

**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 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 FOR EXTENSION OF TIME TO FILE BRIEFS

I. INTRODUCTION

The Joint Motion for Extension of Time to File Briefs (the “Motion”) of the Electric Power Supply Association and the PJM Power Providers Group (the “Joint Movants”) should be denied. Granting the Motion would only further delay these already prolonged proceedings when time is of the essence and prompt Commission action is needed. As demonstrated below, the Joint Movants have had ample time to prepare their brief and any further delay would be unfairly prejudicial to other parties.

II. RELEVANT FACTS

Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (the “Companies”) filed an application for approval of a fourth electric security plan (“ESP IV”) on August 4, 2014. Since then, this case has proceeded through extensive discovery and two evidentiary hearings. The first evidentiary hearing took place over 35 days and came to a close on October 29, 2015. At the hearing, the Attorney Examiner established deadlines for the filing of initial and reply briefs of November 30, 2015 and December 22, 2015, respectively. Tr. Vol. XXXV at 7486:10-12. The briefing schedule was later amended to extend

the due dates on initial and reply briefs to December 30, 2015 and January 22, 2016, respectively. Entry at 2 (Nov. 19, 2015). Thus, from the end of the first evidentiary hearing until the filing of the Third Supplemental Stipulation and Recommendation (the “Third Supplemental Stipulation”) on December 1, 2015, the parties had over a month to prepare their briefs.

After the filing of the Third Supplemental Stipulation, the Attorney Examiners reopened the record for the limited purposes of holding an evidentiary hearing regarding only the Third Supplemental Stipulation and to provide the parties with “an opportunity to present evidence related to the Third Supplemental Stipulation.” Entry at 4-5 (Dec. 9, 2015). Subsequently, over the course of six days in January, 2016, the parties participated in a second evidentiary hearing related solely to the Third Supplemental Stipulation. On January 22, 2016, the final day of that evidentiary hearing, the Attorney Examiner established February 12, 2016 as the due date for initial briefs and February 19, 2016 as the due date for reply briefs. Tr. Vol. XLI at 8722:2-4. Later, on January 29, 2016, the Attorney Examiner extended the due date for reply briefs to February 22, 2016. *See* Entry at 2 (Jan. 29, 2016). On February 9, 2016, the Joint Movants filed the Motion, arguing primarily that their obligations related to a separate case necessitated a modification to the briefing schedule in this proceeding.

III. ARGUMENT

Under Rule 4901-1-13, O.A.C., a party must show “good cause” to be granted an extension of the procedural schedule. Joint Movants fall far short of that standard here.

The Joint Movants argue that they need another delay because they intervened in Case No. 14-1693-EL-RDR and the briefing deadlines in that case have “diminished the time available” to prepare their brief in this proceeding. Motion at 3-4. The Joint Movants fail to cite any authority supporting their argument that the briefing schedule should be amended due to

their obligations related to a separate case. Indeed, Commission precedent holds to the contrary. *See In the Matter of the Application of Ohio Power Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Electric Service and Related Matters*, Case Nos. 94-996-EL-AIR, et. al., 1995 Ohio PUC LEXIS 205, at *1 (Entry of March 10, 1995). In Case No. 94-996-EL-AIR, the Office of Consumers' Counsel ("OCC") moved for an extension of time to file briefs on the argument that its obligations related to separate proceedings left "insufficient time to prepare the [OCC's] brief." *Id.* The Attorney Examiner denied the motion, finding that "due to the urgency to resolve these cases in a timely fashion, time is now of the essence and a delay simply cannot be granted for an extension of time to file the briefs." *Id.* Here, time is also of the essence. As explained by Company witness Mikkelsen, approval of ESP IV is urgently needed "in order for the Companies to have adequate time to prepare for and conduct their standard service offer competitive procurement auctions . . . , and to allow the Companies sufficient time to prepare the first Rider RRS filing which will be filed on or before April 1, 2016." Mikkelsen 5th Supp., p. 14. Thus, any further delay to these already prolonged proceedings is now simply untenable.

The Joint Movants also fail to point out that prior to the filing of the Third Supplemental Stipulation, they already had over a month to prepare their initial brief. From October 29, 2015 to December 1, 2015, the parties should have been or could have been preparing their briefs in this matter. And any evidence that was entered into the record on or after December 1 relates solely to the Third Supplemental Stipulation. That Stipulation provides for only certain, limited changes to the Companies' proposal. The parties have therefore been given ample time, including an extension from the Attorney Examiner *sua sponte*, to prepare their briefs. Simply put, the fact that the Joint Movants had obligations related to another proceeding that overlapped

with the nearly two months they were given to draft their brief falls far short of establishing good cause.

The Joint Movants also advance the empty argument that “[a]dditional time is needed for redaction purposes” due to the “great deal of confidential information” in the record. Motion at 4. Redacting confidential information and preparing motions for protective orders is part and parcel of briefing procedure before the Commission in cases like this one. In any event, the Joint Movants’ claim on this front is misleading. The confidential record in this case is certainly not voluminous. As noted, the Joint Movants have already had over a month to identify and address confidential information that was entered into the record before the Companies filed the Third Supplemental Stipulation. Further, the volume of confidential information directly related to the Third Supplemental Stipulation is easily manageable. As a point of reference, out of more than 1,000 hearing transcript pages related to the Third Supplemental Stipulation, there are only about 29 pages of confidential testimony. *See* Tr. Vol. XXXVI (Confidential) at 7744-7756; Tr. Vol. XLI (Confidential) at 8687-8701; Tr. Vol. XLI (P3/EP SA Confidential) at 8708-8711.

In short, this case been pending since the summer of 2014 and any further delays to the Commission’s decision cannot be tolerated. Every day counts for the Companies, who need adequate time to prepare for and conduct their standard service offer competitive procurement auctions and to prepare the first Rider RRS tariff pricing to be filed on or before April 1, 2016. The parties have been afforded sufficient time to craft their arguments. The time for presenting those arguments to the Commission should not again be delayed. Because the Joint Movants have failed to establish good cause for granting additional time to file briefs, the Motion should be denied. *See In the Matter of the Commission Investigation Relative to Establishment of Intrastate Access Charges*, Case No. 93-464-TP-COI, 1983 WL 887159 (Entry of Dec. 2, 1983)

(denying motion for an extension of time to file briefs because the movant failed to “set forth sufficient grounds.”).

IV. CONCLUSION

For the foregoing reasons, the Commission should deny the Joint Movants’ Motion.

Date: February 10, 2016

Respectfully Submitted,

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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 10, 2016.

/s/ David A. Kutik
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Summary: Memorandum Contra Joint Motion for Extension of Time To File Briefs electronically filed by MR. DAVID A KUTIK on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company