

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
FirstEnergy Solutions Corp.,)	
)	
Complainant,)	
)	
v.)	
)	Case No. 13-1439-EL-CSS
Ohio Power Company,)	
)	
Respondent.)	
)	

MOTION TO DISMISS

Ohio Power Company (“AEP Ohio” or “Respondent”) moves to dismiss the Complaint filed in this proceeding by FirstEnergy Solutions Corp. (“FES” or “Complainant”). As explained more fully in the attached Memorandum, FES’s Complaint is without merit and is moot as a result of the Commission’s July 2, 2013 Entry in Case No. 13-1427-EL-UNC. AEP Ohio therefore respectfully requests that FES's Complaint be dismissed.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1608
Fax: (614) 716-2950
Email: stnourse@aep.com

Daniel R. Conway
Andrew C. Emerson
Porter Wright Morris & Arthur LLP

41 South High Street
Columbus, Ohio 43215
Tel: (614) 227-2270
Email: dconway@porterwright.com
aemerson@porterwright.com

Counsel for Ohio Power Company

MEMORANDUM IN SUPPORT

The sole purpose of the Complaint was to serve as a procedural vehicle to circumvent the Commission's tariff process. One day after Ohio Power Company ("AEP Ohio" or "Company") filed its Request to Suspend in Case No. 13-1427-EL-UNC, FirstEnergy Solutions Corp. ("FES") filed this Complaint against the Company in the present docket. It became clear after FES filed its Response to the Company's Request to Suspend and a Motion to Stay and Consolidate dockets 13-1427 and 13-1469 on June 21, 2013, that FES filed this Complaint merely to set up an end run around the Commission-approved tariff process. In fact, although FES's motion and memorandum in support did not seek an expedited ruling under O.A.C. 4901-1-12, FES displayed the sole purpose of this Complaint by asking the Attorney Examiner, at page 2, to "immediately issue an entry granting FES'[s] Motion to Stay and Consolidate, thus eliminating any automatic suspension after 10 business day provided for by AEP Ohio's Supplier Tariff." (emphasis in original). In its memorandum contra, AEP Ohio objected to FES's transparent attempt to circumvent the Commission-approved tariff process.

By Entry dated July 2, 2013 in Case No. 13-1427, the Commission granted AEP Ohio's alternative request for a limited waiver of the customer switching provisions contained in Section 31, Subsection 4 of its supplier tariff, which resolved the immediate dispute between AEP Ohio and FES. In paragraph 5 of that Entry the Commission noted:

Although the Commission today approves AEP Ohio's request for alternative relief, we also note that AEP Ohio's supplier tariff is currently pending Commission review. On March 22, 2013, AEP Ohio filed an application in *In the Matter of the Application of Ohio Power Company to Amend Its Supplier Coordination Tariff and Related Contracts*, Case No. 13-729-EL-ATA (13-729), seeking approval of changes to its electric generation supplier tariff and its CRES provider agreement. By entry issued on June 5, 2013, the attorney examiner established a comment period in 13-729, with initial and reply comments due July 8, 2013 and July 22,

2013, respectively. The Commission encourages all interested persons to file comments addressing the issues raised in AEP Ohio's application in 13-728, including AEP Ohio's proposed credit requirements for CRES providers.

The July 2nd Entry resolved the immediate dispute between AEP Ohio and FES. Because the Commission has already deemed FES's motion to stay and consolidate moot (Entry at 3), there is no longer a basis for this procedural tool, styled as a Complaint. The Commission should dismiss the Complaint without prejudice forthwith.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 10th day of July, 2013 by electronic mail upon counsel for FirstEnergy Solutions, Inc.

/s/ Steven T. Nourse
Steven T. Nourse

Mark A. Hayden
FirstEnergy Corp.
76 South Main Street
Akron, Ohio 44308
haydenm@firstenergycorp.com

Laura C. McBride
Christine E. Watchorn
ULMER & BERNE LLP
88 East Broad Street, Suite 1600
Columbus, Ohio 43215
lmcbride@ulmer.com
cwatchorn@ulmer.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/10/2013 11:01:42 AM

in

Case No(s). 13-1439-EL-CSS

Summary: Motion to Dismiss electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company