

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Company, and The Toledo 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)
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) **Case No. 14-1297-EL-SSO**
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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY’S MEMORANDUM
CONTRA JOINT MOTION TO AMEND PROCEDURAL SCHEDULE**

I. INTRODUCTION

The Joint Motion to Amend Procedural Schedule (the “Joint Motion”) so lacks merit that it can easily be seen for what it is: an improper attempt to gain delay for delay’s sake. The hearing date in this proceeding has been continued four times already. Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) filed their Application for their fourth electric security plan on August 4, 2014 – well over 300 days ago and well past the 275-day window afforded under Section 4928.143 of the Ohio Revised Code. The Companies’ Application should be heard without further unnecessary delay.

The Joint Motion is now at least the sixth motion seeking to delay this case. There is no reason now to continue the hearing or extend the current discovery and testimony deadlines related to the Supplemental Stipulation and Recommendation filed on May 28, 2015 or to the Second Supplemental Stipulation and Recommendation filed on June 4, 2015. Any claim otherwise is groundless. The apparent basis for the Joint Motion is the supposed need to conduct

additional discovery and file additional intervenor supplemental testimony related to the Second Supplemental Stipulation and Recommendation. Yet, the substantive portion of the Second Supplemental Stipulation merely offers a single substantive paragraph and the related supporting testimony comprises 39 lines of substantive testimony. The issue involved in the Second Supplemental Stipulation has been litigated previously and, for the most part, is already part of this case. Consequently, there is no need to extend the current discovery and supplemental testimony deadlines or to continue the hearing.

II. RELEVANT PROCEDURAL HISTORY

A. The Case Has Been Delayed Too Many Times Already.

The Application and supporting testimony was filed in this case on August 4, 2014. By Entry dated August 29, 2014, this matter was initially set for hearing on January 20, 2015. Subsequently, the hearing has been rescheduled four times. Indeed, since the August 29, 2014 Entry, various intervenors to this proceeding have moved to amend the procedural schedule seemingly at every turn. For example:

- On September 5, 2014, Sierra Club, the Ohio Manufacturers Association Energy Group (“OMAEG”), Ohio Hospital Association, and the Ohio Office of Consumers’ Counsel (“OCC”) moved to amend the procedural schedule.
- On March 30, 2015, as part of a request for certification of an interlocutory appeal, Sierra Club, Northeast Ohio Public Energy Council, Northwest Ohio Aggregation Council, OMAEG, Ohio Partners for Affordable Energy and OCC moved to amend the procedural schedule.
- On April 1, 2015, the Retail Energy Supply Association, the PJM Power Providers Group, Electric Power Supply Association, IGS Energy, Direct Energy Services, LLC, Direct Energy Business, LLC, and Direct Energy Business Marketing, LLC moved to amend the procedural schedule.
- On May 6, 2015, Sierra Club moved to amend the procedural schedule.

- On June 2, 2015, the Retail Energy Supply Association, the PJM Power Providers Group and Electric Power Supply Association orally moved to amend the procedural schedule.

By way of Entries issued on January 14, 2015, February 4, 2015, March 23, 2015, and May 29, 2015, the Attorney Examiner has continued the commencement of the hearing date in this proceeding.

B. Recent Stipulations Do Not Merit Further Delay.

On May 28, 2015, the Companies filed a Supplemental Stipulation and Recommendation that modified the original Stipulation and Recommendation in this proceeding filed on December 22, 2015. The Supplemental Stipulation contains minor modifications regarding the Companies' interruptible rider, Rider ELR. *See* Supplemental Stipulation at 1-2. The Supplemental Stipulation also contains a new provision related to the Companies' Non-Market-Based-Service Rider, Rider NMB. *See id.* at 3-4. On June 1, the Companies filed the Third Supplemental Testimony of Eileen M. Mikkelsen in support of the Supplemental Stipulation. The substantive portion of Ms. Mikkelsen's testimony amounts to 38 lines of testimony. *See* Third Supplemental Testimony of Eileen M. Mikkelsen at 1-3 (June 1, 2015).

On May 29, in light of the Supplemental Stipulation, the Attorney Examiner issued an Entry that modified the procedural schedule. Pursuant to that Entry, Staff testimony is due on July 10, 2015, a prehearing conference is scheduled for July 14, 2015 and the evidentiary hearing is to commence on July 27, 2015. *See* Entry at 2.

At the prehearing conference on June 2, 2015, the Attorney Examiner rejected arguments by various intervenors, including one of the movants here, to continue the hearing set for July 27, 2015 past Labor Day. Instead, the Attorney Examiner ordered that the hearing date and the due date for Staff testimony would remain unchanged. *Trans.* at 95-96 (June 2, 2015). The Attorney Examiner further permitted intervenors to serve written discovery on the Companies by June 22,

2015 and to file supplemental testimony related to the Supplemental Stipulation by July 6, 2015. *See id.* The Companies were ordered to respond to any written discovery requests within seven days. *See id.* at 96.

On June 4, 2015, the Companies filed the Second Supplemental Stipulation and Recommendation. The Second Supplemental Stipulation adds a narrow provision related to a Commercial High Load Factor (“HLF”) Experimental Time of Use Rate for certain Ohio-based commercial customers. *See* Second Supplemental Stipulation at 1-2. On the same day, the Companies filed the Fourth Supplemental Testimony of Eileen M. Mikkelsen in support of the Second Supplemental Stipulation. The substantive portion of Ms. Mikkelsen’s testimony comprises 39 lines of testimony. *See* Fourth Supplemental Testimony of Eileen M. Mikkelsen at 1-3 (June 1, 2015).

By the Joint Motion, movants seek to delay further the written discovery deadline, the filing date for intervenor supplemental testimony and for Staff testimony extended, the prehearing conference continued, and the commencement of the evidentiary hearing. As demonstrated below, there is no reason for the delay.

III. ARGUMENT

When a procedural schedule has already been previously amended and when parties already have had sufficient time in which to conduct discovery, further delay is unwarranted. *See, e.g., In re the Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case No. 10-501-EL-FOR, 2012 Ohio PUC LEXIS 265, ¶12 (March 19, 2012) (denying intervenors' motion to extend the discovery period and the procedural schedule because “ample time in which to conduct discovery [had] been afforded”); *In re the Commission’s Investigation into Intrastate Carrier Access Reform Pursuant to Sub. S.B. 162*, Case No. 2011 Ohio PUC LEXIS 742, ¶6 (June 16, 2011) (denying an intervenor’s motion to modify the procedural

schedule to extend discovery deadlines because, among other reasons, the Commission had already extended the procedural schedule by six weeks); *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, 2012 Ohio PUC LEXIS 538, ¶13 (June 1, 2012) (denying an intervenor’s motion to amend the procedural schedule and extend the hearing date after the schedule had been previously extended once).

Joint Intervenors claim that “good cause exists for modifying the procedural schedule.” Mot. at 1. Given that four continuances have already been granted, Joint Intervenors’ claim that the procedural schedule in this matter once again warrants being amended rings decidedly hollow. As it is, the hearing on the Companies’ Application is scheduled to begin on July 27, 2015 – almost one year after the Companies filed their Application and well past the 275-day statutory window afforded under Section 4928.143 (C)(1) of the Ohio Revised Code. Given the very nature of this proceeding – with over fifty intervenors – no procedural schedule will suit everyone. But, given the ample opportunity that the parties have had for discovery, no party can claim prejudice.¹ The time to move forward is now and the Attorney Examiner should keep the July 27, 2015 hearing date.

Moreover, as specific justification for another delay, the Joint Motion proffers the bogus claim that the Second Supplemental Stipulation and Ms. Mikkelsen’s supporting supplemental testimony somehow warrant additionally extending the deadlines for written discovery and supplemental intervenor testimony. *See* Joint Motion at 6-7. In point of fact, contrary to the Joint Motion’s claim (*id.*), the proposed HLF program hardly presents novel issues. The

¹ As of this date, the Companies have been served with 3,430 discovery requests including subparts.

Companies' tariffs currently contain several time of use ("TOU") rates, including rates involving critical peak pricing. Indeed, a few weeks ago, the Commission ordered to continue a similar program for residential customers as part of a pilot program. *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Ohio Site Deployment of the Smart Grid Initiative and Timely Recovery of Associated Costs*, Case No. 09-1820-EL-ATA, at ¶6 (May 28, 2015). Further, the Stipulation and Recommendation filed in this matter on December 22, 2014, reintroduced time of day rate options under the Companies' Rider GEN. (Stipulation and Recommendation at 10.) The Commission has previously recognized the merit of TOU rates. *See, e.g., In the Matter of the Commission's Investigation of Ohio Retail Electric Market*, Case No. 12-3151-EL-COI, at ¶40 (Mar. 26, 2014).

Further, given the narrow nature of the HLF provision, there simply is no need to alter the current due dates for written discovery cutoff and supplemental intervenor testimony, much less the hearing. Any targeted discovery regarding the Second Supplemental Stipulation thus readily can be accommodated within the current procedural timeframe. The current deadlines (with seven day response time for discovery) allow for multiple rounds of discovery. In fact, for all of the protest about the need for additional discovery on the two most recent supplements to the Stipulation and Recommendation, **only one** party has actually made any effort to propound discovery on the issues raised in those filings – one week after the prehearing on June 2, 2015. In short, movants' own inaction on this front shows the baselessness of the current excuse for more delay. Such inaction also provides no excuse for extending the current Supplemental Stipulation discovery deadlines or continuing the hearing. *See, In re the Long-Term Forecast*

Report of Ohio Power Company at ¶12; *In re the Commission's Investigation into Intrastate Carrier Access* at ¶6; *In the Matter of Ohio Edison Company* at ¶13.

IV. CONCLUSION

For the foregoing reasons, the Joint Motion to Amend Procedural Schedule should be denied.

Date: June 10, 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 filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on June 10, 2015.

/s/ David A. Kutik

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Summary: Memorandum Contra Joint Motion To Amend Procedural Schedule electronically filed by MR. DAVID A KUTIK on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company