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**Via E-File**

August 15, 2014

Public Utilities Commission of Ohio  
PUCO Docketing  
180 E. Broad Street, 10th Floor  
Columbus, Ohio 43215

**In re: Case Nos. 13-2385-EL-SSO and 13-2386-EL-AAM**

Dear Sir/Madam:

Please find attached the REPLY BRIEF OF THE OHIO ENERGY GROUP for filing in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



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**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter Of The Application Of Ohio Power	:	<b>Case No. 13-2385-EL-SSO</b>
Company For Authority To Establish A Standard	:	
Service Offer Pursuant To §4928.143, Revised Code,	:	
In The Form Of An Electric Security Plan	:	
	:	
In The Matter Of Application Of Ohio Power For	:	<b>Case No. 13-2386-EL-AAM</b>
Approval Of Certain Accounting Authority	:	

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**REPLY BRIEF OF THE  
THE OHIO ENERGY GROUP**

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August 15, 2014

**COUNSEL FOR THE OHIO ENERGY GROUP**

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The Ohio Energy Group (“OEG”) submits this Reply Brief in support of its recommendations to the Public Utilities Commission of Ohio (“Commission”) in this proceeding. OEG’s decision not to respond to other arguments raised in this proceeding should not be construed as implicit agreement with those arguments.

**ARGUMENT**

- I. The Commission Should Approve a Modified Version of the Purchase Power Agreement Rider.**
- A. Approval of the Purchase Power Agreement Rider Will Not Violate the Federal Power Act Nor Will It Violate the FERC *Edgar* Standards.**

Parties question the Commission’s authority to adopt a mechanism such as the Purchase Power Agreement (“PPA”) Rider without violating the Federal Power Act, citing recent cases arising from the efforts in Maryland and New Jersey to incentivize new generation to be built in their regions for the explicit purpose of driving down wholesale capacity prices.<sup>1</sup> These actions were found to be preempted by federal law.<sup>2</sup> Both states found that the PJM capacity market clearing prices in their regions were too high because of insufficient generation supply. These states also determined that the annually changing nature of PJM capacity pricing did

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<sup>1</sup> Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (“Staff Brief”) at 15-17; Initial Brief of Industrial Energy Users-Ohio (“IEU-Ohio Brief”) at 20-24.

<sup>2</sup> *PPL EnergyPlus, LLC v. Nazarian*, 974 F. Supp. 2d 790 (D.MD. Sept. 30, 2013), *aff’d* 753 F. 3d 467 (4<sup>th</sup> Cir. June 2, 2014) and *PPL EnergyPlus, LLC v. Hanna*, 977 F. Supp. 2d 372 (D.N.J. 2013).

not provide enough financial certainty for merchant generators to make the large capital investments necessary to construct new generation. Therefore, they decided to take matters into their own hands.<sup>3</sup> In the Maryland case, the Public Service Commission solicited proposals for the construction of a new power plant, offering the successful bidder a fixed, twenty-year revenue stream through a contract that the state would compel local electric utilities to enter.<sup>4</sup> In the New Jersey case, the legislature passed a statute requiring electric utilities to enter into long-term contracts to fund new natural gas-fired plants with generators chosen by the Board of Public Utilities.<sup>5</sup>

The PPA Rider is not remotely similar to the Maryland and New Jersey approaches. While the PPA Rider would allow AEP Ohio to recover its OVEC costs that differ from PJM wholesale market clearing prices, there are important distinctions between Maryland and New Jersey and the present case.

First, in the Maryland and New Jersey cases, the states' efforts were aimed specifically at incentivizing the construction of new power plants that would lower wholesale capacity prices in their region.<sup>6</sup> Even though the RPM capacity prices in the constrained Maryland and New Jersey regions were very high and resulted in high prices for consumers, the annually changing nature of RPM capacity prices did not encourage new generation to be built. The states therefore decided to establish their own methods of encouragement (state-subsidized long-term contracts). Providing state-established methods to subsidize the construction of new generation undermined the price signals provided by the FERC-approved RPM market construct.

Here, the purpose of the PPA Rider is not to encourage new generation to be built by bypassing the FERC-approved RPM market construct. Instead, the PPA Rider is merely intended to provide rate stability to retail consumers by acting as a hedge against market fluctuations at the retail level. Approval of the PPA Rider approach will not distort the price signals resulting from the PJM wholesale markets. The generation supply bid into the PJM markets will not change if the Rider is approved. OVEC is *existing* generation that AEP Ohio previously bid into the PJM wholesale markets, and will continue to bid into those markets, regardless of whether the PPA Rider is approved. Approval of the OVEC PPA Rider will not change the wholesale price for energy or capacity at all. Not by a penny.

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<sup>3</sup> See *Id.*

<sup>4</sup> *PPL EnergyPlus, LLC v. Nazarian*, 753 F. 3d 467, 473.

<sup>5</sup> *PPL EnergyPlus, LLC v. Hanna*, 977 F. Supp. 2d 372, 393.

<sup>6</sup> *Id.*; *PPL EnergyPlus, LLC v. Nazarian*, 753 F. 3d 467, 473.

Second, PJM's FERC-approved Minimum Offer Price Rule ("MOPR") does not apply here. The PJM MOPR is intended to address the concern that certain resources seeking to participate in PJM's capacity auctions might attempt to suppress market clearing prices. The PJM MOPR is designed to limit the ability of buyers to suppress capacity prices by subsidizing the construction of new generation. The PJM MOPR only applies to new gas-fired combustion turbines, new gas-fired combined cycles, and new integrated gasification combined cycle units.<sup>7</sup> The PJM MOPR therefore applied to the new gas generation at issue in the Maryland and New Jersey cases.<sup>8</sup> But it specifically does not apply to existing coal resources such as the OVEC units. Therefore, FERC's concerns regarding buyer-side manipulation of the PJM wholesale markets are not implicated by the PPA Rider.

Third, unlike the contract costs at issue in the Maryland and New Jersey cases, the OVEC charges or credits sought to be passed through in this case are the result of a wholesale rate that has already been approved by the FERC.<sup>9</sup> The Commission would not alter that FERC-approved rate by approving the PPA Rider.

Fourth, the Court of Appeals decision regarding the Maryland scheme expressly limits the scope of its reach. In that case, the Court specifically states "*...it is important to note the limited scope of our holding, which is addressed to the specific program at issue.*"<sup>10</sup> Given that the facts and circumstances in this case are vastly different from those at issue in the Maryland and New Jersey cases, those cases do not bar Commission approval of the PPA Rider.

Regarding other federal issues, Constellation argues that the PPA Rider violates FERC's *Edgar* standards for affiliate transactions, alleging that the pricing of the OVEC generation could not be called "*market priced power.*"<sup>11</sup> However, OVEC has already explained to FERC why the *Edgar* standards do not apply since none of the thirteen Sponsoring Companies that control OVEC do so in the same manner as the affiliate relationships in

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<sup>7</sup> *PJM Interconnection, L.L.C.*, 143 FERC ¶61,090 (May 2, 2013) at ¶4 and ¶22 ("Currently, PJM's MOPR protects against these forms of buyer-side market power by setting a price floor, i.e. a minimum bid, and requiring all new, non-exempted resources to bid at that floor..."); Id at ¶166 ("We accept PJM's proposal to apply the MOPR to gas-fired combustion turbine, combined-cycle, and IGCC resources. The IMM, FirstEnergy, and Dayton argue that the MOPR should apply to all resource types and that any resource type can be used to exercise market power. We agree with PJM, however, that the MOPR may be focused on those resources that are most likely to raise price suppression concerns.").

<sup>8</sup> Id.

<sup>9</sup> See *Ohio Valley Elec. Corp.*, Letter Order in FERC Docket. Nos. ER04-1026-000, *et al.* (Dec. 13, 2004); *Ohio Valley Elec. Corp.*, Letter Order in Docket. Nos. ER11-3181-000, *et al.* (May 23, 2011).

<sup>10</sup> *PPL EnergyPlus, LLC v. Nazarian*, 753 F. 3d 467, 478 (4<sup>th</sup> Cir. June 2, 2014).

<sup>11</sup> Initial Brief of Constellation NewEnergy, Inc. and Exelon Generation, LLC ("Constellation Brief") at 8-10 (citing *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382).

other *Edgar*-related cases.<sup>12</sup> Therefore, there is no risk of affiliate abuse. Additionally, OVEC already provided analysis to FERC demonstrating that it satisfies the *Edgar* standards, to the extent they may apply.<sup>13</sup> FERC accepted OVEC's *Edgar* filing.<sup>14</sup> Hence, Constellation's claim is without merit.

## **B. The Purchase Power Agreement Rider is Authorized Under State Law.**

Several parties challenge the legality of the PPA Rider,<sup>15</sup> with some of those parties arguing that the PPA Rider does not fit within any provision of R.C. §4928.143.<sup>16</sup> But OEG has already explained how the PPA Rider would satisfy the requirements of R.C. §4928.143(B)(2)(d) since the Rider: 1) is a financial "*limitation on customer shopping*," resulting in AEP Ohio's consumers paying a price that is 5% cost-based and 95% market-based;<sup>17</sup> and 2) "*has the effect of stabilizing retail electric service*" since the 5% of customer bills that would be based on the average embedded cost of OVEC is inherently more stable than wholesale market pricing based on the marginal costs of all generators throughout the PJM region.

Further, the existence of other mechanisms through which consumers can achieve some degree of rate stability – fixed price contracts and staggering/laddering the SSO auctions – does not preclude the Commission from establishing the PPA Rider as an additional stability mechanism pursuant to R.C. §4928.143(B)(2)(d).<sup>18</sup> Any stability provided by fixed price contracts offered by CRES providers is only available for customers who can shop and only if CRES providers continue to offer such contracts (which the Commission cannot guarantee). And while staggering and laddering may help mitigate price volatility for non-shopping customers, it will not be

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<sup>12</sup> See Amended and Restated Inter-Company Power Agreement, Amended and Restated OVEC-IKEC Power Agreement, and Termination of First Supplementary Transmission Agreement, FERC Docket No. ER04-1026-000 (July 16, 2004); Modification No. 1 to the Amended and Restated Inter-Company Power Agreement and Supplemental Filing, FERC Docket No. ER04-1026-001 (Nov. 18, 2004); Amended and Restated Inter-Company Power Agreement, FERC Docket No. ER11-3441-000 (Apr. 27, 2011); Letter Order, FERC Docket No. ER11-3441 (May 23, 2011).

<sup>13</sup> See Amended and Restated Inter-Company Power Agreement, FERC Docket No. ER11-3441, Exhibit A (Apr. 27, 2011).

<sup>14</sup> Letter Order in Docket. Nos. ER11-3181-000, *et al.* (May 23, 2011).

<sup>15</sup> Constellation Brief at 6-8; Initial Brief of Environmental Law and Policy Center ("ELPC Brief") at 8 and 15-19; Initial Brief of the Retail Energy Supply Association ("RESA Brief") at 27-30; Staff Brief at 11-14; Post-Hearing Brief of Ohio Partners for Affordable Energy and the Appalachian Peace and Justice Network ("OPAE/APJN Brief") at 45-48; IEU-Ohio Brief at 13-20; Initial Post-Hearing Brief by the Office of the Ohio Consumers' Counsel ("OCC Brief") at 43-46.

<sup>16</sup> OCC Brief at 43; Post-Hearing Brief of the Ohio Hospital Association at 9; Staff Brief at 11; Post-Hearing Brief of Ohio Environmental Council and Environmental Defense Fund ("OEC/EDF Brief") at 12-15; IEU-Ohio Brief at 7-13.

<sup>17</sup> Tr. Vol. II at 480:3-7.

<sup>18</sup> Constellation Brief at 10; RESA Brief at 31; Post-Hearing Brief of the Energy Professionals of Ohio at 3.



sufficient to protect consumers from high prices if the market price is significantly higher than OVEC costs over a long period of time.

Parties claim that the PPA Rider violates R.C. §4928.38, which addresses the termination of transition revenues and provides that after the market development period, the “*utility shall be fully on its own in the competitive market.*”<sup>19</sup> However, beyond the fact that the costs or benefits passed through the PPA Rider are not transition revenues, this provision stems from the full deregulation approach adopted in Senate Bill 3, which as OEG explained in its initial brief, the Ohio General Assembly stepped back from in Senate Bill 221. Senate Bill 221 provided more traditional regulatory tools under which an electric distribution utility can recover generation-related costs from consumers through an ESP.<sup>20</sup> To the extent the provisions of Senate Bill 3 conflict with the provisions of Senate Bill 221, the newer law prevails. R.C. 1.52(A) provides “[i]f statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.” Accordingly, to the extent that there is any irreconcilable conflict between §4928.38 and the provisions of R.C. §4928.143, the provisions of R.C. §4928.143 were adopted later in time and therefore prevail.

The other commonly cited statute that parties claim is violated by the PPA Rider is R.C. §4928.02(H) regarding anti-competitive subsidies flowing from a noncompetitive retail electric service (i.e. transmission or distribution) to a competitive retail service.<sup>21</sup> These arguments are misplaced. As an initial matter, the PPA Rider is not “*anti-competitive*” because it does not the impact the SSO auctions or customer shopping decisions. Nor does it skew the wholesale market. Further, the PPA Rider is not a “*subsidy*” because consumers would be paying for a product that they receive (rate stability). And consumers are in fact expected to receive rate credits through the PPA Rider, which is contrary to the notion of a “*subsidy.*” A PPA Rider rate credit is an “*anti-subsidy.*”

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<sup>19</sup> Initial Brief of the Ohio Manufacturers’ Association Energy Group (“OMAEG Brief”) at 16; OCC Brief at 53; IEU-Brief at 13-20.

<sup>20</sup> See e.g. R.C. §§4928.143(B)(2)(b) and (B)(2)(c).

<sup>21</sup> Constellation Brief at 6-7; OCC Brief at 46; RESA Brief at 29; Staff Brief at 12; OPAE Brief at 47; IEU-Ohio Brief at 13-20.



A few parties allege that the Commission will lose jurisdiction over the OVEC costs or benefits passed through the PPA Rider if the Rider is approved.<sup>22</sup> Yet the Commission would not have any jurisdiction over generation supply costs if it cedes all jurisdiction to PJM and FERC by rejecting the PPA Rider. Additionally, by adopting OEG's recommendation that AEP Ohio retain 10% of the PPA Rider, the Commission can ensure that the Company has an incentive to minimize OVEC costs. The Commission could also establish an audit process to evaluate the reasonableness of the costs or benefits passed through the PPA Rider, as proposed by FirstEnergy with respect to the conceptually similar mechanism included in its recent ESP filing.<sup>23</sup> Alternatively, in the event that the PPA Rider is approved, the Commission could adopt Staff's recommendation that it require AEP Ohio to include in the terms of the PPA that the expenses are subject to a prudence review of the Commission.<sup>24</sup>

Regarding the allegations of parties that Ohio's energy policy dictates full deregulation,<sup>25</sup> OEG already addressed these issues in its initial brief. There, OEG explained that rather than moving Ohio farther toward mandatory reliance on the federally-regulated wholesale power market, Senate Bill 221 gave the Commission discretion to opt back into some of the traditional features of state regulation in the context of an ESP. Accordingly, the Commission can and should use the regulatory tools made available under Senate Bill 221 to retain some local control over the generation costs paid by Ohio consumers.

Those parties arguing for no state control over generation pricing also ignore the fact that the federally-regulated PJM market is highly administered and therefore does not represent pure "*free market*" competition. For example, in order to set the market clearing price in the RPM auctions, PJM must make a wide array of assumptions and determinations. The demand curve used in each RPM auction is administratively determined through a PJM stakeholder process. The key starting point in developing the slope of the administratively-established demand curve is the net cost of new entry ("Net CONE"). Simply to establish the Net CONE, PJM must make assumptions regarding the capital costs of a natural gas combustion turbine unit, the operating life of such a unit, any forecasted capital additions to be made to that unit, variable and fixed O&M costs of the unit, fuel costs over the life of the unit, financing costs associated with that unit (capital structure, cost of equity, cost of

<sup>22</sup> Staff Brief at 7-8; Constellation Brief at 9; OPAE Brief at 46.

<sup>23</sup> Direct Testimony of Eileen M. Mikkelsen, Case No. 14-1297-EL-SSO (August 4, 2014) at 14:3-22.

<sup>24</sup> Staff Brief at 25.

<sup>25</sup> Staff Brief at 2-4; OCC Brief at 70; Constellation Brief at 17; OMA Brief at 16; OEC/EDF Brief at 16; Initial Brief of Direct Energy Services, LLC and Direct Energy Business, LLC ("Direct Energy Brief") at 4.

debt), the heat rate for each year of its operating life, etc.<sup>26</sup> This process merely establishes Gross CONE. To get to Net CONE, the PJM stakeholder process needs to make assumptions about energy and capacity revenues that the unit will earn over its operating life to offset its costs. This is hardly an exact science. Nor is it consistent with a common understanding of a “*free market*.” Additionally, when establishing the supply curve, PJM determines the extent to which various resources can participate (for instance, placing capacity values on wind, solar, and fossil resources, determining which resources outside of PJM can bid in, and regulating which demand response and energy efficiency resources can participate).<sup>27</sup> PJM’s highly regulated capacity market does not represent a purely “*competitive*” market – a point which Staff witness Dr. Chouieki concedes.<sup>28</sup>

Accordingly, rejection of the PPA Rider would only result in the Commission yielding its state regulatory authority over generation costs to a federal regulator, not to the “*free market*.”

### **C. Approval of the Purchase Power Agreement Rider Will Not Prejudice Competitive Retail Electric Service Providers.**

Several competitive retail electric service (“CRES”) providers dispute AEP Ohio’s proposal to establish the PPA Rider.<sup>29</sup> However, those CRES providers will not be prejudiced if the Commission ultimately approves the Rider. At the retail level, the PPA Rider will not alter AEP Ohio’s Standard Service Offer (“SSO”) auctions nor will it alter a CRES provider’s ability to participate in those auctions. Moreover, while the PPA Rider as proposed would be nonbypassable, and therefore applied to shopping customers, establishing that rider would be competitively neutral to CRES providers since all customers within AEP Ohio’s service territory, both shopping and non-shopping, would receive the same charge or credit. Because the PPA Rider charge or credit would not affect the price to compare or the decision to shop, it is competitively neutral. In addition, the cost-based charge or credit that would be applied through the PPA Rider would merely represent a 5% *financial* limitation on shopping since shopping customers would still buy 100% of their power from CRES providers and SSO customers would still be supplied 100% through auctions. AEP Ohio witness Allen explained:

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<sup>26</sup> See AEP Ohio Ex. 31.

<sup>27</sup> Tr. Vol. XII at 2831.

<sup>28</sup> Tr. Vol. XII at 2840-2841.

<sup>29</sup> Constellation Brief at 2-19; RESA Brief at 27-32; Initial Post-Hearing Brief of IGS Energy at 15-17; Direct Energy Brief at 3-5.

*Q. And, again, just to be clear, this would not affect the amount of power people have to buy from CRES suppliers or affect the amount of auction suppliers, it's all on a financial basis so that 5 to 6 percent cost is purely financial?*

*A. That's correct...one of our guiding principles was to try to avoid having any impact on CRES providers or on the auction.*<sup>30</sup>

Establishment of the PPA Rider also will not “skew the competitive wholesale market for power,” as alleged.<sup>31</sup> AEP Ohio is currently bidding its OVEC interest into the annual PJM capacity auctions and the day-ahead energy markets, and will continue to do so in the future, regardless of whether the PPA Rider is established or not. Hence, Commission approval of the PPA Rider will not result in manipulation of the wholesale market clearing prices for energy or capacity since it will not alter the amount of generation supply in PJM. As discussed previously, approval of the OVEC PPA Rider will not change the wholesale price of energy or capacity at all. Not by a penny.

Although the PPA Rider would allow AEP Ohio to recover all of its OVEC costs should the PJM wholesale market clearing price be insufficient to cover those costs, the Rider would also prevent AEP Ohio from retaining additional profits from the OVEC units if the PJM market clearing price was higher than its OVEC costs. In this way, the PPA Rider could result in an advantage to generation-owning CRES providers if wholesale market prices are high. While generation-owning CRES providers have unlimited upside profit potential, AEP Ohio must return its OVEC profits to customers.

In any event, Ohio law permits charges that may have an indirect effect on the PJM wholesale markets. For example, Ohio’s renewable benchmarks set forth in R.C. §4928.64 require consumers to directly subsidize wind, solar, and advanced energy resources. This state-subsidized renewable and advanced generation increases the supply of both energy and capacity, thus suppressing wholesale energy and capacity prices. The price suppression effect of renewable resources has been modeled by PUCO Staff.<sup>32</sup> And Ohio consumers pay charges stemming from the energy efficiency benchmarks set forth in R.C. §4928.66, even though these state-subsidized energy efficiency programs suppress PJM market clearing prices by reducing demand on the system.

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<sup>30</sup> Tr. Vol. II at 480:21-481:4.

<sup>31</sup> Constellation Brief at 7.

<sup>32</sup> “Renewable Resources and Wholesale Price Suppression,” Public Utilities Commission of Ohio Staff (August 2013), available at <http://www.midwestenergynews.com/wp-content/uploads/2013/09/PUCO-renewable-energy-standard-study.pdf>.

#### **D. OEG's Modified Version of the Purchase Power Agreement Rider Resolves Many of the Issues Raised by Opposing Parties.**

A number of parties recommend rejection of the PPA Rider, citing issues that could arise from adopting the Rider as proposed by AEP Ohio.<sup>33</sup> However, only one party directly challenged the modified version of the PPA Rider recommended by OEG, which resolves many of the issues raised.<sup>34</sup> For instance, parties argue that it is unlikely that the PPA Rider will benefit consumers during the ESP term.<sup>35</sup> But by extending the PPA Rider over a 9 and a half year term and levelizing the costs recovered under the Rider, as recommended by OEG, the PPA Rider can provide more projected benefits to consumers and can do so during the first year of the ESP.<sup>36</sup> AEP Ohio is supportive of adopting such a longer PPA Rider term, although it has not taken a position on levelized cost recovery.

Adopting OEG's modified version of the PPA Rider can also help to address parties' concerns about the impact of future environmental regulations on the OVEC units.<sup>37</sup> As explained in OEG's initial brief, a 9 and a half year PPA Rider term (8 and a half years of actual hedging, plus a one-year-true-up) is short enough to likely avoid future exposure to unknown risks such as higher-than-expected CO<sub>2</sub> costs, should federal regulations such as the U.S. EPA's proposed Clean Power Plan be enacted in this area.<sup>38</sup> In addition, it is long enough to increase the likelihood that OVEC would result in cumulative net benefits to consumers given recent market projections

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<sup>33</sup> OMA Brief at 17 at 9; ELPC Brief at 11; OCC Brief at 54 and 73; Staff Brief at 18; OEC/EDF Brief at 16; IEU-Ohio Brief at 24; OPAE/APJN Brief at 40.

<sup>34</sup> OCC Brief at 77-80.

<sup>35</sup> OCC Brief at 54 ("*AEP Ohio's proposed PPA Rider will produce significant additional costs, and therefore, harm customers over the ESP period.*"); OMA Brief at 17 ("*...the likelihood of Rider PPA providing any credits to customers during the term of the ESP is slim...*"); Staff Brief at 18 ("*A substantial amount of evidence shows that the PPA rider will impose significant costs on customers during the term of ESP III.*"); IEU-Ohio Brief at 24 ("*Although AEP-Ohio claims customers will see an \$8 million benefit if the PPAR is authorized, it is more likely that customers will incur a substantial cost in the range of \$82...to \$116 million...during term of the proposed ESP.*"); OPAE/APJN Brief at 40 ("*There is no doubt that the OVEC generation under the PPA Rider will be higher-than-market cost throughout the ESP period.*").

<sup>36</sup> Direct Testimony of Alan Taylor (May 6, 2014) ("*Taylor Testimony*") at 16-17.

<sup>37</sup> ELPC Brief at 11 ("*Greenhouse gas ('GHG') rules and other federal environmental regulations directed at coal plants create significant potential impact on the future of OVEC operations and render the OVEC PPA rider a significant gamble for customers.*"); Constellation Brief at 12; OEC/EDF Brief at 16-18; OPAE Brief at 40-41.

<sup>38</sup> Taylor Testimony at 16-17.

estimating that the OVEC net benefits from June 2015 through calendar year 2023 would be approximately \$70 million<sup>39</sup>

Parties also speculate that granting AEP Ohio an assurance that its OVEC costs will be recovered through the PPA Rider - while simultaneously limiting AEP Ohio's upside profit potential - would provide a disincentive for AEP Ohio to operate those units efficiently.<sup>40</sup> But by adopting OEG's recommendation that 10% of the PPA Rider should be retained by AEP Ohio, the Commission can align the interests of the Company and its consumers and ensure that AEP Ohio has "*skin in the game*." The Office of the Ohio Consumers' Counsel similarly attempted to address this issue by recommending a cost-sharing arrangement in the event that the PPA Rider is approved.<sup>41</sup> Additional pressure to operate the OVEC units efficiently will also likely come from the twelve Sponsoring Companies besides AEP Ohio who own a portion of OVEC, each of whom is interested in profiting from its operations.

**E. Flat Rejection of the Purchase Power Agreement Rider May Foreclose Other Ohio Utilities From Establishing Conceptually Similar Mechanisms.**

If the Commission flatly rejects AEP Ohio's PPA Rider, it may set a precedent that would prevent other utilities in Ohio from establishing riders that are similar in concept, but that may be more reasonable in the Commission's view. For example, both Duke Energy Ohio, Inc. and FirstEnergy have proposed mechanisms that are conceptually similar to AEP Ohio's PPA Rider in their pending ESP cases.<sup>42</sup> The Commission should not prematurely decide those cases by flatly rejecting the concept of a PPA Rider-like mechanism in this case. Any animus that other parties may feel toward AEP Ohio does not justify rejecting the proposals of the other Ohio utilities in advance of their opportunity to be heard.

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<sup>39</sup> See AEP Ohio Ex. 8B (showing AEP Ohio's most recent forecast of \$8.4 million in PPA Rider benefits over the first 3 years); Mr. Taylor stated during cross examination that "*if the latest information on ESP 3 is on the mark, then the \$49 million of net benefits probably grows closer to \$70 million of total benefits.*" Tr. Vol. XI at 2557.

<sup>40</sup> OCC Brief at 73 ("*...the PPA Rider proposal could create anti-consumer incentives.*"); ("OEC/EDF Brief") at 16 ("*this PPA rider removes that incentive to manage the costs at this facility by shifting all of the risk to its distribution customers.*"); Constellation Brief at 8 ("*Because AEP Ohio will be guaranteed full cost recovery and will carry no market risk associated with the OVEC generation, there will be no incentive for AEP Ohio to manage costs and operate the plant efficiently and in the most cost-effective manner...*").

<sup>41</sup> OCC Brief at 74-75.

<sup>42</sup> Case Nos. 14-841-EL-SSO *et al* and 14-1297-EL-SSO.

## **II. AEP Ohio Now Agrees That It Should Continue to Provide Interruptible Service to Both Shopping and Non-Shopping Customers.**

None of the parties to this case challenged OEG's recommendation to continue AEP Ohio's interruptible program for both non-shopping *and shopping customers*. Specifically, OEG proposed two interruptible rate options: 1) an approach modeled upon Duke's current interruptible program, under which ten mandatory interruptions would be permitted during the months of June through September and under which an interruptible credit set equal to 50% of Net CONE (about \$5.36/kW-month for the 2017/2018 Delivery Year) would be available;<sup>43</sup> and 2) an approach allowing unlimited emergency interruptions and offering AEP Ohio's existing \$8.21/kW per month credit.

Notably, AEP Ohio explains that it has *changed* its position with respect to continuing its interruptible service program due to changed circumstances since its Application was filed in this case.<sup>44</sup> AEP Ohio states that the recent polar vortex "*illustrated that there may still be an important role for demand response programs even when sponsored by a wires-only company.*"<sup>45</sup> The Company also cites the recent decision by the D.C. Circuit Court "*that calls into question to some extent the Federal Energy Regulatory Commission's approval of PJM's demand response programs while emphasizing the states' role in overseeing demand response programs for retail customers.*"<sup>46</sup> Finally, AEP Ohio states that "*it may be appropriate to maintain the IRP-D tariff in a modified form in order to provide a more stable revenue stream for certain customers that are able to provide emergency demand response service that can benefit the reliability of the electric grid in AEP Ohio's service territory or that can assist in meeting the state's EE/PDR mandates.*"<sup>47</sup>

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<sup>43</sup> Direct Testimony of Stephen J. Baron (May 6, 2014) at 11:6-14.

<sup>44</sup> Ohio Power Company's Initial Post-Hearing Brief ("AEP Ohio Brief") at 72.

<sup>45</sup> AEP Ohio Brief at 72.

<sup>46</sup> AEP Ohio Brief at 72-73.

<sup>47</sup> AEP Ohio Brief at 73.

In light of these changed circumstances, AEP Ohio would now agree to continuing schedule IRP-D, along with its existing \$8.21/kW-month credit, for existing IRP-D tariff customers (whether such customers shop or take SSO service) and as an option for economic development purposes. The continued version of the IRP-D tariff would be for purposes of unlimited emergency interruptions only. AEP Ohio's support for continuing its interruptible program is contingent upon its ability to recover the costs of the program.<sup>48</sup>

AEP Ohio's change of position and the non-opposition of other parties to OEG's interruptible proposal thus far lend even further support for continuing some form of interruptible program that is available to both non-shopping *and shopping* customers at the state level, as recommended by OEG. The ability of AEP Ohio to interrupt customers at any time and in any season in the case of emergencies would provide greater reliability than could be provided under the current PJM demand response programs. Further, once SSO load is supplied entirely by auction, AEP Ohio is financially indifferent as to whether the interruptible customer is shopping or non-shopping.

Continuing the availability of state-sponsored interruptible programs is increasingly important in light of the recent decision of the D.C. Circuit Court addressing demand response in the PJM energy markets.<sup>49</sup> Indeed, on the heels of that decision, FirstEnergy Service Company filed a Complaint at the FERC asking that it issue an order immediately removing demand response resources as suppliers to the PJM capacity markets.<sup>50</sup> Thus, the possibility that PJM will cease providing opportunities for demand response resources to participate in its markets is very real. The Commission should therefore ensure that a state-established demand response program – for both shopping and non-shopping customers – remains available in Ohio to provide important reliability and efficiency benefits, even if PJM's programs are ultimately eliminated.

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<sup>48</sup> AEP Ohio Brief at 72-73.

<sup>49</sup> *Electric Power Supply Association v. Federal Energy Regulatory Commission*, D.C. Circuit Case No. 11-1486 (May 23, 2014).

<sup>50</sup> Emergency Complaint of FirstEnergy Service Company and Request for Fast Track Processing, FERC Docket No. ER14-55 (May 23, 2014).



Thus, for all of the reasons discussed in OEG's initial brief and those cited by AEP Ohio, the Commission should adopt the interruptible rate option agreed upon by both AEP Ohio and OEG, under which the IRP-D tariff would be modified to provide for unlimited emergency interruptions and an interruptible credit of \$8.21/kW-month available to both shopping and non-shopping customers.

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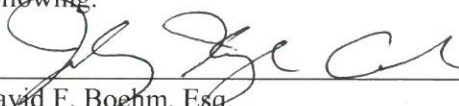
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August 15, 2014

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I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 15<sup>th</sup> day of August, 2014 to the following:

  
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