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 Purchase Agreement for Inclusion in the Power Purchase Agreement Rider	)	Case No. 14-1693-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority	)	Case No. 14-1694-EL-AAM

OHIO POWER COMPANY'S MEMORANDUM CONTRA INTERVENORS' MOTION FOR AN EXTENSION OF THE PROCEDURAL SCHEDULE

This proceeding involves a request by Ohio Power Company (AEP Ohio) to include certain power purchase agreements (PPAs) in the PPA Rider established by the Commission as part of AEP Ohio's most recent electric security plan (ESP). *See* Opinion and Order, Case No. 13-2385-EL-SSO, et al. (Feb. 25, 2015), at 20-22, 25-26. Numerous Intervenors[1] have moved to postpone the procedural scheduled entered by the Attorney Examiner in this proceeding on August 7, 2015. The motion should be denied.

INTRODUCTION & SUMMARY OF ARGUMENT

Intervenors already had an opportunity to brief the issue of the schedule in this case, and they took full advantage of it, filing seven separate memoranda of law. But the Attorney

[1] For convenience, AEP Ohio will use the term "Intervenors" in this Memorandum to refer to the Intervenors who joined the August 11, 2015 Motion for an Extension of the Procedural Schedule – namely, Appalachian Peace and Justice Network (APJN), Electric Power Supply Association (EPSA), Environmental Defense Fund (EDF), Environmental Law & Policy Center (ELPC), IGS Energy, Ohio Consumers' Counsel (OCC), Ohio Environmental Council, Ohio Hospital Association, Ohio Manufacturers' Association Energy Group (OMAEG), Ohio Partners for Affordable Energy (OPAE), PJM Power Providers, Retail Energy Supply Association (RESA), and Sierra Club. For purposes of this Memorandum, the term "Intervenors" excludes those parties who have intervened in this case but did not join the August 11 motion.

Examiner rejected Intervenors' meritless arguments for delay and implemented a procedural schedule that provides AEP Ohio's PPA proposal the prompt treatment that it deserves.

Now Intervenors are trying once again to delay these vitally important proceedings. But their arguments this time around are no more valid than they were the first time. As AEP Ohio has explained since it commenced this case over ten months ago, time is of the essence in this proceeding. If the Commission delays in reaching a decision, the numerous benefits the PPAs offer may be lost.

In any event, Intervenors' attempts to attack the Attorney Examiner's schedule fail. Intervenors' main argument is that the current schedule denies Intervenors "due process." Intervenors' Memorandum in Support of Motion for an Extension of Procedural Schedule ("Br.") 2-3. But tribunals are extremely reluctant to constitutionalize relatively minor matters of procedure such as scheduling, and Intervenors' utter failure to engage with the vast body of due process case law shows that Intervenors' arguments are really about their own subjective and self-serving opinions of reasonableness, not lofty legal principles of "due process."

The current schedule, moreover, was developed objectively by the Commission and is perfectly reasonable. Intervenors' many complaints about it are meritless. Intervenors argue that the schedule leaves inadequate time for discovery. Br. 2-3. But Intervenors have *already* conducted more than ample discovery, propounding over 794 data requests, and the current schedule even leaves time for additional requests and depositions.

Intervenors further complain that the schedule in this case is too close in time to the schedule in the FirstEnergy ESP case. But as described below, Intervenors have sufficient resources to handle both cases. Many Intervenors are represented by large in-house trial teams or law firms with hundreds of attorneys, and the remaining Intervenors can coordinate with and

be supported by other Intervenors, especially those with shared viewpoints. Such efficiency and collaboration is illustrated through the joint motion itself. AEP Ohio recognizes that it may be inconvenient for some Intervenors to litigate both cases in close succession, but Intervenors have skilled, experienced counsel who are more than capable of handling multiple matters. Further, the overlapping nature of the issues being litigated in close succession in the FirstEnergy and AEP Ohio cases also helps abate the Intervenor's inconvenience. In any event, long hours are part of the inherent nature of the legal profession, not grounds for postponing a critical Commission hearing.

Intervenors next argue that the schedule should be postponed to wait for the results of three PJM auctions – the 2018-19 delivery year Base Residual Auction (BRA) and the 2016-17 and 2017-18 transitional auctions. Br. 3-6. But the results of the 2018-19 BRA will be known by August 21,[2] and the results of the remaining auctions will be known by August 31 and September 9,[3] before the intervenor testimony deadline of September 11 and well before the September 28 hearing date established in the current schedule. Thus, the results of all three auctions can be made a part of the record and be fully considered by the Commission before it makes a decision. In any event, the fundamental flaws of PJM's markets are well known and unlikely to be altered by the results of the BRA and transitional auctions, whatever they may be. There will always be another auction or a bit of additional market data on the horizon; at some point the Commission must make a decision.

Finally, Intervenors argue (Br. 6-7) that the schedule does not allow time for public hearings, if the Commission decides to order them. AEP Ohio will respond separately to the

[2] *See* http://www.pjm.com/~/media/markets-ops/rpm/rpm-auction-info/erpm-instructions-for-participation-in-the-2018-19-bra.ashx.

[3] *See* http://www.pjm.com/~/media/markets-ops/rpm/rpm-auction-info/2016-2018-cp-transition-incremental-auctions-rules-schedule-planning-parameters.ashx.

motion of Sierra Club and ELPC to establish local public hearings. But even assuming that the Commission orders public hearings, such hearings are typically scheduled in the evening, and in AEP Ohio's experience, most Intervenors do not even attend, let alone ask questions. Moreover, public hearings are typically held in parallel with the procedural schedule and need not occur prior to any specific phase of the proceeding. Thus, public hearings will not interfere with the current schedule.

In sum, the Attorney Examiner's established schedule is reasonable. Intervenors' meritless arguments for delay have already been rejected once, and they should be rejected again.

ARGUMENT

I. The current procedural schedule is appropriate because it reflects the need for a prompt Commission decision in this matter.

As AEP Ohio has repeatedly explained – in its Amended Application; in the accompanying letter from Pablo A. Vegas, AEP Ohio's President; and in its Memorandum in Opposition in the first round of briefing on the schedule[4] – a prompt Commission decision in this proceeding is critically important. The PPAs, if approved, will bring numerous benefits to customers:

- The PPAs will help stabilize volatile market-based rates by smoothing out severe increases and decreases in market prices.
- The PPAs will provide a credit on customers' bills if, as expected, wholesale rates trend upward.
- The PPAs will help ease the ongoing transition to competition by providing a hedge against price fluctuations, something the market has failed to provide.
- The PPAs will encourage shopping by providing shopping customers a critical hedge against fluctuating CRES rates.

[4] *See* AEP Ohio's Memorandum in Opposition to Intervenors' Motions to Establish a Procedural Schedule, Case No. 14-1693-EL-RDR (May 27, 2015), at 2-4.

- The PPAs will preserve the Commission's remaining authority to regulate generation in Ohio.

- The PPAs will help avoid premature plant retirements by allowing the plants to make rational, long-term decisions regarding capital investments – something they struggle to do based solely on the flawed, unpredictable PJM auctions.

- The PPAs will safeguard reliability by ensuring adequate fuel diversity and preventing Ohio from becoming over-dependent on relatively less reliable natural gas plants.

- The PPAs will promote Ohio's economy by helping to ensure that the thousands of jobs – and millions in tax revenue – generated by the PPA plants will remain in local communities.

- And the PPAs will avoid hundreds of millions of dollars in needed transmission upgrades if the PPA plants prematurely retire.

Yet all of these benefits may be lost if the Commission does not promptly reach a decision in this case. Following the divestiture of AEP Ohio's generation facilities to AEPGR, AEP Ohio's parent company AEP is facing an imminent need to make long-term strategic decisions regarding the former AEP Ohio plants, including whether to make additional investments in the plants or, potentially, to sell the plants. Thus, AEP must know – and know in a reasonable timeframe – whether the State of Ohio wishes to take advantage of the price stability and other benefits that this PPA proposal offers. Otherwise AEP may have to pursue other long-term strategic options.

Accordingly, as part of its Amended Application, AEP Ohio proposed a procedural schedule that sought to facilitate a Commission decision by October 1, 2015 – the date the proposed PPAs would commence. The Attorney Examiner, apparently recognizing the urgency of this case, then established a procedural schedule under which the hearing will commence on September 28, 2015.[5] Although this schedule likely will not enable a Commission decision by the proposed PPA start date of October 1, 2015, it does keep the PPAs alive as a possible option.

[5] Entry, Case Nos. 14-1693-EL-RDR et al. (Aug. 7, 2015), at 3.

However, any further postponement of the schedule will threaten the viability of the PPA proposal and delay the critical benefits for customers that the PPAs will provide. Thus, as with the first round of briefing, Intervenors' renewed request to postpone the schedule is yet another thinly veiled attempt to gain leverage on the *merits* of the PPA proposal through *procedural* wrangling. Intervenors know full well that delay imperils the PPA proposal. Thus they have sought delay at every opportunity, and are doing so again here.

The Commission should deny Intervenors' attempts to postpone the Commission's consideration of the PPA proposal through unwarranted procedural delays. In reality, Intervenors understand that unnecessary delay could result in a withdrawal of the Company's PPA proposal if AEP does not receive a timely decision from the Commission and proceeds to sell the generating units. By contrast, the current procedural schedule appropriately recognizes that time is of the essence in this proceeding. It should not be changed.

II. The current procedural schedule does not violate due process.

In their effort to defeat the PPA Proposal through delay, Intervenors' principal argument is that the current procedural schedule "will deny [them] the basic due process secured to them under the Ohio Revised Code, the Ohio Administrative Code, and the Ohio and U.S. Constitutions." Br. 3. Remarkably, however, Intervenors cite *no authority whatsoever* – not a single case nor any Commission decision – in support of this hyperbolic constitutional claim.

Intervenors cannot simply invoke "due process" and thereby state a valid objection to the procedural schedule. Tribunals are extremely reluctant to overturn decisions on constitutional grounds, and there is a vast body of case law limiting the strictures of the Due Process Clauses of the U.S. Constitution and the Ohio Constitution both in general and as they apply to the procedures employed by the Commission in ratemaking proceedings. *See, e.g.*, *Mathews v. Eldridge*, 424 U.S. 319 (1976) ("due process" as applied to civil procedure requires a balancing

test weighing (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail"); *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard."); *Liming v. Damos*, 2012-Ohio-4783, ¶ 28 ("Because due process requires a fundamentally fair proceeding, we will employ the *Mathews v. Eldridge* test . . . ."); *State v. Hayden*, 2002-Ohio-4169, ¶ 6 ("Although due process is flexible and calls for such procedural protections as the particular situation demands, the basic requirements under this clause are notice and an opportunity to be heard." (quoting *Mathews*, 424 U.S. at 332)); *see also City of Akron v. Pub. Utilities Comm'n*, 5 Ohio St. 2d 237, 241 (1966) (denying claim that the Commission violated due process by imposing "limitations of time to prepare and present evidence or to prepare and present briefs or arguments at various points in the proceedings" and holding that "[o]rders granting or refusing continuance as well as orders setting time for argument or time for filing briefs generally rest . . . in the sound discretion of the commission"); *City of Cleveland v. Pub. Utilities Comm'n*, 67 Ohio St. 2d 446, 453 (1981) (denying due process claim on the ground that "the right to participate in a rate-making proceeding is statutory, and not constitutional," and thus "any legal right which a ratepayer would have to notice or a hearing would have to stem directly from the statutes," not the Constitution).

Intervenors' failure to make any effort to engage with this established body of case law dooms their due process argument from the start. Intervenors make no effort to describe how the procedural schedule denies them "notice and an opportunity to be heard." *Hayden*, 2002-Ohio-

4169, ¶ 6. Intervenors have had "notice" of AEP Ohio's PPA proposal for months, and Intervenors will be given every "opportunity to be heard" at the hearing, where Intervenors will be represented by counsel, will have an opportunity to cross-examine AEP Ohio's witnesses, and will be able to put on witnesses of their own. Intervenors' relatively minor complaints about scheduling do not even begin to implicate the due process guarantees of the U.S. and Ohio Constitutions. Instead, Intervenors' claims are merely arguments about *reasonableness*, and as discussed below, the current procedural schedule is perfectly reasonable.

III. The current procedural schedule is reasonable.

A. The schedule provides ample opportunity for discovery.

Intervenors first assert that the current procedural schedule "does not allow for the ample discovery the law (4903.082) requires." Br. 2. Not true. R.C. 4903.082 provides that "[a]ll parties and intervenors shall be granted ample rights of discovery." Here, Intervenors have *already* conducted more than "ample . . . discovery," and the procedural schedule gives them several additional weeks to conduct even more.

AEP Ohio filed its initial application and testimony in this case on October 3, 2014, and thus Intervenors have now had over *ten months* to conduct discovery in this case. In this time, Intervenors have served 794 discovery requests on AEP Ohio, including 214 requests on August 7, the day the procedural schedule was issued. AEP Ohio has responded to 500 of these data requests and will shortly respond to the remaining requests. What more do Intervenors want? What data request or deposition will this procedural schedule prevent? They make no effort to say. They neither describe specifically how the discovery to date has been inadequate nor make any effort to identify the additional discovery that the procedural schedule will allegedly cut off.

Instead, Intervenors complain vaguely that AEP Ohio's "Amended Application consists of new and revised testimony from 11 witnesses totaling over 300 pages." Br. 2. But as AEP

Ohio explained the first time Intervenors made this argument, the Amended Application and testimony provided updated forecasts and additional supporting evidence in response to the Commission's directives in the *ESP III Order*, but that data and evidence were merely *incremental* to the initial application. The majority of the proposal – including, most importantly, the structure and justification of the PPAs – remained effectively the same as it was on October 3, 2014. The primary substantive change in the Amended Application was the addition of the OVEC PPA, and that PPA was fully addressed in AEP Ohio's ESP III proceeding.

In any event, AEP Ohio filed its Amended Application on May 22, 2015, and promptly thereafter supplemented its outstanding discovery responses to account for the inclusion of the OVEC PPA and updated forecast numbers. Intervenors have had over three months to assess AEP Ohio's Amended Application and serve additional discovery requests, and under the current schedule, they will have multiple weeks to complete that process.

The current procedural schedule sets a deadline for discovery requests that falls eleven months after AEP Ohio filed its initial application, and the hearing is set for almost a full year after AEP Ohio filed its application. If anything, that outcome represents too much delay. It is certainly not unreasonably fast, as Intervenors claim.

B. The proximity of the FirstEnergy ESP hearing is not a reason for delay.

Intervenors' second argument asserts that the procedural schedule is unreasonable because Intervenors will have to undertake "time-intensive tasks" for this proceeding "while preparing for and litigating the proposed FirstEnergy ESP application." Br. 2 (italics omitted). Intervenors claim that "a majority, if not all, of the parties [in this proceeding] will be unavailable during all of September and October 2015." *Id.* at 3. Unpacking this claim for each

of the Intervenors shows that it is overwrought. Counsel for Intervenors are more than capable of handling both this case and the FirstEnergy case.[6]

For instance, six Intervenors are represented by large law firms. EPSA, PJM Power Providers, and RESA are represented in both cases by Vorys, Sater, Seymour and Pease LLP.[7] Both OCC and the Ohio Hospital Association are represented in this case by Bricker & Eckler LLP, and Bricker & Eckler also represents the Ohio Hospital Association in the FirstEnergy case.[8] OMAEG is represented in both cases by Carpenter Lipps & Leland LLP.[9] Collectively these firms have over 350 lawyers in Columbus.[10] Surely they are able to staff more than one case in close succession.

Among the remaining Intervenors, two have assembled large in-house trial teams. In addition to being represented by Bricker & Eckler in this proceeding, OCC has assembled a team of five additional in-house attorneys between this proceeding and the First Energy case.[11] Sierra

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[6] To begin with, one intervenor – APJN – is not even a party in the FirstEnergy case. It is difficult to see how the FirstEnergy proceeding imposes any burden on APJN.

[7] *See* Motion to Intervene of PJM Power Providers Group and EPSA, Case No. 14-1693-EL-RDR (Nov. 11, 2014), RESA's Motion for Leave to Intervene, Case No. 14-1693 (Oct. 29, 2014).

[8] *See* OCC's Notice of Substitution of Counsel, Case No. 14-1693-EL-RDR (May 27, 2015); Motion to Intervene of Ohio Hospital Association, Case No. 14-1693-EL-RDR (Oct. 17, 2014); Motion to Intervene of the Ohio Hospital Association, Case No. 14-1297-EL-SSO (Aug. 28, 2014)

[9] *See* Motion to Intervene of OMAEG, Case No. 14-1693-EL-RDR (Oct. 23, 2014); Motion to Intervene of OMAEG, Case No. 14-1297-EL-SSO (Aug. 29, 2014).

[10] Vorys has "more than 200 lawyers in Columbus alone," and Bricker has at least 125 lawyers in Columbus. *See* http://www.vorys.com/about-offices-Columbus.html; http://www.bricker.com/people/search/advanced (chose "Select an Office Location" and select "Columbus"; excluding paralegals and other apparent non-attorneys, count is approximately 125). Carpenter Lipps has approximately 30 lawyers, and though its website does not appear to identify which lawyers practice in its Columbus office, the vast majority of its attorneys seem to be based in Columbus. *See* http://www.carpenterlipps.com/about.htm; http://www.carpenterlipps.com/profiles.htm.

[11] *See, e.g.*, OCC's Notice of Substitution of Counsel, Case No. 14-1693-EL-RDR (May 27, 2015) (listing Bricker & Eckler, plus Michael, Bair, and Moore); OCC's Notice of Appearance and Substitution of Counsel, Case No. 14-1297-EL-SSO (July 7, 2015) (listing Michael and Moore again, plus Sauer and Grady).

Club, moreover, is now on its second law firm for these two cases and is represented by four additional attorneys based in San Francisco and Washington, DC.[12] Further, EDF, OEC, and IGS Energy are represented by more than one in-house counsel for the two cases. These Intervenors have sufficient resources to handle the two cases.

Intervenors place special emphasis on two Intervenors – ELPC and OPAE – who allegedly have "only one attorney in the State of Ohio." Br. 3 n.9. But even if the schedule will be inconvenient for a few parties, nothing in Ohio law requires the Commission to conduct its proceedings slowly, or one at a time, because two relatively small advocacy groups are understaffed. In the past, the Commission has conducted two important proceedings simultaneously – for example, in June 2012, hearings for AEP Ohio's ESP and FirstEnergy's ESP were conducted simultaneously.

In any event, Intervenors' claims about ELPC and OPAE are exaggerated – both organizations have the capability of bringing on additional attorneys to help in these cases. The websites for these two organizations both indicate that they have at least two attorneys working in Ohio.[13] These organizations presumably employ multiple attorneys for just these occasions; it may be inconvenient for them to litigate two cases in close succession, but they are more than capable of doing so.

[12] Sierra Club was originally represented in both cases by Williams, Allwein & Moser, LLC, but that firm was recently replaced in both cases by the Richard Sahli Law Office, LLC. In addition, in this proceeding, Sierra Club is represented by two attorneys based in San Francisco. And in the First Energy proceeding, Sierra Club is represented by one of the San Francisco attorneys and two additional attorneys based in Washington, D.C. *See* Sierra Club's Notice of Appearance and Substitution of Counsel, Case No. 14-1693-EL-RDR (Aug. 10, 2015); Sierra Club's Notice of Appearance and Substitution of Counsel, Case No. 14-1297-EL-SSO (Aug. 10, 2015).

[13] *See* http://elpc.org/states/ohio/; http://www.ohiopartners.org/index.php?page=who-we-are.

Critically, moreover, even if there are a few Intervenors who lack the large trial teams fielded by the majority of Intervenors, it is not as if the burdens of litigating two proceedings will fall fully on any one Intervenor. As the numerous joint motions in this case and the FirstEnergy case demonstrate, and as the Commission knows well from previous hearings, Intervenors often share work in these proceedings, and the tasks of drafting briefs and examining witnesses are often spread among Intervenors.

Thus, no Intervenor is on its own. In litigating both this proceeding and the FirstEnergy case, each Intervenor can coordinate with and be supported by other Intervenors, especially those with shared viewpoints. For instance, ELPC will be supported by the three other environmental Intervenors – the Sierra Club, the Environmental Defense Fund, and the Ohio Environmental Council. Together, there are eight attorneys who have made appearances on behalf of these four environmental groups in the two proceedings.[14] Likewise, OPAE is not the only consumer organization. Its counsel can coordinate with and be supported by the two other consumer advocates – OCC and APJN. Collectively, there is one large law firm and seven additional attorneys who have made appearances on behalf of the three consumer groups in the two proceedings.[15]

[14] *See supra* note 13 (Sierra Club is represented by at least five attorneys in the two cases: one law firm with at least one attorney, plus two San Francisco counsel and two Washington, D.C. counsel); Motion to Intervene by Environmental Defense Fund, Case No. 14-1693-EL-RDR (EDF is represented by two attorneys); Motion to Intervene by Ohio Environmental Council, Case No. 14-1693-EL-RDR (Oct. 17, 2014); Motion to Intervene by Ohio Environmental Council, Case No. 14-1297-EL-SSO (Sept. 26, 2014) (OEC is represented by the same two attorneys who represent EDF); Motion to Intervene by Environmental Law & Policy Center, No. 14-1693-EL-RDR (Feb. 27, 2015) (ELPC is represented by one attorney).

[15] *See supra* note 12 (OCC is represented by Bricker & Eckler plus five additional in-house attorneys); APJN's Motion to Intervene, Case No. 14-1693-EL-RDR (Jan. 21, 2015) (APJN is represented by one attorney); OPAE's Motion to Intervene, Case No. 14-1693-EL-RDR (Nov. 19, 2014) (OPAE is represented by one attorney).

AEP Ohio certainly sympathizes with the scheduling burdens that lawyers sometimes face, but that is the nature of the profession. Attorneys are capable of handling multiple proceedings in short succession, especially where, as here, Intervenors are represented by attorneys who are such effective and experienced advocates, who have ample in-house resources to support them, and who can coordinate with and support each other in preparing for and litigating the two cases.

C. The upcoming PJM auctions are not a reason for delay.

Intervenors next argue (Br. 3-6) that the Commission should postpone the schedule to account for the results of the 2018-19 delivery year Base Residual Auction (BRA), as well as transitional auctions for the 2016-17 and 2017-18 delivery years. But the results of the 2018-19 BRA – by far the most important of these auctions – will be known by August 21,[16] and the results of the remaining auctions will be known by August 31 and September 9,[17] before the intervenor testimony deadline of September 11 and well before the September 28 hearing date established in the current schedule. Thus, Intervenors will have weeks to analyze the results of the BRA and transitional auctions before the hearing begins, and the results can be made a part of the record at the hearing. Intervenors will be able to cross-examine witnesses or make arguments in post-hearing briefs based on the auction results. And the Commission will have every opportunity to consider the results of all three auctions before making a decision in this case.

Importantly, moreover, much of what the Commission needs to know about PJM for purposes of this proceeding has been established by previous auctions. For example:

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[16] *See* http://www.pjm.com/~/media/markets-ops/rpm/rpm-auction-info/erpm-instructions-for-participation-in-the-2018-19-bra.ashx.

[17] *See* http://www.pjm.com/~/media/markets-ops/rpm/rpm-auction-info/2016-2018-cp-transition-incremental-auctions-rules-schedule-planning-parameters.ashx.

- PJM prices are highly volatile. Because all of AEP Ohio's customers' rates – shopping and non-shopping – are now tied directly to the PJM wholesale markets, PJM's price volatility will harm customers by making their bills unpredictable.

- Especially in times of extreme weather or high demand, PJM experiences severe spikes in its energy market prices. This occurred during the Polar Vortex of 2014.

- PJM capacity prices have been too low and unpredictable to justify large plant capital expenditures. Plant capital expenditures often cost hundreds of millions of dollars and must be recouped over decades. The volatile, unpredictable PJM capacity prices have made it extremely difficult for plants to make rational, long-term plans for capital improvements.

- The low and unpredictable PJM rates have led to the closure of several plants, damaging Ohio's fuel diversity and making Ohio over-reliant on natural gas, which can become scarce during times of extreme weather.

A single capacity auction – no matter the results – will not alter these fundamental features of PJM's auctions. The flaws in PJM's auctions have been established over numerous years and through multiple data points. There will always be "one more auction" on the horizon. At some point, the Commission must make a decision, and that time is now.

D. There is plenty of time for public hearings, if the Commission orders them.

Intervenors' final argument (Br. 6-7) is that the current procedural schedule must be postponed because it "does not provide for and leaves little time for local public hearings to be held in this proceeding." Br. 6. It is not clear that there is a need for any public hearings, but AEP Ohio will respond separately to the motion of Sierra Club and ELPC to establish public hearings. Even assuming that the Commission orders public hearings, moreover, that would not provide a basis for postponing the current schedule.

As an initial matter, Intervenors' arguments about public hearings ring hollow because Intervenors failed to raise this issue earlier in this case. In the first round of briefing on the schedule, not one of the seven briefs filed by Intervenors mentioned the need for public hearings. The Commission should not bend over backwards to change an established procedural schedule

on a ground that Intervenors should have raised *before* the Attorney Examiner established a schedule.

In any event, there is plenty of time in the current schedule for public hearings. The process of public hearings is parallel to – not overlapping with – the schedules for discovery and the evidentiary hearing. Public hearings are a forum for *members of the general public* to provide input; they are not a forum for *attorneys* to make arguments or present witnesses. Indeed, in AEP Ohio's experience – and, no doubt, in the Commission's experience – most Intervenors do not even attend public hearings, and those that do rarely ask questions through counsel.

Thus, public hearings can easily take place before, during, or even after the evidentiary hearing in this case without disrupting the current procedural schedule. If Intervenors attend the hearings (again, it is likely that most Intervenors will not attend), the hearings will likely take place in the evening and thus will not conflict with depositions or the evidentiary hearing. The public hearings, moreover, will require almost no preparation by Intervenors' counsel. Even if the Commission orders public hearings, therefore, no change is necessary to the current schedule.

CONCLUSION

For the foregoing reasons, Intervenors' motion to postpone the procedural schedule should be denied, and the schedule established in the Attorney Examiner's August 7, 2015 Entry should remain in place.

August 19, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Ohio Power Company's *Memorandum Contra Intervenors' Motion for an Extension of the Procedural Schedule* has been served upon the below-named counsel for all parties on this 19th day of August, 2015.

/s/ Steven T. Nourse
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Summary: Memorandum -Memorandum Contra electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company