

**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	)	
Pursuant to §4928.143, Revised Code, in the Form of an	)	Case No. 13-2385-EL-SSO
Electric Security Plan.	)	
In the Matter of the Application of Ohio Power Company	)	
for Approval of Certain Accounting Authority.	)	Case No. 13-2386-EL-AAM

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**APPLICATION FOR REHEARING  
OF  
THE OHIO HOSPITAL ASSOCIATION**

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Pursuant to Ohio Revised Code Section (“R.C.”) 4903.10, the Ohio Hospital Association (“OHA”) respectfully submits this Application for Rehearing of the February 25, 2015, Opinion and Order (“Order”) of the Public Utilities Commission of Ohio (“Commission” or “PUCO”) modifying and approving Ohio Power Company’s (“AEP Ohio”) electric security plan (“ESP”). The Commission has unreasonably and unlawfully authorized AEP Ohio’s to adopt a purchased power agreement (“PPA”) rider as a zero-dollar placeholder.

As discussed in greater detail in the attached Memorandum in Support, the Ohio Hospital Association (“OHA”) respectfully requests that the Commission grant this Application for Rehearing and modify its February 25, 2015 Order in accordance with this Application for Rehearing.

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## MEMORANDUM IN SUPPORT

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### I. INTRODUCTION

Consistent with its initial and reply briefs submitted herein, the OHA's arguments are limited exclusively to the issue of Rider PPA.

The Commission correctly recognized the inherently speculative nature and lack of record support for the OVEC-based Rider PPA proposal and denied AEP's PPA plan, as filed. Opinion and Order at 24. At the same time, the Commission approved the rider mechanism itself on the basis that a lawful and reasonable Rider PPA, if structured correctly, could be proposed by AEP Ohio in the future and approved by the Commission.

For essentially the same reasons as those relied upon by Commission in rejecting AEP's proposed Rider PPA, the Commission's approval of the "placeholder" Rider PPA mechanism as a part of this ESP application is not supported by either the record or the Revised Code and is therefore unlawful and unreasonable.

The Commission has noted that its decisions must be based on the record before it. Opinion & Order ("O&O") at 24, citing *Tongren V. Pub. Util Comm.* 85 Ohio St. 3d 87 (1999). Beyond this, Commission decisions are subject to reversal if they are "Manifestly against the weight of the evidence, and are so clearly unsupported by it as to show misapprehension or mistake, or willful disregard of duty" *Delphos v. Public Util. Comm.* 137 Ohio St. 422 (1940). See also *Elyria Foundry Co. v. PUC* 114 Ohio St. 3d 305 (2007). The Commission's conclusion on the subject Rider PPA meets these criteria for reversal, as there are several fatal flaws in the Commission's reasoning.

## II. ARGUMENT

### A. R.C. 4928.143(B)(2)(d)

The Commission determined that in order for the PPA mechanism to be legal it must comply with three criteria found in R.C. 4928.143(B)(2)(d). First, an ESP component approved under R.C. 4928.143(B)(2)(d) must be a term, condition, or charge. Second, it must relate to one of the enumerated types of terms, conditions, and charges, and Third, it must have the effect of stabilizing or providing certainty regarding retail electric service. Opinion & Order, p. 20.

#### 1. Charge

As to the first criterion, the Commission concluded that the Rider PPA would *consist* of a charge *incurred* by customers under the ESP. For this lone conclusion the record support is unambiguous.

#### 2. Rate Stability

The second criterion considered by the Commission was whether the PPA charge would have the effect of stabilizing or providing certainty regarding retail electric service. On this point, the Commission concluded that Rider PPA, as a financial hedging mechanism, is proposed to have the effect of stabilizing or providing certainty regarding retail electric service. O & O at 21.

The Commission accepted AEP's argument that Rider PPA *is intended* to mitigate, by design, the effects of market volatility, providing customers with more stable pricing and a measure of protection against substantial increases in market prices. Id.

The Commission points to the testimony of AEP Ohio witness Vegas wherein he opined that Rider PPA would smooth out fluctuations in market prices, because the rider would rise or fall in a way that is opposite of the wholesale market. This is because OVEC's "mostly" fixed costs are relatively stable in comparison to market based costs, Rider PPA would produce a credit when

OVEC's costs are below wholesale market prices, while the rider would produce a charge when OVEC's costs are above wholesale market prices. Id.

This point was supported by many bare assertions by AEP Ohio, but very little by way of hard numbers in support was provided. The Commission concluded as much by rejecting AEP Ohio's specific proposal.

Nevertheless, by finding that “there is no question that Rider PPA would produce a credit or charge based on the difference between wholesale market prices and OVEC's costs, offsetting, to some extent, the volatility in the wholesale market[,]” the Commission is accepting AEP's, re-herring arguments concerning market volatility that are premised on faulty notion that retail customers pay wholesale market prices or are directly exposed to daily swings in the wholesale market. Retail prices do not reflect the daily volatility of the wholesale market. While Staff witness Choueiki noted the annual variation in capacity prices, this is a far cry from the short-term variations in the wholesale energy markets into which the output of OVEC would be sold. This difference is why neither the harsh winter of 2014 or this most recent cold spell (that set a new winter peak demand) have not been reflected in retail rates.<sup>1</sup> Yet it is the peaks and valleys of these wholesale prices that AEP Ohio uses to create the specter of market volatility. AEP's entire justification for this hedge, along with the Commission's acceptance of the principle behind it, are based on a misleading portrait of the retail market. Indeed, this proposal is before the Commission because there is not *enough* volatility in wholesale rates – AEP Ohio does not expect those rates to consistently cover the costs of its OVEC obligation. If this was not, in fact, the case, AEP would keep the positive value produced from its OVEC asset for itself.

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<sup>1</sup> The investigation occasioned by FES' vortex surcharge in Case No. 14-568-EL-COI is an example of the exception proving the rule.

Further undermining the notion that the Rider PPA would serve to dampen volatility, the Commission correctly seized upon the fact that the Rider PPA would be reconciled to actual historical costs and revenues at annual intervals, and that the one-year lag associated with the true-up process may mean that the reconciliation component could operate in the same direction of current market prices, serving to exacerbate volatility.

The Commission deflects attention from this flaw by pointing to AEP Ohio's argument that the regulatory lag inherent in the annual true-up process would not alter the fundamental operation of Rider PPA. Here again, the Commission is accepting AEP Ohio's bait-and-switch tactics.

By acknowledging the timing mis-matches of the rider, the Commission concedes that Rider PPA might compound market volatility by adding to, rather than subtracting from, price swings. The "hedge" concept that the Commission has approved is supposed to provide rate "stability or certainty" in the *retail* rate context. Rider PPA will not do this because as AEP Ohio points out in the passage cited by the Commission, there is a disconnect between the PJM market differential that will create the charge or credit to customers and the actual date on which customers will see that charge or credit. The timing mis-match has other causes besides the one-year time lag in the rider true-up; the credits and debits from the wholesale market ledger are one thing, but the record reflects that there are many variable costs associated with the operation of OVEC. These cost fluctuations have nothing to do with the hourly trading swings from the PJM marketplace – they will be collected through the rider at completely random intervals. The idea that the Rider PPA mechanism will provide "stability and certainty" to retail service rates is flatly contradicted by the record in this case. The "hedge" that Mr. Allen refers to is an economic hedge of the type that an investor might make to cover particular risk exposure from a

particular market position. The language found in R.C. 4928.143(B)(2)(d) is in the context of retail electric service rates, not commodity trading portfolio management, as Mr. Allen describes. Timing is not a significant consideration in the economic sense; there, the main consideration is the amount of volatility avoided over the life of the hedge. To a hospital facility operating under a fiscal plan, or more acutely, a pensioner on a budget, the timing of price movement is everything. This is the proper context of “stability” as used in R.C. 4928.143(B)(2)(d).

### 3. Limitation on Customer Shopping

The third and final criterion examined by the Commission is the requirement that the “charge” under R.C. 4928.143(B)(2)(d) must relate to at least one of the following: limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals. The Commission found that the proposed Rider PPA is a financial limitation on customer shopping for retail electric generation service. O&O at 22. The Commission believes that a simple charge on customers, completely unrelated to their generation supply functions as a “financial restraint on complete reliance on the retail market for the pricing of retail electric generation service.” *Id.*

The Commission was persuaded by OEG witness Taylor's argument that a “charge” on customers' bills constitutes a “financial limitation” on customer shopping. *Id.*, citing Tr. XI at 2539 2559. The financial “limitation” in the context offered by OEG witness Taylor is that customers will not receive the benefit of their arms-length transactions with the CRES suppliers of their own choosing. In other words R.C. 4928.143(B)(2)(d) allows the Commission to impose a private tax on all customers in order to prevent the full operation of competition. This intention is found nowhere in the language or context of R.C. 4928.143.

The Commission attempts to support its thin reasoning by pointing to AEP Ohio witness Allen’s testimony contradicting the Commission’s conclusion by drawing a distinction between a physical limitation on shopping versus a financial limitation on shopping, but this distinction only makes the point that the Commission is reading “limitation” synonymously with “evisceration.” Again, it is impossible to find this intention in the overall purpose of R.C. 4928.143.

**B. Other Fatal Flaws**

The Commission determined that Rider PPA would not permit the recovery of generation-related costs through distribution or transmission rates because the rider is considered a generation rate. O&O at 26. The Commission, on the one hand, acknowledges that the PPA mechanism is unrelated to the supply, delivery, or cost of generation, and that it is a purely financial hedge. O&O at 22. Yet, on the other hand, the Commission is claiming that the charge is a “generation rate.” This is patently unreasonable. The *only* reason why a shopping customer would pay Rider PPA is because they receive distribution service from AEP Ohio. Rider PPA is merely a “charge” unrelated to anything except the unregulated, extra jurisdictional costs of OVEC.

By the same token, the Commission’s conclusion that the “PPA rider constitutes a rate stability charge related to limitations on customer shopping for retail electric generation service” (O&O p. 26) rather than a stranded cost recovery mechanism is pure sophistry. The “charge” to be imposed on customers comes from the algebraic fact that the costs of operating OVEC cannot be recovered through arms-length market transactions. The negative difference between the revenues available in the market versus the embedded “book” cost of the plant is the very definition of a stranded cost. It is a “rate stability charge” only from the perspective of AEP Ohio – they are assured of 100% cost recovery for current operating liabilities.

### III. CONCLUSION

With only one exception, consumers are not seeking the rate stability that the Commission appears to be willing to accept on their behalf . Further, the Commission never directly addresses how “stabilization” in the form of a simple appropriation by a private company is consistent with the public interest. Yet this is the “stability” that the Commission’s is negotiating on consumers’ behalf.

Equally suspect is the Commission’s failure to address this simple reality of the PPA mechanism: The “value” of the hedge currently belongs to the shareholders of AEP and it would be a violation of the fiduciary obligations to shareholders for AEP management to simply “donate” a valuable asset to captive ratepayers. As the OHA argued in its briefs herein, if there was even a conceivable net benefit to be found in the PPA mechanism, AEP Ohio would not be proposing this idea in the first place.

WHEREFORE, the Ohio Hospital Association respectfully urges the Commission to grant its application for rehearing.

Respectfully submitted on behalf of  
OHIO HOSPITAL ASSOCIATION



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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing APPLICATION FOR REHEARING was served upon the parties of record listed below this 26<sup>th</sup> day of March 2015 via electronic mail.



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Summary: App for Rehearing electronically filed by Mr. Thomas J O'Brien on behalf of Ohio Hospital Association