

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Alternative Energy Rider Contained in the)	
Tariffs of Ohio Edison Company, The)	Case No.11-5201-EL-RDR
Cleveland Electric Illuminating Company,)	
and The Toledo Edison Company)	
)	

**REPLY OF THE ENVIRONMENTAL LAW & POLICY CENTER, THE OHIO
ENVIRONMENTAL COUNCIL, AND SIERRA CLUB TO FIRSTENERGY’S
MEMORANDUM CONTRA OHIO POWER COMPANY’S MOTION TO INTERVENE
AND REOPEN PROCEEDINGS**

I. Introduction

On June 21, 2013, the Ohio Power Company (“AEP Ohio”) filed a motion to intervene and reopen proceedings, arguing that its perspective would assist the Public Utilities Commission of Ohio (“Commission” or “PUCO”) in reaching a decision in this case. AEP Ohio also argued that the Commission’s decision on certain issues, including corporate separation, could affect AEP Ohio’s business and the market in Ohio. On July 2, FirstEnergy filed a memorandum contra AEP Ohio’s motion. The Environmental Law and Policy Center, Ohio Environmental Council, and Sierra Club (“Environmental Intervenors”) file the following reply to FirstEnergy’s memorandum.

II. Argument

The Commission should conclude that AEP Ohio has a real and substantial interest in this proceeding and can provide an important additional perspective as an independent utility operating in the REC market. The additional detail that could be provided by AEP, including on contingency plans, the consideration of REC prices from other states, and the impropriety of redacting seller identities, would assist the Commission in its consideration of the issues in this

case. At the very least, AEP Ohio's motion, along with its substantial interest, provides yet another reason why the Commission should allow for further investigation into the corporate separation concerns surrounding FirstEnergy and its transactions. AEP Ohio, as a utility and market participant, expresses its concerns about "corporate separation . . . and utility and affiliate roles in the [REC] market," and it should have the opportunity to participate in an investigation into these issues, including in the current proceeding.

A. AEP Ohio's independent utility perspective could assist the Commission in deciding the issues in this case.

In its memorandum, FirstEnergy implies that AEP Ohio has nothing to add to this Commission review of FirstEnergy's unreasonable and imprudent REC purchases.¹ However, that argument ignores the fact that FirstEnergy's case is about the reasonableness of the price it paid for RECs. In determining the reasonableness of FirstEnergy's purchases of RECs at over fifteen times the applicable alternative compliance payment, the actions of other utilities (utilities that are notably not under investigation by the Commission) are of course relevant.

AEP Ohio's perspective could greatly assist the Commission's review in at least three areas. First, in its motion, AEP Ohio asserts that, consistent with the positions of the Environmental Intervenors, the Office of the Ohio Consumers' Counsel ("OCC"), and the Exeter Report, consideration of comparable REC prices in other states is entirely appropriate. Other states' REC markets serve as a useful point of comparison in determining whether the exorbitant prices paid by FirstEnergy were unreasonable; in fact, AEP Ohio explains that "it did consider lower cost RECs from other states" when making its REC procurements to comply with Ohio's

¹ See FirstEnergy Memorandum at 1-2 ("Apparently, AEP Ohio would like to show what it did to comply with the renewable energy procurement mandates. But AEP Ohio never answers this question: So what?").

renewable standard,² a subject of much debate in this case. Second, an important issue in this case is the adequacy of FirstEnergy's contingency planning. As a utility required to meet the same renewable energy standards as FirstEnergy, AEP Ohio can provide the Commission with information regarding its own planning process. In its motion, AEP Ohio explains that it "can show the Commission how it relied on the broker and bilateral markets as a contingency to obtain renewable energy certificates when faced with high costs of certificates held by a few bidders."³ Third, this case presents the question of what information regarding renewable energy purchases should remain confidential and what information should be publically disclosed. FirstEnergy misleadingly claims that "none of the actual parties to this case . . . have claimed that the Companies' redactions were improper,"⁴ but the Environmental Intervenors and OCC have consistently argued that certain information regarding seller identity and purchase price in the Exeter Report should be public. AEP Ohio's perspective, as a fellow utility and market participant, is especially telling: "AEP Ohio questions FirstEnergy's motives for its repeated attempts to shroud the market-related issues in this case under a veil of secrecy. . . . [I]t is unclear to AEP Ohio why the identity of the provider would be protected from disclosure."⁵

As an independent utility perspective, the information provided by AEP Ohio is especially relevant to the question of whether FirstEnergy's actions were reasonable, the answer to which will impact the entire state of Ohio in a variety of ways.

B. As a utility and market participant, AEP Ohio is affected by the potential corporate separation concerns in this case, and the Commission should follow the recommendations of the Environmental Intervenors and OCC to open a further investigation.

² AEP Ohio Motion to Intervene at 4.

³ *See id.*

⁴ *See* FirstEnergy Memorandum at 5.

⁵ AEP Ohio Motion to Intervene at 4-5.

In responding to AEP Ohio's argument that further review of FirstEnergy's actions is necessary, FirstEnergy ignores the fact that intervenors have already advocated for further investigation by the Commission. Because there has been no meaningful examination of potential corporate separation concerns, the Environmental Intervenors explained in briefing that the Commission should conduct a further investigation into FirstEnergy and its procurements.

As AEP Ohio explains in its motion, "[t]his docket considers a number of factors that implicate . . . corporate separation considerations, and utility and affiliate roles in the renewable energy certificate market."⁶ AEP Ohio's interest in these issues is obvious. It is common-sense that "the integrity of [the] market" may be affected by improper actions by utilities and their affiliates.⁷ As a party participating in the REC market, AEP Ohio (along with other Ohio market participants) is affected by FirstEnergy's actions and any potential decision reached by the Commission. This is no small matter for the state, and the Commission will benefit from any input AEP Ohio can bring to this case.

The corporate separation concerns potentially implicated by this case have yet to be examined by the Commission. AEP Ohio's substantial interest in a potential investigation, along with the perspective it could offer, provide yet another reason why the Commission should follow the recommendations of the Environmental Intervenors and OCC to open a formal investigation into FirstEnergy and its transactions.

III. Conclusion

The Commission should determine that AEP Ohio has a real and substantial interest in this proceeding and can provide an important additional perspective as a utility operating in the REC market. Additionally, AEP Ohio, as a utility and market participant, expresses important

⁶ AEP Ohio Motion to Intervene at 2.

⁷ *See id.*

corporate separation concerns about FirstEnergy, and those issues have yet to be investigated. The Commission should follow the recommendations of the Environmental Intervenors and OCC to open a formal investigation into FirstEnergy and its transactions.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Reply to FirstEnergy's Memorandum Contra Ohio Power Company's Motion to Intervene and Reopen Proceeding*, submitted on behalf of the Environmental Law & Policy Center, Ohio Environmental Council, and Sierra Club, was served by a combination of electronic mail and USPS, upon the following Parties of Record, this 9th day of July, 2013.

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