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 Portfolio Plans for 2013 through 2015	)	Case Nos. 12-2190-EL-POR 12-2191-EL-POR 12-2192-EL-POR

JOINT OBJECTION TO COMPANIES' PROPOSED PROCEDURAL SCHEDULE

INTRODUCTION

The Public Utilities Commission of Ohio ("Commission") has before it the application ("Application") of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "FirstEnergy" or "Companies") for approval of their respective Energy Efficiency ("EE") and Peak Demand Reduction ("PDR") Plans ("Proposed Plans") pursuant to Ohio Revised Code ("ORC") § 4928.66 and the Ohio Administrative Code ("OAC") Chapter 4901:1-39. FirstEnergy proposes an expedited procedural schedule in its Application. Environmental Law & Policy Center, Natural Resources Defense Council, Ohio Environmental Council, and Sierra Club ("Intervenors") object to FirstEnergy's proposal for the reasons below. Intervenors include an alternative proposed procedural schedule that provides enough time for parties to develop and present a complete analysis of the Proposed Plans, preserves the 60-day public comment period specified in OAC 4901:1-39-04(D), and helps ensure that the Commission will have enough information to ensure that the Companies implement the best plans for Ohio ratepayers. Intervenors ask the Commission to accept their

alternative proposal, including 10-day expedited discovery. Intervenors also request that the Commission allow the Companies to continue implementing their current plans past January 1, 2013 with full cost recovery if necessary until they can begin implementing the new plans pursuant to Commission ruling.

ANALYSIS

The Companies seek to complete public comments, discovery, direct and rebuttal testimony, hearings, and two rounds of briefs by the beginning of November, at most a mere three and a half months after the Companies filed their Proposed Plans on July 31, 2012. While there is no legally specified procedural schedule, the Ohio Administrative Code requires, subject to change by the Commission, a sixty-day public comment period for any proposed portfolio plans. OAC 4901:1-39-04(D). The Companies' proposed schedule shortens the public comment period from 60 days to 45 days and contemplates only five weeks between the end of the public comment/intervention period and the start of evidentiary hearings. While the Companies have not proposed a briefing schedule, assuming a one-week evidentiary hearing, there would be only five and half weeks for parties to go through two rounds of briefing and for the Commission to make its decision by December 12, 2012. The Proposed Plans are large, complex plans that will dictate how First Energy will spend Ohio ratepayer dollars on energy efficiency for the next three years. The evaluation process should allow sufficient time for intervenors to properly evaluate the Proposed Plans and provide recommendations to the Commission. The expedited schedule proposed by the Companies unnecessarily cuts short a thorough evaluation.

The Companies filed their Application as late as was allowed by the Commission and now insist that a rushed schedule is necessary. Intervenors have been available and eager to discuss the Proposed Plans prior to the spring of this year, when the Companies began canceling

Collaborative meetings. The Companies cite nothing that prevented them from filing before the July 31st deadline. We also note that FirstEnergy initially scheduled a meeting to review a draft plan for April 24th and postponed that meeting without explanation until July 10th. Their reasons for requesting an expedited schedule do not outweigh the need for a thorough vetting of the Proposed Plans by Intervenors, the public, and the Commission.

A. The Commission should adopt Intervenors' proposed procedural schedule.

For the reasons enumerated below, the Companies have not shown that an expedited procedural schedule is necessary in this case. Intervenors propose the following schedule:

Application Filed	July 31, 2012
Company-Sponsored Technical Conference	Week of August 20, 2012
Public Comments, Objections, and Motions to Intervene Due	October 1, 2012
Intervenor Testimony Due	October 15, 2012
Rebuttal Testimony Due	October 22, 2012
Evidentiary Hearings	Week of November 5, 2012
Initial Post-Hearing Briefs Due	November 30, 2012
Reply Briefs Due	December 12, 2012

This schedule keeps the 60-day public comment period specified in the rules. Given that the above schedule still contemplates a relatively short discovery period, Intervenors also request 10-day expedited responses to all discovery.

Since both the Companies' and the Intervenors' proposed schedules might result in the Companies' inability to fully implement new plans by January 1, 2013, Intervenors also request

that the Commission allow the Companies to continue running the current plans past January 1, 2013 with full cost recovery until the Companies can begin implementing the new plans.

B. The Companies' staff scheduling problems should not lead to an abbreviated review process.

The Companies argue for an expedited schedule due to the work load of FirstEnergy counsel and the availability of Company Witness Demiray. While Intervenors understand that accommodating the schedules of individuals is important, in this case the Companies have no one to blame for conflicts other than their own poor planning. The Companies controlled the information provided to the Collaborative throughout the plan development process, refusing to distribute draft plans and canceling collaborative meetings until a mere three weeks before they filed the Application.

The Companies also controlled when they filed the Application. The rules state that the Companies must file their Application by April 15th. OAC 4901:1-39-04(A). The Commission modified this requirement for the Companies in its February 29, 2012 entry, which required the Companies to file their Application "no later than July 31, 2012". Entry, Case No. 12-814-EL-UNC, at Finding (10). There was nothing preventing the Companies from filing before July 31st in order to allow sufficient time to review the Proposed Plans and still receive a Commission decision by December 12th. The Commission should not allow the Companies to point to their own poor planning as a reason for an abbreviated evaluation of important, complex portfolio plans.

C. The Companies have not demonstrated that a Commission decision by December 12, 2012 will harm their ability to comply with the 2013 savings benchmarks.

While the Companies state that a December 12, 2012 decision by the Commission "is critical to their ability to comply with the statutory benchmarks of 2013," Application at 14, they

do not explain any further exactly why that date is so important. It is not clear that a December 12, 2012 decision by the Commission will put the Companies in a position to fully implement their Proposed Plans by January 1, 2013. Rather, the Companies merely imply that the December 12, 2012 deadline will allow them meet the savings targets in 2013. They cite no evidence for why a few weeks lag in implementation will make a material difference in their compliance, and it is unclear why this should be the Commission's problem when the Companies had every opportunity to file earlier than July 31 and/or present draft Proposed Plans to intervenors prior to filing to expedite the review process.

D. The collaborative process was not robust enough to warrant an expedited procedural schedule.

FirstEnergy claims that a 60-day comment period is unnecessary because interested parties participated in the development of the Proposed Plans through the Collaborative. Application at 14. While there have been a few Collaborative meetings since September 2011 and Intervenors and other interested parties have offered suggestions to the Companies, the Collaborative process has been largely nonexistent since March 2012. The Companies originally scheduled a Collaborative meeting for April 24, 2012 to discuss details of the Proposed Plans, but the Companies cancelled the meeting. While the Companies intended to reschedule the meeting for early May, that never happened, and the meeting did not actually occur until July 10, 2012, three weeks before the Proposed Plans were filed. The Companies did not present a draft of the Proposed Plans at the July 10, 2012 meeting. While Intervenors and other interested parties did their best to provide substantive feedback to the Companies, their feedback was based on limited information. The Collaborative process leading up to these Proposed Plans was not sufficient to cut short the 60-day comment period.

E. The Proposed Plans are not merely extensions of existing plans, nor does that argument warrant an expedited schedule.

FirstEnergy incorrectly states that an expedited schedule is warranted because "the Companies' Proposed Plans do not differ that greatly from the Existing Plans." Application at 14. Not only is this statement not accurate, it defies logic. If it was the same plan as three years ago, First Energy could have filed the plan earlier in the year. Company Witness Dargie states that the portfolio plans "should be viewed as the Companies starting point." Direct Testimony of John C. Dargie at 11:6. Even if FirstEnergy's claim was true, the Companies' implementation of their existing plans has had many problems. Intervenors need time to carefully review *all* elements of the Proposed Plans and suggest changes that will improve plan design, implementation, and administration.

The Proposed Plans include several new elements that merit detailed review by the Commission and Intervenors. A preliminary review of the filing shows that among the new elements that require detailed review by intervenors and their experts are:

- An enhanced focus on Small Business Customers;
- The extensive reliance on mailed energy efficiency "kits" for residential and small commercial customers, which could inhibit long-term market transformation;
- The shift of the residential lighting program to an upstream buy-down approach; and
- The Companies' continuation of incentives for standard T8 and T5 fluorescent fixtures, despite that fact that they are becoming the market standard.

The problems with the Companies' current suite of programs are described in the comments of the Natural Resources Defense Council and the Ohio Environmental Council to the Companies' 2011 Portfolio Status Report, Case Nos. 12-1533-EL-EEC, et al. The Companies'

independent evaluator made dozens of recommendations to the Company to change programs, and the Companies' indicated no changes in their Portfolio Status Report. Problems in the current plans that carry over into the Proposed Plans include but are limited to:

- The Home Energy Audit program, part of the Proposed Home Performance Program, was evaluated using an invalid control group;
- The Energy Efficient Products Program, uses rebates ½ the national average and has seen predictably low participation
- The Companies' poor implementation of its Commercial and Industrial prescriptive incentive programs has led to trade ally disillusionment; and
- The Companies have been largely unable to reach Small Business Customers (a major component of the Companies' Proposed Portfolio).

Comments of the Natural Resources Defense Council and the Ohio Environmental Council, Case No. 12-1533-EL-EEC, et al. (July 16, 2012).

The Proposed Plans are in some ways similar to the existing plans, but have significant differences and must be evaluated in light of changes in the market place. The Companies' proposed schedule does not provide sufficient time for intervenors to review both new and continuing elements of the Proposed Plans to ensure the Proposed Plans reflect lessons learned from the Companies' implementation of their first portfolios, nor does it give the Commission the opportunity to make a fully informed decision.

F. A technical conference should supplement – not take the place of – a proper vetting of the Proposed Plans.

Finally, the Companies claim that a technical conference mitigates the need for the full 60-day public comment period. Intervenors look forward to participating in the Companies

technical conference. A technical conference, however, does not meet the same needs as a full 60-day public comment period, proper discovery, and a briefing schedule that gives parties the time to consider testimony and cross-examination and craft helpful evaluations of the Proposed Plans for the Commission.

CONCLUSION

The Companies' failure to file their Application prior to the July 31, 2012 deadline, their failure to engage in discussions with Collaborative members for almost four and a half months, their failure to provide Collaborative members with a draft of their Proposed Plans prior to filing, and poor planning of staff time caused First Energy's scheduling problems. The Companies fail to support the need to rush the vetting of these important plans. Intervenors respectfully request that the Commission adopt their proposed procedural schedule, which maintains the 60-day public comment period specified in the rules, require 10-day expedited discovery, and allow the Companies to continue implementing the existing plans with full cost recovery beyond January 1, 2013 if necessary, until the Companies can start implementing the new plans following approval by the Commission.

Respectfully submitted,

/s/Trent Dougherty
Trent A. Dougherty, Counsel of Record
Cathryn N. Loucas
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 432112
(614) 487-7506
Trent@theOEC.org
Cathy@theOEC.org

Counsel for Ohio Environmental Council

/s Justin Vickers
Justin Vickers (Pro Hac Vice application pending)
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, Illinois 60601
Telephone: 312-795-3736
Fax: 312-795-3730
E-mail: jvickers@elpc.org

Attorney for the Environmental Law & Policy Center

/s/ Todd M. Williams (0083647)
Williams Allwein and Moser, LLC
Two Maritime Plaza, Third Floor
Toledo, Ohio 43604
Telephone: (567) 225-3330
Fax: (567) 225-3329
E-mail: toddm@wamenergylaw.com

Attorney for Natural Resources Defense Council and Sierra Club

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing JOINT OBJECTION submitted on behalf of the Environmental Law & Policy Center, Natural Resources Defense Council, Ohio Environmental Council, and Sierra Club was served by electronic mail, upon the following Parties of Record, this 3rd day of August, 2012.

/s Justin Vickers
_____
Justin Vickers

Ohio Edison Company
The Cleveland Electric Illuminating Company
Toledo Edison Company
Harvey L Wagner
76 South Main Street
Akron, OH 44308

Carrie Dunn
FirstEnergy Service Company
76 Main Street S
Akron, OH 44308

Kathy Kolich
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308

Richard C. Sahli
981 Pinewood Lane
Columbus, OH 43230-3662

Colleen Mooney
Ohio Partners for Affordable Energy
1431 Mulford Road
Columbus, OH 43212

Christopher Allwein
Natural Resources Defense Council
1373 Grandview Avenue
Columbus, OH 43212

William Wright
Attorney General's Office
Public Utilities Commission Section
180 E. Broad Street, 9th Floor
Columbus, Ohio 43215-3793
william.wright@puc.state.oh.us

Summary: Objection Joint Objection to Companies' Proposed Procedural Schedule electronically filed by Mr. Justin M Vickers on behalf of Environmental Law & Policy Center and Sierra Club and Ohio Environmental Council and Natural Resources Defense Council