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Summary of PUCO Order on AEP Ohio Purchase Power Agreement

The Public Utilities Commission of Ohio (PUCO) unanimously approved, with modifications, a settlement authorizing AEP to begin recovering costs through the Power Purchase Agreement (PPA) Rider for an eight-year term. The PPA Rider collects from retail customers on a nonbypassable basis the costs associated with several generating units owned by AEP's unregulated generating affiliate, AEPGR, as well as the costs related to AEP's contractual entitlement to the output from the Ohio Valley Electric Cooperative (OVEC).

The PPA Rider

- The PUCO based its decision to approve the PPA Rider on a projected net credit of $214 million over the next eight years.
- The PUCO limited customer bill increases for the first two years of the PPA Rider to 5% of the June 1, 2015 SSO rate on a customer-by-customer basis. The 5% cap, however, does not apply to the costs associated with any past or future distribution-related proceedings (e.g., distribution investment rider increases, straight fixed variable costs, grid modernization costs, storm rider costs, etc.) and the development of renewable projects (presumes costs for these projects will be passed onto customers).
- The PUCO provided that any revenue reductions resulting from the caps can be recovered in the next quarterly update after May 31, 2018 (this could cause a significant increase in customer bills in June 2018).
- The PUCO clarified that AEP cannot seek recovery of any portion of the $100 million credit commitments if they are actually applied by AEP.
- The PUCO removed the prohibition of refund language in the stipulation in the event the PPA Rider is invalidated on appeal, stating that it was a matter for the PUCO or the Court to decide. Importantly, the PUCO did not, however, state that refunds would be allowed in the event the PPA Rider is found to be unlawful.
- The PUCO clarified that AEP cannot seek recovery of any Capacity Performance penalties, but permitted AEP to retain any Capacity Performance bonus payments.
- The PUCO modified the settlement so that if any PPA unit experiences a forced outage exceeding 90 days, the PUCO may disallow the costs associated with the outage (but is not mandatory and allows the Staff to recommend otherwise).
- The PUCO rejected AEP's commitment to implement the PPA Rider initially based on a $4 million credit and authorized AEP to begin collecting the net effects of the OVEC PPA and Affiliate PPA beginning June 1, 2016.
- The PUCO rejected AEP's request to flow through the PPA Rider costs associated with AEPGR's obligations or entitlements to Buckeye Power's Cardinal Units 2 and 3;

however, the PUCO stated its decision was based on the current record and AEP could file a supplemental application to request that these additional costs be passed on to customers in the future.

- The PUCO provided that the liquidated damages provision does not apply if a court later declares the PPA or any PPA-related provision invalid. The PUCO also reserved the right to reevaluate or modify the PPA Rider, without triggering the liquidated damages provision, if PJM changes its rules to prohibit the PPA units from bidding into the PJM's auctions.
- The PUCO modified the settlement so that AEP cannot recover any conversion costs (i.e., co-firing, refueling, or repowering) and also clarified that no retirement costs are eligible for recovery.
- The PUCO disagreed that its oversight over the PPA Rider was illusory and stated that parties will have the right to intervene and participate in annual audits.

Other Settlement Provisions

- **Payments to Signatories**. The PUCO stated that monetary inducements to parties that add value to the stipulation as a package are ok. The PUCO disagreed that specific payments to OHA and OPAE were unduly favorable, but the PUCO required the filing of compliance reports to show that funding is being spent properly (and stated an audit may be ordered). The PUCO added that energy efficiency administrator payments are ok.
- **Transferring costs from EE/PDR Rider to EDR Rider.** The PUCO rejected a favorable settlement provision that allowed 50% of the EE/PDR Rider costs from transmission and sub-transmission voltage customers and 50% of the costs associated with the IRP credits to be transferred from the EE/PDR Rider to the EDR Rider upon approval of the Stipulation (rather, the PUCO stated that such request should be proposed in AEP's application to extend the ESP).
- **Future Filings**. The PUCO stated that it was not prejudging the outcomes of AEP's commitments that will be featured in future filings (promotion of economic development and retail competition, facilitate energy efficiency measures, reduce carbon emissions, deployment of renewable resources, and grid modernization); however, the PUCO stated that it found value for customers in AEP's commitments to raise these proposals in future proceedings.
- **Renewables.** The PUCO stated its support for the construction of new renewables in the state. AEP is encouraged to pursue bilateral contracting opportunities first. AEP should emphasize solar projects. To the extent bilateral contracting opportunities are not available, the PUCO will then entertain a cost recovery filing. AEP must show that a competitive process was used to source and determine the ownership of any project.
- **Smart Grid.** The PUCO noted the state's policy in promoting smart grid programs and advanced metering in the state and encouraged AEP to ensure that its grid modernization business plan engages customers, supports flexibility, and meets resource adequacy needs.

- **<u>AEP's Headquarters.</u>** The PUCO modified the settlement so that if AEP does not maintain its headquarters in Columbus, the PUCO may terminate the PPA Rider.
- **<u>IRP Expansion.</u>** The PUCO stated that any arguments concerning the merits of the IRP expansion or whether IRP customers may also be able to opt-out of the EE/PDR Rider are premature and should be raised in a future proceeding.
- **<u>ESP v. MRO Test.</u>** The PUCO disagreed that authorizing cost recovery through the PPA Rider resulted in AEP's ESP 3 being less favorable than an MRO. According to the PUCO, the PPA Rider will bring $37 million in additional benefits over the current ESP term.

<u>FERC Matters</u>

- The PUCO opined that its approval of the PPA Rider did not intrude on the powers of the Federal Energy Regulatory Commission (FERC). According to the PUCO, its approval of the PPA Rider rested solely on its retail-ratemaking authority.
- OMAEG and others argued that the PUCO could not approve the PPA Rider because it would interfere with FERC's authority to oversee the wholesale markets. The PUCO did not address this question, explaining that the question was better suited to judicial resolution.
- The PUCO stated its belief that retail customers are not captive customers because of retail choice; however, the PUCO did not address that customers cannot escape the charge created by the affiliate contract. Further, the PUCO stated that the PPA Rider will not restrict current shopping customers; however, the PUCO also found that the PPA Rider was a limitation on shopping in order to authorize it under the ESP statute. OMAEG and others are currently arguing at FERC that retail customers are captive because they cannot avoid the Affiliate PPA Rider by shopping with a supplier. The parties are awaiting a FERC decision.

<u>Concurring Opinions</u>

- **<u>Commissioner Trombold.</u>** She asserted that the settlement *will* result in grid modernization and more renewables. Commissioner Trombold also stated her "clear expectation" that the PPA Rider will result in a net credit over the next eight years.
- **<u>Commissioner Haque.</u>** He conceded that a consumer *charge* is likely in the first 2-3 years of the PPA Rider, which seems to be contradictory with the Order that projected a $37 million benefit accruing to customers for the next two years. He also implied that he may not have approved the PPA Rider standing alone, which perhaps suggests that the additional commitments to the settlement were necessary to secure his approval of the PPA Rider. He stated that Ohio is due to have "utility 2.0" conversations about grid modernization, but acknowledged the "stark reality" that these conversation never would have occurred without packaging the PPA Rider together with the other settlement provisions.