

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company for Authority to Establish a)	Case No. 23-0023-EL-SSO
Standard Service Offer 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 Certain)	Case No. 23-0024-EL-AAM
Accounting Authority.)	

**MOTION OF INTERSTATE GAS SUPPLY, LLC
TO STRIKE DIRECT
TESTIMONY AND MEMORANDUM IN SUPPORT.**

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**MOTION OF INTERSTATE GAS SUPPLY, LLC
TO STRIKE TESTIMONY**

Pursuant to Rule 4901-1-12(A), Ohio Administrative Code (O.A.C.), and Attorney Examiner Entry dated September 26, 2023, Interstate Gas Supply, LLC (IGS or IGS Energy) moves the Public Utilities Commission of Ohio (Commission) to strike, the direct testimony of all intervenors¹ that was filed prior to the Stipulation.² In the alternative, IGS moves to strike portions of witness' Wilson direct testimony filed on June 9, 2023.

¹ Ohio Energy Group (OEG); The Ohio Manufacturers' Association Energy Group (OMAEG); Calpine Retail Holdings, LLC (Calpine); ChargePoint, Inc.; Walmart Inc. (Walmart); Environmental Law & Policy Center (ELPC); The Kroger Company (Kroger); One Energy Enterprises Inc. (One Energy); Ohio Environmental Council (OEC); Ohio Consumers' Counsel (OCC); Retail Energy Supply Association (RESA); Ohio Energy Leadership Council f.k.a. Industrial Energy Users-Ohio (OELC); Constellation Energy Generation, LLC and Constellation NewEnergy, Inc; Northeast Ohio Public Energy Council (NOPEC); and Enel North America, Inc. (Enel); and Direct Energy Business Services LLC and Direct Energy Services LLC (jointly, Direct Energy).

² *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to 4928.143 Revised Code, in the form of an Electric Security Plan, Joint Stipulation and Recommendation* (September 6, 2023).

A memorandum in support of this motion is attached and incorporated herein.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. Introduction

On January 6, 2023, AEP Ohio filed an application that, if approved, would establish the Company's fifth ESP for a period to commence on June 1, 2024, and continue through May 31, 2030. AEP Ohio also filed an application for approval of certain accounting authority to implement aspects of the proposed ESP.

By Entries issued April 17, 2023, and May 30, 2023, the following parties were granted intervention in these cases: Ohio Energy Group, Armada Power, LLC, The Ohio Manufacturers' Association Energy Group (OMAEG), Citizens' Utility Board of Ohio, Ohio Partners for Affordable Energy (OPAE), Calpine Retail Holdings, LLC, Nationwide Energy Partners, Ohio Hospital Association, ChargePoint, Inc., Walmart Inc., Interstate Gas Supply, LLC, Environmental Law & Policy Center (ELPC), The Kroger Company (Kroger), One Energy Enterprises Inc. (One Energy), Ohio Environmental Council, Ohio Consumers' Counsel (OCC), Retail Energy Supply Association, Ohio Energy Leadership Council, Constellation Energy Generation, LLC and Constellation NewEnergy, Inc., Ohio Telecom Association, Ohio Cable Telecommunications Association, Northeast Ohio Public Energy Council, Enel North America, Inc., and Direct Energy Business Services LLC and Direct Energy Services LLC.

On June 9, 2023, the following intervening parties filed direct testimony concerning AEP's initial application: Ohio Energy Group (OEG); The Ohio Manufacturers' Association Energy Group (OMAEG); Calpine Retail Holdings, LLC

(Calpine); ChargePoint, Inc.; Walmart Inc. (Walmart); Environmental Law & Policy Center (ELPC); The Kroger Company (Kroger); One Energy Enterprises Inc. (One Energy); Ohio Environmental Council (OEC); Ohio Consumers' Counsel (OCC); Retail Energy Supply Association (RESA); Ohio Energy Leadership Council (OELC); Constellation Energy Generation, LLC and Constellation NewEnergy, Inc; Northeast Ohio Public Energy Council (NOPEC); and Enel North America, Inc. (Enel); and Direct Energy Business Services LLC and Direct Energy Services LLC (jointly, Direct Energy).

On September 6, 2023, a Joint Stipulation and Recommendation was filed signed by AEP Ohio, Staff, OEG, Enel, Walmart, IGS, RESA, OEC, OPAE, ELPC, OELC, OMAEG, CUB, Direct Energy, OHA, Armada, and Kroger (Signatory Parties). OhioTel also signed the Stipulation as a non-opposing party.

Pursuant to the Entry issued August 16, 2023, testimony in support of the Stipulation was filed on September 11, 2023, by Jamie L. Mayhan for AEP Ohio; Christopher Healey on behalf of Staff; Travis Kavulla for Direct Energy; and John Smith on behalf of RESA. Further, testimony in opposition to the Stipulation was filed on September 20, 2023, by Joseph P. Buckley, Robert B. Fortney, James F. Wilson, Collen Shutrump, Ramteen Sioshansi, Andrew R. Tinkham, and James D. Williams on behalf of OCC; and by Muralikrishna Indukuri for Constellation.

On September 26, 2023, the Attorney Examiner directed parties to file motions to strike testimony by October 2, 2023.

Pursuant to the aforementioned Entry and Rule 4901-1-12(A), Ohio Administrative Code (O.A.C.), IGS moves to strike all irrelevant intervenor testimony filed prior to the Stipulation. IGS does not have any motions to strike with respect to

the testimony that was filed in support or in opposition to the Stipulation. However, there were numerous testimonies filed by AEP Ohio, Signatory Parties, and other intervenors addressing the Application. Much of that testimony is no longer relevant (including entire testimonies for some witnesses) and should not be admitted into the record. That irrelevant testimony should not be admitted as they would muddy the water and make the record difficult to follow should they be offered into evidence.

II. The issues raised in testimony are not relevant to this proceeding

The pre-filed testimony of AEP Ohio and intervening parties is largely no longer relevant to this proceeding as it was filed concerning AEP's initial application and does not necessarily reflect the outcome recommended in the Stipulation. Typical practice in proceedings like this one is that most of the testimony filed before a Stipulation is filed is not offered into evidence as it is outdated and no longer reflect. IGS moves to strike and prevent the admission of all irrelevant testimony filed before the Stipulation was submitted.

The Ohio Rules of Evidence provide that "relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.³ Additionally, evidence which is not relevant is not admissible.⁴ While the Commission has noted that it is not strictly bound by the Ohio Rules of Evidence, the Commission does seek to maintain consistency with the Ohio Rules of

³ Evid. R. 401

⁴ Evid. R. 402

Evidence to the extent practicable.⁵

AEP Ohio submitted prefiled testimony addressing aspects of the Application that are not part of the outcome recommended in the Stipulation. Intervenors are in the same position. For example, AEP Ohio's Application sought to implement a Government Aggregation Standby Rider, which was addressed in AEP Ohio's testimony filed proximate to the ESP Application. Intervenors addressed the GASR in testimony filed before the Stipulation was filed. NOPEC witness Yankel also addressed the GASR. However, the Stipulation provides that the GASR proposal is withdrawn. There are many other aspects of the Application that have been modified by the Stipulation rendering irrelevant portions (or the entirety) of portions of prefiled witness testimonies submitted before the Stipulation was filed.

In this case, the matters raised by intervening parties in pre-filed testimony are irrelevant to the Stipulation and Recommendation which is the subject of the hearing. In the Stipulation and Recommendation, the Company withdrew, amended, and modified many aspects of its Application rendering many of the topics in pre-filed testimony irrelevant. To highlight one example, of many, is Anthony J. Yankel on behalf of NOPEC opines regarding AEP's proposed Governmental Aggregation Standby Rider ("GASR"). However, the GASR was removed by the Stipulation and

⁵ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO, et al., Opinion and Order, at pg. 15 (September 4, 2013).

Recommendation.⁶ For this reason, pre-filed testimony related to AEP's initial Application is irrelevant and inadmissible and should be stricken.

IGS acknowledges that there may be parts of pre-filed intervenor testimony that may still be relevant to the case. However, as of the time of this drafting, a complete witness list has not been finalized. Without a confirmation of what parties' plan to offer a witness at hearing and what testimony they plan to admit into evidence, IGS would have several dozen motions to strike of irrelevant witness testimony that may not even be presented.

Nevertheless, if the motion to strike pre-filed intervening testimony is denied, IGS preserves its right to raise individual motions to strike pre-filed testimony at hearing.

III. IGS moves to strike portions of Mr. Wilson's direct testimony filed prior to the Stipulation.

IGS moves to strike the entirety of page 13 of Mr. Wilson's direct testimony and any references to Figure JFW-2. Mr. Wilson is merely summarizing an argument made by a third party. He provides no analysis on the figure or explanation for the data presented. Parties would be unable to verify the data presented, and Mr. Wilson himself states that he "lack[s] the data to perform these calculations."⁷ Parties lack the opportunity to cross-examine the holders of the data on these hearsay statements, the graph is clearly being offered for the truth of the matter asserted, and thus any reference to or use of the data found in graph JWF-2 should be stricken.

⁷ Direct testimony of Wilson, p. 14 ln 3 (June 9, 2023).

IV. Conclusion

The irrelevant portions of AEP Ohio's testimony filed in support of its Application, and the irrelevant portions of intervenor witness testimony addressing the Application should not be admitted into the record. Should portions of that testimony be admitted, IGS would renew its motions to strike specific portions of Mr. Wilson's direct testimony. For these reasons, IGS and RESA respectfully requests that this motion be granted

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this *Motion to Strike Testimony of Interstate Gas Supply, LLC.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on October 2, 2023. The PUCO's e-filing system will electronically serve notice of the filing of this document on the parties subscribed to these proceedings. Additionally, notice was provided to the parties listed below.

/s/ Evan Betterton

Evan Betterton

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

Summary: Motion to Strike electronically filed by Mr. Evan F. Betterton on behalf of Interstate Gas Supply, LLC.