

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Ohio Edison)	
Company, The Cleveland Electric)	
Illuminating Company, The Toledo)	Case No. 12-504-EL-FOR
Edison Company, and American)	
Transmission Systems, Incorporated)	
2012 Long Term Forecast Report.)	

**MEMORANDUM CONTRA OF OHIO EDISON COMPANY,
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY,
THE TOLEDO EDISON COMPANY, AND AMERICAN
TRANSMISSION SYSTEMS, INCORPORATED TO THE STAFF’S MOTION**

Come now Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, and American Transmission Systems, Incorporated (“Companies”) and hereby file their Memorandum Contra Staff’s Motion filed on July 13, 2012.

I. Introduction

Staff’s Motion, while cast in terms alleging that the Companies are not fully compliant with all of the Commission’s Long Term Forecast Report regulations, appears to seek two outcomes: first, have information related to the transmission systems that was previously provided to the Commission and Staff or that is in the public domain be docketed in the proceeding; and second, impose rule requirements upon the Companies that do not apply. Further, most if not all of the allegations in the Motion apply only to American Transmission Systems, Incorporated (“ATSI”), as Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company do not own or control transmission facilities.

II. Statutory Authorization for “Substantial Change” Has Been Eliminated

Staff’s first “allegation” is that no notice of significant change was provided as described by O.A.C. 4901:5-1-04(A). Staff then provides the text of that Commission rule, which reveals that the rule is dependent upon the statutory authorization as contained in R.C. 4935.04(D)(3)(c). What Staff’s Motion fails to point out is that R.C. 4935.04(D)(3)(c) was amended effective September 9, 2011 and that the amendment eliminated the statutory authorization and definition related to a “substantial change”.¹ Therefore, the “substantial change” language in the rule cited to by Staff is no longer meaningful since the underlying statutory definition of that term, and the requirement to notify the Commission of a “substantial change” was no longer in existence on April 16, 2012, the date upon which the Companies’ Long Term Forecast Report (“LTFR”) was timely filed with the Commission.

Even under the previously existing statutory language in R.C. 4935.04(D)(3)(c), a “substantial change” only arose if there was a change in forecasted loads or energy consumption over the forecast period on average of greater than one-half of one percent per year.² Therefore, the “substantial change” reporting requirement was unrelated to information related to new transmission projects, but only applied in the situation where there was a forecasted change in load or energy consumption. The Companies did not forecast such a change in load or energy consumption in their LTFR. So even if the statutory provision was still in effect, the Companies would have been under no obligation to report a “substantial change” as part of the LTFR.

III. The Commission and Staff Were Well Aware of the Transmission Projects Discussed in the Staff Motion

¹ Am. Sub. H. B. No. 95, 129th General Assembly, eff. September 9, 2011.

² R.C. 4935.04(D)(3)(c) in effect prior to September 9, 2011.

The thrust of Staff's Motion is devoted to a detailed walk through of the Commission's rules related to an LTFR in an effort to find instances of technical non-compliance, mixed in together with alleged shortcomings in the LTFR for information that is not specifically required to be included in an LTFR. Much of the information sought by the Motion is already in the Commission's possession and knowledge through meetings and discussions with the Companies, supplemental information provided by the Companies at Staff's request, and publicly available information.

The purpose of the rules, at least in part, cited by Staff is to provide information to the Commission that is otherwise not available or unknown to the Commission. In this context, the Companies are to provide updates or additional information as it becomes available for projects that was not otherwise available at the time the LTFR is filed.³ In certain instances, such information may not otherwise be available to or known by the Commission. Such is not the case with information related to transmission projects and other actions and efforts undertaken by ATSI as ordered by PJM and FERC following the announced planned deactivations of certain generating plants in Ohio.

With regard to those announced generating plant deactivations, none of which were made by the Companies, and the subsequent steps to be taken by transmission owners as ordered by PJM and FERC, the Companies have directly met on more than one occasion with members of the Commission to provide information specifically related to those matters. The Companies have provided responses to Special Topics identified by Staff on two separate occasions, once on March 19, 2012 before the LTFR was filed and

³ For example, O.A.C. 4901:5-5-04(D)(3)(a) and 4901:5-5-04(E). Since neither of these rules specify when such updates or additional information is to be provided to the Commission, the fact that such updates have not yet been made within this LTFR docket, if necessary at all, is not a basis to find the LTFR deficient. But in some instances, the information described by Staff was only recently finalized and approved by PJM.

a second on June 1, 2012 after the LTFR was filed providing detailed information as to the PJM process to address any issues arising from the announced generating plant deactivations, specifically identifying additional transmission projects that will now be undertaken and discussing other recommended actions. Information related to these topics was also provided through the Companies' filings in Case No. 12-814-EL-UNC. Finally, nearly all of the relevant information related to maintaining transmission system reliability is publicly available on the PJM website and was publicly presented at multiple PJM Transmission Expansion Advisory Committee (TEAC) meetings (i.e. on March 15, April 12, April 27 and Jun 14, 2012). Most of the projects necessary to mitigate the identified reliability issues were approved by the PJM Board of Directors on May 17, 2012.

As Staff concludes in its Motion, it is pivotal for the Commission to have available to it proper information regarding reliability within the scope of its jurisdiction.⁴ As can be seen from the foregoing, the Commission has had such "proper information" available to it throughout the timeframe since the announced generating plant deactivations. While the Companies' LTFR is neither deficient nor inadequate, in order to address Staff's concerns, the Companies would be willing to file in this docket the information previously provided to the Commission and otherwise publicly available as well as information publicly available from PJM that addresses transmission system reliability related to the announced generating plant deactivations arising due to the Cross State Air Pollution Rule and the Mercury and Air Toxics Standards. This information sets out the actions that ATSI is mandated to take as required by PJM and FERC.

IV. Certain Rules Cited by Staff Do Not Apply to the Companies

⁴ Staff Motion at p. 7.

In its rush to find deficiencies, the Staff criticizes the Companies for not complying with Commission rules that do not even apply to the Companies.

A. O.A.C. 4901:5-5-06(B)(2) Does Not Apply to the Companies

One of the rules relied upon by Staff for its conclusion that the Companies' LTFR is deficient is O.A.C. 4901:5-5-06(B)(2).⁵ This rule does not apply to the Companies.

O.A.C. 4901:5-5-06(B) states that the provisions of 4901:5-5-06(B) must be met if the electric utility will be filing for an allowance under divisions (B)(2)(b) and (B)(2)(c) of R.C. 4928.143 in the year following the forecast year. R.C. 4928.143 is the section of the Revised Code relating to Electric Security Plans ("ESP"). This rule has no applicability to the Companies for at least two reasons. First, divisions (B)(2)(b) and (B)(2)(c) of R.C. 4928.143 relate specifically to the recovery of costs associated with generating facilities owned by electric distribution utilities. The Companies do not own generating facilities, therefore these provisions are inapplicable to the Companies by definition. Second, the Companies already have an approved ESP in place for the year following the forecast year; in fact, they have an approved ESP through May 31, 2016, so no ESP can possibly be filed for the year following the forecast year requesting the recovery of generating facility related costs.⁶

⁵ Staff Motion at p. 5.

⁶ The Companies stated that this rule provision did not apply in their LTFR at page 31.

B. O.A.C. 4901:5-5-06(B)(3) Does Not Apply to the Companies

Staff also relies O.A.C. 4901:5-5-06(B)(3) as part of its basis for finding the Companies' LTFR "deficient". But again, for the same reasons as set out in the preceding section, this rule does not apply to the Companies. The Companies do not own generating facilities and will not file to recover the costs of generating facilities under R.C. 4928.143(B)(2)(b) or R.C. 4928.143(B)(2)(c) as contemplated by this rule.⁷

V. Conclusion

The Companies' LTFR is neither deficient nor inadequate. Updates to the information provided in the LTFR identified by Staff in its Motion have already been provided to the Commission through other forums or is otherwise publicly available. Certain rules that the Staff relies upon for its conclusion that the Companies' LTFR is deficient are based upon statutes no longer in effect or that simply don't apply to the Companies. The Companies are willing to file in this LTFR docket publicly available information either previously provided to the Commission or that is otherwise publicly available in order to address Staff's concerns and assist the Commission in its consideration of the Companies' LTFR.

Respectfully submitted,

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⁷ The Companies stated that this rule provision did not apply in their LTFR at page 31.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum Contra served this 30th day of July, 2012 by electronic mail on the persons listed below.

/s/ James W. Burk

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Summary: Memorandum Contra to the Staff's Motion electronically filed by Ms. Carrie M Dunn on behalf of The Cleveland Electric Illuminating Company and Ohio Edison Company and The Toledo Edison Company and American Transmission Systems, Incorporated