

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 08-935-EL-SSO
Illuminating 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.)

PUCO

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**REPLY TO APPLICANT'S MEMORANDUM CONTRA
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of all the residential electric utility customers of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company, (collectively, "FirstEnergy" or the "Companies"), files this reply to FirstEnergy's Memorandum Contra filed on September 2, 2008. FirstEnergy opposed the Joint Motion for a continuance filed by OCC, the Northwest Ohio Aggregation Coalition, and the Ohio Environmental Council. First Energy claimed there was no basis for the request.

Ohio Adm. Code 4901-1-13(A) provides for extensions and "continuances of public hearings" upon a showing of good cause. Good cause exists for granting this continuance and extension of time.

As the parties to the Joint Motion for a Continuance demonstrated, R.C. 4903.082 requires that "[a]ll parties and intervenors shall be granted ample rights of discovery." That statute also requires the PUCO to regularly review its rules "to aid full and

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reasonable discovery by all parties.” With respect to the rules FirstEnergy referenced in R.C. 4903.082, Ohio Adm. Code 4901-1-16(A) provides that the purpose of discovery rules in PUCO proceedings is to “facilitate thorough and adequate preparation for participation in commission proceedings.” Because the cases involve highly technical issues, parties cannot adequately prepare for the hearing without extensive discovery and various parties also have a need to employ experts to address many of the issues that stem from FirstEnergy’s far reaching application.

The circumstances underlying the Joint Motion show good cause. Accordingly, the PUCO should reject FirstEnergy’s Memorandum Contra, continue the hearings, and extend the deadlines for 60 days as requested.

II. ARGUMENT

FirstEnergy’s angry reply only underscores why a continuance of the hearing and extensions of the deadlines prior to the hearing are necessary. FirstEnergy claims the Movants had several months to prepare for the cases FirstEnergy filed pursuant to SB 221:

***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.¹

It was FirstEnergy that was preparing the ESP application, supporting testimony, and exhibits. FirstEnergy’s ESP application is voluminous – almost 3,000 pages. Not until the filing of the application was OCC (and every other stakeholder) able to begin analyzing the details and specifics of the Companies’ proposals.

¹ Memorandum Contra at 3

FirstEnergy also states that OCC began to seek consultants in June 2008

(suggesting consultants have been under contract for some time), for the ESP cases:

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, 2008.²

OCC has been seeking consultants to engage for many weeks – if not months.

Unfortunately, this has not been an easy process both in terms of availability of consultants or the fees they require. In spite of the RFPs issued in June OCC is still in the process of attempting to engage consultants on several technical points for the FirstEnergy hearings so that OCC can have the benefit of an expert evaluation (as well as testimony and exhibits). In FirstEnergy's world consultants can be engaged with a phone call and letter agreement with firms that regularly work for FirstEnergy. However, OCC is obliged to follow state processes that were created to protect the expenditure of public funds – processes that OCC believes are appropriate and that OCC observes.

FirstEnergy's failing to acknowledge this reality of state processes is naive at best.

Moreover, FirstEnergy's reference to OCC's early efforts to prepare just underscores OCC's diligence in preparing for these cases.

Finally, FirstEnergy attempts to suggest that preparation for hearings is something that can be balanced against providing information to consumers about what effect FirstEnergy's filing will have on them and their families (meaning apparently that, in FirstEnergy's view, less time should be spent on developing a transparent public regulatory process through informing and educating the public):

Movants also fail to explain why they believe there is insufficient time to prepare for the October 2 hearing but also believe there is

² Id.

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

Providing information to the public and hearing from the public, regarding FirstEnergy's proposal to increase their electric rates, shift costs, and change terms and conditions of service, is critical to having the transparent regulatory process that is intended as a principle of Ohio energy policy. This public process is all the more significant considering that FirstEnergy is already charging consumers some of the highest electric rates in Ohio. FirstEnergy's apparent disregard for public involvement in the regulatory process and its arguments to foreclose adequate time for the parties to effectively evaluate and counter FirstEnergy's filing through testimony, exhibits, and legal arguments should be ignored by the Commission.

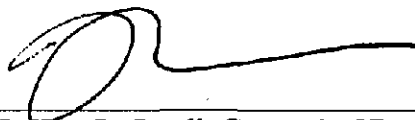
Finally, FirstEnergy never persuasively argues – if it argues at all -- that “good cause” has not been shown in the Motion to Continue. The fact is that the Movants have shown good cause for continuing the hearings as required by law.⁴ The PUCO should reject FirstEnergy's unsubstantiated arguments and grant the continuance and extensions.

³.Id.

⁴Ohio Adm. Code 4901-1-13(A)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the OCC's Reply to Applicant's Memorandum
Contra has been served upon the following parties electronically and via regular U.S.
Mail this 5th day of September, 2008.



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