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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO 2008 OCT 31 PM 3:47

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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 R.C. §4928.143 In the Form Of An Electric Security Plan	))))))	Case No. 08-0935-EL-SSO

BRIEF OF THE OHIO HOSPITAL ASSOCIATION REGARDING SHORT-TERM ESP PLAN

INTRODUCTION

As requested by the Attorney Examiners, the Ohio Hospital Association ("OHA") respectfully submits its brief regarding the short-term ESP proposed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "the FirstEnergy operating companies" or "FirstEnergy").

BACKGROUND

The OHA is a private, nonprofit trade association with 178 hospitals and 40 healthcare system members that have more than 700 electricity accounts statewide. Collectively, OHA members annually spend well in excess of $150 million for electric services. A significant amount of that expenditure is for electric service provided by the FirstEnergy operating companies to the approximately 61 OHA member hospitals in FirstEnergy's service areas.

The FirstEnergy operating companies submitted an application for authority to establish its Standard Service Offer ("SSO") required by Ohio Revised Code Section ("R.C.") 4928.141, pursuant to R.C. 4928.143 (an "electric security plan" or "ESP"). This application was docketed as Case No. 08-935-EL-SSO. Simultaneously with its ESP application, FirstEnergy also filed an application for authority to establish a market rate offer, pursuant to R.C. 4928.142, as an alternative to its ESP proposal. The MRO application is now pending a Commission determination in Case No. 08-936-EL-SSO.

The OHA filed its motion to intervene on August 22, 2008. That motion was granted by Attorney Examiner Entry dated October 2, 2008.

DESCRIPTION OF THE FIRSTENERGY PLAN

FirstEnergy has proposed a Short Term ESP Standard Service Offer ("Short-term ESP"), as part of, but severable from its overall ESP filing. This proposal was conditioned on approval by the Commission by November 14, 2008, or it would be deemed withdrawn from the plan.[1] The Short-term ESP would be in effect from January 1, 2009 until April 30, 2009, or such time as the Commission approves the longer term ESP.[2]

FirstEnergy argues that the Short-term ESP is beneficial to its customers because it gives the Commission more time to consider the overall ESP[3] application. FirstEnergy maintains that an interim rate contingency is necessary because the FirstEnergy operating companies do not have a wholesale supply of electricity under contract beyond December 31, 2008.[4]

The Short-term ESP is based upon the longer term ESP, with certain exceptions: Pricing under the Short-Term ESP would be 7.75 cents per kWh, rather than 7.50 cents per kWh, as reflected in the longer term ESP for 2009. Beyond this, the Short-term ESP excludes most, if not

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[1] FirstEnergy Application, case 08-935-EL-SSO, pp. 36-37.

[2] Id.

[3] Prefiled Direct Testimony of David M. Blank, pp. 20-21. "I must note, though, in my view any strictly economic analysis of the Short-term ESP is greatly overshadowed by the flexibility offered by the Short-term ESP to the Commission in timing for its longer-run decision."

[4] Prefiled Direct Testimony of David M. Blank, p. 20.

all, of the proposed ratepayer benefit commitments of the longer-term ESP. The Short-term ESP does include those features of the longer term ESP dealing with cost recovery mechanisms and the recovery of costs that are imposed by SB 221.

ARGUMENT

Under the law, the rate plan currently in effect must continue until such time that the Commission has approved either an MRO or an ESP. However, the Commission should reject FirstEnergy's proposal in any event.

The Short-term ESP is unjust and unreasonable for a variety of reasons. First, the base generation rate proposed by FirstEnergy of 7.75 cents per kWh is a figure derived from the market analysis used to produce the 7.50 cents per kWh base generation rate reflected in FirstEnergy's longer-term ESP[5]. The Short-term ESP rate accordingly amplifies the flaws of FirstEnergy's proposed longer-term ESP base generation rate. The record demonstrates—and it stands to reason—that, because market conditions are much different now than at the time the FirstEnergy market rate analysis was produced, wholesale rates for electricity have declined sharply. The 7.75 figure simply has no basis to justify its use – particularly in light of the fact that the period of time under consideration is the very near-term.

The record reflects superior alternatives to FirsEnergy's proposal. Ohio Energy Group, through its witness Stephen J. Baron, argues that the FirstEnergy operating companies could purchase energy for this interim period on the MISO day-ahead market at a much lower rate than that proposed by FirstEnergy.[6] The Commission staff, through the Prefiled Testimony of Robert B. Fortney, has recommended that such short-term plan be "fair to customers and the

[5] Prefiled Direct Testimony of David Blank, p. 21.

[6] Prefiled Direct Testimony of Stephen J. Baron, pp. 12-13. "The Companies' existing generation rates should be continued, subject to an adjustment to reflect the difference between the revenues produced by the currently effective generation rates and the cost of actual purchases from the MISO day-ahead market."

companies, and it should be simple and easily administered."[7] Commission staff witness Fortney suggests a "rate stabilization extension" rather than a short-term ESP which would maintain current rates plus a 2.5% increase.[8] Commission staff witness Johnson recommended a rate of $6.75 for the interim plan during his cross examination on October 29, 2008. Each of these proposals would be superior to FirstEnergy's interim plan and the OHA recommends that the Commission choose from among these alternatives instead of FirstEnergy's proposal.

The Commission is certainly within its rights to modify and approve an interim rate plan as an "ESP" under R.C. 4928.143, subject, of course, to FirstEnergy's right to reject such modified proposal. Under either the Commission staff's or the OEG's alternative proposals, the FirstEnergy operating companies will be reasonably assured of recovering their expenditures for the cost of this short-term power supply. It is difficult to understand why FirstEnergy would reject such a modified short-term ESP—unless the reason concerns the possible adverse affects on FirstEnergy's generation affiliate, FES.

In any event, the Commission is bound to follow the law. Revised Code 4928.141(A) provides in part:

> *** the rate plan of an electric distribution utility shall continue for the purpose of the utility's compliance with this division until a standard service offer is first authorized under section 4928.142 [4928.14.2] or 4928.143 [4928.14.3] of the Revised Code, and, as applicable, pursuant to division (D) of section 4928.143 [4928.14.3] of the Revised Code, any rate plan that extends beyond December 31, 2008, shall continue to be in effect for the subject electric distribution utility for the duration of the plan's term.

The Commission must keep the current rate plan in effect until such time as a just and reasonable SSO plan has been approved and implemented.

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[7] Prefiled Testimony of Robert B. Fortney, p. 10.

[8] Id.

CONCLUSION

The Commission should not adopt FirstEnergy's Short-term ESP and instead should consider one of the alternative proposals offered by either the OEG or the Commission staff.

Respectfully submitted on behalf of
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CERTIFICATE OF SERVICE

I hereby certify that this pleading is being served by electronic mail or personal delivery, as shown below, this 31st day of October 2008.

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