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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

COMMENTS OF
CONSTELLATION ENERGY COMMODITIES GROUP, INC.
AND CONSTELLATION NEWENERGY, INC.

Pursuant to the Entry of December 8, 2010, Constellation Energy Commodities Group, Inc. ("CCG") and Constellation NewEnergy, Inc. ("CNE") (collectively "Constellation") respectfully submit these comments.

I. BACKGROUND ON THIS PROCEEDING

On November 24, 2010, pursuant to a Deficiency Letter[1] issued on November 19, 2010 in FERC Docket Numbers ER11-1995-000, ER11-1997-000 and 001 and ER11-2034-000, (together, "Initial Proceedings") American Electric Power Service Corporation ("AEPSC") on behalf of Columbus Southern Power Company ("CSPCo") and Ohio Power Company ("OPCo") (CSP and OPCo are herein collectively referred to as the "AEP Ohio" or "AEP") resubmitted the formula rate templates under which each of the AEP Ohio Companies propose to calculate their respective capacity costs ("Capacity Compensation Formulas") under Schedule 8.1 – Appendix of the PJM Interconnection, L.L.C. ("PJM") Reliability Assurance Agreement ("RAA"). Specifically, AEP proposes that the AEP Ohio Companies recover capacity costs calculated

[1] *See Deficiency Letter*, issued on November 19, 2010 in Docket Nos. ER11-1995-000, ER11-1997-000, ER11-1997-001 and ER11-2034-000. ("Deficiency Letter"). The Deficiency Letter instructed AEP to file the Capacity Compensation Formula templates under Attachment M-2 or whatever other section PJM designated for such provision in PJM's Tariff, with separate tariff sheets for each CSPCo and OPCo. PJM has designated Schedule 8.1 – Appendix to the RAA for the filing of the Capacity Compensation Formulae.

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pursuant to these Capacity Compensation Formulas from Competitive Retail Electric Service Providers ("Ohio CRES Providers") in Ohio, a retail choice state. AEP requested that FERC issue an order accepting the Capacity Compensation Formulas and permitting the new capacity rates to become effective on January 1, 2011. A number of parties objected, including the PUCO. FERC has not yet issued a decision in the matter.

On December 8, 2010, the Ohio Commission issued an entry in Case No. 10-2929-EL-UNC inviting comments from interested persons concerning the AEP Ohio Companies' capacity charges to Ohio's CRES providers.

II. COMMENTS

Constellation appreciates the PUCO's interest in this matter, and appreciates the opportunity to provide comments on AEP Ohio's attempt to fundamentally and dramatically alter capacity charges applied within its service territories by virtue of an end-run around the capacity charges set by the PUCO in AEP Ohio's most recent Electric Security Plan ("ESP"). The change that AEP now seeks would have significant and untold impacts on Ohio consumers and on the competitive landscape for years to come. AEP Ohio's proposed capacity charges represent a radical departure from existing practice. AEP Ohio's FERC filing contains virtually no documentation demonstrating the validity of the figures it claims, and no supporting testimony or affidavits. Rather, AEP Ohio relies on its unsupported claims of results of negotiated agreements in other jurisdictions as support for its hollow assertions that could have a serious and long-lasting impact on the wholesale and retail markets within AEP Ohio service territories. AEP Ohio's proposal is unlawful and discriminatory on its face, and unsupported by the facts. It must therefore be rejected.

A. AEP's Request is Precluded By The POLR Charge Set Via The ESP

In Case Nos. 08-917-EL SSO and 08-918-EL-SSO, AEP sought and was granted an ESP for Standard Service Offer ("SSO") for a three year period beginning January 1, 2009. AEP Ohio proposed the POLR charge based on costs to provide customers taking service from CRES Providers with the optionality to return to SSO service, using the Black-Scholes model containing the following inputs: 1) the market price of the underlying asset; 2) the strike price; 3) the time frame that the option covers; 4) the risk free interest rate; and 5) the volatility of the underlying asset (Id,). (Order at 38-39.) Those rates went into effect, and have not yet expired. Since the Order, AEP has been paid based on that optionality, regardless of whether or not customers returned to AEP (unless they agreed to forego SSO service from AEP for the term of the ESP). AEP Ohio's attempt to change the capacity charges it imposes on customers of CRES violates both the letter and the spirit of that Order.

As noted by the PUCO Order issued on December 8, 2010 initiating this proceeding[2], the PUCO's approval of charges for Provider of Last Resort ("POLR") services in AEP Ohio's service territories constitute a state compensation mechanism, as that term is used under PJM tariffs, for recovery of capacity charges. As noted in the PUCO Order:

> (4) Prior to the filing of this application, the Commission approved retail rates for the Companies, including recovery of capacity costs through provider-of-last resort charges to certain retail shopping customers, based upon the continuation of the current capacity charges established by the three-year capacity auction conducted by PJM, Inc., under the current fixed resource requirement (FRR) mechanism. *In re Columbus Southern Power Company*, Case No. 08-917-EL-SSO; *In re Ohio Power Company*, Case No. 08-917-EL-SSO. See also, *In re Columbus Southern Power Company and Ohio Power Company*, Case Nos. 05-1194-EL-UNC, etc. However, in light of the change proposed by the Companies, the Commission will now expressly adopt as the state compensation mechanism

[2] *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, PUCO Case No. 10-2929-EL-UNC.

for the Companies the current capacity charges established by the three-year capacity auction conducted by PJM, Inc. during the pendency of this review.

Accordingly, to the extent that there was any previous doubt as to whether the POLR charges approved for recovery by AEP were a state compensation mechanism, the PUCO removed all doubt by its express finding. The POLR charge for capacity having been set, AEP Ohio is without the ability to alter capacity charges at this time.

B. AEP's Claimed Capacity Costs Are Unreasonable And Discriminatory

Even assuming, *arguendo*, that the figures AEP contends are its costs are accurate, AEP has nevertheless failed to provide explanation or justification showing that those costs are just and reasonable. A review of AEP's purported costs versus capacity costs resulting from the RPM auctions demonstrates AEP's failure to meet this fundamental tenet. According to AEP's own FERC filing, shifting to its proposed methodology in Columbus Southern Power Company would result in capacity prices that are 48.9% higher than the current capacity price in the unconstrained portions of the PJM region. Even more shocking, shifting to its proposed methodology in the Ohio Power Company would result in capacity prices that are 92.6% higher than the current capacity price in the unconstrained portions of the PJM region. There is no explanation or justification by AEP as to why its costs so grossly exceed the RPM auction clearing prices.

In addition to the costs that are excessive on its face, AEP has failed to provide sufficient information regarding the impact that those exorbitant rates would have on customers that take service from a competitive supplier. AEP has failed to calculate the impact that the increased capacity rates would have on customers taking service from competitive suppliers. AEP should be required to provide that documentation, showing the rate impact on customers within AEP's

service territory at various load factors and the percentage of customers (and load) that fall into each such category.

Section 4928.03, Revised Code requires that each consumer in the state have "comparable and non discriminatory" access to CRES service. On its face AEP's request to raise the capacity charge for shopping customers but not standard service seems to violate this statutory provision. Thus, AEP should be required to demonstrate that the increase in capacity rates that it proposes to charge will not pose a barrier to shopping.. To do otherwise constitutes discriminatory and unlawful treatment, effectively depriving Ohio customers of access to wholesale electricity markets, and must be rejected.

C. AEP Failed to Demonstrate Any Change In Its Actual Permissible Costs

AEP's FERC filing failed to demonstrate that the figures contained in attachments to its request are its actual, permissible costs. According to AEP's filing, its Attachment A represents OPCo's and CSP's Capacity Compensation Formula populated with 2009 costs derived from each of the companies' FERC Form 1. However, the inclusion of a line item from a FERC Form 1 does not mean that the figures have been analyzed, verified, and approved, by FERC, by the Public Utilities Commission of Ohio, or by the CRES Providers that would be subject to those costs. Indeed, no interested parties, particularly load serving entities, have had the opportunity to examine with particularity many of the figures that AEP provides to determine the accuracy of those figures. However, the burden shall not be on parties opposing the request. Rather, the burden is and must remain on AEP to affirmatively demonstrate the accuracy of its purported capacity costs.

In addition to a failure to provide verified costs, AEP includes components that are inappropriate as capacity charges. As noted in its FERC filing, AEP seeks recovery of 100% of

CWIP expenditures for Pollution Control Facilities and Fuel Conversion Facilities (as defined in Section 35.25 of the FERC's regulations), and 50% of all other CWIP expenditures. AEP has failed to justify the inclusion of any aspect of CWIP as a recognized and approved cost of capacity. AEP also seeks recovery of costs related to Post-Employment Benefits other than Pensions ("PBOPs") and Post Employment Benefits ("PEBs"). As with its scheme to recover CWIP costs, AEP has failed to demonstrate that such costs are appropriate as purely capacity costs.

AEP has failed to properly request a change in its capacity costs, and has further failed to demonstrate any rational and lawful basis for its requested change in capacity charges. To the extent that it requests to do so, AEP should be required to make a request to the PUCO through an ESP or other appropriate application. Any such filing must necessarily include sworn testimony and provide data showing, among other things, the details of its actual current costs for its Ohio operations alone, the impact of its proposed change, how the impact on customers of CRES Providers would compare with the capacity charges imposed on its own supply customers, and justification for any change in the state compensation mechanism. It is only with such information and through an appropriate filing before the PUCO can CRES Providers, curtailment service providers, and other interested market participants adequately respond to AEP's request.

D. AEP's Proposed Effective Date Is Not Supported

AEP's request that FERC make its proposed new capacity charges effective on January 1, 2011 is not supported. Seeking the extraordinary increase in capacity charges for customers taking service from competitive suppliers ignores the realities of wholesale and retail competition – that customers and competitive electric suppliers have entered into contracts based on disclosed capacity costs for varying lengths of time which may extend for years to come.

AEP's proposal harms those that have entered into contracts for service in reliance on the PJM capacity costs, for which prices are known through 2013.

III. CONCLUSION

AEP should be precluded from altering its capacity charges, given that AEP's request:

(1) is unlawful, in violation of the POLR rates including capacity set forth by the PUCO in AEP's most recent ESP case;

(2) would have a dramatic increase on the competitive retail and wholesale markets in Ohio, potentially doubling the cost of capacity for Ohio customers served by CRES Providers;

(3) discriminates against customers taking service from CRES Providers, as only those customers would be affected by the outrageous increases; and

(4) would result in a windfall to AEP, who has for years been collecting POLR charges that included costs associated with capacity, based on a model that accounted for potential increases to such costs over a three year ESP term.

WHEREFORE, Constellation respectfully requests that the Commission grant Constellation's motion to intervene, designate CCG and CNE as parties to this proceeding, with all the rights appropriate to that status, and consider Constellation's comments in their review of AEP's proposal to recover capacity costs that differ from those approved in AEP Ohio's most recent ESP cases. Specifically, Constellation requests that the Commission deny any such request.

Respectfully submitted,

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On behalf of
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following persons via e-mail this 7th day of January, 2011 and certify that I will serve additional parties as they become known who may file comments in this case.

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