

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Long-Term	)	
Forecast Report of Ohio Power	)	Case No. 18-501-EL-FOR
Company and Related Matters.	)	

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**OHIO POWER COMPANY’S MEMORANDUM CONTRA  
MOTION FOR HEARING OF THE STAFF OF THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

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**I. Introduction**

Pursuant to Ohio Adm. Code 4901-1-12(B)(1), Ohio Power Company (“AEP Ohio” or the “Company”) hereby submits this memorandum contra the Motion for a Hearing that the Staff of the Public Utilities Commission of Ohio (Staff) filed on September 21, 2018. Staff’s motion requests: (1) an evidentiary hearing and (2) a call-and-continue procedure in order to bypass the 90-day hearing requirement for this case. The Company agrees with Staff’s request for a hearing and had also requested an evidentiary hearing schedule and process in its Amendment to its 2018 Long-Term Forecast Report (Amended LTFR). But the Company would like to further address Staff’s open-ended proposal to conduct an evidentiary hearing sometime after 90 days.

**II. Law and Argument**

The 90-day hearing requirement for an LTFR proceeding is statutory, R.C. 4935.04(D)(3), and it should not be taken lightly or bypassed through a procedural maneuver that has the effect of nullifying the mandatory time period. Surely if the complexities of adding a traditional generation plant to an integrated utility can be done in 90 days, the more streamlined and narrow scope of this proceeding can similarly be expedited. The General Assembly has mandated use of this time period and there is no exception or differing provision for a power plant under R.C. 4928.143(B)(2)(c). And as set forth in the Company’s testimony, there is an

urgent need — based on the impending expiration of federal tax credits — to proceed with deliberate speed here. (Direct Test. of William A. Allen at 13-15 (Sept. 19, 2018).) These tax benefits are significant and meaningfully affect the basic economics of any renewable facility being constructed in the next several years.

Nonetheless, the Company acknowledges the complexities of this case – especially if consolidated with Case Nos. 18-1392-EL-RDR and 18-1393-EL-ATA (the “RDR/ATA cases”). In practical terms, the reasonableness of the 90-day period is largely driven by whether the FOR case is consolidated with the RDR/ATA cases. If consolidation is not granted, the statutory deadline should be strictly followed. If consolidation is granted, however, the Company would agree to waive the 90-day requirement and employ the Staff’s proposed call-and-continue procedure as long as that process is coupled with an expedited procedural schedule is adopted for consideration of both this case and RDR/ATA cases — even if the expedited schedule is not the one proposed in the Amended LTFR. Because consolidation is key to the sequence and timing of the interrelated LTFR and RDR/ATA cases, it is placed at issue by Staff’s motion and the Company would like to briefly reiterate its position on consolidation in this context.

As a threshold matter, there is no statute or rule that prevents the Company’s proposal for consolidation and an expedited process. Rather, consolidation and expedited consideration is the only option that advances the public interest while honoring all of the applicable statutes and rules. Although the Public Utilities Commission of Ohio (Commission) has not faced this specific situation previously, the Commission’s decision in the Company’s 2010 LTFR case (Case No. 10-501-EL-FOR) is instructive. In the 2010 LTFR case, the Commission indicated that it “believe[s] that cost recovery is a matter that should be addressed in a separate proceeding.” 2010 LTFR, Opinion and Order at 23 (Jan. 9, 2013). The Commission also found

in that case that R.C. 4928.143(B)(2)(c) is not intended “to restrict [the Commission’s] determination of the need for the electric generating facility to the time at which an ESP is approved, but rather to ensure that the Commission holds a proceeding before it authorizes any allowance under the statute.” *Id.* Thus, the 2010 LTFR decision instructs that: (1) cost recovery be pursued in a separate proceeding, and (2) the need determination must occur before granting cost recovery.

The Company has initiated a separate proceeding apart from this case to pursue cost recovery — and there is no prohibition against or barrier to consolidating the two sets of cases. As to the determination of need prior to cost recovery, this condition is also satisfied. The Company filed its need case prior to filing the cost recovery case. And while the Company fully understands that a determination of need is a predicate to any cost recovery for a specific project, there is nothing about the Company’s procedural proposal for consolidation and expedited consideration prevents or undermine the idea that the Commission would determine need first before authorizing cost recovery.

The “first determine” requirement should not be interpreted or applied as an impractical or illogical barrier to obtaining a nonbypassable surcharge under R.C. 4928.143(B)(2)(c). On the contrary, the Commission should interpret the applicable statutes and rules together in a manner that promotes efficiency and expediency — in order to provide a fair and timely opportunity for the Company to pursue this legislatively-created option. In practical terms, this means utilizing the consolidation and expedited consideration approach requested by the Company. It is enough that the Commission determine need as a logical predicate and a condition of cost recovery — the two determinations can occur in the same decision, on the same day in separate decisions, or on different days in different decisions. The General Assembly’s requirement to first determine

need simply means that it is a mandatory predicate or condition; it does not procedurally straightjacket the Commission in any way.

Finally regarding consolidation in the context of the LTFR procedural schedule, the Company's proposed approach satisfies Ohio Adm. Code 4901:5-5-06(B), which requires a utility to file its LTFR "in the forecast year prior to any filing for an allowance under divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code." Of course, this case relates to the 2018 LTFR and that is well prior to the first year that cost recovery is requested. As indicated in the testimony supporting the Company's RDR/ATA filing, cost recovery through the Renewable Generation Rider would not commence until after the solar facilities go into commercial operation, which is likely 2021. It would be illogical, inefficient, bureaucratic, and prejudicial to the economic interests of AEP Ohio's customers for the Commission to interpret Ohio Adm. Code 4901:5-5-06(B) as requiring an arbitrary one-year waiting period between the filing of a need case and a cost recovery case. Such a result is not required by the rule.

### **III. Conclusion**

In sum, Staff's proposal to extend the statutory deadline for conducting an evidentiary hearing in this case should only be entertained if the Commission consolidates this case and RDR/ATA cases and adopts an expedited procedural schedule that is generally consistent with the 90-day LTFR deadline.

Respectfully submitted,

/s/ Steven T. Nourse

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## **CERTIFICATE OF SERVICE**

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*/s/ Steven T. Nourse*

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Summary: Memorandum - Ohio Power Company's Memorandum Contra Motion for Hearing of the Staff of the Public Utilities Commission of Ohio electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company