

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Ohio )  
Power Company for Authority to )  
Establish a Standard Service Offer )  
Pursuant to Section 4928.143, Revised )  
Code, in the Form of an Electric Security )  
Plan. )

PUCO  
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

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**INTERSTATE GAS SUPPLY, INC  
MEMORANDUM CONTRA REHEARING APPLICATION  
OF  
OHIO POWER COMPANY**

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**I. INTRODUCTION**

By its February 25, 2015 opinion and order in this proceeding (the "Order"), the Commission approved, subject to certain modifications, the electric security plan ("ESP") proposed by Ohio Power Company ("AEP Ohio"). The ESP approved by the Commission in this case is largely consistent with ESPs approved for other Ohio electric distribution utilities and contains provisions that have previously been incorporated in other ESPs. But, the Order also approved, in concept, the highly controversial Purchase Power Agreement ("PPA") rider proposed by AEP Ohio, notwithstanding that the PPA was approved only as a placeholder rider – the rider rate was set at zero – on the ground that AEP Ohio had failed to demonstrate that the PPA would produce a net benefit for customers.

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Nine parties filed applications for rehearing opposing the Commission's authorization of the PPA. These applications for rehearing identified multiple legal and factual reasons for rejecting the PPA outright. However, in its rehearing application, AEP Ohio claims that the Commission should have authorized the immediate implementation of the PPA to permit recovery of the costs associated with AEP Ohio's interest in the Ohio Valley Electric Corporation ("OVEC") generation assets, including a return thereon, rather than requiring AEP Ohio to justify incorporating an actual rate in the PPA rider in a future proceeding. As discussed below, the Commission should reject AEP Ohio's request for rehearing on this ground. The Commission correctly determined that the record does not support AEP Ohio's proposal. And, as Interstate Gas Supply, Inc. ("IGS") and others demonstrated in their respective applications for rehearing, neither does the law.

## **II. ARGUMENT**

AEP Ohio claims in its rehearing application that, contrary to the Commission's decision, "the current record does adequately support approval of the OVEC proposal at this time and requests that the Commission should reconsider its decision to defer ruling on whether to include the OVEC in the PPA Rider."<sup>1</sup> AEP Ohio contends that, on rehearing, the Commission should approve the PPA as originally proposed because the Commission relied upon the four incorrect findings in rejecting the immediate implementation of a PPA rider rate.<sup>2</sup> Specifically, AEP Ohio contests the following Commission findings:

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<sup>1</sup> AEP Ohio Application for Rehearing at 15.

<sup>2</sup> *Id.* at 15-25.

- The rider “may result in a net cost to customers, with little offsetting benefit from the rider’s intended purpose as a hedge against market volatility.”<sup>3</sup>
- The evidence showing a likelihood of a long-term net credit cannot be relied upon because “the Company has made no offer to ensure that customers receive the alleged long-term benefits of the PPA rider or even a commitment or any type of proposal to continue the rider in subsequent ESP proceedings.”<sup>4</sup>
- It would be inappropriate to adopt the proposal at this time because “(t)here is considerable uncertainty with respect to pending PJM market reform proposals, environmental regulations, and federal litigation.”<sup>5</sup>
- “There are already existing means, such as the laddering and staggering of SSO auction products and the availability of fixed price contracts in the market, that provide a significant hedge against price volatility.”<sup>6</sup>

Although IGS continues to maintain that the Commission should have rejected the PPA out of hand on legal grounds, the four Commission findings disputed by AEP Ohio are unassailable.

#### **A. The PPA Rider Would be Detrimental to Customers.**

AEP Ohio contends that “it cannot be disputed that the PPA Rider will promote rate stability, especially over the long term.”<sup>7</sup> AEP Ohio further claims that each witness admitted that PJM energy prices are volatile and that AEP Ohio demonstrated that the PPA would move in the “opposite direction of market prices and provide a financial

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<sup>3</sup> Order at 25.

<sup>4</sup> Order at 24.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> AEP Ohio Application for rehearing at 16.

stabilizing component to customer rates.”<sup>8</sup> These claims are not supported by the record.

AEP Ohio has not demonstrated that the PPA will stabilize rates. Rather, the record demonstrates that the PPA would likely result in a charge on customers’ electric bills for the duration of the ESP.<sup>9</sup> Further, AEP Ohio has not demonstrated that the deal will get better for customers after the three-year period in which customers will almost certainly have to pay a charge to support the OVEC generation. In fact, the opposite is true. As discussed further below, proposed environmental regulations alluded to by the Commission in its Order will likely render the carbon-intensive OVEC resources less economical over time by increasing OVEC’s cost of production, resulting in the PPA charge to customers increasing in tandem with the market rate for coal-fired generation. Thus, even in a rising price environment, the PPA will not only provide little solace to customers, but would exacerbate the pain.

AEP Ohio’s claim that energy prices are “volatile” – even if true, which it is not – incorrectly assumes that customers purchase energy in the daily and hourly energy markets.<sup>10</sup> Only the most sophisticated, very large customers make such purchases, and they do so at their own election.

**B. AEP Ohio’s Commitment not to Terminate the PPA is Illusory.**

AEP Ohio alleges that the Commission was mistaken in concluding that AEP Ohio did not make a long term commitment to continue the PPA rider beyond the ESP term.<sup>11</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> Opinion and Order at 23-24; Tr. Vol. I at 110; OCC Ex. 15A at 7; OCC Ex. 17; IEU-Ohio Ex. IB at 11-12.

<sup>10</sup> AEP Ohio Application for Rehearing at 16.

<sup>11</sup> *Id.* at 18.

AEP Ohio now claims that it would consent to a condition that the PPA rider extend beyond the term of the ESP.<sup>12</sup> However, the underlying purchased power agreement would be within the jurisdiction of the FERC, not the Commission. Therefore, the Commission could not prevent AEP Ohio from terminating the underlying agreement with OVEC.

If AEP Ohio were to terminate the OVEC agreement, the Commission would necessarily have to terminate the PPA rider because there would be no charges or credits to be flowed back to customers. Moreover, the only circumstance in which AEP Ohio would want to terminate the underlying agreement would be when the OVEC generation was in the money, *i.e.*, when the PPA rider would be generating a credit to customers. Thus, the Commission would be unable to guarantee that customers would, in fact, receive a benefit from the PPA rider despite AEP Ohio's non-binding promises.

**C. The Fact that AEP Previously Received Cost Recovery with Respect to the OVEC Assets has No Bearing on Whether the PPA Rider Should be Approved.**

AEP Ohio incorrectly claims that the Commission should permit cost-recovery related to OVEC because the Commission previously determined the OVEC contract was prudently entered.<sup>13</sup> The prudence of AEP Ohio's decision to enter into a contract with OVEC is irrelevant to AEP Ohio's request for cost recovery. Generation is competitive under Ohio law; thus, the Commission cannot guarantee cost recovery even though the

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 18-19.

existing agreement was deemed to be prudent.<sup>14</sup>

The Commission previously approved recovery of OVEC-related costs through the *bypassable* fuel adjustment clause ("FAC") used to provide the default service product<sup>15</sup> for the period of 2009-2011.<sup>16</sup> The Commission continued cost recovery through the FAC in AEP Ohio's second ESP, but ordered that "as of January 1, 2015, all energy and capacity to serve the Company's SSO load be supplied by auction, whereupon the FAC mechanism will no longer be necessary."<sup>17</sup> AEP Ohio's revisionist version of history completely ignores the fact that AEP Ohio's recovery of OVEC-related costs was confined to default service based on competitive rates and charges. And, AEP Ohio conveniently neglects to mention that the Commission already terminated AEP Ohio's authority to charge default service customers for OVEC-related costs. Thus, AEP Ohio's present position on this issue constitutes an untimely attack on the Commission's order in the ESP II case.

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<sup>14</sup> See R.C. 4928.03.

<sup>15</sup> The standard service offer contains a default product composed of "all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service." R.C. 4928.141.

<sup>16</sup> *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case Nos. 08-917-EL-SSO, *et al.*, Opinion and Order at 14-15 (Mar. 18, 2009). In that order, the Commission specifically stated that "Given that the FAC mechanism is authorized pursuant to the ESP provision of SB 221, we will limit our authorization, at this time, to the term of the ESP." *Id.* at 14.

<sup>17</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Opinion and Order at 16 (Aug. 8, 2012) (hereinafter "*ESP II*"). The Commission subsequently bifurcated the FAC and allowed recovery of OVEC and Lawrenceburg costs through the Fixed Cost Rider until May 31, 2015, but no later. *In the Matter of the Application of Ohio Power Company to Establish a Competitive Bidding Process for Procurement of Energy to Support Its Standard Service Offer*, Case No. 12-3254-EL-UNC, Opinion and Order at 16 (Nov. 13, 2013).

Even if prudence were at issue, AEP Ohio's analogy to a long-term Timber Road wind contract compares apples to oranges.<sup>18</sup> As the Commission noted in approving the Timber Road contract, AEP Ohio has a statutory obligation to procure a portion of the generation necessary to serve default customers from renewable resources, and "the Timber Road REPA will provide AEP-Ohio a 99 MW portion of Timber Road's electrical output, capacity and environmental attributes for 20 years as necessary for the Company to meet its increasing renewable energy benchmarks as required by Section 4928.64(C)(3), Revised Code."<sup>19</sup> No such compliance benefit exists with respect to the OVEC coal-fired generation facilities.

**D. The Commission Rightly Considered the Regulatory Uncertainty Associated with Wholesale Electric Markets in Rejecting the Immediate Implementation of a PPA Rider Rate.**

AEP Ohio argues that the Order should not have deferred approval of recovery of the OVEC costs via the PPA rider until resolution of PJM market reforms, environmental regulations, and federal litigation.<sup>20</sup> AEP Ohio claims these issues may take time to resolve and ultimately cause "wholesale market prices to increase, which would mean that it would be too late for the PPA Rider to be taken up at that point,"<sup>21</sup> noting that it is only committing to keep its PPA proposal on the table for a limited time.<sup>22</sup>

AEP Ohio's claim that OVEC may not be available for inclusion in the PPA is an

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<sup>18</sup> AEP Ohio Application for Rehearing at 18-19.

<sup>19</sup> *ESP II*, Opinion and Order at 19 (Aug. 8, 2012).

<sup>20</sup> AEP Ohio Application for Rehearing at 19-21.

<sup>21</sup> *Id.* at 19.

<sup>22</sup> *Id.* at 21.

empty threat. OVEC inclusion or exclusion would have minimal impact on customer rates due to the relatively small size of AEP Ohio's interest in the OVEC assets. Thus, OVEC generation will not make or break customers' electric bills either way.<sup>23</sup>

Additionally, the Commission wisely determined that it should postpone any determination until after FERC approves changes to PJM's market rules and the Environmental Protection Agency finalizes its proposed carbon rules for existing resources. The EPA rules will disproportionately impact the economics of coal-fired power plants. The Commission should not be expected to evaluate the impact of AEP Ohio's proposal on customers in the blind. Likewise, modifications to PJM's market rules could impact the level of capacity and energy compensation the OVEC plants will receive. Again, at this point, the Commission can only guess at the impact implementation of an actual PPA rider rate would have on customers, and should not be faulted for exercising caution in this regard.

**E. Existing Mechanisms Adequately Protect Customers from Market Volatility.**

AEP Ohio argues that the Commission unreasonably determined that laddering SSO auctions may provide sufficient price stability.<sup>24</sup> AEP Ohio contends that these auctions do not provide stability because they follow market price trends up and down.<sup>25</sup> Further, AEP Ohio claims that the SSO auctions do not mitigate prices for shopping

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<sup>23</sup> Opinion and Order at 17.

<sup>24</sup> AEP Ohio Application for Rehearing at 21-22.

<sup>25</sup> *Id.* at 22.



customers.<sup>26</sup> These arguments are without merit.

Laddering SSO auctions provides default service customers with a long-term fixed-price product. Through laddering and staggering, the SSO (much like multi-year CRES products) may smooth out differences in capacity prices from year to year. Unlike AEP Ohio's proposal to establish a PPA rider, customers taking the default SSO product can determine the price they will pay per kilowatt hour *in advance*. Thus, a laddered default service product provides stability that the PPA simply is incapable of delivering.

AEP also incorrectly claims that the majority of CRES contracts are not long-term based upon its review of the apples-to-apples website.<sup>27</sup> AEP Ohio further contends that CRES providers cannot provide a fixed-priced long-term contract without including a substantial premium to account for the risk of having to honor the price when market prices are higher."<sup>28</sup> This, too, is incorrect.

Although the apples-to-apples chart is a helpful tool, it does not reflect all CRES offers. AEP Ohio is not in a position to know all CRES provider offers in the market, and CRES providers often do make long-term offers to specific customers through various sales channels. Further, AEP Ohio ignores the fact that CRES providers make short-term offers to satisfy the preference of individual customers.

AEP Ohio's claim that CRES providers must build a risk premium into their offers

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<sup>26</sup> *Id.* at 22-25.

<sup>27</sup> *Id.* at 24.

<sup>28</sup> *Id.* at 23.

assumes that CRES providers enter contracts coupled with open positions in the energy markets. AEP Ohio fails to recognize that CRES providers may actually purchase power to backstop their customer contracts, rather than gambling in the wholesale energy markets (as AEP Ohio would have customers do with its proposed PPA).

### **III. CONCLUSION**

As demonstrated above, the Commission findings challenged by AEP Ohio in its application for rehearing were fully supported by the record. Accordingly, IGS urges the Commission to deny rehearing on these grounds.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. E. Royer', is written over a horizontal line.

Barth E. Royer  
Barth E. Royer, LLC  
2740 East Main Street  
Bexley, Ohio 43209  
(614) 385-1937 – Phone  
(614) 360-3529 – Fax  
[BarthRoyer@aol.com](mailto:BarthRoyer@aol.com) – Email

**Attorney for  
Interstate Gas Supply, Inc.**

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 6th day of April 2015.

  
Barth E. Royer

Steven T. Nourse  
Matthew J. Satterwhite  
American Electric Power Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, OH 43215-2373  
stnourse@aep.com  
mjsatterwhite@aep.com

Daniel R. Conway  
Porter Wright Morris & Arthur  
Huntington Center  
41 South High Street  
Columbus, OH 43215  
dconway@porterwright.com

Richard L. Sites  
General Counsel & Senior Director of  
Health Policy  
Ohio Hospital Association  
155 East Broad Street, 15th Floor  
Columbus, OH 43215-3620  
ricks@ohanet.org

Thomas J. O'Brien  
Dylan F. Borchers  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
tobrien@bricker.com  
dborchers@bricker.com

David F. Boehm  
Michael L. Kurtz  
Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, OH 45202  
dboehm@bkllawfirm.com  
mkurtz@bkllawfirm.com  
jkylercohn@bkllawfirm.com

Devin Parram  
Katherine Johnson  
Werner Margard  
Attorney General's Section  
Public Utilities Commission of Ohio  
180 E. Broad St., 6th Floor  
Columbus, OH 43215  
devin.parram@puc.state.oh.us  
katherine.johnson@puc.state.oh.us  
werner.margard@puc.state.oh.us

Philip B. Sineneng  
THOMPSON HINE LLP  
41 South High Street, Suite 1700  
Columbus, OH 43215  
philip.sineneng@thompsonhine.com

Maureen R. Grady  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
maureen.grady@occ.ohio.gov

Samuel C. Randazzo  
Frank P. Darr  
Matthew R. Pritchard  
McNees Wallace & Nurick  
21 East State Street, 17th Floor  
Columbus, OH 43215  
sam@mwncmh.com  
fdarr@mwncmh.com  
mpritichard@mwncmh.com

Gary A. Jeffries  
Assistant General Counsel  
Dominion Resources Services, Inc.  
501 Martindale Street, Suite 400  
Pittsburgh, PA 15212-5817  
gary.a.jeffries@dom.com

Mark A. Hayden  
Jacob A. McDermott  
Scott J. Casto  
FirstEnergy Service Company  
76 S. Main Street  
Akron, OH 44308  
haydenm@firstenergycorp.com  
jmcdermott@firstenergycorp.com  
scasto@firstenergycorp.com

Kimberly W. Bojko  
Mallory M. Mohler  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus OH 43215  
bojko@carpenterlipps.com  
mohler@carpenterlipps.com

David I. Fein  
Vice President,  
State Gov. Affairs – East  
Exelon Corporation  
10 South Dearborn Street,  
47th Floor  
Chicago, IL 60603  
david.fein@exeloncorp.com

Cynthia Fonner Brady  
Assistant General Counsel  
Exelon Business Services Company  
4300 Winfield Road  
Warrenville, IL 60555  
cynthia.brady@constellation.com

Lael Campbell  
Exelon  
101 Constitution Avenue, NW  
Washington, DC 20001  
Lael.Campbell@constellation.com

Colleen L. Mooney  
Cathryn N. Loucas  
Ohio Partners for Affordable  
Energy  
231 W. Lima Street  
Findlay, OH 45839  
cmooney@ohiopartners.org  
cloucas@ohiopartners.org

Trent Dougherty  
Ohio Environmental Council  
1207 Grandview Avenue,  
Suite 201  
Columbus, OH 43215-3449  
trent@theOEC.org

Judi L. Sobecki  
The Dayton Power and Light  
Company  
1065 Woodman Drive  
Dayton, OH 45432  
judi.sobecki@aes.com

Rocco D'Ascenzo  
Elizabeth H. Watts  
Duke Energy Ohio, Inc.  
139 E. Fourth Street  
1303-Main  
Cincinnati, OH 45202  
rocco.dascenzo@dukeenergy.  
com  
elizabeth.watts@dukeenergy.  
com

John Finnigan  
Senior Regulatory Attorney  
Environmental Defense Fund  
128 Winding Brook Lane  
Terrace Park, OH 45174  
jfinnigan@edf.org

Mark S. Yurick  
Taft Stettinius & Hollister LLP  
65 E. State St., Suite 1000  
Columbus, OH 43215  
myurick@taftlaw.com

Stephanie M. Chmiel  
Thompson Hine LLP  
41 S. High Street, Suite 1700  
Columbus, OH 43215  
stephanie.chmiel@thompsonhine.com

Nicholas McDaniel  
Environmental Law & Policy Center  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212  
NMcDaniel@elpc.org

Michael R. Smalz  
Ohio Poverty Law Center  
555 Buttlers Avenue  
Columbus, OH 3215-1137  
msmalz@ohiopoveritylaw.org

Peggy P. Lee  
Southeastern Ohio Legal  
Services  
964 E. State Street  
Athens, Ohio 45701  
plee@oslsa.org

Gregory J. Poulos  
EnerNOC, Inc.  
471 East Broad Street, Suite 1520  
Columbus, OH 43215  
gpoulos@enernoc.com

Steve W. Chriss  
Senior Manager, Energy  
Regulatory Analysis  
Wal-Mart Stores, Inc.  
2001 SE 10th Street  
Bentonville, AR 72716-0550  
stephen.criss@walmart.com

J. Thomas Siwo  
Bricker & Eckeler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
tsiwo@bricker.com

Lisa M. Hawrot  
Spilman Thomas & Battle, PLLC  
Century Centre Building  
1233 Main Street, Suite 4000  
Wheeling, WV 26003  
lhawrot@spilmanlaw.com

Tai C. Shadrick  
Spilman Thomas & Battle, PLLC  
300 Kanawha Blvd. East  
Charleston, WV 25301  
tshadrick@spilmanlaw.com

Kevin R. Schmidt  
88 East Broad Street, Suite 1770  
Columbus, Ohio 43215  
schmidt@sppgrp.com

Joseph M. Clark  
Direct Energy  
21 East State Street, 19th Floor  
Columbus, Ohio 43215  
joseph.clark@directenergy.com

Samantha Williams  
Natural Resources Defense  
Council  
20 N Wacker Drive  
Suite 1600  
Chicago, IL 60606  
swilliams@nrdc.org

Derrick Price Williamson  
Spilman Thomas & Battle,  
PLLC  
1100 Bent Creek Blvd.  
Suite 101  
Mechanicsburg, PA 17050  
dwilliamson@spilmanlaw.com

M. Howard Petricoff  
Gretchen L. Petrucci  
Vorys, Sater, Seymore &  
Pease  
52 East Gay Street  
Columbus, Ohio 43216-1008  
mhpetricoff@vorys.com  
glpetrucci@vorys.com

Sarah Parrot  
Attorney Examiner  
Public Utilities Commission of  
Ohio  
180 East Broad Street  
12<sup>th</sup> Floor  
Columbus, Ohio 43215  
sarah.parrot@puc.state.oh.us