



Public Utilities Commission

Mike DeWine, Governor
Jenifer French, Chair

Commissioners

M. Beth Trombold
Lawrence K. Friedeman
Dennis P. Deters
Daniel R. Conway

June 14, 2022

Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

RE: *In the Matter of the Application of Ohio Power Company to Update its Cogeneration/Small Power Production Tariff*, Case No. 20-963-EL-ATA

Dear Docketing Division:

Enclosed please find the Staff's Review and Recommendations regarding the application filed by Ohio Power Company to amend its Tariff in Case No. 20-963-EL-ATA.

A handwritten signature in black ink, appearing to read "K. Schaefer", with a long horizontal stroke extending to the right.

Krystina Schaefer
Division Chief, Grid Modernization & Security
Public Utilities Commission of Ohio

History

The Public Utility Regulatory Policies Act of 1978 (PURPA), as amended, mandates that electric utilities purchase energy and capacity from qualifying facilities, in accordance with 18 CFR § 292.304 (Rates for purchases), unless exempted by 18 CFR § 292.309 and 18 CFR § 292.310. There are two types of “qualifying facilities” (QF): cogeneration facilities and small power production (SPP) facilities that are fueled primarily by renewable resources.

In Case No. 12-2050-EL-ORD, the Public Utilities Commission of Ohio (“Commission”) conducted the five-year rule review of Ohio Administrative Code (Ohio Adm.Code) Chapter 4901:1-10, pursuant to Section 119.032 of the Ohio Revised Code (R.C.). As part of that review, the Commission approved changes to Ohio Adm.Code 4901:1-10-34 (Compliance with PURPA), which became effective on December 20, 2014.¹

On May 1, 2020, the Ohio Power Company (AEP Ohio or the Company) filed an application to amend its Schedule COGEN/SPP (Cogeneration and/or Small Power Production) tariff in Case No. 20-963-EL-ATA (current case) to comply with changes made to Ohio Adm. Code Chapter 4901:1-10-34 in Case No. 12-2050-EL-ORD. On April 26, 2021, the Staff of the Public Utilities Commission of Ohio (Commission) filed a report recommending approval of the Company’s proposed tariff changes. On May 5, 2021, the Commission filed a Finding and Order approving the Company’s proposed tariff changes.

Meanwhile, on September 19, 2019, FERC issued a notice of proposed rulemaking (NOPR) proposing to modify its PURPA regulations.² One issue addressed in the NOPR was the threshold at which QFs have a rebuttable presumption of nondiscriminatory access to wholesale markets. Following the Energy Policy Act of 2005, an electric utility is no longer required to purchase electric energy from a QF if that QF has nondiscriminatory access to wholesale markets. Initially, FERC set a rebuttable presumption threshold for both cogeneration and small power production facilities at 20 megawatts (MW), meaning QFs over 20 MW are presumed to have nondiscriminatory access to the wholesale market. In July 2020, in Order 872, FERC maintained the 20 MW threshold for cogeneration, but lowered the threshold for SPPs to 5 MW, such that SPPs over 5 MW are presumed to have nondiscriminatory access to the wholesale market.³ Both cogeneration facilities greater than 20 MW and SPPs facilities greater than 5 MW can rebut the presumption of access due to operational characteristics, transmission constraints, and/or other factors.

On March 31, 2021, following Order 872, the Company petitioned FERC to terminate the requirement under 18 CFR § 292.303(a) to enter into new contracts or obligations to purchase electric energy and capacity from small power production QFs with a net capacity over 5 MW. On June 29, 2021, FERC granted the Company’s motion, effective March 31, 2021.⁴

¹ In the Matter of the Commission’s Review of Chapter 4901:1-10, Case No. 12-2050-EL-ORD, Finding & Order at 48-51 (Jan. 15, 2014).

² *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, 168 FERC ¶ 61184 (2019).

³ *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Order No. 872, 172 FERC ¶ 61,041 (2020).

⁴ *In re Appalachian Power Co., et al*, 175 FERC ¶ 61,257 (June 29, 2021).

On May 16, 2022, the Company filed an application in the current case to further amend its Schedule COGEN/SPP (Cogeneration and/or Small Power Production) tariff.

Application

In its application, the Company proposes changes making the tariff available to cogeneration facilities with a net power production capacity of 20 MW or less and small power production facilities with a net power production of 5 MW or less. The Company also updated the seasonal average annual total-real time locational marginal price (LMP) rates for energy deliveries from COGEN/SPP facilities of 100 kW or less.⁵ The LMP rates are set at the AEP Ohio residual aggregate pricing node and reduced by the applicable average PJM operating reserve balancing charges for the billing year.

Staff Recommendation

Staff recommends that the Company modify the tariff to include language that would allow QF's that successfully rebut, as authorized by FERC, the presumption of nondiscriminatory access to wholesale markets to be eligible to take service under the COGEN/SPP tariff. The tariff should also be available to any QF for which FERC reinstates the Company's obligation to purchase according to 18 CFR § 292.311.

Staff reviewed the Company's proposed changes to eligibility under the tariff and the rate calculations, including the inputs used, for the seasonal rates to be put into effect. With the above recommendations, Staff finds the proposed changes to be consistent with PURPA and subsequent modifications as ordered by FERC.

Staff recommends that the Commission approve the Company's proposed changes to the COGEN/SPP tariff with the recommendations above. Staff also recommends that, to the extent necessary, the Company be granted a waiver from any provision of Ohio Adm.Code 4901:1-10-34 that is currently inconsistent with FERC's PURPA regulations.

⁵ For facilities with a design capacity of 100 kilowatts or less, the electric utility must put into effect a standard rate for purchase. 18 CFR § 292.304(c). Per Ohio Adm.Code 4901:1-10-34(L): "Energy payments to qualifying facilities shall be based on the locational marginal price (LMP) at the RTO/ISO's pricing node that is closest to the qualifying facility's points of injection, or at a relevant trading hub or zone."

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

6/14/2022 4:14:59 PM

in

Case No(s). 20-0963-EL-ATA

Summary: Staff Review and Recommendation In the Matter of the Application of Ohio Power Company to Update its Cogeneration/Small Power Production Tariff, Case No. 20-963-EL-ATA electronically filed by Ms. Krystina M Schaefer on behalf of Schaefer, Krystina