

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Company, and The Toledo Edison Company) Case No. 14-1297-EL-SSO
for Authority to Provide for a Standard Service)
Offer Pursuant to R.C. 4928.143 in the Form of)
An Electric Security Plan)**

**JOINT MOTION TO MODIFY DISCOVERY TIME LIMITS AND AMEND THE
PROCEDURAL SCHEDULE**

**by
THE OHIO PARTNERS FOR AFFORDABLE ENERGY, DIRECT ENERGY
SERVICES, LLC, INTERSTATE GAS SUPPLY, INC., OHIO HOSPITAL
ASSOCIATION, OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP,
THE KROGER COMPANY, THE OHIO CONSUMERS' COUNSEL AND THE
SIERRA CLUB**

Pursuant to Ohio Adm. Code 4901-1-12(A), the undersigned Intervenor¹ respectfully move for modifications to the current procedural schedule. Specifically, the Intervenor request that the Attorney Examiner (i) shorten the discovery response time to ten days, and (ii) amend the procedural schedule by granting a brief extension to the deadline for Intervenor testimony. The Intervenor request that the Attorney Examiner adopt the following procedural schedule:

Discovery requests cutoff except deposition notices	12/1/14 (118 days after application filed)
Intervenor testimony due	12/22/14 (139 days after application filed)

¹ The undersigned Intervenor are the Ohio Partners for Affordable Energy, Direct Energy Services, LLC, Interstate Gas Supply, Inc., Ohio Hospital Association, Ohio Manufacturers' Association Energy Group, the Kroger Company, the Ohio Consumers' Counsel, and Sierra Club. In addition, the Public Utilities Commission of Ohio Staff does not oppose the proposed modifications presented in this Motion.

Staff testimony due	1/9/15 (18 days after intervenor testimony)
Procedural Conference	1/23/15 (14 days after Staff testimony)
Evidentiary Hearing Begins	2/10/15 (18 days after procedural conference).

As explained in the accompanying Memorandum in Support, shortening the discovery response time is necessary to ensure that the parties have an adequate opportunity for discovery before submitting testimony on the proposed electric security plan (“ESP”) filed by Ohio Edison Company, the Cleveland Electric Company, and the Toledo Edison Company (the “Companies”).

In addition, the procedural schedule should be amended so that all parties, including the Intervenors, have sufficient time to review the Companies’ discovery responses before submitting testimony. The procedural schedule proposed by the Companies, which was adopted on August 29, 2014, does not provide enough time for Intervenors to fully explore the issues raised by this ESP. Because Intervenor testimony is due only four days after the deadline for serving discovery requests, this schedule effectively truncates the discovery period several weeks before the official cut-off.

A scheduling extension is also appropriate due to redactions in the ESP application. The Companies redacted crucial portions of their ESP application, including the testimony of three witnesses and several witnesses’ workpapers. The complete application will not be reviewable until the parties agree on and enter a protective agreement. Consequently, the parties will have even less time under the current schedule to review and conduct discovery on the proposed ESP.

For the reasons set forth in the accompanying Memorandum in Support,
Intervenors respectfully request that the discovery response time be shortened to ten days,
and that the procedural schedule be amended as proposed.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF INTERVENORS’
JOINT MOTION TO MODIFY DISCOVERY TIME LIMITS
AND AMEND THE PROCEDURAL SCHEDULE**

The Intervenor respectfully move that the Attorney Examiner (i) shorten the discovery response time to ten days; and (ii) extend the deadline for Intervenor testimony by 18 days, and the subsequent deadlines by similar time periods. An expedited discovery response time is necessary to ensure that the parties have a sufficient opportunity to explore the many issues raised by the proposed electric security plan (“ESP”). The procedural schedule should be amended so that Intervenor can make full use of the discovery period before they submit testimony on the ESP.

I. Introduction

On August 4, 2014, the Ohio Edison Company, the Cleveland Electric Company, and the Toledo Edison Company (“FirstEnergy” or “Companies”) submitted an Application to establish a standard service offer, in the form of an electric security plan

(“Application”). If approved, this ESP would govern generation service pricing from June 1, 2016, through May 31, 2019.²

The Application contents filed by the Companies are voluminous. In addition to the Application itself, which runs to 455 pages (including attachments), and a 53-page document containing public versions of various workpapers, the application package includes testimony from 17 separate witnesses. The Companies’ witnesses have submitted lengthy testimony on numerous issues, including energy market price projections, the mechanics and rate design of the proposed Retail Rate Stability Rider, transmission effects of plant retirements, the economic viability of certain plants, cost and revenue projections of those plants – among many others.³ Altogether, the application package contains 1,126 pages of materials.

In their Application, the Companies included a proposed a procedural schedule, which the Attorney Examiner subsequently adopted:

Discovery requests cutoff except deposition notices	12/1/14 (118 days after the application filed);
Intervenor testimony due	12/5/14 (122 days after application filed);
Staff testimony due	12/19/14 (14 days after intervenor testimony);
Procedural Conference	1/9/15 (21 days after Staff testimony);

² See FirstEnergy Application at 3 (August 4, 2014).

³ See, e.g., Direct Testimonies of Judah L. Rose, Joanne M. Savage, Gavin L. Cunningham, Donald Moul, Jason Lisowski.

Hearing begins

1/20/15 (11 days after
procedural conference).⁴

The December 5, 2014 deadline for Intervenor testimony creates a specific hardship for the Intervenors. By setting a deadline that falls only four days after the deadline for discovery requests, the schedule creates a discovery cut-off that is effectively several weeks earlier than the official December 1, 2014 deadline.

II. Argument

A. The Discovery Response Time Should be Shortened to Ten Days.

Intervenors respectfully request that the Attorney Examiner shorten the discovery response time to ten days. The PUCO administrative rules empower the Attorney Examiner to shorten the default 20-day response time where appropriate.⁵ Here, a ten-day response time is necessary to ensure that the parties have sufficient time to investigate the numerous issues raised by the Application within the time period designated for discovery. This is an exceptionally complex case: the Companies' application package, which runs to more than 1,100 pages, includes testimony from 17 separate witnesses covering a wide array of technical topics. A shortened response time will permit the parties to thoroughly investigate these issues, review the Companies' responses, and seek additional information where necessary.

⁴ Application at 22; *see also* Entry, Case No. 14-1297-EL-SSO (Aug. 29, 2014).

⁵ *See* Ohio Adm. Code 4901-1-19(A), 4901-1-20(C), 4901-1-22(B).

Moreover, an expedited response time will not only help Intervenors; it will also benefit the case proceedings by narrowing the issues and potentially reducing the amount of time required to cross-examine 17 FirstEnergy witnesses and intervenor experts during the evidentiary hearing. By allowing the Intervenors to thoroughly investigate the issues raised in the Application, a shortened response time will help ensure that the parties' testimony is more informative, focused and complete.

Intervenors' request is not only warranted by the complexity of this case, it is also well-supported by Commission precedent. In the 2014 Duke Energy ESP proceeding, the Attorney Examiner ordered that the discovery response time be shortened to ten days.⁶ Just as a shortened response time was appropriate in that ESP proceeding, it is here as well. Shortening the response time to ten days will ensure a more thorough review of the Companies' Application, thereby benefiting the interested parties (and, ultimately, Ohio ratepayers).

B. The Procedural Schedule Should be Amended to Allow Intervenors to Make Full Use of the Discovery Period.

Intervenors also respectfully request that the Attorney Examiner amend the procedural schedule to the following:

Discovery requests cutoff except deposition notices	12/1/14 (118 days after application filed)
Intervenor testimony due	12/22/14 (139 days after application filed)
Staff testimony due	1/9/15 (18 days after intervenor testimony)

⁶ See Case Nos. 14-841-EL-SSO, 14-842-EL-ATA, Order ¶ 6 (June 6, 2014).

Procedural Conference	1/23/15 (14 days after Staff testimony)
Evidentiary Hearing begins	2/10/15 (18 days after the procedural conference).

The amended schedule proposed by the Intervenors is reasonable and should be adopted by the Attorney Examiner. This schedule will help ensure that the parties have adequate time to conduct discovery on the numerous issues raised by the Companies' Application, while allowing the Commission enough time to issue a decision within the statutory deadline. This schedule would also provide time for the Commission to render a decision by the date requested by FirstEnergy.

The schedule recommended by the Companies, which was subsequently adopted, essentially shrinks the time period for discovery. The schedule is particularly problematic for the intervening parties, because their testimony would be due only four days after the discovery cut-off. Because the Companies currently have 20 days to respond to discovery requests, as a practical matter the schedule creates a discovery cut-off of November 14. If the Intervenors issued discovery requests after that date, the Companies' responses would be due after the deadline for Intervenor testimony. To avoid this skewed result, which could thwart the Intervenors' ability to prepare thorough and complete testimony, the deadline for Intervenor testimony should be extended to December 22, 2014. This would enable the Intervenors to make full use of

the discovery period,⁷ and allow the parties to incorporate FirstEnergy's final discovery responses into their testimony. This will ultimately result in more focused and complete testimony from the parties.

The need for a scheduling extension is especially acute because the Companies redacted crucial portions of their ESP application, including the testimony of three witnesses and several witnesses' workpapers.⁸ The complete application will not be reviewable until the parties agree on and enter a protective agreement. As a result, the parties will have even less time under the current schedule to review and conduct discovery on the proposed ESP.

In addition to providing a more sufficient amount of time for discovery, the amended schedule will also provide increased opportunity for more meaningful settlement discussions should they occur, and will likely narrow the scope of issues that need to be resolved through an evidentiary hearing. Indeed, the Companies have previously recognized that increased discovery and ample time for settlement discussions

⁷ The Intervenors will be able to make full use of the discovery period only if the discovery response time is shortened to ten days. If that occurs, the Companies' final discovery responses would like be served on December 11, 2014. Intervenors would then have sufficient time to review those responses and incorporate them into their testimony. If the response time is not shortened, then this proposed schedule would still not permit the Intervenors to make full use of the discovery period. In that circumstance, a discovery request served on December 1 would not require a response until December 22 – the same day Intervenor testimony is due. *See* Ohio Administrative Code Rule 4901-1-19(A), -20(C), -22(B) (establishing default 20-day discovery response time). Thus, both recommendations (the shortened response time and the schedule proposed in this motion) should be adopted.

⁸ *See, e.g.*, Direct Testimony of Gavin L. Cunningham, Att. GLC-1; Direct Testimony of Judah L. Rose at 5-6, 36, 38, 40-42, 46-50, 56, 60-62, 87, 89; ; Direct Testimony of Jason Lisowski, Att. JIL-1 to -3; *Workpapers – Public Version* at PDF pp. 7, 9-16, 23-24, 51.

are beneficial in the context of previous proceedings.⁹ The Intervenor believe that this case would benefit from a slightly lengthier schedule for the same reasons.

The Intervenor's proposed amendment also promotes the timely resolution of this ESP proceeding. Intervenor have proposed that the hearing commence three weeks after the schedule recommended by the Companies. This still provides ample time for briefing and a Commission decision prior to the statutory timeline.¹⁰ Further, the Intervenor's proposed schedule provides sufficient time for the Commission to render a decision within the timeframe requested by FirstEnergy.

Intervenor's proposed amendment to the procedural schedule should be adopted because it balances the need for a timely decision with the Intervenor's need to fully review FirstEnergy's discovery responses before submitting testimony. This will enable the parties, especially the Intervenor, to clarify crucial issues in this case and provide thorough and complete testimony on the Companies' Application. The modifications proposed will facilitate a more meaningful review of the Application, resulting in a more efficient decision-making process and ultimately benefiting Ohio ratepayers.

III. Conclusion

⁹ See *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, FirstEnergy Memorandum in Support of Motion to Modify Procedural Schedule at 3 (Oct. 19, 2012).

¹⁰ R.C. 4928.143(C)(1).

For the foregoing reasons, Intervenor respectfully request that the discovery response period be shortened to ten days and the procedural schedule be amended to permit full use of the discovery period.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Joint Motion to Modify Discovery Time Limits and Amend the Procedural Schedule* has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on September 5, 2014.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/5/2014 2:32:18 PM

in

Case No(s). 14-1297-EL-SSO

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