THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF THE POWER PURCHASE AGREEMENT RIDER OF OHIO POWER COMPANY FOR 2018.	**CASE NO. 18-1004-EL-RDR**
IN THE MATTER OF THE REVIEW OF THE POWER PURCHASE AGREEMENT RIDER OF OHIO POWER COMPANY FOR 2019.	**CASE NO. 18-1759-EL-RDR**

ENTRY

Entered in the Journal on December 23, 2021

{¶ 1} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility (EDU) 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.

{¶ 2} R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services 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.

{¶ 3} In Case No. 13-2385-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for an ESP for the period of June 1, 2015, through May 31, 2018, pursuant to R.C. 4928.143. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al. (*ESP 3 Case*), Opinion and Order (Feb. 25, 2015), Second Entry on Rehearing (May 28, 2015), Fourth Entry on Rehearing (Nov. 3, 2016), Seventh Entry on Rehearing (Apr. 5, 2017). Among other matters, the Commission authorized AEP Ohio to establish a placeholder Power Purchase Agreement (PPA) Rider and required AEP Ohio to justify any future request for cost recovery in a separate proceeding. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 20-22, 25-26.

{¶ 4} Subsequently, in Case No. 14-1693-EL-RDR, et al., the Commission modified and approved a stipulation and recommendation pertaining to AEP Ohio's proposal to populate the placeholder PPA Rider approved in the *ESP 3 Case*. *In re Ohio Power Co.*, Case

No. 14-1693-EL-RDR, et al. (*PPA Rider Case*), Opinion and Order (Mar. 31, 2016), Second Entry on Rehearing (Nov. 3, 2016), Fifth Entry on Rehearing (Apr. 5, 2017). The Commission directed that the PPA Rider be subject to an annual audit. *PPA Rider Case*, Opinion and Order (Mar. 31, 2016) at 89-90.

{¶ 5} In Case No. 16-1852-EL-SSO, et al., the Commission modified and approved a stipulation and recommendation, which authorized AEP Ohio to implement an ESP for the period of June 1, 2018, through May 31, 2024, and provided for the continuation of the PPA Rider. *In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, et al. (*ESP 4 Case*), Opinion and Order (Apr. 25, 2018) at ¶ 53.

{¶ 6} By Entry dated January 15, 2020, the Commission directed Staff to issue a request for proposal for the audit services necessary to assist the Commission with the audit of AEP Ohio's PPA Rider for the period of January 1, 2018, through December 31, 2019.

{¶ 7} On March 11, 2020, the Commission selected London Economics International LLC (LEI) to conduct the prudency and performance audit of AEP Ohio's PPA Rider. Confidential and public versions of LEI's audit report were filed on September 16, 2020, in Case No. 18-1004-EL-RDR, and on September 17, 2020, in Case No. 18-1759-EL-RDR.

{¶ 8} By Entry dated January 19, 2021, the attorney examiner granted motions to intervene in these proceedings filed by the Ohio Consumers' Counsel (OCC) and Industrial Energy Users-Ohio. On September 10, 2021, the attorney examiner also granted motions for intervention filed by Ohio Energy Group, Ohio Manufacturers' Association Energy Group (OMAEG), The Kroger Co. (Kroger), Ohio Partners for Affordable Energy, and Natural Resources Defense Council.

{¶ 9} On October 5, 2021, the attorney examiner established a procedural schedule for these cases, including an evidentiary hearing to commence on January 12, 2022.

{¶ 10} On November 19, 2021, OCC filed a notice to take a deposition of a representative of AEP Ohio and a request for production of documents.

{¶ 11} On December 3, 2021, AEP Ohio filed a motion for protective order pursuant to Ohio Adm.Code 4901-1-24(A)(4) and 4901-1-12. In the motion, AEP Ohio states that it has reached an agreement with OCC to produce the Company's hearing witnesses for deposition on December 23, 2021, after the Company has filed its testimony. AEP Ohio notes, however, that it has been unable to agree with OCC on the scope of the document requests and deposition topics and that the Company, therefore, seeks an order providing that the Company is not required to provide testimony or to produce documents relating to matters that fall outside the scope and purpose of these audit proceedings. According to AEP Ohio, OCC seeks discovery on several matters that are irrelevant to the present cases. AEP Ohio explains that, among other things, OCC seeks discovery on how and why the Company originally decided to include the Ohio Valley Electric Corporation (OVEC) PPA in the PPA Rider; how American Electric Power, AEP Ohio's parent company, plans to describe OVEC in a "Sustainability Report"; how AEP Ohio's affiliates commit plants other than OVEC into the day-ahead energy markets; and OVEC-related analyses that may have been developed, and communications and discussions that may have occurred, after the audit period at issue. AEP Ohio provided an affidavit in support of its motion on December 6, 2021.

{¶ 12} On December 20, 2021, memoranda contra AEP Ohio's motion for protective order were filed by OCC and jointly by Kroger and OMAEG. In its memorandum contra, OCC argues that the scope of these proceedings includes whether it is just and reasonable for AEP Ohio to bill consumers for its share of the OVEC charges. OCC asserts that the discovery that it seeks is well within this scope. OCC also maintains that the Commission may consider evidence relating to its original approval of AEP Ohio's collection of OVEC charges in deciding whether such charges are just and reasonable. Further, OCC contends that the Commission may review actions by AEP Ohio's parent company and affiliates in

deciding whether the OVEC charges are just and reasonable. Finally, OCC avers that the Commission may assess AEP Ohio's actions after the audit period in deciding whether the OVEC charges are just and reasonable.

{¶ 13} For their part, Kroger and OMAEG argue that AEP Ohio failed to establish that a single deposition on topics related to the collection of the OVEC costs through the PPA Rider would result in annoyance, embarrassment, oppression, or undue burden or expense, as required by Ohio Adm.Code 4901-1-24. Additionally, Kroger and OMAEG note that any potential burden that AEP Ohio may face from the noticed deposition and the request for production of documents is minimal when viewed in relation to these proceedings.

{¶ 14} On December 22, 2021, AEP Ohio filed a reply in support of its motion for protective order. AEP Ohio asserts that OCC, OMAEG, and Kroger have not demonstrated that the contested deposition topics and document requests are relevant to these proceedings. In addition, AEP Ohio contends that the Commission is authorized to grant, and has granted in prior cases, a motion for protective order where a party seeks irrelevant information through discovery.

{¶ 15} Upon review of AEP Ohio's motion for protective order, the attorney examiner finds that the motion should be granted, in part, and denied, in part. Initially, the attorney examiner notes that OCC seeks to obtain reports, forecasts, policies, and other information that pertains to 2020 and 2021, which is beyond the period under review in these proceedings – January 1, 2018, through December 31, 2019. The attorney examiner finds that such information is not relevant to the subject matter of these cases or reasonably calculated to lead to the discovery of admissible evidence. The deposition and production of documents should, therefore, be limited to topics related to the period up to and including the end of the audit period, December 31, 2019. Information regarding the basis for AEP Ohio's decision to include the OVEC PPA in the PPA Rider is also beyond the scope of these

proceedings, as the Commission has already authorized the OVEC agreement's inclusion in the rider in the *PPA Rider Case* and, more recently, approved the continuation of the rider in the *ESP 4 Case*. As to OCC's request for information related to the actions of AEP Ohio's parent company or affiliates, the attorney examiner finds that these issues are proper for discovery by OCC to the extent that the Company has the information within its possession, custody, or control and if the information pertains to the audit period under review. Accordingly, consistent with these findings, AEP Ohio's motion for protective order should be granted, in part, and denied, in part.

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That AEP Ohio's motion for protective order be granted, in part, and denied, in part. It is, further,

{¶ 18} ORDERED, That a copy of this Entry be served upon all interested persons and parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Sarah J. Parrot

By: Sarah J. Parrot
Attorney Examiner

GAP/mef

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Case No(s). 18-1004-EL-RDR, 18-1759-EL-RDR

Summary: Attorney Examiner Entry ordering the motion for protective order be granted, in part, and denied, in part electronically filed by Ms. Mary E. Fischer on behalf of Sarah J. Parrot, Attorney Examiner, Public Utilities Commission of Ohio