

**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 November 13, 2018

**I. SUMMARY**

{¶ 1} The attorney examiner modifies the procedural schedule for the review of Ohio Power Company d/b/a AEP Ohio's long-term forecast report amendment and denies the request for certification of the interlocutory appeal filed on October 29, 2018.

**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 and recommendation 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), The Kroger Co. (Kroger), Natural Resources Defense Council (NRDC), Ohio Environmental Council (OEC), and Sierra Club.

{¶ 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} By Entry dated October 22, 2018, the attorney examiner granted, to the extent set forth in the Entry, Staff's motion for a hearing in the *LTFR Case* and AEP Ohio's motion to consolidate the above-captioned proceedings. The attorney examiner determined that the consolidated cases should proceed in two phases, with the first phase to consist of a hearing on the issue of need, while, 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*. Additionally, the attorney examiner established a procedural schedule for the first phase of the consolidated proceedings, including a hearing to commence on December 4, 2018.

{¶ 18} On October 29, 2018, OCC, OMAEG, and Kroger (collectively, Joint Appellants) filed, in response to the October 22, 2018 Entry, an interlocutory appeal, request for certification to the full Commission, and application for review. AEP Ohio filed a memorandum contra on November 2, 2018. On November 5, 2018, NRDC, OEC, and Sierra Club (collectively, Environmental Intervenors) filed a joint memorandum contra.

{¶ 19} Ohio Adm.Code 4901-1-15 sets forth the Commission's requirements for interlocutory appeals. The rule provides that no party may take an interlocutory appeal from a ruling by an attorney examiner unless that ruling is one of four specific rulings enumerated in paragraph (A) of the rule or unless the appeal is certified to the

Commission pursuant to paragraph (B) of the rule. Ohio Adm.Code 4901-1-15(B) specifies that an attorney examiner shall not certify an interlocutory appeal unless the attorney examiner finds that the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling that represents a departure from past precedent and an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, if the Commission should ultimately reverse the ruling in question.

*A. Summary of the Arguments*

{¶ 20} In their interlocutory appeal, the Joint Appellants assert that the October 22, 2018 Entry unlawfully and unreasonably consolidated unrelated cases, established an inadequate schedule that violates their due process rights, and unreasonably limited discovery. The Joint Appellants argue that their interlocutory appeal satisfies the standard set forth in Ohio Adm.Code 4901-1-15(A)(2), which provides that an immediate interlocutory appeal may be taken to the Commission from a procedural ruling that terminates a party's right to participate in a proceeding. The Joint Appellants claim that the October 22, 2018 Entry established an expedited and unreasonable procedural schedule, with intervenor testimony due by November 21, 2018, less than one month after the Entry. The Joint Appellants further claim that the current procedural schedule denies the due process rights of the parties and impairs their ability to protect their interests. According to the Joint Appellants, the result is an effective termination of the parties' rights to participate fully in the proceedings with due process. As an example, the Joint Appellants note that, on October 26, 2018, AEP Ohio notified the parties of its intention to include two additional witnesses and an economic study at the hearing on December 4, 2018. The Joint Appellants maintain that it is unreasonable to require the other parties to hire experts to review, model, and address AEP Ohio's economic impact study or to conduct their own economic impact study, and then to prepare their testimony, all within a mere 18 business days. The Joint Appellants assert, therefore, that their interlocutory

appeal may be immediately taken to the Commission without certification by an attorney examiner.

{¶ 21} In its memorandum contra, AEP Ohio argues that the October 22, 2018 Entry did not terminate the Joint Appellants' rights to participate in these proceedings, as their motions for intervention have not been denied. Further, AEP Ohio asserts that Ohio Adm.Code 4901-1-15(A)(2) does not permit an immediate interlocutory appeal of a ruling that does not allow a party to participate in a proceeding in the manner, or to the full extent, that it would prefer. AEP Ohio adds that the Commission has previously rejected attempts by OCC to stretch the rule beyond its express language.

{¶ 22} The Environmental Intervenors argue that the Joint Appellants have in no way been deprived of the opportunity to participate in these proceedings. The Environmental Intervenors note that all of the Joint Appellants have timely sought to intervene in these proceedings and, under the current procedural schedule, will be permitted to conduct discovery, file expert testimony, cross-examine witnesses, and submit briefs. Like AEP Ohio, the Environmental Intervenors point out that similar arguments regarding an effective termination of rights have been previously found by the Commission to lack merit.

{¶ 23} In the alternative, the Joint Appellants contend that their interlocutory appeal should be certified to the full Commission under Ohio Adm.Code 4901-1-15(B). First, the Joint Appellants argue that the October 22, 2018 Entry departs from past precedent established in AEP Ohio's recent ESP proceedings. The Joint Appellants maintain that, in the *ESP Case*, the Commission determined that AEP Ohio should demonstrate the need for its proposed renewable energy projects in a rider proceeding. *ESP Case*, Opinion and Order (Apr. 25, 2018) at ¶ 227. The Joint Appellants add that the October 22, 2018 Entry is also inconsistent with the call-and-continue process used by the Commission in a prior case involving a proposed solar project known as Turning Point. According to the Joint Appellants, intervenors in that case were afforded an opportunity

to analyze the LTFR before a procedural schedule was established. *In re Ohio Power Co.*, Case No. 10-501-EL-FOR (*Turning Point Case*), Entry (Jan. 26, 2011), Entry (Feb. 29, 2012).

{¶ 24} AEP Ohio responds that the Joint Appellants' arguments do not demonstrate a conflict between the October 22, 2018 Entry and Commission precedent and instead reflect a fundamental misreading of the attorney examiner's ruling. AEP Ohio asserts that the October 22, 2018 Entry is consistent with the Commission's orders in the *ESP Case*, specifically in setting forth a process requiring a demonstration of general need, based on resource planning projections, in the first phase of the consolidated proceedings, followed by a demonstration of specific need in the second phase. With respect to the *Turning Point Case*, AEP Ohio notes that it did not object to Staff's proposed call-and-continue process in that case and, therefore, the Company waived any argument that the process was contrary to R.C. 4935.04(D)(3). AEP Ohio claims that, because it accepted the extended schedule in the *Turning Point Case* and the Commission thus did not address the 90-day hearing requirement, the case did not establish any precedent from which the October 22, 2018 Entry could depart.

{¶ 25} With respect to the Joint Appellants' claim that the October 22, 2018 Entry is inconsistent with the *ESP Case*, the Environmental Intervenors assert that the claim is moot, given that the Entry consolidated the above-captioned cases. Regarding the *Turning Point Case*, the Environmental Intervenors argue that procedural schedules vary from case to case and are a function of the specific circumstances in each case.

{¶ 26} Second, the Joint Appellants contend that the October 22, 2018 Entry presents a new interpretation of Ohio law, because it appears to accept the view that the requirements of R.C. 4928.143(B)(2)(c) can be satisfied, in a forecast case, through a showing of generalized need for renewable generation facilities. The Joint Appellants argue that the statute requires a demonstration of specific need for a specific facility. The Joint Appellants also claim that, by departing from the precedent established in the *ESP Case* and the *Turning Point Case*, the October 22, 2018 Entry raises the novel legal question



of whether the attorney examiner's ruling safeguards the predictability that is essential in administrative law. The Joint Appellants maintain that the parties should be able to rely on the Commission's decision in the *ESP Case* that need must be demonstrated in a rider proceeding, as well as to expect that the *LTFR Case* will proceed under a schedule similar to the *Turning Point Case*.

{¶ 27} In response, AEP Ohio maintains that the Commission has previously determined that scheduling orders like the October 22, 2018 Entry, as a general matter, do not present a new or novel question of law or policy, and has often noted that its attorney examiners have extensive experience in scheduling hearings. AEP Ohio also states that whether a procedural entry represents a departure from past precedent is a separate and distinct ground for seeking an interlocutory appeal. Further, AEP Ohio argues that the October 22, 2018 Entry did not adopt a new interpretation of Ohio law, as the Joint Appellants claim. According to AEP Ohio, the Joint Appellants have misinterpreted the October 22, 2018 Entry with respect to the requirements of R.C. 4928.143(B)(2)(c).

{¶ 28} The Environmental Intervenors assert that the October 22, 2018 Entry did not determine that a generalized showing of need is sufficient under R.C. 4928.143(B)(2)(c) or make any other substantive determination. The Environmental Intervenors contend that the October 22, 2018 Entry merely established a procedural schedule, which does not involve a new or novel question of law or policy, as the Commission has often stated. The Environmental Intervenors add that procedural schedules are not predictable and are subject to change based on many factors, while different timelines may be used across cases.

{¶ 29} Finally, the Joint Appellants claim that, because the October 22, 2018 Entry requires the parties to move forward with their case presentation in compliance with a procedurally deficient schedule, the parties will be prejudiced if the Commission ultimately reverses the attorney examiner's ruling. The Joint Appellants add that the

parties will be required to litigate the generic need for 900 MW of renewable generation (rather than the specific need for specific facilities) in an abbreviated and incorrect forum that is counter to the Commission's directive in the *ESP Case*. To prevent this prejudice, the Joint Appellants, therefore, request an immediate determination by the Commission.

{¶ 30} AEP Ohio contends that the Joint Appellants have not demonstrated that any party would be unduly prejudiced if the interlocutory appeal is not certified to the full Commission. Initially, AEP Ohio asserts that the Joint Appellants have not shown that they lack sufficient individual or combined resources to prepare for cross-examination and develop expert witness testimony under the current schedule. Further, AEP Ohio maintains that the Joint Appellants have not supported their claim that being required to litigate issues that the Commission may ultimately find irrelevant, at an earlier point in the consolidated proceedings than the Joint Appellants would prefer, qualifies as undue prejudice.

{¶ 31} The Environmental Intervenors also argue that the Joint Appellants have failed to establish that any undue prejudice will result from the October 22, 2018 Entry. Initially, the Environmental Intervenors assert that the Joint Appellants have been afforded sufficient time to review the testimony of AEP Ohio's witnesses and to prepare their own testimony. Further, the Environmental Intervenors maintain that cost recovery is not at issue in the first phase of the consolidated proceedings and, therefore, there is no risk that customers will be charged any costs as a result of the October 22, 2018 Entry, as the Joint Appellants imply. The Environmental Intervenors also point out that the Joint Appellants have ignored the fact that R.C. 4935.04(D)(3) requires that the hearing be held within 90 days. Finally, the Environmental Intervenors assert that it is unlikely that the Commission would reverse the ruling establishing the procedural schedule after the hearing has concluded, as the Joint Appellants appear to suggest.

{¶ 32} In their application for review, the Joint Appellants request that the Commission adopt a procedural schedule that allows for a thorough and deliberative

review, including a reasonable amount of time for intervenors to review AEP Ohio's testimony, engage in full discovery, locate expert witnesses, and prepare for hearing. Specifically, the Joint Appellants request that AEP Ohio be directed to establish need for specific projects in the *Tariff Cases*, which should proceed with a reasonable schedule that is not established until 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., as recommended by OCC on October 9, 2018, in its response to Staff's motion for a hearing. Alternatively, the Joint Appellants request that the Commission adopt Staff's proposal to call and continue the hearing, with the schedule to be developed at a later time, which, according to the Joint Appellants, is consistent with the approach adopted by the Commission in the *Turning Point Case*. The Joint Appellants conclude that either of these proposals would respect the parties' due process rights and ensure a fair process that facilitates meaningful participation by all parties and an opportunity to develop a complete record.

{¶ 33} In its memorandum contra, AEP Ohio responds that, if the interlocutory appeal is certified to the full Commission, the October 22, 2018 Entry should not be modified, as it reflects a judicious application of the Commission's broad discretion to manage the conduct of its hearings. AEP Ohio also asserts that the October 22, 2018 Entry is consistent with R.C. 4928.143(B)(2)(c) and R.C. 4935.04(D)(3), as well as the Commission's rules and prior precedent. Additionally, AEP Ohio states that it disagrees with the premise that 11 weeks (i.e., the period of time between the filing of the LTFR amendment and the hearing date) is insufficient time for parties with the Joint Appellants' experience and resources to participate meaningfully in the first phase of these consolidated proceedings.

## **B. Conclusion**

{¶ 34} As a preliminary matter, the attorney examiner finds that no ruling in the October 22, 2018 Entry terminated, effectively or otherwise, any party's right to

participate in these cases. On the contrary, consistent with R.C. 4935.04(D)(3), the October 22, 2018 Entry established a procedural schedule that affords all interested stakeholders an opportunity to participate fully in these proceedings, including deadlines for intervention and the filing of testimony, adequate time for discovery with an expedited response time of seven calendar days, and a public hearing to occur within the time period set forth in the statute. Further, the Joint Appellants' argument has previously been raised by OCC and rejected. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 05-1444-GA-UNC, Entry (Feb. 12, 2007) at 6 (rejecting the argument that an entry establishing a procedural schedule terminated OCC's right to participate in the proceeding). The Joint Appellants, therefore, have not shown that they may take an immediate interlocutory appeal to the Commission under Ohio Adm.Code 4901-1-15(A)(2).

{¶ 35} The Joint Appellants also contend that their interlocutory appeal should be certified to the Commission pursuant to Ohio Adm.Code 4901-1-15(B). The rule provides, however, that an interlocutory appeal shall not be certified to the Commission unless the attorney examiner finds that the appeal presents a new or novel question of law or policy or is taken from a ruling that represents a departure from past precedent and that an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, if the Commission should ultimately reverse the ruling in question. Although both requirements must be met, the Joint Appellants have failed to satisfy either provision.

{¶ 36} Initially, the attorney examiner finds that the Joint Appellants' interlocutory appeal does not present a new or novel question of law or policy. As the Commission has noted on numerous prior occasions, the Commission and its attorney examiners have extensive experience with respect to scheduling hearings and establishing procedural schedules, which are routine matters that do not involve a new or novel question of law or policy. *See, e.g., In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, et al., Entry (Feb. 8,

2018) at ¶ 24; *In re The Dayton Power and Light Co.*, Case No. 12-426-EL-SSO, et al., Entry (Jan. 14, 2013) at 5; *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Entry (May 2, 2012) at 4; *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Entry (Oct. 1, 2008) at 7; *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 08-935-EL-SSO, Entry (Sept. 30, 2008) at 3; *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 05-1444-GA-UNC, Entry (Feb. 12, 2007) at 7; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 05-376-EL-UNC, Entry (May 10, 2005) at 2. Additionally, the Joint Appellants' position is based on a mistaken interpretation of the October 22, 2018 Entry, which did not address the issue of whether the criteria of R.C. 4928.143(B)(2)(c) can be met, in a forecast proceeding, by demonstrating a general need for renewable generation facilities. Rather, the October 22, 2018 Entry merely established a procedural schedule, including a public hearing, to consider "the issue of need." October 22, 2018 Entry at ¶¶ 32-33.

{¶ 37} Next, the attorney examiner finds that the Joint Appellants' interlocutory appeal is not taken from a ruling that departs from past precedent. With respect to the *ESP Case*, the stipulation and recommendation (Stipulation) approved by the Commission in that case provides that, in making EL-RDR filings under the RGR to seek approval for specific renewable projects, AEP Ohio will demonstrate that the criteria in R.C. 4928.143(B)(2)(c) are met. *ESP Case*, Opinion and Order (Apr. 25, 2018) at ¶ 51. In accordance with the Stipulation, the Commission noted, in response to arguments raised by OCC in the *ESP Case*, that AEP Ohio will be required, in each EL-RDR proceeding proposing a specific project, to demonstrate need for each proposed facility and to satisfy all of the other criteria in R.C. 4928.143(B)(2)(c). *ESP Case* at ¶ 227. Again, the Joint Appellants have misinterpreted the October 22, 2018 Entry, as nothing in the Entry is counter to the Opinion and Order in the *ESP Case*. Consistent with the *ESP Case*, the October 22, 2018 Entry states:

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.

October 22, 2018 Entry at ¶ 32 (emphasis added). Neither does the October 22, 2018 Entry depart from any precedent established in the *Turning Point Case*. As AEP Ohio notes, no party opposed Staff's request for a call-and-continue process in the *Turning Point Case*. The procedural schedule adopted by the Commission in response to an unopposed motion in the *Turning Point Case* cannot be considered binding here, where both AEP Ohio and NRDC opposed Staff's request for an open-ended call-and-continue process.

{¶ 38} Finally, having failed to demonstrate that the October 22, 2018 Entry either presents a new or novel question of law or policy or departs from past precedent, the Joint Appellants have also failed to demonstrate undue prejudice. Specifically, the rule requires a showing that an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, if the Commission were ultimately to reverse the ruling in question. The Joint Appellants argue that the October 22, 2018 Entry will require the parties to litigate the general need for 900 MW instead of the specific need for specific generating facilities and to do so in a forecast case rather than a rider proceeding. However, as noted above, the Joint Appellants have misinterpreted the October 22, 2018 Entry.

{¶ 39} As the Joint Appellants have not satisfied the requirements of Ohio Adm.Code 4901-1-15(B), the attorney examiner finds that their request for certification of their interlocutory appeal to the Commission should be denied. Nonetheless, in light of the difficulty apparently experienced by Joint Appellants in engaging expert witnesses,

the attorney examiner finds that a brief extension of the procedural schedule is reasonable, in order to afford the intervenors additional time to prepare for hearing. Accordingly, the attorney examiner finds that the procedural schedule should be amended as follows:

- (a) Discovery requests, except for notices of deposition, should be served by December 21, 2018.
- (b) Testimony on behalf of intervenors should be filed by January 2, 2019.
- (c) A prehearing conference will occur on January 7, 2019, 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.
- (d) Testimony on behalf of Staff should be filed by January 8, 2019.
- (e) Consistent with R.C. 4935.04(D)(3), the hearing will be called on December 4, 2018. Any interested member of the public will be given the opportunity to be heard at the public hearing on that date. Following the conclusion of any public testimony, the hearing will then be continued to January 15, 2019, 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.

{¶ 40} All other deadlines and processes set forth in the October 22, 2018 Entry remain unchanged.

**III. ORDER**

{¶ 41} It is, therefore,

{¶ 42} ORDERED, That the Joint Appellants' request for certification of their interlocutory appeal to the Commission be denied. It is, further,

{¶ 43} ORDERED, That the procedural schedule be revised as set forth above. It is, further,

{¶ 44} 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



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Summary: Attorney Examiner Entry denying Joint Appellants' request for certification of the interlocutory appeal to the Commission and revising the procedural schedule as set forth in this entry - electronically filed by Sandra Coffey on behalf of Sarah Parrot, Attorney Examiner, Public Utilities Commission of Ohio