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The Honorable Brett Hillyer  
Chairman  
House Civil Justice Committee  
77 South High Street  
Columbus, Ohio 43215

Chairman Hillyer and committee members:

Ohio Power Company and AEP Ohio Transmission Company, Inc. (collectively, "AEP") appreciate the opportunity to submit this opponent testimony to members of the House Civil Justice Committee. AEP agrees with the proponents of Substitute House Bill 64 (the "Bill") that the matter of eminent domain is an issue of critical importance to the citizens of this State. But AEP respectfully disagrees that the Bill will advance the public interest.

The proposed amendments in the Bill would make Ohio an outlier in eminent domain law, harm taxpayers, and put Ohio at a competitive disadvantage with its neighboring States in attracting new business. The eminent domain process in Ohio is already among the most landowner-friendly in the nation, and the eminent domain process here is slower, more costly, and more cumbersome than in any of the other States in which AEP operates. If the Bill is adopted, it will become even more costly and time consuming to provide Ohio's citizens with critical public utility services. Moreover, businesses may elect to build their future facilities in other States, where the eminent domain laws promote, rather than impede, construction of infrastructure necessary for economic growth.

### The Current Eminent Domain Process

Although existing Ohio law mandates that eminent domain cases "be advanced as a matter of immediate public interest and concern and shall be heard by the court at the earliest practicable moment" – the reality is that eminent domain cases in this State often take years. That is because Ohio law does not allow a public utility to take possession of its easement until the conclusion of the compensation trial, and provides for an intervening right to appeal a finding of public use or necessity. As a result, a public utility faced with a "necessity" challenge in Ohio (regardless of its merit) has two options – pay whatever the landowner's counsel demands, or delay the public project by years to see the eminent domain process through to conclusion.

The recent Ohio Supreme Court decision in *Burns*, referenced in the Ohio Farm Bureau's proponent letter in response to the original bill, illustrates the type of delays currently being seen in Ohio. More than three years have passed since AEP filed those cases, which were met with a necessity challenge to easement terms. The

underlying upgrade to Washington County's aging electrical grid – which all parties agree is necessary to serve the public good – cannot proceed until those challenges are concluded, and there is currently no end in sight to that litigation.

Ohio is therefore already an outlier among other States when it comes to the eminent domain process. Many of those States – Texas, Pennsylvania and West Virginia are just a few examples – allow for some mechanism by which private property rights are protected in the court system and landowners receive just compensation, while allowing important public projects to proceed expeditiously without getting bogged down in years-long litigation.

### Substitute House Bill 64

The proposed amendments would exacerbate the problems described above and threaten future economic development efforts within the State. Businesses may be reluctant to come to Ohio, or to expand their existing facilities here, if public utilities are unable to timely and cost-effectively supply those owners with the utilities they need to actually open and operate their facilities. Indeed, AEP works constantly with companies seeking to locate or expand in Ohio, and the availability of and timely access to utility service is mission-critical to those efforts.

Aside from the inverse condemnation provision (a matter on which AEP takes no position), none of the proponent letters in response to the original bill appears to identify any specific defects in the current legislative framework. All of the fundamental rights mentioned – the right to challenge the validity of a project; the right to seek full compensation; and the right to recover attorneys' fees for any successful challenge – are all already expressly provided for in the existing statute.

Instead, the Bill primarily appears intended to shift the balance between two competing, yet equally important constitutional rights – the individual's right to protect and enjoy private property, and the government's and public utilities' right to acquire private property for the public benefit – entirely in favor of the former interest. Such a shift would no doubt benefit individual property owners and their attorneys, but at great expense to the general public.

To assist the Committee in its evaluation of the Bill, AEP respectfully submits a few specific concerns with certain of the amended provisions:

- Nearly every State recognizes that public utilities are in the best position to assess whether a project is necessary to serve the public use. The Bill would take Ohio far outside the mainstream on this issue, by stripping away two presumptions on this issue and modifying the third, while also applying the highest burden of proof in the civil justice system – clear and convincing evidence. These amendments are certain to increase litigation and further delay – or stop – critical public infrastructure projects in their tracks.
- The revisions to the trial court timing requirements effectively remove any timing requirements whatsoever. Because the proposed language only sets minimum time periods – and not maximums – there would be no obligation to expedite such proceedings at all, and eminent domain litigation might move as slowly as any other civil litigation.
- The Bill expands attorneys' fee awards to even "partial" successes, meaning that counsel might now recover attorneys' fees even if they succeed, for example, on only 1 out of 50 issues raised in the case.
- The addition of an affirmative cause of action for alleged violation of R.C. 163.59 will invite more landowners to bring unsupported claims for violation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, a statute which was not intended to apply to, and does not apply to, the large majority of appropriations taking place in Ohio.
- The addition of an undefined "coercive actions" claim to the statute will merely foster more and lengthier litigation, and it will likely stifle attempts to compromise.

These are just a few of the many potential adverse consequences inherent in the Bill.

AEP appreciates this opportunity to provide feedback on Substitute House Bill 64, and it invites the Committee to follow up with any questions about this letter.

Sincerely,

*Thomas G. St. Pierre*

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