

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	
Edison Company for Authority to Provide)	Case No. 14-1297-EL-SSO
for a Standard Service Offer Pursuant to)	
R.C. 4928.143 in the Form of an Electric)	
Security Plan.)	

**JOINT MEMORANDUM IN RESPONSE
OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
THE PJM POWER PROVIDERS GROUP
THE ELECTRIC POWER SUPPLY ASSOCIATION
IGS ENERGY
DIRECT ENERGY SERVICES, LLC
DIRECT ENERGY BUSINESS, LLC
DIRECT ENERGY BUSINESS MARKETING LLC**

Pursuant to Rule 4901-1-15(D), Ohio Administrative Code,¹ and the directive of the Attorney Examiner provided during the March 31, 2015 prehearing conference in this matter, the Retail Energy Supply Association, the PJM Power Providers Group, the Electric Power Supply Association, IGS Energy, Direct Energy Services LLC, Direct Energy Business LLC, and Direct Energy Business Marketing, LLC (hereinafter “Suppliers”) file this Joint Memorandum in response to the “Joint Interlocutory Appeal, Request for Certification to Full Commission and Application for Review” (“Interlocutory Appeal”).² The Interlocutory Appeal was filed with the Public Utilities Commission of Ohio (“Commission”) at the close of business on March 30, 2015, and seeks to change the March 23, 2015 Entry which set up a new procedural schedule in

¹ Rule 4901-1-15(D), Ohio Administrative Code, allows any party to file a response to an interlocutory appeal within five days. This memorandum in response is, thus, timely filed.

² The Interlocutory Appeal was jointly filed by the Northeast Ohio Public Energy Council, Northwest Ohio Aggregation Coalition, Ohio Manufacturers’ Association Energy Group, Ohio Partners for Affordable Energy, and the Ohio Consumers’ Counsel.

the above-styled proceeding. The new procedural schedule was extended to permit both the applicants and the intervenors to file supplemental testimony addressing the criteria for ratepayer-guaranteed power purchase agreement riders articulated by the Commission in the AEP Ohio ESP III Opinion and Order.³

The Attorney Examiner's March 23, 2015 procedural schedule provided for:

- Discovery requests regarding the power purchase agreement ("PPA") factors identified in the AEP ESP III Order, except for notices of deposition, must be served by April 13, 2015.
- The applicants' and intervenors' supplemental testimony must be filed by May 4, 2015.
- Staff testimony must be filed by May 29, 2015.
- A prehearing conference shall be held on June 2, 2015.
- The evidentiary hearing shall begin on June 15, 2015.

In the Interlocutory Appeal, the Joint Applicants raised two arguments about the procedural schedule. First, the Joint Applicants argues that March 23rd procedural schedule should be amended so that supplemental testimony is not due until after final order on rehearing(s) in the AEP ESP III case. The Joint Applicants point out that the Commission could change the criteria for ratepayer-guaranteed purchase power agreements in its final order. Second, the Joint Applicants argued that the supplemental testimony of the intervenors in this case should be filed after FirstEnergy files its supplemental testimony, instead of on the same date. The Joint Applicants proposed a framework for a new procedural schedule for the FirstEnergy case once a final ruling on rehearing is issued in the AEP ESP III case.⁴

The Suppliers support the procedural schedule presented in the Interlocutory Appeal. This includes the continuance of the March 23rd Entry schedule to allow for the issuance of a final order on rehearing. The continuance will permit the supplemental testimony to reflect the

³ In Re Ohio Power Company, Case Nos. 13-2385-EL-SSO, et al.

⁴ The Joint Applicants' proposed framework includes the following: (a) FirstEnergy's supplemental testimony being filed 40 days after the final Entry on Rehearing in the AEP ESP III case, and (b) intervenor supplemental testimony being filed 21 days after FirstEnergy's deadline to file supplemental testimony.

Commission's final decision on the criteria for power purchase agreements with ratepayer guarantees. It will also allow more time to see how the PJM capacity reforms presented in FERC Case No. ER15-623-000 will affect capacity cost and reliability.

The problem the Suppliers identify with the March 23rd procedural schedule is that the supplemental testimony of the intervenors cannot be responsive to the supplemental testimony of FirstEnergy unless the deadlines are staggered. The testimony of the applicants and intervenors was staggered in the beginning of this proceeding.⁵ Accordingly, the intervenor supplemental testimony should be filed after FirstEnergy files its supplemental testimony. This fundamental problem is addressed in the Interlocutory Appeal and, if certified and granted, the fundamental problem will be resolved.

In the event, however, that the Interlocutory Appeal is either not certified or not granted, the Suppliers request that the Attorney Examiner amend the procedural schedule so as to stagger the filing of supplemental testimony. Rules 4901-1-13 and 4901-1-14, Ohio Administrative Code, permit the Attorney Examiner to either amend a procedural schedule or grant an extension on his own accord upon a showing of good cause. As noted above, the good cause for staggering the supplemental testimony is that the intervenors can, in their supplemental testimony, respond to the arguments and alleged facts the applicants raise to meet its burden of compliance with the Commission power purchase rider criteria. Thus, staggering the filing of supplemental testimony (beginning with the applicants' supplemental testimony) assures a more organized record and better-focused supplemental testimony as the intervenors would be focused on the actual

⁵ See, Rule 4901:1-35-03(C)(1), Ohio Administrative Code, wherein the applicant must file its testimony at the time its files its application and, as a result, intervenor testimony is due sometime thereafter. See, also, Entry dated January 14, 2015, wherein the Attorney Examiner also staggered the filing of the first round of supplemental testimony in this matter.

arguments raised by the applicants, as opposed to the arguments the intervenors anticipated would be raised.

We anticipate FirstEnergy will argue that staggering the filing of the supplemental testimony will delay issuance of an Opinion and Order. If, however, the Attorney Examiner merely staggers the intervenor supplemental testimony date from May 4th to May 22nd, and maintains the date for the Staff's testimony now scheduled -- one week afterwards on May 29th -- the hearing can still commence on June 15th. Thus, there would be no delay in the commencement of hearing. Further, with record would be more focused as the intervenors' supplemental testimony would match by issue the applicants' supplemental testimony. A more orderly record could even contribute to an earlier issuance of the Opinion and Order.

In sum, the Suppliers support certification of the Interlocutory Appeal and support both procedural arguments raised in the Interlocutory Appeal. The Interlocutory Appeal addresses both the staggered testimony issue and the fact that, until there is a final order in the AEP Ohio ESP III proceeding, the criteria for power purchase agreement riders is not final. In the event that the Interlocutory Appeal though is not certified or is not granted, the Suppliers recommend that the Attorney Examiner exercise his authority to stagger the filing deadlines for FirstEnergy and the intervenors as set forth above.

Respectfully submitted,

/s/ Gretchen L. Petrucci

M. Howard Petricoff (0008287), Counsel of Record

Michael J. Settineri (0073369)

Gretchen L. Petrucci (0046608)

Vorys, Sater, Seymour and Pease LLP

52 E. Gay Street

Columbus, OH 43215

614-464-5414

614-719-4904 (fax)

mhpetricoff@vorys.com

mjsettineri@vorys.com

glpetrucci@vorys.com

*Attorneys for the Retail Energy Supply Association,
the PJM Power Providers Group and the Electric
Power Supply Association*

/s/ Joseph Olikier per authorization

Joseph Olikier (0086088)

IGS Energy

6100 Emerald Parkway

Dublin, Ohio 43016

joliker@igsenergy.com

Attorney for IGS Energy

/s/ Joseph M. Clark per authorization

Joseph M. Clark (Counsel of Record) Gerit F. Hull

Direct Energy

21 East State Street, 19th Floor

Columbus, Ohio 43215

joseph.clark@directenergy.com

*Attorney for Direct Energy Services, LLC, Direct
Energy Business, LLC, and Direct Energy Business
Marketing, LLC*

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 1st day of April 2015.

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci

burkj@firstenergycorp.com
cdunn@firstenergycorp.com
jang@calfee.com
talexander@calfee.com
dakutik@jonesday.com
cmooney@ohiopartners.org
drinebolt@ohiopartners.org
tdoughtery@theoec.org
joseph.clark@directenergy.com
ghull@eckertseamans.com
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com
larry.sauer@occ.ohio.gov
kevin.moore@occ.ohio.gov
joliker@igsenergy.com
myurick@taftlaw.com
schmidt@sppgrp.com
ricks@ohanet.org
tobrien@bricker.com
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com
callwein@keglerbrown.com
jfinnigan@edf.org
wttplmc@aol.com

mkl@bbrslaw.com
gas@bbrslaw.com
oik@bbrslaw.com
lhawrot@spilmanlaw.com
dwilliamson@spilmanlaw.com
meissnerjoseph@yahoo.com
trhayslaw@gmail.com
lesliekovacik@toledo.oh.gov
cynthia.bradley@exeloncorp.com
david.fein@exeloncorp.com
lael.campbell@exeloncorp.com
christopher.miller@icemiller.com
gregory.dunn@icemiller.com
jeremy.grayem@icemiller.com
BarthRoyer@aol.com
athompson@taftlaw.com
Marilyn@wflawfirm.com
blanghenry@city.cleveland.oh.us
hmadorsky@city.cleveland.oh.us
kryan@city.cleveland.oh.us
bojko@carpenterlipps.com
allison@carpenterlipps.com
hussey@carpenterlipps.com
gkrassen@bricker.com
dstinson@bricker.com
dborchers@bricker.com
mkimbrough@keglerbrown.com
mfleisher@elpc.org
mitch.dutton@fpl.com

matt@matthewcoxlaw.com
todonnell@dickinsonwright.com
jeffrey.mayes@monitoringanalytics.com
toddm@wamenergylaw.com
sechler@carpenterlipps.com
gpoulos@enernoc.com
mhpetricoff@vorys.com
mjsettineri@vorys.com
glpetrucci@vorys.com
thomas.mcnamee@puc.state.oh.us
thomas.lindgren@puc.state.oh.us
ryan.orourke@puc.state.oh.us
sfisk@earthjustice.org
msoules@earthjustice.org
tony.mendoza@sierraclub.org
laurac@chappelleconsulting.net
gthomas@gtpowergroup.com
stheodore@epsa.org
mdortch@kravitzllc.com
rparsons@kravitzllc.com
dparram@taftlaw.com
charris@spilmanlaw.com
dwolff@crowell.com
rlhefeldt@crowell.com
dfolk@akronohio.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/1/2015 5:24:41 PM

in

Case No(s). 14-1297-EL-SSO

Summary: Response -- Joint Memorandum in Response to Joint Interlocutory Appeal electronically filed by Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association and PJM Power Providers Group and Electric Power Supply Association and IGS Energy and Direct Energy Services LLC and Direct Energy Business LLC and Direct Energy Business Marketing LLC