

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Commission Review)
Of the Capacity Charges of Ohio Power) Case No. 10-2929-EL-UNC
Company and Columbus Southern Power)
Company)**

**OHIO POWER COMPANY’S MEMORANDUM CONTRA
FIRSTENERGY SOLUTIONS CORP.’S MOTION TO EXTEND THE
DEADLINE FOR TESTIMONY OR IN THE ALTERNATIVE FOR EXPEDITED
DISCOVERY AND REQUEST FOR EXPEDITED RELIEF**

INTRODUCTION

The Commission should not delay the deadline for testimony or the deadline for the start of the hearing in this matter beyond the date already set in the March 14, 2012 Entry. FirstEnergy Solutions Corp. (FES) seeks to delay the filing of its testimony in this proceeding until April 9, 2012, that would make it due 10 days after the date prescribed by the Examiner and 7 days before the hearing. In the alternative, FES seeks a shortened discovery response period from 10 days to 3 days. The delay in the testimony due date should not be entertained by the Commission. The expedited exchange of discovery is a matter AEP Ohio can cooperatively address with FES and other Intervenor, as it pertains to any additional issues raised in the supplemental testimony filed by AEP Ohio, but not related to matters filed almost seven months ago.

ARGUMENT

FES overstates the state of the case and the position it finds itself in relation to the schedule released by the Examiner on March, 14 2012. FES bases its request for a delayed date to file its testimony upon the gravity of the case stating that “AEP Ohio is

attempting to change the landscape for customers and CRES providers by imposing massively above-market capacity charges.” FES Motion at 4. According to FES, “there is no way to provide intervenor testimony regarding the appropriate components of a cost-based pricing mechanism without knowing what components AEP Ohio seeks to include in this mechanism and how those purported costs have been calculated.” *Id.* The argument appears premised on an assumption that FES will see the facts presented by AEP Ohio for the first time on March 23, 2012. However, FES has been in possession of AEP Ohio’s testimony for almost seven months and should already be well aware of AEP Ohio’s position.

A procedural schedule calling for testimony from the Company and Intervenor was initially set up on August 11, 2011. In that schedule the Company was required to file its testimony by August 31, 2011, which it did. The Intervenor was then required to file their testimony by September 23, 2011, which they did not end up doing due to the filing of the stipulation in the combined 11-346 *et. al.* ESP proceedings. However, AEP Ohio relied on some of these main points in the testimony in support of the ESP stipulation and a significant amount of discovery was served based upon these points in that case. In total that means that FES already had 201 days to issue discovery on the points raised in the August 31, 2011 testimony of AEP Ohio in this case. As a related matter, AEP also already informally made an offer to FES to incorporate the discovery traded in the ESP Stipulation proceeding into this present proceeding concerning these capacity matters (without waiving any rights to object to the admissibility of such discovery and provided that FES merely identify the specific responses it sought to incorporate into this case). AEP Ohio’s offer was an attempt to approach the litigation

efficiently and cooperatively. However, any argument that FES is unaware of the components of what AEP Ohio seeks to include ignores the testimony in FES' possession for the last 201 days, the discovery already completed on these items, and the consideration of elements of the testimony in a fully litigated ESP case before the Commission.

The Commission recognized the importance of this proceeding and the need to handle the matter expeditiously in its March 7, 2012 Entry. It is the Commission that set the hearing date for April 17, 2012, and the Commission that set the expiration of the interim rate for May 31, 2012. Delays at the very beginning of the process are not a good start for an endeavor the Commission has laid out under this abbreviated timeline. The present request to delay filing testimony that FES was first put on notice of in last year's August 11, 2011 Entry should be denied.

FES may claim there is no harm to delaying the filing of its testimony while retaining the same hearing date, but such an assumption ignores the reality of this case. First, the procedural schedule explicitly exempts the Commission Staff from the March 30, 2012, testimony deadline. Assuredly if the Staff is participating, it will presumably file its testimony in advance of the start of the hearing. The gathering of all applicable testimony will allow the Commission's Staff the opportunity to weigh the merits of the positions of all sides to the case in an attempt to file well reasoned testimony for Commission consideration. However, a further delay of the current schedule would not provide the Commission Staff that opportunity. Second, the delay requested would not allow AEP Ohio an opportunity to meaningfully conduct discovery on testimony to be filed by the Intervenor in this docket for the first time on March 30 – a little over two

weeks prior to the scheduled hearing. FES's request to delay its testimony until April 9 would (assuming the 10-day discovery response time is retained) preclude AEP Ohio from conducting discovery related to the Intervenor testimony – even though the parties have conducted considerable discovery regarding AEP Ohio's litigation position. As stated above, AEP Ohio filed its position almost 7 months ago, but the Intervenor has yet to file their positions in this docket. Any argument that FES or any other Intervenor makes based on the due process rights of a party to conduct discovery is better applied to AEP Ohio. In fact, if any change in the procedural schedule is needed perhaps it should be arranged to provide AEP Ohio expedited discovery concerning the positions provided by Intervenor in the proceeding through pre-hearing discovery and not the other way around.

Recognizing the length of time Intervenor has had to review and conduct discovery on the August 31, 2011 testimony the appropriate scope of the information under consideration in this request should be related to information not yet filed with the Commission – AEP Ohio Supplemental and Intervenor Testimony. While it is not the intention of AEP Ohio to file an entirely new case on March 23, 2012, there will be some additional information beyond that filed in August of 2011 to provide the Commission a larger picture of subject matter. By comparison to the breadth of issues addressed in the August 31 testimony, the Company's supplemental testimony will be surgical and limited. To that end, FES's request is largely premature and based on inaccurate speculation that the Company will file supplemental testimony that is extensive or raises major issues. Nevertheless, in an effort to honor the Commission's stated intent to decide the matters in this case by May 31, 2012, AEP Ohio can agree to use its best efforts to

respond to discovery requests related to items not previously filed in this docket, 3 business days after receipt. Not knowing the extent of information that will be requested, it is not possible to guarantee every item will be returned within three 3 business days, but a good faith effort can be undertaken and communication of items that could be delayed shared with the requesting party. Likewise, AEP Ohio would submit that the same obligation should be imposed on Intervenor regarding discovery requests sent to the Intervenor regarding their testimony, which will be made for the first time in this docket on March 30. AEP Ohio is focused on dealing with this case in an expeditious and efficient manner. Therefore, AEP Ohio does not object if the Commission establishes a 3 business day discovery response time for questions dealing specifically with the supplemental AEP Ohio testimony and any testimony filed by Intervenor in the case. Any additional discovery items related to matters previously filed by AEP Ohio would be subject to the abbreviated 10-day response ordered by the Examiner.

Alternatively, if the Commission grants the delays requested by FES, it should commensurately extend the scheduled expiration date for the interim capacity charge (*i.e.*, beyond May 31, 2012), which expiration date was an integral part of the plan for resolving these issues as was the expedited procedural schedule that FES seeks to modify.

CONCLUSION

FES' request for a delay in the filing of its testimony should be denied. AEP Ohio will agree to an expedited discovery response time, as discussed above, on issues related to matters not already filed 201 days ago in AEP Ohio's testimony filed in this docket, as long as it too will receive responses to its discovery requests on the testimony it has yet to receive from the Intervenor in this docket within 3 business days. AEP

Ohio has already made attempts to accommodate FES's efforts to prepare for hearing in this docket and make the above-described concession in good faith. If the Commission grants the delay requested by FES, it should also extend the scheduled expiration date for the interim capacity charge (*i.e.*, beyond May 31, 2012).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Ohio Power Company's Memorandum Contra FirstEnergy Solutions Corp. Motion to Extend the Deadline for Testimony or in the Alternative for Expedited the Discovery and Request for Expedited Relief has been served upon the below-named counsel via electronic mail this 19th day of March, 2012.

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Summary: Memorandum Contra in case 10-2929-EL-UNC electronically filed by Mr. Matthew J Satterwhite on behalf of Ohio Power Company