

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**DIRECT TESTIMONY OF
EDWARD W. HILL
IN OPPOSITION TO AEP-OHIO'S SETTLEMENT AGREEMENT
ON BEHALF OF THE
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

December 28, 2015

1 **Introduction, Purpose, and Summary of Conclusions**

2 **Q. Please state your name, title, and business address.**

3 A. My name is Edward W. Hill. I am Professor of Public Affairs and City and Regional
4 Planning and a member of the Faculty of the Discovery Theme in Materials and
5 Manufacturing for Sustainability at The Ohio State University's John Glenn College
6 of Public Affairs and College of Engineering. I was appointed to this position
7 beginning September 1, 2015. I retired as the Dean of the Maxine Goodman Levin
8 College of Urban Affairs at Cleveland State University and Professor of Economic
9 Development on June 30, 2015. My business address is 310P Page Hall, 1810 College
10 Road, Columbus, Ohio 43210.

11

12 **Q. Please describe your educational background, professional qualifications, and**
13 **employment experience.**

14 A. I graduated from the University of Pennsylvania with a bachelor's degree in
15 economics and urban studies. I then attended the Massachusetts Institute of
16 Technology where I earned a master's degree in City and Regional Planning and a
17 Ph.D. in Economics and Regional Planning. My doctoral field examinations in
18 economics were in industrial organization and regulation, labor economics, and urban
19 and regional economics. In the Department of Urban Studies and Planning my
20 examinations were in regional economic development.

21

22 I was a member of the Cleveland State University faculty from 1985 to the end of
23 June 2015. During my 30 years at Cleveland State University I rose through the

1 academic ranks: Assistant Professor, Associate Professor, Professor and
2 Distinguished Scholar of Economic Development, Vice President of Economic
3 Development, and then serving as Dean of the Levin College of Urban Affairs.
4

5 The Ohio State University asked me to join the interdisciplinary Discovery Theme in
6 Materials and Manufacturing for a Sustainable World beginning in the 2015-16
7 academic year. I was appointed as a Professor in the John Glenn College of Public
8 Affairs and in City and Regional Planning and I am a faculty member of the Ohio
9 Manufacturing Institute. I am teaching the doctoral seminar in Public Economics in
10 the spring of 2016. I will be teaching economic development policy and practice and
11 public finance in subsequent semesters.
12

13 In addition, I am a Non-resident Senior Fellow at the Brookings Institution's
14 Metropolitan Policy Program and was an Adjunct Professor in Public Administration
15 at South China University of Technology for three years. I was also a Non-resident
16 Visiting Fellow at the Institute of Government Studies at the University of California
17 at Berkeley for five years, ending in 2013.
18

19 I was the inaugural chair of the National Institute of Standards and Technology's
20 Manufacturing Extension Partnership's National Advisory Board. I served in that
21 capacity from 2007 until 2010. I continued to serve on that Board until my term
22 statutorily expired in 2014.

1 I have also served on Ohio's Urban Revitalization Task Force (appointed by
2 Governor Taft), the Auto Industry Support Council (appointed by Governor
3 Strickland), the Cooperative Education Advisory Commission (appointed by Speaker
4 Batchelder), and the Manufacturing Task Force (appointed by Director Schmenk).

5

6 My research has focused on the areas of urban and regional economic development
7 policy, the operation of regional labor markets, and industry studies with an emphasis
8 on manufacturing. My research has a particular emphasis on issues that are important
9 to the state of Ohio's economy.

10

11 I am widely published. I have published one book and am in the process of
12 completing my second. I have edited five books, written eight book-length reports,
13 and have authored over 90 articles, book chapters, and columns. I was the editor of
14 *Economic Development Quarterly* from 1994 to 2005. *Economic Development*
15 *Quarterly* publishes peer-reviewed research that is relevant to the development and
16 renewal of the American economy.

17

18 I participated in much of the energy research conducted at the Levin College either as
19 an advisor or as an investigator. I led the research and writing of the publication titled
20 *Ohio Utica Shale Gas Monitor* and was one of the authors of *An Analysis of the*
21 *Economic Potential for Shale Gas Formations in Ohio* (February 2012).¹ I was also

¹ See, e.g., Edward W. Hill, et al., "Ohio Utica Shale Gas Monitor" (January 10, 2014) at http://engagedscholarship.csuohio.edu/urban_facpub/1143/; Thomas, Andrew R., Iryna Lendel, Edward Hill, Douglas Southgate, and Robert Chase, "An Analysis of the Economic Potential for Shale Gas Formations in Ohio" (February 2012) at http://engagedscholarship.csuohio.edu/urban_facpub/453/.

1 the co-chair of the advisory committee to the recently released three-part report on the
2 natural gas resources in the state of Ohio.²

3
4 **Q. Have you previously filed testimony in this proceeding?**

5 A. Yes. I provided testimony on behalf of the Ohio Manufacturers' Association
6 Energy Group (OMAEG). My testimony addressed the proposal of the Ohio Power
7 Company (AEP-Ohio) to enter into an affiliate power purchase agreement (PPA)
8 between AEP-Ohio and AEP Generation Resources, Inc. (AEPGR) and to collect the
9 net costs associated with the PPA from ratepayers through the PPA Rider.³ Similar to
10 another utility's proposal discussed below, I believe that AEP-Ohio's Proposal is
11 misguided, and the Public Utilities Commission of Ohio (PUCO) should reject it.

12
13 **Q. Does this testimony differ substantially from your previous testimony?**

14 A. Yes, my testimony differs significantly from my previous testimony because the Joint
15 Stipulation and Recommendation (Joint Stipulation) submitted by AEP-Ohio differs
16 considerably from the Amended Application that it filed on May 15, 2015. The Joint
17 Stipulation is also purportedly supported by a number of Signatory Parties, which was
18 absent from the Amended Application. In the Joint Stipulation, AEP-Ohio has raised
19 new issues, offered new arguments, and presented a carefully crafted coalition of

² See, e.g., Iryna Lendel et al., "Mapping the Opportunities for Shale Development in Ohio" (November 2015).

³ AEP-Ohio's Joint Stipulation and Recommendation (December 14, 2015). The Joint Stipulation modifies Ohio Power Company's Amended Application filed on May 15, 2015, which in turn replaced AEP-Ohio's original Application (October 3, 2014).

1 supporters, labeled a “redistributive coalition,” in an attempt to influence the public
2 policy process in ways that are deleterious for the state of Ohio.

3
4 The Signatory Parties, with the exception of the staff of the PUCO, constitute a
5 redistributive coalition; they are not a representative cross-section of diverse interests
6 that serve as a proxy for the public’s interest in this case as is asserted in the Joint
7 Stipulation. Rather, the Signatory Parties represent their own corporate or
8 organizational interests.

9
10 **Q. Does the Joint Stipulation pass all parts of the test that AEP represents as “the**
11 **three-part test traditionally used by the Commission to consider stipulations.”⁴**

12 **A. No. The Joint Stipulation does not satisfy any prong of the three-part test:**

13 (a) The Signatory Parties do not “represent a variety of diverse interests,” as stated in
14 AEP-Ohio’s Allen Settlement Testimony. Instead, they represent a somewhat diverse,
15 *ad hoc*, collection of corporate and institutional interests that represented only
16 themselves and provide a façade of representational diversity. The Signatory Parties
17 did not bargain on behalf of large classes of customers or a diverse group. They did
18 not secure benefits for all individuals or businesses that were not direct participants in
19 the bargaining, a particular type of participant, or members of organizations that
20 participated in the bargaining. They sought benefits either for their own company or
21 what amount to benefits for their members.

⁴Joint Stipulation at 33, Section K; see also Direct Testimony of William A. Allen in Support of AEP Ohio’s Settlement Agreement at 2, ln 8 (December 14, 2015) (Allen Settlement Testimony)(“The signatory parties, who represent a variety of diverse interests, include”).

1 (b) The stipulation violates a number of important regulatory principles and practices.

2 The stipulation:

- 3 • Re-imposes an oligopoly in the electric generating market.
- 4 • Deters new entry into the electric generating market, thwarting both
- 5 competition and hurting the long-term reliability of the electric power
- 6 system as a whole in the state of Ohio.
- 7 • Introduces *de facto* price discrimination among competing large electricity
- 8 users based solely on organizational membership or a particular type of
- 9 customer.
- 10 • Relies upon an opaque system of income transfers and cross-subsidies
- 11 among consumers.

12 (c) The stipulation as a whole does not benefit customers and the public interest. The
13 major beneficiaries from the Joint Stipulation are AEP Corporation, its stockholders,
14 AEP-Ohio, its unregulated affiliates, and other entities that own portions of the power
15 plants in question. The Joint Stipulation shifts business risk away from stockholders
16 and management to customers. The Joint
17 Stipulation is regulatory taxation produced by two forms of subsidy. The first is
18 through the Affiliate PPA, where losses incurred in the operations of the plants
19 covered by the PPA are passed on to all electricity users in AEP-Ohio's service
20 territory. The second is through the way that negotiated rate discounts, subsidies, and
21 energy efficiency investments are made. Typically, the cost of the negotiated
22 provisions are not born by the utility, but instead, the amounts spent are passed on to
23 ratepayers that do not directly benefit. If you are a member of the club that negotiated

1 benefits to support the PPA politically, then you receive the benefits of membership
2 and others pay for the privilege.

3 The Joint Stipulation holds out the very real potential of deterring investment in the
4 electric generating capacity and harming the long-term reliability of the electric
5 system. The Joint Stipulation will reverse the benefits received by consumers from
6 deregulated markets for electric generation and will increase electric rates relative to
7 rates in competing regions and, thereby, harming the economic prospects for
8 businesses that are not members of the redistributive coalition and of residents of the
9 state of Ohio.

10 **Q. What is the economic structure of the electricity market in Ohio?**

11 **A.** The market for electricity service is composed of three distinct and related
12 components: generation, transmission, and distribution. There is a market for base
13 load power generation; a series of spot markets for the allocation of electricity during
14 peak demand periods; and then regulated transmission and distribution systems. The
15 generation components are competitive markets. Ohio is part of the PJM region and
16 PJM Interconnection LLC (PJM) is the region's grid operator and reliability
17 coordinator. At this point in time, the transmission and distribution of electricity is a
18 natural monopoly and should be regulated as such.

19
20 As I explained in my direct testimony, Professor Jean Tirole, a 2014 Nobel Prize
21 laureate, addressed the issues surrounding a monopolized distribution network,
22 demonstrating that having competitive markets in the generation of electricity
23 coupled with regulated distribution networks is the optimal way to organize these

1 markets.⁵ In other words, treat them as separate markets and regulate the portion
2 where market power exists.⁶

3

4 The Joint Stipulation is an attempt to use regulatory power to offset market-
5 determined outcomes in the generation market. Therefore, adopting the Joint
6 Stipulation that subsidizes and favors one generator, locking out other forms of
7 generating capacity and new technologies, is antithetical to the competitive operation
8 of the generating market and will result in higher costs to consumers, and, over time,
9 less reliable power supplies.

10

11 **Q. Will the Joint Stipulation as a whole benefit customers and the public interest?**

12 **A.** No. The Joint Stipulation adopts an affiliated PPA, which will deter entry in the
13 competitive generation market, which is not in the public interest. As explained
14 in my Direct Testimony, the proposed PPA requires AEP-Ohio to purchase all of the
15 power from generating plants owned by AEP-Ohio's unregulated generating affiliate
16 no matter how cost competitive the plants are compared to other generators in the
17 PJM managed grid. AEP-Ohio then will sell the power into the regional wholesale
18 market to determine its market price. Any losses, after considering the costs of fuel
19 and any plant upgrades, plus the stipulated rate of return on equity of 10.38% are
20 borne by the ratepayers.⁷ An overall settlement that includes the PPA proposal
21 prevents a completely free market from evolving and, therefore, is not in the public
22 interest.

⁵ See OMAEG Ex. 19 at 22.

⁶ Id.

⁷ Joint Stipulation at Attachment A.

1

2 Typically, if a market participant cannot compete in a competitive market, it will fail.

3 Subsidizing an existing market participant in the hope that it may be able to compete

4 at some point in the future is not in the public interest, nor is it good public policy. It

5 will only deter entry and keep prices higher than they would otherwise be in a

6 competitive market. The PPA can best be described as gambling with a two-headed

7 coin. The bet becomes “heads I win and tails you lose.”

8

9 Upon examining the algebra behind the logic of the PPA contained in the Joint

10 Stipulation, the inequities of the proposal become apparent. Let:

11 p_C represent the price paid for by consumers,

12 p_{AEP} the price charged by AEP-Ohio’s affiliated generating entity, and

13 p_A is the price charged by alternative suppliers.

14 Also let the production cost of energy be represented by c_{AEP} for AEP-Ohio and c_A

15 for the alternative producers.

16 If $p_C = p_A = p_{AEP}$ then the market is at a short-term equilibrium and there is no

17 incentive to change suppliers. This can only be a stable solution over time only as

18 long as $c_A = c_{AEP}$. However, because AEP-Ohio has engaged in an arduous effort

19 (litigation and now settlement) to put in place the PPA we can assume that its

20 generating affiliate could either not sell the output from the 20 plants covered by the

21 PPA for a profit, that AEP-Ohio expects that will soon be the case, or that it is

22 engaging in a regulatory hedge against that eventuality.

23

24 For the purposes of this algebraic example assume that $c_{AEP} > c_A$. Now let t_{AEP}

25 represent the tax or surcharge imposed by AEP-Ohio through the stipulated PPA on

1 all customers if the net costs outweigh the revenues that the plants obtain in the
2 market; then $t_{AEP} = f(c_{AEP} - c_A)$. This equation implies that as the cost differential
3 increases between the plants in question and alternative sources of generating
4 capacity the tax automatically increases.

5

6 There is a secondary effect to this dynamic that offers greater pause, which is the
7 power of precedent. If the Joint Stipulation (and PPA) is approved and other
8 generating assets become uncompetitive, then the Commission has established a
9 precedent that will be used to bring those uncompetitive assets under regulatory
10 protection with an assured rate of return on equity. This will affect not just the
11 affiliated generating assets but all generating plants located in the state of Ohio; after
12 all, what is fair for one must be fair for all.

13

14 In this case, allow b to represent the decimal fraction of non-competitive generating
15 assets expressed in terms of kilowatt-hours and $(1-b)$ the fraction that is competitive;
16 then $b + (1-b) = 1.00$. Then: $t_{AEP} = f(b)$ meaning that the tax (or costs) imposed by
17 AEP-Ohio, and others in similar situations, will be a function of the portion of
18 generating capacity that falls under a PPA and its successors and as decimal fraction b
19 increases, so does t_{AEP} .⁸

20

21 In other words, as b increases, or as the portion of the state's generating fleet that is
22 not price competitive in the wholesale markets increases, the tax will increase. This
23 will effectively deter entry and investments by competitors in generating capacity.

⁸The actual function is nested: $t_{AEP} = f(b)$ with $b = g(c_i - c_A)$, where c_i is the operating cost at power plant i .

1 Then: $p_C = p_A + t_{AEP} = p_{AEP}$.
2
3

4 The algebra states that as the production cost differential increases compared to that
5 of alternative producers, the imposed tax increases proportionately, thereby
6 redistributing income from customers located in the service territory to AEP-Ohio
7 and its stockholders. Heads, AEP-Ohio wins; tails AEP-Ohio's competitors lose.
8

9 No matter what, AEP-Ohio's customers will have, at best, market electric rates; but,
10 more likely, they will have higher electric rates than if a competitive generation
11 market existed. The second conclusion I reach is that entry into the state by
12 alternative energy producers will be deterred because the precedent provided by the
13 Joint Stipulation (and PPA) will eliminate their pricing advantage held by new
14 entrants. The PPA is a way of using the regulatory power of the state to create
15 political market power in the electric market for the legacy generators. Deterring
16 entry and investment in the state of Ohio is not in the public's interest. A third
17 conclusion is that putting a large fraction of Ohio's generating capacity under PPAs
18 will provide a disincentive to invest in new generating capacity across PJM's
19 footprint resulting in a regulatory impingement on interstate commerce and national
20 energy policy.

21 **Q. Are there other ways that adoption of the Joint Stipulation will not be in the**
22 **Public Interest and will be to the detriment of customers?**

1 A. Yes. Approval of a Joint Stipulation that includes a PPA could impact interstate
2 commerce and out-of-state investment, negatively affecting customers.

3 **Q. How will the Joint Stipulation affect interstate commerce and out-of-state**
4 **investment?**

5 A. The Energy Information Agency's profile of the state of Ohio shows that our state of
6 Ohio is the 9th largest generator of electricity in the nation, accounting for 3.1% of all
7 net electricity generated in 2012.⁹ Additionally, other states that are members of PJM
8 or touch Ohio's borders are also major sources of electricity production: Pennsylvania
9 is 4th, Illinois 5th, New York 7th, Michigan 13th, Indiana 14th, New Jersey 19th,
10 Kentucky 20th, and West Virginia is 23rd. Ohio's power plants can disrupt new
11 investment in generating capacity across the grid if there is assurance that they have
12 financial guarantees that will prevent them from exiting the market. Due to the nature
13 of the grid, a PPA in Ohio will affect decisions to investment in generating capacity
14 across PJM's grid.

15

16 Table 1:

⁹See Table 1.

State	Rank	Total Net Electricity Generation, thousand MWh	Percent of U.S.
TX	1	41,300	11.8%
FL	2	21,039	6.0%
CA	3	19,164	5.5%
PA	4	18,054	5.1%
IL	5	15,882	4.5%
AL	6	12,993	3.7%
NY	7	12,005	3.4%
AZ	8	11,269	3.2%
OH	9	11,033	3.1%
GA	10	10,663	3.0%
NC	11	10,157	2.9%
LA	12	9,440	2.7%
MI	13	9,044	2.6%
IN	14	8,384	2.4%
SC	15	8,220	2.3%
WA	16	7,966	2.3%
VA	17	7,361	2.1%
MO	18	7,154	2.0%
NJ	19	7,008	2.0%
KY	20	6,724	1.9%
OK	21	6,274	1.8%
TN	22	6,169	1.8%
WV	23	6,013	1.7%

Source: Energy Information Agency, retrieved December 28, 2015 from:
<https://www.eia.gov/state/rankings/#/series/51>

The impact will be greater if there is capacity that cannot clear PJM's auctions, as is currently the case. A likely interstate outcome from the broad adoption of PPAs across Ohio is that other states will adopt them in much the same way that Ohio is following West Virginia's example. Political pressure will build to protect generating assets that cannot clear the PJM market due to the way the PPAs will influence the dynamics of the interstate power market. Ohio's demand will be tied through the

1 PPAs to Ohio's plants, meaning that demand for out-of-state production capacity will
2 drop. This will result in less efficient Ohio plants staying in the market while
3 unsubsidized, more efficient, out-of-state generating will be forced to exit.

4 The federal interest in this dynamic can grow if the PPAs deter investment in new
5 capacity and the reliability of the entire grid weakens and if the new capacity would
6 result in lowering levels of carbon emissions across the grid. This is when Ohio's
7 political-economic problem in supporting non-competitive generating plants becomes
8 a national problem of pollution nonattainment and a barrier to interstate commerce.

9 **Q. How has this market structure influenced the Joint Stipulation?**

10 A. The bargaining that took place to shape the Joint Stipulation had four overriding goals,
11 none of which was to provide the lowest cost and most reliable electricity service for
12 the general public or to provide non-discriminatory, uniformly low and reliable
13 electricity service for all businesses in the state of Ohio.

14 The first goal is to determine which entities would bear the business risk in the
15 generating submarket. This is the goal for those that generate electricity for the
16 wholesale market. AEP-Ohio stated that the coal-fired generating plants in question
17 are losing money. The results from PJM's auctions and actions do not indicate that
18 there is a reliability or capacity problem visible on the horizon and the results from
19 PJM's auctions indicate that there is a surplus in generating capacity in the multi-state
20 wholesale generating market.¹⁰ This is occurring when businesses indicate that they

¹⁰PJM Interconnection LLC is the regional electric grid, or transmission, organization all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio,

1 are willing to enter the wholesale generating market with natural gas fired plants,
2 indicating that they expect to be lower cost producers than those with existing
3 generating assets. However, new entry and capital investment will be thwarted if the
4 owners of loss-making generating plants use regulatory power to prevent closing
5 existing facilities.

6
7 The motivation of the three generators¹¹ that are Signatory Parties is to use the power
8 of regulation to subvert market determined competitive results. The generators are
9 using legally permitted regulatory and political mechanisms to protect their
10 stockholders from losses and to preserve the value of their assets, as is their fiduciary
11 responsibility. In other words, the Joint Stipulation is a device for shifting substantial
12 business risk off of the shoulders of stockholders and management and onto Ohio's
13 retail electric customers

14
15 The second goal is that of the business organizations that are Signatory Parties or that
16 have agreed to not oppose the Joint Stipulation. Their objective was to obtain lower
17 electricity costs for their members and in one case operating income for the
18 organization. The third goal was held by the businesses that directly participated in
19 the bargaining. They were seeking to use the Joint Stipulation to further their business
20 interests. The fourth set of goals was held by advocacy groups, which were seeking to
21 further the goals and objectives of those organizations. Each of the Signatory Parties

Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia. PJM uses 15-year planning horizons to manage the regional transmission system and it conducts capacity auctions.

¹¹ AEP-Ohio (on behalf of its unregulated affiliate, AEPGR), FirstEnergy Solutions (FES), and Buckeye Power).

1 had specific, narrow, business or organizational interest in shaping the outcome of the
2 Joint Stipulation. The proof is in their absence as Signatory Parties of the Amended
3 Application and their presence in the Joint Stipulation. The “redistributive coalition”
4 came together in negotiating the Joint Stipulation.

5

6 **Q. What is a “redistributive coalition”?**

7 **A.** A redistributive coalition is a relatively small group that promotes policies for their
8 mutual financial or organizational benefit. The redistributive coalition uses political
9 or regulatory processes to generate financial benefits that they cannot earn through
10 the marketplace.

11 Key to the successful operation of a redistribution coalition is asymmetry of
12 information and asymmetry in the ratio of potential rewards to organizing costs
13 between members and nonmembers. These rewards can include higher earnings,
14 lower operating costs, or lessening the probability of business failure by barring
15 competitors from entering markets. The rewards for coalition participants that are not
16 businesses are typically regulatory or legislative actions that are consistent with the
17 organization’s mission. Nonetheless, while many of these pass-through benefits may
18 be socially beneficial or meritorious to a relatively small group of beneficiaries, it is
19 at the expense of a much larger group that is not a member of the coalition.

20 The costs of organizing small, homogeneous groups of beneficiaries are small
21 compared to cost of organizing large heterogeneous groups. In this case, the costs of

1 organizing the group by AEP-Ohio are trivial, many of which may be passed back to
2 ratepayers.

3

4 **Q. How do you think the coalition members were selected?**

5 A. The list of signatories was carefully constructed. AEP-Ohio stated that the Joint
6 Stipulation was “a product of lengthy, serious, arm’s-length bargaining among the
7 Signatory Parties and other parties who choose not to sign the Stipulation (all of
8 whom are capable, knowledgeable parties) ... All intervenors were invited to discuss
9 and negotiate this Stipulation ... it was openly negotiated among stakeholders who
10 responded and chose to participate ... as a package, the Stipulation benefits customers
11 and the public interest; provides direct benefits to residential and low income
12 customers; and represents a just and reasonable resolution of all issues in this
13 proceeding ... This Stipulation represents an accommodation of the diverse interests
14 represented by the Signatory Parties...”¹²

15

16 The list also raises a series of questions: How are the Signatory Parties
17 representative? Did they represent their peers and similar organizations in the
18 negotiations? Were they able to obtain similar benefits for their peers or at the
19 exclusion of their peers? Generally speaking, the answers to the last two questions are
20 no: they represented themselves and the extractions they obtained are for their
21 organizations alone or their members, at the expense of other customers or other
22 classes of customers.

¹² Joint Stipulation at 1-2.

1 The fact is that the Signatory Parties are a political coalition assembled to provide a
2 veneer of inclusion and the image of universal support in exchange for a limited set of
3 financial and organizational benefits. In exchange, the members of the coalition have
4 committed to endorse the Joint Stipulation (or at least portions thereof), which
5 includes extending AEP-Ohio's Electric Security Plan (ESP) III for an additional five
6 years with modifications that are contained in the Joint Stipulation. In return for the
7 benefits described in the Joint Stipulation and side agreements the Joint Stipulation
8 states: "the Signatory Party agree to fully support adoption of the Stipulation without
9 modification in this proceeding."¹³ Notwithstanding this provision, there are a series
10 of notes throughout the Joint Stipulation that indicate items where Direct Energy,
11 Interstate Gas Supply, Ohio Partners for Affordable Energy, and the Sierra Club,
12 either explicitly agree not to oppose the provision or are not participating in a
13 provision but agree not to oppose it.¹⁴ FES is a signatory only in support of the PPA
14 Rider.¹⁵ Buckeye Power did not participate in Section III.D.10-12, which covers
15 AEP-Ohio's commitments concerning the fuel conversion or retirement of its
16 Cardinal 1 Power Plant, Conesville Units 4, 5 and 6, Zimmer Unit 1, Stuart Units 1-4,
17 and OVEC units.¹⁶

18
19 **Q. From your perspective is there anything improper about a redistributive**
20 **coalition?**

¹³Joint Stipulation at 2.

¹⁴Joint Stipulation at 2, 4, 5, 7, 10, 12, 31, 33, 34, 36, and 37.

¹⁵Joint Stipulation at 39.

¹⁶Joint Stipulation at 20.

1 A. There is nothing improper about forming a redistributive coalition; it is a political
2 coalition designed to extract a favorable outcome from a regulatory or legislative
3 proceeding for its members. It just has to be recognized for what it is, and for what it
4 is not. It is not a bargaining body that represents all of AEP-Ohio's ratepayers or the
5 public interest at large. It is a self-selected group that is using the regulatory process
6 to extract benefits that are in the interest of each member.

7
8 **Q. Why is such a redistributive coalition a problem for policy makers?**

9 A. The problem is that redistributive coalitions can dominate regulatory proceedings and
10 turn them into an "insiders' game." The insiders have the incentive to learn the rules
11 and to make the proceedings as arcane as possible, thereby increasing the cost of
12 participation by outsiders. They also are in a position to distort perceptions of what
13 actions are in the public's interest.

14
15 **Q. How does the redistributive coalition work to form the Joint Stipulation?**

16 A. The Joint Stipulation is very helpful in understanding how this particular redistributive
17 coalition reached an agreement.¹⁷ As in any negotiation there are necessary conditions
18 that are core to the coalition and a broader set of sufficient conditions that will vary
19 for each party.

20 There is a core set of subsidies that were critical to the organizer, AEP-Ohio, this is
21 the affiliate PPA that allows the business risk to the company's stockholders and
22 management from operating loss-making power plants to be shifted onto the

¹⁷ As I was not present in the room for the negotiations, I am interpreting the results as documented in the Stipulation.

1 ratepayers. If a party could not accept the PPA as a necessary condition to
2 participating they exited the negotiations. This was the necessary condition to
3 participate.

4
5 The sufficient condition for signing on to the agreement varied with each party,
6 creating a negotiating table to determine what could go into the Joint Stipulation that
7 satisfied the specific objectives of each of the settlement participants; these are the
8 sufficient conditions. What follows are my conclusions after reading the Joint
9 Stipulation and other discovery responses.

10 11 Three Electric Generating Utilities

12 As explained previously, the three generators, AEP-Ohio (on behalf of its unregulated
13 affiliate, AEPGR), Buckeye Power, and FES are interested in the PPA and the
14 protection against bankruptcy and default risk that the PPA offers to generators.
15 Generators that receive the protection of a PPA will not have to resolve any loss-
16 making generating plant that falls under the protection of the PPA and all costs
17 involved with bringing the plant up to future levels of environmental regulatory
18 compliance is covered. The evidence lies in the portions of the Joint Stipulation that
19 FES and Buckeye Power explicitly supported.¹⁸

20 21 Two Competing Energy Providers

¹⁸ FES is only supporting “a Commission-approved PPA Rider” (Joint Stipulation at 39) and Buckeye Power is not participating in the portions of the settlement that could directly affect its plants, opening the door to its own potential PPA (Joint Stipulation at 20).

1 Direct Energy and Interstate Gas Supply are signatories to AEP-Ohio's Joint
2 Stipulation and not signatories to FirstEnergy's multiple stipulations (and PPA) in its
3 ESP proceeding.¹⁹ What is the difference between them? What are the elements of
4 the AEP-Ohio Joint Stipulation that are not part of the FirstEnergy PPA settlement
5 that could compel these two Competitive Retail Electric Service (CRES) suppliers
6 who compete with AEP-Ohio's affiliate and have strongly resisted PPAs in the past to
7 join the redistributive coalition? There are three elements of the Joint Stipulation that
8 are specific to CRES providers and are new to the discussion (not in AEP-Ohio's
9 Amended Application or in the FirstEnergy ESP case):

- 10 1. A two-year Pilot Supplier Billing Program open to "any Competitive
11 Retail Electric Service provider that is a Signatory Party."²⁰ Half of the cost of
12 the pilot program will be paid for by the participating CRES suppliers and the
13 other half will be picked up by the ratepayers. None of the cost will be paid by
14 AEP-Ohio.
- 15 2. The supplier billing program is intended to be supplemented with a pilot
16 consumer education program that will be associated with enrolling new
17 customers when service is initiated in lieu of taking service initially from the
18 standard service offer.²¹

¹⁹ See, generally, *In the Matter of the Application 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 R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO (FirstEnergy ESP Case).

²⁰ Joint Stipulation at 16-19.

²¹ Joint Stipulation at 19.

1 3. A “standard discount rate providing a guaranteed discount off the price to
2 compare without early termination fees.”²²

3 The only commitment that AEP made is to file a proposal for the second and third
4 CRES-specific inducements in comments filed in early January.

5 Two Social Purpose Trade Associations

6 Ohio has a history of providing energy assistance for low income households through
7 its distribution utilities and paying for them through its rate structure rather than
8 having the legislature approve the spending through the state’s general revenue fund.
9 This peculiar funding mechanism is an outgrowth of community activists using the
10 regulatory system to provide heating and lighting assistance to these constituencies
11 when they perceived the legislature as being unresponsive. They also rely on this
12 funding to staff and run the programs. Ohio Partners for Affordable Energy (OPAE)
13 signed onto the AEP-Ohio Joint Stipulation and is a signatory to FirstEnergy’s Third
14 Supplemental Stipulation and Recommendation, after not being part of the previous
15 versions of FirstEnergy’s PPA.²³

16 OPAE provides services to Community Action Agencies in AEP-Ohio’s service
17 territory. They are to receive \$200,000 in 2016 to provide direct energy efficiency
18 assistance. Then beginning in 2017, an annual budget of up to \$8,000,000 is to be
19 managed by OPAE for its member agencies to provide energy efficiency and peak
20 demand reduction services. The Joint Stipulation also states that OPAE will receive a
21 five percent management fee, which can reach \$400,000 a year. It is unclear from the

²² Joint Stipulation at 19.

²³ FirstEnergy ESP Case, Third Supplemental Stipulation and Recommendation (December 1, 2015).

1 language of the Joint Stipulation if this is in addition to the \$8 million or if it is to be
2 taken on a *pro rata* basis as services are delivered and the total amount spent is not to
3 exceed \$8 million. The program is to be run in a manner that “is consistent with the
4 Company’s existing EE/PDR plan.”²⁴

5

6 The Ohio Hospital Association also engaged in cost shifting on behalf of its members
7 in the Joint Stipulation.²⁵ The association is scheduled to receive \$1 million per year
8 for its members in AEP-Ohio’s footprint to operate two energy efficiency-peak
9 demand reduction programs.

10

11 The side payments that these organizations are to receive from ratepayers through the
12 Joint Stipulation are set in nominal dollar terms over the entire 8-year period of the
13 proposed agreement and are not indexed for inflation.

14

15 Two Business Trade Associations

16 The Ohio Energy Group (OEG) represents some of the largest, most economically
17 important heavy industrial companies in the state. Industrial Energy Users-Ohio
18 (IEU) is a separate trade association that appears to have some overlap in membership
19 with the OEG.²⁶ The location of each of the member companies is sensitive to its
20 operating costs and all are intense electricity users and have a justifiable interest in
21 the cost and regulation of electricity reliability and prices. A good portion of the Joint
22 Stipulation addresses the concerns over these users. However, there was not enough

²⁴ Joint Stipulation, 5.D.3, pp. 15-16.

²⁵ Joint Stipulation, 5.D.2, pp.13-15.

²⁶ See IEU’s member list on its website: http://www.ieu-ohio.org/member_list.aspx

1 time between the day the Joint Stipulation was filed to the day testimony was due to
2 estimate the value of the benefits that will flow to these users, especially given the
3 prominence of Section 6.C, which is dedicated to extending and modifying AEP-
4 Ohio's ESP III.

5
6 The Joint Stipulation states that AEP-Ohio will request to establish an automaker
7 credit through the Extension of the ESP III filing and will continue, expand, and
8 increase the IRP tariff and allow interruptible customers to opt out of the energy
9 efficiency rider.²⁷ The Joint Stipulation also states that AEP-Ohio will request to
10 allow large customers to opt out of the transmission rider (BTCR rider).²⁸
11 Additionally, IEU received a direct \$8 million payment that is linked to settling a
12 number of legal disputes between AEP-Ohio and IEU.²⁹

13
14 Two Environmental Advocacy Groups

15 Two environmental advocacy groups, The Sierra Club and the Mid-Atlantic
16 Renewable Energy Coalition (MAREC), also participated in the Joint Stipulation and
17 received commitments of varying strength to their advocacy agendas. Most prominent
18 are a pledge to develop 500 MW nameplate capacity of wind power and 400 MW
19 nameplate capacity of solar energy power, with full cost recovery coming from
20 ratepayers.³⁰ AEP-Ohio committed to retire, refit, or repower a number of coal-fired

²⁷ Joint Stipulation at 10-11.

²⁸ Id. at 11.

²⁹ Global Settlement Agreement between the Ohio Power Company and the Industrial Energy Users-Ohio and a letter dated December 22, 2015 to the PUCO from the IEU-Ohio. (See Attachments EWH-1 and EWH-2).

³⁰ Joint Stipulation at 30-32.

1 power plants by 2029 and 2030.³¹ The Company also pledged to convert the
2 Conesville Unit 5 and 6 plants to natural gas power and cover the conversion with the
3 PPA.

4
5 **Q. Should the Joint Stipulation be approved by the PUCO?**

6 A. No, the Joint Stipulation should be rejected. There is no way to structure an affiliate
7 PPA that is not anti-competitive. Any affiliate PPA will deter new investment in
8 power generation facilities with the PJM footprint and allow inefficient power
9 generating facilities to last beyond their economic lifetimes. The parts of the Joint
10 Stipulation that are not directly associated with the PPA are a Christmas Tree of
11 inducements to build a set of Signatory Parties (or non-opposing parties) that provide
12 a façade of broad-based, support across the economy. What the Signatories actually
13 represent are themselves—no more, no less. Each received an inducement to accept
14 the PPA in return for a payment from ratepayers, costs that will be shifted away from
15 their constituents toward non-protected ratepayers, direct financial benefit to an
16 organization or its members, or commitments to environmental actions that are
17 consistent with their advocacy agendas.

18
19 **Q. Does this conclude your testimony?**

20 A. Yes, it does. However, I reserve the right to incorporate new information that may
21 subsequently become available through outstanding discovery or otherwise.

³¹ Id. at 19-26.

**OHIO POWER COMPANY'S RESPONSES TO
OHIO CONSUMERS' COUNSEL'S DISCOVERY REQUESTS
PUCO CASE NO. 14-1693-EL-RDR
FIRST SET-JOINT STIPULATION AND RECOMMENDATION**

INTERROGATORIES

INT-S1-002 Under R.C. 4928.145, identify each contract and/or agreement between AEP Ohio and a party (including the PUCO Staff) to this proceeding including members of groups that are parties to this proceeding, related to:

- a. The provision, sale and/or purchase of electric services and charges for those electric services (including, but not limited to generation, distribution and transmission services) for any period during or after the proposed PPA period; and
- b. This Proceeding (e.g. support of AEP Ohio's positions).
- c. The Stipulation.

RESPONSE

The Company objects to the extent the request seeks information which is outside the scope of the case and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The Company objects to this request since this proceeding is not a standard service offer proceeding. Without waiving the foregoing objection(s) or any general objection the Company may have, the Company states as follows. No contracts exist within the scope of the cited statute. But in the spirit of full disclosure, the Company is producing the IEU Global Settlement as OCC-INT-S1-002 Attachment 1.

GLOBAL SETTLEMENT AGREEMENT

This Global Settlement Agreement ("Agreement") memorializes a global settlement of several separate regulatory and litigation matters. It is made by Ohio Power Company ("AEP Ohio") and Industrial Energy Users-Ohio ("IEU") for the benefit of IEU's members. In this Agreement, AEP Ohio and IEU are collectively referred to as the "Parties."

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties agree as follows:

1. **Dismissal of IEU Litigation.** Within 10 days after the PPA Stipulation is executed and filed in the PPA Cases, IEU will take the following actions:
 - A. IEU will file a voluntary application to dismiss its appeal with prejudice in each of the following cases pending before the Supreme Court of Ohio ("S.Ct."): (a) S.Ct. Case No. 2012-2098 (first capacity charge appeal); (b) S.Ct. Case No. 2013-228 (second capacity charge appeal); (c) S.Ct. Case No. 2013-521 (ESP II appeal); and (d) S.Ct. Case No. 2013-1014 (corporate separation appeal).
 - B. IEU will move to withdraw its intervention in the following proceedings: (a) PUCO Case No. 14-1186-EL-RDR (RSR implementation plan); (b) PUCO Case Nos. 09-872-EL-FAC et al (2009 FAC); (c) PUCO Case Nos. 11-4920-EL-RDR et al. (phase in recovery rider); (d) PUCO Case No. 13-1939-EL-RDR (gridSMART Phase II); and (e) PUCO Case No. 15-1022-EL-UNC (2014 SEET).
 - C. IEU-Ohio will limit its participation in PUCO Case Nos. 11-5906-EL-FAC, 12-3133-EL-FAC, 13-572-EL-FAC, 13-1286-EL-FAC, and 13-1892-EL-FAC to the prosecution of the PUCO's investigation of AEP-Ohio's alleged double recovery of certain capacity related costs.
2. **AEP Ohio's Support of Energy Efficiency Opt-Out.** AEP Ohio will support expansion of the streamlined opt-out provisions enacted by SB 310 (130th General Assembly) so as to make the streamlined opt-out available, effective January 1, 2019, to "mercantile customers" as recommended in the report issued by the SB 310 Mandate Study Committee.
3. **IEU's Non-opposition to AEP Ohio's PPA Proposal.**
 - A. IEU agrees not to oppose the Joint Stipulation and Recommendation ("PPA Stipulation") to be filed by AEP Ohio and certain other parties in Public Utilities Commission of Ohio ("PUCO") Case Numbers 14-1693-EL-RDR and 14-1694-EL-AAM ("PPA Cases"). IEU's non-opposition recognizes the substantive terms in the PPA Stipulation that benefit its members. In recognition of its non-opposition and the benefits provided its members, IEU agrees not to challenge, or support any change to, the PPA Stipulation in any legal proceeding.

- B. IEU will file a letter in the PPA Cases stating that IEU does not oppose the PPA Stipulation. This letter will indicate that AEP Ohio and IEU have reached a global settlement of several separate regulatory and litigation matters and that IEU's non-opposition to the PPA Stipulation is one of several terms and conditions involved with the settlement.
- C. Notwithstanding the foregoing and anything else in this Agreement, if the PPA Stipulation is not finalized and filed with the PUCO, this Agreement will become null and void.

4. **IEU's Non-Participation in Oral Argument.** As a preliminary step toward dismissal of capacity charge appeals, IEU agrees to waive and not otherwise participate in the oral argument scheduled for December 15, 2015 in the first and second capacity charge appeals (to the extent permissible under the rules of the Ohio Supreme Court). AEP Ohio acknowledges that IEU has made a filing with the Supreme Court indicating that it will not participate in that oral argument.

5. **No Principle Established.** Nothing contained in this Agreement, or the fact of its submission to the Parties, shall be admissible evidence in any judicial, administrative, or other legal proceeding (except for a proceeding to enforce the terms of this Agreement), or be construed as an admission on the part of the Parties.

6. **Settlement Payments.** Within 10 days of IEU filing the last motion to dismiss its appeal or motion to withdraw required by Paragraph 1 above, AEP Ohio will pay, as a one-time nonrevocable payment, \$8 million to IEU for the benefit of its members. The Parties agree that this payment relates primarily to the cases addressed in Paragraph 1 above. IEU will continue, even after the payment is made and in the face of any opposition by other parties, to pursue the applications and motions referenced in Paragraph 1 until all of those applications and motions are ruled upon and are final. Upon dismissal or the granting of withdrawal pursuant to Paragraph 1 above, IEU will have no further involvement in the proceedings or any appeals or actions relating to the proceedings. This provision does not prevent IEU members from receiving any benefits resulting from a Supreme Court of Ohio remand proceeding.

7. **Disclosure of this Agreement.** IEU understands that this Agreement will likely be disclosed through discovery or another compulsory legal process. In addition, AEP Ohio may voluntarily and unilaterally disclose this Agreement after providing reasonable prior notice to IEU. AEP Ohio will endeavor to provide a minimum of 24 hours' notice.

8. **Entire Agreement.** The Parties acknowledge that this Agreement is the complete and final agreement between the Parties with respect to the subject matter of this Agreement, and that there are no other agreements, written or oral, that form any part of the agreement between the Parties regarding the matters set forth herein.

9. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio. The delay or failure of either Party to assert or

enforce in any instance performance of any of the terms of this Agreement or to exercise any rights hereunder conferred shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights at any later time.

10. Modification. Any waiver or modification of this Agreement must be in writing.

11. Severability. Should any one or more of the terms or conditions of this Agreement be held to be void, invalid, illegal, or unenforceable in any respect, this will not affect any other term or condition of this Agreement, but the remainder of this Agreement will be effective as though such term or condition had never been contained herein.

12. Authorization. The Parties warrant that they have the power and authority, and the legal right, to make, deliver and perform under this Agreement, and have taken all necessary actions to authorize execution, delivery and performance under this Agreement. Specifically, IEU warrants that its participating members have authorized IEU to make, deliver and perform under this Agreement.

13. Notice. Unless otherwise stated herein, all notices, demands, or requests required or permitted under this Agreement must be in writing and must be delivered by overnight express, mail, courier service, electronic mail, or facsimile transmission to the other Party.

14. Costs and Expenses. Each Party is responsible for its own costs and expenses, including attorneys' fees, related to any civil action brought to enforce this Agreement.

15. Execution in Counterparts. This Agreement may be executed in counterparts.

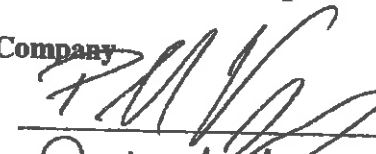
Ohio Power Company

By:

Name:

Title:

Date:


Pablo A. Vegas
President & COO
December 14, 2015

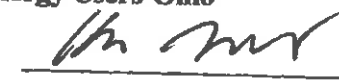
Industrial Energy Users-Ohio

By:

Name:

Title:

Date:


Kevin M. McCoy
Executive Director
December 14, 2015



December 22, 2015

Barcy F. McNeal, Secretary
Public Utilities Commission of Ohio
180 East Broad Street, 11th Floor
Columbus, OH 43215

RE: In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion In the Power Purchase Agreement Rider; PUCO Case No. 14-1693-EL-RDR and PUCO Case No. 14-1694-EL-AAM

Dear Secretary McNeal:

On December 14, 2015, the Ohio Power Company ("AEP-Ohio") filed a Stipulation and Recommendation ("PPA Stipulation") in the proceeding referenced above. AEP Ohio and the Industrial Energy Users-Ohio ("IEU-Ohio") have reached a Global Settlement of several regulatory and litigation matters and IEU-Ohio's non-opposition to the PPA Stipulation is one of several terms and conditions involved with the larger Global Settlement. Accordingly, the purpose of this letter is to inform the Public Utilities Commission of Ohio ("Commission") that ("IEU-Ohio") will not oppose the PPA Stipulation. IEU-Ohio's non-opposition position recognizes the substantive terms in the PPA Stipulation that benefit its members.

As a non-opposing party, IEU-Ohio reserves all rights to initiate or participate in any action to enforce the Stipulation.

Respectfully submitted,

/s/ Samuel C. Randazzo
Samuel C. Randazzo
General Counsel, IEU-Ohio
(614) 395-4268
randazzosc@gmail.com

SCR:dr
cc: Parties of Record

Attachment
EWH - 2

INDUSTRIAL ENERGY USERS-OHIO
21 E. STATE STREET, 17TH FLOOR
COLUMBUS, OH 43215
<http://www.leu-ohio.org>

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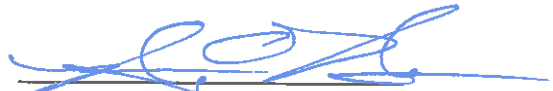
in

Case No(s). 14-1693-EL-RDR, 14-1694-EL-AAM

Summary: Letter of Notification to inform the Public Utilities Commission of Ohio that Industrial Energy Users-Ohio will not oppose the PPA Stipulation electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on December 28, 2015.



Ryan P. O'Rourke

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in

Case No(s). 14-1693-EL-RDR, 14-1694-EL-AAM

Summary: Testimony Direct Testimony of Edward W. Hill In Opposition to AEP-Ohio's Settlement Agreement On Behalf Of The OMAEG electronically filed by Ms. Cheryl A Smith on behalf of The Ohio Manufacturers' Association