

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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IN RE AEP ERISA LITIGATION	:
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This Document Relates To:	:
All Actions	:
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**DEFENDANTS' ANSWER TO PLAINTIFFS' CONSOLIDATED
AMENDED ERISA COMPLAINT**

Defendants American Electric Power Company, Inc. ("AEP"), American Electric Power Service Corporation ("AEPSC"), E. Linn Draper, Jr. ("Dr. Draper"), and Thomas V. Shockley, III ("Mr. Shockley") (collectively, the "Defendants"), through their undersigned counsel, answer the consolidated amended ERISA Complaint (the "Complaint") as follows:

NATURE OF THE ACTION

1. Defendants aver that the allegations contained in paragraph 1 are of no legal significance, and therefore, no response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1, and therefore, deny the allegations, except admit that the Defendants are AEP, AEPSC, Dr. Draper and Mr. Shockley.

2. Defendants deny each and every allegation contained in paragraph 2.

3. Defendants aver that the allegations contained in paragraph 3 are of no legal significance, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 3.

a. Defendants aver that the allegations contained in paragraph 3(a) are of no legal significance, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 3(a).

b. Defendants aver that the allegations contained in paragraph 3(b) are of no legal significance, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 3(b).

4. Defendants deny each and every allegation contained in paragraph 4.

JURISDICTION AND VENUE

5. Defendants aver that the allegation contained in paragraph 5 states a conclusion of law, and therefore, no response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 5, and therefore, deny the allegation, except admit that Plaintiffs purport to bring claims pursuant to ERISA § 502, 29 U.S.C. § 1132.

6. Defendants aver that the allegation contained in paragraph 6 states a conclusion of law, and therefore, no response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 6, and therefore, deny the allegation, except admit that Plaintiffs purport to invoke the jurisdiction of this Court pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

7. Defendants aver that the allegations contained in paragraph 7 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7, and therefore, deny the allegations, except admit that Plaintiffs purport to predicate venue under ERISA § 502, 29 U.S.C. § 1132.

THE PARTIES

8. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8, and therefore, deny the allegations.

9. Defendants admit the allegation contained in paragraph 9.

10. Defendants admit the allegations contained in paragraph 10.

11. Defendants admit the allegations contained in paragraph 11.

12. Defendants deny each and every allegation contained in paragraph 12, except admit that Mr. Shockley was Vice Chairman of the Board of Directors of AEP and AEPSC, COO of AEPSC, and President and a Member of the Board of Directors of AEP Energy Services, Inc., during certain periods during the Class Period, and that AEP Energy Services, Inc. is a subsidiary of AEP that did engage in certain energy trading operations.

13. Defendants deny each and every allegation contained in paragraph 13, except admit that AEPSC is a wholly owned subsidiary of AEP and that AEP is a registered holding company under the Public Utility Holding Company Act of 1935.

a. Defendants deny each and every allegation contained in paragraph 13(a), except admit that Dr. Draper was President, Chairman of the Board, and CEO of AEP and AEPSC as of the filing date of the Complaint.

b. Defendants deny each and every allegation contained in paragraph 13(b), except admit that Mr. Shockley was Vice Chairman of the Board of Directors of AEP and AEPSC and CEO of AEPSC as of the filing date of the Complaint.

c. Defendants deny each and every allegation contained in paragraph 13(c), except admit that Susan Tomasky was the Secretary and CFO of AEP and Assistant Secretary and Director of AEPSC as of the filing date of the Complaint.

- d. Defendants deny each and every allegation contained in paragraph 13(d), except admit that Henry W. Fayne (“Mr. Fayne”) was the Vice President of AEP and Executive Vice President of AEPSC as of the filing date of the Complaint. Defendants also admit that Mr. Fayne signed the American Electric Power System Retirement Savings Plan, adopted August 25, 1977, and amended and restated as of January 1, 2003 (AEP ERISA 00222 et seq.) (“the Plan”) in his capacity as Executive Vice President of AEPSC (AEP ERISA 00287).
- e. Defendants admit the allegations contained in paragraph 13(e).

CLASS ACTION ALLEGATIONS

14. Defendants aver that the allegations contained in paragraph 14 are of no legal significance, and therefore, no response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14, and therefore, deny the allegations.

15. Defendants aver that the allegations contained in paragraph 15 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15, and therefore, deny the allegations.

16. Defendants aver that the allegations contained in paragraph 16 (including subparagraphs (a) through (d)) state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 (including subparagraphs (a) through (d)), and therefore, deny the allegations.

17. Defendants aver that the allegations contained in paragraph 17 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants deny the allegations contained in paragraph 17.

18. Defendants aver that the allegations contained in paragraph 18 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18, and therefore, deny the allegations.

19. Defendants aver that the allegations contained in paragraph 19 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19, and therefore, deny the allegations.

20. Defendants aver that the allegations contained in paragraph 20 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20, and therefore, deny the allegations.

DESCRIPTION OF THE PLAN

21. Defendants deny each and every allegation contained in paragraph 21, except admit that the Plan is an employee benefit plan.

22. Defendants deny each and every allegation contained in paragraph 22, except admit that the Plan is a defined contribution plan.

23. Defendants deny each and every allegation contained in paragraph 23, except admit that the Plan is a voluntary contribution plan whereby Participants direct the Plan to

purchase investments from among the investment options available in the Plan and allocate them to their account.

24. Defendants deny each and every allegation contained in paragraph 24, except admit that, during the Class Period, the Plan provided several options for investment of Participant Contributions including the AEP Stock Fund and that one of the stated purposes of the Plan is to “establish a convenient way for employees . . . to acquire shares of common stock of American Electric Power Company, Inc.”

25. Defendants deny each and every allegation contained in paragraph 25.

26. Defendants deny each and every allegation contained in paragraph 26, except admit that AEPSC was the sponsor of the Plan.

27. Defendants aver that the allegations contained in paragraph 27 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 27, except admit that AEPSC was the administrator of the Plan, and respectfully refer the Court to the documents referenced in the Complaint—the Form 5500 filed with the Department of Labor, Form 11-K filed with the Securities and Exchange Commission (“SEC”), the Plan documents, and “Portraits of Choice: 2001 Retirement Summary Plan Descriptions” (“SPD”)—for the contents thereof.

28. Defendants aver that the allegations contained in paragraph 28 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 28, and respectfully refer the Court to the SPD (AEP ERISA at 00016) for the contents thereof.

29. Defendants aver that the allegations contained in paragraph 29 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 29.

30. Defendants aver that the allegations contained in paragraph 30 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 30.

31. Defendants aver that the allegations contained in paragraph 31 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 31.

32. Defendants aver that the allegations contained in paragraph 32 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 32.

33. Defendants aver that several allegations contained in paragraph 33 state conclusions of law, and therefore, no response is required to them. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 33. Defendants also deny each and every other allegation contained in paragraph 33, including those that relate to Defendants specifically.

34. Defendants deny each and every allegation contained in paragraph 34, except admit that the Plan held the AEP Stock Fund at the beginning of the Class Period.

**ANSWER TO CLAIM 1: THE AEP STOCK FUND WAS AN
IMPRUDENT INVESTMENT**

35. Defendants deny each and every allegation contained in paragraph 35 (including subparagraphs (a) through (g)).

A. Answer to Plaintiffs' Allegation that AEP Breached Fiduciary Duties In Connection With the Plan's Imprudent Investment In the AEP Stock Fund

i. Answer to Plaintiffs' Allegation that American Electric Power Service Corporation was a fiduciary

36. Defendants deny each and every allegation contained in paragraph 36, except admit that AEPSC was the Administrator and Named Fiduciary of the Plan, and respectfully refer the Court to the Form 5500 "Annual Return/Report of Employee Benefit Plan," filed with the Department of Labor and the Internal Revenue Service, for the contents thereof.

ii. Answer to Plaintiffs' Allegation that American Electric Power Company, Inc. was a fiduciary

37. Defendants aver that the allegations contained in paragraph 37 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 37.

38. Defendants aver that the allegations contained in paragraph 38 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 38.

a. Defendants deny each and every allegation contained in paragraph 38(a), except admit that AEPSC was a wholly owned subsidiary of AEP.

b. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38(b), and therefore, deny the allegations, except admit that AEP filed Form 11-K's.

c. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38(c), and therefore, deny the allegations, except admit that the Registration Statement referenced therein was filed by AEP and refer the Court to the Registration Statement for the contents thereof.

- d. Defendants deny each and every allegation contained in paragraph 38(d).
- e. Defendants deny each and every allegation contained in paragraph 38(e).

iii. Answer to Plaintiffs' Allegation that AEP breached its fiduciary duties because the investments by the Plan in the Fund were imprudent based on the material public information

39. Defendants deny each and every allegation contained in paragraph 39, and respectfully refer the court to the SPD for the contents thereof.

40. Defendants deny each and every allegation contained in paragraph 40 (including subparagraphs (a)-(s)). Defendants specifically deny that any of the allegations contained in subparagraphs (a)-(s) would have led a reasonable investment manager to conclude that the AEP Stock Fund was an imprudent investment for the Plan.

41. Defendants deny each and every allegation contained in paragraph 41, except admit that AEP experienced certain problems with its Cook nuclear power plants during certain periods of the Class Period.

a. Defendants deny each and every allegation contained in paragraph 41(a).

b. Defendants admit that the Cook plant was shut down in September 1997, and restarted in June 2000, and was offline during part of the Class Period for various operational reasons.

c. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41(c), and therefore, deny the allegations.

42. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 (including footnote 3), and therefore, deny the allegations.

43. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 (including subparagraphs (a)-(f)), and therefore, deny the allegations.

iv. Answer to Plaintiffs' Allegation that AEP also breached its fiduciary duties because the Plan investment in the Fund was an imprudent investment based on material nonpublic information

44. Defendants deny each and every allegation contained in paragraph 44 (including subparagraphs (a) through (b)), and respectfully refer the Court to the Form 10-Q and Form 10-K for the contents thereof.

45. Defendants deny each and every allegation contained in paragraph 45 (including subparagraphs (a) through (e)).

46. Defendants deny each and every allegation contained in paragraph 46.

v. Answer to Plaintiffs' Allegation that AEP should have protected the Plan losses in the Fund

47. Defendants deny each and every allegation contained in paragraph 47.

48. Defendants deny each and every allegation contained in paragraph 48.

B. Answer to Plaintiffs' Allegation That The Directors Breached Their Fiduciary Duties

i. Answer to Plaintiffs' Allegation that The Director Defendants were fiduciaries

49. Defendants deny each and every allegation contained in paragraph 49.

50. Defendants aver that the allegations contained in paragraph 50 state conclusions of law, and therefore, no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 50.

ii. Answer to Plaintiffs' Allegation that The Directors breached their fiduciary duties

51. Defendants deny each and every allegation contained in paragraph 51 (including subparagraphs (a) through (c)).

52. Defendants aver that the allegations contained in paragraph 52 state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 52.

C. Answer to Plaintiffs' Allegations Common To All Defendants Concerning Claim I

53. Defendants deny each and every allegation contained in paragraph 53.

54. Defendants deny each and every allegation contained in paragraph 54.

55. Defendants deny each and every allegation contained in paragraph 55.

56. Defendants deny each and every allegation contained in paragraph 56.

57. Defendants aver that the allegation contained in paragraph 57 states a conclusion of law, and therefore, no response is required. To the extent a response is required, Defendants deny each and every allegation contained in paragraph 57.

ANSWER TO CLAIM II: DEFENDANTS NEGLIGENTLY MISREPRESENTED AND FAILED TO DISCLOSE MATERIAL INFORMATION

58. Defendants repeat and incorporate by reference the responses set forth in paragraphs 1 through 57 as if set forth fully herein.

59. Defendants aver that the allegations contained in paragraph 59 (including subparagraphs (a) through (c)) state conclusions of law, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 59 (including subparagraphs (a) through (c)).

A. Answer to Plaintiffs' Allegation that AEP Negligently Misrepresented and Failed to Disclose Material Information In a Fiduciary Capacity

i. Answer to Plaintiffs' Allegation that AEP represented information in its SEC filings in a fiduciary capacity

60. Defendants deny each and every allegation contained in paragraph 60, except admit that the SPD and certain other Plan documents were distributed to Plan Participants.

61. Defendants deny each and every allegation contained in paragraph 61, and respectfully refer the Court to the referenced documents—the Form S-8, the Plan Prospectus, and the SPD—for the contents thereof.

ii. Answer to Plaintiffs' Allegation that AEP negligently misrepresented information in SEC filings

62. Defendants deny each and every allegation contained in paragraph 62.

iii. Answer to Plaintiffs' Allegation that AEP misrepresented information in other Plan communications

63. Defendants deny each and every allegation contained in paragraph 63 (including subparagraphs (a) and (b)), and respectfully refer the Court to the SPD for the contents thereof.

B. Answer to Plaintiffs' Allegation That The Directors Negligently Misrepresented and Failed to Disclose Material Information

64. Defendants aver that the allegations contained in paragraph 64 state a conclusion of law, and therefore, no response is required. To the extent that a response is required, Defendants deny each and every allegation contained in paragraph 64.

65. Defendants deny each and every allegation contained in paragraph 65.

66. Defendants deny each and every allegation contained in paragraph 66.

C. Answer to Plaintiffs' Allegations Common To All Defendants Concerning Claim II

67. Defendants deny each and every allegation contained in paragraph 67.

68. Defendants deny each and every allegation contained in paragraph 68.

69. Defendants deny each and every allegation contained in paragraph 69.

70. Defendants deny each and every allegation contained in paragraph 70.

71. Defendants deny each and every allegation contained in paragraph 71.

72. Defendants deny each and every allegation contained in paragraph 72.

PRAYER FOR RELIEF

With respect to Plaintiffs' prayer for relief, Defendants deny that Plaintiffs are entitled to any relief against Defendants in this action.

AFFIRMATIVE AND OTHER DEFENSES

In asserting the following affirmative and other defenses to Plaintiffs' claims, Defendants do not concede that the assertion of such defenses imposes any burden of proof on the Defendants with respect thereto.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, because of lack of standing.

THIRD DEFENSE

The claims asserted in the Complaint are barred because Plaintiffs have failed to comply with the requirements of Rule 23 of the Federal Rules of Civil Procedure.

FOURTH DEFENSE

The claims asserted in the Complaint are barred because Plaintiffs have failed to comply with the requirements of Rule 23.1 of the Federal Rules of Civil Procedure.

FIFTH DEFENSE

The claims asserted in the Complaint are barred and preempted by the doctrine of implied immunity.

SIXTH DEFENSE

The Complaint fails to plead fraud with particularity.

SEVENTH DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, because Defendants were not functioning in a fiduciary capacity when they engaged in the conduct that is the subject of this Complaint.

EIGHTH DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, because Defendants did not breach any fiduciary duty they may have owed to Plaintiffs.

NINTH DEFENSE

The claims asserted in the Complaint against the Individual Defendants are barred, in whole or in part, because the Individual Defendants did not owe or breach a duty to monitor persons appointed to make decisions about the Plan (for the purposes of this defense alone, as that term is defined in the Complaint).

TENTH DEFENSE

The claims asserted in the Complaint are barred to the extent that they rely upon allegations of co-fiduciary liability because, if a co-fiduciary breached a duty, which Defendants deny, Defendants did not know of such breach, assist in such breach, conceal such breach, or otherwise fail to protect the interests of Plaintiffs.

ELEVENTH DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, because Plaintiffs have failed to rebut the presumption of reasonableness regarding investments in company stock.

TWELFTH DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, because Defendants did not make any misrepresentations or omissions of material fact, and are not responsible in law or in fact for any alleged misrepresentation or omission of material fact made by others.

THIRTEENTH DEFENSE

The claims asserted in the Complaint are barred because Defendants did not know, and in the exercise of reasonable care could not have known, of the existence of the alleged false or misleading statements and/or omissions of material fact asserted in the Complaint.

FOURTEENTH DEFENSE

The claims asserted in the Complaint are barred because Defendants were entitled to, and did reasonably and in good faith, rely upon the work and conclusions of professionals and experts in executing or authorizing the execution and/or publication of any document containing the statements complained of in the Complaint.

FIFTEENTH DEFENSE

The claims asserted in the Complaint against Defendants are barred, in whole or in part, because Defendants did not act with scienter.

SIXTEENTH DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, because the alleged misrepresentations and/or omissions upon which Plaintiffs base such claims were not material.

SEVENTEENTH DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, because Plaintiffs have failed to demonstrate actual, direct, or individual reliance upon the alleged misrepresentations and/or omissions.

EIGHTEENTH DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, because the alleged misrepresentations and/or omissions neither caused nor were a material causal factor in Plaintiffs' investment decisions in this action or any alleged losses.

NINETEENTH DEFENSE

The claims asserted in the Complaint are barred because Plaintiffs have failed to allege, and have not suffered, any cognizable injury attributable, in whole or in part, to any acts or omissions by the Defendants. Plaintiffs' damages, if any, resulted from the acts or omissions of Plaintiffs or others and not from any acts or omissions by the Defendants.

TWENTIETH DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, by Section 404(c) of ERISA, 29 U.S.C. § 1104.

TWENTY-FIRST DEFENSE

The claims asserted in the Complaint are barred because Plaintiffs assumed the risk of losses on the transactions at issue in this action.

TWENTY-SECOND DEFENSE

The claims asserted in the Complaint are barred because Plaintiffs failed to exercise due diligence.

TWENTY-THIRD DEFENSE

The claims asserted in the Complaint are barred because Plaintiffs failed to use reasonable care to prevent or minimize any alleged damages.

TWENTY-FOURTH DEFENSE

The claims asserted in the Complaint are barred by the applicable statute or statutes of limitation and/or repose.

TWENTY-FIFTH DEFENSE

Defendants reserve the right to assert other defenses, cross-claims, and third-party claims if and when they become appropriate in this action.

WHEREFORE, Defendants seek judgment:

- A. dismissing with prejudice all claims asserted in the Complaint;
- B. awarding the costs of defending this action, including reasonable attorneys' fees, costs and disbursements; and
- C. granting such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

s/ Alvin J. McKenna

Alvin J. McKenna, Trial Attorney (0023145)

Fred G. Pressley, Jr., Of Counsel (0023090)

PORTER WRIGHT MORRIS & ARTHUR LLP

41 South High Street

Columbus, Ohio 43215

(614) 227-2000

E-mail: amckenna@porterwright.com

fpressley@porterwright.com

Of Counsel:

Michael J. Chepiga
Joseph M. McLaughlin
George S. Wang
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, New York 10017
(212) 455-2000
E-mail: mchepiga@stblaw.com
jmclaughlin@stblaw.com
gwang@stblaw.com

D. Michael Miller (0023117)
Barbara A. Belville (0012206)
AMERICAN ELECTRIC POWER SERVICE CORPORATION
Legal Department
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
(614) 716-1000
E-mail: dmmiller@aep.com
babelville@aep.com

Attorneys for Defendants:

American Electric Power Company, Inc.,
American Electric Power Service Corporation,
E. Linn Draper, Jr., and
Thomas V. Shockley, III

CERTIFICATE OF SERVICE

This is to certify that on August 24, 2004, the foregoing *Defendants' Answer to Plaintiffs' Consolidated Amended ERISA Complaint* was filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to:

Robert G. Cohen, Esq.
Kegler Brown Hill & Ritter
Capitol Square
65 East State Street - Suite 1800
Columbus, OH 43215
Liaison Counsel for ERISA Plaintiffs

Edwin J. Mills
Stull, Stull & Brody
6 East 45th Street
New York, NY 10017
Co-Lead Counsel for ERISA Plaintiffs

and

Robert A. Izard
Schatz & Nobel, P.C.
330 Main Street
Hartford, CT 06106-1851
Co-Lead Counsel for ERISA Plaintiffs

s/ Alvin J. McKenna
Alvin J. McKenna