

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company for Approval)	Case No. 12-1126-EL-UNC
of Full Legal Corporate Separation)	
and Amendment to its Corporate)	
Separation Plan)	

**OHIO POWER COMPANY’S MEMORANDUM CONTRA JOINT MOTION TO
EXTEND COMMENT DEADLINE AND REQUEST FOR EXPEDITED RULING
AND MEMORANDUM IN SUPPORT**

Introduction

The Office of the Ohio Consumers’ Counsel (OCC) and the Industrial Energy Users of Ohio (IEU-Ohio) (collectively “Movants”) seek a delay in the comment cycle in this proceeding, such that comments will not be due until after the filing of information they assert must be filed, and the reply comments will not be due until two weeks after the initial comments. The Movants blame the need for delay on Commission for not acting on other filings made by the Movants and use the opportunity to rehash their SB3 arguments from the 10-2929 and 11-346 proceedings. Ohio Power Company (Company) opposes this motion and requests that the Commission keep the comment cycle and the overall case on its designated path.

Because the Movants reargue many of the arguments they made in their memoranda contra the Company’s request for waivers in this proceeding, the Company incorporates its May 3, 2012 Reply to IEU-Ohio’s Memorandum Contra the request for

waivers as part of this filing as opposed to restating large portions of the same arguments.¹

Argument

Movants seek delay of the procedural schedule in this case based on their view of how the Commission should organize its dockets and proceedings and based on their view of what the Commission needs to make its decision in this case. That is not the standard for delaying a proceeding like the one at hand. First, in their motion, Movants attempt to blame the Commission's not ruling on the waiver requests as a reason to delay the requested comments. Second, in their memorandum in support, Movants attempt to resuscitate past, failed attempts to argue SB3 transition issues as opposed to the SB221 actions taken by the Commission in 2012. The request should be rejected by the Commission and consideration of the matters at issue in this proceeding should move forward pursuant to the procedural schedule filed in this case on July 9, 2012.

In their motion, the Movants base their request for an extension of the comment cycle on the fact that the Company's waiver request is currently pending Commission decision. Movants assert that they (and Staff who has not filed a motion in the docket) cannot effectively and efficiently review the Application and file comments in the absence of a Commission ruling on the Company's waiver requests. Movant Motion at 2. Besides the point that Staff did not file a similar request, the Movants' request ignores the Commission process in this case and attempts to reargue their memorandum contra the motion for waivers.

¹ It should also be pointed out that IEU's memorandum contra was out of time in this case and it should not be allowed to bootstrap its untimely arguments already in this proceeding to OCC as a joint filing nor at this further late and untimely stage in the proceeding.

The Movants correctly recognize that they already filed a memorandum in opposition (Movants Motion at 3) and they should not be permitted to use the present motion as an opportunity to reargue those positions in opposition. However, Movants do just that--arguing again that the Company is receiving improper transition revenues and again arguing about the value of AEP Ohio's assets and their disagreement with using book value for transferring the assets. (Id. at 4-5.)

Contrary to the Movants' suggestions, the corporate separation filing has nothing to do with transition revenues under SB3. As stated previously by the Company, under SB 3, all of these generation assets were subjected to market and EDUs therefore were given a temporary opportunity to recover stranded generation investments during a transition period. That transition period is over. EDUs can no longer recover stranded generation investments, and transferring the generation assets based on an arbitrary determination of their current fair market value rather than net book value would be inappropriate.² Movants still seek to ignore this fact and seek consideration of market value, making unsubstantiated statements about the value of Company assets by citing to the modified ESP docket. Their generalization of a single document in the ESP record ignores the proper context of the document shown by the discussion during cross-examination that dismissed the item as having any relevance on the issue asserted by Movants.³ Movants raise the same arguments as they have before seeking another bite at the valuation waiver request. These attempts to circumvent the Commission's process should be ignored and the schedule for comments maintained.

² Again, see the May 3, 2012 Reply to the Movants' arguments when they previously raised this same argument in opposition to the waiver request.

³ Any inclusion of this document should take into account the cross examination that showed the document was an assessment of the AEP East system as a whole, dated prior to numerous environmental changes, and not descriptive of the argument sought by Movants.

Nothing requires the Commission to decide the waiver requests prior to seeking comments on the case. In fact, the Commission has discretion in deciding how to organize its dockets and does not have to rule on procedural motions like a request for a waiver prior to making its determination of whether a hearing is needed in this case. The Supreme Court of Ohio recognized the broad discretion of the Commission in managing its dockets to avoid undue delay and duplication of effort:

"Under R.C. 4901.13 the commission has *broad discretion in the conduct of its hearings*." *Duff v. Pub. Util. Comm.* (1978), 56 Ohio St. 2d 367, 379, 10 Ohio Op. 3d 493, 500 N.E.2d 264, 273. "It is well-settled that pursuant to R.C. 4901.13, the commission has the *discretion* to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, *avoid undue delay and eliminate unnecessary duplication of effort*." (Footnote omitted.) *Toledo Coalition for Safe Energy v. Pub. Util. Comm.* (1982), 69 Ohio St. 2d 559, 560, 23 Ohio Op. 3d 474, 475, 433 N.E.2d 212, 214.

Weiss v. Pub. Util. Comm. (2000), 90 Ohio St. 3d 15, 2000 Ohio 5, 734 N.E.2d 775 (emphasis added). The Commission can make its decision on the waivers after the comments it sought are provided.

The Movants were granted intervention in this docket as guests of the Commission to assist it in the carrying out of its duties and committed to not delay these proceedings. In its April 2, 2012 Motion to Intervene at page 2, IEU-Ohio indicated, "IEU-Ohio believes that its participation will not unduly prolong or delay this proceeding***." At page 3 of its motion to intervene OCC indicated "OCC's intervention will not unduly prolong or delay the proceedings." Yet both parties now seek to insert its judgment for how best to move forward with establishing the necessary record for the Commission to make its determinations and delay the procedural path

provided in the docket. Such action unduly prolongs or delays the proceedings if the Commission determines after the comment period that no further process is needed. To avoid undue delay or prolonging of the proceeding the Movants could simply comply with the procedural schedule, using the opportunity to comment to make whatever arguments they feel are appropriate, and allow the Commission to process the case as it sees fit.

It would not be unreasonable for the Movants to file comments assuming the underlying waivers will be granted. There is past Commission approval of similar waivers that should provide guidance for their comments. As pointed out previously by the Company, the Commission determined in Case No. 11-3549, based on information similar to what the Company provides in this Application, that it was in the public interest to waive Rule 4901:1-3 7-09(C)(4) and allow Duke Energy Ohio to transfer its generation assets at net book value. The Company recognizes that this was part of a settlement and not binding upon Movants to agree with the outcome, but the fact that it survived the Commission three-part test to ensure settlements are valid shows that the waiver was in the public interest and did not violate any regulatory principles. The Company pointed this fact out in the waiver request and expressed the good cause to apply the same rule to similar facts in a consistent manner so as not to create an unfair and uneven playing field for competition. There is nothing preventing Movants from completing their comments with the information they have. Whether the waivers are granted or not and whether further process is needed is a determination for the Commission. Movants' attempts to second guess the present status is inappropriate.

Conclusion

For the foregoing reasons, the Company respectfully requests the Commission to deny Movants' request to reargue points argued both previously in this docket and others' and to continue with the processing of this docket without delay.

Respectfully submitted,

//s/ Matthew J. Satterwhite

Steven T. Nourse

Matthew J. Satterwhite

American Electric Power Service
Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

(614) 716-1608

Fax: (614) 716-2950

Email: stnourse@aep.com

mjsatterwhite@aep.com

Counsel for Ohio Power Company

Certificate of Service

I hereby certify that a copy of the foregoing *Memorandum Contra Joint Motion to Extend Comment Deadline and Request for Expedited Ruling and Memorandum In Support*, was served upon the following parties of record this 24th day of July, 2012, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

//ss// Matthew J. Satterwhite

Matthew J. Satterwhite

Maureen R. Grady, Counsel of Record
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
grady@occ.state.oh.us

COUNSEL FOR THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Samuel C. Randazzo
Frank P. Darr
Joseph E. Olikier
Matthew R. Pritchard
McNees Wallace & Nurick LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com

COUNSEL FOR THE INDUSTRIAL ENERGY USERS-OHIO

Amy B. Spiller, Counsel of Record
Deputy General Counsel
Jeanne W. Kingery
Associate General Counsel
139 E. Fourth Street, 1303-Main
PO Box 961
Cincinnati, OH 45201-0960
Amy.Spiller@duke-energy.com
Jeanne.Kingery@duke-energy.com

**COUNSEL FOR DUKE ENERGY RETAIL SALES, LLC AND DUKE ENERGY COMMERCIAL ASSET
MANAGEMENT, INC.**

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

James F. Lang
Laura C. McBride
N. Trevor Alexander (0080713)
Calfee, Halter & Griswold, LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

David A. Kutik
Allison E. Haedt
Jones Day
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com
aehaedt@jonesday.com

COUNSEL FOR FIRSTENERGY SOLUTIONS CORP.

Robert A. McMahon, Counsel of Record
Eberly McMahon LLC
2321 Kemper Lane, Suite 100
Cincinnati, OH 45206
BMcMahon@emh-law.com

Rocco D'Ascenzo
Associate General Counsel
Elizabeth Watts
Associate General Counsel
139 E. Fourth Street, 1303-Main
Cincinnati, OH 45202
Elizabeth.Watts@duke-energy.com
Rocco.D'Ascenzo@duke-energy.com

COUNSEL FOR DUKE ENERGY OHIO, INC.

Michael L. Kurtz
David F. Boehm
Jody M. Kyler
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jklyer@BKLawfirm.com

COUNSEL FOR OHIO ENERGY GROUP

Joseph M. Clark, Counsel of Record
6641 North High Street, Suite 200
Worthington, OH 43085
jmclark@vectren.com

COUNSEL FOR DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS, LLC

Kurt P. Helfrich
Ann B. Zallocco
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, OH 43215-6101
Kurt.Helfrich@ThompsonHine.com
Ann.Zallocco@ThompsonHine.com

COUNSEL FOR BUCKEYE POWER, INC.

Lisa G. McAlister, Counsel of Record
Matthew W. Warnock
J. Thomas Siwo
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
lmcaster@bricker.com
mwarnock@bricker.com
tsiwo@bricker.com

COUNSEL FOR THE OMA ENERGY GROUP

Richard L. Sites
General Counsel & Senior Director of Health Policy
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

COUNSEL FOR THE OHIO HOSPITAL ASSOCIATION

Mark S. Yurick
Zachary D. Kravitz
Taft Stettinius & Hollister, LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

COUNSEL FOR THE KROGER CO.

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

**COUNSEL FOR EXELON GENERATION COMPANY, LLC AND
CONSTELLATION NEWENERGY, INC.**

William Wright
Assistant Attorney General
Chief, Public Utilities Section
180 E. Broad Street, 6th Floor
Columbus, OH 43215-3793
william.wright@puc.state.oh.us

COUNSEL FOR THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

Sarah Parrot
Greta See
Attorney Examiners
Sarah.Parrot@puc.state.oh.us
Greta.see@puc.state.oh.us

ATTORNEY EXAMINERS

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/24/2012 8:58:27 AM

in

Case No(s). 12-1126-EL-UNC

Summary: Memorandum Contra electronically filed by Mr. Matthew J Satterwhite on behalf of Ohio Power Company