

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)	Case No. 14-1693-EL-RDR
Purchase Agreement for Inclusion in the)	
Power Purchase Agreement Rider.)	
)	
In the Matter of the Application of Ohio)	
Power Company for Approval of Certain)	Case No. 14-1694-EL-AAM
Accounting Authority.)	

**DIRECT TESTIMONY OF
JOHN FINNIGAN
ON BEHALF OF
ENVIRONMENTAL DEFENSE FUND
AND OHIO ENVIRONMENTAL COUNCIL**

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DEFENSE FUND**

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is John Finnigan. My business address is 128 Winding Brook Lane, Terrace
4 Park, Ohio 45174.

5 **Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
6 **YOUR RELEVANT PROFESSIONAL EXPERIENCE.**

7 A. I received my B.A. at the University of Cincinnati, an M.B.A. from Indiana University,
8 and my J.D. from the University of Cincinnati School of Law. I am currently Lead
9 Attorney for Environmental Defense Fund's Clean Energy program, representing EDF
10 before state public utility commissions on smart grid deployments and other clean energy
11 matters. EDF's Clean Energy program focuses on overcoming barriers to low carbon
12 energy systems, the deployment of smart grid, and works with federal, regional and state
13 agencies on energy-related issues, focusing on energy market structure and the utility
14 business model. Before coming to EDF, John worked for the Duke Energy Corporation
15 for fifteen years where I held positions as Vice President of Government & Regulatory
16 Affairs and in the legal department. My resume is at Attachment JF-1.

17 **Q. ON WHOSE BEHALF ARE YOU FILING THIS DIRECT TESTIMONY?**

18 A. I am filing this direct testimony on behalf of the Environmental Defense Fund ("EDF")
19 and the Ohio Environmental Council ("OEC"), intervenors in this case.

20 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

21 A. The Commission issued an Opinion and Order in Case No. 13-2385-EL-SSO on February
22 25, 2015, approving AEP Ohio's Electric Security Plan. In that case, AEP Ohio proposed
23 a non-competitive purchase agreement. The Commission declined to approve AEP's

1 non-competitive purchase proposal, but listed several factors which might lead it to
2 approve cost recovery for such non-competitive purchase agreements in the future. My
3 testimony will address these factors as they apply to AEP's PPA proposal in this case. I
4 recommend that the Commission should not approve AEP's PPA proposal. I also
5 introduce Diane Munns, who will testify about Volt/VAR Optimization and Conservation
6 Voltage Reduction.

7 **Q. PLEASE INTRODUCE DIANE MUNNS AND THE TESTIMONY SHE WILL**
8 **PROVIDE.**

9 A. Diane Munns is the Senior Director of Collaboration, Clean Energy Program, for the
10 Environmental Defense Fund. She is a former Board member and Board chair of the
11 Iowa Utilities Board, a position comparable to public utility commissioner in Ohio.
12 During this time, she also served as President of the National Association of Regulatory
13 Utility Commissioners ("NARUC"). Prior to her appointment as Commissioner, she
14 served for several years as the general counsel to the Iowa Utilities Board and in the Iowa
15 Attorney General's office. Immediately prior to her employment at EDF, she was a Vice
16 President at MidAmerican Energy Company in Des Moines, Iowa. Finally, she has also
17 served as Executive Director of Retail Energy Services for the Edison Electric Institute in
18 Washington D.C.

19 My testimony recommends that the Commission should not approve AEP's PPA
20 rider proposal. Her testimony advocates for Volt/VAR deployment as a means to
21 improve reliability and reduce price volatility and recommends that, if the Commission
22 rejects our recommendation and approves AEP's proposal, then the Commission should

1 condition its approval on AEP installing all cost-effective Volt/VAR Optimization and
2 Conservation Voltage Reduction equipment.

3 **II. DISCUSSION OF FACTORS FOR APPROVAL OF**
4 **NON-COMPETITIVE PURCHASE AGREEMENTS**
5

6 **Q. WHAT ARE THE FACTORS THAT MIGHT LEAD THE COMMISSION TO**
7 **APPROVE COST RECOVERY FOR NON-COMPETITIVE PURCHASE**
8 **AGREEMENTS?**

9 A. At page 25 of its February 25, 2015 Opinion and Order in the AEP Ohio case, the
10 Commission listed the following factors as necessary to proving cost recovery: 1)
11 financial need of the generating plant; 2) necessity of the generating facility, in light of
12 future reliability concerns, including supply diversity; 3) a description of how the
13 generating plant complies with all pertinent environmental regulations and its plan for
14 compliance with pending environmental regulations; and 4) the impact that a closure of
15 the generating plant would have on electric prices and the resulting effect on economic
16 development within the state.

17 **Q. PLEASE COMMENT ON THE FIRST FACTOR – THE FINANCIAL NEED OF**
18 **THE GENERATING PLANT -- AS IT RELATES TO THE PRESENT CASE.**

19 A. The Commission did not give any guidance on how this first factor should be applied.
20 Inclusion of this “need-based” factor, however, appears to be an implicit
21 acknowledgement by the Commission that the request is a subsidy intended to prop up
22 generation that would otherwise not survive in the competitive wholesale market. In
23 evaluating the “need” itself, it is important to keep in mind that the evaluation to be
24 conducted is of the financial health of the regulated utility’s competitive sister company,
25 not the regulated utility. As such, in the present case, I suggest the appropriate test for

1 need is whether AEP, the parent company, is unable to, not simply unwilling to, maintain
2 the generation facility. It would be difficult for the Commission to find an actual
3 financial need if AEP, the parent, is financially able, but is simply unwilling to prop up
4 its corporate child with a subsidy. If AEP and its shareholders are able but unwilling to
5 subsidize the plant, then this suggests that there is not truly a financial need. There is no
6 public policy purpose that would support carving out and subsidizing, through regulated
7 utility tariffs, the operation of a single economically failing competitive facility when the
8 entire enterprise, as a whole, remains profitable.

9 Finally, even if AEP the corporate parent were unable to assist its corporate child,
10 such a subsidy is anathema to the competitive market to which Ohio has committed itself.
11 As such, I recommend that in considering this factor the Commission explicitly balance
12 impacts upon the wholesale market of the out-of-market payments for generation against
13 any consideration of need. While AEP, the parent, presented no evidence of financial
14 need of the parent company, its annual report shows that it has \$16.8 billion in
15 shareholder equity, so AEP is clearly able to pay to keep these plants open. This first
16 factor should not cause the Commission to approve the PPA proposal for the reasons I
17 outlined above.

18 **Q. WHAT CONCLUSION WOULD YOU REACH ON THIS FIRST FACTOR – THE**
19 **FINANCIAL NEED OF THE PLANT – IF THE COMMISSION DECIDES THAT**
20 **THE FOCUS SHOULD BE ON THE FINANCIAL NEED OF EACH**
21 **INDIVIDUAL PLANT RATHER THAN THE FINANCIAL NEED OF THE**
22 **PARENT COMPANY?**

1 A. I would still conclude that this first factor does not support AEP's request. AEP's
2 analysis of the plants' financial need is not based on the latest available data. AEP filed
3 its testimony in this case on May 15, 2015. AEP witness Pablo Vegas states at page 22 of
4 his testimony that the ten-year average PJM capacity market price at that time was
5 \$93/MW-day.

6 Since that time, however, PJM has changed the rules for its capacity auctions by
7 introducing a new product, known as the Capacity Performance Resource, and new
8 bidding requirements. The first transition auction under these new rules occurred in late
9 August, 2015. PJM announced the auction results in a report entitled "2018/2019 RPM
10 Base Residual Auction Results" at Attachment JF-2.

11 The report explains that Capacity Performance Resources will receive
12 \$164.77/MW-day. By comparison, these resources received \$120/MW-day under the
13 prior auction, conducted under the old PJM rules. The power plants involved in AEP's
14 PPA rider proposal would be classified as Capacity Performance Resources because these
15 resources are, as stated at page 1 of Attachment JF-2, "capable of sustained, predictable
16 operation, and are expected to be available and capable of providing energy and reserves
17 when needed throughout the entire Delivery Year."

18 The second transition auction occurred in early September, 2015. PJM
19 announced the auction results in a report on September 9, 2015, at Attachment JF-3. The
20 report states that the capacity market price for Capacity Performance Resources in this
21 auction was \$151.50/MW-day. These new capacity price auctions are significantly
22 higher than the capacity prices which occurred under the old PJM rules, which AEP used
23 in its analysis.

1 In addition, AEP states that it might need to close these plants during the next few
2 years if the Commission does not approve the PPA proposal because the plants are
3 uneconomic. In support of this claim, AEP witness Pablo Vegas discusses at page 29 of
4 his testimony how AEP had to take a \$287 million write-off in the fourth quarter of 2012
5 for plants which it planned to retire in 2015. I have attached to my testimony as
6 Attachment JF-4 a September, 2015 presentation by AEP to its investors. The
7 presentation covers the period through 2017. AEP does not state in this presentation that
8 it plans to take any write-offs for the plants covered by its PPA rider proposal. Federal
9 law requires that AEP must be accurate in its statements to investors. AEP's statements
10 in this case that these plants are at imminent risk of retirement must be incorrect;
11 otherwise, AEP would have noted this in its presentation to investors.

12 Given that AEP prepared its analysis of financial need using the old capacity
13 market prices, AEP's analysis greatly over-states the plants' financial need and cannot be
14 relied upon. Moreover, these plants are not at imminent risk of retirement, as
15 demonstrated by AEP's financial presentation to investors. AEP therefore failed to meet
16 its burden of proof on this first factor.

17 If AEP tries to supplement its testimony at hearing with a new analysis of
18 financial need, using the results of the most recent PJM capacity market auction prices,
19 this would be unfair to intervenors and would deprive them of their due process rights
20 because the intervenors would not have had any opportunity to issue data requests on the
21 new analysis or to file testimony addressing the new analysis. At a minimum, therefore,
22 the Commission should stay the hearing and issue a new procedural schedule allowing

1 the intervenors to have an opportunity for discovery and to file supplemental testimony
2 on any new analysis which AEP might attempt to introduce at hearing.

3 **Q. PLEASE COMMENT ON THE SECOND FACTOR – THE NECESSITY OF THE**
4 **GENERATING FACILITY, IN LIGHT OF FUTURE RELIABILITY**
5 **CONCERNS, INCLUDING SUPPLY DIVERSITY– AS IT RELATES TO THE**
6 **PRESENT CASE.**

7 A. The Commission should not approve the PPA proposal based on the second factor. The
8 issue of reliability is a red herring because the AEP is not responsible for resource
9 adequacy. Instead, PJM has this responsibility. If PJM determines that these plants are
10 needed for reliability reasons, then PJM could implement a must-run arrangement to keep
11 the plants open. Moreover, this would be the better approach for AEP's customers
12 because it would be a shorter-term commitment than what AEP proposes. If the plants
13 are truly needed for regional reliability, a must-run arrangement would be available only
14 for so long as necessary to alleviate any concern. It would not lock ratepayers into long-
15 term support of an uneconomic facility.

16 As to supply diversity, this is also determined at the regional wholesale level.
17 PJM can determine what level it needs for different types of supply resources, and can
18 procure the appropriate level of each resource. One way PJM could do this is by
19 identifying the performance characteristics for the type of resource it wants, and requiring
20 that a capacity auction must procure a set level of resources with those performance
21 characteristics. If the Commission wishes to encourage diversity of supply within Ohio,
22 it could choose any number of competitive mechanisms to accomplish this. For instance,
23 in procuring supply on behalf of default service customers, the Commission could direct

1 AEP to seek requests for proposal for specific types of resources, including distributed
2 generation such as combined heat and power or rooftop solar. It could also design a
3 procurement process, such as in Illinois that procures energy efficiency as a part of the
4 portfolio for diversity.¹

5 I have attached as Attachment JF-5 a powerpoint by PJM summarizing its
6 Capacity Performance Resource rules. The report states that one of the major drivers for
7 the proposal is to promote reliability and operational diversity.

8 While AEP is not responsible for the reliability of energy supply, it is responsible
9 for the reliability of its delivery system. AEP could greatly improve on the reliability of
10 its delivery system and protect against volatile market prices by installing Volt/VAR
11 Optimization and Conservation Voltage Reduction equipment, as discussed more fully by
12 Ms. Munns.

13 **Q. PLEASE COMMENT ON THE THIRD FACTOR – WHETHER THE**
14 **GENERATING PLANTS COMPLY WITH ENVIRONMENTAL REGULATIONS**
15 **– AS IT RELATES TO THE PRESENT CASE.**

16 A. AEP's witnesses discuss how the plants' economic vitality is in doubt because market-
17 based revenues for energy and capacity are too low to support the costs of making the
18 necessary investments and operating the plants. If so, it is questionable whether AEP
19 would make the necessary investment in equipment to meet current and future
20 environmental laws and regulations. The Commission therefore should not approve
21 AEP's proposal based on this factor.

¹ Illinois Power Agency, *2015 Electricity Procurement Plan*, (September 29, 2014) at pp. 68-99.
Available at <http://www.icc.illinois.gov/docket/files.aspx?no=14-0588&docId=228565>

1 **Q. PLEASE COMMENT ON THE FOURTH FACTOR – THE IMPACT THAT THE**
2 **PLANTS’ CLOSURE WOULD HAVE ON ELECTRIC PRICES AND THE**
3 **RESULTING EFFECT ON ECONOMIC DEVELOPMENT IN THE STATE – AS**
4 **IT RELATES TO THE PRESENT CASE.**

5 A. The Commission should not approve the PPA rider proposal based on the fourth factor.
6 AEP’s proposal would subsidize the continued operation of these plants. Any subsidy
7 would harm the regional wholesale market because it would tend to drive away other
8 plant operators who do not receive subsidies for their plants. Driving away competition
9 through uncertainty (whether certain operators will receive anti-competitive subsidies)
10 would tend to result in higher prices over the long run. Moreover, AEP’s customers
11 would also pay higher prices because they would have to pay for the subsidies. AEP
12 argues that keeping the plants open would have some economic development benefits.
13 But this argument is not persuasive because AEP’s analysis only accounts for the alleged
14 benefits of keeping the plants open. AEP’s economic development analysis does not
15 appear to account for: (1) the economic harm caused by forcing customers to pay higher
16 electricity prices arising from the subsidies; (2) the economic harm caused by distorting
17 the wholesale market, and driving away competitors who choose not to participate
18 because of the anti-competitive subsidies available to certain favored companies; or (3)
19 the economic benefits which would arise from the new plants which might be built, or the
20 energy efficiency programs which might be implemented, if these plants shut down due
21 to market forces.

22 As I discussed above, AEP argues that these plants are needed for reliability
23 reasons, and propose that the Companies’ customers should pay to keep the plants

1 running. But PJM is responsible for maintaining reliability of electricity supply. If PJM
2 determines that the plants are needed for regional reliability reasons, then PJM can
3 implement a must-run arrangement tailored to the length of time the reliability concern
4 exists, rather than the long-term arrangement proposed by AEP. If the Commission were
5 to approve the Companies' long-term proposal, the cost of electricity would be higher in
6 AEP's service territories than would occur if the Commission would allow PJM to
7 resolve this matter and to enter into an must-run arrangement only for so long as the
8 reliability concern exists. AEP's proposal would harm economic development by
9 imposing higher electricity costs on the residents and businesses within AEP's service
10 territory, relative to allowing PJM to resolve the matter.

11 **Q. DO YOU AGREE WITH AEP'S CLAIM THAT FUTURE GENERATING**
12 **PLANTS WILL NOT BE BUILT IN OHIO?**

13 A. No. Mr. Vegas states at page 24 of his testimony that new generation would likely be
14 built in eastern PJM, which has had more delivery constraints. This may be true based on
15 past and present conditions. But if several coal plants are retired in Ohio, this would tend
16 to lead to delivery constraints in Ohio, and would therefore lead developers to build
17 plants here.

18 **Q. DO YOU HAVE ANY RECOMMENDATIONS REGARDING AN**
19 **INDEPENDENT ANALYSIS OF THE ECONOMIC STABILITY PROGRAM?**

20 A. Yes. At page 25 of the Opinion and Order in the AEP ESP case, the Commission
21 reserved the right to require a study by an independent third party, selected by the
22 Commission, of reliability and pricing issues related to AEP's proposal. I recommend
23 that the Commission reject AEP's PPA rider proposal; however, if the Commission is

1 inclined to grant the proposal, it should first hire an independent third party to study the
2 reliability and pricing issues. This is especially important given that AEP based its
3 analysis of financial need on old capacity market prices. In this case, the parties'
4 analyses of the pricing issues diverge greatly. I recommend that the Commission hire an
5 independent expert to do this analysis due to: (1) the amount of money AEP's customers
6 are being asked to pay to support these plants; (2) the long-term nature of the proposal;
7 (3) the fact that the economic analysis rests on so many projections of future conditions;
8 and (4) the fact that AEP failed to use current capacity market prices in analyzing the
9 plants' financial need.

10 **Q. DO YOU HAVE ANY OTHER RECOMMENDATIONS REGARDING THE**
11 **COMMISSION'S CONSIDERATION OF THE ECONOMIC STABILITY**
12 **PROGRAM?**

13 A. Yes. When the Commission listed the four factors in the AEP ESP decision which it
14 would consider when deciding whether to approve a non-competitive purchase
15 agreement, the Commission noted that these were the factors it would consider "at a
16 minimum." I recommend that the Commission consider an additional factor in deciding
17 whether to approve a non-competitive purchase agreement – whether the AEP has also
18 taken all possible steps in managing its electric distribution systems to help provide
19 generation price stability; including but not limited to integrated Volt/VAR control and
20 Conservation Voltage Reduction, as discussed more fully by Ms. Munns.

21 **III. CONCLUSION**

22 **Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?**

23 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 11th day of September, 2015.

/s/Trent A. Dougherty
Trent A. Dougherty

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