

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	:	Case No. 12-1230-EL-SSO
Edison Company For Authority to Provide	:	
For a Standard Service Offer Pursuant to	:	
R.C. §4928.143 in the Form of	:	
An Electric Security Plan	:	

AEP RETAIL ENERGY PARTNERS LLC'S
MOTION TO CONTINUE HEARING DATE, AND TO
MODIFY PROCEDURAL SCHEDULE,
AND
REQUEST FOR EXPEDITED RULING

AEP Retail Energy Partners LLC ("AEP Retail"), by and through its attorneys and pursuant to Ohio Administrative Code Section 4901-1-12(A), respectfully requests the entry of an order that continues the hearing in this matter set for June 4, 2012, and that further modifies the procedural schedule to require FirstEnergy to file supplemental testimony that analyzes the Stipulation in light of the announced results of PJM's May, 2012, Base Residual Auction and to also permit the parties time to evaluate and respond to FirstEnergy's updated proposal. In addition AEP Retail respectfully requests an expedited ruling on this motion pursuant to 4901-1-12(C).

The bases for this motion are set forth in the attached memorandum in support, which is incorporated by reference herein.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (together, "FirstEnergy") initiated this case by filing an application at

the end of the day on Friday, April 13, 2012. The gravamen of FirstEnergy's application is its claim that it can capture what it maintains are current low energy and capacity rates if only this Commission allows it to act immediately to extend its current ESP for an additional two years. To do so, FirstEnergy claims that expedited treatment of its application – with a Commission decision due no later than June 20, 2012 – is necessary if it is to successfully modify the rules of its own CBP auction – which is not scheduled to occur until October, 2012¹ – and provide notice to potential bidders in that auction that it is seeking bids for a three year "product", rather than the one year "product" authorized at this time. In order to accommodate FirstEnergy's haste, hearings are currently scheduled to begin June 4, 2012.

II. DISCUSSION

Unhappily, nothing about FirstEnergy's application can be accepted at face value by the intervenors, nor should it be accepted at face value by this Commission. Without belaboring this point, a single demonstrative example is in order: FirstEnergy began this case by demanding a final Opinion and Order by this Commission no later than May 2, 2012, claiming that this date was absolutely necessary in order to permit it to bid Demand Response and Energy Efficiency resources into PJM's May 7, 2012, 2015/2016 base residual auction (BRA). After the Commission's attorney examiner recognized the impossibility of meeting the first of FirstEnergy's proposed deadlines, however, FirstEnergy acknowledged that even without a decision by this Commission it had always intended to, and it did, bid Energy Efficiency resources into that same auction.²

Despite this initial deception – or perhaps because of it – FirstEnergy secured an expedited procedural schedule, and the intervening parties have strived to comply with that

¹ In its April 20, 2012, Motion to Modify Procedural Schedule, AEP Retail outlined reasons why it maintains the June 20, 2012, dictated by FirstEnergy is itself needlessly artificial and it will not repeat those reasons herein.

² See FirstEnergy's Confidential Response to Sierra Club's Request for Production No. 1.

schedule. That schedule currently contemplates that hearings will begin in less than one week, on June 4, 2012.

On May 18, 2012, however, PJM announced the results of PJM's BRA. With its announcement of those results, PJM cast into question the very foundation of FirstEnergy's application – its ability to "capture" low energy and capacity rates through competitive bids received in October 2012 and extending out to the 2015/2016 delivery year. In short, the resource clearing price PJM announced that would apply throughout most of the RTO is \$136.00 per MW-day in 2015-2016, a modest rise over the \$125.99 per MW-day RTO price for 2014/2015. These prices are obviously a very far cry from the \$16.46 and \$27.73 per MW-day prices received, respectively, for the 2012/2013 and 2013/2014 delivery years and to which FirstEnergy apparently refers when it expresses a hope of capturing "low" capacity prices.

Even more significantly, however, PJM also revealed that it had modeled FirstEnergy's electric transmission subsidiary, American Transmission Systems Inc. ("ATSI"), as a separate Locational Deliverability Area (LDA) within PJM. As a result of this modeling, PJM determined that the ATSI LDA will be locationally constrained for the delivery year 2015/2016. As a result, capacity prices within the ATSI LDA for the 2015/2016 delivery year will not equal the prices prevailing throughout most of PJM, but will instead be **\$357.00 per MW-day**, a price inconsistent with FirstEnergy's promise of capturing "low" market prices.³ In fact, after application of all applicable scaling factors and adjustments necessary to convert the auction price into a price paid by load (such as zonal scaling factors and forecast pool requirements), the actual capacity price paid by load in the ATSI zone during delivery year 2015/2016 is likely to approach or exceed approximately **\$400/MW-day**.

³ Unless otherwise indicated, the quoted BRA prices are for Annual Capacity as defined in PJM rules. Other capacity products are available, and traded at separate prices.

Unfortunately, the record in this case hardly reflects these indisputable facts. This, of course, is in no small part because of the extreme haste with which FirstEnergy has pursued a rush toward judgment of its ESP-3, and the unfair constraints that this rush to judgment is imposing upon the non-signatory intervenors. Again – without belaboring the point — an example is in order. The testimony of witnesses sponsored by non-signatory intervening parties was Ordered to be filed no later than 3:00 p.m., Monday, May 21, 2012. As it would turn out, ***this date and time proved to be exactly six business hours*** after PJM announced the results of its BRA, which announcement occurred after the close of business on Friday, May 18, 2012. As a result, of all the witnesses sponsored by the various intervenors, only Mr. James F. Wilson, whose testimony is sponsored by the Office of Consumers' Counsel, appears to have had any opportunity to obtain the results of PJM's BRA, review those results, appreciate the significance thereof in the context of this case, and then even attempt to prepare testimony to address concerns raised by the auction results.

It is remarkable, in a proceeding in which the burden of proof has been placed upon it by statute, that FirstEnergy has identified not one witness to explain *when* FirstEnergy decided to seek three-year products instead of the one-year products previously scheduled for the October 2012 and January 2013 auctions, *how* that decision was made, or even *what information* underlies its decision. Instead, its application is supported solely by FirstEnergy's expression of "hope" that it will "capture" "low" energy and capacity prices – a hope that clearly appears to be hollow, at this point. Furthermore, FirstEnergy has repeatedly stonewalled the parties' efforts to discover FirstEnergy's own forecasts of energy and capacity prices upon which it may have relied when it prepared its application. AEP Retail respectfully suggests, based upon FirstEnergy's failure to disclose such information, that FirstEnergy's predicted what is now

known – the prices that FirstEnergy hoped to "capture" would not be continued low energy and capacity prices, but would instead reflect the locational constraints within the ATSI system that benefit FirstEnergy's competitive retail and wholesale generation affiliate, FirstEnergy Solutions.

The results of the PJM auction affect every issue before this Commission and all segments of the electric markets in First Energy's territory in Ohio, and include:

Whether FirstEnergy Can Satisfy the MRO Test. The monetary benefit of FirstEnergy's ESP 3 application – if indeed any exists – appears to consist largely if not entirely of its 6% discount to PIPP customers, equaling approximately \$5 Million in annual revenue that FirstEnergy has arranged for its competitive affiliate, FirstEnergy Solutions, to "foregoe" in order to provide the discount.

Per FirstEnergy's response to AEPR INT-1, FirstEnergy has used an average of its October 2010 and January 2011 auction results to calculate the "benefit" of its proposed ESP, including the PIPP discount. This Commission should direct FirstEnergy to submit additional testimony that adjusts the capacity prices embedded in the CBP Price to reflect the results of the May, 2012, PJM auction, and/or forecast CBP Prices using those same inputs. Even minor adjustments in MRO test could impact whether the test can be passed once the RTEP benefits previously counted in ESP 2 are removed, as suggested by several witnesses including Staff witness Robert B. Fortney. These answers will provide overdue transparency to aid the Commission in determining whether the Stipulation is beneficial to ratepayers and in the public interest. As further described below, FirstEnergy has to date refused to respond to virtually all requests for information concerning its typical bill analysis and assumptions regarding energy and capacity prices underlying that analysis, despite the fact that FirstEnergy expressly agreed to separately account for energy and capacity in terms contained within both the proposed

stipulation as well as the Stipulation that resolved FirstEnergy's ESP 2 case, 10-388-EL-SSO.

Retail Pricing and FirstEnergy's Typical Bills Analysis The typical bills analysis submitted by FirstEnergy is of unknown meaning, as it appears to contain no analysis of future pricing, and FirstEnergy refuses to confirm whether it uses as its basis the same CBP Price as inputs into its typical bill determinations. At best, FirstEnergy suggests⁴ that there is no record support to demonstrate pricing for the typical bills for the years 2014-2016, let alone to take into account the effect of the May 2012, RPM auction. What *is* known from FirstEnergy's response to AEPR INT-11 is that FirstEnergy has made no projection of the generation prices that would apply to the two-year extension period (AEPR INT-11.4), and performed no analyses of whether its plan would in fact smooth generation prices or mitigate volatility for customers (AEPR INT-11.7).

At a minimum, FirstEnergy should be required to update its typical bills analysis to show the effect of the new capacity rate for the 2015/2016 PJM Planning Year. It should also be ordered to update its typical bill analysis using appropriate forward price forecast curves for energy within the PJM market, with a level of transparency the provides intervenors and this Commission the ability to understand those results. Thus, as part of its filing obligations, FirstEnergy should submit information in which its typical bill analysis includes the effect of Rider GEN (containing the auction price), and in formulating its response, FirstEnergy should be compelled to abide by Sections A.5.iv of the stipulations in both its ESP 2 and ESP 3 cases, both of which require and provide a method for breaking out capacity from the auction price. If the Commission is unwilling to direct FirstEnergy to submit such additional testimony, it should nonetheless provide the intervenors with the opportunity to perform additional discovery

⁴ See Response to NOPEC Int. 20 and 21, Response to AEP Retail Int. 88.2-88.6.

regarding these issues – or at the very least permit the intervenors an opportunity to follow up on outstanding discovery by obtaining rulings on motions to compel prior to the hearings, and then permit those rulings to guide additional witness testimony.

CBP Prices and Product Durations. The fact that the ATSI Zone cleared at \$357/MW-Day, and the rest of the PJM market cleared at \$136/MW-day, provides new evidence of an increasing uncertainty that surrounds the wholesale market prices within ATSI. As OCC Witness Wilson observes,⁵ such uncertainty – when added to the uncertainties involving the timing and amounts of unit retirements by FirstEnergy's generation affiliate, FirstEnergy Solutions, and others, within ATSI, and the implementation timing of the reported \$1.4 Billion⁶ of additional transmission resources needed to resolve transmission bottlenecks within the ATSI zone – is likely to have the effect of increasing CBP prices.

This Commission should direct FirstEnergy to explain why it is in the interests of its customers, the interests of competition, and the State of Ohio itself, to proceed with a three year auction in October, 2012 and January, 2013, when those risks appear likely to be at their zenith given the unknowns about generation retirements and transmission construction in the ATSI zone that are likely to continue to be unresolved at those times, particularly as it affects the 2015/2016 period. The Commission should direct FirstEnergy to provide additional testimony on the fundamental reasonableness of its CBP plan, and to explain how such uncertainties can be mitigated to ensure bidders do not need to charge risk premiums that may undermine FirstEnergy's stated goal of capturing today's "low" energy prices.

Ability of Generation outside ATSI to Compete For Auctioned Load. The separation in capacity prices between ATSI and the rest of market in PJM highlight the potential

⁵ Direct Testimony of James F. Wilson ("Wilson Testimony") pgs. 21-24.

⁶ Wilson Testimony pg. 15.

transmission bottlenecks that could also affect the ability and price at which generators from outside the zone are able to sell energy into energy into ATSI under the CBP. As OCC witness Wilson notes, these dislocations are most likely to advantage generators inside the ATSI zone – most principally, FES – at the expense of generators with resources in PJM outside the ATSI zone.⁷

It is the State policy of Ohio, however, to favor a level playing field for all competitors, which extends to competitors for CPB auctions. As a result, FirstEnergy should be compelled to propose a plan to ameliorate, if not eliminate entirely, the disadvantages which non-affiliated providers will bear in competing for load in the upcoming CPB auctions which will cover periods during which in-zone generation in ATSI appear to be favored. Just as importantly, these same bottlenecks could significantly reduce competition for the CBP and have the resulting effect of raising CBP prices, which will affect both shopping customers and non-shopping customers with percentage-off contracts, including much of the governmental aggregation load in FirstEnergy's territory. As witness Wilson also observes, there currently is no liquid trading hub in ATSI to facilitate the bidding into the apparently constrained ATSI zone.⁸ FirstEnergy should provide additional testimony on how it intends to ensure the integrity of its proposed auctions and to support a level playing field for suppliers in and out of the ATSI zone.

Ability of CRES providers to compete for Aggregation and Customer Load. For the same reasons, the dramatic dislocation in RPM auction clearing prices is new evidence that CRES providers from outside the ATSI zone could face an unlevel playing field in competing for FirstEnergy customers in comparison to CRES providers owning capacity within the ATSI zone such as FirstEnergy Solutions.

⁷ Wilson Testimony, pg. 24.

⁸ Wilson Testimony, pg. 18.

Consistency with State Policies. FirstEnergy has the burden under the second element of the three-part test for Stipulations of showing that the stipulation does not violate any important regulatory practice or principle. (Rule 4901:1-35-03(C)(8). See also, Ridmann - p.13). The results of the PJM capacity auction, and the issues that increase raises for competition within the ATSI zone will directly impact any number of state policy issues. FirstEnergy has not addressed these issues, and additional evidence should be gathered and submitted prior to hearing. Each of the following state policies described in Ohio Revised Code section 4928.02, at a minimum, are impacted by the announced results of the BRA – the effect of which isn't addressed by FirstEnergy at this point in time.

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

(C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;

(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;

(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;

III. CONCLUSION

For the foregoing reasons, AEP Retail respectfully asks that this Commission GRANT its Motion and modify the procedural schedule in order to require FirstEnergy to file supplemental

testimony that analyzes the Stipulation in light of the announced results of PJM's May, 2012, Base Residual Auction and to provide non-signatory intervenors a meaningful opportunity to seek further discovery, file additional testimony, and prepare for meaningful hearings on FirstEnergy's application in light of these updates. Even if the commission does not order First Energy to file additional testimony, relief is still appropriate to permit provide non-signatory intervenors a meaningful opportunity to seek further discovery, file additional testimony, and prepare for meaningful hearings on FirstEnergy's application in light of PJM's May, 2012 Base Residual Auction results.

Finally, because hearings are scheduled to begin on June 4, 2012 the AEP Retail requests expedited consideration of its Motion pursuant to Ohio Adm. Code 4901-1-12(C). AEP Retail cannot certify that no party objects to a ruling on this Motion on an expedited basis.

Respectfully submitted,

/s/ Michael D. Dortch
Michael D. Dortch (0043897)
KRAVITZ, BROWN & DORTCH, LLC
65 East State Street
Suite 200
Columbus, OH 43215
(614)464-2000
(614)464-2002 (fax)
mdortch@kravitzllc.com

Attorneys for
AEP RETAIL ENERGY PARTNERS LLC

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing were served upon the following parties to this proceeding this May 29, 2012, via electronic mail if available or by depositing the same in the United States Mail, postage prepaid, addressed as follows:

James W. Burk
Arthur E. Korkosz
Mark A. Hayden
Ebony L. Miller
FirstEnergy Service Company
76 S. Main Street
Akron OH 44308

James F. Lang
Laura C. McBride
Calfee, Halter & Griswold LLP
1405 East Sixth Street
Cleveland OH 44114

David A. Kutick
Jones Day
901 Lakeside Avenue
Cleveland OH 44114

Attorneys for Applicants, Ohio Edison
Company, The Cleveland Electric
Illuminating Company, and The Toledo
Edison Company

Thomas McNamee
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus OH 43215

Asim Z. Haque
Christopher L. Miller
Gregory H. Dunn
Alan G. Starkoff
Ice Miller LLP
240 West Street
Columbus OH 43215

Attorneys for Direct Energy Services, LLC
And Direct Energy Business LLC

Vincent Parisi
Matthew White
Interstate Gas Supply, Inc
6100 Emerald Parkway
Dublin OH 43016

Attorneys for Interstate Gas Supply, Inc.

M. Howard Petricoff
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus OH 43216-1008

Attorneys for Exelon Generation Company,
LLC and Constellation NewEnergy, Inc.

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay OH 45839-1793

Attorney for Ohio Partners for Affordable
Energy

Judi L. Sobecki
Randall V. Griffin
The Dayton Power and Light Company
1065 Woodman Drive
Dayton OH 45432

Attorneys for The Dayton Power and Light
Company

Joseph M. Clark
6641 North High Street, Suite 200
Worthington OH 43085

Attorney for Direct Energy Services, LLC
and Direct Energy Business LLC

Glenn Krassen
Bricker & Eckler LLP
1001 Lakeside Avenue
Cleveland OH 44114

Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus OH 43215

Attorneys for the Northeast Ohio Public
Energy Council

Leslie A. Kovacik
City of Toledo
420 Madison Ave., Suite 100
Toledo OH 43604-1219

Counsel on behalf of the Northwest Ohio
Aggregation Coalition

Cynthia Fonner Brady
David I. Fein
550 W. Washington Street, Suite 300
Chicago IL 60661

Attorneys for Constellation Energy
Resources, LLC

Robert Kelter
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago IL 60601

Environmental Law & Policy Center

Christopher J. Allwein
Williams Allwein & Moser, L.L.C.
1373 Grandview Ave., Suite 212
Columbus OH 43212

Natural Resources Defense Council
Thomas R. Hays
John Borell
Lucas County Prosecutors Office
700 Adams Street Suite 251
Toledo OH 43604

Counsel on behalf of the Northwest Ohio
Aggregation Coalition

Larry S. Sauer, Counsel of Record
Terry L. Etter
Melissa Yost
Assistant Consumers' Counsel
Ohio of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus OH 43215

Sandy I-ru Grace
Exelon Business Services Company
101 Constitution Avenue NW, Suite 400
East
Washington DC 20001

Stephen Bennett
Exelon Generation Company LLC
300 Exelon Way
Kennett Square PA 19348

/s/ Michael D. Dortch
Michael D. Dortch

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Summary: Motion to Continue Hearing Date, and to Modify Procedural Schedule, and Request for Expedited Ruling electronically filed by Mr. Michael D. Dortch on behalf of AEP Retail Energy Partners, LLC