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Via E-FILE

May 20, 2016

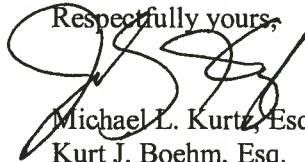
Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case No. 14-1297-EL-SSO

Dear Sir/Madam:

Please find attached the MEMORANDUM CONTRA INTERLOCUTORY APPEAL OF THE OHIO ENERGY GROUP e-filed today in the above-referenced matters.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

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MLKkew
Encl.
Cc: Certificate of Service

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter Of The Application Of The Ohio Edison :
Company, The Cleveland Electric Illuminating Company, :
And The Toledo Edison Company For Authority To : **Case No. 14-1297-EL-SSO**
Establish A Standard Service Offer Pursuant To R.C. § :
4928.143 In The Form Of An Electric Security Plan. :
:

**MEMORANDUM CONTRA INTERLOCUTORY APPEAL
OF THE THE OHIO ENERGY GROUP**

Pursuant to Ohio Adm. Code 4901-1-15, the Ohio Energy Group (“OEG”) submits this Memorandum Contra the Joint Interlocutory Appeal, Request for Certification to Full Commission, and Application for Review and Comments on Tariffs (“Interlocutory Appeal”) filed by the Office of the Ohio Consumers’ Counsel and Northwest Ohio Aggregation Coalition (“OCC/NOAC”) on May 16, 2016. In its Interlocutory Appeal, OCC/NOAC request that the Commission certify its appeal to the full Commission for review, reverse the Attorney Examiner’s May 10, 2016 Entry in this proceeding (“Entry”), and order Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy”) to continue FirstEnergy’s previously-approved standard service offer (“SSO”), currently scheduled to end May 31, 2016, until a new SSO can be approved.

As discussed below, the Commission should dismiss OCC/NOAC’s counterproductive request, which is not only without merit, but would uproot the Commission’s well-reasoned decisions in this case, throwing Ohio’s regulatory scheme into chaos. OCC/NOAC’s argument is based upon a fundamental mischaracterization of the impact of the Federal Energy Regulatory Commission’s (“FERC”) decision with respect to the Purchase Power Agreement (“PPA”) proposed between FirstEnergy and FirstEnergy Solutions (“FES”). Contrary to OCC/NOAC’s assertions, FERC did not preempt the Commission from taking further action at the retail level with respect to FirstEnergy’s Retail Rate Stability Rider (“Rider RRS”), but instead merely directed that *IF* FES intended to proceed with its proposed wholesale sale of electric power to FirstEnergy, then FERC would need to review and approve that wholesale transaction.

Moreover, OCC/NOAC's claims of undue prejudice are baseless since the Rider RRS tariff filed by FirstEnergy has no charge and therefore customers will pay nothing if that Rider goes into effect on June 1, 2016. In contrast, very real and substantial prejudice to customers will occur if the ESP approved by the Commission on March 31, 2016 is not put into effect on June 1, 2016. Under that scenario, retail customers would not only be deprived of the substantial benefits of the newly approved ESP, but would also be significantly harmed by a last-minute upheaval that materially altered rates that they already relied upon in making critical decisions with respect to their electric service. OEG's position is consistent with the Staff recommendations submitted today in this proceeding, which likewise recommend that the tariffs filed by FirstEnergy be approved and become effective on June 1, 2016.

I. The Attorney Examiner's Entry Was Not Preempted By FERC's Recent Decision.

OCC/NOAC's request is premised upon the theory that the Attorney Examiner's Entry was preempted by FERC's recent decision with respect to FES' proposed wholesale sale of electric power to FirstEnergy.¹ But OCC/NOAC completely mischaracterize and vastly overstate the impact of the FERC's decision on retail ratemaking in Ohio. Nowhere in the FERC's decision does it say that the Commission is barred from proceeding with review and implementation of the Rider RRS at the retail level. Rather, FERC simply found that *IF* FirstEnergy and FES wished to proceed with their proposed PPA at the wholesale level, then those companies would have to submit the PPA to FERC for further review.² Although FES has now decided to take a different course of action, FERC's decision was far from a prohibition on the Commission's actions with respect to the retail Rider RRS. Indeed, FERC was careful to note that it was not invading the Commission's retail territory, stating that its decision to review the wholesale PPA further "*does not frustrate or usurp the Ohio Commission's role in protecting retail customers.*"³ Accordingly, given that the main legal premise upon which OCC/NOAC based their Interlocutory Appeal is incorrect, the Commission should give no credence to OCC/NOAC's claims.

¹ Order Granting Complaint, 155 FERC ¶61,101 (April 27, 2016).

² Id. at P62 ("*To the extent FE Solutions or any other FE Ohio Market Affiliate wishes to make sales under the Affiliate PPA, they must submit the agreement to the Commission under section 205 of the FPA for analysis under the Edgar and Allegheny standards.*").

³ Id. at P65.

II. OCC/NOAC Fail To Recognize That The Only Actual Undue Prejudice To Retail Customers Will Occur If The Commission Prevents FirstEnergy's Tariffs From Going Into Effect On June 1, 2016.

The Commission should disregard OCC/NOAC's claim that customers will suffer undue prejudice if the tariffs filed by FirstEnergy on May 13, 2016 go into effect on June 1, 2016. The Rider RRS contained in the filed tariffs does not set forth a dollar amount that would be charged to customers. Consequently, if that Rider goes into effect on June 1, 2016, as ordered by the Attorney Examiner's Entry, there will be zero charge to customers at that time. Zero cost means zero harm.

OCC/NOAC's claims of prejudice are therefore baseless. The fact that OCC/NOAC may oppose Rider RRS going into effect on June 1, 2016 based upon misplaced legal theories is insufficient to establish that retail customers will be harmed by a Rider that will not cost them a penny as of that date. Indeed, the Supreme Court of Ohio recently rejected several claims by aggrieved parties opposed to FirstEnergy's *previous* ESP on the basis that they did not sufficiently demonstrate prejudice to their clients.⁴ The Court explained that it "*will not reverse an order of the commission unless the party seeking reversal shows that it has been or will be harmed by the order.*"⁵ Because OCC/NOAC failed to sufficiently demonstrate that retail customers will experience actual harm as a result of FirstEnergy's tariffs going into effect June 1, 2016, OCC/NOAC's claim should be rejected under the same rationale.

In contrast, real and substantial undue prejudice would occur if FirstEnergy's filed tariffs are not allowed to go into effect on June 1, 2016. As an initial matter, retail customers would be deprived of the substantial benefits contained the ESP approved on March 31, 2016. These benefits include, but are not limited to:

- FirstEnergy's commitment to provide a total of \$3 million per year in shareholder money during the term of the ESP for economic and job retention funding
- FirstEnergy's commitment to expand its current EE/PDR offerings
- Establishment of a carbon emissions reduction goal under which FirstEnergy Corp. would reduce CO₂ emissions by at least 90% below 2005 levels by 2045
- FirstEnergy's agreement to procure at least 100 MW of new Ohio wind or solar resources to diversify the State's generation portfolio

⁴ *In re Application of Ohio Edison Co.*, Slip Opinion No. 2016-Ohio-3021 (May 18, 2016) at ¶¶30, 33, and 49.

⁵ *Id.* at ¶49 (citing *Buckeye Energy Brokers, Inc. v. Palmer Energy Co.*, 139 Ohio St.3d 284, 2014-Ohio-1532, 11 N.E.3d 1126 at ¶ 19).

- FirstEnergy's pledge of money to support EE/PDR efforts of a variety of customers and a low-income fuel fund
- A commitment to explore grid modernization initiatives
- FirstEnergy's consent to evaluate investing in battery resources
- FirstEnergy's commitment to engage in federal advocacy
- FirstEnergy's commitment to maintain its corporate headquarters and a nexus in operations in Akron, Ohio during the term of Rider RRS
- Extension of FirstEnergy's Economic Load Response interruptible load program
- Continuation of the previously-established automaker credit (at a reduced level) to encourage increased production or expansion at automaker facilities in FirstEnergy's service territory
- Adoption of a transmission pilot mechanism that would allocate costs under the Non-Market-Based Services Rider consistent with principles of cost causation

Additionally, retail customers who have already acted in reliance upon the Commission's decision to approve the ESP and the Attorney Examiner's Entry would be substantially harmed by OCC/NOAC's request for a complete upheaval of the rates they expected to pay as of June 1, 2016. Many OEG members have already executed service contracts with competitive suppliers in reliance on the Commission's decision that FirstEnergy's Rider ELR program would continue and be open to participation by shopping customers as of June 1, 2016. Failure to implement the recently approved Rider ELR program as of that date would result in substantial economic disruption to those customers. And given the timing of PJM's upcoming Base Residual Auction ("BRA"), those customers would be unable to mitigate the potential harm by submitting their demand response resources into the 2019/2020 BRA. OCC/NOAC's request is therefore contrary to the public interest and represents the course of action that would result in actual undue prejudice to retail customers.

OEG's position is consistent with the Staff review and recommendations submitted today in this proceeding. In those recommendations, Staff likewise recommends that the tariffs filed by FirstEnergy on May 13, 2016 be approved and become effective on June 1, 2016.⁶

⁶ Staff Review and Recommendations (May 20, 2016) at 2.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should not indulge OCC/NOAC's purposely disruptive request to throw Ohio's regulatory scheme into chaos. Instead, the Commission should dismiss OCC/NOAC's Interlocutory Appeal and should allow the ESP approved on March 31, 2016, as reflected in the tariffs filed by FirstEnergy on May 13, 2016, to go into effect on June 1, 2016.

Respectfully submitted,



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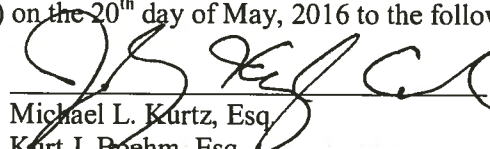
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May 20, 2016

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on 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 (via electronic mail) on the 20th day of May, 2016 to the following:


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in

Case No(s). 14-1297-EL-SSO

Summary: Memorandum MEMORANDUM CONTRA INTERLOCUTORY APPEAL OF THE OHIO ENERGY GROUP electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group