

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking)	
Approval of Ohio Power Company's)	Case No. 14-1693-EL-RDR
Proposal to Enter into an Affiliate Power)	
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.)	

**MEMORANDUM CONTRA PJM INTERCONNECTION'S
MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

As a matter of law, rule and fairness to Ohio consumers, the late-filed motion to intervene by PJM Interconnection, LLC ("PJM") should be denied. Ohio law provides that a motion to intervene will not be considered timely if it is filed later than either five days before the scheduled date of the hearing on the matter or the specific deadline established for intervention in the particular matter.¹ In this case the Commission issued an Entry setting the deadline for intervention at August 21, 2015.² PJM, however, moved to intervene in this proceeding on December 28, 2015, four months after the deadline for intervention. The PJM Motion to Intervene is extremely untimely. AEP Ohio already

¹ R.C. 4903.221.

² Entry at 3 (August 7, 2015).

filed its opposition to PJM's motion to intervene.³ This proceeding is in the final stages, after substantial evidentiary hearings and testimony.

The PUCO's rules provide that an untimely motion to intervene will be granted only under extraordinary circumstances.⁴ Here there are no extraordinary circumstances. And PJM's last-minute intervention would be unfair to consumers and the party (the Consumers' Counsel) that represents them. PJM's Motion to Intervene should be denied.

II. ARGUMENT

PJM's motion to intervene is untimely and PJM fails to show there are extraordinary circumstances that warrant granting its intervention.

The time to intervene in this case was August 21, 2015, over four months ago. PJM missed that deadline.⁵ Its motion to intervene is untimely under the law. Under the PUCO's rules,⁶ "[a] motion to intervene which is not timely will be granted only under extraordinary circumstances." And despite PJM's claims to the contrary, it has not shown extraordinary circumstances that warrant the PUCO granting its intervention.

PJM seems to claim that there are extraordinary circumstances (and good cause⁷) that justify its untimely motion to intervene. PJM seeks to intervene to "clarify" (as a non-stipulating party) the review process⁸ agreed to in the Stipulation. PJM reasons that because the Stipulation (and the review process) did not exist prior to the Stipulation being filed on December 14, 2015, there is good cause for why it failed to meet the

³ AEP Memorandum Contra (December 29, 2015).

⁴ Ohio Adm. Code 4901-1-11(F).

⁵ Ohio Rev. Code 4903.221 requires that intervention meet a specific deadline established by order of the commission.

⁶ Ohio Admin. Code 4901-1-11(F).

⁷ Ohio Rev. Code 4903.221(A)(2).

⁸ Stipulation, Paragraph V.(B)(5)(a).

intervention deadline, four months earlier. PJM does not claim that it had no notice of this proceeding. Nor did PJM explain why it could not have intervened earlier.

But PJM's claims do not amount to extraordinary circumstances. PJM had notice of this proceeding. It should not have come as a surprise to PJM that this case might be resolved through a stipulated proposal. Moreover, when AEP Ohio filed its application over 7 months ago,⁹ a review process for the PPA rider was an issue raised in the testimony of AEP Witness Vegas.¹⁰ PJM should not be surprised that the parties have included a review process as part of the stipulation.

Indeed, a stipulation is a common outcome in complicated cases before the PUCO. Stipulations often encompass a variety of issues, as they are, by their very nature, compromises by the parties involved. The mere fact that the Stipulation may resolve matters differently (or more specifically) than initially proposed in AEP's application, does not afford PJM the right to intervene well beyond the established deadline at this advanced stage of the proceeding.

The PUCO has frequently denied late intervention by parties when similar circumstances have arisen. See, e.g., *In the Matter of the Application of Ohio Power Company*, Case No. 11-346-EL-SSO, Opinion and Order at 18-23 (Dec. 14, 2011) (affirming an earlier ruling denying late intervention to IGS); *In the Matter of SBC Communications, Inc.*, Case No. 98-1082-TP-AMT, Opinion and Order (Apr. 8, 1999)(denying late intervention to a party who sought to intervene to clarify procedures

⁹ Application (May 15, 2015).

¹⁰ “Requirement #1: Rigorous Commission oversight of the rider, including proposed process for a periodic substantive review and audit.” Direct Testimony of Pablo Vegas at 5 (May 15, 2015) and “This review would include the ability to audit the accurate of the costs and revenues included in the PPA Rider as well as a prudence review of actions and decisions undertaken by AEP Ohio or its agents.” Direct Testimony of William Allen at 10 (May 15, 2015).

set forth in a stipulation upon which they otherwise took no position); *In the Matter of the Application of Columbus Southern Power Co.*, Case No. 08-917-EL-SSO, Opinion and Order at 8-9 (Oct. 3, 2011); *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Oho Edison Company et al*, Case No. 11-5201-EL-FOR, Opinion and Order (Aug. 7, 2003).

Moreover, PJM should have to show, as part of its extraordinary circumstances, that its last-minute intervention will not prejudice any other party. It cannot make this showing. There is no way at this late date for a party representing Ohio consumers, namely OCC, to adequately conduct pre-hearing preparation for PJM's participation and to prepare OCC's case for the PUCO to consider in the context of PJM's evidence. It simply would be unfair, in an already unfairly compressed process, to allow for PJM's late-filed participation that would only compound the unfairness. Accordingly, the PUCO should find that PJM fails to provide extraordinary circumstances or good cause that warrants the PUCO granting its untimely intervention.

III. CONCLUSION

PJM's Motion to Intervene is untimely. The PUCO's rules provide that an untimely motion to intervene will be granted only under extraordinary circumstances. PJM has not provided any extraordinary circumstances. And PJM's last-minute intervention would be unfair to consumers and the party (the Consumers' Counsel) that represents them. PJM's Motion to Intervene should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served via electronic transmission to the persons listed below on this 4th day of January, 2016.

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Summary: Memorandum Memorandum Contra PJM Interconnection's Motion to Intervene by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Bair, Jodi Ms.