

**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.)

**MEMORANDUM CONTRA MOTION FOR RELIEF BY THE OHIO POWER
COMPANY
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

This case originated because of the interest of the Public Utilities Commission of Ohio (“PUCO” or Commission”) in reviewing the appropriate state mechanism for capacity charges¹ by affiliates of American Electric Power (“AEP Ohio”² or “Company”), including the impact on Ohio competitive retail electric service (“CRES”) providers and upon the retail competition in Ohio that may provide lower electricity prices to Ohioans.³ This case was consolidated with others -- most notably the cases to determine the standard service offer (“SSO”) retail rates for AEP Ohio’s retail customers⁴ -- for hearing purposes. This case was also the subject (jointly with other cases) of an Order by the PUCO dated December 14, 2011 and an Entry on Rehearing

¹ The importance of capacity charges for this pleading is that they are charged to competitive suppliers of electricity and make their way into the retail offers that these suppliers can offer residential and other customers.

² The affiliates in Ohio, Columbus Southern Power Company and the Ohio Power Company, were recently merged under the Ohio Power Company name. The affiliates have been operating under the name “AEP Ohio.”

³ Entry at 2 (December 8, 2010).

⁴ *In re AEP Ohio SSO ESP II Case*, Case Nos. 11-346-EL-SSO and 11-348-EL-SSO.

dated February 23, 2012 that ultimately resulted in rejection of an agreement (“Stipulation”) among some parties (parties that do not include the OCC).⁵

On February 27, 2012, AEP Ohio filed a Motion for Relief (“Interim Capacity Filing”) in which it stated that the PUCO’s ruling in the Entry on Rehearing was detrimental to the Company⁶ and that the Entry on Rehearing “needs clarification.”⁷ The OCC submits this memorandum contra to AEP Ohio’s Interim Capacity Filing, the latter of which is more properly categorized as an application for rehearing to the Entry on Rehearing.

II. AEP OHIO’S FILING IS IMPROPER AS A MOTION.

AEP Ohio’s Motion for Relief (the Interim Capacity Filing) is more properly categorized as an application for rehearing to the Entry on Rehearing dated February 23, 2012. The Company’s pleading is improperly styled by the Company as a motion accompanied by a request for an expedited ruling. Both the Company’s “requests that the Commission consider additional information”⁸ following the Entry on Rehearing (including a request for an “expedited and firm procedural schedule”⁹) and the Company’s request that the “Entry on Rehearing[] [be] clarif[ied]”¹⁰ are subject matters

⁵ Entry on Rehearing at 8, ¶(15) (“reject the Stipulation”) (February 23, 2012). The OCC opposed the PUCO’s approval of the Stipulation that was filed on September 7, 2011.

⁶ Interim Capacity Filing at 1 (assignment “I”).

⁷ Id. at 1 (assignment “II”).

⁸ Interim Capacity Filing at 1 (assignment “I”).

⁹ Id. at 6.

¹⁰ Id. at 2 (assignment “II”).

for an application for rehearing, and should not have been filed as a motion that is accompanied by a request for expedited treatment.¹¹

AEP Ohio's pleading is strikingly similar to another of the Company's filings, a request for clarification filed in Case No. 05-376-EL-UNC, that sought additional financial assurances from the Commission as well as an expedited schedule upon which to consider the Company's application for monies in connection with the construction of an integrated gasification combined-cycle ("IGCC") power plant.¹² In that proceeding, the Commission held that the Company's request for clarification be "treated and considered as an application for rehearing."¹³ The Interim Capacity Filing should similarly be treated by the Commission as an application for rehearing.

Incumbent upon any rehearing application is the limitation on the materials that may be considered by the Commission.

If the commission grants . . . rehearing, it shall specify in the notice of such granting the purpose for which it is granted. The commission shall also specify the scope of the additional evidence, if any, that will be taken, but *shall not* upon such rehearing take any evidence that, with reasonable diligence, could have been offered upon the original hearing.¹⁴

Without even obtaining a rehearing by the Commission, AEP Ohio asks in its Interim Capacity Filing that the PUCO consider the Company's financial assertions that are not found in the record and which would reasonably be expected to have been presented

¹¹ AEP Ohio incorrectly relies upon Ohio Adm. Code 4901-1-12(C) (Interim Capacity Filing at 2) that provides parties seven days to respond in the event of a request for an expedited ruling. Even if AEP Ohio's Interim Capacity Filing is accepted as a motion and a request for an expedited ruling, the Company has not complied with the Commission's requirement that "[t]he grounds for such a request shall be set forth in the memorandum in support." Ohio Adm. Code 4901-1-12(C).

¹² *In re AEP Ohio's Proposed IGCC Power Plant*, Case No. 05-376-EL-UNC, Entry on Rehearing at 1, ¶(4) (June 6, 2006).

¹³ *Id.* at 2, ¶(5).

¹⁴ *Id.* (emphasis added).

during the hearing for this case. All such assertions that are not identified by AEP Ohio as having a basis in the record (i.e. admitted as evidence in a hearing) should be disregarded.

III. AEP OHIO FAILED TO PROVIDE ANY LEGAL BASIS FOR COMMISSION ADOPTION OF ITS CAPACITY PRICING PROPOSALS.

AEP Ohio's pleading recognizes that the Entry on Rehearing cited and applied R.C. 4928.143(C)(2)(b) and does not argue with that legal interpretation,¹⁵ yet the Company argues for a different interim result for the period until its next SSO rate plan is approved. In particular, the Entry on Rehearing quotes the statute as requiring the Commission to "issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer"¹⁶ That result requires the return to the capacity pricing mechanism that existed in December 2011, immediately before the expiration of the first SSO rate plan for the Company.

In its initial argument, AEP Ohio dramatically refers to a "flash-cut to 100% RPM-priced capacity" as though such a pricing regime is a departure from the norm with untoward consequences.¹⁷ The Reliability Pricing Model ("RPM") regime for AEP Ohio was in place during the standard service rate plan that expired on December 31, 2011. The Company also argues that its return on equity would decline if RPM pricing continued throughout 2012 and 2013.¹⁸ As stated earlier, the Company has not applied the legally correct standard and it bases its empirical presentation on a table that is not in the record and therefore contains untested assertions.

¹⁵ Interim Capacity Filing at 16.

¹⁶ R.C. 4928.143(C)(2)(b), quoted in Entry on Rehearing at 12, ¶20 (February 23, 2012).

¹⁷ See, e.g., Interim Capacity Filing at 1 (sub-points "A" and "B" under assignment "I").

¹⁸ Id. at 5.

In the remainder of AEP Ohio's first major argument (i.e. assignment of error), AEP Ohio offers the Commission three alternative pricing schemes that the Company finds acceptable because they each raise capacity charges. AEP Ohio proposes charging capacity at a rate that resulted from negotiation of the settlement package that is contained in the rejected Stipulation,¹⁹ possibly as adjusted by some of the Commission's earlier requirements regarding aggregation customers²⁰ or possibly by imposing the high capacity charges stated in the rejected Stipulation to suppliers for all customers who have not shopped.²¹ The various alternatives that AEP Ohio considers reasonable are not those that are judged lawful and reasonable by the Ohio General Assembly whose statutes must govern the resolution of matters for the duration of the period until a new SSO rate plan is approved.

AEP Ohio's attempt to limit shopping by increasing capacity charges during the period before it gains approval of a new SSO rate plan should be rejected. The Commission should not be swayed by the Company's rhetoric, but instead should (and must) follow Ohio law. The law requires returning to RPM pricing. This pricing will facilitate the objective stated in R.C. Chapter 4928 that customers have an opportunity to obtain electricity from suppliers other than their distribution utility.

¹⁹ Id. at 7 (rates from the "Revised Detailed Implementation Plan").

²⁰ Id. ("relief from one of the five obligations").

²¹ Id. at 15 ("'split the baby' by . . . allowing RPM pricing for [only] customers being served by CRES providers or having provided a switch request as of the February 23 Entry on Rehearing").

IV. THE COMMISSION ORDERED AEP OHIO TO RETURN TO THE PREVIOUS PRICING OF CAPACITY TO COMPETITIVE SUPPLIERS.

In its second major argument (i.e. assignment of error), AEP Ohio feigns ignorance of the meaning of the Entry on Rehearing regarding the return to conditions under the expired SSO rate plan.²² The statute cited by the Commission requires the PUCO to “continue the provisions, terms, and conditions of the utility’s most recent standard service offer,” and the Entry on Rehearing required AEP Ohio to apply PJM’s RPM capacity charges under the conditions that were used during the recently expired SSO rate plan.²³

AEP Ohio claims in its second major argument that the PUCO’s directive regarding RPM capacity pricing is unclear. But AEP Ohio demonstrates its understanding of the PUCO’s directive in that same argument where the Company “reserves the right to pursue any legal right or remedy available to challenge a *flash-cut to RPM-priced capacity*.”²⁴ AEP Ohio devotes its first major argument -- thirteen pages - - to its review of the situation where the Company returns to RPM capacity pricing under the directive contained in the Entry on Rehearing.²⁵ AEP Ohio’s service corporation affiliate, American Electric Power Service Corporation, stated in a recent filing at the Federal Energy Regulatory Commission that rejection of the Stipulation by the PUCO requires the return to RPM auction pricing for capacity.²⁶ It is disingenuous for the Company to claim that it does not have a clear understanding of the directive in the Entry

²² Id. at 16-19.

²³ Entry on Rehearing at 12, ¶(20) (February 23, 2012) (“appropriate application of capacity charges”).

²⁴ Id. at 19, footnote 3 (emphasis added).

²⁵ Interim Capacity Filing at 3-15.

²⁶ *American Electric Power Service Corporation*, Docket Nos. ER11-2183-001 and EL11-32-000, Motion for Expedited Rulings at 7 (February 29, 2012) (“[b]y rejecting the Stipulation, the Ohio Commission has reverted to capacity prices established through the RPM auction”).

on Rehearing regarding capacity pricing when its pleadings are largely devoted to asserting consequences that may attach to the return to RPM pricing of capacity.

V. CONCLUSION

AEP Ohio's Motion for Relief is procedurally flawed. The Commission should treat the pleading as an application for rehearing and proceed on that basis.

AEP Ohio's alternative capacity charge schemes are not permitted under Ohio's statutes. The reasonable result for the period following the Entry on Rehearing is the statutory requirement that rates be determined by returning customers to rates, terms, and conditions that were contained in AEP Ohio's recently expired SSO rate plan. The rates, terms, and conditions contained in the most recent standard service offer included pricing capacity at RPM levels.

Permitting increased capacity charges to CRES providers would inhibit retail competition in Ohio by unreasonably increasing the rates that CRES providers charge to consumers. This is contrary to state policy as embodied in R.C. 4928.02(A) (ensuring reasonably price retail electric service) and R.C. 4928.02(C) (ensuring diversity of electricity supplies and suppliers), as well as other state policies.

Respectfully submitted,

BRUCE J. WESTON
INTERIM CONSUMERS' COUNSEL

/s/ Jeffrey L. Small

Jeffrey L. Small, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-1292

small@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of OCC's Memorandum Contra was served on the persons stated below via electronic transmission, this 5th day of March, 2012.

*/s/ Jeffrey L. Small*_____

Jeffrey L. Small

Assistant Consumers' Counsel

SERVICE LIST

Thomas.lindgren@puc.state.oh.us
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwnchm.com
cmooney@columbus.rr.com
drinebolt@ohiopartners.org
haydenm@firstenergycorp.com
Paul.Wight@skadden.com
John.Estes@skadden.com

stnourse@aep.com
mjsatterwhite@aep.com
Jeanne.Kingery@duke-energy.com
whitt@whitt-sturtevant.com
Thompson@whitt-sturtevant.com
vparisi@igsenergy.com
mswhite@igsenergy.com
Sandy.grace@exeloncorp.com
constance.reinhard@exeloncorp.com
lmcalister@bricker.com
ricks@ohanet.org
tobrien@bricker.com
mhpetricoff@vorys.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/5/2012 11:50:32 AM

in

Case No(s). 10-2929-EL-UNC

Summary: Memorandum Memorandum Contra Motion for Relief by the Ohio Power Company by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Small, Jeffrey L. Mr.