

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 COMPEL

AEP Retail Energy Partners LLC ("AEP Retail"), by and through its attorneys and pursuant to Ohio Administrative Code Section 4901-1-23, respectfully requests the entry of an order compelling The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (together, "FirstEnergy") to respond to certain interrogatory requests and produce certain documents requested by AEP Retail in its Fourth and Seventh Set of Interrogatories.

Despite efforts by both sides, counsel for AEP Retail and counsel for FirstEnergy were unable to coordinate a time to discuss the issues in dispute between them. In addition AEP Retail respectfully requests an expedited ruling on this motion pursuant to 4901-1-12(C). Undersigned is unable to certify that no party will oppose this motion.

The bases for this motion are set forth in the attached memorandum in support, which is incorporated by reference herein.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Ohio law and the rules of this Commission allow for broad discovery rights in proceedings before this Commission. Ohio Revised Code section 4903.082 provides that all

parties are to be granted "ample" rights of discovery. Ohio Admin. Code section 4901-1-16(B) expressly provides that "any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding." Comparing this Commission's Rule with Rule 26 of the Ohio Rules of Civil Procedure, (the Civil Rule) upon which it is modeled, the Ohio Supreme Court held that the rule must be interpreted so as to allow for broad discovery of any unprivileged matter relevant to the subject matter before this Commission. *Ohio Consumers' Counsel v. PUCO* (2006) 111 Ohio St. 3d 300 at 320.

II. DISCUSSION

AEP Retail maintains that FirstEnergy has failed and refused to provide meaningful responses to portions of AEP Retail's Interrogatory No. 88. Specifically, AEPR INT No. 88, and FirstEnergy's responses to those portions at issue¹, are as follows:

Int. 88. Regarding the Companies' Exhibit 3, "Typical Bills - Comparison"
 in its Supplemental filing:

...

¹ Initially, it is worthy of note that AEP Retail *should not have needed to ask for the above information in the first place*, as Rule 4901:1-35-03(C)(3) expressly directs that the applicant provide projected rate impacts as part of its ESP application:

4901:1-35-03:

...

(C) An SSO application that contains a proposal for an ESP shall comply with the requirements set forth below.

...

(3) Projected rate impacts by customer class/rate schedules for the duration of the ESP, including post-ESP impacts of deferrals, if any.

After FirstEnergy asked for a waiver of Rule 4901:1-35-03(C)(3) and this Commission denied its request, FirstEnergy filed a "Typical Bills Comparison" as exhibit 3 to its May 2, 2012 Supplemental Informational Filing, with the apparent intent that exhibit 3 be deemed sufficient compliance with Rule 4901:1-35-03(C)(3). FirstEnergy represents that the comparison reflects a comparison of Existing ESP 2 v. Year 1 of Proposed ESP 3. What FirstEnergy chose not to reveal, however, is that the "comparison" appears in reality to be nothing more than a comparison of its tariff prices as of April 1, 2012 with its tariff prices as of *that same date* – adjusted, apparently, to reflect the additional costs FirstEnergy proposes to defer into the future under ESP 3 – but with no effort whatsoever to analyze the markets and submit a comparison that reflects any reasoned forecast of results of the auctions that must occur in the future.

88.3 Specify the rate, in cents-per-kWh, included in each line item of Service that represents the Companies' Rider GEN rate in Column C, "Current Winter Bill". Consistent with the Companies' Tariffs, please express each rate in its Capacity and Energy charge components, separately.

Response: Column C of exhibit 3 in the Companies Supplemental Information filing reflects seasonal pricing on the Rider GEN tariff sheet in effect as of April 1, 2012. The Rider GEN tariff sheet includes separate charges for capacity and energy

88.4 Specify the rate, in cents-per-kWh, included in each line item of Service that represents the Companies' Rider GEN rate in Column D, "Proposed Winter Bill". Consistent with the Companies' Tariffs, please express each rate in its Capacity and Energy charge components, separately.

Response: Same assumption as 88.3 above.

88.5 Specify the rate, in cents-per-kWh, included in each line item of Service that represents the Companies' Rider AER rate in Column C, "Current Winter Bill".

Response: Column C of exhibit 3 in the Companies Supplemental Information filing reflects Rider AER tariff pricing in effect as of April 1, 2012.

88.6 Specify the rate, in cents-per-kWh, included in each line item of Service that represents the Companies' Rider AER rate in Column D, "Proposed Winter Bill"

Response: Column D of exhibit 3 in the Companies Supplemental Information filing includes Estimated Rider AER tariff pricing pursuant to paragraph A.4 of the proposed ESP 3 stipulation.

88.7 Specify the rate, in cents-per-kWh, included in each line item of Service that represents the Companies' Rider NDU rate in Column C, "Current Winter Bill".

Response: Column C of Exhibit 3 in the Companies Supplemental Information filing reflects Rider NDU tariff pricing in effect as of April 1, 2012.

88.8 Specify the rate, in cents-per-kWh, included in each line item of Service that represents the Companies' Rider NDU rate in Column D, "Proposed Winter Bill".

Response: Same assumption as 88.7 above.

Confronted with these non-responsive answers, AEP Retail chose to ask FirstEnergy to provide meaningful bill comparisons, expressly inviting FirstEnergy to base its responses upon the announced results of PJM's 2015/2016 Base Residual Auction prices:

AEPR INT No. 146: Regarding the Companies' Exhibit 3, "Typical Bills – Comparison" in their Supplemental Informational Filing served May 2, 2012, please update all calculations in columns (C) through (E) to reflect PJM's 2015/2016 Base Residual Auction prices, released on May 18, 2012.

Response: Objection: The request is unduly burdensome and seeks information beyond the Companies statutory requirements, were satisfied as part of the Companies' May 2, 2012 Supplemental Information filing. Subject to and without waiving the objection, the estimated typical bill rate impacts for the period June 1, 2015 through May 31, 2016 are largely dependent on the results of competitive solicitations for SSO service, the results of which are not known.

AEPR INT No. 147: Please supplement your answers to AEPR INT No. 88.4, 88.6 and 88.8 by providing the rates in cents-per-kwh that would reflect PJM's 2015/2016 Base Residual Auction prices, released on May 18, 2012, separately expressing Capacity and Energy charge components with respect to AEPR INT No. 88.4.

Response: The premise of the request is incorrect. Since the Companies did not supplement their May 2, 2012 Supplemental Information filing, there is no basis for supplementing their response to AEPR Set 4 – INT 88. Subject to and without waiving the objection, please see the Companies' response to AEPR Set 6 – INT 146.

III. ARGUMENT

FirstEnergy's responses to the subparts of interrogatory no. 88 are obviously non-responsive. In conjunction with its responses to AEPR's interrogatory no. 11,² it is also clear that FirstEnergy has not made the effort to perform the modeling that would be necessary to actually "project" rate class impacts as required by Rule 4901:1-35-03(C)(3). Notwithstanding FirstEnergy's objections to Interrogatories no. 146 and 147, however, AEP Retail's discovery requests compel First Energy to do no more than meet the obligation imposed upon it by this Commission's own Rule 4901:1-35-03(C), which obviously contemplates that an applicant will take the steps necessary to provide *meaningful* information that forecasts the impacts of its ESP proposals upon consumers' bills.

In this case, FirstEnergy posits the "potential" of capturing low energy and capacity prices through the expedited approval of its ESP. It failed, however, to provide any information suggesting that low energy and capacity prices are available at this time – and deliberately attempts to ignore evidence that suggests that low capacity prices are not available. Now, recognizing the significance of the information AEP Retail seeks, it stubbornly insists that – no matter how relevant – it may *refuse* to analyze data resulting from PJM's BRA, objecting only that it is subject to no "statutory requirement" that it consider information at its disposal.

The information AEP Retail seeks is obviously relevant to this case. Just as obviously, FirstEnergy is aware of the appropriate sources for data upon which it might base meaningful assumptions. For example, FirstEnergy responded to OCC's Interrogatory No. 43c. by asserting, in part, that "generally wholesale generation prices over the last several months are the lowest

² AEPR Set 1 – INT – 11.4

What are FE's projected generation prices (both capacity and energy) for each year of the two-year extension period.

Response: The Companies have no such projection.

price they have been for at least nine years. The forward market in PJM is very transparent and there are numerous places to observe the data through both subscription and public sources, and reports reflecting such data have been posted publicly."

Ultimately, FirstEnergy must come forward with a meaningful analysis of the impact of its ESP on its customers, providing the data that it believes supports its analysis. To date, it has refused to do so, and can only be compelled to respond properly to discovery requests seeking such information. In response, FirstEnergy attempts to pretend that the market in 2014/2015 and 2015/2016 will be absolutely no different than the market in 2012. It has no basis for such an assumption, and it is deliberately ignoring information that refutes such an assumption. This Commission should Order FirstEnergy to respond to AEP Retail's interrogatories 88, 146 and 147, using whatever forecasts it chooses, but it should also be compelled to justify its selection of those forecasts, but providing sufficient detail for a meaningful review of its approach.

III. CONCLUSION

For the foregoing reasons, AEP Retail respectfully asks that this Commission GRANT its Motion to Compel.

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 May 29, 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 Compel and Request for Expedited Ruling electronically filed by Mr. Michael D. Dortch on behalf of AEP Retail Energy Partners, LLC