

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**THE OHIO MANUFACTURERS' ASSOCIATION'S MEMORANDUM CONTRA
OHIO POWER COMPANY'S MOTION FOR RELIEF**

I. INTRODUCTION AND BACKGROUND

On November 1, 2010, AEP Electric Power Service Corporation, on behalf of OP [and, at the time, Columbus Southern Power Company ("CSP"), which has since merged with OP and will be collectively referred to as "AEP-Ohio" or "Companies"], filed an application before the Federal Energy Regulatory Commission ("FERC") seeking authority to change the basis for compensation for capacity costs from the PJM Reliability Pricing Model ("RPM") auction result to a cost-based mechanism.¹ In response to AEP-Ohio's FERC application, on December 8, 2010, the Public Utilities Commission of Ohio ("Commission") issued an Entry preventing AEP-Ohio from changing the mechanism by expressly adopting as the state compensation mechanism for the Companies the current capacity charges established by the PJM RPM auction.

On September 7, 2011, a Stipulation and Recommendation was filed by numerous parties in AEP-Ohio electric security plan ("ESP") case (Case No. 11-346-EL-SSO, et al.), that included a compromise regarding AEP-Ohio's capacity pricing. However, on February 23, 2012, the Commission rejected the Stipulation and

¹ See FERC Docket No. ER11-1995 et al. At the direction of FERC, AEP-Ohio refiled its application in FERC Docket No. ER11-2183 on November 24, 2010, (hereinafter, "*FERC Case*").

Recommendation, which had the effect of continuing PJM's RPM price as the state compensation mechanism, rather than the compromise proposed.

On February 27, 2012, AEP-Ohio filed a motion for relief and request for expedited ruling, claiming that the state compensation mechanism would materially harm AEP-Ohio and was confiscatory. AEP-Ohio requested one of two alternative interim capacity pricing mechanisms. The first alternative was the pricing implemented pursuant to the Stipulation and Recommendation that was initially approved, which means that in 2012, the first 21% of shopping customers would receive PJM RPM pricing in accordance with the Detailed Implementation Plan ("DIP") filed on December 29, 2011. For other shopping customers, the CRES providers would be charged \$255/megawatt-day ("MW-D"). AEP-Ohio also conceded that, under this option, AEP-Ohio would be willing to adopt the "new and enhanced obligations" added by the Commission's January 23, 2012 Entry, which required AEP-Ohio to charge CRES providers serving all governmental aggregation customers the PJM RPM price. However, AEP-Ohio would not include mercantile customer load in the RPM-priced capacity set aside even in spite of the Commission's direction in the January 23, 2012, Entry. Motion for Relief at 9.

Alternatively, AEP-Ohio proposed to "compromise litigation positions" and permit RPM-priced capacity for everyone that had provided a switch request as of the February 23, 2012, Entry on Rehearing date and charge CRES providers \$255/MW-day for all other customers, including additional aggregation load, who shop prior to resolution of the case. *Id.* at 15.

On March 7, 2012, the Commission granted AEP-Ohio's requested relief for an interim period only. The Commission found record support for the two-tiered capacity pricing mechanism proposed in the ESP Stipulation and Recommendation for an interim period only. Accordingly, the Commission directed AEP-Ohio to charge CRES providers the RPM price for capacity for the first 21 percent of each customer class that shopped and all customers (including mercantile customers) who shop through a governmental aggregation program that was approved on or before November 8, 2011. For all other shopping customers, AEP-Ohio could charge the CRES provider \$255/MW-D. However, on June 1, 2012, if there is not a Commission resolution of this issue, the price that AEP-Ohio may charge CRES providers for all shopping customers reverts back to the PJM RPM price.

On April 30, 2012, AEP-Ohio filed a Motion for Extension of the interim relief ("Motion for Extension"). AEP-Ohio argues that there likely will not be Commission resolution of this issue prior to June 1, 2012. However, rather than seeking an extension, AEP-Ohio is actually seeking additional relief. Specifically, rather than maintaining the two-tiered price structure where the first tier is RPM-priced capacity and the second is \$255/MW-D, AEP-Ohio requests that the Commission again modify the interim state compensation mechanism to provide for first tier pricing at \$146/MW-D and second tier pricing at \$255/MW-D.

For the reasons discussed below, the Commission should deny AEP-Ohio's request to, again, change the state compensation mechanism.

II. ARGUMENT

AEP-Ohio makes several arguments for why the Commission should not only extend the interim relief granted to AEP-Ohio beyond the date specified in the March 7, 2012, Entry, but to also increase the relief granted. None of AEP-Ohio's arguments warrants a Commission reversal of the March 7, 2012, Entry limiting the interim relief to May 31, 2012.

A. The Commission limited the interim relief period to May 31, 2012.

AEP-Ohio essentially argues that the Commission did not really mean for the interim relief to be on an interim basis. AEP-Ohio claims that the Commission provided the interim relief in order to develop the record in this case, regardless of the duration of the prehearing, hearing and briefing process. AEP-Ohio Motion for Extension at 4. AEP-Ohio further alleges that the Commission intended to resolve this case prior to June 1, 2012, and, thus, the unlikelihood of that happening warrants an extension.

Contrary to AEP-Ohio's interpretation, it is clear from the March 7, 2012, Entry that the Commission understood that, despite best intentions, this case might not be resolved prior to June 1, 2012. As AEP-Ohio itself noted, the Commission stated, "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." Entry at 16 (emphasis added). Further, the Commission specifically stated that the "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.**" *Id.* at 17

(emphasis added). Finally, the Commission concluded that its decision to “*temporarily* modify the state compensation mechanism will allow the Commission to fully develop the record to address the issues raised in this proceeding.” *Id.* The Commission directed the Attorney Examiner to schedule the proceeding such that the hearing would begin no later than April 17, 2012. The Commission did not direct the Attorney Examiner to conclude the hearing and briefing prior to a deadline that would ensure a Commission decision prior to June 1, 2012, and the Commission certainly did not guarantee a decision prior to June 1, 2012.

While the OMA agrees that it was a mutual goal of the Commission and the parties to resolve this case expeditiously and, hopefully prior to June 1, 2012, the unlikelihood of that outcome does not warrant a different or longer interim period for AEP-Ohio to charge prices for capacity that are significantly above the RPM auction price. The Commission provided a nearly three month window during which all parties worked expeditiously and vigorously to develop the record in this case. The record is nearly complete. Accordingly, the interim relief served its purpose and should not be extended further.

B. AEP-Ohio has not demonstrated good cause for the Commission to, again, modify the state compensation mechanism and reverse its March 7, 2012, decision.

Next, AEP-Ohio argues that without new and additional relief, it will be financially harmed. Without any supporting documentation or explanation of the assumptions upon which it is based, AEP-Ohio argues that if the Commission does not modify the state compensation mechanism and reverse its March 7, 2012, decision to limit the interim relief it granted AEP-Ohio, AEP-Ohio will lose revenue in excess of \$10 million

per month. AEP-Ohio Motion for Extension at 6. It is not clear whether AEP-Ohio is assuming 100% of its customers will switch on June 1, 2012, or some other unreasonable assumption to reach its conclusion because the only support AEP-Ohio provides is an affidavit from Mr. Allen making the same unsubstantiated claim.

AEP-Ohio's completely unsubstantiated allegation of financial harm does not satisfy any type of burden of proof. The Commission should deny AEP-Ohio's Motion for Extension.

C. Not only does AEP-Ohio's Motion for Extension fail to demonstrate any harm to AEP-Ohio, it would harm Ohio manufacturers and other customers.

The prices of customers who are currently shopping are largely based upon RPM capacity prices as most of the customers who are shopping now entered into the agreements prior to September 2011. The RPM price for capacity is set to decrease on June 1, 2012. AEP-Ohio is asking to charge CRES providers a price for capacity that is significantly higher than the RPM price prior to a Commission decision on whether that is reasonable or appropriate. Most CRES agreements include a provision that permits the CRES providers to pass on costs that were increased as a result of regulatory action, like what would be required for AEP-Ohio to charge CRES providers an amount other than the RPM price. Accordingly, AEP-Ohio, is asking for a rate increase that will impact shopping customers immediately without any demonstration that there is any, let alone immediate, harm to AEP-Ohio.

Current Ohio law provides customers with opportunities to competitively source generation or to remain on a default or standard service offer ("SSO") pricing structure. Given that the economic recovery that Ohio is experiencing is slow, manufacturers need

a reasonable SSO price, real shopping opportunities, price certainty and predictability. Especially when working towards economic recovery, Ohio's manufacturers cannot afford to be burdened with electric rates that are artificially high or be precluded from obtaining other options.

The Commission has made its intention to move the regulated electric utilities to full competition as quickly as reasonable very clear. For example, in a Commission press release on the rejection of the AEP-ESP Stipulation and Recommendation, Chairman Snitchler stated, "Ohio remains committed to continuing down the path towards fully competitive markets." See *PUCO Press Release, "PUCO Revokes AEP-Ohio Electric Security Plan Settlement Agreement"*, available at: <http://www.puco.ohio.gov/puco/index.cfm/media-room/media-releases/puco-revokes-aep-ohio-electric-security-plan-settlement-agreement>.

AEP-Ohio claims to be on board with the Commission's direction to move to market. However, AEP-Ohio's efforts in this case demonstrate that AEP-Ohio is willing to move to market and subject customers to market prices only when they are high.

It is both unlawful and fundamentally unfair to subject customers to above market prices when the market price is low but make market prices the only option when the market prices are high. This structure provides the worst of both worlds for customers and Ohio's economy.

It is important to note that the OMA is not asking for the flip side of the same treatment of AEP-Ohio. The OMA is not asking the Commission for cost when market is high and market when market is low. While the OMA has not been a strong supporter

of the market, if it is the Commission's will to move to market, it should do so in a way that provides a fair and balanced transition for both AEP-Ohio and customers.

For these practical and real world reasons alone, AEP-Ohio's Motion should be denied. But those are not the only reasons.

D. AEP-Ohio's Motion for Extension is an unlawful attempt at rehearing.

Simply put, AEP-Ohio's Motion for Extension is really an application for rehearing of the Commission's March 7, 2012, Entry and it is too late. If AEP-Ohio did not like the amount of relief granted (RPM – not \$146/MW-D) or the duration for which it was granted, it had until April 7, 2012, to seek rehearing. In fact, the rehearing applications of several other parties (which AEP-Ohio opposed) are still pending before the Commission. The proper procedure for AEP-Ohio's request include an application for rehearing, the statutory deadline for which has passed or emergency relief pursuant to Section 4909.16, Revised Code. AEP-Ohio elected neither.

Because it is procedurally deficient, the Commission should deny AEP-Ohio's Motion for Extension.

E. Should the Commission grant AEP-Ohio's Motion for Extension, the Commission should require the difference to be escrowed until a final decision.

For the reasons described, the Commission should deny AEP-Ohio's Motion for Extension. However, should the Commission grant AEP-Ohio's requested relief, the OMA respectfully requests that the Commission require AEP-Ohio to deposit the difference between the RPM price for capacity and the amount authorized by the Commission for additional or continued interim relief into an escrow account. If the Commission ultimately determines that the state compensation mechanism should

remain the RPM price, AEP-Ohio should be directed to return the amount in escrow directly to customers who paid the increases from the RPM amount through their CRES agreements. While this is not ideal and does not help customers who cannot shop because of the uncertainty in the interim, it at least strikes a fair balance for shopping customers, CRES providers and AEP-Ohio.

Such escrow arrangements have been used in other cases for an interim period until the contested matter has been resolved. *See, for example, In the Matter of the Complaints of Worthington Industries, et al., v. The Toledo Edison Company*, Case Nos. 08-67-EL-CSS, et al., Joint Stipulation of Facts (June 17, 2009). In *Worthington Industries*, Toledo Edison entered into an escrow agreement with each complainant pursuant to which each complainant paid into an escrow account held by the Bank of New York the difference between what each complainant and Toledo Edison alleged in their respective pleadings for electric service between the February 2008 billing date and December 31, 2008. The escrow funds were disbursed upon receipt by the escrow agent of a final, non-appealable order of the Commission ordering the amount of the escrowed funds and interest to be disbursed and identifying the recipient to whom the escrowed funds should be disbursed.

III. CONCLUSION

For the foregoing reasons, the OMA respectfully requests that the Commission deny AEP Ohio's Motion for Extension.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing MEMO CONTRA was served by electronic mail on the parties of record listed below this 4th day of May 2012.



Lisa G. McAlister

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Summary: Memorandum The Ohio Manufacturers' Association's Memorandum Contra Ohio Power Company's Motion for Relief electronically filed by Ms. Andrea P Govan on behalf of Ohio Manufacturers' Association and McAlister, Lisa G. Mrs.