

**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)	Case No. 23-0023-EL-SSO
Pursuant to §4928.143, Ohio Rev. Code,)	
In the Form of an Electric Security Plan)	

In the Matter of the Application of)	
Ohio Power Company for Approval of)	Case No. 23-0024-EL-AAM
Certain Accounting Authority)	

**OHIO PARTNERS FOR AFFORDABLE ENERGY, ENVIRONMENTAL LAW AND
POLICY CENTER, OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP,
AND THE KROGER CO.'s JOINT LIMITED MEMORANDUM CONTRA TO THE
MOTION FOR CONTINUANCE OF THE STAFF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**

I. Introduction

On June 16, 2023, the Staff of the Public Utilities Commission of Ohio (“Commission”) filed a Motion for Continuance and Request for Expedited Consideration (“Staff’s Motion”). Staff seeks to reschedule the hearing in this proceeding, currently scheduled for July 10, 2023, to August 15, 2023 to allow additional time to explore whether a settlement can be achieved.¹ Ohio Partners for Affordable Energy (“OPAE”), Environmental Law and Policy Center (“ELPC”), Ohio Manufacturers’ Association Energy Group (“OMAEG”), and The Kroger Co. (“Kroger”) (collectively, “Joint Movants”) have no objection to the request to extend the procedural schedule for purposes of exploring settlement. However, Joint Movants cannot agree to the hearing date proposed by Staff and pursuant to Ohio Admin. Code 4901-1-12(C) file this Joint Limited Memorandum Contra to the hearing date proposed by Staff.

¹ Staff’s Motion p. 1.

II. Argument

Joint Movants are not opposed to the request to extend the hearing date. However, as noted in Staff's Motion OPAE's counsel has significant conflicts the week of August 15th. Both of OPAE's counsel have a mediation scheduled in another case on August 15, 2023.

Additionally, both of OPAE's counsel have overlapping out-of-town travel scheduled for August 17th-18th. Given these conflicts, OPAE would be unrepresented for at least two if not three days of the hearing. This would be highly prejudicial to OPAE's interest. OPAE offered Staff availability both the week prior to August 15th (in the event this hearing can be completed in a week) or the week following August 15th as additional options close to the original proposal prior to Staff filing its motion.

Similarly, in communications exchanged between the parties before Staff's filing, counsel for ELPC indicated that, due to already established vacation schedules and cases in other states, counsel for ELPC is unavailable the week of August 14th but would be available both the week prior and after. Counsel for OMAEG indicated OMAEG generally supports the idea of a continuance but that OMAEG's counsel is unavailable from August 18th through August 25th, but that counsel would be available the week of August 28th. Further, counsel for Kroger advised that Kroger is agreeable to an extension of the hearing, but disclosed that Kroger's witness was unavailable the week of August 15, 2023 (but could be available the following week). Finally, Walmart Inc.'s counsel stated she has hearings in three other states between August 21st-30th, but provided she had a date certain for Walmart Inc.'s witness the week of August 15th, if the hearing started that week, Walmart Inc. could consent to the proposed hearing date.

The Commission recently found requests for extensions based on the unavailability of counsel due to summer travel, hearing conflicts, and witness unavailability reasonable and

granted continuances on those grounds.² Consistent with the Joint Movant's availability, Joint Movants respectfully request that the hearing be rescheduled to a date no earlier than September 5, 2023. This will accommodate both the schedules of the Joint Movants as well as Walmart Inc's counsel and is the closest available date to Staff's proposed date of August 15, 2023, that does not exclude any party's counsel based on the available information.

Additionally, from a practical matter the proposed August 15th hearing date, if approved, would likely need to be moved again if settlement is not reached by mid-July. In AEP-Ohio's last ESP the Commission established the following procedural schedule after a joint stipulation was filed on August 25, 2017:

- Testimony in support of the Stipulation was due September 13, 2017;
- Testimony in opposition to the Stipulation was due October 11, 2017; and
- The evidentiary hearing began November 1, 2017.³

That schedule allowed for two and half weeks for supporting testimony, another month for opposition and then three more weeks to prepare for hearing, for a total of two months and seven days between filing the stipulation and holding the hearing. Working backwards from August 15, 2023, under that schedule, a stipulation would have to have been filed two weeks ago. Similarly, in FirstEnergy's prior ESP case there was a two month and three-day period between filing the stipulation and holding the hearing to allow for discovery and opposition testimony to be crafted.

More recently, in AES's most recent ESP filing, the Commission allotted twenty-three days between the date the stipulation was filed and the hearing date. Again, working backwards from August 15, 2023, a stipulation would have to be filed by Friday July 21, 2023, which gives

² Pub. Util. Comm. Case No. 21-588-EL-UNC et al., Entry **2-3 (May 22, 2023); Pub. Util. Comm. Case No. 19-293-EL-CSS, Entry ¶9 (July 29, 2020).

³ Pub. Util. Comm. Case No. 16-18520EL-SSO et al., Entry ¶10 (Sept. 5, 2017).

parties 19 business days, with a national holiday interspersed in those 19 days, to reach a stipulation. This is not reasonably feasible. Joint Movants' request to extend the hearing date to no earlier than September 5, 2023, is not unreasonable when compared against past procedural schedules. Further, it will ensure due process by setting a date that does not unfairly eliminate any party's counsel's ability to attend the hearing.

III. Conclusion

For the foregoing reasons, Joint Movants respectfully request that should the Commission grant an extension to the hearing date, which the Joint Movants support, that the new hearing date be scheduled no earlier than September 5, 2023.

/s/Robert Dove

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/s/ Robert Dove
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Case No(s). 23-0023-EL-SSO, 23-0024-EL-AAM

Summary: Text Joint Limited Memorandum Contra to the Motion for Continuance of the Staff of the Public Utilities Commission of Ohio electronically filed by Mr. Robert Dove on behalf of Ohio Partners for Affordable Energy and Environmental Law and Policy Center and Ohio Manufacturers' Association Energy Group and The Kroger Co..