

**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)	Case No. 14-1297-EL-SSO
Company for Authority to Provide for a)	
Standard Service Offer Pursuant to)	
R.C. 4928.143 in the Form of An Electric)	
Security Plan)	

**SIERRA CLUB’S MEMORANDUM *CONTRA* OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON
COMPANY’S MOTION TO RENEW AND ENFORCE PROTECTIVE ORDER**

Sierra Club seeks public disclosure of FirstEnergy Solution Corp.’s (“FES”) projection of costs and revenues under Rider RRS, including a calculation of the net impact that Rider RRS may have on customers over the eight-year term using FES’s forecasts of market prices,¹ so that the public can compare that projection to the Companies’ own publicly disclosed projection. FirstEnergy apparently does not want the public to be able to make such comparison and, therefore, on April 22, 2016, the Companies filed a “motion to renew and enforce a protective order” in order to prohibit public disclosure of the FES projection. Because the FES projection

¹ Specifically, Sierra Club seeks public disclosure of the redacted excerpts located at the following places within the Third Supplemental Testimony of Tyler Comings:

- Page 1, line 24
- Page 2, lines 6-8
- Page 3, line 13
- Page 4, Competitively Sensitive Confidential Figure 1: *Valuation of the Proposed Transaction by the Companies and FES (Cumulative NPV, \$2015 mil)*. (Sierra Club seeks disclosure of this entire Figure.)
- Page 5, lines 18, 22
- Page 5, footnote 6
- Page 6, lines 1-3, 6, 10-11, 22, 24
- Page 7, lines 10-15, 17

For ease of reference, Sierra Club will refer hereinafter to the information that it seeks to publicly disclose as the “FES projection.”

is the type of aggregate data that would not, as the Companies have previously acknowledged, reveal any confidential or trade secret information, and its release would increase transparency and understanding of Rider RRS, Sierra Club respectfully requests that the Commission deny FirstEnergy's motion and, instead, grant Sierra Club's pending Motion to Modify Protective Order in order to allow the public disclosure of the FES projection.

In its motion, FirstEnergy hyperbolically claims that Sierra Club has “decided to resort to self-help” and “threatened” to publicly disclose protected information without first seeking Commission review.² Sierra Club takes its confidentiality commitments seriously and would, of course, not publicly disclose the FES projection unless and until the Commission modifies its March 31 ruling on the protective order in order to allow such disclosure. That is why Sierra Club on April 22 filed its Motion to Modify Protective Order. As required by Paragraphs 11 and 15 of the protective agreement in this proceeding, however, Sierra Club's counsel also notified FirstEnergy's counsel on April 15 of its intent to disclose the FES projection.³ FirstEnergy's counsel responded that the Companies oppose such disclosure, that Sierra Club would need to seek Commission approval to disclose the information, and that if the Club believed it had the right to disclose the information without Commission approval then it should “advise [FirstEnergy's counsel] immediately.”⁴ Agreeing that Commission approval would be necessary before any public disclosure could occur, Sierra Club has requested such approval.

² Companies' Memorandum in Support of Motion to Renew and Enforce Protective Order (hereinafter “FirstEnergy Mot.”) at 1, 11.

³ *Id.* at Ex. E.

⁴ *Id.* Contrary to the Companies' claim, *id.* at 7, FirstEnergy never “sought further assurance” that Sierra Club would not disclose the FES projection without first seeking modification of the Commission's March 31 ruling regarding protected materials. Instead, FirstEnergy requested that Sierra Club counsel “advise [FirstEnergy] immediately” if Sierra Club disagreed with FirstEnergy that Commission relief would be needed before any disclosure could occur. As noted, Sierra Club does not disagree.

In their motion, the Companies contend that the FES projection is entitled to confidential treatment under R.C. 1333.61(D) and the six-part test set forth in *State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525 (1997).⁵ Notably, however, the Companies never argue that the aggregate FES valuation of Rider RRS – i.e., the aggregate FES projection Sierra Club seeks to publicly disclose – is itself a trade secret. Instead, the Companies’ argument turns entirely on their assertion that disclosure of that aggregate valuation would somehow enable the derivation of plant-specific information and market forecasts that may be competitively sensitive.⁶ However, as shown by the Companies’ own prior filings in this proceeding, and detailed in the affidavit from Tyler Comings that is attached as Exhibit 1 to this memorandum, the assertion that sensitive information could be derived from the disclosure of FES’s aggregate valuation of Rider RRS is meritless.

The Companies’ prior filings in this proceeding disprove the contentions in the FirstEnergy motion. In their initial application, the Companies publicly disclosed their own aggregate valuation of Rider RRS in Attachment JAR-1 to the testimony of Jay Ruberto,⁷ which provided the Companies’ projection of the amount of costs and revenues that would be passed through Rider RRS in each year, the net of those costs and revenues, and the total net credit or charge for the initial 15-year term of Rider RRS expressed in both nominal and net present value dollars.⁸ While those projections were all outputs from proprietary modeling using market

⁵ *Id.* at 11-15.

⁶ *Id.* at 12 and Ex. F ¶¶ 6-7.

⁷ See Co. Ex. 34, Errata Sheet of Jay Ruberto, Attachment JAR-1 revised.

⁸ After Rider RRS was modified in the Third Supplemental Stipulation, Companies’ witness Eileen Mikkelsen updated Attachment JAR-1 in a workpaper that has been admitted as Sierra Club Exhibit 89. In that workpaper, Ms. Mikkelsen publicly disclosed the Companies’ projection of the amount of costs and revenues that would be passed through Rider RRS in each year, the net of those costs and revenues,

forecasts and other inputs for which the Companies have sought and received trade secret protection, the Companies publicly disclosed the aggregate valuations without any apparent concern that doing so would enable the public to derive sensitive plant-specific information or market forecasts. And that is because there is no way for someone to derive sensitive information from such aggregate data, as the Companies themselves have previously acknowledged. As the Companies explained in an earlier motion for protective order:

Importantly, FirstEnergy Solutions Corp. (“FES”) consistently has distinguished in this proceeding its plant-specific data in Mr. Lisowski’s attachments, which is highly confidential, from the aggregate data in Mr. Ruberto’s Attachment JAR-1. **Mr. Ruberto’s attachment does not provide competitors with data from which plant-specific cost and revenue information can be calculated.** In contrast, the plant specific information contained in Attachments JJJ-1, JJJ-2 and JJJ-3 is highly competitively sensitive in nature and proprietary to FES. Access to this information by a competitor – such as the companies represented by P3/EPSC – would provide a window into FES’s forward-looking business plans related to the specific generation assets involved and would give those competitors a competitive advantage.⁹

This is the exact same type of aggregate data that Sierra Club now seeks to publicly disclose. The only difference between the FES projection and the aggregate data in Attachment JAR-1 and Ms. Mikkelsen’s workpaper updating Attachment JAR-1 is the underlying forecasts. As the Companies’ prior filings demonstrate, such disclosure would not reveal or enable the derivation of any sensitive plant-specific information or market forecasts. FirstEnergy’s *post-hoc* attempt to claim otherwise, now that it is faced with the potential disclosure of FES’s valuation of Rider RRS, should be rejected.

and the total net credit or charge for the 8-year term of Rider RRS expressed in both nominal and net present value dollars.

⁹ Companies’ Motion for Protective Order, at 2 (filed Jan. 11, 2016) (emphasis added).

The attached Affidavit from Mr. Comings further demonstrates that public disclosure of FES's valuation of Rider RRS would not allow for the derivation of any sensitive plant-specific information or market forecasts. As Mr. Comings explains, knowing the total valuation for Rider RRS using FES's forecasts does not enable one to estimate the profitability of any individual plant, because there is no way for someone who lacks access to the confidential information to know how that valuation is divided up between the plants.¹⁰ Although Mr. Lisowski contends that one could simply divide the total valuation by the nameplate capacity of the plants at issue in Rider RRS to arrive at an approximation of the profitability of each plant, that contention lacks merit.¹¹ The disclosure of the total valuation in no way reveals whether each plant in Rider RRS – which differ in terms of age, fuel type, variable O&M costs, etc. – has basically the same valuation per megawatt or whether the per-megawatt valuation of each plant varies widely. In fact, there is essentially an infinite number of ways that a total valuation figure could be divided up between the plants involved, and the public disclosure of the FES projection would in no way enable someone to figure out such division.¹²

FirstEnergy's further contention, that one could derive FES's confidential market forecasts and extrapolate the valuation of other plants in its system from the aggregate Rider RRS valuation, is even more baseless.¹³ As Mr. Comings explains, there are numerous categories of costs and revenues that went into projecting the valuation of Rider RRS as a whole,

¹⁰ Ex. 1 ¶ 6.

¹¹ FirstEnergy Mot. at Ex. F ¶ 6.

¹² Ex. 1 at ¶ 6. FirstEnergy's claim is further undermined by its erroneous claim that only two plants – Sammis and Davis-Besse – are reflected in the FES projection. FirstEnergy Mot. at 2 n.1, Ex. F ¶ 6. In fact, the OVEC entitlement is also included, which makes it even more impossible to determine how FES's total valuation might be divided up between the various plants in Rider RRS. Ex. 1 ¶ 6.

¹³ FirstEnergy Mot. at 12, Ex. F ¶ 6.

including forecasts of market capacity, energy, and carbon prices, and factors such as projected variable O&M costs, outages, heat rates, and capacity factors that can vary widely for each plant and even individual units at a plant.¹⁴ Mr. Lisowski provides no explanation for how someone could purportedly “back into” the values used by FES for any of these elements simply by knowing FES’s overall valuation of Rider RRS.¹⁵ The reality is that it would be impossible to do so.¹⁶

Finally, the Companies contend that the Commission has already concluded in its March 31 Order that disclosure of FES’s total valuation of Rider RRS would enable confidential information to be “easily derived.”¹⁷ But this claim misconstrues what the Commission held. The Commission never concluded that revelation of the FES valuation could enable the public to derive plant-specific information or market forecasts used to develop that valuation. Instead, the Commission was simply noting that, having already averaged the Companies’ publicly-disclosed valuation of Rider RRS with one of the projected valuations provided by witness James Wilson, if the Commission then calculated a new average that included FES’s valuation, one would be able to easily derive the FES valuation “from the calculation.”¹⁸ In short, the Commission assumed the confidentiality of the aggregate FES valuation, which no party at that time had challenged, and therefore avoided making a calculation that would have revealed that valuation. The Commission’s cautious treatment of protected information was not a finding that the aggregate valuation is a trade secret or would reveal confidential information which, as described

¹⁴ Ex. 1 ¶ 8.

¹⁵ FirstEnergy Mot. at Ex. F ¶ 6.

¹⁶ Ex. 1 at ¶ 8.

¹⁷ FirstEnergy Mot. at 6 (citing Opinion and Order at 85 (Mar. 31, 2016)).

¹⁸ Opinion and Order at 85.

above, it plainly is not and would not.¹⁹ FirstEnergy's mischaracterization of the Commission's Order should be rejected.

For the foregoing reasons, Sierra Club respectfully requests that the Commission deny FirstEnergy's motion and grant Sierra Club's April 22 Motion to Modify Protective Order so that the public can gain a fuller understanding of the potential financial impact of Rider RRS on customers.

April 26, 2016

Respectfully submitted,

s/ Shannon Fisk

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¹⁹ To the extent that the Commission has concluded that the FES valuation of Rider RRS is a trade secret or otherwise entitled to protection, Sierra Club respectfully requests that the Commission reconsider that holding for the reasons set forth in its April 22 Motion to Modify Protective Order and in this Response.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Sierra Club's Memorandum Contra Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Motion to Renew and Enforce Protective Order has been served upon the following parties via electronic mail on April 26, 2016:

s/ Michael Soules

Michael Soules

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Exhibit 1

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**
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)
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Commonwealth of Massachusetts)
)
Middlesex County)

1. I am employed as a Senior Associate at Synapse Energy Economics in Cambridge, Massachusetts. At Synapse, I have worked extensively in the energy planning sector, including work on integrated resource plans, costs of regulatory compliance, and economic impact analyses. I have testified on electricity planning, coal economics, and economic impacts in many jurisdictions.

2. On behalf of the Sierra Club, I filed direct, first supplemental, second supplemental, and third supplemental testimony in this proceeding. As part of my work in this case, I evaluated modeling inputs and outputs provided by the Companies and FES on the economics of the W.H. Sammis and Davis-Besse Plants and FES's entitlement to the OVEC plants. FES provided a breakdown of projected costs and revenues for Sammis, Davis-Besse, and the OVEC entitlement over the initial 15-year proposed term for Rider RRS. It is my understanding that FES's projections were derived by inputting FES's assumptions of energy, capacity, and carbon prices, among other inputs, into the same proprietary model that the

Companies used to generate their projection of costs and revenues for each plant and the OVEC entitlement. While those inputs have been provided to me pursuant to the non-disclosure agreement in this proceeding, the proprietary model has not.

3. As Mr. Lisowski states in his affidavit, my Third Supplemental Testimony refers to and relies on some of the information provided by FES under the non-disclosure agreement. Most relevant here, I compiled FES's breakdown of projected costs and revenues for each plant and the OVEC entitlement, adjusted to reflect the revised eight-year term and return on equity for Rider RRS, into a total net present value of the transaction which I then presented in my testimony.

4. I have reviewed the portions of my Third Supplemental Testimony that Sierra Club is seeking to make public. Those portions of my testimony do not reveal any of FES's forecast of energy, capacity, or carbon prices, or any other confidential inputs that FES used to project costs or revenues for each plant and the OVEC entitlement. Nor do those portions of my testimony reveal the projected economic performance of any particular FES generating plant or unit. Instead, those portions of my testimony only reveal FES's valuation of the entire transaction for each of the eight years of Rider RRS. The Companies have already publicly disclosed the exact same type of valuation of Rider RRS using the Companies', rather than FES's, inputs.

5. I have reviewed Mr. Lisowski's April 21, 2016 affidavit and find his concerns about this FES valuation providing a portal into other, sensitive FES information unfounded. Just as the Companies' public disclosure of its annual valuation of Rider RRS did not pose a threat of revealing the underlying forecasts and information that the Companies claimed confidentiality for, public disclosure of FES's valuation would not reveal confidential FES forecasts and information.

6. In his affidavit, Mr. Lisowski states a concern that one could “derive the approximate plant-specific profitability of the Plants” if the FES valuation of the total transaction is revealed. Revealing one number that represents FES’s interest in multiple plants does not make it possible to view the individual profitability of each plant. For instance, if the value of a hypothetical transaction involving two plants (“Plant A” and “Plant B”) was \$500 million—how do you know what Plant A or Plant B are worth individually? You do not. In one case: Plant A may be worth \$500 million while Plant B is worth nothing. In another case: Plant A may be worth -\$1 billion while Plant B is worth \$1.5 billion. Both of these cases lead to a total valuation of \$500 million yet each tell very different stories for the individual plants’ profitability. In fact, with only the total transaction valuation available, there are an infinite number of possibilities for the values of each plant. Therefore, Mr. Lisowski’s stated concern about individual plant economics being revealed through the total value of the transaction is unfounded. This is especially true because, contrary to Mr. Lisowski’s claim, there are more than two plants reflected in FES’s valuation of Rider RRS. In particular, the OVEC entitlement is also included in the transaction valuation, thereby making the derivation of any individual plant’s economics from FES’s valuation even more impossible.

7. Mr. Lisowski further contends in his affidavit that not only can individual plants’ profitability be revealed but that FES’s valuation of other plants—outside of the transaction—could be revealed. He claims that:

In turn, this information could be used to “back into” underlying assumptions regarding energy, capacity, gas, coal prices, and costs as related to the Plants, which, potentially could be extrapolated to the remainder of FES’s competitive generation fleet.

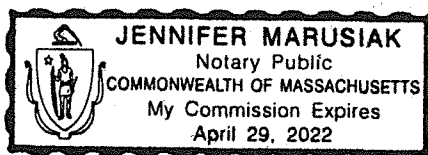
8. These concerns are also unfounded. There are many categories of costs and revenues that go into the valuation of each plant, and by extension the transaction as a whole. You cannot glean what these individual pieces are by viewing the valuation alone. For example, FES's valuation of the Sammis plant is based on, among other things, FES's forecast of coal, energy, and capacity prices, and for each of the seven units at the plant, the projected variable operations and maintenance (O&M) cost, outages, heat rate, capacity factor, and megawatt-hours of energy generated, all of which are inputs or outputs of a model that presumably has its own confidential mechanics. I know from experience that it is impossible to "back into" the values of any of these factors from the transaction's valuation alone, much less to apply those values to different plants that use different fuel types, have different variable O&M costs, and other variations in operating characteristics.

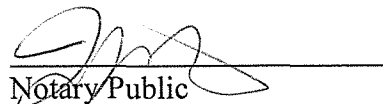
9. I state under penalty of perjury that the foregoing is true and correct.



TYLER COMINGS

SUBSCRIBED AND SWORN to before me this 26 day of April, 2016.





Notary Public

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Case No(s). 14-1297-EL-SSO

Summary: Response Sierra Club's Memorandum Contra Ohio Edison Company, The Cleveland Electric Illuminating Company, And The Toledo Edison Company's Motion To Renew And Enforce Protective Order electronically filed by Mr. Tony G. Mendoza on behalf of Sierra Club