BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Long-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

REPLY POST-HEARING BRIEF OF OHIO POWER COMPANY REGARDING ITS AMENDED LONG-TERM FORECAST REPORT AND THE ISSUE OF NEED

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I. Introduction

Ohio Power Company's ("AEP Ohio" or the "Company") request in this case – and its presentation of evidence in support of that request – is the culmination of a process that began in late 2015 when a settlement was reached in the *PPA Rider Case* (Nos. 14-1693-EL-RDR, *et al*.). The Public Utilities Commission of Ohio ("Commission") adopted the PPA Rider settlement and embraced the 900 MW commitment, stating that "[t]he Commission supports the construction of new renewables in this state." *PPA Rider Case*, Opinion and Order at 83 (Mar. 31, 2016). The Commission also found that "renewable energy plays an integral role in promoting a reliable and cost-effective grid." *Id.* at 82. Subsequently, the signatory parties to the *ESP IV*[1] settlement proposed a new mechanism to recover the costs associated with new renewable projects approved under the 900 MW commitment: the Renewable Generation Rider (RGR). *ESP IV*, Stipulation and Recommendation at ¶ III.D. (Aug. 25, 2017). The new RGR incorporated some of the same conditions applicable to the PPA Rider but also made clear that it was being established pursuant to R.C. 4928.143(B)(2)(c). The Commission specified the anticipated filings and process:

> In each EL-RDR proceeding proposing a specific project, AEP Ohio will be required to demonstrate need for each proposed facility and to satisfy all of the other criteria in R.C. 4928.143(B)(2)(c), and OCC will have a full and fair opportunity to raise its concerns on the issue of need.

ESP IV, Opinion and Order at ¶ 227 (Apr. 25, 2018). *See also ESP IV*, Second Entry on Rehearing at ¶ 50 (Aug. 1, 2018). The RGR remains a placeholder until the Commission approves a project for inclusion in the rider.

[1] Case Nos. 16-1852-EL-SSO, *et al.*

As expected, the opposing intervenors continue to contest the RGR and the process that the Commission established for including projects in it. They harken back to the 1999 mandate of SB 3[2] for a standard service offer (SSO) based strictly on a market pricing – ignoring the 2008 hybrid electric security plan (ESP) construct of SB 221[3] that expressly authorizes an electric distribution utility (EDU) to own or operate a new generation facility. *See* R.C. 4928.143(B)(2)(c). For example, the Office of the Ohio Consumers' Counsel (OCC) incorrectly states that "[u]nder S.B. 3 competition replaced government regulation" and "these provisions were largely unchanged" by the enactment of SB 221. (OCC Br. at 3.) In reality, SB 3 was viewed as having failed in basic purpose of quickly transitioning to market and the requirement for "market-based" SSO pricing in R.C. 4928.14 was repealed through enactment of SB 221. And the General Assembly affirmatively included a provision to enable new utility generation, if needed. Although the Company's opponents may prefer to ignore or dismiss this provision, the General Assembly included it as a vital component of the hybrid ESP construct.

Thus, despite the legal rhetoric throughout the opposing intervenor briefs, the extent to which the Commission should make use of the provision is a policy debate, not a legal one. As laid out in the Company's Initial Brief (at 7-21) and additionally below in Section II, the opposing intervenors and Staff argue for an unduly narrow interpretation of need that is inconsistent with the balance of SB 221 and the Commission's rules. Some also argue that the Commission's 2010 decision in the Turning Point case controls the outcome here – but they overextend that decision and fail to recognize that it was clearly limited to the facts and circumstances presented.

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[2] Am. Sub. S.B. 3 (1999).

[3] Am. Sub. S.B. 221 (2008).

Ohio's codified energy policies further support the Company's interpretation of need under R.C. 4928.143(B)(2)(c). Record evidence in this case further demonstrates that developing at least 900 MW of renewable energy projects in Ohio will ensure the availability of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service (R.C. 4928.02(A)); give customers options they may choose to meet their needs (R.C. 4928.02(B)); ensure "diversity of electric supplies and suppliers" (R.C. 4928.02(C)); protect consumers from "market power" (R.C. 4928.02(I)); incentivize "technologies that can adapt successfully to potential environmental mandates" (R.C. 4928.02(J)); and facilitate Ohio's "effectiveness in the global economy" (R.C. 4928.02(N)).

As a matter of fact and based on evidence of record, AEP Ohio has conclusively demonstrated a resource planning need for at least 900 MW of additional renewable energy resources in the Company's service territory through: (A) the Voice of the Customer Survey, which demonstrates that AEP Ohio customers desire additional, Ohio-sited renewable energy resources; (B) the economic analyses set forth in its integrated resource plan (IRP), which demonstrate that constructing such resources would be economically beneficial to AEP Ohio's customers; (C) its economic impact study, which demonstrates that constructing such resources would create tangible and significant economic benefits for Ohio, and (D) substantial testimony and other evidence that market failures have discouraged development of in-state, utility-scale renewable resources, which a finding of need will help ameliorate. In short, the Company's demonstration of need is based on the demands of customers, the favorable economics of renewable projects, and the tremendous potential benefit to the State of Ohio's economy – all in order to fill a void and satisfy the failure of limited market options only available to a small subset of customers.

A timely decision on the need issue is imperative. Because the contractual provisions with the developers of the renewable projects (based on the expiration of pivotal tax credits) result in expiration/termination of the deal absent timely regulatory approval, an expedient decision is needed here. As the Canadian rock band, Rush, captured in its intriguing lyric: "If you choose not to decide, you still have made a choice." RUSH, *Freewill*, on Permanent Waves (1980). Consistent with all of the prior regulatory developments leading up to this need case, the Company submits that a timely decision is appropriate and respectfully requests the same.

II. The "Need" Standard Under R.C. 4928.143(B)(2)(c)

A. The opposing intervenors' narrow definition of "need" is not supported by the language of the governing statutes, the implementing regulations, or Commission precedent.

The central legal question in Phase One of these proceedings is how to define "need" for purposes of R.C. 4928.143(B)(2)(c). As explained in AEP Ohio's opening Brief (at 13-21), determining "need" is not simply a question of comparing "projected loads and energy requirements" to "estimated installed capacity and supplies to meet the projected load requirements." R.C. 4935.04(E)(2). Instead, it requires consideration of all of the factors presented in an IRP proceeding, including the "[p]otential rate and customer bill impacts[,]" "[e]nvironmental impacts[,]" and "[o]ther significant economic impacts" of alternative generation resources, along with "[o]ther strategic considerations including flexibility, diversity," and "[e]quity among customer classes." Ohio Adm.Code 4901:5-5-06(B)(3)(d)(iii).

The opposing intervenors insist the Commission must reach a different conclusion. According to them, the relevant statutes and regulations are clear and unambiguous and define "need" as the inability of the electric utility to "meet its energy and capacity needs," full stop. (Direct Br. at 7; *see also, e.g.*, IEU Br. at 16-17, OCC Brief at 8, IGS Br. at 9-10.) They further

argue, alternatively, that the Commission's ruling on the Turning Point project already conclusively found either that AEP Ohio must demonstrate insufficient generation and capacity to meet projected needs, *or* that AEP Ohio must demonstrate insufficient renewable energy resources to comply with Ohio's renewable energy portfolio standard. None of these positions is supported by the statutes, regulations, and cases the opposing intervenors cite.

1. R.C. 4928.143(B)(2)(c) and R.C. 4935.04 both require a broad consideration of the impact of alternative resource options.

The opposing intervenors' arguments start with the ESP statute. As discussed in AEP Ohio's initial brief (at 11), R.C. 4928.143(B)(2)(c) permits an ESP to include "a nonbypassable surcharge" to "cover all costs" of a new "electric generating facility that is owned or operated by the electric distribution utility" and "sourced through a competitive bid process[,]" so long as the Commission "first determines * * * that there is *need* for the facility based on *resource planning projections* submitted by the * * * utility." (Emphasis added.)

According to the Kroger Company ("Kroger") and the Ohio Manufacturers' Association Energy Group (OMAEG), this statute is "plain and ambiguous." (Kroger Br. at 32.) "Need" indicates that the generation resource is "essential or very important," and "resource planning projections" means a forecast of whether "projected supply is * * * sufficient to meet the projected demand[ ]." (*Id.* at 33-34; *see also* OMAEG Br. at 21 (similarly interpreting the statute to require a showing that additional "energy and capacity" is "necessary" to "meet the peak demand of customers").) But neither of these terms and phrases has the narrow definition that the opposing intervenors provide.

Black's Law Dictionary defines "need" as either "[t]he lack of something important; a requirement" or "[a]n opportunity or condition for growth or other *positive change*." (Emphasis added.) *Black's Law Dictionary* 1194 (10th Ed. 2014). *Webster's* offers several potential

definitions, including "a want of something requisite, *desirable*, or useful[.]" (Emphasis added.) *Webster's Third New Int'l Dictionary* 1512 (1981). Even in Kroger and OMAEG's preferred dictionary, "need" is alternatively defined as "[a] thing that is *wanted* or required." (Emphasis added.) (Oxford Living Dictionaries, https://en.oxforddictionaries.com/definition/need.) None of these definitions separates "want" from "need," as the intervenors attempt to distinguish these concepts. (*See, e.g.*, Kroger Br. at 33; OCA Br. at 7; IGS Br. at 10.) And none of these definitions would exclude evidence of "customer preference and/or purported economic benefits," as some intervenors insist the Commission must do. (*See* Kroger Br. at 34.) Instead, each of these definitions permits a finding of "need" for a new electric generating facility upon a showing that the facility would meet a customer demand or provide customer benefits.

The reference to "resource planning projections" in R.C. 4928.143(B)(2)(c) also does not mandate a myopic focus on projected energy, capacity, and peak demand. To the contrary – resource planning requires a much broader lens. Ohio Revised Code Chapter 4935, which directs the Commission to "[e]stimate statewide and regional needs for energy for the forthcoming five- and ten-year periods" and report its findings every year, specifically instructs the Commission to "reasonably balance requirements of state and regional development, protection of public health and safety, preservation of environmental quality, maintenance of a sound economy, and conservation of energy and material resources." R.C. 4935.01(A)(1), (3). This statute explicitly recognizes, in other words, that determining "needs for energy" requires a consideration of the economic, environmental, and other impacts of alternative resources. And *each* of the projected benefits of constructing additional utility-scale renewable energy resources in Ohio – reduced costs and rate stability for consumers, significant local and state-wide

economic benefits, reduced importation of power, increased fuel diversity, and reduced carbon emissions– is directly relevant to the factors laid out in R.C. 4935.01. (*See* AEP Ohio Br. at 27.)

The long-term forecast report statute also does not constrain the Commission's considerations, as explained in AEP Ohio's opening brief. (*Id.* at 13-14.) Direct points to the Commission's holding in a 2006 gas cost recovery case for Vectren, later quoted in a decision by the Supreme Court of Ohio, that "the purpose of proceedings on long-term forecast reports under R.C. 4935.04 is 'to require energy utilities to prospectively plan for a sufficient supply based on projected demand * * *.'" *Vectren Energy Delivery of Ohio, Inc. v. Pub. Util. Comm.*, 113 Ohio St.3d 180, 2007-Ohio-1386, ¶ 23, *quoted in* Direct Br. at 5. Those rulings predate SB 221 and the subsequent amendments to the Commission's long-term forecasting rules to accommodate filings in support of a charge under R.C. 4928.143(B)(2)(c). Regardless, AEP Ohio concedes that hearings on long-term forecast reports must "include * * * projected loads and energy requirements" and "[t]he estimated installed capacity and supplies to meet the projected load requirements." (Emphasis added.) R.C. 4935.04(E)(2). But such hearings are not limited to determinations of supply and demand. *See id.* Nor should they be. The Commission is expected to rely on those forecast reports to prepare the energy planning reports required by R.C. 4935.01. As Staff recognized, "[t]he findings the Commission makes in these forecasting cases '[ ] shall serve as the basis for all other energy planning and development activities of the state government where electric and gas data are required.'" (Staff Br. at 2, quoting R.C. 4935.04(H).) *See also In re Revision and Promulgation of Rules for Long-Term Forecast Reports and Integrated Resource Plans of Electric Light Companies*, Case No. 88-816-EL-ORD, Entry, 1988 Ohio PUC LEXIS 516, ¶ 5 (May 24, 1988) ("To accomplish the[ ] statutory requisites [in R.C. 4935.01 and 4935.02], the Commission has in the past relied upon data and

information presented to it by the utilities filing long-term forecast reports pursuant to [R.C.] 4935.04, *et seq.*, * * * in addition to data and information available * * * from other sources."). In other words, electric utilities' long-term forecast reports must address the economic, environmental, and other impacts of alternative resources because the Commission needs that information to prepare its own resource planning reports. R.C. 4928.143 or R.C. 4935.04 do not permit a contrary interpretation.

2. Ohio Adm.Code 4901:5-5-06 similarly requires a broad consideration of the impact of alternative resource options.

Like R.C. 4928.143 and R.C. 4935.04, the Commission's resource planning rules require electric distribution utilities to take a broad perspective. As explained in AEP Ohio's opening brief, the long-term forecast reports filed in advance of (and in support of) an application under R.C. 4928.143(B)(2) do not focus solely on projected load and generation supply. (*See* AEP Ohio Br. at 11-12.) The Commission's IRP rule ("Rule 6") requires electric utilities to discuss a wide range of factors, including advances in renewable energy resource technology (Ohio Adm.Code 4901:5-5-06(A)(1)-(3)); how environmental regulations will affect "generating capacity, cost, and reliability" (*id.*, (A)(4)); the "regulatory climate" (*id.*, (B)(2)(i)); "potential rate and customer bill impacts" (*id.*, (B)(3)(e)(iii)(a)); "environmental impacts" (*id.*, (B)(3)(e)(iii)(b)); "other significant economic impacts" (*id.*, (B)(3)(e)(iii)(c)); "strategic considerations including flexibility, diversity, the size and lead time of commitments, and lost opportunities for investment" (*id.*, (B)(3)(e)(iii)(e)); and "other factors the electric utility deems appropriate" (*id.*, (B)(3)(c)) and "the commission considers appropriate" (*id.*, (B)(3)(e)(iii)(h)).

Staff witness Benedict admitted without qualification that Staff did not evaluate the reasonableness of the Company's IRP under Rule 6 – given that the Staff found that the Company did not establish need. (Tr. VIII at 2367.) The opposing intervenors also ignore this

rule almost uniformly, except Industrial Energy Users-Ohio ("IEU") (at 10), which recognizes that Rule 6's requirements are "instructive as to the Commission's understanding of the legislative requirement to show need based on resource planning projections." But IEU views the rule too narrowly. According to IEU, Rule 6(B) sets up a two-step process: first, the Commission must make a "determination of need based on a review of the load and resources of the EDU"; second, if the company "demonstrate[s] a reliability concern[,]" the Commission should consider the company's integrated resource plan. (IEU Br. at 10.) IEU's interpretation relies on the pre-filed testimony of Staff Witness Benedict (*see id.*, citing Staff Ex. 2 at 3), who described a similar process for determining "need" without reference to the text of the Commission's rules (*see* Staff Ex. 2 and 3, 8-9; *see also* Tr. VIII at 2365). Several other opposing intervenors similarly rely on Mr. Benedict's testimony. (*See, e.g.*, Direct Br. at 2-3 n. 5-7; OCA Br. at 9-10.)

But Mr. Benedict's position, and IEU's interpretation of the IRP rule, are at odds with the Commission's own explanation of its intention when it promulgated Rule 6. As AEP Ohio pointed out previously (*see* Br. at 16-17), the Commission explicitly said it had decided "to use the results of the IRP process to determine the need for construction of a facility being proposed as part of an ESP proceeding" because "[m]aking a determination of need * * * requires consideration of forecasts, existing and new resources, *and the impacts of alternative resource strategies*." (Emphasis added.) *In re Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as amended by Amended Substitute Senate Bill No. 221*, Case No. 08-777-EL-ORD, Entry on Rehearing at 10 (Feb. 11, 2009).

IEU's interpretation of Rule 6 is also contrary to good policy. The approach to resource planning that Staff and IEU propose requires the Commission to accept the existing generation resource mix with fatalistic resignation, no matter its projected impacts on the state, the environment, and customer wallets. Only if and when system reliability is threatened would the opposing intervenors and Staff allow consideration of all the other factors listed in Rule 6 – and then, only to guide the planning for new generation resources to restore system reliability. That is not how the General Assembly directed the Commission to approach resource planning. *See* R.C. 4935.01. And it is not what integrated resource planning requires, no matter how the Intervenors' experts define that phrase. (*See, e.g.*, IEU Br. at 10-11.) "The primary goal of integrated resource planning is to meet the demand for energy services, at the *lowest cost* consistent with the provision of adequate and reliable service, *through balanced consideration of all resource alternatives* (including both demand-side and supply-side alternatives) for the provision of energy services." (Emphasis added.) *In re the Revision and Promulgation of Rules for Long-Term Forecast Reports and Integrated Resource Plans of Electric Light Companies*, Case No. 88-816-EL-ORD, Entry, 1988 Ohio PUC LEXIS 516, ¶ 2 (May 24, 1988). *See also* Ohio Adm.Code 4901:5-5-01(L) (defining "integrated resource plan" to mean, in part, a plan "to furnish electric energy services in a cost-effective and reasonable manner consistent with the provision of adequate and reliable service"). These principles do not allow the Commission to simply shrug at the current failings of the market that have not met the needs of customers (to the extent the market options are even available to certain customers) and have inhibited development of utility-scale renewable resources (*see* Section III.D).

The remainder of the opposing Intervenors' regulatory arguments ignore the text of Ohio Adm.Code 4901:5-5-06 entirely. Instead, the opposing intervenors sift like archaeologists

through the Commission's past statements on the long-term forecast rules, attempting to piece together evidence to support their pre-determined conclusion that the Commission's sole considerations are load and generation supply. But the random words and phrases they turn up do not support their positions.

Direct Energy, LP ("Direct"), for example, structures its brief around a single use of the word "objective" in a resource planning rulemaking 30 years ago. In that proceeding (Case No. 88-816-EL-ORD), the Commission said its IRP rules were "intended to provide a systematic framework for the objective consideration of the adequacy and reasonableness of electric utilities' long-term forecasts * * *." *In re the Revision and Promulgation of Rules for Long-Term Forecast Reports and Integrated Resource Plans of Electric Light Companies*, Case No. 88-816-EL-ORD, Entry, 1989 Ohio PUC LEXIS 1144, ¶ 4 (Oct. 31, 1989). From this one word, Direct spins an entire argument, asserting that "need" must be "an *objective* determination" based on "*objective* criteria" and requiring "objective evidence[.]" (Direct Br. at 5-6; *see also id.* at 8, 10.) But the Commission's reference to "objective consideration" back in 1989 had nothing to do with load and generation supply, or with Ohio's renewable energy portfolio standards (which the state did not adopt until 20 years later). Instead, the reference to "objective consideration" prefaced a discussion of the IRP rules' cost-effectiveness standards for demand-side management (DSM) programs. According to the Commission, commenters had complained that its original proposed standard for evaluating DSM program cost-effectiveness was "too abstract * * * and subject to alternative and subjective interpretations." *In re the Revision and Promulgation of Rules for Long-Term Forecast Reports and Integrated Resource Plans*, Case No. 88-816-EL-ORD, Entry, at ¶ 10. In response, the Commission adopted the "total resource cost test" or "ratepayer impact measure test" as alternative tests "for evaluating the cost-

effectiveness of integrated resource plans" and coupled that with a new requirement to compare "the revenue requirement and rate impacts of alternative integrated resource plans over the twenty-year forecast horizon." *Id.* The Commission concluded that "[t]his standard is more explicit than the 'cost-effective mix of resources' standard" in the original proposed rules and would "thus permit more objective comparisons of alternative plans." *Id.* The reference to objectivity thus had nothing to do with long-term forecast reports generally.

IEU, in turn, points to language in the Commission's 2009 forecasting report rulemaking that purportedly supports "a streamlined determination of need" under R.C. 4928.143(B)(2)(c). (IEU Br. at 9.) IEU suggests this "streamlined" determination focuses only on load and available generation resources. But IEU has misread the Commission's Entry. When the Commission said it had "streamlined" the showing of need in Ohio Adm.Code 4901:5-5-06, it was referring to the "new, abbreviated resource plan" filing "to be included as part of the electric utility's long-term forecast report (LTFR) annual April 15 filing" under Ohio Adm.Code 4901:5-5-06(*A*), not the "integrated resource plan" requirements laid out in Ohio Adm.Code 4901:5-5-06(B)(3). *In re the Adoption of Rules for Alternative and Renewable Energy Technologies and Resources, and Emission Control Reporting Requirements, and Amendment of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Chapter 4928, Revised Code, to Implement Senate Bill No. 221*, Case No. 08-888-EL-ORD, Entry on Rehearing at 20 (Oct. 15, 2009). The Commission further noted that it had rearranged the rule so that "paragraph A of the rule now lists only the analysis and electronic forms required for the annual [resource plan] filing, whereas paragraph B lists the additional requirements that must be filed in the forecast year prior to any filing for an allowance under Sections 4928.143(B)(2)(b) and (C),

Revised Code." *Id.* at 21. Again, the reference to "streamlined" long-term forecast reports had nothing to do with "need" filings.

Ultimately, the opposing intervenors have unearthed no useful regulatory artifacts, and have overlooked the only contemporaneous evidence of the Commission's intent in requiring an integrated resource planning approach for determining need under R.C. 4928.143(B)(2)(c). By contrast, the text of Rule 6 relied upon by AEP Ohio is a current rule, specifically adopted after enactment of SB 221 in order to implement Division (B)(2)(c) of the ESP statute, whose provisions clearly require consideration of the environmental, economic, and other impacts of the proposed generation resource, as the Commission explained when it adopted that rule in 2009. Neither the Staff nor the opposing intervenors have considered or applied those pertinent provisions in this need case.

3. The Commission's *Turning Point* decision does not mandate a narrow focus on load and generation supply.

Next, the opposing intervenors argue that the Commission's 2013 decision on AEP Ohio's proposed Turning Point solar facility (*see In re Long-Term Forecast Report of Ohio Power Co. and Related Matters*, Case Nos. 10-501-EL-FOR *et al.* ("*In re 2010 Forecast Reports*"), Opinion and Order (Jan. 9, 2013)) dooms AEP Ohio's proposals in these proceedings. But they disagree on what the Turning Point decision actually meant. Kroger interprets it to mean that "'need' is to be determined by measuring supply versus demand * * *." (Kroger Br. at 35.) Direct interprets it to mean that "the statutory RPS requirements establish the relevant and objective standard of 'need.'" (Direct Br. at 6.) OMAEG says the Commission held 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)." (OMAEG Br. at 28.) IEU asserts that a "demonstration of need must be based on a showing that

sufficient capacity and energy are not available on the market," but Turning Point "offered an alternative basis for demonstrating need for a renewable generation resource" – the "need to satisfy state renewable energy requirements." (IEU Br. at 11, 14.)

Interestingly, the Staff now asserts that the Commission was "correct" in deferring to market forces in the Turning Point decision – even though Staff explicitly and affirmatively supported a finding of need in the Turning Point case. (Staff Br. at 10.) And Staff concludes on brief (*id*. at 7) that the holding in Turning Point indicates that "'need' means a lack of energy, capacity, or RECs" – even though Staff witness Benedict acknowledged in this testimony that there could be various other reasonable interpretations of the need statute besides the one Staff reached and the Commission may end up adopting a broader definition of need than Staff. (Tr. VIII at 2292, 2345, 2368; Staff Ex. 2 at 11.) Moreover, Staff's brief opens up yet another inconsistency in Staff's position by stating that whether changes in generation diversity "rise to the level of determining 'need' within the meaning of the state is a matter for the Commission to determine in its discretion." (Staff Br. at 10.) Although the Company agrees with the latter statement, it is simply not consistent with Staff position that need means lack of energy, capacity or RECs. Thus, to summarize Staff's position, it affirmatively supported need in Turning Point but now agrees that the Commission properly rejected a finding of need in that case; Staff does not support need in the present case but raises questions about whether there is need and concludes that the Commission could support a broader definition of need in this case. The Company respectfully submits that the Staff's modulating interpretation of need is not all that helpful here and recommends that the Commission should decline to adopt Staff's confusing and inconsistent position in this case.

In any case, none of the Staff or intervenor interpretations hits the mark, though the OMAEG comes closest. In the Turning Point decision, the Commission held that AEP Ohio had failed to clear the hurdle it set for itself. In its December 2010 supplement to its long-term forecast report, AEP Ohio said it intended "to enter a capital leasing arrangement" for the Turning Point project "to facilitate compliance with the Companies' solar energy benchmarks [SERs] under Section 4928.64, Revised Code." *In re 2010 Forecast Reports*, Entry, ¶ 5 (Jan. 26, 2011). AEP Ohio and Staff later filed a partial stipulation and recommendation, in which they recommended "that the Commission find that there is a need for the Turning Point project pursuant to [R.C.] 4928.143(B)(2)(c) * * * so that AEP-Ohio can meet its solar energy resources benchmarks pursuant to [R.C.] 4928.64(B)(2) * * *." *Id.*, Entry, ¶ 11 (Feb. 29, 2012). Both of these filings proposed the standard for "need" that AEP Ohio intended to meet – that is, a need for solar energy to comply with R.C. 4928.64.

Later that year, the Commission invited further briefing on the meaning of "need" in R.C. 4928.143(B)(2)(c), and the parties debated whether "need" could encompass the need for solar renewable energy credits (SRECs). *See In re 2010 Forecast Reports*, Opinion and Order at 18-21 (Jan. 9, 2013). But the Commission ultimately sidestepped the issue. Instead of conclusively defining "need," the Commission pointed to its earlier holding in *ESP II*, in which it had "stated that AEP-Ohio would have the opportunity to demonstrate that the Turning Point project is necessary to comply with the SER provisions in [R.C.] 4928.64," and the partial stipulation between AEP Ohio and Staff, which specifically requested a finding of need tied to R.C. 4928.64, and then "assume[d] for the purpose of reaching a decision regarding the stipulation that the determination of need * * * may take into account the SER benchmarks found in [R.C.] 4928.64(B)(2) * * *." *Id.* at 25-26 and fn.10.

Applying the standard set forth in AEP Ohio's forecast report supplement and the partial stipulation, the Commission concluded that "the signatory parties [to the stipulation] have not demonstrated that the Turning Point project is necessary for AEP-Ohio to comply with its SER benchmarks * * *." *Id.* at 26. "On the contrary," the Commission concluded, "AEP-Ohio's 20-year purchase power agreement with the Wyandot solar facility is expected to provide sufficient SRECs to satisfy the Company's SER benchmarks throughout the forecast period * * *." *Id.* For this reason, the Commission "den[ied] the signatory parties' request for a finding that there is a need for the Turning Point project, during the LTFR planning period, based on resource planning projections submitted by AEP-Ohio, pursuant to Section 4928.143(B)(2)(c), Revised Code, and the provisions of Section 4928.64(B)(2), Revised Code." *Id.* at 27.

Thus, the Turning Point opinion cannot reasonably be read to adopt any of the opposing intervenors' positions. The Commission did not hold that a party seeking to demonstrate "need" under R.C. 4928.143(B)(2)(c) must show that the generation resource is needed to meet load, the renewable energy portfolio standards, or both. It simply held that it could not adopt a stipulation's recommendation to find a need for renewable generation *under R.C. 4928.64* where the stipulating parties had not *shown* a need under R.C. 4928.64. The Commission's subsequent comments on the public support for the Turning Point project and its potential "benefits * * * for the project region" were *dicta* unrelated to the Commission's ruling on the "need for the Turning Point project * * *." *Id.* In this proceeding, in stark contrast to the Turning Point case, AEP Ohio has never said that it needs additional in-state, utility-scale renewable generation resources to meet its requirements under R.C. 4928.64. Consequently, the narrow and record-specific holding from the Turning Point decision provides little useful guidance for deciding this proceeding. Thus, to the extent that Turning Point is considered in connection with the

definition of need under the ESP statute, it should be distinguished as explained above and in the Company's Initial Brief (at 19-20). Regarding the factors supporting need raised in the Company's Amended Application and based on the current facts and circumstances relating to the limited availability of market options, this is a case of first impression. This is a case of first impression and the primary issue of need is a fact-intensive and policy-driven determination, not a legal one that is resolved alone by statute or precedent.

4. The General Assembly's adoption of renewable energy portfolio standards is irrelevant to the question of need under R.C. 4928.143(B)(2)(c).

Lastly, Interstate Gas Supply, Inc. and IGS Solar, LLC (collectively, "IGS") argues that AEP Ohio cannot demonstrate "need" for in-state, utility-scale, renewable generation resources under R.C. 4928.143(B)(2)(c) because the General Assembly chose to "incentivize the development of renewable energy resources" through R.C. 4928.64. (IGS Br. at 13.) To support this argument, IGS relies on the testimony of its General Counsel, Matthew White. Mr. White theorizes – without citation to any Commission ruling or court opinion – that Ohio's renewable energy portfolio standard (RPS) is carefully calibrated to require "the *exact* amount of renewable energy generation and solar generation that the state needs [and its electric companies' customers need] for each year through 2026." (Emphasis added.) (*Id*. at 13, quoting IGS Ex. 11 at 8.) Because Ohio has all of the renewable resources it needs, IGS argues, "[t]he Commission lacks authority to make a finding of need for renewable generation resources" "beyond the levels contemplated by the RPS." (*Id*. at 6 and 14.) Moreover, because the General Assembly "eliminated the requirement to source renewable electricity from facilities physically located in the state of Ohio" in 2008, IGS argues, the Commission cannot find a need for in-state renewable generation. (IGS Br. at 15, 17.) OCC agrees with both of these arguments. (*See* OCC Br. at 15.) Finally, IGS argues that the Commission cannot approve a nonbypassable charge to recover

the costs of a renewable energy resource under R.C. 4928.143(B)(2)(c), because R.C. 4928.64(E) says that costs incurred to comply with R.C. 4928.64 "shall be bypassable[,]" and R.C. 4928.143(B) says that R.C. 4928.64(E) applies to electric security plans. (IGS Br. at 14.)

As explained in AEP Ohio's opening brief, Mr. White's main theory is contradicted by the language in R.C. 4928.64 that explicitly authorizes electric distribution utilities to develop *more* renewable energy resources than the RPS requires. (*See* AEP Ohio Br. at 20, citing R.C. 4928.64(B)(1).) Because the RPS is a floor, not a ceiling, nothing in R.C. 4928.64 prevents the Commission from finding a need for additional renewable energy resources under R.C. 4928.143(B)(2)(c). More importantly, the cross-reference in the ESP statute is not to R.C. 4928.64 generally but only to "division (E) of section 4928.64" – so it only incorporates the requirement in R.C. 4928.64(E) that costs incurred for compliance with the portfolio mandate are bypassable. There is no language in the ESP statute that prohibits the Commission from allowing cost recovery for a facility for which a need finding has been made simply because it happens to be renewable.

And the adoption of RPS in Ohio did not alter the Commission's obligation to weigh "protection of public health and safety, preservation of environmental quality, * * * and conservation of energy and material resources" when projecting "statewide and regional needs for energy * * *." R.C. 4935.01(A). The elimination of the in-state RPS requirements, similarly, did not alter the Commission's obligation to "balance requirements of state and regional development" and "maintenance of a sound economy" when projecting "statewide and regional needs for energy * * *." *Id.* And the limitation on bypassable charges in R.C. 4928.64(E) is inapplicable here, because the RGR will not be used to recover AEP Ohio's costs to comply with the RPS. As AEP Ohio has explained, AEP Ohio does not require additional wind or solar

capacity to meet its renewable portfolio standard benchmarks. In sum, R.C. 4928.64 (and the RPS more generally) does not contain language that would render a renewable facility ineligible for cost recovery under the ESP statute or otherwise control AEP Ohio's proposals and the Commission's determination of "need" in this case.

B. The intervenors' motions *in limine* and for directed verdict are moot.

Some of the opposing intervenors devote considerable space to asking the Commission to hold that the Attorney Examiners erred when they denied the intervenors' motion *in limine* and motion for directed verdict. Both motions rested on the proposition that "need" (for purposes of R.C. 4928.143(B)(2)(c)) "is determined by measuring supply versus demand." (OMAEG Br. at 11. *See also, e.g.*, OCC Br. at 47-53.) The intervenors first moved before hearing to exclude "evidence and testimony regarding purported economic impacts and customer desires * * * [as] irrelevant" (*id.* at 12) and then, after the Attorney Examiners denied that motion, *see* Entry at 8 (Jan. 14, 2019), requested judgment on the grounds that AEP Ohio had not shown need (*see* Tr. VI at 1577-1579). Both motions were founded on an erroneous and overly restricted definition of "need," as discussed above, and the Attorney Examiners correctly denied them.

Regardless, the relief that the intervenors sought in those motions was unavailable. Attorney Examiners have the authority to "[r]ule on objections, procedural motions, and other procedural matters" at hearing (Ohio Adm.Code 4901-1-27(B)(4); *see also* R.C. 4901.18 (authorizing examiners to "receive evidence * * * and perform such other duties as are prescribed by the commission")), but they do not have the authority to issue dispositive rulings from the bench on an application's merits. Instead, they must "report [their] findings and recommendations to the commission and file with it the testimony taken before [them]." *Id.* The Commission must then "file * * * findings of fact and written opinions setting forth the reasons prompting the decisions arrived at * * *." R.C. 4903.09.

The relief that the intervenors now appear to seek – changing the past – is equally unavailable. OCC (at 51) complains that granting the motion *in limine* "would have furthered the interests of administrative economy" and "facilitated a timely decision in these important matters." IEU (at 39) complains that the Attorney Examiners "work[ed] an injustice on" the opposing intervenors by "forc[ing them] to respond to an applicant that has not presented sufficient facts to establish a right to relief." And OMAEG (at 29) complains that "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." But even if the Attorney Examiners had actually erred – and, as discussed above and in AEP Ohio's opening brief, they did not – the Commission cannot return the parties' time, reimburse their expenses, or otherwise change the Attorney Examiners' minds retroactively. At this point, the Commission can only determine which parties have correctly interpreted the definition of "need" in R.C. 4928.143(B)(2)(c) and whether AEP Ohio has shown "need" for purposes of Phase One of this proceeding. In doing so, the Commission will inherently either find that the opposing intervenors' motions were misguided or hold that the Company's evidence on customer desires and environmental and economic benefits is irrelevant. Further attention to the intervenors' motions at this point would serve no useful purpose.

III. Record Evidence Supports a Finding of Need for At Least 900 MW of Additional Renewable Resources.

A. Navigant's Voice of the Customer Survey demonstrates that customers desire additional, Ohio-sited renewable energy resources.

In their initial briefs, the intervening parties make concerted efforts to attack the Voice of the Customer Survey performed by Navigant as either flawed, unreliable, or both. (OMAEG Br. at 35-40; Kroger Br. at 44-48; Direct Br. at 9-10; IEU Br. at 18-23; IGS Br. at 17-22; OCA Br. at 47-50; and OCC Br. at 28-30.) Similarly, IEU submits a series of questions that it would have asked but which were not included in the survey. (IEU Br. at 21-22.) But not a single intervenor can point to any evidence or provide any testimony from the record that illustrates that any of them made even the slightest effort to validate their critical assertions of the Voice of the Customer Survey by actually performing a statistical analysis of AEP Ohio customers for contrast or scientifically testing any of Navigant's results with a comparative survey vehicle. This universal failure of any intervenor to provide contrasting survey results is discussed at length in AEP Ohio's post hearing brief. (AEP Ohio Br. at 36-37.) Only hollow critiques of the format, administration and interpretation have been offered. The intervenors take the position, in regard to the Voice of the Customer Survey, that the results just simply cannot be correct. But the strikingly positive results of the Voice of the Customer Survey are fully supported by the Company's expert testimony, as well as all of the public comments docketed in this proceeding, and no intervenor has provided any empirical evidence (statistically valid or otherwise) that would directly or indirectly contradict the specific results of the Voice of the Customer Survey.

Many of the intervening parties generally rely upon the testimony of OCC witness Dormady to support their argument that the results of the Voice of the Customer Survey should not be relied upon. Notably, while OCC witness Dormady's direct testimony critiquing the

Voice of the Customer Survey results fills more than 28 pages of text, the OCC fails to otherwise refer to or cite the Dormady testimony in its own initial post hearing brief, with the exception of two referential footnotes. (OCC Brief at 29.) Nevertheless, Kroger and OMAEG refer to Dormady's testimony as persuasive, claiming he has extensive experience in such surveys, and that he maintains that the Voice of the Customer Survey was designed to support a particular result, contained a number of biases, and was not reliable. (OMAEG Reply at 37; Kroger Br. at 44.) And the Ohio Coal Association (OCA) also relies upon witness Dormady's testimony, claiming that his experience and credentials make his opinion a particularity credible and reliable piece of persuasive evidence. (OCA Brief at 48.) Finally in its brief, Staff half-heartedly points to Dormady's testimony as a place to look for challenges to AEP Ohio's claim that Voice of the Customer Survey supports the request being made, though Staff acknowledges, correctly, that it "is not in a position to critique the technical validity or lack thereof" of the survey. (Staff Reply at 8.)

Unfortunately for the intervenors, Dormady's admissions during cross-examination reveal that he does not have expertise with surveys (and survey constituent populations) comparable to AEP Ohio witnesses Horner and Fry, who sponsor the Voice of the Customer Survey. Dormady freely admits that he does not consider himself a "statistician," states that he only really administers "economic" surveys that are predominately focused on "small businesses" or "mid-sized businesses" rather than individuals in order to "evaluate resilience to critical infrastructure disruptions" following natural "disasters," and additionally clarifies that he never "actually" administers those surveys. He simply "designs and analyzes" them and he works to "solicit and hire" a professional survey firm to "conduct the outreach and engagement with survey respondents". (Tr. XI at 2698-2709; AEP Ohio Br. at 38.) The intervenors'

assertion that Dormady's experiences with other types of surveys (and unrelated survey constituent populations) makes him an "expert" capable of providing relevant critical commentary regarding a survey like the Voice of the Customer Survey is both misplaced and wholly unsupported. Dormady's professional experiences do not parallel the work performed by Navigant in the Voice of the Customer Survey. Further, Dormady could not even commit to a conclusion that the result was inaccurate. In fact, Dormady admitted that it was entirely "possible" that the Voice of the Customer Survey results were accurate. (Tr. XI at 2723; AEP Ohio Br. at 36.) It is misguided for intervenors challenging AEP Ohio's request to maintain that the results of the Voice of the Customer Survey are incorrect when such an influential "expert" witness upon whose testimony so many of them rely has offered his opinion that the results of the Voice of the Customer Survey may, indeed, be accurate. Intervenors' general reliance on the Dormady testimony is misplaced.

As expected, intervenors also raise specific criticisms of the Voice of the Customer Survey on brief, none of which are valid and some of which were already addressed by the Company in its Initial Brief. OCA and Kroger generally criticize the survey's purportedly low response rate and, as a related matter, OCA asserted that "Navigant cannot extrapolate results to the total customer base." (OCA Br. at 48; Kroger Br. at 44.) IEU and OMAEG similarly allege that the results are not statistically significant and reflected "low" response rates. (IEU Br. at 19; OMAEG Br. at 36.) As explained in AEP Ohio's opening brief (at 38-40), none of these criticisms is valid.

Company witness Horner testified that the number of responses obtained exceeded the number of respondents that were needed in order to achieve a statistically significant sample. (Tr. III at 635.) Ms. Horner maintained that the survey was designed to be an electronic survey,

it was designed to be efficient, and it did not need to be sent to every single customer of AEP Ohio. (*Id*. at 585.) In fact, obtaining a survey response from every AEP Ohio customer was never the objective. Ms. Horner stated that Navigant "didn't ever intend to sample the entire 1.1 million residential non-PIPP customers." (*Id*. at 635.) Further, Navigant believed that the population with e-mail addresses represented a more-than-adequate-sized sample to use. (*Id*.) Company witness Fry explained that a survey result's statistical significance is related not just to the sheer response numbers, but to the survey's confidence and precision levels. (*Id*. at 770-771.) Ms. Horner maintained that she was confident the responses that Navigant designed the survey to elicit and, in fact, received, allowed Navigant to have confidence in the survey results. (*Id*. at 700.) Both confidence and precision are additional factors which Navigant took into consideration when designing and administering the Voice of the Customer Survey. With a statistically designed survey, it is simply not necessary or helpful to engage an unduly large number of participants.

Next, OCA complains that the Voice of the Customer Survey was only sent to customers with email addresses. (OCA Br. at 48.) Similarly, IGS states that Navigant did not evaluate whether "customers with e-mail addresses respond differently than customers responding to 'snail mail.'" (IGS Br. at 18.) These questions appear to imply that the survey results were flawed, but neither IGS nor OCA provides any evidence that an e-mail-only survey would yield a result different from that an e-mail survey. In fact, no intervening challenger presented any evidence to show that an e-mail survey would result in inferior data compared to some other type of survey. Rather, Navigant (the only experts, among all of the witnesses in this proceeding, regarding these types of polling processes) specifically selected an e-mail survey with the very pointed purpose of obtaining a broad and complete result. AEP Ohio witness Horner testified

that a majority of AEP Ohio residential and small C&I customers have emails on file and that was the pool from which the random sample was taken. (Tr. III at 582.) Ms. Horner stated that Navigant had no reason to think that customers with e-mail addresses on file at AEP Ohio were any different from customers without e-mail addresses on file and, absent a reason to think otherwise, they believed that the e-mail addresses used were a reasonable reflection of AEP Ohio's residential and small commercial customer base. (*Id*. at 583-584.) When the bench directly asked witness Horner why Navigant conducted an online survey by e-mail, Horner explained that Navigant, in its experience, believed that e-mail was the most efficient way to reach the most customers and get a robust response. (*Id.* at 729.) The response rate, according to Ms. Horner, was consistent with what Navigant has seen with other general population surveys and actually significantly exceeded Navigant's targets. (*Id*. at 666.) And Ms. Horner confirmed that the sample methodology, the size of the survey, and the demographic information collected gave Navigant no reason to think that the results of the survey were anything other than representative. (*Id*. at 668.)

Next, IGS complains that the Voice of the Customer Survey was sent to a customer sample that did not exclude AEP employees. (IGS Br. at 18.) In fact, IGS wrongly claims that "thousands" of AEP employees were included. (*Id*.) Ms. Horner stated that the survey was random and did not screen out AEP employees, and confirmed that Navigant also did not exclude employees of other stakeholders in this proceeding – such as IGS or other CRES employees. (*Id*. at 724-726.) But Navigant, in an effort to validate the quality of its survey, requested additional information from the Company and concluded through a careful review of the sample data that only 484 of the respondents could have possibly been AEP employees or former employees. (Tr. III at 724-725.) Even assuming that 100% of the employees that

received the survey actually participated (which is very unlikely), Navigant testified that such a nominal number (less than 7%) could not materially impact the conclusions drawn from its report. (*Id*. at 725.)

Despite the expert testimony substantiating the impressive results of the Voice of the Customer Survey and notwithstanding that the same viewpoints were unanimously reflected through testimony at the public hearing and in the thousands of public comments on the docket in this proceeding, the opening of OCC post-hearing brief features a negative quote from a single customer's viewpoint from the open-ended comments portion of the survey. (OCC Br. at 2.) IGS, OMAEG and Kroger also cite the open-ended comments and argue that a few of the comments were misclassified by Navigant in the survey report. (IGS Br. at 21-22; OMAEG Br. at 38-39; Kroger Br. at 45-47.) Although it is highly debatable whether any of the specific comments cited by intervenors were misclassified, they collectively cite less than 50 comments out of the 2,109 comments received (roughly 2%), so debating their classification makes no difference. (AEP Ohio Ex. 6, Ex. TH-1 at 26 of 41.) Because the actual survey results support AEP Ohio's position – as do all of the thousands of docketed comments and the 55 witnesses who testified at the public hearing – these intervenors resort to quoting and emphasize a hand-picked, miniscule slice of the open-ended comments to advance their positions. Sadly, many of those comments are profanity-laced and convey extreme viewpoints – obviously intended to produce a dramatic effect but equally obviously not representative of AEP Ohio's customer base.

And as Navigant affirmatively clarified in the report, "reporting on the distribution of open-ended comment categories and themes is not meant to be representative of AEP Ohio's customer base" but rather the "intends to explore the general themes and the more nuanced perspectives shared by the survey participants." (*Id*.) The detailed summary and discussion of

open-ended customer comments in the Navigant report were included as a measure of transparency (AEP Ohio Ex. 6, Ex. TH-1 at 26 of 41 through 35 of 41) and AEP Ohio Ex. 7 completes the record with each and every open-ended comment received. But the open-ended comments are merely illustrative and provide additional information that does not relate to, or otherwise affect, the main quantitative survey results. For these reasons, intervenors' attempts to grasp onto certain marginal, profanity-laced viewpoints and purposefully regurgitate them in their briefs without more does nothing to advance their arguments. Frankly, those comments appear to be offered merely for the "shock value" of the language contained therein.

IGS also contends that the survey was misleading, because AEP Ohio would not retire the renewable energy credits associated with the renewable projects and, consequently, cannot claim that it is using the 900 MW to provide renewable energy. (IGS Br. at 20.) This same argument was asserted by IGS witness White in his testimony. (IGS Ex. 11 at 16.) Both points are incorrect and, in any event, are Phase Two issues. IGS witness White stated that IGS position on this point was based on his understanding that AEP Ohio's proposal is to liquidate RECs produced and, thus, cannot claim renewable benefit. (Tr. IX at 2487.) In contrast, IGS witness Rengstorf testified that he did not anticipate that AEP Ohio would be liquidating the RECs associated with the projects. (*Id.* at 2597.) Ultimately, this is a Phase Two issue. AEP Ohio witness William A. Allen's September 27, 2018 testimony in the *Tariff Cases* (at 13) explains that the RECs associated with the REPAs "will either be retained and retired by the Company or retired on behalf of specific customers that purchase the RECS to meet their individual renewable energy goals." In any case, for present purposes, it is sufficient to say that Mr. White's false presumption that the RECs will be liquidated is unfounded, has no basis, and is even contested by IGS's own witness Rengstorf.

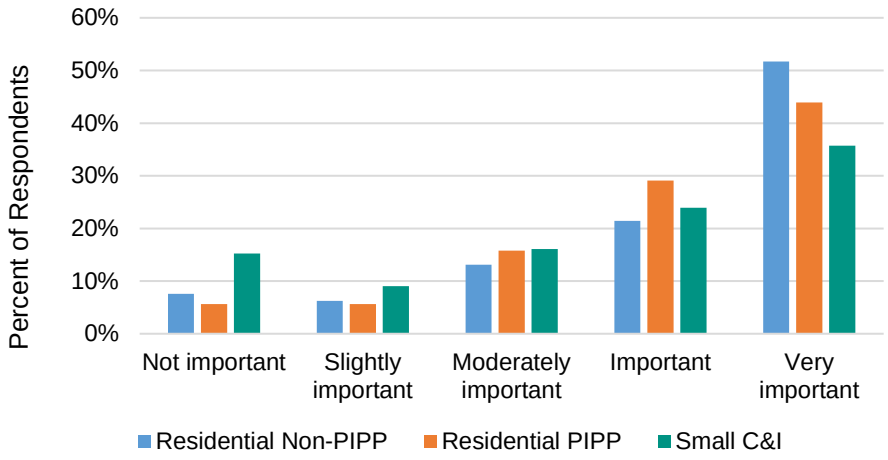
IGS also objects to the survey's stated reference point of the current renewable supply. In asking whether the Company should pursue *more* renewable energy projects, the survey referenced AEP Ohio's current renewable supply of 4.5%. IGS argues that the question is irrelevant to this need case because the Company's 4.5% renewable supply only applies to SSO customers. (IGS Br. at 19-20.) Of course, the minimum renewable mandate under R.C. 4928.64 is currently 4.5% and that is an accurate general reference point in the context of deciding whether to do more than the minimum. Moreover, there is no basis to say that this helped boost the survey results in AEP Ohio's favor.

Ultimately unable to contest the Voice of the Customer Survey's compelling results, OMAEG, Kroger, and Direct question its timing – with OMAEG and Kroger using inflammatory language to sensationalize this non-issue. (*See* OMAEG Br. at 37 (survey's biases "appear more malicious" in light of the timeline); Kroger Br. at 48 (AEP Ohio "manipulated a phony survey in an attempt to bolster its case"); Direct Br. at 10 (the surveys were "conveniently" conducted less than a month before the Amended Application and "merely sought to bolster the decision AEP had already made").) Transparently asking customers whether they support AEP Ohio implementing more renewable energy projects – and whether they are willing to pay for those projects – was not without risk because the Company did not know for certain what customers would say. For example, had the survey results been different, and the intervenors obtained those results through discovery, it could have been used to diminish the Company's demonstration of need. And with respect to timing, had the survey been conducted several months earlier, intervenors would doubtless claim it was stale, outdated, or inapplicable. So it is obvious that these intervenor protests about the timing of the survey are nothing more than "sour grapes" about how well it turned out to support AEP Ohio's position.

In sum, the survey method and content has been substantively supported and defended through the expert testimony of AEP Ohio witnesses Horner and Fry. With no other party providing any contrasting survey or statistical analysis, the Voice of the Customer Survey is not just the best evidence of customer viewpoints in the record, it is the only surveyed evidence of customer viewpoints in the record.

And the survey results revealed that a prodigious 92% of residential non-PIPP customers think it is important (slightly important, moderately important, important, or very important) that AEP Ohio make greater use of renewable energy above the mandatory level. Residential Percentage of Income Payment Plan (PIPP) customers come in even higher, at 94%. And 85% of small C&I customers think it is important. These impressive results are captured in Figure 6 from the Survey:

Figure 6. Importance That AEP Ohio Makes Greater Use of Renewable Energy above Current Levels

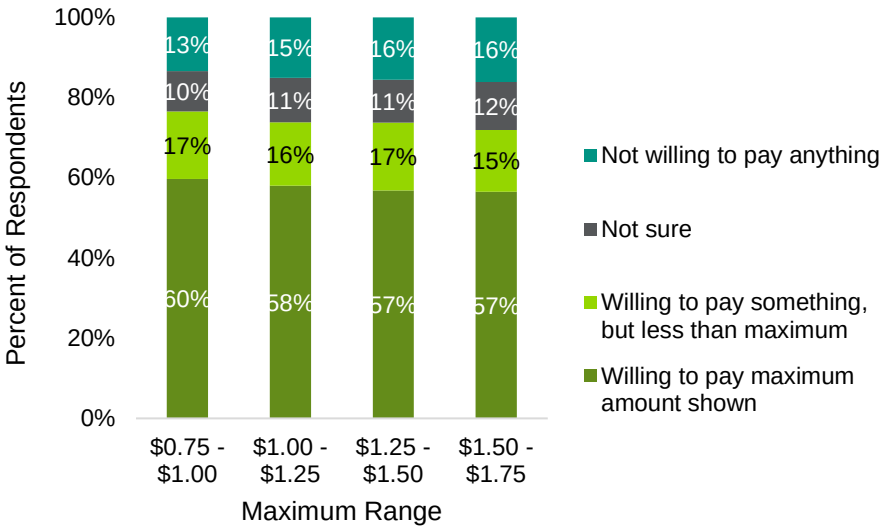


(AEP Ohio Ex. 6, Ex. TH-1 at 17 of 41.) This is overwhelming and unmistakable support – and it is not just in the abstract.

Customers were asked about their willingness to pay for the additional renewable resources at levels that range much higher than the expected cost of the Company's current

proposal. In this regard, consider Figure 9 from the Voice of the Customer Survey report:

Figure 9. Residential Non-PIPP Willingness to Pay Results



(*Id.*, Ex. TH-1 at 20 of 41.) As Figure 9 shows, a significant majority of residential non-PIPP customers were willing to pay the maximum value in the each of the price ranges explored. Combining the customers willing to pay the maximum values with those willing to pay something less than the maximum, the numbers exceed 70% for each price range. These are compelling results, particularly considering that the *low end* of the pricing tiers surveyed is above the *high end* of the potential bill impacts for residential customers discussed so far for the solar projects. (Tr. I at 64-65.) The results of the Voice of the Customer Survey are reliable and consistent with the live testimony given by AEP Ohio customers at the public hearing and with the thousands of supportive comments filed in the docket. The Commission should recognize this customer mandate for more renewable energy by supporting a finding of need in this case.

B. The Company's economic analysis demonstrates that constructing additional, Ohio-sited renewable energy resources would be economically beneficial to AEP Ohio's customers.

In its Initial Brief, AEP Ohio demonstrated, through four economic analyses presented in the IRP sponsored by Company witness Torpey, that constructing utility-scale renewable energy resources in Ohio will provide significant benefits to the Company's customers. (AEP Ohio Br. at 45-55.) Specifically, modeling 650 MW of new renewable projects (400 MW of solar and 250 MW of wind), the Company's analysis demonstrates net present value AEP Ohio customer savings of $173 million. (*Id.* at 46.) Those benefits grow to $196 million when the amount of wind resources is scaled to 500 MW. (*Id.* at 50.)

Direct disparages the Company's economic analysis as "meaningless," arguing that economic benefits cannot be demonstrated "[a]bsent information about specific projects * * *." (Direct Br. at 8-9.) It further claims that the record does not contain information regarding the expected costs associated with adding 900 MW of renewable energy resources, or whether the benefits of such an investment would exceed the costs. (*Id.*) OMAEG similarly summarily criticizes the Company's analysis as being "flawed," "speculative," and "uncertain." (OMAEG Br. at 44.) Direct and OMAEG are incorrect. As set forth in detail in the Company's opening brief, Company witness Torpey's testimony and the IRP that he sponsors quantitatively show that adding renewable projects in AEP Ohio's service territory will provide the significant economic benefits summarized above. (AEP Ohio Br. at 44-45.) Direct and OMAEG have offered no evidence undercutting or refuting that analysis. They also disregard the fact that the purpose of this phase of these cases is to establish the need for utility-scale renewable projects in AEP Ohio as a *general* matter.[4] The costs and benefits associated with the specific projects the

[4] On this point, IEU's argument that the Company's economic analysis is not relevant because it does not demonstrate that there is an energy or capacity need for 900 MW of renewable energy resources to serve

Company has proposed to meet a portion of that need, and the Company's analysis demonstrating that the economic benefits to customers of those projects far surpass their costs, has been reserved for Phase Two of these proceedings.

Intervenors' other criticisms of the Company's economic analyses are also wholly without merit, as set forth below.

1. The Company's PJM Impact Analysis demonstrates net present value AEP Ohio customer savings of $31 million.

AEP Ohio demonstrated at hearing that the addition of 400 MW of solar and 250 MW of wind resources within or near the AEP zone would reduce locational marginal prices (LMP) in PJM and, as a result, save customers $31 million over the 20-year lives of the generic REPAs that are the subject of the Company's IRP. (*See* AEP Ohio Br. at 46-49.) Intervenors criticize the Attorney Examiners' ruling allowing the Company to present rebuttal testimony in response to evidence intervenors presented on cross-examination, trivialize the projected LMP savings benefits, and mischaracterize the PJM Impact analysis and the record evidence supporting it. (*See* IEU Ohio Br. at 24-26; IGS Br. at 24-26; Direct Br. at 9; Kroger Br. at 28-30; OMAEG Br. at 17-19, 32.) None of their arguments has merit or refutes the Company's LMP analysis.

a. The Attorney Examiners properly permitted the Company to present rebuttal testimony regarding the PJM Impact Analysis.

A number of intervenors contend that the Attorney Examiners erred in allowing the rebuttal testimony of AEP Ohio witness Kamran Ali, which confirmed that the change in the Highland solar facility's interconnection from the AEP zone to the DP&L zone after the Company filed its Amended LTFR did not meaningfully change the results of Mr. Ali's original

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customers' load is predicated on IEU's flawed and unreasonably narrow definition of "need" under R.C. 4928.143(B)(2)(c) and should be disregarded for the reasons set forth in Section III of the Company's Initial Brief and Section II.A, *supra*. (*See* AEP Ohio Br. at 9-21.)

LMP analysis. (*See* AEP Ohio Br. at 49; Kroger Br. at 28-30; OMAEG Br. at 17-19; IEU Br. at 25-26; OCA Br. at 26.) In doing so, intervenors mischaracterize Mr. Ali's original LMP analysis, the record developed at hearing to which Mr. Ali's rebuttal testimony responded, and the purpose of the rebuttal testimony. The Attorney Examiners appropriately allowed Mr. Ali's rebuttal testimony into the record.

As Mr. Ali's direct testimony made clear, the purpose of his original LMP analysis was to model 650 MW of new renewable energy projects with technologies, locations, and outputs similar to projects already in the PJM-developed PROMOD® model and the PJM generation queue and near the locations where future projects may be sited. (AEP Ohio Br. at 47-48; AEP Ohio Ex. 5 at 5; AEP Ohio Ex. 26 at 3; Tr. II at 476.) Although not location-specific, that analysis assumed that the Highland Solar Farm, of which Mr. Ali utilized certain attributes for his analysis, would interconnect with the AEP zone. (AEP Ohio Br. at 48-49; AEP Ohio Ex. 26 at 3.) Although no other party offered any substantive analysis or evidence contradicting or refuting Mr. Ali's quantitative analysis, intervenors attempted to undermine that analysis by introducing evidence that the point of interconnection for the Highland Solar Farm has moved to the DP&L zone, which intervenors claimed would change the value of the LMP savings calculation due to congestion between the AEP and DP&L zones. (*See* OCA Ex. 1 at 14 (admitted in the record at Tr. VIII at 2062); IEU Br. at 24; Tr. II at 527.)

The purpose of Mr. Ali's narrow rebuttal testimony was to respond to intervenors' arguments "that the generic LMP analysis is flawed because it did not model the specific characteristics of the proposed Highland Solar Farm project that now exist." (AEP Ohio Ex. 26 at 1.) His rebuttal testimony demonstrates that the change in interconnection has no effect on Mr. Ali's initial LMP analysis or Company witness Torpey's PJM Impact Analysis presented in

the Company's IRP. (*Id.* at 2.) Intervenors now attack the introduction of rebuttal testimony that confirms that the change does not impact the Company's analysis.

Rebuttal testimony is within the discretion of the Attorney Examiners and is permissible to contradict an opponent's evidence. *In re. Duke Energy Ohio, Inc.*, Case No. 14-841-EL-SSO, *et al.*, Opinion and Order at 12-13 (Apr. 2, 2015); *In re. Bell Atlantic Corp., et al.*, Case No. 98-1398-TP-AMT, Entry (July 16, 1999). The Company must be permitted to offer evidence that becomes relevant after the introduction of evidence by intervenors. *In re. Jackson County Power LLC*, Case No. 00-839-EL-BGN, Entry on Rehearing (Sept. 17, 2001). Here, OCA affirmatively offered evidence that attempted to contradict the Company's LMP analysis, and multiple parties continued down that path through cross-examination based upon the evidence OCA offered. AEP Ohio, despite having met its initial burden of proof, is undeniably permitted to refute such an allegation through rebuttal testimony. *See, e.g., In re. AEP Ohio,* Case No. 08-917-EL-SSO, *et al*., Order on Remand at 8 (Oct. 3, 2011). Moreover, the rebuttal testimony did not become necessary until intervenors' introduction of contradicting evidence. In other words, there was no need for Mr. Ali to supplement his direct testimony to confirm its accuracy absent the evidence intervenors introduced attempting to undermine it.

Moreover, contrary to intervenors' characterizations otherwise, Mr. Ali's rebuttal testimony did not "correct" any alleged "error" or "mistake" in his initial LMP analysis. (*See* OCA Br. at 26; OMAEG Br. at 18; Kroger Br. at 29l IEU Br. at 24.) Nor did AEP Ohio "hide the ball" (IEU Br. at 25) – there was no ball to hide. The results of Mr. Ali's analysis confirmed, and were consistent with, his original generic analysis, as his rebuttal testimony makes clear. (AEP Ohio Ex. 26 at 1-2, 4-7.) Intervenors have neither alleged nor demonstrated that the admission of Mr. Ali's rebuttal testimony caused them prejudice. *In re. AEP Ohio,* Case No. 08-

917-EL-SSO, *et al*., Order on Remand at 8. Indeed, such an allegation would be untenable given that Mr. Ali's rebuttal testimony merely confirmed the validity of his initial analysis and all parties had the opportunity to cross-examine him regarding both pieces of testimony. (*See, e.g.*, Tr. II at 506-510, 527.) For these reasons, the Attorney Examiners properly admitted Mr. Ali's rebuttal testimony.

b. Intervenors' criticisms of the Company's PJM Impact Analysis are without merit.

Intervenors' substantive criticisms of the Company's PJM Impact Analysis fare no better than their procedural challenge to the admission of Mr. Ali's rebuttal testimony supporting that analysis. Direct and IEU belittle the $31 million NPV projected LMP savings reflected in that analysis. (Direct Br. at 9; IEU Br. at 25.) That criticism, however, disregards that the PJM Impact Analysis is but one component of the Company's overall economic analysis, which projects even greater customer savings over the 20-year terms of the generic REPAs that are the subject of the analysis. It also ignores that non-residential customers, particularly energy-intensive industrial customers, could enjoy significant savings as a result of a $0.07/MWh energy cost reduction. In any event, $31 million is not an insignificant amount, and it should not simply be disregarded as the Commission considers the Company's Amended LTFR.

Intervenors' criticism of the Company's PJM Impact Analysis in light of the change in Highland Solar Farm's point of interconnection and anticipated output is also unavailing. (IEU Br. at 24; IGS Br. at 26; OCA Br. at 26-31.) The Company largely addressed these arguments in its Initial Brief. (*See* AEP Ohio Br. at 48-49.) The only evidence of record – Mr. Ali's expert analysis – is unequivocal that changing the facility's interconnection point and output "does not impact the results of the LMP analysis [in the AEP zone] or the customer benefits derived from

the lower LMPs presented" in the Company's original analysis. (*Id.* at 49, quoting AEP Ohio Ex. 26 at 4-7.)

IEU's attempt to portray Mr. Ali's testimony at hearing regarding the impact of congestion between transmission zones on LMP prices as being inconsistent with Mr. Ali's rebuttal testimony regarding that topic is disingenuous. (*See* IEU Br. at 24.) Mr. Ali explained on rebuttal cross-examination, in response to a question asked two questions before the answer IEU quotes as being inconsistent with his original cross-examination, that he performed congestion analysis for the Highland Solar Farm's interconnection and "did not see any congestion * * *." (Emphasis added.) (Tr. XII at 2772.) Mr. Ali further explained that his rebuttal analysis "shows that by moving the point of interconnection from AEP to DP&L, the results don't change because there is no congestion at least between this point and between the AEP system. And, as a result, the LMPs across the AEP zone are similar." (*Id.*at 2784.) Mr. Ali's updated PROMOD® runs bear this fact out. (*See* AEP Ohio Br. at 49.) As Mr. Ali thus made abundantly clear, the slight change in the interconnection point for the Highland Solar Farm does not affect his LMP analysis.

IEU also tries to undermine Mr. Ali's LMP analysis because, IEU claims, it assumed the availability of the Highland Solar Facility in 2021 when the facility is not expected to be operational before December 31, 2021. (IEU Br. at 24.) This argument, too, mischaracterizes the nature of Mr. Ali's analysis and the inputs he used from the Highland Solar Facility. As Mr. Ali explained:

> At the end of the day, what that analysis was trying to demonstrate is what happens if you were to add 400-megawatt of solar to AEP's system. * * * [W]e were not trying to show what happens if you connect this particular facility. We were trying to show what happens if you connect any solar facility to the AEP system.

(Tr. XII at 2765-2766.) Thus, Mr. Ali confirmed, the operational date of the Highland Solar Facility was not relevant to his LMP analysis. (*Id.* at 2766.)

OMAEG witness Seryak's contention that Mr. Ali's 650 MW LMP analysis cannot be extrapolated to 900 MW is also unsupported and incorrect. (OMAEG Br. at 32.) Mr. Seryak is not qualified to offer that opinion. Unlike Mr. Ali, Mr. Seryak is not an expert on LMP analysis. (Tr. IX at 2534.) Mr. Seryak has no experience analyzing LMPs and does not even know how they are calculated. (*Id.*) He did not perform any LMP analysis for this case and has no experience with the PROMOD® model. (*Id.*) Simply put, Mr. Seryak's baseless opinion regarding Mr. Ali's LMP analysis should be given no weight. Mr. Ali's qualified expert opinion, however, should be credited. And Mr. Ali's unrefuted testimony establishes that LMP price reductions can be extrapolated to 900 MW because there is no congestion in the AEP system. (Tr. II at 481-482.)

The Commission also should disregard IGS's contentions that AEP Ohio's PJM Impact Analysis failed to consider the impact of ancillary services costs and transmission investment requirements, and IGS's reliance upon a 2016 PJM study regarding large-scale, high-penetration renewable integration to attempt to support those contentions. (IGS Br. at 24-26.) PJM's 2016 study is not relevant or applicable to this case. As Company witness Ali explained during cross-examination when asked about the document, after having had only a few minutes to review it, the PJM analysis "looked at * * * up to 20 percent of the PJM generation being renewable. So I think we need to keep that in context[.] * * * [T]he projects that I am testifying about and we're looking at are not even close to half a percent of PJM generation." (Tr. II at 459.) Mr. Ali testified that because the Company's proposed 900 MW is such a small portion of PJM generation, he does not expect them to impact any of the ancillary markets. (*Id.* at 420-421.)

Moreover, with respect to transmission investment, Mr. Ali explained that such costs are the responsibility of the generation owner, not AEP Ohio. (*Id.* at 461.) AEP Ohio's PJM Impact Analysis thus properly excluded ancillary services cost and transmission investment considerations.

2. The Company's AEP Ohio Impact Analysis demonstrates $196 million net present value AEP Ohio customer benefits from 400 MW of solar and 500 MW of wind resources.

The AEP Ohio Impact Analysis demonstrates that adding 650-900 MW of generic renewable projects will reduce costs relative to market over the lives of the projects and provide a significant economic benefit to customers of $196 million on a NPV basis. (AEP Ohio Br. at 49-54.) As with the Company's PJM Impact Analysis, no intervenor refuted or offered a competing economic analysis in response to the AEP Ohio Impact Analysis. That analysis thus is also unrebutted. (*Id.*) Intervenors instead critique a number of the assumptions and inputs to the analysis. The Company already addressed many of those flawed arguments in its opening brief.

First, the Company fully explained why it is appropriate to assume a CO_2 dispatch burden beginning in 2028. (*Id.* at 53-54; *see also* IEU Br. at 28; IGS Br. at 27; OCC Br. at 32.) The Ohio Energy Group (OEG) agrees that the Company's dispatch burden assumption is reasonable and "is a common industry practice that has been adopted by many states." (OEG Br. at 11.) This Commission itself has previously recognized that forecasts that fail to account for the impact of future carbon emissions regulations "are not an accurate predictor of future energy prices." *PPA Rider Case*, Opinion and Order at 79. Consistent with that decision, it should accept the CO_2 dispatch burden included in the Company's Fundamentals Forecast in this case.

Similarly, the Company already addressed intervenors' incorrect arguments that the natural gas prices included in the Fundamentals Forecast are overstated. (AEP Ohio Br. at 52-

53; *see* OCC Br. at 31-32; IGS Br. at 27-28; IEU Br. at 27-28.) The Commission has already rejected the use of forwards prices as a proxy for future energy prices in the *PPA Rider Case*, holding that "[f]orwards prices * * * are not a forecast of future spot market prices and they should not be relied upon as a basis for long-term forecasts of energy prices." *PPA Rider Case*, Opinion and Order at 79. The Commission also recognized, as Mr. Bletzacker explained at hearing, that "there is a lack of futures market liquidity, other than in the immediate near term" and "simply too few forwards contracts that can be used to form a reliable projection" of future market prices. *Id.* The Commission should reaffirm its rejection of NYMEX futures-based natural gas "forecasts" and rely, as it did in the *PPA Rider Case*, on the only actual forecast of long-term energy prices in the record – Mr. Bletzacker's Fundamentals Forecast.

The Commission should disregard OCA's arguments regarding other commissions' purported analyses of other year's Fundamentals Forecasts. (OCA Br. at 21-24.) The decisions in those cases are inapposite and irrelevant, as they are limited to the specific facts and proposals that AEP Ohio's affiliate made to those commissions. Among other things, those cases dealt with renewable projects that AEP Ohio's affiliate proposed to own, not REPAs like AEP Ohio is proposing here. (Tr. VI at 1536.) They were also decided just after federal tax reform legislations was signed into law, which made the projects at issue less beneficial than when they were proposed. (*Id.)* As Mr. Torpey testified, the Staff witness in the West Virginia case OCA references actually recommended approval of one of the projects – even though there was no capacity need for the generation – before the tax reform legislation altered its economics. (*Id.* at 1535.) In sum, other commission's decisions regarding AEP Ohio's affiliate's proposals with different terms, in other jurisdictions, and in a different legislative environment should not affect the Commission's consideration of the Fundamentals Forecast presented in this proceeding.

The Company has also already demonstrated that its capacity assumptions are reasonable, and that even without the reasonable capacity revenue assumptions, the generic renewable projects analyzed in the IRP would produce tens of millions of dollars in NPV customer benefit. (AEP Ohio Br. at 50-51.) Intervenor arguments to the contrary are flawed. (*See* IEU Br. at 28; IGS Br. at 32-33; OCC Br. at 33.) In particular, there is no basis for the Commission to rely upon speculative intervenor witness testimony regarding the unknown future outcome of the pending FERC MOPR docket. (OCC Br. at 33; IGS Br. at 32-33.) IGS witness Haugen's testimony regarding that proceeding is particularly unreliable and biased. Although the purpose of Mr. Haugen's testimony purportedly was to address the pending MOPR proceeding, Mr. Haugen only reviewed PJM's comments in forming his opinions. (VII at 2000.) He did not review AEP's comments, despite being aware that the Company had taken a position on that issue. (*Id.* at 1999-2000.) Mr. Haugen had to acknowledge, though, that there are "many proposals" in the MOPR docket. (*Id.* at 1997.) Indeed, "even just the status quo is a proposal and, in that instance, under the status quo, then this wouldn't be an actionable state subsidy." (*Id.* at 1997-1998.) At bottom, it is unknown when or how FERC will decide the MOPR docket. (*Id.* at 2001-2002.) The uncertain future outcome of that proceeding should have no bearing on the Commission's evaluation of the capacity values used in the Company's AEP Ohio Impact Analysis.

OCC's criticism that the Company's analysis did not factor in capacity performance penalties (OCC Br. at 32) also is not persuasive. First, the analysis also did not factor in capacity performance credits that would benefit customers. (Tr. V at 1293-1294.) Second, as Company witness Torpey explained at hearing, the impact of any capacity performance penalties or credits

would be "pretty de minim[i]s or small" and thus would not meaningfully change the analysis. (*Id.* at 1293.)

OCA's contention that Mr. Torpey's analysis should have included "debt equivalency costs" is incorrect, and the Commission should ignore OCA's purported "proffer" on that issue. (OCA Br. at 42-43.) As the Attorney Examiners repeatedly and correctly ruled at hearing, AEP Ohio's debt equivalency cost proposal is a Phase Two issue that is outside the scope of the need inquiry presently before the Commission. (*See, e.g.,* Tr. V at 1431.) Besides being a Phase Two issue, Mr. Torpey explained why it is not appropriate to address cost recovery or retail rate treatment associated with a specific project or proposal, like the Company's debt equivalency proposal in the *Tariff Cases*, in a generic IRP: "When we do IRP analyses, we use proxy or generic resources, so all the IRPs we file in every jurisdiction, we do not address the rate treatment of the generic resources. That's usually in a future proceeding where the actual resources are being considered for approval." (Tr. VI at 1515.) Consistent with the Company's practice, AEP Ohio properly did not include its project-specific debt equivalency cost analysis in its generic IRP.

OCA's on-brief proffer is procedurally improper. (OCA Br. at 43.) The Commission's rules authorize presiding hearing officers to rule on "objections, procedural motions, and other procedural matters" and "[t]ake such actions as are necessary to * * * [p]revent the presentation of irrelevant or cumulative evidence." Ohio Adm.Code 4901-1-27(B)(4), (7)(b). As discussed in the preceding paragraph, the Attorney Examiners in this proceeding exercised that authority in denying intervenors' attempts to introduce evidence regarding the Company's Phase Two debt equivalency proposal during the Phase One hearing. A party seeking to appeal such a ruling to the Commission must, "*at the time the ruling or order is made*, * * * make[ ] known the action

which he or she desires the presiding hearing officer to take, or his or her objection to action which has been taken and the basis for that objection." (Emphasis added.) Ohio Adm.Code 4901-1-27(D). This is akin to a proffer under Evid. R. 103(A)(2), which states, in relevant part, that "[e]rror may not be predicated upon a ruling which * * * excludes evidence unless * * * the substance of the evidence was made known to the court by offer * * *." These rules make clear that the time to make a proffer of evidence is at hearing. OCA, however, made no such proffer. Its belated attempt to do so on brief should be disregarded.

In summary, Mr. Torpey's analysis of generic renewable resources demonstrates that renewable energy projects with characteristics similar to the generic projects would result in lower costs to customers over the projects' life cycles, in addition to providing a hedge against market volatility and diversifying AEP Ohio's resource mix. (*See id.*, Ex. JFT-1 at 26.) The Commission should afford Mr. Torpey's analysis, which is unrefuted, substantial weight in analyzing the Company's *Amended LTFR* and deciding whether there is a need for AEP Ohio to own or operate utility-scale renewable energy resources in its service territory.

C. The comprehensive economic impact study sponsored by Company witnesses Buser and LaFayette demonstrates that constructing additional, Ohio-sited renewable energy resources would result in tangible and significant economic benefits for Ohio.

Throughout their briefs, intervenors argue that the commission should ignore impactful and meaningful economic benefits of large renewable projects. Failing to recognize or consider these benefits would be a mistake. This proposal will help a struggling region of our state advance and flourish with the development of a twenty-first century renewable resources. The Appalachian region of Ohio desperately needs help, both economic and societal, and here before this Commission is an opportunity to provide such assistance with a project that Ohioans clearly want and need. For intervenors to suggest this aspect of the project should be ignored when it is

specifically allowed by law is irresponsible. (IEU Br. at 28-30; OMAEG Br. at 41-43; OCA Br. at 50-52; Kroger Br. at 41-43; Direct Br. at 10-12; IGS Br. at 34-47; Staff Br. at 7.) The evidence confirms beyond a doubt that the addition of 900 MW of renewable energy resources will bring significant economic benefits, along with non-quantifiable social benefits, to the State of Ohio.

Although intervenors offered unsubstantiated criticism of the Company's economic impact study, they offered no credible expert testimony to the contrary that should be given any weight. The Company engaged credible and competent experts to perform a formal economic impact study. The Company has undertaken the significant expense and effort to commission a study on estimated economic impacts to this ailing region. (AEP Ohio Ex. 12, 13.) No other party offered any competing study with differing results. Intervenors offered no credible expert reports of their own. Instead they attempt to attack credible experts with lay testimony, assumptions, and insults toward efforts to bring much needed economic relief to a distressed region. In short, utility-scale renewable energy projects will help the region with short- and long-term jobs, have downstream environmental and health benefits from reduced emissions and pollution and will spur development that may impact societal problems. Although the exact depth and breadth of the positive impact of the proposed projects is not known with certainty, there is no uncertainty that the economic and societal effects of the project will be anything other than helpful to Appalachian Ohio. (AEP Ohio Br. at 57-59.)

Intervenors' efforts to undermine the Impact Study at hearing proved not only weak, but counterproductive. For example, although Dr. Buser conceded on cross-examination that the solar projects' economic impact would be similar if they were developed without AEP Ohio's involvement (Tr. IV at 1087-88), that admission does nothing to either diminish the projected

economic benefits of the deployment of the renewable resources themselves or to increase the low probability that the projects would be developed without REPAs signed by a utility. Although likely unintended, intervenors' attempted attack helps confirm the Company's point that utility-scale renewable energy projects will provide substantial economic benefits. And although intervenors attempted to show that constructing renewable facilities could result in some potential job losses in non-renewable facilities (due to displacement of energy from such facilities), Dr. Buser noted these displaced job losses could occur in other states. (*Id*. at 1089.) Indeed, Dr. Buser explained that such job losses would likely occur in other states, given the extent to which Ohio imports energy. (*Id*. at 1094.) Dr. Buser confirmed on cross-examination, in fact, that there would be "no measurable impact" on oil, gas, or coal industry jobs. (*Id*. at 1091.)

Given the record number of Ohio coal plant retirements and job loss in recent years and additional coal and nuclear retirements likely in the coming years, more energy dollars than ever will be leaving the state to benefit other communities. Utility-scale renewable energy projects represent an opportunity to keep those dollars in Ohio, benefitting Ohioans. (OPAE Brief at 26.) Ohio Partners for Affordable Energy (OPAE) has said specifically, commenting on the loss of dollars spent on generation, that "[t]his results in energy dollars from Ohio customers being exported to generators outside Ohio and providing economic development benefits to residents and businesses in other states." (OPAE Br. at 26.)

Some intervenors offer anecdotal comments about potential negative economic impacts of the projects. IGS suggests that recent actions in New Jersey around recovery of small portions of solar projects increased land lease prices, yet offers no details for comparison and fails to recognize the drastic differences between Ohio and New Jersey in geographic size, land use,

congestion issues, and electrical infrastructure. (IGS Br. at 40.) In his testimony, Direct witness Lacey suggests that this project could potentially bring energy prices down lower and suggests that this is somehow a negative attribute. (Direct Ex. 2 at 22; Direct Br. at 11.) On the contrary, lower energy prices are excellent outcomes for Ohio and low prices remain one of the goals of this particular project.

In its brief, Staff avers that the economic benefits of the proposal, whether they may be large, small, incremental, or just a transfer of resources are not worth the Commission's consideration. (Staff Br. at 7.) Further, Staff denounces the economic benefits associated with the proposal by claiming that any such benefits are "not unique" and then opines that the same exact benefits would exist no matter how the renewable resources were constructed. (*Id*.) These assertions are misguided and unsubstantiated. Staff offers nothing in support. It has performed no independent economic analysis nor provided evidence from the record to validate its claims. Staff offers no corroborative evidence in support of its assertions regarding economic benefits and posits that there "will be much discussion in other briefs of the proposed economic benefits." (*Id*.) Staff's position regarding the economic analysis here is both peculiar and ironic, especially considering that, in regard to the Navigant Voice of the Customer Survey where Staff had also not performed a comparative analysis or possessed any subject matter expertise, Staff appropriately admitted that it was "not in a position to critique the technical validity or lack thereof." (*Id*.) Unfortunately, although Staff similarly failed to present evidence or testimony about the economic impact study, it nonetheless proceeds to offer unsupported commentary on brief.

Supporting intervenors such as the Natural Resources Defense Council, Ohio Environmental Council, and Sierra Club (collectively, the "Conservation Groups") reasonably

support and recognize the economic value of renewal development projects. (Conservation Groups Br. at 18.) John Molinaro, President and CEO of Appalachian Partnership, Inc., testified at the public hearing about the barriers to such economic development:

> Our Appalachian Partnership for Economic Growth subsidiary, and I think perhaps others in the JobsOhio Network, regularly run into barriers in attracting e-commerce and foreign firms to Ohio because of the lack of renewable-energy resources available and sourced in Ohio to those firms. Most of the e-commerce ventures require renewable energy. Many of the foreign direct-investment projects we see require renewable energy and we lose those opportunities when we can't provide that from Ohio generating sources.

(*See* Dec. 4, 2018 Public Hearing Transcript (PHT) at 76-77 (docketed on Dec. 14, 2018).) The Conservation Groups additionally affirm that renewable utility-scale projects have the ability to draw investment by large customers and stimulate the economy in Ohio. (*Id*.) The Mid-Atlantic Renewable Energy Coalition (MAREC) credibly asserts that renewable energy generation also "provides other direct and indirect local (and statewide) economic benefits through the collection of tax revenue, the creation of hundreds of construction and ongoing operation and maintenance jobs, and the abundance of new landowner lease payments." (MAREC Ex. 1 at 7-8; MAREC Br. at 7.) The OEG further recognizes the value and need of this project by saying "Constructing 900 MW of renewable energy resources in Ohio would "facilitate the state's effectiveness in the global economy" as directed by R.C. 4928.02(N) by creating new jobs and tax revenues in an otherwise depressed portion of the State. (OEG Br. at 14.) As OEG aptly recognizes, "[g]iven that economic development is an important objective for the state of Ohio, appearing multiple times through Chapter 49 of the Revised Code, including in R.C. 4928.143(B)(2)(i), that factor should be given due weight in the Commission's "need" analysis in this proceeding." (*Id*. at 14.) Finally, OPAE agrees with witnesses Buser and LaFayette, that the "AEP Ohio projects will have a beneficial impact on the Appalachian regional economy," "direct and indirect economic

benefits should be taken into account as the Commission considers the totality of the benefits stemming from the approval of these projects," and "renewable energy has emerged as an important factor in attracting and retaining corporate facilities within a state." (OPAE Br. at 27-28.)

Based on the Company's formal economic impact study sponsored by AEP Ohio witnesses Buser and LaFayette (the only such evidence in the record), it is clear that the projects will have significant economic development benefits. (AEP Ohio Exs. 12 and 13; AEP Ohio Br. at 55-60.) It is also clear that Ohio law recognizes the value of the important economic impacts of generation projects. As a result, this Commission should give sufficient weight to the economic impact study in support of its need finding.

D. A finding of need will help ameliorate market failures that have discouraged development of in-state, utility-scale renewable resources and left too many AEP Ohio customers under-served with limited renewable offerings.

In its Initial Brief (at 60-79), AEP Ohio showed that the evidence admitted at hearing confirms that the competitive markets have to date failed to incentivize the development of utility-scale renewable resources resembling those for which the Company now seeks a determination of "need" in this proceeding. The Company described (at 61-62) aspects of the PJM markets' structure that impede utility-scale renewable development and leave customer needs unmet; explained (at 62-66) how PJM's agnosticism and indifference to fuel diversity and local economic development – both significant State policies – facilitate continued market failure in this area and impede development; and noted (at 67-68) that 900 MW of renewable resources would fulfill customer needs and act as a valuable price hedge for Ohio customers, in light of PJM's increased reliance upon natural gas generation in the supply stack and the attendant exposure to supply-cost volatility. The Company went on to show (at 68-69) that the

deployment of renewable resources in PJM lags well behind corresponding development in other regions, and explained (at 70-77) that options currently available for consumers in the competitive marketplace are simply no substitute for the utility-scale projects at issue in these consolidated proceedings. For example, AEP Ohio explained why rooftop solar facilities are not an adequate replacement for 900 MW of utility-scale renewables (at 70-73); why CRES offerings on the *Apples to Apples* website are equally inadequate (at 73-74); and why other utility-scale projects currently in development – none of which have yet become operational – also fail to ameliorate the markets' failure to incentivize utility-scale renewable development in Ohio (at 74-76). The Company also demonstrated (at 77-78) that a "need" finding for 900 MW of utility-scale renewable resources will not preclude or crowd out other market offerings for consumers.

In their initial briefs, however, parties opposing the Company's Application repeat the tired refrain that existing markets are doing just fine when it comes to satisfying consumer demands for renewable energy, thus precluding any "need" finding here. For the following reasons, these parties miss the mark. This Commission has the power and duty to recognize the current market failure to develop utility-scale renewable energy facilities in Ohio, and to address that gap in a way that will promote numerous State policies, without precluding or impeding other competitive offerings in the marketplace.

1. Intervenors concede that the Commission can ameliorate market failures as part of its resource-planning function by evaluating the need for new utility-owned generation.

In its Initial Brief, the Company explained that, although the applicable statutes and rules do not expressly require AEP Ohio to prove any market failure in order to demonstrate the "need" for additional utility-owned generation, *see* R.C. 4928.143(B)(2)(c) and Ohio Adm. Code

4901:5-5-06, the Commission has indicated that market failures may indeed be relevant to its consideration of whether there is such a need. (AEP Ohio Br. at 61, citing *PPA Rider Case*, Opinion and Order at 82-83 (Mar. 31, 2016).)

Multiple intervenors, in their initial briefs, agree that the Commission possesses authority in the context of resource planning to consider whether failures in the existing markets militate in favor of new, utility-owned generation. Direct, for example, explains:

> Resource planning allows the Commission to constantly monitor and verify that the market is meeting (and will continue to meet) Ohioan's needs for energy and capacity. *If this process reveals a shortcoming in the market, the Commission can evaluate the need for new utility-owned generation.*

(Emphasis added.) (Direct Br. at 3.) IEU similarly notes:

> [T]he Commission has suggested that it will consider whether an EDU can seek recovery of costs for renewable generation to meet state renewable energy requirements *if it demonstrates that the market will not deliver sufficient renewable resources*.

(Emphasis added.) (IEU Br. at 13, citing *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case Nos. 10-501-EL-COI, *et al.*, Opinion and Order at 25-26 (Jan. 9, 2013).) These statements support the Company's position that the Commission may consider the failure of existing markets to develop utility-scale renewable resources. And, as the Conservation Groups explained in their Initial Brief, these statements are also consistent with former Chairman Haque's recognition (in the very case in which the Commission directed AEP Ohio to pursue in-state solar generation) that the markets do not always meet the needs of consumers or individual state governments:

> I am a believer in wholesale markets for reasons associated with the discipline of economics. Clearly, though, state governments have been expressing some recent trepidation with the markets. There are more states than Ohio that are exercising, or contemplating to exercise their retail jurisdictional authority * * * to incent new generation.

(Conservation Groups Br. at 9, quoting *In the Matter of the Application to Enter into an Affiliate Power Purchase Agreement*, Case Nos. 14-1693-EL-RDR et seq., Opinion and Order, Concurring Opinion of Chairman Haque at 9 (Mar. 31, 2016).) For the reasons that follow, intervenors' faith in existing and insufficient market options for renewable energy is unwarranted and, if adopted by the Commission, will only continue the dearth of in-state utility-scale renewable resources.

2. Intervenors do not disprove AEP Ohio's showing that the existing markets' failures to incent new renewable generation, and the market options intervenors rely upon are limited in scope and not available to all customers.

Over and over again, intervenors opposing the Company's Amended LTFR repeat the mantra that "[t]he competitive market is meeting customer demand for renewable energy." (Direct Br. at 8. *See also, e.g.,* OCC Br. at 24 ("The generation needs of customers for renewables are being reliably met through the competitive market."); IGS Br. at 23 ("the competitive market is well positioned to meet any demand for renewables."); IEU Br. at 14 ("markets are working to provide renewable generation resources to meet statutory requirements.").) But repeating incomplete and misleading assertions about the existing market does not make them true. There is simply no escaping the reality that to date, Ohio has *not* been a receptive market for utility-scale renewable development. Undisputed evidence in the record confirms that PJM lags well behind other regional wholesale markets when it comes to renewable resource deployment. (AEP Ohio Br. at 68-69, citing Sierra Club Ex. 1 at 5-25.) Mr. Seryak, for example, could not identify *any* >100MW solar projects that have become operational in Ohio. (Tr. IX at 2540-41.) And the lengthy spreadsheet of Commission-certified solar facilities appended to Mr. Murray's testimony (IEU Ex. 1) confirms that the Commission has not yet certified *any* solar facility in Ohio remotely approaching the output of the projects at

issue in these proceedings. These are market realities that those opposing the Company's Application ask this Commission – over and over again – to simply ignore. But the General Assembly has given the Commission authority to *address* market failures by approving new utility-owned generation – not to sweep these failures under the rug and defer, instead, to the limited and inadequate market offerings described below.

a. CRES offerings on the *Apples to Apples* website do not undermine the need for additional in-state, utility-scale renewable resources.

Based on the testimony presented at hearing, the Company predicted that intervenors opposing a "need" finding would point to the *Apples to Apples* website as proof that there are alternatives to approving additional in-state, utility-scale renewable resources. As such, the Company addressed this issue in its Initial Brief (at 73-74.) As anticipated, numerous post-hearing briefs point to CRES offerings on the *Apples to Apples* website as alleged proof that the markets are working. For example, Direct (devoting only a single sentence to the topic) posits that the *Apples to Apples* website "'consistently demonstrates the existence of a multitude of CRES provider offerings that are, in whole or in part, renewable products.'" (Direct Br. at 8, citing Staff Ex. 2 at 10.) IEU, with comparable brevity, posits that "[d]ozens of offers for residential and commercial contracts, including one from an AEP Ohio affiliate, are marketed as 100% renewables-based." (IEU Br. at 15.) Other parties including IGS (Br. at 47-48), Kroger (Br. at 52), OCA (Br. at 18), OCC (Br. at 25), OMAEG (Br. at 33), and Staff (Br. at 8) all similarly praise the offerings on the *Apples to Apples* website, as if the mere existence of those offerings (to shopping customers only, of course) precludes any "need" for the in-state, utility-scale renewable facilities the Company seeks to develop pursuant to the authority granted by the General Assembly in the ESP statute.

As a threshold matter, it is worth noting that if the CRES offerings on the *Apples to Apples* websites did indeed satisfy Ohio consumers' needs for renewable energy products, then every single witness at the public hearing in this matter would not have supported the Company's proposal to add in-state utility-scale renewable generation, as all 55 individuals did. (*See* Dec. 4, 2018 Public Hearing Transcript (PHT) (docketed on December 14, 2018).) It is equally unlikely that more than 5,000 public comments submitted in this proceeding would *unanimously* support the Company's proposal, as they have (as of the time of filing the initial brief). And it is also unlikely that the independent Voice of the Customer Survey would have uncovered statistically significant support for the Company's proposal, as it did. (*See generally* AEP Ohio Exs. 6, 7, & 10.)

No intervenor, moreover, contradicts Company witness Allen's testimony that only about 35% of AEP Ohio's customers are CRES provider customers, meaning that the 65% of customers who may wish to continue to take SSO service cannot also take advantage of offerings on the *Apples to Apples* website. (Tr. I at 153.) That inescapable truth makes *Apples to Apples* offerings an alleged "market solution" that only applies to a fraction of the Company's customers in the first place – before any shortcomings or limitations in the offerings themselves are even considered. And there are numerous such shortcomings and limitations associated with the *Apples to Apples* offerings. On cross-examination, for example, Staff witness Benedict acknowledged that most (if not all) CRES offerings for renewable energy rely on RECs to support their environmental attributes claim. (Tr. VIII at 2313-30.)

An examination of the *Apples to Apples* data presented in AEP Ohio Ex. 21 (comprehensively covering residential offers listed on the Commission's website from October 5, 2018 through January 25, 2019) further confirms the market failures. The *Apples to Apples*

data was independently authenticated by Staff before being admitted into the evidentiary record. (Tr. VIII at 2385.) After a thorough search of the Commission's Apples-to-Apples database, Staff witness Benedict observed that none of the CRES offers were identified as being based on Ohio RECs. (*Id*.) And none of the CRES offers listed on *Apples to Apples* have a term that can be considered long-term and certainly nothing comparable to a 20-year REPA.

Moreover, no intervenor can dispute that CRES providers are not obligated to keep their offers available for any specific period of time (*Id.* at 2384), or that IGS only began offering a 100% Ohio-only renewable product to its customers within the last six months, after IGS witness White filed his testimony in this case (Tr. IX at 2479-80, 2484; AEP Ohio Ex. 23 at 5). The timing of this offering suggests an effort on IGS's part to make CRES renewable offerings in the market appear more robust than they truly would be if left to the "market's" own devices. And no intervenor challenged MAREC witness Burcat's testimony that, for a consumer shopping on the *Apples to Apples* site, the longest contract that a shopping customer can enter is just three years. (Tr. VIII at 2082-83.) As OPAE notes, such "short term offers should be compared to a 20-year fixed price long-term contract that would mitigate against price volatility." (OPAE Br. at 13, citing Tr. VIII at 2077.)

The bottom line is that no CRES offering on the *Apples to Apples* website comes with the critically positive attributes of AEP Ohio's proposal, including the long-term customer bill impacts addressed by Company witness Torpey; the local, regional and statewide economic benefits addressed by Company witnesses Buser and Lafayette; and the additional benefits (such as fuel diversity) addressed by Company witness Allen. Moreover, as the Conservation Groups noted, "no CRES provider offers a product that supports new solar or new wind in Ohio."

(Conservation Groups Br. at 22-23.) As the Conservation Groups explained, 100% renewable offerings on the *Apples to Apples* website are generally national or regional RECs that support already-existing projects in other states – not new projects here in Ohio. (*Id.*, citing AEP Ohio Ex. 21, Residential *Apples to Apples* Comparison Charts.) As such, CRES offerings on the *Apples to Apples* website are inherently inadequate responses to the market failures that have to date inhibited development of in-state, utility-scale renewable resources.

b. Distributed generation options are not a substitute for in-state, utility-scale renewable projects such as those the Company is proposing.

In addition to the limited offerings on the *Apples to Apples* website, Staff and intervenors also point to distributed generation (*i.e.*, rooftop solar) as an existing, market-based solution for customers that dispenses with any "need" for additional utility-scale renewable projects. Again, the parties opposing the Company's application are comparing apples to oranges and urging the Commission to defer a "need" finding based on a product that is currently inconsequentially deployed and is riddled with inherent limitations for most customers.

Staff, for example, asserts that "some very small portion of those who physically could install [rooftop solar] facilities have done so." (Staff Br. at 9.) The qualifications Staff places on its own endorsement of rooftop solar – that it is "not an option for everyone" and that only a "very small portion" of eligible customers have in fact installed the technology (*id.*) – underscore the practical limitations of rooftop solar. Other intervenors describe distributed generation as an alternative without sharing Staff's honest appraisal of its limited availability. IGS, for example, contends that PPAs allow "customers [to] install solar with 'no up-front cost to the customer * * *.'" (IGS Br. at 48, quoting IGS Ex. 11 at 15.) IGS goes so far as to use this proceeding to try and shape the Commission's distributed generation policies to IGS's own ends, urging the

Commission to "improve net metering" and "establish distribution rate design for commercial customers" to "remove barriers to deploying behind the meter generation." (IGS Br. at 49.) OCC, for its part, notes that "Ohio Power currently has over 1,500 customers who have chosen to install distributed generating facilities at their own premises" (OCC Br. at 26), conveniently obscuring the fact that this represents but a tiny fraction of the Company's approximately 1.5 million retail customers in Ohio. (AEP Ohio Ex. 2 at 14.)

The Company previously addressed the shortcomings of distributed generation in its Initial Brief (at 70-73), and nothing in any of intervenors' post-hearing briefs undermines those points. For example, Staff witness Benedict acknowledged that only about 0.1% of AEP Ohio customers participate in net metering. (Tr. VIII at 2381.) Company witness Allen described the significant costs associated with rooftop solar installations (Tr. II at 342-43) and explained that many customers simply do not have the ability to install it. (Tr. I at 89.) For example, Mr. Allen explained that many customers don't own the home they reside in, don't have a roof or home that faces in the appropriate direction, or are "located in an area with a significant tree canopy * * *." (*Id.*) Intervenors do not dispute these limitations on rooftop solar, nor could they with a straight face. In other unrebutted testimony, Mr. Allen explained that most residential usage peaks between 6-9pm, "after the sun has set and those solar facilities aren't producing power." (*Id.* at 91.) In that case, he explained, the typical residential customer with distributed generation "is not benefitting the system in any way because he is putting the same peak on that local system." (*Id.* at 91-92.)

Intervenors supporting the Company's Application introduced other unrebutted evidence undermining the theory that distributed generation is a viable alternative to utility-scale renewable projects. Sierra Club, for example, noted that many customers who want renewable

energy may not have the appropriate credit rating, experience, or access to capital to develop renewable energy projects on their own or to enter into long-term contracts to do so. (Sierra Club Ex. 1 at 33.) And, as OPAE witness Rinebolt testified, 43% of all residential buildings are not even physically suitable for solar. (OPAE Ex. 1 at 10.) Just 51% of the housing occupied by low- and moderate-income families is suitable for distributed generation, but many families with income under 80% of the Federal Poverty Line live in rental housing and thus cannot contract for rooftop solar. (*Id.*) Staff witness Benedict agreed on cross-examination that not all customers can afford to install solar panels on their home, and that it is not wise for renters to install the technology on property they do not own. (Tr. VIII at 2309-11.)

Utility-scale solar, because it is built to scale, is a less expensive option than rooftop solar per unit of output, which effectively makes solar resources available to customers who cannot put panels on their roof for physical or economic reasons. (OPAE Ex. 1 at 10.) In this way, utility-scale solar promotes equity among customer classes. (*Id.*) Company witness Allen aptly summarized at hearing that "We have lots of customers that don't have [the ability to install rooftop solar] and so the competitive market can't meet those needs and what we are doing is fulfilling that need." (Tr. I at 153.) In short, the availability of distributed generation to a small subset of well-heeled customers who happen to own buildings that can accommodate distributed generation in no way undermines the need for utility-scale renewables, and there is no reason why the two renewable solutions cannot coexist in the marketplace, as hearing witnesses readily agreed. (*See, e.g.*, Tr. VII at 1980 (IGS witness Haugen agreeing that IGS can still pursue bilateral arrangements with customers to develop solar resources, regardless of the outcome of this case); *see also* MAREC Ex. 1; Tr. IX at 2590 (IGS witness Rengstorf testifying that IGS has six or seven other projects in the pipeline that will not "go away" if the Company's projects were

approved).) As Mr. Allen explained, "this isn't an either/or kind of scenario. What we are looking at here is optionality for customers." (Tr. I at 152.) But as the evidence of record shows, too many customers are left behind in pursuing renewable power with the limited options available in the market.

c. Municipal or corporate aggregation programs do not satisfy the need for in-state, utility-scale renewable projects.

Staff witness Benedict testified that, in addition to offerings available in the marketplace, "government aggregations are capable of sourcing renewable resources for their participants, such as the one that currently serves Ohio's third largest city." (Staff Ex. 2 at 10.) The Company already addressed this contention. (AEP Ohio Br. at 77.) AEP Ohio noted, for example, that Mr. Benedict conceded that he had not analyzed how many municipal aggregation programs are based on Ohio RECs, or whether any had resulted in the development of an Ohio renewable project. (Tr. VIII at 2386-87.) The Company also noted that there is no basis in the ESP statute or the Commission's LTFR rules to conclude that municipal renewable offerings have any bearing on EDUs' resource planning needs, as they are offered in separate geographic areas and neither has an impact on the other. (AEP Ohio Br. at 77.) Mr. Benedict also acknowledged that municipal aggregation programs are not long-term, that the provider has no obligation to keep them available for any period of time, that such programs are not available to all customers, and that the Company's proposal would not preclude such programs. (Tr. VIII at 2387-88.)

In their initial briefs, Staff and intervenors opposing the Company's Application do not waste much ink advancing municipal (or other forms) of aggregation as a viable alternative to utility-scale renewable generation. Staff's brief, in fact, contains no reference to municipal aggregation, despite Mr. Benedict's prior testimony on the subject. OCA mentions aggregation

in passing only twice, both times merely parroting Staff's (now apparently discarded) theory that aggregation is an "available" option that undermines any "need" for what the Company is proposing. (OCA Br. at 10, 18.) OCC, too, parrots Mr. Benedict's now-discarded embrace of aggregation in a single sentence. (OCC Br. at 26.) IEU simply asserts that "[a]ggregation for utility scale resources is developing." (IEU Br. at 14, citing Tr. VIII at 2191-94.) But in support of this proposition IEU cites – utterly out of context – to the hearing testimony of MAREC witness Bruce Burcat, who testified that although some small-scale aggregations may be taking place in other places, "the mere fact is *projects aren't really getting done like we are talking about here in Ohio* and that's * * * why *we think it's really important that the Commission moves forward with [the Company's] projects*." (Emphasis added.) (Tr. VIII at 2193.) And OPAE includes a single sentence offering the unsupported proposition that "[g]overnment aggregations are also capable of sourcing renewable resources for their participants." (OPAE Br. at 29.) Simply put, there is no record support for the proposition that aggregation arrangements are a meaningful or adequate substitute for the utility-scale renewable projects the Company seeks to develop.

d. Utility-scale projects currently in development do not displace the need for additional renewable resources proposed by the Company.

In its post-hearing brief, the Company predicted that parties opposing its Application would point to other renewable projects at various stages of development, and use these *potential* facilities as another basis to undermine the need for those proposed by AEP Ohio. (AEP Ohio Br. at 74.) The Company already debunked this theory. (*Id*. at 74-76.) For example, the Company noted that many of these "in-development" projects had already passed their projected in-service dates (Tr. VI at 1757-1758) and that no utility-scale project described in Mr. Murray's

testimony had yet become operational. (AEP Ohio Br. at 76, citing Tr. VI at 1839-1840.) Even those projects that have obtained siting approval and PJM interconnection approval may never be constructed because financing requirements must still be met, which requires a strong counterparty. (AEP Ohio Br. at 76, citing Tr. I at 317-320.)

Nevertheless, as the Company predicted, parties opposing AEP Ohio's Application have hung their hats on those as-yet incomplete and not-yet operational renewable developments to disprove "need" for 900 MW of additional utility-scale renewable generation here in Ohio. IEU, for example, asserts that "[u]tility scale projects are being developed" (IEU Br. at 14), citing to Mr. Murray's testimony, without acknowledging Mr. Murray's concessions that he had not analyzed whether any of the eight projects addressed in his testimony were yet commercially operational, and that five of the eight still await siting approval from the Power Siting Board. (Tr. VI at 1839-1840; IEU Ohio Ex. 1 at 9.) OCA points to its Exhibits 4 & 5 as depicting "both currently operating and pending wind and solar projects in Ohio" (OCA Br. at 18), but it conveniently fails to mention that two of the eight projects depicted on Exhibit 5 are the AEP Ohio projects at issue in these very proceedings (Hecate and Willowbrook), and that more than 1,200 MW of planned solar still remain "pending" before the Power Siting Board and are thus not operational. (*Id.*; *see also* OCA Ex. 5.)

OCC similarly boasts of the "robust" development of in-state solar and wind generation, noting that the Power Siting Board has approved a total of 2,650 MW of in-state solar facilities and 42 in-state wind generators in the last decade. (OCC Br. at 26, citing OCC Ex. 18 at 38.) But OCC omits Dr. Lesser's express acknowledgment that most of the PV facilities approved by the Board each year are behind-the-meter facilities. (OCC Ex. 18 at 39.) And neither OCC nor its witness, Dr. Lesser, specify what amount of this Board-approved renewable generation comes

from utility-scale resources and/or ever became operational. OCC acknowledges that only 11.9% of the generation in PJM's interconnection queues will ever become commercially operational. (OCC Br. at 27.) And Kroger also references the "significant amounts of renewable generation that have either been approved by the Ohio Power Siting Board or are pending before that body," without specifying any Board-approved, utility-scale renewable projects *actually operating*. (Kroger Br. at 51.) The Commission should not take the bait and rely on the mere possibility of other, completed renewable projects to undermine the need for what the Company is proposing.

3. Numerous intervenors confirm that a finding of need will ameliorate market failures that have discouraged development of in-state, utility-scale renewable resources.

Notably, the Company is not the only party to demonstrate how a "need" finding for 900 MW of utility-scale renewable energy resources will address market failures that have inhibited development of such projects in Ohio. The Conservation Groups, OPAE, and OEG all addressed this critical issue as well, with points effectively unrebutted by other parties opposing the Company's Application.

The Conservation Groups, for example, concur that the markets have failed to develop utility-scale solar resources in Ohio, even though they are more economic than smaller-scale solar resources, and even though such development would move Ohio toward a faster reduction in greenhouse gas emissions and other pollutants from the electric sector. (Conservation Groups' Br. at 21.) Although the Conservation Groups are pleased to see rooftop solar growing in Ohio, they agree that rooftop solar is not an option for every Ohioan, and that granting the Company's Application is "unlikely to affect the rooftop solar market." (*Id.* at 22.) The Conservation Groups also agree with the Company that while CRES suppliers are able to offer certain products

with "green" attributes, those opportunities are limited for customers, and "no CRES provider offers a product that supports new solar or new wind in Ohio." (*Id.*) Pointing to the hearing testimony of Sierra Club witness Michael Goggin, the Conservation Groups describe how the PJM market rules and capacity market inhibit the development of renewable energy in Ohio. (*Id.* at 24-29.)

OPAE similarly highlights the failure of the PJM market to incentivize renewable generation in Ohio, noting that deployment of renewables in the PJM market is "falling short of the level that would optimally serve the economic and environmental interests of AEP Ohio's customers." (OPAE Br. at 11.) OPAE, like the Conservation Groups, also agrees with the Company that "the growing need for renewable energy cannot be addressed by competitive marketers alone" (*id.* at 30), and that not all customers can benefit from CRES renewable service offerings. (*Id.* at 30.) As OPAE explains:

> Customers may not have the appropriate credit quality for CRES providers to be willing to serve those customers. Tr. I at 88. There are a lot of customers that do not have access to the scale or the financial wherewithal to take advantage of competitive market offers. The CRES market cannot meet their need. Customers want the benefits of renewable energy but may be unable to take advantage of renewables except through their utility. Tr. VII at 2078. Not all customers have the ability to own their own generating facilities, finance their own renewable installations, or pay for long-term contracts. Many customers are left out of financing options. Tr. VIII at 2081-2082.

(OPAE Br. at 30.) Like the Conservation Groups, OPAE shares the Company's concern that rooftop solar is a limited solution to the market failures inhibiting utility-scale renewable development in Ohio – one that is only available to certain affluent customers and that carries with it low economies of scale. (*Id.* at 31.) OPAE notes that approval of the Company's Application can ameliorate market failures with only "a negligible impact on wholesale energy values and a limited impact on competition." (*Id.* at 33.)

Finally, OEG's position in this case confirms that the Company's current effort to address market failures that have inhibited renewable energy development is an effort that is supported not only by the Conservation Groups and by the 54 member agencies of OPAE, but also by some of the largest, most energy-intensive industrial corporations in Ohio who are OEG members. As OEG explains, instead of moving Ohio farther toward "mandatory reliance on the federally-regulated wholesale markets, SB 221 gave the Commission discretion to opt back into some of the traditional features of state generation regulation." (OEG Br. at 4.) By exercising this discretion and facilitating the construction of 900 MW of renewable energy in Ohio, OEG goes on to explain, the Commission would contribute to fuel diversity, and promote a more reliable and cost-effective grid. (*Id.* at 12.) Like the Company, OEG eschews the concept that "the market" should be left to its own devices to incentivize development of renewable energy resources, saying:

> While opponents argue that the development of renewable energy resources should be left to the market, they ignore current facts on the ground. AEP Ohio witness Allen testified that "*there is an undersupply of renewable power to meet the needs of AEP Ohio customers*," noting the "*very slow growth*" of Ohio solar resources in particular over the last 10 years. And PJM does not seek to prioritize the development of renewable energy, and certainly not renewable energy in Ohio. PJM is fuel agnostic. PJM is only concerned with cost and reliability, no matter the source and no matter the location. Ohio, however, like all other PJM states, is free to develop a generation policy that serves its own specific interests. Moreover, * * * the type of large-scale renewable projects proposed by AEP Ohio in this proceeding are unattainable for many of the Company's customers. AEP Ohio's proposal would thus represent a significant step forward in furthering the fuel diversity state policy objectives set forth under R.C. 4928.02(C) and R.C. 4928.02(J).

(*Id.* at 13; emphasis in original; internal citations omitted.) OEG's members collectively employ approximately 55,000 people and spend nearly $1 billion per year on gas and electricity to

produce their products.[5] As such, OEG's support of the Company's proposal confirms that numerous key participants in the energy markets want the Commission to step in and provide more direct support for the development of utility-scale renewable energy resources than those markets are currently providing.

IV. The Scope of the Phase One Hearing Is Properly Limited to a Determination of Need.

A. Intervenors' arguments against the Renewable Generation Rider and regarding the MRO Test are beyond the scope of this proceeding and otherwise without merit.

As set forth in greater detail in AEP Ohio's Initial Brief, numerous parties representing diverse stakeholder interests signed the *ESP IV* stipulation, which included the creation of the RGR to separate cost recovery associated with renewable projects from OVEC cost recovery under the PPA Rider. (AEP Ohio Br. at 7-9.) The Commission approved and adopted the *ESP IV* stipulation, including the RGR, as proposed by the settling parties and over OCC's objection. (*Id*. at 8.) OCC has appealed the Commission's approval of the *ESP IV* settlement and the creation of the RGR.[6] *See ESP IV Appeal*, OCC Merit Br. at 5-10, 13-15 (Dec. 31, 2018). That appeal remains pending, and OCC's reply brief is due at the end of this month.[7] S.Ct.Prac.R. 16.04(A)(3).

[5] http://ohioenergygroup.com/ (last visited March 18, 2019).

[6] Ohio Supreme Court Case No. 2018-1396 ("*ESP IV Appeal*").

[7] Appellees filed merit briefs earlier this month. *See* PUCO Merit Br. (Mar. 8, 2019); AEP Ohio Merit Br. (Mar. 11, 2019).

1. Intervenors' challenges to the Commission's approval of the RGR are untimely and outside the scope of this proceeding.

The scope of this phase of this *Amended LTFR* proceeding is limited to the issue of need under R.C. 4928.143(B)(2)(c), not the validity of the RGR. Entry at ¶ 32 (Oct. 22, 2018.) In its initial brief in this proceeding, OCC nonetheless repeats nearly verbatim its preemption argument that is presently pending in the *ESP IV Appeal.* (OCC Br. at 39-47.) Similarly, although it did not challenge the rider's approval in *ESP IV* and, unlike OCC, acknowledges on brief that "the Commission has already addressed challenges" to the rider, Direct nonetheless argues that the RGR violates R.C. 4928.143 and 4928.64(E). (Direct Br. at 12-18.) IGS contends that the Commission should not make a finding of need in this proceeding because, IGS claims, inclusion of the generic solar REPAs analyzed in the Company's IRP will cause the Company's ESP to fail the MRO Test set forth in R.C. 4928.143(C)(1). (IGS Br. at 33-34.)

The Commission should disregard each of these arguments on the basis that they constitute untimely and impermissible collateral attacks on the RGR approved in the *ESP IV* case. *In re Ohio Power Co.*, 144 Ohio St. 3d 1, 2015-Ohio-2056, 40 N.E. 3d 1060, ¶ 20; *Office of Consumers' Counsel v. Pub. Util. Comm.*, 16 Ohio St. 3d 9, 10, 475 N.E.2d 782 (1985). The Commission has already thoroughly considered and approved the creation of the placeholder RGR in that case, including finding that the Company's ESP, including the placeholder rider, satisfies the MRO Test. Those conclusions, which OCC is challenging on appeal, are not subject to further debate in this case. *Accord In re. FirstEnergy 2017 SEET*, Case No. 18-857-EL-UNC, Opinion and Order at ¶ 26 (Mar. 6, 2019) (rejecting OCC's attempt to rehash an issue in FirstEnergy's 2017 SEET proceeding that the Commission thoroughly considered in the company's ESP IV case). In any case, these intervenor arguments are misguided because it is

obvious that the Commission will only approve renewable projects for inclusion in the RGR that convey net benefits, quantitative or qualitative or both, to AEP Ohio's customers.

2. Intervenors' challenges to the RGR also fail on their merits.

a. Federal law does not preempt the Commission's jurisdiction to approve the RGR.

Regardless, intervenors' challenges to the RGR also fail on their merits. OCC's argument that the FPA preempts the RGR misstates the scope of the FPA and misapprehends the import of recent U.S. Supreme Court case law interpreting the Act. (*See* OCC Br. at 39-47.) The RGR is undisputedly a *retail* rate. It does not set or otherwise mandate *any* wholesale rates or charges or require AEP Ohio to engage in or continue any wholesale transactions. It is, therefore, soundly within the broad authority that the FPA gives to the States to regulate retail electricity charges.

Under the FPA, FERC has "exclusive authority to regulate 'the sale of electric energy at *wholesale* in interstate commerce.'" (Emphasis added.) *Hughes v. Talen Energy Marketing, LLC*, __ U.S. __, 136 S. Ct. 1288, 1292, 194 L.E.2d 414 (2016) ("*Talen*"), quoting *FERC v. Electric Power Supply Assn.*, __ U.S. __, 136 S.Ct. 760, 766, 193 L.E.2d 661 (2016) ("*EPSA*"). Critically, "the law places beyond FERC's power and leaves to the States alone, the regulation of 'any other sale' – most notably, any *retail* sale – of electricity." (Emphasis added.) *Talen* at 1292, quoting *EPSA* at 766; 16 U.S.C. § 824(b). The line between wholesale electricity sales (which are FERC's exclusive province) and retail electricity sales (which belong to the states) is clearly drawn. "A wholesale sale is defined as a 'sale of electric energy to any person for resale.'" *Talen*, 136 S. Ct. at 1292, quoting 16 U.S.C. § 824(d). A retail sale, in contrast, is defined as a sale "directly to users" of electricity. *EPSA*, 136 S. Ct. at 768. That is, a retail sale

is a sale to the homes, businesses, and industries that ultimately consume the electricity. "State utility commission[s] continue to oversee those transactions." *Id.*

AEP Ohio's RGR, approved as part of AEP Ohio's ESP IV, is undisputedly a *retail* rate involving *retail* credits and charges to end-users of electricity in AEP Ohio's service territory. OCC expressly concedes this in its brief, acknowledging that the RGR involves "a retail charge" to AEP Ohio's "distribution customers." (OCC Br. at 45 (also acknowledging that the RGR "would be a nonbypassable *retail* credit * * *.").) The RGR is one part of the rates and charges that AEP Ohio assesses for delivering electricity "directly to users" in its service territory. *EPSA*, 136 S. Ct. at 768. As such, the RGR is clearly within the Commission's power to regulate "any retail sale" under the FPA. *Id.*; *Talen*, 136 S. Ct. at 1292; 16 U.S.C. § 824(b).

Significantly, the Commission has thoroughly reviewed the intent, structure, and effect of the RGR and found it to be a proper component of AEP Ohio's SSO. In the *ESP IV* case, the Commission approved the RGR because "the General Assembly has specifically authorized the establishment of a nonbypassable surcharge for the life of an electric generating facility owned or operated by the electric distribution utility," subject to R.C. 4928.143(B)(2)(c). *ESP IV* Opinion and Order at ¶ 227. That finding refutes OCC's mischaracterization that the RGR is a charge to consumers to subsidize a generation facility. And it negates OCC's position that the RGR conflicts with federal law. In re-affirming in *EPSA* the broad powers reserved to the States, the Supreme Court noted that "States continue to make or approve all retail rates, and in doing so may insulate them from price fluctuations in the wholesale market." 136 S. Ct. at 777. That is precisely the intent and long-term effect of the RGR – to insulate Ohio retail customers from price fluctuations in the wholesale market. Ohio consumers are not paying the charge to

subsidize the renewable generating facilities included in the rider or AEP Ohio's resale of the generation from those facilities in the PJM market.

While acknowledging that the RGR is a "retail" rate, OCC nevertheless claims that the RGR is akin to a state program that the U.S. Supreme Court struck down as preempted by the FPA in *Talen*. (OCC Br. at 42-44.) But the state program in *Talen* is plainly distinguishable from the RGR, and OCC is attempting to stretch the meaning of the *Talen* decision far beyond what it can bear. Most importantly, unlike the state program in *Talen*, the RGR does not mandate that AEP Ohio (or anyone else) enter into any wholesale contract or pay any wholesale rate.

The state program in *Talen* "required" certain Maryland utilities to enter into a 20-year pricing "contract for differences" with a state-selected generator at a specified wholesale rate. 136 S. Ct. at 1294-1295. That program actually set the wholesale rate the generator would receive and "guarantee[d]" that the generator received "the contract price rather than the [FERC-approved] auction clearing price" for its electricity sales. *Id.* at 1295. The Supreme Court held that mandating this wholesale transaction violated the FPA because, by requiring utilities to guarantee the contract price to the generator, the Maryland program "set[] an interstate wholesale rate" that was different from the FERC-approved rate. *Id.* at 1297.

The RGR is starkly different from Maryland's program, because it does not set any wholesale rate or mandate any wholesale transaction. Rather, AEP Ohio *voluntarily* entered into its REPAs for renewable energy resources, which will be negotiated, bilateral agreements. *Id*. at 1292-1293. And, unlike the "contract for differences" mandated by Maryland, the REPAs will actually transfer ownership of capacity from the generator to AEP Ohio. *Id*. at 1295. AEP Ohio, as the new owner of that capacity, sells the capacity into the PJM market and receives the auction

clearing price for capacity and the locational marginal price for energy, which are market prices set through the FERC-approved PJM process. This second wholesale transaction likewise is a completely voluntary business decision on the part of AEP Ohio. The Commission did not mandate either of these wholesale transactions.

In approving the RGR in *ESP IV*, the Commission acted solely in its proper retail sphere. The RGR merely allows AEP Ohio to pass on the net costs, or net revenue, derived from these completed wholesale transactions to its retail customers. In so doing, the RGR carefully respects the line between state and federal jurisdiction in the FPA. The RGR does not mandate that AEP Ohio enter into any wholesale contract, nor does it mandate, or even incidentally affect, any wholesale rate or charge. And, most importantly, it is not "setting the revenue for wholesale capacity and energy that AEP Ohio receives for its interest in the power plants," as OCC argues. (OCC Br. at 46.) The rider only determines the amounts retail customers pay to AEP Ohio, or the credit retail customers receive, as a result of the financial hedge consummated by the *completed* wholesale transactions.

OCC nevertheless argues that the rider is unlawful because the revenue AEP Ohio receives from it is "'tethered' to the wholesale rate." (OCC Br. at 46, citing *Talen*, 136 S.Ct. at 1299.) Its argument is legally and factually incorrect. The rider is not in any way "tethered" to the generator's wholesale market rate, as was the case in *Talen*. The RGR approved in the *ESP IV* proceeding is a *status quo* continuation of the rider approved in the PPA Rider Case, segregating renewable generation resources and tracking their costs through a rider with a different name. Thus, the rider is not tethered to the wholesale rate and it is does not, as OCC suggests, "guarant[ee] a rate (intended to cover all REPA-related costs) distinct from the clearing price in the PJM markets." (OCC Br. at 46.)

But, in any event, OCC misreads *Talen* to suggest that any "tether" between a retail rate and a wholesale rate would be *per se* impermissible. That is not what the Supreme Court stated or implied. The Court merely clarified its limited holding that the Maryland program violated federal law "because it disregards an interstate wholesale rate required by FERC," stating: "Nothing in this opinion should be read to foreclose Maryland and other States from encouraging production of new or clean generation through measures 'untethered to a generator's wholesale market participation.' Brief for Respondents 40." The Court's limiting statement (referencing a term plucked from the Respondents' argument) that its decision does not affect measures "untethered to a generator's wholesale market participation" cannot be stretched into a conclusion that all measures in any way connected to wholesale market participation are prohibited. Indeed, in the current state regulatory environment AEP Ohio's wholesale market participation is a significant and unavoidable component of retail rates, as the Commission, at the urging of OCC and others, requires AEP Ohio to satisfy its SSO obligations by purchasing power in the wholesale market. *ESP III Order* at 31; *ESP IV Opinion and Order* at 44-45.

The Court also affirmatively stated in *Talen*: "Our opinion does not call into question whether generators and LSEs (load serving entities) may enter into long-term financial hedging contracts based on the auction clearing price," reasoning that such contracts "do not involve state action to the same degree as Maryland's program, which compels private actors (LSEs) to enter into contracts for differences –like it or not –with a generator that must sell its capacity to PJM through the auction." *Id*. at 1299, fn.12. If the Court was not questioning voluntary long-term financial hedging contracts based on auction clearing prices in a purely wholesale transaction between a generator (wholesale seller) and LSE (wholesale buyer), it hardly was suggesting that

a long-term hedging mechanism in a purely retail context would be impermissible because it was based, in part, on the auction clearing price received by the utility.

It also is significant that the RGR is intended to insulate retail customers from the effects of a volatile market, as encouraged by R.C. 4928.02(A). In both *EPSA* and *Talen*, the Supreme Court carried over to the FPA the preemption test articulated in *Oneok, Inc. v. Learjet, Inc.*, __ U.S. __, 135 S.Ct. 1591, 191 L.E.2d 511 (2015). *EPSA*, 136 S.Ct. at 776; *Talen*, 136 S.Ct. at 1298. Under *Oneok*, the "significant distinction" for purposes of preemption is the distinction between state programs "aimed directly at the interstate purchasers and wholesale sales for resale, and those aimed at subjects left to the state to regulate." (Emphasis deleted.) 135 S.Ct. at 1600. One "target" of the RGR, to use the *Oneok* vernacular, is stabilizing retail electric service by means of a financial hedge supported by retail rates; the rider does not target interstate wholesale purchasers or sales for resale, as did the Maryland program rejected in *Talen*.

The RGR, by intent, structure and effect, is, therefore, far afield from *Talen*'s "limited" holding and falls plainly within the Commission's jurisdiction to set *retail* rates.

b. The Commission properly approved the placeholder RGR under R.C. 4928.143(B)(2)(c) without adjudicating the need for specific renewable generating facilities in the *ESP IV* case.

The Commission should disregard Direct's arguments regarding the placeholder RGR's authorization under the ESP statute consistent with the Supreme Court of Ohio's recent decision in *In re Application of Ohio Power Company*, Slip Opinion No. 2018-Ohio-4697, ¶ 18. (*See* Direct Br. at 13-16.) In that case, OCC challenged the Commission's approval of a zero placeholder PPA Rider and required AEP Ohio to demonstrate in a separate proceeding that it was entitled to cost recovery through the PPA Rider. *Id.* at ¶ 4. The Court found that, because

the placeholder rider "did not allow [AEP Ohio] to recover any costs from customers," there was no injury or prejudice to them. Id. at ¶ 15. The Court dismissed the appeal, stating:

> The party seeking reversal of the commission's order must demonstrate prejudice or harm from the order on appeal. *Holladay Corp.*, 61 OhioSt.2d 335, 402 N.E.2d 1175, at syllabus; *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 88, 765 N.E.2d 862 (2002). OCC and OMAEG have not shown any harm or prejudice to ratepayers caused by the commission's approval of the PPA Rider in the ESP Order. As appellants have failed to carry their burden before this court, we dismiss this appeal.

Id. at ¶ 18. The parallel between that case and the RGR is unmistakable. In the *ESP IV* case, the Commission approved the RGR – an offshoot of the PPA Rider – as a placeholder only. *ESP IV* Opinion and Order at ¶ 226. The rate design and all other requirements applicable to the PPA Rider and approved in the *PPA Rider Case* remain identical and applicable to the Renewable Generation Rider. *Id.* at ¶ 50. The rider will not allow AEP Ohio to recover any costs from customers unless AEP Ohio establishes the requisite need for such cost recovery in a separate proceeding – namely, this one. *Id.* at ¶ 50-51.

Direct claims that the Commission erred in approving the placeholder Renewable Generation Rider under R.C. 4928.143(B)(2)(c) because the Commission did not make a need determination for a specific facility *in the ESP IV case* before authorizing the placeholder rider. (Direct Br. at 14-15.) To put it differently, Direct's position is that the ESP proceeding must be "the proceeding" where need must be established under division (B)(2)(c) of the statute. (*Id.*) That construction of the statute is illogical and incorrect. Division (B)(2)(c)'s reference to "the proceeding" is not – and cannot be – to a generic ESP proceeding in which a placeholder rider like the RGR is established. Rather, it is to the proceeding where a nonbypassable surcharge is approved for the life of a specific facility under the statute – here, the EL-RDR proceeding(s) to implement the rider.

The Commission correctly interpreted the statute to condition the approval of a nonbypassable surcharge to be recovered through the Renewable Generation Rider upon a future finding of resource planning need for a renewable generation facility, consistent with past Commission precedent. *ESP IV* Opinion and Order at ¶ 227 (citing *ESP II Case*, Opinion and Order at 24 (Aug. 8, 2012); *In re Ohio Power Co.*, Case No. 10-501-EL-FOR, Opinion and Order at 23 (Jan. 9, 2013), Entry on Rehearing at 3-4 (Mar. 6, 2013)). The Commission thus correctly reaffirmed that the statute does "not restrict the determination of need to the time at which an ESP is approved. *Id.* The Commission's interpretation is practical, logical and consistent with its discretion in managing its own dockets. *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982); *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978). *See also* R.C. 4901.13. Direct has provided no substantive basis to disturb that decision in this proceeding.

c. IGS's arguments regarding the MRO Test are without merit.

IGS's argument that the Company's generic economic analysis in the IRP causes the Company's ESP to fail the statutory MRO Test set forth in R.C. 49218.143(C)(1) is flawed in several respects. (IGS Br. at 33-34.) As discussed in the preceding section, the Ohio Supreme Court has recently affirmed the appropriateness of placeholder riders in ESPs and the Commission's treatment of such riders for purposes of the MRO Test. *In re Application of Ohio Power Company*, Slip Opinion No. 2018-Ohio-4697, ¶ 18. There also is no requirement that the Commission go back and apply the MRO Test after a placeholder rider is activated; rather, it is presumed that the Commission will not activate a rider unless it conveys a net benefit to customers relative to the costs it collects. And it is important to remember that the Company is not seeking to activate the RGR in this phase of these proceedings, which is focused only on the

need for renewable generation resources. Thus, if anywhere, the place to evaluate whether the RGR will convey a net benefit to customers is in Phase Two – not here. In any event, IGS's factual assertion regarding the application of the MRO Test to the Company's IRP analysis is also wrong as a factual matter; the generic REPA projects reflect a net benefit over their terms – the relevant time period that should be evaluated when analyzing a surcharge to be authorized under R.C. 4928.143(B)(2)(c). In any case, this intervenor argument is misguided because it is obvious that the Commission will only approve renewable projects for inclusion in the RGR that convey net benefits, quantitative or qualitative or both, to AEP Ohio's customers.

d. AEP Ohio's RGR does not violate R.C. 4928.64(E).

Direct's argument that the RGR violates R.C. 4928.64(E) also is without merit. In addition to being an untimely collateral attack on the Commission's *ESP IV* decision, as set forth above, Direct's position utterly ignores the fact that R.C. 4928.64(B)(1) makes it abundantly clear that "nothing in this section precludes a utility * * * from providing a greater percentage" of renewable energy resources than the renewable portfolio standard benchmarks require. (*See* AEP Ohio Br. at 20.) As the Company and OEG explained in their initial briefs, as set forth in Section II.A.4 above, R.C. 4928.64 and R.C. 4928.143 are distinct, independent statutes, and nothing in the Revised Code limits R.C. 4928.143(B)(2)(c)'s application to only those resources needed to satisfy the current RPS. (*Id.*; OEG Br. at 9-10.) The Commission, therefore, should disregard this argument as well.

B. The Commission properly consolidated the *Amended LTFR* and *Tariff Cases* and bifurcated the cases into two phases.

Kroger and OMAEG also challenge the consolidation of the *Amended LTFR* proceeding and *Tariff Cases*. To be clear, neither party challenges the Commission's authority to consolidate proceedings for hearing. Instead, Kroger (Br. at 13-17) and OMAEG (Br. at 7-17) resurrect the arguments against consolidation that they raised when AEP Ohio initially moved to consolidate – namely, that the consolidation conflicts with the ESP statute and the Commission's long-term forecast report regulations and would pair two cases with nothing in common. None of these arguments warrants the extraordinary relief that the intervenors seek.

First, Kroger and OMAEG argue that consolidating these proceedings "conflicts with the Commission's directive [in the *ESP IV* proceeding]" that the need for specific generation resources "must be proven by the utility in a [proceeding] to receive cost recovery." (Kroger Br. at 14; *see also* OMAEG Br. at 8-9 (similar).) But the Commission will, indeed, determine whether AEP Ohio demonstrated need for the Highland Solar and Willowbrook Solar energy projects (and all of the other criteria in R.C. 4928.143(B)(2)(c)) in a proceeding to authorize cost recovery – namely, these consolidated proceedings.

Second, Kroger and OMAEG argue that R.C. 4928.143(B)(2)(c) and Ohio Adm. Code 4901:1-35-03(C)(9)(b)(i) require AEP Ohio to demonstrate need for the proposed solar facilities through an IRP process before the Commission can approve cost recovery for those facilities. (Kroger Br. at 14-15; *see also* OMAEG Br. at 9.) Again, that is exactly what the Commission's consolidation and bifurcation orders will accomplish. Under the schedule set by those orders, the Commission will determine, first, whether AEP Ohio has shown a "need" for in-state, utility-scale, renewable energy resources in Phase One, based on AEP Ohio's amended long-term forecast report and witness Torpey's IRP. If the Commission concludes AEP Ohio has shown a

generic "need" in Phase I, the Commission will determine in Phase Two whether to include the Highland Solar and Willowbrook Solar energy projects in the RGR, whether to allow AEP Ohio to create a new Green Power Tariff, and the other issues raised in the *Tariff Cases.*

Third, Kroger (Br. at 15) at and OMAEG (Br. at 9) argue that AEP Ohio filed its *Tariff Cases* too early. Kroger and OMAEG note that an electric utility seeking to recover the cost of owning or operating a generation resource under R.C. 4928.143(B)(2)(c) is required to file its IRP and other information "in the forecast year prior to any filing for [the cost recovery charge.]" Ohio Adm.Code 4901:5-5-06(B). AEP Ohio filed its *Amended LTFR* and *Tariff Cases* in the same year. Kroger and OMAEG's argument is irrelevant to the appropriateness of consolidation – and, for that matter, irrelevant to the issues presented in Phase One of this proceeding. But, again, the consolidation and bifurcation orders fulfill the regulation's primary purpose. The Commission will not approve the inclusion of the proposed solar energy projects in the RGR until this year at the earliest – *i.e.*, the year after AEP Ohio filed its amended long-term forecast report. Given "the Commission's broad discretion to manage its dockets[,]" *ESP IV*, Opinion and Order ¶ 227 (Apr. 25, 2018), the Commission's orders reasonably fulfill the purpose and basic requirements of the Commission's ESP and forecasting regulations.[8]

Fourth, and more relevantly, Kroger and OMAEG argue that the *Amended LTFR* and *Tariff Cases* should not have been consolidated because they "present completely distinct legal questions" and seek different relief. (Kroger Br. at 15-16; *see also* OMAEG Br. at 10.) But the Commission's rules do not limit consolidation to instances in which different proceedings present the same legal questions and seek the same relief. Neither Kroger nor OMAEG

[8] If the Commission feels it is necessary, AEP Ohio would file a motion (pursuant to Ohio Adm.Code 4901:5-5-02(C)) asking the Commission to waive the one-year-prior requirement in Ohio Adm.Code 4901:5-5-06(B) before proceeding to Phase Two.

references, much less distinguishes, the cases cited in the Attorney Examiner's Entry, in which the Commission consolidated LTFR cases with gas cost recovery or electric fuel component proceedings. *See* Entry ¶ 32 (Oct. 22, 2018). And Kroger and OMAEG cannot and do not deny that the *Amended LTFR* and *Tariff Cases* are fundamentally related. The Attorney Examiner properly granted AEP Ohio's original motion to consolidate, finding "consolidation of all three cases * * * reasonable and appropriate, in light of their common issues and the administrative efficiencies to be gained from consolidation" (*id.*), and Kroger and OMAEG have identified no good reason to reverse the Attorney Examiner's order. In sum, none of Kroger and OMAEG's arguments require the Commission to attempt to disentangle these two proceedings at this late stage.

V. Conclusion and Request for Relief

Based on the foregoing, the Commission should make a finding of need under R.C. 4928.143(B)(2)(c) for at least 900 MW of renewable resources in Ohio, in order to further consider the projects proposed by AEP Ohio in the *Tariff Cases*. If it is helpful to the Commission, an oral argument could be scheduled to facilitate consideration of these issues. Given the urgency and impact on the economics of the projects due to a delay, the Commission should also move forward with Phase Two of the hearing pending a decision on the need issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 27th day of March, 2019, via electronic transmission.

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Summary: Reply Post-Hearing Brief Regarding Its Amended Long-Term Forecast Report and the Issue of Need electronically filed by Ms. Christen M. Blend on behalf of Ohio Power Company