

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

FirstEnergy Service Company)	
)	
v.)	Docket No. EL11-56-000
)	
Midwest Independent Transmission System)	
Operator, Inc.		

**NOTICE OF INTERVENTION AND COMMENTS OF
THE MICHIGAN PUBLIC SERVICE COMMISSION**

Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.214 (2011), the Michigan Public Service Commission (“MPSC”) hereby submits its Notice of Intervention and Comments in the above-captioned proceeding.

I. DESCRIPTION OF THE FILING

On August 3, 2011, FirstEnergy Service Company (“FirstEnergy”) filed a Petition for Declaratory Order and Complaint (“Filing”) against the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO” or “MISO”) requesting that the Commission find that the Midwest ISO cannot allocate the costs of a Multi-Value Project (“MVP”) – the “Michigan Thumb Project” (“Project”) – to FirstEnergy or any other entities within the American Transmission Systems, Incorporated (“ATSI”) zone that have withdrawn from the Midwest ISO. *See* Filing at 1 and 4. FirstEnergy asserts that MISO did not include the ATSI transmission zone in the planning models used to approve the Michigan Thumb Project and that the loads in that zone will receive no benefits from the Project once it is built. *See* Filing at 3-4. FirstEnergy states that Midwest ISO nonetheless intends to allocate 11.5 percent of the Project costs to the loads

in the ATSI zone. Filing at 2. FirstEnergy argues that allocating costs associated with the Michigan Thumb Project to the ATSI zone would not be consistent with general cost allocation principles and that there is no other lawful basis for such an allocation. *See* Filing at 11-24.

II. NOTICE OF INTERVENTION

The MPSC is an agency of the State of Michigan created by 1939 Pub. Acts 3, Mich. Comp. Laws § 460.1 *et seq.* As the Michigan regulatory agency having jurisdiction and authority to control and regulate rates, charges, and conditions of service for the retail sale of electricity in the State, the MPSC is a “state commission” as defined in 16 U.S.C. § 796(15) and 18 C.F.R. § 1.101(k) (2011). Accordingly, the MPSC hereby provides its Notice of Intervention pursuant to 18 C.F.R. § 385.214(a)(2) (2011).

Copies of all pleadings and correspondence in the proceeding should be addressed to:

Bill Schuette
Attorney General
Steven D. Hughey (P32203)
Patricia S. Barone (P29560)
Dept. of Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
(517) 241-6680
hugheys@michigan.gov
baronep@michigan.gov

David D’Alessandro
Kelly A. Daly
John E. McCaffrey
M. Denyse Zosa
Stinson Morrison Hecker LLP
1150 18th Street, N.W.
Suite 800
Washington, DC 20036-3816
(202) 785-9100 (phone)
(202) 785-9163 (fax)
ddalessandro@stinson.com
kdaly@stinson.com
jmccaffrey@stinson.com
dzosa@stinson.com

III. COMMENTS

The principal issue presented by FirstEnergy's Filing is whether FirstEnergy can be held responsible for costs associated with the Michigan Thumb Project notwithstanding FirstEnergy's withdrawal from MISO as of June 1, 2011. In considering the issues, the MPSC urges the Commission to be mindful of the purpose of exit fees on withdrawing transmission owners, *i.e.*, "to hold the loads of MISO's remaining members harmless from increased responsibility for the financial obligations on MISO's balance sheet at the time of a transmission owner's withdrawal." *Midwest Ind. Transmission Sys. Op., Inc.*, 135 FERC ¶ 61,255 at P 18 (2011). Such exit fees are "based on the loads of the withdrawing transmission owner's transmission system, reflecting the responsibility for such costs that would have been borne by those loads if they remained in MISO." *Id.* Here, the MPSC notes, the Michigan Thumb Project was approved by the MISO Board on August 19, 2010 – nearly ten months before FirstEnergy's departure from MISO.

The MPSC notes, moreover, that if the Commission determines that FirstEnergy remains responsible for a portion of the Michigan Thumb Project costs, consistent with MISO's Tariff, then the level of cost responsibility for this MVP facility must be influenced by the ultimate resolution of the issues that remain pending on rehearing in Docket No. ER10-1791-000, *see Midwest Ind. Transmission Sys. Op., Inc.*, 133 FERC ¶ 61,221 (2010), *reh'g pending* (addressing Midwest ISO's MVP proposal). These issues include the MPSC's arguments that not every zone of MISO will necessarily benefit from every MVP project, and its request that the Commission provide additional guidance concerning the "portfolio" approach to evaluate benefits of MVP projects. *See Midwest Ind. Transmission Sys. Op., Inc.*, Docket No. ER10-1791-000, "Request for Clarification

and Application for Rehearing of the Michigan Public Service Commission” (January 18, 2011).

IV. CONCLUSION

As set forth more fully above, the MPSC hereby provides its Notice of Intervention in this proceeding and asks that the Commission consider the MPSC’s Comments in resolving the issues presented.

Respectfully submitted,

THE MICHIGAN PUBLIC SERVICE COMMISSION

BILL SCHUETTE
Attorney General

Steven D. Hughey (P32203)
Patricia S. Barone (P29560)
Assistant Attorneys General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
Telephone: (517) 241-6680

*/s/ John E. McCaffrey*_____

David D’Alessandro
Kelly A. Daly
John E. McCaffrey
M. Denyse Zosa
Special Assistant Attorneys General
Stinson Morrison Hecker LLP
1150 18th Street, N.W., Suite 800
Washington, DC 20036-3816
Telephone: (202) 785-9100

September 2, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via electronic mail or first class mail, the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 2nd of September, 2011.

/s/ John E. McCaffrey
John E. McCaffrey