

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Electric Power Supply Association, )  
Retail Energy Supply Association, )  
Dynegy Inc., Eastern Generation, LLC, )  
NRG Power Marketing LLC and GenOn )  
Energy Management, LLC, )  
Complainants, )  
v. )  
AEP Generation Resources, Inc. and )  
Ohio Power Company, )  
Respondents. )**

**Docket No. EL16-33-000**

**JOINT ANSWER OF  
THE ELECTRIC POWER SUPPLY ASSOCIATION,  
THE OFFICE OF OHIO CONSUMERS' COUNSEL AND  
THE RETAIL ENERGY SUPPLY ASSOCIATION  
IN OPPOSITION TO MOTION FOR EXTENSION OF TIME**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission" or "FERC"),<sup>1</sup> the Electric Power Supply Association, the Office of the Ohio Consumers' Counsel and the Retail Energy Supply Association (collectively, the "Indicated Parties") hereby file this answer in opposition to the motion<sup>2</sup> of Ohio Power Company ("AEP Ohio") and AEP Generation Resources, Inc. ("AEP Generation" and together with AEP Ohio, "Respondents") for extension of the comment period in this proceeding. Time is of the essence in this

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<sup>1</sup> 18 C.F.R. § 385.213 (2015).

<sup>2</sup> Motion of Ohio Power Company and AEP Generation Resources, Inc. for Extension of Time and Request for Waiver of Period for Responses, Docket No. EL16-33-000 (filed Feb. 1, 2016) (the "Motion").

proceeding in order to protect both Ohio consumers and the wholesale competitive markets upon which they rely from a proposed abusive affiliate power sales contract (the “Affiliate PPA”) between Respondents, and thereby to fulfill FERC’s core duty to “guard the consumer against exploitation by non-competitive electric power companies.”<sup>3</sup> Respondents have not justified any extension of the comment date established in this proceeding, much less the 14-day extension requested in the Motion.

This proceeding arises out of a January 27, 2016 complaint<sup>4</sup> requesting that FERC rescind a waiver of the affiliate power sales restrictions granted to AEP Ohio and AEP Generation and other “unregulated” affiliates of American Electric Power Company, Inc. (“AEP”), as that waiver relates to Affiliate PPA. The Complaint explained that with the costs of the Affiliate PPA being recovered through a non-bypassable charge assessed to all retail consumers in AEP Ohio’s service territory, even those served by competitive suppliers, the premise for the waiver – that AEP Ohio has no captive retail customers – is not valid where the Affiliate PPA is concerned. The Complaint requested fast track processing of the Complaint pursuant to Rule 206(b)(11) of FERC’s Rules of Practice and Procedure.<sup>5</sup> The Complaint emphasized the urgent need for a FERC order making clear that the Affiliate PPA, which, as AEP has acknowledged, will not be reviewed in pending proceedings before the Public Utility Commission of Ohio (the “PUCO”), will not evade regulatory review altogether.<sup>6</sup> In particular, the Complaint

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<sup>3</sup> *Nat’l Ass’n for the Advancement of Colored People v. FPC*, 520 F.2d 432, 438 (D.C. Cir. 1975), *aff’d*, 425 U.S. 662 (1976).

<sup>4</sup> Complaint Requesting Fast Track Processing, Docket No. EL16-33-000 (filed Jan. 27, 2016) (the “Complaint”).

<sup>5</sup> 18 C.F.R. § 385.206(b)(11) (2015).

<sup>6</sup> See Complaint at 23.

stressed the need for an order that would allow FERC to review the Affiliate PPA under Section 205 of the Federal Power Act (the “FPA”)<sup>7</sup> in advance of the Base Residual Auction for the 2019/2020 Delivery Year (the “2019/2020 BRA”), which PJM Interconnection, L.L.C. (“PJM”) is scheduled to conduct in May 2016.<sup>8</sup>

By notice issued January 28, 2016, FERC established a 20-day comment period in this proceeding.<sup>9</sup> This is consistent with FERC’s Rules of Practice and Procedure, which makes 20 days the default comment period for complaints that do not seek privileged treatment.<sup>10</sup> To be clear, 20 days is the default comment period even in the absence of a request for fast track processing, like that made in this case.<sup>11</sup>

Respondents have failed to show good cause for any extension of the comment period in this proceeding, much less for the 14-day extension requested in the Motion. To the contrary, with consumers potentially facing costs of up to \$3.1 billion if the power purchased under the Affiliate PPA does not clear in the PJM markets,<sup>12</sup> expeditious action granting the Complaint could not be more essential. Vague assertions that the Complaint raises “complex and numerous issues”<sup>13</sup> certainly do not establish good cause for such an extension. In point of fact, the issues raised in the Complaint, while

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<sup>7</sup> 16 U.S.C. § 824d (2012).

<sup>8</sup> See PJM, Auction Schedule, <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/rpm-auction-schedule.ashx>.

<sup>9</sup> Notice of Complaint, Docket No. EL16-33-000 (Jan. 28, 2016) (unreported).

<sup>10</sup> See 18 C.F.R. § 385.206(f) (2015).

<sup>11</sup> See 18 C.F.R. § 385.206(h)(3) (2015) (stating that the comment period for a complaint seeking fast track processing “may be shortened by the Commission from the time provided in section 385.206(f)”).

<sup>12</sup> See Motion to Intervene and Comments in Support of the Office of the Ohio Consumers’ Counsel at 2, Docket No. EL16-33-000 (filed Jan. 27, 2016).

<sup>13</sup> Motion at 2.

of tremendous importance to Ohio consumers and the integrity of the PJM markets, are not particularly complex. To the contrary, the Complaint presents relatively straightforward questions about whether AEP Ohio can be said to lack captive retail customers when it will recover costs of the Affiliate PPA from all retail consumers, even those taking service from competitive suppliers, and whether it is otherwise just and reasonable for the Affiliate PPA to evade Commission review under Section 205 of the FPA and well-established Commission policies for reviewing affiliate power sales transactions.<sup>14</sup> No complex economic or engineering analysis is required to answer these questions, and the key factual issues related to matters, such as the terms of the non-bypassable charge through which AEP Ohio will recover the costs of the Affiliate PPA, with which Respondents are intimately familiar by virtue of having litigated about these issues before the PUCO for over two years.<sup>15</sup> Indeed, AEP's CEO has essentially conceded that answering the Complaint should not be a particularly complex task, declaring that the questions presented have already been "asked and answered."<sup>16</sup> While the Indicated Parties do not agree that these questions have already been answered in a way that would justify retention of the waiver as to the Affiliate PPA, they certainly agree that this is not a complicated case.

Respondents are mistaken in suggesting that the complainants and other parties will not be harmed by granting a 14-day extension of the comment period. To be sure, the Complaint requested that the rescission of the waiver of the affiliate power sales

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<sup>14</sup> See *Boston Edison Co. Re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,382 (1991); *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004).

<sup>15</sup> See Complaint at 10-12 (background on the PUCO proceedings).

<sup>16</sup> Darren Sweeney, *AEP braces for PPA legal challenges, moves ahead with merchant asset sale*, SNL Energy Power Daily (Jan. 29, 2016) (quoting Nicholas Akin).

restrictions be made effective as of the date of filing of the Complaint, and such a refund effective date would provide some measure of protection to Ohio consumers and the PJM markets. But that protection is far from complete. Even where a refund effective date is in place, FERC has been properly reluctant to require resettlement of markets.<sup>17</sup> As a result, even if there were some way to un-do the harm to the 2019/2020 BRA after-the-fact, it is highly questionable whether FERC would be willing to do so after the auction has been conducted. And concerns about resettlement would be no less acute where sales into the PJM energy and ancillary services markets were involved. Accordingly, it is essential that FERC act on the Complaint as soon as possible and, at a minimum, in time to ensure that the Affiliate PPA is not permitted to distort the 2019/2020 BRA.

Finally, as FERC undoubtedly knows, the Indicated Parties endeavor to accommodate other parties' reasonable requests on procedural matters whenever possible. Unfortunately, it is simply not possible to accommodate Respondents' request for what they describe as a "modest 14-day extension" (of a 20-day comment period) without seriously compromising the legitimate interests of the Indicated Parties and others, including Ohio consumers, in expeditious action on the Complaint. It also bears emphasis that during proceedings over the holidays before the PUCO, AEP Ohio

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<sup>17</sup> See, e.g., *California Indep. Sys. Operator Corp.*, 151 FERC ¶ 61,247 at n.46 (2015); *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,184 at PP 128-29 (2010); *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,217 at P 48 (2009); *New York Indep. Sys. Operator, Inc.*, 92 FERC ¶ 61,073 at 61,307, *clarified*, 92 FERC ¶ 61,181 (2000), *reh'g denied*, 97 FERC ¶ 61,154 (2001).



