

**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.)	

**APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF
THE OHIO MANUFACTURERS' ASSOCIATION**

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), The Ohio Manufacturers' Association ("OMA") respectfully submits this Application for Rehearing of the May 30, 2012 Entry ("May 30 Entry") issued by the Public Utilities Commission of Ohio ("Commission") approving AEP-Ohio's Motion for Extension of the interim capacity pricing mechanism that was set to expire on May 31, 2012. The Commission's May 30 Entry is unlawful and unreasonable in the following respects:

1. The Commission's decision to increase and extend AEP's interim capacity pricing relief is not supported by record evidence.
2. The Commission's May 30 Entry undermines customer expectations and substantially harms Ohio manufacturers and other customers.

OMA respectfully requests that the Commission grant this Application for Rehearing and reverse its May 30 Entry for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND BACKGROUND

On March 7, 2012, the Commission granted AEP-Ohio's requested relief for an interim period only on the basis that as applied to AEP-Ohio, the state compensation mechanism (PJM's reliability pricing model or "RPM" price) could risk an unjust and unreasonable result ("March 7 Entry"). Accordingly, the Commission directed AEP-Ohio to charge competitive retail electric service (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 per megawatt-day ("MW-D"). However, on June 1, 2012, if the Commission did not resolve this issue, AEP-Ohio should charge CRES providers the PJM RPM price for all shopping customers.

On April 30, 2012, AEP-Ohio filed a Motion for Extension of the interim relief ("Motion for Extension") approved by the Commission's March 7 Entry. AEP-Ohio reasoned that the extension was necessary because it was unlikely that an order on the merits of the capacity cost case would be issued before May 31, 2012.

Subsequently, OMA, Duke Energy Commercial Asset Management and Duke Energy Retail Sales, FirstEnergy Solutions and Industrial Energy Users-Ohio, Ohio Consumers' Counsel, Exelon Generation Company, and Retail Energy Supply Association filed memoranda contra AEP-Ohio's motion for an extension of the interim capacity prices.

On May 30, 2012, despite strong opposition to extending the interim capacity pricing, the Commission granted AEP-Ohio's Motion for Extension ("May 30 Entry"). In addition, the Commission approved a more generous interim plan that effectively increases rates for the first 21 percent of each customer class that shopped. Specifically, rather than maintaining the two-tiered price structure where the first tier is RPM-priced capacity and the second is \$255/MW-D, the Commission approved AEP-Ohio's proposal to modify the interim state compensation mechanism to provide for first tier pricing at \$146/MW-D and second tier pricing at \$255/MW-D in spite of the RPM price moving to approximately \$20/MW-D on June 1, 2012.

For the reasons discussed below, the Commission should reverse this increase and extension.

II. ARGUMENT

A. The Commission's increase and extension of the interim relief is not supported by record evidence.

Section 4903.09, Revised Code, requires the Commission, in all contested cases, to develop a complete record and to file findings of fact and written opinions setting forth the reasons prompting the decisions, based upon said findings of fact. Although this case has been pending since 2010 and was fully litigated, there is no evidence in the record that supports an extension and increase of the interim pricing.

Rather than citing to record evidence and providing an explanation for its extension and increase, only two of the five Commissioners provided the following bases for the conclusion:

1. For various reasons, the Commission could not issue an order on the merits of the state compensation mechanism prior to May 31, 2012, when the interim rate was due to expire;
2. Circumstances faced by AEP-Ohio are unique and have not changed since the Commission's March 7, 2012 order; and,
3. As applied to AEP-Ohio, the PJM RPM prices could result in an unjust and unreasonable result.

It is worth noting that two other Commissioners concurred in the result only, not the rationale, and only for the purpose of providing stability during the pendency of this matter. Commissioner Porter dissented and specifically stated that the record evidence in this case could not support anything more than "an extension of the interim capacity price to be 'RPM-based' for tier-one customers, i.e., approximately \$20/Mw day as of June 1, 2012, with tier-two customers remaining at the previously approved \$255 Mw day." May 30 Entry, Dissenting Opinion of Commissioner Andre T. Porter at 1. Commissioner Porter also noted that he would even have serious reservations about that or any other option other than PJM RPM pricing as of June 1, 2012. *Id.* Thus, a majority of the Commission did not agree on the rationale relied upon for the majority decision. However, the increase and extension is neither based upon record evidence nor does it provide stability.

First, the timing of the Commission's order on the merits was irrelevant to the balance struck in the March 7 Entry and it continues to be irrelevant now. Because of the litigation positions taken by the parties and the great distance between AEP-Ohio's alleged cost of capacity (\$355/MW-day) and the PJM RPM price (an average of about \$70/MW-day over the next three years), regardless of what the Commission's decision is, some parties will be financially impacted. The March 7 Entry struck a balance on both

the level of the interim capacity price and the duration of its imposition. The May 30, 2012 Order altered the balance both in the level of the capacity pricing and the duration. Such a modification requires thorough explanation and justification that was not provided in the May 30, 2012 Order.

Second, the circumstances faced by AEP-Ohio have changed since the March 7, 2012 Order in that AEP-Ohio provided notice to PJM that it was terminating its Fixed Resource Requirement ("FRR") election as of May 31, 2015 and would become an RPM entity on June 1, 2015. This is further demonstration that the impact on AEP-Ohio will be temporary and that AEP-Ohio willingly elected to move to the PJM RPM pricing structure in the future.

Third, there is no evidence that demonstrates that AEP-Ohio will suffer irreparable harm resulting from an interim PJM RPM price. Rather, the record evidence demonstrates that AEP-Ohio was willing to accept a two-tiered pricing structure wherein the first tier would be priced at the RPM. See, Stipulation and Recommendation at 20 (September 7, 2011); see *also*, AEP-Ohio Motion for Relief at 9 (February 27, 2012). The record also indicates that the interim period was to end on May 31, 2012, a circumstance that AEP-Ohio did not challenge through an application for rehearing. Thus, although the record contains support for various prices for capacity, there is no record evidence that the RPM price for tier one would substantially harm AEP-Ohio or in a way to which it had not already agreed.

Finally, although the level of the two-tiered interim capacity price did not change with the Commission's May 30, 2012 Order, the stability provided by the prior interim rate did change for both customers and AEP-Ohio. As the Commission is aware, the PJM RPM price changed to approximately \$20/MW-day on June 1, 2012. Rather than

continue using the RPM price for capacity, the Commission effectively instituted a rate increase for shopping customers whose shopping contract rates were based upon the PJM RPM price and the Commission's March 7, 2012 Order.

In fact, at least one customer who shopped for generation in order to stabilize its energy costs has identified the cost of the change in price resulting from the increase from RPM to \$146/MW-D. Specifically, the Lima Refining Company identified that the price difference resulting from the May 30, 2012 Order for June 2012 alone will cost them approximately \$400,000. See, *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.*, Tr. Vol. XV at 4210. Thus, rather than provide stability, the May 30, 2012 Order has further confounded this issue.

Because the record does not support an extension of the interim state compensation mechanism and the substantial modification to the interim compensation mechanism is unjust and unreasonable, the Commission should reverse its decision to grant an extension. In the alternative, if the Commission does not reverse the extension, it should adhere to the two-tier pricing mechanism adopted in the March 7, 2012 Entry.

B. The Commission's Order undermines customer expectations and substantially harms Ohio manufacturers and other customers.

On December 7, 2011, the Commission modified and approved a Stipulation that was executed by AEP-Ohio and numerous other parties, including OMA. That Stipulation specifically provided for a two-tiered state compensation mechanism. In the first tier, 21 percent of each customer class was to receive the PJM RPM price, which changes annually. All other customers were to receive the \$255/MW-D capacity rate. In the

December 7, 2011 Entry, neither AEP-Ohio nor any other party refuted the understanding that the RPM price for tier-one customers was subject to the PJM RPM pricing. This interpretation was also not disputed in the December 8, 2010 Entry – where the Commission approved a state compensation mechanism based upon PJM’s annual base residual auction – or the March 7 Entry – when the first interim state capacity mechanism was established.

Notwithstanding the clear intention of all parties for tier-one pricing to be based upon the PJM RPM price, AEP-Ohio’s Motion for Extension made an unsupported allegation that to impose another set of capacity price charges prior to a merits decision would cause customer confusion. Motion for Extension at 6.

However, as noted above, customers would not be confused by lower capacity prices based on the PJM RPM that they anticipated from the March 7 Entry or before. On the contrary, AEP-Ohio’s recently approved modified extension undermines customer expectations and harms them financially.

As previously stated, pursuant to the March 7, 2012 order, AEP-Ohio’s interim rate should have expired on May 31, 2012. *Id.* Accordingly, on June 1, 2012, all AEP-Ohio customers should have realized the anticipated return to RPM pricing based on the rate obtained through the PJM auction for the 2012/2013 year. This was the pricing mechanism determination upon which AEP customers, including Ohio manufacturers, and CRES providers relied in making decisions regarding shopping. The current RPM in effect as of June 1, 2012 is \$20.01/MW-Day. However, instead of receiving the expected PJM RPM pricing, all AEP-Ohio customers, including those customers in tier-1, are paying a rate substantially higher than the PJM RPM price. The record evidence demonstrates that customers have realistic assumptions based upon actual contract language that CRES

providers will pass on to customers any increase in capacity cost (See, Tr. Vol. VII at 1444-1446). This is an unjust and inequitable result for AEP-Ohio customers and CRES providers. Moreover, the Commission has authorized AEP-Ohio to increase rates for shopping customers in a way that alters the business arrangements and reasonable expectations made by customers and CRES providers and adversely impacts shopping customers.

AEP-Ohio's extension will also prejudicially impact the competitive environment of Ohio. As expressed by OMA and other parties, customers need real shopping opportunities, reasonable price adjustments and predictability as the state works its way towards economic recovery. Altering the capacity price again has the effect of adding additional uncertainty into the market. If customers and CRES providers cannot anticipate what the price for a significant portion of the competitive pricing will be, they cannot make rational economic decisions about whether shopping will produce savings.

Finally, it is worth noting that the OMA provided the Commission with an alternative solution to an interim issue, namely that the Commission require AEP-Ohio to deposit the difference between the two-tiered interim relief and the RPM price for capacity into an escrow account. The Commission's May 30 Entry failed to adequately consider this more equitable remedy altogether.

III. CONCLUSION

In short, the increase and extension of the interim capacity price is unreasonable and unlawful as it is not based upon record evidence and it undermines customer expectations and harms them financially. Consequently, the Commission should reverse the May 30 Entry and allow the state compensation mechanism to revert back to the current RPM in effect pursuant to the PJM auction for the 2012/2013 year for all shopping

customers. In the alternative, at a minimum, the Commission should retain the two-tier pricing mechanism set forth in the March 7 Entry.

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 20th day of June 2012.



Lisa G. McAlister

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Summary: Application for Rehearing electronically filed by Teresa Orahood on behalf of Ohio Manufacturers' Association