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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company For Approval of its Electric Security Plan Including Related Accounting Authority; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets	)	Case No. 08-917-EL-SSO
and	)	
In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan Including Related Accounting Authority; and an Amendment to its Corporate Separation Plan	)	Case No. 08-918-EL-SSO

INTEGRYS ENERGY SERVICES, INC.'S MEMORANDUM CONTRA TO COLUMBUS SOUTHERN POWER COMPANY'S AND THE OHIO POWER COMPANY'S APPLICATION FOR REHEARING ON THE ISSUE OF BANNING PJM DEMAND RESPONSE PARTICIPATION

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I. INTRODUCTION

In its March 18, 2009 Opinion and Order, this Commission acknowledged that the PJM demand response programs offer benefits to program participants.[1] Indeed, as Integrys has repeatedly noted in this proceeding, *Ohio customers enrolled over 580 MW into the PJM ILR program, correlating to an average of $27,681,000.00 injected annually into the Ohio economy by just one PJM demand response program.*[2] The value of this program to Ohio and Columbus Southern Power's and Ohio Power's (hereinafter "AEP-Ohio") failure to present any evidence supporting their proposal to ban PJM demand response participation led this Commission to propose a separate proceeding to collect additional information on the programs' benefits and any costs associated with those programs.

Not content to wait for the separate proceeding, AEP Ohio now asks the Commission to immediately shut down the PJM programs. AEP Ohio first argues that FERC's decision to extend the 2009-2010 Planning Year registration period for the PJM Interruptible Load for Reliability Program ("ILR") to May 1st gives the Commission a chance to ban PJM demand response participation without negatively affecting PJM demand response participants. This argument fails for two reasons. First, it ignores the fact that the extension ends in four days and that administratively that is an insufficient time for the Commission to rule, notify the affected retail customers and permit them to withdraw from the PJM program without penalty. Second, the evidence in the record clearly shows that customers participating in PJM demand response programs will be

[1] Opinion and Order, March 18, 2009 at p. 58.
[2] Integrys Ex. 2, Wolfe Dir. Test. at pp. 9, 15.

harmed both contractually and financially if the Commission bans participation for the 2009-2010 Planning Year.

AEP Ohio then claims that its ability to comply with Amended Substitute Senate Bill No. 221's ("Senate Bill 221") peak demand reduction goals will be affected if the PJM programs are allowed to continue. AEP Ohio argues that allowing the programs to continue will inject uncertainty into their compliance plans and that Ohio ratepayers will incur increased costs as a result of that uncertainty. In doing so, AEP Ohio ignores the fact that Section 4928.66, Revised Code does not: 1) require mercantile customers to implement demand response programs; 2) require mercantile customers to enroll in AEP Ohio's programs; and 3) require customers to commit to any on-site demand response program. AEP Ohio also ignores the evidence in the record showing the dismal performance of its demand response program sign up, particularly in comparison with the sign up of AEP Ohio customers for the PJM demand response programs.[3] Finally, AEP Ohio fails to explain why it does not simply seek to adjust its peak demand reduction goals, as allowed under Section 4928.66(A)(2)(b), to account for participation of AEP Ohio customers in the PJM demand response programs.

In sum, none of AEP Ohio's arguments have merit. Integrys has built a record showing the significant financial value of the PJM programs, the reliability the programs bring to the grid and that AEP Ohio's demand response programs are unpopular. Even if AEP Ohio would match the customer advantages of the PJM programs for the 2009-2010 Planning Year, the evidence in the record demonstrates that the PJM program participants registering for the 2009-2010 Planning Year have incurred costs and entered into contracts to participate. In the absence of evidence that the PJM programs have a

[3] Integrys Ex. 2, Wolfe Dir. Test. at pp. 9 - 15.

negative impact on AEP Ohio customers, this Commission cannot and should not ban participation in the PJM programs that bring millions of dollars to Ohio customers, especially in these difficult economic times. The Commission should deny rehearing and proceed with a separate proceeding on the issue of PJM demand response participation.

II. ARGUMENT

A. Banning Participation In The PJM Programs Now Will Negatively Affect PJM Demand Response Participants.

In its Application for Rehearing, AEP Ohio claims that the Commission can immediately ban PJM demand response participation and avoid any negative ramifications because FERC extended the registration period for the PJM Interruptible Load for Reliability Programs ("ILR").[4] As an initial point, PJM did not ask FERC to extend the registration period to allow new entrants. Rather, FERC waived the tariff requirement to allow entities currently certified the opportunity to withdraw given certain procedural changes to the ILR program that take effect in the 2009-2010 Planning Year, including a new testing requirement for PJM participants and increased noncompliance penalties that could exceed the revenue a participant receives under the PJM programs.[5] Rather than resulting in new participants, the FERC extension will likely result in less ILR participants. Moreover, as a practical matter, the FERC extension expires this coming Friday, May 1, 2009. Any Commission action banning PJM program participation will occur after that deadline, adversely affecting customers that registered by the March 2 deadline and that have not withdrawn from the program.

[4] Application for Rehearing at p. 24.
[5] 126 FERC P 61,275, ¶174 to ¶181.

There is also no doubt that these customers will be severely prejudiced if the Commission were to suddenly ban PJM program participation. Customers could commit to the PJM 2009-2010 Planning Year as early as January 1, 2009 and PJM includes loads of committed customers in its operations plan as soon as a customer commits.[6] In fact, the PJM ILR registration period closed well before FERC reopened the registration on March 26 and any customer planning to participate in the 2009-2010 Planning Year would have already committed by that date. In addition, customers committed to PJM demand response programs, like the ILR program, make operational commitments and may have to invest in measurement and verification equipment, controls, and communication equipment.[7] The record is clear that AEP Ohio's commercial and industrial customers will be prejudiced if this Commission were to suddenly ban PJM demand response participation.

AEP Ohio's Application for Rehearing also raises significant issues of contractual certainty. Customers who have committed to participate in PJM demand response programs for the 2009-2010 Planning Year will be at material risk of default to PJM and other contractual obligations if such customers are retroactively prohibited from completing their commitments relating to the PJM demand response programs. Customers could also lose the value of their investments in the metering and communication assets installed to satisfy their commitments to PJM if they are not permitted to receive the value of their participation in the PJM demand response

[6] Rebuttal Testimony of Samuel R. Wolfe at p. 3.
[7] *Id.* at p. 4.

programs.[8] The record sufficiently reflects that customers would be prejudiced if this Commission suddenly reverses its position and bans participation in the PJM demand response programs.

AEP Ohio's request to immediately ban PJM program participation also violates an important Commission policy. The Commission has a policy of not retroactively applying Commission regulations. By granting AEP Ohio's Application for Rehearing, the Commission would be subjecting customers to risk default for commitments made prior to any Commission determination which would bar participation in PJM demand response programs. *See Lucas County Commissioners v. Public Utilities Commission of Ohio* (2007), 80 Ohio St. 3d 344, 686 N.E.2d 501 ("In short, retroactive ratemaking is not permitted under Ohio's comprehensive statutory scheme") *and see Sandusky Marina Limited Partnership v. Ohio Department of Natural Resources* (1998), 126 Ohio App.3d 256, 263, 710 N.E.2d 302, 306 (attempted adjustment of lease by regulation was unconstitutional retroactive application of regulation and violative of Section 28, Article II of the Ohio Constitution). Simply put, customers have relied on the Commission's March 18, 2009 Opinion and Order and will be significantly harmed if the Commission suddenly reverses its position on PJM demand response participation.

B. Senate Bill 221 Does Not Mandate The Use Of In-State Demand Response Resources And AEP Ohio Does Not Point To Any Evidence In The Record That Customer Participation In PJM Programs Is Affecting AEP Ohio's Peak Reduction Compliance Plans.

AEP Ohio also claims that banning PJM demand response participation now will better comply with Senate Bill 221's statutory plan for utilization of in-state demand response resources and allow AEP Ohio to refine its own demand response programs to

[8] Rebuttal Testimony of Samuel R. Wolfe, p. 4.

meet the peak demand reductions of Senate Bill 221. Yet, in making this argument, AEP Ohio does not cite any statutory language mandating the use of in-state demand response resources.

Indeed, as argued previously by Integrys in its trial brief, Senate Bill 221 does not distinguish between the types of demand response programs that can be implemented by customers. Senate Bill 221 contains no express prohibition on PJM program participation and does not require mercantile customers to integrate or commit their demand response programs to AEP Ohio. The only requirement in Senate Bill 221 regarding mercantile demand response programs is that the programs be counted towards the peak reduction goals.

The Commission noted this in its December 17, 2008 Opinion and Order in the Duke ESP settlement, stating:

> As referenced at the start of our analysis of this issue, division (A)(2)(c) of Section 4928.66, Revised Code, includes four sentences, the first three of which have relevance to our discussion or were referenced by parties. While we will not repeat the text of those sentences here, we will summarize them. The first sentence provides that calculation of the electric utility's compliance with the benchmarks should include the effects of all mercantile customers' programs. <u>That first sentence includes no reference to whether or not such programs are capabilities that have been "committed" to the electric utility's own programs.</u> The second sentence allows the Commission to approve a rider that exempts, from its coverage, mercantile customers who commit their capabilities to the electric utility's programs, if the Commission finds that the exemption encourages the customers to commit their capabilities. The third sentence goes back to the calculation methodology and requires the electric utility's baseline to be adjusted to exclude the effect of committed capabilities of mercantile customers.[9] (emphasis added)

As recognized by the Commission, the statutory language is clear that mercantile customers are not required to commit their demand response programs to the utility –

[9] December 17, 2008 Opinion and Order, In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan, Case No. 09-920-EL-SSO *et. al.* at p. 35.

rather customers can commit their programs to the electric utility at the customer's option.[10] Senate Bill 221 does not require mercantile customers to implement demand response programs, does not require mercantile customers to enroll in AEP Ohio's programs and does not require customers to commit on-site demand response programs to AEP Ohio. AEP Ohio has no basis for claiming that Senate Bill 221 directs the use and application of in-state demand response resources.

AEP Ohio also fails to point to any evidence in the record that its plans for complying with the peak demand reduction goals in Section 4928.66, Revised Code are being affected by PJM demand response programs. To the contrary, the record shows that any fault with AEP Ohio's peak reduction compliance plans lies with AEP Ohio.[11] As readily admitted by AEP Ohio, participation in all three of its offered interruptible service offerings has been "meager."[12] AEP Ohio witness Roush testified that only six Ohio Power customers and only one Columbus Southern customer currently receive service under Schedule IRP-D.[13] Likewise, only one Ohio Power customer currently participates in the PCS rider and no Columbus Southern customers participate in the PCS rider.[14] As to the ESC Rider, not one Ohio Power or Columbus Southern customer has participated in that rider for years.[15] Clearly, any fault with the attractiveness of the AEP Ohio's demand response offerings lies with the design of such programs. It is also worth noting that AEP Ohio has not sought any relief from the Commission from the

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[10] *See* Section 4928.66(A)(2)(c), Revised Code.
[11] As an alternative to the PJM programs, the AEP Ohio will offer the customers the opportunity to participate in the AEP Ohio' three interruptible service offerings. These programs exist today and are (1) an interruptible service schedule (Schedule IRP-D), (2) an emergency curtailable service rider (ECS Rider) and (3) a price curtailable service rider (PCS Rider).
[12] AEP Ohio Ex. 1, Roush Dir. Test. at p. 5 *and see* Tr. IX, 35-37.
[13] Tr. IX, 35.
[14] *Id.* at 36.
[15] *Id.* at 37.

peak demand reduction goals. Specifically, under Section 4928.66(A)(2)(b) Revised Code, AEP Ohio can apply to the Commission to amend the peak demand reduction goals.[16] If AEP Ohio truly believes that PJM demand response participation is affecting its compliance plans, then AEP Ohio can avail itself of the relief offered under Section 4928.66(A)(2)(b), Revised Code.

C. AEP Ohio Does Not Point To Any Evidence In The Record That Ohio Ratepayers Will Incur Any Additional Costs By Allowing Continued PJM Program Participation For The 2009-2010 Planning Year.

AEP Ohio also claims that Ohio ratepayers will incur additional costs if PJM program participation is not immediately banned. First, AEP Ohio claims that its compliance costs will increase because apparently, demand resources committed to PJM will not be available to AEP Ohio. AEP Ohio presents no evidence or record cites to support this claim and as indicated above Senate Bill 221 does not require mercantile customers to commit load to AEP Ohio's demand response programs. Rather, mercantile customers can elect to commit demand response load to AEP Ohio and avoid any compliance costs. It is also highly unlikely that mercantile customers will rush to enroll in AEP Ohio' programs if participation in the PJM programs is banned, given the evidence in the record that mercantile customer participation in AEP Ohio's interruptible service offerings has been dismal for years.[17]

AEP Ohio also claims that PJM program participation by AEP Ohio's customers increases costs for other customers because AEP Ohio must maintain fixed capacity for those customers who participate in the PJM demand response programs. In doing so,

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[16] Section 4928.66(A)(2)(b) states that "[t]he commission may amend the benchmarks set forth in division (A)(1)(a) or (b) of this section if, after application by the electric distribution utility, the commission determines that the amendment is necessary because the utility cannot reasonably achieve the benchmarks due to regulatory, economic, or technological reasons beyond its reasonable control."

[17] Tr. IX, 35-37.

AEP Ohio ignore the undisputed fact that customers participating in PJM demand response programs receiving service under schedules GS-2, GS-3 and GS-4 pay demand charges (i.e., demand that requires firm capacity) regardless whether the customer takes energy or curtails.[18] AEP Ohio also ignores the evidence in the record that all customers benefit from PJM demand response programs. As Integrys witness Wolfe testified, even customers not participating in demand response programs receive the indirect, but significant, benefits of improved grid reliability and improved efficiency of market due to competition and positive environmental benefits.[19] His testimony confirms Congress's statement at Section 1252(f) of the Energy Policy Act of 2005 that "[i]t is further the policy of the United States that the benefits of such demand response that accrue to those not deploying such technology and devices, but who are part of the same regional electricity entity, shall be recognized." AEP Ohio's claim that retail customer participation in PJM demand response programs can cause additional costs for the generation supply portfolio being provided to SSO customers is simply wrong.

D. AEP Ohio Has Ignored Chairman Schriber's And Commissioner Centolella's Suggestion That AEP Ohio Work With Staff And Shareholders.

AEP Ohio concludes its arguments by claiming that the Commission should simply order AEP Ohio to modify its demand response programs to mirror the PJM programs. AEP Ohio claims that such an act would follow the spirit of Chairman Schriber's and Commissioner Centolella's concurring opinion to the March 18, 2009 Opinion and Order. In that concurring opinion, Chairman Schriber and Commissioner Centolella suggested that AEP Ohio work with PJM, the Commission and interested

[18] *See* AEP Ohio' Ex. 1 at DMR-9, 225-237.
[19] Integrys Ex. 2, Wolfe Dir. Test. at p. 8.

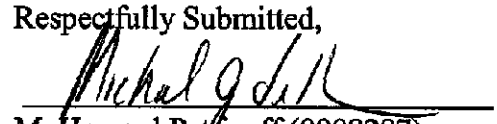
shareholders to "ensure that predictable consumer demand response is recognized as a reduction in capacity that [AEP Ohio] must carry under PJM market rules." They also suggested that the "[C]ompanies ... work with staff to develop additional dynamic pricing options for commercial and industrial SSO customers who have the interval metering to support such rates." However, contrary to AEP Ohio's inference in its Application for Rehearing, the concurring opinion makes no reference to banning PJM demand response participation in the interim. Also, AEP Ohio's request that the Commission unilaterally redesign the AEP Ohio programs ignores Chairman Schriber and Commissioner Centolella's suggestion that this issue be resolved through consensus. AEP Ohio cannot rely on the concurring opinion as support for its request for unilateral action by this Commission.

III. CONCLUSION

For all the reasons detailed in this brief and the briefs previously submitted by Integrys on this issue, Integrys respectfully requests that the Commission reject AEP Ohio's Application for Rehearing on the issue of PJM demand response participation by standard service offer customers. AEP Ohio has not pointed to any evidence in the record supporting its Application for Rehearing. And to the contrary, the record shows that all Ohioans benefit from the PJM demand response programs, that over $27,000,000.00 are pumped into the Ohio economy as a result of just one PJM demand response program and that most of that money comes from load serving entities outside

of Ohio.[20] The Commission should not modify its opinion on the issue of PJM demand response participation.

Respectfully Submitted,



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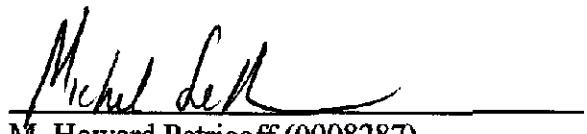
[20] Integrys Ex. 2, Wolfe Dir. Test. at pp. 8-9, 15, 17 *and see* Tr. IX, 52-53 (AEP Ohio' witness Roush testimony on cross).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Document was served upon the following parties by E-mail or First-Class U.S. Mail this 27th day of April, 2009.



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