

**BEFORE THE
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.)

**FIRSTENERGY SOLUTIONS CORP.'S
MEMORANDUM CONTRA THE APPLICATION FOR REHEARING OF
THE OHIO ENERGY GROUP**

I. INTRODUCTION

The Application for Rehearing of the July 2, 2012 Opinion and Order (the “Order”) filed by the Ohio Energy Group (“OEG”) fails because it is based on an incorrect premise. The Commission’s decision to defer for future recovery AEP Ohio’s above-market embedded costs does not improperly shift “costs that CRES providers owe the utility.”¹ To the contrary, the only “cost” that can be imposed on CRES providers as compensation for AEP Ohio’s Fixed Resource Requirement (“FRR”) capacity obligation is what is authorized under the FERC-approved Reliability Pricing Model (“RPM”) and Attachment DD of the PJM Interconnection, LLC (“PJM”) Open Access Transmission Tariff (“OATT”). Indeed, the Order recognizes this by providing that the only amount that AEP Ohio can charge CRES providers for capacity – and, thus, the only “cost” for CRES providers – is the applicable RPM market price. AEP Ohio’s excess above-market embedded costs that would be recovered through the deferral are not a proper consideration in setting the price for PJM capacity provided to CRES providers. Instead, as further recognized by the Order, the deferral is a subsidy intended to provide financial benefits

¹ OEG Application for Rehearing, filed Jul. 20, 2012 (“OEG App.”), p. 3. As used herein, “CRES” stands for competitive retail electric service.

to AEP Ohio while it remains a vertically-integrated utility. Thus, the deferral should be paid for by all of AEP Ohio's customers.

II. ARGUMENT

A. The Order's Deferral Does Not Reflect CRES Providers' "Costs."

OEG argues that the Order is unlawful and unreasonable because the Order – specifically, the deferred recovery of the difference between \$188.88/MW-day and RPM market prices – requires “future retail consumers to repay the wholesale capacity cost obligations that the unregulated CRES providers owe to AEP-Ohio.”² However, the deferred amount does not reflect any cost obligation on the part of CRES providers. The Order specifically dictates that AEP Ohio is only authorized to charge CRES providers the applicable RPM price for capacity while AEP Ohio maintains a FRR monopoly over capacity in its service territory.³ Therefore, the RPM price is (as it should be, for the numerous reasons set forth in FES' post-hearing briefs) the only cost for capacity imposed on CRES providers.

Further, as also detailed in FES' Application for Rehearing, the Commission's calculation of \$188.88/MW-day represents AEP Ohio's embedded costs. This conflicts with PJM tariffs, including the RAA and Attachment DD of the OATT, which limit the “costs” that can be considered for setting capacity prices to avoidable, and not embedded, costs.⁴ Therefore, the \$188.88/MW-day calculation of AEP Ohio's full embedded costs cannot be used as the basis for a charge to CRES providers. CRES providers' responsibility for AEP Ohio's FRR capacity

² OEG App., p. 2.

³ Order, p. 23.

⁴ See FES' Application for Rehearing, filed Aug. 1, 2012, at pp. 4-13; see also RAA Schedule 8.1, Section D.8; FES Ex. 118 (*In re PJM Interconnection, LLC*, 121 FERC ¶ 61,173); Direct Testimony of Robert B. Stoddard, pp. 12, 30-40.

obligations can be no more than AEP Ohio's avoidable costs or the RPM RTO price – the rate charged in all unconstrained areas of PJM.

Rather than reflecting CRES providers' costs, the deferred amount reflects an additional above-market revenue stream for the benefit of AEP Ohio, as a whole. In the Order, the Commission specifically states that it authorized AEP Ohio to recover the additional above-market revenue included in the deferral because RPM prices would provide AEP Ohio with "an unusually low return on equity" and would be "insufficient to yield reasonable compensation" to AEP Ohio.⁵ It is explicitly directed at providing additional revenue to AEP Ohio in order to support AEP Ohio's distribution, transmission and (competitive) generation services. Because it is an above-market subsidy for the benefit of AEP Ohio, the deferral is properly paid by all of AEP Ohio's customers if it is to be maintained as a part of the state compensation mechanism.⁶

In addition, OEG's suggestion that the Order's deferral is unlawful because it is not authorized by R.C. § 4909.15 also fails. As set forth in FES' Application for Rehearing, R.C. § 4909.15 (or Chapter 4909, more generally) does not determine the scope or format of the state compensation mechanism. Rather, the RAA and OATT, as approved by the FERC, set forth the parameters for the compensation for AEP Ohio's "FRR capacity obligations."⁷ Thus, OEG's reliance on *In re Columbus Southern Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535 (1993), is misplaced. In that matter, the Ohio Supreme Court's holding was limited to the Commission's

⁵ Order, p. 23.

⁶ As explained further in FES' Application for Rehearing, the deferred amount also should be recovered on a nonbypassable basis because it would be impractical (and an administrative nightmare) to assign appropriate portions of the deferred amount to only those customers who shopped. One of the benefits of the competitive market is the ability of all customers to shop at any time, including the ability to switch between and among the available competitive offers, including the standard service offer. The only equitable method to implement the recovery of the deferred amount (that is designed to benefit all of AEP Ohio) is to apply the charge evenly to all of AEP Ohio's customers on a nonbypassable basis.

⁷ RAA Schedule 8.1, Section D.8.

authority to phase-in a rate established for an “annual revenue requirement” under R.C. § 4909.15. Because the Commission’s authority for the state compensation mechanism is not based in that chapter of the Revised Code (and the procedures for Chapter 4909 were not followed, in any regard), OEG’s arguments are moot.

III. CONCLUSION

For the foregoing reasons, the Commission should deny OEG’s Application for Rehearing.

Respectfully submitted,

s/ Mark A. Hayden

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp.'s Memorandum Contra the Application for Rehearing of The Ohio Energy Group* was served this 2nd day of August, 2012, via e-mail upon the parties below.

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