BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

INITIAL POST-HEARING BRIEF OF

EXELON GENERATION COMPANY, LLC,

EXELON ENERGY COMPANY, INC.,

CONSTELLATION NEWENERGY, INC. AND

CONSTELLATION ENERGY COMMODITIES GROUP, INC.

May 23, 2012

TABLE OF CONTENTS

Pursuant to Section 4901-1-31 of the Ohio Administrative Code and the schedule set by the attorney examiners, Exelon Generation Company, LLC, Exelon Energy, Inc., Constellation NewEnergy, Inc., and Constellation Energy Commodities Group, Inc. (collectively "Exelon Generation") hereby submit this initial post-hearing brief in opposition to AEP Ohio's[1] proposed above-market, "cost-based" capacity price of $356/MW-day.[2] Instead the Commission should adopt the PJM Reliability Pricing Model ("RPM") price as the state compensation mechanism to price capacity.

* * * *

From the outset of this proceeding and AEP Ohio's related electric security plan ("ESP") cases, Exelon Generation has advocated for a timely and efficient transition to full competition for capacity and energy in the AEP Ohio service territory, on terms fair and equitable to AEP Ohio and all other stakeholders. Exelon Generation believes the subsequently rejected September 7, 2011 Stipulation and Recommendation (the "Stipulation"), although not perfect, struck the correct balance and accomplished this result to the ultimate benefit of Ohio ratepayers. A critically important component of that Stipulation was the transition to 100% competitive procurement of both energy and capacity over a period of months, as well as the establishment of a state compensation mechanism for capacity different from the prevailing market price for some customers, as

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[1] When this proceeding was initiated Columbus Southern Power Company and Ohio Power Company were separate entities and the pleadings referred to the two utilities jointly as "AEP Ohio." Since that time Columbus Southern Power Company was merged into Ohio Power Company. To avoid confusion with the earlier Entries and Orders in this proceeding, Exelon Generation will follow the lead of Ohio Power and refer to the merged company as "AEP Ohio."

[2] *See* AEP Ohio Ex. No. 1 (Direct Testimony of Richard Munczinski) at 15.

part of a comprehensive settlement of a broad set of issues being litigated before the Commission and the Federal Energy Regulatory Commission ("FERC"). Although Exelon was a signatory and supporter of the Stipulation, it cannot support AEP Ohio's stand-alone request in this proceeding to establish capacity rates at a rate other than RPM, as that would protect AEP Ohio's profits at the expense of the transition to competition.

Despite the complexity of many of the issues in this case, one very simple and uncontested fact is critically important. AEP Ohio has been using RPM to price capacity since 2007 without suffering financial hardship or compromising service reliability for its customers. Moreover, it will continue to do so, under its own proposal, beginning June 1, 2015. For the intervening three year period covered by this case, the conclusion is obvious: the Commission ought to adopt RPM as the state compensation for the sake of both competition and continuity. AEP's request to charge a substantially above market rate during that period is unnecessary and anti-competitive and should be denied, for all of the reasons detailed herein.

I. Background

In December 2010, the Public Utilities Commission of Ohio ("PUCO" or the "Commission") initiated this case to resolve several important questions, including: (1) what changes, if any, to the current state mechanism are appropriate to determine AEP Ohio's capacity prices to Ohio competitive retail electric service ("CRES") providers; and (2) the impact of AEP Ohio's capacity charges upon CRES providers and retail competition in

Ohio.[3] In its December 8, 2010 Entry, the Commission required that AEP Ohio charge RPM-based capacity prices during the pendency of the Commission's review. [4]

Since that time, AEP Ohio and a group of interested stakeholders have been litigating complex, interrelated regulatory issues (including capacity pricing) in numerous proceedings before the Commission and FERC. For a brief period of time, the Commission's initial approval of the Stipulation appeared to resolve all of these interrelated issues. The subsequent rejection of that Stipulation, however, has brought to the forefront the continued litigation of the issue of capacity pricing in at least four separate proceedings:

- In this proceeding (No. 10-2929-EL-UNC), AEP Ohio seeks an above-market, "cost-based" capacity charge of $356/MW-day.

- In its ESP II proceeding (No. 11-346-EL-SSO and No. 11-348-EL-SSO) AEP Ohio seeks a modified ESP which would establish the state compensation mechanism at $146/MW-day (the current RPM price[5]) for some customers and $255/MW-day for others.

- At FERC, AEP sought approval under Section 205 of the Federal Power Act (the "FPA") to charge CRES providers over $300/MW-day for capacity, instead of

[3] *See* 12/8/2010 Entry at 2, paragraph 5.

[4] *See id*. at 2, paragraph 4 ("[T]he Commission will now expressly adopt as the state compensation mechanism for the Companies the current capacity charges established by the three-year capacity auction conducted by PJM, Inc. during the pendency of this review.").

[5] According to AEP Ohio witness William Allen, the rate of $146/MW-day is based on the "Final Zonal Capacity Price adjusted for the RPM Scaling Factor, the Forecasted Pool Requirement and losses for the PJM planning year 2011/2012." *See* Direct Testimony of William A. Allen (filed 3/30/2012 in Case No. 11-346-EL-SSO) at 7:7-9.

PJM's RPM capacity price ("AEP's 205 Proceeding").[6] The Commission and other parties intervened and opposed this request, arguing that the PJM Tariff provides a "state compensation mechanism will prevail" in setting capacity costs to CRES providers, and since the inception of AEP Ohio's standard service offer the state implicitly adopted PJM's RPM auction price to value capacity. On January 20, 2011, FERC rejected AEP's filing. AEP has filed for rehearing of that order, but FERC has yet to act.

- And finally, in response to FERC's order in AEP's 205 Proceeding, AEP initiated a second proceeding at FERC pursuant to Section 206 of the FPA ("AEP's 206 Proceeding")[7] arguing that the PJM Tariff is unjust and unreasonable and the Commission had no authority over wholesale capacity rates. This second FERC action also remains unresolved.

Because AEP Ohio has elected to become a RPM entity for the PJM 2015/2016 Planning Year, as of June 1, 2015 all of AEP Ohio's load will be in the RPM market and capacity will be priced at RPM. In addition, RPM has been the price in Ohio for five years already. The record shows that the appropriate course in the intervening three years is to maintain the continuity that exists and affirm that RPM is the correct price for capacity. This determination would not foreclose—indeed may facilitate—fair and balanced resolution of all open issues in the pending AEP Ohio ESP case, including requiring AEP

[6] FERC Docket No. ER11-2183-001.

[7] FERC Docket No. EL11-32-001.

Ohio to participate in a full capacity auction one year earlier than AEP Ohio has proposed, as Exelon Generation and others have advocated in that case.[8]

II. Argument

When the Commission initiated this proceeding in December 2010, one of the central inquiries was the impact of AEP Ohio's capacity charges on CRES providers and retail competition in Ohio. *See* 12/8/2010 Entry at 2. If AEP Ohio is allowed to charge $356/MW-day the answer to that question is plain: retail competition in AEP Ohio's service territory will be stifled and customers will bear the cost. As discussed below, at least six different reasons support rejecting AEP Ohio's requested capacity rate in favor of market-based RPM pricing.

A. Ohio Law Does Not Require the State Compensation Mechanism To Be Cost Based.

Nothing in Ohio law requires a cost-based state compensation mechanism, as this Commission has consistently recognized, including in comments filed March 22, 2012 in AEP Ohio's FERC capacity cases.[9]

AEP Ohio argues that its voluntary election of FRR status somehow justifies higher-than-market capacity prices to CRES providers. But that is not so. AEP Ohio's FRR status does not justify protection from a transparent and competitive process for setting the price for capacity in the AEP Ohio territory as it is done throughout the rest of Ohio. In 2007,

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[8] *See* Exelon Ex. 1 (Direct Testimony of David Fein on behalf of Exelon Generation, et al., filed 5/4/2012 in Case No. 11-346-EL-SSO) at 8.

[9] *See* Motion for Leave to Answer and Limited Answer Submitted on Behalf of the Public Utilities Commission of Ohio to PJM Interconnection, LLC Response to AEP Motion for Expedited Ruling (filed 3/22/2012 in FERC Docket No. ER11-2183-000).

AEP Ohio elected to self supply capacity through FRR. Many Ohio stakeholders acquiesced in that 2007 decision because they believed that FRR and non-market rates would prove less costly for consumers during the five-year FRR commitment period.[10] For a period of time, this was correct. As evidenced by a lack of shopping in the AEP Ohio service territory, customers preferred the AEP Ohio rates to competitive rates.[11] Market conditions changed, however, when prices for natural gas—the fuel that sets the marginal price of electricity for many hours of the year—collapsed with the discovery of abundant shale gas. The far lower competitive market prices triggered a wave of retail shopping, a trend that AEP Ohio now seeks to reverse.

AEP Ohio repeatedly invokes the Commission's 2007 support of its FRR election as justification for a temporary, three-year avoidance of competitive pricing. But FRR status does not automatically allow the FRR entity to receive a cost-based price. An FRR entity is entitled to collect a cost-based price only if the state-approved compensation mechanism so allows, and in the absence of that, the RPM price applies under the PJM Reliability Assurance Agreement.[12] Indeed, the Commission has already rejected cost-based pricing as the proper choice for AEP Ohio, as reflected in its December 8, 2010 Entry (three years

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[10] *See* Exelon Ex. 1 (Direct Testimony of David Fein on behalf of Exelon Generation, et al., filed 4/4/2012 in Case No. 10-2929-EL-UNC) at 6. *See also* Transcript of Hearing in Case Nos. 11-346-EL-SSO, 10-2929-EL-UNC, et al. ("346 Tr.") Vol. VI at 1064-65.

[11] 346 Tr. Vol. VI at 1064-65.

[12] *See* PJM Open Access Transmission Tariff, Attachment D, Schedule 8.1 ("Fixed Resource Requirement Alternative") ("In the absence of a state compensation mechanism, the applicable alternative retail LSE shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff, provided that the FRR Entity may, at any time, make a filing with FERC under Sections 205 of the Federal Power Act proposing to change the basis for compensation to a method based on the FRR Entity's cost or such other basis shown to be just and reasonable, and a retail LSE may at any time exercise its rights under Section 206 of the FPA.").

after AEP Ohio opted for FRR status), and AEP Ohio has used the RPM price as the capacity price even longer than that, since 2007. This pricing methodology is wholly consistent with how capacity is priced by the other three major Ohio utilities.[13]

Moreover, even under its election of FRR status, under the PJM rules AEP Ohio could have elected to procure competitively priced capacity through PJM's Base Residual Auction ("BRA") RPM auction for planning year 2012/13. Shortly after the PUCO December 2010 Order explicitly setting RPM as the compensation mechanism, AEP Ohio had another opportunity to participate in the PJM's May 2011 BRA to acquire capacity for the period from June 1, 2014 to May 31, 2015. Putting its interests above those of its ratepayers, AEP Ohio instead submitted its FRR commitment plan on April 11, 2011, to PJM for that June 1, 2014 to May 31, 2105 period. By failing to participate in PJM's May 2011 RPM auction, AEP Ohio lost a valuable opportunity to procure less expensive market-priced capacity for its customers beginning on June 1, 2014. Given that AEP Ohio could have, and in light of the December 2010 Order should have, elected to participate in the PJM BRA for delivery in 2014, this Commission should hold AEP Ohio (and not shopping customers) responsible for the decision to forego the best outcome for AEP Ohio customers.

As an FRR entity, AEP Ohio elected to self-supply capacity in its zone. But nothing prevents an FRR entity from procuring some of its capacity in the market, through bilateral agreements or otherwise. This means that AEP Ohio could have purchased excess capacity from the market at prices of around $20/MW-day during 2012 and 2013.[14] To date,

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[13] RESA Exhibit No. 1 (Direct Testimony of Teresa Ringenbach) at 14-15.

[14] *See* 2012/2013 Base Residual Auction Report Document (May 15, 2009) at 1 ("The 2012/13 Reliability Pricing Model (RPM) Base Residual Auction (BRA) cleared 136,143.5MW of unforced capacity in the RTO at a Resource Clearing Price of $16.46/MW-day"), *available at*

however, AEP Ohio has ignored all lower cost competitive alternatives and chosen instead to designate only its own relatively inefficient and expensive plants, many of which they have now announced will be retired,[15] as capacity resources at prices well over $300/MW-day. This strategy has paid substantial dividends for AEP Ohio shareholders producing a generous return on its plants, while also allowing AEP Ohio to benefit from any off-system sales from those plants. The Commission should neither sanction nor reward this conduct.

B. RPM Pricing is Consistent with Ohio State Policy.

Ohio state policy, as embodied in Section 4928.02, Revised Code, calls for the Commission to promote the development of competitive markets. RPM pricing is consistent with this policy; AEP Ohio's requested capacity rate is not. Indeed, the fully embedded cost rate of approximately $356/MW-day that AEP Ohio seeks to implement for capacity would curtail retail competition in AEP Ohio's service territory during the transition period.[16] The RPM price in the capacity zone applicable to AEP is now, and is expected to remain, far lower than the $356/MW-day rate that AEP Ohio seeks to impose

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http://www.pjm.com/markets-and-operations/rpm/~/media/markets-ops/rpm/rpm-auction-info/2012-13-base-residual-auction-report-document-pdf.ashx.

[15] The Direct Testimony of Phillip Nelson filed in the formerly consolidated case 11-346-EL-SSO and submitted into the record in that proceeding (as Exhibit PJN 2) lists the generation facilities scheduled to be closed by June 2015.

[16] *See* Exelon Ex. 1 (Fein Testimony) at 7:13-15 ("Clearly, the fully embedded cost rate of approximately $355 per MW-day that AEP Ohio seeks to implement for capacity would retard retail competition in AEP Ohio's service territory during the transition period."); Direct Testimony of Jonathan A. Lesser on Behalf of FirstEnergy Solutions Corp., No. 10-2929-EL-UNC (Apr. 4, 2012), at 33:3-5 ("AEP Ohio's proposed capacity price of $355.72 per MW-day to be charged to CRES providers is anticompetitive, unduly discriminatory, and clearly contrary to state policy promoting retail electric competition.").

on CRES providers and Ohio retail customers. In fact, the RPM price in AEP's capacity zone is currently about 40% of the AEP Ohio price as estimated by AEP Ohio witness Pearce.[17]

C. AEP Ohio Cannot Unilaterally Apply "Better-of-Market-or-Cost Pricing."

Even AEP Ohio concedes that for many years when it was advantageous to do so, it made capacity available to CRES providers at the RPM price.[18] Now that it is no longer financially advantageous to do so, however, AEP Ohio seeks to implement a cost-based approach to capacity pricing. AEP Ohio should not be allowed to unilaterally apply "better-of-market-or-cost" pricing. From 2007 until 2010, AEP Ohio gladly accepted RPM as sufficient compensation for the same fleet for which it now seeks to recover full cost-based compensation.[19] The fact that the market has now changed to AEP Ohio's disadvantage does not justify a departure from market pricing. The interests of AEP Ohio's shareholders should not trump those of its customers or the State's overriding interest in increased competition.

D. CRES Providers Are Captive to AEP Ohio.

While it may be true in theory that CRES providers have the option to purchase capacity from entities other than AEP Ohio, in reality this option is an illusory one due to AEP Ohio's status as an FRR entity.[20] When a load serving entity ("LSE") elects FRR, PJM rules require that capacity to serve the load be committed more than three years in

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[17] Exelon Ex. 1 (Fein Testimony) at 7:17-18.

[18] *Id*. at 7:19-20.

[19] *See* Direct Testimony of Craig Baker (AEP Ex. No. 1 in Case No. 08-917-EL-SSO) at 11.

[20] Exelon Ex. 1 (Fein Testimony) at 8:3-6.

advance of delivery.[21] Given that PJM requirement, it is unrealistic to expect that CRES providers would have purchased and committed capacity to serve retail customers more than three years in advance of delivery when they would have few or no committed retail customers. Thus, their only legitimate option is to buy capacity from AEP Ohio.

E. Ohio Law Requires "Comparable and Non-Discriminatory" Access to Competitive Retail Electric Service.

Section 4928.03 of the Revised Code requires that each consumer in the state have "comparable and non-discriminatory" access to CRES. CRES providers in AEP Ohio's service territory should have access to capacity at the applicable RPM price as is the case in the service territories of other electric distribution utilities in Ohio. (Duke Energy Ohio is in FRR until mid-2015, at which time it will enter into RPM. However, prior to that time, it will be making capacity available at RPM prices.) Applying RPM across all service territories will help promote retail competition in Ohio by: (1) increasing efficiencies for all Ohio retail customers, especially for those commercial and industrial customers who are served by more than one electric utility; and (2) facilitating business planning and increasing transparency for customers and CRES providers.

F. Adopting RPM Pricing Would Advance the Purposes of Senate Bill 221 and Senate Bill 3.

Finally, both Senate Bill 221 and Senate Bill 3 eliminated the full cost-of-service analysis used prior to electric restructuring. Adopting the RPM price would make wholly unnecessary the complex, arcane, and somewhat arbitrary, method of deriving a cost-of-service for AEP Ohio's capacity. Indeed, in this case the record reflects a wide range of

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[21] *See* PJM Tariff , Schedule 8.1. *See also* Direct Testimony of Frank C. Graves on Behalf of AEP Ohio Company (filed 3/23/2012) at 9:9-18.

estimates about what an appropriate "cost based" price really is for AEP Ohio. In Exelon's view this uncertainty and debate provides yet another reason to adopt a transparent market based price that all parties and the Commission can easily verify. Unlike an estimated asset valuation based on the FERC Form 1 as proposed by AEP Ohio, RPM pricing reflects true, transparent market conditions. A competitive market for capacity exists today in the RPM auctions at PJM;[22] the Commission should utilize those competitively derived prices to establish this state compensation mechanism.

III. Conclusion

The only justifiable capacity price is the competitive RPM price, a price AEP Ohio has charged for five years. Clearly, AEP Ohio's proposed non-market based price of $356/MW-day will stifle shopping, an outcome entirely at odds with state and Commission law and policy. AEP Ohio has provided no justification for charging a non-competitive price. The Commission should establish RPM as the proper capacity price for AEP Ohio. The pending ESP case can then explore whether AEP Ohio needs any additional protection to maintain its financial integrity. If shown to be necessary, Exelon Generation would support reasonable measures that comport with a timely transition to a fully competitive market and resolution of related issues in the ESP IIa proceeding.

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[22] The PJM Independent Market Monitor has found that "the Capacity Market results were competitive" in each of the RPM auctions that set the price for capacity between 2012 and 2015. *See* PJM State of the Market Reports for 2008, 2009, 2010, and 2011 at: http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2011.shtml

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Respectfully submitted,

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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 23rd day of May, 2012.

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