

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 08-935-EL-SSO
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.)

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 08-936-EL-SSO
Illuminating Company and The Toledo)
Edison Company for Approval of a)
Market Rate Offer to Conduct a)
Competitive Bidding Process for Standard)
Service Offer Electric Generation Supply,)
Accounting Modifications Associated)
with Reconciliation Mechanism, and)
Tariffs for Generation Service.)

REPLY TO FIRSTENERGY'S MEMORANDUM CONTRA MOTION FOR
LOCAL PUBLIC HEARINGS

BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

On July 31, 2008, Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company, (collectively, "FirstEnergy" or the "Companies") filed their applications in Case Nos. 08-935-EL-SSO and 08-936-EL-SSO. In Case No. 08-935-EL-SSO, the Companies are seeking the approval of their proposed Electric Security Plans ("ESP Case"). In Case No. 08-936-EL-SSO, the Companies are seeking approval of a Market Rate Offer ("MRO Case") to conduct a competitive bidding process for standard service offer electric generation supply.

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On August 5, 2008, an Entry provided a procedural schedule for the ESP Case, which stated that “[l]ocal public hearings will be scheduled, and publication of notice required, by subsequent entry.”¹ On August 25, 2008, the Office of the Ohio Consumers’ Counsel (“OCC”), Northwest Ohio Aggregation Coalition (“OPEC”), the Ohio Partners for Affordable Energy (“OPAE”), and the Ohio Environmental Counsel (“OEC,” collectively with other movants, “Joint Movants”) filed a joint motion in each of the above-captioned cases (collectively, “Joint Motion”) with the Public Utilities Commission of Ohio (“Commission” or “PUCO”) for concurrent public hearings in the ESP Case and the MRO Case. On that same date, the OCC and other parties jointly moved for continuance of the hearing in the ESP Case.

On September 2, 2008, the Applicants (collectively, “FirstEnergy” or the “Company”) filed memoranda contra the Joint Motion for Local Public Hearings in each of the above-captioned cases (“Memo Contra”²). FirstEnergy did not properly serve its Memo Contra on the OCC’s counsel of record,³ a recurring problem with FirstEnergy that places an unfair strain on the OCC under present circumstances where reply memorandum are required within three business day.⁴ To the extent that the

¹ *In re FirstEnergy ESP Case*, Case No. 08-935-EL-SSO, Entry at 3, ¶(5) (August 5, 2008).

² FirstEnergy’s argument is the same in each of its memoranda, and only a few words separate the two pleadings.

³ FirstEnergy did not properly serve its memoranda contra the Joint Motion for Local Public Hearings or the Joint Motion for Continuance (or responses to the OCC’s discovery). FirstEnergy’s certificates of service state that its memoranda were electronically transmitted to an OCC attorney who has not made an appearance in this case and the fourth-listed attorney on the OCC’s signature block, both of whom were in a hearing on September 2. This problem having been pointed out to FirstEnergy, a FirstEnergy representative responded that “FirstEnergy believes that OCC was properly served on Tuesday.” To the contrary, FirstEnergy must serve the OCC’s counsel of record if it chooses not to serve all counsel for a party. Ohio Adm. Code 4901-1-05(B).

⁴ *In re FirstEnergy ESP Case*, Case No. 08-935-EL-SSO, Entry at 3, ¶(6) (August 5, 2008).

Commission considers FirstEnergy's arguments in this situation, this Reply addresses FirstEnergy's arguments in its Memo Contra.

II. ARGUMENT

A. Sound Policy Supports Public Participation.

The Joint Movants relied upon sound public policy in support of the concurrent local public hearings, supported by Commission practice in electric transition plan and rate stabilization plan cases as well as by the Governor's statements regarding principles and concerns that guided his efforts that eventually resulted in enactment of Sub. S.B. 221.⁵ FirstEnergy's response is peculiar: the Company criticizes the concept of local public hearings in any proceeding on the subject of setting SSO rates. For example, FirstEnergy states in the ESP Case (also in the MRO Case) that "there is neither a requirement nor a need for public hearings."⁶ The Commission has already stated otherwise in its Entry dated August 5, 2008.⁷ The issue raised in the Joint Motion is whether local public hearings should be concurrent with those in the MRO Case.⁸

FirstEnergy's arguments regarding a severely limited MRO proceeding -- one that would not permit public comment -- is not supported by either Ohio law or the

⁵ Joint Motion at 2-3.

⁶ *In re FirstEnergy ESP Case*, Case No. 08-935-EL-SSO, FirstEnergy Memorandum Contra Joint Motion for Local Public Hearings at 3 (September 2, 2008).

⁷ Incredibly, FirstEnergy argues that "to the extent that consumers have information that is relevant to the Commission's § R.C. 4928.142(B) review, that information also may be submitted through written testimony." Memo Contra at 5-6. The provision for local public hearings in the ESP Case recognizes the impracticality of FirstEnergy's position.

⁸ The point of the Joint Motion is repeatedly lost by FirstEnergy. As another example, FirstEnergy argues that the list of major issues proposed for the notice of public hearings includes issues not "directly related to the limited technical considerations currently before the Commission." Memo Contra at 5. The Joint Movants' list was for joint, concurrent local public hearings and therefore included issues in the ESP Case.

Company's own filings in the MRO Case. FirstEnergy states that "the Commission's review of an MRO application is limited to determining whether the MRO meets three market requirements [stated in R.C. 4928.142(B)]."⁹ R.C. Chapter 4928 provides for a Commission proceeding to determine whether the "utility and its market-rate offer meet all of the foregoing requirements."¹⁰ The "foregoing requirements" include those stated in R.C. 4928.142(A), and the utility must "conform its filing to the (Commission's) rules."¹¹ The scope of the proceeding in the MRO Case is, therefore, much broader than stated in FirstEnergy's Memo Contra.¹²

One need go no further than FirstEnergy's filings in the MRO Case to find a broad range of topics discussed by the Company's witnesses in pre-filed testimony. The pre-filed testimony of FirstEnergy Witness Norris states, for example:

The purpose of my testimony in this [MRO] proceeding is to: (i) describe how the results of the competitive bid process will be converted to retail rates, (ii) explain the reconciliation mechanism process, (iii) address and support the design of propose rates an associate tariff sheets of the Companies' Market Rate Offer ("MRO"), (iv) discuss avoidable charges, (v) discuss schedules which include generation and transmission rate impacts by customer class and rate schedule, and (vi) discuss schedules which reflect propose and current rates.¹³

⁹ Memo Contra at 2. See also, Memo Contra at 4 ("three criteria").

¹⁰ R.C. 4928.142.

¹¹ R.C. 4928.142(B).

¹² This view was expressed by an attorney examiner at the August 25, 2008 status conference, and no FirstEnergy representative stated a contrary view of Ohio law. The scope of the MRO proceeding is the subject of a separate OCC pleading. See, OCC Motion for Bifurcated Hearing (August 29, 2008).

¹³ *In re FirstEnergy MRO Case*, Case No. 08-936-EL-SSO, Pre-filed Testimony of FirstEnergy Witness Norris at 3.

Mr. Norris' pre-filed testimony, therefore, does not deal with any of the regional transmission organization and price publication issues that are the subject of R.C. 4928.142(B)(1) through R.C. 4928.142(B)(3). The scope for the MRO Case supported in FirstEnergy's own pre-filed testimony is much broader than stated in FirstEnergy's Memo Contra, and includes topics such as rate design that would normally be at issue in rate cases. Local public hearings are held in rate cases, and should be held in the MRO Case.¹⁴

B. The Time for Local Public Hearings in the MRO Case is the Same as that for the Local Public Hearings in the ESP Case.

FirstEnergy argues that the compressed schedule for the MRO Case means that the General Assembly "must have understood that local public hearings would not be appropriate or necessary."¹⁵ The approval process for the MRO Case -- accompanied by the ESP Case resulting from the Company's simultaneous filings -- is the same 150 days as for the ESP Case.¹⁶

The timeframes for both the ESP Case and the MRO Case are compressed, which argues for a continuance of the hearing. Such a continuance is the subject of the Joint Motion for Continuance that was filed in the ESP Case on August 25, 2008.

FirstEnergy's calculations regarding the October timeframes for the public hearings¹⁷ that are supported by Joint Movants assumes that no continuance is granted. The continuance

¹⁴ Joint Motion at 5, footnote 8.

¹⁵ Memo Contra at 5.

¹⁶ R.C. 4928.142(B) ("one hundred fifty days after the filing date of those applications"). The approval process and timing requirements are the subject of a separate pleading. See OCC Motion for Bifurcated Hearing (August 29, 2008). The OCC supports consolidation of the cases. *Id.*

¹⁷ Memo Contra at 1.

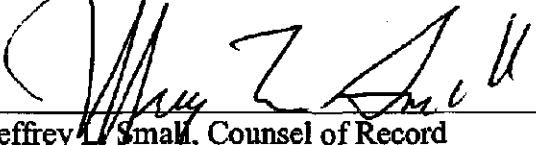
should be granted, as argued elsewhere,¹⁸ and the public should be provided as much notice of the local public hearings as possible in order to provide for an effectiveness public process.

III. CONCLUSION

The Commission should hold local public hearings regarding the Application in the MRO Case as well as the ESP Case, and such local public hearings should be held concurrently. The Joint Motion for Local Public Hearings should be granted.

Respectfully submitted,

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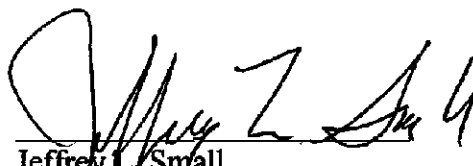
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¹⁸ The OCC is filing, concurrently with the instant Reply, a reply to FirstEnergy's Memorandum Contra Motion for Continuance.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Reply to FirstEnergy's Memoranda Contra Motion for Local Public Hearings*, was served upon the persons listed below via regular U.S. Mail service, postage prepaid, and electronically, this 5th day of September, 2008.


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