

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of **Ohio Edison Company,** :
The Cleveland Electric Illuminating :
Company, and The Toledo Edison : Case No. **12-1230-EL-SSO**
Company for Authority to Provide for a :
Standard Service Offer Pursuant to :
Section 4928.143, Revised Code, in the :
Form of an Electric Security Plan. :

POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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June 22, 2012

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INTRODUCTION

Despite the lengthy hearing and the large amount of testimony, this case is quite simple. FirstEnergy has an existing ESP. It is functioning well – shopping is very strong – in fact, the best in the State. Fundamentally the proposal before the Commission is to extend that plan as though it had originally been structured to last for five years instead of three. This is an eminently reasonable thing to do. Approving this proposal will provide a stability and relative predictability. Many parties agree with this assessment, the proposal has broad support.

There are, of course, those who disagree and recommend against the proposal in this case. The Commission should consider the arguments of these opponents. The Staff has done so. It may even appear that some of the individual criticisms of the proposal

have some small merit, but, at the end of the day, the Commission should, as the Staff has already done, reject these arguments. The proposal as a whole represents a good resolution for the rate paying public. It provides certainty. It maintains the status quo. It should be approved.

DISCUSSION

I. The Three Part Test

Parties to proceedings before the Commission are permitted by Rule 4901-1-30 of the Ohio Administrative Code to enter into stipulations.¹ Although the terms of such stipulations are not binding on the Commission, they are given substantial weight.² In a number of prior proceedings, the Commission has addressed the standard of review for stipulations recommended by the parties.³ Essentially, the Commission considers whether the stipulation, which is the result of considerable time and effort by the parties, is reasonable and should be adopted. The Commission applies the following criteria,

¹ Ohio Adm. Code 4901-1-30(A) (“Any two or more parties may enter into a written or oral stipulation concerning issues of fact or the authenticity of documents.”).

² *Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370, 1373 (1992) (“The commission, of course, is not bound to the terms of any stipulation; however, such terms are properly accorded substantial weight.” (quoting *Akron v. Pub. Util. Comm.* 55 Ohio St.2d 155, 157, 378 N.E.2d 480, 483 (1978))); see also Ohio Adm. Code 4901-1-30(D) (“No stipulation shall be considered binding upon the commission.”).

³ See, e.g. *In re Ohio-American Water Co.*, Case No. 99-1038-WW-AIR (Opinion and Order) (June 29, 2000); *In re Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (Order on Remand) (April 14, 1994); *In re Cleveland Electric Illuminating Co.*, Case No. 88-170-EL-AIR (Opinion and Order) (January 31, 1989).

which have been endorsed by the Supreme Court of Ohio, in determining the reasonableness of a stipulation:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?⁴

The Stipulation, as recommended by the parties in this case, complies fully with the Commission's three-part test and should therefore be adopted by the Commission.⁵

A. The Stipulation is a product of serious bargaining among capable, knowledgeable parties.

Even the most cursory examination of the Stipulation in this case shows that it is the result of serious bargaining among capable, knowledgeable parties. There are sixteen signatories.⁶ Five more parties agreed not to oppose. The support for the agreement is broad and varied. The Stipulation is supported by industrial companies including the Ohio Manufacturer's Association, Industrial Energy Users-Ohio, Ohio Energy Group,

⁴ *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423, 426 (1994); *Consumers' Counsel*, 64 Ohio St.3d at 126, 592 N.E.2d at 1373.

⁵ FE Ex. 3 (Testimony of Ridmann) at 10-14.

⁶ FE Ex. 1 (Stipulation and Recommendation).

Nucor Steel, and Material Sciences. These major employers endorse this proposal.

Smaller commercial entities endorse it as well including the Association of Independent Colleges and Universities, the Ohio Hospital Association, and the Council of Smaller Enterprises. The public at large is represented as well by the City of Akron, Ohio Partners for Affordable Energy, the Cleveland Housing Network, the Consumer Protection Association, and the Empowerment Center of Greater Cleveland. The Stipulation and Recommendation enjoys support across the board. These parties have been involved in earlier FirstEnergy cases.

The relative simplicity of the proposal presented by the Stipulation might be confused with a lack of bargaining. That would be a mistake. The companies' proposal was, in most basic terms, "shall we keep the current ESP for another two years?" As noted above, the considered conclusion of many sophisticated and experienced parties representing all groups of customers was "yes". As the question presented was rather simple, the essential details of the proposal having already been recently vetted, lengthy discussions were unneeded. Either a party thinks the status quo is good or they don't. The bargaining was appropriate to the task at hand.

B. The Stipulation and Recommendation benefits the Public and Ratepayers.

The Stipulation is beneficial to ratepayers and the public for many of the same reasons that the current ESP is beneficial. A primary benefit of the Stipulation is the blending effect that will be achieved through the use of ladder auction products. Although

no one can know what future prices will be, the use of laddering must have the effect of lowering volatility of prices.⁷

Much ink will be spilled concerning the question of whether the use of single year products or multi-year laddering would result in lower overall prices. The debate is pointless. There is no objective answer. Even after the fact it would be impossible to decide the question. Although one would know the outcome of the option chosen, one would know neither what the outcomes would have been if the other option had been chosen nor if the difference was attributable to the option chosen or some extrinsic factor. In short, it is a waste of time to debate which will lead to lower prices. What is certain however is that the laddering that comes with the Stipulation must, as a matter of mathematical necessity, reduce the volatility of prices. This is an exceptional benefit to all concerned.

There are many more benefits to the Stipulation. A partial list would be:

- PIPP load will be provisioned at a 6% discount from the auction price,
- shopping is supported by the absence of shopping caps and standby charges,
- a variety of bill credits will be retained,
- support for economic development and low income customers will be continued,

⁷

Tr. Vol. II at 154.

- new funding for energy efficiency coordinators is provided,
- it continues significant support for the distribution system; and,
- REC costs will be spread over a longer period to reduce customer prices.⁸

In sum, there are many benefits that come with the Stipulation. It should be approved just as the previous ESP was.

C. The settlement package violates no important regulatory principle or practice.

Far from violating any regulatory principle or practice, the Stipulation furthers many important goals. Primary among these is continuity. Indeed continuity is the primary goal of the Stipulation. There is much more than that however.

The Stipulation supports competition and aggregation by avoiding standby charges and other limitations.⁹ It supports reliable service through the continuation of the effective¹⁰ DCR mechanism.¹¹ It directly supports business owners energy efficiency efforts through support of energy coordinators.¹² It very directly protects at risk populations

⁸ FE Ex. 3 (Testimony of Ridmann) at 3-8.

⁹ R.C. 4928.02(B), (C).

¹⁰ Staff Ex. 2 (Testimony of Baker).

¹¹ R.C. 4928.02(A).

¹² R.C. 4928.02(M).

through a variety of measures.¹³ Very significant support is provided for industry to support the state's effectiveness in the global economy.¹⁴

The third prong of the test is easily met.

D. Summary

In sum, the three part test is met. The Stipulation and Recommendation in this case is a product of serious bargaining by knowledgeable parties, benefits the public and the ratepayers, and violates no regulatory policy or practice. It should be adopted by the Commission.

II. Individual Objections

Several parties submitted witnesses who criticized the Stipulation and Recommendation in various ways. They will be discussed separately below.

A. Rate case versus the DCR.

The argument over whether the DCR or a rate case is better for customers is unnecessary. In the longer run the two are a wash with respect to the recovery of approved plant in service costs.¹⁵ The DCR is simply a somewhat smoother, less “lumpy” means to bring the same costs into rates as would be done through the rate case process. The differences between the two, regarding the timing of cost recovery, favor

¹³ R.C. 4928.02(L).

¹⁴ R.C. 4928.02(N).

¹⁵ Staff Ex. 3 (Testimony of Fortney) at 4-5.

the DCR but the effect is small. No reason is presented to reject the Stipulation and Recommendation.

B. Single year product for the Auction

Several witnesses argue that, under current conditions one year auction products should be used. As noted previously, there is simply no possibility of determining, now or in the future, whether one year products or laddering would result in lower prices overall. Preferences in this regard are a matter of belief not subject to empirical assessment. What is certain is the blending effect benefit of the laddering as proposed in the Stipulation and Recommendation. This has been used in previous auctions and has been successful.¹⁶ This aspect of the Stipulation mathematically provides the blending benefit to customers and should be adopted by the Commission.

C. MRO is not preferable to the ESP

Company witness Ridmann provided an analysis showing that the proposed ESP is preferable to an MRO.¹⁷ Staff witness Fortney proposed some revisions to this analysis.¹⁸ There are essentially two ways to look at the question. One should remove the effect of the agreement to forego collection of certain RTEP costs associated with the move to PJM. This benefit was provided in the previous ESP and brings no new value to

¹⁶ Tr. Vol. III at 49.

¹⁷ FE Ex. 3 (Testimony of Ridmann) at 14-19.

¹⁸ Staff Ex. 3 (Testimony of Fortney) at 2-5.

this case. When this adjustment is made, the difference between the costs of the MRO and the ESP is less than \$8 million. This is a sufficiently small amount that the flexibility provided by the ESP readily makes it superior to the MRO. The qualitative benefits of the ESP counterbalance the small nominal difference.

In the alternative, in the long run the costs of the DCR and the effects of a rate case must be a wash.¹⁹ This must be true as they are essentially substitutes. That being true, Mr. Ridmann's analysis should be adjusted to remove the DCR costs from the ESP and the rate case expense from the MRO portions respectively. As they should be equal whatever their absolute value, they make no difference in the outcome. This adjustment shows the ESP as the better option by over \$21 million even without the consideration of the qualitative factors.

Regardless of the approach taken, the ESP is the better option for ratepayers.

D. PIPP supply benefits the Ratepayer

The Stipulation and Recommendation provides that the energy for the PIPP customers will be provided by an affiliate of the EDU's at 6% less than the rate determined in the auction. This is a very good thing for the non-PIPP customers who will see lower arrearages as a result. Although this is an unadulterated good for the ratepayers, some parties still complain. Unless and until someone steps forward offering to provide

¹⁹ Staff Ex. 3 (Testimony of Fortney) at 4-5.

service to the PIPP customers at a greater discount, this provision should be recognized as the public benefit that it is.

E. Energy Efficiency in BRA

It was suggested that the EDU's failed to bid energy efficiency measures that they did not control into the BRA and should be penalized as a result.²⁰ There is no reason to believe that there is any merit to this argument.²¹ Even if there were merit, the Sierra Club witness admitted that this is not the case to examine the question.²² This criticism of the Stipulation should be rejected.

F. The DCR aligns the interests of the Companies and the Ratepayers.

The DCR is a successful mechanism. The proof is in the pudding. The companies meet their reliability criteria.²³ There should be a very good reason to change something that is working and achieving the intended result. No such reason exists here. The DCR mechanism properly aligns the interest of the ratepayers in reliable service with the necessary means for the companies to provide that service.

²⁰ Sierra Club Ex. 1 (Testimony of Neme).

²¹ OCC Ex. 9 (Testimony of Wilson) at 26-34.

²² Tr. Vol. I at 258.

²³ Staff Ex. 2 (Testimony of Baker) at 5-6.

CONCLUSION

This case presents only one simple question, should the successful ESP of the FirstEnergy companies be extended for an additional two years? The answer is clearly yes. Analysis shows that the proposed ESP is superior to an MRO. The competitive market is flourishing. Extending the plan will provide a useful degree of stability and predictability. The Stipulation and Recommendation should be adopted by the Commission.

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**On behalf of the Staff of
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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by electronic mail, upon the following Parties of Record, this 22nd day of June, 2012.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/22/2012 1:34:39 PM

in

Case No(s). 12-1230-EL-SSO

Summary: Brief Post-Hearing Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio