

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company and Columbus) Case No. 10-2376-EL-UNC
Southern Power Company for Authority)
to Merge and Related Approvals.)

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company for Authority to) Case No. 11-346-EL-SSO
Establish a Standard Service Offer) Case No. 11-348-EL-SSO
Pursuant to §4928.143, Ohio Rev. Code,)
in the Form of an Electric Security Plan.)

In the Matter of the Application of)
Columbus Southern Power Company and) Case No. 11-349-EL-AAM
Ohio Power Company for Approval of) Case No. 11-350-EL-AAM
Certain Accounting Authority.)

In the Matter of the Application of)
Columbus Southern Power Company to) Case No. 10-343-EL-ATA
Amend its Emergency Curtailment)
Service Riders.)

In the Matter of the Application of)
Ohio Power Company to Amend its) Case No. 10-344-EL-ATA
Emergency Curtailment Service Riders.)

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.)

In the Matter of the Application of)
Columbus Southern Power Company) Case No. 11-4920-EL-RDR
for Approval of a Mechanism to Recover)
Deferred Fuel Costs Ordered Under)
Ohio Revised Code 4928.144.)

In the Matter of the Application of)
Ohio Power Company for Approval of a)
Mechanism to Recover Deferred Fuel) Case No. 11-4921-EL-RDR
Costs Ordered Under Ohio Revised)
Code 4928.144.)

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**APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT
OF INDUSTRIAL ENERGY USERS-OHIO**

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February 17, 2012

Attorneys for Industrial Energy Users-Ohio

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APPLICATION FOR REHEARING OF INDUSTRIAL ENERGY USERS-OHIO

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("OAC"), Industrial Energy Users-Ohio ("IEU-Ohio") respectfully submits this Application for Rehearing of the Entry issued by the Public Utilities Commission of Ohio ("Commission") on January 23, 2012 regarding the Detailed Implementation Plan ("DIP") filed with the Commission on December 29, 2011 by Ohio Power Company ("OP").¹ The Commission's Entry is unreasonable and unlawful for the following reasons:

- 1. The Commission's January 23, 2012 Entry Is Unreasonable Because It Fails to Provide that All CRES Suppliers Supplying Customers Through Governmental Aggregation Programs That Have Completed the Necessary Process to Take Service by December 31, 2012 Shall Have Access to RPM-Priced Capacity.**
- 2. The Commission's January 23, 2012 Entry Is Unreasonable and Unlawful Because It Artificially Limits Governmental Aggregation Programs Ability to Secure Access to RPM-Priced Capacity By Imposing a December 31, 2012 Deadline to Completing the Necessary Process to Take Service In OP's Service Territory.**

As discussed in greater detail in the Memorandum in Support attached hereto, IEU-Ohio respectfully requests that the Commission grant this Application for Rehearing and clarify and modify its Entry in accordance with this Application for Rehearing.

¹ The DIP was filed on December 29, 2011 on behalf of both OP and the Columbus Southern Power Company ("CSP"); however, throughout this Application for Rehearing all filings by these two companies are referred to as being filed by OP because CSP has since completed its merger with OP.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On September 7, 2011, OP presented the Commission with a Stipulation and Recommendation ("Stipulation") purporting to settle OP's pending electric security plan ("ESP") application as well as all the other proceedings proposed to be consolidated with the ESP, including OP's capacity proceeding to establish the state compensation mechanism. To resolve OP's capacity proceeding, the Stipulation proposed, among other things, to establish a two-tiered generation capacity service pricing scheme ("shopping caps") designed to limit the ability of customers to beneficially exercise their "customer choice" right.² Under the two-tiered plan, competitive retail electric service ("CRES") providers of customers under the first tier have access to capacity priced by the Reliability Pricing Model's ("RPM") competitive bidding process ("CBP") established by PJM Interconnection ("PJM"), while CRES providers of customers in the second tier are required to pay an arbitrary \$255/MW-Day charge for capacity. The Stipulation proposed to cap access to tier one in 2012 at 21% of OP's annual load and proposed to increase the annual load eligible for RPM-priced capacity by roughly 10% for 2013 and again for 2014. The determination of which customers are under the shopping caps is based on a queuing process generally described in the DIP.

² FES Ex. 1, TCB-8 ("So the thought and the theory [of the shopping caps] is that the shopping will be constrained to the RPM price.").

On December 14, 2011, the Commission modified and approved the shopping caps.³ Of importance to this Application for Rehearing was the Commission's modification due to OP's failure to carry its burden of proof to support application of the new and higher capacity charge to governmental aggregation programs. The Commission rejected the Stipulation's inclusion of governmental aggregation programs in the shopping caps, finding that governmental aggregation programs had proven to be effective in promoting retail competition.⁴ The Commission further held that "any customer located in a governmental aggregation community will qualify" for RPM-priced capacity.⁵ Because governmental aggregation programs are not subject to the shopping caps,⁶ the December 14, 2011 Opinion and Order allowed customers shopping through governmental aggregation programs to continue to receive the CBP-based RPM-priced capacity.

OP, however, sought to implement the Commission's modifications in a manner that was not consistent with the letter and spirit of the Commission's Opinion and Order. In a filing on December 29, 2011, OP filed a revised DIP that contained several revisions that restricted access to RPM-priced capacity in violation of the Opinion and Order.

³ The Commission's other modification required that OP maintain the pro rata share of the customer class-specific capacity set-asides. Thus, for 2012 each customer class will maintain their respective 21% allocation (of OP's annual load) of RPM-priced capacity. Opinion and Order at 54-55 (Dec. 14, 2011).

⁴ *Id.* at 54. "It is the state policy to ensure the availability of unbundled and comparable retail electric service to all customer classes, including residential customers, and governmental aggregation programs have proven to be the most likely means to get substantial numbers of residential customers to become the customer of a CRES provider." *Id.*

⁵ *Id.*

⁶ Although the Commission held that it was necessary to modify the Stipulation's proposal to include governmental aggregation in the shopping caps, the Commission then subjected the governmental aggregation programs to a deadline that requires the programs complete the necessary process to take service from a CRES provider by December 31, 2012. *Id.*

IEU-Ohio and FirstEnergy Solutions ("FES") opposed OP's December 29, 2011 filing, and moved for a Commission order directing OP to comply with the Commission-ordered modifications. On January 23, 2012, the Commission ordered OP to comply with the December 14, 2011 Opinion and Order. The January 23, 2012 Entry held that:

- (1) The capacity allotments for each customer class were to remain at 21% and any unused allotment could not be allocated to other customer classes;
- (2) Governmental aggregation programs were not subject to inclusion in the customer-class specific shopping caps and could not be counted towards the 21% customer class-specific shopping caps;
- (3) All governmental aggregation programs approved up to and including the communities that passed governmental aggregation programs in the November 2011 elections were eligible for access to RPM-priced capacity outside of OP's customer class-specific shopping caps if they took steps necessary to take service prior to December 31, 2012;
- (4) Mercantile customers in governmental aggregation programs could access RPM-priced capacity; and
- (5) The Commission was retaining continuing jurisdiction over OP's shopping caps to determine if adjustments to the shopping caps in 2013 and 2014 and the first five months of 2015 would be necessary.⁷

For the reasons discussed below, the Commission should grant rehearing to clarify that the January 23, 2012 Entry allows access to RPM-priced capacity for all governmental aggregation programs, regardless of when they were or will be authorized and implemented, so long as the necessary process has been completed to take service from a CRES provider by December 31, 2012. Consistent with the December 14, 2011 Opinion and Order, the Commission should also explicitly hold that CRES providers of customers in governmental aggregation programs that complete the

⁷ Entry at 3-6 (Jan. 23, 2012).

necessary process by December 31, 2012 will retain access to the RPM-priced capacity in 2013, 2014, and first five months of 2015 (at which time OP will conduct a CBP auction and all of OP's customers will return to having access to RPM-priced capacity).

Further, the Commission should also modify its Entry regarding governmental aggregation programs' access to RPM-priced capacity for those programs that do not complete the necessary process to take service until 2013 and thereafter. Specifically, the Commission should hold that customers in governmental aggregation programs that complete the necessary process to take service from a CRES provider after December 31, 2012, may also continue to secure RPM-priced capacity consistent with the policy in the December 14, 2011 Opinion and Order that supports access to RPM-priced capacity for all governmental aggregation programs.

II. ARGUMENT

- 1. The Commission's January 23, 2012 Entry Is Unreasonable Because It Fails to Provide that All CRES Suppliers Supplying Customers Through Governmental Aggregation Programs That Have Completed the Necessary Process to Take Service by December 31, 2012 Shall Have Access to RPM-Priced Capacity.**

The Commission's December 14, 2011 Opinion and Order modified the Stipulation filed in this proceeding by rejecting the Stipulation's inclusion of governmental aggregation programs in the shopping caps.⁸ As the Commission explained, it found "it necessary to modify the proposed Stipulation ... to ensure that any customer located in a governmental aggregation community" would have access to RPM-priced capacity.⁹ The Commission's only limitation on governmental aggregation

⁸ Opinion and Order at 54 (Dec. 14, 2011).

⁹ *Id.* (emphasis added).

programs' continuing ability to proceed with shopping at RPM-priced capacity was that the community, or its CRES provider, complete "the necessary process to take service in [OP's] service territory by December 31, 2012."¹⁰

In the December 29, 2011 filing,¹¹ OP sought, again, to narrow the opportunity for governmental aggregation programs to continue to pay for capacity based on the previously-approved RPM pricing mechanism, the default pricing mechanism under PJM's tariff.¹² In the December 29, 2011 filing, OP included language that removed RPM-priced capacity for governmental aggregation programs except those programs established by communities that approved governmental aggregation programs in the November 2011 elections. In rejecting OP's December 29, 2011 effort to remove eligibility for RPM-priced capacity from governmental aggregation programs, the Commission, in the January 23, 2012 Entry, provided that its determination to continue to make RPM-priced capacity available to governmental aggregation programs was "meant to include all communities that have established governmental aggregation programs, up to and including those communities that approved government aggregation programs in the November 2011 election" ¹³

¹⁰ *Id.*

¹¹ On December 29, 2011, OP filed a revised DIP to implement what it believed were the Commission's modifications to the shopping caps.

¹² PJM's Reliability Assurance Agreement ("RAA") at 112, available at: <http://www.pjm.com/~media/documents/agreements/raa.ashx> [the default price of capacity for a fixed resource requirement ("FRR") entity under the RAA is the RPM price established in Attachment DD of PJM's Open Access Transmission Tariff]; Attachment DD of PJM's Open Access Transmission Tariff at 2737-2352, available at: <http://www.pjm.com/~media/documents/agreements/tariff.ashx>.

¹³ Entry at 4 (Jan. 23, 2012).

While IEU-Ohio believes that the Commission's actions to this point clearly indicate that RPM pricing for generation capacity service shall continue to apply to shopping through governmental aggregation programs regardless of the shopping that occurs within the shopping caps, OP's intentions to push and pull in the opposite direction are also clear. And, IEU-Ohio expects that OP will continue to try to fill any gap in the Commission's chosen words with language that advances OP's campaign to discourage large scale governmental aggregation programs. In this regard, IEU-Ohio urges the Commission to further clarify the January 23, 2012 Entry to make it clear that governmental aggregation programs, regardless of when they were approved, which complete the necessary process to take service in OP's service territory by December 31, 2012, will have access to RPM-priced capacity.

As the Commission stated in the December 14, 2011 Opinion and Order, it was the Commission's intent to continue to make available RPM-priced capacity to "any customer located in a governmental aggregation community" to ensure customers continue to have access to unbundled and comparable retail electric service.¹⁴ In the Opinion and Order, the Commission did not indicate any restriction on the modification other than completing the necessary process to take service in OP's service territory by December 31, 2012.¹⁵ However, OP has already taken the position that the Commission's preservation of RPM-priced capacity need not extend to programs adopted in 2012.¹⁶

¹⁴ Opinion and Order at 54 (Dec. 14, 2011).

¹⁵ *Id.*

¹⁶ Ohio Power Company's Application for Rehearing at 8-9 (Feb. 10, 2012).

Data published on OP's website on February 14, 2012¹⁷ now show that but for the preservation of RPM-priced capacity for governmental aggregation programs, the amount of RPM-priced capacity available under the shopping caps is essentially gone well into or through 2014.¹⁸ While IEU-Ohio believes that RPM-priced capacity should be available to all shoppers, OP's own numbers show that its effort to shut down access to RPM-priced capacity by governmental aggregation programs will impose the much higher \$255/MW-Day charge on thousands of customers besieged by large electric bill increases at a time when market-based electric prices are declining elsewhere.

As the Commission determined, the State policy is to ensure the availability of unbundled and comparable retail electric service to all customer classes.¹⁹ OP, through its statements²⁰ and its filings,²¹ has made it clear that it will narrowly construe the Commission's order to further its own stop-shopping goals. For the reasons set out above, the Commission should grant this Application for Rehearing and clarify the extent to which it has preserved RPM-priced capacity for shopping occurring through government aggregation programs.

¹⁷ <https://www.aepohio.com/service/choice/cres/Default.aspx>.

¹⁸ The data reflects shopping as of January 20, 2012.

¹⁹ *Id.*

²⁰ FES Ex. 1, TCB 7, 8, & 9.

²¹ Detailed Implementation Plan (Dec. 29, 2011); Ohio Power Company's Application for Rehearing at 8-9 (Feb. 10, 2012).

2. The Commission's January 23, 2012 Entry Is Unreasonable and Unlawful Because It Artificially Limits Governmental Aggregation Programs Ability to Secure Access to RPM-Priced Capacity By Imposing a December 31, 2012 Deadline to Completing the Necessary Process to Take Service In OP's Service Territory.

The Commission should modify its Entry and remove the unreasonable and unlawful December 31, 2012 restriction that it has placed on governmental aggregation programs. The Commission has not unequivocally addressed the effect its modification of the Stipulation will have on customers in governmental aggregation programs that complete the process to take service from a CRES provider after December 31, 2012. As discussed above, the RPM pricing mechanism is the default capacity pricing mechanism under PJM's tariffs²² and was the default price under the state compensation mechanism,²³ but for the Stipulation.²⁴ In the December 14, 2011 Opinion and Order, the Commission rejected OP's proposal to include governmental aggregation in the shopping caps.²⁵ Because the Commission excluded governmental aggregation programs from the Stipulation's proposal to establish a state compensation mechanism, governmental aggregation programs should continue to operate under the previous regulatory environment.

Once the Commission determined that governmental aggregation programs were not subject to the shopping caps and the \$255/MW-Day charge, there was no reason to

²² *Supra* n. 16, at 9.

²³ *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, Entry at 3 (Dec. 8, 2010). "The Commission will now expressly adopt as the state compensation mechanism for [OP] the current capacity charges established by the three-year capacity auction conducted by PJM, Inc." *Id.*

²⁴ Stipulation at 20-21 (Sept. 7, 2011).

²⁵ Opinion and Order at 54 (Dec. 14, 2011).

impose the December 31, 2012 deadline. For those communities that may not be able to meet the December 31, 2012 deadline, the Commission should clarify its Entry and hold that governmental aggregation programs that complete the necessary to process to take service in OP's service territory in 2013, and, thereafter, will continue to have access to RPM-priced capacity.

For these reasons, the Commission should grant this Application for Rehearing and unequivocally hold that the state compensation mechanism that applies to governmental aggregation programs is the capacity price set by PJM's RPM auction. This holding would be consistent with its prior holding that established the state mechanism based on the RPM price²⁶ and its decision in the December 14, 2011 Opinion and Order to not subject governmental aggregation programs to the new state compensation mechanism proposed in the shopping caps (*i.e.*, the \$255/MW-Day charge).

III. CONCLUSION

For the foregoing reasons, the Commission should grant this Application for Rehearing.

Respectfully submitted,



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²⁶ *Supra* n. 26, at 12.

Certificate of Service

I hereby certify that a copy of the foregoing *Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio* was served upon the following parties of record this 17th day of February 2012, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.



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