

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. 10-388-EL-SSO
Edison Company for Authority to Establish)
a Standard Service Offer Pursuant to)
Section 4928.143, Revised Code, in the)
Form of an Electric Security Plan.)

ENTRY

The Commission finds:

- (1) Ohio Edison Company (OE), The Cleveland Electric Illuminating Company (CEI), and the Toledo Edison Company (TE) (collectively, FirstEnergy or the Companies) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) On August 17, 2009, FirstEnergy Service Company, on behalf of six of its affiliates, including OE, CEI, TE, and American Transmission Systems, Inc., filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER09-1589. The application requested permission for the FirstEnergy affiliates to withdraw their transmission facilities from the Midwest Independent Transmission System Operator and transfer operational control to PJM Interconnection, Inc. (PJM). The application characterized this transfer as the RTO realignment.

Subsequently, on September 4, 2009, the Commission opened Case No. 09-778-EL-UNC to review the impact of RTO realignment upon stakeholders in this state. During this proceeding, the Commission received written comments from 11 stakeholders and heard oral presentations regarding the RTO realignment on September 15, 2009, and January 7, 2010.

- (3) Further, on October 20, 2009, FirstEnergy filed an application, in Case No. 09-906-EL-SSO, for its standard service offer (SSO) commencing June 1, 2011, pursuant to Section 4928.141, Revised Code. This application was for a market rate offer

(MRO) in accordance with Section 4928.142, Revised Code. On October 29, 2009, a technical conference was held regarding FirstEnergy's application. The Staff filed comments regarding the application on November 24, 2009; in its comments, Staff recommended that FirstEnergy consider a new electric security plan (ESP) for its SSO rather than the proposed MRO. The hearing in this proceeding commenced on December 15, 2009, and concluded on December 22, 2009.

- (4) Subsequently, on March 23, 2010, FirstEnergy filed an application, pursuant to Section 4928.141, Revised Code, for a SSO for the period between June 1, 2011, and May 31, 2014. This application is for an ESP, in accordance with Section 4928.143, Revised Code, and the application includes a stipulation agreed to by various parties regarding the terms of the proposed ESP. FirstEnergy states in the application that, since the directive by the Commission in the MRO proceeding for Staff to submit comments related to FirstEnergy's proposed SSO or alternative SSOs and Staff's recommendation to consider an ESP, FirstEnergy and numerous parties have engaged in a wide range of discussions over several months regarding various aspects of an ESP, all of which culminated in the filing of the proposed ESP. In addition, among other terms of the stipulation, the signatory parties recommend that the Commission close the RTO realignment proceeding, Case No. 09-778-EL-UNC, as well as FirstEnergy's corporate separation case, Case No. 09-462-EL-UNC.
- (5) In its application filed in this docket, FirstEnergy requested that the 25 parties who intervened in its MRO proceeding, Case No. 09-906-EL-SSO, be granted intervention in this proceeding without the need for the filing of additional motions, and that all attorneys who are authorized to appear *pro hac vice* in the market rate offer proceeding be authorized to appear *pro hac vice* in this proceeding. The attorney examiner granted this request by entry dated March 24, 2010.
- (6) In addition, FirstEnergy requested that the Commission take administrative notice of the record in Case No. 09-906-EL-SSO for purposes of this proceeding. The Commission finds that FirstEnergy's request is reasonable and should be granted. All testimony and exhibits which were admitted into evidence in

Case No. 09-906-EL-SSO shall be admitted into the evidentiary record of this proceeding. Further, all briefs and other pleadings filed in Case No. 09-906-EL-SSO may be used for any appropriate purpose in this proceeding.

- (7) Further, on March 24, 2010, FirstEnergy filed a motion for waivers of certain procedural requirements for electric security plans contained in Rule 4901:1-35-03, O.A.C., and a request for expedited consideration. Specifically, FirstEnergy asked for waivers of the filing requirements contained in paragraphs (C)(2), (C)(4), (C)(5), (C)(6), (C)(7), (C)(8), (F), and (G) of Rule 4901:1-35-03, O.A.C., as well as Rules 4901:1-35-04 and 4901:1-35-06, O.A.C.
- (8) In support of its motion, FirstEnergy states that the Companies have made a good faith effort to conform their application to the substantive requirements of the Commission's procedural rules but that the waivers are necessary for the expedited consideration and approval of the application. FirstEnergy contends that a waiver of the rules is appropriate because the ESP proposed in the application is the result of a stipulation reflecting the participation of numerous stakeholders who have familiarity with the subject matter and issues presented and that the waiver will not present undue prejudice to any party.
- (9) On March 26, 2010, the office of the Ohio Consumers' Counsel, Citizen Power, Citizens Coalition, Natural Resources Defense Council, Northwest Ohio Aggregation Coalition, Northeast Ohio Public Energy Council and the Ohio Environmental Council (Ohio Consumer and Environmental Advocates or OCEA) filed a joint memoranda contra the motion for waivers. OCEA contends that FirstEnergy has not demonstrated "good cause" for the waivers. OCEA urges the Commission to consider whether the information which is the subject of the waiver request is necessary for parties and the Commission to make an effective and efficient review of the application. Based upon this standard, OCEA claims that FirstEnergy has not demonstrated good cause for the proposed waivers. Moreover, OCEA requests that the Commission deny all broadly stated waiver requests, arguing that the Commission has previously rejected "gap-filling", non-specific requests for waivers. *In re FirstEnergy*, Case No. 03-2144-EL-ATA, Opinion and Order

(June 9, 2004) at 40. Finally, OCEA argues that the Commission should deny FirstEnergy's request for a waiver of Rule 4901:1-35-06, O.A.C., regarding the deadline for interventions.

- (10) The Commission finds that FirstEnergy's request for waivers should be granted, in part, and denied, in part. The Commission notes that the application and stipulation filed in this proceeding appear on their face to be the culmination of a lengthy process beginning with FirstEnergy's application to FERC for RTO realignment and continuing with the extensive litigation conducted in the MRO proceeding. In fact, in that proceeding, Staff had recommended that FirstEnergy and the intervenors explore alternatives to the MRO proposed by FirstEnergy. The application and the stipulation appear to provide the alternative to the MRO as recommended by Staff. Moreover, the stipulation, if approved by the Commission, also would resolve all issues in FirstEnergy's pending corporate separation plan proceeding, Case No. 09-462-EL-UNC. Therefore, in light of the process and information provided in other proceedings and the fact that the Commission has taken administrative notice of the extensive record in the MRO proceeding, the Commission believes that a limited waiver of certain filing requirements contained in Rule 4901:1-35-03, O.A.C., is reasonable, and the Commission will waive paragraphs (C)(4), (C)(5), (C)(6), (C)(7), (C)(8), and (F) of Rule 4901:1-35-03, O.A.C. With regard to Rule 4901:1-35-03(G), O.A.C., the Commission will also grant a limited waiver of the requirement to file work papers with the application to the extent that such work papers support schedules that are no longer required to be filed pursuant to FirstEnergy's waiver requests.

However, the financial projections, provided for in Rule 4901:1-35-03(C)(2), O.A.C., or other comparable information, do not appear to be available in the record in the MRO proceeding. Because the Commission believes that these financial projections are essential to our consideration of the application and stipulation, we will deny FirstEnergy's request for a waiver of Rule 4901:1-35-03(C)(2), O.A.C. FirstEnergy is directed to supplement its application with this information within seven

days unless otherwise ordered by the Commission or the attorney examiner.

- (11) The Commission finds that the waiver of Rule 4901:1-35-04, O.A.C., which required FirstEnergy to include a proposed notice in its application, should be granted. This is not the first SSO application filed by FirstEnergy, and, through the prior cases, the Commission has developed a consistent format for the published notice. The Commission anticipates that the notice in this proceeding will be consistent with the notice used in the prior SSO proceedings.
- (12) With respect to the request for a waiver of Rule 4901:1-35-06, O.A.C., the Commission finds that this request is moot. The attorney examiner has established the deadline of April 5, 2010, for intervention, pursuant to Rule 4901:1-35-06(B), O.A.C. Further, the Commission notes that the attorney examiner has already granted intervention to 25 parties in this proceeding, without the necessity of filing motions to intervene, including every party in OCEA.

Nonetheless, OCEA is certainly aware that any party can move for intervention for good cause shown after the deadline for intervention and that the Commission has granted intervention in such circumstances. In fact, in the MRO proceeding, a number of the parties in OCEA filed motions to intervene after the deadline for intervention and were granted intervention in that proceeding.

- (13) Notwithstanding the approval of the waivers delineated herein, the Commission notes that, pursuant to Rule 4901:1-35-06, O.A.C., the burden of proof to show that the proposals in the application are just and reasonable and consistent with the policy of the state rests with the electric utility.

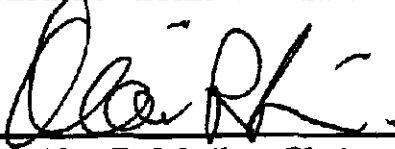
It is, therefore,

ORDERED, That FirstEnergy's motion for waivers be granted, in part, and denied, in part, as set forth in Findings (9) through (12). It is, further,

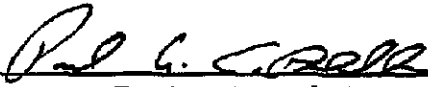
ORDERED, That FirstEnergy file supplemental information to its application, as set forth in Finding (9), within seven days. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record in this proceeding and all parties in Case Nos. 09-906-EL-SSO, 09-778-EL-UNC, and 09-462-EL-UNC.

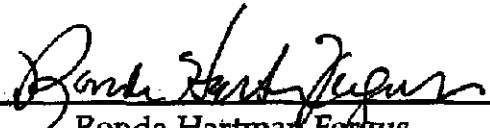
THE PUBLIC UTILITIES COMMISSION OF OHIO



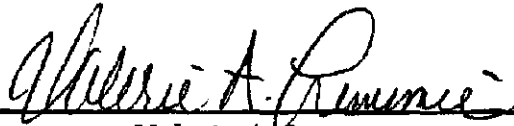
Alan R. Schriber, Chairman



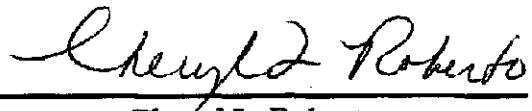
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Secretary