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Via E-File

June 29, 2012

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case No. 12-1230-EL-SSO

Dear Sir/Madam:

Please find attached the REPLY BRIEF OF THE OHIO ENERGY GROUP for filing in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

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MLKkew
Encl.
Cc: Certificate of Service

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter Of The Application Of The 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. 12-1230-EL-SSO**

REPLY BRIEF OF THE OHIO ENERGY GROUP

The Ohio Energy Group ("OEG") submits this Reply Brief in response to the initial briefs of parties recommending that the Public Utilities Commission of Ohio ("Commission") modify or reject the proposed Stipulation and Recommendation filed April 13, 2012 in this docket ("Stipulation"). The Commission should reject the appeals of those parties. The Stipulation, when viewed as a package, satisfies the Commission's three criteria for determining whether a stipulation is reasonable and should, therefore, be approved.[1]

Though parties opposing the Stipulation pull out individual pieces of the Stipulation to attack, the Commission should not forget the bigger picture. A Stipulation must be viewed as a package and, as discussed in a number of the initial briefs,[2] the package arrived at is reasonable and should be approved by the Commission. The Stipulation, in large part, merely seeks to extend the existing Electric Security Plan ("ESP") already in place for Toledo Edison, Ohio Edison and Cleveland Electric Illuminating Company (collectively, "FirstEnergy" or "the Companies"). FirstEnergy's existing ESP is working well

[1] Opinion and Order, Case No. 11-3549-EL-SSO (Nov. 22, 2011) at 41, listing the following three criteria:
- Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- Does the settlement, as a package, benefit ratepayers and the public interest?
- Does the settlement package violate any important regulatory principle or practice?

[2] Initial Post-Hearing Brief of FirstEnergy ("FirstEnergy Brief"); Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio; Initial Brief of Material Sciences Corporation; Initial Brief in Support of ESP by Nucor Steel Marion, Inc. ("Nucor Brief"); Post-Hearing Brief of Industrial Energy Users-Ohio.

and the Stipulation approved by the Commission in Case No. 10-388-EL-SSO has led to reasonable results. There is no compelling reason to suddenly change course now.

I. To address concerns that FirstEnergy may not bid its energy efficiency and peak demand reduction resources into future PJM auctions, the Commission could hold FirstEnergy harmless or extend Rider ELR beyond the term of the proposed ESP.

Multiple non-signatory parties recommend that the Commission require FirstEnergy to bid all of its peak demand reduction and energy efficiency resources into PJM Base Residual Auctions ("BRA").[3] But FirstEnergy appears averse to bidding in all of its potential peak demand reduction resources for a future PJM delivery year without certainty that those resources will actually be available during that delivery year. One way to provide FirstEnergy the certainty it needs to bid energy efficiency and peak demand reduction resources into future PJM BRAs would be for the Commission to agree to hold FirstEnergy harmless in the event that those committed resources are unavailable during the PJM delivery year. By holding FirstEnergy harmless for unavailable resources, the Commission may help lower the capacity prices established in future PJM BRAS. Additionally, with the Commission's hold harmless assurance, FirstEnergy can bid energy efficiency and peak demand reduction resources into the coming PJM Incremental Auctions, which may help mitigate the future increases in capacity prices.

Another way that the Commission could provide more certainty to FirstEnergy to encourage the Companies to bid interruptible load into future PJM BRAs would be for the Commission to determine, prior to the next PJM BRA, that the Economic Load Response peak demand reduction rider ("Rider ELR") will be extended beyond the term of the proposed ESP (currently ending May 31, 2016). Examiner Price raised the issue of whether the timing of the ESP's expiration could prevent FirstEnergy from bidding its Rider ELR load into future PJM BRAs and suggested such a solution during the evidentiary hearing:

[3] Joint Initial Brief by The Office of The Ohio Consumers' Counsel and Citizen Power at 43; Initial Brief by the Sierra Club at 19; Joint Initial Post-Hearing Brief of the Northeast Ohio Public Energy Council and the Northwest Ohio Aggregation Coalition at 24.

> EXAMINER PRICE: Mr. Ridmann, is there a planning horizon problem in that you come in for an ESP and it has an expiration date, but you're racing the PJM 3, your expiration date, so every time you get within three years of the expiration of your ESP, your rider ELR is going to expire of its own terms, and then for maybe that third year, you won't be able to bid in that peak demand reduction?
>
> THE WITNESS: Potentially that could occur, but we are primarily setting up ELR basically to comply with the statutory requirements of demand reduction.
>
> EXAMINER PRICE: I understand, but it wouldn't be a remedy for the Commission to extend the rider ELR termination date beyond the ESP. So were you suggesting -- this ESP will conclude in 2016, would it make sense for the Commission to consider the expiration date of rider ELR being extended to 2018 so you can continue to bid it into future PJM auctions and not run across this ownership situation or run into the situation where you are asking us to approve an ESP in two weeks?
>
> THE WITNESS: Potentially. But I will say I think the longer you go out with the contractual obligation under your ELR, you may find yourself presented with fewer customers that want to commit out that far.[4]

Extending Rider ELR beyond the proposed ESP period would allow any interested customers willing to contract with FirstEnergy to provide peak demand reduction resources that FirstEnergy could bid into the next PJM BRA to do so in time for that auction. The issue of whether to extend Rider ELR beyond the expiration of this ESP or to hold FirstEnergy harmless for unavailable energy efficiency and peak demand reduction resources can be addressed by the Commission in a separate proceeding. What matters is that the Commission makes such a determination as soon as possible and before the next PJM BRA.

II. The Commission should approve the continuation of existing Rider ELR.

The Commission should disregard the concerns of non-signatory parties regarding Rider ELR. For example, EnerNOC's suggests that "only customers that can establish that they renewed their commitment to the extended ELR program by the stipulated date of May 3, 2012 should be allowed to stay in that program."[5] FirstEnergy Ridmann testified that, given the procedural schedule set by the Commission in this case, the May 3, 2012 deadline was no longer needed.[6] Consequently, EnerNOC's

[4] Tr. Vol. I (June 4, 2012) at 310:18-311:19.
[5] Post-Hearing Brief of EnerNOC, Inc.
[6] Supplemental Testimony of William R. Ridmann at 6:19-20.

concern is moot since that provision of the Stipulation has been rendered immaterial. Additionally, EnerNOC's recommendation is in bad faith given that EnerNOC has agreed not to oppose the Stipulation. The better solution to the issue of ensuring that Rider ELR peak demand reduction resources are bid into the next PJM BRA is to extend Rider ELR beyond May 31, 2016 or hold FirstEnergy harmless, as discussed above.

AEP Retail Energy Partners LLC ("AEP Retail") implies that large industrial customers "are largely protected against actual interruption of service through an option, offered in ESP-2 and continued in ESP-3, to simply buy through the interruption."[7] But this statement is flatly contradicted by the plain language of the tariff. Under Rider ELR, a customer cannot "buy through" an Emergency Curtailment Event. Thus, customers taking service under Rider ELR receive no protection against interruption should such an Emergency Curtailment event occur.

AEP Retail appears to be referring to the other type of interruption event provided for under Rider ELR, an Economic Buy-Through Option Event, under which customers can be interrupted for approximately 870 hours of interruption over a twelve-month period. Should a customer actually exercise the onerous "buy-through" option during an Economic Buy-Through Option Event, the buy-through charges imposed upon that customer are credited back to other customers and can offset the costs of the interruptible credit. Hence, the buy-through option under Rider ELR can only be used under limited circumstances and, when actually used, can benefit other customers. AEP Retail's argument against Rider ELR is inconsistent with the general position of its affiliate utility, Ohio Power Company ("AEP"), which supports interruptible programs. Consequently, AEP Retail's argument against Rider ELR may be nothing more than an attempt to disrupt FirstEnergy's ESP in retaliation against

[7] AEP Retail Energy Partners LLC's Initial Post-Hearing Brief at 2.

FirstEnergy for its actions in the AEP ESP case.[8] The Commission should disregard AEP Retail's argument regarding Rider ELR.

OCC argues that EE/PDR program costs should not be collected from residential customers.[9] As FirstEnergy's Initial Brief recounts, OCC raised this argument in Case No. 10-388-EL-SSO and the Commission did not alter cost allocation under Rider ELR.[10] And OCC acknowledged that interruptible load programs can lead to lower generation prices and can help avoid a capacity shortfall.[11] All customers can receive both economic and reliability benefits from FirstEnergy's interruptible program. It is reasonable then that all customers pay for these benefits. The allocation of costs under existing Rider ELR is reasonable and should be continued by the Commission in this proceeding.

III. The concerns of non-signatory parties do not justify modifying or rejecting the Stipulation, which is reasonable as a package and should be approved by the Commission.

The Commission should disregard the concern of the Retail Electric Supply Association, Direct Energy Services, LLC, and Direct Energy Business LLC that extending the recovery of renewable energy credits under the Alternative Energy Rider ("AER") would "artificially depress" FirstEnergy's price to compare.[12] As Nucor Steel Marion, Inc. explained in its Initial Brief, increased shopping in FirstEnergy's territory has caused FirstEnergy's three-year average alternative energy compliance baseline to be artificially high. Because FirstEnergy's SSO load has been reduced by shopping, "a much smaller amount of SSO load is today carrying renewable energy costs that are reflective of a much larger (historical) baseline amount of SSO load, placing a disproportionate burden on FirstEnergy's SSO

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[8] *See* Case No. 11-346-EL-SSO *et al.*
[9] Joint Initial Brief by The Office of The Ohio Consumers' Counsel and Citizen Power at 38-39.
[10] FirstEnergy Brief at 59; Tr. Vol III at 103:22-104:9.
[11] Tr. Vol. III at 99:17-21 and 100:1-9.
[12] Initial Brief of The Retail Energy Supply Association, Direct Energy Services, LLC and Direct Energy Business at 9-10.

customers."[13] The extended recovery of AER costs agreed to in the Stipulation benefits FirstEnergy's customers by easing some of that burden.

Notably, few non-signatory parties simply recommend that the Commission completely reject the proposed Stipulation and ESP. A number of the non-signatory parties present proposed modifications to the Stipulation and ESP that would be acceptable in the alternative.[14] For example, CRES providers ask that the Commission modify the Stipulation to require FirstEnergy to adopt a purchase of receivables program.[15] Concerns such as this are not sufficient to justify modifying or rejecting the current Stipulation package, which already serves to promote competition and satisfies the Commission's three-prong test. The Commission should, therefore, uphold the proposed Stipulation and ESP.

[13] Nucor Brief at 7-8.

[14] *See* Joint Initial Post-Hearing Brief of the Ohio Schools Council (requesting, in the alternative, that the Commission remove the provision allowing the Companies to continue Rider DCR after May 31, 2014); Initial Brief of Interstate Gas Supply, Inc. (requesting modification to incorporate a term that providers for a purchase of receivables program); Initial Brief of The Retail Energy Supply Association, Direct Energy Services, LLC and Direct Energy Business (asking for several modifications and the rejection of only specific provisions in the Stipulation); Joint Initial Post-Hearing Brief of the Northeast Ohio Public Energy Council and the Northwest Ohio Aggregation Coalition (requesting, in the alternative, several specific modifications).

[15] Initial Brief of Interstate Gas Supply, Inc.; Initial Brief of The Retail Energy Supply Association, Direct Energy Services, LLC and Direct Energy Business; AEP Retail Energy Partners LLC's Initial Post-Hearing Brief.

CONCLUSION

The Commission should approve the proposed Stipulation, which essentially seeks to extend for the current ESP and its associated rate design for two years. The current ESP has worked well since its inception. There is no compelling reason to change course now. The proposed Stipulation promotes stability and predictability in electric pricing and facilitates economic development and job retention in Ohio. Thus, it is in the public interest to continue the proven ESP and its associated rate design.

Respectfully submitted,

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June 29, 2012

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