

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 attorney examiner finds:

- (1) Ohio Edison Company (OE), The Cleveland Electric Illuminating Company (CEI), and the Toledo Edison Company (TE) (collectively, FirstEnergy or the Companies) 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 and recommendation (Stipulation) agreed to by various parties regarding the terms of the proposed ESP (ESP 3).
- (3) The attorney examiner granted intervention in this proceeding to Direct Energy Services, LLC, and Direct Energy Business, LLC (jointly, Direct Energy).
- (4) On May 9, 2012, Direct Energy filed a motion to compel FirstEnergy to respond to certain interrogatory requests and produce certain documents requested by Direct Energy in its First Set of Interrogatories and Request for Production of Documents, which it served upon FirstEnergy on April 23, 2012. In its motion, Direct Energy alleges that FirstEnergy failed to respond to certain interrogatory requests and produce certain documents that Direct Energy is entitled to receive

under applicable rules and statutes and that the parties have been unable to resolve their discovery dispute.

- (5) Direct Energy identifies three requests at issue including Interrogatory Set 1-INT 19, and Document Requests No. 1-002 and 1-003. In Interrogatory Set 1-INT 19, Direct Energy requested that FirstEnergy provide an anonymous breakdown (by percentage) of the competitive retail electric service (CRES) providers in the respective Companies' service territories, without identifying any CRES provider by name. FirstEnergy objected to the request on the basis that the information sought is irrelevant, beyond the scope of the proceeding, and subject to confidentiality provisions. In its motion to compel, Direct Energy states that this information is relevant because it intends to present evidence about the state of the competitive market and how the Commission can modify the Stipulation to enhance the retail competitive marketplace in the FirstEnergy territories. Additionally, Direct Energy argues that the request would not break any confidentiality agreement because the information would be anonymous and encompass the entire market.
- (6) In Document Request Nos. 1-002 and 1-003, respectively, Direct Energy requested that FirstEnergy produce copies of a FirstEnergy customer's bills (with personal information redacted if necessary) that was receiving CRES service and returned to SSO service with a CRES arrearage remaining unpaid after the ninth billing cycle, including the eighth, ninth, tenth, and eleventh billing cycles and that FirstEnergy produce copies of a FirstEnergy customer's bills (with personal information redacted if necessary) on both a "one-sixth" and "one-ninth" deferred payment plan under Rule 4901:1-18-05(B), Ohio Administrative Code (O.A.C.). In its responses to both requests, FirstEnergy objected to the requests as irrelevant and overly burdensome. In its motion to compel, Direct Energy states that this information is relevant because it seeks to present evidence in support of modifying the Stipulation to require FirstEnergy to offer a purchase of receivables (POR) program to enhance the competitive market. Further, Direct Energy states that it would not be overly burdensome for a large company such as FirstEnergy to produce these types of documents.

- (7) Subsequently, on May 14, 2012, FirstEnergy filed a memorandum contra Direct Energy's motion to compel. In its memorandum contra, FirstEnergy argues that Direct Energy's Interrogatory Set 1-INT 19 improperly seeks information that is confidential and may not be disclosed under Rule 4901:1-37-04(D)(4), O.A.C. FirstEnergy further explains that this obligation of confidentiality is confirmed in the Companies' supplier tariffs, which provide that confidential information made available to the Companies by CRES suppliers may not be disclosed without the CRES suppliers' consent absent a court or agency order. Further, FirstEnergy notes that information regarding the total load served by an individual CRES provider in the Companies' territories is obtained from the CRES provider and is not publicly available.
- (8) Additionally, FirstEnergy maintains in its memorandum contra that Document Request Nos. 1-002 and 1-003 are irrelevant and beyond the scope of the proceeding. Specifically, FirstEnergy argues that detailed information relating to the Companies' handling of accounts receivable is irrelevant because the Companies' handling of accounts receivable is not at issue in this proceeding. Further, as to Document Request No. 1-003, FirstEnergy argues that production of these specified bills would require an unreasonable amount of time and effort.
- (9) Thereafter, on May 16, 2012, Direct Energy filed a reply to FirstEnergy's memorandum contra. In its reply, Direct Energy restates the arguments contained in its motion to compel and, further, argues that, as to Interrogatory Set 1-INT 19, it is telling that no CRES supplier filed a memorandum contra or motion for protective order regarding Direct Energy's motion to compel. Direct Energy argues that, if FirstEnergy's argument was valid, CRES providers would logically seek to maintain the confidentiality of the information at issue in the motion to compel. Further, as to Document Request Nos. 1-002 and 1-003, Direct Energy argues that the practical effects of the payment priority currently utilized by FirstEnergy are relevant in assessing the development of the competitive market in FirstEnergy service territories. Additionally, Direct Energy clarifies that it is requesting representative samples of customer bills for a single customer in several scenarios, which is not unreasonable or an undue burden. Finally, Direct Energy requests that the Commission require FirstEnergy to

electronically serve responses to the discovery requests by 5:30 p.m. on May 18, 2012, to allow a reasonable amount of time to be incorporated into testimony to be filed by Direct Energy that is due by 3:00 p.m. on May 21, 2012.

- (10) With regard to Interrogatory Set 1-INT 19, the attorney examiner finds that the motion to compel should be denied. Specifically, the attorney examiner finds that the information regarding the total load served by individual CRES providers is confidential and may not be disclosed under Rule 4901:1-37-04(D)(4), O.A.C., and the Companies' supplier tariffs, as this information is obtained from the CRES providers and is not publicly available. In so finding, however, the attorney examiner notes that Direct Energy has argued that it is telling that no CRES supplier filed a memorandum contra or motion for protective order regarding Direct Energy's motion to compel. Consequently, Direct Energy is free to request the CRES suppliers to provide this information if it wishes.
- (11) With respect to Document Request Nos. 1-002 and 1-003, the attorney examiner finds that the requested information is appropriate subject matter for the purposes of discovery. Although FirstEnergy has argued that detailed information relating to the Companies' handling of accounts receivable is irrelevant, Direct Energy has stated that it intends to use the requested information to demonstrate to the Commission that a POR program would enhance the competitive market and that the Commission should modify the Stipulation accordingly. The attorney examiner emphasizes that, under the three-prong test the Commission uses to determine the reasonableness of a stipulation, the Commission always carefully reviews the terms and conditions of a proposed stipulation to determine whether it is in the public interest. Moreover, the fact that the Companies have not included provisions related to POR does not preclude non-signatory parties from advocating that a POR program be included in the ESP, as long as such program is authorized to be part of an ESP pursuant to Section 4928.143(B), Revised Code. Accordingly, parties are entitled to seek discovery of information which is reasonably calculated to lead to the discovery of admissible evidence that is relevant under the three-prong test as well as Section 4928.143, Revised Code. Further, the Commission finds that production of the bills

specified in Document Request Nos. 1-002 and 1-003 would not be overly burdensome to FirstEnergy.

- (12) Consequently, the attorney examiner finds that FirstEnergy should provide Direct Energy with the information requested in Document Request Nos. 1-002 and 1-003. FirstEnergy shall electronically serve responses to the specified discovery requests on Direct Energy by 5:30 p.m. on Monday, May 21, 2012. However, if FirstEnergy furnishes the documents by 5:30 p.m. on Friday, May 18, 2012, Direct Energy will be required to file its testimony under the previously-established deadline of 3:00 p.m. on Monday, May 21, 2012. If FirstEnergy does not furnish the documents until 5:30 p.m. on Monday, May 21, 2012, the deadline for Direct Energy to file its testimony will be extended to 3:00 p.m. on May 24, 2012.

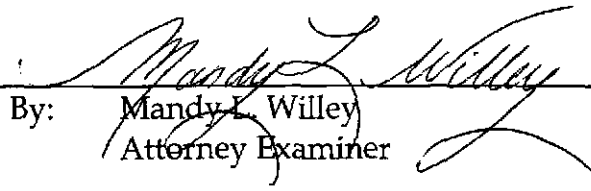
It is, therefore,

ORDERED, That Direct Energy's motion to compel is granted in part, and denied in part, in accordance with the findings above. It is, further,

ORDERED, That FirstEnergy provide Direct Energy with the information requested in Document Request Nos. 1-002 and 1-003 in accordance with Finding (12). It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

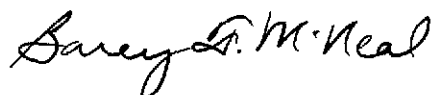
THE PUBLIC UTILITIES COMMISSION OF OHIO

By:   
Mandy L. Willey  
Attorney Examiner

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MAY 17 2012



Barcy F. McNeal  
Secretary