

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio )	
Power Company for Authority to Establish )	Case No. 16-1852-EL-SSO
a Standard Service Offer Pursuant To )	
R.C. 4928.143, in the Form of an Electric )	
Security Plan. )	
)	
In the Matter of the Application of )	
Ohio Power Company for Approval of )	Case No. 16-1853-EL-AAM
Certain Accounting Authority. )	

**BUCKEYE POWER INC.'S COMBINED  
MOTION FOR LEAVE TO AMEND MOTION TO INTERVENE  
AND AMENDED MOTION TO INTERVENE**

On October 31, 2016, pursuant to Ohio Revised Code § 4903.221 and Ohio Administrative Code 4901-1-11, Buckeye Power, Inc. (“Buckeye”) moved to intervene in this proceeding. At that time, Buckeye explained its real and substantial interests in this proceeding, and how those interests may be adversely affected by its outcome. Buckeye further explained that no other party to the proceeding could adequately represent Buckeye’s interests, and Buckeye requested that the Commission grant its Motion to Intervene.

Buckeye wishes to inform the Commission of certain changed circumstances with respect to the facts supporting Buckeye’s intervention in this proceeding. Buckeye, therefore, seeks leave to amend its Motion to Intervene pursuant to Ohio Adm. Code 4901-1-06. As shown below, these changed circumstances constitute the requisite good cause for allowing Buckeye to amend its Motion to Intervene. As explained more fully in the attached Memorandum in Support, despite these changed circumstances, Buckeye’s interest in this proceeding remains real and substantial. The timing of Buckeye’s Motion is proper as the Commission has yet to rule on its original Motion to Intervene and the time to seek intervention has not yet run. Thus, Buckeye

respectfully requests that the Commission grant Buckeye's Motion for Leave to Amend its Motion to Intervene and its Amended Motion to Intervene.

Respectfully submitted,

/s/ Stephanie M. Chmiel

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## **MEMORANDUM IN SUPPORT**

### **I. Background.**

Ohio Power Company (“AEP Ohio”) filed an application on December 20, 2013 in Case Nos. 13-2385-EL-SSO et al. to establish its third electric security plan (the “ESP III Proceeding”). On February 25, 2015, the Commission modified and approved the ESP III application, allowing AEP Ohio to establish a Power Purchase Agreement Rider (“PPA Rider”), but setting it at an initial placeholder rate of zero. Subsequently, on May 15, 2015, AEP Ohio submitted an amended application in Case Nos. 14-1693-EL-RDR et al. seeking Commission approval allowing AEP Ohio to include in the PPA Rider the net financial impacts of an affiliate Power Purchase Agreement (“PPA”) between AEP Ohio and AEP Generation Resources, Inc. (“AEPGR”) and AEP Ohio’s entitlement to a portion of the electrical output of generating units owned by the Ohio Valley Electric Corporation (“OVEC”) (the “PPA Proceeding”).

Buckeye intervened in the PPA Proceeding because AEP Ohio proposed including Unit No. 1 at the Cardinal Generating Station (“Cardinal Station”) in the affiliate PPA and the PPA Rider. AEPGR owns Unit No. 1 at Cardinal Station, and Buckeye owns Unit Nos. 2 and 3 at Cardinal Station. Furthermore, Buckeye is a party to the Inter-Company Power Agreement (“ICPA”), which governs the generating units owned by OVEC. AEP Ohio also proposed to include its contractual entitlement to a portion of the output of these OVEC generating units in the PPA Rider.

Buckeye was a signatory to the Joint Stipulation and Recommendation dated December 14, 2015 (the “Stipulation”) and filed in the PPA Proceeding. The Commission approved the Stipulation (with modifications) on March 31, 2016. As part of the approved Stipulation, AEP

Ohio agreed to file an application to request modifications to and extend the term of ESP III.<sup>1</sup>

Pursuant to the terms of the Stipulation and the Commission's order approving it, AEP Ohio filed its application to amend and extend its ESP III in the docket designed for the ESP III Proceeding. On September 7, 2016, the attorney examiners in the above-captioned matter directed AEP Ohio to refile its application to amend and extend ESP III in a separate docket. AEP Ohio received an extension through November 23, 2016 to file its application. On October 31, 2016, Buckeye moved to intervene in the new ESP III docket.

On November 3, 2016, three days after Buckeye filed its original Motion to Intervene in the instant matter, the Commission issued a Second Entry on Rehearing in the PPA Proceeding. In this entry, the Commission modified the Stipulation to remove the affiliate PPA from the PPA Rider, reducing the PPA Rider to a recovery mechanism for only AEP Ohio's OVEC entitlement and certain renewable generation projects, while retaining mandatory retirement, repowering, or refueling obligations for units, including Cardinal Station Unit No. 1, that no longer receive cost support. Buckeye found this modification to the PPA Rider unacceptable, and on December 5, 2016, Buckeye filed an Application for Rehearing in the PPA Proceeding while simultaneously withdrawing from the Stipulation pursuant to the terms thereof.

In the meantime, on November 23, 2016, AEP Ohio refiled its application to amend and extend ESP III in the above-captioned docket. AEP Ohio's refiled application modified the cost recovery mechanism for its OVEC entitlement, and eliminated entirely the cost recovery mechanism for those units originally proposed for inclusion in the affiliate PPA, including Cardinal Station Unit No. 1. As a result, Buckeye's interest in this proceeding was modified, but not eliminated.

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<sup>1</sup> See *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into An Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Joint Stip. at 10-13.

On February 7, 2017, the Attorney Examiner in this proceeding issued an Entry establishing a procedural schedule, with the deadline for filing Motions to Intervene set as March 1, 2017. In light of Buckeye's withdrawal from the Stipulation and the modifications to AEP Ohio's application described above, Buckeye feels it necessary to amend its original Motion to Intervene and requests that the Commission grant it leave to do so, and further requests that the Commission grant its Motion to Intervene despite the changed circumstances.

## **II. Legal Standards for Amendment and Intervention.**

Pursuant to RC 4903.221, any person who may be adversely affected by a Commission proceeding may intervene in such proceeding. In deciding whether to permit intervention, the Commission shall consider:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues; and
- (5) The extent to which the person's interest is represented by existing parties.

Ohio Adm. Code 4901-1-11. Buckeye continues to meet this standard.

Ohio Adm. Code 4901-1-06 states, "Unless otherwise provided by law, the commission, the legal director, the deputy legal director, or an attorney examiner may, upon their own motion or upon motion of any party for good cause shown, authorize the amendment of any ... pleading filed with the commission."

Buckeye's withdrawal from the Stipulation constitutes "good cause" for allowing Buckeye to amend its Motion to Intervene. Buckeye had been a party to the Stipulation at the

time of its original Motion to Intervene. Buckeye, having now withdrawn from the Stipulation, now has different, but no less valid, interests in this proceeding, and these interest should be reflected in this proceeding's record. Thus, the Commission should grant Buckeye leave to amend its Motion to Intervene.

Furthermore, Buckeye should be granted intervention because it has a real and substantial interest in this proceeding. Although Buckeye is no longer a signatory to the Stipulation which precipitated the filing of this application and this proceeding, Buckeye and AEP Ohio (among others) are parties to the ICPA, under which OVEC is governed and its generating facilities operated. In its most recent application, AEP Ohio has proposed for the first time to use its OVEC entitlement to serve Standard Service Offer load. As a party to the ICPA, Buckeye has an interest in the treatment of AEP Ohio's OVEC entitlement. In particular, the proposed rate treatment could have an impact on AEP Ohio's continued ability to invest in OVEC's generating facilities and to meet its obligations under the ICPA.

AEP Ohio's proposal includes procedures by which AEP Ohio will continue the procurement of generation service for its non-shopping load through an auction process. Buckeye has participated in these auctions as a wholesale supplier in the past and plans to continue to do so in the future. Thus, Buckeye has an interest in this aspect of AEP Ohio's application as well.

Therefore, despite the change in circumstances since Buckeye filed its original Motion to Intervene, Buckeye maintains a clear interest in the proceedings at hand. Buckeye's interests will not be adequately addressed by other parties. Buckeye's participation will not unduly prolong or delay the proceeding. This Motion is timely, as the Commission has set a deadline of

March 1, 2017 for Motions to Intervene, and Buckeye has met that deadline both with its original Motion to Intervene and this Amended Motion to Intervene.

### **III. Conclusion**

For the aforementioned reasons, Buckeye satisfies the criteria set forth in RC 4903.221, Ohio Adm. Code 4901-1-06, and Ohio Adm. Code 4901-1-11. Therefore, Buckeye's Motion for Leave to Amend its Motion to Intervene and its Amended Motion to Intervene should be granted.

Respectfully submitted,

/s/ Stephanie M. Chmiel

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Combined Motion for Leave to Amend Motion to Intervene and Amended Motion to Intervene of Buckeye Power, Inc. has been served by electronic mail delivery upon the persons listed on the attached service list on this 27th day of February, 2017.

/s/ Stephanie M. Chmiel

Stephanie M. Chmiel



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**Case No(s). 16-1852-EL-SSO, 16-1853-EL-AAM**

Summary: Motion for Leave to Amend Motion to Intervene (with Amended Motion to Intervene and Memo in Support) electronically filed by Ms. Stephanie M Chmiel on behalf of Buckeye Power, Inc.