

**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

---

**MEMORANDUM CONTRA APPLICATION FOR REHEARING  
BY  
DIRECT ENERGY BUSINESS, LLC**

---

Ohio Power Company (AEP) seeks rehearing of the November 21, 2019 Opinion and Order finding that the company failed to demonstrate “a need for additional Ohio-sited renewable energy projects during the LFTR planning period.”<sup>1</sup> The grounds asserted for “rehearing” merely ask the Commission to issue an advisory opinion. The Commission should decline and dismiss the application.

AEP seeks three opinions. It first asks the Commission to explain or clarify the “legal and regulatory framework” alluded to in paragraph 127, where the Commission noted that “[n]othing in our decision today precludes AEP Ohio (or its affiliates) from investing in the Willowbrook or Highland projects and pursuing the projects’ claimed social and economic

---

<sup>1</sup> Order at ¶160

benefits through means other than a nonbypassable surcharge under R.C. 4928.143(B)(2)(c).”<sup>2</sup> The Commission explained, “the legal and regulatory framework in Ohio permits AEP Ohio or its affiliates, supporting intervenors, and interested stakeholders to invest in or support the Willowbrook, Highland, and other renewable energy projects.”<sup>3</sup> The legal and regulatory framework has been explained and litigated *ad nauseum*. It is hard to imagine what else the Commission could possibly say.

AEP then seeks a premature determination of how the Order could or should be interpreted in conjunction with two other orders: ESP IV and the company’s Green Tariff proceeding in Case No. 18-1392-EL-ATA. AEP is posing purely abstract, hypothetical questions. The Commission is not authorized to issue opinions on abstract or hypothetical questions. *See City of Cleveland v. Public Util. Comm’n*, 64 Ohio St.2d 209, 217 (1980); *Travis v. Pub. Utilities Comm'n of Ohio*, 123 Ohio St. 355, 356, 175 N.E. 586 (1931).

It is up to AEP, not the Commission, to decide appropriate next steps, if any, for AEP’s solar projects. AEP’s application for rehearing should be denied.

Date: January 2, 2020

Respectfully submitted,

/s/ Mark A. Whitt  
Mark A. Whitt (0067996)  
Lucas A. Fykes (0098471)  
**WHITT STURTEVANT LLP**  
88 E. Broad St., Suite 1590  
Columbus, Ohio 43215  
614.224.3946  
whitt@whitt-sturtevant.com  
fykes@whitt-sturtevant.com

*Attorneys for Direct Energy Business, LLC  
and Direct Energy Services, LLC*

---

<sup>2</sup> Order at ¶127

<sup>3</sup> Order at ¶127

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing document is being served via electronic mail this 2nd day of January 2020, upon the following:

bojko@carpenterlipps.com;  
callwein@keglerbrown.com;  
cblend@aep.com;  
christopher.miller@icemiller.com;  
christopher.healey@occ.ohio.gov;  
cluse@dickinsonwright.com;  
cmooney@ohiopartners.org;  
cpirik@dickinsonwright.com;  
ctavenor@theoec.org;  
dborchers@bricker.com;  
dparram@bricker.com;  
dressel@carpenterlipps.com;  
egallon@porterwright.com;  
glpetrucci@vorys.com;  
bhughes@porterwright.com;  
jkylercohn@BKLawfirm.com;  
joliker@igsenergy.com;  
jstock@beneschlaw.com;  
kboehm@BKLawfirm.com;  
ktreadway@oneenergyllc.com;

maureen.willis@occ.ohio.gov;  
mdortch@kravitzllc.com;  
mjsettineri@vorys.com;  
mkurtz@BKLawfirm.com;  
mleppla@theoec.org;  
mnugent@igsenergy.com;  
mpritchard@mwncmh.com;  
msilberman@beneschlaw.com;  
ocollier@beneschlaw.com;  
paul@carpenterlipps.com;  
rdove@keglerbrown.com;  
rsahli@columbus.rr.com;  
sasloan@aep.com;  
stnourse@aep.com;  
tdougherty@theoec.org;  
thomas.mcnamee@ohioattorneygeneral.gov  
todonnell@dickinsonwright.com;  
tony.mendoza@sierraclub.org;  
William.michael@occ.ohio.gov;  
wvorys@dickinsonwright.com;  
llee@beneschlaw.com;

*/s/ Lucas A. Fykes*  
One of the Attorneys for  
Direct Energy Business, LLC and Direct  
Energy Services, LLC

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**1/2/2020 4:33:27 PM**

**in**

**Case No(s). 18-0501-EL-FOR, 18-1392-EL-RDR, 18-1393-EL-ATA**

Summary: Memorandum Contra of Direct Energy Buisness, LLC to Ohio Power Company's Application for Rehearing electronically filed by Mr. Lucas A Fykes on behalf of Direct Energy Buisness, LLC