

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio )	
Power Company for Authority to Establish a )	Case No. 13-2385-EL-SSO
Standard Service Offer Pursuant to R.C. )	
4928.143, in the Form of an Electric Security )	
Plan. )	
)	
In the Matter of the Application of Ohio )	
Power Company for Approval of Certain )	Case No. 13-2386-EL-AAM
Accounting Authority. )	

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**THIRD APPLICATION FOR REHEARING OF THE  
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

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Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code (O.A.C.), the Ohio Manufacturers' Association Energy Group (OMAEG) hereby respectfully requests rehearing of the Public Utilities Commission of Ohio's (Commission) November 3, 2016 Fourth Entry on Rehearing (Fourth EOR)<sup>1</sup> issued in the above-captioned matters regarding the electric security plan (ESP) proposed by Ohio Power Company (AEP Ohio or the Company). OMAEG contends that the Fourth EOR is unlawful and unreasonable in the following respects:

- A. The Commission erred in increasing the revenue caps associated with the distribution investment rider (DIR) by \$46.4 million from those it previously approved and failed to provide support for its decision in violation of Section 4903.09, Revised Code.

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<sup>1</sup> *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Fourth Entry on Rehearing (November 3, 2016) (Fourth EOR).

Additionally, to the extent necessary to preserve its appellate rights,<sup>2</sup> OMAEG hereby incorporates all other arguments and Commission errors alleged and addressed in its prior Applications for Rehearing filed in the above-captioned proceeding.<sup>3</sup>

For these reasons, and as further explained in the Memorandum in Support attached hereto, OMAEG respectfully requests that the Commission grant its Application for Rehearing.

Respectfully submitted,

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<sup>2</sup> R.C. 4903.11; R.C. 4903.13; see also *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-Ohio-1608 at ¶56.

<sup>3</sup> Application for Rehearing of the Ohio Manufacturers' Association Energy Group (March 27, 2015); Application for Rehearing of the Ohio Manufacturers' Association Energy Group (June 29, 2015).

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION AND PROCEDURAL HISTORY**

On December 20, 2013, AEP Ohio filed an application for a standard service offer (SSO) in the form of an ESP to be in effect initially from June 2015 through May 2018. The Application included, inter alia, a request for a Power Purchase Agreement (PPA) Rider that would flow through to customers the net cost (or benefit) from AEP Ohio's sale of its Ohio Valley Electric Corporation (OVEC) contractual entitlement into the PJM market less all associated costs. The OMAEG, which is comprised of many members with facilities located throughout AEP Ohio's service territory, was granted intervention in the above-captioned proceeding on April 21, 2014. A hearing on the ESP commenced on June 3, 2014 and concluded on June 30, 2014. On December 17, 2014, an oral argument was held before the Commission for the limited purpose of enabling the Commission to clarify the legal and policy implications regarding the PPA Rider.

On February 25, 2015, the Commission issued an Opinion and Order (ESP 3 Order) stating that, based on the record evidence, it was not convinced that the proposed PPA Rider “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.”<sup>4</sup> However, the Commission authorized AEP Ohio to “establish a placeholder PPA rider, at an initial rate of zero, for the term of the ESP.”<sup>5</sup> The Commission also determined that the Distribution Investment Rider (DIR) should continue with recovery capped at certain designated levels for each year of the ESP, with total recovery capped at \$543.2 million over the course of the ESP.<sup>6</sup>

Numerous parties filed applications for rehearing on March 27, 2015 regarding various aspects of the Commission’s ESP 3 Order, including issues associated with the PPA Rider, the DIR, the IRP-D program, and the Basic Transmission Cost Rider (BTCR). On May 28, 2015, the Commission issued a second entry on rehearing (Second EOR) stating that it would “defer ruling on the assignments of error related to the PPA.”<sup>7</sup> Additionally, the Commission determined that the annual revenue caps relating to the DIR should be adjusted, which resulted in approved recovery of \$581 million over the course of the ESP, a \$37.8 million increase above the total amounts the Commission previously authorized for recovery in its Order.<sup>8</sup> In response to the Second EOR, OMAEG, and other parties, filed additional applications for rehearing on June 29, 2015. The Commission issued a Fourth Entry on Rehearing on November 3, 2016 (Fourth EOR) addressing the assignments of error raised by the parties in their June 29, 2015

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<sup>4</sup> *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer*, Case No. 13-2385-EL-SSO, et al., Opinion and Order at 25 (February 25, 2015) (ESP 3 Order).

<sup>5</sup>Id.

<sup>6</sup> Id. at 41.

<sup>7</sup> Second EOR at 5.

<sup>8</sup> *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Second Entry on Rehearing at 24 (May 28, 2015) (Second EOR).

applications for rehearing, as well as assignments of error related to the PPA in the March 27, 2015 applications for rehearing, which the Commission had previously deferred.

In the Fourth EOR, the Commission denied OMAEG's assignments of error related to the PPA Rider raised in OMAEG's Application for Rehearing filed on March 27, 2015.<sup>9</sup> Additionally, the Commission denied OMAEG's assignments of error related to the IRP-D program and the BTCR, as articulated in its Application for Rehearing filed on June 29, 2015.<sup>10</sup> In an effort to preserve its appellate rights and to the extent necessary,<sup>11</sup> OMAEG incorporates its previous arguments and assignments of errors alleged in its prior Applications for Rehearing filed in the above-captioned proceeding.<sup>12</sup>

## **II. ARGUMENT**

### **A. The Commission erred in increasing the revenue caps associated with the distribution investment rider (DIR) by \$46.4 million in violation of Ohio law.**

In its proposed ESP, AEP Ohio sought to expand the DIR and impose a total rate cap of \$667 million for the entire ESP.<sup>13</sup> Although the Commission appropriately denied AEP Ohio's request to expand the DIR to impose a total rate cap of \$667 million, the Commission inappropriately increased the DIR rate caps from \$543.2 million in its ESP 3 Order<sup>14</sup> to \$581

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<sup>9</sup> Application for Rehearing of the Ohio Manufacturers' Association Energy Group (March 27, 2015).

<sup>10</sup> Application for Rehearing of the Ohio Manufacturers' Association Energy Group (June 29, 2015).

<sup>11</sup> R.C. 4903.11; R.C. 4903.13; see also *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-Ohio-1608 at ¶56.

<sup>12</sup> Application for Rehearing of the Ohio Manufacturers' Association Energy Group (March 27, 2015); Application for Rehearing of the Ohio Manufacturers' Association Energy Group (June 29, 2015).

<sup>13</sup> Order at 41.

<sup>14</sup> Order at 41 and 47.

million in the Second EOR,<sup>15</sup> and to \$589.6 million in the Fourth EOR.<sup>16</sup> A table comparing the rate caps originally sought by AEP, the caps approved by the Commission in its ESP 3 Order, the modified caps approved in the Second EOR, and the further modified caps approved in the Fourth EOR is set forth below:<sup>17</sup>

Year	Cap Proposed by AEP	Cap/Recovery Granted by Commission (February 25, 2015 ESP 3 Order)	Cap/Recovery Granted by Commission (May 25, 2015 Second EOR)	Cap/Recovery Granted by Commission (November 3, 2016 Fourth EOR)
2015	\$155 million	\$124 million	\$145 million	\$145 million
2016	\$191 million	\$146.2 million	\$165 million	\$165 million
2017	\$219 million	\$170 million	\$185 million	\$190 million
2018 (Jan.- May)	\$102 million	\$103 million	\$86 million	\$89.6 million
Total	\$667 million	\$543.2 million	\$581 million	\$589.6 million

The DIR was first established in AEP Ohio’s ESP II case in order to facilitate the replacement of aging infrastructure and to improve service reliability on the premise that aging infrastructure was the primary cause of customer outages and reliability issues.<sup>18</sup> In denying AEP Ohio’s request to expand the DIR to the level requested by AEP Ohio, the Commission noted that “AEP Ohio is now performing at or above its established reliability standards” and permitted AEP Ohio to continue the DIR, with a total cap of \$543.2 million.<sup>19</sup> The Commission justified the total revenue caps based on a three to four percent level of growth as permitted for the DIR in the ESP II Case.<sup>20</sup>

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<sup>15</sup> EOR at 24.

<sup>16</sup> Fourth EOR at 51.

<sup>17</sup> Order at 41, 47; EOR at 24; Fourth EOR at 51.

<sup>18</sup> ESP 3 Order at 40-41 and 46.

<sup>19</sup> Id. at 47.

<sup>20</sup> Id.

Subsequent to this decision, and without record support, the Commission unreasonably increased the annual revenue caps of the DIR, first by \$37.8 million in the Second EOR<sup>21</sup> and then by an additional \$8.6 million in the Fourth EOR,<sup>22</sup> authorizing AEP Ohio to collect up to the total capped amount of \$589.6 million under the DIR. These revenue cap increases are unreasonable and unlawful and should be denied by the Commission on rehearing.

Section 4903.09, Revised Code, requires the Commission to include, with its written opinions, “reasons prompting the decisions arrived at, based upon said findings of fact.” The Supreme Court of Ohio has stated that the Commission is required to “explain its decision and identify, in sufficient detail to enable review, the record evidence upon which its orders are based.”<sup>23</sup> The Commission failed to set forth proper rationale in support of its decision to further adjust and increase the revenue caps under the DIR for 2017 and 2018. For example, AEP Ohio witness Dias admitted during the evidentiary hearing that the Company filed no testimony and provided no documentation demonstrating the service reliability improvements that were gained in connection with the DIR.<sup>24</sup> Further, witness Dias confirmed that AEP Ohio could meet the Commission’s distribution reliability standards if Rider DIR was continued at the level at which it was capped at that time.<sup>25</sup> Finally, witness Dias also admitted that customer expectations related to reliability of service is more in line with the Company’s expectations and actual performance on reliability has also greatly improved.<sup>26</sup> At no time did AEP Ohio provide any

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<sup>21</sup> Second EOR at 23-25.

<sup>22</sup> Fourth EOR at 51.

<sup>23</sup> *In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, 147 Ohio St.3d 59, 2016- Ohio-1607 at ¶53 (April 21, 2016). See also, *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St. 3d 306, 312, 513 N.E.2d 337 (1987).

<sup>24</sup> Tr. Vol. II at 328.

<sup>25</sup> Id. at 319

<sup>26</sup> Tr. Vol. II at 315-316.

record support to demonstrate that the DIR revenue caps authorized by the Commission were necessary for service reliability.

In its decision, the Commission states that the DIR annual revenue caps should reflect a three to four percent annual growth in the DIR.<sup>27</sup> Absent the fact that the three to four percent annual growth is consistent with what was permitted for the DIR in the ESP II case, the Commission provides no support or rationale to justify the authorized annual revenue caps from the record in this proceeding. Further, while the Commission states that the annual revenue caps should be adjusted “to enable the Company to make necessary investments in capital infrastructure projects,” the Commission does not explain what those necessary investments are and why they are needed.<sup>28</sup> The Commission also does not cite to any actual projects in the proposal phase or currently being implemented. Thus, the record does not support the increased DIR revenue cap levels established by the Commission in its Fourth EOR for 2017 and 2018.

In its initial ESP 3 Order, the Commission stated:

[A]t the level requested in these proceedings, [AEP’s DIR investments] would be better considered and reviewed in the context of a distribution rate case where the costs can be evaluated in the context of the Company’s total distribution revenues and expenses, and the Company’s opportunity to recover a return on and of its investment can be balanced against customers’ right to reasonably priced service.<sup>29</sup>

The Commission’s finding in its ESP 3 Order is even more relevant now in the context of the Commission authorizing a further adjustment to an increase of the annual revenue caps for 2017 and 2018, totaling \$46.4 million above what was initially authorized in the Commission’s ESP 3 Order. It is unjust and unreasonable for the Commission to increase the revenue caps by such a significant amount without requiring AEP Ohio to file a distribution rate case upon which AEP

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<sup>27</sup> Fourth EOR at 51.

<sup>28</sup> Id.

<sup>29</sup> Order at 46.



Ohio's alleged costs associated with aging infrastructure can be evaluated against distribution revenues. The Commission's decision to cap the DIR at such extreme and significant levels is unsupported by the record and will have a detrimental impact on Ohio ratepayers who will be forced to pay for the higher rate caps.

OMAEG submits that the Commission's decision to increase the applicable DIR revenue caps for 2017 and 2018 on rehearing was erroneous, unreasonable, and unlawful, and respectfully requests that the Commission reconsider its decision to increase the DIR revenue caps.

### **III. CONCLUSION**

OMAEG respectfully requests that the Commission grant its application for rehearing of the issues set forth herein and reverse its decision to increase AEP's DIR recovery caps by \$46.4 million over those previously approved in the ESP 3 Order.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on December 5, 2016.

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Summary: Application Third Application For Rehearing Of The Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group