BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan.	)	Case No. 08-935-EL-SSO
In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service.	)	Case No. 08-936-EL-SSO

ENTRY

The attorney examiner finds:

(1) Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (FirstEnergy) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.

(2) On July 31, 2008, FirstEnergy filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. This application is for an electric security plan in accordance with Section 4928.143, Revised Code. Contemporaneously, in Case No. 08-936-EL-SSO, FirstEnergy filed a separate application for a market rate offer in accordance with Section 4928.142, Revised Code.

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(3) On August 18, 2008, a technical conference was held regarding FirstEnergy's applications. Further, on August 5, 2008, the attorney examiner established a procedural schedule for consideration of FirstEnergy's application for an electric security plan filed in Case No. 08-935-EL-SSO.

Moreover, on August 25, 2008, a prehearing conference was held in Case No. 08-936-EL-SSO in order to discuss procedural issues in that case. Subsequently, by entry dated August 28, 2008, the attorney examiner set the matter for hearing on September 16, 2008.

(4) On August 29, 2008, the Office of Ohio Consumers' Counsel (OCC) filed a motion for bifurcated hearings in Case No. 08-936-EL-SSO, a motion to consolidate Case No. 08-936-EL-SSO with Case No. 08-935-EL-SSO and a motion to sever distribution rate case issues from Case No. 08-935-EL-SSO. On September 8, 2008, FirstEnergy filed a memorandum contra OCC's three motions. The City of Cleveland (Cleveland) filed a motion for a bifurcated hearing and a memorandum in support of OCC's motion on September 9, 2008. OCC filed a reply to FirstEnergy's memorandum contra on September 11, 2008.

(5) In its motion to consolidate Case No. 08-935-EL-SSO with Case No. 08-936-EL-SSO, OCC argues that the two applications filed by FirstEnergy constitute two means by which a SSO may be established and that, according to Section 4928.143(C)(1), Revised Code, the two approaches must be compared with one another. OCC also notes that the two proceedings generally involve the same parties and party representatives.

In its memorandum contra, FirstEnergy argues that the cases should not be consolidated because its market rate offer application and its electric security plan application were filed under two different statutes and the relevant statutes call for different procedural schedules. FirstEnergy claims that comparing the electric security plan to the expected results of a market rate offer does not require the Commission to consolidate the two applications; FirstEnergy notes that the Commission would be required to compare the electric security plan to the expected results of a market rate offer even if FirstEnergy had not filed an application for a market rate offer.

Further, FirstEnergy contends that the fact that the two proceedings generally involve the same parties and the same party representatives does not warrant consolidation.

(6) The attorney examiner finds that OCC's motion to consolidate should be denied. As FirstEnergy points out, the application for a market rate offer is filed under a different statute than the application for a electric security plan. The two statutes, Sections 4928.142 and 4928.143, Revised Code, provide for different timeframes for Commission action on the applications. OCC has not persuasively demonstrated how these two different timeframes can be reconciled if the cases were to be consolidated.

(7) In its motion for bifurcated hearings in Case No. 08-936-EL-SSO, OCC argues that substantive matters that address the Commission's new rules for market rate offers should be the subject of a second hearing after the hearing scheduled for September 16, 2008. OCC claims that the statutory requirement that an application for a market rate offer detail the electric utility's proposed compliance with rules adopted by the Commission under Section 4928.142, Revised Code, cannot be immediately satisfied by any market rate offer filed in combination with an application for an electric security plan at this time. Therefore, OCC recommends that the Commission bifurcate the issues in this proceeding and establish a separate schedule for determining whether FirstEnergy's application is consistent with the rules to be promulgated by the Commission for market rate offers. According to OCC, this separate schedule should be consistent with the schedule established for consideration of FirstEnergy's electric security plan.

In its motion and memorandum in support of OCC's motion, Cleveland states that the governing statute provides the Commission with authority to set more than one hearing to consider an application for a market rate offer. Cleveland also argues that the parties to this proceeding need additional time to fully address the substantive issues regarding the application.

In its memorandum contra, FirstEnergy contends that reading the applicable statutes together clearly demonstrates than an application for a market rate offer must comply with any

applicable Commission rules that are in effect at the time the market rate offer is filed. FirstEnergy claims that, if the Commission accepted OCC's interpretation of the Section 4928.142(B), Revised Code, the Commission would have to conclude that the General Assembly enacted a law which makes it impossible for the electric utilities to meet the market rate offer filing requirements.

FirstEnergy contends that, based upon the text and structure of Am. Sub. Senate Bill 221, it is clear that the General Assembly did not intend for the absence of enforceable Commission rules to delay the review of market rate offer applications. FirstEnergy states that the 90-day statutory timeframe does not wait for the Commission's rules to become effective; had the General Assembly intended the interpretation that OCC posits, Am. Sub. Senate Bill 221 would provide that the 90-day timeframe does not begin until the rules adopted pursuant to Section 4928.142(A)(2), Revised Code, become effective. Instead, the statute expressly provides that the 90-day time period applies "after the application's filing date."

(8) The attorney examiner finds that both OCC's motion for bifurcated hearings in this proceeding and Cleveland's motion for bifurcated hearings should be denied. Neither OCC nor Cleveland have provided a persuasive argument for how granting the motions for bifurcated hearings will allow the Commission to meet the 90-day statutory timeframe expressly provided for in Section 4928.142(B), Revised Code. Moreover, OCC expressly acknowledges that it cannot enumerate the issues which should be addressed in a second-phase hearing in this proceeding. OCC has had a full and fair opportunity to file testimony regarding any issues relevant to the Commission's consideration of FirstEnergy's application for a market rate offer. Accordingly, OCC's motion should be denied.

(9) OCC's motion to sever distribution rate case issues from Case No. 08-935-EL-SSO will be addressed by subsequent entry in that proceeding.

It is, therefore,

ORDERED, That OCC's motion to consolidate Case No. 08-936-EL-SSO and Case No. 08-935-EL-SSO be denied. It is, further,

ORDERED, That OCC's motion for bifurcated hearings and Cleveland's motion for bifurcated hearings be denied. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: Gregory A. Price
Attorney Examiner

gp/ct

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Reneé J. Jenkins
Secretary