

**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)	Case No. 14-1693-EL-RDR
Purchase Agreement for Inclusion in the)	
Power Purchase Agreement Rider.)	

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

**JOINT APPLICATION FOR REHEARING
OF
THE PJM POWER PROVIDERS GROUP
AND
THE ELECTRIC POWER SUPPLY ASSOCIATION
FROM THE SECOND ENTRY ON REHEARING**

Pursuant to Revised Code Section ("R.C.") 4903.10 and Ohio Administrative Code Rule 4901-1-35, the PJM Power Providers Group ("P3")¹ and the Electric Power Supply Association ("EPSA")² submit this Joint Application for Rehearing of the November 3, 2016 Second Entry on Rehearing issued by the Public Utilities Commission of Ohio ("Commission") in this matter. P3 and EPSA are parties to this proceeding and actively participated in all phases of the proceeding.

¹ P3 is a non-profit organization whose members are energy providers in the PJM Interconnection LLC ("PJM") region, conduct business in the PJM balancing authority area, and are signatories to various PJM agreements. Altogether, P3 members own over 84,000 megawatts ("MWs") of generation assets, produce enough power to supply over 20 million homes, and employ over 40,000 people in the PJM region, representing 13 states and the District of Columbia. This application for rehearing does not necessarily reflect the specific views of any particular member of P3 with respect to any argument or issue, but collectively presents P3's positions.

² EPSA is a national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. This application for rehearing does not necessarily reflect the specific views of any particular member of EPSA with respect to any argument or issue, but collectively presents EPSA's positions.

P3 and ESPA jointly file this Application for Rehearing because the Commission's November 3, 2016 Second Entry on Rehearing is unreasonable and unlawful in the following respects:

1. The Commission erred by authorizing an OVEC-only PPA rider because an OVEC-only PPA rider is not authorized under R.C. 4928.143(B)(2)(d).
2. The Commission erred by finding that an OVEC-only PPA rider will provide rate stability.
3. The Commission erred by allowing AEP Ohio to defer and recover any OVEC costs incurred for the period June 2016 through December 2016.

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

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Through this Joint Application for Rehearing, the PJM Power Providers Group and the Electric Power Supply Association (“P3/EP SA”) assert three grounds for rehearing from the Public Utilities Commission of Ohio’s (the “Commission”) November 3, 2016 Second Entry on Rehearing. First, the Commission’s determination that an OVEC-only PPA rider is authorized under R.C. 4928.143(B)(2)(d) is unreasonable and unlawful. This rider is not intended to be a “charge,” is not a limitation on shopping as the plain language of the statute mandates and has nothing to do with rate stability.

Second, the Commission’s conclusion that an OVEC-only PPA rider will lead to rate stability is unreasonable. The amount of megawatts (440) and low amount of projected credit through May 31, 2018 (\$11 million) will not provide any “significant financial hedge” that would impact rates. Indeed, AEP Ohio’s new proposal in its ESP III extension proceeding (Case No. 16-1852-EL-SSO) to use its OVEC entitlement to serve SSO load and terminate the OVEC-only PPA rider next year shows that the OVEC-only PPA rider is a farce meant to transfer and avoid market risk.

Third, the Commission’s directive to AEP Ohio to defer and collect OVEC entitlement costs covering the period of June 2016 through December 2016 was unreasonable and unlawful. No oversight is provided over that recovery and, as the Second Entry on Rehearing is written, AEP Ohio will be allowed to keep any revenues related to the OVEC entitlement. If the rider is permitted, AEP Ohio should only recover OVEC costs net of revenues, and if revenues exceed costs, should pay the difference to ratepayers.

For all of these reasons, the Commission should grant rehearing regarding the Second Entry on Rehearing.

II. ARGUMENT

A. The Commission acted unlawfully and unreasonably by authorizing an OVEC-only PPA rider because such a rider is not authorized under R.C. 4928.143(B)(2)(d).

In its Second Entry on Rehearing, the Commission approved AEP Ohio's request to modify the stipulation to only include the OVEC PPA in the PPA rider.³ In doing so, the Commission relied on its *ESP III* decision wherein it concluded that AEP Ohio's PPA proposal was authorized by R.C. 4928.143(B)(2)(d),⁴ a holding the Commission reiterated in its March 31, 2016 Opinion and Order in this proceeding⁵ and a holding that P3/EP SA have continuously asserted is wrong.

P3/EP SA once again urge the Commission to reverse its prior findings and hold that an OVEC-only PPA rider does not satisfy the requirements of R.C. 4928.143(B)(2)(d). First, to be authorized by R.C. 4928.143(B)(2)(d), an OVEC-only PPA rider must be a "term, condition, or charge" that relates to certain enumerated items.⁶ AEP Ohio, in its Application for Rehearing, asserted that an OVEC-only PPA rider "would remain a charge incurred by (or a credit paid to) customers under the Company's ESP"⁷ but 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

³ Second Entry on Rehearing at ¶ 57 and ¶ 252.

⁴ *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 III* Decision") at 20-25.

⁵ Opinion and Order at 93-95.

⁶ R.C. 4928.143(B)(2)(d) (emphasis added).

⁷ AEP Mem. Supp. at 7.

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 the ratepayers to AEP Ohio, *or* a payment from AEP Ohio to ratepayers, it is not solely a “charge” but is also a “credit.” The Commission has no authority under R.C. 4928.143(B)(2)(d) to allow a “credit,” and the Commission’s finding that an OVEC-only PPA rider will provide an approximately \$11 million credit over the current ESP term⁸ reinforces the fact that the Commission believes the rider will be a credit (and not a charge).

Second, an OVEC-only PPA rider must satisfy one of the enumerated items in subsection (d), which includes “limitations on customer shopping for retail electric generation service” and “bypassability.” AEP Ohio contended in its Application for Rehearing that the OVEC-only PPA rider (if made bypassable, as AEP Ohio urges) would satisfy the bypassability prong and “continue to function as a financial hedge against complete reliance on the retail market for the pricing of retail electric generating service, at least for non-shopping customers”⁹ Making the OVEC-only PPA rider a bypassable rider does not qualify it under the statute as the rider itself has nothing to do with bypassability. Moreover, it still does not qualify as a “limitatio[n] on customer shopping for retail electric generation service.” It would not inhibit, restrict, or impair ratepayers from shopping for generation from other retailers, and therefore, under the plain language of the statute, would not be a “limitation” on customer shopping. Even if one agreed with the Commission’s confusing reasoning that the rider acts as a “financial limitation” on shopping,¹⁰ the Commission only projected an \$11 million net credit over the ESP III term for

⁸ Second Entry on Rehearing at ¶ 63 and see footnote 2, page 38.

⁹ *Id.*

¹⁰ Second Entry on Rehearing at ¶ 83.

the OVEC-only PPA rider¹¹ an amount that when socialized across customers (shopping and non-shopping) on a per kilowatt hour charge for each rate class/voltage level would not be any sort of “financial limitation” on shopping.¹²

Third, an OVEC-only PPA rider would not have the “effect of stabilizing or providing certainty regarding retail electric service” as required by R.C. 4928.143(B)(2)(d). While the Commission in *ESP III* found that a PPA rider “would, *in theory*, have the effect of stabilizing or providing certainty regarding retail electric service”¹³ the Commission concluded that the OVEC-only PPA rider in that case “may result in a net cost to customers, with *little offsetting benefit* from the rider’s intended purpose as a hedge against market volatility.”¹⁴ And as noted above, AEP Ohio previously claimed in these proceedings that what “transform[ed]” the previously-rejected OVEC-only proposal into the kind of “significant financial hedge that truly stabilizes rates” was the addition of the Affiliate PPA.¹⁵ Without the Affiliate PPA, even AEP Ohio conceded that the 440 megawatts (“MWs”) of capacity provided by its OVEC entitlement could not offer the kind of rate stability or certainty envisioned by the *ESP III* decision.

The Commission ignored these statements in its Second Entry on Rehearing, instead finding that:

[a]lthough the value of the PPA rider as a cost-based hedging mechanism is diminished by the affiliate PPA’s exclusion from the rider, we find that the OVEC PPA will nevertheless provide some measure of rate stability benefit over the extended term of the rider, particularly when combined with the renewable energy PPAs that may be included in the rider in the future.¹⁶

¹¹ Second Entry on Rehearing, footnote 2 at page 38.

¹² See Opinion and Order at 25 describing PPA rider credit/charge allocation.

¹³ *ESP III* Decision at 21 (emphasis added).

¹⁴ *Id.* at 24 (emphasis added).

¹⁵ AEP Ohio Reply Brief at 17.

¹⁶ Second Entry on Rehearing at ¶117.

What is before the Commission, though, is only a request for an OVEC-only PPA rider through May 31, 2018. Instead of a \$110 million credit over a yet-to-be approved ESP III extension (which now may never occur if AEP Ohio is allowed to use OVEC to serve SSO load), we have a Commission projected credit of \$11 million. That projected credit is one-third of the Commission's original projection of \$37 million over the term of the ESP III for the PPA rider, a reduction which the Commission noted would abate any arguments that the PPA rider will result in rate volatility.¹⁷ Based on this record, the OVEC-only PPA rider will not have the "effect of stabilizing or providing certainty regarding retail electric service" as required by R.C. 4928.143(B)(2)(d).

For the foregoing reasons, the Commission should find that an OVEC-only PPA rider is unauthorized by R.C. 4928.143(B)(2)(d).

B. The Commission acted unlawfully and unreasonably by finding that an OVEC-only PPA rider will provide rate stability.

As discussed above, the Commission found that the PPA rider with the OVEC PPA will provide a rate stability benefit, even though there is only 440 MWs of capacity associated with OVEC.¹⁸ There is, however, no evidence record that an OVEC-only PPA rider based on the same generation "would provide customers with sufficient benefit from the rider's financial hedging mechanism."¹⁹ Throughout this proceeding, AEP Ohio has admitted that little hedging benefit exists in an OVEC-only PPA rider. In attempting to distinguish the prior OVEC-only

¹⁷ Second Entry on Rehearing at ¶ 216.

¹⁸ Second Entry on Rehearing at 32.

¹⁹ The 440 MWs of the OVEC entitlement is roughly 5% of the load in AEP Ohio's service territory. (*ESP III*, Opinion and Order at 17)

PPA proposal that the Commission rejected in *ESP III* from the Affiliate PPA/OVEC proposal in this proceeding, AEP Ohio wrote in its Reply Brief.²⁰

[T]he Commission emphasized that a “properly conceived” PPA Proposal has “the potential to supplement the benefits derived from the staggering and laddering of the SSO auctions” and that “there may be value for consumers in a reasonable PPA rider proposal that provides for a significant financial hedge that truly stabilizes rates, particularly during periods of extreme weather.” **The OVEC-only proposal was approximately 5 percent of the Company's connected load while the updated PPA Proposal represents approximately 30 percent; that major change transforms the proposal into a “significant financial hedge that truly stabilizes rates” as envisioned by the *ESP III* decision.**

As AEP Ohio conceded, an OVEC-only PPA representing 5% of the Company’s load is *not* the kind of “significant financial hedge” that the Commission envisioned in *ESP III*. What was true then is also true now—the current OVEC-only proposal does not offer ratepayers the kind of hedge against volatility required by the Commission.

The Commission ignored these statements, instead finding that an OVEC-only PPA rider would continue to provide rate stability.²¹ The Commission, though, should consider additional statements by AEP Ohio to this Commission in its recently filed *ESP III* extension application. In its November 23, 2016 application in Case No. 16-1852-EL-SSO, AEP Ohio proposes to abandon the OVEC-only PPA rider and instead use its OVEC entitlement to serve SSO load.²² AEP Ohio proposes to stop the OVEC-only PPA rider, as of June 1, 2017, yet it has repeatedly stated in this proceeding that the PPA rider is needed for rate stability.²³ AEP Ohio’s proposal to

²⁰ AEP Ohio Reply Brief at 17 (internal citations omitted) (emphasis added).

²¹ Entry on Rehearing at ¶¶ 65, 117 and 220.

²² See Amended Application, *In re Ohio Power Company*, Case Nos. 16-1852-EL-SSO, et al. at 9.

²³ See Initial Brief by AEP Ohio filed February 1, 2016 at page 1, Executive Summary stating “[t]his case presents a unique opportunity for the Commission to exercise its statutory authority to promote rate stability while simultaneously facilitating continued development of the competitive markets and protecting the interests of retail

use the OVEC entitlement for its SSO load further exposes the PPA rider as a farce. The PPA rider was never about (and cannot be about) rate stability. It was about transferring market risk to ratepayers, and is now being used as a tool in AEP Ohio's attempt to reregulate generation in Ohio.

C. The Commission acted unlawfully and unreasonably by allowing AEP Ohio to defer and recover any OVEC costs incurred for the period June 2016 through December 2016.

If the Commission allows AEP Ohio to implement an OVEC-only PPA rider, at a minimum, the Commission should modify its ruling on cost recovery. At page 29 of its Second Entry on Rehearing, the Commission for the first time directed AEP Ohio to “defer, without carrying charges, *any OVEC costs* incurred for the period of June 2016 through December 2016, with recovery of such costs to occur beginning with the first billing cycle of January 2017 and continuing over the 12 months of calendar year 2017.”²⁴ The Commission, in making that directive, imposed no regulatory oversight review of the cost recovery and should have done so to ensure costs were reasonably incurred. The Commission should also have required that the costs deferred be net of any revenues received as a result of the OVEC entitlement, and that any net credit over that time period be paid to ratepayers over the 12 months of calendar year 2017. The Commission should modify its deferral directive on rehearing if it concludes (over the objections raised) that an OVEC-only PPA rider is justified and needed.

consumers and the Ohio economy.” *See also* Amended Application, IN re Ohio Power Company, Case Nos. 14-1693-EL-RDR, et al. at 4-5.

²⁴ Second Entry on Rehearing at 29 (emphasis added).

III. CONCLUSION

For all of the foregoing reasons, the Commission should grant P3/EPSA's application for rehearing and put an end to a regulatory tool that has not been authorized by the General Assembly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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/s/ Michael J. Settineri
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