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

FOURTH ENTRY ON REHEARING

Entered in the Journal on November 3, 2016

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I. SUMMARY

{¶ 1} The Commission grants, in part, and denies, in part, the applications for rehearing of the May 28, 2015 *Second Entry on Rehearing*, as well as denies the pending assignments of error regarding the power purchase agreement rider that were raised in the applications for rehearing of the February 25, 2015 Opinion and Order.

II. PROCEDURAL BACKGROUND

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services (CRES) necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} On December 20, 2013, AEP Ohio filed, pursuant to R.C. 4928.143, an application for an ESP for the period of June 1, 2015, through May 31, 2018.

{¶ 5} On February 25, 2015, the Commission issued its Opinion and Order, approving AEP Ohio's proposed ESP, with certain modifications (ESP 3 Order).

{¶ 6} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 7} On March 26, 2015, the Ohio Hospital Association (OHA) filed an application for rehearing of the ESP 3 Order. On March 27, 2015, applications for rehearing were filed by Ohio Partners for Affordable Energy (OPAE) and Appalachian Peace and Justice Network (APJN) (jointly, OPAE/APJN); Industrial Energy Users-Ohio (IEU-Ohio); Interstate Gas Supply, Inc. (IGS); Ohio Manufacturers' Association Energy Group (OMAEG); Constellation NewEnergy, Inc. and Exelon Generation, LLC (jointly, Constellation); AEP Ohio; Ohio Consumers' Counsel (OCC); Environmental Law & Policy Center (ELPC), Ohio Environmental Council, and Environmental Defense Fund (collectively, Environmental Advocates); and Retail Energy Supply Association (RESA). Memoranda contra the various applications for rehearing were filed by Direct Energy Services, LLC and Direct Energy Business, LLC (jointly, Direct Energy), OPAE/APJN, Environmental Advocates, IEU-Ohio, Ohio Energy Group (OEG), OMAEG, FirstEnergy Solutions Corp. (FES), IGS, OCC, AEP Ohio, RESA, and Constellation on April 6, 2015.

{¶ 8} On April 22, 2015, the Commission issued an Entry on Rehearing, granting rehearing for further consideration of the matters specified in the applications for rehearing of the ESP 3 Order.

{¶ 9} By Second Entry on Rehearing dated May 28, 2015, the Commission granted, in part, and denied, in part, the applications for rehearing filed with respect to the ESP 3 Order. The Commission, however, deferred ruling on the assignments of error related to AEP Ohio's power purchase agreement (PPA) rider, which was approved in the ESP 3 Order as a placeholder rider set at zero.

{¶ 10} By Entry dated May 28, 2015, the Commission approved AEP Ohio's proposed compliance rates and tariffs, as filed on April 24, 2015, and supplemented on May 18, 2015, with the exception of the Company's proposed interruptible power-discretionary rider (IRP-D) tariffs. The Commission directed AEP Ohio to file, no later than June 26, 2015, revised IRP-D tariffs consistent with the Second Entry on Rehearing.

{¶ 11} On June 26, 2015, AEP Ohio filed its revised IRP-D tariffs, including three different versions for the Commission's consideration. OEG filed a letter in response to AEP Ohio's IRP-D compliance tariff filing on June 30, 2015.

{¶ 12} On June 29, 2015, OCC, OMAEG, and AEP Ohio filed applications for rehearing of the Second Entry on Rehearing. Memoranda contra the various applications for rehearing were filed by Direct Energy, RESA, IEU-Ohio, ELPC, OCC, OMAEG, and AEP Ohio on July 9, 2015.

{¶ 13} On July 20, 2015, OCC filed a motion to strike RESA's memorandum in response to AEP Ohio's application for rehearing. RESA filed a memorandum contra OCC's motion to strike on July 21, 2015. OCC filed a reply on July 28, 2015.

{¶ 14} By Third Entry on Rehearing dated July 22, 2015, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing of the Second Entry on Rehearing.

{¶ 15} The Commission has reviewed and considered all of the arguments raised in the applications for rehearing of the Second Entry on Rehearing, as well as all of the pending assignments of error regarding the PPA rider that were raised in the applications for rehearing of the ESP 3 Order. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

III. DISCUSSION

A. *PPA Rider*

1. APPLICATIONS FOR REHEARING OF THE ESP 3 ORDER

a. AEP Ohio's PPA Rider Proposal

{¶ 16} In these proceedings, AEP Ohio requested approval of a PPA rider that, as proposed, would flow through to customers the net benefit or cost from the Company's sale of its Ohio Valley Electric Corporation (OVEC) contractual entitlement into the PJM Interconnection, LLC (PJM) market less all associated costs. After thorough consideration of the evidence of record, the Commission concluded, in the ESP 3 Order, that AEP Ohio's proposed PPA rider would not provide customers with a sufficient financial hedge or any other benefit commensurate with the rider's potential cost. The Commission was not persuaded that AEP Ohio's PPA rider proposal would, in fact, promote rate stability or further the public interest. Noting that a properly conceived PPA rider may benefit customers, the Commission authorized AEP Ohio, pursuant to R.C. 4928.143(B)(2)(d), to establish a zero placeholder PPA rider and enumerated a number of factors to be considered in the evaluation of any future PPA rider filing seeking cost recovery. ESP 3 Order at 19-27.

{¶ 17} In its application for rehearing, AEP Ohio argues that it was unreasonable for the Commission to defer to another proceeding its consideration of including OVEC in the PPA rider. Because AEP Ohio believes that the record supports the rate stability benefits of the OVEC asset, the Company urges the Commission to reexamine its decision, in the ESP 3 Order, not to approve recovery of OVEC costs through the PPA rider. In support of its application for rehearing, AEP Ohio first claims that most of the witness testimony offered, including that of intervenor witnesses for OCC and OEG, acknowledged that a PPA rider including the OVEC asset would promote rate stability over the long term, offsetting the potential short-term costs. AEP Ohio points out that a

financial hedge, such as the PPA rider, is not a guaranteed price reduction but a stabilizer of otherwise volatile prices and that the hedge provided by the OVEC asset would be a positive and meaningful step toward that goal.

{¶ 18} OPAE/APJN, IEU-Ohio, IGS, and OMAEG disagree with AEP Ohio's characterization of the record evidence. OPAE/APJN claim that any long-term benefits of the OVEC PPA, if any, are at best speculative and illusory. IEU-Ohio and IGS argue that there is no dispute on the record that the OVEC PPA would result in a cost to customers during the term of the ESP, and, thus, there is no factual basis upon which the Commission could reasonably approve the OVEC PPA as a part of the ESP. IGS projects that, with proposed environmental regulations, OVEC will likely be less economical over time, causing the charge to customers to increase in conjunction with market rates. IEU-Ohio, IGS, and other intervenors argue that the record evidence does not support the rate stability benefits of the OVEC PPA. OMAEG goes further and argues that the record evidence does not support the establishment of the OVEC PPA or a placeholder PPA rider. IEU-Ohio notes that AEP Ohio's financial projections ranged from a $52 million charge to an $8 million credit during the ESP, which, at best, equates to $0.07 per megawatt hour over the ESP. The intervenors also assert that, even assuming that the OVEC PPA performs as predicted by AEP Ohio's best projection, OVEC costs are dependent on weather, economic conditions, and market prices. IEU-Ohio and RESA submit that the Commission correctly determined that AEP Ohio failed to demonstrate that the OVEC PPA is in the public interest or would provide rate stability.

{¶ 19} Constellation and RESA also submit that AEP Ohio's application for rehearing is a request for the Commission to reweigh the evidence. OCC notes that, overall, AEP Ohio contends that the Commission's decision on the OVEC PPA is unreasonable, not unlawful. OCC points out that the Commission is granted considerable latitude on questions of fact. Constellation argues that the Commission

should not make prudency findings as to the OVEC PPA, when it is not necessary, and notes that the Commission directed AEP Ohio, prior to filing its ESP application, to divest the OVEC contractual entitlement.

{¶ 20} Second, AEP Ohio contends that the Commission incorrectly concluded that the Company did not make a long-term commitment, beyond the term of ESP 3, to ensure the long-term benefits of the OVEC PPA for the Company's customers. AEP Ohio asserts that Company witness Vegas confirmed the Company's intentions.

{¶ 21} OCC argues that AEP Ohio's long-term commitment claims ignore the information deemed by the Commission as necessary to evaluate the propriety of a PPA rider. OCC also notes that no evidence of record supports the analysis of the PPA benefit or cost through 2040, when the OVEC contract is set to terminate. In their respective memoranda contra, IEU-Ohio and OMAEG note that AEP Ohio witness Vegas testified that the Company was not requesting that the Commission hold the PPA rider outside of the ESP and approve it for a longer term. IEU-Ohio, thus, argues that AEP Ohio's claim that the Company agreed to a long-term commitment is not supported by the record and should be rejected on rehearing. OMAEG asserts that AEP Ohio's testimony on this issue is sufficiently vague as to neither bind nor commit the Company. Further, OMAEG states that AEP Ohio's application does not itself bind the Company to a long-term commitment on the PPA rider. Accordingly, OMAEG states that the record supports the Commission's conclusion.

{¶ 22} Next, AEP Ohio submits that it is unreasonable for the Commission to defer approval of the OVEC PPA until the resolution of pending matters such as PJM's market reforms, environmental regulations, and federal litigation, as resolution of these issues will take a considerable amount of time, occur in a piecemeal fashion, and cause wholesale market prices to increase, making OVEC no longer available. AEP Ohio urges

the Commission to reverse its decision on OVEC to capture the long-term benefits offered by the OVEC PPA.

{¶ 23} The opposing intervenors, particularly OMAEG and OCC, submit that the resolution of PJM market reforms, environmental regulations, and federal litigation will provide clarity, which is positive for all ratepayers and, therefore, in the public interest, given that the PPA rider has been established as a non-bypassable mechanism. IGS states that the environmental regulations will disproportionately affect the economics of coal-fired facilities and PJM market rules could influence the level of capacity and energy compensation. IGS reasons that the Commission should not be expected to evaluate the impacts of the PPA rider blindly, as AEP Ohio requests. Constellation offers that AEP Ohio's reading of the ESP 3 Order is slanted. Constellation believes that the Commission did not find that the PPA rider would actually promote rate stability or that it is in the public interest. In addition, Constellation asserts that the Commission recognized that resolution of the PJM market reforms, environmental regulations, and federal litigation would impact the PPA rider, which is not a legal error. Accordingly, the intervenors submit that AEP Ohio's argument is not a proper basis for rehearing.

{¶ 24} Finally, AEP Ohio avers that the process of laddering and staggering SSO auctions only partially mitigates market rate volatility for non-shopping customers only. Additionally, the laddering and staggering process, according to AEP Ohio, does not address fundamental changes in market rates and does not include the risk premium reflected in the fixed-rate contracts offered by CRES providers. AEP Ohio reasons that this is particularly true where the vast majority of contracts offered to residential customers, just over 72 percent, are for terms of 12 months or less, causing shopping customers to incur generation rate changes of up to 48 percent at contract renewal. Therefore, AEP Ohio advocates that the OVEC PPA should not be summarily excluded

as an additional tool to address rate volatility for shopping, SSO, and governmental aggregation customers.

{¶ 25} As to the evidentiary support for the rate stability provided by the OVEC PPA, the opposing intervenors, particularly IEU-Ohio and OCC, reiterate that, contrary to the claims of AEP Ohio, the OVEC PPA would inject volatility into retail rates and fail to provide any benefit to customers. OCC argues that whatever minimal benefit the PPA rider may provide as a hedging mechanism is overshadowed by the potential cost of the rider. Further, the intervenors claim that shopping customers may elect other alternatives to manage the price risk associated with their energy requirements, including fixed-rate contracts of up to 36 months. OCC submits that AEP Ohio has raised no new arguments and, thus, rehearing should be denied.

{¶ 26} The Commission finds that AEP Ohio's arguments were already considered in our detailed discussion and decision regarding the PPA rider, as set forth in the ESP 3 Order. ESP 3 Order at 23-25. The Commission thoroughly evaluated the testimony presented by AEP Ohio and the intervenors regarding the projected costs and rate stability benefits of the Company's proposed PPA rider. We reasonably concluded that, although the magnitude of the impact of the PPA rider, as proposed by AEP Ohio in these cases, could not be known to any degree of certainty, the evidence of record reflects that the rider may result in a net cost to customers, with little offsetting benefit from the rider's intended purpose as a hedge against market volatility. ESP 3 Order at 23-24.

{¶ 27} With respect to the duration of AEP Ohio's commitment to the proposed PPA rider, the Commission specifically referenced Company witness Vegas' acknowledgement that the Company would be willing to consider a PPA rider that extends beyond the term of ESP 3. However, as we noted, Mr. Vegas also admitted that AEP Ohio did not request approval of the PPA rider for a period longer than the ESP

term and agreed that the Company decides whether to propose to continue any of its riders in a future ESP application. Aside from this testimony, the fact remains that AEP Ohio proposed a three-year ESP term. The Commission, therefore, appropriately concluded that the record does not reflect a clear and conclusive commitment by AEP Ohio to ensure that customers receive the alleged long-term benefits of the OVEC asset through the proposed PPA rider or even to propose to continue the rider in subsequent ESP proceedings. ESP 3 Order at 24.

{¶ 28} Further, the Commission reasonably noted that there are 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. ESP 3 Order at 24. However, we also acknowledged AEP Ohio's concerns regarding rate stability, recognizing that a PPA rider proposal, if properly designed, has the potential to supplement the benefits derived from the staggering and laddering of the SSO auctions, and to protect customers from price volatility in the wholesale market. ESP 3 Order at 25.

{¶ 29} Finally, the Commission affirms our decision, in the ESP 3 Order, not to approve AEP Ohio's recovery of any costs, including OVEC costs. We specifically noted that our decision, which was based solely upon the evidence in these proceedings, was not intended to preclude AEP Ohio from seeking recovery of its OVEC costs in a future filing, which the Company, in fact, did in Case No. 14-1693-EL-RDR, et al. Among other reasons, we reasonably recognized the uncertainty with respect to pending PJM market reforms, environmental regulations, and federal litigation, which AEP Ohio has likewise acknowledged in these proceedings. ESP 3 Order at 24, 26.

{¶ 30} The Commission notes that much progress has been made on these issues at the federal level. The Federal Energy Regulatory Commission (FERC) has approved PJM's Capacity Performance proposal in Docket ER15-623-000, et al. The United States

Environmental Protection Agency (U.S. EPA) has issued its Clean Power Plan rule. Although there remains considerable uncertainty about the viability of the rule, the Clean Power Plan has the potential to reshape the energy markets in this region in the future.

{¶ 31} In sum, we find that our decision not to approve, in the ESP 3 Order, AEP Ohio's recovery of any costs, including OVEC costs, was reasonable and supported by the record in these cases. AEP Ohio's request for rehearing on this issue should, therefore, be denied. We also find that AEP Ohio's request for rehearing is moot, in light of our decision in Case No. 14-1693-EL-RDR, et al. In those proceedings, the Commission modified and approved a stipulation, including authorization of AEP Ohio's request to include, in the placeholder PPA rider approved in the ESP 3 Order, the net impacts of the Company's OVEC contractual entitlement. *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al. (*PPA Case*), Opinion and Order (Mar. 31, 2016), Second Entry on Rehearing (Nov. 3, 2016).

b. Adoption of the Placeholder PPA Rider

{¶ 32} OCC, IGS, RESA, Constellation, and OPAE/APJN argue that it was unreasonable and unlawful for the Commission to authorize AEP Ohio to establish a zero placeholder PPA rider for the term of the ESP, when the Commission denied the OVEC PPA proposed in the ESP application. RESA and Constellation reason that the Commission lacks the authority under R.C. 4928.143 to adopt a placeholder PPA rider and that, once the Commission denied inclusion of the OVEC PPA, the PPA rider proposal should have been rejected outright. OCC contends that nothing in the record supports a zero placeholder rider and, thus, the ESP 3 Order violates R.C. 4903.09, as the Commission must base its decision on the record before it. IEU-Ohio claims that approval of the placeholder PPA rider is inconsistent with the Commission's rejection of other riders. IEU-Ohio argues that the Commission should not have established the zero placeholder PPA rider for the same reasons that it rejected AEP Ohio's request for

approval of the North American Electric Reliability Corporation compliance and cybersecurity rider. IEU-Ohio also argues that the Commission's authorization of the placeholder PPA rider is contrary to the requirements of R.C. 4928.143(B) and (C)(1). OPAE/APJN contend that the ESP 3 Order is unreasonable and unlawful to the extent that the Commission concluded that a PPA rider may act as a hedge against rate volatility. According to OPAE/APJN, the SSO auction structure provides a sufficient hedge against volatility, while a PPA rider is just as likely to move in the same direction as market prices as it is contrary to market prices. OPAE/APJN assert that shopping customers do not need the hedge offered by the PPA rider, as CRES providers are responsible for mitigating the risk for their customers with fixed-price contracts. Furthermore, OPAE/APJN claim that there are other more effective tools and legal means for the Commission to stabilize rates.

{¶ 33} In response to the opposing intervenors' arguments contesting the approval of the placeholder PPA rider, AEP Ohio asserts that it was permissible and necessary for the Commission to approve the rider as a placeholder, to the extent that the Commission does not approve the Company's OVEC proposal in these cases. AEP Ohio also implores the Commission to clarify that the ESP 3 Order addresses two sets of rate stability findings: one as to the PPA rider structure and design and the other associated with the specific forecasted effects of the OVEC PPA proposal. AEP Ohio submits that the two aspects of the ESP 3 Order address different issues and are not in conflict, as the intervenors assert. OEG offers that the potential implications of establishing the placeholder PPA rider, as raised by the opposing intervenors, are premature. FES argues that, as the Commission acknowledged in the ESP 3 Order, AEP Ohio has other pending PPA proceedings. Thus, FES reasons that the Commission did not err by approving a placeholder PPA rider as a component of the ESP.

{¶ 34} The Commission affirms our findings, as set forth in the ESP 3 Order, that a properly designed and implemented PPA rider proposal has the potential to supplement the benefits derived from the staggering and laddering of the SSO auctions; protect customers from market price volatility; and provide value for consumers through a significant financial hedge that truly stabilizes rates, particularly during periods of extreme weather. Consistent with the requirements of R.C. 4903.09, the basis for our decision to authorize the establishment of a placeholder PPA rider was explained in the ESP 3 Order, including citation to the evidence of record supporting our decision. ESP 3 Order at 25. Additionally, we have previously approved a placeholder rider, with an initial rate of zero, within an ESP. ESP 3 Order at 25, citing *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al. (*ESP 2 Case*), Opinion and Order (Aug. 8, 2012) at 24-25; *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Opinion and Order (Dec. 17, 2008) at 17; *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 08-935-EL-SSO, et al., Second Opinion and Order (Mar. 25, 2009) at 15. As discussed in greater detail below, R.C. 4928.143(B)(2)(d) provides the requisite statutory authority for a PPA rider, and nothing in the ESP statute precludes the Commission's approval of the rider as a placeholder, with cost recovery to be determined at a future date.

{¶ 35} With respect to the issue of rate stability, in the ESP 3 Order, the Commission concluded that, based on the record in these proceedings, we were not convinced that AEP Ohio's proposed PPA rider, which would have included only the net cost or benefit of the OVEC asset in the rider, would provide customers with sufficient benefits. We continued, however, to determine that a properly conceived PPA rider has the potential to supplement the benefits derived from the staggering and laddering of the SSO auctions, and to protect customers from price volatility. This finding was also based on the record in these proceedings. ESP 3 Order at 25. The Commission does not agree with the opposing intervenors' contention that there is an inherent inconsistency in these

respective findings. Rather, we achieved a reasonable and rational outcome that was fully explained and supported by the evidence of record. In short, the Commission denied the specific PPA rider proposal that was before us in these proceedings. However, the Commission also found that there is sufficient merit in the concept of a PPA rider, such that a placeholder rider should be approved, with the implementation details to be addressed in a future proceeding in which the Company would be required to justify any requested cost recovery. We note that the Commission adopted a similar approach with respect to AEP Ohio's proposed bad debt rider and purchase of receivables (POR) program, which was supported by several of the same intervenors that oppose our approval of the placeholder PPA rider. Having offered no compelling basis for rehearing, the opposing intervenors' requests for rehearing on this issue should be denied.

c. Statutory Requirements of R.C. 4928.143(B)(2)(d)

{¶ 36} IEU-Ohio, OMAEG, IGS, OHA, and OPAE/APJN, among other intervenors, argue that the Commission's conclusion that a PPA rider meets the requirements of R.C. 4928.143(B)(2)(d) to be included in an ESP is factually incorrect, unreasonable, and unlawful. IEU-Ohio and OPAE/APJN note that AEP Ohio has the burden of proof in these proceedings to assert in the ESP application or to offer testimony supporting the PPA rider as a limitation on customer shopping. IEU-Ohio and OPAE/APJN further note that AEP Ohio witness Allen admitted that the PPA rider is not a limitation on customer shopping. OPAE/APJN posit that the PPA rider is simply an additional charge on shopping customers' distribution bills, without providing any additional stability or reliability. OMAEG submits that AEP Ohio did not comply with the filing requirement of Ohio Adm.Code 4901:1-35-03(C)(9)(c). IEU-Ohio alleges that AEP Ohio did not meet the requirements of R.C. 4928.143(C)(1). As a result, the opposing intervenors argue that the Commission's reliance on OEG's testimony to establish this factor of R.C. 4928.143(B)(2)(d) is misplaced and against the manifest weight of the evidence. Further, the intervenors submit that this aspect of the ESP 3 Order fails to state

the Commission's rationale for its decision, respond to contrary positions, or support the Commission's decision with appropriate evidence, and, for these reasons, does not comply with the requirements of R.C. 4903.09.

{¶ 37} AEP Ohio argues that the Company first addressed the statutory basis for the PPA rider in its brief because legal matters are not the proper focus of expert testimony. AEP Ohio submits that its legal position was made clear and supported by OEG during briefing and oral argument. AEP Ohio adds that there is no burden of proof as to legal arguments and, if there is, the burden was met to the Commission's satisfaction. As to the claims regarding the filing requirement set forth in Ohio Adm.Code 4901:1-35-03(C)(9)(c), AEP Ohio states that the rule refers to a physical limitation on shopping and is, therefore, not applicable in this instance. AEP Ohio also notes that it did not present the PPA rider as a limitation on shopping in the ESP application and, therefore, the filing requirement does not apply. Nonetheless, AEP Ohio avers that OMAEG's argument elevates form over substance and should be rejected by the Commission. AEP Ohio also responds that the opposing intervenors' claims that the Commission's approval of the PPA rider is against the manifest weight of the evidence are merely transparent attempts to second guess the Commission's judgment and assessment of the PPA rider. AEP Ohio opines that it is apparent from the ESP 3 Order that the Commission understood the PPA rider as a separate and additional layer of stability via a financial hedge. Similarly, AEP Ohio submits that the intervenors' challenges as to the rate stability of the PPA rider are attempts by the intervenors to substitute their judgment for that of the Commission. AEP Ohio states that the design of the PPA rider will have the effect of stabilizing rates, as the Commission concluded in the ESP 3 Order, and is supported by the manifest weight of the evidence.

{¶ 38} IEU-Ohio claims that the Commission lacks authority under R.C. 4928.143(B)(2) to establish a non-bypassable generation-related rider, except as provided

by R.C. 4928.143(B)(2)(b) and (B)(2)(c), which relate to generating facilities under construction or constructed after January 1, 2009, that meet certain statutory requirements. Further, IEU-Ohio reasons that the General Assembly precluded the Commission's authorization of a non-bypassable generation-related rider under R.C. 4928.143(B)(2)(d).

{¶ 39} AEP Ohio responds that the inclusion of R.C. 4928.143(B)(2)(b) and (B)(2)(c) demonstrates that non-bypassable generation charges are permitted as part of an ESP. AEP Ohio contends that this is particularly evident, given that R.C. 4928.143(B)(2)(d) specifically authorizes non-bypassable charges and other related statutory provisions confirm the same result. FES argues that claims that generation costs are only recoverable through R.C. 4928.143(B)(2)(b) or (B)(2)(c) ignore the plain language of the statute and the precedent of the Ohio Supreme Court, as well as misconstrue the PPA rider. FES submits that an ESP may include more than one component under each permissible provision of R.C. 4928.143(B)(2)(d). Despite the position taken by the Commission in the ESP 3 Order, FES asserts that the PPA rider relates to default service for the same reasons that the Commission found that AEP Ohio's retail stability rider relates to default service offered to current and future non-shopping customers. AEP Ohio agrees with FES and asserts that, because a PPA rider would provide a default service for all customers regardless of whether they shop for generation service, the Commission should clarify on rehearing that the rider relates to default service, consistent with R.C. 4928.143(B)(2)(d).

{¶ 40} OHA suggests that the Commission accepted AEP Ohio's arguments regarding market volatility premised on the faulty notion that retail customers pay wholesale market prices or that retail customers are directly exposed to daily swings in the wholesale market. IEU-Ohio notes that AEP Ohio failed to present testimony on the relative volatility of retail electric prices as wholesale prices move. OHA asserts that the

harsh winter of 2014 was not reflected in retail rates. OHA further submits that, in addition to the regulatory lag issue associated with the PPA rider's charge or credit, there are other variable costs that would be collected via the PPA rider, such that the rider would not provide retail rate stability or certainty as required by R.C. 4928.143(B)(2)(d). OHA argues that R.C. 4928.143 does not permit the Commission to impose a PPA charge on all of AEP Ohio's customers in contravention of full competition. OCC submits that shopping and SSO customers have other means to hedge against the alleged price volatility that the PPA rider is supposed to address. OCC supports Staff's position that SSO rates are stabilized by laddering and staggering of the competitive bid procurement process and that shopping customers can secure long-term, fixed-price contracts of up to three years. OCC and Environmental Advocates contend that additional rate mitigation is not needed. Furthermore, according to OCC, shopping and SSO customers are not subject to the hourly and day-ahead markets, despite AEP Ohio's claims. Noting that the PPA rider would be subject to an annual true-up process, the opposing intervenors contend that the PPA rider would not, in theory or otherwise, have the effect of stabilizing or providing certainty for retail customers.

{¶ 41} In response to these arguments, FES points out that the placeholder PPA rider has no cost impact and causes no prejudice, at this time, to any customer. AEP Ohio argues that there is no evidence that CRES providers will provide shopping customers with long-term, fixed-price contracts or that the staggering and laddering of SSO auction products can address fundamental market changes over the long term. AEP Ohio claims that CRES providers can change or eliminate their offerings on a whim, irrespective of customers' desires. AEP Ohio also submits that the intervenors ignore the significant and ongoing volatility of market rates as demonstrated in the record, which shows that, even with the SSO auction design tools of laddering and staggering, auction clearing prices still follow market price changes. AEP Ohio asserts that it would be misguided to conclude that an additional tool for rate mitigation should be categorically excluded,

especially given the limitations of laddering and staggering, which only affect rates for SSO customers. FES agrees with AEP Ohio that staggering and laddering should be supplemented with other mitigation measures. FES also notes that CRES contracts are not being offered for terms longer than 36 months. FES argues that shopping customers are exposed to market risk at the end of their contracts or upon their return to SSO service. Thus, FES reasons that a properly structured PPA rider will provide price stability for all customers, including shopping customers under short-term contracts.

{¶ 42} Noting that the Commission accepted the PPA rider as a generation rate, RESA and OHA reason that, pursuant to R.C. 4928.01(A)(27) and 4928.03, generation is a competitive retail electric service and AEP Ohio is limited to providing non-competitive utility services, except as part of bundled, default service. Accordingly, RESA and OHA argue that the PPA rider is not authorized under R.C. 4928.143(B)(2)(d).

{¶ 43} AEP Ohio responds that R.C. 4928.143(B)(2)(d) refers to "electric generation service" and "retail electric generation service," not "competitive retail electric service." AEP Ohio notes that the statute uses the phrase "retail electric service," which is a broader phrase that includes, among other things, generation service, citing R.C. 4928.01(A)(27). AEP Ohio further notes that the Supreme Court of Ohio has held, in the context of affirming a generation-related charge as part of an ESP, that generation falls within the definition of "retail electric service" for purposes of R.C. 4928.143(B)(2)(d). *Industrial Energy Users-Ohio v. Pub. Util. Comm.*, 138 Ohio St.3d 448, 2014-Ohio-462, 8 N.E.3d 863, ¶32. AEP Ohio points out that R.C. 4928.14 requires the Company to provide service to shopping customers under its SSO, in the event of a CRES provider's default, while R.C. 4928.141 requires that an ESP be formulated and approved, in accordance with R.C. 4928.143. AEP Ohio also cites, as another example, the corporate separation provisions of R.C. 4928.17, which the Company emphasizes are explicitly subordinate to the ESP statute. Further, AEP Ohio notes that the intervenors' arguments are in conflict

with R.C. 4928.143(B)(2)(b) and (B)(2)(c). On that basis, AEP Ohio reasons that nothing in R.C. Chapter 4928 prohibits the Company from providing generation service to shopping customers as part of an ESP.

{¶ 44} According to OCC, IEU-Ohio, IGS, and OMAEG, the PPA rider fails to meet the second and third criteria of R.C. 4928.143(B)(2)(d). Specifically, the intervenors assert that the PPA rider is not a limitation on customer shopping and does not have the effect of stabilizing or providing certainty regarding retail electric service. OCC, IGS, OMAEG, and other intervenors opine that the concept of a financial limitation on shopping is illogical, given that the PPA rider is non-bypassable and contrary to the state policy in favor of a robust competitive electric market. OCC submits that the Commission's interpretation of the statute to include financial limitations on customer shopping is contrary to rules of statutory construction, pursuant to R.C. 1.42 and demonstrated legislative intent. Furthermore, OCC argues that a financial hedge provision is not expressly listed in R.C. 4928.143(B)(2)(a) to (B)(2)(i) and is, therefore, not a permissible provision of an ESP.

{¶ 45} AEP Ohio avers that OCC's argument is overly complicated and inaccurate, as the plain meaning of the term "limitation" includes a financial limitation. According to AEP Ohio, it is apparent from R.C. 4928.143(B)(2)(d) that the General Assembly intended to grant the Commission broad latitude in adopting provisions as part of an ESP. AEP Ohio offers that its interpretation is bolstered by the General Assembly's use of the phrase "relating to" in the statute. FES declares that the PPA mechanism relates to default service available to current and future non-shopping customers. Thus, FES avers that the second criterion of R.C. 4928.143(B)(2)(d) is met.

{¶ 46} Several intervenors allege that the PPA rider will adversely affect the overall benefits of fixed-price generation contracts for which customers bargained. In addition, IGS notes that, although the Commission found that AEP Ohio's proposed PPA

rider may result in a net cost with little offsetting benefit as a hedge, the Commission nevertheless concluded that a PPA rider could have the effect of stabilizing or providing certainty regarding retail electric rates. IGS argues that, because it is impossible to know in advance whether the PPA rider will result in a charge or a credit, it is impossible to conclude that the PPA rider will have the effect of stabilizing or providing certainty regarding retail electric rates. Similarly, OMAEG disputes that the PPA rider, whether a credit or a charge, is associated with the provision of retail electric generation service. The intervenors argue that, until AEP Ohio meets its burden to demonstrate that the proposed PPA rider will actually have the effect of stabilizing or providing certainty regarding retail electric generation service, the Commission's decision to authorize the rider, even as a placeholder, is unreasonable, erroneous, and unlawful.

{¶ 47} AEP Ohio acknowledges that, from the beginning of these proceedings, it has admitted that the PPA rider would not physically supply Ohio consumers with electric power. AEP Ohio argues, however, that nothing in R.C. 4928.143(B)(2)(d) requires physical delivery of power as a component of a rate stability rider. FES agrees with the ESP 3 Order's conclusion that a properly designed PPA rider can have the effect of stabilizing or providing certainty regarding retail electric service, which FES notes is consistent with prior decisions finding that the mitigation of SSO price increases satisfies the statutory requirement pertaining to stability of retail electric service.

{¶ 48} Following careful consideration of the applications for rehearing, the Commission again finds that our authorization of a PPA rider is permitted by R.C. 4928.143(B)(2)(d). In the ESP 3 Order, the Commission thoroughly analyzed the three requirements of R.C. 4928.143(B)(2)(d), concluding that the statute provides the requisite authority for a PPA rider. Specifically, we determined that, consistent with R.C. 4928.143(B)(2)(d), a PPA rider would: consist of a charge; constitute a financial limitation on customer shopping for retail electric generation service; and have the effect of

stabilizing or providing certainty regarding retail electric service. ESP 3 Order at 20-22. In finding that the second criterion was met, we noted that a PPA rider would function as a financial restraint on complete reliance on the retail market for the pricing of retail electric generation service. The Commission, therefore, reasonably and rationally determined that a properly designed and implemented PPA rider would constitute a financial limitation on customer shopping for retail electric generation service. ESP 3 Order at 22. We also determined that the third criterion was satisfied, because a PPA rider would provide a generation-related hedging service that stabilizes retail electric service, by smoothing out the market-based rates paid by all customers. ESP 3 Order at 21; *see also In re Duke Energy Ohio, Inc.*, Case No. 14-841-EL-SSO, et al., Opinion and Order (Apr. 2, 2015) at 43-45; *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 108-109.

{¶ 49} Consistent with R.C. 4903.09, the Commission fully set forth the basis, including citations to the supporting evidence of record, for our determination that R.C. 4928.143(B)(2)(d) provides the necessary statutory authority for a PPA rider. We find no merit in the opposing intervenors' claim that AEP Ohio failed to sustain its burden of proof under R.C. 4928.143(C)(1). All evidence admitted into the record may be used by AEP Ohio to meet its burden of proof or by the Commission to reach its decision on the Company's ESP application. In finding that a PPA rider constitutes a financial limitation on customer shopping, we specifically noted that we were persuaded by the testimony of OEG witness Taylor, which, along with all of the other evidence of record, is a proper basis for our decision. ESP 3 Order at 22. Further, although Ohio Adm.Code 4901:1-35-03(C)(9)(c)(i) requires an ESP application to include a descriptive rationale and other information for any component of the ESP that would have the effect of limiting customer shopping, AEP Ohio did not propose the PPA rider, at the time of the filing of its ESP application, as a limitation on customer shopping for retail electric generation service and, therefore, the Company was not required to comply with the rule.

{¶ 50} In response to the assertion that R.C. 4928.143(B)(2)(d) does not permit the Commission to authorize a non-bypassable generation-related rider, we find no such limitation in the language used within that specific provision or the ESP statute taken in its entirety. Neither do we find any provision elsewhere in R.C. Chapter 4928 that prohibits AEP Ohio from providing a generation service to shopping customers as part of an ESP, as long as such service is consistent with the terms of R.C. 4928.143(B)(2)(d). Further, R.C. 4928.143(B)(2)(d) references only "limitations on customer shopping" and, therefore, does not preclude authorization of a charge constituting a financial limitation on customer shopping, contrary to OCC's assertion. Additionally, we find that arguments questioning the rate stabilizing effect of a PPA rider should be rejected, as the intervenors essentially seek to substitute their judgment and view of the evidence for the Commission's careful and balanced consideration of the third criterion of R.C. 4928.143(B)(2)(d). As discussed above, although we declined to approve the specific PPA rider proposal filed for our consideration in these proceedings, we nevertheless found, based on the record, that that there may be value for consumers in a properly conceived PPA rider proposal. Such a proposal would provide for a significant financial hedge that stabilizes rates and protects all customers from market-based price volatility, including shopping customers with fixed-rate contracts. ESP 3 Order at 25. Having already fully considered the opposing intervenors' arguments on the question of rate stability, as well as thoroughly explained our analysis of R.C. 4928.143(B)(2)(d), the Commission finds that requests for rehearing on these issues should be denied.

d. Corporate Separation Provisions of R.C. 4928.17

{¶ 51} IGS insists that the PPA rider unlawfully allows AEP Ohio to evade the corporate separation requirements contained in R.C. 4928.17. Constellation and RESA aver that the ESP 3 Order is unlawful to the extent that it approves a PPA rider without prior Commission approval of a corporate separation plan under R.C. 4928.17(A). RESA contends that the OVEC PPA was not provided to the Commission for its review, and,

therefore, the Commission cannot determine whether the agreement extends any undue preference or advantage, as required by R.C. 4928.17(A)(3).

{¶ 52} AEP Ohio responds that the PPA rider does not violate the corporate separation provisions of R.C. 4928.17. Noting that the corporate separation statute explicitly subordinates its requirements to anything that is authorized in R.C. 4928.143, AEP Ohio argues that the Commission's approval of the PPA rider under R.C. 4928.143 trumps any flawed claim that the rider independently violates the corporate separation statute.

{¶ 53} As to claims regarding the Commission's legal authority to review the terms of the agreement underlying the PPA rider, FES answers that such agreements, which are under the jurisdiction of FERC, have existed concurrently with R.C. 4928.17 since it was enacted, without any assertion that the agreements violate state corporate separation provisions. As an example, FES cites its PPA with the FirstEnergy operating companies to support their prior rate plans from 2006 to 2008.

{¶ 54} The Commission finds that the opposing intervenors' arguments regarding the corporate separation requirements of R.C. 4928.17 lack merit. We agree that R.C. 4928.17 sets forth a number of corporate separation provisions that generally apply to AEP Ohio as an electric utility. However, the statute mandates certain exceptions, providing that an electric utility's compliance is required, "[e]xcept as otherwise provided in sections 4928.142 or 4928.143 * * * of the Revised Code." Having determined that a PPA rider may be authorized pursuant to R.C. 4928.143(B)(2)(d), the Commission finds that the opposing intervenors' arguments regarding R.C. 4928.17 are misplaced under the circumstances and should, thus, be denied.

e. State Policy of R.C. 4928.02

{¶ 55} Numerous intervenors claim that the ESP 3 Order is unreasonable and unlawful in its finding that a PPA rider is consistent with the state policy set forth in R.C. 4928.02(A) and (H). OPAE/APJN aver that, given the Commission's determination that the proposed PPA rider would not benefit customers, the Commission cannot find that a PPA rider would ensure the availability to consumers of reasonably priced retail electric service, pursuant to R.C. 4928.02(A).

{¶ 56} IEU-Ohio, OCC, IGS, Environmental Advocates, RESA, Constellation, and OPAE/APJN allege that the PPA rider would result in AEP Ohio's distribution customers subsidizing the OVEC generating units, eliminating any risk for the Company's shareholders, in violation of R.C. 4928.02(H). The intervenors contend that the PPA rider would collect OVEC generation costs from shopping and non-shopping customers, even when the rider is a credit to customers, because the cost of OVEC generation includes a profit component. RESA and Constellation contend that the Commission's rationale that the PPA rider would not recover generation-related costs through distribution- or transmission-related rates overlooks the fact that the PPA rider would be imposed on all ratepayers and that shopping customers only pay AEP Ohio for distribution and transmission services. Environmental Advocates note that R.C. 4928.06 requires the Commission to ensure that the state policy set forth in R.C. 4928.02(H) is effectuated and, therefore, regardless of the Commission's determination of its authority under R.C. 4928.143(B)(2)(d), it was unlawful and unreasonable for the Commission to approve the PPA rider. Environmental Advocates reason that defining the PPA rider as merely a generation-related or distribution-related charge is an insufficient inquiry by the Commission, which must determine whether the service can stand on its own in the competitive market. Several intervenors believe that the PPA rider would be a distribution charge, but regardless of how the rider is classified, OCC and IEU-Ohio aver that the Commission erred by failing to follow its decision in Case No. 10-1454-EL-RDR.

{¶ 57} For its part, AEP Ohio argues that the PPA rider does not create an anti-competitive subsidy prohibited by R.C. 4928.02(H). AEP Ohio points out that the intervenors' arguments are based on the flawed premise that the PPA rider is a distribution charge simply because it is non-bypassable. AEP Ohio concludes that, because the PPA rider is a generation rate and not a distribution rate, R.C. 4928.02(H) does not apply.

{¶ 58} FES responds that the PPA rider does not violate R.C. 4928.02(H) for three reasons. First, FES contends that the PPA rider is authorized by R.C. 4928.143(B)(2)(d) and, thus, is permissible as a component of an ESP, notwithstanding any alleged conflict with R.C. 4928.02. Second, FES states that R.C. 4928.02 sets forth guidelines, not requirements. Finally, FES declares that R.C. 4928.02(H) is not in conflict with the PPA rider, as the rider would not generate any distribution revenues and is not a charge for distribution service. FES offers that any revenues generated by the PPA rider would not be used to subsidize retail generation service.

{¶ 59} In the ESP 3 Order, the Commission found that our limited adoption of the placeholder PPA rider was consistent with the state policy specified in R.C. 4928.02 and, in particular, with our obligation under R.C. 4928.02(A) to ensure the availability to consumers of reasonably priced retail electric service. We also rejected claims that a PPA rider is contrary to R.C. 4928.02(H) or inconsistent with our decision in Case No. 10-1454-EL-RDR, in which AEP Ohio sought to collect generation-related plant closure costs through a distribution rider. ESP 3 Order at 26. Unlike the present proceedings, the Commission specifically determined that the plant closure costs in question were not authorized under any of the provisions of R.C. 4928.143. *In re Ohio Power Co.*, Case No. 10-1454-EL-RDR, Finding and Order (Jan. 11, 2012) at 18-19. Here, we affirm our prior findings and reiterate, as addressed above, that a PPA rider may be authorized pursuant to R.C. 4928.143(B)(2)(d). We point out again that, although we did not approve AEP

Ohio's PPA rider, as proposed in these cases, we did find that a properly conceived PPA rider may provide significant customer benefits. ESP 3 Order at 25. Further, the Commission finds that the opposing intervenors' arguments are premature, to the extent that they pertain to AEP Ohio's recovery of costs through the PPA rider. As we previously emphasized, the Commission has not approved any cost recovery, including OVEC costs, in these cases. ESP 3 Order at 25, 26. Accordingly, requests for rehearing on this issue should be denied.

f. Compliance with Other Statutes

{¶ 60} IEU-Ohio, OCC, and OPAE/APJN submit that the PPA rider violates R.C. 4928.38 and 4928.39, because assigning the costs of above-market generation to all distribution customers would make distribution customers responsible for legacy generation costs after the period for transition cost recovery has ended. Further, OCC submits that, contrary to R.C. 4903.09, the ESP 3 Order fails to state why the Commission concluded that the PPA rider does not violate R.C. 4928.38. IEU-Ohio also claims that approval of the PPA rider allows AEP Ohio to violate the terms of its electric transition plan agreement.

{¶ 61} AEP Ohio responds that the PPA rider does not involve recovery of stranded generation costs in violation of R.C. 4928.39. AEP Ohio points out that the evidence of record reflects that there is a long-term benefit rather than cost associated with the OVEC asset. AEP Ohio asserts that, in any event, the intervenors raise nothing on rehearing that the Commission has not already fully considered and rejected in the ESP 3 Order.

{¶ 62} According to FES, AEP Ohio is not attempting to recover legacy generation costs or otherwise seeking transition revenues through the PPA rider. FES states that the PPA rider would provide retail price stability and, therefore, there is no violation of R.C. 4928.38 or 4928.39.

{¶ 63} IEU-Ohio argues that the ESP 3 Order is unlawful in its approval of the PPA rider because it allows AEP Ohio to seek to increase its compensation for wholesale generation-related services. According to IEU-Ohio, the Commission's jurisdiction is limited to retail electric services, as evidenced by R.C. 4905.02, R.C. 4905.03, and R.C. Chapter 4928. Therefore, IEU-Ohio reasons that the Commission's jurisdiction does not include wholesale generation-related electric services, including the establishment of a PPA rider.

{¶ 64} In response, AEP Ohio asserts that the predicate of IEU-Ohio's argument is incorrect because the PPA rider does not involve the establishment of a wholesale rate by the Commission. AEP Ohio notes that, although the PPA is a wholesale contract subject to FERC's jurisdiction under the Federal Power Act (FPA), the PPA rider would pass through the costs and benefits of the PPA through a retail rate.

{¶ 65} The Commission rejected, in the ESP 3 Order, the claim that a PPA rider would permit AEP Ohio to collect untimely transition costs, in violation of R.C. 4928.38. We noted that a PPA rider would constitute a rate stability charge that may properly be authorized under R.C. 4928.143(B)(2)(d). ESP 3 Order at 26. Specifically, the Commission determined that a properly conceived PPA rider has the potential to provide a significant financial hedge that stabilizes retail rates and protects customers from the price volatility that occurs in the market. Consistent with our prior decisions, we reaffirmed that rate stability is an essential component of the ESP. ESP 3 Order at 25, citing *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 08-917-EL-SSO, et al., Opinion and Order (Mar. 18, 2009) at 72; *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 32, 77.

{¶ 66} Because we have not approved the recovery of any costs through the placeholder PPA rider in these cases, the opposing intervenors' contentions that the Commission has authorized the receipt of transition or equivalent revenues are without merit. Neither do we find any merit in IEU-Ohio's claim that a PPA rider would permit

AEP Ohio to increase its compensation for wholesale generation-related services. The Commission expressly determined that a PPA rider would constitute a financial limitation on customer shopping for retail electric generation service. ESP 3 Order at 20-22. Accordingly, requests for rehearing on these issues should be denied.

g. Preemption

{¶ 67} Several intervenors, including OCC, IGS, RESA, Constellation, IEU-Ohio, and OPAE/APJN, contend that the PPA rider violates federal law. Constellation avers that, at a minimum, the Commission should have stated in the ESP 3 Order that, under federal law, FERC and PJM have primary responsibility for reliability and pricing for wholesale transactions. OCC argues that the Commission's failure to rule on the federal preemption claims violates R.C. 4903.09. IEU-Ohio, OCC, and OPAE/APJN submit that the issue of federal preemption is fundamental to the adoption of a PPA rider and cannot be dismissed. IGS and IEU-Ohio argue that the Commission has the authority and the responsibility to determine whether it has the jurisdiction to approve a proposal advanced in a Commission proceeding and has previously done so in other cases. The intervenors reason that the PPA rider would subsidize the wholesale generation rates of AEP Ohio's affiliate and corrupt the regional wholesale generation market, thus, intruding on FERC's exclusive jurisdiction. OCC, RESA, and IGS claim that the PPA rider is subject to exclusive federal jurisdiction based on field and conflict preemption. The intervenors argue that it was unjust and unreasonable for the Commission to approve the PPA rider without considering applicable federal case law, citing *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014) (*Nazarian*) and *PPL EnergyPlus, LLC v. Solomon*, 766 F.3d 241 (3d Cir. 2014) (*Solomon*).[1]

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1 On April 19, 2016, the United States Supreme Court affirmed *Nazarian*. *Hughes v. Talen Energy Marketing, LLC*, 136 S.Ct. 1288 (2016).

{¶ 68} AEP Ohio disputes the intervenors' claims that the PPA rider is preempted by the FPA. Specifically, AEP Ohio argues that the FPA expressly preserves the state's authority to set the retail rates paid by the Company's customers and that the PPA rider falls squarely within that retail ratemaking authority. Emphasizing that the PPA rider is starkly different from the state programs at issue in *Nazarian* and *Solomon*, AEP Ohio contends that the intervenors' preemption arguments offer no grounds for reconsideration of the Commission's approval of the PPA rider. AEP Ohio adds that the Commission was well within its discretion to decline to address the preemption arguments.

{¶ 69} FES reasons that the PPA rider is fundamentally different from the programs at issue in *Nazarian* and *Solomon*. The fundamental issue before the Commission, according to FES, is whether the PPA rider interferes with FERC's exclusive jurisdiction to review all rates and charges for the sale of electric energy under Section 205 of the FPA. FES argues that the PPA rider would not impose any obligations on the sale of wholesale capacity or energy or require any entity to bid into or clear the PJM capacity auction, like the programs at issue in *Nazarian* and *Solomon*. FES concludes that the PPA rider would not set wholesale prices and is not preempted by the FPA, as a mere impact on the wholesale market does not equal preemption.

{¶ 70} In the ESP 3 Order, the Commission acknowledged the parties' arguments on the issue of federal preemption. We declined, however, to address constitutional issues, noting that, under the specific facts and circumstances of these proceedings, such issues are best reserved for judicial determination. ESP 3 Order at 26. We find no error in our decision to defer questions of constitutionality for determination by the courts, and we explained the basis for our decision, as required by R.C. 4903.09. Therefore, to the extent that the intervenors seek a ruling from the Commission on the question of preemption, we reiterate that their arguments should be reserved for judicial

determination and, therefore, find that requests for rehearing on this issue should be denied.

h. Future PPA Rider Filing and the Commission's List of Factors

{¶ 71} IEU-Ohio argues that the future PPA rider filing procedure and the four factors established by the Commission in the ESP 3 Order constitute a rule, pursuant to R.C. 119.01, promulgated without adherence to the requirements of R.C. Chapter 119. IEU-Ohio contends that the Commission's administrative discretion to decide whether to proceed by rule or adjudication does not apply where a statute directs that rules be promulgated to carry out particular actions, as in the case of an ESP. IEU-Ohio contends that Ohio Adm.Code 4901:1-35-03(C)(9)(c), which applies to ESP filings, does not provide for post-ESP approval of a filing to set a charge to recover what IEU-Ohio characterizes as above-market costs. IEU-Ohio claims that the ESP 3 Order significantly broadens the current ESP rule and, therefore, the PPA rider process and filing requirements must be invalidated pursuant to R.C. 119.02. Additionally, IEU-Ohio argues that, given the lack of definition of the factors and the weight to be given to them, the basis for approving the future PPA rider filing is void for vagueness, allows the Commission to engage in an arbitrary process, and fails to bear a direct relationship to matters within the Commission's authority to regulate. IEU-Ohio also submits that the Commission's factor requiring AEP Ohio to address the necessity of the generating facility, in light of future reliability concerns, encroaches on FERC's exclusive jurisdiction to regulate interstate transmission and bulk power system reliability under Section 215 of the FPA.

{¶ 72} OCC argues that the list of factors included in the ESP 3 Order is incomplete and unreasonably biased in favor of approval of the PPA rider. OCC proposes that the list be amended to include factors that facilitate the Commission's assessment of the PPA rider's benefits or detriments to customers. OCC proposes to include the following factors: the total costs of the PPA rider to customers (including bill

impact statements through the entire period that the PPA is in effect); the PPA's impact on PJM's competitive markets, including short-term markets, day-ahead and real-time markets, long-term markets, and the capacity market, as well as generation facility investment decisions; the magnitude and value of the hedge to customers and its expected impact on the stability of customers' rates; evidence that customers would be willing to pay higher rates in return for a modest increase in rate stability; in conjunction with the economic development impact of plant closure, the impact on customers of increased rates to support the PPA rider; environmental impacts of subsidizing select plants; incentives to control costs; incentives to maximize market value or wholesale generation revenues; and incentives to make rational end-of-life decisions.

{¶ 73} Constellation offers that the ESP 3 Order is unreasonable to the extent that the Commission's enumerated factors do not direct that the future PPA application state whether the PPA is the lowest cost alternative, including non-affiliated power plants. Constellation submits that this criterion will avoid claims of corporate separation issues and the appearance of impropriety, provide for greater transparency, and avoid an unduly discriminatory and preferential PPA. Further, Constellation states that certain factors require additional detail and more explanation, including a statement as to whether the generating plant cleared the most recent PJM capacity auction and as to the type of capacity resource, as well as the impact of PJM's Capacity Performance product. Constellation argues that the Commission erred by not specifically requiring, among the PPA factors, a demonstration that: the ratepayer benefits of the PPA are not outweighed by the risks, particularly Capacity Performance penalties; the generating plant associated with the PPA will provide affirmative environmental value to Ohio consumers, including a description of any low carbon or other environmental benefits of the generating plant and the generating plant's value to Ohio under state and federal environmental policies; and the generating plant will retire, absent the PPA rider, with a reliability study conducted by a third party showing the reliability need of the generating plant based on

commonly accepted local or regional reliability standards. Constellation adds that the Commission should require that a PPA application premised on reliability must be temporary in nature and address the necessity of retaining certain generating plants until more permanent solutions are in place.

{¶ 74} Environmental Advocates request that the Commission revise the second factor to require that AEP Ohio offer evidence regarding why its proposed PPA is necessary to address a stated concern regarding instability or uncertainty in retail electric service. Environmental Advocates also request that the Commission add a factor to require AEP Ohio to provide evidence that it evaluated alternatives through a competitive procurement process, including a request for proposals or competitive bidding process, or other protections against self-dealing, to enable the Commission to determine whether the future PPA application complies with R.C. 4928.02, 4928.17, and 4905.22.

{¶ 75} OMAEG states that the Commission arbitrarily selected certain factors and failed to require AEP Ohio to address regional factors that will affect the wholesale energy and capacity markets as part of any future PPA filing. OMAEG proposes that the Commission adopt the following factors to be considered in a future PPA application: 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 plant's 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; and the impact on the generating plant if PJM is required to modify its dispatch order due to environmental constraints or regulations.

{¶ 76} In response, AEP Ohio asserts that, in the ESP 3 Order, the Commission reasonably included guidelines for any future PPA rider proceedings and that there is no need to supplement the Commission's guidelines with the intervenors' collective list of additional factors. AEP Ohio contends that the Commission's guidelines are advisory in nature and will facilitate additional consideration of any PPA sought to be included in the PPA rider in the future, whereas the intervenors' proposed additions and modifications to the guidelines are counterproductive and designed to undermine or defeat the PPA rider. AEP Ohio also maintains that the Commission's treatment of the PPA rider did not create a rule and, thus, the requirements of R.C. Chapter 119 do not apply, contrary to IEU-Ohio's position. Neither does AEP Ohio agree with IEU-Ohio's claim that the Commission's non-binding list of factors is void for vagueness. AEP Ohio points out that IEU-Ohio failed to explain what additional information is needed to understand the factors or what ambiguity should be resolved by the Commission. AEP Ohio adds that it is clear from their arguments that the parties have not found it difficult to understand the Commission's list of factors.

{¶ 77} FES encourages the Commission to ignore the opposing intervenors' requests to include factors focused on the impact of the PJM wholesale market or transmission reliability measures as beyond the scope of the evaluation required by R.C. 4928.143 and counter to Ohio's need to maintain resource diversity. FES submits that the PPA rider is authorized based on the Commission's determination of the net benefits expected to accrue to retail customers and that it is not necessary that the rider provide system reliability or additional economic benefits. According to FES, arguments that the Commission's factors are vague lack merit, as the Commission's review is limited by the requirements of R.C. 4928.143(B)(2)(d) or, if applicable, by R.C. 4928.143(B)(2)(i) for

economic development and job retention programs. FES avers that the factors proposed by Environmental Advocates, OCC, and Constellation are part and parcel of the Commission's consideration of whether the PPA rider will provide a net benefit to retail customers and are not a basis for rehearing.

{¶ 78} The Commission, in the ESP 3 Order, directed AEP Ohio to address, at a minimum, several factors in its future PPA rider filing: financial need of the generating plant; necessity of the generating facility, in light of future reliability concerns, including supply diversity; description of how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations; and the 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 noted that we would balance, but not be bound by, these factors in determining whether to approve AEP Ohio's future request for cost recovery. ESP 3 Order at 25.

{¶ 79} As specified in the ESP 3 Order, the enumerated factors were not meant to be an exhaustive list of the issues to be considered by the Commission in any future PPA rider proceeding. Although the list of factors identifies specific matters of broad concern to the Commission, it was not intended to limit the scope of any future PPA proceeding, limit the issues raised by intervenors, or bias the outcome of such proceeding in favor of AEP Ohio's position. Neither does the list of factors or the future filing process constitute an administrative rulemaking, as IEU-Ohio contends.[2] Consistent with our broad discretion to manage our dockets, *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 384 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 433 N.E.2d 212 (1982), we routinely set forth directives in our orders that are intended to

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2 We also note that, pursuant to R.C. 119.01(A)(1), R.C. Chapter 119 generally does not apply to the Commission.

instruct future filings of the electric utilities. *See, e.g.*, ESP 3 Order at 27 (directing AEP Ohio to file annual status reports regarding the transfer of the OVEC asset). Additionally, although Ohio Adm.Code 4901:1-35-03(C) specifies the filing requirements for an ESP application, the rule does not limit the Commission's authority to subsequently determine proper cost recovery for a rider initially approved in an ESP proceeding and, as noted in the ESP 3 Order, the Commission has previously approved a zero placeholder rider within an ESP. ESP 3 Order at 25, citing *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 24-25; *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Opinion and Order (Dec. 17, 2008) at 17; *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 08-935-EL-SSO, et al., Second Opinion and Order (Mar. 25, 2009) at 15.

{¶ 80} We find no error in having provided guidance to AEP Ohio through a list of factors for future consideration or in having identified only those particular factors set forth in the ESP 3 Order. Essentially, the opposing intervenors attempt to substitute their judgment for the Commission's. In any event, nothing in the ESP 3 Order precludes the intervenors from fully participating in any future PPA rider proceeding and bringing their own relevant considerations to the Commission's attention. In fact, from the applications for rehearing, it is apparent that many of the factors on the lists proposed by the intervenors are already encompassed by those on the Commission's own list. Finally, we do not agree with certain intervenors' contentions that the Commission's list of factors is vague, arbitrary, and outside the bounds of our jurisdiction. Again, the factors were merely intended to note several issues of concern for AEP Ohio to address in any future PPA rider filing. The Commission would then consider, but not be bound by, the factors enumerated in the ESP 3 Order, in the course of weighing all of the evidence of record in that future proceeding. In short, we find that the opposing intervenors' arguments lack merit and that rehearing on this issue should, thus, be denied.

i. Bypassability of the PPA Rider

{¶ 81} Environmental Advocates maintain that there is no reason that the PPA rider must be non-bypassable and that, by adopting the PPA rider for default service customers only, the Commission would allow customers the option to shop, if they wish to pursue an alternative hedging mechanism or to avoid any hedge, in support of the state policy set forth in R.C. 4928.02(B), (C), and (D). Environmental Advocates note that the Commission has previously concluded that requiring customers to pay twice for a generation-related service undercuts the development of the competitive market for generation. Environmental Advocates request that the Commission revisit the bypassability issue and offer some adequate explanation as to why the PPA rider should be unavoidable for shopping customers.

{¶ 82} In response, AEP Ohio asserts that any cost associated with the stability afforded by the PPA rider will be separate and apart from any stability that shopping customers purchase from their CRES providers. AEP Ohio notes that customers will receive two different services that provide additional and separate layers of protection. AEP Ohio, therefore, disputes Environmental Advocates' claim that customers will pay twice for the same hedging service.

{¶ 83} We find that Environmental Advocates' position on the issue of bypassability of the PPA rider has already been thoroughly considered by the Commission. In the ESP 3 Order, we explained that the impact of a PPA rider is intended, in theory, to stabilize the price of retail electric service, by smoothing out fluctuations in the market-based rates paid by shopping, as well as non-shopping customers, and that all customers would, thus, benefit from the rider's hedging mechanism, regardless of whether they are served by a CRES provider or the SSO. ESP 3 Order at 21, 22. We affirm our finding that the PPA rider should be non-bypassable and, accordingly, Environmental Advocates' request for rehearing on this issue should be denied.

j. Severability Provision

{¶ 84} In response to the Commission's directive that AEP Ohio include, as a component of any future PPA rider filing, a severability provision, OCC seeks rehearing on the basis that, if the Commission approves cost recovery in the future PPA proceeding and that decision is subsequently invalidated, customers may not have a means to collect a refund of the PPA rider charges. Accordingly, OCC requests that the Commission make collection of the PPA rider charges subject to refund.

{¶ 85} AEP Ohio responds that OCC inappropriately attempts to bypass the normal process for challenging Commission orders and to shift additional risk to the Company. AEP Ohio adds that OCC's request is unnecessary because the Commission has not approved a rate for inclusion in the PPA rider.

{¶ 86} The Commission directed, in the ESP 3 Order, that AEP Ohio should include, in any future PPA rider proposal, a severability provision that recognizes that all other provisions of the ESP will continue, in the event that the PPA rider is invalidated, in whole or in part at any point, by a court of competent jurisdiction. ESP 3 Order at 25-26. We also emphasized that AEP Ohio was not authorized to recover any costs through the PPA rider, which was approved as a placeholder rider set at a rate of zero, and that the Company would be required, in a future filing, to justify any requested cost recovery. ESP 3 Order at 25, 26. We, therefore, find that OCC's argument that PPA rider charges should be collected subject to refund is premature, given that no charges have been approved in these cases for collection through the rider. OCC's request for rehearing on this issue should be denied.

2. APPLICATIONS FOR REHEARING OF THE SECOND ENTRY ON REHEARING

{¶ 87} AEP Ohio asserts that the Commission's decision to defer ruling on the PPA-related issues raised in the parties' applications for rehearing of the ESP 3 Order

unlawfully and unreasonably impaired the Company's right to withdraw its ESP application under R.C. 4928.143(C)(2)(a). Citing *In re Application of Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, 40 N.E.3d 1060, AEP Ohio argues that the Commission must provide a clear decision on the package of terms and conditions being adopted in the ESP, in order to enable the Company to make an informed choice as to whether it should exercise its statutory right to withdraw its ESP application. AEP Ohio further argues that the Second Entry on Rehearing leaves open the possibility that modifications to the ESP 3 Order could be made well into the future. AEP Ohio adds that the Commission did not offer a valid basis for its decision to defer ruling on the PPA-related issues. AEP Ohio, therefore, requests that the Commission issue a substantive ruling on the pending rehearing requests.

{¶ 88} OMAEG responds that, contrary to AEP Ohio's suggestion, the *Commission's decision to defer ruling on the assignments of error related to the PPA* rider does not insulate from review the establishment of the placeholder PPA rider or other legal and policy decisions related to the rider. OMAEG believes that AEP Ohio attempts to limit the scope of the Commission's review of the PPA-related issues raised by the intervenors in their applications for rehearing of the ESP 3 Order. OMAEG requests that, if the Commission does not rule on the PPA-related issues, it clarify that all *such issues on which any party applied for rehearing are still under consideration by the* Commission.

{¶ 89} IEU-Ohio argues that AEP Ohio's assignment of error is premised on a misreading of R.C. 4928.143(C)(2)(a) and recent Ohio Supreme Court precedent, neither of which, according to IEU-Ohio, supports the Company's claim that the Commission cannot defer resolution of an issue. IEU-Ohio adds that AEP Ohio's right to withdraw its ESP application is not impaired, because the Company already has the right to withdraw, the Company is not financially harmed by the Commission's decision to defer resolution

of the legal issues concerning the PPA rider, and the Company has the ability to make an informed choice to withdraw. IEU-Ohio concludes, however, that, if the Commission grants the applications for rehearing of AEP Ohio, OCC, or OMAEG seeking a final resolution regarding the PPA rider, the Commission should find that the rider is unlawful and unreasonable.

{¶ 90} OCC contends that the Commission had no statutory authority under R.C. 4903.10 to defer its ruling on the parties' assignments of error related to the PPA rider. OCC maintains that the statute required the Commission to either modify or affirm the ESP 3 Order in the Second Entry on Rehearing. OCC also asserts that the Commission acted unreasonably through an attempt to avoid timely appellate review by creating a non-final order, which, according to OCC, was nevertheless regarded by the Commission as a final order for purposes of the FirstEnergy operating companies' ESP proceeding, Case No. 14-1297-EL-SSO, given that the parties to that case were directed to address how and whether the ESP 3 Order should be considered in evaluating the FirstEnergy operating companies' application. OCC believes that the Commission has created a de facto final, appealable order. In any event, OCC requests that the Commission rule on the applications for rehearing related to the PPA rider.

{¶ 91} Like OCC, OMAEG argues that the Commission unreasonably determined that it may defer ruling on the parties' assignments of error related to the PPA rider, while simultaneously ruling on the other assignments of error raised by the parties. OMAEG points out that, if the Commission does not render a decision on the PPA-related issues by the time its decision on the remaining issues must be appealed, the appellate process runs the risk of becoming extremely unwieldy and confusing, given that issues arising from the same proceedings may be appealed separately. OMAEG adds that, if a final order is not deemed to occur until after the Commission issues a determination on the PPA-related issues, rates related to other issues will have already

been in place and charged to customers for months before the possibility of an appeal arises, with no possibility of a refund for charges subsequently deemed excessive. OMAEG concludes that the Commission must either avoid any delay in rendering a final order, including a determination on the PPA-related assignments of error, or clearly specify that, for purposes of those issues that are not the subject of further applications for rehearing, the Second Entry on Rehearing constitutes a final, appealable order.

{¶ 92} In response to OCC and OMAEG, AEP Ohio states that it continues to disagree with their positions on the merits of the PPA rider. AEP Ohio, however, states that it shares their concerns regarding the Commission's decision to defer ruling on the assignments of error pertaining to the PPA rider. AEP Ohio reiterates its request that the Commission issue a timely decision on rehearing that addresses all pending issues.

{¶ 93} In the Second Entry on Rehearing, the Commission elected to defer ruling on the assignments of error related to the PPA rider that were raised in the applications for rehearing of the ESP 3 Order. In reaching this decision, the Commission acknowledged the uncertainty with respect to pending PJM market reform proposals, environmental regulations, and federal litigation. We also noted that our decision would not impact any party's rights under R.C. 4903.10 or 4903.11. Second Entry on Rehearing at 4-6.

{¶ 94} The Commission finds that the assignments of error raised by AEP Ohio, OCC, and OMAEG are moot because the Commission has fully addressed the assignments of error related to the PPA rider. However, the Commission notes that deferring a ruling on the assignments of error related to the PPA rider was fully within the Commission's power to manage its dockets. By deferring a ruling on the PPA rider until today, the Commission was afforded the additional time necessary to continue to monitor developments with respect to the pending federal matters and to fully review the parties' arguments related to the PPA rider, without causing undue delay in the

issuance of a ruling on the numerous other contested issues in these proceedings. As noted above, FERC has now approved the Capacity Performance proposal submitted by PJM and the U.S. EPA has issued its Clean Power Plan rule. Additionally, contrary to OCC's position, nothing in R.C. 4903.10 precludes our consideration of the parties' applications for rehearing in a bifurcated fashion, if necessary and appropriate. Neither do we agree with AEP Ohio's contention that its right to withdraw the ESP application under R.C. 4928.143(C)(2)(a) was impaired by our decision to defer our ruling. Nothing in the Second Entry on Rehearing prevented AEP Ohio from exercising its statutory right to withdraw the ESP application, which the Company could have done at any point since the ESP 3 Order was issued. Accordingly, we find no merit in these assignments of error.

B. Variable Price Tariffs

{¶ 95} OMAEG argues that the Commission erred in determining that the IRP-D program should be continued only for customers that are currently participating in the program and should not be offered to other similarly-situated customers. OMAEG submits that it is anticompetitive and unreasonable to limit participation under the IRP-D program solely to customers that are currently participating in the program, placing other customers at a competitive disadvantage and effectively rendering the program an economic retention tool for a very small number of customers. OMAEG asserts that, to the extent that the Commission's aim is to approve an interruptible rate that will encourage economic development in the state and effectuate the state policy set forth in R.C. 4928.02, it should expand the IRP-D program beyond the few customers presently taking service under the program. Citing R.C. 4903.09, OMAEG adds that the Commission did not sufficiently explain the basis for its decision to limit the IRP-D program to current participants.

{¶ 96} In response to OMAEG, AEP Ohio asserts that the Commission amply explained the basis for its decision regarding the IRP-D program. Noting that the

Commission has already weighed the policy considerations applicable to the IRP-D program, AEP Ohio also maintains that OMAEG seeks to substitute its judgment for the Commission's. According to AEP Ohio, the Commission has reached an appropriate balance between the IRP-D program's policy objectives and cost considerations.

{¶ 97} AEP Ohio asserts that the Commission should grant rehearing and confirm or, in the alternative, provide clarification that the Company is not required to act as a curtailment service provider (CSP) for IRP-D customers and, in any event, that the Company will not be responsible for non-performance charges assessed by PJM for demand resources provided by IRP-D customers that are successfully bid into the PJM capacity market. Specifically, AEP Ohio requests that the Commission confirm that the Company is not required to act as IRP-D customers' CSP with regard to bidding, registering, and selling the products that result from customers' interruptible resources into the PJM markets. AEP Ohio argues that, in light of PJM's rules and the Company's technical and resource limitations, it would be impractical, unfair, unduly complicated, and inefficient to require the Company to serve as IRP-D customers' CSP for purposes of future PJM auctions. According to AEP Ohio, a more straightforward and fair approach is to require IRP-D customers to either act directly on their own behalf or to contract with a third-party CSP to conduct their bidding, registration, and sales transactions for all of the products that may be sold into the PJM markets. AEP Ohio proposes that, under this approach, IRP-D customers would also be required to enter into an agreement to pass back to the Company all of the capacity and emergency energy revenues realized from the PJM markets, which the Company would use to offset the costs of the IRP-D credits paid by other customers. Alternatively, AEP Ohio requests that, if it is required to serve as the CSP in some manner, the Commission confirm that: IRP-D customers are directly responsible for any penalty charges for substandard performance assessed by PJM under the recent Capacity Performance decision issued by FERC in Docket ER15-623-000, et al.; any performance charges not paid by IRP-D customers would be recovered through the

energy efficiency and peak demand reduction (EE/PDR) rider; and IRP-D customers must commit contractually to hold the Company harmless from the cost of any charges for substandard performance of their interruptible loads that are successfully bid into PJM's capacity markets, as a condition of their participation in the IRP-D program. As a related matter, AEP Ohio notes that, in anticipation of its IRP-D recommendations being considered by the Commission, the Company provided, in its compliance tariff filing of June 26, 2015, three versions of the IRP-D tariffs: one set that reflects the Company's understanding of the Commission's rehearing order; a second set that reflects the Company's request in its application for rehearing; and a third set that reflects partial acceptance of the Company's request in its application for rehearing, where the Company would remain the CSP for capacity but not for energy or ancillary services.

{¶ 98} OMAEG objects to the recovery of substandard performance penalties due to the insolvency of any IRP-D customer through the EE/PDR rider. OMAEG argues that AEP Ohio's recommended approach would penalize the customers that are funding the IRP-D credit and that any such penalties should instead be recovered by reducing the IRP-D credit received across the IRP-D customer class by the penalized amount.

{¶ 99} ELPC responds that, although it does not oppose AEP Ohio's request for relief from the obligation to bid IRP-D customers' interruptible resources into the PJM markets, the Company should be required to act as the backup CSP for customers that do not take the necessary steps to bid their resources, either independently or through a third-party CSP. ELPC points out that AEP Ohio has not explained why it cannot develop the ability to participate in PJM's economic energy and ancillary services markets as it currently does in the capacity and emergency energy markets or whether third-party CSPs are even available and willing to carry out the task on behalf of IRP-D customers. ELPC also requests that AEP Ohio be required to include information regarding the bidding of interruptible resources into the PJM markets in its IRP-D filings, in order to

enable the Commission and interested parties to monitor the issue. ELPC asserts that its proposals will benefit AEP Ohio's customers by maximizing the participation of IRP-D customers' interruptible resources in the PJM markets and ensure that such resources are utilized where they represent the least cost option for all customers.

{¶ 100} In response to AEP Ohio's compliance tariff filing, OEG notes that it supports the Company's request to be released from the obligation to serve as a CSP for IRP-D customers. Specifically, OEG points out that AEP Ohio's preferred approach would relieve the administrative burden and risk for the Company associated with serving as a CSP, allow IRP-D customers to bid their interruptible load into all eligible PJM demand response programs, and provide financial benefit to other customers by ensuring that the maximum amount of PJM revenues are used to reduce the costs collected through the EE/PDR rider.

{¶ 101} The Commission finds that OMAEG's request for rehearing regarding the IRP-D program should be denied. Consistent with R.C. 4903.09, we explained the basis for our decision to limit, at present, the IRP-D program to current participants. Taking into consideration the record in these proceedings, as well as the concerns raised by numerous parties, including OMAEG, with respect to the costs of an expanded IRP-D program, which were fully discussed in the Second Entry on Rehearing, we reasonably determined that the program should not currently be expanded to new customers.[3] Second Entry on Rehearing at 9.

{¶ 102} Turning to the issues raised by AEP Ohio, the Commission finds that the Company's request for rehearing should be denied. In the ESP 3 Order, the Commission determined that AEP Ohio should bid the additional capacity resources associated with

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[3] We note, however, that the extension of the IRP-D program will be an issue for our consideration in AEP Ohio's upcoming ESP 3 extension proceeding, pursuant to the stipulation approved in the *PPA Case*. *PPA Case*, Opinion and Order (Mar. 31, 2016) at 28.

the IRP-D program into PJM's base residual auctions held during the ESP term, with any resulting revenues credited back to customers through the EE/PDR rider. ESP 3 Order at 40. However, given that PJM's base residual auctions have already occurred for the three delivery years of the ESP 3 term, we clarified, in the Second Entry on Rehearing, that AEP Ohio should bid the IRP-D capacity resources into PJM's incremental capacity auctions held during the ESP term, to the extent that such capacity resources have not already been bid by the customer into any of PJM's auctions for the three delivery years of the ESP 3 term. Although the Commission expressed no opinion as to whether the IRP-D program will be continued after the ESP 3 term, we noted that, in the event that the program is extended for PJM delivery years after May 31, 2018, current IRP-D customers should be required to agree, as a condition of service under the IRP-D tariff, to allow AEP Ohio to bid their interruptible resources into PJM's auctions, with resulting revenues credited back to customers through the EE/PDR rider. Second Entry on Rehearing at 15.

{¶ 103} The Commission finds that AEP Ohio's request for rehearing is procedurally improper, as the Company's arguments should have been raised in its application for rehearing of the ESP 3 Order. Further, although AEP Ohio now raises its objections to the directive requiring the Company to bid the additional capacity resources associated with the IRP-D program into PJM's auctions, this requirement was established by the Commission and unopposed by the Company in its prior ESP proceedings. *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 26. In any event, consistent with the Commission's clarification in the Second Entry on Rehearing, we reiterate that current IRP-D customers should be required to agree, as a condition of service under the IRP-D tariff, to allow AEP Ohio to bid their interruptible resources in future PJM auctions, to the extent that the IRP-D program is continued beyond the ESP 3 term. If a current IRP-D customer prefers to bid its interruptible resources directly or through a third-party CSP in future auctions, the customer may elect to discontinue its service under the IRP-D

tariff. We believe that this approach reaches an appropriate outcome that balances the key policy and cost considerations associated with the IRP-D program.

{¶ 104} Regarding AEP Ohio's request for clarification, the Commission clarifies that IRP-D customers should be responsible for any penalty charges for substandard performance assessed by PJM under the recent Capacity Performance decision issued by FERC in Docket ER15-623-000, et al., and that IRP-D customers should commit contractually to hold the Company harmless from the cost of any charges for substandard performance of their interruptible loads that are successfully bid into PJM's capacity markets, as a condition of their participation in the IRP-D program. Consistent with OMAEG's recommendation, we also clarify that AEP Ohio should recover any substandard performance charges not ultimately paid by the IRP-D customer at fault by reducing the IRP-D credit across the IRP-D customer class, rather than through the EE/PDR rider. With these clarifications, AEP Ohio's request for rehearing regarding the IRP-D program should be denied. AEP Ohio is directed to file, within five business days of this Fourth Entry on Rehearing, revised IRP-D tariffs that are consistent with our clarifications.

C. *Distribution Investment Rider*

{¶ 105} As a part of the ESP 3 Order, the Commission approved AEP Ohio's request to continue the distribution investment rider (DIR), with certain modifications, and established the DIR annual revenue caps at $124 million for 2015, $146.2 million for 2016, $170 million for 2017, and $103 million for January through May 2018. ESP 3 Order at 46-47. Upon consideration of AEP Ohio's application for rehearing of the ESP 3 Order, the Commission revised, in the Second Entry on Rehearing, the DIR annual revenue caps to $145 million for 2015 (including amounts previously authorized in the *ESP 2 Case*), $165 million for 2016, $185 million for 2017, and $86 million for January through May 2018. We explained that it was the Commission's intent, as stated in the ESP 3 Order,

to provide for growth in the DIR revenue caps of three to four percent annually. However, the ESP 3 Order did not recognize any growth from the DIR revenue cap for 2014, as approved in the *ESP 2 Case*, to the DIR revenue cap for 2015 set forth in the ESP 3 Order. The revised annual caps afford AEP Ohio growth in the DIR, as a percentage of customer base distribution charges, and facilitate the Company's continued implementation of the 2015 DIR plan. All other applications for rehearing on the DIR were denied. Second Entry on Rehearing at 23-25.

{¶ 106} In its application for rehearing of the Second Entry on Rehearing, AEP Ohio emphasizes that the modified DIR annual revenue caps do not support the Commission's expectation that continuation of the DIR, enhanced service reliability rider, and other distribution-related riders should enable the Company to hold base distribution rates constant over the term of ESP 3, while facilitating significant investments in distribution infrastructure and improving service reliability, as stated in the Second Entry on Rehearing. AEP Ohio submits that the DIR annual revenue caps, as adjusted, still fall short of the Commission's stated growth rate of three to four percent annually. AEP Ohio argues that, based on its methodology and calculations, an additional $23 million to $86 million is required over the term of the ESP, beyond the annual revenue caps approved in the Second Entry on Rehearing, to comply with the Commission's stated intent of three to four percent growth. AEP Ohio submits that, absent additional funding, the capital infrastructure programs that the Company is undertaking to improve reliability, like the Underground Network Risk Mitigation Project (UNRMP), could be adversely impacted.

{¶ 107} In response, OCC asserts that, although AEP Ohio seeks clarification from the Commission, the Company does not claim that the Commission's decision regarding the DIR was unlawful or unreasonable in any respect. OCC, therefore, contends that the Company's application for rehearing does not meet the requirements of R.C. 4903.10(B)

and Ohio Adm.Code 4901-1-35, which require the application to state "specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." According to OCC, the Supreme Court of Ohio mandates that there be strict compliance with the specificity requirement. Thus, OCC reasons that AEP Ohio's application for rehearing on the DIR does not meet the requirements of R.C. 4903.10. OCC adds that the Commission has eliminated motions for clarification of Commission orders.

{¶ 108} OCC also challenges AEP Ohio's claims that the adjusted DIR annual revenue caps do not reflect a three to four percent growth in DIR funding. OCC notes that the adjusted DIR revenue caps reflect an annual increase of 3.1 percent for 2015 and 2016. OCC comments that AEP Ohio's calculations suggest that DIR growth should be measured from the total distribution revenue, which includes customer base distribution revenues, plus revenue from the annual DIR caps. OCC encourages the Commission to limit the DIR, in the manner reflected in the Second Entry on Rehearing, and reject AEP Ohio's request for rehearing.

{¶ 109} Further, OCC notes that there is nothing in the record of these proceedings identifying any specific distribution projects that will not be pursued because of DIR funding, including UNRMP, and, for that reason, the potential future of UNRMP cannot be a part of the Commission's consideration on this issue. Thus, OCC requests, within its memorandum contra, that the Commission strike that portion of AEP Ohio's application for rehearing beginning on page 16, at line 12, starting with the words "An example," through page 17, at line 17, ending with the words "DIR caps." AEP Ohio did not file a response to OCC's request to strike the above noted portion of the Company's application for rehearing.

{¶ 110} OMAEG, in its application for rehearing of the Second Entry on Rehearing, maintains, as it also claimed in regard to the DIR annual revenue caps

established in the ESP 3 Order, that the adjusted caps are not supported by the record and the increase in the DIR annual revenue caps of $37.8 million is erroneous.

{¶ 111} AEP Ohio responds that the Commission previously considered and rejected OMAEG's claims regarding the DIR. Thus, AEP Ohio encourages the Commission to reject OMAEG's assertions again.

{¶ 112} The Commission denies OCC's request to strike a portion of AEP Ohio's application for rehearing, which was not properly filed as a motion to strike. Further, in the ESP 3 Order and Second Entry on Rehearing, the Commission approved DIR annual revenue caps, as opposed to specific DIR programs. Accordingly, the Commission finds that AEP Ohio's description of UNRMP is no more than an example of any number of programs that the Company may undertake as part of the DIR and, therefore, is of limited value in our consideration of the DIR annual revenue caps. The Commission also finds no merit in OCC's argument that AEP Ohio's application for rehearing should be denied on procedural grounds. It is clear to the Commission that AEP Ohio believes that the DIR annual revenue caps, as approved in the Second Entry on Rehearing, are unreasonable and inconsistent with the Commission's stated level of growth for the DIR program. Accepting AEP Ohio's methodology and calculation of the DIR annual revenue caps would result in a substantive revision to the Second Entry on Rehearing and, for that reason, the Commission finds that the Company's application for rehearing is in compliance with R.C. 4903.10 and Ohio Adm.Code 4901-1-35.

{¶ 113} Further, the Commission finds no merit in OMAEG's claims regarding the DIR annual revenue caps and, therefore, again rejects OMAEG's arguments. We find that the DIR funding will adequately facilitate AEP Ohio's timely and efficient replacement of aging infrastructure to improve and maintain service reliability and to support the operation of smart grid technologies. The Commission intended, as noted in the ESP 3 Order and the Second Entry on Rehearing, to reflect growth in the DIR annual

revenue cap from 2014 to 2015, and adjusted the annual caps for the term of the ESP accordingly in the Second Entry on Rehearing. Second Entry on Rehearing at 24-25.

{¶ 114} Finally, in examining AEP Ohio's methodology and calculation of the DIR annual revenue caps, the Commission notes that the Company increases total base distribution revenues by three percent, each year, and then multiplies the total base distribution revenues by three percent to determine the minimum cap level for the DIR. The Commission finds that AEP Ohio's method to determine the DIR annual revenue caps is inappropriate, as base distribution revenues rise and fall from year to year. Thus, AEP Ohio's method and the resulting DIR annual revenue caps that the Company proposes would essentially ensure that the Company's total distribution revenues grow by at least three percent every year. That was never the Commission's intention.

{¶ 115} As we have previously stated, the DIR annual revenue caps should reflect annual growth in the DIR, as a percentage of customer base distribution charges, of three to four percent, as permitted for the DIR in the *ESP 2 Case*. ESP 3 Order at 47, Second Entry on Rehearing at 24. Upon consideration of AEP Ohio's application for rehearing, the Commission finds that the DIR annual revenue caps set forth in the Second Entry on Rehearing should be further adjusted, on a prospective basis, in order to enable the Company to make necessary investments in capital infrastructure projects that impact the reliability of the distribution system. We, therefore, find that the DIR annual revenue caps should be set at $190 million for 2017 and $89.6 million for January through May 2018. The DIR annual revenue cap should remain at $145 million for 2015, which includes amounts previously authorized in the *ESP 2 Case*, and $165 million for 2016. We note that the adjusted DIR annual revenue caps remain within the annual growth range of three to four percent. Accordingly, the Commission grants AEP Ohio's request for rehearing on this issue.

D. Basic Transmission Cost Rider

{¶ 116} OMAEG contends that it was unreasonable for the Commission to deny requests for rehearing regarding potential double billing of transmission-related expenses as a result of AEP Ohio's transition from the prior transmission cost recovery rider (TCRR) to the new basic transmission cost rider (BTCR). OMAEG notes that CRES providers have not adequately ensured against double recovery of transmission-related costs, as the transmission charges reflected on the bills of OMAEG's members appear to have significantly increased over previous charges for the same service. OMAEG further notes that its affected members are discussing the situation with their CRES providers, as directed by the Commission. In light of the significant financial implications for affected customers, OMAEG requests that the Commission direct AEP Ohio, CRES providers, and Staff to implement, within 30 days of the Commission's decision on rehearing, a process for determining whether the Company or the CRES provider will charge certain affected customers the transmission-related costs at issue. Additionally, OMAEG requests that the Commission order AEP Ohio, CRES providers, and Staff to work together to ensure that customers are not charged more for transmission-related expenses than what they otherwise would have been charged under the prior ESP and the former TCRR.

{¶ 117} In response, Direct Energy notes that its customers have raised similar concerns to OMAEG's. According to Direct Energy, its investigation revealed that the unexpected increases may be attributable to causes other than double billing, such as the rate design of the BTCR or a prior under-recovery in the TCRR that may now be reflected in the BTCR. Direct Energy, therefore, requests that the Commission ensure that all possible causes of the alleged double recovery are reviewed, if OMAEG's request for rehearing on this issue is granted.

{¶ 118} For its part, AEP Ohio contends that OMAEG reiterates arguments that have already been addressed by the Commission. AEP Ohio further contends that it is

neither necessary nor feasible for the Company, CRES providers, and Staff to implement the process that OMAEG recommends. AEP Ohio points out that, in accordance with the Commission's prior directive, the Company, CRES providers, and Staff are already working together to resolve any double-billing issues. AEP Ohio concludes that there is no reason to impose an arbitrary deadline on a process that is already underway as previously ordered.

{¶ 119} As an initial matter, the Commission finds that OMAEG's request for rehearing on this issue should have been included in OMAEG's application for rehearing of the ESP 3 Order and, therefore, the request is procedurally improper. Further, OMAEG's position on this issue has already been fully addressed by the Commission. Consistent with the directive set forth in the ESP 3 Order and the Second Entry on Rehearing, we expect that, if customers are experiencing increased bills that may be attributed to double billing of transmission-related expenses, AEP Ohio, CRES providers, and, if necessary, Staff will work together to ensure that such customers do not pay twice for the same expenses. ESP 3 Order at 68, Second Entry on Rehearing at 32. AEP Ohio has confirmed that such efforts are already in progress. Additionally, as we have previously noted, affected customers have existing means to seek our assistance, either informally by contacting Staff or through the formal complaint process set forth in R.C. 4905.26. ESP 3 Order at 68, Second Entry on Rehearing at 32-33. For these reasons, OMAEG's request for rehearing on this issue should be denied.

E. POR Program and the Bad Debt Rider

{¶ 120} AEP Ohio contends that, in delegating the implementation details of the POR program to a subset of the Market Development Working Group (MDWG), the Commission unreasonably failed to empower the MDWG to make recommendations that may be necessary to implement a workable POR program in the Company's service territory. AEP Ohio notes that it is working with the MDWG to determine whether there

is a POR program that is both consistent with the Commission's directives and that the Company would be willing to implement. AEP Ohio asserts that, as it works with the MDWG to determine whether there is a viable option, it would be reasonable for the Commission to maintain flexibility for the MDWG to divert from the Commission's directives. AEP Ohio, therefore, requests that the Commission clarify that the MDWG is free to develop any type of POR program, including a discount rate, that the Company is willing to implement.

{¶ 121} In response to AEP Ohio's application for rehearing, Direct Energy urges the Commission to make clear that the Company must implement a POR program under whatever conditions are established by the Commission. Direct Energy also notes that, although it is not opposed to AEP Ohio's proposal to afford the MDWG greater flexibility in developing the POR program, the Commission should ensure that the utility consolidated billing functionality currently available to CRES providers for non-commodity products and services is not eliminated by the MDWG.

{¶ 122} RESA contends that AEP Ohio's request for greater leeway in the MDWG's development of the POR program is reasonable and should be approved, as a means to facilitate the MDWG's success in crafting a POR implementation proposal that is administratively efficient and best serves customers. RESA insists, however, that any POR program proposed by the MDWG must provide for AEP Ohio's purchase of the receivables of each participating CRES provider that uses utility consolidated billing, as well as utilize a discount rate that applies to all participating CRES providers.

{¶ 123} OCC argues that the Commission reasonably delegated certain POR issues to the MDWG and that AEP Ohio has raised no new arguments to demonstrate that the Commission's decision was unlawful or unreasonable. According to OCC, AEP Ohio seeks to attack aspects of the POR program that the Commission has already resolved, including those that afford significant consumer protections. OCC maintains

that the MDWG should not be permitted to reconsider issues that have been decided by the Commission and should instead focus on the remaining POR implementation details, as required by the Commission's prior orders.

{¶ 124} As noted above, OCC filed a motion to strike RESA's memorandum in response to AEP Ohio's application for rehearing. In its motion, OCC asserts that RESA's memorandum constitutes an untimely application for rehearing. Noting that RESA did not seek leave to file its pleading, OCC also contends that no provision of the Commission's rules permits the filing of a "memorandum in response" to an application for rehearing. OCC points out that RESA supports AEP Ohio's request for rehearing regarding the POR program and that RESA agrees with the Company's position that the MDWG should have greater flexibility. OCC also emphasizes that it was precluded from responding to RESA's arguments, which were presented for the first time in the memorandum in response.

{¶ 125} In its memorandum contra OCC's motion to strike, RESA argues that a memorandum in support of an application for rehearing is not an impermissible filing under the Commission's rules. Regardless, RESA notes that, because it sought to limit AEP Ohio's request for rehearing regarding the POR program, RESA's response to the Company should not be construed as support for the Company's rehearing request. Specifically, RESA points out that its memorandum in response to AEP Ohio's application for rehearing was focused on the key components of the POR program that the MDWG should not be permitted to change. RESA explains that, although it does not object to the MDWG having some leeway to work out the details of the POR program, RESA does not agree with AEP Ohio that the MDWG should have broad discretion to deviate from several key POR program components set forth by the Commission in the ESP 3 Order.

{¶ 126} OCC replies that, contrary to RESA's claims, RESA's memorandum in response to AEP Ohio's application for rehearing includes no indication that RESA seeks to limit, or is opposed to, the Company's rehearing request. According to OCC, RESA attempts to circumvent the Commission's rules, which OCC notes do not permit the filing of a memorandum in support of an application for rehearing, unless leave is properly obtained from the Commission.

{¶ 127} Upon consideration of OCC's motion to strike RESA's memorandum in response to AEP Ohio's application for rehearing, the Commission finds that the motion should be denied. As RESA notes in its memorandum contra OCC's motion, RESA opposes AEP Ohio's rehearing request to the extent that the Company seeks discretion for the MDWG to depart from several key components of the POR program approved by the Commission in the ESP 3 Order. RESA advocates for specific limitations on the MDWG's discretion in its memorandum in response to AEP Ohio's application for rehearing, asserting that the POR program proposed by the MDWG must provide for, as required by the ESP 3 Order, the Company's purchase of the receivables of each participating CRES provider for whom the Company bills on a consolidated basis, as well as the Company's purchase of receivables at a single discount rate that applies to all participating CRES providers. We, therefore, agree with RESA's assertion that its position is not entirely aligned with AEP Ohio's request for rehearing regarding the POR program.

{¶ 128} Turning to AEP Ohio's request for rehearing, the Commission notes that, in the ESP 3 Order, we determined that a POR program should be approved for the Company, with the implementation details to be discussed within the MDWG and resolved in a subsequent proceeding, following Staff's filing of a detailed implementation plan. ESP 3 Order at 80-81. In its application for rehearing, AEP Ohio argues that the Commission should have empowered the MDWG with broad discretion to propose a

POR program that the Company deems feasible. Initially, we find that AEP Ohio's argument is procedurally improper, as the Company should have raised the argument in its application for rehearing of the ESP 3 Order. Although the Commission clarified certain POR program issues in the Second Entry on Rehearing at the request of the parties, we made no substantive modifications to our authorization of a POR program in the ESP 3 Order. More importantly, the Commission emphasizes that the ESP 3 Order enumerated a number of requirements for any POR program proposed by the MDWG. ESP 3 Order at 80-81. The Commission set forth requirements, not guidelines, for the MDWG, which is, therefore, not authorized to deviate from the directives in the ESP 3 Order or the clarifications in the Second Entry on Rehearing, in the course of developing a detailed implementation plan for the POR program. Accordingly, AEP Ohio's request for rehearing on this issue should be denied.

{¶ 129} Finally, the Commission notes that, on November 16, 2015, in Case No. 15-1507-EL-EDI, Staff filed its report regarding the MDWG's discussions of the implementation details for AEP Ohio's POR program. In order to facilitate the Commission's review of the proposed POR implementation plan, we direct the attorney examiners to establish a procedural schedule by subsequent entry in that case, seeking comments in response to the report filed by Staff.

IV. ORDER

{¶ 130} It is, therefore,

{¶ 131} ORDERED, That the applications for rehearing of the ESP 3 Order, as related to the PPA rider, be denied. It is, further,

{¶ 132} ORDERED, That the applications for rehearing of the Second Entry on Rehearing be granted, in part, and denied, in part. It is, further,

{¶ 133} ORDERED, That AEP Ohio shall file, within five business days, proposed final IRP-D tariffs, consistent with the Commission's clarifications in this Fourth Entry on Rehearing, and subject to review and approval by the Commission. It is, further,

{¶ 134} ORDERED, That OCC's request to strike a portion of AEP Ohio's June 29, 2015 application for rehearing be denied. It is, further,

{¶ 135} ORDERED, That OCC's motion to strike RESA's July 9, 2015 memorandum be denied. It is, further,

{¶ 136} ORDERED, That a copy of this Fourth Entry on Rehearing be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

Lynn Slaby

M. Beth Trombold

Thomas W. Johnson

M. Howard Petricoff

SJP/GNS/sc

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NOV 03 2016

Barcy F. McNeal
Secretary

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
IN THE MATTER OF THE APPLICATION SEEKING APPROVAL OF OHIO POWER COMPANY'S PROPOSAL TO ENTER INTO AN AFFILIATE POWER PURCHASE AGREEMENT FOR INCLUSION IN THE POWER PURCHASE AGREEMENT RIDER.	CASE NO. 14-1693-EL-RDR
IN THE MATTER OF THE APPLICATION OF OHIO POWER COMPANY FOR APPROVAL OF CERTAIN ACCOUNTING AUTHORITY.	CASE NO. 14-1694-EL-AAM

CONCURRING OPINION OF CHAIRMAN ASIM Z. HAQUE

The Commission decided two related AEP Ohio cases on rehearing today. As these decisions collectively comprise a significant amount of technical reading, this concurrence is meant to explain, from my vantage point, the Commission's decisions today.

I. Granting the OVEC PPA Request

A. What Is The Ohio Valley Electric Corporation?

The Commission today provided financial certainty to AEP Ohio for its ownership interest in the Ohio Valley Electric Corporation (OVEC), and more specifically, its interest in power plants owned and operated by OVEC. OVEC was created in 1952 by investor-

owned utilities furnishing electric service in the Ohio River Valley area. OVEC's creation arose from a national security need – to provide power to a uranium enrichment facility constructed by the Atomic Energy Commission (AEC) in Portsmouth.

To advance this national security need, OVEC constructed two coal-fired generating units, Kyger Creek and Clifty Creek, and entered into a long-term power purchase contract with the federal government that ensured the availability of power for the facility's substantial electricity demand. In 2003, the U.S. Department of Energy officially terminated this power purchase relationship with OVEC, and the megawatts produced by Kyger Creek and Clifty Creek were available to be offered on the open market.

We have historically, and will continue to ask through an annual filing, that AEP Ohio try and shed their interest in these plants. AEP Ohio has been unable to do so because divestment requires the agreement of all of OVEC's many and diverse owners. The Commission today, however, has affirmed its willingness to provide certainty to AEP Ohio during the duration of their ESP or until their interests in OVEC are divested, whichever comes first.

B. How Did We Get Here?

Let me provide a quick overview of how we arrived at these decisions today from a procedural perspective. The Commission resolves two cases today: 13-2385-EL-SSO and 14-1693-EL-RDR. There will be one more major case in the AEP Ohio purchase power lineage, but that case, 16-1852-EL-SSO, will primarily serve to simply combine elements of the two cases being decided today for an extended period.

1. 13-2385-EL-SSO (Three Year ESP Application)

Case No. 13-2385-EL-SSO is a three year electric security plan application that was filed by AEP Ohio in December 2013. Recall that our distribution utilities, by statute, are obligated to either file an ESP or a Market Rate Offer (MRO) in perpetuity until an MRO is approved by the Commission. It was in this case that AEP Ohio made its original request for the power purchase construct for only its ownership interest in the OVEC generating units. On Feb. 25, 2015, after lengthy debate and an en banc hearing, the Commission determined that AEP Ohio's power purchase construct was legal under state law. The Commission, however, declined to place OVEC or any other generating unit in the PPA rider it created. The rider was created, set at zero, and further debate over whether the rider would be populated, by what units and by how many megawatts, was to take place in another case.

2. 14-1693-EL-RDR (PPA Rider Application)

That other case was/is 14-1693-EL-RDR. On March 31, 2016, the Commission unanimously approved a settlement Stipulation filed by AEP Ohio and a number of intervening parties in 14-1693-EL-RDR. The Stipulation included a number of negotiated provisions, including provisions that would promote grid modernization, retail competition, and the development of renewable energy resources. However, the centerpiece of the approved Stipulation was an arrangement whereby AEP Ohio (the distribution company) would purchase power from American Electric Power Generation Resources, Inc. (AEPGR) (the generation affiliate), in addition to a PPA for the OVEC entitlement. That core arrangement would have allowed AEP Ohio to purchase power from AEPGR at a fixed price that would then be liquidated into the regional wholesale market. AEP Ohio would then pass through to its customers the difference between the cost of the power under the agreement and the profits received from the wholesale markets, whether charges or credits. This is the PPA "hedge" concept.

On April 27, 2016, the Federal Energy Regulatory Commission (FERC) essentially prevented that core part of the decision from being implemented, finding that the power purchase agreement would need to be submitted to the FERC for review. Based upon the legal standard that FERC would apply to that review, it is possible that the AEP Ohio/AEPGR purchase power agreement would not have survived FERC scrutiny, and the agreement was never in fact submitted to the FERC for review.

On May 2, 2016, after the FERC ruling, AEP Ohio filed for rehearing with the Commission, withdrawing the core power purchase arrangement with AEPGR, and requesting that the Commission uphold its decision to grant a PPA for AEP Ohio's OVEC entitlement. This represents a substantially pared down power purchase arrangement from 3,111 MW to 440 MW. Commission approval of this pared down request would enable the other provisions of the Stipulation, an agreement signed by several parties representing diverse interests, to stay intact.

3. 16-1852-EL-SSO (Eight Year ESP Extension Case)

There will be one more case in the true lineage of these PPA cases, and that is the ESP extension case that is currently pending before the Commission. This case will serve to combine provisions of 13-2385-EL-SSO and 14-1693-EL-RDR to extend AEP Ohio's current ESP to an 8 year duration.

C. Why Grant the OVEC PPA Request?

The reasons for granting AEP Ohio's OVEC PPA request are set forth collectively in the Entries that that this concurrence is affixed to. The reasoning is sensible and has received universal approval from my colleagues. Let me provide a little more color though.

When talking about OVEC, I always recall a conversation that I had with a former colleague at the PUCO very early during my time here. The gist: OVEC is different than the rest. The recited history of OVEC above would alone separate OVEC from other, more conventional generating units constructed either during Ohio's fully regulated cost-of-service era, or through private funding during our hybrid deregulation era. There is more though.

First, the federal dynamics are far different with the OVEC PPA than with the AEPGR PPA that FERC essentially precluded. As AEP Ohio holds the OVEC entitlement, the power purchase agreement does not receive the same type of FERC analysis that applies to the expanded PPA arrangement between AEP Ohio and AEPGR. In fact, FERC has already accepted the power agreement for OVEC and it has been operating under that agreement for years.

Further, I again note AEP's OVEC interests are owned by the distribution utility. As I stated in my FirstEnergy concurrence, the distribution utility falls squarely within our jurisdiction, and we are in the midst of addressing some odd outlier issues that are impacting our distribution utilities. In the FirstEnergy case, it was credit ratings that had the potential to deleteriously affect the FirstEnergy distribution utility. Here, it is the OVEC generating units that are still owned by the distribution utility, AEP Ohio.

And finally, recall that 14-1693-EL-RDR came to conclusion via a settlement Stipulation. AEP Ohio entered into this Stipulation with the understanding that it would receive a PPA for about 3,111 MW. It made concessions to signatory parties based upon that understanding. The Stipulation, again, was signed by several diverse parties. AEP Ohio is now stating that it will honor the agreement if it receives a substantially pared down version of its original PPA request in terms of MWs, cost/credit impacts, and that

is just a fraction of the overall installed capacity of PJM (less than .25%). If the Commission denied this request, per AEP Ohio's own suggestion in its pleadings, one must contemplate whether the Stipulation would survive. Understandably, non-signatory parties wouldn't mind this. However, the Commission believes the Stipulation, considering all of its provisions, is still in the public's interest and should be retained.

This case has been pending for almost the entirety of my time on the Commission. It's time to move forward. We have provided certainty to AEP Ohio for OVEC today. Done. Now let's figure out what Ohio's energy future is supposed to look like and move forward.

D. What These Entries Are Not

I can't say it enough. From my vantage point, OVEC is different. It is different than the typical plant owned by distribution company affiliates or independent power producers. As such, the Entries and my concurrence should not be read in a manner that would ascribe or create a position as to possible re-regulation in this State.

II. Granting Provisions Allowing for Renewable Construction

Within the body of the Stipulation are provisions allowing cost recovery for the construction of utility-scale renewables in the State. AEP has the authority now to develop up to 900 MW of utility-scale wind (500 MW) and solar (400 MW), own up to 50% of it through an AEP affiliate, and enter into long-term PPAs. The remaining ownership and construction of these projects will be competitively bid.

A blank check does not accompany the renewable provisions of the Stipulation though. AEP Ohio will need to work with Staff prior to any filing to ensure that competitive processes and cost containment are accomplished. Each proposed project

will need to be approved by the Commission, and again, cost containment will be key in determining whether or not the project receives the requisite approval. Every party involved must be transparent and work towards the betterment of this endeavor, especially early on as appropriate processes are developed, all the while being mindful of ratepayer impacts.

I have asked myself many times by allowing AEP cost recovery for utility-scale renewable development, we will actually hinder overall development as this is not a fully market based solution. Eventually, would the large-scale projects being contemplated by AEP be constructed through purely competitive forces? Perhaps. Competitive utility-scale renewable developers still have the ability to partially own the AEP projects through a competitive bid process though. We will take each project as it comes and, as already stated, we will consider cost containment with each individual application that is filed.

I have always tried to listen to and carefully analyze the positions of all stakeholders in this State. I have tried not to play favorites. I have tried to create the best balance I can possibly create. As I have already stated in my previous concurrence in this case, we cannot simply ignore what I have witnessed to be overwhelming consumer sentiment to add renewable energy to our generation mix. AEP, the largest owner of coal-fired generation in this State, recognizes that. And if AEP recognizes it, along with the numerous stakeholders that have signed the settlement Stipulation, then I'm on board too.

Asim Z. Haque, Chairman

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