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October 31, 2008

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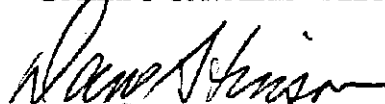
Re: *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan; Case No. 08-935-EL-SSO*

Dear Ms. Jenkins:

Please find enclosed for filing in the above captioned matter the original and twenty (20) copies of the FPL Energy's Brief Regarding the Applicants' Short-Term Electric Security Plan. Please date stamp and return the additional copies enclosed herewith.

Very truly yours,

BAILEY CAVALIERI LLC


Dane Stinson

Enclosures

cc: Parties of Record (via electronic mail)

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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. 08-935-EL-SSO

***FPL ENERGY'S
BRIEF REGARDING THE APPLICANTS'
SHORT-TERM ELECTRIC SECURITY PLAN***

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BEFORE
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In the Matter of the Application of Ohio Edison)	
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***FPL ENERGY'S
BRIEF REGARDING THE APPLICANTS'
SHORT-TERM ELECTRIC SECURITY PLAN***

I. INTRODUCTION

FPL Energy¹ has a substantial interest in this proceeding as it has executed a letter of intent to provide electric supply to the Northeast Ohio Public Energy Council ("NOPEC"), a large-scale governmental aggregation in Northeastern Ohio with approximately 600,000 eligible customers in Ohio Edison's and Cleveland Electric Illuminating Company's service territories. Testimony of NOPEC/NOAC witness Mark Frye, at 3. Whether FPL Energy will be able to enter the Ohio market to serve this considerable load, and thus accomplish the pro-competitive policies of the State of Ohio,² is dependent upon the modifications the Public Utilities Commission of Ohio ("Commission") makes to the Applicants' electric security plan ("ESP" or "Long-Term ESP"). As proposed, the ESP would provide, among other things, an approximate 10%

¹ FPL Energy, LLC's affiliates, FPL Energy Power Marketing, Inc, and Gexa Energy Holdings, LLC, are the entities that have intervened in this proceeding and are jointly referred to herein as FPL Energy.

² The State of Ohio's pro-competitive electric policies generally are contained in Section 4928.02, Ohio Rev. Code. The specific policies designed to encourage and promote large-scale governmental aggregation are contained in Sections 4928.143(B) and 4928.20(I), (J), and (K), Ohio Rev. Code.

generation phase-in credit (“GPIC”) to the standard service offer (“SSO”) during the three years of the ESP; however, no similar credit would be provided to large-scale governmental aggregation customers. Application at 10. In addition, the minimum default service (“MDS”) rider would be assessed against large-scale governmental aggregation customers as a non-bypassable charge. Application at 14. However, the MDS charge is not supported by even a scintilla of evidence. Testimony of FPLE witness Robert M. Garvin, at 13. Testimony of NOPEC/NOAC witness Mark Frye, at 11. The GPIC and MDS, as proposed, would create a significant disparity between the price that consumers would pay if they took SSO service and if they shopped with a large-scale governmental aggregation – so much so that shopping effectively would be prevented – as reflected in the following table. See, also, Testimony of FPLE witness Robert M. Garvin, at 15-16.

	<u>SSO Customers</u> <u>\$ / MWhr</u>	<u>Gov’t. Agg. Customers</u> <u>\$ / MWhr</u>
2009 Base Generation Rate	\$75.00	\$75.00
Proposed ESP GPIC	(\$7.50)	
Net 2009 Base Generation Rate	\$67.50	\$75.00
MDS Rider		\$10.00
Net Base Generation Rate	\$67.50	\$85.00
Gov’t. Agg. Price Disadvantage		<u>\$17.50 (~26 %)</u>

Because of the onerous effect of the GPIC and MDS, the letter of intent contains two significant conditions precedent to the execution of a future power supply agreement with NOPEC: 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. See Testimony of FPLE witness Robert M. Garvin, Attachment A, page 3 at paragraph b.

Unfortunately, the Short-Term ESP proposed in this proceeding retains the GPIC³ and MDS as well as other objectionable features of the Long-Term ESP that would prevent FPL Energy from entering the Ohio market. These features include the non-bypassable non-distribution uncollectible (“NDU”) rider, which clearly is a generation-related charge that should not be imposed upon shopping customers.⁴ Testimony of Staff witness Robert B. Fortney, at 8. These anti-competitive provisions could be in place indefinitely under the statutory framework of SB 221 – and without the careful deliberation of the Commission if it approves the Short-Term ESP intact, as requested by the Applicants. Under such circumstances, FPL Energy requests that the Commission modify the proposed Short-Term ESP and order the Applicants to implement it as revised until such time as an SSO is authorized either under the Long-Term ESP or an MRO. At a minimum, FPL Energy requests that the Commission modify the Short-Term ESP as to large-scale governmental aggregations such that the proposed MDS and NDU riders are

³ Indeed, the Applicants’ Short-Term ESP increases the 2009 base generation charge to \$77.50/MWhr, with a \$10.00/MWhr credit to SSO customers. Application at 37. This would increase the price disadvantage to large-scale governmental aggregation customers reflected in the above table from \$17.50 to \$20.00/MWhr.

⁴ The other features include the non-transparent capacity cost adjustment (“CCA”) rider and fuel transportation surcharge (“FTS”). See Testimony of FPLE witness Robert M. Garvin, at 7-8.

bypassable, and customers receive the full amount of any GPIC available to the Applicants' SSO customers. Moreover, the CCA rider and FTS will be unnecessary during the proposed term of the Short-Term ESP and should be eliminated.

Alternatively, if the Commission does not adopt the above revisions, FPL Energy supports the proposed Short-Term ESP presented by the Ohio Energy Group ("OEG"). See Testimony of OEG witness Stephen J. Baron, at 11-15.

II. ARGUMENT

A. *If the Short-Term ESP is Approved as the Applicants' First SSO, It Could be in Place Indefinitely and Without the Commission's Careful Deliberation on the Anti-Competitive and Controversial Issues Presented in this Proceeding. Section 4928.143(C)(2)(b), Ohio Rev. Code.*

It cannot be disputed that the Applicants' proposed Short-Term ESP differs little from the Long-Term ESP which is the primary subject of this proceeding. The Short-Term ESP retains the anti-competitive provisions discussed above upon which hearing was conducted and upon which the Commission must deliberate in the coming weeks. Application at 37. Yet, the Applicants ask the Commission to approve the Short-Term ESP intact by November 14, 2008 (before briefs are filed in this proceeding) and to reserve ruling on these important issues until its order is issued with respect to the Long-Term ESP. The Applicants request the Commission to issue such order by March 5, 2009.

The Applicants claim that if the Commission rejects the Long-Term ESP, or does not act by the March 5, 2009 deadline, the Applicants' remedy will be to implement their market rate option ("MRO"). Application at 36. The difficulty with the Applicants' position is that it is conceivable that the Commission will not have approved an MRO for

the Applicants by the March 5, 2009 deadline. In that instance, the Commission would be required to continue the Short-Term ESP indefinitely, only allowing adjustments for fuel costs. See Section 4928.143(C)(2)(b), Ohio Rev. Code. In effect, the Commission would have approved an SSO without deliberating on the anti-competitive provisions that were the subject of hearing in this proceeding. Clearly, it would not be prudent to approve the Short-Term ESP as proposed considering that it could remain in effect indefinitely without the benefit of the Commission's deliberate review.

FPL Energy requests that the Commission modify the Short-Term ESP as to large-scale governmental aggregations such that the proposed MDS and NDU riders are bypassable, and customers receive the full amount of any GPIC available to the Applicants' SSO customers.

Moreover, application of the CCA rider will not be necessary until at least May 2009, if then (Application at 18); and the FTS certainly will not exceed the \$30 million baseline by March 5, 2009 (Application at 14). Because the CCA and FTS would not be chargeable during the first quarter of 2009, they should be eliminated from the Applicant's Short-Term ESP.

B. If the Commission Does Not Adopt FPL Energy's Revisions to the Applicants' Short-Term ESP, FPL Energy Supports the Short-Term ESP Proposed by OEG as Reasonable Alternative to the Applicants' Proposed ESP.

FPL Energy finds the Short-Term ESP proposed by OEG to be a reasonable interim plan and supports its adoption if the Commission does not adopt FPL Energy's revisions to the Applicants' proposed Short-Term ESP. The OEG plan would resolve FPL Energy's anti-competitive concerns until the Commission authorizes an SSO under the Long-Term ESP or an MRO, as the plan calls for the Applicants to purchase energy

for non-shopping customers through the MISO day-ahead market. The Applicants' existing generation rates would remain in effect and would be adjusted, through a purchased power recovery rider, to reflect the difference between the revenues produced by the existing rates and the actual cost of purchases from the MISO day-ahead market. See Testimony of OEG witness Stephen J. Baron, at 11-15.

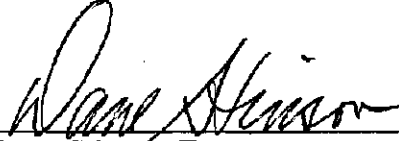
FPL Energy notes that, to the extent the Applicants may not have the requisite personnel to accommodate the power purchases, the Applicants could enter into an agreement whereby a third-party could manage the power procurement.

III. CONCLUSION

For the foregoing reasons, FPL Energy respectfully requests that the Commission modify the Applicants' Short-Term ESP. At a minimum, FPL Energy requests that the Commission modify the Short-Term ESP as to large-scale governmental aggregations such that the proposed MDS and NDU riders are bypassable, and customers receive the full amount of any GPIC available to the Applicants' SSO customers. Moreover, the CCA rider and FTS will be unnecessary during the proposed term of the Short-Term ESP and should be eliminated.

Alternatively, if the Commission does not adopt the above revisions, FPL Energy supports the proposed Short-Term ESP presented by the OEG.

Respectfully submitted,

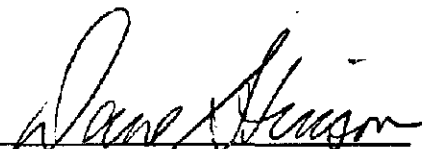
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of FPL Energy's Brief Regarding the Applicants' Short-Term Electric Security Plan was served by electronic mail this 31st day of October, 2008, upon the following.


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