

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. 12-1230-EL-SSO
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 :

AEP RETAIL ENERGY PARTNERS LLC 'S
MEMORANDUM CONTRA FIRSTENERGY'S
MOTION FOR WAIVER OF RULES
AND MOTION TO EXPEDITE CONSIDERATION OF THIS CASE

I. INTRODUCTION

Asserting that "time is of the essence", applicants Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("FirstEnergy" or "the Companies") initiated this proceeding at the end of the day on Friday, April 13, 2012, by filing an application for authority to provide an electric security plan in the years 2014-2016 for the purpose of satisfying the Companies' standard service offer obligation. On the same date, it filed a remarkable motion in which it asks this Commission to:

- waive numerous standard filing requirements that exist to ensure that the general public is aware of this Commission's proceedings, and receives an opportunity to meaningfully participate in those proceedings,
- waive virtually all rules that compel FirstEnergy, as the applicant, to come forward with evidence and information upon which any meaningful review of, and decision regarding, its application might be based;
- schedule a hearing to begin barely one week (!) after the application was filed,¹

¹ On Thursday, April 19, 2012, the Attorney Examiner issued an Entry that contains a procedural schedule that would appear to foreclose FirstEnergy's demands for a ruling by no later than May 2, 2012, but nonetheless appears to contemplate acceding to FirstEnergy's alternative date. It is worth note that FirstEnergy provided little, if any, justification why the proposed change in its ESP from a one year to three year bid process is in the public interest, but instead merely invites speculation that bids for a three year product will be lower, now, than those same bids

- enter an Opinion and Order approving FirstEnergy's proposed ESP by collapsing a 275-day process to three weeks (!) from the date it filed its application, and
- rule within one week of the filing that "good cause" exists to justify the tremendously expedited consideration of FirstEnergy's prepackaged application, waivers, and stipulation.

For the reasons stated herein, the Commission should recognize that FirstEnergy's "urgency" is an issue largely of its own design, and the Commission should refuse to expedite its consideration of FirstEnergy's application. Second, the Commission should deny FirstEnergy's motions for waivers of this Commission's rules. Finally, the Commission should set a schedule that is reasonable given the necessity of exchanging, reviewing and evaluating the information necessary to any considered decision regarding FirstEnergy's proposed new ESP.

II. THE COMMISSION SHOULD EXAMINE FIRSTENERGY'S APPLICATION ON THE MERITS, AS CONTEMPLATED BY THE RULES OF THIS COMMISSION AND OHIO LAW. IT SHOULD DENY FIRSTENERGY'S MOTION FOR EXPEDITED TREATMENT OF ITS APPLICATION, AND IT SHOULD DENY FIRSTENERGY'S REQUESTED WAIVERS.

FirstEnergy asserts that "time is of the essence" because it hopes to bid demand response and energy efficiency resources into the PJM 2015-2016 Base Residual Auction scheduled for May 7, 2012. FirstEnergy fails to mention that it has been fully aware of PJM's processes, and the date of the PJM auction, for months. Further, FirstEnergy is obviously also aware of its own energy efficiency/demand reduction programs and issues that may surround those programs. First Energy nonetheless delayed filing any plan with this Commission to bid those resources into the PJM auction to the last possible moment, and only then appears to have acted in

might be in several months. Even more curiously, FirstEnergy's next auction will occur in October, 2012, so its haste for a judgment by mid-June appears to have little substance.

response to an inquiry regarding its non-action from this Commission.² It should not be rewarded for its delays.

Moreover, FirstEnergy itself recognizes that this Commission will likely prove unwilling to expedite its consideration of the application to the remarkable degree demanded by FirstEnergy. It therefore asks for a "consolation prize." For its proposed alternative, FirstEnergy asks the Commission to issue a final decision regarding its application no later than June 20, 2012. FirstEnergy explains this second alternative by asserting that a decision by this later date will "at least" allow it to implement changes to its ESP auction in order to include a three-year bid period (through 2016) within its own competitive auction, rather than "force" it to accept the one-year bids (through 2013) that are contemplated by its current, Commission-approved, ESP.

This Commission should not condone FirstEnergy's "urgent" presentation of a pre-packaged stipulation as the initiation of this matter. FirstEnergy's calculated manipulation of this Commission's processes is transparent. The stipulation presented this Commission with the application obviously took several weeks, if not months, to negotiate. Allowing FirstEnergy to ram through its pre-packaged plan that is based on secret negotiations by a limited number of stakeholders does not advance the important goals of transparency and due process. FirstEnergy nonetheless deliberately chose not to docket its application until after it reached a negotiated solution with many of the participants to its most recent standard service offer case. FirstEnergy chose to negotiate with those it knows would seek a seat at the table in order to make it more difficult for others that might seek a seat at that table. In doing so, it ensured that any such others

² In the Matter of the Commission's Review of the Participation of The Cleveland Electric Illuminating Company, the Ohio Edison Company, and the Toledo Edison Company in the May 2012 PJM Reliability Pricing Model Auction, Case No. 12-814-EL-UNC, Entry dated February 29, 2012.

(such as AEP Retail Energy Partners LLC) would prove unable to effectively participate in this proceeding, if indeed they are able to participate at all.

In short, this Commission may not presume to know – as FirstEnergy presumes to know – the identity of those that may wish to be heard on the subject of its application. Furthermore, this Commission may not presume, as does First Energy, that the proposed stipulation is an adequate substitute for the notice/meaningful-opportunity-to-participate process in which Ohio law demands this Commission engage.

Further, assuming *arguendo* that it is true that FirstEnergy merely seeks to continue its existing SSO for an additional two years – and AEP Retail Energy Partners LLC has not had any chance as yet to evaluate FirstEnergy's claim in this regard – this Commission should not ignore the fact that FirstEnergy itself proposed, during its most recent ESP case, to terminate its existing standard service offering in 2013. It plainly anticipated a future standard service offer proceeding would be required of it.

Even more troubling, FirstEnergy's application is obviously, woefully, deficient on the merits. While FirstEnergy's proposed "ESP – 3" may change little from the current ESP as FirstEnergy asserts, this fact does not necessarily mean that the current ESP continues to serve the public policies of this State or best promote the market for electric service. The Commission cannot ignore that both the retail and wholesale markets in Ohio have changed significantly since this Commission approved FirstEnergy's most recent ESP. Even more to the point, the announcement of planned retirements in September, 2012, of certain assets in Northern Ohio belonging to the Companies' affiliate, FirstEnergy Solutions, is threatening transmission constraints and increased capacity prices. Bidding demand response and energy efficiency resources into PJM's next auction at this time could potentially ameliorate those price increases

in part, or may simply permit FirstEnergy to secure higher prices for the Companies' energy efficiency/demand reduction offerings. In any event, even with the still over-accelerated initial procedural schedule issued by the Attorney Examiner on April 19, 2012, which will not yield a decision until after the PJM Base Residual Auction on May 7th, FirstEnergy's plan now appears to do nothing to synchronize the PJM Base Residual Auction occurring in May with the energy efficiency/demand reduction plan proposed by the Company. The schedule is now alarmingly poised to accelerate this case in order to facilitate FirstEnergy's proposed three-year auctions that will not begin until October 2012 at the earliest. There has been absolutely no exploration of alternatives to the hurry-up-and-wait approach taken by FirstEnergy, including alternative auction schedules, that would provide a more reasonable procedural schedule in this case permitting all parties to participate fairly in the merits of FirstEnergy's proposed ESP.

It is remarkable, therefore that FirstEnergy would submit its application with requests for waiver that would excuse it from submitting any substantial information whatsoever regarding the effects of these market changes and the impact of possible other market options on:

- the finances of the FirstEnergy operating entities;
- consumer rates;
- State policies, including policies that expressly encourage competition in the market;
- The continuation of non-bypassable generation charges on large-scale governmental aggregation;
- The continued imposition of First Energy's numerous electric rate riders.

This Commission should not accept FirstEnergy's invitation to rush to judgment. It is true that market rates are low at the moment. It is not true, however, that they must necessarily be higher

at that point in time that follows a reasoned examination of FirstEnergy's application. Further, while low rates are a prominent policy of this State, they are but one of numerous policies promoted by the law of Ohio.

FirstEnergy's application may have merit. It may not. In either event, FirstEnergy must be required to meet the burdens of proof that by statute it bears.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing were served upon the following parties to this proceeding this April 20, 2012, via electronic mail if available or by depositing the same in the United States Mail, postage prepaid, addressed as follows:

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Summary: Memorandum Contra FirstEnergy's Motion for Waiver of Rules and Motion to Expedite Consideration of This Case