

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 January 14, 2019

{¶ 1} 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.

{¶ 2} 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.

{¶ 3} 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.

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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.

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

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

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

{¶ 11} 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.

{¶ 12} Also on September 27, 2018, AEP Ohio filed a motion seeking to consolidate the *LTFR Case* and the *Tariff Cases*.

{¶ 13} 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. The attorney examiner also directed 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.

{¶ 14} On November 13, 2018, the procedural schedule was amended, in order to afford the intervenors additional time to prepare for hearing. Pursuant to the amended procedural schedule, testimony on behalf of intervenors was due for filing by January 2,

2019. Additionally, a prehearing conference was set to occur on January 7, 2019, with the evidentiary hearing to be called on December 4, 2018, and reconvened on January 15, 2019.

{¶ 15} During the prehearing conference held on January 7, 2019, AEP Ohio indicated that it intended to file a motion to strike certain portions of the intervenor testimony filed on January 2, 2019, which, according to the Company, is beyond the scope of the first phase of these consolidated proceedings. In addition, the Ohio Consumers' Counsel (OCC) noted that it intended to file a motion in limine to preclude certain evidence from being presented in these cases. In order to expedite consideration of the motions, the attorney examiner directed that the motions be filed by January 7, 2019, and that any memoranda contra be filed by January 9, 2019. The attorney examiner further directed that no reply memoranda should be filed.

{¶ 16} On January 7, 2019, AEP Ohio filed a motion to strike or defer certain intervenor testimony to phase two of these proceedings. More specifically, AEP Ohio requests that portions of the direct testimony of The Kroger Company (Kroger) witness Justin Bieber, OCC witness Jonathan A. Lesser, and Ohio Coal Association (OCA) witnesses Emily S. Medine and Richard E. Brown either be stricken or deferred to the second phase of these proceedings on the basis that the testimony encompasses substantive analysis regarding the request for proposals that led to the execution of the REPAs, the specific terms and conditions and associated costs of the REPAs, the cost recovery proposals, and the Green Power Tariff addressed by the Company in the *Tariff Cases*.

{¶ 17} On January 9, 2019, Kroger, OCC, OCA, and Ohio Manufacturers' Association Energy Group (OMAEG) filed memoranda contra AEP Ohio's motion to strike or to defer intervenor testimony. Kroger, OCC, OMAEG, and OCA emphasize that AEP Ohio's LTFR amendment relies on a broad definition of need that includes "economically beneficial" renewable energy, lower energy costs, and customers' desires for renewable energy, which, according to the intervenors, is inconsistent with R.C. 4928.143(B)(2)(c) and Commission precedent. *In re Long-Term Forecast Report of Ohio Power Co.*, Case No. 10-501-EL-FOR

(*Turning Point*), Opinion and Order (Jan. 9, 2013) at 26. Kroger, OMAEG, OCA, and OCC contend that AEP Ohio opened the door to the presentation of testimony opposing the Company's definition of, and justification for, need.

{¶ 18} Specifically, as to OCC witness Lesser's testimony, OCC argues that the Commission has previously determined that the sufficiency of solar resources, including solar RECs to meet the utility's renewable energy mandates under R.C. 4928.64, is relevant to the issue of need under R.C. 4928.143(B)(2)(c). *Turning Point* at 26. OCC, therefore, asserts that AEP Ohio's request to strike confidential exhibits JAL-9 and JAL-12 should be rejected.

{¶ 19} In its memorandum contra, OCC concedes that whether AEP Ohio will own and operate the renewable energy facilities and whether the output of the facilities will be dedicated to Ohio consumers is beyond the scope of the Phase I proceedings; however, OCC proposes that the Commission reconsider the scope of these proceedings for judicial economy. OCC and OCA argue that, pursuant to R.C. 4928.143(B)(2)(c), if any of the statutory conditions are not met, phase two of these proceedings, to address the specific terms of the renewable projects, cannot go forward. Similarly, OCA avers that the predicate issues of ownership and operation, as well as the competitive bid process required by the statute, were not addressed in the Entry issued October 22, 2018. OCA contends that these are not necessarily tariff issues to be resolved in the next phase and they are, therefore, addressed by OCA witness Brown.

{¶ 20} Further, OCA submits that AEP Ohio's focus on generic renewable resources rather than the specific facilities at issue is irrelevant and inconsistent with R.C. 4928.143(B)(2)(c), as the operation, design, output, costs, cost recovery, capacity factors, and reliability of the specific resources at issue can only be determined by examination of the actual REPAs, which AEP Ohio wholly ignores. OCA submits that the testimony of OCA witness Brown initially addresses the generic project economics addressed by AEP Ohio witness Torpey and then the specific project economics for the proposed facilities.

{¶ 21} The attorney examiner denies AEP Ohio's motion to strike, for purposes of Phase I of these proceedings, the testimony of intervenor witnesses Bieber, Brown, Medine, and Lesser, as set forth in the Company's motion filed January 7, 2019. However, the attorney examiner grants AEP Ohio's alternative request to defer the identified portions of the testimony of intervenor witnesses Bieber, Brown, Medine, and Lesser to the second phase of these proceedings. Specifically, both cross-examination and consideration of the admission of the identified portions of testimony will be deferred to the second phase of these proceedings. As stated in the October 22, 2018 Entry at ¶ 32, the first phase of the proceedings will address the need provision of R.C. 4928.143(B)(2)(c), while all other provisions, including those noted by OCC and OCA, will be addressed in the second phase of these proceedings.

{¶ 22} On January 7, 2019, OCC, OMAEG, Kroger, OCA, Interstate Gas Supply, Inc., and IGS Solar, LLC (collectively, Joint Movants) filed a motion in limine seeking to exclude certain evidence or, in the alternative, a motion to strike certain testimony of AEP Ohio's witnesses. More specifically, Joint Movants seek to exclude, in its entirety, the testimony of AEP Ohio witnesses Trina Horner and Nicole Fry, in regard to the survey performed by Navigant Consulting as to AEP Ohio's customers' interest in renewable energy, and to exclude, in its entirety, the testimony of Stephen A. Buser and William LaFayette, in regard to the economic-impact benefit analysis of renewable energy projects. Joint Movants contend that the above-noted testimony regarding the economic-impact benefit study and customer survey are irrelevant to the Commission's determination of need pursuant to R.C. 4928.143(B)(2)(c).

{¶ 23} On January 9, 2019, AEP Ohio filed a memorandum contra Joint Movants' motion in limine or, in the alternative, motion to strike. AEP Ohio avers that Joint Movants' motion is an untimely, misguided attempt to avoid the central issue before the Commission, whether the Company can demonstrate a need for at least 900 MW of renewable energy resources in Ohio, in accordance with R.C. 4928.143(B)(2)(c). The Company notes that the

term “need” is not defined by the General Assembly and, therefore, the definition of need is left to the Commission’s reasonable interpretation. AEP Ohio submits that Joint Movants’ reliance on *Turning Point* is misplaced, as the Commission decision in *Turning Point* was based on the specific facts, circumstances, and record developed in the *Turning Point* proceeding. According to AEP Ohio, the Commission is not bound to follow the *Turning Point* decision as long as the Commission explains the basis for its departure from the *Turning Point* decision. Further, AEP Ohio reasons that Joint Movants’ exclusively capacity-based understanding of resource planning is overly narrow, fundamentally flawed, and inconsistent with Commission rules. See Ohio Adm.Code 4901:5-5-01 and 4901:5-5-06(B)(3)(e) (regarding the integrated resource plan and the information to be provided in support thereof).

{¶ 24} The attorney examiner finds that, while Joint Movants may disagree with AEP Ohio’s definition of and justification for need, the Company has the burden of proof to demonstrate need. The ultimate decision as to whether AEP Ohio has met its burden to demonstrate need rests with the Commission. To that end, the attorney examiner denies the Joint Movants’ motion in limine, as well as the alternative motion to strike, in its entirety, the testimony of AEP Ohio witnesses Horner, Fry, Buser, and LaFayette, as well as selected portions of AEP Ohio witness Allen’s testimony.

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That AEP Ohio’s motion to strike be denied. It is, further,

{¶ 27} ORDERED, That AEP Ohio’s alternative request to defer certain portions of the intervenor testimony to the second phase of these proceedings be granted. It is, further,

{¶ 28} ORDERED, That Joint Movants’ motion in limine or, in the alternative, motion to strike be denied. It is, further,

{¶ 29} 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/Greta See

By: Greta See
Attorney Examiner

JRJ/hac

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

Summary: Attorney Examiner Entry denying AEP Ohio's motion to strike, granting AEP Ohio's alternative request to defer testimony, and denying Joint Movants' motion in limine or, in the alternative, motion to strike electronically filed by Heather A Chilcote on behalf of Greta See, Attorney Examiner, Public Utilities Commission