

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company for Authority to) Case No. 13-2385-EL-SSO
Establish a Standard Service Offer)
Pursuant to §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.)

**APPLICATION FOR REHEARING OF
OHIO PARTNERS FOR AFFORDABLE ENERGY
AND
THE APPALACHIAN PEACE AND JUSTICE NETWORK
AND
MEMORANDUM IN SUPPORT**

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March 27, 2015

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Pursuant to Ohio Revised Code (“R.C.”) Section 4903.10, Ohio Partners for Affordable Energy and the Appalachian Peace and Justice Network (together “Low-Income Advocates”) hereby submit to the Public Utilities Commission of Ohio (“Commission”) this Application for Rehearing from the Commission’s February 25, 2015 Opinion and Order in these proceedings considering the applications made by Ohio Power Company (“AEP Ohio”) for authority to establish a standard service offer (“SSO”) in the form of an electric security plan (“ESP”) and for approval of certain accounting authority. The Commission’s Opinion and Order is unreasonable and unlawful on the following grounds:

- 1) The Commission acted unreasonably and unlawfully when it found that a Power Purchase Agreement (“PPA”) rider would be allowable as a financial limitation on customer shopping pursuant to R.C. 4928.143(B)(2)(d). Opinion and Order at 22.
- 2) The Commission acted unreasonably and unlawfully when it found that a PPA rider proposal, if properly conceived, has the potential to

supplement the benefits derived from the staggering and laddering of the SSO auctions, and to protect customers from price volatility in the wholesale market and particularly during periods of extreme weather. Opinion and Order at 25.

- 3) The Commission acted unreasonably and unlawfully when it found that the adoption of a PPA Rider was consistent with the state policy specified in R. C. 4928.02(A) and R. C. 4928.02(H). Opinion and Order at 26.
- 4) The Commission acted unreasonably and unlawfully when it ignored obvious federal preemption issues associated with a PPA.
- 5) The Commission acted unreasonably and unlawfully when it authorized AEP Ohio to establish a placeholder PPA rider. Opinion and Order at 25.
- 6) The Commission acted unreasonably and unlawfully when it found that a Purchase of Receivables (“POR”) program would provide significant customer benefits, including the likelihood of increased numbers of active CRES providers and product offerings and allowed the establishment of a Bad Debt Rider. Opinion and Order at 81.
- 7) The Commission acted unreasonably and unlawfully when it approved continuation of AEP Ohio’s Distribution Investment Rider (“DIR”) and expanded AEP Ohio’s Enhanced Service Reliability Rider (“ESRR”) and continued the current cost allocations of the riders. Opinion and Order at 47.
- 8) The Commission acted unreasonably and unlawfully when it did not approve additional funding for low-income and at-risk populations. Opinion and Order at 65.

The Commission should grant rehearing and correct these errors in its Opinion and Order for the reasons set forth in the attached Memorandum in Support of the Application for Rehearing which is incorporated herein.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE
APPLICATION FOR REHEARING OF
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ALLEGATION OF ERROR 1

- 1) The Commission acted unreasonably and unlawfully when it found that a Power Purchase Agreement (“PPA”) rider would be allowable as a financial limitation on customer shopping pursuant to R.C. 4928.143(B)(2)(d). Opinion and Order at 22.**

The Commission did not approve AEP Ohio’s proposed PPA rider but found that a PPA rider could be approved as a component of an ESP under R.C. 4928.143(B)(2)(d). Using language from R.C. 4928.143(B)(2)(d), the Commission found that it was possible for a distribution utility to propose a PPA rider with terms, conditions or charges related to limitations on customer shopping for retail electric generation service as would have the effect of stabilizing or providing certainty regarding retail electric service. Opinion and Order at 20. The Commission found that a PPA rider such as the one proposed by AEP Ohio could be a financial limitation on customer shopping that would help to stabilize rates. Opinion and Order at 22. The PPA rider “would function as a financial restraint on complete reliance on the retail market for the pricing of retail electric generation service.” Opinion and Order at 22. This finding is wrong, both factually and legally.

First, as a matter of fact, AEP Ohio’s witness Allen testified that the PPA rider was not a limitation on customer shopping. The Commission acknowledged this but

stated that it was not bound by the applicant's testimony. Id. However, the applicant in this proceeding has the burden of proof and if the applicant did not propose the PPA rider as a limitation on customer shopping, the applicant could not have met its burden of proof that the PPA rider complied with R.C. 4928.143(B)(2)(d) as a limitation on shopping. While the Commission cited the testimony of the Ohio Energy Group ("OEG") witness Taylor that the PPA rider was a financial limitation on customer shopping that was intended to stabilize rates, OEG was not the applicant in these proceedings. Id.

R.C. 4928.143(B)(2)(d) states that an ESP charge must be related to these specific categories: limitations on customer shopping, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, or accounting deferrals that would have the effect of stabilizing or providing certainty regarding retail electric service. Even though AEP Ohio did not propose its PPA rider as a limitation on customer shopping and AEP Ohio's witness testified that the PPA rider was not a limitation on customer shopping, the Commission, searching for a category to which a PPA rider would fit, found that the PPA rider was a limitation on customer shopping as suggested by OEG.

The PPA rider is not a limitation on shopping. The PPA rider is not related to any of the categories that may be addressed through an ESP charge authorized under R.C. 4928.143(B)(2)(d). The PPA rider did not limit customer shopping in any way, as AEP Ohio witness Allen testified.

The PPA rider was proposed to shield AEP Ohio from the risk associated with the financial losses of the OVEC generating stations, whose costs AEP Ohio is

obligated to absorb. Under AEP Ohio's PPA rider, AEP Ohio's distribution customers would pay the losses of the OVEC generating units. This stability of the guarantee of AEP Ohio's profit from these generating units was the purpose of the proposed PPA rider.

There is only one situation under Ohio law where a distribution utility such as AEP Ohio can recover the costs of a power plant from distribution customers. Under R.C. 4928.143(B)(2)(b), a utility may recover the costs associated with constructing a new generation facility, but only if "the Commission first determines...there is a need for the facility based on resource planning projections submitted by the electric distribution utility." AEP Ohio did not propose a new facility and did not demonstrate the need for a new facility. It did not justify the need for OVEC, which, of course, is not a new facility. The auctions which provide generation service to AEP Ohio's SSO customers have been oversubscribed, and there is excess generation available in PJM, the regional transmission organization ("RTO") to which AEP Ohio belongs. Ohio law does not authorize the subsidy to the OVEC generating stations that AEP Ohio was requesting.

The purpose of the PPA rider was to shift the business risk -- whether an asset makes a profit or produces a loss -- associated with AEP Ohio generating stations to AEP Ohio's distribution customers. The PPA rider, if approved, would be paid by all AEP Ohio distribution customers, including those who take generation service under the SSO, those who shop individually, and those who shop through a governmental aggregator. To obtain generation service, all of AEP Ohio's distribution customers either shop individually or through a governmental

aggregation for their generation or have their generation procured through the Commission-administered SSO auctions. Under Ohio's competitive retail generation market, AEP Ohio's distribution customers cannot be required to subsidize energy and capacity produced by any power plants unless AEP Ohio demonstrates a need for a new plant and wins the right to build a new one.

AEP Ohio's distribution customers may secure generation from competitive retail electric service ("CRES") providers rather than take service from the SSO. Customers who are receiving generation from a CRES provider would see no benefit from a PPA rider. The PPA rider is simply an additional charge on a shopping customer's distribution bill. Also, the PPA rider will not provide any additional stability or reliability for CRES customers because CRES customers pay for stability and reliability through their CRES bills and the PJM tariffs. Direct Energy's witness Ringenbach testified that the shareholders of generation companies should bear the risk of a generation unit's profits or losses. Direct Ex. 1 at 10. The Commission should not allow an opening for future PPA riders and should not set a precedent to require distribution customers to pay for generation units that are not profitable. Id.

In the context of the PPA rider, the Commission ignored the statutory test set forth in R.C. 4928.143(C)(1) that an ESP must be more favorable in the aggregate than would be expected under a Market Rate Option ("MRO") under R.C. 4928.142. In this case, after denying the PPA rider as no benefit to customers, the Commission found that the modified ESP was more favorable quantitatively than an MRO because the rates to be charged SSO customers will be established through a fully auction-based process and therefore will be equivalent to the results that would be

obtained under R.C. 4928.142, the MRO. Opinion and Order at 91. The Commission also stated that the modified ESP continues to enable AEP Ohio to move more quickly to market rate pricing and that AEP Ohio will implement fully market-based pricing beginning on June 1, 2015. The Commission believed that the more rapid implementation of market-based pricing possible under an ESP was a qualitative benefit that is consistent with R.C. 4928.02. Opinion and Order at 95.

In short, in determining that the modified ESP was more favorable than the MRO, the Commission emphasized the benefit of the market pricing that would result from its approval of the ESP without a PPA rider. Given that the statute requires that an ESP be more favorable in the aggregate than an MRO, the Commission stated that this ESP would take the SSO to full market pricing even quicker than an MRO. The MRO is the standard. The MRO is the fully market based SSO rate. It is not possible that an ESP that includes a PPA rider charge priced higher than market could ever, under any circumstances, be more favorable in the aggregate than an MRO. The statute guarantees ratepayers market-based SSO generation rates unless a non-MRO option is more favorable. A PPA rider would have to be priced below market to satisfy R.C. 4928.142, but then it would not be a charge under R.C. 4928.143(B)(2)(b).

Thus, the Commission acted unreasonably and unlawfully in finding that an above-market rate PPA rider could be approved as part of an ESP under circumstances that the PPA rider was an above-market charge that limited customer shopping to provide stability and certainty to electric retail service. This is not Ohio law. The stability claim does not overcome the statutory requirement that an ESP be

more favorable in the aggregate than an MRO. Under Ohio law, SSO generation rates cannot be stabilized above-market. AEP Ohio proposed the PPA rider to require distribution ratepayers to pay the above-market costs of the OVEC generating units through a PPA rider charge. A PPA rider with above-market costs cannot satisfy R.C. 4928.143(C). A PPA rider with below-market costs would not be a charge under R.C. 4928.143(B)(2)(b). There is no place in Ohio law for a PPA rider.

ALLEGATION OF ERROR 2

- 2) The Commission acted unreasonably and unlawfully when it found that a PPA rider proposal, if properly conceived, has the potential to supplement the benefits derived from the staggering and laddering of the SSO auctions and to protect customers from price volatility in the wholesale market and particularly during periods of extreme weather. Opinion and Order at 25.**

In addition to a PPA rider having nothing to do with limiting customer shopping, a PPA rider will not provide a hedge against volatility. Ohio's SSO customers already have a sufficient hedge against volatility. The structure of SSO auctions in Ohio eliminates the need for a PPA Rider. Ohio's SSO auctions provide whatever hedge is needed against price volatility. A PPA rider cannot enhance the price stability provided through the auction. Even if SSO customers were exposed to significant price volatility, which they are not, a PPA rider would just as likely move in the same direction as market prices as contrary to market prices, thus doing nothing to address volatility.

Customers receiving service under the SSO are served under one- and two-year full requirements contracts established through periodic auctions. Therefore,

SSO customers are not exposed to substantial market price volatility under any foreseeable circumstances. OCC Ex. 15 at 5. This was true during the polar vortex event in the winter of 2014; SSO customers were protected from the price volatility because the auction-winning suppliers were under contract to deliver at a fixed price and had incorporated a risk premium into their bid prices to cover such an event. Thus, while the SSO auctions are a real hedge against volatility, the PPA rider has another true purpose. It shifts the risk of the profitability of the OVEC plants onto distribution customers and away from one of the plants' owners, AEP Ohio.

Staff witness Choueiki testified that the SSO auction process is a more effective approach for mitigating price volatility than AEP Ohio's proposed PPA rider insurance hedge. The approach in administering SSO procurement auctions includes staggering the procurement of the products (twice a year) and laddering multiple products (12 months, 24 months, 36 months, etc.). The current approach is so effective that there is no need to inflict the price of a PPA rider on customers to provide any additional stability.

This auction laddering and staggering of the SSO power procurement moderates changes in price and prevents price volatility. The frequent SSO auctions are more effective than the hedge AEP Ohio PPA rider would be. Tr. XII at 2933-2934. Averaging is one of the tools that are used to reduce volatility. Id. When capacity prices are averaged over three years and over two annual auctions, the potential price volatility is minimized. Tr. XII at 2936. The SSO auction produces the SSO rate that reduces volatility by taking averages of averages. Unlike a PPA rider, the auction approach is not a financial hedge that all distribution

customers are forced to pay for even if they do not want to purchase this hedge and do not need this hedge. Tr. XII at 2938. The same is true for CRES customers. When a customer purchases a fixed contract from a CRES provider; the customer has no need to worry about volatility because the CRES provider is responsible for mitigating the risk.

There are other more effective tools to stabilize rates than a PPA rider. In addition to the SSO auction process, the Commission has tools under the ESP to either order an electric distribution utility to build new generation or competitively bid for additional generation. If additional generation was needed for stability, the best available source would be through a competitively bid Request for Proposals for new or additional generation. Tr. XII at 2904.

The Commission acted unreasonably and unlawfully in claiming that a need for additional stability justifies a PPA rider. There is no need at all for a PPA rider to provide additional stability, even if such a rider would do so. The SSO auction process provides the needed hedge against volatility for SSO pries. CRES providers secure their own stability. The RTO PJM provides stability in the wholesale power purchase market. A PPA rider would add nothing. If additional generation is ever needed in Ohio, Ohio law provides the process to obtain it.

ALLEGATION OF ERROR 3

- 3) The Commission acted unreasonably and unlawfully when it found that adoption of a PPA Rider was consistent with the state policy specified in R. C. 4928.02(A) and R. C. 4928.02(H). Opinion and Order at 26.**

The Commission found that adoption of a PPA rider was consistent with the policy of the State of Ohio specified at R.C. 4928.02(A) to ensure the availability to consumers of reasonably priced retail electric service. Opinion and Order at 26. Given that the Commission denied approval of the PPA rider proposed by AEP Ohio in this case on the basis that it did not benefit customers, the Commission did not find that the PPA rider proposed in this case would ensure the availability to consumers of reasonably priced retail electric service pursuant to R. C. 4928.02(A). It is only in the context of a PPA rider not proposed here and not under consideration in this case that the Commission finds that a PPA rider might conform to R.C. 4928.02(A).

A PPA rider that would benefit customers through an ESP would be one that is set lower than market prices. It would be a credit, not a charge. Given that under Ohio law, customers are entitled to a market rate option (“MRO”) for SSO service when the MRO is more favorable in the aggregate than an ESP, the only justification for a PPA rider as part of an ESP would be that the PPA rider resulted in lower rates than market prices. R.C. 4928.142.

In addressing R.C. 4928.02(H), the Commission found that a PPA rider would not permit recovery of generation-related costs through distribution rates because a PPA rider would be a generation rate. However, the PPA rider was presented by AEP Ohio not as a generation charge but as a hedge, an insurance hedge, allegedly against price volatility resulting from the SSO auctions. Tr. at XII at 2937. AEP Ohio proposed the charge on distribution customers. Contrary to the Commission’s finding, AEP Ohio did not propose a PPA rider as a generation charge.

Under R.C. Section 4928.02(H), the Commission is to:

avoid anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation related costs through distribution or transmission rates....

The PPA rider violates the state's policy at R.C. 4928.02(H), which declares that it is the state's policy to ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service. The PPA rider would force all of AEP Ohio's distribution customers, including those paying directly for generation supplied by CRES providers, to subsidize the OVEC units when under Ohio law it is AEP Ohio's shareholders that should bear the risk of OVEC's profits or losses in the market.

Approving a PPA rider would directly contravene the decision of the General Assembly to ensure that generation is competitive and that there is no cross-subsidization of any competitive product or service. A PPA rider would subsidize the rates AEP Ohio can charge for power from OVEC because distribution customers will pay the difference between cost and market. What is being described as a hedge is actually a guarantee that the OVEC plants will produce a guaranteed profit for AEP Ohio. The PPA violates Ohio law. R.C. 4928.02(H).

The PPA also violates R.C. 4928.38 and 4928.39. The Commission found a PPA rider could be a generation charge allowable under R. C. 4928.143(B)(2)(d) but did not recognize that assigning the costs of above-market generation to all distribution customers makes distribution customers responsible for Ohio Power's

legacy generation costs long after the period for transition cost recovery has ended. The subsidy would insulate AEP Ohio and its shareholders from the risk of the competitive market associated with AEP Ohio's interest in the generating units when Ohio law requires that the utility shall be fully on its own in the competitive market. The PPA rider would be a form of transition revenues Under R.C. 4928.38 and 4928.39, recovery of above-market generation transition costs by Ohio public utilities has long ended.

The PPA rider as proposed had no basis in Ohio law; it violated Ohio law at R.C. 4928.02(A), R.C. 4928.02(H), R.C. 4928.38 and R.C. 4928.39. The PPA rider was not an authorized ESP charge under R.C. 4928.143(B)(2)(d). A PPA rider set above market would not allow an ESP to pass the MRO test. The PPA rider is anti-competitive as it clearly puts electric generators on a different level if one generator's profits are guaranteed by distribution ratepayers. R.C. 4928.02(H). The PPA rider corrupts Ohio's statutory scheme for competitive generation markets in Ohio. The Commission acted unlawfully in failing to recognize that Ohio law does not allow for a PPA rider.

ALLEGATION OF ERROR 4

- 4) The Commission acted unreasonably and unlawfully when it ignored obvious federal preemption issues associated with a PPA. Opinion and Order at 26.**

The Commission declined to address constitutional issues raised by the parties because the Commission believed that such issues were best reserved for judicial determination. Opinion and Order at 26. Issues of federal preemption are so fundamental to a PPA that they cannot be credibly dismissed.

By subsidizing wholesale generation with distribution customer funds, a PPA rider will corrupt the operation of the regional wholesale generation market, which violates federal law. Ohio relies on the regional transmission organization (“RTO”) PJM for wholesale generation, and PJM operations are regulated by the Federal Regulatory Energy Commission (“FERC”). All wholesale generation must be treated the same in the PJM market or there is a violation of the Federal Power Act. *EnergyPlus LLC v. Nazarian*, 753 F. 3d 467 (4th Cir. 2014) (affirming *PPL EnergyPlus, LLC v. Nazarian*, 974 F. Supp.2nd 790 (D. Md. 2013), and *PPL EnergyPlus, LLC v. Hanna*, Case No. 13-4330 (slip opinion) (3rd Cir.2014 (affirming *PPL EnergyPlus, LLC v. Hanna*, 977 F. Supp.2d 372 (D.N.J. 2013)).

A PPA rider gives assurance of cost recovery and profitability not afforded to all other wholesale generators in the federal PJM and Ohio SSO markets. AEP Ohio could bid its generation into PJM at zero cost as a price taker making it virtually impossible to determine the cost of the subsidy for the generation in a market where prices change hourly. The only way to avoid this problem is not to allow an unlawful subsidy from Ohio distribution customers to the wholesale generation.

The PPA rider would have passed through to AEP Ohio’s retail distribution ratepayers the costs and revenues of OVEC generating units plus a guaranteed profit although the Commission lacks jurisdiction to review those costs and revenues. AEP Ohio would receive the PPA generation through a wholesale contract, which is subject solely to the jurisdiction of FERC. FERC has long held jurisdiction over the field of wholesale power sales, and federal law preempts state law in this field. This makes the PPA rider wholly inappropriate as a non-bypassable

retail charge on captive distribution customers and illegal under the Federal Power Act.

The Commission does not regulate wholesale energy and capacity prices, which are the exclusive jurisdiction of FERC. The Commission has no authority to regulate the costs of the PPA or AEP Ohio's obligation to pay such costs. If all of PPA costs are guaranteed by Ohio's retail distribution ratepayers, AEP Ohio has no incentive to minimize costs because the Commission has no authority to regulate the costs. Therefore, those costs must not be recovered through a retail rider.

If the Commission were to ignore the Federal Power Act and approve a PPA rider, customers would be inherently harmed. Under Ohio law, rates authorized under an order issued by the Commission are assumed to be lawful. The federal issue cannot be appealed to the Ohio Supreme Court so there is no possibility to stay the collection of the charge nor post a bond during a State appeal. As a result, Ohio utility customers would be required to pay the rider until the federal courts ultimately rule the PPA unlawful, yet there is no mechanism to refund the illegal charges to customers. Willingly ignoring federal law will inevitably lead to Ohio utility customers paying an illegal charge with no opportunity to recover for the financial damages that result. The Commission cannot simply ignore federal constitutional issues.

The Commission acted unreasonably and unlawfully in avoiding the obvious federal preemption issues of a PPA rider. The PPA is subject to exclusive federal jurisdiction. Wholesale generation markets are under the exclusive jurisdiction of FERC. The Commission's approval of a PPA rider interferes with federal jurisdiction

of PPAs and RTOs. The temporary imposition of a charge illegal under federal law would deny customers any remedy.

ALLEGATION OF ERROR 5

- 5) The Commission acted unreasonably and unlawfully when it authorized AEP Ohio to establish a placeholder PPA rider. Opinion and Order at 25.**

The Commission concluded that the PPA rider was a financial limitation on customer shopping that was intended to stabilize rates. Therefore, a PPA rider could satisfy the criteria of R.C. 4928.143(B)(2)(d). While not approving the proposed PPA before it, the Commission invited AEP Ohio to propose another PPA rider that could be authorized under the Commission's theory of R.C. 4928.143(B)(2)(d). The Commission authorized AEP Ohio to establish a placeholder PPA rider at an initial rate of zero, for the term of the ESP Opinion and Order at 25.

The Commission should not have authorized a placeholder PPA rider set at zero when the Commission denied AEP Ohio's proposed PPA rider. The Commission correctly denied the proposed PPA rider that was before it. The Commission should not have encouraged AEP Ohio to file another proposal using the Commission's theory of the right words (a PPA rider as a generation charge that limits customer shopping to stabilize rates) to satisfy R. C. 4928.143(B)(2)(d).

The problem with a PPA rider is not the use of the right words to fit a charge under R. C. 4928.143(B)(2)(d). Whether the Commission ignores them or not, there are many other provisions of Ohio law that a PPA rider violates. There is also federal preemption. Therefore, it was unlawful and unreasonable for the

Commission to have encouraged AEP Ohio to file another PPA rider proposal or to have allowed AEP Ohio to establish a placeholder PPA rider in the event a PPA rider is ever approved. .

ALLEGATION OF ERROR 6

- 6) The Commission acted unreasonably and unlawfully when it found that a Purchase of Receivables (“POR”) program would provide significant customer benefits, including the likelihood of increased numbers of active CRES providers and product offerings, and approved the establishment of a Bad Debt Rider. Opinion and Order at 81.**

The Commission found that a POR program would provide significant customer benefits, including the likelihood of increased numbers of active CRES providers and product offerings. Opinion and Order at 81. The Commission also allowed for a Bad Debt Rider to be set at zero pending details of the POR program to be determined in another proceeding.

The POR program will not benefit consumers. The POR program will impose significant costs on distribution customers without any quantifiable benefits. AEP Ohio failed to provide any customer data or numerical projections for the POR program and relied on anecdotal evidence to support its POR proposal. AEP Ohio failed to provide any cost-benefit analysis to demonstrate whether the increased costs of the POR program are supported with quantifiable benefits for customers. OCC Ex. 13 at 37-39.

There was also no support for the notion that additional CRES providers would enter the market because of a POR program. There is no need to jump-start competition in the AEP Ohio service territory because a large number of CRES

providers are currently competing to sign up customers. There are currently fifty-one different competitive offers being made by twenty CRES providers that are available for customers who are considering shopping. Given that AEP Ohio presented no evidence of the number of additional CRES providers who might enter the Ohio market with a POR program, the Commission should not have approved the proposed POR program on the basis that it will enhance the competitive market.

As for the Bad Debt Rider, the collection risk for unregulated CRES provider debt should not be shifted from the CRES providers to all distribution customers. R.C. 4928.02(H) prohibits subsidies between competitive and noncompetitive services including recovery of generation-related charges through distribution rates. The certainty in the collection of debt for CRES providers is an anti-competitive subsidy that is contrary to the State policy at R. C. 4928.02(H), which ensures effective competition in the provision of retail electric service by avoiding anti-competitive subsidies flowing from a non-competitive electric service such as distribution service to a competitive retail electric service such as generation service. The state policy also prohibits the recovery of any generation-related costs through distribution rates. Charges to distribution customers should not include generation charges and should not be used to subsidize deregulated generation functions. Thus, the Bad Debt Rider is simply unlawful.

Moreover, the Commission has no regulatory authority over the prices that CRES providers charge for service. The Bad Debt Rider will be used to recover unregulated CRES generation charges, which will often exceed the AEP Ohio charges for the SSO, the standard service offer. AEP Ohio intends, regardless of

the rate the CRES provider charges for generation service, to recover through the Bad Debt Rider any uncollectible CRES generation charges without any regard to the amounts of these generation charges.

AEP Ohio's base distribution rates already collect distribution-related bad debt expense. The amount included in base rates can be updated when AEP Ohio files a new distribution base rate case. A Bad Debt Rider is an example of single issue ratemaking, which should be avoided. OCC Ex. 13 at 36. Staff witness Donlon testified that it is not appropriate to adjust costs from the last distribution rate case in an SSO proceeding. Staff Ex. 14 at 6 (Direct Testimony of Patrick Donlon).

The proposed POR-Bad Debt Rider program illegally shifts the expense of collection of the unregulated debt and uncollectible expenses of CRES providers onto all distribution customers, eliminating any incentive for unregulated CRES providers to manage risk or keep their prices affordable. The POR-Bad Debt Rider could increase the number of service disconnections and also the amount of delinquency (reconnection charges and prior balances) that customers must pay in order to have services reconnected.

The Commission should have rejected the proposed POR program and the Bad Debt Rider. For the regulated distribution service, bad debts are already recovered in base rates. The POR-Bad Debt Rider represents an unlawful subsidy because it relieves CRES providers of the risk associated with non-payment of unregulated generation service without any benefit to customers. The POR-Bad Debt Rider proposal is unlawful and unnecessary and should have been rejected by the Commission.

ALLEGATION OF ERROR 7

- 7) The Commission acted unreasonably and unlawfully when it approved continuation of AEP Ohio's Distribution Investment Rider ("DIR") and expansion of the Enhanced Service Reliability Rider ("ESRR") and maintained the Riders' current cost allocations. Opinion and Order at 47.**

In its Opinion and Order, the Commission denied AEP Ohio's request to increase the DIR and found that the record did not support such a significant expansion of the DIR. The Commission found that AEP Ohio's future distribution investments would be better considered and reviewed in the context of a distribution rate case where the costs can be evaluated in the context of total distribution revenues and expenses and the opportunity to recover a return on and of its investment can be balanced against customers' right to reasonably priced service. Opinion and Order at 46. The Commission approved AEP Ohio's continued investment in its DIR at \$124 million for 2015, \$146.2 million for 2016, \$170 million for 2017, and \$103 million for January through May 2018 for a total \$543.2 million. The Commission approved the annual DIR amounts based on the level of growth of three to four percent, as permitted for the DIR in the prior ESP case. The Commission found this to be a reasonable level to allow AEP Ohio to continue to replace aging distribution infrastructure to maintain and improve service reliability over the term of this ESP. Opinion and Order at 47.

The Commission also found that AEP Ohio's request to continue the Enhanced Service Reliability Rider ("ESRR") was reasonable and should be approved as currently allocated between the customer classes and rate schedules.

Opinion and Order at 49. The Commission found that the increased O&M expense as presented by AEP Ohio was reasonable and should be approved. Id.

AEP Ohio's proposal to continue the DIR program should have been rejected. AEP did not consider the affordability of the DIR and did not demonstrate any quantifiable reliability benefits from the DIR. AEP Ohio Ex. 4 at 16. The expanded ESRR should also not have been approved.

Distribution service charges should be considered in distribution base rate proceedings. If AEP Ohio needs an increase in its distribution base rates, it should file an application for an increase in distribution base rates. As OCC witness David J. Efron testified, riders allow regulated utilities to collect designated costs from customers outside of the context of traditional base rate cases where all elements of the cost of service are examined. OCC Ex. 18 at 4 (Direct Testimony of David J. Efron). Such riders are contrary to sound ratemaking practice. When utilities are permitted to collect costs from customers through a rider, the incentive for a utility to control costs tends to be reduced. The collection of costs through riders can lead to increases in rates even when a utility does not have a revenue deficiency. Id. at 6. In the absence of riders, a utility would be able to implement a rate increase only after all costs and revenues under present rates are taken into consideration. If the present rates were already producing an adequate return, then no rate increase would be granted.

If any riders are approved, the riders should be limited to costs that are large, volatile, and outside the utility's control. Examples of such costs include the fuel and

purchased power for an integrated utility. However, AEP Ohio is no longer an integrated utility; AEP Ohio is to be only a distribution utility. AEP Ohio has not shown that the distribution costs it seeks to collect through its riders are large, volatile, and outside of its control. AEP Ohio has also not shown that its financial integrity would be compromised if these distribution costs were considered in a distribution base rate case where costs are subject to closer scrutiny. OCC Ex. 18 at 4. The Commission should have discontinued the DIR and the ESRR.

Given that the Commission continued the DIR and the ESRR, the costs recovered under these riders should have been allocated to customer classes in a manner that reflects cost causation. OCC witness Jonathan Wallach testified that AEP Ohio proposes to allocate the costs to customer classes on the basis of each class's contribution to total base distribution revenues. OCC Ex.14 at 6. This is inconsistent with the approach used to allocate the same types of costs currently collected through base distribution rates. Therefore, AEP Ohio's approach would allocate costs to customer classes disproportionately with each class's responsibility for those costs and thus is inconsistent with the cost-causation principles of AEP Ohio's most recent cost of service studies. Id. at 7. The net impact of the rate design proposal is to shift costs to residential and small commercial customers.

The costs collected through the riders should be allocated to customer classes in a manner that reflects cost causation. Mr. Wallach recommended that the net plant, O&M, or labor costs collected through the riders be allocated to customer classes in proportion to the allocation of net plant, O&M, or labor costs in the cost of service studies filed in AEP Ohio's last distribution base rate case. Id. at 9. DIR

costs should be allocated in proportion to the allocation of net electric plant in service, ESRR capital costs should be allocated in proportion to the allocation of net electric plant in service, and ESRR O&M costs should be allocated in proportion to the allocation of distribution O&M expenses.

ALLEGATION OF ERROR 8

8) The Commission acted unreasonably and unlawfully when it did not approve additional funding for low-income and at-risk populations. Opinion and Order at 65.

The Commission found that the concerns raised by OPAE, APJN, and OCC had been thoroughly addressed through its modifications to AEP Ohio's proposed ESP, including, but not limited to, limitations imposed on the DIR and continuation of the funding commitment for the Neighbor-to-Neighbor program. The Commission found that, with these modifications, AEP Ohio's ESP would provide reasonably priced retail electric service for consumers, including at-risk populations, consistent with the state policy enumerated in R.C. 4928.02. Opinion and Order at 91.

R.C. 4928.02(A) and (L) set forth the State's policy for competitive retail electric service. The State policy is to:

- (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
...
- (L) Protect at-risk populations, including, but not limited to, when considering implementation of any new advanced energy or renewable energy resource;

R.C. 4928.02(L) provides that it is the public policy of the State of Ohio to protect at-risk populations. At-risk customers include low-income customers who

must often juggle utility bill payments and other expenses for necessities such as food, clothing, shelter, home repairs, medical care and utilities. Home energy costs are a major burden for many low-income households. Low-income customers have a much higher “energy burden” (ratio of utility bills to income) than other residential customers. Home energy bills are generally considered to be an “affordable burden” if they do not exceed 6% of gross household income. Despite the tremendous savings the Percentage of Income Payment Plan (“PIPP”) brings to low-income customers, PIPP customers must still pay 12% of their income -- 6% each for electric and gas.

Electric service is a basic necessity for human health and life, and unaffordable bills can force low-income consumers to sacrifice other necessities such as food or medication. Especially at risk are children, elderly, or medically vulnerable customers who cannot safely reside in their homes without heat, air conditioning, appliances or essential medical devices such as respirators.

The at-risk populations that benefit from the Neighbor-to-Neighbor bill payment assistance program are Ohioans living in AEP Ohio’s service territory with incomes that are at or below the Federal Poverty Level. OCC Exhibit 11 at 9.

The Commission required AEP Ohio to continue funding its low-income bill payment assistance program at the current minimum \$1 million annual amount. Opinion and Order at 65. The Commission found that the annual \$1 million funding of the Neighbor-to Neighbor program was an essential element of the Residential Distribution Credit Rider (“RDCR”) mechanism that furthers the state policy set forth at R.C. 4928.02(L). Opinion and Order at 65. The Commission modified AEP

Ohio's RDCR proposal to continue to include \$1 million annually to fund the Neighbor-to-Neighbor bill payment assistance program to support at-risk and low-income customers in AEP Ohio's service territory. Opinion and Order at 65.

The Commission should also have considered requiring AEP Ohio to add \$1 million annually from shareholder funds to increase its funding commitment to an annual amount of \$2 million to ensure there is adequate funding to meet the current need and to more closely approximate the amount ordered in the first AEP ESP case.

Conclusion

Wherefore, the Commission should grant this application for rehearing to assure the affordability of retail electric service for all consumers, including at-risk consumers, in AEP Ohio's service territory.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing and Memorandum in Support was served electronically on these parties on this 27th day of March 2015.

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