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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

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. :

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POST-HEARING BRIEF  
OF  
DOMINION RETAIL, INC.

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I. INTRODUCTION

The Commission initiated the above-styled investigation by entry of December 8, 2010 in response to an application filed with the Federal Energy Regulatory Commission ("FERC") by American Electric Power Service Corporation on behalf of Ohio Power Company and Columbus Southern Power Company (collectively, "AEP-Ohio") proposing to change the basis for compensation for capacity costs to a cost-based mechanism. The Commission determined that this investigation was necessary to assess the impact of the proposed recovery mechanism upon, among other things, Ohio competitive retail electric service ("CRES") providers and retail competition in this state. The entry called for comments by interested stakeholders, and comments and/or reply comments were filed by several entities in early 2011. By entry of August 11, 2011, the attorney examiner set the matter for hearing and established a procedural schedule. In accordance with this procedural schedule, AEP-Ohio filed written testimony on August 31, 2011. However, a stipulation submitted on September 7, 2011 in the pending AEP-Ohio ESP cases, Case Nos. 11-346-EL-SSO and 11-348-EL-SSO, and a number of other related

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AEP-Ohio proceedings, included a proposed resolution of the capacity charge issue that is the subject of this investigation. Accordingly, by entry of September 16, 2011, this case was consolidated with the other proceedings addressed in the stipulation.

Although the Commission initially approved the stipulation subject to certain modifications (including modifications to the capacity charge provisions) in its December 14, 2011 opinion and order in the consolidated cases, by its February 23, 2012 entry on rehearing, the Commission reversed its finding that the stipulation was in the public interest and rejected the stipulation. Thus, the capacity charge investigation that is the subject of this proceeding resumed under the new procedural schedule established by the attorney examiner's March 14, 2012 entry in this docket, as subsequently modified by the attorney examiner's entry of March 23, 2012. AEP-Ohio and other participants in the proceeding submitted prefiled testimony of numerous witnesses in accordance with the procedural schedule. The hearing in this matter commenced on April 17, 2012, and concluded on May 15, 2012. Intervenor Dominion Retail, Inc. ("Dominion Retail") hereby submits its post-hearing brief in accordance with briefing schedule established by the attorney examiner at the conclusion of the hearing.

Although the dispute that occupies much of the record in this case centers on whether, and by what degree, AEP-Ohio's proposed \$355 per MW day capacity charge exceeds the actual cost of its capacity, the more important threshold question is whether AEP-Ohio should be authorized to charge competitive retail electric service ("CRES") providers anything other than the market price of such capacity as determined through the PJM Reliability Pricing Model ("RPM") auction. If the Commission answers this threshold question in the negative, it need not even reach the issue of which of the widely varying estimates submitted in this case best reflects the actual cost of AEP-Ohio's capacity. As a Commission-certified CRES provider whose

primary focus is on the residential market, Dominion Retail can say with certainty that a \$355 per MW day capacity charge would stifle competition in the AEP-Ohio residential market. Indeed, AEP-Ohio's own witness acknowledged that a capacity charge at this level would not provide sufficient headroom to allow CRES providers to compete for residential customers.<sup>1</sup> However, the fundamental point is that the Commission, as a matter of policy, should reject the notion that, because AEP-Ohio elected to remove its load from the RPM capacity auction and serve that load from specific generation assets under the PJM Fixed Resource Requirement ("FRR") option, it is somehow relieved of the obligation to supply capacity to CRES suppliers at a reasonable price. Thus, Dominion Retail will leave the issue of the actual cost of AEP-Ohio's capacity to others, and will focus, instead, on the threshold question of whether AEP-Ohio should be permitted to charge CRES providers something other than a market-based price for capacity.

## II. ARGUMENT

### A. AEP-OHIO PROPOSED COST-BASED CAPACITY PRICING ONLY WHEN IT BECAME APPARENT THAT MARKET-BASED ENERGY AND CAPACITY CHARGES WOULD PERMIT CRES PROVIDERS TO COMPETE EFFECTIVELY FOR CUSTOMERS IN THE AEP-OHIO SERVICE TERRITORY FOR THE FIRST TIME.

The evidence shows that there was zero switching in terms of sales by customers of Ohio Power Company ("OP") prior to the second quarter of 2010, and less than 1% switching by customers of Columbus Southern Power Company ("CSP") over that same period.<sup>2</sup> Although the switching rate for OP increased to a modest 7.83% by the end of 2011, the residential switching rate was still below 3%.<sup>3</sup> For CSP, the switching rate increased to 23.25% by year-end

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<sup>1</sup> Allen Cross, Tr. III, 669-670.

<sup>2</sup> See FES Exhibit 113.

<sup>3</sup> *Id.*

2011, with the residential switching rate increasing to approximately 4.5%.<sup>4</sup> Yet even by the end of 2011, the switching rates for the AEP-Ohio companies were a fraction of those of the other Ohio electric utilities.<sup>5</sup> Why? Because, historically, the AEP-Ohio end-user rates were low relative to the rates charged by other Ohio electric utilities, which made it much easier for CRES providers to compete in the other Ohio markets than in the AEP-Ohio service territory.<sup>6</sup>

Although AEP-Ohio has been an FRR entity since 2007, while there was essentially no competition, AEP-Ohio was content to charge CRES providers the RPM price for capacity. However, with substantial rate increases looming on the horizon, AEP-Ohio obviously foresaw that shopping could increase significantly, and, in November of 2010, filed its application with FERC to permit it to meet its capacity obligations through designated generation assets, ultimately leading to its claim in this proceeding that it should be allowed to charge CRES providers a “cost-based” rate for this capacity. Thus, by this heads-I-win-tails-you-lose approach to capacity pricing, AEP-Ohio is, in effect, asking this Commission to protect it from competition now that the worm has turned and higher AEP-Ohio end-user rates, lower market-based capacity charges, and lower energy prices make competition possible. Despite what its witnesses had to say on the subject in their testimony in this case, there is no question that AEP-Ohio’s underlying motivation was to constrain shopping.<sup>7</sup> Plainly, permitting AEP-Ohio to charge a “cost-based” rate for capacity under these circumstances, whatever that rate might be, would be inimical to the state policy of encouraging electric competition enunciated in Section 4928.02, Revised Code.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Munczinski Cross, Tr. I, 189-191.

<sup>7</sup> FES Ex. 102, Banks Direct, 11-12.

**B. THERE IS NO REQUIREMENT IN OHIO LAW THAT CAPACITY CHARGES BE BASED ON EMBEDDED COSTS.**

Every other Ohio electric utility, with this Commission's blessing, charges the PJM RPM price for capacity, including Duke Energy Ohio, which will be in FRR until mid-2015.<sup>8</sup> Thus, the fact that AEP-Ohio will also be an FRR entity until mid-2015 does not mean, as AEP-Ohio would have it, that the Commission must identify the embedded cost of the capacity that will be made available to CRES providers and utilize the resulting dollars per MW day as the basis for the state compensation mechanism. Indeed, in its December 8, 2010 entry initiating this investigation, the Commission expressly adopted the capacity charges established by the RPM auction as the state compensation mechanism during the pendency of this investigation, notwithstanding that AEP had elected the FRR option some three years earlier. Further, although the rates for monopoly electric distribution service continue to be set under the statutory ratemaking formula set forth in Section 4909.15, Revised Code, SB 3, the 1999 legislation that restructured the Ohio electric industry, deliberately eliminated full-blown cost-of-service based ratemaking for generation service so as to open the door to retail competition and the associated benefits to customers.

AEP-Ohio now asks the Commission to turn back the clock by using an embedded cost analysis (of its own creation) to establish a cost-based charge for the capacity it supplies to CRES providers, thereby seeking to generate a revenue requirement-based revenue stream from the capacity in question. As explained in detail by IEU-Ohio witness Hess, the stranded generation cost issue was addressed by the stipulation in the AEP-Ohio ETP cases,<sup>9</sup> wherein AEP-Ohio, as a signatory party, agreed to forego its statutory opportunity to recover generation transition costs on the theory that withdrawing its request for generation transition costs offset

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<sup>8</sup> Exelon Ex. 101, Fein Direct, 8.

<sup>9</sup> IEU-Ohio Ex. 101, Hess Direct, 8-15.

any stranded transition benefits that would otherwise have to be taken into account.<sup>10</sup> Indeed, as a part of this Commission-approved stipulation, AEP-Ohio committed not to impose any generation transition costs on switching customers,<sup>11</sup> which is, effectively, precisely what will occur if its proposal in this case were to be adopted. Thus, not only is there no requirement that the Commission use an embedded cost analysis as a basis for the state compensation mechanism simply because AEP-Ohio as an FRR entity, but to do so would violate the stipulation it previously approved and would permit AEP-Ohio to recover stranded above-market generation investment long after the statutory window for such recovery had closed.<sup>12</sup>

C. SETTING THE CAPACITY CHARGE AT THE FULL MARKET PRICE OF CAPACITY DOES NOT REQUIRE AEP-OHIO, ITS SHAREHOLDERS, OR ITS SSO CUSTOMERS TO SUBSIDIZE CRES PROVIDERS.

Section 4928.02(H), Revised Code, identifies the policy of the state to be to:

Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa . . .

Contrary to the claim of various AEP-Ohio witnesses, neither AEP-Ohio, or its shareholders, or its non-shopping customers would be subsidizing CRES providers if the CRES providers are charged for capacity at the market-based RPM rate. Indeed, as Exelon witness Fein points out, if CRES providers are required to pay above-market rates for capacity, the subsidy flows in precisely the opposite direction.<sup>13</sup>

Dominion Retail understands that the predicament in which AEP-Ohio now finds itself is not of its own making, and that, had it been permitted to proceed with its earlier plans to divest

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<sup>10</sup> IEU-Ohio Ex. 101, Hess Direct, 10-11.

<sup>11</sup> *Id.*

<sup>12</sup> See Section 4928.141, Revised Code.

<sup>13</sup> Exelon Ex. 101, Fein Direct, 12

itself of its generation, this issue would not have arisen. However, that does not justify subjecting shopping customers to what is, in effect, a second transition plan to recover the embedded costs of generation before AEP-Ohio goes back to RPM pricing in mid-2015.

**D. AEP-OHIO'S SUGGESTION THAT CRES PROVIDERS COULD SUCCESSFULLY COMPETE UNDER A \$355 PER MW DAY CAPACITY CHARGE BY SUPPLYING THEIR OWN CAPACITY IGNORES THE REALITIES OF THE SITUATION.**

According to AEP-Ohio witness Allen, the proposed \$355 MW per day capacity charge translates into a usage rate of \$0.0301 per kWh.<sup>14</sup> As noted above, AEP-Ohio agrees that CRES providers targeting residential customers would not have sufficient headroom to successfully compete at a capacity charge of this magnitude, but suggests that CRES providers could overcome this obstacle by self-supplying capacity, and actually goes so far as to fault CRES suppliers for not pursuing this option.<sup>15</sup> However, this criticism ignores that CRES suppliers would have had to be clairvoyant to do this,<sup>16</sup> not to mention that it would be foolhardy from a business standpoint for them to do so.

As explained by Exelon witness Fein, the PJM rules require that when a load serving entity elects FRR, it must commit capacity three years in advance of delivery.<sup>17</sup> CRES providers reasonably assumed that, notwithstanding that it elected the FRR option in 2007, AEP-Ohio would continue to price the capacity at RPM as it had always done. Thus, it was not until AEP-Ohio filed its FERC application in November of 2010 that CRES providers had any inkling that AEP-Ohio intended to switch from market-based pricing to cost-based pricing. To suggest that CRES providers should have rushed out and attempted to make different capacity arrangements

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<sup>14</sup> Allen Cross, Tr. III, 667.

<sup>15</sup> Munczinski Cross, Tr. II, 70-71.

<sup>16</sup> Munczinski Cross, Tr. II, 91-93.

<sup>17</sup> Exelon Ex. 101, Fein Direct, 8.

on their own that far in advance is simply unrealistic in view of the fact that CRES providers have no way of knowing how much load they will be serving, if any, that far down the road. Indeed, CRES suppliers that serve residential customers typically offer contracts that have one or two-year terms, and, thus, have to gear their power supply procurement efforts to the amount of load they have under contract at a particular point in time. Thus, for CRES providers such as Dominion Retail, AEP-Ohio capacity is, as a practical matter, the only game in town.

**E. IN CONSIDERING AEP-OHIO'S \$355 PER MW DAY CAPACITY PRICING PROPOSAL, THE COMMISSION SHOULD NOT LOSE SIGHT OF THE FACT THAT THIS IS NOT THE PRICE FOR CAPACITY THAT AEP-OHIO ACTUALLY PROPOSES TO CHARGE TO CRES PROVIDERS.**

Dominion Retail trusts that it is not lost upon the Commission that neither the two-tier capacity pricing proposal contained in the now-rejected stipulation, nor the modified version of that proposal now before the Commission in the resumed ESP proceeding, contain capacity charges anywhere near the \$355 per MW day that AEP-Ohio claims is justified in this case. Instead, AEP-Ohio is proposing in its modified ESP that the state compensation mechanism provide for a \$146 per MW day price for capacity to some customers and a \$255 per MW day price for those that lose the race to the queue. Under these circumstances, it appears that the parties are simply spinning their wheels in attempting to identify the actual embedded cost of the capacity in question, an exercise whose only purpose seems to be to provide a basis for AEP-Ohio to claim that the ESP provides benefits that would not otherwise be available. Indeed, at the end of the day, what this really shows is that AEP-Ohio is willing to provide capacity at something below its version of a cost-based rate. This is quite telling in terms of AEP-Ohio's confiscation argument, because it clearly indicates that a rate of return below that used by AEP-Ohio in its cost analysis will not result in a confiscatory capacity charge, notwithstanding that no



AEP-Ohio witness could identify the point at which the rate of return generated by the capacity charge would become confiscatory. However, even a \$146 the capacity charge is well above RPM capacity prices for the next three delivery years – \$16.46 per MW day for 2012-2013, \$27.73 per MW day for 2013-2012, and \$125.94 per MW day for 2014-2015<sup>18</sup> – so there can be no question that the \$355 per MW day capacity charged proposed by AEP-Ohio is simply off the chart.

In this connection, Dominion Retail would also note that AEP-Ohio's attempt to justify above-market pricing for capacity by pointing out that there has been a substantial increase in shopping in 2012 is extremely misleading.<sup>19</sup> First, the capacity charge in place thus far in 2012 is not the \$355 charge proposed herein by AEP-Ohio, but the lower charges contained in the two-tier pricing structure initially proposed in the stipulation, which were subsequently extended by the Commission on an interim basis pending the resolution of this proceeding. Second, the lower charge for the first tier was made available only to the first 20% of shoppers in each customer class, which lead to a gold rush mentality on the part of CRES providers that likely caused some enrollments to spillover into the second tier rate.<sup>20</sup> Thus, the notion that CRES providers were willing to compete under capacity priced at \$255 per MW day is not really accurate, particularly in view of the fact that the higher second tier price represented a deliberate effort by AEP-Ohio to constrain shopping.<sup>21</sup>

### III. CONCLUSION

As noted at the outset of this brief, the threshold question for the Commission is whether the state compensation mechanism approved in this case should be the RPM market-based

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<sup>18</sup> IEU-Ohio Ex. 102-B, Murray Direct,

<sup>19</sup> AEP-Ohio Ex. 104, Allen Direct,

<sup>20</sup> RESA Ex. 101, Ringenbach Direct, 17.

<sup>21</sup> FES Ex. 102, Banks Direct, 12.

capacity price utilized by every other Ohio electric utility – and heretofore employed by AEP-Ohio – or a cost-based capacity price as proposed by AEP-Ohio. From the standpoint of effectuating Ohio's stated pro-competition policies as set forth in Section 4928.02, the answer to this question is a no-brainer. Market-based capacity pricing is fundamental to the development of a robust competitive market in AEP-Ohio's service territory. If the Commission concludes that RPM pricing is appropriate, it need not even reach the question of which of the various cost analyses submitted in this case represents the best estimate of the cost of the capacity in question. Further, as explained above, the examination required to select the best estimate from among the competing cost studies will be wasted motion in any event because the capacity pricing proposal AEP-Ohio's modified ESP is not cost-based. For the reasons set forth above, the Commission should continue to employ RPM pricing as the state compensation mechanism and should reject AEP-Ohio's proposal for a cost-based capacity charge.

Respectfully submitted,



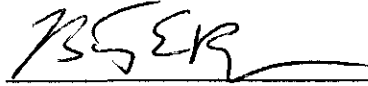
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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 23rd day of May 2012.



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