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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO** 2011 JAN 18 AM 11:28

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

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MEMORANDUM CONTRA THE APPLICATION FOR REHEARING OF
COLUMBUS SOUTHERN POWER COMPANY AND
OHIO POWER COMPANY**

Introduction

On November 1, 2010, Columbus Southern Power Company and Ohio Power Company (collectively "the Companies" or "AEP") filed an application with the Federal Energy Regulatory Commission ("FERC") to drastically increase the amount charged to Competitive Retail Electric Suppliers ("CRES") for capacity costs under Section D of the PJM Interconnection, L.L.C. ("PJM") Reliability Assurance Agreement ("RAA"). See Docket Nos. ER11-1995-000, and ER11-2183-000. Numerous customer groups and marketers along with this Commission, filed interventions, protests, and comments in the two dockets.

On December 8, 2010, the Public Utilities Commission of Ohio ("PUCO" or "the Commission") filed an Entry in the above-referenced docket clarifying that AEP was being compensated for capacity charges per the decision in Case No. 08-917-EL-SSO which approved electric security plans ("ESP") for the Companies. Under provisions of the PJM RAA and FERC precedents, state Commissions may establish the appropriate level of compensation for capacity costs which must be paid by CRES providers to utilities that opt to self-supply capacity under the under the Fixed Resource Requirement ("FRR") Alternative.

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On January 7, 2011, AEP filed for rehearing of the Commission's Entry. OPAE hereby submits this Memorandum Contra to the Application for Rehearing.

Argument

AEP posits that Section 205 of the Federal Power Act ("FPA") allows it to petition to change the basis for compensation for capacity costs charged to CRES suppliers. It argues that the current method used to determine compensation, the PJM capacity auction, is inadequate. AEP offers an alternative approach to pricing the capacity, allegedly cost-based, which would result in a significant increase in costs for CRES providers.

Consumer groups and marketers have argued at FERC that the application under Section 205 is transparently an effort to price CRES providers out of the market, thus denying customers the opportunity to reduce their utility bills, a concept that is one of the goals of the Ohio legislative framework which seeks to create a competitive market for retail electric service. (See ORC. 4928.02.) Consumer groups and marketers further argue that the filing of the application has created a chilling effect on the development of the competitive market within Ohio. Fortunately, the PUCO stepped in to resolve this situation by clarifying that AEP is currently compensated for capacity costs through the Provider of Last Resort ("POLR") charge established as a part of AEP ESP as approved by the Commission.

AEP now argues that the POLR charges do not fairly compensate it for capacity under the FRR and also contends that the POLR charge was not based

'upon the continued use of RPM auction prices to set capacity charges for CRES providers.' Application for Rehearing at 3. Neither argument has merit.

When the PUCO approved the rates and charges of the current ESP, it included a POLR charge that was designed to protect AEP from the financial risk associated with customers moving from the Standard Service Offer ("SSO") to marketers and back. The cost of capacity as set by the PJM auction is a factor in the model that determined the POLR charge, though the POLR charge is not cost-based. The three-year forward prices established by the auction equates to the period of the ESP. The ESP also require customers to pay for capacity through retail rates and additional retail charges for environmental compliance investments.

Curiously, while AEP claims it is inadequately compensated for capacity, it fails to explain what would be a fair level of compensation above and beyond the revenues its capacity already generates from ratepayers and the sale of excess generation and capacity in the marketplace. The assertion that AEP is inadequately compensated for capacity is simply unsupported. If AEP were correct in its assertion that a charge established under Sec. 205 of the FPA trumps any decision by this Commission, the PUCO would still have the authority to prevent double recovery through Ohio retail rates.

The AEP argument that the PUCO lacks the authority to determine appropriate compensation for capacity is without merit. Section D.8 of the RAA, as approved by FERC, gives precedence to state commissions in establishing capacity charges. This is an explicit grant of authority. Likewise, Ohio law also

authorizes the Commission to determine these charges through its general powers and its authority to oversee retail market offers. The Companies received ample due process during the ESP litigation as witnessed by the lengthy quotations for the transcript included in the Application for Rehearing. The PUCO has authority to make this decision under the FERC approved schedule and under state law, and has provided AEP with adequate due process.

One cannot help but think that AEP is using the due process available in this forum and at FERC to stymie the ability of marketers to provide customers with competitive options. A quick approval of the charges as filed at FERC with no due process was satisfactory to the Companies. Since a quick approval was not forthcoming, AEP is happy to see the matter go to hearing, creating uncertainty that prevents the market from functioning. An attempt by this Commission to resolve the situation in a manner favorable to customers is now met with an application for rehearing, which will also cast a shadow over the emerging market. The ample due process the Companies are receiving is inhibiting the ability of buyers and sellers to come to terms in the marketplace.

Conclusion

Rates in competitive markets are not set based on costs. This is true for SSO rates in Ohio; generation rates offered by marketers at retails and at wholesale; and, for capacity. AEP used capacity auctions to establish the value of capacity as a component of the POLR charge established in the ESP. The Commission has blessed this approach twice. It is now being litigated in two

forums. And, the losers in the process – at least temporarily – are the customers who are being denied access to a competitive market.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served
by regular U.S. Mail upon the following parties identified below in this case on this
18th day of January, 2011.



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