

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Ohio Power    )  
Company for a Limited Waiver of Rule            )   Case No. 15-386-EL-WVR  
4901:1-35-10, Ohio Administrative Code        )**

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**APPLICATION FOR LIMITED WAIVER  
OF OHIO POWER COMPANY AND REQUEST FOR EXPEDITED RULING**

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Ohio Power Company (“AEP Ohio” or the “Company”), an electric utility as defined in § 4928.01(A)(11), Ohio Rev. Code, seeks a limited waiver that would extend the May 15 filing requirement set forth in §4901:1-35-10, Ohio Adm. Code, until 60 days after the later of two events: (1) the final adjudication on the merits by the Supreme Court of Ohio in Case No. 2013-521 (the appeal of AEP Ohio’s 2012-2015 Electric Security Plan), or (2) the Commission’s final order in Case Nos. 11-5906-EL-FAC *et al.* (the pending audit concerning the allegations of double recovery of certain demand costs). Pursuant to the requirements set out by §4901:1-35-10, Ohio Adm. Code, AEP Ohio is normally required to make its 2014 SEET filing by May 15. For the reasons stated below, however, AEP Ohio respectfully requests that the Commission grant a limited waiver to allow AEP Ohio to make its 2014 SEET filing 60 days after the final adjudication by the Supreme Court of AEP Ohio’s 2012-2015 Electric Security Plan (ESP II) or 60 days after final adjudication of the “double recovery” audit cases pending before the Commission, whichever is later.

AEP Ohio seeks the limited waiver pursuant to § 4901:1-35-02(B), Ohio Adm. Code, which provides:

The commission may, upon application or motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

Although § 4928.143(F), Ohio Rev. Code, requires that the Commission apply the significantly excessive earnings test (SEET) to AEP Ohio's 2014 earnings, the statute does not set a date by which an electric utility subject to the SEET must file its annual SEET application. The May 15 date, therefore, is not required by statute and can be waived by the Commission. Due to the fact that the May 15 deadline is rapidly approaching, AEP Ohio requests an expedited ruling on this request.

## **I. ARGUMENT IN SUPPORT**

The May 15 filing date is the result of the Commission's rulemaking proceeding in Case No. 08-777-EL-ORD. The Commission has found it appropriate to defer filing beyond the May 15 deadline on numerous occasions. Following the "Development of the SEET" proceedings that it conducted on April 1, 2010, the Commission deferred the May 15 filing deadline for all electric utilities' SEET applications until July 15, 2010 (for the 2009 earnings year). Case No. 09-786-EL-UNC, Finding and Order, 32 (June 30, 2010). The Commission also deferred the May 15 deadline for filing AEP Ohio's (and Columbus Southern Power Company's) SEET applications until July 31, 2011 (for the 2010 earnings year). See Case No. Case No. 11-1177-EL-WVR, Entry (April 19, 2011). And, as described above, the Commission deferred the May 15 deadline for filing AEP Ohio's SEET application for the 2011 earnings year until the later of July 31, 2012, or 30 days after the Commission issues its decision in the Company's 2010 SEET proceeding. Case No. 12-1177-EL-WVR, Entry (April 25, 2012).<sup>1</sup> Additionally, in Case No. 13-1118-EL-WVR, the Commission deferred the May 15 deadline for filing AEP Ohio's

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<sup>1</sup> This Entry also deferred the May 15 deadline for the FirstEnergy utilities until July 31, 2011.

SEET application for the 2012 earnings year until the later of July 31, 2013, or 30 days after the Commission issues its decision in the Company's 2011 SEET proceeding.

Good cause exists for granting AEP Ohio's current application for limited waiver. First, the Supreme Court's decision in the ESP II appeal (S.Ct. Case No. 2013-521) has not yet been rendered and may affect AEP Ohio's SEET filing for 2014. If the Supreme Court's decision grants the Company's cross-appeal, the entire standard for the 2014 SEET filing would change and affect the type of data necessary to present and the manner of presentation of that data. More specifically, the current standard for the 2014 SEET case primarily involves the question of whether the Company's adjusted earnings are greater than 12% (per the ESP II decision). Whereas, if the Supreme Court grants the Company's cross-appeal, then the standard would involve a more complicated set of issues with multiple steps of analysis under the statute – as it has in prior SEET cases involving AEP Ohio. Stated differently, if the SEET threshold is not pre-established at 12% (per the Opinion and Order) but is dependent upon the actual 2014 financial results of other companies with comparable business and financial risks (per the statute), then the Company's application would look completely different. Thus, it makes no sense for the Commission or any of the parties to litigate an outcome that may need to be re-litigated after the pending appeal is decided. And this is particularly true, given that the Court has scheduled oral arguments for May 19, 2015 and is expected to issue a merit decision in the third quarter of 2015.

Second, litigation is pending before the Commission that could also affect the Company's 2014 SEET filing. In Case Nos. 11-5906-EL-FAC *et al.*, an audit was conducted to determine whether AEP Ohio recovered certain demand costs more than

once. The so-called “double recovery” case could affect the adjusted 2014 earnings for SEET purposes if a disallowance is imposed by the Commission – though the Company is confident that no such double recovery has occurred and remains optimistic that the Commission will confirm that result. As a related matter, the Company’s pending request for approval of the final implementation plan for its Retail Stability Rider approved under ESP II is also pending before the Commission in Case No. 14-1186-EL-RDR. If the Commission approves anything less than full recovery of the capacity deferrals in that case – as is advocated by opposing parties – that outcome could also affect the Company’s 2014 financial results for purposes of the SEET inquiry.

Thus, as a matter of efficiency and fairness, the Commission should defer the 2014 SEET case until after the pending litigation is resolved. By contrast, if the Commission rendered a decision in the 2014 SEET case first based on the current financial results (*i.e.*, applying the 12% SEET threshold) and then subsequently imposed a separate disallowance in the double recovery audit case that includes a 2014 financial impact, the combined result would inappropriately impose a SEET threshold of even lower than 12%. In short, in addition to being potentially prejudicial to the Company, it would be inefficient and wasteful of resources for the Commission and the parties to litigate the 2014 SEET case before the other pending cases are first resolved.

### **III. CONCLUSION**

Because the Supreme Court's decision in Case No. 2013-0521 will not be rendered until after the May 19 oral argument (and the existing May 15 SEET deadline) and may fundamentally affect the content of AEP Ohio's 2014 SEET proceeding, there is good cause to grant AEP Ohio's limited waiver request and should extend AEP Ohio's SEET filing date until 60 days after the final adjudication on the merits of AEP Ohio's 2012-2015 Electric Security Plan. Moreover, the pending double recovery audit case could also affect the Company's 2014 financial results and impact the related outcome of the 2014 SEET case. Accordingly, the Company requests that the 2014 SEET filing be delayed until 60 days after the later of two events: (1) the final adjudication on the merits by the Supreme Court of Ohio in Case No. 2013-521 (the appeal of AEP Ohio's 2012-2015 Electric Security Plan), or (2) the Commission's final order in Case Nos. 11-5906-EL-FAC *et al.* (the pending audit concerning the allegations of double recovery of certain demand costs). Due to the fact that the May 15 deadline is rapidly approaching, AEP Ohio requests an expedited ruling on this request.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse, Counsel of Record  
American Electric Power Service Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215-2373  
Telephone: (614) 716-1608  
Facsimile: (614) 716-2950  
stnourse@aep.com

**Counsel for Ohio Power Company**

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Summary: Application for Limited Waiver of Ohio Power Company and Request for Expedited Ruling electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company