



Legal Department

September 1, 2016

The Honorable Sarah Parrot  
Attorney Examiner  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215-3793

Re: *In the Matter of the Application of Ohio Power Company for  
Administration of the Significantly Excessive Earnings Test for 2014 under  
Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio  
Administrative Code; Case No.15-1022-EL-UNC*

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Attorney Examiner Parrot:

Enclosed please find a Stipulation and Recommendation (Stipulation) being filed to resolve this case. To the extent any intervenor challenges the Stipulation, AEP Ohio witness Allen will defend the Stipulation on the witness stand using the three-part test adopted by the Commission for consideration of contested settlements. If necessary, this matter can be discussed further at the tentative prehearing conference scheduled as a placeholder for September 7 – though AEP Ohio does not see a need for the prehearing conference and is not requesting that it occur.

Thank you for your attention to this matter.

Respectfully,

//s/ Steven T. Nourse

cc: Parties of record

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio	)	
Power Company for Administration of the	)	
Significantly Excessive Earnings Test for 2014	)	Case No. 15-1022-EL-UNC
Under Section 4928.143(F), Revised Code,	)	
and Rule 4901:1-35-10, Ohio Administrative	)	
Code.	)	

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**STIPULATION AND RECOMMENDATION**

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**I. INTRODUCTION**

Rule 4901-1-30, Ohio Administrative Code (“O.A.C.”), provides that any two or more parties to a proceeding may enter into a written or oral stipulation concerning the issues presented in such a proceeding. This document sets forth the understanding and agreement of the parties who have signed below (Signatory Parties) and jointly recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation and Recommendation (Stipulation) without modification, which resolves all of the issues raised in the above-captioned proceedings involving Ohio Power Company ( “AEP Ohio” or the “Company”).

This Stipulation is submitted for purposes of this proceeding only. Except for purposes of enforcement of the terms of this Stipulation, this Stipulation (including the information and data contained therein or attached) shall not be cited as precedent in any future proceeding for or against any Signatory Party. The circumstances of this case are unique; thus, using the terms of this Stipulation in any other case is inappropriate and undermines the willingness of the parties to compromise. This Stipulation is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that one or more of the Signatory Parties

would have taken if these issues had been fully litigated. This Stipulation recognizes that each Signatory Party may disagree with individual provisions of this Stipulation, but also recognizes that the Stipulation has value as a whole.

## **II. SIGNATORY PARTIES**

The Signatory Parties are AEP Ohio and Staff.<sup>1</sup> The Signatory Parties agree that the Stipulation violates no regulatory principle or precedent, and that it is the product of serious arm's length bargaining among knowledgeable and capable parties in an open and cooperative process in which all Signatory Parties were represented by able counsel and technical experts. While this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission where, as here, it represents a comprehensive compromise of issues raised by parties representing a wide range of interests. The Signatory Parties believe that the Stipulation that they are recommending for Commission adoption presents a fair and reasonable result that, as a package, benefits ratepayers and is in the public interest. For purposes of resolving the issues raised by these proceedings, the Signatory Parties, by and through their respective counsel, stipulate, agree and recommend as set forth below.

## **III. BACKGROUND AND PROCEDURAL RECITALS**

WHEREAS, AEP Ohio is an electric utility and an electric distribution utility as those terms are defined in Section 4928.01, Revised Code, and an electric utility operating company subsidiary of American Electric Power Company, Inc.;

WHEREAS, in 2008, the Ohio General Assembly passed Substitute Senate Bill 221, which included new Section 4928.143, Revised Code, establishing the option for an electric

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<sup>1</sup> Pursuant to Rule 4901-1-10(C), O.A.C., the Staff of the Commission ("Staff") is considered a party for the purposes of entering into a stipulation under Rule 4901-1-30, O.A.C.

distribution utility to provide an Electric Security Plan (ESP) as the standard service offer required by Section 4928.141, Revised Code;

WHEREAS, the Commission through an August 8, 2012 Opinion and Order approved an ESP for AEP Ohio in Case Nos. 11-346-EL-SSO and 11-348-EL-SSO (*ESP II* Cases) whose term continued from September 2012 through May 2015.

WHEREAS, Section, 4928.143(F), Revised Code, contains a significantly excessive earnings test (SEET) applicable to AEP Ohio's approved ESP adopted in the *ESP II* Cases;

WHEREAS, the *ESP II* decision adopted a 12% SEET threshold for the ESP term of 2012-2015;

WHEREAS, AEP Ohio filed a cross-appeal in Supreme Court Case No. 2013-521 to challenge the 12% SEET threshold;

WHEREAS, AEP Ohio made a filing in Case No. 15-386-EL-WVR to extend the 2014 SEET filing based in part on the 2013-521 appeal;

WHEREAS, In its April 22, 2015 Entry in Case No. 15-386-EL-WVR, the Commission deferred the 2014 SEET filing to June 1, 2015 and proactively indicated (at 4) that it would "take necessary steps in the conduct of the 2014 SEET proceeding" to ensure that the Supreme Court's decision in Case No. 2013-521 regarding the 12% SEET threshold adopted by the Commission in the *ESP II* decision would be "appropriately considered by the Commission."

WHEREAS, AEP Ohio initiated Case No. 15-1022-EL-UNC as required by Rule 4901:1-35-10, O.A.C. (2014 SEET Case), including prefiled direct testimony which supports findings and conclusions that OPCo did not have significantly excessive earnings during, and passed the SEET, for 2014;

WHEREAS, On April 21, 2016, the Court issued its decision regarding the SEET threshold determination in the *ESP II* decision, reversing and remanding the issue to the Commission with instructions to the Commission regarding application of R.C. 4928.143(F). *In re Application of Columbus S. Power Co.*, 2016-Ohio-1608 at ¶66.

WHEREAS, the remand proceedings relating to the Court's decision in *In re Application of Columbus S. Power Co.*, 2016-Ohio-1608, and *In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, 2016-1607 (collectively, the "Remand Cases") could affect, and the recent decision in the *Phase In Recovery Rider*, Case Nos. 11-4920-EL-RDR *et al.* ("PIRR Cases") has affected, the 2014 SEET earnings of AEP Ohio;

WHEREAS, the Signatory Parties agree on how to resolve the issues presented in the 2014 SEET Case, as reflected in their recommendations set forth below, which the Signatory Parties submit fully comply with the Supreme Court's decision;

WHEREAS, the Signatory Parties believe that the agreements herein represent a fair and reasonable solution to all of the issues raised in the 2014 SEET Case;

WHEREAS, the Stipulation represents the product of serious bargaining among capable, knowledgeable parties;

WHEREAS, the Stipulation as a package benefits consumers and the public interest; and

WHEREAS, the terms and conditions of this Stipulation satisfy the policies of the State of Ohio as set forth in Section 4928.02, Revised Code and do not violate any important regulatory policies or principles.

NOW, THEREFORE, the Signatory Parties stipulate, agree and recommend that the Commission should issue its Opinion and Order in these proceedings accepting and adopting this

Stipulation and relying upon its provisions as the basis for resolving all issues raised by these proceedings:

#### **IV. RECOMMENDATIONS**

The Signatory Parties recommend the Commission find as follows:

- A. The testimony filed by AEP Ohio on June 1, 2015 and by Staff on August 15, 2016 should be admitted as evidence of record subject to cross examination at an evidentiary hearing;
- B. Based upon the Company's testimony including AEP Ohio's FERC Form 1 filing, AEP Ohio's 2014 earned return on equity (ROE) was 12.717 % after an adjustment for a special accounting item was made as supported in the testimony of AEP Ohio witness Thomas E. Mitchell;
- C. AEP Ohio witness William A. Allen's testimony supports a finding that the comparable risk group's mean earned ROE is 10.05%. For purposes of the SEET analysis conducted in this proceeding in accordance with Section 4928.143(F), Revised Code, the Signatory Parties recommend that the Commission find that the comparable risk group's mean earned ROE for 2014 is 10.05%. The analysis in Mr. Allen's testimony is consistent with the methodology used by the Commission in Case Nos. 11-4571-EL-UNC and 4572-EL-UNC, Opinion and Order (October 23, 2013) (the 2010 SEET Order) and in Case Nos. 13-2249-EL-UNC and 13-2250-EL-UNC, Opinion and Order (March 26, 2014) (the 2011 SEET Order);
- D. The 11-4571 order applied an adder to that baseline mean earned ROE using 1.64 standard deviations. In this case that adder would be 5.99% resulting in a SEET threshold of 16.04% using the Company's calculation. Accordingly, the Signatory Parties agree that AEP

Ohio's 2014 adjusted earned ROE does not constitute significantly excessive earnings under Section 4928.143(F) of the Revised Code;

E. AEP Ohio's 2016 reversal of an accounting provision for the earnings between the original 12% threshold and the earned ROE of 12.717% for 2014, resulting from the implementation of the Supreme Court's decision, shall not be included in AEP Ohio's earnings for purposes of the 2016 SEET; and

F. The Signatory Parties agree that the additional revenue authorized by the Commission in the remand proceeding in the PIRR Cases, relating to carrying charges, should be spread over the entire collection period including an allocation of increased earnings for SEET purposes in 2014 of approximately \$30 million. Similarly, to the extent a Commission decision in the Remand Cases results in either a net revenue increase or decrease, the resulting impact on earnings will be spread for purposes of the SEET over the entire period of the Retail Stability Rider or the Capacity Charges (*i.e.*, August 2012 through May 2015), as applicable, including an allocation to 2014. More specifically, additional SEET earnings of up to approximately \$90 million (above and beyond the additional PIRR revenue) could be granted under the Remand Cases relating to 2014 without the need to revisit the 2014 SEET.

## **V. GENERAL CONDITIONS**

This Stipulation, if adopted by the Commission, will resolve all issues arising from the proceedings referenced above. The settlement agreement embodied in this Stipulation was reached only after negotiations between the Company and Staff, and it reflects a bargained compromise involving a balancing of competing interests. Because the Stipulation is an integrated settlement, it is expressly conditioned upon the Commission adopting the same in its

entirety without material modification. Rejection of all or any part of the Stipulation and Recommendation by the Commission shall be deemed to be a material modification for purposes of this provision. Upon the Commission's issuance of a decision that does not adopt this Stipulation in its entirety without material modification, or the alternative proposal, if one is submitted, a Signatory Party may withdraw from the Stipulation by filing a notice with the Commission within thirty (30) days after the Commission's decision. Upon the filing of a notice of termination and withdrawal, the Stipulation shall immediately become null and void.


In such event, this proceeding shall go forward from the procedural point at which the Stipulation was filed, and the parties will be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to brief all issues which shall be decided based upon the record and briefs, as if this Stipulation had never been executed.

AGREED THIS 1<sup>st</sup> DAY OF SEPTEMBER, 2016.



Steven T. Nourse  
On behalf of Ohio Power Company

Thomas W. McNamee / by STN  
per authority



Thomas W. McNamee  
Assistant Attorney General,  
Public Utilities Section  
On behalf of the Staff of the Public Utilities  
Commission of Ohio



**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 15-1022-EL-UNC**

Summary: Stipulation and Recommendation of Ohio Power Company electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company