

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking)
Approval of Ohio Power Company's)
Proposal to Enter into an Affiliate)
Power Purchase Agreement for) Case No. 14-1693-EL-RDR
Inclusion in the Power Purchase)
Agreement Rider)

In the Matter of the Application of)
Ohio Power Company for Approval of) Case No. 14-1694-EL-AAM
Certain Accounting Authority)

**MEMORANDUM IN OPPOSITION TO APPLICATION FOR REHEARING OF
ENVIRONMENTAL LAW AND POLICY CENTER, OHIO ENVIRONMENTAL
COUNCIL, AND ENVIRONMENTAL DEFENSE FUND**

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MAY 12, 2016

ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO

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I. INTRODUCTION

The Ohio Power Company ("AEP-Ohio") filed an application seeking to implement an increase in its previously approved Purchased Power Agreement Rider ("PPA Rider") on October 3, 2014. The Application was contested and the matter was set for hearings by the Public Utilities Commission of Ohio ("Commission"). Following hearings, AEP-Ohio, several parties, and the Staff of the Commission ("Staff") entered into a Stipulation and Recommendation ("Stipulation"). After hearings on the Stipulation, the Commission modified and approved the Application and Stipulation in an Opinion and Order issued on March 31, 2016. Parties, including the Energy Law and Policy Center, Ohio Environmental Council, and Environmental Defense Fund (collectively, referred to herein as "ELPC") sought rehearing of the Opinion and Order.

In its Application for Rehearing, ELPC requests that the Commission clarify the effect of the Stipulation on the ability of an eligible customer¹ to opt out of the EE/PDR Plan if the customer is also taking service under the Interruptible Rider Program (“IRP”). Its position is premised on a misunderstanding of the IRP and the scope of the benefits it provides both IRP and other customers.

Under a proper understanding of the IRP and its relation to the AEP-Ohio EE/PDR Plan, eligible AEP-Ohio customers including those taking service under the IRP may opt out of the Plan beginning January 1, 2017. Accordingly, the Commission should reject ELPC’s request for clarification that eligible customers taking service under the IRP may not opt out of the EE/PDR Plan.

II. THE COMMISSION SHOULD FIND THAT ELIGIBLE CUSTOMERS MAY LAWFULLY OPT OUT OF THE EE/PDR PLAN AND TAKE SERVICE UNDER THE IRP

Paragraph III.C.11 of the Stipulation provides “that nothing in this Stipulation affects a customer’s opt-out right under R.C. 4928.6612, as that provision was enacted in 2014 by Senate Bill 310. IRP tariff customers may opt out of the opportunity and ability to obtain direct benefits from AEP Ohio’s EE/PDR Plan as provided in S.B. 310.” Joint Ex. 1 at 11-12. In its Post-Hearing Brief, ELPC argued that this Paragraph violates R.C. 4928.6613 because the IRP was part of the AEP-Ohio EE/PDR Plan. ELPC Initial Brief at 57-58 (Feb. 1, 2016). IEU-Ohio and others pointed out that ELPC’s argument was premised on a faulty understanding of the IRP and the operation of the opt out provisions contained in SB 310. See Reply Brief of Industrial Energy Users-Ohio at 4-6

¹ Customers eligible to exercise the right to opt out are limited to those taking service above primary voltage level as determined by the utility’s tariff classification and customers that receive electricity that exceeds 45 million KWH and that have made written requests for registration as self-assessing purchasers under R.C. 5727.81. R.C. 4928.6610.

(Feb. 8, 2016). In the Opinion and Order, the Commission summarized the arguments presented by ELPC and the response of other parties, but concluded that the issue should be addressed as part of the application to amend the electric security plan (“ESP”) that AEP-Ohio is required to file. Opinion and Order at 98.

In its Application for Rehearing, ELPC alleges that the Commission failed to clarify the effect of the Stipulation on the ability of customers to opt out of the AEP-Ohio EE/PDR Plan and also take service under terms and conditions of the IRP. ELPC Application for Rehearing at 15. According to ELPC, the need for clarification is premised on its understanding that Paragraph III.C.11 will be effective on approval of the Stipulation.² *Id.* at 16. Further, it again alleges that “R.C. 4928.6613 does not permit customers to both opt out of paying for a utility’s energy efficiency and peak demand reduction programs while still receiving the benefits of participating in one of those programs through an interruptible credit.” *Id.*

So that customers can plan appropriately, the Commission should reject ELPC’s renewed attempt to frustrate the operation of Ohio law that permits eligible customers to opt out of the EE/PDR Plan. As IEU-Ohio explained in its Reply Brief, the right to opt out of the EE/PDR Plan is consistent with participation in the IRP since they are separate programs. The IRP is a provision of the AEP-Ohio tariff that is approved as part of the ESP, not as part of its portfolio plan. *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C.*

² As a practical matter, eligible customers will not be able to opt out of an AEP-Ohio EE/PDR Plan until January 1, 2017. After enactment of SB 310, AEP-Ohio stated that it would not amend its EE/PDR Plan, and the Commission refused to approve a request by AEP-Ohio to increase its shared savings on the basis that the increase would operate as an amendment to the Plan. *In the Matter of the Application of Solvay Advanced Polymers, LLC, dba Solvay Specialty Polymers*, Case Nos. 14-2296-EL-EEC, *et al.*, Finding and Order (Nov. 18, 2015). Because the Plan has not been amended, eligible customers do not have the right to opt out of the Plan under Section 8 of SB 310. Those customers will have the option to opt out of the next AEP-Ohio EE/PDR Plan beginning January 1, 2017. R.C. 4928.6611.

4928.143, in the Form of an Electric Security Plan, Case Nos. 13-2385-EL-SSO, et al., Opinion and Order at 40 (Feb. 25, 2015) (“*ESP III*”). If there were no portfolio plan, there would still be an IRP. Additionally, the benefits of the IRP extend beyond AEP-Ohio’s compliance with EE/PDR requirements. As the Commission has previously found, the IRP advances “numerous benefits, including the promotion of economic development and the retention of manufacturing jobs.” *Id.* Because the IRP is separately approved and provides benefits that extend beyond compliance with EE/PDR requirements, a customer electing to take service under the IRP should not be deemed to be taking a benefit of the EE/PDR Plan.³ Accordingly, the provision of the Stipulation making explicit that a customer taking service under the IRP may elect to opt out of the portfolio plan complies with R.C. 4928.6611 to 4928.6613.

Taking ELPC’s argument concerning the availability of the opt out to its logical conclusion, moreover, would encourage customers to withhold their demand response capabilities from AEP-Ohio. The streamlined opt out would be available to a customer eligible to participate in the IRP if the customer successfully bids its demand response into the PJM Interconnection, LLC (“PJM”) market. If the customer participates in the IRP, however, that customer is subject to unlimited emergency interruptions. *ESP III*, Opinion and Order at 40. An opt out customer, however, could also use its demand response to reduce its capacity obligation without loss of the statutory opt out right.

³ The question whether a customer taking service under the IRP is taking a benefit of the portfolio plan is distinct from the issue whether changes in the recovery mechanism constitute an amendment to the existing plan. Had the Commission revised the recovery mechanism as requested by AEP-Ohio in its first application for rehearing in the *ESP III* case, that change would have amended the EE/PDR Plan. See *ESP III*, Memorandum of Industrial Energy Users-Ohio in Opposition to the Applications for Rehearing of the Ohio Power Company, Ohio Manufacturers’ Association Energy Group, and Environmental Advocates at 13 (Apr. 6, 2015). Whether the modification of the ESP is an amendment becomes irrelevant beginning January 1, 2017 because all current plans terminate and any eligible customer may elect to opt out of the costs and benefits of a portfolio plan. See Substitute Senate Bill 310, Section 6 and R.C. 4928.6611-4928.6613.

These customers could benefit from reducing their capacity charges and have no obligation to offer those capabilities to AEP-Ohio. By participating in the IRP, the customer gives up its right to use emergency-related demand response as it may see fit, and AEP-Ohio is then able to use this demand response capability to address emergency circumstances that might otherwise cause involuntary interruptions of service to other non-IRP customers. Because ELPC's position would impose an additional costs on participation in the IRP, it would discourage customers with IRP capabilities from making them available to AEP-Ohio.

III. **CONCLUSION**

For the reasons discussed above, the Commission should reject the arguments regarding the lawfulness of the IRP advanced by ELPC. ELPC's claims are legally unsupported and would reduce the benefits that may otherwise be produced by the IRP.

Respectfully submitted,

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ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Memorandum in Opposition to Applications for Rehearing of Environmental Law and Policy Center, Ohio Environmental Council, and Environmental Defense Fund*, was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 12th day of May 2016, via electronic transmission.

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