**BEFORE THE**

**PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking )

Approval of Ohio Power Company’s )

Proposal to Enter into an Affiliate )

Power Purchase Agreement for ) Case No. 14-1693-EL-RDR

Inclusion in the Power Purchase )

Agreement Rider )

In the Matter of the Application of )

Ohio Power Company for Approval of ) Case No. 14-1694-EL-AAM

Certain Accounting Authority )

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**Memorandum in opposition to application for rehearing of environmental law and policy center, Ohio Environmental Council, and Environmental Defense Fund**

Frank P. Darr (Reg. No. 0025469)

(Counsel of Record)

Matthew R. Pritchard (Reg. No. 0088070)

McNees Wallace & Nurick LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

fdarr@mwncmh.com

(willing to accept service by e-mail)

mpritchard@mwncmh.com

(willing to accept service by e-mail)

**May 12, 2016 On Behalf of Industrial Energy Users-Ohio**

**BEFORE THE**

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**Memorandum in opposition to application for rehearing of environmental law and policy center,** **Ohio Environmental Council, and Environmental Defense Fund**

# Introduction

 The Ohio Power Company (“AEP-Ohio”) filed an application seeking to implement an increase in its previously approved Purchased Power Agreement Rider (“PPA Rider”) on October 3, 2014. The Application was contested and the matter was set for hearings by the Public Utilities Commission of Ohio (“Commission”). Following hearings, AEP-Ohio, several parties, and the Staff of the Commission (“Staff”) entered into a Stipulation and Recommendation (“Stipulation”). After hearings on the Stipulation, the Commission modified and approved the Application and Stipulation in an Opinion and Order issued on March 31, 2016. Parties, including the Energy Law and Policy Center, Ohio Environmental Council, and Environmental Defense Fund (collectively, referred to herein as “ELPC”) sought rehearing of the Opinion and Order.

 In its Application for Rehearing, ELPC requests that the Commission clarify the effect of the Stipulation on the ability of an eligible customer[[1]](#footnote-1) to opt out of the EE/PDR Plan if the customer is also taking service under the Interruptible Rider Program (“IRP”). Its position is premised on a misunderstanding of the IRP and the scope of the benefits it provides both IRP and other customers.

 Under a proper understanding of the IRP and its relation to the AEP-Ohio EE/PDR Plan, eligible AEP-Ohio customers including those taking service under the IRP may opt out of the Plan beginning January 1, 2017. Accordingly, the Commission should reject ELPC’s request for clarification that eligible customers taking service under the IRP may not opt out of the EE/PDR Plan.

# the Commission should find that eligible customers may lawfully opt out of the EE/PDR plan and take service under the IRP

Paragraph III.C.11 of the Stipulation provides “that nothing in this Stipulation affects a customer’s opt-out right under R.C. 4928.6612, as that provision was enacted in 2014 by Senate Bill 310. IRP tariff customers may opt out of the opportunity and ability to obtain direct benefits from AEP Ohio’s EE/PDR Plan as provided in S.B. 310.” Joint Ex. 1 at 11-12. In its Post-Hearing Brief, ELPC argued that this Paragraph violates R.C. 4928.6613 because the IRP was part of the AEP-Ohio EE/PDR Plan. ELPC Initial Brief at 57-58 (Feb. 1, 2016). IEU-Ohio and others pointed out that ELPC’s argument was premised on a faulty understanding of the IRP and the operation of the opt out provisions contained in SB 310. See Reply Brief of Industrial Energy Users-Ohio at 4-6 (Feb. 8, 2016). In the Opinion and Order, the Commission summarized the arguments presented by ELPC and the response of other parties, but concluded that the issue should be addressed as part of the application to amend the electric security plan (“ESP”) that AEP-Ohio is required to file. Opinion and Order at 98.

In its Application for Rehearing, ELPC alleges that the Commission failed to clarify the effect of the Stipulation on the ability of customers to opt out of the AEP-Ohio EE/PDR Plan and also take service under terms and conditions of the IRP. ELPC Application for Rehearing at 15. According to ELPC, the need for clarification is premised on its understanding that Paragraph III.C.11 will be effective on approval of the Stipulation.[[2]](#footnote-2) *Id*. at 16. Further, it again alleges that “R.C. 4928.6613 does not permit customers to both opt out of paying for a utility’s energy efficiency and peak demand reduction programs while still receiving the benefits of participating in one of those programs through an interruptible credit.” *Id*.

So that customers can plan appropriately, the Commission should reject ELPC’s renewed attempt to frustrate the operation of Ohio law that permits eligible customers to opt out of the EE/PDR Plan. As IEU-Ohio explained in its Reply Brief, the right to opt out of the EE/PDR Plan is consistent with participation in the IRP since they are separate programs. The IRP is a provision of the AEP-Ohio tariff that is approved as part of the ESP, not as part of its portfolio plan. *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, *et al.*, Opinion and Order at 40 (Feb. 25, 2015) (“*ESP III”*). If there were no portfolio plan, there would still be an IRP. Additionally, the benefits of the IRP extend beyond AEP-Ohio’s compliance with EE/PDR requirements. As the Commission has previously found, the IRP advances “numerous benefits, including the promotion of economic development and the retention of manufacturing jobs.” *Id*. Because the IRP is separately approved and provides benefits that extend beyond compliance with EE/PDR requirements, a customer electing to take service under the IRP should not be deemed to be taking a benefit of the EE/PDR Plan.[[3]](#footnote-3) Accordingly, the provision of the Stipulation making explicit that a customer taking service under the IRP may elect to opt out of the portfolio plan complies with R.C. 4928.6611 to 4928.6613.

Taking ELPC’s argument concerning the availability of the opt out to its logical conclusion, moreover, would encourage customers to withhold their demand response capabilities from AEP-Ohio. The streamlined opt out would be available to a customer eligible to participate in the IRP if the customer successfully bids its demand response into the PJM Interconnection, LLC (“PJM”) market. If the customer participates in the IRP, however, that customer is subject to unlimited emergency interruptions. *ESP III,* Opinion and Order at 40. An opt out customer, however, could also use its demand response to reduce its capacity obligation without loss of the statutory opt out right. These customers could benefit from reducing their capacity charges and have no obligation to offer those capabilities to AEP-Ohio. By participating in the IRP, the customer gives up its right to use emergency-related demand response as it may see fit, and AEP-Ohio is then able to use this demand response capability to address emergency circumstances that might otherwise cause involuntary interruptions of service to other non-IRP customers. Because ELPC’s position would impose an additional costs on participation in the IRP, it would discourage customers with IRP capabilities from making them available to AEP-Ohio.

# Conclusion

For the reasons discussed above, the Commission should reject the arguments regarding the lawfulness of the IRP advanced by ELPC. ELPC’s claims are legally unsupported and would reduce the benefits that may otherwise be produced by the IRP.

 Respectfully submitted,

 /s/ *Frank P. Darr*

Frank P. Darr (Reg. No. 0025469)

(Counsel of Record)

Matthew R. Pritchard (Reg. No. 0088070)

McNees Wallace & Nurick LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

fdarr@mwncmh.com

(willing to accept service by e-mail)

mpritchard@mwncmh.com

(willing to accept service by e-mail)

 **On Behalf of Industrial Energy Users-Ohio**

**Certificate of Service**

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Memorandum in Opposition to Applications for Rehearing of Environmental Law and Policy Center, Ohio Environmental council, and Environmental Defense Fund,* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 12th day of May 2016, *via* electronic transmission.

*/s/ Frank P. Darr*

 Frank P. Darr

Steven T. Nourse (0046705)

Matthew J. Satterwhite (0071972)

Matthew S. McKenzie

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

stnourse@aep.com

mjsatterwhite@aep.com

msmckenzie@aep.com

Daniel R. Conway (0023058)

Porter Wright Morris & Arthur LLP

41 S. High Street, Suites 2800-3200

Columbus, Ohio 43215

dconway@porterwright.com

Christopher L. Miller

Ice Miller LLP

250 West Street

Columbus, Ohio 43215

Christopher.miller@icemiller.com

**On Behalf of Ohio Power Company**

Celia M. Kilgard

Taft Stettinius & Hollister LLP

65 East State Street, Suite 1000

Columbus, Ohio 43215

ckilgard@taftlaw.com

**On Behalf of The Kroger Co.**

David F. Boehm (0021881)

Michael L. Kurtz (0033350)

Jody Kyler Cohn (0085402)

BOEHM, KURTZ & LOWRY

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

dboehm@bkllawfirm.com

mkurtz@bkllawfirm.com

jkyler@BKLlawfirm.com

**On Behalf of the Ohio Energy Group**

Mark A. Hayden (0081077)

Jacob A. McDermott (0087187)

Scott J. Casto (0085756)

FirstEnergy Service Company

76 South Main Street

Akron, Ohio 44308

haydenm@firstenergycorp.com

jmcdermott@firstenergycorp.com

scasto@firstenergycorp.com

James F. Lang

N. Trevor Alexander

Calfee, Halter & Griswold LLP

1405 East Sixth Street

Cleveland, Ohio 44114

jlang@calfee.com

talexander@calfee.com

**On Behalf of FirstEnergy Solutions**

**Corp.**

Richard C. Sahli (0007360)

Richard Sahli Law Office, LLC

981 Pinewood Lane

Columbus, OH 43230-3662

rsahli@columbus.rr.com

Tony G. Mendoza (PHV-5610-2014)

Kristin A. Henry

Counsel of Record

Sierra Club

Environmental Law Program

85 Second Street, Second Floor

San Francisco, CA 94105-3459

Tony.mendoza@sierraclub.org

Kristin.henry@sierraclub.org

Shannon Fisk (PHV-1321-2015)

Earthjustice

1617 John F. Kennedy Blvd.

Suite 1675

Philadelphia, PA 19103

sfisk@earthjustice.org

Michael C. Soules

Earthjustice

1625 Massachusetts Ave. NW, Suite 702

Washington, DC 20036

msoules@earthjustice.org

**On Behalf of the Sierra Club**

Kurt P. Helfrich

Scott Campbell

Stephanie M. Chmiel

Thompson Hine LLP

41 South High Street, Suite 1700

Columbus, Ohio 43215-6101

Kurt.helfrich@thompsonhine.com

Scott.campbell@thompsonhine.com

Stephanie.chmiel@thompsonhine.com

**On Behalf of Buckeye Power, Inc.**

Terrence O'Donnell (0074213)

Raymond D. Seiler (0087706)

Dickinson Wright PLLC

150 East Gay Street, Suite 2400

Columbus, Ohio 43215

todonnell@dickinsonwright.com

rseiler@dickinsonwright.com

**On Behalf of Mid-Atlantic Renewable Energy Coalition**

Trent Dougherty

Ohio Environmental Council

1145 Chesapeake Ave., Suite 1

Columbus, Ohio 43212

tdougherty@theOEC.org

**On Behalf of the Ohio Environmental Council; and, Environmental Defense Fund**

Richard L. Sites

Ohio Hospital Association

155 E. Broad Street, 3rd Floor

Columbus, Ohio 43215-3620

ricks@ohanet.org

Thomas J. O'Brien

Bricker & Eckler LLP

100 South Third Street

Columbus, Ohio 43215

tobrien@bricker.com

**On Behalf of the Ohio Hospital Association**

Lisa M. Hawrot

Spilman Thomas & Battle PLLC

Century Centre Building

1233 Main Street, Suite 4000

Wheeling, West Virginia 26003

lhawrot@spilmanlaw.com

Derrick Price Williamson

Spilman Thomas & Battle PLLC

1100 Bent Creek Blvd., Suite 101

Mechanicsburg, Pennsylvania 17050

dwilliamson@spilmanlaw.com

Carrie M. Harris

Spilman Thomas & Battle, PLLC

310 First Street, Suite 1100

Roanoke, VA 24002

charris@spilmanlaw.com

**On Behalf of Wal-Mart Stores East, LP, and Sam's East, Inc.**

Kevin R. Schmidt

Energy Professionals of Ohio

88 East Broad Street, Suite 1770

Columbus, Ohio 43215

Schmidt@sppgrp.com

**On Behalf of Energy Professionals of Ohio**

Madeline Fleisher

Environmental Law & Policy Center

21 West Broad Street, Suite 500

Columbus, Ohio 43215

mfleisher@elpc.org

Robert Kelter

Justin Vickers

Environmental Law & Policy Center

35 East Wacker Drive, Suite 1600

Chicago, Illinois 60601

jvickers@elpc.org

rkelter@elpc.org

**On Behalf of Environmental Law & Policy Center**

Jeffrey W. Mayes

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Valley Forge Corporate Center

Eagleville, Pennsylvania 19403

Jeffrey.mayes@monitoringanalytics.com

Todd M. Williams

Shindler, Neff, Holmes, Worline & Mohler

300 Madison Avenue

1200 Edison Plaza

Toledo, Ohio 43604

twilliams@snhslaw.com

**On Behalf of Monitoring Analytics, LLC**

Kimberly W. Bojko (0069402)

Danielle M. Ghiloni (0085245)

Ryan P. O’Rourke (0082651)

Carpenter Lipps & Leland LLP

280 North High Street - Suite 1300

Columbus, Ohio 43215

Bojko@carpenterlipps.com

ghiloni@carpenterlipps.com

o’rourke@carpenterlipps.com

**On Behalf of the Ohio Manufacturers’ Association Energy Group**

M. Howard Petricoff

Michael J. Settineri

Gretchen L. Petrucci

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street

Columbus, Ohio 43215

mhpetricoff@vorys.com

mjsetterini@vorys.com

glpetrucci@vorys.com

**On Behalf of Retail Energy Supply Association; PJM Power Providers Group and Electric Power Supply Association; and Constellation NewEnergy, Inc. and Exelon Generation Company, LLC**

Joseph Oliker

IGS Energy

6100 Emerald Parkway

Dublin, Ohio 43016

joliker@igsenergy.com

**On Behalf of IGS Energy**

Mark A. Whitt

Andrew J. Campbell

Rebekah J. Glover

WHITT STURTEVANT LLP

The KeyBank Building

88 East Broad Street, Suite 1590

Columbus, OH 43215

whitt@whitt-sturtevant.com

campbell@whitt-sturtevant.com

glover@whitt-sturtevant.com

Gerit F. Hull

Eckert Seamans Cherin & Mellott, LLC

1717 Pennsylvania Avenue, N.W. 12th Fl

Washington, DC 20006

ghull@eckertseamans.com

**On Behalf of Direct Energy Services, LLC, Direct Energy Business, LLC and Direct Energy Business Marketing, LLC**

William J. Michael

 Counsel of Record

Jodi Bair

Kevin F. Moore

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215

William.michael@occ.ohio.gov

Jodi.bair@occ.ohio.gov

Kevin.moore@occ.ohio.gov

Dane Stinson

Bricker and Eckler LLP

100 South Third Street

Columbus, Ohio 43215

dstinson@bricker.com

**On Behalf of the Ohio Consumers' Counsel**

Joel E. Sechler

Carpenter Lipps & Leland

280 N. High St., Suite 1300

Columbus, Ohio 43215

sechler@carpenterlipps.com

Gregory J. Poulos

EnerNOC, Inc.

471 E. Broad St., Suite 1520

Columbus, Ohio 43054

gpoulos@enernoc.com

**On Behalf of EnerNoc, Inc.**

Michael R. Smalz

Ohio Poverty Law Center

555 Buttles Avenue

Columbus, Ohio 43215

msmalz@ohiopovertylaw.org

**On Behalf of the Appalachian Peace and Justice Network**

Werner L. Margard

Steven L. Beeler

Assistant Attorneys General

Chief, Public Utilities Section

PUBLIC UTILITIES COMMISSION OF OHIO

30 East Broad Street, 16th Floor

Columbus, OH 43215-3793

werner.margard@ohioattorneygeneral.gov

steven.beeler@ohioattorneygeneral.gov

**On Behalf of the Staff of the Public Utilities Commission of Ohio**

Colleen L. Mooney

David C. Rinebolt (0073178)

Ohio Partners for Affordable Energy

231 West Lima Street

Findlay, OH 45840

cmooney@ohiopartners.org

drinebolt@ohiopartners.org

**On Behalf of Ohio Partners for Affordable Energy**

Michael D. Dortch (0043897)

Richard R. Parsons (0082270)

Kravitz, Brown & Dortch, LLC

65 East State Street, Suite 200

Columbus, Ohio 43215

mdortch@kravitzllc.com

M. Howard Petricoff (0008287)

(Counsel of Record)

Michael J. Settineri (0073369)

Gretchen L. Petrucci (0046608)

Vorys, Sater, Seymour and Pease LLP

52 E. Gay Street

Columbus, Ohio 43215

mhpetricoff@vorys.com

mjsettineri@vorys.com

glpetrucci@vorys.com

**On Behalf of Dynegy, Inc.**

Evelyn R. Robinson (0022836)

PJM Interconnection

2750 Monroe Blvd.

Audubon, PA 19403

evelyn.robinson@pjm.com

**Counsel for Amicus Curiae PJM Interconnection**

Michael J. Settineri (0073369),

Gretchen L. Petrucci (0046608)

Ilya Batikov (0087968)

Vorys, Sater, Seymour and Pease LLP

52 E. Gay Street

Columbus, OH 43215

614-464-5462

mjsettineri@vorys.com

glpetrucci@vorys.com

ibatikov@vorys.com

**Counsel for Advanced Power Services, Carroll County Energy LLC and South Field Energy LLC**

Dylan F. Borchers

BRICKER & ECKLER LLP

100 South Third Street

Columbus, OH 43215-4291

Telephone: (614) 227-4914

Facsimile: (614) 227-2390

dborchers@bricker.com

**Attorney for Oregon Clean Energy, LLC**

Sarah Parrott

Greta See

Attorney Examiners

Public Utilities Commission of Ohio

180 E. Broad Street

Columbus, Ohio 43215

Sarah.parrott@puc.state.oh.us

Greta.see@puc.state.oh.us

**Attorney Examiners**

1. Customers eligible to exercise the right to opt out are limited to those taking service above primary voltage level as determined by the utility’s tariff classification and customers that receive electricity that exceeds 45 million KWH and that have made written requests for registration as self-assessing purchasers under R.C. 5727.81. R.C. 4928.6610. [↑](#footnote-ref-1)
2. As a practical matter, eligible customers will not be able to opt out of an AEP-Ohio EE/PDR Plan until January 1, 2017. After enactment of SB 310, AEP-Ohio stated that it would not amend its EE/PDR Plan, and the Commission refused to approve a request by AEP-Ohio to increase its shared savings on the basis that the increase would operate as an amendment to the Plan. *In the Matter of the Application of Solvay Advanced Polymers, LLC, dba Solvay Specialty Polymers*, Case Nos. 14-2296-EL-EEC, *et al*., Finding and Order (Nov. 18, 2015). Because the Plan has not been amended, eligible customers do not have the right to opt out of the Plan under Section 8 of SB 310. Those customers will have the option to opt out of the next AEP-Ohio EE/PDR Plan beginning January 1, 2017. R.C. 4928.6611. [↑](#footnote-ref-2)
3. The question whether a customer taking service under the IRP is taking a benefit of the portfolio plan is distinct from the issue whether changes in the recovery mechanism constitute an amendment to the existing plan. Had the Commission revised the recovery mechanism as requested by AEP-Ohio in its first application for rehearing in the ESP III case, that change would have amended the EE/PDR Plan. *See ESP III*, Memorandum of Industrial Energy Users-Ohio in Opposition to the Applications for Rehearing of the Ohio Power Company, Ohio Manufacturers’ Association Energy Group, and Environmental Advocates at 13 (Apr. 6, 2015). Whether the modification of the ESP is an amendment becomes irrelevant beginning January 1, 2017 because all current plans terminate and any eligible customer may elect to opt out of the costs and benefits of a portfolio plan. *See* Substitute Senate Bill 310, Section 6 and R.C. 4928.6611-4928.6613. [↑](#footnote-ref-3)