

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

**MOTION FOR AN EXTENSION OF THE ATTORNEY EXAMINER’S
PROCEDURAL SCHEDULE AND
REQUEST FOR EXPEDITED RULING
BY
NORTHWEST OHIO AGGREGATION COALITION,
OHIO MANUFACTURERS’ ASSOCIATION ENERGY GROUP
AND
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

The Cleveland Electric Illuminating Company, Toledo Edison Company, and the Ohio Edison Company (collectively “FirstEnergy”) are now seeking authority from the Public Utilities Commission of Ohio (“PUCO”) to charge its 1.9 million customers costs associated with a new proposal that modifies its previously approved Rider RRS. FirstEnergy's new proposal was introduced in FirstEnergy's application for rehearing, filed on May 2, 2016. The modified Rider RRS is fundamentally different than the PUCO approved Rider RRS and could result in customers paying hundreds of millions of dollars in unsubstantiated costs for a long-term financial hedge.

In order to assist the PUCO in its review and analysis of FirstEnergy’s Modified RRS proposal, sufficient time must be afforded to the intervening parties to conduct pre-

hearing discovery, formulate recommendations (and alternatives) for the PUCO to consider, and prepare for and participate in an evidentiary hearing. Sufficient time for case preparation is not provided for in the expedited procedural schedule established by the Attorney Examiner in its June 3, 2016 Entry (“June 3 Schedule”).

Furthermore, with FirstEnergy’s tariff in place and no upcoming auctions, there is no justification to expedite the PUCO’s review of this proposal. While FirstEnergy claims the PUCO should proceed expeditiously to rehear its proposal "so that the Companies' customers may start to receive the rate stabilization benefits of Rider RRS"¹ such claims cannot be taken seriously. These claims really translate to FirstEnergy trying to collect more money from customers, sooner. For under the first two years of FirstEnergy's Rider RRS, customers are expected to pay a net charge (by FirstEnergy's estimate).²

The Joint Movants³ respectfully request⁴ that the PUCO extend the procedural schedule provided in the June 3, 2016 Attorney Examiner’s Entry because it is prejudicial, unjust, and unreasonable. Additionally, the Joint Movants request expedited review due to the tight schedule that has already been established. By filing this motion, the Joint Movants do not waive any existing rights or requests that have been made in any previous motions, interlocutory appeals, or applications for rehearing. Nor do Joint Movants concede that the PUCO has proper jurisdiction over the rehearing on this matter.

¹ Rehearing testimony of Eileen Mikkelsen at 21 (May 2, 2016).

² Opinion and Order at 108.

³ Northwest Ohio Aggregation Coalition (“NOAC”), Ohio Manufacturers’ Association Energy Group (“OMAEG”), and The Office of the Ohio Consumers’ Counsel (“OCC”).

⁴ Under Ohio Adm. Code 4901-1-12 and 4901-1-14.

Due process in this case means allowing all parties the ample discovery rights required by law for thorough and adequate case preparation for participation in commission proceedings.⁵ Parties must also be afforded adequate time to present testimony and evidence to the PUCO. Accordingly, a just and reasonable schedule should be ordered as follows:

- A. Intervenors' testimony - filed by July 22, 2016
- B. Written Discovery deadline – served by July 29, 2016
- C. Evidentiary hearing beginning August 8, 2015 at 10:00 a.m. at the PUCO offices.

The reasons the PUCO should grant this motion to extend the procedural schedule are more fully explained in the attached memorandum in support.

Respectfully submitted,

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⁵ See, e.g., R.C. 4903.082.

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**MEMORANDUM IN SUPPORT OF MOTION FOR AN EXTENSION OF
ATTORNEY EXAMINER’S PROCEDURAL SCHEDULE**

I. INTRODUCTION

On May 2, 2016, FirstEnergy filed an Application for Rehearing containing fundamental and substantive changes to its original Rider RRS proposal. On June 3, 2015, the Attorney Examiner in this proceeding established a procedural schedule that would require Intervenors to file testimony in less than 13 business days, complete the discovery process, and prepare for a complex evidentiary hearing in approximately five weeks. Due to this tight schedule, the Joint Movants also request expedited treatment. The Joint Movants cannot certify whether any party objects to the issuance of an expedited ruling on this motion.

But there is no need to expedite the process and rush to judgment. There are no upcoming auctions or tariff filings that are dependent on the outcome of this proceeding. And customers are willing to wait for the so called "benefits" --higher rates-- to be provided under FirstEnergy's Modified Rider RRS.

II. ARGUMENT

A. The Attorney Examiner's procedural schedule denies parties due process and a just and reasonable opportunity to be heard by the PUCO.

The Attorney Examiner in this proceeding has established a procedural schedule that is unreasonable and prejudicial to the intervening parties. Such a schedule does not allow for the “ample” discovery that the law requires.⁶ Nor will it allow parties to adequately prepare for participation in the evidentiary hearing, contrary to Ohio Adm. Code 4901-1-16.

Under the Attorney Examiner's schedule Joint Movants would have to complete their analysis of the FirstEnergy's Application for Rehearing, the Modified RRS Proposal and the new testimony; coordinate, prepare, and file testimony from their own witnesses in less than 13 business days; prepare and serve discovery; and prepare for an evidentiary hearing in approximately five weeks. And while all of this is occurring, the realities of litigation will set in – engagement of expert witnesses; motion practice (a certainty in a case of this magnitude); depositions; coordinating the availability of witnesses, not to mention the schedules of counsel representing FirstEnergy and over a dozen Intervenors (including previously scheduled hearings and client communications). Moreover, it will be difficult to select and engage expert witnesses on the new proposal, have those witnesses review the relevant testimony, engage in the discovery necessary to draft testimony, and draft testimony within 13 days, particularly in light of previously scheduled work commitments. Furthermore, with such a radically new proposal, it is

⁶ R.C. 4903.082.

possible that new witnesses may need to be engaged in order to adequately address the concerns that will be raised in this hearing.

The Attorney Examiner's expedited procedural schedule will deny Joint Movants (and their clients) the basic due process provided to them under the Ohio Revised Code, the Ohio Administrative Code, and the Ohio and U.S. Constitutions.⁷ The expedited schedule is unjust and unreasonable. As a practical matter, it denies Joint Movants the right to be heard. It should be rejected in favor of the schedule proposed here by the Joint Movants.⁸

B. There is no justification to unduly expedite the procedural schedule.

There is no reason at this juncture to move the proceedings at such an expedited pace. FirstEnergy has already implemented its new ESP and PUCO-approved tariffs. There is no need to issue an order before the next SSO auction. Additionally, there is no statutory deadline that must be met. The only reason that FirstEnergy can come up with for expediting the process is that they want to get the "benefits" to customers under its new proposal. Joint Movants have good reason to be wary of those benefits, as, according to FirstEnergy, the benefits mean customers will pay higher rates. Thus, the only thing an expedited schedule will do at this point is allow FirstEnergy to charge consumers more money sooner. And the rushed schedule will deprive the PUCO of a full and complete record that adequately addresses these issues of monumental importance.

⁷ See O.R.C. sec. 4903.082; Ohio Adm. Code 4901-1-16 *et seq.*; Ohio Const., Art. I, sec. 16; U.S. Const., Amends. 5 and 14.

⁸ This motion is not intended to waive any motion or application for rehearing that has been filed with the PUCO. The issues raised in those previous motions are still ripe for PUCO consideration. Nor do Joint Movants concede that the PUCO has proper jurisdiction over the rehearing on this matter.

C. The PUCO should adopt Joint Movants' proposed schedule.

To assure a just and reasonable proceeding an extension to the current procedural schedule is needed. Joint Movants therefore request that the PUCO extend the Attorney Examiner's June 3, 2015 procedural schedule and adopt the following schedule:

- A. Intervenors' testimony - filed by July 22, 2016
- B. Written Discovery deadline – served by July 29, 2016
- C. Evidentiary hearing beginning August 8, 2015 at 10:00 a.m. at the PUCO offices.

This proposed procedural schedule is reasonable and recognizes the fact that FirstEnergy's Application for Rehearing presents a fundamental change to its previously PUCO modified and approved proposal. Joint Movants should be afforded ample discovery in this new case, a right that is established under the law.⁹ Further, this filing by FirstEnergy does not have a pressing need for completion. Therefore, the PUCO's interest in producing a thorough and complete record should far outweigh any purpose that may be served by a rush to complete this case before summer's end.

III. CONCLUSION

The PUCO should set a schedule – as proposed by Joint Movants – that ensures fairness to the interests of FirstEnergy's residential, commercial, and industrial consumers. The Attorney Examiner through its expedited schedule would effectively foreclose Joint Movants, and the great many Ohioans and Ohio businesses that they represent, from having ample rights of discovery, a full set of facts, and a fair hearing process. The unreasonable schedule initially established by the Attorney Examiner should be extended, and the schedule proposed by Joint Movants adopted.

⁹ R.C. 4903.082.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for a Procedural Schedule was served via regular electronic transmission to the persons listed below, on this 10th day of June, 2016.

/s/ Larry S. Sauer
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Summary: Motion Motion for an Extension of the Attorney Examiner's Procedural Schedule and Request for Expedited Ruling by Northwest Ohio Aggregation Coalition, Ohio Manufacturers' Association Energy Group and the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Sauer, Larry S.