

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

**SIERRA CLUB’S MOTION TO AMEND THE PROCEDURAL
SCHEDULE AND REQUEST FOR EXPEDITED RULING**

Pursuant to O.A.C. 4901-1-12(A), Sierra Club respectfully moves that the Attorney Examiners amend the procedural schedule in the above-captioned matter. Sierra Club requests that the Attorney Examiners grant a brief extension to the deadline for intervenor testimony, so that the intervenors’ witnesses have a sufficient opportunity to review and provide testimony regarding the May 4, 2015 supplemental filings by the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or “Companies”). Under the current procedural schedule, intervenor testimony is due May 11, 2015. Sierra Club respectfully requests that the Attorney Examiner amend the procedural schedule by extending the deadline for intervenor testimony to May 18, 2015.

For the reasons set forth in the accompanying Memorandum, Sierra Club respectfully requests that the Attorney Examiners amend the procedural schedule as described above. In addition, pursuant to O.A.C. 4901-1-12(C), Sierra Club requests an expedited ruling on this motion.

May 6, 2015

Respectfully submitted,

/s/ Christopher J. Allwein

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**MEMORANDUM IN SUPPORT OF
SIERRA CLUB’S MOTION TO AMEND THE PROCEDURAL
SCHEDULE AND REQUEST FOR EXPEDITED RULING**

On May 4, 2015, the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or the “Companies”) filed their supplemental testimony in this matter. This testimony was submitted pursuant to the Attorney Examiner’s March 23, 2015 Entry, which had amended the procedural schedule to allow 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.”¹

FirstEnergy’s supplemental filings – which include testimony from six witnesses, three of whom have not previously appeared in this case – are both voluminous and complex. This newly-filed testimony runs to 186 pages (including attachments), and it presents new analyses on a wide array of topics, including transmission upgrades that might be needed if FES were to seek to retire the Sammis and Davis-Besse plants, new estimates of the economic impacts of Sammis

¹ Entry, ¶ 5 (Mar. 23, 2015) (citing *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (Feb. 25, 2015)). The amended procedural schedule allowed for both discovery and supplemental testimony addressing the impact of the AEP Ohio Order on FirstEnergy’s ESP proposal. *Id.* ¶¶ 5, 5(b)-(d).

and Davis-Besse, and an entirely new theory about the dynamics of pricing in wholesale energy and capacity markets.² FirstEnergy's supplemental filings include revisions to the direct testimony of one of its original witnesses.³ And, in its supplemental filings, FirstEnergy has presented a new, significantly greater estimate of transmission-related costs that might result if FES were to retire Sammis or Davis-Besse, claiming that such costs could increase electric prices for customers by as much as \$4.1 billion.⁴ In short, through its supplemental filings FirstEnergy has introduced an enormous amount of new evidence and analyses into this proceeding.

In light of these supplemental filings, and in order to ensure a thorough review of FirstEnergy's proposed ESP, the deadline for intervenor testimony should be extended to May 18, 2015. This brief extension will give the intervenors sufficient time to review and analyze FirstEnergy's supplemental filings before submitting their own supplemental testimony. The current procedural schedule, which requires any intervenor supplemental testimony to be filed by May 11, 2015, does not provide enough time for intervenors to adequately review and respond to the many new analyses and technical issues introduced in the Companies' May 4 filings. Sierra Club therefore respectfully requests that the procedural schedule be amended so that supplemental testimony on behalf of the intervenors must be filed by May 18.

I. Background

²² See generally Supplemental Testimonies of Rodney L. Phillips, Sarah Murley, and Lawrence Makovich.

³ Phillips Supplemental Testimony at 4.

⁴ Second Supplemental Testimony of Eileen Mikkelsen at 8:17-19 ("If the Plants were to close, the electric prices for the Companies' customers could increase between \$1.7 billion and \$4.1 billion related to additional transmission investment . . .").

As part of their electric security plan (“ESP”), the Companies have requested that the Commission approve a Retail Rate Stability Rider (“Rider RRS”), a non-bypassable rider that would tie their customers’ bills to the economic fortunes of four major generating facilities owned wholly or partly by FES: the W.H. Sammis, Kyger Creek, and Clifty Creek coal plants, and the Davis-Besse nuclear plant. If Rider RRS is approved, the Companies would enter into a 15-year purchase power agreement (“PPA”) with FirstEnergy Solutions Corp. (“FES”). Under this proposed PPA, the Companies would commit to paying all of FES’s costs for these facilities, purchasing all of FES’s output from these facilities, and selling all of that output into the market. The Companies would then pass any costs or savings on to their ratepayers for the term of the contract.

On February 25, 2015, the Commission issued its opinion and order on AEP Ohio’s proposed electric security plan, which includes a PPA rider proposal that bears many similarities to Rider RRS.⁵ In its Order, the Commission ruled that PPA riders are permissible under Ohio law, but rejected AEP Ohio’s specific proposal. The Commission created a placeholder PPA rider, and identified several factors that it stated it would balance, but not be bound by, in considering future PPA rider proposals.⁶ The Commission also identified several additional issues that a rider proposal must address.⁷

⁵ *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (Feb. 25, 2015).

⁶ *Id.* at 25. These factors are the “financial need of the generating plant; necessity of the generating facility, in light of future reliability concerns, including supply diversity; description of how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations; and the impact that a closure of the generating plant would have on electric prices and the resulting effect on economic development within the state.”

⁷ *Id.* These additional issues include that the proposal “provide for rigorous Commission oversight of the rider, including a proposed process for a periodic substantive review and audit; commit to full information sharing with the Commission and its Staff; and include an alternative plan to allocate the rider’s financial risk between both the Company and its ratepayers.” Such proposals must also include a severability provision.

On March 23, 2015, the Attorney Examiner amended the procedural schedule “[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.”⁸ The Entry 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.”⁹ The March 23 Entry established a written discovery cut-off of April 13, 2015, and a May 4 deadline for supplemental testimony from FirstEnergy and intervenors.¹⁰ The Attorney Examiner subsequently amended the schedule on May 1, 2015, moving the deadline for the intervenors’ testimony to May 11. FirstEnergy filed its supplemental testimony on May 4.

II. Argument

A. The Deadline for Intervenors’ Supplemental Testimony Should be Extended to May 18, 2015.

Sierra Club respectfully requests that the procedural schedule be amended so that the deadline for supplemental testimony is May 18, 2015. Under the current schedule, intervenors have only one week in which to review, evaluate, and provide supplemental testimony responding to FirstEnergy’s supplemental filings. Although a one-week turnaround would have been feasible if FirstEnergy’s supplemental filings had simply addressed whether its previous analyses demonstrated that the AEP Ohio Order factors would be satisfied, that is not what FirstEnergy filed. Instead, FirstEnergy has provided entirely new analyses that purport to support Rider RRS.

⁸ See Mar. 23 Entry ¶¶ 4-5 (citing AEP Ohio Order).

⁹ Mar. 23 Entry ¶ 5.

¹⁰ *Id.* ¶ 5(b)-(d).

The filings include more than 180 pages of testimony and attachments from six witnesses, three of whom have not appeared before in this case. This testimony covers a wide range of topics, and introduces new analyses that had not been previously provided. Among other things, FirstEnergy's filings include:

- Supplemental and revised direct testimony regarding transmission reliability upgrades that might be needed if FES were to seek to close the Sammis and Davis-Besse plants. FirstEnergy substituted Rodney L. Phillips as a witness for Gavin Cunningham, and Mr. Phillips revised Mr. Cunningham's estimates prior to adopting them.¹¹ Mr. Phillips also presented the results of an additional analysis, using different assumptions, that estimated upgrade costs could be as high as \$1.1 billion – an amount nearly 2.5 times greater than Mr. Cunningham's original estimate.¹² Mr. Phillips did not present any workpapers, modeling files, or documents supporting his new analysis.
- Testimony about pricing in wholesale energy and capacity markets that, for the first time in this docket, postulates that there is a “missing money” problem that purportedly favors approval of Rider RRS. This testimony, which was presented by a new witness in the case, was accompanied by a 52-page report.¹³
- Testimony presenting new analyses purporting to estimate the economic impact of retiring the Sammis and Davis-Besse plants, as well as revised estimates of the economic impacts of the Sammis and Davis-Besse plants. This testimony was accompanied by four separate reports.¹⁴
- Testimony, from a new witness in the case, discussing the generating plants' purported compliance with an array of current and expected federal environmental standards.¹⁵
- Testimony presenting new estimates of the impact on customers' electric prices resulting from avoided transmission investments, as well as other predicted effects associated with plant closures;¹⁶

¹¹ Phillips Supplemental Testimony at 4.

¹² *Id.* at 7:16 to 10:15.

¹³ See Makovich Supplemental Testimony; Attachment LM-2.

¹⁴ See Murley Supplemental Testimony; Attachments SM-1 to -4.

¹⁵ See Supplemental Testimony of Raymond L. Evans.

¹⁶ Mikkelsen Second Supp. Testimony at 6:14 to 11:16, Att. EMM-1, -2.

- Testimony providing additional information about the financial condition of the generating plants.¹⁷

In sum, FirstEnergy's newly-filed testimony presents the results of an array of new analyses, introducing a considerable amount of new evidence, just six weeks before the start of the evidentiary hearing.

Given the length and scope of FirstEnergy's supplemental filings, and many new analyses and topics presented therein, the current schedule provides intervenors with insufficient time to review, assess, and prepare supplemental testimony regarding the issues raised in FirstEnergy's supplemental testimony. Therefore, in order to ensure that the parties have a sufficient opportunity to review FirstEnergy's supplemental filings, and "to fully develop the record for the Commission's consideration,"¹⁸ the Attorney Examiners should extend the deadline for intervenor testimony to May 18, 2015.

A deadline extension could also be beneficial in the event that the Attorney Examiners grant relief on Sierra Club's pending discovery requests prior to May 18. Currently, Sierra Club has two discovery-related issues that are fully briefed and pending before the Attorney Examiners: 1) an outstanding subpoena duces tecum to FES, which is the subject of a motion to quash; and 2) a motion to compel discovery requests from the Companies. The information sought in the subpoena, and in Sierra Club's discovery requests, relates to the factors listed in the AEP Ohio Order, and therefore will provide insight into "how the Commission's findings in the AEP Ohio Order should be considered in evaluating FirstEnergy's application in this proceeding."¹⁹ If the Attorney Examiners rule for Sierra Club on either of these disputes, a short

¹⁷ Supplemental Testimony of Donald Moul at 1:15 to 3:8.

¹⁸ May 1 Entry ¶ 23.

¹⁹ Mar. 23 Entry ¶ 5.

extension of the supplemental testimony deadline could permit Sierra Club and other parties to incorporate any additional information produced by FES and/or the Companies into their supplemental testimony.²⁰

B. Sierra Club Requests an Expedited Ruling on this Motion.

Pursuant to O.A.C. 4901-1-12(C), Sierra Club respectfully requests that the Attorney Examiners address this motion under the procedures for an expedited ruling. Sierra Club seeks expedited consideration due to timing concerns, with intervenors' supplemental testimony currently due in five days. Pursuant to O.A.C. 4901-1-12(C), the Attorney Examiner can issue an immediate ruling on Sierra Club's request to extend the deadline for intervenor testimony. If the Attorney Examiners grant this motion, an expedited ruling would enable Sierra Club, and the other intervenors, to perform a more thorough review of FirstEnergy's supplemental filings before submitting supplemental testimony.

III. Conclusion

For the foregoing reasons, Sierra Club respectfully requests that the Attorney Examiners extend the deadline for intervenor testimony until May 18, 2015, thereby allowing intervenors' witnesses sufficient time to review FirstEnergy's filings and provide supplemental testimony responsive to such filings.

²⁰ See also *In the Matter of the Report of Duke Energy Ohio, Inc. Concerning its Energy Efficiency and Peak- Demand Reduction Programs and Portfolio Planning*, No. 09-1999-EL-POR, Entry ¶ 10 (Mar. 19, 2010) (briefly extending the deadline for intervenor testimony where there was a pending motion to compel, and the movant asserted that it "has been unable to gather the information necessary to file testimony in this proceeding").

May 6, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Amend the Procedural Schedule and Request for Expedited Ruling and Memorandum in Support were served upon the following parties via electronic mail on May 6, 2015.

/s/Christopher J. Allwein

Christopher J. Allwein

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