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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison)
Company, The Cleveland Electric Illuminating) Case No. 08-935-EL-SSO
Company and The Toledo Edison Company for)
Authority to Establish a Standard Service Offer)
Pursuant to R.C. 4928.143 in the Form of an)
Electric Security Plan.)

APPLICANTS' MEMORANDUM CONTRA
JOINT MOTION FOR CONTINUANCE OF HEARING
AND EXTENSIONS OF TIME

I. Introduction

The Office of the Ohio Consumers' Counsel ("OCC"), Northwest Ohio Aggregation Coalition and the Ohio Environmental Counsel (collectively "Movants") waited for nearly three weeks after Attorney Examiner Price's August 5, 2008 Entry setting the schedule in this proceeding before filing their Joint Motion for Continuance of the Hearing and Extensions of Time. Movants ask the Commission to push back by sixty days all dates fixed by that Entry,¹ which would result in a hearing commencing on December 1, 2008 instead of October 2, 2008. Remarkably, Movants also have asked to continue the hearing in Duke's Electric Security Plan ("ESP") case until December 4, 2008. Given that the Commission must issue a final order by December 29, 2008 in each of the three ESP cases, Movants appear intent on obtaining a schedule in this proceeding (and, presumably, the Duke proceeding) which would prevent the Commission from having sufficient time to issue a well-reasoned decision based on record support. The Motion should be summarily denied.

¹ Movants do not mention the September 22, 2008 deadline for filing Staff testimony. However, Movants seek to extend the deadline for filing intervenor testimony until November 14, 2008, which suggests that Staff testimony would then be filed one week later on November 21, 2008.

II. Discussion

The schedules established for each of the three ESP cases and the Market Rate Option case (the “MRO Case”) filed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”) were carefully crafted to meet the needs of all parties while affording the Commission adequate time to adopt rules and to issue decisions on all four applications within the 90 and 150-day statutory periods set forth in R.C. § 4928.142(B) and R.C. § 4928.143(C)(1), respectively. Because similar common intervenors are expected to participate in each of the ESP cases initiated by the Companies, Duke and AEP, the attorney examiners staggered the hearings specifically in the interest of avoiding undue burden and prejudice to these intervenors, including Movants. *See* August 5 Entry at 1-2. Moreover, the attorney examiners scheduled the Companies’ ESP application to be heard first because, unlike Duke and AEP, the Companies will be required to arrange for its supply of generation within a reasonable period prior to January 1, 2009. *Id.* at 2. If Movants’ request is granted and all activities in this proceeding and the Duke ESP proceeding are pushed into November and December, the Commission’s carefully structured plan for all these matters will collapse.

Although Movants complain that they lack sufficient time to conduct discovery and prepare for hearing, all parties face the same challenges resulting from the General Assembly’s mandate that initial ESP cases be concluded within 150 days. Movants certainly were aware that the Companies would be filing their ESP Application on the earliest date permitted by law – July 31, 2008 (not August 1, 2008 as stated in the Motion), and Movants also were aware generally of the subject matter to be addressed in each ESP proceeding within the statutorily mandated 150-day period. Notably, Movants also have known since late April that the Commission’s review of

ESP applications would be limited to the question of whether the ESP is more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C. § 4928.142. *See* R.C. § 4928.143(C)(1).² Thus, one would have reasonably expected them to have used the several months prior to the July 31, 2008 filings both to prepare for these cases and to focus their efforts.

Yet Movants' Motion does not explain why the Companies received no data requests from any of the Movants until OCC served discovery in this matter after 5 p.m. on Friday, August 22. The Motion also lacks a satisfactory explanation as to why the approximately sixty-nine employees of OCC, and the untold number of staff and outside experts employed by the other Movants, are incapable of keeping to the schedule set by the Commission. Moreover, although the Motion states that OCC "may" be unable to retain experts within the time allowed by the current schedule (Motion at 4), OCC fails to mention that it issued multiple Requests For Proposals in early June 2008 seeking proposals from consultants to assist it in reviewing the ESP applications it anticipated would be filed on July 31, 2008. Movants also fail to explain why they believe there is insufficient time to prepare for the October 2 hearing but also believe there is sufficient time for the parties and attorney examiners to dedicate several days to attending general public hearings across northern Ohio between now and October 2 and also sufficient time for OCC to market its own public forums across the state.³

² Movants mistakenly describe the relevant issues before the Commission as including the issue of whether the Companies' proposed rates are "reasonable." Motion at 2; *see* Motion at 4. This is not, however, the standard of review established by the General Assembly in R.C. § 4928.143(C)(1).

³ *See* Joint Motion for Local Public Hearings By the Office of the Ohio Consumers' Counsel, Northwest Ohio Aggregation Coalition, Ohio Partners for Affordable Energy ("OPAE") and The Ohio Environmental Council filed August 25, 2008 in Case Nos. 08-935-EL-SSO and 08-936-EL-SSO. The OPAE joined with Movants in seeking local public hearings, but did not join with Movants in seeking an extension of all dates scheduled in this proceeding. *See also* August 14, 2008 OCC Press Release announcing public forums, here: <http://www.pickocc.org/news/2008/pressrelease.php?date=08142008>.

The Companies were fully cognizant of the time pressures caused by Am. Sub. S.B. 221's timing provisions, and, thus, provided the OCC and all parties a full set of its ESP filing, including work papers, on July 31, 2008. Movants could have commenced discovery in this matter on that date or soon thereafter (as other parties did), but OCC chose to wait for more than three weeks and the other Movants have yet to serve any discovery. Although Movants complain that they are being denied the ample rights of discovery referenced in R.C. § 4903.082, the August 5 Entry allows intervenors to submit data requests to the Companies up until September 19, 2008 – seven weeks from the date the application was filed – and permits depositions beyond that date. The August 5 Entry also established an expedited pleading schedule, encouraged e-mail service or hand delivery of documents, and shortened the response time for discovery requests to ten days. Given that the requirement for ample discovery has to be considered in the context of the 150-day review period mandated by the General Assembly, the Commission's schedule satisfies R.C. § 4903.082 and is reasonable.

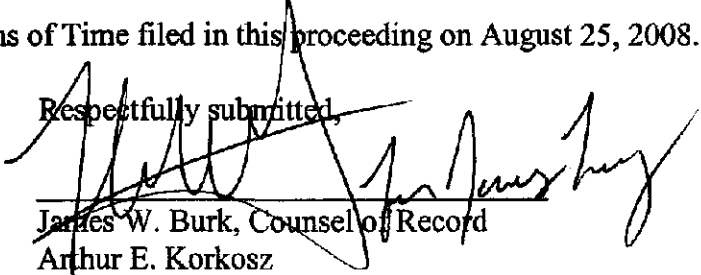
Movants confusingly suggest that the Commission can delay its consideration of the Companies' ESP beyond the statutorily-mandated 150-day review period by simply declaring that the Companies shall charge a temporary rate, subject to reconciliation, until the Commission's review of the ESP is complete sometime in 2009. *See* Motion at 6-7. However, should the Commission not approve the ESP within the required 150-day period, then the Companies' MRO will survive as the alternative. The Short Term ESP set forth in the Companies' Application cannot be selectively sliced and diced as suggested by Movants – if not accepted in full by November 14, 2008, it is deemed withdrawn. Thus, absent acceptance of the Short Term ESP, Movants' proposal is inconsistent with the controlling provisions of Am. Sub. S.B. 221.

On the last page of the Motion, Movants appear to lose faith in the merits of their primary proposal and suggest a second option. According to Movants, the Commission should continue the October 2 hearing date a mere 15 days until October 30, 2008. Motion at 8. The Companies respectfully suggest that disguising a 28-day extension as a 15-day extension is inappropriate. Regardless, such an extension is unreasonable for all the same reasons set forth above. Therefore, the Commission should reject Movants' attempt to upset the carefully structured schedule and should deny Movants' request for an extension, whether of the 15-day, 28-day or 60-day variety.

III. Conclusion

For the reasons set forth above, the Commission should deny the Joint Motion for Continuance of the Hearing and Extensions of Time filed in this proceeding on August 25, 2008.

Respectfully submitted,



James W. Burk, Counsel of Record
Arthur E. Korkosz
Mark A. Hayden
Ebony L. Miller
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
(330) 761-7735
(330) 384-3875 (fax)
burkj@firstenergycorp.com
korkosza@firstenergycorp.com
haydenm@firstenergycorp.com
elmiller@firstenergycorp.com

James F. Lang
Laura McBride
Trevor Alexander
Calfee, Halter & Griswold LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114

(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
lmcbride@calfee.com
tallexander@calfee.com

On behalf of Applicants

CERTIFICATE OF SERVICE

The foregoing Brief was served via regular U.S. Mail, postage pre-paid, on this 2nd day of September, 2008, upon all parties of record.



One of Attorneys for Respondent

Case 08-935-EL-SSO
Service List

Public Utilities Commission of Ohio

Robert Fortney
180 East Broad St.
3rd Floor
Columbus, OH 43215
E-mail: robert.fortney@puc.state.oh.us

Ohio Energy Group (OEG)

Michael L. Kurtz
David F. Boehm
Kurt J. Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
mkurtz@BKLawfirm.com
dboehm@BKLawfirm.com
kboehm@BKLawfirm.com

Ohio Consumers' Counsel

Ann M. Hotz
Gregory J. Poulos
Ohio Consumers' Counsel
10 West Broad Street
18th Floor
Columbus, OH 43215-3485
hotz@occ.state.oh.us
poulos@occ.state.oh.us

Kroger Co

John W. Bentine
Chester Wilcox & Saxbe, LLP
65 E. State St., Suite 1000
Columbus, OH 43215
jbentine@cwsllaw.com

Ohio Environmental Council

Barth E. Royer
Bell & Royer, LPA
33 South Grant Avenue
Columbus, OH 43215
barthroyer@aol.com

Ohio Partners for Affordable Energy

David C. Rinebolt
Colleen L. Mooney
(OPEA)
231 West Lima Street
PO BOX 1793
Columbus, OH 43215
E-mail: drinebolt@aol.com
cmooney2@columbus.rr.com

Nucor Steel Marion, Inc.

Garrett A. Stone
Brickfield, Burchette, Ritts & Stone
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007-5201
gas@bbrslaw.com

Northwest Ohio Aggregation Coalition (NOAC)

Toledo
Leslie A. Kovacik
Kerry Bruce
420 Madison Ave., Suite 100
Toledo, OH 43604-1219
Phone: 419.245.1893
Fax: 419.245.1853
E-mail: leslie.kovacik@toledo.oh.gov

Lucas

Lance M. Keiffer
Lucas County Assist Prosecuting Atty
711 Adams St., 2nd Floor
Toledo, OH 43624-1680
Phone: 419.213.2001
Fax: 419.213.2011
E-mail: lkeiffer@co.lucas.oh.us

NOAC- Holland

Paul Skaff
Leatherman Witzler Dombey & Hart
353 Elm St.
Perrysburg, OH 43551
Phone: 419.874.3536
Fax: 419.874.3899
E-mail: paulskaff@justice.com

NOAC- Lake

Thomas R. Hays
Lake Township – Solicitor
3315 Centennial Road, Suite A-2
Sylvania, OH 43560
Phone: 419.843.5355
Fax: 419.843.5350
E-mail: hayslaw@buckeye-express.com

NOAC- Maumee

Sheilah H. McAdams
Marsh & McAdams – Law Director
204 West Wayne Street
Maumee, OH 43547
Phone: 419.893.4880
Fax: 419.893.5891
E-mail: sheilahmca@aol.com

NOAC- Northwood
Brian J. Ballenger
Ballenger & Moore – Law Director
3401 Woodville Rd., Suite C
Toledo, OH 43619
Phone: 419.698.1040
Fax: 419.698.5493
E-mail: ballengerlawbjb@sbcglobal.net

NOAC- Oregon
Paul S. Goldberg
Oregon – Law Director
6800 W. Central Ave.
Toledo, OH 43617-1135
Phone: 419.843.5355
E-mail: pgoldberg@ci.oregon.oh.us

NOAC- Perrysburg
Peter D. Gwyn
Perrysburg – Law Director
110 West Second St.
Perrysburg, Oh 43551
Phone: 419.874.3569
Fax: 419.874.8547
E-mail: pgwyn@toledolink.com

NOAC- Sylvania
James E. Moan
Sylvania – Law Director
4930 Holland-Sylvania Rd
Sylvania, OH 43560
Phone: 419.882.7100
Fax: 419.882.7201
E-mail: jimmhoan@hotmail.com

Jones Day
Mark A. Whitt
P.O. Box 165017
325 John H. McConnell Blvd. Suite 600
Columbus, OH 43216-5017
Phone: 614-281-3880
Fax: 614-461-4198
E-mail: mawhitt@jonesday.com

Constellation Energy
M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymore and Pease, LLP
52 East Gay Street
PO Box 1008
Columbus, OH 43216-1008
E-mail: mhpetricoff@vssp.com

Dominion Retail, Inc.
Barth E. Royer
Bell & Royer, LPA
33 South Grant Avenue
Columbus, OH 43215
Email: barthroyer@aol.com

Ohio Hospital Association
Richard L. Sites
155 E. Broad Street, 15th Floor
Columbus, OH 43215-3620
Phone: (614) 221-7614
Email: ricks@ohanet.org

National Energy Marketers Assoc.
Craig G. Goodman, Esq.
3333 K. Street, NW, Suite 110
Washington, D.C. 20007
Email: cgoodman@energymarketers.com

The Citizens Coalition
Joseph P. Meissner
The Legal Aid Society of Cleveland
1223 West 6th Street
Cleveland, OH 44113
Phone: 216.687.1900
Email: jpmessn@lasclev.org

Direct Energy Services, LLC
M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43216-1008
Phone: 614.464.5414
Fax: 614.464.6350
E-mail: mhpetricoff@vorhys.com

Integrus Energy Services, Inc
Bobby Singh
300 West Wilson Bridge Road, Suite 350
Worthington, OH 43085
Phone: 614.844.4340
Fax: 614.844.4306
E-mail: bsingh@integrusenergy.com

City of Akron
Sean W. Vollman
161 S. High Street, Suite 202
Akron, OH 44308
Phone: 330.375.2030
Fax: 330.375.2041
E-mail: vollmse@ci.akron.oh.us