

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company for Authority to Issue)	
Phase-in-Recovery Bonds and Impose,)	
Charge and Collect Phase-in-Recovery)	Case No. 12-1969-EL-ATS
Charges and for Tariff and Bill Format)	
Changes.)	

**MOTION FOR AN EXPEDITED DISCOVERY PROCESS
AND
REQUEST FOR EXPEDITED RULING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to establish expedited discovery, including electronic service, in this case where Ohio Power Company ("Ohio Power" or the "Utility") is proposing to collect up to \$320 million from consumers through securitization. In its application ("Application"), filed on July 31, 2012, Ohio Power requested an expedited case time line but did not request a correspondingly expedited discovery process for customer representatives, such as OCC, to obtain information about the filing. The Attorney Examiner for this proceeding issued a procedural schedule on August 14, 2012, calling for initial comments in response to the Application to be filed on September 14, 2012, and reply comments to be filed on August 28, 2012.

An expedited discovery process should be established so that parties may effectively examine the Application and prepare their recommendations to the PUCO. To this end, discovery procedures should include a seven-day turnaround for responses

and electronic transmission of all discovery requests and responses. The OCC also requests, pursuant to Ohio Adm. Code 4901-1-12 (C), an expedited ruling on this Motion.

This Motion should be granted for good cause on an expedited basis, for the reasons more fully set forth in the accompanying memorandum in support.

Respectfully submitted,

BRUCE J. WESTON
CONSUMERS' COUNSEL

/s/ Kyle L. Kern

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On July 31, 2012, the Utility filed an extensive Application seeking authority to recover from customers certain specified “phase-in costs and financing costs” through the issuance of bonds payable from the collection of phase-in-recovery (“PIR”) charges. On August 14, 2012, the Attorney Examiner issued an Entry (“Entry”) establishing a comment schedule for this proceeding. Per the Entry, initial comments are due on September 14, 2012, and reply comments are to be filed on September 28, 2012.¹ This schedule provides merely one month for parties² to examine the Application, develop and service discovery, analyze discovery responses and documents produced, and draft initial comments. But Ohio law, R.C. 4928.232(C)(1) provides much more time, up to 135 days, for the case time-line.

As this is only the second proceeding for securitization under Amended Substitute House Bill 364, (“HB 364”) it is of particular importance to the residential customers

¹ *In the Matter of the Application of Ohio Power Company for Authority to Issue Phase-in-Recovery Bonds and Impose, Charge and Collect Phase-in-Recovery Charges for Tariff and Bill Format Changes*, Case No. 12-1969-EL-ATS, Entry at 1(August 14, 2012).

² At the time OCC filed this Motion there were no other intervening parties.

served by Ohio Power. The Utility's customers will ultimately be asked to pay for all the costs of the proposed securitization, but will also benefit from the potential savings of the proposed securitization as well. OCC's Motion for expedited discovery response time should be granted to shorten the response time from twenty to seven days to facilitate the needed review of the Utility's Application in this important proceeding.

II. ARGUMENT

A. The Motion for Expedited Discovery Should be Granted.

Pursuant to Ohio Adm. Code 4901-1-17(A), "discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible." However, the PUCO may shorten or enlarge the time periods for discovery, under Ohio Adm. Code 4901-1-17(G), for good cause shown. Similarly, Ohio Adm. Code 4901-1-19(A) allows for the PUCO to shorten response times for interrogatories, setting forth that responses are due "within twenty days after the service thereof, or within such shorter or longer time as the commission, the legal director, the deputy legal director, or an attorney examiner may allow." Ohio Adm. Code 4901-1-20(C) contains a similar provision for production of documents. Here, twenty days is too long of a response period considering that initial comments are to be filed on September 14, 2012. Seven days is a more appropriate response time, given the short commenting period provided in this proceeding.³

R.C. 4903.082 requires "ample rights of discovery." The PUCO should provide interested parties the opportunity to conduct expedited discovery that is "ample" in this case, where significant sums of money are proposed for consumers to pay. Discovery

³ OCC served its first set of discovery on the Company on August 17, 2012, and requests that the seven day response time, if granted by the Commission, apply to this discovery.

should be conducted with a seven-day turn-around so that follow-up discovery can be served (and responses timely received) if necessary. The Commission should also require service of all discovery requests and responses by e-mail. Service by e-mail is allowed, but not required, by Ohio Adm. Code 4901-1-5(C).

Ohio Adm. Code 4901-1-14 authorizes attorney examiners and others to enter procedural rulings such as that requested here. Pursuant to Ohio Adm. Code 4901-1-27(B)(7)(d), examiners are authorized to “assure that the hearing proceeds in an orderly and expeditious manner,” and this objective should be followed by proceeding with seven-day turn-around and e-mail service for discovery.

Finally, under the Ohio securitization law, the Commission may only issue a financing order if it determines that the financing order is consistent with state electric service policies as specified in R.C. 4928.02.⁴ Also, the PUCO must be able to find, if there is to be approval of the Application, that the issuance of the bonds and the authorization of phase-in-recovery charges will measurably enhance cost savings to customers and mitigate rate impacts to customers.⁵ At the present time, there are no Ohio benchmarks and/or guidelines in place for securitization proceedings, as this is only the second proceeding of its kind.⁶ Discovery is crucial so that OCC may thoroughly review and carefully consider the Utility’s Application, and provide meaningful comments to the PUCO on behalf of Ohio Power’s customers.

⁴ R.C. 4928.232(D)(1).

⁵ Id. at (D)(2). (Emphasis added).

⁶ The first securitization proceeding under Amended Substitute House Bill 364 was the FirstEnergy securitization proceeding (Case No. 12-1465-EL-ATS). The Commission has not yet issued a financing order in that case.

B. An Expedited Ruling Should Be Issued.

An expedited ruling should be issued on the OCC's Motion because time is of the essence in a proceeding conducted on such a short timeframe. Expeditious responses to OCC's inquiries are needed so that parties and the Commission can take steps to assure that the Company's Application advances state electric policies, measurably enhances cost savings for customers, and mitigates rate impacts to customers.⁷ Expeditious treatment of the OCC's Motion serves this same purpose.

In order to facilitate the timely development of this case, the Commission should grant the OCC's motion on an expedited basis pursuant to Section 4901-1-12(C) of the Ohio Adm. Code. OCC made several attempts to contact Ohio Power's counsel regarding an expedited ruling as contemplated in Ohio Adm. Code 4901-1-12(C), but was unable to reach them. However, the Commission should act promptly to provide parties with a real opportunity to participate in this proceeding, and should grant the OCC's Motion.

III. CONCLUSION

OCC's Motion should be granted for the good cause shown. Expedited discovery should be provided to permit parties to fully analyze the Utility's application and prepare comments. Furthermore, the Commission should act on an expedited basis to grant the OCC's Motion.

⁷ R.C. 4928.232(D)(1).and (D)(2).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion for Expedited Discovery* was served on the persons stated below, via electronic transmission this 17th day of August 2012.

/s/ Kyle L. Kern

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Summary: Motion Motion for an Expedited Discovery Process and Request for Expedited Ruling by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Kern, Kyle Mrs.