

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
MOTION TO MODIFY PROCEDURAL SCHEDULE
AND
REQUEST FOR EXPEDITED RULING

AEP Retail Energy Partners LLC ("AEP Retail"), by and through its attorneys and pursuant to Ohio Administrative Code Section 4901-1-12, respectfully moves for the entry of an order that modifies the procedural schedule set April 23, 2012 in this matter. The bases for this motion are set forth in the attached memorandum in support, which is incorporated by reference herein. In addition, because AEP Retail's testimony is currently due May 4, 2012, it respectfully requests an expedited ruling on this motion pursuant to 4901-1-12(C).

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (together, "FirstEnergy") initiated this case at the end of the day on Friday, April 13, 2012, by filing an Application to modify and extend its existing ESP, a proposed Stipulation approved by a number of entities that participated in its last ESP case, the

testimony of a single witness, and a Motion through which FirstEnergy asked for a number of rule waivers and for the extraordinarily expedited treatment of its application.

In support of its request for expedited treatment, FirstEnergy explained that it hoped to modify its ESP so as to "capture" what it characterizes as current low energy and capacity rates, and that expedited treatment of its application would allow it to meet two dates consistent with that purpose. FirstEnergy posited that the first such date, May 2, 2012, represented the date by which it would need a decision on the merits of its "ESP 3" case in order for it to be prepared to bid demand response and energy efficiency resources into PJM's 2015/2016 base residual auction (BRA), scheduled to occur on May, 7, 2012.

First Energy next posited the necessity of a Commission decision no later than June 20, 2012. Conceding that this date would be too late to bid into PJM's BRA, it explained that this date would "at least" permit FirstEnergy adequate time to implement changes to the terms of its own October 2012 competitive bidding process ("CBP") auction in order to recognize the "extension" of its current ESP, as contemplated in its application. FirstEnergy thereby intimates, at least, that any date falling after June 20, 2012, could prove too late to permit it to change the terms of its October, 2012, CBP auction, and expressly threatens that it will withdraw the Stipulation if the Commission does not issue its approval on the merits by that date.

The Commission's attorney examiner immediately recognized the impossibility of meeting the first of FirstEnergy's two proposed deadlines. Through an entry issued April 19, 2012, the attorney examiner established a schedule she deemed "practicable". Although that schedule would not allow the Commission to satisfy FirstEnergy's May 2 deadline, it might – at great inconvenience to this Commission and to the various parties – at least allow the second of FirstEnergy's dates to be met.

Then, on April 25, 2012, this Commission filed its own Entry which granted (in part) and denied (in part) FirstEnergy's numerous requests for waivers of this Commission's rules. Between the dates for FirstEnergy to comply with rules that will not be waived that this Commission established through its Entry, and those established by the attorney examiner in her initial entry, the current procedural schedule for this case is as set forth below:

- April 19, 2012: Case filed.
- April 23, 2012: FirstEnergy (and the signatories to the Stipulation) granted leave to supplement the testimony submitted in support of the application.
- April 26, 2012: First Energy to conduct a technical conference regarding its application.
- **Undetermined** (Local public hearings and publication of notice are to be scheduled by a subsequent entry.)
- **May 2, 2012:** FirstEnergy to submit the following evidence deemed essential by this Commission to any determination of the merits of FirstEnergy's application:
 - The Financial Projections required by rule 4901:1-35-03 (C)(2);
 - An explanation of projected rate impacts as required by 4901:1-35-03 (C)(3);
 - Information regarding operational support, as required by 4901:1-35-03 (C)(5);
 - Information relating to governmental aggregation programs as required by 4901:1-35-03 (C)(6) and (C)(7);
 - A statement regarding State Policy, as required by 4901:1-35-03 (C)(8);
 - Information regarding retail shopping, as required by 4901:1-35-03 (C)(9)(c);
 - Information regarding alternative regulation mechanisms or programs relating to distribution service as required by 4901:1-35-03 (C)(9)(g); and
 - Information regarding economic development, job retention, and energy efficiency programs, as required by relating to distribution service as required by 4901:1-35-03 (C)(9)(h)

- **May 4, 2012:** Non-signatory parties to submit testimony.
- **May 21, 2012** (10:00 a.m.): Evidentiary hearing to begin.

As of this moment, therefore, public notice has not issued, the existing intervenors have received none of the information this Commission's rules require be submitted in support of an application, this Commission has expressly recognized that such information is critical to a determination of the merits, the intervenors will have something like 36 hours in which to evaluate any information submitted by FirstEnergy in response to this Commission's April 25, 2012 entry before their own testimony is due, the intervenors will have virtually no opportunity to conduct meaningful discovery until after testimony is due, and the intervenors must conduct that discovery and any necessary follow up to that discovery in a period of approximately three weeks duration.

II. DISCUSSION

With little to no record evidence supporting FirstEnergy's proposed Stipulation to guide its evaluation of FirstEnergy's application, AEP Retail Energy Partners LLC ("AEP Retail") was compelled to timely intervene in this proceeding on Thursday, April 20, 2012, and to file its Memo Contra FirstEnergy's Motions for Waivers and for the extraordinarily expedited process on the same date. AEP Retail then participated in the technical conference held April 26, 2012.

During the technical conference, the representatives of FirstEnergy acknowledged that the current procedural schedule will not permit it to bid demand resources into PJM's May 7, 2012 BRA. Significantly, however, those same representatives acknowledged that with or without a decision on its application, FirstEnergy does not feel precluded from bidding energy efficiency ("EE") resources into that same auction. Further, FirstEnergy suggested it intends to bid EE resources into the auction provided only that FirstEnergy obtains a specific level of

customer commitment it requires internally, sufficiently in advance of May 7, 2012, and that PJM accepts its verification and measurement program for those EE resources. As a result of these clarifications by FirstEnergy's representatives, the Commission should recognize that the date of May 2, 2012 can safely be "decoupled" completely from the merits of FirstEnergy's application, and this date therefore has no further significance to these proceedings.

When asked to explain the significance of the June 20, 2012, date, FirstEnergy's representatives stated that the date of June 20, 2012 was selected by considering three things. Those are: (i) FirstEnergy's next scheduled CBP auction will occur in October, 2012, (ii) FirstEnergy is factoring in a six to eight week "lead in" time prior to its CBP auction in order to permit FirstEnergy to ensure auction participants are on notice that it will seek bids for up to three year products, (rather than merely a one year product), and in order to ensure that all auction participants have had the opportunity to evaluate and prepare their bids based upon the products being sought, and (iii) finally, FirstEnergy is factoring in time for the anticipated application for rehearing process that is likely to follow a determination of the merits of its application.

In its haste, FirstEnergy offers no explanation why it did not file its application sooner. It also fails to explain why the currently scheduled date of its October auction is necessarily sacrosanct. Logic suggests that FirstEnergy could seek this Commission's leave to defer the CBP auction date for a few weeks – or even to combine that auction with the scheduled January, 2012 CBP auction, if need be.

Furthermore, this proceeding has already placed potential bidders on notice that FirstEnergy may seek bids on three year products rather than one year products. The changes FirstEnergy proposes to its tariffs, CBP contracts, and bid rules within this proceeding strongly

suggest that FirstEnergy has already recognized and is prepared to implement the necessary changes to its bid processes. Therefore, potential bidders will no doubt be prepared to participate in the October CBP auction no matter what products FirstEnergy ultimately has authority to seek. The significance assigned to June 20, 2012, appears dubious, at best.

More important, serious questions surround FirstEnergy's ESP – 3 application. As examples only, FirstEnergy's haste to extend its ESP is now justified only by its proclaimed desire to "capture" what it characterizes as the current low prices for energy and capacity. However, as FirstEnergy explained at the technical conference, they cannot or will not modify the October 2012 auction to solicit more than 1/6 of the required trenches. As a result, the parties to this proceeding are potentially being deprived of sufficient time to review the merits of this case for the benefit of an auction price that will comprise only a small part of the overall generation price paid by customers. FirstEnergy also offers no support in the Stipulation or its supporting testimony to explain why, under current market conditions, these same market price benefits would not also be obtained if the October 2012 auction were held later in the fourth quarter of 2012 or consolidated with the January 2013 auction, and either of these potential alternatives would permit more time for a fuller record to be developed. Further, FirstEnergy must explain why it believes it is entitled to \$360 million in credit for foregoing RTEP recovery in this application when it has already fully committed to foregoing the same \$360 million in RTEP recovery as part of "ESP -2".¹

In the end, FirstEnergy's application is based upon the premise that some parties who were privy to their closed negotiations of the Stipulation prefer that its current ESP be continued, rather than a new ESP be proposed. Of course, in the absence of any information against which

¹ Case No. 10-388-EL-SSO, Second Supplemental Stipulation, filed July 22, 2010, pg. 5, ¶4

its application is to be compared, it is relatively difficult to either attack or defend that premise. Nonetheless, FirstEnergy is before this Commission seeking approval of an ESP for the years 2014-2016. It has specific burdens of proof that it must meet in order to obtain that approval from this Commission. FirstEnergy's desired haste – regardless of its motivations and no matter how comfortable some may be in their understanding of that current ESP – does not justify a summary approval of its proposal.

III. CONCLUSION

For the foregoing reasons, AEP Retail respectfully asks that this Commission GRANT its Motion and modify the procedural schedule in order to provide non-signatory intervenors a meaningful opportunity to seek discovery, file testimony, prepare for hearing, and brief issues that undoubtedly exist with FirstEnergy's application. AEP Retail does not suggest that the full 275 day schedule contemplated by statute is necessary for that purpose. Even so, a schedule that requires intervenors to submit testimony on May 4, 2012 and proceed to hearing on May 21, 2012, is needlessly hasty.

AEP Retail does not believe that a delay of thirty to forty-five days is prejudicial to FirstEnergy. AEP Retail therefore respectfully suggests that a schedule be issued that permits immediate public notice, permits an additional period for intervention, permits discovery to occur, provides that the testimony of non-signatory intervenors be due no sooner than June 11, 2012, and that a date for hearing be established that begins approximately June 25, 2012. Finally, because testimony is currently due on May 4, the AEP Retail requests expedited consideration of its Motion pursuant to Ohio Adm. Code 4901-1-12(C). AEP Retail cannot certify that no party objects to a ruling on this Motion on an expedited basis.

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 26, 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: Motion to Modify Procedural Schedule and Request for Expedited Ruling
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