

**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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**REPLY IN SUPPORT OF 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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**I. INTRODUCTION**

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. Ohio Power also proposes to rush forward with a procedural schedule seeking a decision by October of this year, denying parties due process. Time is not of the essence, as Ohio Power asserts,<sup>1</sup> and a decision certainly

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<sup>1</sup> See Memorandum in Opposition at 2.

cannot be at the expense of affording due process and developing a record on which the PUCO can make an informed decision. Ohio Power's proposed expedited schedule should be rejected, and Joint Movants'<sup>2</sup> schedule adopted.

## **II. ARGUMENT**

Ohio Power asserts that the PUCO must rush to judgment because it is facing an "imminent need" to make long-term decisions, including whether to make additional investments in, or sell, the plants in question.<sup>3</sup> Not so says Ohio Power's Witness, Toby L. Thomas, Vice President – Competitive Generation, AEP Generation Resources. Mr. Thomas, in recently filed testimony, assured the PUCO that the applicable generation units are well maintained, capable of meeting environmental regulations in the "foreseeable future with reasonable amounts of capital investment," and are not "currently planned"<sup>4</sup> to be retired "in the next few years for economic or environmental reasons[.]"<sup>5</sup> Since the Vice President's planning horizon for capital investments is approximately three years, Ohio Power's asserted "imminent need" is not supported by its own witness. It is contradicted.

Ohio Power next asserts that its expedited schedule should be adopted over Joint Movants' proposed schedule because this case has been pending for eight months and its Amended Application has changed nothing.<sup>6</sup> But when Ohio Power filed its Application,

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<sup>2</sup> Appalachian Pease and Justice Network, Environmental Defense Fund, IGS Energy, Office of Ohio Consumers' Counsel, Ohio Environmental Council, Ohio Hospital Association, Ohio Manufacturers' Association Energy Group, and Ohio Partners for Affordable Energy.

<sup>3</sup> See Memorandum in Opposition at 3.

<sup>4</sup> That is, under the status quo without the PPA Rider.

<sup>5</sup> See May 15, 2015 Direct Testimony of Toby L. Thomas at 9.

<sup>6</sup> See Memorandum in Opposition at pp. 4-6.

the PUCO had not even ruled on its PPA proposal.<sup>7</sup> Joint Movants did not know, and could not have known, precisely how to proceed on the Application until the Order in the ESP Case.<sup>8</sup> Since the PPA proposal had not even been approved, they did not know, and could not have known, if there was even anything to proceed on.

Further, Ohio Power's assertion that the vast majority of its PPA proposal has been available since the Application was filed<sup>9</sup> is squarely contradicted by Ohio Power's own actions. It withdrew the testimony it filed along with the Application and submitted new and additional testimony with the Amended Application.<sup>10</sup> And even if the PUCO were to accept Ohio Power's (faulty) assertion that the majority of the PPA proposal remains the same as when Ohio Power filed its Application, the context in which the proposal will be evaluated by the PUCO is vastly different. Not until the PUCO in its ESP Order set out (in Ohio Power's words) the Four Factors and the Three Requirements could Joint Movants have possibly known what rules would be applied to evaluate the PPA proposal.<sup>11</sup>

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<sup>7</sup> The Application was filed October 23, 2014. The PUCO's Order in Ohio Power's ESP Case was in February 2015.

<sup>8</sup> Case No. 13-2385-EL-SSO.

<sup>9</sup> See Memorandum in Opposition at 4.

<sup>10</sup> See Amended Application at 8. Also, Ohio Power acknowledges that the new testimony "builds significantly" on the Application. See Memorandum in Opposition at 4. Joint Movants do not agree that the new testimony builds anything, much less significantly. But if Ohio Power believes that it does, it cannot credibly at the same time assert that the Amended Application is no different than the Application.

<sup>11</sup> See Case No. 13-2385-EL-SSO, February 25, 2015 Order at 25-27; Amended Application at 2-3. Not unimportantly, the PUCO did not rule out additional factors that it might consider. See *id.* So not only do Joint Movants have to consider the Four Factors and Three Requirements, they must also consider additional factors – further differentiating the Amended Application from the Application.

Ohio Power's assertion that FirstEnergy's ESP Case<sup>12</sup> will take place "well before" the hearing date it proposes<sup>13</sup> is wrong, and beside the point. FirstEnergy's ESP Case is now set for hearing beginning July 27, 2015.<sup>14</sup> Fifty two witnesses are scheduled to testify in the case. Rebuttal testimony is a certainty, and surrebuttal not unexpected. The hearings in Ohio Power's and Duke Energy's ESP Cases each lasted approximately a month.<sup>15</sup> With this background and precedent, FirstEnergy's hearing will not end before, let alone "well before," Ohio Power's proposed July 20, 2015 hearing commencement date.

Equally important, the PUCO's history and practice is without support for Ohio Power's assertion (and Ohio Power cites to no support) that Joint Movants should be required to litigate a month-long, complex ESP case and then turn right around and litigate another multi-week, if not month long, complex rider case with hundreds of millions of consumer dollars at stake.<sup>16</sup>

### **III. CONCLUSION**

Joint Movants have not procrastinated or engaged in "thinly-veiled attempts to defeat the PPA proposal through delay[.]" as Ohio Power declares. Although Joint Movants continue to assert that the PUCO lacks the authority to hear this case, Joint Movants have been making their way through AEP's new application, and the new

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<sup>12</sup> Case No. 14-1297-EL-SSO.

<sup>13</sup> See Memorandum in Opposition at 8.

<sup>14</sup> See Case No. 14-1297-EL-SSO, May 29, 2015 Entry.

<sup>15</sup> See Case No. 13-2385-EL-SSO June-July 2014 Docket (AEP); Case No. 14-0841-EL-SSO October-November 2014 Docket (Duke Energy).

<sup>16</sup> This should come as no surprise, given the protections afforded litigants under the Ohio and United States Constitutions and Ohio law. See, e.g., O.R.C. sec. 4903.082; Ohio Adm. Code 4901-1-16 *et seq.*; Ohio Const., Art. I, sec. 16; U.S. Const., Amendments 5 and 14.

testimony supporting the application. Joint Movants have also been focusing on how to address the new guidelines the PUCO established for evaluating Ohio Power's PPA proposal. They must do so while contemporaneously litigating the FirstEnergy ESP Case. Thus, Ohio Power's proposed expedited schedule would deny Joint Movants due process. It would render impossible the development of a full record on which the PUCO could make an informed decision. Accordingly, Ohio Power's proposed expedited schedule should be rejected and Joint Movants' proposed schedule adopted.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served via regular electronic transmission to the persons listed below, on this 3rd day of June, 2015.

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Summary: Reply Reply in Support of 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 electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.