

**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. 14-1297-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	}	

**REPLY OF PJM INTERCONNECTION
TO MEMORANDA CONTRA OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY,
AND THE TOLEDO EDISON COMPANY TO PJM INTERCONNECTION’S
MOTION TO INTERVENE**

PJM Interconnection, L.L.C., (“PJM”) files this Memorandum Contra to address the narrow question of whether its request for limited intervention in this proceeding should be granted, rather than to address the more pointed arguments made by Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FE”) which seem to address more of the merits of PJM’s proposal.

PJM’s limited intervention request is based on the submittal, for the first time in this proceeding, of Paragraph V(B)(3)(a) of the Third Supplemental Stipulation and Recommendation (“Stipulation”) filed by FE and other signatory parties addressing an affiliate power purchase agreement (“PPA”) between FE and First Energy Solutions, among other things – a paragraph that specifically references FE’s bidding practices into the PJM markets and ties review of that bidding by the Public Utilities Commission of Ohio (“Commission”) with recovery of revenues under the PPA. PJM accepts the record as filed and has purposefully kept its testimony limited with the intent of providing a constructive suggestion to the Commission on how it may reconcile Ohio’s various stated policy goals in light of the Stipulation provision at

issue. To that end, PJM believes that with appropriate clarification, the Stipulation can be harmonized with Ohio's goals of promoting new competitive entry to meet the state's economic development needs.

PJM tendered its testimony and sought this narrow limited intervention so that its proposal can be fully vetted on the record. In its opposition to PJM's intervention, FE has not shown a reason why the Commission should not be allowed to fully hear and consider this proposal on the record after all parties have had the opportunity to examine it through the hearing process. For this reason, PJM believes that limited intervention is appropriate, especially given PJM's stated acceptance of the record as it presently exists and to limit its intervention to the single issue of the interpretation of paragraph V(B)(3)(a) of the Stipulation. As further detailed herein, PJM's Motion to Intervene satisfies all the requirements for leave to intervene pursuant to Ohio Revised Code Section 4903.221 and Rule 4901-1-11 of the Ohio Administrative Code.

I. PJM Meets the Requirements for Intervention and its Request Should be Granted

Under Ohio Revised Code Section 4903.221, and Rule 4901-1-11 of the Ohio Administrative Code, intervention in a proceeding is permitted to any person who may be "adversely affected" and when the "...person has a real and substantial interest in the proceeding." PJM meets these requirements.

A. PJM has a Real and Substantial Interest in These Proceedings

FE claims that PJM has failed to articulate a real and substantial interest in this proceeding because, it asserts, the issue of responsibility for the payments to PJM relating to capacity performance requirements has already been addressed by various witnesses in this proceeding and, as such, Paragraph V(B)(3)(a) raises no new issues in this proceeding. FE Memorandum Contra at pp. 5-6. Despite these assertions, PJM has a real and substantial interest in this

proceeding targeted on the clarification of Paragraph V(B)(3)(a) to ensure that FE's actions in bidding the units affected by the PPA into the PJM market is undertaken in a manner that continues to support a competitive wholesale market in Ohio and continues to incent the development of new generation in the state to meet the state's economic development needs.

Not only has this issue not been previously addressed by parties to this proceeding, primarily because the requirements of Paragraph V(B)(3)(a), and relevant language, have only recently been proposed, but without question, PJM is the only entity that administers the tariffs under which FE and other market participants bid into the PJM market. Paragraph V(B)(3)(a) brings the bidding practice of the units covered by PPA into this proceeding and makes the express link between those bidding practices, Commission review of the same and the retail rates that customers will pay as a result of the Stipulation. In fact, it is somewhat disingenuous for parties to this proceeding to inject such a linkage between wholesale markets administered by PJM and the application of the Rider RRS, but then to argue that any discussion of that language is irrelevant for purposes of PJM's intervention. While a discussion of these issues on the merits is very appropriate, FE's utilization of a procedural process to deny discussion of the issue from the perspective of the very organization charged with ensuring effective, competitive markets is inconsistent with the very point of permissible intervention by affected stakeholders.

Also, contrary to FE's assertions, PJM does not purport to request that the Commission involve itself in matters outside of its jurisdiction or impermissibly direct FE's behaviors in the wholesale market; in fact, PJM's testimony in this matter expressly states that PJM does not suggest that the Commission undertake such authority. Direct Testimony of F. Stuart Bresler, p. 5. Rather, PJM's testimony makes very clear that it is proposing a clarification that the Commission should consider as a means to provide guidance to all parties as to the

Commission's expectations in implementing the oversight authority that FE and other signatory parties have encouraged the Commission to undertake through Paragraph V(B)(3)(a). Plainly, the Commission should have the right to consider the proposal on the basis of a full record, and with a semblance of an appreciation for how the proposal may impact the wholesale market, or at least how it may be perceived, by the entity charged with oversight and administration of that market.

B. No Other Party to This Proceeding Can Adequately Represent PJM's Interest

While other parties to this proceeding may have discussed potential impacts of the implementation of Rider RRS on the wholesale market, the simple fact remains that none of those other parties to this proceeding actually administer the wholesale market potentially impacted by Rider RRS, and subsequent Stipulation and specific language set forth in Paragraph V(B)(3)(a). Again, as noted above, PJM is the only entity that administers the tariffs under which FE and other entities bid into the PJM market and, as such, its interest simply cannot be adequately addressed by stakeholders who have varied and, in some cases, conflicting, interests in how those tariff rules and processes are implemented and administered. Paragraph V(B)(3)(a) expressly addresses FE's bidding practices into the PJM market and, as such, provides the linkage necessary to allow PJM's limited intervention in this proceeding.

C. PJM has Demonstrated "Extraordinary Circumstances" and "Good Cause" for Out-of-Time Intervention

Commission procedural rules permit the grant of intervention out of time for "extraordinary circumstances." Paragraph V(B)(3)(a) was presented for the first time in the Stipulation filed in this proceeding on December 1, 2015, and squarely addresses FE's bidding actions into the PJM market, and subsequent compliance review. This paragraph and its proposed requirements simply did not exist prior to the filing of the Stipulation. In fact, it was FE and the other parties

to the Stipulation that put this matter into consideration by calling for: (a) a direct role for the Commission in overseeing FE's actions in an after-the-fact review, and (b) tying retail rate recovery to the Commission's review.

Despite FE's assertions the contrary, these issues were not in play prior to December 1, 2015, and PJM did not know, or could not have known, that any proposed settlement would include an *ex post* review of any bidding practices and the resulting linkage between those practices and retail rates. While the proceeding to date may have included discussions regarding the Commission's existing prudence jurisdiction, or the ability of FE's units to participate in the wholesale market, such concepts at those stages in the proceeding were, at best, intangible or ancillary. Moreover, the resulting requirements specified in the Stipulation just did not exist prior to December 1, 2015, and, regardless, as they exist today, it is unclear how those requirements are to administered, thus the very reason for PJM's participation in this proceeding. Simply because testimony by a party may touch on aspects of the Stipulation does not indicate whether the Commission agrees with such sentiments or believes they are appropriate. PJM's role in this proceeding is limited to seek such a clarification to ensure that all parties have a clear understanding of the requirements and to describe to the Commission the potential impact if such requirements are vague.

Finally, PJM's late intervention does not prejudice the parties in any substantial way. FE asserts that PJM's motion comes too late because, absent relief from the Commission, FE will be unable to serve written discovery on PJM if intervention if permitted. However, given the very narrow focus of PJM's testimony, it is unlikely that FE will be prejudiced in any way without the ability to conduct written discovery since PJM's clarification does not raise new facts.

Moreover, Mr. Bresler's testimony is subject to further examination by the parties during an evidentiary hearing.

D. PJM's Participation will not Unduly Prolong This Proceeding

PJM's limited intervention in this proceeding will not unduly prolong or delay this proceeding. As stated in PJM's Motion for Limited Intervention and Memorandum in Support, PJM accepts the record in this proceeding to date, and has committed to the procedural schedule in this proceeding. PJM timely filed and served Mr. Bresler's testimony and PJM intends to present Mr. Bresler at the hearing at the date and time agreed upon in the customary manner. Moreover, as noted above, parties will not be prejudiced by the Commission's acceptance of PJM's limited intervention and consideration of the very narrow issue presented in PJM's direct testimony.

II. Conclusion

PJM meets the requirements for intervention in this proceeding. Accordingly, the Commission should grant the Motion for Limited Intervention.

Respectfully submitted,

/s/ Evelyn R. Robinson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply of PJM Interconnection, L.L.C. to Memoranda Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to PJM Interconnection's Motion to Intervene was served this 8th day of January, 2016 via electronic mail upon the individuals listed.

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electronically filed by Ms. Sandra Ritchie on behalf of PJM Interconnection