

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

Entered in the Journal on May 20, 2016

I. SUMMARY

{¶ 1} In this Entry, the attorney examiner grants the motion for a stay of discovery filed by the PJM Power Providers Group and the Electric Power Supply Association.

II. DISCUSSION

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy) are electric distribution utilities as defined in R.C. 4298.01(A)(6) and public utilities as defined in R.C. 4905.02 and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide customers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} On August 4, 2014, FirstEnergy filed an application pursuant to R.C. 4928.141 to provide for an SSO to provide generation pricing for the period of June 1, 2016, through May 31, 2019. The application is for an ESP, in accordance with R.C. 4928.143 (ESP IV).

{¶ 5} On March 31, 2016, the Commission issued its Opinion and Order in this proceeding, approving FirstEnergy's application and the stipulations filed in this proceeding with several modifications (Opinion and Order).

{¶ 6} On April 27, 2016, the Federal Energy Regulatory Commission (FERC) issued an order granting a complaint filed by the Electric Power Supply Association (EPSA), the Retail Energy Supply Association (RESA), Dynegy Inc. (Dynegy), Eastern Generation, LLC, NRG Power Marketing LLC, and GenOn Energy Management, LLC, and rescinding the waiver of its affiliate power sales restrictions previously granted to FirstEnergy Solutions Corporation. 155 FERC ¶ 61,101 (2016) (FERC Order).

{¶ 7} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 8} On April 29, 2016, applications for rehearing regarding the Opinion and Order were filed by the following parties: Sierra Club; Dynegy; the PJM Power Providers Group and EPSA (jointly, P3/EPSA); and RESA.

{¶ 9} Thereafter, on May 2, 2016, applications for rehearing regarding the Opinion and Order were filed by the following parties: FirstEnergy; Mid-Atlantic Renewable Energy Coalition (MAREC); Cleveland Municipal School District (CMSD); The Ohio Schools Council, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Association of School Business Officials, d/b/a Power4Schools (collectively, Power4Schools); Northeast Ohio Public Energy Council (NOPEC); Environmental Law and Policy Center, Ohio Environmental Council, and Environmental Defense Fund (collectively, Environmental Advocates); the Ohio Manufacturers' Association Energy Group (OMAEG);

and the Ohio Consumers' Counsel and Northwest Ohio Aggregation Coalition (jointly, OCC/NOAC).

{¶ 10} In its application for rehearing, and as a recommended solution to three of its proffered assignments of error, FirstEnergy proposed a modified calculation (Modified RRS Proposal) for its retail rate stability rider (RRS) as approved in the ESP IV Opinion and Order, in order to reflect the FERC Order. Additionally, FirstEnergy recommended an expedited procedural schedule in order for the Commission to consider the proposed modifications to Rider RRS.

{¶ 11} By Entry on Rehearing issued May 11, 2016, the Commission granted the applications for rehearing filed by the Companies, Sierra Club, P3/EPSC, Dynegy, RESA, MAREC, CMSD, Power4Schools, NOPEC, Environmental Advocates, OMAEG, and OCC/NOAC, for further consideration of the matters specified in the applications for rehearing. In granting the applications for rehearing, the Commission noted that memoranda contra the applications for rehearing were due to be filed on May 12, 2016. The Commission nevertheless found that, "[b]ecause of the number and complexity of the assignments of error raised in the applications for rehearing, as well as the potential for further evidentiary hearings in this matter, * * * it is appropriate to grant rehearing at this time. This will allow parties to begin discovery in anticipation of potential further hearings." Entry on Rehearing (May 11, 2016) at 3.

{¶ 12} Thereafter, on May 19, 2016, P3/EPSC filed a joint motion for a stay of discovery and a joint motion for an expedited ruling. In its memorandum in support, P3/EPSC requests that the Commission stay discovery in the proceeding because the Commission has not yet issued substantive rulings on any of the applications for rehearing that are pending and the Commission has not yet addressed P3/EPSC's jurisdictional argument that the Commission does not have jurisdiction over FirstEnergy's Modified RRS Proposal. Further, P3/EPSC asserts that a stay on all discovery will allow all parties to

avoid the needless cost, expense, and time of conducting and responding to discovery until such time that the Commission resolves the issues pending on rehearing and the jurisdictional issue. Consequently, P3/EP SA requests discovery be stayed pending a Commission determination of what issues will be further considered on rehearing, or in the alternative, stay discovery related to the Modified RRS Proposal until the Commission resolves the jurisdictional issue raised by P3/EP SA. Further, P3/EP SA request expedited treatment pursuant to Ohio Adm.Code 4901-1-12(c).

{¶ 13} The attorney examiner finds that the motion to stay discovery should be granted, on a limited basis, in order to allow parties to file memoranda in response to the motion to stay. After memoranda in response are filed and reviewed by the attorney examiners, the attorney examiners will issue a ruling either extending or terminating the stay. Accordingly, discovery shall be stayed until otherwise ordered by the attorney examiners and no party is under any obligation to respond to pending discovery requests for the duration of the stay.

III. ORDER

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That the motion to stay discovery is granted, on a limited basis, as set forth in Paragraph 13. It is, further,

{¶ 16} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Mandy W. Chiles

By: Mandy Willey Chiles
Attorney Examiner

JRJ/sc

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

Summary: Attorney Examiner Entry granting the motion to stay discovery filed by PJM Power Providers Group and the Electric Power Supply Association. - electronically filed by Sandra Coffey on behalf of Mandy Willey Chiles, Attorney Examiner, Public Utilities Commission of Ohio