

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

**JOINT REPLY BRIEF
OF THE RETAIL ENERGY SUPPLY ASSOCIATION
CONSTELLATION NEWENERGY, INC.
AND
EXELON GENERATION COMPANY LLC**

February 8, 2016

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. ARGUMENT	2
A. Customers Do Not Need or Want a Commission-Imposed “Hedge”	2
1. The Standard Service Offer Auctions are Successful	3
2. Competitive Retail Electric Service Offers are not Volatile.....	4
3. There is Strong Customer Opposition to AEP Ohio’s PPA Proposal.....	7
a. <i>Strong public opposition and outcry has been presented</i>	7
b. <i>A true cross-section of customer groups has not joined the Stipulation</i>	8
c. <i>Weighting the support for the signatory parties demonstrates that there is not broad support for the PPA Proposal</i>	10
B. AEP Ohio has not provided Evidence that the ESP is More Favorable than a MRO.....	11
1. AEP Ohio cannot modify the ESP III without following R.C. 4928.143(C)(1).....	11
2. AEP Ohio did not meet its burden	13
3. The ESP III with the PPA Proposal will not be more favorable in the aggregate than an MRO	14
C. The PPA Proposal Differs from Traditional Generation Rate Recovery and the Traditional Recovery Process cannot be a Basis for Approving the PPA Proposal	16
D. The PPA Rider Captures Wholesale Market Volatility and Moves it into Retail Rates	18
E. AEP Ohio Must be Appropriately Incentivized.....	19
1. There is little to no incentive for AEP Ohio and AEPGR to act as rational competitive market participants.....	19
2. The credit commitment in the Stipulation is woefully insufficient	20
3. AEP Ohio should be required to provide a meaningful and effective incentive	22
III. CONCLUSION.....	24

I. INTRODUCTION

Ohio Power Company (“AEP Ohio”) has presented a multi-part proposal in this proceeding designed so that its ratepayers shoulder all of risks and potentially incur billions in costs associated with (a) AEP Ohio’s entitlement from the Ohio Valley Electric Corporation (“OVEC”) units and (b) output to be purchased under a new, yet-to-be-executed 8.25-year, power purchase agreement (“PPA”) with its affiliate AEP Generation Resources Inc. (“AEPGR”). AEP Ohio will compile the net costs of the OVEC PPA and the AEPGR PPA, and pass them through to AEP Ohio’s ratepayers via an “add-on” generation-related charge (the PPA Rider) so that all of the PPA net costs are recovered (hereinafter collectively referred to as the “PPA Proposal”). The risks and costs associated with both agreements are risks that the ratepayers do not bear today. AEP Ohio claims that the proposal is appropriate because it will have the effect of stabilizing or providing certainty regarding retail electric service.

There are a slew of flaws with AEP Ohio’s proposal, as well as the pending Joint Stipulation and Recommendation (“Stipulation”). Rather than pointing out each specific flaw, the Retail Energy Supply Association (“RESA”),¹ Constellation NewEnergy, Inc. (“CNE”) and Exelon Generation Company LLC (“Exelon”) highlight arguments on five critical points.² First, AEP Ohio’s ratepayers did not ask for and are adamantly opposed to the PPA Proposal. Second, nothing in the record shows AEP Ohio’s current electric security plan (“ESP III”)³ will be more favorable in the aggregate as compared to a market rate offer (“MRO”) with the addition of the PPA Proposal.

¹ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² RESA, CNE and Exelon have elected to address herein only certain issues involved in this proceeding. The decision to not address a specific issue should not be construed as acceptance or agreement therewith.

³ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO et al., Opinion and Order (February 25, 2015) (“ESP III”).

This is a statutorily required demonstration that AEP Ohio has not met. Third, the PPA Proposal will put AEP Ohio back in charge of formerly held generation assets and not put in place commensurate and effective regulatory controls/oversight. Fourth, the PPA Proposal will insert volatility into retail rates, supplanting the generation-related decisions that the ratepayers have made. Finally, in the event that the Commission finds that the PPA Proposal, as modified by the Stipulation, should be approved, the Commission should impose additional, effective incentives so that the ratepayers are not put at substantial and unknown risk over the term of the PPA Proposal. Competitive retail electric service (“CRES”) providers offer risk-management services for all ratepayer classes, from the residential customer to the largest consumers, and the Commission should not negate those services.

II. ARGUMENT

A. Customers Do Not Need or Want a Commission-Imposed “Hedge.”

The PPA Proposal seeks to impose the PPA Rider as a non-bypassable rider.⁴ That means all of AEP Ohio’s captive distribution ratepayers must pay the PPA Rider for “add-on” generation-related charges. AEP Ohio contends that “[w]hile the PPA Rider could be either a credit or a charge during a given time period, inclusion of the [AEPGR] PPA and the OVEC PPA in the PPA Rider would always provide a measure of stability in parallel to, and as a hedge against, more volatile market prices.”⁵ Neither AEP Ohio nor the parties who support the PPA Proposal and/or the Stipulation have demonstrated that AEP Ohio’s ratepayers, the supposed beneficiaries of this deal, need this alleged “hedge” imposed upon them by the Commission. Rather, the evidence shows otherwise for all customers –non-shopping and shopping.

⁴ AEP Ohio Ex. 10 at 8.

⁵ AEP Ohio Ex. 13 at 4. (Emphasis added.) *See, also*, AEP Initial Brief at 14-15. This statement is patently false as to the ratepayers. The PPA Rider cannot *always* provide a measure of stability. AEP Ohio readily admits it has not presented a forecast with a single set of numbers (rather, its forecast numbers swing wildly between credits and charges). AEP Ohio also readily admits it has not used its forecast analysis as a guarantee of the financial result to be given to customers. Tr. Vol. 18 at 4584; AEP Ohio Initial Brief at 75. AEP Ohio cannot claim that the PPA Rider will *always* provide stability as a hedge for customers.

1. The Standard Service Offer Auctions are Successful.

As of June 2015, 28.41 percent of the megawatt-hours consumed by ratepayers in AEP Ohio's service territory were procured via Commission-administered standard service offer ("SSO") auctions.⁶ Those auctions are conducted on a specific schedule and have products with varying and overlapping delivery periods, resulting in a "laddering" and "staggering" of the products and charges associated with those products. AEP Ohio's recent SSO auctions currently take place twice a year – in the fall and spring.⁷ There have been multiple participants and the Commission has accepted the auction results.⁸ The Staff described the effect of the laddering and staggering as "a more effective approach for mitigating price volatility" as compared to the PPA Rider.⁹ The design behind the SSO auctions is to weave or blend the market-based costs of generation.

AEP Ohio witness Allen acknowledges that the laddering and staggering has a beneficial effect of "smoothing out changes in market prices."¹⁰ He claims that the beneficial effect of the laddering and staggering is only short-term, whereas AEP Ohio's PPA Proposal (which is long-term) can provide a much better benefit.¹¹ He further contends that the SSO cannot mitigate "to the absolute level of market prices," but the PPA Proposal can.¹² This claim completely ignores important details about AEP Ohio's PPA Rider:¹³

- A Rider charge will be set one time each year and it will be based on forecasted assumptions including normalized weather.
- Since weather is not always normal (a fact that AEP Ohio admits), the Rider charge will be adjusted periodically based on the actual generation costs incurred and revenues received.

⁶ Staff Ex. 1 at 10.

⁷ P3/EP SA Ex. 8 at 10. *See, also, In the Matter of the Procurement of Standard Service Offer Generation for the Customers of Ohio Power Company*, Case No. 15-792-EL-UNC.

⁸ *Id.*, Finding and Order (May 13, 2015) and Finding and Order (November 4, 2015).

⁹ *ESP III, supra*, Staff Ex. 18 at 10-11 (filed May 20, 2014).

¹⁰ AEP Ohio Ex. 10 at 7. *See, also*, AEP Ohio Initial Brief at 91.

¹¹ AEP Ohio Ex. 10 at 7; Tr. Vol. 17 at 4376.

¹² Tr. Vol. 17 at 4377.

¹³ P3/EP SA Ex. 1 at 12; Tr. Vol. 18 at 4520-4521, 4574, 4577, 4583.

- AEP Ohio will adjust the PPA Rider rates each quarter, changing the rider charge more frequently than the SSO laddering and staggering process.
- The quarterly adjustments will not take place until at least one full quarter after the quarter in which the rider revenue and costs are netted, changing the rider charge without any correlation to the then-current weather.

AEP Ohio witness Allen also presented the individual winning bids for the auction products from SSO auctions in the FirstEnergy service territories and compared the dollar figures.¹⁴ That presentation completely overlooks the actual effect of the laddering and staggering of the auctions and products. P3/EPISA witness Cavicchi presented that information,¹⁵ clearly illustrating that the SSO rates have been generally stable for years. The totality of the evidence establishes that the SSO auctions are having the Commission-desired effect and that the “smoothing out” is not a short-term effect – it continues as the SSO auctions continue. The SSO customers are not needing AEP Ohio’s PPA Proposal to stabilize their rates.

2. Competitive Retail Electric Service Offers are not Volatile.

As of June 2015, 71.59 percent of the megawatt-hours consumed by ratepayers in AEP Ohio’s service territory were supplied by CRES providers or through aggregation.¹⁶ The majority of the publicly available offers for shopping customers are fixed-rate products, from one year to three years in length.¹⁷ The PPA Rider “un-fixes” such contracts by requiring the shopping customers to pay AEPGR’s and OVEC’s generation costs at a variable price. RESA witness Campbell noted that the PPA Rider “undermines one of the key benefits of retail competition in Ohio – the ability to negotiate the lowest fixed-price term from a variety of CRES providers.”¹⁸ P3/EPISA witness Cavicchi testified that these products are based on forward/futures market prices,

¹⁴ AEP Ohio Ex. 10 at 8 and Exhibit WAA-2.

¹⁵ P3/EPISA Ex. 8 at Attachment AJC-2a – AJC-2c.

¹⁶ Staff Ex. 1 at 10.

¹⁷ P3/EPISA Ex. 8 at 10-11.

¹⁸ RESA/Exelon Ex. 1 at 13.

which are less volatile than wholesale supply spot markets.¹⁹ Mr. Cavicchi further explained that as the CRES contracts expire/renew, the CRES pricing moves slowly.²⁰

In an attempt to challenge Mr. Campbell's and Mr. Cavicchi's testimony, AEP Ohio witness Allen presented a chart containing a snapshot of assorted 12-month and 24-month CRES offers from January 2014, April 2014 and January 2015.²¹ He compared the average, median, minimum and maximum offers, and concluded that CRES offers are volatile.²² However, upon cross-examination, he acknowledged that the 12-month offers in the three time frames had different capacity price components.²³ Also, Mr. Allen's charts do not compare offers by the same CRES providers or the same numbers of entities among the three time frames. For example, there are eight offers for the 12-month group in January 2014, but 12 offers for that group in the January 2015 time frame. Instead, he presented a list of assorted offers, just averaged them or selected the highest and lowest. Mr. Allen's chart also leaves out 36-month offers which are another category of stable pricing options available on the market.

Further, the comparison involved time frames before and after the 2014 Polar Vortex. That event has had an isolated and unique impact on energy pricing.²⁴ Given this approach, there would naturally be some difference in pricing over time just like consumers see with other basic commodities such as milk and gas. Taken altogether, Mr. Allen skewed the data to support his claim that CRES offerings are volatile.

Importantly, CRES offers have exhibited a downward trend in Ohio, which provides shopping customers the ability to have set generation rates for the time period of their choosing.

¹⁹ P3/EPISA Ex. 8 at 11, 12.

²⁰ *Id.* at 11.

²¹ AEP Ohio Ex. 51 at Exhibit WAA-R1.

²² AEP Ohio Ex. 51 at 4.

²³ Tr. Vol. 17 at 4393.

²⁴ Tr. Vol. 17 at 4078, 4374.

The below table shows the downward trend in 1-year, 2-year and 3-year CRES offers during the period of October 2014 to October 2015.

CRES Provider	October 3, 2014 Offers	October 2, 2015 Offers	Citations
AEP Energy	12 mos.= \$0.0765	12 mos.=\$0.0615	Sierra Club Ex. 44 at 23; Sierra Club Ex. 45 at 73
IGS Energy	12 mos.= \$0.0769	12 mos.= \$0.0639	Sierra Club Ex. 44 at 26; Sierra Club Ex. 45 at 76
Direct Energy	12 mos.= \$0.0765 24 mos.= \$0.0809	12 mos.= \$0.0715 24 mos.= \$0.0789	Sierra Club Ex. 44 at 24-25; Sierra Club Ex. 45 at 74-75
Star Energy	12 mos.= \$0.0889 24 mos.= \$0.0889	12 mos.= \$0.0729 24 mos.= \$0.0769	Sierra Club Ex. 44 at 29; Sierra Club Ex. 45 at 79
Capital Energy	12 mos.= \$0.0828 24 mos.= \$0.0838	12 mos.= \$0.0633 24 mos.= \$0.0608	Sierra Club Ex. 44 at 23; Sierra Club Ex. 45 at 73-74
CNE	12 mos.= \$0.0789 36 mos.= \$0.0769	12 mos.= \$0.0659 36 mos.= \$0.0639	Sierra Club Ex. 44 at 24; Sierra Club Ex. 45 at 74
DP&L Energy	12 mos.= \$0.0829 24 mos.= \$0.0809	12 mos.= \$0.0729 24 mos.= \$0.0719	Sierra Club Ex. 44 at 25; Sierra Club Ex. 45 at 75
Source Power & Gas	12 mos.= \$0.0799 24 mos.= \$0.0785	12 mos.= \$0.0740 24 mos.= \$0.0767	Sierra Club Ex. 44 at 29; Sierra Club Ex. 45 at 79

This trend does not reflect a need for AEP Ohio’s shopping customers to pay an extra charge on top of their set generation rates. And the record establishes that those offers are set when accepted – especially as AEP witness Allen admitted that he was only aware of one CRES provider (FirstEnergy Solutions Corp.) that tried to adjust contract rates by passing through charges related to the Polar Vortex.²⁵ The Commission should recognize that, regardless of which CRES product a shopping customer selects, the customer is able to set its generation costs for the length of the CRES contract. What is most important is that the individual customers can exercise their own limits on volatility if they so choose. In other words, all customers have the opportunity to select CRES risk-management services to address their volatility concerns. The PPA Rider undermines that stability by imposing additional generation charges/credits on the ratepayers that will fluctuate quarterly.

²⁵ Tr. Vol. 1 at 4268-4269, 4273-4280.

3. There is Strong Customer Opposition to AEP Ohio's PPA Proposal.

a. *Strong public opposition and outcry has been presented.*

The record establishes that AEP Ohio's customers have not asked for this alleged "hedge." Instead, it was an internal corporate idea.²⁶ Moreover, many letters from AEP Ohio ratepayers have been filed with the Commission expressing strong opposition to this proposal. Multiple customer groups and representatives have been very involved in this proceeding and are strongly opposed to the PPA Proposal. They include: The Ohio Consumers' Counsel (on behalf of millions of AEP Ohio's residential customers); The Kroger Co. (a large commercial customer); The Ohio Manufacturers' Association Energy Group (representing multiple Ohio manufacturers); and Wal-Mart and Sam's East Inc. (a large retailer in Ohio). The Commission should not ignore this strong opposition from many different customers.

Not long ago, there was customer outcry against other rate changes that led the Commission to reevaluate its conclusion and reject a stipulation, stating in part:²⁷

[W]e find that the Signatory Parties have not demonstrated that the [market transition rider] MTR and [load factor provision] LFP provisions of the Stipulation promote rate certainty and stability as required by Section 4928.143.(B)(2)(d), Revised Code. We further find that the Signatory Parties have not demonstrated these provisions benefit ratepayers and the public interest as required by the second prong of our three part test for the consideration of stipulations.

At the hearing, AEP-Ohio presented testimony regarding the rate impacts of the Stipulation upon customers, including small commercial customers in the GS-2 class (AEP-Ohio Ex. 2, Exhibit DMR-5). In the Opinion and Order, the Commission recognized that these rate impacts may be significant, based upon evidence indicating that total bill impacts may, in some cases, approach 30 percent. However, the evidence in the record inadvertently failed to present a full and accurate portrayal of the actual bill impacts to be felt by customers, particularly with respect to low load factor customers who have low usage but high demand.

²⁶ Tr. Vol. 2 at 591.

²⁷ *In the Matter of the Application of Columbus Southern Power Company and Power Company for Authority to Establish a Standard Service Offer Pursuant Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, et al., Entry on Rehearing at 10-11 (February 23, 2012).

Due to the evidence that some commercial customers were going to receive significant total bill increases in approaching 30 percent, we modified the shopping credits provision to provide additional relief to GS-2 customers in the form of an additional allocation of shopping credits to new shopping customers. However, the actual impacts suffered by a significant number of GS-2 customers appear to have vastly exceeded AEP-Ohio's representations at hearing. Since we issued the Opinion and Order, numerous customers have filed, in the case record of this proceeding, actual bills containing total bill rate increases disproportionately higher than the 30 percent predicted by AEP-Ohio. The disproportionate rate impacts indicated by these bills undermine the evidence presented by the signatory parties that the MTR and LFP provide rate certainty and stability pursuant to Section 4928.143(B)(2)(d), Revised Code. * * * We find that the Signatory Parties have not met their burden of proof of demonstrating that the MTR and LFP provisions meet the statutory requirement of Section 4928.143(B)(2)(d), Revised Code, to provide rate certainty and stability, and that Signatory Parties have not demonstrated that the MTR and LFP benefit ratepayers and the public interest. Accordingly, pursuant to our three-part test for the consideration of stipulations, we must reject the Stipulation.

The PPA Proposal has and will lead to a similar outcry from AEP Ohio's captive ratepayers, especially as the PPA Rider exposes all ratepayers to substantial risks with the potential for charges in the billions of dollars.²⁸ The Commission should reject the proposal and Stipulation.

b. A true cross-section of customer groups has not joined the Stipulation.

AEP Ohio argues that there is a diversity of parties who have signed the Stipulation and that every customer group and interest has joined the Stipulation.²⁹ For example, AEP claims that Ohio Hospital Association ("OHA") represents AEP Ohio commercial customers and the Ohio Partners for Affordable Energy ("OPAE") represents residential customers.³⁰ OHA and OPAE, however,

²⁸ Ohio Consumers' Counsel witness Wilson estimated that the PPA Proposal will cost AEP Ohio customers \$1.9 billion over the stipulated term. OCC Ex. 34 at 5. P3/EPISA witness Cavicchi testified that there is no prospect for AEP Ohio to provide a hedge to the ratepayers because of recent declines in fuel and power market prices and that the quarterly reconciliations will make rate unstable. P3/EPISA Ex. 13 at 12-16.

²⁹ AEP Ohio Initial Brief at 31.

³⁰ The Ohio Hospital Association currently represents 219 hospitals and 13 health systems throughout Ohio. See, Ohio Hospital Association's website at <http://ohiohospitals.org/About-Us.aspx> (accessed February 3, 2016). Ohio Partners for Affordable Energy advocates for affordable energy policies for moderate and low-income Ohioans and its member agencies provides services to over 400,000 households statewide each year. See, Ohio Partners for Affordable Energy's website at <http://www.ohiopartners.org/> (accessed February 3, 2016).

received multiple special perks through the Stipulation negotiations that only they receive. For instance, OHA received a reduction in the rate that it pays for dual distribution service, a reduction that will total over \$100,000 a year.³¹ OPAE will receive special earmarked EE/PDR project funding along with a \$400,000 administration fee that it does not receive today.³² RESA took issue in its initial Brief with these monetary inducements (page 55-56) and continues to believe that they violate the Commission's regulatory principles and practices. They also indicate that serious bargaining did not take place on the PPA Proposal that is the subject of the application in this proceeding.

In fact, every signatory party with the exception of Staff, Buckeye Power and FirstEnergy Solutions, are receiving individually tailored perks under the Stipulation that are unrelated to the PPA Rider. Likewise, the Industrial Energy Users of Ohio ("IEU") received \$8 million, in part to drop its opposition to the PPA Proposal and to agree to not oppose the Stipulation.³³

A cross-section is not demonstrated by pointing to a small group of signatory parties that are benefiting through favor trading under the Stipulation while ignoring the wide cross-section of parties and entities who oppose the Stipulation, including the Independent Market Monitor, PJM Power Providers Group (energy providers in the PJM region), Electric Power Supply Association (representing competitive power suppliers), RESA (representing Ohio CRES suppliers), Exelon and Dynegy Inc. (wholesale merchant generators), CNE (an Ohio CRES supplier), Ohio Consumers' Counsel (representing AEP Ohio's ratepayers), OMAEG (representing commercial customers) and Advanced Power Services and Oregon Clean Energy (constructing new generation plants in Ohio).³⁴ There is not a true representation of all customer groups and there is still extensive opposition from multiple customer groups including the Ohio Consumers' Counsel (representing

³¹ Joint Ex. 1 at 15; Tr. Vol. 18 at 4551.

³² Joint Ex. 1 at 13-14; Tr. Vol. 18 at 4558-4559; 4562.

³³ P3/EPSCA Ex. 11.

³⁴ See, the initial briefs filed by each of these parties on February 1, 2016.

Ohio's ratepayers) and the Ohio Manufacturing Association Energy Group (representing commercial customers).

- c. *Weighting the support of the signatory parties demonstrates that there is not broad support for the PPA Proposal.*

AEP Ohio's basis that the Stipulation in general and the Rider PPA in particular has broad stakeholder support rests on the observation that the list of signatory parties contains a party from each of the major stakeholder groups. Had the Stipulation been limited to just the Rider PPA, as was the Application, there may be some merit in that observation, but the Stipulation is festooned with private awards. Further, it is the parties receiving the private awards who have signed on to the Stipulation. The Commission must weigh the support from a signatory party against any private award within the Stipulation before it can determine that there is stakeholder support. For example, all the major supplier trade associations, including the Retail Energy Supply Association, the Electric Power Supply Association, and the PJM Power Providers Group, oppose the Stipulation in general and specifically the Rider PPA. Two suppliers took no position on the Rider PPA, but signed the Stipulation. Those two and only those two suppliers are named specifically as the only suppliers eligible to be the suppliers in a supplier-consolidated billing program.³⁵ Supplier-consolidated billing is a worthwhile endeavor for which RESA and its members have advocated. Nevertheless, there is no record to support or even describe how the consolidated billing is related to the Rider PPA, how the size of the pilot program which is part of the Stipulation was determined, and most importantly, why it is just restricted to the signatory parties. On its face, it appears that this provision of the Stipulation was just currency created by AEP Ohio to garner support in a quid pro quo trade for the Rider PPA. Similarly, to state that residential customers as a stakeholders group support the Stipulation because OPAE supports the Stipulation just rings false. Before the Commission can conclude that residential customers support the Stipulation, it must weigh the fact

³⁵ Joint Ex. 1 at 16-18.

that the Office of the Consumer Counsel, the governmental agency which represents all of the residential consumers, opposes the Stipulation and filed testimony, including expert testimony, showing the harm the Rider PPA does to residential consumers with the fact that OP&E's support could have been purchased as it is a private organization that receives as part of the Stipulation a no-bid contract. Further, the no-bid contract could have been awarded by AEP Ohio without specific Commission approval. There is no reasonable relationship between OP&E's grant for low income conservation and the Rider PPA provided in the record. In sum, for qualitative purposes, the Commission simply cannot tout as stakeholder support any sector whose only signatory parties are specifically named for private goods in the Stipulation unassociated with the Rider PPA.

B. AEP Ohio has not provided Evidence that the ESP is More Favorable than a MRO.

The Company's ESP III was approved in February 2015.³⁶ At that time and based on the evidence presented in that matter, the Commission performed the analysis required by Revised Code ("R.C.") 4928.143(C)(1). That analysis, commonly referred to as the "ESP versus MRO test," determines whether an ESP proposal would be more favorable in the aggregate as compared to a market rate offer ("MRO") for purposes of deciding whether the ESP proposal should be approved. The Commission concluded that the ESP III as modified was more favorable and, upon Commission approval, the ESP III went into effect in June 2015. It is scheduled to end May 31, 2018.

1. AEP Ohio cannot modify the ESP III without following R.C. 4928.143(C)(1).

In this proceeding, AEP Ohio states that the basis for the PPA Rider portion of the proposal is *the ESP statute* because the rider is a term, condition, or charge "relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or

³⁶ *ESP III, supra.*

deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service.”³⁷ R.C. §4928.143(B)(2)(d). AEP Ohio states in this case that it is presenting “a proposal that fulfills the benefits envisioned in the *ESP III Order* through a particular set of terms and conditions reflected in the new proposed affiliate PPA with AEPGR, as well as benefits of the OVEC PPA.”³⁸ AEP Ohio is asking to implement the PPA Proposal immediately.³⁹ This makes clear that AEP Ohio intends to modify the ESP III with the new PPA Proposal.

AEP Ohio goes on to argue in its initial brief that the Commission already found that the PPA Rider is authorized under R.C. §4928.143(B)(2)(d).⁴⁰ What the Commission concluded in the ESP III is that a *properly conceived PPA proposal* could be permissible under the ESP statute and that AEP Ohio’s original PPA proposal was not such.⁴¹ As a result, this new proposal needs to be fully evaluated under the ESP statute, which includes not only R.C. §4928.143(B)(2)(d), but the remainder of the ESP statute.⁴² In particular, AEP Ohio has not sufficiently demonstrated that its ESP III (as modified by the PPA proposal) will comply with R.C. §4928.143(C)(1), which states in relevant part:

Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.

³⁷ AEP Ohio Ex. 13 at 9. *See, also*, AEP Ohio Initial Brief at 2, 11.

³⁸ AEP Ohio Ex. 13 at 7.

³⁹ Tr. Vol. 18 at 4480.

⁴⁰ AEP Ohio Initial Brief at 13.

⁴¹ *ESP III, supra*, Opinion and Order at 25.

⁴² RESA, CNE and Exelon have previously argued that AEP Ohio’s PPA Proposal does not satisfy R.C. §4928.143(B)(2)(d) and will not repeat those arguments here. For this Reply Brief, RESA, CNE and Exelon have elected to focus on the lack of compliance with subsection C of the ESP statute.

R.C. §4928.142 refers to the MRO. This statutory language is clear – the Commission must determine whether the modified ESP III (with this new PPA proposal) is more favorable in the aggregate than an MRO.

2. AEP Ohio did not meet its burden.

AEP Ohio’s position is that the *ESP III* decision is still applicable and it is only “enhanced” by this new PPA Proposal because (a) the Stipulation⁴³ implicates the placeholder PPA Rider established in the *ESP III* decision and (b) the Commission decided at that time the ESP III was more favorable than an MRO.⁴⁴ In other words, the ESP III with this new PPA Proposal must be more favorable in the aggregate as compared to the expected results under an MRO because AEP Ohio claims that the PPA Proposal will provide a net benefit over the term of the ESP III. AEP Ohio goes on to criticize other witnesses’ testimony addressing the ESP versus MRO test, but nonetheless did not present an actual ESP versus MRO analysis in this proceeding.⁴⁵

The new PPA Proposal will change the qualitative and quantitative inputs into the ESP versus MRO analysis conducted in 2015 in the *ESP III* case. AEP Ohio did not present an ESP versus MRO analysis, and its claim that the PPA Proposal only enhances the Commission’s *ESP III* finding on the ESP versus MRO test, without any demonstration to back it up, is legally insufficient evidence. AEP Ohio had the burden of proof that its proposal will satisfy the ESP statute, and it has failed to meet that burden.

⁴³ The Stipulation simply states: “The Signatory Parties agree that the Stipulation preserves and advances the positive results of the MRO v. ESP test under R.C. 4928.143(C) as found in the *ESP III Order*.” Joint Ex. 1 at 34 (footnote omitted).

⁴⁴ AEP Ohio Initial Brief at 8, 26, 132-133.

⁴⁵ *Id.* at 132-133.

3. The ESP III with the PPA Proposal will not be more favorable in the aggregate than an MRO.

The Commission found that the ESP III would provide \$53,064,000 in benefits over the ESP term that would not be possible under an MRO.⁴⁶ That conclusion assumed a zero value for a PPA Rider.⁴⁷ That value will change if the Stipulation in this matter is approved, the only issue is that the value is unknown.

AEP Ohio claims in its initial brief (and for the first time) that the quantitative value of the benefit to customers over the remainder of the ESP III term is a \$209 million benefit.⁴⁸ Yet, at hearing, AEP witness Allen testified that the credit/charge each year could fluctuate between the amounts listed in the 5% Lower Load Forecast and the 5% Higher Load Forecast in Settlement Exhibit WAA-2.⁴⁹ Those rows in his forecast sheet show extreme annual variations between charges and credits.

Regardless, if one accepts AEP Ohio witness Allen's testimony that the PPA Rider will range between the 5% higher and 5% lower load forecasts,⁵⁰ then the ESP versus MRO analysis must consider those two forecasts. The quantitative results are as follows:

Load Forecast ⁵¹	Rider Impact Through end of ESP III	Addition of \$4 M initial credit and \$53 M of other quantified benefits ⁵²
5% Higher Load	\$602.75 M ⁵³	\$659.75 M
5% Lower Load	-\$215.33 M ⁵⁴	-\$158.33 M

⁴⁶ *ESP III*, Second Entry on Rehearing at 52.

⁴⁷ *ESP III*, Opinion and Order at 94.

⁴⁸ AEP Ohio Initial Brief at 132, footnote 15.

⁴⁹ Tr. Vol. 18 at 4582-4583.

⁵⁰ Mr. Allen stated that *both* the 5% higher and the 5% lower load forecasts should be used for the ESP versus MRO analysis. Tr. Vol. 18 at 4603-4604. RESA does not necessarily concur with this methodology for the analysis, but can nonetheless make this point using that methodology.

⁵¹ Based on the rows entitled "Net PPA Rider Credit/(Charge) incl. PJM CP, including CO2 tax." AEP Ohio Ex. 52 at Settlement Exhibit WAA-2.

⁵² For simplicity, the total amount of quantifiable benefits (\$53 million) that the Commission determined would exist for the ESP III was added. There is no reason to believe that all \$54 million of quantifiable benefits still remain, but was used for illustrative purposes. The stipulated initial credit was also added, although there is no guarantee that the ratepayers will actually receive that credit in 2016 (due to the reconciliations), but was used for illustrative purposes.

⁵³ The calculation is: (10/12) of \$267M in 2016 + \$294 M in 2017 + (5/12) of \$207 M in 2018 = \$602.75 M.

⁵⁴ The calculation is: (10/12) of (\$84)M in 2016 + (\$102) M in 2017 + (5/12) of (\$104) M in 2018 = \$215.33 M.

This analysis (based on the forecasts that AEP Ohio identified for use in evaluating the PPA Proposal) does not show that the ESP quantitatively will be more favorable in the aggregate than an MRO. What it does show is that the amount of the PPA Rider could be quantitatively more favorable than an MRO but also much worse than an MRO. That is not sufficient to show that the ESP III with the PPA Proposal will be more quantitatively favorable than a MRO.

In fact, witness testimony makes it more likely than not that the PPA Rider will result in significant charges to the ratepayers. P3/EPISA witness Joseph Cavicchi noted that AEP witness Bletzacker's natural gas price forecast (used by Mr. Allen in December 2015 to prepare his new PPA Rider credit/charge estimates) was from 2013. Those prices are now long out-of-date and inconsistent with current natural gas forecasts.⁵⁵ Mr. Cavicchi testified that resulting lower gas prices will result in lower electric energy prices leading to increased charges to the ratepayers under the PPA Rider.⁵⁶ OCC witness Wilson forecasted the total cost of the PPA Rider to be \$177 million through the end of the ESP III.⁵⁷ This testimony, coupled with Mr. Allen's admission that the PPA Rider could be on the lower end of the spectrum on his forecast sheet, show that if the PPA Proposal could be quantified, that the ESP III would no longer be more favorable than an MRO.

The qualitative side of the equation also does not establish that the ESP will be more favorable in the aggregate than an MRO. There are significant unknown risks of the PPA, especially because AEP itself has forecasted losses during the remainder of the ESP III term, and the record is replete with substantial testimony supporting the negative impact of the PPA Proposal on the competitive markets and the unknown market risk that AEP Ohio's ratepayers are taking on under the PPA Proposal. These concerns outweigh by far any qualitative benefits found by the Commission in the *ESP III*.

⁵⁵ P3/EPISA 12 at 11.

⁵⁶ *Id.* at 13.

⁵⁷ OCC Ex. 34 at 5 ($\$67.5M + \$72.4M + (\$90.5M/12 * 5) = \$177M$).

Additionally, the Stipulation's monetary inducements and litany of promises for future action that may never amount to actual benefits do not add any qualitative benefits into the analysis. Monetary inducements can be given under (although they should not) under either an ESP or MRO. Future promises are just that – a nonbinding commitment by AEP Ohio that are properly evaluated in AEP Ohio's next ESP application. The future promises in the Stipulation add no qualitative benefit to the current ESP III.

Quantitatively and qualitatively, the ESP III with the PPA Proposal cannot be shown to be more favorable than an MRO. AEP Ohio tipped the scale when it applied for a PPA Proposal that is designed with minimal oversight by the Commission and unknown risk to the ratepayers. One way to correct that is to require AEP Ohio to guarantee a minimum credit amount for the PPA Rider through the remainder of the ESP III. Without that guarantee, the ESP III is no longer more favorable than an MRO – and the Stipulation must be rejected in order to continue the ESP III.

C. The PPA Proposal Differs from Traditional Generation Rate Recovery and the Traditional Recovery Process cannot be a Basis for Approving the PPA Proposal.

To support its claim for the PPA Proposal, AEP Ohio points to other utilities and cooperatives that operate under traditional vertically integrated cost-of-service regulation and also participate in the competitive wholesale markets, including the Dominion utility in Virginia.⁵⁸ Similarly, OEG finds the PPA Proposal to be acceptable on the theory that it will keep regulatory authority over generation assets and retail generation pricing with the Commission, and put AEP Ohio on par with those cost-of-service entities that already participate in the wholesale markets.⁵⁹ AEP Ohio is essentially making a “me too” argument, claiming that it should be allowed to receive cost-based compensation from ratepayers for generation resources.⁶⁰

⁵⁸ AEP Ohio Initial Brief at 133-137.

⁵⁹ OEG Initial Brief at 16.

⁶⁰ AEP Ohio Initial Brief at 136.

OEG and AEP Ohio, however, sidestep several important distinctions between AEP Ohio's actions under the PPA Proposal and the operations of utilities operating in regulated cost-of-service states:

AEP Ohio under PPA Proposal	Utilities under Cost-of-Service Construct
The generation will not be purchased for the ratepayers' needs - it will be purchased solely for resale into the PJM market.	The generation is purchased for the ratepayers' needs. ⁶¹
AEP Ohio will have little to no incentive to maximize profits when participating in the PJM markets. ⁶²	Cost-of-service utilities have incentives to minimize costs and maximize profits to achieve the return on equity in their rate structure. ⁶³
Commission will only have annual review over AEP Ohio's actions limited solely to its actions related to selling output into the PJM markets, with limited access to the underlying books and records.	Cost-of-service utilities are subject to extensive ongoing state oversight.

These differences justify rejection of the "me too" arguments raised by AEP Ohio and OEG. The Commission should find that significant legal and factual disparities exists between AEP Ohio's PPA proposal and the procurement of generation in a state requiring traditional cost-of-service rate recovery. How other PJM participants recover their costs is not a basis upon which to justify AEP Ohio's harmful subsidy proposal.

⁶¹ Any excess generation is encouraged to be sold in the PJM market, with additional revenues often shared with ratepayers. Tr. Vol. 21 at 5293.

⁶² RESA/Exelon Ex. 1 at 14; IMM Ex. 1 at 4; IMM Ex. 2 at 5; Dynegy Ex. 2 at 5, 7-8; P3/EPSCA Ex. 13 at 7-8; RESA Ex. 1 at 4-5.

⁶³ Tr. Vol. 21 at 5293.

D. The PPA Rider Captures Wholesale Market Volatility and Moves it into Retail Rates.

AEP Ohio makes the claim that the PPA Proposal “will provide an effective hedge against volatile market conditions to the benefit of Ohio retail customers.”⁶⁴ The reality though is that the PPA Proposal is going to capture wholesale market volatility and place it into retail rates.

The mechanics of the PPA Proposal shows how this will happen. First, all amounts netted into the PPA Rider are based on wholesale market costs and revenues. AEP Ohio pays AEPGR for all of its costs plus a return on and of equity. AEP Ohio will then sell the output into the PJM markets. Any charges and revenues from the PJM markets will be netted against the payments to AEPGR.

Second, the PPA Rider, which will be initially set each year on a weather-normalized basis, will be adjusted quarterly to reflect the netting of the wholesale transactions. For example, if the PPA Rider is initially set as a monthly \$2.00 charge for a residential customer and the wholesale netting in the first quarter of the year results in a calculated credit of \$5.14 for that customer, then starting June 1 of that year the customer would receive a credit of \$3.14. Likewise, if one assumes that the PPA Rider was in effect the prior year, there would be adjustments to the \$2.00 charge in the second quarter of the year based on the prior year’s fourth quarter results.

The end result is that both shopping and non-shopping customers will be paying a rider charge that is calculated based on wholesale transactions. Shopping customers, however, can set their generation rates through long-term contracts with CRES providers and SSO customers can benefit from set SSO pricing that is in place for an entire delivery year (currently June 1 to May 31). The PPA Rider will eliminate the ability of customers to fix their rates by applying a monthly charge/credit to all customers’ bills that will change each quarter. That is how the PPA Rider captures wholesale market volatility and applies it to retail generation rates. Exposing retail

⁶⁴ AEP Ohio Initial Brief at 1.

customers to the wholesale markets will not have the effect of “stabilizing or providing certainty regarding retail electric service.” Nor is it necessary because risk-management services are already available from CRES providers for all ratepayer classes, from the residential customer to the largest consumers.

E. AEP Ohio Must be Appropriately Incentivized.

In the event that the Commission approves the PPA Proposal, it should still impose additional, appropriate incentives to ensure that the ratepayers are not exposed to substantial risk when the PPA costs exceed the revenues.

1. There is little to no incentive for AEP Ohio and AEPGR to act as rational competitive market participants.

RESA witness Campbell explained that, because AEP Ohio and AEPGR will receive guaranteed cost recovery under the PPA Rider, there is no incentive for AEP Ohio to offer the units into the wholesale market based on market fundamentals, such as the variable costs to operate the units.⁶⁵ The lack of incentive provides AEP Ohio and AEPGR a competitive advantage over the generation owners that are subject to wholesale market forces and whose offers are guided by the variable costs to operate the unit.⁶⁶ Dynegy Inc. witness Ellis voiced a similar concern, finding that the subsidy will create a disincentive for AEP Ohio and AEPGR to operate the PPA units efficiently and to competitively market their output in the PJM market.⁶⁷

The Independent Market Monitor (“IMM”) for PJM Interconnection LLC (“PJM”) testified similarly:⁶⁸

The logical offer price for these resources in the PJM capacity market, under these conditions, would be zero. A zero offer would be rational because this would maximize the revenue offset to the customers who would be required

⁶⁵ RESA/Exelon Ex. 1 at 14.

⁶⁶ *Id.*

⁶⁷ Dynegy Ex. 2 at 5.

⁶⁸ IMM Ex. 1 at 4; IMM Ex. 2 at 5.

to pay 100 percent of the costs of this capacity. This would have an anti-competitive, price suppressive effect on the PJM capacity markets.

* * *

Competition depends on units making competitive offers that reflect their costs and on recovering revenues only from the markets and not from subsidies.

The IMM emphasized how critical it is for the wholesale market to have appropriate incentives, stating:⁶⁹

It is essential that any approach to the PJM markets and the PJM Capacity Market incorporate a consistent view of how the preferred market design is expected to work to provide competitive results in a sustainable market design over the long run. A sustainable market design means a market design that results in appropriate incentives to retire units and to invest in new units over time such that reliability is ensured as a result of the functioning of the market. (Emphasis added.)

These witnesses convincingly establish that if the PPA Proposal is approved, appropriate incentives for AEP Ohio's and AEPGR's proper participation in the PJM markets are necessary and critical to the success of the wholesale market.

2. The credit commitment in the Stipulation is woefully insufficient.

AEP Ohio contends that the Stipulation includes an "insurance" mechanism for the hedge, making it more valuable to ratepayers.⁷⁰ Specifically, in Stipulation Section III.A.3, AEP Ohio agrees to give its ratepayers credits up to \$100 million in the last four years if the PPA Rider falls below the listed values:

⁶⁹ IMM Ex. 2 at 5.

⁷⁰ AEP Ohio Initial Brief at 102-103.

Planning Year	If the PPA Rider falls below:	Then, AEP Ohio will credit up to:
2020-2021	\$10 M	\$10 M
2021-2022	\$20 M	\$20 M
2022-2023	\$30 M	\$30 M
2023-2024	\$40 M	\$40 M

The details of these credit commitments show that the credits are woefully inadequate to provide proper incentives to AEP Ohio and AEPGR. First, AEP Ohio witness Allen admitted, that the credits are not intended to provide any incentive to AEPGR in its management and operation of the PPA units.⁷¹ The credits are only intended to act as an incentive for AEP Ohio to maximize revenues received from the PJM markets. Second, since the credits only apply in the last four years, there is no incentive for AEP Ohio to maximize PJM revenues during the first four years of the PPA proposal, leaving the ratepayers at full risk during the first four years. This first four years also happen to be when AEP Ohio claims the PPA units have a financial need.⁷² Thus, the ratepayers will not have this “insurance” during the neediest period of time.

Third, the credits of \$10M, \$20M, \$30M and \$40M apply on an annual basis and not in the aggregate. This means that the annual credits are woefully insufficient to cover the risk that is being shifted to the ratepayers. For example, if the PPA Rider follows the 5% lower load forecast in planning year 2022/2023, the charge according to Mr. Allen would be \$74 million⁷³ (not accounting for PJM capacity performance penalties) and AEP Ohio would pay a credit amount of \$30 million dollars. The ratepayers, in that instance, would be required to pay a very hefty amount - \$44 million in charges in just one year. Worse, under the OCC’s forecasted \$1.9 billion outcome

⁷¹ Tr. Vol 18 at 4524.

⁷² AEP Ohio Ex. 52 at Settlement Exhibit WAA-2; AEP Ohio Initial Brief at 33 (“* * *both the Affiliate PPA and OVEC Units[] have a financial need, at least in the near term”).

⁷³ 2022 PPA Rider charge of (\$77) divided by 12, and then multiplied by 7; and 2023 PPA Rider charge of (\$69) divided by 12, and then multiplied by 5, with each resulting number summed to equal the total charge for the 2022/2023 PJM planning year.

over the course of the PPA Rider term, AEP Ohio's credits would only account for 5% of the total PPA Rider charges.

Fourth, as RESA witness Bennett pointed out, the impact of the credits could be further diminished because capacity performance penalties could easily exceed the credits.⁷⁴ Fifth and lastly, the credit commitment will not include any cost of the wind and solar facilities that the Company agreed to develop. Mr. Bennett explained that this carve-out excludes "the only financial exposure AEP Ohio has to the PPA Rider" and absolves AEP Ohio from financial liability for that new generation. For these many reasons, the Commission should find the credit commitment is insufficient.

3. AEP Ohio should be required to provide a meaningful and effective incentive.

RESA witness Bennett pointed out that, instead of offering an annual dollar commitment for some of the years, an effective incentive would be for AEP Ohio to assure that at no time will the annual PPA Rider exceed a ceiling amount and the aggregate PPA Rider credit at the end of the term will be at least equal to any PPA Rider charges plus carrying charges.⁷⁵ Since the Commission has encouraged an equitable risk sharing, this arrangement would appropriately place risk on AEP Ohio and not all of the risk on its captive ratepayers. It would also provide AEP Ohio with the proper incentive to competitively bid the PPA as is done by traditional cost-of-service utilities that are obtaining generation⁷⁶ and to use best efforts when bidding capacity and selling energy and ancillary services into the PJM markets.

AEP Ohio witness Allen acknowledged that there is no cap or minimum on the charges or credits that could be imposed on the ratepayers.⁷⁷ Likewise, he admitted that AEP Ohio is not

⁷⁴ RESA Ex. 1 at 7

⁷⁵ RESA Ex. 1 at 7.

⁷⁶ Tr. Vol. XXI at 5292.

⁷⁷ Tr. Vol. 18 at 4585-4586.

committing to any level for the PPA Rider – it is committing that “those are the best estimate of costs that existed and net revenues that existed at the time the company prepared the case.”⁷⁸ Given this demonstrated lack of commitment by AEP Ohio, the public interest dictates that the Commission craft a sufficient and appropriate incentive. If this PPA Rider does not result in the credits forecasted by the Company (which is a very real possibility), the backlash should not fall on the Commission for ignoring the well-documented inadequacies. AEP Ohio has to have some “skin in the game.”

There is precedent for including this type of incentive. The Commission has previously considered and imposed additional incentives for another eight-year contractual arrangement involving AEP Ohio for which its ratepayers were exposed to risks.⁷⁹ This matter involved a unique arrangement with an AEP Ohio customer. At the recommendation of Staff, the Commission imposed both a floor and a ceiling on the amount of the ratepayers’ responsibility under that arrangement. Staff had advocated for a floor as an incentive encouraging efficient and effective operations, and for a ceiling as a safeguard against exposing ratepayers to substantial risks. The Commission agreed with Staff, concluding “generally, unique arrangements must contain a floor, a minimum amount that the party seeking a unique arrangement should be required to pay, and a ceiling, a maximum amount of delta revenue which the ratepayers should be expected to pay.”⁸⁰ The Commission further explained that it was imposing the floor and ceiling because, in part “[t]he aluminum market is subject to a great deal of volatility and that the unique arrangement should address that volatility.”⁸¹

⁷⁸ Tr. Vol. 18 at 4593.

⁷⁹ *In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, Case No. 09-119-EL-AEC, Opinion and Order (July 15, 2009).

⁸⁰ *Id.* at 9.

⁸¹ *Id.* at 10-11.

In the event that the Commission approves the PPA Proposal in this proceeding, it should impose additional, appropriate incentives as advocated by RESA, CNE, and Exelon. AEP Ohio's PPA proposal is a lengthy eight-year arrangement, for which the ratepayers are exposed to substantial risks. AEP Ohio witness Allen presented forecasts documenting the Company's "best estimates," but that also demonstrated the annual volatility of the PPA rider. The Commission should address that volatility as it did in *Ormet*, given the demonstrated inadequacies of the Stipulation on this point. Finally, the recommended incentives are also appropriate to curb the subsidy created by the PPA Proposal and the financial boost that the proposal provides to AEPGR and AEP.

III. CONCLUSION

For the foregoing reasons (as well as those in the Joint Initial Brief of RESA, CNE and Exelon), the Commission should deny AEP Ohio's PPA Proposal and reject the Stipulation.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 8th day of February 2016.


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