

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY OF THE RETAIL ENERGY SUPPLY ASSOCIATION, THE PJM POWER
PROVIDERS GROUP AND THE ELECTRIC POWER SUPPLY ASSOCIATION**

TO

**OHIO POWER COMPANY'S MEMORANDUM IN OPPOSITION TO THE
INTERVENORS' MOTION TO ESTABLISH A PROCEDURAL SCHEDULE**

June 3, 2015

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I. Introduction

Now come the Retail Energy Supply Association, the PJM Power Providers Group, and the Electric Power Supply Association (Jointly "Suppliers") and reply to the memorandum contra filed by Ohio Power Company ("AEP Ohio") in the above-styled docket on May 27, 2015. The proceeding at bar is just beginning. Though the Suppliers have filed for intervention, no ruling has been made yet on any of the intervention requests. Similarly, as of this writing, no procedural schedule has been established. On May 15, 2015, AEP Ohio filed an Amended Application, eleven sets of testimony and requested a hyper-expedited proceeding in which intervenors, such as the Suppliers, would have to conduct discovery, formulate their

positions, and file their testimony by June 19th.¹ In addition, AEP Ohio requested that discovery other than depositions be completed by June 30th,² Staff testimony be filed by July 6th and the hearing to begin on July 14th.³ AEP Ohio's proposed schedule would cause the hearing in this case to overlap the FirstEnergy ESP IV proceeding⁴ now scheduled to commence on July 27th, in which the Suppliers and many of the intervenors are already parties and have prefiled testimony. In response to this hyper-expedited schedule, the Sierra Club, the Joint Intervenors⁵, and the Environmental Law and Policy Center requested a non-expedited procedural schedule. On May 27th, AEP Ohio filed a memorandum contra as to the three motions for a non-expedited hearing schedule. In support of its position, AEP Ohio indicated that it needs an expedited schedule so that it can make planning decisions⁶ for the power plants owned by its affiliates. In addition, AEP Ohio accused the intervenors of seeking delay for delay's sake⁷, and noted that its application has been on file since October.⁸

The Suppliers file this Reply to refute the reasons AEP Ohio raises for an expedited hearing. The AEP Ohio expedited schedule is impractical, inequitable and not in the public interest. It is impractical because the time provided is clearly insufficient, given the complexity of the application. AEP Ohio is asking the Commission to commit rate-payers to guarantee all operating expenses for the life of five power plants, one of which AEP Ohio projects to be in

¹ AEP Ohio Amended Application at 8.

² *Id.*

³ *Id.*

⁴ *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.

⁵ The "Joint Intervenors" are the Office of the Ohio Consumers' Counsel, Appalachian Peace and Justice Network, IGS Energy, Inc. Ohio Environmental Council, Ohio Hospital Association, Ohio Manufacturers' Association, and Ohio Partners for Affordable Energy.

⁶ AEP Ohio Memorandum Contra at 2-3.

⁷ *Id.* at 3.

⁸ *Id.* at 5.

service 36 years from now. The capacity of the Rider PPA would extend the rate-payer underwriting to roughly 1/3 of all the capacity demand forecasted for the AEP Ohio system. A financial guarantee of all operating expenses plus a guaranteed rate of return four times the rate of return United States Treasury bonds pay would profoundly impact the competitive market including the construction of new power plants. Finally, the Amended Application puts at stake literally hundreds of millions of rate payer dollars. Clearly, this is application matter of great importance to the public in general and affects many varied interests in the community. The true scope of the company's game plan became apparent when AEP Ohio filed its Amended Application, which included new cost estimates and eleven sets of testimony. Yet, as explained below, counting from the filing of the Amended Application, the AEP Ohio proposed schedule affords few days for the public to assess the impact of the Amended Application and respond accordingly:

- Interventions under the AEP Ohio Schedule must be filed by June 1st, a mere 16 days after the Amended Application was filed.
- All intervenor testimony be filed by June 19th, a mere 35 days after the Amended Application was filed.
- Discovery cut-off (except for notices of deposition) by June 30th, a mere 46 days after the Amended Application was filed.
- Staff testimony be filed by July 6th, a mere 52 days after the Amended Application was filed.
- The hearing begin on July 20th, a mere 66 days after the Amended Application was filed.⁹

An application that will have impact on the public for a period of time forecasted by AEP Ohio to be 36 years should not be reviewed in a two-month time span, unless the issues can be truly evaluated and presented fully to the Commission in two months. One of the reasons which

⁹ AEP Amended Application at 9-10.

AEP Ohio offers for its proposed hyper-expedited schedule, despite the complexity of the Amended Application is the observation that the Commission has already approved a placeholder Rider PPA in the *ESP III* Opinion and Order,¹⁰ so less time is needed to evaluate the Amended Application.¹¹ That statement is greatly inaccurate. In the *ESP III* Opinion and Order, the Commission rejected AEP Ohio's initial Rider PPA request¹² and found only that it had the authority to implement such a rider. Further, the Commission concluded that it would not approve a PPA for rider treatment unless specific criteria were addressed and met through a future filing. Many parts of the testimony attached to the Amended Application seek to address the Commission's criteria outlined in the AEP Ohio *ESP III* Opinion and Order, but that criteria was not known or could have been known in October when the original application was filed. Responding to the Commission's recent ruling in the *ESP III* Opinion and Order AEP Ohio attempts to make the case for its new expanded PPA in its Amended Application. For that reason when the Commission considers an adequate amount of time for the public to respond it should not count from the October 2014 filing; but from May 15, 2015, when AEP Ohio really addresses the Commission-established criteria.

AEP Ohio's Amended Application is not only different from the market-based regulatory scheme the Commission has been pursuing for the past 15 years, but it radically different from the previous cost-of-service pricing paradigm. If AEP Ohio was proposing to "retake" the four plants (Cardinal, Conesville, Stuart and Zimmer) and run them on a cost-of-service basis, it

¹⁰ *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 Nos. 13-2385-EL-SSO et al., Opinion and Order (February 25, 2015).

¹¹ AEP Memorandum Contra at 1, 11.

¹² The Commission rejected AEP's first Rider PPA proposal on February 25, 2015, in *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 Nos. 13-2385-EL-SSO et al., Opinion and Order at 25 (hereinafter referred to as the "*ESP III*" case). The Commission, however, established a placeholder PPA rider for the term of the electric security plan. *Id.*

would be shareholders and not rate-payers who would be financially responsible if the plants were no longer used and useful because of environmental rule changes or market shifts.¹³ In the Amended Application, however, the rate-payers are at risk for plant operating costs and at an 8% to 15% return on the coal plants for the life of such plants. That is a risk shift to rate-payers for which there is no precedent in this or other states. Moreover, AEP Ohio is not asking the Commission to commit to a plan for the next ESP term or even the next five years. Once approved, the Rider PPA would be for decades and no future Commissions can change that reassignment of risk. Given the gravity of the potential impact, the Amended Application is clearly not one for expedited treatment.

Furthermore, the Amended Application has another factual complexity that will take time to fully understand. Several of the plants being covered by the Rider PPA are jointly owned, but only the portion owned by the AEP Ohio affiliate would be subject to the rate-payer guarantee of Rider PPA. That raises numerous concerns including who has the right to shut the jointly owned plants, invest obligations for the jointly plants, how the capacity and energy will be sold and scheduled. For all of these reasons, AEP Ohio's proposed expedited schedule should be rejected outright and its arguments in its memorandum in opposition to the non-expedited schedules should be rejected.

II. Even though AEP Ohio filed its original application in this proceeding in October 2014, this matter has not progressed procedurally and AEP's Amended Application (filed on May 15, 2015) actually amends its request.

AEP Ohio's original application in this proceeding was filed in October 2014, at a time when the Commission was wrestling with AEP Ohio's original Rider PPA request in *ESP III*.

¹³ For the fifth plant (the Ohio Valley Electric Corporation units) under the Amended Application, the situation is different. AEP Ohio shareholders currently are at risk because the power purchased from them is sold into the PJM market, per Commission order. See, *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to Its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Finding and Order (December 4, 2013).

The original Rider PPA request involved purchased power from the two generating plants (Kyger Creek and Clifty Creek) of the Ohio Valley Electric Corporation (“OVEC”), of which AEP Ohio is part owner. AEP Ohio’s power output from those two OVEC plants is approximately 423 megawatts¹⁴ and is approximately 5-6% of AEP Ohio’s customer load.¹⁵ After extensive evidence from many parties about the original Rider PPA proposal, after extensive briefs on the subject and after taking the unusual step of holding oral arguments specifically to address the Rider PPA proposal, the Commission concluded that AEP Ohio had not sustained its burden of proof that the original Rider PPA request was reasonable – questioning whether customers would benefit sufficiently from the alleged hedging mechanism of the rider.¹⁶

This case has been pending while that the Commission considered AEP’s original Rider PPA proposal. However, no procedural schedule has been established for this case. In fact, only one entry has been issued (on December 23, 2014) and that entry addressed only a few motions for admission pro hac vice for several attorneys. No ruling on the intervention requests has been issued and little other activity has otherwise occurred.¹⁷ This is not surprising, as most parties have been involved in AEP Ohio’s original Rider PPA request – presenting evidence, writing briefs, and presenting oral arguments.

In addition, it should be pointed out that AEP Ohio admits that it will update numerous discovery responses it has provided in this proceeding, in light of its Amended Application.¹⁸ As a result, there is even more information coming from AEP Ohio at some point in the future.

¹⁴ Pearce Direct Testimony (in support of the Amended Application) at 10.

¹⁵ *ESP III*, Transcript Vol. 2 at 480.

¹⁶ *ESP III*, Opinion and Order at 23.

¹⁷ Some discovery requests have been presented and answered, but only by a few parties. AEP estimates that it has been served with 295 discovery requests. AEP Memorandum in Opposition at 5.

¹⁸ AEP Memorandum in Opposition at 5.

Furthermore, the Suppliers are unaware of any data requests from the Staff for this proceeding. Taken altogether, it is clear that AEP Ohio's proposed hyper-expedited procedural schedule is not warranted and will be unfair for many parties, including the Staff.

III. **AEP Ohio wrongly characterizes its Amended Application as not including major changes.**

AEP Ohio is currently proposing a PPA involving the two OVEC units, as well as units from four other affiliated generating plants (Cardinal, Conesville, Stuart and Zimmer). AEP Ohio contends that this proposal involves roughly 3,094 megawatts.¹⁹ One argument put forth by AEP Ohio in its Memorandum Contra to the intervenors' procedural schedules is that the Amended Application involved only one substantive change – the addition of the OVEC PPA and that the incremental changes in the Amended Application do not justify an extended procedural schedule.²⁰ AEP Ohio is incorrect on this point.

A comparison of a few AEP Ohio witnesses' testimony in the October 2014 and May 2015 applications demonstrates that AEP Ohio has not just presented incremental changes and one substantive change in the Amended Application (some of the differences are in bold):

Original Application Testimony	Amended Application Testimony
<p><u>McManus – purpose of 10/2014 testimony:</u></p> <ul style="list-style-type: none"> Describe the proposed Greenhouse Gas (“GHG”) Guidelines that were announced by the United States EPA on June 2, 2014 and published in the Federal Register on June 18, 2014, referred to as the Clean Power Plan (“CPP” or “Guidelines”). Describe the main provisions of the proposed CPP, the current status of the proposed Guidelines, and the issues that AEP Ohio has 	<p><u>McManus – purpose of 5/2015 testimony:</u></p> <ul style="list-style-type: none"> Discuss existing and proposed environmental regulations that are likely to affect the generating units that are proposed to be included in the PPA Rider. Describe the ability of the generating units to comply with these environmental regulations, with Company witness Thomas describing in more detail the major environmental compliance

¹⁹ As noted earlier, the OVEC units are approximately 423 megawatts. The other four generating plants are 2,671 megawatts, for a total of 3,094 megawatts. Pearce Direct Testimony (in support of the Amended Application) at 10 and at KDP-1 page 7.

²⁰ *Id.*

<p>with the Guidelines as currently proposed.</p> <ul style="list-style-type: none"> • Discuss some of the significant challenges that AEP Ohio sees in implementing the proposed Guidelines. • Discuss why the proxy for future carbon regulation that witness Pearce included in the Companies' analysis presented in this proceeding remains a reasonable surrogate for the potential effects of the proposed CPP. 	<p>projects that are planned for the affiliated units.</p> <ul style="list-style-type: none"> • Describe, in detail, a proposed United States EPA rulemaking to reduce (“GHG”) emissions from existing fossil fuel-fired electric generating units, which was published in the Federal Register on June 18, 2014, and is referred to as the Clean Power Plan (“CPP”) or as the Clean Air Act Section 111(d) guidelines (“Guidelines”), describing the main provisions of the proposal and summarizing key issues that AEP Ohio has identified. • Discuss why the proxy for future carbon regulation that witness Pearce included in the Companies’ analysis presented in this proceeding remains a reasonable surrogate for the potential effects of the proposed CPP.
<p>Thomas – purpose of 10/2014 testimony:</p> <ul style="list-style-type: none"> • Describe the generating units related to the Company’s request for a PPA in this proceeding. • Describe the characteristics of each generating unit, their economic viability in the deregulated market for electricity, and the anticipated future operation of these units in light of existing and anticipated environmental regulations. 	<p>Thomas – purpose of 5/2015 testimony:</p> <ul style="list-style-type: none"> • Describe the AEPGR generating units related to AEP Ohio’s request for a PPA in this proceeding. • Describe the characteristics of each generating unit, their economic viability in the deregulated market for electricity, their anticipated compliance with environmental regulations, and the impact of that deregulated market with respect to the financial needs of the generating units.
<p>[Did not present testimony in the 10/2014 application]</p>	<p><u>Wittine – purpose of testimony:</u></p> <ul style="list-style-type: none"> • Provide an assessment of the construction of new generating plants in Ohio. • Provide a general outlook for electric power generation in Ohio. • Demonstrate that there is uncertainty regarding whether projects approved by the Ohio Power Siting Board (OPSB) will be placed into service consistent with their proposed schedules, if at all. In fact, most of the dispatchable generation under development has already been delayed – and history indicates that most new generation winds up being withdrawn rather than placed in service.

However, that comparison is just an initial illustration of the differences between the applications. It is important to also realize that AEP Ohio has presented new information/charts

and updated forecasts in support of its Amended Application. This new information addresses several of the Commission’s factors from the *ESP III* decision and includes a new forecast of the impact of the PPA under the Amended Application. Below is a list containing some of the new items/information:

Witness	New/Changed Information in Testimony Supporting the Amended Application
Allen	Added description of the “Economic Benefits of OVEC” in Exhibit WAA-3.
Bletzacker	Deleted former Figures 1 2, 4 and 5.
Hawkins	Presented a new return on equity evaluation, with different inputs, in Exhibit RVH-1.
McManus	Added discussion of “Environmental Compliance of the PPA Rider Units” to testimony (pages 3-12).
Pearce	<p>Presented new forecast with different forecast period in Exhibit KDP-2.</p> <p>Added Table 1 “PPA Rider Forecast” (page 5).</p> <p>Changed information in Figure 1 “Forecasted PPA Rider Credit/(Charge).</p> <p>Presented new testimony addressing forecast results, new generating plant construction, capacity performance resource, and financial needs of the generating plants (pages 23, 28-33).</p> <p>Added Table III “PPA Energy Margin Revenue Requirements to Recover Fixed Capacity Costs” (page 31).</p>
Thomas	Presented new testimony addressing environmental compliance (pages 5-8).
Vegas	<p>Added testimony regarding the factors and requirements from the <i>ESP III</i> decision and the AEP witnesses who address them (page 3-7).</p> <p>Changed testimony regarding the benefits of the PPA (pages 7-11).</p> <p>Added testimony regarding economic viability of the PPA units in the PJM market, oversight and information sharing, and allocating financial risk (pages 16-19, 27-30).</p>

As the above demonstrates, AEP Ohio has clearly presented new and additional testimony and information in its Amended Application. All of the parties should have a

reasonable and just opportunity to review, evaluate and respond to the Amended Application, including the new and additional information. Such an opportunity should be more than a few weeks. AEP Ohio's proposed schedule does not offer the parties the fundamental element of time. While AEP Ohio may want to move this case at a rapid pace, its proposal is unjust and unreasonable.

IV. Because AEP Ohio is advocating for a significantly different PPA in this proceeding and, as such, is asking for Commission endorsement of a radical regulatory change, a procedural schedule that allows all parties adequate time to evaluate and prepare is just, reasonable, and essential.

AEP Ohio wishes the Commission to overlook the fact that this proceeding involves a dramatic regulatory change for its competitive market – a Commission-approved ratepayer guarantee for a significant amount of power produced by its affiliates for a significant period of time. In its *ESP III*, AEP Ohio had proposed a Commission-approved ratepayer guarantee for 423 megawatts from the two OVEC units. AEP Ohio's witness explained that the hearing that the request was just for the term of that ESP²¹ – which was at most a three-year period. AEP Ohio's current PPA proposal is a significantly different proposition – one involving nearly 3,100 megawatts and one that would be in effect for as long as each of the units is commercially operational.²² For Cardinal Unit 1, the current planned retirement year is 2033, while Zimmer Unit 1 is not planned to retire until 2051.²³ This amounts to a PPA that would be in effect for 18-36 years for those affiliated units. Moreover, AEP Ohio has acknowledged that the planned retirements are “only estimates that are subject to change,”²⁴ and thus the proposed PPA could be for an even longer period.

In addition, AEP Ohio's proposal is asking the Commission to sanction today a rider that

²¹ *ESP III*, Transcript Vol. 1 at 121, 150-152.

²² Pearce Direct Testimony (in support of the Amended Application) at Exhibit KDP-1 page 1.

²³ *Id.* at Exhibit KDP page 7.

can require AEP Ohio's ratepayers to pay for facilities that are not now used and useful for the electric service provided to those ratepayers and will not be used and useful for the electric service provided to those ratepayers in the future. It is a basic tenet in ratemaking that rates be established on facilities that are "used and useful."²⁵ AEP Ohio is asking the Commission to sidestep a fundamental regulatory tenet. Not only should the Commission be weary of the proposal, it should be even more weary since AEP Ohio is seeking to have this request proceed in such an expedited manner.

These facts demonstrate that careful, deliberate consideration of the Amended Application is warranted. Parties need and deserve to have the time to evaluate all that has been presented thus far and need more time than what AEP Ohio has proposed.

V. AEP Ohio's proposal involves generating facilities that are jointly owned, under various ownership schemes, all of which raise important and practical questions and concerns that require deliberate exploration.

Of the generating facilities now proposed to be included in the PPA, AEP Ohio co-owns Conesville Unit 4, Stuart Units 1-4 and Zimmer Unit 1²⁶ through various agreements. As noted above, the OVEC units are also partly-owned by AEP, but that ownership arrangement differs from Conesville Unit 4, Stuart Units 1-4 and Zimmer Unit 1. President and Chief Operating Office of AEP (Mr. Vegas) states in his pre-filed testimony that he will be a member of the committees that oversee decisions affecting all of the PPA plants.²⁷ Additionally, the PPA terms reflect that there will be an operating committee to "develop arrangements for the generation, delivery and receipt of energy."²⁸ While that may be the case, there are many more concerns as to how the joint ownership by other utilities will be affected if the PPA were to be approved and

²⁴ Thomas Direct Testimony (in support of the Amended Application) at 16.

²⁵ OJur 3d §131.

²⁶ Thomas Direct Testimony (in support of the Amended Application) at 3.

²⁷ Vegas Direct Testimony (in support of the Amended Application) at 16.

this has not really been explained thus far. Such questions include: (1) who will dispatch/schedule the output of the plants; (2) who will run the plants; (3) who has the right to shut the plant; (4) who can invest in the plant; and (5) how will the revenues be allocated among the joint owners.

While the Amended Application purports to address the Commission's factors and requirements, the parties should be allowed the opportunity to explore other concerns such as these very relevant and practical operational concerns related to the PPA plants. How the joint ownership of the involved plants will work under the proposed PPA is extremely important. Parties need and deserve to have the time to evaluate all that has been presented thus far and need more time than what AEP Ohio has proposed.

VI. AEP Ohio's proposed schedule in this matter squarely conflicts with the procedural schedule for the FirstEnergy ESP IV case, which involves nearly all of the same parties as in AEP Ohio's case.

The last argument of the Suppliers is logistical. Counsel for the Suppliers are involved in the FirstEnergy ESP IV case.²⁹ The hearing in that case is scheduled to begin on July 27, 2015, and is expected to last at least six weeks.³⁰ Additionally, that case could involve a rebuttal phase and will assuredly also involve written briefs. In addition to the Suppliers, there are many other parties in AEP's case who are also involved in the FirstEnergy ESP IV case, including:

²⁸ Pearce Direct Testimony (in support of the Amended Application) at Exhibit KDP-1 page 1.

²⁹ *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.

³⁰ This is a conservative estimate because there are 20 company witnesses and 31 intervenor witnesses who will be testifying in that case. It is not known at this time how many Staff witnesses there will be.

Constellation NewEnergy Inc.	Ohio Environmental Council
Direct Energy Services, LLC	Ohio Hospital Association
Direct Energy Business, LLC	Ohio Manufacturers' Association Energy Group
Direct Energy Business Marketing, LLC	Ohio Partners for Affordable Energy
Dynegy Inc.	Sam's East, Inc.
Environmental Defense Fund	Sierra Club
Environmental Law & Policy Center	Staff of the Commission
Exelon Generation Company LLC	The Energy Professionals of Ohio
IGS Energy	The Kroger Company
Mid-Atlantic Renewable Energy Coalition	The Independent Market Monitor for PJM
Ohio Consumers' Counsel	Wal-Mart Stores East LP
Ohio Energy Group	

It is unnecessary to schedule the hearing in this matter at the same time as the lengthy hearing for the FirstEnergy ESP IV case. The parties cannot adequately and meaningfully prepare for and participate in both at the same time. Thus, the procedural schedule proposed by AEP Ohio is not practical, just or reasonable for those logistical reasons.

VII. Conclusion

For all of the foregoing reasons, AEP Ohio's arguments in its memorandum in opposition should be rejected and AEP Ohio's proposed schedule should be rejected as well. The hearing in AEP Ohio's case should be scheduled to begin in 2016, as that will allow the all the parties adequate time to review the Amended Application, conduct discovery, prepare testimony in response, and not conflict with the FirstEnergy ESP IV case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 3rd day of June 2015 upon all persons/entities listed below:

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Summary: Reply to Ohio Power Company's Memorandum in Opposition to the Intervenor's Motion to Establish a Procedural Schedule electronically filed by Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association and PJM Power Providers Group and Electric Power Supply Association