

**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.)

**MOTION FOR EXPEDITED DISCOVERY AND FOR AN EXPEDITED RULING
BY THE ENVIRONMENTAL LAW & POLICY CENTER**

On August 7, 2015, the Attorney Examiner assigned by the Public Utilities Commission of Ohio ("Commission") to hear this proceeding issued a procedural schedule. That procedural schedule is as follows:

Event	Current Schedule
Deadline for motions to intervene	August 21, 2015
Last day to serve discovery requests, except notices for deposition	September 4, 2015
Deadline for intervenor testimony	September 11, 2015
Deadline for Staff testimony	September 18, 2015
Procedural Conference	September 22, 2015
Evidentiary Hearing	September 28, 2015

The procedural schedule did not alter the timeframe for responding to written discovery requests – interrogatories, requests for production of documents and requests for admissions. Rules 4901-1-19, 4901-1-20 and 4901-1-22, Ohio Administrative Code, require that responses to those written discovery requests be provided within 20 days after service of the request.

Depositions for the witnesses of Ohio Power Company (“AEP Ohio” or “Company”) have now been noticed in this case for September 15 through September 25, 2015. Under the existing schedule, intervenors may not receive responses to discovery requests served after August 25 in time to review those responses in preparation for depositions. Even putting aside deposition preparation, under the current schedule it is possible that intervenors will not receive discovery responses filed in accordance with the September 4 deadline until September 24, leaving just four days before the evidentiary hearing to review those responses and prepare to cross-examine AEP Ohio’s witnesses. Although AEP Ohio will currently have no opportunity to serve written discovery itself regarding intervenor testimony by September 11, should the Company later be granted that opportunity then it might be in a similar quandary.

In light of the highly compressed existing schedule, the Environmental Law & Policy Center (“ELPC”) requests that the time frame for responding to written discovery requests be shortened to seven days. While ELPC continues to support the pending August 12, 2015 Motion for an Extension of the Attorney Examiner’s Procedural Schedule as necessary to allow adequate time to grapple with the many complex issues raised by AEP Ohio’s Application, granting this request will give all parties at least a minimal opportunity to utilize discovery responses in preparing for depositions or cross-examination at hearing. Additionally, ELPC requests an expedited ruling due to the limited time remaining in the case schedule.

Further grounds supporting this request are set forth in the attached Memorandum in Support.

Dated: September 3, 2015

Respectfully submitted,

/s/ Madeline Fleisher

Madeline Fleisher (0091862)

Staff Attorney

Environmental Law & Policy Center

21 W. Broad St., Suite 500

Columbus, OH 43215

P: 614-670-5586

F: 614-487-7510

mfleisher@elpc.org

**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.)

**MEMORANDUM IN SUPPORT OF THE MOTION FOR EXPEDITED
DISCOVERY AND FOR AN EXPEDITED RULING**

I. INTRODUCTION

Rules 4901-1-19, 4901-1-20 and 4901-1-22, Ohio Administrative Code, require that responses to interrogatories, requests for production of documents and requests for admissions (“written discovery requests”) be provided within 20 days after service of the request, unless otherwise ordered by the Commission. Those rules also expressly allow for shorter response times. In this matter, no other time frame for written discovery responses has been established. On August 7, 2015, the Attorney Examiner established a procedural schedule as follows:

Event	Current Schedule
Deadline for motions to intervene	August 21, 2015
Last day to serve discovery requests, except notices for deposition	September 4, 2015
Deadline for intervenor testimony	September 11, 2015
Deadline for Staff testimony	September 18, 2015
Procedural Conference	September 22, 2015
Evidentiary Hearing	September 28, 2015

II. ARGUMENT

A. **The utility of discovery through written discovery requests is limited under the current procedural schedule because some responses will not be received in time for parties to use them in case preparation.**

The current schedule effectively imposes an earlier limit on parties for serving written discovery than theoretically permitted by the Attorney Examiner's August 7, 2015 entry. Any written discovery requests served on September 4 will not have to be responded to until September 24, which will not allow (a) an intervenor to incorporate the information into its expert testimony (due September 11), (b) allow the Staff to incorporate the information into its testimony (due September 11), or (c) allow an intervenor to utilize the information in preparing for depositions of AEP Ohio witnesses (currently noticed for September 15-25). This issue is particularly concerning to the extent it prematurely cuts off intervenors' ability to serve follow-up discovery requests regarding earlier responses by the Company; for example, intervenors will not have received responses to requests filed on August 8 – immediately after issuance of the existing schedule – until August 28, leaving only a few days to analyze those responses and serve follow-up requests before the written discovery deadline.

Shortening the time for responding to written discovery requests to seven days would allow at least minimal time for the parties to make use of AEP Ohio's responses in preparing for hearing. For example, parties would receive responses to requests filed up through September 2 with at least one day to incorporate them into intervenor testimony. Similarly, the parties would receive all discovery responses by Friday, September 11, allowing three days to review them before depositions commence on September 15. While ELPC continues to view this schedule as far too compressed to allow for an

adequate exploration of the complex and weighty issues raised by AEP's application for a decades-long power purchase agreement for over 3000 MW of generation, granting this Motion would mean that discovery requests served in compliance with the existing deadline could at least theoretically be of some use to the parties. The current 20-day timeframe for responding to written discovery requests is not compatible with either the expedited schedule currently in place or even the more relaxed but still expedited schedule proposed by thirteen intervenors (including ELPC) in the pending motion filed August 12, 2015.¹

B. Seven days for discovery responses is reasonable and justified.

In light of the compressed schedule, ELPC requests that the time frame for responding to written discovery requests be shortened to seven days. A seven-day turnaround time frame is not unusual in Commission proceedings. In fact, in June 2015, the Attorney Examiner in the FirstEnergy electric security plan proceeding concluded that seven days for discovery responses was an appropriate shortened time frame.² This request will allow all parties the opportunity to serve written discovery requests and submit follow-up written discovery requests before the discovery cut-off date and before

¹ ELPC, as well as a number of other intervenors in this matter, have jointly requested an extension of the procedural schedule for other reasons. ELPC continues to support that extension motion, but submits this motion separately due to the time constraints caused by the current schedule. If the procedural schedule is extended as requested, ELPC still asserts that a shortened timeframe for responding to written discovery requests is appropriate so that there is ample opportunity to conduct multiple rounds of discovery before any new cut-off date.

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, June 2, 2015 Prehearing Conference, Transcript at 92-93.

the testimony deadlines. A seven-day turn-around on discovery responses will also allow the parties an opportunity to follow up during depositions on those discovery requests.

While AEP Ohio may assert that seven days is not sufficient time to prepare discovery responses, we point to the Company's Memorandum Contra the pending motion to extend the schedule, in which AEP Ohio asserted that intervenor "attorneys who are such effective and experienced advocates, who have ample in-house resources to support them," should be able to simultaneously handle the ongoing hearing in Case No. 14-1297-EL-SSO and preparation for this proceeding.³ To the extent that statement is true, it should apply no less to AEP Ohio than to the intervenors, and the Company must be required to fulfill its obligation to respond to discovery requests on a timeline that is consistent with the extremely compressed schedule in this proceeding. And unless AEP Ohio can offer some specific grounds why it is unable to provide discovery responses in a seven-day period, it is intervenors' right under Ohio Admin. Code 4901-1-19, 4901-1-20, and 4901-1-22 to serve written discovery requests in accordance with the schedule issued by the Attorney Examiner.

III. CONCLUSION

As discussed above, the current 20-day timeframe for responding to discovery requests is incompatible with the highly compressed procedural schedule for this case. The Commission should shorten the timeframe to seven days. ELPC has contacted AEP Ohio and the intervenors to determine if any of them objects to the issuance of a ruling on this motion without the filing of memoranda. ELPC cannot certify that no one objected to the issuance of an immediate ruling.

Respectfully submitted,

/s/ Madeline Fleisher

Madeline Fleisher (0091862)

Staff Attorney

Environmental Law & Policy Center

21 W. Broad St., Suite 500

Columbus, OH 43215

P: 614-670-5586

F: 614-487-7510

mfleisher@elpc.org

³ Ohio Power Company's Mem. Contra Intervenor's Motion for an Extension of the Procedural Schedule (Aug. 19, 2015) at 13.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion* was served via regular electronic transmission to the persons listed below, on September 3, 2015.

/s/ Madeline Fleisher

Madeline Fleisher

SERVICE LIST

stnourse@aep.com	scott.campbell@thompsonhine.com
mjsatterwhite@aep.com	stephanie.chmiel@thompsonhine.com
msmckenzie@aep.com	ricks@ohanet.org
sam@mwncmh.com	bojko@carpenterlipps.com
fdarr@mwncmh.com	William.michael@occ.ohio.gov
mpritchard@mwncmh.com	Jodi.bair@occ.ohio.gov
myurick@taftlaw.com;	Kevin.moore@occ.gov
mkurtz@bkllawfirm.com	DStinson@bricker.com
dboehm@bkllawfirm.com	laurac@chappelleconsulting.net
jkylar@bkllawfirm.com	gthomas@gtpowergroup.com
tony.mendoza@sierraclub.org;	stheodore@epsa.org
schmidt@sppgrp.com	mdortch@kravitzllc.com
tdougherty@theoec.org	msmalz@ohiopoveritylaw.org
joliker@igsenergy.com	jfinnigan@edf.org
mswhite@igsenergy.com	cmooney@ohiopartners.org
jennifer.spinosi@directenergy.com	mhowardpetricoff@vorys.com
ghull@eckertseamans.com	mjsettineri@vorys.com
haydenm@firstenergycorp.com	glpetrucci@vorys.com
jmcdermott@firstenergycorp.com	werner.margard@puc.state.oh.us
scasto@firstenergycorp.com	steven.beeler@puc.state.oh.us
tobrien@bricker.com	twilliams@snhslaw.com
jlang@calfee.com	rsahli@columbus.rr.com
talexander@calfee.com	charris@spilmanlaw.com
jeffrey.mayes@monitoringanalytics.com	hussey@carpenterlipps.com
todonnell@dickinsonwright.com	kristen.henry@sierraclub.org
lhawrot@spilmanlaw.com	msoules@earthjustice.org
dwilliamson@spilmanlaw.com	sfisk@earthjustice.org
kurt.helfrich@thompsonhine.com	mfleisher@elpc.org

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/3/2015 11:33:43 AM

in

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

Summary: Motion and Memorandum in Support for Expedited Discovery and for an Expedited Ruling electronically filed by Madeline Fleisher on behalf of Environmental Law and Policy Center