

**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 ) Case No. 14-1693-EL-RDR  
Purchase Agreement for Inclusion in the )  
Power Purchase Agreement Rider. )

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

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**JOINT MEMORANDUM CONTRA  
OF  
THE PJM POWER PROVIDERS GROUP  
AND  
THE ELECTRIC POWER SUPPLY ASSOCIATION**

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May 12, 2016

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## I. INTRODUCTION

In its Application for Rehearing, Ohio Power Company (“AEP Ohio”) resurrects its proposal for a PPA Rider that only includes AEP Ohio’s entitlement to the Ohio Valley Electric Corporation (“OVEC”) units—a proposal essentially no different than the one the Commission rejected in its *ESP III* decision.<sup>1</sup> Just like before, AEP Ohio has not met its burden of proof in establishing that ratepayers will benefit from an OVEC-only PPA Rider. Moreover, an OVEC-only PPA Rider is not authorized by Ohio law and fails to satisfy the Commission’s minimum factors identified in *ESP III*. For these reasons, the PJM Power Providers Group (“P3”)<sup>2</sup> and the Electric Power Supply Association<sup>3</sup> (collectively, “P3/EPISA”) strongly urge the Commission to reject AEP Ohio’s rehashed proposal and deny rehearing. However, if the Commission does approve an OVEC-only PPA Rider, it should be made bypassable.

As to AEP Ohio’s other assignments of error, none warrant rehearing. The Commission correctly required competitive bidding as a first choice to the procurement of renewable projects rather than letting AEP Ohio receive an ownership in the renewable generation assets as a condition of the procurement. The Commission also should not reverse its finding that AEP Ohio be responsible for capacity performance penalties and should reject AEP Ohio’s request for relief from the imposed customer bill cap. Lastly, the Commission should find that AEP Ohio’s

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<sup>1</sup> *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 Nos. 13-2385-EL-SSO et al. , Opinion and Order (February 25, 2015) (“*ESP III* Decision”) at 24.

<sup>2</sup> P3 is a non-profit organization whose members are energy providers in the PJM Interconnection LLC (“PJM”) region, conduct business in the PJM balancing authority area, and are signatories to various PJM agreements. Altogether, P3 members own over 84,000 megawatts (“MWs”) of generation assets, produce enough power to supply over 20 million homes, and employ over 40,000 people in the PJM region, representing 13 states and the District of Columbia. This joint memorandum contra does not necessarily reflect the specific views of any particular member of P3 with respect to any argument or issue, but collectively presents P3’s positions.

<sup>3</sup> EPISA is a national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPISA seeks to bring the benefits of competition to all power customers. This joint memorandum contra does not necessarily reflect the specific views of any particular member of EPISA with respect to any argument or issue, but collectively presents EPISA’s positions.

complaint about Commission modifications to the Stipulation is vague and not a perfected assignment of error.

AEP Ohio commenced this rider proceeding using its affiliate PPA as the cornerstone for the PPA Rider. The Federal Energy Regulatory Commission's April 27, 2016 order (the "FERC Order")<sup>4</sup> removed that cornerstone, effectively ending the PPA Rider as designed. There is no reason to now revisit an OVEC-only PPA Rider in this proceeding that this Commission rejected in 2015. The Commission should deny AEP Ohio's application for rehearing, reverse its approval of the Stipulation and terminate this proceeding.

## II. ASSIGNMENTS OF ERROR

In its Application for Rehearing, AEP Ohio appears to raise the following assignments of error, which this Memorandum of Contra denominates, for purposes of clarity, as Assignments of Error Nos. 1-5.

1. "The Commission should adopt an OVEC-only PPA Rider going forward in light of the recent FERC decision concerning the Affiliate PPA, after scaling back of the \$100 million credit commitment and reversing the Opinion and Order modifications discussed below."
2. "The large number of modifications that the Opinion and Order made to the Joint Stipulation and Recommendation (Stipulation) were not necessary to meet the Commission's three-part test for reviewing and adopting settlement agreements, which unreasonably discourages parties from participating in settlement negotiations in future proceedings \* \* \*."
3. "The Commission should either reverse or clarify its directives (page 83) that the Company should be 'first focusing on enhancing solar projects' and must demonstrate that 'bilateral opportunities were explored' — by confirming that the rapidly-waning opportunity to take advantage of tax credits for wind generation (which reduce the cost) should be also expeditiously pursued and affirming the right of AEP Ohio affiliates under the Stipulation to own up to 50 percent of such projects remains intact."

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<sup>4</sup> *Elec. Power Supply Ass'n v. AEP Generation Res., Inc.*, 155 F.E.R.C. ¶ 61,102, 2016 FERC LEXIS 687 (F.E.R.C. 2016).

4. “The Commission should reverse the modification that unreasonably precludes AEP Ohio from including costs of Capacity Performance penalties in the PPA Rider, especially given that it would now be an OVEC-only PPA Rider.”
5. “The Commission should reverse the five percent customer bill cap imposed for the PPA Rider if it becomes bypassable on rehearing.”

As discussed below, the Commission should not grant rehearing on AEP Ohio’s assignments of error.

### III. ARGUMENT

**A. AEP Ohio’s proposal for an OVEC-only PPA Rider is no different than the proposal that the Commission rejected in the *ESP III* proceeding, does not meet the Commission’s minimum factors, and violates Ohio law (Assignment of Error No. 1).**

**1. The Commission already rejected an OVEC-only PPA Rider proposal in *ESP III* and nothing has changed in this proceeding.**

AEP Ohio asks the Commission to “adopt an OVEC-only PPA Rider going forward in light of the recent FERC decision concerning the Affiliate PPA.”<sup>5</sup> But the Commission already rejected that very proposal in its *ESP III* decision<sup>6</sup> and nothing has changed since then. The Commission should reject this assignment of error.

As part of the proceedings in *ESP III*, AEP Ohio sought the Commission’s approval of a PPA Rider based on the generation purchased from the OVEC plants.<sup>7</sup> The Commission approved a PPA Rider construct, but rejected its implementation as to the OVEC plants, saying it was not persuaded that an OVEC-only PPA Rider “would provide customers with sufficient benefit from the rider’s financial hedging mechanism or any other benefit that is commensurate with the rider’s potential cost.”<sup>8</sup> The Commission also found that the “evidence of record reflects that the rider may result in a net cost to customers, with little offsetting benefit from the

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<sup>5</sup> AEP Ohio, Memorandum in Support of Application for Rehearing (“AEP Mem. Supp.”), at 3.

<sup>6</sup> *ESP III* Decision at 24-25.

<sup>7</sup> The OVEC plants refer to the Clifty Creek in Jefferson County, Indiana, and Kyger Creek in Gallia County, Ohio. *Dynegy Ex. 1* at 10.

<sup>8</sup> *ESP III* Decision at 25.

rider's intended purpose as a hedge against market volatility."<sup>9</sup> In this case, AEP Ohio has presented nothing new regarding OVEC: the same OVEC plants are involved, the OVEC Inter-Company Power Agreement is the same today as it was then, no different costs are proposed for recovery, no different recovery mechanism is presented, and there is no new, reliable evidence that customers would sufficiently benefit from an OVEC-only PPA Rider.

As to the question of ratepayer benefit, AEP Ohio contends that an OVEC-only PPA Rider would yield a net benefit of \$110 million.<sup>10</sup> AEP Ohio mistakenly points to a workpaper that was based on the initial proposed term of the rider (10/31/2015 through 12/31/2024), specifically for a weather-normalized case. This is not the forecast that: (a) was presented during the stipulation phase of the proceeding (see WAA-2 which replaced Kelly Pearce's initial projection sheets), (b) was recommended by AEP Ohio or (c) evaluated by the Commission. AEP Ohio cannot now rely on it as compelling evidence of a \$110 million benefit to ratepayers. Regardless, even if the Commission considered the specific workpaper now relied upon by AEP Ohio, it would see that an OVEC-only PPA Rider would project only a credit of approximately \$13 million through the end of the ESP III term,<sup>11</sup> which cannot be found to have a rate stabilizing effect given the dilution effect of any alleged credit when socialized amongst AEP Ohio's many ratepayers.

The Commission provided a good summary on the weakness of AEP Ohio's projections at page 24 of its *ESP III* decision. In rejecting the OVEC-only PPA Rider, the Commission stated:<sup>12</sup>

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<sup>9</sup> *Id.* at 24.

<sup>10</sup> AEP Mem. Supp. at 5.

<sup>11</sup> This number was derived from IGS Ex. 1, page 10, and is approximated from the weather-normalized row that AEP Ohio relies upon for its \$110 million figure. AEP Ohio maintains that the document remains confidential but has agreed that the \$13 million approximation figure is not confidential.

<sup>12</sup> *ESP III* Decision at 24.

It is undisputed that all of these projections are based on data assumptions that attempt to predict OVEC's costs and revenues, as well as PJM prices for energy and capacity, over the three-year period of the ESP and beyond. In light of the uncertainty and speculation inherent in the process of projecting the net impact of the proposed PPA rider, which is evident in AEP Ohio's own projections ranging from a \$52 million net cost to an \$8.4 million net benefit, the Commission is unable to reasonably determine the rate impact of the rider.

The Commission continues, in the matter at bar, to acknowledge the uncertainties of a PPA Rider proposal, noting in its Opinion and Order for the current proceedings that AEP Ohio's estimates "were simply predictions of future market prices and costs" and "even the most reliable projections may be proven wrong in the future, particularly over an eight-year timeframe."<sup>13</sup>

Also worth noting is the fact that AEP Ohio's current claim of a \$110 million credit contradicts its earlier projections in these proceedings. In its Opinion and Order, the Commission adopted AEP Ohio's weather normalized case that the PPA Rider would provide a net credit of \$37 million over the current ESP term, or \$214 million over the term of the PPA Rider.<sup>14</sup> That finding was premised on the PPA Rider being populated with both the OVEC entitlement (440 MWs of capacity) and AEP Ohio's power purchase agreement (the "Affiliate PPA") with AEP Generation Resources, Inc. (2,671 MWs of capacity).<sup>15</sup> As AEP Ohio notes in its brief, OVEC makes up less than 15% of the capacity previously included in the Stipulation.<sup>16</sup> Yet based on the \$110 million figure referred to by AEP Ohio in its Application for Rehearing, OVEC alone would have provided over 50% of the total \$214 million benefit under the PPA Rider. That projection also contradicts AEP Ohio's request for a scaled back credit commitment to 15% of its original \$100 million commitment.<sup>17</sup> This only highlights the absence of credible

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<sup>13</sup> Opinion and Order at 81.

<sup>14</sup> *Id.* at 80.

<sup>15</sup> Opinion and Order at 22.

<sup>16</sup> AEP Mem. Supp. at 4.

<sup>17</sup> This issue is further addressed below in Section III.B.2.



record evidence in these proceedings regarding the net charges or credits that would result from an OVEC-only PPA Rider.

Additionally, with only 440 MWs of capacity at issue here, there is no evidence that an OVEC-only PPA Rider “would provide customers with sufficient benefit from the rider’s financial hedging mechanism.” Throughout this proceeding, AEP Ohio has admitted that little hedging benefit exists in an OVEC-only PPA Rider. In attempting to distinguish the prior OVEC-only PPA proposal that the Commission rejected in *ESP III* from the Affiliate PPA/OVEC proposal in this proceeding, AEP Ohio wrote in its Reply Brief:<sup>18</sup>

[T]he Commission emphasized that a “properly conceived” PPA Proposal has “the potential to supplement the benefits derived from the staggering and laddering of the SSO auctions” and that “there may be value for consumers in a reasonable PPA rider proposal that provides for a significant financial hedge that truly stabilizes rates, particularly during periods of extreme weather.” **The OVEC-only proposal was approximately 5 percent of the Company’s connected load while the updated PPA Proposal represents approximately 30 percent; that major change transforms the proposal into a “significant financial hedge that truly stabilizes rates” as envisioned by the *ESP III* decision.**

As AEP Ohio conceded, an OVEC-only PPA representing 5% of the Company’s load is *not* the kind of “significant financial hedge” that the Commission envisioned in *ESP III*. What was true then is also true now—the current OVEC-only proposal does not offer ratepayers the kind of hedge against volatility required by the Commission.

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<sup>18</sup> AEP Ohio Reply Brief at 17 (internal citations omitted) (emphasis added).

**2. AEP Ohio failed to address all of the minimum factors set forth in *ESP III*.**

In *ESP III*, the Commission rejected the PPA Rider proposal for the OVEC plants but established a placeholder PPA Rider at an initial rate of zero and required that any future filing for cost recovery under the PPA Rider address the following factors:<sup>19</sup>

- “[F]inancial need of the generating plant.”
- “[N]ecessity of generating facility, in light of future reliability concerns, including supply diversity”;
- “[D]escription of how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations”; and
- “[T]he impact that a closure of the generating plant would have on electric prices and the resulting effect on economic development within the state.”

The Commission also directed AEP Ohio to “provide for rigorous Commission oversight of the rider” and “commit to full information sharing with the Commission and its Staff.”<sup>20</sup> But AEP Ohio ignored this directive and failed to establish all of the foregoing factors with respect to an OVEC-only PPA Rider.

*a. AEP Ohio has not established the financial need of the OVEC plants.*

AEP Ohio has failed to show the financial need of any of the OVEC generating plants. In fact, AEP Ohio did not present **any** evidence as to any financial need of the OVEC plants whatsoever. P3/EPISA made this very point in their initial brief in these proceedings. In its Reply Brief, AEP Ohio responded that it did not need to provide any information as to the financial need of the OVEC plants specifically, as it “provided testimony and information

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<sup>19</sup> Opinion and Order at 25.

<sup>20</sup> *Id.*

supporting the financial need of the PPA units *as a package*.”<sup>21</sup> But with this package unbound through the removal of the plants covered by the Affiliate PPA, there is nothing in the record that specifically addresses the financial needs of the OVEC plants standing alone. AEP Ohio has not met its burden of proof as to this factor.

*b. AEP Ohio has not established the necessity of the OVEC plants in light of future reliability concerns, including supply diversity.*

AEP Ohio has failed to show the OVEC plants are required for future reliability. AEP Ohio witness Bradish did produce a reliability impact study in these proceedings, but that study was limited to the AEP Generation Resources, Inc. PPA plants and did not include information related to the OVEC plants being required for future reliability.<sup>22</sup> Therefore, AEP Ohio has not met this factor of the Commission’s test.

*c. The OVEC plants are not at risk of prematurely closing, and AEP Ohio has not addressed the impact that such closure would have on electric prices and the resulting effect on economic development within the state.*

The record evidence in these proceedings demonstrates that the OVEC plants are not at risk of closing prematurely, whether or not a PPA Rider proposal is adopted. Because the PPA plants are not going to close, there is no resulting adverse impact to electricity rates or economic development within Ohio. AEP Ohio owns 19.93% of the ownership share of the OVEC units,<sup>23</sup> enough to give AEP Ohio a seat on OVEC’s operating committee, and enough to give its then-President and Chief Operating Officer Pablo Vegas a seat on the board of directors, but not enough to allow AEP Ohio to make unilateral decisions regarding the OVEC plants, including retirement decisions.<sup>24</sup> Mr. Vegas admitted that he was not sure whether OVEC would retire any

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<sup>21</sup> AEP Ohio Reply Brief at 12 (emphasis added).

<sup>22</sup> AEP Ex. 7 at 2; Tr. Vol. 6 at 1552-1553; Sierra Club Ex. 23.

<sup>23</sup> Sierra Club Ex. 12 at 1.

<sup>24</sup> Tr. Vol. 1 at 90-92, 99-100.

of its units if the PPA Rider was not approved.<sup>25</sup> Additionally, although both OVEC and AEP Ohio would be required to notify PJM in the event they planned to retire the OVEC units, Mr. Vegas was not aware that either company had done so.<sup>26</sup> Given AEP Ohio's minority share in the OVEC plants, the record evidence simply does not support a proposition that the PPA Rider is necessary to avoid the retirement of the OVEC plants. Because AEP Ohio has not established that the plants will prematurely retire, it cannot maintain that the PPA Rider will guard against any risks to electricity rates or economic development within Ohio.

Additionally, even if the Commission accepts AEP Ohio's unsupported claim that the OVEC units may prematurely close without the PPA Rider, AEP Ohio nonetheless failed to establish the impact that a closure of the OVEC plants would have on electric prices and economic development within Ohio. The sum of AEP Ohio's evidence on this question is a study by AEP Ohio witness Allen, but it only addressed the economic impact of the OVEC units in Ohio.<sup>27</sup> Conversely, there was no evidence presented to establish the impact of the closure of the OVEC Indiana units, which was specifically required by the Commission.

*d. AEP Ohio has not committed to "rigorous oversight" or "full information sharing" with the Commission concerning the OVEC plants.*

AEP Ohio has not offered the Commission the "rigorous oversight" or "full information sharing" regarding the OVEC plants as it was required to provide in *ESP III* proceeding. AEP Ohio provides for periodic reviews by the Commission of the OVEC component of the PPA proposal, but provides no different oversight by the Commission than what has already been in place as to the OVEC plants.<sup>28</sup> The Stipulation simply states "AEP Ohio agrees to participate in

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<sup>25</sup> *Id.* at 96.

<sup>26</sup> *Id.* at 97.

<sup>27</sup> AEP Ohio Ex. 10 at Exhibit WAA-3.

<sup>28</sup> AEP Ohio Ex. 1 at 28; Tr. Vol. 1 at 72.

annual compliance reviews before the Commission to ensure that actions taken by the Company when selling the output from generation units included in the PPA Rider into the PJM market were not unreasonable.”<sup>29</sup> This does not amount to “rigorous” Commission review.

As for “full information sharing” AEP Ohio proposes maintaining the status quo—i.e., the Commission must go through AEP Ohio, which is entitled to certain OVEC records as a sponsoring company under the OVEC Agreement.<sup>30</sup> That agreement only gives AEP Ohio “reasonable access” to OVEC’s books and records; it does *not* give the Commission such access, or the right to audit these books and records.<sup>31</sup> And AEP Ohio has indicated that it may provide the Commission with “summaries and details about the information contained in the books and records for OVEC”—not necessarily the underlying information itself.<sup>32</sup> This does not satisfy the Commission’s requirement for full information sharing.

### **3. An OVEC-only PPA Rider violates R.C. 4928.143(B)(2)(d).**

In its *ESP III* decision, the Commission concluded that AEP Ohio’s PPA proposal was authorized by R.C. 4928.143(B)(2)(d),<sup>33</sup> a holding the Commission reiterated in its Opinion and Order in these proceedings.<sup>34</sup> For all the reasons stated herein and in their Application for Rehearing, P3/EP SA urge the Commission to reverse its prior finding and hold that an OVEC-only PPA Rider does not satisfy the requirements of that statute.

First, to be authorized by R.C. 4928.143(B)(2)(d), the PPA Rider must be a “term, condition, or *charge*” that relates to certain enumerated items.<sup>35</sup> AEP Ohio, in its Application for Rehearing, asserts that an OVEC-only PPA Rider “would remain a charge incurred by (or a

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<sup>29</sup> Joint Ex. 1 at 7.

<sup>30</sup> AEP Ohio Ex. 1 at 28; Tr. Vol. 1 at 72.

<sup>31</sup> Tr. Vol. 1 at 71-72.

<sup>32</sup> *Id.*

<sup>33</sup> *ESP III* Decision at 22;

<sup>34</sup> Opinion and Order at 93-95.

<sup>35</sup> R.C. 4928.143(B)(2)(d) (emphasis added).

credit paid to) customers under the Company's ESP"<sup>36</sup> but the word "credit" does not appear anywhere in Section 4928.143(B)(2)(d) and the Commission is without authority to read it into the statute. *See In re Columbus S. Power Co.*, 128 Ohio St.3d 512, ¶ 32 (2011) ("[I]f a given provision does not fit within one of the categories listed 'following' (B)(2), it is not authorized by statute"); *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2016-Ohio-1608, ¶ 49 ("[I]n construing a statute, we may not add or delete words."). Because the PPA Rider can switch between a payment from the ratepayers to AEP Ohio, *or* a payment from AEP Ohio to ratepayers, it is not solely a "charge" but is also a "credit." The Commission has no authority under R.C. 4928.143(B)(2)(d) to allow a "credit."

Second, the PPA Rider must satisfy one of the enumerated items in subsection (d), which includes "limitations on customer shopping for retail electric generation service" and "bypassability." AEP Ohio contends that the OVEC-only PPA Rider (if made bypassable, as AEP Ohio urges) would satisfy the bypassability prong and "continue to function as a financial hedge against complete reliance on the retail market for the pricing of retail electric generating service, at least for non-shopping customers"<sup>37</sup> Making the OVEC-only PPA Rider a bypassable rider does not qualify it under the statute as the rider itself has nothing to do with bypassability. Moreover, it still does not qualify as a "limitatio[n] on customer shopping for retail electric generation service." It would not inhibit ratepayers from shopping for generation from other retailers, and therefore, would not be a "limitation" on customer shopping. Moreover, if the PPA Rider is made bypassable, rather than limit shopping, the PPA Rider could actually *encourage* shopping by providing an incentive to avoid the uncertainty of the rider's charges.<sup>38</sup>

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<sup>36</sup> AEP Mem. Supp. at 7.

<sup>37</sup> *Id.*

<sup>38</sup> In a May 3, 2016 filing in this proceeding, AEP Ohio presented its forecasted residential PPA Rider charge of \$.0019458/kwh for a bypassable rider and a residential charge of \$.0007131/kwh if nonbypassable.

Third, an OVEC-only PPA Rider would not have the “effect of stabilizing or providing certainty regarding retail electric service” as required by R.C. 4928.143(B)(2)(d). While the Commission in *ESP III* found that a PPA Rider “would, *in theory*, have the effect of stabilizing or providing certainty regarding retail electric service”<sup>39</sup> the Commission concluded that the OVEC-only PPA Rider in that case “may result in a net cost to customers, with *little offsetting benefit* from the rider’s intended purpose as a hedge against market volatility.”<sup>40</sup> And as noted above, AEP Ohio previously claimed in these proceedings that what “transform[ed]” the previously-rejected OVEC-only proposal into the kind of “significant financial hedge that truly stabilizes rates” was the addition of the Affiliate PPA.<sup>41</sup> Without the Affiliate PPA, even AEP Ohio conceded that the 440 megawatts (“MWs”) of capacity provided by its OVEC entitlement could not offer the kind of rate stability or certainty envisioned by the *ESP III* decision.

For the foregoing reasons, the Commission should find that an OVEC-only PPA proposal is unauthorized by R.C. 4928.143(B)(2)(d).

**B. If the Commission adopts an OVEC-only PPA Rider, it should be bypassable, but the Commission should reject AEP Ohio’s other requested modifications.**

**1. If the Commission does not reject an OVEC-only PPA Rider, then the rider should be bypassable (Assignment of Error No. 1).**

For all the reasons set forth above, the Commission should reject an OVEC-only PPA Rider. But if the Commission disagrees, it should require that the OVEC-only PPA Rider be made bypassable. Indeed, AEP Ohio invites this modification, writing that if the “Commission is concerned that the ‘captive customer’ finding made by FERC in its April 27, 2016 decision

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<sup>39</sup> *ESP III* Decision at 21 (emphasis added).

<sup>40</sup> *Id.* at 24 (emphasis added).

<sup>41</sup> AEP Ohio Reply Brief at 17.

involving the Affiliate PPA could negatively impact the OVEC-only PPA Rider, it could render the PPA Rider bypassable \* \* \* .”<sup>42</sup>

In rescinding the waiver of affiliate sales restrictions as to the Affiliate PPA, the FERC Order concluded that with a non-bypassable PPA Rider, ratepayers would be captive despite their ability to shop for generation service.<sup>43</sup> These ratepayers, the Order concludes, “are nonetheless captive in that they have no choice as to payment of the non-bypassable generation related charges incurred under the Affiliate PPA.”<sup>44</sup> Although not directly at issue in that decision, the reasoning of the FERC Order also applies with respect to the OVEC PPA. In light of the FERC Order, an OVEC-only PPA Rider must be made bypassable.

**2. The Commission should reject AEP Ohio’s proposal to scale back the \$100 million credit commitment (Assignment of Error No. 1).**

As noted above, although AEP Ohio claims that an OVEC-only PPA Rider would yield a net benefit of \$110 million (or approximately 51% of the \$214 million projected under the weather-normalized case accepted by the Commission), it asks the Commission to scale back the \$100 million credit commitment to 15% of its original value.<sup>45</sup> In the event the Commission allows an OVEC-only PPA Rider, the Commission should reject AEP Ohio’s proposed modification to the credit commitment. Instead, if the Commission believes a reduction of the original credit commitment is necessary, it should reduce the credit commitment proportionately with the revised anticipated net benefit under an OVEC-only PPA Rider. Therefore, if the Commission accepts AEP Ohio’s assertion that this rider will result in a \$110 million net benefit, the credit commitment should be reduced, if at all, to no less than \$51 million (i.e., 51% of the

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<sup>42</sup> AEP Mem. Supp. at 4.

<sup>43</sup> FERC Order at 20.

<sup>44</sup> *Id.*

<sup>45</sup> AEP Mem. Supp. at 4.



original \$100 million commitment). In so doing, the Commission will provide some measure of protection to ratepayers in the event that the Commission's accepted forecast proves inaccurate.

**3. Ratepayers should not be responsible for capacity performance penalties (Assignment of Error No. 4).**

In its Opinion and Order, the Commission modified the Stipulation to provide that ratepayers will not be responsible for capacity performance penalties, deeming the recovery of such penalties as "not . . . prudent expenditures."<sup>46</sup> AEP Ohio now asks the Commission to reverse its modification. The Commission should deny this request.

AEP Ohio contends that it should now be allowed to pass on capacity performance penalties to its ratepayers because "AEP Ohio is one of many OVEC owners and its retail cost recovery does not affect the plant operator's decisions."<sup>47</sup> But that is an overstatement. Unlike its ratepayers, who have absolutely no say in the matter, AEP Ohio is positioned to directly influence decision-making at the OVEC plants. While it may hold a minority interest in OVEC, AEP Ohio has a seat on OVEC's operating committee and its President and Chief Operating Officer has a seat on OVEC's board of directors.<sup>48</sup> Therefore, as between ratepayers and AEP Ohio, AEP Ohio is best positioned to influence decision-making at the OVEC plants so as to avoid capacity performance penalties. It is unreasonable to place the risk of capacity performance penalties on ratepayers with no influence at all on OVEC's operations.

**4. Ratepayers should not be exposed to unlimited PPA Rider charges (Assignment of Error No. 5).**

If the PPA Rider becomes bypassable, AEP Ohio urges the Commission to reverse its limitation that for the first two years of the PPA Rider, average customer bills will not increase

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<sup>46</sup> Opinion and Order at 88.

<sup>47</sup> AEP Mem. Supp. at 12.

<sup>48</sup> Tr. Vol. 1 at 90-92, 99-100.

more than five percent from the June 1, 2015 SSO rate plan bill schedules.<sup>49</sup> If the Commission allows an OVEC-only PPA Rider (which it should not), the Commission should deny AEP Ohio's request to change the limitation on bill increases. In its Opinion and Order, the Commission found that the projections presented by AEP Ohio were "simply predictions" and "even the most reliable projections may be proven wrong in the future, particularly over an eight-year timeframe."<sup>50</sup> Therefore, the Commission found it was necessary to protect ratepayers by imposing a limitation on the rate impacts caused by the PPA Rider.<sup>51</sup> While P3/EPSA dispute the effectiveness of the Commission's limitation,<sup>52</sup> nothing in the record supports doing away with even that narrow protection for ratepayers, particularly because AEP Ohio's projections are questionable, and because an OVEC-only PPA Rider still involves an eight-year timeframe. That an OVEC-only PPA Rider would be bypassable could enable ratepayers to avoid the risk of rider charges by shopping, but AEP Ohio's SSO customers nonetheless require protection from the risks posed by the PPA Rider. The Commission should not reverse course on safeguarding the interests of these ratepayers.

**C. The Commission's ruling that AEP Ohio affiliates could not obtain an ownership interest in wind and solar projects until AEP Ohio explored competitively-bid bilateral opportunities was just and reasonable (Assignment of Error No. 3).**

Assignment of Error No. 3 asks the Commission to reverse or clarify statements in its Opinion and Order regarding AEP Ohio's obligation to procure 500 MWs of wind capacity and 400 MWs of solar capacity.

In its Opinion and Order, the Commission wrote:<sup>53</sup>

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<sup>49</sup> AEP Mem. Supp. at 13.

<sup>50</sup> Opinion and Order at 81.

<sup>51</sup> *Id.*

<sup>52</sup> See P3/EPSA, Application for Rehearing at 58.

<sup>53</sup> Opinion and Order at 82-83.

The Commission supports the construction of new renewables in this state. The state has previously seen a number of wind-related projects approved for siting through the Board, many of which have yet to be constructed. However, solar projects are not as prevalent. Solar projects would enhance the diversity of available generation options. The Commission first encourages that bilateral contracting opportunities be explored to provide support for the construction of renewables. To the extent that bilateral opportunities are not available, the Commission will entertain and review a cost recovery filing, first focusing on enhancing solar opportunities. We also direct AEP Ohio to demonstrate that bilateral opportunities were explored and that a competitive process was utilized to source and determine ownership of any project to be built.

AEP Ohio objects to what it characterizes as the Commission's unreasonable and unnecessary direction that AEP Ohio prioritize the development of solar projects ahead of wind-related projects.<sup>54</sup> AEP Ohio also seeks "clarification regarding the directive in the Opinion and Order to demonstrate that bilateral opportunities were explored and that a competitive process was used to source and determine ownership of any solar or wind-related projects to be built."<sup>55</sup> AEP Ohio notes that under the Stipulation, although solar and wind projects would be competitively bid out, AEP affiliates would have the right to own up to 50% of these projects on an aggregate net basis based on installed capacity<sup>56</sup> AEP Ohio asks the Commission to "clarif[y] on rehearing that this directive does not affect the right of AEP affiliates to initially own up to 50% of wind-related projects and 50% of solar projects on an aggregate net basis based on installed capacity, as negotiated in the Stipulation."<sup>57</sup>

P3/EPSPA take no position on the Commission's determination regarding the priority of solar and wind projects. But as to AEP Ohio's other objection, P3/ESPA submit that the Commission's order requires no clarification: the Commission was clear that before AEP Ohio

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<sup>54</sup> AEP Mem. Supp. at 10.

<sup>55</sup> *Id.* at 11.

<sup>56</sup> *Id.* at 10.

<sup>57</sup> *Id.* at 12.

affiliates take ownership of the proposed wind and solar projects, AEP Ohio must first explore procuring such projects via bilateral contracts obtained through a competitive bid process. Therefore, AEP's affiliates would be precluded from owning such projects until AEP Ohio demonstrated that it explored competitively-bid bilateral contract opportunities. The Commission's emphasis on competitive bidding is just and reasonable, supported by strong public policy and should not be reversed on rehearing. In fact, the Commission's ruling only reinforces P3/ESPA's position in this proceeding that competitive bidding should have been used to acquire the power purchase agreement included in the PPA Rider. In this respect, Assignment of Error No. 3 should be denied.

**D. AEP Ohio failed to perfect Assignment of Error No. 2.**

Assignment of Error No. 2 provides:

The large number of modifications that the Opinion and Order made to the Joint Stipulation and Recommendation (Stipulation) were not necessary to meet the Commission's three-part test for reviewing and adopting settlement agreements, which unreasonably discourages parties from participating in settlement negotiations in future proceedings. \* \* \*

It is not entirely clear whether AEP Ohio intends Assignment of Error No. 2 to be a stand-alone assignment of error. However, to the extent AEP Ohio contends that it is, Assignment of Error No. 2 does not comply with the specificity requirements of R.C. 4903.10 and therefore is not a valid ground for rehearing.

R.C. 4903.10 governs applications for rehearing before the Commission and its requirements are jurisdictional. *Senior Citizens Coalition v. Pub. Util. Comm.*, 40 Ohio St.3d 329, 332-33 (1988). R.C. 4903.10 provides in relevant part that an application for rehearing "shall be in writing and *shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.*" R.C. 4903.10(B) (emphasis added). An

appellant must specifically raise or contest an issue in its application for a rehearing. *Disc. Cellular, Inc. v. PUC*, 112 Ohio St. 3d 360, 374-375, 2007-Ohio-53 (“[w]e have held that when an appellant's grounds for rehearing fail to specifically allege in what respect the PUCO's order was unreasonable or unlawful, the requirements of R.C. 4903.10 have not been met. . . .” )

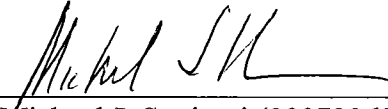
Assignment of Error No. 2 lacks the specificity required to perfect this assignment of error under R.C. 4903.10. For one, it fails to specifically identify the “large number of modifications” that it asserts were not necessary to meet the Commission’s three-part test for stipulations. It also fails to specifically indicate which modifications AEP Ohio believes “discourag[e] parties from participating in settlement negotiations in future proceedings.” Because it does not comply with R.C. 4903.10, the Commission does not have jurisdiction to hear Assignment of Error No. 2.

#### **IV. CONCLUSION**

AEP Ohio commenced this rider proceeding seeking approval to populate the PPA Rider relying on an Affiliate PPA and its OVEC entitlement. With the Affiliate PPA removed from the PPA Rider, AEP Ohio is left with only its OVEC entitlement – a construct this Commission expressly rejected in 2015. AEP Ohio should not be allowed to revisit that decision through this proceeding and there is no reason to grant rehearing on AEP Ohio’s OVEC-only PPA Rider as well as AEP Ohio’s other assignments of error. For the reasons presented above, P3/EPISA the

Commission should deny AEP Ohio's application for rehearing, reverse its approval of the Stipulation and terminate this proceeding.

Respectfully submitted,



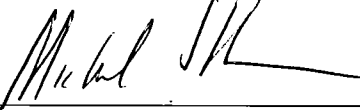
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Michael J. Settineri (00073369), Counsel of Record  
Gretchen L. Petrucci (00046608)  
Ilya Batikov (0087968)  
Vorys, Sater, Seymour and Pease LLP  
52 E. Gay Street  
Columbus, OH 43215  
614-464-5462  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)  
[ibatikov@vorys.com](mailto:ibatikov@vorys.com)

*Attorneys for the PJM Power Providers Group and  
the Electric Power Supply Association*

## CERTIFICATE OF SERVICE

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Michael J. Settineri

[stnourse@aep.com](mailto:stnourse@aep.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)  
[msmckenzie@aep.com](mailto:msmckenzie@aep.com)  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)  
[myurick@taftlaw.com](mailto:myurick@taftlaw.com);  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)  
[dboehm@bkllawfirm.com](mailto:dboehm@bkllawfirm.com)  
[jkyler@bkllawfirm.com](mailto:jkyler@bkllawfirm.com)  
[tony.mendoza@sierraclub.org](mailto:tony.mendoza@sierraclub.org);  
[schmidt@sppgrp.com](mailto:schmidt@sppgrp.com)  
[tdougherty@theoec.org](mailto:tdougherty@theoec.org)  
[joliker@igsenergy.com](mailto:joliker@igsenergy.com)  
[ghull@eckertseamans.com](mailto:ghull@eckertseamans.com)  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)  
[jmcdermott@firstenergycorp.com](mailto:jmcdermott@firstenergycorp.com)  
[scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com)  
[jlang@calfee.com](mailto:jlang@calfee.com)  
[talexander@calfee.com](mailto:talexander@calfee.com)  
[jeffrey.mayes@monitoringanalytics.com](mailto:jeffrey.mayes@monitoringanalytics.com)  
[lhawrot@spilmanlaw.com](mailto:lhawrot@spilmanlaw.com)  
[dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)  
[kurt.helfrich@thompsonhine.com](mailto:kurt.helfrich@thompsonhine.com)  
[scott.campbell@thompsonhine.com](mailto:scott.campbell@thompsonhine.com)  
[stephanie.chmiel@thompsonhine.com](mailto:stephanie.chmiel@thompsonhine.com)  
[ricks@ohanet.org](mailto:ricks@ohanet.org)  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
[William.michael@occ.ohio.gov](mailto:William.michael@occ.ohio.gov)  
[Jodi.bair@occ.ohio.gov](mailto:Jodi.bair@occ.ohio.gov)  
[Kevin.moore@occ.gov](mailto:Kevin.moore@occ.gov)  
[DStinson@bricker.com](mailto:DStinson@bricker.com)

[laurac@chappelleconsulting.net](mailto:laurac@chappelleconsulting.net)  
[gthomas@gtpowergroup.com](mailto:gthomas@gtpowergroup.com)  
[stheodore@epsa.org](mailto:stheodore@epsa.org)  
[mdortch@kravitzllc.com](mailto:mdortch@kravitzllc.com)  
[kristen.henry@sierraclub.org](mailto:kristen.henry@sierraclub.org)  
[msoules@earthjustice.org](mailto:msoules@earthjustice.org)  
[sfisk@earthjustice.org](mailto:sfisk@earthjustice.org)  
[msmalz@ohiopoveritylaw.org](mailto:msmalz@ohiopoveritylaw.org)  
[mfleisher@elpc.org](mailto:mfleisher@elpc.org)  
[cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)  
[werner.margard@puc.state.oh.us](mailto:werner.margard@puc.state.oh.us)  
[steven.beeler@puc.state.oh.us](mailto:steven.beeler@puc.state.oh.us)  
[twilliams@snhslaw.com](mailto:twilliams@snhslaw.com)  
[rsahli@columbus.rr.com](mailto:rsahli@columbus.rr.com)  
[charris@spilmanlaw.com](mailto:charris@spilmanlaw.com)  
[ghiloni@carpenterlipps.com](mailto:ghiloni@carpenterlipps.com)  
[sechler@carpenterlipps.com](mailto:sechler@carpenterlipps.com)  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com)  
[chris@envlaw.com](mailto:chris@envlaw.com)  
[jennifer.spinosi@directenergy.com](mailto:jennifer.spinosi@directenergy.com)  
[jvickers@elpc.org](mailto:jvickers@elpc.org)  
[ckilgard@taftlaw.com](mailto:ckilgard@taftlaw.com)  
[rseiler@dickinsonwright.com](mailto:rseiler@dickinsonwright.com)  
[todonnell@dickinsonwright.com](mailto:todonnell@dickinsonwright.com)  
[drinebolt@ohiopartners.org](mailto:drinebolt@ohiopartners.org)  
[orourke@carpenterlipps.com](mailto:orourke@carpenterlipps.com)

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Summary: Memorandum Contra of he PJM Power Providers Group and the Electric Power Supply Association electronically filed by Mr. Michael J. Settineri on behalf of Electric Power Supply Association and PJM Power Providers Group