**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Power Company for New Tariffs Related To Data Centers and Mobile Data Centers. | ))) | Case No. 24-508-EL-ATA |

**MEMORANDUM CONTRA**

**INTERVENORS’ JOINT MOTION FOR CONTINUANCE**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

1. **INTRODUCTION**

A surge in data centers across Ohio is threatening to put a strain on the power grid. To address what may be required to serve data centers, AEP has proposed new tariffs for these new, energy intensive consumers. AEP’s proposed tariffs include higher minimum usage fees and longer contracts. This is protective of other AEP consumers, including residential consumers, who could be forced to pay for distribution and transmission infrastructure to accommodate data center expansion.

Not content with AEP’s proposal, the big tech companies (e.g. Amazon, Google, Microsoft), energy marketers, and non-residential consumer groups[[1]](#footnote-1) filed their own settlement (the “Data Center Settlement”) on October 10, 2024.[[2]](#footnote-2) The settling parties also filed a Motion for Continuance and Request for Expedited Ruling to change the procedural schedule.[[3]](#footnote-3) The motion should be denied.

The settling parties request a seven-day extension of the hearing date from October 21, 2024 to October 28, 2024, an October 18, 2024 deadline for testimony in support of the settlement, and an October 25, 2024 deadline for testimony opposing the settlement. This procedural schedule does not permit a deliberate process for considering ways to protect consumers. Settling parties’ motion should be denied. The PUCO Staff should proceed to file its testimony which, under prior Entry, would be due today, October 15, 2024.

1. **LAW AND ARGUMENT**

The settling parties’ schedule violates OCC’s discovery rights guaranteed under Ohio law, by the Supreme Court of Ohio, and the Ohio Administrative Code. Ohio law provides that “[a]ll parties and intervenors shall be granted ample rights of discovery” in PUCO proceedings.[[4]](#footnote-4) The Supreme Court of Ohio has affirmed OCC’s right under R.C. 4903.082 to “broad discovery of nonprivileged matters.”[[5]](#footnote-5)

In accordance with this law, the PUCO adopted discovery rules designed to “facilitate thorough and adequate preparation for participation in commission proceedings.”[[6]](#footnote-6) A party that moves to intervene in a proceeding before the PUCO is entitled to immediately participate in the discovery process on equal footing with all other parties.[[7]](#footnote-7)

The right to participate in discovery includes the right to serve interrogatories and requests for production of documents and conduct depositions.[[8]](#footnote-8) A party served with written interrogatories usually has 20 days to answer or object.[[9]](#footnote-9) A party served with requests for document production can usually take 20 days to produce the documents, permit their inspection, or object.[[10]](#footnote-10)

The settling parties’ schedule undercuts OCC’s and other parties’ “ample rights” to discovery on the Data Center Settlement. With the filing of the settlement, the focus of the evidentiary hearing will shift from AEP’s application to the partial settlement. That partial settlement deserves to be fully vetted. Consistent with PUCO practice, the PUCO should allow full and complete discovery on the partial settlement.[[11]](#footnote-11) The settling parties’ proposed schedule does not provide OCC or other non-settling parties with time to conduct discovery, analyze responses and deposition testimony, and consider the responses and deposition testimony in preparing their own testimony that will likely oppose the Data Center Settlement.

Adopting a schedule that denies discovery on the Data Center Settlement violates R.C. 4903.082’s guarantee that parties to PUCO proceeding have “ample rights” to discovery. The compressed schedule proposed would undermine the purpose of the PUCO’s discovery rules: to encourage thorough and adequate preparation for hearings. Without full discovery on the Data Center Settlement, OCC’s representation of residential consumers will be hampered in this case that has far reaching implications for Ohio. What’s more, the PUCO will lack a full and complete record necessary to make its required findings of fact and conclusions of law. To protect consumers, preserve the intent of its discovery rules, and resolve this matter justly, the PUCO should reject the settling parties’ proposed schedule.

The PUCO should adopt a procedural schedule that allows parties sufficient time to address issues raised by the Data Center Settlement. It is important to consider the details and potential impacts of the Data Center Settlement on residential consumers. OCC (and all other parties) should be given reasonable time to scrutinize the Data Center Settlement to assess whether it adequately protects residential consumers from shouldering the burden that may come from the investment to serve these consumers.

Instead of adopting the settling parties’ proposed schedule, OCC recommends that the PUCO continue the pending hearing in this proceeding. The PUCO should set a pre-hearing conference on or after October 21, 2024, to discuss and adopt a more appropriate procedural schedule that is amenable to all parties.. A fair procedural schedule should permit the filing of testimony, additional discovery, the opportunity for depositions, and a new hearing date to accommodate the interests of *all parties* to this proceeding. A fair process is needed especially given the critical issues in this case. The settling parties’ proposal for expedited testimony is neither fair nor reasonable.

**CONCLUSION**

The PUCO should reject the settling parties’ motion. It should adopt OCC’s recommendation.

Respectfully submitted,

Maureen Willis

Ohio Consumers’ Counsel

*/s/ William J. Michael*

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of this Memorandum Contra Intervenors’ Joint Motion for Continuance by OCC has been served via email upon the following parties of record this 15th day of October, 2024.

 */s/ William J. Michael*

 William J. Michael

Counsel of Record

**SERVICE LIST**

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1. Intervenors supporting this Motion include Microsoft Corporation, Data Center Coalition, Amazon Data Services, Inc., Google LLC, Sidecat LLC (an affiliate of Meta Platforms, Inc.), Constellation Energy Generation, LLC, Constellation NewEnergy, Inc., Enchanted Rock, LLC, Interstate Gas Supply, Ohio Blockchain Council, Ohio Energy Leadership Council, Ohio Manufacturers Association Energy Group, One Energy Enterprises Inc., and Retail Energy Supply Association. [↑](#footnote-ref-1)
2. Joint Stipulation and Recommendation (Oct. 10, 2024). [↑](#footnote-ref-2)
3. Motion for Continuance and Request for Expedited Ruling (Oct. 10, 2024). [↑](#footnote-ref-3)
4. R.C. 4903.082. [↑](#footnote-ref-4)
5. *In re Suvon, LLC*, 166 Ohio St. 3d 519, 529 (2021). [↑](#footnote-ref-5)
6. O.A.C. 4901-1-16(A). [↑](#footnote-ref-6)
7. O.A.C. 4901-1-16(H). [↑](#footnote-ref-7)
8. O.A.C. 4901-1-19; 4091-01-20, 4091-01-21. [↑](#footnote-ref-8)
9. O.A.C. 4901-1-19(A). [↑](#footnote-ref-9)
10. O.A.C. 4901-1-20(C). [↑](#footnote-ref-10)
11. *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer*, Case No. 14-1297-EL-SSO, Entry (Dec. 9, 2015); Entry (July 2, 2015); Entry (May 29, 2015); Entry (Jan. 14, 2015). [↑](#footnote-ref-11)