

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

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking	)	
Approval of Ohio Power Company's	)	
Proposal to Enter into an Affiliate Power	)	Case No. 14-1693-EL-RDR
Purchase Agreement for Inclusion in the	)	
Power Purchase Agreement Rider	)	
	)	
In the Matter of the Application of Ohio	)	
Power Company for Approval of Certain	)	Case No. 14-1694-EL-AAM
Accounting Authority	)	

**DIRECT TESTIMONY  
OF  
NOAH C. DORMADY, Ph.D.**

**On Behalf of**  
**The Office of the Ohio Consumers' Counsel**  
*10 West Broad Street, Suite 1800*  
*Columbus, Ohio 43215-3485*

**December 28, 2015**

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1    **I.        INTRODUCTION**

2

3    ***Q1.    PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.***

4    ***A1.***    My name is Noah C. Dormady. My business address is 1810 College Rd,  
5           Columbus OH 43210.

6

7    ***Q2.    ARE YOU THE SAME NOAH C. DORMADY WHO PREVIOUSLY***  
8           ***TESTIFIED IN THIS PROCEEDING?***

9    ***A2.***    Yes.

10

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

12   ***A3.***    The purpose of my testimony is to provide an analysis concerning whether the  
13           Stipulation and Recommendation filed on December 14, 2015, in this proceeding,  
14           violates any or all of the PUCO's three-prong test for evaluating a stipulation.

15

16   **II.       SUMMARY OF FINDINGS**

17

18   ***Q4.    WHAT IS THE PUCO'S THREE-PRONG TEST FOR APPROVAL OF A***  
19           ***STIPULATION?***

20   ***A4.***    The PUCO's three-prong test for evaluating a stipulation requires that the  
21           Stipulation meet all of the following conditions:

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- 1           1.       Is the settlement a product of serious bargaining among capable,  
2                   knowledgeable parties, where there is diversity of interests among  
3                   the stipulating parties?
- 4           2.       Does not violate any important regulatory principle or practice?  
5                   and
- 6           3.       As a package, benefits ratepayers and the public interest?

7

8   ***Q5.   IF THE PUCO USES THE THREE-PRONG TEST TO EVALUATE THE***  
9           ***STIPULATION, DOES THE STIPULATION MEET ALL OF THE THREE***  
10           ***PRONGS?***

11   ***A5.***   In my opinion, none of the three prongs are met by the Stipulation as filed on  
12           December 14, 2015. As my testimony describes below, several provisions of the  
13           Stipulation violate one or more of each of these conditions. The bottom-line is  
14           that the Stipulation was not the product of serious bargaining among capable,  
15           knowledgeable parties, it violates important regulatory principles and practices,  
16           and as a package, it does not benefit customers or the public interest.

17

18   ***Q6.   PLEASE EXPLAIN HOW THE STIPULATION VIOLATES THE THREE-***  
19           ***PRONG TEST.***

20   ***A6.***   First, there is a lack of diversity in that residential customers are not represented.<sup>1</sup>  
21           Further, several provisions of the Stipulation create substantial uncertainty (e.g.,  
22           regulatory, economic, environmental). Many of the “commitments” by the Ohio

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<sup>1</sup> To my knowledge, Ohio Partners for Affordable Energy represents only a subset of residential customers.

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1       Power Company (“AEP Ohio”) are dependent upon suppositions that lack any  
2       preliminary analysis, feasibility assessment, or cost assessment whatsoever.

3       There is therefore no way that the parties to the Stipulation were able to conduct  
4       capable, knowledgeable bargaining on the basis of such uncertainty and tenuous  
5       planning on these important issues affecting Ohio consumers.

6

7       Second, provisions of the Stipulation violate important regulatory principles or  
8       practices. These unduly benefit one class of customer at the cost of another,  
9       develop cross-subsidization across customer classes, and distort the economic  
10      incentives of pricing mechanisms. This will undoubtedly result in prices that are  
11      inefficient and that send distorted price signals to producers and consumers alike.  
12      These market distortions are not simply due to distortions inherent to the  
13      Stipulation, but are more broadly due to the distorted nature of the PPA rider  
14      mechanism itself. Simply put, the Stipulation’s PPA rider provision itself is  
15      distortionary and economically inefficient, and the Stipulation’s other provisions  
16      further compound these distortions and inefficiencies.

17

18      Third, the Stipulation introduces additional costs that will raise electricity prices  
19      to businesses and households. AEP Ohio estimates the initial magnitude of these  
20      costs to be minor (according to testimony filed by AEP Ohio Witness William A.  
21      Allen on December 14, 2015 [see pp. 14-15]). But AEP Ohio will seek additional  
22      cost-recovery above this in connection with some of the provisions of the  
23      Stipulation. This has the potential to saddle Ohio’s businesses and households

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1 with additional increases in electricity costs above those increases already  
2 projected in the Stipulation as filed. And in any event, OCC is presenting expert  
3 testimony showing that the costs to consumers are significant, not minor.  
4 Further, one of the provisions that I describe below—a Competition Incentive  
5 Rider (CIR)—creates what essentially amounts to a tax on energy for standard  
6 service offer (“SSO”) customers. Taxes of this nature have been shown to  
7 generate economic inefficiency (i.e., deadweight loss) and diminish consumer  
8 surplus, with potentially significant adverse effects on the macroeconomy (i.e.,  
9 jobs) in Ohio.

10  
11 **III. ASSESSMENT OF SPECIFIC PROVISIONS IN THE STIPULATION**

12  
13 ***Q7. THE STIPULATION COMMITS AEP OHIO TO A SCHEDULE OF***  
14 ***CONDITIONAL CREDITS TO CUSTOMERS FOR THE LAST FOUR***  
15 ***YEARS OF THE PPA RIDER TO “ENSURE THAT THE UNITS ARE***  
16 ***MANAGED EFFICIENTLY, COST-EFFECTIVELY, AND WITH***  
17 ***MAXIMUM MARKET PROFITABILITY.” WILL THE CREDITS BE***  
18 ***SUFFICIENT TO ENSURE THIS?***

19 **A7.** No. The Stipulation calls for an initial eight-year PPA rider term. And to my  
20 knowledge AEP Ohio has not ruled out requesting an extension beyond eight  
21 years at some later date. The schedule of credits will only occur in the last four  
22 years of the eight-year term, and thus does not cover losses consumers might face  
23 in the first four years of the PPA rider term. The Stipulation does not therefore

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1 provide any incentives to protect consumers from inefficient management or from  
2 management that is not cost-effective, in the first four years or in any subsequent  
3 years the rider may be approved for extension beyond the eight years provided for  
4 in the Stipulation. Additionally, the credit schedule does not protect customers  
5 from losses exceeding the limits in the credit schedule.

6

7 Moreover, if AEP Ohio's forecasted PPA rider credits/charges to consumers are  
8 accurate, as provided in Exhibit WAA-2 appended to the Direct Testimony of  
9 William A. Allen, the credit schedule will not be utilized anyway. This is based  
10 upon the Average High and Low Load forecast as provided in that exhibit.

11

12 ***Q8. THE STIPULATION COMMITS AEP OHIO TO THE FUEL SWITCHING***  
13 ***(NATURAL GAS CONVERSION) OF TWO COAL-FIRED UNITS BY THE***  
14 ***END OF CALENDAR YEAR 2017. WILL THIS FUEL SWITCHING BE OF***  
15 ***BENEFIT TO CONSUMERS AND THE PUBLIC INTEREST?***

16 ***A8.*** That benefit is uncertain, and certainly not shown by AEP Ohio. According to the  
17 Stipulation, AEP Ohio will make a cost recovery filing in support of the  
18 conversion of Conesville Units 5 and 6 to gas co-firing units, and the units will be  
19 converted by the end of calendar year 2017, with costs collected from customers.  
20 Based on AEP Ohio's analysis, a reasonable person could not conclude that  
21 converting any of these units, on the whole, is in the public interest for the  
22 following reasons:

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- 1           1.       To my knowledge, the PUCO has not been provided any analysis  
2                   of the costs consumers would pay regarding the conversion of  
3                   these units.<sup>2</sup> It cannot be ascertained at this time whether the costs  
4                   associated with the conversion of these units would be  
5                   unnecessarily high and have an adverse impact on customer bills.  
6                   And, there is presently no guarantee (and thus there is uncertainty),  
7                   that the Commission will approve the conversion of these units. In  
8                   any case, the conversion will bear some positive costs that will be  
9                   collected from customers.
- 10          2.       AEP Ohio witnesses<sup>3</sup> went to some length to argue that the  
11                   interruptible service contracts of gas supply were inconsistent with  
12                   the public interest as a rationale for approval of the PPA rider to  
13                   begin with. According to the Stipulation, more than 62 percent of  
14                   the generation provided by these units will be provided by gas  
15                   (post conversion). If the interruptible nature of these plants is  
16                   inconsistent with the public interest as espoused by AEP Ohio  
17                   witnesses, the conversion of these units to co-firing units could  
18                   also be inconsistent with the public interest.
- 19          3.       The Stipulation provides that AEP Ohio and its affiliates will  
20                   commit the units to maximize gas usage when it is “available and

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<sup>2</sup> In response to interrogatories, the AEP Ohio has confirmed that they have indeed performed no study or calculation of the costs of converting the units to natural gas co-firing units. (See INT-S1-048).

<sup>3</sup> See Pablo Vegas testimony (pp. 15-16) filed May 15, 2015. See also Kelley Pearce testimony (pp.25-26) filed May 15, 2015.



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1 economic” (p.20). It is uncertain what impacts any potential  
2 changes in gas prices in the next eight years (or longer under any  
3 PPA rider extensions) would have on the PPA rider charge/credit  
4 to consumers. Given that these units would be nearly two-thirds  
5 fueled by natural gas, in the event that gas is no longer  
6 “economic,” it is uncertain what additional cost risks the  
7 conversion will place on customers through the PPA rider  
8 mechanism or how the potentially diminished output of these units  
9 would alter the PPA rider’s net of energy revenue and operations  
10 costs.

11 4. AEP Ohio Witness Allen, in his testimony filed on May 15, 2015,  
12 argued that the shutdown of the PPA units would be deleterious to  
13 the macroeconomy, in part, because of the indirect Ohio coal  
14 mining employment that is purportedly dependent upon the PPA  
15 units. To my knowledge, the Commission has not been provided  
16 any revised analyses outlining how many additional Ohio coal  
17 workers AEP Ohio believes would be discharged from the labor  
18 force due to the co-firing of these units.

19  
20 ***Q9. DOES THE CONVERSION OF CONESVILLE UNITS 5 AND 6 VIOLATE***  
21 ***ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE?***

22 ***A9.*** Yes. In a competitive deregulated wholesale electricity market, costs such as fuel  
23 switching should not be collected from captive utility customers (as AEP Ohio

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1 proposes) but should be subject to recovery through revenues earned in the  
2 wholesale market. As such, financial risks such as the up-front-costs of fuel  
3 switching should be carried by competitive producers in an efficient market.  
4 They should not be carried by captive customers paying for the entirety of the  
5 capital outlay plus a sizeable return on equity. But under the terms of the  
6 Stipulation, the costs of the conversion would be borne by captive customers.  
7 This approach in the Stipulation is counter to the very nature of deregulation.  
8

9 ***Q10. THE STIPULATION CONTAINS A PROVISION BY WHICH AEP OHIO***  
10 ***AGREES TO ADVOCATE FOR THE USE OF A COMPETITION***  
11 ***INCENTIVE RIDER (C.I.R.). TO YOUR KNOWLEDGE, HOW WOULD***  
12 ***THIS C.I.R. BE STRUCTURED?***

13 ***A10.*** The Competition Incentive Rider would add additional charges to consumers on  
14 top of the SSO auction price at some uncertain level. The cost structure of the  
15 rider would work in a manner similar to a redistributive tax on consumers. The  
16 Stipulation states that the level, or rate, of the additional cost to be paid by  
17 consumers would be set by the Stipulation's "signatory parties." And in the event  
18 that the signatory parties cannot agree upon this rate, the determination would fall  
19 to PUCO Staff. The CIR would be bypassable for customers who switch to a  
20 competitive retail electric supplier ("CRES") provider, and all revenues collected  
21 from the CIR would be returned to customers—both CRES customers and SSO  
22 customers equally—via a new rider.

***Q11. WOULD THE IMPLEMENTATION OF THE C.I.R. AS OUTLINED IN THE  
STIPULATION VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE  
OR PRACTICE?***

***A11.*** Yes. Were the PUCO to consider them, it would not even pass muster under the five points suggested by AEP Ohio Witness Allen in response to interrogatory INT-S1-062. That response provides “some” (though not an exhaustive list) of the important regulatory principles the Commission, according to AEP Ohio, should include for evaluating the second prong of the PUCO’s three-prong test for approval of a stipulation.

1. The first regulatory principle AEP Ohio asserts is that “Rates and rate structure should not be more complex than they need to be.”

a. The addition of an exogenous charge on SSO customers above the SSO auction price adds further complexity to an already complex rate-setting scheme for consumers. No analysis has been provided to the PUCO, to my knowledge, with the rationale for this added complexity to SSO customer rates, or the added complexity of determining redistribution mechanisms for revenues collected under this proposed rider.

2. The second regulatory principle that AEP Ohio provides is that “Rates should be conducive to rate stability.”

a. There is no evidence to suggest that the CIR will be conducive to rate stability. According to the most recent

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1 PUCO switch rate assessment<sup>4</sup> the percentages of  
2 customers in the AEP Ohio service area who have switched  
3 to CRES providers are 33 percent, 52 percent, and 52  
4 percent, respectively, for residential, commercial, and  
5 industrial customers. The percentage of customers who  
6 switch to CRES providers will likely be positively related  
7 to the CIR rate, and I see no guarantee in the Stipulation  
8 that the CIR rate will remain steady once set. A fluctuating  
9 CIR rate is likely to induce inefficiently high rates of  
10 switching to CRES providers, which given the transaction  
11 costs incurred in switching (e.g., opportunity cost of time,  
12 review of new contract terms and conditions, and  
13 cancellation fees), is counter to the public interest.  
14 Moreover, the PUCO, to my knowledge, has not been  
15 provided any assessments of the impact that such a tax  
16 would have on rate stability.

17 3. The third regulatory principle that AEP Ohio provides is that “rates  
18 should be fair across customer classes.”

19 a. The CIR is a tax on SSO customers that is refunded to all  
20 customers (those on AEP Ohio’s standard service offer and  
21 those who are CRES customers). By its definition, SSO

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<sup>4</sup> Retrieved from:  
<http://www.puco.ohio.gov/puco/assets/File/Summary%20of%20Switch%20Rates%20CUS%203Q2015.pdf>

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1 customers would bear a disproportionate burden of the CIR  
2 charge, so it is unfair to them.

3 4. The fourth regulatory principle AEP Ohio provides is that “rates  
4 should not be unduly discriminatory.”

5 a. My answer to item 3a is applicable.

6 5. The fifth regulatory principle that AEP Ohio provides is that “rates  
7 should be economically efficient.”

8 a. While AEP Ohio does not provide a definition of economic  
9 efficiency, it is standard practice to measure economic  
10 efficiency by deadweight loss<sup>5</sup> and consumer surplus.<sup>6</sup> All  
11 taxes generate some deadweight loss because they  
12 discourage consumption and increase the costs of  
13 production, which can have larger adverse macroeconomic  
14 consequences. Increasing the cost of electricity to SSO  
15 customers will result in some degree of diminished  
16 consumer surplus for households, and some degree of  
17 producer surplus for commercial and industrial customers.

18 b. Additionally, it is likely that the CIR tax on SSO customers  
19 will diminish the incentives of CRES providers to offer a  
20 truly competitive price to attract SSO customers. CRES  
21 providers would have an incentive to raise their rates by

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<sup>5</sup> Deadweight loss is a measure of inefficiency that can occur when prices are distorted leading to foregone transactions.

<sup>6</sup> Consumer surplus is a measure of consumer benefit from engaging in a transaction.

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1                   some amount up to the CIR rate. This would provide a  
2                   distortionary effect on the rates customers pay. Depending  
3                   upon the magnitude of the CIR rate, that price increase  
4                   could be substantial for consumers. However, even if that  
5                   price increase is minimal, the regulatory principle of  
6                   economic efficiency would be violated if CRES prices were  
7                   set by anything other than competitive rates. In other  
8                   words, prices that are either above or below the equilibrium  
9                   price that would occur in an efficient competitive market  
10                  are not economically efficient for customers.

11  
12    ***Q12.   WOULD THE IMPLEMENTATION OF THE C.I.R. AS OUTLINED IN THE***  
13           ***STIPULATION VIOLATE ANY OTHER IMPORTANT REGULATORY***  
14           ***PRINCIPLE OR PRACTICE BEYOND THOSE SUGGESTED BY AEP OHIO***  
15           ***IN THIS CASE?***

16    ***A12.*** Yes. The Stipulation calls for the “signatory parties” to set the CIR tax rate based  
17           on mills per KWh, and no additional methodology is outlined in the Stipulation.  
18           The signatory parties include private firms, wholesale market participants, as well  
19           as CRES providers. If approved by the PUCO, this provision would allow private  
20           entities to set a tax rate.

1    ***Q13.  WOULD THE IMPLEMENTATION OF THE C.I.R. AS OUTLINED IN THE***  
2                   ***STIPULATION BE OF BENEFIT TO CONSUMERS AND THE PUBLIC***  
3                   ***INTEREST?***

4    ***A13.***  No.  An additional rider on customer bills would add yet another layer of  
5           complexity and cost to businesses and households who are already struggling  
6           through a difficult economic recovery.  Customers today are already faced with  
7           complex rider mechanisms on their energy bills that they do not understand  
8           completely.  The CIR would provide an energy tax that would likely raise both  
9           AEP Ohio's SSO and CRES rates, and increase energy costs to businesses and  
10          households.  Moreover, these additional costs on Ohio manufacturers would likely  
11          have an adverse effect on the Ohio economy, including employment and gross  
12          state product.  This would be directly counter to the public interest.

13  
14   ***Q14.  THE STIPULATION PROVIDES FOR FINANCIAL BENEFITS TO***  
15                   ***SPECIFIC SIGNATORY PARTIES.  CAN YOU SUMMARIZE A FEW OF***  
16                   ***THESE?***

17   ***A14.***  Sure.  The Stipulation provides a \$10/MWh discount to automakers in the AEP  
18          Ohio service area, which is capped at \$500,000 per year.  The Stipulation  
19          provides Ohio Partners for Affordable Energy (OPAE) with \$200,000 to manage  
20          a Community Assistance Program (CAP) that will have an annual budget of \$8  
21          million.  The Stipulation provides the Ohio Hospital Association (OHA) with  
22          \$400,000 per year in energy efficiency/peak demand reduction (EE/PDR)

1 funding, and provides for collaboration between AEP Ohio and OHA on how to  
2 distribute an additional amount of up to \$600,000 per year in EE/PDR funding.<sup>7</sup>  
3

4 ***Q15. DO THESE CONCENTRATED INCENTIVES BENEFIT CUSTOMERS AND***  
5 ***THE PUBLIC INTEREST?***

6 ***A15.*** Unfortunately, these incentives provide limited benefits to relatively few while  
7 the overwhelming majority of customers are left with the costs of paying for the  
8 purchase power agreement and various other terms of the Stipulation. If the  
9 Stipulation is approved by the Commission, these incentives and credits will be  
10 funded via riders on customer bills within the AEP Ohio service area. They are a  
11 direct benefit to signatory parties and are an explicit tax on energy to households  
12 and businesses. This funding structure is the classic textbook definition of  
13 “government failure,” the public sector corollary to market failure. Within the  
14 larger theory of Public Choice, a branch of political science and economics,  
15 government failures are understood to arise when certain conditions for them are  
16 met. One of these conditions is the classic problem of *concentrated benefits and*  
17 *diffuse costs*.<sup>8</sup>  
18

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<sup>7</sup> And subsequent to the filing of the Stipulation, a settlement agreement from Industrial Energy Users-Ohio (IEU) was purchased for \$8 million.

<sup>8</sup> See for example:

Olson, M. (2009). *The logic of collective action* (Vol. 124). Cambridge: Harvard University Press.

Wilson, J. Q. (1980). *The politics of regulation*. New York: Basic Books.

Weingast, B., Shepsle, K., Johnsen, C. (1981). The political economy of benefits and costs: A neoclassical approach to distributive politics. *The Journal of Political Economy* 89(4): 642-664.

Schultze, C. (1992). Is there a bias toward excess in the U.S. government budgets or deficits? *The Journal of Economic Perspectives* 6(2):25-43.



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1 Credits to the auto industry or the hospital industry, for example, are benefits that  
2 are concentrated on a small group of targeted firms. The costs of providing these  
3 benefits are diffuse, or spread out across all customers—residential, commercial,  
4 and industrial. These incentives and benefits to signatory parties are textbook  
5 classic examples of a public interest violation. Moreover, it is precisely the  
6 purpose of public service/utilities commissions to protect customers against these  
7 sorts of abuses.

8  
9 Additionally, a quick perusal of the Stipulation reveals that a number of the  
10 “signatory parties” (e.g., Sierra Club, IGS, Direct Energy) have in fact opted out  
11 of participating in several of the provisions but are nonetheless described as  
12 “signatory parties.”<sup>9</sup> This further heightens the degree of concentration of  
13 benefits conveyed by the Stipulation and the PPA rider more broadly. This  
14 clarifies the fact that provisions contained within the Stipulation are meant to  
15 further the interest of one or more signatory party(ies) at a cost to other customers  
16 within AEP Ohio’s service territory.

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<sup>9</sup> In response to interrogatories requesting clarification on the meaning of the language of the footnotes contained within the provision (e.g., “...is not participating in this provision”) the Company affirmed that “if a party is not participating in a provision, that party is not affirmatively joining in the statement or declaration made in the provision.” (See INT-S1-074).

1    ***Q16. THE STIPULATION PROVIDES FOR THE DEVELOPMENT OF AT***  
2            ***LEAST 900 MW OF RENEWABLE GENERATION CAPACITY (500MW OF***  
3            ***WIND AND 400 MW OF SOLAR). HOW WILL THESE BE PAID?***

4    ***A16.*** According to the Stipulation, AEP Ohio will file future applications with the  
5            PUCO to pass the costs of the development of these resources through to  
6            customers via the PPA rider mechanism.

7  
8    ***Q17. DOES THE FULL COST RECOVERY OF THESE RESOURCES VIOLATE***  
9            ***ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE?***

10   ***A17.*** Yes. As I discussed previously with respect to the cost recovery of co-firing  
11           conversion of the Conesville units, in a deregulated market these costs should be  
12           recovered only through revenues gained in a competitive wholesale market. Full  
13           recovery of these costs by a distribution utility via a PPA rider with a divested  
14           generation subsidiary would be distortionary.

15

16   ***Q18. THE STIPULATION PURPORTS TO PROVIDE JOBS BENEFITS OF***  
17            ***SITING THE SOLAR INSTALLATIONS PREFERENTIALLY IN***  
18            ***APPALACHIAN OHIO. ARE THESE PURPORTED JOBS BENEFITS***  
19            ***OVERSTATED?***

20   ***A18.*** Possibly. The aim of siting the facilities in Appalachian Ohio is laudable in that it  
21           may serve to bring some economic benefit to a region of the state that has been  
22           more severely hit by the recession. There are two mitigating factors to the  
23           Stipulation's claim that this will "create permanent manufacturing jobs in

Appalachian Ohio” (p.32). First, solar installations, once installed, require only operational and maintenance staffing and do not require a high degree of permanent manufacturing employees. Second, there is no guarantee that the solar equipment (presumably photovoltaic [PV] power system but not specified in the Stipulation) will be purchased from Ohio manufacturers, or even domestic manufacturers from within the United States. Given the international pressure that domestic firms presently face in the PV panel market, this provision of the Stipulation may very well result in the provision of an economic stimulus to the People’s Republic of China, at a potentially sizeable cost to Ohio’s households and businesses.

**IV. ASSESSMENT OF THE STIPULATION AS A WHOLE**

***Q19. YOU HAVE SHOWN THAT A NUMBER OF PROVISIONS OF THE STIPULATION ARE CONDITIONAL UPON SOME DEGREE OF UNCERTAINTY. YOU HAVE ARGUED THAT THE FIRST PRONG OF THE TEST FOR EVALUATING A STIPULATION IS NOT MET BECAUSE THE UNCERTAINTY PRECLUDES THE BARGAINING PARTIES FROM BEING KNOWLEDGEABLE ABOUT THE PROVISIONS TO WHICH THEY ARE SIGNATORIES. HOWEVER, CAN YOU CHARACTERIZE THE DEGREE OF UNCERTAINTY THESE PARTIES FACED IN BARGAINING FOR THE STIPULATION AS A WHOLE?***

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1   **A19.**   The lack of any preliminary (let alone thorough) study, assessment, or evaluation  
2           of many of the provisions and individually-tailored carve outs contained within  
3           the Stipulation would indeed have precluded the signatories from capably and  
4           knowledgeably bargaining. Taken as a whole, the quantity of provisions  
5           contained within the Stipulation that are defined by at least some degree of  
6           uncertainty is striking. Table 1 provides a list of seventeen substantive provisions  
7           within the Stipulation and matches them to four general classes of uncertainty.

8           These general classes are the following:

- 9           1.       The Stipulation proposes an action or outcome that is conditional  
10           upon future regulatory approval by the PUCO or another relevant  
11           authority (e.g., FERC or PJM).
- 12          2.       The Stipulation proposes an action or outcome for which no  
13           preliminary, or thorough, technical (e.g., engineering, operational)  
14           analyses have been performed and provided to signatory parties.
- 15          3.       The Stipulation proposes an action or outcome that may or may not  
16           be technically feasible and for which no preliminary, or thorough,  
17           analyses have been provided to signatory parties.
- 18          4.       The Stipulation proposes an action or outcome for which no  
19           preliminary, or thorough, economic or cost-benefit analyses have  
20           been performed and provided to signatory parties.

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**Table 1. List of Stipulation provisions by their degree of uncertainty precluding serious bargaining among capable, knowledgeable parties**

Provision or plan within Stipulation	Uncertainty Condition
PJM Long-term capacity product	1,2,3,4
Automaker credit	4
Competition Incentive Rider (CIR)	1,2,3,4
EE/PDR funding to OHA & affiliates	4
Volt-Var Optimization deployment	2,4
Funding to Community Assistance Program (CAP)	4
Pass-thru of 50% of costs for Pilot Supplier Consolidated Billing program	1
Co-firing conversion of Conesville units 5 & 6	1,2,3,4
Retirement, refueling or repowering Conesville units 5 & 6 and Cardinal unit 1	1,2,3,4
Retirement, refueling or repowering of co-owned PPA units	1,2,3,4
Conesville units 5 & 6 RMR declaration	1
EE/PDR energy savings goal achievement	3,4
Carbon emissions reduction plan	1,2,3,4
Fuel diversification plan	1,2,3,4
Grid modernization plan	1,2,3,4
Battery technology deployment	1,2,3,4
Renewable energy development	1,2,3,4

Uncertainty Condition Key:

- 1: Absence of certainty in outcome of future regulatory proceeding or approval
- 2: Uncertainty due to lack of any preliminary technical analysis (e.g., engineering, operational)
- 3: Uncertainty due to lack of any feasibility assessment (e.g., siting, transmission, permitting, fuel supply or availability)
- 4: Uncertainty due to lack of any preliminary economic analysis or cost-benefit analysis

While the list and conditions of uncertainty contained with Table 1 is by no means exhaustive—meaning that additional conditions of uncertainty may also define them—it encompasses those conditions that I would ascribe to be reasonably important for consideration by a signatory party. Taken as a whole, the quantity of provisions of the Stipulation and the expansive nature of uncertainty that defines them, I do not see how anyone could describe the nature of bargaining over them to be knowledgeable or capable.

1   ***Q20. TAKEN AS A WHOLE, DOES THE STIPULATION MEET THE***  
2                   ***COMMISSION'S THREE CONDITIONS FOR EVALUATION OF A***  
3                   ***STIPULATION?***

4   ***A20.*** No. As described thus far, the provisions in the Stipulation fail the three-part test.  
5           The failure is brought into stark relief when the Stipulation is considered as a  
6           whole. The cumulative result of each provision's failure confirms, without  
7           question, that the Stipulation as a package was not the subject of serious  
8           bargaining between knowledgeable parties, violates important regulatory  
9           principles and practices, and does not benefit customers and the public interest.

10

11   ***Q21. ARE THE PPA RIDER PROVISIONS IN THE STIPULATION OF BENEFIT***  
12                   ***TO RATE PAYERS AND THE PUBLIC INTEREST?***

13   ***A21.*** No. The PPA rider in the Stipulation is economically distortionary and violates  
14           the underlying principle of functional separation of electric distribution and  
15           generation inherent to deregulation. The rider essentially indemnifies AEP Ohio  
16           against losses and it places a vast majority of the economic risk in the hands of  
17           households and businesses. The rider will ensure that all environmental costs, all  
18           fuel costs, all retrofit costs, wholesale market risk, and all other costs and risks  
19           associated with the operation, maintenance, and retrofit of these units is borne by  
20           customers. Other provisions in the Stipulation also commit AEP Ohio to a path of  
21           submitting several additional cost recovery filings to the Commission to increase  
22           these costs on customers even further. Not only is this directly counter to the  
23           public interest, this is directly counter to the intention of deregulation, in which

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1       these pricing risks and costs should be borne by the firms operating in a  
2       competitive market.

3  
4       As a package, the Stipulation introduces new taxes and surcharges on energy,  
5       create incentives for CRES providers to distort the prices that they charge  
6       customers, solidifies a system of cross subsidies from businesses and households  
7       to a concentrated clientele of signatories, and introduces a system of credits to  
8       provide against mismanagement that only take effect for half of the term of the  
9       Stipulation.

10  
11       Furthermore, I have already filed direct testimony (dated September 11, 2015)  
12       regarding the macroeconomic impact analysis provided by AEP Ohio for the PPA  
13       rider itself. In that testimony, I provided at some length and detail, an explanation  
14       of how the macroeconomic analysis performed by AEP Ohio is not credible, and  
15       is based upon an outdated and flawed methodology. Taken as a whole—the PPA  
16       rider and the other provisions of the Stipulation—the Commission has not been  
17       provided any inclusive economic impact assessment. The economic assessment  
18       provided by AEP Ohio for the PPA rider alone, that was performed prior to the  
19       introduction of the terms of the Stipulation, should not be trusted. Moreover, the  
20       Stipulation adds several costly provisions, expenditures, riders and a distortionary  
21       energy tax to the PPA rider. Any purported positive economic benefits of the  
22       PPA rider described in the Stipulation, are unfounded at best. In my opinion, the

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1 PPA rider and the rest of the Stipulation are not of benefit to households,  
2 businesses, and the public more broadly.

3  
4 At a time when households are struggling to keep up with the ever-increasing cost  
5 of living, the astronomical costs of college tuition, the increasing cost of housing,  
6 and flat-to-declining real wages, saddling AEP Ohio's customers and businesses  
7 with a litany of additional riders, surcharges and taxes is most certainly not in the  
8 public interest.

9

10 ***Q22. PLEASE SUMMARIZE YOUR RECOMMENDATIONS.***

11 ***A22.*** For the foregoing reasons, the Stipulation fails each part of the three-prong test  
12 and should be rejected.

13

14 **V. CONCLUSION**

15

16 ***Q23. DOES THIS CONCLUDE YOUR WRITTEN TESTIMONY?***

17 ***A23.*** Yes, it does.



## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Direct Testimony of Noah C. Dormady, Ph.D. on Behalf of the Office of the Ohio Consumers' Counsel* was served via electronic transmission this 28<sup>th</sup> day of December, 2015 upon the parties below.

/s/ William J. Michael

William J. Michael  
Assistant Consumers' Counsel

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