

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) Case No. 14-1297-EL-SSO
for a Standard Service Offer Pursuant to)
R.C. 4928.143 in the Form of an Electric)
Security Plan.)

**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

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. PURPOSE OF SUPPLEMENTAL TESTIMONY	1
III. RECOMMENDATIONS AND ANALYSIS.....	2
IV. CONCLUSION.....	11

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

1 supplemental testimony “to address *whether* and how the PUCO’s findings in the
2 AEP Ohio Order should be considered in evaluating FirstEnergy’s application in
3 this proceeding.”¹ My Supplemental Testimony explains why the four main
4 factors set forth in the AEP Ohio Order are not appropriate metrics by which to
5 measure whether the Utilities’ request for Rider RRS should be granted.
6

7 **III. RECOMMENDATIONS AND ANALYSIS**
8

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

11 **A4.** Yes. I have read the February 26, 2015 Opinion and Order issued in Case No. 13-
12 2385-EL-SSO and I am abreast of the issues in that case. I understand that the
13 Public Utilities Commission of Ohio (“PUCO”) rejected AEP Ohio’s proposed
14 Purchase Power Agreement (“PPA”) rider seeking to collect Ohio Valley Electric
15 Corporation (“OVEC”) costs, for a number of reasons, including that the PPA was
16 not shown to benefit customers and was not determined to be in the public
17 interest.

¹ Entry at 2 (March 23, 2015) (emphasis added).

1 **Q5. IN THE AEP OHIO ORDER, DID THE PUCO IDENTIFY WHAT THEY**
2 **WOULD CONSIDER IN REVIEWING A UTILITY'S REQUEST FOR A PPA**
3 **ARRANGEMENT?**

4 **A5.** Yes, when authorizing AEP Ohio to establish a "placeholder" PPA rider, at zero,
5 the PUCO identified several factors that AEP Ohio should address and the PUCO
6 will consider when deciding whether the request is in the public interest. These
7 are enumerated below:²

- 8
- 9 1) "financial need of the generating plant;"
- 10 2) "necessity of the generating facility, in light of future
- 11 reliability concerns, including supply diversity;"
- 12 3) "description of how the generating plant is compliant with
- 13 all pertinent environmental regulations and its plan for
- 14 compliance with pending environmental regulations; and"
- 15 4) "the impact that a closure of the generating plant would
- 16 have on electric prices and the resulting effect on economic
- 17 development within the state."
- 18

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

² AEP Ohio Order (February 25, 2015), p. 25, numbers added.

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

3
4 ***Q6. IN DETERMINING WHETHER THE PPA IS IN THE PUBLIC INTEREST***
5 ***AND BENEFITS CUSTOMERS, SHOULD THE PUCO CONSIDER THE***
6 ***FIRST FACTOR FROM THE AEP ORDER, WHICH REQUIRES THE***
7 ***UTILITIES TO ADDRESS WHETHER THE GENERATING PLANTS HAVE***
8 ***A FINANCIAL NEED?***

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

13
14 The term “financial need” is undefined by the PUCO. But in competitive markets
15 if a generating unit cannot clear its output in the wholesale market (PJM), by
16 producing a price-competitive product, then it will be replaced by lower offers for
17 generation in the wholesale market and by other retail suppliers in the retail
18 market. Moreover, financial need is a subjective factor that should only be
19 evaluated by the generation owner in a competitive environment. Financial need
20 of a generation plant should not be a consideration for the PUCO to evaluate in a
21 deregulated market-based generation environment. By considering the financial
22 need of a generating plant, the PUCO leads the state in a direction that is contrary

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

3

4 ***Q7. ARE THERE ANY OTHER REASONS WHY THE FIRST FACTOR IS NOT A***
5 ***GOOD FACTOR BY WHICH TO DETERMINE IF A PPA IS IN THE PUBLIC***
6 ***INTEREST AND BENEFITS CUSTOMERS?***

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

15

16 ***Q8. DOES THIS FACTOR RAISE ADDITIONAL QUESTIONS?***

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

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

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

13
14 Additionally, subsidizing one supplier and not others may discourage new entry
15 rather than encouraging new entrants. This will harm--- not help reliability in the
16 long run. Creating such a barrier to new entry will also result in a more
17 concentrated market (fewer suppliers with larger market shares), which makes it
18 more likely that suppliers (e.g. FES) would be able to raise prices above
19 competitive levels.

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

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

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

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

12
13 Allowing a special class of generation owners to pass their above-market costs
14 through to customers will simply increase prices within the state, discourage entry
15 by other suppliers, and not help develop a functioning retail market that would
16 benefit the state in the long run.

17
18 The PUCO cannot unilaterally, even by public rulemaking, revert back to
19 previous regulations, institute a new regulatory regime, or insert mechanisms that
20 were not intended by or are contrary to current law.

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

3 ***A12.*** No, they do not.
4

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

7 ***A13.*** The primary recommendation in my Direct Testimony was that the PUCO should
8 reject the proposed Rider RRS and its associated PPA because the regulated
9 Utilities should not be allowed to charge customers for contracted generation
10 rates. As explained in my Direct Testimony, allowing an unregulated generation
11 company to have guaranteed recovery of costs and return on capital through a
12 contract with a regulated distribution utility would be inconsistent with the
13 legislative intent of a deregulated competitive generation market in the State of
14 Ohio. The four factors the PUCO focuses on ignore the anti-competitive nature of
15 Rider RRS (and the concept of a PPA); instead focusing on the individual needs
16 of the deregulated generation facilities. Approval of Rider RRS would distort the
17 retail generation market and will likely impose substantial and additional costs to
18 the customers of the Utilities.
19

20 ***Q14. DID THE PUCO COMMENT SPECIFICALLY ON THE USE OF R.C.***
21 ***4928.38, CITED IN YOUR DIRECT TESTIMONY, AND THE CONTINUED***
22 ***COLLECTION OF TRANSITION COSTS IN THE AEP OHIO DECISION?***

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

1 “Neither do we agree with the assertion that the PPA rider would
2 permit AEP Ohio to collect untimely transition costs in violation of
3 R.C. 4928.38.”³

4
5 The PUCO decided to approve the PPA rider in the AEP Ohio case, but, as noted,
6 did not allow AEP Ohio to collect any costs based on the record in that case.
7 What is relevant to my testimony is the above statement by the PUCO that R.C.
8 4928.38 does not apply.

9
10 ***Q15. DO YOU BELIEVE THAT THE PUCO IS CORRECT IN CONCLUDING***
11 ***THAT A PPA WILL NOT ALLOW UTILITIES TO COLLECT TRANSITION***
12 ***COSTS?***

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

³ AEP Ohio Order, p. 26.

1 **IV. CONCLUSION**

2

3 ***Q16. DOES THIS CONCLUDE YOUR TESTIMONY?***

4 ***A16.*** Yes. However, I reserve the right to supplement my testimony later in the event
5 that any party submits new or corrected information which materially affects the
6 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
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Summary: Testimony Supplemental Testimony of Kenneth Rose, Ph.D. on behalf of the Ohio Consumers' Counsel. electronically filed by Ms. Gina L Brigner on behalf of Sauer, Larry S Mr.