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 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**

OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY'S COMBINED MEMORANDUM CONTRA OCC, NOAC, AND OMAEG MOTION TO EXTEND PROCEDURAL SCHEDULE AND P3/EPSA MOTION TO STAY

I. INTRODUCTION

This case has been pending since August of 2014. After thousands of discovery requests, hundreds of hours of depositions and weeks of hearing testimony, the Commission has now set a hearing limited to one discrete issue: the proposed modifications to how Rider RRS should be calculated (the "Proposal"). The bulk of the modest proposed changes to the Rider RRS calculations are supported and reliant on the forecasts which were already the subject of cross examination in this proceeding. As a result, the issue for hearing presents little that is new.

The Companies submitted testimony on May 2, 2016 describing the Proposal.[1] Since that date, the intervenors have been able to consider and review the Proposal as well as issue

[1] *See* Rehearing Testimony of Eileen M. Mikkelsen (May 2, 2016). *See also* Companies Application for Rehearing filed May 2, 2016.

discovery.[2] Some intervenors took advantage of that opportunity and issued discovery requests seeking additional information about the Proposal shortly after it was made. In contrast, Joint Movants[3] waited more than a month before issuing their own discovery requests.[4] Instead of conducting discovery, Joint Movants spent this time filing a flurry of motions which had nothing to do with the merits of the Proposal. The dilatory behavior of the Joint Movants is not grounds to continue this case yet again. The hearing should proceed as scheduled.

II. THE PROCEDURAL SCHEDULE SHOULD NOT BE MODIFIED.

In its Entry on Rehearing dated May 11, 2016, the Commission found that it was appropriate to grant rehearing to consider the assignments of error and the potential for further evidentiary hearings.[5] The Joint Movants have taken issue with this decision. On May 19, 2016, some of the Joint Movants (P3/EPSA) argued that discovery should be stayed while their objections to the Commission's decision were briefed. The Companies opposed this motion, pointing out that any stay of the proceeding would only make it more difficult for intervenors to conduct discovery before the hearing.[6] Thus, to the extent that discovery was briefly stayed, Joint Movants and those parties who failed to oppose the stay, have only themselves to blame.

Otherwise, the motions here present little new. P3/EPSA's motion to stay regurgitates its prior filings. The motion by OCC/NOAC/OMAEG weakly claims that going forward under the current schedule will deny them due process. Even a cursory review of the issue remaining for

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[2] There was a two week stay of discovery between May 20, 2016 and June 3, 2016 at the request of P3/EPSA, which was opposed by the Companies.

[3] OCC, NOAC, OMAEG, and P3/EPSA.

[4] *See* OCC 1st Set of Rehearing Discovery Requests issued June 3, 2016.

[5] Entry on Rehearing dated May 11, 2016, p. 3.

[6] Companies Memorandum Contra P3/EPSA Motion to Stay dated May 26, 2014.

the hearing and the time that has been allowed for discovery demonstrates the fallacy of that argument. Accordingly, the hearing should go forward as currently scheduled.

A. There Is No Reason To Stay This Case.

P3/EPSA filed both a request for certification of an interlocutory appeal and a Motion to Stay. The Motion to Stay reiterates practically verbatim the P3/EPSA request for certification of an interlocutory appeal dated June 8, 2016. The Companies have already responded to those arguments in their brief filed June 13, 2016.[7] As the Companies demonstrated there, the scheduling entry was correct in all respects and there is no reason to stay the procedural schedule while the various Joint Movant motions and applications are decided. Those arguments are hereby incorporated by reference.

B. The Procedural Schedule Should Not Be Modified.

As noted, P3/EPSA requested that discovery be stayed. The Companies opposed this request, pointing out it would reduce the time available for discovery. Having endeavored to stay or delay discovery, P3/EPSA cannot now be heard to complain that they do not have enough time for discovery.

Similarly, given that OCC/NOAC/OMAEG did not join the Companies in opposing the stay of discovery, their claims that they do not now have sufficient time ring hollow.

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[7] "Once the Commission made the decision to reopen the record to consider the Proposal, the Entry was well within the Attorney Examiner's authority to establish hearing procedures. The Entry merely implements the First Entry on Rehearing pursuant to well-established, and often used, Commission rules: (1) Rule 4901-1-17(G) authorizing an attorney examiner to set discovery deadlines; (2) Rule 4901-1-29(A) authorizing an attorney examiner to set deadlines for filing expert testimony; and (3) Rule 4901-1-27(A) authorizing an attorney examiner to set the time and date for hearing." Companies Opposition Brief, p. 4.

In any event, Joint Movants' arguments that they need more time are overblown. The remaining issue for the upcoming hearing is narrow. The modified Rider RRS is for the most part on all fours with the Commission-approved Rider RRS that was the subject of extensive discussion by the parties in this proceeding. The data supporting how modified Rider RRS will be calculated – plant costs, generation output and cleared capacity – have already been subject to extensive cross examination. These inputs were provided to the parties in 2014 and have long been part of the record. All of the non-Rider RRS aspects of Stipulated ESP IV have similarly been resolved or are awaiting decision and are not at issue on rehearing. Because there is almost nothing new for consideration at this point, there is no reason to engage in additional discovery beyond what has already been authorized.

Given the narrow nature of the remaining issue, the time provided for discovery in this case is sufficient. The Joint Movants could have issued discovery requests regarding Modified Rider RRS at any point between May 2, 2016 and May 20, 2016. The Joint Movants chose not to do so. The Joint Movants again had the opportunity to conduct discovery since June 3, 2016, and ultimately took advantage of that opportunity to issue multiple rounds of discovery. Joint Movants still have time to receive those responses and issue multiple additional rounds of discovery. Notably none of the current motions identifies any specific issues or topics that Joint Movants have been unable to address in discovery under the current schedule.

Joint Movants claim that due process requires additional time to conduct discovery.[8] None of the authority they cite supports Joint Movants' vague claim. At bottom, due process requires that parties have the opportunity to be heard. Joint Movants have made no showing that

[8] OCC/NOAC/OMAEG Mem. in Supp. of Joint Motion, p. 2.

they will not have this opportunity. Given the scope of the upcoming hearing issues and the time allowed for discovery, they couldn't make such a showing.

The upcoming hearing is limited in scope. There is no statutory minimum period of time which must be provided for discovery, and more than two months of discovery for a simple hearing on a limited issue is more than reasonable. There already has been a substantial time period allowed for discovery – including months of discovery in 2014 and 2015 on the Rider RRS inputs that are proposed to be used under the Proposal. Joint Movants have had the opportunity to propound multiple sets of discovery, and they also have the ability to take depositions. There is, accordingly, no due process issue with the procedural schedule.

OCC/NOAC/OMAEG also claim that customers would benefit from a delay because Rider RRS under the Proposal is projected to be a charge to customers in the next few months. This argument ignores several realities about this case. Stipulated ESP IV includes more than Rider RRS. But the final provisions of Rider RRS will have a large role in determining whether the Companies will accept Stipulated ESP IV as modified by the Commission and the rehearing process. Uncertainty about whether Stipulated ESP IV – with all of its benefits – goes forward benefits no one. Accordingly, to bring Stipulated ESP IV to a prompt conclusion, the Proposal should be evaluated on its merits, and a decision issued in a timely manner.

III. CONCLUSION

For the foregoing reasons, the P3/EPSA Motion to Stay and the OCC/NOAC/OMAEG Motion to Modify Procedural Schedule should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this Memorandum Contra was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 17th day of June, 2016. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties. Further, a courtesy copy has been served upon parties via electronic mail.

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

Summary: Memorandum Contra OCC/NOAC/OMAEG Motion to Extend Procedural Schedule and P3/EPSA Motion to Stay electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company