

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review)	
of the Capacity Charges of Ohio Power)	Case No. 10-2929-EL-UNC
Company and Columbus Southern)	
Power Company.)	

**DUKE ENERGY COMMERCIAL ASSET MANAGEMENT
AND
DUKE ENERGY RETAIL SALES
MEMORANDUM CONTRA MOTION FOR EXTENSION**

The Public Utilities Commission of Ohio (Commission) commenced the above-referenced proceeding, on December 8, 2010, with an entry that expressly adopted, as the state compensation mechanism for capacity charges, the rates established by the three-year auctions conducted by PJM Interconnection, L.L.C. (PJM). As the Commission is aware, after being temporarily consolidated with other proceedings relating to Ohio Power Company, d/b/a AEP Ohio (AEP Ohio), AEP Ohio filed a motion requesting that the Commission grant it the extraordinary relief of being authorized to charge a higher rate during the continued pendency of this case. Numerous parties, including Duke Energy Retail Sales, LLC (DER), filed memoranda in opposition to that request. Nevertheless, on March 7, 2012, the Commission determined that the capacity rate should be raised from PJM's auction-based rate (RPM) on the basis that the RPM rate "could risk an unjust and unreasonable result." It provided, on a very limited, temporary basis, for AEP Ohio to charge for capacity under a two-tiered system. The first tier, applicable to the first 21 percent of each customer class, would be charged at the RPM rate. The second tier was to be charged at a rate of \$255.00/MW-day, which rate was not based on market

or cost determinants. The Commission specifically ordered that this extraordinary relief would be in place only until May 31, 2012.

Now, on April 30, 2012, with a month left before the expiration of this special rate, AEP Ohio has asked for a further extension of rates that have no basis in fact or law and have not been justified through the hearing and decision-making process. DER and Duke Energy Commercial Asset Management, Inc. (DECAM), oppose such an extension.

Allowing AEP Ohio, on an interim basis, to charge anything more than PJM's market-based rates was, as DER previously argued, without merit. All of the arguments raised by DER are equally applicable to AEP Ohio's present motion and are incorporated herein. Furthermore, it should be clearly understood that AEP Ohio's efforts, in this proceeding, to extend its above-market rates will form the basis of AEP Ohio's efforts to gain approval of its proposed electric security plan (ESP).¹ Without the Commission's agreement to extend the above-market capacity rates, as requested in the motion discussed herein, AEP Ohio will be unable to prove that its ESP proposal is more favorable than a market rate option. For this reason, as well as those previously asserted, the Commission should reject AEP Ohio's motion for an extension of the temporary, above-market capacity rate.

In addition, DER and DECAM strongly urge the Commission to reject AEP Ohio's newest request for even more unproven charges. The Commission's approval of the interim, two-tiered rate said nothing about freezing the tier-one RPM rate at the RPM rate that was then in effect. Rather, relying on the rejected stipulation in AEP Ohio's standard service offer proceedings, Case No. 11-346-EL-SSO, *et al.*, the Commission specifically ordered that the first tier of customers would receive RPM-priced capacity. And the now rejected stipulation clearly and unambiguously provided that the state capacity mechanism should reflect "the PJM RPM-

¹ Case No. 11-346-EL-SSO, *et al.*

based rate except” for the interim rate applicable *above* the identified thresholds.² Thus, as the RPM price changes, the capacity charge must similarly change. AEP Ohio has offered no alternative interpretation, as none is plausible. Further, AEP Ohio has made no showing, either in its motion or in the hearing, that the Commission should grant further extraordinary relief in the nature of yet another rate freeze.

Ironically, AEP Ohio urges the Commission not to prejudge the outcome of this decision, claiming that such a result would have a prejudicial effect upon it. Yet AEP Ohio ignores the prejudicial impact that an extension of above-market pricing would have on its customers and the competitive environment in the state of Ohio. In this respect, it is critical to recognize that the change requested by AEP Ohio would alter the pre-existing business arrangements made by suppliers in the competitive marketplace, which arrangements were entered into on the basis of auctions that took place three years ago. One of the important rationales for the timing of PJM’s auctions is that they allow competitive suppliers to know and account for the costs that they will encounter, prior to entering into contracts with customers. To change those costs less than thirty days before they are to go into effect will almost certainly create an unjust and unreasonable result on those suppliers and on competition in Ohio in general.

AEP Ohio also suggests that its request “represents a reasonable request based upon the record in this proceeding.” AEP Ohio’s motion in this regard should be rejected outright as it functions to do that which AEP Ohio urged the Commission not to do: prejudge the result. But should the Commission consider the additional evidence that has since been presented in this docket, it follows that the accompanying affidavit of William Allen cannot be viewed as sufficiently credible evidence. Rather, Mr. Allen summarily concludes that the company will

² See *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, *et al.*, Stipulation and Recommendation, pg. 20 (Sept. 7, 2011).

suffer a loss in revenues, without offering verifiable, convincing support for such a conclusion. Further, the developed record, reflecting multiple days of hearing, underscores the shortcomings in Mr. Allen's projections of financial harm. As AEP Ohio has the burden of proof on its motion, the record evidence confirms that it has not demonstrated that, in all probability, it will suffer substantial and irreparable harm should the Commission's prior instruction be implemented effective June 1, 2012.

AEP Ohio cannot be heard to claim, at this point, that the upcoming RPM rate will have an unanticipated impact on its business. Like the suppliers and customers, AEP Ohio has known about this new rate for three years.

DER and DECAM urge the Commission to reject AEP Ohio's motion to extend the rate freeze. In addition, if the Commission does determine that it will extend the freeze, it should refuse to expand that freeze to include the RPM rate applicable to the first tier of shopping customers.

Respectfully submitted,

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and

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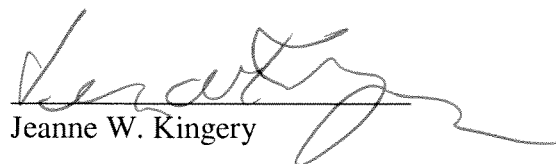
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 4th day of May, 2012, to the following:



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