

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

**MEMORANDUM CONTRA THE OHIO POWER COMPANY'S MOTION TO STRIKE
OR DEFER CERTAIN INTERVENOR TESTIMONY
BY
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. INTRODUCTION AND PROCEDURAL HISTORY

The Ohio Manufacturers' Association Energy Group (OMAEG) opposes the Ohio Power Company's (AEP Ohio) attempt to frame the scope of the hearing as to what it claims is the broad definition of "need" to use customer funds to develop at least 900 MW of renewable energy while limiting the ability of the intervening parties' to file testimony in response to AEP Ohio's broad definition. AEP Ohio cannot have it both ways. AEP Ohio cannot be permitted to offer testimony on whatever issues it sees fit in the first phase of the hearing (the forecast case), but then advocate to restrict the ability of intervening parties to contest assertions contained in AEP Ohio's own testimony through intervenors' testimony and/or at hearing. As the parties proceed towards a hearing on this matter, OMAEG urges the Commission to reject AEP Ohio's attempt to limit the ability of intervening parties to litigate this matter by offering testimony and/or evidence that responds to and directly rebuts AEP Ohio's own claims and assertions.

AEP Ohio commenced this proceeding when it filed an amendment to its Long-Term Forecast Report in Case No. 18-501-EL-FOR (Need Case) on September 19, 2018.¹ Simultaneously with its Amendment, AEP Ohio filed testimony from six witnesses in support of the assertions made in the Amendment.² Through the Amendment, AEP Ohio asked the Public Utilities Commission of Ohio (Commission) to find that there was a need for the development of at least 900 MW of renewable generation and for the Commission to grant AEP Ohio authority to develop that generation.³

Through its testimony, AEP Ohio suggested that it intended for this proceeding surrounding the proposed Amendment to AEP Ohio's 2018 Long-Term Forecast Report to be consolidated with a then-forthcoming proceeding regarding specific renewable projects.⁴ Then, on September 27, 2018, AEP Ohio filed an application to enter into renewable energy purchase agreements and for authority to amend its tariffs in Case No. 18-1392-EL-RDR, et al. (Tariff Cases).⁵ Along with that Tariff Cases Application, AEP Ohio filed the testimony of six additional witnesses, as well as additional testimony from Mr. Allen in support of the Tariff Cases Application, and a motion to consolidate the Tariff Cases with the Need Case.⁶

¹ See Amendment to the 2018 Long-Term Forecast Report, Case No. 18-501-EL-FOR (September 19, 2018) (Amendment).

² See Need Case, Direct Testimony of William A. Allen (Allen Testimony), Karl R. Bletzacker (Bletzacker Testimony), Kamran Ali (Ali Testimony), John F. Torpey (Torpey Testimony), Trina Horner (Horner Testimony), and Nicole Fry (Fry Testimony), Case No. 18-501-EL-FOR (September 19, 2018).

³ See Amendment.

⁴ See Allen Testimony at 4, lines 10-12.

⁵ See Application, Case Nos. 18-1392-EL-RDR, et al. (September 27, 2018) (Tariff Cases Application).

⁶ See Tariff Cases, Direct Testimony of Daniel R. Bradley (Bradley Testimony), Stephen Buser (Buser Testimony), Steven M. Fetter (Fetter Testimony), Joseph A. Karrasch (Karrasch Testimony), Bill LaFayette (LaFayette Testimony), Jon F. Williams (Williams Testimony), and William A. Allen (Allen Testimony) (September 27, 2018); Motion to Consolidate (September 27, 2018).

Over the objection of OMAEG and others,⁷ the Commission granted AEP Ohio’s Motion to Consolidate on October 22, 2018.⁸ In granting the Motion to Consolidate, however, the Commission also determined that the proceeding would be bifurcated such that the Commission would address the consolidated cases in two phases. The first phase would address the resource planning need for AEP Ohio’s proposed generation facilities, and then, if a resource planning need is found, the Commission would proceed to the second phase. The second phase would consider the Tariff Cases Application.⁹ In its Amendment in the Need Case and through supporting testimony, AEP Ohio claims that the renewable projects will provide economic benefits to customers, which justifies “need.”¹⁰

After the issues in the consolidated case were bifurcated, AEP Ohio filed notice that it would be offering the testimony of two witnesses who only filed testimony in the Tariff Cases during the first phase of the proceeding to address the need determination.¹¹ Specifically, AEP Ohio stated that it “wishes to bring one additional **issue** from the *Tariff Cases* forward into the need hearing: the economic impact study performed by The Ohio State University (OSU) Professor Stephen Buser and co-authored by Regionomics LLC’s Bill LaFayette. The economic impact study is entitled ‘Impacts of Solar Plant Construction and Operation on the Ohio Economy’ and was completed on September 20, 2018,”¹² which was after the Company’s LTFR Case was filed. The economic impact study, **as a supplement** to the Long-Term Forecast Report

⁷ See Memorandum Contra Motion to Consolidate Proceedings by the OMAEG (October 9, 2018); Memorandum Contra Motion of the Ohio Power Company to Consolidate Proceedings Which Would Result in an Unfair Process for Consumers by the Office of the Ohio Consumers’ Counsel (October 9, 2018).

⁸ See Entry at ¶ 40 (October 22, 2018).

⁹ See *id.* at ¶ 32.

¹⁰ Amendment at 6-9,

¹¹ See Ohio Power Company’s Notice of Additional Witnesses (October 26, 2018); Ohio Power Company’s Amended Notice of Additional Witnesses (November 1, 2018).

¹² See Buser Testimony, Exhibit SB/BL-1.

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.”¹³ OMAEG and others objected to the inclusion of the testimony of the two witnesses that address the purposed economic impact of the renewable generation plants as irrelevant to the determination of whether “there is need for the facility based on resource planning projections” as required by R.C. 4928.143(B)(2)(c).¹⁴ OMAEG requested that the Commission prohibit AEP Ohio from expanding the definition of need and requested to limit Phase 1 of the hearing to a need tied to resource planning projections as delineated in the statute and as interpreted by prior Commission precedent.¹⁵ The Commission has not yet ruled upon that request.

On January 2, 2019, pursuant to the procedural schedule established by the November 13, 2018 Entry, many parties, including OMAEG, filed testimony for the first phase of the consolidated proceedings responding to the testimony filed by AEP Ohio in the Need Case, including the two additional pieces of testimony that AEP Ohio noticed would also be presented in this phase of the proceeding.¹⁶ On January 7, 2019, AEP Ohio filed a motion to strike or defer certain intervenor testimony.¹⁷ Pursuant to Ohio Adm. Code 4901-1-12(B)(1) and the Entry

¹³ Ohio Power Company’s Notice of Additional Witnesses at 1 (October 26, 2018) (emphasis added) (citations omitted).

¹⁴ See Objection to Ohio Power Company’s Notice to Present Additional Witnesses by the Office of the Ohio Consumers’ Counsel and The Ohio Manufacturers’ Association Energy Group and the Kroger Co (November 5, 2018).

¹⁵ Id. at 3.

¹⁶ Entry at ¶ 39 (November 13, 2018).

¹⁷ See Motion of Ohio Power Company to Strike or Defer Certain Intervenor Testimony that Is Beyond the Scope of the First-Phase Hearing Set by the Attorney Examiners’ October 22, 2018 Procedural Entry (January 7, 2019) (AEP Motion to Strike).

issued on January 8, 2019,¹⁸ OMAEG now timely files this memorandum contra AEP Ohio’s Motion to Strike or Defer. The reasons for OMAEG’s opposition to this motion are more fully articulated below.

II. ARGUMENT

In its motion, AEP Ohio asks the Commission to either strike or defer to the second phase of this proceeding the testimony of four witnesses: Witness Justin Bieber of the Kroger Co. (Kroger), Witnesses Richard E. Brown and Emily S. Medine of the Ohio Coal Association (OCA), and Witness Jonathan A. Lesser of the Office of the Ohio Consumers’ Counsel (OCC). AEP Ohio claims that portions of these witnesses’ testimonies offend the Commission’s bifurcation of the consideration of the issues in this case because it discusses the Requests for Proposal (RFPs) that led to the execution of Renewable Energy Purchase Agreements (REPAs) and retail cost recovery issues related to those proposed REPAs.¹⁹ Specifically, AEP Ohio says that these portions of testimony are “irrelevant to the issues being considered in the first phase and well beyond its scope.”²⁰ AEP Ohio goes on to state that the testimony allows for the rebuttal of issues which AEP Ohio has not yet presented and prejudices both AEP Ohio and other parties that, in AEP Ohio’s estimation, appropriately adhered to the separation of issues as established by the Commission.²¹

As an initial matter, AEP Ohio does not speak for other parties, and no other parties have actually claimed to be prejudiced by the portions of the testimony that AEP Ohio references. OMAEG can state that it, as a party that AEP Ohio apparently believes complied with the

¹⁸ Entry at ¶ 19 (January 8, 2019).

¹⁹ AEP Motion to Strike at 6.

²⁰ Id.

²¹ Id. at 6-7.

Commission's directives regarding separation of issues, does not feel prejudiced by the cited intervenor testimony, as this testimony specifically responds to testimony that AEP Ohio presented and that OMAEG and others explicitly objected to being offered into the record in Phase 1 of the hearing. OMAEG and others asked the Commission in November to limit the hearing to evidence and testimony that can be offered to demonstrate need for the facility based on resource planning projections. Given that the Commission did not rule upon this request, intervenors were left with no other option than to address AEP Ohio's testimony and its broad interpretation of the definition of need in their own testimony or through cross examination and evidence at hearing.

In light of AEP Ohio's testimony and broad claims of what constitutes need, including purported economic benefits and customer desires, OMAEG contends that the challenged intervenor testimony allows for a more thorough consideration of the issues at stake in this portion of the consolidated proceeding, thus benefiting both the Commission and customers who will be subject to whatever decision the Commission renders in this proceeding.

The Commission separated the issues in the consolidated proceeding in order to adhere to the requirements of R.C. 4928.143(B)(2)(c).²² The Commission stated that it sought to first consider whether the requirements of R.C. 4928.143(B)(2)(c) are met before proceeding to the consideration of the issues raised in the Tariff Cases.²³ R.C. 4928.143(B)(2)(c) provides that utilities cannot charge customers for generation facilities unless 1) the facilities will be "owned or operated" by the utility; 2) the Commission determines that there is a "need" for the facilities based on resource planning projections submitted by the utility, and; 3) the utility dedicates the capacity and energy from the generation facilities to Ohio consumers. The PUCO has further

²² Entry at ¶ 32 (October 22, 2018).

²³ Id.

determined that the utility must show that its “generation needs cannot be met through the competitive market.”²⁴ AEP, through the testimony it has filed in this case, has failed to meet these requirements. Specifically, it has not submitted testimony to establish a resource planning need for the proposed renewable generation facilities. Its own Amendment filing concedes, “wholesale markets are adequately supplying capacity and energy to the AEP Ohio load zone.”²⁵ Staff of the Commission accordingly filed testimony that it does not believe that the proposed 900 MW of renewable generation is necessary for AEP Ohio to meet its renewable portfolio standard (RPS) obligations.²⁶

Instead, the Company has crafted its own definition of “need;” one that it apparently believes better suits the evidence that it is able to present. When asked how the Company evaluates need, Mr. Allen discusses AEP Ohio’s contention that the proposed generation facilities will lead to lower costs for customers and the desire of customers for in-state renewable power, while also speculating on the incentives that AEP Ohio’s proposal would provide for businesses that are considering doing business in Ohio.²⁷ At no point does he mention a resource planning need.²⁸ As Staff notes in its testimony, AEP Ohio is conflating customer preferences with customer needs.²⁹ OMAEG has joined other parties to this case in opposing this reconstruction of the statutory language by AEP Ohio.³⁰

²⁴ *In re Long-Term Forecast Report of Ohio Power Co., and Related Matters*, Case No. 10-501-EL-FOR, Opinion and Order at 26 (January 9, 2013).

²⁵ Amendment at 3.

²⁶ Testimony of Stuart M. Siegfried at 4 (January 8, 2019).

²⁷ See Allen Testimony at 6-7.

²⁸ Id.

²⁹ Testimony of Timothy W. Benedict at 9-10 (January 8, 2019).

³⁰ See Motion in Limine to Exclude Evidence Purporting to Show Need Based on Economic Impact and Customer Surveys, or, in the Alternative, Motion to Strike Irrelevant Testimony of AEP Ohio Witnesses by The Office of the Ohio Consumers’ Counsel, the Ohio Manufacturers’ Association Energy Group, the Kroger Co., the Ohio Coal Association, Interstate Gas Supply, and IGS Solar (January 7, 2019).

AEP Ohio makes its unilateral rewriting of Ohio law all the more perplexing in the instant motion. Not only has it filed testimony that modifies the plain, statutory definition of need, but it also asks the Commission to preclude parties from responding to that testimony. Notably, AEP Ohio did not move to withdraw or amend any of its testimony filed in the Need Case for the purposes of the hearing on the first phase of the consolidated proceeding. As noted above, AEP Ohio actually notified the parties of its intent to offer the testimony of witnesses that originally filed their testimony in the Tariff Cases. We can presume that AEP Ohio therefore believes that this testimony is relevant to the need determination that the Commission will make in phase one of the consolidated proceeding.

The testimony that AEP Ohio intends to present discusses the proposed REPAs extensively. Mr. Torpey's testimony reviews the purported benefits of AEP Ohio's proposed generation projects, deploying analyses that used the proposed REPAs.³¹ Additionally, Exhibit JFT-1,³² which Mr. Torpey says was used in the PJM Impact analysis that he supports, was used to show alleged cost savings resulting from AEP Ohio's proposed projects.³³ According to Mr. Torpey, one of the purposes of his testimony is to explain the methodology used by AEP Ohio to determine the "economic benefits" associated with the addition of renewable resources for AEP Ohio.³⁴ Thus, the discussion of REPAs throughout his testimony is central to his testimony. Similarly, Mr. Allen states at several points, without citation to any source, that the renewable projects that AEP Ohio proposes would be "economically beneficial."³⁵

³¹ See Torpey Testimony at 5-13.

³² See id. at Exhibit JFT-1.

³³ Id. at 10.

³⁴ Id. at 3.

³⁵ See Allen Testimony at 4, 7, 8, and 12.

Further, the testimony of the two witnesses that AEP Ohio first filed testimony for in the Tariff cases both discuss AEP Ohio’s economic impact analysis at length.³⁶ Mr. LaFayette even goes so far as to discuss specific provisions and commitments contained in a solar REPA that is at issue in this consolidated proceeding. AEP Ohio made the decision to offer the testimony of these two witnesses in this phase of the consolidation instead of the second phase, which AEP Ohio argues is the proper time to address the testimony that it disputes in this motion. Clearly, based on its choice to file the testimony in the Tariff Cases initially, it saw Mr. LaFayette’s and Mr. Buser’s testimony to be appropriate for the Commission’s consideration in that proceeding.

Now, however, AEP Ohio, seeks to prevent other parties from entering evidence to combat these assertions. If intervening parties are not permitted to discuss the REPAs or costs underlying AEP Ohio’s Amendment and application in this case, they cannot meaningfully address the central assertions that AEP Ohio makes. Again, OMAEG strongly disputes the idea that AEP Ohio has properly conceptualized need. But if the Commission determines that it has, AEP Ohio cannot ask the Commission to allow its assertions to go unchallenged. A review of the challenged testimony that Kroger, OCC, and OCA filed reveals that the witnesses were simply responding to AEP Ohio’s own assertions.

AEP Ohio’s statements that the Commission risks procedural reversal³⁷ are unsupported. AEP Ohio does not cite to any law that the Supreme Court of Ohio would use to reverse the Commission’s need determination based on the inclusion of the testimony it disputes. It only cites past Commission cases where the Commission has determined that irrelevant testimony

³⁶ See Buser Testimony; LaFayette Testimony.

³⁷ See AEP Ohio Motion to Strike at 7.

should be stricken.³⁸ For the reasons discussed above, this testimony is not irrelevant, as it directly relates to contentions made in AEP Ohio's own testimony.

III. CONCLUSION

The Commission should reject AEP Ohio's attempt to establish a set of rules to govern the presentation of testimony by intervening parties that is distinct from those which govern AEP Ohio's own testimony. The Commission should deny AEP Ohio's motion and allow the affected parties to present their testimony as was filed in Phase 1 of the hearing on the consolidated cases.

Respectfully submitted,

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³⁸ Id. at 3.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail January 9, 2019

/s/ Brian W. Dressel
Brian W. Dressel

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Summary: Memorandum Memorandum Contra The Ohio Power Company's Motion To Strike Or Defer Certain Intervenor Testimony By The Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group