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

APPLICATION FOR REHEARING OF OHIO POWER COMPANY

Pursuant to Section 4903.10, Ohio Revised Code ("R.C."), and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), Ohio Power Company ("AEP Ohio" or the "Company") respectfully files this Application for Rehearing of the Commission's April 25, 2018 Opinion and Order ("Opinion and Order"). The Commission's Opinion and Order is unreasonable and unlawful in the following respects:

I. Paragraph 252 of the Opinion and Order violates 4903.09.

II. To the extent Paragraph 252 of the Commission's Order categorically precludes potential cost recovery for FERC-approved project costs incurred under the FERC-approved ICPA, it is unlawful and should be reversed; if the language is intended to permit recovery through another rate mechanism or based on conditions determined by the Commission, that language should be clarified.

III. At a minimum, Paragraph 252 should be modified or clarified to provide that the Commission will entertain recovery of RTEP and supplemental projects associated with integration into PJM if the incremental savings associated with PJM integration outweigh the incremental costs.

A memorandum in support of this Application for Rehearing is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

INTRODUCTION

AEP Ohio greatly appreciates the Commission's Order adopting the Stipulation in this case, which not only passes the three-part test for contested settlements but also conveys significant customer benefits and embraces progressive technology programs. There is one aspect of the decision, however, that the Company asks the Commission to reconsider in order to correct an (hopefully inadvertent) error. Depending on how it is interpreted or clarified, the language in Paragraph 252 of the Order appears to categorically exclude recovery of certain incremental transmission costs that may arise in connection with OVEC's potential integration into PJM. If OVEC pursues integration into PJM (a decision that has not been made with finality), it would be because the incremental savings outweigh the incremental costs. The Commission unreasonably addressed this matter outside of the record and without an opportunity for parties to address it. And the apparent result under Paragraph 252 could conflict with federal law and is otherwise not justified from a factual or policy perspective. The Company requests that the Commission reverse or clarify the language in order to preserve a potential benefit to customers and to ensure a fair approach to the Company, as explained in more detailed below.

ARGUMENT

I. Paragraph 252 of the Opinion and Order violates 4903.09.

In contested cases, R.C. 4903.09 requires the Commission to issue "findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact." The Commission must satisfy this obligation in order to permit the Ohio Supreme Court to properly discharge its duties on appeal. *MCI Telecommunications Corp. v.*

Pub. Util. Comm., 32 Ohio St.3d 306, 311, 513 N.E.2d 337 (1987). The Ohio Supreme Court has repeatedly recognized that the Commission errs if it decides an issue without record support. *See, e.g., In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, 147 Ohio St.3d 59, 2016-Ohio-1607, 60 N.E.3d 1221, ¶ 53, citing *MCI Telecommunications Corp.* at 312 (holding that 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), and *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30 (holding that the Commission abuses its discretion if it decides an issue without record support).

The Commission's direction that the Company's recovery of AEP Ohio's portion of OVEC PPA costs through the PPA Rider "shall not include any costs associated with transmission system additions, improvements, or other projects under PJM's Regional Transmission Expansion Plan or supplemental transmission projects" violates R.C. 4903.09. *See* Opinion and Order at ¶ 252. The Commission's decision to exclude costs associated with OVEC's potential future status as a transmission owner within PJM was not based on any evidence developed in the evidentiary record for this case. There is no evidence in the record regarding OVEC's actual or expected transmission costs. Indeed, as the Commission itself notes, the development that triggered the Commission's decision on that issue was a filing that OVEC and PJM made more than a month after the evidentiary record in this proceeding closed. *See id.* at ¶ 251.

The Opinion and Order also does not specifically explain why the proposal to integrate OVEC into PJM supports the Commission's directive regarding transmission costs. The Opinion and Order merely states that the directive is "necessary to ensure that AEP Ohio's customers

received the intended benefit of the PPA Rider as a financial hedging mechanism" and "to effectuate [the Commission's] intention in approving the inclusion of the OVEC generating units in the PPA Rider, consistent with [its] obligation under R.C. 4928.02(A)." *Id.* at ¶ 252. But the decision– along with the record upon which it is required to be based – is silent as to whether OVEC's potential integration into PJM would have any effect at all on either the benefit that customers receive from the PPA Rider or the availability to consumers of reasonably priced electric service.

For these reasons, Paragraph 252 of the Opinion and Order fails to comport with R.C. 4903.09 and should be reconsidered on rehearing.

II. To the extent Paragraph 252 of the Commission's Order categorically precludes potential cost recovery for FERC-approved project costs incurred under the FERC-approved ICPA, it is unlawful and should be reversed; if the language is intended to permit recovery through another rate mechanism or based on conditions determined by the Commission, that language should be clarified.

In addition to the procedural shortcomings described above, there are compelling substantive reasons why the Commission should grant rehearing to confirm that it has not flatly precluded the potential future recovery of OVEC costs associated with transmission system additions, improvements, or other projects under PJM's Regional Transmission Expansion Plan ("RTEP") or supplemental transmission projects. As the Commission acknowledged earlier in its Opinion (at Paragraph 53), the OVEC contractual entitlement is a legacy asset that AEP Ohio has not been able to divest. Given that the OVEC Inter-Company Power Agreement ("ICPA") and transmission charges are approved by the Federal Energy Regulatory Commission ("FERC"), the categorical preclusion of RTEP/supplemental project cost recovery conflicts with federal approval of those same costs and does not fit within the exception for prudence reviews of utility expenditures for retail recovery under the *Pike County* doctrine.

As the Commission knows, the OVEC plants were originally built to serve vital national security interests at the U.S. Department of Energy's Portsmouth Site in Piketon, Ohio, and OVEC continues to serve the ongoing decontamination and decommissioning operations at the site. AEP Ohio controls approximately 20% of OVEC's output through the FERC-approved ICPA. AEP Ohio currently recovers OVEC costs in retail rates under its current ESP, based on the Commission's prior findings that it would have oversight of the costs through an audit process. *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., Opinion and Order (Feb. 25, 2015) at 25. *See also In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliated Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (March 31, 2016) at 87-90 (addressing annual prudency reviews). In prior ESPs, the Company recovered OVEC-related costs through SSO rates without challenge and with no prudence issues. *E.g., In re Columbus Southern Power Co. and Ohio Power Company*, Case No. 08-917-EL-SSO, et al., Opinion and Order (March 18, 2009) at 14-15.

The Commission's prudence reviews are conducted in accordance with well-settled law. Under the Federal Power Act, the Commission has authority to determine retail rate treatment of costs incurred under a utility's wholesale purchases – that is, to determine whether (or to what extent) a utility may pass on the net costs or credits of a wholesale purchase to retail ratepayers. As part of that retail ratemaking power, the Commission has broad authority to judge the prudence of a utility's wholesale purchases – that is, "to determine whether [the utility] has prudently chosen from among available supply options." *Central Vermont Pub. Serv. Corp.*, 84

FERC ¶ 61,194 (1998). The Commission's authority to judge the prudence of wholesale purchases for the purposes of retail ratemaking is well recognized under the *Pike County* doctrine, so named after the case that first formally recognized this longstanding principle, *Pike Cty. Light & Power Co. v. Penn. Pub. Serv. Comm.*, 78 Pa. Commw. 268, 237-74 (1983).

Numerous cases have relied upon the *Pike County* preemption exception to hold that states can perform their own examination of a utility's wholesale purchase agreement (even if FERC has approved the agreement's wholesale rate), so long as the state does not take it upon itself to re-examine FERC's approval of the wholesale rate and attempt to prevent a utility from recovering that rate based on its unreasonableness. For example, in *Pub. Serv. Co. of New Hampshire v. Patch*, 167 F.3d 29, 35 (1st Cir. 1998), the court held that the Federal Power Act did not preempt a state public utility commission's decision finding a utility imprudent for failing to terminate its FERC-approved power supply contract with its parent company, because the PUC did not disallow the utility's retail rate increase on the ground that the parent's wholesale rates were unjust or unreasonable but, rather, that lower-cost sources of energy were available. *See, also, Cent. Vermont Pub. Serv. Corp., supra*; *New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans*, 491 U.S. 350 (1989); *Entergy Servs., Inc.*, 911 F.2d 993, 1002 (5th Cir. 1990); *Ky. W. Va. Gas Co. v. Penn. Pub. Util. Comm.*, 837 F.2d 600, 609 (3d Cir. 1988); *Exelon Generation Co., LLC*, 126 FERC ¶ 61,031 (2009).

Through periodic audits under R.C. 4928.143, the Commission has exercised and will continue to exercise its *Pike County* authority to ensure that OVEC costs are properly accounted for in rates and that AEP Ohio has prudently exercised its contractual rights under the ICPA. Flatly precluding potential recovery of costs that may be incurred by OVEC associated with transmission system additions, improvements, or other projects under PJM's RTEP, however,

would go a significant and impermissible step beyond the type of prudence review that the Commission has historically and permissibly conducted under the *Pike County* doctrine. Although the Commission's Order confirms (at ¶ 53 & 250), on the one hand, that AEP Ohio will retain the ability to recover OVEC costs through the non-bypassable PPA Rider for the duration of the extended ESP term (whether the cost recovery results in a net charge or a net credit after applying market revenue), Paragraph 252 of the Commission's Order (as written) suggests a stark and ill-advised departure from that netting approach. Paragraph 252 appears to categorically disallow OVEC RTEP project costs outside the context of typical prudence review, even though any such costs will have been approved by FERC and incurred pursuant to a FERC-approved contract (the ICPA).

For the foregoing reasons, the Commission should grant rehearing to clarify that Paragraph 252 of its Opinion and Order does not preclude recovery of AEP Ohio's share of OVEC costs associated with transmission system additions, improvements, or other projects under PJM's RTEP or supplemental transmission projects. Instead, the Commission should confirm that it will review future costs incurred by AEP Ohio based on the Company's prudence in implementing the terms of the FERC-approved ICPA, consistent with the Commission's established history of prudence reviews undertaken pursuant to the *Pike County* doctrine. At a minimum, as further described below, the Commission should clarify that it will permit recovery of RTEP and supplemental project costs if the Company demonstrates that the costs are exceeded by savings associated with PJM integration.

III. At a minimum, Paragraph 252 should be modified or clarified to provide that the Commission will entertain recovery of RTEP and supplemental projects associated with integration into PJM if the incremental savings associated with PJM integration outweigh the incremental costs.

Because the ostensible conclusion in Paragraph 252 was reached based on extra-record information and without giving the Company or other parties an opportunity to address the concern, the Commission should grant rehearing to modify or clarify the language. This is especially true if the Commission intended to categorically exclude recovery of costs approved by FERC, as discussed above. The better course would be to defer the issue for future resolution based on the pertinent facts as they develop, to the extent the issue does not become moot. That is the normal approach for subsequent regulatory prudence reviews of actions taken by utilities to incur costs being recovered from ratepayers – and it is most appropriate here.

OVEC pursued the initiative to integrate into PJM because it was expected to save costs. While that initiative is presently on hold so that OVEC can further examine updated cost information, it can be fairly presumed that OVEC expects a net savings if it does move forward with PJM integration. Of course, if OVEC withdraws its application to integrate into PJM, then this whole issue becomes moot and need not be further addressed. So, the best course of action is to avoid prejudging the result in a way that is unreasonable and clarify on rehearing that the Company will have an opportunity to recover incremental transmission costs associated with PJM integration if it can demonstrate through a one-time upfront review that the expected savings of integration outweigh the expected costs.

Presuming the PJM integration effort does go forward and there are net savings, it would be unfair to disallow the costs while allowing the savings to be passed through the PPA Rider – when those same costs were necessary to achieve the cost savings. That outcome is possible under the apparent meaning of Paragraph 252. And if there are net savings, the Commission

should want to encourage that outcome as it would necessarily either reduce the PPA Rider charge or increase the PPA Rider credit going forward. In order to preserve this potential customer benefit, the Commission should reverse Paragraph 252 and clarify that incremental transmission costs associated with PJM integration (if pursued by OVEC) will not be categorically excluded from recovery under the PPA Rider and that the Company will have an opportunity to recover those costs if it can show that the expected incremental costs association with integration are outweighed by the expected savings.

CONCLUSION

For the foregoing reasons, the Commission should grant rehearing and should reverse, modify, and/or clarify its April 25, 2018 Opinion and Order as set forth above.

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 was sent by, or on behalf of, the undersigned counsel to the following parties of record this 25th day of May, 2018.

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