BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of Ohio Power Company and Solvay Specialty Polymers for Approval of a Special Arrangement Agreement	))))	Case No. 14-2296-EL-EEC

OBJECTION AND COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO TO JOINT APPLICATION FOR APPROVAL OF A SPECIAL ARRANGEMENT AGREEMENT BETWEEN OHIO POWER COMPANY AND SOLVAY SPECIALTY POLYMERS

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On Behalf of Industrial Energy Users-Ohio

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I. INTRODUCTION

On December 22, 2014, Solvay Specialty Polymers ("Solvay") and the Ohio Power Company ("AEP-Ohio") filed a joint application seeking approval of a special arrangement.[1] According to the Application, Solvay, a mercantile customer, is completing a combined heat and power project ("CHP") and would allow the CHP resources to count toward AEP-Ohio's compliance with energy efficiency benchmarks.[2]

Due to the size of the project, AEP-Ohio has requested that it be permitted to count half of the energy and demand savings in 2015 and the remaining half in 2016.[3] It also requests that it be permitted to count the savings from this program toward its recovery of shared savings, to be split between 2015 and 2016.[4] Further, AEP-Ohio requests that twenty percent of the shared savings calculated not be subject to the

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[1] Joint Application for Approval of a Special Arrangement Agreement Between Ohio Power Company and Solvay Specialty Polymers (Dec. 22, 2014) ("Application").

[2] *Id*. at 1-3.

[3] *Id*. at 5.

[4] *Id*. at 6-7.

shared savings cap established as part of its portfolio plan.[5] After insisting that the Application is not an amendment to its current portfolio plan, AEP-Ohio nonetheless concedes that it would not withdraw the Application if the Commission approved the Application without authorizing it to treat twenty percent of the shared savings as outside the shared savings cap.[6]

Industrial Energy Users-Ohio ("IEU-Ohio") agrees that the Public Utilities Commission of Ohio ("Commission") should approve the terms of the Application that afford Solvay a cash payment for committing the CHP project benefits to AEP-Ohio if it is a lower cost alternative to options available under the current plan.

IEU-Ohio, however, objects to AEP-Ohio's request to amend the portfolio plan to permit it to recover twenty percent of the shared savings related to the CHP project in excess of the cap on shared savings contained in AEP-Ohio's current portfolio plan.

Further, if the Commission approves the request to amend the portfolio plan to permit AEP-Ohio to recover twenty percent of the shared savings related to the CHP project in excess of the cap, the Commission should further find that eligible customers may opt out of the opportunity and ability to obtain direct benefits from AEP-Ohio's portfolio plan, as amended, as provided by Substitute Senate Bill 310 ("SB 310").

II. THE COMMISSION SHOULD APPROVE THE REQUEST TO COMMIT SOLVAY'S CHP PROJECT TO AEP-OHIO FOR A COMPLIANCE PAYMENT

Solvay is a mercantile customer and is seeking to commit the energy efficiency resources resulting from the installation of a CHP project to AEP-Ohio for an estimated

[5] *Id*. at 8.

[6] *Id*. at 9-10.

payment of $1,445,125 over five years.[7] According to the Application, approval of the Application will reduce energy costs and usage in a highly cost effective manner.[8] It is further alleged that "approval of this application can help reduce costs to all customers due to the project's relative size, energy and demand savings and associated net benefits generated."[9] If the Commission finds that compliance costs of other customers will be reduced by approval of the Application, IEU-Ohio supports the approval of this portion of the Application.

III. OBJECTION: IEU-OHIO OBJECTS TO AEP-OHIO'S REQUEST FOR RELIEF FROM THE SHARED SAVINGS CAP BECAUSE THE APPLICATION DOES NOT DEMONSTRATE A LAWFUL OR REASONED BASIS FOR AUTHORIZING THIS AMENDMENT OF THE CURRENT PORTFOLIO PLAN

AEP-Ohio entered into a Stipulation to establish its current portfolio plan, which was scheduled to terminate at the end of 2014.[10] The Commission approved the Stipulation without modification.[11] Although the plan was scheduled to terminate at the end of 2014, the plan remains in effect until the end of 2016 under Section 6(D) of SB 310 unless it is amended in compliance with Section 6(B) of SB 310.[12]

As set out in the approved Stipulation, the portfolio plan contains a detailed provision that permits AEP-Ohio to recover shared savings, but limits the total amount

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[7] *Id*., Ex. 1 at 3.

[8] *Id*. at 2.

[9] *Id*.

[10] *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case Nos. 11-5568-EL-POR, *et al*., Stipulation and Recommendation (Nov. 29, 2011) ("Stipulation").

[11] *Id*., Opinion and Order (Mar. 21, 2012) ("Opinion and Order").

[12] SB 310, § 6(D).

of revenue that AEP-Ohio may collect as a result of the shared savings provision to no more than $20 million per year on an after-tax basis.[13]

Despite its protests to the contrary, AEP-Ohio is seeking an amendment to the shared savings cap in the current portfolio plan. Specifically, "[AEP-Ohio] … requests that twenty percent of the shared savings calculated not be subject to the shared savings cap provided in Case 11-5568-EL-POR to recognize the Company's efforts to reduce overall costs for customers and encourage the Company to pursue additional highly cost effective CHP opportunities with its customers."[14]

The Commission may not authorize the amendment under the terms of SB 310. Under Section 7(B) of SB 310, the Commission, prior to January 1, 2017, is prohibited from taking any action with regard to any portfolio plan or application regarding a portfolio plan with two exceptions. Under the first exception contained in Section 7(B), the Commission may approve, or modify and approve, an application to amend a portfolio plan if the application is to amend an existing portfolio plan under Section 6(B) ("plan exception").[15] Under the second exception, the Commission may take those actions necessary to administer the implementation of the existing portfolio plan ("implementation exception").

The implementation exception does not provide the Commission authority to act on AEP-Ohio's Application. The approved portfolio plan contains a cap of $20 million; AEP-Ohio is seeking to amend the current shared savings authorization to collect

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[13] Stipulation at 6.

[14] Application at 8.

[15] *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 through 2015*, Case Nos. 12-2190-EL-POR, *et al*., Finding and Order (Nov. 20, 2014) (approving modification to current portfolio plan).

revenue in excess of the cap. Because AEP-Ohio is seeking to amend the existing cap, the implementation exception to the prohibition in Section 7(B) does not apply and Section 7 requires that the Commission reject AEP-Ohio's request.

Because AEP-Ohio is seeking to amend its current portfolio plan to extend the recovery mechanism,[16] however, the plan exception may require the Commission to approve, or modify and approve, the Application.[17] The amended plan, or amended plan as modified, then will be effective through December 31, 2016.[18]

The opportunity to amend the current plan, however, ended on October 12, 2014.[19] Because the Application was filed after October 12, 2014, the Application cannot be a lawful basis to amend the current portfolio plan.

If the Commission nonetheless finds that the plan exception applies, the Commission may, and in this case should, deny the request to modify the shared savings provision because the amendment is not reasonable. To support approval of the amendment, AEP-Ohio argues that additional shared savings will provide it an incentive to pursue other cost-effective CHP projects.[20] AEP-Ohio makes this shared savings demand notwithstanding its identification that counting the Solvay CHP project towards AEP-Ohio's compliance obligation will reduce the cost of compliance with the

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[16] The Commission may also reject the proposed amendment because it is filed too late. Under Section 6(B)(1) of SB 310, an amended portfolio plan must be filed within 30 days of the effective date of SB 310. SB 310 became effective on September 12, 2014.

[17] SB 310, § 6(B)

[18] *Id*.

[19] AEP-Ohio agrees that the Application is untimely, Application at 9, but concludes that the Application is not an amendment because AEP-Ohio "does not want to amend its plan." *Id*. Regardless of its attempt to construe the Application's request to modify the shared savings provision as something other than an amendment, it is clear from the terms of the Application and AEP-Ohio's additional concession that it would accept a decision that permitted it to split the savings between 2015 and 2016 but "subject to the cap" that the relief AEP-Ohio is seeking would be an amendment to the current portfolio plan. *Id*. at 8-9.

[20] *Id*. at 8.

energy efficiency and peak demand reduction ("EE/PDR") requirements for all customers.[21] Thus, the failure of AEP-Ohio to pursue the necessary steps to allow counting of the Solvay CHP project or similar ones towards AEP-Ohio's compliance obligation would raise questions regarding whether AEP-Ohio was prudently managing its EE/PDR compliance obligation, regardless of what the Commission ultimately determines is appropriate regarding shared savings. The requirement to demonstrate prudent management of the compliance obligations should be an adequate "incentive" for AEP-Ohio to reduce its portfolio compliance costs. Accordingly, IEU-Ohio objects to AEP-Ohio's request to amend its current portfolio plan and recommends that the Commission deny AEP-Ohio's request for shared savings.

IV. THE COMMISSION SHOULD FIND THAT ELIGIBLE CUSTOMERS MAY OPT OUT OF AEP-OHIO'S PORTFOLIO PLAN

AEP-Ohio states that "nothing in this Application should be construed as an amendment" of its current portfolio plan[22] even though AEP-Ohio is seeking authorization to avoid the current cap on shared savings. AEP-Ohio then threatens to unilaterally withdraw the Application if the Commission finds that the Application constitutes a request to amend its current plan because it does not consent "to approval under those circumstances."[23]

Regardless of what AEP-Ohio believes it may do if the Commission correctly finds that AEP-Ohio has sought to amend its portfolio plan, the portion of the Application regarding Solvay's commitment and the payment for that commitment should be

[21] Application at 2.

[22] *Id*. at 9.

[23] *Id*.

unaffected. Solvay could have filed an application regarding the commitment of the energy efficiency benefits of its CHP project without AEP-Ohio "consent."[24] Solvay should not be required to refile an application because AEP-Ohio believes it has some unilateral right to withdraw.

If the Commission finds that AEP-Ohio has provided a timely application to modify its portfolio plan, then the Commission should also grant other customers the additional opportunity to opt out of an amended portfolio plan. Because the Application seeks an amendment to AEP-Ohio's current portfolio plan, SB 310 directs that the Commission may either approve, or modify and approve, the Application not later than sixty days after the date the application is filed.[25] If the Commission does amend the current portfolio plan, then eligible customers[26] "may opt out of the opportunity and ability to obtain direct benefits from the utility's portfolio plan that is amended."[27] Accordingly, IEU-Ohio requests that the Commission make an affirmative finding that AEP-Ohio's eligible customers may elect to opt out of the benefits and costs of the amended portfolio plan if the Commission grants AEP-Ohio's request to increase its recovery of shared savings in excess of the current cap.

V. <u>CONCLUSION</u>

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[24] R.C. 4905.31. *See In re Application of Ormet Primary Aluminum Corp.*, 129 Ohio St.3d 9, 14-16 (2011).

[25] SB 310, § 6(B)(2).

[26] Those customers that may elect to opt out are those taking service above primary voltage levels or commercial or industrial customers that have made written requests for registration as self-assessing purchasers pursuant to R.C. 5727.81 (*i.e.*, the customer self-assesses the KWh tax). R.C. 4928.6610 & SB 310, § 5.

[27] SB 310, § 8.

IEU-Ohio supports the Application's request to authorize the commitment of Solvay's CHP project to AEP-Ohio for a commitment payment if the Commission finds that the commitment will lower AEP-Ohio's cost of compliance with the EE/PDR requirements. The Commission, however, should reject the amendment of AEP-Ohio's portfolio plan that would remove the cap on shared savings. Additionally, if the Commission authorizes AEP-Ohio's requested amendment of the shared savings provision of the current portfolio plan, the Commission also should affirmatively find that eligible customers may elect to opt out of the opportunity and ability to obtain direct benefits from AEP-Ohio's portfolio plan as amended.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Objection and Comments of Industrial Energy Users-Ohio to Joint Application for Approval of a Special Arrangement Agreement Between Ohio Power Company and Solvay Specialty Polymers* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 12th day of January 2015, *via* electronic transmission.

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ON BEHALF OF OHIO POWER COMPANY

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Summary: Objection and Comments of Industrial Energy Users-Ohio electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio