

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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**REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") hereby submits reply comments in the above-captioned case where the Public Utilities Commission of Ohio ("PUCO" or "Commission") seeks public comment regarding the capacity rates that the Ohio Power Company and the Columbus Southern Power Company (collectively, "AEP Ohio") charge to competitive retail electric service ("CRES") providers in Ohio. Capacity charges represent the costs of a utility making its generation units available to provide electric service to a customer. OCC files on behalf of all the approximately 1.2 million residential utility customers of AEP Ohio who may be impacted by the resolution of this proceeding.

This case involves the Commission's review of: 1) what changes to the current state mechanism are appropriate to determine AEP Ohio's capacity charges to Ohio CRES providers; 2) the degree to which AEP Ohio's capacity charges are currently being collected from customers through retail rates approved by the Commission or through wholesale rates; and 3) the impact of AEP Ohio's capacity charges upon CRES providers and retail competition in Ohio. Thus, OCC has a direct interest in this case because AEP

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Ohio's capacity charges either are currently, or may ultimately be collected from Ohio residential customers.

II. REPLY COMMENTS

A. AEP Ohio Should Not Be Permitted To Exploit Regulatory Seams In An Attempt To Receive Double Compensation For Its Capacity Obligations.

AEP Ohio's receipt of double compensation for its capacity obligations at both the state and federal levels is inconsistent with the PJM Interconnection, L.L.C. ("PJM") Reliability Assurance Agreement ("RAA"), which AEP Ohio claims provides the legal basis for its request at the Federal Energy Regulatory Commission ("FERC") to change its capacity compensation methodology.¹ As multiple parties noted, Section D.8 of the PJM Interconnection, L.L.C. ("PJM") Reliability Assurance Agreement provides:

"In a state regulatory jurisdiction that has implemented retail choice, the [Fixed Resource Requirement ("FRR")] Entity must include in its FRR Capacity Plan all load, including expected load growth, in the FRR Service Area, notwithstanding the loss of any such load to or among alternative retail LSEs. In the case of load reflected in the FRR Capacity Plan that switches to an alternative retail LSE, where the state regulatory jurisdiction requires switching customers or the LSE to compensate the FRR Entity for its FRR capacity obligations, **such state mechanism will prevail.**"²

Naturally, AEP Ohio does not quote the above language in its Comments, choosing instead to generically describe this portion of the RAA and characterize it as "merely a

¹ Ohio Power Company's and Columbus Southern Power Company's Initial Comments ("AEP Comments") at 2.

² Comments of Industrial Energy Users-Ohio ("IEU Comments") at 3; Comments of Ohio Partners for Affordable Energy ("OPAE Comments") at 2; Comments of FirstEnergy Solutions Corp ("FirstEnergy Comments") at 3 (emphasis added).

backstop mechanism for compensation if no others exist.”³ AEP Ohio claims that “[a]s stated in the RAA, AEP Ohio...may at any time make a filing with FERC to change the basis for the compensation of capacity costs.”⁴ But AEP Ohio’s basis for this argument is presumably premised on part of Section D.8 of the RAA, which provides:

“In the absence of a state compensation mechanism, the applicable alternative retail LSE shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff, provided that the FRR Entity may, at any time, make a filing with FERC under Sections 205 of the Federal Power Act proposing to change the basis for compensation to a method based on the FRR Entity’s cost or such other basis shown to be just and reasonable, and a retail LSE may at any time exercise its rights under Section 206 of the [Federal Power Act]”⁵

Thus, an FRR Entity like AEP Ohio can only make a filing at FERC to change the basis for its compensation in the absence of a state compensation mechanism. According to the language of the RAA, if a state compensation mechanism exists, then AEP Ohio should use that mechanism to recover the costs of its capacity obligations and should not seek to bypass the state mechanism by requesting the implementation of a formula rate mechanism at the federal level. FERC’s recent Order rejecting AEP Ohio’s request to change its capacity compensation methodology echoes this interpretation of the RAA.⁶ AEP Ohio should not be permitted to exploit regulatory seams to receive double compensation for its capacity obligations in a manner inconsistent with the PJM RAA.

³ AEP Comments at 3.

⁴ AEP Comments at 3.

⁵ IEU Comments at 3-4; OPAE Comments at 2 (emphasis added).

⁶ Order Rejecting Formula Rate Proposal, FERC Docket No. ER11-2183 (January 20, 2011) at 4.

Multiple parties argue that the provider-of-last-resort (“POLR”) charge established in the most recent AEP Ohio Electric Security Plan (“ESP”) cases, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, was designed to compensate AEP Ohio for the risks of customers shopping.⁷ Further, some parties have suggested that AEP Ohio’s Environmental Investment Carrying Cost Rider provides AEP Ohio recovery of its capacity obligations since that rider compensates AEP Ohio for the costs of investments in environmental facilities and equipment that maintain generation operations.⁸ OCC agrees with these arguments. Thus, state mechanisms already exist to compensate AEP Ohio for its capacity obligations.

As multiple parties argue, if AEP Ohio is unsatisfied with the current state capacity compensation mechanism, it may seek to alter that mechanism at the state level through a future PUCO proceeding rather than at the federal level.⁹ In such a case, the Commission could require AEP Ohio to recalculate or modify the current POLR charge with updated input assumptions. Further, as Constellation argues, a future filing by AEP Ohio at the PUCO “must necessarily include sworn testimony and provide data showing, among other things, the details of the its actual current costs for its Ohio operations alone, the impact of its proposed change, how the impact on customers of CRES Providers would

⁷ IEU Comments at 5-9; Comments of the Ohio Energy Group (“OEG Comments”) at 3; OP&E Comments at 5-6; Comments by Direct Energy Services, L.L.C. and Direct Energy Business, L.L.C. at 3; Comments of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (“Constellation Comments”) at 3-4; FirstEnergy Comments at 8-13.

⁸ IEU Comments at 9; FirstEnergy Comments at 13.

⁹ IEU Comments at 15; OEG Comments at 2; Constellation Comments at 6.

compare with the capacity charges imposed on its own supply customers, and justification for any change in the state compensation mechanism.”¹⁰

Additionally, challenges to the excessiveness of the POLR rate itself were made in AEP Ohio’s last ESP case.¹¹ Now, AEP Ohio brazenly attempts to obtain additional capacity compensation through its request at FERC. Accordingly, the excessiveness of the POLR charge is relevant to the Commission’s investigation in this case and should be addressed by the Commission when determining AEP Ohio’s reasonable compensation for its capacity obligations.

B. AEP Ohio’s Attempt to Put Its Interests First Is Inconsistent With State Policy.

AEP Ohio argues that “[t]he impact of AEP Ohio’s capacity charges upon CRES providers and retail competition must be a secondary consideration when determining what an appropriate capacity charge should be.”¹² AEP Ohio alleges that “[t]he primary consideration must be whether the capacity charges that AEP Ohio charges CRES providers provides reasonable compensation to AEP Ohio for the capacity resources that the Companies have dedicated through the FRR process to serve retail load in Ohio.”¹³ AEP Ohio’s position is inconsistent with state policy which is to “[e]nsure diversity of electricity supplies and suppliers, by giving consumers effective choices over the

¹⁰ Constellation Comments at 6.

¹¹ Post-Hearing Brief Addressing Columbus Southern Power Company and Ohio Power Company Electric Security Plans by the Ohio Consumer and Environmental Advocates, PUCO Case Nos. 08-917-EL-SSO and 08-918-EL-SSO at 24-29.

¹² AEP Comments at 5.

¹³ AEP Comments at 5.

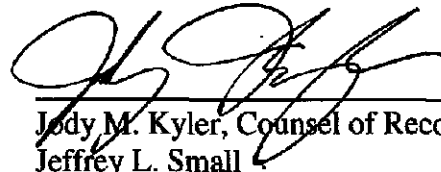
selection of those supplies and suppliers..."¹⁴ The Commission has the duty to uphold state policy in considering whether AEP Ohio's capacity compensation undermines the diversity of retail electric suppliers to customers. This duty is not secondary to the Commission's other duties, and deserves equal consideration in the Commission's investigation of AEP Ohio's capacity compensation.

III. CONCLUSION

The Commission should adopt OCC's recommendations for the benefit of Ohio residential customers and the public interest.

Respectfully submitted,

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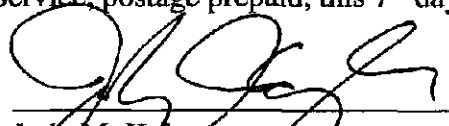
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¹⁴ R.C. 4928.02(C).

CERTIFICATE OF SERVICE

I hereby certify that a copy of OCC's Reply Comments were served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 7th day of February, 2011.


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