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 Company.	))))	Case No. 10-2929-EL-UNC

INITIAL POST-HEARING BRIEF OF NFIB/OHIO

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I. Introduction.

In this proceeding, AEP-Ohio seeks to establish the price for the capacity available to competitive retail electric service ("CRES") providers in AEP-Ohio's distribution service territory. AEP-Ohio alleges that it is entitled to a $355.00/MW-day capacity price in order to recover its "full embedded costs." Along with other parties (CRES providers and intervenors alike), NFIB/Ohio's position is that market-based pricing arising out of PJM Interconnection, LLC's ("PJM") Reliability Pricing Model ("RPM") is the appropriate pricing for the capacity available to CRES providers and their customers.

The over 24,000 members of NFIB/Ohio have been directly affected by the State's transition to a competitive electric marketplace that began more than ten years ago, most recently by the impact from the reinstated 2-tier capacity pricing scheme. The interests of NFIB/Ohio in this proceeding center on longstanding support of competition. NFIB/Ohio has long championed reliance upon competitive markets and limiting government intervention as the best approach to freeing up businesses small and big to create jobs, make capital investments, and take risks that help grow their businesses.

Even though market-based electric rates are at historic lows, small business owners' energy costs are disproportionately and rapidly increasing. As the testimony of NFIB/Ohio's Executive Director, Roger R. Geiger makes clear, capacity pricing at above market rates "takes us away from the market-based system and, therefore … does add to the bottom line cost, and distorts a market-based system." (Testimony of Roger R. Geiger, Transcript of Proceedings, Vol. VII at 1415.)

NFIB/Ohio's unprecedented participation in this proceeding and in the pending modified electric security plan ("ESP") proceeding (Case No. 11-346-EL-SSO) is intended to highlight the disadvantage that NFIB/Ohio believes that AEP-Ohio's capacity pricing proposals have imposed and will impose further on Ohio's thousands of small businesses (many of which are NFIB/Ohio members), if approved by the Commission.

II. The Proposed Cost-Based Capacity Charge Does Not Promote Competition.

From the NFIB/Ohio perspective, open market pricing is "as simplistic as it can be, it means that there is a system out there that allows for robust competitive pricing that is not encumbered by lots of regulatory requirements that allow for a number of different competitors to compete for the customer that's G1 and G2 class customers." (Testimony of Roger R. Geiger, Tr. Vol. VII at 1418.) NFIB/Ohio's participation in this proceeding, and Mr. Geiger's testimony, underscore "that we need to be moving in a direction where [NFIB/Ohio's] members compete every day, and that is in a free, open marketplace, that allows for healthy, robust competition, and that should be whether you're buying 10 widgets or whether you're buying kilowatt hours." (Id. at 1427-1428.)

AEP witness William Allen perhaps best summarizes the impact the proposed $355.00/MW-day capacity price will have upon small business customers of AEP- Ohio.

Mr. Allen acknowledged that "if the capacity charges increase as a result of this proceeding, especially looking at commercial customers, the headroom for them decreases as that capacity charge increases." (Testimony of William A. Allen, Tr. Vol. III, at 712, l. 10-14.) Thus, as the capacity price increases, the costs to CRES providers go up, the opportunity for smaller business customers (NFIB/Ohio's members) to shop and reduce their electric bill is correspondingly decreased because the headroom available to CRES providers to serve those customers goes down. (Id.)

Under the AEP-Ohio capacity charge proposal, small business owner customers within the AEP-Ohio distribution service territory would effectively be prevented from taking advantage of historically low market prices expected to continue during the next three (3) years. Moreover, if the cost-based capacity charges AEP-Ohio seeks are in fact approved by the Commission for the next 3 years, what incentive does AEP-Ohio have to compete in a market-based environment?

Throughout this proceeding, the concept of the best interests of customers has rarely, if ever, escaped from the mouths of AEP-Ohio's witnesses. Most assuredly, customers have rarely made it into the AEP-Ohio jargon or testimony, and even then, only as a "shopping" or "noticed" statistic seeking to switch to a CRES provider in the hopes of securing cost-saving, competitive, market-based prices for generation service as mandated by operation of Ohio law.

III. AEP Will Earn a Profit and Healthy ROE at RPM Prices for Capacity.

From 2007 through 2011, all CRES providers operating in AEP Ohio's distribution service territory paid RPM-based prices for capacity. This Commission adopted RPM-based pricing of capacity as the state compensation mechanism in this very docket by Entry dated December 8, 2010. Even were AEP-Ohio "only able to charge a rate for its capacity used by CRES providers that was equal to the RPM price in the unconstrained region of PJM[,]" Mr. Allen nonetheless estimated AEP Ohio's earnings would be $344M in 2012, and AEP-Ohio would enjoy a 7.6% return on equity ("ROE"). (Direct Testimony of William A. Allen, AEP Exhibit 104, p. 3, l.15-18.) Thus, the claim that AEP-Ohio would experience or suffer severe financial harm during the balance of this year if its capacity charge were market-based rings hollow.

Neither the statutes nor rules governing this proceeding **guarantee** that AEP-Ohio receive or be awarded a minimum ROE, or **guarantee** a fixed level of revenue, earnings or profit to AEP-Ohio. Still, this is precisely what AEP-Ohio asks the Commission to **guarantee** that it receive for the next three (3) years -- a 10.5 % ROE before transitioning to a "competitive" market in June 2015. Yet the abject failure of AEP-Ohio to establish in this record either why or how it will be better able to handle this transition as a result of prevailing on the relief requested in this case, other than in its increased revenues, earnings and net income, surely cannot have escaped the attention of the Commission.

While the "problem," according to AEP-Ohio, occurs in 2013 when its ROE is estimated to be 2.4%, based upon projected earnings of "only" $109M. (Id., l. 18.), even Mr. Allen acknowledges that AEP-Ohio is not guaranteed a "reasonable rate of return." Instead, Mr. Allen admitted that what AEP-Ohio is entitled to is the "opportunity" to earn a reasonable rate of return. In this case, AEP-Ohio claims that a 2.4% ROE is "confiscatory" and demonstrates that there would be "significant financial harm to AEP-Ohio if it were required to provide RPM-priced capacity to CRES providers to serve all shopping load." (Id., l. 19-21.)

However, AEP-Ohio has failed to articulate the ROE which differentiates a reasonable ROE from that which it would consider to be unreasonable. That, however, is neither the legally mandated nor common sense approach to the "financial harm" issue AEP-Ohio tees up for the Commission. The correct approach, recognized by Mr. Allen, is whether AEP-Ohio has the "opportunity to earn a reasonable rate of return." A market-based rate as the price for capacity available to CRES providers levels the playing field and forces, yet allows, AEP-Ohio to compete for business in the open market without a built in, downside protection which its consumers are ultimately paying for.

Mr. Geiger's testimony in this matter addresses this issue head on: "The core philosophy of NFIB/Ohio is rooted in the concept of free markets, limiting government intervention as necessary. In that spirit, we believe that rather than utilizing a cost-based mechanism, competitive forces should be allowed to set the capacity charge. But the reinstated capacity charge of two-hundred and fifty-five dollars per megawatt-day places the cost of shopping at a level that essentially denies customers the ability to shop elsewhere." (NFIB/Ohio Exhibit 101, p. 5.)

IV. Conclusion.

NFIB/Ohio's intervention in this proceeding **is** extraordinary for the organization and its members. Throughout its decades of advocacy for small business across the State, NFIB/Ohio has never before asked to intervene or sought to become a party to a case before this Commission. That it has chosen to do so here underscores and highlights the importance of the ultimate decision to be rendered in this proceeding to Ohio's job creators. This is precisely why NFIB/Ohio urges the Commission to allow competitive markets the opportunity to work beginning June 1, 2012, when the interim rate ends and the state compensation mechanism is to revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 year.

For all the foregoing reasons, as well as those contained in the record of these proceedings, NFIB/Ohio urges the Commission to adopt market-based pricing arising out of PJM Interconnection, LLC's ("PJM") Reliability Pricing Model ("RPM") as the state compensation mechanism and appropriate pricing for the capacity available to CRES providers and their customers in AEP-Ohio's distribution service territory.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **INITIAL POST-HEARING BRIEF OF NFIB/OHIO** was served by electronic mail, this 23rd day of May, 2012, upon the following:

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