

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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.)	

**MEMORANDUM CONTRA OF RETAIL ENERGY SUPPLY ASSOCIATION,
DIRECT ENERGY BUSINESS, LLC, AND DIRECT ENERGY SERVICES, LLC**

Pursuant to Rule 4901-1-35(B) of the Ohio Administrative Code, the Retail Energy Supply Association¹ (“RESA”), Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, the “Suppliers”)² who are full parties of record submit this Memorandum Contra to the July 20, 2012 Application for Rehearing filed by the Ohio Power Company (hereinafter “AEP Ohio” or “Ohio Power”).³

I. INTRODUCTION

Ohio Power argues in its Application for Rehearing that the Commission unreasonably and unlawfully adopted a cost-based State Compensation mechanism and then ordered AEP-Ohio to only charge CRES providers RPM pricing far below the cost-based rate that the

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

² Teresa L. Ringenbach presented testimony jointly on behalf of both RESA and Direct Energy in this proceeding.

³ The Suppliers in this memorandum contra only respond to the grounds that AEP Ohio raise on rehearing in which they actively participated. The fact that the Suppliers do not comment on every single ground of the AEP Ohio July 20, 2012 application for rehearing should not be interpreted to mean that the Suppliers agree with those positions.

Commission determined was just and reasonable. Ohio Power has misconstrued the Commission's Opinion and Order. Simply put, the majority opinion in the matter at bar, in accordance with the Commission's general supervisory authority⁴ pragmatically balanced the interests of consumers, suppliers and AEP-Ohio. It provided certainty for consumers and suppliers by establishing a competitive electricity market in the AEP-Ohio service territory and across the state. The Commission's July 2, 2012 Opinion and Order established a state compensation mechanism for AEP Ohio under which Competitive Retail Electric Service ("CRES") providers and the customers they serve would have access to RPM-based market capacity pricing in AEP Ohio, just as they do in every other Commission jurisdictional electric distribution utility in the state. Having a uniform CRES capacity charge encourages competition among CRES and provides retail consumers with the lowest possible electric generation rates. It is instructive to note that of the score of intervenors in the case which includes residential, commercial and industrial customers, as well as suppliers and governmental agencies, only AEP Ohio opposed setting the State Compensation Mechanism at the RPM price.

In taking a balanced approach, the Commission, though, did not just give the retail customers and suppliers their requested capacity price, but also responded to AEP Ohio's claim that as fixed resource requirement entity which dedicated capacity to serve customers in its service territory was at risk financial harm for the difference between the competitive price of capacity, as established by the PJM base residual auction, and its self-described high priced generation units. Thus, the July 2nd Opinion and Order allowed AEP-Ohio to receive its actual costs of capacity, determined to be \$188.88/MW-day, through a deferral and subsequent recovery mechanism to be determined in AEP Ohio's electric security plan case. In Section II of

⁴ Section 4905.04 – 4905.06, Revised Code

its Application, AEP Ohio argues that assuring the Company of its incurred capacity cost while putting all customers in AEP Ohio on the same capacity pricing system as the rest of the unconstrained areas of the 11 state PJM regional transmission organization was outside the Commission's authority or unreasonable. There is no merit to this line of argument. The Commission's Opinion and Order is supported by the record and is reasonable and lawful. Thus all of Section II of the Ohio Power Application for Rehearing should be summarily denied.

A. The Commission's Pragmatic Approach in Establishing a State Compensation Mechanism Based on the Cost of Providing Capacity at \$188.88/MW-Day But Allowing CRES Suppliers to Have Access to RPM-Based Market Capacity Pricing, is Consistent with the Energy Policy of This State, is Supported by the Record, and is Reasonable and Lawful.

Ohio Power argues at pages 58-59 of its Application for Rehearing that the Commission has somehow disregarded its own determination that a cost-based rate is the lawful rate that must be collected. AEP Ohio has missed the subtlety of the Commission's Opinion and Order. The Commission, in response to AEP Ohio's application and briefs, did indeed calculate a capacity cost, but when it came time to setting the rate, balanced the various competing interests to establishing a just and reasonable state compensation mechanism.

At page 23 of its July 2, 2012 Opinion and Order, the Commission stated:

Therefore, with the intention of adopting a state compensation mechanism that achieves a reasonable outcome for all stakeholders, the Commission directs that the state compensation mechanism shall be based on the costs incurred by the FRR Entity for its FRR capacity obligations, as discussed further in the following section. However, because the record in this proceeding demonstrates that RPM-based capacity pricing will promote retail electric competition, we find it necessary to take appropriate measures to facilitate this important objective. For that reason, the Commission directs AEP-Ohio to charge CRES providers the adjusted final zonal PJM RPM rate in effect for the rest of the RTO region for the current PJM delivery year (as of today, approximately \$20/mw-day), and with the rate changing annually on June 1, 2013, and June 1, 2014, to match the then current adjusted final zonal PJM RPM rate in the rest of the RTO region.

Further, the Commission will authorization AEP-Ohio to modify its accounting procedures, pursuant to Section 4905.13, Revised Code, to defer incurred capacity costs not recovered from CRES provider billings during the ESP period to the extent that the total incurred capacity costs do not exceed the capacity pricing that we approve below. Moreover, the Commission notes that we will establish an appropriate recovery mechanism for such deferred costs and address any additional financial considerations in the 11-346 proceeding. We also find that AEP-Ohio should be authorized to collect carrying charges on the deferral based on the Company's weighted average cost of capital, until such time as a recovery mechanism is approved in 11-346 in order to ensure that the Company is fully compensated. Thereafter, AEP-Ohio should be authorized to collect carrying charges at its long-term cost of debt.

It is obvious that the Commission recognized that as a retail choice state and with the policy of the state to promote the development of a retail market, that RPM pricing was the most transparent, market-based price. A competitive market is only viable when it is based on transparent, market-based prices.⁵ The RPM price is the only price that is a transparent and market-based price. It allows for a transparent capacity price across Ohio as AEP-Ohio transitions to a competitive market and moves to RPM pricing in 2015.

The Commission also recognized that RPM priced capacity is necessary as a part of AEP-Ohio's transition to market. Beginning in 2007, AEP Ohio charged the RPM price for capacity up until November of 2010 when it filed at the FERC for a cost-based rate.⁶ AEP-Ohio has made the decision to transition to a full market by June 1, 2015, including participation in the RPM auctions. In this context, it is illogical that AEP-Ohio would charge RPM pricing up until January 1, 2012, transition to full market and charge RPM in 2015, but in the interim, charge another cost-based rate that is far above the RPM price. Such an outcome would hinder the transition to market and be contrary to the energy policy of this state.

⁵ RESA Exhibit 101, 7.

⁶ Cross of Munczinski, Tr. Vol. I, pp. 82-83.

The Commission's pragmatic approach provides AEP-Ohio with its costs but provides access to RPM pricing for CRES suppliers. To give meaning to Ohio Power's argument that the Commission could only set the State Compensation Mechanism at its claimed embedded cost, it would have had to state that the General Assembly mandated that the Commission only set State Compensation Mechanism at such cost. The General Assembly passed no such statute, the Commission is acting on its general grant of supervisor authority, and as such is balancing the needs of the utility with the needs of the public. Thus, AEP Ohio makes the argument that balancing interests is somehow unreasonable or at odds with the Commission calculating the incurred cost of AEP Ohio's capacity. There is no merit in that argument and it should be denied.

B. It is Reasonable and Lawful for the Commission to Establish an Appropriate Recovery Mechanism for Deferred Costs and to Address Any Additional Financial Considerations in Case No. 11-346.

At page 59 of its Application for Rehearing and Memorandum in Support, Ohio Power Company complains that the Commission's determination to establish a deferral of certain costs in Case No. 10-2929 and its statement that the Commission would establish an appropriate recovery mechanism in the AEP Ohio ESP II proceeding (Case No. 11-346-EL-SSO) is inappropriate, unreasonable and unlawful. There is no rule or statute that requires the Commission to establish a deferral and a recovery mechanism for that deferral in the same case. The Commission simply announced that there would be a deferral in the capacity case and that it would establish an appropriate recovery mechanism in AEP ESP II proceeding. There is nothing inappropriate, unreasonable or unlawful about this approach. This ground must be rejected. In fact, in terms of matching like issues and public notice, since the recovery of the deferral will require an amendment to existing retail tariffs, the proper forum for establishing a retail rider would be an Electric Security Plan proceeding, where, under Section 4928.143, Revised Code,

the Commission will be considering both by passable and non by passable rates associated with generation capacity.

C. The Commission's Decision Promotes Real Competition, Not Artificial, Uneconomic and Subsidized Competition.

At pages 60-61 of its Application for Rehearing and Memorandum in Support, Ohio Power argues that RPM-based capacity pricing does nothing more than promote artificial, uneconomic and subsidized competition and does not foster durable, legitimate competition. Nothing could be further from the truth. The Commission's decision in this case will promote real competition among suppliers and the beneficiary of such market-based pricing will be customers. To the extent a CRES provider chose not to pass through the cost-savings associated with lower capacity prices, that customer could pay a small penalty to break their contract and switch to another supplier.⁷ RESA witness Ringenbach stated that if a CRES provider were to attempt to keep the lower cost of capacity rather than passing through to their customers, other CRES providers operating in the competitive market would simply go after those customers and inform them of their ability to save with a different CRES provider under a better offer that did flow through the RPM capacity price.⁸ FES witness Banks noted that if a CRES provider got a discount on anything that was readily available in the marketplace, the CRES provider is going to have to pass those savings on to customers, otherwise, they risk losing those customers.⁹

The Commission's decision establishes real competition based on real capacity prices. Across Ohio, all EDUs, with the exception of AEP Ohio, assess the RPM price to their shopping customers. Implementing the RPM price assures price transparency and market consistency as to

⁷ Tr. Vol. IV, p. 836.

⁸ Tr. Vol. IV, pp. 836-837.

⁹ Tr. Vol. VIII, pp. 1660-61.

what capacity costs are across the state.¹⁰ A consistent price for capacity over all the service territories makes it easier for CRES providers to make offers. RESA witness Ringenbach stated that in other Ohio service territories, where the prices are transparent, CRES are able to send a flier, or an internet advertisement that states a comparable price, and such is the case in the non-AEP Ohio service areas today.¹¹

There is nothing artificial about such competition; what is artificial is AEP's request for capacity prices to be set at higher than market rates.

The Commission's decision also establishes economic competition. It has determined what AEP-Ohio's capacity costs are. By allowing a deferral and by establishing a recovery mechanism, AEP-Ohio will receive revenues to recover those costs. The Commission's approach is geared to put Ohio manufacturers and commercial entities on an equal footing with other areas and to give stable rates to residential customers.

D. It Was Neither Unreasonable, Unlawful Nor Unnecessary for the Commission to Establish RPM Pricing for Customers That Already Switched Based on a Capacity Price to CRES Providers of \$255/mw-Day.

At pages 61-62 of its Application for Rehearing and Memorandum in Support, Ohio Power claims that retail electric competition was being promoted when the capacity charge was at \$255/MW-day and that the Commission has created a significant windfall for CRES providers who entered into retail contracts based on \$255/MW-day capacity pricing to Ohio Power's financial detriment. Ohio Power claims that this is unreasonable, unlawful and unnecessary. Ohio Power's argument must be rejected.

Those customers who enrolled with a CRES provider at \$255/MW-da did so thinking that (based on the stipulation and the general direction indicated prior to the 10-2929 case) that they

¹⁰ RESA Exhibit 101, p. 13.

¹¹ RESA Exhibit 101, p. 14.

were establishing their position in the queue to receive the tier 1 (aka RPM) price when the tier 1 eligibility expanded. There was never a reasonable expectation that the \$255 rate would be the final rate; the \$255/MW-day rate was a provision of a rejected stipulation. It was for all customers who signed up to be served and to get in the queue. Customers served by CRES providers may have begun service at a \$255/MW-day rate, but then the rate changed to \$188.88/MW-day. The Commission had never placed all CRES provider served customers on an RPM rate. Ohio Power's argument must be rejected.

E. It Was Both Reasonable and Lawful for the Commission to Apply the Energy Policy of This State in Rendering Its Decision in This Case.

At pages 62-64 of its Application for Rehearing and Memorandum in Support, Ohio Power makes the argument that because the Commission found that the provision of capacity for CRES providers was not a retail electric service, then the Commission must ignore all of Chapter 4928, Revised Code including the state electric services policy contained in Section 4928.02, Revised Code. Ohio Power is mistaken.

Section 4928.02, Revised Code is the State Electric Service Policy; it is not the state retail electric services policy. Only subsections (b), (d), (h) and (i) apply to retail electric service. Subsection (c) provides in part:

(c) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;

The Commission lawfully, reasonably and appropriately applied subsection c of Section 4928.02, Revised Code in making its decision in this case. Ohio Power's argument must be rejected.

II. CONCLUSION

The Commission should reject the arguments put forward by Ohio Power supporting its

Application and should also deny Ohio Power's grounds for rehearing set forth on pages 56-64 of its Application for Rehearing and Memorandum in Support for the reasons set forth above.

Respectfully submitted,

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*On behalf of Retail Energy Supply
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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 30th day of July, 2012.

/s/ M. Howard Petricoff

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