

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2018 Long-Term Forecast    )  
Report on Behalf of Ohio Power Company    ) Case No. 18-501-EL-FOR  
and Related Matters                            )

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**MOTION TO STRIKE  
AND REPLY TO AEP OHIO'S MEMORANDUM CONTRA  
MOTION FOR A HEARING**

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Pursuant to Ohio Adm. Code 4901-1-06 and 4901-1-12, the Ohio Manufacturers' Association Energy Group (OMAEG) respectfully moves the Public Utilities Commission of Ohio (Commission) to strike the Ohio Power Company's (AEP Ohio) Memorandum Contra Motion for Hearing, filed on October 9, 2018.<sup>1</sup> Despite AEP Ohio's attempt to cast this filing as a memorandum contra a request by Staff of the Commission (Staff), it is actually a procedurally improper reply to the Memoranda Contra AEP Ohio's Motion to Consolidate filed by OMAEG<sup>2</sup> and the Office of the Ohio Consumers' Counsel (OCC).<sup>3</sup> As explained in the memorandum in support attached hereto, AEP Ohio is prohibited by the Commission's rules from filing a reply to the memoranda contra given that AEP Ohio sought expedited treatment of its Motion. Nonetheless, AEP Ohio filed a reply anyway, disguising it as a memorandum contra the Staff's pleading.

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<sup>1</sup> See Ohio Power Company's Memorandum Contra Motion for Hearing (October 9, 2018) (AEP Ohio Memorandum Contra).

<sup>2</sup> See Memorandum Contra Motion to Consolidate the Proceeding (October 4, 2018) (OMAEG Memorandum Contra).

<sup>3</sup> See Memorandum Contra the Motion of Ohio Power Company to Consolidate Proceedings Which Would Result in an Unfair Process for Consumers (October 4, 2018) (OCC Memorandum Contra).

The Commission should reject this attempt by AEP Ohio to manipulate the Commission's rules to allow for additional argument beyond that which those rules permit. Alternatively, if AEP Ohio's Memorandum Contra is not stricken, OMAEG requests that its filing be considered OMAEG's Reply to AEP Ohio's Memorandum Contra to the extent that AEP Ohio's Memorandum Contra actually opposes Staff's Motion for a Hearing. A memorandum in support is attached.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**I:     INTRODUCTION AND PROCEDURAL HISTORY**

On April 16, 2018, the Ohio Power Company (AEP Ohio) filed its Long-Term Forecast Report (LTFR) with the Public Utilities Commission of Ohio (Commission) in this case,<sup>4</sup> and supplemented its LTFR on June 26, 2018.<sup>5</sup> On September 19, 2018, AEP Ohio filed its Amendment to the 2018 Long-Term Forecast Report, wherein it requested that the Commission permit AEP Ohio to develop at least 900 MW of renewable energy projects in Ohio (the costs for which would be recovered from customers).<sup>6</sup> Eight days later, AEP Ohio commenced a rider proceeding to receive cost recovery associated with two solar energy projects from customers through the Renewable Generation Rider (Rider RGR) in Case Nos. 18-1392-EL-RDR, et al. (Cost Recovery Case). In the same Application, AEP Ohio requested the creation of a “Green Tariff” whereby shopping and non-shopping customers could choose to support renewable projects by purchasing green power. Simultaneously with that Application, AEP Ohio filed a Motion to Consolidate this case with the Cost Recovery Case (Motion to Consolidate).<sup>7</sup>

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<sup>4</sup> In the Matter of the 2018 Long-Term Forecast Report on behalf of AEP Ohio (or Ohio Power), pursuant to Section 4935.04, Ohio Revised Code (April 16, 2018).

<sup>5</sup> Ohio Power Company’s Supplemental Long-Term Forecast Report Filing (69 kV facilities) (June 26, 2018).

<sup>6</sup> Amendment to the 2018 Long-Term Forecast Report of Ohio Power Company at 2-3 (September 19, 2018) (Amendment).

<sup>7</sup> See Motion to Consolidate (September 27, 2018).

Prior to AEP Ohio filing its Motion to Consolidate and Application for cost recovery in Case Nos. 18-1392-EL-RDR, et al., Staff filed its Motion for a Hearing in the LRFR case, which is the motion that AEP Ohio purports to be opposing in the subject pleading.

## **II. ARGUMENT**

### **A. AEP Ohio's Memorandum Contra is Actually a Procedurally Improper Reply and Should Be Stricken.**

When a party files a motion before the Commission, the Commission's rules afford that party the option of seeking an expedited ruling on its motion.<sup>8</sup> If a party requests such treatment without affirming that no other parties to the case object, any other party that opposes the motion must file a memorandum contra within an expedited period of seven days (as opposed to the typical 15 days that the rules allow).<sup>9</sup> However, if the moving party requests expedited treatment and shortens the response time for others, the rules do not allow the moving party to file a reply memorandum should another party oppose the motion that requested expedited treatment unless the Commission, legal director, deputy legal director, or attorney examiner requests a reply.<sup>10</sup>

When AEP Ohio filed its Motion to Consolidate, it requested expedited consideration by the Commission, pursuant to Ohio Adm. Code 4901-1-12.<sup>11</sup> In doing so, it was unable to certify that no party objected to expedited consideration of the Motion to Consolidate.<sup>12</sup> No law or Commission rule required AEP Ohio to request expedited consideration of the Motion to Consolidate. Yet, AEP Ohio did so, presumably because it wanted the Commission to rule on the Motion to Consolidate quickly. But in making such request Ohio Adm. Code 4901-1-12(C)

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<sup>8</sup> See Ohio Adm. Code 4901-1-12(C).

<sup>9</sup> Id.; Ohio Adm. Code 4901-1-12(B)(1).

<sup>10</sup> Ohio Adm. Code 4901-1-12(C).

<sup>11</sup> See Motion to Consolidate at 2.

<sup>12</sup> See Motion to Consolidate.

explicitly prohibits AEP Ohio from filing a reply should any other party oppose the Motion to Consolidate, as OMAEG and OCC did. Thus, pursuant to the Commission's rules, briefing is complete on AEP Ohio's Motion to Consolidate and the parties should be awaiting the Commission's decision.

Nonetheless, through its purported response to Staff's Motion for Hearing, AEP Ohio takes the opportunity to improperly reply to the arguments raised by OMAEG and OCC, concerning AEP Ohio's Motion to Consolidate. The Commission should strike AEP Ohio's flagrant attempt to sidestep the Commission's rules and present additional arguments on its Motion to Consolidate.

Specifically, AEP Ohio showed its hand at the beginning of the Memorandum Contra when it conceded that it did not actually oppose the proposals contained in Staff's Motion for a Hearing, so long as consolidation is granted.<sup>13</sup> Then, despite the fact that Staff's Motion for a Hearing does not mention consolidation at all (and was, in fact, filed before AEP Ohio even requested consolidation), AEP Ohio devotes all but two paragraphs of its "Law and Argument" section to arguing the merits of its Motion to Consolidate.<sup>14</sup>

Perhaps recognizing that it does not have an opportunity under the Commission's rules to reply to the arguments of OMAEG or OCC directly, AEP Ohio submits its responsive arguments without reference to OMAEG or OCC. AEP Ohio's reiteration of its position on consolidation, however, undeniably contains direct replies to the arguments set forth by OMAEG and OCC. For example, OMAEG and OCC argued that R.C. 4928.143 prohibited consolidation in this case.<sup>15</sup> In its "Memorandum Contra" to Staff, AEP Ohio attempts to rebut the merits of that

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<sup>13</sup> See AEP Ohio Memorandum Contra at 2.

<sup>14</sup> See *id.* at 2-4.

<sup>15</sup> OMAEG Memorandum Contra at 3-4; OCC Memorandum Contra at 4-5.

claim by citing Commission precedent interpreting R.C. 4928.143 and arguing for an alternative interpretation of Ohio law and Commission rules than the one proposed by OMAEG and OCC.<sup>16</sup> AEP also replied to OMAEG and OCC's argument regarding Ohio Adm. Code 4901:5-5-06(B),<sup>17</sup> arguing that it has complied with that rule and that the interpretation of the rule advanced by OMAEG and OCC is "illogical, inefficient, bureaucratic, and prejudicial to the economic interests of AEP Ohio's customers."<sup>18</sup>

The fact that AEP Ohio does not cite the arguments to which it replies does not make this less of a reply to OMAEG and OCC. Plain and simple, AEP Ohio has identified arguments that it desired to counter and filed a reply in the form of a memorandum contra a different, unrelated motion. If parties are permitted to circumnavigate the requirements of Ohio Adm. Code 4901-1-12(C) so easily, the consequences of filing a motion with a request for expedited treatment and shortening other parties' response time diminish. Parties would have little disincentive from requesting expedited treatment of most or all motions, because parties will be able to impose a burden of turning around responsive pleadings in a limited timeframe without any commensurate, tangible consequence.

For these reasons, the Commission should strike AEP Ohio's purported Memorandum Contra from the record and disregard the arguments concerning its Motion to Consolidate contained therein. AEP Ohio made the choice to request expedited treatment when it filed its Motion to Consolidate, and now must live with that choice and its forfeiture of the right to file a reply. Striking this pleading would enforce the Commission's rules and send a message that

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<sup>16</sup> AEP Memorandum Contra at 2-4.

<sup>17</sup> See OMAEG Memorandum Contra at 4; OCC Memorandum Contra at 4-5.

<sup>18</sup> AEP Memorandum Contra at 4.

parties cannot avoid rules that disadvantage them by filing a prohibited pleading under a different title.

**B. Alternatively, OMAEG Files This Pleading as a Reply to AEP Ohio's Opposition to Staff's Request for a Hearing, to the Extent that AEP Ohio Opposes Staff's Request.**

As discussed above, AEP Ohio does not appear to fully oppose Staff's Motion for Hearing, especially if AEP Ohio receives the consolidation that it desires. But AEP Ohio does suggest that Staff's proposal violates the spirit of Ohio law by requesting that the Commission call-and-continue the required hearing on this matter so that a full record may be developed.<sup>19</sup> OMAEG supports Staff's proposal, as it would allow all parties to conduct discovery regarding AEP Ohio's proposals and develop a more complete understanding of the issues at stake in this proceeding. All parties to this case as well as AEP Ohio's customers would be served by allowing the parties to develop a complete record to assist the Commission in determining whether AEP Ohio's proposal complies with Ohio law and best serves customers.

Moreover, AEP Ohio's contention that Staff's proposal takes lightly or bypasses through a procedural maneuver the requirements of R.C. 4935.04(D)(3)<sup>20</sup> is undermined by the fact that in the paragraph immediately following that contention, AEP Ohio states that it is willing to go along with Staff's proposal, as long as the Commission grants AEP Ohio's Motion to Consolidate. OMAEG agrees that the requirements of Ohio law should not be taken lightly, and does not believe that Staff's proposal does so. If AEP Ohio truly believed that Staff's proposal ignores Ohio law, it would seem inappropriate to consent to such violation in exchange for the consolidation of two cases. The Commission should reject the proposition that a utility can use

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<sup>19</sup> Id. at 1-2.

<sup>20</sup> Id. at 1.

the parties' rights to due process in this proceeding as leverage to extract favorable rulings from the Commission.

AEP Ohio also facially states that the Commission should proceed with "deliberate speed" in order to take advantage of tax credits that have been in place since the "Protecting Americans from Tax Hikes Act" was signed into law in 2015.<sup>21</sup> This problem is, therefore, one of AEP Ohio's own making. AEP Ohio could have filed this request at any time, and chose to wait until now. It cannot be permitted to delay its own proceeding until the tax credits near expiration and then use its delay to expedite the proceedings and deny the parties' rights to a full and fair proceeding.

### III. CONCLUSION

AEP Ohio's Memorandum Contra was nothing more than a brazen attempt to file a responsive pleading that was unauthorized. As such, the Commission should grant this Motion to Strike. Alternatively, the Commission should reject AEP Ohio's opposition to Staff's Motion for Hearing (to the extent AEP Ohio even opposes the Motion for a Hearing) and grant Staff's request to afford the parties' an opportunity to develop a full, complete record in this case.

Respectfully submitted,

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<sup>21</sup> Direct Testimony of William A. Allen at 13-15 (September 19, 2018).



**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail October 16, 2018.

/s/ Brian W. Dressel  
Brian W. Dressel

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**10/16/2018 5:11:37 PM**

**in**

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

Summary: Motion Motion to Strike and Reply to AEP Ohio's Memorandum Contra Motion For A Hearing electronically filed by Mr. Brian W Dressel on behalf of The Ohio Manufacturers' Association Energy Group