

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 6, 2022

{¶ 1} Ohio Power Company d/b/a AEP Ohio (AEP Ohio) is an electric distribution utility (EDU) 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 EDU 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. Confidential and public versions of LEI's audit report were filed on September 16, 2020, in Case No. 18-1004-EL-RDR, and on September 17, 2020, in Case No. 18-1759-EL-RDR.

{¶ 8} By Entry dated January 19, 2021, the attorney examiner granted motions to intervene in these proceedings filed by the Ohio Consumers' Counsel (OCC) and Industrial Energy Users-Ohio. On September 10, 2021, the attorney examiner also granted motions for intervention filed by Ohio Energy Group, Ohio Manufacturers' Association Energy Group, The Kroger Co., Ohio Partners for Affordable Energy, and Natural Resources Defense Council.

{¶ 9} On October 5, 2021, the attorney examiner established a procedural schedule for these cases, including an evidentiary hearing to commence on January 12, 2022.

{¶ 10} On December 1, 2021, OCC filed a motion for subpoenas duces tecum for the following individuals to testify and produce a number of designated documents at the evidentiary hearing in these proceedings: Marie Fagan, Chief Economist of LEI; Mahila Christopher of the Commission's Staff; and the person or persons referenced in email correspondence by Ms. Christopher as "PUCO Admin." In support of its motion, OCC notes that Ohio Adm.Code 4901-1-28(E) provides that, if a hearing is scheduled in a case in which the Commission orders an investigation to be performed by Staff and the filing of a report, any person making or contributing to the report may be subpoenaed to testify at the hearing in accordance with Ohio Adm.Code 4901-1-25(A). OCC asserts that Ms. Fagan, Ms. Christopher, and the person or persons identified as "PUCO Admin" are individuals that have either drafted or contributed to the audit report filed in these proceedings.

{¶ 11} On December 16, 2021, Staff filed a memorandum contra OCC's motion for subpoenas duces tecum. Staff argues that the motion is moot as to Ms. Fagan, because she is the auditor and will be available to testify in these proceedings, in accordance with customary practice. As to Ms. Christopher and the person or persons identified as "PUCO Admin," Staff contends that OCC's subpoenas are premature, given that the deadline for testimony is December 29, 2021, and Staff is currently determining which individuals will testify on behalf of Staff in these proceedings. According to Staff, OCC should wait until after Staff's testimony is filed to determine whether a motion for subpoena is necessary.

{¶ 12} On December 23, 2021, OCC filed a reply in support of its motion. OCC maintains that Staff's position is not well-founded, as OCC's motion was filed in accordance with Ohio Adm.Code 4901-1-28(E). OCC reiterates that the Commission should permit OCC to exercise its right to subpoena any person making or contributing to the audit report.

{¶ 13} On December 29, 2021, Staff filed the testimony of Ms. Fagan and Rodney Windle.

{¶ 14} Upon review of OCC's motion for subpoenas duces tecum, the attorney examiner finds that, as to Ms. Fagan, OCC's request for the issuance of a subpoena is moot, given that Ms. Fagan has submitted pre-filed testimony in these proceedings and Staff has represented that Ms. Fagan is available and will appear at the evidentiary hearing to address the findings and conclusions in the audit report. With respect to Ms. Christopher and the person or persons identified as "PUCO Admin," the attorney examiner initially notes that Ohio Adm.Code 4901-1-28(E) does not "entitle" OCC to subpoena Staff witnesses to testify at hearings, as OCC claims. Neither does the rule authorize or even address the production of documents. The rule merely provides that "any person making or contributing to [Staff's] report *may* be subpoenaed to testify at the hearing," while Ohio Adm.Code 4901-1-25(C) permits the attorney examiner, sua sponte, to quash a subpoena if it is unreasonable or oppressive. Consistent with past practice in other Commission proceedings, and in the interest of furthering administrative efficiency and conserving limited Staff resources, OCC and the other parties to these proceedings should direct their questions on cross-examination to Staff's designated witness, Mr. Windle. *See, e.g., In re PALMco Power OH, LLC d/b/a Indra Energy and PALMco Energy OH, LLC d/b/a Indra Energy*, Case No. 19-957-GE-COI, Transcript Vol. I (Sept. 19, 2019) at 98. To the extent that Mr. Windle is unable or without sufficient knowledge to respond to questions from the parties seeking information that is relevant to these proceedings, the attorney examiner may direct Staff, at that time, to produce another witness to testify at the hearing. Accordingly, the attorney examiner finds that it is appropriate to defer a ruling on OCC's motion until such time as Ms. Fagan and Mr. Windle have completed their testimony.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That OCC's motion for subpoenas duces tecum be denied, in part, as moot, and that the remainder of OCC's motion be held in abeyance. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Sarah J. Parrot

By: Sarah J. Parrot
Attorney Examiner

GAP/mef

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

1/6/2022 9:55:37 AM

in

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

Summary: Attorney Examiner Entry denying the motion for subpoenas duces tecum, in part, with the remainder held in abeyance as detailed herein electronically filed by Ms. Mary E. Fischer on behalf of Sarah J. Parrot, Attorney Examiner, Public Utilities Commission of Ohio