

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Review of the
Alternative Energy Rider Contained in the
Tariffs of Ohio Edison Company, The
Cleveland Electric Illuminating Company,
and the Toledo Edison Company**

Case No. 11-5201-EL-RDR

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY’S MOTION TO
MODIFY PROCEDURAL SCHEDULE
(EXPEDITED RULING REQUESTED)**

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the “Companies”), pursuant to Ohio Administrative Code Rule 4901-1-13(A), move to modify the procedural schedule in this proceeding. Specifically, the Companies respectfully request that the Commission approve the following modified procedural schedule:

- January 23, 2013: Due date for the Companies’ testimony.
- January 31, 2013: Due date for intervener testimony.
- February 8, 2013: Due date for Commission Staff testimony and date for prehearing conference.
- February 19, 2013: Commencement date for hearing.¹

As set forth in the attached Memorandum in Support, the proposed modification to the current procedural schedule is necessary due to confidentiality issues that are affecting discovery in this case, which, in turn, will likely impact, among other things, the parties’ abilities to prepare

¹ These dates are somewhat different than discussed with the parties to accommodate Staff’s request regarding the scheduling of the financial auditor.

pre-filed testimony and engage in meaningful settlement discussions. Pursuant to Rule 4901-1-12(C), the Companies respectfully request an expedited ruling on this matter.

DATED: October 19, 2012

Respectfully submitted,

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ATTORNEYS FOR OHIO EDISON
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TOLEDO EDISON COMPANY

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Case No. 11-5201-EL-RDR

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY’S MEMORANDUM IN
SUPPORT OF MOTION TO MODIFY PROCEDURAL SCHEDULE
(EXPEDITED RULING REQUESTED)**

I. INTRODUCTION

As the docket in this case demonstrates, several issues have arisen regarding how to address and handle third-party proprietary information contained in the Confidential Final Report/Performance Audit of the Alternative Energy Resource Rider (Rider AER) of FirstEnergy Ohio Utility Companies for October 2009 through December 31, 2011 (the “Exeter Report”). These issues will hinder the Parties’ abilities to conduct sufficient discovery for anticipated depositions, to prepare pre-filed testimony, and to engage in meaningful settlement discussions within the timeframe allotted by the current procedural schedule. Pursuant to Rule 4901-1-13(A), the Companies thus respectfully request that the Commission modify the procedural schedule for this matter in accordance with the dates set out below.

II. ARGUMENT

On August 15, 2012, the Commission Staff filed the Exeter Report under seal. Some of the interveners in this proceeding, including the Office of Ohio Consumer’s Counsel (“OCC”), have requested access to an unredacted version of the Exeter Report. As detailed in the Companies’ Motion for a Protective Order, filed on October 3, 2012, the Exeter Report contains competitively-sensitive third-party proprietary information that the Companies are under an

obligation to protect. Specifically, the Motion addresses whether the Exeter Report, as filed with the Commission, may be protected from public disclosure. The Companies' Motion for a Protective Order is pending before the Commission.

Related confidentiality issues – *e.g.*, how to handle related proprietary information requested in discovery – will likely take some time for the parties and potentially the Commission to work through, delaying the discovery process. A delay in discovery will, in turn, likely cause difficulties for interveners in meeting the current procedural schedule for intervener testimony, currently due November 13, 2012—less than a month away. As OCC noted in its recent Memorandum in Support of its Motion for a Prehearing Conference, the interveners to this proceeding need adequate time to prepare their pre-filed testimony. [OCC Mem. in Support of Prehearing Conference, p. 5 (filed: Sept. 26, 2012).] Moreover, until the resolution of these confidentiality issues, it will prove difficult for the Parties to engage in meaningful settlement negotiations.²

The current procedural schedule, as contained in the Entry issued by the Commission on August 22, 2012, is as follows:

- November 6, 2012: Due date for the Companies' testimony.
- November 13, 2012: Due date for intervener testimony.
- November 20, 2012: Date for prehearing conference.
- November 27, 2012: Commencement date for hearing.

In light of the confidentiality issues outlined above and to permit adequate time for discovery and settlement discussions, the Companies propose the following revised procedural schedule:

² Further, the current hearing date, November 27, 2012, and anticipated briefing schedule, will make scheduling around the holiday season difficult.

- January 23, 2013: Due date for the Companies' testimony.
- January 31, 2013: Due date for intervenor testimony.
- February 8, 2013: Due date for Commission Staff ("Staff") testimony and date for prehearing conference.
- February 19, 2013: Commencement date for hearing.

This modified schedule will ensure that the parties have ample time to complete discovery before their pre-filed testimony is due and will provide increased opportunities for the parties to engage in meaningful settlement discussions. The requested continuance will not unduly prejudice any party's interests. The period covered by the audits in this case was 2009 through 2011 and is a locked-in period at this point. The Companies have recovered most of the expenses incurred for the purchase of alternative energy related to this period. Carrying costs on the unrecovered balance for this period as a result of the continuance would be de minimus, i.e., on average less than a dime a month for a nonshopping customer for all of the Companies.³

On October 5, 2012, counsel for the Companies began contacting the parties in this proceeding and has now contacted counsel for Staff and each party that has intervened in this case. The Companies originally had proposed an approximate sixty day continuance in the schedule. The Commission Staff, Ohio Energy Group, Nucor Marion Steel, Inc., Citizen Power, Mid-Atlantic Renewable Energy Coalition, and Interstate Gas Supply, Inc. d/b/a IGS Energy have all agreed to or do not oppose these proposed revisions to the procedural schedule. The Staff then asked for the continuance to extend the hearing until February 19, 2013 to accommodate the schedule of one of the auditors who is expected to testify. The Companies are

³ This assumes that an Order would be delayed by the same period as the continuance. This may or may not be the case, and would happen only by coincidence in any event. Of course, if, as a result of the continuance being granted, the parties are able to narrow the issues or even resolve the case in the intervening period, an Order may be more expeditiously issued.

also waiting to hear back from counsel for the Ohio Environmental Council and for OMA Energy Group. Counsel for OCC and for Sierra Club have indicated that they would agree to continuing the current procedural schedule, but only for approximately two weeks. Given the current status of the case, a continuance of only two weeks would not provide sufficient additional time discovery and settlement discussions and also would serve to exacerbate the scheduling problems around the holidays and create problems with other previously existing conflicts.

Because the Companies' pre-filed testimony is currently due November 6, 2012, less than three weeks away, and interveners' pre-filed testimony is currently due November 13, 2012, less than a month away, the Companies respectfully request an expedited ruling on this Motion. *See* Rule 4901-1-12(C).

III. CONCLUSION

For the foregoing reasons, the Companies respectfully request that the Commission approve the proposed revisions to the procedural schedule.

DATED: October 19, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion to Modify Procedural Schedule and Memorandum In Support was delivered to the following persons by e-mail this 19th day of October, 2012:

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Summary: Motion to Modify Procedural Schedule (Expedited Ruling Requested) electronically filed by MR. DAVID A KUTIK on behalf of The Cleveland Electric Illuminating Company and The Toledo Edison Company and Ohio Edison Company