

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application Seeking)	
Approval of Ohio Power Company's)	
Proposal to Enter into an Affiliate)	Case No. 14-1693-EL-RDR
Power Purchase Agreement for)	
Inclusion in the Power Purchase)	
Agreement Rider)	
)	
In the Matter of the Application of)	
Ohio Power Company for Approval of)	Case No. 14-1694-EL-AAM
Certain Accounting Authority)	

**REPLY MEMORANDUM IN SUPPORT OF
SIERRA CLUB'S MOTION TO ESTABLISH A PROCEDURAL SCHEDULE**

In this proceeding, the Ohio Power Company ("AEP" or the "Company") seeks approval of a proposal with far-reaching consequences for Ohio ratepayers. By asking the Commission to approve a decades-long power purchase agreement with an unregulated affiliate, the Company seeks to tie its customers' bills to the economic fortunes of four coal-fired power plants. AEP proposes to do so by vastly expanding the scope of its proposed Power Purchase Agreement ("PPA") Rider, a non-bypassable rider, still under consideration in the pending AEP Electric Security Plan ("ESP") proceeding.¹

If approved, this power purchase agreement would create a subsidy for 2,700 MW of generation and impact customers' rates for the lifetimes of four coal-fired power plants, which AEP currently projects could extend for 20 to more than 35 years.² The potential ratepayer impacts are both significant and highly uncertain: AEP's own projections show that this proposal

¹ The AEP ESP proceeding is Case No. 13-2385-EL-SSO.

² Case Nos. 14-1693-EL-RDR, 14-1694-EL-AAM, Application at 1 (Oct. 3, 2014) (hereinafter, "Application"); Direct Testimony of Kelly D. Pearce, Ex. KDP-1 at 7.

could save customers as much as \$1.5 billion over the next decade—or cost them as much as an extra \$1.1 billion.³ And despite the vast amounts of ratepayer money at stake, AEP is proposing to foreclose the Commission and any interested parties from undertaking any future prudency reviews of economic conditions or spending on those coal plants over the life of the PPAs.⁴

AEP’s recently-filed application reflects the magnitude of its proposal. The application package—which includes testimony from ten separate witnesses—is both voluminous and complex. AEP’s witnesses offer testimony on numerous technical issues, including future energy prices; the economic impacts of the Cardinal, Conesville, Stuart, and Zimmer power plants; potential transmission costs of plant retirements; and the plants’ financial prospects.⁵ Multiple witnesses have filed testimony citing to various economic and energy models.⁶ And witnesses have opined on whether, and the extent to which, the power purchase agreement would benefit Ohio’s economy and AEP’s customers.⁷

Despite this proposal’s enormous scope and technical complexity, AEP asks the Commission to conduct a “one-time prudence review,” with hopes of locking in this agreement for decades to come.⁸ And the Company requests that these critical issues be considered on what AEP itself concedes is an “expedited procedural schedule.”⁹ AEP’s preferred schedule is

³ Pearce Testimony, Ex. KDP-2.

⁴ AEP Application ¶ 8.

⁵ See, e.g., Direct Testimony of Karl R. Bletzacker at 2-15; Direct Testimony of William A. Allen, Exs., WAA-2; Direct Testimony of Robert W. Bradish at 2-8; Pearce Testimony at 8-15.

⁶ See, e.g., Pearce Testimony; Bletzacker Testimony; Bradish Testimony.

⁷ See, e.g., Direct Testimony of Pablo A. Vegas at 3-4, 20-24; Direct Testimony of Steven M. Fetter at 4-12.

⁸ The review requested by AEP “w[ould] not be revisited later during the term of the contract should economic conditions or cost/price projections change in the future.” Application ¶ 8

⁹ *Id.* ¶ 12.

unreasonable—it would allow no meaningful opportunity for discovery, would effectively preclude intervenors from providing informed testimony on the proposal, and may prevent important voices, including the Ohio Consumers’ Counsel, from participating at all.¹⁰ Because there is no legitimate reason for adopting this hasty schedule, the Commission should reject AEP’s invitation to short-circuit a thorough review of this power purchase agreement.

I. Sierra Club’s proposed schedule would allow the Commission and parties to review AEP’s application, and should be adopted in this proceeding.

Due to the serious problems that AEP’s proffered schedule would create, Sierra Club filed the instant motion the same day it moved to intervene. In its motion and accompanying brief, Sierra Club proposed a reasonable procedural schedule.¹¹ This schedule would enable the parties to conduct meaningful discovery, thereby permitting them to review the application’s numerous technical issues and assess the reasonableness of its underlying assumptions. The procedural schedule proposed by Sierra Club is modeled after the one from the FirstEnergy ESP proceeding. As explained in Sierra Club’s Motion, the FirstEnergy schedule is a good analogue because that case also involves an assessment of long-term cost and revenue projections for four generation facilities and related issues.¹² Sierra Club proposed a similar schedule even though the issues here are broader due to the longer timeframe of AEP’s proposal.¹³ Also similar to the

¹⁰ AEP’s proposed schedule requires that motions to intervene be filed by October 17, 2014. Application ¶ 12. Because OCC did not file its motion to intervene until October 29, AEP’s schedule could preclude OCC (and at least six other parties) from intervening in this case.

¹¹ Motion at 1-2; Memorandum at 4.

¹² Motion at 3; Memorandum at 4-5.

¹³ AEP misreads Sierra Club’s Motion. Contrary to AEP’s assertion, Opp. at 2, Sierra Club did not state the FirstEnergy ESP case involved a broader scope of issues. Rather, it is *AEP’s* proposal that is broader in scope, given that it extends through at least 2051, whereas the FirstEnergy proposal would terminate 20 years earlier. See Motion at 2.

FirstEnergy case, issues of corporate separation exist in this proposed arrangement between a regulated entity and an unregulated affiliate. This issue was not a part of the Company's ESP case.

AEP suggests that its expedited schedule is preferable because the issues presented have previously been litigated.¹⁴ Not so. In pressing this argument, AEP mischaracterizes the true extent of what it has proposed. AEP is not asking for some *de minimis* adjustment to a well-established rider. Rather, AEP is seeking approval for a life-of-the-plants (currently estimated at 20 to more than 35 years) power purchase agreement that would fundamentally change the scope and economic consequences of the PPA Rider, which has not received Commission approval. As originally proposed, the rider applied only to AEP's 19.93% share of the two OVEC plants.¹⁵ Although the ESP application mentioned the possibility of later modifying the rider, the Company's proposal, and related testimony, focused on the OVEC plants only.¹⁶ Indeed, the ESP application lacks any analysis of the four plants at issue here. Thus, although AEP responded to many discovery requests in that proceeding,¹⁷ that discovery was necessarily limited to the original ESP.¹⁸ Furthermore, the ESP Application did not include plants which were owned or operated by AEP's unregulated affiliate and therefore did not invoke the same corporate separation issues that are present here. Ensuring proper corporate separation under

¹⁴ Memorandum Contra at 3 (“[T]he issues involving AEP Ohio’s PPA Rider have largely been litigated and the current affiliate PPA application presents a much narrower set of issues than the FirstEnergy ESP IV case.”).

¹⁵ Case No. 13-2385-EL-SSO, Direct Testimony of Pablo Vegas at 13:12-13 (Dec. 20, 2013).

¹⁶ See Memorandum Contra at 3-4.

¹⁷ See Memorandum Contra at 3.

¹⁸ Notably, the schedule for AEP’s ESP proceeding permitted 133 days of discovery—15 more days than proposed by Sierra Club for this proceeding, even though the original PPA Rider only applied to two coal plants instead of the four at issue here. See Case No. 13-2385-EL-SSO, Entry at 1-2 (Jan. 24, 2014).

Ohio law and preventing illegal cross-subsidization are of paramount importance in this present case and must be fully explored.

AEP now seeks to shoehorn into the PPA Rider four additional coal plants with a combined 2,700 MW of capacity. The potential impacts to ratepayers are substantial and highly speculative: Depending on the assumptions, within the first ten years this proposal might either save—or cost—ratepayers more than \$1 billion. And the timeline of this proposal is lengthy: if approved, this proposal could affect Ohio ratepayers until at least 2051.¹⁹ In short, the magnitude of AEP’s current proposal is much greater than that of the original PPA Rider. So the fact that discovery was conducted on that earlier proposal does not obviate the need for a thorough review of the vast expansion of the PPA Rider being proposed here. Until now, neither Sierra Club nor any other party has had a chance to seek discovery on AEP’s request to extend the Rider to these four additional coal plants. The parties should be given that opportunity, which will assist the Commission’s review and ultimately benefit Ohio ratepayers.

Contrary to AEP’s suggestion,²⁰ the voluminous nature of its application does not support a compressed schedule.²¹ The application is lengthy for a telling reason: AEP’s application covers numerous complex topics, including projections of energy prices, the profitability of the four coal plants, and many other issues. The effects of this proposal, furthermore, are projected to extend to mid-century. AEP’s apparent belief—that because it provided an evaluation of the

¹⁹ Pearce Testimony, Ex. KDP-1 at 7.

²⁰ Memorandum Contra at 3.

²¹ AEP seems to imply that it should be rewarded with an accelerated schedule simply because it filed a complete application. To be sure, if AEP filed an incomplete application, that would hamper the parties’ review of the issues, and likely result in a delay of the proceedings. But even a properly-filed application should be thoroughly reviewed, and a party’s “ample rights of discovery” are not limited to those proceedings in which the applicant has withheld information. *See* R.C. 4903.082.

PPA “using substantial data and explanations,”²² the parties and the Commission should uncritically accept AEP’s representations—has no basis in law. Sierra Club, like all intervenors, “shall be granted ample rights of discovery,”²³ and the Commission’s review will benefit from the parties’ submission of informed testimony. The Commission should reject AEP’s attempt to insulate its proposal from a serious review.

Rather than address the merits of this motion, AEP spends most of its opposition brief attacking Sierra Club for not participating in the earlier ESP proceeding.²⁴ AEP’s criticisms are misplaced. Nothing in the intervention rules conditions a party’s participation on its involvement in an earlier case. A party may intervene in a Commission proceeding where it “may be adversely affected by a public utilities commission proceeding,” or “has a real and substantial interest in the proceeding.”²⁵ Sierra Club easily satisfies those standards, and the fact that it did not intervene in an earlier case—involving different power plants, different witness testimony, and different economic projections—does not relegate it to a second-class status here.

More importantly, though, Sierra Club’s position is far from “unilateral”—to the extent that other parties did not join this motion, which is largely a reflection of the rushed nature of AEP’s proposed schedule. In fact, Sierra Club’s proposed schedule is supported by Environmental Defense Fund, IGS Energy, Ohio Environmental Council, and Retail Energy Supply Association, all of whom have moved to intervene in this proceeding.²⁶ AEP’s *ad*

²² Memorandum Contra at 4.

²³ R.C. 4903.082.

²⁴ See Memorandum Contra at 2-4.

²⁵ R.C. 4903.221; Ohio Adm. Code 4901-1-11(A)(2).

²⁶ Counsel for these intervenors have all indicated their support for Sierra Club’s schedule. In addition, counsel for Walmart has indicated that Walmart does not oppose Sierra Club’s proposed schedule.

hominem attacks on Sierra Club are a red herring, and they should not detract attention from the flaws with AEP's preferred schedule, or the major consequences this proposal would have for Ohio ratepayers.

AEP's further argument, that a rushed schedule is necessary because its proposed power purchase agreement would begin on June 1, 2015,²⁷ is similarly misplaced. This timing concern is a problem of AEP's making. AEP arranged this deal with its own corporate affiliate, and if AEP had wanted a decision by a specific date, the Company should have submitted this application earlier. (As a sophisticated party that regularly appears before the Commission, AEP is well aware of the typical timeframe needed to review substantial proposals like this one.) AEP's failure to file sooner should not preclude the Commission or Ohio ratepayers from having the time needed to review this proposal.

Indeed, the real timing concern here is not the power purchase agreement's proposed start date, but rather than the lengthy period for which this deal would be in effect. If approved, AEP's proposed agreement is projected to extend until at least 2051. Thus, the electricity bills of Ohio ratepayers would be impacted by the economic fortunes of four coal plants for as long as 35 or more years, and AEP has proposed to foreclose any future prudency review of those plants through the entire life of the agreement. Giving the parties—and the Commission—a few months to investigate the costs and benefits of AEP's proposal is a small price to pay given the long-term implications of this proposal.

²⁷ Memorandum Contra at 4. AEP attempts to justify its desire to rush the proceeding by citing concern for the other parties to the proposal, and the need to provide them with ample notice of the rider's approval or disapproval. This argument ignores the interest, shared by all parties, in ensuring that any agreement reached is prudent and beneficial.

When establishing a procedural schedule, a paramount goal should be ensuring that the process will facilitate a thorough review of the issues. AEP's proffered schedule would unnecessarily truncate the Commission's review and impede other parties' efforts to thoroughly investigate the issues raised by this proposal. The Commission should therefore reject AEP's attempt to rush this proceeding, and instead adopt the reasonable schedule proposed by Sierra Club.

II. Conclusion

For the foregoing reasons, as well as the reasons set forth in its motion and memorandum in support, Sierra Club respectfully requests that the Commission adopt the procedural schedule set forth in its motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Reply in Support of Sierra Club's Motion to Establish a Procedural Schedule* has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on November 5, 2014.

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Summary: Reply to the AEP Memorandum Contra Sierra Club's Motion to Establish a
Procedural Schedule electronically filed by Mr. Christopher J. Allwein on behalf of SIERRA
CLUB