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 R.C. 4928.143, 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 RETAIL ENERGY SUPPLY ASSOCIATION

May 25, 2018

On April 25, 2018, the Commission issued a Finding and Order (Order) approving a Stipulation and Recommendation (Stipulation) in AEP Ohio's request for an extension of its most recent Electric Security Plan (ESP). The Order accepted most of the recommendations contained in the Stipulation, with a notable exception. The Commission authorized the creation of the Competitive Incentive Rider (herein after referred to by the name assigned in the Order, "Retail Reconciliation Rider" (RRR)); however, instead of approving the $1.05/Mwh charge agreed upon in the Stipulation, the Commission instead approved the RRR (and the accompanying SSO Credit Rider) as placeholder riders until a thorough analysis of AEP Ohio's distribution costs can be conducted by the Commission in the next rate case.

The Retail Energy Supply Association (RESA) disagrees with the Commission's contention that there is not sufficient evidence in the record of this case to determine whether there are "known, quantifiable costs that are collected from customers through distribution rates" that are expressly related to the provision of SSO service. As such, in accordance with R.C. 4903.10 and Ohio Admin. Code 4901-1-35, RESA respectfully submits this Application for Rehearing of the Order issued by the Commission on April 25, 2018, for the following reasons:

1. **The Order unjustly, arbitrarily, and unreasonably establishes the RRR as a placeholder rider and not at the agreed-upon rate of $1.05/MWh.**
    a. **The Order violates the state policy of Ohio in R.C. 4928.02 of "ensur[ing] the availability of unbundled and comparable competitive retail electric service" and "avoiding anticompetitive subsidies";**
    b. **The Order violates its own ruling from the 14-1693 Order creating the RRR pilot program and ordering the charge to take effect upon final order of this proceeding.**
2. **The Commission's decision to fundamentally modify a key component of a negotiated settlement agreement undermines the party's positions and stifles the ability of parties to engage in honest and open negotiations.**

RESA urges the Commission to grant this application for rehearing and to correct the errors identified herein.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING OF RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

On November 23, 2016, AEP Ohio filed an application to extend its existing ESP.[1] This extension application contained many elements that had been negotiated and stipulated by the parties, and subsequently approved by the Commission, in Case No. 14-1693-EL-RDR et al.[2] Among these elements was the RRR, proposed by AEP Ohio at a rate of $0.62/MWh.[3]

Through the testimony of Matthew White, RESA proposed a much higher rate for the RRR, $4.60/MWh.[4] The analysis Mr. White performed demonstrated that this higher rate was justified based on a number of factors, including uncollectible expenses, Commission and Ohio

[1] Ohio Power Co.'s Application for to Amend its Electric Security Plan, Case Nos. 16-1892-EL-SSO (Nov. 23, 2016) (Application).

[2] *In re the Application Seeking Approval of Ohio Power Co.'s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Adjustment Rider*, Case Nos. 14-1693-EL-RDR et al, Opin. & Order (Mar. 31, 2016) (14-1693 Order).

[3] Application at 11.

[4] RESA Ex. 1.0 at 8-12.

Consumers' Counsel (OCC) assessments, legal and regulatory expenses, payroll taxes, call center costs, infrastructure costs, and other costs incurred to support default service.[5]

The parties in this proceeding met numerous times over several months in 2017 and eventually came to an agreement among all but one party. The Stipulation was signed and filed on August 25, 2017. The Stipulation represented an agreement among a diverse group of interests and was the product of serious bargaining among capable, knowledgeable parties; *as a package*, benefited ratepayers and the public interest; and *as a package*, did not violate any important regulatory principle or practice.[6]

By modifying only one significant portion of the Stipulation, the Commission upsets the balance of the Stipulation as a whole. Agreements that were made among parties to include certain provisions at the expense of others do not hold together when certain fundamental elements of those agreements are arbitrarily and capriciously altered. Specifically, by choosing to alter only the portion of the Stipulation related to the RRR, the Commission alters the entire spirit of the agreement, as well as violates the state policy of competition and its own precedent. The Commission should reverse its Order and establish the RRR at the agreed-upon rate.

II. ARGUMENT

A. The Order unjustly, arbitrarily, and unreasonably established the RRR as a placeholder rider and not at the negotiated rate of $1.05/MWh.

The Commission is charged with upholding the state's policy of protecting competition in the provision of electric service. Such competition is inherently hindered, and retail suppliers and the customers who purchase generation from them are automatically put at a disadvantage, when costs incurred by the utility are not properly allocated, but are thrown into general buckets of

[5] *Id*. at 9-10, Exs. MW-1 through MW-7.
[6] Stipulation at 1-2.

"generation," "distribution," and "transmission." There are fine distinctions to be made in what costs are more properly allocated just to SSO customers and which are correctly paid by all distribution customers, and while the Commission in the past has given lip service to examining these distinctions and assigning proper allocation of costs, this decision walks back that sentiment so far as to be essentially meaningless.

Not only is the Order in violation of state policy, but it is in violation of the Commission's own case law. In the 14-1693 Order, the Commission approved, without modification or amendment, the stipulation provision creating the RRR and detailing both how the charge would initially be assessed and the process by which actual costs would eventually be calculated.[7] Instead of following this procedure it has already approved, however, the Commission here has created a new process out of whole cloth and without consideration to the interests of the parties that have now twice negotiated the issue.

1. The Order violates the state policy of Ohio in R.C. 4928.02 of "ensur[ing] the availability of unbundled and comparable competitive retail electric service" and "avoiding anticompetitive subsidies".

The state policy of Ohio in part is to ensure "nondiscriminatory retail electric service" and to "ensure the availability of unbundled and comparable retail electric service" to customers.[8] Further, state policy prohibits anticompetitive subsidies.[9] While a distribution case provides one venue for evaluating SSO-related costs in distribution rates, that does not mean the Commission should do nothing to ensure that AEP Ohio's rates comply with state policy until a rate case is filed and decided.

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[7] 14-1693 Order at 29.

[8] R.C. § 4928.02(A) and (B); *see also Ohio Consumers' Counsel v. Pub. Util. Comm.*, 114 Ohio St.3d 340, 2006-Ohio-0788, ¶¶ 2-26, 41 ("The cornerstone of SB 3 was the requirement that electric utilities unbundle the three major components of electric service—generation, distribution, and transmission.").

[9] R.C. § 4928.02(H).

The RRR as agreed upon in the Stipulation simply bridges the gap between this case and the next rate case. The Commission's decision pays no attention to the fact that if the RRR is left at zero until the next rate case, then for at least the next two years, and certainly much longer before that case's rates go into effect, shopping customers will continue to be penalized by being made to pay twice for certain services simply because they have chosen to shop. And, importantly, Mr. White's analysis of an appropriate RRR level is based upon AEP Ohio's currently-in-effect distribution rates.[10] Thus, his analysis reflects the amount of costs that shopping customers will be overcharged until the next distribution rate case.

The Supreme Court of Ohio has frequently emphasized this aspect of state policy; when discussing the legislation that put the policy into effect, the Court stated that it "restructured Ohio's electric-utility industry to foster retail competition in the generation component of electric service. As we have repeatedly recognized, S.B. 3 altered the traditional rate-based regulation of electric utilities by requiring the three components of electric service — generation, transmission, and distribution — to be separated."[11] Additionally, the Court has said that "[p]ursuant to R.C. 4928.03 and 4928.05, electric generation is an unregulated, competitive retail electric service, while electric distribution remains a regulated, noncompetitive service pursuant to R.C. 4928.15(A)."[12] Unbundling regulated and unregulated services "ensured that distribution service would not subsidize the generation portion of the business. In short, each service component was required to stand on its own."[13]

[10] RESA Ex. 1.0 at 8.
[11] Industrial Energy Users-Ohio v. Pub Util. Comm'n, 2008-Ohio-990 at ¶ 5.
[12] *Id*. at ¶ 6.
[13] Migden-Ostrander v. Pub. Util. Comm'n, 102 Ohio St.3d 451, 453 (2004).

By disallowing the RRR as anything more than a placeholder, the Commission has violated this policy of promoting competition, unbundling services, and avoiding subsidies. The decision should be reversed.

2. The Order violates its own ruling from the 14-1693 Order creating the RRR pilot program and ordering the charge to take effect upon final order of this proceeding.

In the 14-1693 case, the parties negotiated and signed an extensive stipulation that, among other provisions, outlined the creation of the RRR and detailed the parties' obligations in determining an appropriate charge for the rider.[14] Importantly, that determination was meant to take place in between the approval of that stipulation and the filing of the Application in this case; the expectation was clearly that an initial analysis of AEP Ohio's distribution rates and the appropriate allocation of costs between shopping and non-shopping customers would be done before this case was ever commenced. The final element of the RRR provision in the 14-1693 Stipulation stated that "[t]he charge from the [RRR] would take effect . . . upon final order of the ESP extension proceeding."[15] Further, "[u]nless otherwise amended by the Commission, the [RRR] pilot adder shall be in effect through the term of the affiliate PPA recovery sought in the agreement or until new distribution base rates are put into effect."[16] Finally, the stipulation provided that "AEP Ohio will provide an analysis as part of its next distribution rate case to show all of the actual costs required to provide SSO generation service that are included in the Company's cost of service study."[17]

With hardly even a mention of the 14-1693 Stipulation, the Order upends the intentions of the signatory parties to both this Stipulation and the one in the previous case, by establishing

[14] 14-1693 Stipulation at 12-13 (Dec. 14, 2015).
[15] *Id*. at 12.
[16] *Id*. at 13.
[17] *Id*.

the RRR as a placeholder and delaying any recovery for shopping customers until the next rate case, if ever.[18] The Order states that the $1.05/MWh charge proposed in the Stipulation is a "negotiated value, because the various parties have differing views as to what it should be."[19] While the Order apparently views this disparity as bug, it is more accurately described as a feature. To be sure, RESA disagrees with AEP Ohio and with Staff as to how the proper allocation of costs should be reflected in the RRR; however, as is clear from the 14-1693 Stipulation, this disagreement was anticipated and accounted for through the establishment of a pilot, including having the parties meeting and "determine the charge . . . [to] be included in the 2016 ESP amendment case."[20] The agreement by the parties in the Stipulation of the $1.05/MWh charge was nothing more than the fulfillment of an agreement already negotiated, signed, and approved.

The Commission's concern that AEP Ohio's distribution rates "may include call center costs solely incurred to promoted competition or other costs related to the customer choice program," and its directive that "AEP Ohio should also analyze, in the rate case, its actual costs associated with the choice program,"[21] is a valid potential concern that will no doubt be exhaustively argued by interested parties in the upcoming rate case proceeding. But this current proceeding was never anticipated to be the venue in which those concerns would be fleshed out. The RRR pilot was created to acknowledge the costs associated with provided retail electric service that are not reflected in SSO rates, and to provide that bridge between this case and the next rate case, which is still years away. The Order gives no justification for overturning this

[18] *See* Order at 98-99.
[19] *Id*. at 98.
[20] 14-1693 Stipulation at 12.
[21] Order at 99.

aspect of the 14-1693 Stipulation that was signed and approved over two years ago, and should therefore the Commission should reverse its Order and allow the negotiated rate to stand.

B. The Commission's decision to fundamentally modify a key component of a negotiated settlement agreement undermines the party's positions and stifles the ability of parties to engage in honest and open negotiations.

The Commission's authority to modify stipulations is well-documented. There is a danger, however, in the arbitrary modification of fundamental provisions on which parties rely when agreeing to settle a case with as many moving parts in the one at issue here. Settlement negotiations in this case spanned months, involving countless meetings among parties and between individual stakeholders, and as is inevitable in situations like this, virtually every party gave up items or issues in order to gain elsewhere in the Stipulation. While RESA cannot speak for other parties, the removal, for all intents and purposes, of such an integral element as the RRR from the Stipulation creates a vacuum not able to be filled by the inclusion of other provisions. As just one example, RESA likely would not have agreed to such a delay in AEP Ohio filing a distribution rate case if it had known that fulfillment of the RRR would experience that same delay.

This is to say nothing of the fact that the agreed upon amount of the RRR in this case was merely the culmination of yet another set of negotiations and another stipulation in the 14-1693 case. RESA and other parties again spent long hours hashing out the details of the settlement agreement in that case, sacrificing other valuable elements under the reasonable belief that the package as a whole would serve the public interest and the interests of the parties. By modifying a provision in this proceeding that is nothing more than the fulfillment of terms of a previous agreement, the Commission devalues that previous agreement and the process as a whole.

Not only does the removal of the RRR charge undermine the intent of parties that signed the 14-1693 Stipulation and the parties in this case, but it fundamentally alters the Stipulation

itself. Specifically, another provision of the Stipulation which was approved without modification by the Commission was the removal of Commission and OCC assessment fees from the GEN-E, GEN-C, and ACRR riders.[22] These assessment fees are specifically called out as [i]ssues relating to unbundling of SSO costs"[23] meant to be addressed in the next rate case, but with the removal of the RRR charge, these costs have essentially been "rebundled," causing the Stipulation to now violate the state policy discussed above.

Again, RESA does not dispute that the Commission has the authority to modify stipulations. But when parties cannot reasonably rely on the idea that compromises made in the spirit of negotiation and cooperation will actually be honored, the entire process is undermined.

III. CONCLUSION

For these reasons, RESA respectfully requests that the Commission grant this application for rehearing and correct the errors identified herein.

[22] Order at 44.
[23] *Id*.

Dated: May 25, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served by electronic mail this 25th day of May, 2018, to the following:

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Summary: Application for Rehearing and Memorandum in Support electronically filed by Ms. Rebekah J. Glover on behalf of Retail Energy Supply Association