

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company for Authority to)	Case No. 13-2385-EL-SSO
Establish a Standard Service Offer)	
Pursuant to §4928.143, Revised Code,)	
in the Form of an Electric Security Plan.)	

In the Matter of the Application of)	
Ohio Power Company for Approval of)	Case No. 13-2386-EL-AAM
Certain Accounting Authority.)	

**PUBLIC VERSION
DIRECT TESTIMONY OF KEVIN M. MURRAY
ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO**

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I. INTRODUCTION

Q1. Please state your name and business address.

A1. My name is Kevin M. Murray. My business address is 21 East State Street, 17th Floor, Columbus, Ohio 43215-4228.

Q2. By whom are you employed and in what position?

A2. I am employed as a Technical Specialist by McNees Wallace & Nurick LLC ("McNees") and serve as the Executive Director of the Industrial Energy Users-Ohio ("IEU-Ohio"). I am providing testimony on behalf of IEU-Ohio.

Q3. Please describe your educational background.

A3. I graduated from the University of Cincinnati in 1982 with a Bachelor of Science degree in Metallurgical Engineering.

1 **Q4. Please describe your professional experience.**

2 A4. I have been employed by McNees for 17 years where I focus on helping
3 IEU-Ohio members address issues that affect the price and availability of utility
4 services. I have also been actively involved, on behalf of commercial and
5 industrial customers, in the formation of regional transmission organizations
6 ("RTOs") and the organization of regional electricity markets from both the
7 supply-side and demand-side perspective. I serve as an end-use customer
8 sector representative as well as Vice Chair on the Midcontinent Independent
9 Transmission System Operator, Inc. ("MISO") Advisory Committee and I have
10 been actively involved in MISO working groups that focus on various issues since
11 1999. Prior to joining McNees, I was employed by the law firm of Kegler, Brown,
12 Hill & Ritter ("KBH&R") in a similar capacity. Prior to joining KBH&R, I spent 12
13 years with The Timken Company, a specialty steel and roller bearing
14 manufacturer. While at The Timken Company, I worked within a group that
15 focused on meeting the electricity and natural gas requirements for facilities in
16 the United States. I also spent several years in supervisory positions within The
17 Timken Company's steelmaking operations.

18 **Q5. Have you previously testified before the Public Utilities Commission of**
19 **Ohio ("Commission")?**

20 A5. Yes. The proceedings before the Commission in which I have submitted expert
21 testimony are identified in Exhibit KMM-1.

1 **Q6. What is the purpose of your testimony?**

2 A6. The purpose of my testimony is to: (1) describe Ohio Power Company's
3 ("AEP-Ohio") proposed Purchased Power Agreement ("PPA") Rider, (2) compare
4 AEP-Ohio's proposed electric security plan ("ESP") to the market rate offer
5 ("MRO") alternative; and (3) review AEP-Ohio's proposal to rebundle network
6 integration transmission service ("NITS") and other non-market based
7 transmission charges and convert NITS charges and other non-market based
8 transmission charges from a bypassable charge, which allows a shopping
9 customer to obtain NITS from a competitive retail electric service ("CRES")
10 provider, into a non-bypassable charge. Based on my evaluation of the
11 proposed PPA Rider and for reasons provided in my testimony, I recommend
12 that the proposed PPA Rider be excluded from any ESP that may be approved
13 by the Commission. I also recommend the Commission find that AEP-Ohio's
14 proposed third ESP (ESP III) is not more favorable than an MRO alternative if
15 AEP-Ohio's PPA Rider is included in the ESP III. I also recommend that the
16 Commission not accept AEP-Ohio's proposal to rebundle NITS and other non-
17 market based transmission charges with distribution service and convert NITS
18 charges and other non-market based transmission charges into a non-
19 bypassable charge.

20 If the Commission adopts the recommended modifications to the ESP III
21 contained in my testimony, as well as the testimony of IEU-Ohio witness Joseph
22 Bowser, it is my opinion that such a modified ESP III would be more favorable in
23 the aggregate than the MRO alternative. As importantly, the adoption of the

1 recommendations offered in my testimony and the testimony of Mr. Bowser will
2 avoid authorizing additional non-bypassable charges that will act as a barrier to
3 completing the so-called “transition to market.” The existing and proposed
4 nonbypassable charges have resulted and will continue to result in AEP-Ohio’s
5 customers paying significantly above-market charges that detract from the
6 benefits customers would have otherwise been able to obtain through the
7 exercise of their “customer choice” rights.

8 **II. HISTORY OF THIS PROCEEDING**

9 **Q7. What are the significant components of the proposed ESP III?**

10 A7. AEP-Ohio’s ESP III has a three-year term from June 1, 2015 through May 31,
11 2018. However, AEP-Ohio’s application states that AEP-Ohio is retaining the
12 unilateral right at its sole option and discretion to terminate ESP III one year early
13 by providing written notice to the Commission in the event of a: (1) substantive
14 change in Ohio law affecting standard service offer (“SSO”) obligations or SSO
15 rate plan options; or (2) substantive change in federal law including changes in
16 PJM Interconnection, L.L.C.’s (“PJM”) tariff or market rules regarding capacity,
17 energy or transmission pricing.

18 Under the proposed ESP III, AEP-Ohio would conduct a competitive bid to obtain
19 100% of the generation supply (energy, capacity and ancillary services)
20 necessary to provide the SSO. However, the results of the proposed competitive
21 bid do not identify all the generation-related implications of the proposed ESP III
22 on shopping and non-shopping retail customers of AEP-Ohio.

1 While AEP-Ohio has transferred its ownership of generating assets to a non-
2 regulated affiliate or other affiliated American Electric Power (“AEP”) operating
3 companies, AEP-Ohio sought and obtained Commission approval¹ to retain its
4 wholesale contractual entitlement to receive power pursuant to a purchased
5 power agreement between AEP-Ohio, Ohio Valley Electric Corporation (“OVEC”) and
6 other electric utility signatories (termed Sponsoring Companies under the
7 purchased power agreement). In this proceeding, AEP-Ohio has proposed a
8 PPA Rider which would allow AEP-Ohio to charge or credit retail customers for
9 the difference between the costs it incurs pursuant to its wholesale power
10 purchase agreement with OVEC and the revenues it receives from liquidating its
11 wholesale energy and capacity entitlements pursuant to the agreement through
12 sales into the wholesale power markets operated by PJM.

13 Other aspects of the proposed ESP III include a proposal to implement a
14 purchase of receivables (“POR”) program with CRES providers that would be
15 linked to a new rider in order to allow AEP-Ohio to collect any bad debt resulting
16 from the implementation of the POR program.

17 The proposed ESP III also contains several new riders (on top of the many riders
18 that are already in place). These include the North American Electric Reliability
19 Corporation (“NERC”) Compliance and Cybersecurity Rider, which is intended to
20 allow AEP-Ohio to automatically collect from its distribution customers the cost of
21 compliance with new regulations imposed for system reliability and security.

¹ *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Finding and Order at 9 (December 4, 2013).

1 Additionally, AEP-Ohio has proposed the Sustained and Skilled Workforce Rider
2 to recover the costs associated with training additional internal construction and
3 line workers. AEP-Ohio has proposed to continue several current riders,
4 including the Distribution Investment Rider (“DIR”), the Enhanced Service
5 Reliability Rider (“ESRR”), the gridSMART[®] Rider and the Storm Damage
6 Recovery Mechanism. AEP-Ohio has also proposed to continue the Residential
7 Distribution Credit Rider (“RDCR”) which is presently scheduled to expire on
8 May 31, 2015.

9 Finally and as already discussed previously, AEP-Ohio has proposed to rebundle
10 NITS and other non-market based transmission charges and collect NITS and
11 other non-market based transmission costs through a non-bypassable charge.

12 **III. PPA RIDER**

13 **Q8. What is the purpose of the proposed PPA Rider?**

14 A8. AEP-Ohio has previously sought and obtained Commission approval of a
15 modification to its corporate separation plan to allow AEP-Ohio to temporarily
16 retain its generation supply entitlements under a wholesale power purchase
17 agreement with OVEC.² I have attached a copy of the current power purchase
18 agreement (the Amended and Restated Inter-Company Power Agreement dated
19 as of September 10, 2010 or “ICPA”) to my testimony as Exhibit KMM-2. The
20 temporary retention of this wholesale generation supply contract and the related
21 modification to its corporate separation plan was based upon AEP-Ohio’s claim

² AEP-Ohio is one of the joint owners of OVEC.

1 that AEP-Ohio was unable to obtain the required consents necessary to transfer
2 the OVEC contract entitlements to its affiliate, AEP Generation Resources Inc.
3 (“AEP Genco”).³ As part of its proposal to retain the OVEC contract, AEP-Ohio
4 proposed to liquidate its entitlements under the supply contract with OVEC by
5 selling the entitlements (energy, capacity and ancillary services) into the
6 wholesale markets operated by PJM.

7 In this proceeding, AEP-Ohio has proposed the PPA Rider to either collect or
8 credit, through a non-bypassable charge to shopping and non-shopping
9 customers, the difference between the costs it incurs pursuant to the wholesale
10 power purchase agreement with OVEC (as well as possibly other additional
11 wholesale power purchase contracts) and the revenues AEP-Ohio receives by
12 liquidating AEP-Ohio’s contractual entitlements through sales into PJM’s
13 wholesale markets or through bilateral wholesale sales.

14 **Q9. Should the Commission approve the PPA Rider?**

15 A9. No. There are multiple reasons to justify not approving the PPA Rider. First, as I
16 discuss in my testimony, the proposed PPA Rider is expected to [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]. Second, it is my understanding that the Commission’s
20 order authorizing modification of AEP-Ohio’s corporate separation plan indicates
21 that the modification was temporary until AEP-Ohio could transfer the OVEC

³ AEP Genco was created to assume ownership of some of the generating assets previously owned by AEP-Ohio.

1 generation supply entitlements and did not establish an ongoing opportunity for
2 AEP-Ohio to retain the OVEC generation supply entitlements or, in effect, use its
3 relationship with retail customers to supplement or participate in the financial
4 benefits AEP-Ohio may derive from holding the OVEC generation supply
5 entitlement. In this context, I would also note that it is my understanding that the
6 OVEC contract provides a clear path to accomplish the transfer of the OVEC
7 wholesale generation supply entitlements before the start of the proposed ESP III
8 and thereby eliminate the need for any deviation from the otherwise applicable
9 corporate separation requirements. Finally, the proposed PPA Rider would result
10 in a subsidy flowing to or from AEP-Ohio's noncompetitive retail electric service
11 distribution customers to a product or service other than retail service, a result
12 that is both contrary to the state's policies and, as I understand it, unlawful.

13 **Q10. What is your understanding of the duration of Commission's approval of**
14 **AEP-Ohio's corporate separation plan modification?**

15 A10. Although the Commission accepted AEP-Ohio's plan to liquidate its OVEC
16 wholesale power purchase agreement in the wholesale market, it is my
17 understanding that the Commission's authorization of AEP-Ohio's retention of the
18 OVEC wholesale generation supply entitlements was temporary. In discussing
19 the conditions imposed on retention of the OVEC entitlement, the Commission
20 stated:

21 These conditions should apply during AEP Ohio's current ESP
22 period and beyond, until the OVEC contractual entitlements can be

1 transferred to AEP Genco or otherwise divested, or until otherwise
2 ordered by the Commission.⁴

3 **Q11. What cost is AEP-Ohio expected to incur under the wholesale ICPA?**

4 A11. It is my understanding that under the ICPA AEP-Ohio is billed on a cost-plus
5 formula rate in accordance with the approvals provided by the Federal Energy
6 Regulatory Commission ("FERC"). According to page 8 of the 2012 OVEC
7 Annual Report, which is attached to my testimony as Exhibit KMM-3, "[t]he
8 proceeds from the sale of power to the Sponsoring Companies are designed to
9 be sufficient for OVEC to meet its operating expenses and fixed costs, as well as
10 earn a return on equity before federal income taxes. In addition, the proceeds
11 from power sales are designed to cover debt amortization and interest expense
12 associated with financings. The Companies have continued and expect to
13 continue to operate pursuant to the cost plus rate of return recovery provisions at
14 least to June 30, 2040, the date of termination of the ICPA."

15 **Q12. Has AEP-Ohio estimated the revenues or credits it expects to collect**
16 **through the PPA Rider during the term of the ESP III?**

17 A12. Yes. In response to IEU-Ohio Interrogatory 2-1, AEP-Ohio produced three Excel
18 spreadsheets⁵ that model the expected wholesale revenue from the sales or
19 liquidation of the OVEC entitlement as well as the expected costs of the
20 wholesale generation supply. I have attached AEP-Ohio's response to IEU-Ohio

⁴ *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Finding and Order at 9 (December 4, 2013) (emphasis added).

⁵ AEP-Ohio identified the Excel spreadsheets as IEU RPD 2-001 Competitively-Sensitive Confidential Attachment 1.xlsx, IEU RPD 2-001 Competitively-Sensitive Confidential Attachment 2.xlsx, and IEU RPD 2-001 Competitively-Sensitive Confidential Attachment 3.xlsx, respectively.

Interrogatory 2-1 as Exhibit KMM-4 to my testimony, and the three Excel spreadsheets (**which are confidential**) as Exhibits KMM-5, KMM-6 and KMM-7.

Q13. What are AEP-Ohio's estimated revenues or credits it expects to collect through the PPA Rider during the term of the ESP III?

A13. As shown on Exhibit KMM-5, AEP-Ohio projects to [REDACTED] [REDACTED] from retail customers through the non-bypassable PPA Rider during the term of the ESP III.

Q14. What is your understanding regarding the assumptions AEP-Ohio made in calculating these estimates?

A14. As is the case in any estimate of forward wholesale generation market sales and costs, it is my understanding that AEP-Ohio made numerous assumptions to develop its estimate. For example, the Office of the Ohio Consumers' Counsel ("OCC") requested, through Interrogatory 5-094 and 5-095, that AEP-Ohio provide a description of the data modeled and the data sources in the three Excel spreadsheets which I have attached to my testimony. I have included AEP-Ohio's response to those interrogatories as Exhibit KMM-8 and it illustrates the numerous assumptions associated with the estimation and modeling effort. However, a significant assumption made by AEP-Ohio, one that is specifically noted on Exhibit KMM-5, is that the annual wholesale demand charge to AEP-Ohio under the ICPA would be [REDACTED]

[REDACTED]

[REDACTED] its

1 power participation ratio, which is 19.93%. In other words, the total assumed

2 [REDACTED]

3 [REDACTED] Without

4 this assumed reduction in OVEC wholesale generation supply demand charges,

5 the impact of the PPA Rider during the term of ESP III would be much higher.

6 And, under the proposed PPA Rider, AEP-Ohio's shopping and non-shopping

7 customers take on all the risk of deviations between the assumed reduction in

8 OVEC wholesale demand charges and actual OVEC wholesale demand charges

9 that turn out to be higher than the level assumed by AEP-Ohio in its analysis.

10 **Q15. Are, in your opinion, these** [REDACTED]

11 [REDACTED] **likely to happen or certain to**

12 **happen?**

13 A15. No. The OCC requested AEP-Ohio, through an interrogatory, to identify whether

14 OVEC or AEP-Ohio had [REDACTED]

15 [REDACTED]

16 [REDACTED]. I have attached AEP-Ohio's

17 response to the OCC's interrogatory 11-272 as Exhibit KMM-9 (**confidential**) to

18 my testimony. In all instances, AEP-Ohio's response was no.

19 In other words, if the [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]. Based upon the information provided by AEP-Ohio, I believe

1 the [REDACTED] impact of the PPA Rider is a more realistic indication of the
2 electric bill increasing effect of the proposed PPA Rider on AEP-Ohio's retail
3 distribution service customers during the term of AEP-Ohio's proposed ESP III.

4 **Q16. Are there any options you have identified and recommend the Commission**
5 **adopt as an alternative to the PPA Rider?**

6 A16. Yes. AEP-Ohio has previously represented to the Commission that it was unable
7 to obtain the required consent from the other parties to the ICPA in order to
8 transfer the ICPA to AEP Genco. While this may be correct, it is my
9 understanding that there are other transfer options under the ICPA. It is my
10 understanding that Section 9.18 of the ICPA governs successors to and
11 assignment of the ICPA. It is my understanding that Section 9.181 of ICPA
12 requires written consent of the other signatory parties in order to assign the
13 ICPA. However, it is also my understanding that Section 9.182 provides that
14 notwithstanding the provisions of Section 9.181, the ICPA may be assigned to
15 another Permitted Assignee,⁶ so long as an assignment agreement in an
16 acceptable form to the Corporation⁷ has been executed. Further, it is my
17 understanding that Section 9.183 also specifies that notwithstanding Section
18 9.181 "any Sponsoring Company shall be permitted to, subject to compliance
19 with all of the requirements of this Section 9.183, assign all or part of its rights,

⁶ It is my understanding that a Permitted Assignee is defined generally as a Sponsoring Company or Affiliate provided that a threshold credit rating is satisfied and the assignment does not trigger or cause a termination, default, loss or payment obligation under any security issued or agreement entered into prior to the assignment.

⁷ It is my understanding that this is defined as OVEC, Indiana-Kentucky Electric Corporation ("IKEC") and all other subsidiaries of OVEC.

1 title and interests in, and obligations under this Agreement to a Third Party
2 without any further action by the Corporation or the other Sponsoring Parties.”

3 It is my understanding that a Third Party is defined under the ICPA as any person
4 other than a Sponsoring Company or Affiliate.

5 It is my understanding that the additional compliance obligations required to
6 assign the ICPA pursuant to Section 9.183 govern minimum creditworthiness
7 requirements for the Third Party assignee, and a determination that the
8 assignment would not trigger a default, termination, loss or payment obligation
9 under any securities issued prior to the assignment.

10 **Q17. Based on your understanding of the ICPA, are there any other notable**
11 **provisions associated with the Third Party assignment options permitted**
12 **pursuant to Section 9.183 of the ICPA?**

13 A17. Yes. The subsections to Section 9.183 identify that if a signatory attempts to
14 assign its contractual entitlements and obligations to a Third Party under the
15 ICPA, that action triggers a right of first refusal option to the other Sponsoring
16 Companies. It is my understanding that this option allows any Sponsoring
17 Company or its Affiliate the first right to purchase the ICPA entitlements in place
18 of assignment to a Third Party. The first right occurs when the Sponsoring
19 Company or its Affiliate agree to terms of an Offer Notice that specifies the terms
20 and conditions through which the Sponsoring Company or its Affiliate exercises
21 its rights rather than allowing assignment to a Third Party. It is my
22 understanding that if no Sponsoring Company or Affiliate exercises its rights to

1 purchase the entitlement, the signatory is permitted, pursuant to Section
2 9.183(e), to complete the assignment to a Third Party at no less than 92.5% of
3 the purchase price specified in the Offer Notice.

4 **Q18. Assuming your understanding of the ICPA provisions is correct, how might**
5 **they affect AEP-Ohio's opportunity to complete the transfer of its OVEC**
6 **wholesale generation supply entitlements?**

7 A18. Based on my understanding of these provisions of the ICPA, it is my opinion that
8 they may provide AEP-Ohio several opportunities to assign its ICPA wholesale
9 generation supply entitlements and that they provide AEP-Ohio with the option to
10 assign such entitlements to a Third Party without further action by the Sponsoring
11 Companies.⁸ Once the OVEC generation supply entitlements are transferred or
12 assigned, the transferee or assignee would be able to bid the generation supply
13 directly into the wholesale markets, use the supply to meet requirements under
14 bilateral retail or wholesale contracts or engage in other commercial physical or
15 financial transactions without consequence to AEP-Ohio's retail distribution
16 service customers and in ways that would discontinue any ongoing need for
17 AEP-Ohio to maintain a temporary corporate separation waiver. If, as AEP-Ohio
18 claims, the ICPA is a valuable hedge against wholesale generation market
19 exposure, it should not be difficult to find a Third Party willing to accept
20 assignment of the ICPA. Additionally, if the ICPA is viewed by other Sponsoring
21 Companies to be a valuable hedge against market exposure, competitive

⁸ The Corporation is required to identify that the assignment will not trigger a default.

1 pressure would trigger these companies to consider exercising their right of first
2 refusal rather than allow assignment of the ICPA to a Third Party.

3 **Q19. Are there any other reasons why the proposed PPA Rider should not be**
4 **approved?**

5 A19. Yes. It is my understanding that Ohio's state electricity policy and Ohio law
6 require that the Commission ensure "effective competition in the provision of
7 retail electric service by avoiding anticompetitive subsidies flowing from a
8 noncompetitive retail electric service to a competitive retail electric service or to a
9 product or service other than retail electric service, and vice versa, including by
10 prohibiting the recovery of any generation-related costs through distribution or
11 transmission rates."⁹ AEP-Ohio's proposed PPA Rider is structured to provide a
12 direct subsidy flowing to or from AEP-Ohio retail non-competitive distribution
13 service customers and to or from a product or service other than retail electric
14 service, in this case wholesale generation supply service available to AEP-Ohio
15 pursuant to the ICPA. The PPA Rider causes such a subsidy payment from
16 AEP-Ohio retail distribution customers when it results in a charge (the cost of the
17 OVEC wholesale supply available to AEP-Ohio is in excess of the revenue
18 resulting from liquidation in the wholesale markets). The PPA Rider is a subsidy
19 to retail distribution customers when it results in a credit (the cost of the OVEC
20 wholesale supply available to AEP-Ohio is less than the revenue resulting from
21 liquidation in the wholesale markets). In either case, the result runs afoul of
22 Ohio's pro-competitive policies and the law. I would also note that because the

⁹ Section 4928.02(H), Revised Code.

1 proposed liquidation of the wholesale generation supply available to AEP-Ohio
2 pursuant to the ICPA is, based on my understanding, a wholesale or generation
3 sale for resale transaction which would be subject to the exclusive jurisdiction of
4 FERC, the opportunity for the Commission to supervise or regulate the liquidation
5 side of the proposed PPA Rider process may be limited to the extent it may exist
6 at all.

7 Additionally, in those instances in which the PPA Rider would result in a charge
8 and result in AEP-Ohio's retail distribution customers supplementing the revenue
9 which AEP-Ohio receives from the wholesale generation supply liquidation
10 process that is part of the proposed PPA Rider, AEP-Ohio's retail customers
11 would be providing AEP-Ohio with the equivalent of additional generation-related
12 transition revenues. It is my understanding that result is prohibited by the
13 express terms of the Stipulation and Recommendation adopted to resolve AEP-
14 Ohio's (or its predecessors') electric transition plan ("ETP") proceedings to
15 implement 1999's Amended Substitute Senate Bill 3 ("SB 3"), as well as Ohio
16 law, which requires that the collection of transition revenues terminate no later
17 than the end of AEP-Ohio's market development period. It is also my
18 understanding that the electric generation function is required to be "fully on its
19 own in the competitive market"¹⁰ and the Commission lacks the authority to
20 authorize additional transition revenues or their equivalent.

21 Finally, the ICPA, in its present form, dates to 2003 when the U.S. Department of
22 Energy ("DOE") elected to terminate its right to purchase a significant part of

¹⁰ Section 4928.38, Revised Code.

OVEC's wholesale generation supply. At the time, it is my understanding that the Sponsoring Companies agreed to pay their share of all of OVEC's costs resulting from the ownership, operation and maintenance of its generation and transmission facilities, except those costs that were paid by the DOE. In exchange, the Sponsoring Companies were entitled to fractional shares of the output of the generating facility. The ICPA was amended in 2010 to extend the termination date from March 2026 to June 30, 2040 in part to allow OVEC the opportunity to refinance debt and to take advantage of more favorable interest rates. The decision to restructure the ICPA and assumed obligation, theretofore underwritten to a large extent by DOE, was freely undertaken at a point in time after Ohio had elected to restructure its electricity markets and subject generation to competition and after any opportunity to seek transition revenues terminated. It would be fundamentally unfair to require retail distribution customers to underwrite the financial consequences of generation-related business decisions made by AEP-Ohio since AEP-Ohio made this decision well after Ohio changed its laws to declare generation service competitive and to provide retail customers with the benefits of a competitive electric market.

Q20. Can you summarize your recommendations on AEP-Ohio's proposed PPA Rider?

A20. Yes. The Commission should deny AEP-Ohio's request for authorization to include the proposed PPA Rider in ESP III. As discussed below, the fate of the proposed PPA Rider and the wholesale generation supply costs it would, if approved, impose of retail customers as part of an ESP is inextricably tied to the

1 question of whether the proposed ESP III is more favorable in the aggregate than
2 an MRO.

3 **IV. ESP VERSUS MRO TEST**

4 **Q21. What is your understanding regarding what the Commission must find**
5 **before it can approve the proposed ESP III?**

6 A21. It is my understanding that the Commission must find that the proposed ESP III,
7 including its pricing and all other terms and conditions, including any deferrals
8 and the future recovery of deferrals, is more favorable in the aggregate as
9 compared to the expected results under an MRO before it can approve the ESP
10 III. It is also my understanding that AEP-Ohio bears the burden of proof to
11 demonstrate the proposed ESP III is more favorable than an MRO.

12 **Q22. Did AEP-Ohio evaluate whether the ESP III is more favorable in the**
13 **aggregate than an MRO?**

14 A22. Yes. AEP-Ohio witness William Allen testifies that the proposed ESP III is more
15 favorable than an MRO. Mr. Allen testifies that because AEP-Ohio would be
16 acquiring 100% of the commodity to provide the SSO through a competitive
17 bidding process ("CBP") under either an ESP or an MRO, there is no quantifiable
18 difference in commodity prices. Although there is no quantifiable difference in
19 commodity prices between the proposed ESP III and an MRO, he concludes on
20 page 5 of his written testimony, that because the proposed ESP III provides

1 \$44,064,000 in quantifiable benefits over the term of the ESP III and additional
2 non-quantifiable benefits, the proposed ESP III is more favorable than an MRO.

3 **Q23. What is the source of the \$44,064,000 in quantifiable benefits identified by**
4 **Mr. Allen?**

5 A23. The \$44,064,000 in quantifiable benefits is the result of AEP-Ohio's proposal to
6 extend the RDCR through May 31, 2018. This rider is presently scheduled to
7 expire on May 31, 2015.

8 **Q24. Do you disagree with Mr. Allen's assignment of \$44,064,000 in quantifiable**
9 **benefits resulting from extension of the RDCR?**

10 A24. No. However, as discussed in Mr. Allen's testimony, the benefits of the credit are
11 limited to the residential class. Additionally, as discussed later in my testimony,
12 there are some offsetting costs that Mr. Allen has failed to recognize in his
13 analysis.

14 **Q25. Do you agree that the generation supply cost would be the same under**
15 **either an ESP or MRO?**

16 A25. Yes, assuming you ignore the PPA Rider proposal which I discuss below.
17 Because AEP-Ohio will have divested all of its generating assets by June 1,
18 2015, I also agree with Mr. Allen's conclusion that the generation supply costs to
19 provide the SSO under either an ESP or MRO would be the same.

1 **Q26. Did AEP-Ohio identify any other quantifiable benefits of the proposed ESP**
2 **III?**

3 A26. No. In response to OCC Interrogatory 3-025, AEP-Ohio responded that it had
4 not identified any other quantifiable benefits. I have attached a copy of this
5 interrogatory and AEP-Ohio's response as Exhibit KMM-10.

6 **Q27. Has AEP-Ohio failed to recognize quantifiable costs associated with the**
7 **proposed ESP III?**

8 A27. Yes. AEP-Ohio has failed to recognize the costs associated with the proposed
9 PPA Rider which, based upon AEP-Ohio's own analysis, [REDACTED]
10 [REDACTED] over the three-year term of the ESP III.

11 **Q28. What is the appropriate treatment of the PPA Rider for the purpose of the**
12 **ESP versus MRO test?**

13 A28. Mr. Allen testifies that the PPA Rider would not exist under an MRO and I agree
14 with Mr. Allen's conclusion. Therefore, there would be no cost (or benefit)
15 associated with the proposed PPA Rider under an MRO. As discussed
16 previously in my testimony, I offer multiple reasons, independent of the ESP
17 versus MRO test, why the proposed PPA Rider should not be approved.
18 However, because AEP-Ohio has included the PPA Rider as a component of the
19 proposed ESP III, the effect of the proposed PPA Rider must be included for
20 purposes of conducting the ESP versus MRO test.

1 **Q29. What are the quantifiable costs or benefits of the proposed PPA Rider?**

2 A29. As discussed previously in my testimony, AEP-Ohio's own analysis concludes
3 that the PPA Rider will [REDACTED]
4 [REDACTED] during the term of the
5 ESP III. As previously discussed, I believe AEP-Ohio's [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 during the term of the ESP III.

10 **Q30. Now, moving to a different element of the proposed ESP, are there**
11 **quantifiable costs and benefits associated with the DIR?**

12 A30. No. Mr. Allen's testimony could be read to imply there are, although he does not
13 assign a specific dollar amount to the DIR quantitative benefit. Mr. Allen testifies
14 that the DIR mechanism provides a streamlined approach to cost recovery and
15 suggests that recovery of incremental distribution investment costs through a
16 base rate case would result in higher costs to consumers.

17 **Q31. To the extent Mr. Allen is asserting quantifiable benefits from the DIR, do**
18 **you agree with Mr. Allen's views regarding the DIR?**

19 A31. No.

1 **Q32. Why are there no quantifiable benefits associated with the DIR?**

2 A32. The Commission has previously considered a proposal substantively equivalent
3 to the proposed DIR and concluded the quantitative costs associated with
4 recovery of incremental distribution investment through either a rider or a base
5 rate case should be considered a “wash.” Specifically, in Case No. 12-1230-EL-
6 SSO [which involved a proposed ESP for the FirstEnergy Corporation
7 (“FirstEnergy”) operating companies], various parties advanced competing
8 arguments on whether FirstEnergy’s Delivery Capital Recovery Rider (“Rider
9 DCR”) should be considered a quantifiable benefit of the proposed ESP. Rider
10 DCR would “provide the Companies with the opportunity to recover property
11 taxes, commercial activity tax, and associated income taxes, and earn a return
12 on and of plant-in-service associated with distribution, subtransmission, and
13 general and intangible plant, including general plant from FirstEnergy Service
14 Company that supports the Companies and was not included in the rate base
15 determined in *In re FirstEnergy*, Case No. 07-551-EL-AIR, *et al.*, Opinion and
16 Order (January 21, 2009).”¹¹ FirstEnergy (through the supporting testimony of
17 FirstEnergy witness William Ridmann) argued that Rider DCR should be
18 considered a quantifiable benefit of the proposed ESP. Conversely, the
19 Commission Staff (through the supporting testimony of Robert Fortney) testified
20 the costs of Rider DCR versus recovery through a traditional base rate
21 proceeding should be considered a “wash.”

¹¹ *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 10 (July 18, 2012).

1 In its decision, the Commission agreed with the opinion of Staff witness Fortney
2 and removed the costs associated with Rider DCR from the quantitative ESP
3 versus MRO analysis.¹²

4 Given this precedent and the substantial similarities between FirstEnergy's Rider
5 DCR and the DIR, I recommend the Commission treat the DIR as a "wash" and
6 remove the DIR from the ESP versus MRO analysis.

7 **Q33. What are the quantifiable costs or benefits of the proposed ESP III?**

8 A33. Once the \$44 million in benefits of the RDCR over the term of the ESP III [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 **Q34. Has AEP-Ohio identified any non-quantifiable benefits to support approval**
14 **of the proposed ESP III?**

15 A34. Yes. Mr. Allen testifies that there are non-quantifiable benefits associated with:
16 (1) the accelerated transition to competition; (2) the increased price stability
17 associated with the PPA Rider; and (3) the POR program.

18

¹² *Id.* at 55-56.

1 **Q35. Do you agree that these elements of the proposed ESP III provide non-**
2 **quantifiable benefits?**

3 A35. No. I discuss below why the first two items identified in the answer to Question
4 34 do not provide any non-quantifiable benefits. IEU-Ohio witness Joseph
5 Bowser discusses in his testimony why the POR does not provide non-
6 quantifiable benefits.

7 **Q36. Why are there no non-quantifiable benefits associated with the accelerated**
8 **process to achieve full competition as discussed in Mr. Allen's testimony?**

9 A36. The commitment to source all generation necessary to serve the entire SSO load
10 through a CBP was made as part of the approval of AEP-Ohio's current ESP in
11 2012. Thus, there is no "accelerated" move to competition associated with the
12 proposed ESP III and hence there can be no non-quantifiable benefits even if
13 non-quantifiable benefits could be considered for purposes of conducting the
14 ESP versus MRO test.

15 **Q37. Has the Commission previously reached a similar conclusion?**

16 A37. Yes, that is my understanding.

17 **Q38. Can you describe your understanding of the Commission's decision and**
18 **the specific circumstances?**

19 A38. Yes. This also involved the Commission's decision on FirstEnergy's current ESP
20 approved in Case No. 12-1230-EL-ESP.

1 Although the specific facts differ, I believe they are similar enough to provide
2 guidance in this proceeding. In Case No. 12-1230-EL-SSO, FirstEnergy argued
3 that its decision to forego regional transmission expansion plan (“RTEP”) costs
4 should be considered a quantifiable benefit of the proposed ESP. Through the
5 testimony of Commission Staff witness Robert Fortney, the Staff recommended
6 that foregoing recovery of RTEP costs not be treated as a quantifiable benefit of
7 the ESP because FirstEnergy had already agreed to forego recovery of RTEP
8 costs in a prior proceeding. The Commission accepted the view of Commission
9 Staff witness Fortney.¹³

10 Because the commitment to source all generation necessary to serve the entire
11 SSO load through a CBP was made as part of the approval of AEP-Ohio’s
12 current ESP, I recommend the Commission find it does not provide a non-
13 quantifiable benefit to the proposed ESP III. I would also note that the PPA Rider
14 proposal is, practically speaking, a proposal that would make an exception to the
15 commitment to determine generation-related costs imposed on SSO customers
16 through a CBP [REDACTED]

17 [REDACTED].

18 **Q39. Why are there no non-quantifiable benefits associated with the “rate**
19 **stability” that Mr. Allen attributes to the PPA Rider in his testimony?**

20 A39. The only stability provided by the PPA Rider is the stability provided AEP-Ohio
21 (as an equity owner in OVEC) through a guaranteed return of and on its

¹³ *Id.* at 55.

1 generation investments funded by captive retail distribution customers through
2 the PPA Rider. As proposed by AEP-Ohio, the PPA Rider provides no stability to
3 any SSO or non-SSO customer at all because it is an unknown cost or credit that
4 will vary in amount over the term of the proposed ESP III and the variation will be
5 reflected in the charge that is periodically adjusted and reconciled as the PPA
6 Rider is implemented along with the several other riders and adjustment
7 mechanisms. The only guarantee for shopping and non-shopping retail
8 customers provided by the PPA Rider is that their rates will remain unpredictable
9 for the entire term of the ESP III. Indeed, for shopping customers who have
10 selected fixed price offers from CRES providers, the proposed PPA Rider would
11 add uncertainty and instability to their delivered price of electricity.

12 AEP-Ohio witness Dr. Chantale LaCasse testifies the design of the CBP is
13 structured (both in terms of the timing, quantity of tranches, and bid term) to
14 reduce exposure to market conditions at any one time.

15 If the true objective of the PPA Rider was to provide retail customers predictable
16 rates, there would be a far easier, and stable, way to achieve this result. The
17 Commission could direct the ESP III be modified to conduct a single, descending
18 clock auction for all of the SSO generation supply necessary for the entire ESP III
19 term or for a longer term, prior to the start of the ESP III, and eliminate the pricing
20 uncertainty created by the PPA Rider to both SSO and shopping customers.
21 That course of action would provide the ultimate level of pricing and revenue
22 stability for non-shopping customers. The SSO generation rates would be known
23 before the start of the ESP and stable for the entire ESP III term, and shopping

1 customers would not face the unpredictability [REDACTED] that they will
2 experience if the PPA Rider is approved.

3 For these reasons and assuming that non-quantifiable benefits are considered
4 for purposes of conducting the ESP versus MRO test, I recommend the
5 Commission conclude there are no non-quantifiable benefits associated with the
6 PPA Rider.

7 **Q40. Can you summarize your conclusion on the ESP versus MRO test?**

8 A40. Yes. As compared to an MRO, the proposed ESP III results in [REDACTED]
9 [REDACTED] and there are no non-
10 quantifiable benefits.

11 **V. TRANSMISSION COST RECOVERY RIDER**

12 **Q41. How does AEP-Ohio presently recover transmission and ancillary services**
13 **costs from customers?**

14 A41. For SSO customers, AEP-Ohio presently has a Transmission Cost Recovery
15 Rider ("TCRR") that is designed to recover all transmission and transmission-
16 related costs or credits, including ancillary and congestion costs, imposed on or
17 charged to AEP-Ohio by FERC or PJM. The TCRR is fully avoidable by
18 shopping customers. Shopping customers pay for transmission and ancillary
19 services costs to PJM through their CRES provider, which obtains transmission
20 and ancillary services on behalf of the customer through PJM. In some
21 circumstances, shopping customers can be their own "load serving entity" and

1 procure transmission service directly from PJM. Transmission and ancillary
2 services revenues collected by PJM from CRES providers serving customers in
3 AEP-Ohio's service area are credited by PJM to AEP-Ohio's transmission
4 business. This current structure provides AEP-Ohio with the opportunity to
5 recover 100% of its transmission and ancillary services revenue requirement as
6 authorized by FERC.

7 **Q42. Has AEP-Ohio proposed any changes to its TCRR?**

8 A42. Yes. AEP-Ohio is proposing to establish a non-bypassable Basic Transmission
9 Cost Rider ("BTCR") to recover what AEP-Ohio classifies as non-market based
10 transmission charges from all of its customers, both shopping and non-shopping.
11 Other so-called market-based transmission charges would be included as part of
12 the auction conducted to secure generation supply for SSO customers, and
13 bidders in the auction would be expected to include their projected market-based
14 transmission costs in their bids. CRES providers would continue to be
15 responsible for market-based transmission charges associated with their
16 shopping customers.

17 **Q43. What does AEP-Ohio identify as non-market based transmission charges?**

18 A43. The non-market based transmission charges that AEP-Ohio proposes be
19 recovered through the BTCR are listed on Exhibit AEM-E attached to the
20 testimony of Company witness Andrea Moore. The charges are associated with
21 NITS, Transmission Enhancement, Reactive Supply and Voltage Control,

1 Transmission Owner Scheduling, System Control and Dispatch Service, and a
2 credit for any Point to Point Transmission Service Revenues.

3 **Q44. Why did AEP-Ohio propose the BTCR?**

4 A44. According to AEP-Ohio witness Pablo A. Vegas, the BTCR will ensure all
5 customers, both shopping and non-shopping, only pay the actual cost of non-
6 market based transmission expenses, and making this change will come at no
7 cost to customers as the cost responsibilities are being shifted from CRES
8 providers to AEP-Ohio. Mr. Vegas describes three reasons why AEP-Ohio has
9 proposed the BTCR. First, the proposed changes will align AEP-Ohio's
10 transmission recovery mechanism with other electric distribution utilities ("EDUs")
11 in the state. Second, the change will enable CRES providers and SSO suppliers
12 to operate and provide price rate offerings in a similar manner in different regions
13 of the state. Third, Mr. Vegas testifies the change will result in shopping
14 customers paying actual non-market based transmission costs, rather than
15 estimated transmission costs.

16 **Q45. Are AEP-Ohio's proposed changes for the recovery of transmission-related**
17 **costs appropriate?**

18 A45. No. AEP-Ohio's proposed changes to the TCRR could disrupt the contractual
19 relationship between AEP-Ohio customers that are presently shopping (who
20 constitute the majority of AEP-Ohio's distribution sales) and their CRES
21 providers. As previously noted, shopping customers presently pay for
22 transmission and ancillary services available through PJM in the prices they pay

1 to CRES providers. Therefore, for customers on term contracts, the prices they
2 pay their CRES providers already include compensation for non-market based
3 transmission and ancillary services. If the Commission approves AEP-Ohio's
4 proposed BTCR, shopping customers with term contracts could end up
5 effectively paying twice for non-market based transmission and ancillary
6 services.

7 **Q46. Has AEP-Ohio acknowledged this risk to customers?**

8 A46. Yes. In its response to IEU-Ohio Request for Admission 5-001, which is attached
9 to my testimony as Exhibit KMM-11, AEP-Ohio has acknowledged that "[w]hether
10 or not a customer will be billed twice for non-market based transmission costs will
11 be dependent on the contract with their CRES provider." Thus, the claim that
12 approval of the proposed BTCR will "come at no cost to customers" is simply
13 inaccurate.

14 **Q47. Do you agree that approval of the proposed BTCR will align AEP-Ohio's**
15 **recovery of transmission costs with other utilities in the state?**

16 A47. Approval of the proposed BTCR will result in AEP-Ohio billing all customers, both
17 shopping and non-shopping customers, for certain transmission and ancillary
18 services costs. However, in response to IEU-Ohio Interrogatory 5-014, which is
19 attached to my testimony as Exhibit KMM-12, AEP-Ohio has indicated there will
20 continue to be differences in how each EDU bills and collects the costs
21 associated with transmission and ancillary services from customers.

1 **Q48. Do you agree that approval of the BTCR is necessary to advance the**
2 **development of the competitive market?**

3 A48. No. The most recent report by the Commission Staff, which is attached to
4 testimony as Exhibit KMM-13, indicates that as of December 31, 2013, the
5 majority of retail sales volume in the AEP-Ohio territory, 61.13%, is from a CRES
6 provider. Thus, approval of the proposed BTCR is not necessary to advance the
7 development of the competitive market.

8 **Q49. Is the requirement that shopping customers pay actual non-market based**
9 **transmission costs rather than estimated transmission costs a benefit?**

10 A49. No. It is common practice for customers receiving service from a CRES provider
11 to structure their contracts to treat transmission and ancillary services costs as
12 either a cost reflected in a fixed price offer or a pass-through cost. Either
13 approach may be viewed as beneficial from a customer standpoint.

14 Under a fixed price approach (either a stated rate or a percentage discount to the
15 SSO rate), the CRES provider is assuming the transmission pricing risk and this
16 risk transfer can be valuable to the customer.

17 When transmission and ancillary services are treated as a pass through cost, it
18 provides customers with the ability to proactively manage their usage, and
19 reduce their energy usage and resulting electricity bill during times of peak
20 demand.

1 **Q50. Will the BTCR send customers more transparent and apparent price**
2 **signals?**

3 A50. No. PJM allocates NITS costs (which are the majority of costs to be collected
4 through the proposed BTCR) through each customer peak load contribution to
5 the single highest peak load in each transmission pricing zone. As I have
6 previously stated, pricing options available through CRES providers allow for
7 customers to contract for transmission service as a pass-through. This sends a
8 very transparent pricing signal to each customer to reduce demand during peak
9 load conditions and thereby reduce congestion that may otherwise result in
10 higher prices or degradation in reliability.

11 In contrast, the proposed BTCR would allocate NITS costs among customer
12 classes based upon the classes' coincident peak demand. However, the actual
13 BTCR charges billed to customers with demand-based charges would be based
14 upon monthly billing demand which is typically the customer's peak demand or
15 based upon a demand ratchet. A customer's monthly peak demand or demand
16 ratchet will have little, if any, relationship to the single zonal coincident peak
17 within the PJM zone and thereby eliminate the demand response opportunity that
18 is signaled to customers obtaining transmission service, directly or indirectly,
19 through PJM. I would note that if non-quantifiable costs and benefits are to be
20 considered for purposes of the ESP versus MRO test, the proposed BTCR
21 should be regarded as a non-quantifiable cost with the understanding that it will
22 detract from the ability of customers to effectively employ their demand response
23 capabilities.

1 **Q51. What are your recommendations regarding the proposed BTCR?**

2 A51. The Commission should not adopt AEP-Ohio's proposed BTCR. The current
3 rider to recover transmission-related costs should remain in place and fully
4 avoidable by shopping customers.

5 **VI. CONCLUSION**

6 **Q52. What are your overall recommendations on the proposed ESP III?**

7 A52. If the Commission chooses to approve the ESP III, it should modify the proposal
8 and direct AEP-Ohio to eliminate the PPA Rider and the POR program. The
9 Commission should also not approve the proposed BTCR and allow the current
10 TCRR mechanism to remain in place.

11 **Q53. Does this conclude your testimony?**

12 A53. Yes.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Public Version of Direct Testimony of Kevin M. Murray on Behalf of Industrial Energy Users-Ohio* was served upon the following parties of record this 6th day of May 2014 via electronic transmission, hand-delivery or first class mail, U.S. postage prepaid.

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Summary: Testimony --Public Version of Direct Testimony of Kevin M. Murray on Behalf of the Industrial Energy Users-Ohio electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio