

# 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  
APPROVAL OF THEIR ENERGY EFFICIENCY  
AND PEAK DEMAND REDUCTION PROGRAM  
PORTFOLIO PLANS FOR 2017 THROUGH  
2019.

CASE NO. 16-743-EL-POR

## ENTRY

Entered in the Journal on May 23, 2016

### I. SUMMARY

{¶ 1} In this Entry, the attorney examiner adopts the procedural schedule and expedited written discovery response time stipulated to by several parties and denies the motion to modify the stipulated procedural schedule filed by the Environmental Law and Policy Center and the Natural Resources Defense Council.

### II. DISCUSSION

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or the Companies) are electric distribution utilities as defined in R.C. 4928.01(A)(6) and public utilities as defined in R.C. 4905.02 and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} On August 4, 2014, FirstEnergy filed an application pursuant to R.C. 4928.141 to provide for a standard service offer (SSO) to provide generation pricing for the period of June 1, 2016, through May 31, 2019. The application was for an electric security plan (ESP), in accordance with R.C. 4928.143 (ESP IV). *In re FirstEnergy*, Case No. 14-1297-EL-SSO (*FirstEnergy ESP IV*).

{¶ 4} On December 1, 2015, the Companies and several other parties, including Staff, filed a joint stipulation and recommendation (Third Supplemental Stipulation) in

FirstEnergy ESP IV, in which the signatory parties attempted to resolve all outstanding issues in that proceeding. On March 31, 2016, the Commission issued its Opinion and Order in FirstEnergy ESP IV, approving FirstEnergy's application and stipulations with several modifications (*FirstEnergy ESP IV* Opinion and Order). As part of the stipulated agreement, FirstEnergy agreed to reactivate all of its programs suspended in *In re FirstEnergy*, Case No. 12-2190-EL-POR, et al., expand offerings to include best practice ideas from utility peers in Ohio and nationally, and strive to achieve over 800,000 MWh savings annually subject to customer opt-outs (Third Supplemental Stipulation at 11).

{¶ 5} On April 15, 2016, FirstEnergy filed an application for the approval of its energy efficiency and peak demand reduction program portfolio plans for 2017 through 2019 in the above captioned case, pursuant to the terms of the Third Supplemental Stipulation, the *FirstEnergy ESP IV* Opinion and Order, R.C. 4928.66, and Ohio Adm.Code 4901:1-39-04, -05, -06, -07. In addition, FirstEnergy filed testimony in support of the application.

{¶ 6} The Companies' application contains a proposed procedural schedule including a suggested deadline of May 30, 2016, for objections to the application and a suggested range of start dates for the evidentiary hearing. Additionally, FirstEnergy requests that a Commission order be issued by September 30, 2016, in order to avoid any potential delay in implementing the plans on January 1, 2017.

{¶ 7} Thereafter, on April 29, 2016, the Ohio Consumers' Counsel (OCC) filed a limited objection to FirstEnergy's proposed procedural schedule. In its limited objection, OCC asserts that FirstEnergy's proposed procedural schedule provides for a 45-day period from the date the application was filed for parties to file objections to the application. OCC notes that, in accordance with Ohio Adm.Code 4901:1-39-04(D), parties are normally afforded a 60-day period for the filing of objections, subject to any modifications by the Commission. Additionally, OCC argues that FirstEnergy's proposed portfolio plans are large and complex and require more time for examination

than FirstEnergy has allotted in its proposed procedural schedule, in order to provide a more thorough and robust record for the Commission's consideration. Moreover, OCC argues that FirstEnergy will not be burdened by providing 60 days for the filing of objections.

{¶ 8} Ohio Adm.Code Chapter 4901:1-39 provides that the Commission establish a procedural schedule for energy efficiency and peak demand reduction program portfolio plans.

{¶ 9} By Entry issued May 2, 2016, the attorney examiner scheduled a technical conference for May 9, 2016. Additionally, the attorney examiner noted that all other deadlines for this proceeding would be established by subsequent Entry.

{¶ 10} Thereafter, on May 5, 2016, FirstEnergy, OCC, Ohio Environmental Council (OEC), Environmental Defense Fund (EDF), and Ohio Partners for Affordable Energy (OPAE) filed the following stipulated procedural schedule:

- (a) June 14, 2016 – Deadline for objections to plans and motions to intervene.
- (b) June 28, 2016 – Deadline for intervenor testimony.
- (c) July 5, 2016 – Deadline for intervenors' and the Companies' discovery (excluding depositions).
- (d) July 15, 2016 – Deadline for discovery served on or after June 28, 2016, to July 5, 2016.
- (e) July 25, 2016 – Evidentiary Hearing

{¶ 11} Further, in the May 5, 2016 filing, FirstEnergy, OCC, OEC, EDF, and OPAE agreed to an expedited written discovery response time of ten days, with the

exception of discovery served on or after June 28, 2016, to July 5, 2016, which shall be due on July 15, 2016.

{¶ 12} Thereafter, on May 10, 2016, the Environmental Law and Policy Center (ELPC) and Natural Resource Defense Council (NRDC) filed a motion to modify the stipulated procedural schedule in the May 5, 2016 filing. In their motion, ELPC/NRDC state that they have no objection to the dates in the stipulated procedural schedule, but request that the Commission establish a deadline of July 18, 2016, for the Companies to file any rebuttal testimony, so that such testimony is filed before the evidentiary hearing commences. ELPC/NRDC assert that this additional deadline will serve the parties' and the Commission's interest in an efficient process that will allow for full and fair litigation of the merits, while acknowledging that the usual practice in Commission proceedings is for the utility to file rebuttal testimony during the hearing.

{¶ 13} On May 11, 2016, FirstEnergy filed a memorandum contra ELPC/NRDC's motion to modify the stipulated procedural schedule. In its memorandum contra, FirstEnergy asserts that ELPC/NRDC's motion should be denied, as it is the Commission's longstanding practice to allow for the utility to file rebuttal testimony after the conclusion of direct testimony and cross-examination of all parties' witnesses, and ELPC/NRDC have failed to explain how the circumstances in this proceeding warrant a change in practice. Further, FirstEnergy asserts that rebuttal testimony is not only for the purpose of rebutting pre-filed direct testimony, but also may be used to contradict the opponents' evidence. Next, FirstEnergy disputes ELPC/NRDC's argument regarding efficiency, arguing that that ELPC/NRDC have failed to cite to any circumstances where a hearing took longer than it would have had the utility pre-filed rebuttal testimony. Finally, FirstEnergy asserts that ELPC/NRDC's arguments regarding rebuttal practices undermining the adequacy of the litigation process are speculative, at best.

{¶ 14} On May 18, 2016, ELPC/NRDC filed a reply in support of their motion to modify the stipulated procedural schedule. In their reply, ELPC/NRDC assert that the issue of rebuttal practice should be open to reconsideration in any particular case and that FirstEnergy's argument that it would be unfairly prevented from contradicting the opponents' evidence is based on the incorrect assumption that FirstEnergy has the right to contradict evidence it solicits on cross-examination.

{¶ 15} Initially, the attorney examiner finds that the stipulated procedural schedule is reasonable and should be adopted. Consequently, the procedural schedule set forth in Paragraph 9 shall be adopted by the Commission. The hearing shall commence on July 25, 2016, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio. Additionally, the Commission finds that an expedited written discovery response time of ten days, with the exception of discovery served on or after June 28, 2016, to July 5, 2016, shall be adopted.

{¶ 16} Next, regarding ELPC/NRDC's motion to set a deadline for rebuttal testimony prior to the commencement of the hearing, the Commission finds that the motion should be denied. As argued by FirstEnergy, the Commission finds that establishing such a deadline would contradict the Commission's longstanding practice, and the Commission finds that no circumstances in this proceeding warrant a departure from this practice.

### **III. ORDER**

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That the stipulated procedural schedule and expedited written discovery response time set forth in Paragraphs 10 and 11 are adopted pursuant to Paragraph 15. It is, further,

{¶ 19} ORDERED, That ELPC/NRDC's motion to modify the stipulated procedural schedule is denied. It is, further,

{¶ 20} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Megan Addison

By: Megan J. Addison  
Attorney Examiner

SEF/sc

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**Case No(s). 16-0743-EL-POR**

Summary: Attorney Examiner Entry directs that the stipulated procedural schedule and expedited written discovery response time set forth in Paragraphs 10 and 11 are to be adopted pursuant to Paragraph 15 and denies ELPC/NRDC's motion to modify the stipulated procedural schedule. - electronically filed by Sandra Coffey on behalf of Megan Addison, Attorney Examiner, Public Utilities Commission of Ohio