

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)	
Power Company for Authority to Establish a)	
Standard Service Offer Pursuant to Section)	Case No. 23-23-EL-SSO
4928.143, Revised Code, in the Form of an)	
Electric Security Plan)	

In the Matter of the Application of Ohio)	
Power Company for Approval of Certain)	Case No. 23-24-EL-AAM
Accounting Authority)	

**AEP OHIO’S MEMORANDUM CONTRA
THE JOINT MOTION FOR AN EXTENSION OF TIME TO FILE
INTERVENOR TESTIMONY**

Under Ohio Administrative Code (“OAC”) 4901-1-12(C), Ohio Power Company (“AEP Ohio”) submits this Memorandum Contra the May 19, 2023, Joint Motion for an Extension of Time to File Intervenor Testimony (Motion for Continuance) filed by a minority group of parties (Joint Movants). There are 23 parties¹ who filed timely motions to intervene in this case, *see* April 17, 2023 Entry ¶ 6, *In re Application of Ohio Power Company for Authority to Establish a Standard Service Offer*, Case Nos. 23-23-EL-SSO et seq. A distinct minority of eight parties support the Motion for Continuance. They do so not because they need extra time to file (let alone demonstrated any such need), but because they disagree with the majority of parties that had already set up a process and scheduled multiple meetings to attempt settlement of the cases immediately following the filing of intervenor testimony. Joint Movants’ stated basis for continuance of the testimony deadline is misguided and should be rejected.

¹ This number counts the joint application of the Constellation entities as a single “party.”

The Company filed its application and supporting testimony on January 6, 2023 – nearly 140 days ago. The June 2 Intervenor testimony deadline was established by Entry on March 2, three months ahead of the Intervenor testimony deadline. The current request for extension is obviously a last-minute effort to delay this proceeding, as evidenced by the accompanying request for expedited ruling. More importantly, the sole argument in support of the proposed delay lacks any merit and is premised on the unsupportable notion that Joint Movants should not have to disclose their position in the case until they first deem settlement to be infeasible.

Joint Movants claim that their request is “very minor” and “will not introduce any new risk” into the existing procedural schedule. Memo in Support at 3. In reality, a two-week extension at this stage will inevitably have a domino effect that places at risk every other significant deadline remaining in the procedural schedule. Even though the Joint Movants only ask to change the Intervenor testimony deadline, the other major deadlines in the case are nevertheless indirectly affected: discovery, Staff testimony and the hearing are placed in jeopardy.

While the Company would not oppose any reasonable request by Staff for an extension of their testimony deadline (should the need subsequently arise), the Company strongly opposes any extension of discovery and also opposes extension (or even consideration of an extension) of the hearing at this point in the process that predates any settlement discussions. And yet, Joint Movants want to kick off the settlement process by seeking a delay in one of the pivotal pieces of the procedural schedule without acknowledging the realistic impact on the remaining schedule. Moreover, under Joint Movants twisted logic, Intervenor testimony would never need to be filed unless and until settlement was determined with finality to be dead or unachievable. That

extreme approach has no basis in the law or precedent and Joint Movants cite no authority in support of their flawed premise.

In addition, contrary to Joint Movants' claim (Memo in Support at 3) that their request will not prejudice any party, AEP Ohio is likely to be prejudiced by any continuance unless the Commission provides additional clarification at this stage. Since the Company's application and testimony was filed in January, the Company has conducted a technical conference to answer questions about the filing and has received and answered *34 sets of discovery* consisting of: 456 Interrogatories, 129 Requests for Production of Documents, and 20 Requests for Admissions. And the discovery continues to pour in from Intervenor: 18 additional sets of discovery are pending consisting of: 296 Interrogatories, 82 Requests for Production of Documents, and 12 Requests for Admissions). This amounts to a total 52 sets of discovery consistency of nearly 1,000 discovery requests (*excluding* subparts, which are extensive). While the Company understands that discovery is part of the process, the Commission should avoid undue prejudice to AEP Ohio of any continuance by also addressing the resulting harm. Perhaps by design or perhaps an incidental benefit to Intervenor, another consequence of Joint Movants delay will be to grant more time for last-minute discovery – to the detriment of the Company. Indeed, seven of the sets of discovery are not due until after the current testimony deadline of June 2 – providing Intervenor additional time to incorporate discovery into testimony that could have been served during the last four months to meet the current testimony deadline. Another harmful result of the continuance is that the Company's already limited opportunity to send discovery questions to Intervenor after reading their filed testimony will be rendered completely useless (because the modified Intervenor testimony deadline will be on the same day as the discovery cutoff). Therefore, if any continuance is granted, the Commission should bifurcate the remaining

discovery process by: (a) establishing a cutoff for Intervenor discovery to the Company prior to their testimony deadline, and (b) extend by an amount equal to the extension the Company's opportunity to seek discovery from Intervenors (to date zero requests have been sent from the Company to Intervenors).

Joint Movants falsely imply that the existing plan of AEP Ohio and the other parties would create an inadequate settlement opportunity and seek to have the Commission step in to fix that problem. In reality, the Company had already set a plan in motion to explore settlement that was supported by a majority of parties. Four meetings are scheduled commencing June 6, immediately following the filing of Intervenor testimony in these cases. This broadly accepted approach allowed for parties to solidify their positions while simultaneously allowing for completion of the post-hearing briefs in the AES Ohio ESP cases, which was absorbing resources of many of the same Intervenors involved in this case. AEP Ohio and the other Intervenors recognized these constraints and attempted to avoid an ill-timed settlement effort that could have over-extended the parties' resources; thereby, creating an unnecessary overlap in major SSO cases and result in a lack of time and attention toward a serious settlement effort.

There is no doubt that a larger set of parties would be complaining had the Company indifferently plowed forward with settlement without regard to those scheduling conflicts. The existing settlement process and scheduled meetings was the first realistic opportunity to pursue serious settlement and left a full month before the evidentiary hearing to determinate whether settlement could be reached. Joint Movants' Motion for Continuance – if granted in full – could derail that plan and undermine settlement opportunity, not enhance it.

AEP Ohio's reputation and track record for fully pursuing challenging settlement opportunities speaks for itself. For example, the Company settled its last base rate case (Case

No. 20-585-EL-AIR *et al.*) and its last ESP case (Case No. 16-1852-EL-SSO *et al.*). Indeed, AEP Ohio reached one of the most far-reaching and challenging set of issues in the “Global Settlement” involving a slate of 17 difficult and complex cases in one mega-settlement (Case Nos. 10-2929-EL-UNC *et al.*). Consequently, the Commission should have no doubt that AEP Ohio will fully explore settlement in these cases.

In any case, the voluntary pursuit of settlement is not a legal or regulatory requirement, let alone a prerequisite to filing testimony. It is evident that Joint Movants’ entire premise of the continuance is to second-guess the existing plan for settlement and provide themselves an inequitable bargaining position. Indeed, it is ironic and disingenuous for Joint Movants to argue that refraining from filing their testimony and providing any indication of their positions “will establish a foundation for . . . good faith, arms-length bargaining” while the Company has publicly disclosed its entire case by filing an application and eighteen pieces of testimony and is responding to nearly 1,000 discovery requests (excluding subparts). If anything, this would put the Intervenor in a superior bargaining position, allowing them to maintain amorphous positions during settlement. While it would normally go without saying, the Commission as the ultimate decisionmaker in the case should not be involved in second-guessing or deciding settlement strategy or hard-wiring the sequence or timing of settlement meetings. Because that is the ostensible intent and effect of Joint Movants’ continuance request, the Commission should refrain from issuing directives about settlement and deny the unfounded request for delay.

CONCLUSION

For the foregoing reasons, the Motion for Continuance should be denied. If the Commission does decide to grant a continuance, it should simply extend the intervenor testimony deadline one week or less. And if any continuance is granted, the Commission should avoid

resulting harm to AEP Ohio and bifurcate the remaining discovery process by: (a) establishing a cutoff for Intervenor discovery to the Company prior to their testimony deadline, and (b) extend by an amount equal to the extension the Company's opportunity to seek discovery from Intervenors (e.g. a five-day extension to the Intervenor testimony deadline would result in a five-day extension of the current deadline for the Company to issue discovery to Intervenors).

Respectfully submitted,



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CERTIFICATE OF SERVICE

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Summary: Memorandum AEP OHIO'S MEMORANDUM CONTRA THE JOINT
MOTION FOR AN EXTENSION OF TIME TO FILE INTERVENOR TESTIMONY.
electronically filed by Mr. Steven T. Nourse on behalf of Ohio Power Company.