

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Determination of the Existence of) | |
| Significantly Excessive Earnings for 2018 Under the) | Case No. 19-1338-EL-UNC |
| Electric Security Plan of Ohio Edison Company, The) | |
| Cleveland Electric Illuminating Company, and The) | |
| Toledo Edison Company.) | |
|) | |
| In the Matter of the Determination of the Existence of) | |
| Significantly Excessive Earnings for 2019 Under the) | Case No. 20-1034-EL-UNC |
| Electric Security Plan of Ohio Edison Company, The) | |
| Cleveland Electric Illuminating Company, and The) | |
| Toledo Edison Company.) | |
|) | |
| In the Matter of the Quadrennial Review Required by) | |
| R.C. 4928.143(E) for the Electric Security Plan of Ohio) | Case No. 20-1476-EL-UNC |
| Edison Company, The Cleveland Electric Illuminating) | |
| Company, and The Toledo Edison Company) | |

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON'S MEMORANDUM CONTRA OCC'S
MOTION TO MODIFY PROCEDURAL SCHEDULE**

The Commission should deny the Motion to Modify Procedural Schedule (“Motion”) filed on October 20, 2020, by the Office of the Ohio Consumers’ Counsel (“OCC”). The current procedural schedule for these consolidated proceedings sets the following deadlines:

- November 2, 2020: Testimony of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, the “Companies”).
- November 16, 2020: Testimony of intervenors.
- January 5, 2021: Evidentiary Hearing.

Because the Companies filed testimony in support of their 2018 and 2019 significantly excessive earnings test (“SEET”) proceedings on July 15, 2019 and May 15, 2020, respectively, the Companies’ testimony filed on November 2, 2020, will address only the fourth-year review

required by R.C. 4928.143(E). OCC's Motion requests two alternative modifications to the current schedule – either an indefinite suspension or a lengthy delay. Neither of these is justified.

A. OCC's Request to Suspend to the Procedural Schedule

First, OCC asks the Commission to “suspend” the procedural schedule in these consolidated proceedings until after the Ohio Supreme Court issues its decision in *In the Determination of the Existence of Significantly Excessive Earnings for 2017 under the Electric Security Plans of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Supreme Court Case No. 2019-961 (the “2017 SEET Appeal”).¹ This request is based on OCC's concern that the Commission might issue a decision in the 2018 and 2019 annual significantly excessive earnings test (“SEET”) proceedings before the Court issues a decision in the 2017 SEET Appeal.² Because the Court must issue a decision in the 2017 SEET Appeal before the end of this year, OCC's concern is not valid.

The Court held oral argument in the 2017 SEET Appeal on May 12, 2020, and soon will issue a decision on the merits. Because this is an election year in which two of the justices hearing the 2017 SEET Appeal have terms that end prior to the scheduled hearing date in this proceeding, the Court is constrained to issue its decision in the next two months.³ Since the Commission cannot issue a ruling in the 2018 and 2019 SEET proceedings until after the hearing scheduled for January 5, 2021, there is no valid basis for suspending the procedural schedule.

Moreover, OCC's professed concern does not actually relate to the current schedule. OCC does not argue that it is unable to file SEET testimony on November 16, 2020. To the contrary, OCC identifies in its Motion the amount of revenues from the Companies' distribution

¹ OCC Memo. in Supp., pp. 2-3.

² *Id.*

³ See Ohio Const., Art. IV, § 6; R.C. 2503.03.

modernization rider that OCC wants to include in its 2018 and 2019 SEET calculations to derive customer refund amounts.⁴ OCC can file its testimony now. Similarly, the parties can present evidence in support of their respective positions at the hearing scheduled for January 5, 2021. These procedural steps can be taken regardless of when the Court issues its decision in the 2017 SEET Appeal. OCC's true worry lies not with the schedule but, instead, with the Commission issuing a decision in the 2018 and 2019 SEET proceedings before the 2017 SEET Appeal is decided. Because the current procedural schedule does not control the timing of the Commission's future order in the SEET proceedings, OCC has offered no valid basis for suspending that schedule.

B. OCC's Request for an Extension of Five Months to Respond to the Companies' Fourth-Year Review Testimony.

As an alternative to its request to suspend the procedural schedule, OCC asks for a drawn-out schedule that retains the November 2, 2020 deadline for the Companies' testimony and then gives intervenors five months – until April 5, 2021 – to prepare and file any testimony in response, with the Companies having only seven days to respond to all discovery requests over the course of that entire five-month period.⁵ For no identifiable reason, OCC also suggests a round of comments and reply comments during January.⁶ These are the same modifications to the procedural schedule that OCC already requested in its September 9, 2020 request for certification of an interlocutory appeal from the Attorney Examiner's Entry dated September 4, 2020, which set the procedural schedule for these consolidated cases. Both in that request for certification and in this motion, OCC has not shown that this modification to the procedural schedule is necessary or reasonable.

⁴ OCC Memo. in Supp., p. 2.

⁵ OCC Motion, pp. 1-2; OCC Mem. in Supp., pp. 4-7.

⁶ OCC Motion, p. 2; OCC Mem. in Supp., p. 6.

There is no reason to believe that either of the tests required by R.C. 4928.143(E) will require an extended period of time for intervenor review. As the Commission has explained, the fourth-year review is “merely intended to act as a ‘check-up’” on the Companies’ fourth electric security plan (“ESP IV”).⁷ The Commission found ESP IV to be more favorable in the aggregate over its entire term than the expected results of a market rate offer under R.C. 4928.142, and there have been no material changes to ESP IV that would cause a different conclusion *for its remaining term* (the “ESP v. MRO Test”).⁸ For purposes of this check-up, the Commission need simply determine the quantitative and qualitative benefits that continue through the end of ESP IV.

Likewise, the prospective significantly excessive earnings test (“Prospective SEET”) required by R.C. 4928.143(E) is sufficiently similar to the annual SEET tests conducted for the last ten years that the Companies’ forthcoming testimony should be easy to follow and uncontroversial. Indeed, because the Prospective SEET involves a comparison between the Companies’ *combined* total earned return on equity to that of comparable companies *during the balance of the plan*,⁹ the one issue that caused disagreement between the Companies and OCC in a recent SEET proceeding will not be relevant here.¹⁰ While OCC’s Motion leans heavily on DP&L’s fourth-year review proceeding, the instant proceeding has none of the unique issues

⁷ See *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*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing, ¶ 338 (Oct. 12, 2016) (“ESP IV Fifth Entry on Rehearing”).

⁸ See R.C. 4928.143(E).

⁹ R.C. 4928.143(E).

¹⁰ See *In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2017 Under the Electric Security Plans of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 18-857-EL-UNC, Opinion and Order, ¶ 19 (March 20, 2019).

presented there. OCC has not and cannot point to even one such issue in this proceeding that merits a more extended procedural schedule.

OCC attempts to support its Motion by misrepresenting the Companies' responses to OCC's discovery requests for fourth-year review data.¹¹ While the Companies did interpose objections, the Companies also responded that they will produce responsive information when it becomes available. The Companies fully intend to do so. This also reveals the weakness of OCC's complaint that the standard twenty-day period for discovery responses prevents it from conducting discovery during the two-week period after the Companies file their testimony and OCC's testimony is due. Because OCC served discovery on the Companies relating to fourth-year review issues on September 18, 2020, the Companies are obligated to supplement their responses as data becomes available. OCC has not shown that the timing of discovery requires a more extended procedural schedule.

C. Conclusion

For the foregoing reasons, the Commission should deny OCC's Motion to Modify the Procedural Schedule.

Respectfully submitted,

/s/ James F. Lang

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¹¹ OCC Mem. in Supp., pp. 4-5.

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Electric Illuminating Company, and The Toledo
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum Contra was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 27th day of October, 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ James F. Lang

One of the Attorneys for Ohio Edison
Company, The Cleveland Electric
Illuminating Company, and The Toledo
Edison Company

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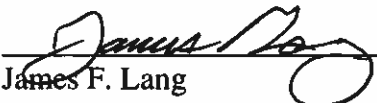
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AFFIDAVIT UNDER SECTION 1.05 OF THE DOCKETING INFORMATION SYSTEM
("DIS") ELECTRONIC FILING MANUAL AND TECHNICAL REQUIREMENTS.


State of Ohio)
) SS
County of Cuyahoga)

I, James F. Lang, being first duly sworn, hereby state and aver as follows:

1. I am counsel for Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies") in the above-captioned proceeding. I have personal knowledge of the facts stated herein.
2. On Tuesday, October 27, 2020, I attempted to file the attached Memorandum Contra via the DIS. I made one attempt before 4 pm, a second attempt before 5 pm, multiple attempts between 5 pm and 5:30 pm, and multiple attempts between 5:30 pm and 6:30 pm. At all times, DIS was not functioning, thereby preventing the filing.


James F. Lang

Sworn to and subscribed before me on this 28th day of October 2020.


Notary Public

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

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in

Case No(s). 19-1338-EL-UNC, 20-1034-EL-UNC, 20-1476-EL-UNC

Summary: Memorandum Contra OCC's Motion to Modify Procedural Schedule electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company