

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

In the Matter of the Application of Ohio)	
Power Company for Approval of Certain)	Case No. 14-1694-EL-AAM
Accounting Authority.)	

**MOTION TO ESTABLISH A PROCEDURAL SCHEDULE
BY THE ENVIRONMENTAL LAW & POLICY CENTER**

On May 15, 2015, the Ohio Power Company ("AEP") filed an amended application in this case that proposes requiring AEP customers to subsidize coal plants owned by AEP's unregulated affiliate through the Power Purchase Agreement ("PPA") rider established by the Public Utilities Commission of Ohio ("Commission") in Case No. 13-2385-EL-SSO. In its amended application, AEP proposes a plainly inadequate procedural schedule that will not allow the parties adequate time to conduct discovery and develop expert testimony on the myriad, highly complex issues raised by AEP's PPA proposal. The Environmental Law & Policy Center ("ELPC") respectfully requests that the Commission reject AEP's suggested timeline and instead establish a reasonable schedule that will permit a full airing of the arguments for and against AEP's application.

Dated: May 22, 2015

Respectfully submitted,

/s/ Madeline Fleisher

Madeline Fleisher

Staff Attorney

Environmental Law & Policy Center

21 W. Broad St., Suite 500

Columbus, OH 43215

P: 614-670-5586

F: 614-487-7510

mfleisher@elpc.org

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

In the Matter of the Application of Ohio)
Power Company for Approval of Certain) Case No. 14-1694-EL-AAM
Accounting Authority.)

**MEMORANDUM IN SUPPORT OF MOTION TO ESTABLISH A
PROCEDURAL SCHEDULE**

I. INTRODUCTION

This case concerns a proposal by the Ohio Power Company (“AEP” or “Company”) to commit its customers to a power purchase agreement (“PPA”) for more than 3000 MW of coal-fired generation owned by AEP’s generation affiliate. Ratepayers would shoulder the costs of this PPA pursuant to the PPA rider approved by the Public Utilities Commission of Ohio (“PUCO” or “Commission”) in a February 25, 2015 order in Case No. 13-2385-EL-SSO. On May 15, 2015, AEP filed an amended application in response to that order, including a suggested procedural schedule that provides insufficient time for the intervening parties (which lack AEP’s resources) to delve into the many complicated issues implicated raised by the proposed PPA.¹ Not only is AEP’s suggested timeline entirely insufficient to allow for adequate development of the significant substantive issues that must be considered by the Commission in this complex case, but it will also rush through this litigation before important and relevant issues can

¹ AEP Amended Application at 9-10 (May 15, 2015).

be resolved in other proceedings. Therefore, the Commission should establish a reasonable schedule that gives the parties sufficient time to ensure the merits of AEP's proposal are fully vetted.

II. ARGUMENT

The Environmental Law & Policy Center ("ELPC") urges the Commission to reject the highly accelerated procedural schedule proposed by AEP. AEP's application raises myriad, complex issues regarding both wholesale and retail electric service which require thorough Commission review. AEP's suggested schedule is inconsistent with the significance of the issues it puts before the Commission, as it provides insufficient time for discovery and development of expert testimony to provide the Commission with an adequate evidentiary record regarding the merits of the case. Therefore, ELPC urges the Commission to reject that proposed schedule in favor of a more a reasonable timeline.

A. The Schedule Proposed by AEP Is Unreasonable.

AEP's proposed schedule for this case allows just 35 days to prepare intervenor testimony; 42 days to serve written discovery; and 66 days to complete preparations for an evidentiary hearing. This case involves complex arguments about price volatility, grid reliability, and the economic repercussions of subsidizing these plants versus leaving them to the free market. With respect to a similar PPA proposal offered by Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company (collectively, "FirstEnergy") in Case No. 14-1297-EL-SSO, intervenors and PUCO staff have served thousands of discovery requests and offered testimony from more than 20 witnesses in order to adequately address these weighty issues. It is unrealistic to expect the parties to compress that same amount of effort into just two months – especially since many of these same intervenors will be simultaneously

immersed in litigating FirstEnergy's proposal, which is scheduled for hearing starting June 15, 2015, with briefing to follow.

Meanwhile, AEP's purported rationale for this expedited schedule does not justify such prejudice to intervenors and PUCO staff. According to AEP, it needs a decision on its proposal by October 1, 2015, "in order to make strategic decisions regarding the future of these plants, including investments or a potential sale."² AEP does not identify why that October 1 date has any particular significance; nor does the Company explain why its desire for certainty about the PPA application – presumably so it can make the best business decision regarding these plants for AEP's *shareholders* – justifies the PUCO rushing to conclusions regarding a proposal without considering whether it will be bad for AEP's *customers*.

B. A More Reasonable Schedule Will Allow the Commission to Take Relevant Developments in the PJM Wholesale Market into Consideration.

AEP has argued that defects in the existing PJM capacity market warrant Commission intervention in PJM's domain of ensuring a reliable electric grid.³ PJM has filed proposals with the Federal Energy Regulatory Commission ("FERC") that could entail significant reforms to that capacity market. And as AEP itself has noted, these filings – primarily PJM's Capacity Performance proposal – are likely to push PJM capacity prices higher over the long term.⁴ Therefore, a core issue in this proceeding is likely to be the question of whether PUCO action is warranted or counterproductive in this area of evolving market policy. The Commission's rejection of the hasty schedule

² *Id.* at 9.

³ *See* Vegas Direct Testimony at 21-24.

⁴ *See* Pearce Direct Testimony at 26-30.

proposed by AEP in favor of a more reasonable timeline is likely to give the Commission significantly more clarity on this issue.

By the end of the summer, FERC is likely to clarify the future rules for the PJM capacity market. PJM has requested a ruling from FERC on its Capacity Performance filing before it conducts its Base Residual Auction for the 2018/2019 delivery year, which by FERC order is to be held no later than August 10, 2015. If the Commission allows discovery and filing of intervenor testimony past this date, the parties will be able to incorporate any policy changes approved by FERC into their assessment of the merits of AEP's proposal. By contrast, the schedule proposed by AEP would require all discovery and even the evidentiary hearing to conclude before FERC may have even issued a decision on the Capacity Performance proposal. That rushed timeline will preclude the Commission from making its decision in light of fully developed arguments regarding these consequential issues.

C. The Schedule in This Case Should Account for FirstEnergy's Parallel PPA Proposal.

AEP's proposed schedule ignores the fact that FirstEnergy has filed a substantially similar proposed PPA rider – also seeking ratepayer subsidies for over 3000 MW of generation – for Commission approval in Case No. 14-1297-EL-SSO. Both AEP and FirstEnergy have offered the rationale that these subsidies are necessary to support baseload generation that is essential to reliability. The Commission cannot consider these proposals in isolation without weighing whether both PPAs are necessary for that purpose, or how the two PPAs may interact to disrupt Ohio's deregulated electric market. FirstEnergy filed its ESP case first and it requires thorough review. Certainly, the

Commission should not decide AEP's case before it issues a ruling on FirstEnergy's proposal.

III. CONCLUSION

As described above, AEP's proposed schedule does not provide parties with sufficient time for discovery and the development of the type of record that allows the Commission to reach a just decision. AEP's proposal also unduly prejudices intervenors that lack AEP's resources to expedite this proceeding. Finally, any schedule set in this case must provide sufficient time for the parties and the Commission to take account of collateral developments before FERC and with respect to FirstEnergy's proposed PPA. ELPC therefore requests that the Commission reject the timeline suggested by AEP and instead adopt a schedule that is adequate to allow the development of a complete evidentiary record in this case.

Respectfully submitted,

/s/ Madeline Fleisher

Madeline Fleisher

Staff Attorney

Environmental Law & Policy Center

21 W. Broad St., Suite 500

Columbus, OH 43215

P: 614-670-5586

F: 614-487-7510

mfleisher@elpc.org

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was served via regular electronic transmission to the persons listed below, on May 22, 2015.

/s/ Madeline Fleisher

Madeline Fleisher

SERVICE LIST

haydenm@firstenergycorp.com jmcdermott@firstenergycorp.com scasto@firstenergycorp.com jlang@calfee.com talexander@calfee.com dboehm@BKLawfirm.com mkurtz@BKLawfirm.com jkyler@BKLawfirm.com Kurt.Helfrich@ThompsonHine.com Scott.Campbell@ThompsonHine.com Stephanie.Chmiel@ThompsonHine.com tdougherty@theOEC.org jeffrey.mayes@monitoringanalytics.com toddm@wamenergylaw.com Bojko@carpenterlipps.com mhpetricoff@vorys.com mjsettineri@vorys.com glpetrucci@vorys.com joliker@igsenergy.com mswhite@igsenergy.com cmooney@ohiopartners.org mdortch@kravitzllc.com msmalz@ohiopoverlylaw.org ricks@ohanet.org tobrien@bricker.com	stnourse@aep.com mjsatterwhite@aep.com msmckenzie@aep.com sam@mwncmh.com fdarr@mwncmh.com mpritchard@mwncmh.com myurick@taftlaw.com callwein@keglerbrown.com tony.mendoza@sierraclub.org todonnell@dickinsonwright.com lhawrot@spilmanlaw.com dwilliamson@spilmanlaw.com Stephen.Chriss@walmart.com schmidt@sppgrp.com jfinnigan@edf.org Larry.sauer@occ.ohio.gov Kyle.kern@occ.ohio.gov Michael.schuler@occ.ohio.gov joseph.clark@directenergy.com ghull@eckertseamans.com stheodore@epsa.org laurac@chappelleconsulting.net gthomas@gtpowergroup.com mfleisher@elpc.org thomas.mcnamee@puc.state.oh.us Katie.johnson@puc.state.oh.us Attorney Examiners: Sarah.parrot@puc.state.oh.us Greta.see@puc.state.oh.us
--	---

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/22/2015 4:55:19 PM

in

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

Summary: Motion Motion to Establish a Procedural Schedule by the Environmental Law & Policy Center electronically filed by Madeline Fleisher on behalf of Environmental Law and Policy Center