

**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)	Case No. 14-1693-EL-RDR
Inclusion in the Power Purchase)	
Agreement Rider)	

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

**MEMORANDUM IN OPPOSITION TO ENVIRONMENTAL LAW & POLICY
CENTER'S MOTION TO EXPEDITE DISCOVERY**

On August 7, 2015, the Attorney Examiner presiding over this proceeding finalized the procedural schedule that would be used to adjudicate the Amended Application of Ohio Power Company (AEP Ohio). As part of that Entry, the Attorney Examiner established a discovery cutoff of September 4, 2015 under the normal rules in OAC Chapter 4901-1. Nearly a month after the Entry and only one day before the discovery deadline, the Environmental Law & Policy Center (ELPC) filed a motion to expedite discovery, seeking to either delay the established procedural schedule (page 3) or reduce the response time to 7 days (page 4). The renewed request to delay the procedural schedule is improper as it is already the subject of a separate motion that has been fully briefed and awaits ruling. The motion to expedite discovery is also untimely and without merit.

ELPC claims (at 3-4) that granting the motion will allow the parties the opportunity to serve written discovery requests before the cutoff deadline and before testimony deadline – even affording the parties the opportunity to ask follow-up

questions during the scheduled depositions of Company witnesses. Of course, this is a fallacy since intervenors have already been afforded each of these rights as part of the existing procedural schedule and without regard to the motion to expedite. ELPC's argument only holds true for an intervenor that has not exercised its discovery rights and sat on its hands during: (a) the more than ten months since the original Application was filed, (b) the nearly four months since the Amended Application was filed, and (c) the nearly four weeks since the Entry setting a procedural schedule was issued. Perhaps this obvious flaw explains why no other intervenor joined in ELPC's last-ditch motion. In any case, ELPC itself has previously submitted some discovery requests that have been answered (and additional requests that are pending).

In total, 1,111 discovery requests have been received since the Application was filed – with 870 since the Amended Application was filed on May 15. Since the August 7 Entry was issued, 528 requests have been submitted. A total of 160 requests came in on the day of the cutoff – with one intervenor dispatching its last batch of requests at the last possible moment (precisely 5:30pm) going into the Holiday weekend. Moreover, the Company has been forthright in responding to extensive and burdensome requests without the need for intervention or ruling by the Attorney Examiner on any discovery disputes. The intervenors have had more than adequate time for discovery and the Company is entitled at some point to focus on its own hearing and litigation preparation – after first responding to the currently-pending requests (which total 314).

ELPC also attempts (at 4) to shift the burden to AEP Ohio arguing that the Company must “offer some specific grounds why it is unable to provide discovery responses in a seven-day period.” It is ELPC's burden of proving – based on current

circumstances – that its motion should be granted. While ELPC attempts to support their position that a seven-day response period in this case is appropriate by referring to a recent Attorney Examiner ruling in the FirstEnergy electric security plan proceeding, they fail to provide appropriate context to that ruling – that ruling was limited only to discovery requests related to a supplemental stipulation that was filed only 3 business days prior to the pre-hearing conference.¹

As indicated, there are currently 314 pending requests and it would be unreasonable to suddenly require the Company to respond within seven days. If ELPC did not like the discovery response time established by the Attorney Examiner's August 7 Entry, it should not have waited nearly a month to challenge it – one day before the established discovery cutoff deadline. The intervenors have had plentiful opportunities to pursue discovery (and have taken advantage of such) and ELPC's lone cry for more time is untimely and unreasonable.

CONCLUSION

Even though this motion is merely another attempt to derail the procedural schedule in this proceeding, AEP Ohio has quickly responded (in two business days) in order to expedite consideration of the request (since it was expedited ELPC cannot file a reply). In any case, ELPC's untimely request for expedited discovery is not only an untimely challenge of the Attorney Examiner's August 7 Entry that established a

¹ 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, June 2, 2015 Prehearing Conference, Transcript at 92-93. "Without changing the hearing date parties will have until June 22 to file written discovery except for notices of deposition strictly with respect to the terms of the supplemental stipulation. And as I indicated previously, Sierra Club is not foreclosed from filing written discovery with respect to the supplemental stipulation. The company will serve discovery responses within seven days."

discovery cutoff under the normal rules, but is also another veiled attempt to seek a delay of the established procedural schedule. ELPC and the other intervenors have had more than adequate opportunity for discovery and have already received an abundance of information from the Company. Although the Company does not believe that any modification to the discovery response time is appropriate at this late point in the proceeding, if the Attorney Examiner does decide to reduce the discovery response time, it should only do so prospectively so that any remaining discovery requests should be answered within seven business days of the ruling.

Respectfully submitted,

//s// Steven T. Nourse

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Ohio Power Company's *Memorandum Contra Motion for Expedited Discovery* has been served upon the below-named counsel for all parties on this 8th day of September, 2015.

/s/ Steven T. Nourse
Steven T. Nourse

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Summary: Memorandum in Opposition to ELPC's Motion to Expedite Discovery electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company