

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.)

ENTRY

The attorney examiner finds:

- (1) Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.
- (2) R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.
- (3) In Case No. 13-2385-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for an ESP for the period beginning June 1, 2015, through May 31, 2018, pursuant to R.C. 4928.143. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (ESP 3 Case), Opinion and Order (Feb. 25, 2015), Second Entry on Rehearing (May 28, 2015). Among other matters, the Commission concluded that AEP Ohio's proposed power purchase agreement (PPA) rider, which would flow through to customers the net impact of the Company's contractual entitlement associated with the Ohio Valley Electric Corporation (OVEC), satisfies the requirements of R.C. 4928.143(B)(2)(d) and, therefore, is a permissible provision of an ESP. The Commission

stated, however, that it was not persuaded, based on the evidence of record, that AEP Ohio's PPA rider proposal would provide customers with sufficient benefit from the rider's financial hedging mechanism or any other benefit that is commensurate with the rider's potential cost. Noting that a properly conceived PPA rider proposal may provide significant customer benefits, the Commission authorized AEP Ohio to establish a placeholder PPA rider, at an initial rate of zero, for the term of the ESP, with the Company being required to justify any future request for cost recovery. Finally, the Commission determined that all of the implementation details with respect to the placeholder PPA rider would be determined in a future proceeding, following the filing of a proposal by AEP Ohio that addresses a number of specific factors, which the Commission will consider, but not be bound by, in its evaluation of the Company's filing. In addition, the Commission indicated that AEP Ohio's PPA rider proposal must address several other issues specified by the Commission. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 20-22, 25-26.

- (4) On October 3, 2014, in the above-captioned proceedings, AEP Ohio filed an application seeking approval of a proposal to enter into a new affiliate PPA with AEP Generation Resources, Inc. (AEPGR).
- (5) Following the issuance of the Commission's Opinion and Order in the *ESP 3 Case*, AEP Ohio filed, on May 15, 2015, an amended application and supporting testimony, again seeking approval of a new affiliate PPA with AEPGR and also requesting authority to include the net impacts of both the affiliate PPA and the Company's OVEC contractual entitlement in the placeholder PPA rider approved in the *ESP 3 Case*. AEP Ohio explains that the amended application supersedes and replaces the Company's original application filed on October 3, 2014. AEP Ohio further explains that the primary purposes of the amended application are to include the OVEC contractual entitlement in the pending PPA rider proposal, along with the proposed affiliate PPA with AEPGR; address the factors and requirements set forth by the Commission in the *ESP 3 Case*; and update the Company's supporting testimony to reflect a current analysis of the amended proposal.

- (6) By Entry dated August 7, 2015, a procedural schedule was established, which included an intervention deadline of August 21, 2015.

Motions to Intervene

- (7) Timely motions to intervene in these proceedings were filed by the following movants:

FirstEnergy Solutions Corp. (FES)
Industrial Energy Users-Ohio
Ohio Energy Group
The Kroger Company
Sierra Club
Buckeye Power, Inc.
Mid-Atlantic Renewable Energy Coalition
Ohio Advanced Energy Economy
Wal-Mart Stores East, LP (Wal-Mart)
Sam's East, Inc. (Sam's)
Ohio Environmental Council
Monitoring Analytics, LLC (Market Monitor)
Ohio Hospital Association
Energy Professionals of Ohio
Environmental Defense Fund
Ohio Manufacturers' Association Energy Group
Retail Energy Supply Association
Ohio Consumers' Counsel
Direct Energy Services, LLC
Direct Energy Business, LLC
Direct Energy Business Marketing, LLC
Interstate Gas Supply, Inc.
PJM Power Providers Group
Electric Power Supply Association
Ohio Partners for Affordable Energy
Dynegy Inc.
Appalachian Peace and Justice Network
Environmental Law & Policy Center (ELPC)
Constellation NewEnergy, Inc.
Exelon Generation Company, LLC
EnerNOC, Inc.

- (8) On October 31, 2014, AEP Ohio filed a memorandum contra the motion to intervene filed by the Market Monitor on October 17, 2014. No other memoranda contra the motions to intervene were filed in these proceedings. The attorney examiner finds that the unopposed motions to intervene satisfy the intervention criteria set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11, are reasonable, and should be granted.
- (9) In support of its motion to intervene in these proceedings, the Market Monitor asserts that, in its capacity as the Independent Market Monitor for PJM Interconnection, LLC (PJM), it meets the requirements for intervention under R.C. 4903.221 and Ohio Adm.Code 4901-1-11. First, the Market Monitor maintains that it has a real and substantial interest in the competitiveness of PJM markets because it is required to monitor compliance with the PJM market rules, actual or potential design flaws in the PJM market rules, structural problems in the PJM markets that may inhibit a robust and competitive market, and the potential for a market participant to exercise market power or violate any PJM rule. Next, the Market Monitor asserts its legal position that subsidies should not be permitted to interfere with the competitiveness of PJM markets and PJM's competition-based market design. Third, the Market Monitor claims that it will not unduly prolong or delay these proceedings, given that it timely filed its motion to intervene and accepts the record established to date. Finally, the Market Monitor notes that it will significantly contribute to full development and equitable resolution of the factual issues, as no other party can adequately represent its interests, and it has exclusive resources and knowledge of PJM markets, which could aid the Commission in resolving these proceedings.
- (10) In its memorandum contra the motion to intervene filed by the Market Monitor, AEP Ohio argues that the Market Monitor has failed to satisfy the statutory requirements for intervention in these proceedings. AEP Ohio, therefore, requests that the Commission deny the Market Monitor's motion to intervene. Specifically, AEP Ohio contends that the Market Monitor has failed to meet the Commission's standard for intervention because the Market Monitor does not have a real and substantial interest in these proceedings. AEP Ohio asserts that the Market

Monitor does not explain how these proceedings concerning retail electric service will affect its ability to monitor PJM's wholesale markets or how it may be adversely affected by these proceedings involving retail ratemaking, job retention, economic benefits, fuel mixes and environmental attributes, and Ohio's energy future. Additionally, AEP Ohio argues that the stated premise for the Market Monitor's legal position (i.e., subsidies should not be permitted to interfere with the competitiveness of PJM markets and PJM's competition-based market design) is incorrect, irrelevant, and otherwise misguided. AEP Ohio contends that it has not requested any subsidy in these proceedings and, regardless, the competitiveness of the PJM markets is not within the Commission's power to address or even implicated by the Company's application, which, according to the Company, concerns only retail rates. AEP Ohio also asserts that the Market Monitor's federal claims are beyond the scope of these state proceedings, which, if litigated, could delay the resolution of these cases. Alternatively, AEP Ohio requests that, if the Commission does not deny the motion to intervene, the Market Monitor's intervention be limited to market power issues, with the Commission's discovery rules fully applying to the Market Monitor for those limited issues, as a means to protect the Company's due process rights. AEP Ohio adds that, if the Market Monitor does not wish to participate in the discovery process, it could be permitted to file an amicus curiae brief addressing policy issues, after the evidentiary record has been closed.

- (11) On November 5, 2014, FES filed correspondence noting that it opposes the Market Monitor's motion to intervene in these proceedings for the same reasons set forth by AEP Ohio.
- (12) The Market Monitor filed a reply to AEP Ohio's memorandum contra on November 7, 2014. In its reply, the Market Monitor asserts that it has complied in all material respects with the intervention requirements under R.C. 4903.221. Initially, the Market Monitor argues that it has standing to intervene in these proceedings because it performs a public interest function that includes monitoring the PJM markets for any exercise of market power as well as recommending market design changes to increase competition. The Market Monitor, thus, points out that

no other party is capable of representing its unique interests. The Market Monitor asserts that its particular interest in these proceedings is the impact of AEP Ohio's application on PJM's wholesale markets, primarily the capacity market, and the resulting effects on Ohio retail customers. The Market Monitor notes that it does not agree with AEP Ohio's assertion that these proceedings do not involve PJM's wholesale markets. Additionally, the Market Monitor contends that there is no reason to place special restrictions on its participation as a party to these proceedings, given that the impact of AEP Ohio's PPA rider proposal on PJM's market design is a core issue in these cases. As a final matter, the Market Monitor notes that the Commission can protect confidential information, while ensuring that the parties to these proceedings have access to the information that they need.

- (13) Upon review of the Market Monitor's motion to intervene, the attorney examiner notes that the Supreme Court of Ohio has held that statutes and rules governing intervention should be "generally liberally construed in favor of intervention." *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶ 16, quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 144, 656 N.E.2d 1277 (1995). The attorney examiner finds that, considering the standard for intervention set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11, particularly in light of the precedent finding that statutes and rules should be liberally construed in favor of intervention, the motion to intervene filed by the Market Monitor should be granted.

The attorney examiner finds that the Market Monitor has demonstrated the relevant nature and extent of its interest by explaining that it is required to monitor the PJM markets, including any design flaws or structural problems that could inhibit a competitive market or the potential for a market participant to exercise market power. Further, the Market Monitor has set forth its legal position that AEP Ohio's proposal in these proceedings constitutes a subsidy with the potential to interfere with competition in the PJM markets. Although AEP Ohio disagrees with the Market Monitor's legal position, the attorney examiner finds that it is nevertheless relevant to these

proceedings. The attorney examiner also finds that nothing indicates that the Market Monitor's participation will unduly prolong or delay these cases. The Market Monitor has demonstrated that it will significantly contribute to full development and equitable resolution of the factual issues, and no other party can represent its interests. Finally, the attorney examiner notes that the Commission has substantial experience with protecting confidential information and resolving discovery disputes; consequently, AEP Ohio's due process concerns are premature at this point.

Motions for Admission Pro Hac Vice

- (14) Gov.Bar R. XII(2)(A) provides rules governing eligibility to practice pro hac vice in Ohio. Pursuant to Gov.Bar R. XII(2)(A)(6), motions for admission pro hac vice must be accompanied by a certificate of pro hac vice registration furnished by the Supreme Court Office of Attorney Services.
- (15) On various dates, motions to appear pro hac vice and certificates of pro hac vice registration were filed for Kristin A. Henry, Shannon Fisk, Michael C. Soules, Susan L. Williams, and Christopher M. Bzdok on behalf of Sierra Club; Carrie M. Harris on behalf of Wal-Mart and Sam's; and Justin Vickers on behalf of ELPC.¹ The attorney examiner finds that the motions are reasonable and should be granted.

It is, therefore,

ORDERED, That the motions to intervene filed on various dates be granted, in accordance with findings (8) and (13). It is, further,

ORDERED, That the motions to appear pro hac vice of Kristin A. Henry, Shannon Fisk, Michael C. Soules, Susan L. Williams, Christopher M. Bzdok, Carrie M. Harris, and Justin Vickers be granted. It is, further,

¹ A motion to appear pro hac vice and certificate of pro hac vice registration were also filed for Madeline Fleisher on behalf of ELPC. On September 1, 2015, the motion to appear pro hac was withdrawn, as Ms. Fleisher was recently admitted to the Ohio bar.

ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Sarah Parrot

By: Sarah J. Parrot
Attorney Examiner

JRJ/sc

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Case No(s). 14-1693-EL-RDR, 14-1694-EL-AAM

Summary: Attorney Examiner Entry granting motions to intervene in accordance with Findings (8) and (13) and granting motions of Kristin Henry, Shannon Fisk, Michael Soules, Susan Williams, Christopher Bzdok, Carrie Harris, & Justin Vickers to appear pro hac vice. - electronically filed by Sandra Coffey on behalf of Sarah Parrot, Attorney Examiner, Public Utilities Commission of Ohio