

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
OHIO POWER COMPANY TO UPDATE ITS  
TARIFF.

CASE NO. 20-963-EL-ATA

## FINDING AND ORDER

Entered in the Journal on June 29, 2022

### I. SUMMARY

{¶ 1} The Commission grants the May 16, 2022 application of Ohio Power Company to amend its Cogeneration/Small Power Production tariff, as modified by the Staff recommendations and consistent with this Finding and Order.

### II. DISCUSSION

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or Company) is an electric distribution utility (EDU), as defined by R.C. 4928.01(A)(6), and a public utility, as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Ohio Adm.Code 4901:1-10-34 outlines the requirements for EDU compliance with the Public Utility Regulatory Policies Act of 1978 (PURPA). Among other things, Ohio Adm.Code 4901:1-10-34 addresses the implementation of a standard market-based rate for electricity transactions between EDUs and qualifying facilities, as provided by PURPA, specifically for small power production (SPP) facilities and cogeneration facilities.

{¶ 4} In accordance with the Energy Policy Act of 2005, an electric utility is no longer required to purchase electric energy from a qualified facility (QF) if that QF has nondiscriminatory access to wholesale markets. Pursuant to Order 872, the Federal Energy Regulatory Commission (FERC) lowered the threshold for SPP to five megawatts (MW). SPPs over 5 MW are presumed to have nondiscriminatory access to the wholesale market. FERC maintained the 20 MW threshold for cogeneration. Cogeneration facilities greater

than 20 MW and SPP facilities greater than 5 MW can rebut the presumption of access due to operational characteristics, transmission constraints, and/or other factors.<sup>1</sup>

{¶ 5} On March 31, 2021, AEP Ohio 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 SPP QFs with a net capacity over 5 MW. On June 29, 2021, FERC granted the Company's motion, effective March 31, 2021. *In re Appalachian Power Co., et al.*, 175 FERC ¶ 61,257 (June 29, 2021).

{¶ 6} On May 16, 2022, AEP Ohio filed an application to revise its tariff to update the locational marginal price (LMP) consistent with the requirements of Ohio Adm.Code 4901:1-10-34. In addition, AEP Ohio requests authority to revise its tariff language to be consistent with the new FERC regulations regarding the size limits for QFs. The Company proposes to amend the tariff to make it available to cogeneration facilities with a net power production capacity of 20 MW or less and SPP facilities with a net power production of 5 MW or less.

{¶ 7} On June 14, 2022, Staff filed its review and recommendation regarding AEP Ohio's proposed tariff amendments. Staff reviewed the Company's proposed changes to eligibility under the tariff and the rate calculations. As to the LMP rate, Staff notes that the Company updated the seasonal average annual total-real time LMP rates for energy deliveries from cogeneration and SPP facilities of 100 kW or less.<sup>2</sup> 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. While the Company proposes to amend the tariff to make it consistent with the new FERC size limits, Staff recommends that

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<sup>1</sup> *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, Order No. 872, 172 FERC ¶ 61,041 (2020).

<sup>2</sup> For facilities with a design capacity of 100 kilowatts (kw) or less, the electric utility must put into effect a standard rate for purchase. 18 CFR § 292.304(c). Ohio Adm.Code 4901:1-10-34(L) provides that energy payments to QFs shall be based on the LMP at the regional transmission organization's or independent system operator's pricing node that is closest to the qualifying facility's points of injection, or at a relevant trading hub or zone.

the Company also modify the tariff to include language that would allow QFs that successfully rebut the presumption of nondiscriminatory access to wholesale markets, as authorized by FERC, to be eligible to take service under the COGEN/SPP tariff. In addition, Staff recommends the tariff be amended to be available to any QF for which FERC reinstates the Company's obligation to purchase energy in accordance with 18 CFR § 292.311. With these recommendations, Staff concludes that the proposed amendments to the tariff are consistent with PURPA and modifications of QF size limits as ordered by FERC. Accordingly, Staff recommends that the Commission approve the application to amend the tariff. 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.

### III. COMMISSION CONCLUSION

{¶ 8} Upon review of AEP Ohio's application to amend its tariff and the Staff's review and recommendation, the Commission finds that the amendments to AEP Ohio's tariff are consistent with FERC's PURPA regulations and the application to amend the COGEN/SPP tariff should be approved subject to the recommendations of Staff. The Commission finds that a waiver of Ohio Adm.Code 4901:1-10-34, to the extent that it may be inconsistent with FERC PURPA regulations, is not necessary as a part of this application. However, the Commission directs AEP Ohio to file a motion for waiver if the Company believes circumstances have been presented such that a waiver may be required due to any inconsistency in Ohio Adm.Code 4901:1-10-34 and FERC PURPA regulations. Finally, the Commission finds that no hearing is required in this case.

### IV. ORDER

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That AEP Ohio's application for tariff amendment be approved, as modified by the recommendations of Staff and consistent with this Finding and Order. It is, further,

{¶ 11} ORDERED, That AEP Ohio is authorized to file its tariffs, in final form, consistent with this Finding and Order. AEP Ohio shall file one copy in this case docket and one copy in its TRF docket. It is, further,

{¶ 12} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariffs are filed with the Commission. It is, further,

{¶ 13} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 14} ORDERED, That a copy of this Finding and Order be served upon all parties and interested persons of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

GNS/hac

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Summary: Finding & Order granting the May 16, 2022 application of Ohio Power Company to amend its Cogeneration/Small Power Production tariff, as modified by the Staff recommendations and consistent with this Finding and Order electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio