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

ENTRY

The attorney examiner finds:

(1) Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or 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, FirstEnergy filed an application pursuant to R.C. 4928.141 to provide for a standard service offer (SSO) to provide generation 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.

(3) During the pendency of FirstEnergy's application, on February 25, 2015, the Commission modified and approved an ESP for Ohio Power Company d/b/a AEP Ohio (AEP Ohio), which will ultimately determine AEP Ohio's SSO rates from June 1, 2015, through May 31, 2018. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (*AEP Ohio ESP III*), Opinion and Order (Feb. 25, 2015) (AEP Ohio Order). The Commission declined to adopt the purchase power agreement (PPA) rider proposal, as put forth in *AEP Ohio ESP III*; however, the Commission authorized the establishment of a placeholder PPA rider, at the initial rate of zero, with AEP Ohio being required to justify any requested cost recovery in future filings before the Commission. The Commission also presented several factors it may balance, but not be bound by, in deciding

whether to approve future cost recovery requests associated with PPAs (AEP Ohio Order factors).

(4) Thereafter in this case, by Entry issued March 23, 2015 (March Scheduling Entry), the attorney examiner modified the procedural schedule in 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. Subsequently, the Northeast Ohio Public Counsel, Northwest Ohio Aggregation Coalition, Ohio Manufacturers' Association Energy Group (OMAEG), Ohio Partners for Affordable Energy, and the Office of the Ohio Consumers' Counsel (collectively, Joint Movants) filed a joint interlocutory appeal, requesting certification of the March Scheduling Entry to the Commission for its review.

(5) By Entry issued May 1, 2015, the attorney examiner found that the joint interlocutory appeal should not be certified to the Commission for review. Nevertheless, the attorney examiner modified the procedural schedule in order to allow intervenors to file supplemental testimony after FirstEnergy, establishing May 11, 2015, as the deadline for the filing of supplemental testimony regarding the AEP Ohio Order factors by intervenors, while retaining all other dates set in the March Scheduling Entry, including that FirstEnergy filed supplemental testimony by May 4, 2015.

(6) Thereafter, on May 6, 2015, Sierra Club filed motions to amend the procedural schedule and to permit limited written discovery, as well as requests for expedited ruling. In its motion to amend the procedural schedule, Sierra Club requests that the attorney examiner extend the deadline for intervenor testimony until May 18, 2015. Sierra Club asserts that this brief extension will allow intervenors' witnesses sufficient opportunity to review and provide testimony regarding the Companies' May 4, 2015 supplemental filings.

Additionally, in its motion to permit limited written discovery, Sierra Club requests the opportunity to serve written discovery requests through May 22, 2015, regarding FirstEnergy's supplemental testimony filed on May 4, 2015, and that FirstEnergy be required to provide responses within five days. Sierra Club argues that FirstEnergy's

May 4, 2015 supplemental filings are voluminous and present new analyses on a wide array of technical topics.

(7) On May 7, 2015, OMAEG, the Retail Energy Supply Association, PJM Power Providers Group, and Electric Power Supply Association filed correspondence supporting Sierra Club's motion to amend the procedural schedule. Additionally, in its correspondence, OMAEG supports Sierra Club's motion to permit limited written discovery.

(8) On May 8, 2015, FirstEnergy filed a memorandum contra Sierra Club's motions to amend the procedural schedule and to permit limited discovery. In its memorandum contra, FirstEnergy first argues that Sierra Club's motion to amend the procedural schedule should be denied on the basis that the Companies' supplemental findings complied with the March Scheduling Entry and should come as no surprise to the Sierra Club. Further, FirstEnergy argues that Sierra Club's proposed amendment to the procedural schedule would put the Companies at a disadvantage, as many depositions need to be taken, and, as intervenor witnesses may file additional testimony, or there may be additional witnesses, the proposed schedule would give the Companies only an approximate two-week period to take depositions.

Second, FirstEnergy argues that Sierra Club's motion to permit limited discovery should be denied on the basis that there is no right to additional written discovery merely because the Companies have filed testimony, and because Sierra Club should have sought already any desired discovery. FirstEnergy also argues that its supplemental testimony thoroughly addressed the vast amount of relevant discovery sought by Sierra Club.

(9) As previously noted by the attorney examiner, the hearing is scheduled currently to take place over ten months after the filing of the application in this proceeding; intervenors have had an extensive opportunity to conduct discovery on any relevant issues regarding the proposed purchase power agreement over this time period. With respect to the AEP Ohio Order factors, intervenors have the opportunity to depose any witness for which the Companies have presented supplemental testimony.

In addition, as noted previously, the attorney examiner already modified the procedural schedule to allow intervenors to file supplemental testimony after FirstEnergy, and intervenors have the right to request the opportunity to file rebuttal testimony at the hearing regarding the AEP Ohio Order factors, as well as to cross-examine any witnesses presented by the Companies. In light of all these factors, the attorney examiner finds that Sierra Club can demonstrate no prejudice resulting from the current procedural schedule.

(10) Further, the attorney examiner finds that, as argued by FirstEnergy, if the Commission were to adopt Sierra Club's proposed schedule, FirstEnergy would be required to complete its depositions within less than 15 business days, given the imminent June 15 hearing date. The attorney examiner agrees that this may prejudice the Companies, given that there are more than 50 intervenors in this proceeding and that intervenors have already filed testimony on behalf of over two dozen witnesses. Consequently, for the reasons set forth above, the attorney examiner finds that Sierra Club's motions to amend the procedural schedule and permit limited discovery should be denied.

It is, therefore,

ORDERED, That Sierra Club's motions to amend the procedural schedule and permit limited discovery be denied. It is, further,

ORDERED, That a copy of this Entry be served upon all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Mandy W. Chiles

By: Mandy Willey Chiles
Attorney Examiner

SEF/sc

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

Summary: Attorney Examiner Entry denying Sierra Club's motions to amend the procedural schedule and permit limited discovery. - electronically filed by Sandra Coffey on behalf of Mandy Willey Chiles, Attorney Examiner, Public Utilities Commission of Ohio