

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Electric Power Supply Association,
Retail Energy Supply Association,
Dynegy Inc., Eastern Generation, LLC,
NRG Power Marketing LLC and GenOn
Energy Management, LLC,**

Complainants,

v.

**AEP Generation Resources, Inc. and
Ohio Power Company,**

Respondents.

Docket No. EL16- 33 -000

COMPLAINT REQUESTING FAST TRACK PROCESSING

Pursuant to Sections 206, 306 and 309 of the Federal Power Act (the “FPA”)¹ and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission” or “FERC”),² the Electric Power Supply Association (“EPSA”), the Retail Energy Supply Association (“RESA”), Dynegy Inc. (“Dynegy”), Eastern Generation, LLC (“Eastern Generation”), and the NRG Companies³ (collectively, “Complainants”) hereby file this complaint (this “Complaint”) seeking to ensure that an abusive affiliate power sales contract (the “Affiliate PPA”) involving subsidiaries of American Electric Power Company, Inc. (“AEP”) does not evade Commission review. Under the Affiliate PPA, captive Ohio consumers would be forced

¹ 16 U.S.C. §§ 824e, 825e, 825h (2012).

² 18 C.F.R. § 385.206 (2015).

³ For purposes of this filing, the NRG Companies are NRG Power Marketing LLC (“NRG-PML”) and GenOn Energy Management, LLC (“GEM”).

to fund a massive bailout of AEP's "unregulated" generation subsidiary through a non-bypassable charge assessed to all retail customers, even those served by competitive suppliers. The Commission should rescind the waiver of its affiliate power sales restrictions that it previously granted to AEP's market-based rate subsidiaries,⁴ as that waiver relates to the Affiliate PPA,⁵ and thus ensure that the Affiliate PPA is reviewed under Section 205 of the FPA⁶ and in accordance with the standards for evaluating proposed affiliate power sales set forth in *Boston Edison Co. Re: Edgar Electric Energy Co.*⁷ and *Allegheny Energy Supply Co., LLC*.⁸

The Affiliate PPA strikes at the heart of the Commission's longstanding restrictions on affiliate transactions. Indeed, this contract threatens exactly the harm to both captive consumers and markets that prompted the adoption of those restrictions in the first place. The Affiliate PPA would saddle captive Ohio consumers with hundreds of millions or even billions of dollars in above-market costs and would artificially distort prices in the PJM Interconnection, L.L.C. ("PJM") markets by subsidizing the continued operation of nearly 3 GW of generation that, according to AEP, would otherwise retire. The fact that AEP has devised, and that the PUCO may approve, a clever scheme to shift costs of this abusive affiliate contract onto consumers does not alter the Commission's statutory duty to protect consumers from the effects of unjust and

⁴ See *AEP Energy Partners, Inc.*, Docket Nos. ER14-593-000, *et al.* (Feb. 5, 2014) (unreported) ("*AEP Energy*").

⁵ Complainants are not, by this Complaint, asking that this waiver be rescinded as to wholesale power sales other than the Affiliate PPA.

⁶ 16 U.S.C. § 824d (2012).

⁷ 55 FERC ¶ 61,382 at 62,167 (1991) ("*Edgar*").

⁸ 108 FERC ¶ 61,082 at P 18 (2004) ("*Allegheny*").

unreasonable wholesale rates⁹ or in any way make it less critical to ensure the integrity of the PJM markets. There have been fundamental changes in circumstances since the Commission granted the waiver that make it unjust, unreasonable and unduly discriminatory to allow AEP Generation Resources, Inc. (“AEP Generation”) to enter into the Affiliate PPA pursuant to its blanket market-based rate authorization.

Expedited Commission action granting this Complaint and providing for review of the Affiliate PPA under the *Edgar/Allegheny* standards is essential. The Public Utilities Commission of Ohio (the “PUCO”) is poised to authorize the parties to enter into the Affiliate PPA as early as next month, and PJM will conduct the Base Residual Auction for the 2019/2020 Delivery Year (the “2019/2020 BRA”) in May 2016.¹⁰ A Commission order making clear its intent to review the Affiliate PPA in accordance with the *Edgar/Allegheny* standards will provide needed assurance to consumers and other market participants that the Affiliate PPA is not going to evade Commission review. It would also afford AEP sufficient time to file the Affiliate PPA with the Commission and obtain Commission guidance in advance of the 2019/2020 BRA.

⁹ See *FERC v. Elec. Power Supply Ass’n*, Nos. 14-840, *et al.*, slip op. at 28-29 (U.S. Jan. 25, 2016).

¹⁰ See PJM, Auction Schedule, <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/rpm-auction-schedule.ashx>.

I. CORRESPONDENCE AND COMMUNICATIONS

Complainants request that all correspondence and communications regarding this filing be addressed to the following persons, who should be placed on the Commission's official service list in this proceeding:¹¹

For EPSA:

Nancy Bagot
Senior Vice President
Sharon Theodore
Director of Regulatory Affairs
Electric Power Supply Association
1401 New York Ave, NW, 11th Floor
Washington, DC 20005
(202) 628-8200
nancyb@epsa.org
stheodore@epsa.org

David G. Tewksbury
Stephanie S. Lim
KING & SPALDING LLP
1700 Pennsylvania Ave., NW
Washington, DC 20006
(202) 737-0500
(202) 626-3737 (facsimile)
dtewksbury@kslaw.com
sslim@kslaw.com

For RESA:

Elizabeth W. Whittle
NIXON PEABODY LLP
799 Ninth Street, N.W., Suite 500
Washington, DC 20001
(202) 585-8338
(202) 585-8080 (facsimile)
ewhittle@nixonpeabody.com

For Dynegy:

Michelle D. Grant
Senior Corporate Counsel
Dynegy Inc.
601 Travis Street, Suite 1400
Houston, TX 77002
(713) 767-0387
(713) 388-6008 (facsimile)
michelle.d.grant@dynegy.com

Dean Ellis
Vice President
Dynegy Inc.
601 Travis Street, Suite 1400
Houston, TX 77002
(713) 767-0328
dean.ellis@dynegy.com

¹¹ Complainants respectfully request waiver of Rule 203(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b) (2015), to the extent necessary to allow each of these individuals to be included on the official service list in this proceeding.

For Eastern Generation:

John P. Reese
Senior Vice President
Liam T. Baker
Vice President, Regulatory Affairs
Eastern Generation, LLC
300 Atlantic Street, 5th Floor
Stamford, CT 06901
(202) 792-0800
(212) 792-0899 (facsimile)
jreese@uspowergen.com
lbaker@uspowergen.com

For the NRG Companies:

Abraham Silverman
Assistant General Counsel, Regulatory
Cortney Madea
Assistant General Counsel, Regulatory
Jennifer Hsia
Senior Counsel - Regulatory
NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
(609) 524-4500
abraham.silverman@nrg.com
cortney.madea@nrg.com
jennifer.hsia@nrg.com

II. DESCRIPTION OF COMPLAINANTS AND RESPONDENTS

A. Complainants

1. EPSA

EPSA is a national trade association that represents the competitive power industry and is incorporated under the laws of the District of Columbia. EPSA's members include 14 companies, along with numerous supporting members, and state and regional partners, that represent the competitive power industry in their respective regions, including PJM. Competitive suppliers, which collectively account for 40 percent

of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers.

2. RESA

RESA is a non-profit trade association of independent corporations that are involved in the competitive supply of electricity. RESA and its members are actively involved in retail electricity markets throughout the United States, including Ohio and other markets in PJM.¹²

3. Dynegy

Dynegy is a Delaware corporation that, through various subsidiaries, produces and sells electric energy, capacity, and ancillary services in various U.S. markets. Dynegy's power generation portfolio currently consists of approximately 26,000 MW of baseload, intermediate, and peaking power plants fueled by a mix of natural gas, coal, and fuel oil, including approximately 5,332 MW of generation in Ohio. Dynegy also has two retail electricity subsidiaries serving businesses and residents in Ohio and other states.

¹² The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

4. Eastern Generation

Eastern Generation is a wholly owned subsidiary of ArcLight Energy Partners Fund VI, L.P., a private equity fund managed by ArcLight Capital Partners, LLC. Eastern Generation recently indirectly acquired generation facilities with an aggregate generating capacity of approximately 4,953 MW, including an approximately 825 MW natural gas-fired generation facility in Vinton County, Ohio.¹³

5. The NRG Companies

The NRG Companies are wholly owned subsidiaries of NRG Energy, Inc. (“NRG”) that market the output of affiliated generation in various markets. In Ohio, NRG’s affiliates sell electricity and capacity from its Avon Lake generating facility, facilitate the sale of Ohio demand response into PJM’s market, and sell retail electricity in Ohio. Nationwide, NRG owns over 53,000 MW of electric generating capacity throughout the United States.

B. Respondents

Respondents are subsidiaries of AEP. AEP is a multi-state electric utility holding company system whose operating companies provide electric service in parts of 11 states.

Ohio Power Company (“AEP Ohio” and together with AEP Generation, “Respondents”) is a “franchised public utility,” as defined in Section 35.36(a)(5) of the

¹³ See *Astoria Generating Co., L.P.*, 153 FERC ¶ 62,148 (2015) (approving the transaction).

Commission's regulations,¹⁴ with a franchised service territory in the State of Ohio. In connection with the implementation of retail choice in Ohio, AEP Ohio divested virtually all of its generation assets to AEP Generation on December 31, 2013.¹⁵ These assets include (but are not limited to) interests in various coal-fired units at the Cardinal, Conesville, Stuart and Zimmer Stations in Ohio, which represent an aggregate generating capacity of approximately 2,671 MW (the "PPA Units").¹⁶

AEP Generation is a "market-regulated power sales affiliate," as defined in Section 35.36(a)(7) of the Commission's regulations,¹⁷ of AEP Ohio.

III. BACKGROUND

A. Previously-Granted Waiver Of Affiliate Sales Restriction

Since the inception of its market-based rate program, the Commission has recognized the risk of self-dealing and other affiliate abuse that exists when a franchised utility transacts with its affiliates. Accordingly, it has made clear that "it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted."¹⁸ To protect against affiliate abuse, the Commission's market-based rate regulations expressly provide that "no wholesale sale

¹⁴ 18 C.F.R. § 35.36(a)(5) (2015) (defining "franchised public utility" as "a public utility with a franchised service obligation under State law").

¹⁵ See *Ohio Power Co.*, 143 FERC ¶ 61,075 (2013), *on reh'g*, 146 FERC ¶ 61,016 (2014).

¹⁶ See Direct Testimony of Pablo A. Vegas in Support of AEP Ohio's Amended Application at 12, Table 2, PUCO Case Nos. 14-1693-EL-RDR, *et al.* (filed May 15, 2015) ("Vegas Direct Testimony") (describing the PPA Units), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A15E15B61949I33668.pdf>.

¹⁷ 18 C.F.R. § 35.36(a)(7) (2015) (defining "market-regulated power sales affiliate" as "any power seller affiliate other than a franchised public utility . . . whose power sales are regulated in whole or in part on a market-rate basis").

¹⁸ *Edgar*, 55 FERC ¶ 61,382 at 62,167. See also *Southern Power Co.*, 153 FERC ¶ 61,068 at P 15 (2015) ("*Southern*") (same); *Allegheny*, 108 FERC ¶ 61,082 at P 18 (same).

of electric energy or capacity may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving Commission authorization for the transaction under section 205 of the [FPA].”¹⁹ For purposes of these restrictions, “captive customers” are “wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation.”²⁰

As noted, AEP Ohio is a “franchised public utility,” one of whose “market-regulated power sales affiliates” is AEP Generation. AEP Ohio and its affiliates requested waiver of the affiliate sales restrictions in December 2013.²¹

In their Waiver Request, AEP Ohio and its affiliates argued that “there is retail choice in Ohio and that [AEP Ohio] will not have captive retail customers.”²² The Commission agreed and granted the waiver on that basis.²³

¹⁹ 18 C.F.R. § 35.39(b) (2015).

²⁰ 18 C.F.R. § 35.36(a)(6) (2015). Retail customers electing to take cost-based service from a franchised public utility acting as a provider of last resort (“POLR”) “are not considered captive customers because, although they may choose not to do so, they have the ability to take service from a different supplier whose rates are set by the marketplace.” *Market-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 480 (“Order No. 697”), *on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (“Order No. 697-A”), *on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), clarified, 131 FERC ¶ 61,021 (2010), *aff’d sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied Pub. Citizen, Inc. v. FERC*, 133 S. Ct. 26 (2012).

²¹ See Amended Market Based Rate Tariffs Waiving Affiliate Restrictions, Docket Nos. ER14-593-000, *et al.* (filed Dec. 11, 2013) (the “Waiver Request”), *accepted*, AEP Energy, Docket Nos. ER14-593-000, *et al.*

²² Waiver Request at 13. They also stated that, upon the implementation of a corporate restructuring, AEP Ohio would no longer have any captive wholesale customers. See *id.* at 11-12.

²³ See AEP Energy, Docket Nos. ER14-593-000, *et al.*

B. The Proposed Affiliate Transaction

In a December 20, 2013 application to the PUCO, AEP Ohio proposed to establish a rider (the “PPA Rider”) to recover the costs it incurs in connection with its entitlement to the output of generation facilities owned by Ohio Valley Electric Corporation (“OVEC”) from all customers on a non-bypassable basis.²⁴ AEP Ohio proposed to have the ability to petition the PUCO in the future seeking to recover the costs of other power purchase agreements pursuant to the PPA Rider.²⁵ In a February 2, 2015 order, the PUCO approved the PPA Rider on a placeholder basis, with an initial rate of zero, leaving open the possibility that AEP Ohio could make future filings to justify the recovery of costs incurred under a particular power purchase agreement.²⁶

In an application filed on October 3, 2014 and amended on May 15, 2015, while AEP Ohio’s proposal to establish the PPA Rider was pending, AEP Ohio sought PUCO approval to recover the costs of the Affiliate PPA through the PPA Rider.²⁷ Under the Affiliate PPA, AEP Ohio would agree to purchase the output of the PPA Units for the

²⁴ See Ohio Power Company’s Electric Security Plan at 8-9, PUCO Case Nos. 13-2385-EL-SSO, *et al.* (filed Dec. 20, 2013), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A13L23B40635F07212.pdf>.

²⁵ See *id.*

²⁶ See *In the Matter of the Application of Ohio Power Co. for Auth. to Establish a Standard Serv. Offer Pursuant to R.C. 4928.143, in the Form of an Elec. Security Plan*, Order and Opinion at 19-27, PUCO Case Nos. 13-2385-EL-SSO, *et al.* (Feb. 25, 2015), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A15B25B40110J73365.pdf>.

²⁷ See Application, PUCO Case No. 14-1693-EL-RDR, *et al.* (filed Oct. 3, 2014), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A14J03B31748I76343.pdf>; Amended Application, PUCO Case No. 14-1693-EL-RDR, *et al.* (filed May 15, 2015) (the “Amended Rider Application”), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A15E15B61559D77793.pdf>.

remaining operational life of the units.²⁸ As originally proposed, the Affiliate PPA provided that AEP Ohio would pay rates developed using an assumed 50/50 debt/equity ratio and a return on equity (“ROE”) of 11.24 percent.²⁹

The power purchased under the Affiliate PPA will not be offered into any of the competitive solicitation auctions conducted pursuant to an electric security plan, and will not otherwise be used to serve retail consumers in AEP Ohio’s service territory. Rather, AEP Ohio will resell the purchased power into the PJM markets and recover the losses from this “liquidation” of the power in the PJM markets through the PPA Rider.³⁰ AEP Ohio claimed that the Affiliate PPA is needed to “protect Ohio’s economy and reduce the likelihood of premature retirements of the relevant AEP[Generation] generating plants due to short-term economic signals.”³¹ Among other things, it insisted that the Affiliate PPA would “help begin to address the current prospects faced by Ohio of being a perpetual importer of power and a taker of volatile market prices in the future.”³² In particular, AEP Ohio argued that the Affiliate PPA is necessary in light of “flaws” in the PJM capacity market that “have led to suppressed capacity prices and significant price volatility.”³³

²⁸ See Direct Testimony of Kelly D. Pearce in Support of AEP Ohio’s Amended Application, Exh. KDP-1, PUCO Case No. 14-1693-EL-RDR, *et al.* (filed May 15 2015) (summary of Affiliate PPA terms), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A15E15B62402I64570.pdf>.

²⁹ See Direct Testimony of Renee V. Hawkins in Support of AEP Ohio’s Amended Application at 5-8, PUCO Case No. 14-1693-EL-RDR, *et al.* (filed May 15, 2015), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A15E15B64754D01882.pdf>.

³⁰ Amended Rider Application at 4.

³¹ *Id.*

³² *Id.* at 6.

³³ Vegas Direct Testimony at 21.

Since filing the Amended Rider Application, AEP Ohio has agreed to modify the Rider Application through a stipulation with the PUCO Staff and some (but certainly not all) of the parties to the PUCO proceeding.³⁴ Among other things, the Stipulation provides for a reduction in the ROE from 11.24 to 10.38 percent³⁵ and includes commitments by AEP Ohio to seek to retire various of the PPA Units or to convert such units to operate on natural gas.³⁶ AEP Ohio and the other parties to the Stipulation have asked the PUCO to issue an order approving the Rider Application, as modified, no later than February 10, 2016.³⁷

In the proceedings before the PUCO, AEP Ohio has stated that the Affiliate PPA will not be filed with the Commission.³⁸ At the same time, the Stipulation makes clear that “the [PUCO] lacks jurisdiction over the rates and terms of the [] Affiliate PPA”³⁹

IV. COMPLAINT

Notwithstanding AEP Ohio’s efforts to characterize the Affiliate PPA as intended to “protect Ohio’s economy,”⁴⁰ the real beneficiaries of this massive ratepayer bailout of

³⁴ See Joint Stipulation and Recommendation, PUCO Case No. 14-1693-EL-RDR, *et al.* (filed Dec. 14, 2015) (the “Stipulation”), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A15L14B60023H00068.pdf>.

³⁵ See *id.*, Attachment A.

³⁶ See *id.* at 19-26.

³⁷ See *id.* at 34.

³⁸ See Transcript, Vol. I at 275-76, PUCO Case No. 14-1693-EL-RDR (hearing held Sept. 28, 2015) (“Sept. 28 Tr.”), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A15J12B52614C02635.pdf>; *id.* at 281; Transcript, Vol. II at 354, PUCO Case No. 14-1693-EL-RDR (hearing held Sept. 29, 2015), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A15J13B70522I03103.pdf>; *id.* at 356.

³⁹ Stipulation at 3. See *also* Rider Application at 4 (“The wholesale rates paid to AEP[Generation] under the proposed [Affiliate] PPA are jurisdictional to the . . . Commission”); Sept. 28 Tr. at 274 (The Affiliate PPA “itself doesn’t require [PUCO] approval because the contract is a FERC jurisdictional contract.”).

⁴⁰ Amended Rider Application at 4.

AEP Generation are AEP's shareholders.⁴¹ This bailout will impose hundreds of millions, if not billions, of dollars in above-market costs on captive retail consumers, and at the price of potentially enormous market distortion. It is essential that the Commission act to protect both consumers and the PJM markets by requiring that the Affiliate PPA be separately filed pursuant to Section 205 of the FPA and reviewed in accordance with the Commission's established *Edgar/Allegheny* standards.

While Respondents and perhaps others will likely suggest that this Complaint is premature because the PUCO has not yet acted, immediate Commission action is, in fact, essential. Not only are captive Ohio consumers facing hundreds of millions, if not billions, of dollars in above-market costs to fund this bailout, the threatened *de facto* re-regulation of the Ohio market and the subsidization of previously-divested, uneconomic generation assets has created an acute crisis of investor confidence in PJM markets⁴² and threatens irreversible market distortion, including distortion of the upcoming

⁴¹ See John Funk, *Electric competition short-circuited in Ohio? PUCO considering second power purchase deal*, Cleveland Plain Dealer, Dec. 15, 2015, http://www.cleveland.com/business/index.ssf/2015/12/electric_competition_short-cir.html; Supplemental Testimony of A. Joseph Cavicchi on Behalf of the PJM Power Providers Group and the Electric Power Supply Association at 9, PUCO Case No. 14-1693-EL-RDR, *et al.* (filed Dec. 28, 2015) (the "Cavicchi Supplemental Testimony") ("The only clear beneficiaries of [the] Stipulation are the shareholders of AEP[], AEP Ohio's parent company."), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A15L28B70151F02362.pdf>.

⁴² See, e.g., Letter from Chuck Davis to the PJM Board of Managers (dated Jan. 13, 2016) (letter from Carroll County Energy LLC describing the threat that the Affiliate PPA, as well as a similar proposal by affiliates of FirstEnergy Corporation ("FirstEnergy"), poses to investors in an approximately 700 MW natural gas-fired, combined-cycle facility under construction in Ohio), <http://www.pjm.com/~media/about-pjm/who-we-are/public-disclosures/20160113-apa-management-letter-regarding-ohio-ppa-settlements.ashx>; Letter from Lucas Missong to the PJM Board of Managers (dated Jan. 22, 2016) (letter from Oregon Clean Energy, LLC describing the threat that the Affiliate PPA and FirstEnergy's similar proposal poses to an 860 MW natural gas-fired combined cycle generator under construction in Lucas County, Ohio and an additional 860 MW project under development in Ohio), <http://www.pjm.com/~media/about-pjm/who-we-are/public-disclosures/20160125-oregon-clean-energy-llc-letter-to-pjm-board-of-managers.ashx>.

2019/2020 BRA. When combined with a similar scheme proposed by FirstEnergy,⁴³ the Affiliate PPA will result in the subsidized retention of over 6 GW of generation that would, according to AEP and FirstEnergy, otherwise retire.⁴⁴ It is hard to imagine a more clear threat to the viability of the PJM market or a circumstance that more clearly and urgently requires the Commission's attention.⁴⁵ Moreover, with the PUCO already having approved the PPA Rider, as well as a similar rider for Duke Energy Ohio, Inc.,⁴⁶ the only real issue remaining before the PUCO at this point is how much AEP Ohio will be allowed to recover from captive consumers through the PPA Rider.

A. The Basis For The Waiver Of The Affiliate Power Sales Restrictions Is Invalid Where The Affiliate PPA Is Concerned

The Commission has long recognized that, absent adequate safeguards, a “power marketer could sell power to its affiliated franchised public utility at an above

⁴³ Complainants are filing a separate complaint with respect to the waiver of the Commission's affiliate power sales restrictions previously granted to FirstEnergy's market-based rate subsidiaries.

⁴⁴ By comparison, the New Jersey and Maryland programs that were, quite rightly, recognized as a serious threat to the PJM market involved subsidies for the uneconomic entry of “only” about 3.8 GW of generation. See *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 at PP 19-20, *on reh'g*, 137 FERC ¶ 61,145, *on reh'g*, 138 FERC ¶ 61,160 (2011), *aff'd sub nom. New Jersey Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 3rd Cir. 2014)..

⁴⁵ This Complaint asks only that the Commission rescind the waiver and review the Affiliate PPA pursuant to Section 205 of the FPA and in accordance with the *Edgar/Allegheny* standards. Complainants believe that the contemplated actions of the PUCO approving the Amended Rider Application and Stipulation and guaranteeing the rates that will be received by AEP Ohio for its resale of the energy and capacity to be purchased from AEP Generation under the Affiliate PPA would separately be preempted by the FPA and subject to injunction. Any such preemption claim would be properly adjudicated in federal district court, see 16 U.S.C. §§ 825p, 825m(a) (2012), and the Commission need not and, indeed, should not address preemption questions in this proceeding.

⁴⁶ *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Elec. Security Plan, Accounting Modifications, & Tariffs for Generation Serv.*, Opinion and Order at 46-47, PUCO Case No. 14-841-EL-SSO, *et al.* (Apr. 2, 2015), <https://dis.puc.state.oh.us/TiffToPDF/A1001001A15D02B40703H86216.pdf>.

market price, and that affiliated utility could then pass those costs through to its captive customers.”⁴⁷ That is precisely what is occurring here: AEP Generation will be selling power to AEP Ohio at an above-market price, and AEP Ohio will then pass those costs through to its captive customers. Indeed, this case effectively involves what the Commission has previously described as an “extreme example” of such affiliate abuse: “a holding company that siphons funds from a franchised public utility to support its failing market-regulated power sales affiliate”⁴⁸

AEP sought, and the Commission granted, waiver of the affiliate power sales restrictions with respect sales to (or by) AEP Ohio on the basis that AEP Ohio no longer had any captive wholesale or retail customers.⁴⁹ As discussed below, that is simply not true where the Affiliate PPA is concerned, and, consequently, the waiver can, should and, indeed, must be rescinded as it relates to that contract.⁵⁰

To be sure, the State of Ohio still has retail choice in the sense that customers may choose to receive retail service from competitive suppliers. But the PPA Rider would eliminate retail choice as it relates to AEP Ohio’s purchases under the Affiliate PPA, because customers will have no ability to choose not to bear the costs that AEP Ohio will incur under the Affiliate PPA. All customers, regardless of whether they take POLR service from AEP Ohio or have opted to take service from a competitive retail supplier, will be subject to the non-bypassable PPA Rider, and those charges will be

⁴⁷ *Illinova Power Mktg., Inc.*, 88 FERC ¶ 61,189 at 61,649 (1999) (“*Illinova*”).

⁴⁸ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at n.280.

⁴⁹ See Waiver Request at 11-13; *AEP Energy*, Docket Nos. ER14-593-000, *et al.*

⁵⁰ The circumstances surrounding the Affiliate PPA are sufficiently different from those described when AEP received the waiver that Complainants would hope and expect that AEP Ohio and AEP Generation to recognize their obligation to file a notice of change in status pursuant to Section 35.42 of the Commission’s regulations, 18 C.F.R. § 35.42 (2015).

cost-based in that they will represent the net cost of the affiliate purchases – the difference between what AEP Ohio pays its affiliate, AEP Generation, and what it receives from re-selling the power in the PJM markets.⁵¹ As a result, where costs of the Affiliate PPA are concerned, retail customers will be “served by a franchised public utility under cost-based regulation”⁵² just as surely as they were before retail choice.

The fact that the Rider RRS charges will apply to **all** retail customers is a critical distinction between the Affiliate PPA and other affiliate transactions whose costs are recovered solely from POLR customers. Complainants recognize that the Commission has held that:

Retail customers in retail choice states who choose to buy power from their local utility at cost-based rates as part of that utility’s [POLR] obligation, which is the case here, are not considered captive customers – that is, they are not served under cost-based regulation, since that term indicates the absence of retail choice.⁵³

The vital difference here is that retail customers in AEP Ohio’s service territory cannot avoid the cost of the affiliate transaction by choosing to take service from a competitive supplier, and thus retail choice, in any meaningful sense, is entirely absent. These retail customers could not be more captive with respect to costs of the Affiliate PPA if they were locked in a cage with a greedy tiger.

⁵¹ The PPA Rider charges are no less cost-based by virtue of their being based on the difference between costs incurred under an allegedly “market-based rate” contract and revenues from market-based rate sales into the PJM markets. In this respect, the inputs to the PPA Rider charges are no different from other inputs to cost-based rates, such as turbines, transformers, etc., whose prices are “market-based.”

⁵² 18 C.F.R. § 35.36(a)(6) (2015).

⁵³ *Duquesne Light Holdings, Inc.*, 117 FERC ¶ 61,326 at P 38 (2006).

B. Allowing The Waiver To Cover The Affiliate PPA Will Result In Exactly The Harms That The Affiliate Power Sales Restriction Is Meant To Prevent

Even assuming *arguendo* that there were some way to ignore the fact that retail choice is non-existent where costs of the Affiliate PPA are concerned, it would still be manifestly unjust, unreasonable and unduly discriminatory to allow the previously-granted waiver of the affiliate power sales restrictions to apply under these circumstances. The Affiliate PPA threatens exactly the sorts of harm to both consumers **and** markets that the affiliate power sales restrictions exist to prevent.⁵⁴ The Affiliate PPA thus demands review under the *Edgar* and *Allegheny* standards, which will not occur unless the waiver is rescinded as it relates to the Affiliate PPA.

The Affiliate PPA will saddle retail customers in AEP Ohio's service territory with hundreds of millions, if not billions, of dollars in above-market costs. For example, James F. Wilson, testifying in the PUCO proceeding on behalf of the Office of the Ohio Consumers' Counsel (the "OCC"), estimated the cost to consumers of the PPA Rider, under which AEP Ohio would recover the costs of both the Affiliate PPA and AEP Ohio's OVEC entitlement, to be a cumulative \$1.9 billion or \$1.5 billion on a net present value basis.⁵⁵ Because this amount reflects AEP Ohio's net loss from reselling the power in

⁵⁴ See, e.g., *Southern*, 153 FERC ¶ 61,068 at P 15; *Allegheny*, 108 FERC ¶ 61,082 at P 18; *Edgar*, 55 FERC ¶ 61,382 at 62,167. See also *Pinnacle W. Capital Corp.*, 109 FERC ¶ 61,295 at P 31 (2004) (finding that a market-based rate applicant had satisfied the Commission's affiliate abuse concerns but noting that "the Commission has become increasingly concerned about the potential impact affiliate transactions may have not only on customers, but also on wholesale competition"); *Sunbury Generation, LLC*, 108 FERC ¶ 61,160 at P 41 (2004) (same).

⁵⁵ See Supplemental Direct Testimony of James F. Wilson on Behalf of the Office of the Ohio Consumers' Counsel at 10, PUCO Case No. 14-1693-EL-RDR (dated Dec. 28, 2015), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A15L28B72148G02372.pdf>.

the PJM markets, the portion of it attributable to the Affiliate PPA also reflects the above-market value of the Affiliate PPA to AEP Generation.

Separate and apart from what the experts have said, ***the market*** has spoken and has confirmed just how grossly-one sided the Affiliate PPA really is: a competing supplier, not affiliated with AEP, has offered to supply AEP Ohio the same amount of energy and capacity at prices that would save consumers \$2.5 billion over the contract term.⁵⁶ To be clear, Complainants oppose Rider RRS and would continue to oppose it even if a non-affiliated supplier were substituted for AEP Generation as the seller, without a competitive solicitation. Nonetheless, this offer removes any doubt as to the magnitude of the above-market costs that retail customers in the AEP Ohio's service territory would bear under the Affiliate PPA. Assuming *arguendo* that AEP Ohio is going to enter into a power purchase agreement of this sort, entering into the Affiliate PPA will now indisputably cost retail customers billions of dollars relative to the market alternative. But for the affiliate preference, a rational purchaser would choose the market alternative over the Affiliate PPA in a heartbeat.

Over and above the impact on Ohio consumers, the impact of the Affiliate PPA on the PJM markets is enormous. If it is true, as AEP Ohio suggests, that the PPA Units would retire sooner but for the Affiliate PPA, this case involves the same issue of "uneconomic non-exit" – *i.e.*, subsidized retention of resources that would otherwise have left the market – with which the Commission has been confronted in other

⁵⁶ See Dynegy, Inc., News Release, *Dynegy Offers Superior Alternatives to the FirstEnergy and AEP PPA Subsidies*, Jan. 12, 2016, <http://www.dynegy.com/news/news-release?newsurl=http%3A%2F%2Fphx.corporate-ir.net%2Fphoenix.zhtml%3Fc%3D147906%26amp%3Bp%3DRssLanding%26amp%3Bcat%3Dnews%26amp%3Bid%3D2128549>.

proceedings.⁵⁷ Because capacity markets are designed to convey the price signals needed **both** to encourage entry of economic new resources and to discourage the premature exit of economic existing resources,⁵⁸ it follows naturally that uneconomic non-exit will present the same threat to such markets as uneconomic entry.

The subsidies that will be paid under the Affiliate PPA threaten serious disruption of the wholesale markets. As Joseph E. Bowring, Ph.D., the Independent Market Monitor for PJM, testified in the PUCO proceeding, the effect of the Affiliate PPA is that the PPA Units will “be returned to the cost of service regulation regime that predated the introduction of competitive wholesale power markets.”⁵⁹ Dr. Bowring further testified that such an arrangement “is not consistent with competition in the PJM wholesale power market” because it:

would require that the ratepayers of AEP [Ohio] subsidize the cost of the plants and the contracts to the benefit of AEP. The logical offer price in the PJM capacity market, under these conditions, would be zero. A zero offer would be rational because this would maximize the revenue offset to the customers who would be required to pay 100 percent of the costs of this capacity. This would have an anti-

⁵⁷ See *Independent Power Producers of New York, Inc. v. New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,214 at P 69 (2015) (finding that a contract that would provide subsidies for the retention of capacity “above the amount needed for short-term reliability” could “raise potential issues of artificial price suppression”).

⁵⁸ See, e.g., *Maine Pub. Utils. Comm’n v. FERC*, 520 F.3d 464, 473 (D.C. Cir. 2008) (explaining that the New England capacity market was intended to “ensure both that existing generators are adequately compensated and that prices support new entry when additional capacity is needed”), *rev’d in part not relevant*, *NRG Power Mktg. LLC v. Maine Pub. Utils. Comm’n*, 558 U.S. 165 (2010).

⁵⁹ Direct Testimony of Joseph E. Bowring on Behalf of the Independent Market Monitor for PJM at 4, PUCO Case No. 14-1693-EL-RDR (filed Sept. 11, 2015), <http://dis.puc.state.oh.us/TiffToPdf/A1001001A15I11B65739H02384.pdf>.

competitive, price-suppressive effect on the PJM capacity markets.⁶⁰

Among other things, the structure of the Affiliate PPA will also “create incentives for AEP [Generation] to sustain inefficient operations (i.e., operations and investment that would not be economic under PJM’s market-determined prices).”⁶¹

Under the circumstances, it would be unjust, unreasonable and unduly discriminatory if the Affiliate PPA were allowed to evade any meaningful regulatory review. As AEP Ohio has insisted in the PUCO proceedings, the PUCO lacks the authority to review the Affiliate PPA.⁶² At the same time, however, there will be no effective oversight at the federal level if AEP Generation can rely on its blanket market-based rate authorization to make sales on terms that were not negotiated at arm’s-length.⁶³ Failure to review the Affiliate PPA would re-create precisely the sort of

⁶⁰ *Id.* at 4. See also First Supplemental Testimony of Joseph E. Bowring on Behalf of the Independent Market Monitor for PJM at 4-5, PUCO Case No. 14-1693-EL-RDR (filed Dec. 28, 2015) (“Bowring First Supplemental Testimony”), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A15L28B35048G02244.pdf>. The harm to the market could be mitigated by imposing a floor on AEP Ohio’s offers into the PJM markets. See *id.* at 6; Direct Testimony of F. Stuart Bresler, III on Behalf of PJM Interconnection, PUCO Case No. 14-1693-EL-RDR (filed Dec. 30, 2015), <http://dis.puc.state.oh.us/TiffToPDF/A1001001A15L30B71618B03010.pdf>. Of course, as Dr. Bowring observed, doing so would work to reduce the offset to costs that AEP Ohio’s customers will bear under Ride RRS. Bowring First Supplemental Testimony at 6.

⁶¹ Cavicchi Supplemental Testimony at 8.

⁶² See *supra* note 38. See also, e.g., *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986); Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 415 (“[O]nly the Commission has the authority to determine the justness and reasonableness of a public utility’s wholesale rates and . . . a state cannot disallow pass-through in retail rates on the basis that it disagrees with the Commission’s just and reasonable determination.”).

⁶³ The Commission’s market-based rate regime rests on the eminently reasonable presumption that rates negotiated at arm’s-length by a seller that lacks market power can be expected to satisfy the statutory just and reasonable standard. See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 963; *Citizens Power & Light Corp.*, 48 FERC ¶ 61,210 at 61,776-79 (1989) (“*Citizens*”). See also, e.g., *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1004 (D.C. Cir. 1990) (“In a competitive market, where neither buyer nor seller has significant market power, it is rational to assume that the terms of their voluntary exchange are reasonable . . .”). This presumption does not hold where, as here, affiliates are involved, because of the incentive

regulatory gap that the FPA was enacted to fill,⁶⁴ leaving AEP Generation free to make wholesale power sales to AEP Ohio at unjust, unreasonable and unduly discriminatory rates.

To be clear, Complainants are not asking the Commission to prejudge the issues that would be presented if and when it has the opportunity to review the Affiliate PPA under Section 205 of the FPA.⁶⁵ The Commission is obviously in no position to review a contract that has not been filed and that has not even been executed yet. Nor are Complainants asking the Commission, either in this proceeding or any future proceeding in which it reviews the Affiliate PPA, “to pass judgment on state resource procurement policies.”⁶⁶ States indisputably possess broad authority over generation and the procurement practices of state-regulated utilities. What the Commission can, should and, in Complainants’ view, must do is act to ensure that it has the **opportunity** to review the Affiliate PPA under Section 205 and in accordance with well-established Commission standards for reviewing affiliate power sales contracts, *i.e.*, the

for “self-dealing” that follows naturally when the transacting parties “have the same goal: maximize profits for the parent firm.” *Citizens*, 48 FERC ¶ 61,210 at 61,777. *Cf. also Nantahala Power & Light Co. v. FERC*, 727 F.2d 1342, 1345 (4th Cir. 1984) (explaining that affiliate transactions “cannot be presumed to be as fair as they would be if [the transacting parties] were independent entities”); *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128 at P 109 (2014) (“[A]rm’s-length bargaining is a process in which each party pursues its individual interests, and a negotiation in which the parties pursue a single, common, and shared interest is thus inconsistent with such bargaining”), *on reh’g*, 150 FERC ¶ 61,038, *on reh’g*, 151 FERC ¶ 61,250 (2015).

⁶⁴ See *Arkansas Elec. Coop. v. Ark. Pub. Serv. Comm’n*, 461 U.S. 375, 379 (1983) (stating that “the main purpose of th[e] FPA was to ‘fill the gap’ created by [*Public Utils. Comm’n of R.I. v. Attleboro Steam & Elec. Co.*, 273 U.S. 83 (1927)] and its predecessors”).

⁶⁵ 16 U.S.C. § 824d (2012). Moreover, Complainants are only asking the Commission to review the Affiliate PPA, something AEP Ohio has conceded the PUCO lacks jurisdiction to do. Complainants are not asking the Commission “to pass judgment on state resource procurement policies.” *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,060 at P 40 (2015).

⁶⁶ *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,066 at P 40 (2015).

Edgar/Allegheny standards,⁶⁷ in order to ensure that the rates, terms and conditions of this wholesale power sales contract are just and reasonable.

V. RELIEF REQUESTED

Complainants respectfully request that the Commission rescind the waiver of the affiliate power sales restrictions previously granted to Respondents, as that waiver relates to the Affiliate PPA, for the reasons set forth herein and that it make such rescission effective as of the date of filing of this Complaint pursuant to Section 206(b) of the FPA.⁶⁸ Making the rescission effective as of the date of this Complaint would be consistent with the Commission's policy of setting refund effective dates at the earliest date possible in order to "provid[e] maximum protection to customers"⁶⁹

In rescinding the waiver, the Commission should make clear that when AEP Generation files the Affiliate PPA pursuant to Section 205 of the FPA, the Commission will not entertain any request for waiver of the prior notice filing requirements based on claims that AEP Generation anticipated being able to enter into the Affiliate PPA pursuant to its blanket market-based rate authorization. The Commission has long required that a public utility demonstrate "extraordinary circumstances" for waiver when an agreement is filed "on or after the day service has commenced."⁷⁰ Even if the

⁶⁷ Complainants note that the *Edgar/Allegheny* standards will apply whether the Affiliate PPA is filed as a market-based rate agreement or as a cost-based rate agreement. See *Southern Cal. Edison Co.*, 106 FERC ¶ 61,183 at P 58, *on reh'g*, 109 FERC ¶ 61,086 (2004), *on reh'g*, 110 FERC ¶ 61,319 (2005).

⁶⁸ 16 U.S.C. § 824e(b) (2012).

⁶⁹ *Boston Energy Trading & Mktg. LLC v. Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,336 at P 43 (2015). See also, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993).

⁷⁰ *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,337 at 61,339, *on reh'g*, 61 FERC ¶ 61,089 (1992). See also, e.g., *Pacific Gas & Elec. Co.*, 153 FERC ¶ 61,021 at P 24 (2015);

Commission does not grant this Complaint until after service has commenced under the Affiliate PPA, AEP Generation can have no legitimate claim that loss of the waiver establishes “extraordinary circumstances” for late filing of the Affiliate PPA. This Complaint places AEP Generation on notice that the waiver could be rescinded effective to the date of filing of this Complaint, and there is no reason that AEP Generation cannot file the Affiliate PPA pursuant to Section 205 of the FPA while this Complaint is pending.⁷¹

VI. REQUEST FOR FAST TRACK PROCESSING

The issues raised in this Complaint warrant fast track processing under Rule 206(b)(11) of the Commission’s Rules of Practice and Procedure.⁷² As noted, the PUCO is poised to approve Amended Rider Application, as revised by the Stipulation, as soon as February 2016. A Commission order making clear its intent to review the Affiliate PPA in accordance with the *Edgar/Allegheny* standards would provided need assurance to consumers and market participants that the Affiliate PPA, which, as AEP Ohio has acknowledged, is not subject to PUCO review, does not evade regulatory review. In particular, it would avoid the situation in which AEP Generation enters into the Affiliate PPA with the expectation that its market-based rate tariff provides the necessary FPA Section 205 authorization and then learns otherwise after-the-fact. It

San Gorgonio Farms, Inc., 140 FERC ¶ 61,234 at PP 42-43 (2012); *El Paso Elec. Co.*, 105 FERC ¶ 61,131 at PP 44-46 (2003); *Prior Notice & Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984 (1993).

⁷¹ Naturally, if this Complaint were still pending, AEP Generation could make the Section 205 filing with the understanding that it could withdraw, or the Commission could reject, the filing if and when this Complaint was denied.

⁷² 18 C.F.R. § 385.206(b)(11) (2015).

would also afford AEP Generation sufficient time to file the Affiliate PPA with the Commission pursuant to Section 205 of the FPA and to obtain Commission guidance in advance of the 2019/2020 BRA.

VII. OTHER MATTERS

A. Other Proceedings

The Ohio Office of Consumers' Counsel has raised issues relating to the Affiliate PPA and AEP Ohio's OVEC entitlement in Docket No. ER16-323-000, a proceeding in which OVEC is seeking authorization to sell electric energy, capacity and ancillary services at market-based rates.⁷³ Complainants note that OVEC has taken the position that such issues are beyond the scope of that proceeding.⁷⁴ In addition, as noted above,⁷⁵ Complainants are concurrently filing a separate complaint with respect to the waiver of the Commission's affiliate power sales restrictions previously granted to FirstEnergy's market-based rate subsidiaries. Pursuant to Rule 206(b)(6) of the Commission's Rules of Practice and Procedure,⁷⁶ Complainants state that, to the best of their knowledge, the issues presented in this Complaint are not pending before the Commission in any other proceeding.

⁷³ See, e.g., Motion to Intervene, Protest and Request for Evidentiary Hearings of the Office of the Ohio Consumers' Counsel, Docket No. ER16-323-000 (filed Dec. 4, 2015).

⁷⁴ See Motion for Leave to Answer and Answer of Ohio Valley Electric Corporation, Docket No. ER16-323-000 (filed Dec. 18, 2015); Motion for Leave to Answer and Answer of Ohio Valley Electric Corporation, Docket No. ER16-323-000 (filed Dec. 23, 2015).

⁷⁵ See *supra* note 43.

⁷⁶ 18 C.F.R. § 385.206(b)(6) (2015).

B. Negotiations Among The Parties

As indicated above, AEP Ohio has made clear in the PUCO proceedings that AEP Generation does not intend to file the Affiliate PPA with the Commission.⁷⁷ Moreover, even if AEP Generation voluntarily filed the Affiliate PPA pursuant to Section 205 of the FPA, such a filing would almost certainly be dismissed if the waiver of the affiliate sales restrictions were to remain in force.⁷⁸ Accordingly, Complainants do not believe that informal discussions provide a means of addressing the concerns that have prompted this Complaint.

In accordance with Rule 206(b)(9) of the Commission's Rules of Practice and Procedure,⁷⁹ Complainants state that they have not contacted the Commission's Office of Enforcement before filing this Complaint. This Complaint seeks rescission of a waiver previously granted by a Commission order and thus involves issues that could not be resolved by the Office of Enforcement.

C. Financial Impact

It is not possible to estimate the financial impact of the Affiliate PPA and the associated arrangements with precision, but, as discussed above in Section IV.B, the potential financial impact of AEP's scheme on both consumers and the markets is massive.

⁷⁷ See *supra* note 38.

⁷⁸ See, e.g., *Commonwealth Edison Co.*, 122 FERC ¶ 61,200 (2008) (dismissing FPA Section 203 filing of affiliate contract where parties had already obtained waiver of the affiliate power sales restrictions), *on reh'g*, 126 FERC ¶ 61,032 (2009).

⁷⁹ 18 C.F.R. § 385.206(b)(9) (2015).

D. Service and Form of Notice

In accordance with Rule 206(c) of the Commission's Rules of Practice and Procedure,⁸⁰ Complainants are serving a copy of this Complaint on the corporate officials identified on the Commission's website for service on behalf of Respondents.

In accordance with Rule 206(b)(10) of the Commission's Rules of Practice and Procedure,⁸¹ a form of notice suitable for publication in the Federal Register is provided in Attachment A.

⁸⁰ 18 C.F.R. § 385.206(c) (2015).

⁸¹ 18 C.F.R. § 385.206(b)(10) (2015).

VIII. CONCLUSION

WHEREFORE, for the foregoing reasons, Complainants respectfully request that the Commission issue an order granting this Complaint and the relief requested herein.

Respectfully submitted,

ELECTRIC POWER SUPPLY ASSOCIATION RETAIL ENERGY SUPPLY ASSOCIATION

By: /s/

David G. Tewksbury
Stephanie S. Lim
KING & SPALDING LLP
1700 Pennsylvania Ave., NW
Washington, DC 20006

Nancy Bagot
Senior Vice President
Sharon Theodore
Director of Regulatory Affairs
Electric Power Supply Association
1401 New York Ave, NW, 11th Floor
Washington, DC 20005

On behalf of the **Electric Power
Supply Association**

NRG POWER MARKETING LLC
GENON ENERGY MANAGEMENT, LLC

By: /s/
Abraham Silverman
Assistant General Counsel, Regulatory
Cortney Madea
Assistant General Counsel, Regulatory
Jennifer Hsia
Senior Counsel - Regulatory
NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540

On behalf of **NRG Power
Marketing LLC and GenOn
Energy Management, LLC**

By: /s/
Elizabeth W. Whittle
NIXON PEABODY LLP
799 Ninth Street, N.W., Suite 500
Washington, DC 20001

Counsel for the **Retail Energy
Supply Association**

DYNEGY INC.

By: /s/
Michelle D. Grant
Senior Corporate Counsel
Dynegy Inc.
601 Travis Street, Suite 1400
Houston, TX 77002

Counsel for **Dynegy Inc.**

EASTERN GENERATION, LLC

By: /s/
John P. Reese
Senior Vice President
Liam T. Baker
Vice President, Regulatory Affairs
Eastern Generation, LLC
300 Atlantic Street, 5th Floor
Stamford, CT 06901

On behalf of **Eastern
Generation, LLC**

Dated: January 27, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the respondents, AEP Generation Resources, Inc. and Ohio Power Company.

Dated at Washington DC, this 27th day of January, 2016.

/s/
Stephanie S. Lim

Attachment A
Form of Notice

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**Electric Power Supply Association,
Retail Energy Supply Association,
Dynegy Inc., Eastern Generation, LLC,
NRG Power Marketing LLC and GenOn
Energy Management, LLC,**

Complainants,

v.

**AEP Generation Resources, Inc. and
Ohio Power Company,**

Respondents.

Docket No. EL16-____-000

NOTICE OF COMPLAINT

(January __, 2016)

Take notice that on January 27, 2016, the Electric Power Supply Association, , the Retail Energy Supply Association, Dynegy Inc., Eastern Generation, LLC, NRG Power Marketing LLC and GenOn Energy Management, LLC (Complainants) filed a formal complaint against AEP Generation Resources, Inc. and Ohio Power Company (Respondents) pursuant to Sections 206, 306 and 309 of the Federal Power Act seeking rescission of a previously-granted waiver of the Commission's affiliate power sales restriction as it relates to a proposed affiliate transaction between Respondents.

Complainants certify that copies of the complaint were served on the contacts for Respondents, as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Respondents' answer and all interventions, or protests must be filed on or before the comment date. Respondents' answer, motions to intervene, and protests must be served on Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to

the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, D.C. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose
Secretary