

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio
Edison Company, The Cleveland Electric
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

Case No. 10- 0388 -EL-SSO

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MOTION FOR WAIVER OF RULES, REQUEST FOR EXPEDITED
TREATMENT AND MEMORANDUM IN SUPPORT THEREOF

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (hereinafter collectively referred to as the "Companies"), have filed their Application requesting regulatory authority to establish a standard service offer ("SSO") pursuant to R.C. § 4928.141 and, more particularly, pursuant to and consistent with the provisions of R.C. § 4928.143, to implement a comprehensive electric security plan. As is explained in the Application, time is of the essence and the Commission must act quickly on the Application – by May 5, 2010 – as such expedited approval is required in order to permit the Companies to proceed with implementing the competitive bidding process to take advantage of historically low market prices for wholesale electric generation, to the benefit of customers.

The Companies have made a good faith effort to conform their Application to substantive requirements of rules adopted by the Commission pursuant to R.C. § 4928.143(A) or other applicable Revised Code sections. However, to effect expedited consideration and approval, certain of the Commission's rules and procedures will

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require waiver. The waiver of such Commission rules is particularly appropriate because the electric security plan ("ESP") proposed in the Application is the result of a Stipulation reflecting the participation of numerous interested parties who already have considerable familiarity of the subject matter and issues presented, such waivers will not present undue prejudice and, in the circumstances is reasonable and warranted. As follows, the Companies, pursuant to O.A.C. 4901:1-35-02(B), specifically herein request the following waivers for good cause shown. Additionally, pursuant to O.A.C. 4901-1-12(C), expedited consideration of this Motion is requested.¹

A. O.A.C. 4901:1-35-03(C)

(C)(2) *Financial Projections.* The Companies are unable, upon the filing of their Application, to provide pro forma financial projections of the effect of the ESP's implementation and thus hereby request a waiver of such provision.

(C)(4) *Corporate Separation Plan.* The Commission approved the Companies' interim corporate separation plan by Opinion and Order issued on July 19, 2000 in Case Nos. 99-1212-EL-ETP *et al.* (the "ETP Order"). The Companies' corporate separation plan currently is in full force and effect and is in compliance with statutory and rule requirements. Additionally, the Companies' corporate separation plan was filed in Case No. 09-462-EL-UNC and was also presented in the record of Case No. 09-906-EL-SSO, which the Signatory Parties, as defined in the Recommendation and Stipulation have requested be incorporated by reference into this proceeding. The Companies specifically request a waiver of (C)(4) to the extent that such provision contemplates additional information to satisfy this requirement.

¹ As the Application initiating this matter is being filed contemporaneously with this Motion, formal intervention has not yet been granted and the undersigned counsel makes no representation regarding the position of any such potential intervenors with respect to the Commission's expedited consideration.

(C)(5) **Operational Support Plan.** The Companies' operational support plan was implemented as directed by the Commission in the ETP Order and related orders. There are no outstanding problems with the implementation. The Companies specifically request a waiver of (C)(4) to the extent that such provision contemplates additional information to satisfy this requirement.

(C)(6) **Governmental Aggregation.** The Companies will continue to maintain systems necessary to account for customer participation in governmental aggregation programs. The Companies herein request a waiver of the provision to provide a description as to how the Companies propose to implement divisions (I), (J), (K) of R.C. § 4928.20.

(C)(7) **Impact of Unavoidable Generation Charge on Large-Scale Governmental Aggregation.** The overall effect of the ESP's nonavoidable charge(s)² is beneficial to customers served by large-scale aggregation groups, just as it is beneficial for all customers. The nonavoidable generation charge(s) help provide the risk mitigation arrangements that are essential for the Companies to have the financial capacity to propose the ESP in its present form for the benefit of all customers. Such charge(s) have no disproportionate effect on large scale governmental aggregation.

(C)(8) **State Policy.** The Companies herein request a waiver of a discussion as to how the state policy is advanced by the ESP, to the extent a waiver is required. Am. Sub. S.B. 221 does not impose a requirement that every Electric Security Plan application achieve the policy goals set forth in R.C. § 4928.02, and those policies

² R.C. § 4928.20(K) directs the Commission to consider the effect on large-scale governmental aggregation of non-bypassable generation charges established by an electric security plan, except for those non-bypassable generation charges that relate to a cost whose deferral was authorized by the Commission prior to July 31, 2008.

can conflict in practice. If the Commission affirmatively determines the ESP is more favorable in the aggregate than an MRO, as required to approve the ESP, then the proposed ESP is not only consistent with the statute, but necessarily advances state policy.

(C)(9) The Companies specifically request a waiver of (C)(9) to the extent that such provision requiring “Specific Information” may be applicable to the ESP and not otherwise provided for in the Companies’ Application, Stipulation, or supporting testimony.

(C)(10) The Companies specifically request a waiver of (C)(10) to the extent that such provision requiring “Additional Required Information” may be applicable to the ESP and not otherwise provided for in the Companies’ Application, Stipulation, or supporting testimony.

B. O.A.C. 4901:1-35-03(F)

As stated above in O.A.C. 4901:1-35-03(C)(4), the Commission approved the Companies’ interim corporate separation plan by Opinion and Order issued on July 19, 2000 in Case Nos. 99-1212-EL-ETP *et al.* (the “ETP Order”). The Companies’ corporate separation plan currently is in full force and effect and is in compliance with statutory and rule requirements. Additionally, the Companies’ corporate separation plan was filed in Case No. 09-462-EL-UNC. The Companies specifically request a waiver of (C)(4) to the extent that such provision contemplates additional information to satisfy this requirement.

C. O.A.C. 4901:1-35-03(G)

The Companies have provided work papers with their Application. However, the Companies specifically request a waiver of (G) to the extent that such provision contemplates certain work papers not filed as part of the Companies' Application.

D. O.A.C. 4901:1-35-04

The Companies will publish a notice for newspaper publication as ordered by the Attorney Examiner(s). However, to the extent more is required to be included with the Application, the Companies herein request a waiver of this rule requirement.

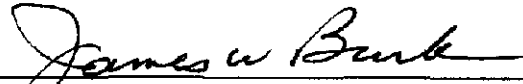
E. O.A.C. 4901:1-35-06

As stated above, expedited approval is required in order to permit the Companies to proceed with implementing the competitive bidding process to take advantage of historically low market prices. In an effort to facilitate such a procedural schedule the Companies herein request to waive the forty-five day period for intervention and instead request that all interventions be due by April 5, 2010. The Companies have been actively working with numerous interested parties and such parties have had an opportunity to familiarize themselves with the Companies' Application. In fact, the Stipulation evidences the fact that such parties have had sufficient opportunity to intervene.

F. Additional Waivers

In addition to the matters specifically itemized above, to the extent waiver of the requirements of any other provisions of the Commission's rules may be required in order to accommodate the Commission's expeditious consideration of the Application, such waiver is also herein requested.

For the foregoing reasons, the Companies request the Commission issue its Entry granting the Motion as requested herein.



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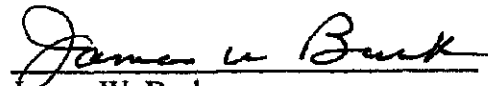
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CERTIFICATE OF SERVICE

Motion for Waiver

This is to certify that the foregoing ~~Application~~ has been served upon all of the parties of record in Case No. 09-906-EL-SSO by electronic mail and by U.S. Mail, postage prepaid this 23 day of March, 2010.


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