

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

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**JOINT MOTION TO STAY THE PROCEDURAL SCHEDULE  
AND  
REQUEST FOR AN EXPEDITED RULING  
OF THE PJM POWER PROVIDERS GROUP  
AND  
THE ELECTRIC POWER SUPPLY ASSOCIATION**

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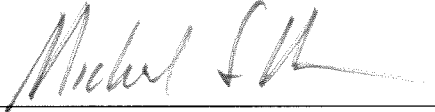
Pursuant to Ohio Administrative Code Rule (“Rule”) 4901-1-12, the PJM Power Providers Group (“P3”) and the Electric Power Supply Association (“EPSA”) jointly move to stay the procedural schedule established by Entry issued on June 3, 2016. The schedule should be stayed while the P3/EPSA joint interlocutory appeal, which is related to other parts of that same Entry, is under consideration. The June 3<sup>rd</sup> Entry issued by the attorney examiners ruled that a hearing should be held on rehearing, established the scope of the hearing, and established a procedural schedule.<sup>1</sup> The Public Utilities Commission of Ohio (“Commission”), however, has not found that it has the necessary jurisdiction to consider on rehearing the sole issue identified and set for further hearing in the attorney examiners’ Entry, the new Rider RRS proposal. Nor, contrary to FirstEnergy’s claims, has the Commission determined the initial matters required by Ohio Revised Code Section 4903.10 in order for rehearing to take place.

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<sup>1</sup> June 3, 2016 Entry at 4.

Because significant errors otherwise exist with the June 3<sup>rd</sup> Entry, the procedural schedule should be held in abeyance while the interlocutory appeal is under consideration, and an expedited ruling on this motion should be issued to prevent harm to the parties pursuant to Rule 4901-1-12(C). P3's<sup>2</sup> and EPSA's<sup>3</sup> arguments are set forth more fully in the attached memorandum in support of this joint motion to stay the procedural schedule and joint request for an expedited ruling. If this motion is denied, P3/EPSPA express their support for the joint motion for extension filed by OCC, NOAC and OMAEG. P3/EPSPA express this support without waiving any jurisdictional arguments related to the rehearing issue.

Respectfully submitted,



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<sup>2</sup> P3 is a non-profit organization whose members are energy providers in the PJM Interconnection LLC (“PJM”) region, conduct business in the PJM balancing authority area, and are signatories to various PJM agreements. Altogether, P3 members own over 84,000 megawatts of generation assets, produce enough power to supply over 20 million homes, and employ over 40,000 people in the PJM region, representing 13 states and the District of Columbia. This joint motion to stay the procedural schedule and request for expedited ruling do not necessarily reflect the specific views of any particular member of P3 with respect to any argument or issue, but collectively present P3’s positions.

<sup>3</sup> EPSA is a national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. This joint motion to stay the procedural schedule and request for expedited ruling do not necessarily reflect the specific views of any particular member of EPSA with respect to any argument or issue, but collectively present EPSA’s positions.

**MEMORANDUM IN SUPPORT OF  
JOINT MOTION TO STAY THE PROCEDURAL SCHEDULE  
AND  
REQUEST FOR AN EXPEDITED RULING  
OF THE PJM POWER PROVIDERS GROUP  
AND  
THE ELECTRIC POWER SUPPLY ASSOCIATION**

**I. INTRODUCTION**

The PJM Power Providers Group (“P3”) and the Electric Power Supply Association (“EPSA”) filed an interlocutory appeal to the Public Utilities Commission of Ohio (“Commission”) of the June 3<sup>rd</sup> Entry because the Commission has not yet determined it has jurisdiction (which it does not) to proceed with the sole issue set for further hearing, and because the attorney examiners inappropriately made determinations that are statutorily within the sole province of the Commission. While the interlocutory appeal is under consideration, the parties should not be obligated to prepare and file expert testimony and prepare for a hearing that may never be held. Regardless of how the Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, “FirstEnergy”) try to spin the Commission’s May 11, 2016 Entry on Rehearing,<sup>4</sup> the fact remains that the Commission did not grant rehearing for the purpose of holding a hearing on the new Rider RRS proposal and has not ruled on the jurisdictional arguments on the new proposal. With FirstEnergy’s ESP IV now in operation, there should be no rush to impose a new monthly charge on ratepayers that has nothing to do with recovery of FirstEnergy’s costs to provide service. The June 3<sup>rd</sup> Entry’s dates for filing witness testimony and commencing the hearing in this proceeding should be stayed pending resolution of the interlocutory appeal. P3/EPSA also requests an expedited ruling on this motion.

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<sup>4</sup> See, e.g., FirstEnergy’s Memorandum Contra P3 and EPSA’s Interlocutory Appeal at 4 (June 13, 2016).

## II. ARGUMENT

### A. P3/EP SA are likely to prevail on their pending interlocutory appeal.

The attorney examiners evaluated the arguments raised in the applications for rehearing and the memoranda contra the applications for rehearing, and concluded an additional hearing should be held in this proceeding regarding the provisions of the new Rider RRS Proposal. They ruled on the scope of the hearing – it “will be limited to the provisions of, and alternatives to, the Modified RRS Proposal” and concluded that “[n]o further testimony will be allowed regarding other assignments of error raised by parties.”<sup>5</sup> After doing so, the attorney examiners established the following procedural schedule in the June 3<sup>rd</sup> Entry:

- (a) Testimony on behalf of intervenors should be filed by June 22, 2016.
- (b) Discovery requests regarding the Modified RRS Proposal, except for notices of deposition, should be served by July 1, 2016.
- (c) The evidentiary hearing shall commence on July 11, 2016, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-A, Columbus, Ohio.

The Commission, however, has not yet determined whether it has jurisdiction over FirstEnergy’s new Rider RRS proposal. Additionally, the attorney examiners cannot determine what issues shall be granted rehearing and the scope of additional hearings. That authority is set forth in R.C. 4903.10, which clearly states that such determinations are to be made by the Commission. The only step the Commission has taken in this proceeding is to grant itself more time to consider the rehearing petitions and reopen discovery. It has not granted rehearing on any specific matter that would authorize the attorney examiners to set a hearing on the new Rider RRS proposal.

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<sup>5</sup> June 3, 2016 Entry at 4.

For these reasons, the determinations made in the June 3<sup>rd</sup> Entry are unlawful and unreasonable. The likelihood that P3/EPISA will succeed on the arguments raised in the interlocutory appeal support a stay of the procedural schedule.

**B. P3/EPISA will suffer irreparable harm absent a stay on the procedural schedule.**

The compressed procedural schedule set for the new Rider RRS proposal will force P3/EPISA to expend further time, expense, and resources that may be warrantless given the pending jurisdictional arguments and the absence of statutorily required initial determinations. Without the requested stay, P3/EPISA must immediately incur significant expenses to engage witnesses and to commit extensive time and resources to prepare for hearing.<sup>6</sup> These costs, coupled with the fact that FirstEnergy's ESP IV is already operating, support a stay of the procedural schedule until the Commission resolves the jurisdictional arguments and issues an order in compliance with R.C. 4903.10.

**C. The requested stay will not substantially harm any other party.**

A stay on the procedural schedule will not *substantially harm* any other party in this proceeding. FirstEnergy's ESP IV is in place with the exception of Rider RRS. FirstEnergy is not seeking to recover any costs through Rider RRS, so it will not be harmed by a stay of the procedural schedule. With no harm to the utilities, all other parties will clearly benefit from the requested stay by avoiding the time and expense of litigating Rider RRS (as well as avoiding its charges) until the Commission addresses the jurisdictional arguments and the statutory requirements set forth in R.C. 4903.10.

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<sup>6</sup> *Accord, In the Matter of the Complaint of Mark A. Whitt, Complainant, v. Nationwide Energy Partners, LLC, Respondent*, Case No. 15-697-EL-CSS, 2015 Ohio PUC LEXIS 988, \*16 (November 18, 2015) (granting stay and noting it would be unduly burdensome or expensive for respondent to respond to discovery requests while a separate Commission investigation was ongoing).

**D. A stay on the procedural schedule is in the public interest.**

The requested stay on the procedural schedule is in the public interest. All of the parties in this proceeding should not be subject to needless time, expense and resources preparing for a rehearing issue that is not within the Commission's jurisdiction and for which the Commission has not determined that rehearing should be held. The requested stay allows the Commission to adhere to its governing statutes and rules regarding jurisdiction and rehearing. It is in the public interest (as well as being consistent with Ohio law) to allow the Commission to consider the applications for rehearing and the jurisdictional issues before holding a hearing for a charge that will not recover any utility costs. The requested stay is reasonable, is in the public interest and should be granted immediately.

**E. An expedited ruling is warranted to prevent undue prejudice and expense to the parties.**

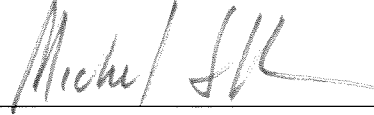
An expedited ruling should issue immediately on this motion to stay. The intervenors are under an extremely short timeframe to conduct discovery, obtain experts and prepare testimony. That testimony is due on June 22, 2016 with a hearing scheduled for July 11, 2016. An immediate ruling on this motion is needed to prevent undue prejudice and expense to the parties. P3/EPSC cannot certify that all parties do not object to the issuance of an immediate ruling.

**III. CONCLUSION**

For all of the foregoing reasons, the Commission should issue an expedited ruling and impose a stay on the procedural schedule in this case until the Commission determines that it has jurisdiction to hear the new Rider RRS proposal and reaches the requisite determinations required by R.C. 4903.10 to proceed with rehearing. If this motion is denied, P3/EPSC express

their support for the joint motion for extension filed by OCC, NOAC and OMAEG. P3/ESPA express this support without waiving any jurisdictional arguments related to the rehearing issue.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 14<sup>th</sup> day of June 2016 upon all persons/entities listed below:

  
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Summary: Motion - Joint Motion to Stay the Procedural Schedule and Request for an Expedited Ruling electronically filed by Mr. Michael J. Settineri on behalf of PJM Power Providers Group and Electric Power Supply Association