

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

ENTRY

Entered in the Journal on April 14, 2021

{¶ 1} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or Company) is an electric light company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 2} In Case No. 16-1852-EL-SSO, et al., the Commission modified and approved a stipulation and recommendation (Stipulation) filed by AEP Ohio, Staff, and numerous other signatory parties, which authorized the Company to implement an electric security plan for the period of June 1, 2018, through May 31, 2024. Among the commitments in the Stipulation, AEP Ohio agreed to file a base distribution rate case by June 1, 2020. *In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, et al., Opinion and Order (Apr. 25, 2018) at ¶ 45.

{¶ 3} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order

was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 4} On April 29, 2020, in the above-captioned cases, AEP Ohio filed a pre-filing notice of its intent to file an application for approval of an increase in its electric distribution rates, tariff modifications, and changes in accounting methods.

{¶ 5} On June 8, 2020, AEP Ohio filed its application to increase its rates pursuant to R.C. 4909.18.¹ AEP Ohio filed direct testimony in support of its application on June 15, 2020.

{¶ 6} On November 18, 2020, as amended on November 25, 2020, Staff filed a written report of its investigation (Staff Report). Pursuant to R.C. 4909.19 and Ohio Adm.Code 4901-1-28(B), objections to the Staff Report were due by December 18, 2020.

{¶ 7} Objections to the Staff Report were filed by various parties on December 18, 2020.

{¶ 8} By Entry issued on November 23, 2020, as amended by Entries issued on December 1, 2020, January 14, 2021, January 27, 2021, and February 1, 2021, the procedural schedule was established in these cases such that a public hearing was held on February 8, 2021, a prehearing conference and technology test session were held on February 11, 2021, and the evidentiary hearing commenced on March 4, 2021, all through Webex. Pursuant to the February 1, 2021 Entry, the due dates for direct expert testimony supporting objections to the Staff Report, motions to strike objections to the Staff Report, and memoranda contra

¹ Due to the closure of the Commission's offices from June 1, 2020, through June 5, 2020, the application for a rate increase, which was submitted by AEP Ohio on June 1, 2020, was accepted for filing on June 8, 2020, and deemed timely filed in accordance with R.C. 1.14 and Ohio Adm.Code 4901-1-07 and 4901-1-13. *In re the Extension of Filing Dates for Pleadings and Other Papers Due to a Building Emergency*, Case No. 20-1132-AU-UNC, Entry (June 8, 2020).

motions to strike objections to the Staff Report were indefinitely extended at the request of the parties.

{¶ 9} At the February 11, 2021 prehearing conference, the parties informed the attorney examiners that they were engaged in negotiations in an attempt to reach a settlement. AEP Ohio requested that, if a stipulation was not filed before March 4, 2021, the evidentiary hearing be called and continued. AEP Ohio also agreed to provide an update on the status of negotiations at that time.

{¶ 10} On March 4, 2021, the evidentiary hearing was called and the proceedings continued to permit the parties to engage in further settlement negotiations. At that time, AEP Ohio informed the attorney examiners that the Company had reached a settlement in principle with some of the parties and that they expected to file a stipulation by March 12, 2021. Other parties to these cases indicated that the stipulation would likely be opposed.

{¶ 11} On March 12, 2021, as amended on April 7, 2021, a Joint Stipulation and Recommendation (Stipulation) was filed by AEP Ohio and 13 other parties to the proceedings. In a correspondence included with the Stipulation, AEP Ohio indicated that the parties had begun discussions in an effort to negotiate a separate agreement to address matters relating to the virtual hearing process, consistent with the directives discussed at the prehearing conference.

{¶ 12} By Entry issued March 17, 2021, a second prehearing conference was scheduled for March 26, 2021, via Webex, for the purpose of updating the attorney examiners on the parties' progress regarding matters relating to the virtual hearing process. The prehearing conference was held, as scheduled, and the parties offered proposals for the virtual hearing process and proposed hearing dates, as well as informed the attorney examiners regarding the availability of certain witnesses.

{¶ 13} After considering the parties' proposals and witness availability, by Entry issued April 5, 2021, the procedural schedule was established such that testimony in support

of the Stipulation on behalf of the Company, Staff, and intervenors, as well as AEP Ohio's testimony supporting objections to the Staff Report, was due by April 9, 2021; testimony in opposition to the Stipulation and testimony supporting objections to the Staff Report is due by April 16, 2021; motions to strike objections to the Staff Report are due by April 20, 2021; memoranda contra motions to strike objections to the Staff Report are due by April 27, 2021; and Staff testimony in response to objections to the Staff Report is due by May 4, 2021. The April 5, 2021 Entry also scheduled a prehearing conference and technology test session on May 10, 2021 and scheduled the evidentiary hearing to reconvene on May 12, 2021. Finally, the April 5, 2021 Entry revised the response time for memoranda contra any motions filed to five business days and the response time for discovery to seven calendar days.

{¶ 14} Ohio Adm.Code 4901-1-15 sets forth the Commission's requirements for interlocutory appeals. The rule provides that no party may take an interlocutory appeal from a ruling by an attorney examiner unless that ruling is one of four specific rulings enumerated in paragraph (A) of the rule or unless the appeal is certified to the Commission pursuant to paragraph (B) of the rule. Ohio Adm.Code 4901-1-15(B) specifies that an attorney examiner shall not certify an interlocutory appeal unless the attorney examiner finds that the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling that represents a departure from past precedent and an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, if the Commission should ultimately reverse the ruling in question.

{¶ 15} On April 6, 2021, the Environmental Law & Policy Center (ELPC), Interstate Gas Supply, Inc. (IGS), Ohio Environmental Council, Ohio Partners for Affordable Energy (OPAE), and Natural Resources Defense Council (jointly, Appellants) filed a joint interlocutory appeal of the April 5, 2021 Entry requesting that the Commission modify the procedural schedule.² Appellants note that the procedural schedule directs that parties

² By correspondence filed April 9, 2021, Nationwide Energy Partners, LLC and Armada Power, LLC declared their support for the Appellants' joint interlocutory appeal.

opposing the Stipulation file testimony seven calendar days after testimony supporting the Stipulation is filed. Appellants cite other Commission cases where parties were afforded more time to conduct discovery and submit testimony. Appellants assert that the procedural schedule, particularly the de facto elimination of post-testimony discovery for parties opposing the Stipulation, deprives Appellants of their right to discovery and due process. Citing select prior rate cases, Appellants assert that Commission precedent has afforded parties more time between the submission of testimony supporting a stipulation and the filing of testimony in opposition. Appellants contend that the procedural schedule does not allow for even one round of discovery after the submission of testimony in support of the Stipulation, does not provide sufficient time for parties opposed to the Stipulation to prepare testimony, and does not afford IGS sufficient time to receive a response on a pending public records request submitted to Staff. Further, Appellants argue that, despite the objections of multiple parties, the hearing was scheduled to reconvene in mid-May, which is too soon to allow parties to properly prepare. The procedural schedule, according to Appellants, overlooks that, at the prehearing conference, OP&AE informed the attorney examiners that its witness would be unavailable beginning May 15, 2021, necessitating that OP&AE's witness be taken out of order, likely before AEP Ohio and others supporting the Stipulation have completed the presentation of their witnesses. Also, Appellants note that the April 5, 2021 Entry does not explicitly provide a schedule for rebuttal testimony in response to testimony submitted by Staff, AEP Ohio, or others supporting the Stipulation, as permitted by Ohio Adm.Code 4901-1-28, although Appellants admit they have yet to make a decision on whether they will submit rebuttal testimony. Appellants submit that the April 5, 2021 Entry establishing a procedural schedule represents a departure from past precedent and that an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties. Appellants request that opponents of the Stipulation be afforded three additional weeks to file testimony and that the evidentiary hearing reconvene on June 7, 2021.

{¶ 16} On April 9, 2021, AEP Ohio, Staff, Ohio Consumers' Counsel, Clean Fuels Ohio, and EVgo Services, LLC filed testimony in support of the Stipulation.

{¶ 17} On April 12, 2021, AEP Ohio filed a memorandum contra Appellants' interlocutory appeal. AEP Ohio argues that the appeal does not meet the requirements of Ohio Adm.Code 4901-1-15(B) to be certified to the Commission on the basis that the procedural schedule represents a departure from past precedent and must be extended to avoid undue prejudice. AEP Ohio contends that the fact that the procedural schedule does not provide the same amount of time to conduct discovery, submit testimony, or prepare for hearing, as in some earlier Commission cases, does not qualify the schedule in these cases as a departure from past precedent for purposes of Ohio Adm.Code 4901-1-15. AEP Ohio notes that the procedural schedule in the April 5, 2021 Entry affords parties more time than the default discovery deadline under Ohio Adm.Code 4901-1-17(B). AEP Ohio notes that the discovery deadline was previously extended to December 9, 2020, and the April 5, 2021 Entry permits the parties to continue to serve discovery up to the week before hearing, in addition to shortening the response time to seven calendar days. The Company contends that the cases cited by Appellants did not, as Appellants assert, establish a precedent for all subsequent rate case proceedings. AEP Ohio notes that Appellants ignore a Commission case where parties opposing a stipulation were afforded 11 days to file testimony after testimony in support of the stipulation was filed. The Company notes that challenges to a procedural schedule do not meet the requirements for certifying interlocutory appeals, because "[s]etting procedural schedules * * * is a routine matter with which the Commission and its examiners have significant experience, and, thus, * * * is not a departure from past precedent." *In the Matter of the Application of P.H. Glatfelter Co. for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-730-EL-REN, Entry (Oct. 15, 2009) at 4. Nor have Appellants demonstrated, according to AEP Ohio, undue prejudice. AEP Ohio notes that the Company and Staff filed their testimony before 1:30 p.m., on April 9, 2021, giving Appellants the afternoon to prepare discovery. Further, provided Appellants serve a manageable number of discovery requests on AEP Ohio, the Company states that it

will endeavor to respond to such discovery within six days. AEP Ohio emphasizes that, even if Appellants do not receive responses to discovery requests before the due date to file their testimony, Appellants can use the responses on cross-examination at the hearing or on rebuttal. As to IGS' pending public records request, AEP Ohio reasons that Appellants do not provide sufficient information regarding the public records request to support the claim of undue prejudice in these proceedings. Further, AEP Ohio states that counsel for OP&E and the Company have agreed to take OP&E's witness on May 14, 2021, and that Appellants have not offered any legal support for their claim that being required to offer a witness "out of order" is unduly prejudicial. In addition, AEP Ohio notes that Company counsel is also working with ELPC to ensure the Company witness ELPC expects to subpoena is available to testify on May 14, 2021. Finally, AEP Ohio states that Appellants fail to explain why two months from the date the Stipulation was filed is insufficient time to prepare for hearing in proceedings that have been pending since April 2020. Accordingly, AEP Ohio reasons the Appellants have failed to satisfy the requirements of Ohio Adm.Code 4901-1-15(B) to certify an interlocutory appeal to the Commission.

{¶ 18} The attorney examiner finds that Appellants' interlocutory appeal does not present a new or novel question of law or policy or a departure from past precedent. As the Commission has noted on numerous prior occasions, the Commission and its attorney examiners have extensive experience with respect to establishing procedural schedules and determining filing deadlines, which are routine matters that do not involve a new or novel question of interpretation, law, or policy. *See, e.g., In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, et al., Entry (Feb. 8, 2018) at ¶ 24; *In re The Dayton Power and Light Co.*, Case No. 12-426-EL-SSO, et al., Entry (Jan. 14, 2013) at 5; *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Entry (May 2, 2012) at 4; *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Entry (Oct. 1, 2008) at 7; *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 08-935-EL-SSO, Entry (Sept. 30, 2008) at 3; *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 05-1444-GA-UNC, Entry (Feb. 12, 2007) at 7; *In re Columbus Southern Power Co. and Ohio*

Power Co., Case No. 05- 376-EL-UNC, Entry (May 10, 2005) at 2. Further, as to Appellants' claim that the procedural schedule is a departure from past precedent, the attorney examiner notes that, even in the cases cited by Appellants, the procedural schedules vary, likely based on a number of factors, including, but not limited to, statutory requirements; schedules of the parties, witnesses, Staff, and the attorney examiners; and the availability of Commission resources.

{¶ 19} The attorney examiner also finds that Appellants have failed to demonstrate that an immediate determination by the Commission is needed to prevent the likelihood of any undue prejudice resulting from the April 5, 2021 Entry. Appellants have had ample time to conduct discovery and prepare for hearing and, in short, have not shown that the procedural schedule is unduly prejudicial or unreasonable under the circumstances of these proceedings. In this instance, the attorney examiner notes that the Commission must also be mindful of the timing requirements in R.C. 4909.42. The statute provides that, where the Commission fails to issue an order within 275 days of the filing of an application under R.C. 4909.18, a public utility requesting an increase on any rate, joint rate, toll, classification, charge, or rental or requesting a change in a regulation or practice affecting the same, the increase shall go into effect upon the filing of a bond or a letter of credit by the public utility, subject to refund. Further, considering the number of parties and potential witnesses in these proceedings, it is unreasonable to delay the hearing until June to accommodate the availability of OP&E's witness, where the witness can otherwise be accommodated, and the hearing proceed.

{¶ 20} Nonetheless, in order to afford Appellants additional time to conduct discovery before testimony in opposition to the Stipulation is due, the procedural schedule should be revised such that testimony in opposition to the Stipulation and testimony supporting objections to the Staff Report is due by April 20, 2021. All other dates and deadlines set forth in the April 5, 2021 Entry remain unchanged.

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the procedural schedule be revised as set forth above in Paragraph 20 and that testimony in opposition to the Stipulation and testimony supporting objections to the Staff Report is due by April 20, 2021. It is, further,

{¶ 23} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Greta See

By: Greta See
Attorney Examiner

NJW/hac

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Case No(s). 20-0585-EL-AIR, 20-0586-EL-ATA, 20-0587-EL-AAM

Summary: Attorney Examiner Entry ordering that the procedural schedule be revised as set forth above in Paragraph 20 and that testimony in opposition to the Stipulation and testimony supporting objections to the Staff Report is due by April 20, 2021 electronically filed by Heather A Chilcote on behalf of Greta See, Attorney Examiner, Public Utilities Commission