

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Company, and The Toledo Edison Company)	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)	
)	

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON COMPANY’S MEMORANDUM
CONTRA ENVIRONMENTAL LAW AND POLICY, OHIO ENVIRONMENTAL
COUNSEL, AND ENVIRONMENTAL DEFENSE FUND MOTION TO ESTABLISH A
PROCEDURAL SCHEDULE.**

I. INTRODUCTION

This case has been repeatedly delayed at the request of the intervenors. Now the Environmental Movants¹ have requested a procedural schedule that would unduly delay this case further. As discussed at length in the Companies response to the Joint Movants filed on December 2, 2015,² there is no reason to delay the hearing beyond this month. All intervenors have had an extensive opportunity to participate in this proceeding and, under the Companies’ proposed schedule, will have an opportunity to take a deposition of the Companies’ witness

¹ “Environmental Movants” are defined as Environmental Law and Policy Center, Ohio Environmental Council, and Environmental Defense Fund. The Environmental Movants Motion to Establish A Procedural Schedule is referred to as the “Motion.”

² “Joint Movants” are Buckeye Association of School Administrators, Constellation NewEnergy, Inc., the Electric Power Supply Association, Exelon Generation Company LLC, Interstate Gas Supply, Inc., Northeast Ohio Public Energy Council, Ohio Association of School Business Officials, Ohio Consumers’ Counsel, Ohio Hospital Association, Ohio Manufacturers’ Association Energy Group, Ohio School Boards Association, Ohio Schools Council, PJM Power Providers Group, Retail Energy Supply Association, and Sierra Club.

supporting the Third Supplemental Stipulation and to present their respective positions prior to and at hearing.

Moreover, the lengthy delay proposed by the Environmental Movants is simply not feasible. As demonstrated in the Companies' memorandum contra the Joint Movants' motion to establish a procedural schedule, delaying this matter so that a decision is not forthcoming in early February will significantly impede the Companies' ability to implement their ESP IV. The Commission cannot delay the briefing schedule into March 2016 (as the Environmental Movants request) and still issue an order in time for the Companies to prepare for and conduct their standard service offer SSO procurement auctions or to prepare for the first Rider RRS tariff pricing to be filed on or before April 1, 2016. The Environmental Movants do not address these practical problems with their proposal, and their proposal should accordingly be rejected.

Additionally, the Environmental Movants have proposed that any rebuttal testimony be required prior to the hearing. This proposal is not supported by any authority or factual support, and represents an unwarranted change to long-established Commission practice on when rebuttal testimony is filed. There is no reason for such a change, and this request should be denied.

II. MOVANTS HAVE HAD AN AMPLE OPPORTUNITY TO LITIGATE THIS CASE.

The Companies' response to the Joint Movants showed in great detail the lengthy procedural history of this case and the extensive opportunities already provided to intervenors to obtain all relevant information. In the interests of efficiency, that discussion is hereby incorporated by reference.

The Environmental Movants do not contest the extensive process already provided in this proceeding. Instead, they suggest that additional time is needed because they are busy over the

holidays and most of the parties in this case are involved in other proceedings.³ Compared to the consequences of delaying this case and a decision beyond early February, the convenience of counsel is not an adequate justification for such a delay.

The Environmental Movants also contend that three new issues raised in the Third Supplemental Stipulation justify an additional delay of the hearing and briefing. The Environmental Movants first reference two plans which will be filed in the future regarding grid modernization and rate design.⁴ There is no reason to delay the hearing to address those future proposals since there is nothing significant to discover or discuss at this point. The agreement on what the Companies will do is contained in the text of the Third Supplemental Stipulation. If the Environmental Movants have questions about what the text means, they can ask them in deposition or hearing. However, this is not the case in which the merits of those future proposals will be determined. The Commission will consider those proposals in future proceedings. Indeed, given that the Companies have not yet even drafted these plans, it would be impossible to spend significant time exploring them in this proceeding. Accordingly, there is no reason to delay the hearing to address those future plans.

The Environmental Movants also suggest that the hearing should be delayed to allow additional discovery on resource diversification provisions because “this section [of the Third Supplemental Stipulation] and the supporting testimony contain little detail as to the substance of FirstEnergy’s commitments.”⁵ Once again, the scope of the Company’s commitments is contained in the Third Supplemental Stipulation itself. If the Environmental Movants have

³ Motion, p. 5.

⁴ Motion, pp. 2-3.

⁵ Motion, p. 3.

questions about what that language means, they can ask them at deposition or hearing. Since the Environmental Movants cannot claim ignorance of the terms “carbon reduction, battery resources, energy efficiency programs, and renewable energy development,” or of the programs to be reactivated in Case No. 12-2190-EL-POR, these parties do not need *two additional months* to learn about these issues prior to a hearing on the Third Supplemental Stipulation.⁶

In addition, the Environmental Movants want to “fully elucidate” the basis for the Companies’ commitment to filing a case within the next eighteen months to shift their residential base distribution rates to a straight fixed variable (“SFV”) rate design.⁷ Again, they will have a reasonable opportunity to explore the basis for this commitment under the procedural schedule proposed by the Companies. In any event, considering whether an SFV rate design is reasonable is not in any sense a new issue or, more to the point, an issue that will be resolved in this ESP IV. In Case No. 10-3126-EL-UNC, the Commission reviewed the potential benefits of SFV rate design and encouraged all of Ohio’s electric utilities to propose a straight fixed variable rate design in their next base rate cases.⁸ Indeed, in that proceeding the Commission directed further consideration of an SFV rate design over the objections of two of the three Environmental Movants here – ELPC and OEC.⁹ Any complaints the Environmental Movants have with the Companies’ proposal for an SFV mechanism can be addressed by the Commission in the future case to be filed by the Companies.

⁶ See Motion, pp. 3, 5 (requesting hearing commencing Feb. 3, 2015).

⁷ Motion, pp. 3-4.

⁸ *In re Aligning Electric Distribution Utility Rate Structure with Ohio's Public Policies to Promote Competition, Energy Efficiency, and Distributed Generation*, Case No. 10-3126-EL-UNC, Finding and Order at p. 20 (Aug. 21, 2013).

⁹ *Id.*, Second Entry on Rehearing (Dec. 4, 2013).

These relatively simple issues do not justify a delay to the hearing schedule as proposed by the Companies.

III. UNDUE DELAY WILL HARM CUSTOMERS.

Notably, the Environmental Movants do not address what would happen if the Commission were to adopt their proposed schedule delaying briefing into March 2016. As discussed in the response to the Joint Movants, the Companies' customers will be harmed if a Commission decision is not issued in this proceeding in a timely manner. Competitive procurement needs to take place in the near future. Moreover, the benefits to customers of seasonally diverse power procurement will be lost or reduced if the auctions are forced to take place too close together in the late spring, where such auctions will all take place near the historically higher priced summer periods. This abbreviated timeline would also provide less time for bidders to prepare for auctions, which would also likely put upward pressure on prices.

IV. THERE IS NO JUSTIFICATION OR SUPPORT FOR REQUIRING REBUTTAL TESTIMONY PRIOR TO HEARING.

The Environmental Movants also have requested that the Commission order the filing of rebuttal testimony prior to the beginning of the hearing.¹⁰ Commission precedent on this point is clear, as is shown through the schedule used in this case. At the Commission, rebuttal testimony is filed, if at all, after the conclusion of cross-examination of opposing intervenor witnesses. The Environmental Movants have not provided any authority or justification for departing from that long-established precedent, and therefore this request should be denied.

¹⁰ Motion, p. 5.

V. CONCLUSION

For the foregoing reasons, the Motion should be denied and the Companies' proposed procedural schedule adopted.

Respectfully submitted,

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/s/ James F. Lang
One of the Attorneys for the Companies

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

Summary: Memorandum Contra ELPC, OEC and EDF Motion to Establish a Procedural Schedule electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company