

**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 Provide)	Case No. 14-1297-EL-SSO
for a Standard Service Offer Pursuant to)	
R.C. 4928.143 in the Form of an Electric)	
Security Plan.)	

**JOINT REPLY
IN SUPPORT OF THE MOTION TO AMEND PROCEDURAL SCHEDULE**

In their fourth electric security plan (“ESP”) proceeding, Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy”) seek to increase electric rates to all customers in their services territories. A troubling part of FirstEnergy’s electric security plan is that FirstEnergy proposes that its monopoly customers guarantee and pay a profit for the deregulated power plants held by FirstEnergy’s competitive affiliate, FirstEnergy Solutions Corp. This proposal comes in the form of a Retail Rate Stability (“RRS”) rider.

In efforts to secure the Public Utilities Commission of Ohio’s approval of the controversial RRS proposal, FirstEnergy has lined up a number of customers who support or do not oppose the RRS proposal. The support or non-opposition of those customers to the RRS proposal appears to have been purchased by FirstEnergy through various special deals with certain customers that include customer-specific programs, special rate offerings, and/or contributions. FirstEnergy has filed three stipulations over the course of the past six months in order to effectuate these special deals. The latest special deal was filed as a new Section V.A.3 to the stipulation on June 4, 2015.

In response to the June 4, 2015 filing, the Joint Movants respectfully requested a brief extension in the procedural schedule set forth in the Attorney Examiner's June 1st Entry, as modified at the June 2, 2015 prehearing conference. Specifically, the Joint Movants requested that the current procedural schedule be modified as follows:

Activity in the Procedural Schedule	Current Schedule (per June 1 Entry and June 2 Conference)	Joint Movants' Requested Changes
Discovery requests (except as to notices of deposition) cut-off	June 22, 2015	July 2, 2015 ¹
Intervenors' supplemental testimony due	July 6, 2015	July 16, 2015
Staff testimony due	July 10, 2015	July 20, 2015
Prehearing conference held	July 14, 2015	July 24, 2015
evidentiary hearing begins	July 27, 2015	August 6, 2015

On June 10, 2015, FirstEnergy filed a Memorandum Contra the Joint Motion. In accordance with Rules 4901-1-12 and 4901-1-13 of the Ohio Administrative Code, the Retail Energy Supply Association, the PJM Power Provider's Group, the Electric Power Supply Association, the Ohio Consumers' Counsel, Ohio Partners for Affordable Energy, the Ohio Manufacturers' Association Energy Group, and the Northeast Ohio Public Energy Council ("the Joint Movants") jointly file this Reply in response to the Memorandum Contra the Joint Movants' motion to amend the procedural schedule in this matter filed FirstEnergy.

FirstEnergy contends that there is "no reason" to continue the hearing or extend the discovery and testimony deadlines. FirstEnergy overlooks the fact that, after the schedule was established on June 2nd, FirstEnergy and other parties filed a Second Supplemental Stipulation and Recommendation and an attachment in this matter. In addition, the fourth supplemental testimony of Eileen M. Mikkelsen was filed on behalf of FirstEnergy. These changes in

¹ The deadline for responding discovery requests would remain at seven days.

circumstances present good cause for modifying the procedural schedule briefly as requested by the Joint Movants.

The filings made on June 4 introduce a completely new Section V.A.3 to the stipulation. While FirstEnergy attempts to paint the new stipulation and fourth supplemental testimony as small and narrow,² the fact of the matter is that the newest stipulation and the fourth supplemental testimony of Ms. Mikkelsen raise additional matters that have not been presented previously. Under this proposed new stipulation provision, the stipulating parties propose to deploy a Commercial High Load Factor (“HLF”) Experimental Time-of-Use Rate Proposal for only commercial customers with headquarters located in Ohio having at least 30 facilities in the Company’s combined service territory with each facility consuming at least 1.5GW annually and having refrigeration as a major portion of the load. In addition, this proposed HLF Experimental Time-of-Use Rate Proposal requires that each individual facility must have interval metering, must have an average monthly load factor during the preceding 12 months of 70% or higher, and must otherwise be served under the Company’s GS or GP rate schedules. The Commercial HLF Experimental Time-of-Use Rate Proposal purports to give the FirstEnergy commercial customers an opportunity to determine whether time-of-use rates could reduce their overall energy bills. Once a facility qualifies for the Commercial HLF Experimental Time-of-Use Rate and is enrolled in the Commercial HLF Experimental Time-of-Use Rate, that facility may remain on that rate notwithstanding any subsequent change in the load characteristics of the facility or reduction in energy consumption by the facility.

² FirstEnergy Memorandum Contra at 2 (“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”); at 4 (“[t]he Second Supplemental Stipulation adds a narrow provision * * *”); and 6 (“the narrow nature of the HLF provision”).

When the current procedural schedule was established, no discovery had been conducted or could have been conducted on the proposed Commercial HLF Experimental Time-of-Use Rate Proposal as it did not exist. All of the non-signatory parties should have a reasonable opportunity to explore and consider this newly presented program, including (a) how the prices will be set, (b) what costs could be shifted to other customers and (c) why the service is so limited in its availability. As the Joint Movants argued previously, it is unclear who will actually benefit from this proposal, and whether the limitations and restrictions are reasonable.

The number of testimony lines or the size of the paragraph used to present this new proposal is entirely irrelevant to any determination as to whether all non-signatory parties should be given a reasonable opportunity to review, evaluate and respond to this new proposal. In fact, the absence of any description in the stipulation and testimony as to the mechanics of the time-of-use rates requires more, not less, discovery. Additionally, the absence of any explanation or calculation of the revenues and costs associated with the proposal and the potential impact on other customers requires more, not less, discovery.³ The Joint Movants' request is reasonable, and only seeks slight extensions in the procedural schedule – approximately 10 days.

FirstEnergy also complains that the Joint Movants' request is unreasonable because the case has already been delayed.⁴ Even though FirstEnergy's original proposal was filed in August 2014, several events have occurred which have had a significant impact on the review and evaluation of the FirstEnergy application. Most of those events were of FirstEnergy's making and, more importantly, all of them were outside of the Joint Movants' control:

- Proposed Stipulation and Recommendation – December 22, 2014

³ See, Mikkelsen Fourth Supplemental Testimony at 2 ("Recovery of differences, if any, between revenues collected to provide this generation service and the cost associated with providing this generation service would be recovered in Rider GCR.").

⁴ FirstEnergy Memorandum Contra at 2-3.

- Commission ruling on the Ohio Power Company power purchase agreement rider in its third Electric Security Plan proceeding⁵ – February 25, 2015
- Supplemental Stipulation and Recommendation – May 28, 2015
- Second Supplemental Stipulation and Recommendation – June 5, 2015

This proceeding presents new, novel, and significant proposals for the Commission's consideration, including the new proposal in the Second Supplemental Stipulation and Recommendation. FirstEnergy denies this last point, claiming that this Commercial HLF Experimental Time-of-Use Rate Proposal "hardly presents novel issues"⁶ because other time-of-use rates already exist in the FirstEnergy tariffs. Again, FirstEnergy ignores that this Commercial HLF Experimental Time-of-Use Rate Proposal is new and different. The parties should be given a reasonable opportunity to review, evaluate and respond. The Joint Movants are only asking for a 10-day adjustment in the schedule in light of this new development.

Moreover, FirstEnergy claims that somehow the *number* of parties who submitted additional discovery requests after the June 2nd prehearing conference demonstrates a lack of need for additional time. More than one party has propounded additional discovery requests on FirstEnergy since the June 2, 2015 prehearing conference and more will follow. All of the parties need reasonable amount of time to review, evaluate and respond, which will include reviewing FirstEnergy's responses to the additional discovery requests. Thus, the Commission should not be persuaded that somehow the *number* of parties who submitted additional discovery requests after the June 2nd prehearing conference but before the due date is instructive as to the temporal needs for discovery and testimony on the new issues.

⁵ See, *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO et al, Opinion and Order (February 25, 2015) and Entry on Rehearing (May 28, 2015).

⁶ FirstEnergy Memorandum Contra at 5.

Lastly, the Joint Movants note that the issues and concerns related to FirstEnergy's proposed Retail Rate Stability Rider (its power purchase agreement rider) are intertwined with pending regional market reform proposals, environmental regulations and federal litigation.⁷ On June 9, 2015, the Federal Energy Regulatory Commission approved PJM Interconnection LLC's Capacity Performance proposal and this new development incorporates changes in capacity requirements for part of FirstEnergy's proposed electric security plan term. This ruling (more than 180 pages long) will be another matter for the parties to review and evaluate for this proceeding.⁸

WHEREFORE, The Joint Movants reassert that a slight modification to the previously announced procedural schedule is warranted in order to afford parties a brief amount of time to conduct additional discovery and prepare for the hearing. Specifically, the Joint Movants request that discovery be extended until July 2, the due date for Intervenor supplemental testimony be extended from July 6 to July 16, and Staff testimony be due July 20. Thus, the prehearing conference previously scheduled for July 14 should be extended until July 24 and the evidentiary hearing previously scheduled for July 27 at 10:00 a.m. be moved to August 6 at 10:00 a.m. Granting this joint motion for a brief 10-day extension is not unduly burdensome and will permit adequate time for discovery and the preparation of supplemental testimony so that this new proposal can be reviewed, evaluated, explored and addressed. This will facilitate the PUCO

⁷ This is a point that the Commission has repeatedly made. *See, Ohio Power, supra*, Opinion and Order at 24; and *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case Nos. 14-841-EL-SSO et al., Opinion and Order at 46.

⁸ Indeed, the PUCO itself acknowledged that the PJM proposal, among other issues, potentially impacts the financial needs of utilities' generating plants and grid reliability. It indicated that it will closely monitor developments in these matters. *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, Second Entry on Rehearing at ¶9 (May 28, 2015).

having a full and complete record upon which it can base its decision on these matters of great importance to Ohioans.

Respectfully submitted,

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Summary: Reply (Joint Reply) in Support of the Motion to Amend Procedural Schedule electronically filed by Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association and PJM Power Providers Group and Electric Power Supply Association and Ohio Consumers' Counsel and Ohio Partners for Affordable Energy and Ohio Manufacturers' Association Energy Group and Northeast Ohio Public Energy Council