

FILE

FAX

**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)	Case No. 09-906-EL-SSO
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)	

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**MEMORANDUM CONTRA
MOTION FOR AN EXTENSION OF
TIME TO FILE TESTIMONY**

The Commission should deny the motion filed by the Office of the Ohio Consumers' Counsel ("OCC") to extend the time for intervenors to file testimony. Not only has OCC failed to identify any "good cause" for an extension, but the delay proposed by the motion would prejudice Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (the "Companies") and their ability to prepare for the hearing in this matter.

This case has been pending since October 20, 2009 when the Companies' application and testimony were filed. OCC has had the opportunity to plan its case since that date. A procedural entry was issued in this matter on November 12. Thus, OCC has known for two weeks what the schedule in this matter would be. OCC has provided no definitive reason, much less good cause, why it cannot get its testimony filed in time. It has provided the Commission with only the vaguest assertions. For example, OCC refers to the "State process for approval of contracts" (OCC Memo in Supp., p. 3), but OCC fails to provide any concrete

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information about: (a) when it began that process; (b) why the process has prevented OCC from retaining whatever assistance that it needs; or (c) more critically, any assertion that, without the extension, OCC would be unable to file its testimony on time.

Similarly, OCC makes an ambiguous reference to some alleged failure by the Companies to provide discovery (*id.*), but OCC again fails to provide any specifics. The reason for the omission is obvious: OCC can't provide any. On the contrary, the Companies have met every deadline for discovery and have complied with all of their discovery obligations.

The best that OCC can argue is that having to file its testimony on time would be "burdensome." Given the time schedule already established in this case, OCC can hardly claim to have a monopoly on being "burdened" by having to meet the tight time schedules set in this matter. Indeed, as the schedule now stands, the Companies are faced with having to review testimony, schedule, prepare for and take depositions of, and prepare cross-examinations for witnesses for all of twenty intervenors, movant intervenors and Staff – all in ~~six~~ business days (including the day before the hearing). If OCC had its way, the Companies would have only *three* business days to do all of this.

Although the Companies have asked the intervenors to state whether they intend to sponsor testimony and to assist in discussing a deposition schedule, no intervenor has advised that it will *not* be producing any witnesses.¹ It therefore is reasonable to assume that all parties currently contemplate filing testimony. Thus, if there is any party that faces an extraordinary burden in this case, it is the Companies. Granting OCC's motion would only tip the imbalance

¹ The Companies propounded an identical set of discovery to each intervenor and to each party that has moved to intervene. The discovery sought to have the responding party identify the witnesses intended to be sponsored, the substance and basis of the testimony. The Companies also served and filed notices for depositions of each witness identified, which depositions were to be held at times to be agreed upon.

unfairly further against the Companies to such an extent as effectively to preclude the Companies from preparing to respond to opposing testimony.

CONCLUSION

For the foregoing reasons OCC's motion for an extension of time to file testimony should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Companies' Memorandum Contra Motion to Extend Time to File Testimony was delivered to the following persons by e-mail this 27th day of November, 2009:


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