

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters.)	Case No. 18-501-EL-FOR
In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter Into Renewable Energy Purchase Agreements for Inclusion in the Renewable Generation Rider.)	Case No. 18-1392-EL-RDR
In the Matter of the Application of Ohio Power Company to Amend its Tariffs.)	Case No. 18-1393-EL-ATA

APPLICATION FOR REHEARING OF OHIO POWER COMPANY

Pursuant to Section 4903.10, Ohio Revised Code (R.C.), and Rule 4901-1-35, Ohio Administrative Code (O.A.C.), Ohio Power Company (AEP Ohio or the Company) respectfully files this Application for Rehearing of the Commission's November 21, 2019 Opinion and Order (Opinion and Order). The Commission's Opinion and Order is unreasonable in the following respects:

- I. It was unreasonable for the Commission, in making a negative resource planning need finding, to reference a bypassable charge "legal and regulatory framework" in ¶127 of the Opinion and Order without explaining or clarifying the framework.
- II. It was unreasonable for the Commission, in rejecting the requested finding of resource planning need in this case, not to provide: (a) that the Company can nonetheless file applications under the reasonable arrangement option adopted in the *ESP IV* Stipulation (such as the preliminary filing in Case No. 19-2037-EL-AEC) in order to seek bypassable approval of retail contracts that support renewable projects in pursuit of the 900 MW renewable commitment; and (b) that such reasonable arrangement filings will be considered as subsidiary filings linked to the reasonable arrangement option approved by the Commission in the *ESP IV* decision.

- III. The Commission should also confirm that AEP Ohio may continue to pursue the bypassable Green Tariff option reflected in Case No. 18-1392-EL-ATA in parallel with the bypassable reasonable arrangement option.

A memorandum in support of this Application for Rehearing is attached.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse (0046705), Counsel of Record
Christen M. Blend (0086881)
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1608
(614) 716-1915
Fax: (614) 716-2950
Email: stnourse@aep.com
cblend@aep.com

Eric B. Gallon (0071465)
L. Bradfield Hughes (0070997)
Porter Wright Morris & Arthur, LLP
41 South High Street, 30th Floor
Columbus, Ohio 43215
Telephone: (614) 227-2190
Fax: (614) 227-2100
Email: egallon@porterwright.com
bhughes@porterwright.com

Christopher L. Miller (0063259)
Ice Miller LLP
250 West Street
Columbus, Ohio 43215
Telephone: (614) 462-2339
Fax: (614) 222-4707
Email: christopher.miller@icemiller.com

(willing to accept service by e-mail)

Counsel for Ohio Power Company

MEMORANDUM IN SUPPORT

As part of the December 14, 2015 settlement in the *PPA Rider Case* (Case Nos. 14-1693-EL-RDR, *et al.*), AEP Ohio committed to pursue development of 900 MW of renewable resources in Ohio (500 MW of wind and 400 MW of solar), subject to Commission approval, with the underlying costs to be recovered through the PPA Rider. *PPA Rider Case*, Stipulation at 30 (Dec. 14, 2015). The Commission adopted the settlement and embraced the 900 MW commitment, stating in part:

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

(Emphasis added.) *PPA Rider Case*, Opinion and Order at 83 (Mar. 31, 2016). AEP Ohio did focus first on solar, and it conducted a competitive bidding process to formulate a bilateral Renewable Energy Purchase Agreement (REPA) proposal that it ultimately filed for approval in Case Nos. 18-1392-EL-RDR, *et al.* (*Tariff Cases*). Although the Office of the Ohio Consumers' Counsel (OCC) and the Ohio Manufacturers' Association Energy Group (OMAEG) appealed the Commission's decision in the *PPA Rider Case*, the Supreme Court of Ohio unanimously affirmed the Commission's decision. *In re Application of Ohio Power Co.*, 155 Ohio St.3d 326, 2018-Ohio-4698.

AEP Ohio's *ESP IV* plan includes the nonbypassable Renewable Generation Rider (RGR) subject to a resource planning "need" finding and approval of specific renewable projects, as well as additional conditions in R.C. 4928.143(B)(2)(c) and the *ESP IV* Stipulation, as part of pursuing the 900 MW development commitment previously approved by the Commission. *ESP IV*, Stipulation at ¶ III. D. As an additional and separate option, however, the approved *ESP IV* plan also includes a reasonable arrangement option that permits AEP Ohio to pursue bilateral contracts with retail customers conditioned upon Commission approval as a reasonable arrangement under R.C. 4905.31. *ESP IV*, Stipulation at Par. III.D.3.

In order to minimize concerns and opposition to the Application and to address the contingency of a negative resource planning need finding, AEP Ohio continued to explore options that avoid utility ownership of the underlying renewable generation resource, avoid an affiliate renewable energy purchase agreement (REPA), and include the potential alternative to a nonbypassable charge. The result was reflected in an application filed in Case No. 19-2037-EL-AEC. In that proceeding, AEP Ohio plans to request that the Commission approve individual reasonable arrangements and concur in the conclusion that it is reasonable and prudent for the Company to enter into specific wholesale REPA(s) in support of such approved reasonable arrangements. If granted, that Amended Application could forge a path to successful implementation of a significant number of MWs as part of the approved 900 MW commitment for specific renewable resources without either a nonbypassable surcharge or a general finding of resource planning need.

AEP Ohio was, of course, seriously disappointed that the Commission did not adopt a positive finding on the resource planning need question. Although the Company strongly disagrees with the findings made in the Opinion and Order, it respects the Commission's policy

decision and does not seek to prolong this proceeding by challenging its decision on the merits.

Rather, AEP Ohio simply asks that the Commission clarify¹ the regulatory framework for developing the renewable projects through means other than a nonbypassable charge, as referenced in the decision:

Nothing in our decision today precludes AEP Ohio (or its affiliates) from investing in the Willowbrook or Highland projects and pursuing the projects' claimed social and economic benefits through means other than a nonbypassable surcharge under R.C. 4928.143(B)(2)(c). Indeed, the legal and regulatory framework in Ohio permits AEP Ohio or its affiliates, supporting intervenors, and interested stakeholders to invest in or support the Willowbrook, Highland, and other renewable energy projects, without the implementation of a nonbypassable surcharge on all AEP Ohio customers, as proposed in these proceedings.

(Opinion and Order at ¶ 127.) Although AEP Ohio appreciates the Commission's observations in this regard, there could be another significant (and perhaps fatal) delay pursuing the wrong procedural path if the Company has a different idea of what the correct "regulatory framework" is or what "means other than a nonbypassable surcharge" can be used to pursue development of the renewable projects.

Unfortunately, with all of the regulatory filings and litigation that have occurred to date, the Company cannot afford to pursue additional paths that are not productive and which result in more delays without success. Indeed, the fourth anniversary of AEP Ohio's commitment to develop 900 MW of renewable resources in Ohio recently passed – yet the Company has not been able to successfully obtain any regulatory approvals despite its diligent efforts to do so during that period. Due to the dissipation of tax credits, the limited time period for availability

¹ The Commission's rehearing powers include the power not only to correct errors, but also to clarify prior stipulations and orders. See, e.g., *In re Application of Ohio Edison Co. et al. for Authority to Provide for a Standard Service offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, No. 14-1297-EL-SSO, Fifth Entry on Rehearing at ¶ 323-324 (Oct. 12, 2016) (granting rehearing to clarify certain provisions of prior Stipulations and Order). See also *MCI Telecoms. Corp. v. Pub. Util. Comm.*, 38 Ohio St.3d 266, 527 N.E.2d 777 (rejecting due-process challenge to clarifying order of the Commission).

of House Bill 6 credits, and the expiration of contractual time periods, there is no additional time to spare if the projects are to be developed.

Thus, the Company requests that the Commission confirm that the nonbypassable “regulatory framework” referenced in ¶ 127 of the Opinion and Order includes the reasonable arrangement option under the *ESP IV* Stipulation. Stated differently, AEP Ohio asks that the Commission confirm that, despite a negative finding of need, the Company can nonetheless file applications under R.C. 4905.31 (such as the preliminary filing in Case No. 19-2037-EL-AEC) to seek bypassable approval of retail contracts that support renewable projects in pursuit of the 900 MW renewable commitment, and that such filings will be considered as subsidiary/parallel filings linked to the reasonable arrangement option approved by the Commission in the *ESP IV* decision. Finally, the Company asks the Commission to confirm that AEP Ohio may continue to pursue the bypassable Green Tariff option reflected in Case No. 18-1392-EL-ATA in parallel with the bypassable reasonable arrangement option, which would enable residential customers to elect whether they want to individually support the renewable projects through REC purchases under the tariff. As AEP Ohio explained in its Application in that proceeding (at 3), the Green Tariff gives residential customers another way to “support the development of in-state renewable energy resources” and “promotes economic development for commercial and industrial customers interested in maintaining or expanding operations in the Company’s service territory while supporting sustainability and carbon emissions reduction goals.”

CONCLUSION

For the foregoing reasons, the Commission should grant rehearing and should clarify its November 21, 2019 Opinion and Order as set forth above.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse (0046705), Counsel of Record
Christen M. Blend (0086881)
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1608
(614) 716-1915
Fax: (614) 716-2950
Email: stnourse@aep.com
cmblend@aep.com

Eric B. Gallon (0071465)
Porter Wright Morris & Arthur, LLP
41 South High Street, 30th Floor
Columbus, Ohio 43215
Telephone: (614) 227-2190
Fax: (614) 227-2100
Email: egallon@porterwright.com

Christopher L. Miller (0063259)
Ice Miller LLP
250 West Street
Columbus, Ohio 43215
Telephone: (614) 462-2339
Fax: (614) 222-4707
Email: christopher.miller@icemiller.com

(willing to accept service by e-mail)

Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record this 23rd day of December, 2019, via electronic transmission.

/s/ Steven T. Nourse

Steven T. Nourse

E-Mail Service List:

Bojko@carpenterlipps.com;
callwein@keglerbrown.com;
cmblend@aep.com;
Christopher.Miller@icemiller.com;
christopher.healey@occ.ohio.gov;
cluse@dickinsonwright.com;
cmooney@ohiopartners.org;
cpirik@dickinsonwright.com;
ctavenor@theoec.org
dborchers@bricker.com
dparram@bricker.com;
Dressel@carpenterlipps.com;
egallon@porterwright.com;
glover@whitt-sturtevant.com;
glpetrucci@vorys.com;
BHughes@porterwright.com;
jkylercohn@BKLawfirm.com;
joliker@igsenergy.com;
jstock@beneschlaw.com;
kboehm@BKLawfirm.com;
ktreadway@oneenergylc.com;
fykes@whitt-sturtevant.com;

Maureen.willis@occ.ohio.gov;
mdortch@kravitzllc.com;
mjsettineri@vorys.com;
mkurtz@BKLawfirm.com;
mleppla@theoec.org;
mnugent@igsenergy.com;
mpritchard@mwncmh.com;
msilberman@beneschlaw.com;
ocollier@beneschlaw.com;
paul@carpenterlipps.com;
rdove@keglerbrown.com;
rsahli@columbus.rr.com;
sasloan@aep.com;
stnourse@aep.com;
tdougherty@theoec.org
Thomas.mcnamee@ohioattorneygeneral.gov;
todonnell@dickinsonwright.com;
tony.mendoza@sierraclub.org;
whitt@whitt-sturtevant.com;
William.michael@occ.ohio.gov;
wvorys@dickinsonwright.com;
llee@beneschlaw.com;

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/23/2019 2:27:32 PM

in

Case No(s). 18-0501-EL-FOR, 18-1392-EL-RDR, 18-1393-EL-ATA

Summary: Application - Application for Rehearing of Ohio Power Company electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company