

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of)
Ohio Edison Company, The Cleveland) Case No. 08-936-EL-SSO
Electric Illuminating Company, and)
The Toledo Edison Company for)
Approval of a Market Rate Offer to)
Conduct a Competitive Bidding)
Process for Standard Service Offer)
Electric Generation Supply,)
Accounting Modifications Associated)
with Reconciliation Mechanism, and)
Tariffs for Generation Service.)

**MEMORANDUM CONTRA OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MOTION FOR CONTINUANCE AND EXTENSION OF TIME**

The FirstEnergy Companies are generally amenable to granting requests for extensions where it is reasonable and practical to do so. Under the circumstances of this case, however, Ohio Partners for Affordable Energy's ("OPAE") request to extend the deadline for filing direct testimony and to continue the hearing until September 22, 2008 is neither reasonable nor practical. OPAE's motion should be denied.

The Attorney Examiners held a prehearing conference in this matter on August 25, 2008 and stressed the need to expedite the procedural schedule in this case. None of the parties voiced opposition to the case scheduled announced at the end of that conference. Specifically, the Attorney Examiners established September 9 as the deadline for filing intervenor testimony. The hearing was scheduled for September 16. Counsel for OPAE was at the prehearing conference and thus had the opportunity to raise concerns about the case schedule. OPAE said nothing. For

OPAE to now claim that it was “caught unaware of the accelerated schedule” defies credibility. (OPAE Motion, p. 6.)

Indeed, OPAE’s motion indicates that OPAE contacted its expert “within two hours of the technical conference” that was held in this proceeding on August 18. (OPAE Motion, p. 6.) OPAE further states that its expert started work that day. (Id.) Given that the FirstEnergy Companies filed their MRO application on July 31, 2008, and further given that R.C. 4928.142(B) requires the Commission to rule on an MRO application with 90 days, OPAE was on notice that the Commission would likely schedule hearings on the application sometime in September. OPAE and its expert had the opportunity to discuss potential scheduling conflicts in the period between the technical conference and prehearing conference.

OPAE’s claim that no one will be prejudiced by an extension is incorrect. The hearings in the FirstEnergy Companies’ ESP application are scheduled to commence, pursuant to the Entry issued September 5, on October 16. There has been no indication that once the MRO hearing begins, the hearing will continue on consecutive days. Therefore, moving the MRO hearings to September 22 raises the potential for the hearings in both the MRO and ESP to overlap. At a minimum, the FirstEnergy Companies would be forced to prepare for the ESP hearings while simultaneously participating in the MRO hearings, as would all other parties and Staff. The schedule adopted at the prehearing conference is much more workable with the ESP schedule for all others concerned. Further, the FirstEnergy Companies, and presumably other parties, have now altered their plans and taken actions to comply with the MRO procedural schedule issued by the Attorney Examiners on August 25.

OPAE requests, in the alternative, that it be granted an extension to file its expert testimony. The FirstEnergy Companies take this to mean that OPAE proposes to file its expert

testimony three days later than all other parties but maintain the September 16 hearing date. This proposal is equally impractical and improper. If OPAE is granted an extension to file its testimony on September 12, other intervening parties would presumably be entitled to the same extension upon request. The FirstEnergy Companies would then have only one business day to review testimony, take depositions and prepare for hearing. That would be impossible.

The Commission's current caseload of SSO cases and rate cases (among other proceedings) is challenging for everyone. The FirstEnergy Companies and their counsel, like OPAE and other parties, often find themselves having to be in multiple places at the same time. That is the world we all find ourselves in at the moment. Tinkering with case schedules after they are established is not the way to deal with this situation. Changing the schedule in one case has a cascading effect in other cases. OPAE could have raised its concerns about the MRO schedule at the prehearing conference on August 25. Having failed to do so, OPAE must abide by the same schedule that applies to all other parties.

For these reasons, OPAE's motion for continuance and for an extension should be denied.

September 8, 2008

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Ohio Partners for Affordable Energy's Motion for Continuance and Extension of Time was electronically delivered to the following persons, this 8th day of September, 2008:


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