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 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.	:	Case No. 14-1297-EL-SSO

REPLY BRIEF

SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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INTRODUCTION

The Third Supplemental Stipulation and Recommendation (Stipulation) presented in this case enhances the benefits to ratepayers identified in the Toledo Edison Company, Ohio Edison Company and the Cleveland Electric Illuminating Company's (FE or the Companies) Application and addresses the concerns raised by the Staff of the Public Utilities Commission of Ohio (Staff) and other parties in this proceeding. The Stipulation is supported by a broad and diverse group of 19 stakeholders (the Signatory Parties). The plan represents compromises by FE and the other Signatory Parties and provides for a balanced outcome for all stakeholders. Approval would give the stakeholders what is needed; stability today and predictability for tomorrow.

DISCUSSION

Several parties have challenged aspects of the Stipulation. As will be shown below, these objections have no merit.

I. The Stipulation meets the three-part test for reasonableness.

In considering the reasonableness of a stipulation, the Commission has used the following criteria;

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

The Signatory Parties, and the Commission staff, respectfully submit that the Stipulation here satisfies these three reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

A. Serious Bargaining

The Stipulation is the product of serious negotiations among knowledgeable parties. The list of parties that signed the Stipulation represents a variety of diverse interests. The signatories are a listing of the major users of power in the companies' service territories and the Staff. The Stipulation is the result of a lengthy process of negotiation involving experienced counsel representing members of many stakeholder groups (the Parties).[1] The Companies met with the various parties both prior to and during the evidentiary hearing to discuss areas of potential settlement. These parties were involved in the earlier phase of this case and have been involved in many Commission cases over the years. During the case, the Companies responded to over 3,700 questions, and participated in 25 days of depositions.[2] The Parties then participated in over 40 days of evidentiary hearing. Parties signing the stipulation were capable and knowledgeable about the issues raised in this case.

In sum, the Stipulation is the product of serious negotiations among knowledge-able Parties.

B. Public Interest

The benefits of the proposed Stipulation to the public are large and broad. The Stipulation provides that[3]:

- The term of the ESP will be modified to an eight year term from June 1, 2016 to May 31, 2024, subject to reconciliation. (Section V.A.1 at 7);

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[1] FE Ex. 155 (Fifth Supplemental Direct Testimony of 5 Eileen M. Mikkelsen) at 8-9.

[2] *Id*. at 8.

[3] FE Ex. 154 (Third Supplemental Stipulation and Recommendation) at 7-18.

- The retail rate stability rider (Rider RRS) will be reduced to a term from June 1, 2016 to May 31, 2024, subject to reconciliation. (Section V.B.1 at 7);

- The Commission may terminate the specific charge or credit of Rider RRS for any generation unit upon its sale or transfer pursuant to R.C. 4905.26. (Section V.B.1 at 7);

- FE will provide an aggregate credit of up to $100 million to the RRS during years five through eight. (Section V.B.2 at 7);

- FE will commit to a rigorous annual review process under which the Commission will review all actions taken when selling the output from the generating units into the market and costs resulting therefrom for reasonableness under the facts known at the time. FE and not customers will be responsible for any adjustments made by the Commission. (Section V.B.3.a. at 8);

- FirstEnergy Solutions Corporation fleet information on any cost component will be provided to Staff on reasonable request as it conducts a reasonableness review of cost components for the generation units included in the rider. (Section V.B.3.b. at 8);

- Rider RRS will be severable in that if a Court of competent jurisdiction invalidates Rider RRS in whole or part, the balance of the ESP will continue. (Section V.B.3.c. at 8);

- FirstEnergy will take steps to advocate for market enhancements at the wholesale level such as a longer-term capacity product, informing the Staff first and providing a public, quarterly update to the Commission on the state of the wholesale market. (Section V.D. at 9);

- FE commits to a grid modernization initiative by filing a business plan within 90 days for the Commission's consideration. This plan will include a specific timeline, sharing of data with customer consent, certain specific examples, and a decoupling mechanism. The parties agree to support defined rate recovery if this mechanism is approved and FE will provide semi-annual updates of its progress on this initiative. (Section V.D. at 9-10);

- For the term of the ESP FE will not seek a waiver of the personal service requirement on the day of disconnection of service. (Section V.D.3. at 10);

- FE commits to a goal of reducing carbon emissions by 90% by 2045 and will file reports of its progress every five years. (Section V.E.1. at 11) at 28-29);

- FE will evaluate battery investments. (Section V.E.2. at 11);

- FE will submit a plan to reactivate its EE/PDR Portfolio Plan offerings with a goal of over 800,000 MWh of annual energy savings and will include a program to aid customers in making smart energy choices using information targeted to the individual customers. (Section V.E.3. at 11);

- To the extent Staff deems it necessary to comply with federal law or rules FE will acquire 100 MW of new Ohio solar or wind resources as part of a strategy to diversify Ohio's energy portfolio. (Section V.E.4. at 12);

- FE will file a proposal seeking approval of a straight fixed variable cost recovery mechanism by April 3, 2017 with a specified phase-in. (Section V.F. at 12-13);

- There will be a distribution rate freeze for the term of the ESP. (Section V.G.1. at 13);

- There are a number of rate design provisions that will aid economic development. (Section V.G.4.a. at 14-15);

- Funds will be provided to a number of organizations to further energy efficiency programs. (Section V.G.4.b. at 15);

- Nearly $1.4 million will be provided annually to assist low-income customers. (Section V.G.4.c. at 16);

- $24 million will be provided to support economic development or conservation programs in Ohio. (Section V.I.2. at 17);

- The Rider NMB pilot is expanded to include more customers. (Section V.H.6. at 17); and

- FE will maintain its headquarters and nexus of its operations in Akron, Ohio. (Section V.G.1.3. at 17).

These benefits touch many customers and are self-explanatory. Staff asks that the Commission exercise its discretion to find that the stipulation, as a whole, benefits the public interest.

C. The Stipulation does not violate any important regulatory principle or practice, rather it promotes public policy.

The final prong of the Commission's three-part test is passed, as the Stipulation does not violate any important regulatory principle or practice. The terms of the Stipulation represent a compromise of the Signatory Parties. None of the individual provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice. On the contrary, the compromise reached by the diverse set of Signatory Parties results in a Stipulation that promotes a number of the state policies expressed in Ohio Revised Code 4928.02, including:

> (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;
>
> (D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand- side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;
>
> (E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective

customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;

(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;

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

(N) Facilitate the state's effectiveness in the global economy.[4]

The Stipulation goes beyond not violating any important regulatory principles or policies; the Stipulation advances important regulatory policies and principles. For example, the Stipulation:

- Brings stability to volatile prices;
- supports competitive markets and protects retail choice;
- encourages energy efficiency and peak demand reduction;
- supports resource adequacy goals of Ohio
- protects at-risk populations through low income programs;
- benefits large industrial customers allowing them to better compete in global markets;
- promotes carbon reductions;
- hastens grid modernization; and preserves resource diversification.[5]

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4 R.C. 4928.02.

5 FE Ex. 155 (Fifth Supplemental Direct Testimony of Eileen M. Mikkelsen) at 10.

- supports economic development;

The terms of the Stipulation promote advancements in technology for infrastructure.[6] Likewise the terms of the Stipulation increase energy efficiency and a partnering with the other stakeholders to implement efficiency.[7] All of these matters are benefits of the Stipulation but also promote important regulatory principles and practices as incorporated by the Signatory Parties in the Stipulation.

The Stipulation benefits customers, is in the public interest, and is designed to provide adequate, safe, and reliable electric service.[8] The Stipulation also supports economic development and job retention in Ohio.[9] This Stipulation proposes a lower fixed ROE.[10]

The Stipulation includes credits to customers that could amount to up to $100 million during the last four years of the program.[11] These benefits include: (1) changing the term of the ESP to eight years; (2) commitments to advocate at the federal level; (3) proposals to include enhancements to the competitive retail markets in Ohio; (4) commitments to enhance energy efficiency programs; (5) commitments to reduce the carbon

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6 FE Ex. 154 (Third Supplemental Stipulation and Recommendation) Section V.D. at 9-10); (Section V.D. at 9-10).

7 *Id*. at Section V.G.4.b.at 15-16).

8 FE Ex. 155 (Fifth Supplemental Direct Testimony of Eileen M. Mikkelsen) at 10.

9 *Id*. at 9.

10 *Id*. at 7.

11 *Id*. at 3-4.

emissions of power plants in Ohio; (6) commitments to seek to expand the wind and solar energy resources by 100 MW in Ohio; (7) commitments to file a rate decoupling plan and (7) commitments develop a plan for grid modernization.[12] FE has estimated that, over the term of the agreement customers are forecasted to receive $561 million in benefits related to the program that would not have been available under an MRO.[13]

The Stipulation will also be subject to continuing review and oversight and should be approved. These are just a few of the abundant benefits provided by the Stipulation. These benefits further the important policy goals of the General Assembly and show that the stipulation meets the third prong of the Commission's three-part test on the reasonableness of a contested stipulation.

II. The Proposed Arrangement is not anticompetitive.

Opponents of the Stipulation, argue that the proposed arrangement and RRS rider are anticompetitive. On the contrary, the record shows that the plants have participated in the wholesale markets and will continue to do so competitively.[14] Stipulation and the record show that the Commission will have full ability to review actions taken to assure that the plants are bid in a reasonable and competitive fashion.[15] The Staff fully expects

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12 FE Ex. 155 (Fifth Supplemental Direct Testimony of Eileen M. Mikkelsen) at 3-6.

13 *Id*. at 11.

14 Tr. V. XIV at 3033.

15 FE Ex. 154 (Third Supplemental Stipulation and Recommendation), Section V.B.3.a.; Tr. V. I at 126.

that the relevant units will be bid competitively into the PJM markets consistent with historic bidding behavior.

Furthermore, a quasi-market paradigm already exists in PJM which includes cost-based plants in regulated jurisdictions, including West Virginia, Virginia, Kentucky, Indiana, North Carolina, Tennessee, and Michigan.[16] No irreparable harm exists in the PJM market today where cost-based units are treated the same as competitive units. As a result, the RRS rider would not harm the PJM market if approved.

The Stipulation is designed to provide adequate, safe, and reliably priced electric service, supports economic development and the resource adequacy and fuel diversity goals of Ohio.[17] Over the term of the Stipulation, it is estimated that customers will receive $612 million in benefits related to the program.[18] Several Parties challenge FE's estimated benefit of $612 million. The major difference between the estimates is in the use of long-term forward-looking forecasts. Long-term forecasts are largely speculative. In the end, regardless of whether the RRS provides customer savings, the other benefits of the Stipulation are equally, if not more, important. The other benefits include adequate, safe, and reliably priced electric service, while at the same time supporting economic development in Ohio.

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16 IMM Ex. 2 (First Supplemental 16 Testimony of Joseph E. Bowring) at 5:31-6:5.

17 FE Ex. 155 (Fifth Supplemental Direct Testimony of Eileen M. Mikkelsen) at 9.

18 *Id*. at 12.

The Commission will also have rigorous review of the program, including FE's full information sharing, in annual compliance reviews to ensure that actions taken by FE when selling the output from generation units included in the RRS Rider into the PJM market were not unreasonable.[19] FE, not its customers, would be responsible for the adjustments made based on actions deemed unreasonable.[20]

Such Commission review will include quarterly true ups, as well as a prudency review of the RRS designed to ensure that FE's policies and practices comport with sound ratemaking principles and Commission policies, confirm that its books and records are reliable sources of cost and revenue data, and ultimately determine if the program is just and reasonable. This type of prudency review routinely includes an examination that the filed schedules, particularly RRS schedules, are consistent with the Commission's Opinions and Orders and ensure proper accounting treatment was applied. The audit also typically consists of a review of the financial statements for completeness, occurrence, presentation, valuation, allocation, and accuracy. Commission reviews are conducted through a combination of document review, interviews, and interrogatories. Documentation will be requested as needed to determine that the RRS costs and revenues were substantiated or to conclude that a disallowance is warranted.

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[19] FE Ex 154 (Third Supplemental Stipulation and Recommendation), Section V.B.3.a. at 8.

[20] *Id.*; Tr. V.I at 126.

It is argued that this process will lead to anticompetitive results because FE Solutions is not subject to Commission review, so FE would lack incentive to improve efficiency in operations (i.e. maximize profits). This ignores the rigorous Commission review of the actions taken by FE that is part of the Stipulation.[21] The Commission may look at more than just maximizing profits.[22] It also ignores the contract relationship between FE and FirstEnergy Solutions through the PPA – the relationship does not work without cooperation of both parties.

This contractual relationship gives both FE and FirstEnergy Solutions incentive to operate efficiently. In addition, the shorter term of the PPA (8 years) would give both FE and FirstEnergy Solutions incentive to make efficient plans for competing in the market in the future.

III. Arguments that the other provisions of the Stipulation violate regulatory principles and practices are premature.

A. Grid modernization, energy efficiency customer engagement, battery development, and Straight fixed variable plans.

Various parties have challenged the provisions of the stipulation that call for FE to submit plans for, or reports on, grid modernization, energy efficiency customer engagement, battery development, and straight fixed variable rate design. All of these

21 FE Ex 154 (Third Supplemental Stipulation and Recommendation), Section V.B.3.a. at 8.

22 *Id.*

criticisms are premature. In each instance the details of these actions are not yet fixed. The commitments serve to set up future discussion and analysis of these complicated issues. Indeed, this is the real value of the commitments, they set up future venues for consideration of issues that might not otherwise be broached. To discuss the merits now is entirely premature. There will be opportunities is due course.

B. Exelon

Exelon has presented what it might term an alternative "offer" to the RRS. The Commission should not be distracted by this. Exelon's discussion is not an offer at all at least in the sense that it cannot be accepted.[23] The price has not been approved by the Exelon Board.[24] The finance and risk committee, charged with approving such arrangements, has not approved it.[25] It does not contain the credit requirements or performance guarantees that such transactions normally include.[26] Exelon's discussion is on a round-the-clock basis rather than unit-specific as is FE's offer.[27] Exelon includes a smaller amount of capacity.[28] It does not include ancillary services.[29] It even creates

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23 Tr. XXXVIII at 8048.

24 *Id*. at 8025.

25 *Id*. at 8030.

26 *Id*. at 8035.

27 *Id*. at 8050-1.

28 *Id*. at 8068-9.

29 *Id*. at 8070.

capacity price risk, borne by ratepayers, not associated with the FE offer.[30] In short, the Exelon suggestion is nothing to be taken seriously by the Commission.

C. Additional Issues

Several Parties opposing the Stipulation take issue with other provisions of the Stipulation including: the Ohio Partners for Affordable Energy (OPAE) Community Connection Program Funding, the extension of energy efficiency commitments, 2017 EE/PDR Plan, the Resource Diversification Plan, the continuation of the Commercial High Load Factor Experimental Time of Use Rate rider CPP and Rider RTP, and the extension of the CEI fuel fund. These provisions provide many benefits to FE's customers and the public interest. A few examples of note are as follows:

(1) The Community Connection Program includes consumer energy efficiency programs such as low-income weatherization.[31] The Stipulation calls for OPAE to administer the program. OPAE has administered weatherization programs for utilities in the past.[32] It makes sense for OPAE to administer the program;

(2) Commercial High Load Factor Experimental Time of Use Rate, Rider CPP and Rider RTP provide obvious economic development benefits and provide customers with additional rate options to meet their needs; and

(3) The reactivation of the EE/PDR programs achieves a goal that would not otherwise be possible

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30 Tr. XXXVIII at 8092-4.

31 Tr. XXIX at 6043.

32 *Id*. at 6029.

Opponents of the Stipulation contend that these additional provisions are not related to the core concerns of the case and should not be given credence in this case. However, this contention overlooks the significant value these provisions seek to provide to Ohioans. The Stipulation provides benefits to Ohioans through multiple facets, including ensuring reliable service at hospitals, providing additional employment opportunities from automotive manufacturers, and aiding low income families. Such provisions are integral considerations when evaluating the societal impact of the Stipulation on Ohioans. As discussed above, the Stipulation is most appropriately evaluated as a package. Even if some attributes could have been accomplished separately, achieving them in one group is advantageous by concisely enhancing stability for the future of FE and its customers. Furthermore, many of the Stipulation's package-attributes are subject to subsequent Commission review. Parties will have their due-process opportunities at that time.

CONCLUSION

As demonstrated in Staff's Initial Brief, the Stipulation meets all prongs of the three-part test for evaluating a settlement. The Commission should adopt the Stipulation as its final Opinion and Order in this case.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following Parties of Record, this 26th day of February, 2016.

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