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 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

POST-HEARING REPLY BRIEF OF THE INDEPENDENT MARKET MONITOR FOR PJM

Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM[1] ("Market Monitor"), hereby submits this post-hearing reply brief on the request of Ohio Power Company ("AEP") for Commission approval of its new affiliate power purchase agreement ("PPA") between AEP and AEP Generation Resources, Inc. ("AEPGR") for the output of certain units[2] ("PPA Units") for inclusion in the PPA Rider and approval

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1 The Federal Energy Regulatory Commission (FERC) has approved PJM Interconnection, L.L.C. ("PJM") as an independent system operator and regional transmission organization. Capitalized terms used herein and not otherwise defined have the meaning used in the FERC-approved PJM Open Access Transmission Tariff ("OATT") or the PJM Operating Agreement ("OA").

2 The "PPA Units" are coal-fired units: Cardinal Plant Unit 1; Conesville Plant Units 5 and 6, which are 100 percent owned by AEPGR; and the AEPGR share of Conesville Plant 4; Stuart Plant Units 1 – 4; and Zimmer Plant Unit 1. In addition, the proposed PPA Rider would transfer, from AEP (AEPGR) to the ratepayers of AEP, all responsibility for paying for AEP's share of the two generating plants owned and operated by the Ohio Valley Electric Corporation: the Kyger Creek Plant in Cheshire, Ohio, and the Clifty Creek Plant in Madison, Indiana.

for including the responsibility for AEP's partial ownership of the Ohio Valley Electric Corporation ("OVEC") plants in the PPA Rider.[3]

Approval of the PPA Rider is not in the interest of Ohio customers and would fundamentally conflict with Ohio regulatory policy. Competition should be protected because it benefits Ohio customers. Adoption of a quasi market approach to markets may create the worst of both paradigms for Ohio consumers.

Approval of the PPA Rider would interfere with federal policies promoting competition. It is in the interest of Ohio customers that state and federal policy work well together.

Attempting to justify a bad bargain, AEP relies on slogans such as "rate stabilization" and "fuel type diversity." Rate stabilization does not just imply "fixed," it also implies protected from high rates. The "rate stabilization" that AEP proposes would, by design, lock in above market rates for Ohio customers. AEP attempts to justify this filing based on testimony that market prices will not be high enough to keep the PPA Units in service, i.e. an expectation of low market prices. Rates stabilized above market levels are not in the interest of Ohio customers.

The PPA Rider will have no meaningful impact on the diversity of resources that serve Ohioans. "Fuel type diversity" as used by AEP means nothing more that inefficiently prolonging the life of aging, risky and undesirable units. Subsidizing resources with characteristics that the market does not value is not in the public interest.

Most Ohio customers filed in opposition to the PPA Rider and do not want to assume responsibility for the PPA units.[4] The settlement is not the product of a serious bargain about the value of the PPA Units.

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[3] The PPA Rider now before the Commission is the product of the Joint Stipulation and Recommendation filed in this proceeding on December 14, 2015 ("December 14th Stipulation").

The compensatory benefits offered in support of this bad bargain are not serious. The credits will not offset the significant financial risks Ohio customers assume. It is not a benefit for AEP to spend customer's money on projects that would not otherwise be economic. These projects do not represent a concession by AEP. AEP profits on these projects.

The PPA Rider is a bad bargain for Ohio customers and is not in the public interest. The PPA Rider should not be approved.

I. ARGUMENT

A. AEP Fails to Show That the PPA Rider Is in the Public Interest; The PPA Rider Fails to Meet Every Specific Criterion That It Must Satisfy.

The PPA Rider should not be approved unless AEP can demonstrate that it is in the public interest. The minimum factors that the *ESP III* decision specified that AEP must address depend upon a showing that the agreement is in the public interest.[5]

AEP states the Commission's standard to approve partial settlements: (a) [i]s the settlement a product of serious bargaining among capable, knowledgeable parties? (b)

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[4] The initial PPA proposed for inclusion in the PPA Rider was initially considered and rejected in the *ESP III* decision. Opponents to the PPA included Industrial Energy Users-Ohio; Ohio Consumers' Counsel; Dominion Retail, Inc. d/b/a Dominion Energy Solutions (Dominion); Duke Energy Ohio, Inc.; Ohio Hospital Association; Duke Energy Retail Sales, LLC; Duke Energy Commercial Asset Management, Inc.; Interstate Gas Supply, Inc.; Ohio Manufacturers' Association Energy Group; FirstEnergy Solutions Corp.; Ohio Partners for Affordable Energy; The Kroger Company; The Dayton Power and Light Company; Environmental Defense Fund; Ohio Environmental Council; Direct Energy Services, LLC and Direct Energy Business, LLC; Appalachian Peace and Justice Network; Retail Energy Supply Association; Constellation NewEnergy, Inc. and Exelon Generation Company, LLC; Environmental Law & Policy Center; Wal-Mart Stores East, LP and Sam's East, Inc.; Natural Resources Defense Council; Border Energy Electric Services, Inc.; EnerNOC, Inc.; Paulding Wind Farm II LLC; and Energy Professionals of Ohio. *ESP III* at 4–5. With sole exception of Ohio Energy Group, Ohio customers opposed the PPA. *Id*. at 5.

[5] *See In re Columbus S. Power Co.*, Case No. 09-1089-EL-POR, Opinion and Order at 21 (May 13, 2010); *In re Application of Ohio Power Company for Authority to Establish a Standard Service Offer*, Case Nos. 13-2385-EL-SSO et al., Opinion and Order at 19-27 (Feb. 25, 2015) ("*ESP III*").

[d]oes the settlement, as a package, benefit ratepayers and the public interest? (c) [d]oes the settlement package violate any important regulatory principle or practice?[6]

The *ESP III* decision requires that AEP, at a minimum, address four factors to justify any cost recovery above zero dollars: (i) financial need of the generating plant, (ii) necessity of the generating facility, in light of future reliability concerns, including supply diversity, (iii) description of how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations, (iv) the impact that a closure of the generating plants would have on electric prices and the resulting effect on economic development within the state.[7]

AEP fails to justify cost recovery under the standards included in Ohio's policy for approving partial settlements or under any of the minimum four specific factors set forth in the *ESP III* decision. On the contrary, the record shows that the PPA Rider does not satisfy the public interest standard.

1. AEP Fails to Show, and Cannot Show, That the PPA Rider Is Both in the Public Interest and Meets the Financial Needs of the PPA Units.

The *ESP III* decision requires AEP to demonstrate the financial need of the generating plants included in the PPA Rider. AEP produced witness Vegas and argues on the basis of his testimony that "the PPA units are now on the economic 'bubble,' where low short-term capacity and energy market prices have increased the risk of premature retirement."[8] AEP argues on the basis of Vegas' testimony that "without the long-term

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[6] AEP at 25, citing, e.g., *In re Columbus S. Power Co.*, Case No. 09-1089-EL-POR, Opinion and Order at 21 (May 13, 2010).

[7] *ESP III* at 25 ("The Commission emphasizes that we are not authorizing, at this time, AEP Ohio's recovery of any costs through the placeholder PPA rider.").

[8] AEP at 34, citing AEP Ohio Ex. 1 at 17.

stability provided by the Affiliate PPA, the ability to make long-term investment decisions will be hindered."[9]

Witness Vegas and other AEP witnesses' testimony show that cost responsibility for the PPA units is risky and demonstrates that the PPA Units likely could not be sustained on a market basis. This testimony explains the motivation for AEP to transfer responsibility for PPA Units to others. This testimony does not show that the PPA Units have an actual financial need.

Proving risk and low market value does not equate to proving financial need. For example, if the units retired and the capacity was replaced with lower cost resources, they would create a net financial benefit to Ohioans.

AEP implies that the units' operation could result in a net credit to AEP customers.[10] If a net credit to customers is a real possibility, AEP fails to demonstrate actual financial need. If it is not a real possibility, AEP's arguments are misleading.

The requirement to prove financial need poses a dilemma for AEP. If it demonstrates financial need because the market prices will not support them, it necessarily demonstrates that the PPA Rider is not in the public interest. In that case, the market can provide capacity equal to that of the PPA Units' capacity, but at lower cost. If AEP does not demonstrate financial need, it fails the *ESP III* criterion. It is impossible for AEP to prove both that the PPA Units have financial need because the market does not value them and that transferring responsibility for them to Ohio customers is in their interest.

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9 AEP at 35, citing AEP Ohio Ex. 9 at 13.

10 *See* AEP at 14 ("…the PPA Rider could be either a credit or a charge during a given time period…"); AEP at 15 ("The Independent Market Monitor, Dr. Bowring, would oppose the PPA even if it were a certainty that it would be a credit to customers.").

2. AEP Fails to Show That the Settlement Is the Product of Serious Bargaining.

AEP has not demonstrated that the settlement is a product of serious bargaining among capable, knowledgeable parties, as the Ohio precedent applicable to settlements requires. AEP has not shown that other parties have real knowledge of the risks associated with the PPA Units. On the contrary, AEP argues that intervenors lack familiarity with the PPA Units sufficient to form a reasonable opinion about them.[11] The Market Monitor agrees that AEP provides the best record evidence on the value of the PPA Units. AEP testimony shows that the PPA units are likely more costly than an equal amount of capacity available in the market, which means that any transfer to a rational buyer would be at a steep discount. The PPA Rider proposes an above market premium.

The Commission correctly identified the public interest in relying on the flexibility of markets in the face of uncertainty in the *ESP III* decision (at 24):

> The Commission must base our decision on the record before us. [citation omitted]. With that in mind, we are not persuaded that the PPA rider proposal put forth by AEP Ohio … is in the public interest. There is considerable uncertainty with respect to pending PJM market reform proposals, environmental regulations, and federal litigation, as AEP Ohio acknowledges, and, in light of this uncertainty, the Commission does not believe that it is appropriate to adopt the proposed PPA rider at this time.

Nothing in the record of this proceeding provides a basis for the Commission to decide differently.

The introduction of capacity market performance rules (CP) raises the risks of assuming cost responsibility for aging units. Ohio customers are at significant financial risk if the PPA units do not provide power when needed. The capacity performance penalties can exceed the total market revenues of the units. Under these circumstances, Ohio

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[11] AEP at 49–50.

customers would pay the full costs of the units, would receive no revenue offset and would pay the full penalty while other AEP units could be receiving such penalty payments as bonus payments that would flow to shareholders.

AEP attempts to justify the settlement based on a number of credits and purported ancillary benefits (at 32–130). AEP has not demonstrated that the credit provisions offset the risks the PPA Rider transfers to Ohio customers. Many of the asserted "benefits" are paid for by Ohio customers, not AEP. AEP will profit from these benefits. AEP has not shown that the Parties could not have obtained these benefits by other means, without Ohio customers have to assume responsibility for the unwanted PPA Units, or that providing the benefits is an economic choice.

AEP has not demonstrated that the settlement is a product of serious bargaining, as the Ohio precedent applicable to settlements requires. AEP has proven that the PPA Rider is a bad bargain. No record evidence shows that any settling party would assume the terms of the PPA Rider as part of serious bargaining. Serious bargaining occurs when a buyer who wants to buy and a seller who wants to sell agree on terms. There is no evidence that any party in this proceeding actually wants to assume cost responsibility for the PPA Units going forward. On the contrary, most settling parties opposed AEP's initial PPA filing in Docket No. 13-2385 and/or the initial PPA Rider in this proceeding, or took no position.[12]

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[12] *See ESP III* at 5 (Opponents to the PPA included Industrial Energy Users-Ohio; Ohio Hospital Association; Interstate Gas Supply, Inc.; FirstEnergy Solutions Corp.; Ohio Partners for Affordable Energy; Direct Energy Services, LLC and Direct Energy Business, LLC). The Sierra Club filed Direct Testimony of Paul Chernick on September 11, 2105, concluding, "While the PPA is almost certainly valuable to AEPGR (and hence the AEP shareholders), the record does not demonstrate that it has any net benefit to the AEP Ohio ratepayers." Commission Staff recommended denial of the PPA Rider in Docket No. 13-2385 and filed Prefiled Testimony of Hisham M. Choueiki, Ph.D., P.E., on October 9, 2015, recommending (at 13) denial of the PPA Rider but signaling openness to an expanded PPA Rider. Mid-Atlantic Renewable Energy Coalition filed Direct Testimony of Bruce Burcat on September 14, 2015, but took no position on whether the PPA Rider is in the public interest. Buckeye Power, Inc. filed a brief supporting the PPA Rider on February 1, 2016. Only intervenor Ohio Energy Group has consistently supported the PPA and PPA Rider.

There is no record basis showing that the PPA Rider is a serious bargain. The evidence proves that the PPA Rider is a bad bargain for all parties except AEP.

3. AEP Fails to Show the PPA Units Are Needed for Resource Diversity or Reliability.

AEP asserts that the PPA Rider is needed for supply diversity and reliability but does not prove it. Ohio customers have nothing to gain from paying above market prices to preserve aging and obsolete assets. Ohio law states Ohio policy: "Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities."[13] AEP's proposal denies effective choice to all Ohio customers.

Ohio customers are supplied by resources located throughout the Eastern Interconnection and the PJM region. AEP has not defined diversity using any metric but makes general reference (at 39) to an "over-reliance on one source of fuel, such as natural gas." That is a self serving and non measurable definition which could have been applied five years ago to overreliance on coal. AEP does not explain why Ohio customers are not better off with the lowest cost market based prices for capacity.

For years, coal units have provided most electric power to Ohio and the PJM Region because they were economic. Now different natural gas resources are increasingly economic and there is a shift from coal to natural gas. The market is working exactly as Ohio law wisely anticipates. There is no reason to interfere with a process that represents the policy goal established in Ohio law.[14]

As Market Monitor witness Bowring explained at hearing, reliability of supply "entirely depends on the certainty of supply and whether there's any difference in certainty

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[13] *See* R.C. 4928.02(C).

[14] *See* R.C. 4928.02(C).

[of] supply among the various fuel types."[15] There is no record evidence showing that, but for the PPA Units, PJM will have sub optimal resource diversity.

Ohioans do have a strong interest in reliability. AEP cannot show that the PPA Units are needed for reliability. PJM states that the PPA Units are not needed for reliability.[16] The PJM Capacity Market can achieve resource adequacy goals without the PPA Units. Coal units have performance risks like all units, as the Market Monitor witness Bowring explained at hearing: "All fuels have issues. Coal has issues… There are frozen coal piles. There are issues with trains, issues with barge traffic."[17] AEP has not shown that the aging PPA Units are more reliable than the units that might replace them through operation of the market.

The aging PPA Units do not represent the kind of diversity likely to enhance reliability; AEP's testimony on the market prospects for the PPA Units confirms that judgment.

Resource diversity is a concept that has not been clearly defined by AEP. Diversity is not a synonym for reliability. AEP has used diversity as an empty slogan. The test of the AEP proposal should be the impact on customers' bills and the risks to customers and to customers' bills.

Recent reforms in the PJM Capacity Market emphasize performance incentives. Suppliers have strong incentives to invest in resources that perform well. The PPA Rider places the performance risk on Ohio customers rather than shareholders. AEP has a clear incentive to offer the units at levels low enough to ensure they clear in the capacity market.

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[15] Transcript Vol. XII at 3093:11–18.

[16] Brief for Amicus Curiae PJM Interconnection, L.L.C. at 9–12 ("In filed testimony, the company has argued a generalized concern relating to electric system reliability as reason to accept the Stipulation.[footnote omitted] Such concerns are categorically misplaced.").

[17] Transcript Vol. XII at 3090:18–24.

It is clear that the PPA Rider operates like the programs in New Jersey and Maryland that have been found to be preempted by federal regulation.[18]

4. AEP Fails to Show that Subsidization of the PPA Units Is Needed to Protect Public Interests in Electric Prices and Economic Development.

AEP also uses price stability as an empty slogan.[19] AEP has not defined price stability or why stable prices that are higher than market levels are a benefit to customers. They cannot provide such an explanation because it is not true. AEP also fails to address the risk of even higher prices to customers under the proposed settlement. The Commission holding that rate stability is "an essential component" of an ESP is not properly interpreted to mean indifference to price.[20] The Commission adopted the PPA Rider at zero dollars because it was "consistent with the state policy specified in R.C. 4928.02 and, in particular, with [its] obligation under R.C. 4928.02(A) to ensure the availability to consumers of reasonably priced retail electric service."[21] AEP must show that an increase of the PPA Rider above zero dollars is also consistent with that obligation.[22]

AEP has not shown that Ohio customers can expect lower prices under the PPA Rider if the costs of the PPA Units are included or that customers would receive protection from higher prices. Ohio customers would pay higher prices and bear the risk of even higher prices under AEP's proposal.

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18 *See* PPL EnergyPlus, LLC v. Solomon, 766 F.3d 241 (3d Cir. 2014); PPL EnergyPlus, LLC v. Nazarian, 753 F.3d 467 (4th Cir. 2014), *cert granted*.

19 *See* AEP at 8–10.

20 See AEP at 11, citing *ESP III* at 25.

21 *ESP III* at 26.

22 *Id*.

If Ohio customers want long term PPAs they can obtain them on competitive terms.[23] AEP can seek long term contracts to serve its standard service offer (SSO) customers in the market. AEP has not proven it needs the PPA Rider for rate stabilization. AEP could have obtained proven the value of PPAs by conducting a non-discriminatory request for proposals. AEP has instead filed the PPA Rider with no support for its assertion that it is in the public interest.

5. AEP Fails to Show That the PPA Will Not Interfere with Ohio's Compliance with Environmental Regulations.

The *ESP III* decision requires that AEP describe "how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations."[24] Intervenors have criticized AEP's compliance with the applicable environmental regulations,[25] but AEP's current compliance status is not the only issue, or even the most important issue, when the implications of environmental regulations are considered.

Regulatory risk and who bears it going forward is also important. Under the PPA Rider, AEP proposes to transfer the risks of regulatory compliance now and in the future to Ohio customers.

Subsidizing uneconomic coal plants will not help Ohio comply with the Clean Power Plan. AEP's testimony demonstrates that the regulatory risks are significant.[26] AEP's testimony does not show why it is in the interest of Ohio customers to assume such risks. AEP's testimony fails to show why Ohioans are not better off allowing markets to

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23 The properly held in the *ESP III* decision (at 24): "[T]here are already 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."

24 *ESP III* at 25.

25 *See*, *e.g.*, AEP at 49–50.

26 AEP at 47–49.

determine the future of the PPA units. AEP should follow the implications of its own economic analysis and offer the units for sale to the highest bidder.

B. Ohio Customers Should Receive the Benefits of Ohio's Decision to Rely on Markets.

Ohio precedent requires that a settlement be evaluated to determine whether it "violate[s] any important regulatory principle or practice." The PPA Rider fails that test. Indeed, the PPA Rider is antithetical to the government of Ohio's decision to adopt retail competition.[27]

Approval of the PPA Rider would interfere with the competitiveness of both the retail and wholesale regulatory paradigm that prevails in Ohio. Approval of the PPA Rider would introduce discord between Ohio policy and federal policies promoting competition. It is in the interests of Ohio customers that state and federal policy work well together.

The PPA Rider would operate to deprive Ohio customers of a key benefit that Ohio's pro competition policy offers: the placement of investment risk on AEP shareholders. If the AEP Rider is approved, AEP will be permitted to remove investment risk from its shareholders and place it on Ohio customers exactly when those risks have become highly elevated.

In the context of a federal effort to restructure the electricity industry and the regulation of that industry based on competition, Ohio passed the 1999 Act, making Ohio a forward looking retail competition state. Ohio, like Maryland, New Jersey, Pennsylvania and most recently Illinois, adopted the retail market model. Ohio and its peers have assumed leadership in an important regulatory initiative that provides Ohio customers with power at lowest cost.

A key feature of competition policy is the assignment of investment risk to investors who are well positioned to manage risk and away from customers who are not. No market

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[27] *See* Ohio Restructuring Act of 1999 ("1999 Act").

is perfect, and certainly the fledgling regulated electricity markets are not perfect, but retail competition working in tandem with wholesale competition remains that best choice for Ohio customers. The way forward is to continue to improve and reform PJM wholesale markets and Ohio's retail markets. Adoption of a confused quasi market approach to markets would not serve the public interest.

The PPA Rider represents exactly the type of misstep to avoid. AEP concedes that approving the PPA Rider would introduce the quasi-market concept to Ohio.[28] AEP argues that the Commission should model its policies after quasi-market states, which pursue policies different from Ohio.[29] The continued reliance on cost of service does not serve the interest of customers in those states.

AEP is out of step with the direction of Ohio policy. The Government of Ohio's website informs its citizens:

> The power for Ohioans to choose their energy supplier has been around for more than a decade. Ohio initiated these reforms to remain competitive in business and industry and in order to bring jobs and economic developments to Ohio. Now, residential consumers are able to take advantage of the same competitive markets manufacturers and industrial consumers have engaged in for years. In fact, we are already seeing the benefits of choice in Ohio as nearly 2.4 million electric customers and 1.7 million natural gas customers are already participating either individually or with aggregation groups.[30]

The Ohio Electric Restructuring Act of 1999 has not been repealed, and no statute requires approval of the PPA Rider. Ohio Senate Bill 221 did not repeal retail choice; on the

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[28] *See* AEP at 150 ("the Ohio General Assembly has expressly authorized this Commission to pursue retail ratemaking policies consistent with both the market paradigm and the quasi-market paradigm.").

[29] *See* AEP at 56, citing AEP Ohio Ex. 1 at 24.

[30] *See* Energy Choice Ohio: <*http://www.energychoice.ohio.gov/Pages/About%20Choice.aspx*>, accessed February 5, 2016.

contrary, it is intended to ease the transition to competitive markets. The PPA Rider does not ease the transition to markets, it hinders transition. Ohioans do not need protection from lower priced capacity available in the market.

AEP argues that there is no difference between the PPA Rider and cost–of-service units in quasi-market states. Witness Bowring observed one key difference at hearing:

> On a very high level, Dominion is, as we've discussed, a full cost-of-service, regulated, vertically integrated utility, and when power plants are built in that paradigm, in that model, they are built and operated for the entire life under the cost-of-service regime, and retail rates are set by that regime.
>
> The difference in Ohio clearly is that units were at one point … under the cost-of-service paradigm, were shifted to markets, and now are proposed to be shifted back. In addition, of course, in Ohio there is retail choice, so that's really the fundamental difference.[31]

Dominion did not have the opportunity to recover market-based rates from Virginia customers and Virginia customers always bore investment risk. AEP's Ohio customers, on the other hand have paid market prices, whether high or low, for power from the PPA Units, and have been free of the investment risk for such units since the passage of the 1999 Act. Only now, as the PPA assets near end of life, are less reliable, face new market risks and are unattractive investments, AEP seeks to transfer responsibility for them to Ohio customers. Ohio should not be deprived of a key benefit of competition policy. Ohio customers should not suddenly have the prevailing regulatory paradigm changed in a way that hurts customers when competition works in their interests.

Recently, two other market states, Maryland and New Jersey, adopted measures counter to the market paradigm for reasons similar to the alleged justifications offered in this proceeding. In both cases, the anticompetitive contract would have locked in

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[31] Transcript XII at 3084:14–3085:1.

significantly higher prices for their customers than the PJM wholesale market prices, with no increase in reliability. Customers in Maryland and New Jersey were protected from this misstep by the Minimum Offer Price Rule ("MOPR"), which protected PJM's markets from interference.[32] Ohio customers should have to rely on PJM market rules to protect them from similarly bad choices. The right decision can be made in this proceeding. The PPA Rider is not in the interests of Ohio customers and it should not be approved.

C. The Response to Subsidies for New Entrants Demonstrates that the FERC Will Defend Competitive Markets Against Manifest Harm.

The PJM MOPR does not apply to existing units, it applies to new units. To prevent harm to competitive markets that would result from the PPA Rider and similar arrangements that may follow such a harmful precedent, the MOPR would have to be revised. A revised MOPR could prevent the harm to PJM markets that would result from subsidies shielding the PPA Units from market incentives to retire in a manner similar to the way the MOPR protects against subsidized new entry.

AEP does not dispute that the MOPR could be revised. AEP instead points to the procedural hurdles that would meet any such effort and argues that revision of the MOPR is unlikely.[33] AEP explains, correctly, that the theory behind the MOPR could and should apply to many situations that are not currently covered by the MOPR, most importantly units subsidized through life of the unit cost of service in the non market PJM states.[34]

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[32] OATT Attachment DD § 5.14(h).

[33] AEP at 140–144.

[34] *See* Comments of the Independent Market Monitor for PJM, FERC Docket No. ER13-535-000 (Dec. 28, 2012) ("The Market Monitor recognizes the tension between the regulation of wholesale supply through competition at the federal level and regulation under a traditional approach at the state level. The PJM resource adequacy framework already provides sufficient accommodation for jurisdictions that are not restructured and want to pursue some form of integrated resource planning under cost of service regulation. Vertically integrated utilities that do not want to fully participate in competitive markets have the option to meet their capacity obligations through the Fixed Resource Reliability Resource (FRR) alternative.[34] The FRR option is currently in use.

The Market Monitor is concerned about all forms of anticompetitive subsidies. The Market Monitor will advocate in any such process the most comprehensive and rational rule that can be developed, as it did when the MOPR was revised.[35] The Market Monitor's position will be challenging to vindicate. However, the prospects for establishing a comprehensive policy against subsidized investment is a distraction.

Regulatory action addressing the concrete and discrete problem posed by the PPA Rider is quite likely. The possibility of the introduction of an expanded MOPR or similar mechanism should be carefully considered in evaluating whether the PPA Rider serves the interest of Ohio consumers.

If recent history repeats, a revised MOPR protecting PJM markets will be swiftly put in place even if it is controversial. The FERC has demonstrated that it will not ignore manifest harm to competitive wholesale markets.[36]

Although, the same procedural hurdles identified by AEP applied to the process that produced the current MOPR, 91 days after New Jersey's passage of S. 2381 (program to promote qualified electric generation facilities) the MOPR became effective. Both the Commission and PJM quickly appreciated the need to protect competitive markets and acted decisively to put a rule in place before the next RPM auction.

Accordingly, there is no need to exempt vertically integrated utilities from MOPR review, as they would be under the proposed rule.").

35 *See Id*.

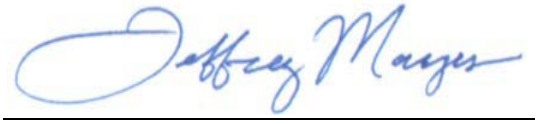
36 *See PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022 (2011) ("The filings … contain sufficient information to resolve the issues without the need for suspension or a hearing; we are not persuaded that the existing record is deficient on any of the issues presented. We are also not persuaded that the delay, uncertainty, and administrative expense associated with additional litigation would be outweighed by any other countervailing considerations. Further, we agree with parties who argue that it would be beneficial to resolve these issues prior to the May 2011 base residual auction. "); *see also PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013).

The amicus curiae brief filed by PJM in this proceeding reveals that it appreciates the problem. PJM has asked (at 4–5) that any order approving the PPA Rider interpret the PPA Rider in a way that would insulate the PJM markets from anti-competitive effects. Such an interpretation would require that AEP offer its units in way that would reduce the probability that the PPA Units would clear RPM auctions and raise the prospects that Ohio customers will be unable to share their bad bargain with others. Ohio customers would pay above market prices and be relatively worse off than PJM customers in other states. Ohio customers should be protected from that harmful result. The best way to do that is to not approve the PPA Rider.

II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this brief as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,



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Dated: February 8, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by email the foregoing document upon persons with email addresses listed below.

Dated at Eagleville, Pennsylvania, this 8th day of February, 2016.

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