FILE

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 R.C. §4928.143 In the Form Of An Electric Security Plan	)	Case No. 08-935-EL-SSO

OHIO SCHOOLS COUNCIL'S
BRIEF REGARDING THE APPLICANTS'
SHORT TERM ESP

I. INTRODUCTION

Pursuant to the direction of the Attorney Examiners in this case[1], the Ohio Schools Council ("OSC") submits its Brief regarding the Severable Short Term ESP Standard Service Offer ("Short-Term ESP") proposed by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (the "Companies" or "FirstEnergy" or "Operating Companies") in pages 35-37 of the Application filed in the above-captioned matter. If the Short Term ESP is approved as proposed by the Companies, it will result in a significant and disproportionate increase in the electricity rates paid by public school districts in the FirstEnergy service territory.

II. BACKGROUND

OSC is a regional council of governments established under Chapter 167 of the Ohio Revised Code and is a political subdivision of the State of Ohio. OSC operates the Energy for Education II program. In this proceeding, OSC represents the 249 public school districts that

[1] Tr. Vol. I (October 16, 2008).

participate in OSC's Energy for Education II electricity program, all of which are served by the Operating Companies. These 249 districts include all but 5 of the public school districts served by the Companies, and represent 41% of the public school districts in the State of Ohio. There are approximately 731,000 Ohio school children enrolled in the 249 school districts participating in the Energy for Education II program. Ohio public school districts are under extraordinary and well-publicized funding pressures.

Under the Energy for Education II program, each of the 249 school districts have entered into contracts with each district's respective FirstEnergy operating company under O.R.C. § 4905.34. The rates to be charged under each of these contracts are in effect through bills rendered in December, 2008. These rates include a 10% base rate discount and an additional discount obtained through a bond prepayment financing arranged by OSC.

On July 31, 2008, FirstEnergy submitted its Application ("Application") for authority to establish a Standard Service Offer ("SSO") required by Ohio Revised Code Section 4928.141, in the form of an electric security plan ("ESP") pursuant to R.C. 4928.143. FirstEnergy also filed an application for authority to establish a market rate offer SSO, pursuant to R.C. 4928.142, to be implemented in the event that the Commission rejects FirstEnergy's ESP application, or changes that application in a manner unacceptable to FirstEnergy. The Commission's decision on the MRO application is now pending in Case No. 08-936-EL-SSO.

OSC filed a motion to intervene in this case; the motion was granted by the Attorney Examiner in his Entry of October 2, 2008. OSC also has submitted direct testimony in this case. According to the Applicants' figures, the 249 school districts participating in the Energy for Education II program will experience an average increase of about 11% starting January 1, 2009 if the ESP rates go into effect, which equates to about an $8 million annual rate increase for Schools for 2009 alone.[2]

III. THE SHORT TERM PLAN

As part of its Application, FirstEnergy has proposed a Short-Term ESP. FirstEnergy has conditioned its offer of the Short-Term ESP on Commission approval of the Short-Term plan by November 14, 2008, or it is deemed withdrawn.[3] The Short-Term ESP would be in effect from January 1, 2009 until April 30, 2009, or such time when the Commission approves the longer term ESP.[4]

FirstEnergy asserts that its Short-Term ESP proposal provides value by giving the Commission additional time to consider the longer term ESP[5]. FirstEnergy contends that an interim rate plan is necessary because the Operating Companies currently do not have a wholesale contract in place for the supply of electricity beyond December 31, 2008.

The Short-term ESP is based upon the longer term ESP, except in the following respects. 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. In addition, the Short-Term ESP excludes most, if not all, of the proposed ratepayer benefit commitments of the longer-term ESP. The Short-Term ESP, however, includes those ratepayer burden features of the longer term ESP dealing with cost recovery mechanisms and the recovery of costs that may be requested under SB 221.

Further, the Companies' Short-Term ESP provides for resolution of two other key issues in the case, the Companies' pending distribution case, Case No. 07-551-EL-AIR, and the

[2] OSC Exhibit No. 2.

[3] Application at pp. 36-37.

[4] Application at pp. 36-37.

[5] 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."

calculus for determining "significantly excessive earnings" under O.R.C 4928.143(F) The distribution case, and all issues that may be decided within that case, has been severed from the Companies ESP, and this alone makes the Companies Short-Term proposal not approvable without modification or revision.[6] Second, the test used by the Commission to assess whether earnings are significantly excessive is a key check within S.B. 221 that can only assure consumer protection, as intended, if it is thoughtfully implemented. As suggested by Staff Witness Cahaan, the ESP case, much less the Short-Term ESP, is not the proper venue to make this important determination.[7]

In summary, the Short-Term ESP provides some rate stability for the first several months of 2009, but only at a significantly higher rate and a significantly high cost to customer interests. It also provides maximum revenue recovery and security for FirstEnergy – all of the "upsides" for FirstEnergy and all of the "downsides" for consumers.

IV. ARGUMENT

The Commission must follow the law as set out in S.B. 221. The statute states that an electric utility must continue with the current rate plan until a SSO is authorized by the Commission. Revised Code Section 4928.141, provides in relevant part:

> Only a standard service offer authorized in accordance with section 4928.142 [4928.14.2] or 4928.143 [4928.14.3] of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section; and that standard service offer shall serve as the utility's default standard service offer for the purpose of section 4928.14 of the Revised Code. Notwithstanding the foregoing provision, **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. (emphasis added)

[6] Tr. Vol. I, October 16, 2008. (Ruling of Examiner Price)
[7] Testimony of Staff Witness Cahaan at pp. 5-6.

This provision controls the "rate plan" that will be in effect unless and until the Commission determines that ruling on a short-term proposal would be in the best interest of customers. Thus, the first option available to the Commission is not to act on FirstEnergy's Short-Term ESP by November 14, 2008, and allow the Companies to continue the current rate plan in effect until the Commission makes the O.R.C. 4928.143(C)(1) determination of whether an electric security plan is "more favorable in the aggregate as compare to the expected results" of a market rate option.[8] The "second" option available to the Commission is to assess the benefits of a Short-Term plan.[9]

FirstEnergy's Short-Term ESP, as proposed, is flawed beyond redemption. First, the average base generation rate for the Short-term ESP is 7.75 cents/kWh, a figure apparently based upon the same market estimations underpinning the base generation rate contained in FirstEnergy's longer term ESP of 7.5 cents/kWh. There are a number of questions about those market estimates. The record in this case so far reflects the fact that since the time that FirstEnergy's market rate analysis was conducted, on July 15, 2008, wholesale prices for electricity have declined substantially. Thus, the rates and market information contained in FirstEnergy's Application and testimony do not reflect today's market reality, and likely do not reflect market conditions for the first quarter of 2009. The Short-Term ESP rates uses FirstEnergy's proposed 2009 ESP rate as a base and tacks on an additional 3.3%. Ohio Energy Group witness Stephen J. Baron provided an estimate of how inflated this rate may be. He determined, based on MISO day-ahead prices, that the cost should be more like 6.185 cents/kWh.[10] "The difference between the 6.185 cent/kWh rate and the Companies' proposed

[8] *See* O.R.C. 4928.143(C)(1).

[9] As contemplated by O.R.C. 4928.143(C)(2), the Commission may modify any proposed ESP plan in making its (C)(1) determination of whether to approve an Electric Security Plan.

[10] OEG Exhibit No. 1, Testimony of Stephen J. Baron, p. 14.

Short-Term ESP generation rate of 7.75 cents/kWh is $294 million for the four month period January to April 2009."[11]

The record in the case contains at least two possible alternatives to FirstEnergy's Short-Term ESP proposal.[12] OEG witness Baron has suggested that the Companies purchase energy for non-shopping customers via the MISO day-ahead market.[13] Staff, through the testimony of Robert B. Fortney, is recommending that any short-term plan be "fair to customers and the companies, and it should be simple and easily administered."[14] Staff witness Fortney suggests a "rate stabilization extension" rather than a short-term ESP which would maintain current rates plus a 2.5% increase.[15] Both of these proposals serve to demonstrate that the Commission need not feel pressured by FirstEnergy regarding lack of a contract between the Operating Companies and FirstEnergy's affiliate, FirstEnergy Solutions, after January 1, 2009.

As a result, the Commission should order FirstEnergy to continue the current rate plan in effect until such time as a just and reasonable SSO plan has been approved and implemented. OSC sees no benefit to consumers of the Commission making a determination under O.R.C. 4928.143(C)(1) regarding the Companies Short-Term Plan *as proposed.* There is a clear requirement in the law regarding the rates that FE must charge prior to an SSO being approved under S.B. 221. In the alternative, if the Operating Companies cannot or will not procure generation from FirstEnergy Solutions for the first quarter of 2009 at the current FERC 2008

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[11] OEG Exhibit No. 1, Testimony of Stephen J. Baron, p. 13.

[12] Staff Witness Johnson also proposed a Short-Term ESP rate of 6.75 cents/kwh, but, at this time, the bases of this rate proposal are unclear. Thus, OSC does not propose it as a viable alternative. However, this proposal by Staff further reflects the unreasonableness of FirstEnergy's 7.75 cents/kwh proposal. *See* Tr. Vol. X, (Examination of Witness Johnson by Examiner Price).

[13] OEG Exhibit No. 1, Testimony of Stephen J. Baron, p. 12. "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."

[14] Staff Exhibit No. 5, Testimony of Robert B. Fortney, p. 10.

[15] Staff Exhibit No. 5, Testimony of Robert B. Fortney, p. 10.

authorized prices to continue the current generation rates now in effect, then the Commission should adopt, under O.R.C. 4928.143(C)(1), the recommendation to purchase through the MISO day-ahead market similar to what has been proposed by OEG witness Baron for the first quarter of 2009, as an interim plan, until a PUCO-approved ESP or MRO becomes effective.

V. CONCLUSION

To ameliorate potential substantial rate increases to the Schools, the Commission should reject FirstEnergy's Short-term ESP and follow SB 221 by keeping the Operating Companies' rates in their current rate plan in effect after January 1, 2009 until the Commission approves a new SSO, or, in the alternative, order the Companies to procure their supply from the MISO day-ahead market.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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