

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 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.

Case No. 08-936-EL-SSO

REPLY BRIEF
OF
DOMINION RETAIL, INC.

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Due Date: October 14, 2008
Submitted: October 14, 2008

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REPLY BRIEF
OF
DOMINION RETAIL, INC.

I. INTRODUCTION

This case is before the Commission upon the joint application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "FE Companies") pursuant to Section 4928.142, Revised Code, for approval of a plan to conduct a market rate offer ("MRO") competitive bidding process to secure generation supply for a standard service offer ("SSO") generation rate for non-shopping customers. The hearing in this matter concluded September 22, 2008, and initial briefs were filed October 6, 2008. Intervenor Dominion Retail, Inc. ("Dominion Retail") hereby submits its reply brief in accordance with the schedule established by the presiding attorney examiners.

In conjunction with their application in this case for approval of an MRO-based SSO, the FE Companies simultaneously filed an application in Case No. 08-935-EL-SSO for approval of an electric security plan ("ESP") SSO pursuant to Sections 4928.141 and 4928.143, Revised

Code. Although the Commission must render a decision on the MRO application based on the record now before it, there is no assurance that an MRO competitive bidding process will actually be implemented. Under Section 4928.143(C)(1), Revised Code, if the Commission ultimately determines in the ESP SSO case that the ESP "is more favorable in the aggregate as compared to the expected results that would otherwise apply" under a Section 4928.142, Revised Code, MRO-based SSO, it must approve, or modify and approve, the ESP.

For those reasons set forth in its initial brief, Dominion Retail believes that effective retail competition will never develop in the FE Companies' market area as long as the price for generation against which competitive providers must compete is artificially reduced as a result of a short-sighted approach that pushes the real cost of generation supply off for future recovery from customers in exchange for short-term caps on generation rates and other bells and whistles of the type proposed in the application in Case No. 08-935-EL-SSO. *See Dominion Retail Brief, 2-3.* However, the important point for purposes at hand is that, if the expected outcome of the MRO-based SSO is to get a fair shake when ultimately compared to the purported aggregate benefits of the FE Companies' ESP, not only must the wholesale competitive bidding process approved in this case be properly structured, but costs relating solely to SSO generation must be avoidable by customers that elect service from a competitive retail supplier. *See Dominion Retail Brief, 3.* Otherwise, the benefits of the MRO-based SSO will be understated.

II. ARGUMENT

A. THE FE COMPANIES' PROPOSAL TO IMPOSE SSO GENERATION-RELATED COSTS ON SHOPPING CUSTOMERS THROUGH A NON-BYPASSABLE RIDER IS UNREASONABLE AND UNLAWFUL.

With the notable exception of the FE Companies, all the parties that addressed proposed Rider CRT in their initial briefs agree with Dominion Retail that this cost recovery true-up

mechanism should be bypassable by shopping customers that contract for generation supply with a competitive retail electric service ("CRES") provider. See Staff Brief, 7-8; OEG Brief, 14-15; OPAE Brief, 7-8; Constellation Brief, 7-8; Nucor Brief, 27. The mere fact that parties representing such a variety of interests share this view should, of itself, go far in persuading the Commission that the FE Companies' stance that Rider CRT should be unavoidable is neither reasonable nor in the public interest. Indeed, nothing the FE Companies have to say on brief with respect to this subject should convince the Commission otherwise.

B. THE FE COMPANIES' ARGUMENTS FOR APPLYING RIDER CRT TO SHOPPING CUSTOMERS MISSTATE THE ISSUES INVOLVED AND ARE WITHOUT MERIT.

1. The FE Companies' reliance on Section 4928.142(C)(3), Revised Code, for the proposition that costs relating to the competitive bidding process not captured in the SSO price should be recovered through a non-bypassable rider is totally misplaced.

In addition to adjusting the retail SSO price to reconcile differences between SSO generation revenues and the costs incurred by the FE Companies in the provision of SSO generation service during the prior quarter, proposed Rider CRT is also designed to recover certain categories of incremental expense associated with the MRO-based SSO generation service. As identified in the testimony of Company witness Norris, the first of these categories is competitive bidding process ("CBP") expenses not recovered through the tranche fees paid by the winning SSO suppliers. Company Ex. 2, at 5. Although the application was silent as to what type of CBP-related expenses might be included in this category, Mr. Norris suggested at hearing that it could include items such a late invoice from the CBP manager or the cost of consultants retained by the Commission. Tr. I, 182-183. Staff witness Fortney recommended that the element of Rider CRT intended to recover these costs should be bypassable by shopping

customers on the ground that, as SSO generation-related charges, they should be the responsibility of the customers that actually utilized the FE Companies' SSO generation service. Staff Ex. 3, at 3.

On brief, the FE Companies criticize Mr. Fortney's recommendation, claiming that, under Section 4928.142(C), Revised Code, the FE Companies are allowed to recover all generation-related costs and that Mr. Fortney failed to consider how these costs could be recovered if a substantial portion of customers elected to shop, which would place the FE Companies at increased risk that full recovery would not be achieved. *See* FE Companies' Brief, 25-26. This argument ignores a fundamental point.

No one disputes that costs incurred in connection with the CBP are generation-related. However, Section 4928.142(C)(3), Revised Code, specifically states that costs incurred as a result of, or related to, the CBP are to be recovered through the SSO price or through a reconciliation or other recovery mechanism, or a combination of such mechanisms. If, as provided by this statute, CBP costs are to be included in the SSO generation price – a price that, by definition, is not paid by shopping customers – it goes without saying that a reconciliation mechanism designed to recognize CBP-related expenses, which, for timing reasons, were not captured in the SSO generation price or recovered through the tranche fees, must also be the responsibility of the customers of SSO service, not customers that have contracted with a CRES supplier for an alternative source of generation supply. To find otherwise would make a mockery of the legislative scheme. Moreover, had the legislature shared the FE Companies' concern that there would be a shrinking pool of customers from which to recover the CPB-related costs, the legislature would have certainly provided for recovery of this category of costs from all customers rather than through the SSO price. Plainly, the FE Companies' reliance on

Section 4928.142(C) for the proposition that this category of costs is to be recovered from all customers is totally misplaced.

2. The FE Companies' proposal that the element of Rider CRT designed to recover uncollectible expense associated with SSO generation service should be non-bypassable is unreasonable and would create a barrier to competition.

The second category of incremental expenses the FE Companies seek to recover through Rider CRT is uncollectible expense incurred in connection with SSO generation service. In their brief, the FE Companies echo Mr. Norris' argument that this element of Rider CRT should be non-bypassable because shopping customers benefit from having the option to return to SSO, and, thus, should share in cost of insuring the FE Companies against the risk of undercollection of the revenues generated by SSO service. *See* FE Companies' Brief, 25. Here, too, the FE Companies criticize Staff witness Fortney's recommendation that this element of Rider CRT should be avoidable by shopping customers, claiming that the risk of under-recovery would increase as customers migrated to CRES generation service. *Id.*

Again, no one disputes that the uncollectible expense associated with SSO service is a generation-related cost. Indeed, that is precisely why Mr. Fortney recommended that the uncollectible expense associated with SSO generation service be borne by the customers utilizing that service and not by those customers that do not. *See* Staff Ex. 3, at 3. As Dominion Retail explained in its initial brief, the price charged for generation supply by a CRES provider must necessarily take into account the CRES provider's bad debt expense experience. *See* Dominion Retail Brief, 8. Thus, charging the shopping customer for the uncollectible expense associated with SSO generation service would, in effect, require the shopping customer to pay for the same cost twice, thereby placing the CRES provider at a competitive disadvantage vis-à-vis the FE

Companies' SSO service. Moreover, the FE Companies' "death spiral" argument – the notion that a shrinking pool of SSO customers increases the risk of undercollection – ignores that total SSO-related uncollectible expense would decrease if the number of customers served by the SSO decreases. Further, the argument that shopping customers have the option of returning to SSO service is completely mistakes the point. Upon returning to SSO service, the former shopping customer, would, in fact, pay the uncollectible expense element or Rider CRT, which is just as it should be under fundamental ratemaking principles. However, until that happens there is, to use Mr. Fortney's words, "no logical rationale which would require customers who are not taking service from the companies" to pay this element of Rider CRT. Staff Ex. 3, at 3.

3. The revenue shortfall that may result under certain schedules and special arrangements should not be recovered through Rider CRT.


The final category of cost the FE Companies propose to recover through Rider CRT is the delta revenue resulting from the difference between the otherwise applicable rate, inclusive of the SSO generation charge, and the charges under any economic development or energy efficiency schedule, reasonable arrangement, governmental special contract, or unique, special contract arrangement. There has been considerable debate in this proceeding as to whether, and to what extent, these anticipated revenue shortfalls should be chargeable to both SSO and shopping customers. However, regardless where the Commission comes out on this subject, the threshold issue is whether delta revenues should be an element of Rider CRT as proposed in the application, or whether, as Staff witness Fortney recommends, all elements of Rider CRT relating to delta revenue recovery should be removed and recovered through a separate rider, with the amount to be recovered to be determined in the various proceedings in which the schedules or arrangements in question are approved. *Id.*

Although FE Companies' witness Norris has characterized the "otherwise applicable rate schedule" as including the SSO generation charge (Company Ex 2, at 6), Dominion Retail would argue that, although the baseline to which the revenues generated by these schedules and arrangements will be compared include the SSO price, the resulting delta revenues are not, strictly speaking, a generation-related cost, and, thus, are not properly included in Rider CRT. However, be that as it may, Dominion Retail agrees with Mr. Fortney that this is a matter that should be addressed in the proceedings in which the schedules and arrangements are considered, and, if such schedules and arrangements are approved, the anticipated revenue shortfall should be recovered through a separate rider so as to facilitate subsequent monitoring and review. Other than a desire to resolve this matter in the context of this proceeding (*see* Tr I, 186-188), the FE Companies have offered no reason why delta revenue recovery should not be accomplished through a separate rider. In view of the present uncertainty as to the form certain of these schedules and arrangements will ultimately take, Dominion Retail urges the Commission to defer its decision on this matter and to eliminate delta revenue recovery as an element of Rider CRT.

IV. CONCLUSION

For those reasons set forth above, delta revenues should be recovered through a separate rider and the remaining incremental expense components of proposed Rider CRT should be bypassable by shopping customers.

Respectfully submitted,


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CERTIFICATE OF SERVICE

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