

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 agreed to by various parties regarding the terms of the proposed ESP (ESP 3).
- (3) The attorney examiner granted intervention in this proceeding to AEP Retail Energy Partners LLC (AEP Retail).
- (4) On May 29, 2012, AEP Retail filed a motion to continue the hearing date and modify the procedural schedule, as well as a request for an expedited ruling. In its memorandum in support, AEP Retail states that, in light of the announced result of PJM's May 2012 Base Residual Auction (BRA), FirstEnergy should be required to file supplemental testimony that analyzes the stipulation in light of the BRA

results and the parties should be afforded time to evaluate and respond to the supplement.

- (5) Shortly thereafter, on May 30, 2012, AEP Retail filed a motion to compel FirstEnergy to respond to certain interrogatory requests by AEP Retail in its Fourth and Seventh Set of Interrogatories. In its motion, AEP Retail alleges that FirstEnergy failed to adequately respond to certain interrogatory requests that are relevant to this proceeding and that the parties have been unable to resolve their discovery dispute.
- (6) AEP Retail identifies eight requests at issue including portions of Interrogatory 88 (specifically 88.3, 88.4, 88.5, 88.6, 88.7, and 88.8), Interrogatory 146, and Interrogatory 147.
- (7) In Interrogatory 88, AEP Retail requested specific information pertaining to Exhibit 3 of the Companies' supplemental information filing, entitled "Typical Bills – Comparison." The interrogatory requested specification of the rate included in each line item of service representing the Companies' Rider GEN rate for a "current winter bill" and "proposed winter bill," the Companies' Rider AER rate for a "current winter bill" and "proposed winter bill," and the Companies' Rider NDU rate for a "current winter bill" and "proposed winter bill." FirstEnergy responded that Exhibit 3 of the Companies' supplemental information filing reflected the seasonal pricing on the Rider GEN tariff sheet as of April 1, 2012, Rider AER tariff pricing in effect as of April 1, 2012, and Rider NDU tariff pricing as of April 1, 2012.
- (8) AEP Retail avers that it found FirstEnergy's answers to Interrogatory 88 to be nonresponsive and requested further information on meaningful bill comparisons, in which it expressly invited FirstEnergy to base its responses upon the announced results of PJM's 2015/2016 BRA. Specifically, in Interrogatory 146, AEP Retail requested that FirstEnergy update the calculations contained in Exhibit 3 of the Companies' supplemental information filing "Typical Bills – Comparison" to reflect PJM's 2015/2016 BRA prices that were released on May 18, 2012. Further, in Interrogatory 147, AEP Retail requested that FirstEnergy supplement its

answers to Interrogatories 88.4, 88.6, and 88.8, by providing the rates that would reflect PJM's 2015/2016 BRA prices, released on May 18, 2012, separately expressing capacity and energy charge components with respect to 88.4. FirstEnergy objected to Interrogatory 146, arguing that the request was unduly burdensome, sought information beyond the Companies' statutory requirements, and stating that the estimated typical bill rate impacts for the period of June 1, 2015, through May 31, 2016, are largely dependent on the results of competitive solicitations for SSO service. As to Interrogatory 147, FirstEnergy responded that the premise of the request was incorrect because the Companies did not supplement their May 2, 2012, supplemental information filing, so there was no basis for supplementing their response to Interrogatory 88. Additionally, FirstEnergy alternately objected to this interrogatory on the same basis set forth in its objection to Interrogatory 146.

- (9) In its motion to compel, AEP Retail states that FirstEnergy has pointed to the "potential" of capturing low energy and capacity prices, but has failed to provide any information suggesting that low energy and capacity prices are available at this time. AEP Retail argues that its discovery request merely seeks to require FirstEnergy to provide meaningful information that forecasts the impacts of its proposed ESP upon consumers' bills, which is clearly relevant to this proceeding.
- (10) On May 31, 2012, FirstEnergy filed memoranda contra AEP Retail's motion to compel and motion to continue the hearing date and modify the procedural schedule.
- (11) In its memorandum contra AEP Retail's motion to continue the hearing date and modify the procedural schedule, FirstEnergy argues that AEP Retail's motion should be denied because the procedural schedule is appropriate as it currently stands, the schedule in this case has already been extended once at the request of AEP Retail and other intervenors, AEP Retail has failed to demonstrate that additional time or testimony is necessary, and because there was no deception on part of FirstEnergy to obtain an expedited schedule in this proceeding.

- (12) In its memorandum contra AEP Retail's motion to compel, FirstEnergy argues that it does not have the information requested by AEP Retail and is incapable of accurately ascertaining the information, and, further, argues that the Commission has already approved the use of prior auction data to predict billing impact in Case No. 10-388-EL-SSO (ESP 2).
- (13) Initially, the attorney examiner will address AEP Retail's motion to continue the hearing date and modify the procedural schedule. The attorney examiner finds that AEP Retail's motion to continue the hearing date and modify the procedural schedule should be denied. Initially, the attorney examiner notes that the evidentiary hearing has already been continued once at the request of AEP Retail and other intervenors. Further, the current date for the evidentiary hearing was established by entry issued May 2, 2012, which the attorney examiner finds has afforded the parties an appropriate amount of time to conduct discovery. Consequently, the attorney examiner finds AEP Retail's motion to continue and request for expedited ruling, filed less than one week before the scheduled hearing date, to be unreasonable. Further, although AEP Retail claims that the parties should be afforded more time to review any supplemental information supplied by FirstEnergy, the attorney examiner notes that no other party filed a request to continue the hearing date.
- (14) Next, the attorney examiner will turn to AEP Retail's motion to compel.¹ With regard to all portions of Interrogatory 88 at issue, the attorney examiner finds that the motion to compel should be denied. Specifically, the attorney examiner finds that the answers provided by FirstEnergy were adequately responsive to AEP Retail's interrogatories.
- (15) With respect to Interrogatories 146 and 147, the attorney examiner finds that the requested information, in part, is appropriate subject matter for the purposes of discovery.

¹ As FirstEnergy points out in its memorandum contra, AEP Retail failed to meet the requirement set forth in Rule 4901-1-23, O.A.C., requiring an affidavit of counsel setting forth the efforts that have been made to resolve the discovery dispute. However, given the impending hearing date, the attorney examiner finds it appropriate to waive this requirement as there is insufficient time for AEP Retail to correct the defect.

Although FirstEnergy has argued that it is incapable of accurately ascertaining the requested information, the attorney examiner finds that portions of the requested information would provide meaningful information regarding the impacts of the proposed ESP 3 upon consumers' bills, and that FirstEnergy should be capable of producing this information. 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. Accordingly, parties are entitled to seek discovery of information that 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. Here, the attorney examiner finds to be discoverable the impact on typical customer bills of the known change in capacity costs from the 2014/2015 BRA to the 2015/2016 BRA, which will occur during the proposed ESP 3.

- (16) Consequently, the attorney examiner finds that FirstEnergy should provide AEP Retail with the information requested in Interrogatories 146 and 147, to the extent the information requested regards the impact on typical customer bills of the known change in capacity costs from the 2014/2015 BRA to 2015/2016 BRA. In light of the date the evidentiary hearing is scheduled to commence in this proceeding, FirstEnergy is directed to electronically serve responses to the specified discovery requests on AEP Retail by 9:00 a.m. on Monday, June 4, 2012.

It is, therefore,


ORDERED, That AEP Retail's motion to continue the hearing date and modify the procedural schedule is denied. It is, further,


ORDERED, That AEP Retail'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 AEP Retail with the information requested in Interrogatories 146 and 147 to the extent set forth in Finding (16). 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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Entered in the Journal
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Barcy F. McNeal
Secretary