

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| 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 |) | |

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY’S MEMORANDUM
CONTRA THE MOTION TO CONTINUE OF THE STAFF OF THE
PUBLIC UTILITIES COMMISSION OF OHIO**

On February 4, 2015, the Commission Staff (“Staff”) filed a motion to continue for 45 days the due date for supplemental intervenor testimony, Staff testimony, the pre-hearing conference, and the hearing date. Granting Staff’s request will not allow the Commission to issue a decision in this proceeding within the 275-day statutory deadline set forth in Section 4928.143 of the Ohio Revised Code or before the PJM Base Residual Auction. Moreover, the Attorney Examiner has considered and rejected previous arguments by various intervenors to adopt a procedural schedule that moves the commencement of the hearing back several weeks. The Attorney Examiner should thus reject Staff’s proposal. In the alternative, the Attorney Examiner should at most grant an approximate 30-day continuance of the due date for Staff testimony, the date of the prehearing conference, and the commencement date of the hearing. The due date for intervenor testimony should not be moved at all.

**Granting Staff’s Motion Will Make It Difficult For The Commission To Comply With
Section 4928.143**

Section 4928.143(C)(1) provides, in pertinent part:

The commission shall issue an order under this division....for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date.

Pursuant to Section 4928.143, the Commission is required to issue an order regarding any subsequent application for approval of an electric security plan ("ESP") by an Ohio electric distribution utility within 275 days of the utility's filing of its ESP application. The Commission has denied continuances of hearing dates where doing so made compliance with the deadline set forth in Section 4928.143 unlikely. *See, e.g. In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, Entry at 3 (Oct. 1, 2008) (denying requested continuance of hearing because "it would leave only 25 days for the Commission to complete the hearing, for the parties to review the evidence and write two sets of briefs, and for the Commission to draft, consider, and approve an opinion and order" in order to comply with the statutory deadline).

Here, the Companies filed their fourth ESP Application on August 4, 2014. The 275-day window provided by Section 4928.143 closes on May 6, 2015. Currently, the hearing in this proceeding is set to commence on February 24, 2015. Staff's request for a 45-day extension, however, would move the commencement date of the hearing to April 10, 2015, leaving a mere 26 days to comply with the requirements of Section 4928.143(C)(1). Staff's motion should thus be denied. *See In re Duke* at 3.

The Attorney Examiner has previously rejected arguments to push back the commencement date of the hearing. As the Companies' prior briefing on this issue makes clear, the Attorney Examiner should deny Staff's motions on similar grounds. *See Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Memorandum Contra Intervenors' Joint Motion to Modify Discovery Time Limits and Amend*

the Procedural Schedule (Sept. 22, 2014); *see also, In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Entry at 4 (June 1, 2012) (denying motion to continue hearing because a continuance had previously been granted).

Granting the Motion Will Make It Unlikely That An Order Will Be Issued Before The PJM Base Residual Auction

The Companies have sought approval of their ESP IV before PJM conducts its next Base Residual Auction in May 2015. This timing would allow the Companies to effectuate the outcome of the Commission's decision in this proceeding in a reasonable manner. Granting Staff's motion for continuance will render such an outcome very unlikely.

In The Alternative, The Attorney Examiner Should Grant An Approximate 30-Day Continuance And Deny the Request To Move The Intervenor Testimony Date

In the alternative, the Companies respectfully request that Commission only grant an approximate 30-day extension of the due date for Staff testimony, the date of the prehearing conference, and the commencement date of the hearing. Under the Companies' alternative proposal, the new dates would be as follows:

- March 18: Due date for Staff testimony
- March 20: Pre-hearing conference
- March 25: Commencement of hearing¹

Adopting the above procedural schedule should address Staff's concerns as well as provide the Commission with additional time to meet the 275-day deadline set forth in Section

¹ The Companies note that Staff's proposed dates would have the hearing commencing on a Friday, and the Staff testimony date and the prehearing conference date would fall on a Saturday.

4928.143. This 30-day extension is consistent with previous modifications to the procedural schedule by the Attorney Examiner, in terms of the amount of delay, resulting from intervenor requests.

Importantly, the due date for supplemental intervenor testimony is currently February 5, 2015. *See Case No. 14-1297-EL-SSO, Entry at 2 (Jan. 14, 2015).* There is no need to alter the due date for supplemental intervenor testimony. Indeed, Staff's motion provides no grounds to do so. Further, because any intervenors planning to file supplemental testimony related solely to changes in the Stipulation have already had over a month to prepare their supplemental testimony, keeping the February 5, 2015 due date for supplemental intervenor testimony will not prejudice those intervenors who plan to file such testimony.

Conclusion

For the reasons stated above, the Attorney Examiner should deny Staff's motion for a continuance or, in the alternative, grant a continuance of approximately 30 days.

Date: February 4, 2015

Respectfully submitted,

/s/ David A. Kutik

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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 on February 4, 2015.

/s/ David A. Kutik

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Summary: Memorandum Contra The Motion For A Continuance Of The Staff Of The Public Utilities Commission Of Ohio electronically filed by MR. DAVID A KUTIK on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company