

**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. 12-1230-EL-SSO
Establish a Standard Service Offer)	
Pursuant to R.C. § 4928.143 in the Form)	
of an Electric Security Plan.)	

**JOINT MOTION TO EXTEND PROCEDURAL SCHEDULE
AND
JOINT MOTION FOR CONTINUANCE OF THE EVIDENTIARY HEARING
AND
REQUEST FOR EXPEDITED RULING
BY
ENVIRONMENTAL LAW AND POLICY CENTER
NATURAL RESOURCES DEFENSE COUNCIL
NORTHEAST OHIO PUBLIC ENERGY COUNCIL
NORTHWEST OHIO AGGREGATION COALITION
OFFICE OF THE OHIO CONSUMERS' COUNSEL
OHIO ENVIRONMENTAL COUNCIL
SIERRA CLUB**

Now come The Environmental Law and Policy Center, Natural Resources
Defense Council, Northeast Ohio Public Energy Council, Northwest Ohio Aggregation
Council, Office of the Ohio Consumers' Counsel, Sierra Club and The Ohio
Environmental Council (collectively, the "Consumer Advocates"), and move the Public
Utilities Commission of Ohio ("PUCO" or "the Commission") for an extension of the
procedural schedule for this matter, and to continue the evidentiary hearing. Consumer

Advocates hereby submit this Motion¹ to extend the current due date for non-signatory parties' testimony² and to continue the date for commencement of the evidentiary hearing³ for a minimum of four weeks. (These Motions are not a withdrawal of the Interlocutory Appeal that consumer advocates filed on April 24, 2012, and that the Commission should grant to provide for a more reasonable schedule.). The reasons for this request are set forth more fully in the accompanying memorandum in support. In addition, because Consumer Advocates' testimony is currently due May 4, 2012, Consumer Advocates request an expedited ruling on this Motion, pursuant to Ohio Adm. Code 4901-1-12(C).

Respectfully submitted,

/s/ Robert Kelter

Robert Kelter
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
Phone: 312-795-3734
Fax: 312-795-3730
rkelter@elpc.org

Environmental Law and Policy Center

¹ The Motion is filed pursuant to Ohio Adm. Code 4901-1-12 and Ohio Adm. Code 4901-1-13.

² Entry at 2 (April 19, 2012) (non-signatory party testimony currently due May 4, 2012, extension to June 1, 2012 is being requested herein).

³ Entry at 2 (April 19, 2012) (evidentiary hearing to commence currently on May 21, 2012, extension to June 18, 2012 is being requested herein).

/s/ Christopher J. Allwein

Christopher J. Allwein
Williams Allwein & Moser, L.L.C.
1373 Grandview Ave., Suite 212
Columbus, Ohio 43212
Phone: 614-429-3092
Fax: 614-670-8896
callwein@wamenergylaw.com

Counsel for Natural Resources Defense
Council and Sierra Club

/s/ Glenn S. Krassen

Glenn S. Krassen
Bricker & Eckler LLP
1001 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 523-5405
Facsimile: (216) 523-7071
gkrassen@bricker.com

Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
mwarnock@bricker.com

Attorneys for the Northeast Ohio Public
Energy Council

/s/ Leslie A. Kovacik

Leslie A. Kovacik
City of Toledo
420 Madison Ave., Suite 100
Toledo, Ohio 43604-1219
leslie.kovacik@toledo.oh.gov

Counsel on behalf of the Northwest Ohio
Aggregation Coalition

/s/ Thomas R. Hays

Thomas R. Hays
John Borell
Lucas County Prosecutors Office
700 Adams Street Suite 251
Toledo, Ohio 43604
trhayslaw@gmail.com
jaborell@co.lucas.oh.us

Counsel on behalf of the Northwest Ohio
Aggregation Coalition

/s/ Cathryn N. Loucas

Trent Dougherty
Cathryn N. Loucas
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
trent@theoec.org
cathy@theoec.org

Counsel on behalf of The Ohio
Environmental Council

BRUCE J. WESTON

/s/ Larry S. Sauer

Larry S. Sauer, Counsel of Record
Terry L. Etter
Melissa Yost
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
614-466-1312 (Telephone-Sauer)
614-466-7964 (Telephone-Etter)
614-466-1291 (Telephone-Yost)
sauer@occ.state.oh.us
etter@occ.state.oh.us
yost@occ.state.oh.us

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MEMORANDUM IN SUPPORT

I. CASE HISTORY

On April 13, 2012, FirstEnergy filed an application (“Application”) pursuant to Section 4928.141, Revised Code, to provide for a standard service offer (“SSO”) commencing as early as May 2, 2012, but no later than June 20, 2012, and ending May 31, 2016. The Application is for an electric security plan (“ESP”), filed pursuant to R.C. 4928.143. The Application included a Stipulation and Recommendation (“Stipulation”) agreed to by various Parties regarding the terms of the proposed ESP (“ESP 3”). FirstEnergy also filed a Motion for Waiver of Rules in an attempt to avoid compliance with the standards under Ohio Adm. Code 4901:1-35-03(C).

Six days later, the Attorney Examiner issued an Entry establishing a procedural schedule. In the April 19 Entry, the Attorney Examiner established the procedural schedule for this case. The Entry states:

The attorney examiner finds that the following procedural schedule is practicable and should be established for this proceeding:

- (a) Supplemental testimony on behalf of FirstEnergy and other signatory parties should be filed by April 23, 2012.
- (b) Pursuant to Rule 4901:1-35-05, Ohio Administrative Code (O.A.C), a technical conference regarding the application should be held on April 26, 2012, at 10:00 a.m., at the offices of the Commission, 180 E. Broad Street, 11th Floor, Hearing Room 11-B, Columbus, Ohio.
- (c) Pursuant to Rule 4901:1-35-06(B), O.A.C, motions to intervene in this proceeding should be filed by April 30, 2012.
- (d) Testimony on behalf of non-signatory parties should be filed by May 4, 2012.
- (e) The evidentiary hearing shall commence on May 21, 2012, at 10:00 a.m., at the offices of the Commission, 180 E. Broad Street, 11th Floor, Hearing Room 11-C, Columbus, Ohio.⁴

On April 17, 2012, the Consumer Advocates filed a Joint Motion to Bifurcate and a Joint Memorandum Contra FirstEnergy's Motion for Waiver of Rules. In addition, on April 23, 2012, the Consumer Advocates filed an Interlocutory Appeal of the April 19 Entry.

On April 25, 2012, the Commission issued a ruling on FirstEnergy's Motion for Waiver of Rules ("April 25 Entry"). The Commission stated:

Here, the Commission finds that the request for waivers should be granted, in part, and denied, in part. The Commission notes that the application and stipulation filed in this proceeding appear on their face to extend for an additional two years, with modifications, the electric security plan originally modified and approved by the Commission in the ESP 2. Therefore, the Commission finds that FirstEnergy has demonstrated good cause for a waiver of the filing requirements contained in Rules 4901:1-35-03(C)(4), 4901:1-35-03(C)(9)(a), 4901:1-35-03(C)(9)(b),

⁴ April 19 Entry at 2-3.

4901:1-35-03(C)(9)(d), 4901:1-35-03(C)(9)(e), 4901:1-35-03(C)(9)(f), 4901:1-35-03(C)(10), 4901:1-35-03(F), and 4901:1-35-03(G), O.A.C. The Commission notes specifically as to Rule 4901:1-35-03(G), O.A.C, that, despite the waiver of this section, workpapers are discoverable and must be made available to Staff upon request.

However as the Commission noted in its previous finding in the ESP 2, the financial projections provided for in Rule 4901:1-35-03(C)(2), O.A.C, are necessary to our consideration of this type of application and stipulation and in the public interest. Similarly, the Commission finds that the information on projected rate impacts required by Rule 4901:1-35-03(C)(3), O.A.C; information regarding the operational support plan required by Rule 4901:1-35-03(C)(5), O.A.C; information relating to governmental aggregation programs required by Rules 4901:1-35-03(C)(6) and 4901:1-35-03(C)(7), O.A.C; statement regarding state policy required by Rule 4901:1-35-03(C)(8), O.A.C; information regarding retail shopping required by Rule 4901:1-35-03(C)(9)(c), O.A.C; information on alternative regulation mechanisms or programs relating to distribution service required by Rule 4901:1-35-03(C)(9)(g), O.A.C; and, information concerning provisions for economic development, job retention, and energy efficiency programs required by Rule 4901:1-35-03(C)(9)(h), O.A.C, are necessary for our consideration of the application and stipulation. Additionally, some of these filing requirements may involve information that differs from the information utilized in the ESP 2. Consequently, the Commission denies FirstEnergy's request for a waiver of Rules 4901:1-35-03(C)(2), 4901:1-35-03(C)(3), 4901:1-35-03(C)(5), 4901:1-35-03(C)(6), 4901:1-35-03(C)(7), 4901:1-35-03(C)(8), 4901:1-35-03(C)(9)(c), 4901:1-35-03(C)(9)(g), and 4901:1-35-03(C)(9)(h), O.A.C. FirstEnergy is directed to supplement its application with this information within seven days unless otherwise ordered by the Commission or the attorney examiner.⁵

The Commission's Entry thereby granted some of FirstEnergy's waiver requests and denied some of the waiver requests. The requests that were denied obligate the Companies to file additional materials with the Commission by May 2, 2012. The

⁵ April 25 Entry at 5-6.

additional information required by the Commission's rules will be filed as late as two days before non-signatory testimony is due.

Commission rules also require "a complete description of the ESP and testimony explaining and supporting each aspect of the ESP."⁶ By filing only two short piece of testimony by Mr. Ridmann,⁷ the companies still have not complied or received a waiver for this requirement. In light of the Commission's April 25 Entry and FirstEnergy's continued failure to file a proper application, the procedural schedule for this proceeding should be extended by a minimum of four weeks. These Motions are not a withdrawal of the Interlocutory Appeal that consumer advocates filed on April 24, 2012, and that the Commission should grant to provide for a more reasonable schedule.

II. ARGUMENT

Good cause exists for the Commission to grant Consumer Advocates Motion to extend the procedural schedule and continue the evidentiary hearing. Under the procedural schedule as it currently exists, the Consumer Advocates (non-signatory parties to the Stipulation) must file testimony by May 4, 2012. As indicated above, the Commission has instructed FirstEnergy to file additional information by May 2, 2012 (within seven days of the April 25 Entry). The additional information includes: financial projections,⁸ information on projected rate impacts,⁹ information regarding the

⁶ Ohio Adm. Code 4901:1-35-03(C)(1).

⁷ Including an additional eight pages of testimony filed on April 23, 2012.

⁸ Ohio Adm. Code 4901:1-35-03(C)(2).

⁹ Ohio Adm. Code 4901:1-35-03(C)(3).

operational support plan,¹⁰ information relating to governmental aggregation programs,¹¹ statement regarding state policy,¹² information regarding retail shopping,¹³ information on alternative regulation mechanisms or programs relating to distribution service,¹⁴ and information concerning provisions for economic development, job retention, and energy efficiency programs.¹⁵ It is anticipated that the information being provided will be voluminous and will take the Consumer Advocates significant time to review.¹⁶ The current procedural schedule does not permit time for such a review. Consumer Advocates will be deprived of conducting discovery with regard to the additional information submitted by FirstEnergy or incorporate the additional information in testimony. Therefore, the Commission should grant Consumer Advocates' Motion.

The fundamental basis for ample discovery rights is so that parties in PUCO cases are able to present to the Commission recommendations and positions that are based on information and data obtained through the discovery process, as contemplated by law, rule and Court precedent. Information is key for Commission decision-making, as the Commission recently stated in a decision in an electric case:

In the Opinion and Order, the Commission recognized that these rate impacts may be significant, based upon evidence indicating

¹⁰ Ohio Adm. Code 4901:1-35-03(C)(5).

¹¹ Ohio Adm. Code 4901:1-35-03(C)(6) and (7).

¹² Ohio Adm. Code 4901:1-35-03(C)(8).

¹³ Ohio Adm. Code 4901:1-35-03(C)(9)(c).

¹⁴ Ohio Adm. Code 4901:1-35-03(C)(9)(g).

¹⁵ Ohio Adm. Code 4901:1-35-03(C)(9)(h).

¹⁶ Consumer Advocates do not concede that the filing of the additional information will bring FirstEnergy's Application into compliance with Ohio law. See Joint Motion to Bifurcate and Joint Memorandum Contra FirstEnergy's Motion for Waivers at 5-7 (April 17, 2012).

that total bill impacts may, in some cases, approach 30 percent. However, the evidence in the record inadvertently failed to present a full and accurate portrayal of the actual bill impacts to be felt by customers, particularly with respect to low load factor customers who have low usage but high demand.¹⁷

To assure the Commission has a full and accurate portrayal of the issues presented in a particular case, the Commission should ensure that all parties and intervenors are provided a procedural schedule that grants sufficient time to review utility filings and provides parties ample rights of discovery. In this case, the Consumer Advocates are provided time for neither. Therefore, the Commission should grant the Consumer Advocates' Motion, and extend the procedural schedule to reflect a modified due date for non-signatory party testimony of at least June 1, 2012, and to continue the commencement of the evidentiary hearing of at least June 18, 2012.

Because testimony is currently due on May 4, the Consumer Advocates request expedited consideration of its Motion pursuant to Ohio Adm. Code 4901-1-12(C). Consumer Advocates are not able to certify that no party objects to a ruling on this Motion on an expedited basis.

III. CONCLUSION

For all the reasons discussed above, the Commission should grant Consumer Advocates' Motions and extend the procedural schedule by at least four weeks as a result of the April 25 Entry, to allow Consumer Advocates and other interested parties sufficient time to review the additional information, present testimony and prepare for the

¹⁷ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, et al, Entry on Rehearing at 11 (February 23, 2012).

evidentiary hearing. The Consumer Advocates specifically request the Commission to modify the procedural schedule to reflect a due date for non-signatory party testimony extended to at least June 1, 2012 and commencement of the evidentiary hearing extended to at least June 18, 2012. But these Motions are not a withdrawal of the Interlocutory Appeal that consumer advocates filed on April 24, 2012, and that the Commission should grant to provide for a more reasonable schedule.

Respectfully submitted,

/s/ Robert Kelter

Robert Kelter
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
Phone: 312-795-3734
Fax: 312-795-3730
rkelter@elpc.org

Environmental Law and Policy Center

/s/ Christopher J. Allwein

Christopher J. Allwein
Williams Allwein & Moser, L.L.C.
1373 Grandview Ave., Suite 212
Columbus, Ohio 43212
Phone: 614-429-3092
Fax: 614-670-8896
callwein@wamenergylaw.com

Counsel for Natural Resources Defense
Council and Sierra Club

/s/ Glenn S. Krassen

Glenn S. Krassen
Bricker & Eckler LLP
1001 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 523-5405
Facsimile: (216) 523-7071
gkrassen@bricker.com

Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
mwarnock@bricker.com

Attorneys for the Northeast Ohio Public
Energy Council

/s/ Leslie A. Kovacik

Leslie A. Kovacik
City of Toledo
420 Madison Ave., Suite 100
Toledo, Ohio 43604-1219
leslie.kovacik@toledo.oh.gov

Counsel on behalf of the Northwest Ohio
Aggregation Coalition

s/ Thomas R. Hays

Thomas R. Hays
John Borell
Lucas County Prosecutors Office
700 Adams Street Suite 251
Toledo, Ohio 43604
trhayslaw@gmail.com
jaborell@co.lucas.oh.us

Counsel on behalf of the Northwest Ohio
Aggregation Coalition

/s/ Cathryn N. Loucas

Trent Dougherty
Cathryn N. Loucas
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
trent@theoec.org
cathy@theoec.org

Counsel on behalf of The Ohio
Environmental Council

BRUCE J. WESTON

/s/ Larry S. Sauer

Larry S. Sauer, Counsel of Record
Terry L. Etter
Melissa Yost
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
614-466-1312 (Telephone-Sauer)
614-466-7964 (Telephone-Etter)
614-466-1291 (Telephone-Yost)
sauer@occ.state.oh.us
etter@occ.state.oh.us
yost@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served upon the following parties via electronic mail, regular mail or by hand delivery this 26th day of April, 2012.

/s/ Larry S. Sauer
Larry S. Sauer
Assistant Consumers' Counsel

SERVICE LIST

Thomas.mcnamee@puc.state.oh.us
burkj@firstenergycorp.com
haydenm@firstenergycorp.com
korkosza@firstenergycorp.com
elmiller@firstenergycorp.com
cmooney2@columbus.rr.com
jmclark@vectren.com
Asim.haque@icemiller.com
jlang@calfee.com
lmcbride@calfee.com
vparisi@igsenergy.com
mswhite@igsenergy.com
mhpetricoff@vssp.com
Randall.Griffin@DPLINC.com
Judi.sobecki@dplinc.com
Trent@theoec.org
Cathy@theoec.org

dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkyler@BKLawfirm.com
lmcalister@bricker.com
tsiwo@bricker.com
rkelter@elpc.org
callwein@wamenergylaw.com
gkrassen@bricker.com
mwarnock@bricker.com
leslie.kovacik@toledo.oh.gov
trhayslaw@gmail.com
jaborell@co.lucas.oh.us
mdortch@kravitzllc.com
amy.spiller@duke-energy.com
jeanne.Kingery@duke-energy.com
mjsatterwhite@aep.com
stnourse@aep.com

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Summary: Motion Joint Motion to Extend Procedural Schedule and Joint Motion for Continuance of the Evidentiary Hearing and Request for Expedited Ruling by the Environmental Law and Policy Center, Natural Resources Defense Council, Northeast Ohio Public Energy Council, Northwest Ohio Aggregation Coalition, Office of the Ohio Consumers' Counsel, the Ohio Environmental Council and the Sierra Club