

**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 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.)

**REPLY TO OHIO POWER COMPANY'S MEMORANDUM CONTRA MOTION
TO STAY PROCEEDINGS PENDING A RULING BY FERC
FILED BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
THE APPALACHIAN PEACE AND JUSTICE NETWORK,
AND
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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Staying these proceedings is necessary to protect 1.3 million Ohio consumers from paying non-refundable rates for a power purchase agreement (“PPA”) that the Federal Energy Regulatory Commission (“FERC”) may decide is unlawful. The stay should remain until a final decision is issued by FERC regarding the legality of AEP Ohio’s proposed PPA.

The Public Utilities Commission of Ohio (“PUCO”) need merely exercise its well-established authority over managing its docket and stay these proceedings. Staying these proceedings will not harm AEP Ohio, as AEP Ohio readily admits. Not doing so runs the substantial risk of an “unfair outcome” to customers and a “windfall” to the

utility – where customers pay charges, later determined unlawful, and can get no refund of those charges.¹ To protect the public interest, these proceedings should be stayed.

I. INTRODUCTION

It is well settled that the PUCO enjoys broad discretion in managing its docket.² As part of this broad discretion, the PUCO has the power to stay its proceedings where necessary to safeguard the public interest against paying unjust or unreasonable charges.³ It should do so here, where a FERC decision is pending on the underlying affiliate transaction. The PUCO has stayed other proceedings while awaiting FERC decisions. For instance, in *In re Commission’s Review of Columbus S. Power Company’s and Ohio Power Company’s Independent Transmission Plan*,⁴ the PUCO noted various issues outstanding at FERC and decided “that all further activity, including discovery, in the [case] should be stayed until more clarity is achieved regarding matters pending at FERC and elsewhere.”⁵

Seemingly unaware of this longstanding principle, AEP Ohio urges the PUCO to rule expeditiously⁶ on a proposal that would force captive distribution customers to pay above-market prices for a fleet of affiliate owned generating units (“PPA Units”). Glaringly absent from AEP Ohio’s request to forge ahead is any citation to authority requiring the PUCO to accelerate its decision-making process.

¹ *In re: Columbus S. Power Co.*, 138 Ohio St. 3d 448 (2014); see also *In re: Columbus S. Power Co.*, 128 Ohio St. 3d 512 (2011).

² *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 46, 2011-Ohio-2383, ¶ 34, citing *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560 (1982); see also R.C. 4901.13.

³ R.C. 4905.22.

⁴ Case No. 02-1586-EL-CSS.

⁵ *Id.* at Entry (February 20, 2003).

⁶ AEP Ohio Memo Contra at 4, 13.

Lacking any legal basis to accelerate the proceedings, AEP Ohio urges that a quick PUCO decision is necessary to enable its *parent company* to make “long-term strategic decisions” about the PPA Units.⁷ Because the PPA Rider is revenue neutral to it, AEP Ohio’s memo contra does not even bother to explain how it (and not its parent) could possibly suffer financial injury from staying the proceedings.⁸ These are striking concessions to say the least, but not entirely surprising. The interests of AEP Ohio’s parent company – not customers’ interests and not the regulated distribution utility’s interests – are driving this misguided proposal. Stripped of all the legal niceties, the question for the PUCO is straightforward: should the parent company’s interest in delivering value to shareholders and the investment community defeat a request to stay the proceedings for the benefit of the public interest? The answer is plainly no.

The complaint pending before FERC filed by the Electric Power Supply Association and others (“EPSA Complaint”) against AEP Ohio and its affiliate, AEPGR, provides a compelling justification for why the PUCO should stay the proceedings. A stay will allow FERC adequate time to rule on whether to rescind the prior waiver it granted on affiliate power sales restrictions. Before considering retail cost recovery for the PPA Units, the PUCO should await a decision from FERC on whether the proposed Affiliate PPA’s rates, terms, and conditions are just and reasonable, and free from affiliate abuse.⁹ A PUCO decision authorizing retail cost recovery for the PPA Units, followed *later* by a FERC decision declaring that the Affiliate PPA does not meet the standards of the Federal Power Act, would be contrary to the public interest. It could

⁷ AEP Ohio Memo Contra at 13.

⁸ Tr. Vol. I at 211; Tr. Vol. VI at 1706-1707.

⁹ See 16 U.S.C. 824d; *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 at 62,167-169 (1991); *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 at 61,417-418 (2004).

place retail customers in the untenable position of having to pay for unlawful charges without any remedy to refund those unlawful charges, as AEP Ohio will most certainly argue.¹⁰ To avoid irreparable injury to consumers, the PUCO should grant the motion to stay the proceedings by the Office of the Ohio Consumers' Counsel, Appalachian Peace and Justice Network, and the Ohio Manufacturers' Association Energy Group (collectively, "Consumers"). That would allow FERC adequate time to rule on the EPSA Complaint.

II. RECOMMENDATIONS

A. The issues pending before FERC in the EPSA Complaint are directly linked to the PPA issues pending before the PUCO. Only after FERC rules on the EPSA Complaint should the PUCO issue its decision.

AEP Ohio is flatly wrong in its assertion that the PUCO's decision in this case does not depend on the outcome of the EPSA Complaint.¹¹ The issues are directly linked – as the PUCO made abundantly clear in its comments filed at FERC.¹² It makes eminent sense to allow FERC to rule *first* and for the PUCO to act *second*. Contrary to AEP Ohio's claims, the PUCO did not "strongly impl[y]" in its comments filed at FERC that it would rule first.¹³ The PUCO stated that it would be improper to speak to issues that directly relate to two pending cases.

¹⁰ See, e.g., *In re Application of Columbus S. Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, ¶ 56 (acknowledging the "no-refund rule"), citing *Keco Indus., Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957).

¹¹ AEP Ohio Memo Contra at 2.

¹² PUCO Comments at 2, FERC Docket No. EL16-33-000 (February 10, 2016) (explaining that the subject matter in the EPSA Complaint "directly relates" to this case).

¹³ AEP Ohio Memo Contra at 5.

As detailed in the EPSA Complaint and the comments submitted in support, there is a genuine issue as to whether the proposed Affiliate PPA's rates, terms, and conditions are just and reasonable, and free from affiliate abuse.¹⁴ The answer to that question is imperative for all involved. A contract for wholesale power sales must meet the requirements of the Federal Power Act to be valid and enforceable.¹⁵ If the proposed Affiliate PPA is inconsistent with the Federal Power Act, it is invalid. And if FERC declares the Affiliate PPA invalid under the Federal Power Act, then there will be *no* costs associated with the Affiliate PPA that can be passed through to retail customers. Given the direct linkage between FERC's authority at the wholesale level and the PUCO's authority at the retail level, it makes eminent sense for the PUCO to stay the proceedings. That way FERC can fulfill its vital role under the Federal Power Act.¹⁶

AEP Ohio's request to have the PUCO rule first and for FERC to act second is backwards. It would result in the same type of damage that befell customers merely two years ago in *In re Application of Columbus S. Power Co.*¹⁷ There, customers were forced to pay hundreds of millions of dollars in charges, later determined by the Ohio Supreme Court to be unlawful, as AEP Ohio successfully argued that *Keco*¹⁸ would not allow a refund. AEP Ohio will assuredly argue the same thing here if it is allowed to begin

¹⁴ See generally FERC Docket No. EL16-33-000.

¹⁵ See, e.g., *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1 of Snohomish County, Wash.*, 554 U.S. 527, 531-532 (2008).

¹⁶ *Mun. Light Bds. of Reading & Wakefield v. FPC*, 450 F.2d 1341, 1348 (D.C. Cir. 1971) (the "primary aim [of the Federal Power Act] is the protection of consumers from excessive rates and charges."), cert denied, 405 U.S. 989 (1972).

¹⁷ See *supra*, note 1.

¹⁸ *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 155 Ohio St. 254 (1957).

collecting costs through the PPA Rider that are later found to be unlawful.¹⁹ A PUCO ruling permitting AEP Ohio to collect costs under the PPA, followed later by a FERC decision declaring the Affiliate PPA unenforceable, would irreparably harm customers. Such an unfair result, creating a windfall to AEP Ohio, should be avoided at all costs. The PUCO should avoid inflicting the harm sustained by AEP Ohio customers just two years ago. AEP Ohio has already been unjustly enriched with Ohioans' hard-earned money. It does not deserve more. Customers deserve the protection of a PUCO stay.

B. The Consumers' motion for a stay of the proceedings is proper and will protect customers. AEP Ohio's claims to the contrary are groundless.

AEP Ohio's contention that the Consumer's motion for a stay conflicts with "multiple provisions" of Title 49²⁰ cannot be squared with precedent from the Supreme Court of Ohio. It has declared: "It is well-settled that pursuant to R.C. 4901.13, the commission has the discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort."²¹ This authority thus belies AEP Ohio's assertion that the PUCO cannot press the pause button and stay the proceedings to safeguard the public interest. AEP Ohio is wrong that a stay conflicts with R.C. 4903.15 because no PUCO order has been issued. AEP Ohio is wrong that a stay conflicts with R.C. 4903.10(B) because no applications for rehearing have been filed. And AEP Ohio is wrong that a stay conflicts with R.C. 4903.16 because

¹⁹ Further, the Joint Stipulation and Recommendation provides that "[n]o amounts collected shall be refunded" if the PPA Rider is invalidated by a court of competent jurisdiction. See Joint Stipulation and Recommendation at 35 (filed December 14, 2015).

²⁰ AEP Ohio Memo Contra at 6.

²¹ *Toledo Coalition for Safe Energy*, 69 Ohio St.2d at 560.

no appeal has been filed. If anyone is sorely lacking in authority for their position, it is certainly not the Consumers. It is AEP Ohio.

Far from an extreme remedy, the stay requested by the Consumers merely calls for the PUCO to exercise its discretion to manage its docket. While AEP Ohio claims that the PUCO should not follow the four-factor test for stays articulated in dissent by Justice Douglas,²² and later followed by the PUCO,²³ AEP Ohio cites no authority holding that the test is cannot be considered before a PUCO order is issued. The four-factor test for granting stays, if not controlling, is certainly instructive here. It provides a framework for assessing whether the PUCO should exercise its discretion to stay the proceeding pending a ruling by FERC. The four factors weigh heavily in favor of the Consumers. AEP Ohio's arguments to the contrary lack merit.

1. AEP Ohio fails to recognize that times have changed since the waiver was granted. Customers would be captive to the PPA Rider.

AEP Ohio's theory regarding why consumers are not captive to the PPA Rider is remarkable for what it does not argue. At no point does AEP Ohio even contest the Consumers' demonstration that retail customers will have no opportunity to avoid the PPA Rider by selecting a competitive retail electric supplier ("CRES") of their choosing. Consumers in Ohio are no less captive than consumers in traditionally-regulated states who have no choice but to receive their supply of generation services from a vertically-integrated electric utility.

²² *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 31 Ohio St.3d 604, 605 (1987) (Douglas, J., dissenting).

²³ *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI, Entry on Rehearing at 5 (February 20, 2003).

When FERC originally granted AEP Ohio and AEPGR a waiver on affiliate power sales restrictions,²⁴ there was no PPA Rider in existence or even proposed. Thus, whatever may have motivated FERC to originally grant the waiver, it was not presented with the scenario AEP Ohio presents here. Here, a distribution utility is on the cusp of striking an eight-year, above-market, cost-plus deal with its affiliate generator to deliver output to the PJM markets (as opposed to serving the distribution utility's retail load). That fact-pattern, unaddressed by FERC when it *originally* granted a waiver, is precisely the scenario confronting FERC *now* as detailed in the EPSA Complaint. FERC should be given adequate time to answer the question presented before the PUCO considers retail cost collection for a wholesale power contract of questionable validity.

The fact that Ohio law allows retail choice is not dispositive of the narrower issue raised in the EPSA Complaint. AEP Ohio therefore gains nothing by arguing that it is up to the PUCO, not FERC, to assess the adequacy of retail choice in Ohio.²⁵ A sweeping analysis of retail choice is not what is at issue. The more limited question in the EPSA Complaint is whether the waiver on affiliate power sales restrictions should be rescinded. The answer to that question is “yes” and FERC's Order No. 697²⁶ does not require a different result.

In Order No. 697, FERC explained that “in a regulatory regime in which retail customers have no ability to choose a supplier, they are considered captive because they

²⁴ See FERC Docket No. ER14-593-000 et al.

²⁵ AEP Memo Contra at 4.

²⁶ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 480 (2007) (“retail customers in retail choice states who choose to buy power from their local utility at cost-based rates as part of that utility's [POLR] obligation are not considered captive customers because, although they may choose not to do so, they have the ability to take service from a different supplier whose rates are set by the marketplace.”).

must purchase from the local utility pursuant to cost-based rates set by a state or local regulatory authority.”²⁷ All the elements prescribed in Order No. 697 that identify what it means to be a “captive customer” are present here. First, retail customers will have no opportunity to avoid the PPA Rider by selecting a CRES (as AEP Ohio agrees). Second, the charges associated with the PPA Rider will be imposed by the local distribution utility (AEP Ohio). Third, the charges associated with the PPA Rider will be flowed through under a cost-based contract between AEP Ohio and AEPGR. And fourth, the rates underlying the PPA Rider will be set by a state regulatory authority (the PUCO). With all of these elements met, FERC can only come to one conclusion: retail customers are captive customers under the PPA Rider.

AEP Ohio’s reliance on FERC’s *FirstEnergy Solutions Corp.*²⁸ decision is equally unavailing. Under AEP Ohio’s sweeping interpretation of that decision, FERC unconditionally ruled that – no matter the magnitude and purpose of a bypassable charge – the existence of retail choice is the sine qua non of the captive-customer inquiry. *FirstEnergy Solutions Corp.* cannot bear the weight that AEP Ohio places upon it. It did not deal with charges flowing from an eight-year, above-market, cost-plus, affiliate deal to deliver output to the PJM markets (as opposed to serving the distribution utility’s retail load). As in all interpretive exercises, “[c]ontext matters” here.²⁹ Indeed, “courts have recognized the folly of lifting a general phrase or sentence out of an opinion and applying

²⁷ Id.

²⁸ *FirstEnergy Solutions Corp.*, 125 FERC ¶ 61,356 (2008).

²⁹ *In re Application of Ohio Power Co.*, 140 Ohio St.3d 509, 2014-Ohio-4271, ¶ 26 (2014).

it to an entirely different context.”³⁰ Put simply, *FirstEnergy Solutions Corp.* is not determinative of the question presented in the EPSA Complaint.

2. Without a viable mechanism to refund unlawfully collected charges, customers will be irreparably harmed.

In claiming that monetary harm does not constitute irreparable injury sufficient to warrant a stay, AEP Ohio misapprehends a fundamental distinction between PUCO proceedings and proceedings in other tribunals. Many types of civil actions contemplate the award of money damages to prevailing parties.³¹ But the PUCO, as a creature of statute, does not have the power to award monetary relief.³² Likewise, due to the no-refund rule articulated in *Keco* and its progeny (that AEP Ohio will assuredly argue), consumers generally are not able to recoup, in the form of a refund, unlawfully collected charges.³³

Thus, even if it were possible to quantify a consumer’s financial injury, the PUCO lacks the power to rectify that injury through the award of money damages. Harm is irreparable “when there could be no plain, adequate, and complete remedy at law for its occurrence and when any attempt at monetary restitution would be ‘impossible, difficult or incomplete.’”³⁴ Under this standard, the PUCO cannot *repair* the consumer’s injury

³⁰ *American Meat Inst. v. U.S. Dept. of Agric.*, 760 F.3d 18, 39 (D.C. Cir. 2014) (Brown, J., dissenting).

³¹ See, e.g., R.C. 2307.60 (authorizing money damages to persons injured by criminal acts); R.C. 2307.611 (authorizing money damages in identity fraud cases); R.C. 2307.73 (authorizing manufacturer liability in the form of money damages in products liability cases).

³² *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535 (1993) (“It is axiomatic that the PUCO, as a creature of statute, may exercise only that jurisdiction conferred upon it by the General Assembly.”).

³³ But see *River Gas Co. v. Public Util. Comm.*, 69 Ohio St.2d 509, 513-514 (1982) (distinguishing *Keco*). For the reasons principally stated in *River Gas*, Consumers are not conceding that the no-refund rule articulated by *Keco* would apply here. Nonetheless, because Consumers expect AEP Ohio to rely on *Keco* in the future if necessary, Consumers believe it is important for the PUCO to stay the proceedings pending a FERC ruling so as to avoid a scenario that would potentially implicate *Keco*.

³⁴ *Fraternal Order of Police v. Cleveland*, 141 Ohio App.3d, 81 (8th Dist. 2001) (citations omitted).

because it cannot grant monetary relief. Without a remedy to repair the consumer's injury, it necessarily follows that the injury is *irreparable* as contemplated under the second factor of the stay analysis.

This critical distinction between PUCO proceedings and proceedings that authorize relief in the form of monetary damages therefore renders the judicial authority cited by AEP Ohio inapposite. Equally unavailing are AEP Ohio's citations to the PUCO's decisions in Case No. 08-917-EL-SSO, et al. and Case No. 05-792-EL-ATA.³⁵ In neither of those cases was the PUCO confronted with a scenario where a forthcoming FERC ruling may have effectively nullified any retail-rate treatment authorized by the PUCO.

At bottom, a situation where the PUCO authorizes AEP Ohio to recover the costs of the Affiliate PPA, followed later by a FERC decision invalidating the Affiliate PPA, would plainly threaten customers with an irreparable injury.

³⁵ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan, et al.*, Case No. 08-917-EL-SSO, et al., Entry at 3 (March 30, 2009) and *In the Matter of the Dayton Power and Light Company for Approval of Tariff Changes Associated with the Request to Implement a Billing Cost Recovery Rider*, Case No. 05-792-EL-ATA, Opinion and Order at 14 (March 1, 2006).

3. An aggregate rate increase of \$1.9 billion, coupled without any meaningful remedy for consumers to recoup payments made towards that rate increase, plainly implicates the public interest.

AEP Ohio is naïve if it genuinely believes that a potential aggregate rate increase of \$1.9 billion,³⁶ coupled without any meaningful remedy to recoup that money (assuming *Keco* applies), is not deeply affected with the public interest. The animating purpose of public-utility oversight – at both the state and federal levels – is protecting the public, not enhancing a parent company’s strategic planning objectives. The Supreme Court of Ohio has observed that “[p]ublic utilities * * * are subject to supervision, regulation and control by governmental agencies * * * to protect those served by the utilities with respect to the fairness of rates charged, adequacy of service and against discriminatory practices.”³⁷ The overarching purpose of federal supervision is no different: “It is long established that the ‘primary aim [of the FPA] is the protection of consumers from excessive rates and charges.’”³⁸

Contrary to AEP Ohio’s claims, it is not merely the prospect of a rate increase that the Consumers are relying on to justify a stay of the proceedings. It is the prospect of a rate increase (and a gargantuan one at that) *coupled with* the possibility that consumers

³⁶ OCC Ex. 34 at 5, 10 (Supplemental Direct of Wilson). This is a best-case scenario, as it assumes the output clears the PJM markets. As one of the signatories to the Joint Stipulation and Recommendation, Ohio Energy Group (“OEG”), admits, if a “PPA Unit did not clear in the PJM market, then there would be no capacity revenue from that PPA Unit to offset its costs. This would dramatically raise the level of costs collected through the PPA Rider.” Ohio Energy Group Brief at 20 (February 1, 2016). OEG made this admission in connection with asserting that the PUCO should reserve the right to reevaluate, modify, or terminate the PPA Rider if the PJM Minimum Offer Price Rule (“MOPR”) is applied to the PPA Units during the PPA term. *Id.* The MOPR, according to OEG, “could threaten the ability of [the PPA Units] to clear.” *Id.* A complaint is currently pending at FERC that requests expansion of the MOPR. See Complaint Requesting Fast Track Processing, *Calpine Corp., et al. v. PJM Interconnection, LLC*, Docket No. EL16-49-000 (March 21, 2016).

³⁷ *Shopping Centers Assn. v. Pub. Util. Comm.*, 3 Ohio St.2d 1, 3 (1965).

³⁸ *Xcel Energy Servs., Inc. v. FERC*, Slip Opinion at 9 (D.C. Cir. January 15, 2016) (bracketing in original), quoting *Mun. Light Bds. of Reading & Wakefield v. FPC*, 450 F.2d 1341, 1348 (D.C. Cir. 1971), cert denied, 405 U.S. 989 (1972).

may never be able to recoup monies paid under an unlawful charge. The absence of PUCO authority to award compensatory damages to injured consumers and *Keco's* no-refund rule therefore negate AEP Ohio's contention that this case involves no more than just a rate increase.

4. AEP Ohio concedes it will suffer no financial harm from a stay of the proceedings.

Tellingly, AEP Ohio does not even bother to defend itself against the argument that it will suffer no financial harm from staying these proceedings. Given that the PPA Rider is revenue neutral to AEP Ohio,³⁹ it could not. Perhaps recognizing this quandary, AEP Ohio resorts to arguing the interests of others, namely its parent.⁴⁰ This argument fails on multiple levels.

To begin with, the last factor in the stay analysis asks whether a stay would cause harm to other *parties*.⁴¹ Neither AEP Ohio's parent company nor its subsidiary, AEPGR, have sought intervention in this proceeding and, therefore, neither qualify as parties whose interests matter under the stay analysis. Next, the claim that the parent company must have a quick PUCO decision to fulfill its strategic planning objectives cannot be squared with the parent company's prior statements from May, June, and September of last year that AEPGR's generation fleet "is well positioned from a cost and operational perspective to compete in the competitive market."⁴² In fact, because AEPGR's generation fleet (which includes the PPA Units) is so well positioned, as the parent claims, a swift decision is not necessary. Finally, AEP Ohio offers no authority to justify,

³⁹ Tr. Vol. I at 211; Tr. Vol. VI at 1706-1707.

⁴⁰ AEP Ohio Memo Contra at 13.

⁴¹ *MCI Telecommunications Corp.*, 31 Ohio St.3d at 605 (Douglas, J., dissenting).

⁴² OCC Ex. 5 at 23; OCC Ex. 6 at 28; OCC Ex. 7 at 28.

at the behest of its parent company or affiliate, an “expedient resolution” of this proceeding.⁴³ The PUCO enjoys broad latitude in how it chooses to manage its docket. No statute bearing on this proceeding directs the PUCO to move quickly simply because the parent company finds it convenient.

III. CONCLUSION

To protect customers against the potential of paying unlawfully collected charges without any means to refund those charges, the PUCO should exercise its broad discretion to stay these proceedings pending a ruling by FERC on the EPSA Complaint. The public interest clearly lies in favor of granting a stay because without a mechanism to refund unlawfully collected charges, the harm is irreparable. The PUCO should avoid another unfair outcome where customers are left with no remedy, and the utility walks away with a windfall. The PUCO should stay these proceedings.

⁴³ AEP Ohio Memo Contra at 13.

Respectfully submitted,

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I hereby certify that a copy of the foregoing Reply was served on the persons stated below via electronic transmission, this 30th day of March 2016.

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