BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Lon-Term Forecast Report of Ohio Power Company and Related Matters	)))	Case No. 18-501-EL-FOR
In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into Renewable Energy Purchase Agreements for Inclusion in the Renewable Generation Rider	)))))	Case No. 18-1392-EL-RDR
In the Matter of the Application of Ohio Power Company to Amend Its Tariffs	))	Case No. 18-1393-EL-ATA

POST-HEARING BRIEF OF THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

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I. INTRODUCTION

This case is about an elaborate attempt by the Ohio Power Company (AEP Ohio or the Company) to rewrite Ohio law in order to contravene state policy that has been firmly established by the General Assembly. Undeterred by the codified state policy favoring competition in the generation markets, AEP Ohio asks the Commission to allow AEP Ohio, as a regulated electric distribution utility, to develop noncompetitive renewable generation using customer funds. In order to grant AEP Ohio's request, the Commission would have to reverse course on its own interpretation of Ohio law, adopt an approach to distribution utility-owned generation that is at odds with statutory text, and open a loophole large enough to render the general prohibition on monopoly-owned generation meaningless.

Let's be clear, this case is not about the merits of renewable energy or a dispute over the benefits that renewable energy can provide when properly deployed. The Ohio Manufacturers' Association Energy Group (OMAEG) supports market-driven, competitive development of renewable energy. There are environmental and economic benefits that result from renewable energy development and deployment if completed in a competitive and cost-effective manner. Ohio's preference for generation resources and market solutions can and will be resolved through the competitive market without Commission involvement. Generation sources that are economical and desired by customers will thrive in the market, while others will fail. Thus, the question before the Commission in this proceeding is simple: Under R.C. 4928.143(B)(2)(c), is there need for a generation facility based on resource planning projections that necessitates AEP Ohio developing renewable generation at customers' expense? The record demonstrates that the answer is an unequivocal no. Staff concluded that the answer is no.

AEP Ohio filed an Amendment to its 2018 Long-Term Forecast Report on September 19, 2018 (Amendment), requesting that the Commission allow AEP Ohio and its affiliates to develop a total of at least 900 MW of renewable energy projects in Ohio and receive cost recovery pursuant to R.C. 4928.143(B)(2)(c).[1] Although AEP Ohio plainly admits that no energy or capacity need exists, AEP Ohio still claims that there is a "need" as required by R.C. 4928.143(B)(2)(c).[2] At hearing, however, it became apparent that rather than demonstrate need as it has been defined in statutes and interpreted, AEP Ohio's claim of "need" is really a claim of purported "desire" or "want." Accordingly, AEP Ohio is asking the Commission to stretch the definition of "need" and rely on warped definitions that would purportedly authorize the requested development in this case rather than the statutory definition which decidedly would not.

OMAEG opposes AEP Ohio's attempted end-around Ohio law to force AEP Ohio customers to finance generation resources that could, and should, be procured from the competitive marketplace. The General Assembly has clearly rejected the possibility of such an arrangement outside of narrow, specifically-defined circumstances, which do not exist in this case.[3] Staff joined OMAEG and several other parties in opposing AEP's Amendment and asserting that AEP Ohio has not demonstrated a need to construct any additional resources at this time.[4] As Staff Witness Benedict stated directly, AEP Ohio "is conflating customer preferences with customer needs."[5] The Commission should steadfastly reject AEP Ohio's Amendment because it violates both the letter and spirit of the General Assembly's prohibition on distribution utility-owned generation.

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1 See Company Exhibit 2 at 1-2.

2 See, e.g., id. at 3.

3 See R.C. 4928.143(B)(2).

4 Staff Ex. 2 at 8 (Benedict Direct).

5 Id. at 9-10.

OMAEG submits this post-hearing brief pursuant to the direction of the Attorney Examiners at the close of hearing.[6]

II. PROCEDURAL HISTORY

AEP Ohio filed its 2018 Long-Term Forecast Report on April 16, 2018 (Forecast Case).[7] On September 19, 2018, AEP Ohio filed the Amendment, seeking permission to develop at least 900 MW of generic renewable generation.[8] The Amendment did not describe the specific projects that the Company sought to develop and only spoke generally about the proposed development.[9] Eight days later, in a separate case, AEP Ohio filed an application for approval of the development of 400 MW of specific solar energy projects (Cost Recovery Case).[10] That same day, AEP Ohio moved to consolidate its Forecast Case with the Cost Recovery Case.[11]

OMAEG, as well as the Office of the Ohio Consumers' Counsel (OCC), opposed consolidation.[12] OMAEG noted that Ohio law clearly requires AEP Ohio to first determine a need for the renewable projects before seeking cost recovery for specific projects under R.C. 4928.143(B)(2)(b)-(c).[13] Over the objections of OMAEG and OCC, the Commission granted AEP Ohio's motion and consolidated the proceedings.[14]

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6 Tr. Vol. XII at 2834.

7 See Company Ex. 1.

8 See Company Ex. 2.

9 See id.

10 See *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into Renewable Energy Purchase Agreements for Inclusion in the Renewable Generation Rider, et al.*, Case No. 18-1392-EL-RDR, et al., Application at 1 (September 27, 2018).

11 Motion to Consolidate (September 27, 2018).

12 See Memorandum Contra Motion to Consolidate Proceedings by the Ohio Manufacturers' Association Energy Group (October 4, 2018) (OMAEG Memo Contra Consolidation); Memorandum Contra Motion of the Ohio Power Company to Consolidate Proceedings Which Would Result in an Unfair Process for Consumers by the Office of the Ohio Consumers' Counsel (October 4, 2018).

13 Id. at 4.

14 See Entry (October 22, 2018).

In granting consolidation, however, the Commission bifurcated this case into two separate phases, with the first phase assessing the issue of general need for the proposed development of at least 900 MW of renewable energy and the second phase considering cost recovery issues for the two specific projects in the Cost Recovery Case.[15] The Commission's hearing on phase one of the case commenced on January 15, 2019,[16] and concluded on February 8, 2018 with the presentation of AEP Ohio's rebuttal testimony.[17] At the conclusion of the hearing on the first phase, the Attorney Examiners directed the parties to submit initial briefs by March 6, 2019 and reply briefs by March 27, 2019.[18]

III. LEGAL STANDARD

In general, Ohio law prohibits regulated utilities from owning generation. The passage of Senate Bill 3 by the General Assembly resulted in a decisive shift away from traditional cost-of-service principles to a competitive-market approach, which "provides for competition in the supply of electric generation services * * *"[19] and where CRES suppliers compete to provide customers' generation service. Indeed, R.C. 4928.02(H) explicitly provides that it is the policy of the state of Ohio to:

> Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.

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15 Id. at ¶ 32.

16 See Tr. Vol. I.

17 See Tr. Vol. XII.

18 Tr. Vol. XII at 2834.

19 *Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St. 3d 451, 2004-Ohio-3924, 812 N.E.2d 955, ¶ 2.

The Commission's adherence to this policy, and to others included under R.C. 4928.02, is not optional. R.C. 4928.06 provides that the Commission "shall ensure that the policy specified in section 4928.02 of the Revised Code is effectuated." Given the decisive policy shift away from monopoly-owned generation and towards a competitive market, the Commission should not easily disregard the importance of the state's policy or construe and interpret limited exceptions to the general policy so broadly as to allow the exceptions to swallow the rule. The General Assembly has set forth specific, carefully-tailored, and limited exceptions to the state policy favoring competitive markets over the sort of monopolized generation that AEP Ohio proposes here. None of which apply in this case.

More specifically, AEP Ohio is contending that its proposal is authorized by R.C. 4928.143(B)(2)(c). That statute provides:

> [t]he establishment of a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the electric distribution utility, was sourced through a competitive bid process subject to any such rules as the commission adopts under division (B)(2)(b) of this section, and is newly used and useful on or after January 1, 2009, which surcharge shall cover all costs of the utility specified in the application, excluding costs recovered through a surcharge under division (B)(2)(b) of this section. **However, no surcharge shall be authorized unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility.** Additionally, if a surcharge is authorized for a facility pursuant to plan approval under division (C) of this section and as a condition of the continuation of the surcharge, the electric distribution utility shall dedicate to Ohio consumers the capacity and energy and the rate associated with the cost of that facility. Before the commission authorizes any surcharge pursuant to this division, it may consider, as applicable, the effects of any decommissioning, deratings, and retirements.[20]

[20] R.C. 4928.143(B)(2)(c) (emphasis added).

Pursuant to the plain language of the statute, an electric distribution utility cannot charge consumers for generation facilities unless (1) the facilities will be "owned or operated" by the utility; (2) the Commission determines that there is a "need" for the facilities based on resource planning projections; and (3) the utility dedicates the capacity and energy from the generation facilities to Ohio consumers.[21] These express conditions must each be met before a regulated utility such as AEP Ohio can receive cost recovery from captive customers for owning, operating, or constructing generation resources. Thus, in order for AEP Ohio to recover charges from customers for the development of the proposed renewable generation facilities, it must submit information to the Commission sufficient for the Commission to determine that AEP Ohio will own or operate the proposed facilities, that it will dedicate capacity and energy from the generation facilities to Ohio customers, and that there is a need for the proposed generation based on resource planning projections. Short of such a showing, AEP Ohio is unable to meet this exception and its request to develop at least 900 MW of renewable energy resources must be denied.

IV. ARGUMENT

Throughout the hearing, AEP Ohio attempted to rewrite the statute, creatively defining "need" in every way possible, except for the way explicitly provided for under Ohio law. Despite AEP Ohio's attempts to muddle the record with evidence related to customer needs and desires, economic impacts, additional analyses and other ultimately irrelevant arguments, this case still turns on the same single question: has AEP Ohio demonstrated need for the development of renewable generation based on resource planning projections as required under R.C. 4928.143(B)(2)(c)? Again, the answer is simply no.

[21] R.C. 4928.143(B)(2)(c).

Even by their own admission, a review of the record shows that AEP Ohio has not cleared this fundamental statutory hurdle. Moreover, even if AEP Ohio were permitted under the law to define need as it attempts to do here and even if the Commission were to disregard its statutory mandates, AEP Ohio's request would still fall short, as the evidence presented does not make a compelling case for AEP Ohio's proposal. Thus, under any definition of need, AEP Ohio failed to demonstrate that need exists and its request to develop at least 900 MW of renewable energy projects should be rejected.

A. The Scope of the Hearing Was Unjustly and Unreasonably Defined and Inconsistently Applied.

Pursuant to Ohio Adm. Code 4901-1-15(F), a party adversely affected by an oral ruling made at hearing or a prehearing procedural ruling made under Ohio Adm. Code 4901-1-14 (if the party either elects not to take an interlocutory appeal or files an interlocutory appeal that is not certified) may raise the propriety of such ruling in its initial brief as a distinct issue for the Commission's consideration. Accordingly, OMAEG respectfully requests that the Commission find that the evidentiary rulings were in error in three different respects with regard to decisions framing the scope of this hearing both before and during the hearing. First, OMAEG contends that the consolidation of these distinct cases was in error. Second, OMAEG argues that granting AEP Ohio's prehearing Motion to Strike/Defer portions of intervenor testimony while denying the Joint Motion *in Limine* filed by OMAEG and other parties, and then by inconsistently applying its bifurcation of the issues in this proceeding was in error. Third, OMAEG asserts that allowing AEP Ohio to present rebuttal testimony was in error.

These decisions and rulings resulted in an imbalanced presentation of evidence at the hearing, whereby AEP Ohio and supporting parties were granted broad discretion to testify and present evidence regarding matters outside the proscribed scope for phase one of this proceeding,

while opposing parties were limited in their ability to question witnesses and present evidence rebutting those same issues and positions.

i. Granting Consolidation of the Cases in this Matter Was Unjust and Unreasonable and Should Be Reversed.

The Forecast Case (where AEP Ohio tries to establish need for a generic 900 MW of renewable generation projects) was consolidated with the Cost Recovery Case (where AEP Ohio tries to establish cost recovery from customers for two specific renewable power plants, Highland Solar and Willowbrook Solar, totaling 400 MW). Following the Entry granting consolidation, OMAEG joined OCC and the Kroger Co. in taking an interlocutory appeal (Joint Interlocutory Appeal) of that decision.[22] In the Joint Interlocutory Appeal, OMAEG and the other parties raised issues related to the compressed timeline and the decision to grant consolidation.[23] By Entry on November 13, 2018, the procedural schedule was amended to partially alleviate the due process concerns raised in the Joint Interlocutory Appeal, but certification of the Joint Interlocutory Appeal, including the claim that consolidation was not appropriate, to the Commission was denied.[24] Thus, this issue is appropriately raised in this initial brief under Ohio Adm. Code 4901-1-15(F).

This decision to grant consolidation was unjust and unreasonable for several reasons. As an initial matter, consolidation of these proceedings conflicts with the Commission's directive that

[22] See Interlocutory Appeal, Request for Certification to Full Commission and Application for Review Regarding a Fair Process for AEP's Customers by The Office of the Ohio Consumers' Counsel and the Ohio Manufacturers' Association Energy Group and the Kroger Co. (October 29, 2018) (Joint Interlocutory Appeal).

[23] See id.

[24] See Entry (November 13, 2018).

whether a monopoly utility needs to build specific generation plants must be proven by the utility in a filing for a rider (the charge to customers).[25]

Additionally, the consolidation decision is at odds with R.C. 4928.143(B)(2)(c). That law requires an electric distribution utility to prove first there is an actual need based upon resource planning projections for each generating facility to be owned or operated by that utility,[26] before the Commission can approve a non-bypassable surcharge to fund monopolized generation by that utility with cost recovery from customers. Ohio Adm. Code 4901:1-35-03(C)(9)(b)(i) states that at the time an application is filed, "[t]he need for the proposed facility must have already been reviewed and determined by the commission through an integrated resource planning process filed pursuant to rule 4901:5-5-05 of the Administrative Code."[27] The Commission's prior decisions related to AEP Ohio's Rider RGR explicitly provide that any cost recovery for renewable projects will be considered by the Commission on a case-by-case basis.[28]

Moreover, pursuant to Ohio Adm. Code 4901:5-5-06(B), a utility must file its long-term forecast report (LTFR) one year prior to any filing under R.C. 4928.143(B)(2)(b) or R.C. 4928.143(B)(2)(c). The Commission has previously determined that a utility cannot seek cost recovery for the construction of a new power plant under R.C. 4928.143(B)(2)(c) until the year following the year in which the utility's LTFR was filed.[29]

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[25] *In re Application of Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Elec. Security Plan*, Case No. 16-1852-EL-SSO, Opinion & Order at ¶ 227 (Apr. 25, 2018); *see also id.*, Second Entry on Rehearing at ¶ 227 (Aug. 1, 2018).

[26] R.C. 4928.143(B)(2)(c).

[27] Ohio Adm. Code 4901:1-35-03(C)(9)(b)(i).

[28] See *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider, et al.*, Case Nos. 14-1693-EL-RDR, et al. (AEP Ohio PPA Case), Second Entry on Rehearing at 57 (November 3, 2016) and Fifth Entry on Rehearing at 32 (April 5, 2017).

[29] See *In the Matter of the Long Term Electric Forecast Report of the Ohio Power Company and Related Matters, et al.*, Case Nos. 10-501-EL-FOR (2010 Forecast Case), Opinion and Order at 20-21 (January 9, 2013).

Consolidation in this case is especially problematic given that AEP Ohio is not seeking the same relief in these cases, but, instead is seeking relief for different renewable projects. AEP Ohio concedes in its Application in the Cost Recovery Case that it is seeking a determination from the Commission in the Forecast Case that a generic set of projects totaling at least 900 MW is necessary, but that in the Cost Recovery Case, it is only seeking cost recovery for two solar energy projects totaling 400 MW.[30] As demonstrated at the hearing, these asymmetrical issues—generic need for renewable generation under R.C. 4928.143(B)(2)(c) and proposed recovery for specific projects—are not easily considered in the same proceeding. In short, these cases concern completely distinct legal questions, and Ohio law and the Commission's rules dictate that the Forecast Case must be resolved before the Cost Recovery Case may proceed.

ii. Granting the Motion to Strike/Defer Portions of Intervenor Testimony While Denying the Joint Motion in Limine Was Unjust and Unreasonable and Should be Reversed.

Although the Commission is not bound by the Rules of Evidence in contested proceedings, it must exercise its discretion to conduct hearings in a manner that does not prejudice parties.[31] As discussed above, Ohio law and the Commission's rules caution against consolidation of these proceedings. In an attempt to circumvent those roadblocks, the hearing on the consolidated proceeding was bifurcated such that there would be two phases of the hearing.[32] In applying that bifurcation, however, inconsistent evidentiary rulings were made throughout the first phase of the hearing, allowing AEP Ohio and supporting parties to present testimony and evidence in apparent violation of the order limiting the scope of the first phase of the hearing. But, then, subsequent evidentiary rulings deferred testimony and disallowed questioning by opposing parties. These

[30] Cost Recovery Case, Application at 6.

[31] R.C. 4903.22; *Greater Cleveland Welfare Rights Organization v. Pub. Util. Comm.*, 2 Ohio St.3d 62, 68 (1982).

[32] Entry at ¶ 32 (October 22, 2018).

inconsistent evidentiary rulings, issued both before the hearing under Ohio Adm. Code 4901-1-14 and during the hearing are appropriate to address in this brief under Ohio Adm. Code 4901-1-15(F).

As explained above, applicable Ohio law prohibits regulated electric distribution utilities, which enjoy monopoly status, from owning or constructing generation (and charging customers for that generation) unless the utility can demonstrate that it meets the limited exceptions created under R.C. 4928.143(B)(2). A threshold requirement to be considered for the limited exceptions is that the utility must first show there is "a need for the facility *based on resource planning projections* submitted by the electric distribution utility."[33] The Commission has ruled that need is determined by measuring supply versus demand, consistent with the plain language of the statute. And, the Commission also ruled that need should not be broadly defined in terms of economic impacts that the power plants would have on the state.[34]

In light of the foregoing, on January 7, 2019, OMAEG, and several other intervenors, filed a Joint Motion in Limine seeking to exclude from the first phase of the proceeding testimony and evidence relating to purported economic impacts of the specific proposed renewable projects and customer wants or desires (i.e., survey) as irrelevant to the threshold determination of "need" that the Commission had determined would be the focus of the first phase. The Motion was consistent with the October 22, 2018 Entry that the first phase is limited to the determination of "need" under R.C. 4928.143(B)(2)(c).[35] The Supreme Court of Ohio noted that motions in limine are "to avoid

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[33] R.C. 4928.143(B)(2)(b) and (c) (emphasis added).

[34] *In the Matter of the Long-Term Forecast of Ohio Power Company and Related Matters*, Case Nos. 10-501-EL-FOR *et seq.*, Opinion and Order at 25-27 (Jan. 9, 2013) ("Turning Point Order").

[35] See Entry at ¶ 32 (October 22, 2018).

injection into trial of matters which are irrelevant, inadmissible, and prejudicial . . . ."[36] The Commission also has recognized motions in limine,[37] and granted them to narrow issues for hearing.[38]

Significantly, AEP Ohio repeatedly admitted that it does not have a resource planning "need" for generation,[39] and that the "wholesale markets are adequately supplying capacity and energy to the AEP Ohio load zone."[40] Recognizing this proof problem, AEP Ohio made it clear that it intended to present evidence and testimony regarding purported economic impacts and customer desires. Such evidence and testimony, however, is irrelevant to the threshold issue of "need" before the Commission. For example, the fact that some customers might *want* something does not mean that they *need* it. As discussed in Section C below, customers who desire renewable generation can have those desires fulfilled—today—through the competitive market and without AEP Ohio's proposed subsidies. Likewise, the study of the purported economic impacts of two specific renewable projects, Highland Solar and Willowbrook Solar, are not relevant to the current

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[36] *State v. Gibb*, 28 Ohio St. 3d 199, 200 (1986); *see also* Ohio Rule of Evidence 401 ("Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence."); Ohio Rule of Evidence 402 (evidence that is not relevant is not admissible).

[37] *In the Matter of the Establishment of a Permanent Rate for the Sale of Energy from Montgomery County's Energy-From-Waste Facility to The Dayton Power and Light Company*, Case No. 88-359-EL-UNC ("Montgomery County"), Entry (July 6, 1988). Motions in limine have also been used in administrative contexts in other jurisdictions. *See, e.g., In re Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light*, 2003 Fla. PUC Lexis 458 (2003); *In the Matter of Aylin, Inc., et al.*, 2016 EPA ALJ Lexis 23 (U.S. EPA 2016).

[38] See, e.g., *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. For Approval Pursuant to Revised Code Section 4929.11 of Tariffs to Recover Conservation Expenses*, Case No. 05-1444-GA-UNC, Hearing Transcript at 72 (February 28, 2007) (Attorney Examiner Lesser granting motion in limine limiting scope of proceeding).

[39] Id.

[40] Company Ex. 2 at 3.

proceedings and, indeed, have been rejected by the Commission in trying to establish "need" in another case.[41]

As such, certain intervenors believed that the Joint Motion in Limine was necessary to focus the established first phase of the hearing on the threshold determination of "need" pursuant to R.C. 4928.143(B)(2)(c). The Joint Motion in Limine, however, was denied, allowing AEP Ohio to present irrelevant and prejudicial evidence that served only to confuse the issues and muddle the record. The decision was in error, particularly in light of other simultaneous rulings that prevented certain intervenors from presenting testimony challenging the very same evidence that AEP Ohio was to present when the Joint Motion in Limine was denied. At a minimum, in order to make the presentation of evidence just and reasonable, the testimony of AEP Ohio witnesses Horner, Fry, Buser, and Lafayette should have been deferred to the second phase as was done with certain intervenor witnesses' testimony. When this did not occur, OMAEG and other opposing intervenors were prejudiced.

By way of its Motion To Strike/Defer, AEP Ohio asked the Commission to "issue a finding of need for at least 900 MW of economically beneficial renewable energy projects"[42] relying upon purported "economic benefits," "lower energy costs," and "customer desires," without hearing or considering the testimony of four opposing witnesses who challenged and refuted AEP Ohio's assertions on those topics. Such a skewed presentation of evidence is contrary to the law, unreasonable, and fundamentally unfair and prejudicial.

Under Ohio law, when a party presents evidence and testimony about an issue, that party opens the door for opposing parties to present evidence and testimony on that same issue in

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41 Turning Point Order at 25-27.

42 See Company Ex. 3 at 4 (Allen Direct).

response or to rebut the testimony.[43] In the January 14, 2019 Entry, it was acknowledged that certain intervenors argued that AEP Ohio had "opened the door," and despite the fact that the Entry did not find that those arguments were inapplicable or distinguishable or disagree that AEP Ohio had indeed opened the door,[44] AEP Ohio's Motion To Strike/Defer was granted without any stated rationale or good cause, deferring portions of four opposing witnesses' testimony to the second phase of the proceeding.[45]

Yet, when the Joint Motion in Limine was denied, AEP Ohio was able to present purported evidence of economic impact and customer surveys. AEP Ohio was expressly allowed to open the door to these issues, with the option to close the door as soon as opposing parties sought to respond. This approach to defining the scope of the hearing is unjust and unreasonable, as parties should have been entitled to challenge and refute AEP Ohio's attempts to establish need through the consideration of factors unrelated to the statutory definition.

The error was compounded by rulings that changed the standard for which testimony and evidence was admissible and which was not. The Commission has long held that it is in the public interest for the Commission "to base its decisions on as full and complete a record as possible."[46] Specifically, the Commission has recognized that a record is not adequate when it is skewed or

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[43] See, e.g., *Sheets v. Norfolk S. Corp.*, 109 Ohio App.3d 278, 286 (3rd District 1996) (holding that based on the totality of the opening statement and trial testimony, "defendants clearly opened the door" to competing evidence and testimony); *see also State v. Johnson*, 2003-Ohio-3241, ¶ 33 (holding that "[h]aving opened the door, the defense waived any right to object to the admission of the witness' testimony regarding those photos on redirect.") (in criminal context).

[44] Entry at ¶ 17 (January 14, 2019).

[45] Id. at ¶ 21.

[46] *In the Matter of the Application of Columbus & Southern Ohio Elec. Co. for Auth. to Amend & to Increase Certain of Its Rates & Charges for Elec. Serv.. in the Matter of the Application of Columbus & Southern Ohio Elec. Co. for Auth. to Amend & to Increase Certain of Its Rates & Charges for Elec. Serv. in Various Municipalities in Franklin Cty., Ohio.*, 1976 WL 408123, *2, Case No. 74-760-EL-AIR, Interim Order (May 27, 1976).

one-sided.[47] Despite this precedent guarding against unbalanced record building, the procedural rulings in this case, which are seemingly at odds with each other, allowed for the creation of such a record.

Specifically, as set forth above, AEP Ohio was allowed to present testimony and evidence regarding economic benefits and impacts, as well as customer wants or desires, while simultaneously refusing to allow opposing intervenors to present evidence challenging those benefits and impacts and the customer wants or desires.[48] Instead, opposing evidence was deferred to the second phase of the hearing, thereby precluding the opposing intervenors from fully challenging AEP Ohio's alleged justifications of need.[49] When AEP Ohio's evidence purporting to show "need" was allowed to go unchallenged, AEP Ohio was able to build a skewed record.

On the first day of the hearing, the Attorney Examiners clarified the Entry that denied the Joint Motion in Limine and partially granted AEP Ohio's Motion to Strike/Defer by stating:

> I think it would be helpful to everyone to provide a little bit of clarity of the ruling that was issued yesterday. To the extent that parties are seeking to question the Company's witnesses about the case and Mr. Torpey's testimony for the economic analysis that was presented there with respect to a need for a generic 900 megawatts of unspecified projects, those questions will be permitted generally, subject to other objections, of course.
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> To the extent you are trying to get at specific projects that have been proposed in the – that will be addressed in the second phase of this

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47 *In the Matter of the Investigation of Supply of Nat. Gas Within the State of Ohio.*, 1974 WL 383956, *1, Case No. 71-757-G, Entry Pursuant To Section 4903.10 Revised Code (June 17, 1974); *see also State v. Pettit*, 4th Dist. Vinton No. 99CA529, 2000 WL 897993, *1 (Finding the trial court "abused its discretion and denied Defendant-Appellant her right to due process and a fair trial under U.S. Const. amend. XIV and Ohio Const. art. I, § 10 when it repeatedly made evidentiary rulings that were contrary to the Rules of Evidence, that were entirely one-sided in favor of the prosecution…"); *Jennings v. Thomas Mfg. Co.*, 4 Ohio Law Abs. 276 (Ohio 1925) (Holding that the trial court "erred in giving a onesided resume of the evidence in its charge.").

48 Entry at ¶¶ 27-28 (January 14, 2019).

49 Id.

> case as proposed by the Company, the intention there was to defer those issues to the second phase.[50]

From that clarification, it appeared that evidence and questioning about the generic 900 MW of unspecified projects would be allowed, but evidence and questioning about the specific Highland Solar and Willowbrook Solar projects at issue in the Cost Recovery Case would not. After the January 14, 2019 Entry and subsequent clarification, seven witnesses testified in support of AEP Ohio's Amendment, and opposing intervenors were not permitted to cross-examine those witnesses about specific projects, even when those witnesses specifically referred to specific projects in their written and oral testimony and utilized and relied upon assumptions from the specific projects to support their conclusions.

Notwithstanding the above, AEP Ohio's concluding two witnesses presented testimony that is directly contrary to the Entry and subsequent clarification about the scope of the hearing. AEP Ohio Witnesses Buser and LaFayette filed their testimony originally in the Cost Recovery Case,[51] which, per the Entry was to be considered in the second phase of the hearing. Moreover, both Dr. Buser and Dr. LaFayette plainly admitted that their testimony was focused on the specific projects at issue in the Cost Recovery Case and the purported benefits those projects would provide.[52] Yet, those witnesses were permitted to offer that testimony in clear contradiction to the earlier Entry and clarification.[53]

The inconsistent rulings regarding the scope of the hearing prejudiced opposing intervening parties because they, in effect, allowed AEP Ohio to present evidence that in the Company's view

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[50] Tr. Vol. I at 62 (emphasis added).

[51] See Company Ex. 13 (LaFayette Direct), Company Ex. 12 (Buser Direct).

[52] See Company Ex. 12 at 2 (Buser Direct); Company Ex. 13 at 2 (LaFayette Direct).

[53] Tr. Vol. IV at 1077-78.

goes to "need" while denying intervening parties the opportunity to address and oppose such issues in their affirmative case. The decision to defer portions of intervening testimony and deny intervenors the opportunity to cross-examine and challenge AEP Ohio witnesses on certain topics while allowing AEP Ohio to offer testimony on those topics is an abuse of discretion that constitutes reversible error.

iii. Granting AEP Ohio's Request to File Rebuttal Testimony Was Unjust and Unreasonable and Should Be Reversed.

At the end of the hearing, AEP Ohio requested to file rebuttal testimony from AEP Ohio Witness Ali.[54] Specifically, AEP Ohio sought to present testimony on the issue of whether Mr. Ali's Locational Marginal Pricing (LMP) analysis was changed by the fact that the proposed Highland solar facility interconnects to the Dayton Power and Light Company's Stuart-Clinton 345 kV line instead of to AEP Ohio's system, which is a fact that Mr. Ali had failed to consider in his original analysis.[55] In making its request, AEP Ohio noted that after it learned of the changed interconnection point, it "did not see a need to update or supplement [] Mr. Ali's testimony because Mr. Ali's LMP analysis was and has been intended to be generic in nature."[56] AEP Ohio sought to file the rebuttal testimony only after the inconsistency in Mr. Ali's testimony was probed by opposing parties on cross examination.[57] After oral arguments by several parties, including OMAEG,[58] AEP Ohio's request for rebuttal testimony was granted.[59] Opposition to this oral ruling is appropriate for inclusion in the initial brief under Ohio Adm. Code 4901-1-15(F).

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54 Tr. Vol. X at 2660.

55 Id.

56 Id.

57 Id. at 2661.

58 Id. at 2660-75.

59 Id. at 2675-76.

OMAEG maintains its objection to the decision to permit the filing of rebuttal testimony on a factual issue. This rebuttal testimony was requested for the sole purpose of correcting a factual error that AEP Ohio knew existed and, by its own admission, chose not to correct. AEP Ohio had the information necessary to correct this error in its testimony at least as far back as October 2018.[60] Mr. Ali even admitted that he was aware that his analysis contained this error when he took the stand and did not include this change when he was asked if he had any changes to his prefiled testimony.[61]

The facts of this issue are straightforward. AEP Ohio and Mr. Ali became aware that one of the proposed facilities used in Mr. Ali's analysis did not interconnect where the analysis had assumed it did, and, in fact, interconnected in the territory of another electric distribution utility. While the exact timing can be debated, at a minimum, AEP Ohio and Mr. Ali knew of this fact about two months before this hearing began. AEP Ohio and Mr. Ali then failed to bring that error to the attention of the Commission and the other parties, not even noting it as a correction to his testimony when asked at hearing. Then, after other parties drew attention to the inaccuracy in Mr. Ali's analysis on cross-examination, AEP Ohio sought to file rebuttal testimony to clean up the mess that it had made.

Allowing this rebuttal testimony sets a dangerous precedent whereby parties can ignore known errors in their testimony in hopes that their opponents will not discover the errors and bring them to light all while resting assured that if such errors do surface, they will have the opportunity to file rebuttal testimony to correct the errors. This precedent is made doubly troubling by the fact that this testimony is hardly rebuttal testimony at all. It is not responding to points raised by

[60] See Tr. Vol. XII at 2751-52.

[61] See Tr. Vol. XII at 2757; Tr. Vol. II at 403-04.

intervenors in their affirmative case, but rather only serves to provide an untimely correction to AEP Ohio's own error.

The parties should not have been forced to add an additional day of hearing to respond to and cross-examine Mr. Ali regarding his rebuttal testimony. Opposing parties have been prejudiced by the decision to grant rebuttal testimony, as well as by the fact that AEP Ohio alone has been able to file a new round of testimony to correct its own errors at hearing. As such, OMAEG requests that the Commission find that allowing rebuttal testimony was in error and that the Commission strike the rebuttal testimony and not consider Mr. Ali's rebuttal testimony in rendering its decision in this proceeding.

B. AEP Ohio Has Not Demonstrated a Resource Planning Need for the Proposed Generation as Required by R.C. 4928.143(B)(2)(c).

i. AEP Ohio Failed to Meet Its Burden of Establishing a Need for the Development of Generation Facilities by a Regulated Distribution Utility.

As discussed above, Ohio has a general prohibition against monopoly-owned generation. Accordingly, in order for AEP Ohio's proposal to be permissible under Ohio law, it must demonstrate that the proposal falls within an exception to that general provision. AEP Ohio contends that R.C. 4928.143(B)(2)(c) provides that exception.[62] Thus, AEP Ohio was required to show a need based on "resource planning projections."[63] The Commission limited the scope of the first phase of the hearing to that question, noting that "[t]he Commission's rules…contemplate that the need for a proposed generating facility should generally be heard first as a distinct issue."[64]

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62 See Company Ex. 3 at 3 (Allen Direct).

63 R.C. 4928.143(B)(2)(c).

64 See Entry at ¶ 32 (October 22, 2018).

In doing so, the Commission set forth a clear legal roadmap for the parties as the Commission recently addressed this exact issue for AEP Ohio in a factually analogous case.[65]

The plain language of R.C. 4928.143(B)(2)(c) and other Ohio statutes should control the Commission's determination in this case. As noted in the Legal Standard section, the statute states that "no surcharge shall be authorized unless the commission first determines in the proceeding that *there is a need for the facility based on resource planning projections* submitted by the electric distribution utility."[66] The Commission should begin its analysis with the language of the statute. The Supreme Court of Ohio has repeatedly held that "[w]hen construing a statute, we first look to its plain language."[67] Additionally, "[w]e apply a statute as it is written when its meaning is unambiguous and definite."[68]

In determining what constitutes a resource planning projection, other provisions of the Ohio Revised Code provide insights helpful to this case. For instance, resource planning projections consider whether the projected supply meets projected demands of customers.[69] Moreover, resource planning considers whether there is capacity available in excess of the expected peak demand of customers.[70]

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65 See *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case Nos. 10-501-EL-FOR, et al. (Turning Point Case).

66 R.C. 4928.143(B)(2)(c) (emphasis added); see also R.C. 4935.04.

67 *In re Black Fork Wind Energy, L.L.C.*, 2018-Ohio-5206 at ¶ 17, citing *State v. Thomas*, 148 Ohio St.3d 248, 2016-Ohio-5567, 70 N.E.3d 496, ¶ 7.

68 *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478, ¶ 52, citing *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.* (1996), 74 Ohio St.3d 543, 545, 660 N.E.2d 463.

69 See R.C. 4935.04(C)(1) (referring to the "resource planning projections to meet demand"); Ohio Admin. Code 4901:5-5-01(L); *Vectren Energy Delivery of Ohio, Inc. v. PUCO*, 113 Ohio St. 3d 180, 183 (2007) ("The purpose of a long-term forecast report is to project customers' future demands for [commodity] and to determine how to acquire sufficient commodity ... to meet demand").

70 See R.C. 4935.04(C) (requiring the long-term forecast report to include a year-by-year, ten-year forecast of annual peak load as well as month-by-month forecast of peak load for electric utilities).

As far as the meaning that should be ascribed to the word "need" in R.C. 4928.143(B)(2)(c), the Court offers guidance. In the absence of a definition of a word or phrase used in a statute, words are to be given their common, ordinary, and accepted meaning.[71] According to the Oxford Living English Dictionaries, the noun "need" has a straightforward definition: "[c]ircumstances in which something is necessary."[72] Similarly, the same dictionary provides the following definition of "need" when used as a verb: "[r]equire (something) because it is essential or very important rather than just desirable."[73] Conversely, "want" is defined as "[h]ave a desire to possess or do (something)."[74]

The analysis above renders the meaning of R.C. 4928.143(B)(2)(c)'s provision that no surcharge shall be authorized unless the Commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility clear. The ordinary, understood definition of need is that it encompasses those things which are necessary. Meanwhile, "resource planning projections" considers whether there is energy and capacity available to meet the peak demand of customers.

In the very Amendment that initiated this proceeding, AEP Ohio admits that "PJM wholesale markets are adequately supplying capacity and energy to the AEP Ohio load zone."[75] At hearing, AEP Ohio Witness Allen confirmed that, within the 13-state PJM region, there are

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71 *State v. Black*, 142 Ohio St.3d 332, 2015-Ohio-513, 30 N.E.3d 918, ¶ 39 (2015), citing *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948), paragraph five of the syllabus.

72 See *Need*, Oxford Living Dictionaries, available at https://en.oxforddictionaries.com/definition/need (accessed March 4, 2019).

73 Id.

74 See *Want*, Oxford Living Dictionaries, available at https://en.oxforddictionaries.com/definition/want (accessed March 4, 2019).

75 Company Ex. 2 at 3.

already adequate generation reserves."[76] Mr. Allen went on to state that the adequacy of the current level of generation reserves is further bolstered by the design of the PJM market, which is constructed to always provide adequate supply by increasing the price to consumers and the price that generators receive if reserves are inadequate.[77] Mr. Allen stated that "[AEP Ohio] made it clear in my testimony, we're not addressing a capacity need."[78]

Other AEP Ohio witnesses arrived at the same conclusion. AEP Ohio Witness Ali testified that he was not assessing whether there was a capacity need for renewable generation[79] because "these resources are not needed to meet any sort of liability [sic] criteria violation that is out there. These resources are purely helping reduce the energy prices…"[80] AEP Ohio Witness Torpey agreed, testifying that AEP Ohio does not have a capacity need.[81] Cross-examination of Mr. Torpey also revealed that this is not the first case in which an affiliate of AEP Corp. has attempted to recover costs for generation facilities from customers. Mr. Torpey admitted that he had offered testimony in proceedings before regulators in both Virginia and West Virginia wherein an affiliate of AEP Ohio sought cost recovery for generation facilities, and that the analysis he testified to in those proceedings was similar to his analysis in this case.[82] In both cases, the respective state commissions denied AEP affiliates requests and determined that the AEP utilities had not demonstrated that need existed.[83]

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76 Tr. Vol. I at 70.

77 See id.

78 Id. at 71.

79 Tr. Vol. II at 462.

80 See id. at 428.

81 Tr. Vol. V at 1382.

82 Tr. Vol. V at 1383-1412.

83 Id.

Opposing witnesses have similarly determined that AEP Ohio does not have a need for the proposed generation of monopoly-owned renewable generation. Kroger Witness Bieber explained that "demand for electricity in Ohio is already being adequately met with existing resources, and, therefore, no need for the specified facilities (or a general need for 900 MW of renewable generation) exists."[84] Mr. Bieber ultimately concluded that the Company has not shown that the proposed generation facilities are necessary to meet demand, peak load, or reserves and, accordingly, AEP Ohio has failed to make the requisite showing of need.[85] OMAEG Witness Seryak agreed. Based on his review of AEP Ohio's own testimony, Mr. Seryak was able to conclude that there is no generic resource planning need for 900 MW of renewable generation facilities in Ohio.[86]

Industrial Energy Users of Ohio (IEU-Ohio) Witness Murray also confirmed that there is no capacity need for the proposed generation facilities, stating that "the regional power market operated by PJM is awash in capacity and there is no indication this situation is likely to change anytime soon."[87] Mr. Murray additionally added that recent actions taken by PJM demonstrate that AEP Ohio's assertion that Ohio requires in-state generation resources is incorrect.[88] Mr. Murray even testified that additional generation capacity is already being developed in Ohio, including utility-scale solar projects being developed through the competitive market.[89]

Faced with an inability to demonstrate need based on any definition that has been used under Ohio law or by the Commission, AEP Ohio devotes much of its testimony to posing

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84 Kroger Ex. 4 at 5 (Bieber Direct).

85 Id.

86 OMAEG Ex. 16 at 6 (Seryak Direct).

87 IEU Ex. 1 at 5 (Murray Direct).

88 Id. at 6.

89 Id. at 709.

distractions to divert the Commission's attention from the fact that, by its own admission, the question of whether there is a resource planning need for the proposed generation must be answered in the negative. Careful examination of the Company's proposed justifications demonstrates that none relate to a resource planning need. As noted by OMAEG Witness Seryak, AEP Ohio responds to this flaw in its claim of "need" by attempting to add factors such as customer desires and societal benefits into the statutory inquiry as to whether there is a resource planning need.[90]

One justification discussed throughout AEP Ohio's testimony is that customers allegedly desire the sort of renewable generation that AEP Ohio proposes in this case, specifically that there is a "strong desire on the part of AEP Ohio customers for in-state renewable power."[91] AEP Ohio then offered the testimony of two witnesses involved in administering a survey to assess customer desires for renewable generation.[92] Below, OMAEG demonstrates that the survey conducted by AEP Ohio was severely flawed and ultimately unreliable. But the quality of the survey does not even relate to its relevance to this proceeding such that even an error-free, expertly designed survey that was administered perfectly (which it was not) could not change the Commission's mandated statutory analysis. The AEP Ohio witnesses who supported these surveys essentially admitted that they did not support the statutory definition of need. AEP Ohio Witness Horner testified that she had no opinion as to whether the statutory definition of need had been met in this proceeding.[93] In fact, the survey that Ms. Horner oversaw did not even attempt to determine whether customers

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90 See OMAEG Ex. 16 at 6 (Seryak Direct).

91 See Company Ex. 3 at 7 (Allen Direct).

92 See, Company Ex. 6 (Horner Direct); Company Ex. 10 (Fry Direct).

93 See Tr. Vol. III at 566-567.

actually needed renewable energy.[94] Simply put, customer wants are not the same as customer needs. A survey of what customers may want or desire (without any discussion of who will provide for those wants or at what cost or whether the customers surveyed are able to and want to pay extra for the desired renewable energy) does not provide any information as to whether there is a resource planning *need* for certain generation.

As OMAEG Witness Seryak succinctly stated in his testimony, most customers who respond to surveys are not in a position to determine whether there is a "need" for certain generation.[95] The respondents to these surveys are not subject matter experts and are not subject-matter experts who have a demonstrated understanding of the regulatory framework and electric policy of the state of Ohio.[96] Thus, these individuals are not able to adequately assess this issue of need under Ohio law.[97]

AEP Ohio also argues that the economic development benefits of the proposed generation somehow demonstrate "need."[98] As an initial matter, per the Commission's bifurcation of this case, specific projects and their economic development effects are not appropriate for consideration in this phase of the hearing. Even if such considerations were relevant in this phase, and AEP Ohio was able to demonstrate actual economic benefits, those benefits would not equate to establishing a resource planning need. The Commission has already declined to consider economic benefits in its calculation of a resource planning need.[99]

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94 Id. at 641.

95 OMAEG Ex. 16 at 12-13 (Seryak Direct).

96 Id.

97 Id.

98 See, e.g., Company Ex. 3 at 7-8, 10 (Allen Direct); Company Ex. 13 (LaFayette Direct); Company Ex. 12 (Buser Direct).

99 Turning Point Order at 25-27.

Staff Witness Siegfried added some additional color to the issue of lack of need for AEP Ohio's proposal. He noted that not only does AEP Ohio not have a general shortage of capacity that would require a need for this generation, but AEP Ohio is already projected to exceed its renewable portfolio standards (RPS) requirements through 2022.[100] AEP Ohio Witness Allen admitted on cross-examination that this proposal, if approved, would not be used to satisfy AEP Ohio's RPS requirements.[101] As stated previously, Staff Witness Benedict further supported the argument that there is no need for the proposed generation, adding that "Staff believes that Ohio Power is conflating customer preferences with customer needs."[102]

AEP Ohio Witness Allen's testimony demonstrates that AEP Ohio's attempted conflation must fail. Mr. Allen states the statutory requirement of demonstrating a resource planning need near the outset of his testimony.[103] But he explains the need to demonstrate a need based on Company-submitted resource planning projections, Mr. Allen does not use the phrase "resource planning" for a second time throughout the entirety of his testimony.[104] Instead, he admits that there is not a capacity need underlying this filing,[105] and goes on to volunteer (without any citation to Ohio statutes, Supreme Court precedent, or the Commission's rules or precedents) "other relevant considerations" that the Commission should consider in evaluating need.[106]

Mr. Allen's decision to subtly drop the term "resource planning" from his discussion of need is telling. It indicates that the Company is not interested in engaging customers with the

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100 Staff Ex. 1 at 4 (Siegfried Direct).

101 Tr. Vol. I at 210.

102 Staff Ex. 2 at 9 (Benedict Direct).

103 Company Ex. 3 at 5-6 (Allen Direct).

104 See Company Ex. 3 (Allen Direct).

105 Id. at 8.

106 Id. at 9.

statutory text that purportedly authorizes this Amendment, and, instead uses its testimony and evidence to persuade the Commission to bring additional factors into its consideration under R.C. 4928.143(B)(2)(c). But the Commission is not permitted to unilaterally write additional exceptions into Ohio law. "It is axiomatic that the PUCO, as a creature of statute, may exercise only that jurisdiction conferred upon it by the General Assembly."[107] Put simply, Ohio law defines the limitations of the Commission, not the other way around.

Nevertheless, R.C. 4928.143(B)(2)(c) creates a limited exception to the general prohibition of monopoly-owned generation. In doing so, it does not ask if customers would be pleased by proposed generation, and it does not ask whether generation would provide economic benefits. It asks whether there is a resource planning need. Reasonable minds may differ in their opinion of how, to what extent, and by whom renewable generation should be developed, but this case is not the forum for that discussion for the simple reason that the General Assembly has not vested the Commission with the power to make that determination. Instead, it has told the Commission that unless it is able to find a resource planning need under R.C. 4928.143(B)(2)(c), it should reject a request by an electric distribution utility to develop generation at customer expense. The Commission should uphold that mandate in this case and find that AEP Ohio has not demonstrated that need exists.

ii. <u>The Commission Should Follow Its Own Precedent in Assessing Resource Planning Needs Under R.C. 4928.143(B)(2)(c).</u>

When the Commission has considered this issue in the past, it has indeed adopted the approach to assessing resource planning needs outlined above. Specifically, the Commission used this approach in a prior AEP Ohio forecast proceeding. In AEP's 2010 long-term forecast case,

[107] *Columbus S. Power Co. v. Pub. Util Comm'n*, 67 Ohio St.3d 535, 537, 620 N.E.2d 835 (1993) (internal citations omitted).

AEP sought approval of charges to customers for solar energy, commonly referred to as the "Turning Point" project.[108] That case involved a proposal for less than 50 MW of solar energy resources – less than six percent of the 900 MW for which AEP now seeks a finding of need.[109] Ultimately, in that case, the Commission determined that speculative assertions that the Company may need additional renewable resources do not provide a sufficient basis to approve recovery from customers under R.C. 4928.143(B)(2)(c).[110]

The Commission should follow its own precedent in this case. In addition to being consistent with the relevant statutes, the Supreme Court of Ohio has directed the Commission to respect its own precedents in order to "assure predictability which is essential in all areas of law, including administrative law."[111] When one applies the Commission's prior decision regarding what constitutes a resource planning need to the facts of this case, it becomes clear that AEP Ohio has not demonstrated a resource planning need under R.C. 4928.143(B)(2)(c).

Six years after the Turning Point decision, AEP Ohio has returned to the Commission again seeking recovery from customers for generation facilities that the regulated utility proposes to own or develop. In that period, the law governing such requests has not changed. The law still requires the resource planning need to be analyzed as discussed above, and given that AEP Ohio has again failed to submit a proposal that survives such analysis, the Commission should follow the same course that it followed in the Turning Point Case.

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108 *In re Long-Term Forecast Report of Ohio Power Co.*, Case No. 10-501-EL-FOR.

109 *In re Long-Term Forecast Report of Ohio Power Co.*, Case No. 10-501-EL-FOR, Opinion and Order at 2 (January 9, 2013) (Turning Point Order).

110 Id. at 26.

111 See *In re Duke Energy Ohio, Inc.*, 150 Ohio St. 3d 437, 443, 2017-Ohio-5536, 82 N.E.3d 1148, ¶ 23 (internal citations omitted).

iii. Given AEP Ohio's Admissions that It Cannot Establish Need Under the Provisions of Ohio Law, the Intervening Parties' Motion for a Directed Verdict Should Have Been Granted.

At the close of AEP Ohio's case-in-chief, OMAEG joined several other intervening parties in moving for a directed verdict on the basis that AEP Ohio had not met the statutory definition of need.[112] As noted by counsel for IEU-Ohio, at the close of AEP Ohio's case it had failed to present evidence that would support a determination that the Company had satisfied R.C. 4928.143(B)(2)(c), even when construed in the light most favorable to AEP Ohio.[113] Accordingly, granting the motion for a directed verdict would have saved all parties the time and expense of putting on evidence in opposition to the Company's case. The motion, however, was denied and the hearing proceeded to testimony from intervening parties.[114] The ruling constituted reversible error.

Ohio Rule of Civil Procedure 50(A)(4) sets forth the standard for motions for directed verdict:

> When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.

The Supreme Court of Ohio has provided guidance on such motions:

> When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one

[112] Tr. Vol. VI at 1577-79.

[113] Id. at 1577.

[114] Id. at 1581.

> conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.[115]

Additionally, in *Wagner v. Roche Laboratories* (1996), 77 Ohio St.3d 116, 671 N.E.2d 252, the Supreme Court of Ohio stated, "'[w]hen a motion for a directed verdict is entered, what is being tested is a question of law, that is, the legal sufficiency of the evidence to take the case to the [factfinder]. This does not involve weighing the evidence or trying the credibility of witnesses.'"[116] Finally, "[b]ecause a motion for a directed verdict presents a question of law, appellate review of a trial court's decision on the motion is de novo."[117]

As recounted extensively in this section, the only question at issue in this phase of the proceeding was whether or not AEP Ohio had demonstrated a need for the proposed renewable generation facility based on resource planning projections under R.C. 4928.143(B)(2)(c). Thus, in considering the motion for a directed verdict, the evidence should have been construed the most strongly in favor of AEP Ohio and an assessment should have been made as to whether that evidence could support a finding that the statutory requirements had been satisfied. Had this occurred, pursuant to the evidence and admissions discussed previously, it would have been determined that the motion should have been granted. Accordingly, the motion was denied in error, and such decision should be reversed.

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115 *Wagner v. Midwestern Indem. Co.*, 83 Ohio St.3d 287, 1998-Ohio-111, 699 N.E.2d 507 (1998).

116 Id. at 119, 671 N.E.2d at 255, quoting *Ruta v. Breckenridge–Remy Co.* (1982), 69 Ohio St.2d 66, 68–69, 23 O.O.3d 115, 116–117, 430 N.E.2d 935, 938.

117 *Bennett v. Admir., Ohio Bur. of Workers' Comp.*, 134 Ohio St.3d 329, 2012-Ohio-5639, 982 N.E.2d 666, ¶ 14 (2012).

C. Speculative Desires for Additional Renewable Generation Can Be Met by the Competitive Market.

AEP Ohio disregards the reality that if the public truly desires renewable generation that AEP Ohio seeks to develop, competitive markets will be able to meet that desire. AEP Ohio asks that the Commission consider factors such as customer desires,[118] economic impact,[119] and the impacts that the specific projects will have on LMPs[120] to justify the approval of its proposal. These factors, as well as others that AEP Ohio discusses, do not provide a coherent basis to abandon the competitive market. Rather, in the event that AEP Ohio's assertions are accurate, the tenet of the competitive market will naturally address AEP Ohio's concerns.

In the Turning Point Case, the Commission noted that it was erroneous for AEP Ohio to assume that the speculative needs it identified could not be met by the market.[121] Yet, AEP Ohio has returned in this case and again failed to address the reality that market forces are already at work to increase the amount of renewable generation in the state.

OMAEG Witness Seryak explained how AEP Ohio's argument for need, which hinges on the purported economical nature of the proposed projects and the financial benefits that the projects will bring, is self-defeating. Mr. Seryak noted that the market favors projects that are economically beneficial, so if these projects are as beneficial as AEP Ohio claims, the competitive market should support them, or other similar renewable energy projects.[122] As Mr. Seryak discusses in his testimony, there are two possible outcomes with regard to the financial benefits of this case, both of which support allowing the markets to operate without the type of interference AEP Ohio

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118 See, e.g., Company Ex. 6 (Horner Direct); Company Ex. 10 (Fry Direct).

119 See, e.g., Company Ex. 12 (Buser Direct); Company Ex. 13 (LaFayette Direct).

120 See Company Ex. 5 (Ali Direct).

121 Turning Point Order at 27.

122 OMAEG Ex. 16 at 10 (Seryak Direct).

proposes: (1) the projects truly carry a financial benefit and would thus be favored by the competitive market without a nonbypassable charge to customers; or (2) the projects do not actually provide the benefits that AEP Ohio suggests, in which case there is no need for the projects under AEP Ohio's own argument for need.[123] Mr. Seryak further discussed how the LMP analysis AEP Ohio relied upon was flawed because it is asymmetrical with the Company's request in this case.[124] Specifically, AEP Ohio is now requesting to develop at least 900 MW of renewable generation, but the LMP analysis only considered 650 MW and, as explained in Mr. Seryak's testimony, the results of an LMP analysis of 650 MW cannot necessarily be extrapolated to 900 MW (or more) of renewable generation.[125]

As discussed above, Ohio's state policy provides for a clear preference for allowing the competitive market to address the purported need for these renewable projects over allowing monopoly utilities to own generation at the customers' expense. Unsurprisingly, the record in this case reflects that the competitive market is doing just that when it comes to renewable generation in the state of Ohio.

Ample evidence in this case demonstrates that markets have already been acting to increase the amount of renewable generation in Ohio. On cross-examination, Natural Resources Defense Council (NRDC) Witness Stebbins admitted that, in her experience people who desire to obtain power through renewable generation have been able to purchase such generation from the market.[126] Ms. Stebbins further testified that Ohio has seen significant growth in the amount of wind and solar generation in the state's generation mix, even seeing a 40-percent increase between

[123] Id. at 10-11.

[124] Id. at 9-10.

[125] Id.

[126] Tr. Vol. IV at 1034-35.

2015 and 2017.[127] Moreover, there are already significant amounts of renewable generation that have either been approved by the Ohio Power Siting Board or are pending before that body.[128] Just in the past month, the Ohio Power Siting Board has approved a 125.1 MW wind farm in Paulding County, Ohio[129] and an amendment to a previously-issued certificate that now allows for 200 MW of solar generation in Brown County, Ohio.[130] Ohio Coal Association (OCA) Exhibit 5 shows that there are additional such projects that have either been approved or are pending before the Ohio Power Siting Board.

Additionally, on cross-examination, AEP Ohio Witness Allen revealed another way in which the market is meeting the needs and desires of customers who would like to use renewable generation. Mr. Allen admitted that CRES providers already offer "green products" to both commercial and residential customers who desire to be served with renewable energy.[131] Specifically, Mr. Allen agreed that the Commission's Apples to Apples website provides customers with information regarding "green products" that are available to customers.[132] This is yet another example of market solutions emerging to meet needs and desires of customers, without the use of nonbypassable charges to customers by an electric distribution utility. Mr. Allen further

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127 Id. at 1036-37.

128 Id. at 1039.

129 See *In the Matter of the Application of Paulding Wind Farm IV LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Wind-Powered Electric Generation Facility in Paulding County, Ohio*, Case No. 18-91-EL-BGN, Opinion, Order, and Certificate at ¶ 1 (February 21, 2019). Even AEP Corp. has announced a $1 billion investment in such competitive renewable resources.

130 See *In the Matter of the Application of Hillcrest Solar I, LLC for an Amendment to Its Certificate Issued in Case No. 17-1152-EL-BGN,* Order on Certificate at ¶¶ 1-3 (February 21, 2019).

131 Tr. Vol. I at 201-02.

132 Id. at 202; see also IEU Ex. 4-6.

conceded that competition in the market generally will lead to lower prices being paid by customers.[133]

With new renewable generation being constructed and entering the market in Ohio every year and ample renewable product offerings being offered by CRES providers, the market appears to be functioning as expected with regard to renewable generation. Thus, the Commission can rest assured that any "need" supposedly justified by demand will be met through means other than AEP Ohio's proposed nonbypassable charge to customers for the development of monopoly generation.

D. In Addition to Failing to Meet the Statutory Requirements, AEP Ohio's Assertions of Need Are Not Compelling.

As AEP Ohio was unable to present evidence of a resource planning need to justify its proposal under R.C. 4928.143(B)(2)(c), it instead sought to divert the Commission's attention by presenting purported benefits and justifications based upon purported customer desires and economic impact studies. As discussed in the preceding sections, these considerations are irrelevant to a consideration of whether AEP Ohio has demonstrated a resource planning need for its proposal. That irrelevance, however, is not the only issue with the evidence AEP Ohio presented. AEP Ohio arrived at its conclusions using deficient analyses, biased surveys, and flawed logic in presenting these arguments. Thus, even in the event where AEP Ohio's position could possibly support a determination that the general exception to the prohibition of monopoly-owned generation under R.C. 4928.143(B)(2)(c) is invoked here, the Commission would still be compelled to reject the Company's arguments.

[133] Id. at 230.

i. AEP Ohio's Assertions that Customers Desire Utility Development of Renewable Generation Are Rooted in Flawed Surveys.

Much of AEP Ohio's argument for approval of its development of generation at customers' expense hinges on the idea that customers desire this development to occur. At hearing, however, it was revealed that the customer surveys underlying that premise were flawed and unreliable. On cross-examination, AEP Ohio Witness Allen admitted that statements in his testimony regarding customer desires for renewable generation were based on a survey conducted by Navigant Consulting, Inc.[134] Mr. Allen also stated that he had personally spoken to customers that shared a desire for AEP Ohio to develop renewable generation as it proposes to do in this proceeding, but admitted that those conversations only occurred with two or three customers and on a very high level.[135] Thus, AEP Ohio is dependent upon Navigant's survey as adequate support of its claim of need in this case. Cross-examination of the witnesses supporting that survey, however, demonstrated that Navigant's survey was inadequate and unable to support a claim of need. Indeed, one of the witnesses supporting the survey testified that the survey did not even attempt to determine how customer desires feed into the issue of customer need.[136]

AEP Ohio filed the testimony of Trina Horner and Nicole Fry in support of the Navigant survey.[137] Examination related to Ms. Horner's credentials revealed that despite the fact that she testified that the "Voice of the Customer" Report (VOC Report) was prepared by her or under her direction,[138] she did not have significant prior experience designing and implementing customer

134 Tr. Vol. I at 204-05.

135 Id.

136 Tr. Vol. III at 641.

137 See Company Ex. 6 (Horner Direct); Company Ex. 10 (Fry Direct).

138 Company Ex. 6 at 2-3 (Horner Direct).

surveys.[139] Ms. Horner testified that the sample of customers surveyed was "statistically significant,"[140] but admitted that the VOC Report only contained responses from 0.6% of AEP Ohio's residential non-PIPP customers.[141] Ms. Horner went on to admit that it received similarly low response rates for PIPP customers[142] and commercial and industrial customers.[143] Moreover, when pressed, Ms. Horner—while testifying as an expert in statistical analysis—was unable to actually define what would constitute a statistically significant survey size.[144]

Furthermore, as observed by OMAEG Witness Seryak, the Navigant survey did not even attempt to assess the views of all of AEP Ohio's customers.[145] AEP Ohio did not survey large businesses in its assessment of customer desires, only focusing on residential and small commercial customers.[146] The results of the Company's survey of small commercial customers demonstrates the flaw in that approach. Open-ended comments from small commercial customers were divided in their view on AEP Ohio's proposed development of renewable generation.[147] Presumably, large commercial customers—many of whom, as discussed below, are already purchasing renewable generation in the competitive market without paying a nonbypassable charge to AEP Ohio for the Company to develop renewable generation—would have been more knowledgeable and would have provided very different responses. Surely, an assessment of only

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139 Tr. Vol. III at 627-31.

140 Id. at 635.

141 Id.

142 Id. at 637 (noting that of approximately 100,000 PIPP customers, only 660 responded to the survey).

143 Id. (noting that of approximately 150,000 commercial and industrial customers, only 664 responded to the survey).

144 Id. at 700.

145 OMAEG Ex. 16 at 12-13 (Seryak Direct).

146 Id.

147 Id. at 13.

some classes of customers cannot be credibly held up as a tool to holistically determine the preferences, wants, or desires of AEP Ohio's entire customer base.

OCC Witness Dormady provided additional information regarding the flaws in the design of the survey conducted by Navigant and relied upon by AEP Ohio.[148] Dr. Dormady, based on his extensive experience, testified that the survey was designed to support a particular policy conclusion and not to obtain an accurate assessment of the views of AEP Ohio's customers.[149] Dr. Dormady explained how the survey's poor design led to it containing inherent biases such as Framing Bias, Hypothetical Bias, Social Desirability Bias, and a likely Selection Bias.[150] Throughout his testimony, Dr. Dormady detailed how the survey used a less reliable approach to determine actual customer preferences and omitted key methodological details.[151] Dr. Dormady explained that the survey suffers from significant bias issues, which tend to skew the results towards the conclusion that AEP Ohio desired the survey to reach.[152]

These biases in the survey's design appear more malicious in light of the timeline under which these surveys were conducted. The survey was conducted in August of 2018, just one month before AEP Ohio filed its Amendment.[153] It does not appear to be the case that AEP Ohio conducted this survey to honestly assess customer interest in the development of renewable generation by AEP Ohio, but rather to bolster its case with regard to the inquiry into statutory need that the Commission is required to conduct under R.C. 4928.143(B)(2)(c). This approach by AEP Ohio is consistent with the record evidence that demonstrates that the survey was engineered to

[148] See OCC Ex. 24 (Dormady Direct).

[149] Id. at 4.

[150] Id.

[151] Id. at 5-10.

[152] Id. at 14-19.

[153] Company Ex. 6 at Exhibit TH-1, page 5 (Horner Direct).

conclude that customers have a desire for AEP Ohio to develop monopolized renewable generation.

Additional errors in the survey's approach are evidenced by the survey's failure to properly and consistently code responses from customers.[154] Additionally, Navigant failed to include coding reliability checks by having only a single person code.[155] On Company Exhibit 7, responses are grouped into different categories, with responses coded as "Supportive," "Mixed," "Neutral/Unclear," and "Negative."[156] A review of these responses demonstrates that the survey contained flagrant coding errors that mark neutral and negative responses as "Supportive" and responses that are clearly hostile to AEP Ohio's proposal as "Mixed" or "Neutral/Unclear."

For instance, the following comments that are hostile to AEP Ohio's proposal were coded as "Mixed:"

> "AEP should not force its customers to pay for its upgrades and investments. [BLANK] AEP Corp."[157]
>
> "This should not be at the expense of customers."[158]
>
> "Please stop. The windmills are ugly, they kill birds and bats, and they are a giant waste of money (literally). If you have to use renewables, then give more credits to homeowners to purchase their own solar panels."[159]

Meanwhile, the comments below were coded as "Neutral/Unclear," despite expressing apparent opposition to AEP Ohio's proposal:

> "I'd prefer a cheaper bill. I don't care about wind or solar."[160]

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154 See Tr. Vol. XI at 2688-94.

155 OCC Ex. 24) at 10, 27-28 (Dormady Direct).

156 See id.

157 Id. at 72.

158 Id. at 48.

159 Id. at 47.

160 Id. at 88.

> "Too damn high."[161]
>
> "I would not want to see increased expense in my bill."[162]
>
> "I [BLANK] hate AEP, they are the only source of electricity in the city of Columbus, which gives them the [BLANK] power to charge us very high electric bill. AEP is like the NAZI in Columbus, Ohio. [BLANK] them."[163]
>
> "Please use my money more wisely."[164]

Finally, comments such as the ones below were coded as "Supportive" despite not appearing to support AEP Ohio's proposal or, at the very least, speaking to subjects that are unrelated to the proposal:

> "Build wind turbines in KS (Kansas)/IL (Illinois) more wind than OH (Ohio). Don't bother with solar in OH (Ohio) – cloudy days 50%-inconsistent power generation."[165]
>
> "like to know some results."[166]
>
> "I would like to see ocean current power better investigated. Large submerged horizontal cylindrical generators with engaging/retracting teeth. I would call it dual gravity power. The gravity of the moon to create ocean current, and then the gravity of the earth to position the teeth engaged with the current while extended on the underside, while at the same time retracted on the upper side, thus maximizing positive contact area and driving force."[167]

These plainly misinterpreted comments, when considered in conjunction with the issues raised by Dr. Dormady and the credibility issues exposed with the witnesses sponsoring the survey,

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[161] Id.

[162] Id.

[163] Id. at 89.

[164] Id. at 88.

[165] Id. at 31.

[166] Id. at 26.

[167] Id. at 13.

demonstrate that AEP Ohio's survey relied upon in this case is not reliable and should not be given significant weight (even assuming that the Commission entertains AEP Ohio's creative definition of "need" at all).

ii. AEP Ohio Did Not Demonstrate that These Projects Would Make Ohio More Attractive for Businesses.

Another argument advanced by AEP Ohio is that the proposed development of renewable generation would make Ohio a more attractive home for businesses.[168] In support of this claim, AEP Ohio Witness Allen cites to a number of corporations that he claims have initiatives to use renewable energy.[169] Mr. Allen's contentions are undermined, however, by the reality that these corporations (and others) were able to procure renewable generation without relying on AEP Ohio's proposed development, and in fact have done so. As noted in the record, businesses are currently buying more renewable energy than ever before from the competitive market or by installing their own renewable generation.[170] That same exhibit states that there is now a "blueprint" for businesses seeking renewable energy and that "it's a lot easier for other companies to do it."[171]

AEP is attempting to create a false choice for the Commission. AEP Ohio presents this argument as if the Commission must choose between allowing AEP Ohio to develop renewable generation or making Ohio unattractive for businesses. The assumptions underlying this choice are faulty. AEP Ohio does not offer testimony from any business customer who is actually making the choice of where they conduct business based on the availability of utility-owned generation

168 See Company Ex. 3 at 10 (Allen Direct).

169 Id. at 11.

170 See OCC Ex. 17.

171 Id. at 2.

and whether the specific projects proposed by AEP Ohio would be a deciding factor in that decision. AEP Ohio also overlooks two important facts. First, as noted above, businesses are already able to procure renewable energy in the competitive market without the involvement of monopolies like AEP Ohio. Second, there are other considerations businesses must evaluate in determining where and how to conduct business, such as the extensive, above-market charges that Ohio utilities have added to customers' bills. Specifically, Mr. Allen agreed on cross-examination that if a customer were forced to pay more for electric supply in Ohio than it would pay elsewhere, that factor could be a deterrent for that customer in terms of whether they choose to do business in Ohio.[172] Increasing a customer's bull by adding nonbypassable surcharges to develop generation resources could be such a deterrent.

The Commission should reject AEP Ohio's attempt to portray its proposal to charge customers for the development of monopoly generation as a business-friendly move to make Ohio more attractive to businesses. The deceptiveness of this claim is illustrated not only by the fact that these businesses are already able to obtain renewable generation through the competitive market in Ohio through purchasing renewable generation or constructing on-site renewable generation, but also by the fact that most entities representing customers do not support AEP Ohio's proposal in this proceeding.

iii. AEP Ohio's Studies Regarding the Economic Impact of the Proposed Projects Are Not Persuasive and Should Be Rejected.

As OMAEG has discussed at length, factors such as the purported economic benefit of AEP Ohio's proposed monopoly generation should not be considered as part of the inquiry into whether there is a need for such monopoly-owned or developed generation under R.C.

[172] Tr. Vol. I at 205-06.

4928.143(B)(2)(c). Economic benefits plainly do not factor into a determination of whether there is a resource planning need for additional generation. Nonetheless, over the objections of the parties, AEP Ohio presented extensive evidence regarding the purported economic benefits of the proposed generation in hopes that the Commission would factor those alleged benefits into its need determination. As demonstrated below, even if the Commission were to consider economic benefits in its analysis of this case, the evidence presented by AEP Ohio fails to make a persuasive case that economic benefits would even result from the Commission's approval of AEP Ohio's proposal.

AEP Ohio Witnesses Buser and LaFayette sponsored economic impact analyses that AEP Ohio contends support its position that there is a need for this proposed monopoly generation.[173] In addition to the fact that this testimony is based upon specific projects (which, as discussed above, were deemed inappropriate for this phase of the hearing), the testimony is deeply flawed and unduly prejudicial.

For instance, Dr. Buser's testimony on the impact that these proposed projects will have is overstated to the point of removing any credibility that the testimony may have had. Without evidence related to these projects, Dr. Buser claims that the 400 MW of renewable projects that he analyzed could have effects that include addressing gender imbalance in the workforce in the energy field,[174] improved standard of living for all community members,[175] improved public health,[176] and—perhaps the most preposterous conclusion of all—combatting the opioid crisis.[177]

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[173] See Company Ex. 12 (Buser Direct); Company Ex. 13 (LaFayette Direct).

[174] Company Ex. 12 at 9 (Buser Direct).

[175] Id. at 9-10.

[176] Id. at 6-7.

[177] Id. at 10.

On cross-examination of Dr. Buser, it became clear that he had relied on studies and information that he had no part in conducting or compiling to come to these conclusions.[178] Dr. Buser further admitted that he has not researched the opioid crisis and was unable to provide any sort of concrete link between that matter of major public concern and the proposed energy projects he reviewed in this case.[179] And, ultimately, Dr. Buser conceded that the benefits he claims these projects will bring do not depend on AEP Ohio being the party to develop the facilities, thus further undercutting the contention that there is a need for the projects.[180]

Dr. LaFayette admitted on cross-examination that much of the economic impact that he claims these projects will bring is tied to their construction and is, thus, temporary.[181] He went on to state that the permanent impacts of the projects are considerably less once those temporary construction impacts are removed.[182] While Dr. LaFayette relied on his model to predict the number of full-time employees these projects may employ, he was unable to testify to the level of employment of a typical solar array.[183] Like Dr. Buser, Dr. LaFayette admitted that whatever impact may exist does not depend upon AEP Ohio being an investor in or developer of the projects.[184] In fact and importantly, these same purported economic impact benefits would exist if the renewable projects were developed by the competitive market.

This review of the testimony of AEP Ohio Witnesses Buser and LaFayette demonstrates several key points. First, AEP Ohio's claims of economic impact are unambiguously tied to

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178 Tr. Vol. IV at 1102-15.

179 Id. at 1111-1115.

180 Id. at 1087-88.

181 Id. at 1147.

182 Id.

183 Id. at 1148.

184 Id. at 1149.

specific projects at specific site locations that have been determined to be beyond the scope of this phase of the hearing. Second, the actual economic impact that the witnesses claim is speculative at best and overstated at worst. Third, and most importantly, any economic impact does not appear to depend on AEP Ohio investing in or developing these projects at customers' expense; the impact would be the same if the projects were privately funded.

Moreover, as OMAEG Witness Seryak notes, the idea that the projects would have a positive economic benefit for customers is not at all settled and AEP Ohio's analysis of those potential benefits is flawed.[185] Mr. Seryak explains how AEP Ohio's Amendment is speculative and contains a great deal of uncertainty regarding potential benefits.[186] Mr. Seryak describes how the conditional statements in the Amendment demonstrate that AEP Ohio cannot provide certainty that its Amendment, if approved, would provide benefits to customers.[187] AEP Ohio Witness Torpey actually concluded that approval of AEP Ohio's development of monopoly generation would result in costs to customers for the next four years (for generic solar) and six years (for generic wind).[188] Mr. Torpey even agreed, however, that AEP Ohio cannot guarantee that customers will in fact receive a benefit from AEP Ohio's proposal after numerous years of costs.[189]

V. CONCLUSION

For the reasons stated above, the Commission should find that AEP Ohio failed to make the requisite showing of need to support its Amendment under R.C. 4928.143(B)(2)(c) and, accordingly, reject AEP Ohio's Amendment to its LTFR, reject AEP Ohio's application in the

185 OMAEG Ex. 16 at 9-10 (Seryak Direct).

186 Id. at 9.

187 Id.

188 See Company Ex. 14 at Exhibit JFT-1, 21-22 (Torpey Direct).

189 Tr. Vol. V at 1424.

Cost Recovery Case for cost recovery for specific projects, and find that there is no need to proceed to the second phase of this proceeding. Competition among renewable developers in the market is working. The competitive market can produce lower prices for those customers that choose to procure their energy sourced from renewable projects. Customers' desires for renewable energy can and will be satisfied through the competitive market.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail on March 6, 2019.

/s/ Brian W. Dressel_____
Brian W. Dressel

Summary: Brief Post-Hearing Brief of the Ohio Manufacturers' Association Energy Group electronically filed by Mr. Brian W Dressel on behalf of The Ohio Manufacturers' Association Energy Group