

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking	)	
Approval of Ohio Power Company's	)	Case No. 14-1693-EL-RDR
Proposal to Enter into an Affiliate Power	)	
Purchase Agreement for Inclusion in the	)	
Power Purchase Agreement Rider.	)	

In the Matter of the Application of Ohio	)	
Power Company for Approval of Certain	)	Case No. 14-1694-EL-AAM
Accounting Authority.	)	

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**MOTION FOR A PROCEDURAL SCHEDULE  
BY  
APPALACHIAN PEACE AND JUSTICE NETWORK  
ENVIRONMENTAL DEFENSE FUND  
IGS ENERGY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL  
OHIO ENVIRONMENTAL COUNCIL  
OHIO HOSPITAL ASSOCIATION  
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP  
AND  
OHIO PARTNERS FOR AFFORDABLE ENERGY**

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Ohio Power Company ("Ohio Power") is seeking authority from the Public Utilities Commission of Ohio ("PUCO") to charge its 1.4 million customers costs associated with guaranteeing the profits of power plants that are supposed to operate fully on their own in the competitive market. In order to assist the PUCO in its review and analysis of Ohio Power's proposal, sufficient time must exist to fully develop the record in this proceeding. Ample time should be afforded to the intervening parties to conduct discovery regarding Ohio Power's Amended Application, and justification for subsidizing power plants of its corporate affiliate, and to formulate recommendations for

the PUCO to consider. Sufficient time for case preparation cannot be found in the procedural schedule that Ohio Power proposed.<sup>1</sup>

Although Joint Movants continue to assert that the PUCO lacks the authority to hear Ohio Power's Application and Amended Application,<sup>2</sup> the Joint Movants<sup>3</sup> respectfully request that the PUCO adopt a reasonable procedural schedule that allows for fairness, transparency, and due process.<sup>4</sup> Ohio Power's expedited procedural schedule and request to rush to judgment is prejudicial, unjust, and unreasonable. More than a million customers are at risk of paying hundreds of millions (if not billions) of dollars over the coming decades.

Due process in this case means allowing customer participants the ample discovery rights required by law for case preparation and presentation at hearing.<sup>5</sup>

Accordingly, a fair schedule should be ordered as follows:

- A. Motions to Intervene - filed by June 1, 2015
- B. Written discovery - served by November 27, 2015
- C. Intervenors' testimony - filed by November 30, 2015
- D. Staff testimony - filed by December 9, 2015
- E. Procedural Conference – January 9, 2016 at 10:00 a.m. at the PUCO offices
- F. Evidentiary hearing beginning January 19, 2016 at 10:00 a.m. at the PUCO offices

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<sup>1</sup> See Ohio Power's Amended Application at 9-10.

<sup>2</sup> The PUCO lacks subject matter jurisdiction. Also, the PUCO is field and conflict preempted from exercising subject matter jurisdiction over the Amended Application under the Federal Power Act and the Supremacy Clause of the United States Constitution. Thus, it would be appropriate for the PUCO to dismiss Ohio Power's Amended Application

<sup>3</sup> Appalachian Peace and Justice Network ("APJN") Environmental Defense Fund, IGS Energy ("IGS"), the Office of the Ohio Consumers' Counsel ("OCC"), Ohio Environmental Council ("OEC"), Ohio Hospital Association ("OHA"), Ohio Manufacturers' Association Energy Group ("OMAEG"), and the Ohio Power for Affordable Energy ("OPAE").

<sup>4</sup> Under Ohio Adm. Code 4901-1-12 and 4901-1-14.

<sup>5</sup> See, e.g., R.C. 4903.082.

As more fully explained in the attached memorandum in support, the PUCO should grant this motion to establish a reasonable procedural schedule that allows sufficient time for discovery and case presentation in the interests of Ohio consumers.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF MOTION FOR A SCHEDULE**

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**I. INTRODUCTION**

Ohio Power has filed an Amended Application purporting to supersede and replace its initial Application. Ohio Power's Amended Application consists of eleven pieces of revised and new testimony to address what it describes as the Four Factors and Four Requirements outlined in the PUCO's Order in its recent ESP Case.<sup>6</sup>

Ohio Power filed an Amended Application containing fundamental, substantive changes to its Application. Nevertheless, Ohio Power proposed that the PUCO expedite the case schedule.<sup>7</sup> Under that schedule Joint Movants would be required to file testimony, serve discovery, and prepare for an evidentiary hearing in approximately two

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<sup>6</sup> See Amended Application at 2-3; *see also* Case NO. 13-2385-EL-SSO, Order at 25-26.

<sup>7</sup> Ohio Power did not file a motion requesting a procedural schedule. Instead it included the proposed schedule as a request.

months. And during these same two months Joint Movants are simultaneously litigating FirstEnergy's proposed ESP to protect consumers.<sup>8</sup>

## **II. ARGUMENT**

### **A. The PUCO Should Adopt Joint Movants' Proposed Schedule.**

To assure Joint Movants' rights to conduct ample discovery, and adequate time to prepare for the hearing, a fair procedural schedule is needed. Joint Movants therefore request that the PUCO reject Ohio Power's proposed unfair procedural schedule and adopt the following schedule:

- A. Motions to Intervene - filed by June 1, 2015
- B. Written discovery - served by November 27, 2015
- C. Intervenors' testimony - filed by November 30, 2015
- D. Staff testimony - filed by December 9, 2015
- E. Procedural Conference – January 9, 2016 at 10:00 a.m. at the PUCO offices
- F. Evidentiary hearing beginning January 19, 2016 at 10:00 a.m. at the PUCO offices

This proposed procedural schedule is reasonable and will not unduly interfere with Joint Movants' litigation in the FirstEnergy ESP proceeding. It recognizes the fact that Ohio Power's Amended Application presents a new case that involves novel and complex regulatory issues. Joint Movants should be afforded ample discovery in the new case, a right which is established under law. Further, as this filing by Ohio Power is purely discretionary, the Commission's interest in producing a thorough and complete record far outweighs any purpose that may be served by a rush to completion. Moreover,

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<sup>8</sup> See Amended Application at 9-10 (proposing that intervenors' testimony be filed by June 19, 2015, discovery requests be served by June 30, 2015, and an evidentiary hearing beginning on July 20, 2015); Case No. 14-1297-EL-SSO, May 23, 2015 Entry at para. 5 (setting evidentiary hearing on FirstEnergy's ESP proposal for June 15, 2015).



the proposed schedule will allow the Commission to issue an order in advance of the May 2016 PJM Base Residual Auction.

**B. Ohio Power's Proposed Expedited Schedule Denies Ohio's Residential, Commercial, And Industrial Consumers and Competitive Retail Electric Service Providers Due Process And A Fair Opportunity To Be Heard By The PUCO.**

Ohio Power has proposed an expedited schedule that is unreasonable and prejudicial to the intervening parties. Ohio Power submitted an Amended Application with new and revised testimony from 11 witnesses totaling over 300 pages.

Under Ohio Power's proposed schedule Joint Movants would have to analyze the Amended Application and the new and revised testimony; coordinate, prepare, and file testimony from their own witnesses; prepare and serve discovery; receive and analyze Staff testimony; and prepare for an evidentiary hearing in a two-month period. And while all of this is occurring, the realities of litigation will set in – motion practice (a certainty in a case of this magnitude);<sup>9</sup> depositions; coordinating the schedules of what will likely be well over 30 witnesses, not to mention the schedules of counsel representing Ohio Power and over a dozen Intervenors.

This in and of itself is unreasonable and does not afford parties adequate due process. Adding to the complexity is the fact that Joint Movants will have to perform these time-intensive tasks *while preparing for and litigating the FirstEnergy ESP application, which will also significantly affect consumers, in Case No. 14-1297-EL-SSO.*

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<sup>9</sup> Ohio Power has not yet produced the proposed PPA – a fundamental document in this case – notwithstanding that it was requested and promised long ago. Although the parties are working to obtain the document consistent with their obligations under governing procedural rules, Ohio Power's unwillingness to produce the PPA to date foreshadows the motion practice inevitable in a case such as this.

Ohio Power's proposed expedited procedural schedule will deny Joint Movants (and their clients) the basic due process secured to them under the Ohio Revised Code, the Ohio Administrative Code, and the Ohio and U.S. Constitutions.<sup>10</sup> The expedited schedule is unreasonable and unfair. As a practical matter, it denies Joint Movants the right to be heard. It should be rejected in favor of the schedule proposed herein.

### **III. CONCLUSION**

The PUCO should set a schedule – as proposed by Joint Movants – that gives fairness to the interests of Ohio Power's residential, commercial, and industrial consumers. Ohio Power through its expedited schedule proposal would effectively foreclose Joint Movants, and the great many Ohioans and Ohio businesses that they represent, from having ample rights of discovery and a fair hearing process. The PUCO should reject the unreasonable, expedited schedule proposed by Ohio Power, and adopt the Joint Movants' proposed schedule.

Respectfully submitted,

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<sup>10</sup> See O.R.C. sec. 4903.082; Ohio Adm. Code 4901-1-16 *et seq.*; Ohio Const., Art. I, sec. 16; U.S. Const., Amends. 5 and 14.

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for a Procedural Schedule was served via regular electronic transmission to the persons listed below, on this 22<sup>nd</sup> day of May, 2015.

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**Commission of Ohio Docketing Information System on**

**5/22/2015 5:16:36 PM**

**in**

**Case No(s). 14-1693-EL-RDR, 14-1694-EL-AAM**

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