

**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)	Case No. 14-1694-EL-AAM
Certain Accounting Authority.)	

**OHIO POWER COMPANY'S MEMORANDUM CONTRA ADVANCED POWER SERVICES,
CARROLL COUNTY ENERGY LLC AND SOUTHFIELD ENERGY LLC'S MOTION
FOR LEAVE TO FILE A JOINT BRIEF OF AMICUS CURIAE**

I. Introduction:

Ohio Power (AEP Ohio or Company) files this memorandum contra the Joint Motion of different generation providers filed in this docket on Friday, January 22, 2016. AEP Ohio opposes this request to file amicus on a variety of issues. The issues raised are not new issues and were all at issue when intervention was available to interested parties. The addition of these cumulative points of view at this late stage will prejudice the Signatory Parties and the briefing schedule. Finally, the Joint Movants provide not justifiable reason for the undue delay in their participation in this proceeding.

II. Law and Argument:

The Commission recently allowed the amicus filing of PJM in this proceeding and discussed the standard to apply when making this determination. The Commission made clear

that the decision to allow an amicus is not in the Commission rules and is therefore “must be based on the individual case at bar and the issues proposed to be addressed by the movant.” (January 7, 2016 Entry at ¶20; citing *In re Duke Energy Ohio, Inc.*, Case No. 12-1685-GA-AIR, Opinion and Order (Nov. 13, 2013) at 5-6.) Joint Movants also include this standard in their request. (JM Motion at 5.) The allowance of PJM’s amicus was very narrow and was the result of PJM seeking to file testimony in line with the procedural schedule and seeking intervention in the case to share its views formally. The Commission ultimately denied the intervention but allowed amicus participation on a very fine point related to an issue raised by the applicable RTO.

Joint Movants do not share the same status at PJM. They did not seek intervention stating a viable interest and they did not share a point of view subject to discovery and deposition. Joint Movants have not shown any real or substantial interest in this proceeding that is not adequately represented by the existing parties or any reason why it could not participate in the proceeding in a timely manner. As discussed below, Joint Movants seek to pursue issues in a cumulative manner and do not benefit the record or briefing schedule.

Joint Movants should have been aware of the AEP Ohio PPA proceedings long before the request to file an amicus brief in January of 2016. Joint Movants are represented by the same law firm that represents PJM Power Providers, Exelon/Constellation, and RESA. The Joint Movants had access to their counsel involved in the case and an opportunity to participate in this case long before January 2016.

Allowing Joint Movants the ability to file an amicus brief will unduly prejudice AEP Ohio and the Signatory parties. As discussed below, the issues Joint Movants seek leave to file

arguments on involve issues already covered by other parties. The cumulative nature of these arguments put AEP Ohio and the Signatory Parties at an unfair disadvantage. While AEP Ohio cannot anticipate every argument being made in a post hearing brief, the Company has attempted to cover many of the areas of contention in its pending initial brief to allow the Commission a full review of the issues from the first filing. Allowing Joint Movants to add its spin on arguments that it asserts has not been included in the record to date unfairly burdens the briefing process. It is also likely that the Joint Movants will need to assert certain facts about the nature of their business and interests to make their policy arguments. Those facts will not be subject to cross examination and review by AEP Ohio and the Signatory Parties. The Joint Movants could have sought formal involvement earlier in the case when its opinions could be shared and properly vetted in the record. There is no reason to allow the special rights at this stage. Joint Movants have not shown any unique position and the risk of the addition on non-record information from a non-party in this case outweighs the benefit of cumulative arguments.

Joint Movants assert that the proceeding changed dramatically after the hearing record closed in November 2015. (JM Motion at 4.) Joint Movants seek leave to file on three issues it claims are uniquely tied to the December 14th Stipulation. The Joint Movants issues are not new and not unique and do not justify the attempt to provide briefs in the record at this late state. Joint Movants raised three issues that it intended to address through amicus briefs. Specifically, Joint Movants raised these three issues that all relate to issues already vetted in the initial phase of this case:

- Topic 1) The lack of an open solicitation process on the proposed power purchase agreement (PPA) coupled with a reduction in term of the proposed PPA (from the life of the units to 8.5 years);

- Topic 2) Providing a special subsidy to a merchant generator (AEP GR) along with cost recovery for adding natural gas co-firing to certain of the PPA units; and
- Topic 3) The ability of new natural gas fired generation in Ohio to reduce carbon dioxide emissions rather than relying on the Stipulation's carbon reduction commitments and heat input limitations for certain units.

Joint Movants arguments simply take issues developed in the first phase of the proceeding and pair that with a somewhat related update of the issue in the Stipulation to claim the presence of a new issue. A review of the issues proposed as changes or new items highlights that the core of the issue sought for briefing has not changed from the initial case. The Commission should deny the Joint Movants the opportunity to add their cumulative view of issues, many of which are already presented by parties represented by their same counsel.

A. Joint Movants First Topic Area Request for Leave to File Amicus: (Open Solicitation for the PPA units)

The first area Joint Movants seek leave to file an amicus brief, considers the lack of an open solicitation process for the PPA units. (JM Motion at 6-7.) Joint Movants assert this issue is now different because the timeframe is now shorter. First, the concern is without merit as AEP Ohio is not constrained by what type of units it must ask for usage in a PPA rider and justified the utilization of the units involved in the Company filing. Second, the policy question associated with whether there was a competitive process to choose the units is not different based on the number of years. In fact, in the prefiled direct testimony of Constellation/Exelon/RESA witness Lael Campbell he proposes an alternative plan that calls for a competitive bidding process to choose PPA units for inclusion in a PPA. (Exelon/RESA Ex. 1 at 24.) In fact this was a fundamental issue in Mr. Campbell's testimony with sections of his testimony stricken as he

indicated that this would be presented in the trial brief. (Tr. Vol. XV at 3673, discussion of motion to strike at 3666-3673) The remaining portion of the testimony indicates again a preference for a competitive bidding process. (Exelon/RESA Ex. 1 at 29.) This was indicated in prefiled direct testimony as an issue by counsel for Exelon/RESA. Allowing further bites at the apple without participating in the proceeding is unwarranted. Third, other parties have already raised this question and the filing of brief by Joint Movants would be cumulative on top of arguments provided by parties that complied with the rules and timely intervened. The Joint Movants attempt to treat the shortening of the term to 8.5 years does not change the underlying facts. The proposed PPA units had varying lives of operation and the same arguments Joint Movants assert now apply could have been made in the initial case.

B. Joint Movants Second Topic Area Request for Leave to File Amicus: (The PPA provides a subsidy)

Joint Providers also argue the need to address the issue that the PPA Rider provides a special subsidy to a merchant generator (AEPGR) along with cost recovery for adding natural gas co-firing to certain of the PPA units. (JM Motion at 7.) The question of whether the PPA Rider is an improper subsidy is an issue fully developed and presented by existing parties through prefiled testimony and on cross-examination in the hearing. The Joint Movants add the cost recovery of adding natural gas co-firing as an update to the argument justifying its tardiness in engaging in the process. However, as the Commission is aware there is no cost recovery for adding natural gas co-firing in the Stipulation. Any cost recovery for adding natural gas co-firing is subject to future Commission proceedings where Joint Movants can timely intervene and if granted intervention, then they can make their arguments in opposition. There is no authority associated with approving cost recovery for future co-firing efforts and therefore no

reason to extend a special privilege and allow amicus briefing. There is simply no special circumstance that would justify the cumulative arguments of the Joint Movants on this issue.

C. Joint Movants Third Topic Area Request for Leave to File Amicus: (Alternatives for carbon reduction)

Joint Movants third issue they seek leave to file an amicus brief on involves the anticipated benefit that the Stipulation's carbon reduction commitments and heat input limitations for certain units will have in comparison to what Joint Movants opine its business could provide. (JM Motion at 7-8.) The argument that fuel sources for generation other than the coal used in the PPA proposed units is an issue that has been before the Commission since the first round of testimony in opposition was filed. This is not a new issue. The fact that the Stipulation added benefits to address carbon reduction and heat limitations is not a reason to provide amicus comments. The continuation of unit life was an issue in the initial phase of this case. The possibility that those units could be repowered, if approved in a future case by the Commission, does not change the issues involved. Joint Movants add nothing new to the proceedings.

Joint Movants rely on the fact that Staff was initially opposed to AEP Ohio's application as a reason why it now should be granted special privileges to provide comments in this case. (JM Motion at 8.) The Staff engaged in the full hearing process and further developed its position based on the proceedings, the record, its experience, and settlement discussions. The fact that Staff participated with an open mind on the issues and ultimately signed a settlement agreement is not an acceptable rationale to provide a party a right to weigh in on a case with cumulative arguments. If the underlying facts of a proceeding impact an interested party that party should

seek involvement from the beginning. It is not an appropriate basis for seeking special leave to say that the Joint Movants expected Staff to carry their individual interests.

III. Conclusion

The time for adding parties to this proceeding has passed. The Joint Movants' request fails to justify the special request to add another set of briefs to this case. The interests they seek to advance are presented by other parties in this case, in fact parties represented by the same law firm. The cumulative nature of these arguments do not outweigh the potential harm that could come from inclusion of the parties that does not provide the Signatory Parties, including the Commission Staff, to properly examine the basis of the arguments being provided. As shown in the record in this case the views of some parties expressed in testimony was different once subject to cross-examination. Joint Movants provide no acceptable rationale for their delay in interest and the request for amicus briefing rights should be denied.

Respectfully Submitted,

/s/ Matthew J. Satterwhite

Steven T. Nourse

Matthew J. Satterwhite

American Electric Power

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215-2373

Telephone: (614) 716-1915

Facsimile: (614) 716-2950

stnourse@aep.com

mjsatterwhite@aep.com

msmckenzie@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
41 S. High Street
Columbus, Ohio 43215
Telephone: (614) 227-2100
Facsimile: (614) 227-2270
dconway@porterwright.com

Christopher L. Miller
Ice Miller LLP
250 West Street
Columbus, Ohio 43215
Telephone: (614) 462-2339
Fax: (614) 222-4707
Email: Christopher.Miller@icemiller.com

Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Ohio Power Company's Memorandum Contra* has been served upon the below-named counsel and Attorney Examiners via electronic mail this 27th day of January, 2016.

/s/ Matthew J. Satterwhite

Matthew J. Satterwhite

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;
mhpetricoff@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;

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@ohiopovertylaw.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;

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

tobrien@bricker.com;
todonnell@dickinsonwright.com
twilliams@snhslaw.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

1/27/2016 12:46:08 PM

in

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

Summary: Memorandum Contra Advanced Power Services, Carroll County Energy LLC and Southfield Energy LLC's Motion for Leave to File a Joint Brief of Amicus Curiae electronically filed by Mr. Matthew J Satterwhite on behalf of Ohio Power Company