

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.)

ENTRY

The Commission finds:

- (1) On November 1, 2010, American Electric Power Service Corporation (AEPSC), on behalf of Columbus Southern Power Company and Ohio Power Company (AEP-Ohio or the Company),¹ filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. At the direction of FERC, AEPSC refiled its application in FERC Docket No. ER11-2183 on November 24, 2010. The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism and included proposed formula rate templates under which AEP-Ohio would calculate its capacity costs under Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement (RAA).
- (2) On December 8, 2010, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charges. Consequently, the Commission sought public comments regarding the following issues: (1) what changes to the current state mechanism are appropriate to determine AEP-Ohio's fixed resource requirement (FRR) capacity charges to Ohio competitive retail electric service (CRES) providers; (2) the degree to which AEP-Ohio's capacity charges are currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charges upon CRES providers and retail competition in Ohio. The Commission invited all interested

¹ The Commission notes that the merger of Columbus Southern Power Company into Ohio Power Company has been confirmed today in a separate docket. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

stakeholders to submit written comments in the proceeding within 30 days of issuance of the entry and to submit reply comments within 45 days of the issuance of the entry. Additionally, in light of the change proposed by AEP-Ohio, the Commission adopted as the state compensation mechanism for AEP-Ohio the current capacity charges established by the three-year capacity auction conducted by PJM Interconnection (PJM), during the pendency of the review.

- (3) On January 20, 2011, AEP-Ohio filed a motion to stay the reply comment period and to establish a procedural schedule for hearing, as well as for an expedited ruling. In the alternative, AEP-Ohio requested an extension of the deadline to file reply comments until January 28, 2011. In support of its motion, AEP-Ohio asserted that, due to the recent rejection of its application by FERC based on the "existence of a state compensation mechanism," it would be necessary for the Commission to move forward with an evidentiary hearing process to establish the state compensation mechanism. AEP-Ohio argued that, in light of this recent development, the parties needed more time to file reply comments.
- (4) By entry issued January 21, 2011, the attorney examiner granted AEP-Ohio's motion to extend the deadline to file reply comments and established the new reply comment deadline as February 7, 2011. The January 21, 2011, entry also determined that AEP-Ohio's motion for the Commission to establish a procedural schedule for hearing would be considered after the reply comment period had concluded.
- (5) On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.* (11-346), AEP-Ohio filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code.² The application was for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.
- (6) By entry issued August 11, 2011, in the present case, the attorney examiner established a procedural schedule in order

² *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Case Nos. 11-346-EL-SSO and 11-348-EL-SSO; In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority, Case Nos. 11-349-EL-AAM and 11-350-EL-AAM.*

to establish an evidentiary record on a state compensation mechanism. Interested parties were directed to develop an evidentiary record on the appropriate capacity cost pricing/recovery mechanism including, if necessary, the appropriate components of any proposed capacity cost recovery mechanism. An evidentiary hearing was scheduled to commence on October 4, 2011.

- (7) On September 7, 2011, a stipulation and recommendation (ESP 2 Stipulation) was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in 11-346 and several other cases pending before the Commission (consolidated cases),³ including the above-captioned case. Pursuant to an entry issued September 16, 2011, the consolidated cases were consolidated for the purpose of considering the ESP 2 Stipulation. The September 16, 2011, entry also stayed the procedural schedule in the pending cases, including this proceeding, until the Commission specifically ordered otherwise. The evidentiary hearing on the ESP 2 Stipulation commenced on October 4, 2011, and concluded on October 27, 2011.
- (8) On December 14, 2011, the Commission issued an opinion and order in the consolidated cases, modifying and adopting the ESP 2 Stipulation (ESP 2 order).
- (9) Subsequently, on February 23, 2012, the Commission issued an entry on rehearing in the consolidated cases, granting rehearing in part (ESP 2 entry on rehearing). Finding that the signatory parties to the ESP 2 Stipulation had not met their burden of demonstrating that the stipulation, as a package, benefits ratepayers and the public interest, as required by the Commission's three-part test for the consideration of stipulations, the Commission rejected the ESP 2 Stipulation.

³ *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-343-EL-ATA; *In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-344-EL-ATA; *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; *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4920-EL-RDR; *In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4921-EL-RDR.

The Commission directed AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its previous ESP, including an appropriate application of capacity charges under the approved state compensation mechanism established in the present case.

- (10) On February 27, 2012, AEP-Ohio filed a motion for relief and request for expedited ruling in the present docket. Under the provisions of Rule 4901-1-12(C), Ohio Administrative Code (O.A.C.), any memoranda contra AEP-Ohio's request for expedited ruling are due by March 5, 2012. Memoranda contra AEP-Ohio's request for relief were filed by FirstEnergy Solutions Corp. (FES), Interstate Gas Supply, Inc. (IGS), Duke Energy Retail Sales, LLC (DERS), Industrial Energy Users-Ohio (IEU-Ohio), Ohio Consumers' Counsel (OCC), and Ohio Manufacturers' Association (OMA). A joint memorandum contra was filed by Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., Direct Energy Services, LLC, Direct Energy Business, LLC, and the Retail Energy Supply Association (RESA) (collectively, Joint Suppliers).⁴
- (11) In its motion for relief and request for expedited ruling, AEP-Ohio asserts that, in light of the Commission's rejection of the ESP 2 Stipulation, the Commission should quickly resume this proceeding from the point at which it was suspended to allow for consideration of the stipulation. AEP-Ohio reasons that, in the absence of the ESP 2 Stipulation, this proceeding would have been resolved by the end of 2011, and the Company would not have faced the prospect of unreasonably low capacity rates. AEP-Ohio believes that the Commission should expeditiously consider implementation of a cost-based capacity rate, at least for a transition period during which the Company would remain an FRR entity, and issue a decision on the merits of the case within 90 days.

Additionally, AEP-Ohio argues that a reasonable interim capacity rate should be implemented during the pendency of this proceeding, but cautions that the Commission should not

⁴ On February 28, 2012, and March 5, 2012, IGS and RESA, respectively, filed a motion to intervene in this case. IGS and RESA are, therefore, each deemed a party for the purpose of responding to AEP-Ohio's motion pursuant to Rule 4901-1-12(E), O.A.C.

prejudge the merits of the case through implementation of the interim rate. AEP-Ohio contends that the interim rate should not be based exclusively on PJM's Reliability Pricing Model (RPM) auction prices, which, according to AEP-Ohio, would precipitate immediate, irreparable financial harm on the Company, as it would be forced to provide CRES providers with access to its capacity at below-cost rates. AEP-Ohio believes that the majority of its customers would leave its SSO service, resulting in massive revenue loss for the Company. Specifically, AEP-Ohio projects that its earnings for 2012 and 2013 would decrease by 27 percent and 67 percent, respectively, resulting in a return on equity of 7.6 percent and 2.4 percent, respectively, as well as possible downward adjustments to the Company's credit ratings. AEP-Ohio argues that such a result would be confiscatory, unreasonable, and unjust. AEP-Ohio adds that the Company would be forced to pursue all possible legal remedies if the Commission elects to impose full RPM-based capacity pricing. Noting that the ESP 2 Stipulation was rejected for reasons unrelated to its capacity charge provisions, AEP-Ohio argues that it should not be subject to the punitive result of full RPM-based capacity pricing, which the Company believes would prejudice the outcome of this proceeding by causing the majority of its customers to switch providers by the time a final decision is reached. AEP-Ohio also claims that switching to RPM-based capacity pricing now, and later implementing a different pricing scheme after the case is decided, would cause uncertainty and confusion for customers.

AEP-Ohio believes that using the same two-tiered capacity pricing proposed in the ESP 2 Stipulation would offer the most stability and represents a reasonable middle ground based on the record in this case. Specifically, AEP-Ohio proposes that the interim rate should be RPM-based capacity pricing for the first 21 percent of shopping load of each customer class, plus aggregation, but excluding mercantile load, with an interim rate of \$255.00/megawatt-day (MW-day) for shopping load above the 21 percent cap. AEP-Ohio notes that this "status quo" proposal would essentially maintain the approach implemented to date by the Company pursuant to the revised Detailed Implementation Plan (DIP) filed on December 29, 2011, which the Company recognizes was subsequently modified by the Commission on January 23, 2012, in the consolidated cases. AEP-Ohio asserts that the record supports

its interim proposal or, in the alternative, an interim mechanism that conforms to the Commission's modifications to the revised DIP, with the exception of the inclusion of mercantile load. AEP-Ohio notes that it has filed the testimony of Dr. Kelly Pearce in this docket, as well as testimony from the same witness in support of the ESP 2 Stipulation in the consolidated cases, which, according to the Company, supports a cost-based formula rate that is well in excess of its interim proposal. AEP-Ohio notes that Dr. Pearce's testimony supports a capacity rate of \$355.72/MW-day, whereas its interim proposal would set aside amounts of RPM-priced capacity for an initial tier of customers and provide for a capacity rate of \$255.00/MW-day for amounts above the first tier.

Alternatively, AEP-Ohio proposes a compromise position of RPM-based capacity pricing for customers already served by CRES providers or those having provided a switch request as of the date of the ESP 2 entry on rehearing, and \$255.00/MW-day for all other customers, including aggregation load, that switch before the case is decided. AEP-Ohio believes that this proposal is a reasonable interim solution, one that would facilitate shopping during the pendency of the case, as well as avoid financial harm for the Company. As this approach would adopt two opposing litigation positions in part, AEP-Ohio notes that it can be implemented without prejudice to the outcome of the case.

Finally, AEP-Ohio notes that the ESP 2 entry on rehearing is unclear with respect to the directive regarding capacity pricing and that the Commission should provide clarification so that AEP-Ohio may comply with the Commission's directive.

- (12) In its memorandum contra, FES argues that AEP-Ohio's motion for relief should be denied as legally and procedurally deficient, and that the Commission should reject the Company's attempt to retain the anticompetitive and discriminatory capacity pricing scheme from the now rejected ESP 2 Stipulation. FES contends that AEP-Ohio has a number of means by which it could have sought relief, including seeking rehearing of the ESP 2 entry on rehearing pursuant to Section 4903.10, Revised Code, or seeking emergency rate relief pursuant to Section 4909.16, Revised Code. If AEP-Ohio's dispute is with the allegedly confiscatory impact of the state

compensation mechanism set forth in the RAA, FES notes that the Company has already filed a complaint case in FERC Docket No. EL11-32, seeking to change the terms of the RAA. Rather than pursue these options, FES argues that AEP-Ohio elected to file its motion for relief, which disregards the rehearing process and is not authorized by statute.

Additionally, FES takes issue with AEP-Ohio's claim that RPM-based capacity pricing will cause the Company to suffer immediate and irreparable harm. FES points out that, although AEP-Ohio sought rehearing of the December 8, 2010, entry in this docket, the Company did not claim in its application for rehearing that RPM-based capacity pricing would cause such harm and, therefore, FES contends that the Company has waived the argument. FES adds that AEP-Ohio's claim that RPM-based capacity pricing is confiscatory is not credible, given that the Company voluntarily used such pricing throughout the term of its first ESP. FES notes that the RPM zonal price for delivery year 2011/2012 is approximately \$116.00/MW-day and that AEP-Ohio voluntarily charged a price of \$105.00/MW-day as recently as the 2009/2010 delivery year. FES further notes that AEP-Ohio's projections for 2012 and 2013 show significant earnings, despite the Company's unsupported assumption that the majority of its customers will switch to CRES providers under RPM-based capacity pricing. FES also indicates that AEP-Ohio's anticipated return on equity of 7.6 percent for 2012 under RPM-based capacity pricing is almost exactly what the Company had projected that it would earn under the ESP 2 Stipulation.

In addition, FES argues that the Commission's directive to AEP-Ohio is clear and that there is no need for clarification of the ESP 2 entry on rehearing. FES asserts that AEP-Ohio should comply with the Commission's directive and continue to charge RPM-based pricing for its capacity in accordance with the state compensation mechanism established in the Commission's December 8, 2010, entry. In order to comply with the Commission's directive, FES notes that AEP-Ohio need only notify PJM that the state compensation mechanism requires RPM-based capacity pricing.

FES adds that the restoration of RPM-based capacity pricing, which is the default pricing structure under the RAA, would

not predetermine the outcome of this case but rather complies with the RAA and restores all parties to the circumstances in place throughout all of AEP-Ohio's first ESP. Given that the ESP 2 Stipulation has now been rejected, FES also notes that there is no support in the record for a capacity price of \$255.00/MW-day, which was negotiated by the signatory parties to the stipulation. FES argues that AEP-Ohio cannot rely on the hearing record in the consolidated cases to support its claims, as the consolidated cases were consolidated for the limited purpose of considering the ESP 2 Stipulation. Further, FES points out that even several of the signatory parties agreed that setting the capacity price based on anything other than RPM-based pricing was unreasonable but that the other purported benefits of the ESP 2 Stipulation made the two-tiered approach acceptable to them. FES adds that AEP-Ohio's interim proposal would harm governmental aggregation and restrict shopping. FES also argues that the two-tiered interim proposal would discriminate among shopping customers, as well as between shopping customers and non-shopping customers, and that there are no benefits to outweigh the harm caused to competitive markets, now that the ESP 2 Stipulation has been rejected. With respect to AEP-Ohio's alternative proposal, FES argues that it directly conflicts with state law and policy and with the Commission's express intent in the ESP 2 order to accommodate governmental aggregation. FES notes that, if AEP-Ohio's alternative proposal is adopted, all governmental aggregation load from the November 2011 ballot initiatives would be denied RPM-based capacity pricing, as those communities have not completed enrollments.

- (13) IGS states that it does not object to AEP-Ohio's interim proposal, but argues that AEP-Ohio's compromise position should be rejected. Although IGS believes that capacity charges should be market based, it notes that there is a need for a measured transition from a regulated to a competitive paradigm. IGS asserts that AEP-Ohio's interim proposal is a reasonable approach that would enable the parties to engage again in a constructive dialogue toward a more permanent solution that provides certainty for all stakeholders. IGS contends that AEP-Ohio's interim proposal would provide clarity for CRES providers, as well as an opportunity for customers to benefit from savings offered by CRES providers. IGS notes that the interim proposal, which would essentially

maintain the capacity pricing recommended in the ESP 2 Stipulation, was agreed to by most of the parties in the consolidated cases. IGS cautions that the RPM capacity allotments must be available to all customer classes equally, if AEP-Ohio's interim proposal is to remain a viable interim solution. Additionally, although IGS does not object to AEP-Ohio's interim proposal, IGS suggests that, as an alternative, the Commission could implement a cap on the governmental aggregation load to which RPM-based capacity pricing applies. With respect to mercantile customers, IGS proposes that the Commission could defer the decision of whether to exclude such customers to the communities seeking to aggregate, instructing each community to capture its decision in its plan of governance.

IGS believes that AEP-Ohio's compromise position would distort the basic premise of market-priced capacity and would immediately and perhaps permanently stifle competition. Noting that there has been a general consensus among stakeholders that AEP-Ohio should transition to competition, IGS argues that a flat rate increase to \$255.00/MW-day for all customers electing to shop after February 23, 2012, would not serve this end but would rather create a roadblock to competitive markets.

- (14) In its memorandum contra, DERS argues that AEP-Ohio's motion for relief should be denied and that the Company should be required immediately to implement RPM-based rates for capacity while this proceeding is pending. DERS believes that AEP-Ohio's interim proposal would harm the competitive markets and dissuade customers from shopping in violation of state policy. According to DERS, AEP-Ohio's interim proposal would penalize new shoppers by imposing a dramatic escalation in capacity charges. Noting that the Commission has approved RPM-based capacity pricing as the state compensation mechanism, DERS maintains that AEP-Ohio seeks a drastic change from the situation that existed before this proceeding commenced. DERS further notes that AEP-Ohio's proposed two-tiered capacity charge is entirely at odds with the capacity charge calculation methodologies approved for other utilities in the state.

Additionally, DERS contends that there is no justification for the remedy that AEP-Ohio seeks. DERS argues that AEP-Ohio has effectively sought a stay of the capacity-related portion of the ESP 2 entry on rehearing. DERS asserts that AEP-Ohio has made no attempt to address any of the relevant factors that are considered in determining whether to grant a stay of an order, other than to allege that the Company will suffer financial harm.

- (15) IEU-Ohio argues that AEP-Ohio's motion for relief should be denied as another attempt by the Company to impede shopping by limiting access to RPM-based capacity pricing. IEU-Ohio notes that the state compensation mechanism established in this proceeding requires RPM-based capacity pricing. Because the Commission has now rejected the ESP 2 Stipulation including its capacity pricing provisions, IEU-Ohio asserts that the "status quo" price is the RPM-based price as a matter of law. IEU-Ohio adds that each of the interim solutions proposed by AEP-Ohio is discriminatory and non-comparable in violation of various sections of Chapter 4928, Revised Code, in that similarly situated customers would be subject to one of two significantly different capacity prices based on nothing more than when the determination to switch providers was made.

In addition, IEU-Ohio agrees with DERS that AEP-Ohio has failed to provide any basis for a stay of the Commission's orders regarding capacity charges. Specifically, IEU-Ohio contends that a claim of irreparable harm does not enable AEP-Ohio to secure approval for a new capacity pricing scheme, even on an interim basis, in this proceeding. IEU-Ohio believes that, although claims of financial distress and confiscation may appropriately justify regulatory relief in some circumstances, no such circumstances exist in this case. IEU-Ohio notes that AEP-Ohio has not invoked the Commission's authority under Section 4909.16, Revised Code, and that the Company, therefore, has no justification for seeking interim relief based on alleged financial distress. IEU-Ohio further notes that AEP-Ohio has failed to provide any support for its claim of confiscation and instead has offered non-record information showing positive returns for 2012 and 2013. Given that AEP-Ohio has benefited from significantly excessive earnings under the same SSO rates and the same capacity pricing mechanism

that the Company was ordered to implement in the ESP 2 entry on rehearing, IEU-Ohio maintains that the Company has not provided any basis upon which to believe that the ESP 2 entry on rehearing will result in confiscation. Even if there were a legitimate confiscation claim, IEU-Ohio believes that AEP-Ohio should direct its efforts at FERC.

Additionally, IEU-Ohio disputes AEP-Ohio's argument that a return to RPM-based capacity pricing would create confusion for customers and CRES providers. IEU-Ohio avers that the only confusion surrounding capacity charges stems from AEP-Ohio's continued efforts to impede shopping. Noting that AEP-Ohio is not authorized to compete with CRES providers to provide service to retail customers, IEU-Ohio also takes issue with AEP-Ohio's claim that it would be unlawful to require the Company to provide below-cost capacity to its competitors. IEU-Ohio asserts that AEP-Ohio has clearly indicated that its *proposed capacity pricing structure is intended to prevent customers from shopping.*

IEU-Ohio further argues that none of AEP-Ohio's proposed interim solutions is based on record evidence. IEU-Ohio points out that AEP-Ohio's testimony in this proceeding has not been subjected to discovery or cross-examination and that reliance on the record supporting the ESP 2 Stipulation and the ESP 2 order is unreasonable in light of the fact that the stipulation has now been rejected. IEU-Ohio also contends that AEP-Ohio's proposed interim solutions are unreasonable, as they would unreasonably restrict customer choice and limit access to RPM-based capacity pricing. Finally, IEU-Ohio maintains that the ESP 2 entry on rehearing clearly directs AEP-Ohio to implement RPM-based capacity pricing. IEU-Ohio adds that AEP-Ohio's position that the ESP 2 entry on rehearing requires clarification is not credible in light of testimony given by the Company during the hearing on the ESP 2 Stipulation, as well as arguments raised by AEPSC in a recent filing for relief in FERC Docket No. ER11-2183.

- (16) OCC, in its memorandum contra, argues that AEP-Ohio's motion for relief and request for expedited ruling are procedurally improper and that the subject matter of the motion should have been addressed in an application for rehearing of the ESP 2 entry on rehearing. OCC requests that

the Commission treat AEP-Ohio's motion as an application for rehearing and proceed on that basis. OCC further contends that AEP-Ohio's untested financial assertions are not part of the record and should be disregarded.

In addition, OCC maintains that AEP-Ohio has failed to provide any legal basis for its interim capacity pricing proposals. OCC believes that Section 4928.143(C)(2)(b), Revised Code, requires a return to the RPM-based capacity pricing that existed in December 2011 under the first ESP and that AEP-Ohio's proposals are not consistent with the statute. OCC adds that the ESP 2 entry on rehearing is clear and that the Commission ordered AEP-Ohio to apply RPM-based capacity pricing under the conditions that were used during the first ESP. OCC notes that it is disingenuous for AEP-Ohio to claim that it does not understand the Commission's directive in the ESP 2 entry on rehearing when the Company's pleading in this case and the recent filing in FERC Docket No. ER11-2183 are largely devoted to asserting the consequences of a return to RPM-based capacity pricing. OCC concludes that AEP-Ohio's attempt to limit shopping by increasing capacity charges in violation of state policy should be rejected.

- (17) The Joint Suppliers argue that AEP-Ohio's interim capacity proposals are contrary to the ESP 2 entry on rehearing, including the Commission's clear directive to implement RPM-based capacity pricing. The Joint Suppliers assert that the two-tiered capacity charge agreed to under the ESP 2 Stipulation was a specific component of a comprehensive plan that cannot now be lifted in part from the stipulation and used outside of the context for which it was created. The Joint Suppliers add that AEP-Ohio's interim proposals would effectively curtail competition and postpone market-based pricing indefinitely, without all of the other aspects of a transition to competition, which was the purpose of the two-tiered capacity charge in the ESP 2 Stipulation. The Joint Suppliers contend that, outside of the context of the comprehensive ESP 2 Stipulation, the only appropriate charge for capacity is RPM-based pricing. The Joint Suppliers note that the top tier of \$255.00/MW-day, which was a negotiated number, has no logical basis and does not reflect market prices. The Joint Suppliers believe that RPM-based capacity pricing is both transparent and predictable for all market participants, including consumers and CRES

providers, and is the only appropriate pricing for capacity outside of the context of a comprehensive transition to a competitive market. The Joint Suppliers note that, for non-shopping customers, the price of capacity is built into AEP-Ohio's tariff rates. With respect to shopping customers, the Joint Suppliers note that the RPM-based capacity rate will be approximately \$116.00/MW-day until the June 2012 billing cycle, which is the same amount that AEP-Ohio has charged since the June 2011 billing cycle, other than for a small number of commercial and industrial customers that switched after the ESP 2 Stipulation was executed. The Joint Suppliers add that AEP-Ohio reinstated, in its compliance tariffs filed on February 28, 2012, the 90-day notice requirement for most non-residential customers that elect to shop, which the Joint Suppliers argue will protect the Company from a flood of shopping for at least the next 90 days while this proceeding is pending. Therefore, the Joint Suppliers maintain that AEP-Ohio's financial concerns are not well founded at this time.

- (18) OMA argues that granting AEP-Ohio's motion would harm Ohio manufacturers. OMA contends that the relief sought by AEP-Ohio would prevent customers from taking advantage of historically low market prices. OMA adds that, if AEP-Ohio's motion for relief is granted, the Company will not be incented to develop expeditiously a better rate plan than the rejected ESP 2 Stipulation, as the Company will have some of the revenue protection that it seeks. OMA also argues that AEP-Ohio could lessen the detrimental financial impact of the ESP 2 entry on rehearing by developing and filing a new and improved SSO. OMA notes that AEP-Ohio's projected 2.4 percent return on equity for 2013, while not a healthy return on equity, does not reflect a new rate plan and thus may never come to fruition. OMA emphasizes that AEP-Ohio seeks relief for only an interim period until a new SSO is approved. OMA believes that it is more important for AEP-Ohio and the other parties to develop a new SSO that can be expeditiously implemented so as to avoid financial harm to both AEP-Ohio and customers.

Additionally, OMA asserts that AEP-Ohio's motion for relief is legally deficient. OMA contends that the Commission may not authorize AEP-Ohio to modify its capacity charges, even for an interim period, unless the state compensation mechanism is

changed, emergency relief is granted, or the RAA is modified at FERC's direction. OMA further contends that AEP-Ohio's motion for relief is not authorized under Ohio law and is thus procedurally deficient.

- (19) On March 5, 2012, AEP-Ohio filed a motion for leave to file a reply to the various memoranda contra to provide the Commission with updated information in response to the arguments offered by the intervenors and ensure that the Commission has the necessary information to make an informed decision. The motion includes the affidavit of AEP-Ohio employee William A. Allen, Director-Rate Case Management, regarding the level of shopping in AEP-Ohio's service territory and the details and assumptions used in the Company's analysis in support of the information provided in the Company's request for relief.

AEP-Ohio responds that 36.7 percent of AEP-Ohio's load has switched or indicated an intention to switch to a CRES provider as of March 1, 2012. Under the two-tier capacity pricing mechanism approved by the Commission in the ESP 2 order, AEP-Ohio claims that 6.8 percent of its total load transferred to a CRES provider at the second tier of \$255.00/MW-day. This is the interim structure that AEP-Ohio requests remain in place until the Commission issues a final decision on the capacity charge issue. Since the ESP 2 entry on rehearing issued February 23, 2012, AEP-Ohio states some 10,000 switch requests have been presented to the Company.

Further, Mr. Allen attests that, since his rebuttal testimony in the consolidated cases, the energy prices in the PJM market have decreased by approximately 25 percent, increasing the headroom available for CRES providers. Mr. Allen further reasons that, with the current energy prices, CRES providers can make offers below the Company's tariff rates with capacity at \$255.00/MW-day. According to AEP-Ohio, customer shopping increased after the ESP 2 entry on rehearing and will continue to increase, particularly if all capacity is priced at RPM, harming AEP-Ohio.

- (20) On March 6, 2012, FES filed a memorandum contra AEP-Ohio's motion for leave to file a reply. FES contends that AEP-Ohio filed its motion for relief pursuant to Rule 4901-1-12(C), O.A.C.,

which, in exchange for an accelerated response time, prohibits the filing of a reply. Further, FES argues that there is nothing AEP-Ohio filed in its reply that could not have been included in its motion for relief, which would have granted the other parties an opportunity to respond. FES claims that AEP-Ohio's reply is unreasonable and a violation of procedural due process and requests that the Commission not consider the information presented in the reply as, according to FES, to do so would be plain error.

- (21) Rule 4901-1-38, O.A.C., provides that the Commission may, for good cause shown, prescribe different practices from those provided by rule. It is imperative that the Commission have the most accurate and complete information available to make an informed decision to balance the interests of all stakeholders, particularly in light of the unique circumstances of this case. Accordingly, we grant AEP-Ohio's motion for leave to file a reply.
- (22) We reject claims that the interim relief is not based upon record evidence. The instant proceeding was consolidated with 11-346 and the cases enumerated in footnote three of this entry for purposes of considering the ESP 2 Stipulation. All of the testimony and exhibits admitted into the record for purposes of considering the ESP 2 Stipulation are part of the record in this proceeding. Our subsequent rejection of the ESP 2 Stipulation did not remove such evidence from the record, and we may, and do, rely upon such evidence in our decision granting interim relief.
- (23) As certain of the memoranda contra argue, the two-tier capacity rate was created and agreed to by numerous intervenors to the consolidated cases, as one component of the ESP 2 Stipulation. As is the case with a stipulation, parties negotiate for and compromise on various provisions. We understand that parties may feel that consideration of the two-tier capacity rate as the state compensation mechanism denies the other parties to the stipulation the benefit of the bargain. Moreover, while AEP-Ohio may have other avenues to challenge the alleged confiscatory impact of the state compensation mechanism, the Commission is also vested with the authority to modify the state compensation mechanism established in our December 8, 2010, entry in this case.

- (24) As we noted in the entry establishing the state compensation mechanism, the Commission approved retail rates for AEP-Ohio in its first ESP proceeding. *In re Columbus Southern Power Company and Ohio Power Company*, Case Nos. 08-917-EL-SSO, *et al.* (ESP 1 Case). These retail rates included the recovery of capacity costs through provider-of-last-resort (POLR) charges to certain retail shopping customers based upon the continuation of the current capacity charges established by the three-year capacity auction conducted by PJM under the current FRR mechanism. Entry (December 8, 2010) at 1-2. Further, the Commission established, as the state compensation mechanism, the current RPM rate established by the PJM base residual auction.
- (25) However, on remand from the Supreme Court, the Commission eliminated the POLR charges. ESP 1 Case Order on Remand at 33 (October 3, 2011). Therefore, AEP-Ohio is no longer receiving any contribution towards recovery of capacity costs from the POLR charges. Further, evidence presented in this proceeding in support of the ESP 2 Stipulation claimed that RPM rates for capacity are below AEP-Ohio's costs to provide such capacity. As we have previously noted, the evidence in the record indicates a range of potential capacity costs from a low of \$57.35/MW-day (FES Ex. 2 at 5) to a high of \$355.72/MW-day, as a merged entity (AEP-Ohio Ex. 3 at 10). Moreover, when retail customers switch to competitive suppliers, AEP-Ohio cannot take full advantage of the opportunity to sell into the wholesale market as any margin on off-system sales must be shared with other AEP affiliate companies under its current Pool Agreement and in many instances is flowed through to customers of non-Ohio AEP utility affiliates. The Pool Agreement was last amended in 1980 and did not contemplate current circumstances. Until the Pool Agreement is modified, it places AEP-Ohio in a position different from other Ohio utilities.
- (26) Accordingly, we find support in the record that, as applied to AEP-Ohio for the interim period only, the state compensation mechanism could risk an unjust and unreasonable result. Therefore, the Commission implements the two-tier capacity pricing. We implement the two-tier capacity pricing mechanism proposed by AEP-Ohio in its motion for relief, subject to the clarifications contained in our January 23, 2012,

entry, including the clarification including mercantile customers as governmental aggregation customers eligible to receive RPM-priced capacity. Under the two-tier capacity pricing mechanism, the first 21 percent of each customer class shall be entitled to tier-one RPM pricing. All customers of governmental aggregations approved on or before November 8, 2011, shall be entitled to receive tier-one RPM pricing. The second-tier charge for capacity shall be at \$255.00/MW-day. This interim rate will be in effect until May 31, 2012, at which point the rate for capacity under the state compensation mechanism shall revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 year.

Finally, we note that, on March 5, 2012, AEP-Ohio filed notice of its intent to file a modified ESP, pursuant to Section 4928.143, Revised Code, by March 30, 2012. AEP-Ohio plans to propose as part of the modified ESP a capacity charge, applicable until such time as AEP-Ohio can transition from an FRR to an RPM entity. AEP-Ohio submits that this will preclude the need for the Commission to adjudicate this case, provided a satisfactory interim mechanism is established and the ESP is resolved expeditiously. The Company states the term of the modified ESP will be June 1, 2012, through May 31, 2016.

Although AEP-Ohio believes that the present case may be resolved under its modified application for an ESP, the Commission believes that resolution of this case should no longer be delayed. Our decision today temporarily modifying the state compensation mechanism will allow the Commission to fully develop the record to address the issues raised in this proceeding. Therefore, the Commission directs the attorney examiner to issue a procedural schedule in this case under which this matter be set for hearing no later than April 17, 2012.

It is, therefore,

ORDERED, That AEP-Ohio's motion for leave to file a reply is granted. *It is, further,*

ORDERED, That AEP-Ohio's motion for relief be granted, as determined above, *until May 31, 2012. It is, further,*

ORDERED, That a copy of this entry be served upon all parties of record.

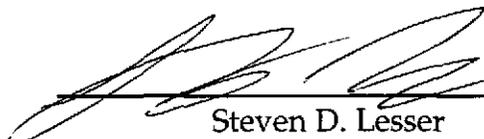
THE PUBLIC UTILITIES COMMISSION OF OHIO



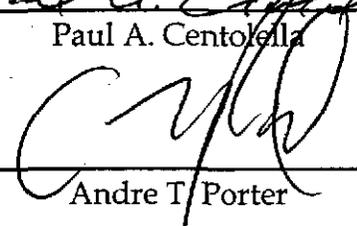
Todd A. Snitchler, Chairman



Paul A. Centolella



Steven D. Lesser



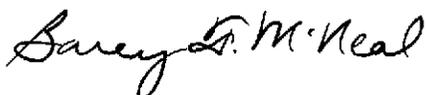
Andre T. Porter

Cheryl L. Roberto

SJP/GNS/vrm

Entered in the Journal

MAR 07 2012



Barcy F. McNeal
Secretary