

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Ohio Edison Company,)
The Cleveland Electric Illuminating)
Company, and The Toledo Edison)
Company for Authority to Provide for a) Case No. 12-1230-EL-SSO
Standard Service Offer Pursuant to Section)
4928.143, Revised Code, in the Form of an)
Electric Security Plan.)

ENTRY

The attorney examiner finds:

- (1) Ohio Edison Company (OE), The Cleveland Electric Illuminating Company (CEI), and the Toledo Edison Company (TE) (collectively, FirstEnergy) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) On April 13, 2012, FirstEnergy filed an 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), in accordance with Section 4928.143, Revised Code, and the application includes a stipulation agreed to by various parties regarding the terms of the proposed ESP (ESP 3).
- (3) In its application, FirstEnergy requests that the Commission set an expedited procedural schedule for the stipulated ESP because, if approved by May 2, 2012, the plan includes provisions to allow FirstEnergy to bid demand response resources and energy efficiency resources into the 2015/2016 PJM base residual auction on May 7, 2012, or, if approved by June 20, 2012, to permit adequate time to implement changes to the bidding schedule to capture a greater amount of generation at lower prices for the benefit of customers.
- (4) By entry issued April 19, 2012, the attorney examiner established a procedural schedule (April 19 Entry), providing, in pertinent part, that testimony on behalf of non-signatory

parties should be filed by May 4, 2012, and that the evidentiary hearing should commence on May 21, 2012.

- (5) Thereafter, on April 24, 2012, 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, and the Sierra Club (collectively, the Ohio Environmental and Consumer Advocates or OCEA), filed an interlocutory appeal, motion for certification to the Commission, and application for review of the procedural schedule. In its filing, OCEA argues that Section 4928.143(C)(1), Revised Code, provides for a 275-day period of time for the review of an ESP, and that the procedural schedule set by the attorney examiner falls short of that time allotted. Further, OCEA argues that the procedural schedule set by the attorney examiner does not provide non-signatory parties with time for adequate case preparation.
- (6) Additionally, on April 26, 2012, OCEA filed a joint motion to extend the procedural schedule, joint motion for a continuance of the evidentiary hearing, and a request for an expedited ruling.

In its joint motion, OCEA notes that, by entry issued April 25, 2012, the Commission denied certain waivers of the standard filing requirements filed by FirstEnergy and required FirstEnergy to supplement its application by May 2, 2012. OCEA points out that, because the current procedural schedule requires non-signatory parties to file testimony by May 4, 2012, non-signatory parties will not have sufficient time to review FirstEnergy's supplemental information prior to filing their testimony. Further, OCEA argues that the current procedural schedule does not ensure that all parties and intervenors will have sufficient time to review filings and conduct discovery. Consequently, OCEA requests that the Commission modify the procedural schedule to require testimony on behalf of non-signatory parties to be filed no earlier than June 1, 2012, and to reschedule the evidentiary hearing to no earlier than June 18, 2012.

- (7) On April 27, 2012, AEP Retail Energy Partners LLC (AEP Retail), filed a motion to modify the procedural schedule as well as a request for expedited treatment. In its motion, AEP Retail also argues that non-signatory parties will have little

opportunity to review the supplemental information that will be submitted by FirstEnergy prior to filing their testimony, and that parties will have insufficient time to conduct meaningful discovery prior to the hearing date. For these reasons, AEP Retail requests that testimony on behalf of non-signatory parties be due no sooner than June 11, 2012, and that the hearing date be rescheduled no earlier than June 25, 2012.

- (8) Thereafter, on April 30, 2012, FirstEnergy filed a memorandum contra OCEA's interlocutory appeal, motion for certification to the Commission, and application for review. In its memorandum contra, FirstEnergy argues that the April 19 Entry presents no new or novel questions of interpretation, law, or policy, or any departure from past precedent. FirstEnergy notes that Section 4928.143(C)(1), Revised Code, requires the Commission to issue an order on an ESP application not later than 275 days after the application's filing date, and that the procedural schedule established by the attorney examiner does not conflict with this statute because it does not establish any deadline for a Commission order on the ESP application. Further, FirstEnergy points out that OCEA has cited no Commission precedent from which the established procedural schedule departs and states that, in fact, the procedural schedule is consistent with the schedules set for other recent SSO proceedings. In addition, FirstEnergy claims that OCEA has not demonstrated that the Commission's immediate determination is necessary to prevent undue prejudice to the non-signatory parties to the proposed stipulation. Therefore, FirstEnergy concludes that OCEA's interlocutory appeal, motion for certification, and application for review does not meet the standards for an interlocutory appeal and should be denied.
- (9) Initially, the attorney examiner will address OCEA's interlocutory appeal, motion for certification to the Commission, and application for review. Rule 4901-1-15, Ohio Administrative Code (O.A.C.), sets forth the substantive standards for interlocutory appeals. The rule provides that no party may take an interlocutory appeal from a ruling by an attorney examiner unless that ruling is one of four specific rulings enumerated in paragraph (A) of the rule, which are not applicable in this instance, or unless the appeal is certified by the attorney examiner pursuant to paragraph (B) of the rule.

Paragraph (B) of Rule 4901-1-15, O.A.C., specifies that an attorney examiner shall not certify an interlocutory appeal unless the attorney examiner finds that the appeal presents a new or novel question of law or policy and an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties should the Commission ultimately reverse the ruling in question.

The attorney examiner initially notes that, as argued by FirstEnergy, the 275-day period set forth by Section 4928.143(C)(1), Revised Code, represents the outer limitations of the time period in which the Commission may issue an order on an application for an ESP and does not require the Commission to take the entire 275-day period to issue an order. Further, the attorney examiner finds that establishing a procedural schedule in a Commission proceeding is a routine matter with which the Commission and its examiners have had long experience and is not a new or novel question of law or policy. *In re Vectren Energy Delivery of Ohio*, Case No. 05-1444-GA-UNC, Entry (February 12, 2007) at 7; *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 05-376-EL-UNC, Entry (May 10, 2005) at 2.

Consequently, the attorney examiner finds that the issues identified by OCEA in its interlocutory appeal, motion for certification to the Commission, and application for review do not present a new or novel question of interpretation, law, or policy and, further, are not taken from a new ruling which represents a departure from past precedent. Accordingly, OCEA's interlocutory appeal, motion for certification to the Commission, and application for review should be denied.

- (10) Regarding the motions to extend the procedural schedule filed by AEP Retail and OCEA, the attorney examiner finds that the movants have not demonstrated a compelling reason to extend the hearing date to June 18 or June 25, 2012, as proposed in the motions. The examiner notes that the stipulation proposes to modify the auctions scheduled for October 2012 under FirstEnergy's current ESP. The movants have not demonstrated that there will be sufficient time for potential bidders to respond to the proposed changes in the competitive bidding process if the hearing commences on June 18 or June 25

as the movants propose. Nonetheless, the examiner finds that a more limited extension of the procedural schedule is reasonable. Consequently, the attorney examiner finds that the procedural schedule should be modified to require that testimony on behalf of non-signatory parties be due by 3:00 p.m. on May 21, 2012, and that the evidentiary hearing shall be rescheduled to commence on June 4, 2012, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio.

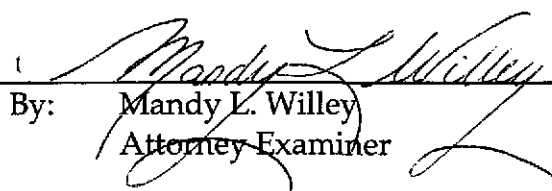
It is, therefore,


ORDERED, That the interlocutory appeal, motion for certification to the Commission, and application for review filed by OCEA is denied. It is, further,

ORDERED, That the procedural schedule is modified as set forth in Finding (10). It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: 
Mandy L. Willey
Attorney Examiner

 sc

Entered in the Journal

MAY 02 2012



Barcy F. McNeal
Secretary