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Via E-FILE

March 25, 2015

Public Utilities Commission of Ohio
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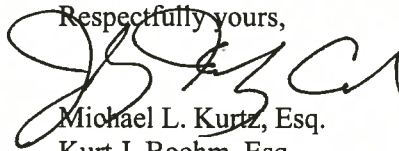
In re: Case No. 14-1297-EL-SSO

Dear Sir/Madam:

Please find attached the MEMORANDUM CONTRA SIERRA CLUB MOTION TO STRIKE BY THE OHIO ENERGY GROUP e-filed today in the above-referenced matters.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Michael L. Kurtz", is written over the typed name.

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Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

MLKkew

Encl.

Cc: Certificate of Service

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter Of The Application Of The Ohio Edison	:	
Company, The Cleveland Electric Illuminating Company,	:	Case No. 14-1297-EL-SSO
and The Toledo Edison Company For Authority To Establish	:	
A Standard Service Offer Pursuant To R.C. § 4928.143 In	:	
The Form Of An Electric Security Plan	:	
	:	

**MEMORANDUM CONTRA SIERRA CLUB MOTION TO STRIKE
BY THE OHIO ENERGY GROUP**

Pursuant to Ohio Adm. Code §4901-1-12(B)(1), the Ohio Energy Group (“OEG”) hereby submits this Memorandum Contra the Motion to Strike Portions of the Supplemental Testimony of Stephen J. Baron filed by Sierra Club on March 20, 2015 (“Motion”).

In its Motion, Sierra Club argues that the portions of the Supplemental Testimony of Stephen J. Baron filed March 2, 2015 in this proceeding (“Testimony”) discussing the proposed Economic Stability Program and associated Retail Rate Stability Rider (“Rider RRS”) should be stricken because those portions are not *“testimony regarding the stipulation filed on December 22, 2014”* consistent with the Attorney Examiner’s February 4, 2015 Entry in this proceeding.

Sierra Club is incorrect. The disputed portions of Mr. Baron’s Testimony are well within the scope of appropriate supplemental testimony as set forth in the Attorney Examiner’s Entry and should not be stricken. A fundamental provision of the Stipulation and Recommendation filed December 22, 2014 in this proceeding (“Stipulation”) is that the Signatory Parties agree to and recommend the establishment of the Economic Stability Program and associated Rider RRS. The very first provision in the *“Terms and Conditions”* section of the Stipulation states that *“...the Signatory Parties expressly agree and recommend that the Commission approve and adopt the ESP IV filing in its entirety as filed by the Companies with the Commission on August 4, 2014 in this proceeding.”* FirstEnergy’s August 4, 2014 ESP IV filing included its Economic Stability Program and Rider RRS proposals. Hence, those proposals are integral parts of the Stipulation and testimony addressing those proposals is testimony *“regarding the stipulation”* consistent with the Attorney Examiner’s Entry.

That the Stipulation does not explain in excruciating detail each and every provision of FirstEnergy's August 4, 2014 Application - including the Economic Stability Program and Rider RRS - does not lessen the importance of those provisions to the Stipulation package. It is true that the only modification to the Economic Stability Program and Rider RRS expressly set forth in the Stipulation is a change to the rate design of Rider RRS. But Sierra Club's attempt to restrict the scope of testimony on the RRS to that narrow rate design change completely disregards the earlier provision in the Stipulation discussed above. As that provision reflects, the Stipulation package was dependent upon the agreement of the Signatory Parties to recommend the Economic Stability Program and Rider RRS. Accordingly, to state that testimony addressing the Economic Stability Program and Rider RRS is not testimony "*regarding the stipulation*" is to completely ignore a central component of the agreement between the Signatory Parties.

Sierra Club alleges that portions of Mr. Baron's Testimony were "*untimely*," noting that OEG could have filed testimony regarding the Economic Stability Program and Rider RRS on December 22, 2014.¹ OEG chose not to do so at the time. Had the Attorney Examiner chosen to restrict the filing of intervenor testimony to that December 22, 2014 window, then OEG would have missed its opportunity to explain in testimony why it supported the Stipulation. But the Attorney Examiner provided a second opportunity for all intervenors to file testimony "*regarding the stipulation*" on March 2, 2014. OEG chose to take advantage of this opportunity to provide the Commission insight into its reasoning for supporting the entire Stipulation package, including the Economic Stability Program and Rider RRS. Sierra Club may wish that OEG had not taken advantage of that subsequent opportunity, but that is not a sufficient basis for striking testimony that is well within the scope of proper testimony as set forth by the Attorney Examiner.

Further, OEG's reasoning for signing the Stipulation and thereby agreeing to recommend the Economic Stability Program and associated Rider RRS is highly relevant to the Commission's consideration of the Stipulation in this proceeding. OEG represents large manufacturers in FirstEnergy's service territory whose ability to compete nationally and internationally can substantially impact the economy in Northern Ohio. The competitiveness of large manufacturers can be greatly impacted by the electric rates in FirstEnergy's service territory. Because the Economic Stability Program and associated Rider RRS will impact the electric rates paid

¹ Motion at 4.

by large manufacturers, it is important that the Commission understand OEG's reasoning for recommending adoption of those proposals as part of the Stipulation package.

Contrary to Sierra Club's allegations,² allowing the disputed portions of Mr. Baron's Testimony to remain in the record will not result in any procedural unfairness. Sierra Club claims that *"the additional discovery and supplemental testimony permitted by the Attorney Examiner's January 14th order was limited to 'new information.'"*³ But the Attorney Examiner never expressly stated that the scope of supplemental testimony was limited to *"new information"* as Sierra Club suggests. Moreover, Sierra Club and other intervenors received notice that OEG supported the Economic Stability Program and associated Rider RRS when the Stipulation was filed on December 22, 2014. Mr. Baron's Testimony simply provided an explanation as to why OEG supported those proposals. Sierra Club could have conducted discovery on OEG's rationale for supporting the Economic Stability Program and associated Rider RRS as far back as December 22, 2014 and still has several opportunities to respond to OEG's rationale, including the ability to cross-examine Mr. Baron at the hearing and to address OEG's rationale in its post-hearing brief in this proceeding.

Sierra Club claims that by commenting on the Economic Stability Program and Rider RRS, OEG *"seeks an unfair advantage"* over other intervenors, citing several developments it *"would have liked"* to address in supplemental testimony, including the Commission's recent Order in the AEP Ohio ESP proceeding.⁴ As discussed above, OEG did not seek any *"unfair advantage"* since its testimony was well within the proper scope of testimony as set forth in the Attorney Examiner's Entry. Additionally, Sierra Club now has an opportunity to file testimony regarding how the Commission should view the Stipulation in light of the AEP Ohio ESP Order. On March 23, 2015, the Attorney Examiner provided both FirstEnergy and intervenors an additional opportunity to file supplemental testimony *"addressing the AEP Ohio Order, as applied in this case."*⁵ Hence, Sierra Club's procedural fairness concerns are now moot.

The Commission can give the disputed portions of Mr. Baron's Testimony appropriate weight without resorting to the extreme approach of striking entire portions. The inclusion of all of Mr. Baron's Testimony in

² Motion at 6-7.

³ Motion at 6.

⁴ Motion at 6-7 (referring to Opinion & Order, Case No. 13-2385-EL-SSO (February 25, 2015)("AEP ESP Order").

⁵ Entry at 2.

this proceeding will help develop a full record for the Commission to consider in making its determination in this case. The Commission can then rely upon the Testimony to the extent it deems appropriate.

WHEREFORE, for these reasons discussed above, the Commission should deny Sierra Club's Motion.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael L. Kurtz", is written over a horizontal line.

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March 23, 2014

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CERTIFICATE OF SERVICE

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Summary: Memorandum Ohio Energy Group's (OEG) Memorandum Contra Sierra Club
Motion to Strike electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group