

**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.) Case No. 13-2385-EL-SSO
4928.143, in the Form of an Electric)
Security Plan.)**

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

**MEMORANDUM CONTRA OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. Introduction

Now comes the Retail Energy Supply Association (“RESA”)¹ a full party of interest in the matter at bar and submits the following responses to assignments of error raised in applications for rehearing filed by Ohio Power Company (“Ohio Power”) and the Industrial Energy Users – Ohio (“IEU”). In addition to the rehearing petitions of Ohio Power and IEU, seven other parties including RESA, filed rehearing petitions. RESA only submits the limited reply comments to the Ohio Power and IEU’s petitions, and is not submitting comments in opposition to the other applications for rehearing.

Ohio Power asks the Commission to reverse its findings that the proposed Rider PPA was not shown to be of benefit to ratepayers. Further, Ohio Power requests the Commission to

¹ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

completely reverse its decision and approve Ohio Power's original request to transfer to ratepayers the entire commercial risk of Ohio Power's portion of the Ohio Valley Electric Corporation's Ohio and Indiana coal plants. The rehearing petition by Ohio Power simply repeats the arguments from its trial brief and asks the Commission to reweigh the evidence and change its mind. Reviewing the record citations in the Opinion and Order, one can only come to one conclusion – the Commission's assessment was correct. Ohio Power's calculation of benefits for ratepayers, which morphed during the span of the hearing itself, clearly was refuted by the evidence presented by the Staff, IEU, Ohio Manufacturer's Association, the environmental intervenors, the Ohio Consumers' Counsel and the various suppliers' expert witnesses. As determined by the Commission, Ohio Power did not carry its burden of proof as to Rider PPA.

In contrast to a mere restatement of its trial position as to Rider PPA, Ohio Power does offer new arguments and treatments of the Purchase of Receivables ("POR") program from what was in its trial brief. The February 23rd Opinion and Order calls for a unique process for the POR program from competitive retail electric service ("CRES") providers which differs both from the Ohio Power application and from the POR program currently in place at Duke. The Commission's blending of part of the Staff suggestion with the Application and the evidence presented by RESA created a new set of circumstances that merit granting rehearing. Ohio Power offers several changes to the Opinion and Order's treatment of POR. RESA agrees with one of Ohio Power's requests, namely not sending the POR program to the Market Development Working Group ("MDWG") for discussion of several of the key terms. RESA agrees little will be gained by sending the POR program to the MDWG, but time will be lost. Ohio Power also seeks to reverse the Opinion and Order as to the flexibility of CRES providers to sign up customers for POR and/or consolidated billing. RESA believes the Commission correctly decided these points and the petition to restrict use of consolidated billing or POR should be denied.

RESA also presents arguments in opposition to IEU's rehearing petition, which argues that the Commission lacks either the jurisdiction or authority to permit an electric distribution utility to direct bill the Regional Transmission Organization's non-market transmission costs directly to retail customers. Such is done today in the Duke, FirstEnergy and the Dayton Power and Light service areas² and is in the best interest of the public.

II. Rider PPA

Ohio Power argues on rehearing that the Commission erred in deferring to another proceeding the inclusion of the Ohio Valley Electric Corporation ("OVEC") generation costs in Rider PPA.³ Ohio Power points to the following four findings in the decision and argues that they are incorrect:⁴

- (1) Inclusion of OVEC "may result in a net cost to customers, with little offsetting benefit from the rider's intended purpose as a hedge against market volatility";
- (2) A long-term net credit associated with OVEC cannot be relied upon because "the Company has made no offer to ensure that customers receive the alleged long-term benefits of the PPA rider or even a commitment or any type of proposal to continue the rider in subsequent ESP proceedings";
- (3) It is not appropriate at this time to adopt the OVEC proposal because "[t]here is considerable uncertainty with respect to pending PJM market reform proposals, environmental regulations, and federal litigation";
- (4) "[T]here are already existing means, such as the laddering and staggering of SSO auction products and the availability of fixed price contracts in the market, that provide a significant hedge against price volatility."

² *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of the Establishment of Rider BTR and Associated Tariff Approval*, Case No. 11-2641-EL-RDR, et al., Opinion and Order (May 25, 2011); *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison 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. 10-388-EL-SSO, Stipulation at 18, Opinion and Order (August 25, 2010); and *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 12-426-EL-SSO et al., Opinion and Order at 36 (September 4, 2013).

³ Ohio Power Application for Rehearing at 5-6, 15-25.

⁴ Opinion and Order at 24.

Ohio Power essentially is asking the Commission to re-weigh the evidence so that the above determinations related to Rider PPA are in Ohio Power's favor. However, nothing presented in Ohio Power's application for rehearing warrants a complete reversal of the Rider PPA ruling. As to Ohio Power's first point, Ohio Power's own "best" estimates of the rider⁵ showed that the customers will pay charges under Rider PPA for the first two years of the ESP III term, so there is no question that Rider PPA would be a net cost to customers at least for the near-term when the estimates are most reliable. Ohio Power points to its second set of projections to support the finding of benefits, but the Commission properly found, from the testimony of the vast majority of expert witnesses who testified, including Staff, that Rider PPA as proposed will not provide rate stability or certainty, or be in the best interest of consumers.⁶ Moreover, as noted in the third point above, the Commission has recognized that other pending matters (PJM market reforms, environmental regulations, and federal litigation) could affect the estimates of Rider PPA for the later years. Such recognition was reasonable and correct. These matters are expected to affect wholesale market prices, and would affect the impact of Rider PPA as a means of offsetting expected price increases. The Commission understands the inter-relationship of these matters, and the uncertainty that exists. The Commission did not defer approval of OVEC in a PPA rider until those matters are resolved; rather, it correctly recognized that the uncertainty surrounding those matters and concluded that Rider PPA should be rejected.

As to the second point, the Commission understood that Ohio Power's estimated benefits of Rider PPA over the long-term are speculative because the proposal does not somehow ensure that the customers will receive them. Ohio Power emphasizes in its application for rehearing that it is proposing Rider PPA as a lengthy, multi-year rider. However, the Commission's finding remains

⁵ Ohio Power Exs. 8A and 8B.

⁶ Opinion and Order at 24.

valid – there is no assurance that the “benefits” that Ohio Power claims today will take place down the road will accrue to the customers. Rider PPA is not structured in that manner. Nothing that Ohio Power stated on rehearing changes that fact.

Finally, Ohio Power takes issue with the Commission citing to other existing hedging tools as a basis for denying Rider PPA by claiming that they are flawed and/or limited. Any flaws or limitations in the staggering/laddering of the standard service offer auctions and fixed-price retail contracts (if they exist) does not turn Rider PPA into an acceptable rate-stabilizing tool. The benefits of Rider PPA are speculative at best. Moreover, virtually no customer wants to pay for years to have the speculative opportunity of having some future benefits.

III. Purchase of Receivables

Ohio Power claims that the Commission made multiple errors in approving Ohio Power’s proposed POR program. RESA responds to several of Ohio Power’s arguments. First, Ohio Power takes issue with the Commission sending the unresolved POR program issues to the MDWG.⁷ Ohio Power has raised a valid point. As detailed in its petition for rehearing, RESA also has raised concerns with that aspect of the Opinion and Order. The Ohio Power POR program will be different than what is in place in Duke, which the Staff pointed out went through a period of discounts before the application of the full bad debt tracker⁸ found in the Ohio Power application.⁹ Since the POR program is going to be unique to Ohio Power, it should be developed by Ohio Power with an opportunity for the stakeholders to participate (see, the RESA’s application for rehearing).¹⁰ There is little the other utilities and parties not interested in an Ohio Power POR can contribute via

⁷ Ohio Power Application for Rehearing at 50-53.

⁸ Staff Ex. 14 at 6-7.

⁹ RESA supported the Application as was filed and still finds great merit in the Application.

¹⁰ RESA Application for Rehearing at 17-20.

the MDWG. Further, as Ohio Power correctly points out, the MDWG has several issues already specifically assigned to it by the Commission.¹¹

Second, Ohio Power contends that it was error for the Commission to allow CRES providers who use utility-consolidated billing to opt out of the POR program.¹² This appears to arise from the Commission's requirement that "participation in the POR program by CRES providers that elect consolidated billing must not be mandatory."¹³ Ohio Power argues that POR should be mandatory for all CRES providers who use utility-consolidated billing. Ohio Power does present alternatives – that CRES providers be required to participate for 5-years at a time or that a non-participation fee be imposed to recover incremental program costs.¹⁴ Ohio Power also requests that participation in the POR program be an "all or nothing" proposition. In other words, CRES providers could not effectively include some products and the customers who selected them in the POR and still have other products and customers in dual billing.

RESA supports the concept of having the maximum amount of flexibility when it comes to billing, for if the billing is rigid, then the products which can be offered will be limited. This is particularly true given the Commission's finding that only "commodity" expenses can be in the POR program.¹⁵ With no actual definition of what the difference is between "commodity only" and all costs associated with CRES the all-in provision could result in reducing the number of products available to customers on a consolidated bill. To illustrate the need for flexibility in billing, assume a CRES provider offers many types of products including: a) a conservation program that comes with equipment which will lower the customer's usage as well as providing energy; b) a product that is energy only and features the convenience of a single bill; c) a product that is energy only but

¹¹ See Ohio Power Application for Rehearing at 55-56.

¹² *Id.* at 55-56.

¹³ Opinion and Order at 80.

¹⁴ *Id.* at 56.

¹⁵ Opinion and Order at 80.

has unique budgeting features which Ohio Power can accommodate with its bill-ready program; and d) an energy only service but with unique billing provisions which cannot be accommodated by bill-ready billing. Under the Opinion and Order as written, a CRES could offer all four products a) – d) above in Ohio Power’s service area. In fact, if a customer called in after being on product b) and wanted to go to a), the Opinion and Order would not serve as a barrier to allowing the customer to have the service they wish. The same is not true if Ohio Power’s prohibitions on POR and consolidated billing are granted. In the example above, a CRES provider who elected to offer consolidated billing (options b and c) could not offer the conservation product a) or the discounted direct-bill product to anyone in the Ohio Power service area if they offered consolidated billing to anyone in the Ohio Power service area.

The Commission wisely ruled against making the customers fit the product, instead of the market approach of making the products fit the customers. To provide further clarity, RESA requests that the Commission clarify that, with Ohio Power’s POR program, CRES providers can provide dual billing to certain customers and also have other customers receive utility-consolidated billing. For those CRES customers receiving utility-consolidated billing, RESA prefers a POR program option of all-in/all-out. In other words, if a CRES providers wants to use utility-consolidated billing, it can either put all customers on the POR program or none of them. This approach will allow CRES providers who prefer not to use POR (because they have invested in their own accounts receivable capabilities) to use utility-consolidated billing without being forced to use POR.¹⁶

¹⁶ Though RESA is not proposing or promoting any cost-recovery method, RESA finds it reasonable that CRES providers who use the POR optionality features for utility-consolidated billing customers pay the added costs for its implementation if the Commission decides that CRES providers must pay the costs to implement the POR program.

One closing observation regarding POR: Ohio Power asks the Commission to clarify what is meant by “commodity.”¹⁷ In that regard, Ohio Power would classify an early termination fee as a non-commodity item. Should the Commission seek to clarify what is a “commodity cost,” then it should find that a termination fee is a rate design feature not a cost. Further, a termination fee is a rate design component which seeks to capture a fixed cost which may otherwise not be collected (in part or in whole). For example, most residential consumer contracts today are for a fixed-price product, and that fixed price is calculated based on the assumption that the full contract term will be honored. If a customer signs up in the cooling season when they are receiving a below-cost price, but leaves in the shoulder months in the above-cost period, there must be a termination fee to make up for the breach of the contract term. In sum, if the Commission elects to clarify what costs are “commodity costs,” it should be all cost components needed to provide bundled energy service. Trying to get a truly comprehensive list would be difficult, but it includes all generation costs, transmission costs, capacity costs, ancillary services, labor, taxes and administrative cost components necessary to bring physical power to the electric distribution service area.

IV. Supplier-Consolidated Billing

Ohio Power argues that it was unreasonable for the Commission to require the MDWG to address supplier-consolidated billing (as well as certain tariff provisions addressing switching) in the August 2015 filing.¹⁸ RESA supports the idea of working out the mechanics of supplier-consolidated billing in the MDWG. However, as a participant in the MDWG, RESA would note that issues are best resolved in the collaborative when there is a pre-approved concept, along with a deadline. RESA requested on rehearing that the Commission incorporate a deadline for the MDWG and that a Staff report be filed by August 2015 regarding how supplier-consolidated billing should be provided, as well as address the tariff provisions addressing switching.

¹⁷ Ohio Power Application for Rehearing at 53.

¹⁸ Ohio Power Application for Rehearing at 58.

V. Basic Transmission Cost Rider

IEU contends that it was error to approve Ohio Power's proposed Basic Transmission Cost Rider ("BTCR") for several reasons, but none of them warrant rejection of the BTCR. IEU first claims that the Commission does not have the authority to accept Ohio Power's BTCR proposal.¹⁹ The Commission has statutory authority and reasonably exercised that authority to establish a reconcilable rider, the BTCR, for transmission costs. Section 4928.05(A)(2), Revised Code, states in part:

Notwithstanding Chapters 4905. and 4909. of the Revised Code, commission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.

This statutory provision expressly allows for the establishment of a transmission-related rider like the BTCR.

Second, IEU argued that the BTCR will reduce options for customers and frustrate price signals.²⁰ However, the BTCR will properly place the recovery of non-market-based transmission costs in Ohio Power's hands. CRES providers should not be collecting for non-market-based transmission costs. The Commission has understood this for several years and has approved non-market-based riders for the other Ohio electric utilities.²¹ The establishment of the BTCR is

¹⁹ IEU Application for Rehearing at 53-56.

²⁰ IEU Application for Rehearing at 56-58.

²¹ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of the Establishment of Rider BTR and Associated Tariff Approval*, Case No. 11-2641-EL-RDR, et al., Opinion and Order (May 25, 2011); *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison 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. 10-388-EL-SSO, Stipulation at 18, Opinion and Order (August 25, 2010); and *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 12-426-EL-SSO et al., Opinion and Order at 36 (September 4, 2013).

consistent and properly eliminates from CRES providers the responsibility to recover for non-market-based charges.

Third, IEU took issue with the Commission's directive to Ohio Power to work with CRES providers and Staff to ensure that no double-billing of the involved transmission charges takes place.²² IEU argues that customers must be included in that cooperative work. RESA agrees with the Commission's directive as is, and has supported such in the past.²³ In addition to such cooperation among the company, CRES providers and Staff, shopping customers can also ensure, from their end, that no double-billing takes place by having appropriate conversations with their CRES providers. Nothing in the Commission's decision precludes such action on the part of customers. RESA points out this same process has taken place without incident when other similar transmission riders were implemented by other Ohio utilities. RESA has every expectation that a transition to the BTCR can be successful in the Ohio Power service territory as well.

Lastly, IEU claims that the Commission improperly required IEU to prove its alternative proposal for the BTCR's rate design.²⁴ In considering the BTCR proposal, the Commission properly evaluated the evidence by Ohio Power and the parties. The Commission considered IEU's proposal to change the rate design and was not comfortable with IEU's alternative and rejected it for that reason.²⁵ The Commission did not improperly shift the burden of proof to IEU; the Commission was not persuaded by IEU's alternative.

VI. Conclusion

For the reasons presented above, RESA requests the Commission deny the petition for rehearing by Ohio Power to reverse its findings of "no demonstrated benefit" for Rider PPA. Ohio

²² IEU Application for Rehearing at 58-59.

²³ *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 12-426-EL-SSO et al., RESA Memorandum Contra at 8, 10 (October 31, 2013).

²⁴ IEU Application for Rehearing at 59-61.

²⁵ Opinion and Order at 68.

Power's petition for rehearing should be granted as to its requested relief of not sending the details for the Ohio Power POR program to the MDWG, but denied as to adding restrictions to the Opinion and Order as to a CRES provider signing up particular customers for POR or consolidated billing service. Finally, the Commission should deny IEU's request to find it lacks the authority to permit direct billing of non-market transmission costs by the electric distribution utilities.

For all of the foregoing reasons, the Commission should reject several of Ohio Power's assignments of error and reject IEU's assignments of error 13-16 to the extent addressed above.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

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