

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the 2018 :
Long-Term Forecast Report : Case No. 18-501-EL-FOR
of Ohio Power Company and :
Related Matters. :

In the Matter of the :
Application of Ohio Power :
Company for Approval to :
Enter Into Renewable : Case No. 18-1392-EL-RDR
Energy Purchase :
Agreements for Inclusion :
in the Renewable :
Generation Rider. :

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

- - -

PROCEEDINGS

before Ms. Sarah Parrot and Ms. Greta See, Attorney
Examiners, at the Public Utilities Commission of
Ohio, 180 East Broad Street, Room 11-A, Columbus,
Ohio, called at 9:10 a.m. on Friday, February 1,
2019.

- - -

VOLUME X

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481

- - -

1 APPEARANCES:

2 American Electric Power Service Corporation
3 By Mr. Steven T. Nourse
4 and Ms. Christen M. Blend
5 1 Riverside Plaza, 29th Floor
6 Columbus, Ohio 43215

7 Porter Wright Morris & Arthur, LLP
8 By Mr. Eric B. Gallon
9 and Mr. L. Bradfield Hughes
10 41 South High Street, 29th Floor
11 Columbus, Ohio 43215

12 Ice Miller, LLP
13 By Mr. Christopher L. Miller
14 250 West Street, Suite 700
15 Columbus, Ohio 43215

16 On behalf of Ohio Power Company.

17 Dave Yost, Ohio Attorney General
18 By Mr. John Jones, Assistant Section Chief
19 and Mr. Thomas W. McNamee,
20 Principal Assistant Attorney General
21 Public Utilities Section
22 30 East Broad Street, 16th Floor
23 Columbus, Ohio 43215

24 On behalf of the Staff of the Public
25 Utilities Commission of Ohio.

McNees Wallace & Nurick, LLC
By Mr. Frank P. Darr
and Mr. Matthew R. Pritchard
Fifth Third Center, Suite 1700
21 East State Street
Columbus, Ohio 43215

On behalf of Industrial Energy
Users-Ohio.

1 APPEARANCES: (Continued)

2 Ohio Partners for Affordable Energy
3 By Ms. Colleen L. Mooney
4 and Mr. Christopher J. Allwein
5 P.O. Box 12451
6 Columbus, Ohio 43215

7 On behalf of Ohio Partners for Affordable
8 Energy.

9 Carpenter Lipps & Leland LLP
10 By Ms. Kimberly W. Bojko
11 and Mr. Brian W. Dressel
12 280 North High Street, Suite 1300
13 Columbus, Ohio 43215

14 On behalf of Ohio Manufacturers'
15 Association Energy Group.

16 Interstate Gas Supply
17 By Mr. Joseph Olikier
18 and Mr. Michael A. Nugent
19 6100 Emerald Parkway
20 Dublin, Ohio 43016

21 On behalf of IGS Energy and IGS Solar,
22 LLC.

23 Bruce J. Weston, Ohio Consumers' Counsel
24 Office of the Ohio Consumers' Counsel
25 By Ms. Maureen R. Willis,
Senior Counsel,
Mr. William J. Michael,
and Mr. Christopher Healey,
Assistant Consumers' Counsel
65 East Street, 7th Floor
Columbus, Ohio 43215

On behalf of the Residential Utility
Consumers of Ohio Power Company.

Carpenter Lipps & Leland LLP
By Ms. Angela Paul Whitfield
and Mr. Stephen E. Dutton
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of The Kroger Company.

1 APPEARANCES: (Continued)

2 Ohio Environmental Council
3 By Ms. Miranda Leppla,
4 Mr. Trent A. Dougherty,
5 and Mr. Christopher D. Tavenor
6 1145 Chesapeake Avenue, Suite I
7 Columbus, Ohio 43212

8 On behalf of the Ohio Environmental
9 Council.

10 Kegler, Brown, Hill & Ritter, LPA
11 By Mr. Robert Dove
12 Capitol Square, Suite 1800
13 65 East State Street
14 Columbus, Ohio 43215-4294

15 On behalf of the Natural Resources
16 Defense Council.

17 Whitt Sturtevant, LLP
18 By Mr. Mark A. Whitt
19 and Ms. Rebekah J. Glover
20 The KeyBank Building, Suite 1590
21 88 East Broad Street
22 Columbus, Ohio 43215

23 On behalf of Direct Energy, LP and Retail
24 Energy Supply Association.

25 Benesch Friedlander Coplan & Aronoff, LLP
By Mr. John F. Stock
and Mr. Orla E. Collier, III
41 South High Street, Suite 2600
Columbus, Ohio 43215

On behalf of the Ohio Coal Association.

Dickinson Wright, PLLC
By Ms. Christine M.T. Pirik,
Mr. Terrence O'Donnell,
Mr. William V. Vorys,
and Ms. Cristina N. Luse
150 East Gay Street, Suite 2400
Columbus, Ohio 43215

On behalf of Mid-Atlantic Renewable
Energy Coalition.

1 APPEARANCES: (Continued)

2 Boehm, Kurtz & Lowry
3 By Mr. Michael L. Kurtz,
4 Ms. Jody Kyler Cohn,
5 and Mr. Kurt J. Boehm
6 36 East Seventh Street, Suite 1510
7 Cincinnati, Ohio 45202

8 On behalf of Ohio Energy Group.

9 Sierra Club
10 By Mr. Tony G. Mendoza
11 2101 Webster Street, 13th Floor
12 Oakland, California 94612

13 Richard Sahli Law Office, LLC
14 By Mr. Richard C. Sahli
15 981 Pinewood Lane
16 Columbus, Ohio 43230-3662

17 On behalf of the Sierra Club.

18 - - -
19
20
21
22
23
24
25

1 Friday Morning Session,
2 February 1, 2019.

3 - - -

4 EXAMINER PARROT: Let's go on the record.
5 Good morning, everyone. We are back for
6 the continuation of the hearing in Case No.
7 18-501-EL-FOR, et al. Let's start with brief
8 appearances and we'll start with the Company and work
9 our way around the table.

10 MS. BLEND: Thank you, your Honor. Good
11 morning. On behalf of the Ohio Power Company,
12 Christen M. Blend and Steven T. Nourse; the law firm
13 of Ice Miller, by Christopher L. Miller; and the law
14 firm of Porter Wright Morris & Arthur, by L. Bradford
15 Hughes and Eric B. Gallon.

16 MR. KURTZ: Good morning, your Honors.
17 For OEG, Mike Kurtz.

18 MR. McNAMEE: For the Staff of the Public
19 Utilities Commission of Ohio, Tom McNamee.

20 MS. WILLIS: On behalf of the residential
21 customers of the Ohio Power Company, Maureen Willis,
22 Christopher Healey, and William Michael.

23 MS. BOJKO: Good morning, your Honors.
24 On behalf of Ohio Manufacturers' Association Energy
25 Group, Kimberly W. Bojko and Brian W. Dressel.

1 MS. WHITFIELD: Good morning, your
2 Honors. On behalf of The Kroger Company, Angie Paul
3 Whitfield and Stephen E. Dutton.

4 MR. DARR: On behalf of IEU-Ohio, Frank
5 Darr.

6 MS. LEPPLA: Good morning, your Honors.
7 For the Ohio Environmental Council, Miranda Leppla.

8 MR. DOVE: For Natural Resources Defense
9 Council, Robert Dove.

10 MS. GLOVER: For the Retail Energy Supply
11 Association and Direct Energy, Mark Whitt and Rebekah
12 Glover.

13 EXAMINER PARROT: Thank you, everyone.

14 All right. We have several pending
15 pleadings to address this morning.

16 First, on January 29, 2019, Dr. Dormady
17 filed a motion seeking leave to file a memorandum
18 contra to the joint motion to exclude his testimony,
19 as filed by NRDC and OPAE on January 28, 2019. We
20 find it appropriate under the circumstances to grant
21 Dr. Dormady's motion. Dr. Dormady's memorandum
22 contra to the joint motion is, therefore, accepted
23 for filing and should be regarded as an amicus
24 memorandum.

25 Next, we will address the joint motion of

1 NRDC and OPAE to exclude Dr. Dormady's testimony.
2 Following thorough consideration of the pleadings,
3 the joint motion is denied. Although we agree with
4 OCC and others that this Commission is not the proper
5 forum in which to adjudicate alleged ethics
6 violations, this Commission does have authority and
7 broad discretion under R.C. 4901.13 to regulate and
8 conduct its proceedings, including authority to
9 determine whether a witness is qualified to testify.

10 We also note that we have an obligation
11 to take a measured approach in reviewing and
12 deliberating on a motion such as this one, consistent
13 with this Commission's duty to ensure that principles
14 of fundamental fairness and integrity are followed in
15 its proceedings.

16 Ultimately, we find no basis to exclude
17 Dr. Dormady's testimony upon consideration of his
18 qualifications. We also note that it would be unduly
19 prejudicial to OCC if his testimony were to be
20 excluded at this point in the process.

21 With respect to the alleged conflict, we
22 note only that if Dr. Dormady testifies on behalf of
23 OCC in these proceedings, he does so at his own
24 election and without any ruling from this Commission
25 on that issue.

1 Finally, regarding the interlocutory
2 appeal, request for certification, and application
3 for review filed by OCC on January 30, 2019, OCC's
4 request for certification of the appeal to the
5 Commission is denied.

6 Although OCC asserts that its appeal
7 should be taken immediately to the full Commission,
8 OCC did not attempt to make the showing required
9 under Ohio Administrative Code Rule 4901-1-15(A).
10 Neither did OCC make its case for certification under
11 Ohio Administrative Code Rule 4901-1-15(B).

12 Although OCC argues that its appeal
13 presents a new or novel question of law, the
14 Commission and its Attorney Examiners have extensive
15 experience in regulating the course of hearings in
16 determining whether a witness is qualified to offer
17 testimony.

18 As examples, I will point you to the
19 January 2, 1998, Entry in Case No. 97-439-TP-CSS; the
20 November 15, 1988, Entry in Case No. 88-17-GA-GCR;
21 the February 18, 1987, Opinion and Order in Case No.
22 86-07-EL-EFC; and the July 26, 1978, Opinion and
23 Order in Case No. 76-357-GA-AIT.

24 Further, although OCC contends that an
25 immediate determination by the Commission is needed

1 to prevent undue prejudice, OCC made no attempt to
2 demonstrate how that is the case.

3 As to the merits of OCC's claim that the
4 ruling of the Attorney Examiners was improper, we
5 note -- we note that Ohio Administrative Code
6 4901-1-12(G) clearly provides that the presiding
7 hearing officer may direct that any motion made at a
8 public hearing be reduced to writing.

9 All right. At this time I was going to
10 offer OCC the opportunity to call again to the stand
11 Dr. Dormady who I understand is not present today; is
12 that correct, Ms. Grady? Sorry. Ms. Willis.

13 MS. WILLIS: That's correct. This
14 morning I received an early morning e-mail from
15 Dr. Dormady indicating that he is not able to make it
16 to the hearing this morning with his apologies. I
17 have attempted, I am attempting to contact
18 Dr. Dormady to find out if he has availability later
19 today as well as we had given availability for the
20 upcoming week for Dr. Dormady, and I will continue to
21 try to communicate with Dr. Dormady to see if
22 those -- if he is still available for next week to be
23 presented for cross-examination.

24 EXAMINER PARROT: Thank you for doing
25 that, Ms. Willis.

1 Anything in response?

2 MS. BLEND: Your Honor, I just want to
3 note for the record that Dr. Dormady has been
4 provisionally scheduled for this morning at 9:00 a.m.
5 since Monday of this week.

6 The Company objects to any delay that's
7 going to be caused as a result of Dr. Dormady's
8 unavailability. It's really not the Company's fault
9 that Dr. Dormady is now unavailable without
10 explanation or unable to make it without explanation.
11 The parties just learned of this development 15
12 minutes ago this morning. And I think for -- I guess
13 given the circumstances where we are, the Company
14 would move to just exclude Dr. Dormady's testimony
15 based on the fact that he's not here today to testify
16 as previously scheduled.

17 MS. WILLIS: Your Honor, if I may? I
18 don't know that there's any grounds to exclude a
19 witness because they didn't -- they are unable to
20 show up, especially given the weather conditions this
21 morning, although I don't know that the weather
22 conditions are this specific reason. I will attempt
23 to find out further, but I don't believe there's any
24 grounds to exclude a witness because he was unable to
25 make it.

1 I would also say that Dr. Dormady at
2 the -- Friday, when he was supposed to come on, he
3 was present all day long, sat in the lobby all day
4 long, waiting to come on, was then put on and then
5 told to go home because there was a motion with
6 regard to -- an unfounded motion, I may add, with
7 regard to excluding him, so I don't see that there's
8 any grounds. I haven't heard counsel provide any
9 grounds, rule, or precedent that would allow the
10 exclusion of his testimony.

11 MS. BOJKO: Your Honor, OMAEG would
12 oppose any motion from the Company. The Company did
13 not move to exclude Mr. Rinebolt's testimony when his
14 plane did not arrive in a timely fashion, and we sat
15 in here for an hour and a half waiting for his
16 arrival.

17 There have also been other circumstances
18 where expert witnesses were not able to attend. We
19 don't know if there's a health issue. We don't know
20 if there is a medical reason, a family member. We
21 don't know if it's the weather. The weather was very
22 bad outside. I don't think it is unreasonable to
23 give some latitude to an expert witness that is
24 taking their time to come here and give this
25 information to the Commission that he has and to

1 testify.

2 I also would note that I agree with
3 Ms. Willis that he was here on Friday and had we not
4 had the unfounded motion to exclude, he would have
5 already been on the stand. So AEP -- there is no
6 prejudice to AEP; any prejudice is made by them for
7 not opposing that motion at that time as well.

8 MS. BLEND: Your Honor, I'll just
9 respond. I don't think the Company's -- you know,
10 Ms. Bojko's comment about the Company's
11 non-opposition to a motion that NRDC made is
12 irrelevant, and I don't appreciate the aspersion she
13 just cast.

14 I'll note, we believe Dr. Dormady lives
15 in Franklin County, relatively close to downtown.
16 Mr. Kurtz made it from Cincinnati today. Ms. Bojko
17 made it from New Albany. So while I understand the
18 weather is bad, the rest of us were here. This has
19 been scheduled, again, since last Monday. And the
20 grounds for the motion would be the undue delay
21 associated with rescheduling Dr. Dormady for a date
22 in the future. And I'll just leave it at that.

23 MS. WILLIS: And, your Honor, if I might
24 respond, the undue delay, there is no undue delay.
25 The Company has indicated if it wants to put on

1 rebuttal testimony, that it will put on that witness
2 next Friday. So we have a whole week here where it's
3 not going to be -- the proceeding is not going to be
4 concluded. It's going to go on. It's just a matter
5 of rescheduling and making sure that he can be fit in
6 next week. I think we have got all week long.

7 And as I indicated earlier, last week,
8 Mr. Dormady -- Professor Dormady has availability for
9 this upcoming week. So I don't see that there's any
10 undue delay. We are not ending the hearing today.
11 We are going forward. We're intending to have
12 rebuttal testimony next Friday.

13 EXAMINER SEE: And confirm for the Bench
14 what days Professor Dormady is available next week.

15 MS. WILLIS: I have to find that, your
16 Honor. I sent it out to Ms. Blend last week after
17 your Honors asked for his dates of availability. I
18 don't have it offhand. I will try to track my e-mail
19 down.

20 MS. BLEND: And I will just also note,
21 your Honor, when Ms. Willis sent me Dr. Dormady's
22 availability for next week, it was the afternoon
23 after Attorney Examiner Parrot's scheduling,
24 confirming that he was scheduled for 9 o'clock today.
25 I responded and confirmed for Ms. Willis -- with

1 Ms. Willis that he was available today. And she had
2 indicated she was simply -- had simply looked for his
3 availability next week because that had been
4 discussed at --

5 MS. WILLIS: Yes, your Honors had asked
6 for that. That was my understanding, you had asked
7 for his availability for this week and for last --
8 and the next week and that was what I was doing.

9 EXAMINER PARROT: We have yet to see
10 that.

11 MS. WILLIS: Yes.

12 EXAMINER PARROT: If you could send that
13 and provide that now.

14 MS. WILLIS: I will do that, your Honors.

15 EXAMINER PARROT: All right. Let's table
16 this issue just for now. Ms. Willis, I am going to
17 ask that you do your best, maybe use your phone --

18 MS. WILLIS: Your Honors --

19 EXAMINER PARROT: -- and try to get ahold
20 of Dr. Dormady.

21 MS. WILLIS: -- Dr. Duann is doing that
22 right as we speak.

23 EXAMINER PARROT: Very good.

24 Let's go ahead and discuss the Company's
25 proposal for rebuttal testimony.

1 MS. BLEND: Your Honor, the Company
2 requests to file rebuttal testimony from Company
3 Witness Kamran Ali on the narrow issue of whether
4 Dr. Ali's generic LMP analysis performed in May 2018
5 is affected or changes as a result of the specific
6 Highland solar farm project now interconnecting to
7 the Dayton Power & Light Stuart-Clinton 345 kV line.

8 Dr. Ali's generic analysis was performed
9 in May 2018. At that time, the planned point of
10 interconnection for the Highland solar farm was the
11 AEP Hillsboro 138 kV substation. Dr. Ali's direct
12 testimony, on cross, explained that while Dr. Ali's
13 testimony and analysis were generic in nature, AEP's
14 transmission started with three known projects so
15 that the inputs that they used in their modeling was
16 more accurate for Ohio or for the parts of the areas
17 in Ohio where these projects were expected to be
18 built.

19 In October of 2018, after Mr. Ali's
20 testimony, generic testimony, and analysis was filed,
21 the interconnection point changed with PJM to
22 interconnect to Dayton Power & Light. The Company
23 did not see a need to update or supplement Dr. --
24 Mr. Ali's testimony because Mr. Ali's LMP analysis
25 was and has been intended to be generic in nature.

1 But because Intervenor counsel has raised on
2 cross-examination and argues that Dr. -- Mr. Ali's
3 generic LMP analysis is flawed because it didn't
4 model the specific characterization of the Highland
5 solar farm project, including the fact that it's now
6 interconnecting to Dayton Power & Light, the Company
7 would request the opportunity to file very limited
8 rebuttal testimony looking -- that reruns the LMP
9 analysis based on the current PJM interconnection to
10 The Dayton Power and Light Company's Stuart-Clinton
11 line.

12 And the Company would be prepared to file
13 that testimony by close of business today. The
14 Company would serve Mr. Ali's confidential workpapers
15 to counsel for all parties who have signed protective
16 agreements today. And we ask that Mr. Ali be
17 scheduled for hearing, regarding his very narrow
18 rebuttal testimony, next Friday, February 8.

19 The Company would also reserve the right
20 to seek additional rebuttal testimony to respond to
21 any issues that Dr. Dormady would raise if
22 Dr. Dormady -- given the fact that Dr. Dormady is now
23 going to be testifying after we're discussing
24 rebuttal. Thank you.

25 MR. DARR: If I may?

1 EXAMINER PARROT: Mr. Darr.

2 MR. DARR: Thank you, your Honor.

3 There are two questions raised by the
4 motion presented by AEP seeking to offer the rebuttal
5 testimony to buttress their study prepared by
6 Dr. Ali. First, is it proper rebuttal testimony?
7 The answer to that question is no. And I will go
8 into the details of that here in a moment. The
9 second is whether it would be proper to reopen the
10 record for purposes of allowing AEP to go forward and
11 buttress its direct case. And the answer to that, on
12 equitable grounds, is no as well.

13 Turning to the first issue. Is this
14 proper rebuttal testimony? Rebuttal testimony
15 addresses an issue raised by an adversary as part of
16 its direct case, the adversary's case. It is not
17 responsive to an issue that comes up -- it is not
18 proper to address rebuttal testimony issues that have
19 been raised with regard to the direct case as
20 presented by the -- by the proponent.

21 The description that you have here today
22 from AEP is cross-examination resulted in an
23 identification of a problem with the initial study,
24 the direct case. It did not arise as a result of
25 testimony presented by the adversary. Therefore,

1 responding to that testimony is, in effect,
2 presenting evidence that should have been or could
3 have been presented as part of the direct case. That
4 is not proper rebuttal testimony by any stretch of
5 the imagination.

6 Now, the second question is whether or
7 not it would be proper to reopen in this
8 circumstance. To reopen the case, AEP has to
9 demonstrate that it is now in possession of
10 information that it was not in possession of when it
11 presented its direct case. By Ms. Blend's own
12 admission, that is not the situation here. It was --
13 it became aware of the problem with its transmission
14 study at least, or should have become aware at least
15 by October. But I would present to the Bench that,
16 in fact, AEP was well aware that the transmission
17 assumptions in this study were wrong, or should have
18 been aware as early as December of 2017.

19 How do we know that? Because the bid
20 documents associated with this project and which are
21 summarized in discovery presented by -- provided by
22 AEP to the parties in the related case show that as
23 of December 2017, the Stuart station on the DP&L
24 system was already identified as the interconnection
25 point. And, in fact, AEP was in possession of that

1 information. That is confirmed by the fact that back
2 as -- as early as December 2017, PJM, itself, had
3 identified this particular project, the solar project
4 at Highland, and had identified it as being an
5 interconnection by DP&L and specifically at the
6 Stuart interconnect. That is then confirmed
7 repeatedly in the PJM documents as well.

8 On both grounds, then, on the first
9 ground, is this proper rebuttal testimony? The
10 answer to that is clearly no. They are not
11 responding to an issue that's been raised by a party
12 through its direct case and, in that regard, it is
13 improper rebuttal testimony. And it is improper to
14 reopen, if under these circumstances, because AEP
15 went forward with its direct case fully knowing that
16 the interconnection point was at the wrong spot. If
17 there was a risk with doing that, that was a risk it
18 assumed. And we should not be burdened with rebuttal
19 testimony on this supposedly narrow issue, or
20 allegedly narrow issue, because AEP elected to go
21 forward on information that is inaccurate.

22 On that basis, we would request that
23 the -- we request that the motion to seek rebuttal
24 testimony be denied.

25 MS. BOJKO: Your Honor, OMAEG supports

1 Mr. Darr's opposition to the motion for rebuttal
2 testimony for the reasons that he stated, but I would
3 like to address a misstatement by Ms. Blend.

4 Ms. Blend, in her opening remarks for the
5 motion, stated that they did not learn or there was
6 some kind of change after the filing of Mr. Ali's
7 testimony and that is an incorrect statement, and in
8 addition to what Mr. Darr stated, I wanted to add
9 further timeline to -- to this to further flesh out
10 what has happened in this case.

11 In February 2017, DP&L was listed as the
12 secondary interconnection point for Hecate for the
13 solar facility at issue in this case. In October and
14 November of 2017, there was discussion at PJM about
15 the interconnection change and that is documented,
16 and the utility, at that time, would have and should
17 have known. And then in December of 2017, the bid
18 documents as Mr. Darr explained. And then on
19 September 13, 2018, prior to the filing of Mr. Ali's
20 testimony, PJM updated its interconnection points and
21 Hecate was specifically listed as a DP&L project.
22 That was six days prior to Mr. Ali's testimony being
23 filed. Then Mr. Ali's testimony was filed on
24 September 19. And then on October 9, the Application
25 of Hecate was filed at the Ohio Power Siting Board in

1 order to memorialize that the DP&L is actually the
2 interconnection point.

3 So at this point, from October 9 until
4 the beginning of the hearing, the Company had an
5 opportunity to update its testimony just as any other
6 witness can come on the stand and make corrections or
7 update the testimony and as typical practice before
8 the Commission.

9 The Company chose not to do that, and
10 they, in fact, did rely on a study even though -- you
11 know, over the objections of the Intervenors, they
12 were allowed to rely on the study and use the study
13 to demonstrate the economic benefits related to the
14 location of the solar facility.

15 A witness is responsible for his
16 testimony. Just because a witness may not have known
17 of a change or claims to not have known of a change
18 or didn't think it was important enough, per
19 Ms. Blend, to make a change, Intervenors have a right
20 to question the witness's testimony. They have a
21 right to bring in evidence that challenges the
22 testimony. They have a right to bring in evidence
23 that impeaches a witness's studies, a witness's
24 character, a witness's analysis; this is exactly what
25 the Intervenors did. They brought in evidence that

1 questioned the validity of the testimony, questioned
2 the results and the credibility of the testimony on
3 cross-examination.

4 This is proper cross-examination. It
5 does not give rise to the level of rebuttal
6 testimony. It is not something that was a change
7 that they did not know or learn until the
8 cross-examination.

9 As Mr. Darr stated, for all the rules
10 that he stated, this is not proper rebuttal testimony
11 and we should not allow this type of testimony to
12 correct an error the Company made in relying on a
13 faulty study when they had time to do so during their
14 direct presentation. Thank you.

15 MS. BLEND: If I could respond briefly,
16 your Honor?

17 With respect to, first, to the point that
18 this would not be proper rebuttal testimony, I think
19 it is unfair and somewhat a matter of semantics to
20 say that because Intervenors chose as -- as a
21 strategic decision to address this issue or raise
22 evidence regarding this issue through
23 cross-examination as opposed to through affirmative
24 witness testimony, that should foreclose the
25 Company's opportunity to respond to the issue on

1 rebuttal.

2 This issue -- the fact of the matter is,
3 the supposed evidence calling into question Mr. Ali's
4 generic LMP analysis was raised for the first time by
5 Intervenors' counsel at the hearing in an attempt to
6 undermine the benefits associated with the LMP
7 analysis performed. This testimony -- rebuttal
8 testimony would properly respond to that evidence
9 introduced at the hearing, and it demonstrates and
10 confirms the LMP analysis is unaffected.

11 I think the reason that Intervenor
12 counsel is pushing back against the Company's narrow
13 rebuttal testimony request here is because the
14 evidence would show and confirm that Mr. Ali's
15 generic analysis is unaffected by the change in the
16 interconnection point.

17 I'll also note that it's in the interest
18 of the Commission, in making its decision in this
19 case, to have a full and accurate record before it.
20 And we believe that enabling this limited rebuttal
21 testimony from Mr. Ali would facilitate that.

22 With respect to the quote-unquote
23 equitable argument, I disagree with the
24 characterization of there being a problem with the
25 Company's direct case or with Mr. Ali's generic

1 testimony. Again, the Company stands by that
2 testimony. The testimony was intended to be generic
3 in nature and to model the impacts to -- of
4 650 megawatts of solar and wind interconnecting.

5 The Company was not anticipating, didn't
6 have reason to believe that specific project
7 characteristics would be utilized on
8 cross-examination, over objection of the Company's
9 counsel, to try to undermine that generic analysis;
10 and so it's fair and it would enhance the -- lend to
11 the development of a complete and accurate record to
12 allow the Company to respond to those
13 characterizations and that cross-examination through
14 rebuttal testimony.

15 MR. DARR: Briefly, your Honor -- I'm
16 sorry.

17 MS. BLEND: I have one more thing. The
18 only other point that I'll make is the only
19 testimony, the testimony on this issue right now is
20 that the DP&L -- if there were congestion between the
21 AEP zone and DP&L zone, that could impact the
22 analysis, that was on cross-examination, and that the
23 DP&L zone is distinct from the AEP zone.

24 So to the extent that Intervenors are
25 going to argue on brief that there is congestion

1 between the AEP and the DP&L zone that affects the
2 analysis, without any -- I think it's fair for the
3 Company to have the opportunity to put into the
4 record the evidence that shows otherwise. Thank you.

5 MR. DARR: Thank you, your Honor. I hope
6 the irony is not lost on anyone else, but when AEP
7 complains about semantics on the definition of
8 whether or not we are dealing with rebuttal, I remind
9 them that they are the ones seeking to redefine need
10 in a way that apparently is broader than what might
11 be implied by the statute.

12 But leaving that aside, rebuttal is a
13 defined term. Rebuttal is evidence that answers
14 something that's been presented by the adversary. In
15 this case, clearly, that's not what's happening here.

16 What is happening here is that AEP is
17 seeking to reopen the record and correct a mistake it
18 made in its direct case. The documents -- apparently
19 we don't have any disagreement at this point that the
20 documents that AEP provided as part of its discovery
21 demonstrate that it was on notice in December of 2017
22 that there was a problem. They then elected, after
23 apparently it knew in October of 2018 that the
24 connection point was different, to go forward with
25 testimony in January of 2019. That election blew up

1 on them.

2 Mr. Collier asked the key question, after
3 asking a series of questions about how the modeling
4 was done on the transmission study, do you have the
5 right interconnect point? That's basically what it
6 amounted to. And the answer was no.

7 That's a problem that AEP took on. And
8 we should not be required to have to respond to that
9 at this late stage of the game when AEP made that
10 election.

11 MS. BLEND: Your Honor, if I may, I have
12 two very, very brief responses to Mr. Darr.

13 EXAMINER PARROT: Go ahead.

14 MS. BLEND: The first is that rebuttal
15 testimony is not a defined term. The Commission has
16 confirmed, as recently as its April 2, 2015, Order in
17 Duke's ESP, Case No. 14-841-EL-SSO, affirming, over
18 OCC's argument on brief, the Attorney Examiner's
19 decision allowing Duke to file rebuttal testimony
20 that "there is no certain rule as to when rebuttal
21 testimony may or may not be presented. It depends on
22 the circumstances in the given proceeding and it's
23 within the discretion of the Attorney Examiner." So
24 I wanted to just briefly address that issue.

25 And then with respect to the timing

1 issue, your Honor, I also just want to point out that
2 the Company's decision-making and the Company's
3 understanding of what the scope of this phase of the
4 proceeding would be, in that it was to be generic in
5 nature and not project-specific, was informed by the
6 October 22, 2018, procedural entry issued in the case
7 that confirmed that issues related to the specific
8 projects would be handled in the Phase II hearing.

9 So I just wanted to raise those two very
10 brief points. Thank you.

11 MS. BOJKO: Your Honor, may I first
12 respond to just a case citation for the Bench's
13 consideration? There actually is a Suburban versus
14 Columbia Gas case, I'm trying to get -- the number is
15 17-2168, where the Bench ruled that rebuttal was not
16 appropriate and went through an analysis that I would
17 ask the Bench to consider at that time -- at this
18 time, in response to the Duke Order that Ms. Blend
19 just referenced. Thank you.

20 EXAMINER PARROT: Anything else?

21 MR. OLIKER: Your Honor, if I may be
22 heard just briefly. If we are talking about
23 discretion of the Attorney Examiners, keep in mind if
24 you grant rebuttal in this instance, you encourage or
25 set precedent that any time the Company screws up

1 their initial case and somebody points it out in
2 cross, they are going to just go back and try to fix
3 it in some type of rebuttal testimony. I don't think
4 it's a very good precedent for purposes of developing
5 the record and the type of behavior that it would
6 encourage in Commission proceedings.

7 EXAMINER PARROT: And to the point that
8 the Commission is interested in a full and accurate
9 record in being able to render its decision in this
10 case, what would you all say?

11 MS. BOJKO: I think the Commission has a
12 full and accurate record, and the point of where the
13 connect -- disconnection is does not give the Company
14 the right to go back and rerun an analysis that we
15 then have to address and recross the witness on based
16 on their error in their original case.

17 It's -- that's the whole point of
18 cross-examination is to impeach a witness, to
19 discredit a witness, to point out flaws in surveys,
20 analyses. That's the whole point of cross. The
21 Intervenors don't have an opportunity to go back and
22 do any kind of rebuttal in order to bolster or
23 correct errors in their testimony.

24 EXAMINER PARROT: And they don't have the
25 burden of proof in this case either.

1 MS. BOJKO: Your Honor, this is -- this
2 is an error that was known and should have been
3 known. It wasn't a change. It is something that was
4 known and should have been known. That is the
5 distinction and that's where the rebuttal lies.

6 And in the Columbia -- Suburban versus
7 Columbia case, the Examiners in there say that the
8 party with the burden has no right to rebuttal, and
9 the Commission and the Attorney Examiners can decide
10 if it's necessary, given the evidence that was
11 produced before them. They said, in that case, there
12 is no right to rebuttal for the person with the
13 burden.

14 EXAMINER PARROT: We are just going to
15 take a short recess, consider the citations.

16 MS. BLEND: Could I possibly just make
17 one final point? I just want to disagree again with
18 the characterization of the Company's direct
19 testimony of Dr. -- Mr. Ali and the rebuttal is
20 correcting an error. As I thought I made clear at
21 the outset, and I want to make clear so you
22 understand, Dr. -- Mr. Ali's rebuttal testimony would
23 have confirmed that his original analysis was correct
24 in response to the -- the evidence that Intervenors
25 put on trying to undermine that regarding the change

1 in the point of interconnection for this specific
2 project. Thank you.

3 EXAMINER SEE: And before we go off the
4 record, you want to say something?

5 MS. WILLIS: I do have an update, your
6 Honor. Dr. Dormady was sick this morning and is not
7 expected to be well later today nor Monday. But his
8 availability, and I've just about got that confirmed,
9 his availability would be for Wednesday, wide open,
10 and Friday after 1:30 p.m. open as my understanding.
11 It will be confirmed within minutes if that
12 availability that we indicated earlier is still
13 holding true. Thank you.

14 MS. BOJKO: Your Honor, if you are
15 considering that when you leave, I just wanted to
16 bring to the Bench's attention, which I am sure you
17 are well aware, many of us will be in the FirstEnergy
18 hearing at least probably Monday through Wednesday is
19 what the schedule is right now.

20 EXAMINER PARROT: All right. Short
21 recess.

22 (Recess taken.)

23 EXAMINER PARROT: All right. Let's go
24 back on the record.

25 With respect to whether or not the

1 Company should be permitted to file rebuttal
2 testimony in these proceedings, we would note that
3 the Examiners do have discretion as to whether or not
4 it's proper to allow rebuttal testimony in a given
5 case and, under the circumstances of this one, in the
6 interest of ensuring the Commission has a full and
7 accurate record on which to base its decision, we are
8 going to allow the Company to file the rebuttal
9 testimony of Mr. Ali.

10 Ms. Blend, I guess if you are prepared to
11 file that today, that's perfectly acceptable to the
12 Bench.

13 MS. BLEND: Thank you, your Honor. The
14 Company will begin to file Mr. Ali's rebuttal
15 testimony at the close of business today, and we will
16 also serve his rebuttal workpapers, which are
17 confidential, to counsel for all parties who have
18 executed protective agreements today, and the Company
19 would request that we schedule rebuttal -- hearing
20 regarding rebuttal testimony for Friday, February 8.

21 EXAMINER PARROT: Which brings me to my
22 next issue which is Dr. Dormady's testimony. We are
23 going to deny the request to exclude his testimony
24 given that he is apparently ill. We've coordinated
25 with other Examiners that are involved in other cases

1 going on next week, and in light of his availability,
2 we are going to ask that he appear at 1:30 on Friday
3 next week, February 8, in Room 11-A.

4 With that, Ms. Blend, I guess we were
5 thinking that if Mr. Ali is available perhaps on
6 Monday or Tuesday the following week.

7 MS. BLEND: I have his availability for
8 that week, your Honor. Give me one moment. I
9 apologize.

10 MR. KURTZ: Can we go off the record?
11 Can we go off the record?

12 EXAMINER PARROT: Yes.

13 (Discussion off the record.)

14 EXAMINER PARROT: Let's go back on the
15 record.

16 We have agreed on a schedule.
17 Dr. Dormady is going to appear on Wednesday,
18 February 6, at 2:00 p.m. We are going to ask that he
19 be there and, if he's not, let us know as soon as you
20 know, Ms. Willis.

21 MS. WILLIS: I will, your Honor.

22 EXAMINER PARROT: And then we will
23 reconvene Friday, February 8, at 9:00 a.m. for the
24 Company's rebuttal testimony and specifically the
25 rebuttal testimony of Mr. Ali. And we'll let you

1 know -- yeah, we'll let you know about the room
2 situation by e-mail.

3 Anything else for today?

4 Thank you, everyone.

5 (Thereupon, at 10:14 a.m., the hearing
6 was adjourned.)

7 - - -

8 CERTIFICATE

9 I do hereby certify that the foregoing is a
10 true and correct transcript of the proceedings taken
11 by me in this matter on Friday, February 1, 2019, and
12 carefully compared with my original stenographic
13 notes.

14

15 _____
Karen Sue Gibson, Registered
Merit Reporter.

16

17 _____
Carolyn M. Burke, Registered
Professional Reporter.

18

19 (KSG-6687)

20 - - -

21

22

23

24

25

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/11/2019 8:50:12 AM

in

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

Summary: Transcript in the matter of the Long-Term Forecast Report of the Ohio Power Company hearing held on 02/01/19 - Volume X electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.