

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

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**JOINT MOTION OF ENVIRONMENTAL LAW AND POLICY CENTER,  
OHIO ENVIRONMENTAL COUNCIL, AND ENVIRONMENTAL DEFENSE FUND  
TO ESTABLISH A PROCEDURAL SCHEDULE**

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The Environmental Law & Policy Center, Ohio Environmental Council, and Environmental Defense Fund (collectively, “Environmental Intervenors”) hereby file a motion pursuant to Ohio Admin. Code 4901-1-34 to establish a new procedural schedule in this case in light of the Third Supplemental Stipulation and supporting testimony filed on December 1, 2015. The Environmental Intervenors agree with the Joint Motion filed by a number of other intervening parties on December 1, 2015 (“December 1 Joint Motion”), seeking to reopen the hearing record and establish a schedule for further discovery, intervenor testimony, and hearing dates in order to allow for the presentation of evidence on the significant new issues raised by the Third Supplemental Stipulation. However, because a number of these new issues involve questions of environmental and clean energy policy that the Environmental Intervenors believe require significant new discovery and analysis in order for adequate consideration by the Commission, we seek a slightly more extended procedural schedule than that proposed in the December 1 Joint Motion, as follows:

- Discovery requests related to the Third Supplemental Stipulation (except as to notices of deposition) permitted through Monday, December 21,

2015, with responses to written discovery requests provided within seven calendar days.

- Testimony from opposing parties filed by Wednesday, January 20, 2016.
- Rebuttal testimony filed by Friday, January 29, 2016.
- Hearing reconvened for testimony in support and in opposition to the Third Supplemental Stipulation on Wednesday, February 3, 2016.
- Initial Briefs be filed by Wednesday, February 24, 2016.
- Reply Briefs be filed by Wednesday, March 9, 2016.

This proposed schedule extends the conclusion of briefing only two weeks beyond the schedule proposed in the December 1 Joint Motion, while providing intervenors with additional time to analyze discovery responses and prepare testimony that is necessary given the new subject matter introduced by the Third Supplemental Stipulation, especially given the intervening Christmas and New Year's holidays and the likelihood of parallel proceedings in Case Nos. 14-1693-EL-RDR *et al.* Environmental Intervenors also propose the filing of rebuttal testimony prior to hearing in order to ensure an efficient hearing process and ensure a full airing of the merits of the Third Supplemental Stipulation. Further arguments supporting this Joint Motion are set forth in the attached Memorandum in Support.

Date: December 2, 2015

Respectfully submitted,

/s/ Madeline Fleisher

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**MEMORANDUM IN SUPPORT OF THE JOINT MOTION OF THE  
ENVIRONMENTAL LAW AND POLICY CENTER,  
OHIO ENVIRONMENTAL COUNCIL, AND ENVIRONMENTAL DEFENSE FUND  
TO ESTABLISH A PROCEDURAL SCHEDULE**

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On November 9, 2015, after the close of a 35 day evidentiary hearing in this case, the Staff of the Public Utilities Commission of Ohio (“Commission”) filed a motion seeking an extension of the existing briefing schedule in order to allow time for settlement discussions. This settlement discussion process culminated in the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy”) filing of the Third Supplemental Stipulation three weeks later, on December 1, 2015. This Stipulation introduces new provisions regarding environmental issues not previously raised in the case, including: planning for the installation of Volt/VAR technology that may affect both future load in FirstEnergy territory and future energy efficiency requirements, Third Supplemental Stipulation at 9-10; “resource diversification initiatives” purportedly aimed at reducing carbon pollution, *id.* at 2, 11-12; supposed support for development of renewable energy projects, *id.* at 12; and an agreement regarding a rate design proposal that could significantly affect energy efficiency and distributed generation deployment, *id.* at 12-13. Each of these requires a thorough evaluation on its own merits and full analysis of how each provision may affect the overall

merits of the proposed Electric Security Plan (“ESP”) versus a market rate offer, the overarching test that must determine whether the Commission approves the ESP under R.C. 4928.143(C)(1). Therefore, the Commission should adopt Environmental Intervenors’ proposed procedural schedule so that the parties may develop and present the evidence necessary for adequate consideration of FirstEnergy’s new proposed stipulation.

As our fellow intervenors discuss in the December 1 Joint Motion, the appropriate course of action for the Commission following the filing of the Third Supplemental Stipulation is to reopen the record, allow for additional discovery and testimony, and presentation of evidence regarding the stipulation at hearing. December 1 Joint Motion at 7-8. However, the Environmental Intervenors urge the Commission to provide additional time for the analysis of discovery responses and development of intervenor testimony given that the Third Supplemental Stipulation introduces several provisions that are wholly new to this case, particularly those addressing environmental issues.

First, the Stipulation provides for FirstEnergy to file a “grid modernization plan” by February 29, 2016, that will among other things “highlight[] future initiatives” regarding deployment of Volt/VAR technology that can produce significant energy savings by improving FirstEnergy’s ability to manage voltage within its distribution system. Third Supplemental Stipulation at 9. The Stipulation offers no details as to the substance of this filing, nor does the supporting testimony by FirstEnergy Witness Mikkelsen. In fact, it is unclear why this provision is in the Stipulation at all unless it is aimed at getting some pre-approval from the Commission to facilitate FirstEnergy’s future application. Certainly that is the case with respect to FirstEnergy’s expected return on equity (“ROE”), since the Stipulation binds Commission Staff to agree to an ROE for any grid modernization efforts based on the ATSI ROE (currently set at 10.38%).

Accordingly, since the Commission's approval of the Third Supplemental Stipulation may constitute endorsement of a particular substantive grid modernization effort, the Environmental Intervenors must explore the substance of this proposal to the full extent possible now. Furthermore, this issue may be important to the proposed power purchase agreement central to FirstEnergy's ESP application as well, since Volt/VAR deployment may affect load across FirstEnergy's service territory, which could in turn affect local energy prices.

Second, the Third Supplemental Stipulation includes a number of asserted "resource diversification" provisions regarding carbon reduction, battery resources, energy efficiency programs, and renewable energy development. Third Supplemental Stipulation at 11-12. Again, this section and the supporting testimony contain little detail as to the substance of FirstEnergy's commitments. Additionally, Section V.E.3.d. guarantees FirstEnergy shared savings for all "[c]ost effective energy efficiency programs" and more than doubles the size of FirstEnergy's shared savings cap, issues that have been subject to extensive litigation before the Commission in the past and that should receive similar vetting in this proceeding. *See, e.g., In the Matter of the FirstEnergy Application for Approval of Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 to 2015*, Case Nos. 12-2190 *et al.*, Opinion and Order (Mar. 20, 2013), at 12-17. It will be necessary to use thorough discovery and potentially expert testimony to analyze the merits of these provisions individually and in relation to the ESP as a whole, especially given the paucity of FirstEnergy's supporting testimony on these points.

Finally, the Third Supplemental Stipulation commits FirstEnergy to filing a case within the next eighteen months to propose shifting its residential base distribution rates to a straight fixed variable design based on 75% fixed costs and 25% variable costs. Third Supplemental Stipulation at 12-13. This rate design could have significant effects on future deployment of

energy efficiency and distributed generation by divorcing distribution charges from the actual size of a customer's energy use and thus reducing the bill savings available to residential customers by conserving energy or providing their own behind-the-meter generation. As with the grid modernization section, we believe it is necessary to fully elucidate the basis for this provision to the extent possible now, since the Commission's approval of the Stipulation now could affect our ability to fully litigate FirstEnergy's proposal in future proceedings – particularly in light of the fact that Staff has signed on in support of this future proposal. Furthermore, this section of the Stipulation also sets in stone a mechanism for FirstEnergy's future recovery of lost distribution revenue under a straight fixed variable rate design, *id.* at 13, another issue that has been contested by the parties to this case in past proceedings. *See, e.g., In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 38-40.

Each of the three issues discussed above is new and complex, and therefore warrants adequate time for all intervening parties who oppose the stipulation to prepare and present evidence regarding the merits of the proposed Stipulation. Although two of these provisions – regarding grid modernization and distribution rate design – involve future proposals, their inclusion in this Stipulation places the burden on the Environmental Intervenors to fully explore and, if necessary, contest these provisions now to avoid the risk of finding such arguments later preempted by approval of the Stipulation. The Environmental Intervenors expect that the Commission will need significant additional information, either through discovery responses from FirstEnergy or expert analysis, before being able to decide whether to require modifications of these portions of the Stipulation or to approve the Stipulation at all.

Meanwhile, the time to prepare such evidence for the Commission is in short supply. In addition to the upcoming holiday season, most of the parties in this case are also participating in Case Nos. 14-1693-EL-RDR *et al.*, in which Ohio Power Company proposes a power purchase agreement similar to FirstEnergy's and is likewise currently in settlement negotiations that may shortly lead to additional proceedings regarding a stipulation. *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement*, Case No. 14-1693-EL-RDR *et al.*, Entry (Nov. 19, 2015) at 3.

Finally, although the December 1 Joint Motion did not address this issue, the Environmental Intervenors believe it is appropriate for the Commission to order the filing of rebuttal testimony prior to the beginning of any additional hearing dates. Given the lack of substance in FirstEnergy's supporting testimony, and the likelihood of opposing testimony from several intervenors, we anticipate the possibility of significant rebuttal testimony by FirstEnergy. We propose that any such testimony be filed before the start of hearing so that intervenors may have an adequate opportunity to assess that testimony without the need to delay cross-examination of rebuttal witnesses beyond the scheduled hearing dates, which would push off briefing dates beyond those proposed below.

Accordingly, the Environmental Intervenors request that the Commission establish a new procedural schedule as follows:

- Discovery requests related to the Third Supplemental Stipulation (except as to notices of deposition) permitted through Monday, December 21, 2015, with responses to written discovery requests provided within seven calendar days.
- Testimony from opposing parties filed by Wednesday, January 20, 2016.
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Respectfully submitted,

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## CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of the public version of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail on December 2, 2015.

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Summary: Motion Joint Motion to Establish a Procedural Schedule electronically filed by Madeline Fleisher on behalf of Environmental Law and Policy Center and Ohio Environmental Council and Environmental Defense Fund