

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**SIERRA CLUB'S MOTION TO ESTABLISH A PROCEDURAL  
SCHEDULE FOR AMENDED APPLICATION**

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Under Ohio Administrative Code § 4901-1-12(A), Sierra Club respectfully requests that the Attorney Examiners establish a procedural schedule for these cases that affords reasonable opportunity for interested parties to evaluate the amended application of Ohio Power Company ("AEP" or the "Company"), which seeks approval of two power purchase agreements involving six coal-fired power plants. Specifically, Sierra Club requests that the Attorney Examiner adopt this procedural schedule:

Discovery requests except for depositions due	September 10, 2015 (118 days after amended application filed)
Intervenors' Testimony due	October 1, 2015 (139 days after amended application filed)
Staff Testimony due	October 19, 2015 (18 days after intervenors' testimony)
Pre-hearing Conference	October 19, 2015 (18 days after intervenors' testimony)

Sierra Club's proposed schedule is modeled on the schedule approved by the Attorney Examiner in the FirstEnergy electric security plan case (Case No. 14-1297-EL-SSO) currently pending before the Commission.<sup>1</sup> For Sierra Club's proposed schedule, each of the deadlines is set to allow the same number of days (measured from the date of the amended application, intervenors' testimony, or pre-hearing conference) as were afforded in the FirstEnergy case.<sup>2</sup> Though the issues in the Company's cases are in some respects broader in scope—AEP's proposal, for example, extends through 2051, while FirstEnergy's proposal goes through 2031—the FirstEnergy schedule serves as an appropriate model here as the issues are similar: In both proceedings, the utility seeks approval to tie its customers' bills to the economic fortunes of several generation facilities over a lengthy period of time.

Unlike the schedule proposed by AEP,<sup>3</sup> Sierra Club's proposed schedule allows adequate opportunity for the parties to engage expert assistance, conduct discovery, develop written testimony, and fully assess the Company's proposal. Sierra Club's

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<sup>1</sup> See Case No. 14-1297-EL-SSO, et al., Entry at 5 (Oct. 6, 2014). This procedural schedule was subsequently amended due to a stipulation and other developments in the case. See Case No. 14-1297-EL-SSO, Entry at 1-2 (Feb. 4, 2015).

<sup>2</sup> In the FirstEnergy case, the hearing is scheduled to begin 11 days after the pre-hearing conference. Eleven days after Sierra Club's proposed date for the pre-hearing conference in this case is Friday, October 30. Sierra Club proposes that the hearing not begin on a Friday. Instead, the hearing should begin on the next Monday, November 2, 2015.

<sup>3</sup> Amended Application at 9-10.

proposal also affords the Commission sufficient time to evaluate the Company's proposal and render a decision within a reasonable period of time. For these reasons and those set forth in the accompanying Memorandum in Support, Sierra Club asks that the Attorney Examiners adopt its proposed procedural schedule for these cases.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF SIERRA CLUB'S MOTION TO  
ESTABLISH A PROCEDURAL SCHEDULE FOR THE OHIO POWER  
COMPANY'S AMENDED APPLICATION**

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Sierra Club respectfully requests that the Attorney Examiners establish a procedural schedule that affords all the parties and the Commission adequate time to assess and evaluate the amended application of Ohio Power Company ("AEP" or the "Company"). AEP's application seeks approval of a proposed power purchase agreement ("PPA"), with an unregulated affiliate, involving four major coal-fired generating plants, and it also seeks approval to recover costs associated with the Ohio Valley Electric Corporation ("OVEC") plants. Sierra Club's proposed schedule assures that the Commission and the parties have sufficient opportunity to explore the many issues raised by AEP's proposal.

## **I. Introduction**

On May 15, 2015, AEP filed its amended application in these cases seeking approval of affiliate and OVEC power purchase agreements for six coal-burning power plants. Under AEP's proposal, the costs of operating these plants minus revenues generated from them would flow through to customers on a non-bypassable basis via a "Power Purchase Agreement" ("PPA") Rider. AEP has proposed that the four affiliate and two OVEC purchase agreements (collectively, the "Rider PPAs") remain in place for the life of each generation unit.<sup>4</sup>

AEP's application is both voluminous and, if approved, consequential. In support of the application, AEP filed written testimony of eleven witnesses totaling over 310 pages. This testimony addresses numerous issues, including energy market forecasts, forecasted revenues and costs for operating the six power plants at issue (Cardinal, Conesville, Stuart, Zimmer, Kyger, and Clifty Creek)<sup>5</sup>, purported economic development benefits to the proposal, assessment of U.S. EPA greenhouse gas regulations, transmission impacts related to the proposal, reliability, and many others.<sup>6</sup> If approved, AEP's affiliate power purchase agreements would provide a subsidy for

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<sup>4</sup> Amended Application at pg. 6, fn. 2 and pg. 7

<sup>5</sup> Cardinal, Conesville, Stuart, and Zimmer are the four coal-fired plants that are owned in whole or in part by AEP's corporate affiliate AEP Generation Resources, Inc. Kyger and Clifty Creek are generating units owned by Ohio Valley Electric Corporation, for which AEP has contractual entitlement to a share of their output.

<sup>6</sup> See Amended Application and supporting testimonies.

3,111 MW of generation and affect customers' rates through at least 2051.<sup>7</sup> And AEP has asked for an explicit Commission finding that the ruling in these cases be unreviewable for the decades-long life of the affected generation plants:

[T]he Company also requests that the Commission acknowledged that its up-front approval of the Affiliate PPA for retail recover is a one-time prudence review that will not be revisited later during the term of the contract should economic or cost/price projections change in the future.<sup>8</sup>

Despite the gravity of the issues involved and the acknowledged need for a “prudence review,” AEP has proposed a schedule that does not come close to providing adequate opportunity to assess its potentially consequential proposal.<sup>9</sup> Under its proposed schedule, AEP has called for intervenors' testimony to be filed by June 19, 2015<sup>10</sup> (35 days after the amended application was filed), and a hearing to commence on

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<sup>7</sup> Direct Testimony of Pablo A. Vegas in Support of Amended Application page 12 (May 15, 2015); Direct Testimony of Kelly D. Pearce in Support of Amended Application, Exhibit KDP 1 at page 7 (May 15, 2015).

<sup>8</sup> Amended Application at 7; *see* similar provision for OVEC PPA, Amended Application at pg. 6, fn. 2 (“[T]here is no need to review the prudence of entering into the OVEC PPA or the terms and conditions of the OVEC contract.”)

<sup>9</sup> *See* Amended Application at 9-10.

<sup>10</sup> Sierra Club and a number of other parties in this proceeding are also involved in the FirstEnergy case (No. 14-1297), which involves similar complex issues with possible decades-long impacts from requested PPAs. The First Energy case is scheduled to go to hearing on June 15, 2015, so AEP's proposed date for Intervenor Testimony falls right in the middle of the First Energy hearing. Such a schedule would seriously prejudice Sierra Club, a not-for-profit entity, and probably other parties, from being able to fully participate in both proceedings. Given the magnitude of what is at stake, it would be a disservice to the Commission and Ohio rate-payers to establish a procedural schedule in

July 20, 2015 (66 days after the application). The potentially affected ratepayers deserve better.

**II. Sierra Club's proposed schedule affords the Commission and all interested parties adequate opportunity to review and evaluate AEP's Application.**

The Attorney Examiners should establish a procedural schedule that affords interested parties the opportunity to meaningfully participate in these cases. The parties, the Commission, and Ohio ratepayers would benefit from a procedural schedule that enables a thorough review of the myriad issues AEP's application presents. To allow for such thorough review, Sierra Club requests that the Attorney Examiners adopt the following procedural schedule:

Discovery requests except for depositions due	September 10, 2015 (118 days after amended application filed)
Intervenors' Testimony due	October 1, 2015 (139 days after amended application filed)
Staff Testimony due	October 19, 2015 (18 days after intervenors' testimony)
Pre-hearing Conference	October 19, 2015 (18 days after intervenors' testimony)
Evidentiary Hearing	November 2, 2015 (14 days after pre-hearing conference)

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the AEP case that precludes parties with limited resources but a deep understanding of the issues involved from being able to effectively engage in this docket.

As described in the accompanying motion, Sierra Club's proposed schedule is modeled on the schedule adopted by the Attorney Examiners in the FirstEnergy ESP case (Case No. 14-1297-EL-SSO) currently pending before the Commission. Though many parties, including Sierra Club,<sup>11</sup> sought more time to conduct discovery and develop their case regarding FirstEnergy's proposal, the Attorney Examiner deemed this schedule adequate.

The scope and breadth of AEP's proposal necessitates a similar schedule here. As described above, AEP's proposal, if approved, would impact the rates charged to AEP's retail customers for decades and would establish a lasting subsidy for six aging coal-fired units. A procedural schedule that allows for discovery and exploration of AEP's proposal and the economics of these six coal-fired plants is, therefore, required.

Under AEP's suggested schedule, there simply is not sufficient time for intervenors to engage expert assistance, conduct discovery, evaluate the proposal, and submit written testimony. Even a party that filed robust discovery requests the very day that AEP submitted its proposal, could not be guaranteed more than one round of discovery before intervenors' testimony is due, assuming the default 20-day response period is retained.<sup>12</sup> AEP's proposed June 19, 2015 deadline for written testimony would preclude any intervenor from meaningful participating in these cases.

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<sup>11</sup> See Joint Motion to Modify Discovery Time Limits and Amend the Procedural Schedule, filed Sept. 5, 2014 in PUCO Case No. 14-1297-EL-SSO, et al.

<sup>12</sup> The Company has argued that an expedited schedule is warranted since it has already responded to hundreds of data requests. See Amended Application at pg. 9, fn 4. This



### **III. Conclusion**

For the foregoing reasons, Sierra Club respectfully requests that the Attorney Examiners adopt the procedural schedule as set forth here.

Respectfully submitted,

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previous discovery does not support an expedited procedural schedule because AEP has just added eleven new units to the application that have not been addressed through discovery yet. In addition, AEP has significantly changed its initial application regarding the nine units that were the subject of the initial application to address the new issues and factors that address the Commission's Order in PUCO Case Nos. 13-2385-EL-SSO and 13-2386-EL-AAM. No discovery has been served on these additional issues and arguments yet.

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Sierra Club's Motion to Establish a Procedural Schedule for Amended Application has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on May 20, 2015.

<a href="mailto:Allison@carpenterlipps.com">Allison@carpenterlipps.com</a> <a href="mailto:Bojko@carpenterlipps.com">Bojko@carpenterlipps.com</a> <a href="mailto:cmooney@ohiopartners.org">cmooney@ohiopartners.org</a> <a href="mailto:dboehm@BKLawfirm.com">dboehm@BKLawfirm.com</a> <a href="mailto:dwilliamson@spilmanlaw.com">dwilliamson@spilmanlaw.com</a> <a href="mailto:fdarr@mwncmh.com">fdarr@mwncmh.com</a> <a href="mailto:gnull@eckertseamans.com">gnull@eckertseamans.com</a> <a href="mailto:glpetrucci@vorys.com">glpetrucci@vorys.com</a> <a href="mailto:haydemn@firstenergycorp.com">haydemn@firstenergycorp.com</a> <a href="mailto:hussey@carpenterlipps.com">hussey@carpenterlipps.com</a> <a href="mailto:jmcdermott@firstenergycorp.com">jmcdermott@firstenergycorp.com</a> <a href="mailto:jang@calfee.com">jang@calfee.com</a> <a href="mailto:jeffrey.mayes@monitoringanalytics.com">jeffrey.mayes@monitoringanalytics.com</a> <a href="mailto:jkylercohn@BKLawfirm.com">jkylercohn@BKLawfirm.com</a> <a href="mailto:jfinnigan@edf.org">jfinnigan@edf.org</a> <a href="mailto:joseph.clark@directenergy.com">joseph.clark@directenergy.com</a> <a href="mailto:joliker@igsenergy.com">joliker@igsenergy.com</a> <a href="mailto:Katie.johnson@puc.state.oh.us">Katie.johnson@puc.state.oh.us</a> <a href="mailto:Kurt.Helfrich@ThompsonHine.com">Kurt.Helfrich@ThompsonHine.com</a> <a href="mailto:Kyle.kern@occ.ohio.gov">Kyle.kern@occ.ohio.gov</a> <a href="mailto:Larry.sauer@occ.ohio.gov">Larry.sauer@occ.ohio.gov</a> <a href="mailto:lhawrot@spilmanlaw.com">lhawrot@spilmanlaw.com</a> <a href="mailto:mdortch@kravitzllc.com">mdortch@kravitzllc.com</a> <a href="mailto:mfleisher@elpc.org">mfleisher@elpc.org</a> <a href="mailto:mpetricoff@vorys.com">mpetricoff@vorys.com</a> <a href="mailto:Christopher.Miller@icemiller.com">Christopher.Miller@icemiller.com</a>	<a href="mailto:myurick@taftlaw.com">myurick@taftlaw.com</a> <a href="mailto:mpritchard@mwncmh.com">mpritchard@mwncmh.com</a> <a href="mailto:mjsatterwhite@aep.com">mjsatterwhite@aep.com</a> <a href="mailto:msmckenzie@aep.com">msmckenzie@aep.com</a> <a href="mailto:mswhite@igsenergy.com">mswhite@igsenergy.com</a> <a href="mailto:mkurtz@BKLawfirm.com">mkurtz@BKLawfirm.com</a> <a href="mailto:Michael.schuler@occ.ohio.gov">Michael.schuler@occ.ohio.gov</a> <a href="mailto:mjsettineri@vorys.com">mjsettineri@vorys.com</a> <a href="mailto:msmalz@ohiopoveritylaw.org">msmalz@ohiopoveritylaw.org</a> <a href="mailto:talexander@calfee.com">talexander@calfee.com</a> <a href="mailto:ricks@ohanet.org">ricks@ohanet.org</a> <a href="mailto:sam@mwncmh.com">sam@mwncmh.com</a> <a href="mailto:Scott.Campbell@ThompsonHine.com">Scott.Campbell@ThompsonHine.com</a> <a href="mailto:scasto@firstenergycorp.com">scasto@firstenergycorp.com</a> <a href="mailto:schmidt@sppgrp.com">schmidt@sppgrp.com</a> <a href="mailto:sasloan@aep.com">sasloan@aep.com</a> <a href="mailto:Stephanie.Chmiel@ThompsonHine.com">Stephanie.Chmiel@ThompsonHine.com</a> <a href="mailto:stnourse@aep.com">stnourse@aep.com</a> <a href="mailto:todonnell@dickinsonwright.com">todonnell@dickinsonwright.com</a> <a href="mailto:tobrien@bricker.com">tobrien@bricker.com</a> <a href="mailto:toddm@wamenergylaw.com">toddm@wamenergylaw.com</a> <a href="mailto:tony.mendoza@sierraclub.org">tony.mendoza@sierraclub.org</a> <a href="mailto:tdougherty@theOEC.org">tdougherty@theOEC.org</a> <a href="mailto:williamtwright@puc.state.oh.us">williamtwright@puc.state.oh.us</a> <a href="mailto:dconway@porterwright.com">dconway@porterwright.com</a>
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/s/Christopher J. Allwein  
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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**Case No(s). 14-1693-EL-RDR, 14-1694-EL-AAM**

Summary: Motion to Establish a Procedural Schedule electronically filed by Mr. Christopher J. Allwein on behalf of SIERRA CLUB