

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 ) Case No. 14-1297-EL-SSO  
Provide for a Standard Service Offer )  
Pursuant to R.C. 4928.143 in the Form of )  
an Electric Security Plan. )

ENTRY

The attorney examiner finds:

- (1) Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) are public utilities as defined in R.C. 4905.02 and, as such, are subject to the jurisdiction of this Commission.
- (2) On August 4, 2014, the Companies filed an application pursuant to R.C. 4928.141 to provide for a standard service offer (SSO) to provide generation service pricing for the period of June 1, 2016, through May 31, 2019. The application is for an electric security plan (ESP), in accordance with R.C. 4928.143. In the application, the Companies assert that the proposed ESP is designed to provide customers with competitive, yet stable pricing of energy services, enhancements to the delivery system, and an economic stability program to stabilize retail rates and protect against increasing market prices and volatility.
- (3) By Entry issued August 29, 2014, the attorney examiner established a procedural schedule.
- (4) On September 5, 2014, a Joint Motion to Modify Discovery Time Limits and Amend the Procedural Schedule (Joint Motion) was filed by Ohio Partners for Affordable Energy, Direct Energy Services, LLC, IGS Energy, Ohio Hospital Association, Ohio Manufacturers' Association Energy Group, The Kroger Company, Ohio Consumers' Counsel, and the Sierra Club (collectively, Movants). In the Joint Motion, Movants request that the attorney examiner shorten

the discovery response time to ten days and amend the procedural schedule to grant a brief extension of the deadline for intervenor testimony. More specifically, Movants request the following procedural schedule:

- (a) Discovery requests cutoff (except deposition notices): December 1, 2014.
  - (b) Intervenor testimony due: December 22, 2014.
  - (c) Staff testimony due: January 9, 2015.
  - (d) Procedural Conference: January 23, 2015.
  - (e) Hearing begins: February 10, 2015.
- (5) In the accompanying memorandum in support, Movants explain that the discovery response time should be shortened to ten days in order to ensure that parties have sufficient time to investigate the issues raised by the application within the time for discovery. Movants assert that more time is necessary because this is an exceptionally complex case, and, further, point out that, in the 2014 Duke Energy electric security plan (ESP) case, the attorney examiner shortened the discovery response time to ten days, citing *In re Duke*, Case No. 14-841-EL-SSO, et al. (*Duke ESP Case*), Entry (June 6, 2014). Next, Movants assert that the procedural schedule should be modified as requested in order to ensure adequate time for parties to conduct discovery, and point out that the schedule is problematic for intervening parties because intervenor testimony is currently due only four days after the discovery cutoff. Movants further explain that an extension is necessary because the Companies redacted crucial parts of their application, which will not be reviewable until the parties enter into a protective agreement.
- (6) On September 22, 2014, the Companies filed a memorandum contra the Joint Motion. In their memorandum contra, the Companies assert that the current procedural schedule is consistent with Commission precedent and allows ample time for several rounds of discovery and settlement discussions while providing a reasonable time for a decision

to be issued within the statutorily mandated 275-day timeframe. Additionally, the Companies assert that the current procedural schedule will better enable the Companies to prepare for the PJM base residual auction (BRA) scheduled for May 2015. The Companies further oppose Movants' request to expedite discovery on the basis that the Companies have not sought expedited treatment of the application and the current schedule permits discovery until December 1, 2014, 118 days after the application was filed. Further, the Companies note that, given the large number of intervenors in this proceeding and large amount of discovery likely, a 10-day discovery response time would be unduly burdensome to the Companies. In support of the current procedural schedule, the Companies point out that the schedule is similar to that established in the recent ESP proceeding for Ohio Power, in which the attorney examiner rejected arguments to shorten response time, citing *In re AEP Ohio*, Case No. 13-2385-EL-SSO, et al. (*AEP Ohio ESP Case*), Entry (Feb. 6, 2014). The Companies also note that the procedural schedule in the *Duke ESP Case*, relied upon by the Movants in support of the request for shortened response time, provided for a hearing date 102 days after the application was filed, in contrast to the current proceeding, which provides for a hearing date 170 days after the application was filed.

Next, the Companies argue that it is unnecessary to amend the procedural schedule, as the current due date for intervenor testimony does not create a hardship, but provides all intervenors the opportunity to conduct several rounds of discovery prior to the due date. The Companies also point out that discovery responses received after the intervenor testimony filing date may still be used at hearing and for deposition purposes. The Companies next argue that, although some portions of the application were redacted to protect confidential information, the Companies have readily provided protective agreements to intervenors upon request so that those intervenors can access the redacted information.

- (7) On September 29, 2014, Movants filed a reply memorandum in support of the Joint Motion. In their reply memorandum,

Movants assert that reducing the discovery response time would permit thorough discovery of the issues, stressing again that the application is “extraordinarily complex,” particularly when compared to the *Duke ESP Case*. Additionally, Movants assert that the Companies’ claim that there is ample time for discovery ignores the complexity of this case and its potential ramifications for ratepayers. Movants also argue that, although discovery responses served after the due date for intervenor testimony may still be used at hearing or for depositions, intervenors should have the opportunity to address such responses in their testimony. Movants further dispute the Companies’ arguments regarding protective agreements, asserting that negotiating these agreements takes time. Finally, Movants oppose FirstEnergy’s argument that delays in the procedural schedule would impede the Companies’ participation in the May 2015 PJM BRA, asserting that Movants’ proposed schedule still allows sufficient time and that, if FirstEnergy preferred an earlier decision, it should have filed its application sooner.

- (8) Initially, the attorney examiner will address Movants’ request to shorten the discovery response time from the default 20 days to 10 days. The attorney examiner finds that this request should be rejected, as good cause has not been demonstrated. The procedural schedule previously established provides ample time for multiple rounds of discovery and provides intervenors with a fair and full opportunity to investigate the issues raised in the application and supporting testimony. Further, the attorney examiner finds that expedited discovery is unnecessary to enable adequate testimony preparation or allow for meaningful settlement negotiations, given that the current procedural schedule allows 118 days from the date the application was filed until the discovery cut-off date. *See AEP Ohio ESP Case*, Entry (Feb. 6, 2014). Finally, the attorney examiner notes that, as argued by the Companies, due to the large number of intervenors in this proceeding, and the corresponding anticipated large number of discovery requests, shortening of the response time as requested by Movants would be unduly burdensome for the Companies.

Next, the attorney examiner will address Movants' request to modify the procedural schedule. The attorney examiner finds that, in order to afford intervenors a longer period of time to complete testimony following the discovery request cutoff date, it is reasonable to extend the due date for intervenor testimony to December 22, 2014, and the due date for Staff testimony to January 9, 2015. However, the attorney examiner finds that the remainder of the request to modify the procedural schedule should be denied. As discussed above, the attorney examiner finds that the previously established dates for the procedural conference and hearing will provide all parties with a fair and full opportunity to investigate the issues raised in the application and prepare for the hearing. Further, notwithstanding the passing of the holiday season during the established procedural schedule, the attorney examiner finds that there is also ample time for depositions to take place. Consequently, the attorney examiner finds that the following procedural schedule should be established:

- (a) Discovery requests, with the exception of deposition notices, shall be served no later than December 1, 2014.
- (b) Testimony on behalf of intervening parties shall be filed by December 22, 2014.
- (c) Testimony on behalf of Staff shall be filed by January 9, 2015.
- (d) A prehearing conference shall commence on January 9, 2015, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio.
- (e) The evidentiary hearing shall commence on January 20, 2015, at 10:00 a.m., at the offices of the Commission, 180 E. Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio.

It is, therefore,

ORDERED, That the procedural schedule set forth in Finding (8) be observed by the parties. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record in this proceeding and all parties of record in Case No. 12-1230-EL-SSO.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Mandy W. Chiles

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By: Mandy Willey Chiles  
Attorney Examiner

JRJ/sc

**This foregoing document was electronically filed with the Public Utilities**

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

Summary: Attorney Examiner Entry modifying the procedural schedule, in part, to require the filing of testimony on behalf of intervening parties by 12/22/2014 and the filing of testimony on behalf of Staff by 01/09/2015. - electronically filed by Sandra Coffey on behalf of Mandy Willey Chiles, Attorney Examiner, Public Utilities Commission of Ohio