

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider)))	Case Nos. 14-1693-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority)))	Case No. 14-1694-EL-AAM

**REPLY OF THE RETAIL ENERGY SUPPLY ASSOCIATION
TO THE OHIO POWER COMPANY’S MEMORANDUM IN OPPOSITION TO SIERRA
CLUB’S MOTION TO ESTABLISH A PROCEDURAL SCHEDULE**

The Retail Energy Supply Association (“RESA”)¹ filed a motion to intervene in these proceedings on October 29, 2014. The Ohio Power Company (“Ohio Power”) in the matter at bar seeks a ratepayer guarantee for five non-utility owned, affiliated generation facilities for the life of those facilities.² Though the matter is extremely complex and involves novel issues of law, and hundreds of millions of dollars, Ohio Power requests the decision be made on an extremely expedited schedule.³ Where the Public Utilities Commission of Ohio (“Commission”) generally provides for more than a month for citizens to learn of the filing and determine if they have an interest worthy of intervention, Ohio Power proposed just 14 days. Where the Commission usually provides several months for parties to conduct discovery in complex rate cases and to

¹ RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

² From the application one cannot tell how long that commitment would be, but in the Ohio Power ESP III proceeding it was established that the contract for OVEC power extends 26 years, to 2040. RESA assumes that the commitment for the five new plants will be of similar vintage.

³ Application at 6-7.

prepare expert testimony, Ohio Power suggested only a month. Finally, while the time frame from application to evidentiary hearing is usually six to nine months in complex rate cases, Ohio Power requests the evidentiary hearing commence within just two months of filing.

To make matters worse, the two months within which Ohio Power has allotted for intervenors to determine their interest, conduct discovery, prepare expert testimony, review the Staff testimony and prepare for trial, most of the likely participants will be engaged in the Duke electric security plan (“ESP”) III proceeding (Case Nos. 14-841-EL-SSO et al.), which is currently in trial and will have briefs due and the FirstEnergy ESP IV proceeding (Case No. 14-1297-EL-SSO) in which discovery and preparation of testimony is being conducted now through December 22, 2014.

The Sierra Club filed a motion to establish a different procedural schedule which basically set up the Ohio Power proceeding after the FirstEnergy ESP IV. In response, Ohio Power filed a memorandum opposing Sierra Club’s motion on October 29, 2014. As an intervenor in these proceedings, RESA is permitted, per Rule 4901-1-12(B)(2), Ohio Administrative Code, to file this reply to Ohio Power’s memorandum in opposition to Sierra Club’s motion to establish a procedural schedule.

As present, the following two procedural schedules are proposed:

Event	Ohio Power Proposal	Sierra Club Proposal
Intervention deadline	October 17, 2014	Not addressed
Discovery deadline (except for depositions)	November 15, 2014	January 29, 2015
Intervenor Testimony due	November 8, 2014	February 19, 2015
Staff Testimony due	November 19, 2014	March 9, 2015
Prehearing Conference held	December 1, 2014	March 9, 2015
Evidentiary Hearing begins	December 8, 2014	March 23, 2015

Ohio Power's proposed expedited schedule is neither practical nor feasible given that today is November 5, 2014. Further, any trial schedule may be unnecessary, for the application in this case is to expand the Purchase Power Agreement ("PPA") Rider, but Rider PPA does not exist and may never exist. Whether the Commission should approve the creation of Rider PPA and the form in which it may be approved are issues in the Ohio Power ESP III Case Nos. 13-2385-EL-SSO et al, which is now decisional. If the Commission in the Ohio Power ESP III proceeding follows the advice of its Staff, the Ohio Consumers Counsel, RESA, Industrial Energy Users – Ohio, the Ohio Manufacturers Association, the Ohio Hospital Association and others,⁴ there will not be a Rider PPA; and therefore no reason to discuss expanding such a rider. Thus, before establishing a procedural schedule for the instant proceedings, judicial economy favors awaiting first a ruling on whether Ohio Power's proposed Rider PPA should be approved. This argument of waiting became even more compelling on November 4, 2014, when Ohio Power filed a request for oral argument for the ESP III proceedings.⁵

I. Background

RESA is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than a regulated utility structure. Many of RESA members are certified as competitive retail service providers and are active in the Ohio retail electric and natural gas markets providing service to residential, commercial, industrial and governmental customers. In addition, some of RESA's members currently provide competitive retail electric service ("CRES") to retail

⁴ In RESA's Reply Brief in Case No. 13-2385-EL-SSO et al., RESA outlined the extensive opposition to PPA Rider. (RESA Reply Brief at 14-15) Nearly every party in Ohio Power's ESP III case is opposed to PPA Rider and the only party besides Ohio Power to support PPA rider supports it with material modifications.

⁵ RESA is not, herein, responding to Ohio Power's Motion for Oral Argument for the ESP III proceeding.

customers in the Ohio Power Company (“Ohio Power”) service area. RESA has participated in the most recent ESP proceedings involving Ohio Power in Case Nos. 13-2385-EL-SSO, et al.

As part of its ESP III proposal in Case No. 13-2385-EL-SSO, et al., Ohio Power proposed the Rider PPA. Under this proposed PPA Rider, Ohio Power sought authority to pass through to customers the differential between PJM market prices and a cost-based contractual price. Ohio Power proposed initially to include the Ohio Valley Electric Corporation (OVEC) contractual entitlement in the PPA Rider. The hearing in the ESP III proceedings is completed and the parties have submitted briefs for consideration on the PPA Rider issue, as well as many other issues. The Commission has not yet ruled upon the proposed Rider PPA in Case No. 13-2385-EL-SSO, et al. By this Application, Ohio Power is seeking Commission authority to enter into an affiliate PPA between it and AEP Generation Resources, Inc. for inclusion in the Rider PPA that is pending approval in Case Nos. 13-2385-EL-SSO, et al. Ohio Power is seeking Commission consideration of this additional PPA in parallel with the pending ESP III Application.

II. An Expedited Schedule is Unfair and Unnecessary

Ohio Power recognizes that its ESP III case is decisional. In fact, the last briefs were filed two and one-half months ago. Moreover, Ohio Power recognizes that its request to expand Rider PPA will involve discovery, testimony, and a hearing. To have this new request “catch up” with the underlying issue in the ESP III, Ohio Power incorrectly claims that an expedited schedule is appropriate because its proposal has “already been extensively subjected to discovery and litigation,” referring to the activities in the ESP III proceedings.⁶ The power plants in question during the Ohio Power ESP III proceeding were just the OVEC Kyger Creek and Clifty

⁶ Ohio Power October 29, 2014 Memorandum in Opposition to Sierra Club’s Motion to Establish a Procedural Schedule at 3.

Creek plants. The expansion application is for the Cardinal plant, Conesville plant, Zimmer plant and Stuart plant. Nothing in the Ohio Power ESP III record addresses these generation facilities, yet the economics of the expansion application are based exclusively on these new plants. Further, Ohio Power owns the OVEC plants, but they do not own the Cardinal, Conesville, Zimmer and Stuart plants. So the legal issues of whether utility customers can be conscripted to pay the losses on non-utility facilities must be addressed in the new application.

Ohio Power presented testimony from 10 witnesses to support the application, none of whom present the proposed purchase power agreement between Ohio Power and AEP Generation Resources, Inc. That was not due to error or happenstance. Ohio Power contends that the Commission lacks the jurisdiction to review and regulate the purchase power agreement which will give rise to the costs and credits of the expanded Rider PPA. This is not a position that is universally held, and it would be litigated, if the Commission approves the Rider PPA.

In sum, given the gravity of the request, the millions of dollars for which rate payers will be at risk, the decades of time that would be covered by the application, the significant legal issues of whether utility customers can be forced to pay for losses on non utility property, whether the Commission would have jurisdiction over the purchase power agreement, and whether the rate payer guarantees violate state and federal law, due process and fundamental fairness as well as common sense dictate the application cannot go to trial two months after the filing.

III. The Commission Should Rule on Rider PPA First

As noted above, as a matter of logic, expanding the Rider PPA, which is the subject of the application, requires the existence of the Rider PPA. Thus, no decision on the application hearing should be made prior to the existence of the Rider PPA. The Commission should

recognize that Ohio Power could have included the request for more purchase power agreements covering plants in addition to OVEC as part of its ESP III proposal.⁷ Ohio Power elected not to include the new power plant requests in its ESP III proposal. Ohio Power's request of the Commission, the Staff, the Consumers Counsel, and all the other stakeholders to compress the existing Commission trial schedules to accommodate Ohio Power's change of tactic as to when to ask for new purchase power agreements is inequitable and blatantly seeks to capitalize on parties being distracted by the press of other ESP cases at the Commission. RESA and numerous other intervenors are currently involved in the hearings in the Duke ESP III cases (Case Nos. 14-841-EL-SSO, et al.) and will be preparing briefs for those cases over the next two months. Those cases are followed by the Ohio Edison, CEI and Toledo Edison ESP IV case, Case No. 14-1297-EL-SSO, which is scheduled for hearing in January 2015. To move forward in an expedited fashion with Ohio Power's request in this case would impose extra burdens on numerous parties, the Commission, and its Staff. Sierra Club's proposed schedule appropriately places Ohio Power's new application at the end of the line of the existing cases which is where it should be. The timing of when Ohio Power requested to include the five new power plants was always in the control of Ohio Power, not the Commission and the stakeholders. Thus, it should be Ohio Power and not the other stakeholders who must accommodate the existing Commission trial schedule.

IV. Sierra Club's Schedule Proposal Could be Appropriate

Sierra Club is proposing a different, non-expedited schedule – one that allows greater and more adequate time for discovery, testimony, and the hearing. Sierra Club noted that its schedule

⁷ Ohio Power specifically explained in the ESP III application that its proposed PPA rider would include additional PPAs, but Ohio Power did not propose any such additional PPAs. Just three months after the close of the evidentiary hearing record and less than two months after the parties filed reply briefs in the ESP III proceedings, Ohio Power filed the instant applications.

consistently incorporates the same number of days for each step as has been afforded in the pending ESP case for the FirstEnergy distribution utilities (Case No. 14-1297-EL-SSO). Sierra Club also recognizes that the PPA Rider is pending Commission approval and noted that there is no explanation as to why Ohio Power did not include the affiliate PPA in its ESP proposal.⁸

RESA agrees with Sierra Club that a procedural schedule should afford the interested parties the opportunity to meaningfully participate in the case. Moreover, RESA believes that Sierra Club's proposed schedule is much more reasonable than what Ohio Power proposed.

V. Conclusion

In sum, it is simply impractical and unfair to establish the expedited procedural schedule as proposed by Ohio Power. Given the fact that the Commission has not yet decided Case Nos. 13-2385-EL-SSO, et al. and given that the numerous parties are already extensively involved in the Duke and FirstEnergy ESP cases for the next several months, RESA proposes that the Commission reject Ohio Power's proposed expedited procedural schedule for these instant proceedings. Sierra Club's proposed schedule could provide adequate and meaningful time for a hearing, but it is unclear at this time that a procedural schedule needs to be established at all. If in the pending case the Commission rejects the Rider PPA, a hearing is unnecessary.

WHEREFORE, the Retail Energy Supply Association respectfully requests that the Commission: (1) reject Ohio Power's proposed expedited procedural schedule for these proceedings; (2) issue a ruling on Ohio Power's proposed Rider PPA in Case Nos. 13-2385-EL-SSO et al. so that the parties know whether Ohio Power's new request is moot; and (3) if necessary, establish a procedural schedule for these proceedings along the timelines proposed by Sierra Club.

⁸ Sierra Club memorandum in support at 1-2.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 5th day of November 2014 upon the persons/entities listed below.

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