

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company for Authority to)
Establish a Standard Service Offer) Case No. 13-2385-EL-ORD
Pursuant to Section 4928.143, Revised)
Code, in the Form of an Electric)
Security Plan.)

In the Matter of the Application of Ohio)
Power Company for Approval of) Case No. 13-2386-EL-AAM
Certain Accounting Authority)

REPLY BRIEF OF IGS ENERGY

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I. INTRODUCTION

In its Initial Post Hearing Brief filed in this proceeding IGS Energy (“IGS”) recommended that the Public Utilities Commission of Ohio (“Commission”) modify Ohio Power Company’s (“AEP”) Electric Security Plan Application (“ESP Application”) in a manner that would benefit Ohio customers. IGS recommendations include the following:

- Adopting IGS’ witness White’s proposal to apply a retail price adjustment (“RPA”) to Standard Service Office (“SSO”) suppliers and conduct a retail auction to serve SSO customers - such measures would make AEP’s SSO price a more comparable and unbundled price consistent with Ohio law;
- Reject AEP’s Power Purchase Adjustment (“PPA”) rider proposal in its entirety;
- Adopt IGS’ witness White and Direct Energy witness Ringenbach’s proposal for supplier consolidated billing.

Additionally, IGS recommended that the Commission approve a number of AEP’s proposals made in the ESP Application including:

- Implementing the Basic Transition Cost Rider (“BTCR”) to recover non-market based transmission charges through a non-bypassable charge;
- Implementing a purchase of receivables (“POR”) program;
- Discontinue AEP’s time-of-use and stand-by service tariffs.

In this reply brief IGS reiterates its support for the recommendations made in its initial brief and also responds to issues addressed in the initial post hearing briefs of other parties.

II. ARGUMENT

A. RPA and Retail Auction Proposals.

1. Ohio Law Allows the Commission to Adopt IGS' RPA and Retail Auction Proposals.

In its initial post hearing brief AEP and the Office of Ohio Consumers' Counsel ("OCC") claimed that IGS' RPA and retail auctions proposals conflict with Ohio law.¹ However, as explained in IGS' post hearing brief, both IGS' RPA proposal and retail auction proposal are authorized under Ohio law, and in-fact are more consistent with Ohio law than AEP's proposed SSO.

OCC and AEP point to R.C. 4928.141(B) claiming that a retail auction would violate the provision in the law that requires that an SSO be made available to customers.² However, 4928.141(B) only requires that there is an SSO, but it does not require that the SSO be procured via a wholesale auction. With its retail auction proposal, IGS is not proposing to eliminate the SSO. Rather with the retail auction, an SSO would still be available to SSO customers, the only difference is that the SSO would be served directly by CRESs, rather than in the current scenario, where retail suppliers deliver electric generation to AEP and AEP then passes on those costs to SSO customers.

Further, R.C. 4928.143(B)(2) does not limit what may be included in an ESP, but gives the Commission discretion to establish an SSO. Moreover, 4928.02(G) states that

¹ AEP Initial Brief at 14.

² AEP Initial Brief at 14; OCC Post Initial Brief at 124.

it is the policy of the State to “[r]ecognize the *continuing emergence of competitive electricity markets* through the development and implementation of *flexible regulatory treatment* (Emphasis added).” The Commission has already transitioned the SSO from a cost of service based price served from utility owned generation, to a market based price served from competitive generation. A retail auction would merely be the next logical step for Ohio’s “continuing emergence of competitive electricity markets.”

Moreover, none of the arguments made by OCC and AEP regarding a violation of 4928.141(B) can even arguably apply to IGS’ RPA proposal. Under IGS’ RPA proposal, a wholesale auction mechanism would still be utilized to procure electric service for the SSO. The only change is that a fee would be assessed to the wholesale suppliers of the SSO to account for the costs that the SSO avoids because of the favored regulatory treatment granted to the SSO. The fee would effectively be charging those suppliers for the value they get for being able to serve a retail customer.

Finally, IGS’ RPA and retail auction proposals are more consistent with Ohio law than the current SSO proposed by AEP. R.C. 4928.141 provides that “an electric distribution utility shall provide consumers, on a *comparable and nondiscriminatory basis* ...a standard service offer (Emphasis added).” R.C. 4928.02(B) also provides that it is the policy of the State of Ohio to “[e]nsure the availability of *unbundled and comparable* retail electric service (Emphasis added).”

IGS’ RPA proposal would unbundle costs from distribution rates and assign those costs to the cost causer consistent with R.C. 4928.02(B). Further, both the retail auction proposal and the RPA proposal would ensure that the SSO rate would be more

comparable to the other electric products and would create an SSO rate that better reflects the retail products that are provided in the market. Ultimately, IGS' proposals would facilitate the development of a nascent retail relationship between the CRES and customer which would serve to further develop the retail electric market.

2. The RPA and Retail Auction Proposals Would Lower Costs to Electric Consumers.

In their initial briefs both OCC and the Ohio Partner's for Affordable Energy ("OPAE") claim that IGS' RPA proposal and retail auction proposal will raise the price of Ohio electric customers pay.³ OCC's and OPAE's claims are not supported by the record evidence.

First, as IGS Witness White testified, 100% of the money generated from both the retail auction proposal and the RPA proposal would be returned to all Ohio electric customers.⁴ Under IGS' proposals, CRESs that provide SSO service would be assessed a fee and all of the money generated from that fee would go to reduce the costs all electric customers pay. As Mr. White notes in his testimony, AEP currently has significant deferrals and the money raised from either of IGS' proposals could go to paying down the deferrals benefiting all customers.⁵ Thus, contrary to OCC's and OPAE's claims, the RPA and retail auction proposals would reduce electric rates paid for by all electric customers, not increase costs.

³ OPAE Initial Brief at 49; OCC Initial Brief at 123.

⁴ Direct Testimony of Matthew White at 16, 22.

⁵ Id.

Further, none of the dollars generated from a retail auction proposal or the RPA proposal would go to CRES providers, contrary to OCC's and OPAE's claims.⁶ Both the RPA and the retail auction proposal would actually access a fee to CRES providers that provide SSO service, charging them for the value they receive for being able to provide service to a customer without having to affirmatively enroll that customer.

Beyond just the price benefits, IGS' proposals will also encourage customer engagement in Ohio's retail electric market. As IGS Witness White explained, "products offered in the AEP market are largely commodity products only, and the innovative products that require higher fixed capital costs have been inhibited due to the current AEP SSO rate structure."⁷ Therefore, in addition to the price benefits afforded to customers, IGS' proposals will lead to a more robust and dynamic competitive electric market for customers.

Finally, it is ironic that in their initial briefs both OCC and OPAE argue that IGS' retail auction proposal will *force* SSO customers to take service from a CRES provider⁸ but simultaneously they make the claim that customers *choose* to remain on the current SSO.⁹ OCC and OPAE cannot have it both ways. If the Commission adopts the retail auction proposal allowing CRES providers to begin directly serving SSO customers, customers could simply choose to leave the SSO service, just like they can choose to remain on, or leave, the SSO service today.

⁶ Id.

⁷ Id at 12.

⁸ OPAE Initial Brief at 49; OCC Initial Brief at 124.

⁹ Id.

3. The Fact the Commission Has not Approved IGS' Retail Auction Proposal in the Past Does not Preclude the Commission from Approving IGS' Proposals Either Now or in the Future.

In their post hearing briefs, both OCC and AEP assert that because the Commission has not adopted IGS' retail auction proposal in previous proceedings, the Commission should not adopt either IGS' retail auction proposal or its RPA proposal in this proceeding.¹⁰ OCC and AEP's arguments are without merit.

First, it should be noted that although the Commission did not adopt IGS' retail auction proposal in AEP's last ESP, the Commission is not precluded from doing so in this case. Ohio electric markets are continuing to evolve, and as the markets evolve, the provision of SSO service should evolve as well. For instance, in AEP's last ESP the Commission had not yet ordered AEP to divest its electric generation, and SSO customers were still being served on the cost of service model. At the beginning of this ESP period, AEP will have divested its electric generation in its entirety; thus the competitive landscape will have changed significantly since AEP's last ESP case.

Further, IGS' RPA proposal was not raised in AEP's last ESP or in any other electric utility ESP. But even if it had been, it would not preclude the Commission from approving an RPA in this proceeding or in future proceedings. 4928.02(G) recognizes the "continuing emergence of competitive electricity market" and promotes "flexible regulatory treatment." Thus the Commission has the flexibility it needs to implement proposals that will help Ohio's retail electric markets continue to evolve.

B. The Commission Should Reject AEP's PPA Rider.

¹⁰ OCC Initial Brief at 124-125; AEP Initial Brief at 14.

A review of the post hearing briefs filed in this proceeding indicates that a significant majority of the parties in this proceeding oppose approval of AEP's proposed PPA Rider. Those parties opposing the PPA represent a vast array of interests including residential, commercial and industrial end-users; numerous CRES providers; environment advocates; and Commission Staff. In fact, of the 18 parties filing initial post hearing briefs in this proceeding, only 2 parties supported Rider PPA – AEP Ohio (the author of the proposal) and the Ohio Energy Group (“OEG”).

Since the issue of Rider PPA has been litigated significantly in this proceeding (including in testimony, at hearing, and in post hearing briefs) IGS will not recount the point-by-point case against the approval of the PPA Rider. IGS will just point out that the arguments submitted by AEP and OEG in favor of Rider PPA can be distilled into the notion that Rider PPA would promote price stability and reliability for Ohio electric markets. This notion, however, is based on the false premise that AEP can somehow forecast the direction of wholesale electric prices or the future of electric generation costs.

For instance, in its initial brief AEP cites the net rate impact analysis projecting Rider PPA would benefit customers to the amount of \$8.4 million over a 3 year period.¹¹ OEG cites its own study that the rate impact of the PPA Rider over a 9 ½ year period will be a positive \$70 million for customers.¹² Conversely, OCC's witness forecasts a negative net impact of the PPA of \$117 million.¹³ Further, the Industrial Energy User's

¹¹ AEP Initial Brief at 52.

¹² OEG Initial Brief at 7.

¹³ Id.

("IEU") witness projects that the PPA will cost customers \$30 million more than what AEP's is projecting.¹⁴

While all the forecasts and models submitted as "evidence" in this proceeding vary significantly, they have one thing in common – they all rely on assumptions about what will happen in the future. However, no party in this proceeding knows where electric prices will go in the future.¹⁵ Nor does any party know with certainty the costs it will take to support OVEC in the future (including fuel costs and environmental liabilities). Nor does anyone know whether the costs of coal fired generation will have a positive or negative correlation with the cost of wholesale energy prices in the future. At the end of the day, it's all just speculation.

So rather than making a proposal that will promote price stability, AEP is actually proposing that Ohio ratepayers take a bet on the OVEC generation assets producing lower cost energy than the whole-electric markets over the long run. Further, while the future is not known, what is now known is that OVEC is currently producing higher cost electricity than the wholesale electric markets. Therefore, AEP is asking Ohio ratepayers to take a bet on OVEC, but given that OVEC is currently out of the money, Ohio ratepayers would be forced to place this bet at a handicap.

This misguided attempt at creating price "stability" is also contrary to Ohio law and the policy of the state of Ohio for electric generation to be a competitive service. Granting AEP guaranteed cost recovery of OVEC generation, while requiring all other generators to compete in the market without guaranteed cost recovery, constitutes an

¹⁴ Direct Testimony of Kevin Murray at 11.

¹⁵ If any party knew with accuracy the direction of electric prices, they would not be spending resources in a regulatory proceeding, but would quit their jobs and be trading in the commodities markets on Wall Street.

undue and discriminatory preference granted to AEP generation at the expense of all other generation in the electric market. If price stability has value as a product attribute in the eyes of the consumer, the competitive market is a more efficient delivery mechanism through fixed price offers.

Further, as Staff points out in its initial brief, even if the PPA is approved by the Commission, there are serious questions about whether the PPA Rider will stand up constitutionally.¹⁶ The federal courts in both New Jersey and Maryland have recently determined that cost recovery of electric generation similar to what AEP is proposing — a contract for differences between wholesale market revenue and a cost-based revenue requirement— is a violation of federal law.¹⁷ Thus, it would be imprudent and unlawful for the Commission to approve a proposal that has a reasonable likelihood to be challenged in federal court and rejected.

In sum, the vast majority of the parties that oppose Rider PPA are correct. Rider PPA is bad for Ohio rate-payers and is contrary to Ohio law. Thus, the Commission should reject Rider PPA in its entirety.

C. The Commission Should Approve Rider BTRC.

In its ESP Application AEP proposed Rider BTRC which would allow AEP to recover non-market based transmission costs through a non-bypassable rider. Currently, these non-market based costs are charged to CRES providers on behalf of the customer, and then the CRES provider must pass those charges on to the customer.

¹⁶ Staff Initial Brief at 15-17.

¹⁷ Id.

In its initial brief IGS supported the approval of Rider BTRC because the costs in Rider BTRC are pass-through costs from PJM which CRESs have no ability to alter. Further, Rider BTRC would be more consistent with the way other utilities in the State recover similar costs. However, both IEU and the Ohio Manufacturers' Association ("OMA") opposed Rider BTRC in this proceeding. Both IEU and OMA claim that if shopping customers have a fixed rate with a CRES which already includes the transmission charges, implementation of the Rider BTRC may cause some shopping customers to be double billed for transmission charges.¹⁸

First, both IEU and OMA are made up of sophisticated industrial energy users who have known of the Rider BTRC proposal for quite some-time. Further, even if the charge is approved, it will not go into effect until June of 2015, almost a full year from now. Therefore, IEU and OMA members have sufficient time to negotiate with their CRES provider a rate that would not include transmission costs into their charges - or at minimum a contract that would remove transmission costs from the fixed rate if Rider BTRC is approved. And even if a CRES provider is unwilling to remove transmission charges from the rate of IEU and OMA members that are locked into a fixed contract beyond June 2015, the CRES would be in significant jeopardy of losing that customer once the customer contract expires.

Further, if the Commission is concerned about the double billing issue, it could simply modify AEP's Rider BTRC proposal to require CRES providers to remove these costs from customer's prices before Rider BTRC goes into effect. When Columbia Gas of Ohio modified its balancing fee to make it a pass-through charge directly to the

¹⁸ IEU Initial Brief at 38-39; OMA Initial Brief at 12-13.

customer, rather than a charge to the natural gas supplier, the Commission required that natural gas suppliers to verify they removed the charge from all customers' fixed prices.¹⁹ The Commission can do the same in this proceeding. As such, IEU's and OMA's concerns regarding double billing are without merit.

D. The Commission Should Approve Discontinuance of AEP's TOU Rate Offerings and GridSmart Tariffs.

In its ESP Application AEP proposed eliminating its time-of-use ("TOU") tariffs with the approval of this ESP. IGS supports the termination of these tariffs, as the termination of these tariffs will better facilitate the development of similar products offered by the competitive market. However, certain parties in their initial brief disagree and request that the Commission require AEP to continue its TOU tariffs.²⁰ The arguments made to maintain TOU tariffs are not persuasive and thus the Commission should accept AEP's proposal.

In its initial brief the Environmental Law and Policy Center ("ELPC") cites to R.C. 4928.02(D) which states that it is the policy of Ohio to "[e]ncourage *innovation and market access* for cost-effective supply and demand-side retail electric service including, but not limited to, demand-side management, *time-differentiated pricing*, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure (Emphasis added)."²¹ Certainly this is the policy of the State of

¹⁹ In this proceeding the Commission directed Staff to develop a process to ensure that all customers with fixed contracts were notified that the balancing fee would be switched from the supplier to the customer. Further, the Commission directed Staff to come up with a process to audit suppliers to ensure that the balancing charges were removed from all customers fixed prices for any contracts that extend beyond the date the balancing fee was switched. See Case N. 12-2637-GA-EXM, Opinion and Order (January 9, 2013) at 15-17.

²⁰ OCC Initial Brief at 37; ELPC Initial Brief at 4; OEC Initial Brief at 4.

²¹ ELPC Initial Brief at 5.

Ohio and IGS is supportive of this policy, but requiring AEP to continue its TOU tariffs would be contrary to R.C. 4928.02(D).

Indeed, innovation is a key component to the development of TOU pricing but as recognized in R.C. 4928.02(D), innovation should be promoted through “market access” and not through the regulated utility. This is because innovation is restricted when the distribution utility receives cost recovery of a generation related product through distribution rates, and other competitive products do not get this same advantage. Currently the resources to develop and support TOU products for AEP are recovered through distribution rates, even though TOU rates are a generation service.

Further, rather than requiring AEP to offer a TOU product when AEP is clearly not interested in doing so, the Commission should find means to enable CRES providers to offer these products. ELPC and the Ohio Environment Council (“OEC”) claim that not a single CRES provider is currently offering TOU rates to customers in the AEP service territory.²² However, this is because currently CRES suppliers do not have access to customer data that is required to offer TOU products. In other markets where CRES providers do have access to this data (such as Texas) CRES providers are offering TOU products to customers.

IGS does, however, agree with OEC that the AEP GridSmart rider should be approved.²³ The full deployment of smart meters in the AEP service territory will be key for the widespread offering of TOU products to customers.

²² Id. at 6; OEC Initial Brief at 4.

²³ OEC Initial Brief at 6-7.

E. The Commission Should Adopt RESA’s Market Entry Program and the Instant Connect Proposal Advocated by RESA.

In this proceeding RESA proposed that the Commission adopt a referral program (“MEP Program”) that would offer customers that initially enroll in AEP distribution service the ability to enroll in a CRES product at a 3% percentage discount to the SSO price.²⁴ Further, RESA supported in its initial brief an instant connect proposal (a/k/a the “Instant Connect Proposal”) initially proposed by IGS that would allow customers to enroll with a CRES upon institution of service with AEP and not require all customers to enroll on the SSO.²⁵ Both of these proposals are reasonable and should be adopted by the Commission.

In its initial brief OCC claims that the MEP proposal should be rejected because it lacks detail about how the MEP will be implemented.²⁶ However, in its testimony, RESA proposed to start a working group to develop further detail on how the MEP Program would be implemented once the Commission approves the basic concept of an MEP program. Like all working groups, interested parties would work together to develop the details of the MEP program and the MEP working group would then submit a proposal to the Commission regarding the implementation of the MEP. Ultimately the Commission would have the final authority to approve, reject or modify the plan. Further, OCC would have an opportunity to participate in the working group, and if OCC disagreed with any of the details of the MEP Program, OCC would have an opportunity to object in the proceeding required in order for the MEP to receive final approval.

²⁴ RESA Initial Brief at 25.

²⁵ Id. at 33.

²⁶ OCC Initial Brief at 126.

Further, as noted in IGS' initial brief, very successful referral programs have been established for a number of the electric utilities in Pennsylvania. Thus, the MEP working group would not necessarily have to start from scratch in order to develop the details of implementing a workable MEP. Thus, it is not a legitimate rationale to reject the conceptually sound MEP proposal simply because all the operational details have not been determined at this time.

OCC also objects to the MEP proposal because OCC is concerned that a price that offers 3% discount to the SSO may not be as low as prices offered by CRES providers on the PUCO Apples-to-Apples site.²⁷ With this claim OCC misses the point of the MEP program. Since the MEP program is designed to enroll customers that otherwise would enroll with the SSO, *any discount to the SSO would be beneficial to customers*. It does not matter that CRES providers may be offering an even lower price, because simply switching customers from the SSO price would put customers on a lower price. Using OCC's logic, all SSO customers should just be assigned to CRES providers offering prices on the PUCO Apples-to-Apples site that are lower than the SSO. IGS would not necessarily object to this concept if OCC is willing to support assigning SSO customers to offers on the PUCO Apples-to-Apples site.

Similarly, in its initial brief RESA supported an Instant Connect proposal made by IGS Witness White that would allow AEP customers to enroll in CRES provided electric service upon institution of distribution service with AEP.²⁸ Currently, all distribution customers must enroll on the SSO for a minimum period before receiving electric

²⁷ Id. at 128.

²⁸ RESA Initial Brief at 33.

service from a CRES provider. As far as IGS is aware, no party has disputed this proposal. Further, given that there is no legitimate policy reason to require customers to first enroll in the SSO, before even having an opportunity to switch to a CRES provider, the Commission should approve the Instant Connect proposal proposed by IGS and supported by RESA.

F. The Commission Should Adopt the Purchase of Receivables (“POR”) Program Proposed by AEP.

In its ESP Application AEP proposed a POR program that would allow AEP to collect the receivables of CRES providers and recover any uncollectible expense of CRES receivables from a bad-debt rider recovered by all customers. In their initial brief certain parties objected to AEP’s POR proposal.²⁹ IGS is supportive of AEP’s proposal, but in accordance with the Commission’s policy of encouraging parties with like positions to adopt arguments instead of filing repetitive briefs, IGS simply adopts the arguments made in RESA’s reply brief in support of POR.

IGS would note, however, that if the Commission adopts a POR program it should do so with a bad debt tracker rather than with a discount rate. Currently, AEP is recovering bad debt of SSO generation through distribution rates; thus Choice customers are currently paying the cost of SSO generation bad debt, through distribution rates. If a discount rate were adopted Choice customers would still be paying the cost of bad debt twice-once through the discount rate (which is reflected in CRES pricing) and again through distribution rates which recover the bad debt of SSO

²⁹ OCC Initial Brief at 17; OPAE Initial Brief 18.

generation. A bad debt tracker would eliminate this subsidy by treating all bad-debt equally.

III. CONCLUSION

IGS respectfully requests that the Commission adopt the proposals and modifications described above.

Respectfully submitted,

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