

**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 CONTRA ENVIRONMENTAL LAW & POLICY CENTER'S
MOTION TO STRIKE**

On August 7, 2015, the Commission issued its scheduling Entry in this case which provided, among other things, that intervenor testimony would be due September 11, 2015 – five weeks after the Entry and approximately four months after the Amended Application filed by Ohio Power Company (AEP Ohio). On August 12, the Environmental Law & Policy Center (ELPC) –along with several other intervenors – filed a joint motion to delay the procedural schedule established by the Commission. After the Company filed a memo contra, the group of intervenors filed a reply in support of their request for delay on August 21, which appended an un-executed affidavit inserting a new claim not raised in the original motion for delay. More than 10 days later, ELPC submitted an executed affidavit as additional support for the motion to delay, explaining simply that the affiant was “on vacation in Florida.” On September 3, 2015, AEP Ohio filed a letter registering some concerns and questions about the late-filed affidavit.

Specifically, AEP Ohio letter's questioned the propriety of the executed affidavit being submitted more than 10 days after the reply memo was filed – and well after the deadline for submitting arguments in support of the motion for delay. The Company also raised some questions that have not been addressed. Presuming the affiant agreed to the original language of the affidavit at the time it was submitted, why did he not just take a few extra minutes to execute and transmit the completed affidavit? Why did it take 10 days to execute the affidavit? Of course, the substantive content of the affidavit raises additional procedural questions. Can a conversation between counsel and a prospective witness that occurred after the request to delay was filed and presented for the first time on reply (after the Company responded to the original motion) be properly submitted as a valid basis for the prior motion? Is a claim that a prospective witness is on vacation and too busy to prepare testimony by the established deadline probative or relevant, given that the question was not asked of the potential witness until 10 days after the deadline was established? After the Company's letter was filed, EPLC filed a motion to strike the correspondence.

EPLC cites OAC 4901-1-12 as requiring the Company to file a motion to strike and as prohibiting the Company from filing correspondence in this situation. In support of this position that OAC 4901-1-12 was triggered, EPLC characterizes AEP Ohio's letter as requesting relief because the letter suggested that the Commission ignore the late-filed affidavit. The purpose of the Company's letter was to register concerns about the late-filed affidavit and the Company chose not to move that the affidavit be stricken from the record or request any affirmative relief. Indeed, the Company is mindful of presenting additional decisions for the Attorney Examiners that are unnecessary or result

in the proliferation of procedural issues. To the end, the Company chose not to move to strike and sought instead to register its concerns through open correspondence – to which ELPC was welcome to respond. In any event, the Company’s passive suggestion to ignore the late-filed affidavit can hardly be considered a request for affirmative relief and, therefore, did not trigger the need to file a formal motion.

Ironically, ELPC’s use of correspondence to file its affidavit out of time violates the same rule it cites in an attempt to eradicate the concerns raised in the Company’s letter. Just because EPLC mentioned in its prior pleading that it could not get the affidavit signed within the deadline, that does not give EPLC *carte blanche* to continue submitting information after the deadline. On the contrary, because EPLC could no longer provide any pleadings or information in support of the motion for delay, it was required to get pre-approval to file the affidavit after that deadline – through a motion for permission under OAC 4901-1-12. Because EPLC violated the same rule it claims AEP Ohio did not follow, it should be prevented from selectively enforcing that rule through its motion to strike.

EPLC also casts aspersions (at 1) on the questions that were set forth in the Company’s letter – characterizing the points made in the letter as “legally dubious speculation” and as raising “baseless assertions.” While it is evident that these acrimonious comments manifestly over-react to the valid questions raised in the letter, it is even more telling that ELPC’s filing fails to make any attempt to address the substance of the questions raised by the Company. Thus, those legitimate questions remain unanswered and should – at a minimum – be left in the record to mitigate any weight given to the late-filed affidavit.

CONCLUSION

In sum, by using correspondence as the method to file its affidavit late and without seeking permission through a motion under OAC 4901-1-12, EPLC violates the same principles advanced in its motion while also failing to address the substantive questions raised by the Company concerning the late-filed affidavit. By contrast, AEP Ohio merely pointed out concerns about the late-filed affidavit in order to complete the record and avoid creating additional procedural decisions for the Attorney Examiners to rule upon in this case. Accordingly, the Commission should either deny EPLC's motion to strike or strike both the letter and the late-filed affidavit.

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 to Strike* has been served upon the below-named counsel for all parties on this 10th day of September, 2015.

/s/ Steven T. Nourse
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Summary: Memorandum Contra ELPC's Motion to Strike electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company