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January 19, 2001

BY HAND

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
Dockets Room, Room 1A
888 First Street, N.E.
Washington, D.C. 20426

Re: The Cincinnati Gas & Electric Co. et. al. & American Electric Power Service Corporation; Docket Nos. EC98-24 & EC99-80

Dear Secretary Boergers:

Enclosed for filing please find an original and fourteen (14) copies, and an electronic version on diskette, of the Industrial Consumers' motion in support of the motion requesting the appointment of a settlement judge in the above-referenced proceedings.

We ask that two copies of this document be date-stamped and returned for our records. Thank you for your assistance.

Sincerely,

Sara Schotland
Sara D. Schotland

Enclosures

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

-
- The Cincinnati Gas & Electric Company,)
 - Commonwealth Edison Company,)
 - Commonwealth Edison Company of Indiana)
 - Illinois Power Company,)
 - PSI Energy, Inc.,) Docket No. EC98-24-000
 - Wisconsin Electric Power Company,)
 - Union Electric Company,)
 - Central Illinois Public Service Company,)
 - Louisville Gas & Electric Company, and)
 - Kentucky Utilities Company)
-
- American Electric Power Service Corporation,)
 - Consumers Energy Company,) Docket No. EC99-80-000
 - Detroit Edison Company,) (Not Consolidated)
 - First Energy Corporation, and)
 - Virginia Electric and Power Company)
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MOTION OF
THE ELECTRICITY CONSUMERS RESOURCE COUNCIL (ELCON),
THE AMERICAN IRON AND STEEL INSTITUTE (AISI) and
THE AMERICAN CHEMISTRY COUNCIL (ACC)
IN SUPPORT OF MOTION REQUESTING
THE APPOINTMENT OF A SETTLEMENT JUDGE CONCERNING
THE ALLIANCE REGIONAL TRANSMISSION ORGANIZATION AND
THE MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.

Pursuant to Rules 212 and 603 of the Federal Energy Regulatory
Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.603,
Intervenors, The Electricity Consumers Resource Council (ELCON), the American Iron

and Steel Institute (AISI) and the American Chemistry Council (ACC), submit this motion in support of the relief requested by the Motion Of Indicated Intervenors For Appointment Of Settlement Judge To Oversee The Uniting Of The Midwest Independent Transmission System Operator & The Alliance Regional Transmission Organization filed on January 5, 2000.

FERC Order 2000 identifies the need for RTOs to redress complaints of discrimination in transmission access and to improve efficiencies and reliability. FERC's goals cannot be achieved unless and until there is a single RTO in the Midwest because unquestionably the status quo is not working. FERC should not wait to act until the Midwest degenerates into a crisis situation comparable to California. FERC should seize the opportunity to appoint a settlement judge to forge a single Midwest RTO.

1. FERC's Staff Report On The Midwest Markets Confirms The Need For A Single Midwest RTO

FERC's November 1, 2000 Staff Reports on Regional Power Markets unequivocally identify impediments to competition and reliability that must be addressed. Given the importance of these findings, we quote extracts from the Report.

TLRs

"The increased incidences of TLRs appear to have eroded confidence in the Midwest transmission market. Some public power market participants indicated to Staff that the large number of TLRs harmed the liquidity of the market by stifling long-term transactions (2-3 years). They alleged that marketers are less willing to enter into multi-year contracts for fear that they will be unable to fulfill their commitments because of the TLRs."

... [T]here has been no concerted regulatory effort to date to police the implementation of TLRs to ensure that they are utilized properly and in a non-discriminatory fashion."

Abuses of the Transmission Grid

“Several market participants have argued to Staff that the current regulatory environment has not kept up with the new challenges of the Open Access era, in which there are economic incentives for transmission providers to misuse the transmission grid to benefit their own load.”

“... The lack of uniform standards for implementing TLRs creates an uncertainty for public power market participants as to the likelihood that their transmission schedules will be curtailed. Moreover, Staff was unable to analyze, because of inadequate existing information, whether TLRs have been implemented to advantage a transmission provider’s generation resources. The lack of adequate remedial measures if this occurs appears to have created an atmosphere of skepticism among public power market participants, who question whether transmission providers have any incentive not to use TLRs to favor their own generation.”

Lack of Standardized Protocols for Calculating ATC and CBM and Handling Transmission Requests and Scheduling

“There are no consistent rules for calculating and posting ATC and CBM. . . . Transmission providers have wide latitude to use various methodologies to calculate ATC. This variance comes about from different assumptions about reliability, dissimilar engineering approaches and a host of historical and operational parameters. The result is that ATC may be calculated differently on two sides on an interface. This appears to be an issue with the existing regulations, which do not provide for specific methodologies for calculating ATC and CBM.”

“... ATC is often inaccurately posted on the OASIS even if calculated under the standard for the utility posting the ATC. Several market participants alleged that certain transmission providers in the Midwest were not accurately posting ATC. One market participant alleged that transmission providers in the Midwest regularly post incorrect amount for ATC and documented three examples.”

“... [T]here is a lack of uniformity in processing transmission requests and scheduling service. . . . For example, reservations are not handled the same way across the entire Midwest. MAPP uses an e-mail procedure while the other three regions use OASIS sites. Two market participants complained that transmission providers are able to change their “Business Practices” on the OASIS sites with little or no notice. One of those market participants alleged that this is particularly a problem with regard to next hour service, which is not covered by the OATT, but which is a major source of business for marketers and can be a source of quick response power. One market participant complained of a unilateral change by a NERC region that limited the quantity of requests that could be made to certain delivery points within a certain time.”

Allegations of Market Power and/or Non-Competitive Behavior

“Entities with network service have built-in advantages to service their native load over non-network (point-to-point) service. The advantages that network service

have over point-to-point service are priority of service under the OATT (which has separate provisions for network service and point-to-point service), lack of curtailment until a TLR Level 5 is called, and the lack of source/sink requirements. . . . This places any NUG at a competitive disadvantage vis-a-vis the vertically integrated utilities.”

“In addition to the inherent advantages for transmission providers relating to network service under the current regulations, several market participants raised allegations of incidences in which individual transmission providers engaged in non-competitive discriminatory conduct.

One market participant raised specific allegations concerning two utilities in the Midwest, alleging that they had discriminated against it by approving or confirming later affiliate requests before the market participant’s own requests, and provided supporting documentation. Three other market participants also raised allegations of transmission providers favoring their merchant affiliates. Enforcement staff is evaluating the information presented with these allegations.”

2. Defections From the Midwest ISO Have Made A Settlement Conference Yet More Urgent

Even as originally conceived, there was a question about the adequacy of MISO’s Scope and Configuration to address reliability and mitigate market power. With the pending defection of Ameren Corp., Commonwealth Edison, Illinois Power, CILCO, Cinergy, Wabash and other utilities, MISO is clearly too small. At present the lack of a single Midwest RTO results in suboptimal internalization of regional power flows; inadequate efforts to improve ATC and TTC capacity determinations; and inadequate management of congestion.

FERC has previously expressed concerns about the scope and configuration of the Alliance RTO and, in particular, whether its configuration will act as a tollgate or barrier to west-east trading patterns. Alliance, 89 FERC ¶ 61,298 (2000).

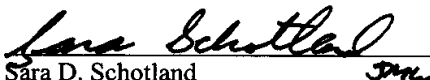
FERC has long ago suggested that Alliance join MISO; it is certainly worthwhile to appoint a settlement judge to oversee bilateral talks which to date have not been fruitful.

The procedural posture of Docket EC98-24-000 and EC99-80-000 provides a golden opportunity. Appointment of a settlement judge represents a non-coercive tool to forge a single Midwest RTO to assure mitigation of market power and promote effective bulk power markets in the Midwest. Because the motion is made in the context of Section 203 proceedings where FERC has a mandate to impose conditions necessary to assure that jurisdictional transfers of assets are consistent with the public interest, there is no question about FERC's authority or duty to act.

Conclusion

Industrial Consumers accordingly support the appointment of a settlement judge to oversee a badly-needed single RTO in the Midwest.

Respectfully submitted,



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202-974-1500

Dated: January 19, 2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of the Industrial Consumers was today mailed to parties on the service list of this proceeding by U.S. mail, postage prepaid.

Dated at Washington, D.C., this 19th day of January, 2001.



John Winter
Law Clerk
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