

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company for Authority to Establish a)
Standard Service Offer Pursuant to Section) Case No. 23-23-EL-SSO
4928.143, Revised Code, in the Form of an)
Electric Security Plan.)

In the Matter of the Application of Ohio)
Power Company for Approval of Certain) Case No. 23-24-EL-AAM
Accounting Authority.)

POST-HEARING BRIEF OF ONE ENERGY ENTERPRISES INC.

I. INTRODUCTION

These proceedings initiated by Ohio Power Company (“AEP Ohio”) present the Public Utilities Commission of Ohio (the “Commission”) with an opportunity to: (1) ensure that AEP Ohio retail customers, including intervenor One Energy Enterprises Inc. (“One Energy”), can exercise their right to access lawful, cost-effective, efficient, comparable, non-discriminatory and unbundled transmission service; and (2) protect intervenors’ right to full discovery based on the terms of a reasonable protective agreement. To date, neither has occurred.

Instead, AEP Ohio urges the Commission to adopt a contested Joint Stipulation and Recommendation (the “Stipulation”) for which AEP Ohio has not satisfied its burden of proof. As set forth below, that issue alone warrants rejection of the Stipulation in its entirety.

Further compelling rejection of the Stipulation is the simple fact that the non-bypassable, Basic Transmission Cost Recovery Rider (“BTCR”) embedded in the contested Stipulation only through a proposed rate schedule violates Ohio law, and important regulatory principles. The

Commission must, at minimum, modify the Stipulation to make the BTCR bypassable in order to comply with Ohio law and important regulatory principles.

II. AEP'S MOTIVES – TRANSMISSION PROFITS AT ANY COST

During the hearing in this proceeding, AEP Ohio Witness, Ms. Kelso claimed to be concerned about anything impacting the rates paid by AEP Ohio customers. Tr. 832, 838; OEE Cross Exhibit 1 at 13 (“AEP believes in doing the right thing every time for ... customers”). One Energy is a shopping retail electric customer of AEP Ohio and the cost of transmission service has a significant impact on its electric bills. Tr. at 863. However, AEP Ohio’s actions in this and other venues reveal that AEP Ohio’s sole concern is about anything that might impinge upon the earnings of the AEP family of companies, particularly those derived from its regulated lines of business (i.e., transmission). Nothing highlights this better than AEP’s most recent Form 10K filed with the SEC (“OEE Cross Ex. 1”).¹

From 2020 through 2022, the earnings attributable to AEP common shareholders produced by AEP’s Transmission and Distribution business segment grew from \$496.4 million to \$595.7 million, an increase of about 20%. OEE Cross Ex. 1 at 90.

In the context of transmission only, AEP Transmission Company, LLC (“AEPTCo”) serves as the holding company of seven (7) wholly-owned, FERC regulated, transmission entities, including AEP Ohio Transmission Company. On a consolidated basis, AEPTCo contributes the largest percentage of pretax income (28.5%) to AEP (the parent company). OEE Cross Ex. 1 at 4.

¹ OEE Cross Exhibit 1, as filed with the Securities and Exchange Commission, is available here <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000004904/849094a1-243f-4116-9c0e-335abcbe1ed5.pdf> (stating on p. 32 “A significant portion of AEP’s earnings is derived from transmission investments... [I]f transmission needs do not continue or develop as projected, AEP’s strategy of investing in transmission could be impacted. [AEP’s] [m]anagement believes AEP’s experience with transmission facilities construction and operation gives AEP an advantage over other competitors in securing authorization to install, construct and operate new transmission lines and facilities”).

From 2020 through 2022, AEPTCo's transmission revenue jumped from \$1.199 billion to \$1.677 billion, an increase of nearly 40%. OEE Cross Ex. 1 at 96. Protecting these profits is at the heart of AEP Ohio's decision making process.

For example, AEP Ohio, in concert with its affiliates and PJM Interconnection LLC ("PJM"), is also working hard before FERC, and in federal court, to further increase the cost of transmission service in Ohio and bolster its bottom line. In *Office of the Ohio Consumer's Counsel v. PJM Interconnection, L.L.C., et al.*, Case No. EL23-105-000, the "FERC issued an order removing the 0.5 basis point RTO incentive from OPCo and OHTCo transmission formula rates effective the date of the February 2022 complaint filing and directed OPCo and OHTCo to provide refunds, with interest, within sixty days of the date of its order." OEE Cross Ex. 1 at 62. AEPSC, AEP Ohio's agent, claims that the FERC's removal of a return on equity bonus, or "incentive," from its transmission service revenue requirement was unreasonable and unlawful.² Based on AEP management's preliminary estimates, the FERC order is expected to reduce AEP's pretax income by approximately \$20 million on an annual basis. *See* OEE Cross Ex. 1 at 62. And, through the application for rehearing process, and an appeal pending before the 6th Circuit Court of Appeals,³ AEPSC is looking to have ratepayers not only pay the just and reasonable price for transmission service, but also this incentive compensation for membership in PJM, something that is required by R.C. 4928.12. It is plain to see that protecting transmission profits and enhancing earnings growth are at the heart of AEP Ohio's decision-making process. This is exemplified in this proceeding by its insistence to adopt a Stipulation that has an unlawful, non-bypassable

² In December 2022, FERC issued an order removing the 50 basis point incentive from OHTCo transmission formula rates effective February 2022, and reducing OHTCo's authorized return on equity ("ROE") to 9.85%. OEE Cross Ex. 1 at 4, footnote b. AEP Ohio's authorized return on equity is 9.7%. OEE Cross Ex. 1 at 4.

³ *Dayton Power & Light Co. DBA AES Ohio, et al. v. FERC*, Consolidated Case Nos. 21-4072, 22-3351, 23-3196, 23-3324, 23-3366 and 23-3417.

transmission cost recovery rider (i.e., BTCR) that boosts AEP Ohio's profits at the expense of Ohio ratepayers.

III. LEGAL ARGUMENT

A. The Stipulation Must Be Rejected Because AEP Ohio's ESP V is Incomplete under OAC 4901:1-35-03(A)&(C).

This proceeding was initiated by the filing of AEP Ohio's January 6, 2023 application ("Application") seeking approval of an electric security plan ("ESP V") and accounting to implement the proposed ESP V. Under OAC Rule 4901:1-35-03(A), "an application for an ESP or MRO is incomplete without **a complete set** of direct testimony of the electric utility personnel or other expert witnesses written in question and answer format supporting **all schedules** and **significant issues identified** by the electric utility". (emphasis added). In addition, under OAC Rule 4901:1-35-03(C), AEP Ohio is obligated to provide a "**complete description** of the ESP and testimony explaining and supporting **each aspect** of the ESP" and other enumerated criteria in the rule. (emphasis added). Absent such testimony and supporting documentation, any application or proposal seeking approval of an ESP, including one advanced by a stipulation, is incomplete as a matter of law.

Neither the Application nor any of the written testimony filed by AEP Ohio on January 6, 2023 in support of the Application are, at AEP Ohio's insistence, part of the evidentiary record in this case despite the Application being incorporated by reference into the Stipulation. In fact, AEP Ohio admitted at the hearing that the Application is "not being admitted into the evidentiary record for the truth of the matter asserted or to litigate all the issues that were presented with the original Application." Tr. 20. This problem is exacerbated by AEP Ohio's conscious decision not to introduce any of the direct testimony of its witnesses filed along with the Application and its counsel's statement at the hearing that such testimony is "not part of the evidentiary record." Tr. at

156. In other words, the Application is incomplete and any attempt by AEP Ohio to backdoor it into evidence to the Stipulation is unreasonable and unlawful.

The lack of evidentiary support in the record is highlighted by the proposed schedule for the BTCR, which is identified in Exhibit A, starting at 2nd Revised Sheet No. 400-1 of P.U.C.O. 21, but is not explained or supported by the Stipulation or any testimony filed in support of the Stipulation. In fact, none of the direct testimony submitted by parties supporting the Stipulation discusses or explains the Stipulation's BTCR or addresses the BTCR issues raised by intervening parties in their filed testimony.

Further, the evidentiary record contains no specific description of the accounting authority requested by AEP Ohio or how it might be implemented. Given what AEP Ohio and its affiliates are doing to manipulate the cost of transmission service it obtains from PJM prior to billing AEP Ohio customers for such service (as discussed later in this brief), the lack of a specific identification of each aspect of the requested accounting authority and how it will be implemented is a material omission.

The evidentiary record, what little there is of it, does not show that AEP Ohio satisfied the requirements of OAC Rule 4901:1-35. Rather, the evidentiary record demonstrates non-compliance. Tr. at 148. Accordingly, at the conclusion of AEP Ohio's direct case, One Energy made a motion alerting the presiding administrative law judges to the reasons why the Commission cannot consider the Stipulation or certain provisions contained therein as a matter of law, and the motion was denied. For reasons explained in One Energy's motion and those contained herein, AEP Ohio's ESP V application and the Stipulation should have been dismissed, without prejudice, at the close of AEP Ohio's direct case as a matter of law. Tr. at 148-155 & 157. Alternatively, the

Commission should now reject the Stipulation due to AEP Ohio's Application being "incomplete" under OAC Rule 4901:1-35-03(A) for the reasons stated above.

B. The Stipulation Must Be Rejected Because AEP Ohio Failed to Satisfy its Burden of Proof.

It is unquestioned that AEP Ohio bears the burden of proof in this proceeding. R.C. 4928.143(C); *In the Matter of the Application of Columbia Gas of Ohio*, Case No. 21-637-GA-AIR et al. (Opinion and Order at ¶ 60, January 26, 2023). In addition, R.C. 4903.09 "requires the commission to set forth the reasons for its decisions and prohibits summary rulings and conclusions that do not develop the supporting rationale or record." *In re Application of Ohio Power Co.*, 155 Ohio St.3d 326, 2018-Ohio-4698, at ¶24. To comply with R.C. 4903.03 and survive appellate scrutiny, the Commission must independently determine what is just and reasonable from the evidence presented at the hearing. "At bottom, [a] PUCO order 'must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the [Commission] in reaching its conclusions.'" *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, 166 Ohio St.3d 519, 2021-Ohio-3630, at ¶22. And, "[w]hen the commission reviews a contested stipulation, the requirement of evidentiary support remains operative. While the commission 'may place substantial weight on the terms of a stipulation,' it 'must determine, from the evidence, what is just and reasonable.' . . . The agreement of *some* parties is no substitute for the many procedural protections reinforced by the evidentiary support requirement." *In re Columbus S. Power Co.*, 129 Ohio St. 3d 46, 2011-Ohio-2383 at ¶19. (bold emphasis added, italics in original).

The Commission's decision in *In the Matter of the Application of Columbia Gas of Ohio* illustrates further how a public utility goes about satisfying its burden of proof obligation when a

contested stipulation is presented. Case No. 21-637-GA-AIR et al. (Opinion and Order at 4-5, January 26, 2023). There, the testimony of 29 witnesses, including the direct testimony filed in support of the application, were introduced and the witnesses were available for cross-examination. The utility's application was sponsored and admitted into the evidentiary record. In addition, testimony supporting the contested stipulation was sponsored and admitted into the evidentiary record. *Id.* at ¶45.

Here, nothing close to satisfying the procedural protections and evidentiary support requirements happened. All AEP Ohio has presented to the Commission is a Stipulation and conclusory testimony supporting the Stipulation which baldly and inaccurately claims that it is supported by adequate data and information. The Stipulation states that “[t]he Signatory Parties recommend that the Commission adopt the Application in this case as modified by this Stipulation and Recommendation.” P. 3, ¶ III A. Yet, AEP Ohio admitted that: (i) the Application is “not being admitted into the evidentiary record for the truth of the matter asserted or to litigate all the issues that were presented with the original Application,” and (ii) the direct testimony of its witnesses filed along with the Application is “not part of the evidentiary record.” Tr. 20, 156. In other words, the heart of the Stipulation is an Application that is not in the evidentiary record and cannot lawfully be considered by the Commission. As the Supreme Court stated, the Commission “must determine, from the evidence, what is just and reasonable” and “must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the [commission] in reaching its conclusions.” *See In re Columbus S. Power Co.*, 129 Ohio St. 3d 46, 2011-Ohio-2383 at ¶19; *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, 166 Ohio St.3d 519, 2021-Ohio-3630,

at ¶22. But the Commission cannot determine if the Application, as modified by the Stipulation in this case, is just and reasonable based on the evidentiary record before it.

Further, the initial direct expert testimony of some twenty-seven (27) persons was filed by intervenors in this case on June 9, 2023. With one exception (which was made over AEP Ohio's objection), the intervenors' testimony is not part of the evidentiary record and available as evidence to assist the Commission in its identification, review and resolution of contested issues (such as the BTCR). Other than brief and conclusory testimony offered in support of the contested Stipulation, the Commission's Staff did not file or sponsor any other testimony. As a result, the Commission is left to guess what the Application and testimony opposing and supporting it were; something it cannot do.

At the end of the day, the Stipulation does not license AEP Ohio or the Commission to skip over the statutory procedural protections and evidentiary support requirements. None of the three-prongs often referenced in these proceedings can be used to guide the Commission to a lawful decision unless and until the procedural and evidentiary support requirements are properly satisfied. And, based upon AEP Ohio's decisions in this proceeding, such procedural and evidentiary requirements have not been (and cannot be) met. Thus, AEP Ohio has not satisfied its burden of proof and the Stipulation must be rejected.

C. The Stipulation Must Be Rejected Because (1) It Violates Ohio Law Requiring Transmission Riders Such as the BTCR to be Bypassable and (2) It Violates Important Regulatory Principles and the Electric Policies Set Forth in R.C. 4928.02.

If the Commission improperly holds that AEP Ohio's Application is not incomplete and that AEP Ohio satisfied its burden of proof, the Stipulation still fails as a matter of law. Specifically, the Stipulation fails the third prong of the three-prong test by which the Commission evaluates stipulations—namely, whether the Stipulation violates any regulatory principle or practice. *Ohio*

Consumers' Counsel v. Pub. Util. Comm., 110 Ohio St.3d 394, 2006-Ohio-4706, 853 N.E.2d 1153, ¶ 16.

As explained in more detail below, the Stipulation violates important regulatory principles or practices by virtue of its inclusion of the BTCR.

1. **The Stipulation must be rejected because it authorizes a non-bypassable transmission rider, and transmission riders are required to be bypassable under Ohio law.**

R.C. 4928.143 provides the Commission with authority to authorize the inclusion of a transmission provision in an ESP; however, it limits such authority to a transmission provision applicable to non-shopping customers. Specifically, R.C. 4928.143(B)(2)(g) provides the Commission with limited discretion to authorize (assuming the evidence allows) a standard service offer (“SSO”) containing transmission provisions. There is nothing in R.C. 4928.143, however, that authorizes the Commission to approve an SSO containing a transmission provision that makes shopping customers that obtain electric generation service from a Competitive Retail Electric Service (“CRES”) provider captive to such a provision. In fact, R.C. 4928.143 specifically identifies some unavoidable or non-bypassable provisions that may be included in an SSO. A non-bypassable SSO transmission provision is not one of them.

Building on this, the Commission’s own rules implementing R.C. Chapter 4928 require AEP Ohio’s transmission cost recovery riders to be bypassable, upon customer election, for customers obtaining generation service from a CRES provider. Specifically, OAC 4901:1-35-03(C) requires that an ESP proposing a transmission cost recovery rider satisfy the requirements of Rule Chapter 4901:1-36. OAC Rule 4901:1-36-04(B) then states that “[t]he transmission cost recovery rider **shall** be avoidable by all customers who choose alternative generation suppliers.” (emphasis added). Customers obtaining generation service from a CRES provider are not, as a

matter of law, SSO customers. Accordingly, any 4928.143(B)(2)(g) transmission provision cannot attach to non-SSO customers. And, a non-bypassable transmission rider (here, the BTCR) is not permitted by statute and the Commission's rules. As a result, the Stipulation authorizing the BTCR should be rejected.

2. The Stipulation must be rejected because it violates important regulatory principles and practices and the electric policies set forth in R.C. 4928.02, causing the Stipulation to fail the three-prong test.

The Stipulation states that it violates no regulatory principle or practice. Stipulation at 2. The evidence shows otherwise.

It is well established that “the foundation of rate design is that each customer bears his or her proportionate share of the costs for providing the utility services.” *In re The East Ohio Gas Company dba Dominion East Ohio*, Case No. 07-829-GA-AIR, et al. Opinion and Order at 25 (Oct. 15, 2008). The BTCR, however, bills customers for electric transmission service in ways that ignore critical peak hours on the transmission system as well as the network service peak load (“NSPL”) statistic and billing determinant that identifies each customer's relative responsibility for the cost of transmission service provided by PJM. Tr. at 875-878. Instead, AEP Ohio rebills demand metered customers for transmission service based on each customer's monthly billing demand. This billing demand is not tied to each customer's NSPL or to any coincident peak measurement. As a result, the BTCR cannot operate to cause any customer to bear its proportionate share of the cost of the transmission service (purchased from PJM).

Worse yet, the BTCR fails to signal to and inform customers how their electric consumption decisions cause costs to be incurred, and those decisions may lead to an inefficient use of the transmission network. *See In re The East Ohio Gas Company dba Dominion East Ohio*, Case No. 07-829-GA-AIR, et al. Opinion and Order at 25 (Oct. 15, 2008).

Doubters need only read the testimony of AEP Ohio's Witness Mayhan and intervenors in this case. Witness Mayhan's written testimony offered in support of the Stipulation confirms the disabilities of the BTCR. It explains that billing customers for transmission service based on the customer's NSPL (the "1 CP" statistic, rather than the BTCR's focus on a customer's monthly billing demand) "encourages more efficient use of the transmission grid and reduces the overall transmission revenue requirement for AEP Ohio." AEP Ohio Exhibit 2 at 17, 18. In addition, the testimony of Stipulation opponents and supporters in this proceeding describe the BTCR as sending non-transparent, misleading and anti-competitive price signals.⁴ This testimony explains why the failure to bill customers for transmission service based on basic cost causation principles violates important regulatory principles and practices.

The Stipulation's proposed non-bypassable BTCR is also not compatible with Ohio's electric policy set forth in R.C. 4928.02. Among other things, the BTCR:

- Blocks consumers from gaining efficient and non-discriminatory access to reasonably priced retail electric service [R.C. 4928.02(A)];
- Works against the development of distributed and small generation facilities [R.C. 4928.02(C)];
- Discourages innovation and market-access for cost-effective supply-and-demand-side retail electric service including demand-side management and implementation of advanced metering infrastructure [R.C. 4928.02(D)];
- Blocks cost-effective and efficient customer access to information regarding the operation of the transmission system that would, if available, promote effective customer choice [R.C. 4928.02(E)];
- Ignores continuing emergence of competitive electricity markets [R.C. 4928.02(G)];
- Denies customers protection against unreasonable sales practices, market deficiencies and market power [R.C. 4928.02(I)];

⁴ See testimony (and cross examination) related to BTCR from RESA Exhibit 1, Direct Energy Exhibit 1, and Calpine Exhibit 1.

- Denies customers access to coherent, transparent means of giving appropriate incentives to technologies that can successfully adapt to environmental mandates [R.C. 4928.02(J)];
- Discourages implementation of distributed generation [R.C. 4928.02(K)];
- Encumbers Ohio's effectiveness in the global economy [R.C. 4928.02(N)];
- Blocks customers' cost-effective, timely and efficient access to and sharing of customer usage data (such as each customer's NSPL) in ways that frustrate (rather than promote) customer choice and grid modernization [R.C. 4928.02(O)];
- Precludes access to readily available customer data provided in standard format (such as each customer's NSPL) which is made available to third parties in as close to real time as is economically justifiable in order to spur economic investment and improve the energy options of customers [R.C. 4928.02(P)].

D. In the Alternative, if the Stipulation is Not Rejected in its Entirety, the BTCR Must Be Modified and Made Bypassable.

1. The BTCR is unlawful because it is makes shopping customers captive to AEP Ohio's SSO transmission provision.

As noted above, the non-bypassable BTCR included in the ESP V violates R.C. 4928.143 and OAC Rule 4901:1-36-04(B). If this fatal flaw does not render the entire Stipulation unlawful, the Commission must at least modify the Stipulation to make the BTCR bypassable for shopping customers, at their election.

Modifying the BTCR to make it bypassable is not only required under Ohio law, but consistent with AEP Ohio's prior transmission cost recovery rider ("TCRR"). The evidentiary record confirms that AEP Ohio's TCRR (the BTCR's predecessor) was bypassable. Tr. 861. Thus, AEP Ohio has years of experience to draw upon for how to implement a bypassable transmission rider.

AEP Ohio tries to argue, contrary to Ohio law, that a bypassable BTCR should not be adopted at this juncture. In AEP Ohio Exhibit 9, Ms. Kelso references a FERC-approved

transmission agreement⁵ and indicates that AEP Ohio has not studied⁶ how a bypassable BTCR might affect the operation of the transmission agreement. But any lack of study about such interoperability is a byproduct of AEP Ohio's election to ignore information in its possession and control. **The bottom line is that the non-bypassable nature of the BTCR is unlawful.** AEP Ohio should not be allowed to perpetuate an unlawful scheme because it has sat on its hands and not conducted studies to evaluate what the impact of complying with the law would be.

2. As proposed in the Stipulation, the BTCR leads to unlawful overcharges to AEP Ohio customers and blocks others from having access to transmission on the same terms AEP Ohio obtains such access.

In her testimony in support of the Stipulation, AEP Ohio Witness, Ms. Kelso confirmed that AEP Ohio's actual transmission service cost through PJM is based on a 1CP allocation method, and such cost is combined with the PJM 1CP transmission costs of other AEP operating companies before being rebilled (by AEPSC) to AEP Ohio using a 12CP allocation method. AEP Ohio Exhibit 9 at 7. This disconnect – 1CP to 12CP) is critical, as Ms. Kelso noted that, in the past, this structure created a variance that was pushed to non-shopping customers and that AEP Ohio is concerned about adopting a bypassable BTCR because it is unsure whether the same type of variance would be created. *Id.* at 7. But, the reality is that any variance is being created solely by AEP through its

⁵ During her direct examination, she changed her written testimony to refer to a FERC-approved Transmission Agreement instead of the Transmission Equalization Agreement. The history behind both agreements is laid out by AEP on its website at <https://www.aep.com/requiredpostings/FERCRateSchedule>. Ms. Kelso also testified that her reference to the FERC-approved agreement was not made for the purpose of saying that the Commission cannot make the BTCR bypassable. Tr. 877.

⁶ The AEP Ohio no-study claim is remarkable. For context, AEP Ohio's Application, proposed to allow all GS 3 and GS 4 customers with interval metering to be billed for transmission service based on their 1CP/NSPL billing determinants.

"In addition, the Company proposes to continue, as part of this ESP V, to include a pilot program that would give GS-3 and GS-4 customers with interval metering capability the opportunity to opt-in to a pilot mechanism under the BTCR based on each eligible customer's single annual transmission coincident peak demand." Application at 18.

assigning of transmission service cost responsibility without regard to cost causation principles—specifically, AEPSC’s rebilling of its combined affiliates’ actual cost of PJM transmission service (as determined by the 1CP) to AEP Ohio and its affiliates based on a 12 CP allocation factor.

AEP Ohio and its affiliates have created a unique, affiliate-only transmission service cost reallocation, repricing and rebilling substructure that is exclusively applicable to AEP Ohio and its affiliates. Tr. 875 - 881. This affiliate-only scheme results in a violation of a fundamental requirement of Ohio and federal law.

In 1996, FERC issued Order No. 888 to remedy undue discrimination or preference in access to the monopoly owned transmission wires that control whether and to whom electricity can be transported in interstate commerce. In Order No. 888, FERC required, as a remedy for undue discrimination, that all public utilities provide open access transmission service consistent with the terms and conditions of a pro forma OATT. To achieve this, FERC required all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to file OATTs containing certain non-price terms and conditions, and to functionally unbundle wholesale power services from transmission services. With functional unbundling, public utilities must: (1) **take wholesale transmission services under the same tariff of general applicability as they offer their customers;** (2) state separate rates for wholesale generation, transmission and ancillary services; and (3) rely on the same electronic information network that their transmission customers rely on to obtain information about the utilities’ transmission systems. *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh’g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. &

Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888- B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. *New York v. FERC*, 535 U.S. 1 (2002) (emphasis added).

Concurrent with the issuance of Order No. 888, FERC issued Order No. 889 which imposed standards of conduct governing communications between the utility's transmission and wholesale power functions, to prevent the utility from giving its power marketing arm preferential access to transmission information.

In Order No. 2000, FERC found that “opportunities for undue discrimination continue to exist that may not be remedied adequately by [the] functional unbundling [remedy of Order No. 888]... .” *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,105 (1999), order on reh'g, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), aff'd sub nom. *Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001). FERC has confirmed that the open access tariffs and standards are based upon the comparability principles it has applied in individual cases since its decision in *American Electric Power Service Corp.*, 64 FERC ¶ 61,279 (1993), reh'g granted, 67 FERC ¶ 61,168, clarified, 67 FERC ¶ 61,317 (1994). Comparability requires that **utilities offer third parties access on the same or comparable basis, and under the same or comparable terms and conditions, as the transmission provider's use of its system.** See also *Tex. Mun. Power Agency v. Pub. Util. Com'n* 150 S.W. 3d 579 (Tex. App. 2004) (emphasis added).

The federal requirements for comparable, non-discriminatory and unbundled electric services are also important requirements in Ohio law. R.C. 4928.02, R.C. 4928.03.

The non-bypassable BTCR, accompanied by the AEP Ohio requirement that CRES providers sign principal agent declarations of authority or execute bill line-item transfers of their demand-based PJM charges to AEP, preclude AEP Ohio shopping customers from obtaining and paying for transmission service pursuant to the PJM OATT. Calpine Ex. 3, Tr. 848 (regarding sheet 103-25 of AEP Ohio's tariff on file with the Commission). This law-defying preclusion blocks CRES providers from assisting customers in managing their spend for transmission service as they do, have done and will do in other states and other parts of Ohio. Calpine Ex. 1 at 5. It denies customers and CRES providers the opportunity to respond to the critical peak, NSPL-based, price signal clearly sent by the PJM Open Access Transmission Tariff ("OATT").

The Commission must not allow AEP Ohio to evade its legal duty to allow all other customers and market participants comparable and nondiscriminatory access to the same unbundled transmission services, rates and charges as are available to AEP Ohio. That is what the words nondiscriminatory and comparable mean.

E. The Attorney Examiners Rulings on One Energy's Motion to Establish a Reasonable Protective Agreement (the "Motion") Should be Reversed as a Matter of Law.

The General Assembly's directive to the Commission is clear: "[a]ll parties and intervenors shall be granted ample rights of discovery." R.C. 4903.082. *See also* OAC Rule 4901-1-15(B) ("any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter proceeding.") Consistent with this directive, the Commission's own discovery rules explain that they are designed "to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings." OAC Rule 4901-1-15(A).

Unfortunately, the Attorney Examiners' rulings in this case denying One Energy's Motion to Establish a Reasonable Protective Agreement (the "Motion") violated One Energy's discovery rights, significantly prejudiced One Energy's ability to gather relevant evidence and present its case at hearing and creates a dangerous precedent for future Commission proceedings. As set forth in more detail below, the Commission should adopt One Energy's reasonable edits to AEP Ohio's boilerplate protective agreement and provide One Energy with such relief as may be warranted to remedy the harm imposed on One Energy.

1. Background on One Energy's Attempts to Enter Into a Reasonable Protective Agreement with AEP Ohio.

One Energy filed the Motion on July 31, 2023, after making good faith efforts to resolve a discovery dispute with AEP Ohio about the content of its proposed protective agreement. AEP Ohio filed its memorandum contra ("Memo Contra") on August 9, 2023, which acknowledged AEP Ohio's continued refusal to respond to One Energy's discovery requests unless One Energy restricted access to such responses in a way that would prevent it from meaningfully gathering evidence and adequately preparing for the hearing.

On August 16, 2023, at 5:00 pm EST, the Commission docketed One Energy's Reply in support of the Motion ("One Energy's Reply"). In One Energy's Reply, it corrected a number of material factual inaccuracies in AEP Ohio's Motion Contra and provided further support for its request to establish a reasonable protective agreement. Just thirty-one (31) minutes later, at 5:31pm EST, the Commission docketed the Attorney Examiner Entry denying the Motion. Notably, the Entry did not mention One Energy's Reply and, in Paragraph 24, expressly "ORDERED, That One Energy's motion to establish a reasonable protective agreement be denied."

On August 21, 2023, One Energy filed a motion to certify an interlocutory appeal regarding the Entry. By Entry dated September 18, 2023 (the "Interlocutory Appeal Entry"), another Attorney

Examiner improperly, and with little discussion, refused to certify the interlocutory appeal based on a misreading of the relevant rule. Now, OAC Rule 4901-1-15(F) expressly allows One Energy to raise the unreasonableness of the Attorney Examiners' rulings in this post-hearing brief.

2. The Attorney Examiners Failed to Protect One Energy's Statutory Right to Broad Discovery by Denying the Motion.

The substance of the Motion boiled down to a single issue – the ability of One Energy's expert witness (Jereme Kent, an employee of One Energy Enterprises Inc., the intervening party in this case) to access certain information and documents unilaterally deemed by AEP Ohio to be confidential, competitively-sensitive confidential or restricted access confidential ("RAC"). As explained in Paragraph 10 of the Interlocutory Appeal Entry:

One Energy took issue with three particular provisions in paragraph three of AEP Ohio's proposed protective agreement: (a) a provision prohibiting all competitive retail electric service (CRES) employee-witnesses from viewing RAC information [the highest level of confidentiality]; (b) a provision that allows a CRES employee to view competitively sensitive confidential information only if the employee is not engaged in competitive pricing, sales, or marketing, or involved in other CRES-related business activities of One Energy; and (c) a provision requiring One Energy to give AEP Ohio notice of an individual who will view protected information, which it asserts grants AEP Ohio virtual veto power over individuals to be granted access.

For the reasons set forth below, and as shown on Attachment 1 to this brief, One Energy continues to request that Section 3 of AEP Ohio's unreasonable protective agreement be modified to: (1) expressly allow all employee-witnesses (regardless of whether such person is employed by the intervening party) and officers of an intervenor access to all levels of confidential information; and (2) eliminate the provision giving AEP Ohio unreasonable veto power over who at One Energy can access all levels of confidential information.

3. One Energy Enterprises Inc. (the Intervenor in This Case) Is Not a CRES Provider, and Mr. Kent Is Not an Employee of a CRES Provider.

In the Entry, the Attorney Examiner agreed with AEP Ohio that “the type of access which One Energy seeks for its employee-witness, in the case of [restricted access confidential] RAC material, and for CRES-related employees for viewing competitively-sensitive material, is precisely what the protective agreement is intended to prevent.” Entry at Page 6 (¶16). The Attorney Examiner expands on this in the Interlocutory Appeal Entry, stating:

One Energy’s wholly-owned subsidiary, which has no officers or directors of its own, is managed by One Energy and, as AEP Ohio demonstrates, Mr. Kent is identified personally in OE Retail Services LLC’s CRES application, highlighting Mr. Kent’s vast experience in the electric industry. Thus, the August 16 Entry’s reasoning as to One Energy employees, such as Mr. Kent, being unable to forget or disregard the type of sensitive information AEP Ohio seeks to protect remains sound.

This finding, however, ignores the pertinent facts.

First, both AEP Ohio and the Attorney Examiners (in the Entry and Interlocutory Appeal Entry) ignore the facts that: (i) One Energy Enterprises Inc. is the intervening party; (ii) One Energy Enterprises Inc. is not a CRES provider; and, (iii) One Energy’s subsidiaries are not parties to this case. These facts alone should end the discussion.

Second, as set forth in Mr. Kent’s direct prefiled testimony in this case, Mr. Kent is an employee of One Energy Enterprises Inc., not the One Energy subsidiary that is a registered broker in the State of Ohio. And, again, One Energy Enterprises Inc. is not a CRES provider.

Third, the protective agreement submitted by One Energy (the intervening entity) precludes One Energy (and Mr. Kent) from engaging in the behavior AEP Ohio and the Attorney Examiner indicate to be of concern (i.e., giving One Energy’s affiliates some sort of competitive advantage).

In effect, the Attorney Examiners adopt AEP Ohio's presumption that One Energy, and its employee-witness, would not comply with the reasonable limitations of a protective agreement; and thus, that One Energy would simply disregard and violate a binding agreement. This is ridiculous. Neither the Attorney Examiners nor AEP Ohio have cited any specific facts suggesting that One Energy would not comply with the reasonable restrictions it has proposed.⁷

Instead, the sole basis is the concept that Mr. Kent would be "unable to forget or disregard the type of sensitive information AEP seeks to protect." Interlocutory Appeal Entry at ¶ 26. This is a red herring designed to distract the Commission from the truth—namely, that the protective agreement itself provides adequate protections to prevent this from happening. For example: (i) Section 7 of the protective agreement states: "Protected Materials shall not be used except as necessary for the conduct of this proceeding," and "Authorized Representatives may not use information contained in any Protected Materials obtained through this proceeding to give Intervenor or any competitor of the Company a commercial advantage;" (ii) Section 18 states: "Failure to abide by any of the terms of this Agreement shall be determined to be a breach that is enforceable at the Public Utilities Commission of Ohio or a court of competent jurisdiction. AEP Ohio has sole discretion to seek legal and/or equitable remedies, including but not limited to, monetary damages, sanctions, and/or the exclusion of using or otherwise introducing any information that was the subject of the breach"; and (iii) access is only provided after a certification is signed.

Finally, Paragraph 16 of the Entry states: "The attorney examiner finds AEP Ohio's representation that all other competitive intervenors have agreed to these provisions to be telling."

⁷ Although One Energy is unsure how AEP Ohio has direct competitors in the first place (see more below), One Energy should not be categorized as a "competitive intervenor" due to the facts stated above.

This fact is entirely irrelevant. As highlighted above, One Energy is not a CRES/competitive intervenor. Further, the circumstances behind certain CRES providers (“competitive intervenors”) decision to sign AEP Ohio’s protective agreement are nowhere to be found. The actions (or inactions) of other parties have no bearing on this issue.

Therefore, the Attorney Examiners’ reliance on inaccurate facts is grounds for reversal.

4. AEP Ohio Should Not Have Direct Competitors as an Electric Distribution Utility (“EDU”).

In the Entry, the Attorney Examiner concluded that “the protective agreement proposed by AEP Ohio...imposes reasonable limits on competitor employee-witnesses.” (Entry at ¶17). This finding is troublesome because AEP Ohio is an EDU. While AEP Ohio is ironically seeking to be the white knight for the competitive market via its protective agreement, it cannot lawfully provide competitive retail electric services as an EDU. Such services are provided by AEP Ohio’s affiliates, none of which are parties in this case. Since AEP Ohio only provides non-competitive retail electric services, and One Energy is not an EDU, it is impossible to ascertain who the “competitor employee-witnesses” are that AEP Ohio and the Attorney Examiner are trying to keep information from. As a result, the Attorney Examiners’ rulings should be reversed, and the protective agreement modified as suggested by One Energy.

5. The Practical Result of the Entry and Interlocutory Appeal Entry is That Intervening Parties Are Forced to Hire Third Parties Even When They Have Subject Matter Expertise In-House.

AEP Ohio argued that One Energy (and presumably all intervening parties in a Commission proceeding) should be forced to hire outside experts to get access to information unilaterally restricted by AEP Ohio, and the Attorney Examiner seemingly agreed by ruling against One Energy. The practical effect of this is that AEP Ohio is free to gain the advantage of internal subject

matter experts employed by it and affiliates in preparing its case,⁸ while One Energy is precluded from benefiting from the in-house expertise of its CEO who, the Attorney Examiner acknowledged in Paragraph 26 of the Interlocutory Appeal Entry, has “vast experience in the electric industry.”

The fact that One Energy’s counsel (in-house or external) has access to certain confidential materials does not cure this, as counsel is not and cannot be expected to be both lawyer and subject matter expert. Allowing subject matter experts full access to all information and documents in this proceeding to be fully informed while working with counsel is the only cure. The inability for counsel to communicate certain key pieces of information is counterproductive and unduly burdensome to a party trying to put its best foot forward at hearing. Further, it would be a concerning Commission precedent to enable AEP Ohio to assert this type of control over other parties and undermine such intervening party’s ability to prepare for a case.

6. The Interlocutory Appeal Entry Misapplied Ohio Law in Refusing to Certify One Energy’s Interlocutory Appeal.

The Interlocutory Appeal Entry unreasonably and unlawfully applied the language in OAC Rule 4901-1-15(A)(1) in refusing to certify One Energy’s motion to certify an interlocutory appeal. As the Attorney Examiner noted in Paragraph 26 of the Interlocutory Appeal Entry, OAC Rule 4901-1-15(A) identifies certain situations “which entitle a party to an immediate interlocutory appeal as of right.” And, subsection (A)(1) provides such an immediate appeal as of right from any ruling that “denies a motion for a protective order.” The clear and unambiguous language in this rule applies to One Energy’s Motion.

⁸ For example, AEP Ohio witness Reid Newman is, according to his pre-filed testimony, employed by AEPSC (Newman Testimony at 1).

It is beyond dispute that One Energy timely filed the Motion, which is expressly captioned as a “motion” for a reasonable “protective agreement.” One Energy also attached its proposed protective agreement to the Motion. The Entry expressly states: “ORDERED, That One Energy’s motion to establish a reasonable protective agreement be **denied**, as stated in Paragraphs 16 and 17.” (Emphasis added). The denial of One Energy’s requested protective agreement thereby satisfied the only prerequisite to an appeal as of right under OAC Rule 4901-1-15(A)(1).

In Paragraph 26 of the Interlocutory Appeal Entry, however, the Attorney Examiner concludes: “One Energy’s contention that the August 16 Entry denial of [One Energy’s] motion to establish a reasonable protective agreement is akin to the denial of a motion for a protective order is misguided.” Please make sure you read this again. The Attorney Examiner effectively states that the denial of One Energy’s Motion (for a protective order) is not a denial of a protective order for purposes of OAC Rule 4901-1-15(A). This makes no sense and effectively allows the Attorney Examiner to rewrite the rule. That is entirely improper.

As a result, the Attorney Examiner’s ruling in the Interlocutory Appeal Entry violated Ohio law and One Energy’s right to an automatic appeal under OAC Rule 4901-1-15(A)(1) and must be reversed.

IV. CONCLUSION

For the reasons set forth herein, the Commission should reject the Stipulation advanced by AEP Ohio or, at minimum, modify the BTCR to make it bypassable. In addition, the Commission should reverse the Attorney Examiners’ rulings on One Energy’s motion to establish a reasonable protective agreement and adopt One Energy’s reasonable modifications to that protective agreement.

Respectfully submitted on behalf of
ONE ENERGY ENTERPRISES INC.

/s/ Marion H. Little, Jr.

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing Post-Hearing Brief of One Energy Enterprises Inc. was served upon the parties of record listed below this 1st day of December, 2023 via email.

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/s/ Marion H. Little, Jr.

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ATTACHMENT 1

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company for Authority to)	
Establish a Standard Service Offer)	Case No. 23-23-EL-SSO
Pursuant to Section 4928.143, Revised Code,)	
in the Form of an Electric Security Plan)	

In the Matter of the Application of)	
Ohio Power Company for Approval of)	Case No. 23-24-EL-AAM
Certain Accounting Authority)	

PROTECTIVE AGREEMENT

This Protective Agreement (“Agreement”) is entered into by and between Ohio Power Company (OP), also referred to as the “Company” or “AEP Ohio,” and One Energy Enterprises Inc. (referred to as “Intervenor”). This Agreement is designed to facilitate and expedite the exchange with Intervenor of information in the discovery process in this proceeding, as “the Proceedings” is defined herein. It reflects agreement as to the manner in which “Protected Materials,” as defined herein, are to be treated in this Proceeding. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials.

1. This Agreement shall govern the use of all Protected Materials produced by, or on behalf of, the Company in connection with the above-captioned cases including any appeals therefrom and remands (“the Proceedings”). Notwithstanding any order terminating the Proceedings, this Agreement shall remain in effect until specifically modified or terminated by the Public Utilities Commission of Ohio (Commission).

2. “Authorized Representative” shall mean a person who has signed any of the attached Non-Disclosure Certificates Attachment A (applicable to CONFIDENTIAL Protected

Materials), and Attachment B (applicable to COMPETITIVELY-SENSITIVE CONFIDENTIAL) and/or Attachment C (applicable to RESTRICTED ACCESS CONFIDENTIAL Protected Materials) and who is: (a) an attorney who has made an appearance in this proceeding for Intervenor; (b) attorneys, paralegals, officers, and other employees associated for purposes of this case with an attorney described in (a); (c) an employee of Intervenor involved in Proceedings on behalf of Intervenor including any expert or employee of an expert retained by Intervenor to the Proceeding for the purpose of advising, preparing for or testifying in this Proceeding.

3. “Protected Materials” are materials designated as “CONFIDENTIAL”, “COMPETITIVELY-SENSITIVE CONFIDENTIAL”, “RESTRICTED ACCESS CONFIDENTIAL” or with words of similar import by Company which customarily are treated by Company as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject Company to risk of competitive disadvantage or other business injury. This includes, but is not limited to, materials meeting the definition of “trade secret” under Ohio law. Protected Materials shall not include (a) any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (b) information that is public knowledge or becomes public knowledge, other than through disclosure in violation of this Agreement or in violation of a similar agreement executed by Company in this proceeding. Notwithstanding other provisions of this Agreement that permit any Authorized Representative to access Protected Materials, Intervenor’s access to the subset of Protected Materials that are labeled by the Company as “COMPETITIVELY-SENSITIVE CONFIDENTIAL” or with words

of similar import will be strictly limited to the following Authorized Representatives: (i) Intervenor's legal counsel that have made an appearance for purposes of advancing Intervenor's interest in this Proceeding, (ii) non-employee Intervenor witness(es) and support staff, (iii) employee Intervenor witness(es) and support staff and (iv) company officers who are evaluating and/or testifying to matters that advance Intervenor's interest in this Proceeding. The Authorized Representatives identified in (i), (ii), (iii), and (iv) including both outside counsel and in house counsel, will ensure that persons involved with the CRES-related business activities, excluding broker-related services, are not permitted to access COMPETITIVELY-SENSITIVE CONFIDENTIAL materials. Further, certain Protected Materials may be designated and conspicuously marked as "RESTRICTED ACCESS CONFIDENTIAL" where counsel for the producing party in good faith determines that such Protected Materials are highly sensitive and could cause significant damage to the producing party or other parties if made available to individuals that have influence or knowledge about the CRES-related business activities, excluding broker-related services, of Intervenor. Such RESTRICTED ACCESS CONFIDENTIAL materials are subject to all of the obligations listed above for COMPETITIVELY-SENSITIVE CONFIDENTIAL materials, except that these additional restrictions shall also apply: (i) RESTRICTED ACCESS CONFIDENTIAL materials shall not be copied, replicated or electronically transmitted, including notes, (ii) shall be limited to legal counsel that have made an appearance for purposes of advancing Intervenor's interest in this Proceeding, Intervenor witness(es) and company officers, and outside counsel's support staff; and (iii) counsel for the receiving party must create and maintain a written log of all persons accessing RESTRICTED ACCESS CONFIDENTIAL materials including the name and title. A copy of each Amended Non-Disclosure Certificate for Protected Materials designated as

CONFIDENTIAL, COMPETITIVELY-SENSITIVE CONFIDENTIAL or RESTRICTED ACCESS CONFIDENTIAL shall be provided to the other Party at least three business days prior to disclosure of any Protected Materials to an Authorized Representative.

4. “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Protected Materials. Notes of Protected Materials are subject to the same restrictions provided in this Agreement for Protected Materials except as specifically provided otherwise in this Agreement.

5. Protected Materials shall be made available under the terms of this Agreement only to Intervenor for this Proceeding and only by provision of the Protected Materials to its Authorized Representatives.

6. Protected Materials shall remain available to Intervenor until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, Intervenor shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Company, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Materials may be retained, if they are maintained in accordance with Paragraph 7, below. Within such time period, Intervenor, if requested to do so, shall also submit to Company an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 7. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

7. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to Authorized Representatives. Protected Materials shall be treated as confidential by Intervenor and by the Authorized Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except an Authorized Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Except as set forth in paragraph 3 of this Agreement, Authorized Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials. Authorized Representatives may not use information contained in any Protected Materials obtained through this proceeding to give Intervenor or any competitor of the Company a commercial advantage.

8. In the event that Intervenor wishes to designate as an Authorized Representative a person not described in Paragraph 2 above, Intervenor shall seek agreement from the Company. If agreement is reached, that person shall become an Authorized Representative. If no agreement is reached, Intervenor shall submit the disputed designation to the Attorney Examiner for resolution.

9. An Authorized Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials unless that Authorized Representative has first executed the attached Non-Disclosure Certificate. Attorneys qualified as Authorized Representatives are responsible for ensuring that persons under their supervision or control comply with this order. A copy of each Non-Disclosure Certificate shall

be provided to the Company prior to disclosure of any Protected Material to an Authorized Representative.

10. An Authorized Representative may disclose Protected Materials to another Authorized Representative (for the same Intervenor) as long as the disclosing Authorized Representative and the receiving Authorized Representative have both executed the appropriate Non-Disclosure Certificate(s) and are permitted to access the same designations of confidentiality set forth in Paragraph 3 of this Agreement. In the event that any Authorized Representative to whom the Protected Materials are disclosed ceases to be engaged in these Proceedings, access to Protected Materials by that person shall be terminated and such person must promptly return Protected Materials in his or her possession to another Authorized Representative of Intervenor. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Agreement and the Non-Disclosure Certificate. Intervenor and Authorized Representatives are prohibited from disclosing Protected Materials to another Party or that Party's Authorized Representatives, regardless of whether that Party has also signed a Protective Agreement with the Company in these Proceedings.

11. Consistent with the terms of this Agreement, Intervenor shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected materials, shall be filed and served in compliance with the applicable procedures for

filing confidential information in this proceeding. If Intervenor seeks to make use of or reference to Protected Materials, it must do so under seal as required by the Commission's regulations.

13. If Intervenor desires to include, utilize, or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these Proceedings in such a manner that might require disclosure of such material to persons other than Authorized Representatives, such participant shall first notify both counsel for the Company and the Attorney Examiner of such desire, identifying with particularity each of the Protected Materials, at least 10 business days in advance. Thereafter, use of the so-identified Protected Materials will be governed by procedures determined by the Attorney Examiner. Until such a ruling Intervenor must maintain confidentiality of the Protected Materials until the Parties or the Attorney Examiner decides otherwise.

14. Nothing in this Agreement shall be construed as precluding the Company from objecting to the use of Protected Materials on any legal grounds.

15. Nothing in this Agreement shall preclude Intervenor from requesting that the Attorney Examiner, Commission or any other body having appropriate authority, to find that this Agreement should not apply to all or any materials designated as Protected Materials pursuant to this Agreement. However, Intervenor shall continue to treat any Protected Materials as Protected Materials under this Agreement until the Attorney Examiner or Commission issues a ruling that such materials should not be designated as Protected Materials. Neither the Company nor Intervenor waives its rights to seek additional administrative or judicial remedies after the Attorney Examiner's decision respecting Protected Materials or Authorized Representatives, or the Commission's denial of any appeal thereof.

16. Nothing in this Agreement shall be deemed to preclude the parties from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Agreement.

17. Neither the Company nor Intervenor waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

18. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this proceeding.

18. Failure to abide by any of the terms of this Agreement shall be determined to be a breach that is enforceable at the Public Utilities Commission of Ohio or a court of competent jurisdiction. AEP Ohio has sole discretion to seek legal and/or equitable remedies, including but not limited to, monetary damages, sanctions, and/or the exclusion of using or otherwise introducing any information that was the subject of the breach.

20. This Agreement represents the entire understanding of the parties with respect to Protected Materials and supersedes all other understandings, written or oral, with respect to the Protected Materials. No amendment, modification, or waiver of any provision of this Agreement is valid, unless in writing signed by both Parties.

21. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

BY: One Energy Enterprises Inc.

Counsel

Date

BY: Ohio Power Company

/s/ Michael J. Schuler
Counsel

June 29, 2023
Date

Attachment A

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company for Authority to)
Establish a Standard Service Offer) Case No. 23-23-EL-SSO
Pursuant to Section 4928.143, Revised Code,)
in the Form of an Electric Security Plan)

In the Matter of the Application of)
Ohio Power Company for Approval of) Case No. 23-24-EL-AAM
Certain Accounting Authority)

**NON-DISCLOSURE CERTIFICATE FOR
CONFIDENTIAL PROTECTED MATERIALS**

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Agreement between Ohio Power Company and One Energy Enterprises Inc. in this proceeding, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Agreement, and will be used only for the purposes of this proceeding.

BY: _____

PRINTED NAME: _____

Title: _____

Representing: _____

Date: _____

Attachment B

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company for Authority to)
Establish a Standard Service Offer) Case No. 23-23-EL-SSO
Pursuant to Section 4928.143, Revised Code,)
in the Form of an Electric Security Plan)

In the Matter of the Application of)
Ohio Power Company for Approval of) Case No. 23-24-EL-AAM
Certain Accounting Authority)

**NON-DISCLOSURE CERTIFICATE FOR
COMPETITIVELY SENSITIVE CONFIDENTIAL PROTECTED MATERIALS**

I hereby certify my understanding that access to COMPETITIVELY-SENSITIVE CONFIDENTIAL Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Agreement between Ohio Power Company and One Energy Enterprises Inc. in this proceeding, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Agreement, and will be used only for the purposes of the Proceedings.

BY: _____

PRINTED NAME: _____

Title: _____

Representing: _____

Date: _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

§In the Matter of the Application of)	
Ohio Power Company for Authority to)	
Establish a Standard Service Offer)	Case No. 23-23-EL-SSO
Pursuant to Section 4928.143, Revised Code,)	
in the Form of an Electric Security Plan)	

In the Matter of the Application of)	
Ohio Power Company for Approval of)	Case No. 23-24-EL-AAM
Certain Accounting Authority)	

**NON-DISCLOSURE CERTIFICATE FOR
RESTRICTED ACCESS CONFIDENTIAL PROTECTED MATERIALS**

I hereby certify my understanding that access to RESTRICTED ACCESS CONFIDENTIAL Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Agreement between Ohio Power Company and One Energy Enterprises Inc. in this proceeding, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Agreement, and will be used only for the purposes of the Proceedings.

BY: _____

PRINTED NAME: _____

Title: _____

Representing: _____

Date: _____

**This foregoing document was electronically filed with the Public Utilities
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Case No(s). 23-0023-EL-SSO, 23-0024-EL-AAM

Summary: Brief POST-HEARING BRIEF OF ONE ENERGY ENTERPRISES INC.
electronically filed by Mr. Marion H. Little on behalf of One Energy Enterprises Inc..