

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Long-Term Forecast)	
Report of Ohio Power Company and)	Case No. 10-501-EL-FOR
Related Matters.)	

In the Matter of the Long-Term Forecast)	
Report of Columbus Southern Power)	Case No. 10-502-EL-FOR
Company and Related Matters.)	

**OHIO POWER COMPANY’S MOTION TO STRIKE COMMENTS ON AN
EXPEDITED SCHEDULE FOR CONSIDERATION**

Pursuant to Rule 4901-1-27(B)(7)(a) and (b), Ohio Admin. Code, Ohio Power Company (“AEP Ohio” or the “Company”) moves to strike the comments filed by Retail Energy Supply Association (“RESA”) and Interstate Gas Supply Inc. d/b/a IGS Energy (“IGS”) in this proceeding on October 3, 2012, on the grounds that those comments discuss topics that are outside the limited scope of this proceeding and, consequently, are irrelevant. Further, the comments should be stricken because they seek to introduce new facts into the record that pertain to the very issues litigated in an evidentiary hearing more than six months ago without affording the parties an opportunity to review or test the new evidence. Lastly, to allow RESA or IGS to file “comments” at this late stage when the Commission sought supplemental briefing by parties to the case would be improper given that neither entity respected the Commission’s process and filed to intervene in this proceeding and show a unique interest beyond those already presented by existing parties.

AEP Ohio also respectfully moves that this motion be considered on an expedited basis recognizing that the risk of further prejudice to the record is present given that reply

briefs are due on October 17, 2012. The reasons supporting these motions are described in the attached memorandum in support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Commission should strike the comments filed by RESA and IGS (collectively “Untimely Commenters”) because they are not authorized by the Commission’s September 5, 2012, Entry and they discuss topics that are outside the limited scope of this proceeding in violation of the Commission’s process. Further, the comments should be stricken because they seek to introduce new facts into the evidentiary record more than six months after the conclusion of the evidentiary hearing without affording the parties an opportunity to review or test the new evidence. Lastly, the Commission ordered additional briefing in its Entry. To allow the Untimely Commenters to file comments instead of briefs at this late stage, without even an attempt to justify intervention, would be improper and outside of the process established by the Commission. The Company also seeks expedited consideration of this motion recognizing that the risk of further prejudice to the record is present given that reply briefs are due on October 17, 2012.

II. ARGUMENT

A. RESA And IGS Are Not Parties To This Proceeding And, Therefore, Cannot File Additional Briefs In This Docket.

The Untimely Commenters have no authority to file the comments provided because they are not parties to the case under O.A.C. rule 4901-1-10. The Commission’s September 5, 2012, Entry provided only “the parties”¹ with the opportunity to submit additional briefs; the Commission did not solicit comments from “interested

¹ September 5, 2012, Entry at ¶10.

stakeholders.”² This is not a rulemaking proceeding where parties routinely provide their opinions on matters throughout the Commission’s review. Being an interested stakeholder is not an eligible determinant to define an entity as a party pursuant to O.A.C. rule 4901-1-10. The Untimely Commenters should not be permitted to ignore the Commission’s rules and proceedings.

The Untimely Commenters did not even attempt to file motions to intervene or seek leave to file their comments. Perhaps that is because they are aware that their interests are already represented by existing parties and that no new point of view would be represented by their attempts at untimely intervention.³ Absent an order to the contrary from the attorney examiner, motions to intervene must be filed by no later than five days prior to the scheduled start of the evidentiary hearing.⁴ As of today, over six months after the conclusion of the evidentiary hearing in this case, neither of the Untimely Commenters have moved to intervene in this proceeding. Yet each took it upon themselves to submit comments in a case in which they have not participated and in which the Commission did not request their comments. The Untimely Commenters’ attempts to circumvent the Commission’s process and provide new evidence and after the fact opinions of interests already represented in the case and presented at the evidentiary hearing should not be permitted. The Commission should strike the comments filed by the Untimely Commenters.

² RESA Comments at 1.

³ The University of Toledo Innovation Enterprises filed a motion to intervene and provided a different point of view than an existing party. Their interests focused on the statewide impact of the Commission’s decision on the business development opportunities in Ohio as compared to the CRES issues repeated by the Untimely Commenters and already represented in the docket by FES.

⁴ R.C. § 4903.221(A)(2).

B. The Comments Filed By RESA And IGS Should Be Stricken From The Record Because They Are Outside The Scope Of The Commission's September 5th Entry And Seek To Introduce New Evidence Into The Record At This Late Stage In The Case.

In its September 5, 2012, Entry, the Commission reopened these proceedings for the specific purpose of permitting the parties to submit additional briefing on the issues surrounding the Commission's determination of need for purposes of section 4928.143(B)(2)(c), Revised Code. Far from focusing on this very narrow issue, RESA uses its comments to pontificate on the evolution of the regulatory scheme in Ohio and to champion competitive market principles as a beacon for Ohio's energy policies. RESA's comments go on to discuss the other statutory requirements to establishing a non-bypassable surcharge, such as the requirement that the proposed facility be competitively bid and dedicated to Ohio consumers.⁵ Not only are these topics outside the scope of this proceeding, they are well beyond the scope of the Commission's limited purpose for reopening the record in this case—to permit *additional briefing* related solely to the need requirement. IGS' comments also discuss topics that are outside the scope of this proceeding. Twice in their comments IGS discusses a purchase of receivables program, lamenting the fact that AEP Ohio does not have one and encouraging the Commission to “make shopping for energy easy by having consolidated billing with the purchase of receivables.”⁶ Whether AEP Ohio has such a program or how such a program will make shopping easier are topics that have absolutely nothing to do with any issue in this case.

Moreover, the crux of both of the Untimely Commenters' comments is cost recovery, a topic the attorney examiner consistently found at the hearing to be beyond the

⁵ RESA Comments at 5-7.

⁶ IGS Comments at 2.

scope of this proceeding.⁷ As AEP Ohio has repeatedly argued, the issue of cost recovery is irrelevant in this case. This proceeding is solely about determining need for the Turning Point facility. Before any costs associated with the facility are recovered, AEP Ohio will address each of the statutory requirements, including the costs of the proposed facility, in a future proceeding. The Untimely Commenters' comments submitted in response to the Commission's September 5th Entry discuss topics that are not only outside the scope of this proceeding as a whole, but that are also outside the scope of the Commission's limited purpose for reopening the record in this case. Consequently, the Commission should strike both comments as irrelevant.

In addition to being stricken as irrelevant because they discuss topics outside the scope of this proceeding, the comments submitted by the Untimely Commenters should also be stricken because they seek to introduce new facts into the evidentiary record more than six months after the evidentiary hearing was concluded. Both Untimely Commenters' comments introduce evidence related to the cost and availability of sRECs that was not in the evidentiary record before and that was not subject to cross-examination at the hearing. RESA's comments discuss the actions of its members in complying with the state's RPS benchmarks and go on to offer opinions as to the liquidity of the sREC market today.⁸ The parties to this proceeding did not have the opportunity to explore the circumstances prompting RESA members to take the actions they did or to test the opinions offered in RESA's comments. IGS goes further in its comments, seeking to introduce evidence related to the prices it paid for sRECs in 2011

⁷ Tr. at 168-169 (“[i]t’s not the Commission’s intention to address cost-recovery at this point.”); *See also*, Attorney Examiner’s February 29, 2012, Entry.

⁸ RESA Comments at 8-9.

and the going rate for sRECs in 2012.⁹ Here again, because neither of the Untimely Commenters participated at the hearing in this case, the parties did not have the opportunity to explore and test the circumstances and assumptions surrounding IGS' sREC purchases. Moreover, the "going rate today for 2012 S-RECs"¹⁰ is irrelevant given that the evidentiary record in this case was established more than six months ago. And again, no party was provided the opportunity to test IGS' sREC figures.

The Untimely Commenters also seek to introduce their CRES beliefs and experience when those interests are already represented by FES in this case. The actions taken by the Untimely Commenters are akin to sitting on the sidelines in the AEP Ohio ESP case as a non-party and then once the briefing schedule is opened, filing views asserting a number of new facts that relate to facts offered and rebutted at hearing and offering opinions without participating in the Commission process to establish the record. In addition to striking the Untimely Commenters' comments because they discuss topics outside the limited scope of this case, the Commission should strike the comments as they seek to introduce new evidence into the record at this late stage in the case, denying the parties an opportunity to review and test through cross-examination this new evidence.

C. The Commission Should Consider This Matter On An Expedited Basis To Avoid Further Prejudice To The Record.

The Examiner should consider this matter on an expedited basis to avoid further prejudice to the record in this case. Under O.A.C. rule 4901-1-12(C), any motion may include a request for expedited treatment. The schedule for consideration of expedited motions will provide the Untimely Commenters the opportunity to respond and the

⁹ IGS Comments at 1-2.

¹⁰ Id. at 2.

Commission, the legal director, the deputy legal director, or the attorney examiner to rule accordingly prior to the filing of reply briefs. A record or decision that relies upon entities not parties to the case is improper and in violation of R.C. § 4903.09, which requires that decisions be based on the evidence of record and not asserted facts by untimely commenters that add untested claims to a case in which they have not even sought intervention. AEP Ohio respectfully requests that the Commission acts in an expedited manner to strike the prejudicial comments of other CRES providers from this record and prevent the filing of potentially prejudicial reply comments when the parties file reply briefs.

III. CONCLUSION

For the foregoing reasons, AEP Ohio respectfully requests that the Commission strike the comments filed by RESA and IGS.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the below-named counsel for parties and Untimely Commenters, via electronic mail this 9th day of October, 2012.

/s/ Yazen Alami

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Summary: Motion Ohio Power Company's Motion to Strike Comments electronically filed by Mr. Yazen Alami on behalf of Ohio Power Company