

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)	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)	

**SIERRA CLUB'S MEMORANDUM IN RESPONSE TO
SUPPLIERS' REQUEST TO AMEND THE PROCEDURAL SCHEDULE
AND THE JOINT MOTION FOR INTERLOCUTORY APPEAL**

Pursuant to O.A.C. §§ 4901-1-12 and 4901-1-15(D), and the direction provided by the Attorney Examiner at the March 31, 2015 prehearing conference, Sierra Club files this response to two requests currently pending before the Commission:

- 1) The request to amend the procedural schedule made by the Retail Energy Supply Association, PJM Power Providers Group, Electric Power Supply Association, IGS Energy, Direct Energy Services LLC, Direct Energy Business LLC, and Direct Energy Business Marketing, LLC (collectively, "Suppliers") at the prehearing conference, and reiterated in their joint memorandum filed on April 1, 2015; and
- 2) The Joint Interlocutory Appeal filed by the Northeast Ohio Public Energy Council, Northwest Ohio Aggregation Coalition, Ohio Manufacturers' Association Energy Group, Ohio Partners for Affordable Energy, and the Ohio Consumers' Counsel ("Joint Appellants") on March 30, 2015.

As explained below, Sierra Club supports both the Suppliers' scheduling request and the Joint Appellants' interlocutory appeal. Sierra Club agrees with these parties that the supplemental testimony deadlines should be staggered so that intervenor testimony is filed after FirstEnergy's testimony. And, if the interlocutory appeal is denied, Sierra Club supports the Suppliers' recommendation to move the intervenor deadline back by 14

days, to May 18, 2015, while maintaining the June 15, 2015 start date for the evidentiary hearing.

So long as FirstEnergy does not attempt to modify the substance of its electric security plan (“ESP”) proposal, the above-listed dates are feasible and appropriate. If, however, FirstEnergy modifies its ESP proposal through either supplemental testimony or an amended Application, the procedural schedule will need to be further amended so the parties have a meaningful opportunity to conduct discovery and submit testimony on any such modified proposal.

DISCUSSION

On March 23, 2015, the Attorney Examiner amended the procedural schedule in light of the Commission’s order in Case No. 13-2385-EL-SSO (the “AEP Ohio Order”).¹ The Attorney Examiner did so “[i]n order for the parties to address whether and how the Commission’s findings in the AEP Ohio Order should be considered in evaluating FirstEnergy’s application in this proceeding,” and he provided the parties with an opportunity to “conduct additional discovery and to evaluate and offer supplemental testimony addressing the AEP Ohio Order, as applied in this case.”² Under the amended schedule, the deadline for the intervenors’ supplemental testimony is the same as FirstEnergy’s deadline.³

¹ Entry, Case No. 14-1297-EL-SSO (Mar. 23, 2015) (“Mar. 23 Entry”) (citing *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (Feb. 25, 2015)).

² Mar. 23 Entry ¶ 5.

³ *Id.* ¶ 5(c), (d).

In response to the March 23 Entry, the Joint Appellants filed an interlocutory appeal, which seeks two changes to the procedural schedule: First, the Joint Appellants ask that the schedule be stayed until the Commission rules on the rehearing petitions filed in the AEP Ohio ESP case, and; Second, they request that the deadline for intervenors' supplemental testimony fall after the deadline for FirstEnergy's supplemental testimony. At the prehearing conference, the Suppliers also requested that the supplemental testimony deadlines be staggered.

Like the Suppliers, Sierra Club supports the procedural schedule presented in the interlocutory appeal. Adopting the Joint Appellants' proposed schedule will ensure that the evidentiary hearing, and the record in general, are responsive to the Commission's final ruling in the AEP Ohio ESP case.

Sierra Club also supports the Suppliers' and Joint Appellants' request to stagger supplemental testimony deadlines so that intervenors' testimony is due after FirstEnergy's. Staggering these deadlines will give intervenors an opportunity to respond to FirstEnergy's testimony and result in more focused testimony from the parties. Moreover, as the Joint Appellants and Suppliers observe, staggered deadlines are consistent with both Commission precedent and earlier procedural schedules in this case.⁴ For these reasons, Sierra Club supports this request.

If the interlocutory appeal is not certified or not granted, Sierra Club would support the procedural schedule proposed by the Suppliers. Specifically, the deadline for

⁴ Joint Interlocutory Appeal at 6; Suppliers' Memo. at 3 & n.5

intervenor testimony could be moved back by two weeks, to May 18, 2015, without requiring a change to the subsequent dates in the procedural schedule. This means that the evidentiary hearing could begin on June 15, as currently scheduled.

There is, however, another contingency that could affect the procedural schedule in this case. The above-listed dates are appropriate so long as FirstEnergy does not modify its ESP proposal, such that (consistent with the March 23 Entry) its supplemental testimony merely addresses whether the current Application satisfies the factors set forth in the AEP Ohio Order.⁵ Further modifications to the schedule, however, would be necessary if FirstEnergy tries to modify its proposal, either through supplemental testimony or an amended Application, in order to, for example, attempt to bolster aspects of its proposal that do not meet the standards set forth in the AEP Ohio Order. If FirstEnergy does seek to alter the substance of its ESP proposal, the parties should be entitled to conduct discovery on the modified proposal, and to file supplemental testimony addressing the proposal.

Although an additional period of discovery would affect the timing of the evidentiary hearing, such discovery would be necessary to ensure that FirstEnergy's modified proposal is thoroughly investigated. Discovery will enable the intervenors and Staff to file more targeted testimony, and will facilitate a more meaningful review of the ESP proposal. Finally, allowing such discovery would be consistent with the approach that the Attorney Examiners have followed in scheduling matters in this proceeding to

⁵ Mar. 23 Entry ¶ 5.

date. Just as the Attorney Examiners allowed additional discovery and testimony when FirstEnergy filed its stipulation, and allowed another round of discovery and testimony to address the AEP Ohio Order, the Attorney Examiners should permit further discovery and testimony if, at the eleventh hour, FirstEnergy modifies its ESP proposal.

At present, this issue is premature, as FirstEnergy has made no attempt to modify its proposal since the AEP Ohio Order was issued. But if FirstEnergy modifies its proposal through supplemental testimony or an amended Application, Sierra Club reserves the right to move to amend the procedural schedule for the reasons stated above.

April 3, 2015

Respectfully submitted,

/s/ Christopher J. Allwein

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Sierra Club's Memorandum in Response to Suppliers' Request to Amend the Procedural Schedule and the Joint Motion for Interlocutory Appeal has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on April 3, 2015.

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Summary: Response to Suppliers' Request to Amend the Procedural Schedule and the Joint Motion for Interlocutory Appeal electronically filed by Mr. Christopher J. Allwein on behalf of SIERRA CLUB