

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

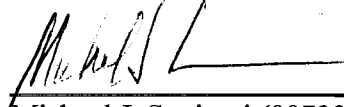
**RENEWED JOINT MOTION OF ADVANCED POWER SERVICES, CARROLL
COUNTY ENERGY LLC AND SOUTH FIELD ENERGY LLC FOR LEAVE TO FILE A
JOINT BRIEF OF *AMICUS CURIAE*, INSTANTER**

Pursuant to Rule 4901:1-12 of the Ohio Administrative Code, Advanced Power Services, Carroll County Energy LLC and South Field Energy LLC (the "Joint Movants") respectfully renew their joint motion for leave to file a joint *amicus curiae* brief in this matter. The Joint Movants are related companies currently constructing and developing over 1,900 megawatts of natural gas fired generation in Ohio at a cost of over \$1.9 billion. As more fully discussed in the accompanying memorandum, the Joint Movants seek leave to file a joint *amicus curiae* brief to address the policy implications of three issues that exist in this proceeding and that are now heightened given the December 14, 2015 stipulation.¹ The three issues will affect the development and siting of new generation in Ohio and are: (i) the lack of an open solicitation process on the proposed power purchase agreement ("PPA") coupled with a reduction in term of the proposed PPA (from the life of the units to 8.5 years), (ii) providing a special subsidy to a

¹ The Joint Movants renew their motion for leave because a ruling on their initial motion for leave has not been issued and today is the deadline for filing briefs. The Joint Movants have attached to this renewed motion their *amicus curiae* brief.

merchant generator (AEP Generation Resources, Inc.) along with cost recovery for adding natural gas co-firing to certain of the PPA units, and (iii) the ability of new natural gas fired generation in Ohio to reduce carbon dioxide emissions rather than relying on the Stipulation's carbon reduction commitments and heat input limitations for certain units. This renewed joint motion requests leave to file a joint *amicus curiae* brief, instant in this proceeding and attaches hereto the Joint Movants' joint amicus brief. Joint Movants will not reply in the event there is any opposition to this renewed motion.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Advanced Power Services, Carroll County Energy LLC and South Field Energy LLC (the “Joint Movants”) are not parties in this matter but have reviewed the December 14, 2015 Joint Stipulation and Recommendation (the “Stipulation”). The Joint Movants submit this renewed joint motion seeking leave to file a joint *amicus curiae* brief, instanter, to raise and discuss certain policy implications that exist in this case and that have been heightened by the filing of the Stipulation. Specifically, the Joint Movants wish to inform the Commission of three policy implications that relate to the development and construction of future generation plants in Ohio and arise under the Ohio Power Company’s d/b/a AEP Ohio (“AEP Ohio”) amended application as modified by the Stipulation.

The issues for discussion are limited in scope and are: (i) the lack of an open solicitation process on the proposed power purchase agreement (“PPA”) coupled with a reduction in term of the proposed PPA (from the life of the units to 8.5 years), (ii) providing a special subsidy to a merchant generator (AEP Generation Resources, Inc.) along with cost recovery for adding natural gas co-firing to certain of the PPA units, and (iii) the ability of new natural gas fired generation in Ohio to reduce carbon dioxide emissions rather than relying on the Stipulation’s carbon reduction commitments and heat input limitations for certain units.

Because of their significant investment in constructing and developing modern clean-burning gas fired power generation facilities in Ohio, the Joint Movants have a unique perspective to share with the Commission that no other party in this proceeding shares. Moreover, the consequences of the Stipulation provisions at issue here affect not only the Joint Movants but also other Ohio-based generation owners that seek an opportunity to develop new generation plants and compete on an equal basis in the PJM markets. The public interest in

hearing Joint Movants' perspective favors granting leave to file an amicus brief - leave that should be freely granted. *See Matthews v. Ingleside Hospital, Inc.*, 21 Ohio Misc. 116, 120 (Cuyahoga C.P. 1969) (noting that "[t]he function of an amicus curiae is to call the court's attention to law or facts or circumstances in a matter then before it that may otherwise escape its consideration" and observing that leave to file an amicus brief is "generally granted" in cases involving the public interest).

II. ARGUMENT

On May 15, 2015, AEP Ohio filed an amended application (the "Application") seeking to modify the PPA Rider and recover the net of the costs and revenues associated with (a) a proposed PPA between AEP Ohio and its generation affiliate, AEP Generation Resources, Inc. and (b) AEP Ohio's contractual entitlement to a share of the electrical output of generating units owned by the Ohio Valley Electric Corporation. AEP Ohio also requests a "prudence" approval by the Commission of the proposed terms of the affiliate PPA with AEP Generation Resources, Inc.

A hearing was held and the hearing record closed in early November 2015, but events in the case then changed dramatically. On December 14, 2015, AEP Ohio filed the Stipulation, which included a number of changes to its power purchase agreement proposal and a variety of other settlement terms. The evidentiary record was reopened and the hearing process recommenced on January 4, 2016, and concluded on January 8, 2016. At the conclusion of the hearing, the Commission set a briefing schedule and directed that initial briefs be filed no later than February 1, 2016.

Although no Commission rule exists on filing amicus briefs, the Commission has granted leave for interested parties to file briefs as *amici curiae* where actual intervention is not

necessary or warranted. See *In re Application of Duke Energy Ohio, Inc. for an Increase in Its Natural Gas Distribution Rates*, Case Nos. 12-1685-GA-AIR, et al., 2013 Ohio PUC LEXIS 259, Entry, *12 (Nov. 13, 2013); *In re Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Service*, Case No. 94-987-GA-AIR, 1994 Ohio PUC LEXIS 684, *8 (Aug. 4, 1994).² The Commission has noted in a past ruling that “the determination as to whether it is appropriate to permit the filing of amicus briefs in a proceeding must be made based on the individual case [at] bar and the issues proposed to be addressed by the movant.” See *In re Application of Duke Energy Ohio, Inc. for an Increase in Its Natural Gas Distribution Rates*, Case Nos. 12-1685-GA-AIR, et al., 2013 Ohio PUC LEXIS 259, Entry, *12 (Nov. 13, 2013).

The unique perspective the Joint Movants bring to this proceeding and the implication of the Application as modified by the Stipulation on power plant development in Ohio warrant leave to file an amicus brief. Advanced Power Services (“Advanced Power”) is a privately owned developer of independent power generation projects. Since 2006, Advanced Power and its affiliates have developed or put into construction more than 7,000 megawatts (“MW”) of generation in the United States and Europe. Advanced Power is currently constructing or developing four projects in the eastern United States, totaling 3,000 MW—including two projects in Ohio through Carroll County Energy LLC and South Field Energy LLC, which are both within Advanced Power’s corporate organizational structure.

Advanced Power’s two Ohio projects are well underway. Carroll County Energy LLC is developing and constructing the Carroll County Energy Facility, an \$899 million, 750-MW state-

² See also *In re Application of FirstEnergy Corp. on Behalf of Ohio Edison Co. et al. for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case Nos. 99-1212-EL-ETP et al., Entry, ¶5 (Mar. 23, 2000); *In re Complaint of WorldCom, Inc. at al. v. City of Toledo*, Case No. 02- 3207-AU-PWC, Entry, ¶¶7, 11 (Mar. 4, 2003); *In re Complaint of XO Ohio v. City of Upper Arlington*, Case No. 03-870-AU-PWC, Entry, ¶30 (May 14, 2003).

of-the-art combined-cycle natural gas turbine electric generation facility in Carroll County, Ohio. Construction for this project is progressing on schedule and commercial operations will start in the second-half of 2017. South Field Energy LLC is developing the South Field Energy Facility, an over \$1 billion, 1,100 MW dual fuel combined-cycle generating facility to be located in Columbiana County, Ohio, near Wellsville. This plant is scheduled to become commercially operational in 2020.

None of the parties to this proceeding are currently developing new generation facilities in Ohio of the size and magnitude that Carroll County Energy and South Field Energy are developing. Advanced Power, Carroll County Energy and South Field Energy, thus, present a unique perspective on the significant adverse consequences that the Application as modified by the Stipulation will have on these new Ohio generation plants and similarly situated generation plants under development that seek to participate in the PJM markets.

The Joint Movants seek leave to file a joint *amicus curiae* brief that will be limited in scope and will address the policy implications of three issues that exist in this proceeding and that affect the development and siting of new generation in Ohio: (i) the lack of an open solicitation process on the proposed PPA coupled with a reduction in term of the proposed PPA (from the life of the units to 8.5 years), (ii) providing a special subsidy to a merchant generator (AEP Generation Resources, Inc.) along with cost recovery for adding natural gas co-firing to certain of the PPA units, and (iii) the ability of new natural gas fired generation in Ohio to reduce carbon dioxide emissions rather than relying on the Stipulation's carbon reduction commitments and heat input limitations for certain units.

The magnitude of these issues and the resulting policy implications warrant leave to file an amicus brief. First, the Stipulation raises the issue of basic fairness to certain PJM market

participants. AEP Ohio has now agreed to enter into a PPA with its affiliate that is significantly shorter in duration than their original proposal. That reduced term for the PPA (dropping from the life of the units to 8.5 years) is such that non-affiliated generators could fulfill the generation needs and could participate in the PPA opportunity if AEP Ohio would have undertaken an open solicitation allowing all market participants to bid on a competitive basis. Such a competitive process would allow new generation owners, such as Carroll County Energy and South Field Energy, the opportunity to make more compelling (and arms-length) offers. It could also result in additional generation being sited in Ohio.

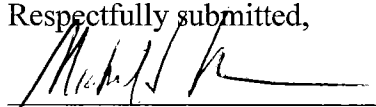
Second, the Stipulation not only preserves the subsidy effect of the PPA but obligates AEP Ohio to pursue natural gas co-firing at some of AEP Generation Resources, Inc.'s units with cost recovery from Ohio's ratepayers. These aspects of the Stipulation raise serious policy concerns because other market participants are building Ohio generation plants with no opportunity for cost recovery from Ohio's ratepayers. The Stipulation's preservation of the subsidy to AEP Ohio's deregulated generation affiliate can lead to a chilling effect on future power plant development in Ohio as well as making it more challenging to raise capital to construct power plants. This is an important policy issue for the Commission to consider.

Third, the Stipulation includes "soft" commitments for carbon reduction goals and heat input limitations on certain PPA units. The Joint Movants, on the other hand, are constructing over approximately 1,900 megawatts of natural gas fired generation which could result in significant carbon dioxide reductions on an unsubsidized basis assuming an equal amount of coal generation displacement. In addition to the "soft" environmental commitments, the Stipulation includes commitments to retire, refuel or repower certain units – units that would compete against Joint Movants' new power plants. Although couched in environmental terms, the

implication is that AEP Generation Resources, Inc. will be able to receive a subsidy from ratepayers all the while converting plants under the guise of carbon emission reductions to compete with Joint Movants' plants.

The implications and policy ramifications raised by these issues are new developments in this proceeding, especially as the Commission's Staff was initially opposed to AEP Ohio's application. They were not issues during the first phase of the proceeding, or foreseeable at that time. Also, these issues are uniquely specific to the Joint Movants' concerns and are appropriate to discuss in an *amicus curiae* brief. The Joint Movants' amicus brief attached hereto is being filed in accordance with the existing briefing schedule in this matter and will not unduly prejudice any party to this proceeding. The Joint Movants' amicus brief will contribute to the full development of issues that have tremendous consequences not only for companies considering putting steel in the ground in Ohio, but for the entire State. Accordingly, given the strong interest of the Joint Movants in the Commission's determination of AEP Ohio's amended application and Stipulation, the Joint Movants respectfully renew their request leave to file a joint *amicus curiae* brief, instantan.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 1st day of February 2016 upon all persons/entities listed below:

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**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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Approval of Ohio Power Company's)	
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Purchase Agreement for Inclusion in the)	
Power Purchase Agreement Rider.)	

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Power Company for Approval of Certain)	Case No. 14-1694-EL-AAM
Accounting Authority.)	

**JOINT BRIEF OF ADVANCED POWER SERVICES,
CARROLL COUNTY ENERGY LLC AND SOUTH FIELD ENERGY LLC, AS
*AMICUS CURIAE***

Advanced Power Services, Carroll County Energy LLC and South Field Energy LLC respectfully submit this brief as *amicus curiae* in opposition to the May 15, 2015 Amended Application of Ohio Power Company ("AEP Ohio"), as modified by the December 14, 2015 Joint Stipulation and Recommendation.

I. INTEREST OF *AMICUS CURIAE*

Advanced Power Services is a privately owned developer of independent power generation projects. Since 2006, Advanced Power Services and its affiliates have developed or put into construction more than 7,000 megawatts ("MW") of generation in the United States and Europe. Advanced Power Services is currently constructing or developing four projects in the eastern United States, totaling 3,000 MW—including two generation plants in Ohio through Carroll County Energy LLC and South Field Energy LLC, which are both within Advanced Power Services' corporate organizational structure.

Carroll County Energy LLC is constructing the Carroll County Energy Facility, a 742 MW state-of-the-art combined-cycle natural gas turbine electric generation facility at an approximate cost of \$899 million in Carroll County, Ohio. Construction for this generation plant is progressing on schedule and commercial operations are scheduled to start in the second-half of 2017. Equity investors have committed \$411 million in funds and a syndicate of 10 commercial banks provided an additional \$488 million in credit facilities to support the construction and financing of the project. The development and financing of the project was predicated on the PJM market mechanism, which is the largest and most liquid competitive capacity and energy market in the United States. Advanced Power Services through South Field Energy LLC is developing the South Field Energy Facility, an over \$1 billion, 1,100 MW dual fuel combined-cycle generating facility to be located in Columbiana County, Ohio, near Wellsville.

AEP Ohio's May 15, 2015 Amended Application as modified by the December 14, 2015 Joint Stipulation and Recommendation ("Stipulation") asks the Public Utilities Commission of Ohio ("Commission"), in part, to approve a PPA Rider that would require ratepayers to subsidize (a) AEP Ohio's entitlement to generation from the Ohio Valley Electric Corporation ("OVEC") and (b) through a power purchase agreement ("PPA") with AEP Ohio's generation affiliate, the operations of AEP Generation Resources, Inc. ("AEPGR").

Advanced Power Services, Carroll County Energy and South Field Energy (collectively, "Advanced Power") have a compelling interest in this proceeding given their substantial investment in Ohio to develop and construct new generation facilities that, when operational, will compete against the subsidized PPA units as well as the rest of AEPGR's fleet in the PJM markets. Advanced Power, thus, presents a unique perspective that will help inform the Commission as it reviews AEP Ohio's Amended Application and the Stipulation.

II. ARGUMENT

A. **Granting AEP Ohio's PPA Proposal will Negatively Impact Generation Plants Currently Under Construction and Decisions to Site Future Plants in Ohio.**

The Commission will be granting a state-sanctioned subsidy to incumbent Ohio-based and Indiana-based PJM generators (AEPGR and AEP Ohio's OVEC entitlement) if it approves AEP Ohio's PPA and OVEC proposal. And that approval will have far reaching consequences for Ohio's power market, now and in the future.

If approved, this state-sanctioned subsidy will circumvent the PJM market mechanism and cause power pricing for capacity and energy of other market participants, who do not benefit from the subsidy, to be significantly lower than the PJM market would otherwise provide. That, in turn, will impact the investment returns of other active participants in the PJM market, including those who are contemplating investment in new power plants who will face lower returns and, as a result, either find it more challenging to raise capital or not make the investment at all. The end result will be that the subsidized power generation facilities will be kept on line at a time when they could and should be replaced by newer, lower-cost, and cleaner facilities having a far smaller carbon footprint.

Likewise, investors building new generation plants in Ohio started those projects when it was clear that Ohio was a deregulated generation market. AEP Ohio witness Wittine discussed the various plants in his direct testimony and on cross-examination, noting the development of Carroll County Energy (742 MW)¹, Oregon Clean Energy (799 MW), Middletown (540 MW), the Lordstown Energy Center (800 MW) and the South Field Energy Facility (1,100 MW),² and

¹ *In re. Carroll County Energy LLC*, Case No. 13-1752-EL-BGN, Opinion, Order and Certificate dated April 28, 2014 at 3.

² Company Ex. 11 Direct Testimony of Eric Wittine at 12; Dynegy Ex. 1 Direct Testimony of Dean Ellis at 20 and see P3-Ex. 3 (South Field OPSB letter).

that these developments may not reach completion.³ That, however, is not the policy point for this Commission to consider – what the Commission should consider is that AEP Ohio’s attempt to return the AEPGR units along with its OVEC entitlement to a regulated construct will reverse the gains that Ohio has made in attracting new generation. Just as important, the Ohio General Assembly and not the Commission should be deciding to shift the playing field for new generation investors.

The reversal in the development of new generation will only become more severe if the Commission approves AEP Ohio’s commitment to pursue ratepayer-subsidized natural gas co-firing at its Conesville Units 5 and 6, as well as a refueling or repowering of those units to 100% natural gas by December 31, 2029. The conversion of the Cardinal Unit 1 to 100% natural gas by December 31, 2030 will also have a chilling effect on siting new generation in Ohio. Although the cost recovery of the conversion to natural gas co-firing at Conesville Units 5 and 6 will be subject to a future proceeding, the Stipulation provides a direct path for AEP Ohio to convert both Conesville units and the Cardinal Unit 1 unit by 2030 to natural gas – less than 15 years away and during the operational life of the new generation units currently under development.

AEP Ohio’s PPA proposal will have far reaching ramifications if approved, with impacts on the PJM wholesale markets as well as on new power plants being constructed in Ohio. New generation units and old generation units can coexist in Ohio – but not when the owners of the older generation units are receiving an out-of-market subsidy.

³ Company Ex. 11 Direct Testimony of Eric Wittine at 8.

B. The Commission Should Consider Competitively Bidding Out the Megawatts that AEP Ohio Believes Are Necessary for Rate Stability.

AEP Ohio has agreed in the Stipulation to enter into a PPA with its affiliate that is significantly shorter in duration than the original proposal. That reduced term for the PPA (dropping from the life of the units to 8.5 years) is such that non-affiliated generators could fulfill the generation needs and could participate in the PPA opportunity if AEP Ohio would undertake an open solicitation allowing all market participants to bid on a competitive basis. Such a competitive process would allow new generation owners, such as Carroll County Energy and South Field Energy, the opportunity to make more compelling (and arms-length) offers with better consumer protections (risk sharing and cost sharing) and lower environmental impacts than those proposed through the Stipulation. A competitive procurement process could also result in additional generation being sited in Ohio.

Competition is good for markets, and just like the competition that has consistently lowered AEP Ohio's Standard Service Offer, a competitive procurement process for the energy and capacity necessary to provide the hedge that AEP Ohio claims is necessary will provide the best results for all of Ohio, including its new merchant generators.

C. The Commission Should Consider the Benefits of Siting New Natural Gas Fired Generation in Ohio.

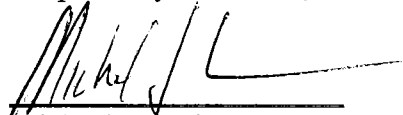
As noted above, the Stipulation includes commitments to pursue carbon reduction goals along with natural gas co-firing and coal heat input limitations at Conesville Units 5 and 6. Carroll County Energy and South Field Energy, on the other hand, are constructing over 1,840 megawatts of natural gas fired generation that could result in significant carbon dioxide reductions on an unsubsidized basis, assuming an equal amount of coal generation displacement. Given that this could be achieved without transferring the market risk of the AEPGR units and OVEC entitlement to AEP Ohio's ratepayers, this represents a strikingly better proposition for

Ohio ratepayers to achieve carbon dioxide reduction goals. It is also a proposition that can be realized much quicker than waiting 15 years until the Conesville Units 5 and 6 and Cardinal Unit 1 are refueled to natural gas.

III. CONCLUSION

AEP Ohio's Amended Application as modified by the Stipulation is not intended to facilitate Ohio's effectiveness in both the domestic and global economies. It is not intended to promote competition, and it is not intended to create new economic development opportunities for Ohio. Instead, it creates a subsidy that will impact the wholesale markets and negatively impact new and future generation projects in Ohio. The Commission should not approve AEP Ohio's proposal. But if it does so, at a minimum, the Commission should modify the proposal to require AEP Ohio to competitively procure the generation it believes is necessary to provide its claimed hedge for ratepayers.

Respectfully submitted,




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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 1st day of February, 2016 upon all persons/entities listed below:


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

Summary: Motion (Renewed) for Leave to File Joint Brief of Amicus Curiae, Instantly electronically filed by Mr. Michael J. Settineri on behalf of South Field Energy LLC and Carroll County Energy LLC and Advanced Power Services