

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	
Columbus Southern Power Company)	
and Ohio Power Company for)	Case No. 11-346-EL-SSO
Authority to Establish a Standard)	
Service Offer Pursuant to § 4928.143,)	Case No. 11-348-EL-SSO
Ohio Rev. Code, in the Form of an)	
Electric Security Plan.)	
)	
)	Case No. 11-349-EL-AAM
In the Matter of the Application of)	
Columbus Southern Power Company)	Case No. 11-350-EL-AAM
and Ohio Power Company for Approval)	
of Certain Accounting Authority.)	

REPLY BRIEF OF
CONSTELLATION NEWENERGY, INC.
CONSTELLATION ENERGY COMMODITIES GROUP, INC.
EXELON ENERGY COMPANY, INC.
EXELON GENERATION COMPANY, LLC

July 9, 2012

INTRODUCTION

Now come Constellation NewEnergy, Inc.; Constellation Energy Commodities Group, Inc.; Exelon Energy Company, Inc.; and Exelon Generation Company, LLC (collectively, “Exelon”), and hereby submits their Reply Brief. This Reply will respond to certain issues in the parties’ Initial Post-Hearing Briefs regarding Columbus Southern Power Company’s and Ohio Power Company’s (collectively, “AEP Ohio”) proposed Retail Stability Rider, as well as market enhancements, including AEP Ohio’s proposed timing for transition to a fully competitive wholesale market.¹

ARGUMENT

I. Retail Stability Rider

A. The Effect of the July 2 Order in the Capacity Charge Case

AEP Ohio’s request for a Retail Stability Rider (“RSR”), in the form it proposed, now appears to be moot. The RSR was intended to allow AEP Ohio to recover a stream of revenues largely to recoup revenues “lost” from “discounted” Tier 1 and Tier 2 capacity pricing. As explained by AEP Ohio in its Initial Brief, “The proposed RSR should be used to avoid any adverse financial harm to AEP Ohio resulting from a parallel decision in the Capacity Charge docket, Case No. 10-2929-EL-UNC.”² On July 2, 2012, the Public Utilities Commission of Ohio (the “Commission”) issued its Opinion and Order in the capacity charge proceeding. Among the many significant features of that Order, the Commission set a “cost-based” state compensation mechanism of \$188.88 per MW-day; however, in order to provide retail customers access to PJM RPM-based pricing, the Commission ordered that

¹ Failure to address any particular issue in this Reply Brief shall not be construed as acceptance of, or opposition to, any issue not addressed herein.

² AEP Ohio In. Br. at 40.

suppliers were only to be charged the then-prevailing RPM price per MW-day for capacity during the ESP period.³

The Commission further ordered that the difference between the prevailing RPM price per MW-day and the \$188.88 per MW-day state compensation mechanism should be deferred and recovered by AEP Ohio, with the precise means of the deferral to be established in this proceeding. Given the fact that the Commission Opinion and Order in 10-2929-EL-UNC has already adopted a measure designed to compensate AEP Ohio for its true cost of capacity, the RSR proposed by AEP Ohio no longer appears to be necessary.

The same principles that were articulated regarding the RSR apply equally to the deferral, in as much as the deferrals represent (like the RSR) “discounts” from “cost based” capacity charges. As such, these deferrals (which are in essence supply charges) should be bypassable for shopping customers for two principal reasons: first, it would be anti-competitive to charge shopping customers this additional generation-related charge, and second, Ohio law forbids imposing generation-related charges through a distribution rate.⁴

If the Commission rejects Exelon’s proposal to make these deferrals bypassable, and finds that these deferrals should be recovered from *both* shopping customers and non-shopping customers, great care must be taken regarding the length of deferral, and the manner in which the deferral is imposed. To the extent that shopping customers are effectively charged more than SSO customers for the same capacity (taking into account the total capacity charge, including the associated carrying costs), the effect would be precisely the opposite of the goal in providing shopping customers with access to RPM capacity pricing – it would retard, rather than promote or even sustain, retail competition. The

³ Opinion and Order, No. 10-2929-EL-UNC (July 2, 2012) at 33.

⁴ Ohio Rev. Code §§ 4928.03, 4928.02(H).

record in this proceeding does not contain any facts or analyses showing the effects on retail competition or on any particular customer group or class of this deferral, nor could it since the deferral arose after the record in this case was closed.

B. Proposals That the Deferrals (or any RSR) Be Recovered Only From Shopping Customers Must Be Rejected

OEG and OCC argue that the RSR (if one survives the Order in 2929) and, implicitly, the deferred amounts created by the 2929 Order, should not be collected from non-shopping SSO customers, on grounds that to do so would impose an “unjustifiable” rate increase on those customers and would require those customers to “subsidize” shopping customers (and possibly CRES providers). OEG In. Br. at 5; OCC In. Br. at 41-42.⁵ The basis for this position is the “cost-causation” principle, and the contention that the deferral amounts represent compensation for lost revenues caused by shopping customers. Exelon continues to oppose the misguided proposal to impose either the RSR or deferred amount charge on shopping customers at all, much less *only* on shopping customers as OEG and OCC propose.

Cost causation is only one of a number of policies that compete for application here. Whatever the merit of that principle in a case that involves establishment of cost-based rates, it has little if any merit or application here, to set a plan for SSO service. It cannot be denied that imposing the RSR or a similar charge on shopping customers will hinder competition by requiring such customers to pay twice for generation-related charges. In this instance, the statutory policy favoring promotion of competition must be given primacy over the general, non-statutory principle of cost-causation.

⁵ Both OEG and OCC cite RC 4928.02(H) as prohibiting anti-competitive subsidies. OEG In. Br. at 6; OCC In. Br. at 42. To the extent any “subsidy” is involved here, and it is not, it is one that would advance the Ohio statutory policy to promote competition. Thus, no “anti-competitive” subsidy is involved.

Furthermore, the clear import of Senate Bill 221, which set up the hybrid system for supplying competitive services for the standard service offer by the electric distribution utility, is that imposition of generation-related charges cannot be levied through a distribution tariff. Levying those charges on *both* shopping and non-shopping customers is itself inconsistent with that statute. Imposition of such charges on shopping customers alone would be a blatant violation of the statute, as well as be inconsistent with the Ohio statutory policy favoring competition.

Moreover, it is significant that, unlike in traditional cost-of-service ratemaking involving monopoly suppliers, where no customer or group of customers could practicably avoid the effects of an inter-class “subsidy,” that is not the case here. Any non-shopping customer may become a shopping customer, especially now that the Commission has adopted the RPM price as the base capacity price for shopping load.

Finally, OEG recognizes that its position favoring imposition of an RSR-like charge only on shopping customers was not what the Commission authorized in the recent *Duke* proceeding, but seeks to distinguish that outcome on the basis that Duke’s SSO customers were allowed to avail themselves of the competitive market through auction-based procurements.⁶ This point presents yet another reason why the Commission should adopt Exelon’s primary position, advocating a full SSO auction by June 1, 2014. Moreover, even if the Commission does not adopt this additional pro-competitive feature, this should not be seized upon to justify adoption of a blatantly anti-competitive and statutorily improper proposal to impose AEP Ohio’s generation-related charges on shopping customers. That would only compound the competitive problem, not represent a solution to it.

⁶ OEG In. Br. at 5.

II. Pro-competitive Enhancements

As detailed on page 14 of its Initial Post Hearing Brief, AEP Ohio plans to procure five percent (5%) of the energy at market for its standard service offer six months after approval of the ESP II plan. This will be increased to one hundred percent (100%) procurement of energy at market by January of 2015, and one hundred percent (100%) energy and capacity at market by June of 2015. AEP Ohio claims that this three year progression from legacy pricing to market pricing for the standard service customers fulfills the requirement to provide unbundled and comparable retail electric service as required by Section 4928.02 (B), Revised Code.⁷

Although AEP Ohio claims that the ESP contains “significant pro-competitive proposals,”⁸ the ESP should be modified to provide additional pro-competitive benefits to consumers. In addition to the capacity charge issues discussed in Part I, Exelon proposed the following improvements to the ESP, all of which can benefit retail customers: (1) the full capacity and energy auction that AEP Ohio proposes be held beginning June 1, 2014; (2) the rules and procedures for the auction be similar to those used in the Duke Ohio and FirstEnergy auctions, and that they be established in this proceeding; and (3) AEP Ohio be ordered to make certain retail market enhancements. All of the suggested modifications fit within the mandate of Section 4928.02(B) and (C), which requires that the Commission ensure a diversity of power supplies and suppliers. Those recommendations remain valid, and are largely unchallenged by anything in any of the Initial Briefs filed on June 29.

Given the fact that the only legal barriers to full market procurement for the standard service offer claimed by AEP Ohio will be removed by January 2014, full

⁷ AEP Ohio In. Br. at 114.

⁸ AEP Ohio In. Br. at 54.

procurement of energy and capacity should be moved up so that by June 2014, standard service customers will be priced at market for their utility provided competitive services. Assuming that the state compensation mechanism applies to all customers (which it should), the Opinion and Order adds several compelling reasons for the Commission to advance the full market procurement for SSO load to 2014.

If the Commission moved up the market procurement for the SSO load, SSO customers would know what they were paying for capacity for the first time since Senate Bill 221 became effective. At the hearings Mr. William A. Allen, the chief rate witness for AEP Ohio, testified that because AEP Ohio had not run a cost of service study on the cost of capacity for standard service, he could not state the actual capacity cost such customers are paying.⁹ Further, the process for setting rates under Senate Bill 221, which starts with the current rate and then adds on items requested by the utility, does not produce an auditable trail. Thus, AEP Ohio used a current FERC Form I to approximate the cost of capacity for the SCM, which AEP Witness Allen concluded was \$356 per MW-day.¹⁰

By following Exelon's suggestion, all standard service customers would know, as of June 1, 2014, exactly what they pay for capacity. Perhaps more importantly, they would know that it is a competitive price, likely the same price that they would pay if they were shopping, and the same price as their PJM non-constrained located competitors would be paying for capacity.

AEP Ohio advocates a three year wait before it moves the standard service offer customers to full market procurement. No compelling reason exists to wait that long;

⁹ Tr. Vol. V (Allen), May 23, 2012 at 1437-41. *See also* Direct Testimony of IEU witness K. Murray IEU Ex. 125, p.50-51; Direct Testimony of William A. Allen, AEP Ohio Ex. 116, p.9.

¹⁰ Tr. Vol. V (Allen), May 23, 2012 at 1689-91; Direct Testimony of William A. Allen, AEP Ohio Ex. 116, p.9.

indeed, the record contains not a shred of evidence that even suggests a reason to delay that auction. Further, given the deferral mechanism that the Commission has approved in the July 2 Order in the Capacity Case, AEP will receive \$188.88 per MW-day for capacity when the deferrals are figured in, which is the amount the Commission has determined is the true embedded cost of capacity. To deny standard service offer customers the benefits of a fully competitive procurement, including RPM pricing, beyond June 2014 is simply unjust and unreasonable.

CONCLUSION

For all the foregoing reasons, as well as those stated in Exelon's Initial Brief, Exelon respectfully requests that the Commission, if it approves AEP Ohio's proposed ESP, modify that ESP to: (1) provide for a full capacity and energy auction for SSO load as of June 1, 2014; (2) ensure that any RSR or related or similar charge arising out of the capacity charge case order be imposed on non-shopping customers; (3) the rules and procedures for the auction be established in this proceeding and be similar to the ones used in the Duke Ohio and FirstEnergy auctions; and (4) the retail market enhancements proposed by Exelon be adopted.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 9th day of July, 2012 by electronic mail, upon the persons listed below.



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