

**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.       )

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**REPLY IN SUPPORT OF MOTION TO ESTABLISH A PROCEDURAL SCHEDULE  
BY THE ENVIRONMENTAL LAW & POLICY CENTER**

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**I. INTRODUCTION**

On October 3, 2014, the Ohio Power Company (“AEP” or “Company”) filed an application in this case to commit its customers to a power purchase agreement (“PPA”) for over 2600 MW of coal-fired generation owned by AEP’s generation affiliate. Ratepayers would shoulder the costs of this PPA pursuant to a PPA rider proposed by AEP as part of its Electric Security Plan in Case No. 13-2385-EL-SSO (“ESP 3”). The Public Utilities Commission of Ohio (“PUCO” or “Commission”) did not rule on the PPA rider until February 25, 2015. For the first time, that February 25 order set forth the Commission’s understanding of the legal basis for approving the PPA rider and laid out several factual considerations that would, at a minimum, inform the Commission’s decision regarding any future PPAs proposed to be included under the rider.<sup>1</sup> Almost three months later, AEP submitted an amended application adding additional plants to the proposed PPA in this case (for a total of more than 3000 MW of generation) and

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<sup>1</sup> *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, Opinion and Order at 25 (Feb. 25, 2015).

addressing the factors from the February 25 order. AEP now suggests that the case proceed to hearing within just 66 days of AEP's amended application, without regard to the current status of the case and without accounting for relevant outside developments likely to occur in the near future. That approach will not allow for the development of a record that can serve as an adequate basis for the Commission's decision here.

## **II. ARGUMENT**

As outlined in the Motion to Establish a Procedural Schedule filed by the Environmental Law & Policy Center ("ELPC"), as well as the motions filed by other intervenors, the procedural schedule proposed by AEP will not allow the discovery, expert testimony, and depositions necessary to adequately explore the complex factual issues raised by AEP's amended application.<sup>2</sup> Moreover, the Commission's recent decision to defer a rehearing decision regarding the PPA-related issues raised in the *ESP 3* case confirms that any schedule issued in this case must likewise account for expected developments in other proceedings that are likely to affect the merits of the PPA proposed here.

### **A. AEP's Proposed Schedule Is Not Reasonable.**

AEP's response to the intervenor motions regarding the procedural schedule suggests that the intervenors have had eight months to prepare their case, and therefore proceeding to hearing within 66 days of AEP's amended application is reasonable.<sup>3</sup> But the eight months preceding AEP's amended application were rife with uncertainty as to whether the PPA rider proposed in the then-pending *ESP 3* case would be approved at all, and if so under what conditions. As a

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<sup>2</sup> ELPC Mem. in Support of Mot. to Establish a Procedural Schedule at 2-3 (May 22, 2015); Sierra Club Mem. in Support of Mot. to Establish a Procedural Schedule at 2-3 (May 20, 2015); Appalachian Peace and Justice Network *et al.* Mem. in Support of Mot. for a Procedural Schedule at 9-10 (May 22, 2015).

<sup>3</sup> AEP Mem. in Opp. to Intervenors' Motions to Establish a Procedural Schedule at 4-6 (May 27, 2015).

practical matter, it is not realistic to expect the parties to have spent that time preparing at full tilt for a hearing in a case that might be rendered moot or significantly affected by the outcome of the *ESP 3* proceeding – especially when the Commission itself had not established a schedule in this case that would suggest any intent to move forward while the *ESP 3* case was pending.

Additionally, the Commission’s February 25, 2015 decision adopting the PPA rider but rejecting AEP’s proposed PPA for its Ohio Valley Electric Corporation (“OVEC”) plants provides significant new information for the parties to consider regarding the merits of the PPA in this case. AEP’s suggestion that there are few issues left to resolve in the wake of the Commission’s ruling on the PPA rider ignores the fact that the Commission’s decision delineated, at a minimum, several factors resting on complicated factual matters that would be relevant to the future consideration of a particular PPA such as that proposed here.<sup>4</sup> These remaining issues include the projected costs of the plants encompassed in this proposed PPA for their entire remaining life through plant closure; the predicted revenues from these plants over that same extended timeline; the potential effects on grid reliability should any of these plants close and the probability of that happening; and the effects of the proposed PPA on “adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service” in Ohio. Furthermore, the addition of the OVEC plants to this PPA proposal does affect each of these issues and would require further discovery under any scenario. These matters would be given short shrift under AEP’s expedited schedule.

For example, as noted in ELPC’s Motion, there are more than 20 witnesses offering testimony regarding a similar PPA proposal offered by Ohio Edison Company, the Cleveland

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<sup>4</sup> *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, Opinion and Order at 25 (Feb. 25, 2015).

Electric Illuminating Company and the Toledo Edison Company in Case No. 14-1297-EL-SSO.<sup>5</sup> There is no reason not to expect a similar number of witnesses in this proceeding, where AEP has itself proffered 11 witnesses and there are currently 24 intervening parties. If that is the case, then the parties would have to schedule a deposition nearly every day in the 34 business days remaining before AEP's proposed hearing date, if we started today. Such a schedule would be a marked departure from the schedules the Commission followed in the *ESP 3* case and in Case No. 14-1297-EL-SSO, which both center(ed) in large part on PPA proposals like this one and which both provided several months for discovery prior to the filing of testimony and the evidentiary hearing.<sup>6</sup>

While ELPC did not choose to submit yet a fourth schedule for the Commission's consideration, on top of the proposals by AEP, Sierra Club, and another group of intervenors, that does not alter the force of our argument that AEP's proposal is unreasonable and should not be adopted by the Commission.

**B. The Commission's Recent Order in Case No. 13-2385-EL-SSO Confirms that It Would Be Reasonable to Set a Schedule in this Case that Allows the Parties to Account for Related Developments in Federal Policy.**

In an order issued in Case No. 13-2385-EL-SSO on May 28, 2015, the Commission decided to "defer ruling on the assignments of error related to the PPA" – an array of arguments regarding the Commission's adoption of the PPA rider and its identification of factors relevant to

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<sup>5</sup> ELPC Mem. at 2.

<sup>6</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Entry at 1-2 (Aug. 29, 2014) (since extended based on intervening circumstances); *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, Entry at 1-2 (Jan. 24, 2014).

consideration of future proposed PPAs.<sup>7</sup> This ruling acknowledged the “considerable uncertainty with respect to pending PJM Interconnection, LLC (PJM) market reform proposals, environmental regulations, and federal litigation” which could potentially have large impacts “on the financial needs of generating plants and on grid reliability.”<sup>8</sup>

These pending proceedings include a PJM proposal to alter its capacity market rules pending before the Federal Energy Regulatory Commission and a rule proposed by the U.S. Environmental Protection Agency to regulate carbon dioxide emissions from existing power plants.<sup>9</sup> Both of these matters are expected to reach at least some initial resolution this summer.<sup>10</sup> As discussed in ELPC’s Motion in this case, it is eminently sensible to set a procedural schedule that allows for discovery and submission of intervenor testimony to continue past the summer so that the parties may account for developments in such relevant proceedings as the record in this case develops.<sup>11</sup> The Commission’s decision to defer any rehearing decision regarding the original PPA rider and proposed PPA in Case No. 13-2385-EL-SSO only confirms that this case should proceed similarly.

### **III. CONCLUSION**

There is every reason to reject AEP’s proposed procedural schedule. It would hurry the parties through discovery, submission of testimony, depositions, and an evidentiary hearing, without accounting for the complex factual issues in this case or the need to wait for concurrent developments in related proceedings. Therefore, ELPC urges the Commission to adopt a more reasonable schedule in

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<sup>7</sup> *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, Second Entry on Rehearing at 5 (May 28, 2015).

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.*

<sup>11</sup> ELPC Mem. at 3-4.

this case.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served via regular electronic transmission to the persons listed below, on June 2, 2015.

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Summary: Reply ELPC's Reply in Support of Motion to Establish a Procedural Schedule electronically filed by Madeline Fleisher on behalf of Environmental Law and Policy Center