

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE
POWER PURCHASE AGREEMENT RIDER
OF OHIO POWER COMPANY FOR 2018.

CASE NO. 18-1004-EL-RDR

IN THE MATTER OF THE REVIEW OF THE
POWER PURCHASE AGREEMENT RIDER
OF OHIO POWER COMPANY FOR 2019.

CASE NO. 18-1759-EL-RDR

ENTRY

Entered in the Journal on January 19, 2021

{¶ 1} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or 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. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 3} In Case No. 13-2385-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for an ESP for the period of June 1, 2015, through May 31, 2018, pursuant to R.C. 4928.143. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (*ESP 3 Case*), Opinion and Order (Feb. 25, 2015), Second Entry on Rehearing (May 28, 2015), Fourth Entry on Rehearing (Nov. 3, 2016), Seventh Entry on Rehearing (Apr. 5, 2017). Among other matters, the Commission authorized AEP Ohio to establish a placeholder Power Purchase Agreement (PPA) Rider and required AEP Ohio to justify any future request for cost recovery in a separate proceeding. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 20-22, 25-26.

{¶ 4} Subsequently, in Case No. 14-1693-EL-RDR, et al., the Commission modified and approved a stipulation and recommendation pertaining to AEP Ohio's proposal to

populate the placeholder PPA Rider approved in the *ESP 3 Case. 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). The Commission directed that the PPA Rider be subject to an annual audit. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 89-90.

{¶ 5} In Case No. 16-1852-EL-SSO, et al., the Commission modified and approved a stipulation and recommendation, which authorized AEP Ohio to implement an ESP for the period of June 1, 2018, through May 31, 2024, and provided for the continuation of the PPA Rider. *In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, et al., Opinion and Order (Apr. 25, 2018) at ¶ 53.

{¶ 6} By Entry dated January 15, 2020, the Commission directed Staff to issue a request for proposal for the audit services necessary to assist the Commission with the audit of AEP Ohio's PPA Rider for the period of January 1, 2018, through December 31, 2019.

{¶ 7} On March 11, 2020, the Commission selected London Economics International LLC (LEI) to conduct the prudency and performance audit of AEP Ohio's PPA Rider. LEI filed confidential and public versions of its audit report on September 16, 2020.

{¶ 8} On June 16, 2020, Ohio Consumers' Counsel (OCC) filed a motion to intervene on behalf of the residential customers of AEP Ohio. On September 18, 2020, Industrial Energy Users–Ohio (IEU) filed a motion to intervene. No memorandum contra OCC's motion to intervene nor IEU's motion to intervene was filed. The attorney examiner finds that OCC's and IEU's motions are reasonable and should be granted.

{¶ 9} On September 16, 2020, Staff filed a motion for protective order requesting that certain confidential information regarding the PPA Rider in LEI's audit report be kept confidential pursuant to Ohio Adm.Code 4901-1-24. Staff declares that the report includes

highly sensitive financial information, which the Commission has protected from public disclosure in prior auction cases.

{¶ 10} On September 21, 2020, AEP Ohio filed a motion for protective order of the audit report. AEP Ohio states that the redacted information consists of confidential, proprietary, and competitively-sensitive financial and strategic information regarding the operations of the Ohio Valley Electric Corporation (OVEC), including OVEC's costs and projections for operations, OVEC's coal procurement methods and pricing, and the Company's offers of the OVEC energy and capacity in the annual PJM Base Residual Auction, that if disclosed could impair OVEC's financial position, as well as market prices for fuel, energy, and capacity in the markets in which OVEC participates.

{¶ 11} By Entry issued December 7, 2020, the procedural schedule was established such that the deadline for the filing of motions to intervene was January 15, 2021, initial comments are due by January 22, 2021, and reply comments are due by February 12, 2021.

{¶ 12} On January 7, 2021, OCC filed a notice to take deposition and a request for production of documents, seeking to depose on January 13, 2021, a person with knowledge and expertise regarding AEP Ohio's procurement of a percentage of the OVEC entitlement.

{¶ 13} On January 11, 2021, AEP Ohio filed a motion for protective order to preclude the deposition and production of documents, with an attached affidavit. In the motion, AEP Ohio notes that this matter has not been scheduled for a hearing, nor is a hearing contemplated, but the process provides an opportunity to file comments and reply comments in response to the audit report and, therefore, AEP Ohio will not present witnesses to testify in these proceedings. Further, counsel for AEP Ohio states that he spoke with counsel for OCC, John Finnigan, and instead offered to answer OCC's questions informally or in writing before the due date for comments. According to counsel for AEP Ohio, Mr. Finnigan stated that he would take AEP Ohio's suggestions under consideration and notify the Company of OCC's response. AEP Ohio states that, without further

discussion or response from counsel for OCC, within an hour of the conversation, OCC filed the January 7, 2021 notice of deposition and request for production of documents.

{¶ 14} By electronic mail on January 12, 2021, to counsel for the parties and the attorney examiners, OCC advised that the deposition scheduled for January 13, 2021, would not go forward at the scheduled time but once a new date and time had been agreed upon, an amended notice would be filed.

{¶ 15} On January 14, 2021, OCC refiled its notice to take deposition and a request for production of documents, seeking to depose on January 21, 2021, a person with knowledge and expertise regarding AEP Ohio's procurement of a percentage of the OVEC entitlement.

{¶ 16} By correspondence filed January 15, 2021, AEP Ohio reiterates the assertions in its January 11, 2021 motion for protective order. Further, AEP Ohio states that the Company does not withdraw its motion for protective order, as it continues to be applicable to the ongoing conduct of OCC to pursue depositions and to bypass the 20-day discovery deadline applicable to requests for production of documents.

{¶ 17} The attorney examiner notes that, pursuant to Ohio Adm.Code 4901-1-12, memoranda contra the motion for protective order are due by January 26, 2021. Further, any party may file a reply to a memorandum contra within seven days after the service of such memorandum contra, in this instance, on or before February 2, 2021. Accordingly, to prevent prejudice to any party or interested person, the attorney examiner hereby vacates the existing deadlines for the filing of comments and reply comments. New dates for the filing of comments to the audit report and reply comments will be set by subsequent entry. In all other respects, the due dates established in the December 7, 2020 Entry remain.

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That the motions to intervene filed by OCC and IEU be granted.
It is, further,

{¶ 20} ORDERED, That a copy of this Entry be served upon all interested persons
and parties of record in these cases.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Greta See

By: Greta See
Attorney Examiner

GAP/hac

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Commission of Ohio Docketing Information System on

1/19/2021 12:28:11 PM

in

Case No(s). 18-1004-EL-RDR, 18-1759-EL-RDR

Summary: Attorney Examiner Entry ordering that the motions to intervene filed by OCC and IEU be granted electronically filed by Heather A Chilcote on behalf of Greta See, Attorney Examiner, Public Utilities Commission