***OCC EXHIBIT NO.\_\_\_\_\_\_\_***

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan. | )  )  )  )  )  )  ) | Case No. 14-1297-EL-SSO |

**SUPPLEMENTAL TESTIMONY**

**OF**

**KENNETH ROSE, Ph.D.**

**On Behalf of the**

**Office of the Ohio Consumers' Counsel**

*10 West Broad Street, Suite 1800*

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**May 11, 2015**

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# I. Introduction

***Q1. Please state your name, position, and business address.***

***A1.*** My name is Kenneth Rose, an independent consultant based in Chicago, Illinois. I have been retained by the Office of the Ohio Consumers’ Counsel for purposes of this proceeding.

***Q2. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS CASE?***

***A2.*** Yes. On December 22, 2014, the OCC submitted direct testimony I prepared that provided my analysis and recommendations supporting rejection of the proposed Retail Rate Stability Rider (“Rider RRS”) contained in the fourth electric security plan (“ESP IV”) of the Ohio Edison Company (“Ohio Edison”), The Cleveland Electric Illuminating Company (“CEI”) and The Toledo Edison Company (“Toledo Edison”) (together the “FirstEnergy EDUs” or “the Utilities”).

My Direct Testimony also included a statement of my qualifications and listing of my past testimony.

# ii. purpose of supplemental testimony

***Q3. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?***

***A3.*** On March 23, 2015, the Attorney Examiner issued an Entry in this matter, which extended the procedural schedule and provided the parties an opportunity to file supplemental testimony “to address *whether* and how the PUCO’s findings in the AEP Ohio Order should be considered in evaluating FirstEnergy’s application in this proceeding.”[[1]](#footnote-2) My Supplemental Testimony explains why the four main factors set forth in the AEP Ohio Order are not appropriate metrics by which to measure whether the Utilities’ request for Rider RRS should be granted.

# iii. recommendations and analysis

***Q4. ARE YOU FAMILIAR WITH THE AEP OHIO ORDER REFERENCED IN THE MARCH 23, 2015 ENTRY IN THIS CASE?***

***A4.*** Yes. I have read the February 26, 2015 Opinion and Order issued in Case No. 13-2385-EL-SSO and I am abreast of the issues in that case. I understand that the Public Utilities Commission of Ohio (“PUCO”) rejected AEP Ohio’s proposed Purchase Power Agreement (“PPA”) rider seeking to collect Ohio Valley Electric Corporation (“OVEC”) costs, for a number of reasons, including that the PPA was not shown to benefit customers and was not determined to be in the public interest.

***Q5. in the aep ohio order, DID THE PUCO IDENTIFY WHAT THEY WOULD CONSIDER IN REVIEWING A UTILITY’S REQUEST FOR A PPA ARRANGEMENT?***

***A5.*** Yes, when authorizing AEP Ohio to establish a “placeholder” PPA rider, at zero, the PUCO identified several factors that AEP Ohio should address and the PUCO will consider when deciding whether the request is in the public interest. These are enumerated below:[[2]](#footnote-3)

1. “financial need of the generating plant;”
2. “necessity of the generating facility, in light of future reliability concerns, including supply diversity;”
3. “description of how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations; and”
4. “the impact that a closure of the generating plant would have on electric prices and the resulting effect on economic development within the state.”

If the PUCO decides to use these factors in this case, it is important that the PUCO also consider the impact on the competitive retail market (and ultimately on customers) that these considerations will have and the additional

considerations set forth in the supplemental testimony of OCC/NOPEC witness Ramteen Sioshansi.

***Q6. IN DETERMINING WHETHER THE PPA IS IN THE PUBLIC INTEREST AND BENEFITS CUSTOMERS, SHOULD THE PUCO CONSIDER THE FIRST FACTOR FROM THE AEP ORDER, WHICH REQUIRES THE UTILITIES TO ADDRESS WHETHER THE GENERATING PLANTS HAVE A FINANCIAL NEED?***

***A6.*** No. The first factor clearly suggests that generators in the state would be able to recover their costs based on “financial need.” This is more consistent with a policy of regulating generation than a restructured retail market that aims to foster a competitive retail generation market.

The term “financial need” is undefined by the PUCO. But in competitive markets if a generating unit cannot clear its output in the wholesale market (PJM), by producing a price-competitive product, then it will be replaced by lower offers for generation in the wholesale market and by other retail suppliers in the retail market. Moreover, financial need is a subjective factor that should only be evaluated by the generation owner in a competitive environment. Financial need of a generation plant should not be a consideration for the PUCO to evaluate in a deregulated market-based generation environment. By considering the financial need of a generating plant, the PUCO leads the state in a direction that is contrary

to the direction Ohio has been moving since 1999—that is, toward competitive retail markets, as required by Ohio law.

***Q7. are there any other reasons why the first FACTOR IS not a good FACTOR by which to DETERMINE IF a ppa IS IN THE PUBLIC INTEREST AND BENEFITS CUSTOMERS?***

***A7.*** Yes. As previously mentioned, the PUCO does not define what they mean by the phrase “financial need.” In the competitive market, “financial need” is determined by the unregulated owner of the generation unit. Some may argue that there is no financial need as long as the revenues exceed the variable costs of the plant. Owners of the plants, especially when seeking a subsidy with a guaranteed return, might argue that there is financial need as long as the guaranteed return is not achieved. Again, this is a consideration that would be expected in a regulated environment, not a market-based environment.

***Q8. does this FACTOR raise additional questions?***

***A8.*** Yes. Several questions arise: Will this factor apply to all generators in the state, or only those that are affiliated with a regulated utility? Does the PUCO intend to evaluate the financial need and economic performance of any generation plant in perpetuity?

***Q9. IN DETERMINING WHETHER THE PPA IS IN THE PUBLIC INTEREST AND BENEFITS CUSTOMERS, SHOULD THE PUCO CONSIDER THE SECOND FACTOR FROM THE AEP ORDER, WHICH REQUIRES THE UTILITIES TO ADDRESS THE NEED FOR THE GENERATING PLANTS?***

***A9.*** No. The second factor, “necessity of the generating facility, in light of future reliability concerns, including supply diversity,” is an important issue but is not an appropriate consideration for the PUCO. The need for generating units in a Regional Transmission Organization (“RTO”), such as PJM, is determined by the RTO’s procedures for meeting reliability to ensure there is enough capacity to fill the customer demand. This is not an issue to be determined by the PUCO on a plant-by-plant basis; rather, it is a determination for the RTO based on market forces for the entire region.

Additionally, subsidizing one supplier and not others may discourage new entry rather than encouraging new entrants. This will harm--- not help reliability in the long run. Creating such a barrier to new entry will also result in a more concentrated market (fewer suppliers with larger market shares), which makes it more likely that suppliers (e.g. FES) would be able to raise prices above competitive levels.

***Q10. IN DETERMINING WHETHER THE PPA IS IN THE PUBLIC INTEREST AND BENEFITS CUSTOMERS, SHOULD THE PUCO CONSIDER THE THIRD FACTOR FROM THE AEP ORDER, WHICH REQUIRES THE UTILITIES TO ADDRESS HOW THE GENERATING UNITS ARE COMPLIANT WITH ALL PERTINENT AND PENDING ENVIRONMENTAL REGULATIONS?***

***A10.*** No. The third factor, “description of how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations” is an issue faced industry-wide and by nearly every state. The state of Ohio, like all states, needs to address this issue comprehensively at a state-wide level, not by one utility at a time and certainly not one plant at a time. Subsidies for existing fossil plants may encourage them to remain operating and delay retirement. However, the decision whether a unit or plant should remain operating or retire should be based on the economic decisions of the owner in consideration of price signals from the competitive market, in compliance with state and federal environmental regulation. This is further explained in OCC Witness Ferrey’s testimony.

***Q11. IN DETERMINING WHETHER THE PPA IS IN THE PUBLIC INTEREST AND BENEFITS CUSTOMERS, SHOULD THE PUCO CONSIDER THE FOURTH FACTOR FROM THE AEP ORDER, WHICH REQUIRES THE UTILITIES TO ADDRESS THE IMPACT THAT CLOSURE OF THE GENERATING PLANTS WOULD HAVE ON ELECTRIC PRICES AND ECONOMIC DEVELOPMENT IN THE STATE?***

***A11.*** No. The fourth factor, “the impact that a closure of the generating plant would have on electric prices and the resulting effect on economic development within the state” gets back to why the restructuring efforts began in the first place – to moderate prices and retain and attract new businesses to the state. The best way to do this is to keep prices relatively low and maintain existing reliability.

Allowing a special class of generation owners to pass their above-market costs through to customers will simply increase prices within the state, discourage entry by other suppliers, and not help develop a functioning retail market that would benefit the state in the long run.

The PUCO cannot unilaterally, even by public rulemaking, revert back to previous regulations, institute a new regulatory regime, or insert mechanisms that were not intended by or are contrary to current law.

***Q12. DO THE FOUR FACTORS FROM THE AEP OHIO ORDER CHANGE THE OPINIONS SET FORTH IN YOUR DIRECT TESTIMONY?***

***A12.*** No, they do not.

***Q13. WHY DO THE FOUR FACTORS FROM THE AEP OHIO ORDER NOT CHANGE YOUR OPINIONS SET FORTH IN YOUR DIRECT TESTIMONY?***

***A13.*** The primary recommendation in my Direct Testimony was that the PUCO should reject the proposed Rider RRS and its associated PPA because the regulated Utilities should not be allowed to charge customers for contracted generation rates. As explained in my Direct Testimony, allowing an unregulated generation company to have guaranteed recovery of costs and return on capital through a contract with a regulated distribution utility would be inconsistent with the legislative intent of a deregulated competitive generation market in the State of Ohio. The four factors the PUCO focuses on ignore the anti-competitive nature of Rider RRS (and the concept of a PPA); instead focusing on the individual needs of the deregulated generation facilities. Approval of Rider RRS would distort the retail generation market and will likely impose substantial and additional costs to the customers of the Utilities.

***Q14. DID THE PUCO COMMENT SPECIFICALLY ON THE USE OF R.C. 4928.38, CITED IN YOUR DIRECT TESTIMONY, AND THE CONTINUED COLLECTION OF TRANSITION COSTS IN THE AEP OHIO DECISION?***

***A14.*** Yes. The PUCO stated that:

“Neither do we agree with the assertion that the PPA rider would permit AEP Ohio to collect untimely transition costs in violation of R.C. 4928.38.”[[3]](#footnote-4)

The PUCO decided to approve the PPA rider in the AEP Ohio case, but, as noted, did not allow AEP Ohio to collect any costs based on the record in that case. What is relevant to my testimony is the above statement by the PUCO that R.C. 4928.38 does not apply.

***Q15.*** ***DO YOU BELIEVE THAT THE PUCO IS CORRECT IN CONCLUDING THAT A PPA WILL NOT ALLOW UTILITIES TO COLLECT TRANSITION COSTS?***

***A15***. No. Under the regulatory scheme in Ohio, after the market development period ended, utilities are required to be fully on their own in the competitive market. The market development period ended on December 31, 2005. Being on your own in the competitive market means that unregulated generation efforts cannot be aided by a subsidy—especially one paid for by the Utilities’ distribution customers. Under the Rider RRS, FES will be permitted to collect generating costs from customers in excess of market prices. This provides FES with a subsidy.

# iv. CONCLUSION

***Q16. Does this conclude your testimony?***

***A16.*** Yes. However, I reserve the right to supplement my testimony later in the event that any party submits new or corrected information which materially affects the findings and recommendations presented in my testimony.

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Supplemental Testimony of Kenneth Rose* *on Behalf of the Office of the Ohio Consumers’ Counsel,* was served via electronic transmission to the persons listed below on this 11th day of May 2015.

*/s/ Larry S. Sauer* \_\_\_\_\_\_\_\_\_\_\_

Larry S. Sauer

Deputy Consumers’ Counsel

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1. Entry at 2 (March 23, 2015) (emphasis added). [↑](#footnote-ref-2)
2. AEP Ohio Order (February 25, 2015), p. 25, numbers added. [↑](#footnote-ref-3)
3. AEP Ohio Order, p. 26. [↑](#footnote-ref-4)