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. 18-0501-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 NATURAL RESOURCES DEFENSE COUNCIL, OHIO ENVIRONMENTAL COUNCIL, AND SIERRA CLUB

I. INTRODUCTION

As OCC concedes in the opening statement of its Initial Brief, "Renewable energy is a good thing."[1] AEP Ohio's proposal for 900MW of renewable energy is the best opportunity Ohio has had to move the economy firmly toward the future by supporting in-state clean energy, and their customers, both residential[2] and industrial,[3] overwhelmingly support the proposal for good reason. AEP Ohio's proposal will drive job creation in a part of southern Ohio that is in dire need of an economic boost, and renewable energy projects will bring cleaner air to the Buckeye state—just two reasons AEP Ohio has proven a need for this project. The proposal also balances out the failure of PJM's market to deliver renewables to Ohio, and provides an opportunity for all Ohioans to participate in the development of a clean energy future for our

[1] OCC Initial Brief at 1
[2] Navigant survey and public comments submitted in this docket. *See* Conservation Groups Opening Brief at 2.
[3] *See* OEG Initial Brief.

state. And while competitive retail energy suppliers offer limited options to purchase renewable energy credits through the PUCO's Apples to Apples marketplace, those options support out-of-state renewables that have already been built, not new construction of in-state renewables. Only one option even sources its renewable energy from within the state of Ohio. This case presents a rare opportunity for the PUCO to support job creation in southern Ohio, and the evidence shows that AEP Ohio has more than met the definition of need. The Commission has the opportunity to support an economically depressed region of Ohio through renewable energy while providing significant benefits to all of Ohio. The Conservation Groups ask that the Commission approve a finding of "need" for AEP Ohio.

II. AEP OHIO HAS PROVEN NEED UNDER OHIO LAW.

A. Ohio Law Requires the Commission to Consider More than Simply Projected Supply and Demand.

The opposition parties in this case all uniformly argue that AEP Ohio has failed to establish need pursuant to R.C. 4928.143(B)(2)(c). All parties, with the exception of the Ohio Coal Association, agree that "need" within that statute is undefined. (OCA states that it is "well-defined" and is based on resource planning projections).[4] In general, when the General Assembly declines to define a statutory term, the agency charged with administering the statute has broad interpretive power. While the opposing parties seem to believe that "resource planning" means only PJM's determination of its reserve margin, the legislature did not use that terminology and instead granted the Commission broad power to interpret this open-ended statute. The opposed parties argue that "need", as used in R.C. 4928.143(B)(2)(c), is governed by the plain language of the statute, and since it is immediately followed by "based on resource

[4] Ohio Coal Association Initial Brief at 7.

planning projections", need can only mean whether or not there is a shortfall between projected demand and projected capacity.

However, such a determination fails to fully consider the statute, instead ending the analysis prematurely and ignoring plain statutory language to the contrary. It is true that we begin interpreting a statute based upon the plain language of the statute[5] , which states, ""[n]o surcharge shall be authorized unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility." Revised Code 4928.143(B)(2)(c). The statute states that need must be based on resource planning projections. While "resource planning projections" is undefined within R.C. 4928.143, it has been defined by the Commission in other Rules; specifically, the Rules which apply to the very type of filing AEP Ohio made in this case, a forecast report filed pursuant to Rule 4901:5-3-01, marking the beginning of the end of the opposed intervenors' interpretation.

As discussed at length in the Conservation Groups' Initial Brief, Ohio Admin. Code 4901:5-5-06 (the "IRP Rule") states, "Need for additional electricity resource options. The reporting person shall describe the procedure followed in determining the need for additional electricity resource options. All major factors shall be discussed, including but not limited to: * * * " (emphasis added), and then goes on to list over fourteen different factors. This non-exhaustive list of factors crafted by the Commission must be considered together and balanced. The IRP Rule amplifies R.C. 4935.04. Revised Code 4935.04(E) states,

> (1) The scope of the hearing held under division (D)(3) of this section shall be limited to issues relating to forecasting. The power siting board, the office of consumers' counsel, and all other persons having an interest in the proceedings shall be afforded the

[5] *Cleveland Mobile Radio Sales, Inc. v. Verizon Wireless*, 113 Ohio St.3d 394, ¶12, 2007-Ohio-2203 (May 23, 2007)

> opportunity to be heard and to be represented by counsel. The commission may adjourn the hearing from time to time.
> (2) The hearing shall include, but not be limited to, a review of:
> (a) The projected loads and energy requirements for each year of the period;
> (b) The estimated installed capacity and supplies to meet the projected load requirements.
> (Emphasis added)

This statute clearly establishes by its express language that hearings involving forecasts are limited to issues related to forecasting, including but is not limited to**,** projected demand and capacity. Yet every opposing party, with the exception of OCA, included a discussion or reference of R.C. 4935.04, and several cite it to support their flawed interpretation that "need" only means a shortfall between projected supply and projected demand.[6]

An incomplete interpretation is a flawed interpretation, and that is the problem with the opposed parties' position in this case—it remains incomplete. The statute clearly states that the hearing should include a review of projected supply and demand, but that it is not limited solely to those two forecasts. Under R.C. 1.47, a statute must be interpreted in a manner to give full

[6] IGS Merit Brief at 9, ("'[R]esource planning projections' submitted pursuant to R.C. 4935.04 are required to ensure that there is no imbalance between supply and demand."); OCC Merit Brief at 49, ("Resource planning looks at whether there is excess capacity available above and beyond the expected peak demand of customers"); IEU Merit Brief at 9, (Emphasizing the Commission's statements regarding the reasonableness of supply and demand forecasts in light of R.C. 4935.04(F)(5).); Direct Energy Merit Brief at 14, ("The evident purpose of R.C. 4928.143 is to incorporate the resource planning requirements of R.C. 4935.04, to ensure that a demonstrable need exists for new generation."); OMA-EG Merit Brief at 20, ("[R]esource planning projections consider whether the projected supply meets projected demands of customers. Moreover, resource planning considers whether there is capacity available in excess of the expected peak demand of customers." (citing to R.C. 4935.04(C)).); Kroger Merit Brief at 2, ("R.C. 4928.143(B)(2)(c) requires a threshold showing that "there is need for the facility based on resource planning projections submitted by the electric distribution utility"[omitted]. Resource planning projections consider whether the projected supply meets the projected demand of customers." (Emphasis in Brief). (Citing to R.C.4935.04(C)); Staff Merit Brief at 4 ("As noted previously, R.C. 4935.04 does not explicitly define "need" however the context of the statute makes it rather clear. The basic review in an FOR case is: The hearing shall include, but not be limited to, a review of: (a) the projected loads and energy requirements for each year of the period; (b) the estimated installed capacity and supplies to meet the projected load requirements. R.C. 4935.04(E)(2). Thus a forecasting case is really about assuring that there is sufficient resource available to meet anticipated demand.").

effect to all of its language. Any interpretation that claims resource planning under R.C. 4935.04 is related solely to supply and demand is patently incorrect, as it purposefully ignores important language—that "the hearing shall include, but not be limited to," a review of projected supply and demand. To discover what other forecasting issues the Commission must consider, the Commission only need look to the first statute of the very same Chapter.

Revised Code 4935.01, which governs forecasting energy needs, states:

> (A) The commission shall:
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> (1) Estimate statewide and regional needs for energy for the forthcoming five- and ten-year periods which, in the opinion of the commission, will reasonably balance requirements of state and regional development, protection of public health and safety, preservation of environmental quality, maintenance of a sound economy, and conservation of energy and material resources. Other factors and trends which will significantly affect energy consumption such as the effects of conservation measures shall also be included;
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> (Emphasis Added).

The Commission *must* balance the *requirements* of state and regional development, protection of public health and safety, preservation of the environment, maintenance of a sound economy, and conservation. The legislature used the word "shall," giving the Commission a mandate, not merely a suggestion.[7]

In addition, the legislature named those other policy objectives the Commission has to balance as "requirements," further demonstrating their intent that balancing those objectives is not discretionary. Under R.C. 1.47, there is no other way to interpret the statute and give full effect to the words chosen by the legislature. Furthermore, as noted by IGS, under the doctrine of *in pari materia*, all statutes which relate to the same general subject matter must be read

[7] *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, ¶1 of Syllabus, 271 N.E.2d 834 (July 7, 1971). ("In statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage.")

together to give full meaning to all. See *Maxfield v. Brooks*, 110 Ohio St. 566 (1924). All provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously. *Couts v. Rose*, 152 Ohio St. 458, 461 (1950).

There is simply no way to read R.C. 4935.04 and 4935.01 together and come to the conclusion that resource planning projections rely solely on projected demand and supply. Such an interpretation ignores the broad powers that the legislature has granted to the Commission through the "need" statute. Further, such an interpretation ignores both the express language in R.C. 4935.04 that explicitly states it is not limited to just those issues, and the express language of R.C. 4935.01 which requires the Commission to estimate the energy needs of the state through the balancing of the specified policy objectives as well as other significant factors and trends. Every statute and Commission-crafted rule provides for the consideration of additional factors and issues beyond merely those listed, and the General Assembly mandated the Commission consider the very issues put forth by AEP Ohio when making need determinations via energy forecasts.

No interpretation of "need" pursuant to R.C. 4928.143, R.C. 4935.04, R.C. 4935.01, or the applicable rules that limits the determination to just projected supply and demand, can survive a review of the plain language of those statutes, let alone the rules of statutory interpretation. And no amount of reliance on dictionary definitions will change the fact that the General Assembly has clearly provided a statutory framework requiring the Commission to consider more than just projected supply and demand.

B. The *Turning Point* Decision is Not Dispositive.

Another common mantra among the opposed parties is that this is a settled issue and the Commission's decision in the *Turning Point* case controls. But these arguments are wrong

because decided based upon vastly different facts and circumstances. Furthermore, the *Turning Point* decision was not a unanimous decision, but rather was a majority decision with one of the five Commissioners dissenting, finding that AEP did in fact prove need.[8]

In *Turning Point*, the stipulation before the Commission alleged that the proposed solar generation was needed to allow the applicant to satisfy its renewable portfolio standard ("RPS") obligations.[9] In addition, the stipulation alleged a more general need for the facility to provide solar renewable energy credits to other EDUs or CRES providers so they could comply with the RPS standards.[10] The Commission held that the stipulating parties failed to prove the applicant needed the facility to satisfy its RPS obligations or that there was a general need for the facility based on the availability of renewable energy credits for other entities.[11] That was the extent of the Commission's decision. The Commission decided the case on the narrow factual argument—not made here—that was presented to it in that case.

In this case, the Company has already repeatedly stated, as early as its initial direct testimony, it will not use the generation secured through its proposal to satisfy its RPS obligations.[12] Therefore, the majority decision in *Turning Point* is not dispositive because the factual basis on which the majority decided *Turning Point* is not applicable in this case. AEP Ohio is not claiming need based on RPS obligations, and in fact has affirmatively stated it will not use this proposal to satisfy its RPS requirements.

Furthermore, several parties, including Staff, have mischaracterized the holding in *Turning Point*. Staff, when discussing the *Turning Point* decision, states,

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[8] Pub. Util. Comm. Case No. 10-501-EL-FOR, Opinion and Order, Dissenting Opinion of Commission Lesser (January 9, 2013).
[9] *Id.* at 26.
[10] *Id.*
[11] *Id.*
[12] Direct testimony of William Allen in Case No. 18-0501-EL-FOR, page 13 Lines 3-6.

> "Even more tellingly, the Commission did not consider the benefits to the public or the ratepayers at all. It felt that it could not do so absent a finding of "need". Thus it appears that the Commission's view of 'need' within the statute is exactly the same as Staff's. 'Need' means a lack of energy, capacity, or RECs."[13]

This is an attempt to demonstrate that the Commission previously refused to consider other benefits in determining "need," but this is a false premise because the Commission simply declined to reach that question after having rules on AEP Ohio's RPS-focused factual claims: "Neither can we find that the Turning Point provision of the stipulation benefits ratepayers and the public interest, *given that there has been no demonstration of need for the Turning Point project*."[14]

This is clearly the majority simply refusing to consider customer benefits after having rejected the RPS theory on the facts. As discussed above, the Commission was asked to find need based upon the availability of renewable energy credits in *Turning Point*, which is a different basis entirely than what has been asked in this case. The majority indisputably did not state it could not consider benefits in a need determination. Instead, it found that the stipulating parties failed to prove need based on the factual theory presented. Because that is a threshold issue, there was no need to complete the analysis of the stipulation.

It is also important to note that Staff believes "'need' means a lack of energy, capacity, or RECs."[15] This definition of "need" is different from every other opposing party who limit need to simply a shortfall between projected capacity and energy demand.[16] Staff stated that "need"

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[13] Staff Merit Brief at 6.
[14] *Id.* at 27 (emphasis added)..
[15] Staff Merit Brief at 7.
[16] Direct Energy Merit Brief at 7, ("Commission cannot find that AEP is able to meet its energy and capacity needs through PJM and also find that there is a 'need'"); IEU Merit Brief at 11, ("Thus, the demonstration of need must be based on a showing that sufficient capacity and energy are not available in the market."); IGS Merit Brief at 11, ("AEP Ohio has not identified an imbalance between supply and demand; therefore the resource planning projections at issue cannot provide the basis for a finding of need."); Kroger Merit Brief at 33-34, (the proposed facilities are "only necessary if the resource

goes beyond simply projected capacity and projected demand and included a need for RECs. This interpretation inherently recognizes that "need" goes beyond just capacity and energy, and shows that even Staff believes that the statutes allow, and in fact requires, the Commission to consider more. As discussed above, the only interpretation of the statutes governing need, that gives full effect to the plain language without adding or deleting words, is the interpretation proffered by the supporting parties.

Ohio statutory law is clear that the Commission must consider more than projected near-term capacity and demand. The General Assembly requires the Commission to consider policies such as conservation, strengthening the economy, regional development, and protection of health and safety in determining "statewide and regional needs for energy." R.C. 4935.01. Contrary to the opposition parties' claims, *Turning Point* is not dispositive as it was decided on entirely different proponent arguments for "need" and facts. AEP Ohio has proven a need for its proposed facility under the various policies the Commission is required to balance when determining energy "need" of the state.

III. THE GENERAL ASSEMBLY DID NOT CAP OHIO'S "NEED" FOR RENEWABLE ENERGY NOR DOES AEP OHIO'S PROPOSAL IMPLICATE R.C. 4928.64(E).

This case has nothing to do with the state's Renewable Portfolio Standard and the opposition's effort to inject the RPS into the case is nothing more than an attempt to substitute their judgment for that of the General Assembly when it granted the Commission authority to determine "need" under Ohio law.

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planning projection indicate as such (i.e. the projected supply is not sufficient to meet the projected demand)."); OCC Merit Brief at 8, ("'Need' based on resource planning projection merely means 'having sufficient electricity supplies to ensure that customers' lights will always stay on" * * * .); OMA-EG Merit Brief at 21, ("Resource planning projections consider whether there is energy and capacity available to meet the peak demand of customers."); OCA Merit Brief at 7, ("Need is determined with reference to the specific facility at issue and the capacity and energy of that specific facility * * * .").

The "need" statute does not refer to the RPS at all and that should be the end of the matter. But, in addition, the plain language of the RPS statute contradicts the opposition's rationale. Revised Code 4928.64 requires EDUs to provide a certain minimum percentage of their energy supply from qualified renewable sources. Revised Code 4928.64(B) lays out the specific minimum percentages and the years they must be achieved. Revised Code 4928.64(B)(1) also explicitly states, "[h]owever, nothing in this section precludes a utility or company from providing a greater percentage."

It is clear from the plain language of the statute that the RPS, which the OCC believes establishes the state's "need" for renewable energy, in reality only establishes the minimum amount required. S.B. 310 is irrelevant to this case as the current statutory law controls and as has been shown the law supports a finding of "need" for AEP Ohio's proposal. The General Assembly did not address the optimal level of renewable energy to serve Ohioans nor did they amend the "need" statute to limit its applicability or definition when they could have done so in S.B. 310. In addition, the General Assembly has repeatedly chosen not to apply the limited definition proffered by the opposition in any of the numerous legislative enactments since the RPS was originally created.

OCC cites to S.B. 310's removal of the in-state procurement requirement as evidence that the legislature must believe there is no need to build additional in-state resources. This is obviously false because the legislature did not amend the "need" stature or connect it to the RPS in any way; which the General Assembly surely could have done if it agreed with OCC's policy preferences. There is simply no support for OCC's position. In fact, the Commissions own annual reports to the General Assembly demonstrate this is false. In 2013, the Commission told the General Assembly "uncertainty associated with customer choice and variable sales volumes

creates some unwillingness by Companies to enter longer-term contracts, while developers may prefer or require the longer-term contracts prior to proceeding with project development."[17] Notably, the PUCO Report to the General Assembly stated that "If Ohio solar resources become constrained, the legislature may need to revisit [the in-state requirement]."[18] Then in 2014, S.B. 310 was passed eliminating the in-state requirement.

In addition, R.C. 4928.64(D)(3) directly contradicts this line of reasoning. Revised Code 4928.64(D)(3) states:

> (D) The commission annually shall submit to the general assembly in accordance with section 101.68 of the Revised Code a report describing all of the following: * * * (3) Any strategy for utility and company compliance or for encouraging the use of qualifying renewable energy resources in supplying this state's electricity needs in a manner that considers available technology, costs, job creation, and economic impacts.

The statute requires the Commission to issue a report to the General Assembly indicating "any strategy for utility and company compliance or for encouraging the use of qualifying renewable energy resource in supplying this state's electricity needs in a manner that considers available technology, costs, job creation, and economic impacts." R.C. 4928.64(D)(3) (emphasis added). It is unfathomable to claim that the General Assembly believes there is no need for additional Ohio based renewable resources when the statute explicitly requires the Commission to report to the legislature strategies to use renewable energy not just for RPS compliance but to supply state electricity needs. The General Assembly went even further and required the Commission to strategize how to use renewable energy to meet the state's electricity needs "in a manner that considers available technology, costs, job creation, and economic impacts."

[17] Pub. Util. Comm. Case No. 12-2668-EL-ACP, Alternative Energy Portfolio Standard Report to the General Assembly, Appendix B page 19 (filed on November 6, 2013.)
[18] Id.

These are similar to the requirements that must be balanced in determining need in R.C. 4935.01 and the exact type of considerations AEP Ohio has put forth. The General Assembly purposefully chose to use the word "or" when it directed the Commission to report on strategies to implement renewable energy. Those strategies were to focus on using renewable energy for RPS compliance or for encouraging its use in supplying the state's electricity needs. The opposed parties are purposefully and intentionally ignoring the plain language of the statutes. The Commission should rely on the actual language the General Assembly put in the law rather than accepting flawed interpretations by parties ignoring explicit language.

Several parties also attack the RGR and claim that any recovery would be in violation of R.C. 4928.64(E).[19] These arguments are meritless. First and foremost, the RGR has already been approved by the Commission. Secondly, the RGR is not at issue in this phase of the proceeding. Despite these procedural defects, the claim fails substantively as well. The crux of the claim is that R.C. 4928.64(E) prohibits non-bypassable charges from recovering the cost of compliance with the RPS. However, this prohibition will never be triggered as AEP Ohio has made it clear that the generation from the proposed facilities will not be used to satisfy their RPS compliance obligations.[20] Since AEP-Ohio will not use the proposed output towards RPS compliance than R.C. 4938.64(E) is irrelevant and inapplicable.

IV. THE OPPOSITION PARTIES FAIL TO OFFER ANY VALID CRITICISMS OF AEP OHIO'S SHOWING THAT CUSTOMERS OVERWHELMINGLY SUPPORT ITS RENEWABLE ENERGY PROPOSAL.

AEP Ohio customers overwhelmingly support the renewable projects.[21] While the opposition parties offer various quibbles with the Navigant Study, none offer any evidence of their own that undermines AEP Ohio's showing that customers support renewable energy. And

[19] IGS Merit Brief at 14, Direct Energy Merit Brief at 16.
[20] Direct testimony of William Allen in Case No. 18-0501-EL-FOR, page 13 Lines 3-6.
[21] CITE Opening Brief; Cite public hearing and count of public comments.

none of the opposition parties grapple with the fact that customers who spoke at the public hearing and that submitted written comments in for this proceeding—over 3,000 in total—all *without a single exception* support the AEP Ohio proposal. There simply is no reasonable dispute that AEP Ohio customers demand more renewable energy.

The opposition's criticisms of AEP Ohio's study are without merit. IGS claims that the Navigant survey was "misleading" because AEP Ohio cannot claim that it is using the 900 MWs to provide renewable energy to its customers, but this is splitting irrelevant hairs.[22] The electrons generated by these proposals will go into the grid that serves Ohio and AEP Ohio's customers and will in fact serve AEP Ohio's customers, while some of them will surely go to other Ohio customers as well. OCC witness Noah Dormady's criticism of the Navigant survey actually show that the customers support renewable energy. Dormady highlights what he calls "social desirability bias,"[23] which he says means that survey respondents are more likely to offer support for things that they know are beneficial. But this just shows that nearly everyone supports renewable energy. At the hearing, Dormady himself confirmed that he supports renewable energy through his utility bills.[24] Furthermore, the opposition' parties own briefs show that they know that customers overwhelmingly support renewable energy. OCC[25] says that the renewable energy is a "good a thing." IGS states it is "supportive of renewable energy."[26] Kroger states that it "has a long-standing and significant commitment to the development and use

[22] IGS Opening Brief at 20.
[23] *See* OMAEG Opening Brief at 37.
[24] Tr. Vol. XI at 2727 (Normady Cross) ("I am willing to pay, I am a customer who is willing to pay a slightly higher premium on his electric bill for renewables.")
[25] Bizarrely, OCC cites to the testimony of Jonathan Lesser on the topic of the Navigant survey continuing Lesser's long-standing practice of offering opinions on topics for which he has no qualifications, that are also in-line with the economic interests of the people who pay him. The Commission should ignore Lesser's biased opinions on the topic of customer surveys and all others.
[26] IGS Opening Brief at 4.

of renewable energy."[27] Still, they are opposing the best opportunity Ohio has to develop significant renewable energy. It is uncontested that AEP Ohio customers demand more renewable energy.

V. OTHER OPPORTUNITIES TO OBTAIN RENEWABLE GENERATION IN OHIO ARE INADEQUATE.

A. OCC's and Staff's focus on CRES providers ignores the fact that these offering do not support development of new renewables projects in Ohio.

OCC's and Staff's suggestion that the project should not be approved, in part, because customer demand for renewable energy is already being met through the competitive market is unavailing. Evidence presented in the case proves that there is in fact an unmet need for renewable energy in Ohio.

Several witnesses incorrectly conclude that the option to purchase renewable energy credits (RECs) from an energy provider satisfies Ohioans' desire to support in-state renewable energy development and to buy renewable energy being produced in Ohio.[28] For example, OCC Witness Ramteen Sioshansi relies on the PUCO Apples to Apples rate comparison chart to show that AEP Ohio customers have access to energy containing renewable-energy content, and even some tariffs that provide energy sourced 100% from renewable energy sources.[29] Yet, Mr. Sioshansi's analysis ends here. The offers contained in the Apples to Apples chart are merely offering renewable energy credits for projects operating in other states. Staff Witness Toimothy W. Benedict similarly claims that the Apples to Apples offerings satisfy Ohioans' demand for renewable energy development, yet again conveniently ignores the fact that these offerings do not support development of renewables in Ohio and the power does not come from Ohio-based

[27] Kroger Opening Brief at 1.
[28] OCC Exs. 18 and 25, Direct Testimony of OCC Witnesses Sioshansi and Jonathan A. Lesser; Staff Ex. 2, Direct Testimony of Witness Benedict; Direct Energy Ex. 2, Direct Testimony of Witness Frank Lacey.
[29] OCC Initial Brief at 24, citing OCC Ex. 25, Direct Testimony of Sioshani at 15-16.

projects.[30] All their analyses do is show how shallow their understanding of renewable energy development in Ohio actually is.

In the case of renewable energy sources, Witnesses Sioshansi and Benedict are comparing apples to oranges, not apples to apples. Ohio customers do not have the ability to choose an energy provider on Apples to Apples that will help drive more renewable development in Ohio, and Ohio customers have, at most, one option for renewable energy that comes from an *existing* project in the state of Ohio.[31] The rest of the Apples to Apples options are met by the power provider purchasing renewable energy credits (RECs) for out-of-state projects. While purchasing a CRES offering that offers some or all renewable energy content, as OCC's own witness Dr. Dormady does[32], may drive renewable development in the United States, it does nothing to drive development of renewable energy sources in Ohio because the energy being offered in those plans isn't procured in-state.

Further, OCC and Staff ignore the importance of the opportunity for a long-term contract and price stability that comes with the proposal by AEP Ohio in this case, as explained in Conservation Groups' Initial Brief, that is not available when purchasing a CRES offering with renewable content from Apples to Apples.[33] However, Commission, Staff, and consultants employed by the Commission have all previously noted this concern.[34] With the financial and administrative support of the National Associate of Regulated Utility Commissioners, the Commission engaged Ed Holt and Associates to draft the Alternative Energy Resource Market Assessment (the "Report") which was filed by the PUCO in case 12-1100-EL-ACP and

[30] *See* Tr. VIII at 2312-2329 (cross of Staff Witness Benedict on Apples to Apples offerings).
[31] *See* Company Ex. 21.
[32] Tr. Vol. XI at 2727 (Normady Cross) ("I am willing to pay, I am a customer who is willing to pay a slightly higher premium on his electric bill for renewables.")
[33] Conservation Groups' Initial Brief at 23.
[34] Pub. Util. Comm. Case No. 12-1100-EL-ACP, Alternative Energy Portfolio Standard Report by the Commission to the General Assembly for 2009 and 2010, filed on August 15, 2012, Appendix C.

referenced in annual compliance reports to the General Assembly. In this report, the importance of long-term contracts for renewable projects is noted.[35] The Report states that long-term contracts support access to financing at more favorable terms (such as lower expected rates of return or interest rates), especially if the contracts are with counterparties with strong credit.[36]

This Report was included in multiple Commissions' Annual Reports to the General Assembly. The Report found that in Ohio:

> [I]t can be more difficult to encourage long-term contracts because competitive electric service providers are unable or unwilling to play the role in long-term resource acquisition that has traditionally been played by regulated utilities. In these states, policymakers have to balance the benefits of competitive wholesale and retail electricity markets against a policy preference, in many cases, for cleaner and more diverse sources of supply.[37]
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> * * *
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> Ohio competitive retail electric suppliers are in a weaker position to support long-term contracts. For project financing, lenders and investors require long-term contracts with creditworthy counterparties. Many, but not all, such competitive suppliers are not large enough, or do not have a stable enough customer base, to meet the creditworthiness criteria. Although they are not limited by ESP rates, as the EDUs are, they are subject to competitive market forces that naturally limit how much they can charge their customers. They are also more likely than EDUs to experience customer switching and therefore greater volatility in their compliance obligations.[38]

It is clear that AEP Ohio's proposal addresses these barriers to in-state development. Barriers both the Commission and Staff have recognized and remain in existence today.

As AEP Ohio clearly identified through the Navigant survey, Ohio customers want renewable energy and they want it to come from within Ohio.[39] Although Staff believes that because global warming is "by definition, global, the location of the generation should be

[35] *Id.* Appendix C at 19.
[36] *Id.*
[37] *Id.* at 21.
[38] *Id.* at 22.
[39] *See* Company Ex. 7, Navigant study.

irrelevant"[40] the impacts on Ohio's economy of the lack of renewable development are local. Further, the impacts of fossil fuel generation are felt locally, and moving our in-state production toward clean, renewable sources of generation is not only what customers want and what is best for Ohio's economy, but is imperative to reduce the health impacts caused by burning fossil fuels. The Commission should recognize that Ohioans do not have their demands for renewable energy met and approve the AEP Ohio case for need.

B. Solar and community aggregation aren't options for all Ohioans.

As explained in Conservation Groups' Initial Brief,[41] installing solar isn't an option for every Ohioan, and the reasons for that vary, from physical limitations of particular properties, to a lack of monetary resources, to state rules and regulations that impede community solar opportunities. The Commission should reject the false notion that because some individuals in Ohio have been able to install distributed generation on their premises[42] that the opportunities for Ohioans to procure renewable generation on a broader scale is satisfied.

Similarly, while governmental aggregators have more flexibility in determining where their generation is sourced, not all aggregated communities have the means to procure renewable projects, and individuals within those aggregated communities may not be able to choose where to source their generation as a result of participation. As a result of these impediments, there are a variety of reasons that these suggested options to procure renewable generation don't meet the demand seen in the Navigant study and in customer comments in this proceeding for renewable energy in Ohio, and the Commission should recognize that these options do not currently meet the need for renewable generation in Ohio.

[40] Staff Initial Brief at 9.
[41] Conservation Groups' Initial Brief at 22.
[42] For example, see OCC Initial Brief at 26 citing PUCO Staff Witness Benedict's argument that because Ohio Power has over 1,500 customers with distributed generation installed,

VI. OMAEG'S, KROGER'S, AND OCC'S REQUEST TO OVERTURN PROCEDURAL RULINGS BY THE ATTORNEY EXAMINERS SHOULD BE DENIED.

The Commission should deny the various requests by opposition parties to reverse the Attorney Examiners' procedural rulings. In addition to lacking substantive merit, all of these requests suffer from the same basic infirmity: none of these parties offer any plausible theory about how the Attorney Examiners' procedural rulings prejudice them. Furthermore, Attorney Examiners have wide discretion in governing the hearings before them and at no point did they abuse that discretion.

Most of the opposition parties' procedural arguments simply re-state their core statutory argument. But if they were correct on the statutory meaning of "need"—which they are not—then surely they would ultimately prevail and cannot complain of any prejudice Allowing AEP Ohio to present its case at the hearing did not harm these parties in any way. These parties also complain that they were denied the opportunity to present certain types of evidence at the hearing. These arguments are likewise meritless because, under the Attorney Examiners' rulings, they will be allowed to present such evidence when this case moves to the next phase. There simply is no plausible claim that the opposition parties were harmed by these procedural rulings.

VII. CONCLUSION

None of the parties arguing against AEP Ohio's proposal were able to prove that the need for renewable generation is adequately met in Ohio, for the reasons above and for the reasons in the Conservation Groups' Initial Brief. The Conservations Groups request that the Commission approve AEP Ohio's request for a determination of need, and permit the case to move expeditiously toward Phase II of the proceeding.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Conservation Groups' Reply Brief has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on this 27th day of March, 2019.

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Summary: Brief Reply Brief of NRDC, Ohio Environmental Council, and Sierra Club electronically filed by Mr. Tony G. Mendoza on behalf of Sierra Club and Ohio Environmental Council and Natural Resources Defense Council