**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of<br>Ohio Power Company for Authority to<br>Establish a Standard Service Offer<br>Pursuant to §4928.143, Revised Code,<br>in the Form of an Electric Security Plan. | )<br>)<br>)<br>)<br>) | Case No. 13-2385-EL-SSO |
| In the Matter of the Application of<br>Ohio Power Company for Approval of<br>Certain Accounting Authority. | )<br>)<br>) | Case No. 13-2386-EL-AAM |

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# REPLY BRIEF OF INDUSTRIAL ENERGY USERS-OHIO

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Frank P. Darr (Counsel of Record)
(Reg. No. 0025469)
Matthew R. Pritchard (Reg. No. 0088070)
McNees Wallace & Nurick LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
fdarr@mwncmh.com
(willing to accept service by e-mail)
mpritchard@mwncmh.com
(willing to accept service by e-mail)


**August 15, 2014** **Attorneys for Industrial Energy Users-Ohio**

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## I. INTRODUCTION

In this proceeding, Ohio Power Company ("AEP-Ohio") seeks authorization of an Electric Security Plan ("ESP" or "proposed ESP" as appropriate) for the period of June 1, 2015 to May 31, 2018.[1] As the initial briefs of the parties demonstrate, the most significant contested issue in this proceeding is AEP-Ohio's request that the Public Utilities Commission of Ohio ("Commission") authorize the proposed Power Purchase Agreement Rider ("PPAR"). AEP-Ohio also proposes to classify some transmission costs as non-market based and collect these costs from retail customers through a nonbypassable Basic Transmission Cost Rider ("BTCR").[2] Additionally, AEP-Ohio proposes a Purchase of Receivables ("POR") program that includes a nonbypassable

[1] AEP-Ohio Ex. 1 at 2. AEP-Ohio also seeks authority to terminate the ESP one year early. *Id.* at 15.

[2] *Id.* at 12-13.

Bad Debt Rider ("BDR") to socialize the incremental bad debt costs in excess of amounts currently collected in distribution rates.[3]

In its initial brief, AEP-Ohio argues the PPAR as proposed is lawful and reasonable. No other party supports the PPAR as proposed, and all but one recommend that the Commission refuse to authorize it in any form. Because authorization of the PPAR would violate Ohio and federal law and result in a substantial shift of generation-related costs from AEP-Ohio to customers, the Commission should not authorize it.

In contrast to the overwhelming lack of support for the illegal and unreasonable PPAR, the parties offer varying amounts of support for the BTCR and POR program. As discussed below, the Commission should not authorize either as proposed because AEP-Ohio has failed to demonstrate that they are reasonable.

AEP-Ohio also claims that the proposed ESP, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section R.C. 4928.142 ("ESP v. MRO Test").[4] Although AEP-Ohio apparently now concedes that the Commission must assign a value to the PPAR as part of the ESP v. MRO Test as Industrial Energy Users-Ohio ("IEU-Ohio") demonstrated in its initial brief,[5] AEP-Ohio has treated the PPAR as a benefit of the

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[3] *Id.* at 14. As appropriate, the POR program refers to the combination of the POR and BDR proposed by AEP-Ohio.

[4] AEP-Ohio Initial Brief at 139-46.

[5] IEU-Ohio Initial Brief at 53-54.

ESP when the record does not support that conclusion.[6] When all costs of the proposed ESP are accounted from, it fails the ESP v. MRO Test.

Because the proposed ESP contains several unlawful and unreasonable riders and does not pass the ESP v. MRO Test, the Commission may not approve it. To ensure that the ESP complies with Ohio law, including its pro-competitive policies, the Commission must modify the proposed ESP by removing the unlawful and unreasonable riders, particularly the PPAR.[7]

## II. THE COMMISSION SHOULD NOT AUTHORIZE THE PPAR

Through the PPAR, AEP-Ohio seeks to guarantee that it will recover the cost of its contractual obligations to the Ohio Valley Electric Corporation ("OVEC") under the Inter-Company Purchase Agreement ("ICPA").[8] Many pages of the briefs of AEP-Ohio, the Commission Staff ("Staff"), and the intervenors are devoted to the expected cost of the PPAR, but the Commission need not place itself in the intractable position of guessing whether the PPAR would result in a charge or credit to retail customers because no provision of R.C. 4928.143(B) authorizes the PPAR. Additionally, authorization would violate the prohibitions of generation-related subsidies contained in R.C. 4928.02(H) and 4928.17, and the prohibition of the Commission's authorization of

[6] AEP-Ohio Initial Brief at 142.

[7] In their initial briefs, the Office of the Ohio Consumers' Counsel ("OCC") and the Ohio Environmental Council/Environmental Defense Fund ("OEC/EDF") propose modifications of the proposed ESP to shift distribution cost recovery and increase requirements associated with the Economic Development Rider ("EDR"). For the reasons discussed below, the Commission should not authorize those modifications.

[8] AEP-Ohio's contractual rights to obtain power from OVEC are referred to herein as the OVEC Entitlement.

transition revenue or its equivalent. Further, a Commission order approving the PPAR would be preempted by the Federal Power Act ("FPA").[9]

In its initial brief, AEP-Ohio limits its argument regarding the lawfulness of the PPAR to the claim that four provision of R.C. 4928.143(B)(2) authorize it. These claims are not correct. Additionally, ignoring the testimony of AEP-Ohio's witnesses and the balance of the record, AEP-Ohio incorrectly claims that the PPAR will provide benefits to customers. Because AEP-Ohio has failed to demonstrate that the PPAR would be lawful or reasonable, the Commission should not authorize it.

### A. The PPAR is not authorized by R.C. 4928.143(B)(2)

In its initial brief, AEP-Ohio argues that the PPAR may be authorized by four divisions of R.C. 4928.143(B). Initially, AEP-Ohio claims that the Commission can authorize the PPAR under R.C. 4928.143(B)(2)(d) because the PPAR "relates" to default service and bypassibility and promotes stability and certainty for all customers.[10] Second, AEP-Ohio argues the PPAR may be authorized under R.C. 4928.143(B)(2)(a) because that division permits affiliate power agreements.[11] Third, it argues that R.C. 4928.143(B)(2)(e) may be relied upon to authorize the PPAR because the rider would adjust automatically.[12] Fourth, AEP-Ohio argues that R.C. 4928.143(B)(2)(i) would authorize the PPAR because the rider relates to economic development.[13] AEP-Ohio's claims that a provision of R.C. 4928.143(B)(2) authorizes the PPAR are without merit.

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[9] IEU-Ohio Initial Brief at 7-24.

[10] AEP-Ohio Initial Brief at 27-28.

[11] *Id.* at 29.

[12] *Id.* at 30.

[13] *Id.*

### 1. R.C. 4928.143(B)(2)(d) does not provide a basis for authorizing the PPAR because the rider does not relate to default service or provide certainty or stability regarding retail electric service

R.C. 4928.143(B)(2)(d) provides that an ESP may include terms, conditions, or charges related to certain listed items that have the effect of stabilizing or providing certainty regarding retail electric service. AEP-Ohio rests its argument that the PPAR may be authorized pursuant to R.C. 4928.143(B)(2)(d) on the claim that the PPAR relates to default service and bypassability. The proposed PPAR charge, however, does not relate to default service, and the fact that AEP-Ohio has proposed the PPAR as a nonbypassable charge is irrelevant because the rider would not provide stability or certainty in the pricing of retail electric service.

AEP-Ohio's initial claim that the PPAR is related to default service is directly contradicted by its testimony at the hearing. During cross-examination, Mr. Allen testified that AEP-Ohio would not use the OVEC generation to support default service.[14] In his prefiled written testimony, he also stated that AEP-Ohio's interest in the OVEC Entitlement would not be bid into the SSO auctions.[15] Based on Mr. Allen's testimony, therefore, the OVEC Entitlement is unrelated to default service.

AEP-Ohio also claims that the PPAR relates to bypassability and thus may be authorized by R.C. 4928.143(B)(2)(d). AEP-Ohio is urging the Commission to interpret the division as permitting any charge with a nonbypassable label attached to it to be a lawful component of an ESP, a nonsensical result. Instead, the division must be read in light of the fact that it is applicable to generation-related items of the ESP such as

[14] Tr. Vol. II at 566-67.

[15] AEP-Ohio Ex. 7 at 10.

restrictions on shopping, backup service, and default service. As the record demonstrates, the PPAR has no relationship to the provision of retail electric services provided to customers (other than it would likely increase their bills for electricity).

Even if the Commission wrongly concluded that the PPAR was related to default service or "bypassability," AEP-Ohio has failed to demonstrate that the charge has the effect of providing certainty or stability in the provision of retail electric service. Although it repeatedly asserts that the PPAR will provide a hedge for customers,[16] in reality the PPAR would increase the volatility of the prices all customers pay for retail electric services, as discussed below.

Because AEP-Ohio has not demonstrated the requirements of R.C. 4928.143(B)(2)(d) have been met, the Commission cannot lawfully authorize the PPAR under that division.

**2. R.C. 4928.143(B)(2)(a) does not provide a basis for authorizing the PPAR because it does not recover the cost of purchased power supplied under the SSO**

AEP-Ohio also argues that the PPAR may be authorized under R.C. 4928.143(B)(2)(a) because "[t]hat provision explicitly permits affiliate purchase power agreements."[17] In making this argument, AEP-Ohio ignores the additional requirement that the PPA must concern power supplied under the offer.

With regard to purchased power agreements, the full text of R.C. 4928.143(B)(2)(a) states that an ESP may provide "[a]utomatic recovery of any of the following costs of the electric distribution utility, provided the cost is prudently incurred:

[16] AEP-Ohio Initial Brief at 28.

[17] *Id.* at 29.

… *the cost of purchased power supplied under the offer*, including the cost of energy and capacity, and including purchased power acquired from an affiliate." (Emphasis added.) Thus, the text of the division requires that any purchased power be utilized to the supply standard service offer ("SSO") available to customers.

According to Mr. Allen and as required by Commission order, the OVEC Entitlement must be sold into the wholesale markets operated by PJM Interconnection, LLC ("PJM").[18] Further, a competitive bid process ("CBP") will be used to secure both capacity and energy used for the SSO.[19] Thus, AEP-Ohio's assertion that R.C. 4928.143(B)(2)(a) provides authorization for the PPAR is not correct because the PPAR is unrelated to the cost of power supplied under the SSO.

### 3. R.C. 4928.143(B)(2)(e) does not provide a basis for authorizing the PPAR because it does not increase or decrease any component of the SSO price

R.C. 4928.143(B)(2)(e) authorizes "automatic increases and decreases in any component of the standard service offer price," and AEP-Ohio claims this division may be relied upon to authorize the PPAR:

> Separately, division (B)(2)(e) of the ESP statute also permits automatic increases or decreases and encompasses a mechanism relating to SSO service such as the PPA Rider. This automatic pass through of increases or decreases accurately describes operation of the PPA Rider. As with the discussion under division (B)(2)(a) above, when taking into account that the FERC-authorized costs associated with the OVEC contract need to be recovered at the retail level and given AEP Ohio's existing authority to exclude OVEC from corporate separation and its obligation (under the 12-1126 decision) to liquidate OVEC power into the PJM markets, the net

[18] AEP-Ohio Ex. 7 at 10.

[19] AEP-Ohio Ex. 1 at 7.

cost (or credit) associated with OVEC is precisely what would automatically be passed through the customers under the PPA Rider.[20]

There are several problems with AEP-Ohio's argument.

Initially, AEP-Ohio does not identify what "component" the PPAR would increase or decrease. The PPAR is unrelated to any cost recoverable in the proposed ESP. If AEP-Ohio instead is assuming that it may recover any OVEC related costs through the PPAR as part of an ESP pursuant to authorization of a component under R.C 4928.143(B)(2)(a), (d), or (i), that assumption must be rejected for the reasons discussed herein.

Federal approval of the ICPA also does not provide a basis for authorization. Unlike transmission costs for which express authorization exists for the recovery of those costs,[21] there is no provision authorizing recovery of costs unrelated to the provision of electric service simply because they are approved by the Federal Energy Regulatory Commission ("FERC"). AEP-Ohio may want to recover the OVEC related costs from retail customers, but it has not pointed to any provision of R.C. 4928.143 that authorizes such a charge as part of an ESP.

AEP-Ohio's reference to FERC's approval of the costs associated with the ICPA, moreover, highlights an additional problem with the PPAR. Any cost or credit resulting from the PPAR would be a function of the costs governed by the FERC-approved ICPA and revenues produced under the FERC-approved PJM markets. These wholesale

[20] AEP-Ohio Initial Brief at 30.

[21] R.C. 4928.05(A)(2).

markets are not subject to Commission jurisdiction, and AEP-Ohio and the Staff both recognize the limits of the Commission's authority to review these costs and revenues.[22]

AEP-Ohio offers that the Commission should nonetheless take comfort in the fact that the review process for transmission rates provides a "good track record."[23] This "good track record," however, has been marked by repeated failures on the part of AEP-Ohio to estimate properly the amount of revenue needed to recover its federally-approved transmission costs and Commission intervention that introduced a new nonbypassable charge to socialize a missed estimate.[24] One can only imagine what a "poor track record" might look like if this past performance represents a good one.

Moreover, concerns about whether the PPAR would result in the pass-through of improper costs are not hypothetical. For example, OVEC in its 2012 Annual Report indicated that it was penalized $2.2 million in liquidated damages by one of its coal transportation contractors for violating terms of a supply contract.[25] OVEC booked these damages as a current regulatory asset recoverable from Sponsoring Companies in the following twelve months.[26] In theory, the risk that AEP-Ohio will recover such imprudent costs could be addressed by FERC, but it is unlikely that either customers or the Commission can expend the resources to assure that supervision takes place.

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[22] AEP-Ohio Initial Brief at 42; Staff Initial Brief at 7.

[23] AEP-Ohio Initial Brief at 42.

[24] *See In the Matter of the Application of Ohio Power Company to Update its Transmission Cost Recovery Rider*, Case No. 12-1046-EL-RDR, Application (June 15, 2012) (requesting a reconciliation adjustment of $36 million),*appeal pending*, Supreme Ct. Case No. 2013-154; *In the Matter of the Application of Ohio Power Company to Update its Transmission Cost Recovery Rider Rates*, Case No. 14-1094-EL-UNC, Application (June 16, 2014) (identifying an under-recovery of $57 million).

[25] IEU-Ohio Ex. 6 at 13.

[26] *Id.*

Further, under the FPA, the Commission is prohibited from increasing AEP-Ohio's compensation for wholesale electric generation services because FERC has exclusive jurisdiction to establish a utility's compensation for the provision of wholesale electric services.[27] The PPAR would increase AEP-Ohio's total compensation for wholesale energy and capacity services by permitting AEP-Ohio to recover the amount of costs assigned to it by OVEC that is not recovered when AEP-Ohio liquidates the OVEC Entitlement into the wholesale markets established by PJM. Because the authorization of the PPAR would increase AEP-Ohio's wholesale compensation, a Commission order authorizing the rider is preempted by the FPA even if R.C. 4928.143(B)(2)(e) or another division authorized such a provision.

Implicit in AEP-Ohio's claim that the Commission must authorize the PPAR to collect these costs through retail rates may be a claim the costs would otherwise be "trapped."[28] Initially, they are not a trapped cost of supply because AEP-Ohio would not rely upon generation supply associated with the OVEC Entitlement to provide the SSO. Additionally, under the ICPA, AEP-Ohio currently has the ability to assign the OVEC Entitlement to a credit-worthy affiliate or third party.[29] As a result, any costs that AEP-Ohio incurs as a result of the OVEC Entitlement are the results of a voluntary undertaking. By denying the authorization of the PPAR, therefore, the Commission would not be trapping FERC-approved costs of providing service to retail customers.

[27] IEU-Ohio Initial Brief at 20-24; Staff Initial Brief at 15-18.

[28] *Nantahala Power and Light Co. v. Thornburg*, 476 U.S. 953, 971 (1986).

[29] IEU-Ohio Initial Brief at 34-36.

Thus, AEP-Ohio's attempt to bootstrap approval based on R.C. 4928.143(B)(2)(e) must be rejected. Neither this division nor federal law permits or requires the Commission to authorize the rider.

#### 4. R.C. 4928.143(B)(2)(i) does not provide a basis for authorizing the PPAR because it would have no effect on economic development

Finally, AEP-Ohio seeks authorization of the PPAR under R.C. 4928.143(B)(2)(i) on the basis that the operation of OVEC provides economic benefits to a six county region in Ohio.[30] Its claim assumes that OVEC would not provide those economic benefits if the PPAR was not approved. Mr. Vegas, however, testified that OVEC would continue to operate even if the Commission denied authorization of the PPAR.[31] Thus, the authorization of the PPAR would not be related to economic development or job retention. Accordingly, AEP-Ohio has failed to show that R.C. 4928.143(B)(2)(i) authorizes the PPAR.

### B. The PPAR is unreasonable because the PPAR fails to provide any benefit to customers, will likely increase their costs substantially, and will impose additional market risk on customers

The Staff opposes the PPAR, in part, on the basis that its authorization would undo the Commission's recent steps to implement the requirements of Amended Substitute Senate Bill 3 ("SB 3") and Amended Substitute Senate Bill 221 ("SB 221").[32] As Staff points out, "AEP-Ohio asks … the Commission to reverse course and begin

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[30] AEP-Ohio Initial Brief at 24 & 30.

[31] Tr. Vol. I at 40.

[32] Staff Initial Brief at 2-3.

'reregulating' some of AEP-Ohio's generation assets. The PPA Rider will move AEP-Ohio in the exact opposite direction of market-based competition."[33]

The Staff is only partially correct in asserting that AEP-Ohio is seeking to avoid the outcomes required by Ohio law. As proposed, the PPAR would guarantee AEP-Ohio full cost recovery of the OVEC Entitlement. Beyond that, however, AEP-Ohio is seeking authority that these costs be unregulated by this Commission. According to AEP-Ohio, it is seeking a one-time determination that the costs of the OVEC Entitlement are prudently incurred and a commitment from the Commission that any additional PPAs for which it seeks authorization for cost recovery in the future will also be subject to a "one and done" approval process.[34] Moreover, the generation units that AEP-Ohio would look to for additional PPAs would be limited to those of its unregulated generation affiliate.[35] Thus, AEP-Ohio is not asking the Commission to re-regulate generation costs through the PPAR; rather, it is seeking a near-blank check to pass through generation related costs of OVEC and its unregulated generation affiliate.

To justify this "blank check," AEP-Ohio argues at length that the PPAR complies with the ESP statutory framework and that rejection of the PPAR would inappropriately limit the Commission's ability to address price stability.[36] Both claims are wrong.

First, the "statutory framework" for an ESP, R.C. 4928.143(B), does not provide authorization for a PPAR. As the discussion above indicates, none of the provisions of R.C. 4928.143(B)(2) that AEP-Ohio has identified authorizes the PPAR. Additionally,

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[33] *Id.* at 4.

[34] AEP-Ohio Initial Brief at 31.

[35] Tr. Vol. I at 110-11.

[36] AEP-Ohio Initial Brief at 33-43.

the PPAR would violate a prohibition of subsidies contained in R.C. 4928.02(H) and 4928.17, violate a prohibition of the authorization of transition revenue or its equivalent contained in R.C. 4928.38, and exceed the Commission's authority, which is limited to the regulation of retail, rather than wholesale, electric services.[37] Additionally, it would also violate federal law.[38] AEP-Ohio's claim that PPAR satisfies the statutory framework of an ESP is plainly wrong.

Second, the Commission will not limit its ability to address price stability of the SSO if it refuses to authorize the PPAR. For example, the Staff has proposed modifications to address price stability within the CBP process the Commission may authorize lawfully.[39]

Moreover, customers already have practical tools to secure price stability. As AEP-Ohio's witness Dr. McDermott explained, customers have different risk preferences and the market for generation services respond to those preferences. To the extent that customers desire to hedge their cost of generation service, they can do so by selecting fixed price contracts.[40] Many fixed price contracts are available to customers currently.[41] Thus, there are lawful market-based options available to customers that desire to hedge price risk.

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[37] *See* IEU-Ohio Initial Brief at 13-20.

[38] *Id.* at 20-24.

[39] Staff Ex. 16.

[40] IEU-Ohio Ex. 16.

[41] AEP-Ohio Ex. 33 at WAA-R4. *See also*, http://energychoice.ohio.gov/ApplesToApplesCategory.aspx?Category=Electric

To justify securing a "blank check" for generation-related costs it may not recover in the wholesale markets, AEP-Ohio also provides a "brief digression"[42] on the difficult path the Commission followed to implement SB 3 and SB 221. After reiterating its incorrect claim that its rates were not market-based following the transition period provided by SB 3 and during its first ESP under SB 221, it cites the "cooperative partnership" between it and the Commission as if the "partnership" can justify authorizing a rider that is neither legal nor reasonable.[43] If the Commission's order approving and modifying the proposed ESP is to comply with R.C. 4928.143, the Commission cannot accept this invitation from AEP-Ohio to approve the unlawful and unreasonable PPAR.

Beyond the legal barriers it fails to address in its "brief digression," AEP-Ohio also ignores several fundamental problems with its proposal, which undermine its claim that the PPAR will provide price stability. These problems include the injection of additional market risk into the bills of all customers, a lack of proof concerning the stabilizing effect of the rider, the failure to address adequately its own estimates that show the rider will be a net cost during the ESP term, and the fact that markets already provide the benefit the PPAR is claimed to provide.

#### 1. The PPAR injects additional price volatility in customer bills

According to AEP-Ohio, the PPAR will promote rate stability whether it is a credit or a charge.[44] That claim is not correct.

[42] AEP-Ohio Initial Brief at 36.

[43] *Id.* at 33-43.

[44] *Id.* at 43.

Regardless of whether the PPAR results in a charge or credit, it would increase the volatility of prices of both shopping and nonshopping customers. Shopping customers, including residential customers, can secure long-term contracts of up to three years at a fixed rate.[45] Nonshopping customers would benefit from the stability provided by the laddering and staggering of the CBP.[46] Authorization of the PPAR, however, would increase price risk for both shopping and nonshopping customers by adding the wholesale price risk of the OVEC Entitlement to their bills.[47]

**2. The evidence does not support the claim that the PPAR would act as a hedge or provide additional protection from extreme weather events**

In response to the evidence that the PPAR would increase the price volatility of AEP-Ohio's customers, AEP-Ohio seeks to cloud the ineffectiveness of the PPAR as a "hedge" by arguing that market prices are more volatile in an upward direction due to significantly harsher seasonal weather than downward due to milder than normal weather and offered some examples of the sensitivity of the rider to changes in market prices of electricity.[48] This response, however, does not address the basic problem the intervenors have identified with the PPAR that the PPAR increases retail price volatility. The problem is inherent in the design of the rider and is not resolved by AEP-Ohio's attempt to show that there may be an upside to the rider if electric prices increase or decrease more than what is shown by a set of normalized weather assumptions.

[45] AEP-Ohio Ex. 33 at Ex. WAA-R3; Tr. Vol. XIII at 3284-85.

[46] Staff Ex. 16 *passim*; Tr. Vol. XIII at 3279-80.

[47] Tr. Vol. XIII at 3141. As one witness supporting a modified PPAR pointed out, none of the factors driving the PPAR rate is known. Tr. Vol. XI at 2594.

[48] AEP-Ohio Initial Brief at 47-50.

Even if AEP-Ohio's response did address the effect of the rider on price volatility, the examples concerning the sensitivity of the hedge offered by AEP-Ohio are not grounded in reality. In practice, OVEC's costs are sensitive to many factors including plant outages, weather, soft energy prices, and general economic conditions.[49] These factors resulted in a 24% swing in the cost of OVEC generation between 2011 and 2012.[50] Despite the fact that OVEC's costs are sensitive to weather and other factors, AEP-Ohio assumed that costs remained constant when market prices changed.[51] By ignoring the connection between prices and costs, AEP-Ohio forced the data to produce the results it desired. These contrived examples are not sound evidence on which to authorize the PPAR.

**3. The PPAR, directionally, will impose a cost on customers**

AEP-Ohio further attempts to justify the PPAR by arguing that the effect of the PPAR on customer bills will be either neutral to positive in the short run and a benefit in the long run.[52] (Given AEP-Ohio's recent ability to estimate transmission costs and customer migration, the Commission should not place much weight on AEP-Ohio's ability to predict even short-term results.[53]) As to the short run benefits of the PPAR, AEP-Ohio concedes that they will likely be minimal: 7¢/megawatt-hour.[54] Thus, its claim that the PPAR will provide price stability or a financial benefit to customers during the term of the proposed ESP is unsupported.

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[49] Tr. Vol. II at 544-49.

[50] IEU-Ohio Ex. 1B at Ex. KMM-3, page 2.

[51] AEP-Ohio Ex. 33 at Ex. WAA-R2; Tr. Vol. XIII at 3214.

[52] AEP-Ohio Initial Brief at 52-60.

[53] *See* IEU-Ohio Initial Brief at 25 n.89.

[54] AEP-Ohio Ex. 8A.

Further, AEP-Ohio seeks to avoid its own prior estimates of the cost the PPAR would impose on customers. Before it provided its 7¢ solution, AEP-Ohio's estimates demonstrated that the PPAR initially would be a cost to customers.[55] Further, its first estimate, a reasonable one according to Mr. Vegas, predicted that the cost of the PPAR would be $52 million.[56] Properly adjusted for output and costs, the PPAR likely would increase customer bills between $82 million and $116 million.[57] On the record of this case, AEP-Ohio failed to demonstrate that the PPAR would produce a benefit to customers.

**4. Lawful solutions to hedge price volatility are already available to customers**

As an additional justification for the PPAR, AEP-Ohio offers that the Commission should not rely exclusively on the markets operated by PJM to establish prices for retail customers.[58] In support of this position, AEP-Ohio enters into an extended criticism of PJM's markets.[59] AEP-Ohio further argues that "it is self-evident that reasonable rates are not achieved by unmitigated exposure to volatile market rates."[60]

AEP-Ohio's criticism of PJM markets is irrelevant to a determination of the lawfulness and reasonableness of the PPAR. Retail generation service has been declared a competitive service in Ohio as a matter of law.[61] The Commission's authority

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[55] IEU-Ohio Ex. 1B at KMM Exs. 5-7.

[56] *Id.* at Ex. KMM-5.

[57] IEU-Ohio Ex. 1B at 20-21; OCC Ex. 15A at 10-28.

[58] AEP-Ohio Initial Brief at 64-67.

[59] *Id.*

[60] *Id.* at 44.

[61] R.C. 4928.03.

to price the ESP is limited by R.C. 4928.143. Based on Ohio law, there is no lawful basis for approval of the PPAR as a provision of an ESP.

Further, there is no demonstrated need for the PPAR to address the volatility of retail electric markets. As noted above, retail markets provide products by which customers elect the amount of price risk they want to undertake, and the Commission can address price volatility through the terms of its authorization of the SSO product.[62] As the Staff and others point out, these options assure that customers' needs and risk tolerance are addressed by lawful means.[63]

### C. AEP-Ohio's claim that the PPAR will hedge electricity prices ignores the effects of the annual reconciliation

AEP-Ohio also urges the Commission to ignore the mathematical consequences that the annual reconciliation adjustment to true-up revenues collected or credited through the PPAR will have on the claimed hedge resulting from the PPAR.[64] As proposed, AEP-Ohio will annually adjust the PPAR for prior year under and over-recoveries of revenues. Whether large or small, the reconciliation adjustments would be the result of the prior period over or under-recovery and have no relationship to generation prices in the coming year. As a result, whatever hedge that might be attributed to the PPAR may be offset by the annual reconciliation adjustment.

Ignoring the lag associated with the annual reconciliation adjustment also requires the Commission to ignore the consequences of AEP-Ohio's request to be able to terminate unilaterally the proposed ESP a year early. If AEP-Ohio has over-collected

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[62] Staff Brief at 5-6.

[63] *Id.*; OPAE/APJN Initial Brief at 42-43.

[64] AEP-Ohio Initial Brief at 46.

its revenue requirement associated with the PPAR in the second year of the ESP, any benefit that might flow to customers through the reconciliation adjustment in the third year of the ESP could be trumped by AEP-Ohio's unilateral termination of the ESP a year early.

In summary, authorization of the PPAR would be illegal and unreasonable. No provision of Ohio law authorizes the rider, and several prohibit it. Further, AEP-Ohio has failed to demonstrate that the PPAR will provide a benefit of either lower prices or more stable prices. The Commission, moreover, should recognize that customers have available to them the means to manage exposure to price volatility through the market or a properly designed SSO. Because authorization of the PPAR would not be lawful or reasonable, the Commission should reject AEP-Ohio's "unsolicited act of altruism."[65]

### D. The Commission should not authorize the modified PPAR proposed by the Ohio Energy Group

Ohio Energy Group ("OEG") offers its own take on the PPAR, presenting many of the same arguments in support of a PPAR as AEP-Ohio. However, OEG also argues that the Commission should substantially modify AEP-Ohio's proposal in two significant ways. First, OEG recommends that the PPAR be extended to nine and a half years. Second, it recommends that energy-intensive commercial and industrial customers have the option of opting out of the rider.[66]

OEG does not provide any legal basis for authorization of a PPAR under R.C. 4928.143(B)(2) (either as proposed by AEP-Ohio or as modified by OEG). It instead offers broad claims that such a rider would be consistent with the policies embedded in

[65] OHA Initial Brief at 10.

[66] OEG Initial Brief at 15-17.

Ohio law.[67] As discussed above, R.C. 4928.143(B)(2) does not authorize a PPAR, and several provisions prohibit this sort of rider.

OEG also argues that the PPAR will provide a benefit to customers.[68] As discussed above, those claims are not well-grounded in the record.

Also like AEP-Ohio, OEG criticizes the Staff for opposing the PPAR and "ceding complete control of energy and capacity pricing to PJM."[69] This claim suffers from the same problems as AEP-Ohio's: by approving the PPAR, the Commission would be granting AEP-Ohio authority to pass through OVEC costs with no Commission oversight and little expectation of FERC review. Further, customers can secure retail agreements that hedge prices.

OEG's recommendations for modifying the PPAR, however, are more telling of the limited benefits it expects from AEP-Ohio's proposal and the inherent problems of a nonbypassable rider. By OEG's estimate, the rider does not provide a benefit unless the rider is in place for a longer term than that offered by AEP-Ohio. In the "near term," the PPAR would result in a cost to customers.[70] That does not mean, however, that the situation will turn around if the term of the PPAR is extended. OEG's witness conceded that long-term estimates become more susceptible to error.[71]

Additionally, OEG recommends that the PPAR be a nonbypassable charge for all customers other than those with more than a ten megawatt load at a single site; the

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[67] *Id.* at 1-5.

[68] *Id.* at 6-10 & 13-15.

[69] *Id.* at 10-13.

[70] OEG Ex. 3 at 14.

[71] *Id.* at 16-17.

energy intensive customers could elect to opt out of the PPAR.[72] Given the uncertainty of the benefits signaled by OEG's request that there be authorization to opt-out of the rider, the Commission should place little weight on a claim that OEG, or anyone else, can safely estimate that the PPAR will produce a customer benefit if parties just wait long enough.

## III. THE COMMISSION SHOULD NOT AUTHORIZE AEP-OHIO'S PROPOSED NONBYPASSABLE BTCR

AEP-Ohio proposes the BTCR and several changes in the manner in which transmission service obligations are assigned. As discussed in IEU-Ohio's Initial Brief, the proposed nonbypassable BTCR and associated re-bundling of a portion of transmission service should be rejected for several reasons.[73] The Ohio Manufacturers' Association Energy Group ("OMAEG") similarly opposes the proposed nonbypassable BTCR.[74]

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[72] OEG Initial Brief at 17.

[73] These include its conflict with state policy of providing customers with choice, the inefficient price signals that the BTCR would send, the potential for shopping customers to be double-billed. IEU-Ohio also demonstrated that the BTCR will not result in uniform treatment of transmission costs across the state because the proposed BTCR varies from the nonbypassable transmission riders in place for the other EDUs, which all have riders that vary from each other. IEU-Ohio also demonstrated that shopping and competition is already robust in AEP-Ohio's service area.

The Pennsylvania Public Utilities Commission recently rejected a proposal by RESA and FES to re-bundle Network Integration Transmission Services ("NITS"), one of the identified non-market based transmission costs in this case, and have the incumbent distribution utility provide and collect the costs of that service from all customers through a nonbypassable charge. The Pennsylvania Commission found that the competitive suppliers had failed to meet their burden of proof to alter the status quo and re-bundle the NITS portion of transmission service. The Pennsylvania Commission further found that there was merit to the industrial users group's proposal that had NITS been re-bundled, large commercial and industrial customers should be carved out from the re-bundling due to their sophistication in being able to negotiate contracts and their need to craft contract terms that meet their individual company's needs (*i.e.* they should be able to elect between a fixed price and a "pass-through" for transmission costs). *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of the Default Service Programs*, Case Nos. P-2013-2391368, *et al.*, Opinion and Order at 23-53 (Pa. Pub. Util. Comm'n July 24, 2014).

[74] OMAEG Initial Brief at 11-13.

In support of its proposal to re-bundle a portion of transmission service (non-market based transmission service[75]) and collect the costs through the proposed nonbypassable BTCR, AEP-Ohio and several CRES providers argue in their initial briefs that the Commission should approve the proposal because it would be a benefit to both customers and CRES providers. For example, AEP-Ohio argues that re-bundling these charges and collecting the non-market based costs on a dollar for dollar basis, *i.e.* as a "pass-through," through the proposed nonbypassable BTCR will "ensure that all customers only pay the actual costs of non-market based transmission expenses."[76] Several CRES providers make similar arguments.[77]

If the Commission authorized AEP-Ohio's proposal, the effect would be to limit customer choice and frustrate state policy. A "pass-through" already exists for customers, and many shopping customers have elected to pay for transmission service in this manner, although others have not.[78] Because customers have different needs, the ability to select either pass-through or fixed price contracts provides them opportunities to match products to their needs.[79] Depriving customers of that choice is contrary to the state policy to "[e]nsure the availability of unbundled and comparable

[75] AEP-Ohio Ex. 1 at 12-13; IEU-Ohio Ex. 1B at 28. "Non-market based transmission charges" are identified by AEP-Ohio as the following items: ID# 1100 Network Integration Transmission Service; ID#1108 Transmission Enhancement; ID# 1320 Transmission Owner Scheduling, System Control and Dispatch Service; ID# 1330 Reactive Supply and Voltage Control from Generation and Other Source Service; ID# 1450 Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service; ID# 2130 Firm Point-to-Point Transmission Service; and ID# 2140 Non-Firm Point to-Point. Transmission Service. AEP-Ohio Ex. 15 at Att. F (highlighted items); *see also*, IEU-Ohio Ex. 10. In its Initial Brief, AEP-Ohio agreed with the arguments of several CRES providers that Generation Deactivation Charges should be classified as non-market based and recovered through the BTCR. AEP-Ohio Initial Brief at 117.

[76] AEP-Ohio Initial Brief at 116.

[77] RESA Initial Brief at 19-21; IGS Initial Brief at 19-20; FES Initial Brief at 5.

[78] IEU-Ohio Ex. 1B at 31.

[79] IEU-Ohio Initial Brief at 37-44.

retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs."[80]

If CRES providers are truly concerned about the price risks for non-market based transmission services, they can elect to offer contracts to shopping customers that contain only "pass-through" pricing for non-market based transmission services. Of course, if customers demand something other than a "pass-through" of "non-market based" transmission costs, CRES providers will have to come up with better estimates for non-market based transmission costs or allow other CRES providers to serve such customers. The Commission, however, should not transfer such pricing risk to all customers through AEP-Ohio's proposal to re-bundle non-market based transmission service.

## IV. THE COMMISSION SHOULD NOT AUTHORIZE THE POR PROGRAM AS PROPOSED

AEP-Ohio and several CRES providers (though not all) support AEP-Ohio's POR program with some modifications.[81] Generally, they argue that the POR program as proposed by AEP-Ohio will provide non-quantifiable benefits such as increased CRES provider participation, an increased variety of offers, and reduced customer confusion. As IEU-Ohio demonstrated in its Initial Brief, the record does not support these claims.[82]

AEP-Ohio advances two additional arguments in support of the POR program in its initial brief. First, it claims that the POR program will standardize such programs in

[80] R.C. 4928.02(B).

[81] Direct Energy recommends that the Commission expand the scope of the items that could be included as accounts receivable. Direct Energy Initial Brief at 8-9.

[82] IEU-Ohio Initial Brief at 46-48.

Ohio.[83] The record, however, does not support that claim: AEP-Ohio offered no evidence suggesting that its proposal was like those of other electric distribution utilities ("EDU") except Duke Energy Ohio ("Duke") (and in the case of Duke, AEP-Ohio only claimed that a bad debt rider is available in Duke's program; other programs are run by natural gas utilities),[84] its witness on the matter could not address the terms of the Duke program on which he relied as a basis for his claim that the BDR was similar to that of Duke's,[85] and the initial brief of FirstEnergy Solutions Corp. ("FES") shows that the existing Duke program and AEP-Ohio's proposed program would be materially different.[86] Thus, the record does not support AEP-Ohio's broad claim that its proposal aligns with the "consistent model for the Ohio market."[87]

Second, it belatedly claims that the adoption of its POR program will reduce discrimination in the provision of CRES to at-risk populations.[88] Other than an unsupported statement made by Mr. Gabbard,[89] AEP-Ohio does not demonstrate that there is any discrimination in the provision of CRES to at-risk populations. Further, CRES providers are prohibited by Commission rules from knowingly enrolling percentage of income payment program and arrearage crediting program customers.[90] Without a change in the current rules, a POR program is irrelevant to these at-risk customers.

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[83] AEP-Ohio Initial Brief at 126.

[84] AEP-Ohio Ex. 11 at 8.

[85] Tr. Vol. III at 875-76.

[86] FES Initial Brief at 3.

[87] AEP-Ohio Initial Brief at 126.

[88] *Id.* at 129.

[89] Tr. Vol. III at 799.

[90] Rule 4901:1-21-06(B)(1), OAC.

Additionally, the Commission should expect either OCC, Ohio Partners for Affordable Energy ("OPAE"), or the Appalachian Peace and Justice Network (APJN") to support the proposal if the POR program would provide a meaningful benefit to at-risk customers, but they uniformly oppose it.[91] Instead, the only parties that support AEP-Ohio's POR program are AEP-Ohio and the CRES providers (though not all) that would benefit from shifting the market risk associated with bad debt to all AEP-Ohio customers.[92]

In addition to improperly subsidizing CRES providers, the POR program would upset legitimate efforts on the part of CRES providers to compete for customers in the AEP-Ohio service territory. Some CRES providers have operated effectively in the AEP-Ohio service territory without an undiscounted nonrecourse purchase of receivables program and built collection practices to address their own needs.[93] The Commission's approval of the POR program would damage the "sweat equity" of those CRES providers that successfully played by the current rules.

Although the Commission has expressed interest in having the EDUs present proposals for PORs,[94] the record in this case does not support approval of the proposal advanced by AEP-Ohio. Neither AEP-Ohio nor the CRES providers supporting the POR program have demonstrated that authorization would provide any substantive benefit to consumers. Further, the record demonstrates that a POR program, with the BDR proposed by AEP-Ohio, would unlawfully and unreasonably shift market risk for

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[91] OCC Initial Brief at 90-100; OPAE/APJN Initial Brief at 18-30.

[92] IEU-Ohio Ex. 2 at 13.

[93] FES Initial Brief at 2-3.

[94] *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-UNC, Finding and Order at 21 (Mar. 26, 2014).

generation-related services to customers. It would not assist at-risk populations, but would undermine the competitive advantage of those CRES providers that successfully built their business models based on the current rules. Accordingly, the Commission should not authorize the POR program as proposed by AEP-Ohio.

## V. THE COMMISSION SHOULD NOT AUTHORIZE MODIFICATION OF THE EDR

OEC/EDF recommend that the Commission modify the EDR to require AEP-Ohio to "undertake a good faith effort to work with its reasonable arrangement customers—its contractual partner in encouraging economic development—so that they can take advantage of longer-lived cost-effective energy efficiency."[95] The proposal offered by OEC/EDF, however, is unclear. Further, market incentives already exist for customers to exploit all economically efficient outcomes, and existing Commission practices appear to accomplish the goal that OEC/EDF seek to accomplish with their recommendation. Accordingly, there is no need for the Commission to adopt OEC/EDF's recommendation.

Initially, the proposal by OEC/EDF is unclear. According to OEC/EDF's initial brief, the EDR should be modified to require unique arrangements customers to "engage in all cost-effective energy efficiency programs."[96] In their supporting testimony, however, they do not provide a method to measure whether a particular project would achieve this "goal."[97] When cross-examined, the only explanation that Ms. Roberto offered was that the payback period of energy efficiency programs that

[95] OEC/EDF Initial Brief at 10.

[96] *Id.* at 9.

[97] OEC/EDF Ex. 1 at 9-11.

should be pursued should be within the period of the authorized arrangement.[98] Without some additional specificity, the standard that is being proposed by OEC/EDF is empty.

Further, there is no need to impose a new condition on the proposed ESP's EDR provision. As OEC/EDF's witness agreed, customers have an economic interest in deploying cost-effective energy efficiency measures.[99] Because customers already will deploy cost-effective energy efficiency measures if they are available, there is no reason for the Commission to bind customers with unique arrangements with an additional requirement.

Moreover, the Commission already addresses the very concern raised by OEC/EDF in its orders approving unique arrangements for industrial customers on a case by case basis. In approving the orders for The Timken Company and Eramet Marietta Inc., for example, the Commission directed the customers to commit the results of their demand reduction and energy efficiency efforts for integration with AEP-Ohio's demand reduction, demand response, and energy efficiency programs.[100] Because the Commission already addresses this issue as it is presented in individual cases, there is no need for the Commission to adjust the EDR to accommodate the request of OEC/EDF.

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[98] Tr. Vol. XII at 2795.

[99] Tr. Vol. XII at 2797.

[100] Tr. Vol. XII at 2764-67; *In the Matter of the Joint Application of the Timken Company and The Ohio Power Company for Approval of a Unique Arrangement for the Timken Company's Canton, Ohio, Facilities*, Case No. 10-3066-EL-AEC, Opinion and Order (Apr. 27, 2011); *In the Matter of the Application for Establishment of a Reasonable Arrangement Between Eramet Marietta, Inc. and Columbus Southern Power Company*, Case No. 09-516-EL-AEC, Opinion and Order (Oct. 15, 2009); *In the Matter of the Application of Columbus Southern Power Company and Eramet Marietta Inc. for Approval of a Special Arrangement with a Mercantile Customer*, Case No. 09-2329-EL-EEC, *et al.*, Finding and Order (Dec. 29, 2010).

Because OEC/EDF's proposal to increase the requirements of the EDR is unclear and unnecessary, the Commission should reject it.

## VI. THE COMMISSION SHOULD NOT AUTHORIZE ALTERATION OF DISTRIBUTION COST RECOVERY

Based on the claim that "cost-causation" principles support a change to AEP-Ohio's proposed method of allocating costs, OCC and OPAE[101] propose a change in the allocation of distribution costs recovered through the Distribution Investment Rider ("DIR"), the Enhanced Service Reliability Rider ("ESRR"), the proposed Sustained and Skilled Workforce Rider ("SSWR"), and the Storm Damage Recovery Rider ("SDRR").[102] Relying on Mr. Wallach's use of a cost of service study AEP-Ohio prepared to support its 2011 distribution rate case, OCC recommends that the Commission apply several allocation factors to assign recovery responsibility and thereby shift $31 million of the proposed distribution revenue increase to large commercial customers taking service under the GS-3 tariff.[103] According to OCC, the "specified allocations for each rider … are consistent with cost-causation principles."[104] The record, however, demonstrates that reliance on the outdated cost of service study and the shifts in cost responsibility produced by its use are unreasonable.[105]

Initially, the Commission should not revise the proposed collection mechanisms based on OCC's use of AEP-Ohio's cost of service study. The test year for the cost of

[101] OPAE relies upon OCC's position and testimony. OPAE Initial Brief at 38-39.

[102] OCC Initial Brief at 107-09.

[103] *Id.* at 107-08; Tr. Vol. X at 2408.

[104] OCC Initial Brief at 108.

[105] IEU-Ohio takes no position on the lawfulness of the modifications of the existing riders and the proposed new rider. In its Initial Brief, IEU-Ohio showed that the evidence did not support a finding that the proposed distribution riders provided a benefit that supported a finding that the proposed ESP satisfied the ESP v. MRO Test. IEU-Ohio Initial Brief at 64-66.

service study ended May 31, 2011.[106] Mr. Wallach did not attempt to update the study.[107] A comparison between the assumed revenue recovery and the actual recovery under current approved rates shows a $110 million annual difference.[108] Based on the outdated nature of the cost of service study and the discrepancy between projected and annual distribution revenue recovery, the use of the 2011 vintage cost of service study would be unreasonable.

Additionally, the proposal offered by OCC will violate the concept of rate gradualism typically considered when adjusting rates. Although OCC's Mr. Wallach offered that the bill impacts would be minor, he calculated the changes in revenue recovery for each class as a percentage of total revenue increase.[109] When recalculated as a percentage change from the proposed rate increase, the increase over the proposed charge for GS-3 customers was approximately 24%.[110] This substantial proposed shift in the increase based on information that has little current value is unreasonable and would fail to recognize the principle of rate gradualism.

Finally, Mr. Wallach's justification for allocating the revenue requirement for the distribution riders in this case is inconsistent with the approach he endorsed in a recent rate case in Wisconsin. In that case, the Wisconsin commission staff proposed a revenue requirement and revenue allocation. Addressing a possible increase in the revenue requirement, Mr. Wallach recommended that the difference between the

[106] Tr. Vol. X at 2416.

[107] Tr. Vol. X at 2417.

[108] Tr. Vol. X at 2418-19.

[109] OCC Ex. 14 at Attachment Wallach-2.

[110] Tr. Vol. X at 2420.

Commission Staff revenue requirement and the Commission's ordered revenue requirement "be allocated to customer classes in equal proportion, such that all customer classes would experience an equal percentage change in revenues due to the difference between the Commission's and the Commission staff audit revenue requirements."[111] This approach is effectively the same as that proposed in this proceeding by AEP-Ohio, yet Mr. Wallach abandons it in this case and recommends instead the unreasonable shift in revenue responsibility.

For the reasons discussed above, OCC and OPAE have failed to demonstrate that their proposal to allocate revenue responsibility for the proposed distribution riders is reasonable, and the Commission should not adopt it.

## VII. THE PROPOSED ESP IS NOT MORE FAVORABLE IN THE AGGREGATE THAN AN MRO

Only AEP-Ohio's Initial Brief argues that the proposed ESP without modification is more favorable in the aggregate than an MRO.[112] In addition to the $44 million quantitative benefit and several "non-quantitative" benefits it claimed in its Application, it now asserts that there is an additional $8 million in quantitative benefits associated with the proposed ESP.[113] IEU-Ohio,[114] OMAEG,[115] and OCC[116] demonstrate that the proposed ESP fails the ESP v. MRO test. Staff provided testimony that a substantially modified ESP would meet the requirements of the Test but did not address the effect of

[111] IEU-Ohio Ex. 11 at 5-6.

[112] AEP-Ohio Initial Brief at 139.

[113] *Id.* at 142.

[114] IEU-Ohio Initial Brief at 51-67.

[115] OMAEG Initial Brief at 21-26.

[116] OCC Initial Brief at 6-27.

the PPAR on the ESP v. MRO Test because Staff recommended that the Commission refuse to authorize the rider.[117] Staff does not address the ESP v. MRO Test in its initial brief.

### A. The proposed ESP is not more favorable quantifiably than an MRO

From its initial position that the proposed ESP provided a quantifiable benefit of $44 million,[118] AEP-Ohio has expanded its claims regarding the quantifiable benefits in two ways. The first relates to the claimed benefit of the proposed distribution riders. In its initial brief, it asserts there is a "not so readily quantifiable" quantifiable benefit to the distribution riders.[119] The second relates to its claims regarding the PPAR. In its brief, it now relies on a late found $8 million claimed benefit of the PPAR.[120]

AEP-Ohio does not demonstrate that there is any quantifiable benefit of the distribution riders that makes the ESP more favorable quantifiably (or non-quantifiably) than an MRO. AEP-Ohio's "proof" that the distribution riders would benefit customers was based on faulty claims about a study it relied upon, and AEP-Ohio admitted that there was no guarantee that the distribution expenditures would improve distribution reliability.[121] Additionally, the Commission has previously held that the alleged benefit of distribution riders is a wash; the riders would be available in a distribution case if the

[117] Staff Ex. 15 at 5.

[118] AEP-Ohio Ex. 7 at 5.

[119] AEP-Ohio Initial Brief at 141-42.

[120] *Id.* at 142.

[121] IEU-Ohio Initial Brief at 64-66 and citations therein.

EDU operated under an MRO and thus are not a unique benefit attributable to the ESP side of the ESP v. MRO Test.[122]

In its initial brief, AEP-Ohio also has failed to present any argument that sustains its claim that the distribution riders provide a quantifiable benefit. Its only assertion that there is a quantifiable benefit is that there may be less administrative overhead associated with the operation of the DIR than a rate case.[123] Whatever that quantifiable benefit is, however, AEP-Ohio cannot identify it, and the linguistic and logical problems with its assertion that there are "not so readily quantifiable" quantifiable benefits associated with the reduction in litigation costs have escaped AEP-Ohio.

The claim that the proposed ESP provides a new-found quantifiable benefit of $8 million associated with the PPAR also is not credible. As noted previously, AEP-Ohio itself did not claim that the PPAR was a quantifiable benefit of the ESP as part of its application,[124] and it excluded the PPAR from its analysis of bill impacts because the PPAR could be either a charge or a credit.[125] Thus, AEP-Ohio had little faith that the PPAR would provide a benefit to customers until the second day of the hearing in this proceeding.

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[122] *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 56 (July 18, 2012) ("*FirstEnergy ESP III*").

[123] *Id.* ("Although perhaps not so readily quantifiable as other pricing elements of the proposed ESP, the reduced time and expense related to the streamlined process used to implement the DIR through an ESP amounts to a cost advantage for all participants in that process compared to what would be necessary in an MRO environment.").

[124] AEP-Ohio Ex. 7 at 5.

[125] Tr. Vol. III at 930.

Its late found reliance on an $8 million benefit, moreover, is not supported by the record. AEP-Ohio's own estimates show that the PPAR will result in a cost to customers at the beginning of the proposed ESP, regardless of which of the scenarios the Commission adopts.[126] Further, AEP-Ohio's initial estimate was that the PPAR would cost customers an additional $52 million.[127] Conservative corrections of the initial estimate of the cost of the PPAR increase the cost to customers to $82 million.[128] Because there is no credible foundation for concluding that the PPAR will result in an $8 million benefit, the Commission should reject AEP-Ohio's assertion that the PPAR is a quantifiable benefit of the ESP.

In summary, AEP-Ohio has failed to demonstrate that the ESP is quantifiably more favorable than an MRO. Contrary to its claims, the credible evidence of the cost of the PPAR is that it is likely to result in an $82 million charge to customers. The amount it adversely affects customers may range from $82 million to $116 million.[129] When the cost of the PPAR is included on the ESP side of the ESP v. MRO Test, it offsets the $44.1 million benefit of the extension of the distribution credit rider, and the proposed ESP is $38 million to $72 million worse than an MRO.[130]

### B. The proposed ESP does not provide non-quantifiable benefits to customers

Unlike its attempt to expand the alleged quantifiable benefits of the proposed ESP, AEP-Ohio relies in its initial brief on the same "non-quantifiable" benefits it

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[126] OEG Ex. 3 at 14-15.

[127] IEU-Ohio Ex. 1B at Ex. KMM-5.

[128] IEU-Ohio Ex. 1B at 23.

[129] *Id.* at 21; OCC Ex. 15 at 26.

[130] IEU-Ohio Initial Brief at 54-56.

advanced in Mr. Allen's testimony. According to AEP-Ohio, the non-quantifiable benefits of the ESP are that it provides a faster transition to an SSO based on a CBP, that the PPAR provides price stability, and that the POR program will likely increase competitive entry, provide CRES providers with more predictable payment, and increase payment options.[131] None of the claimed non-quantifiable benefits provides a basis for approving the proposed ESP.

As a preliminary matter, AEP-Ohio does not provide a basis, or metric, by which the Commission is to "weigh" the alleged non-quantifiable benefits of the proposed ESP and its quantified cost relative to the MRO. AEP-Ohio has the burden of proof,[132] and in this and every other contested case, R.C. 4903.09 requires the Commission to issue "findings of fact and [a] written opinion [] setting forth the reasons prompting the decision [] arrived at, based on said findings of fact." Because AEP-Ohio did not provide a method by which to "weigh" objective costs of the proposed ESP with subjectively "valued" non-quantifiable benefits (and harms), AEP-Ohio's reliance on these non-quantifiable benefits would require the Commission to base its decision on unsupported beliefs and guesses.[133] On the record in this case, therefore, AEP-Ohio has failed to carry its burden to demonstrate that the claimed non-quantifiable benefits are sufficient to outweigh the substantial objective costs of the proposed ESP.

Additionally, applicable law and the record do not support a finding that the three items identified by AEP-Ohio provide non-quantifiable benefits to customers. For

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[131] AEP-Ohio Initial Brief at 142-43.

[132] R.C. 4928.143(C)(1).

[133] *Consumers' Counsel v. Pub. Util. Comm'n of Ohio*, 61 Ohio St.3d 396, 406 (1991) (*quoting Columbus v. Pub. Util. Comm'n of Ohio*, 58 Ohio St.2d 103, 104 (1979) (Brown, J., dissenting)).

example, AEP-Ohio argues that the faster move to an auction-based SSO provides a non-quantifiable benefit. Under the applicable requirements of an ESP or MRO, however, the SSO must be either market-tested (ESP)[134] or market-based (MRO).[135] The Commission cannot elevate the outcome already required by Ohio law, a market-tested or market-based SSO, to make a finding that the proposed ESP, which burdens customers with unlawful charges, is more favorable in the aggregate than an MRO.

Even if the claimed benefit of moving to an SSO price based on the results of a CBP were not illusory, AEP-Ohio seeks to double count a benefit that the Commission has already credited to the current ESP when the Commission approved it.[136] As AEP-Ohio's testimony and brief indicate, the Commission previously recognized the transition to an ESP based on a CBP as a non-quantifiable benefit of the ESP approved in AEP-Ohio's last SSO case.[137] The Commission, however, has already rejected attempts by other EDUs to count the same claimed benefit in successive ESPs.[138] Accordingly, the Commission cannot lawfully and reasonably "double count" the so-called faster move to market-based rates in this case.

The PPAR, likewise, is not a non-quantifiable benefit of the proposed ESP. Contrary to AEP-Ohio's claims that customers will realize a non-quantifiable benefit of price stability if the Commission approves the proposed ESP with a PPAR, the PPAR's

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[134] The ESP must be more favorable in the aggregate than an MRO. R.C. 4928.143(C)(1).

[135] The MRO price is established through a competitive auction process. R.C. 4928.142.

[136] IEU-Ohio Initial Brief at 59. *See In the Matter of the Application of Columbus Southern Power Company and 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 Nos. 11-346-EL-SSO, *et al.*, Opinion and Order at 76 (Aug. 8, 2012) ("ESP II").

[137] AEP-Ohio Ex. 7 at 5; AEP-Ohio Initial Brief at 146.

[138] *FirstEnergy ESP III*, Opinion and Order at 55 (July 18, 2012).

only effect is to guarantee AEP-Ohio that it will not face any market risk from voluntary retention of the OVEC Entitlement.[139] At the same time, the PPAR will impose a significant new cost on customers through a nonbypassable rider and inject additional price volatility into the total bills of customers.[140] In addition to harming customers through higher bills and increased volatility, authorization of the PPAR would violate state energy policy, be anticompetitive, result in the illegal billing and collection of transition revenue, and result in a violation of federal law.[141] Accordingly, the Commission cannot lawfully and reasonably count the PPAR as a non-quantifiable benefit of the proposed ESP.

AEP-Ohio also failed to demonstrate the claimed benefits of the POR program and ignores the harms that it will cause.[142] As to the alleged customer benefits, AEP-Ohio could not demonstrate that any additional CRES provider would enter the AEP-Ohio service territory if the Commission authorized a POR program,[143] and AEP-Ohio could not point to any CRES provider not already serving customers that had contacted AEP-Ohio and requested a POR program.[144] Further, there is no shortage of CRES providers or offers from them.[145]

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[139] Constellation New Energy Initial Brief at 10-13.

[140] See discussion above.

[141] IEU-Ohio Initial Brief at 7-24; Constellation New Energy Initial Brief at 2-19; Staff Initial Brief at 2-24; OCC Initial Brief at 54-77.

[142] AEP-Ohio Ex. 2 at 7-8.

[143] Tr. Vol. III at 872.

[144] Tr. Vol. III at 873. Further, the CRES provider's decision involves many more factors than the existence of a POR program, many of which are more important. Tr. Vol. XI at 2659-64.

[145] AEP-Ohio Ex. 33 at Ex. WAA-R3.

Likewise, AEP-Ohio did not demonstrate that CRES providers would benefit from its proposed POR program. Other than showing that the POR program would result in an unlawful subsidy to CRES providers,[146] AEP-Ohio provides no substantive support for its claims that CRES providers would benefit from the POR program through the transfer of customer responsibility to AEP-Ohio.[147] Moreover, one CRES provider shows that the POR program will adversely affect those CRES providers that have invested in providing customer support services.[148] AEP-Ohio chooses to ignore the potential adverse effect its program may have on the existing market that has substantially developed without a POR program with a BDR.

Further, AEP-Ohio ignores the fact that authorization of the BDR would be harmful to customers and competition. Under the proposed POR program, customers would be subsidizing the bad debt expense of CRES providers, and CRES providers would be relieved of the market check that the risk of bad debt places on them. This mechanism, thus, would remove the market discipline that encourages CRES providers to evaluate their customers and price services appropriately.[149]

Finally, the Commission should not accept AEP-Ohio's implied claim that the Staff supports AEP-Ohio's position that the proposed ESP passes the ESP v. MRO Test. According to AEP-Ohio, "AEP Ohio witnesses [*sic*] Allen, other Company witnesses, *and Staff witness Turkenton* provide testimony that confirms that AEP Ohio's proposed ESP, including its pricing and all other terms and conditions, is more favorable

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[146] OCC Initial Brief at 90.

[147] IEU-Ohio Ex. 2 at 9.

[148] FES Initial Brief at 2-3.

[149] IEU-Ohio Ex. 2 at 13.

in the aggregate as compared to the expected results of an MRO."[150] Although the Staff did state that an ESP could pass the ESP v. MRO Test and based its opinion on some of the same claimed benefits that AEP-Ohio relied upon, the ESP it recommended in its testimony and initial brief for approval included substantial changes to the proposed ESP. In particular, the Staff recommended that the Commission reject the PPAR.[151] AEP-Ohio's implication that the Staff testimony "confirms that AEP Ohio's proposed ESP … is more favorable in the aggregate as compared to the expected results of an MRO" takes Staff's recommendation completely out of its context.

In summary, AEP-Ohio has failed to demonstrate that the proposed ESP is more favorable in the aggregate than an MRO. It ignores the substantial cost the PPAR will impose on customers. When this cost is correctly included on the ESP side of the ESP v. MRO Test, the proposed ESP is worse than an MRO based on an objective comparison of cost. Further, AEP-Ohio's reliance on non-quantifiable benefits is based on subjective and unsupported claims and fails to account for the harms the PPAR and the POR program as proposed would cause.

## VIII. CONCLUSION

Based on the applicable law and the record in this case, the Commission should not authorize the PPAR, BTCR, and POR programs. Further, it should find that the proposed ESP does not pass the ESP v. MRO test. Only if the Commission substantially modifies the proposed ESP, particularly by removing the PPAR, will the proposed ESP pass the ESP v. MRO Test. Additionally, the Commission should reject

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[150] AEP-Ohio Initial Brief at 139 (emphasis added).

[151] Staff Ex. 15 at 5; Staff Brief *passim*.

the recommendations of OEC/EDF and OCC to modify the EDR and allocation of responsibility for the distribution riders, respectively, because neither recommendation is reasonable.

Respectfully submitted,

/s/ Frank P. Darr

Frank P. Darr (Counsel of Record)
Matthew Pritchard
McNees Wallace & Nurick LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
fdarr@mwncmh.com
mpritchard@mwncmh.com

**Attorneys for Industrial Energy Users-Ohio**

**CERTIFICATE OF SERVICE**

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission'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 *Reply 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 15th day of August 2014, *via* electronic transmission.

/s/ Frank P. Darr
Frank P. Darr

Steven T. Nourse (0046705)
Matthew J. Satterwhite (0071972)
AMERICAN ELECTRIC POWER CORPORATION
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373
stnourse@aep.com
mjsatterwhite@aep.com

Daniel R. Conway (0023058)
PORTER WRIGHT MORRIS & ARTHUR
Huntington Center
41 South High Street
Columbus, Ohio 43215
dconway@porterwright.com

**ON BEHALF OF OHIO POWER COMPANY**

David F. Boehm (0021881)
Michael L. Kurtz (0033350)
Jody Kyler Cohn (0085402)
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com
jkylercohn@BKLlawfirm.com

**ON BEHALF OF THE OHIO ENERGY GROUP**

William L. Wright (0018010)
Werner Margard (0024858)
Devin Parram (0082507)
Katherine Johnson (0091064)
Assistant Attorneys' General
180 E. Broad Street, 6th Floor
Columbus, Ohio 43215-3793
William.wright@puc.state.oh.us
werner.margard@puc.state.oh.us
Devin.Parram@puc.state.oh.us
katherine.johnson@puc.state.oh.us

**ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO**

Maureen R. Grady (0020847)
Assistant Consumers' Counsel
OFFICE OF THE OHIO CONSUMERS' COUNSEL
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
grady@occ.state.oh.us

**ON BEHALF OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Rocco D'Ascenzo (0077651)
DUKE ENERGY OHIO, INC.
139 East Fourth Street
Cincinnati, Ohio 45202
Rocco.D'Ascenzo@duke-energy.com

Elizabeth H. Watts
Assistant General Counsel
DUKE ENERGY OHIO
155 East Broad Street, 21st Floor
Columbus, Ohio 43215
Elizabeth.Watts@duke-energy.com

**ON BEHALF OF DUKE ENERGY OHIO, INC.**

Barth E. Royer (0016999)
BELL & ROYER CO,, LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
BarthRoyer@aol.com

Gary A. Jeffries (0071742)
DOMINION RESOURCES SERVICES, INC.
501 Martindale Street, Suite 400
Pittsburg, PA 15212-5817
Gary.A.Jeffries@dom.com

**ON BEHALF OF DOMINION RETAIL, INC. D/B/A DOMINION ENERGY SOLUTIONS**

Richard L. Sites (0019887)
OHIO HOSPITAL ASSOCIATION
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620
ricks@ohanet.org

Thomas J. O'Brien (0066249)
Dylan F. Borchers (0090690)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
tobrien@bricker.com
dborchers@bricker.com

**ON BEHALF OF THE OHIO HOSPITAL ASSOCIATION**

Phillip B. Sineneng (0083406)
THOMPSON HINE LLP
41 South High Street, Suite 1700
Columbus, Ohio 43215
PhilipSineneng@ThompsonHine.com

**ON BEHALF OF DUKE ENERGY RETAIL SALES, LLC AND DUKE ENERGY COMMERCIAL ASSET MANAGEMENT, INC.**

Mark A. Whitt (0067996)
Andrew J. Campbell (0081485)
Gregory L. Williams (0088758)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
whit@whitt-sturtevant.com
campbell@whitt-sturtevant.com
williams@whitt-sturtevant.com

Vincent Parisi (0073283)
Lawrence Friedeman (0018902)
INTERSTATE GAS SUPPLY, INC.
6100 Emerald Parkway
Dublin, Ohio 43016
vparisi@igsenergy.com
lfriedeman@igsenergy.com

**ON BEHALF OF INTERSTATE GAS SUPPLY, INC.**

Kimberly W. Bojko (0069402)
Mallory M. Mohler (0089508)
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Bojko@carpenterlipps.com
Mohler@carpenterlipps.com

**ON BEHALF OF OMA ENERGY GROUP**

Mark A. Hayden (0081077)
Jacob A. McDermott (0087187)
Scott J. Casto (0085756)
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
haydenm@firstenergycorp.com
jmcdermott@firstenergycorp.com
scasto@firstenergycorp.com

**On Behalf of FirstEnergy Solutions Corp.**

Colleen L. Mooney (0015668)
Cathryn N. Loucas (0073533)
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45839-1793
cmooney@ohiopartners.org
cloucas@ohiopartners.org

**On Behalf of Ohio Partners for Affordable Energy**

Mark S. Yurick (0039176)
Zachary D. Kravitz (0084238)
Taft, Stettinius & Hollister LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

**On Behalf of The Kroger Co.**

Judi L. Sobecki (0067186)
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432
judi.sobecki@aes.com

**On Behalf of The Dayton Power and Light Company**

Joseph M. Clark (0080711)
Direct Energy
21 East State Street, 19th Floor
Columbus, Ohio 43215
joseph.clark@directenergy.com

**On Behalf of Direct Energy Services, LLC and Direct Energy Business, LLC**

Trent Dougherty (0079817)
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
tdougherty@theOEC.org

John Finnigan (0018689)
Senior Regulatory Attorney
Environmental Defense Fund
128 Winding Brook Lane
Terrace Park, Ohio 45174
jfinnigan@edf.org

**On Behalf of the Ohio Environmental Council and Environmental Defense Fund**

Michael R. Smalz (0041897)
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, Ohio 43215-1137
msmalz@ohiopovertylaw.com

Peggy P. Lee (0067912)
Southeastern Ohio Legal Services
964 E. State Street
Athens, Ohio 45701
plee@oslsa.org

**On Behalf of the Appalachian Peace and Justice Network**

M. Howard Petricoff (0008287)
Gretchen L. Petrucci (0046608)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
glpetrucci@vorys.com

David I Fein
Vice President, State Government Affairs-East
EXELON CORPORATION
10 South Dearborn Street, 47th Floor
Chicago, IL 60603
david.fein@exeloncorp.com

Cynthia Fonner Brady
Assistant General Counsel
EXELON BUSINESS SERVICES COMPANY
4300 Winfield Road
Warrenville, IL 60555
cynthia.brady@constellation.com

Lael Campbell
EXELON
101 Constitution Avenue, NW
Washington, DC 20001
Lael.Campbell@constellation.com

**ON BEHALF OF CONSTELLATION NEWENERGY, INC. AND EXELON GENERATION COMPANY, LLC**

M. Howard Petricoff
Gretchen L. Petrucci
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
glpetrucci@vorys.com

**ON BEHALF OF THE RETAIL ENERGY SUPPLY ASSOCIATION**

Nicholas McDaniel (0089817)
ENVIRONMENTAL LAW & POLICY CENTER
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212
NMcDaniel@elpc.org

**ON BEHALF OF THE ENVIRONMENTAL LAW AND POLICY CENTER**

Lisa M. Hawrot
SPILMAN THOMAS & BATTLE, PLLC
Century Centre Building
1233 Main Street, Suite 4000
P.O. Box 831
Wheeling, WV 26003-8731
lhawrot@spilmanlaw.com

Derrick Price Williamson
SPILMAN THOMAS & BATTLE, PLLC
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com

Steve W. Chriss
Senior Manager, Energy Regulatory Analysis
WAL-MART STORES, INC.
2001 SE 10th Street
Bentonville, AR 72716-0550
Stephen.Chriss@walmart.com

Tai C. Shadrick
SPILMAN THOMAS & BATTLE, PLLC
300 Kanawha Blvd. East
Charleston, WV 25301
tshadrick@spilmanlaw.com

**ON BEHALF OF WAL-MART STORES EAST, LP AND SAM'S EAST, INC.**

Samantha Williams
NATURAL RESOURCES DEFENSE COUNCIL
20 N. Wacker Drive, Suite 1600
Chicago, IL 60606
swilliams@nrdc.org

**ON BEHALF OF THE NATURAL RESOURCES DEFENSE COUNCIL**

Kevin R. Schmidt (0086722)
ENERGY PROFESSIONALS OF OHIO
88 East Broad Street, Suite 1770
Columbus, Ohio 43215
Schmidt@sppgrp.com

**ON BEHALF OF THE ENERGY PROFESSIONALS OF OHIO**

Stephanie M. Chmiel (0087555)
THOMPSON HINE LLP
41 S. High Street, Suite 1700
Columbus, Ohio 43215
Stephanie.Chmiel@ThompsonHine.com

**ON BEHALF OF BORDER ENERGY ELECTRIC SERVICES, INC.**

Gregory J. Poulos (0070532)
ENERNOC, INC.
471 E. Broad Street, Suite 1520
Columbus, Ohio 43215
gpoulos@enernoc.com

**ON BEHALF OF ENERNOC, INC.**

J. Thomas Siwo (0088069)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
tsiwo@bricker.com

**ON BEHALF OF PAULDING WIND FARM II LLC**

Sarah Parrot (0082197)
Greta See
Attorney Examiners
PUBLIC UTILITIES COMMISSION OF OHIO
180 East Broad Street, 12th Floor
Columbus, OH 43215
sarah.parrot@puc.state.oh.us
Greta.See@puc.state.oh.us

**ATTORNEY EXAMINER**

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