**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Ohio Power Company to Establish Initial Storm Damage Recovery Rider Rates. | )  )  )  ) | Case No. 12-3255-EL-RDR |

**REPLY TO OHIO POWER COMPANY’S MEMORANDUM CONTRA**

**BY**

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

1. **INTRODUCTION**

This case involves Ohio Power Company’s (“AEP Ohio”) application to charge more than $61 million to its 1.2 million customers for restoration of their electric service after storm-related outages. Given the significance of both the charges and the outages for customers, the Office of the Ohio Consumers’ Counsel (“OCC”) filed a Motion for Procedural Schedule and request for local public hearings (“Motion”). In its Motion, OCC set forth a proposed procedural schedule that affords the parties appropriate time for case preparation, including time to depose expert witnesses after the filing of testimony. And, to allow for public participation, OCC proposed adequate time for local public hearings throughout AEP Ohio’s service area, with sufficient advance notice to the public regarding their opportunity to testify.

On July 25, 2013, AEP Ohio filed a Memorandum Contra, to oppose the time OCC requested for case preparation and to oppose an opportunity for Ohioans to present testimony to the Public Utilities Commission of Ohio (“Commission” or “PUCO”). AEP Ohio’s main arguments include that there has already been an adequate amount of time for discovery[[1]](#footnote-2) and that local hearings would upset customers by “forcing them to “relive” the outages.[[2]](#footnote-3) AEP Ohio’s arguments, however, are unavailing. OCC therefore urges the PUCO to adopt the procedural schedule proposed in the Motion and to order local public hearings in Athens, Columbus, Findlay, Newark and Portsmouth, Ohio.

1. **LAW AND ARGUMENT**
2. **The PUCO Should Adopt the Procedural Schedule Proposed in OCC’s Motion, to Provide a Fair Opportunity for All Interests (Utility and Customers) to be Heard.**

OCC proposes a procedural schedule that would provide adequate time for the parties to complete discovery and depose witnesses when they become available. AEP Ohio takes issue with the length of the procedural schedule proposed by OCC,[[3]](#footnote-4) but in part it is AEP Ohio’s own actions that necessitate such a schedule. AEP Ohio has yet to file testimony in this action. Instead, in its July 1, 2013 letter to the PUCO, AEP Ohio proposed that it file testimony on August 8, 2013, with a hearing to be held in the last week of August. This is not nearly enough time for case preparation, including to conduct depositions on the witnesses that will provide testimony less than three weeks before the hearing.

Contrary to fair process and customer interests, AEP Ohio appears to stand on the assumption that collection of its sizeable request (more than $61 million) is nearly certain[[4]](#footnote-5) and that the discovery in this matter has been a bother.[[5]](#footnote-6) This position, however, is directly contrary to the burden of proof and standard of review – “AEP shall bear the burden of proof of demonstrating that all costs were prudently incurred and reasonable.”[[6]](#footnote-7) In light of this standard, AEP Ohio’s Application was woefully inadequate, which should justify outright denial of the Application.[[7]](#footnote-8) For example, the only cost data included with the Application was a one-page summary of the various costs AEP Ohio alleged that it incurred in association with the three storms,[[8]](#footnote-9) with no detail of cost components and no supporting testimony to explain the costs.

Now, AEP Ohio criticizes the discovery that the PUCO Staff and intervenors have had to conduct in order to adequately address the Application.[[9]](#footnote-10) Further, AEP Ohio suddenly seeks to force the parties into a hearing on an expedited timeline with little or no opportunity to depose AEP Ohio’s witnesses on testimony that has yet to be filed.

To support its position of moving forward at a rapid pace, AEP Ohio cites to forgoing the booking of carrying charges during the time that this case is pending.[[10]](#footnote-11) Yet, AEP Ohio itself has delayed the case timeline by not filing its testimony. And instead of directly addressing OCC’s request for time for formal discovery, including the need for depositions, AEP Ohio attempts to establish that OCC has had ample opportunity to question AEP Ohio personnel by explaining that “the Company made its staff available throughout the extended review and discovery period.”[[11]](#footnote-12) While OCC acknowledges that AEP Ohio’s personnel were available and helpful during the time period that led up to filing objections and to potential settlement, the conversations during that time are no substitute for receiving AEP Ohio’s testimony and then deposing its witnesses.

OCC’s proposed schedule provides for the due process ensured by law and rule. The Ohio General Assembly requires the PUCO to grant all parties and intervenors ample rights of discovery.[[12]](#footnote-13) The PUCO’s rules require “prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings.”[[13]](#footnote-14) This includes the use of interrogatories, requests for production of documents, requests for admissions and depositions.[[14]](#footnote-15) The rules of discovery have been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.[[15]](#footnote-16)

Further, the PUCO should contrast AEP Ohio’s opposition to process and public participation here with AEP Ohio’s championing of process and openness in the case of its competitor, FirstEnergy.[[16]](#footnote-17) In the FirstEnergy case, AEP Ohio is a leading advocate for process. There, AEP Ohio moved to intervene *after* the hearing and *after* briefs were filed. And AEP Ohio filed a rare motion to reopen the FirstEnergy proceedings, arguing: “it will not unduly delay the proceeding….”[[17]](#footnote-18)

The PUCO has a choice to make. The choice is between the AEP Ohio that is the opponent of due process here versus the AEP Ohio that is the champion of due process in the FirstEnergy case. For the reasons stated above, the PUCO should choose the approach of due process. OCC’s proposed case schedule should be adopted.

1. **The PUCO Should Grant OCC’s Motion for Local Public Hearings, so that Customers Have an Opportunity to Participate in This Case About the Outages They Endured and the Costs that AEP Ohio Wants Them to Pay.**

AEP Ohio also opposes OCC’s request for local public hearings. In so doing, AEP Ohio fails to acknowledge the vital information its customers may be able to provide the PUCO before it renders a decision in this matter involving a tremendous amount of storm-related costs.[[18]](#footnote-19)

Once again, it is difficult to harmonize AEP Ohio’s position limiting public involvement in this proceeding, with AEP Ohio’s chastising of FirstEnergy for shielding from the public the identities and pricing information of renewable energy credit providers.[[19]](#footnote-20) In championing an open process, AEP Ohio opposed what it described as FirstEnergy’s “veil of secrecy.”[[20]](#footnote-21) In fact, in the 11-5201-EL-RDR case, AEP Ohio argued for intervention because “there are numerous issues the Commission may rule upon that would benefit from other industry points of view.”[[21]](#footnote-22) And AEP Ohio stressed the importance of a “fully developed record, and seeking input from knowledgeable parties.”[[22]](#footnote-23) But by opposing OCC’s request for local public hearings in this matter, AEP Ohio is now trying to squelch the voices of those that were impacted most by the storms that swept through Ohio in June and July of 2012.

AEP Ohio, in seeking to deny a public process for customers, described OCC’s positions as “forcing customers to relive their hardship” in order to “sensationalize” or make “a public spectacle of” this matter.[[23]](#footnote-24) Here, AEP Ohio is grasping for something that cannot be found, which speaks to the emptiness of its arguments. The truth is that, as even AEP Ohio appreciated during the time in question, OCC was circumspect in its views when outages occurred and service needed to be restored for many Ohioans. After the fact of the storms, there needs to be a fair process for the PUCO and parties to review AEP Ohio’s proposed charges, which includes preparation time and public participation and which should not be constrained by AEP Ohio’s self-interested hyperbole.

Local public hearings are an opportunity for customers to **voluntarily** participate in this process in order to assist the PUCO in determining whether AEP Ohio meets its burden of establishing that the storm costs were reasonably and prudently incurred.[[24]](#footnote-25) AEP Ohio is asking to be made whole for the costs it incurred. But it wants to prevent the PUCO from hearing first-hand from those who lived without power, who lost hundreds of dollars in food, who went without running water, and who had no air conditioning for an extended period of a very hot summer. That’s not fair to Ohioans. Instead, the PUCO should grant OCC’s Motion, which requests local public hearings to take place in a diverse cross-section of AEP Ohio’s electric distribution territory that was affected by the storm outages in June and July 2012.

1. **CONCLUSION**

AEP Ohio’s arguments against OCC’s Motion are baseless. Therefore, the PUCO should favor due process by granting OCC’s Motion and adopting the procedural schedule OCC proposed. And the PUCO should favor public participation in its processes by scheduling local public hearings in Athens, Columbus, Findlay, Newark and Portsmouth, Ohio.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply was served on the persons stated below via electronic service this 1st day of August 2013.

*/s/ Terry L. Etter*

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1. See Memorandum Contra at 4. [↑](#footnote-ref-2)
2. Id. at 6. [↑](#footnote-ref-3)
3. Id. at 3-4. [↑](#footnote-ref-4)
4. Id. at 3 (stating “This case involves a single mechanism to recover real costs for service restoration after major storms, a category already deemed eligible for recovery by the very establishment of the mechanism”). [↑](#footnote-ref-5)
5. See, generally, id. at 2-5. [↑](#footnote-ref-6)
6. *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.443, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO *(“ESP II”)*, Opinion and Order (August 8, 2012) at 69. [↑](#footnote-ref-7)
7. See OCC’s Comments (May 29, 2013) at 7-9. [↑](#footnote-ref-8)
8. Application, Exhibit D. [↑](#footnote-ref-9)
9. Memorandum Contra at 2-5. [↑](#footnote-ref-10)
10. Id. at 2. [↑](#footnote-ref-11)
11. Id. at 5. [↑](#footnote-ref-12)
12. R.C. 4903.082. [↑](#footnote-ref-13)
13. Ohio Adm. Code 4901-1-16(A). [↑](#footnote-ref-14)
14. Ohio Adm. Code 4901-1-18 through 4901-1-22. [↑](#footnote-ref-15)
15. See *Ohio Consumers’ Counsel v. Public Util. Comm’n*, 111 Ohio St. 3d 300, 320; 2006 Ohio 5789; 856 N.E.2d 213 (2006). [↑](#footnote-ref-16)
16. *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company*, Case No. 11-5201-EL-RDR, Ohio Power Company’s Motion to Intervene and Reopen Proceedings (June 21, 2013) (“AEP Ohio’s 11-5201 Motion”) at 9. [↑](#footnote-ref-17)
17. Id. [↑](#footnote-ref-18)
18. The PUCO has recognized that local public hearings may assist its evaluation of an application. See *In the Matter of the Joint Application of Frontier Communications Corporation, New Communications Holdings, Inc. and Verizon Communications Inc. for Consent and Approval of a Change in Control*, Case No. 09-454-TP-ACO, Entry (April 19, 2009) at 7. [↑](#footnote-ref-19)
19. Case No. 11-5201-EL-RDR, Ohio Power Company’s Reply to Ohio Edison Company’s, Cleveland Electric Illuminating Company’s, and Toledo Edison Company’s Memorandum Contra Ohio Power Company’s Motion to Intervene and Reopen These Proceedings (July 9, 2013) (“AEP Ohio’s 11-5201 Reply”) at 4-7. [↑](#footnote-ref-20)
20. AEP Ohio’s 11-5201 Motion at 4, n. 1. [↑](#footnote-ref-21)
21. Id. at 4. [↑](#footnote-ref-22)
22. AEP Ohio’s 11-5201 Reply at 11. [↑](#footnote-ref-23)
23. Memorandum Contra at 5-6. [↑](#footnote-ref-24)
24. *ESP II*, Opinion and Order at 69. [↑](#footnote-ref-25)