

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 June 3, 2016

I. SUMMARY

{¶ 1} In this Entry, the attorney examiner issues a procedural schedule that sets an additional hearing in this matter to begin on July 11, 2016.

II. DISCUSSION

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) are electric distribution utilities as defined in R.C. 4928.01(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 resolution 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/EP SA, 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 that Entry, the Commission also found that given “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} On May 19, 2016, P3/EP SA filed a joint motion for a stay of discovery and a joint motion for an expedited ruling, arguing that a stay would allow the parties to avoid unnecessary expenses and time conducting and responding to discovery until such time that the Commission resolves the pending issues on rehearing and objections to the Commission’s jurisdiction to consider FirstEnergy’s Modified RRS Proposal.

{¶ 13} On May 20, 2016, the attorney examiner granted P3/EP SA’s motion to stay discovery, on a limited basis, in order to allow parties to file memoranda in response to the motion to stay. Additionally, the attorney examiner noted that the stay of discovery may be extended or terminated once the attorney examiners had the opportunity to review memoranda in response to the motion to stay.

{¶ 14} On May 26, 2016, FirstEnergy filed its motion contra P3/EP SA’s motion to stay discovery, stating no party to the proceeding was prejudiced by the Commission’s

decision to inform parties to engage in additional discovery. Contrarily, FirstEnergy argues that denying parties the opportunity to engage in discovery at this point will prejudice parties if an additional hearing is required by the Commission. In fact, FirstEnergy indicated that it had already received discovery requests from another intervenor. FirstEnergy further argues that P3/ESPA raised no sufficient grounds to stay discovery, as the Commission sufficiently specified the scope of any additional proceeding, as required by R.C. 4903.10. Moreover, FirstEnergy states that an additional hearing to consider the Modified RRS Proposal is well within the Commission's jurisdiction, noting that the Ohio Supreme has previously found that the Commission may grant rehearing, take additional evidence, and consider proposed modifications to the plan originally approved. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 304, 2006-Ohio-5789). Finally, FirstEnergy contends that if further clarification is needed as to the scope of any additional proceeding, the Commission may provide such clarification in a future order.

{¶ 15} Upon consideration of the arguments raised in the applications for rehearing and the memoranda contra the applications for rehearing, a hearing should be held regarding the provisions of the Modified RRS Proposal. The scope of the hearing will be limited to the provisions of, and alternatives to, the Modified RRS Proposal. No further testimony will be allowed regarding other assignments of error raised by parties.

{¶ 16} In addition, in light of the decision to hold an evidentiary hearing regarding the provisions of the Modified RRS proposal contained in FirstEnergy's application for rehearing, the stay of discovery is hereby terminated in order to provide parties the ability to conduct discovery in anticipation of the forthcoming hearing.

{¶ 17} Further, in order to provide the parties sufficient time and opportunity to present evidence related to the Modified RRS Proposal, the attorney examiner finds the following procedural schedule is reasonable and should be established for this proceeding:

- (a) Testimony on behalf of intervenors should be filed by June 22, 2016.
- (b) Discovery requests regarding the Modified RRS Proposal, except for notices of deposition, should be served by July 1, 2016.
- (c) The evidentiary hearing shall commence on July 11, 2016, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-A, Columbus, Ohio.

{¶ 18} Further, the attorney examiner finds that the response time for discovery should continue to be seven days for all discovery served in this proceeding. Discovery requests and replies shall be served by hand delivery, e-mail or facsimile (unless otherwise agreed by the parties). An attorney serving a discovery request shall attempt to contact the attorney upon whom the discovery request will be served in advance to advise him/her that a request will be forthcoming (unless otherwise agreed by the parties). To the extent that a party has difficulty responding to a particular discovery request within the seven-day period, counsel for the parties should discuss the problem and work out a mutually satisfactory solution.

III. ORDER

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That the stay of discovery previously granted in this proceeding be terminated, in accordance with Paragraph 16. It is, further,

{¶ 21} ORDERED, That the procedural schedule set forth in Paragraph 17 be observed by the parties. It is, further,

{¶ 22} ORDERED, That the discovery timeline set forth in Paragraph 18 be observed by the parties. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Megan Addison

By: Megan J. Addison
Attorney Examiner

GAP/sc

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

Summary: Attorney Examiner Entry setting a procedural schedule and terminating the stay of discovery imposed in the May 20, 2016 Attorney Examiner Entry. - electronically filed by Sandra Coffey on behalf of Megan Addison, Attorney Examiner, Public Utilities Commission of Ohio