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**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 R.C. ) Case No. 13-2385-EL-SSO  
4928.143, 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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**APPLICATION FOR REHEARING OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION**

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Now comes the Retail Energy Supply Association (“RESA”)<sup>1</sup> and pursuant to Section 4903.10, Revised Code, requests the Public Utilities Commission of Ohio (“Commission”) to grant rehearing for the purpose of modifying its February 25, 2015 Opinion and Order in the above-styled proceeding. Specifically, the February 25, 2015 Opinion and Order was unjust and unreasonable because it:

- (1) Establishes a place holder Rider PPA for Ohio Power Company when such a Rider does not comply with Sections 4928.143(B)(2)(d), 4928.17, and 4928.02(H), Revised Code, nor with federal law preemptions as to state subsidies on wholesale sales of power.
- (2) Having rejected Rider PPA as applied for as not being in the public interest, permits Ohio Power to include Rider PPA in its tariff even though the Rider could not be implemented without further Commission approval.

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<sup>1</sup> The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

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- (3) Requires an industry review of the Ohio Power Purchase of Receivables program via the Market Development Working Group when the Purchase of Receivable program only affects Ohio Power and the Ohio Power customers.
  - (4) Expects the competitive marketplace to begin offering time-of-use and other dynamic products without taking the necessary steps to ensure that the interval data needed for such competitive offerings is made available to Competitive Retail Electric Service providers in a meaningful manner.
  - (5) Establishes a new rider for collection of transmission costs without first setting forth a specific process to ensure that the existing bypassable transmission costs will be properly reconciled and be excluded from the new non-bypassable transmission rider.
  - (6) Requires supplier-consolidated billing and certain tariff language to be discussed by the Market Development Working Group without first establishing an administrative procedure and a time deadline(s).

The facts and arguments that support these grounds for rehearing, and the suggested remedies are set forth on the attached Memorandum in Support.

Respectfully Submitted,



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**MEMORANDUM IN SUPPORT OF  
THE APPLICATION FOR REHEARING OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION**

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**I. Introduction**

On December 20, 2013, Ohio Power Company (“Ohio Power”) filed an application seeking approval of a third electric security plan (“ESP III”) that would commence on June 1, 2015, and continue through May 31, 2018.<sup>2</sup> On February 25, 2015, the Commission modified the ESP III and approved it as modified. The Retail Energy Supply Association (“RESA”) supports most of the conclusions of fact and law reached by the Commission in these proceedings. RESA finds, however, that several conclusions in the 100-page decision are unjust and unreasonable, and thus warrant modification. The Commission correctly determined that Ohio Power did not meet its burden of proof to establish a rider to collect or credit the difference between (a) what Ohio Power pays its affiliate Ohio Valley Electric Corp. (“OVEC”) for generation and (b) what it receives when Ohio Power subsequently resells that power and capacity in the wholesale PJM market (“Rider PPA”).

As part of the Opinion and Order the Commission did, however, opine that under different facts and circumstances than those contained in the application and the hearing record, a purchase power agreement (“PPA”) rider could be approved under Ohio law. Such dicta is within the prerogative of the Commission, but the Commission committed error when it approved its theoretical PPA rider to be placed in Ohio Power’s tariff. The Commission, as a state agency, can only exercise that authority which has been specifically delegated to it by the

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<sup>2</sup> Ohio Power’s application included an option to terminate the ESP at the end of the second year. That termination proposal was rejected by the Commission. As a result, the Commission has approved a three-year ESP.

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General Assembly.<sup>3</sup> There is no expressed authority for the Commission to authorize a theoretical tariff provision. Equally troubling was the Commission's failure to include all the legal requirements which would be necessary for a PPA, when it listed the criteria for a rider that was acceptable under Ohio law.

While the Rider PPA received most of the attention in the hearing and in the Opinion and Order, there were several other issues in the proposed Ohio Power Electric Security Plan III ("ESP III") which merit rehearing. While the Commission correctly approved a purchase of receivables plan ("POR") for Ohio Power, instead of having Ohio Power simply submit an application for the POR in accordance with the findings in the Opinion and Order, the Opinion and Order added the extra steps of sending the POR program first to the industry-wide Market Development Working Group ("MDWG"), and then having a Staff Report. When one considers that the POR program will not apply to a utility other than Ohio Power, and any interested person can intervene at the time of the actual application; there seems little reason to send the matter to the MDWG. This is especially true when one considers all the other issues already on the MDWG's work list.

The Commission in its Opinion and Order stated that Ohio Power is required to continue offering its standard time-of-use ("TOU") tariffs during the ESP III and the Commission "fully expects that CRES providers will begin to offer TOU and other innovative and dynamic products...." RESA does not seek rehearing on those findings, but requests that the Commission take the next required step and provide for supplier access to the interval data necessary for supplying TOU services. Another technical point in the Opinion and Order that needs to be

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<sup>3</sup> *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St.3d 535, 620 N.E.2d 835; *Pike Natural Gas Co. v. Pub. Util. Comm.* (1981), 68 Ohio St.2d 181, 22 O.O.3d 410, 429 N.E.2d 444; *Consumers' Counsel v. Pub. Util. Comm.* (1981), 67 Ohio St.2d 152, 21 O.O.3d 96, 423 N.E.2d 820; and *Dayton Communications Corp. v. Pub. Util. Comm.* (1980), 64 Ohio St.2d 302, 18 O.O.3d 478, 414 N.E.2d 1051.

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addressed on rehearing is how to accomplish the accounting required when the new non-bypassable transmission rider goes into effect. The Commission needs to affirmatively state that the existing bypassable transmission costs are separate and should be prevented from being included in the new non-bypassable transmission charges. Administrative attention also needs to be provided on rehearing to the Commission's order that the MDWG take up the issue of supplier-consolidated billing. The Opinion and Order is silent as to either the procedure for the review or equally important the time allotted for the review. RESA would like to see the Commission provide the MDWG with the guidance of a process such as a recommendation or if no consensus is reached a Staff recommendation within the year, but it failed to provide a procedural schedule or time allotment for the MDWG or Staff to report out on the subject.

**II. It was unjust and unreasonable to establish a place holder Rider PPA for Ohio Power Company when such a rider does not comply with Sections 4928.143(B)(2)(d), 4928.17, and 4928.02(H), Revised Code, nor with federal law preemptions as to state subsidies on wholesale sales of power.**

Ohio Power's PPA rider proposal has been the most highly contested aspect of the matter at bar. Extensive testimony and arguments on this one issue have been presented by the parties. The Commission even conducted an oral argument on the subject of the legal requirements for a purchased power agreement. Rider PPA was a creative attempt on the part of Ohio Power to transfer the entire commercial risk of competitive generation from the shareholders of Ohio Power to the ratepayers. Further, Ohio Power requests that customers not be able to elect not to take the hedging service. Specifically, Ohio Power's Rider PPA will pass on to all ratepayers, via a non-bypassable rider, any differences between the purchase costs of the energy, capacity and ancillaries from Ohio Power's affiliate, OVEC, and the sale price when that energy, capacity and ancillaries is sold into the PJM Interconnection LLC ("PJM") market. Just over a year ago, the Commission in reviewing Ohio Power's claim that it could not divest the OVEC holdings, as

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was required by its corporate separation agreement, the Commission permitted Ohio Power to sell the OVEC power into the PJM market with the commercial risk being on the stockholders – not the ratepayers<sup>4</sup>.

The Commission made five conclusions with regard to this aspect of the Ohio Power ESP III:

- The Commission concluded that a PPA Rider (in concept) was a permissible provision of an ESP under Section 4928.143(B)(2)(d), Revised Code.
- The Commission found that Ohio Power had not proven that its specific proposal should be approved.
- After rejecting Ohio Power’s proposal, the Commission nonetheless approved and established a PPA rider for the ESP III term.
- The Commission concluded that Rider PPA would not violate another Ohio laws.
- The Commission outlined a number of factors that Ohio Power should include in a future PPA application and which the Commission might consider in deciding such future PPA application.

The Commission correctly rejected the OVEC PPA proposal, but erroneously concluded that since Ohio law could permit such a rider, based on a different application and set of facts, a place holder rider could be placed in the tariff. That conclusion was unjust and unreasonable and as such, should be reversed.

**A. Rider PPA is not authorized by Section 4928.143(B)(2)(d), Revised Code, as the rider is for generation costs and thus involves a competitive service.**

Ohio Power tried to justify Rider PPA as a permissible provision for its ESP III by citing Section 4928.143(B)(2)(d), Revised Code. That code section states that an electric distribution utility’s ESP can include “[t]erms, conditions, or charges relating to 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,

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<sup>4</sup> *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Finding and Order (December 4, 2013).



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including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service.”

The Commission found that Rider PPA involves generation. More specifically, the Commission stated that Rider PPA “would be considered a generation rate,” whether a charge or a credit.<sup>5</sup> RESA agrees. However, in Ohio, generation is a “competitive retail electric service”. *See*, Sections 4928.01(A)(27) and 4928.03, Revised Code. Moreover, in Ohio, the electric utility is limited to providing non-competitive utility services only. The exception is that the utility can provide competitive services for those customers as part of a bundled, default full electric retail service for those customers who have not selected a competitive retail electric service provider.<sup>6</sup> The Rider PPA does not provide bundled generation to any Ohio Power customers. Under Rider PPA the OVEC generation is sold wholesale into the PJM market. Section 4928.143(B)(2)(d), Revised Code, does not expressly or implicitly authorize Ohio Power to provide this PPA mechanism to all its ratepayers, especially the shopping customers who have contracted for the competitive portion of their retail electric service. Since shopping customers are not permitted to “opt out” if they have fixed priced or made other hedging arrangements, In sum, Rider PPA is not authorized by Section 4928.143(B)(2)(d), Revised Code, because the rider is for generation costs and thus involves a competitive service.

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<sup>5</sup> Opinion and Order at 26. Similarly, the Commission stated that Rider PPA’s impact “would be reflected as a charge or credit for a generation-related hedging service.” Opinion and Order at 21. RESA disagrees that Rider PPA will actually have an appreciable hedging effect, especially during the ESP III term, but RESA agrees with the Commission that Rider PPA is generation related.

<sup>6</sup> Sections 4928.01(A)(11) and 4928.141, Revised Code, authorize an electric company such as Ohio Power to provide competitive retail electric services in addition to utility distribution services, and such competitive retail electric services must be needed to maintain “essential” electric service to default customers. There was no Commission finding (nor did Ohio Power even argue) that Rider PPA is needed to maintain “essential” electric service to default customers.

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**B. Rider PPA cannot be lawful under Section 4928.143(B)(2)(d), Revised Code, as a non-bypassable rider applicable to all Ohio Power ratepayers because it involves a competitive service per Section 4928.03, Revised Code.**

Shopping customers pay their CRES providers for the power they use. Under Rider PPA, the shopping customers would potentially also pay for some of the cost of generation from OVEC that they did not use because OVEC's generation price is above market.<sup>7</sup>

As explained above, in Ohio, generation is a retail electric service and it is a competitive retail electric service. *See*, Sections 4928.01(A)(27) and 4928.03, Revised Code. The statutory framework limits the electric utilities to supplying only non-competitive services, except when the customer has not selected a CRES provider. Rider PPA will ignore this very framework because, as a non-bypassable rider, it applies to all Ohio Power customers, including the shopping customers, and mandates that all customers pay for the costs of a competitive retail electric service – one that is not even being served to them. Nothing in Section 4928.143(B)(2)(d), Revised Code, authorizes Ohio Power to side-step the statutory framework in this manner.

**C. Rider PPA violates Section 4938.17, Revised Code, because Ohio Power is contracting with its affiliate without any direct approval of the Commission.**

In addition to the statutory limitation found in Section 4928.03, Revised Code, Ohio Power is not allowed to supply a noncompetitive retail electric service (i.e., distribution service) and a competitive retail electric service (i.e., generation service) without a corporate separation plan. *See*, Section 4928.17(A), Revised Code. That statute requires Ohio Power to have a corporate separation plan approved and supervised by the Commission. At a minimum, the corporate separation plan must contain the following:

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<sup>7</sup> Ohio Power's own "best" estimates reflect that its customers will incur charges under Rider PPA during the ESP III term. Ohio Power Exs. 8A and 8B.

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- (1) The plan provides, at minimum, for the provision of the competitive retail electric service or the nonelectric product or service through a fully separated affiliate of the utility, and the plan includes separate accounting requirements, the code of conduct as ordered by the commission pursuant to a rule it shall adopt under division (A) of section 4928.06 of the Revised Code, and such other measures as are necessary to effectuate the policy specified in section 4928.02 of the Revised Code.
  - (2) The plan satisfies the public interest in preventing unfair competitive advantage and preventing the abuse of market power.
  - (3) The plan is sufficient to ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the competitive retail electric service or nonelectric product or service \* \* \*.

Ohio Power was required to fully separate its generation assets from its distribution assets by the end of 2013.<sup>8</sup> However, Ohio Power had difficulty in timely completing its corporate separation with regard to its OVEC holdings/entitlement. The Commission has allowed Ohio Power to retain the OVEC entitlement, but required that the OVEC energy must be sold into the PJM energy markets.<sup>9</sup> Nothing in that decision reflected that Ohio Power should cease its efforts to divest/transfer its OVEC entitlement, and the Commission affirmed in the matter at bar that Ohio Power must divest/transfer its OVEC entitlement.<sup>10</sup>

Yet, Ohio Power still retains its OVEC entitlement at this time and Rider PPA will cause shopping customers to pay for OFEC's generation even though they will not use it. The agreement underlying Rider PPA was not submitted to the Commission, and will not be reviewed by the Commission in the future. (It was reviewed by the Federal Energy Regulatory Commission.)<sup>11</sup> As a result, the agreement is not a matter within the Commission's regulation and the Commission cannot therefore ensure that through the agreement "the utility will not

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<sup>8</sup> *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Finding and Order (October 17, 2012).

<sup>9</sup> *Corporate Separation, supra*, Finding and Order (December 4, 2013).

<sup>10</sup> Opinion and Order at 26-27.

<sup>11</sup> Transcript Vol. 1 at 31-33.

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extend any undue preference or advantage to any affiliate, division, or part of its own business.”

The Commission should recognize that the PPA mechanism is inconsistent with the corporate separation requirements in Ohio.

**D. Rider PPA violates the state energy policy, particularly Section 4928.02(H), Revised Code.**

Section 4928.02, Revised Code, is the State Energy Policy. Subsection H forbids subsidies to flow (either direction) between a regulated non-competitive company and the non-regulated affiliates of the distribution company. Section 4928.02(H), Revised Code, instructs the Commission to take the necessary actions 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[.]”

Rider PPA violates Section 4928.02(H), Revised Code, by requiring shopping customers to pay the cost of the OVEC generation regardless of whether OVEC’s generation sales revenue exceed the OVEC costs. Put another way, Ohio Power’s ratepayers are guaranteeing that the OVEC generation earns a profit by covering any difference in the revenues from the sale of the power and cost of generation (the costs of generation include a profit amount). Since all ratepayers (both shopping and non-shopping ratepayers) will pay the OVEC generation costs, Rider PPA creates a subsidy for the generation service -- OVEC has the advantage over other competitive generators because the OVEC units would be guaranteed to recover their costs, including a return on equity. Plus, Rider PPA will free Ohio Power from any market/price risk associated with the OVEC generation.

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As was mentioned earlier, the Commission acknowledges that Rider PPA will be a generation-related rate,<sup>12</sup> recovering generation-related costs. However, the Commission's conclusion that Rider PPA will not recover generation-related costs through distribution or transmission rates<sup>13</sup> is incorrect. Rider PPA will be imposed by Ohio Power on all Ohio Power ratepayers. Because the shopping customers in Ohio Power's territory pay Ohio Power only for its distribution and transmission services, Ohio Power will be recovering, through Rider PPA, generation-related costs through distribution or transmission rates at least as to the shopping customers in Ohio Power's territory.

**E. Rider PPA violates federal law, and recent holdings in two indistinguishable circuit courts cases confirm this point.**

Rider PPA is based on an agreement for the wholesale purchase of generation. Wholesale transactions are within the purview of the Federal Energy Regulatory Commission ("FERC"). Two recent federal decisions have tossed out other states' efforts to require retail customers to buy or subsidize the wholesale sale of power because those state actions are preempted by federal law. *See, PPL Energy Plus v. Nazarian*, 753 F.3d 467 (4<sup>th</sup> Cir. 2014) and *PPL Energy Plus v. Solomon*, 766 F.3d 241 (3<sup>rd</sup> Cir. 2014). In *Nazarian*, the Maryland Public Service Commission ordered local electric utilities to enter into 20-year contracts with a generation plant owner, and ordered them to pay the difference between the generator's sale of power in the PJM wholesale market and the contract price. The difference was to be passed on to Maryland ratepayers. The federal court concluded that the Maryland Public Service Commission's decision fixed a value for the generator's wholesale capacity and energy, and was not within the state commission's authority (it was with the exclusive jurisdiction of the FERC). *Id.* Similarly, in *Solomon*, the New Jersey legislature passed legislation allowing the New Jersey

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<sup>12</sup> Opinion and Order at 26.

<sup>13</sup> Opinion and Order at 26.

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Board of Public Utilities to order the electric utilities to enter into contracts with a generation plant owner to pay the difference between the new generators' sale of power in the wholesale market and the contract price. The federal court declared the New Jersey statute null and void because it too was preempted by federal law. *Id.*

The Commission did not consider the federal law arguments in its decision, specifically opting not to.<sup>14</sup> The Commission should not only analyze Rider PPA in light of its jurisdiction versus federal jurisdiction, but also recognize the similarities between Rider PPA and the schemes involved in those two federal decisions. It was unjust and unreasonable for the Commission to approve Rider PPA without considering applicable case law.

**III. Having rejected Rider PPA as applied for as not being in the public interest, it is unjust and unreasonable to permit include Rider PPA in its tariff even though the Rider could not be implemented without further Commission approval.**

The Commission reviewed the evidence and rejected Ohio Powers' PPA rider completely, stating "[w]e conclude that Ohio Power has not demonstrated that its PPA rider proposal, as put forth in these proceedings, should be approved under R.C. 4928.143(B)(2)(d)."<sup>15</sup> The Commission rejected the one and only PPA Rider proposal from the applicant.<sup>16</sup> As a result, the Commission did not have any other applicant proposal or any evidentiary basis upon which to find that Section 4928.143(B)(2)(d), Revised Code was actually met and then establish and adopt a PPA rider.<sup>17</sup> This is particularly apparent since the Commission listed a variety of "factors" that must be presented to it in a future proceeding from Ohio Power when asking for

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<sup>14</sup> Opinion and Order at 26.

<sup>15</sup> Opinion and Order at 25.

<sup>16</sup> The Commission also did not approve the modified Rider PPA proposed by the Ohio Energy Group.

<sup>17</sup> A Commission decision is unlawful if the Commission fails to state specific findings of fact, supported by the record, and fails to state the reasons upon which the conclusions in the Commission's Opinion and Order were based. *Ideal Transp. Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d 195, 71 O.O.2d 183, 326 N.E.2d 816, *See, also, Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87,.

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approval of a PPA rider before a PPA rider can be found worthy of terms, conditions, rates, etc.<sup>18</sup>

The U.S. Supreme Court has reached the same conclusion in a similar situation. In *Ohio Bell Tel. Co. v. Pub. Util. Comm. of Ohio* (1937), 301 U.S. 292, 57 S.Ct. 724, 81 L.Ed. 1093, the U.S. Supreme Court reversed a decision that had approved the Commission's adjustment of rates based on "price trends" that were not in the record, but were of record in a separate Commission investigation and analysis. Also, the Ohio Supreme Court has found that there was no evidentiary support for approval on rehearing of an alternative proposal submitted by Cincinnati Gas & Electric Company during rehearing. *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, 2006-Ohio-5789. If the actual Rider PPA proposal submitted by the applicant was not approved and Ohio Power must present a host of other information before a PPA rider can take effect, then the Commission did not have any evidentiary basis in this case upon which to conclude that Section 4928.143(B)(2)(d), Revised Code, had been satisfied or to establish and approve a PPA Rider.<sup>19</sup>

Moreover, it is unknown whether any such future application will be received, whether Ohio Power will carry its burden of proof with regard to any next proposal for a PPA rider, and/or whether the Commission will approve such proposal in the term of the ESP III. Ohio Power cannot impose and collect under the approved PPA rider.

The Commission noted in its decision that it has previously established placeholder riders within an ESP.<sup>20</sup> These instances though were where the Commission found certain known costs were going to exist in the future and the Commission determined that when those costs were

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<sup>18</sup> *Id.* at 25.

<sup>19</sup> Also, from a practical standpoint, it was not necessary for the Commission to have authorized a PPA rider – Ohio Power cannot use the PPA rider and cannot include any terms/conditions because none have been approved. The establishment of the PPA rider in the company's tariff simply confuses the situation, creating the appearance that the company has some authorization for a PPA rider, but it does not.

<sup>20</sup> Opinion and Order at 25.

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presented they could be submitted for review and payment. For example, Duke Energy Ohio, Inc. was permitted to establish the Distribution Rider – Infrastructure Modernization (Rider DR-IM), initially set a zero, while actual costs were incurred.<sup>21</sup> In that situation, Duke’s underlying proposal was actually approved and Duke took actions thereon, although a specific rider rate could not be set initially. That is very different from a PPA rider that allows nothing to take place until some future application when new unknown facts will be presented and compliance with the criteria that was not met at hearing must be proven. Similarly, the FirstEnergy electric distribution utilities were permitted to establish the Delta Revenue Recovery Rider (Rider DRR) for recovery of delta revenues for reasonable arrangements approved after a specific date.<sup>22</sup> This rider too was an approved rider that had to be initially set at zero until the costs were incurred. Again, those utilities were taking actions based on the approved Rider DRR, so that the specific rate could be determined at a point in the future. This situation is likewise very different from what is involved here with the PPA rider. As mentioned, the Commission did not approve any terms or conditions with regard to a PPA rider. Also, Ohio Power will not actually charge/credit any differences between costs and revenues and Ohio Power will have no other actions to take otherwise. Instead, Ohio Power has to file anew, if it decides to move forward.<sup>23</sup> It was error to

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<sup>21</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case Nos. 08-920-EL-SSO et al, Opinion and Order at 17 (December 17, 2008).

<sup>22</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Opinion and Order at 15 (March 28, 2009).

<sup>23</sup> Ohio Power has another pending application for approval of additional PPAs for inclusion in Rider PPA. *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case Nos. 14-1693-EL-RDR et al. However, the Commission’s February 25, 2015 decision makes it clear that Ohio Power’s Rider PPA was rejected and any future request must address a host of factors, which are not included in Ohio Power’s other pending application. In fact, the other pending application makes clear that there are no actual, executed PPAs for Commission approval, stating:

The new PPA would be between Ohio Power and AEPGR and this separate rider Application will allow the Commission to consider the additional PPA in parallel with the pending ESP III



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allow Ohio Power to establish anything in its tariff for the term of the ESP III relative to the rejected PPA. Furthermore, removal of the PPA rider does not harm Ohio Power because it will have to propose specific tariff sheets in the future if it wants any PPA rider to go into effect. Finally, allowing placeholders for matters that have not even been approved, and may never be approved, is not good public policy. Utility tariffs should reflect the services and charges that companies actually provide/impose, not those they may be able to provide/impose at some unknown time in the future.

**IV. It was unjust and unreasonable to require industry review of the Ohio Power Purchase of Receivables program via the Market Development Working Group when the Purchase of Receivable program only affects Ohio Power and the Ohio Power customers.**

As part of its ESP III proposal, Ohio Power proposed to establish a POR program such that Ohio Power would purchase the receivables of each participating CRES provider for which Ohio Power bills on a consolidated basis. On page 80 of the February 25, decision, the Commission authorized the establishment of a POR program in Ohio Power's service territory and set forth the following requirements:

- (1) Receivables must be purchased at a single discount rate that applies to all CRES providers;
- (2) Only commodity-related charges may be included in the POR program;
- (3) Participation in the POR program by CRES providers that elect consolidated billing must not be mandatory; and
- (4) A detailed implementation plan should be discussed within the MDWG, with a proposal subsequently filed for the Commission's consideration.

RESA commends the Commission for approving Ohio Power's POR program, and for not accepting the Staff's recommendation to establish per-provider discount rates. POR will help spur further development of the competitive market in Ohio Power's service territory. The

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Application. The proposed PPA will only be executed if this Commission approves retail cost recovery through inclusion in the PPA rider.

Application at 3. Therefore, Ohio Power still has to file anew before any Rider PPA can take effect.

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Commission also correctly noted that there are additional implementation details that will need to be addressed before the POR program can be instituted. The Commission identified those implementation details: POR program rules, calculation of the discount rate, implementation and maintenance costs, collection rates and procedures, and the timing and other mechanics of the purchasing process.<sup>24</sup> However; those discussions should not be sent to the MDWG for several reasons.

- A. Since the Commission concluded that every POR program is to be evaluated on its own merits and, encouraged the electric distribution utilities to develop their own proposals, the industry-wide working group is not the appropriate group to discuss implementation details for Ohio Power's program.**

Ohio Power's POR will be unique to Ohio Power as it is not identical to the other existing POR programs in Ohio.<sup>25</sup> As a result, an industry-wide working group, composed of all electric utilities, governmental aggregators and others, is not needed to determine the narrow list of implementation details for Ohio Power's POR program. Quite frankly, not all of those parties have an interest in Ohio Power's POR, and that would detract from the other industry-wide issues on the MDWG's "plate." The MDWG is not the best working group to handle the task.

- B. Not all members of the MDWG have an interest in, nor should they have the ability to impact, Ohio Power's POR program.**

As noted above, the MDWG is composed of the electric utilities in Ohio, governmental aggregators and others. Not all of them would even be interested in discussing the various implementation details of Ohio Power's POR program. For example, Duke Energy Ohio, Inc. already has POR and would likely not have an interest in discussing the implementation details

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<sup>24</sup> Opinion and Order at 81.

<sup>25</sup> Ohio Power noted that its proposal is similar to, but not the same as, the electric POR in Duke Energy Ohio, Inc.'s service territory. *See, e.g.*, Transcript Vol. 3 at 787. Plus, the undetermined implementation details may results in differences between Ohio Power's POR program and the other programs in Ohio.

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of Ohio Power's POR program. RESA anticipates that would be the case for other MDWG participants as well.

In addition, it would be unfair and unreasonable for those interested stakeholders regarding Ohio Power's POR program to have the discussion derailed or bogged down by parties who are not true stakeholders in the program. Such an opportunity would exist if the discussions take place in the MDWG.

**C. The MDWG has plenty of issues to discuss and debate already.**

The Commission has already delegated to the MDWG a host of issues to discuss and debate, per the Commission's decision in *Investigation, supra*. Those include: bill format changes, price-to-compare calculation, proper data exchange protocols to improve the ability for CRES providers to offer time-differentiated rates, and streamlining competitive processes. Adding in the implementation issues for Ohio Power's POR program will require a reshuffling of the current issues. This could cause further delays in addressing those other issues. Plus, the Commission added other issues to the MDWG's "plate" in its February 25 decision in this matter – (1) supplier-consolidated billing; (2) Ohio Power's tariff sheets 103-20D and 103-41D; (3) immediate enrollment; (4) accelerated switching.<sup>26</sup> Since the members of the MDWG are volunteering their time, and as a practical matter can only address a limited number of issues in a year, the Commission should be judicious in its assignments to the MDWG. Since Ohio Power's POR does not affect the industry statewide, it should be not be added to the above list of statewide issues which the Commission has already delegated to the MDWG.

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<sup>26</sup> Opinion and Order at 81, 90.

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**D. It is more reasonable for parties interested in Ohio Powers' POR program to meet separately for the implementation details.**

In light of the arguments set forth above, RESA believes a better and more reasonable approach is to simply give Ohio Power 60 days to submit a POR plan that meets the requirements articulated by the Commission in the February 25, 2015 Opinion and Order. That approach is more consistent with the Commission's prior and current statements that the POR programs should be evaluated on their own merits (e.g., page 80 of the Opinion and Order), and not be a statewide program. Further, all interested parties could intervene in the application and express their view – not on general policy which the Commission has addressed in the Opinion and Order, but the specifics of the discount rate and the mechanics of the receivable purchase.

**V. It was unjust and unreasonable to expect the competitive marketplace to begin offering time-of-use and other dynamic products without taking the necessary steps to ensure that the interval data needed for such competitive offerings is made available to Competitive Retail Electric Service providers in a meaningful manner.**

Ohio Power proposed to eliminate the generation component of its standard TOU tariffs unrelated to its gridSMART project.<sup>27</sup> The Commission denied Ohio Power's proposal.<sup>28</sup> Yet, the Commission also stated that it “fully expects that CRES providers will begin to offer TOU and other innovative and dynamic products” and “time-differentiated rates are a type of generation service that should be offered by generation service providers.”<sup>29</sup>

The competitive market wants to develop innovative and dynamic products based on the interval data being gathered, the same data upon which some of Ohio Power's time-of-use tariffs are based. If Ohio Power is to continue its standard time-of-use tariffs throughout the ESP III term, interval data should be provided to CRES providers so that the competitive market can begin offering these dynamic products too, as is expected.

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<sup>27</sup> Ohio Power Ex. 3 at 12.

<sup>28</sup> Opinion and Order at 39.

<sup>29</sup> *Id.* at 39 and 40.

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The Commission must be very clear on this point and step forward to provide specific directives so that the competitive marketplace can actually fulfill the Commission's expectation, Ohio Power's desire to stop offering TOU services can occur, and customers will have more options for managing their electric bills. To this end, the Commission should require the following:

- Access to historical interval data needs to be available for specific download through Ohio Power's new portal;
- Data provided is bill-quality and timely provided so that CRES providers can bill their own dynamic products; and
- The bill-quality data needs to be sent to CRES providers via EDI, which is the transaction process used today with CRES providers for sharing bill-quality data.

In addition, the Commission should resolve the open issue regarding the means by which customer authorization for accessing the interval data can be provided to the utility.

**VI. It was unjust and unreasonable to establish a new rider for collection of transmission costs without first setting forth a specific process to ensure that the existing bypassable transmission costs will be properly reconciled and excluded from the new non-bypassable transmission rider.**

Ohio Power proposed and the Commission accepted the elimination Ohio Power's Transmission Cost Recovery Rider ("TCRR") and the creation of the Basic Transmission Cost Rider ("Rider BTCR") for recovery of PJM-assessed transmission costs.<sup>30</sup> The TCRR is a bypassable rider, while the BTCR is non-bypassable. Besides recovering transmission costs from different customers, the two riders also involve different charges. RESA is not challenging the elimination of the TCRR or the creation of the BTCR. In fact, RESA supports the change.

However, RESA seeks to ensure that the Commission establishes a process now, since we are only a short time away from the start of the ESP III, to ensure that the bypassable TCRR costs are properly reconciled based on pre-June 2015 costs and then collected from only the

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<sup>30</sup> Ohio Power Ex. 1 at 12-13; AEP Ex. 13 at 7-8; Opinion and Order at 67-68.

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standard service offer customers. Similarly, RESA seeks to have the Commission establish a process now to ensure that the BTCR includes only the correct costs as the new ESP III begins. These steps are needed to ensure that the change in riders takes place smoothly and fairly.

**VII. It was unjust and unreasonable to require supplier-consolidated billing and certain tariff language to be discussed by the Market Development Working Group without first establishing an administrative procedure and a time deadline(s).**

Interstate Gas Supply Inc., Direct Energy Services LLC and Direct Energy Business LLC advocated for implementation of supplier-consolidated billing as part of Ohio Power's ESP III.<sup>31</sup> Separately, RESA asked that certain language contained in two provisions in Ohio Power's tariffs<sup>32</sup> be removed because it is unreasonable and anticompetitive in allowing Ohio Power to unilaterally terminate a shopping customer's decision to shop. The Commission did not adopt either request and, instead, decided that supplier-consolidated billing and the tariff provisions should be further discussed in the MDWG.<sup>33</sup>

RESA accepts the Commission's conclusion to have supplier-consolidated billing and the tariff provisions discussed in the MDWG. However, the Commission erroneously did not provide any parameters for such discussions. As identified earlier, the MDWG has a variety of issues on its agenda.. Specific expectations and timeframes are needed to ensure that discussions are effective and efficient. To that end, RESA recommends that the Commission require that a Staff report be filed by August 2015 and that it (a) identify how supplier-consolidated billing should be provided and (b) address the concern raised by RESA as to the language in Ohio Power proposed tariff sheets 103-20D and 103-41D.

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<sup>31</sup> Interstate Gas Supply Inc. Ex. 2 (White Direct Testimony) at 22-24; Direct Energy Services LLC and Direct Energy Business LLC Ex. 1 (Ringebach Direct Testimony ) at 6-8.

<sup>32</sup> Tariff Sheets 103-20D and 103-41D state: "[a]t the Company's discretion, any customer receiving Company consolidated billing with a CRES Provider billing arrearage of more than 60 days may be switched back to the Company's Standard Offer Service and will not be permitted to select a new CRES Provider until the arrearage is paid."

<sup>33</sup> Opinion and Order at 81.

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## VIII. Conclusion

For the foregoing reasons, the Commission should find that its earlier decision is unjust and unreasonable, warranting a granting of this Application for Rehearing, and modify its February 25, 2015 decision in the following five areas:

- (1) Rider PPA should be rejected and no placeholder be established.
- (2) The details for implementation of the approved POR program should be worked out in an Ohio Power-specific stakeholder group.
- (3) Interval data upon which TOU products and other innovative and dynamic products rely must be provided to CRES providers during the ESP III.
- (4) Establish processes by which (a) the current TCRR is finalized and properly reconciled based on pre-June 2015 costs, and (b) the BTCR is based on the correct costs starting with the ESP III period in June 2015.
- (5) Establish parameters and timeframes for discussions that will occur at the MDWG regarding (a) supplier-consolidated billing and (b) language in Ohio Power's Tariff Sheets 103-20D and 103-41D.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

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