

**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. 14-1297-EL-SSO

**SECOND SUPPLEMENTAL
DIRECT TESTIMONY OF STEPHEN E. BENNETT
ON BEHALF OF THE RETAIL ENERGY SUPPLY ASSOCIATION**

May 11, 2015

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1 **INTRODUCTION**

2 **Q1. Please state your name and business address.**

3 **A1.** My name is Stephen E. Bennett. My business address is Two North Ninth Street, Allentown,
4 PA 18101-1179.

5
6 **Q2. By whom are you employed and in what capacity?**

7 **A2.** I am employed by PPL Energy Supply as Senior Manager, Markets & Regulatory Policy.¹
8

9 **Q3. Did you cause to be filed your direct testimony in this matter on December 22, 2014, on
10 behalf of the Retail Energy Supply Association (“RESA”)?**

11 **A3.** Yes.
12

13 **Q4. Did you cause to be filed your supplemental direct testimony in this matter on March 2,
14 2015, on behalf of RESA?**

15 **A4.** Yes.
16

17 **PURPOSE OF THE SECOND SUPPLEMENTAL TESTIMONY**

18 **Q5. What is the purpose of your second supplemental testimony?**

19 **A5.** On February 25, 2015, the Public Utilities Commission of Ohio (“Commission”) issued an
20 Opinion and Order regarding the third electric security plan proposal presented by Ohio Power
21 Company (“Ohio Power”) in *In the Matter of the Application of Ohio Power Company for
22 Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an
23 Electric Security Plan*, Case Nos. 13-2385-EL-SSO et al. In that Order (pages 19-27), the
24 Commission declined to adopt a purchase power agreement (“PPA”) rider proposal, as put forth
25 by Ohio Power; however, the Commission authorized the establishment of a placeholder PPA
26 rider, at the initial rate of zero, with Ohio Power being required to justify any requested cost
27 recovery in future filings before the Commission. Also, the Commission presented several
28 factors it may balance, but not be bound by, in deciding whether to approve future cost
29 recovery requests associated with PPAs.

¹ PPL Corporation is in the process of moving its competitive energy business into a newly formed corporation, Talen Energy Corporation. As part of that transaction, the name of the subsidiary for whom I am employed changed to PPL Energy Supply.

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On March 23, 2015, the Attorney Examiner in this proceeding amended the procedural schedule so that the parties could conduct additional discovery and evaluate and offer supplemental testimony addressing this aspect of the Ohio Power Order because the Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively “FirstEnergy EDUs”) have proposed a PPA rider in this proceeding.

FACTORS AND REQUIREMENTS FOR FUTURE PPA REQUESTS

Q6. What factors may be evaluated by the Commission in deciding whether to approve cost recovery requests associated with PPAs?

A6. In the Ohio Power Order (page 25), the Commission listed the following factors it would take into consideration in deciding whether to approve a future PPA application, as well as items that must be included in a future PPA application:

- Financial need of the generating plant;
- Necessity of the generating facility in light of future reliability concerns, including supply diversity;
- Description of how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations;
- Impact that a closure of the generating plant would have on electric prices and the resulting effect on economic development;
- Rigorous Commission oversight of the rider, including a process for periodic substantive review and audit;
- Commitment to full information sharing with the Commission and its Staff;
- An alternative plan to allocate the rider’s financial risk between the company and its ratepayers; and
- Severability provision recognizing that other provisions of the ESP will continue if the PPA rider is invalidated by a court of competent jurisdiction.

1 **THE FIRSTENERGY EDUS' APPLICATION AND TESTIMONY DOES NOT MEET THE**
2 **COMMISSION'S REQUIREMENTS FOR FUTURE PPA REQUESTS**

3 **Q7. Have you reviewed the supplemental testimony filed by the FirstEnergy EDUs on May 4,**
4 **2015?**

5 **A7.** Yes, and on behalf of RESA, I have found that the FirstEnergy EDUs did not address or
6 inadequately addressed several of the factors/requirements set forth in the Ohio Power Order.
7 Specifically, I find that the FirstEnergy EDUs' application and testimony are deficient with
8 respect to the following:

- 9 • Rigorous Commission oversight of the rider, including a process for periodic
10 substantive review and audit;
- 11 • The FirstEnergy EDUs did not express a commitment to full information sharing
12 with the Commission and its Staff;
- 13 • The FirstEnergy EDUs did not present an alternative plan to allocate the rider's
14 financial risk between the company and its ratepayers; and
- 15 • The FirstEnergy EDUs' description of its "severability provision" will not
16 recognize that other provisions of the ESP IV will continue on for the remainder
17 of the ESP IV term if the PPA rider is invalidated by a court of competent
18 jurisdiction.

19
20 **Q8. Please explain why you conclude that the FirstEnergy EDUs did not include rigorous**
21 **Commission oversight of the Rider RRS.**

22 **A8.** The FirstEnergy EDUs have proposed a process for periodic review financial audits of Rider
23 RRS, but did not provide for Commission oversight as to management and performance of the
24 ratepayer-guaranteed plants. In fact, all legacy costs associated with the plants are excluded
25 from review, which include costs arising in the future from a decision or commitment made
26 prior to December 31, 2014. Ms. Mikkelsen's original direct testimony (pages 14-15) explains
27 the proposed reviews/audits:

- 28 (1) The first review proposed by the FirstEnergy EDUs is to be conducted
29 from April 1 to May 31, and will review Rider RRS for mathematical
30 errors, consistency with the approved rate design, and incorporation of
31 prior audit findings.

1 (2) The second review proposed by the FirstEnergy EDUs will involve the
2 reasonableness of the actual costs contained in Rider RRS and the actual
3 market revenues contained in Rider RRS. However, the costs will exclude
4 all of the Legacy Cost Components.²

5 Ms. Mikkelsen's claims (second supplemental testimony, page 12) that these reviews constitute
6 "rigorous Commission oversight" for Rider RRS. The FirstEnergy EDUs presented nothing
7 further on this point in the supplemental testimony.

8
9 I disagree that these reviews constitute "rigorous Commission oversight" for Rider RRS. Both
10 reviews are very limited in scope, and the more substantive review will not include a very
11 significant component of the Rider costs – the Legacy Cost Components (instead, it is proposed
12 that they will be deemed to be reasonable with the approval of the ESP IV). The exclusion of
13 the Legacy Cost Components is so extensive that the second review will not have much to
14 review. Much more is expected if the Commission is to adequately oversee such a significant
15 rider; much more should be required for such oversight to be rigorous. As a result, I cannot
16 conclude that the reviews proposed by the FirstEnergy EDUs constitute rigorous Commission
17 oversight.

18
19 **Q9. Please address why you conclude that the FirstEnergy EDUs did not express a**
20 **commitment to full information sharing with the Commission and its Staff.**

21 **A9.** Ms. Mikkelsen presented the overview of how the FirstEnergy EDUs' application and
22 testimony addresses the factors and the requirements from the Ohio Power Order. Ms.
23 Mikkelsen noted, in her second supplemental testimony (page 11-12) that a commitment to full
24 information sharing was required. She noted in passing that her prior testimony addressed
25 Commission concerns over information sharing (page 12, lines 6-8). However, she did not
26 identify where in her earlier testimony the FirstEnergy EDUs had committed to full information
27 sharing with the Commission and its Staff.

28
29 If Ms. Mikkelsen was referring to the two separate reviews for Rider RRS (described on pages
30 14-15 of Ms. Mikkelsen's original direct testimony), then it must be pointed out that the scope

² Ms. Mikkelsen defined (page 14 of her original direct testimony) the Legacy Cost Components as "all costs that arise from decisions or commitments made and contract entered into prior to December 31, 2014, including any costs arising from provisions under such historic contracts that may be employed in the future."

1 of these two reviews are very limited and that the FirstEnergy EDUs provided no express
2 commitment to full information sharing with the Commission and its Staff as evidenced by:

- 3 • The first review proposed by the FirstEnergy EDUs for Rider RRS will simply be to see
4 if the mathematical calculations were done correctly; and
- 5 • The second review proposed by the FirstEnergy EDUs will involve the reasonableness
6 of the actual costs contained in Rider RRS and the actual market revenues contained in
7 Rider RRS. However, the costs will exclude all of the Legacy Cost Components.

8
9 While the FirstEnergy EDUs have proposed these two reviews, there was nothing in that earlier
10 testimony that expressed a commitment to *full* information sharing with the Commission and its
11 Staff regarding Rider RRS. Rider RRS is designed to exist for fifteen years. During that time,
12 there will be significant cost and revenue issues that are likely to arise. The Commission Staff
13 will have to have full oversight on investments or lack of investments in the plant, what work
14 was done and billed and what work was not done in order to assure that the charges being
15 passed on directly to all retail customers are just and reasonable. In addition, even if such
16 information is provided, it has to be clear that the Commission can review and oppose any
17 charge. The Legacy Cost Component is a loop hole that could permit any type of charge or
18 reduction in revenue to occur based only on the claim that it is based on the past investment.
19 The FirstEnergy EDUs have voluntarily proposed only targeted reviews by the Commission
20 and its Staff for limited purposes only. This is insufficient to satisfy the Commission's
21 requirement on this point.

22
23 **Q10. Please address why you conclude that the FirstEnergy EDUs did not present an**
24 **alternative plan to allocate the rider's financial risk between the company and its**
25 **ratepayers.**

26 **A10.** Ms. Mikkelsen specifically noted, in her second supplemental testimony (page 12), that the
27 Commission is requiring inclusion of an alternative plan to allocate the rider's financial risk
28 between the company and its ratepayers. She failed to include any such alternative plan. None
29 of the other FirstEnergy EDU witnesses who filed testimony on May 4 included an alternative
30 plan. As a result, the FirstEnergy EDUs have not fulfilled that requirement.

1 **Q11. Please explain why you conclude that the FirstEnergy EDUs' description of its**
2 **"severability provision" will not recognize that other provisions of the ESP IV will**
3 **continue on for the remainder of the ESP IV term if the PPA rider is invalidated by a**
4 **court of competent jurisdiction.**

5 **A11.** Ms. Mikkelsen stated the following in her second supplemental direct testimony (page 13-14)
6 regarding its proposed severability provision:

7
8 The Companies propose, in light of the foregoing concern, to rely upon a common
9 practice that would allow parties to work to return the party negatively impacted
10 by the court's order to a position as close to its original position. Similarly, in this
11 case, should a court reject Rider RRS, **the Companies' proposal would require**
12 **the Signatory Parties to work in good faith and on an expedited basis, not to**
13 **exceed 60 days, to cure any court determined deficiency.** The Companies
14 would then file (or jointly file with Signatory Parties) the modified Rider RRS, or
15 its successor provision, with the Commission for expedited approval, and such
16 approval shall not be withheld if the modified Rider RRS, or its successor
17 provision, provides a reasonable remedy to cure the deficiency. **During this**
18 **process, the ESP IV would either remain in effect** or, depending on timing, go
19 into effect including all the agreed upon stipulated provisions, consistent with the
20 Commission's prior approval of the ESP IV.

21 * * *

22 The Signatory Parties would have an opportunity to express any concerns with the
23 modified Rider RRS, or its successor provision to the Commission. However, if
24 such concerns are not accepted by the Commission, then **any Signatory Party**
25 **that opposed the modified Rider RRS or its successor provision would forfeit**
26 **its Stipulation provisions.** (Emphasis added.)

27
28 There are three reasons why the FirstEnergy EDUs' inadequately included a severability
29 provision. First, the FirstEnergy EDUs are proposing that the invalidated PPA rider remain in
30 effect until a modified Rider RRS or its successor provision is approved by the Commission. If
31 invalidated by a court of competent jurisdiction, Rider RRS cannot lawfully remain in effect.

1 For this reason alone, the severability provision proposed by the FirstEnergy EDUs is wholly
2 deficient.

3
4 Second, the FirstEnergy EDUs' proposal *requires* the parties who are Signatory Parties to the
5 December 22, 2014 Stipulation and Recommendation to go back to the negotiation table to
6 develop a modified Rider RRS or its successor provision. Despite Ms. Mikkelsen
7 acknowledging in her second supplemental testimony (page 13, lines 2-4) that the severability
8 provision required by the Commission requires all other provisions of the ESP IV to continue
9 as previously approved by the Commission, the FirstEnergy EDUs are proposing a different
10 requirement – a stipulation “do over.” This too does not meet the severability requirement
11 expressed by the Commission.

12
13 Third, the severability provision proposed by the FirstEnergy EDUs unequivocally states that
14 any Signatory Party that opposes the modified Rider RRS or its successor provision forfeits its
15 Stipulation provisions. Again, despite Ms. Mikkelsen acknowledging in her second
16 supplemental testimony (page 13, lines 2-4) that the severability provision required by the
17 Commission requires all other provisions of the ESP IV to continue as previously approved by
18 the Commission, the FirstEnergy EDUs are proposing that the ESP IV be revised in multiple
19 ways. Again, this does not comport with the severability requirement expressed by the
20 Commission.

21 22 **CONCLUSION AND SUMMARY OF ALL RECOMMENDATIONS**

23 **Q12. What are RESA's recommendations in this proceeding?**

24 **A12.** As set forth in my direct testimony and both of my supplemental testimonies, RESA
25 recommends that the Commission:

- 26 • Reject the FirstEnergy EDUs' anti-competitive Rider RRS proposal outright;
- 27 • Find that the FirstEnergy EDUs failed to present or presented insufficient evidence
28 with regard to the four requirements for a PPA proposal, for all of the reasons
29 identified above.
- 30 • Order the FirstEnergy EDUs to develop a Purchase of Receivables program;
- 31 • Reject the FirstEnergy EDUs' proposal to modify the bill-ready tariff to narrow the
32 charges that competitive retail electric service (“CRES”) providers can place on the

1 EDU bill; and further, the Commission should affirm that CRES providers can use the
2 bill-ready function to bill for non-commodity charges;

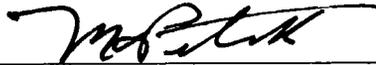
- 3 • Reject the FirstEnergy EDUs' proposal to modify its tariff to eliminate CRES
4 providers' ability to request non-summary customer-specific usage data; rather, the
5 Commission should modify the FirstEnergy EDUs' tariffs to require that the
6 customers' information be provided to CRES providers free of charge;
- 7 • Reject the FirstEnergy EDUs' proposal to modify its tariff that relates to
8 unaccountable energy;
- 9 • Approve the FirstEnergy EDUs' request to make certain PJM-related charges non-
10 bypassable except for PJM Billing Line Item 1375;
- 11 • Approve the FirstEnergy EDUs' proposed CRES supplier portal, but order a
12 stakeholder process to ensure the development of the portal is done appropriately and
13 in a timely manner;
- 14 • Modify Rider GCR to eliminate the provision that allows the FirstEnergy EDUs to
15 determine that the GCR charge is not avoidable for customers who take generation
16 from a CRES provider. If the SSO program develops revenue shortfalls, the
17 FirstEnergy EDUs should at that time file an application with a solution that best fits
18 the public interest; and
- 19 • Retain the Time-of-Day Option in Rider GEN until there are commercially available
20 services. To hasten the development of time-of-day offers, require the FirstEnergy
21 EDUs to provide an action agenda for providing the necessary customer usage and
22 billing information to CRES providers through industry-standard means as of June of
23 2016, the start of the ESP IV.

24
25 **Q13. Does this conclude your second supplemental testimony?**

26 **A13.** Yes, although I reserve the right to further supplement my testimony.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 11th day of May 2015.



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