

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Power	)	
Purchase Agreement Rider of Ohio Power	)	Case No. 18-1004-EL-RDR
Company for 2018.	)	
	)	
In the Matter of the Review of the Power	)	
Purchase Agreement Rider of Ohio Power	)	Case No. 18-1759-EL-RDR
Company for 2019.	)	

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**INTERLOCUTORY APPEAL,  
REQUEST FOR CERTIFICATION TO THE PUCO COMMISSIONERS,  
AND  
APPLICATION FOR REVIEW  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") appeals to the PUCO Commissioners a ruling by PUCO Attorney Examiner Sarah J. Parrot that limited OCC's discovery of information related to AEP's charges to a million consumers for OVEC coal plants. The ruling, dated December 23, 2021, granted AEP Ohio's motion for protective order to limit OCC's deposition of a designated corporate representative of AEP. The deposition occurred on December 22, 2021 and AEP produced Jason Stegall as its corporate representative for the deposition. The ruling is reflected in the attached Entry.

OCC filed its deposition notice on November 19, 2021, seeking reports, forecasts, policies, and other information that pertains to 2020 and 2021, among other things.<sup>1</sup> The Attorney Examiner's ruling included that the information pertaining to 2020 and 2021 is beyond the scope of the audit period in this case.<sup>2</sup> OCC seeks certification of this appeal to the PUCO Commissioners.

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<sup>1</sup> See Notice (November 19, 2021).

<sup>2</sup> Entry (December 23, 2021) at 4.

Under O.A.C. 4901-1-15(B) and (E), the PUCO should reverse the Attorney Examiner's ruling granting AEP's motion for protective order.

The Attorney Examiner's ruling represents a departure from past precedent. An immediate determination is needed to prevent the likelihood of undue prejudice or expense to OCC and AEP's consumers, considering that the requested information would likely produce highly relevant information including information that would be admissible at hearing.

The PUCO's ruling should occur on a timeline to allow OCC to complete its deposition of AEP's witness, prior to the January 12, 2022 hearing. AEP should be also be ordered to produce the requested documents before the deposition reconvenes.

The reasons for granting this interlocutory appeal are more fully stated in the following memorandum in support.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ John Finnigan  
Christopher Healey (0086027)  
Counsel of Record  
William Michael (0070921)  
John Finnigan (0018689)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone [Healey]: (614) 466-9571  
Telephone [Michael]: (614) 466-1291  
Telephone [Finnigan]: (614) 466-9585  
[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)  
[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)  
[john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  
(willing to accept service by e-mail)

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018.	)	)	Case No. 18-1004-EL-RDR
	)	)	
In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2019.	)	)	Case No. 18-1759-EL-RDR
	)	)	

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

AEP is a recipient of corporate welfare that supports the outmoded and polluting OVEC coal plants. It wants the PUCO to prevent Ohio’s consumer advocate from inquiring into those subsidies. Unfortunately for consumers, a PUCO Attorney Examiner ruling has unreasonably limited OCC’s inquiry into the subsidies. Specifically, the Attorney Examiner has prevented OCC from obtaining information regarding 2020 and 2021 because it is purportedly “outside the scope” of the audit period in this case.<sup>3</sup> The Attorney Examiner’s ruling is inconsistent with the past PUCO precedent that OCC cited on this issue when opposing AEP’s motion for protective order.<sup>4</sup> It should be reversed.

**II. STANDARD OF REVIEW**

Under O.A.C. 4901-1-15(B), a party may take an interlocutory appeal to the PUCO Commissioners if the appeal is certified by the Examiners under O.A.C. 4901-1-15(B). The standard applicable to certifying such an appeal is “that the appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure

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<sup>3</sup> Entry (December 23, 2021) at 4.

<sup>4</sup> See OCC’s Memorandum Contra (December 20, 2021) at 4-10.

from past precedent and an immediate determination by the commission is needed to prevent the likelihood of undue prejudice ... to one or more of the parties, should the commission ultimately reverse the ruling in question.”<sup>5</sup> Once an appeal has been certified under O.A.C.4901-1-15(B), the PUCO may affirm, reverse, or modify the ruling or dismiss the appeal.<sup>6</sup>

### III. REQUEST FOR CERTIFICATION

**A. The appeal is taken from a ruling that departs from past precedent, including Ohio Supreme Court precedent, to the detriment of consumers paying the coal-plant subsidy to AEP.**

At issue is the protection of a million AEP consumers from subsidizing two uneconomic and polluting coal plants (one that is not even located in Ohio). The Entry preventing OCC from obtaining information from 2020 and 2021 departs from past PUCO precedent and violates OCC’s discovery rights under R.C. 4903.082 and O.A.C. 4901-1-16 et seq.

As we described at length in our Memorandum Contra AEP’s motion for protective order, the PUCO routinely allows parties to obtain information outside of the audit period where appropriate.<sup>7</sup> The discovery OCC seeks in this case is relevant to issues in the present case. The PUCO should therefore overrule the Attorney Examiner.

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<sup>5</sup> Ohio Adm. Code 4901-1-15(B).

<sup>6</sup> Ohio Adm. Code 4901-1-15(E).

<sup>7</sup> See OCC’s Memorandum Contra at 4-10; see also *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of the East Ohio Gas Company d/b/a Dominion East Ohio and Related Matter*, Case No. 05-219-GA-GCR, Entry, 2006 Ohio PUC LEXIS 841 (July 28, 2006).

In *In re Dominion Purchased Gas Adjustment Clause*, the PUCO ruled that OCC could obtain discovery of certain transactions going back ten years even though the case only involved a prudency review of Dominion's gas costs for the two-year period ending October 31, 2005.<sup>8</sup> The Attorney Examiner reasoned that the sought-after discovery was relevant to whether the costs during the audit period (and during the prior audit periods) was just and reasonable.<sup>9</sup> The ruling also discusses several other cases where the PUCO allowed discovery of matters outside the audit period.<sup>10</sup> *Dominion's* rationale is equally applicable here, as we explained at length in our Memorandum Contra AEP's motion for protective order.<sup>11</sup>

The PUCO's order approving the AEP PPA Rider (to make consumers subsidize coal plants) noted: "Our approval of AEP Ohio's request was based on evidence in the record reflecting that the OVEC PPA alone is projected to provide ratepayers with a net credit of approximately \$110 million..."<sup>12</sup> The PUCO is entitled to weigh those earlier cost projections against the actual costs. The PUCO could conclude that current evidence shows that it is unlikely the PPA Rider will ever result in a credit and could disallow the OVEC costs on that basis. The Ohio Supreme Court established this point in a prior AEP Ohio case:

**The commission is entitled to modify a prior order, provided that it explains the change and the new regulatory course is permissible.**

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<sup>8</sup> *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of the East Ohio Gas Company d/b/a Dominion East Ohio and Related Matter*, Case No. 05-219-GA-GCR, Entry, 2006 Ohio PUC LEXIS 841 (July 28, 2006).

<sup>9</sup> *Id.* at ¶ 14.

<sup>10</sup> *Id.* at ¶¶ 12-13.

<sup>11</sup> See OCC's Memorandum Contra at 4-10.

<sup>12</sup> *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Purchase Power Agreement*, Case No. 14-1693-EL-RDR, Fifth Entry on Rehearing at ¶ 40 (Apr. 5, 2017).

We have instructed the commission to ‘respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.’ This does not mean, however, that the commission may never revisit a particular decision, only that if the commission does change course, it must explain why. ‘When the commission has made a lawful order, it is bound by certain institutional constraints to justify that change before such order may be changed or modified.’<sup>13</sup>

Further, the Ohio Supreme Court recently reversed the PUCO in denying OCC its discovery rights under law and rule. The case involved the PUCO’s denial of discovery with regard to the certification of FirstEnergy Advisors.<sup>14</sup>

The discovery OCC seeks goes to the point that the OVEC charge will never act as a bill credit as the PUCO found it would; therefore, the PPA Rider mechanism is illusory and is unjust and unreasonable. Then-PUCO Chair Haque addressed this point, in his concurring opinion when the PUCO originally approved the OVEC charges:

After a period of charges, I expect to see credits from the PPA riders. I'm not going to give definitive timelines, but that is my expectation. If this mechanism is truly a hedge, wherein consumers will pay when market prices are low, but will be credited money back when market prices are high, then what exactly is the point of the hedge if ratepayers never experience the credits? If ratepayers never experience the credits, then *the PPA rider mechanism would then act as a somewhat illusory insurance policy.*<sup>15</sup>

The discovery OCC seeks goes to whether the OVEC charges will ever result in a credit for consumers. The PUCO is entitled to consider this evidence because, as Commissioner Haque noted, if the OVEC charges do not result in a net credit then it is an illusory insurance policy and would therefore be unjust and unreasonable.

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<sup>13</sup> *In re Application of Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056 at ¶ 16 (Citations omitted).

<sup>14</sup> *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Opinion No. 2021-Ohio-3630.

<sup>15</sup> *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Purchase Power Agreement*, Case No. 14-1693-EL-RDR, Opinion and Order, Concurring Opinion of Commissioner Haque at 4 (Mar. 31, 2016).

When the PUCO originally approved AEP's PPA Rider in an ESP case, OCC argued that the costs of the PPA Rider would render the ESP too costly such that it was not "more favorable in the aggregate" than a market-rate offer.<sup>16</sup> The premise for the PUCO's approval of the PPA Rider was that the rider's costs were subject to approval in the next ESP case and the PUCO would determine at that time whether the ESP costs were more favorable in the aggregate than the market-rate option. As the PUCO's Merit Brief notes in OCC's appeal of the ESP to the Supreme Court of Ohio:

Finally, with respect to costs associated with future filings required by the stipulation, the Commission properly found that OCC's concerns were premature, The future filings are only commitments for future approval, not modifications to the existing ESP. The Commission will consider any such costs, if they are approved for recovery, in AEP Ohio's next ESP proceeding, when the ESP/MRO test is applied.<sup>17</sup>

The Supreme Court confirmed this point when it affirmed the PUCO's ruling approving the ESP: "the renewable-energy projects at issue were to be developed in the future, and the commission would determine any cost recovery [under the PPA Rider] in Ohio Power's next ESP case."<sup>18</sup>

OCC was prevented from presenting evidence of OVEC costs when the ESP was originally approved (because the PUCO ruled it was premature – the actual costs were not known). And now that the actual costs are known, AEP argued (and the Attorney Examiner agreed) that OCC cannot present evidence of the actual costs vs. projected costs (because it's too late – the PUCO already approved the ESP). Under AEP's approach, now stamped with the

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<sup>16</sup> *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Purchase Power Agreement*, Case No. 14-1693-EL-RDR, OCC Application for Rehearing at 44-47 (May 2, 2016).

<sup>17</sup> *In re Application of Ohio Power Co.*, 155 Ohio St.3d 326, 2018-Ohio-4698, Appellee's Merit Brief of Public Utilities Commission of Ohio at 34 (Oct. 23, 2017).

<sup>18</sup> *Id.*, Opinion at ¶ 37.

Attorney Examiner's approval, the PUCO would *never* be allowed to consider whether the actual OVEC costs are unreasonably higher than the original projections.

The discovery OCC seeks goes to earlier projections of OVEC costs and it is relevant to the issue of whether the PPA Rider actually serves as a hedge. If the evidence shows net credits to customers are not likely, the PUCO could conclude that the OVEC costs are unjust and unreasonable. Prior PUCO cases establish that the PUCO can consider evidence from outside the audit period if it relates to whether the charges covered by the audit are just and reasonable. The information OCC seeks go to this point and are a proper topic for discovery. The PUCO should therefore overrule the Attorney Examiner's Entry granting AEP's motion for protective order.

The Attorney Examiner's ruling in this case does not even address *Dominion* or the authority cited therein.<sup>19</sup> Nor does it address our detailed rationale for our need for the subpoenaed information. The Entry includes a two-sentence conclusion without supporting analysis:

The attorney examiner finds that such information is not relevant to the subject matter of these cases or reasonably calculated to lead to the discovery of admissible evidence. The deposition and production of documents should, therefore, be limited to topics related to the period up to and including the end of the audit period, December 31, 2019.<sup>20</sup>

The Entry is a departure from past precedent.

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<sup>19</sup> See Entry (December 23, 2021).

<sup>20</sup> *Id.* at 4.

The Entry is also a departure from precedent from other jurisdictions involving these same costs. The Michigan Public Service Commission (“MPSC”) recently issued an order disallowing AEP Ohio’s affiliate, Indiana Michigan Power (“I&M”), from collecting OVEC costs for 2019 – which are also the subject of review in this case. The Michigan case involved I&M’s application to implement a power supply cost recovery (“PSCR”) plan. This plan included a request to utilize OVEC for its power supply and charge consumers for the entire allocated costs associated with the I&M portion of the Inter-Company Power Agreement (“ICPA”). The Commission Staff agreed with I&M that the OVEC costs in the plan were “within the range of reasonableness” and should be approved.

Sierra Club contended that the OVEC costs are substantially higher than market prices and should be denied. Sierra Club asked the Commission to recognize OVEC as an affiliate of I&M and place an affiliate price cap on OVEC costs (this limits the OVEC charges to be the lesser of 110% of the fully allocated embedded costs or the actual market prices for energy and capacity).

The MPSC found that an affiliate relationship exists between I&M and OVEC and the price cap should apply. The MPSC’s Order states:

[W]hile long-term contracts are encouraged, this does not absolve a utility from monitoring and responding to market conditions and system needs and making good faith efforts to manage existing contracts...[S]uch efforts may include meaningful attempts to renegotiate contract provisions to ensure continued value for ratepayers as market conditions change. \* \* \*

The [MPSC] does not control the business judgment or decisions of utilities, but the Commission has a duty to customers

to assure utilities are not subsidizing uneconomic, unreasonable, and imprudent decisions through customer rates.<sup>21</sup>

I&M is AEP Ohio's affiliate operating in Indiana and Michigan. AEP Ohio presented no evidence that it took any different steps than I&M took to manage the OVEC costs, particularly when the actual results started to come in much higher than the original projections. The information that OCC sought for 2020 and 2021 is relevant to this issue of whether AEP Ohio acted reasonably by failing to take steps to manage the costs by, for example renegotiating the contract and securing another financial hedge.

Consumers deserve more. This appeal should be certified to the PUCO. The PUCO should overrule the Attorney Examiner and order AEP to produce the requested witness and information by January 3, 2021.

**B. An immediate determination by the PUCO is needed to prevent the likelihood of undue prejudice to AEP's residential consumers, who OCC represents.**

The Attorney Examiner's Entry has prevented the disclosure of information necessary for the protection of consumers. An immediate ruling is needed on this issue so that OCC can fully evaluate the subsidies that AEP charges consumers for the OVEC coal plants. With the impending evidentiary hearing scheduled for January 12, 2022,, an immediate ruling is needed. Otherwise, OCC (and consumers) will be unduly prejudiced by having to continue paying unjust and unreasonable charges to subsidize the plants. The PUCO itself would be denied adequate information in the record for making a decision in this case.

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<sup>21</sup> *In the Matter of the Application of Indiana Michigan Power Company for approval to implement a power supply cost recovery plan for the twelve months ending December 31, 2021*, Case No. U-20804, Order at 19 (Nov. 18, 2021).

#### IV. APPLICATION FOR REVIEW

The ruling prohibiting OCC from obtaining information from 2020 and 2021 should be reversed. The Entry is a departure from past precedent, including Ohio Supreme Court precedent.

As explained above, in *In re Dominion Purchased Gas Adjustment Clause*, the PUCO allowed OCC to obtain discovery for a period of ten years prior to the audit period because these transactions were relevant to the issue of whether the charges during the audit period were just and reasonable.<sup>22</sup> The same reasoning applies here.

The coal-plant information that OCC requested for the future periods goes to how the current audit-period charges for OVEC should be judged for consumer protection. That information is relevant considering that the PUCO allowed AEP to charge consumers for the coal plants based on future projections, among other things.

In particular, the PUCO approved the PPA Rider based on evidence that it would produce a net credit of \$110 million over the life of the rider (originally scheduled to end in 2024).<sup>23</sup> The sought-after evidence suggests that the PPA Rider, over its life which includes the audit periods, will not be a credit to consumers. Therefore, it is relevant to whether the present charges for the audit period are just and reasonable.

The Ohio Supreme Court recently reversed the PUCO in denying OCC its discovery rights under law and rule. The case involved the PUCO's denial of discovery with regard to the

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<sup>22</sup> *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of the East Ohio Gas Company d/b/a Dominion East Ohio and Related Matter*, Case No. 05-219-GA-GCR, Entry, 2006 Ohio PUC LEXIS 841 (July 28, 2006).

<sup>23</sup> *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Purchase Power Agreement*, Case No. 14-1693-EL-RDR, Fifth Entry on Rehearing at ¶ 40 (Apr. 5, 2017).

certification of FirstEnergy Advisors.<sup>24</sup> The Attorney Examiner's ruling is denying OCC its lawful discovery rights (and denying consumer protection).

The PUCO should order AEP to produce the subpoenaed information from 2020 and 2021.

## V. CONCLUSION

For the reasons explained above, the Attorney Examiner should certify this interlocutory appeal. In the interest of consumer protection, the PUCO should reverse the December 23, 2021 Entry.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

/s/ John Finnigan

Christopher Healey (0086027)  
Counsel of Record  
William Michael (0070921)  
John Finnigan (0018689)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone [Healey]: (614) 466-9571  
Telephone [Michael]: (614) 466-1291  
Telephone [Finnigan]: (614) 466-9585  
[christopher.healey@occ.ohio.gov](mailto:christopher.healey@occ.ohio.gov)  
[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)  
[john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  
(willing to accept service by e-mail)

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<sup>24</sup> *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, Slip Opinion No. 2021-Ohio-3630.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Interlocutory Appeal, Request for Certification to the Commission, and Application for Review by Office of the Ohio Consumers' Counsel was provided electronically to the persons listed below this 28<sup>th</sup> day of December 2021.

*/s/ John Finnigan*  
John Finnigan  
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

### **SERVICE LIST**

[kyle.kern@ohioAGO.gov](mailto:kyle.kern@ohioAGO.gov)  
[thomas.lindgren@ohioAGO.gov](mailto:thomas.lindgren@ohioAGO.gov)  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)  
[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com)  
[rdove@keglerbrown.com](mailto:rdove@keglerbrown.com)

Attorney Examiners:  
[sarah.parrot@puco.ohio.gov](mailto:sarah.parrot@puco.ohio.gov)  
[greta.see@puco.ohio.gov](mailto:greta.see@puco.ohio.gov)

[stnourse@aep.com](mailto:stnourse@aep.com)  
[EGallon@porterwright.com](mailto:EGallon@porterwright.com)  
[mjschuler@aep.com](mailto:mjschuler@aep.com)  
[matthew@msmckenzieltd.com](mailto:matthew@msmckenzieltd.com)  
[mpritchard@mcneeslaw.com](mailto:mpritchard@mcneeslaw.com)  
[tlong@mcneeslaw.com](mailto:tlong@mcneeslaw.com)  
[bmckenney@mcneeslaw.com](mailto:bmckenney@mcneeslaw.com)  
[megan.wachpress@sierraclub.org](mailto:megan.wachpress@sierraclub.org)  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
[donadio@carpenterlipps.com](mailto:donadio@carpenterlipps.com)  
[paul@carpenterlipps.com](mailto:paul@carpenterlipps.com)

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE  
POWER PURCHASE AGREEMENT RIDER  
OF OHIO POWER COMPANY FOR 2018.

CASE NO. 18-1004-EL-RDR

IN THE MATTER OF THE REVIEW OF THE  
POWER PURCHASE AGREEMENT RIDER  
OF OHIO POWER COMPANY FOR 2019.

CASE NO. 18-1759-EL-RDR

### ENTRY

Entered in the Journal on December 23, 2021

{¶ 1} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 2} R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 3} In Case No. 13-2385-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for an ESP for the period of June 1, 2015, through May 31, 2018, pursuant to R.C. 4928.143. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (*ESP 3 Case*), Opinion and Order (Feb. 25, 2015), Second Entry on Rehearing (May 28, 2015), Fourth Entry on Rehearing (Nov. 3, 2016), Seventh Entry on Rehearing (Apr. 5, 2017). Among other matters, the Commission authorized AEP Ohio to establish a placeholder Power Purchase Agreement (PPA) Rider and required AEP Ohio to justify any future request for cost recovery in a separate proceeding. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 20-22, 25-26.

{¶ 4} Subsequently, in Case No. 14-1693-EL-RDR, et al., the Commission modified and approved a stipulation and recommendation pertaining to AEP Ohio's proposal to populate the placeholder PPA Rider approved in the *ESP 3 Case*. *In re Ohio Power Co.*, Case

No. 14-1693-EL-RDR, et al. (*PPA Rider Case*), Opinion and Order (Mar. 31, 2016), Second Entry on Rehearing (Nov. 3, 2016), Fifth Entry on Rehearing (Apr. 5, 2017). The Commission directed that the PPA Rider be subject to an annual audit. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 89-90.

{¶ 5} In Case No. 16-1852-EL-SSO, et al., the Commission modified and approved a stipulation and recommendation, which authorized AEP Ohio to implement an ESP for the period of June 1, 2018, through May 31, 2024, and provided for the continuation of the PPA Rider. *In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, et al. (*ESP 4 Case*), Opinion and Order (Apr. 25, 2018) at ¶ 53.

{¶ 6} By Entry dated January 15, 2020, the Commission directed Staff to issue a request for proposal for the audit services necessary to assist the Commission with the audit of AEP Ohio's PPA Rider for the period of January 1, 2018, through December 31, 2019.

{¶ 7} On March 11, 2020, the Commission selected London Economics International LLC (LEI) to conduct the prudency and performance audit of AEP Ohio's PPA Rider. Confidential and public versions of LEI's audit report were filed on September 16, 2020, in Case No. 18-1004-EL-RDR, and on September 17, 2020, in Case No. 18-1759-EL-RDR.

{¶ 8} By Entry dated January 19, 2021, the attorney examiner granted motions to intervene in these proceedings filed by the Ohio Consumers' Counsel (OCC) and Industrial Energy Users-Ohio. On September 10, 2021, the attorney examiner also granted motions for intervention filed by Ohio Energy Group, Ohio Manufacturers' Association Energy Group (OMAEG), The Kroger Co. (Kroger), Ohio Partners for Affordable Energy, and Natural Resources Defense Council.

{¶ 9} On October 5, 2021, the attorney examiner established a procedural schedule for these cases, including an evidentiary hearing to commence on January 12, 2022.

{¶ 10} On November 19, 2021, OCC filed a notice to take a deposition of a representative of AEP Ohio and a request for production of documents.

{¶ 11} On December 3, 2021, AEP Ohio filed a motion for protective order pursuant to Ohio Adm.Code 4901-1-24(A)(4) and 4901-1-12. In the motion, AEP Ohio states that it has reached an agreement with OCC to produce the Company's hearing witnesses for deposition on December 23, 2021, after the Company has filed its testimony. AEP Ohio notes, however, that it has been unable to agree with OCC on the scope of the document requests and deposition topics and that the Company, therefore, seeks an order providing that the Company is not required to provide testimony or to produce documents relating to matters that fall outside the scope and purpose of these audit proceedings. According to AEP Ohio, OCC seeks discovery on several matters that are irrelevant to the present cases. AEP Ohio explains that, among other things, OCC seeks discovery on how and why the Company originally decided to include the Ohio Valley Electric Corporation (OVEC) PPA in the PPA Rider; how American Electric Power, AEP Ohio's parent company, plans to describe OVEC in a "Sustainability Report"; how AEP Ohio's affiliates commit plants other than OVEC into the day-ahead energy markets; and OVEC-related analyses that may have been developed, and communications and discussions that may have occurred, after the audit period at issue. AEP Ohio provided an affidavit in support of its motion on December 6, 2021.

{¶ 12} On December 20, 2021, memoranda contra AEP Ohio's motion for protective order were filed by OCC and jointly by Kroger and OMAEG. In its memorandum contra, OCC argues that the scope of these proceedings includes whether it is just and reasonable for AEP Ohio to bill consumers for its share of the OVEC charges. OCC asserts that the discovery that it seeks is well within this scope. OCC also maintains that the Commission may consider evidence relating to its original approval of AEP Ohio's collection of OVEC charges in deciding whether such charges are just and reasonable. Further, OCC contends that the Commission may review actions by AEP Ohio's parent company and affiliates in

deciding whether the OVEC charges are just and reasonable. Finally, OCC avers that the Commission may assess AEP Ohio's actions after the audit period in deciding whether the OVEC charges are just and reasonable.

{¶ 13} For their part, Kroger and OMAEG argue that AEP Ohio failed to establish that a single deposition on topics related to the collection of the OVEC costs through the PPA Rider would result in annoyance, embarrassment, oppression, or undue burden or expense, as required by Ohio Adm.Code 4901-1-24. Additionally, Kroger and OMAEG note that any potential burden that AEP Ohio may face from the noticed deposition and the request for production of documents is minimal when viewed in relation to these proceedings.

{¶ 14} On December 22, 2021, AEP Ohio filed a reply in support of its motion for protective order. AEP Ohio asserts that OCC, OMAEG, and Kroger have not demonstrated that the contested deposition topics and document requests are relevant to these proceedings. In addition, AEP Ohio contends that the Commission is authorized to grant, and has granted in prior cases, a motion for protective order where a party seeks irrelevant information through discovery.

{¶ 15} Upon review of AEP Ohio's motion for protective order, the attorney examiner finds that the motion should be granted, in part, and denied, in part. Initially, the attorney examiner notes that OCC seeks to obtain reports, forecasts, policies, and other information that pertains to 2020 and 2021, which is beyond the period under review in these proceedings - January 1, 2018, through December 31, 2019. The attorney examiner finds that such information is not relevant to the subject matter of these cases or reasonably calculated to lead to the discovery of admissible evidence. The deposition and production of documents should, therefore, be limited to topics related to the period up to and including the end of the audit period, December 31, 2019. Information regarding the basis for AEP Ohio's decision to include the OVEC PPA in the PPA Rider is also beyond the scope of these

proceedings, as the Commission has already authorized the OVEC agreement's inclusion in the rider in the *PPA Rider Case* and, more recently, approved the continuation of the rider in the *ESP 4 Case*. As to OCC's request for information related to the actions of AEP Ohio's parent company or affiliates, the attorney examiner finds that these issues are proper for discovery by OCC to the extent that the Company has the information within its possession, custody, or control and if the information pertains to the audit period under review. Accordingly, consistent with these findings, AEP Ohio's motion for protective order should be granted, in part, and denied, in part.

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That AEP Ohio's motion for protective order be granted, in part, and denied, in part. It is, further,

{¶ 18} ORDERED, That a copy of this Entry be served upon all interested persons and parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

*/s/ Sarah J. Parrot*

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By: Sarah J. Parrot  
Attorney Examiner

GAP/mef

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**in**

**Case No(s). 18-1004-EL-RDR, 18-1759-EL-RDR**

Summary: Attorney Examiner Entry ordering the motion for protective order be granted, in part, and denied, in part electronically filed by Ms. Mary E. Fischer on behalf of Sarah J. Parrot, Attorney Examiner, Public Utilities Commission of Ohio

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**in**

**Case No(s). 18-1004-EL-RDR, 18-1759-EL-RDR**

Summary: Request Interlocutory Appeal, Request for Certification to the PUCO Commissioners, and Application for Review by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Finnigan, John