

**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 PERMIT LIMITED WRITTEN DISCOVERY
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 by authorizing a short period for limited written discovery regarding the supplemental testimony that the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or “Companies”) filed on May 4, 2015. Specifically, Sierra Club requests that the parties be permitted to serve written discovery requests regarding FirstEnergy’s supplemental testimony through May 22, 2015, and that FirstEnergy be required to provide responses to such discovery requests within five days.

For the reasons set forth in the accompanying Memorandum, Sierra Club respectfully requests that the Attorney Examiners amend the procedural schedule to allow for limited written discovery. 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 PERMIT LIMITED WRITTEN
DISCOVERY 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

As Sierra Club explained in the Memorandum in Support of its Motion to Amend the Procedural Schedule, filed on May 6, 2015, FirstEnergy’s supplemental filings are voluminous, and they present new analyses on a wide array of technical topics.² In light of these

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).

² To avoid unnecessary duplication, Sierra Club will not repeat the Introduction and Background from the Memorandum in Support of its Motion to Amend the Procedural Schedule. Sierra Club incorporates those discussions by reference as if fully set forth herein.

supplemental filings, and to ensure a more thorough review of FirstEnergy's proposed electric security plan, the procedural schedule should be amended so that the parties have a brief opportunity to conduct limited written discovery regarding the bases for the factual contentions, analyses, and assumptions set forth in FirstEnergy's supplemental filings. Specifically, Sierra Club respectfully requests that the procedural schedule be amended so that discovery requests regarding FirstEnergy's supplemental testimony, except for notices of deposition, can be served up through May 22, 2015, and that FirstEnergy be required to respond to such requests within five days.

I. Argument

A. The Parties Should Be Allowed to Conduct Written Discovery on FirstEnergy's Supplemental Filings.

Sierra Club respectfully requests that the procedural schedule should be amended in order to allow the parties an opportunity to conduct limited written discovery on FirstEnergy's supplemental filings. As Sierra Club explained in the Memorandum in Support of its Motion to Amend the Procedural Schedule, filed on May 6, 2015,³ the supplemental testimony and exhibits, which total more than 180 pages, address an array of highly technical issues, and present new analyses conducted by FirstEnergy's witnesses, for which FirstEnergy has produced almost no supporting workpapers or documents. Given the magnitude of FirstEnergy's supplemental filings, and the lack of written discovery permitted under the current schedule, the parties should be given a brief opportunity to conduct limited written discovery regarding the

³ To avoid unnecessary duplication, Sierra Club will not repeat the discussion of FirstEnergy's supplemental testimony from its Memorandum in Support of its Motion to Amend the Procedural Schedule. Sierra Club incorporates that discussion by reference as if fully set forth herein.

bases for the factual contentions, analyses, and assumptions set forth in FirstEnergy's supplemental filings.

Specifically, the Attorney Examiners should amend the schedule so that discovery requests regarding FirstEnergy's supplemental testimony, except notices of deposition, must be served by May 22, 2015. Doing so will help ensure that the record is fully developed for the Commission's review.⁴

Although the current procedural schedule allows for depositions, that is not a substitute for written discovery which would enable the intervenors to access any workpapers, modeling files, and other documents that FirstEnergy's witnesses may have relied on in their supplemental testimony. For example, Mr. Phillips presents a new "higher end" estimate of the potential costs of transmission upgrades that might be needed if FES were to retire the Sammis and Davis-Besse plants, estimating that such costs could be as high as \$1.1 billion, which is nearly 2.5 times higher than FirstEnergy's previous estimate.⁵ Ms. Mikkelsen, in turn, used Mr. Phillips's new estimate in asserting that "[i]f 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"⁶ Mr. Phillips's testimony, however, was accompanied by no workpapers, modeling files, or supporting documents, and FirstEnergy provided no other documentation showing how Mr. Phillips generated that \$1.1 billion estimate. No matter how thoroughly Mr. Phillips is deposed, the parties will not have access to his calculations and other written analyses, nor will they have access to the source documents he relied on for his testimony.

⁴ See May 1 Entry ¶ 23 (modifying procedural schedule "in order to fully develop the record for the Commission's consideration").

⁵ Phillips Supplemental Testimony at 8:7-15.

⁶ Mikkelsen Second Supp. Testimony at 8:17-19.

The need for limited written discovery is further underscored by the lack of scrutiny FirstEnergy's supplemental testimony will receive as compared with the testimony that accompanied the original Application.⁷ After FirstEnergy filed its direct testimony, the parties were given several months to conduct written discovery on that testimony. In addition, FirstEnergy filed workpapers supporting the testimony in its Application,⁸ and the application package was the subject of a technical conference intended to "explain, among other things, the structure of the filing, the work papers, the data sources, and the manner in which methodologies were devised."⁹ FirstEnergy's supplemental testimony, by contrast – although producing the results of new analyses, presenting new theories, and revising the claimed benefits of Rider RRS – is not subject of any written discovery, has been accompanied by only a single one-page workpaper, and will not be the subject of a technical conference. Permitting the parties to conduct limited discovery on the supplemental filings will help ensure that this newly-filed testimony is more thoroughly reviewed, and to ensure that the underlying assumptions and analyses are evaluated.

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. If the Attorney Examiners grant this motion, an

⁷ Notably, much of the information included in these supplemental filings could have been submitted at the time of FirstEnergy's original application. This includes, among other things, the economic theory presented in Dr. Makovich's testimony and the transmission upgrade estimates provided by Mr. Phillips.

⁸ See O.A.C. 4901:1-35-03(C)(2) (stating that ESP application must include "pro forma financial projections of the effect of the ESP's implementation upon the electric utility for the duration of the ESP, together with testimony and work papers sufficient to provide an understanding of the assumptions made and methodologies used in deriving the pro forma projections")

⁹ O.A.C. 4901:1-35-05.

expedited ruling would enable Sierra Club, and the other intervenors, to perform a more thorough review of FirstEnergy's supplemental filings, and it would permit them to begin conducting written discovery immediately. Because Sierra Club has not asked other parties if they object to this motion, other parties can file their response to this motion within seven days. Sierra Club does not anticipate filing a reply brief and can instead address any additional issues if the Attorney Examiners schedule a conference to address this motion.

II. Conclusion

For the foregoing reasons, Sierra Club respectfully requests that the Attorney Examiners amend the procedural schedule to permit an opportunity for written discovery on FirstEnergy's supplemental filings.

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 Permit Limited Written Discovery 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
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This foregoing document was electronically filed with the Public Utilities

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5/6/2015 5:13:19 PM

in

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

Summary: Motion to Permit Limited Written Discovery and Request for an Expedited Ruling
electronically filed by Mr. Christopher J. Allwein on behalf of SIERRA CLUB