

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Ohio Edison Company,)
The Cleveland Electric Illuminating)
Company, and The Toledo Edison)
Company for Authority to Provide for a) Case No. 12-1230-EL-SSO
Standard Service Offer Pursuant to Section)
4928.143, Revised Code, in the Form of an)
Electric Security Plan.)

ENTRY

The Commission finds:

- (1) Ohio Edison Company (OE), The Cleveland Electric Illuminating Company (CEI), and The Toledo Edison Company (TE) (collectively, 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 April 13, 2012, FirstEnergy filed an application, pursuant to Section 4928.141, Revised Code, to provide for a standard service offer (SSO) commencing as early as May 2, 2012, but no later than June 20, 2012, and ending May 31, 2016. The application is for an electric security plan (ESP), in accordance with Section 4928.143, Revised Code, and the application includes a stipulation agreed to by various parties regarding the terms of the proposed ESP (ESP 3). FirstEnergy states that the stipulation is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process. Additionally, FirstEnergy states that it and numerous other parties have engaged in a wide range of discussions over a period of time related to the development of the ESP 3, which extends, with modifications, a stipulation and second supplemental stipulation modified and approved by the Commission in Case No. 10-388-EL-SSO (ESP 2) for an additional two years.
- (3) Further, on April 13, 2012, FirstEnergy filed a motion for waivers of certain procedural requirements for electric security plans contained in Rule 4901:1-35-03, Ohio Administrative Code (O.A.C.), as well as a request for expedited consideration.

Specifically, FirstEnergy seeks waivers of the filing requirements contained in paragraphs (C)(2), (C)(3), (C)(4), (C)(5), (C)(6), (C)(7), (C)(8), (C)(9), (C)(10), (F), and (G), of Rule 4901:1-35-03, O.A.C., as well as Rules 4901:1-35-04 and 4901:1-35-06, O.A.C.

- (4) In support of its motion, FirstEnergy states that the Companies have made a good faith effort to conform their application to the substantive requirements of the Commission's procedural rules, but that the waivers are necessary for the expedited consideration and approval of the application. FirstEnergy also contends that a waiver of the rules is appropriate because the ESP proposed in the application is the result of a stipulation reflecting participation of numerous interested parties who have considerable familiarity with the subject matter and issues presented and that the waiver will not present undue prejudice.

FirstEnergy specifically states that it is unable, upon the filing of its application, to provide pro forma financial projections regarding the effect of the implementation of the ESP in accordance with Rule 4901:1-35-03(C)(2), O.A.C. Additionally, FirstEnergy states that it would be of little value to provide projected rate impacts in accordance with Rule 4901:1-35-03(C)(3), O.A.C., because, with limited exceptions, the rate schedules under the ESP 3 carry forward the existing rate schedules and, further, that future generation auction prices are an unknown factor. FirstEnergy also seeks a waivers from Rules 4901:1-35-03(C)(4) and 4901:1-35-03(F), O.A.C., requiring a description of the Companies' corporate separation plan, on the basis that the Commission approved the current corporate separation plan in the ESP 2, which continues to be in effect and in compliance with applicable statutes and rules. Similarly, FirstEnergy seeks a waiver of Rule 4901:1-35-03(C)(5), O.A.C., requiring filing of an operational support plan, on the basis that the Companies' operational support plan was approved in the ESP 2, and there are no outstanding problems with its implementation.

Next, FirstEnergy seeks a waiver of Rule 4901:1-35-03(C)(6), O.A.C., stating that it will continue to maintain systems necessary to account for customer participation in governmental aggregation programs. Further, FirstEnergy

seeks a waiver of Rule 4901:1-35-03(C)(7), O.A.C., which requires a description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP. In support of this request, FirstEnergy states that the overall effect of the nonavoidable charge of the ESP 3 is beneficial to customers served by large-scale aggregation groups and all customers. FirstEnergy next seeks a waiver of Rule 4901:1-35-03(C)(8), O.A.C., which requires a discussion as to how state policy is advanced by the ESP, on the basis that the Commission previously determined that the ESP 2 was consistent with state policy, and the ESP 3 largely mirrors the ESP 2.

FirstEnergy also seeks waivers of Rules 4901:1-35-03(C)(9) and 4901:1-35-03(C)(10), O.A.C., to the extent that these provisions requiring additional information may be applicable to the ESP 3 and not otherwise provided for in the Companies' application, stipulation, or supporting testimony. Additionally, FirstEnergy requests waiver of Rule 4901:1-35-03(G), O.A.C., which requires a complete set of work papers to be filed with the application. FirstEnergy stresses again that the ESP 3 essentially carries forward for an additional two years the provisions, schedules, and impacts of the existing ESP 2, for which workpapers were available and reviewed during consideration of the ESP 2.

Finally, FirstEnergy requests a waiver of Rules 4901:1-35-04 and 4901:1-35-06, O.A.C., which require a proposed notice for newspaper publication and provide for a 45-day intervention period, respectively.

- (5) On April 17, 2012, the Ohio Consumers' Counsel, Environmental Law and Policy Center, Natural Resources Defense Council, Northeast Ohio Public Energy Council, and Northwest Ohio Aggregation Coalition (Ohio Consumer and Environmental Advocates or OCEA) filed a joint motion to bifurcate issues and a joint memorandum contra FirstEnergy's motion for waivers. OCEA argues that FirstEnergy has not demonstrated "good cause" for the waivers. Specifically, OCEA urges the Commission to consider whether the information that is the subject of the waiver requests is necessary for an effective and efficient review of the application. Based upon this standard, OCEA claims that

FirstEnergy has not demonstrated good cause for the proposed waivers. OCEA requests that the Commission deny all broadly-stated waiver requests, arguing that the Commission has previously rejected "gap-filling, non-specific requests for waivers." *In re FirstEnergy*, Case No. 03-2144-EL-ATA, Opinion and Order (June 9, 2004) at 40. Specifically, OCEA argues that FirstEnergy's request for a waiver of the pro forma financial projections under Rule 4901:1-35-03(C)(2), O.A.C., is not supported by good cause because FirstEnergy has merely stated that this information is not available upon the filing of the application and that this information would be useful in assessing the effect of rate collections. Additionally, OCEA opposes FirstEnergy's request for waivers of Rules 4901:1-35-03(C)(6), 4901:1-35-03(C)(8), 4901:1-35-03(C)(9), 4901:1-35-03(C)(10), and 4901:1-35-03(G), O.A.C., on the basis that these requests are not supported by good cause. Further, OCEA states that FirstEnergy has failed to set forth good cause for waivers of Rules 4901:1-35-04 and 4901:1-35-06, O.A.C.

- (6) On April 18, 2012, Direct Energy Services, LLC, Direct Energy Business, LLC, and IGS Energy, Inc. (collectively, Direct and IGS), filed a joint memorandum contra FirstEnergy's motion for waivers. In their memorandum contra, Direct and IGS specifically dispute FirstEnergy's requests for waiver of Rule 4901:1-35-03(C)(2), O.A.C., requiring pro forma financial projections, and Rule 4901:1-35-06, O.A.C., governing hearings and interventions. Direct and IGS argue that granting of these waivers would not allow parties adequate time to evaluate the ESP or to make a decision whether to intervene in the ESP.
- (7) Additionally, on April 18, 2012, FirstEnergy filed a memorandum contra OCEA's motion to bifurcate issues as well as a reply to the memoranda contra filed by OCEA and Direct and IGS.
- (8) Moreover, on April 20, 2012, AEP Retail Energy Partners, LLC, filed a memorandum contra FirstEnergy's request for waivers.
- (9) Thereafter, on April 20, 2012, Direct and IGS filed a joint motion to partially strike FirstEnergy's reply to the memoranda contra filed by OCEA and Direct and IGS. In their joint motion, Direct and IGS point out that FirstEnergy filed its April 13, 2012, motion for waivers with a request for expedited

consideration, pursuant to Rule 4901-1-12(C), O.A.C. Direct and IGS contend that Rule 4901-1-12(C), O.A.C., governing requests for expedited rulings, prohibits reply memoranda unless specifically requested by the Commission or attorney examiner. Here, neither the Commission nor the attorney examiner requested reply memoranda. Consequently, Direct and IGS argue that the portions of FirstEnergy's April 18, 2012, filing that constitute a reply to the memoranda contra filed by OCEA and Direct and IGS should be stricken. A similar motion to strike FirstEnergy's reply to the memoranda contra as inconsistent with Rule 4901-1-12(C), O.A.C., was filed by OCEA on April 23, 2012.

- (10) Initially, the Commission will consider the motion to partially strike FirstEnergy's reply to the memoranda contra filed by OCEA and Direct and IGS. The Commission finds that, pursuant to Rule 4901-1-12(C), O.A.C., the portions of FirstEnergy's April 18, 2012, filing that constitute a reply to the memoranda contra filed by OCEA and Direct and IGS are not permitted and are hereby stricken.
- (11) As to FirstEnergy's April 13, 2012, request for waivers, the Commission notes that Rule 4901:1-35-02(B), O.A.C., provides that the Commission may waive any requirement of Chapter 4901:1-35, O.A.C., other than a requirement mandated by statute, for good cause shown.

Here, the Commission finds that the request for waivers should be granted, in part, and denied, in part. The Commission notes that the application and stipulation filed in this proceeding appear on their face to extend for an additional two years, with modifications, the electric security plan originally modified and approved by the Commission in the ESP 2. Therefore, the Commission finds that FirstEnergy has demonstrated good cause for a waiver of the filing requirements contained in Rules 4901:1-35-03(C)(4), 4901:1-35-03(C)(9)(a), 4901:1-35-03(C)(9)(b), 4901:1-35-03(C)(9)(d), 4901:1-35-03(C)(9)(e), 4901:1-35-03(C)(9)(f), 4901:1-35-03(C)(10), 4901:1-35-03(F), and 4901:1-35-03(G), O.A.C. The Commission notes specifically as to Rule 4901:1-35-03(G), O.A.C., that, despite the waiver of this section, workpapers are discoverable and must be made available to Staff upon request.

However, as the Commission noted in its previous finding in the ESP 2, the financial projections provided for in Rule 4901:1-35-03(C)(2), O.A.C., are necessary to our consideration of this type of application and stipulation and in the public interest. Similarly, the Commission finds that the information on projected rate impacts required by Rule 4901:1-35-03(C)(3), O.A.C.; information regarding the operational support plan required by Rule 4901:1-35-03(C)(5), O.A.C.; information relating to governmental aggregation programs required by Rules 4901:1-35-03(C)(6) and 4901:1-35-03(C)(7), O.A.C.; statement regarding state policy required by Rule 4901:1-35-03(C)(8), O.A.C.; information regarding retail shopping required by Rule 4901:1-35-03(C)(9)(c), O.A.C.; information on alternative regulation mechanisms or programs relating to distribution service required by Rule 4901:1-35-03(C)(9)(g), O.A.C.; and, information concerning provisions for economic development, job retention, and energy efficiency programs required by Rule 4901:1-35-03(C)(9)(h), O.A.C., are necessary for our consideration of the application and stipulation. Additionally, some of these filing requirements may involve information that differs from the information utilized in the ESP 2. Consequently, the Commission denies FirstEnergy's request for a waiver of Rules 4901:1-35-03(C)(2), 4901:1-35-03(C)(3), 4901:1-35-03(C)(5), 4901:1-35-03(C)(6), 4901:1-35-03(C)(7), 4901:1-35-03(C)(8), 4901:1-35-03(C)(9)(c), 4901:1-35-03(C)(9)(g), and 4901:1-35-03(C)(9)(h), O.A.C. FirstEnergy is directed to supplement its application with this information within seven days unless otherwise ordered by the Commission or the attorney examiner.

- (12) The Commission finds that the waiver of Rule 4901:1-35-04, O.A.C., which required FirstEnergy to include a proposed notice in its application, is granted. This is not the first SSO application filed by FirstEnergy, and, through the prior cases, the Commission has developed a consistent format for the published notice. The Commission anticipates that the notice in this proceeding will be consistent with the notice used in the prior SSO proceedings.
- (13) Finally, with respect to FirstEnergy's request for a waiver of Rule 4901:1-35-06, O.A.C., the Commission finds that this request is moot. The attorney examiner has established the deadline of April 30, 2012, for intervention, pursuant to Rule

4901:1-35-06(B), O.A.C. Further, the Commission notes that the attorney examiner has already granted intervention to all parties who participated as intervenors in the ESP 2 without the necessity of filing motions to intervene.

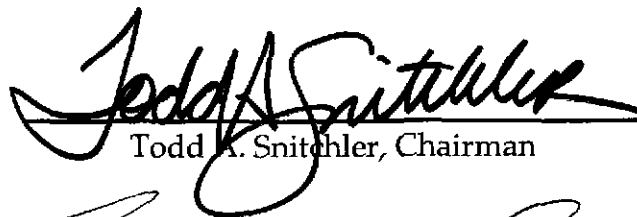
It is, therefore,

ORDERED, That FirstEnergy's motion for waivers be granted, in part, and denied, in part, as set forth in Findings (11) through (13). It is, further,

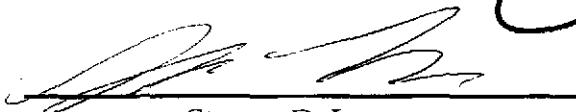
ORDERED, That FirstEnergy file supplemental information to its application, as set forth in Finding (11), within seven days. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record in this proceeding and all parties of record in Case No. 10-388-EL-SSO.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Todd A. Snitchler, Chairman



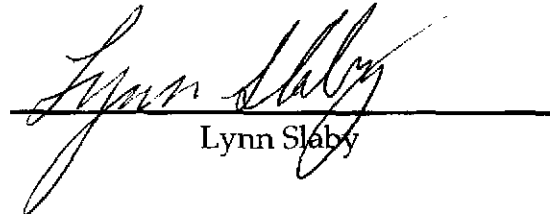
Steven D. Lesser



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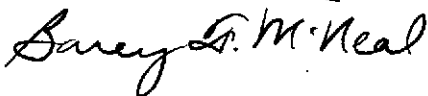


Lynn Slaby

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Entered in the Journal

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