

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2018 Long-Term Forecast     )  
Report and Related Matters.                             )     Case No. 18-0501-EL-FOR

In the Matter of the Application of Ohio Power     )  
Company for Approval to Enter into Renewable     )     Case No. 18-1392-EL-RDR  
Energy Purchase Agreements for Inclusion in     )  
the Renewable Generation Rider.                     )

In the Matter of the Application of Ohio Power     )     Case No. 18-1393-EL-ATA  
Company for Approval to Amend its Tariffs.         )

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**INTERLOCUTORY APPEAL  
REQUEST FOR CERTIFICATION TO FULL COMMISSION  
AND APPLICATION FOR REVIEW  
REGARDING A FAIR PROCESS FOR AEP'S CUSTOMERS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL  
AND  
THE OHIO MANUFACTURERS' ASSOCIATION  
AND  
THE KROGER CO.**

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The Ohio Power Company ("AEP") seeks government approval to add even more subsidy charges to the electric bills of its 1.5 million captive customers. AEP, a monopoly distribution utility, would charge captive customers for 900 megawatts of renewable power plants (instead of having power plants built in the competitive market that the Ohio legislature favors). In an attempt to thwart the competitive generation market, AEP asked the PUCO to rush to judgment and give its approval to develop renewable power plants now, without due process. In response, the PUCO's ruling last week created an expedited process that disserves customers' interests in developing recommendations to the PUCO. And the ruling disserves the PUCO's interest in hearing those recommendations for its ultimate decision-making.

Prior to the ruling on a case process, the PUCO Staff did not abide AEP's proposal for a rush to judgment. It rightly described AEP's subsidy proposal as "potentially have[ing] very significant consequences, financial and environmental, for decades."<sup>1</sup> The PUCO Staff's proposal would have at least enabled a process with time for parties to investigate the "novel and complex" issues – issues that we say can harm consumers and the competitive markets that benefit consumers. While the PUCO Staff's proposed process was still expedited, its suggested process would be more protective of customers because it requires a hard look at a utility's request to increase rates to customers by hundreds of millions of dollars.

OCC generally supported the PUCO Staff's proposed schedule over the rush to judgment AEP insisted upon.<sup>2</sup> The PUCO Staff noted that the hearing could be called and continued to meet the 90 day deadline under the statute, as the PUCO did in the Turning Point case.<sup>3</sup> And, the day after the Entry, the Ohio Coal Association filed a pleading that included its concern about a rushed process: "The OCA \*\*\* maintains that the issues before the Commission in this matter are far too important to warrant such expedited consideration."<sup>4</sup>

Unfortunately, under the October 22, 2018 Attorney Examiner's Entry ("Entry"), there will not be a fair process. Parties' case preparation, as enabled by R.C. 4903.082 and Ohio Adm. Code 4901-1-16 et seq., has been severely truncated. Parties are being

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<sup>1</sup> Motion for a Hearing and Memorandum in Support Submitted on Behalf of the Public Utilities Commission of Ohio Staff at 2 (Sept. 21, 2018) ("Staff Motion").

<sup>2</sup> See, e.g., OCC's Opposition to AEP's Proposed Schedule and Memorandum in Response to the PUCO's Staff's Motion for a Hearing (Oct. 9, 2018).

<sup>3</sup> Staff Motion at 2. See *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case No. 10-501-EL-FOR et al., Entry (Jan. 26, 2011).

<sup>4</sup> Ohio Coal Association Motion to Intervene at 12 (Oct. 23, 2018).

required to file testimony within a mere month (November 21st) of the ruling. And they will have to proceed to hearing two weeks later (December 4th) to address one of the crucial issues in these cases – whether there is a public need for the renewable generation. The shortened time period and notice of a hearing is making it very difficult to engage expert witnesses who are already scheduled for other hearings or commitments during the week of December 4<sup>th</sup> and/or who have explained that they cannot research, analyze, and draft testimony within a four week time period due to previously scheduled projects.

To further exacerbate the concerns, AEP recently indicated that, as part of the PUCO's determination of whether there is a need for the monopoly utility to develop power plants, it intends to present not only the six witnesses who filed testimony in the forecast proceeding, but also the testimony of two other witnesses. The other two AEP witnesses will present the economic impact study filed only in the rider proceeding.

The PUCO's compressed time frame – to resolve issues potentially costing Ohioans hundreds of millions, if not billions, of dollars – is unjust, unreasonable, and departs from past precedent. The expedited and compressed procedural schedule limits due process and unduly prejudices intervenors (including customer stakeholders), in violation of Ohio law and PUCO rules.

Additionally, the PUCO consolidated the forecast case (where AEP tries to establish need for a generic 900 MW of renewable power plants) with its rider case (where AEP tries to establish charges to customers for two specific renewable power plants, totaling 400 MW). This consolidation conflicts with the PUCO's directive<sup>5</sup> that whether a monopoly utility needs to build specific generation plants must be proven by

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<sup>5</sup> *In re Application of Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Elec. Security Plan*, Case No. 16-1852-EL-SSO, Opinion & Order ¶227 (Apr. 25, 2018); *see also id.*, Second Entry on Rehearing ¶227 (Aug. 1, 2018).

the utility in a filing for a rider (the charge to customers). And it conflicts with the statute, R.C. 4928.143(B)(2)(c). That law requires a monopoly utility to prove there is a need for each generating facility to be owned or operated by the utility, before the PUCO can approve a non-bypassable charge to customers as a provision in a utility's electric security plan.

Therefore, the Office of the Ohio Consumers' Counsel ("OCC"), the statutory representative of AEP's 1.3 million residential consumers, the Ohio Manufacturers' Association Energy Group ("OMA"), and the Kroger Co. ("Kroger") (collectively, "Joint Appellants") file this Interlocutory Appeal<sup>6</sup> of the October 22 Entry. The full Commission should protect consumers from an unfair case process by reversing and modifying the October 22nd ruling which is unfair to customers and those parties trying to analyze AEP's filings (and is to the advantage of AEP).

Joint Appellants respectfully request that the PUCO review this appeal, without the need for certification of the appeal by the Legal Director, Deputy Legal Director, or Attorney Examiner. The ruling effectively terminates Joint Appellants' rights to meaningfully participate in the proceeding, satisfying Ohio Adm. Code, 4901-1-15(A)(2).

If the interlocutory appeal is determined not to satisfy Ohio Adm. Code 4901-1-15(A)(2), an attorney examiner should nonetheless certify the appeal to the full Commission for review, under Ohio Admin. Code 4901-1-15(B). The Interlocutory Appeal should be certified<sup>7</sup> to the PUCO because the Entry represents both a departure from past precedent and presents a new or novel question of interpretation, law, or policy.

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<sup>6</sup> The appeal is filed pursuant to Ohio Admin. Code 4901-1-15.

<sup>7</sup> Ohio Admin. Code 4901-1-15(B).

Additionally, an immediate determination by the PUCO is needed to prevent the likelihood of undue prejudice to AEP's consumers and other members of the public.

Joint Appellants request that the PUCO review the October 22nd Entry and modify or reverse it. Ohio consumers, who may end up footing the bill for hundreds of millions, if not billions, of dollars for monopoly AEP's renewable power plants, deserve a fair process as intended by R.C. 4903.082 and Ohio Adm. Code 4901-1-16 et seq. A fair process means sufficient time to facilitate meaningful participation by all parties. A fair process means time to develop a complete record of all relevant facts and opinions. In this regard, the PUCO should adopt a procedural schedule consistent with the schedule recommended by OCC.<sup>8</sup> That proposed schedule accommodates adequate case preparation and would await a ruling by FERC on subsidies that can affect the economics of AEP's proposal (as even AEP admits). Alternatively, the PUCO should adopt its Staff's proposal to call and continue the hearing in favor of time for case review, with a schedule to be developed later. That would be consistent with the PUCO's Entry in the Turning Point case (Case No. 10-501-EL-FOR), where the PUCO approved a call and continue, at the request of its staff (absent objections by AEP), and later established a procedural schedule providing for testimony and hearing one year after the call and continue.<sup>9</sup>

The support for these arguments is more fully explained in the attached Memorandum in Support.

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<sup>8</sup> See Case No. 18-0501-EL-FOR, OCC's Opposition to AEP's Proposed Schedule and Memorandum in Response to the PUCO Staff's Motion for a Hearing (October 9, 2018).

<sup>9</sup> *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case No. 10-501-EL-FOR et al. Entry (Mar. 29, 2012).

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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**I. BACKGROUND**

On September 19, 2018, AEP filed an amendment to its 2018 Long-Term Forecast Report (“LTFR Case”). The filing is purportedly to show Ohio’s need for 900 MW of renewable power plants to be developed by a monopoly utility (AEP) under state regulation instead of in the competitive market.<sup>10</sup> In the amendment, AEP proposed a procedural schedule that asked the Public Utilities Commission of Ohio (“PUCO”) to rush to judgment in a large, complex case with far-reaching ramifications for Ohio consumers.<sup>11</sup> AEP’s proposal was unfair.

Shortly thereafter, the PUCO Staff filed a motion requesting a more deliberative process, where a hearing would be called and continued to allow parties to adequately investigate and prepare for the case.<sup>12</sup> Notably, the Staff’s call and continue approach was accepted by the PUCO, without AEP’s objection, in a previous forecast case where

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<sup>10</sup> See Entry at 3.

<sup>11</sup> Amendment to the 2018 Long-Term Forecast Report of Ohio Power Company at 11 (Sept. 9, 2018).

<sup>12</sup> See Staff Motion.

AEP had sought approval of a solar project called Turning Point.<sup>13</sup> As we note, the PUCO Staff's proposed schedule is a far better alternative for the parties' case preparation and the PUCO's decision making. And the Staff's approach is consistent with PUCO precedent in the Turning Point case.

On September 27, 2018, AEP filed an application seeking approval to charge consumers to subsidize two renewable generation plants totaling 400 MW ("Rider Case").<sup>14</sup> The same day, AEP filed a motion to consolidate the LTFR Case and the Rider Case.<sup>15</sup> OCC and OMA opposed AEP's motion to consolidate, and OCC opposed AEP's proposed schedule and responded to the Staff Motion.<sup>16</sup>

In the Entry, the Attorney Examiner granted AEP's motion to consolidate and largely adopted AEP's proposed procedural schedule.<sup>17</sup> In doing so, the Entry departed from past precedent with a ruling that presents a new or novel question of interpretation, law, or policy. Joint Appellants request that the PUCO review the Entry and modify or reverse the Attorney Examiner's ruling.

## **II. STANDARD OF REVIEW**

Under Ohio Adm. Code 4901-1-15(A), there are certain circumstances adversely affecting a party that allow the party to take an interlocutory appeal directly to the PUCO without the need for the appeal to be certified to the PUCO by the attorney examiner.

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<sup>13</sup> *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case No. 10-501-EL-FOR et al, Entry (Jan. 26, 2011).

<sup>14</sup> See Entry at 3-4.

<sup>15</sup> See Entry at 4.

<sup>16</sup> See Entry at 5.

<sup>17</sup> See Entry.

Appeals can be taken without certification, inter alia, when an attorney examiner has terminated a party's right to participate in a proceeding.<sup>18</sup>

If a party does not satisfy the criteria in Ohio Adm. Code 4901-1-15(A), the PUCO's procedural rules nonetheless allow an interlocutory appeal to be taken as long as the attorney examiner certifies the appeal to the PUCO. The standard applicable to certifying such an appeal is "that the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure from past precedent and an immediate determination by the commission is needed to prevent the likelihood of undue prejudice ... to one or more of the parties, should the commission ultimately reverse the ruling in question."<sup>19</sup>

Upon consideration of the interlocutory appeal under either of these two subsections of Ohio Adm. Code 4901-1-15, the PUCO may affirm, reverse, or modify the ruling or dismiss the appeal.<sup>20</sup>

### **III. BECAUSE THIS APPEAL SATISFIES OHIO ADM. CODE 4901-1-15(A)(2), IT MAY BE TAKEN TO THE PUCO WITHOUT CERTIFICATION**

An interlocutory appeal may be taken directly to the PUCO without the need for the appeal to be certified to the PUCO by the attorney examiner if the Entry in question has terminated a party's right to participate in a proceeding.<sup>21</sup> By forcing parties to adhere to an unreasonable expedited procedural schedule, where testimony is due less than one month after the Entry, the attorney examiner has denied parties their due process rights,

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<sup>18</sup> See Ohio Admin. Code 4901-1-15(A)(2).

<sup>19</sup> Ohio Admin. Code 4901-1-15(B).

<sup>20</sup> Ohio Adm. Code 4901-1-15(E).

<sup>21</sup> See Ohio Admin. Code 4901-1-15(A)(2).

thus impairing parties' ability to protect the interests they represent. This is an effective termination of a parties' rights to participate fully in the proceeding with due process.

As an example of the effective termination of rights to meaningful participation in the case, on October 26, 2018, AEP notified the parties and the PUCO of its intent to bring an additional issue from the rider proceeding into the hearing regarding need. AEP has decided that the detailed "economic impact study performed by The Ohio State University (OSU) Professor Stephen Buser and co-authored by Regionomics LLC's Bill LaFayette" and related testimony should now be a part of the hearing regarding need. AEP asserts that the economic impact study titled "Impacts of Solar Plant Construction and Operation on the Ohio Economy" will supplement its "Long-Term Forecast Report Amendment and supporting testimony filed on September 27, 2018 in the LTFR Case, will provide additional evidence of the need for renewable projects being addressed in these consolidated cases and will assist the Commission in developing a complete record to decide that issue."

Accordingly, a mere three and a half weeks before intervenor testimony is due, AEP notified parties of its intent to include two new witnesses and their corresponding testimony and economic impact study, which will now be made a part of the December 4, 2018 evidentiary hearing. It is unreasonable to relegate intervenors to the difficulties of hiring an expert to review, model, and address a 38-page economic impact study in testimony or to conducting their own economic impact study for testimony, within a mere 18 business days. For the reasons stated herein, this interlocutory appeal satisfies Ohio Adm. Code 4901-1-15(A), and should go directly to the PUCO, without the need for certification.

#### IV. REQUEST FOR CERTIFICATION

The criteria for an appeal to be certified to the full PUCO,<sup>22</sup> which are also satisfied here, are as follows: does the appeal present a new or novel question of interpretation, law, or policy, or is it taken from a ruling which represents a departure from past precedent and, which requires immediate determination by the commission to prevent the likelihood of undue prejudice to one or more of the parties, should the commission ultimately reverse the ruling in question. As explained below, the Entry satisfies both of these criteria.

First, the PUCO ordered (in AEP's latest electric security plan extension case<sup>23</sup>) that the Rider Case is the appropriate forum to demonstrate there is a need for the renewables AEP committed to pursuing. Pursuing the need for these discrete projects, within the context of an abbreviated case, goes against that precedent. Thus, the Entry departs from this past precedent.

Second, the Entry also presents a new interpretation of Ohio law, because it appears to accept the notion that R.C. 4928.143(B)(2)(c) can be satisfied by showing a generalized need for renewable generation facilities (under a forecast case), as opposed to a specific need for a specific facility. But the statute requires AEP to prove that there is a specific need for a specific power plant involving the monopoly. It reads: "No such allowance for generating facility construction shall be authorized, however, unless the commission first determines in the proceeding that there is a need for *the facility . . .*."<sup>24</sup>

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<sup>22</sup> Ohio Admin. Code 4901-1-15(B).

<sup>23</sup> *In re Application of Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Elec. Security Plan*, Case No. 16-1852-EL-SSO, Opinion & Order ¶227 (Apr. 25, 2018); *see also id.*, Second Entry on Rehearing ¶227 (Aug. 1, 2018).

<sup>24</sup> R.C. 4928.143(B)(2)(c) (italics added).

Finally, because the ruling requires parties to move forward with testimony and a hearing, parties will be prejudiced if the PUCO ultimately reverses the ruling. Parties will have been required to comply with a procedurally deficient schedule and forced to go forward with their case presentation, only to be undone by a PUCO ruling. At that point, it will be too late to “take back” filed testimony or undo the cross-examination that is to occur at the December 4, 2018 hearing.

**A. The Entry represents a departure from past precedent that will harm consumers.**

The PUCO has already ruled that AEP must prove that there is a “need” under R.C. 4928.143(B)(2)(c) for each individual renewable power plant involving a utility monopoly, and that this “need” showing must be made in a rider case, not a forecast case. In the PUCO’s own words: “In each EL-RDR proceeding proposing a specific project, AEP Ohio will be required to demonstrate need for each proposed facility and to satisfy all of the other criteria in R.C. 4928.143(B)(2)(c) . . . .”<sup>25</sup>

Thus, AEP’s attempt to demonstrate a blanket “need” for 900 MW of renewable power plants in the LTFR Case is barred by the PUCO’s Order in AEP’s ESP extension case. And AEP’s proposal in the LTFR Case has nothing to do with the ultimate issue that must be resolved in the Rider Case—whether there is a “need” for the specific power plants: AEP’s proposed 300 MW Highland Solar facility or AEP’s proposed 100 MW Willowbrook Solar facility.<sup>26</sup>

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<sup>25</sup> *In re Application of Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Elec. Security Plan*, Case No. 16-1852-EL-SSO, Opinion & Order ¶ 227 (Apr. 25, 2018); *see also id.*, Second Entry on Rehearing ¶ 50 (Aug. 1, 2018) (“AEP Ohio will be required to demonstrate, in each EL-RDR proceeding proposing a specific project, need for the proposed project and to satisfy all other requirements of R.C. 4928.143(B)(2)(c).”).

<sup>26</sup> Case No. 18-1392-EL-RDR, Application at 1-2 (Sept. 27, 2018).

Additionally, the Entry departs from past precedent regarding the schedule. In AEP's 2010 long-term forecast case, AEP sought approval of charges to customers for solar energy, commonly referred to as the "Turning Point" project.<sup>27</sup> That case involved a proposal for less than 50 MW of solar energy resources – less than six percent of the 900 MW for which AEP now seeks a finding of need.<sup>28</sup> In that case, the PUCO Staff recommended a call and continue process just like it recommended here.<sup>29</sup> The PUCO granted its Staff Motion<sup>30</sup> (with no objection by AEP) and later, only after parties were given a chance to analyze the filing, established a case schedule.<sup>31</sup> Under that case schedule, testimony was filed by intervenors more than 15 months after AEP's long-term forecast report.<sup>32</sup>

**B. The Entry presents a new or novel question of interpretation, law, or policy that will harm consumers.**

The PUCO is a creature of statute and may exercise only that jurisdiction conferred upon it by the General Assembly.<sup>33</sup> It must follow the law.<sup>34</sup> Further, the PUCO should respect its own precedents in its decisions to assure the predictability that is essential in all areas of the law, including administrative law.<sup>35</sup>

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<sup>27</sup> *In re Long-Term Forecast Report of Ohio Power Co.*, Case No. 10-501-EL-FOR.

<sup>28</sup> *Id.*, Opinion & Order at 2 (Jan. 9, 2013).

<sup>29</sup> *In re Long-Term Forecast Report of Ohio Power Co.*, Case No. 10-501-EL-FOR, Staff Motion for hearing and Memorandum in Support (Jan. 12, 2011).

<sup>30</sup> *Id.*, Entry (Jan. 26, 2011).

<sup>31</sup> *Id.*, Entry (Feb. 29, 2012).

<sup>32</sup> *See* Case No. 10-501-EL-FOR, Docket Card (supplement to long term forecast report filed December 20, 2010 and testimony filed March 21, 2012).

<sup>33</sup> *See, e.g., Columbus S. Power Co. v. PUCO*, 67 Ohio St.3d 535, 537 (1993).

<sup>34</sup> *See id.*; *see also OCC v. PUCO*, 10 Ohio St.3d 49, 51 (1984).

<sup>35</sup> *See OCC v. PUCO*, 10 Ohio St.3d 49, 51 (1984).



The Entry allows AEP to show a generic need as part of the LTFR Case. A little over two months before, the PUCO ordered that the required forum to evaluate need was the Rider Case.<sup>36</sup> The most analogous case to that here – the Turning Point case<sup>37</sup> – involved intervenors filing testimony 15 months after AEP’s long-term forecast report was filed and followed the PUCO Staff’s call and continue approach.<sup>38</sup> But under this Entry, intervenors would be forced to file testimony approximately two months after AEP’s amendment to its long-term forecast report and less than three and a half weeks after AEP amended its filing by adding additional issues and testimony to its case in chief.<sup>39</sup> This is a far cry from the more fair and judicious approach followed in the Turning Point case, which adopted the Staff’s call and continue approach, followed by investigation, and testimony and hearing over a year later.

The Entry’s departure from such recent and analogous precedent raises the new or novel question of interpretation, law, or policy of whether the Entry safeguards the predictability that is essential in all areas of the law, including administrative law. In fact, it does not. Parties are entitled to rely on the PUCO’s orders requiring that need be shown in the Rider Case. And parties are entitled to believe that like cases will be treated similarly. But the Entry does not treat this case similarly to the way the Turning Point case was treated, as it relates to the schedule set. The Entry’s rejection of the call and

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<sup>36</sup> *In re Application of Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Elec. Security Plan*, Case No. 16-1852-EL-SSO, Opinion & Order ¶ 227 (Apr. 25, 2018); *see also id.*, Second Entry on Rehearing ¶ 50 (Aug. 1, 2018) (“AEP Ohio will be required to demonstrate, in each EL-RDR proceeding proposing a specific project, need for the proposed project and to satisfy all other requirements of R.C. 4928.143(B)(2)(c).”).

<sup>37</sup> *In re Long-Term Forecast Report of Ohio Power Co.*, Case No. 10-501-EL-FOR.

<sup>38</sup> *See* Case No. 10-501-EL-FOR, Docket Card (supplement to long term forecast report filed December 20, 2010 and testimony filed March 21, 2012).

<sup>39</sup> *See* Entry.

continue approach used in Turning Point is that much more egregious given that the solar facility there (and thus the dollars that consumers would be charged to subsidize it) was much smaller (a tenth of the size of the two projects now being considered) than what AEP is seeking to charge consumers for here.

**C. An immediate determination is needed to prevent undue prejudice to consumers.**

Because the Entry requires parties to move forward with testimony and a hearing, parties will be prejudiced if the PUCO ultimately reverses the ruling. Parties will have been required to comply with a procedurally deficient schedule and forced to go forward with their case presentation, only to be undone by a PUCO ruling. At that point, it will be too late to “take back” filed testimony or undo the cross-examination that is to occur at the December 4, 2018 hearing (under the current schedule).

Further, the Entry will require parties to litigate the generic need for 900 MW of renewable generation (rather than the specific need for specific facilities) in an abbreviated forum and an incorrect forum per the PUCO’s directive in AEP’s recent ESP case (the LTFR Case rather than the Rider Case). Parties will be prejudiced if the PUCO ultimately reverses the ruling. They will have been required to litigate the wrong issue in the wrong forum, only to be undone by a PUCO ruling.

To prevent this prejudice, an immediate determination by the PUCO is necessary.

**V. APPLICATION FOR REVIEW**

This appeal should be granted or certified to the full PUCO because the Entry unlawfully and unreasonably consolidated two cases that are unrelated, contrary to precedent. Additionally, the procedural schedule adopted by the Entry is substantially inadequate and violates Intervenors’ due process rights.

The proposed schedule unreasonably limits discovery (discovery must be served within the next three weeks), contrary to the law (R.C. 4903.082) allowing all parties “ample rights of discovery.” The compressed discovery schedule is also contrary to PUCO rules (Ohio Adm. Code 4901-1-16(A)) that allow for discovery “to facilitate thorough and adequate preparation for participation in commission proceedings.” Three weeks of discovery for issues that could cause customers’ rates to increase by hundreds of millions of dollars is inadequate and destined to squelch any opposition to the utility’s proposal. Additionally, the proposed schedule forces parties to file testimony in a little over a month and requires intervenors to be ready for the hearing in a scant month and a half. This rush to judgment is unreasonable and will have the effect of unlawfully and unreasonably limiting participation by intervenors.

Given the importance of this proceeding, the PUCO should insist upon a thorough and deliberative process to create a full and complete record upon which it can base its decision. There is no need to rush forward, with an expedited process that infringes upon parties’ due process rights and which may result in an unjust and unreasonable outcome.

The PUCO should establish a procedural schedule that affords parties a reasonable amount of time to thoroughly analyze and review the evidence presented in the fourteen pieces of testimony presented by AEP. Parties should be given the opportunity to engage in full discovery (including depositions), pull together their own expert witnesses, and be able to adequately prepare for hearing. OCC’s proposed schedule affords parties’ these important opportunities. The Entry’s proposed schedule is woefully inadequate in this regard.

This Application for Review meets the terms of Ohio Adm. Code 4901-1-15(C), because the application has been filed “within five days after the ruling is issued” and the application does “set forth the basis of the appeal and citations of any authorities relied upon.” The PUCO should reverse or modify the Entry, consistent with Ohio Adm. Code 4901-1-15(E). Upon review,<sup>40</sup> the PUCO should reverse the Entry. It consolidated two cases that are unrelated, contrary to precedent, and caused parties to be deprived of due process. Instead, the PUCO should direct AEP to show need in the Rider Case under a fair, just, and reasonable procedural schedule.

## **VI. CONCLUSION**

The PUCO should review this appeal, without the need for certification, because the appeal effectively terminates Joint Appellants’ rights to participate in the proceeding, satisfying Ohio Adm. Code 4901-1-15(A)(2). If the interlocutory appeal is determined not to satisfy Ohio Adm. Code 4901-1-15(A)(2), the Attorney Examiner should nonetheless certify the appeal to the full Commission for review, under Ohio Admin. Code 4901-1-15(B). The Interlocutory Appeal should be certified<sup>41</sup> to the PUCO because the Entry represents both a departure from past precedent and presents a new or novel question of interpretation, law, or policy. Additionally, an immediate determination by the PUCO is needed to prevent the likelihood of undue prejudice to AEP’s consumers and other members of the public resulting from an unfair case process.

Upon review of the Entry, the PUCO should reverse and modify the holding and adopt a procedural schedule that allows a thorough and deliberative review of the utility’s

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<sup>40</sup> Ohio Adm. Code 4901-1-15(C).

<sup>41</sup> Ohio Admin. Code 4901-1-15(B).

request for customers to subsidize monopoly megawatts. In this regard, the PUCO should adopt a procedural schedule consistent with the schedule recommended by OCC.<sup>42</sup> That proposed schedule accommodates adequate case preparation and would await a ruling by FERC on subsidies that can affect the economics of AEP's proposal. Alternatively, the PUCO should adopt its Staff's proposal to call and continue the hearing in favor of time for case review, with a schedule to be developed later. That approach is consistent with how the PUCO treated AEP's Turning Point request. Either of these proposals would be much more fair to all parties than AEP's rush to judgment and would honor the due process rights to which parties are entitled under law and PUCO rules.

Respectfully submitted,

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/s/ Maureen R. Willis

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<sup>42</sup> See Case No. 18-0501-EL-FOR, OCC's Opposition to AEP's Proposed Schedule and Memorandum in Response to the PUCO Staff's Motion for a Hearing (October 9, 2018).

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Interlocutory Appeal was served by electronic service to the counsel identified below (provided electronically to the Attorney Examiners) this 29th day of October 2018.

/s/ Maureen Willis

Maureen Willis  
Senior Counsel

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## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE 2018 LONG-TERM FORECAST REPORT OF OHIO POWER COMPANY AND RELATED MATTERS.

CASE No. 18-501-EL-FOR

IN THE MATTER OF THE APPLICATION OF OHIO POWER COMPANY FOR APPROVAL TO ENTER INTO RENEWABLE ENERGY PURCHASE AGREEMENTS FOR INCLUSION IN THE RENEWABLE GENERATION RIDER.

CASE No. 18-1392-EL-RDR

IN THE MATTER OF THE APPLICATION OF OHIO POWER COMPANY FOR APPROVAL TO AMEND ITS TARIFFS.

CASE No. 18-1393-EL-ATA

### ENTRY

Entered in the Journal on October 22, 2018

#### I. SUMMARY

{¶ 1} The attorney examiner establishes a procedural schedule for the review of Ohio Power Company d/b/a AEP Ohio's long-term forecast report amendment and grants, to the extent set forth in this Entry, various motions filed in these proceedings.

#### II. DISCUSSION

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.143(B)(2)(c) provides that an electric security plan (ESP) may include a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by an electric distribution utility, was sourced through a competitive bid process, and is newly used and useful on or after January 1, 2009. The statute directs the Commission to determine, in advance of authorizing any surcharge, whether there is



need for the facility based on resource planning projections submitted by the electric distribution utility.

{¶ 4} R.C. 4935.04(C) requires certain electric transmission line owners to furnish to the Commission, on an annual basis, a long-term forecast report (LTFR), including, among other information, a year-by-year, ten-year forecast of annual energy demand, peak load, reserves, and a general description of the resource planning projections to meet demand. Pursuant to Ohio Adm.Code 4901:5-3-01(A) and 4901:5-5-06(A), an electric transmission owner or electric utility is required to file its LTFR, including an integrated resource plan, by April 15 of each year.

{¶ 5} R.C. 4935.04(D)(3) provides that the Commission shall hold a public hearing regarding a LTFR upon the showing of good cause to the Commission by an interested party. If a hearing is held, the Commission shall fix a time for the hearing, which shall be not later than 90 days after the report is filed, and publish notice of the date, time of day, and location of the hearing in a newspaper of general circulation in each county in which the person furnishing the report has or intends to locate a major utility facility and will provide service during the period covered by the report. The notice shall be published not less than 15 nor more than 30 days before the hearing and shall state the matters to be considered.

{¶ 6} On April 16, 2018, AEP Ohio filed its LTFR for 2018 in Case No. 18-501-EL-FOR (*LTFR Case*). AEP Ohio corrected and supplemented its LTFR on May 31, 2018, and June 26, 2018, at the request of Staff.

{¶ 7} On June 7, 2018, pursuant to Ohio Adm.Code 4901-1-12 and 4901:5-5-02(C), AEP Ohio filed a motion for waiver, requesting that the Commission waive certain portions of the LTFR requirements for electric utilities and electric transmission owners. In its motion, AEP Ohio stated that it intended to file an amendment to its 2018 LTFR to demonstrate the need for at least 900 megawatts (MW) of renewable energy projects in

Ohio, consistent with the Commission's orders in the Company's recent ESP proceedings and its earlier power purchase agreement (PPA) proceedings. *In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, et al. (*ESP Case*), Opinion and Order (Apr. 25, 2018); *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al. (*PPA Rider Case*), Opinion and Order (Mar. 31, 2016), Second Entry on Rehearing (Nov. 3, 2016), Fifth Entry on Rehearing (Apr. 5, 2017). AEP Ohio explained that the stipulation approved by the Commission in the *PPA Rider Case* includes an agreement and commitment by the Company and its affiliates to develop a total of at least 500 MW nameplate capacity of wind energy projects in Ohio and at least 400 MW nameplate capacity of solar energy projects in the state, subject to Commission approval. AEP Ohio noted, however, that it must first submit a demonstration of need filing pursuant to R.C. 4928.143(B)(2)(c), as a predicate for advancing project-specific proposals through subsequent EL-RDR filings.

{¶ 8} With respect to its waiver request, AEP Ohio asserted that the designated information required by certain LTFR rules is not necessary for an efficient review of the Company's integrated resource plan that will be the focus of the LTFR amendment. AEP Ohio added that the information required by the rules is voluminous and would be time consuming for the Company to prepare, while much of the information is publicly available in the Company's Federal Energy Regulatory Commission Form 715.

{¶ 9} By Entry dated September 19, 2018, the Commission granted AEP Ohio's unopposed motion for waiver, subject to certain conditions.

{¶ 10} On September 19, 2018, AEP Ohio filed the amendment to its 2018 LTFR, along with supporting testimony.

{¶ 11} On September 21, 2018, Staff filed a motion for a hearing in the *LTFR Case*.

{¶ 12} On September 27, 2018, in Case No. 18-1392-EL-RDR and Case No. 18-1393-EL-ATA (*Tariff Cases*), AEP Ohio filed an application seeking approval of the inclusion of

two solar energy resources totaling 400 MW of nameplate capacity in the Company's Renewable Generation Rider (RGR), as well as approval to establish a new Green Power Tariff under which customers may purchase renewable energy certificates (RECs) for the solar energy resources' environmental attributes. AEP Ohio states that, in accordance with the *PPA Rider Case* and the *ESP Case*, the Company has executed 20-year renewable energy purchase agreements (REPAs) for the energy, capacity, and environmental attributes associated with two solar energy projects to be constructed in Highland County, Ohio – a 300 MW nameplate capacity solar facility known as Highland Solar and a 100 MW nameplate capacity solar facility known as Willowbrook Solar. AEP Ohio further states that, although the solar facilities would be operated on its behalf, the Company would be responsible for the dispatch of the resources in the wholesale markets. AEP Ohio requests that the Commission find that it is reasonable and prudent for the Company to enter into the REPAs associated with the two solar energy projects and that the Company should be authorized under R.C. 4928.143(B)(2)(c) to recover through the RGR its REPA costs and debt equivalency costs for the life of the facilities. With respect to the Green Power Tariff, AEP Ohio notes that it requests approval to establish the tariff under R.C. 4909.18, as an application not for an increase in rates, in order to provide all customers, whether served by the Company's standard service offer or by a competitive retail electric service provider, the opportunity to purchase RECs to cover some or all of their usage.

{¶ 13} Also on September 27, 2018, AEP Ohio filed a motion seeking to consolidate the *LTFR Case* and the *Tariff Cases*, along with a request for an expedited ruling.

{¶ 14} Numerous motions for intervention have been filed and are pending in the *LTFR Case* and the *Tariff Cases*, including motions filed by the Ohio Consumers' Counsel (OCC), Ohio Manufacturers' Association Energy Group (OMAEG), and Natural Resources Defense Council (NRDC).

{¶ 15} On October 4, 2018, OCC and OMAEG filed memoranda contra AEP Ohio's motion for consolidation of the *LTFR Case* and the *Tariff Cases*.

{¶ 16} Memoranda contra Staff's motion for a hearing in the *LTFR Case* were filed on October 9, 2018, by AEP Ohio and NRDC. OCC also filed a memorandum in response to Staff's motion on October 9, 2018. AEP Ohio filed a response to OCC's memorandum on October 15, 2018. On October 16, 2018, OMAEG filed a reply to NRDC's memorandum. On that same date, OCC filed a reply to AEP Ohio and NRDC.

{¶ 17} On October 16, 2018, OMAEG filed a motion to strike AEP Ohio's memorandum contra Staff's motion for a hearing in the *LTFR Case*. AEP Ohio filed a memorandum contra OMAEG's motion on October 17, 2018.

**A. Motion for Hearing in the *LTFR Case***

{¶ 18} In its motion for a hearing in the *LTFR Case*, Staff requests that the Commission hold a hearing to be scheduled for a date within 90 days of September 19, 2018. Staff further requests that the hearing be called on the established date and continued to a later date, in order to allow sufficient time for investigation and settlement discussions. Noting that the question presented by AEP Ohio's *LTFR* amendment filing is relatively novel, complex, and likely to attract considerable public interest, Staff asserts that good cause exists for a hearing on the *LTFR* pursuant to R.C. 4935.04(D)(3), given that the proposed renewable generation facilities would potentially have significant financial and environmental consequences for decades. Staff adds that additional time beyond the 90-day period set forth in R.C. 4935.04(D)(3) may be required to fully develop the record in the *LTFR Case* for the benefit of the Commission and the parties.

{¶ 19} AEP Ohio responds that the 90-day period for a hearing in a *LTFR* proceeding was mandated by the General Assembly and should not be bypassed through a procedural maneuver. AEP Ohio adds that the impending expiration of significant federal tax credits for renewable energy facilities poses an urgent need to proceed with



the *LTFR Case*. AEP Ohio acknowledges, however, the complexities of the *LTFR Case*, particularly if it is consolidated with the *Tariff Cases*. AEP Ohio states that, if its motion for consolidation of the three proceedings is granted, the Company agrees to waive the 90-day requirement and employ Staff's requested call-and-continue procedure, provided that it is coupled with an expedited procedural schedule for the consolidated cases that is generally consistent with the 90-day period. AEP Ohio also contends that, if consolidation is not granted, the 90-day requirement set forth in R.C. 4935.04(D)(3) should be strictly followed.

{¶ 20} In its limited memorandum contra Staff's motion, NRDC responds that the Commission should balance Staff's reasonable request for additional time with AEP Ohio's commitment in the *PPA Rider Case* to use its best efforts to maximize the potential value for customers associated with the procurement of renewable energy resources. NRDC asserts that Staff's request to have an open-ended continuance would unnecessarily delay the *LTFR Case* and could place at risk the significant value that available tax credits for solar projects could provide to AEP Ohio's customers. NRDC, therefore, proposes that the evidentiary hearing be called within the 90-day period and continued to a date no later than January 14, 2019.

{¶ 21} In its response to Staff's motion, OCC responds that the hearing in the *LTFR Case* should be called and continued to a date after the Federal Energy Regulatory Commission (FERC) issues its order addressing PJM Interconnection, LLC's capacity market in FERC Docket No. EL18-178-000, et al., which, according to OCC, is expected to occur by March 15, 2019. OCC asserts that FERC's decision could materially impact the revenue that AEP Ohio derives from the wholesale capacity market, if the Company is permitted to proceed with the proposed renewable generation facilities. OCC requests that the Commission direct AEP Ohio to update its application and testimony in the *LTFR Case* to account for FERC's order within 30 days of its issuance, with the hearing reconvening no sooner than 90 days after the updated application and testimony are filed.

OCC argues that this approach would enable the Commission to consider FERC's ruling and provide the parties with sufficient time to develop a thorough factual record. In the alternative, OCC proposes that the hearing be called and continued, followed by an opportunity in early 2019, after initial review and discovery, for the parties to propose a case schedule. OCC contends that the magnitude of the charges at issue and experience gained from a prior LTFR case involving AEP Ohio, Case No. 10-501-EL-FOR, warrant a deliberative approach to the pending *LTFR Case* rather than a rush to judgment. Finally, OCC maintains that AEP Ohio's request for a hearing in November 2018 should be rejected under any circumstances.

{¶ 22} In response to OCC's memorandum, AEP Ohio replies that OCC's request to suspend the *LTFR Case* constitutes an untimely motion for affirmative relief that should be rejected. AEP Ohio also argues that OCC's proposal that the hearing be called and indefinitely continued, until after the issuance of a final order by FERC, is misguided and likely to harm Ohio consumers. Noting that there is no specific deadline for action by FERC, AEP Ohio asserts that an indefinite delay would negate the significant advantage of soon-to-expire federal tax credits and the resulting net financial benefit for customers.

{¶ 23} In its reply to AEP Ohio and NRDC, OCC reiterates that the Commission should not proceed with the *LTFR Case* until FERC issues its ruling. OCC also argues that AEP Ohio's testimony confirms that the availability of a limited and uncertain amount of tax credits should not dictate the procedural schedule, particularly given that the tax credits remain available for renewable projects with construction beginning in 2019 or later. OCC concludes that its proposed schedule would permit the parties time to develop a complete record in an important and complicated case involving significant costs for consumers.

{¶ 24} Replying to NRDC's position, OMAEG contends that NRDC's proposed schedule would impose arbitrary deadlines in order to maximize a claimed benefit that may not exist. According to OMAEG, the Commission should ensure that all parties are

afforded due process and a full opportunity to participate in the *LTFR Case*, including a complete discovery process. OMAEG urges the Commission to adopt Staff's proposal.

**B. Motion to Consolidate Proceedings**

{¶ 25} In its motion to consolidate the above-captioned cases, AEP Ohio asserts that consolidation is appropriate, given the common and interrelated issues between the proceedings. Specifically, AEP Ohio states that the *Tariff Cases* will encompass the economic impacts and other details pertaining to the two proposed solar projects and the associated Green Power Tariff, which would offset a portion of the cost of the solar projects, while the *LTFR Case* will involve the Company's demonstration of need for the solar projects. According to AEP Ohio, its supporting testimony confirms that the three cases are fundamentally related. AEP Ohio also claims that consolidation would enable the efficient and expeditious resolution of all three matters, while avoiding potentially duplicative discovery, witness testimony, hearings, and post-hearing briefing. Noting that it has proposed the same procedural schedule in all three proceedings, AEP Ohio contends that there would be no resulting prejudice if the cases are consolidated.

{¶ 26} In its memorandum contra, OCC argues that AEP Ohio's LTFR amendment is inconsistent with R.C. 4928.143(B)(2)(c) and the Commission's orders in the *ESP Case* and, therefore, there is no reason to consolidate the three proceedings. OCC asserts that AEP Ohio's request for a blanket finding of need for 900 MW in the *LTFR Case* is irrelevant to the question to be answered in the *Tariff Cases*, which, according to OCC, is whether there is a need for each of the specific solar facilities. Additionally, OCC argues that AEP Ohio's application in the *Tariff Cases* is premature under Ohio Adm.Code 4901:5-5-06(B), which requires the Company to file its LTFR in the forecast year prior to any filing for an allowance under R.C. 4928.143(B)(2)(c). OCC concludes that AEP Ohio must demonstrate the need for each of the two solar facilities in the *Tariff Cases* when it becomes timely to do so.

{¶ 27} OMAEG argues that AEP Ohio's motion for consolidation is procedurally improper and inconsistent with Ohio law and Commission practice. OMAEG notes that Ohio Adm.Code 4901:1-35-03(C)(9)(b)(i) requires that, when an application seeking cost recovery for renewable generation owned or operated by an electric utility is filed, the need for the proposed facility must have already been reviewed and determined by the Commission through an integrated resource planning process filed pursuant to Ohio Adm.Code 4901:5-5-05. OMAEG further notes that Ohio Adm.Code 4901:5-5-06(B) requires that the LTFR must be filed a year prior to any filing under R.C. 4928.143(B)(2)(c). Like OCC, OMAEG maintains that, before AEP Ohio can begin to seek cost recovery, the Commission must first find that specific proposed projects are necessary rather than a generic set of projects totaling at least 900 MW. OMAEG believes that the issue for determination in the *LTFR Case* is whether specific proposed projects are necessary, while the issue to be decided in the *Tariff Cases* is whether, and to what extent, the Company can seek cost recovery from customers through the RGR for specific projects that have already been deemed necessary. OMAEG concludes that these issues are not the same and that the Commission should adhere to its rules by first assessing the need for specific renewable facilities and then, if necessary, proceeding to AEP Ohio's cost recovery application.

### C. *Motion to Strike*

{¶ 28} As noted above, OMAEG filed a motion to strike AEP Ohio's memorandum contra Staff's motion for hearing. OMAEG argues that AEP Ohio's filing constitutes a procedurally improper reply to the memoranda contra the Company's motion for consolidation. OMAEG notes that AEP Ohio requested expedited treatment of its motion to consolidate the proceedings and, therefore, replies are not permitted pursuant to Ohio Adm.Code 4901-1-12(C). According to OMAEG, the Commission should reject AEP Ohio's attempt to offer additional arguments in support of its motion for consolidation. In the alternative, OMAEG requests that its motion to strike be construed as a reply to



AEP Ohio's memorandum contra. In its reply, OMAEG maintains that Staff's proposal should be adopted, as it would permit the parties to conduct discovery and develop a complete record to assist the Commission. OMAEG adds that AEP Ohio's opposition to Staff's proposed call-and-continue procedure as contrary to R.C. 4935.04(D)(3) is undermined by the Company's acceptance of Staff's proposal, provided that the three proceedings are consolidated.

{¶ 29} AEP Ohio argues that its memorandum contra was a proper response to Staff's hearing request and does not constitute a reply in support of the Company's motion to consolidate the proceedings. AEP Ohio asserts that the issue of whether the 90-day period in R.C. 4935.04(D)(3) should be strictly followed is inextricably intertwined with the issue of consolidation and, therefore, it was proper for the Company to address both issues in response to Staff's motion. AEP Ohio also notes that it would be inappropriate to strike its entire pleading, as the Company was entitled to file a response to Staff's motion.

#### *D. Conclusion*

{¶ 30} Initially, addressing OMAEG's motion to strike AEP Ohio's memorandum contra Staff's motion for a hearing in the *LTR Case*, the attorney examiner finds that the portion of the Company's memorandum contra that "reiterates its position" regarding consolidation is procedurally improper and should be stricken.<sup>1</sup> Given that Staff's motion does not address the issue of consolidation, the attorney examiner agrees with OMAEG that AEP Ohio's arguments on consolidation do not relate in any way to Staff's hearing request and instead constitute an improper reply to OCC's and OMAEG's memoranda contra the Company's motion for consolidation, which requested expedited

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<sup>1</sup> Specifically, the paragraph beginning with "[a]s a threshold matter" on page two and continuing through the remainder of the Law and Argument section of AEP Ohio's memorandum contra should be stricken. Although AEP Ohio characterizes this portion of its memorandum as a mere reiteration of its position on consolidation, the Company proceeds to respond to the arguments raised by OCC and OMAEG in their memoranda contra the Company's motion to consolidate the proceedings.

consideration under Ohio Adm.Code 4901-1-12(C). Replies in support of motions seeking an expedited ruling are not permitted under the rule. However, the attorney examiner finds that, to the extent that AEP Ohio's memorandum contra relates to Staff's hearing proposal, the Company's arguments in response to Staff should not be stricken.

{¶ 31} With respect to Staff's motion for a hearing in the *LTFR Case*, the attorney examiner finds that AEP Ohio's proposal to demonstrate the need for at least 900 MW of renewable energy resources in the state constitutes good cause for a hearing, in accordance with R.C. 4935.04(D)(3). Staff's request for a hearing should, therefore, be granted, consistent with this Entry.

{¶ 32} Regarding AEP Ohio's motion for consolidation of the above-captioned cases, the attorney examiner finds that the motion should be granted to the extent set forth in this Entry. Consistent with prior precedent, the attorney examiner finds that consolidation of all three cases is reasonable and appropriate, in light of their common issues and the administrative efficiencies to be gained from consolidation. *See, e.g., In re National Gas and Oil Corp.*, Case No. 89-34-GA-GCR, et al., Entry (Aug. 22, 1989) (consolidating LTFR case with gas cost recovery proceeding); *In re Ohio Gas Co.*, Case No. 89-874-GA-FOR, et al., Entry (June 26, 1989) (consolidating LTFR case with gas cost recovery proceeding); *In re Ohio Power Co.*, Case No. 88-333-EL-FOR, et al., Entry (Jan. 11, 1989) (consolidating LTFR case with electric fuel component proceeding). The attorney examiner notes, however, that Ohio Adm.Code 4901:1-35-03(C)(9)(b)(i) provides that, when an electric utility in an ESP application seeks authority to impose a surcharge pursuant to R.C. 4928.143(B)(2)(c) for an electric generating facility owned or operated by the utility, the need for the proposed facility must have already been reviewed and determined by the Commission through an integrated resource planning process filed pursuant to Ohio Adm.Code 4901:5-5-05. Further, Ohio Adm.Code 4901:5-5-06(B) requires that certain information, including an integrated resource plan and a discussion of the need for additional electricity resource options, be included in the LTFR and filed

by the electric utility in the forecast year prior to any filing for an allowance under R.C. 4928.143(B)(2)(c). The Commission's rules, therefore, contemplate that the need for a proposed generating facility should generally be heard first as a distinct issue. Separately, the Commission will also consider, through its review of the electric utility's EL-SSO or EL-RDR filing, whether all of the criteria set forth in R.C. 4928.143(B)(2)(c), including need for the facility, have been satisfied, in advance of authorizing any cost recovery through a nonbypassable surcharge. The attorney examiner, therefore, finds that it is appropriate under the circumstances to proceed initially with the review of AEP Ohio's LTFR amendment and, separately, to address the Company's application in the *Tariff Cases*. Accordingly, the consolidated cases should proceed in two phases, with the first phase to consist of a hearing on the issue of need, as set forth below. In the second phase of the consolidated proceedings, a separate hearing will be held to consider the issues raised by AEP Ohio's application in the *Tariff Cases*. The attorney examiner notes that the bifurcation of the hearing process does not preclude AEP Ohio from offering its direct testimony, as submitted in support of the application in the *Tariff Cases*, at the hearing on the issue of need.

{¶ 33} As noted above, R.C. 4935.04(D)(3) directs the Commission, if it holds a public hearing regarding a LTFR, to fix a time for the hearing that is not later than 90 days after the report is filed. Consistent with the statute, the attorney examiner finds that the following procedural schedule should be established for the consideration of the issue of need and any other issues presented in AEP Ohio's LTFR amendment filed in the *LTFR Case*:

- (a) Motions to intervene in the consolidated cases should be filed by October 29, 2018.
- (b) Discovery requests, except for notices of deposition, should be served by November 13, 2018.

- (c) Testimony on behalf of intervenors should be filed by November 21, 2018.
- (d) A prehearing conference will occur on November 26, 2018, at 10:00 a.m., in Hearing Room 11-A, at the offices of the Commission, 180 East Broad Street, 11th Floor, Columbus, Ohio 43215.
- (e) Testimony on behalf of Staff should be filed by November 27, 2018.
- (f) The hearing shall commence on December 4, 2018, at 10:00 a.m., in Hearing Room 11-A, at the offices of the Commission, 180 East Broad Street, 11th Floor, Columbus, Ohio 43215.

{¶ 34} The attorney examiner requires that, in the event that any motion is made prior to the issuance of the Commission's order, any memorandum contra shall be filed within five business days after the service of such motion, and a reply memorandum to any memorandum contra shall be filed within three business days. Parties shall provide service of pleadings via hand delivery, facsimile, or e-mail.

{¶ 35} In addition, the attorney examiner finds that the response time for discovery shall be shortened to seven calendar days. Unless otherwise agreed to by the parties, discovery requests and replies shall be served by hand delivery, facsimile, or e-mail. An attorney serving a discovery request shall attempt to contact, in advance, the attorney upon whom the discovery request will be served to advise him/her that a request will be forthcoming.

{¶ 36} AEP Ohio should cause the following notice to be published once, not less than 15 days nor more than 30 days prior to December 4, 2018, in at least one newspaper of general circulation in each county of the Company's service territory.



## LEGAL NOTICE

The Public Utilities Commission of Ohio has scheduled a public hearing in Case No. 18-501-EL-FOR, et al., to review the 2018 long-term forecast report filed by Ohio Power Company d/b/a AEP Ohio. The company's long-term forecast report includes information regarding annual energy demand and projected loads, as well as the company's plan to demonstrate the need for at least 900 megawatts of renewable energy generation resources in Ohio. The public hearing will begin at 10:00 a.m., on December 4, 2018, at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio 43215-3793.

Persons wishing to review copies of the company's long-term forecast report may do so by contacting the company at: [Appropriate contact information to be inserted].

The Commission will give any interested member of the public the opportunity to be heard at the public hearing. Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, viewing the Commission's web page at <http://www.puc.state.oh.us>, or contacting the Commission's hotline at 1-800-686-7826 or, for hearing or speech impaired customers, 7-1-1.

{¶ 37} As a final matter, the attorney examiner notes that the hearing schedule for the consideration of AEP Ohio's application in the *Tariff Cases* will be established by future entry.

### III. ORDER

{¶ 38} It is, therefore,

{¶ 39} ORDERED, That OMAEG's motion to strike be granted to the extent set forth in this Entry. It is, further,

{¶ 40} ORDERED, That AEP Ohio's motion to consolidate the *LTFR Case* and the *Tariff Cases* be granted to the extent set forth in this Entry. It is, further,

{¶ 41} ORDERED, That Staff's request for a hearing on AEP Ohio's LTFR amendment be granted, consistent with this Entry. It is, further,

{¶ 42} ORDERED, That the procedural schedule set forth in Paragraph 33 be adopted. It is, further,

{¶ 43} ORDERED, That the parties adhere to the processes established in Paragraphs 34 and 35. It is, further,

{¶ 44} ORDERED, That AEP Ohio cause notice of the public hearing to be published as set forth in Paragraph 36. It is, further,

{¶ 45} ORDERED, That a copy of this Entry be served upon all parties and other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Sarah Parrot

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By: Sarah J. Parrot  
Attorney Examiner

JRJ/sc

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

**Commission of Ohio Docketing Information System on**

**10/22/2018 3:47:47 PM**

**in**

**Case No(s). 18-0501-EL-FOR, 18-1392-EL-RDR, 18-1393-EL-ATA**

Summary: Attorney Examiner Entry granting OMAEG's motion to strike, granting AEP Ohio's motion to consolidate the LTFR Case and the Tariff Cases, granting Staff's request for a hearing on AEP Ohio's LTFR amendment, setting a procedural schedule indicated in Paragraph 33, directing the parties to adhere to the processes established in Paragraphs 34 and 35, and directing AEP Ohio cause notice of the public hearing to be published as set forth in Paragraph 36 - electronically filed by Sandra Coffey on behalf of Sarah Parrot, Attorney Examiner, Public Utilities Commission of Ohio

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

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**10/29/2018 4:56:17 PM**

**in**

**Case No(s). 18-0501-EL-FOR, 18-1392-EL-RDR, 18-1393-EL-ATA**

Summary: Request Interlocutory Appeal, Request for Certification to Full Commission and Application for Review Regarding a Fair Process for AEP's Customers by the Office of the Ohio Consumers' Counsel, the Ohio Manufacturers' Association and the Kroger Co. electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.