

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates.)))	Case No. 20-585-EL-AIR
In the Matter of the Application of Ohio Power Company for Tariff Approval.)))	Case No. 20-586-EL-ATA
In the Matter of the Application of Ohio Power Company for Approval to Change Accounting Methods.)))	Case No. 20-587-EL-AAM

**OHIO POWER COMPANY’S MEMORANDUM IN OPPOSITION TO
ONE ENERGY’S MOTION FOR DELAY**

I. BACKGROUND

After the Staff Report was filed on November 18, 2020, the Attorney Examiner established a procedural schedule by Entry dated November 23, 2020. Two days later on November 25, Ohio Power Company (“AEP Ohio” or the “Company”), Staff and intervenors filed an unopposed Motion to Extend certain deadlines while explicitly leaving other deadlines in place. In order to facilitate settlement discussions, the Parties’ Motion to Extend sought to move back the deadlines for Supplemental Testimony, Motions to Strike, Memos Contra Motions to Strike, and the Pre-Hearing/Hearing dates. The Motion specifically excluded any extension of a statutory deadline (*e.g.*, the filing of objections) and left the discovery cutoff unmodified. By Entry dated December 1, 2020, the Attorney Examiner granted the unanimous Motion to Extend and incorporated the updated procedural schedule.

On November 25, 2020, the Staff filed a revised Staff Report “to correct a clerical error contained within the schedules of the Staff Report for which three values were erroneously deleted.” For each of the clerical errors, the original Staff Report was correct in its narrative summary of those issues and the supporting workpapers also conformed to the narrative portion of the original Staff Report – just the schedules did not align on the clerical errors and were corrected in the revised Staff Report. With only the clerical errors corrected, the Staff filed a revised Staff Report “to supersede and replace” the original Staff Report.

One Energy Enterprises LLC (One Energy) filed a Motion to intervene on December 4, 2020 based on its narrow stated interest in any resolution of net metering issues in this case – claiming that its intervention is timely under the existing procedural schedule established by the November 23, 2020 Entry and stating that its proposed intervention will not cause undue delay. Yet a mere three days later, One Energy set out to cause such a delay. On December 7, 2020, One Energy filed a Motion to Clarify the Filing Date of the Staff Report. While the Motion itself indicates that the revised Staff Report impacts two deadlines (the discovery cutoff and the objections deadline), the Motion fails to set forth the specific relief or clarification requests (only stated later in the supporting memorandum), as required by O.A.C. 4901-1-12. Further, the memorandum in support improperly attempts to go beyond the scope of the motion, to modify a statutory deadline and improperly seek to delay the evidentiary hearing.

In reality, One Energy seeks to completely overhaul the process already established through proper channels and unanimous agreement – in order to achieve what in its own judgment would “more fairly align the time intervals between One Energy’s proposed dues dates with the intervals in the initial procedural schedule and as required by rule and statute.” One Energy Memo at 4. In other words, One Energy seeks to broadly readjust the established

procedural schedule in very significant ways while attempting to disingenuously maintain that granting its requested relief does not affect the rights of any party and after having stated in its motion to intervene that it would not cause delay.

Surprisingly, the summary table on page 5 of One Energy's Memorandum in Support also includes for the first time a delayed date for the evidentiary hearing. It could be a typo since it is not mentioned elsewhere and is completely unsupported and unjustified; the implicit request should be ignored or rejected. It is one thing for One Energy to seek clarification of the objections and discovery deadline, but seeking to drastically modify the established schedule and second-guess all of the other parties and the Attorney Examiner is inappropriate and should be ignored or rejected. The delayed hearing date listed in the table was not stated in the motion, not stated in the two listed requests for clarification on page four and is otherwise completely unexplained and unjustified. The Company strongly opposes any further delay of the hearing at this point and this aspect of One Energy's motion without question should be denied. The remainder of this response will address the two clarification requests that related to the revised Staff Report filing date.

Regarding the revised Staff Report filing date, the clerical errors were narrow and technical in nature and only affected the supporting schedules (not the Staff Report itself or supporting workpapers). That kind of revision should not be considered as a new Staff Report filing or trigger a delay in the objections or discovery cutoff. And none of the clerical errors corrected in the revised Staff Report relate to One Energy's stated interest in net metering issues. In any case, the Commission has substantial discretion over its proceedings and substantial compliance is adequate. The Commission's interpretation is practical, logical and consistent with its discretion in managing its own dockets. *Toledo Coalition for Safe Energy v. Pub. Util.*

Comm., 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982); *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978). *See also* R.C. 4901.13.

In short, there is no need to delay the objections deadline or reopen the now-closed discovery period. Alternatively, if the Commission conservatively concludes that the revised Staff Report should reset the clock for those two deadlines, it should do so narrowly and with deference for the unanimous agreement reached by the parties regarding the procedural schedule (One Energy sought to intervene after the new schedule was unanimously established). With regard to objections, the deadline should not be delayed based on correcting the clerical errors, but the Company does support a clarification from the Commission to ensure the parties understand the impact of Staff's November 25 and December 2 filings. Regarding the discovery cutoff, if the deadline is moved back, it should only be extended to December 9, 2020 – not December 16, 2020 as proposed by One Energy; and the scope of any new discovery should be strictly limited to the clerical errors that were corrected in the revised Staff Report.

As a threshold matter, One Energy states (at 4) without explanation that the revised Staff Report filed on November 25, 2020 was not served until December 2, 2020. Apparently, One Energy is referring to the letter that was sent out by Staff on December 1, 2020 and docketed on December 2, 2020 to explain the clerical errors and revised Staff Report. The December 1 letter refers to the prior certified mail service but (apparently) the revised Staff Report was not re-served by certified mail. Thus, One Energy's reliance on the December 2 date as a trigger for the 30-day objections deadline is misplaced. One Energy's ostensible (but unexplained) position that the 30-day statutory objection deadline is restarted with the revised Staff Report is legally incorrect and defies established process and precedent. Again, correcting clerical errors does not restart the clock.

Nothing in R.C. 4909.19(C) supports the idea that service of the Staff Report is only completed when the certified mail process is completed. It is the longstanding practice to file objections within 30 days of the Staff Report filing (without regard to receipt of certified mail service dates). In prior rate proceedings, objections were filed within 30 days of the Staff Report being initially docketed, even where the certified mail process was not initiated until days after the Staff Report was docketed. *See e.g. Duke Energy Ohio*, Case No. 17-32-EL-AIR (certified mailing one day after docketed Staff Report but objections still filed 30 days from Staff Report initially being docketed); *Dayton Power & Light Company*, Case No. 15-1830-EL-AIR (same); *Northeast Ohio Gas Company*, Case No. 18-1720-GA-AIR (certified mailing three days after docketed Staff Report but objections still filed 30 days from Staff Report initially being docketed); *Vectren Energy*, Case No. 18-298-GA-AIR (same). This longstanding practice is supported by a straightforward reading of the controlling statutory language. Division (C) of R.C. 4909.19 initially uses the phrase “within thirty days after such filing and the mailing of copies thereof” to refer to the objection deadline and subsequently uses the shorthand phrase “within thirty days after the filing of such report” to refer to the same deadline. The phrase “and mailing of copies thereof” simply refers to the parallel certified mailing process but does not link the 30-day deadline to completion of the certified mailing process. In sum, the Commission need not delay the statutory objection deadline based on the correction of clerical errors but AEP Ohio supports a clarification to equally assist all parties. Thus, even if the Commission considers the clerical errors to constitute a new Staff Report that resets the procedural clock (which it need not do so), the clock commences on November 25 – not December 2 as proposed by One Energy.

Further, regarding One Energy's clarification request relating to the discovery cutoff deadline, as One Energy acknowledges, the cutoff deadline is established by default under O.A.C. 4901-1-17(B). By rule, the 30-day intervention deadline necessarily occurs after the 14-day discovery cutoff – that is fine and does not cause any problems. But subsequent movants to intervene should not be permitted to disturb the procedural schedule that has been established to that point. AEP Ohio has already answered thousands of discovery questions and subparts of questions from parties with transparency and while avoiding a single discovery dispute. Moreover, the Parties' unanimous Motion to Extend affirmatively and repeatedly stated that it did not change the statutory objection deadline or the discovery cutoff. Motion to Extend at 2, 3 and 7. Extending the discovery deadline as requested by One Energy undermines the parties' agreement.

Further, even if the Commission considers the revised Staff Report as resetting the clock, the updated discovery cutoff should be December 9, 2020 – not December 16, 2020 as proposed by One Energy (although 14-day discovery deadline in O.A.C. 4901-1-17 was created by the Commission and not a statute, it refers to the filing/ mailing process in R.C. 4909.19 and should yield a similar start date of November 25, not December 2, for both matters). Finally, any discretionary extension of discovery beyond December 2, 2020 should be limited to modifications in Staff Report since that was all that happened in fixing the clerical errors after the initial Staff Report filing date of November 18, 2020.

II. CONCLUSION

One Energy did not contact the Company to discuss any of these issues. Regardless, its motion is procedurally flawed as outlined above and its requested relief is not justified. Because One Energy sought an expedited ruling, it cannot file a reply memorandum and the Commission

should proceed to issue a ruling on these important procedural matters to help the parties and the public proceed with clarity in light of the revised Staff Report.

Respectfully submitted,

/s/ Steven T. Nourse _____

Steven T. Nourse (0046705), Counsel of Record
Christen M. Blend (0086881)

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

Telephone: (614) 716-1608

Email: stnourse@aep.com

cblend@aep.com

Eric B. Gallon (0071465)

Porter, Wright, Morris & Arthur LLP

41 South High Street, 30th Floor

Columbus, Ohio 43215

Telephone: (614) 227-2190

Email: egallon@porterwright.com

Christopher L. Miller (0063259)

Ice Miller LLP

250 West Street

Columbus, Ohio 43215

Telephone: (614) 462-5033

Email: christopher.miller@icemiller.com

(willing to accept service by e-mail)

Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 8th day of December, 2020, via e-mail.

/s/ Steven T. Nourse

Steven T. Nourse

E-Mail Service List:

ChargePoint, Inc.

Dylan F. Borchers, Esq.
Kara H. Herrnstein, Esq.
Jhay T. Spottswood, Esq.
BRICKER & ECKLER LLP
dborchers@bricker.com
kherrnstein@bricker.com
jspottswood@bricker.com

Clean Fuels Ohio (CFO)

Madeline Fleisher, Esq.
Dickinson Wright PLLC
mfleisher@dickinsonwright.com

Direct Energy Business, LLC

Direct Energy Services, LLC

Mark A. Whitt, Esq.
Lucas A. Fykes, Esq.
WHITT STURTEVANT LLP
whitt@whitt-sturtevant.com
fykes@whitt-sturtevant.com

**The Environmental Law &
Policy Center (ELPC)**

Caroline Cox, Esq.
Environmental Law & Policy Center
ccox@elpc.org

Robert Kelter
Environmental Law & Policy Center
rkelter@elpc.org

**Industrial Energy Users-
Ohio (IEU-Ohio)**

Matthew R. Pritchard, Esq.
Rebekah J. Glover, Esq.
Bryce A. McKenney
MCNEES WALLACE & NURICK LLC
mpritchard@mcneeslaw.com
rglover@mcneeslaw.com
bmckenney@mcneeslaw.com

**Interstate Gas Supply, Inc.
(IGS)**

Bethany Allen, Esq.
Joseph Oliker, Esq.
Michael Nugent, Esq.
IGS Energy
bethany.allen@igs.com
joe.oliker@igs.com
michael.nugent@igs.com

The Kroger Co.

Angela Paul Whitfield, Esq.
Carpenter Lipps & Leland LLP
paul@carpenterlipps.com

**Nationwide Energy Partners,
LLC (NEP)**

Michael J. Settineri, Esq.
Gretchen L. Petrucci, Esq.
Vorys, Sater, Seymour and Pease LLP
mjsettineri@vorys.com
glpetrucci@vorys.com

**Natural Resources Defense
Council (NRDC)**

Robert Dove, Esq.
Kegler Brown Hill + Ritter Co., L.P.A.
rdove@keglerbrown.com

**Ohio Consumers' Counsel
(OCC)**

Angela D. O'Brien, Esq.
Christopher Healey, Esq.
Office of the Ohio Consumers' Counsel
angela.obrien@occ.ohio.gov
christopher.healey@occ.ohio.gov

Ohio Energy Group (OEG)

Michael L. Kurtz, Esq.
Kurt J. Boehm, Esq.
Jody Kyler Cohn, Esq.
BOEHM, KURTZ & LOWRY
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

**The Ohio Environmental
Council (OEC)**

Miranda Leppla, Esq.
Trent Dougherty, Esq.
Chris Tavenor, Esq.
mleppla@theOEC.org
tdougherty@theOEC.org
ctavenor@theOEC.org

**The Ohio Hospital
Association (OHA)**

Devin D. Parram, Esq.
Rachel N. Mains, Esq.
BRICKER & ECKLER LLP
dparram@bricker.com
rmains@bricker.com

**The Ohio Manufacturers'
Association Energy Group
(OMAEG)**

Kimberly W. Bojko, Esq.
Carpenter Lipps & Leland LLP
Bojko@carpenterlipps.com

**Ohio Partners for Affordable
Energy (OPAE)**

Robert Dove, Esq.
Kegler Brown Hill + Ritter Co., L.P.A.
rdove@keglerbrown.com

PUCO Staff

John Jones
Steven Beeler
Werner Margard
John.Jones@ohioattorneygeneral.gov
Steven.Beeler@ohioattorneygeneral.gov
Werner.margard@ohioattorneygeneral.gov

Walmart Inc.

Carrie H. Grundmann, Esq.
cgrundmann@spilmanlaw.com
Derrick Price Williamson, Esq.
dwilliamson@spilmanlaw.com
Steve W. Chriss
Walmart Inc.
Stephen.Chriss@walmart.com

One Energy Enterprise LLC

Marion H. Little
Christopher J. Hogan
Zeiger, Tigges & Little, LLP
little@litohio.com
hogan@litohio.com
Dane Stinson
Matthew Warnock
Bricker & Eckler LLP
dstinson@bricker.com
mwarnock@bricker.com
Katie Johnson Treadway
One Energy Enterprise, LLC

ktreadway@oneenergyllc.com

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Summary: Memorandum -OHIO POWER COMPANY'S MEMORANDUM IN OPPOSITION TO
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electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company