

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

**REPLY OF PJM INTERCONNECTION
TO MEMORANDA CONTRA OF OHIO POWER COMPANY
TO PJM'S MOTION TO INTERVENE**

PJM files this Memorandum Contra to correct the record concerning technical matters such as whether PJM's testimony was docketed concurrent with its Petition. But in a larger sense, PJM believes that Ohio Power's arguments against PJM's limited intervention request go more to the merits of PJM's proposal and not to the narrower question of whether limited intervention should be granted.

As PJM notes, its limited intervention request is based on the submittal, for the first time in this proceeding, of Paragraph III(A)(5)(a) of the Stipulation—a paragraph that directly references AEP's bidding into the PJM markets and ties review of that bidding by the Ohio Commission with recovery of revenues under the PPA Rider. PJM accepts the record as filed and has purposefully kept its testimony limited with the intent of providing a constructive suggestion to the Commission on how it may reconcile Ohio's various policy goals in light of the Stipulation provision at issue. Although PJM appreciates Ohio Power's offer that PJM could

submit an amicus brief as an alternative, PJM notes that Ohio Power's proposal would confine PJM's comments in such a Brief to only addressing proposals that have been included in other's testimony. See Ohio Power Memorandum Contra at p. 6. Thus Ohio Power's proposal potentially creates the very "Catch-22" that drove PJM to file testimony and seek this limited intervention—and has the effect of denying all parties the opportunity, through cross-examination and rebuttal testimony in an open proceeding, the ability to test PJM's very targeted proposal. PJM's goal remains to ensure that the Commission has the full ability to consider PJM's proposed clarification. We welcome Commission guidance as to the best means to achieve that end in a way which ensures due process for all parties and a complete record available to the Commission.

PJM believes that with appropriate clarification, the Stipulation can be harmonized with Ohio's other goals of promoting new competitive entry to meet the state's economic development needs. PJM tendered its testimony and sought this narrow limited intervention so that its proposal can be fully vetted on the record. AEP has not shown a reason why, the Commission should not be allowed to *fully hear and consider* this proposal on the record after all parties have tested it through the hearing process. For these reasons limited intervention is appropriate especially given PJM's pledge to accept the record as it presently exists and to limit its intervention to the single issue of the interpretation of Paragraph III(A)(5)(a) of the Stipulation. As detailed in this Reply to Ohio Power's Memorandum Contra, PJM's Motion to Intervene satisfies all of the requirements for leave to intervene pursuant to Ohio Revised Code Section 4903.221.

I. PJM meets the requirement for intervention and its request should be granted.

Under Ohio Revised Code Section 4903.221, intervention is permitted by any person who may be “adversely affected” by the proceeding. The Commission’s intervention rule, set forth in Ohio Administrative Code Rule 4901-1-11(A), permits intervention when the “person has a real and substantial interest in the proceeding.” PJM meets these requirements.

A. PJM has a real and substantial interest in these proceedings.

Ohio Power claims that PJM’s “interest relates to the operation and functioning of wholesale markets, not the issues presented in this case relating to the retail jurisdiction of the Commission under Ohio law.” (Memo Contra at p.3). Contrary to Ohio Power’s assertion, PJM has a real and substantial interest in these proceedings targeted on the clarification of Paragraph III (A) (5) (a): to ensure that AEP’s actions in bidding the units affected by the PPA into the PJM market is undertaken in a manner that continues to support a competitive wholesale market in Ohio and continues to incent the development of new generation in the state to meet the state’s economic development needs. Without question, PJM is the only entity that administers the tariffs under which AEP Ohio and other market participants bid into the PJM market. Although Ohio Power is correct that those tariffs are overseen by FERC and not this Commission, it is *AEP* and the other Stipulation signatories, through Paragraph III(A)(5)(a) of the Stipulation that brought the bidding practices of the units covered by the PPA into this proceeding and made the express link between those bidding practices, PUCO review of same and the retail rates that customers will pay as a result of the Stipulation. It seems quite odd for a party to inject into this proceeding such a linkage between the wholesale markets and the workings of Rider PPA but then argue that any discussion of that

linkage is irrelevant for purposes of intervention. In short, Ohio Power's Motion tries to have it both ways. Although a discussion of these issues on the merits is more than appropriate, trying to use the intervention process to deny discussion of the issue from the perspective of the market administrator charged with ensuring effective competitive markets is inconsistent with the very point of allowing intervention by affected stakeholders. PJM has a real and substantial interest in ensuring that this provision of the Stipulation is compatible with PJM's market and AEP's participation in same, should the Commission adopt the Stipulation.

Ohio Power concludes that: "PJM may be seeking intervention to improperly advocate federal positions in a state proceeding. The Commission should retain its focus on the issues involving Ohio law and energy policy, and forgo PJM's invitation to involve itself in matters that concern FERC-jurisdictional wholesale rates, or that concern the FERC-jurisdictional PJM markets." (Memo Contra at p.3). This is the precise assertion that Ohio Power made in its Memorandum Contra to the Independent Market Monitor's Motion to Intervene. Ohio Power's assertion was without merit as to the IMM's intervention; it is equally without merit with respect to PJM's limited intervention. PJM's testimony makes very clear that it is proposing a clarification that the *Ohio Commission* should consider. The Commission should have the right to consider that proposal on the basis of a full record which is all that PJM seeks in this proceeding.

B. PJM has demonstrated “extraordinary circumstances and “good cause” for Out of Time Intervention.

The Commission’s Rules permit the grant of out of time interventions for “extraordinary circumstances.” Paragraph III.A.5.a was presented for the first time in the Stipulation filed in these proceedings on December 14, 2015. This provision states:

AEP Ohio agrees to participate in annual compliance reviews before the Commission to ensure that actions taken by the Company when selling the output from generation units included in the PPA Rider into the PJM market were not unreasonable. AEP Ohio, not its customers, would be responsible for the adjustments made to the PPA Rider based on actions deemed unreasonable by the Commission, including any costs (after proper consideration of such costs and netting of any bonus payments) associated with performance requirements in PJM’s markets. Any determination that the costs and revenues included in the PPA Rider are unreasonable shall be made in light of the facts and circumstances known at the time such costs were committed and market revenues were received. In addition, the calculation of PPA Rider will be based on the sale of power into PJM.

This December 14, 2015 provision squarely addresses AEP Ohio’s bidding actions into the PJM market. This Paragraph and the proposed annual compliance review discussed therein simply did not exist prior to the filing of the Stipulation. In fact, it was AEP and the other parties to the Stipulation that put this matter into consideration by calling for: (a). a direct role for this Commission in overseeing the Company’s actions after-the-fact and (b). tying retail rate recovery to the Commission’s review. For these reasons, good cause and extraordinary

circumstances warrant PJM's intervention so that the PJM can obtain clarification regarding this provision, should the Commission decide to adopt this Stipulation. Prior to December 14, 2015, PJM did not know nor could it have known that a proposed settlement would include such a provision.

C. PJM's stated interest is relevant and appropriate.

Ohio Revised Code Section. 4903.221(B) (2) provides that the Commission must consider "the legal position advanced by the intervenor and its probable relation to the merits of the case." Ohio Power incorrectly claims that PJM "statements completely overstate and distort the meaning and effect of Section III.A.5.a." (Memo Contra at 3). The legal position advanced by PJM is simply this: Paragraph III.A.5.a. must be clarified to ensure the continued efficient operation of the wholesale market in the PJM region.

PJM's limited intervention in this proceeding will not unduly prolong or delay the proceeding. As stated in its Motion for Limited Intervention and Memorandum in Support, PJM accepts the record in this proceeding, to date. In addition, PJM has already demonstrated its commitment to the procedural schedule in this proceeding: PJM filed and served Mr. Bresler's testimony on December 28, 2015; PJM has made Mr. Bresler available for deposition, at the date and time requested by Ohio Power; and PJM will present Mr. Bresler at the hearing at the date and time agreed upon in the customary manner.

In sum, PJM has established that it has a substantial interest in this proceeding, which cannot be adequately represented by other parties. Accordingly, PJM's motion for limited intervention should be granted.

II. PJM's limited intervention will contribute to the full development and equitable resolution of the factual issues.

Ohio Power contends that the Commission should deny PJM's request for limited intervention, but suggests that the Commission could permit PJM to file an amicus curiae brief in these proceedings. PJM appreciates Ohio Power's effort to provide an avenue for PJM to "weigh in" on these proceedings. However, as noted below, PJM is attempting to avoid the "Catch-22" where parties later claim that PJM's suggestions in any Amicus filing cannot be considered by the Commission because no witness testified to them. As a result, should the Commission wish PJM to utilize this alternative path, it would be highly ironic if a ruling striking PJM's testimony then becomes a sword that Ohio Power or other parties use to prevent any substantive Commission consideration of PJM's proposals. Once again, PJM's intent was simply to provide the Ohio Commission with a means to reconcile its policy goals should it decide to accept the Stipulation. PJM believes that the presentation of a witness, so all parties can test those proposals in a fair and open hearing, is the best way for the Commission to have the opportunity, through the record, to consider those proposals. Nevertheless, PJM is open to consideration of alternative means such as proposed by AEP if it allows the Commission a *full opportunity* to fairly consider PJM's proposed clarification with any objections to it considered on their merits rather than merely on process issues. For all of these reasons, the Commission should grant PJM's Motion for Limited Intervention.

III. PJM timely filed the Motion for Limited Intervention and the Bresler testimony.

On December 28, 2015, PJM filed and served both its Motion for Limited Intervention and Memorandum in Support, as well as the testimony of F. Stuart Bresler, III. See Attached

Exhibits. Ohio Power claims that the docket clearly shows that Mr. Bresler's testimony was not filed until December 30, 2015, when PJM filed the Bresler testimony for a second time. Ohio Power and the parties of record were actually served with Mr. Bresler's testimony on December 28, 2015.¹

IV. Conclusion.

PJM meets the requirements for intervention in these proceedings. Accordingly, the Commission should grant its Motion for Limited Intervention.

Respectfully submitted,

/s/ Evelyn R. Robinson

Evelyn R. Robinson (#0022836)

PJM Interconnection

2750 Monroe Boulevard | Audubon | PA | 19403

Cell: (610) 639-0491

Fax: (610) 666-4281

Email: evelyn.robinson@pjm.com

¹ To the extent that there is an administrative or clerical error regarding the docketing of Mr. Bresler's testimony, PJM hereby moves for leave to perfect the filing of said testimony. Since the testimony was filed and served on December 28, 2015, no party would be prejudiced by the Commission's grant of leave to perfect the filing.

Exhibit

From: Ritchie, Sandra
Sent: Monday, December 28, 2015 5:15 PM
To: Ritchie, Sandra; Glazer, Craig; Stroup, Kerry M.; Robinson, Evelyn
Subject: revised / correct

I spoke w/ the PUC Ohio Commission
Filed on behalf of PJM Interconnection.

E-Filing Confirmation

Please print and save this page as confirmation that the following document was electronically filed with the Public Utilities Commission of Ohio Docketing Information System:

Date & Time: 12/28/2015 5:13:01 PM
Case Number(s): 14-1693-EL-RDR, 14-1694-EL-AAM
Summary: Motion Motion for limited intervention and memorandum in support of PJM Interconnection. Testimony of F. Stuart Bresler, III electronically filed by Ms. Sandra Ritchie on behalf of PJM Interconnection
Confirmation Number: 78cf1a9a-8dbe-4e19-a9c8-b3a6cb9b4a6f

Official PDF File: 78cf1a9a-8dbe-4e19-a9c8-b3a6cb9b4a6f_Official_ritchs1228201551240PM_20151228 Limited Intervention AEP 14-1693 and 14-1694Secure.pdf
Source File(s): 78cf1a9a-8dbe-4e19-a9c8-b3a6cb9b4a6f_ritchs1228201551255PM_FINAL 20151228 AEP - Case No 14-1693 - PJM - S Bresler testimony final (W0075919x8DF47).pdf

Filings received after 5:30 p.m. Eastern Time will be deemed to be filed the following business day. All filings are subject to review and acceptance by the PUCO Docketing Division. Please call (614) 466-4095 if you have questions or need assistance. Do not reply to this message. Send any correspondence to docketing@puc.state.oh.us.

Message

20151228 Limited Intervention AEP 14-1693 and 14-1694.pdf (201 KB)

FINAL 20151228 AEP - Case No 14-1693 - PJM - S Bresler testimony final (W0075919x&DF47).pdf (326 KB)

From: Ritchie, Sandra

Next

Last

Sent: Monday, December 28, 2015 5:35 PM

To: 'Thomas.mcnamee@puc.state.oh.us'; 'Katie.johnson@puc.state.oh.us'; 'haydenm@firstenergycorp.com'; 'jmcdermott@firstenergycorp.com'; 'scasto@firstenergycorp.com'; 'jlang@calfee.com'; 'talexander@calfee.com'; 'myurick@taftlaw.com'; 'callwein@wamenergylaw.com'; 'tony.mendoza@sierraclub.org'; 'todonnell@dickinsonwright.com'; 'tdougherty@theOEC.org'; 'toddm@wamenergylaw.com'; Mayes, Jeffrey; 'ricks@ohanet.org'; 'tobrien@bricker.com'; 'mhpetricoff@vorys.com'; 'mjsettineri@vorys.com'; 'glpetrucci@vorys.com'; 'mdortch@kravitzllc.com'; 'joliker@igsenergy.com'; 'mswhite@igsenergy.com'; 'stnourse@aep.com'; 'mjsatterwhite@aep.com'; 'msmckenzie@aep.com'; 'mkurtz@BKLLawfirm.com'; 'kboehm@BKLLawfirm.com'; 'jkylercohn@BKLLawfirm.com'; 'sam@mwncmh.com'; 'fdarr@mwncmh.com'; 'mpritchard@mwncmh.com'; 'Kurt.Helfrich@ThompsonHine.com'; 'Scott.Campbell@ThompsonHine.com'; 'Stephanie.Chmiel@ThompsonHine.com'; 'lhawrot@spilmanlaw.com'; 'dwilliamson@spilmanlaw.com'; 'Stephen.Christ@walmart.com'; 'Schmidt@sppgrp.com'; 'jfinnigan@edf.org'; 'Bojko@carpenterlipps.com'; 'mfleisher@elpc.org'; 'msmalz@ohiopoveritylaw.org'; 'cmooney@ohiopartners.org'; 'joseph.clark@directenergy.com'; 'ghull@eckertseamans.com'

Subject: PUC of Ohio (AEP) = Motion for limited intervention & memorandum in support / testimony of F. Bresler, III

PJM filed a Motion for Limited Intervention and Memorandum in Support of PJM Interconnection

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# 14-1693-EL-RDR).

In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority (Case# 14-1694-EL-AAM).

Sandra L. Ritchie

Exec. Administrator to Denise R. Foster, VP, State & Member Services

PJM Interconnection, LLC

610-666-4408 phone

sandra.ritchie@pjm.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply Of PJM Interconnection To Memoranda Contra Of Ohio Power Company To PJM's Motion To Intervene was served this 31st day of December 2015 via electronic mail upon the individuals listed below.

/s/ Evelyn R. Robinson

Counsel for PJM Interconnection

Allison@carpenterlipps.com;
Bojko@carpenterlipps.com;
charris@spilmanlaw.com;
ckilgard@taftlaw.com;
chris@envlaw.com;
Christopher.Miller@icemiller.com;
cmooney@ohiopartners.org;
drinebolt@ohiopartners.org
dstinson@bricker.com;
ghiloni@carpenterlipps.com;
dclark1@aep.com;
dboehm@BKLawfirm.com;
dconway@porterwright.com;
dwilliamson@spilmanlaw.com;
fdarr@mwncmh.com;
gaunder@CarpenterLipps.com;
ghull@eckertseamans.com;
glpetrucci@vorys.com;
gpoulos@enernoc.com
Greta.see@puc.state.oh.us;
haydenm@firstenergycorp.com;
mhpeticoff@vorys.com;
jeffrey.mayes@monitoringanalytics.com;
jennifer.spinosi@directenergy.com;
jkylercohn@BKLawfirm.com;
jlang@calfee.com;
jmcdermott@firstenergycorp.com;
Jodi.bair@occ.ohio.gov;
joliker@igsenergy.com;
jvickers@elpc.org;
Katie.johnson@puc.state.oh.us;
Kevin.moore@occ.ohio.gov;
Kristin.henry@sierraclub.org;
Kurt.Helfrich@ThompsonHine.com;
evelyn.robinson@pjm.com
o'rourke@carpenterlipps.com

Larry.sauer@occ.ohio.gov;
laurie.williams@sierraclub.org;
lhawrot@spilmanlaw.com;
mjsatterwhite@aep.com;
msmckenzie@aep.com;
mdortch@kravitzllc.com;
mfleisher@elpc.org;
msoules@earthjustice.org;
mjsettineri@vorys.com;
mkurtz@BKLawfirm.com;
mpritchard@mwncmh.com;
msmalz@ohiopoveritylaw.org;
myurick@taftlaw.com;
rseiler@dickinsonwright.com
rsahli@columbus.rr.com;
ricks@ohanet.org;
sam@mwncmh.com;
Sarah.Parrot@puc.state.oh.us
scasto@firstenergycorp.com;
Sechler@carpenterlipps.com
schmidt@sppgrp.com;
Scott.Campbell@ThompsonHine.com;
sfisk@earthjustice.org;
sasloan@aep.com;
Stephanie.Chmiel@ThompsonHine.com;
steven.beeler@puc.state.oh.us;
stnourse@aep.com;
talexander@calfee.com;
tdougherty@theOEC.org;
tobrien@bricker.com;
todonnell@dickinsonwright.com
twilliams@snhsllaw.com;
tony.mendoza@sierraclub.org;
Werner.margard@puc.state.oh.us;
William.michael@occ.ohio.gov;
william.wright@puc.state.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/31/2015 4:17:06 PM

in

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

Summary: Reply Reply of PJM Interconnection to Memoranda Contra of Ohio Power Company to PJM's Motion to Intervene electronically filed by Mrs. Denise M Schuhart on behalf of PJM Interconnection, L.L.C. and Robinson, Evelyn R.