

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application Seeking)	
Approval of Ohio Power Company's)	
Proposal to Enter into an Affiliate Power)	Case No. 14-1693-EL-RDR
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-RDR
Accounting Authority.)	

**JOINT REPLY TO THE OHIO POWER COMPANY'S MEMORANDUM CONTRA
THE JOINT MOTION FOR AN EXTENSION OF THE ATTORNEY EXAMINER'S
PROCEDURAL SCHEDULE**

BY
**APPALACHIAN PEACE AND JUSTICE NETWORK
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ENVIRONMENTAL DEFENSE FUND
ENVIRONMENTAL LAW & POLICY CENTER
IGS ENERGY
OFFICE OF THE OHIO CONSUMERS' COUNSEL
OHIO ENVIRONMENTAL COUNCIL
OHIO HOSPITAL ASSOCIATION
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP
OHIO PARTNERS FOR AFFORDABLE ENERGY
PJM POWER PROVIDERS
RETAIL ENERGY SUPPLY ASSOCIATION
AND
SIERRA CLUB**

On August 11, 2015, thirteen intervenors to this proceeding¹ jointly filed a motion for an extension of the procedural schedule that was established by the Attorney Examiner of the Public Utilities Commission of Ohio ("Commission") by entry issued August 7, 2015. The existing

¹ Those 13 intervenors are: Appalachian Peace and Justice Network, Electric Power Supply Association, Environmental Defense Fund, Environmental Law & Policy Center, IGS Energy, Office of the Ohio Consumers' Counsel, Ohio Environmental Council, Ohio Hospital Association, Ohio Manufacturers' Association Energy Group, Ohio Partners for Affordable Energy, PJM Power Providers, Retail Energy Supply Association, and Sierra Club. Herein the 13 intervenors are referred to as "Joint Movants."

procedural schedule and the Joint Movants’ requested modifications to the procedural schedule are as follows:

Event	Current Schedule	Requested Schedule
Deadline for motions to intervene	August 21, 2015	October 16, 2015
Last day to serve discovery requests, except notices for deposition	September 4, 2015	October 30, 2015
Deadline for intervenor testimony	September 11, 2015	November 6, 2015
Deadline for Staff testimony	September 18, 2015	November 13, 2015
Procedural Conference	September 22, 2015	November 17, 2015
Evidentiary Hearing	September 28, 2015	November 23, 2015

On August 19, 2015, Ohio Power Company (“AEP Ohio” or “the Company”) filed its memorandum contra the Joint Movants’ motion to extend the procedural schedule. None of AEP Ohio’s arguments is convincing. Moreover, recent events in another Commission proceeding – the FirstEnergy electric security plan (“ESP”) IV proceeding² – further substantiate and justify the Joint Movants’ request.

I. AEP Ohio again argues that this proceeding must move quickly, although the Commission has not accepted that argument.

AEP Ohio claims in its memorandum contra that a prompt Commission decision is “critically important” to bring alleged benefits to its customers from its proposed power purchase agreement (“PPA”).³ This is a repeated claim from the Company.⁴ In AEP Ohio’s Memorandum Contra, the Company provides nine bullet points listing the benefits of the

² *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO.

³ AEP Ohio’s Memorandum Contra at 4-5.

⁴ AEP Ohio claimed a need for quick Commission action in its original application (page 6), filed on October 3, 2014. AEP Ohio also asked for expedited Commission review in its amended application (page 9), filed on May 15, 2015. Additionally, AEP Ohio claimed time is of the essence for this proceeding in its Memorandum in Opposition to Intervenors’ Motions to Establish a Procedural Schedule, filed on May 27, 2015.

proposed PPA to the public⁵ and, given those benefits, intimates that the public will be harmed by the requested extension. Needless to say, the Joint Movants do not share AEP Ohio's view that the Rider PPA benefits the public, nor are the Joint Movants conceding the point that the Rider PPA will ever produce benefits for the public. The issue raised by the Joint Movants' motion is whether the two-month extension sought harms the public. The first three bullet points listed in the AEP Ohio Memorandum Contra actually support granting the extension, if judged purely on the impact to the public. The three bullet points states:

- The PPAs will help stabilize volatile market-based rates by smoothing out severe increases and decreases in market price.
- The PPAs will provide a credit on customers' bills if, as expected, wholesale rates trend upward.
- The PPAs will help ease the ongoing transition to competition by providing a hedge against price fluctuations, something the market has failed to provide.

Although AEP Ohio asserts these facts as providing customer benefits, AEP's own projections demonstrate that charges will be assessed under the Rider PPA.⁶ In fact, the basis for the argument that ratepayer guarantees are needed to prevent the plants covered by the Rider PPA from being closed by AEP Ohio is that they are facing losses. Thus, the statement that delaying the implementation of Rider PPA by two months could decrease the market price for the retail customers is incorrect, assuming AEP Ohio's statements on the financial conditions are correct. Similarly, so long as the Rider PPA is a charge to customers, it will not offset rising capacity prices. Finally, so long as the Rider PPA is a charge to customers, not only will the Rider PPA not hedge the impact of rising capacity costs, it will exacerbate it.

⁵ AEP Ohio's Memorandum Contra at 4-5.

⁶ See, Pearce Direct Testimony at 12 and Exhibit KDP-2.

The remaining six bullet points address the potential benefits of Rider PPA (including, increased Commission authority, a decrease in fuel diversity, and the long-term impact on the Ohio economy) do not appear to be affected by a two-month extension of the hearing. AEP Ohio's memorandum contra raises nothing new, suggesting further that a hearing beginning in November as opposed to the end of September would not make any decisive difference as to the fate of the PPA plants. Also, there is no reason to suddenly expedite this proceeding; however, there are several important reasons for moving this proceeding forward at a more reasonable pace.

There are serious questions regarding the alleged benefits of the proposed PPA, particularly since the Commission itself has already found that the Company's prior PPA proposal would not bring forth such benefits during the term of AEP's ESP III plan (2015-2018).⁷ All parties should have the opportunity to explore the many issues raised by the Company's proposal, as substantially amended a few months ago, and have adequate time to prepare and present their evidence. The Joint Movants explained that, for multiple reasons, the current schedule will not allow many parties to this proceeding adequate time to prepare. As the Commission noted in the recent Entry in the FirstEnergy ESP IV hearing, "Commission proceedings depend heavily on expert testimony prepared for a specific Commission proceeding by both utilities and intervenors."⁸ The following sections demonstrate why an additional two months are necessary to permit intervenors to prepare their expert testimony and cross-examination. Without such time, intervenors will be prejudiced.

⁷ *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 Nos. 13-2385-EL-SSO, et al. Opinion and Order (February 25, 2015).

⁸ FirstEnergy ESP IV, *supra*, Entry at 11 (July 22, 2015).

II. A reasonable and justified extension of time has been requested by the Joint Movants to allow all parties a real opportunity to retain experts, examine discovery, prepare testimony, and prepare cross-examination.

AEP Ohio claims that the Joint Movants are seeking unwarranted procedural delays.⁹ This is simply incorrect. The Joint Movants have requested a fair and sufficient opportunity to investigate, prepare and present their evidence in this proceeding. With the issuance of the scheduling entry on August 7th, the parties have been given roughly one month to locate and retain expert witnesses who are available and for those expert witnesses to review the application and discovery, and to prepare testimony and cross-examination. That is not an easy task, given the complex nature of the issues involved and the abbreviated lead time, and in some cases may be impossible. Many Joint Movants do not have “in-house” experts available to them, and have to retain outside experts, many of whom may already be engaged in pending projects and/or hearings. Some of the Joint Movants have encountered difficulty in retaining experts with the current schedule.¹⁰ For example, as reflected in the attached affidavit, one experienced expert will not be able to complete the necessary work in the time allotted, although he has affirmed that, under the requested extension, he would be able to complete the necessary work and testify.

The Commission should also understand that the Joint Movants have not been sitting by idly. Most of the Joint Movants were active participants in AEP Ohio’s ESP III proceeding in 2013-2015 when the concept of a PPA was first raised, explored, and litigated. Most of the Joint Movants are current active participants in the FirstEnergy ESP IV proceeding, which began in 2014 and will continue through 2015. Many of the Joint Movants are presenting expert witnesses in that proceeding and those experts cannot be available to participate in this AEP

⁹ AEP Ohio’s Memorandum Contra at 6.

¹⁰ See, e.g., Lanzalotta Affidavit, attached as Exhibit A. Mr. Lanzalotta is in Florida and we are making arrangements to submit a signed and notarized affidavit soon.

Ohio case under the current schedule. Also, the Joint Movants have actively sought a procedural schedule for this matter that will allow all parties ample notice of the schedule and ample opportunity to investigate, retain experts, review discovery, prepare testimony and cross-examination, and present their evidence in this proceeding.

III. The current schedule will not allow the parties to adequately evaluate the capacity auction results and forecloses meaningful discovery related thereto.

The Joint Movants cited to the PJM Interconnection LLC auctions as a central reason why the current procedural schedule is problematic.¹¹ AEP Ohio has claimed that the Joint Movants do not need an extension of the procedural schedule because the results of the 2018/2019 Base Residual Auction results and the other two transitional auctions will be known by September 9 (two days before the intervenor testimony deadline of September 11), and the results of all three auctions can be made a part of the record and fully considered by the Commission.¹² The auction results are important information for the Commission's consideration in this matter. What AEP Ohio has ignored is that the parties not only want to know the auction results, but also seek the opportunity to conduct discovery and potentially provide testimony related thereto. For instance, intervenors will want to know if AEP Ohio participated in the auctions, which ones, and whether AEP Ohio's bids for the plants with proposed rate payer guarantees cleared the auctions. PJM will not publicly publish this information so discovery is the only manner to ascertain this information. Additionally, intervenor witnesses may well need to review these results and related discovery responses in order to appropriately respond to these auction results in their testimony. The current procedural schedule will not allow that opportunity because some of the auctions will take place after the

¹¹ Joint Movants' Motion at 3-6.

¹² AEP Ohio's Memorandum Contra at 3.

discovery cut-off date and just before the deadline.¹³ The Commission too will likely want more in-depth information regarding the auctions, and certainly more than just the results. The new auctions implement the new capacity assurance programs which may have long term effects on the cost projections. AEP Ohio's participation in the auctions is extremely relevant to the question of the near-term economic viability of the power plants in the proposed PPA. The Commission should allow the parties this important opportunity and the extension requested by the Joint Movants will allow for that to take place.

IV. The current schedule squarely conflicts with the FirstEnergy ESP hearing.

Among the other reasons cited by the Joint Movants for changing the procedural schedule is the fact that numerous parties in this case are also involved in the FirstEnergy ESP proceeding, and the hearing in that case is scheduled to begin on August 31, 2015.¹⁴ The Joint Movants stated that the hearing in the FirstEnergy ESP proceeding will last at least four weeks, conflicting with the adopted schedule for this case.¹⁵

Shortly after the Joint Movants filed the extension request, a prehearing conference was held on August 18, 2015, in the FirstEnergy ESP case. At that time, a schedule for the witnesses was discussed. It is clear, now, that the 19 FirstEnergy witnesses are expected to testify throughout September 2015. The 32 intervenor witnesses in the FirstEnergy ESP case are not expected to even begin testifying until the very end of September 2015 and are expected to last

¹³ Even if a party were to propound written discovery on AEP Ohio prior to the later auctions, the responses would likely not be received prior to the intervenor testimony deadline, and there would be not opportunity at all to conduct any follow-up written discovery. If written discovery is precluded, parties could inquire during depositions, depending upon when they are scheduled. However, this would unfairly leave parties at the mercy of the memory of the company witnesses.

¹⁴ Joint Movants' Motion at 2.

¹⁵ Joint Movant's Motion at 2-3.

through the first two weeks in October. Plus, there could be Staff witnesses who testify, there may be a rebuttal phase and, most assuredly, there will be written briefs.

AEP Ohio contends that the Joint Movants “are more than capable of handling both this case and the FirstEnergy case” at the same time.¹⁶ AEP Ohio claims that, because many parties are represented by large law firms or have multiple counsel of record, they have the counsel for more than one case in close succession. AEP Ohio completely overlooks the highly specialized nature of public utility law and the extremely complex nature of the issues involved in both of the cases. Thus, these cases involve issues requiring utility experience. Also, like AEP’s team of counsel, the counsel of record for each of the Joint Movants are working as teams for their respective clients, sharing hearing duties and cross-examination of witnesses. In addition, it is particularly important to note that neither hearing is expected to be short.¹⁷ The parties cannot adequately and meaningfully prepare for and litigate both of these significant and complex cases at the same time. With the additional information about the hearing schedule for the FirstEnergy ESP case, it is clear that a change in the procedural schedule in this matter is reasonable and justified.

A useful case in point may be the position of the Environmental Law & Policy Center (“ELPC”). AEP Ohio asserts, based on a review of ELPC’s website, that ELPC has two attorneys working in Ohio.¹⁸ In fact, one of these attorneys – Rob Kelter – is based in Chicago,

¹⁶ AEP Ohio’s Memorandum Contra at 10.

¹⁷ AEP Ohio noted that the Commission held AEP’s ESP II hearing and FirstEnergy’s ESP III simultaneously in mid-2012. AEP Memorandum Contra at 11. The two situations are not akin. The AEP ESP II hearing was lengthy and involved many witnesses, like the FirstEnergy ESP IV case will be. However, the FirstEnergy ESP III hearing was smaller than what is anticipated for this AEP case. The FirstEnergy ESP III application was filed with a stipulation and its hearing was only four days in length, including the rebuttal phase, and only 12 witnesses testified. AEP Ohio is calling 11 of its own witnesses for this instant case and it is expected that there will be many intervenor witnesses and Staff witnesses as well.

¹⁸ AEP Ohio’s Memorandum Contra at 12.

Illinois; leads ELPC's entire Energy Efficiency Program across nine Midwestern states; and is listed on the ELPC website as among key staff working in Illinois, Michigan, and Wisconsin in addition to Ohio.¹⁹ While ELPC may be forced to utilize this attorney in order to have any chance at handling two proceedings with conflicting schedules, to do so will require drawing his efforts away from matters such as active litigation in other states and the rollout of a major new energy efficiency program in Illinois, and to undertake significant duplicative effort by having two attorneys familiar with each of the myriad overlapping issues raised by the FirstEnergy and AEP Ohio PPA proposals. And in the end, that inefficient allocation of resources may be too costly for ELPC to consider fully participating in both cases.

AEP Ohio dismisses that as the loss of one "relatively small intervenor." But ELPC is planning to participate actively in the AEP Ohio proceeding, including by presenting testimony from one or more witnesses (assuming the schedule allows), and all of the Joint Movants are closely coordinating with each other to ensure that each offers independent evidence and arguments that do not simply reproduce others' input. If ELPC does not fill its own role, then other intervenors will have to stretch their own limited resources even further to do so – as AEP Ohio itself said, "no Intervenor is on its own."²⁰ Therefore, leaving in place the current schedule would unduly prejudice all of the intervenors and the completeness of the record in this case, an issue the Commission should certainly weigh heavily in determining whether to grant the Motion for Extension.

¹⁹ See <http://elpc.org/states>; <http://elpc.org/staff/robert-kelter>.

²⁰ AEP Ohio's Memorandum Contra at 12.

V. Conclusion

The Commission should recognize the significant difficulties caused by the current procedural schedule. Parties will not be able to retain experts, take and defend depositions, adequately prepare intervenor testimony and cross-examination, fully evaluate the PJM auction results, and participate in the hearing given the conflict that exists between the recently established procedural schedule in this matter and the FirstEnergy ESP proceeding. Other than sweeping claims that time is of the essence and that benefits may be lost, AEP Ohio has not explained why a less-than-2-month extension is so problematic. The Joint Movants, however, have presented multiple reasons why the current schedule causes significant difficulties for numerous parties. Accordingly, Joint Movants respectfully request that the Commission modify the procedural schedule in this matter as requested in the Joint Movants' Motion for Extension.

Respectfully submitted,



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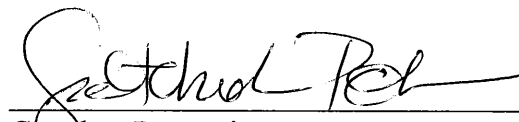
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CERTIFICATE OF SERVICE

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 21st day of August 2015 upon all persons/entities listed below:

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Gretchen Petrucci

**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.)

AFFIDAVIT OF PETER LANZALOTTA

1. I am a consultant providing expertise regarding electric energy issues, particularly related to the planning, operation, and maintenance of electric transmission and distribution facilities.
2. I have provided expert testimony to the Public Utilities Commission of Ohio on behalf of the Sierra Club regarding transmission issues related to a power purchase agreement proposed by FirstEnergy in Case No. 14-1297-EL-SSO.
3. On Monday, August 17, 2015, I spoke with Madeline Fleisher, an attorney for the Environmental Law & Policy Center, about the possibility of providing testimony regarding transmission issues raised by a similar power purchase agreement (?PPA?) proposed by American Electric Power in Case No. 14-1693-EL-RDR.
4. Ms. Fleisher informed me that under the current schedule for the case, intervenor testimony would be due on September 11, 2015. I explained that I would be unable to prepare testimony by that date because of conflicts with existing professional commitments, including the need to prepare written testimony on behalf of the New Jersey Rate Counsel regarding electric system operating issues. Additionally, I would likely not have sufficient time to conduct discovery, prepare a load flow analysis, and prepare testimony about the results of that analysis in that timeframe, which would provide important information regarding the validity of AEP's assertions regarding potential transmission costs stemming from the closure of the plants proposed to be included in its PPA.
5. Ms. Fleisher also informed me that she and other intervening parties have filed a motion seeking an extension of the deadline for filing intervenor testimony until November 6, 2015. I believe this would provide adequate time in which to prepare testimony by that date.

Sworn this 21st day of August, 2015, in Sarasota County, Florida.

/s/ Peter Lanzaotta
Peter Lanzaotta
Principal,
Lanzaotta & Associates LLC

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

Summary: Reply -- Joint Reply to The Ohio Power Company's Memorandum Contra electronically filed by Mrs. Gretchen L. Petrucci on behalf of Appalachian Peace and Justice Network and Electric Power Supply Association and Environmental Defense Fund and Environmental Law & Policy Center and IGS Energy and Ohio Consumers' Counsel and Ohio Environmental Council and Ohio Hospital Association and Ohio Manufacturers' Association Energy Group and Ohio Partners for Affordable Energy and PJM Power Providers Group and Retail Energy Supply Association and Sierra Club