

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of Ohio</b>	)	
<b>Edison Company, The Cleveland Electric</b>	)	
<b>Company, and The Toledo Edison Company</b>	)	<b>Case No. 14-1297-EL-SSO</b>
<b>for Authority to Provide for a Standard</b>	)	
<b>Service Offer Pursuant to R.C. 4928.143 in</b>	)	
<b>the Form of An Electric Security Plan</b>	)	
	)	

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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY AND THE TOLEDO EDISON COMPANY’S MEMORANDUM  
CONTRA JOINT MOTION TO REOPEN THE HEARING RECORD AND TO  
ESTABLISH A PROCEDURAL SCHEDULE**

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**I. INTRODUCTION**

In their December 1, 2015 Joint Motion, the Movants<sup>1</sup> concede that they have “actively participated”<sup>2</sup> in this proceeding. As discussed below, in light of the opportunity that has already been afforded to all parties to obtain information from the Companies and to litigate this case, Movants proposed extended schedule is unreasonable and should be rejected. Delaying this case any further will significantly impede the ability of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) to procure generation for non-shopping customers beginning on June 1, 2016.

Nevertheless, in an effort to balance Movants’ requests for further information and to present testimony and the need of the Signatory Parties for a Commission decision by February

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<sup>1</sup> Movants are defined as Buckeye Association of School Administrators, Constellation NewEnergy, Inc., the Electric Power Supply Association, Exelon Generation Company LLC, Interstate Gas Supply, Inc., Northeast Ohio Public Energy Council, Ohio Association of School Business Officials, Ohio Consumers’ Counsel, Ohio Hospital Association, Ohio Manufacturers’ Association Energy Group, Ohio School Boards Association, Ohio Schools Council, PJM Power Providers Group, Retail Energy Supply Association, and Sierra Club.

<sup>2</sup> Joint Motion at 2.

10, 2016, the Companies propose a procedural schedule that will provide reasonable opportunities to the parties to further litigate the reasonableness of the Third Supplemental Stipulation but still preserve the established briefing schedule. For all of these reasons, the Commission should deny the Joint Motion and adopt the Companies' proposed procedural schedule as discussed below.

## **II. MOVANTS HAVE HAD AN AMPLE OPPORTUNITY TO LITIGATE THIS CASE.**

The Companies filed their Application for their fourth ESP on August 4, 2014 – and it has been pending for well over a year well past the 275-day window afforded under Section 4928.143 of the Ohio Revised Code. The hearing in this matter was re-scheduled five times and commenced on August 31, 2015. Prior to the commencement of the hearing, all parties were provided with ample opportunities for discovery and took full advantage of that opportunity by receiving responses to over 3,700 discovery requests and deposing Company witnesses for more than 25 days. Ms. Mikkelsen, the witness the Companies proffered to support the Third Supplemental Stipulation, has already been deposed three times in this proceeding and cross-examined for over four days at hearing. As indicated below, the Companies are offering yet another opportunity for all parties to depose Ms. Mikkelsen, a *fourth* time so that they may receive additional discovery related to the Third Supplemental Stipulation – an opportunity that

the Commission has not historically required.<sup>3</sup> In light of the Companies' reasonable compromise, written discovery is not necessary.<sup>4</sup>

Movants admit that they have received ample opportunity to litigate this case through a lengthy hearing – lasting 35 days, 62 witnesses and over 7,400 pages of hearing transcript.<sup>5</sup> Further, Movants have already had an opportunity to learn about the Third Supplemental Stipulation as they admit Movants participated in settlement discussions.<sup>6</sup>

Given the weighty record already in place and the knowledge that Movants already have about the Third Supplemental Stipulation and the issues it presents, Movants have no need for the extended schedule that they request. Certainly, they have no right that schedule. Indeed, none of the Commission decisions cited by Movants are on point.<sup>7</sup> None of them provide for, or even reference, any written discovery or depositions related to any stipulation at issue. At most, in each case the Commission merely permitted additional testimony in favor of or opposed to the stipulation under consideration, a hearing thereafter, and nothing more.

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<sup>3</sup> 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).

<sup>4</sup> One of the reasons cited by Movants for the delay in this proceeding is the case schedule in Case Nos. 14-1693-EL-RDR, *et al.* (Joint Motion at 8.) That reason has been previously rejected and should similarly be rejected here. Moreover, Movants request for written discovery conveniently fits within the deadlines for briefing (December 22) in that case or simply to delay this proceeding until after the initial briefs are due in that case.

<sup>5</sup> Joint Motion at 6.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

For example, in *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-3459-EL-SSO, Entry at 1 (Oct. 25, 2011), the Attorney Examiner required all testimony regarding a stipulation to be filed four days after the filing of a stipulation and a hearing to convene eleven days after the stipulation was filed. In *In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR, Entry at 1-2 (Mar. 21, 2012), the Commission *sua sponte* re-opened the proceedings and requested additional testimony and scheduled a hearing limited to the appropriate incentive mechanism for a utility's energy efficiency program. There was no additional discovery.

In *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, Entry at 2-3 (Sept. 16, 2011), the parties entered into an omnibus stipulation "for the purpose of resolving all issues raised in the ESP 2 cases and several other AEP-Ohio cases pending before the Commission." While additional testimony and a hearing were allowed, no additional discovery occurred. *See id.* Likewise, in *In the Matter of the Application of Ohio Power Company for Approval of an Advanced Meter Opt-Out Service Tariff*, Case No. 14-158-EL-ATA, Entry at 1-2 (Mar. 26, 2015), direct testimony and a hearing, but no additional discovery, was provided for. In *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric*

*Security Plan*, Case No. 10-388-EL-SSO, Entry on Rehearing at 9 (May 13, 2010), the Commission requested that Staff provide an “analysis” regarding customer bill impacts subsequent to “comments received during the local public hearings held in this proceeding.” No further testimony was provided for, let alone any additional discovery.

Ultimately, Movants mischaracterize the elements of the Third Supplemental Stipulation as new issues and facts that are not part of the record.<sup>8</sup> However, a cursory review of the Third Supplemental Stipulation demonstrates that many of the elements are: 1) not new; 2) will require further Commission proceedings before the provision takes effect; 3) previously existed; or 3) currently exist. For example, the Economic Stability Program already has been thoroughly litigated in this proceeding. The Joint Motion incorrectly asserts that the Third Supplemental Stipulation contains new provisions “setting different parameters for the purchase power agreement.”<sup>9</sup> The Third Supplemental Stipulation merely shortens the term of the Economic Stability Program from fifteen to eight years, making the voluminous information produced in discovery and entered into the record apply to the eight year term as it did to the original fifteen year term. The construct of the original Economic Stability Program is intact. Moreover, the Companies have committed to adding at least \$100 million in credits to customers beginning in year five of the ESP IV period and full information sharing with the Staff regarding FirstEnergy Solutions Corp.’s generation fleet. These commitments along with the lowering of the Seller’s Return on Equity only benefit customers and must be viewed as more favorable by the Movants as compared to similar provisions contained in the Companies’ original Application.

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<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.*

Second, as it relates to the proposed grid modernization plan, the Third Supplemental Stipulation contemplates the filing of a business plan which will be further reviewed by the Commission. Likewise, many of the other commitments relating to renewable and energy efficiency programs also will require further Commission review and proceedings. Third, because similar funding for the Community Connections Program and OPAE currently exists and was previously approved by the Commission on similar terms, no further extended evaluation is necessary. Last, in the materials supporting the Third Supplemental Stipulation, the Companies have provided updated information on the ESP vs. MRO test and they will have the opportunity to depose Ms. Mikkelsen who is sponsoring that testimony.<sup>10</sup>

As the very authorities cited by Movants shows, all that Movants should be allowed is the opportunity to present testimony and to have a hearing on the Third Supplemental Stipulation. The procedural schedule proposed by the Companies provides Movants approximately the same or more time than has been historically permitted in the Companies' previous ESP to file testimony following the filing of a Stipulation. For example, in Case No. 10-388-EL-SSO (ESP II), the Companies filed a Second Supplemental Stipulation on July 22, 2010; testimony opposing the stipulation was filed on July 27, 2010 and the hearing commenced on July 29, 2010. In Case No. 08-935-EL-SSO (ESP I), following the filing of a stipulation on February 19, 2009, intervenor testimony was due on March 4, 2009, and the hearing was held on March 11, 2009, with briefs due on March 18, 2009.

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<sup>10</sup> See Fifth Supplemental Testimony of Eileen M. Mikkelsen at pp. 10-14 and Workpaper.

The Commission has consistently held that stipulations advance the public interest by avoiding costly litigation and further protracted litigation in this case is unnecessary especially in light of the opportunities that have already been afforded the parties.<sup>11</sup> For all of these reasons, the Commission should deny the Joint Motion and adopt the Companies' proposed procedural schedule.

### **III. UNDUE DELAY WILL SIGNIFICANTLY IMPEDE THE COMPANIES' ABILITY TO IMPLEMENT ESP IV.**

Although Movants claim that an extended procedural schedule and adjustment of the briefing schedule will not "unduly delay this proceeding," this is patently untrue.<sup>12</sup> As the Signatory Parties stated in the Third Supplemental Stipulation, a Commission decision by February 10, 2016 is necessary to allow the Companies adequate time to prepare for and conduct their standard service offer ("SSO") competitive procurement auctions and to prepare for the first Rider RRS tariff pricing to be filed on or before April 1, 2016. Movants fail to demonstrate how their prolonged procedural schedule could possibly permit those items to occur. Rather, Movants mistakenly argue that all that is necessary is a Commission decision by May 31, 2016 – the expiration date of the current ESP without taking into consideration the need to acquire power for customers beginning June 1, 2016, not to mention all of the work necessary to

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<sup>11</sup> See, e.g., *In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2010 Under the Elec. Sec. Plan of Ohio Edison Co., the Cleveland Elec. Illuminating Co., & the Toledo Edison Co.*, 11-4553-EL-UNC, 2012 WL 252212 (Jan. 18, 2012) ("[T]he Stipulation is in the public interest because it avoids further litigation in this matter."); *In Re Ne. Ohio Nat. Gas Corp.*, 06-209-GA-GCR, 2006 WL 2433256, at \*5 (Aug. 23, 2006) ("By avoiding the cost of litigation, we conclude that the stipulation will benefit ratepayers and is in the public interest."); *In Re Cincinnati Gas & Elec. Co.*, 02-218-GA-GCR, 2013 WL 22473331 (Oct. 15, 2003) (same); *In Re Dayton Power & Light Co.*, 91-414-EL-AIR, 1992 WL 281169 (Jan. 22, 1992) ("[A]ll parties are benefited in that extensive litigation has been avoided. Absent the stipulation and recommendation, the costs of a fully-litigated case would ultimately be passed on to ratepayers through higher rates or reflected in their tax payment to support the experts protecting their interests.").

<sup>12</sup> Joint Motion at 8.

implement the ESP IV by that deadline, including any modifications required by the Commission in its Order.

As referenced above, Movants fail to consider the effect of delays on the SSO auctions. Due to the delay of this case as discussed above, the Companies have been unable to hold an auction for their SSO load in October 2015 and will further not be able to hold an auction for the SSO load in January 2016. Because of the inability to go forward with those auctions, and if a decision is not received by February 10, 2016, customers may not have the opportunity to fully benefit from seasonally diversified auction prices that they have previously enjoyed. Moreover, pushing the Companies' SSO auctions further out later into Spring and Summer 2016 moves the auctions closer to historically higher-priced summer periods and shortens the time that bidders will have to prepare for the auction including the time winning bidders will have to arrange for power delivery, which will put upward pressure on auction prices.

If the Commission issues an Order by February 10, 2016, an expected, typical timeline for the auction process for two auctions occurring to achieve power flow on June 1, 2016 may be as follows:

<b>Timeline</b>	<b>April 4, 2016 Auction</b>	<b>May 2, 2016 Auction</b>
PUCO Order	Wednesday, February 10, 2016	Wednesday, February 10, 2016
WebEx Information Session #1	Thursday, February 11, 2016	Friday, March 18, 2016
Deadline: CRA announces tranche target and tranche size (% and MW)	Friday, February 12, 2016	Monday, March 21, 2016
Part 1 Applications can be submitted	Friday, February 12, 2016	Monday, March 21, 2016
WebEx Information Session #2	Thursday, February 18, 2016	N/A
Deadline to submit Part 1 Applications	Thursday, February 25, 2016	Tuesday, March 29, 2016
Deadline: CRA announces minimum and maximum starting prices	Thursday, March 03, 2016	Tuesday, April 05, 2016
Part 2 Applications can be submitted	Thursday, March 03, 2016	Tuesday, April 05, 2016
Deadline: CRA announces any update to the tranche size (MW)	Friday, March 11, 2016	Thursday, April 07, 2016



Deadline to submit Part 2 Applications	Thursday, March 17, 2016	Friday, April 15, 2016
Bidder User Manuals Distributed	Monday, March 28, 2016	Monday, April 25, 2016
Mock Auction for Registered Bidders	Thursday, March 31, 2016	Thursday, April 28, 2016
Deadline: CRA announces starting price to Registered Bidders	Thursday, March 31, 2016	Thursday, April 28, 2016
Auction for Registered Bidders	Monday, April 04, 2016	Monday, May 02, 2016
CRA notifies Duke Energy Ohio, Inc. and PUCO of results (tentative)	Monday, April 04, 2016	Monday, May 02, 2016
Master SSO Supply Agreements Signed (tentative)	Friday, April 08, 2016	Friday, May 06, 2016
Power Flow	Wednesday, June 01, 2016	Wednesday, June 01, 2016

As evidenced by that schedule, further delay will hamper the Companies' ability to implement ESP IV. For these reasons, the Commission should deny the Joint Motion.

#### **IV. THE COMPANIES' PROPOSED PROCEDURAL SCHEDULE IS REASONABLE**

To accommodate Movants request for further information and an opportunity to present testimony and to balance that request with the issuance of a Commission decision by February 10, 2016, the Companies propose the following procedural schedule:

- Deposition of Ms. Mikkelsen: December 7 (no written discovery);
- Intervenor Testimony: December 10;
- Hearing: December 16-18;
- Initial Brief: December 30 (maintain current date); and
- Reply Briefs: January 22, 2016 (maintain current date).

#### **V. CONCLUSION**

For the foregoing reasons, the Joint Motion to Reopen the Hearing Record and to Establish a Procedural Schedule should be denied and the Companies' proposed procedural schedule adopted.

Respectfully submitted,

/s/ Carrie M. Dunn

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ATTORNEYS FOR OHIO EDISON  
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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 a courtesy copy has been served upon parties via electronic mail on December 2, 2015

/s/ Carrie M. Dunn  
Carrie M. Dunn

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

Summary: Memorandum Contra Joint Motion to Reopen the Hearing Record and to Establish a Procedural Schedule electronically filed by Ms. Carrie M Dunn on behalf of The Toledo Edison Company and The Cleveland Electric Illuminating Company and Ohio Edison Company