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 Pursuant to R.C. 4928.143, 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-AAM

APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

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TABLE OF CONTENTS

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APPLICATION FOR REHEARING OF THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code (O.A.C.), the Ohio Manufacturers' Association Energy Group (OMAEG) hereby respectfully requests rehearing of the Public Utilities Commission of Ohio's (Commission) February 25, 2015 Opinion and Order (Order)[1] issued in the above-captioned matters regarding the electric security plan (ESP) proposed by Ohio Power Company (AEP or the Company). OMAEG contends that the Order is unlawful and unreasonable in the following respects:

1. The Commission erred in establishing the PPA rider as the PPA rider fails to meet the statutory requirements of Section 4928.143(B), Revised Code.

    a. The Commission unreasonably and unlawfully determined that the PPA rider functions as a limitation on customer shopping for retail electric generation service under Section 4928.143(B)(2)(d), Revised Code.

    b. The Commission unreasonably and unlawfully found that AEP met its burden of demonstrating that the rider will have the effect of stabilizing or providing certainty regarding retail electric generation service, as required by Section 4928.143(B)(2)(d), Revised Code.

[1] *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (February 25, 2015).

c. The Commission erred in establishing minimum standards to be considered when evaluating a Company's request for cost recovery through a PPA rider.

2. The Commission erred in determining that costs associated with AEP's interruptible power-discretionary rider (IRP-D) should be recovered through the energy efficiency/peak demand reduction (EE/PDR) rider, as this determination is contrary to its own recent precedent, and because continuing to collect IRP-D costs in the EE/PDR rider could create cost-shifting to small and medium size manufacturers, businesses, and consumers due to increased dependence on the mercantile self-direct exemption from the rider.

3. The Commission erred in permitting AEP to recover $543.2 million through the DIR over the course of the ESP, as recovery of distribution investments of that order of magnitude is not supported by record evidence, and recovery of such costs is more appropriately addressed in the context of a base distribution rate case.

4. AEP's proposed ESP fails to satisfy the statutory requirement that the ESP, including its pricing and all other terms and conditions, be more favorable in the aggregate than an MRO.

For these reasons, and as further explained in the Memorandum in Support attached hereto, OMAEG respectfully requests that the Commission grant its Application for Rehearing.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

A. INTRODUCTION AND PROCEDURAL HISTORY

On December 20, 2013, AEP filed an application (Application) for a standard service offer (SSO) in the form of an ESP to be in effect initially from June 2015 through May 2018.[2] The OMAEG, which is comprised of many members with facilities located in AEP's service territory, was granted intervention in the above-captioned proceeding on April 21, 2014. A hearing on the ESP proposed in the Application commenced on June 3, 2014 and concluded on June 30, 2014. On December 17, 2014, an oral argument was held before the Commission for the limited purpose of enabling the Commission to clarify the legal and policy implications related to the PPA rider.

On February 25, 2015, the Commission issued its Order which, inter alia, permitted AEP "to establish a placeholder PPA rider, at an initial rate of zero, for the term of the ESP."[3] The Commission also determined that the IRP-D "should be modified to provide for unlimited

[2] Application (AEP Ex. 1) at 1.

[3] Order at 25.

emergency interruptions and that the $8.21/kW-month credit should be available to new and existing shopping and non-shopping customers."[4] With regard to the IRP-D, the Commission held that AEP "should continue to apply for recovery of the costs associated with the IRP-D through the EE/PDR Rider, until otherwise ordered by the Commission."[5] The Commission further established a $543.2 total cap on the distribution investment rider (DIR) over the course of the ESP. Finally, the Commission incorrectly determined that AEP's proposed ESP satisfies the statutory requirement that the ESP, including its pricing and all other terms and conditions, is more favorable in the aggregate than a market rate offer (MRO).[6]

B. ARGUMENT

1. The Commission erred in establishing the PPA rider as the PPA rider fails to meet the statutory requirements of Section 4928.143(B), Revised Code.

As explained in the Order, when evaluating the proposed PPA rider, the Commission must initially "determine whether the proposed PPA mechanism may be considered a permissible provision of an ESP, in accordance with R.C. 4928.143(B)(1) or (B)(2)."[7] If the proposed PPA rider does not fall within the categories specifically enumerated in Section 4928.143(B)(1) or (2), Revised Code, the Commission may not lawfully authorize AEP to establish the rider, as "[t]he Commission has the authority to approve, as a component of an ESP, only items that are expressly listed in the statute."[8] As discussed herein, the PPA rider is not properly interpreted as falling within the categories of items delineated in the statute; therefore, the Commission may not lawfully authorize AEP to establish the PPA rider. "The Commission

[4] Id. at 40.

[5] Id.

[6] Id. at 95.

[7] Id. at 20.

[8] Id.

is a creature of statute and can exercise only the authority conferred upon it by the General Assembly." [9]

a. The Commission erred in unreasonably determining that the PPA rider functions as a limitation on customer shopping for retail electric generation service under Section 4928.143(B)(2)(d), Revised Code.

The Commission determined, without credible record support, that the PPA rider functions as a limitation on customer shopping for retail electric generation service pursuant to Section 4928.143(B)(2)(d), Revised Code. In the Order, the Commission depends solely upon the testimony of Ohio Energy Group (OEG) witness Taylor in determining that the PPA rider represents a "financial limitation on customer shopping that is intended to stabilize rates."[10] Temporarily setting aside the requirement under Section 4928.143(B)(2)(d), Revised Code, that an ESP may include terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service only in the event that such terms, conditions, or charges would have the effect of stabilizing or providing certainty regarding retail electric generation service, the PPA rider does not function as a limitation on customer shopping, financially or otherwise.

AEP customers, unless constrained by the terms of the mechanism under which they take service, are free to shop for retail electric generation service. As the Commission notes, pursuant to AEP's Application, shopping customers will still purchase all of their physical retail electric generation supply from the market through a certified retail electric service (CRES) provider; therefore, the proposed PPA rider would provide no physical constraints on retail shopping.[11] The Commission opines, however, that "[a]lthough the proposed PPA rider would have no

[9] *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 88, 706 N.E.2d 1255 (1999).

[10] Id. at 22, citing Tr. Vol. XI at 2539, 2559.

[11] Id. at 22.

impact on customers' physical generation supply, the effect of the PPA rider is that the bills of all customers would reflect a price for retail electric generation service that is approximately 5 percent based on the cost of service of the OVEC units and 95 percent based on the retail market."[12] The Commission, therefore, concludes that the rider would "*effectively* . . . function as a financial restraint on complete reliance on the retail market for the pricing of retail electric generation service."[13] The Commission's conclusion overlooks several factors. First, as explained more fully below, the "price" referenced by the Order is not a price associated with the provision of retail electric generation service. Rather, it is a charge or credit associated with netting the costs of operating certain generating facilities against the revenue obtained from selling the proportionate output of the generating facilities into the wholesale market, if any. If the calculation results in net costs, there will be a charge reflected on the bills of all customers. If the calculation results in net revenues, there will be a credit reflected on the bills of all customers. The Commission acknowledges that "the record reflects that, during the three-year period of the ESP, the PPA rider [will], in all likelihood, result in a net cost to customers[.]"[14]

Second, the Order ignores the fact that many customers, including SSO customers, do not rely on the fluctuations of the spot energy market for their retail electric generation service. For the term of the proposed ESP, most customers will have either entered into fixed-price contracts for retail electric generation service or will take service pursuant to the SSO, with the resulting price reflecting the product of negotiations with CRES suppliers or a competitively bid process utilizing a laddering approach. For those customers with fixed-price generation contracts during various periods of time corresponding with the proposed ESP, the PPA rider will merely add

[12] Id.

[13] Id. (emphasis added).

[14] Id.

unwanted charges (as the record indicates) to their electric distribution bills. In the unlikely event that a credit occurs from the PPA rider calculation, there will be a credit assessed on the customers' distribution bills. Rider PPA will not, financially or otherwise, alleviate or somehow constrain customers' "reliance on the retail market for the pricing of retail electric generation service."[15] In fact, the PPA rider will adversely affect the overall benefits of fixed, known costs for which customers with fixed-price generation contracts bargained when negotiating those contracts. The PPA rider will actually destabilize prices for customers.[16]

Further, the PPA rider was proposed by AEP to be reconciled and trued-up on an annual basis. When reviewed on an annual basis, which is a relatively long period of time in energy markets, the PPA rider is unlikely to provide any of the positive outcomes that might be associated with any purported benefit of a financial hedge to retail electric generation service against high prices in the wholesale energy market at a given point in time. True-ups of Rider PPA on an annual basis, as proposed, will not provide price stability even if it is assumed, for instance, that market prices do in fact increase during "periods of extreme weather"[17] and then return to average market prices.[18] Thus, in addition to being unlikely to produce a financial benefit for customers during the proposed ESP term, the touted rate stabilizing benefits of Rider PPA as a limitation on customer shopping will not come to fruition under the reconciliation and true-up periods proposed by AEP.

[15] Order at 22.

[16] Staff Br. at 24; IEU Br. at 32.

[17] Order at 25.

[18] There is no evidence in the record that extreme weather events, by themselves, do in fact cause increases in market prices. See, e.g., Constellation Br. at 13-14. There is also no record evidence that each and every "extreme weather event" has caused or will cause energy prices to increase. Many factors can contribute to prices in the energy market and the profitability of generating units, including other markets (e.g., natural gas prices), market demand, bidding behavior, and generator performance (i.e., failures). Id.

Further, AEP is bound by the requirements of Rule 4901:1-35-03(C)(9)(c), O.A.C., to the extent that it proposes to include in an ESP terms, conditions, or charges related to retail shopping by customers. Rule 4901:1-35-03(C)(9)(c), O.A.C., provides, in pertinent part:

> (c) Division (B)(2)(d) of section 4928.143 of the Revised Code authorizes an electric utility to include terms, conditions, or charges related to retail shopping by customers. Any application which includes such terms, conditions or charges, shall include, at a minimum, the following information:
>
> (i) *A listing of all components of the ESP which would have the effect of preventing, limiting, inhibiting, or promoting customer shopping for retail electric generation service.* Such components would include, but are not limited to, terms and conditions relating to shopping or to returning to the standard service offer and any unavoidable charges. For each such component, an explanation of the component and a descriptive rationale and, to the extent possible, a quantitative justification shall be provided.
>
> (ii) A description and quantification or estimation of any charges, other than those associated with generation expansion or environmental investment under divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, which will be deferred for future recovery, together with the carrying costs, amortization periods, and avoidability of such charges.
>
> (iii) A listing, description, and quantitative justification of any unavoidable charges for standby, back-up, or supplemental power.

(Emphasis added). AEP did not allege in its Application that the PPA rider would have the effect of preventing, limiting, or inhibiting customer shopping for retail electric generation service, financially or otherwise, nor did it request a waiver of Rule 4901:1-35-03(C)(9)(c), O.A.C., from the Commission during the course of this proceeding. In fact, as the Commission notes in its Order, AEP witness Allen testified that "he believes that the PPA rider, as proposed, is not a limitation on customer shopping."[19] The sole witness that advanced an argument at

[19] Id., citing Tr. Vol. II at 566.

hearing that the PPA rider represents a financial limitation on shopping was witness Taylor.[20] Witness Taylor explained the limitation as a "financial constraint that would help stabilize rates."[21] First, the unknown potential of adding an additional charge or credit to customers' distribution bills is in no way a "constraint." The PPA rider also does not constrain the costs that AEP may pass on to customers; there is no cap. AEP will pass on to customers its share of whatever the costs to operate the generating units, including future environmental and capital expenditures and increases in coal prices, net any revenues received from the output.[22] As the Commission recognized, there is "uncertainty and speculation inherent in the process of projecting the net impact of the proposed PPA rider."[23] Thus, the PPA rider cannot create financial certainty for customers. Accordingly, the Commission improperly depended on witness Taylor's testimony, despite AEP's failure to comply with filing requirements set forth in Rule 4901:1-35-03(C)(9)(c), O.A.C., or to seek a waiver from the Commission regarding said filing requirements.

In light of the aforementioned items, the Commission unreasonably determined that the PPA rider functions as a limitation on customer shopping for retail electric generation service under Section 4928.143(B)(2)(d), Revised Code.

b. The Commission unreasonably and unlawfully found that AEP met its burden to demonstrate that the rider will have the effect of stabilizing or providing certainty regarding retail electric generation service, as required by Section 4928.143(B)(2)(d), Revised Code.

The Commission unlawfully and unreasonably permitted AEP to establish a placeholder PPA rider, at an initial rate of zero, for the term of the ESP, as AEP failed to meet its burden to

[20] Tr. Vol. XI at 2539, 2559.

[21] OEG Br. at 4, quoting Tr. Vol. XI at 2539.

[22] Staff Br. at 22, citing Tr. I at152-153.

[23] Order at 24.

demonstrate that the PPA rider will stabilize or provide certainty regarding retail electric generation service. In the Order, the Commission states the following:

> [C]onsidering the plain language of the statute, we find that there are *three criteria with which the PPA mechanism must comply*. Specifically, an ESP component approved under R.C. 4928.143(B)(2)(d) *must* first be a term, condition, or charge; next, relate to one of the enumerated types of terms, conditions, and charges; and, finally, *have the effect of stabilizing or providing certainty regarding retail electric service*.[24]

(Emphasis added). Pursuant to the language utilized by the Commission when interpreting the requirements of Section 4928.143, Revised Code, the PPA mechanism must have the effect of stabilizing or providing certainty regarding retail electric generation service. In its analysis of whether it may lawfully and reasonably establish the PPA rider mechanism, however, the Commission found merely that the PPA rider "is proposed to have the effect of stabilizing or providing certainty regarding retail electric service."[25] Although the Commission soundly determined in the Order that AEP did not meet its burden to show that the proposed PPA rider would promote rate stability,[26] the Commission still approved the establishment of the PPA rider mechanism. This outcome diverges from the Commission's interpretation, advanced in the Order, that the PPA mechanism or component must have the effect of stabilizing or providing certainty regarding retail electric generation service.[27] "Proposed" to have a particular effect or

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[24] Order at 20, citing, e.g., *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* (ESP 2 Case), Case No. 11-346-EL-SSO, et al., Entry on Rehearing (Jan. 30, 2013) at 15-16; *In re Dayton Power and Light Company*, Case No. 12-426-EL-SSO, et al. (DP&L ESP Case), Opinion and Order (Sept. 4, 2013) at 21-22.

[25] Order at 21.

[26] Id. at 24, stating "we are not persuaded that the PPA rider proposal put forth by AEP Ohio in the present proceedings would, in fact, promote rate stability, as the Company claims, or that it is in the public interest. There is considerable uncertainty with respect to pending PJM market reform proposals, environmental regulations, and federal litigation, as AEP Ohio acknowledges, and, in light of this uncertainty, the Commission does not believe that it is appropriate to adopt the proposed PPA rider at this time."

[27] See, e.g., Order at 20.

an "intent to mitigate, by design, the effects of market volatility" is insufficient.[28] By means of its reference to the PPA "mechanism" or "component," the Commission is discussing the standard for establishing such a mechanism, not just the standard for authorizing the recovery of various costs (or passing benefits) through the rider.

In its initial and reply briefs, AEP itself concedes the importance of a Commission determination that the PPA rider will in fact promote rate stability, indicating that "[p]resumably, the Commission will not adopt the PPA rider unless it determines that the proposal will have the effect of stabilizing or providing certainty regarding retail electric service,"[29] and describing a determination on whether the mechanism will promote rate stability as a "key finding the Commission will need to make under Division (B)(2)(d) of the ESP statute"[30] when adopting the PPA mechanism and rider. Both of these statements indicate an understanding on the part of AEP, the Applicant in the above-captioned case, that it must demonstrate that the PPA mechanism would promote rate stability or certainty before the Commission would agree to establish the mechanism, whether or not the Commission authorized AEP to pass costs or benefits on to customers through the PPA rider. As the Commission determined, AEP did not adequately demonstrate that the PPA mechanism would have the effect of providing certainty regarding retail electric service or stabilizing the same.[31] Accordingly, the Commission erred when it authorized AEP to establish a placeholder PPA rider, even at an initial rate of zero, for

[28] Order at 21.

[29] *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., AEP Initial Post-Hearing Brief at 28 (July 23, 2014).

[30] *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, et al., AEP Reply Brief at 25 (August 15, 2014).

[31] Order at 25.

the term of the ESP.[32] The PPA rider may not be properly established unless or until such time as AEP demonstrates that it will have the effect of stabilizing or providing certainty regarding retail electric generation service. As the Commission correctly recognized in denying AEP's proposed Sustained and Skilled Workforce rider (SSWR), "for the Commission to approve a proposed provision of an ESP requires more than a mere demonstration that the provision is statutorily permissible."[33] Because AEP did not make satisfy its burden, the Commission's decision to authorize its establishment was unreasonable, erroneous, and unlawful, and should be reversed on rehearing.

The law also requires that the "limitation on customer shopping" be on "retail electric generation service."[34] The PPA rider, however, is nonbypassable and has no bearing on retail electric generation service. The purported financial hedge is not related to the supply or provision of retail electric service to Ohio ratepayers. Equating a financial hedge assessed to all customers on their distribution bills to a limitation on retail electric generation service or shopping is tantamount to equating apples to oranges. The Commission should not depend on such a false comparison in order to authorize AEP to establish the PPA rider.

c. The Commission erred in establishing minimum standards to be considered when evaluating a Company's request for cost recovery through a PPA rider.

The Commission erred in establishing minimum standards for AEP to address in a future PPA rider request proceeding.[35] It appears that the Commission arbitrarily selected certain factors to address and not others. Additionally, the Commission failed to require AEP to address regional factors that affect the wholesale energy and capacity markets in which the generating

[32] See Id.

[33] Id. at 56.

[34] Section 4928.143(B)(2)(d), Revised Code.

[35] Order at 25.

plants will participate. The entire PJM footprint will be affected by any decision to provide financial support to a particular generating plant and generation owner while not providing similar support to competing generating facilities/generation owners in the PJM footprint. The Commission also failed to require AEP to address the necessity of the generating plant with regard to reliability in the PJM region, as PJM is the reliability coordinator for the region.

Factors that the Commission should consider, and thus, require AEP to address in future filings include, but are not limited to, the following:

- The ownership of the generating plant;
- The extent to which the generating plant is serving Ohio customers;
- The geographic location of the generating plant;
- The necessity of the generating plant with regard to reliability in the PJM region;
- The economic viability of the generating plant with and without the establishment of the PPA rider;
- The generating plants' participation, or lack thereof, in PJM's wholesale energy and capacity markets;
- The cost of compliance with pending environmental regulations;
- The cost of maintaining operations of the generating plant and the resulting effect on economic development within the state;
- The resulting effect on other competing generating plants of providing financial support to a competitor;
- The impact on PJM's competitive wholesale energy and capacity markets;
- The impact on the generating plant if PJM is required to modify its dispatch order due to environmental constraints/regulations.

2. The Commission erred in determining that costs associated with AEP's interruptible power-discretionary rider (IRP-D) should be recovered through the energy efficiency/peak demand reduction (EE/PDR) rider, as this determination is contrary to its own recent precedent, and because continuing to collect IRP-D costs in the EE/PDR rider could create cost-shifting to small and medium size manufacturers, businesses, and consumers due to increased dependence on the mercantile self-direct exemption from the rider.

The Commission unreasonably determined in its Order that AEP should, for the time being, continue to apply for recovery of the costs associated with the IRP-D through the EE/PDR rider, as its determination on this issue contradicts its own recent precedent. As recently as

December 2014, the Commission stated the following with regard to the recovery of the costs of interruptible programs:

> The Commission agrees . . . that certain other costs, including . . . interruptible tariff credits, although included in some EDUs' EE/PDR riders, are not related to EDUs' compliance with the EE and PDR requirements . . . [.]
>
> * * *
>
> [T]he Commission believes that interruptible tariff credits are primarily economic development costs that have EE and PDR impacts, rather than being primarily EE and PDR programs. *See In re Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and [T]he Toledo Edison Co. for Auth. to Establish a Std. Serv. Offer*, Case No. 10-388-EL-SSO, Opinion and Order (Aug. 25, 2010) at 30.
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> * * *
>
> [I]n upcoming electric security plan cases for the EDUs, the Commission will work to remove any costs currently collected under EE/PDR riders that are more appropriately collected under another rider in order that the EE/PDR rider rate will accurately reflect the actual cost of the EDUs' compliance with the statutory requirements.[36]

Despite the Commission's above-stated intent to remove interruptible program costs that are collected under EE/PDR riders from such riders, in favor of collecting such costs under more appropriate riders, including EDUs' economic development cost riders, in "upcoming" ESP cases, the Commission seems to have taken no action in this case to effectuate such a change. Although the Commission again recognized that interruptible programs "promot[e] economic development and the retention of manufacturing jobs" in the instant proceeding, it directed that the associated IRP-D costs be collected through the EE/PDR rider.[37] The Commission's decision not to act to authorize collection of interruptible program costs through economic development cost riders, as opposed to EE/PDR riders, directly contradicts its previous determination

[36] See *In the Matter of the Amendment of Chapters 4901:1-10 and 4901:1-21, Ohio Administrative Code, Regarding Electric Companies and Competitive Retail Electric Service, to Implement 2014 Sub. S.B. 310,* Case No. 14-1411-EL-ORD, Finding and Order at 20 (December 17, 2015).

[37] Order at 40.

regarding the purpose of the programs, as well as its prior expression of intent on the recovery of interruptible program costs. The effects of the Commission's failure to act on this important commitment will be pronounced under the Commission-approved modifications to expand the IRP-D program.[38]

As illustrated below, an expanded IRP-D program may result in additional costs under the EE/PDR rider, which may cause mercantile customers to utilize the mercantile self-direct exemption mechanism in order to forgo paying the EE/PDR rider, including costs attributable to IRP-D credits. Any mercantile customer may forgo paying the EE/PDR rider if it achieves a percentage of energy savings at their facility equivalent to the utility's energy efficiency resource standard annual benchmark. Currently, some mercantile customers utilize this self-direct mercantile exemption from the EE/PDR rider; others receive a cash rebate in lieu of an exemption from the EE/PDR rider; and still others participate in the utility operated energy efficiency programs and continue to pay the costs of the EE/PDR rider. However, a marked increase in EE/PDR rider costs could lead to significant increases in utilization of the mercantile self-direct exemption mechanism. Assuming AEP will seek to recover the costs attributable to an expanded IRP-D program, the additional costs will be collected from a reduced pool of customers that are still paying the EE/PDR rider.

This scenario demonstrates a negative feedback loop: for each mercantile customer that self-directs and forgoes paying the EE/PDR rider, the cost of the EE/PDR increases for all other customers of that class. This may, in turn, cause those customers to choose to self-direct and forgo the payment of the EE/PDR rider. The percentage of mercantile customers who self-direct as a result could be substantial. Small or medium sized manufacturers or other commercial

[38] Id. (stating "[w]e find that the IRP-D should be modified to provide for unlimited emergency interruptions and that the $8.21/kW-month credit should be available to new and existing shopping and non-shopping customers").

customers and consumers who are unable to self-direct in order to forgo paying the EE/PDR rider will be forced to absorb cost increases for the EE/PDR rider, depending on the rate of self-direct exemptions.

The disproportionate adverse impacts to commercial customers and consumers who are unable to utilize a mercantile self-direct mechanism to avoid EE/PDR rider costs will be alleviated considerably if the Commission acts upon the commitment it made in Case No. 14-1411-EL-ORD to modify recovery of costs that are more appropriately collected under a rider other than the EE/PDR rider so that they are collected under the alternate rider.[39] As this commitment applies to AEP's recovery of IRP-D costs, such costs would be more appropriately collected under the EDR rider than the EE/PDR rider as the Commission has previously recognized.

3. The Commission erred in permitting AEP to recover $543.2 million through the DIR over the course of the ESP, as recovery of distribution investments of that order of magnitude is not supported by record evidence, and recovery of such costs is more appropriately addressed in the context of a base distribution rate case.

As noted in the Order, AEP sought Commission approval of an expanded DIR in the proposed ESP, thereby requesting a total rate cap of $667 million for the DIR over the course of the ESP.[40] The Commission appropriately denied the requested expansion of the DIR; however, the rate caps it established for the term of the ESP are still excessive and unreasonable, as they

[39] See *In the Matter of the Amendment of Chapters 4901:1-10 and 4901:1-21, Ohio Administrative Code, Regarding Electric Companies and Competitive Retail Electric Service, to Implement 2014 Sub.S.B. No. 310,* Case No. 14-1411-EL-ORD, Finding and Order at 20 (December 17, 2014).

[40] Order at 41.

are unsupported by record evidence. AEP's proposed rate caps for the corresponding years of the ESP, versus the rate caps approved by the Commission in the Order are set forth herein:[41]

Year	Proposed DIR Cap	DIR Cap Approved by Commission
2015	$155 million	$124 million
2016	$191 million	$146.2 million
2017	$219 million	$170 million
2018 (January through May)	$102 million	$103 million
Total	$667 million	$543.2 million

Although the Commission stated that it "determined the annual DIR amounts based on the level of growth of three to four percent as permitted for the DIR in the ESP 2 Case,"[42] neither the total DIR cap nor the annual caps approved by the Commission for the term of the ESP were supported by the record.

The Commission properly rejected AEP's request to expand the DIR program and to increase the annual DIR caps; however, the Commission did authorize the collection of total expenditures up to $543.2 million for the ESP term, which is significant. Like the $667 million total cap in expenditures sought by AEP, the $543.2 million recovery of distribution investment costs authorized by the Commission is unsupported by record evidence.

In AEP's ESP II case, on which the Commission appears to rely for support regarding the level of growth to be associated with the DIR over the course of the proposed ESP, the Commission required AEP to work with Staff to develop distribution maintenance work plans to focus spending where it would have the greatest impact on maintaining and improving reliability

[41] Id. at 41, 47.

[42] Id. at 47.

for customers.[43] Although AEP filed DIR work plans for its projected investments, it did not provide sufficient analysis to demonstrate how those investments improved reliability for customers.[44] Despite previous Commission directives to quantify and provide more detail regarding its reliability investments, and a reference to those concerns,[45] witness Dias admitted during the hearing that the Company had filed no testimony or other documentation demonstrating service reliability improvements related to Rider DIR in connection with the proposed ESP.[46] Further, at the hearing, when asked if AEP could meet the Commission's distribution reliability standards if Rider DIR was continued at the level at which it was capped at that time, witness Dias answered affirmatively.[47] When further asked whether AEP could maintain its current level of service reliability if, instead of Rider DIR, the Company had to use a base distribution rate case for funding, witness Dias testified that "reliability would deteriorate over time if we were required to use a base case as opposed to the DIR for making investments[;]"[48] however, witness Dias did not know, nor had he conducted any analysis demonstrating the manner in which reliability might deteriorate without Rider DIR.[49] In fact, the Company admitted that it would be able to provide reliable service as measured by current reliability performance indices if the Commission did not approve Rider DIR as proposed in this

[43] 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 No. 11-346-EL-SSO, et al., Opinion and Order at 47 (August 8, 2012) (ESP II Case Opinion and Order).

[44] See, e.g., *In the Matter of the Commission's Review of the Ohio Power Company's Distribution Investment Rider Work Plan Resulting from Commission Case No. 11-346-EL-SSO et al.*, Case No. 12-3129-EL-UNC, Finding and Order at 13-14 (May 29, 2013); see also *In the Matter of the Commission's Review of Ohio Power Company's Distribution Investment Rider Plan*, Case No. 13-2394-EL-UNC, Finding and Order at 8 (May 28, 2014).

[45] See Id.; see also Tr. Vol. II at 328.

[46] Id.

[47] Id. at 319.

[48] Id.

[49] Id. at 320; see also Williams Direct at 32.

proceeding.[50] At no point in time did witness Dias indicate that the caps approved by the Commission, as established in the Order, represented a necessary level of recovery under the DIR for AEP to be able to continue to provide customers with reliable service. Thus, the record does not support the DIR cap levels established by the Commission.

The Commission also explained in its Order:

> [A]t the level requested in these proceedings, [AEP's DIR 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 the Company's total distribution revenues and expenses, and the Company's opportunity to recover a return on and of its investment can be balanced against customers' right to reasonably priced service.[51]

OMAEG submits that the above-cited argument equally applies to AEP's DIR investments at the level approved in the Order, and respectfully requests that the Commission revisit its decision to cap the DIR at such extreme, unsupported levels over the course of the ESP. OMAEG likewise requests that the Commission reconsider its decision to relieve AEP of its responsibility to work with Staff to develop a DIR plan.[52] As evidenced in witness Dias' testimony, in spite of prior Commission directives to do so, AEP filed no testimony or other documentation demonstrating service reliability improvements related to specific distribution investments in connection with the proposed ESP. AEP's demonstration of specific service reliability improvements arising from targeted investments in the distribution system is an important tool by which consumers may gauge the effects of DIR investments. In view of the fact that AEP's previous coordination with Staff on its distribution investment plan in the context of DIR work plan proceedings was not burdensome for AEP, and that AEP customers should be apprised of the reliability impacts of their targeted investments in the distribution system,

[50] Williams Direct at Attachment JDW-14.

[51] Order at 46.

[52] Order at 47.

OMAEG requests that the Commission order AEP to continue the DIR work plan collaboration with Staff throughout the period of the proposed ESP.

4. The Commission erred in determining that AEP's proposed ESP, as modified, is more favorable in the aggregate than an MRO.

Section 4928.143(C)(1), Revised Code, provides, in pertinent part, that the Commission shall do the following:

> modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, 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 4928.142 of the Revised Code.
>
> * * *
>
> Otherwise, the commission by order shall disapprove the application.[53]

As stated above, before approving an ESP, the Commission must determine that the proposed ESP is more favorable in the aggregate as compared to the expected results that would otherwise apply under a market rate offer (MRO), otherwise known as the MRO test.[54] AEP had the burden of demonstrating, during the course of the proceeding, that its proposed ESP was, in fact, more favorable than an MRO.[55] AEP did not meet its burden, and therefore, the Commission incorrectly determined that the proposed ESP is more favorable than the results expected under an MRO both quantitatively and qualitatively.[56]

[53] Section 4928.143(C)(1), Revised Code.

[54] Id.; see also *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO, Opinion and Order at 48 (September 4, 2013).

[55] Id.

[56] Order at 95.

The Commission's conclusion that the ESP was quantitatively more favorable was based solely upon AEP's commitment to continue the Residential Distribution Credit Rider (RDCR) over the three year term of the ESP, which would not occur under an MRO.[57] The Commission failed, however, to take into account the fact that only one class of AEP customers, residential customers, will benefit from the continuation of the RDCR. For all other classes of customers, the ESP, as approved by the Commission, affords no quantitative benefits whatsoever. Thus, the Commission's determination that the ESP is quantitatively $44,064,000 more favorable in the aggregate than an MRO over the term of the ESP is somewhat misleading, as the $44,064,000 asserted benefit of the ESP is illusory to all AEP customer classes other than residential ratepayers.

Also illusory under the ESP are any qualitative benefits associated with the continuation of the DIR and other distribution-related riders. Although the Commission counts among the ESP's qualitative benefits significant investment in AEP's distribution infrastructure and improving service reliability, and states that the continuation of the DIR and other distribution-related riders "should enable the company to hold base distribution rates constant over the ESP period,"[58] the Commission also notes the fact that AEP has not committed to refrain from filing a distribution rate case application during the ESP period.[59] Thus, it is extremely unclear whether the qualitative benefits associated with continuation of the DIR and other distribution-related riders will come to fruition without the imposition of additional distribution costs on ratepayers during the term of the ESP.

[57] Id. at 94, 95.

[58] Id. at 95.

[59] Id.

The Commission also cites as a qualitative benefit of the ESP the fact that, under ESP 3, AEP "will implement fully market based prices beginning on June 1, 2015."[60] Respectfully, considering the implementation of fully market-based prices beginning on June 1, 2015 to be a qualitative benefit of the ESP, but also agreeing that the PPA rider may be established as a financial limitation on shopping that will provide certainty and less reliance on the retail market appear to be contradictory positions.[61] If "mov[ing] more quickly to market rate pricing than would be expected under an MRO"[62] represents a qualitative benefit of the ESP, establishing the PPA rider as a financial limitation on shopping that would purportedly alleviate the risk associated with market-based pricing represents a step in the opposite direction and is not a benefit of the ESP.

Although the PPA and Bad Debt Rider (BDR) riders have been approved and set at zero, the Commission still must consider the effect that the establishment of those riders in an ESP will have on customers as compared to the expected results that would otherwise apply under a MRO. Section 4928.143(C)(1), Revised Code, requires the Commission to look at the ESP in the aggregate and ensure that all of "its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals" are more favorable than an MRO. The creation and establishment of the riders is clearly a term and condition of the ESP approved by the Commission, which must be considered. Additionally, a PPA rider would not be able to be established under an MRO. Therefore, the Commission must consider future recovery of costs under all riders that are explicitly established as a provision of an ESP. Future recovery of costs authorized by an ESP was clearly intended to be considered in the context of the MRO test as the

[60] Id.

[61] See Order at 22 (stating that "the proposed PPA rider would function as a financial restraint on complete reliance on the retail market for the pricing of retail electric generation service.")

[62] Id.

statute specifically cites to one instance of future recovery of costs as an illustration. Although the statute does not explicitly contemplate a rider established at a zero cost and the future costs that may be collected under that rider, the statute does provide guidance. When discussing future recovery of costs regarding deferrals, the statute requires a consideration of such future costs. Similarly, with regard to the future recovery of costs regarding the PPA or BDR, the Commission is required to consider the level of those future costs or the potential of costs to be recovered under the authorized riders for purposes of the MRO test.

Considering potential costs is particularly important in the instant case as the Commission has recognized that "the record reflects that, during the three-year period of the ESP, the PPA rider would, in all likelihood, result in a net cost to customers." Accordingly, the level of potential costs that could be associated with the PPA rider during the term of the ESP must be considered, and the range of potential costs to customers that should be considered is from $52 million to $116 million over the term of the ESP.[63]

Furthermore, as the Commission recognized,[64] only with Staff's proposed modifications does Staff believe the ESP becomes more favorable in the aggregate than an MRO.[65] Staff Witness Turkenton explained that Staff's proposed modifications included the elimination, or denial by the Commission, of Rider PPA, Rider SSWR, Rider NCCR, and the BDR.[66] Given that the Commission approved the establishment of Rider PPA and BDR, OMAEG concurs with Staff that the ESP is not more favorable in the aggregate than an MRO.

[63] Order at 24; OMAEG Reply Br. at 27.

[64] Order at 92.

[65] Tr. Vol. IX at 2202.

[66] Tr. Vol. IX at 2202, 2203; see also Turkenton Direct at 5.

Even with the modifications approved by the Commission, the ESP continues to be neither quantitatively nor qualitatively more favorable in the aggregate than an MRO. Consequently, it was erroneous for the Commission to determine that the ESP passed the MRO test and should be approved as modified. Given that the proposed ESP and the modified ESP were not more favorable in the aggregate than an MRO, the Commission erred in approving the plan.

C. CONCLUSION

OMAEG respectfully requests that the Commission grant its application for rehearing of the issues set forth above. Specifically, OMAEG requests that the Commission find that the PPA rider mechanism proposed by AEP does not represent a financial limitation on customer shopping, and reverse its decision authorizing AEP to establish the PPA rider mechanism. OMAEG additionally requests that the Commission revisit its decision to permit AEP to continue collecting interruptible program costs through Rider EE/PDR, in light of the fact that the Commission previously committed to reposition such costs to recover them through a more appropriate rider. With regard to the DIR, OMAEG requests that the Commission reevaluate its decision authorizing**.** AEP to recover $543.2 million through the DIR over the course of the ESP, and reinstate AEP's obligation to work with Staff to develop DIR work plans throughout the ESP term. Finally, OMAEG requests that the Commission reevaluate the perceived quantitative and qualitative benefits of the proposed ESP.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on March 27, 2015.

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