

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission Review)	
of the Capacity Charges of Ohio Power)	
Company and Columbus Southern Power)	Case No. 10-2929-EL-UNC
Company)	

OHIO POWER COMPANY’S MOTION TO STRIKE TESTIMONY

Pursuant to Rules 4901-1-12 and 4901-1-27(B)(7)(a) and (b), Ohio Adm. Code, Ohio Power Company (“Ohio Power” or “AEP Ohio”) moves to strike certain portions of the direct testimony that Retail Energy Supply Association (“RESA”), the National Federation of Independent Business (“NFIB/Ohio”), Interstate Gas Supply, Inc. (“IGS”), and The Ohio Association of School Business Officials, The Ohio Schools Boards Association, The Buckeye Association of School Administrators, and The Ohio Schools Council (collectively, the “Schools”) have proffered in this proceeding. As demonstrated in the attached memorandum in support, Ohio Power seeks to strike portions of the direct testimonies of RESA witness Teresa L. Ringenbach, NFIB witness Geiger and Schools witness Frye, as well as the entire direct testimony of IGS witness Parisi on the grounds that those portions sought to be stricken discuss topics that are outside the limited scope of these proceedings and, therefore, are irrelevant. Accordingly, Ohio Power respectfully requests that the following direct testimony be stricken:

1. RESA Witness Teresa L. Ringenbach’s Direct Testimony (filed April 4, 2012):
 - Page 10, lines 5 through 23
 - Page 11, lines 1 through 18

2. NFIB Witness Roger R. Geiger's Direct Testimony (filed April 4, 2012):
 - Page 3, lines 6 through 23
 - Page 4, lines 1 through 20
3. Schools Witness Mark Frye's Direct Testimony (filed April 4, 2012):
 - Page 10, lines 7 through 14
 - Exhibit MF-2
 - Exhibit MF-3
4. IGS Witness Vincent Parisi's Direct Testimony (filed April 4, 2012):
 - Entire direct testimony

Respectfully submitted,

/s/ Christen M. Moore

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Commission should strike the identified portions of the direct testimonies of RESA witness Teresa L. Ringenbach, NFIB witness Geiger and Schools witness Frye, as well as the entire direct testimony of IGS witness Parisi, because they address topics that are outside the scope of these proceedings and irrelevant to the subject matter of this case. The subject matter of this case is limited to one issue – Ohio Power Company’s recovery of an appropriate charge for the cost of capacity it is legally obligated to supply to Competitive Retail Electric Service (“CRES”) providers in the AEP Ohio Service Territory. While the case was previously consolidated with other cases, dealing with other matters, it now stands alone as a singular case. As such, the limited issue the case relates to should also stand alone. The testimony the Company seeks to strike does not relate in any way to the appropriate capacity charge going forward. Accordingly, the Commission should strike it.

II. ARGUMENT

A. This Proceeding Is Limited To The Determination Of An Appropriate Capacity Cost Pricing/Recovery Mechanism For AEP Ohio.

On November 1, 2010, American Electric Power Service Corporation (“AEPSC”), on behalf of Ohio Power and Columbus Power Southern Company, filed an application with the Federal Energy Regulatory Commission (“FERC”) seeking to change the basis for compensation for its capacity costs to a cost-based mechanism. *See* FERC Docket Nos. ER11-1995, ER11-2183. AEPSC proposed that AEP Ohio would calculate its capacity costs under Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement (“RAA”).

On December 8, 2010, in response to AEPSC's FERC application, the Commission found that an investigation was necessary concerning the proposed change to AEP Ohio's capacity charges, and sought public comment on a number of issues related to AEP Ohio's capacity charges. *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929 (“*Capacity Charge Case*”), Entry (Dec. 8, 2011). At that time, the Commission also adopted as the state compensation mechanism for AEP Ohio, during the pendency of its investigation, the current capacity charges established by the three-year capacity auction conducted by PJM Interconnection (PJM). *Id.* at 2.

In an August 11, 2011 Entry, the Attorney Examiner established a procedural schedule in order 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.**” *Capacity Charge Case*, Entry at 2 (Aug. 11, 2011) (emphasis added). An evidentiary hearing was scheduled to commence on October 4, 2011. *Id.* at 3. On September 16, 2011, however, the procedural schedule was stayed until further order after AEP Ohio and a number of intervenors entered into a stipulation and recommendation (“Stipulation”) that proposed to resolve the issues in this and several other pending Commission proceedings.

The Commission subsequently adopted and later rejected the proposed Stipulation and, on March 14, 2012, the attorney examiner established a new procedural schedule for hearing to develop an evidentiary record on a state compensation mechanism. *Capacity Charge Case*, Entry at 3-4 (Mar. 14, 2012). In the March 14, 2012 Entry, the attorney examiner again

instructed interested parties 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.**” *Id.* at 3 (emphasis added). Thus, the scope of this proceeding is limited to the determination of the manner in which AEP Ohio should recover an appropriate charge from CRES providers for its capacity.

B. The Testimony Sought To Be Stricken Is Outside The Scope of This Proceeding And Is Irrelevant.

Evidence, including witness testimony, that is not relevant to the issues before the Commission in a proceeding should be stricken. *See In the Matter of the Application of Columbus Southern Power Co. for Approval of an Electric Security Plan*, Case No. 08-917-EL-SSO, et. al, Entry at 6 (July 19, 2011) (striking witness testimony relating to issues outside the scope of the issues on remand); *In re. Verizon Wireless*, Case No. 03-515-TP-ARB, Opinion at 4 (Nov. 13, 2003) (striking witness affidavit based in part upon the fact that the information contained therein was “not relevant” to the case); *In re. TDS MetroCom, Inc.*, Case No. 02-1254-TP-ARB, Entry at 2 (Sept. 27, 2002) (striking witness testimony on issues that did “not assist the Commission” in deciding the relevant issues in the case). The intervenor witnesses’ testimony at issue here similarly is outside the scope of this proceeding, is not relevant to the appropriate price for capacity that AEP Ohio should charge to CRES providers, and will not assist the Commission in deciding on an appropriate capacity cost pricing/recovery mechanism. The testimony, therefore, should be stricken.

RESA witness Ringenbach’s testimony, from page 10, line 5, through page 11, line 18, should be stricken because it constitutes an improper additional argument in support of RESA’s March 14, 2012 Petition for Rehearing. In that petition, RESA sought rehearing of the Commission’s March 7, 2012 Entry setting a temporary interim state compensation mechanism

through May 31, 2012. Rule 4901-1-35(A), Ohio Adm. Code, does not allow an applicant for rehearing to submit a reply or additional argument in support of its rehearing application after the application is filed and after the deadline for such applications has passed. The Commission should strike Ms. Ringenbach's testimony, which does nothing more than reiterate RESA's arguments in support of rehearing, on that basis alone. *See In re. Ohio Power Co.*, Entry on Rehearing, Case No. 98-101-EL-EFC (July 15, 1999) (granting AEP Ohio's motion to strike argument that served "only to bolster [the] [i]ntervenors' position relative to their own application for rehearing"). Ms. Ringenbach's testimony additionally should be stricken because the temporary interim capacity pricing mechanism adopted in the March 7 Entry is wholly irrelevant to the issue in this proceeding – the adoption of a permanent state compensation mechanism for AEP Ohio.

NFIB witness Geiger's testimony, from page 3, line 6, through page 4, line 20, is also outside the scope of this proceeding and should be stricken. His testimony regarding customer rate impacts relates solely to AEP Ohio's ESP rates that the Commission initially approved in December 2011. It is not related in any way to AEP Ohio's proposed capacity pricing mechanism and thus, is irrelevant.

Likewise, the Schools witness Frye's testimony, at page 10, lines 7 through 14, as well as Exhibits MF-2 and MF-3, discusses general funding issues facing Ohio's public schools. This information too is outside the scope of the issues in this proceeding and is not relevant to AEP Ohio's capacity charges to CRES providers. Further, Exhibits MF-2 and MF-3 constitute impermissible hearsay (and hearsay within hearsay), which violates Ohio Rule of Evidence 802. The Commission should strike these portions of Mr. Frye's direct testimony.

IGS witness Parisi's direct testimony is, in its entirety, an improper attempt to complicate this proceeding and turn it into a debate about electric service competition generally. None of the testimony relates to AEP Ohio's proposed capacity pricing mechanism or addresses the Commission's adoption of a state compensation mechanism. Mr. Parisi attempts to tie his testimony to this case asserting that increased costs could lead to collection risks that could lead to his concerns at page 4, lines 1 through 9. Nothing in this case was set up to deal with collection risks. Mr. Parisi's testimony is more appropriate for a rulemaking proceeding, not a proceeding focused on setting the appropriate capacity rate to recover costs. This attempt to insert such an issue into this case is without merit and should not be used to expand the issues for Commission consideration in this case. Given the expedited nature and discrete focus of this case, Mr. Parisi's testimony should not be permitted to remain and should be stricken.

III. CONCLUSION

For the reasons set forth above, Ohio Power Company respectfully requests that the Commission strike the portions of Ms. Ringenbach's, Mr. Geiger's, and Mr. Frye's direct testimony discussed above, as well as Mr. Parisi's direct testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Ohio Power Company's Motion to Strike Testimony was served by E-mail upon counsel for all parties of record in this case on this 12th day of April, 2012.

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Summary: Motion Ohio Power Company's Motion to Strike Testimony electronically filed by Ms. Christen M Moore on behalf of Ohio Power Company