

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

In the Matter of the Application Seeking        )  
Approval of Ohio Power Company’s            )  
Proposal to Enter into Renewable Energy        ) Case No. 18-1392-EL-RDR  
Purchase 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.            )

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**JOINT MEMORANDUM CONTRA TO AEP’S  
MOTION FOR THE PUCO TO HOLD OFF RULING ON ITS PROPOSAL FOR  
CONSUMERS TO PAY A SOLAR SUBSIDY  
BY  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL  
THE OHIO MANUFACTURERS’ ASSOCIATION ENERGY GROUP  
INTERSTATE GAS SUPPLY, INC.  
IGS SOLAR, LLC  
DIRECT ENERGY, LP**

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The Public Utilities Commission of Ohio (“PUCO”) established a process for considering the Ohio Power Company’s (AEP) proposal for its 1.5 million monopoly customers to subsidize solar power owned or operated by AEP, which included two phases. The first phase was strictly limited to whether AEP could demonstrate that customers need the solar plants under Ohio law. A hearing addressing the subsidies that AEP wants its consumers to pay would be held later. The first phase consisted of discovery, testimony of witnesses, an evidentiary hearing, and briefs, and is now pending a PUCO decision.

But, after it became known last week that the PUCO may decide this case on September 26<sup>th</sup>, AEP reacted by immediately asking the PUCO to stand down on issuing its decision. AEP justified its request for a 60-day delay with what it characterized as “intervening developments” since the briefing of phase one.<sup>1</sup> The intervening development, according to AEP, is the passage of Amended Substitute House Bill No. 6 (H.B. 6). According to AEP, certain provisions in H.B.6 will allow the two AEP solar projects that are the subject of this proceeding to receive “potential benefits” (which is AEP’s way of describing the subsidies that Ohioans will pay for the solar projects).<sup>2</sup>

AEP is erroneously seeking a delay and proposing a new process, based on H.B. 6. H.B. 6 is simply irrelevant to the statutory issue of whether Ohio utility consumers *need* electricity from the proposed solar plants (that are proposed to be built with money from AEP’s monopoly customers). H.B. 6 was principally about giving money, at consumer expense, to certain generation owners to subsidize certain power plants. H.B. 6 did *not* change the Ohio standard (R.C. 4928.143(B)(2)(c)) for evaluating whether consumers need monopoly electric utilities like AEP to build or develop new power plants outside of the competitive market. H.B. 6 did not alter Ohio law that strictly limits a utility’s ability to seek PUCO approval of customer-funded subsidies for new generation plants that it proposes to own or operate. This separate funding for a monopoly utility generation project (including solar) can only be approved by the PUCO if the utility can show, among other things,<sup>3</sup> that utility consumers need the electricity

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<sup>1</sup> AEP Motion, Memorandum in Support at 1 (Sept. 20, 2019).

<sup>2</sup> AEP Motion, Memorandum in Support at 1.

<sup>3</sup> Additional restrictions contained under R.C. 4928.143(B)(2)(c) are that the charge must be non-bypassable; the plant must be owned or operated by the utility; the facility must be sourced through a competitive bidding process; and the energy and capacity must be dedicated to Ohio consumers.

from the proposed power plants. As has been shown in this case, Ohio consumers don't need electricity from AEP's proposed plants, as the competitive market provides more than an adequate supply of power. *See* R.C. 4928.143(B)(2)(c).

AEP's reliance on H.B. 6 for delay is misplaced and unreasonable. There should not be a delay (and a modified or new PUCO process from AEP) in the PUCO's scheduled decision on whether AEP has demonstrated need as required under R.C. 4928.143(B)(2)(c). In fact, earlier in the case AEP emphasized that a decision should be expedited.<sup>4</sup>

While AEP claims its new approach (that it alleges cannot yet be revealed due to confidentiality) will address parties' concerns about the project, AEP has not consulted any of the parties to this pleading. An outcome that could actually "ameliorate many of the concerns and objections raised by opponents in these proceedings,"<sup>5</sup> as AEP asserts, would be for AEP to withdraw its proposal and to develop the contested renewable projects through a separate affiliate. Of course, AEP is free to undertake that endeavor outside this proceeding, without a delay in the PUCO's decision.

Additionally, AEP's request is unreasonable because it would require the PUCO to throw out its process (and the parties' advocacy that went with it) to allow for AEP to work on a new version of its proposal. AEP's approach is contrary to the administrative efficiency that the PUCO seeks for its cases. AEP's motion should also be denied for this reason. The PUCO should proceed, as scheduled, to issue its decision on whether AEP has established a customer need for electricity from the solar projects. (It has not).

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<sup>4</sup> *See* AEP Initial Brief, at p. 79 (Mar. 6, 2019).

<sup>5</sup> AEP Motion, Memorandum in Support at 1.

The PUCO should honor the process it established last year—where it determined that these proceedings should be bifurcated.<sup>6</sup> AEP itself was successful in excluding intervenor testimony on issues that went beyond the scope of the first phase. During the hearing AEP moved to strike, or defer to the second phase, certain intervenor testimony, which included, among other things, Kroger’s, OCC’s, and the Ohio Coal Association’s testimony on the renewable energy purchase agreements, the specific terms and conditions and the associated costs of the agreements.<sup>7</sup> The Attorney Examiners granted AEP’s motion to prevent the testimony from being heard then and to defer it to the second phase.<sup>8</sup> The intervenors were expressly precluded from presenting testimony (and cross-examining witnesses) on issues beyond the scope of the first phase—including issues that AEP now seeks to raise. Yet, now that AEP seems fearful of a PUCO decision, it wants to blend the phases to suit its own purposes.

Also, AEP’s request to consider issues beyond the scope of phase one now is legally flawed. AEP’s motion is essentially an out-of-time interlocutory appeal of the Attorney Examiner’s ruling that set up a two-phase process. Any interlocutory appeal of the PUCO’s ruling is too late.<sup>9</sup> The PUCO should reject AEP’s request on this ground alone.

Thus, AEP’s request is contrary to what the PUCO determined as the scope of the first phase of these proceedings. And it is contrary to what other case participants had to

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<sup>6</sup> Entry at ¶32 (Oct. 22, 2018).

<sup>7</sup> AEP Motion to Strike (Jan. 7, 2019).

<sup>8</sup> Entry at ¶27 (Jan. 14, 2019).

<sup>9</sup> Interlocutory appeals of Attorney Examiner rulings must be filed within five days of the ruling, under Ohio Adm. Code 4901-1-15. That rule also allows parties who do not take an interlocutory appeal to address the ruling in their initial brief or any other appropriate filing.

follow in their recommendations to the PUCO. AEP's request would result in an unfair and unreasonable process.

Importantly, AEP is mistaken in its understanding of H.B. 6 and its impact on phase one of this proceeding. The fact that H.B. 6 may provide subsidies to solar projects, at consumer expense, is irrelevant to the statutory issue of whether Ohio utility consumers *need* electricity from proposed solar plants owned or operated by AEP. In other words, the subsidies that consumers will pay under H.B. 6 are not in any way a justification for more subsidies to AEP in this PUCO case. AEP's motion should be denied.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra was served on the persons stated below via electronic transmission this 23rd day of September 2019.

/s/ Maureen R. Willis

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Summary: Memorandum Joint Memorandum Contra to AEP's Motion for the PUCO to Hold Off Ruling on it's Proposal for Consumers to Pay a Solar Subsidy by the Office of the Ohio Consumers' Counsel, The Ohio Manufacturers' Association Energy Group, Interstate Gas Supply, Inc., IGS Solar, LLC, Direct Energy, LP electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.