

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company for Authority to)
Establish a Standard Service Offer)
Pursuant to §4928.143, Revised Code,)
in the Form of an 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
AND REQUEST FOR CLARIFICATION
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

The Office of the Ohio Consumers’ Counsel (“OCC”) files this Memorandum Contra the Ohio Power Company’s (“Utility” “Ohio Power” or “AEP”) Application for Rehearing. OCC opposes, inter alia, the Utility’s attempt to undo portions of the Public Utilities Commission of Ohio’s (“PUCO”) decision that protect customers by denying the Utility’s request to collect costs under a Purchased Power Agreement (“PPA”) and placing limits on how much customers pay for distribution investment. AEP’s Application for Rehearing should be denied.

II. ARGUMENT

A. The PUCO's determination that AEP Ohio's proposed PPA rider is not in the public interest is imminently reasonable and must be affirmed on rehearing.

1. Introduction

The intervenors' applications for rehearing of the PUCO's February 25, 2015, Opinion and Order ("Order") make clear that AEP Ohio's PPA rider is nothing more than a thinly veiled attempt by AEP Ohio to obtain a guaranteed return of and on its investment in the Ohio Valley Electric Corporation's ("OVEC") generating facilities. Recognizing that the General Assembly repealed the statutes formerly providing this guarantee,¹ AEP Ohio has struggled (enormously and unpersuasively) to "fit" the PPA Rider into its proposed electric security plan.² And in the process, it has attempted to force customers to pay potentially enormous amounts of money - \$116 million according to OCC Witness Wilson. Representatives of all of AEP Ohio's customer classes – large industrial, commercial, and residential – strenuously oppose the rider,³ because it will make them exclusively responsible for the financial risks and additional costs of the OVEC facilities. Nevertheless, feigning a lack of self-interest, AEP Ohio arrogantly insists that its customers don't know what's good for them, and urges the PUCO to approve the PPA Rider for its customers' benefit – on the scant record in this case.

¹ R.C. 4928.03 declared generation service to be competitive. By enacting R.C. 4928.05, the General Assembly repealed the traditional rate base, rate of return ratemaking methodology provided by R.C. Chapter 4909, which provided utilities a return of and on their investment.

² The Supreme Court decisively found that only the factors included in R.C. 4928.02(B) can be included in an ESP. AEP Ohio relies on R.C. 4928.01(B)(2)(d).

³ See the initial briefs of OCC, Industrial Energy Users – Ohio, Ohio Manufacturers' Association, Ohio Partners for Affordable Energy, and the Ohio Hospital Association.

The PUCO wisely refused to approve AEP Ohio's PPA Rider as proposed because the record made in this proceeding utterly failed to support it. In its application for rehearing, AEP Ohio attempts to rehabilitate its case and even attempts to strike a new bargain with PUCO, which has not been tested through discovery or cross-examination. OCC requests the PUCO deny AEP Ohio's application for rehearing out of hand.

2. Argument

- a. The PUCO already has considered and rejected AEP Ohio's arguments meant to support its self-serving PPA Rider. Because AEP Ohio raises no issues not previously considered by the PUCO, its request for rehearing on this issue must be denied.**

AEP Ohio alleges that the PUCO erred in rejecting the PPA Rider as proposed. Specifically, AEP Ohio takes issue with the following general findings:⁴

- (1) the proposed PPA Rider's benefits are not commensurate with its costs;
- (2) AEP Ohio did not commit to a long-term PPA Rider;
- (3) the uncertainty relating to PJM market reform proposals, environmental regulations and federal litigation makes it inappropriate to adopt the rider as proposed; and
- (4) existing laddering and staggering of SSO auction products and the availability of fixed price contracts provide a significant hedge against price volatility.

⁴ AEP Ohio Application for Rehearing, at 16.

As a threshold matter, OCC notes that AEP Ohio does not contend that the above findings are unlawful, but that they are unreasonable. However, each of the findings has significant support in the record from numerous expert witnesses. Thus, they are reasonable and would withstand judicial scrutiny. *See, e.g., Monongahela Power Co. v. Pub. Util. Comm.*, 104 Ohio St.3d 571, 2004-Ohio-6896, 820 N.E.2d 921, ¶ 29, in which the Ohio Supreme Court recited its standard of review on questions of fact:

We will not reverse or modify a PUCO decision as to questions of fact when the record contains sufficient probative evidence to show that the PUCO's decision was not manifestly against the weight of the evidence and was not so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty.

Moreover, OCC notes that AEP Ohio raised each of these arguments in some form on brief, and the PUCO considered them thoroughly in issuing its Order. Because no new arguments have been raised which have not already been considered by the PUCO, AEP Ohio's application for rehearing should be dismissed out of hand. *See, e.g., In Re Application of Ohio Edison Company, et al.*, Case No. 10-938-EL-SSO, Entry on Rehearing (February 9, 2011); *In Re Application of AT&T Communications*, Case No. 96-752-TP-ARB, Entry on Rehearing (May 8, 1997); *Consumers' Counsel v. Ohio Bell Tel. Co.*, Case No. 90-1070, Entry on Rehearing (May 27, 1993).

b. The enormous net costs of AEP Ohio's proposed PPA Rider outweigh its minimal theoretical benefits to consumers and, therefore, the rider is not in the public interest.

AEP Ohio argued extensively on brief that its proposed PPA Rider will promote rate stability for its distribution customers.⁵ The PUCO extensively considered this issue in its Order, both in theory and under the specific facts of record.⁶ Ultimately, the PUCO concluded that the record in this proceeding did not support the rider, as proposed.⁷ The PUCO found:

In sum, the PUCO is not persuaded, based on the evidence of record in these proceedings, that AEP Ohio's PPA [R]ider proposal would provide customers with sufficient benefit from the rider's financial hedging mechanism or any other benefit that is commensurate with the rider's potential cost.⁸

In its application for rehearing, AEP argues that this conclusion is inconsistent with the PUCO's finding, in theory, that a "reasonable PPA Rider proposal" may provide for "a significant financial hedge that truly stabilizes rates."⁹ AEP Ohio relies (nearly verbatim) on evidence cited in its reply brief to support its general position that the PPA Rider could provide a benefit, as a hedge (at least to wholesale rates), during periods of high wholesale market prices, e.g., extreme weather.¹⁰ However, AEP Ohio ignores the PUCO's concern that whatever minimal benefits the hedging mechanism may provide, it is overshadowed by the proposed rider's potentially enormous cost. The PUCO's concern

⁵ AEP Ohio Initial Br. at 25-28, 43-52; AEP Ohio Reply Br, at 25-31.

⁶ Order at 8, 20-21, 23-25.

⁷ Order at 24-25.

⁸ Order at 25.

⁹ Order at 25.

¹⁰ AEP App. for Rehearing at 16-17; AEP Ohio Initial Br, at 45-46; AEP Ohio Reply Br. at 26.

was with the unreliable testimony offered by AEP Ohio's witnesses as to the PPA Rider's cost, particularly when intervening witnesses reasonably estimated a net cost of up to \$116 million during the three-year ESP term.¹¹ One AEP witness initially testified that the proposed PPA Rider's net cost would be \$52 million over the three-year term of the ESP.¹² The other testified subsequently, based upon data one month more recent, that the rider would produce a net benefit of \$8.4 million.¹³

AEP Ohio has not attempted to resolve its unreliable estimates of the cost of the PPA in its application for rehearing, likely because the evidence of record will not support it. Instead, AEP Ohio argues that "the benefit of a hedge is not a guaranteed price reduction but stabilization of otherwise volatile prices." AEP Ohio's analysis speaks volumes: AEP Ohio doesn't really care what its proposed PPA rider costs its customers, as long as it receives a return of and on the share of its investment in the OVEC facilities. Obviously, the PUCO correctly found, on the basis of this record, that the PPA Rider, as proposed, clearly is unreasonable and not in the public interest.

As stated above, AEP Ohio has raised no arguments not previously considered by the PUCO; thus, rehearing on this issue must be denied.

¹¹Order at 23; OCC Exs. 15A and 17 (Wilson).

¹² Order at 8, 24; Tr. II at 498, 507-508.

¹³ Order at 9, 24, Tr. II at 484-486.

c. This record does not support AEP Ohio's attempt to rehabilitate its case by offering to make a long-term commitment on rehearing regarding the PPA Rider.

The record in this proceeding is crystal clear: AEP Ohio proposed a PPA Rider that would terminate at the end of the three-year ESP term, except if AEP Ohio, in its sole discretion, decided to terminate the rider earlier.¹⁴

Based upon AEP Ohio's application, all intervenors in this proceeding (except one), based their analyses of the proposed PPA Rider on AEP Ohio's representation that it sought approval only for a three-year period, at most. The Ohio Energy Group ("OEG") performed an analysis that assumed a nine year PPA Rider, lasting through 2024.¹⁵ Now, on rehearing, AEP Ohio asks the PUCO to accept that it will make a long-term commitment regarding the PPA through 2040 (the term of the OVEC contract), provided that the PUCO finds in this proceeding that it was prudent for AEP Ohio to enter into the OVEC contract.¹⁶

The most striking deficiency in AEP Ohio's new proposal is that it is entirely without record support. No party proposed a PPA Rider extending through 2040, the duration of the OVEC contract. Thus, there is no reliable evidence of record as to the rider's cost over that period.¹⁷ Not surprisingly, AEP Ohio is indifferent to the rider's cost, as noted above, and asks the PUCO to blindly accept the rider without a full

¹⁴ Tr. I at 151-152 (Vegas).

¹⁵ Order at 23.

¹⁶ AEP Application for Rehearing at 19.

¹⁷ On brief, AEP Ohio attempted to rely on OMA Ex. 3, Attachment 2 for the proposition that the PPA provides a net benefit of \$400 million through 2032. AEP Ohio Initial Br. at 54. Not only does this analysis fail to encompass the full term of the OVEC commitment, it also is based on AEP Ohio's cost analysis that the PUCO found to be unreliable, as stated previously. Serious consideration cannot be given to this halfhearted analysis presented for the first time on brief, without the benefit of discovery and cross-examination.

analysis. As the PUCO has recognized, without a reliable estimate of the rider's net cost, it cannot be found to be in the public interest. Rehearing on this issue should be rejected on this basis alone.

Although AEP Ohio's proposed long-term "commitment" should be rejected solely on the basis of the uncertainty of the net cost estimates alone, it also is lacking because it completely ignores the additional information the PUCO deems necessary to rule on the propriety of a PPA Rider in a future filing.¹⁸ Significant among the additional factors to be included in a future filing is a provision "for rigorous PUCO oversight of the rider."¹⁹ However, AEP Ohio's proposed long-term "commitment" to the PPA denies the PUCO the opportunity for rigorous review. Specifically, AEP Ohio conditions its agreement to a long-term PPA Rider upon the PUCO making an "upfront" finding that it was prudent for AEP Ohio to enter into the OVEC contract.²⁰ As Staff recognized on brief, this represents a departure from current practice in which the PUCO currently reviews the prudence of OVEC costs in Fuel Adjustment Clause cases, because the costs relate to AEP Ohio's actual supply of electricity to SSO customers.²¹ If the PUCO were to accept AEP Ohio's condition for its commitment, it would relinquish its ability to disallow costs related to the PPA, and be forced to file a complaint as to improper costs with FERC.²² Relinquishing a prudence review would permit the pass through to customers of significant OVEC capital expenditures, coal costs, and the costs of future

¹⁸ Order at 25. Of course, these factors should be expanded by those that OCC proposed in its application for rehearing.

¹⁹ Order at 25.

²⁰ AEP Ohio App. for Rehearing, at 18-19.

²¹ R.C. 4928.143(B)(2)(a); Staff Initial Br. at 8; Staff Reply Br. at 14-16.

²² Tr. I at 31-33 (Vegas), Staff Initial Br. at 7; Staff Reply Br. at 14-16.

environmental regulations without proper PUCO oversight. AEP Ohio's long-term "commitment" conditioned upon the PUCO relinquishing its ability to conduct a prudence review is actually no commitment at all. Accepting AEP Ohio's contingency is not in the public interest.

Finally, this ground for rehearing should be rejected, considering that AEP Ohio raised many of the similar arguments on brief, regarding its vague "intent" to provide a long-term rider in future ESP proceedings.²³ After fully considering the arguments, the PUCO declined to adopt them in its Order. Indeed, the PUCO required AEP Ohio to agree to the PUCO's rigorous oversight of OVEC costs, which AEP Ohio has blatantly failed to do, requiring that this basis for rehearing be denied.

d. The PUCO should ignore AEP Ohio's threats and pressure for a speedy approval of the PPA Rider. It is reasonable to await the resolution of pending issues at the federal level so that the PUCO may make an informed decision that serves the public interest.

In its next ground for rehearing on the PPA Rider, AEP Ohio pressures the PUCO to approve the rider now, with the threat that it may not be available in the future, considering that pending issues at the federal level may increase PJM market prices and lead AEP Ohio to withdraw the PPA Rider proposal. AEP Ohio's argument has all of the subtlety of a used car salesman who offers a deal that is good only for today – without the opportunity for its customer to look under the hood or kick the tires.

Specifically, AEP Ohio claims that the determinations on market reform, environmental regulations, and federal litigation may take a considerable amount of time and result in increased costs to consumers. However, as the PUCO is fully aware, all

²³ See, e.g., AEP Ohio Initial Br. at 30-33, 51, 54.

three issues are under current consideration by FERC, the US EPA and the US Supreme Court and resolution is expected within a matter of months. It is reasonable, and in the public interest, for the PUCO to await these pending decisions to determine what impact these will have on any customer-funded subsidy proposal (which OCC does not support). It also is reasonable, and in the public interest, to require AEP Ohio to provide additional information as to how it plans to comply with the pending determinations once issued.

In addition, AEP Ohio recites the same alleged PJM reforms that allegedly may result in increased market prices that it recited on brief.²⁴ AEP Ohio has failed to quantify the potential cost of the reforms, some of which already have been undertaken. The PUCO, undoubtedly, will recognize AEP Ohio's argument for what it is: a desperate attempt to pressure the PUCO to place the risk of above market generation costs (influenced by future PJM market reform, environmental regulations and federal litigation) on consumers, while AEP Ohio can begin to receive its guaranteed return of and on its share of the OVEC investment – without rigorous PUCO oversight.

Because AEP Ohio attempted to invoke these same unfounded fears on brief, and has raised no arguments not previously considered by the PUCO, rehearing on this issue must be denied.

- e. AEP Ohio's argument that the PPA Rider is needed as an additional tool to mitigate market volatility misses the point. The enormous cost of the proposed PPA Rider does not warrant any de minimus benefit it may provide.**

As its final argument related to the PUCO's rejection of the proposed PPA Rider, AEP Ohio argues that the PUCO erred by finding that there are existing means that

²⁴ AEP Ohio Initial Br. at 65-67.

provide a significant hedge against price volatility. Specifically, the PUCO referred to the laddering and staggering of SSO auction products and the availability of fixed price contracts in the market.²⁵ AEP Ohio made the same arguments, nearly verbatim, on brief.²⁶

The record shows, and AEP Ohio even admits, that the laddering/staggering of auction products for SSO service, as well as CRES providers' fixed price contracts for competitive supply, provide a hedge against retail price volatility. As to SSO service, the PUCO relied on Staff witness Choueiki's expert testimony that laddering and staggering of SSO auction products provides a more effective approach to mitigate price volatility than AEP Ohio's proposed PPA Rider.²⁷ Indeed, AEP Ohio witness Allen readily admitted that both tools reduced the volatility of the SSO price.²⁸

As to the ability of CRES providers' contracts to mitigate market volatility, the PUCO's determination is based upon AEP Ohio's witness McDermott's admission that most CRES customers enter into fixed rate contracts that are not subject to the fluctuations of the PJM real time or day-ahead markets.²⁹ Moreover, those customers have access to fixed rate contracts that cover terms of up to 36 months,³⁰ providing a significant mitigation of price volatility. Indeed, the PUCO appropriately relied on witness McDermott's testimony that the PPA Rider, as proposed, could actually expose

²⁵ Order at 24.

²⁶ AEP Ohio Initial Br. at 60-64.

²⁷ Staff Ex. 18 at 10-11 (Choueiki); Tr. XII at 2933-2934 (Choueiki).

²⁸ AEP Ohio Ex. 33 at 2-3 (Allen), Tr. XIII at 3279-3280 (Allen).

²⁹ Tr. XIII at 3084 (McDermott). Moreover, witness McDermott admitted that sophisticated large industrial customers who take service subject to an index tied to these markets have other means to mitigate volatility, through their own hedges or call options. *Id.*

³⁰ AEP Ohio Ex. 33, WAA-R3 (Allen); Tr. XIII at 3284-3285 (Allen).

SSO and CRES customers to greater risks of price volatility by charging them for OVEC costs that didn't clear the market.³¹

In essence, AEP Ohio merely argues that, although the SSO auction process and CRES contracts do provide a hedge against price volatility, they provide only partial mitigation. It reasons that the PPA Rider should also be used as an additional tool. Even assuming AEP Ohio's point to be true (which it is not), AEP Ohio's position misses the point. According to AEP Ohio witness Allen's own testimony, the assumed benefit of the rider would be de minimus, providing (even under the assumptions chosen by witness Allen) a stability effect of only \$0.35/MWh.³² The PUCO's overarching determination in this proceeding is predicated on the basis that, even assuming this miniscule benefit to customers, the PPA Rider's enormous cost is not worth it.³³

The PUCO's findings on this issue have significant support in the record and are undoubtedly reasonable. For this reason, and because AEP Ohio raises no arguments not previously considered by the PUCO, rehearing on this issue must be denied.

B. Distribution Investment Rider

1. The PUCO correctly rejected the inclusion of general plant in the DIR as beyond the intent of the statute.

In its second assignment of error AEP Ohio asserted that the PUCO's modifications to the Distribution Investment Rider ("DIR") were unreasonable and should be changed or clarified on rehearing.³⁴ Specifically, AEP Ohio argued that the PUCO improperly modified the proposed revenue caps, and that the PUCO should have

³¹ Tr. XIII at 3241-3142 (McDermott).

³² AEP Ohio Ex. 33, WAA-R2 (Allen).

³³ Order at 24.

³⁴ AEP Ohio App. for Rehearing at 1, 25.

allowed the inclusion of general plant in the DIR.³⁵ AEP Ohio's position is based on a claim that the general plant "is intended to have a direct impact on customers' reliability."³⁶

AEP Ohio had ample opportunity to present evidence that supported its claim that general plant, and specifically the radio system have a direct impact on customer service and reliability. Despite this opportunity and any claimed intent, the Utility failed to meet its burden of proving³⁷ that such a nexus exists between general plant and service reliability. Staff Witness McCarter rejected the Utility's position testifying that the radio system was an important communications tool used by employees when working on **any aspect of utility service** -- distribution, transmission or other.³⁸ She concluded that general plant did not rise to the level of direct impact necessary for inclusion in the DIR.³⁹ OCC witness Effron also testified that general plant is not distribution infrastructure and thus should not be included as part of the DIR.⁴⁰ Mr. Effron testified that even though general plant may indirectly be connected to distribution infrastructure and might indirectly lead to improved electric service reliability, that general plant does not represent an upgrade of distribution infrastructure.⁴¹ The PUCO did not act unreasonably or unlawfully when it agreed with the positions espoused by Ms. McCarter and Mr. Effron.

³⁵ AEP Ohio App. for Rehearing at 31.

³⁶ AEP Ohio App. for Rehearing at 31.

³⁷ R.C. 4928.143(C)(1).

³⁸ Tr. IX at 2289.

³⁹ Tr. IX at 2292 (Emphasis added).

⁴⁰ OCC Ex. 18 at 14 (Effron).

⁴¹ OCC Ex. 18 at 14 (Effron).

AEP Ohio also argues that the PUCO should reconsider the exclusion of general plant in the DIR because the Staff did not completely oppose the inclusion of general plant in the DIR.⁴² AEP Ohio noted that Staff witness McCarter acknowledged that “she may have been able to include certain investments categorized as general plant, namely the radio system, in the DIR if they are fully reviewed by Staff.”⁴³ This argument overstates the Staff testimony, and should be rejected. Ms. McCarter concluded in her testimony that, **“I don’t know that anything could resolve my concern with general plant overall.** I guess my comment is now focusing on the mobile system that AEP seems to be focusing on and whether something, you know, a specific review could be set up for that system.”⁴⁴

The PUCO fully considered AEP Ohio’s argument in the Opinion and Order and AEP Ohio has presented no evidence that the PUCO failed to consider and specifically rejected. The Utility’s claim notwithstanding, the PUCO concluded 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. Furthermore, it appears that AEP Ohio’s interpretation of distribution infrastructure exceeds the intent of the statute (Tr. II at 436-438). Accordingly, we must deny AEP Ohio’s request to significantly increase the amount to be recovered via the DIR and to incorporate general plant into the DIR mechanism.⁴⁵

The PUCO should reject AEP Ohio’s request for rehearing to include general plant as part of the DIR because the PUCO’s decision not to include general plant in the DIR was not unreasonable or unlawful.

⁴² AEP Ohio App. for Rehearing at 31.

⁴³ AEP Ohio App for Rehearing at 31.

⁴⁴ Tr. IX at 2295 (Emphasis added).

⁴⁵ Opinion and Order at 46.

2. The PUCO correctly established DIR revenue caps.

In its third assignment of error AEP Ohio claimed that the PUCO mistakenly established DIR revenue caps that did not reflect three to four percent growth referenced in connection with the *ESP 2 Case*.⁴⁶ In making this claim, AEP Ohio alleges that the PUCO made a mistake in setting the DIR revenue caps.⁴⁷ However AEP Ohio offers no evidence or documentation that the PUCO erred in its decision. To the contrary, it is clear from the Opinion and Order that the PUCO specifically identified the DIR revenue caps at \$124 million for 2015, \$146.2 million for 2016, \$170 million for 2017 and \$103 million for the period January through May 2018 for a grand total of \$543.2 million in DIR spending.⁴⁸ A disagreement with the PUCO's decision does not support a claim that the PUCO erred.

In setting the DIR revenue caps the PUCO referenced the *ESP 2 Case*.⁴⁹ However, the PUCO order in this case is consistent with the *ESP 2 Case*, because as noted by AEP Ohio the growth rate from 2015 to 2016 is 3.9% and an additional 3% from 2016 to 2017.⁵⁰ AEP Ohio's argument for a PUCO error is contingent on assuming that the PUCO also intended to increase the DIR revenue cap from 2014 to 2015 by 2-3%.⁵¹ There is nothing in the Opinion and Order to support AEP Ohio's interpretation.

⁴⁶ AEP Ohio App. for Rehearing at 32.

⁴⁷ AEP Ohio App. for Rehearing at 32.

⁴⁸ Opinion and Order at 47.

⁴⁹ Opinion and Order at 47.

⁵⁰ AEP Ohio App. for Rehearing at 33.

⁵¹ AEP Ohio App. for Rehearing at 33.

The original DIR program was approved for a set period of time (three years) in the *ESP 2 Case*⁵² and was approved again by the PUCO in this proceeding for a similar three-year period.⁵³ Thus the DIR program represents two distinct three-year programs that were proposed, considered and approved in two separate ESP proceedings, and not one continuous six year program from a single six-year ESP case. AEP Ohio's interpretation for a 2-3% growth from 2014 to 2015 requires the DIR program to be viewed as a single continuous program which is not supported by the record. The proposed expansion of the DIR program (to include general plant) supported by AEP Ohio and rejected by the PUCO supports viewing the DIR program as two separate three-year programs rather than a single six year program. Moreover, the fact that the PUCO required AEP Ohio to again meet its burden of proving the need for and benefits of the DIR program, supports the notion that the two ESP cases are separate proceedings giving rise to two separate three-year DIR programs, as reflected by the DIR spending caps approved by the PUCO for the period of this ESP.

AEP Ohio further argues that the carryover amount from the *ESP 2 Case* DIR should be treated as the carryover from any one year to another.⁵⁴ AEP Ohio asks the PUCO to find there is an *ESP 2 Case* DIR "cumulative underspend that carries over to 2015 and beyond."⁵⁵ Again, there is nothing in the record or in the Opinion and Order to support this interpretation. Instead the spending cap as set forth in conclusion of the DIR

⁵² AEP *ESP 2 Case*, Opinion and Order at 46-47.

⁵³ Opinion and Order at 47

⁵⁴ AEP Ohio App. for Rehearing at 38-39.

⁵⁵ AEP Ohio App. for Rehearing at 39-40.

section of the Opinion and Order supports the interpretation of the two DIR programs being distinct three-year periods.

In addition, AEP Ohio's argument regarding the alleged carryover from 2012⁵⁶ -- the last five months of the *ESP 2 Case* period -- constitutes an unlawful attempt by the Utility to re-litigate aspects of the *ESP 2 Case* that are not at issue in this case. AEP Ohio argues that the 2012 revenue cap should be for the annualized amount of \$86 million without proration. AEP Ohio argues that now in 2015 it is unclear whether the PUCO intended to prorate the \$86 million revenue cap for 2012 (based on an effective date of August 2012).⁵⁷ If AEP Ohio had concerns about the actual level of 2012 DIR spending, then any questions regarding reconsideration or clarification should have been presented at the time when the 2012 DIR spending cap was established. AEP Ohio failed to do so in a timely manner. Instead, AEP Ohio is now attempting to get rehearing or clarification of the *ESP 2 Case* August 8, 2012 Opinion and Order, well over three years after the statutory deadline for a rehearing or clarification.⁵⁸ The PUCO should reject AEP Ohio's untimely attempt to seek rehearing or clarification of the AEP *ESP 2 Case* Opinion and Order.

3. The PUCO should not address the DIR issues on rehearing on a separate expedited basis.

In a further attempt to manipulate the DIR spending levels, AEP Ohio requested expedited consideration of the DIR issues separate and apart from the other issues raised

⁵⁶ AEP Ohio App. for Rehearing at 38-40.

⁵⁷ AEP Ohio App. for Rehearing at 39.

⁵⁸ R.C. 4903.10, which requires an Application for Rehearing to be filed within thirty days after the entry of any final order.

by its rehearing, or the rehearing of other parties.⁵⁹ In making this request, AEP Ohio failed to cite to any statute or precedent to permit the PUCO to separate the DIR issues from the other issues raised by any party in rehearing. Absent any law or precedent to support AEP-Ohio's request, the PUCO should deny rehearing on this issue, and resolve all issues at the same time within the same Entry on Rehearing.

Separating the DIR issues from the other issues raised by parties would also establish a dangerous precedent in which certain issues would receive special treatment over others. Neither R.C. 4903.10 nor R.C. 4903.13 provides the PUCO with power and discretion to determine which issues should receive preferential treatment. Moreover, the statutes do not establish a process under which the PUCO would have such unfettered discretion. As a creature of statute, the PUCO lacks the ability to create such authority.⁶⁰

Moreover, it is always AEP Ohio's obligation to spend whatever capital is necessary to achieve appropriate service reliability. The existence of a DIR rate mechanism does not preclude AEP Ohio from making other reliability-related investments and seeking cost recovery of any such prudent investment through a distribution base rate case. In fact R.C. 4905.22 requires a utility to spend what is needed to provide necessary and adequate service.

To the extent that AEP Ohio claims that it cannot maintain customer service and reliability with the DIR spending caps that the PUCO approved, the PUCO concluded that a distribution base rate case is the Utility's alternative. "We find 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

⁵⁹ AEP Ohio App. for Rehearing at 40-41.

⁶⁰ *Canton Storage and Transfer Co. v. Pub. Util. Comm.*, 72 Ohio St.3d 1,5, 647 N.E.2d 135 (1995).

the context of the Company's total distribution revenues and expenses, and the Company's opportunity to recover a return on and of its investment can be balanced against customers' rights to reasonably priced service."⁶¹ Such a distribution base rate case would also afford the PUCO the opportunity to ensure that customers have actually received the service reliability improvements and efficiencies claimed by AEP Ohio. The PUCO should reject AEP Ohio's request for expedited consideration of the DIR issues.

- C. If the PUCO approves AEP Ohio's PPA Rider, as now proposed in the utility's application for rehearing, it must quantify the rider for purposes of this proceeding. Such quantification would show that the ESP is \$62,940,000 less favorable than a Market Rate Offer ("MRO") requiring that the ESP be rejected in its entirety.**

In its Order, the PUCO did not include the cost of the PPA Rider in the ESP v. MRO analysis because it was authorized solely as a placeholder rider. In its Application for Rehearing filed March 27, 2015, OCC demonstrated that the cost of the PPA Rider nevertheless is required to conduct the ESP v. MRO test.⁶² Now, on rehearing, AEP Ohio seeks to populate the PPA Rider, but remains silent as to its costs for purposes of the ESP v. MRO analysis. If the PUCO were to approve the PPA Rider as AEP Ohio proposes on rehearing, the best evidence of the rider's cost is \$116 million over the three-year term of the ESP.⁶³ Assuming that the PUCO approves the residential distribution credit rider ("RDCR"), the Neighbor-to-Neighbor program, and the Ohio Growth Program as quantitative benefits (which it shouldn't), the total benefits would equal \$53,060,000.

⁶¹ Opinion and Order at 46.

⁶² Indeed, *ESP 2* requires as much, even for a placeholder rider. *ESP 2* at 75.

⁶³ Order, at 23; OCC Exs. 15A and 17 (Wilson).

Thus, the ESP would be \$62,940,000⁶⁴ less favorable than an MRO, requiring that the ESP be rejected in its entirety.

D. The Neighbor-to-Neighbor program credits and the indeterminate Ohio growth fund payments are not quantitative benefits of the electric security plan.

AEP Ohio does not contest the PUCO's determination that the ESP is more favorable in the aggregate than a MRO under R.C. 4828.142. Rather, it asks the PUCO to clarify that two modifications to the ESP require its quantitative benefits to be increased by \$9 million over the ESP's three-year term, to bring the total quantitative benefits to \$53,060,000. The modifications involve the PUCO's determination that AEP Ohio should continue to fund: (1) Neighbor-to-Neighbor program in the amount of \$1 million annually, and (2) the Ohio Growth Fund by \$2 million annually. OCC opposes AEP Ohio's request.

1. OCC has no objection to AEP Ohio continuing the Neighbor-to-Neighbor credit; however, it is not a factor that can be included in the statutory test under R.C. 4928.13(C)(1), because it does not fit into any of the items specified in R.C. 4928.143(B)(2).

The PUCO ordered AEP Ohio to continue funding the Neighbor-to-Neighbor program, finding that (1) it is an integral part of the residential distribution credit rider ("RDCR"), and (2) it furthers the policy set forth in R.C. 4928.02(L).⁶⁵ The PUCO also approved the RDCR citing R.C. 4928.02(L).⁶⁶

⁶⁴ \$116,000,000 - \$53,060,000 = \$62,940,000.

⁶⁵ R.C. 4928.02(L) provides it is the policy of the state to:

Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;

⁶⁶ Order at 64-65.

As OCC stated in its Application for Rehearing filed March 27, 2015, the PUCO cannot rely on R.C. 4928.02 as independent authority to include factors to consider as a part of the ESP v. MRO test.⁶⁷ While the PUCO must review an ESP to ensure that its provisions do not violate the state policies contained in R.C. 4928.02, only those items expressly listed in R.C. 4928.143(B) can be considered a part of the ESP for purposes of the test performed under R.C. 4928.143(C)(1). The PUCO, itself, has admitted that only items expressly listed in R.C. 4928.143(B) may lawfully be considered in an ESP.⁶⁸ Accordingly, although OCC has no objection that AEP Ohio is willing to provide these credits to consumers, they cannot lawfully be quantified under R.C. 4928.143(C)(1) as a benefit of the ESP.

Moreover, under its ESP v. MRO analysis, the PUCO considers quantitative costs of an ESP to “wash” if they also can be imposed in an MRO in conjunction with a rate distribution case.⁶⁹ Although OCC does not agree with the PUCO’s analysis, if the PUCO is to apply it to the costs of an ESP, it also must also apply it to benefits. In this proceeding, the PUCO confirms that the RDCR and Neighbor-to-Neighbor credits were approved in a distribution rate case.⁷⁰ Accordingly, applying the PUCO’s analysis equally to costs and benefits, it is clear that the RDCR and Neighbor-to-Neighbor credits are not available only under an ESP, but also are available under an MRO in conjunction with the a base distribution case.

⁶⁷ OCC Application for Rehearing at 55.

⁶⁸ Order at 20.

⁶⁹ See OCC Application for Rehearing at 50-53.

⁷⁰ Order at 64-65.

Accordingly, neither the RDCR nor the Neighbor-to-Neighbor credits should be included in the ESP v. MRO analysis.

2. The PUCO properly excluded the Ohio Growth Fund payments as a benefit of the ESP in conducting the ESP v. MRO test because they are indeterminate.

The PUCO ordered AEP Ohio to reinstate the Ohio Growth Fund. It is to be funded by shareholders at “\$2 million per year, *or portion thereof*, during the term of ESP 3,” consistent with the PUCO’s order in AEP Ohio’s prior ESP case.⁷¹ AEP argues in its application for rehearing that the sum of \$6 million should be recognized as a quantitative benefit of the ESP for purposes of the ESP v. MRO test under R.C. 4928.143(C)(1).⁷² However, as reflected by the emphasized portion of the language quoted above, the funds to be expended are indeterminate and, thus, cannot be quantified as a benefit of the ESP. Indeed, they were not quantified in *ESP 2*,⁷³ as the PUCO should consistently find in this proceeding.

E. Purchase of Receivables

1. It was reasonable for the PUCO to assign matters to a future proceeding.

In its fourth assignment of error AEP Ohio argues that the PUCO’s modifications to the Purchase of Receivables Program (“POR”) are unreasonable and unlawful because the PUCO assigned a number of matters to future proceedings.⁷⁴ The PUCO approved the POR but indicated that the implementation details would be determined in a subsequent

⁷¹ See *In re AEP Ohio*, Case No. 11-346-EL-SSO, Opinion and Order (August 8, 2012) at 67 (“*ESP 2*”). (Emphasis added).

⁷² AEP Ohio Application for Rehearing at 67.

⁷³ *ESP 2* at 75.

⁷⁴ AEP Ohio App. for Rehearing at 50.

proceeding.⁷⁵ However, in making this claim, AEP Ohio failed to cite to any rule, statute or case precedent that would preclude the PUCO's actions. Although OCC opposed the implementation of a POR that provides benefits to CRES providers but imposes costs on customers, OCC agrees that the PUCO's approach offers the best opportunity for a more collaborative resolution of the issue.

2. The PUCO incorrectly included CRES provider early termination fees as commodity-related charges.

In its Opinion and Order the PUCO concluded that only commodity-related charges should be eligible for recovery in the Purchase of Receivables ("POR") program.⁷⁶ OCC agrees with the PUCO decision to limit the type of charges that are eligible for recovery in the POR. However, AEP Ohio correctly notes that inclusion of CRES provider early termination fees is beyond the provision of the generation source.⁷⁷ By permitting CRES provider early termination fees for recovery in the POR, the PUCO is essentially encouraging CRES providers to impose early termination fees and to impose even higher early termination fees. These early termination fees become nothing more than punitive charge designed to impose limitations on a customers' ability to move from one CRES provider to another.

R.C. 4928.02 (C) sets forth the State policy to encourage diversity of electricity supplies and suppliers. This diversity includes the option of the SSO commodity. Establishing a policy that includes significant early termination fees as part of the POR harms customers' diversity options because the early termination fee could restrict

⁷⁵ Opinion and Order at 80.

⁷⁶ Opinion and Order at 80.

⁷⁷ AEP Ohio App. for Rehearing at 53.

customers' ability to select the SSO commodity option or even other competitive electric commodity alternatives.

The inclusion of CRES provider early termination fees in the POR exacerbates the barrier to reasonably priced service,⁷⁸ and diversity of choice⁷⁹ for customers when they contemplate whether to take service from the SSO or from a different CRES provider. Customers do not face the risk of early termination fees associated with the SSO commodity service, thus making the SSO a more attractive alternative. If the intent of the POR is to create an environment that encourages more customers to participate in the competitive electric retail market, then inclusion of CRES provider early termination fees in the POR works against that goal. The PUCO should grant rehearing and exclude CRES provider early termination fees for recovery in the POR.

F. The PUCO correctly ruled that AEP Ohio should not be allowed to disconnect a customer's service for the non-payment of deregulated services.

AEP Ohio asked the PUCO to grant rehearing to permit the Utility to disconnect a customer's service for the non-payment of CRES charges.⁸⁰ In the Opinion and Order the PUCO rejected the Utility's request for a waiver of Ohio Admin. Code 4901:1-10-19(A) which provides that a utility company shall not disconnect service to a residential customer for failure to pay CRES-related charges.⁸¹ The PUCO concluded that R.C. 4928.10(D)(3) requires it to adopt rules that include specific customer protection prohibiting disconnection of a customer's service for non-payment of competitive retail

⁷⁸ R.C. 4928.02(A).

⁷⁹ R.C. 4928.02(C).

⁸⁰ AEP Ohio App. for Rehearing at 61.

⁸¹ Opinion and Order at 82.

electric service.⁸² AEP Ohio failed to make a case against R.C. 4928.10(D)(3) in its Brief or Reply Brief and similarly fails to make an argument in its Application for Rehearing.

CRES supplier charges are not regulated by the PUCO and thus should not be subject to collection practices such as disconnection -- which are governed by the PUCO. The SSO commodity service serves as a default option for customers. Customers should not be subject to collection practices that include the threat of disconnection for the non-payment of unregulated services. Moreover, customers should not face the risk of disconnection and thus lose the ability to return to the regulated default SSO commodity service. The PUCO should deny AEP Ohio's request to grant rehearing to permit disconnection of service for the non-payment of CRES provider related charges.

G. The PUCO correctly rejected AEP Ohio's proposed late payment charge.

AEP argues that the PUCO unreasonably denied its request for a late payment charge.⁸³ The PUCO ruled that the consideration of a late payment charge was more appropriately addressed in a distribution base rate case.⁸⁴ AEP Ohio argues that it was unreasonable for the PUCO to decide that the late payment issue should be addressed in a distribution base rate case. Yet in making this argument, AEP Ohio points to no statute, rule, or case law that requires the PUCO to rule on the late payment issue as part of an ESP case. In addition, the Utility cited no statute, rule, or case law precedent that precludes the PUCO from concluding that a distribution base rate case is the better forum for the determination a late payment charge.

⁸² Opinion and Order at 82.

⁸³ AEP Ohio App. for Rehearing at 62.

⁸⁴ Opinion and Order at 81-82.

The PUCO previously concluded that a distribution rate case provided a better forum to evaluate some issues because in a distribution base rate case the Company's total distribution revenues and expenses, and the Company's opportunity to recover a return on and of its investment can be balanced against customers' rights to reasonably priced service.⁸⁵ To that end, the record in this case indicates that AEP Ohio did not consider the impact that the additional cost from a late payment charge will have on the affordability of service for consumers.⁸⁶ Moreover, reviewing this issue in a distribution base rate case will enable the PUCO to better evaluate the impact of any late payment charge on rates that for customers in the Columbus area are 21.8% higher than the statewide average bill.⁸⁷

H. The PUCO correctly rejected AEP's proposed NERC Compliance and Cybersecurity Rider.

In its fifth assignment of error, AEP Ohio claimed that the PUCO unlawfully rejected the NERC Compliance and Cybersecurity Rider.⁸⁸ However, AEP Ohio also failed to establish that it would even actually incur any NERC Compliance and Cybersecurity costs.⁸⁹ Furthermore, AEP Ohio failed to prove the type or magnitude of the alleged future expenses that could arise from NERC Compliance and Cybersecurity compliance. Staff witness Pearce noted this very fact stating:

given the lack of specifics or any quantifiable expenses anticipated to be expended, Staff believes that approval of such a rider would be tantamount to providing the Company with a blank check for expenditures in this area without a reasonable estimate or

⁸⁵ Opinion and Order at 46.

⁸⁶ OCC Ex. 11 at 27 (Williams).

⁸⁷ OCC Ex. 11 at 15 (Williams).

⁸⁸ AEP Ohio App. for Rehearing at 63.

⁸⁹ Opinion and Order at 62.

projection of such expenditures. Staff is concerned that absent identification of actual expenditures or a reasonable projection of anticipated expenditures associated with known and existing NERC compliance and cybersecurity measures, that implementation of such a rider is premature.⁹⁰

The PUCO properly denied these riders after finding that the Utility failed to meet its burden of proof.⁹¹

Despite claims that the PUCO decision was unlawful, AEP Ohio failed to cite any specific law that was violated.⁹² AEP Ohio argued that the PUCO approved other placeholder riders and that PUCO precedent supported the NERC Compliance and Cybersecurity Rider.⁹³

However, it is AEP Ohio's failure to meet its burden of proof that separates the NERC Compliance and Cybersecurity Rider issue from other Rider placeholders that the PUCO approved such as the Bad Debt Rider and Pilot Demand Response Rider.⁹⁴ The PUCO should reject AEP Ohio's Application for Rehearing on the NERC Compliance and Cybersecurity Rider.

⁹⁰ Staff Ex. 11 at 4-5 (Pearce).

⁹¹ Opinion and Order at 62.

⁹² AEP Ohio App. for Rehearing at 63-66.

⁹³ AEP Ohio App. for Rehearing at 64.

⁹⁴ AEP Ohio App. for Rehearing at 64.

I. The PUCO should grant rehearing on the Rider IRP-D as requested by AEP, subject to modifications proposed by OCC that will ensure costs charged to customers for IRP-D credits are fully offset by revenues obtained from the sale of capacity resources.

AEP seeks rehearing of the PUCO's Opinion and Order on a number of aspects pertaining to Rider IRP-D.⁹⁵ Generally, OCC supports AEP's request for rehearing on the IRP-D.

OCC supports AEP's request for clarification that the PUCO did not intend to eliminate existing restrictions on the IRP-D tariff.⁹⁶ The restrictions contained in AEP's current tariffs⁹⁷ are appropriate and serve to provide a limit on the amount of costs that other customers pay, while still achieving the objective of providing reasonable interruptible capacity resources.

AEP seeks rehearing requesting that the actual costs of proving the IRP-D credits be collected through the Economic Development Rider ("EDR") rather than through the EE/PDR (Energy Efficiency/Peak Demand Reduction) Rider.⁹⁸ OCC supports this request for rehearing. As noted by AEP, the costs of the current IRP-D credits are substantial and are born by all customers who pay the EE/PDR Rider charges.⁹⁹ To assure that the costs of those credits are born by all customers, the costs should be collected through the Economic Development Rider. Otherwise, mercantile customers who are receiving the benefits of the IRP-D may opt out from the EE/PDR Rider and pay nothing for the benefits.

⁹⁵ AEP Application for Rehearing at 41-50.

⁹⁶ Id. at 44-45.

⁹⁷ Id. at 44.

⁹⁸ Id. at 49-50. See also Environmental Law & Policy Center et al. Application for Rehearing at 18-19.

⁹⁹ Id. at 45.

AEP also applied for rehearing on the PUCO's directive to bid capacity resources associated with Rider IRP-D into PJM's capacity auctions and then offset them against the cost of the IRP-D credit revenues received.¹⁰⁰ AEP claims that the directive is "infeasible and thus unreasonable and unlawful."¹⁰¹ Instead, AEP offered an alternative solution to accomplish the same end. AEP offers to offset against and reduce the amount of the interruptible credits provided to each IRP-D customers by the gross amount of capacity revenues.¹⁰² It proposes to calculate the gross amount of capacity revenues based on the weighted average auction clearing price and the amount of any emergency energy payments during events.¹⁰³ AEP would then collect from all customers the net amount of the Rider IRP-D interruptible credits minus the gross amount of revenues realized from the sale of the IRP-D interruptible capacity and emergency energy into the PJM market.¹⁰⁴

The PUCO's decision to require AEP to offset revenues associated with the IRP-D bid into the PJM base residual auctions¹⁰⁵ was well intentioned and reasonable. But OCC agrees with AEP that the procedure that the PUCO ordered is infeasible given, inter alia, the auctions have already taken place that coincide with the term of the Utility's ESP.

OCC supports an alternative approach similar to what AEP proposes but with adjustment. Specifically, when calculating any adjusted IRP-D payment, the actual PJM

¹⁰⁰ Id. at 47-49.

¹⁰¹ Id. at 47.

¹⁰² Id. at 48.

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ Opinion and Order at 40.

Base Residual Auction clearing price for each individual delivery year should be subtracted from the monthly AEP credit. The actual PJM clearing price would be used in place of AEP's proposed weighted average auction clearing price. For example, in delivery year 2014-2015, \$125.99 per MW day should be subtracted from the IRP-D credit. This would work to ensure against customers being charged twice for the same capacity resource. It would also work to reduce the overall IRP-D subsidy from AEP's customers.

III. CONCLUSION

AEP's Application for rehearing should be rejected in large part, as explained above. Otherwise customers will be charged even higher rates for service, when they are already paying rates higher than those paid by customers in thirty two other states across the country.¹⁰⁶

¹⁰⁶ EIN Table 5.6 (b)(2014).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memo Contra AEP Ohio's Application for Rehearing by the Office of the Ohio Consumers' Counsel was served via electronic transmission, to the persons listed below, on this 6th day of April, 2015.

/s/ Maureen R. Grady

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Summary: Memorandum Memorandum Contra Ohio Power Company's Application for Rehearing and Request for Clarification by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.