

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|   |   |                         |
|---|---|-------------------------|
| In the Matter of the 2018 Long-Term     | ) |                         |
| Forecast Report on behalf of Ohio Power | ) | Case No. 18-0501-EL-FOR |
| Company and Related Matters.            | ) |                         |

|  |   |                         |
|--|---|-------------------------|
| In the Matter of the Application Seeking | ) |                         |
| Approval of Ohio Power Company's         | ) |                         |
| Proposal to Enter into Renewable Energy  | ) | Case No. 18-1392-EL-RDR |
| Purchase Agreements for Inclusion in the | ) |                         |
| Renewable Generation Rider.              | ) |                         |

|  |   |                         |
|--|---|-------------------------|
| In the Matter of the Application of Ohio | ) | Case No. 18-1393-EL-ATA |
| Power Company to Amend its Tariffs.      | ) |                         |

---

**MEMORANDUM CONTRA  
MOTION OF OHIO POWER COMPANY TO STRIKE RELEVANT  
INTERVENOR TESTIMONY  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

Ohio Power Company ("AEP") is seeking government approval to add charges for 400 monopoly megawatts of power plants to the electric bills of its 1.5 million captive utility customers. But the Ohio General Assembly has spoken on this matter. Ohio law prohibits monopolies (electric utilities) from owning power plants (and charging customers for those power plants) unless the utility can show that it meets the limited exception created under R.C. 4928.143(B)(2)(c). A crucial part of meeting that statutory exception is for the utility to show there is "a need for the facility based on resource planning projections submitted by the electric distribution utility."

The PUCO correctly determined in, AEP's previous attempt to obtain regulated customer funding for another power plant (the Turning Point project), that need is determined by measuring supply versus demand, consistent with the plain words of the

statute (R.C.4928.143(B)(2)(c)). Additionally, the PUCO ruled that need should not be broadly defined to include the economic impacts that the power plants would have on the state.<sup>1</sup>

Ignoring the plain words of the statute and PUCO precedent, AEP presented the testimony of witnesses in its forecasting proceeding that defined need as power expected to be “economically beneficial” and lead to lower costs for customers. To prove its point, AEP modelled 650 MW of generic renewable projects, found the generic projects economically beneficial, and determined there was a need for at least 900 MW of renewables.

OCC and others presented testimony opposing AEP’s definition of need. In addressing AEP’s testimony, Dr. Lesser testified on the specific costs associated with the 400 MW solar projects –the exact facilities AEP is seeking to charge customers. AEP has moved to strike this testimony (and more).

The Public Utilities Commission of Ohio (“PUCO”) should deny AEP’s motion to strike<sup>2</sup> portions of the testimony of Ohio Consumers’ Counsel (“OCC”) witness Lesser’s testimony. Dr. Lesser’s testimony, including portions that AEP seeks to strike, is relevant to the question of “need” under R.C. 4928.143(B)(2)(c) and thus is admissible.

---

<sup>1</sup> *In the Matter of the Long-Term Forecast of Ohio Power Company and Related Matters*, Case Nos. 10-501-EL-FOR *et seq.*, Opinion and Order at 25-27 (Jan. 9, 2013) ( “Turning Point”).

<sup>2</sup> Motion of Ohio Power Company to Strike or Defer Certain Intervenor Testimony that is Beyond the Scope of the First-Phase Hearing Set by the Attorney Examiners’ October 22, 2018 Procedural Entry (Jan. 7, 2019) (the “Motion to Strike”).

## I. ARGUMENT

**The PUCO should deny the Motion to Strike because Dr. Lesser’s testimony rebuts the testimony of AEP witnesses regarding the purported generalized need for at least 900 MW of renewable power plants.**

**A. Dr. Lesser’s testimony is relevant to the specific need for the Willowbrook and Highland solar facilities and is consistent with Ohio law.**

Under R.C. 4928.143(B)(2)(c), “no surcharge shall be authorized unless the commission first determines in the proceeding that there is **a need for the facility** based on resource planning projections submitted by the electric distribution utility.” (Emphasis added). The facility that AEP seeks to charge customers for is not 900 MW of renewables. And the facility AEP seeks to charge customers for is not 650 MW of generic solar and wind projects. Rather the facilities that AEP must show a need for (before customers can be charged) are two actual renewable energy projects, producing in total 400MW of solar power: the Highland and Willowbrook projects.

Yet, despite the specific directive of the statute, and the definitive projects, AEP presents in its forecast case a “need” for “at least 900 MW” of renewable resources. In defining this so-called need for at least 900 MW of renewable resources, AEP relies upon modelling that it conducted for 650 MW of generic renewable resources. AEP believes that if it can show that 650 MW of generic renewable resources are “economically beneficial” and will lead to lower energy costs for AEP Ohio customers, then “need for the facility” has been shown.<sup>3</sup> AEP is wrong.

---

<sup>3</sup> To be clear Mr. Allen’s definition of need does not stop there. According to Mr. Allen, need is met if there is a strong desire on the part of AEP customers for renewables. Allen Testimony at 7. Also part of defining need, according to Mr. Allen, is considering the fact that AEP is a net importer of power; the growing demand for renewable energy that is produced locally, and local economic development impacts of renewable projects. *See id.* at 9.

Consistent with the statute, OCC's Witness Dr. Lesser responds to not only AEP's generalized arguments in the forecasting case, but also addresses the specific need for the 400 MW solar projects. Principally, Dr. Lesser presents testimony showing that need under the statute is related to supply and demand and not the extraneous factors AEP relies upon, including whether the renewable plants are "economically beneficial." But in response to AEP's general claims in the forecasting case that renewable resources are "economically beneficial" (based on modelling of the generic renewable resources), Dr. Lesser analyzes the specific economics of AEP's proposed Willowbrook and Highland projects.

AEP, however, seeks to strike the testimony of Dr. Lesser that challenges the notion that the specific Willowbrook and Highland projects are "economically beneficial" and will lead to lower energy costs for customers. AEP's motion applies to the following Lesser testimony: page 8, line 3 through page 9, line 12; page 62, line 4 through page 69, line 16, and confidential Exhibit JAL-16 of Dr. Lesser's testimony.<sup>4</sup> In these portions of Dr. Lesser's testimony, he rebuts the testimony of AEP Ohio witnesses Allen and Torpey who claim that need has been established for the specific facilities based on generic modelling that does not consider the specific project costs of Willowbrook and Highland.

---

<sup>4</sup> Interestingly, AEP did not move to strike NRDC witness Stebbins testimony, the scope of which is strikingly similar to the scope of Dr. Lesser's testimony. In her testimony, NRDC witness Stebbins refers to AEP witness Torpey's testimony from the RDR Case (18-1392-EL-FOR), provides testimony on the specific costs that customers will pay as a result of the Willowbrook and Highland projects, discusses AEP's proposal for bidding capacity from the solar projects into PJM, and testifies regarding the potential hedge value of the Willowbrook and Highland projects.<sup>4</sup> And of course, if Ms. Stebbins is permitted to testify regarding the specific value of the REPAs and their effect on customer rates, then Dr. Lesser must be allowed to present his contrary views.

To be clear, OCC does not agree with AEP's definition of need. In fact, there are many parties, including the PUCO Staff, that disagree with how AEP has defined need.<sup>5</sup> AEP's framing of the need issue, however, is fair game for parties to address in filed testimony. OCC responds to AEP's erroneous need arguments on a number of fronts, including that if economics are a part of establishing need (and they are not), the economics of the specific projects must be reviewed. In other words, the PUCO must consider not only modelled generic costs, but the specific costs that customers will pay for renewable energy coming from Willowbrook and Highland.

Dr. Lesser's testimony is directly related to the likely actual costs that customers would pay under AEP's proposed Willowbrook and Highland projects. Dr. Lesser explains how, if the actual 400 MW projects cost are considered, AEP's generalized claim that renewable projects are economically "beneficial" and "low cost" (equaling need according to AEP) is misleading. Dr. Lesser's testimony contradicts the leap AEP makes when it claims that a generalized need for renewable resources (as established though modelling 650 MW of generic renewable projects) establishes a specific need for the Willowbrook and Highland projects.

Dr. Lesser's testimony is relevant, and addresses need for the facility, as required under R.C. 4928.143(B)(2)(c). It should stand. AEP's motion to strike should be denied.

**B. The PUCO has determined that testimony on compliance with statutory solar benchmarks is relevant to the question of "need" and therefore admissible.**

AEP also seeks to strike Dr. Lesser's confidential Exhibit JAL-9. The PUCO should deny the motion to strike this exhibit. This exhibit provides data regarding AEP's

---

<sup>5</sup> See Testimony of Timothy Benedict (Jan. 8, 2019).

projected compliance with renewal mandates for several years. The PUCO itself has determined that the sufficiency of solar resources to meet its renewable energy mandates (of R.C. 4928.64) is relevant to the question of need under R.C. 4928.143(B)(2)(c).<sup>6</sup> Notably, the PUCO Staff filed testimony yesterday, confirming this interpretation as well.<sup>7</sup> Dr. Lesser's testimony on this issue is relevant. It should be permitted as part of Phase 1.

**C. The PUCO has determined that testimony on solar renewable energy certificates is germane to the question of "need" and therefore relevant.**

AEP also seeks to strike Dr. Lesser's confidential Exhibit JAL-12. The PUCO should deny the motion to strike this exhibit. Although this exhibit contains AEP's response to discovery question regarding the testimony of AEP witness Jon Williams (a Phase II witness), the attachment provided by AEP is relevant to Phase 1. The attachment includes information about the market for RECs, including Ohio solar RECs. The PUCO has already determined that whether there are sufficient solar resources for AEP to meet its mandates is relevant to the question of need under R.C. 4928.143(B)(2)(c).<sup>8</sup> The PUCO Staff filed testimony yesterday confirming this interpretation. Dr. Lesser's testimony in this regard is relevant and admissible. AEP's motion to strike should be denied.

---

<sup>6</sup> *In re Long-Term Forecast Report of Ohio Power Co.*, Case No. 18-501-EL-FOR, Opinion & Order at 26 (Jan. 9, 2013) (finding that AEP failed to demonstrate need under R.C. 4928.143(B)(2)(c) in part because it did not need the Turning Point project to satisfy its statutory solar benchmarks).

<sup>7</sup> Testimony of Timothy Benedict (Jan. 8, 2018).

<sup>8</sup> *In re Long-Term Forecast Report of Ohio Power Co.*, Case No. 18-501-EL-FOR, Opinion & Order at 26 (Jan. 9, 2013) (finding that AEP failed to demonstrate need under R.C. 4928.143(B)(2)(c) in part because it did not need the Turning Point project to satisfy its statutory solar benchmarks).

**D. Other preconditions to approving a charge for Willowbrook and Highland projects should be addressed in Phase 1 to facilitate judicial economy.**

AEP next seeks to strike page 20, line 56 through page 21, line 4 and Exhibit JAL-6 of Dr. Lesser's testimony. This testimony addresses whether AEP will own and operate the facilities and whether the output of the facilities will be dedicated to Ohio consumers. While these are independent and additive conditions that AEP must meet to charge customers for monopoly megawatts under R.C. 4928.143(B)(2)(c), OCC concedes that these are outside the scope of Phase I of this proceeding as defined by the Attorney Examiner.

In this regard the PUCO should reconsider the scope of this proceeding in order to further judicial economy. For if any of the statutory conditions are not met, then the second phase of the proceeding, addressing the specific terms of the renewable projects, cannot go forward. Additionally, the PUCO has also determined that it will not authorize charges to customers for monopoly generation unless the generation needs cannot be met through the competitive market.<sup>9</sup> This is a condition that should also be considered as part of Phase I of this proceeding.

Expanding the scope of this Phase I proceeding to consider all conditions that must be met before a utility can charge customers for monopoly megawatts makes sense and is judicially efficient. The PUCO should expand the scope of the proceeding and permit the testimony of Dr. Lesser and others on these independent and additive conditions in Phase 1 of this proceeding.

---

<sup>9</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company*, Case No. 11-346-EL-SSO et al, Opinion and Order at 39 (Dec. 14, 2011).

## II. CONCLUSION

AEP, through its direct case, has presented a broad and loose interpretation of Ohio law, that ignores the plain language of the statute, R.C. 4928.143(B)(2)(c). AEP's definition of need also ignores the PUCO precedent that narrowly defined need.

In rebutting AEP's case, OCC and others address AEP's definition of need, including its unsupported and erroneous assertion that need can be established by positive economic benefits produced when modelling 650 MW of generic renewable projects. In addressing the economics of renewable projects, OCC Witness Lesser explores not only the modelling results, but the real-life expected costs of the solar facilities AEP is seeking to charge customers. Dr. Lesser's testimony is relevant and should be considered as a counterpoint to AEP's need testimony. AEP's motion to strike should be denied.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

*/s/ Maureen R. Willis*

---

Maureen R. Willis, Counsel of Record  
Senior Counsel (0020847)  
William J. Michael (0070921)  
Christopher Healey (0086027)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, 7th Floor  
Columbus, Ohio 43215  
Telephone [Willis]: (614) 466-9567  
Telephone [Michael]: (614) 466-1291  
Telephone [Healey]: (614) 466-9571  
[Maureen.willis@occ.ohio.gov](mailto:Maureen.willis@occ.ohio.gov)  
[William.michael@occ.ohio.gov](mailto:William.michael@occ.ohio.gov)  
[Christopher.healey@occ.ohio.gov](mailto:Christopher.healey@occ.ohio.gov)  
(Willing to accept service by e-mail)



## CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra was served on the persons stated below via electronic transmission this 9th day of January 2019.

/s/ Maureen R. Willis

Maureen R. Willis  
Senior Counsel

### SERVICE LIST

|  |  |
|--|--|
| <a href="mailto:Thomas.mcnamee@ohioattorneygeneral.gov">Thomas.mcnamee@ohioattorneygeneral.gov</a> | <a href="mailto:stnourse@aep.com">stnourse@aep.com</a>                       |
| <a href="mailto:kboehm@BKLLawfirm.com">kboehm@BKLLawfirm.com</a>                                   | <a href="mailto:cblend@aep.com">cblend@aep.com</a>                           |
| <a href="mailto:jkylerecohn@BKLLawfirm.com">jkylerecohn@BKLLawfirm.com</a>                         | <a href="mailto:tony.mendoza@sierraclub.org">tony.mendoza@sierraclub.org</a> |
| <a href="mailto:mpritchard@mwncmh.com">mpritchard@mwncmh.com</a>                                   | <a href="mailto:rsahli@columbus.rr.com">rsahli@columbus.rr.com</a>           |
| <a href="mailto:fdarr@mwncmh.com">fdarr@mwncmh.com</a>   | <a href="mailto:cmooney@ohiopartners.org">cmooney@ohiopartners.org</a>       |
| <a href="mailto:paul@carpenterlipps.com">paul@carpenterlipps.com</a>                               | <a href="mailto:mnugent@igsenergy.com">mnugent@igsenergy.com</a>             |
| <a href="mailto:Bojko@carpenterlipps.com">Bojko@carpenterlipps.com</a>                             | <a href="mailto:joliker@igsenergy.com">joliker@igsenergy.com</a>             |
| <a href="mailto:Dressel@carpenterlipps.com">Dressel@carpenterlipps.com</a>                         | <a href="mailto:rdove@keglerbrown.com">rdove@keglerbrown.com</a>             |
| <a href="mailto:mleppla@theOEC.org">mleppla@theOEC.org</a>   | <a href="mailto:whitt@whitt-sturtevant.com">whitt@whitt-sturtevant.com</a>   |
| <a href="mailto:jstock@beneschlaw.com">jstock@beneschlaw.com</a>                                   | <a href="mailto:glover@whitt-sturtevant.com">glover@whitt-sturtevant.com</a> |
| <a href="mailto:jrego@beneschlaw.com">jrego@beneschlaw.com</a>                                     | <a href="mailto:callwein@opae.org">callwein@opae.org</a>                     |
| <a href="mailto:dparram@bricker.com">dparram@bricker.com</a>                                       | <a href="mailto:mjsettineri@vorys.com">mjsettineri@vorys.com</a>             |
| <a href="mailto:mdortch@kravitzllc.com">mdortch@kravitzllc.com</a>                                 | <a href="mailto:glpetrucci@vorys.com">glpetrucci@vorys.com</a>               |
| <a href="mailto:cpirik@dickinsonwright.com">cpirik@dickinsonwright.com</a>                         | <a href="mailto:ktreadway@oneenergylc.com">ktreadway@oneenergylc.com</a>     |
| <a href="mailto:todonnell@dickinsonwright.com">todonnell@dickinsonwright.com</a>                   | <a href="mailto:dborchers@bricker.com">dborchers@bricker.com</a>             |
| <a href="mailto:wworys@dickinsonwright.com">wworys@dickinsonwright.com</a>                         | <a href="mailto:tdougherty@theoec.org">tdougherty@theoec.org</a>             |
| <a href="mailto:cluse@dickinsonwright.com">cluse@dickinsonwright.com</a>                           | <a href="mailto:ctavenor@theoec.org">ctavenor@theoec.org</a>                 |
| <a href="mailto:msilberman@beneschlaw.com">msilberman@beneschlaw.com</a>                           |  |

Attorney Examiners

[Sarah.parrot@puc.oh.us.gov](mailto:Sarah.parrot@puc.oh.us.gov)  
[Greta.see@puc.oh.us.gov](mailto:Greta.see@puc.oh.us.gov)

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

**Commission of Ohio Docketing Information System on**

**1/9/2019 5:05:24 PM**

**in**

**Case No(s). 18-0501-EL-FOR, 18-1392-EL-RDR, 18-1393-EL-ATA**

Summary: Memorandum Memorandum Contra Motion of Ohio Power Company to Strike Relevant Intervenor Testimony by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.