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MEMORANDUM

TO: OMA Leadership

FROM: Kimberly W. Bojko and Rebecca L. Hussey, Carpenter Lipps & Leland LLP

DATE: December 18, 2014

SUBJECT: Executive Summary, Oral Argument on AEP's proposed Rider PPA

On December 17, 2014, the Commission held an oral argument "for the limited purpose of enabling the Commission to clarify the legal and policy implications related to the AEP's proposed [Power Purchase Agreement] rider." AEP was initially provided ten minutes to present its arguments regarding the proposed Power Purchase Agreement Rider ("Rider PPA"). In support of its request that the Commission approve proposed Rider PPA, AEP argued that the rider promotes three main concepts: (1) rate stability, (2) the preservation and advancement of competition, and (3) economic development. Specifically AEP contended that the "hedge" structure of Rider PPA would promote stability in customers' electric rates over the term of the proposed electric security plan (ESP). AEP further argued that price volatility is an enemy of retail choice, and that Rider PPA will preserve and advance competition by providing customers a safety net in the event that energy prices spike. In that respect, AEP contended, Rider PPA both enhances retail shopping and market conditions. AEP also argued that its expanded Rider PPA will promote economic development and job retention throughout Ohio, namely at its affiliate generation units and surrounding communities.

In addition to these concepts, AEP argued for the first time that the Commission would have the ability to conduct prudency reviews associated with costs of Rider PPA. This argument marked a change in position from the one AEP adopted during the evidentiary hearing. AEP also argued that Commission authority to approve a mechanism such as Rider PPA is not preempted by the Federal Energy Regulatory Commission's (FERC) regulation of wholesale markets.

Immediately following AEP's initial argument, FirstEnergy Solutions (FES) was provided with the opportunity to present its view on Rider PPA to the Commission. In its argument, FES largely reiterated AEP's views that the Commission is not preempted from approving riders such as AEP's Rider PPA because of FERC's authority over wholesale electric markets.

Following FES's presentation, intervenors in the AEP ESP proceeding that filed a brief were given the opportunity to present their arguments to the Commission. With the exception of the Ohio Energy Group (OEG), each of these parties argued that the Commission should deny AEP's proposal to establish Rider PPA. Intervenors who presented arguments opposing Rider PPA included the OMA Energy Group, the Ohio Consumers' Counsel, Industrial Energy Users-Ohio, The Kroger Company, Ohio Partners for Affordable Energy/Appalachian Peace and Justice Network, the Retail Energy Supply Association, Exelon/Constellation New Energy, and the Environmental Law and Policy Center/Ohio Environmental Council. The arguments offered by opponents of Rider PPA are summarized as follows:

- Ohio and federal law do not permit the Commission to authorize Rider PPA.
- The Commission does not have any statutory authority to regulate wholesale markets.
- Approval of Rider PPA is preempted by the Federal Power Act.
- The Ohio ESP statute does not authorize Rider PPA—the practical aim of the rider does not appear in the enumerated list of items permitted in an ESP.
- Ohio law also prohibits the collection of additional transition revenues, which is effectively what the costs of Rider PPA would be.

Opponents of Rider PPA also argued that approving Rider PPA would conflict with codified state energy policies and the Commission's public mission statement. The Commission's stated mission is to assure access to adequate, safe and reliable utility services at fair prices, while facilitating an environment that provides competitive choices. Rider PPA opponents voiced concerns to the Commission that Rider PPA is contrary to state energy policy and the Commission's mission statement in the following ways:

- It is an unlawful subsidy;
- It unfairly and unreasonably increases the cost of electricity to ratepayers;
- It eliminates important customer choices; and
- It frustrates the goals of the competitive market.

A number of intervenors also advised the Commission that contrary to AEP's claims, Rider PPA will not provide customers with reliability or stability—in fact, only party that the rider will bring certainty to is AEP. Rider PPA opponents related to the Commission that several projections offered during the case (including one by AEP) indicated that the rider will result in an increase to customers' bills over the term of the ESP. Opponents also cited concerns that for those customers that sought stability and certainty in their generation prices by entering into a fixed price contract, Rider PPA would impose additional costs, effectively taking away the benefit of their bargains.

Finally, Rider PPA opponents argued that the rider is unjust and unreasonable, in that AEP is asking the Commission to shift the risk it bears through its partial ownership of the OVEC units to customers. This shift of risk would subject customers to unknown costs which, due to potential environmental regulations and other factors, may be substantial. Further, Rider PPA opponents advised the Commission that it must carefully consider the effect of Rider PPA on the companies who would be paying the increased costs under the rider, and determine how these costs will affect their businesses in Ohio and their ability to retain their own jobs. Rider PPA opponents noted that the higher the electric rates, the less capital Ohio businesses have to invest in Ohio's economy, and the less attractive Ohio is to businesses that are looking to locate or expand in Ohio. In connection with the foregoing reasons, Rider PPA opponents respectfully requested that the Commission support competitive markets and deny proposed Rider PPA. In doing so, they asked the Commission to consider that it took over a decade for the Commission to transition the four Ohio electric distribution utilities to a fully competitive retail electricity market, and that granting Rider PPA would represent a move in the opposite direction.

Immediately following Rider PPA opponents' arguments, OEG offered its argument regarding Rider PPA to the Commission. OEG indicated that it would support Rider PPA if the rider was modified such that AEP would retain a ten to twenty percent interest in the costs of the OVEC generating units, rather than shifting all costs to consumers. By retaining such an interest, OEG argued, AEP would have an incentive to keep costs down. Additionally, when asked by the Commission, OEG argued that it supports a modification that would permit large industrial customers to opt out of the costs of Rider PPA.

Following each of the above-mentioned arguments, AEP was provided with a rebuttal opportunity, in which AEP reiterated those points it previously asserted, and requested that the Commission approve Rider PPA.

The Commission was extremely engaged during the course of the arguments and asked insightful, specific questions of both the proponents and opponents of Rider PPA. We expect that the Commissioners will continue considering arguments for and against Rider PPA over the holidays and into the new year. We will be sure to keep you apprised of any developments on Rider PPA and other related matters.