

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)	

**RETAIL ENERGY SUPPLY ASSOCIATION'S
PETITION FOR REHEARING TO THE COMMISSION
MARCH 7, 2012 ENTRY**

I. Introduction

Pursuant to Section 4903.10, Revised Code and Rule 4901-1-35 of the Ohio Administrative Code, Retail Energy Supply Association¹ ("RESA") hereby submits this Petition for Rehearing as to the Entry issued March 7, 2012 in the above styled docket. RESA requests the Commission grant rehearing for the purpose of clarifying that its March 7, 2012 Entry did not intend or authorize AEP Ohio² to revoke RPM pricing to any customer who received RPM pricing under the Opinion and Order of December 14, 2011. RESA was informed by AEP Ohio that as soon as practical it intends to remove a significant number of commercial customers who are currently receiving RPM priced capacity under Tier One via their competitive retail electric service providers (CRES) and begin charging those customers the Tier Two price of \$255 per Megawatt day. It would be unjust and unreasonable to charge customers who were shopping and

¹ RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

² When this proceeding was originally opened, Columbus Southern Power Company and Ohio Power Company were affiliates. In Case No. 10-2376-EL-UNC the Commission granted a request for merger. Ohio Power now does business under the name AEP Ohio.

receiving RPM capacity pricing prior to the now rejected Stipulation, and while the Stipulation was in place, the Tier Two Price for capacity. Finally, RESA believes that it is unjust and unreasonable to decrease the amount of RPM pricing to the commercial class from the level authorized in the Opinion and Order of December 14, 2011, because the Commission authorized expanding RPM pricing for governmental aggregation. The purpose of the Commission's March 7, 2012 Entry was to temporarily suspend the "flash cut" to 100% RPM pricing, not to strip RPM pricing from customers who have always received it in order to thwart non aggregation shopping or create a revenue stream for AEP Ohio that it did not have under the Stipulation.

II. Issues

A. In Order to Preserve the Status Quo Commercial Customers Who Were Receiving RPM Pricing Should Not Be Stripped of Tier One Pricing

On December 14, 2011 the Commission in its Opinion and Order in Case No. 11-346-EL-SSO approved with modifications a Stipulation that permitted AEP Ohio to charge CRES a state capacity compensation charge for all shopping customers in the AEP Ohio service territory utilizing a two tier rate structure. The Tier One rate was set at PJM's RPM³ and while it applied to less than a quarter of AEP Ohio's load in 2012, it was to be expanded over time until by June of 2015 all retail shopping load would be charged the Tier One rate. Tier Two consisted of a negotiated settlement amount of \$255 per Megawatt day.⁴ The Stipulation was very specific that all customers who were receiving service from a CRES provider transporting at the time the Stipulation was filed would receive Tier One pricing. Specifically, Section IV.2(b)(2) of the Stipulation provided:

³ "RPM" stands for Resource Pricing Model – a price for capacity determined by an open auction conducted 36 months in advance by PJM Interconnection, LLC ("PJM").

⁴ Stipulation IV.2(b)(1).

“With regard to customers who are receiving generation service from a CRES provider as of the time that the Stipulation is filed, the capacity rate to be paid by the CRES provider to AEP Ohio for that customer's load will continue to be charged the otherwise applicable RPM rate for the remaining period that the contract remains effective (including renewals). The load grandfathered under this paragraph will be counted toward the RPM-priced set aside limits set forth below and will remain subject to a RPM-priced capacity during the term of the ESP, provided the contract remains in effect during that period.” (Emphasis added)

On February 23, 2012, the Commission in its Entry on Rehearing rejected the Stipulation and provided that AEP Ohio file tariffs that would apply “... an appropriate application of the capacity charges under the approved state compensation mechanism established in the capacity charge case.”⁵ Though the Commission has now set a hearing date to determine the appropriate capacity charge going forward, the current state compensation mechanism established by the Order of December 8, 2010 in this proceeding authorized the RPM capacity price. Four days after the Commission’s February 23, 2012 Entry on Rehearing, AEP filed a motion for relief. AEP Ohio claimed that if the Commission “flash cut” all shopping customers to RPM pricing now it would suffer “grievous financial harm.”⁶ To prevent such harm, AEP Ohio requested the Commission stay the implementation of the December 8, 2010 Order in this docket noting that “[a] reasonable interim solution of maintaining the *status quo* pending an expeditious resolution of this proceeding is supported by the record and is reasonable and fair.”⁷

One of the reasons AEP Ohio gave in its motion for maintaining the status quo was to prevent customers from experiencing a total of “three different pricing regimes” if customers

⁵ Entry on Rehearing, Feb. 23, 2012, p. 12.

⁶ AEP Motion, p. 3.

⁷ AEP Motion, p. 2.

who were now on Tier Two would flash cut to Tier One only to be put back to another rate several months later after an Opinion and Order is issued in this case.⁸ Oddly enough, though, this logic of preventing customers from a potential triple rate change did not prevail when AEP Ohio went to define what was *status quo*. AEP Ohio defines the *status quo* in its February 27, 2012 motion as only 21% of the commercial class, even though at the time of the Stipulation more than 21% of the commercial class load was engaged in shopping customers and were receiving RPM pricing.

If the AEP Ohio definition of *status quo* is accepted small school⁹ and commercial customers who were shopping before September and being charged RPM capacity prices would now be charged the Tier Two price of \$255 Megawatt Day starting in March, only to be switched potentially back to RPM pricing in June when the stay expires¹⁰ and then potentially switched to a different price based on the outcome of the April 17th hearing or the revised Electric Security Plan.

At this time, neither the customers or the CRES have any idea which of the retail customers who have been shopping and paying RPM capacity pricing prior to last September 7th will now be charged Tier Two capacity rates. The task is larger than just determining chronologically which commercial customers began services with a CRES before 21% of the commercial load commenced shopping, for the Commission in its January 23, 2012 Entry instructed AEP Ohio to create a separate category for Governmental Aggregation who had ballot approval and perfected programs prior to December 31, 2012. Thus, commercial customers in

⁸ AEP motion, p. 7.

⁹ The Stipulation provided RPM pricing for all GS-1 and GS-2 school buildings. Stipulation, IV(1)(c).

¹⁰ The second Ordering Paragraph of the March 7, 2012 Order only authorizes the Two Tiered capacity pricing through May 31, 2012. It then expires. See March 7, 2012, Entry, p. 17.

approved Governmental Aggregation programs now need to be pulled out of the commercial class prior to recalculating the 21%.

AEP Ohio under its interpretation of *status quo*, unless this Commission grants rehearing, intends to go back in time and eliminate a significant number of commercial customers from Tier One pricing even though those customers began shopping before the Stipulation and have been charged RPM capacity prices at all times prior to the March 7, 2012 Entry. This is inequitable because such customers began shopping only with the expectation of RPM pricing and such customers thought they were covered by the Stipulation and assured RPM pricing. This is inequitable because such customers will be exposed to the potential triple rate change described above. This is inequitable because such customers and the CRES who supplied them could not have foreseen the dramatic shifts in the state established capacity price which is an unavoidable cost of providing competitive retail electric service.

Stripping existing RPM capacity priced commercial customers will have a chilling effect on shopping by making shopping seem risky and unpredictable. For these reasons it is unjust and unreasonable to now permit AEP Ohio to charge any customer who was shopping prior to the Stipulation and being charged RPM capacity charges to now be switched to Tier Two pricing for the next three months.

B. The March 7, 2012 Order does not Order AEP Ohio to Cut Back the Number of Commercial Shopping Customers Receiving RPM Pricing.

Paragraph 26 of the March 7, 2012 Order specifically states that the first 21% of each class shall receive Tier One pricing. It does not state that “only” 21% of each class “can” receive Tier One pricing. Because many commercial customers could buy competitive electric service for less than tariff that class has had more shopping proportionately than the other classes. When the Stipulation was put together that factor was recognized and the Stipulation provided for more

than 21% of the commercial class to receive RPM pricing.¹¹ In fact, Section 1(d) of the Appendix C (now the DIP) stated that:

The level of RPM Set-Aside shall be updated each time the Cap is updated. No retail customer served by a CRES provider shall lose its RPM Set-Aside as a result of the annual cap update.¹²

In its January 23, 2012 Entry the Commission expanded the customers eligible for Tier One pricing by including Governmental Aggregations with ballot approval prior to November 8, 2011¹³ and restored back to 21% the residential and industrial class who under the Stipulation had their allotment reduced so that the total allotment did not exceed 21%.¹⁴ Once again it should be noted that the Commission did not order AEP Ohio to reduce the commercial class when it expanded back to 21% the residential and industrial class. In fact, the Commission in paragraph 18 stated:

We will continue to monitor retail shopping in the AEP Ohio service territories, and we retain jurisdiction over the set-aside levels, as well as all other provisions of the Stipulation, in order to ensure that retail shopping through governmental aggregations does not unintentionally displace individual customer shopping in 2013 and 2014.

The Commission was aware that its January 23, 2012 Order expanded the availability of Tier One capacity pricing. In fact, Commissioner Roberto in her dissent clearly states that the Commission was expanding the Tier One pricing beyond 21% for individual shoppers and she opposed the expansion.¹⁵

¹¹ Stipulation, Appendix C.

¹² Id.

¹³ Jan. 23, 2012 Entry, p. 12

¹⁴ Id.

¹⁵ Dissent of January 23, 2012 Entry, p.2.

As of September 7, 2011 approximately 29% of AEP Ohio's commercial class had switched to an alternative supplier.¹⁶ Assuming the most recent order was not to combine the Columbus Southern and Ohio Power total load customers in Columbus Southern would lose RPM. In addition, assuming the most recent order combines the load of the two utilities there would still be customers who as of January 2012 will now also lose their RPM pricing. The original settlement recognized this issue of the separate utility load by combining the two utilities and through the grandfathering provision. If the order is truly a simple move to 21% of each class customers the result will be that customers who were receiving RPM as of June 2011 could lose RPM. In the Commission's attempt to allow for new switching but protect AEP they have instead removed RPM from customers who have been shopping since before last June. The simple solution is to order that anyone receiving RPM as of January 2012 will continue to receive RPM. Any customer class that is not at 21% switching will be able to receive RPM up to 21% of the load in that class and that a government aggregation program will receive RPM with no load cap.

In sum, AEP Ohio has requested that the Commission stay the effect of its December 8, 2010 Entry on the state compensation mechanism until May 31st in order to protect it from financial harm. Though it asks that the *status quo* be kept, AEP Ohio's version of the *status quo* is that it be permitted to roll back the number of commercial customers who are receiving RPM pricing now so that only 21% of the commercial class are receiving Tier One pricing. The Commission has not granted AEP Ohio that authority for a roll back and it should clarify that position now in a grant of rehearing.

¹⁶ Case No. 11-346-EL-SSO, OCC Ex. 5 (AEP Ohio's Customer Choice website noting the RPM-priced allotment status as of September 7, 2011). The exhibit demonstrates that as of September 7, 2011, the Pro-Rata Allocation of RPM (at 21%) for the commercial class was 3,033,579 MWh. However, the allotments awarded as of September 7, 2011 was 4,227,965. Based on these numbers, approximately 29% of AEP Ohio's commercial load was shopping as of September 7, 2011.

III. Conclusion

WHEREFORE, the Suppliers respectfully request that the Commission grant it rehearing and clarify its March 7, 2012 Entry. The clarification should state that any customer who began shopping prior to September 7, 2012 and received RPM pricing shall be charged Tier One capacity prices during the interim period covered by the March 7, 2012 Order.

Respectfully submitted,

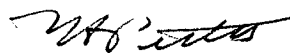


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*On behalf of Retail Energy Supply
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following persons via e-mail this 14th day of March, 2012 and certify that I will serve additional parties as they become known who may file comments in this case.



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Summary: Petition Retail Energy Supply Association's Petition for Rehearing to the Commission March 7, 2012 Entry electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association