

FILE

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)

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**COMMENTS BY DIRECT ENERGY SERVICES, LLC
AND DIRECT ENERGY BUSINESS, LLC**

I. Introduction

In its Entry of December 8, 2010 in the above styled docket, the Ohio Public Utilities Commission of Ohio (Commission) established a state rate for capacity by which Ohio Power and Columbus Southern Power (jointly AEP Ohio), both public utilities as defined by Section 4905.02, Revised Code, could charge for jurisdictional assets used to provide capacity service for shopping services to retail customers within the franchised monopoly service area granted to AEP Ohio¹. The General Assembly granted the Commission full supervisory authority over public utilities² in order to balance the regulatory compact in which the state has granted to electric utilities such as AEP Ohio a franchised monopoly for electric service within a defined area³ and eminent domain authority, but retained within the Commission the oversight to make sure that monopolistic rents would not be collected and that the Commission would use its supervisory authority to carry out the state energy policy pursuant to Section 4928.02, Revised Code. The Commission's entry of December 8, 2010 was necessary because AEP Ohio, without approval or even notice to the Commission and its customers, sought to change rates for the use of generating assets for which the Commission had recently established comprehensive

¹ December 8, 2010 Entry in Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company Case No. 10-2929-EL-UNC Par. 4

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rates as part of an electric security plan⁴.

The Commission in paragraph 5 of its December 8, 2010 Entry also requested interested persons to file comments on three posted questions. In response to the Commission's request, Direct Energy Services, LLC and Direct Energy Business, LLC (jointly Direct Energy) submit the following comments to the Commission's questions. Direct Energy's interest and expertise in capacity fees arises from the fact that it is a certificated CRES supplier. Further, Direct Energy today is a major supplier of retail generation to customers located in AEP Ohio's service area including numerous public school facilities. Direct Energy intervened and was an active participant in AEP Ohio's electric security plan proceeding Case No. 08-917-EL-SSO and filed comments in FERC Docket No. ER11-2183.

II. Commission Questions

A. Question One: What changes to the current state mechanism are appropriate to determine the Companies' [AEP Ohio] FRR capacity charges to Ohio competitive retail electric service (CRES) providers.

None. The current capacity charge that AEP Ohio charges CRES who serve shopping customers in their franchised service area is based upon a fixed resource requirement (FRR) charge which is made up of the outcome of the PJM auctions plus an adjustment for scaling, pool requirements and line losses. This charge has been in place before, as well as during, the entirety of the current electric security plan. The rate is designed to compensate AEP Ohio for the market value of the capacity. The market value is tested during auctions for capacity conducted under the supervision PJM. Being based on a public auction the costs are transparent, and available on an equal basis to all load serving entities who chose to rely on them. The use of the FRR assures AEP that it will get the market value for its capacity used by shopping customers

² Sections 4905.04 and 4905.05, Revised Code

³ Section 4933.82, Revised Code

via their CRES. As Ohio has moved from a strict cost of service system in 1999 to an open access system with a hybrid standard service offer in 2008 the use of an open auction to set the value of capacity is more appropriate at this late date reverting back to a cost of service approach only for capacity.

Most important, the FRR rate was what was in place during the hearing on the electric security plan in Case No. 08-971-EL-SSO. The purpose of the electric service plan hearing was to establish regulated rates for regulated assets that met the goals set out in the state energy policy Section 4928.02, Revised Code. Section 4928.143(E), Revised Code also requires that the Commission determine prospectively, based on the information submitted in the application and hearing, that the estimated rates will not result in the utility earning a return on common equity that significantly exceeds that of like companies. AEP Ohio in its Electric Security Plan (ESP) application did not discuss, let alone reserve, the right to increase its revenues by increasing what it would charge CRES for capacity over the FRR price. Specifically, Mr. Baker⁵ testified that AEP Ohio required a Provider of Last Resort (POLR) charge for customers who shopped based on the projected cost of holding capacity open for the shopping customers. Further, the price for that capacity was based on the Black Sholes model that was designed to look at projected market prices and determine the relative market value.

Permitting AEP Ohio to increase the fee for capacity used for shopping customers in its service area without a showing of unexpected increase nullifies the basis upon which the Commission made its determination that the ESP rates in general and the POLR rate specifically would not result in an undue return on the equity of a regulated company. Unless and until AEP Ohio makes such a showing, no change should be made. The current ESP expires December 31st

⁴ Case No. 08-917-EL-SSO

⁵ Case No. 08-917-EL-SSO Company Exhibit 2

of this year, so the likely forum for AEP Ohio to request a change in its capacity charge would be at that time. The Commission whether as part of a petition to change the current ESP or in addressing future ESPs, also must make sure that the design and amount of a capacity fee is not in violation of Section 4928.03, Revised Code which prohibits an electric utility from discriminating against shopping. In the FERC Docket ER 11-2183 application it appears that the increases sought would ultimately only apply to shopping customers, and given the size of the increase as illustrated in subsection C below the proposed capacity increase would impede shopping.

B. Question Two: The degree to which AEP-Ohio's capacity charges are currently being recovered through retail rates approved by the Commission or other capacity charges.

The nature of the ESP proceedings do not readily accommodate calculations as to the cost of a particular service. Senate Bill 221 applied a "hybrid" approach to rate making in which rather than building up the cost of each service based on test year data and then allocating those costs out per service or class of service, an applicant starts with the current rates and revenues and then asks the utility to request rate adjustments. The result is that while total costs are known and revenue requirements are allocated, one cannot say with specificity that the revenue requirement from a particular asset is being collected by a particular charge from certain customers.

C. Question Three: The impact of AEP-Ohio's capacity charges upon CRES providers and retail competition in Ohio.

As noted in the Introduction section, Direct Energy today supplies numerous school buildings in the Columbus Southern Power service territory. The capacity charge today in Columbus Southern is \$208.20 a megawatt day (MW/d) day based on the 2010 – 2011 FRR using the PJM year adjusted for scaling, pool requirements and losses. AEP-Ohio in its FERC

application has asked that the capacity charge be increased to \$310.04 per MW/d after adjustments, an increase of \$101.84 per MW/d. When one converts from megawatts to kilowatts and spreads the increase out over the 24 hours, the AEP-Ohio request at FERC comes out to 4.2 mils per kWh for a customer with a 100% load factor. As noted in the Introduction, Direct Energy supplies many school facilities in the Columbus Southern service area. A large high school is likely to operate at a 40% load factor which means the increase would cost 10.06 mils per kWh, while a smaller elementary schools will be operating closer to a 30% load factor which equates to an increase of 14.1 mils given AEP-Ohio's FERC request.

These are large increases for customers. A representative high school building now shopping as part of the School Pool⁶ used 1,875,400 kWh⁷ during a recent 12 month period. For that representative high school the AEP-Ohio capacity fee increase would amount to \$19,455 per year. A representative elementary school building⁸ now shopping as part of the School Pool⁹ used 682,560 kWh¹⁰ during a recent 12 month period. For the representative elementary school the cost of capacity increase sought by AEP-Ohio would mean an additional payment of \$9,624 per year.

III. Conclusion

Direct Energy appreciates this opportunity to present its thoughts concerning the proper capacity charges for CRES serving shopping customers on the AEP-Ohio system. Direct Energy believes that the present mechanism for establishing the capacity fees are fair and

⁶ School Pool is the program organized by the Ohio School Boards Association and the Ohio Association of School Business Officials. School Pool participated in the Columbus Southern ESP case (08-917-EL-SSO) and sponsored a witness who presented the impacts on school of the ESP for shopping customers.

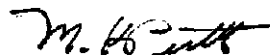
⁷ Based on usage of the Westland High School South-Western City School District for the 12 months ending November 2010. Westland High School is a participant in School Pool.

⁸ Based on the usage of the Buckeye Woods Elementary School South-Western City School District for the 12 months ending November 2010.

⁹ School Pool is the program organized by the Ohio School Boards Association and the Ohio Association of School Business Officials. School Pool participated in the Columbus Southern ESP case and sponsored a witness.

equitable and should be left in place unless or until changed as part of the next ESP which could be initiated at AEP-Ohio request as soon as the January 2012 billing cycle.

Respectfully submitted,



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On behalf of Constellation Energy
Commodities Group, Inc., and Constellation
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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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