, relationships, and will to engage constructively in investigating, evaluating, and selecting solutions to unit-specific reliability risks. These solutions will require multiple strategies, collaboration and time. For that reason, the PUCO is supportive of the RTO’s “safety valve” proposal – but with modification.

In restructured states like Ohio, the RTOs are best suited to identifying the criticality of a specific retiring power plant. They are capable of quantifying the location and magnitude of the reliability problem. However, the optimum solution to the reliability challenge may be outside of the RTO’s authority. If all potential solutions, including but not limited to retrofits, transmission reconfiguration, energy efficiency,

demand response, distributed generation, combined heat and power or waste heat recovery, are to be available to solve the reliability problem, then the PUCO, as well as other willing state commissions, must conduct the evaluation of alternatives. Our residents, commercial and industrial facilities are those who will bear any harm from reliability risk and the cost of risk mitigation. The PUCO is in the best position to determine that resolution.

The “Safety Valve” proposal should be modified to direct the RTO to refer the reliability critical situation to willing state commissions together with its recommended solution. The state commission can undertake its evaluation and select the optimum solution for its state on behalf of its citizens. The state commission should advise the RTO of the selected solution. Only then, should the entity responsible for implementation proceed.

This commission could advance this result by directing the RTOs to amend their tariffs to provide explicitly for the integration of state commissions into the solution selection process.

INTRODUCTION

A. Ohio's public policy supports coal and environmental protection

Ohio is a coal state. Ohio safeguards its natural environment. These two statements are not mutually exclusive. The Ohio General Assembly has declared that coal is one of the state's best, most abundant energy resources. It is the public policy of the state to assist in the development of facilities and technologies that will lead to increased, environmentally sound use of Ohio coal.¹ Ohio also embraces energy innovation – any method that increases generation output of an electric generating facility without adding carbon dioxide emissions, clean coal technology, renewable energy, distributed energy, energy efficiency, combined heat power/waste heat recovery, time-differentiated pricing, and demand response.²

It is the policy of the state of Ohio to provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates.³ Ohio has mandated that electric distribution companies providing electricity to customers in Ohio use alternative energy sources to meet 25 percent of their customers' needs by 2025 and at least 12 ½ percent of it must be renewable.⁴ It has adopted peak demand reduction benchmarks and has mandated that

¹ Section 1551.31 of the Ohio Revised Code.

² Sections 4928.01(A)(34), 4928.02(E) and (F), 4928.64(A)(1)(b).

³ Section 4928.02(J) of the Ohio Revised Code.

⁴ Section 4928.64(B) of the Ohio Revised Code.

each electric distribution company must achieve a minimum energy efficiency benchmark of 22 percent by 2025.⁵

B. Ohio is reliant upon coal-fired power and particularly vulnerable to reliability and price impacts from plant retirements.

The mission of the Public Utilities Commission of Ohio (PUCO), as well as that of other state commissions around the country, is to implement the policies of our states while we assure all customers access to adequate, safe and reliable utility service at fair prices. Statistics in 2009 demonstrate that coal fuels about 85 percent of the net electric generation in Ohio.⁶ The Edison Electric Institute Yearbook (2008 data) shows that the state of Ohio is sixth in electric generation and 24th in electricity consumption per capita. Coal makes up more than 65 percent of Ohio's generation capacity.

The future of coal-fired generation is facing challenges, both economic and environmental. While in the recent past, the price of coal was favorable relative to natural gas, this position has reversed. In the past two years, natural gas price forecasts have been adjusted downward, further exacerbating the pressures on coal-fired generation.⁷ New environmental regulations, as well as the potential for future regulation of greenhouse gases, further threaten the viability of coal-fired generation.

⁵ Section 4928.66(A) of the Ohio Revised Code.

⁶ Velocity Suite, a PUCO subscription database maintained by Ventyx, 2009.

⁷ Tierney, Sue, "EPA's MACT, Water Cooling Intake and Transport Rules: What now for power generation?" (SNL Energy Webinar – Tuesday, April 12, 2011), slides 24 and 25, citing data from EIA Annual Energy Outlook (2008, 2011).

PUCO analysis has predicted that over 150 units presently⁸ within the PJM Interconnection (PJM) could be decommissioned by 2015 given the aggregate of recently proposed and finalized environmental regulations.⁹ Based upon a study by Charles Rivers and Associates, roughly 24 gigawatts (GW) of generation will be retired in PJM.¹⁰ The Midwest ISO (MSIO) has identified nearly 13,000 MW of units at risk for retirement within its footprint.¹¹

Ohioans will be particularly vulnerable to the reliability and price impacts of retiring plants. Of the 24 GW, PUCO expects nearly seven GW to be retired in Ohio. Supporting this analysis was the announcement from AEP earlier this year that it will shut down nearly six GW of capacity due to environmental regulations. Much of this capacity serves Ohioans and/or is located within Ohio. The recently released updated analysis from Fitch Ratings continues to project that Ohio will be among the five contiguous Midwest states with the most at-risk capacity.¹² Some of the expected retirements in Ohio will have localized impacts, resulting in reliability concerns in the

⁸ This analysis was conducted prior to the transfer of Duke Energy Ohio, Toledo Edison, Cleveland Illuminating Company, and Ohio Edison from MISO to PJM which is expected to occur at the end of 2011.

⁹ These results were obtained from modeling performed by PUCO Staff using PROMOD IV production simulation software (PROMOD).

¹⁰ Summary of MRN-NEEM Results for EIPC BAU Sensitivity 3: Alternative EPA Regulations,” Charles Rivers & Associated, April 20, 2011.

¹¹ “EPA Impact Analysis: Impacts from the EPA Regulations on MISO,” (MISO, October 2011)

¹² The other four states are Pennsylvania, Indiana, Illinois, and Michigan. “Time to Retire II? The Update to Coal Plant Retirements,” (FitchRatings Special Report, November 17, 2011)

http://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=656410&cm_mmc=Eloqua- -Email- -LM_USPF%20NA%2fNYC%202011%2fNov%2f17%20Teleconf%20Coal%20Plants- -0000

state and region. As many as four electricity generating units could be shut down within a 50 square mile area.¹³

If reliability becomes a problem from retirements, then Ohio's customers may become subject to paying for costly above-market solutions. One of these mechanisms is a reliability "must run" contract. If an older, smaller, and/or less efficient plant that should retire can not be permitted to retire because it is the only reliability option, then PJM may offer a "must run"¹⁴ contract. Paying above market rates to retain these units could magnify cost implications.

BACKGROUND

A. Meeting the environmental and health goals of the EPA requirements while maintaining reliability and affordability will require multiple strategies, collaboration and time.

The National Association of Regulatory Utility Commissions (NARUC) at both its February and July meetings this year found that state utility regulators are well positioned to evaluate risks and benefits of various resource options through policies that appropriately account for and mitigate the risks arising from compliance with pending regulations; that cooperation between utility commissions and environmental regulators can promote greater policy coordination and integration and improve the quality and effectiveness of electricity sector regulations; and that state utility regulators, by working with the power sector and state and federal environmental regulators and help to facilitate least-cost compliance with public health and environmental goals.¹⁵ NARUC noted that there are many strategies available to states and

¹³ PROMOD.

¹⁴ PJM's "Must Run" provision is required as part of the PJM Operating Agreement in Schedule 1, Section 6. Reliability "Must Run" Units are compensated under a contract between the owner of the unit and PJM and are approved by COMMISSION. The compensation is generally at cost-plus (i.e. higher than the Location Marginal Pricing).

¹⁵ "Resolution on the Role of State Regulatory Policies in the Development of Federal Environmental Regulations" (Adopted February 16, 2011)

utilities to comply with EPA regulations, including retrofits and installation of pollution control equipment, construction of new power plants and transmission upgrades to provide resource adequacy and system security where needed when power plants retire, purchases of power from wholesale markets, demand response, energy efficiency, and renewable energy policies – the collection of which can be implemented at different time frames by different interested parties and may constitute lower-cost options that provide benefits to ratepayers.¹⁶

Accessing all of these strategies will require collaboration and time. The Federal Energy Regulatory Commission (Commission) is uniquely situated to assist in assuring that interested stakeholders have adequate forewarning of plant closures. As NARUC noted, the Commission, through its oversight of NERC, has authority over electric system reliability, and is in a position to require generators to provide sufficient notice to Commission, system operations, and state regulators of expected effects of forthcoming health and environmental regulations on operating plants to allow an opportunity for meaningful assessment and response to reliability claims.¹⁷

B. Recent PJM base residual auctions both confirm impending coal-fired plant retirements and provide reason for optimism that alternate strategies may successfully meet reliability and affordability needs.

In the April PJM base residual auction, 6,895 MW less unforced coal-fired capacity (equivalent to approximately 7,350 MW of installed capacity) cleared the auction for the 2014/2015 period as cleared during the 2013/2014 period,¹⁸ confirming that coal-fired plants are becoming less economically competitive. At the same time, nearly 75 percent of that lost capacity was replaced by a combination of renewable,

<http://www.naruc.org/Resolutions/Resolutionpercent20onpercent20thepercent20Rolepercent20ofpercent20Statepercent20Regulatorypercent20Policiespercent20inpercent20Developmentpercent20ofpercent20Fedpercent20Enviropercent20Regs.pdf>

¹⁶ “Resolution on Increased Flexibility for the Implementation of EPA Rulemakings” (adopted July 20, 2011)

<http://www.naruc.org/Resolutions/Resolutionpercent20onpercent20Increasedpercent20Flexibilitypercent20forpercent20thepercent20Implementationpercent20ofpercent20EPApercent20Rulemakings.pdf>

¹⁷ *Id.*

¹⁸ “2014/2015 Base Residual Auction Report Addendum” at 1-2, available at <http://pjm.com/markets-and-operations/rpm/~media/markets-ops/rpm/rpm-auction-info/2014-2015-rpm-bra-results-report-addendum.ashx>; “Coal Capacity at Risk for Retirement in PJM: Potential Impacts of the Finalized EPA Cross State Air Pollution Rule and Proposed National Emissions Standards for Hazardous Air Pollutants,” (August 26, 2011), p. iv; Sotkiewicz, Paul and M. Gary Helm, PowerPoint briefing “Coal Capacity at Risk for Retirement in PJM: Potential Impacts of the Finalized EPA Cross State Air Pollution Rule and Proposed National Emissions Standards for Hazardous Air Pollutants,” September 8, 2011) Slide 46/47.

energy efficiency, and demand response. Thus, a market response alone successfully replaced the coal-fired power at a more cost-effective rate.¹⁹ The concerted efforts of PJM, PUCO and the Ohio Power Siting board as proposed herein should find success in fully mitigating the effects of localized reliability issues in the most cost-effective manner.

DISCUSSION

A. State commissions and sister state agencies, even in restructured states like Ohio, have both the authority and relationships to ascertain, initiate and implement unit-specific reliability solutions in the face of plant retirements.

The Commission has convened this Technical Conference to, among other topics, discuss emerging issues, including processes used by planning authorities and other entities to identify reliability concerns that may arise in the course of compliance with the environmental Protection Agency (EPA) regulations, and the tools and processes (including tariffs and market rules) available to address any identified reliability concerns.”²⁰ The PUCO welcomes this opportunity and expresses its gratitude for the Commission’s leadership. The PUCO has much to share regarding the authorities and relationships that it can contribute to resolving reliability issues. State commissions and sister state agencies, even in restructured states like Ohio, have both the authority and relationships to ascertain, initiate and implement unit-specific reliability solutions in the face of plant retirements.

¹⁹ 5108 MW unforced capacity MW of installed capacity) more capacity from the combination of renewable, energy efficiency, and demand response cleared the auction for the 2014/2015 period as it did for the 2013/2014 period. *Id.*

²⁰ “Reliability Technical Conference Agenda,” Reliability Technical Conference North American Electric Reliability Corporation, Docket No. AD12-1-000 et al.

1. The Ohio Power Siting Board has exclusive jurisdiction to approve and site both generation and transmission in Ohio.

In Ohio, no generation facility equal to or greater than 50 MW, electric transmission lines at or greater than 125 kV, natural gas transmission lines with pressures in excess of 125 pounds per square inch, and any economically significant wind farm which has an aggregate capacity of greater than 5 MW, may commence construction without first having obtained approval from the Ohio Power Siting Board.²¹ In granting or denying this approval, the Ohio Power Siting Board will consider, among other factors, the need for the facility, the nature of the probable environmental impact, that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and, in the case of electricity transmission or generation, whether the facility is consistent with regional plans and will serve the interests of the electric system economy and reliability.²² To enable it to make such decisions, the Ohio Power Siting Board engages staff and consultants knowledgeable in matters that would add insight and value to any consideration of potential solutions to unit-specific reliability challenges.

2. The PUCO has responsibility and expansive authority to forecast Ohio's energy needs and to ensure that each electric distribution company is able to meet the forecast needs of the customers within its certified territory.

The PUCO is responsible for estimating statewide and regional needs for energy for five, 10, and 20-year windows. In doing so, the PUCO must reasonably balance

²¹ Sections 4906.04, 4906.01(B)(1(a)-(c)), and 4906.20 of the Ohio Revised Code.

²² Section 4906.10(A) of the Ohio Revised Code.

requirements of state and regional development, protection of public health and safety, preservation of environmental quality, maintenance of a sound economy, and conservation of energy and material resources.²³ To assist this analysis, the PUCO may request information from any public or private entity and if “necessary to deal with any energy problem in this state,” may issue subpoenas.²⁴ Additionally, each electric and natural gas distribution utility serving more than 15,000 customers, as well as transmission facilities, within the state must file its own forecast for the same period.²⁵

While Ohio is a restructured state in that there is retail electric competition, the PUCO retains substantial authority. Each electric distribution utility is required on a comparable and nondiscriminatory basis within its certified territory, to supply a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.²⁶ The PUCO is responsible for ensuring that the standard service offer will maintain essential electric service. As such, the PUCO may direct the electric distribution utility as to the acquisition of the necessary services. Additionally, the PUCO may still authorize an electric distribution utility to build generation or to invest in environmental expenditures for any electric generating facility and authorize recovery for such investment through a nonbypassable surcharge.²⁷ However, prior to gaining this

²³ Sections 4935.01(A)(1) and (2) of the Ohio Revised Code.

²⁴ Section 4935.01(B)(3) of the Ohio Revised Code.

²⁵ Section 4935.04(C) of the Ohio Revised Code.

²⁶ Section 4928.141(A) of the Ohio Revised Code.

²⁷ Sections 4928.143(B)(2)(b) and (c) of the Ohio Revised Code.

authorization, an electric distribution utility must provide a resource plan sufficient for the PUCO to determine the reasonableness of the resource plan, including:

- (i) The adequacy, reliability, and cost-effectiveness of the plan.
- (ii) Whether the methodology used to develop the plan evaluates demand-side management programs and nonelectric utility generation on both sides of the meter in a manner consistent with electric utility's generation and other electricity resource options. At a minimum, the total resource cost test as defined in rule 4901:1-39-01 of the Administrative Code, should be used to determine the cost-effectiveness of demand-side management programs.
- (iii) Whether the plan gives adequate consideration to the following factors:
 - a. Potential rate and customer bill impacts of the plan.
 - b. Environmental impacts of the plan and their associated costs.
 - c. Other significant economic impacts and their associated costs.
 - d. Impacts of the plan on the financial status of the company.
 - e. Other strategic considerations including flexibility, diversity, the size and lead time of commitments, and lost opportunities for investment.
 - f. Equity among customer classes.
 - g. The impacts of the plan over time.²⁸

Thus, the PUCO has responsibility and expansive authority to forecast Ohio's energy needs and to ensure that each electric distribution company is able to meet the forecast needs of the customers within its certified territory.

3. The PUCO has responsibility and expansive authority to ensure that each electric distribution company meets, and in some instances surpasses, statutory benchmarks for alternative energy, energy efficiency, and peak demand reduction.

Ohio law requires electric distribution utilities and electric services companies to secure a portion of their electricity supplies from alternative energy resources. By the year 2025, 25 percent of the electricity sold by each utility or electric services company within Ohio must be generated from alternative energy sources. At least 12.5 percent must be generated from

²⁸ Rule 4901:5-5-06(B).

renewable energy resources, including wind, hydro, biomass and at least 0.5 percent solar. The remainder can be generated from advanced energy resources, including nuclear, clean coal and certain types of fuel cells. In addition, at least one half of the renewable energy used must be generated at facilities located in Ohio. All companies must meet annual renewable and solar energy benchmarks that increase as a percentage of electric supply each year.²⁹ Additionally, each electric distribution company must achieve at least an energy efficiency savings of 22 percent by the year 2025. Ohio also requires each electric distribution company to implement substantial peak demand reduction programs.³⁰ Thus, the PUCO has responsibility and expansive authority to ensure that each electric distribution company meets, and in some instances surpasses, statutory benchmarks for alternative energy, energy efficiency, and peak demand reduction.

²⁹ Section 4928.64 of the Ohio Revised Code.

³⁰ Section 4928.66 of the Ohio Revised Code.

4. The PUCO has authority to work directly with high use customers within the State of Ohio to achieve alternative energy, energy efficiency, peak demand reduction goals of the State.

Commercial and industrial customers in the state of Ohio which consume more than 700,000 kilowatt hours per year or is part of a national account involving multiple facilities in one or more states³¹ may work directly with the PUCO to achieve the alternative energy, energy efficiency, and peak demand reduction goals of the state.³² Ohio specifically recognizes combined heat power and waste energy technologies as alternative energy sources.³³ These customers may be eligible to opt out of surcharges associated with utility energy efficiency programs.³⁴ Additionally, the PUCO may authorize special contracts between customers and the electric distribution company in order to advance economic development, energy efficiency, or other unique relationships that are in the public interest.³⁵

Thus, the PUCO has authority to work directly with high use customers within the state of Ohio to achieve alternative energy, energy efficiency, peak demand reduction goals of the state.

³¹ Section 4928.01(A)(19) of the Ohio Revised Code.

³² Rule 4901:1-39-08 of the Ohio Administrative Code.

³³ Section 4928.64(A)(1)(b) of the Ohio Revised Code.

³⁴ Rule 4901:1-39-08 of the Ohio Administrative Code.

³⁵ Section 4905.31 of the Ohio Revised Code and Rules 4901:1-38-03, -04, and -05 of the Ohio Administrative Code.

5. The Public Utilities Commission of Ohio has adopted and has the competence to adjust, nimbly and as necessary, net metering and interconnection rules to promote and support Ohio’s policy to encourage implementation of distributed generation.

It is the policy of the state of Ohio to encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering.³⁶ The PUCO has adopted standardized net metering requirements whether the qualified facility is served by the regulated electric distribution company or receives its energy from a competitive provider.³⁷ The PUCO has the demonstrated competence to adjust, nimbly, and as necessary, net metering and interconnection rules to promote and support Ohio’s policy to encourage implementation of distributed generation.

6. The PUCO and the Ohio Power Siting Board have positive relationships with sister state of Ohio agencies that possess additional authorities which may be marshaled to ascertain, initiate and implement unit-specific reliability solutions in the face of plant retirements.

It is the public policy of the state of Ohio through the operations of the Air Quality Development Authority to provide for the conservation of air as a natural resource and to prevent or abate air pollution.³⁸ In order to achieve this goal, the Air Quality Development Authority possesses extraordinary authority to initiate, acquire, construct, maintain, repair or operate any air quality projects - whether for small or large businesses,

³⁶ Section 4928.02(K) of the Ohio Revised Code.

³⁷ Rules 4901:1-20-28 and 4901:1-21-13 of the Ohio Administrative Code.

³⁸ Section 3706.03 of the Ohio Revised Code.

utilities, government agencies, and universities.³⁹ It has the authority to enter commodity contracts or make loans⁴⁰ in support of these projects and may issue bonds to finance them.⁴¹ Tax exempt bond financing is available for up to 40 years. Participating facilities also enjoy exemptions from tangible personal property tax and sales and franchise taxes related to the acquired project.⁴² The Authority may also acquire property and relocate roadways.⁴³

The Ohio EPA has responsibility for enforcement of the Clean Water Act and Clean Air Act in Ohio. As such, its staff has expertise that can help to guide a reliability solution selection investigation as well. It also has the authority to enter administrative compliance and consent orders.

The Ohio Department of Development (ODOD) has expertise and programming in energy efficiency.⁴⁴ It also manages the “Third Frontier” to coordinate and administer science and technology programs to maximize economic growth by nurturing technology research and development as well as product commercialization.⁴⁵ To accomplish this, the Third Frontier Commission funds projects from bond revenue.⁴⁶ The ODOD also houses the Ohio Coal Development Office.⁴⁷ The Ohio Department of Natural

³⁹ *Id.*

⁴⁰ Section 3706.041(A) of the Ohio Revised Code.

⁴¹ Section 3706.05 of the Ohio Revised Code.

⁴² Section 3706.15 of the Ohio Revised Code.

⁴³ Sections 3706.17 and 3706.18 of the Ohio Revised Code.

⁴⁴ Section 1551.11 of the Ohio Revised Code.

⁴⁵ Section 184.01 of the Ohio Revised Code.

⁴⁶ Section 184.19 of the Ohio Revised Code.

⁴⁷ See Sections 1555.01 and 1551.32 of the Ohio Revised Code.

Resources' (ODNR) Division of Ohio and Gas Resources Management is responsible for regulating the exploration and production of shale gas in Ohio.⁴⁸

All of these state agencies possess authority and expertise that may be tapped to meet the challenges posed by generation retirement. The PUCO and the Ohio Power Siting Board have positive relationships with these sister agencies which may be marshaled to ascertain, initiate and implement unit-specific reliability solutions in the face of plant retirements. In fact, the statutory members of the Ohio Power Siting Board include: the chair of the PUCO, who also serves as the chair of the Ohio Power Siting Board; the director of the Ohio EPA; the director of the ODNR; and the director of the ODOD.

- 7. The PUCO may alert the Governor of the State of Ohio who may declare a state of emergency when the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.**

The Governor of Ohio has the authority on a state-wide basis or for a single county to declare an energy emergency. The declaration shall state the counties, utility service areas, or fuel market areas affected, or its statewide effect, and what fuels or forms of energy are in critically short supply. An energy emergency goes into immediate effect upon filing and continues in effect for the period prescribed in the declaration, but not more than 30 days. At the end of any 30-day or shorter energy emergency, the

⁴⁸ See Chapter 1509 of the Ohio Revised Code and Chapter 1501 of the Ohio Administrative Code.

governor may issue another declaration extending the emergency. This order may be enforced by injunctive relief through an ex parte proceeding. The Governor may declare an emergency after consultation with the chairperson of the PUCO.⁴⁹

B. The PUCO is supportive of the exemption process proposed by PJM and the other RTOs known as the “Safety Valve” but to achieve optimum results it must be modified to integrate state commissions directly to resolve reliability issues of bulk power.

The PUCO concurs with PJM that limited, targeted, and temporary relief from EPA compliance deadlines are indicated in those defined instances where PJM would issue a unit-specific finding of adverse reliability impacts in response to timely notices of retirement. This proposal is a reasonable and responsible response to the likelihood of localized reliability challenges while respecting the environmental and health goals of the EPA regulations. The PUCO agrees that in such instances it would be appropriate both to use a fourth year of compliance and, when reliability issues cannot be addressed within the four-year timeframe, the establishment of a mechanism to allow additional time on a unit-specific basis. The PUCO also advocates for a timely notice requirement as a condition precedent to a grant of either the fourth year of compliance or access to any additional mechanism for an extended compliance schedule.

PJM and the other RTOs have the information and resources to confirm, after notice from the generator, whether the retirement of a unit will cause reliability issues

⁴⁹ Section 4935.03 of the Ohio Revised Code.

and the extent of the challenge. PJM and the other RTOs are particularly well-suited to reliability problem identification and quantification.

The PUCO departs from the PJM recommendation, however, as to the mechanism to identify the solution to the reliability problem. PJM suggests that the solution should be found in an “RTO’s Commission-approved public and transparent stakeholder process.”⁵⁰ However, PJM acknowledges that its own limitations of authority compel it to rely on transmission reinforcements as the “primary direct solution available to PJM to address local reliability problems caused by generation retirements.”⁵¹ The PUCO respectfully suggests that an RTO-centered process may lead to an unduly restrictive assay of alternatives which could lead to the selection of less cost-effective solutions. Alternatively, the PUCO suggests a joint collaborative exercise should be undertaken to ascertain, initiate, and implement a reliability solution.

C. In order to resolve localized reliability challenges resulting from plant retirements in the most expeditious and cost-effective manner, PJM and the other RTOs should refer the matter to state commissions, such as the PUCO, which indicate that they are willing and able to investigate, evaluate, and select the resolution most suitable for their states, upon the determination by PJM that a retiring unit is reliability critical.

Resolving localized reliability challenges resulting from plant retirements in the most expeditious and cost-effective manner will require the collaborative action of the RTOs and State commissions, in conjunction with additional state agencies such as

⁵⁰ “Corrected Comments of PJM Interconnection, L.L.C.,” In re: National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institution, and Small Industrial-Commercial-Institutional Steam Generating Units (EPA-HQ-OAR-2009-0234 et al.) filed August 4, 2011 at p. 3, F.N. 4.

⁵¹ *Id.* at pp. 11-12.

power siting boards. The collective authorities and capabilities of each of these agencies can and should be considered for optimum results.

Even though Ohio is a restructured state, every electric distribution company is mandated to “furnish necessary and adequate service and facilities” and each is directed to “furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable.”⁵² The PUCO has responsibility for general supervision over electric distribution companies including authority to examine their operations with regard to the adequacy afforded by their service.⁵³ The PUCO may initiate an investigation to determine whether an electric distribution company’s service is or will be insufficient or inadequate or cannot be obtained.⁵⁴ If the PUCO determines that an electric distribution company’s service is or will be insufficient, “in order to secure adequate service or facilities, the commission may make and serve an appropriate order directing that such repairs, improvements, or additions be made within a reasonable time and in a manner specified in such order.”⁵⁵ The Ohio Power Siting Board has explicit authority “to make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States, whether in the holding of such investigations or hearings, or in the making of such orders, the board is functioning under

⁵² Section 4905.22 of the Ohio Revised Code.

⁵³ Section 4905.06 of the Ohio Revised Code.

⁵⁴ Section 4905.26 of the Ohio Revised Code.

⁵⁵ Section 4905.38 of the Ohio Revised Code.

agreements or compacts between states or under the concurrent power of states to regulate interstate commerce, or as an agency of the United States, or otherwise.”⁵⁶

Once PJM, or other RTO, makes a finding that a unit is reliability critical, it should proceed to quantify the shortage and identify any potential transmission solution(s) or other solution which is within the authority of the RTO to implement, including but not limited to demand response. This analysis should be referred to the PUCO, or other state commission indicating a willingness and capability to identify and examine the unit-specific options available to resolve the associated reliability issues. The questions to be considered would include alternative solutions available and the reasonable time necessary to implement such solutions. At the conclusion of the state commission’s investigation, the state commission will indicate to the RTO the solution selected. Once the solution is identified, the appropriate agencies would proceed as necessary to implement it.

In the event that a solution required a unit to continue to operate past a fourth year of a compliance schedule, the schedule adopted in any implementation order(s) could become the basis for an appropriately adopted compliance order by either the U.S. EPA or state EPA. Given the close relationship of both the PUCO and the Power Siting Board to the Ohio EPA and the Ohio EPA’s role in enforcing the Clean Air Act, an administrative compliance or a judicially enforceable consent order in state court issued by the Ohio EPA may be the most practical vehicle to impose an enforceable compliance

⁵⁶ Section 4906.14 of the Ohio Revised Code.

schedule. Additionally, state-based collaborations such as that undertaken by Minnesota may also prove to be fruitful here in Ohio.⁵⁷

D. The PUCO suggests three actions that the Commission can take to address unit-specific reliability solutions in the face of plant retirements.

The PUCO suggests that the Commission consider undertaking taking the following actions to assist in addressing unit-specific reliability solutions in the face of plant retirements.

1. Direct Amendment to RTO Tariffs to Integrate State Commissions into Solution Selection.

In support of the integrated role of state commissions in evaluating and determining the local reliability solution most acceptable to their jurisdictions, the Commission could direct each RTO to submit, for Commission approval, tariffs that would clarify and support a formalized role for those state commissions that indicate a willingness and capability, to investigate, evaluate and select a solution most suitable for their states.

2. Re-Examine Current Resource Adequacy and Capacity Market Standards.

The Commission could accelerate its examination of whether current resource adequacy and capacity market standards are appropriate. The PUCO is aware of and grateful for the Request For Proposal (RFP) issued July 27, 2011 by the Commission

⁵⁷ Minnesota's "Power Sector Regulations Project" <http://www.pca.state.mn.us/index.php/air/air-permits-and-rules/air-rulemaking/power-sector-regulations-project.html>

Staff regarding the Economic Assessment of Resource Adequacy Requirements and encourage the Commission to continue this investigation.⁵⁸ Additionally, we would welcome a dialogue between State and Federal regulators regarding the best way to allocate scarce investment dollars to enhance the reliability actually experienced by consumers.

As background for the request, today more than 90% of service outages are distribution related. There are steps – ranging from improved vegetation management, to automatic recloser systems that isolate faults and advanced metering that allows utilities to immediately identify and direct resources to the source of distribution outages – which could be taken to significantly improve distribution reliability. However, these steps are not without costs and compete for resources against RTO capacity requirements that seek to maintain sufficient reserve capacity to meet a one in ten year, or in some cases a one in twenty-five year, Loss of Load Expectation (LOLE). In comments filed last year, the Ohio Commission presented a conservative illustrative calculation equating the one in ten year LOLE planning standard to an expected loss of service of 1.2 minutes per year due to lack of adequate resources. As we said that that time, “If we are building to meet a resource adequacy criterion that produces an expected loss of load of 1.2 minutes per year, while many consumers, in a good year, experience more than 100 minutes of service interruptions due to distribution faults, regulators and planners should be reexamining whether historical planning criteria will lead to a reasonable allocation of

⁵⁸ See also PUCO comments in RM10-10.

resources.”⁵⁹ By rationalizing the balance between bulk power and distribution system reliability investments, we may well have an opportunity to provide consumers greater reliability at lower costs. We would welcome your active participation in such an initiative to explore how to more effectively balance investments in bulk power and distribution system reliability.

3. Convene a Technical Conference to Examine Capacity “Seams”.

The Commission could convene a technical conference to examine whether respective PJM and MISO administrative rules create a “seam” between them that prevents the free-flow of capacity. Preliminary MISO analysis indicates that up to 4,000 MW of additional capacity transfers from MISO to PJM should be possible resulting in at least \$2 billion in excess capacity costs for consumers. Although the transfer capability exists, artificial (rule-based), non-physical barriers inhibit the movement of capacity across our seams. Along with planning for sufficient transmission to allow delivery of available resources, the ability to get capacity across MISO’s underutilized borders will increase flexibility to maintain reliability at the lowest costs to consumers. MISO is currently developing solutions and seeking stakeholder, regulatory, and regional support to solve this border problem.⁶⁰

⁵⁹ “Comments on Proposed Reliability Standard BAL-502-RFC-02: Planning Resource Adequacy Analysis, Assessment, and Documentation Submitted on behalf of the PUCO,” *In the Matter of the North American Electric Reliability Corporation*, Docket No. RM10-10 (December 27, 2010).

⁶⁰ “Capacity Deliverability: Maximizing Benefits to Consumers,” (MISO, November 10, 2011).

CONCLUSION

The PUCO thanks the Commission for the opportunity to file comments in this proceeding.

Respectfully submitted,

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On behalf of
The Public Utilities Commission of Ohio

PROOF OF SERVICE

I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Thomas W. McNamee
Thomas W. McNamee

Dated at Columbus, Ohio this November 22, 2011.