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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application Seeking)
Approval of Ohio Power Company's Proposal)
to Enter into an Affiliate Power Purchase) Case No. 14-1693-EL-RDR
Agreement for Inclusion in the Power Purchase)
Agreement Rider.)

In the Matter of the Application of Ohio Power)
Company for Approval of Certain Accounting) Case No. 14-1694-EL-AAM
Authority.)

APPLICATION FOR REHEARING OF DYNEGY INC.

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Now comes Dynegy Inc. (“Dynegy”) and pursuant to Section 4903.10, Revised Code, requests that the Public Utilities Commission of Ohio (“Commission”) grant rehearing on its March 31, 2016 Opinion and Order in the above-styled proceeding. Specifically, the Opinion and Order was unreasonable and unlawful in the following respects:

CO-OWNED UNITS

1. The Commission’s failure to exclude the Co-Owned Units from cost recovery under the PPA Rider was unreasonable and unlawful.

NO LEGAL AUTHORITY FOR PPA RIDER

2. The Commission’s holding that the PPA Rider is authorized by R.C. 4928.143(B)(2)(d) was unreasonable and unlawful.
3. The Commission’s failure to find that the Stipulation and the PPA Rider violate R.C. 4928.17, which requires corporate separation between an electric utility and its generation affiliate, was unreasonable and unlawful.
4. The Commission’s failure to find that the PPA Rider violates AEP Ohio’s OAD tariff code of conduct was unreasonable and unlawful.
5. The Commission’s failure to find that the PPA Rider will violate R.C. 4905.22 as an unreasonable charge was unreasonable and unlawful.

INSUFFICIENT OVERSIGHT OVER PPA RIDER

6. The Commission’s finding that its oversight over the PPA Rider is sufficient was unreasonable and unlawful.

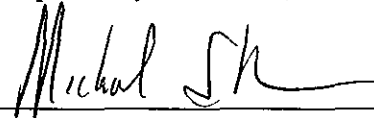
PPA RIDER DOES NOT BENEFIT RATEPAYERS AND IS NOT IN THE PUBLIC INTEREST

7. The Commission’s failure to substantively address concerns that the PPA Rider threatens competitive markets and impedes the development of new sources of generation in Ohio was unreasonable and unlawful.
8. The Commission’s finding that the PPA Rider promotes retail rate stability was unreasonable and unlawful.

9. The Commission ignored evidence that AEPGR and OVEC are not closing their plants.
10. The Commission's finding that the PPA Rider promotes grid reliability or fuel diversity was unreasonable and unlawful.

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

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

In Case No. 13-2385-EL-SOO, et al., Ohio Power Company d/b/a AEP Ohio (“AEP Ohio”) sought approval of its application for an electric security plan (“ESP”), including the Commission’s approval of AEP Ohio’s proposed power purchase agreement rider (“PPA Rider”), which would have flowed through to ratepayers the net impacts of AEP Ohio’s contractual entitlement associated with the Ohio Valley Electric Corporation (“OVEC”). In that proceeding, the Commission allowed AEP Ohio to create the PPA Rider, but deferred its implementation, setting the Rider’s initial rate at zero.¹ In refusing to implement the PPA Rider, the Commission noted that “... we are not persuaded that the PPA rider proposal put forth by AEP Ohio in the present proceedings would, in fact, promote rate stability, as the Company claims, or that it is in the public interest.”²

On October 3, 2014, in the above-captioned proceedings, AEP Ohio filed an application to enter into a new affiliate PPA (the “Affiliate PPA”) with AEP Generation Resources, Inc.³ (“APEGGR”). AEP Ohio amended the application on May 15, 2015 to request Commission approval of both the Affiliate PPA and a PPA Rider that would include the net impacts of the units included in the Affiliate PPA and AEP Ohio’s OVEC entitlement. On December 14, 2015, a joint stipulation and recommendation (“Stipulation”) endorsing AEP Ohio’s Affiliate PPA and PPA Rider proposal was filed by AEP Ohio and certain other parties to this proceeding.

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 Nos. 13-2385-EL-SSO et al., Opinion and Order (February 25, 2015) (“ESP IIP”) at 25.

² *Id.*

³ *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case Nos. 14-1693-EL-RDR and 14-1693-EL-AAM, Application (Oct. 3, 2014).

On March 31, 2016, the Commission issued its Opinion and Order, approving the Stipulation and PPA Rider with certain modifications. The Opinion and Order found that the PPA Rider provides ratepayers with a valuable financial “hedge” against market volatility and also provides certain other benefits, including furthering fuel supply diversity, and promoting economic development by safeguarding against the premature retirement of the PPA units.⁴

Dynegy, Inc. (“Dynegy”) submits that the Commission’s findings regarding the Stipulation and the PPA Rider are unreasonable and unlawful. First, the Commission failed to address the unique harm to Dynegy that results from its decision to approve the Stipulation and the PPA Rider. Dynegy is a merchant generator that owns a number of coal-and-gas-fired generating units in Ohio, including ownership interests in certain units included in the Affiliate PPA. The impact of the Commission’s decision will unfairly impair Dynegy’s interest in these units. Second, the PPA Rider is unlawful as it runs contrary to multiple Ohio statutes as well as AEP Ohio’s open access distribution tariff. Third, the Commission was unreasonable and unlawful in failing to consider the objections of several intervenor parties that its level of oversight is insufficient to adequately safeguard against the serious risks posed by the PPA Rider. Finally, the Commission was unreasonable and unlawful in failing to substantively address the evidence in this proceeding that the PPA Rider will hurt ratepayers and the public interest, including evidence that the PPA Rider will harm competitive markets and discourage new generation from being sited in Ohio, evidence that the PPA Rider does not advance retail rate stability, and evidence that the PPA units will not close whether or not the PPA Rider is approved, obviating concerns over grid reliability and fuel diversity.

As discussed further below, the Commission should address this evidence, reverse its decision, and disapprove the Stipulation and the PPA Rider.

⁴ Opinion and Order at 77-88.

II. ARGUMENT

A. The Commission's Decision Impairs Dynegy's Interests in Co-Owned Units.

Assignment of Error No. 1: The Commission's Failure to Exclude the Co-Owned Units From Cost Recovery Under the PPA Rider was Unreasonable and Unlawful.

1. Dynegy Jointly Owns PPA Units With AEPGR and DP&L

Of the units included in the Affiliate PPA, AEPGR owns only three outright, with the rest being jointly-owned by AEPGR and other generators.⁵ Dynegy co-owns the following units (the "Co-Owned Units") with AEPGR and The Dayton Power and Light Company ("DP&L"):⁶

Generating Unit	Total Size	AEPGR Share (MW)	Dynegy Share (MW)	DP&L Share (MW)
Stuart Units 1-4	2,308	600	904	804
Zimmer Unit 1	1,300	330	628	342
Conesville Unit 4	779	339	312	128

The Co-owned Units are covered by Joint Operating Agreements ("JOAs") between AEPGR and the other owners.⁷ Under the JOAs, each owner offers (bids) its fractional share into the PJM Interconnection LLC ("PJM") energy and capacity markets, and each owner

⁵ See Company Ex.2 at KDP-1 page 7; Company Ex.5 at 3-4; AEP Ex. 4 at 3-4; Company Ex.10 at WAA-3 page 1; Tr. Vol. 1 at 88-89, 122, 259-262, 268-270, 272; P3/EPSCo Ex. 10 at 31; Company Ex.16 at 104; Sierra Club Ex. 12 at 1.

⁶ See Dynegy Ex. 1 Direct Testimony of Dean Ellis at 10 and see Dynegy Ex. 2 Supplemental Direct Testimony of Dean Ellis at 5.

⁷ Dynegy Ex. 2 at 5.

receives its share of the market revenues.⁸ The operational costs are split amongst each owner in proportion to their fractional share.⁹

2. *The Stipulation Distorts Market Principles and Creates a Disincentive for AEPGR to Make Financially-Rational Decisions Concerning the Co-Owned Units*

Today, competitive market principles drive operational decision-making for the Co-Owned Units. Dynegy, AEPGR and DP&L must compete for sales in the markets and bear the risk of lost revenues if they do not competitively price their generation output—incentivizing them to make market-appropriate decisions regarding unit expenses and operations.¹⁰ As P3/EPSC witness Joseph Cavicchi noted, “generation owners in PJM’s wholesale markets are under constant pressure to minimize the cost of operation and make optimal investment decisions.”¹¹

The Stipulation distorts these market principles by awarding AEPGR with guaranteed cost recovery and a guaranteed return on and of equity equal to 10.38 percent. Under this regime, AEPGR has no financial incentive to act in a market-rational manner in its dealings with Dynegy as to the Co-Owned Units. As Dynegy witness Dean Ellis noted:

Under the Stipulation, AEPGR will be guaranteed a competitive market rate of return for years but without the risk of not making that return because of weak sales, increasing costs, or low priced competition. On the other hand, AEPGR will not have the risk typically associated with cost of service regulation that requires the units to be used and useful and to operate under set rates. And under the PPA, if costs go up, AEPGR can simply pass through increased costs to its affiliate (AEP Ohio) which in turn will pass on the cost increases to its customers through the non-bypassable PPA rider.¹²

⁸ *Id.* at 6.

⁹ *Id.*

¹⁰ *Id.* at 4.

¹¹ *Id.* at 8.

¹² *Id.* at 7.

In contrast, Dynegy's decisions regarding the Co-Owned Units must reflect and respond to market forces.¹³

For example, if low gas prices and warm weather this winter depress prices in the Duke Ohio Zone, Dynegy will have to reduce or possibly eliminate its margin, carefully control costs and carefully watch the market in order to make a profitable sale into the market for the 46.5% portion of the Zimmer plant it owns. By contrast, with the stipulated PPA proposal in place, AEPGR will simply bill AEP Ohio its costs for its 25.4% portion of Zimmer plant and collect its 10.38% rate of return.

P3/EPISA witness Joseph Cavicchi echoed these concerns, noting that the "guaranteed return of all costs including a return on equity will create incentives for [AEPGR] to sustain inefficient operations (i.e., operations and investment that would not be economic under PJM's market-determined prices)."¹⁴

3. *The Commission's Decision Forces Dynegy to Abide by AEPGR's Market-Irrational Decisions*

In its decision, the Commission prohibited AEP Ohio from recovering costs associated with capacity performance penalties.¹⁵ The Commission attempted to address the concern expressed by a number of parties in this proceeding that the penalties that arise from AEP Ohio's inability to abide by its capacity performance obligations in PJM would flow through to the ratepayers through the PPA Rider. But in its attempt to address one defect with the PPA Rider mechanism, the Commission created another by allowing AEP Ohio to retain all capacity performance bonuses, rather than flowing such bonuses on to the ratepayers.¹⁶ As things stand now, while AEP Ohio (and AEPGR) are no longer incentivized to disregard capacity performance penalties, they have every incentive to maximize investments in AEPGR's plants so

¹³ *Id.* at 8.

¹⁴ P3/EPISA Ex. 8, Direct Testimony of A. Joseph Cavicchi at 7.

¹⁵ Opinion and Order at 87.

¹⁶ *Id.* at 88.

as to earn capacity performance bonuses, even if such investments would be objectively uneconomic to an unsubsidized merchant generator like Dynegy, who enjoys neither cost-recovery nor a guaranteed return on and of equity.

The Commission's decision to allow AEP Ohio to retain capacity performance bonuses is particularly corrosive to the relationship between AEPGR and Dynegy in the Co-Owned Units. Whereas the competitive markets once incented all the co-owners to operate the Co-Owned Units in a manner that emphasized efficiency, reliability and profitability, the Commission's decision has caused the owners' motivations to radically diverge.

Because AEPGR receives its costs and a return on and of equity in the Co-Owned units, it is no longer incentivized to undertake capital improvements to the Co-Owned Units in a manner that carefully balances the putative gains from such improvement against their costs, and ultimately, the units' profitability. AEPGR is now motivated, however, to pursue capacity performance bonuses for its affiliate AEP Ohio. Thus, AEPGR can be expected to act in its self-interest and pursue costly expenditures that maximize the possibility of obtaining such bonuses without considering the impacts of the costs expended to attain such bonuses on the profitability of the Co-Owned Units. P3/EPSA witness noted this concern, testifying that AEPGR would seek to make investments in its plants without regard to market concerns, all because the costs are being borne by the ratepayers.¹⁷ Dynegy, however, does not enjoy the luxury of ignoring market forces in making capital improvement decisions for the Co-Owned Units. Simply put, the Commission's decision places Dynegy and AEPGR directly at odds with respect to future capital expenditures.

AEPGR, Dynegy, and DP&L operate the Co-Owned Units through an operating committee, comprised of a representative from each co-owner, which is responsible for

¹⁷ P3/EPSA Ex. 8 at 7.

overseeing expenses, maintenance, and other decisions concerning the Co-Owned Units.¹⁸ In most cases, the operating committee makes decisions involving the Co-Owned Units through a majority vote of the three unit owners.¹⁹ Can DP&L be counted on to side with Dynegy when evaluating uneconomic capital improvements? Not likely. DP&L could easily seek to file its own ESP application that operates just like the PPA Rider, and that would include certain DP&L plants, including the Co-Owned Units.²⁰ Similar to AEPGR, if such a proposal by DP&L were approved, it would immunize DP&L's Co-Owned Units from the constraints and risks inherent in competitive markets. If the Commission similarly allowed DP&L to retain capacity performance bonuses, DP&L would be motivated to pursue such bonuses and side with AEPGR in any vote to approve uneconomic capital improvements to the Co-Owned Units.

The result: Dynegy, which must adhere to the demands of the competitive markets and which enjoys neither cost recovery nor a return on and of equity, will be compelled by two generators who receive these benefits into decisions that commit Dynegy to uneconomic investments for the Co-Owned Units. To be held hostage by owners with radically divergent rights and incentives is patently unfair to Dynegy and demonstrates that this Commission was unreasonable and unlawful in allowing cost recovery related to the Co-Owned Units to flow through the PPA Rider.

¹⁸ Tr. Vol. 17 at 1175.

¹⁹ *Id.* at 1214.

²⁰ Indeed, DP&L has done just that, as its filing on the PUCO docket indicates. *See In the Matter of the Application of the Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 16-0395-EL-SSO, et al, Application (February 22, 2016) at 1-2.

B. Violations of Ohio Law.

Assignment of Error No. 2: The Commission's Holding That the PPA Rider is Authorized by R.C. 4928.143(B)(2)(d) was Unreasonable and Unlawful.

The Opinion and Order acknowledged that the Commission's authority to approve the PPA Rider depends on the satisfaction of the requirement in R.C. 4928.143(B)(2)(d).²¹ Section 4928.143(B)(2)(d) provides that an electric security plan may include the following:

- (d) Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service. (emphasis added).

The Commission concluded that the PPA Rider satisfies subsection (d) as a “credit or charge” that “would operate as a financial limitation on customer shopping for retail electric generation service” and that it has the effect of stabilizing retail rates.²² For the following reasons, this finding is unreasonable and unlawful and should be reversed on rehearing.

1. The PPA Rider is not a Charge

To be permissible under Section 4928.143(B)(2)(d), the PPA Rider must be a “term, condition, or charge” that relates to certain enumerated items.²³ In approving the PPA Rider, the Commission noted that its first task was “to evaluate the parties’ projections, in order to determine a reasonable overall estimate of the PPA Rider’s net credit or charge based on the evidence of record.”²⁴ The Opinion and Order concludes that based on the evidence, “the PPA

²¹ Opinion and Order at 94.

²² *Id.* at 94.

²³ R.C. 4928.143(B)(2)(d) (emphasis added).

²⁴ Opinion and Order at 78.

Rider is reasonably estimated to provide a net credit to Ohio's ratepayers of \$37 million over the current ESP term, or \$214 million over the PPA Rider term, for AEP Ohio's ratepayers."²⁵

But in finding that the PPA Rider is authorized under Section 4928.143(B)(2)(d), the Opinion and Order concludes that the "PPA rider, as presented in the amended application and the stipulation, is a credit or charge that would appear on customers' bills."²⁶ Significantly, the word "credit" does not appear anywhere in Section 4928.143(B)(2)(d) and the Commission is without authority to read it into the statute. *See In re Columbus S. Power Co.*, 128 Ohio St.3d 512, ¶ 32 (2011) ("[I]f a given provision does not fit within one of the categories listed 'following' (B)(2), it is not authorized by statute"); *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-Ohio-1608, ¶ 49 ("[I]n construing a statute, we may not add or delete words."). Because the PPA Rider can switch between a payment from AEP Ohio to ratepayers, *or* a payment from the ratepayers to AEP Ohio, it is not solely a "charge." Section 4928.143(B)(2)(d) does not authorize a "credit," only a "charge" whereby the utility charges the ratepayer a fee. The Commission has no authority to allow a "credit," i.e., a payment *from* the utility *to* the ratepayer, and therefore, the Commission's order is unlawful and should be reversed on rehearing.

2. *The PPA Rider Does not Limit Customer Shopping*

To be sustained under R.C. 4928.143(B)(2)(d), the PPA Rider must satisfy one of the enumerated items in subsection (d), which includes "limitations on customer shopping for retail electric generation service." The Commission found that the PPA Rider "would operate as a financial limitation on customer shopping for retail electric generation service."²⁷ But the Commission conceded that the PPA Rider "does not prohibit or otherwise curtail customers from

²⁵ *Id.* at 80 (emphasis added).

²⁶ *Id.* at 93-94 (emphasis added).

²⁷ *Id.* at 94.

securing their electric service from a CRES provider nor will the rider restrict current CRES customers.”²⁸ Rather, the Commission noted, “[t]he effect of the PPA rider is that the bills of all customers would reflect a price for retail electric generation service that is approximately 30 percent based on the cost of service of the PPA units and 70 percent based on the retail market, thus functioning as a financial hedge against complete reliance on the retail market for the pricing of retail electric generation service.”²⁹ The Commission’s reasoning is unlawful, unreasonable and should be reversed on rehearing.

The term “limitation” is understood in its plain sense to denote “the act of controlling the size or extent of something” or “control[ling] how much of something if possible or allowed.”³⁰ No party to these proceedings asserts that the PPA Rider controls the “size or extent” of the class of AEP Ohio ratepayers that shop for generation with a CRES provider, or alternatively, prohibits ratepayers from migrating to or from AEP Ohio’s SSO load. Indeed, as AEP Ohio’s witness Steven M. Fetter noted: “the PPA and PPA Rider are structured to be nonbypassable, so that every customer will be subject to the charge or credit resulting from [the PPA Rider].... Accordingly, the dynamic between CRES customers and those subject to the SSO auction price will not be skewed by the presence of the proposed PPA.”³¹

The requirement relating to “limitations on customer shopping for retail electric generation service” is plain and unambiguous and the Commission lacks the authority to ignore it or subvert its plain meaning. See *Doe v. Marlinton Local Sch. Dist. Bd. of Educ.*, 122 Ohio St.3d 12, 2009-Ohio-1360, ¶ 29 (“It is our duty to apply the statute as the General Assembly had drafted it; it is not our duty to rewrite it.”). Because the PPA Rider is nonbypassable and does

²⁸ *Id.* at 95.

²⁹ *Id.* at 94.

³⁰ Merriam-Webster Online Dictionary, <http://www.merriam-webster.com> (accessed April 24, 2016).

³¹ Company Ex. 3, Direct Testimony of Steven M. Fetter at 9.

not prohibit AEP Ohio's ratepayers from shopping for generation through a CRES provider or migrating to or from AEP Ohio's SSO load, under the plain meaning of R.C. 4928.143(B)(2)(d), it is *not* a "limitation" on shopping. Therefore, the Commission's finding that the PPA Rider is a limitation on customer shopping is unlawful and should be reversed on rehearing.

3. *The PPA Rider Does not Provide Rate Stability or Certainty*

The Commission's finding that the PPA Rider satisfies R.C. 4928.143(B)(2)(d) should be reversed for a yet another reason. To comply with that statute, a rider must have "effect of stabilizing or providing certainty regarding retail electric service." The Opinion and Order concludes that this requirement was satisfied as the PPA Rider "would operate as a financial hedging mechanism with the effect of stabilizing or providing certainty regarding retail electric service" and would "mitigate. . . the effects of market volatility, providing customers with more stable retail pricing and a measure of protection against substantial increases in market prices[.]"³² But the Commission's decision fails to consider in any substantive manner the considerable evidence presented in this case that the PPA Rider will, in fact, increase rate *instability*, contrary to the requirements of R.C. 4928.143(B)(2)(d). *See* R.C. 4903.09; *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 312 (1987) (R.C. 4903.09 requires the Commission to set forth the reasons for its decisions and prohibits summary rulings and conclusions that do not develop the supporting rationale or record); *In Re Comm. Rev. of Capacity Charges of Ohio Power Co.*, Slip Opinion No. 2016-Ohio-1607 at ¶ 51 ("AEP is correct that the Commission failed to address its arguments in any substantive manner. According, we remand the cause to correct this error."). On rehearing, the Commission should find that the PPA Rider does not have the effect of stabilizing retail rates.

In finding that the PPA Rider is needed for wholesale rate stability, the Commission

³² Opinion and Order at 94.

failed to consider evidence that the PJM wholesale markets are already stable. Dynegy witness Ellis noted that the last decade has “shown wholesale prices to be relatively stable and even declining, despite relatively short periods in time when the region experienced record cold weather.”³³ Moreover, as Mr. Ellis explained, in response to the Polar Vortex of 2014, PJM took steps to further ameliorate wholesale price volatility by instituting the Capacity Performance product, which provides an incentive for capacity suppliers to perform, thereby reducing wholesale price volatility.³⁴ P3/EPSC witness Cavicchi agreed, noting that “[w]hile price volatility is relatively high for daily electric supply, for longer-term energy supply the volatility of prices is much lower.”³⁵ And it’s the longer-term forward market energy prices, not day-to-day prices that drive retail power price volatility.³⁶ Therefore, concerns over wholesale price volatility simply does not justify the PPA Rider.

Similarly, the Commission did not address evidence that the PPA Rider is not justified on the grounds of addressing retail rate volatility. Rather, the record in this proceeding establishes that ratepayers subject to the PPA Rider will experience greater fluctuations in retail rates because the rider amounts will change quarterly, but not in a way that corresponds to actual costs. The PPA Rider’s initial rate will be set based on projected costs and revenues and that rate will remain in effect until it is adjusted the following quarter.³⁷ Until the first quarterly reconciliation, this initial rate will remain static, and therefore, will not be “counter-cyclical” to wholesale market prices.

The quarterly reconciliation process will also heighten rate instability. As AEP witness Allen acknowledged, the reconciliation mechanism for the PPA Rider will result in the actual

³³ Dynegy Ex. 1 at 16.

³⁴ *Id.* at 17.

³⁵ P3/EPSC Ex. 8 at 11.

³⁶ *Id.* at 12.

³⁷ Ex. 52 at Settlement Ex. WAA-1 at 6.

credits/charges from PJM market activities being added to the PPA Rider one full quarter after the credits/charges are received.³⁸ P3/EPSCA witness Joseph Cavicchi found that “[w]ith power prices and PPA costs moving in many possible directions over time any supposed additional stability is practically impossible to quantify * * *.”³⁹ Using the wholesale market from 2011 to 2015 to estimate the impact of the quarterly reconciliation process, Mr. Cavicchi established that quarterly reconciliations will introduce significant swings in rates up and down resulting in reconciliation adjustments by tens of millions of dollars per quarter.⁴⁰

As a result of these reconciliations, customers’ rates may not change in a corresponding fashion with the SSO or generation charge from a CRES provider or aggregator. AEP Ohio witness Vegas noted, for example, that customers under AEP Ohio’s SSO load do not experience short-term volatility, but may experience volatility through the layering of incremental SSO auctions into the SSO auction price.⁴¹ Mr. Vegas also acknowledged that shopping customers under fixed-price contracts will not experience short-term volatility, but may experience volatility when they interest into later fixed-price contracts.⁴² As to these customers, who enjoy long periods of stable rates, the quarterly-adjustments of the PPA Rider will cause these customers to experience increased volatility. This volatility will lead to likely confusion, as the attendant several-month lag in the reconciliation mechanism may result in rate variations that do not correspond to the customer’s usage or weather conditions.⁴³

On rehearing, the Commission should address this evidence and find that the PPA Rider does not promote rate stability or certainty as required by R.C. 4928.143(B)(2)(d).

³⁸ Tr. Vol 18 at 4521.

³⁹ P3/EPSCA Ex.13, Supplemental Testimony of A. Joseph Cavicchi at 20.

⁴⁰ *Id.*

⁴¹ Tr. Vol. 1 at 133.

⁴² *Id.* at 134.

⁴³ Tr. Vol. 18 at 4521. For example, the second quarter PPA results will not be included in the PPA Rider until the beginning of the fourth quarter. *See* Tr. Vol. 18 at 4521.

Assignment of Error No. 3: The Commission's Failure to Find That the Stipulation and the PPA Rider Violate R.C. 4928.17, Which Requires Corporate Separation Between an Electric Utility and its Generation Affiliate, was Unreasonable and Unlawful.

R.C. 4928.17 prohibits an electric utility from supplying both a non-competitive retail electric services (i.e., distribution) and competitive retail electric service (i.e., generation) except under a corporation plan approved by the Commission. The Commission concluded that the Stipulation and the PPA Rider do not violate R.C. 4928.17.⁴⁴ This conclusion is unreasonable, unlawful, and should be reversed on rehearing.

As required by R.C. 4928.17, AEP Ohio has separated its legacy generation assets, placing those assets into AEPGR so that AEPGR can engage in sales for resale as regulated by the FERC.⁴⁵ Therefore, today, AEPGR's generation related business is structurally separated from the regulated transmission and distribution related businesses, which remain with AEP Ohio.⁴⁶ But separation between AEPGR and AEP Ohio will not be enforced after this Commission's adoption of the Stipulation. AEP Ohio's witness testimony establishes that AEP Ohio will be actively involved in the operation of AEPGR's PPA units.⁴⁷ Moreover, under the draft of the PPA in the record, AEP Ohio, AEPGR and American Electric Power Service Corporation will be members of an Operating Committee that will have oversight of the PPA units and will develop operating procedures for the generation, delivery and receipt of the energy under the PPA.⁴⁸

The PPA states that the Operating Committee will make a myriad of decisions regarding the PPA units, including (i) retirement dates of the plants for depreciation or other purposes;

⁴⁴ Opinion and Order at 101-02.

⁴⁵ See *In re. Ohio Power Company for Approval of an Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Finding and Order Oct. 17, 2012, 4-6 and 25.

⁴⁶ *Id.*

⁴⁷ Tr. Vol. 2 at 602-603.

⁴⁸ P3/EPSCA Ex. 10 at 25 of 32.

(ii) annual budgets; (iii) capital expenditures; (iv) procedures and systems for dispatch and notification of dispatch; (v) procedures for communication and coordination with regard to unit capacity availability; (vi) discussion of scheduling of outages for maintenance; (vii) the return to availability following an outage; (viii) approval of material contracts for fuel; (ix) establishment of specifications for fuels; and (x) other duties as assigned.⁴⁹

AEP Ohio witness Allen acknowledged that the Operating Committee will discuss significant issues related to the operation of the units, but claimed the existing code of conduct in AEP Ohio's tariff will address AEP Ohio's direct involvement with the generation assets.⁵⁰ A review of that code of conduct reveals no such protections that would apply or allow the sharing of information between AEP Ohio and AEPGR on the generation plants.⁵¹

Additionally, AEP Ohio witness Allen testified that AEPGR (on AEP Ohio's behalf) will be bidding the PPA units into the PJM markets at the very same time that AEPGR will be bidding the other units into the PJM markets.⁵² Mr. Allen testified that bidding information will be kept separate and the AEPGR employees will conduct these bids consistent with the aforementioned code of conduct.⁵³ Yet, these AEPGR employees will all be in the same building, will work for the same corporate group, and be under the same chain of command.⁵⁴ These employees would not be fully separated and a code of conduct will not be sufficient to protect against errors and abuses.

Without addressing these concerns, the Opinion and Order concludes that the Stipulation and the PPA Rider do not violate R.C. 4928.17, because that statute contains an exception,

⁴⁹ Sierra Club Ex. 2 at 21; P3/EPSCA Ex. 10 at 21.

⁵⁰ Tr. Vol. 18 at 4493.

⁵¹ See Ohio Power Company OAD Tariff, 1st Revised Sheet Nos. 103-44D and 103-45D; OAC Rule 4901:1-37-04(D).

⁵² Tr. Vol. 18 at 4486, 4659.

⁵³ *Id.* at 4486-4487.

⁵⁴ *Id.*

providing that an electric utility must comply with R.C. 4928.17 “[e]xcept as otherwise provided in sections * * * 4928.143 * * * of the Revised Code.”⁵⁵ The Opinion and Order finds that because the PPA Rider is authorized under R.C. 4928.143, it is therefore excepted from the corporation separation requirements of R.C. 4928.17.⁵⁶ But as discussed above, the PPA Rider does not comply with R.C. 4928.143 as it is not a “charge,” does not limit customer shopping for retail electric generation service, and fails to provide for rate stability or certainty under subsection (B)(2)(d). Therefore, this exception does not apply.

The Commission’s conclusion here fails for another reason. While R.C. 4928.17 may exclude items “provided in sections * * * 4928.143,” nothing in R.C. 4928.143 negates the corporate separation requirements of R.C. 4928.17. Even if the Commission reaffirms its finding that the PPA Rider is authorized by R.C. 4928.143, the PPA Rider—standing alone—would not allow AEP Ohio to reassert de-facto ownership over AEPGR’s generation plants. The Commission did not explain why it believed the active involvement of AEP Ohio in AEPGR’s operations of the PPA units was necessary for the PPA Rider to function (another reversible error by the Commission). In any event, R.C. 4928.143 does not excuse AEP Ohio’s failure to comply with R.C. 4928.17.⁵⁷

For these reasons, the Commission’s finding that the PPA Rider and Stipulation do not violate R.C. 4928.17 is unlawful and should be reversed on rehearing.

⁵⁵ Opinion and Order at 101.

⁵⁶ *Id.* at 101-02.

⁵⁷ See also, *Electric Power Supply Association et al. v. AEP Generation Resources, Inc. and Ohio Power Company*, 155 FERC ¶ 61, 102 at ¶ 67 (April 27, 2016) (requiring filing by Respondents and their affiliates to allow for review of PPA impact on other existing waivers including § 35.39(c) (separation of functions) and § 35.39(d) (information sharing).

Assignment of Error No. 4: The Commission's Failure to Find That the PPA Rider Violates AEP Ohio's OAD Tariff Code of Conduct was Unreasonable and Unlawful.

When asked whether AEPGR will be bidding the PPA units into the PJM markets on behalf of AEP Ohio at the same time that it would be bidding its non-PPA units, AEP Ohio witness Allen agreed that this would be the case, but qualified his statement by noting that AEPGR's bidding will be consistent with AEP Ohio's code of conduct,⁵⁸ which appears to be the code of conduct in AEP Ohio's open access distribution ("OAD") tariff.⁵⁹ In its brief, Dynegy noted that the PPA transaction in fact violates that code, which states that:⁶⁰

[t]he Company shall not tie (nor allow an affiliate to tie) or otherwise condition the provision of the Company's regulated services, discounts, rebates, fee waivers, or any other waivers of the Company's ordinary terms and conditions of service, including but not limited to tariff provisions, to the taking of any goods and/or services from the Company's affiliates.

In its Opinion and Order, the Commission disagreed with Dynegy, finding that the PPA Rider operates as a financial hedge for retail customers, while the OAD tariff concerns "physical generation."⁶¹ The Commission further found that because the energy, capacity and ancillary services from the PPA units would be sold into the PJM markets, AEP Ohio's regulated services are "not linked to the goods or services from AEPGR" and therefore, the PPA Rider does not violate the OAD tariff.⁶² But the Commission read the term "services" far too narrowly. Nothing in the OAD tariff's language restricts "services" to embrace solely physical generation. Under the Stipulation, AEP Ohio's customers are required to pay the PPA Rider, which compensates AEP Ohio for its costs in purchasing the output of the PPA units from AEPGR. In

⁵⁸ Tr. Vol. 18 at 4486-4487.

⁵⁹ *Id.*

⁶⁰ Ohio Power Company OAD Tariff, 1st Revised Sheet Nos. 103-44D and 103-45D; OAC Rule 4901:1-37-04(D) (emphasis added).

⁶¹ Opinion and Order at 101.

⁶² *Id.*

return, the PPA Rider, according to AEP Ohio, acts as a “hedge”—i.e., a financial *service* for AEP Ohio’s ratepayers that depends on the “taking” of generation services from AEP Ohio’s affiliate, AEPGR. Although AEP Ohio’s ratepayers may not be directly receiving AEPGR’s PPA unit generation, their receipt of AEP Ohio’s regulated wires services is conditioned on paying for, and (according to AEP Ohio), receiving an economic value from the generation output of AEPGR in the form of the “hedge”—a clear violation of the tariff’s code of conduct. Therefore, the Commission erred in failing to find that the PPA Rider violates AEP Ohio’s OAD tariff.

Assignment of Error No. 5: The Commission’s Failure to Find That the PPA Rider Will Violate R.C. 4905.22 as an Unreasonable Charge was Unreasonable and Unlawful.

Intervenor P3/EPSC objected in this proceeding that the PPA Rider violated R.C. 4905.22.⁶³ The Commission did not expressly address this objection but appeared to implicitly reject it—a reason that alone supports reversal. *See In re Comm. Rev. of Capacity Charges of Ohio Power Co., supra*, ¶ 52 (“AEP is correct that the commission failed to address its argument in any substantive manner. Accordingly, we remand the cause to correct this error.”). On rehearing, the Commission should address this question and find that the PPA Rider violates R.C. 4905.22.

1. The PPA Is an Unreasonable Charge Because it Shifts Significant Risk From AEPGR to Ratepayers

R.C. 4905.22 requires that “[a]ll charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable . . . and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service” The PPA Rider, based on a PPA

⁶³ P3/EPSC Initial Brief at 76; P3/EPSC Reply Brief at 28.

between AEP Ohio and AEPGR that was not the result of any competitive process, is an unjust, unreasonable charge that is passed from AEP Ohio to its ratepayers, in violation of R.C. 4905.22.

Here, the Commission concluded that the PPA Rider will result in a projected \$37 million net credit to customers over the current ESP term, or \$214 million over the term of the PPA Rider.⁶⁴ But the Commission failed to consider the testimony of P3/EPSA witness Cavicchi, who criticized the AEP Ohio projections and presented adjusted projections based on (i) more current and accurate natural gas price assumptions separate from the U.S. Energy Information Administration's data and (ii) revised electric demand assumptions.⁶⁵ Mr. Cavicchi's testimony indicates that lower commodity prices over the next several years could result in significant charges under the PPA Rider.⁶⁶ This testimony was also corroborated by testimony of Sierra Club witness Paul Chernick and IGS witness Leanza.⁶⁷ Exposing Ohio ratepayers to the risk of incurring significant charges through AEP Ohio's "hedge" is per se unreasonable and violates R.C. 4905.22.

2. *The PPA Rider is an Unreasonable Charge Because the Commission Failed to Mitigate the Risks That the PPA Rider Poses to Ratepayers*

The transfer of a real and substantial risk to AEP Ohio's ratepayers through the PPA Rider is patently unreasonable. But it is even more egregious, because even if the Commission believes that the PPA Rider is more likely than not to benefit to ratepayers, the Commission could have mitigated (at least in part) the serious risks that the PPA Rider poses. That it failed to take such mitigation measures further demonstrates that the PPA Rider is unreasonable under R.C. 4905.22.

⁶⁴ Opinion and Order at 80.

⁶⁵ P3/EPSA Ex. 13 at 11-20 and Attachments AJC-S-1 through AJC-S-4D.

⁶⁶ *Id.*

⁶⁷ See Sierra Club Ex. 37, Direct Testimony of Paul Chernick, at 7; 4-33; IGS Ex. 7 at 4-5, 6-7. The Commission noted that Messrs. Chernick and Leanza's testimonies bear "no weight" as they were not updated following the filing of the Stipulation, but the Commission did not explain why their forecasts would not be applicable during the first eight years of the PPA Rider. See Opinion and Order at 79-80, n. 31.

One mitigating measure would have been to impose a dollar cap on PPA Rider charges, similar to what the Commission imposes in rate discount arrangements filed under R.C. 4905.31.⁶⁸ As RESA witness Bennett acknowledged, a ceiling for PPA Rider charges would be an appropriate means of balancing the putative harms and benefits of the PPA Rider.⁶⁹ The Commission did concede that “even the most reliable projections may be proven wrong in the future” and imposed a limitation that for the first two years of the PPA Rider, average customer bills will not increase more than five percent from the June 1, 2015 SSO rate plan bill schedules.⁷⁰ But this “limitation” is itself unreasonable, as it difficult to decipher, and at any rate, does not cover the remaining six years of the PPA Rider term, notwithstanding the continued risk of substantial charges in those years. Additionally, any revenue reduction resulting from this limitation during the first two years of the PPA Rider will be reflected in the calculation of the PPA Rider’s over/under-recovery balance for recovery during the last six years of the PPA Rider.⁷¹ This anemic limitation is grossly inadequate to protect ratepayers against the significant risks of the PPA Rider.

The Commission could have also required that any PPA included with the PPA Rider mechanism must be obtained through competitive bidding. Dynegy witness Ellis noted that states that have adopted competition in the electricity sector have realized significant cost savings for ratepayers, as well as greater choice in suppliers and product offerings.⁷² Ohio law also endorses competitive bidding. For example, competitive bidding is required for county

⁶⁸ See, e.g., *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, Case No. 09-119-EL-AEC, Opinion and Order, at 9 (July 15, 2009).

⁶⁹ RESA Ex. 1 at 10.

⁷⁰ Opinion and Order at 81.

⁷¹ *Id.* at 81-82.

⁷² Dynegy Ex. 1 at 24.

purchases, leases, or contracts..⁷³ Municipalities⁷⁴ and state agencies⁷⁵ are likewise required to procure supplies or services over a certain dollar amount through competitive bidding. Ohio courts too have recognized the many benefits of competitive bidding to both merchants/service providers and the public at large.⁷⁶

Competitive bidding is well recognized in public matters because it gives everyone an equal chance to bid, eliminates collusion, and saves taxpayers money. There has been a strong public policy in favor of competitive bidding to protect the public and eliminate collusion. It fosters honest competition in order to obtain the best work and supplies at the lowest possible price because taxpayers' money is being used. It is also necessary to guard against favoritism, imprudence, extravagance, fraud and corruption. Competitive bidding statutes are to be construed for the benefit of taxpayers and not bidders. The guidepost is the public interest.

The same is just as true here. In order to satisfy the reasonableness standard in R.C. 4905.22, AEP Ohio should not be allowed to recover the costs of a no-bid PPA through the PPA Rider. Any costs flowed through the PPA Rider should only be the result of a competitively bid PPA, and doing so would give other merchant generators an equal opportunity to compete against AEPGR, and result in a market-price PPA.

The Commission's failure to implement reasonable mechanisms to blunt the potential harm of the PPA Rider is further evidence that the PPA Rider is unreasonable and contravenes R.C. 4905.22.

⁷³ See R.C. 307.86.

⁷⁴ See R.C. 735.05.

⁷⁵ See R.C. 125.05(B).

⁷⁶ *United States Constructors & Consultants, Inc. v. Cuyahoga Metro. Hous. Auth.*, 35 Ohio App.2d 159, 300 (8th Dist.1973). *Accord State v. Bd. of Cnty. Comm'rs*, 8th Dist. Cuyahoga No. 36979, 1978 Ohio App. LEXIS 10306 at *9-10 (Apr. 27, 1978) (emphasis added).

C. The Commission's Oversight Over the PPA Rider is Insufficient.

Assignment of Error No. 6: The Commission's Finding That its Oversight Over the PPA Rider is Sufficient was Unreasonable and Unlawful.

The Commission found that its oversight over the PPA Rider is sufficient to satisfy the requirements of *ESP III*.⁷⁷ But the Commission failed to substantively address the objections of intervenors, including Dynegy, that the Commission's oversight of the PPA Rider was inadequate to protect ratepayers and the public interest. See *In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, Slip Opinion No. 2016-Ohio-1607, ¶ 52 (noting that Commission's failure to address objection in substantive manner is grounds for remand). On rehearing, the Commission should address these objections and modify its decision to enhance its oversight over the PPA Rider.

The Stipulation commits AEP Ohio to participate in annual compliance reviews before the Commission to ensure actions taken by AEP Ohio when selling output from its PPA units into the PJM markets are not unreasonable.⁷⁸ Notably, this provision only commits AEP Ohio to participate in an annual review regarding what is limited to the scope of its selling activities—not a review of the PPA Rider broadly.

Further, as AEP Ohio witness Allen conceded, the Commission's oversight will not extend to AEPGR.⁷⁹ The Stipulation does provide that AEPGR's "fleet information on any cost component" will be provided to the Commission if the Staff makes a reasonable request.⁸⁰ But core problems exist with this approach that the Commission failed to address in its Opinion and Order. First, the Commission does not have the right to audit the books of AEPGR.⁸¹ Second,

⁷⁷ Opinion and Order at 88.

⁷⁸ Joint Ex. 1 at 7.

⁷⁹ Joint Ex. 1 at 7; Tr. Vol. 18 at 4484.

⁸⁰ Joint Ex. 1 at 7.

⁸¹ Tr. Vol 1 at 69.

by tying information sharing to a Staff request, the Stipulation assures that no “full” information sharing will occur. Rather, the Staff will need to know what to ask for in advance in order to be entitled to information under the Stipulation. This loophole creates the serious risk that a plethora of documents will not be part of the so-called “rigorous” review simply because the Staff did not know to ask for it.

The Commission’s current level of oversight is unreasonable and inadequate to protect AEP Ohio’s ratepayers. On rehearing, the Commission should specifically address these objections and modify its Opinion and Order to enhance its level of oversight over the PPA Rider.

D. The Stipulation (Including the PPA Rider) does not Benefit Ratepayers and the Public Interest Under the Commission’s Three-Prong Test for Stipulations.

In order for the Stipulation to satisfy the Commission’s three-prong test, the Stipulation must, among other matters, benefit ratepayers and the public interest.⁸² The Opinion and Order erroneously concludes that the Stipulation does benefit ratepayers and the public interest.⁸³ But the Commission failed to address evidence in this proceeding that the Stipulation (including the PPA Rider) does significant harm to the interest of the Ohio public in maintaining and participating in competitive electricity markets. Moreover, the evidence established that the PPA Rider does not promote retail rate stability and that the purported benefits of grid reliability and fuel diversity are illusory because the PPA units will not close, whether or not the PPA Rider is approved. For these reasons, the Commission’s finding that the Stipulation (including the PPA Rider) benefits the interests of ratepayers and the public is unlawful, unreasonable, and should be reversed on rehearing.

⁸² *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* 68 Ohio St.3d 559, 562 (1994).

⁸³ Opinion and Order at 77.

Assignment of Error No. 7: The Commission's Failure to Substantively Address Concerns That the PPA Rider Threatens Competitive Markets and Impedes the Development of New Sources of Generation in Ohio was Unreasonable and Unlawful.

In concluding that the PPA Rider proposal favors the public interest, the Commission failed to substantively address the threats that the PPA Rider poses to the wholesale and retail markets. But the ample evidence in this proceeding establishes that the PPA Rider will do significant damage to the wholesale and retail markets. R.C. 4903.09 requires the Commission to explain its decision and identify, in sufficient detail to enable review, the record evidence upon which its orders are based. *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 312 (1987) (R.C. 4903.09 requires the Commission to set forth the reasons for its decisions and prohibits summary rulings and conclusions that do not develop the supporting rationale or record). The Commission was unreasonable and unlawful in ignoring this evidence.

The concerns over the harm of the PPA Rider to the PJM wholesale markets prompted Dr. Joseph Bowring, the PJM Market Monitor, to take the unprecedented move of traveling to Ohio to testify in these proceedings. Dr. Bowring testified that “[t]he proposed PPA Rider would constitute a subsidy analogous to the subsidies previously proposed in New Jersey and Maryland, both of which were found to be inconsistent with competition in the wholesale power markets.”⁸⁴ Dr. Bowring explained that the PPA Rider would return the PPA units “... to a version of the cost of service regulation regime that predated the introduction of competitive wholesale power markets.”⁸⁵ He also noted that the PPA Rider would allow AEP Ohio to offer capacity at a less-than-competitive level, which creates a price suppressive effect on the PJM

⁸⁴ IMM Ex. 2, First Supplemental Testimony of Joseph E. Bowring, at 4.

⁸⁵ *Id.*

capacity market.⁸⁶ Dr. Bowring concluded that such price suppressive effects “would make it difficult or impossible for generating units without subsidies to compete in the market.”⁸⁷

Other witnesses expressed similar concerns about the impact of the PPA Rider on the wholesale markets. Dynegy witness Dean Ellis testified that a subsidy like the PPA Rider could motivate the recipient of the subsidy to “engage in market behavior that would distort prices, such as offering its capacity or energy in the market at prices that do not reflect the owner’s actual cost of operations, suppressing the market clearing price for the other owners of generating units.”⁸⁸ Likewise, P3/EPSC witness Cavicchi noted that the PPA Rider is a subsidy, stating that it would create incentives for AEPGR to sustain inefficient operations, such as operations and investment that would not be economic under PJM’s market-determined prices.⁸⁹ He added that AEPGR would seek to make investments to support continued operations even when the investments are uneconomic relative to market alternatives, all because the costs are being borne by the ratepayers.⁹⁰

The harm of the PPA Rider extends to the retail markets as well. RESA witness Bennett noted that without a robust, sustainable wholesale market, the retail market does not exist.⁹¹ Exelon/RESA witness Campbell also explained that the PPA Rider impairs the progress made toward full retail and wholesale competition, and could erase the progress made to date.⁹² For instance, the PPA Rider could adversely affect SSO supply procurement in Ohio. Mr. Campbell opined that wholesale suppliers may become hesitant to bid against generation receiving cost

⁸⁶ *Id.* at 5.

⁸⁷ *Id.*

⁸⁸ Dynegy Ex. 1 at 21.

⁸⁹ P3/EPSC Ex. 8 at 7.

⁹⁰ P3/EPSC Ex. 8 at 7.

⁹¹ Tr. Vol. 22 at 5558-5559.

⁹² Exelon/RESA Ex. 1 at 6.

plus a return on equity, concluding that “[u]ltimately, the PPA Rider could compromise the wholesale SSO supply procurements that have brought considerable value to Ohio customers.”⁹³

Finally, the PPA Rider could discourage the siting of new generation in Ohio. Dr. Bowring explained that subsidies like the PPA Rider “would negatively affect the incentives to build new generation in Ohio and elsewhere in PJM and if adopted by others would likely result in a situation where only subsidized units would ever be built.”⁹⁴ This point was echoed by Dynegy witness Ellis.⁹⁵

One of the desired outcomes from competition in any market is that the most cost-effective and efficient suppliers will prevail, and the oldest, least efficient and most obsolete suppliers will exit the market. When the oldest, most expensive and least efficient suppliers are artificially kept in the market, market signals that would incentivize the development of newer, cheaper, cleaner plants are suppressed.

Similarly, RESA witness Bennett opined that the PPA Rider gives AEPGR a significant advantage over other competitors, which could deter and chill investments from others in new merchant plants in Ohio.⁹⁶

The Commission failed to substantively address the concerns Dr. Bowring and the other witnesses raised concerning the price-suppressive effects of the PPA Rider. The Commission did note that AEP Ohio will bear the burden of proof at its annual prudency reviews of demonstrating that its bidding behavior is prudent and in the best of interest of retail ratepayers.⁹⁷ But this annual review is simply inadequate to protect against the corrosive effects of the PPA Rider on the wholesale markets, especially because the annual review only applies to the year of cost recovery. In other words, AEP Ohio’s capacity bids will not be reviewed until after the

⁹³ *Id.* at 16.

⁹⁴ IMM Ex. 2 at 5.

⁹⁵ Dynegy Ex. 1 at 21-22.

⁹⁶ RESA Ex. 1 at 4.

⁹⁷ Opinion and Order at 89.

delivery year. Given this one year delay and the three-year delay between a capacity auction and its corresponding delivery year, AEP Ohio's price-suppressive bidding behavior will send out pricing signals that will deter investment in new Ohio generation *four years* prior to the Commission's review of such bidding behavior. By then, the damage to the PJM market and the price signals it sends will have already been done.

For the foregoing reasons, the Commission should find on rehearing that the PPA Rider does not benefit ratepayers and is not in the public interest.

Assignment of Error No. 8: The Commission's Finding That the PPA Rider Promotes Retail Rate Stability was Unreasonable and Unlawful.

As discussed above, the Commission found that the PPA Rider advances retail rate stability.⁹⁸ The Commission made this finding in connection with its (erroneous) finding that the PPA Rider satisfies the requirements of R.C. 4928.143(B)(2)(d).⁹⁹ The Commission also appeared to find stability is a benefit to ratepayers and the public interest under its three-prong test for stipulations.¹⁰⁰ But as discussed in Assignment of Error No. 2 above, the Commission ignored evidence that the PPA Rider will have no positive effect on retail rate stability, and may, in fact, destabilize retail rates. As noted in that discussion, the PPA Rider and its quarterly reconciliation mechanism will introduce significant swings in customers' rates in ways that do not correspond to the customers' usage or weather conditions, defeating the expectations of SSO and fixed-contract shopping ratepayers who already enjoy stable retail rates. On rehearing, the Commission should address this issue and conclude that the PPA Rider does not benefit ratepayers or the public through its claimed ability to enhance retail rate stability.

Assignment of Error No. 9: The Commission Ignored Evidence That AEPGR and OVEC are not Closing Their Plants.

⁹⁸ Opinion and Order at 83.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

The Commission accepted AEP Ohio's claim that its PPA plants are at risk of premature retirement;¹⁰¹ thereby justifying the PPA Rider. The Commission also noted the testimony of AEP Ohio witnesses who warned about the expected impact of the PPA unit closures on economic development.¹⁰² Finally, the Commission noted that the continued retirement of generating units would necessitate costly transmission upgrades.¹⁰³ But the Commission ignored considerable evidence that this parade of horrible will not come to pass; the PPA units will not close, regardless of whether or not the PPA Rider is approved.

AEPGR owns a minority of the net capacity of the units it proposes to include its PPA. In fact, as shown below, AEPGR only owns three units outright, the rest are co-owned with Dynegy and DP&L.

List of PPA Generating Units with AEP-Controlled Capacity¹⁰⁴

Generation Unit	Total Size (MW)	AEP Share (MW)	MW of Plants Wholly Owned by AEP
Cardinal Unit	592 MW	592 MW	<i>592 MW</i>
Conesville Units 5-6	810 MW	810 MW	<i>810 MW</i>
Conesville Unit 4	779 MW	339 MW	<i>0 MW</i>
Stuart Units 1-4	2,308 MW	600 MW	<i>0 MW</i>
Zimmer Unit 1	1,300 MW	330 MW	<i>0 MW</i>
OVEC ¹⁰⁵	1,086 MW	423 MW	<i>0 MW</i>
Total	6,875 MW	3,094 MW	<i>1,402 MW</i>

¹⁰¹ Opinion and Order at 86.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Compiled from Dynegy Ex. 1, Direct Testimony of Dean Ellis.

¹⁰⁵ OVEC is comprised of two plants – Clifty Creek in Jefferson County, Indiana, and Kyger Creek in Gallia County, Ohio. The amount shown above represents the portion of OVEC located in Ohio (the Kyger Creek plant). Dynegy Ex. 1 at 10.

Further, the majority of the AEPGR PPA plants are not operated by AEPGR.¹⁰⁶ Likewise, AEP Ohio only has a 19.93% share to the OVEC units, and the remaining shares are owned by other companies.¹⁰⁷

Significantly, and as noted earlier, AEPGR, Dynegy, and DP&L operate the co-owned units through an operating committee comprised of a representative from each co-owner, which is responsible for overseeing expenses, maintenance, and other decisions concerning the units.¹⁰⁸ Most decisions involving these plants are made through a majority vote of the three owners.¹⁰⁹ But plant retirements are different. Retirement decisions cannot be unilaterally made by one owner. Each owner has a veto over any proposed closure of the units.¹¹⁰ As AEP Ohio witness Thomas acknowledged, “[w]ith respect to the Stuart units, Zimmer, and Conesville 4, that is a correct statement because it’s a unanimous vote to retire a co-owned unit like that within that ownership arrangement.”¹¹¹ And as Dynegy witness Ellis noted, “Dynegy intends to continue to operate and invest in [these] plants,”¹¹² rather than retire them. Given that unanimity is required for retirement decisions, threats of imminent retirement of co-owned units are simply not credible. And because the plants will not close, the threats of job loss are also unfounded. The Commission ignored this evidence. To do so was unreasonable and unlawful, and on rehearing, the Commission should find that the PPA Rider proposal is not justifiable on grounds involving the closure of the plants.

¹⁰⁶ Company Ex. 5 at 3-5.

¹⁰⁷ Sierra Club Ex. 12 at 1.

¹⁰⁸ Tr. Vol. 17 at 1175.

¹⁰⁹ *Id.* at 1214.

¹¹⁰ Dynegy Ex. 1 at 9; Company Ex. 1 Direct Testimony of Pablo Vegas at 11.

¹¹¹ Tr. Vol. 4 at 1203.

¹¹² Dynegy Ex. 1 at 9; Company Ex. 1 at 11.

Assignment of Error No. 10: The Commission's Finding That the PPA Rider Promotes Grid Reliability or Fuel Diversity was Unreasonable and Unlawful.

AEP Ohio has maintained that the PPA Rider advances grid reliability and supply diversity by guarding against the early retirement of the PPA units, which have the ability to store fuel on site and thus maintain reliability during adverse weather conditions.¹¹³ According to AEP Ohio, retirement of these units could lead to increased market volatility and result in an over-reliance on natural gas generation facilities, and necessitate costly transmission system upgrades.¹¹⁴ The Commission agreed, finding that the PPA proposal will “facilitate generation fuel supply diversity and work to offset the price volatility impact that any single fuel source may have on electric rates.”¹¹⁵ It also observed that the closure of the PPA units could lead to costly transmission system upgrades.¹¹⁶

The Commissions’ findings hinge on the assumption that the PPA units will close without the PPA Rider. But, as discussed in Assignment of Error No. 9 above, this assumption is belied by the fact that these plants will not close, meaning that Ohio will continue to have coal-fired base load generation in place, regardless of whether the PPA Rider is approved. This also disposes of AEP Ohio’s argument regarding grid reliability. Lastly, because the plants are not going to close, the specter of costly transmission upgrades also disappears. Therefore, the Commission’s Finding that the PPA Rider promotes grid reliability and fuel diversity is unlawful, unreasonable, and should be reversed on rehearing.

¹¹³ Opinion and Order at 68.

¹¹⁴ *Id.* (summarizing arguments).

¹¹⁵ *Id.* at 83.

¹¹⁶ *Id.* at 84.

III. CONCLUSION

For the foregoing reasons, the Commission should grant this Application for Rehearing and reject the Stipulation and the PPA Rider.

Respectfully submitted,



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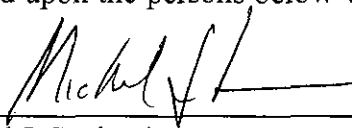
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CERTIFICATE OF SERVICE

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