

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company for an Update to Its)	Case No. 21-978-EL-UNC
Environmental Commitment)	

APPLICATION

Ohio Power Company (“AEP Ohio” or the “Company”), an electric utility as defined in R.C. 4928.01(A)(11), seeks to update the commitment, as described in this Application, made by AEP Ohio on behalf of its affiliate, AEP Generation Resources (AEPGR), in connection with Paragraph III.D.10 of the December 14, 2015 Joint Stipulation and Recommendation (Stipulation) in Case Nos. 14-1693-EL-RDR et al. (*PPA Rider Cases*).

In Paragraph III.D.10 of the Stipulation, the Company committed that “AEP Ohio and its affiliates will retire, refuel, or repower Cardinal Unit 1 to 100% natural gas by December 31, 2030.” The Company’s commitment in Paragraph III.D.10 of the Stipulation was one of many provisions in the Stipulation that the Commission found beneficial. (*PPA Rider Cases*, Opinion and Order at 82-86.) Moreover, the Company agreed to largely maintain its ongoing obligations under the Stipulation even though the central feature of including the Affiliated PPA is being eliminated from the Stipulation’s PPA Proposal as a result of an intervening FERC decision – notwithstanding that the Company’s commitments from the original Stipulation were based on a settlement package that included purchase of the output of 3,111 MW of affiliate generation resources and the modified version incorporated merely 440 MW of capacity (less than 15% of the original capacity).

The Commission acknowledged this highly beneficial trade in the Second Entry on Rehearing in the 14-1693 cases:

In order to preserve the customer benefits of the stipulation, we approve AEP Ohio's request to modify the stipulation, such that the OVEC PPA is included in the PPA rider, the affiliate PPA is not included in the rider, and all other provisions of the stipulation remain in effect as approved or modified by the Commission.

PPA Rider Cases, Second Entry on Rehearing at ¶ 57.

The Sierra Club/AEPGR Agreement, enclosed to this Application as Exhibit A, was specifically referenced in the Stipulation and disclosed in discovery and admitted into the evidentiary record in the PPA Rider cases, essentially memorializing the commitments to pursue retiring, co-firing or conversion of specified PPA units (*PPA Rider Cases*, OMAEG Ex. 26; Joint Ex. 1 at 25.) The Commission also found as a matter of record evidence that the Sierra Club/AEPGR Agreement was provided in the course of discovery in the PPA Rider cases, consistent with R.C. 4928.145 (*PPA Rider Cases*, Opinion and Order at 51; OMAEG Ex. 26; Co. Ex. 53; P3/EPSC Ex. 11; Tr. XXI at 5186-5188). Ultimately, the Commission found in the *PPA Rider Cases* that the Sierra Club/AEPGR Agreement has “not been submitted to the Commission for approval and the Commission will not enforce the terms” of the agreement. (Opinion and Order at 51.)

After the PPA Rider cases concluded, the United States Environmental Protection Agency (USEPA) finalized regulations known as Effluent Limitation Guidelines (ELG) pursuant to authority in various Clean Water Act sections, including 33 U.S.C. §§1311, 1314, 1316, 1317, 1318, 1342, and 1361. The ELGs for the Steam Electric Power Generating Point Source Category are found in 40 C.F.R. 423 and are implemented through the National Pollutant Discharge Elimination System (“NPDES”) permit program administered by the Ohio Environmental Protection Agency (“OEPA”). AEPGR and Buckeye Power (collectively, the “Cardinal Owners”) co-own the Cardinal Power Plant in Brilliant, Ohio. As part of the Cardinal Owners’ ELG compliance strategy and for operational reasons, AEPGR and Buckeye Power wanted to create a potential option for retirement of Buckeye Power’s Cardinal Unit 3 as an alternative to retiring AEPGR’s Cardinal Unit 1. Owners that choose to comply with the ELG regulation

by committing to retire a unit by December 31, 2028 must submit a notice by October 13, 2021 of their intent to do so. In order to preserve the option of retiring Cardinal Unit 3 as a potential alternative to retiring Unit 1, the Cardinal Owners are in the process of determining whether they can submit a flexible notice to OEPA that indicates either Unit 1 or Unit 3 will be retired as part of the ELG compliance plan.

In that context, AEPGR and Sierra Club discussed and quickly entered into an Amendment to the original 2015 Sierra Club/AEPGR Agreement on September 14, 2021 – attached to this Application as Exhibit B. This Amendment replaced AEPGR’s commitment to retire, refuel, or repower Unit 1 by 2030 with a commitment to retire either Unit 1 or Unit 3 by 2028. Unit 3 is a larger (620 MW) unit than Unit 1 (590 MW) and Unit 3 has a higher heat rate than Unit 1; when these factors are combined with the notion of a retirement (versus repowering or refueling), it is obvious that the potential for swapping Unit 3 for Unit 1 in this context presents an unqualified opportunity and incremental environmental benefit.

While the modified agreement, which is not subject to approval by the Commission, requires AEPGR to commit to retire either Unit 1 or Unit 3 by 2028, the Company plans to only pursue the option of Cardinal Unit 3 retirement if the Commission approves the update to Paragraph III.D.10 of the Stipulation in the *PPA Rider Cases*. Stated differently, in accordance with the terms of Exhibit B, Sierra Club has already contractually obtained the incremental benefits of Cardinal Unit 1 retiring (versus refueling or repowering under the original agreement) and doing so by the end of 2028 (versus the end of 2030 per the original commitment). Absent a Commission finding that it does not need to approve the commitment update, the only way to realize the additionally beneficial option of retiring the larger Cardinal Unit 3 by 2028 in lieu of Cardinal Unit 1 is if the Commission approves the updated commitment (this outcome is also dependent on the OEPA accepting the flexible notice as described above and the Cardinal Owners ultimately agreeing and deciding to go with the Unit 3 retirement option).

Although the Commission found in the *PPA Rider Cases* (as quoted above) that it would not enforce the terms of the 2015 Sierra Club/AEPGR Agreement, the Company wishes to transparently

disclose the modified agreement with Sierra Club and present the updated agreement to the Commission for review and an opportunity to approve or find that approval is not needed – given its basis in Paragraph III.D,10 of the original Stipulation while recognizing that the PPA Rider was effectively replaced through legislation enacting R.C. 4928.148 as of January 1, 2020. In sum, the updated commitment is a “no brainer” with the incremental difference being purely beneficial to the public and the environment.

I. CONCLUSION

For the reasons stated above, AEP Ohio requests that the Commission: (1) find that its approval is not needed for the commitment to be updated or, (2) to the extent approval is required, either summarily adopt the updated commitment or establish a quick comment opportunity for interested parties and adopt the updated commitment as soon as possible.

Respectfully submitted,

/s/ Steven T. Nourse

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Agreement

This agreement ("Agreement") is executed this 14th day of December, 2015, by and between AEP Generation Resources Inc. ("AEPGR"), an indirect subsidiary of American Electric Power Company, Inc. and Sierra Club (individually a "Party", collectively, the "Parties"), as set forth below.

I. Recitals

WHEREAS, AEPGR owns an electric generating unit known as Cardinal Unit 1, located in Jefferson County, Ohio and two electric generating units known as Conesville Units 5 and 6, respectively, located in Coshocton County, Ohio;

WHEREAS, AEPGR also owns an interest, along with other entities/owners, in generating units known as Conesville Unit 4, located in Coshocton County, Stuart Units 1 through 4, located in Brown County, Ohio, and Zimmer Unit 1, located in Clermont County, Ohio (any one unit individually a "Co-Owned Unit", or collectively, the "Co-Owned Units");

WHEREAS, Ohio Power Company ("AEP Ohio"), a subsidiary of American Electric Power Company, Inc., filed an amended application, dated May 15, 2015, with the Public Utility Commission of Ohio ("PUCO" or "Commission") that seeks, in part, approval of cost recovery for an affiliate power purchase agreement between AEPGR as Seller and AEP Ohio as Buyer that is proposed to include Cardinal Unit 1, Conesville Units 5 and 6, and the Co-Owned Units ("Affiliate PPA");

WHEREAS, Sierra Club has intervened in AEP Ohio's power purchase agreement proceeding, which has been docketed as PUCO Case No. 14-1693-EL-RDR *et al.* and has opposed AEP Ohio's proposed Affiliate PPA, and has filed expert testimony in the case;

WHEREAS, AEPGR and Sierra Club are both sophisticated entities represented by counsel;

WHEREAS, AEPGR and Sierra Club both freely choose to enter into this Agreement and Sierra Club has freely chosen to sign the "Joint Stipulation and Recommendation," filed by AEP Ohio in PUCO Case No. 14-1693-EL-RDR *et al.* (herein referred to as "Joint Stipulation");

NOW, THEREFORE, the Parties agree as follows:

II. Agreements

A. AEPGR agrees as follows:

1. With respect to Conesville Units 5 and 6, AEPGR makes the following commitments:
 - a) Subject to AEP Ohio receiving cost-recovery approval on or before January 31, 2017 and all other needed regulatory approvals as contemplated in the Joint Stipulation, AEPGR will complete the natural gas co-firing project for Conesville Units 5 and 6 by December 31, 2017. If the Commission's cost recovery decision is not issued until after January 31, 2017 (the lead time needed for construction), the completion deadline may change commensurately based on the timing of the Commission's actual cost recovery approval decision.
 - b) If AEP Ohio's application for cost recovery to convert Conesville Units 5 and 6 to natural gas co-firing is approved as contemplated in the Joint Stipulation, AEPGR shall, from the completion of the co-firing project through December 31, 2029, limit the coal heat input to no more than 28,737,180 MMBTUs per year (annualized for any partial years) combined for both units Conesville 5 and 6.
 - c) Within six (6) months of completing the natural gas co-firing project for the conversion of Conesville Units 5 and 6 as contemplated in the Joint Stipulation, AEPGR will file an application to amend the Title V operating permit for the Conesville facility. Such permit amendment shall establish that from date of issuance, AEPGR will limit the coal heat input to no more than 28,737,180 MMBTUs per year (annualized for any partial years) combined for both units Conesville 5 and 6.
 - d) Conesville Unit 6 will cease burning solid fuel, including coal, by either retiring, refueling, or repowering to 100% natural gas by December 31, 2029. If PJM pursues a Reliability Must Run ("RMR") arrangement or equivalent mechanism for continued operation of the unit due to transmission reliability impacts of retiring of the unit, AEPGR will retire, refuel, or repower the unit at the end of such RMR arrangement or equivalent mechanism.

e) Conesville Unit 5 will cease burning solid fuel, including coal, by either retiring, refueling, or repowering to 100% natural gas by December 31, 2029. If PJM pursues a RMR arrangement or equivalent mechanism for continued operation of the unit due to transmission reliability impacts of retiring of the unit, AEPGR will retire, refuel, or repower the unit at the end of such RMR arrangement or equivalent mechanism.

2. AEPGR will cease burning solid fuel, including coal, by either retiring, refueling, or repowering Cardinal Unit 1 to 100% natural gas by December 31, 2030. If PJM pursues a RMR arrangement or equivalent mechanism for continued operation of the unit due to transmission reliability impacts of retiring of Cardinal Unit 1, AEPGR will retire, refuel, or repower the Unit at the end of such RMR arrangement or equivalent mechanism.
3. With respect to Conesville Units 5 and 6 and Cardinal Unit 1 as it relates to the "Retirement Readiness" docket referenced in the Joint Stipulation (Section III., Paragraph D. 11), AEPGR will provide AEP Ohio with the data and information needed for AEP Ohio to complete the annual reports contemplated by Section III., Paragraph D. 11 of the Joint Stipulation.
4. With respect to the Co-Owned Units as it relates to the "Generation Transition" docket referenced in the Joint Stipulation (Section III., Paragraph D. 12), AEPGR will provide AEP Ohio with the data and information needed for AEP Ohio to complete the annual reports contemplated by Section III., Paragraph D. 12 of the Joint Stipulation. AEPGR will use best efforts to develop a plan with the owners of the Co-Owned Units to retire, repower or refuel these Co-Owned Units as contemplated in Section III., Paragraph D. 12. i. of the Joint Stipulation, and if the owners of the Co-Owned Units are not willing to commit to early retirement or refueling, AEPGR will use best efforts to consolidate ownership of the Co-Owned Units so that it can further explore potential early retirement scenarios.
5. AEPGR or other AEP affiliates will participate in the requests for proposal associated with Joint Stipulation Section III., Paragraph I. - Environmental and Renewable Energy Projects.

B. In exchange, Sierra Club agrees as follows:

1. Sierra Club agrees to sign the "Joint Stipulation and Recommendation," filed by AEP Ohio in PUCO Case No. 14-1693-EL-RDR *et al.* and to not oppose the actions or efforts associated with items A. 1 thru 5 of this Agreement.

III. Assignment

- A. This Agreement will be binding upon the successors and assigns of AEPGR and may be assigned, in whole or in part to another entity in connection with the sale or transfer of any of the generation units referenced herein, and AEPGR shall be relieved of its obligations hereunder with respect to any unit sold, transferred or assigned, on an after such sale, transfer or assignment provided that the purchaser or transferee executes an assignment agreement as a condition of the sale or transfer and agrees in writing to be bound by and liable for all of AEPGR's requirements in this Agreement being assumed as set forth in D below. This Agreement is not assignable by the Sierra Club.
- B. The Parties agree that the operational limits, retirement, refueling, and/or repowering commitments set forth in this Agreement apply to any and all future owners of Cardinal Unit 1, Conesville Unit 5, and Conesville Unit 6.
- C. AEPGR shall expressly condition the sale or transfer of Cardinal Unit 1, Conesville Unit 5, and/or Conesville Unit 6 on any current or future buyer's or transferee's express acceptance of the operational limits, retirement, refueling, and/or repowering commitments set forth in this Agreement.
- D. With respect to any sale or transfer of Cardinal Unit 1, Conesville Unit 5, and/or Conesville Unit 6, the purchaser or transferee shall execute an assignment agreement as a condition of the sale or transfer where the purchaser or transferee agrees in writing to be bound by and liable for all the requirements of this Agreement assumed by the purchaser or transferee.

IV. Remedies

- A. The Parties agree that neither Party will be responsible or liable for monetary damages (direct, indirect, consequential, etc.) as a result of any breach of this Agreement. The Parties acknowledge and agree that monetary damages are not available as a remedy in the event the obligations of this Agreement are breached.

The Parties agree that monetary damages would not be an adequate remedy for material breach of this Agreement, and that no adequate remedy at law exists for noncompliance with the terms of this Agreement.

- B. Accordingly, the Parties expressly agree that an award of injunctive relief may be an appropriate remedy for a material breach of the obligations under this Agreement, provided the reviewing court has followed appropriate procedures for issuing injunctive relief. The Parties also agree that should either Party commence any legal action to enforce this Agreement, that neither Party will seek any remedy except specific performance.
- C. The Parties agree that each Party will bear its own costs in any litigation to enforce or related to this Agreement.

V. Dispute Resolution

- A. Before commencing any legal action to enforce this Agreement for a Party's material breach of this Agreement, a Party must: i) notify the other Party in writing of such material breach providing details regarding the nature of the breach, so that the other Party could explore whether such material breach can be cured through diligence and ii) take at least 30 days before filing any such action, during which period the Parties will undertake all reasonable efforts to resolve the matter, provided, further, if the non-performing Party is working to diligently cure the material breach, and such cure cannot reasonably be accomplished in 30 days, such Party, provided it exercises diligence to cure the breach, will be given more time to cure the breach before an action is filed.

- 1. For AEPGR, any such notice shall be sent by U.S. certified mail, return receipt requested or by overnight courier with return receipt requested to:

President
AEP Generation Resources Inc.
155 W. Nationwide Blvd., Suite 500
Columbus, OH 43215

With a copy to Chief Legal at the same address.

- 2. For Sierra Club, any such notice shall be sent by electronic and U.S. mail to:

Litigation Director, Environmental Law Program
Sierra Club
85 Second Street, 2nd Floor
San Francisco, CA 94105

- B. Should either Party wish to substitute the person to receive any notice related to this Agreement, that Party shall provide written notice to the other Party regarding such substitution.

VI. Modification and Termination

- A. Any amendments to this Agreement must be in a signed written agreement between the Parties. This Agreement is null and void if the Joint Stipulation is not approved as contemplated in the Joint Stipulation or is rejected in any legal proceedings.

VII. Choice of Law


- A. This Agreement will be construed and governed in all respects by the laws of the State of Ohio, without regard to the principles of conflicts of law. Any dispute arising over the terms and conditions contained in this Agreement will be resolved by a court of competent jurisdiction located in Franklin County, Ohio.

VIII. Authority

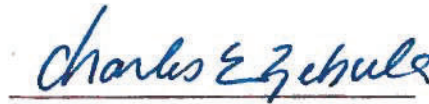
- A. Each of the signatories to this Agreement affirms that she or he is authorized to enter into the terms and conditions of this Agreement. Each Party may validly execute this Agreement by facsimile signature or in counterparts, each of which will constitute an original and all of which constitute one and the same Agreement.

This Agreement has been executed by AEP Generation Resources Inc. and Sierra Club and is effective as of December 14, 2015.

On Behalf of Sierra Club:


Tony G. Mendoza

On Behalf of AEP Generation Resources Inc.:



First Amendment

This is the first amendment ("First Amendment") to the December 14, 2015 agreement ("Agreement") between AEP Generation Resources Inc. ("AEPGR") and Sierra Club (collectively the "Parties"). All definitions in the Agreement are incorporated herein.

WHEREAS, the Cardinal Power Plant in Jefferson County, Ohio, consists of three units: Unit 1, which is owned by AEPGR; and Units 2-3, which are owned by Buckeye Power, Inc. ("Buckeye").

WHEREAS, the Cardinal Power Plant must comply with the effluent limit guidelines ("ELG") of the United States Environmental Protection Agency ("US EPA"), and under the ELG, the deadline to submit a Notice of Planned Participation ("NPP") is October 13, 2021.


WHEREAS, AEPGR and Buckeye wish to submit an NPP that commits to retire one unit at the Cardinal Power Plant (either Cardinal Unit 1 or Cardinal Unit 3) by December 31, 2028, with the choice of which unit to retire to be made by AEPGR and Buckeye at a later time.

NOW, THEREFORE, the Parties agree as follows:

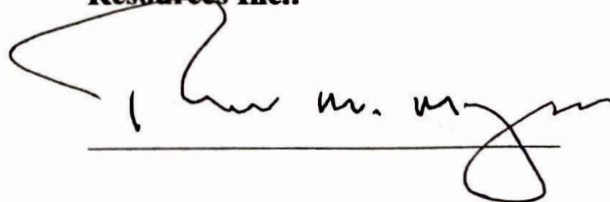
- I. Paragraph II.A.2 of the Agreement will be deleted in its entirety and replaced with the following:
 2. AEPGR must effect the retirement of one unit at the Cardinal Power Plant (either Cardinal Unit 1 or Cardinal Unit 3) by December 31, 2028. If PJM pursues a RMR arrangement or equivalent mechanism for continued operation of the Cardinal Unit to be retired (either Unit 1 or Unit 3) due to transmission reliability impacts of retiring such Unit, such Unit will retire at the end of such RMR arrangement or equivalent mechanism. Retirement or retire in the context of this paragraph means the permanent cessation of electric generation for the selected Cardinal Unit.
- II. Except as set forth above, all other provisions of the Agreement remain the same.

This First Amendment has been executed by AEP Generation Resources Inc. and Sierra Club on September 14, 2021.

On behalf of Sierra Club:



**On behalf of AEP Generation
Resources Inc.:**



This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 21-0978-EL-UNC

Summary: Application In the Matter of the Application of
Ohio Power Company for an Update to Its Environmental Commitment

electronically filed by Mr. Steven T. Nourse on behalf of Ohio Power Company