UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Electric Power Supply Association, Retail Energy Supply Association, Dynegy Inc., Eastern Generation, LLC, NRG Power Marketing LLC and GenOn Energy Management, LLC,	)	
Complainants,	)	**Docket No. EL16-34-000**
v.	)	
FirstEnergy Solutions Corporation, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company,	)	
Respondents.	)	

JOINT ANSWER OF
THE ELECTRIC POWER SUPPLY ASSOCIATION,
THE OFFICE OF OHIO CONSUMERS' COUNSEL AND
THE RETAIL ENERGY SUPPLY ASSOCIATION
IN OPPOSITION TO MOTION FOR EXTENSION OF TIME

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission" or "FERC"),[1] the Electric Power Supply Association, the Office of the Ohio Consumers' Counsel and the Retail Energy Supply Association (collectively, the "Indicated Parties") hereby file this answer in opposition to the motion[2] of FirstEnergy Service Company, on behalf of Respondents,[3]

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1 18 C.F.R. § 385.213 (2015).

2 Motion for Extension of Time to File Answer of FirstEnergy Service Company, Docket No. EL16-34-000 (filed Feb. 3, 2016) (the "Motion").

3 "Respondents" are FirstEnergy Solutions Corp. ("FE Solutions"), Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), The Toledo Edison Company (together with Ohio Edison and CEI, the "FE Ohio Utilities").

for extension of the comment period in this proceeding. Time is of the essence in this proceeding in order to protect both Ohio consumers and the wholesale competitive markets upon which they rely from a proposed abusive affiliate power sales contract (the "Affiliate PPA") between FE Solutions and the FE Ohio Utilities, and thereby to fulfill FERC's core duty to "guard the consumer against exploitation by non-competitive electric power companies."[4] Respondents have not justified any extension of the comment date established in this proceeding, much less the 14-day extension requested in the Motion.

This proceeding arises out of a January 27, 2016 complaint[5] requesting that FERC rescind a waiver of the affiliate power sales restrictions granted to Respondents and other affiliates of FirstEnergy Corporation ("FirstEnergy"), as that waiver relates to the Affiliate PPA. The Complaint explained that with the costs of the Affiliate PPA being recovered through a non-bypassable charge assessed to all captive retail consumers in the FE Ohio Utilities' service territories, even those served by competitive suppliers, the primary premise for the waiver – that the FE Ohio Utilities have no captive retail customers – is not valid where the Affiliate PPA is concerned and that it would otherwise be unjust, unreasonable and unduly discriminatory to allow FE Solutions to enter into the Affiliate PPA pursuant to its blanket market-based rate authorization. The Complaint requested fast track processing pursuant to Rule 206(b)(11) of FERC's Rules of

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4 *Nat'l Ass'n for the Advancement of Colored People v. FPC*, 520 F.2d 432, 438 (D.C. Cir. 1975), *aff'd*, 425 U.S. 662 (1976).

5 Complaint Requesting Fast Track Processing, Docket No. EL16-34-000 (filed Jan. 27, 2016) (the "Complaint").

Practice and Procedure.[6] The Complaint emphasized the urgent need for a FERC order making clear that the Affiliate PPA, which, as FirstEnergy has acknowledged, will not be reviewed in pending proceedings before the Public Utility Commission of Ohio (the "PUCO"), will not evade regulatory review altogether.[7] In particular, the Complaint stressed the need for an order that would allow FERC to review the Affiliate PPA under Section 205 of the Federal Power Act (the "FPA")[8] in advance of the Base Residual Auction for the 2019/2020 Delivery Year (the "2019/2020 BRA"), which PJM Interconnection, L.L.C. ("PJM") is scheduled to conduct in May 2016.[9]

By notice issued January 28, 2016, FERC established a 20-day comment period in this proceeding.[10] This is consistent with FERC's Rules of Practice and Procedure, which makes 20 days the default comment period for complaints that do not seek privileged treatment.[11] To be clear, 20 days would be the default comment period even if the complainants had not sought fast track processing.[12]

Respondents have failed to show good cause for any extension of the comment period in this proceeding, much less for the 14-day extension requested in the Motion. To the contrary, with consumers potentially facing costs of up to $5.15 billion if the

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6 18 C.F.R. § 385.206(b)(11) (2015).

7 *See* Complaint at 21.

8 16 U.S.C. § 824d (2012).

9 *See* PJM, Auction Schedule, http://www.pjm.com/~/media/markets-ops/rpm/rpm-auction-info/rpm-auction-schedule.ashx.

10 Notice of Complaint, Docket No. EL16-34-000 (Jan. 28, 2016) (unreported).

11 *See* 18 C.F.R. § 385.206(f) (2015).

12 *See* 18 C.F.R. § 385.206(h)(3) (2015) (stating that the comment period for a complaint seeking fast track processing "may be shortened by the Commission from the time provided in section 385.206(f)").

power purchased under the Affiliate PPA does not clear in the PJM markets,[13] expeditious action granting the Complaint could not be more essential. Vague assertions that the Complaint raises "complex legal and factual issues"[14] certainly do not establish good cause for such an extension. In point of fact, the issues raised in the Complaint, while of tremendous importance to Ohio consumers and the integrity of the PJM markets, are not particularly complex. To the contrary, the Complaint presents relatively straightforward questions about whether the FE Ohio Utilities can be said to lack captive retail customers when it will recover costs of the Affiliate PPA from all retail consumers, even those taking service from competitive suppliers, and whether it is otherwise just and reasonable for the Affiliate PPA to evade Commission review under Section 205 of the FPA and well-established Commission policies for reviewing affiliate power sales transactions.[15] No complex economic or engineering analysis is required to answer these questions, and the key factual issues relate to matters, such as the terms of the non-bypassable charge through which the FE Ohio Utilities will recover the costs of the Affiliate PPA, with which Respondents are intimately familiar by virtue of having litigated about these issues before the PUCO for the last 18 months.[16] Indeed, Respondents claim to have already "carefully evaluated" the affiliate power sales

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[13] *See* Motion to Intervene and Comments in Support of the Office of the Ohio Consumers' Counsel at 2, Docket No. EL16-34-000 (filed Jan. 27, 2016).

[14] Motion at 4.

[15] *See Boston Edison Co. Re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,382 (1991); *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004).

[16] *See* Complaint at 11-13 (background on the PUCO proceedings).

restriction issues – *i.e.*, precisely the issues presented by the Complaint – prior to filing their proposal with the PUCO.[17]

Respondents are mistaken in suggesting that the complainants and other parties will not be harmed by granting a 14-day extension of the comment period. The fact that the PUCO has not yet ruled is cold comfort to the Indicated Parties and Ohio consumers, given that the PUCO has previously approved similar non-bypassable charges and that the PUCO staff has endorsed FirstEnergy's bailout scheme.[18] There is little reason to expect any changes to FirstEnergy's proposal that would be material to the Commission's analysis in this case. Moreover, while there is no basis for Respondents' assertion that "completion of the PUCO proceeding will substantively assist the Commission in its analysis of the issues raised in the Complaint,"[19] that assertion, even if true, would only be relevant to when FERC issues its order and has no bearing on whether Respondents should be given additional time to prepare their answer.

Finally, as FERC undoubtedly knows, the Indicated Parties endeavor to accommodate other parties' reasonable requests on procedural matters whenever possible. Unfortunately, it is simply not possible to accommodate Respondents' request for a 14-day extension (of a 20-day comment period) without seriously compromising the legitimate interests of the Indicated Parties and others, including Ohio consumers, in expeditious action on the Complaint. It also bears emphasis that during proceedings

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[17] Darren Sweeney, *Morgan Stanley sees 'material risk' FERC will reject Ohio subsidy plans*, SNL Power Policy Week (Feb. 3, 2016) (quoting Doug Colafella).

[18] *See* Complaint at 15-16.

[19] Motion at 3.

before the PUCO, the FE Ohio Utilities opposed other parties' requests for extensions and insisted that the proceedings press forward at a highly expedited pace.[20]

CONCLUSION

WHEREFORE, for the foregoing reasons, the Indicated Parties respectfully request that FERC deny the Motion.

Respectfully submitted,

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Dated: February 4, 2016

[20] *See, e.g.*, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company's Memorandum Contra Environmental Law and Policy, Ohio Environmental Counsel, and Environmental Defense Fund Motion to Establish a Procedural Schedule, PUCO Case No. 14-1297-EL-SSO (filed Dec. 3, 2015), http://dis.puc.state.oh.us/TiffToPDf/A1001001A15L03B60132F04720.pdf; Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company's Memorandum Contra Joint Motion to Reopen the Hearing Record and to Establish a Procedural Schedule, PUCO Case No. 14-1297-EL-SSO (filed Dec. 2, 2015), http://dis.puc.state.oh.us/TiffToPDf/A1001001A15L02B61956D04586.pdf.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington DC, this 4th day of February, 2016.

/s/
Stephanie S. Lim