

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Ohio Power Company for Authority to	)	
Establish a Standard Service Offer	)	Case No. 13-2385-EL-SSO
Pursuant to §4928.143, Ohio Rev. Code,	)	
In the Form of an Electric Security Plan.	)	

In the Matter of the Application of Ohio	)	
Power Company for Approval of Certain	)	Case No. 13-2386-EL-AAM
Accounting Authority.	)	

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**POST-HEARING REPLY BRIEF OF  
THE ENERGY PROFESSIONALS OF OHIO**

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## **I. Introduction**

The Energy Professionals of Ohio (EPO) files its post-hearing reply brief in this proceeding. While a handful of parties have made arguments in support of AEP-Ohio's proposed Rider Power Purchase Agreement (Rider PPA), for the reasons below, the Commission should reject Rider PPA.

## **2. AEP-Ohio's and the OEG's Claims that Rider PPA is a Hedge and Will Provide Price Stability are Invalid.**

AEP-Ohio and the OEG continue to claim that Rider PPA is a financial hedge that will provide price stability. The OEG states in its post-hearing brief that "... Ohio consumers will have a 5% financial hedge to help mitigate future PJM wholesale price increases."<sup>1</sup> AEP-Ohio states "...[T]he PPA Rider will stabilize customer rates by providing a hedge against future market volatility."<sup>2</sup> Financial hedges work by moving in the opposite direction of the market on a real time basis thereby reducing the purchaser's risk to market volatility. As the EPO pointed out in its initial post-hearing brief, AEP-Ohio has proposed to true-up Rider PPA only but once a year. AEP-Ohio points out in its post-hearing brief that it is happy to make this true-up more frequently<sup>3</sup>; however, anything short of a real-time accounting renders Rider PPA as a very blunt, and potentially harmful financial instrument for consumers. AEP-Ohio acknowledges that its proposal could exacerbate market increases or decreases due to the annual true-up mechanism.<sup>4</sup> Consumers operate and make decisions in real-time. Power contracts are priced in real-time. Nothing short of a real-time true up mechanism for Rider PPA will provide the

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<sup>1</sup> OEG Post Hearing Brief at 6.

<sup>2</sup> AEP-Ohio Post Hearing Brief at 25.

<sup>3</sup> Id. at 47.

<sup>4</sup> Id. at 47.

financial benefit of a hedge. Unless AEP-Ohio is able to true up Rider PPA on a real time basis the PUCO should reject the proposal.

### **3. The Record Reflects Extreme Uncertainty Regarding the Ultimate Benefits of Rider PPA.**

AEP-Ohio's claim that Rider PPA is beneficial is incorrect<sup>5</sup>. Similarly, the OEG's claim that Rider PPA is a "valuable tool" is also incorrect<sup>6</sup>. Their statements communicate a *certainty* that Rider PPA will benefit customers. A correct statement would be: The record reflects several different accounts of the cost/benefit of Rider PPA, most are bad and one is almost unnoticeable. The OCC points out in its post-hearing brief that AEP-Ohio has two different assessments, one showing a net detriment to consumers to the tune of \$52 million<sup>7</sup>, and one showing a net benefit to consumers of \$8.4 million<sup>8</sup>. The OCC's own analysis shows a net cost of \$116 million to consumers over the ESP period<sup>9</sup>. The IEU reminds us that even the rosiest projection of an \$8 million dollar benefit results in a \$.07 per MWH benefit to customers<sup>10</sup>. The uncertainty is on the record clear and inarguable. This extreme uncertainty should lead the Commission to deny the request for Rider PPA since even its most favorable projections are nearly meaningless to individual consumers.

### **4. AEP-Ohio's and OEG's Statements That Consumers are 100% Exposed to the Market Miss a Critical Distinction.**

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<sup>5</sup> AEP Post Hearing Brief at 22.

<sup>6</sup> OEG Post Hearing Brief at 7.

<sup>7</sup> OCC Post Hearing Brief at 54.

<sup>8</sup> Id. at 55.

<sup>9</sup> Id. at 43.

<sup>10</sup> IEU-Ohio Post Hearing Brief at 24.

The OEG states in its post-hearing brief “Without the PPA Rider, AEP Ohio customers will be 100% exposed to the PJM market.”<sup>11</sup> AEP Ohio points to the OEG’s claim in its post hearing brief as well when it discusses “...practical, real-world solutions for its customers...”<sup>12</sup> The OEG continues its argument for Rider PPA stating “No reasonable investor would invest 100% of his or her assets in a single stock...”<sup>13</sup> These arguments miss a vital distinction – that the market is a construct to create products for customers. Customers themselves choose how exposed they want to be to the market. Customers themselves pick their hedges. As RESA states in its post hearing brief “For those who are concerned with the price volatility, they may obtain power at fixed prices or through other hedging arrangements.”<sup>14</sup> The OEG admits as much when it notes that the PUCO’s Apples to Apples Comparison Charts have fixed price contracts offered to residential customers<sup>15</sup>. Commercial and industrial customers can obtain fixed price contracts, variable priced contracts, products that fix a portion of their load and float a portion, variable priced contracts with collars, and a multitude of other products to hedge themselves against market prices. Put simply, rejecting Rider PPA will not subject customers to 100% market exposure. Rather, rejecting Rider PPA will allow customers to choose for themselves which hedges they wish to by rather than forcing AEP-Ohio’s upon them.

## **5. The OCC makes a strong Case for the Illegality of Rider PPA and its Arguments Should be Supported.**

In its post hearing brief the OCC makes a thorough and strong case for why Rider PPA is not authorized by Ohio law based on the Ohio Supreme Courts ruling in *In re: Columbus S. Power*

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<sup>11</sup> OEG Post Hearing Brief at 7.

<sup>12</sup> AEP Ohio Brief at 26-27.

<sup>13</sup> OEG at 7.

<sup>14</sup> RESA Post Hearing Brief at 28.

<sup>15</sup> OEG at 7.

Co..<sup>16</sup> The EPO will not clutter the record and repeat the entirety of the OCC's legal arguments, but the OCC's thorough treatment of AEP-Ohio's arguments deserves careful consideration.

**6. AEP Ohio's Legal Arguments Concerning the Authority of the Commission to Approve Rider PPA Should Not Be supported.**

AEP Ohio does its very best to take the square peg that is Rider PPA and fit it into the round hole that is 4928.143(B)(2). These arguments are addressed in the order found in AEP-Ohio's post hearing brief. Each of its arguments fail and should not be supported.

**a. 4928.143(B)(2)(a) - Rider PPA does not supply power.**

AEP Ohio claims that 4928.143(B)(2)(a) explicitly permits "affiliate purchase power agreements."<sup>17</sup> O.R.C. 4928.143(B)(2)(a) allows for only "the cost of purchased power *supplied* under the offer..."<sup>18</sup> (emphasis added). Rider PPA is described expressly as a financial hedge and AEP Ohio has made it clear that no power will be supplied to directly to Ohio customers through it. Since Rider PPA does not *supply power* it does not fit.

**b. 4928.143(B)(2)(d) – Relates to default service and addresses bypassability.**

AEP Ohio claims Rider PPA is authorized under O.R.C. 4928.143(B)(2)(d) because it relates to default service and addresses "(non) bypassability."<sup>19</sup> Rider PPA does not address default service since it has noting to do with the cost to supply power under default service. It is a financial hedge as we've been repeatedly told. Further, since it is non-bypassable it

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<sup>16</sup> OCC at 43-51.

<sup>17</sup> AEP at 29.

<sup>18</sup> O.R.C. 4928.143(B)(2)(a)

<sup>19</sup> AEP at 27-28.

affects all customers whether or not they take default service or service from a CRES. Since Rider PPA does not relate to default service it does not fit.

AEP-Ohio also claims that Rider PPA fits under (B)(2)(d) because addresses “(non) bypassability.”<sup>20</sup> However, the statute reads “bypassability.”<sup>21</sup> Had the legislature intended to include the term non-bypassability it would have. The legislature took pains to list several terms, conditions, or charges and non-bypassability is not on the list. Basic rules of statutory interpretation state that if the statute in question has a list of items subject to it items not on the list are excluded. This proposition is supported by the Ohio Supreme Court in *In re: Columbus S. Power Co.* when it stated “The commission believes that the phrase “without limitation” allows unlisted items... But this phrase does not allow unlisted items. Rather, it allows unlimited inclusion of listed items.”<sup>22</sup> As such, AEP-Ohio’s argument does not fit.

**c. 4928.143(B)(2)(d) - Rider PPA is Not a Limitation on Customer Shopping.**

AEP Ohio claims that Rider PPA fits into O.R.C. 4928.143(B)(2)(d) because it “could also be considered a limitation on customer shopping to the extent it is viewed as selling a generation hedging service to shopping customers even though they are purchasing generation service from a CRES provider.”<sup>23</sup> This argument, again, fails because, well, Rider PPA does not limit shopping. AEP Ohio makes this argument itself in its own post hearing brief it states “the non-bypassable nature of the PPA rider will ensure that this element of the Company’s proposed ESP will have no adverse impact on the... ability of CRES

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<sup>20</sup> Id. at 27-28.

<sup>21</sup> O.R.C. 4928.143(B)(2)(d)

<sup>22</sup> *In re: Columbus S. Power Co.*, 128 Ohio St.3d 512, 520

<sup>23</sup> AEP at 28.

providers to compete for customers on a level playing field.”<sup>24</sup> A limitation on shopping must have an adverse impact on CRES providers ability to compete for customers. Since AEP Ohio itself notes that Rider PPA does not do this, Rider PPA does not fit as a limitation on customer shopping.

**d. Rider PPA Does Not Stabilize or Provide Certainty**

Rider PPA does not stabilize or provide certainty regarding retail electric service. Since the output of Rider PPA is based on the sale of OVEC contractual entitlements into the PJM market, it necessarily reflects the volatility of the market.<sup>25</sup> As such, customers with fixed price contracts, who have diligently sought to avoid the volatility of the market, now have it inserted into their monthly bills. This is hardly a stabilizing effect. Nor does Rider PPA provide certainty. As proposed, AEP Ohio put forth two assessments of the costs/benefits of Rider PPA. Also, IEU-Ohio notes in its post hearing brief that OVEC costs shifted 24% due to a change in output from 2011 to 2012.<sup>26</sup> Put simply, no one knows what the effect of Rider PPA will be other than guaranteeing the costs of AEP Ohio’s share of OVEC are covered for the utility.

**e. 4928.143(B)(2)(e) Does Not Allow Rider PPA**

AEP Ohio makes the attempt to shoehorn Rider PPA into (B)(2)(e) which allows for “Automatic increases or decreases in any component of the standard service offer price.”<sup>27</sup> AEP Ohio states, “This automatic pass through of increases or decreases accurately describes operation of the PPA Rider.”<sup>28</sup> The statute in question states “Automatic increases or decreases in any component of the standard service offer price;” Under a plain

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<sup>24</sup> Id. at 26.

<sup>25</sup> AEP at 22-23.

<sup>26</sup> IEU Ohio at 24.

<sup>27</sup> O.R.C. 4928.143(B)(2)(e)

<sup>28</sup> AEP at 30.

reading of the statute, Rider PPA could only be approved through subsection (e) if it were limited to the “standard service offer.” Since AEP Ohio’s proposal is non-bypassable it cannot fit into this subsection because it applies beyond the standard service offer. If AEP-Ohio’s proposal was bypassable and limited only to non-shopping customers could it fit into 4928.143(B)(2)(e).

**f. 4928.143(B)(2)(i) Does Not Allow Rider PPA**

O.R.C. 4928.143(B)(2)(i) allows for “Provisions under which the electric distribution utility may impellent economic development, job retention, and energy efficiency programs...” The key word here is “programs.” Rider PPA does not effectuate any AEP Ohio economic development program. It only guarantees cost recovery for AEP Ohio’s share of OVEC. Admitting Rider PPA is somehow economic development because it keeps OVEC running is tantamount to asking Ohio ratepayers to subsidize uneconomic generating assets. Since AEP Ohio claims that OVEC costs are below market prices<sup>29</sup> and will provide customers with a benefit, it cannot now claim that Rider PPA is a job retention program aimed at keeping OVEC operating.

**7. The OEG’s Claim That Outside Investment Firms May Not Work With Ohio is Conjecture and Not Supported by the Record.**

The OEG does its best to incite panic that if investment firms outside of Ohio owned Ohio’s power plants they may not work with Ohio on a CO2 State Implementation Plan or to stabilize customer rates.<sup>30</sup> While the OEG’s counsel Mr. Kurtz tried to elicit these answers in his cross examination of Dr. Choueiki there were no affirmative answers given.<sup>31</sup> The OEG’s repetition of this speculation in its post hearing brief is its attempt at creating a boogeyman. To

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<sup>29</sup> AEP at 46.

<sup>30</sup> OEG at 13.

<sup>31</sup> Tr. Vol. XII at 2847



follow the OEG's logic that "outside" investor ownership of power plants in Ohio is bad, then Duke Energy's or AES ownership of power plants in Ohio are bad. The OEG's claim is speculation and bad speculation at that. Any owner of a power plant in Ohio has an incentive to work well with the state since the state has so much regulatory authority over nearly every aspect of its operations from the PUCO, EPA, Department of Commerce, etc. Outside investors that bring hundreds of millions, if not billions of dollars, into Ohio's economy should be celebrated not made the stuff of scary bedtime stories.

## **8. Conclusion**

The record does not support the approval of Rider PPA. The record reflects extreme uncertainty as there are at least three different assessments of the cost/benefit of Rider PPA. Further, as addressed above, Ohio law does not allow its inclusion in any of its provisions. Stripped bare, Rider PPA is AEP-Ohio's attempt to force customers to shoulder all of the market risk for the OVEC assets with no legal authority by Ohio regulators to independently review the costs associated with the potential charges.<sup>32</sup> Further if AEP Ohio truly believes that customers can benefit from Rider PPA, the Commission should ask itself why is a publically traded company, with a fiduciary responsibility to its shareholders, giving away such a valuable asset? The only logical conclusion can be that Rider PPA is not likely to benefit customers in any meaningful way and it should be rejected.

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<sup>32</sup> As the EPO stated in its initial post hearing brief, and AEP Ohio has made abundantly clear, the PUCO has no authority to review the prudence of OVEC costs (Tr. Vol. 1 at 32-33). The OEG itself highlights the "unenviable role of an intervenor at FERC rather than a regulator." OEG at 13.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this motion to intervene out of time has been served by electronic service to the parties identified below this 15<sup>th</sup> day of August, 2014.

*/s/ Kevin Schmidt*  
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Summary: Reply Brief of the Energy Professionals of Ohio electronically filed by Mr. Kevin R Schmidt on behalf of The Energy Professionals of Ohio