

**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,)
)
v.)
)
FirstEnergy Solutions Corporation,)
Ohio Edison Company, The Cleveland)
Electric Illuminating Company and The)
Toledo Edison Company,)
)
Respondents.)

Docket No. EL16-34-000

JOINT ANSWER

Complainants in the above-captioned proceeding (“Complainants”) and the Ohio Consumers’ Counsel (the “OCC”)¹ hereby answer the submission² by FirstEnergy Solutions Corporation (“FE Solutions”) and the FE Ohio Utilities³ (collectively, “Respondents”) of the March 31, 2016 Opinion and Order of the Public Utilities Commission of Ohio (“PUCO”) in PUCO Case No. 14-1297-EL-SSO (the “PUCO

¹ The OCC is the State of Ohio’s representative of residential utility consumers.

² Notice of Issuance of Public Utilities Commission of Ohio Order of the FirstEnergy Companies, Docket No. EL16-34-000 (filed Apr. 4, 2016) (the “April 4 Filing”). Under Rule 213(a) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission or “FERC”), 18 C.F.R. § 385(a) (2015), Complainants and the OCC are entitled to answer the April 4 Filing, which is not a protest, an answer or a request for rehearing, as a matter of right.

³ The FE Ohio Utilities are Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company.

Order”). The PUCO Order will force Ohio retail consumers to subsidize wholesale power purchases by the FE Ohio Utilities from their “unregulated” affiliate, FE Solutions. Complainants and the OCC agree with Respondents that the PUCO Order should be made a part of the record in this proceeding, and, in that respect, do not oppose the April 4 Filing as a motion to lodge⁴ that order in this proceeding. That said, notwithstanding suggestions in the April 4 Filing to the contrary, the PUCO Order underscores the urgent need for expeditious FERC action granting the January 27, 2016 complaint⁵ in the above-captioned proceeding in order to protect 4.5 million consumers in Ohio and the competitive markets upon which they and other consumers in the PJM Interconnection, L.L.C. (“PJM”) footprint rely.

Under the PUCO Order, Ohio retail consumers will be required to subsidize the net costs incurred under a proposed power purchase agreement (the “Affiliate PPA”) between the FE Ohio Utilities and FE Solutions. All Ohioans – shoppers and non-shoppers alike – will be forced to subsidize FE Solutions’s deregulated power plants (the “PPA Units”) through a non-bypassable charge called “Rider RRS.”⁶ Energy, capacity and ancillary services from the subsidized PPA Units will then be offered into the wholesale markets operated by PJM.⁷

⁴ As Respondents appear to recognize, the April 4 Filing, while styled as a “notice,” is essentially a motion to lodge. See April 4 Filing at 4 n.18.

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

⁶ See PUCO Order at 110 (“Rider RRS will be non-bypassable and thus will have the same impact on customers’ bills on shopping customers as [standard service offer] customers.” (citation omitted)).

⁷ See *id.* at 13.

The PUCO's approval of the FE Ohio Utilities' bailout proposal puts to rest any claims that the Complaint was "premature,"⁸ and makes clear that FERC must now step in to protect consumers and the PJM markets. Indeed, the Commission has a statutory duty to ensure that the rates, terms and conditions of the Affiliate PPA are just and reasonable, and without federal protection, Ohio consumers will be saddled with billions of dollars in above-market costs under this abusive affiliate contract.⁹ Moreover, the PJM markets, which extend well beyond Ohio, will be harmed by noncompetitive offers of over 3,000 MW of subsidized generation.¹⁰ That market harm will especially injure Ohio retail consumers who will pay both the distorted market clearing prices for energy and capacity procured from the PJM markets and the non-bypassable subsidies approved by the PUCO.

To be clear, the PUCO's decision under Ohio state law to endorse the customer-funded bailout of FE Solutions in no way relieves this Commission of its statutory duty to protect wholesale markets for the sake of Ohioans and consumers in the 12 other states and the District of Columbia that make up the PJM region. Only the Commission has the legal authority to ensure that Ohio consumers and the PJM markets are protected

⁸ Answer of the FirstEnergy Companies at 10 n.21, Docket No. EL16-34-000 (filed Feb. 23, 2016); Comments of the Ohio Energy Group at 2, Docket No. EL16-34-000 (filed Feb. 23, 2016).

⁹ See, e.g., 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) (estimating that Ohio consumers will bear approximately \$3.6-\$5.15 billion in above-market costs under the Affiliate PPA).

¹⁰ See, e.g., Motion to Intervene and Comments in Support of PJM Interconnection, L.L.C. at 3, Docket No. EL16-34-000 (filed Feb. 23, 2016) (stating that the incentives for below-cost bidding resulting from the Affiliate PPA "could impact significantly PJM's administration of the wholesale markets"); Comments of the Independent Market Monitor for PJM at 3, Docket Nos. EL16-34-000, *et al.* (filed Feb. 23, 2016) (stating that the Affiliate PPA will "interfere[] with the efficient operation of wholesale markets in the PJM region").

from unjust and unreasonable wholesale rates like those in the Affiliate PPA,¹¹ and it has a duty to exercise that authority, regardless of what the PUCO says or does.¹²

The bottom line is that it is imperative that the Commission act expeditiously to grant the Complaint. PJM is scheduled to conduct the Base Residual Auction for the 2019/2020 Delivery Year beginning on May 11, 2016.¹³ Moreover, the FE Ohio Utilities will begin charging customers for the costs of the Affiliate PPA under Rider RRS beginning in June,¹⁴ and the FE Ohio Utilities can also be expected to claim that such charges are not subject to refund.¹⁵

¹¹ See PUCO Order at 87 (acknowledging that “[c]harges at wholesale are exclusively within the jurisdiction of the FERC”).

¹² See Complaint at 19-21, 28; Motion for Leave to Answer and Limited Answer at 6-7, Docket Nos. EL16-33-000, *et al.* (filed Mar. 9, 2016).

¹³ See PJM, Auction Schedule, <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/rpm-auction-schedule.ashx>.

¹⁴ See PUCO Order at 20.

¹⁵ See *In re Application of Columbus S. Power Co.*, 8 N.E.3d 863, ¶ 56 (Ohio 2014) (finding that a “no-refund rule” prevented consumers from recovering charges previously collected by the utility, despite the rule resulting in a “windfall” for the utility and being “unfair”); *In re Application of Columbus S. Power Co.*, 947 N.E.2d 655, ¶¶ 8-21 (Ohio 2011) (finding that the PUCO unlawfully granted a retroactive rate increase but nevertheless holding that refunds of the wrongfully collected amounts were not permitted).

CONCLUSION

WHEREFORE, for the foregoing reasons, Complainants and the OCC respectfully request that the Commission grant the Complaint without delay.

Respectfully submitted,

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Dated: April 6, 2016

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 6th day of April, 2016.

/s/ Stephanie Lim
Stephanie S. Lim