

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

|  |   |                         |
|--|---|-------------------------|
| In the Matter of the Application of      | ) |                         |
| Ohio Power Company for Authority to      | ) | Case No. 13-2385-EL-SSO |
| Establish a Standard Service Offer       | ) |                         |
| Pursuant to §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. 13-2386-EL-AAM |
| Certain Accounting Authority             | ) |                         |

---

**POST-HEARING BRIEF  
OF  
OHIO ENVIRONMENTAL COUNCIL AND ENVIRONMENTAL DEFENSE FUND**

---

Trent Dougherty, **Counsel of Record**  
Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212-3449  
(614) 487-7506 - Telephone  
(614) 487-7510 - Fax  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)

John Finnigan  
Lead Counsel  
Environmental Defense Fund  
128 Winding Brook Lane  
Terrace Park, Ohio 45174  
(513) 226-9558  
[jfinnigan@edf.org](mailto:jfinnigan@edf.org)

**Counsel for the Ohio Environmental Council and Environmental Defense Fund**

Submitted: July 23, 2014

## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>I. INTRODUCTION.....</b>   | <b>1</b>  |
| <b>II. APPLICABLE LAW.....</b>  | <b>2</b>  |
| <b>III. ARGUMENT .....</b>  | <b>3</b>  |
| A. Commission should deny Company's request to discontinue Time of Use Pricing Tariff, and require the continuance of this tariff .....   | 3         |
| B. AEP Ohio's proposed gridSMART® Rider should be approved with modification .....  | 6         |
| C. The Company's Economic Development Rider should be approved with modification requiring unique arrangements customers to engage in all cost-effective energy efficiency programs ..... | 9         |
| D. The Commission should deny the Company's PPA Rider to pay for generation services from two coal-fired power plants.....  | 10        |
| <i>i. There is no provision in law that permits the Company, within an ESP, to ask for this type of rider. ....</i>   | <i>12</i> |
| <i>ii. The effects of this PPA rider will have consequences for the environment, customers, and electric competition .....</i>  | <i>15</i> |
| <b>IV. CONCLUSION.....</b>  | <b>19</b> |

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

|  |   |                         |
|--|---|-------------------------|
| In the Matter of the Application of      | ) |                         |
| Ohio Power Company for Authority to      | ) | Case No. 13-2385-EL-SSO |
| Establish a Standard Service Offer       | ) |                         |
| Pursuant to §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. 13-2386-EL-AAM |
| Certain Accounting Authority        | ) |                         |

---

**POST-HEARING BRIEF  
OF  
OHIO ENVIRONMENTAL COUNCIL AND ENVIRONMENTAL DEFENSE FUND**

---

**I. INTRODUCTION**

In the above-captioned proceeding Ohio Power Company (“AEP Ohio” or “Company”) is seeking approval by the Public Utilities Commission of Ohio (“Commission”) of its Application for Authority to Establish a Standard Service Offer Pursuant to ORC §4928.143, in the Form of an Electric Security Plan (“Application” or “ESP”). The Company suggests that the proposed ESP aligns with the State of Ohio’s long-term vision for a competitive generation marketplace, promotes SB221’s state policies, and supports economic development.<sup>1</sup>

Pursuant to the procedural schedule established by the Attorney Examiners in this case, Ohio Environmental Council (“OEC”) and Environmental Defense Fund (“EDF”), respectfully submit their joint initial post hearing brief. We focus this initial brief on two main areas: 1.) Riders proposed by the Company in the ESP that, with the recommended modifications we present, will better facilitate alignment of the ESP with the State of Ohio’s long-term vision for a

---

<sup>1</sup> AEP Ohio Ex. No. 2, page 4, lines 7-9.

competitive generation marketplace, promotes SB221's state policies, and supports economic development; and 2.) AEP Ohio's proposed PPA Rider and its potential for customer subsidized detriment to Ohio's environment. While OEC/EDF's brief focuses on only a few discreet issues in the ESP proceeding, we reserve the right and opportunity in our Reply Brief to argue any and all other issues discussed by the parties in this proceeding.

## **II. APPLICABLE LAW**

Pursuant to Ohio Revised Code §4928.141, an electric distribution utility ("EDU") shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. For the purpose of complying with §4928.141, an EDU may file an application for public utilities commission approval of an electric security plan, which the Company has chosen in this proceeding.<sup>2</sup>

The Commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results of a Market Rate Offer under §4928.142.<sup>3</sup> Revised Code §4928.143(C)(1) further states that the burden of proof in an ESP proceeding shall be on the electric distribution utility. Therefore, the burden of proof in this proceeding is on AEP Ohio, and not on any intervening parties.<sup>4</sup>

---

<sup>2</sup> Ohio Rev Code§4928.143(A)

<sup>3</sup> Ohio Rev Code§4928.143(C)(1)

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

Senate Bill 221 of the 127<sup>th</sup> Ohio General Assembly (“SB221”) codified into the Ohio Revised Code the 14 guiding policies of this state concerning electric utilities.<sup>5</sup> ESP can facilitate many of these policies, with four of these policies promoted in AEP Ohio’s ESP if the recommendations of OEC and EDF are considered by the Commission herein. Those particular policies include the state policies to:

- (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
- (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
- (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;
- (D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, **time-differentiated pricing**, waste energy recovery systems, **smart grid programs**, and implementation of advanced metering infrastructure;<sup>6</sup>

### III. ARGUMENT

#### *A. Commission should deny Company’s request to discontinue Time of Use Pricing Tariff, and require the continuance of this tariff*

AEP Ohio contends that, as a result of the Company’s proposed implementation of full auction based pricing; it is proposing to eliminate, among other tariffs, its Standard Time of Use Tariffs.<sup>7</sup> According to Company Witness Spitznogle’s testimony, the standard time of use tariffs “are legacy rates from a cost of service model for a vertically integrated utility that is no longer applicable under the current market construct and can be more appropriately obtained in the

---

<sup>5</sup> Ohio Rev. Code §§4928.02(A)-(N)

<sup>6</sup> *Id.* at (A)-(D). (emphasis added).

<sup>7</sup> AEP Ohio Ex. No. 1 at p. 9.

market from CRES providers.”<sup>8</sup> Under the current state of the market and competition in the AEP Ohio Service territory, OEC and EDF, however, reject this conclusion as premature. Due to a combination of the customer and environmental benefits of these tariffs, lack of generation supplier offerings of these rates, and recent Commission orders on this subject, AEP Ohio should not be permitted to prematurely discontinue these tariffs. OEC & EDF thus urge the Commission to deny the Company’s request to discontinue these rates.

AEP Ohio Witness Spitznogle cites, as of August 30, 2013, the Company had 915 customers taking advantage of its Standard Time of Use Tariff.<sup>9</sup> However, he suggests that AEP Ohio is not expecting any significant customer impacts through the elimination of the tariff, because many of the customers “should be able to obtain comparable service from CRES providers.”<sup>10</sup> This conclusion however lacks any basis in fact, and presumes the competitive market is more evolved in this territory than it truly is. AEP Ohio’s main policy witness, Mr. Vegas, testified during cross-examination that he was unaware of *any* CRES providers that currently offer TOU rates or intend to offer them in the near future.<sup>11</sup> Witness Spitznogle, when questioned as to whether any CRES providers in the AEP Ohio service territory provide time of use rates, answered: “I don’t know if any of them provide it today. . . . [a]lthough some are interested.”<sup>12</sup> None of the 30+ providers in the service territory offer these rates, therefore, none of AEP Ohio’s customers could “be able to obtain comparable service from CRES providers”.

If AEP Ohio withdraws its time-based rates, customers would have no option to obtain service from competitive suppliers on time-based prices, and could have unnecessary consequences on a significant number of customers. The Company cannot identify how many of

---

<sup>8</sup> AEP Ohio Ex. No. 3 at p. 12.

<sup>9</sup> AEP Ohio Ex. No. 3 at p. 13.

<sup>10</sup> *Id.*

<sup>11</sup> Transcript Vol. I, page 79, lines 12-13.

<sup>12</sup> *Id.* at page 268, lines 19-21.

the 915 current time of use customers are with CRES providers and how many are under the SSO.<sup>13</sup> According to testimony, only approximately 31 percent of AEP Ohio's customers have shopped.<sup>14</sup> Thus, even if CRES providers did offer these rates as the Witness for the Company suggests, over two-thirds of AEP Ohio customers would not have access to these beneficial, cost-cutting rates. Furthermore, Ohio Consumers' Counsel ("OCC") Witness Williams poignantly testified that elimination of the TOU tariff can have impacts not only to the customers under the "legacy . . . standard time-of-use program that residential customers are on," but also the experimental time differentiated programs for smart meter participants.<sup>15</sup> According to Witness Williams, "[e]limination of the experimental pricing options can have an immediate impact on the 9,000 customers who are participating in the gridSMART Phase I program."<sup>16</sup>

In the Commission's March 26, 2014 Finding and Order in the Commission's Investigation of Ohio's Retail Electric Service Market (PUCO Case No. 12-3151-EL-COI), the Commission stated that utilities which have deployed smart meters should continue to offer time-based rate programs.<sup>17</sup> Further, the Commission found that although time-differentiated rates are a generation service that should be offered by generation providers, the EDUs should provide time-differentiated rates for so long as it takes for the market to develop and for a reasonable number of CRES providers to begin offering this service in each service territory.<sup>18</sup> In Case No. 12-150-EL-COI, CRES providers identified lack of usage data and lack of access to the utility's billing system as barriers which prevent them from offering dynamic pricing and time-based rate programs. As OEC/EDF Witness Roberto recommend in her Direct Testimony, the Company

---

<sup>13</sup> Transcript Vol. I, page 268, line 14-15.

<sup>14</sup> Transcript Vol. III, page 696, lines 14-15.

<sup>15</sup> Transcript Vol. VI, page 1501, lines 1-11.

<sup>16</sup> OCC Ex. No. 11, page 34, line 14-15.

<sup>17</sup> *In the matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, PUCO Case No. 12-3151-EL-COI, Finding and Order, March 23, 2014, at page 38, ¶40.

<sup>18</sup> *Id.*

must work collaboratively with Commission Staff and other industry stakeholders to provide electricity usage data to CRES providers which would enable them to offer dynamic pricing and time-based rate programs. The Commission, through its Order in this case, should thus facilitate the sharing and disclosure of information necessary to allow the CRES providers to provide time-differentiated offerings.

Even without this Commission directive, AEP Ohio's time-based tariffs provide such significant environmental and economic benefits for customers who shift their energy usage to off-peak periods that the Company should be encouraged to provide such benefits as long as it maintains non-shopping customers. The environment benefits because, in PJM, wind energy and other renewable sources generally forms a higher proportion of the total generation mix during off-peak periods as compared to on-peak periods. From an economic perspective, customers can save money on time-based rates due to how rates are calculated. Standard utility rates are based on the average annual cost to serve a customer, so a customer pays the same rate regardless of when they use energy. Customers can receive lower prices under time-based rates because the rates are based on the time of day when the customer uses energy and the utility's cost-to-serve is typically lower during off-peak periods as compared to on-peak periods. In addition, small businesses served by rate schedules with demand charges can reduce their demand charges.

Therefore, OEC and EDF urge the Commission to deny the elimination of the TOU rates, and order the Company to provide time-differentiated rates for so long as it takes for the market to develop and for a reasonable number of CRES providers to begin offering this service.

***B. AEP Ohio's proposed gridSMART® Rider should be approved with modification***



The Commission originally approved AEP Ohio's gridSMART Phase 1 proposal in AEP Ohio's 2008 ESP case.<sup>19</sup> In the currently proposed ESP, the Company intends to modify its gridSMART® Rider "by moving the remaining gridSMART® Phase 1 costs to the DIR and use the ESP III gridSMART® Rider to track gridSMART® Phase 2 costs going forward."<sup>20</sup> OEC and EDF's interest in the gridSMART® Rider and gridSMART® program is the great potential for improved air quality resulting from the smart grid deployment. AEP Ohio's smart grid deployment, we believe, will achieve cleaner air emissions in several areas, such as: (1) fewer truck rolls to read meters, and to disconnect and reconnect electric service; (2) energy savings from the Volt VAR Optimization program; and (3) energy savings from energy efficiency and demand response programs enabled by the smart grid deployment.

OEC and EDF recognize that many of the details of how Phase 2 of the gridSMART® program will be implemented will be determined with the impending order in PUCO Case No. 13-1939-EL-RDR. The cost recovery mechanism for Phase 2 of the gridSMART® program, however, is developed in *this* case, and we believe that certain issues relating to whether those costs are prudent and all benefits accounted should be addressed by the Commission in *this* case. Therefore, OEC/EDF Witness Roberto, in her Direct Testimony in this case, recommended that the Commission approve the program subject to certain conditions.<sup>21</sup>

First, OEC & EDF recommend that the Commission require the Company to net the operational cost savings from the Phase 2 deployment against the costs of deployment. This will

---

<sup>19</sup> *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO (Direct Testimony of Karen L. Sloneker on Behalf of Columbus Southern Power Company and Ohio Power Company)(July 31, 2008).

<sup>20</sup> AEP Ohio Ex. No. 1, page 10.

<sup>21</sup> OEC/EDF Ex. No. 1 at page 3, lines 8-14. Ms. Roberto's recommendations included *in toto*: (1) annual approval process; (2) treatment of operational cost savings; (3) regulatory commitments; (4) performance metrics; (5) deployment of Green Button Connect; (6) implementing a prepaid electric service program; (7) providing public outreach and education; (8) implementing the Volt/VAR proposal; and (9) continuing their dynamic pricing and time-based rate programs.

provide a fair allocation of project benefits between shareholders and ratepayers. As referenced in Ms. Roberto's testimony, "[t]he Commission approved a similar approach for Duke Energy's smart grid rider in *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust and Set its Gas and Electric recovery Rate for 2009 SmartGrid Costs Under Rider AU and Rider DR-IM*, Case No. 10-867-GE-RDR (Opinion and Order) (March 23, 2011); *Id.* (Stipulation at ¶ 14)(February 14, 2011)."<sup>22</sup>

However, smart grid investments are "prudent" only if utility complies with certain consumer and environmental metrics. Thus, OEC and EDF recommend that the Company complete annual reporting of performance metrics on the results of Phase 2 deployment. This would help the Commission and other stakeholders to determine: (1) how well the Company is performing on the Phase 2 deployment; and (2) the program's cost-effectiveness. AEP Ohio plans to invest \$465 million on Phase 2, which is a significant sum. The annual rider updates are summary proceedings, conducted without a hearing. It would be reasonable for the Company to self-report, with each annual rider update filing, on various performance metrics related to how the implementation is proceeding.

This reporting on stakeholder developed metrics is important for three important reasons. First, it allows AEP Ohio to demonstrate additional benefits arising from its smart grid deployment. Second, the results may be useful for helping AEP Ohio's parent company comply with new regulations that will be forthcoming from the U.S. Environmental Protection Agency, and implemented through the Ohio EPA, relating to greenhouse gas emissions from existing coal plants under Section 111(d) of the Clean Air Act. Finally, in order to guarantee the transparency and accountability that is also inherent in the prudent use of customer funds for smart grid investments, we recommend that the Company work collaboratively with interested stakeholders

---

<sup>22</sup> OEC/EDF Ex. No. 1, page 4, lines 6-13.

to develop these performance metrics, and results of the metrics are to be shared and discussed with the stakeholders and parties interested in the outcomes of the gridSMART® program.

***C. The Company's Economic Development Rider should be approved with modification requiring unique arrangements customers to engage in all cost-effective energy efficiency programs***

As described in the Application, and in Company Witness Spitznogle's testimony, the Company proposes to continue its Economic Development Rider ("EDR"), previously approved by its Commission.<sup>23</sup> The EDR is used to recover forgone revenue from the subsidies provided to Mercantile Customers.

Section 4905.31 of the Revised Code allows the Company to establish a reasonable arrangement with a Mercantile Customer, and may include a device to recover costs incurred in conjunction with any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone as a result of any such program. Witness Spitznogle avers also that the EDR facilitates the state's effectiveness in the global economy in adherence to Ohio's stated policy in Section 4928.02(N). Thus, in order to keep mercantile customers in business, and presumably keep Ohio economically competitive, the customer gets great amounts of electricity for greatly reduced costs. However, as OEC/EDF Witness Roberto testified: "... the unique arrangements customer is receiving subsidized rates and the customer isn't required to make any commitments regarding the manner in which they use their energy."<sup>24</sup> Furthermore, while the unique arrangements customer can use the cost

---

<sup>23</sup> See AEP Ohio Ex. No. 1, at page 13; See also AEP Ohio Ex. No. 3 at page 9.

<sup>24</sup> OEC/EDF Ex. No. 1 at page 9, lines 16-18.

savings from the lower electricity rates to benefit their owners/shareholders, the other customers who pay the subsidy receive no real benefit.<sup>25</sup>

Requiring unique arrangements customers to engage in all cost-effective energy efficiency programs can benefit the Company and its other customers by lowering the Company's cost of complying with the energy efficiency standards. To the extent that energy efficiency programs have a wholesale price suppression impact, customers would also benefit in this manner. To the extent that the energy efficiency programs would be associated with lower greenhouse gas emissions for the customer's manufacturing operations, this may be available as a compliance option for Ohio's compliance with the U.S. EPA's rules on carbon emissions from existing fossil-fuel plants.

OEC and EDF's proposal simply asks that the Company undertake a good faith effort to work with its reasonable arrangement customers – its contractual partner in encouraging economic development – so that they can take advantage of longer-lived cost-effective energy efficiency.<sup>26</sup> For example, if the customers in Ohio should underwrite a ten-year promise of subsidized electricity, then it is fair to ask reasonable arrangement customers to undertake cost-effective efficiency measures.<sup>27</sup>

***D. The Commission should deny the Company's PPA Rider to pay for generation services from two coal-fired power plants.***

Ohio Valley Electric Corporation (OVEC), organized in 1952, was formed by investor-owned utilities ("Sponsoring Companies") (among them AEP Ohio) to furnish electric service to the federal government's uranium enrichment facility in Piketon, Ohio, with excess power

---

<sup>25</sup> See *Id.*

<sup>26</sup> Transcript Vol. XII, page 2800, lines 5-10.

<sup>27</sup> *Id.* at page 2799, lines 15-20.

furnished to the Sponsoring Companies' customers.<sup>28</sup> The federal government terminated its agreement with OVEC and the Sponsoring Companies in 2003.<sup>29</sup> After that agreement was terminated, the Sponsoring Companies entered into a subsequent agreement availing OVEC's entire generating capabilities, the Kyger Creek and Clifty Creek Generating Stations specifically, to the Sponsoring Customers.<sup>30</sup> According to the agreement AEP Ohio is entitled to a 19.93% share of the OVEC "power participation benefits and requirements."<sup>31</sup>

The Company's proposed Power Purchase Agreement ("PPA") rider would contain the revenue from the sale of the entitlement into the PJM market, minus all costs associated with said OVEC entitlement.<sup>32</sup> Furthermore, as Company Witness Allen states, the Company may also petition the Commission to include in the PPA rider recovery of costs associated with other, heretofore undetermined and/or undisclosed, Power Purchase Agreements.<sup>33</sup> During cross-examination, Company Witness Allen made exhausting attempts to differentiate the PPA rider from the coal-fired generating facility OVEC at the core of the PPA rider, and acknowledging the Company was "not providing any generation service to customers."<sup>34</sup> However, Mr. Allen could not successfully get around the fact that the OVEC facilities are generating facilities,<sup>35</sup> and that the PPA rider is for generation.

While there has been much testimony from the Company on the "benefits" of the PPA rider for hedging the volatility of the market,<sup>36</sup> sustaining millions of dollars of economic benefit

---

<sup>28</sup> AEP Ohio Ex No. 7 at page 9, lines 11-12.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at page 8, lines 12-15.

<sup>33</sup> *Id.* at page 8 lines 8-11.

<sup>34</sup> Transcript Vol. II, page 540, lines 8-9

<sup>35</sup> *Id.* at line 6.

<sup>36</sup> AEP Ex. No. 2, page 13, lines 7-8.

in southern Ohio,<sup>37</sup> and benefiting shareholders to include more than just the OVEC plants in PPA<sup>38</sup>, the Company has yet to present evidence to meet its burden of proof that the PPA is a permitted rider under an ESP context.

- i. *There is no provision in law that permits the Company, within an ESP, to ask for this type of rider.*

As the ESP has been described in the Application and Company testimony, AEP Ohio will no longer be in the business of selling electricity to its customers after May 31, 2015, and could be characterized as a ‘wires-only’ company.<sup>39</sup> A 100% wires-only company has no need for agreements like this to purchase power, nor does it have the need to own coal-fired baseload generation. Electric Security Plans are statutorily permitted to contain generation related provisions under limited circumstances; however, as described below, this OVEC entitlement PPA rider fails to meet those limits.

First, under §4928.143(B)(1), an electric security plan shall include provisions relating to the supply and pricing of electric generation service. This proposed rider, however, will not be bid into the auctions to serve the generation load of AEP-Ohio’s customers.<sup>40</sup> As simply explained by Staff Witness Choueiki, “None of the MWs coming out of AEP Ohio’s interests in the OVEC generation is being sold to AEP Ohio’s distribution customers.”<sup>41</sup> Therefore, this proposed rider is not for the supply and pricing of electric service.

Moving through the ESP statute leads to more failures for the validity of this rider. Such a generation-based ride, too, fails under the allowance given for certain automatic recoveries under revised code §4928.143(B)(2)(a). That section allows provisions in an ESP for:

---

<sup>37</sup> *Id.* at 9-10.

<sup>38</sup> Transcript Vol. I, page 182, lines 5-7.

<sup>39</sup> See AEP Ex. No. 1, page 7; See also Transcript Vol. I, page 259.

<sup>40</sup> AEP Ex. No. 7, page 10, lines 13-15.

<sup>41</sup> Staff Ex. No.18, page 9, line 13-15.

“automatic recovery of any of the following costs of the electric distribution utility, provided the cost is prudently incurred: the cost of fuel used to generate the electricity supplied under the offer; the cost of purchased power supplied under the offer, including the cost of energy and capacity . . .”<sup>42</sup>

Again, while couched in terms of a power purchase agreement, the “agreement” is not for power “supplied under the offer” to be used for the SSO customers.

AEP-Ohio’s proposal, if anything, more closely resembles a request for a nonbypassable surcharge under §4928.143(B)(2)(c). This section of the code concerns proposed surcharges for the life of an electric generating facility that is owned or operated by the electric distribution utility, much like the OVEC power plants vis-à-vis AEP Ohio.<sup>43</sup> However, unlike the electric generating facilities envisioned by this section of the code, the OVEC PPA rider fails the major prerequisites for this section.<sup>44</sup>

The first prerequisite is that it was sourced through a competitive bid process. As Staff Witness Choueiki explained, the PPA rider “would also have to be competitive. It can’t be just a purchased power agreement carte blanche cost-based agreement . . .”<sup>45</sup> Yet, in the case of the OVEC PPA, the facility was not sourced by a competitive bid, but to the contrary, was sourced through a private deal among a number of utilities. Beyond that, it is the product of a 60-plus year agreement (which fails the second prerequisite of being newly used and useful on or after January 1, 2009). In fact, the discriminatory and anti-competitive nature of the PPA rider flies in

---

<sup>42</sup> R.C. § 4928.143(B)(2)(a).

<sup>43</sup> R.C. §4928.143(B)(2)(c).

<sup>44</sup> *See Id.*

<sup>45</sup> Transcript Vol. XIII, page 2819, lines 5 to 11.

the face the spirit of §4928.143(B)(2)(c) and impedes the SB221's state policy to prohibit anticompetitive subsidies.<sup>46</sup>

Finally, the biggest failure of this facility when put to the §4928.143(B)(2)(c) is the lack of need for this facility. There has been absolutely no testimony or evidence offered that there is a need for these facilities to continue in operation. While the company extols on the potential benefits of the rider<sup>47</sup>, and the volatility of the market, neither are a basis for need under the generation rider context. It was the Company's inability to show need during the last ESP that doomed a similar plan to facilitate a power purchase agreement.<sup>48</sup> In that case, the rider for the Turning Point Solar project at least was presented with testimony that it was needed to comply with the very real renewable energy benchmarks of SB 221 that face Ohio EDUs, like the Company, and the need in the state for solar renewable energy credits.<sup>49</sup> The rider in this case, however, seems to place its unstated "need" on a need to protect against *presumed* volatility. While Staff's Witness recognizes recent market volatility, he however, Furthermore, while the Company suggests that the impact of such volatility of the market on its customers is the major concern of the PPA,<sup>50</sup> as we discuss below, the rider seems to act as an insulation from cost increases for the shareholders. Whether that protection against volatility is to protect

---

<sup>46</sup> Ohio Rev. Code §4928.02(H).

<sup>47</sup> See *supra* page 11-12. Describing the "benefits" of the PPA rider for hedging the volatility of the market, sustaining millions of dollars of economic benefit in southern Ohio, and benefiting shareholders to include more than just the OVEC plants in PPA

<sup>48</sup> See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan.*, Case No. 11-346-EL-SSO et al. Entry on Rehearing January 30, 2013 at ¶13. (Citing *In the Matter of the Long Term Forecast Report of Ohio Power Company and Related Matters*. Case No. 10-501-EL-FOR, et. al. Opinion and Order (January 9, 2013)). In AEP's last Longterm Forecast Case and ESP, the Commission found that AEP failed to prove need for its proposed power purchase agreement for the Turning Point Solar Array Project in Southeast Ohio.

<sup>49</sup> See *In the matter of the 2010 long term forecast report of the Ohio Power Company and related matter*. PUCO Case No. 10-501-EL-FOR, Opinion and Order January 9, 2013, page 14-15. See also Ohio Rev. Code §4928.64.

<sup>50</sup> Transcript Vol. 1, page 27, lines 2-25.



shareholders or customers is immaterial, however, as neither is a viable need for a generation surcharge.

*ii. The effects of this PPA rider will have consequences for the environment, customers, and electric competition*

Even discounting the lack of any statutory basis for this type of rider, the proposed PPA rider is bad for customers, circumvents more than a decade's long effort to achieve a statewide competitive electric market, and detrimental for the environment.

To support its rider, the Company claims it is seeking to stabilize customer rates and hedge against market volatility through the use of the OVEC PPA Rider.<sup>51</sup> However, testimony on behalf of many customer class-representative intervenors, question these benefits. A witness for the Ohio Consumers' Counsel, representing the residential electricity customers that presumably would benefit, concluded that:

the potential for the proposed PPA Rider to contribute to price stability is directionally doubtful . . . , and insignificant in magnitude.<sup>52</sup>

The crux of the arguments critical to the PPA rider focus on the assertion that unlike the rest of the market-based generation units producing electricity for Ohio's distribution utilities, these Company-owned units will cost customers and, thus, only benefit the Company's shareholders. OCC Witness Wilson's estimates show the cost to customers under the PPA rider to be \$117 million over the ESP period.<sup>53</sup> Mr. Wilson's conclusion shows that the cost of the OVEC output exceeds its market value by \$19.22 MWh on average over the ESP period.<sup>54</sup> Others, including

---

<sup>51</sup> See AEP Ohio Ex No. 1 at page 8. See Also AEP Ohio Ex No. 2 at page 13, lines 7-8.

<sup>52</sup> OCC Ex. No. 15A, page 8, lines 6-8.

<sup>53</sup> *Id.* at 3-4.

<sup>54</sup> *Id.* at lines 5-6.

the Industrial Energy Users of Ohio, see a slightly less, but still significant increase in customer costs.<sup>55</sup>

The Company's proposal to charge these increased generation costs to all of its customers goes beyond a mere increased in rates, but increases to customers, based on a circumvention of the competitive generation market. This PPA rider seemingly stands in the way of the state's policy to move toward competition. The goal of retail electric competition is only achieved if all competitive generation is on an equal market playing field – not just competition for its own sake, but an effective competitive market with no market participant allowed to receive separate cost recovery. This is why one of Ohio's statutory state policies is to:

[e]nsure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.<sup>56</sup>

Ohio's decade-and-a-half struggle to reach a competitive market was forged to drive prices of electricity down by having distribution utilities, not own, but purchase generation at a low cost. OCC Witness Wilson explains that there is a built in incentive to produce power efficiently in the market where competitive buyers bear the risks of their decisions to build, own, or operate power plants.<sup>57</sup> Yet, this PPA rider removes that incentive to manage the costs at this facility by shifting all of the risk to its distribution customers.

From an environmental perspective, it is our position that AEP Ohio's proposed PPA is a less than veiled attempt to increase its customers' electric bills to pay for aging coal plants and insulate its shareholders from the risks of the competitive market and the costs of future carbon restraints on electric generating units. Testimony has suggested these plants are in

---

<sup>55</sup> IEU Ex. No. 1B, page 11, lines 19-22.

<sup>56</sup> Ohio Rev. Code §4928.02(H).

<sup>57</sup> See OCC Ex. No 15A, page 36, lines 15-21.

environmental compliance.<sup>58</sup> While it is our understanding that the two plants in question are scrubbed for sulfur dioxide, they are far from environmentally benign,<sup>59</sup> and are questionable as to whether they will be in compliance with the environmental laws over the life of this ESP or the life of the “entitlement”. These plants not only contribute to climate impacts from carbon pollution, the customer subsidy of these plants could have dire consequences for Ohio’s plan to comply with USEPA’s carbon regulations under §111(d) of the Clean Air Act (“Clean Power Plan”), and its ultimate ability to comply.

In its Clean Power Plan, USEPA based its emission reduction targets for states on the following criterion: 1) increased efficiency of existing generation, 2) increased dispatching of existing lower-carbon generation, 3) increased reliance on renewable energy, and 4) demand-side energy efficiency.<sup>60</sup> States then are given the ability to choose the right mix of generation using diverse fuels, energy efficiency and demand-side management to meet the goals and their own state needs. While it may be years before Ohio fully determines its compliance path with USEPA’s standards for CO2 pollution, it is quite possible that the OVEC plants could be forced to co-fire, incur costly efficiency upgrades, or other environmental retrofits. Similar legacy coal-fired generating units that must competitively offer its power are subject to the market forces combined with the environmental protection policies that may force those plants to retire. The PPA rider artificially shields the OVEC plants (and perhaps others in the future) from those market forces. In fact, as testimony showed, “the OVEC contract include . . . escalating costs for environmental retrofits” leaving it to the AEP Ohio customers to fit the escalating bill.<sup>61</sup> As the state and the other generation unit owners regulated by the Clean Power Plan determine their

---

<sup>58</sup> Transcript Vol. XII, pages 2810-11.

<sup>59</sup> No evidence has been presented, however, by the Company that these facilities are in compliance with mercury air toxics standards, water pollution permitting, nor the status of its coal ash pond.

<sup>60</sup> 79 Fed. Reg. 34,830 (June 18, 2014).

<sup>61</sup> Transcript Vol. XII, page 3122, lines 12-14.

compliance paths, insulating the OVEC units could result in forcing otherwise viable units in the state to retire, and/or displacing cleaner fuels, thus dramatically limiting Ohio's flexibility to reach its carbon reduction targets.

Moreover, the open-ended nature of the proposed PPA makes this rider even more problematic. Company Witness Allen explains that "...The Company will have the ability to petition the Commission to allow the inclusion of additional PPAs (or similar products subsequently approved by the Commission) in the PPA rider throughout the ESP term."<sup>62</sup> Company Witness Vegas, without going into any detail on the identity of any future plants, testified that the Company has "looked at a number of different portfolio options [to include in the PPA] consisting of the power plants that used to be part of the AEP Ohio generating fleet."<sup>63</sup> It appears certain that, like the camel with his nose in the tent, the PPA rider will soon cover the entire panoply of unaffiliated, unregulated generation assets. The new generation of clean and efficient energy sources continues to out muscle the older, polluting, legacy coal generation units in the electricity market. This is evidenced by the impending coal retirements in the PJM territory, including the "[a]pproximately, a little over 2,000 megawatts that will be retired" testified to by Company Witness Vegas.<sup>64</sup> Instead of allowing the necessary and inevitable retirement of these aged plants, the vision of the AEP Ohio PPA Rider is to buttress these aged facilities on the backs of its distribution customers and the future of climate protection.

For the benefit of customers, the environment, and the competitive market of this state, OEC and EDF, therefore, urges the Commission to deny this proposed rider as unlawful.

---

<sup>62</sup> AEP Ohio Ex. No. 7, page 8.

<sup>63</sup> Transcript Vol. I, page 182, lines 15-17.

<sup>64</sup> Transcript Vol. I, page 122 lines 6-15.

#### **IV. CONCLUSION**

Ohio Environmental Council and Environmental Defense Fund urge the Commission to modify the Company's Application for Electric Security Plan in this proceeding based on the recommendations outlined in this Initial Post Hearing Brief. The Commission should reject the Company's PPA rider and AEP Ohio's proposed elimination of time of use tariffs as inconsistent with Commission orders and state law and injurious to the interests of AEP Ohio customers and the environment. Furthermore, to promote the policies of state of Ohio, the gridSMART® Rider and Economic Development Rider should be approved with the recommendations above.

Respectfully Submitted,



**Trent Dougherty, Counsel of Record**  
Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212-3449  
(614) 487-7506 - Telephone  
(614) 487-7510 - Fax  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)

John Finnigan  
Environmental Defense Fund  
128 Winding Brook Lane  
Terrace Park, Ohio 45174  
(513) 226-9558  
[jfinnigan@edf.org](mailto:jfinnigan@edf.org)

**Counsel for the Ohio Environmental Council and Environmental Defense Fund**

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 23rd day of July, 2014.



---

Trent Dougherty

Steven T. Nourse  
Matthew J. Satterwhite  
American Electric Power Service  
Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[msatterwhite@aep.com](mailto:msatterwhite@aep.com)

Rocco D'Ascenzo  
Assistant General Counsel  
Duke Energy Ohio, Inc.  
139 East Fourth Street  
1303-Main  
Cincinnati, Ohio 45202  
[rocco.d'ascenzo@duke-energy.com](mailto:rocco.d'ascenzo@duke-energy.com)

Barth E. Royer  
Bell & Royer Co., L.P.A.  
33 South Grant Ave.  
Columbus, OH 43215-3927  
[BarthRoyer@aol.com](mailto:BarthRoyer@aol.com)

Philip B. Sineneng  
Thompson Hine LLP  
41 South High Street, Suite 1700  
Columbus, OH 43215  
[Philip.Sineng@thompsonhine.com](mailto:Philip.Sineng@thompsonhine.com)

Gary A. Jeffries  
Dominion Resources Services  
501 Martindale Street, Suite 400  
Pittsburgh, PA 15212  
[Gary.A.Jeffries@dom.com](mailto:Gary.A.Jeffries@dom.com)

Devin Parram  
Katherine Johnson  
Werner Margard  
Assistant Attorney General  
Public Utilities Commission of Ohio  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, Ohio 43215  
[devin.parram@puc.state.oh.us](mailto:devin.parram@puc.state.oh.us)  
[katherine.johnson@puc.state.oh.us](mailto:katherine.johnson@puc.state.oh.us)  
[werner.margard@puc.state.oh.us](mailto:werner.margard@puc.state.oh.us)

Maureen R. Grady  
Joseph Serio  
Ohio Consumers' Counsel  
10 W. Broad Street  
Suite 1800  
Columbus, OH 43215-3485  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)  
[serio@occ.state.oh.us](mailto:serio@occ.state.oh.us)

Michael L. Kurtz  
David F. Boehm  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)

Samuel C. Randazzo  
Frank P. Darr  
Matthew R. Pritchard  
McNees Wallace & Nurick LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)

Colleen L. Mooney  
Cathryn N. Loucas  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, OH 45840  
[cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)  
[cloucas@ohiopartners.org](mailto:cloucas@ohiopartners.org)

Vincent Parisi  
Lawrence Friedeman  
Matthew White  
Interstate Gas Supply  
6100 Emerald Parkway  
Dublin, Ohio 43016  
[vparisi@igsenergy.com](mailto:vparisi@igsenergy.com)  
[lfriedeman@igsenergy.com](mailto:lfriedeman@igsenergy.com)  
[mswhite@igsenergy.com](mailto:mswhite@igsenergy.com)

Mark Hayden  
Jacob A. McDermott  
Scott J. Casto  
First Energy Service Corp.  
76 South Main Street  
Akron, OH 44308  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)  
[jmcdermott@firstenergycorp.com](mailto:jmcdermott@firstenergycorp.com)  
[scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com)

Thomas J. O'Brien  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215  
[tobrien@bricker.com](mailto:tobrien@bricker.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)

Richard Sites  
Ohio Hospital Association  
155 E. Broad Street, 15<sup>th</sup> FL  
Columbus, OH 43215  
[ricks@ohanet.org](mailto:ricks@ohanet.org)

Mark A. Whitt  
Andrew J. Campbell  
Gregory Williams  
Whitt Sturtevant LLP  
86 East Broad Street  
Columbus, OH 43215  
[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)  
[campbell@whitt-sturtevant.com](mailto:campbell@whitt-sturtevant.com)  
[williams@whitt-sturtevant.com](mailto:williams@whitt-sturtevant.com)

Kimberly W. Bojko  
Mallory Mohler  
Carpenter Lipps & Leland LLP  
280 North High Street, Suite 1300  
Columbus, OH 43215  
[Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com)  
[mohler@carpenterlipps.com](mailto:mohler@carpenterlipps.com)

Judi L. Sobecki  
The Dayton Power & Light Company  
1065 Woodman Drive  
Dayton, OH 45432  
[Judi.sobecki@aes.com](mailto:Judi.sobecki@aes.com)

Mark S. Yurick  
Zachary D. Kravitz  
Taft Stettinius & Hollister LLP  
65 E State Street, Suite 1000  
Columbus, OH 43215  
[myurick@taftlaw.com](mailto:myurick@taftlaw.com)  
[zkravitz@taftlaw.com](mailto:zkravitz@taftlaw.com)

Stephanie M. Chmeil  
Thompson Hine LLP  
41 S. High Street, Suite 1700  
Columbus, OH 43215  
[Stephanie.Chmiel@thompsonhine.com](mailto:Stephanie.Chmiel@thompsonhine.com)

Gregory Poulos  
ENERNOC, INC.  
471 E Broad Street, Suite 1520  
Columbus, OH 43215  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com)

Nicholas McDaniel  
1207 Grandview Ave  
Columbus, OH 43212  
[NMcDaniel@elpc.org](mailto:NMcDaniel@elpc.org)

J. Thomas Siwo  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, Ohio 43215-4291  
[tsiwo@bricker.com](mailto:tsiwo@bricker.com)

Lisa M. Hawrot  
SPILMAN THOMAS & BATTLE, PLLC  
Century Centre Building  
1233 Main Street, Suite 4000  
P.O. Box 831  
Wheeling, WV 26003-8731  
[lhawrot@spilmanlaw.com](mailto:lhawrot@spilmanlaw.com)

Derrick Price Williamson  
SPILMAN THOMAS & BATTLE, PLLC  
1100 Bent Creek Blvd., Suite 101  
Mechanicsburg, PA 17050  
[dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)

Steve W. Chriss  
WAL-MART STORES, INC.  
2001 SE 10th Street  
Bentonville, AR 72716-0550  
[Stephen.Chriss@walmart.com](mailto:Stephen.Chriss@walmart.com)

Samantha Williams  
20 N. Wacker Drive, Suite 1600  
Chicago, IL 60606  
[swilliams@nrhc.org](mailto:swilliams@nrhc.org)

Michael R. Smalz  
OHIO POVERTY LAW CENTER  
555 Buttles Avenue  
Columbus, Ohio 43215-1137

[msmalz@ohiopoveritylaw.com](mailto:msmalz@ohiopoveritylaw.com)

Peggy P. Lee  
SOUTHEASTERN OHIO LEGAL  
SERVICES  
964 E. State Street  
Athens, Ohio 45701  
[plee@oslsa.org](mailto:plee@oslsa.org)

Joseph M. Clark  
DIRECT ENERGY  
21 East State Street, 19th Floor  
Columbus, Ohio 43215  
[joseph.clark@directenergy.com](mailto:joseph.clark@directenergy.com)

M. Howard Petricoff  
Gretchen L. Petrucci  
VORYS, SATER, SEYMOUR AND  
PEASE LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)

David I Fein  
EXELON CORPORATION  
10 South Dearborn Street, 47th Floor  
Chicago, IL 60603  
[david.fein@exeloncorp.com](mailto:david.fein@exeloncorp.com)

Cynthia Fonner Brady  
Assistant General Counsel  
EXELON BUSINESS SERVICES  
COMPANY  
4300 Winfield Road  
Warrenville, IL 60555  
[cynthia.brady@constellation.com](mailto:cynthia.brady@constellation.com)

Lael Campbell  
EXELON  
101 Constitution Avenue, NW  
Washington, DC 20001  
[Lael.Campbell@constellation.com](mailto:Lael.Campbell@constellation.com)



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/23/2014 3:16:45 PM**

**in**

**Case No(s). 13-2385-EL-SSO, 13-2386-EL-AAM**

Summary: Brief POST-HEARING BRIEF OF OHIO ENVIRONMENTAL COUNCIL AND ENVIRONMENTAL DEFENSE FUND electronically filed by Mr. Trent A Dougherty on behalf of Ohio Environmental Council and Environmental Defense Fund