BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC

PARTIAL MEMORANDUM CONTRA TO
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
APPLICATION FOR REHEARING BY
INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

In the July 2 Order in this case ("the 10-2929 Order"), the Commission established a new state compensation mechanism applicable in the Ohio Power Company d/b/a AEP Ohio ("AEP") service area. The Office of the Ohio Consumers' Counsel ("OCC") filed an application for rehearing of the Order on August 1, 2012. In accordance with Rule 4901-1-35(B), Interstate Gas Supply ("IGS") files it memorandum contra portions of OCC's application for rehearing.

II. ARGUMENT

IGS supports OCC's arguments to the extent they advocate RPM pricing for capacity. Several of OCC's arguments, however, propose unreasonable and unsupportable remedies for any excessive recovery that may occur under the 10-2929 Order. OCC, who apparently favors the interests of residential customers who do not shop over the interests of those who do, proposes that shopping customers should bear the full load of a charge designed to compensate AEP for its embedded costs of generation. IGS opposes OCC's arguments for the following reasons.

A. The ESP proceeding is the appropriate place to determine whether the capacity deferrals may be collected through an ESP.

Many of OCC's arguments are premised on the notion that capacity charges are not for "retail electric service" and therefore that the deferrals cannot be collected through an ESP.

(OCC Memo. in Supp. at 6.) Given that the Commission stated that issues regarding the deferral mechanism would be addressed in the ESP case, *see* 10-2929 Order at 23, this is not the appropriate venue to raise issues regarding collection through an ESP.

B. The state compensation mechanism *is* applicable to CRES Suppliers and does not subsidize CRES suppliers.

OCC claims that the state compensation mechanism is "not applicable to CRES providers" and thus that they are being subsidized. (OCC Memo. in Supp. at 12; *see also id.* at 14.)

The notion that the compensation mechanism is not applicable to CRES providers is simply false. Obviously, it is applicable: AEP must offer RPM-priced capacity to CRES suppliers pursuant to the state compensation mechanism approved in this case. As for the deferral, IGS agrees with OCC that AEP did not demonstrate that it was entitled to collect the embedded costs of its generation fleet. (*See, e.g.*, Graves Dir. 6.) But OCC has no basis for suggesting that shopping customers should be the exclusive payors of those costs. Shopping customers are already paying market prices for energy and capacity; the real cause for complaint is requiring them *also* to pay AEP's embedded generation costs. So OCC has no basis for complaining on behalf of default-service customers: the assistance they receive from shopping customers in paying AEP's embedded generation costs is a boon to them, not a burden.

This is why OCC is incorrect that the 10-2929 Order results in a "subsidy to competitors." (OCC Memo. in Supp. at 13.) The costs at issue are not CRES suppliers' costs, but AEP's. Again, IGS agrees with OCC that the capacity charge hearing was not the appropriate place to deal with larger questions of AEP's financial condition and system stability. But the Commission took those issues on—and the compensation it ordered was not to CRES providers, but to AEP, and it was for the sake of default-service benefits. As those benefits

accrue to non-shopping customers, it is fair for such customers to pay them. CRES suppliers are not receiving any subsidy.

Finally, OCC's arguments on this score ultimately miss the larger point. If AEP's compensation is too great, or if it is collecting costs already being collected in rates, the remedy is not to foist the excessive balance on CRES suppliers or shopping customers. It is to reduce the overcollection.[1]

C. OCC's arguments regarding the introduction of the deferral mechanism into the ESP proceeding lack merit.

OCC argues that "[i]t was unreasonable for [the deferral mechanism] issue to be thrust into the AEP ESP proceeding at such a late date to determine the appropriate mechanism for collections, with no evidence or record on the issue." (OCC Memo. in Supp. at 23.)

Whether or not the deferral mechanism is reasonable, the decision to address it in the ESP case was not unreasonable. "It is well-settled that . . . the commission has the discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort." *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St. 2d 559, 560 (1982) (footnote omitted). OCC has not demonstrated how dealing with the deferral mechanism in the ESP case was an abuse of discretion. Indeed, OCC itself points out elsewhere the dangers of overcollection if the capacity deferrals are not considered alongside AEP's other rates. (*See, e.g.*, OCC Memo. in Supp. at 21 (arguing that "[u]nless the Commission orders the Company to reduce these base generation rates for non-shopping customers, [they] will be overpaying . . . compared to what the PUCO determined was AEP's capacity cost").) Given the need to deal with the deferrals in the context of AEP's total package of rates, it made

[1] OCC repeats variations on the subsidy-and-double-collection argument in pages 17 to 21 of its memorandum; IGS would offer the same responses as here.

abundant sense to address the deferral mechanism and related costs in the ESP—where those rates are presently at issue.

D. The record supports the Commission's decision to promote the development of retail competition.

OCC also argues that "the record does not establish (1) a connection between the deferrals and the development of retail competition or (2) the need for development of retail competition beyond what is currently occurring." (OCC Memo. in Supp. at 24.) This argument does not establish error.

Regarding the first point, the record *does* establish that the state compensation mechanism will promote the development of retail competition. As IGS's brief and several others explained in detail, the record abounds with evidence that RPM pricing will foster the development of retail competition and, conversely, that failing to charge RPM will have deleterious effects on competition. (*See* IGS Init. Br., 6-7, 9-10.) In light of this record evidence, the Commission plainly viewed the deferrals as a necessary tool to enable the provision of RPM capacity pricing.

As to OCC's second point, whether retail competition "needs" to develop "beyond what is currently occurring" is fundamentally a policy question, and it is a policy question already answered by the General Assembly. *See, e.g.*, *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St. 3d 81, 81 (2002) (Ohio policy is "to facilitate and encourage development of competition in the retail electric market"). Given this overarching policy directive, the Commission is not required to engage in fact-finding to determine whether competition should be promoted.

III. CONCLUSION

For these reasons, IGS requests the Commission deny in part OCC's application for rehearing.

Dated: August 13, 2012

Respectfully submitted,

/s/ Mark A. Whitt

Mark A. Whitt (Counsel of Record)
Andrew J. Campbell
WHITT STURTEVANT LLP
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3911
Facsimile: (614) 224-3960
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com

Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone: (614) 659-5000
Facsimile: (614) 659-5073
mswhite@igsenergy.com

ATTORNEYS FOR INTERSTATE GAS SUPPLY, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Memorandum Contra OCC's Application for Rehearing was served by electronic mail this 13th day of August, 2012 to the following:

greta.see@puc.state.oh.us
jonathan.tauber@puc.state.oh.us
amy.spiller@duke-energy.com
arthur.beeman@snrdenton.com
asim.haque@icemiller.com
BarthRoyer@aol.com
bkelly@cpv.com
bpbarger@bcslawyers.com
carolyn.flahive@thompsonHine.com
cathy@theoec.org
cendsley@ofbf.org
cmoore@porterwright.com
callwein@wamenergylaw.com>;
christopher.miller@icemiller.com
cmontgomery@bricker.com
cmooney2@columbus.rr.com
cmoore@porterwright.com
cynthia.brady@constellation.com
dane.stinson@baileycavalieri.com
DConway@porterwright.com
dakutik@jonesday.com
dmeyer@kmklaw.com
dboehm@BKLlawfirm.com
david.fein@constellation.com
dstahl@eimerstahl.com
djmichalski@hahnlaw.com
dryan@mwncmh.com
kaelber@buckleyking.com
dorothy.corbett@duke-energy.com
doug.bonner@snrdenton.com
elizabeth.watts@duke-energy.com
emma.hand@snrdenton.com
fdarr@mwncmh.com
Gary.A.Jeffries@dom.com
gthomas@gtpowergroup.com
gregory.dunn@icemiller.com
gpoulos@enernoc.com
henryeckhart@aol.com
holly@raysmithlaw.com
tsiwo@bricker.com
jdaurora@behallaw.com
jlang@calfee.com
james.rubin@snrdenton.com
jejadwin@aep.com
jhummer@uaoh.net
Jeanne.Kingery@duke-energy.com
joliker@mwncmh.com
malina@wexlerwalker.com
john.jones@puc.state.oh.us
jmclark@vectren.com
jmaskovyak@ohiopovertylaw.org
judi.sobecki@dplinc.com
kbowman@mwncmh.com
keith.nusbaum@snrdenton.com
kpkreider@kmklaw.com
eisenstatl@dicksteinshapiro.com
lmcbride@calfee.com
laurac@chappelleconsulting.net
lmcalister@bricker.com
mhpetricoff@vorys.com
haydenm@firstenergycorp.com
whitt@whitt-sturtevant.com
matt@matthewcoxlaw.com
mjsatterwhite@aep.com
mpritchard@mwncmh.com
mwarnock@bricker.com
mswhite@igsenergy.com
grady@occ.state.oh.us
mjsettineri@vorys.com
mkurtz@BKLlawfirm.com
msmalz@ohiopovertylaw.org
talexander@calfee.com
nolan@theoec.org
randall.griffin@dplinc.com
rhart@hahnlaw.com
rgannon@mwncmh.com
ricks@ohanet.org
lehfeldtr@dicksteinshapiro.com
rrremington@hahnlaw.com
rburke@cpv.com

kinderr@dicksteinshapiro.com
walter@buckleyking.com
rocco.d'ascenzo@duke-energy.com
rsugarman@keglerbrown.com
sam@mwncmh.com
sandy.grace@exeloncorp.com
sbruce@oada.com
selisar@mwncmh.com
stephanie.chmiel@thompsonhine.com
smhoward@vorys.com
Stephen.Chriss@wal-mart.com
stnourse@aep.com
tsantarelli@elpc.org
Terrance.Mebane@ThompsonHine.com
todonnell@bricker.com
etter@occ.state.oh.us
tobrien@bricker.com
tlindsey@uaoh.net
thomas.millar@snrdenton.com
toddm@wamenergylaw.com
trent@theoec.org
vparisi@igsenergy.com
werner.margard@puc.state.oh.us
wmassey@cov.com
Yalami@aep.com
myurick@taftlaw.com
zkravitz@taftlaw.com

/s/ Andrew J. Campbell
One of the Attorneys for Interstate Gas Supply, Inc.

Summary: Memorandum Contra the Office of the Ohio Consumers' Counsel Application for Rehearing electronically filed by Mr. Andrew J Campbell on behalf of Interstate Gas Supply, Inc.