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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. 08-0935-EL-SSO

NORTHEAST OHIO PUBLIC ENERGY COUNCIL AND NORTHWEST OHIO AGGREGATION COALITION'S BRIEF REGARDING FIRSTENERGY'S SHORT TERM PLAN

I. INTRODUCTION

Pursuant to the direction of the Attorney Examiners in this case, the Northeast Ohio Public Energy Council ("NOPEC") and the Northwest Ohio Aggregation Coalition ("NOAC") submit this Brief regarding the 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") as a feature of its application filed July 31, 2008 ("Application") in the above-captioned matter. NOPEC and NOAC note that they are signatories to, and support, the Brief filed today by the Ohio Consumers and Environmental Advocates ("OCEA") parties, but submit this separate Brief to highlight particular criticisms of FirstEnergy's Short-Term ESP proposal of paramount importance to large-scale governmental aggregators.

II. BACKGROUND

NOPEC is a regional council of governments established under Chapter 167 of the Ohio Revised Code. NOPEC is comprised of 126 member counties, municipalities and townships in nine counties in Northeastern Ohio. NOPEC is a political subdivision of the State of Ohio, and a governmental aggregator certified by this Commission to provide both electricity and natural gas services. NOPEC has aggregated the electricity supplies for approximately 450,000 electric customers located in The Cleveland Electric Illuminating Company ("CEI") and Ohio Edison Company ("OE") service areas of FirstEnergy Corp. NOPEC is the largest public energy aggregator in the State and the nation. Currently, NOPEC's customers are all taking SSO service from the Ohio Edison Company and Cleveland Electric Illuminating Company, and are captive customers of FirstEnergy.

NOAC consists of the Cities of Maumee, Northwood, Oregon, Sylvania, Toledo the Village of Holland, Lake Township and the Board of County Commissioners, Lucas County. NOAC has operated a commercial aggregation program serving 17,000 business and approximately 120,000 residential customers in northwest Ohio. Currently, NOAC's residential electric customers are all taking SSO service from Toledo Edison Company and are captive customers of FirstEnergy.

This briefing has been deemed necessary due to the constrained time periods in both this case and Case No. 09-936-EL-SSO. It is possible that neither case may have been approved by Commission in time for implementation on January 1, 2009, the date on which FirstEnergy's current rate plan is scheduled to expire. As a result, a contingency plan is necessary in order to fill this potential void in the rate structure of the FirstEnergy Operating Companies until such time as an SSO plan, as contemplated by R.C. 4928.141, can be put into place.

III. THE SHORT TERM PLAN

As part of its Application, FirstEnergy has proposed a Severable Short Term ESP Standard Service Offer ("Short-Term ESP"). FirstEnergy has conditioned its offer of the Short-

Term ESP on approval by the Commission by November 14, 2008, or it is 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 when the Commission approves the longer term ESP.[2]

FirstEnergy maintains that its Short-Term ESP proposal provides value by giving the Commission additional time to consider the longer term ESP.[3] FirstEnergy contends that an interim rate plan is necessary because the FirstEnergy Operating Companies currently do not have a wholesale contract in place for the supply of electricity beyond December 31, 2008.[4]

The Short-Term ESP is a close variant of the longer term ESP, except in the following respects: Pricing under the Short-Term ESP would be 7.75 cents per kWh, rather than 7.5 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 *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.

Of critical importance to NOPEC and NOAC, FirstEnergy's Short-Term ESP contains several unlawful, unreasonable and anti-competitive features of its longer term ESP that would make it impossible for large scale governmental aggregations to operate a successful electric aggregation program within FirstEnergy's service territory. The inclusion of a generation phase-in credit available only to SSO customers, a brand new proposed non-bypassable Minimum Default Service ("MDS") Rider, and the Non-Distribution Uncollectibles ("NDU") Rider alone make the Companies' Short-Term plan unsupportable by large-scale governmental aggregators

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[1] Application at pp. 36-37.

[2] Application at pp. 36-37.

[3] 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] Application at p. 41.

even if the Short-Term plan were otherwise acceptable. These provisions have the effect of ensuring NOPEC's and NOAC's customers remain captive customers of the FirstEnergy utilities.

Additionally, as discussed below, the Short-Term ESP plan is not otherwise acceptable or beneficial to customers generally, and its approval would result in substantial and unjustified rate increases to customers. NOPEC and NOAC support the arguments made by the OCEA regarding how the Commission should evaluate the Short-Term ESP proposal as well as their recommendation(s) regarding a more acceptable plan that would benefit all customers during the first quarter of 2009.

IV. ARGUMENT

A. The Commission Should Not Approve a Short-Term ESP that Includes Anti-Competitive Barriers to Customer Participation in Large-Scale Governmental Aggregation.

FirstEnergy's Short-Term ESP plan is anti-competitive and inconsistent with both the policies and statutory mandates of S.B.221, which provides for the encouragement and promotion of large-scale governmental aggregation in Ohio.[5] The Companies' Short-Term ESP plan proposal, like the long-term ESP, is constructed in a manner that inhibits customer shopping, thereby preventing the benefits of customer participation in large-scale governmental aggregation. The three key barriers to large-scale governmental aggregation in the Companies proposed Short-Term plan are as follows.

As proposed by the Companies, the Generation Phase-In ("GPI") Rider would defer recovery in the Short-Term ESP period of 1.0 cents/kWh of the 7.75 cents/kWh base generation rate (6.75 cents/kWh would be charged to customers). At the same time, customers participating

[5] *See* O.R.C. 4928.20(K).

in a large-scale governmental aggregation are provided no deferral credit.[6] Because Rider GPI applies only to customers who accept Rider GEN from the Companies, large-scale governmental aggregators would need to purchase generation at a price lower than Rider GEN less an approximately fifteen percent GPI credit in 2009 to provide the same benefit associated with the Short-Term ESP deferral to potential customers.[7] This mechanism provides a significant and direct barrier to competition. When combined with the MDS Rider, these proposed charges result in substantial and insurmountable barriers to large-scale governmental aggregation under the Short-Term ESP.

FirstEnergy's Short-Term plan, like its long term plan, also penalizes customers who decide to participate in a large-scale governmental aggregation through the application of a non-bypassable "Minimum Default Service" ("MDS") charge of one cent per kWh.[8] Combined with the Rider GPI deferral, this newly proposed "exit fee", results in large-scale government aggregators starting off with a market price disadvantage in the Short-Term ESP plan of 2.0 cents/kWh. This means third-party generation supply would need to be obtained at a price below $57.50/mwh to create any savings to NOPEC's and NOAC's customers. Obviously, this is well below the $77.50/mwh the Companies propose to charge for providing generation service. The effect is to create an unlawful, unreasonable, discriminatory and grossly uneven playing field for large-scale governmental aggregations to obtain savings for their customers. As a result, NOPEC's and NOAC's electricity customers would remain captive customers of FirstEnergy.

The Companies justify the MDS charge as a compensation for the costs and risks associated with obtaining adequate generation resources to serve the entire load of their retail

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[6] Testimony of Mark Frye, p. 4.

[7] Testimony of Mark Frye, p. 6.

[8] Testimony of Mark Frye, p. 5.

customers.[9] Yet the Companies have produced not a shred of evidence as to what administrative charges, hedging costs, or revenues from the MDS are expected.[10] Simply put, this is a charge on consumers who choose third party generation supply without corresponding or comparable benefits.[11] A non-bypassable minimum default service charge would greatly impede, and likely destroy, large scale governmental aggregation, and should be made bypassable for large-scale governmental aggregation customers under the Companies' Short-Term ESP plan, as well as long-term plan.[12] This is particularly compelling if the large-scale governmental aggregators provide adequate advance notice to FirstEnergy that it will not take SSO generation service during the ESP plan period.

Another barrier to large-scale governmental aggregation is Rider NDU. It provides guaranteed generation receivables to FirstEnergy Solutions without a corresponding benefit to any large-scale governmental aggregation generation supplier. Rider NDU would cause any consumer participating in large-scale governmental aggregation to pay twice for uncollectible costs and risks while providing no benefits.[13]

These are the three key barriers to large-scale governmental aggregation FirstEnergy has included in the Short-Term ESP proposal. They should be scrutinized and stricken by the Commission. These provisions are inconsistent with the policies and statutory mandates set forth in S.B. 221. Alone, these provisions are sufficient justification for the rejection or modification of the Companies Short-Term ESP.

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[9] Testimony of Mark Frye, pp. 10-11.

[10] Testimony of Mark Frye, p. 11.

[11] Testimony of Mark Frye, p. 12.

[12] Testimony of Mark Frye, p. 12.

[13] Testimony of Mark Frye, pp. 21-22.

B. <u>The Commission's Decision Regarding the Short-Term ESP Plan Will Send Signals to Potential Suppliers and Could Destroy Potential Opportunities for Customer Savings.</u>

The anti-competitive provisions included in both the Short-Term ESP and ESP plan have real and immediate consequences on the viability of large-scale governmental aggregations even before the Commission makes a decision on the long term ESP. NOPEC has entered into a Letter of Intent ("LOI") with FPL Energy to serve its customer load for the duration of the proposed ESP plan.[14] The LOI contains two significant conditions precedent to the execution of a future power supply agreement: the electric security plan approved by the Commission must (1) extend the full amount of any generation phase-in credit to large-scale governmental aggregation groups, and (2) the MDS rider must be made bypassable for large-scale governmental aggregation group customers. If the Commission approves the Short-Term ESP as proposed by the Companies, without removing these barriers, this will signal a lack of support for the development of large-scale governmental aggregation in Ohio. It could suggest that the Commission does not wish for NOPEC's 600,000 customers to receive a discount on their generation from FPL Energy. The Commission should consider the impact on the NOPEC/FPL Energy agreement in deciding on the Companies' proposed short term ESP.

C. <u>NOPEC and NOAC Support OCEA's Arguments and Recommendations Regarding a Reasonable Short-Term Plan.</u>

While the issues above underscore some of the serious defects of the Companies' Short-Term Plan regarding the future viability of large-scale governmental aggregations, NOPEC and NOAC join in the brief of the OCEA to address the other inadequacies and defects of the Companies' proposed Short-Term plan. NOPEC and NOAC request the Commission to review the recommendations of OCEA regarding what would constitute an effective Short-Term ESP as

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[14] FPL Energy Exhibit No. 1.

if fully incorporated herein. OCEA's brief provides the Commission with an effective interim plan recommendation that will fully compensate FirstEnergy, while, at the same time, establish reasonable terms for SSO service.

V. CONCLUSION

The Commission should reject FirstEnergy's Short-Term ESP based on the unjustifiable, unreasonable and anti-competitive provisions of the plan regarding large-scale governmental aggregations. As further articulated by OCEA, the Companies' plan would harm the interests of NOPEC's and NOAC's customers. NOPEC and NOAC respectfully request the Commission adopt the recommendations of OCEA regarding a reasonable Short-Term ESP plan.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOPEC and NOAC Brief Regarding FirstEnergy's Short-Term Plan was served upon the following parties of record this 31st day of October 2008, *via* electronic transmission, hand-delivery or first class mail, postage prepaid.

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