

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio ) Power Company for Authority to Establish a ) Standard Service Offer Pursuant to Section ) 4928.143, Revised Code, in the Form of an ) Electric Security Plan )	Case No. 16-1852-EL-SSO
In the Matter of the Application of Ohio ) Power Company for Approval of Certain ) Accounting Authority )	Case No. 16-1853-EL-AAM

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**INITIAL POST-HEARING BRIEF OF INDUSTRIAL ENERGY USERS-OHIO**

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**I. INTRODUCTION**

In a prior settlement resolving issues in its application to populate its Purchased Power Agreement Rider, the Ohio Power Company (“AEP-Ohio”) agreed to file an application to extend with modifications its current electric security plan. *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, et al., Joint Stipulation and Recommendation (Dec. 14, 2015) (“PPA Stipulation”). AEP-Ohio filed the initial application to modify and extend the electric security plan in the docket for its third electric security plan. The Public Utilities Commission of Ohio (“Commission”) subsequently directed AEP-Ohio to file an application in a new docket. On November 23, 2016, AEP-Ohio filed the amended application in this docket. AEP-Ohio Ex. 3 (“Amended Application”).

Following extended negotiations, parties including Industrial Energy Users-Ohio (“IEU-Ohio”) entered a Joint Stipulation and Recommendation (“Stipulation”).<sup>1</sup> Joint Exhibit 1. One intervening party, the Office of the Ohio Consumers’ Counsel (“OCC”),

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<sup>1</sup> IEU-Ohio agreed not to oppose two provisions of the Stipulation. Joint Exhibit 1, nn. 4 & 9.

opposed the Stipulation. To take evidence from parties supporting and opposing the Amended Application and Stipulation, the Commission conducted a hearing from November 1, 2017 to November 6, 2017.

The Amended Application and Stipulation contain proposals for two provisions that would extend and expand the Interruptible Rate Program (“IRP”) and the Basic Transmission Cost Recovery Rider (“BTCR Pilot”). Joint Ex. 1 at 20-26 & 28-31. OCC objects to both provisions on the basis that they do not benefit customers or the public interest.<sup>2</sup>

Contrary to OCC’s claims, these provisions benefit all customers by improving system reliability, potentially lowering capital investment requirements, and advancing the State’s economic goals. Accordingly, the Commission should approve the expansion of the IRP and BTCR Pilot.

## **II. THE PROVISION OF THE STIPULATION EXPANDING THE IRP BENEFITS RATEPAYERS AND THE PUBLIC INTEREST**

The current IRP tariff sheet provides that certain legacy customers may contract for service that may be interrupted by AEP-Ohio for either system emergencies or discretionary economic reasons. Ohio Power Company, PUCO No. 20, Sheet 427.<sup>3</sup>

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<sup>2</sup> Rule 4901-1-30, Ohio Administrative Code (“OAC”) authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of an agreement are given substantial weight. *Consumers’ Counsel v. Pub. Utils. Comm’n of Ohio*, 64 Ohio St. 3d 123, 125 (1992). In the review of a contested settlement, the Commission considers three questions: (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties? (2) Does the settlement, as a package, benefit ratepayers and the public interest? (3) Does the settlement package violate any important regulatory principle or practice? *Industrial Energy Consumers of Ohio Power Co. v. Pub. Utils. Comm’n of Ohio*, 68 Ohio St. 3d 559 (1994); *In the Matter of the Application of the Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 16-395-EL-SSO, et al., Opinion and Order at 16 (Oct. 20, 2017).

<sup>3</sup> The Commission’s order approving the current AEP-Ohio ESP continued the IRP program and opened it to existing customers that shopped for generation. It removed the ability of AEP-Ohio to request curtailment for discretionary economic reasons. It also required that AEP-Ohio serve as a curtailment service provider to legacy customers and bid the demand response capability of these customers into the PJM capacity auctions with any revenue from that demand response capability used to offset the costs of the IRP. Tariff sheets under the revised program were never approved by the Commission. *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

Under the PPA Stipulation, AEP-Ohio agreed to seek an extension and expansion of the IRP as modified in the ESP III Opinion and Order. The total megawatts (“MWs”) of curtailable load were to be expanded by 280 MWs and the credit for curtailable load was to be increased from \$8.21/KW-month to \$9/KW-month. PPA Stipulation at 10-11.

Several significant modifications to the PPA Stipulation are presented in the Stipulation. While new load that may be enrolled in the IRP is proposed to be increased by 280 MWs, the Stipulation treats legacy and new load differently.

Working from the IRP terms and conditions approved in the Opinion and Order and Application for Rehearing approving AEP-Ohio’s third electric security plan, see note 2 above, the proposed program for legacy customers provides for those customers to continue to receive an increased credit beginning June 1, 2018, and it requires them to turn over PJM demand response revenue to AEP-Ohio. Joint Ex. 1 at 22.<sup>4</sup>

New load is assigned to two different categories: Expanded IRP and New Industry IRP. *Id.* at 23-26. Expanded IRP is limited to 160 MW of curtailable load and is assigned to specific customer groups. The limit of 160 MW may not be exceeded. Customers may be interrupted if AEP-Ohio declares an emergency or when PJM issues a curtailment order for the AEP Zone. Customers may elect to suspend participation with notice. Most significantly, the credit for curtailable load is set at 70% of the RPM BRA market clearing price for the AEP zone in the applicable delivery year and total credits for the term of the ESP are capped at \$28.5 million. Expanded IRP customers, unlike legacy customers, may participate in wholesale demand response programs and retain any revenue associated with those programs. *Id.* at 23-25.

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*the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO, et al., Opinion and Order at 36-40 (Feb. 25, 2015); Second Entry on Rehearing at 7-16 (May 28, 2015); and Staff’s Review and Recommendations (Jan. 4, 2017) (“*ESP III*”).

<sup>4</sup> AEP-Ohio will not serve as the curtailment service provider for these customers. Joint Ex. 1 at 22.

New Industry IRP is assigned up to 120 MW of curtailable load in the program, the credit is priced in the same manner as Expanded IRP, and the credits are capped at \$22.2 million for the term of the ESP. *Id.* at 26.

The Commission has previously determined that the IRP is in the public interest. In the Commission's decision approving AEP-Ohio's current ESP, the Commission directed AEP-Ohio to extend its IRP over AEP-Ohio's objection, stating that an interruptible rate program advances "numerous benefits, including the promotion of economic development and the retention of manufacturing jobs." *ESP III*, Opinion and Order at 40.

The extension and expansion of the IRP continues those laudable outcomes. In particular, extension and expansion encourage economic development. AEP-Ohio Ex. 1 at 18 and 21; Tr. Vol. I at 165 and 171. Moreover, by reducing the cost of power to those customers that can interrupt and are willing to take electric service of a lower quality, the IRP contributes to a reduction of the system peak because these customers absorb some of the risks associated with system emergencies. Tr. Vol. I at 171; Vol. IV at 521-22. To the extent that interruptible customers reduce their demand, other customers are less likely to suffer a reduction in service and service quality. Additionally, by lowering the system peak, the need for additional costly generation is reduced.

The additional benefits of the modified IRP come at a lower cost to other customers, relative to the original proposal. New load credits under the IRP are priced at 70% of the RPM BRA PJM closing price for the AEP zone, an amount far lower than the \$9/KW-month set out in the PPA Stipulation. Further, credits are capped over the term of the electric security plan for both Expanded and New Industry IRP.

Despite the apparent benefits of the IRP modifications in the Stipulation, OCC complains that the IRP does not provide any additional value for the credits provided to participating customers. In support of this argument, OCC asserts that IRP customers are already participating in PJM programs and that PJM has not called IRP customers to curtail since the program's inception or called an event since 2014. Further, OCC asserts the IRP is limited to customers that signed or did not oppose the Stipulation. OCC Ex. 8 at 7-8.

OCC's argument is premised on an incorrect assumption that the PJM demand response programs and the IRP cover the same demand response criteria. Under the proposed IRP, AEP-Ohio may require a customer to curtail for either an AEP-Ohio or a PJM announced event. Tr. Vol. IV at 505 & 528-29 (PJM's call for assistance during Polar Vortex was not a mandatory call). AEP-Ohio may call an event with 30 minutes' notice while a customer may arrange for a notice of up to 120 minutes from PJM. *Id.* at 506. Further, the load reduction calculations are different: the IRP provides for the designation of the firm service level; PJM measures the curtailment from a customer's Peak Load Contribution. *Id.* Finally, the penalty structures for noncompliance are different. In addition to different financial penalties that may be assessed, AEP-Ohio may terminate a customer from the program for multiple performance failures, an option not available to PJM. *Id.* at 506-07. Because the IRP and PJM demand response address different products, they should be compensated differently. OCC's suggestion that customers could be compensated properly by resorting to PJM demand response programs is simply wrong.

OCC's other complaint that the program's availability is too limited assumes that there is an injured population of interruptible customers. There is not. While the

availability of the program is limited to certain parties, OCC is unaware of any other customers with curtailable load that may be interested in participating in the IRP. *Id.* at 525.

Under the Stipulation's proposed modifications to the IRP, customers benefit and the public interest is advanced. IRP customers trade service quality for lower rates. Other customers benefit from increased system reliability and job retention. Further, by providing eligible customers with a means of reducing their electric generation expenses, continuation of a modified IRP would also further Ohio industrial companies' effectiveness in the global economy. R.C. 4928.02(N).

### **III. THE PROVISION OF THE STIPULATION EXPANDING THE BTCR PILOT BENEFITS RATEPAYERS AND THE PUBLIC INTEREST**

As part of the PPA Stipulation, AEP-Ohio agreed to submit as part of its application to extend its electric security plan a provision to initiate the BTCR Pilot that would be available to all customers taking service under AEP-Ohio's GS-3 and GS-4 tariff sheets. PPA Stipulation at 11. In a decision approving another settlement addressing several open fuel and electric security plan related cases, the Commission approved the creation of a small-scale BTCR Pilot. *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case Nos. 09-872-EL-FAC, et al., Opinion and Order at 32-35 (Feb. 23, 2017) ("Global Settlement"). Under this small-scale version of the BTCR Pilot, 19 customers from several identified customer groups could participate. *Id.* at 33. On approval of the Global Settlement, AEP-Ohio modified its transmission tariff sheet so the demand portion of the transmission rate for a Pilot participant would be based on the participant's demand during the single zonal transmission peak as defined by the PJM Open Access Transmission Tariff. *Id.* at 34.

The Stipulation in this case retains the BTCR Pilot approved in the Global Settlement and expands participation to 34 customers. Joint Ex. 1 at 27-31. The rate design for developing the Pilot demand rate will be the same as in the small scale pilot. *Id.* at 30. As in the small scale pilot, slots in the expanded Pilot will be assigned to certain customer groups. *Id.* at 28; AEP-Ohio Ex. 1 at 14. In addition to members of those customer groups, Ohio schools with no limit on the number of participants would be eligible for an additional 20 MW of load. Joint Ex. 1 at 29. To protect against undue shifts in revenue responsibility, a check based on total load of the participating customers is provided. *Id.* at 29-30. AEP-Ohio will report monthly data regarding the operation of the Pilot. *Id.* at 30.

While participating customers will benefit from the BTCR Pilot because they will have the opportunity to lower their total billed cost of electricity, extension and expansion of the BTCR Pilot also provides nonparticipating customers with a benefit and is consistent with the public interest. Using the zonal coincident peak for purposes of developing responsibility for transmission-related demand costs will provide a signal to participating customers to reduce their demand, and this demand reduction will promote efficient use of the transmission grid. AEP-Ohio Ex. 1 at 18-19.

As part of its testimony that the Stipulation is not in the public interest, OCC asserts that the costs associated with the BTCR Pilot associated with any uncollected transmission costs will be allocated to nonparticipating customers. OCC Ex. 8 at 9. Additionally, OCC complains that customers eligible to participate in the program will “game” the Pilot Program. According to OCC, a customer’s ability to elect to participate annually will reduce the effectiveness of the program. *Id.* OCC also asserts that some customers, such as schools, already have lower load during the zonal peak (which OCC

assumes is usually in the summer months) and will not provide any additional value through reduced load. *Id.* Accordingly, OCC suggests a modification of the BTCR Pilot such that customers should be bound by a one-time election to participate in the program. *Id.*

As the cross examination of OCC's witness demonstrated, the modification offered by OCC is not justified. Initially, the cost shift that concerns OCC is limited to the commercial and industrial customers. Under the methodology used by AEP-Ohio in the approved Pilot, any revenue not recovered from Pilot customers is collected within the class of the Pilot customers. See *In the Matter of the Application of Ohio Power Company to Update its Basic Transmission Cost Rider*, Case No. 17-1461-EL-RDR, Application (June 15, 2017); Tr. Vol. IV at 496 (administrative notice of application). Thus, residential customers have nothing to fear from the effects of the Pilot, but will benefit from any reduction in overall transmission costs that results from lowering the cost of facilities necessary to meet the transmission peak.

A further customer protection is built into the terms of the Stipulation. It provides load "limits" and a rate recalculation that prevent excessive rate shifts within the customer classes taking advantage of the pilot if the loads of the participating customers exceed 400 or 500 MWs. Joint Ex. 1 at 14.

Likewise, the gaming complained about by OCC is unlikely to present a harm because customers in the Pilot will remain economically motivated to reduce load in response to system peaks. These incentives assure that customers are motivated to not "game" the system.

OCC's complaint about the schools' access to the pilot also is unwarranted. While OCC assumes that the zonal peak is usually in the summer, in fact the AEP-Ohio's zonal

peak over the last nine years has alternated between summer and winter almost evenly. Tr. Vol. IV at 504. Based on the fact that schools will have to address the possibility of a winter peak, they too will be required to reduce load to participate in the BTCR Pilot.

The record thus demonstrates that the BTCR Pilot will provide benefits to participating and nonparticipating customers. Gaming is unlikely, and concerns about the scope of the program can be addressed through the Commission's ongoing monitoring. Accordingly, the Commission should reject OCC's recommendation to modify the terms of the BTCR Pilot.

#### **IV. CONCLUSION**

The record in this case warrants Commission findings that the BTCR Pilot and the extension and expansion of the IRP benefit ratepayers and the public interest. These provisions serve to reduce the system peak and increase reliability of the electric system. Accordingly, they should be approved as submitted in the Amended Application as modified by the Stipulation.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Initial Post-Hearing Brief of Industrial Energy Users-Ohio*, was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 30th day of November 2017, via electronic transmission.

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