BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY BRIEF OF THE OHIO HOSPITAL ASSOCIATION

I. INTRODUCTION

Pursuant to the direction of the Attorney Examiners assigned to this matter, the Ohio Hospital Association ("OHA") now respectfully submits this Reply Brief. In its Post-Hearing Brief, filed on July 23, 2014, the OHA limited its arguments to the subject of Ohio Power Company's ("AEP-Ohio" or "Company") proposed Rider PPA mechanism and its reasons for opposing this proposal. This Reply Brief is similarly limited to this single subject.

The OHA's Post-Hearing Brief directed the Commission's attention to the most significant and obvious flaws in AEP-Ohio's Rider PPA proposal. These flaws involve the highly speculative nature of any possible value of the "hedge" to customers. The record is clear that neither the OVEC costs nor the anticipated market revenues are stable or predictable. The many speculative aspects of the OVEC entitlements and liabilities, viewed together, render meaningless any conceivable hedge value of AEP-Ohio's proposal.

The more serious fatal flaw in the proposal is its lack of legal foundation. It has no basis in Ohio Revised Code Section ("R.C.") 4928.143, hence the proposal has no place in this ESP proceeding. The OHA did not raise the other fatal infirmities found in federal law.

Both the grossly speculative value of the proposal to customers, as well as its patent illegality have been thoroughly and persuasively argued by the other intervenors to this case, including the Commission Staff; a recitation of those arguments on reply would not serve any useful purpose. Rather, this Reply Brief will focus on the arguments made by AEP-Ohio that serve to underscore the OHA's admonition to the Commission in its Post-Hearing Brief to "beware of Greeks bearing gifts." In its presentation and defense of Rider PPA, AEP-Ohio has not been forthcoming with respect to its value (or lack thereof) to its captive monopoly distribution customers, and the proposal is not what the Company claims it to be.

II. ARGUMENT

In both its supporting testimony and Initial Post-Hearing Brief, AEP-Ohio is careful to characterize the Rider PPA mechanism as a hedge against market volatility by passing through to customers the net benefits of all revenues accruing to AEP-Ohio from the sale of its OVEC contractual entitlements into the PJM markets, less all costs associated with its OVEC contractual obligations. AEP-Ohio Initial Brief, p.23. AEP-Ohio summarizes Rider PPA as "allow[ing] customers to take advantage of market opportunities while providing added price stability." *Id*. See also, *Id*., p. 26.

These benign characterizations of Rider PPA, and the pointed silence about the market risks and potential contract liabilities, beg the question of why is the Company being so generous with its captive customer with this "benefit" when it is under no regulatory direction or retail market pressure to so behave? A viable hedge, after all, has independent market value and AEP-

Ohio is free to realize that value to its own benefit. What motivates this "donative" intent on the part of the Company, contrary to the interest of its shareholder?

Viewed in a more rational light, Rider PPA is a breathtakingly simple shift of financial risk from the operation of unregulated generation facilities to monopoly distribution customers with no corresponding benefit to those customers. What is worse, this "hedge" for the Company is callable within two years if the Commission were to approve AEP-Ohio's proposal, during which time the hedge will, by all accounts in this record, provide a significant net benefit to AEP-Ohio. Clearing away the "customer benefit" hyperbole, it becomes clear that the Company simply wants guaranteed recovery of its OVEC contract costs, and the cost of any other affiliate generation facilities it so chooses—costs that it strongly suspects will outweigh any market revenues.

AEP-Ohio's persistent sugarcoating of the value of the Rider PPA concept is not the only instance where the Company mischaracterizes the facts. In another clear instance, AEP-Ohio characterizes the Commission's Order in Case No. 12-1126-EL-UNC as "not temporary and that there was *no* expectation of the Company continuing to try and transfer the assent…" AEP-Ohio Initial Brief, p. 24. Here again, the Company is making bald assertions to try to make its case. It doesn't even attempt to explain away the Commission's clear direction that the obligation to sell its OVEC entitlements into the PJM markets would continue "until the OVEC contractual entitlements can be transferred to AEP Genco or otherwise divested, or until otherwise ordered by the Commission." Case No. 12-1126-EL-UNC (Finding & Order dated December 4, 2013) Finding 20. Unequivocally, the Commission expressed an expectation that the OVEC obligations would not stay with AEP-Ohio indefinitely, as now suggested by the Company. Further, the Company must not be allowed to use its temporary exemption from its

corporate separations obligations to obtain a guaranteed recovery of these now-competitive generation assets, as the Company seems to be attempting here.

Another outlandish mischaracterization is found where AEP-Ohio attempts to shoe-horn Rider PPA into R.C. 4923.143(B)(2)(d), by claiming that the OVEC entitlements "clearly" relates to a default service and addresses (non) bypassablity. AEP-Ohio Initial Brief, pp. 27-28. AEP-Ohio takes pains in this case to assure the Commission and the parties that the costs and revenues to be reflected in Rider PPA do not relate in any way to the provision of electric service to its customers, but rather it's a purely financial transaction that (allegedly) will act as a hedge against market volatility. It follows that under AEP-Ohio's interpretation of the language in R.C. 4923.143(B)(2)(d), it could pass through losses from a precious metals trading portfolio and call it a hedge against market volatility for customers. Under AEP-Ohio's interpretation, literally any cost imaginable could be recovered through a non-bypassable charge, because that charge would "relate" to default service (because it was approved in an SSO case) and addresses non-bypassability (because it is non-bypassable). This is absurd, but this is AEP-Ohio's argument. It is not even necessary to get to the third prong of R.C. 4923.143(B)(2)(d), because the record is clear that Rider PPA will do nothing to stabilize bills for a broad variety of reasons.

Perhaps the "topper" comes with AEP-Ohio's characterization of R.C. 4923.143(B)(2)(a) where it claims that this provision provides authority to the Commission to adopt the Rider PPA, because that provision explicitly permits affiliate purchase power agreements. AEP-Ohio Initial Brief, p. 29. The statute states:

> (2) The plan may provide for or include, without limitation, any of the following: (a) Automatic recovery of any of the following costs of the electric distribution utility, provided the cost is prudently incurred; the cost of fuel used to generate the electricity supplied under the offer; the cost of purchased power *supplied under the offer*, including the cost of energy and capacity, and including

> purchased power acquired from an affiliate; the cost of emission allowances; and the cost of federally mandated carbon or energy taxes; (Italics added)

As with the previous example, the record in this case is crystal clear that the customers of AEP-Ohio will not have access to the electricity from the OVEC PPA, and that Rider PPA is purely financial. The **in**applicability of R.C. 4923.143(B)(2)(a) could not be clearer. Rider PPA has nothing to do with the supply of electricity on the AEP-Ohio distribution system, let alone its default electric offer.

The Company uses this same tortured interpretation with R.C. 4923.143(B)(2)(e) by claiming that this provision applies to give the Commission the necessary authority to adopt Rider PPA because that provision permits automatic increases or decreases and "encompasses a mechanism relating to SSO service such as the PPA Rider." AEP-Ohio Initial Brief, p. 30. in any component of the standard service offer price. Again, this is not what the law says. R.C. 4923.143(B)(2)(e) states:

> (2) The plan may provide for or include, without limitation, any of the following: (e) Automatic increases or decreases in any component of the standard service offer price.

Rider PPA is not a component of the standard service offer price and it does not relate to the standard service offer in any way other than by the pure coincidence that the Rider PPA is being proposed as a non-bypassable charge in this ESP case. AEP-Ohio could propose a non-bypassable pass-through of the cost of the Ferraris that it may purchase for its senior officers (purely illustrative) and use these same interpretations of the law to support the Commission's authority to approve such a charge.

As noted at the start of this Reply Brief, the OHA made its arguments about the lack of legal authority for Rider PPA in its Initial Brief. The examples of AEP-Ohio's mis-application

of the law are not being offered here as legal arguments, but rather as examples of AEP-Ohio's attempt to misdirect the attention of the Commission. These examples are evidence of some other agenda on the part of AEP-Ohio.

AEP's real motivation is contained in a thinly veiled legal argument suggesting that the Commission has no choice but to allow the recovery of its OVEC costs, because "FERC-authorized costs associated with the OVEC contracts need to be recovered at the retail level…" AEP-Ohio Initial Brief, p. 29. AEP-Ohio clearly believes that it is entitled, as a matter of law, to the full recovery of its OVEC costs, and this is the actual, and only, purpose of Rider PPA. We can only guess that AEP-Ohio believes that this particular mechanism was the path of least resistance to accomplish this end. If the Commission approves Rider PPA, then AEP-Ohio will have been correct in its belief.

As a final thought on the matter, the Commission should consider AEP-Ohio's continued reliance on its witness Mr. Allen and his "most accurate representation of what the value of the PPA rider would be" over the life of this plan, namely a $8.4 million net credit to customers (AEP-Ohio Initial Brief, p. 53), and weigh this incongruous "generosity" against the potential costs and harm to the economy of Ohio through a guaranteed cost recovery by the unregulated affiliate of monopoly distribution utilities. Viewed in this light, the OHA is confident the Commission will make the correct decision and deny approval of Rider PPA.

III. CONCLUSION

For the reasons stated above, OHA requests that this Commission adopt the positions of OHA on the issue set forth above, as well as those set forth in its Post Hearing Brief.

Respectfully submitted on behalf of
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply Brief was served *via electronic mail* upon the parties of record this 15th day of August 2014.

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