

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**RESPONSE OF FIRSTENERGY SOLUTIONS CORP. AND INDUSTRIAL
ENERGY USERS-OHIO TO THE MOTION OF OHIO POWER COMPANY TO
CLARIFY THE PROCEDURAL SCHEDULE ETC., AND REQUEST FOR
EXPEDITED DISCOVERY**

Ohio Power Company (“AEP Ohio”) improperly seeks to limit the hearing scheduled in this proceeding for June 24, 2013, by “clarifying” the procedural schedule issued May 23, 2013. The “clarification” takes two forms: (1) a mandate that the hearing be limited to positions taken by the parties in their comments; and (2) a prohibition on any re-litigation of the ESP II orders. FirstEnergy Solution Corp. (“FES”) and Industrial Energy Users-Ohio (“IEU-Ohio”) disagree with the first proposal, and agree that parties should not be permitted to re-litigate the ESP II orders in this proceeding. However, the proper remedy is not a prospective limitation on testimony, but instead is a motion to strike when the bench can review the testimony at issue and rule accordingly. FES and IEU-Ohio also request that the Commission order expedited discovery so that issues of dispute can be identified before the parties file testimony on June 14, 2013.¹

¹ FES contacted counsel for AEP Ohio regarding potential expedited discovery in this proceeding on May 29, 2013 and May 31, 2013. Counsel for AEP Ohio did not agree to expedited discovery, necessitating this request.

With regard to the appropriate scope of the hearing, AEP Ohio seeks to limit testimony to the issues already discussed in the comments of the parties. However, this limitation appears nowhere in the Entry setting this hearing or in the AEP Ohio ESP II decision itself.² In fact, in the ESP II Order the Commission held that “AEP-Ohio anticipates the CBP process will be similar to other Ohio utility CBP filings, and explains that specific details of the CBP will be addressed in a future filing.”³ As this is the “future filing” anticipated by the Commission, there is no justification for prospectively limiting testimony to only those issues already raised in comments. Instead, AEP Ohio’s Application and Supplement to Application define the subject matter of this proceeding, and there is no reason to believe that the parties’ testimony will stray beyond that subject matter. Rather than prospectively limiting testimony to only those issues already raised in comments, the testimony submitted by the parties on June 14, 2013, will make clear to all what facts are in dispute. To the extent any testimony is irrelevant or cumulative, the hearing examiner has ample discretion under Rule 4901-1-27 to regulate the hearing proceedings. To ask at this point that the issues be limited is simply premature.

AEP Ohio also requests a prospective limitation on the parties ability to re-litigate the ESP II orders. FES and IEU-Ohio agree that parties, including AEP Ohio, should not be permitted to ignore these orders. In particular, FES remains concerned that AEP Ohio may intend to disregard the Commission’s decision in its January 30, 2013 Entry on

² Case No. 11-346-EL-SSO, Opinion and Order dated August 8, 2012, p. 38-41.

³ *Id.*, p. 38.

Rehearing rejecting AEP Ohio's request to continue to freeze base generation rates.⁴ As the hearing examiner noted in his May 23, 2013 Entry, "there is confusion over the appropriate retail rate that AEP Ohio's SSO customers should be charged upon the commencement of AEP Ohio's energy auctions."⁵ Remediating this confusion is an obvious objective of the hearing scheduled for June 24, 2013. Once again the proper remedy is not a prospective limitation on potential testimony at this point. AEP Ohio's attempt to stifle discussion of the underlying causes of that confusion does not serve anyone's interest and should be rejected. To the extent any party attempts to present improper testimony, it may be stricken from the record by the Attorney Examiner when the testimony at issue is offered into evidence.

AEP Ohio also seeks, in the alternative, to submit testimony responding to intervenor testimony if surprised by that intervenor testimony. This request also is premature and unnecessary. Again, there is no reason to believe that intervenor testimony will not address AEP Ohio's Application and Supplement to Application. As a result, there is no reason to believe that AEP Ohio will be surprised by the issues raised in intervenor testimony. Moreover, given the confusion generated by AEP Ohio's filings, it would make more sense to have AEP Ohio file its supporting testimony first and to then have intervenors submit testimony thereafter. Regardless, the Commission lacks justification at this time to rework the procedural schedule to give AEP Ohio an additional round of testimony.

⁴ Case No. 11-346, Entry on Rehearing dated January 30, 2013, p. 36.

⁵ Case No. 12-3254-EL-UNC, Entry dated May 23, 2013, p. 5.

Given the schedule established in the May 23, 2013 Entry, FES and IEU-Ohio believe that a schedule for expedited discovery should be established. They recommend that all discovery requests should be answered within five business days of service (with service after 5:30 pm constituting service on the next business day). FES served discovery on AEP Ohio on May 30, 2013, and without an expedited schedule AEP Ohio is not required to provide responses until June 19, 2013 – five days after testimony is due. A five business day turn-around would permit parties to receive discovery responses prior to filing testimony.

For the foregoing reasons, AEP Ohio's Motion should be denied in its entirety and the hearing examiner should grant expedited discovery as discussed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Response of FirstEnergy Solutions Corp. and Industrial Energy Users-Ohio To The Motion of Ohio Power Company To Clarify The Procedural Schedule, Etc., And Request For Expedited Discovery* was served this 31st day of May, 2013, via e-mail upon the parties below.

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Summary: Response of FirstEnergy Solutions Corp. And IEU-Ohio To The Motion Of Ohio Power Company To Clarify The Procedural Schedule, Etc. And Request For Expedited Discovery electronically filed by Mr. Nathaniel Trevor Alexander on behalf of FirstEnergy Solutions Corp.