

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 Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanisms. |) | |
| |) | |
| |) | Case Nos. 09-1947-EL-POR |
| |) | 09-1948-EL-POR |
| |) | 09-1949-EL-POR |
| |) | |
| |) | |
| |) | |
| In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Initial Benchmark Reports. |) | Case Nos. 09-1942-EL-EEC |
| |) | 09-1943-EL-EEC |
| |) | 09-1944-EL-EEC |
| |) | |
| |) | |
| |) | |
| In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company |) | Case Nos. 09-580-EL-EEC |
| |) | 09-581-EL-EEC |
| |) | 09-582-EL-EEC |
| |) | |

MOTION OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY TO STAY THE EVIDENTIARY HEARING AND RELATED MEMORANDUM IN SUPPORT

Pursuant to Ohio Administrative Code § 4901-1-12, and for the reasons more fully discussed in the attached Memorandum in Support, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively “Companies”) hereby move for an indefinite stay of the proceedings in the above referenced case. The active parties to the proceedings and discussions related to the shared savings mechanism in this case have indicated that they do not oppose this request.

Respectfully submitted,

/s/ Carrie M. Dunn

Kathy J. Kolich, Counsel of Record

Carrie M. Dunn

FIRSTENERGY SERVICE COMPANY

76 South Main Street

Akron, OH 44308

T: (330) 384-4580

F: (330) 384-3875

kjkolich@firstenergycorp.com

cdunn@firstenergycorp.com

MEMORANDUM IN SUPPORT OF MOTION TO VACATE ENTRY

I. Introduction

In the Commission's March 23, 2011 Opinion and Order issued in this proceeding, the Commission deferred ruling on the shared savings mechanism, directing the Staff to develop a strawman proposal for consideration by interested stakeholders:

[T]he Commission will defer ruling on the [Companies'] proposed shared savings mechanism until further proceedings regarding the Companies' portfolio programs; in the meantime, [the] Commission directs Staff to prepare a proposal for an incentive mechanism which addresses the issues raised by the Commission and to distribute such proposed incentive mechanism to a range of stakeholders.¹

On October 24, 2011, the Staff submitted a strawman incentive mechanism proposal that has been the subject of settlement discussions by interested parties in this proceeding. The Attorney Examiner assigned to this matter established a procedural schedule, originally setting an evidentiary hearing on the proposed incentive mechanism for November 7, 2011, which was subsequently continued at the request of Commission Staff until December 7, 2011. On November 23, 2011 the Companies filed a motion to continue the December 7, 2011 hearing until January 17, 2012 so as to provide the parties more time to discuss a potential settlement of the matter. This motion was granted by entry issued on November 29, 2011. And on December 27, 2011, the Companies filed a similar motion for similar reasons seeking to continue the January 17, 2011 hearing until February 21, 2012. This motion was also granted through an entry issued on January 5, 2012.

For reasons more fully discussed below, the Companies now request an indefinite stay of the proceeding.

¹ This Docket, Opinion and Order (Mar. 23, 2011).

II. Justification

The Companies, the Staff and other interested parties are actively engaged in serious discussions regarding the appropriate incentive mechanism and the Companies are hopeful this will yield an agreement. In parallel, the Companies are well into the process of developing their next three year energy efficiency and peak demand reduction portfolio plan (“EEPDR Plan”) for the period January 1, 2013 through December 31, 2015, which they intend to file in the second quarter of 2012. Finally, because of amendments to the Companies’ benchmarks in 2010 and 2011, the differences of which must be made up by the end of 2012, and the exclusions expected to be required as part of any agreed to incentive mechanism, it is unlikely that any incentive mechanism that is ultimately filed with the Commission and agreed to and/or approved, would trigger during 2012. Therefore, rather than litigating a single issue involving the incentive mechanism in this docket, the Companies ask that this proceeding be stayed while the parties continue settlement discussions with a goal of reaching an agreement in time to include the incentive mechanism in the Companies’ next EEPDR Plan, with an effective date of January 1, 2013². The Companies believe that such an approach would conserve resources for all involved, would provide the Commission with a clearer picture of how the incentive mechanism would fit within the next three year plan, and would avoid the need for all parties to litigate similar issues in two separate dockets, assuming litigation was necessary.

² Due to a medical issue faced by the Companies’ counsel, which will have her unavailable until at least February 15, 2011, the Companies will not be prepared to either submit expert testimony by February 14, 2012, or to litigate the matter in an evidentiary hearing by February 21, 2012, thus also necessitating a continuance from the currently scheduled hearing date.

III. Conclusion

Based upon the foregoing, the Companies respectfully ask that the Attorney Examiner stay this proceeding indefinitely while the parties continue to discuss a mutually agreeable incentive mechanism with a goal to include such a mechanism in the Companies' next three-year EEPDR Plan. The active parties to the proceedings and discussions related to the shared savings mechanism have indicated that they do not oppose this request.³

Respectfully submitted,

/s/ Carrie M. Dunn

Kathy J. Kolich, Counsel of Record
Carrie M. Dunn
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 384-4580
(330) 384-3875 (fax)
kjkolich@firstenergycorp.com
cmdunn@firstenergycorp.com

ATTORNEYS FOR OHIO EDISON
COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE
TOLEDO EDISON COMPANY

³ Specifically, the Ohio Energy Group, Sierra Club, Office of the Ohio Consumers' Counsel, Ohio Environmental Council, Citizen Power, Commission Staff, Ohio Hospital Association, Ohio Schools Council, Ohio Partners for Affordable Energy and Nucor Steel Marion, Inc. do not oppose this request. The other parties to this case have not been active in this proceeding as it relates to the shared savings mechanism.

CERTIFICATE OF SERVICE

I hereby certify that this Motion to Vacate the Attorney Examiner's September 23, 2011 Entry and related Memorandum in Support was filed electronically this 31st day of January, 2012, with the Public Utilities Commission of Ohio Docketing Information System. Notice of this filing will be sent via e-mail to the parties as set forth below.

/s/ Carrie M. Dunn
Carrie M. Dunn, Esquire

Craig I. Smith
Attorney at Law
2824 Coventry Road
Cleveland, OH 44120
wis29@yahoo.com

Jeffrey L. Small (Counsel of Record)
Terry L. Etter
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
small@occ.state.oh.us
etter@occ.state.oh.us

Samuel Randazzo (Counsel of Record)
MCNEES WALLACE & NURICK LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215-4228
sam@mwncmh.com

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Jody M. Kyler, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street
Suite 1510
Cincinnati, OH 45202
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
jkyler@bkllawfirm.com

Thomas J. O'Brien
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

Thomas Lindgren
Attorney General's Office
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215
thomas.lindgren@puc.state.oh.us

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
drinebolt@aol.com
cmooney2@columbus.rr.com

Glenn S. Krassen
BRICKER & ECKLER LLP
1001 Lakeside Ave., East
Suite 1350
Cleveland, OH 44114-1142
GKrassen@Bricker.com

Matthew W. Warnock
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215
MWarnock@Bricker.com

Michael K. Lavanga
mkl@bbrslaw.com
Counsel of Record
Garrett A. Stone
gas@bbrslaw.com
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, DC 20007

Richard L. Sites
General Counsel & Sr. Director of Health
Policy
OHIO HOSPITAL ASSOCIATION
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Nolan Moser
Trent. A. Dougherty
Cathy Loucas
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 4321
nmoser@theOEC.org
trent@theOEC.org
cathy@theOEC.org

Joseph P. Meissner, Esq.
The Legal Aid Society of Cleveland
1223 W. 6th Street
Cleveland, OH 44113
jpmessn@lasclev.org

Michael E Heintz
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, OH 43204
mheintz@elpc.org

Robert Kelter
Environmental Law & Policy Center
35 West Wacker Drive
Suite 1600
Chicago, IL 60601
rkelter@elpc.org

Matthew R. Cox
McDonald Hopkins
6000 Superior Ave., East
Suite 2100
Cleveland, OH 44114
mcox@mcdonaldhopkins.com

Henry W. Eckhart
Eckhart Law Offices
1200 Chambers Road
Columbus, OH 43212
henryeckhart@aol.com

Theodore J. Robinson
2121 Murray Avenue
Pittsburgh, PA 15217
robinson@citizenpower.com

Christopher L. Miller
Gregory H. Dunn
Schottenstein Zox & Dunn Co. LPA
250 West Broad Street
Columbus, OH 43215
cmiller@szd.com
gdunn@szd.com

Steven Beeler
Assistant Director of Law, City of
Cleveland, Ohio
Cleveland City Hall
601 Lakeside Avenue, Room 106
Cleveland, OH 44114
SBeeler@city.cleveland.oh.us

Nicholas C. York
Attorney for Council of Smaller
Enterprises
Tucker Ellis & West LLP
1150 Huntington Bldg.
925 Euclid Ave.
Cleveland, OH 44115-1414
Nicholas.york@tuckerellis.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/31/2012 11:05:37 AM

in

Case No(s). 09-1947-EL-POR, 09-1948-EL-POR, 09-1949-EL-POR, 09-1942-EL-EEC, 09-1943-EL-EEC,

Summary: Motion to Stay the Evidentiary Hearing and Related Memorandum in Support electronically filed by Ms. Carrie M Dunn on behalf of The Cleveland Electric Illuminating Company and Ohio Edison Company and The Toledo Edison Company