

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 :

Initial Post Hearing Brief of Ohio Power Company

In this proceeding, the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "FE EDUs") seek the Public Utilities Commission of Ohio's ("Commission's") approval of a partial stipulation implementing its next Electric Security Plan (ESP) based in large part on the ESP this Commission previously approved in Case No. 10-388-EL-SSO ("ESP II").

Rule 4901-1-30, O.A.C, authorizes parties to Commission proceedings to enter into stipulations. Although it is not binding on the Commission, the terms of such agreements are accorded substantial weight. *See Consumers' Counsel v. Pub. Util Comm.* (1992), 64 Ohio St.3d 123,125, *citing Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. While the Commission may place substantial weight on the terms of a stipulation, it must determine from the evidence what is just and reasonable. *In re Columbus S. Power Co.*, 2011 Ohio 2383, P19 (Ohio 2011).

Ohio Power Company timely moved to intervene in this proceeding on April 25, 2012 and was granted intervention on May 15, 2012. Ohio Power's interest in this case involves its participation in the electric market in Ohio. Ohio Power points out that regardless of the positions of the parties to the case that any Commission approval of this partial-stipulation must find that

the issues included in the stipulation pass the three-part test traditionally used by the Commission to weigh partial agreements. That criteria includes:

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

Columbus Southern Power Company, Case No. 09-1089-EL-POR, May 13, 2010

Opinion and Order at 21 (and cases cited therein). The well established three-part test for contested settlements has been endorsed by the Supreme Court of Ohio for use in this context. *Indus. Energy Consumer of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992).

Ohio Power is interested in the fair and equitable processing of the issues offered by the FE EDUs and the Signatory Parties to the Stipulation for Commission review. Ohio Power Company intends actively review the initial briefs filed in this case and determine if any of the positions raised impact Ohio Power Company's interests. As such Ohio Power Company reserves the right to reply to any of the arguments raised in the initial post hearing briefs.

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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 June 22, 2012, via electronic mail to the party representatives as follows:

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Summary: Brief electronically filed by Mr. Matthew J Satterwhite on behalf of Ohio Power Company