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

POST-HEARING BRIEF OF ENERNOC, INC.

I. INTRODUCTION

On April 13, 2012, Ohio Edison Company, The Cleveland Electric Company, and the Toledo Edison Company (hereinafter collectively referred to as "FirstEnergy Companies" or the "Companies") requested approval of an application ("Application") and stipulation from the Public Utilities Commission of Ohio ("PUCO" or the "Commission") to provide a standard service offer pursuant to R.C. § 4928.141.[1] The Application was described as "essentially" a two-year extension of their current Electric Security Plan.[2] The Application identifies four new benefits that consumers will realize if the current ESP is extended for two years: (1) The potential opportunity for FirstEnergy Companies to bid demand response resources into the PJM 2015-2016 Reliability Pricing Model ("RPM") Base Residual Auction ("BRA") that was completed in late May 2012; (2) Modifying the Companies' current bid schedule so that the bids process that will take place later this year will be for a three-year period rather than a one-year;

[1] Application at 1 (April 13, 2012).
[2] Application at 1 (April 13, 2012).

(3) extend the recovery period for renewable energy credit costs over the life of the proposed ESP plan ("ESP 3"); and (4) maintain the benefits gained from the 2010 ESP Stipulation for an additional two years.[3] The FirstEnergy Companies filed the Stipulation and Agreement ("Stipulation") with over 19 signatory parties and 5 non-opposing parties. EnerNOC, Inc. ("EnerNOC") signed as a non-opposing party.[4]

Under the conditions and timeframes proposed in the Stipulation, EnerNOC does not oppose the settlement proposal and agrees that overall it is a fair compromise. EnerNOC did not sign as a "supporting party" because we cannot support the proposed ESP 3's plan to extend the subsidized Economic Load Reduction ("ELR") tariff offering. While EnerNOC does not support extending the subsidized ELR program from June 1, 2014 through May 31, 2016, we do not oppose the extension of the ELR program with the understanding that there was a stipulated deadline for customers to re-new participation in the ELR program of May 3, 2012:

> Approval of the Stipulation by the Commission indicates acceptance of the Signatory Parties' recommendation. Customers wishing to continue to be on <u>Rider ELR will need to sign an Addendum to the Contract for Electric Service no later than May 3, 2012</u> signaling their commitment of their demand response capabilities under Rider ELR to the Companies under the peak demand reduction benchmarks for the term of their service under Rider ELR. (emphasis added).[5]

As discussed further below, the Commission should order customers to demonstrate that they signed the addendum prior to May 3, 2012 to continue on the ELR rider rates past May 31, 2014. Extending the ELR commitments at this point may exacerbate the capacity resource shortage in the American Transmission System, Inc. ("ATSI") zone for the PJM Interconnection.

Accordingly, EnerNOC does not oppose the application and asks the Commission to

---

[3] Company Exhibit 1, Application at 2.
[4] Company Exhibit 1,Stipulation at 47-48, the signature pages (April 13, 2012).
[5] Company Exhibit 1, Stipulation at 28-29.

enforce the May 3, 2012 deadline that is identified in the ELR language above as filed on April 13, 2012.

II. APPLICABLE LAW

FirstEnergy applies for the approval of the Stipulation as an ESP under Ohio R.C. §4928.143, enacted by Am. Sub. Senate Bill 221. That section allows electric distribution utilities ("EDUs") to use an ESP make the "standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers" mandated by O.R.C. §4928.141 . While the burden of proof to show the ESP complies with O.R.C. §4928.143 is on the EDU, the Commission may modify the proposal as part of PUCO approval:

> Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and
> conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. (emphasis added)

However, should the Commission modify the ESP, the EDU may withdraw the application and file a new standard service offer.

Furthermore, R.C. 4928.02 addresses relevant policies of the State. R.C. 4928.02(D) states that it is one of the State's policies to "Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure." The purpose of this law is to develop a fair, competitive retail electric market throughout the State. The best way to encourage innovation and market access for cost-effective supply and demand-side resources is to allow market rates to prevail. In this instance the PJM market rates should dictate the proper price signal whenever practical.

III. APPLICABLE FACTS AND DISCUSSION

A. Background

On January 26, 2012, FirstEnergy announced that it intended to retire a number of power plants of coal-fired generation from the Northern Ohio reliability zone, the American Transmission System, Inc. zone for the PJM Interconnection ("ATSI zone").[6] On February 29, 2012, the Commission correctly identified the potential that these retirements could produce a significant increase in PJM capacity prices for Northern Ohio for the 2015/2016 planning year.[7] Thus, the Commission ordered the FirstEnergy Companies to evaluate whether they had additional resources -- like energy efficiency and peak demand reduction -- that it could submit into the PJM's RPM BRA that will take place in May 2012 for the 2015/2016 planning year.[8]

On March 29, 2012, the FirstEnergy Companies submitted a report to address the Commission's February 29, 2012 Order. ("Report") [9] The Report stated that the FirstEnergy Companies had potential energy efficiency ("EE") and peak demand reduction ("PDR")

[6] 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, PUCO Case No. 12-814-EL-UNC, Entry (February 29, 2012) at Paragraph 1. ("The Commission's ATSI Order")

[7] The Commission's ATSI Order at paragraph 3.

[8] The Commission's ATSI Order at 3.

[9] 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, PUCO Case No. 12-814-EL-UNC, Report of [FirstEnergy] (March 29, 2012). ("Report") Administrative Notice if this Report was taken by the Hearing Examiner, Hearing Transcript ("TR.") Volume II at 56.

resources that the Companies could submit into the PJM's 2015/2016 BRA that took place in May.[10]

The Report described PJM's RPM structure and the risks that the Companies would bear if it provided its available EE and PDR resources into PJM's 2015/2015 RPM BRA. The FirstEnergy Companies explained that PJM conducts a three-year forward capacity auction, the BRA, to ensure that there are adequate supply resources to meet the projected peak load plus an adequate buffer to ensure reliability.[11] In addition, the Companies explained the obligations that committing EE & PDR resources into the May 2012 auction would create for the Companies starting on June 1, 2015:

> If the Companies offer EE & PDR resources and PJM clears or accepts such resources in a BRA, or in subsequent incremental auctions, the Companies are obligated to supply PJM-qualified Capacity Resources in an amount that is equal to the amount of EE&PDR that was offered by the Companies and taken in the BRA for the given Delivery Year. If the Companies fail to meet their respective capacity supply obligation for all or part of a given Delivery Year, PJM will impose financial penalties, and possibly other sanctions, on the Companies. In addition, the PJM Market Monitor or FERC enforcement staff may investigate the Companies' activities, thus creating a significant financial and legal risk.[12]

The Companies also stated that offering resources into the RPM auctions – the base residual auction or the incremental auctions -- for the 2015/2016 Planning Year posed significant risk for the Companies because they do not have Commission approval to extend the ELR and its EE & PDR plan through the PJM RPM 2015/2016 Planning year.[13] The FirstEnergy Companies' current ESP – and the ELR tariff – expire on May 31, 2014.[14] If the ELR is not extended

[10] Report at 4-5.
[11] Report at 3.
[12] Report at 3.
[13] Report at 4.
[14] Report at 4. (As stated in the Report FirstEnergy Companies' current EE&PDR plan expires at the end of 2012 and the plan that will be filed later this

through May 31, 2016 before the PJM BRA Auction in early May and the FirstEnergy Companies committed the ELR resources into a PJM RMP auction the Companies would be held accountable for finding resources to replace the committed resources when the PJM 2015/2016 Planning Year started on June 1, 2015.[15]

The Report concluded by stating that the Companies did not think it was "prudent" to shoulder the risks associated with offering energy efficiency or demand response resources into PJM's 2015/2016 BRA.[16] It should be noted that the Companies could still offer the megawatts ("MWs") from the ELR into the incremental 2015/2016 RPM auctions but the impact of those auctions on the capacity price for the 2015/2016 Planning Year are significantly reduced.

Due to the nature of the utility's regulated business and the short length of time remaining before the May auction, the FirstEnergy Companies' concerns were understandable. In the end, the FirstEnergy Companies did not commit any of the megawatts of interruptible load signed up under the ELR rider into the PJM RPM BRA for the 2015/2016 Planning Year.[17] Moreover, as discussed below, approving the Companies' Application -- at any time -- will not reduce the "risks" for the FirstEnergy Companies in future PJM BRAs.

PJM's 2015/2016 RPM BRA results for the ATSI zone cleared as high as \$357.00/MW-day. This result was almost double the price of the RTO price, \$167.46/MW-day and almost triple the clearing price in the ATSI zone just last year, \$125.99/MW-day.[18] PJM has concluded that the extremely high prices in the ATSI zone can be attributed to the number of generator retirements in the zone and short lead-time for new resources to get established in the market.[19]

---

year will offer programs from 2013 through only 2015).

[15] Report at 5.

[16] Report at 2.

[17] TR. Volume I, at 283.

[18] AEP Retail Exhibit 1, PJM's 2015/2016 RPM Base Residual Auction Results at 28.

[19] AEP Retail Exhibit 1 at 28.

Demand Response Resources played an integral role in filing some of the gap left by the generator retirements in the ATSI zone. In the short period of time that was provided, demand response resources were able to practically double the amount of resources that were offered into the ATSI BRA from last year (from 1,055.1 MWs to 2,765.9 MWs) and cleared (from 955.7 MWs to 1,763.7 MW).[20] The net result is 808 MW, or almost a Gigawatt, of new demand response resources cleared in the ATSI zone in May.[21] Demand Response Resources quick response will result in lower overall prices for consumers in the ATSI zone and additional revenue opportunities for local institutional, commercial, and industrial businesses that provide this valuable resource. The question that remains is how much will demand resources be able to help in future PJM auctions.

B. The Commission should enforce the language of the Stipulation and limit participation in the Companies' ELR program to those who signed-up prior to May 3.

As stated above, under the conditions and timeframes proposed in the Stipulation, EnerNOC does not oppose the settlement proposal with the understanding that the deadline for resources to participate in the ELR tariff proposal has passed. EnerNOC supports the goals that the Companies ELR rider is intended to meet and we also recognize that the customers that participate in these programs receive benefits for their commitments. However, going forward, the Commission should enforce the May 3, 2012 deadline for participation in that program that was presented to the Commission (and cited above) that the parties agreed to in the Stipulation.[22]

In the pre-filed supplemental testimony of FirstEnergy Companies' witness William R. Ridmann, he proposes an extension of the May 3 deadline until a date set by the Companies after

[20] AEP Retail Exhibit 1 at 8,Table 3A.
[21] AEP Retail Exhibit 1 at 8, Table 3A.
[22] Company Exhibit 1, Stipulation at 28-29.

the issuance of an approval of the ELR extension by the Commission.[23] The proposed extension is not supported by the clear language of the Stipulation and should be dismissed for the reasons stated below. While permitting some resources to continue on the Companies' interruptible program will not have a material impact on other customers, the more customers, or at least their MWs of interruptible load, that do participate on the ELR schedule the more likely there will be a negative impact on the price in the ATSI zone. The negative impact would be the result of reducing the amount of available (and willing) customers with interruptible load capability that may participate in the PJM RPM base residual auctions going forward on their own or through a curtailment service provider.

Looking forward, the proposed ESP 3 will not alleviate the Companies "risks" that are associated with offering the megawatts from the ELR participants into PJM's RPM BRAs for the 2016/2017 or the 2017/2018 Planning Years. The very same reasons the FirstEnergy Companies stated it could not offer ELR megawatts into the 2015/206 RPM BRA this past year -- that the Companies will not have ownership of those megawatts through the entire Planning Year in three years[24] – will not addressed by the Companies proposed ESP 3 filing for future years.

The Base Residual Auction for PJM's 2016/2017 auction will take place in 2013. The Base Residual Auction for PJM's 2017/2018 will take place in 2014. Accordingly, PJM's BRAs for 2016/2017 and 2017/2018 will take place during the proposed ESP 3 but the respective Planning Years – that take place three years later -- for those BRAs will not. As proposed the

[23] Company Exhibit 4, FirstEnergy, Pre-filed Supplemental Testimony of William R. Ridmann at 6 (filed April 23, 2012). (Mr. Ridmann notes that only existing customers may sign-up for the ELR extension. The FirstEnergy Companies are not accepting new customers on that program. Tr. Volume I at 66-67.)
[24] Tr. Volume I at 293. (At least in terms of "ownership" at the time of future PJM RPM base residual auctions.)

ESP 3 is set expire on May 31, 2016.[25]

The Companies will not have "ownership" of the ELR resources for the term of the 2016/2017 Planning Year or for the 2017/2018 Planning Year. Therefore, the FirstEnergy Companies will again be placed in the position of accepting the "risk" if it will agree to offer those resources into future RPM BRAs. Thus, by extending the ELR program for two more years and allowing additional ELR participants to re-sign with the Companies there may be additional interruptible load that will not be available to offer into the 2016/2017 and 2017/2018 PJM RPM ATSI base residual auctions. The net result may again negatively impact all of the FirstEnergy Companies' customers through higher capacity prices in the ATSI zone.

IV. CONCLUSION

EnerNOC does not oppose the Commission approving the proposed Stipulation. Furthermore, EnerNOC supports the goals that the FirstEnergy Companies' ELR rider is intended to meet. However, the Companies will not offer those resources that are committed into the ELR program into PJM's RPM BRA for Planning Years 2016/17 and 2017/18 and this may result in higher capacity prices in the ATSI zone.

One way the Commission can address this issue going forward is to hold the parties to the specific terms of the Stipulation. In this way, only customers that can establish that they re-newed their commitment to the extended ELR program by the stipulated date of May 3, 2012 should be allowed to stay in that program.

[25] Company Exhibit 1, Application at 2.

Respectfully submitted,

/s/ Gregory J. Poulos
Gregory J. Poulos
EnerNOC, Inc.
471 East Broad Street, Suite 1520
Columbus, Ohio 43215
E-mail: gpoulos@enernoc.com
Phone: (614) 507-7377
Facsimile: (614) 245-4301

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Hearing Brief was served by electronically, to the persons listed below on this 22nd day of June, 2012.

/s/ Gregory J. Poulos
Gregory J. Poulos
Manager, Regulatory Affairs

SERVICE LIST

Thomas.mcnamee@puc.state.oh.us
toddm@gmail.com
TAlexander@Calfee.com
Amy.Spiller@Duke-Energy.com
asim.haque@icemiller.com
BarthRoyer@aol.com
burkj@firstenergycorp.com
callwein@wamenergylaw.com
cathy@theoec.org
Ccunningham@Akronohio.Gov
christopher.miller@icemiller.com
cmooney2@columbus.rr.com
cynthia.brady@constellation.com
dakutik@JonesDay.com
dane.stinson@baileycavalieri.com
david.fein@constellation.com
DBoehm@bkllawfirm.com
doris.mccarter@puc.state.oh.us
dorothy.corbett@duke-energy.com
drinebolt@ohiopartners.org
dsullivant@nrdc.org
etter@occ.state.oh.us
Garrett.Stone@bbrslaw.com
gregory.dunn@icemiller.com
greg.lawrence@cwt.com
jeanne.kingery@duke-energy.com
jejadwin@aep.com
jkyler@bkllawfirm.com
jlang@calfee.com
jmclark@vectren.com
joliker@mwncmh.com
jpmeissn@lasclev.org
judi.sobecky@dplinc.com
korkosza@firstenergycorp.com

leslie.kovacik@toledo.oh.gov
lkalepsclark@vorys.com
LMcBride@Calfee.com
matt@matthewcoxlaw.com
mdortch@kravitzllc.com
mhpetricoff@vorys.com
Mike.Lavanga@bbrslaw.com
mjsatterwhite@aep.com
MKurtz@bkllawfirm.com
mparke@firstenergycorp.com
myurick@taftlaw.com
nolan@theOEC.org
Randall.Griffin@dplinc.com
rhorvath@city.cleveland.oh.us
ricks@ohanet.org
rkelter@elpc.org
robinson@citizenpower.com
sam@mwncmh.com
sandy.grace@exeloncorp.com
sauer@occ.state.oh.us
smhoward@vorys.com
stephen.bennett@exeloncorp.com
steven.huhman@morganstanley.com
stnourse@aep.com
teresa.ringenbach@directenergy.com
Thomas.McNamee@puc.state.oh.us
tobrien@bricker.com
trent@theoec.org
trhayslaw@gmail.com
tsiwo@bricker.com
vparisi@igsenergy.com
wttpmlc@aol.com
yost@occ.state.oh.us
robb.kapla@sierraclub.org
jvickers@elpc.org
gkrassen@bricker.com
MWarnock@bricker.com