

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking)	
Approval of Ohio Power Company’s)	Case No. 14-1693-EL-RDR
Proposal to Enter into an Affiliate Power)	
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)	

**BUCKEYE POWER, INC.’S WITHDRAWAL FROM THE STIPULATION
AND APPLICATION FOR REHEARING**

Pursuant to Article IV.G of the Joint Stipulation and Recommendation (the “Stipulation”) filed by Ohio Power Company (“AEP Ohio”), Buckeye Power, Inc. (“Buckeye”) and other parties with the Commission on December 14, 2015, Buckeye hereby withdraws from the Stipulation because the Commission’s November 3, 2016 Second Entry on Rehearing (the “Rehearing Entry”) materially modifies the Stipulation by eliminating the Affiliate PPA units, including Cardinal Generating Station (“Cardinal”) Unit 1, from the PPA Rider while at the same time continuing to include mandatory retirement, refueling or repowering requirements for such generating units. The result is that the likelihood that such generating units will be prematurely and imminently retired or degraded is increased, despite evidence in the hearing record in this proceeding, which establishes the need for the continued operation of these generating units for reasons of reliability, economic development and retention of jobs, fuel diversity, and cost. Buckeye would continue to support the Stipulation, even as materially modified by the Commission in the Rehearing Entry, if the Stipulation is further modified by the Commission on rehearing, in accordance with Buckeye’s request for rehearing, as described below. Of course, Buckeye would

continue to support the Stipulation if the Affiliate PPA were to be replaced with provisions of equivalent value in accordance with Article IV.D. of the Stipulation.

Pursuant to Section 4903.10, Ohio Revised Code (“R.C.”) and Rule 4901-1-35, Ohio Administrative Code (“O.A.C.”), Buckeye also respectfully files this application for rehearing of the Commission’s Rehearing Entry, which granted in part and denied in part AEP Ohio’s application for rehearing of the Commission’s March 31, 2016 Opinion and Order (the “Initial Order”), and denied the applications for rehearing filed by certain of the other parties to the above-captioned proceedings.

The Commission’s Rehearing Entry is unreasonable and unlawful in the following respects:

I. The Commission’s decision on rehearing to modify the Stipulation to eliminate cost support for the generating units included in the PPA Rider (other than units owned by the Ohio Valley Electric Corporation (“OVEC”)) while retaining the Stipulation’s mandatory retirement, refueling, or repowering provisions for such generating units is contrary to the record in this proceeding. The Commission should grant Buckeye’s rehearing request, and, on rehearing, should eliminate the mandatory retirement, refueling, or repowering provisions applicable to the PPA Rider units (other than OVEC), if cost support for such generating units or replacement provisions of equivalent value will not be included in the Stipulation.

II. AEP’s recent decision to write-down and abandon the PPA Units (other than OVEC) rather than continue to pursue cost support for the PPA units at the Commission or in the Ohio legislature is contrary to the record in this proceeding, including AEP Ohio’s own application and testimony in this proceeding, and the Commission’s Initial Order in this proceeding, which all establish the need for the continued operation of the generating units included in the PPA Rider. The Commission, therefore, should grant Buckeye’s rehearing

request and, on rehearing, should require AEP Ohio to pursue the transfer or sale of, or at least not retire, the PPA Units (defined below) and should require AEP Ohio to continue to make necessary investments in the PPA Units until such a transfer or sale is completed, so as to avoid the premature and imminent retirement or degradation of the PPA Units.

The Commission should grant Buckeye's request for rehearing, and, on rehearing, should: (a) eliminate the mandatory retirement, refueling or repowering obligations imposed on the PPA Rider units (other than OVEC); (b) require AEP Ohio to pursue a transfer or sale of, or at least not retire, the PPA Rider units; (c) require AEP Ohio to take steps to preserve the PPA Rider units (other than OVEC) until they are transferred or sold by requiring AEP Ohio to continue to make needed investments in such units until they are transferred or sold; and (d) affirm the other provisions of the Stipulation, including cost support for (or the market benefit of) OVEC, in accordance with the Commission's Rehearing Entry.

Respectfully submitted,

/s/ Stephanie M. Chmiel

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**MEMORANDUM IN SUPPORT OF BUCKEYE POWER, INC.'S
WITHDRAWAL FROM STIPULATION AND
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INTRODUCTION

On May 15, 2015, AEP Ohio filed an Amended Application in this proceeding and provided evidence that certain generating units¹ to be included in a proposed Affiliate PPA and associated PPA Rider had a financial need, were necessary in light of future reliability concerns, including supply diversity, were compliant with all environmental regulations, and would negatively impact Ohio's economy if closed. Subsequently, AEP Ohio and the other parties to this proceeding developed a robust record expanding, explaining, and challenging AEP Ohio's initial assertions regarding these factors. Both AEP Ohio's application in this proceeding and the Stipulation were designed to benefit and support the PPA Units given their demonstrated importance to Ohio.²

Now, however, the Stipulation approved by the Commission on rehearing has turned the purpose of AEP Ohio's application on its head. Despite the fact that both AEP Ohio and the Commission agreed that the PPA Units should be supported and are important to Ohio's economy and fuel diversity, the Stipulation approved on rehearing will instead negatively impact them. Pursuant to the Commission's Rehearing Entry, not only do the PPA Units no longer receive cost recovery, but they remain bound by the mandatory retirement, repowering, and refueling provisions rendering them unattractive to potential purchasers. Further, as discussed below, AEP has announced its intent to essentially abandon these units, meaning that they are likely to be imminently retired or degraded in the absence of a sale or transfer by AEP. Thus,

¹ The generating units included in AEP's Amended Application in this proceeding were Cardinal Unit 1; Conesville Generating Station Units 4, 5, and 6; Stuart Generating Station Units 1, 2, 3, and 4; and Zimmer Generating Station Unit 1 (collectively, the "PPA Units"); and the Kyger Creek Generating Station and Clifty Creek Generating Station Units (collectively, the "OVEC Units"). The PPA Units were owned, at least in part, by AEP's merchant generating affiliate AEP Generation Resources ("AEPGR"), and AEP Ohio was to purchase the output of the PPA Units pursuant to an Affiliate PPA with AEPGR (the "Affiliate PPA"). The OVEC Units, although not included in the Affiliate PPA were included in the PPA Rider. The OVEC Units were and are owned by AEP Ohio negating the need for an Affiliate PPA with respect to them. OVEC is governed by the Inter-Company Power Agreement ("ICPA"). Throughout this application for rehearing, Buckeye will reference actions taken by AEP at a corporate level as being taken by "AEP."

² See AEP Ohio's Amended Application at pp 4-5.

with the exception of OVEC, the PPA Units would have been better off if AEP Ohio had never commenced this proceeding.

Buckeye, therefore, requests that the Commission grant Buckeye's application for rehearing as outlined below and approve a stipulation that does not harm the PPA Units.

BACKGROUND

Buckeye has participated in this proceeding to support AEP Ohio's application. As a part owner of OVEC and the full owner of Cardinal Units 2 and 3, Buckeye fully comprehends the challenges faced by coal-fired generating units as well as the reliability and other benefits that such units provide. To that end, Buckeye sought to ensure that the Commission understood these benefits and would authorize cost support to viable generating units, including the OVEC Units and Cardinal Unit 1. Buckeye and certain of Buckeye's electric distribution cooperative members filed public comments in this proceeding supporting AEP Ohio's application.³

Ultimately, the Commission approved a Stipulation signed by Buckeye, AEP Ohio, the Commission Staff, and numerous other parties recognizing the various benefits to Ohio of the continued operation of the PPA Rider units. The Commission granted AEP Ohio's request to include the financial impact of the Affiliate PPA and the OVEC ICPA in the PPA Rider, thus providing cost support for the impacted generating units. In order to ensure that the Stipulation represented a diverse array of interests, AEP Ohio committed to, among other things, retire, refuel, or repower certain of the generating units included in the Affiliate PPA by a date certain.⁴

³ The electric distribution cooperative members of Buckeye submitting public comments in this proceeding were: Adams Rural Electric Cooperative, Inc., Darke Rural Electric Cooperative, Inc., Guernsey-Muskingum Electric Cooperative, Inc., Holmes-Wayne Electric Cooperative, Inc., Logan County Electric Cooperative, Lorain-Medina Rural Electric Cooperative, Inc., Midwest Electric, Inc., North Central Electric Cooperative, Inc., North Western Electric Cooperative, Inc., Paulding Putnam Electric Cooperative, Inc., The Frontier Power Company, Tricounty Rural Electric Cooperative, Inc., and Union Rural Electric Cooperative, Inc. Buckeye's affiliate, Ohio Rural Electric Cooperatives, Inc., also submitted public comments supporting AEP Ohio's proposal.

⁴ The generating units subject to the mandatory retirement, refueling or repowering obligation were Conesville Units 5 and 6 and Cardinal Unit 1. Although the so-called co-owned PPA Units, including OVEC, were not subject to a mandatory, refueling or repowering obligation, AEP Ohio was required to pursue retirement, refueling or repowering options with the other joint owners.

On April 27, 2016, the Federal Energy Regulatory Commission (“FERC”) rescinded AEP Ohio’s waiver of affiliate transaction restrictions applicable to the Affiliate PPA, making it illegal for AEP Ohio and its affiliates to transact under the Affiliate PPA absent additional analysis and approval by FERC.⁵ This would require AEP Ohio to make a filing with FERC satisfying its applicable affiliate transaction requirements. It is Buckeye’s understanding that AEP Ohio has made no such filing with FERC and does not intend to do so because AEP Ohio believes that the Affiliate PPA would not meet these FERC requirements.

In its application for rehearing filed on May 2, 2016, AEP Ohio requested that the Commission allow the Stipulation to proceed, with the PPA Rider populated only with AEP Ohio’s contractual entitlement under the ICPA to a portion of the output of OVEC.⁶ AEP Ohio also indicated that it was reserving the right to pursue replacement provisions for the Affiliate PPA at the Commission or legislatively.⁷ AEP Ohio also invoked Article IV.D of the Stipulation and reserved its “right” to pursue replacement provisions of equivalent value for the Affiliate PPA.⁸ In its Memorandum Contra Applications for Rehearing filed May 12, 2016, AEP Ohio also suggested that the Commission could approve AEP Ohio’s OVEC-only proposal but then direct AEP Ohio to develop additional hedging options to replace the Affiliate PPA, and establish a hearing and procedural schedule to evaluate the additional hedging options developed by AEP Ohio as replacement provisions for the Affiliate PPA.⁹

On November 1, 2016, just two days before the Commission issued its Rehearing Entry, AEP held a third quarter earnings conference call. On that call, AEP announced that it had made

⁵ “Order Granting Complaint,” 155 F.E.R.C. ¶ 61,102 (April 27, 2016), Docket No. EL16-33-000.

⁶ *See, generally*, AEP Ohio Application for Rehearing.

⁷ AEP Ohio Application for Rehearing at p. 3 (footnote 1).

⁸ Buckeye notes that Article IV.D. is not a right of AEP Ohio to pursue replacement provisions of equivalent value; rather Article IV.D. requires the Signatory Parties to work in good faith to cure any court-determined deficiency.

⁹ AEP Ohio Memorandum Contra Applications for Rehearing at p. 3.

the decision to write-down the generating units included in the PPA Rider (other than OVEC); that AEP would not pursue cost recovery of the PPA Rider units (other than OVEC) through the regulatory or legislative process; and that AEP had decided to focus on regulated and quasi-regulated investments, including renewables and transmission and distribution investments.¹⁰ AEP also indicated that it would likely pursue a sale of the PPA Rider units (other than OVEC) similar to AEP Ohio's recent announced sale of the General Gavin Station and certain gas-fired power plants to a Blackstone and ArcLight Capital joint venture. AEP's decision to write-off the PPA Units and to forego any further efforts to pursue cost recovery for the PPA Units was a remarkable about face on the part of AEP, particularly in the context of this proceeding, where AEP had provided extensive testimony establishing the need for the continued operation of these units.

On November 3, 2016, in the Rehearing Entry, the Commission responded to both the FERC action and AEP Ohio's application for rehearing and granted AEP Ohio's application for rehearing by including only the OVEC units in the PPA Rider while preserving all of the other negotiated provisions of the Stipulation, notwithstanding that no cost recovery would be provided for any of the generating units included in the Affiliate PPA, which units represented the vast majority of the generating units originally proposed by AEP Ohio for inclusion in the PPA Rider.¹¹ The Commission did not request that AEP Ohio develop additional hedging options as a replacement of equivalent value for the Affiliate PPA, nor did it establish a hearing or procedural schedule to explore such replacement options.

The Rehearing Entry materially modified the Stipulation by eliminating cost support for the PPA Units, which was the basis for Buckeye's support of the Stipulation in the first place.

¹⁰ See "AEP Takes Writedown on Competitive Assets," *Megawatt Daily*, November 2, 2016 at pp. 4-5.

¹¹ The OVEC units represent only 440 MW out of the 3,100 MW originally included in the PPA Rider proposal.

With the removal of cost support for the PPA Units, and continued inclusion of a mandatory retirement, refueling, or repowering obligation for such units, Buckeye can no longer support the Stipulation, and Buckeye withdraws from the Stipulation. Buckeye signed and supported the original Stipulation most importantly because it provided needed cost support for the PPA Units. Although Buckeye never joined the provisions of the Stipulation applying the mandatory retirement, refueling, and repowering obligations, Buckeye did support the Stipulation as whole as a reasonable balance of competing interests. However, with the elimination of any cost support for the PPA Units, while continuing to include the mandatory retirement provisions applicable to such units, the Stipulation no longer represents a reasonable balance of competing interest. Instead, it unreasonably favors environmental interest groups, at the expense of the PPA Units that the Stipulation purported to support at least for its term.

As discussed in greater detail below, the benefits provided by the PPA Units, including reliability, diversity of supply resources, local economic benefits, and the avoidance of unnecessary transmission expenditures, are well-supported by the record in this case. But rather than support the PPA Units, which was the original intent of AEP Ohio's application, the Commission's Rehearing Entry will likely lead to their premature and imminent retirement or degradation.¹²

Buckeye requests that the Commission modify the Rehearing Order in a manner so that at least no harm is done to the PPA Units and so that a proper balance of competing interests in the Stipulation is restored. To that end, Buckeye respectfully requests that the Commission modify the Rehearing Order by: (a) eliminating the mandatory retirement, repowering, and refueling provisions of the Stipulation applicable to the PPA Units; (b) requiring AEP Ohio to sell or

¹² Buckeye supports the Commission's decision in the Rehearing Entry to include the OVEC Units in the PPA Rider for all of the reasons cited in the Commission's original order approving the PPA Rider. Buckeye takes no position on and does not oppose the other provisions of the Stipulation that the Commission approved in its Rehearing Order.

transfer, or at least not retire, the PPA Units; and (c) requiring AEP Ohio to continue to invest in and support the PPA Units until they are sold or transferred to a third party. Buckeye requests that the Commission affirm all other provisions of the Stipulation as approved by the Commission in its Rehearing Entry. With these revisions, Buckeye would be prepared to again support the Stipulation, even with no cost support for the PPA Units or other replacement provisions of equivalent value. Buckeye asserts that the Rehearing Entry is unreasonable and unlawful and not supported by the record in these proceedings without the modifications requested by Buckeye.

ARGUMENT

I. BUCKEYE WITHDRAWS FROM THE STIPULATION.

Buckeye hereby withdraws from the Stipulation. Section IV.G of the Stipulation states, in part, “If the Commission does not adopt the Stipulation without material modification upon any rehearing ruling, then within thirty days of such Commission rehearing ruling any Signatory Party may terminate and withdraw from the Stipulation by filing a notice with the Commission.”

In the Rehearing Entry, the Commission materially modified the Stipulation by granting AEP Ohio’s request to modify the Stipulation such that the PPA Rider would include only AEP Ohio’s OVEC entitlement. Buckeye cannot support this modification so long as the mandatory retirement, refueling, or repowering provisions of Sections III.D(9 through 12) of the Stipulation remain in place with respect to the PPA Units.

Throughout this proceeding, Buckeye has consistently supported AEP Ohio’s original PPA Rider application, and Buckeye supported the compromise represented in the original Stipulation, aside from the mandatory retirement, refueling, or repowering provisions.¹³ Buckeye could also support replacement provisions of equivalent value that would provide cost-support

¹³ Buckeye Initial Brief at pp. 3-4.

for the PPA Units, while addressing the affiliate issues identified by FERC, as well as any federal pre-emption or other legal problems.

Although Buckeye withdraws from the Stipulation, below Buckeye suggests certain additional modifications to the Stipulation that could render it acceptable once again to Buckeye, even without inclusion of the Affiliate PPA or replacement provisions of equivalent value in the PPA Rider. Buckeye respectfully requests that the Commission consider the requested modifications set out in this application for rehearing.

II. ON REHEARING, THE COMMISSION SHOULD MODIFY THE STIPULATION TO ELIMINATE THE MANDATORY RETIREMENT, REFUELING, OR REPOWERING OBLIGATIONS FOR THE PPA UNITS (EXCLUDING OVEC).

A. In the absence of cost support for the PPA Units, the mandatory retirement, refueling, or repowering obligations applicable to the PPA Units are not supported by the record in this proceeding.

To justify the inclusion of the PPA Units in the PPA Rider, the Commission required AEP Ohio to address “the financial need of the generating plant; the necessity of the generating facility, in light of future reliability concerns, including supply diversity; a description of how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations; and the impact that a closure of the generating plant would have on electric prices and the resulting effect on economic development within the state.”¹⁴

In the Initial Order, while approving the Stipulation, the Commission considered AEP Ohio’s showing regarding these factors and recognized the benefits of the Stipulation and the PPA Units relative to these factors.¹⁵ The Commission stated that, “The PPA proposal will guarantee that the PPA units continue to provide jobs and other economic benefits to the region,

¹⁴ Initial Order at p. 67.

¹⁵ Initial Order at P. 82, 83-84.

while avoiding the potential for increased transmission costs that may result from premature retirements.”¹⁶ The Commission also stated in its Initial Order that, “Fuel source diversity is a matter of great importance to the Commission, and the PPA proposal will help to ensure that a diverse fuel source mix is maintained in Ohio.”¹⁷

Buckeye agreed with the Commission’s Initial Order and viewed the cost support offered in the Stipulation as ensuring the continued availability of these benefits. While Buckeye did not agree with and did not participate in the Stipulation’s mandatory retirement, refueling, or repowering provisions, Buckeye did support the Stipulation as a whole as a reasonable compromise of competing interests.

The Commission’s Rehearing Entry provides no cost-support for the PPA Units, but retains the mandatory retirement, refueling, or repowering provisions, which will have precisely the opposite effect intended by the Commission’s Initial Order.¹⁸ Instead of supporting the generating units that the record in this proceeding shows to be beneficial to Ohio ratepayers, the Commission has left these generating units stranded, and in fact worse off than they would have been if AEP Ohio had never filed its application in this proceeding. This outcome is unlawful and unreasonable in light of the record in these proceedings, and Buckeye requests that the Commission grant rehearing accordingly.¹⁹

As the Commission is no doubt aware, AEP recently announced that it took a \$2.3 billion impairment charge on certain of its generation assets, including the PPA Units.²⁰ This accounting

¹⁶ Initial Order at p. 84.

¹⁷ Initial Order at pp. 83-84.

¹⁸ Rehearing Entry at p. 28.

¹⁹ R.C. 4903.10.

²⁰ See “AEP Takes Writedown on Competitive Assets,” *Megawatt Daily*, November 2, 2016; see also “Analyst and Investor Meeting,” presentation made by AEP on November 1, 2016, available at <http://www.aep.com/investors/EventsPresentationsAndWebcasts/>.

treatment means that future investments in the PPA Units must be immediately expensed, leaving AEP with no incentive to further invest in the PPA Units. Furthermore, AEP has indicated publicly that it will focus its energies on regulated and quasi-regulated investments, including new gas and renewable generation in Ohio, as well as transmission and distribution investments.²¹

Although AEP is apparently content to abandon the PPA Units, AEP Ohio's testimony in this proceeding stated that the PPA Units "have been properly maintained and are capable of operating reliably well into the future."²² AEP Ohio also stated in its Initial Brief that, "AEP Ohio's testifying witnesses are uniform in their conclusions regarding energy market volatility and the very real threat that will undoubtedly be associated with closure of these coal-fired generation facilities because fuel diversity is vital and coal units are a crucial party of a diversified portfolio of generation resources."²³ Finally, AEP Ohio also stated, "Large base load generating plants are vital to Ohio's economy, as they employ hundreds of Ohioans and produce millions of dollars of annual economic benefit to the state and local economies; conversely, premature closure of the generating plants would be devastating to the local economies in which they currently operate."²⁴

The Commission should not simply accede to AEP's willingness to abandon the PPA Units, but rather, should remain mindful of the PPA Units' benefits that the Commission explicitly recognized in its Initial Order.²⁵ To that end, Buckeye requests that the Commission modify its Rehearing Entry to ensure that the PPA Units will have an opportunity to continue to

²¹ *Id.*

²² Vegas Initial Direct Testimony at p. 15; See also Thomas Initial Testimony Direct at p. 9.

²³ AEP Ohio Initial Brief at p. 4.

²⁴ *Id.* at pp. 18-19.

²⁵ Initial Order at pp 86-87.

survive as participants in a market unhampered by arbitrary retirement obligations unrelated to their potential remaining economic and physical lives.

The Commission can do this simply by eliminating the mandatory retirement, repowering, and refueling provisions of the Stipulation applicable to the PPA Units.²⁶ If these provisions remain, the likelihood that AEP will be able to sell these units to a new owner willing to invest in the PPA Units is greatly reduced. Buckeye understood the mandatory retirement provisions of the Stipulation to be a “result of serious discussion and compromise of complex issues” and, in some respects, a quid pro quo for the cost support for the PPA Units.²⁷ With the cost support for the PPA Units being eliminated, Buckeye contends that the mandatory retirement, refueling, or repowering provisions should also be eliminated.

B. If neither the parties to the Stipulation nor the Commission will include in the Stipulation replacement provisions of equivalent value for the Affiliate PPA, then the Commission’s rehearing order should, at a minimum, do no harm to the PPA Units, and the PPA Units should be allowed to participate in the market unencumbered by a negative subsidy.

Certain parties in this proceeding have argued that coal is simply an outdated fuel source and that the PPA Rider amounted to a ratepayer bailout of uneconomic coal.²⁸ However, if coal is truly on the way out, Cardinal Unit 1 and the other PPA Units will be retired, refueled, or repowered as a result of naturally occurring economic forces, without the need for an arbitrary mandatory retirement, refueling, or repowering obligation. In contrast, allowing the mandatory retirement, refueling, or repowering provisions to stand would amount to the Commission tipping the scales against Cardinal Unit 1 and the other PPA Units, which should not be the outcome of a proceeding intended to assist them. For the parties to this proceeding that objected

²⁶ Stipulation Sections III.D(9 through 12).

²⁷ Stipulation at p. 3.

²⁸ See Initial Post-Hearing Brief of the Environmental Law & Policy Center, Environmental Defense Fund, and Ohio Environmental Council at pp. 12-13.

to cost support for the PPA Units based on fair market and subsidy arguments, this result should be just as objectionable as the Affiliate PPA and the PPA Rider.²⁹

C. Inclusion of mandatory retirement, refueling, or repowering obligations for the PPA Units in the Stipulation without cost support will have a particularly adverse impact on Buckeye and its members.

In his concurring opinion to the Rehearing Order, Chairman Haque stated that OVEC was different.³⁰ Buckeye respectfully submits that Cardinal is different as well. Buckeye and AEP have been joint owners at Cardinal since 1968. In light of this longstanding relationship, Buckeye joined this proceeding to support the core principles of cost of service ratemaking and a long-term focus on affordability, reliability and stable rates. These principles align with Buckeye's own business model, and Buckeye felt that the PPA Rider would enable it to continue to work with AEP to operate Cardinal with similar operating philosophies well into the future.³¹ Buckeye has asked for no special provisions or concessions in this proceeding.

Notwithstanding its longstanding relationship with AEP, Buckeye was not consulted or advised in advance of AEP Ohio's decision to agree in the Stipulation to a mandatory retirement, refueling, or repowering obligation for Cardinal Unit 1. Buckeye was also not consulted or advised in advance of AEP's decision to write-down and abandon the PPA Units, including Cardinal Unit 1, and to no longer seek cost support for Cardinal Unit 1 through the regulatory or legislative process.

As a result of AEP's recent actions, Buckeye's longstanding joint arrangements with AEP at Cardinal will likely be coming to an end shortly. Buckeye simply asks that the outcome of this proceeding not harm it as it works with AEP to transition the ownership and operation of

²⁹ See Initial Post-Hearing Brief of the PJM Independent Market Monitor at p. 6 ("Competition depends on units making competitive offers that reflect their costs and the risk of paying penalties and/or receiving benefits.").

³⁰ Rehearing Entry, Haque Concurrence at p. 5.

³¹ Buckeye Initial Brief at pp. 13-14.

Cardinal from AEP to another joint owner. Imposing an arbitrary retirement, refueling, or repowering obligation on Cardinal Unit 1 will significantly impede AEP's ability to find a buyer for that unit, likely resulting in its premature and imminent retirement or degradation. The Commission should allow Cardinal Unit 1 to participate in the marketplace and have an opportunity compete unencumbered by an arbitrary retirement deadline. This would likely empower AEP to find a buyer that could partner with Buckeye on investments to ensure the continued benefits of the Cardinal.

In addition, Buckeye and AEPGR are parties to the Cardinal Station Agreement through 2026.³² Thus, Buckeye has a particular concern regarding continued necessary investments in Cardinal Unit 1. The Cardinal Station Agreement does not contemplate unit retirements during its term, except upon recommendation of the Cardinal Operating Company, which is jointly owned by AEPGR and Buckeye. If Cardinal Unit 1 is retired prematurely, Buckeye and its members, who plan to continue to invest in and operate the remaining Cardinal generating units for the long term, could experience increased costs because the cost of common facilities for the plant would have to be borne entirely by Buckeye instead of shared among three units.

Buckeye notes that certain record evidence indicates that Cardinal Unit 1 was the most economical of all of the PPA Rider units, and should be economically dispatchable even at off-peak times.³³ In light of this record evidence, Cardinal Unit 1, of any of the PPA Units, should not be hampered with an arbitrary retirement deadline completely unrelated to its remaining potential economic and physical life, particularly when all cost support for Cardinal Unit 1 has been eliminated by the Commission's Rehearing Entry. Rather, the Commission should allow

³² *Id.* at 17.

³³ See Initial Direct Testimony of IEU-Ohio Witness Lesser at p. 19.

Cardinal Unit 1 to compete in the generation marketplace, potentially with a new owner willing to invest in it for the long term, as Buckeye plans to do with its units at Cardinal Station.

D. The results of the recent General Election likely mean that the regulatory burden on the PPA Rider units will be reduced thereby supporting the continued need for and viability of the PPA Rider Units.

Buckeye believes that coal-powered generation, at least Cardinal and the OVEC Units, will continue to provide affordable and reliable electric power and energy long-term. The Commission should not ignore the outcome of the recent presidential election in this regard. On November 8, 2016, in the General Election, Donald J. Trump was elected President of the United States of America on promises to, among other things, end the so-called “war on coal” and reduce the regulatory burden on coal-fired power plants, including withdrawal of the United States Environmental Protection Agency’s so-called Clean Power Plan. Indeed, the Presidential transition website, www.greatagain.gov, states among other things that:

We will end the war on coal, and rescind the coal mining lease moratorium, the excessive Interior Department stream rule, and conduct a top-down review of all anti-coal regulations issued by the Obama Administration. We will eliminate the highly invasive "Waters of the US" rule, and scrap the \$5 trillion dollar Obama-Clinton Climate Action Plan and the Clean Power Plan and prevent these unilateral plans from increasing monthly electric bills by double-digits without any measurable effect on Earth’s climate. Energy is the lifeblood of modern society. It is the industry that fuels all other industries. We will lift the restrictions on American energy, and allow this wealth to pour into our communities. It’s all upside: more jobs, more revenues, more wealth, higher wages, and lower energy prices.

While the next presidential administration’s policies have yet to be written, it seems safe to assume that they will result in a reduced regulatory compliance burden on coal-powered generation plants. Thus, the outcome of the recent presidential election would seem to indicate that the regulatory costs of operating a coal-powered generating unit are likely to decrease relative to the assumptions used by the parties and the Commission in this proceeding. In

addition, conventional wisdom suggests that the outcome of the recent General Election was driven to a large extent by rural voters focused on jobs and economic opportunities, some of the same considerations the Commission undertook in initially approving the Stipulation.³⁴ In light of these considerations, the Commission should not take an action that would harm the ability of the PPA Units to function in the market or lead to their premature retirement or degradation, and the Commission should remove the provisions in the Stipulation relating to mandatory retirement, refueling, and repowering.

E. The other parties to the Stipulation and to this proceeding should have no reason to object to Buckeye's rehearing request.

1. AEP Ohio

AEP Ohio should have no objection to removing the retirement, refueling or repowering obligations applicable to the PPA Units. As announced at AEP's third quarter earnings conference call, AEP has decided to write-down these assets and to pursue a sale of these units rather than cost recovery through the regulatory or legislative process.³⁵ Removing the retirement, refueling, or repowering obligations should make the PPA Units more marketable and increase the likelihood that AEP will be able to sell the units at a favorable price.

Furthermore, throughout this proceeding, AEP Ohio has sought to establish the need for the continued operation of these units. AEP Ohio should not then object to removing obligations that place an artificial retirement deadline on viable generating units prior to the end of what would otherwise be their remaining economic and physical useful life.

³⁴ See Initial Order at pp. 86-87.

³⁵ See "AEP Takes Writedown on Competitive Assets," *Megawatt Daily*, November 2, 2016.

2. PJM Interconnection L.L.C. (“PJM”) and the PJM Independent Market Monitor (“IMM”)

PJM and the PJM IMM expressed opposition to the supposed “subsidiaries” represented by the Affiliate PPA and the potential for such “subsidiaries” to distort the PJM market.³⁶ With the removal of cost support for the PPA Units, PJM and the PJM IMM should have no objections to the Stipulation at least with respect to the PPA Units that are no longer “subsidized.”

According to the reasoning of PJM and the PJM IMM, they should object to the continued inclusion of the mandatory retirement, refueling, and repowering obligations on the PPA Units. As noted above, these obligations amount to a negative subsidy on the PPA Units, and thus have just as much potential to impact the efficient operation of PJM’s markets as the cost support for the PPA Units. Accordingly, Buckeye sees no reason for PJM or the PJM IMM to object to removal of the mandatory retirement obligations applied to the PPA Units.

3. Independent Power Producers and Marketers

Similar to PJM and the PJM IMM, the independent power producers (“IPPs”) and power marketers that are parties to this proceeding objected to the Affiliate PPA as a “subsidy” that would distort the PJM market and give an unfair advantage to the PPA Rider units as compared to the supposedly “unsubsidized” merchant plants of the IPPs and power marketers.³⁷ Now that cost support for the PPA Units has been eliminated, these parties should have no objection to the elimination of the negative subsidy represented by the mandatory retirement obligations. Based on principles of market efficiency, they should not want the PPA Units to have an unfair disadvantage attached to them in the market any more than such units should have an unfair

³⁶ *See, generally*, Initial Post-Hearing Brief of the PJM Independent Market Monitor and Brief for Amicus Curiae PJM Interconnection, L.L.C.

³⁷ *See, generally*, Initial Post-Hearing Brief of Retail Energy Supply Association, Constellation NewEnergy, Inc., and Exelon Generation Company; Initial Post-Hearing Brief of Dynegy Inc.; and Initial Post-Hearing Brief of PJM Power Providers Group and the Electric Power Supply Association.

advantage. In addition, the IPPs and power marketers are potential purchasers of the PPA Units, and may, therefore, have an interest in ensuring that the PPA Units are able to compete in the marketplace according to their remaining economic and physical useful lives unhampered by arbitrary retirement obligations.

4. Commission Staff

If Commission Staff believes that ensuring that the PPA Units are managed efficiently while providing economic benefits, job retention, and reliability benefits, then Commission Staff should not object to the elimination of mandatory retirement, refueling, and repowering obligations that have the potential to artificially shorten the useful lives of generating units that would otherwise be able to continue to compete in the PJM marketplace and serve the needs of Ohio ratepayers.³⁸

Further, Commission Staff should be concerned that the continued inclusion of mandatory retirement, refueling, and repowering obligations on PPA Units that will no longer receive cost support through the Affiliate PPA will likely lead to the premature retirement or degradation of such units. Commission Staff should also consider that AEP's recent decision to write-down the PPA Units and no longer pursue cost support for them means that AEP is unlikely to be willing to continue to invest in and support these units absent Commission action and that the PPA Units are unlikely to be an attractive buying opportunity for third parties with their useful lives shortened by the mandatory retirement obligations.

5. Large Commercial and Industrial Customers

Large commercial and industrial customers should have no reason to object to the PPA Units being available to compete in the PJM marketplace unencumbered by an arbitrary retirement deadline. If these units can provide power to customers in Ohio in an efficient and

³⁸ See, generally, Initial Post-Hearing Brief of Commission Staff.

reliable manner (and without additional cost support pursuant to the Affiliate PPA having to be paid by Ohio ratepayers), then there is no reason that these customers should want these units to be prematurely retired or degraded.

If anything, large commercial and industrial customers should be concerned that AEP Ohio appears to have traded the PPA Units for potential future cost recovery from ratepayers for potentially less efficient renewable facilities and gas-fired generating units.³⁹ But why should the PPA Units be prematurely retired or degraded by AEP when Ohio ratepayers have already supported them through cost recovery until AEP Ohio transferred its ownership of them to AEPGR? At least with the removal of the artificial retirement deadline, these units will have the opportunity to be sold to a new owner willing to invest in such units and allow them to participate in the PJM marketplace and benefit Ohio ratepayers.

6. Office of the Ohio Consumers' Counsel ("OCC")

OCC, representing residential Ohio ratepayers, should have no reason to object to Buckeye's rehearing request for the same reason that large commercial and industrial ratepayers should have no objections. Buckeye's request will cost consumers nothing, but will allow Ohio consumers to realize the benefits of the PPA Units well into the future.

7. Environmental Groups

The environmental advocacy groups that are parties to this proceeding have no reason to oppose Buckeye's rehearing request. In general, these groups opposed AEP Ohio's application on the grounds that it required Ohio ratepayers to support coal-fired generation, which they found environmentally objectionable. The fact that the PPA Units will no longer receive cost support should be sufficient, and these groups should not have an interest in further impeding the

³⁹ Based on its recent earnings call, discussed above, AEP has apparently changed its corporate strategy and announced its intention to pursue legislative restructuring in Ohio that would allow for cost recovery from ratepayers for renewable and gas generating units while abandoning the possibility of cost recovery for the PPA Units.

PPA Units' ability to operate. If the viability of these units is truly at risk without cost support, as the environmental groups indicate, then the PPA Units will likely be retired anyway, even without a mandatory retirement obligation.

Furthermore, the Stipulation's mandatory retirement, refueling, or repowering obligations applicable to the PPA Units were a quid pro quo for the cost support for these units that AEP Ohio requested. These provisions helped to ensure that the Stipulation served a variety of interests and had a diverse array of signatory parties. Specifically, in exchange for these provisions, Sierra Club agreed not to oppose AEP Ohio's efforts to secure cost support for the PPA Units by including them in the PPA Rider.⁴⁰ With removal of the cost support for the PPA Units in the Commission's Rehearing Entry, and with no replacement provisions of equivalent value included in the Stipulation, the continued inclusion of the retirement, refueling or repowering obligations for the PPA Units now amounts to a windfall for the environmental parties. Under the original Stipulation, the PPA Units would have been very likely to operate as long as they received cost support under the PPA Rider. However, the elimination of cost support for the PPA Units, AEP's decision to write down the PPA Units and to no longer pursue cost support for the PPA Units at the Commission or in the legislature, and the continued inclusion of the mandatory retirement obligations increase the likelihood that AEP will be unable to sell or transfer these units to another party. This, in turn, increases the likelihood that AEP will allow these units to be prematurely retired or degraded before the time that the cost support for these units under the original Stipulation would have expired. Thus, the Commission has altered the Stipulation in a way that provides a "benefit" to the environmental parties beyond that which

⁴⁰ See Agreement between AEPGR and Sierra Club, dated December 14, 2015.

was included in the original Stipulation, whereas Ohio will lose the benefit of the continued operation of the PPA Units.

If modified as proposed by Buckeye, the Stipulation would nevertheless provide the environmental advocacy groups a favorable outcome. AEP Ohio has agreed to comply with all of the other Stipulation provisions, including provisions requiring the development of renewable generation. Buckeye does not oppose the inclusion of those provisions in the Stipulation. Furthermore, Buckeye does not oppose the provisions in the Stipulation relating to AEP Ohio's required efforts to sell or retire, refuel, or repower the OVEC Units, so long as the associated cost support for the OVEC Units remains in place. Finally, AEP has announced its intention to turn away from coal generation and to focus its future capital investment in regulated or quasi-regulated investments in gas, renewables, and transmission and distribution.⁴¹

III. BUCKEYE SUPPORTS THE COMMISSION'S DECISION ON REHEARING TO ALLOW AEP OHIO'S INTEREST IN THE OVEC UNITS TO BE INCLUDED IN THE PPA RIDER.

In the Rehearing Entry, the Commission granted AEP Ohio's request to include its OVEC entitlement in the PPA Rider.⁴² Despite Buckeye's withdrawal from the Stipulation, Buckeye supports the Commission's approval of cost support for the OVEC Units for all of the reasons cited by Buckeye in its public comments and initial brief, and by AEP Ohio and other parties at the hearing, and by the Commission in its orders approving the PPA Rider, approving the Stipulation, and on rehearing. Furthermore, Buckeye does not oppose the other provisions of the Stipulation as approved by the Commission on Rehearing, provided that the Stipulation is modified as requested by Buckeye in this application for rehearing.

⁴¹ See "AEP Takes Writedown on Competitive Assets," *Megawatt Daily*, November 2, 2016; see also "Analyst and Investor Meeting," presentation made by AEP on November 1, 2016, available at <http://www.aep.com/investors/EventsPresentationsAndWebcasts/>.

⁴² Rehearing Entry at p. 28.

IV. ON REHEARING, THE COMMISSION SHOULD REQUIRE AEP TO TRANSFER OR SELL, OR AT LEAST NOT RETIRE, THE PPA UNITS AND TO CONTINUE TO INVEST IN SUCH UNITS UNTIL THEY ARE TRANSFERRED OR SOLD.

A. AEP should be required to transfer or sell, or at least not retire, the PPA Units.

The Commission should require that AEP cause its affiliate AEPGR to sell or transfer the PPA Units to a new owner consistent with AEP's obligations to its joint owners. AEP's decision to write off and abandon the PPA Units and to no longer seek cost support for the units calls into question AEP's continued commitment to the PPA Units. In recognition of the record in this proceeding having demonstrated the benefits associated with the continued operation of the PPA Units, the Commission should not allow this to happen. Presumably, a new owner would be willing to invest in and support the PPA Units for at least as long as the original Stipulation would have provided, if not longer, allowing Ohio to maximize the benefits associated with them. For all of the reasons cited in the case, the Commission should not allow AEP to simply fail to invest in these units and to cause job losses, negative reliability impacts, and fuel supply concentration, and increased transmission costs associated with the early retirement of these units.

At a minimum, AEPGR should not be permitted to retire the PPA Units without Commission approval and without AEPGR meeting all of its obligations to its joint owners. Section 3.2 of the Cardinal Station Agreement does not contemplate unit retirements without the recommendation of Cardinal Operating Company, which AEPGR jointly owns with Buckeye. As mentioned above, the CSA runs through 2026.

The record in this proceeding shows that Cardinal Unit 1 is a unit capable of being economically dispatched even at off-peak times.⁴³ Cardinal Unit 1 should not arbitrarily be subjected to an early retirement simply because AEP wants to trade Cardinal Unit 1 for other Commission concessions that AEP finds more attractive such as the possibility of cost recovery for new renewable generation and gas fired units, as well as cost recovery for investments in distribution smart grid. Allowing that to happen is contrary to all of the evidence in this case supporting the value of the PPA Units with respect to jobs, reliability, and supply diversity.

B. AEP should be required to continue to make needed investments in the PPA Units until they are transferred or sold.

Section 3.2 of the Cardinal Station Agreement also requires AEP to make capital investments in its units as required by law.⁴⁴ The Cardinal Station Agreement also requires AEP to make capital investments recommended by Cardinal Operating Company, unless AEP has a good reason not to do so.⁴⁵ Certain of the other PPA Units are jointly owned by AEP and other parties. These other PPA Units are governed by their own joint operating agreements.

AEP's recent decision to write down the PPA Units, coupled with the Commission's decision to proceed without providing them any cost support, calls into question AEP's continued commitment to invest in the PPA Units, despite the demonstrated benefits they provide. The Commission can rectify this by requiring AEP to cause its affiliate AEPGR to comply with its obligations to its joint owners to make necessary investments in the PPA Units until AEP sells or transfers the PPA Units to other parties committed to make such investments. With respect to Cardinal Unit 1, these obligations apply until the termination of the Cardinal Station Agreement in 2026.

⁴³ See Initial Direct Testimony of IEU-Ohio Witness Lesser at p. 19.

⁴⁴ Cardinal Station Agreement Section 3.2.

⁴⁵ *Id.*

CONCLUSION

For the foregoing reasons, Buckeye withdraws from the Stipulation and respectfully requests that the Commission grant Buckeye's application for rehearing and, on rehearing, that the Commission modify the Stipulation to: (a) eliminate the mandatory retirement, refueling or repowering obligations imposed on the PPA Units; (b) require AEP to pursue a transfer or sale of, or at least not retire, the PPA Units; and (c) require AEP to take steps to preserve the PPA Units until they are transferred or sold by continuing to make needed investments in such units until they are transferred or sold. In addition, Buckeye requests that the Commission, on rehearing, affirm the other provisions of the Stipulation, including cost support for the OVEC Units, in accordance with the Commission's Rehearing Entry.

Buckeye asserts that in the absence of such modifications, the Commission's Rehearing Entry is unlawful and unreasonable and contrary to the record in this proceeding, including AEP Ohio's own Amended Application and supporting testimony, and the Commission's own Initial Order in this proceeding. The record in this proceeding establishes the need for the continued operation of the PPA Units. The inclusion in the Stipulation of the mandatory retirement, refueling, or repowering obligations for the PPA Units, without any corresponding cost support for the PPA Units, combined with AEP Ohio's recent decision to write-down and abandon the PPA Units and to no longer pursue cost recovery for the PPA Units at the Commission or in the legislature, means that there is a likelihood that the PPA Units will be prematurely retired or degraded absent Commission action. This result is exactly contrary to what the record in this proceeding requires. Moreover, this result could have a particularly negative impact on Buckeye and its members given its joint ownership with AEP of Cardinal. Remarkably, with the Commission's Rehearing Entry, the PPA Units are worse off than if this proceeding had never

occurred. The Commission can and should remedy this outcome by granting Buckeye's application for rehearing.

For the reasons set forth in this Application and Memorandum in Support, no party to this proceeding should feel compelled to object to Buckeye's rehearing request. The results of the recent General Election and likely lightened regulatory burden on the PPA Units further validates the continued viability of the PPA Units as already established by the record. The record establishes the continued viability of Cardinal Unit 1 in particular, given its low variable costs of operation. Furthermore, the results of the recent General Election evidence the focus of the people of Ohio, particularly the rural people of Ohio who are the members and consumers of Ohio's electric cooperatives, on the jobs and economic development opportunities represented by the PPA Units. Buckeye respectfully requests that the Commission take into account the views of Buckeye and its members, and the impact of the Commission's Rehearing Entry on them, when considering Buckeye's application for rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Withdrawal from Stipulation and Application for Rehearing was filed with the PUCO electronically and has been served by electronic mail delivery upon the persons listed on the attached Service List on this 5th day of December 2016.

/s/ Stephanie M. Chmiel
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in

Case No(s). 14-1693-EL-RDR, 14-1694-EL-AAM

Summary: App for Rehearing Buckeye Power, Inc.'s Withdrawal from the Stipulation and Application for Rehearing electronically filed by Ms. Stephanie M Chmiel on behalf of Buckeye Power, Inc.