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Via E-MAIL

March 27, 2019

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case Nos. 18-0501-EL-FOR, 18-1392-EL-RDR and 18-1393-EL-ATA

Dear Counsel:

Please find attached the REPLY BRIEF OF THE OHIO ENERGY GROUP e-filed today in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service.

Respectfully ~~yours~~,

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BOEHM, KURTZ & LOWRY

MLKkew
Encl.
Cc: Certificate of Service

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters.	))	**Case No. 18-501-EL-FOR**
In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into Renewable Energy Purchase Agreements for Inclusion in the Renewable Generation Rider.	))))	**Case No. 18-1392-EL-RDR**
In the Matter of the Application of Ohio Power Company to Amend its Tariffs.	))	**Case No. 18-1393-EL-ATA**

REPLY BRIEF OF THE THE OHIO ENERGY GROUP

The Ohio Energy Group ("OEG") submits this Reply Brief in support of its recommendations to the Public Utilities Commission of Ohio ("Commission"). OEG's decision not to respond to other arguments raised in this proceeding should not be construed as implicit agreement with those arguments.

To be clear, OEG does not support or oppose AEP Ohio's position on the merits at this time. In Phase I we are only supporting the Commission's legal authority to move forward to Phase II. OEG is urging the Commission to preserve its jurisdiction under R.C. 4928.143(B)(2)(c), but is not advocating for approval of specific renewable generation projects.

I. The Commission Should Reject Opponents' Calls To Render An Important Statutory Tool Meaningless.

Throughout opponents' briefs, a common refrain is repeated again and again – the Commission should adopt an interpretation of "*need*" under R.C. 4928.143(B)(2)(c) that is so narrowly constricted as to essentially render that statute meaningless.[1] Under opponents' interpretation, the Commission would only examine two factors

[1] Initial Brief of the Ohio Consumers' Counsel ("OCC Brief"); Initial Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio ("Staff Brief") at 3-4; Initial Brief of Interstate Gas Supply, Inc. and IGS Solar, LLC at 11-12; Initial Brief of Industrial Energy Users-Ohio at 11; Post-Hearing Brief of the Ohio Manufacturers' Association Energy Group at 21 and 28; Initial Post-Hearing Brief the Kroger Co. at 31; Initial Brief of Direct Energy, LP at 6-12; Initial Brief of Intervenor Ohio Coal Association at 7-8.

– PJM's reserve margin and the ability of a proposed resource to satisfy Ohio's RPS requirements. Some advocate for such an interpretation based upon concerns about the potential impact on customer rates, downplaying the fact that AEP Ohio's proposal is projected to result in $196 million in total Net Present Value ("NPV") savings as well as long-term rate stability for customers (hedging 4.55% of AEP Ohio's total energy load against potentially volatile market prices).[2] Others advocate for this interpretation in order to hinder the development of renewable resources that could undermine their own competing business interests. But the Commission should take great care when considering these arguments, as adoption of such a narrowly constricted interpretation of *"need"* would throw away an important tool created by the General Assembly.

When the General Assembly enacted S.B. 221 in July 2008, Ohio utilities were already members of regional transmission organizations ("RTOs"), including PJM. The Legislature therefore could have ceded all of Ohio's generation authority to the FERC/RTOs. It expressly chose not to do so. Rather, through R.C. 4928.143(B)(2)(c), the General Assembly provided the Commission with authority that can be used to further Ohio's state-specific generation interests, including the state policies expressly listed in R.C. 4928.02.

Opponents may not agree with the General Assembly's choice to create such generation authority through S.B. 221. Indeed, some even hesitate to refer to that law by its name.[3] But to render a statute effectively meaningless by limiting its application to circumstances that opponents know are unlikely to ever occur is to undermine the General Assembly's legislative intent, in contravention of Ohio's canons of statutory interpretation.[4] By its plain words, R.C. 4928.143(B)(2)(c) authorizes an approach under which Ohio is free to pursue state-specific generation interests while still receiving all of the benefits of the federally-regulated wholesale power market.

Opponents lean heavily on the *Turning Point* decision, but the Commission is not perpetually constrained by that single precedent. In fact, there is at least one countervailing precedent in which the Commission did find a *"need"* for solar resources consistent with R.C. 4928.143(B)(2)(c).[5] Further, as the Commission is well-aware, if

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[2] Company Ex. 14 at 10:20-11:7; Ex. JFT-1 at 20-22, Tr. Vol. I (January 15, 2019) at 58:2-4 and Tr. Vol. VI at 1519-1521.
[3] OCC Brief at 2.
[4] R.C. 1.47 (*"[i]n enacting a statute, it is presumed that: (B) the entire statute is intended to be effective...[and] (D)a result feasible of execution is intended."*).
[5] Opinion and Order, Case 10-505-EL-FOR (April 19, 2011).

the Commission wishes to depart from precedent, it simply must explain why.[6] The Commission could easily do so here. The *Turning Point* decision turned largely on whether the proposed resources would help satisfy Ohio's RPS requirements.[7] But as already explained in our Initial Brief, the generation authority granted under R.C. 4928.143(B)(2)(c) does not apply solely to renewable resources. Instead, it applies to many types of generating resources, including natural gas, coal, or nuclear generation. Accordingly, the *Turning Point* precedent should not be invoked to unduly narrow the scope of the *"need"* inquiry contemplated under R.C. 4928.143(B)(2)(c). Moreover, as discussed in detail in the supporting party briefs, there is a compelling record in this case indicating that 900 MWs of generic renewable resources could satisfy many *"needs"* of Ohioans, including the need for reasonably priced retail electric service, rate stability, fuel diversity, and economic development in Ohio. The Commission should therefore exercise caution and refrain from unduly binding its hands in future R.C. 4928.143(B)(2)(c) proceedings.

II. A Finding Of Need For 900 MW Of Economically-Beneficial Renewable Energy Is Not Preempted By Federal Law.

OCC invokes *Hughes v. Talen Energy Marketing, LLC* in claiming that AEP Ohio cannot recover the costs of the proposed generic renewable projects through its Renewable Generation Rider (RGR).[8] OCC's analysis is flawed. OEG has already explained how a Commission finding of *"need"* in Phase I of this case would be consistent with the *Hughes* decision. In the *Hughes* case, the U.S. Supreme Court specifically opened the door for states seeking to adopt new resources that would further their specific interests, particularly clean generation interests, explaining that *"so long as a State does not condition payment of funds on capacity clearing the auction, the State's program would not suffer from the fatal defect that renders Maryland's program unacceptable."*[9] Here, payment of funds associated with AEP Ohio's proposed generic renewable energy resources would not be conditioned on the resources clearing in the PJM capacity auctions. Consequently, those resources would not be unlawfully

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[6] See *In re Duke Energy Ohio, Inc.,* 150 Ohio St.3d 437, 2017-Ohio-5536, ¶ 23 (citing *In re Application of Columbus S. Power Co.,* 128 Ohio St.3d 512, 2011-Ohio-1788, ¶ 52).
[7] Opinion and Order, Case Nos. 10-501-EL-FOR (January 9, 2013) (*Turning Point* Order).
[8] OCC Brief at 42-47 (citing *Hughes v. Talen Energy Mktg, LLC,* 136 S. Ct 1288 (2016)).
[9] *Hughes,* 136 S. Ct. 1288, 1299 (emphasis added).

"tethered" to wholesale capacity market participation, thus fitting squarely within the *"safe harbor"* created by the U.S. Supreme Court.

Both PJM and the FERC have recently proposed market reforms specifically designed to accommodate states that elect to pursue their own specific generation interests.[10] As PJM explains in its proposal, *"the question raised ... is not **whether** states have the right to act but instead **how** the wholesale market should **respond** to such actions so that the goal of ensuring just and reasonable rates is not frustrated by an individual state's action."*[11] And federal courts of appeals have recently approved state efforts to support generating resources that further their specific policy interests, even if those resources may have an incidental impact on wholesale market prices. [12] Accordingly, nothing in federal law prohibits the Commission's exercise of its authority under R.C. 4928.143(B)(2)(c) to protect and promote Ohio's specific generation-related interests while still enjoying the benefits of the federally-regulated wholesale markets.

III. The Proposed Renewable Energy Resources Meet Generation Needs That Cannot Currently Be Satisfied Through The Competitive Market.

In both the AEP Ohio 2011 ESP and the *Turning Point* cases cited by opponents, the Commission stated that new generation projects would be approved only when needs cannot be met through the competitive market.[13] Here, neither the wholesale nor the retail markets are meeting *"needs"* that would be met by the 900 MW of proposed generic renewable projects. For example, the generic renewable energy projects would satisfy a need for rate stability, establishing a twenty-year hedge against potentially volatile market prices. In contrast, the PJM market only secures capacity three years out and the current CRES Apples-to-Apples offers do not extend beyond three years.[14] Long-term renewable energy hedges therefore are presently inaccessible to many AEP Ohio customers. Additionally, the generic renewable energy projects would satisfy a need for fuel diversity that is

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[10] Capacity Repricing or in the Alternative MOPR-Ex Proposal: Tariff Revision to Address Impacts of State Public Policies on the PJM Capacity Market, FERC Docket No. ER18-1314 (April 9, 2018) ("PJM Filing"); Order Rejecting Proposed Tariff Revisions, Granting in Part and Denying in Part Complaint, and Instituting Proceeding Under Section 206 of the Federal Power Act, Docket Nos. EL18-187 *et al.*, (June 29, 2018).

[11] PJM Filing at 4 (emphasis added).

[12] *Elec. Power Supply Ass'n v. Star, 904 F.3d 518, 524* (7th Cir. 2018); *Coalition for Competitive Elec. v. Zibelman*, 906 F.3d 41 (2d Cir. 2018).

[13] Opinion and Order, Case Nos. 11-346-EL-SSO *et al* (December 14, 2011) at 39; *Turning Point* Order at 26.

[14] Company Ex. 23 (IGS's Rate on Apples to Apples).

currently unmet in PJM (which is agnostic as to fuel supply and in which only 2.8% of generation is renewable),[15] as well as in Ohio, where renewable energy resources are unavailable to many customers who lack either the physical or financial ability to employ them.[16] And as AEP Ohio explains in detail, the Power Siting Board has not yet certified any solar facility in Ohio approaching the output of the projects at issue in these proceedings and the *"other solar projects at some preliminary stage of development [in Ohio] are no substitute for the 900 MW projects that AEP Ohio is proposing."*[17] Claims of opponents that the competitive market is satisfying or will satisfy the renewable generation needs of all customers fails to consider the current realities of the renewable energy market in PJM and in Ohio.

IV. A Finding Of Need For 900 MW Of Economically-Beneficial Generic Renewable Energy Resources Would Not Preclude Other Renewable Development In Ohio.

Opponent assertions that a finding of *"need"* in this case would discourage other renewable energy development in Ohio should be dismissed as mere speculation.[18] Utility-backed renewable energy can coexist with private renewable energy development. The two approaches are not mutually exclusive. They may even be synergistic. For instance, the nearly 4,000 workers that would be employed during construction of AEP Ohio's proposed projects may gain an expertise that facilitates the development of smaller-scale renewable energy projects in the private market. And even after a *"need"* finding, customers would still be free to shop for all of their physical generation supply from CRES providers offering renewable content.

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[15] Company Ex. 2 at 7; Sierra Club Ex. 1 (Direct Testimony of Michael Goggin on Behalf of Sierra Club) at 5 (citing https://www.pjm.com/-/media/committees-groups/committees/mc/20180322-state-of-market-report-review/20180322-2017-state-of-the-market-report-review.ashx).

[16] Sierra Club Ex. 1 at 33; OPAE Ex. 1 (Direct Testimony of David C. Rinebolt on Behalf of Ohio Partners for Affordable Energy) at 10:7-14.

[17] AEP Ohio Brief at 74-76.

[18] IGS Brief at 6 and 39; OCC Brief at 38.

V. Ohio's Net Importer Status Is Relevant To This Proceeding Since It Impacts Potential Economic Development In The State.

Staff and other parties attempt to undermine the importance of AEP Ohio's argument regarding Ohio's role as a net importer of energy. Indeed, Staff goes so far as to say that *"energy independence means literally nothing."*[19] While those parties are correct that PJM will ensure that the lights will stay on even if there are no megawatts of generation located in Ohio, they entirely neglect the significant economic development benefits that are lost when Ohio relies increasingly on out-of-state generation to meet its needs.

For instance, during construction, AEP Ohio's proposed renewable energy projects are projected to create 3,870 new jobs, grow earnings for Ohio workers by more than $250 million, grow output by nearly $700 million, and increase Ohio's gross domestic product ("GDP") by nearly $390 million.[20] Following construction, the projects are projected to produce 50 jobs, grow earnings for Ohio workers by more than $2.5 million, grow output by more than $38 million, and increase Ohio's GDP by more than $33 million.[21] The projects are also projected to generate more than $24 million in additional state tax revenue and $8.4 million in additional local tax revenue during construction and ongoing annual state and local tax revenues of $320,000 and $50,000, respectively.[22] Such substantial economic development benefits should not be so easily ignored or dismissed, particularly given that the projects would be located in a very economically-depressed region of Ohio like Highland County, which had a poverty rate of 19.8% in 2016 (with 28.4% of all children living in poverty).[23] Additionally, the Commission should not unduly disregard the fact that many large businesses have sustainability initiatives and that increased development of renewable energy in Ohio may help bolster the State's attractiveness for those employers.[24]

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[19] Staff Brief at 10.
[20] Company Ex. 12 at 4.
[21] Id at 5.
[22] Id.
[23] OPAE Ex. 1.
[24] Company Ex. 3 at 10:15-17.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should find that AEP Ohio's proposal satisfies the *"need"* requirement set forth in R.C. 4928.143(B)(2)(c) and that AEP Ohio should be permitted to proceed to Phase II of this proceeding.

Respectfully submitted,

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March 27, 2019

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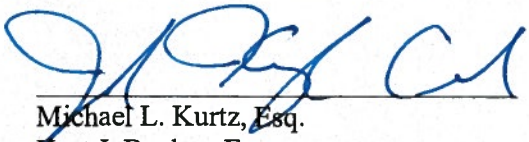
CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail this 27TH day of March, 2019 to the following:



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Summary: Brief Ohio Energy Group's (OEG) Reply Brief electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group