

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of</b>	)	
<b>Ohio Power Company to Establish</b>	)	
<b>a Competitive Bidding Process for</b>	)	<b>Case No. 12-3254-EL-UNC</b>
<b>Procurement of Energy to Support its</b>	)	
<b>Standard Service Offer.</b>	)	

**MOTION OF OHIO POWER COMPANY TO CLARIFY THE PROCEDURAL  
SCHEDULE OR, IN THE ALTERNATIVE, TO MODIFY THE PROCEDURAL  
SCHEDULE AND REQUEST FOR EXPEDITED RULING**

Pursuant to Rule 4901-1-12, Ohio Administrative Code (O.A.C.), Ohio Power Company (AEP Ohio) hereby moves the Public Utilities Commission of Ohio (Commission) to clarify the procedural schedule set forth in the Attorney Examiner's May 23, 2013 Entry in this proceeding. The procedural schedule should be clarified to more clearly articulate the specific issues on which a hearing should take place, and it should limit the scope of testimony and discovery to only those issues. In the alternative, the Commission should modify the schedule to provide AEP Ohio the opportunity to file responsive testimony after the intervenors have filed (which would also likely necessitate moving the hearing back). In addition, the procedural schedule should be clarified to ensure no re-litigation of issues that have already been decided in the Commission's final order in the *ESP II* case, which are not proper subjects to be addressed in this proceeding. The grounds for this motion are set forth in greater detail in the attached Memorandum in Support. Pursuant to Rule 4901-1-12(C), O.A.C., the Company requests expedited ruling on this motion.

Respectfully submitted,

/s/ Steven T. Nourse

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## **MEMORANDUM IN SUPPORT**

On December 21, 2012, AEP Ohio filed its Application in this docket to establish a CBP process for its SSO in accordance with the Commission's (now final) decision in AEP Ohio's *ESP II* proceeding. Since then, AEP Ohio has submitted a Supplement to its Application to address recovery of auction-related costs through retail rates in a manner consistent with the Commission's first entry on rehearing in the *ESP II* case, and the Company and six other parties have submitted initial and reply comments regarding AEP Ohio's application.<sup>1</sup> On May 23, 2013, the Attorney Examiner issued an Entry (May 23 Entry) setting this matter for hearing approximately one month later, on June 24, 2013, and setting a June 14 deadline for parties to file testimony in advance of the hearing.

As the May 23 Entry reflects, there is some level of disagreement among the parties to this proceeding related to: (1) the auction pricing mechanism, including starting bid prices, (2) the appropriate retail rate that AEP Ohio's SSO customers should be charged upon the commencement of the energy auctions, and (3) the delivery date of AEP Ohio's initial 10 percent slice-of-system energy auction. The Attorney Examiner concluded that, "[i]n light of the[se] disputes[,] . . . an evidentiary hearing is necessary." May 23 Entry at ¶ 18. The first two issues are rather broad and, in any case, the May 23 Entry does not explicitly limit the scope of testimony or discovery to the three stated issues. Further, as written, the May 23 Entry could open the door to parties attempting to re-litigate issues that the Commission has already considered and decided in the *ESP II* case. Thus, AEP Ohio submits that the hearing process

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<sup>1</sup> Ohio Energy Group (OEG); Industrial Energy Users-Ohio (IEU-Ohio); FirstEnergy Solutions Corp. (FES); Exelon Generation Company, LLC (Exelon); Constellation NewEnergy, Inc. (Constellation); and the Office of the Ohio Consumers' Counsel (OCC) each filed initial comments; AEP Ohio, OCC, FES, and Exelon/Constellation filed reply comments.

should be more clearly delineated, in order to avoid the potential for an inefficient process and/or the improper re-litigation of issues relating to the Commission's now-final *ESP II* decision.

As a threshold matter, the Commission should clarify the scope of the testimony and hearing to be the positions already specifically raised in the record to date – those were the issues being referenced in the May 23 Entry as representing the parties' disagreement. No new issues should be permitted at this point. The stated purpose of the hearing is to help the Commission decide the issues already raised. So the scope of the hearing and discovery should be strictly limited to those issues.

As an important but separate matter, re-litigation of the *ESP II* Orders is not a proper subject for an evidentiary hearing in this proceeding. Rather than re-litigating or modifying the *ESP II* Orders, this case should concern *application* of the matters already decided in the *ESP II* Orders. To the extent that issues raised in this proceeding have already been considered and addressed by the Commission in the *ESP II* case, or are disputes as to the legal interpretation of the Commission's final decision in that case, it is inappropriate and unnecessary to re-litigate them again through an evidentiary hearing now. Given that the Commission's *ESP II* decision is final and is currently being reviewed by the Supreme Court on appeal (Case No. 2013-521), it would be inappropriate for the Commission to entertain positions that are inconsistent with the existing orders or otherwise further modify the orders at this time. On the contrary, the Supreme Court has jurisdiction over the case now. Thus, the process should also be clarified to provide that parties' positions should be based on the existing *ESP II* Orders and that parties cannot advocate changing the *ESP II* Orders in this docket.

Moreover, without explicitly limiting the proceeding to a narrow and defined set of issues, it is unfair and inappropriate for the May 23 Entry to require simultaneous testimony

without any opportunity for responsive testimony – since the Company would not know what issues intervenors will address in testimony absent a prior determination of the issues and proper scope of testimony. Thus, if the Commission does not explicitly delineate and narrow the scope of the issues, it should alternatively allow the Company an opportunity for responsive testimony after the intervenors file their testimony. The Company has already described and explained in great detail its proposals – through the Application and Supplement as well as comments and pleadings in this docket. It would be appropriate for intervenors to file testimony next to be followed by responsive testimony from AEP Ohio that would address the issues raised by intervenors. That process, while it would require adjustment to the procedural schedule set forth in the May 23 Entry (*i.e.*, through a new date for AEP Ohio response testimony and a modified hearing date), would also better ensure that the Commission hears from all parties on all of the issues.

## **CONCLUSION**

For the reasons set forth above, AEP Ohio respectfully requests that the procedural schedule be clarified for efficiency to limit the scope of testimony and hearing to only the issues that have properly been raised in this proceeding and not to the re-litigation of issues already addressed in *ESP II*. If the Commission does not clarify the issue in detail as described above, it should provide the Company with an opportunity to file responsive testimony after intervenors file their testimony and move the hearing date back. Due to the impending deadlines established by the May 23 Entry, AEP Ohio requests an expedited ruling on this matter.

Respectfully submitted,

/s/ Steven T. Nourse

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**Counsel for Ohio Power Company**

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the parties of record in this proceeding by electronic service this 29<sup>th</sup> day of May, 2013.

/s/ Steven T. Nourse  
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Steven T. Nourse

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Summary: Motion of OPCo to Clarify the Procedural Schedule or, in the Alternative, To Modify the Procedural Schedule and Request for Expedited electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company