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

MEMORANDUM CONTRA OHIO POWER COMPANY'S APPLICATION FOR REHEARING ON BEHALF OF THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

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I. INTRODUCTION AND PROCEDURAL HISTORY

On December 20, 2013, Ohio Power Company (AEP, AEP Ohio, or the Company) filed an application (Application) for a standard service offer (SSO) in the form of an electric security plan (ESP) to be in effect initially from June 2015 through May 2018.[1] The Ohio Manufacturers' Association Energy Group (OMAEG), which is comprised of many members with facilities located in AEP's service territory, was granted intervention in the above-captioned proceeding on April 21, 2014. A hearing on the ESP proposed in the Application commenced on June 3, 2014 and concluded on June 30, 2014. On December 17, 2014, an oral argument was held before the Commission for the limited purpose of enabling the Commission to clarify the legal and policy implications related to the Power Purchase Agreement Rider (PPA rider).

On February 25, 2015, the Commission issued an Opinion and Order[2] (Order) which, inter alia, permitted AEP "to establish a placeholder PPA rider, at an initial rate of zero, for the term of the ESP."[3] However, the Commission denied AEP's request to recover any costs, including Ohio Valley Electric Corporation (OVEC) costs, through the PPA rider at this time based on the record developed in the case.[4] The Commission also determined that the interruptible power-discretionary rider (IRP-D) "should be modified to provide for unlimited emergency interruptions and that the $8.21/kW-month credit should be available to new and existing shopping and non-shopping customers."[5] With regard to the IRP-D, the Commission

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[1] *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Application (December 20, 2013) (AEP Ex. 1).

[2] *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (February 25, 2015).

[3] Id. at 25.

[4] Id. at 26.

[5] Id. at 40.

held, inter alia, that AEP should "bid the additional capacity resources associated with the IRP-D into PJM's base residual auctions held during the ESP term, with any resulting revenues credited back to customers[.]"[6] The Commission further established a $543.2 million total cap on the distribution investment rider (DIR) over the course of the ESP, imposing the following annual caps over the ESP period: for 2015, $124 million; for 2016, $146.2 million; for 2017, $170 million; and for the first five months of 2018, $103 million.[7] Moreover, the Commission determined that AEP did not sustain its burden of proof regarding it request to establish a placeholder rider for North American Electric Reliability Corporation (NERC) compliance and cybersecurity costs (NCCR), and that establishment of the NCCR would be premature.[8] Accordingly, the Commission denied AEP's request to establish the NCCR.[9] Finally, the Commission determined that AEP's proposed ESP satisfies the statutory requirement that the ESP be more favorable in the aggregate than a market rate offer (MRO) (i.e., the MRO test).[10]

On March 27, 2015, AEP, OMAEG, and numerous other parties filed applications for rehearing of various aspects of the Commission's Order. AEP raised a number of specific objections pertaining to the Commission's determinations on the PPA rider, the DIR, the IRP-D, the NCCR, and the MRO test.[11] OMAEG hereby files its memorandum contra several of the specific objections asserted in the AEP Application for Rehearing.

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[6] Id.

[7] Id. at 47.

[8] Id. at 62.

[9] Id.

[10] Id. at 95.

[11] *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Application for Rehearing of Ohio Power Company (March 27, 2015) (AEP Application for Rehearing).

II. ARGUMENT

A. Given that the Commission established a placeholder PPA rider, it was reasonable for the Commission to defer consideration of including OVEC in the PPA Rider, as the Commission determined that the record did not support AEP's contention that customers would sufficiently benefit from the PPA rider's financial hedging mechanism.

In its Application for Rehearing, AEP argues that "the current record does adequately support approval of the OVEC proposal at this time," and requests that the Commission reconsider "its decision to defer ruling on whether to include [ ] OVEC" in the PPA rider.[12] Initially, AEP contends that "it cannot be disputed that the PPA Rider will promote rate stability, especially over the long term."[13] In support of this statement, AEP argues that "[v]irtually all of the witnesses that testified regarding the PPA Rider acknowledged that PJM market rates are volatile."[14] However, acknowledgment by witnesses that PJM market rates may be volatile does not translate into the PPA rider providing rate stability for customers.

AEP also contends that it was inconsistent with the record and the Commission's findings for the Commission to deduce that including OVEC in the PPA rider does not offer a hedge benefit that offsets the potential short-term cost of the rider over the ESP term, given that the Commission concluded that the third criterion of Section 4928.143(B)(2)(d), Revised Code, was satisfied, in that it authorized AEP to establish a placeholder PPA rider.[15] Contrary to the conclusion AEP has drawn from the Commission's language in the order, however, OMAEG contends that the Commission's decision to authorize AEP to establish a placeholder PPA rider, rather than its decision not to authorize AEP to recover OVEC costs through the PPA rider, was

[12] Id. at 15.

[13] Id. at 16.

[14] Id.

[15] Id. at 17 (citing Order at 26).

inconsistent with the record evidence submitted in the case.[16] The record establishes not only that AEP failed to meet its burden of showing that it was reasonable for the Commission to authorize AEP to recover charges related to the PPA rider from ratepayers, but also that the basic establishment of the PPA rider is not authorized by the provisions of Section 4928.143(B)(2)(d), Revised Code.[17] AEP's arguments on this issue are without merit and should be disregarded by the Commission.

Second, AEP argues that the Commission was mistaken in concluding that AEP "did [not] make a long-term commitment beyond the ESP term to ensure that the projected long-term financial benefits of the OVEC proposal would accrue to the benefit of customers."[18] AEP argues that witness Vegas "was clear in binding AEP Ohio to a long-term commitment regarding the PPA Rider and, in particular, keeping the OVEC asset for the benefit of customers."[19] Contrary to AEP's contention, however, OMAEG posits that witness Vegas' statement was sufficiently vague that it neither bound AEP to a long-term commitment regarding the PPA rider nor indicated that it objected to such a long-term commitment. It is clear, however, that the terms of the Application itself did not bind AEP to a long-term commitment for the PPA rider. Likewise, AEP offered no concomitant commitment that it would refrain from discontinuing the PPA rider at any time prior to the expiration of a long-term commitment regarding the rider. Given these circumstances, the record supported the Commission's conclusion that the length of time of the proposed ESP and the proposed PPA rider coincided.

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[16] See *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Application for Rehearing of OMAEG at 9-12 (March 27, 2015) (OMAEG Application for Rehearing).

[17] Id.

[18] AEP Application for Rehearing at 18.

[19] Id. (citing Tr. Vol. I. at 264).

Third, AEP contends that it is unreasonable for the Commission to defer approval of OVEC in the PPA rider until there is resolution of the uncertainty relating to PJM market reforms, environmental regulations, and federal regulations, given that resolution of these items could take considerable time and may cause wholesale market prices to increase, rendering it "too late for the PPA Rider to be taken up at that point."[20] Respectfully, OMAEG contends that approval of the PPA rider will inject risk that is unwanted, from most ratepayers' perspectives, into distribution rates. Consequently, OMAEG submits that resolution of the uncertainty relating to pending PJM market reforms, environmental regulations, and federal regulations, will provide more clarity regarding the expected outcome of any proposed PPA rider, which is positive for all ratepayers, given that the PPA rider has been established as a non-bypassable rider mechanism.

AEP further contends that it "is offering OVEC as a hedge now but there is no guarantee that it will be available in the future, especially if market prices increase as a result of the Commission waiting for the dust to settle in these three areas."[21] This statement functions largely as a warning that if the Commission does not provide AEP with the ability to recover its OVEC costs through the PPA rider, that AEP may retract its proposal. AEP goes on to suggest that the PPA rider might not be available to customers for much longer, given that it "is not supposed to forego any reasonable opportunity to divest or transfer the OVEC asset."[22] This statement serves as an empty threat, however, as most AEP ratepayers, including OMAEG, do not want to be saddled with the costs of a generation asset in their distribution bills, in a competitive generation market, with no guaranteed benefits. For these reasons, the Commission should deny AEP's application for rehearing argument regarding the PPA rider.

[20] AEP Application for Rehearing at 19.

[21] Id at 21.

[22] Id.

B. The Commission should reject AEP's arguments regarding the DIR as unsupported by record evidence.

AEP argues in its Application for Rehearing that the Commission should, inter alia, adopt the DIR annual revenue caps proposed in its Application, and that the Commission should reconsider its decision not to include general plant in the DIR. As discussed herein, AEP did not sufficiently demonstrate that the annual caps should be set at the level proposed in its application. Moreover, as determined by the Commission, general plant should not be included in the DIR. Further, as discussed in Section F (infra), the Commission should not issue an entry on rehearing separately addressing the DIR questions under reconsideration based simply upon AEP's unfounded request for an expedited decision on those issues.

1. The Commission's decision not to include general plant in the DIR was reasonable.

As noted in the Order, AEP sought Commission approval of an expanded DIR in the proposed ESP, thereby requesting a total rate cap of $667 million[23] for the DIR over the course of the ESP.[24] The Commission denied the requested expansion of the DIR, including AEP's request that the DIR be expanded to include general plant.[25] In rendering its decision, the Commission depended upon the fact that the "expanded DIR for which AEP Ohio seeks approval in these ESP Proceedings far exceeds the justification offered and accepted by the Commission in approving the original DIR."[26] The Commission also determined that "AEP Ohio's

[23] There appears to be some disagreement between the DIR cap figures referenced by the Commission in the Order and those referenced in the AEP Application for Rehearing.

[24] Order at 41.

[25] Id. at 46.

[26] Id.

interpretation of distribution infrastructure exceeds the intent" of Section 4928.143(B)(2)(h), Revised Code.[27]

In the AEP Application for Rehearing, the Company contends that the Commission erred "in its broad refusal to add general plant to the DIR[,]" when "the Company was seeking a targeted addition overseen by Staff." However, as noted by the Commission and Staff, the types of general plant expenses "that AEP Ohio seeks to include in the DIR do not directly relate to the reliability of the distribution system[;]" at best, rather, they "support maintaining reliability" but do not "directly relate to distribution service reliability."[28] The service centers and radio communications system which, AEP alleges, constitute targeted general plant that the Commission unreasonably excluded from the DIR,[29] are prime examples of infrastructure that may assist in maintaining the system, but do not, on their own, directly relate to distribution service reliability. For instance, a communications system may, with the proper integral distribution infrastructure, help AEP to maintain its system; however, in and of itself, the communications system will not promote reliability.

Numerous additional parties also asserted throughout the case that AEP's request to include general plant in the DIR is further evidence of AEP's attempt to avoid a distribution rate case.[30] The Commission acknowledged the wisdom of these arguments in finding that "AEP Ohio's DIR investments, at the level requested in these proceedings, would be better considered and reviewed in the context of a distribution rate case where the costs can be evaluated in the context of the Company's total distribution revenues and expenses, and the Company's

[27] Id. at 41.

[28] Id. at 43.

[29] AEP Application for Rehearing at 31.

[30] Order at 42.

opportunity to recover a return on and of its investment can be balanced against customers' right to reasonably priced service."[31] In connection with this well-reasoned explanation, the Commission's decision not to include general plant in the DIR mechanism was reasonable and should not be reversed on rehearing.

2. The Commission should not adopt AEP's proposed annual revenue caps for the DIR on rehearing.

The Commission should also decline to adopt on rehearing AEP's proposed annual revenue caps for the DIR. As OMAEG and the Office of the Ohio Consumers' Counsel (OCC) argued throughout the course of the proceeding, and the Commission noted in the Order, AEP failed to present any analysis to support its claims that service reliability has and will deteriorate without the DIR.[32] Regardless, AEP seeks DIR revenue caps at levels of $156 million for 2015, $192 million for 2016, $200 million for 2017, and $103 million for the first five months of 2018.

In his direct testimony, AEP witness Dias stated that "the capital forecast for 2015 through 2018 . . . without the General Plant is within the same range as the projected 2013 and 2014 spend levels. The capital forecast for 2015 through 2018 is consistent with the current Commission approved revenue caps for the existing DIR approved for ESP II."[33] Given this testimony and the Commission's determination that general plant should not be included in the DIR, the annual DIR caps and the total DIR cap over the course of the ESP term should look remarkably like the caps currently approved by the Commission and in place. AEP's request, therefore, for the Commission to impose a total revenue cap of $671 million over the course of the proposed ESP is unreasonable, in that the amounts sought to be recovered are excessive as

[31] Id. at 46.

[32] Id. at 43.

[33] See *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Direct Testimony of Selwyn J. Dias at 19 (December 20, 2013).

compared with those currently in place, unsupported by the evidence,[34] and, in significant part, do not directly relate to distribution service reliability.

C. The Commission should clarify that although it directed AEP to bid the capacity resources associated with the IRP-D into PJM's base residual auctions held during the ESP term, and such base residual auctions have already occurred, AEP may still bid the IRP-D capacity resources into PJM's incremental capacity auctions held during the ESP term.

AEP contends that the Commission must modify its directive that the Company bid its capacity resources associated with the IRP-D into PJM's capacity auctions, and then offset against the cost of the IRP-D credits the revenues received from PJM, as the Commission's "directive is infeasible and, thus, unreasonable and unlawful."[35] AEP bases its position on the fact that PJM has already conducted the base residual auctions (BRAs) into which such capacity resources may be bid for each of the years that span the term of the ESP; thus, AEP contends, it "will not be able to directly realize revenues from the sale of IRP-D related capacity resources into PJM" during the term of the ESP.[36]

The Order directs that AEP "bid the additional capacity resources associated with the IRP-D into PJM's [BRAs] held during the ESP term, with any resulting revenues credited back to customers through the EE/PDR rider."[37] Although AEP contends that complying with the Commission's directive is not possible because the PJM BRAs for the ESP term have already occurred, AEP notes the following:

[34] See generally, OMAEG Application for Rehearing at 16-20.

[35] AEP Application for Rehearing at 47.

[36] Id.

[37] Order at 40.

> There will be additional incremental capacity auctions for delivery of additional capacity during the last two of the three delivery years that span the term of ESP III. However, such incremental auctions would not likely provide much revenue from IRP-D resources not already bid into PJM in the base residual auctions for delivery during ESP III and, in any event, would not achieve the Commission's purpose of offsetting all revenues realized from sales of IRP-D interruptible capacity resources against the cost of IRP-D's interruptible credits.[38]

In the above passage, AEP recognizes the fact that although the PJM BRAs for the ESP term have already occurred, it may still participate in and bid the capacity resources associated with the IRP-D into the additional PJM incremental capacity auctions held during the last two of the three delivery years of the proposed ESP. Although AEP contends that bidding the capacity resources associated with the IRP-D into PJM incremental capacity auctions would not likely yield much revenue, it would at least partially offset the amounts that would otherwise be recovered from customers; thus, it is a viable option for recovering some of the costs attributable to IRP-D credits. OMAEG accordingly requests that the Commission clarify that AEP may accordingly bid the capacity resources associated with the IRP-D into the incremental capacity auctions held during the ESP term in order to reduce the IRP-D credit amounts that must be recovered from ratepayers.

Notwithstanding OMAEG's position on the above issue, OMAEG agrees with AEP that IRP-D costs should be recovered through the economic development rider (EDR). As explained by AEP and OMAEG, the EDR is a more appropriate mechanism for recovery of these costs than the energy efficiency/peak demand reduction rider (EE/PDR rider).

D. The Commission's denial of the proposed NCCR was lawful and reasonable.

AEP argues that the Commission's decision denying AEP's request to establish a placeholder NCCR was unreasonable in a number of respects. Inter alia, AEP contends that the

[38] AEP Application for Rehearing at 47 (footnote 16).

Commission's denial of the NCCR on the grounds that the magnitude and allocation of NERC compliance and cybersecurity costs are not presently known was unreasonable.[39] In support of its argument, AEP contends that "the Company's future NERC compliance and cybersecurity costs are no less speculative than the costs to be included in other zero dollar placeholder riders the Commission has approved" in this and other cases.[40]

AEP makes this argument in spite of the fact that the Commission denied the establishment of the NCCR as a placeholder rider because the Company had not advanced the requisite evidence to establish the NCCR, and because the Commission determined that it was not evident whether AEP, as an electric distribution utility, will even incur costs for compliance with NERC standards.[41] The Commission further offered the sound rationale that the NCCR should not be established at the present time, as the types of investments for which AEP would seek recovery, the magnitude of any such investments, and the allocation of any such costs between generation, transmission, and distribution functions are all currently unknown.[42] In OMAEG's estimation and, seemingly, the Commission's opinion, the above factors render establishment of the NCCR entirely speculative; thus, the Commission's decision to deny establishment of a placeholder NCCR rider was decidedly reasonable.

Additionally, OMAEG submits that AEP's above-cited comment, stating that the costs to be collected pursuant to the proposed NCCR are no less speculative than the costs to be included in other zero dollar placeholder riders, such as the PPA rider, that the Commission has approved,

[39] Id. at 63.

[40] Id. at 64.

[41] Order at 62.

[42] Id.

bolsters OMAEG's argument that the PPA rider may not lawfully or reasonably be established.[43] AEP's comparison of the proposed NCCR rider to the placeholder PPA rider that the Commission authorized AEP to establish further demonstrates the lack of certainty regarding any potential stabilizing effect of such a mechanism. As such, OMAEG submits, the Commission should reconsider its decision to authorize the establishment of the PPA rider, as it is unreasonable and unlawful.

E. The proposed ESP does not pass the MRO test.

AEP argues that the quantifiable benefits of the proposed ESP actually amount to $53,060,000, rather than the previously-determined $44,064,000, over the course of the ESP term. In support of its argument, AEP notes that the Commission made two modifications to the Company's proposed ESP that together add an additional $9 million of costs to the Company and quantitative benefits to the ESP: (1) additional annual funding of the Neighbor-to-Neighbor program, in the amount of $1 million annually over the three-year ESP term;[44] and (2) funding of the Ohio Growth Fund at the level of $2 million annually over the term of the ESP.[45]

As discussed in OMAEG's Application for Rehearing, in evaluating the ESP under the MRO test, the Commission failed to take into account the fact that only one class of AEP customers, residential customers, will benefit from the continuation of the RDCR.[46] Although the Commission's modification of the ESP to include $1 million in annual funding for the Neighbor-to-Neighbor program over the term of the ESP will provide bill payment assistance for at-risk customers, it does nothing to alleviate the disparate treatment of customer classes when

[43] See OMAEG Application for Rehearing at 9-12.

[44] AEP Application for Rehearing at 66.

[45] Id. at 67.

[46] OMAEG Application for Rehearing at 21.

considering any potential quantitative benefits of the ESP. Further, while the $2 million annual funding for the Ohio Growth Fund over the term of the ESP, made possible pursuant to the Commission's modification, may provide some economic benefit for non-residential customers, the ratio of residential to non-residential quantitative benefits is still considerably skewed. For this reason, the Commission should find that the proposed ESP does not provide more customer benefits than would be available under an MRO.

F. The request for the Commission to issue an expedited rehearing decision on the DIR issues raised in the AEP Application for Rehearing is unreasonable and should be denied.

Finally, the Company contends that the Commission should issue an expedited decision on rehearing pertaining to the DIR issues raised in the AEP Application for Rehearing, due to the Order's "immediate and substantial impact on the Company's capital commitments and investment in Ohio."[47] AEP cites the timing of the Commission's issuance of the Order as a factor that has rendered expedited reconsideration of this issue necessary. OMAEG respectfully submits that AEP's motion for oral argument was likely a factor in the timing of the Commission's issuance of its opinion. The Commission granted the motion for oral argument based on AEP's request, and the Commission's decision to grant oral argument, in all likelihood, extended the period of time necessary for the Commission to render its Order. Accordingly, AEP cannot now complain in good faith about the timing of the Commission's decision. OMAEG also submits that, in spite of AEP's representation, the confusion attending the issuance of an expedited entry on rehearing solely addressing the DIR issues raised by AEP is not in most parties' interests and, further, is not in the Commission's best interests. The procedural confusion that may result from this awkward, ad hoc approach to an entry on rehearing

[47] AEP Application for Rehearing at 40.

outweighs the alleged urgency of Commission action regarding the DIR. Accordingly, the Commission should deny the Company's request.

III. CONCLUSION

As discussed at length supra, OMAEG respectfully requests that the Commission deny AEP's request for rehearing of the previously identified issues, and grant rehearing of the issues outlined in OMAEG's Application for Rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on April 6, 2015.

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