

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Long-Term)	
Forecast Report of Ohio Power)	Case No. 18-501-EL-FOR
Company and Related Matters.)	

**OHIO POWER COMPANY’S RESPONSE IN OPPOSITION TO THE REQUEST OF
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL TO CALL AND CONTINUE
THE HEARING IN THIS CASE INDEFINITELY PENDING A FINAL ORDER BY THE
FEDERAL ENERGY REGULATORY COMMISSION IN DOCKETS
EL18-178-000, EL18-1314-000, EL18-1314-001, & EL16-49-000**

I. INTRODUCTION

On October 9, 2018, the Office of the Ohio Consumers’ Counsel (OCC) filed a document in this proceeding styled as an “Opposition to AEP’s Proposed Schedule and Memorandum in Response to the PUCO Staff’s Motion for a Hearing.” Part IIA of OCC’s Opposition includes a new request for the Public Utilities Commission of Ohio (Commission) to call and continue the hearing in this case “to await” what OCC describes as “a highly relevant ruling by the Federal Energy Regulatory Commission (FERC) that will affect the power plant market and electric consumers.”¹ For the following reasons, the Commission should deny OCC’s procedurally improper and misguided request for an indefinite suspension and delay of this important and time-sensitive proceeding.

II. BACKGROUND

In this case (*LTFR-Need* case), Ohio Power Company (“AEP Ohio” or the “Company”) submitted an amendment to its 2018 Long-Term Forecast Report to demonstrate the need for at

¹ OCC Opp. at 2.

least 900 megawatts of renewable energy projects in Ohio, including at least 400 MW nameplate capacity for solar energy projects. In the subsequently filed *Renewable Generation Rider*² and *Green Tariff*³ cases, the Company continues to follow through on its prior commitment to develop renewable-energy projects in Ohio by seeking an order from the Commission approving the inclusion in the Company's Renewable Generation Rider of two solar energy resources totaling approximately 400 MW of nameplate capacity solar energy, as well as the creation of a new Green Power Tariff, pursuant to which customers may purchase renewable energy credits.

The Company filed this *LTFR-Need* case on September 19, 2018. As is routine in matters before the Commission, the Company's initial filing included a proposed procedural schedule.⁴ The Company sought an expedited schedule, proposing a hearing at the end of November 2018, so that the Company's proposed renewable projects may take advantage of certain federal tax credits that impact the price of renewable energy products and are only available for a limited time.⁵ The Company filed the *Renewable Generation Rider* and *Green Tariff* cases soon thereafter, on September 27, 2018, and sought the very same expedited procedural schedule for the same compelling reasons.⁶ That is, for construction to begin in time to take full advantage of available investment tax credits and thereby enable customers to receive the full benefits associated with the Highland Solar and Willowbrook Solar projects, the Company requested that the Commission, after a late-November hearing, promptly issue

² Case No. 18-1392-EL-RDR.

³ Case No. 18-1393-EL-ATA.

⁴ See *Long-Term Forecast* Amendment at 11.

⁵ *Id.* at 8; see also Testimony of William A. Allen at 13-15.

⁶ *Renewable Generation Rider* and *Green Tariff* Application at 6-7.

decisions finding that the Company has made the requisite need showing in this *LTFR-Need* case, and approving the Application in the *Renewable Generation Rider* and *Green Tariff* cases. Given the close interrelationship between this *LTFR-Need* proceeding and the subsequently filed *Renewable Generation Rider* and *Green Tariff* cases, the Company also filed, contemporaneously with its Application in the latter two cases, a motion to consolidate all three proceedings.

On September 21, 2018, Staff filed a very short motion in the *LTFR-Need* case, agreeing that a hearing was appropriate, but asking the Commission to call and continue the hearing for an unspecified amount of time “to allow the time needed to fully develop the record in this complicated and relatively novel case.”⁷ The Company filed a Memorandum Contra Staff’s Motion on October 8, noting that there is an urgent need to proceed with deliberate speed – based on the impending expiration of the relevant federal tax credits – because the tax benefits “are significant and meaningfully affect the basic economics of any renewable facility being constructed in the next several years.”⁸ The Company acknowledged the complexities of the case, but urged the Commission to entertain Staff’s proposal to extend the statutory deadline for conducting a hearing only if the Commission granted the Company’s consolidation request and adopted a procedural schedule generally consistent with the 90-day LTFR deadline.⁹

On October 9, 2018, OCC filed a document in the *LTFR-Need* case styled not as a motion, but as an “Opposition to AEP’s Proposed Schedule and Memorandum in Response to the PUCO Staff’s Motion for a Hearing.” And instead of simply opposing the points raised by

⁷ Staff Motion at 2.

⁸ AEP Ohio Mem. Contra at 2.

⁹ *Id.* at 4.

Staff and the Company in their filings, OCC also included a brand-new request for the Commission to call and continue the hearing in this case “to await” what OCC describes as “a highly relevant ruling by the Federal Energy Regulatory Commission that will affect the power plant market and electric consumers”¹⁰ in FERC Docket Nos. EL18-178-000, EL18-1314-000, EL18-1314-0001, & EL16-49-000 (*MOPR Docket*). Noting that PJM Interconnection, L.L.C. has “asked” FERC in these proceedings to issue a final order by March 15, 2019, OCC “recommends that any hearing on the ‘need’ for these renewable power plants await a final order in the FERC proceeding.”¹¹ Thus, the substance of Part II.A of OCC’s pleading is clearly a motion.

For the reasons described more fully below, the Company opposes OCC’s procedurally irregular request to indefinitely suspend this time-sensitive proceeding. What OCC seeks is an effectively open-ended delay that would require this Commission to stand down from its statutory obligation to review and assess need for beneficial renewable-energy projects that the Company previously committed to undertake pursuant to a Commission-approved stipulation. The Commission need not and should not await an unknown and unpredictable FERC action in unrelated FERC dockets before fulfilling the duties that the General Assembly has imposed upon it to review and approve need and rate treatment for new proposed generation projects. And the delay OCC seeks is more likely to harm – not benefit – the consumers OCC represents, by impairing the availability of soon-to-expire federal tax credits that could substantially increase the net financial benefit of the projects to those consumers. For all of these reasons, as further explained below, AEP Ohio respectfully requests that the Commission reject OCC’s proposal to

¹⁰ OCC Opp. at 2.

¹¹ *Id.*

suspend this proceeding, consolidate the *LTFR-Need*, *Renewable Generation Rider*, and *Green Tariff* cases, and adopt an expedited schedule.

III. ARGUMENT

A. OCC's request to suspend is untimely.

As is routine in Commission proceedings such as this one, the Company included a proposed procedural schedule in its original filing on September 19, 2018. Instead of promptly filing a motion to stay, however, based on the pending FERC dockets that OCC believes justify an indefinite suspension of these proceedings, OCC waited twenty days to lodge its affirmative request for a stay within the text of its October 9, 2018 filing. OCC did so even though its October 9 filing was styled as an "Opposition" to prior filings by the Company and Staff that nowhere mention these FERC dockets. The Commission should reject OCC's request to suspend as an untimely motion for affirmative relief, improperly disguised as a brief in opposition. In any case, AEP Ohio would like to further respond to this new request and new argument that is not related to Staff's motion for hearing.

B. OCC's request to call and indefinitely continue the hearing in this time-sensitive proceeding to await a FERC final order is misguided and would not benefit the Ohio customers that OCC represents.

OCC complains that the Company's expedited schedule proposes an "unfair process for consumers."¹² Yet the indefinite delay that OCC seeks to inject into this time-sensitive proceeding is likely to harm Ohio consumers by negating the significant financial advantage of soon-to-expire federal tax credits that the Company is diligently seeking to utilize in order to increase the net financial benefit (to consumers) of the solar projects at issue. If OCC's open-ended suspension of these proceedings is adopted, the "unfair process" that will result is this

¹² OCC Opp. at 5.

Commission's abdication of its statutory duties for no good reason, while it sits on its hands and awaits final action (who knows when) by FERC.

The timing of FERC's ruling is wide open and PJM's request for ruling is non-binding. Indeed, in PJM's filing it explicitly acknowledged that "there is generally no specific deadline for Commission action" in making its request for a 2019 ruling. *MOPR Docket*, FERC Docket EL18-178, PJM's Answer in support of the Organization of PJM States, Inc.'s motion for extension of filing deadline (Aug. 9, 2018). The *MOPR Docket* is highly contested, has a high likelihood of being challenged on appeal and could be unresolved for a significant period of time. More generally, it is widely known that PJM is continuously making changes to its highly regulated "market construct" and waiting on the rules to be settled is a vain task. Thus, it is clear that suspending this case in anticipation of the capacity market update *du jour* will implicitly cause AEP Ohio's filing to "die on the vine" – as is apparently OCC's goal. Rather, the Commission should give AEP Ohio its "day in Court" and permit the Company an opportunity to demonstrate the financial and economic benefits associated with additional renewable facilities – which will remain net positive even in the remote circumstances that the proposed projects do not yield any capacity revenue due to the ultimate outcome of FERC's *MOPR Docket*. Given that the Commission has sanctioned AEP Ohio's commitment to pursue development of 900 MW of renewable resources in the PPA Rider Cases and only recently in the ESP IV proceeding – not to mention the fact that the Commission has a duty to implement R.C. 4928.143(B)(2)(c) – it would be a travesty for the Commission to indefinitely suspend this proceeding.

IV. CONCLUSION

For the foregoing reasons, AEP Ohio respectfully requests that the Commission deny OCC's untimely and meritless request to indefinitely postpone the hearing in this case. Given the soon-to-expire tax credits described in the Company's filings, the Ohio consumers that OCC

represents will benefit from diligence and deliberate speed, not from an indefinite and open-ended delay.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse (0046705), Counsel of Record
Christen M. Blend (0086881)
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1608
(614) 716-1915
Fax: (614) 716-2950
Email: stnourse@aep.com
cblend@aep.com

Eric B. Gallon (0071465)
L. Bradfield Hughes (0070997)
Porter Wright Morris & Arthur, LLP
41 South High Street, 30th Floor
Columbus, Ohio 43215
Telephone: (614) 227-2190
(614) 227-2053
Fax: (614) 227-2100
Email: egallon@porterwright.com
bhughes@porterwright.com

Christopher L. Miller (0063259)
Jason M. Rafeld (0079809)
Ice Miller LLP
250 West Street
Columbus, Ohio 43215
Telephone: (614) 462-5033
(614) 462-1145
Fax: (614) 222-4707
Email: christopher.miller@icemiller.com
jason.rafeld@icemiller.com

(willing to accept service by e-mail)

Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 15th day of October, 2018, via electronic transmission.

/s/ Steven T. Nourse

Steven T. Nourse

EMAIL SERVICE LIST

thomas.mcnamee@ohioattorneygeneral.gov
mkurtz@bkllawfirm.com
kboehm@bkllawfirm.com
jkylercohn@bkllawfirm.com
mpritchard@mwncmh.com
fdarr@mwncmh.com
cmooney@opae.org
rsahli@columbus.rr.com
tony.mendoza@sierraclub.com
bojko@carpenterlipps.com
dressel@carpenterlipps.com
joliker@igsenergy.com
mnugent@igsenergy.com
Maureen.willis@occ.ohio.gov
William.michael@occ.ohio.gov
Christopher.healey@occ.ohio.gov
paul@carpenterlipps.com
mleppla@theOEC.org
rdove@attorneydove.com
whitt@whitt-sturtevant.com
glover@whitt-sturtevant.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/15/2018 11:22:30 AM

in

Case No(s). 18-0501-EL-FOR

Summary: Response - Ohio Power Company's Response in Opposition to the Request of the Office of the Ohio Consumers' Counsel to Call and Continue the Hearing in this Case Indefinitely Pending a Final Order by the Federal Energy Regulatory Commission in Dockets EL18-178-000, EL18-1314-000, EL18-1314-001 & EL16-49-000 electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company