

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Ohio Edison:
Company, The Cleveland :
Electric Illuminating :
Company, and The Toledo :
Edison Company for : Case No. 23-301-EL-SSO
Authority to Establish a :
Standard Service Offer :
Pursuant to R.C. 4928.143 :
in the Form of an Electric:
Security Plan. :

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PREHEARING CONFERENCE

before Ms. Jacky Werman St. John and Ms. Megan
Addison, Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-C,
Columbus, Ohio, called at 10:07 a.m. on Thursday,
October 19, 2023.

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APPEARANCES:

Benesch, Friedlander, Coplan & Aronoff, LLP
By Mr. N. Trevor Alexander
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Columbus, Ohio 43215

FirstEnergy Service Company
By Mr. Brian Knipe
76 South Main Street
Akron, Ohio 44308

On behalf of the Applicants.

Boehm, Kurtz & Lowry
By Mr. Michael Kurtz
and Ms. Jody Kyler Cohn
36 East 7th Street, Suite 1510
Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

Carpenter Lipps, LLP
By Ms. Kimberly W. Bojko
and Ms. Emma Easley
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of the Ohio Manufacturers'
Association Energy Group.

Hubay Dougherty LLC
By Mr. Trent Dougherty
1391 Grandview Avenue
Columbus, Ohio 43212

On behalf of the Citizens Utility Board
of Ohio.

Kegler, Brown, Hill & Ritter
By Mr. Robert Dove
and Mr. Nicholas S. Bobb
65 East State Street, Suite 1800
Columbus, Ohio 43215

On behalf of the Ohio Partners for
Affordable Energy.

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APPEARANCES: (Continued)

Bricker Graydon LLP
By Mr. Devin D. Parram
and Ms. Rachael Mains
100 South Third Street
Columbus, Ohio 43215

On behalf of the Ohio Hospital
Association.

Spilman, Thomas & Battle, PLLC
By Mr. Joseph C. Unger
300 Kanawha Boulevard, East
Charleston, West Virginia 25301

On behalf of Walmart, Inc.

Interstate Gas Supply, LLC
By Mr. Evan Betterton
6100 Emerald Parkway
Dublin, Ohio 43016

On behalf of the Interstate Gas Supply,
Inc.

Environmental Law & Policy Center
By Ms. Erica McConnell
21 West Broad Street
Columbus, Ohio 43215

On behalf of the Environmental Law &
Policy Center.

Carpenter Lipps, LLP
By Ms. Angela Paul Whitfield
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of The Kroger Company.

One Energy Enterprises, Inc.
By Mr. James D. Dunn
12385 Township Road 215
Findlay, Ohio 45840

On behalf of the One Energy Enterprises,
Inc.

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APPEARANCES: (Continued)

McNees, Wallace & Nurick
By Mr. Matthew Pritchard
and Ms. Avery Walke
250 West Street
Columbus, Ohio 43215

On behalf of the Retail Energy Supply
Association.

Baker & Hostetler LLP
By Mr. David Proano
127 Public Square
Cleveland, Ohio 44114

On behalf of the Ohio Energy Leadership
Council.

Maureen Willis, Ohio Consumers' Counsel
By Mr. John Finnigan,
Assistant Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215

On behalf of the Residential Utility
Consumers of Ohio Edison Company, The
Cleveland Electric Illuminating Company,
and The Toledo Edison Company.

Bricker Graydon LLP
By Mr. Dane Stinson
100 South Third Street
Columbus, Ohio 43215

Northeast Ohio Public Energy Council
By Mr. Glenn S. Krassen,
General Counsel
31360 Solon Road, Suite 33
Solon, Ohio 44139

On behalf of the Northeast Ohio Public
Energy Council.

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APPEARANCES: (Continued)

Vorys, Sater, Seymour and Pease, LLP
By Mr. Michael Settineri
52 East Gay Street
Columbus, Ohio 43215

On behalf of the Constellation Energy
Generation, LLC, and Constellation
NewEnergy, Inc.

Stone Mattheis Xenopoulos & Brew, PC
By Mr. Michael K. Lavanga
and Mr. Joseph Briscar
1025 Thomas Jefferson St., NW
8th Floor West Tower
Washington, D.C. 20007

On behalf of the Nucor Steel Marion, Inc.

NRG Retail Companies
By Mr. Bryce A. McKenney
3060 Kent Road
Silver Lake, Ohio 44224

Calfee, Halter & Griswold LLP
By Mr. James F. Lang
and Mr. Matthew B. Barbara
1405 East Sixth Street
Cleveland, Ohio 44114

On behalf of the NRG Retail Companies.

Dave Yost, Ohio Attorney General
By Mr. Thomas Lindgren,
Ms. Rhiannon Howard,
and Ms. Amy Botschner O'Brien
Assistant Attorneys General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

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1 Thursday Morning Session,
2 October 19, 2023.

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4 EXAMINER ADDISON: Let's go on the
5 record.

6 The Public Utilities Commission of Ohio
7 calls for a prehearing conference at this time and
8 place Case No. 23-301-EL-SSO which is captioned in
9 the Matter of the Application of Ohio Edison Company,
10 The Cleveland Electric Illuminating Company, and The
11 Toledo Edison Company for Authority to Establish a
12 Standard Service Offer Pursuant to R.C. 4928.143 in
13 the Form of an Electric Security Plan.

14 My name is Megan Addison and with me
15 today is Jackie St. John and we are the Attorney
16 Examiners assigned by the Commission to preside over
17 today's conference.

18 Before we begin, we will go ahead and
19 take appearances this morning beginning with the
20 Companies, and we will just work our way around the
21 room.

22 MR. KNIPE: Good morning, your Honors.
23 Appearing on behalf Ohio Edison Company, The
24 Cleveland Electric Illuminating Company, and The
25 Toledo Edison Company, Brian Knipe, FirstEnergy

Service Company. Also appearing with me is Trevor Alexander from the Benesch law firm.

MR. STINSON: Thank you, your Honor. On behalf of the Northeast Ohio Public Energy Council, the law firm Bricker Graydon, LLP, 100 South Third Street, Columbus, Ohio 43215 and Glenn S. Krassen, General Counsel, Northeast Ohio Public Energy Council, 31360 Solon Road, Suite 33, Solon, Ohio 44139.

MR. DOUGHERTY: Thanks, your Honors. On behalf of Citizens Utility Board of Ohio, Trent Dougherty from the law firm Hubay Dougherty, Grandview Heights, Ohio 43212.

MS. McCONNELL: Good morning, your Honors. On behalf of the Environmental Law & Policy Center, Erica McConnell, 21 West Broad Street, 8th Floor, Columbus, Ohio 43215.

MR. BETTERTON: Good morning, your Honors. On behalf of the Interstate Gas Supply, Evan Betterton, 6100 Emerald Parkway, Dublin, Ohio 43016.

MS. WALKE: Good morning, your Honors. On behalf of the Retail Energy Supply Association, Avery Walke, co-counsel Matthew Pritchard from McNees, Wallace & Nurick, 250 West Street, Columbus, Ohio 43215.

1 MR. DOVE: Good morning, your Honors. On
2 behalf of the Ohio Partners for Affordable Energy,
3 Robert Dove and Nick Bobb from the law firm Kegler,
4 Brown, Hill & Ritter, 65 East State Street, Suite
5 1800, Columbus, Ohio 43125.

6 MR. DUNN: Good morning, your Honors.
7 James Dunn on behalf of One Energy Enterprises, Inc.,
8 at 12385 Township Road 215, Findlay, Ohio 45840.

9 MR. PARRAM: Good morning, your Honor.
10 On behalf of the Ohio Hospital Association, Devin
11 Parram and Rachael Mains from the law firm Bricker
12 Graydon, 100 South Third Street, Columbus, Ohio
13 43215.

14 MS. COHN: Good morning, your Honors. On
15 behalf of the Ohio Energy Group, Jody Kyler Cohn and
16 Michael Kurtz from the law firm Boehm, Kurtz &
17 Lowery, 36 East Seventh Street, Cincinnati, Ohio
18 45202.

19 MR. PROANO: Good morning, your Honor.
20 David Proano from Baker & Hostetler on behalf of Ohio
21 Energy Leadership Council, 127 Public Square, Suite
22 2000, Columbus, Ohio 44114.

23 MR. FINNIGAN: Good morning, your Honors.
24 John Finnigan, Assistant Consumers' Counsel,
25 appearing on behalf of the Ohio Office of Consumers'

1 Counsel.

2 MR. LAVANGA: Good morning, your Honors.
3 On behalf of Nucor Steel Marion, Michael Lavanga and
4 Joseph Briscar of the firm Stone Mattheis Xenopoulos
5 & Brew, 1025 Thomas Jefferson Street, Washington,
6 D.C. 20007.

7 MR. MCKENNEY: Thank you, your Honors.
8 On behalf of NRG Energy retail companies, Bryce
9 McKenney. Also for the NRG retail companies, Jim
10 Lang and Matt Barbara from the law firm Calfee,
11 Halter & Griswold.

12 MR. SETTINERI: Good morning, your
13 Honors. On behalf of Constellation NewEnergy, Inc.,
14 and Constellation Energy Generation, LLC, Mike
15 Settineri, the law firm Vorys, Sater, Seymour and
16 Pease. Thank you.

17 MR. UNGER: Good morning, your Honors.
18 On behalf of Walmart, Joe Unger at Spilman, Thomas &
19 Battle.

20 MS. WHITFIELD: Good morning, your
21 Honors. On behalf of The Kroger Company, Angela Paul
22 Whitfield with the law firm Carpenter Lipps, 280
23 North High Street, Suite 1300, Columbus, Ohio 43215.

24 MS. EASLEY: Good morning, your Honors.
25 On behalf of the Ohio Manufacturers' Association

1 Energy Group, Kimberly W. Bojko and Emma Y. Easley,
2 also with Carpenter Lipps, 280 North High Street,
3 Columbus, Ohio 43215.

4 MR. LINDGREN: Good morning, your Honors.
5 On behalf of the Commission Staff, Ohio Attorney
6 General Dave Yost by Thomas Lindgren, Rhiannon
7 Howard, and Amy Botschner O'Brien at 30 East Broad
8 Street, 26th Floor, Columbus, Ohio 43215.

9 EXAMINER ADDISON: Thank you. I believe
10 that was everyone.

11 All right. We have a number of items to
12 address this morning. I don't believe Mr. Shaefer is
13 here this morning, so I will pose this question to
14 the Companies. We had a motion to -- what was
15 labeled as a motion to compel filed on July 13, 2023,
16 by the Intervenor the Labor Union, Local 126. Just
17 for clarity, has the Company -- or have the Companies
18 responded to that discovery request?

19 MR. KNIPE: Yes, your Honor. Would you
20 like to take this?

21 EXAMINER ADDISON: Whoever would like to
22 address.

23 MR. ALEXANDER: Your Honor, yes, we did
24 respond to those questions.

25 EXAMINER ADDISON: Perfect. Thank you.

1 It was our understanding that was never
2 technically a motion to compel but just want to make
3 the record clear. Thank you very much.

4 The next item we have a motion to compel
5 filed by the Ohio Consumers' Counsel on June 9, 2023,
6 in particular in reference to OCC Discovery Request
7 OCC Set 01-RFP-05. We have read the pleadings
8 associated with the motion, but we would like to know
9 if this issue has been resolved among the parties at
10 this time or if it still requires a ruling from the
11 Bench.

12 MR. ALEXANDER: It still requires a
13 ruling, your Honor.

14 EXAMINER ADDISON: Thank you. Based on
15 the pleadings, we do agree that -- with the Companies
16 they have responded to the discovery request by
17 explaining that they have no side agreements related
18 to ESP V as contemplated by R.C. 4928.145. However,
19 it has been the practice in these ESP proceedings to
20 allow contracts between the Companies and other
21 Intervenorors to be reviewed at the Companies'
22 headquarters, and we would expect the same to be true
23 in this proceeding.

24 With that being said, we would expect the
25 Companies to work with OCC to come up with a mutually

1 agreeable date for such a review to take place, if it
2 hasn't been done already.

3 MR. ALEXANDER: Your Honor, just --

4 EXAMINER ADDISON: Yes, Mr. Alexander.

5 MR. ALEXANDER: -- clarification on that.

6 The ruling is limited to Intervenor and not to the
7 full scope of the parties included in OCC's request?

8 EXAMINER ADDISON: Correct.

9 MR. ALEXANDER: And OCC's request asked
10 for contracts relevant to the proceeding, and so is
11 the ruling that the Company should only produce
12 contracts relevant to the proceedings as OCC
13 requested?

14 EXAMINER ADDISON: Well, I believe it
15 was -- the ruling was any existing contracts between
16 the Companies and intervening parties that are --
17 that have intervened in this proceeding.

18 MR. ALEXANDER: Okay. Even if they are
19 not relevant, the order is they be produced?

20 EXAMINER ADDISON: Correct.

21 MR. ALEXANDER: Okay. Thank you.

22 MR. FINNIGAN: Your Honor.

23 EXAMINER ADDISON: Anything else,
24 Mr. Finnigan?

25 MR. FINNIGAN: The one concern we had was

1 the response seemed like it was worded we had no side
2 deals at this time. And it would be burdensome for
3 us to continually keep sending out the same discovery
4 request to get updates whether any were signed after,
5 you know, the last discovery request. Can this be
6 deemed as a continuing request where they would be
7 obligated to produce any side deals that are entered
8 into through the point of a final ruling in this
9 case? Because that's what we really need to know.
10 If there is a side deal entered into in the 11th
11 hour, we would want to know that.

12 EXAMINER ADDISON: Would the Companies
13 like to respond?

14 MR. ALEXANDER: Yes. Your Honor, I do
15 want to push back against this concept of side deal.
16 The concept of side deal assumes there is a contract
17 relevant to this proceeding, right? Those do not
18 exist. The Companies do not have any side deals.

19 EXAMINER ADDISON: I think we have made
20 that clear.

21 MR. ALEXANDER: Thank you, your Honor.

22 EXAMINER ADDISON: At the time of the
23 Company's response, correct, yes.

24 MR. ALEXANDER: Also still true today.
25 And the Ohio Administrative Rules already govern

1 the -- the supplementation of discovery requests, and
2 so our position would be there is no need for an
3 additional ruling because the Ohio Administrative
4 Rules already cover that.

5 EXAMINER ADDISON: And I would agree,
6 Mr. Finnigan. If there was a need for a supplemental
7 discovery response, certainly the Companies would
8 afford that to OCC as well as any other intervening
9 party in this proceeding.

10 MR. FINNIGAN: Thank you, your Honor.

11 EXAMINER ADDISON: Of course.

12 Yes, Mr. Alexander.

13 MR. ALEXANDER: I'm sorry. One more
14 clarification. There are several trade associations
15 that are -- that are parties to this case. Does the
16 ruling encompass an agreement with the trade
17 association or agreements with each of their members?
18 And the reason we are seeking to clarify is we don't
19 necessarily have a complete list of the members of
20 each of the trade associations. In fact, I suspect
21 we don't.

22 EXAMINER ADDISON: For clarity, my ruling
23 does only pertain to the trade associations.

24 MR. ALEXANDER: Thank you, your Honor.

25 EXAMINER ADDISON: Yes, absolutely.

1 MR. SETTINERI: Your Honor, if I may, I
2 just want to understand the ruling as well. I mean,
3 is your ruling broad any contract between the Company
4 and any Intervenor is open to review by any party or
5 OCC?

6 EXAMINER ADDISON: Well, OCC made the
7 request at this point.

8 MR. SETTINERI: And then would that
9 include service agreements, type of agreements?

10 EXAMINER ADDISON: I believe the ruling
11 was any contracts.

12 MR. SETTINERI: Okay. Thank you. Will
13 you put the ruling in writing, or is it just going to
14 be in the record?

15 EXAMINER ADDISON: Oh, no. It is being
16 transcribed.

17 MR. FINNIGAN: And, your Honor, you know,
18 we will work with the Company to see if there is any
19 way we can narrow the request because things like
20 service agreements or collective bargaining
21 agreements, things like that, we are not interested
22 in seeing those. It's only things that relate to
23 this ESP V proposal.

24 So I think after this hearing is over
25 today, we will meet with the Companies and see if we

1 can narrow the request and make it simpler.

2 EXAMINER ADDISON: Thank you very much,
3 Mr. Finnigan. I am certain that every party
4 appreciates that -- that effort, and you can
5 certainly keep the Bench apprised of any -- any
6 resolution that comes from those discussions. Thank
7 you.

8 EXAMINER ST. JOHN: The next issue we
9 would like to discuss today is the pending motions to
10 schedule a virtual public hearing. This motion was
11 filed by OCC on September 29. We've also received
12 filings in support of that motion on September 29,
13 October 3, and October 6.

14 First as background, on October -- excuse
15 me, on August 9, an entry was issued that scheduled
16 the in-person local public hearings. Those were to
17 be held on September 7, 14, and 26 and were held on
18 those days.

19 That August 10 entry also directed
20 FirstEnergy to publish notice of the local public
21 hearings in newspapers in counties in which they had
22 service area.

23 No party at that point in time filed a
24 motion for a virtual public hearing. OCC's motion
25 was not filed until after the notices were published

1 and after those local public hearings were held.

2 At this point in the proceeding, the
 3 three local public hearings have been held in person
 4 and there has been little public participation during
 5 those hearings as compared to the written public
 6 comments which have been filed in the docket.
 7 Individuals may make comments at the evidentiary
 8 hearing or file written comments in the docket if
 9 they still wish to provide comments for the
 10 Commission to consider.

11 For these reasons, and as we similarly
 12 determined in the Columbia Gas rate case, Case No.
 13 21-637-GA-AIR, et al., and the Aqua Ohio rate case,
 14 Case No. 22-1094-WW-AIR, et al., we deny that motion
 15 as unnecessary.

16 The last issue that we would like --

17 MR. PROANO: Your Honor, before we move
 18 on, David Proano for Ohio Energy Leadership Council.
 19 Could you just clarify for the record so we know the
 20 procedure when you will take any comments from the
 21 public at the hearing?

22 EXAMINER ST. JOHN: It's typical in our
 23 proceedings that if there are members of the public
 24 who attend the hearing and would like to make
 25 comments similar to the local public hearings,

1 relatively short comments, less than 5 minutes or so
2 in length.

3 EXAMINER ADDISON: If necessary, we will
4 make a determination at the hearing if there are any
5 members of the public there to observe and/or inquire
6 about making comments.

7 MR. PROANO: Okay. Thank you, your
8 Honor.

9 EXAMINER ST. JOHN: And as a final issue,
10 we would ask that the parties coordinate with each
11 other and provide cross estimates and a proposed
12 witness schedules to the ALJs no later than the end
13 of the day on November 2.

14 MR. ALEXANDER: Your Honor, with regard
15 to that, the Companies are happy to coordinate the
16 scheduling of witnesses and cross estimates, so if
17 the parties want Intervenor testimonies filed,
18 provide those to the Companies, we will consolidate
19 all the comments and provide them to the Bench.

20 EXAMINER ST. JOHN: Thank you. And with
21 that that's everything that we had on our list to
22 address today. Are there any other issues the
23 parties would like to raise?

24 MS. WHITFIELD: Yes, your Honor. This is
25 Angela Paul Whitfield on behalf of The Kroger

1 Company. As I mentioned off the record, Kroger would
2 like to request a short extension of the evidentiary
3 hearing from November 7 to November 28 in light of
4 some recent developments and changes in circumstances
5 that occurred after your Honors' October 11 entry in
6 this case.

7 Specifically as your Honors are aware,
8 the AEP ESP V evidentiary hearing is still open and
9 needs to be concluded with one, possibly two rebuttal
10 witnesses. So with -- and I believe that testimony
11 is due tomorrow, and then I believe some parties had
12 made a request to have time to conduct depositions in
13 that case before we schedule that hearing which
14 appears to be taking us into November for that, I
15 would assume.

16 There also is -- because that hearing
17 needs to be concluded and then couple that with the
18 OVEC LGR audit proceeding, 21-477, that is against
19 three utilities and has, I believe, eight or nine
20 depositions and witnesses scheduled to testify that
21 begins October 31 and the need to conclude that
22 hearing and then also as your Honors referenced off
23 the record, there is the NARUC conference that
24 several parties -- or several people involved in this
25 hearing will be participating in or attending

1 November 13 to I believe the 16th you said. There's
2 also another conference November 8 and 9, the Ohio
3 Energy Conference, in which a couple counsel in this
4 case are scheduled to present and attend at.

5 And so with all of those conflicts and
6 the hearings that need to be concluded, Kroger feels
7 that moving the hearing three weeks from November 7
8 to November 28 will accommodate all of those and
9 doesn't necessarily impact the Companies' objection
10 to the original request for I believe a 60-day
11 extension because we would still be having and
12 completing the hearing in relatively short order
13 after that.

14 And I don't believe -- you know, the Grid
15 Mod II, FirstEnergy Grid Mod II, is scheduled to
16 start December 11, so I think we could get the ESP V
17 in right before that hearing would start as well.

18 EXAMINER ADDISON: Ms. Whitfield, would
19 it give you any comfort in knowing that the Attorney
20 Examiners assigned to Case No. 21-477-EL-RDR had
21 every intention on finishing that hearing before the
22 hearing commences on November 7 in this case?

23 MS. WHITFIELD: It does a little bit,
24 your Honor. For like Kroger I have an out-of-state
25 witness, so I feel -- could you also accommodate the

1 8th and 9th that a couple of us will not -- will have
 2 to attend another conference that we're accommodating
 3 the NARUC? I understand, your Honor, you are in the
 4 same boat as many of us already. So that's why I was
 5 trying to instead of having that -- just one second,
 6 instead of having that uncertainty, if we could just
 7 move it and then we aren't starting -- you know, we
 8 are not done by November 7, and we start November 9,
 9 and then we are stopping until the 16th. And then I
 10 believe that puts us into Thanksgiving week, you
 11 know, so I just kind of was suggesting we move beyond
 12 all of that and just start and then be devoted to
 13 this hearing starting November 28.

14 EXAMINER ADDISON: Thank you.

15 Mr. Proano.

16 MR. PROANO: Your Honor, I am going to
 17 support Kroger's motion. I am looking at the
 18 schedule and we -- I was one of the parties that
 19 moved to extend the hearing date that was not
 20 granted, your Honor.

21 EXAMINER ADDISON: We are aware.

22 MR. PROANO: But I really think it does
 23 make sense. You look at the schedule. October 28 we
 24 are going to have 24 parties potentially submitting
 25 Intervenor testimony, some with multiple witnesses,

1 so you are looking at at least 24 witnesses, maybe
2 even 30. And then you have the Companies' witnesses
3 are 10 to 12 at least. And then you have Staff
4 witnesses on the 30th. And there is zero time to
5 depose any of these people between now and
6 November 7.

7 So I think due process requires a short
8 extension of the schedule. November 28 is a
9 reasonable extension. It will allow parties, if they
10 wish, to take depositions of witnesses. This is an
11 extremely complicated case. FirstEnergy has produced
12 thousands of pages of materials, hundreds of
13 discovery requests, probably 3 or 4 hundred discovery
14 requests.

15 The sheer time and effort it takes to
16 prepare for this hearing is enormous. It's going to
17 take a considerable effort. I think this hearing is
18 going to go three or four weeks honestly given all
19 the witnesses that are going to be out there. I
20 think it's reasonable to extend it just a few weeks.
21 As I see it, the hearing calendar, November 28
22 hearing calendar, I think it's open for two weeks
23 until the Grid Mod II hearing on December 11
24 obviously, so we will have to deal with that. I
25 think it's reasonable.

1 EXAMINER ADDISON: Which -- and that
2 hearing has already been moved, correct?

3 MR. PROANO: That's already been moved.
4 You could theoretically move that back one week.
5 We'd have to talk about it. Most people in this case
6 are also in that case.

7 EXAMINER ADDISON: We are well aware.

8 MR. PROANO: Yeah, you are all well
9 aware. I think to bring a little sanity to the
10 process, I don't think it's going to hurt anyone to
11 move it a few weeks. I don't think it's going to
12 make a material difference to when the ESP gets into
13 effect.

14 I realize FirstEnergy doesn't want to
15 really move it very far or at all because they want
16 that order, that decision. I appreciate that. But
17 moving a few weeks, I think, makes sense. I think
18 due process requires it.

19 Deposition is a right that's under the
20 rules, and I think we need to exercise that right if
21 the parties want to. There is literally going to be
22 thousands of pages of testimony filed on Monday. And
23 I think it's fair for the parties and the Company to
24 have time to review that and prepare for the case.
25 Thank you, your Honor.

1 EXAMINER ADDISON: Mr. Finnegan.

2 MR. FINNIGAN: Your Honor, I support
3 Ms. Whitfield's request, and as Mr. Proano stated,
4 Ms. Whitfield laid out that under the existing
5 schedule, there's barely no time between now and the
6 hearing for things that are already scheduled. And
7 as Mr. Proano said, with about 30 witnesses that
8 leaves no time for depositions. If we assumed about
9 30 witnesses and each deposition of a witness took
10 about half a day, we would require about two weeks of
11 free time to accomplish that.

12 That time doesn't exist under the current
13 schedule. So for that reason we would support the
14 brief extension request by Ms. Whitfield.

15 EXAMINER ADDISON: Thank you.

16 Mr. McKenney.

17 MR. MCKENNEY: The NRG retail companies
18 for I think different reasons would like more time
19 just between the filing of the testimony and the
20 hearing date for settlement discussions. So while we
21 talked about more time for litigation prep, I think
22 we are optimistic there is -- that there should be
23 more time for settlement discussions between the
24 filing of the testimony and hearing date that way. I
25 guess for that reason we support an extension whether

1 it be three weeks or another time period. Thank you.

2 EXAMINER ADDISON: Anybody else care to
3 weigh in?

4 MR. UNGER: Your Honor, Walmart would
5 object just to the November 28 hearing. We've got
6 three hearings, one in West Virginia, one in Kentucky
7 with the same witnesses, and one in Virginia. I will
8 have to coordinate with my colleague Carrie Grundmann
9 on a specific date, but we would object to the 28th.

10 EXAMINER ADDISON: Thank you.

11 Anyone else? Ms. Easley.

12 MS. EASLEY: OMA would also like to
13 support the extension. Sorry.

14 EXAMINER ADDISON: You're fine. Thank
15 you.

16 Mr. Lindgren, does Staff want to weight
17 in on this?

18 MR. LINDGREN: Your Honor, I have not had
19 a chance to confer with Staff, so we don't have a
20 position at this time. Personally I would be fine
21 with it, but I haven't had a chance to confer with my
22 clients.

23 EXAMINER ADDISON: Anyone else?

24 MS. COHN: Your Honor, OEG has the same
25 issue with the November 28 date that Walmart has for

1 the hearing in the other state but --

2 EXAMINER ADDISON: Thank you.

3 MS. COHN: -- we can make it work if we
4 have to.

5 EXAMINER ADDISON: Thank you.

6 MR. DUNN: Your Honor, One Energy
7 Enterprises, Inc., would support Kroger's request at
8 this point in time for reasons that have already been
9 stated.

10 EXAMINER ADDISON: Thank you.

11 MR. DOVE: OPAE would support as well. I
12 would note I have another hearing at the Power Siting
13 Board on the 14th which may not be an issue if NARUC
14 is on the 14th and testimony due on the 7th, the week
15 before, so an extension would be helpful to the
16 extent it's consistent with other parties' interests.

17 EXAMINER ADDISON: Thank you.

18 MR. PARRAM: Your Honor, since everyone
19 else is speaking up.

20 EXAMINER ADDISON: Why not?

21 MR. PARRAM: The peer pressure is just
22 weighing on me. Ohio Hospital Association would be
23 supportive of an extension of time to the 28th.

24 EXAMINER ADDISON: Do the Companies have
25 any thoughts on the extension request?

1 MR. ALEXANDER: Yes, your Honor. As a
2 preliminary matter, the hearing was set for
3 November 7 back in July. This has been established
4 for a long period of time. Parties have had the
5 opportunity to plan their calendars and their
6 discovery to try the case on November 7.

7 With regard to the argument that an
8 extension is required for due process purposes, the
9 Companies' testimony has been filed since April.
10 It's been out there. If someone wanted to depose the
11 Companies' witnesses, that could have happened
12 between April and now. And I do not believe there is
13 any due process concern with keeping the schedule
14 which was established back in July.

15 With regard to the AEP hearing, that
16 hearing will be completed before this hearing begins,
17 so I don't believe there is any hearing conflict
18 there. With regard to the OVEC LGR hearing, same
19 situation. It is anticipated to be completed before
20 this hearing will begin so no issues there.

21 With regard to various conflicts that
22 parties may have due to other proceedings or other
23 commitments, this case has been scheduled. Parties
24 moved to change the hearing date already, and the
25 Bench has already ruled on that so this is

effectively an application for rehearing of a sort or a motion for reconsideration of the ruling the Bench already made.

We would love to accommodate everyone, but by statute a decision is to be issued in this case by January 5 as the Bench noted already and that's important because we have auctions that need to take place. We need to be able to serve customers starting June 1 of next year, and so we think it's important we proceed to hearing in a timely manner.

MR. PROANO: Your Honor, may I respond to the auction issue?

EXAMINER ADDISON: One moment.

MR. ALEXANDER: I'm sorry, your Honor, one additional point. Mr. McKenney raised the question of additional time for settlement and for settlement discussions as a potential justification for moving the hearing. That is certainly common at the Commission.

Right now we are not close enough to justify making that request. If things change in the future, if we do get close enough in settlement that would justify moving the hearing date, we will certainly notify the parties and the Bench that that is the case. But right now we are just not close

1 enough to represent to the Bench that settlement is
2 grounds to move the hearing date.

3 EXAMINER ADDISON: Thank you.

4 Mr. Proano.

5 MR. PROANO: Yes, thank you, your Honor.
6 Just to respond to the auction issue, as I have
7 discussed with my colleague Mr. Alexander, there can
8 be a placeholder option under the ESP IV parameters
9 just as was done with AEP. I think the only argument
10 I have heard on a potential delay really is that
11 auction issue, they need to hold auctions in March to
12 start the June 1 delivery year.

13 AEP just had an auction like that where
14 pending approval of ESP V, they held the auction
15 under the auspices of ESP IV. The same can be done
16 here, so I don't think there is any prejudice to the
17 auctions, your Honor. Thank you.

18 EXAMINER ADDISON: Thank you.

19 MS. WHITFIELD: And, your Honor, if I
20 could just briefly respond.

21 EXAMINER ADDISON: Absolutely.

22 MS. WHITFIELD: So with respect to the
23 Companies' suggestion that the parties could have
24 taken these depositions of their witnesses since
25 April and there is no due process issues, you know,

1 as he noted, we were engaged in settlement talks.
2 Parties don't want to expend resources and money and
3 time on taking depositions that may not be necessary.

4 It appears now that we are shifting to
5 litigation mode. Maybe not but it certainly seems
6 that way from this front and so we've all got to find
7 a time when we can schedule those depositions now.
8 And as both of my colleagues pointed out, there's
9 literally no time. I mean, he says these hearings
10 will be done. That may be true. Your Honors may
11 ensure that these -- the AEP ESP V hearing will be
12 completed before this one starts, the OVEC LGR
13 hearing will be completed before this one starts, but
14 when are we going to have the opportunity to conduct
15 the depositions, review the testimony, get our
16 exhibits together if we are back to back in these
17 hearings? Thank you, your Honor.

18 EXAMINER ADDISON: Thank you.

19 And refresh my recollection,
20 Ms. Whitfield, no extension request was ever filed in
21 the OVEC LGR proceeding, correct, once the hearing
22 date was established which I believe was around the
23 same time as this hearing date?

24 MS. WHITFIELD: It was extended. It's
25 been extended.

1 MR. FINNIGAN: It was moved briefly, your
2 Honor, on account of potential conflict with the AEP
3 ESP.

4 EXAMINER ADDISON: You are correct. It
5 was originally October 17; is that correct?

6 MS. WHITFIELD: Correct.

7 EXAMINER ADDISON: Thank you all. We
8 certainly appreciate everyone's input into this
9 matter. At this time we are going to stick with the
10 November 7 hearing date. As we noted before, parties
11 can certainly be flexible in generating the list of
12 witnesses and their cross estimates, getting that to
13 the Bench. We will try to accommodate as much as we
14 can, but I believe we've just gotten to a point this
15 year where everything is coming to a head.

16 We certainly feel the same way with the
17 cases that we are presiding over, namely, that
18 we're -- you know, I am involved in three of the
19 cases that were named. Ms. St. John is involved with
20 two others. We certainly feel that pressure as well.
21 We do not issue this lightly.

22 We will certainly try our best to
23 accommodate. If that means adjusting outside of
24 the -- you know, we normally have a 5:00 p.m. cutoff
25 time. If that means adjusting that during the

1 hearing, we can certainly accommodate that. It
2 sounds like we will need to do so in the OVEC LGR
3 proceeding to allow us to start on November 7 in this
4 proceeding.

5 But at this time we will stick with the
6 schedule. We will note that in response to the joint
7 motion, the earlier joint motion, to amend the
8 procedural schedule, we did push back testimony
9 filing dates to accommodate parties' interests and
10 whether or not settlement discussions could be
11 fruitful there. And we just -- we have come to a
12 point where extensions are not viable absent any
13 significant indication that a settlement might --
14 might happen in this case.

15 So as Mr. Alexander has indicated, if
16 that does happen, you can certainly inform the Bench.
17 That will change circumstances. But as of right now,
18 we will be moving ahead on November 7.

19 MR. PROANO: Your Honor, thank you.
20 Could I just ask just so we can coordinate schedules
21 of witnesses, which specific days are we not going to
22 have a hearing for the NARUC conference?

23 EXAMINER ADDISON: Well, I put that out,
24 Mr. Proano, as for the parties to kind of take that
25 information. I am going to leave it to you,

1 especially with all the other hearings going on. We
2 certainly -- you know, we've indicated we want to be
3 flexible. We will allow the parties -- depending on
4 who is actually participating in the conference, we
5 will allow the parties to identify dates that may be
6 problematic due to that.

7 The same goes for the Ohio Energy
8 Conference, I believe Ms. Whitfield also indicated,
9 on the 8th and 9th. We will certainly do our best to
10 work around things but that will be up to the parties
11 to -- to decide and propose something for the Bench
12 to consider so.

13 MR. PROANO: Thank you, your Honor.

14 MR. ALEXANDER: I'm sorry. So, your
15 Honor, because I am going to be putting together the
16 list, the concept would be avoid the witnesses who
17 would testify on those days being Kroger witnesses?
18 I just want to make sure I understand the ruling. So
19 basically Kroger's witnesses wouldn't testify on the
20 8th and 9th?

21 MS. WHITFIELD: Or any witness I might
22 want to cross or any witness I would like to hear.

23 EXAMINER ADDISON: I wouldn't necessarily
24 say, Ms. Whitfield, that it takes away the entirety
25 of the day. Where is the conference taking place,

1 Ms. Whitfield?

2 MS. WHITFIELD: It's up in Powell --
3 Lewis Center, sorry, Lewis Center.

4 EXAMINER ADDISON: Thank you. So
5 certainly if there -- if someone happens to be
6 speaking and is not available --

7 MS. WHITFIELD: Perhaps -- sorry.
8 Perhaps just during that speaking time we could take
9 a break.

10 EXAMINER ADDISON: Perhaps, yes. From my
11 understanding that would be a more reasonable
12 proposition so.

13 MR. ALEXANDER: Your Honor, I am happy to
14 work on this with Ms. Whitfield, but I don't
15 understand how that's feasible when that would cost
16 us at least half a day for her to speak and then come
17 back on each of those two dates, and we only have
18 three days that week already.

19 EXAMINER ADDISON: Mr. Alexander, I am
20 just propping it up to the parties to propose
21 something. Certainly if there are disputes, the
22 Bench will address those. If there is a concern
23 where the hearing is getting unduly prolonged,
24 certainly that would be something that the Attorney
25 Examiners can step in and address at that time.

1 But I would like the parties to be able
2 to try to come up with a schedule that works for
3 everyone. If we need to step in and say, you know,
4 that's -- we are not going to break for that long on
5 that day, certainly we can do so at that time, but I
6 would like the parties to take a first stab at
7 things.

8 MR. ALEXANDER: Thank you, your Honor.

9 MS. WHITFIELD: Thank you, your Honor.

10 EXAMINER ADDISON: Is there anything else
11 we need to address before we adjourn for today?

12 All right. Thank you all.

13 We are off the record.

14 (Thereupon, at 10:43 a.m., the hearing
15 was adjourned.)

16 - - -

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Thursday, October 19,
2023, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7536)

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Gibson, Karen Sue Mrs..