

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
POST-HEARING REPLY BRIEF

By statutory mandate, the Cleveland Electric Illuminating Company, and The Toledo Edison Company (together, "the FE EDUs") must establish, *through evidence* and to the satisfaction of this Commission, that their ESP-3 proposal is more favorable in the aggregate than an MRO would be.¹ In this case, the FE EDUs plainly have not provided this Commission with the evidence necessary to permit a rational determination whether the FE EDUs' proposed ESP-3 is or is not more favorable in the period June 1, 2013 through May 31, 2016 than a pure market rate will prove to be during that same period. The FE EDUs failed to do so, because they did not even try to do so.

Further, and with respect, AEP Retail Energy Partners LLC suggests that Staff has asked the wrong question in this case, and as a result reached an incorrect answer. Staff attempts to overly simplify this case by claiming that the proposal before this Commission is "Shall we keep the current ESP for another two years?"² It then answers this question affirmatively, and adds that "either a party thinks the status quo is good or they don't."³ What Staff failed to recognize, and what the FE EDUs have failed to disclose, is that the proposed ESP-3 cannot "keep" the

¹ Ohio Revised Code §4928.143(C)(1).

² Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio, p. 4

³ Id.

benefits of ESP-2 for an additional two years, nor can it possibly preserve the status quo. The landscape has changed since the date this Commission approved ESP-2. The most significant of these changes in the FE EDU service territories is the capacity constraints that are currently a concern within the ATSI service territory during the 2015/2016 PJM planning year. Because the full extent of these changes, like the impact of the proposed ESP-3, cannot be fully evaluated on the evidence currently before the Commission, this Commission should disapprove the proposal.

I. THE FE EDUs FAILED TO INTRODUCE EVIDENCE THAT IS FUNDAMENTAL TO ANY EVALUATION OF ITS PROPOSED ESP VS. THE ALTERNATIVE MRO.

In their brief,⁴ the FE EDUs continue to ignore the most significant issue in this case – the need for an honest comparison, based upon the best information available, of the prices likely to be obtained through its proposed ESP and the prices likely available through an alternative MRO. They insist instead upon using stale information determined during auctions conducted in 2010 and 2011, and upon a premise that, even though facially attractive, ultimately distracts from the more important issues concerning price, which the FE EDUs obviously do not want to address. This distracting premise is whether this Commission should approve blended rates and thereby "smooth" rate changes that may occur in the future. The promise of greater rate stability is based upon the unassailable truth that an average of auction results from three different years is mathematically more "stable" than the auction results themselves.

AEP Retail, however, does not challenge this premise. None of the non-signatory parties appears to do so. What concerns AEP Retail and the other non-signatory parties – and what should most concern this Commission – is the timing involved in the FE EDUs' proposal, their insistence upon unwarranted speed, and their failure to provide as much probative information as

⁴ Initial Post-Hearing Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (hereafter, the "FE EDU Brief").

possible, let alone provide the information required to understand the true impacts of the FE EDUs' proposal. Given the limited information in the record and the significance of the timing, AEP Retail and the other non-signatory parties urge this Commission to disapprove the current ESP-3 proposal, direct the FE EDUs to provide additional information and other alternatives to this Commission, and prepare to employ the many tools available to this Commission through which rate stability may be maintained, *even if the current ESP-3 is disapproved and subsequent events fail to reduce concerns over the issue of rate shock in 2015/2016.*

The FE EDUs, of course, initially asserted that the time to strike is now, by suggesting (in part) that approval will permit them to "lock in" "historic" low energy prices.⁵ Despite this assertion, they chose to introduce no information concerning what energy prices within the ATSI zone might be at the time of their proposed auctions, and no information suggesting what the price of energy might be at any later point in time that would still allow them to provide service in the 2014/2015 and 2015/2016 years. They relied solely upon stale information that was determined by auctions conducted in 2010 and 2011, and presented this information to the Commission without explaining what they were doing. Additionally, they demanded highly expedited treatment, and offered flimsy excuses why such treatment was necessary.

The lack of evidence regarding energy prices is glaring. This Commission need only consider the fact that the FE EDUs also initially refused to recognize known information about capacity prices for the 2014/2015 and 2015/2016 PJM planning years, presumably because those prices create serious concerns about the timing and substance of their application. Worse, in the absence of accurate data regarding capacity pricing, the FE EDUs submitted a typical bills⁶ analysis to this Commission that suggests that customers would receive modest price decreases of

⁵ Application, p. 2. See also Direct Testimony of William R. Ridmann, (hereafter, "Ridmann") pp. 3-4.

⁶ Ridmann Supplemental Testimony (hereafter, "Ridmann Supplement"), Exhibit 3 (Residential rates, p. 2 of 164.)

up to 3.6% during the first year as a result of their proposed "extension" of ESP-2 (compared to the second year of ESP-2 itself), followed by somewhat more modest decreases (compared to year 1 of the proposed ESP-3) in year 2 of the proposed ESP-3.

Later, when forced to acknowledge the results of the 2014/2015 and 2015/2016 PJM BRA, the FE EDUs for the first time revealed that *due solely to the effect of the RPM auction prices* (and but for their blending proposal), its customers would actually receive a 6% decrease next year (assuming the 2012 CBP is limited to a one year product), a 5% increase in 2014/2015 (thus returning their rates to approximately today's rates) – and will then suffer a **25% increase** in rates in planning year 2015/2016.⁷ Even *these* predicted increases, which result solely from increased *capacity* prices, tell only a part of the story, as (again) the FE EDUs continue to ignore information currently available regarding future *energy* prices.⁸

Confronted with the PJM BRA results which strongly suggest the prices they will receive will increase dramatically if the 2015/2016 year is included in their October 2012 CBP auction, the FE EDUs cannot credibly emphasize any hope of locking in historic low energy prices through their proposal for a three year product. Thus, they must instead emphasize that the "blending" portion of their plan will provide a hedge against rate shocks in 2015/2016.

This hedge, however, may or may not prove necessary. The increases (now) projected by the FE EDUs presume that this Commission directs the FE EDUs to secure energy today to meet the needs of customers in 2015/2016. Indeed, if the Commission orders the FE EDUs to seek bids in the October, 2012 and January 2013 CBP auctions for energy to be delivered during the years 2014/2015 and 2015/2016 planning years, all potential bidders will submit bids that must

⁷ Initial Post-Hearing Brief of the FE EDUs (hereafter, "FE EDU Brief"), p. 11.

⁸ FE EDUs' own witness, Mr. Stoddard, acknowledged that models exist that permit his company, Charles River Associates – also the FE EDUs' CBP auction manager – to reasonably predict the future price of energy. Cross Examination of Robert B. Stoddard, ("hereafter, "Stoddard Cross"), Transcript Vol. IV, pp. 59-61.

necessarily recognize and incorporate the historically high capacity prices to which load within the ATSI zone is currently exposed. In addition, potential bidders will also consider the impact that the ATSI zone constraints will have on energy prices for the future planning years.

Thus, rather than the uncertain hope of "locking in" historically low energy prices, the true result of the FE EDU plan to seek bids for a three year product in October, 2012 and January, 2013 is instead the certainty of "locking in" historically high capacity rates. This assures significant price increases to the customers of the FE-EDUs, and thereby necessitates some form of a hedge in order to alleviate rate shock, and necessarily raises the lower prices that otherwise would apply to the last year of ESP-2.

Nor should this Commission ignore still another absolute certainty. As AEP Retail described in its initial brief, while the blending process endorsed by the FE EDUs can, when employed appropriately, successfully mitigate against rate shock, it is necessarily true that that blending process creates still additional market risks that compels bidders to raise their bid prices, thus contributing to and further exacerbating rate increases that will be locked in if power for 2015/16 is purchased through auctions in October, 2012 and January, 2013.⁹ Again, the FE EDUs have failed to provide this Commission with any evidence that permits it to rationally estimate the costs associated with these market risks, and thus evaluate the costs ultimately incurred in connection with the blending proposal.

Given these certainties, it is not surprising that the FE EDUs tried to avoid accounting for the PJM BRA results. Nor is it surprising that they failed to introduce the best (actually, any) information available regarding future energy prices in this record, and instead rely upon pricing determined by the results of CBP auctions that took place between six and twenty months ago. It

⁹ AEP Retail Brief, pp. 21-23; Stoddard Cross, Transcript Vol. IV, pp. 77-91.

is also unsurprising that the FE EDUs would propose a plan at a point in time when, due to concerns with capacity constraints in the ATSI zone, capacity prices will be astronomical. The principal beneficiary of high capacity prices, of course, will be the generation providers located within the ATSI zone. Thus, it is also a certainty that the entity that will most greatly benefit from the FE EDUs' ESP-3 proposal will be the FE EDUs' generation affiliate, FirstEnergy Solutions – the owner of the majority of generation within the ATSI zone.¹⁰

II. THE COMMISSION SHOULD EXCLUDE ALL EFFORTS TO DOUBLE-COUNT THE CLAIMED RTEP BENEFITS.

The FE EDUs' claims that their RTEP commitments make benefits available through ESP-3 are comical. Numerous parties in addition to AEP Retail,¹¹ including even Staff, which signed the stipulation,¹² recognize the fallacy of the FE EDUs' attempts to claim that the ESP-3 proposal benefits customers by foregoing legacy RTEP costs. The economic benefits of that commitment were actually secured by ESP-2, and will continue with or without regard to ESP-3.

In response to the widespread criticism of its effort to double count these benefits, the FE EDUs use their post-hearing brief to float, for the first time, still another theory through which they hope to claim at least some additional benefit associated with their prior RTEP commitments. This new and even more egregious scheme relies solely on the unsupportable notion that by removing all double-counted benefits, the ESP 3 benefits *actually increase by approximately \$39 million.*¹³ The FE EDUs offer this new theory because unless they claim some

¹⁰ This significant benefit is in addition to the FE EDUs' proposal to allow their affiliate to be the sole provider for PIPP load rather than conduct a competitive bid process for service to the PIPP load.

¹¹ See Joint Initial Brief of the Retail Energy Supply Association, Direct Energy Services, LLC and Direct Energy Business, LLC, p. 5; Corrected Joint Initial Brief of the Office of the Ohio Consumers' Counsel and Citizen Power, p. 65; Joint Initial Post Hearing Brief of the Northeast Ohio Public Energy Council and the Northwest Ohio Aggregation Coalition, pp. 6-8.

¹² See, for example, the Direct Testimony of Robert B. Forney (hereafter, "Fortney Direct") submitted on behalf of Staff and in support of the application, at pp. 2-3.

¹³ FE EDU Brief, p. 28.

benefit from the RTEP commitment, ESP 3 fails the quantitative MRO test based on the analysis they presented and on which they must rely.

If the facts are reviewed at even a cursory level, however, it becomes clear that this view does no more than manipulate numbers associated with timing and differences in cost estimates for the same work and same commitments in an attempt to create a phantom benefit at the 11th hour.¹⁴ Quite simply, in ESP 2 the FE EDUs committed to forego recovery from customers of a total of \$360 million in legacy RTEP charges. It does not matter how much of that amount has already been paid by the FirstEnergy family of entities, nor does it matter what more current forecasts suggest may be the full period during which such charges will ultimately be assessed. The FE EDUs commitment was \$360 million, and it remains committed to \$360 million.¹⁵

Unless the FE EDUs commit to forgo an amount greater than \$360 million in ESP 3, there are no unaccounted-for benefits to be included in ESP 3. The \$360 million is simply not properly associated with ESP 3 – or for that matter with any alternative MRO, as the FE EDUs have also attempted to suggest.

Staff witness Fortney's approach considers only the two years of ESP 3 (PY 2013-14 and 2014-2015), removes a total of \$72.7 million in claimed RTEP benefits associated with those two years, and concludes the proposed ESP fails the MRO by \$7.6 million.¹⁶ It is worth noting,

¹⁴ Notably, this theory was apparently not even given credence within the FE EDUs themselves until now, as the FE EDU's own response to Interrogatory AEPR Set 1-INT 36 indicates that removal of RTEP cost from the test would result in the ESP being more expensive than an MRO by \$7 million, and makes no mention of any potential for an additional \$39 million in benefits as now claimed by the FE EDU's in their brief.

¹⁵ The FE EDUs also suggest that they should receive some credit in ESP-3 because they could, in theory, renegotiate the terms of the ESP-2 commitment. FE EDU Brief, p. 28. This suggestion is laughable. They can indeed seek to negotiate a change in these terms. It is a bit difficult to assume that the ESP-2 signatories would willingly surrender this particular benefit without securing equivalent value, however, and thus such a renegotiation would likely represent a "wash", in the end. Whether this Commission is prepared to release the FE EDUs from their commitment is of course still another question. Finally, assuming they succeeded in reducing the value of their legacy RTEP commitment as part of a new ESP, that reduction in their commitment level would actually reduce the benefit of the ESP, not justify a claim of some increase in benefits from the ESP.

¹⁶ Fortney Direct, pp. 2-3.

however, that the FE EDUs originally estimated the RTEP benefit in ESP-2 for years June 1, 2011 through May 31, 2016 would be some \$321 million.¹⁷ The actual amount (dollars spent plus revised forecast for the same period) turned out to be significantly less (more than \$240 million dollars less, in fact) than the FE EDUs planned just two years ago. In addition, the revised forecast for the 2014/2015 and 2015/2016 planning years has dropped by over \$82 million.

As a result, the actual benefits secured by the original commitment concerning legacy RTEP costs are turning out to represent a much lower burden to the FE EDUs than they claimed during ESP2. It is unconscionable for the FE EDUs to now claim that they are providing an additional \$39 million as they do in their brief, when reality has demonstrated that they are actually providing a much lower benefit than what they represented they would be called on to provide in ESP-2, and when it further appears increasingly likely that these benefits may never be recognized at all, let alone recognized during the life of ESP-3. Finally, given the FE EDUs' repeated statements regarding their inability to forecast costs for a period even only three years out, and given that their estimated RTEP charges have proven so wildly inaccurate to date, it makes no sense to consider any long term forecast of highly speculative benefits from a period more than 10 years into the future.

This Commission should simply recognize that the ESP fails any quantitative benefits analysis because no part of the \$360 million claimed relates to the proposal before it. In the absence of these dollars, the proposal fails the MRO test quantitatively.

¹⁷ Compare Ridmann, attachment WRR-1 as filed in this case to exhibit WRR-1 as attached to Mr. Ridmann's testimony in case no. 10-388-EL-SSO.

As to the alleged qualitative benefits of their proposal, AEP Retail and other intervenors have already explained why these alleged benefits are at best dubious,¹⁸ and at most of considerably less value than the FE EDUs represent.¹⁹ The FE EDUs have said nothing on the subject of qualitative benefits in their brief to which a further response should be required.

III. THE FE EDU's BRIEF ALSO ILLUSTRATES STILL ANOTHER AS YET UNRECOGNIZED PROBLEM WITH ITS PROPOSAL. THE PROPOSAL DENIES ITS CUSTOMERS THE BENEFIT THEY WERE TO SECURE IN THE LAST YEAR OF ESP-2.

The chart the FE EDUs' provided on page 11 of their brief helps highlight still another flaw in their proposal. The chart depicts the actual results of ESP-2 (to date), and attempts to illustrate the events of 2014/15 and 2015/16 as the FE EDUs anticipate those events will unfold if ESP-3 is approved, and if it is not approved.²⁰ This chart demonstrates that in a market in which prices are rising, customers pay the costs of a "blended" or "laddered" rate at the beginning, and do not receive the benefit of their price hedges until the end of the ESP.

This illustration applies equally to ESP-2, in which a three year laddering approach was previously approved. Thus, in ESP-2, the FE EDU customers "paid" the costs associated with the benefits of laddering upfront, and are to receive the benefits of that payment in year 3 of ESP-2.

ESP-3, however, will strip them of the benefit to which they are entitled – lower prices than

¹⁸ Initial Post-Hearing Brief of AEP Retail Energy Partners, LLC, pp. 7-14.

¹⁹ For example, the FE EDUs claim that the 6% PIPP discount has a value of approximately \$5 million per year. *Cf.* Ridmann, WRR-1 lines 9 and 15. Even assuming (for the sake of argument alone) that no CRES would provide this same level of discount, other CRES providers would certainly provide some discount for the benefit of the load stability and the assurances of payment the PIPP load represents. Further assuming (as an example) that a CRES provider would offer a 5% discount, the true benefit of the PIPP discount would then be revealed to be only the incremental discount of approximately \$800,000 – and should conceivably be available outside the ESP, in an MRO, in any event. Of course, these figures have not been tested, because the FE EDUs are unwilling to solicit bids for the PIPP load.

²⁰ Again, even this projection ignores real-time information regarding future energy pricing. More significantly, however, this projection ignores any possibility that answers will be found and actions taken between now and the last opportunity to secure energy for the 2015/16 delivery year, that reduce or even eliminate the concerns that exist today regarding the transmission constraints within ATSI during the years 2015/16. In the event that these concerns are addressed in sufficient time, generators will be likely to bid into a later CBP auction at a lower price and the "constraint premium" that will be incurred today will be greatly reduced, if not eliminated entirely.

otherwise anticipated in the 2013/2014 year, and will replace the nominally lower rates they should see with nominally higher rates instead. These new rates are higher because they reflect new costs that must again be paid up front in return for a nominally lower rate to be received two years later, in the 2015/2016 year. Meanwhile, the benefit customers were to receive for accepting blended rates in ESP-2 is lost.

As submitted by the FE EDUs in response to an Order from this Commission that it comply with the SSO rules, none of the bill impacts for the period of the ESP-3 showed the impacts on customers that the FE EDUs revealed during litigation, and which continue to become known only because of admissions within their brief. At the end of the day, there is no clear picture that permits customers – or this Commission – to determine what the impact of the proposed ESP-3 may be. As a result, customers will be hindered in evaluating the shopping opportunities presented by various suppliers.

IV. FINALLY, THE COMMISSION SHOULD REJECT THE PROPOSAL BECAUSE IT DOES NOT CONFORM TO OHIO LAW.

The FE EDUs' maintain that their proposed ESP-3 satisfies the MRO test both quantitatively and qualitatively, and that the proposed stipulation meets the three part test this Commission employs to evaluate stipulations. As discussed in AEP Retail's Initial Brief, the fact is that the FE EDUs failed to adequately support their proposal and thus the claimed benefits of the ESP-3 are unsupported.

The FE EDUs also ignore a number of other facts. The first of these is the fact that the Ohio General Assembly devised a scheme in which any ESP proposal that exceeds three years in duration must be tested in year number four, and must undergo an advance SEET test, as well. The FE EDUs' proposal does not address these mandates, and if accepted, creates precedent that threatens the avoidance of these mandates altogether.

The second such fact is the fact that the General Assembly's statutory scheme further contemplates that *virtually all provisions of ESP-2 are to continue by force of law until this Commission is presented a proposal (whether an ESP or an MRO) that it concludes is an appropriate replacement for ESP-2.*²¹ As a result, the FE EDUs efforts to suggest that Commission approval of ESP-3 is necessary to secure the benefits of ESP-2 beyond its initial term is misleading. If this Commission denies the ESP-3 proposal, all those provisions of ESP-2 that are consistent with the terms of this Commission's Orders in the ESP-2 case (such as the use of a CBP auction to obtain electric power for SSO customers) will themselves continue until this Commission approves an MRO or a new ESP that replaces the existing scheme.

V. CONCLUSION

The statutory scheme applicable to this proceeding demands that the FE EDUs establish, through *evidence and to the satisfaction of this Commission*, that the ESP-3 proposal is more favorable in the aggregate than an MRO would be. In this case, the FE EDUs did not provide this Commission the evidence necessary to a rational determination whether the proposed ESP is or is not more favorable in the years 2014-2015 than a pure market rate would be during that same period. As a result, the proposal must be disapproved.

Respectfully submitted,

s/s Michael D. Dortch

Michael D. Dortch (0043897)
KRAVITZ, BROWN & DORTCH, LLC
65 East State Street, Suite 200
Columbus, OH 43215
(614)464-2000
(614)464-2002 (fax)
mdortch@kravitzllc.com
Attorneys for
AEP RETAIL ENERGY PARTNERS LLC

²¹ R.C. §4928.143(C)(2)(b).

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 29, 2012, via electronic mail if available or by depositing the same in the United States Mail, postage prepaid, addressed as follows:

James W. Burk
Arthur E. Korkosz
Mark A. Hayden
Ebony L. Miller
FirstEnergy Service Company
76 S. Main Street
Akron OH 44308

James F. Lang
Laura C. McBride
Calfee, Halter & Griswold LLP
1405 East Sixth Street
Cleveland OH 44114

David A. Kutick
Jones Day
901 Lakeside Avenue
Cleveland OH 44114

Attorneys for Applicants, Ohio Edison
Company, The Cleveland Electric
Illuminating Company, and The Toledo
Edison Company

Thomas McNamee
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus OH 43215

Asim Z. Haque
Christopher L. Miller
Gregory H. Dunn
Alan G. Starkoff
Ice Miller LLP
240 West Street
Columbus OH 43215

Attorneys for Direct Energy Services, LLC
And Direct Energy Business LLC

Vincent Parisi
Matthew White
Interstate Gas Supply, Inc
6100 Emerald Parkway
Dublin OH 43016

Attorneys for Interstate Gas Supply, Inc.

M. Howard Petricoff
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus OH 43216-1008

Attorneys for Exelon Generation Company,
LLC and Constellation NewEnergy, Inc.

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay OH 45839-1793

Attorney for Ohio Partners for Affordable
Energy

Judi L. Sobecki
Randall V. Griffin
The Dayton Power and Light Company
1065 Woodman Drive
Dayton OH 45432

Attorneys for The Dayton Power and Light
Company

Joseph M. Clark
6641 North High Street, Suite 200
Worthington OH 43085

Attorney for Direct Energy Services, LLC
and Direct Energy Business LLC

Glenn Krassen
Bricker & Eckler LLP
1001 Lakeside Avenue
Cleveland OH 44114

Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus OH 43215

Attorneys for the Northeast Ohio Public
Energy Council

Leslie A. Kovacik
City of Toledo
420 Madison Ave., Suite 100
Toledo OH 43604-1219

Counsel on behalf of the Northwest Ohio
Aggregation Coalition

Cynthia Fonner Brady
David I. Fein
550 W. Washington Street, Suite 300
Chicago IL 60661

Attorneys for Constellation Energy
Resources, LLC

Robert Kelter
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago IL 60601

Environmental Law & Policy Center

Christopher J. Allwein
Williams Allwein & Moser, L.L.C.
1373 Grandview Ave., Suite 212
Columbus OH 43212

Natural Resources Defense Council
Thomas R. Hays
John Borell
Lucas County Prosecutors Office
700 Adams Street Suite 251
Toledo OH 43604

Counsel on behalf of the Northwest Ohio
Aggregation Coalition

Larry S. Sauer, Counsel of Record
Terry L. Etter
Melissa Yost
Assistant Consumers' Counsel
Ohio of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus OH 43215

Sandy I-ru Grace
Exelon Business Services Company
101 Constitution Avenue NW, Suite 400
East
Washington DC 20001

Stephen Bennett
Exelon Generation Company LLC
300 Exelon Way
Kennett Square PA 19348

/s/ Michael D. Dortch
Michael D. Dortch

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Summary: Reply electronically filed by Mr. Michael D. Dortch on behalf of AEP Retail Energy Partners, LLC