

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company to Adjust its)	Case No. 14-193-EL-RDR
Economic Development Cost Recovery)	
Rider Rate.)	

**OHIO POWER COMPANY’S MEMORANDUM CONTRA
OCC’S MOTION TO STRIKE**

INTRODUCTION

On February 3, 2014, AEP Ohio filed an application to update its Economic Development Cost Recovery Rider (“EDR”) rate. OCC filed comments and objections to the Company’s application on February 24, 2014, and AEP Ohio filed reply comments on March 7, 2014. On March 14, 2014, OCC filed a Motion Strike AEP Ohio’s reply comments on the grounds that they are not permitted by the rules. (OCC’s Motion at 1-2.) OCC’s Motion to Strike, however, ignores the routine practice in these types of proceedings and, if granted, would deprive the Commission the benefit of a developed record. OCC’s Motion to Strike should therefore be denied.

ARGUMENT

OCC relies on Ohio Administrative Code Rule 4901:1-38-08 (Rule 8) to argue that only OCC was permitted to file comments in this docket. AEP Ohio submits that Rule 8 does not govern this proceeding. It addresses a process for a utility to apply for a rider to recover delta revenues associated with a reasonable arrangement. AEP Ohio’s EDR was authorized as part of the *ESP II* decision (Case Nos. 11-346-EL-SSO et al.) and the Company’s Application relies upon that authority to file the EDR update – it does not rely upon Rule 8 at all. AEP Ohio

already had the right to file its EDR update before the Application was filed. To the extent Rule 8 can be used to support the conclusion that the Company has no right to file reply comments in support of its Application, AEP Ohio submits that Rule 8 does not apply.

If the Commission does view Rule 8 as applying to this proceeding, it still does not support the conclusion that AEP Ohio's reply comments should be stricken. Rule 8 permits affected parties to file comments and objections to an application within twenty days of the date of the filing of the application. (*See* Ohio Admin. Code 4901:1-38-08(C).) Contrary to OCC's arguments, however, that rule does not prohibit comments from the applicant or otherwise limit the applicant's pleadings in these proceedings to the application. Rather, Rule 8 serves as a preliminary method by which parties can present concerns about an application. It in no way prohibits parties (including the applicant) from developing arguments in favor of or against the Application after the submission of their comments and objections. AEP Ohio's reply comments address the objections and comments raised by OCC and provides additional support for the Application for the Commission's consideration. The Company has the burden of proof in this case and, as a matter of due process, should be entitled to respond to attacks on its proposal. The Commission can and should consider AEP Ohio's reply comments in making its decision on the Company's Application.

Moreover, the Company has routinely filed comments in response to comments from other parties in these types of proceedings without objection. *See, e.g., In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust their Economic Development Cost Recovery Rider Rates*, Case No. 09-1095-EL-UNC; *In the Matter of the Joint Application of the Timken Company and The Ohio Power Company for Approval of a Unique Arrangement for the Timken Company's Canton, Ohio, Facilities*, Case No. 10-3066-

EL-AEC; *In the Matter of the Application for Approval of a Contract for Electric Service Between Columbus Southern Power Company and Solsil, Inc.*, Case No. 08-883-EL-AEC. AEP Ohio's reply comments follow the routine practice governing these proceedings. OCC's objections to this routine practice belies its argument that the "rules of procedure establish a level playing field of fairness." OCC Motion at 1. In order to have a fair playing field, the comments and arguments of all parties should be considered – especially where, as in this case, the Company has the burden of proof and, as a matter of due process, should be entitled to respond to attacks on its proposal. OCC's Motion to Strike ignores the routine practice governing these proceedings and seeks to deprive the Commission the benefit of having both sides of the issues presented.

OCC also submits sur-reply comments as an alternative to its motion to strike. OCC's sur-reply comments amount to a transparent attempt to get the last word. Following OCC's arguments to their natural conclusion would mean that OCC's response to AEP Ohio's reply comments (OCC's Motion at 3-6) should also be stricken as the rules do not expressly provide the opportunity for a sur-reply. In any case, OCC's sur-reply comments do not raise any arguments that are not already disposed of through AEP Ohio's reply comments. As such, AEP Ohio does not oppose submittal of OCC's sur-reply comments provided that AEP Ohio's reply comments are considered.

CONCLUSION

The Commission can and should afford AEP Ohio's reply comments the appropriate consideration and weight. For the foregoing reasons, OCC's Motion to Strike should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the below-listed individuals via email on this 25th day of March, 2014.

/s/ Steven T. Nourse

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Summary: Memorandum Contra - OCC's Motion to Strike electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company