

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan.)	Case No. 13-2385-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority.)	Case No. 13-2386-EL-AAM

**MEMORANDUM CONTRA OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
TO OHIO POWER COMPANY’S MOTION FOR ORAL ARGUMENT**

Introduction

On November 4, 2014, nearly three months after numerous parties filed reply briefs in these proceedings, Ohio Power Company (“Ohio Power”) has submitted a motion for oral argument in these proceedings. Ohio Power also requested an expedited ruling on its motion for oral argument. Pursuant to Rule 4901-1-12(C), Ohio Administrative Code, any party may file a memorandum contra within seven days after service of such a motion. The Retail Energy Supply Association (“RESA”)¹ timely files the following memorandum

¹ RESA is a broad and diverse group of 21 retail energy suppliers who share the common vision that competitive energy retail markets deliver a more efficient, customer-oriented outcome than the regulated utility structure. Several RESA members are certificated as Competitive Retail Electric Service (“CRES”) providers and are active in the Ohio retail market, including the AEP Ohio service territory. RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

contra the motion for oral argument and in the alternative, if the Commission elects to have an oral argument, thoughts as to how the argument should be arranged.

Argument

Ohio Power requests an oral argument “as soon as possible in this 2014 calendar year.” Ohio Power claims that there is complexity and difficulty with certain issues in these proceedings. Ohio Power cites to its request for a purchase power agreement rider (“Rider PPA”) and the proposed inclusion therein of costs related to its entitlement to power from the Ohio Valley Electric Corporation (“OVEC”). More specifically, Ohio Power proposes to include in Rider PPA the differential between its cost to purchase the OVEC generation and the revenues it receives when that generation is sold in the PJM market during the electric security plan (“ESP”) period and thereafter. Ohio Power supports its request for an oral argument on three assumptions, none of which would justify reopening the record at this time.

First, Ohio Power urges an oral argument because there has been a “delay” in the decision from the Public Utilities Commission of Ohio (“Commission”). The Ohio Power ESP III has only been decisional for some eight weeks. Given the numerous issues in the case, especially the controversial Rider PPA, that is not an unusual amount of time. Further, the relief of having an oral argument exacerbates the problem by converting a record which is decisional now, to one that would not be decisional for several weeks as the oral argument is first arranged, then conducted, and then evaluated by the Commissioners. If time is of the essence, Ohio Power should have merely requested that the Commission issue its order.

The Commission has provided all of the parties ample opportunity to present evidence and arguments in these proceedings. In particular, the Commission received extensive evidence over the course of 13 days of hearing from numerous parties who have vast knowledge and experience with utility issues and ESP issues. Forty-three witnesses testified in these proceedings. In addition, the Commission received 19 initial briefs and 17 reply briefs which addressed Rider PPA in particular in great detail. The briefs not only highlighted the various positions of the parties on the various issues, but they also outline how the parties' positions align or how they conflict. These were summarized in RESA's reply brief in these proceedings.² Nearly every party opposed Rider PPA.

Fully Opposes Rider PPA	Supports Rider PPA with Modifications	Supports Rider PPA as Proposed
<p style="text-align: center;">Staff OCC OPAE/APJN IEU OMAEG Ohio Hospital Association The Kroger Company Environmental Law & Policy Center Ohio Environmental Council/EDF Constellation/Exelon RESA Direct Energy IGS Energy Energy Professionals of Ohio</p>	<p>Ohio Energy Group*</p> <p>*Although listed as a supporter, its recommended modifications are so significant that it has essentially redesigned Rider PPA.</p>	<p>AEP Ohio</p>

Simply put, Ohio Power has not, and could not, point to an argument that should have been made during the course of the proceedings but somehow was not presented. Accordingly, Ohio Power's first premise for its request for an oral argument should be rejected.

² RESA Reply Brief at 15.

Second, Ohio Power claims that oral argument is appropriate because the Commission Staff has taken an adversarial position on certain issues and, thus, the Commission is somehow without an advisor in reviewing the cases.³ There is no support for this position. Over the course of many years, the Commission Staff has been able to advise the Commission in numerous cases, even when the Staff has taken positions on one or more issues in a proceeding. Ohio Power presents no case precedent that when the Commission Staff opposes the position advocated by an applicant, that oral argument is either advisable, or that the applicant is entitled to an oral argument. Equitably if that was true, then if the Staff took a position in support of the applicant, the opposing intervenors should be entitled to an oral argument for the Staff would not be in position to point out the short falls in the application.

Simply put, Ohio Power's argument is based on the assumption that the Commission needs "neutral" advice from Staff and that somehow an oral argument from all the parties will fill the void created when the Staff takes a position. It should be noted that even if the Staff has not taken a formal position in a case, that does not mean they are "neutral." More important, there is no rule, case precedent or logical reason to have an oral argument merely because the Staff has taken a position. Thus, the second argument should be rejected.

Third, Ohio Power contends that the Commission may be reviewing the issues in these proceedings from a different perspective and thus have questions. First, as a threshold matter, the Commission is limited to the closed record to make its decision in this case. However, to the extent larger policy considerations may be weighed by the

³ Ohio Power Memorandum in Support at 3.

Commission, then the Commission on its own could call for an oral argument and a motion from Ohio Power would not be necessary. RESA's concern with an oral argument is that an oral argument will reopen the record with facts which were not presented in the case, tested by cross-examination, and thoughtfully briefed.

For all of the foregoing reasons, Ohio Power's motion for oral argument should be rejected. Numerous parties have presented voluminous amounts of evidence and many arguments about all of the issues in these matters. The record is very clear on the facts, policy positions and legal positions of the parties. RESA is confident that the Commission can review and weigh all of the evidence, and reach a well-reasoned decision in these matters.

Alternative

If the Commission disagrees and schedules an oral argument to ask specific questions of the parties, RESA believes that parameters must be established in advance. Additionally, if the Commission decides that it would like to have an oral argument, RESA requests that it be permitted to participate and present its position. In that regard, in order to prevent contamination of the extensive record in this case, RESA suggests that an oral argument be conducted in a manner similar to that used in the Retail Marketing Investigation or the Ohio Power ESP II proceeding in which the Commission had definitive questions and permitted all points of view to be heard.

WHEREFORE, RESA requests that the Commission deny Ohio Power's motion for oral argument in these proceedings, and in the alternative if oral argument is conducted, that RESA be permitted to participate and that the argument be limited to specific issues for

which the Commission desires clarity to avoid simply rearguing facts and issues that have been painstakingly presented in the hearing and briefs.

Respectfully Submitted,

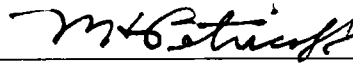


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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 12th day of November 2014 upon all persons/entities listed below.



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