

**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)	Case No. 14-1297-EL-SSO
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)	

**REPLY OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY TO
RETAIL ENERGY SUPPLY ASSOCIATION AND PJM POWER PROVIDERS GROUP
AND THE ELECTRIC POWER SUPPLY ASSOCIATION MEMORANDUM CONTRA**

I. INTRODUCTION

On November 5, 2014, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”), filed their Motion to Amend the Procedural Schedule (the “Motion”). In their Motion, the Companies sought to change the date of the prehearing conference, from January 9, 2015 to January 16, 2015, and the commencement date of the hearing, from January 16, 2015 to January 28, 2015. As demonstrated in their Motion, the Companies have good cause for this request. As currently scheduled, there are only 29 days from the due date for intervenor testimony to the commencement date of the hearing.

Given that there are over fifty intervenors in this proceeding, and the upcoming Christmas and New Year’s holidays, there is simply not enough time for the Companies to review intervenor testimony and schedule and take depositions prior to the hearing under the current procedural schedule. Indeed, no intervenors were willing to commit to depositions over the holidays. The Companies’ proposed schedule also still permits the Commission to issue a decision prior to the Companies’ potential participation in the PJM Base Residual Auction

(“BRA”) scheduled for May 2015. Further, as demonstrated below, the Companies’ proposal does not prejudice any party to this proceeding and best balances the interests of the Commission, Staff, the Companies and the Intervenors.

In their Memoranda Contra, Retail Energy Supply Association (“RESA”), and the PJM Power Providers’ Group and the Electric Power Supply Association (the “Power Providers”) nakedly attempt to game the schedule by blithely ignoring the potential number of intervenor witnesses (and thus the time needed for their depositions) or the legitimate concerns for assuring that there is adequate time between the Commission’s decision here and the May 2015 PJM BRA. Their suggestions for a new schedule recreate the problem which the Companies seek to resolve in their Motion; their suggestion would truncate the time between intervenor testimony and the hearing. Further, these parties simply ignore the fact that the due date for intervenor testimony has already been extended once in this proceeding. Thus, as demonstrated below, the Attorney Examiner should grant the Companies’ requested amendment to the procedural schedule and reject the proposals by RESA and the Power Providers.

II. ARGUMENT

The procedural schedule originally approved for this proceeding was as follows:

- Discovery cutoff: December 1, 2014
- Due date for intervenor testimony: December 5, 2014
- Due date for Staff testimony: December 19, 2014
- Prehearing conference: January 9, 2015
- Hearing commencement date: January 20, 2015

See Case No. 14-1297-EL-SSO, Entry at 2 (Aug. 29, 2014). This schedule provided 46 days from the due date for intervenor testimony to the commencement of the hearing. Further, by setting the commencement date of the hearing for January 20, 2015, this schedule afforded the

Commission sufficient time within which to render a decision on the Companies' Application prior to the May 2015 PJM BRA.

On September 5, 2014, several intervenors moved to alter the schedule and shorten the time for discovery of their witnesses. *See* Case No. 14-1297-EL-SSO, Joint Motion to Modify Discovery Time Limits and Amend the Procedural Schedule (Sept. 5, 2014). In an Entry dated October 6, 2014, the Attorney Examiner changed the due date for intervenor testimony to December 22, 2014, an extension of seventeen days. Thus, pursuant to the October 6 Entry, the current procedural schedule for this proceeding is as follows:

- Discovery cutoff: December 1, 2014
- Due date for intervenor testimony: December 22, 2014
- Due date for Staff testimony: January 9, 2014
- Prehearing conference: January 9, 2015¹
- Hearing commencement date: January 20, 2015

See id. at 5. In light of the extension granted to the intervenors regarding the due date for their testimony, the current schedule, on paper, provides only 29 days between the filing of intervenor testimony and the commencement date for the hearing.

As the Companies demonstrated in their Motion, given the holiday period, the current schedule realistically only provides less than 10 business days, in which to review testimony, as well as schedule and take depositions from intervenor witnesses. Given that there are over fifty intervenors, this schedule is unduly burdensome.

¹ As the Companies indicated in the Motion, scheduling the due date for Staff testimony and the prehearing conference on the same day means that it will not be possible for any party to this proceeding, Staff, the Companies, or the intervenors, as well as the Attorney Examiners, to review Staff's testimony prior to the prehearing conference. *See* Mot. at 2-3. The Companies' Motion resolves this issue as well.

As such, the Companies' proposal in the instant Motion makes sense. The Companies merely seek a one week continuance of the prehearing conference and the hearing, moving those dates to January 16, 2015 and January 28, 2015, respectively. Doing so has numerous advantages. First, it enables all interested parties and the Commission to review Staff testimony prior to the prehearing conference. Second, in providing more time from the due date for intervenor testimony to the commencement date of the hearing, it affords the Companies sufficient time to review intervenor testimony, and schedule and take depositions of intervenors' witnesses, notwithstanding the holidays. Third, it provides the Commission sufficient time to issue a decision prior to the PJM BRA. Indeed, it is crucial for both the Companies and FirstEnergy Solutions Corp. ("FES") to have sufficient time to review and analyze any forthcoming Opinion and Order to determine capacity bidding for the Davis-Besse and Sammis generating units. Fourth, the Companies' proposal does not prejudice any party while fairly balancing the interests of the Commission, Staff, the Companies and the intervenors. Thus, contrary the Power Providers' assertions, there are several "compelling arguments" for amending the procedural schedule accordingly. Power Providers' Memo Contra at 2.

In contrast, RESA's and the Power Providers' proposals are misplaced. Both apparently suggest a willingness to accommodate the Companies but then request that the due date for intervenor testimony be moved back until December 30, 2014. *See* RESA Memo Contra at 2; Power Providers' Memo Contra at 2. In doing so, these proposals merely reinstate the problems identified by the Companies in their Motion. Setting a due date for intervenor testimony of December 30, 2014, leaves little time until the commencement date of the hearing. Again, this time frame will be further reduced by the holidays. The Companies thus would once again be

left with too little time to review intervenor testimony as well as schedule and take numerous depositions of witnesses sponsored by whichever of the over fifty intervenors offers testimony.

Further, the Power Providers ignore the need for the Commission to issue a decision by April 8 in order for the Companies to have time to plan for the PJM BRA in May 2015. *See* Power Providers' Memo Contra at 2-3. Moreover, both RESA and the Power Providers have already received an extension of 17 days regarding the due date of their testimony; now, they are simply seeking another extension. RESA's and the Power Providers' proposals further not only unduly burden the Companies regarding the scheduling of and taking depositions, but also the Commission regarding the need to issue a decision sufficiently before the PJM BRA. Simply put, RESA's and the Power Providers' proposals serve no one's interests but their own.

Contrary to RESA's and the Power Providers' assertions, the Commission decisions cited in the Companies' Motion do not address the need for "symmetry" between a due date for intervenor testimony and the commencement date for a hearing. RESA Memo Contra at 2; Power Providers' Memo Contra at 2. Instead, all of these decisions stand for the proposition that moving a hearing date is permissible in order to afford a party sufficient time to prepare for that hearing. *See generally, In the Matter of Columbus Southern Power Company*, Case No. 09-872-EL-UNC, 2010 Ohio PUC LEXIS 1296 (Dec. 3, 2010); *In the Matter of the Application of Ohio Edison Company*, Case No. 10-176-EL-ATA, 2010 Ohio PUC LEXIS 1211 (Nov. 12, 2010); *In the Matter of the Application of Commerce Energy, Inc. d/b/a Just Energy*, Case No. 02-1828-GA-CRS, 2010 Ohio PUC LEXIS 1025 (Oct. 7, 2010); *In the Matter of the Application of Duke Energy Ohio*, Case No. 10-1268-EL-RDR, 2010 Ohio PUC LEXIS 991 (Sept. 29, 2010). Nor is the citation to other companies' ESP cases availing. There were only 23 intervenors in Duke Energy's case, Case No. 14-841-EL-SSO, and 29 in AEP Ohio's case, Case No. 13-2385-EL-

SSO. This matter presents the Companies with a potentially unprecedented amount of intervenor testimony to which they must respond. Accordingly, the modest proposal made by the Companies in their Motion should be granted without delay.

III. CONCLUSION

For the foregoing reasons, the Commission should grant the Companies' Motion to Amend the Procedural Schedule and deny the procedural proposals set forth in RESA's and the Power Providers' Memoranda Contra.

Date: November 19, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on November 19, 2014.

/s/ David A. Kutik

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Commission of Ohio Docketing Information System on

11/19/2014 3:49:23 PM

in

Case No(s). 14-1297-EL-SSO

Summary: Reply of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to Retail Energy Supply Association and PJM Power Providers Group and the Electric Power Supply Association Memorandum Contra electronically filed by MR. DAVID A KUTIK on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company