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On July 2, 2012, the Commission issued the Order in the Capacity Case (Capacity Order) wherein the Commission determined $188.88 per MW-day as the appropriate charge to enable the Company to recover its capacity costs pursuant to its Fixed Resource Requirements (FRR) obligations from CRES providers.[18] However, the Capacity Order also directed that AEP-Ohio's capacity charge to CRES providers shall be the auction-based rate, as determined by PJM via its reliability pricing model (RPM), including final zonal adjustments, on the basis that the RPM rate will promote retail electric competition.[19]

In the Capacity Order, the Commission also authorized AEP-Ohio to modify its accounting procedures to defer the incurred capacity costs not recovered from CRES providers, commencing June 1, 2012, through the end of this modified ESP, with the recovery mechanism to be established in this proceeding.[20]

In this Order on the modified ESP, the Commission adopts, as part of the RSR, the recovery of the difference between the RPM-based capacity rate and AEP-Ohio's state compensation mechanism for capacity as determined by the Commission.

Staff endorses the Company's recovery of the difference between the state compensation mechanism for capacity and the RPM rate (Staff Reply Br. at 13). On the other hand, IEU, OCC and APJN argue that there is no record evidence in this modified ESP case, or any other proceeding, to determine an appropriate mechanism to collect deferred capacity charges in contradiction of the requirements in Section 4903.09, Revised Code, and the parties were not afforded due process on the issue. Furthermore, OCC and APJN reason that the capacity charge deferrals cannot be a provision of an ESP as the charges do not fall within one of the specified categories listed in Section 4928.143(B)(2), Revised Code, and there is no statutory basis under Chapter 4928, Revised Code, for such charges. OCC and APJN also contend approval of the recovery of deferred capacity charges violates state policies expressed in Section 4928.02, Revised Code, at paragraph (A), which requires reasonably priced retail electric service; at paragraph (H), which prohibits anticompetitive subsidies from noncompetitive retail electric service to competitive retail service; and at paragraph (L), which requires the Commission to protect at-risk populations. (OCC/APJN Reply Br. at 18; IEU Reply Br. 6-7).

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18 In re Capacity Case, Order at 33-36 (July 2, 2012).

19 In re Capacity Case, Order at 23 (July 2, 2012).

20 In re Capacity Case, Order at 23 (July 2, 2012).

Certain parties that oppose the Commission's incorporation of the Capacity Case deferrals in the modified ESP overlook the fact that the Capacity Case was opened prior to each of the ESP 2 applications filed by AEP-Ohio and that each of the applications proposed a state compensation capacity charge and plan for resolution of the issue. The Commission rejects the Company's two-tier capacity plan and rates, proposed as a part of this modified ESP 2.

Furthermore, in accordance with Section 4928.144, Revised Code, the Commission may order any just and reasonable phase-in of any rate or price established under Sections 4928.141, 4928.142, or 4928.143, Revised Code, including carrying charges. Where the Commission establishes a phase-in, the Commission must also authorize the creation of the regulatory asset to defer the incurred costs equal to the amount not collected, plus carrying charges on the amount not collected, and authorize the recovery of the deferral and carrying charges by way of a non-bypassable surcharge.

Several of the interveners argue that because the record in the modified ESP was closed when the Capacity Order was issued, the deferral of capacity charges was not made an issue in the modified ESP case, the record does not support the deferral of capacity charges or that the parties were not afforded due process on the issue. We disagree. AEP-Ohio proposed certain capacity charges and a plan as a part of this modified ESP and consistent with the Commission's authority we may approve or modify and approve an ESP. Nothing in the Section 4928.144, Revised Code, limits the Commission's authority to modify the ESP to include deferrals on its own motion. With the Commission's decision to begin collecting the deferral in part through the RSR, all other issues raised on this matter are addressed in that section of the Order.

12. <u>Phase-in Recovery Rider and Securitization</u>

As part of AEP-Ohio's ESP 1 case, to mitigate the impact of the rate increase for customers, the Commission ordered, pursuant to Section 4928.144, Revised Code, the Company to phase-in any increase authorized over an established percentage for each year of the ESP.[21] The Commission authorized CSP and OP to establish a regulatory asset to record and defer fuel expenses, with carrying costs at the weighted average cost of capital (WACC), with recovery through a non-bypassable surcharge to commence January 1, 2012, and continue through December 31, 2018.[22] This aspect of the ESP 1 Order is final and non-appealable. On September 1, 2011, CSP and OP filed the Phase-in Recovery Case application to request the creation of the Phase-In Recovery Rider (PIRR), a mechanism to recover the accumulated deferred fuel costs, including carrying costs, to be effective with the first billing cycle of January 2012. The Phase-in Recovery Case was a part of the proposed ESP 2 Stipulation which was initially approved by the Commission on

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21 ESP 1 Order at 22.

22 ESP 1 Order at 20-23; First ESP EOR at 6-10.

December 14, 2011. Consistent with the Commission's directive in the February 23, 2012 Entry on Rehearing rejecting the ESP Stipulation, a procedural schedule was established for the Phase-in Recovery Case to proceed independently of any ESP. On August 2, 2012, the Commission issued its decision on the Company's PIRR application.

Notwithstanding the Phase-in Recovery Case, as a part of this modified ESP case, AEP-Ohio requests that recovery of the deferred fuel expenses be delayed, while continuing to accrue carrying cost at WACC, until June 2013. The Company does not propose to extend the recovery period. AEP-Ohio also proposes that the PIRRs of CSP and OP be combined. The rationale presented by the Company for delaying collection of the PIRR is to coincide with and offset the consolidation of the FAC, which the Company reasons will minimize customer rate impacts. According to AEP-Ohio witness Roush, combining the PIRR rates will increase the rate for customers in the CSP rate zone and reduce the rate for customers in the OP rate zone. In this modified ESP proceeding, AEP-Ohio also requests that the Commission suspend the procedural schedule in the PIRR cases. (AEP-Ohio Ex. 118 at 8; AEP-Ohio Ex. 119 at 3; AEP-Ohio Ex. 111 at 5-6.)

AEP-Ohio witness Hawkins acknowledges that legislation permitting the securitization of the PIRR was passed in December 2011 but claims that securitization of the PIRR regulatory asset will likely take about nine months to finalize after the issuance of a final, non-appealable order. AEP-Ohio admits that securitization of the PIRR regulatory assets would reduce customer costs as a result of the reduction in carrying costs and provide the Company with capital to assist with the transition to market. (AEP-Ohio Ex. 102 at 7-8.)

OCC opposes the notion that AEP-Ohio be permitted to earn a return on its own capital at WACC while the PIRR is delayed at the Company's request. Further, OCC and APJN agree with Staff that collection of the PIRR should commence as soon as possible after the Commission issues its Order, the delay in collection amounts to an additional cost of $64.5 million. OCC and APJN argue that there is no justification for the delay and the delay at WACC only serves to benefit the Company. Since the delayed collection is at the Company's request, OCC and APJN advocate that no further carrying charges accrue or the carrying charge be reduced to the long-term cost of debt. (OCC Ex. 115 at 4-7; OCC Ex. 111 at 20-22; OCC/APJN Br. at 64-72)

Similarly, IEU argues that the delay of the PIRR violates Section 4928.144, Revised Code, which requires that the delay in collection at WACC be consistent with sound regulatory practice, just, and reasonable. IEU estimates the additional carrying cost will be at least an additional $40 to $45 million and reasons that AEP-Ohio was only authorized to collect WACC on deferred fuel costs through December 31, 2011, the end of ESP 1. (IEU Ex. 129 at 30-31, 14; Tr. at 3639, 4549.)

Ormet argues that the increased carrying charge to defer the implementation of the PIRR until June 2013 is excessive and presents a number of legal and pragmatic issues. Ormet notes that the interest to be incurred by delaying the implementation of the PIRR is based on an interest rate of 11.26 percent, more than AEP-Ohio utilized to determine the RSR. Ormet encourages the Commission to reduce the carrying cost, in light of the change in economic and financial circumstances since the ESP 1 Order, to the short-term cost of debt and to delay PIRR implementation until securitization is complete or at least until June 2013. (Ormet Br. at 23-24.)

Ormet and IEU request that the Company be directed to maintain the separate PIRR mechanisms for CSP and OP to reduce the impact on ratepayers. IEU notes that CSP customers have contributed approximately one percent of the total PIRR balance. Ormet notes that the deferred fuel expenses that are the basis of the PIRR, as provided in the ESP 1 Order, is a final non-appealable order for which AEP-Ohio may rely to seek securitization. AEP-Ohio has argued such in this case in its filing of March 6, 2012, and Ormet contends that pursuant to *Nationwide Ins. Co. v. Hall*, No. 1258, 1978 WL 214906 at *3 (Ohio App. 7 Dist. Mar. 23, 1978) AEP-Ohio can not now assert a contradictory legal position. (Tr. at 4543-4548; Ormet Ex. 106B at 9; Ormet Br. at 23-27; IEU Ex. 129 at 9-11; IEU Br. at 72)

Ormet asserts that blending the PIRR rate for CSP and OP rate zones constitutes a retroactive change in fuel costs for which AEP-Ohio has failed to offer any justification. Ormet states that at the time the fuel cost were incurred, CSP and OP were not merged and that the overwhelming majority of the PIRR balance is from the OP rate zone. The rationale offered by Ormet is that the blending of the FAC rate is fundamentally different from the blending of the PIRR rate, as FAC is an ongoing look at current and future fuel costs where the PIRR is the collection of previously incurred, deferred fuel costs. Ormet argues that the Commission has previously concluded that the distinction between retrospective and prospective is key to what constitutes prohibited retroactive ratemaking. Ormet asks that, consistent with the Commission's determination in the ESP 1 Entry on Remand Order, that the Commission find the blending of the CSP and OP PIRR balances equates to changing the rate for previously incurred but deferred fuel costs. (Tr. at 1187, 4536-4537, 4540; Ormet Br. at 27-31.)

The Company reasons that the PIRR regulatory asset is on the books of OP, as the surviving entity post-merger, along with all of the other assets and liabilities of the former CSP. Therefore, it is appropriate for all AEP-Ohio customers to pay the PIRR. AEP-Ohio notes that Staff advocates that the FAC and PIRR be immediately unified and implemented, because CSP customers benefit from a rate impact perspective with the merging of both rates (Tr. at 4539-4540).

Staff opposes the Company's request to delay recovery of the merged PIRR rates and recommends that the Commission direct recovery to commence upon approval of the modified ESP to avoid increased carrying charges associated with the dely. Staff notes that with a PIRR balance of approximately $549 million, delaying PIRR recovery until June 2013 results in additional carrying charges of $71 million at the WACC. Further, Staff supports the merger of the PIRR rates. (Staff Ex. 109 at 4-5.)

AEP-Ohio answers that the difference between the Company's proposal to delay collection of the PIRR in comparison to the Staff and certain interveners opposition to the delay is essentially a balancing or prioritizing between two goals: mitigating present rate impacts and reducing the total carrying charges. The Company's proposal was aimed at addressing the first goal and the Staff's position prioritizes the second goal. The Company contends that its proposal to delay implementation of the PIRR until June 2013 to coincide with the unification of FAC rates is reasonable, results in minimal immediate rate impacts to customers, and should be approved.

AEP-Ohio's request to suspend the procedural schedule in the PIRR case is moot, as it does not appear that the Company made a similar request in the Phase-in Recovery Cases, and given that the Commission has issued its decision on the PIRR application. Consistent with the Company's limited request as to the PIRR in this modified ESP, we will address the commencement of the amortization period for the PIRR, combining the PIRR rates for the CSP and OP rate zones and securitization. Any remaining issue raised as to the deferred fuel expense or the PIRR that is not addressed in the Phase-in Recovery Order or this modified ESP Order is denied.

As AEP-Ohio correctly points out, delaying collection of the PIRR to offset against the merged FAC rates, as opposed to immediately commencing collection of the PIRR, is indeed the prioritizing between two goals. AEP-Ohio's request to delay commencement of the amortization period for the PIRR is denied. In this case, where the accrued carrying charges during the requested delay are estimated to be an additional $40 to $71 million, it is unreasonable for the Commission to approve the delay and permit carrying charges to continue to accrue merely to facilitate one charge offsetting another. AEP-Ohio is directed to commence recovery of the PIRR charges as soon as practicable after the issuance of this Order.

We agree with the recommendation of Ormet and IEU to maintain separate PIRR rates for the CSP and OP rate zones. The PIRR balance was incurred primarily by OP customers, and according to cost causation principles, the recovery of the balance should be from OP customers. Further, as discussed above, the Commission directs that FAC rates should be maintained on a separate basis.

IEU argues that the PIRR fails to address the requirements of Section 4928.20(I), Revised Code,[23] that requires non-bypassable charges arising from a phase-in deferral are applicable to customers in governmental aggregation programs only in proportionate to the benefit received. IEU's claim that the PIRR violates Section 4928.20(I), Revised Code, is misdirected. The PIRR is not part of this ESP proceeding but was the directive of the Commission in the Company's prior ESP case. Therefore, the Commission finds that IEU should have raised this issue in the ESP 1 case or when the Commission established the PIRR and that Section 4928.144, Revised Code, as to the collection of the PIRR, is not applicable to this modified ESP proceeding.

The Commission notes that AEP-Ohio witness Hawkins testified that securitization of the PIRR regulatory assets would reduce customer costs through the reduction of the carrying cost and provide AEP-Ohio with the needed capital to assist with the transition to competition. AEP-Ohio also states that recovery of the PIRR can commence before securitization is complete. Ormet supports securitization of the PIRR. (AEP-Ohio Ex. 102 at 8; Ormet Br. at 24-25.)

Finally, while AEP-Ohio does not specifically propose securitization of the PIRR in the modified ESP, AEP-Ohio notes that securitization offers a benefit to both customers and AEP-Ohio. Further, no parties opposed the idea of securitizing the PIRR. Accordingly, we direct AEP-Ohio to take advantage of this extremely useful tool our General Assembly created for electric utilities and their customers through House Bill 364 and securitize the PIRR deferral balance. Securitization not only leads to lower utility bills for all customers as a result of reduced carrying costs, but also leads to lower borrowing costs for AEP-Ohio. The Commission finds it extremely important, particularly when our State has been hit by tough economic times, to keep customer utility bills as low as possible, and securitization of the PIRR provides us with a means to ensure we protect customer interests. Therefore, AEP-Ohio shall initiate the securitization process for the PIRR deferral balance as soon as practicable..

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[23] Section 4928.20(I), Revised Code, states:

Customers that are part of a governmental aggregation under this section shall be responsible only for such portion of a surcharge under section 4928.144 of the Revised Code that is proportionate to the benefits, as determined by the commission, that electric load centers within the jurisdiction of the governmental aggregation as a group receive. The proportionate surcharge so established shall apply to each customer of the governmental aggregation while the customer is part of that aggregation. If a customer ceases being such a customer, the otherwise applicable surcharge shall apply. Nothing in this section shall result in less than full recovery by an electric distribution utility of any surcharge authorized under section 4928.144 of the Revised Code. Nothing in this section shall result in less than the full and timely imposition, charging, collection, and adjustment by an electric distribution utility, its assignee, or any collection agent, of the phase-in-recovery charges authorized pursuant to a final financing order issued pursuant to sections 4928.23 to 4928.2318 of the Revised Code.

13. Generation Asset Divestiture

The Company describes, but does not request as a part of this modified ESP, its proposed application for full corporate separation filed in Case No. 12-1126-EL-UNC (Corporate Separation Case), pursuant to the requirements of Section 4928.17, Revised Code, and Chapter 4901:1-37, O.A.C.[24] AEP-Ohio asserts full corporate separation is a necessary prerequisite for generation asset divestiture and AEP-Ohio's transition to an auction-based SSO. Pursuant to the proposed modified ESP and the Company's proposed corporate separation plan, AEP-Ohio will retain transmission and distribution-related assets, its REPAs and the associated RECs. AEP-Ohio will transfer to its generation affiliate, GenResources, existing generation units and contractual entitlements, fuel-related assets and contracts and other assets and liabilities related to the generation business.[25] The generation assets will be transferred at net book value. AEP-Ohio proposes to retain senior notes and pollution control revenue bonds, as such long-term debt is not secured by the generation assets being transferred to GenResources. The Company expects to complete termination of the Pool Agreement and full corporate separation by January 1, 2014.[26] (AEP-Ohio Ex. 103 at 4-6, 8, 21-22.)

AEP-Ohio is a Fixed Resource Requirement (FRR) entity, pursuant to the requirements of PJM Interconnection LLC (PJM), and must remain an FRR until June 1, 2015. To meet its FRR obligations after full corporate separation and before the proposed energy auctions for delivery commencing January 1, 2015, the Company states GenResources will provide AEP-Ohio, via a full requirements wholesale agreement, its load requirements to supply non-shopping customers. Pursuant to the proposed modified ESP, AEP-Ohio proposes that for the period January 1, 2015 through May 31, 2015, GenResources will provide AEP-Ohio only capacity, no energy, at $255 per MW-day and the contract between AEP-Ohio and GenResources will terminate effective June 1, 2015, when both energy and capacity will be provided to SSO customers through an auction. While AEP-Ohio is an FRR entity, the Company states it will make capacity payments to GenResources for the energy only auctions proposed in this modified ESP at $255 per MW-day. Generation-related revenues paid to AEP-Ohio by Ohio ratepayers will be passed through to GenResources for capacity and energy received for the SSO load, and AEP-Ohio will reimburse GenResources on a dollar-for-dollar basis for transmission, ancillary, and other service charges billed to GenResources by PJM to serve AEP-Ohio's

24 See *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, filed March 30, 2012.

25 AEP-Ohio notes that after transferring the generation assets and liabilities to GenResources, GenResources will transfer Amos unit 3 and 80 percent of the Mitchell Plant to Appalachian Power Company (APCo) and transfer the balance of the Mitchell Plant to Kentucky Power Company (KYP), so the utilities can meet their respective load requirement absent the AEP East Pool Agreement (AEP-Ohio Ex. 101 at 22).

26 As a part of the modified ESP, AEP-Ohio requests approval for a Pool Termination Rider which is addressed in a separate section of this Order.

SSO load. In addition, AEP-Ohio will remit all capacity payments made by CRES providers pursuant to PJM's Reliability Assurance Agreement to GenResources as well as revenues from the Retail Stability Rider as compensation for fulfillment of AEP-Ohio's FRR obligations. (AEP-Ohio Ex. 101 at 23; AEP-Ohio Ex. 103 at 6-8; Tr. at 515-519.)

IEU, OCC and APJN argue that because AEP-Ohio has made the modified ESP filing contingent on receiving approval of the corporate separation plan yet failed to request consolidation of the Corporate Separation Case, the Commission cannot approve the corporate separation plan as a part of this proceeding. (OCC/APJN Br. at 73; IEU Br. 76-77.)

In fact, IEU argues that AEP-Ohio is not the FRR entity but, American Electric Power Service Corporation (AEPSC) is the FRR entity on behalf of all of the American Electric Power operating companies within PJM and, therefore, AEP-Ohio does not have any FRR obligation. Nor has AEP-Ohio offered into evidence, IEU notes, AEPSC's FRR capacity plan or indicated which of AEP-Ohio's generation assets are part of the capacity plan. IEU reasons that AEP-Ohio's generation assets are not dedicated to AEP-Ohio's distribution customers and may be replaced by other capacity resources. (IEU Ex. 125 at 23, AEP-Ohio Ex. 103 at 9.)

DER and DECAM argue that AEP-Ohio's proposal to contract with GenResources to serve the SSO load at the proposed capacity price after corporate separation is an illegal violation of the corporate separation laws and violates state policy causing a negative impact on the ability of unaffiliated CRES providers to compete in OP territory (Tr. at 812-813; DER/DECAM Br. at 11).

Staff opposes AEP-Ohio's request to retain $296 million in pollution control bonds, where there has not been, according to Staff, any demonstration that use of the intercompany notes would have a substantial negative affect on the generation affiliate's cost of debt. Staff proposes that AEP-Ohio be directed to make a filing with the Commission within six months after the completion of corporate separation, to demonstrate that there is not any substantial negative impact on AEP-Ohio if the debt or intercompany notes are not transferred to the generation affiliate. Therefore, Staff recommends that the Commission deny this aspect of the Company's ESP proposal at this time. Further, Staff recommends that the Corporate Organization chart be updated to reflect the legal entities that are related to American Electric Power Inc., as well as all reportable segments related to AEP-Ohio, in a format and manner similar to the information American Electric Power Inc. provides in its 10K filing to the Securities and Exchange Commission. (Staff Ex. 108 at 5-6; Tr. at 4405-4406.)

AEP-Ohio did not request consolidation of its pending corporate separation plan in conjunction with this modified ESP application, and as such the Commission will consider the corporate separation application in a separate docket. As such, the primary issues to be considered in this modified ESP proceeding is how the divestiture of the generation assets and the agreement between AEP-Ohio and GenResources will impact SSO rates.

We find IEU's arguments, that AEP-Ohio is not the entity committed to an FRR obligation with PJM to be form over substance. AEPSC entered into the FRR agreement on behalf of AEP-Ohio and other AEP-Ohio operating affiliates and the legal obligation of AEP-Ohio is no less binding than if AEP-Ohio entered into the agreement directly.

The Commission finds that sufficient information regarding the proposed generation asset divestiture and corporate separation, as reflected in more detail in the Corporate Separation Case, has been provided in this modified ESP case to allow the Commission to reasonably conclude that termination of the Pool Agreement and corporate separation facilitate AEP-Ohio's transition to a competitive market in Ohio. With the modification and adoption of the modified ESP, as presented in this Order, the Commission may reasonably determine the ESP rates, including the rate impact of the generation asset divestiture, on the Company's SSO customers for the term of the modified ESP, where upon SSO rates will subsequently be subject to a competitive bidding process. While, AEP-Ohio proposes to enter into an agreement with GenResources to provide AEP-Ohio capacity at $255 per MW-day, we emphasize that based on the Commission's decision in the Capacity Case, AEP-Ohio will not receive any more than the state compensation capacity charge of $188.88 per MW-day from Ohio customers during the term of this ESP.

As the Commission understands the Company's description of the generation divestiture, all AEP-Ohio generation facilities, except Amos and Mitchell, will be transferred to GenResources at net book value. Amos and Mitchell will ultimately be transferred to AEP-Ohio operating affiliates at net book value.

Staff raises some concern with the implementation of corporate separation and the lack of the Company's transfer of all debt and/or intercompany notes to GenResources. Despite the Staff's recommendation, the Commission approves AEP-Ohio's requests to retain the pollution control bonds contingent upon a filing with the Commission demonstrating that AEP-Ohio ratepayers have not and will not incur any costs associated with the cost of servicing the associated debt. More specifically, AEP-Ohio ratepayers shall be held harmless for the cost of the pollution control bonds, as well as any other generation or generation related debt or inter-company notes retained by AEP-Ohio. AEP-Ohio shall file such information with the Commission, in this docket no later than 90 days after the issuance of this Order. Accordingly, the Commission finds that, subject to our approval of the corporate separation plan, the electric distribution utility should divest its generation assets from its noncompetitive electric distribution utility assets by transfer to its separate competitive retail generation subsidiary, GenResources, as represented in this modified ESP. The Company states that it has notified PJM of its intention to enter PJM's auction process for the delivery year 2015-2016. The Commission will review the remaining issues presented in the Company's Corporate Separation Case.

In regards to the contract between AEP-Ohio and GenResources, FES contends that after corporate separation AEP-Ohio cannot simply pass-through the generation revenues it receives without evidence that the cost are prudent consistent with Section 4928.143(B)(2)(a), Revised Code, and AEP-Ohio has done nothing to establish that $255 per MW-day for capacity is prudent. The price of $255 per MW-day is unrelated to cost or market rates, and according to FES, appears to be well above market. Furthermore, Constellation and Exelon witness Fein testified that Exelon made an offer of energy and capacity and an offer for capacity only to serve AEP-Ohio's SSO load June 1, 2014 through May 31, 2016, at a cost lower than the Company is proposing as a part of this modified ESP. Constellation and Exelon emphasize that the PJM tariff does not prohibit an FRR entity from making bilateral purchases in the market to meet its capacity obligations. (Constellation/Exelon Ex. 101 at 17-19). FES notes that according to testimony offered by AEP-Ohio witness Nelson, the $255 MW-day for capacity is not based on costs nor indexed to the market rate. Furthermore, FES points out that AEPSC is negotiating the contract for both AEP-Ohio and GenResources. AEP-Ohio has no intent, based on the testimony of Mr. Nelson, to evaluate whether the cost of its contract with GenResources for SSO service could be reduced by contracting with another supplier. Based on the record evidence, FES argues that this aspect of the modified ESP does not comply with the requirements of Section 4928.143(B)(2)(a), Revised Code, and the contract between AEP-Ohio and GenResources, after corporate separation does not comply with the FERC *Edgar* guidelines, which direct that no wholesale sale of electric energy or capacity between a franchised public utility with captive customers and a market-regulated power sales affiliate may take place without first receiving FERC authorization for the transaction under section 205 of the Federal Power Act. (Tr. at 523-526; FES Br. at 102-105.)

The Commission finds, that once corporate separation is effective and AEP-Ohio procures its generation from GenResources that it is appropriate and reasonable for certain revenues to pass-through AEP-Ohio to GenResources. Specifically, the revenues AEP-Ohio receives, after corporate separation is implemented, from the RSR which are not allocated to recovery of the deferral, revenue equivalent to the capacity charge of $188.99/MW-day authorized in Case No. 10-2929-EL-UNC, generation-based revenues from SSO customers, and revenue for energy sales to shopping customers, should flow to to GenResources. We recognize, as AEP-Ohio acknowledges and FES discusses in its reply brief, that the contract between AEP-Ohio and GenResources is subject to prior FERC approval. We do not make, as a part of our review of the Company's modified ESP application, any expressed or implied endorsement of the terms or conditions of the AEP-Ohio contract with GenResources, as presented in this case.

14. GridSMART

The Company's modified ESP application proposes the continuation of the gridSMART rider approved by the Commission in the ESP 1 Order, with two modifications. First, AEP-Ohio requests that the gridSMART rates for the CSP rate zone be expanded to the OP rate zone. Second, AEP-Ohio requests that the net book value of meters retired as a result of the gridSMART project be deferred as a regulatory asset for accounting purposes. Currently, the net book value of meters replaced as a result of Phase 1 of the gridSMART project are charged to expense net of salvage and net of meter transfers and included in the over/under calculation of the rider. The Company expects to complete the installation of gridSMART equipment in Phase 1 and to complete gridSMART data submission to the U. S. Department of Energy on Phase 1 of the project by December 31, 2013, with the evaluation to be completed around March 31, 2014. Further, AEP-Ohio states that the Company intends to deploy elements of the gridSMART program throughout the AEP-Ohio service territory as part of the proposed DIR program proposed in this proceeding. (AEP-Ohio Ex. 107 at 10; AEP-Ohio Ex. 110 at 9-13.)

OCC and APJN submit that, to the extent that the Company proposes to include gridSMART costs in the DIR, there are numerous concerns that need to be addressed before the Company is authorized to proceed. Staff, OCC, and APJN retort that the Company's proposed expansion of the gridSMART project, before any evaluation and analysis of the success of gridSMART Phase 1, is inconsistent with sound business principles and should be rejected by the Commission. Therefore, these parties recommend that the Company not proceed with Phase 2 until evaluation of Phase 1, is complete, on or about March 31, 2014. (Staff Ex. 105 at 5-6; OCC/APJN Br. at 96-97.)

More specifically, Staff reasons that the costs of the expansion of various gridSMART technologies have not been determined, the benefits of the gridSMART expansion defined nor customer acceptance of such technologies evaluated. In addition, Staff claims that the Company has stated that certain components of the aging distribution infrastructure do not support gridSMART technologies. Despite Staff's position on the commencement of Phase 2 of the gridSMART project, Staff does not oppose the Company's installation, at the Company's expense and risk of recovery, of proven distribution technologies that can proceed independently of gridSMART, which address near term generation reliability concerns, such as integrated voltage variation control (IVVC), and do not present any security or interoperability issues or violate requirements set forth by the National Institute of Standards and Technology Interagency Report. Staff endorses the continuation of the gridSMART rider to be collected from all AEP-Ohio customers. Staff emphasizes that equipment should not be recoverable in the gridSMART rider until it is installed, has completed and passed thorough testing, and has been placed in-service. (Staff Ex. 105 at 3-6; Staff Ex. 107 at 3-13.)

AEP-Ohio points out that no intervener has expressed any opposition to the continuation and completion of gridSMART Phase 1 and, accordingly, AEP-Ohio requests approval of this aspect of the modified ESP. AEP-Ohio also requests that the Commission provide some policy guidance on whether the Company should proceed with the expansion of the gridSMART program.

As the Commission noted in AEP-Ohio's ESP 1 Order:

> [I]t is important that steps be taken by the electric utilities to explore and implement technologies... that will potentially provide long-term benefits to customers and the electric utility. GridSMART Phase 1 will provide CSP with beneficial information as to implementation, equipment preferences, customer expectations, and customer education requirements... More reliable service is clearly beneficial to CSP's customers. The Commission strongly supports the implementation of AMI [advanced metering infrastructure] and DA [distribution automation initiative], with HAN [home area network], as we believe these advanced technologies are the foundation for AEP-Ohio providing its customers the ability to better manage their energy usage and reduce their energy costs.

(ESP 1 Order at 34-35.)

The Commission is not wavering in its conviction as to the benefits of gridSMART. Thus, we direct AEP-Ohio to continue the gridSMART Phase 1 project and to complete the review and evaluation of the project. We are approving the Company's request to initiate Phase 2 of the gridSMART project, prior to the March 31, 2014, completion of the evaluation of gridSMART Phase 1, with those technologies that have to-date demonstrated success and are cost-effective. To require the Company to delay any further expansion or installation of gridSMART is unnecessarily restrictive with respect to the further deployment of successful individual smart grid systems and technologies used in the project. The Company shall file its proposed expansion of the gridSMART project, gridSMART Phase 2, as part of a new gridSMART application, including sufficient detail on the equipment and technology proposed for the Commission to evaluate the demonstrated success, cost-effectiveness, customer acceptance and feasibility of the proposed technology. However, the Company shall include, as Staff recommends, IVVC only within the distribution investment rider, as IVVC is not exclusive to the gridSMART project. IVVC supports the overall electric system reliability and can be installed without the presence of grid smart technologies, although IVVC enhances or is necessary for grid smart technology to operate properly and efficiently. Furthermore, the gridSMART Phase 1 rider was approved with specific limitations as to the equipment for which recovery could be sought, and a dollar limitation.[27] Any gridSMART investment beyond the Phase 1 pilot, which is not subject to recovery through the DIR mechanism, should be recovered through a mechanism other than the current gridSMART rider, for example, through a gridSMART Phase 2 rider. The current gridSMART rider allows for recovery on an "as spent" basis, with audits directed toward truing-up expenditures with collections through the rider rate. Keeping subsequent non-DIR, gridSMART expenditures in a new separate recovery mechanism facilitates enforcement and a Commission determination that recovery of gridSMART investment occur only after the equipment is installed, tested, and is in-service. With these clarifications, the Commission approves the Company's request to continue, as a part of this modified ESP, the current gridSMART rider mechanism, subject to annual true-up and reconciliation based on the Company's prudently incurred costs, and to extend the rate to include OP as well as CSP customers.

We note that the gridSMART Phase 1 rider was last evaluated for prudency of expenditures, reconciled for over- and under-recoveries and the rate mechanism adjusted in Case No. 11-1353-EL-RDR, with the rate effective beginning September, 1, 2011. Despite the Commission's February 23, 2012 rejection of the application in this ESP 2 proceeding, the recovery of the gridSMART rate mechanism continued consistent with the Entry issued March 7, 2012. Accordingly, the gridSMART rider rate mechanism approved in Case No. 11-1353-EL-RDR shall continue at the current rate until revised by the Commission. We also note that in Case No. 11-1353-EL-RDR, the Commission deducted an amount from the Company's claim for the loss on the disposal of electro-mechanical meters. The Commission notes, as we stated in the Order issued August 4, 2011, that we will address the meter issue in the Company's pending gridSMART rider application, Case No. 12-509-EL-RDR, and nothing in this Order on the modified ESP should be interpreted to the contrary.

15. <u>Transmission Cost Recovery Rider</u>

Pursuant to Commission authority, as set forth in Section 4928.05(A)(2), Revised Code, and the rules in Chapter 4901:1-36, O.A.C., electric utilities may seek recovery of transmission and transmission-related costs. Through this modified ESP, AEP-Ohio proposes only that the transmission cost recovery rider (TCRR) mechanisms of the CSP and OP rate zones be combined. The Company proposes no other changes to the TCRR mechanism as a part of this ESP. (AEP-Ohio Ex. 111 at 6-7; AEP-Ohio Ex. 107 at 8.)

The Commission notes that the current TCRR process has been in place since 2009, and operates appropriately. As structured, with the TCRR mechanism any over- or under-recovery is accounted for in the next semi-annual review of the TCRR mechanism. For this reason, we do not expect any adverse rate impact for customers with the combining of the CSP and OP TCRR rate mechanisms. Given the merger of CSP into OP, effective as of

[27] ESP 1 Order at 37-38; ESP 1 Entry on Rehearing at 18-24 (July 23, 2009).

December 31, 2011, the Commission finds AEP-Ohio's request to combine the TCRR mechanism to be reasonable. The Commission directs that any over-recovery of transmission or transmission-related costs, as a result of combining the TCRR mechanisms, be reconciled in the over and under-recovery component of the Company's next TCRR rider update.

16. Enhanced Service Reliability Rider

As part of AEP-Ohio's ESP 1 case, AEP-Ohio proposed an enhanced service reliability rider (ESRR) program which included four components, of which only the transition to a cycle-based vegetation management program was approved by the Commission. In this modified ESP, AEP-Ohio requests continuation of the ESRR and the Company's transition to a four-year, cycle-based trimming program. Further, the Company proposes the unification of the ESRR rates for each rate zone into a single rate, adjusted for anticipated cost increases over the term of the ESP, with carrying cost on capital assets and annual reconciliation. AEP-Ohio admits that before the initiation of the transitional vegetation management program, the number of tree-related circuit outages had gradually increased. However, the Company states that with the initiation of the new vegetation management program, the number of tree-caused outages has been reduced and service reliability has improved. AEP-Ohio proposes to complete the transition from a performance-based program to a four-year, cycle-based trimming program for all of the Company's distribution circuits as approved by the Commission in the prior ESP. However, the Company notes that the vegetation management plan was implemented as a five-year transition program and, as a result of the delay in adopting a second ESP and increases in the expected costs to complete implementation of the cycle-based trimming program, it is now necessary to extend the implementation period to include an additional year into 2014. AEP-Ohio requests incremental funding for 2014 for both the completion of the transition to a cycle-based vegetation management program of $16 million and an incremental increase of $18 million annually to maintain the cycle-based program. (AEP-Ohio Ex. 107 at 8; AEP-Ohio Ex. 110 at 5-9.)

Staff supports the continuance of the ESRR through 2014 but not any cost incurred thereafter. Staff reasons that after 2014, the Company's transition to a four-year, cycle-based vegetation management program will be complete and regular maintenance pursuant to the program will be part of the Company's normal operations, the cost of which should be recovered through base rates not through the ESRR. Further, Staff argues that the ESRR funding level for the period 2012 through 2014 is overstated due to the increased ESRR baseline reflected in the Company's recent distribution rate case.[28] According to Staff, to reach the rate base in the Stipulation in the distribution rate case, Staff agreed to an increase in the revenue requirement for CSP and OP which incorporated an annual increase in vegetation management operation and maintenance expense of $17.8

[28] *In re AEP-Ohio*, Opinion and Order, Case No. 11-351-EL-AIR, et al. (December 14, 2011).

million annually for 2012 through 2014 over its recommendation in the Staff Report. For that reason, Staff asserts that vegetation management operation and maintenance expense must be reduced by $17.8 million annually for the period 2012 through 2014. Further, Staff recommends that the Commission direct AEP-Ohio to file, pursuant to Rule 4901:1-10-27(E)(2) and (3), O.A.C., by no later than December 31, 2013, a revised vegetation management program which commits the Company to complete end-to-end trimming on all of its distribution circuits every four years beginning January 1, 2014 and beyond. (Staff Ex. 106 at 11-14; Tr. at 4363-4365.)

AEP-Ohio retorts that Staff ignores the fact that the Stipulation, and the Commission Order approving the Stipulation, in the Company's distribution rate case do not detail any increase in the ESRR baseline. AEP-Ohio requests that the Commission reject Staff's view of the rate case settlement as unsupported and improper, after the issuance of a final, non-appealable order in the case. As to Staff's proposed termination of funding after 2014, the Company offers that such would undermine the benefits of the cycle-based trimming. (AEP-Ohio Reply Br. at 76-77.)

The Commission concludes that while the Stipulation in the distribution rate case reflects an increase in the baseline operations and maintenance expense from the level recommended in the Staff Report, there is no evidence in the Stipulation or the Commission's Order adopting the Stipulation which specifically supports a $17.8 million increase in operations and maintenance expense for the vegetation management program. Accordingly, the Commission approves the continuation of the vegetation management program, via the ESRR, and merger of the rates, as requested by the Company for the term of the modified ESP, through May 31, 2015. Within 90 days after the conclusion of the ESRR, the Company shall make the necessary filing for the final year review and reconciliation of the rider. We direct AEP-Ohio to file a revised vegetation management program consistent with this Order and Rule 4901:1-10-27(E)(2) and (3), O.A.C., by no later than December 31, 2012. We see no need to wait until December 2013 for the filing, as requested by Staff, in light of our ruling in this Order.

17. Energy Efficiency and Peak Demand Reduction Rider

Through this modified ESP, the Company proposes the continuation of the EE/PDR Rider, with the unification of the rates into a single rate. The EE/PDR rider would continue to be, as it has been since its adoption in the ESP 1 cases,[29] updated annually. AEP-Ohio notes the proposed regulatory accounting for the EE/PDR rider, is over-under accounting with no carrying charge on the investment and no carrying charge on the over/under balance. The Company states that it has developed energy efficiency and demand response programs for all customer segments and through the implementation of the programs customers have the potential to save approximately $630

[29] ESP 1 Order at 41-48; ESP 1 EOR at 27-31.

million in reduced electric service cost over the life of the programs. Further, the EE/PDR programs cause power plant emissions to be reduced. AEP-Ohio testified that its energy efficiency and peak demand response programs for 2009 through 2011 have been very successful in meeting the benchmarks. Staff endorses the Company's request to continue the EE/PDR rider. (AEP-Ohio Ex. 107 at 8; AEP-Ohio Ex. 118 at 11-12; Staff Br. at 31.)

The Commission approves the merger of the EE/PDR rider rates for the CSP and OP rate zones and, for the term of this modified ESP, the continuation of the EE/PDR rider as adopted in the ESP 1 Order and subsequently confirmed in each of the Company's succeeding EE/PDR cases. In addition, as we established in our analysis of the IRP-D credit, because the IRP-D credit promotes energy efficiency, it is appropriate for AEP-Ohio to recover any costs associated with the IRP-D under the EE/PDR rider, as opposed to the RSR. Further, the Commission directs AEP-Ohio to take the appropriate steps necessary to bid the energy efficiency savings funded by the EE/PDR rider into the next PJM base residual auction and all subsequent auctions held during the term of the ESP.

18. Economic Development Rider

AEP-Ohio's modified ESP application request approval to continue, with one modification, the non-bypassable Economic Development Rider (EDR). The EDR mechanism recovers the costs, incentives, and forgone revenues associated with new or expanding Commission-approved special arrangements for economic development and job retention. As currently designed, the EDR rate is a component of each customer's base distribution rates. The Company wishes to merge the EDR rates for each of the rate zones into a single EDR rate with the EDR rate to continue in all other respects as approved by the Commission in the ESP 1 Order and the Company's subsequent EDR cases. As currently approved by the Commission, the EDR is updated periodically and the regulatory accounting for the EDR, being over-under accounting with no carrying charge on the investment and a long-term interest carrying charge on any unrecovered balance. AEP-Ohio states that the EDR supports Ohio's effectiveness in the global economy as required in Section 4928.02(N), Revised Code. AEP-Ohio asserts that the proposed EDR is reasonable and should be adopted as part of the modified ESP. (AEP-Ohio Ex. 111 at 3, 7 and Ex. DMR-5; AEP-Ohio Ex. 107 at 8; AEP-Ohio Ex. 118 at 7, 13.)

Staff supports the Company's EDR proposal (Staff Br. at 31). However, OCC and APJN argue the Company allocates the EDR rider based only on distribution revenues as opposed to current total revenues (distribution, transmission and generation) between the customer classes in compliance with Rule 4901:1-38-08(A), O.A.C.[30] OCC and APJN note

[30] Rule 4901:1-38-08(A)(4), O.A.C., states:

> The amount of the revenue recovery rider shall be spread to all customers in proportion to the current revenue distribution between and among classes, subject to change,

that the Commission approved Dayton Power & Light Company's EDR application with a similar allocation to the one they are proposing AEP-Ohio be required to adopt.[31]

The Company argues that because transmission and generation revenues are recovered only from its nonshopping customers, that OCC's and APJN's proposal would actually result in residential customers being responsible for a greater share of the delta revenues than under the current allocation method based only on distribution revenues paid by shopping and non-shopping customers. Further, AEP-Ohio notes that the Commission rejected this same proposal by OCC in the ESP 1 cases and requests that the Commission again reject the proposed change in the allocation methodology. (AEP-Ohio Reply Br. at 78.)

The Commission rejects OCC's and APJN's request to revise the basis for the EDR allocation, given the fact that the EDR is a non-bypassable rider recovered from shopping and non-shopping customers alike. We recognize that the EDR acts to attract new business and to facilitate the expansion of existing businesses in Ohio. In order to allow AEP-Ohio to effectively promote economic development to customers in its service territories, and continue its positive corporate presence in communities throughout Ohio, as evidenced by multiple witnesses at the public hearings, we find it reasonable for AEP to maintain its corporate headquarters in Columbus, Ohio, at a minimum, for the entire term of this ESP and the subsequent collection period associated with the deferral costs included in the RSR. Further, the Commission finds that, the EDR, as a non-bypassable rider, is recovered from all AEP-Ohio shopping and non-shopping customers. Therefore, we approve the Company's request to merge the EDR rates for the CSP and OP rate zones into a single rate and to otherwise continue the EDR mechanism as previously approved by the Commission in the Company's ESP 1 Order, as revised or clarified in its subsequent EDR proceedings.

Additionally, in light of the extenuating economic circumstances, the Commission hereby orders the Company to reinstate the Ohio Growth Fund, to be funded by shareholders at $2 million per year, or portion thereof, during the term of this ESP. The Ohio Growth Fund creates private sector economic development resources to support and work in conjunction with other resources to attract new investment and improve job growth in Ohio.

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alteration, or modification by the commission. The electric utility shall file the projected impact of the proposed rider on all customers, by customer class.

31 See In re Dayton Power & Light Company, Case No. 12-815-EL-RDR, Order (April 25, 2012).

19. Storm Damage Recovery Mechanism

AEP-Ohio proposes a storm damage recovery mechanism be created to recover any incremental expenses incurred due to major storm events (AEP-Ohio Ex. 110 at 20). AEP-Ohio provides that the mechanism would be created in the amount of $5 million per year in accordance with the settlement in Case Nos. 11-351-EL-AIR and 11-352-EL-AIR. In support of the storm damage recovery mechanism, AEP-Ohio witness Kirkpatrick notes that absent the mechanism, forecasted operation and maintenance (O&M) funds would be constantly diverted to cover the expense of major storms, which could disrupt planned maintenance activities and impact system reliability. The determination of what a major storm is or is not would be determined by methodology outlined in the IEEE Guide for Electric Power Distribution Reliability Indices, as set forth in Rule 4901:1-10-10(B), O.A.C. (*Id.*) Any capital costs that would be incurred due to a major storm would either become a component of the DIR or would be addressed in a distribution rate case (*Id.* at 21). Upon approval of the storm damage recovery mechanism, AEP-Ohio will defer the incremental distribution expenses above or below the $5 million storm expense beginning with the effective date of January 1, 2012 (AEP-Ohio Ex. 107 at 10).

OCC notes that while AEP-Ohio's actual storm costs expenses are currently unknown, it is likely that AEP-Ohio will incur more than $5 million based on historic data, which indicates the average annual expenses amount to approximately $8.97 million per year (OCC Ex. 114 at 20-21). In addition, OCC explains that AEP-Ohio failed to specify the carry charge rate for any storm damage deferrals, but suggests the carrying charges not be calculated using AEP-Ohio's WACC, as the mechanism does not include capital costs (OCC Br. at 97-98). OCC suggests that AEP-Ohio utilize its cost of long-term debt to calculate carrying charges (*Id.*).

In establishing its storm damage recovery mechanism, AEP-Ohio failed to specify how recovery of the deferred asset would actually work or would occur. As proposed, it is unknown when AEP-Ohio would seek recovery, or whether anything over or under $5 million would become a deferred asset or liability. As it currently stands, the storm damage recovery mechanism is open-ended and should be modified.

Therefore, we find that AEP-Ohio may begin deferral of any incremental distribution expenses above or below $5 million, per year, subject to the following modifications. Further, throughout the term of the modified ESP, AEP-Ohio shall maintain a detailed accounting of all storm expenses within its storm deferral account, including detailed records of all incidental costs and capital costs. AEP-Ohio shall provide this information annually for Staff to audit to determine if additional proceedings are necessary to establish recovery levels or refunds as necessary.

In the event AEP-Ohio incurs costs due to one or more unexpected, large scale storms, AEP-Ohio shall open a new docket and file a separate application by December 31 each year throughout the term of the modified ESP, if necessary. In the event an application for additional storm damage recovery is filed, AEP-Ohio shall bear the burden of proof of demonstrating all the costs were prudently incurred and reasonable. Staff and any interested parties may file comments on the application within 60 days after AEP-Ohio dockets an application. If any objections are not resolved by AEP-Ohio, an evidentiary hearing will be scheduled, and parties will have the opportunity to conduct discovery and present testimony before the Commission. Thus, OCC's concern on the calculation of appropriate carrying charges is premature.

20. Other Issues

(a) Curtailable Service Riders

In ESP 1, based on the lack of certain information in the record, the Commission determined that customers under reasonable arrangements with AEP-Ohio, including, but not limited to, energy efficiency/peak demand reduction arrangements, economic development arrangements, unique arrangements, and other special tariff schedules that offer service discounts from the applicable tariff rates, are prohibited from also participating in a PJM demand response program (DRP), unless and until the Commission decides otherwise (First ESP EOR at 41). While the Commission opined on the ability of customers in reasonable arrangements with AEP-Ohio to participate in PJM DRPs, the Commission did not, in the context of the ESP 1, address the ability of AEP-Ohio's retail customers to participate in PJM DRPs.

On March 19, 2010, in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, AEP-Ohio filed an application to amend its emergency curtailment service riders to permit customers to be eligible to participate in AEP-Ohio's DRPs, integrate their customer-sited resources and assign the resources to AEP-Ohio to meet with the Company's peak demand reduction mandates or conditional retail participation in PJM DRPs.

As a part of this modified ESP, AEP-Ohio recognizes customer participation in the PJM directly or through third-party aggregators and proposes to eliminate two tariff services, Rider Emergency Curtailable Services and Rider Price Curtailable Service, as no customer currently receives service pursuant to either rider. EnerNOC endorses this aspect of AEP-Ohio's modified ESP application on the basis that its supports the provisions of Section 4928.02(D), Revised Code. (AEP-Ohio Ex. 100 at 9; AEP-Ohio Ex. 111 at 9; EnerNOC Br. at 5-6.).

We concur with the Company's request. Accordingly, the Company should eliminate Rider Emergency Curtailable Services and Rider Price Curtailable Service from its tariff service offerings and Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, closed of record and dismissed.

(b) Customer Rate Impact Cap

In order to ensure no customers are unduly burdened by any unexpected rate impacts, as well as to mitigate any customer rate changes, we direct AEP-Ohio to cap customer rate increases at 12 percent over their current ESP I rate plan bill schedules for the entire term of the modified ESP, pursuant to our authority as set forth in Section 4928.144, Revised Code. The 12 percent limit shall be determined not by overall customer rate classes, but on an individual customer by customer basis. The customer rate impact cap applies to items approved within this modified ESP. Any rate changes that arise as a result of past proceedings, including any distribution proceedings, or in subsequent proceedings are not factored into the 12 percent cap. Further, the 12 percent cap shall be normalized for equivalent usage to ensure that at no point any individual customer's bill impacts shall exceed 12 percent. On May 31, 2013, AEP-Ohio should file, in a separate docket, a detailed accounting of its deferral impact created by the 12 percent rate cap. Upon AEP-Ohio's filing of its deferral calculations, the attorney examiners shall establish a procedural schedule, to consider, among other things, the deferral costs created, and the Commission will maintain the discretion to adjust the 12 percent limit, as necessary, throughout the term of the ESP.

(c) AEP-Ohio's Outstanding FERC Requests

The Commission takes notice that American Electric Power Service Corporation filed a renewed motion on AEP-Ohio's behalf for expedited rulings on July 20, 2012, in FERC docket numbers ER11-2183-001 and EL11-32-000. In the event FERC takes any action that may significantly alter the balance of this Commission's order, the Commission will make appropriate adjustments as necessary. Specifically, pursuant to Section 4928.143(F), Revised Code, at the end of each annual period of this modified ESP, the Commission shall consider if any such adjustments, including any that may arise as a result of a FERC order, lead to significantly excessive earnings for AEP-Ohio. In the event that the Commission finds that AEP-Ohio has significantly excessive earnings, AEP-Ohio shall return any amount in excess to consumers.

III. IS THE PROPOSED ESP MORE FAVORABLE IN THE AGGREGATE AS COMPARED TO THE RESULTS THAT WOULD OTHERWISE APPLY UNDER SECTION 4928.142, REVISED CODE.

AEP-Ohio contends that the ESP, as proposed, including its pricing and all other terms and conditions, is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO. To properly conduct the statutory test, AEP-Ohio states that the proposed ESP must be viewed in the aggregate, which includes the statutory price test, other quantifiable benefits, and the consideration of non-quantifiable benefits (AEP Ex. 114 at 3-4). In evaluating all of these criteria, AEP-Ohio witness Laura Thomas concludes that the proposed ESP, in the aggregate, is more favorable that the results that would otherwise apply under an MRO by approximately $952 million (AEP-Ohio Ex. 115 at Exhibit LJT-1, page 1). In addition, Ms. Thomas states that there are numerous benefits that are not readily quantifiable (*Id.*).

In conducting the statutory price test, Ms. Thomas explains that she utilized Section 4928.20(J), Revised Code's interpretation of market prices for guidance in determining the competitive benchmark price. In establishing the competitive benchmark price, AEP-Ohio used ten components, including the capacity component, which includes the capacity cost that a supplier would incur to serve a retail customer within AEP-Ohio's service territory (AEP-Ohio Ex. 114 at 15). AEP-Ohio concluded that the capacity cost to be utilized in the statutory price test should be $355.72/MW-day, based on the notion that AEP-Ohio will be operating under its FRR obligation and the full capacity cost rate for AEP-Ohio should be utilized in the competitive benchmark price. By using $355.72/MW-day, Ms. Thomas concludes that the statutory price test shows the ESP is more favorable than an MRO by $256 million (AEP-Ohio Ex. 114 at LJT-1 page 3). Ms. Thomas also conducted an alternative price test utilizing the two-tier capacity proposal numbers of $146 and $255 as the capacity costs, and concludes that modified ESP would be more favorable than an MRO $80 million (*Id.* at LJT-5 page 2). In light of the Commission's decision in Case No. 10-2929, AEP-Ohio indicates the use of the $188.88 capacity price would result in the MRO being slightly less favorable by $12.6 million, but when factoring in AEP-Ohio's energy-only slice-of-system auction the statutory price test comes out almost even, with the MRO being slightly more favorable by approximately 2.6 million (AEP-Ohio Reply Br. at 97-99, Attachment B).

In addition, as AEP-Ohio explains that the statutory test requires the proposed ESP be reviewed in the aggregate in addition to the price test, other quantifiable benefits need to be considered. Specifically, AEP-Ohio points to capacity price discount from AEP-Ohio's $355.72/MW-day to the two-tier discounted capacity pricing for CRES provides, which results in a benefit of $988 million. In addition, in her aggregate test, Ms. Thomas acknowledges that while the RSR is a benefit of the proposed modified ESP, the RSR will cost $284 million during the term of the modified ESP. Ms. Thomas explains that the GRR should not be considered in the aggregate analysis as the results would be the same under the proposed ESP or an MRO, but notes if the Commission determines otherwise the consideration of GRR would reduce the quantifiable benefits by approximately $8 million. By taking these additional quantifiable factors into consideration in addition to the results under the statutory test, AEP-Ohio asserts that the total quantifiable benefits of the modified ESP are $952 million based on the statutory price test using $355.72/MW-day (AEP-Ohio Ex. 115 at LJT-1).

Regarding non-quantifiable benefits, AEP-Ohio states that the modified ESP will provide price certainty for SSO customers while presenting increased customer shopping opportunities. AEP-Ohio provides that the modified ESP will ensure financial stability of

AEP-Ohio and provides for a necessary transition towards the competition while acknowledging AEP-Ohio's existing contractual and FRR obligations. AEP-Ohio also opines that the modified ESP advances state policies and is consistent with Section 4928.02, Revised Code.

In addition to the statutory test conducted by AEP-Ohio witness Thomas, several other parties conducted the statutory test pursuant to Section 4928.143, Revised Code. OCC, FES, IEU, DER and Staff allege that the statutory price test actually indicates that the modified ESP produces results that are less favorable than what would otherwise apply under an MRO by figures ranging from $50 million to $1.427 billion (*See* OCC Ex. 114, DER Ex. 102, IEU Ex. 125, FES Ex. 104, and Staff Ex. 110). Specifically, OCC witness Hixon points out that AEP-Ohio's assumption of a $355.72/MW-day capacity charge is inappropriate, but rather, the capacity charge approved by the Commission in Case No. 10-2929-EL-UNC should be utilized. Further, OCC notes that any costs associated with the GRR should be included in the statutory test, as the GRR would not be available under an MRO (*Id.* at 14-17). In addition, OCC points out that in considering any non-quantifiable benefits associated with the modified ESP, the aggregate test should consider additional costs to customers associated with items such as the DIR, ESRR, and gridSMART rider, which, while not readily quantifiable, are currently known to be costs associated with the modified ESP (*Id.* at 18).

FES and IEU raise similar concerns in utilizing AEP-Ohio's $989 million as a quantifiable benefit. FES states that the Commission previously found the consideration of discounted capacity pricing cannot be considered a benefit because it is too speculative (FES Ex. 104 at 14-16, IEU Ex. at 50-53). IEU, DER, and FES provide that AEP-Ohio overstated the competitive benchmark price by failing to use a market-based capacity price, and failed to properly consider the costs associated with the modified ESP including the RSR, GRR, and possibly the PRR (FES at 16-25, IEU at 49-72, DER Ex. 102 at 3-6). Mr. Schnitzer also concluded that the statutory test indicates that the modified ESP is worse for customers than the Stipulation ESP, and approval of the modified ESP would harm the development of a competitive retail market by limiting CRES providers' ability to provide alternative offers to customers (FES Ex. 104 at 38-41).

IEU, DER, and OCC argue that Ms. Thomas incorrectly assumed the MRO's blending requirement should have been accelerated, as it is unlikely the Commission would authorize an MRO with any blending other than the fault blending provisions of 70 percent ESP pricing and 30 percent market pricing, as is consistent with Section 4928.142, Revised Code (DER Ex. at 3-6, OCC Ex. 114 at 8-9). Further, IEU suggests the Commission consider the June 2015 to May 2016 deliver year as part of the statutory test analysis, as AEP-Ohio is seeking Commission approval to conduct a CBP for the entire SSO load beginning in June 2015 under this modified application (IEU Ex. 125 at 79).

Staff witness Fortney conducted the statutory test by blending the market rate with the SSO rates pursuant to Section 4928.142(D), Revised Code, but noted that the market rate is extremely uncertain due to volatility of forward contract prices. Mr. Fortney calculated the average rates under AEP-Ohio's modified ESP and compared them to the results that would occur under an MRO on RPM price capacity, $146.41, and $255. Mr. Fortney concluded that under all three scenarios the modified ESP is less favorable, but noted there are other non-quantifiable benefits, including AEP-Ohio's transition to competitive markets, which would be achieved more quickly than through an MRO (Staff Ex. 110 at 3-7). FES revised Mr. Fortney's statutory price test using the $188.88 price of capacity and concluded an MRO would be less expensive by $277 million (FES Reply Br. at B-1).

The Commission finds that, while AEP-Ohio made multiple errors in conducting the statutory test, we believe that these errors are correctible based on evidence contained within the record. Under Section 4928.143(C)(1), Revised Code, we must determine whether AEP-Ohio's has sustained its burden of proof of indicating whether the proposed electric security plan, as we've modified it, including its pricing, other terms and conditions including any deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to results that would otherwise apply under Section 4928.142, Revised Code. Further, we must ensure our analysis looks at the entire modified ESP as a total package, as the Supreme Court of Ohio has held that Section 4928.143(C)(1), Revised Code, does not bind the Commission to a strict price comparison, but rather, instructs the Commission to consider other terms and conditions, as there is only one statutory test that looks at an entire ESP in the aggregate (*In re Columbus S. Power Co.*, 128 Ohio St. 3d 402, 407).

Therefore, as AEP-Ohio presented its analysis of this statutory test, we first look at the statutory pricing test, and then will explore other provisions, terms, and conditions of the proposed ESP that are both quantifiable and non-quantifiable. In considering AEP-Ohio's statutory price test, consistent with Section 4928.143(C)(1), Revised Code, we must look in part at the price AEP-Ohio's proposed ESP, as we've modified it, with the price of the results that would otherwise apply under Section 4928.142, Revised Code. The way AEP-Ohio calculated its statutory price test precludes us from accurately determining the results that would otherwise apply under a market rate offer, as it begins its analysis on June 1, 2012.

To accurately determine what would otherwise apply under Section 4928.142(A)(1), Revised Code, for the purposes of comparing it with this modified ESP, we begin by looking at the statute for guidance. Section 4928.142(A)(1), Revised Code, mandates that any electric distribution utility that wishes to establish its standard service offer price through a market rate offer must ensure the competitive bidding process provides for an open, fair, and transparent competitive solicitation process, with a clear product definition, standardized bid evaluation criteria, oversight of the process by an independent third party, and an evaluation of the submitted bids prior to selecting a winner. For the Commission to appropriately predict the results that would otherwise occur under this section, we cannot, in good conscience, compare prices during a time period that has elapsed prior to the issuance of this order. Nor can we, by statute, compare this modified ESP price with what would otherwise apply under Section 4928.142, Revised Code, beginning today, as it would be impossible for AEP-Ohio to immediately establish an alternate plan under Section 4928.142, Revised Code, that meets all the statutory criteria. Therefore, for the Commission to appropriately compare the price components of this modified ESP with the results that would otherwise apply under Section 4928.142, Revised Code, we must determine the amount of time it would take AEP-Ohio to implement its standard service offer price with what would otherwise apply under Section 4928.142, Revised Code.

As FES witness Banks testified, a June 1, 2013 start date would provide AEP-Ohio sufficient time to plan for auctions, develop bidding rules, and the auction structure, all of which are requirements of Section 4928.142, Revised Code (FES Ex. 105 at 20). In light of this testimony, we believe that we should begin evaluating the statutory price test analysis approximately ten months from the present, in order to determine what would otherwise apply. Therefore, in considering this modified ESP with the results that would otherwise apply under the statutory price test, we will conduct the statutory price test for the period between June 1, 2013, and May 31, 2015.

Further, in conducting the statutory price test, Ms. Thomas erred by utilizing $355.72/MW-day for the capacity component of the competitive benchmark price. This number was unilaterally determined by AEP-Ohio and justified as AEP-Ohio's cost of capacity, which is entirely inconsistent with the Commission's determination of AEP-Ohio's cost of capacity being $188.88. Although we believe AEP-Ohio's use of the $355.72/MW-day capacity figure is flawed, we are not persuaded by parties who argue the capacity component should be market based and reflect RPM prices. These parties fail to consider that AEP-Ohio, as an FRR entity, will be supplying capacity for its customers throughout the term of this ESP, whether the customer is an SSO customer or the customer takes service through a CRES provider. Thus, even under the results that would otherwise apply consistent with Section 4928.142, Revised Code, due to AEP-Ohio's remaining FRR obligations, it would still be supplying capacity to all of its customers through 2015. We find it is inappropriate to consider market prices in establishing this capacity component, even though RPM prices are consistent with the state compensation mechanism, as AEP-Ohio is and will remain an FRR entity for the immediate future. In conducting the statutory price test, we shall use AEP-Ohio's cost of capacity of $188.88, as supported by Case 10-2929, for the competitive benchmark.

Next, we need to address the appropriate blending method under the statutory price test for the period of January 1, 2015 through June 1, 2015. In light of the clearly defined statutory blending percentages contained within Section 4928.142(D), Revised Code, as well as past Commission precedent in conducting the statutory price test, we do not find it appropriate to use a 100 percent blending rate for the final five months of the modified ESP. *See* Duke Energy Ohio, Case No. 10-2586-EL-SSO (February 23, 2011). Accordingly, we need to adjust the percentages of the MRO pricing component that is indicated in AEP-Ohio's reply brief to 90 percent of the generation service price and ten percent of the expected market price for the period between June 1, 2013 to May 31, 2014, consistent with Section 4928.142(D), Revised Code, and increase the MRO pricing component to 80 percent of the generation service price and 20 percent of the expected market price for the period of June 1, 2014, to May 31, 2015. By making these modifications to the competitive benchmark price, as well as the $188.88 cost of capacity figure, we conclude that the statutory price test indicates the modified ESP is more favorable than the results that would otherwise occur under Section 4928.142, Revised Code, by approximately $9.8 million.

Our analysis does not end here, however, as we must now consider the proposed ESP's other provisions that are quantifiable. As we previously established in the December 14, 2011, Opinion and Order, we believe AEP-Ohio must address costs associated with the GRR, as it is non-bypassable pursuant to Section 4928.143(B)(2)(c), Revised Code, and thus would not occur under an MRO. Therefore, the costs of approximately $8 million must be considered in our quantitative analysis. We understand that the GRR is a placeholder rider, but we find that the costs associated with the GRR are known and should therefore be included in the quantitative benefits. Likewise, we must consider the costs associated with the RSR of approximately $388 million in our quantitative analysis.[32] The inclusion of any deferral amount does not need to be included in our analysis, as it would still be recovered under an MRO pursuant to the Commission's decision in the Capacity Case. After including the statutory price test in favor of the ESP by $9.8 million, and the quantifiable costs of $388 million under the RSR and $8 million for the GRR, we find an MRO is more favorable by approximately $386 million.

By statute, our analysis does not end here, however, as we must consider the non-quantifiable aspects of the modified ESP, in order to view the proposed plan in the aggregate. We acknowledge that there may be costs associated with distribution related

[32] The RSR determination of $388 million is calculated by taking the $508 million RSR recovery amount and subtracting the $1 figure to be devoted towards the Capacity Case deferral, as recovery of this deferral will occur under either an ESP or an MRO. Using LJT-5 in AEP-Ohio Ex. 114, when we consider the total connected load of 48 million kWh and multiply it by $1 over the term of the modified ESP, we reach a figure of $144 million to be devoted towards the Capacity Case deferral. However, as the RSR recovery amount increases to $4/MWh in the final year of the modified ESP, we also must account for an increase in the RSR of $24 million, which is also calculated by connected load in LJT-5. Therefore, the actual amount which should be included in the test is $388 million.

riders and the gridSmart and ESRR that currently are not readily quantifiable, we believe any of these costs are significantly outweighed by the non-quantifiable benefits this modified ESP leads to. Although these riders may end up having costs associated with them, they would support reliability improvements, which will benefit all AEP-Ohio customers, as well as provide the opportunity for customers to utilize efficiency programs that can lead to lower usage, and thus lower costs. Further, these costs will be mitigated by the increase in auction percentages, including the slice-by-slice auction, as we modified to ten percent each year, which will offset some of these costs in the statutory test and moderate the impact of the modified ESP. Further, the acceleration to 60 percent of AEP-Ohio's energy only auction by June 1, 2014, not only enables customers to take advantage of market based prices, but also creates a qualitative benefit which, while not yet quantifiable, may well exceed the costs associated with the GRR and RSR.

In addition, while the RSR and the inclusion of the deferral within the RSR are the most significant cost associated with the modified ESP, but for the RSR it would be impossible for AEP-Ohio to completely participate in full energy and capacity based auctions beginning in June 1, 2015. Although the decision for AEP-Ohio to transition towards competitive market pricing is something this Commission strongly supports and the General Assembly anticipated in enacting Senate Bill 221, the fact remains that the decision to move towards competitive market pricing is voluntary under the statute and in the event this ESP is withdrawn or even replaced with an MRO, there is no doubt that AEP-Ohio would not be fully engaged in the competitive marketplace by June 1, 2015.

The most significant of the non-quantifiable benefits is the fact that in just under two and a half years, AEP-Ohio will be delivering and pricing energy at market prices, which is significantly earlier than what would otherwise occur under an MRO option. If AEP-Ohio were to apply for an MRO it is not feasible to conclude that energy would be at market prices prior to June 1, 2015, even if the Commission were to accelerate the percentages set forth under Section 4928.142, Revised Code. Thirteen years ago our general assembly approved legislation to begin paving the way for electric utilities to transition towards market-based pricing, and provide consumers with the ability to choose their electric generation supplier. While the process has not been easy, we are confident that this plan will result in the outcome the general assembly intended under both Senate Bill 3 and Senate Bill 221, and this modified ESP is the only means in which this can be accomplished in less than two and a half years. Further, while the modified ESP will lead us towards true competition in the state of Ohio, it also ensures not only that customers will have a safe harbor in the event there is any uncertainty in the competitive markets by having a constant, certain, and stable option on the table, but also that AEP-Ohio maintains its financial stability necessary to continue to provide adequate, safe, and reliable service to its customers. Accordingly, we believe these non-quantifiable benefits significantly outweigh any of the costs.

Therefore, in weighing the statutory price test which favors the modified ESP by $9.8 million, as well as the quantifiable costs and benefits associated with the modified ESP, and the non-quantifiable benefits, as we find the modified ESP, is more favorable in the aggregate than what would otherwise apply under an MRO.

IV. CONCLUSION

Upon consideration of the modified ESP application filed by the Company and the provisions of Section 4928.143(C)(1), Revised Code, the Commission finds that the modified ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, as modified by this Order, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code. Therefore, the Commission finds that the proposed ESP should be approved, with the modifications set forth in this Order. As modified herein, the plan provides rate stability for customers, revenue certainty for the Company, and facilitates a transition to market. To the extent that interveners have proposed modifications to AEP-Ohio's modified ESP that have not been addressed by this Opinion and Order, the Commission concludes that the requests for such modifications are denied.

AEP-Ohio is directed to file, by August 16, 2012, revised tariffs consistent with this Order, to be effective with bills rendered as of the first billing cycle in September 2012.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) OP is a public utility as defined in Section 4905.02, Revised Code, and, as such, the Company is subject to the jurisdiction of this Commission.

(2) Effective December 31, 2011, CSP was merged with and into OP consistent with the Commission's December 14, 2011 Order in the ESP 2 cases. The merger was confirmed by entry issued March 7, 2012 in Case No. 10-2376-EL-UNC.

(3) On March 30, 2012, the Company filed modified applications for an SSO in accordance with Section 4928.141, Revised Code.

(4) On April 9, 2012, a technical conference was held regarding AEP-Ohio's modified ESP applications.

(5) Notice was published and public hearings were held in Canton, Columbus, Chillicothe, and Lima where a total of 66 witnesses offered testimony.

(6) A prehearing conference on the modified ESP application was held on May 7, 2012.

(7) The following parties filed for and were granted intervention in AEP-Ohio's modified ESP 2 proceeding: IEU, Duke Retail, OEG, OHA, OCC, OPAE, Kroger, FES, Paulding, APJN, OMAEG, AEP Retail, P3, Constellation, Compete, NRDC, Sierra Club, RESA, Exelon, Grove City, AICUO, Wal-Mart, Dominion Retail, ELPC, OEC, Ormet, Enernoc, IGS, Ohio Schools, Ohio Farm Bureau Federation, Ohio Restaurant Association; Duke, DECAM, Direct, The Ohio Automobile Dealers Association, Dayton Power and Light Company, NFIB, Ohio Construction Materials Coalition, COSE, Border Energy Electric Services, Inc., UTIE; (Summit Ethanol); city of Upper Arlington, Ohio; Ohio Business Council for a Clean Economy; city of Hillsboro, Ohio; and CPV Power Development, Inc.

(8) Motions for protective orders were filed by AEP-Ohio on July 1, 2011, May 2, 2012, by OMAEG, IEU, FES, and Exelon on May 4, 2012, AEP-Ohio on May 11, 2012. The attorney examiners granted the motions for protective order in the evidentiary hearing on May 17, 2012.

(9) Additional motions for protective order were filed by Ormet on June 29, 2012, and July 9, 2012, by IEU on June 29, 2012, and by AEP-Ohio on July 5, 2012 and July 12, 2012.

(10) The evidentiary hearing on the modified ESP 2 was called on May 17, 2012, and concluded on June 15, 2012.

(11) Briefs and reply briefs were filed on June 29, 2012, and July 9, 2012, respectively.

(12) Oral arguments before the Commission were held on July 13, 2012.

(13) The proposed modified ESP, as modified pursuant to this opinion and order, including the pricing and all other terms and conditions, deferrals and future recovery of the deferrals, and quantitative and qualitative benefits, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

VI. ORDER:

It is, therefore,

ORDERED, That IBEW's and Hilliard's requests to withdraw from these proceedings are granted. It is, further,

ORDERED, That the motions for protective order as discussed herein be granted for 18 months from the date of this Order. It is, further,

ORDERED, That the Company should eliminate Rider Emergency Curtailable Services (ECS) and Rider Price Curtailable Service (PCS) from its tariff service offerings and Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, closed of record and dismissed. It is, further,

ORDERED, That IEU's request to review the procedural rulings is denied. It is, further,

ORDERED, That OCC/APJN's motion to take administrative notice be denied. It is, further,

ORDERED, That OCC/APJN's motion to strike AEP-Ohio's reply brief be granted in part and denied in part. It is, further,

ORDERED, That the Company shall file proposed final tariffs consistent with this Order by August 16, 2012, subject to review and approval by the Commission. It is, further, ORDERED, That a copy of this opinion and order be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

Lynn Slaby

JJT/GNS/vrm

Entered in the Journal
AUG 08 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan.	)	Case No. 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.	)	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM

DISSENTING OPINION OF COMMISSIONER CHERYL L. ROBERTO

I decline to join my colleagues in finding that the quantitative advantage of $388 million dollars that an MRO would enjoy over the proposed ESP is overcome by the non-quantifiable benefit of moving to market two years and three months faster than what would have occurred under an MRO. For this reason, I do not find that the proposed modified ESP, as modified pursuant to the opinion and order, including the pricing and all other terms and conditions, deferrals and future recovery of the deferrals, and quantitative and qualitative benefits, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code. Because of this conclusion, it is unnecessary for me to discuss further any individual conclusion within the order or feature of the ESP.

Cheryl L. Roberto

Cheryl L. Roberto

CLR/sc

Entered in the Journal

AUG 08 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan.	)	Case No. 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.	)	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM

CONCURRING OPINION OF COMMISSIONER LYNN SLABY

I agree with the conclusions of the majority. However, I write separately to express my reservations on the use of a retail stability rider (RSR). It is my opinion that generally the use of an RSR with decoupling components lacks certain benefits to consumers. In addition, a company that receives that RSR has little, if any, incentive to look for more operating efficiencies to reduce consumer costs. Consequently, these inefficiencies could lead to additional costs to consumers in the long run. Although these concerns led to my reservations in this present case, I am also fully aware that certain cases present specific circumstances that necessitate setting aside individual concerns for the greater good.

In Case No. 10-2929-EL-UNC, the Commission agreed to defer the recovery of the difference between the market price and the companies' cost of generation. This created a need to establish a mechanism to recover those costs. Although I generally disagree with the use of RSRs for recovering deferred costs, in this case I side with the majority in order to meet our mission. Our mission is to ensure all residential and business consumers access to adequate, safe and reliable utility services at a fair price, while facilitating an environment that provides competitive choices. We as a Public Utilities Commission have to balance the rights of the consumer to ensure safe and reliable service at a fair cost while also making sure that companies receive sufficient revenues to provide that service in a safe and reliable manner.

This decision will help move the company to a fully competitive market at the end of the ESP term, which has been the overall goal of the state legislature since the adoption of Senate Bill 3 in 1999. Furthermore, by creating an RSR without decoupling components, we are stabilizing the rate structure over the next three years. This provides customers a stabilized rate or the opportunity to shop for a better rate, depending on what the market presents during the term of the ESP. Overall, this decision is not only important to the State statutory goal of free and open competition in the market place, but also to the philosophy of this Commission. Therefore, in this isolated case, I find the use of an RSR to be an appropriate mechanism to allow the Company to begin to recover its deferred costs.

Lynn Slaby

Lynn Slaby

LS/sc

Entered in the Journal

AUG 08 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

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

ENTRY

The Commission finds:

(1) Ohio Power Company and Columbus Southern Power Company (AEP-Ohio or the Companies) are electric light companies as defined in Section 4905.03(A)(3), Revised Code, and public utilities as defined in Section 4905.02, Revised Code. As such, the Companies are subject to the jurisdiction of the Commission in accordance with Sections 4905.04 and 4905.05, Revised Code.

(2) Sections 4905.04, 4905.05, and 4905.06, Revised Code, grant the Commission authority to supervise and regulate all public utilities within its jurisdiction.

(3) On November 1, 2010, AEP Electric Power Service Corporation, on behalf of AEP-Ohio, filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. At the direction of FERC, AEP refiled its application in FERC Docket No. ER11-2183 on November 24, 2010. The application proposes to change the basis for compensation for capacity costs to a cost-based mechanism and includes proposed formula rate templates under which the Companies would calculate their respective capacity costs under Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement.

(4) Prior to the filing of this application, the Commission approved retail rates for the Companies, including recovery of capacity costs through provider-of-last-

resort charges to certain retail shopping customers, based upon the continuation of the current capacity charges established by the three-year capacity auction conducted by PJM, Inc., under the current fixed resource requirement (FRR) mechanism. *In re Columbus Southern Power Company*, Case No. 08-917-EL-SSO; *In re Ohio Power Company*, Case No. 08-917-EL-SSO. See also, *In re Columbus Southern Power Company and Ohio Power Company*, Case Nos. 05-1194-EL-UNC et al. However, in light of the change proposed by the Companies, the Commission will now expressly adopt as the state compensation mechanism for the Companies the current capacity charges established by the three-year capacity auction conducted by PJM, Inc. during the pendency of this review.

(5) Further, the Commission finds that a review is necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charges. As an initial step, the Commission seeks public comment regarding the following issues: (1) what changes to the current state mechanism are appropriate to determine the Companies' FRR capacity charges to Ohio competitive retail electric service (CRES) providers; (2) the degree to which AEP-Ohio's capacity charges are currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charges upon CRES providers and retail competition in Ohio.

(6) All interested stakeholders are invited to submit written comments in this proceeding within 30 days of the issuance of this entry and to submit reply comments within 45 days of the issuance of this entry.

It is, therefore,

ORDERED, That written comments be filed within 30 days after the issuance of this order and that reply comments be filed within 45 days of the issuance of this entry. It is, further, ORDERED, That a copy of this entry be served on AEP-Ohio and all parties of record in the Companies' most recent standard service offer proceedings, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Valerie A. Lemmie

Steven D. Lesser

Cheryl L. Roberto

GAP/sc

Entered in the Journal
DEC 0 8 2010

Reneé J. Jenkins
Secretary

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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

OHIO POWER COMPANY'S AND COLUMBUS SOUTHERN POWER COMPANY'S APPLICATION FOR REHEARING

On December 8, 2010, the Commission issued an Entry initiating this proceeding. In its Entry the Commission makes statements regarding and seeks information from interested parties concerning the application filed on November 24, 2010, on behalf of Ohio Power Company (OPCo) and Columbus Southern Power Company (CSP) (collectively referred to as "AEP Ohio" or "the Companies") with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-2183-000.

The Companies' FERC application seeks approval from the FERC to make changes to the wholesale charges that they assess for supplying capacity associated with retail loads served by alternative load-serving entities (also referred to in Ohio as competitive retail electric service (CRES) providers). Under the Fixed Resource Requirement (FRR) provisions in the PJM Interconnection, L.L.C. (PJM) Reliability Assurance Agreement (RAA), the amounts that the Companies currently recover from CRES providers in connection with their sales to retail customers that switch away from the Companies are set by PJM's Reliability Pricing Model (RPM) capacity auction prices. Those prices are not based upon, and would not permit the Companies to fully recover, their capacity costs. Accordingly, consistent with express provisions in the RAA and their rights established by the Federal Power Act (FPA), the

Companies requested approval for an alternative mechanism that would more accurately calculate and recover their capacity costs.

In its December 8 Entry, at Finding 4, the Commission first asserts that in *In re Columbus Southern Power Company*, Case No. 08-917-EL-SSO, and *In re Ohio Power Company*, Case No. 08-918-EL-SSO (*ESP Cases*), it approved retail rates, "including recovery of capacity costs through provider-of-last-resort (POLR) charges to certain retail shopping customers, based upon the continuation of the current capacity charges established by the three-year capacity auction conducted by PJM, Inc., under the current fixed resource requirement (FRR) mechanism."

Next, also in Finding 4 of its December 8 Entry, the Commission concludes that, as a result of the Companies' application to the FERC, "the Commission will now expressly adopt as the state mechanism for the Companies the current capacity charges established by the three-year capacity auction conducted by PJM, Inc. during the pendency of this review."

The Commission further finds, at Finding 5 of its December 8 Entry, that a review is necessary in order to determine the impact of the proposed change to AEP Ohio's FERC-regulated wholesale capacity charges. As a result, the Commission's Entry seeks comment regarding "(1) what changes to the current state mechanism are appropriate to determine the Companies' FRR capacity charges to Ohio competitive retail electric service (CRES) providers; (2) the degree to which AEP-Ohio's capacity charges are currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charges upon CRES providers and retail competition in Ohio."

Pursuant to §4903.10, Ohio Rev. Code, and §4901-1-35(A), Ohio Admin. Code, the Companies respectfully apply for rehearing of the Commission's December 8, 2010, Entry. The Entry is unreasonable and unlawful in the following respects:

I. The Commission's Entry is unlawful and unreasonable in finding that the POLR charges approved in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO cover the Companies' costs of supplying capacity for retail loads served by CRES providers; the Commission also erred in finding that the approved POLR charges were based upon the continued use of RPM auction prices to set capacity charges for CRES providers.

   A. The Provider of Last Resort Obligation under Ohio law

   B. The approved POLR charge and the wholesale RAA capacity charge are related to separate services that are based on distinct costs.

   C. CSP's and OPC's POLR charges approved in the *ESP Cases* simply do not reflect the capacity costs recovered under the FRR charges.

   D. The Commission's decision in the *Ormet Case* and the *Eramet Case* also directly undercut the Entry's present finding that the approved POLR charges already reflect the capacity cost associated with shopping customers.

II. The Commission's Entry establishing an interim wholesale capacity rate is unreasonable and unlawful because the Commission is a creature of statute and lacks jurisdiction under both Federal and Ohio law to issue an order affecting wholesale rates regulated by the Federal Energy Regulatory Commission.

III. The Entry was issued in a manner that denied AEP Ohio due process and violated statutes within Title 49 of the Revised Code, including Sections 4903.09, 4905.26, and 4909.16, Revised Code.

IV. Finding 4 of the Entry and subpart 1 of Finding 5 must be reversed and vacated because they are in direct conflict with, and preempted by, federal law.

A memorandum in support of this application for rehearing is attached.

Respectfully submitted,

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Counsel for Columbus Southern Power Company
and Ohio Power Company

MEMORANDUM IN SUPPORT

In FERC Docket No. ER11-2183-000, CSP and OPCo have applied for authority to revise the amounts that they charge for supplying capacity associated with retail loads served by alternative load-serving entities (referred to in Ohio as competitive retail electric service (CRES) providers).[1] Under the Fixed Resource Requirement (FRR) provisions in the PJM Interconnection, L.L.C. (PJM) Reliability Assurance Agreement (RAA), the amounts that CSP and OPCo currently recover from the CRES providers in connection with CRES providers' sales to retail customers that switched away from CSP/OPCo are set by PJM's Reliability Pricing Model (RPM) capacity auction prices. Those prices will not permit the Companies to fully recover their costs. Consequently, consistent with the express provisions of the RAA and rights established by the Federal Power Act, the Companies submitted an alternative mechanism to more accurately calculate and recover their costs of supplying capacity for retail loads served by CRES providers.

Through their application to FERC, the Companies sought to revise the compensation they receive for meeting their FRR capacity obligations in accordance with Section D.8 of Schedule 8.1 of the RAA.[2] That provision expressly provides that the Companies may, "at any time, make a filing with FERC under Section 205 of the Federal Power Act proposing to change the basis for compensation to a method based on [their] cost or such other basis shown to be just and reasonable." While it is true that Section D.8 also references the option of a "state compensation mechanism" and suggests that a state mechanism may "prevail" in lieu of a

[1] American Electric Service Corporation initially filed on November 1, 2010, an application with FERC in FERC Docket No. ER11-1995, on behalf of the Companies. Pursuant to a Deficiency Letter issued on November 19, 2010, the Companies' revised application was refiled with FERC in FERC Docket No. ER11-2183-000 on November 24, 2010.

[2] PJM Rate Schedule FERC No. 44 at 113, Section D.8 of Schedule 8.1 of the RAA ("Section D.8").

federally-approved alternative, that reference does not justify the Commission's action in this instance and is inapplicable here for several reasons.

First, Congress has mandated that the FERC exercise plenary authority over the regulation of wholesale electric transactions involving the sale of capacity as well as the sale of energy. Thus, the state compensation mechanism referenced in Section D.8 cannot be invoked to usurp the Companies' right under Section 205 of the FPA to petition FERC to change the basis for compensating them for capacity charges to CRES providers. Nor can it be used to justify a state proceeding that seeks to undermine and derail a pending FERC proceeding commenced under the last proviso in Section D.8. Yet that apparently is what the Commission is doing here, as evidenced by its comments in the pending FERC proceeding.[3]

Second, even if a state regulatory entity could exercise authority to establish the capacity charges to be paid to the FRR Entity by CRES providers, this Commission has no authority to do so under Ohio law.

Third, even if were permissible for it do so as a matter of both federal and state law (which it is not), this Commission has not adopted a state compensation mechanism within the purview of Section D.8 because it has never issued an order that requires CRES providers to compensate the Companies for their FRR capacity obligations. It certainly did not do so in the *ESP Cases* when it approved provider-of-last resort ("POLR") charges to certain retail customers and it did not do so in the December 8 Entry. The POLR charges relate to an entirely different service and are based on an entirely different set of costs than the capacity charges provided for in Sch. 8.1, Sec. D.8 of the RAA. During the entire period in which the current retail POLR charges have been in effect, the Companies have been collecting the PUCO-approved POLR

[3] The Commission's December 10, 2010 Comments in Docket No. ER11-2183-000 state that there is no need for the FERC proceeding to advance because the Commission has provided a state compensation mechanism. Comments at 2 and n.1 (attached hereto as Attachment A).

charge from certain retail customers <u>and</u> the separate FERC-approved FRR capacity charge from CRES Providers. Heretofore, no one – not the Commission, not the CRES Providers and not the retail customers nor their advocates – has suggested that the POLR charge or any other PUCO-approved retail charge compensates the Companies for their capacity obligations under the RAA and is, in whole or in part, the state compensation mechanism referenced in Sch. 8.1, Sec. D.8. While the Entry in this proceeding purports to adopt an interim "state compensation mechanism," it does not do so effectively because it does not require switching customers or CRES providers to pay any additional amounts to the Companies to compensate them for the FRR capacity obligations.

Fourth, even if the prior ESP Orders or the December 8, 2010 Entry could be read to have established a state compensation mechanism for capacity charges to be paid by switching retail customers or CRES providers, the Commission's action would be invalid because the Commission failed to provide the Companies any semblance of due process by summarily purporting to establish a rate to be paid by CRES providers without any record basis to do so or any opportunity for the Companies to be heard on this issue.

Each of these reasons, which singly and collectively establish the grounds for rehearing, is discussed more fully below. Any one of these reasons requires the Commission to vacate its findings in paragraph 4 of the Entry.

The Commission erroneously asserts in Finding 4 of its Entry that in the *ESP Cases*, it approved retail rates, "including recovery of capacity costs through provider-of-last-resort (POLR) charges to certain retail shopping customers, based upon the continuation of the current capacity charges established by the three-year capacity auction conducted by PJM, Inc., under the current fixed resource requirement (FRR) mechanism." Also in Finding 4 of its December 8

Entry, the Commission unlawfully states that, as a result of the Companies' application to the FERC, "the Commission will now expressly adopt as the state mechanism for the Companies the current capacity charges established by the three-year capacity auction conducted by PJM, Inc. during the pendency of this review."

Each of these reasons also requires the Commission to vacate its finding in subsection 1 of paragraph 5 of the Entry. In subsection 1 of Finding 5, the Commission seeks comment regarding "what changes to the current state mechanism are appropriate to determine the Companies' FRR capacity charges to Ohio [CRES providers]." This finding is erroneously premised on the existence of a "current state mechanism," although no such mechanism is in place. It also would be unlawful as a matter of both federal and state law for the Commission to now adopt any mechanism to determine the Companies' FRR capacity charges.

The Commission further finds, at Finding 5 of its December 8 Entry, that a review is necessary in order to determine the impact of the proposed change to AEP Ohio's FERC-regulated wholesale capacity charges. As a result, the Commission's Entry seeks comment regarding ". . . (2) the degree to which AEP-Ohio's capacity charges are currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charges upon CRES providers and retail competition in Ohio."

While these subparts of Finding 5 of the Entry also appear to be designed to support taking further action in this proceeding regarding the Companies' wholesale capacity charges that are beyond this Commission's jurisdiction, AEP Ohio recognizes that the Commission has broad authority to investigate matters involving Ohio utilities and that it may explore such matters even as an adjunct to its own participation in FERC proceedings such as FERC Docket ER11-2183-000. Therefore, while the Companies disagree that there is any need for an investigation or PUCO proceeding regarding this matter, AEP Ohio plans to participate in the investigation component of this proceeding and its current application for rehearing is focused on the interim rate that the Commission purported to establish in Finding 4 of the Entry and on subpart 1 of Finding 5 that appears to be aimed at further modifying the wholesale capacity charge.

I. The Commission's Entry is unlawful and unreasonable in finding that the POLR charges approved in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO cover the Companies' costs of supplying capacity for retail loads served by CRES providers; the Commission also erred in finding that the approved POLR charges were based upon the continued use of RPM auction prices to set capacity charges for CRES providers.

The Commission's claim in its December 8 Entry that the POLR charges it approved for the Companies in the *ESP Cases* were intended to recover their costs of supplying capacity for retail loads served by CRES providers is without basis. That notion reflects a misunderstanding of the basis for the retail POLR rates approved for CSP's and OPC's retail customers. The POLR charges relate to an entirely different service and are based on an entirely different set of costs than the capacity rates provided for under Section D.8 of Schedule 8.1 of the RAA. As the record in the *ESP Cases* confirms, the POLR rates are not the "state compensation mechanism" envisioned under the RAA and there is no overlap (and thus no double recovery) between the Ohio retail POLR charges and the FRR compensation provided for under the RAA. Simply put, the PUCO's approval of retail POLR charges do not compensate CSP and OPC for the wholesale capacity that they are required to make available as FRR Entities under the RAA.

A. The Provider of Last Resort Obligation under Ohio law

Am. Sub. S.B. No. 3, 1999 Ohio SB 3, effective October 5, 1999 (SB 3) which was subsequently modified by S.B. 221, restructured regulation of electric utilities by introducing retail customer choice for electric generation service and providing for future deregulation of generation service in Ohio. Of importance to this proceeding, SB 3 granted retail customers the right to not shop and avoid market-based rates by taking the standard service offer ("SSO") of their electric distribution utility (*i.e.*, CSP and OPC). *See* Ohio Rev. Code Ann. § 4928.141 (2010). A unique aspect of Ohio's restructuring laws is that retail customers that do shop for alternative generation service may return to the utility's SSO if they subsequently decide to return or if their CRES provider turns the customer back or defaults on its obligation to serve. Ohio Rev. Code Ann. § 4928.14 (2010).

A corollary to these customer rights is the electric distribution utility's obligation to be the provider of last resort, a requirement imposed on electric distribution utilities by multiple statutory provisions.[4] When coupled with the right to choose a retail generation supplier, availability of the SSO means that a retail customer may freely leave the electric distribution utility when the market price is lower than the stabilized SSO rate and may just as easily return when the market price rises above the SSO rate. Given the volatile nature of market prices for electricity, there exists an opportunity for "churn" or migration of customers on and off SSO service. Another POLR obligation provides that customers of a defaulting competitive provider may return to the electric distribution utility's SSO until the customers choose an alternative supplier.[5] Thus, Ohio electric distribution utilities must stand ready to provide full generation services as necessary to fulfill their statutory POLR obligation.

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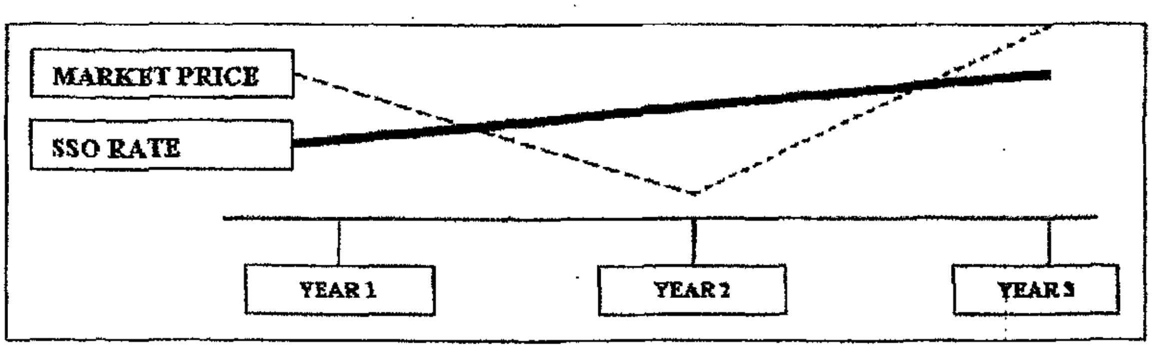
[4] R.C. § 4928.141(A) imposes on an electric distribution utility the requirement to provide consumers within its certified service territory "a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service." Ohio Rev. Code Ann. § 4928.141(A) (2010). CSP and OPC recover their capacity charges from retail customers through the PUCO-approved SSO rates and, for shopping customers, through the wholesale FRR capacity charges to CRES Providers approved by this Commission.

[5] Ohio Rev. Code Ann. § 4928.14 (2010).

B. The approved POLR charge and the wholesale RAA capacity charge are related to separate services that are based on distinct costs.

As the prior discussion confirms, CSP's and OPC's POLR obligations address the right of retail customers to shop and subsequently return for generation service under the SSO rates. This section demonstrates that, contrary to Finding 4 of the Entry, the Companies' POLR charges were never intended to compensate CSP and OPC for meeting their wholesale FRR capacity obligations to CRES Providers that serve shopping customers.

The PUCO-approved retail POLR charges reflect the value of the customers' right, or *option*, to switch suppliers but retain the safety net of the SSO rate; *i.e.*, retail customers have the right to come back to the Companies, *if* electricity prices move in a way that makes switching back to CSP or OPC an economically attractive choice or if a CRES Provider turns back the customer or defaults on its obligations. The value of that option existed at the beginning of the 2009-2011 rate term covered by the last PUCO proceeding, independent of the actual outcomes that eventually materialize in the future. In other words, CSP and OPC were obligated at the outset of that term, based on then-current circumstances and uncertainties, to provide an SSO rate for the full three-year term and undertake the attendant POLR risk. The simple hypothetical example in the diagram below illustrates the customers' POLR optionality and CSP's and OPC's attendant POLR risks:



Under this example, customers may stay on (or return to) the SSO rate in years 1 and 3, while they would likely shop in the market during year 2. CSP's and OPC's obligations to support the SSO price during the period covered by the PUCO rate orders was firmly established on the first day that the rates became effective, even though neither company could predict with certainty market prices (the dotted line) over the three subsequent years. The migration risk, for which the PUCO authorized the POLR charges, is illustrated in year 2 when customers could leave the SSO to pursue more favorable market prices. The retail POLR charge reflects the cost of the customers' POLR optionality, and the amounts collected through the POLR charges allow CSP and OPC to "hedge" against market changes and ride out fluctuations in SSO load. As explained in the next section, the POLR charge does not reflect the cost of CSP's and OPC's installed capacity.

C. CSP's and OPC's POLR charges approved in the ESP Cases simply do not reflect the capacity costs recovered under the FRR charges.

During the entire period in which the current retail POLR charges have been in effect, CSP and OPC have charged CRES providers the FRR capacity charge as provided for under the RAA. And during that entire time, neither the PUCO nor any CRES providers or shopping customers have ever argued that the FRR charges were duplicative of the POLR charges. Now that CSP and OPC have sought to increase the FRR charges to recover their costs, commenters in the FERC proceeding have seized upon snippets of AEP testimony taken out of context to argue that FRR charges coupled with CSP's and OPC's POLR charges results in a double charge. This is apparently the premise of the PUCO's own comments before the FERC (Attachment A to this application for rehearing). Of course, eliminating the FRR capacity charge would result in CRES providers getting free use of CSP's and OPC's capacity resources, which would be highly inequitable and inconsistent with express provisions of the RAA. When the PUCO's decision to adopt the retail POLR charges and AEP's supporting POLR testimony are examined in detail, it becomes obvious that there was never any intention that the POLR charges would displace the FRR capacity charges or serve as the "state compensation mechanism" under the RAA. Indeed, neither the RAA nor the FRR were raised in the PUCO proceeding in connection with the deliberation of the appropriate POLR charges.

The cost of CSP's and OPC's POLR obligations result from trying to balance and quantify two of the goals of electric restructuring in Ohio, not from the cost of AEP's installed capacity. The first goal is to preserve the customers' right to take competitive generation service from their electric distribution company or from CRES Providers. The second goal is to provide customers rate stability and protection from the volatility of short-term market prices through the existence of a default standard service offer. In the proceedings before the PUCO, AEP's POLR charge witness was J. Craig Baker, who described the potential conflict between these two goals in his direct testimony as follows:

> Despite the many changes to Ohio's customer choice legislation enacted in 1999 (Am. Sub. S.B. No.3 - S.B.3) that were made by S.B. 221, the fundamental premise of S.B. 3 remains. That is, all ***customers are free to switch to receive generation service from Competitive Retail Electric Service (CRES) providers.*** Further, customers can become part of a government aggregation group as another form of switching.
>
> ***Conversely, customers also are free to continue to rely on their incumbent utility for generation service at a tariff rate.*** Even those customers who switch can choose to return to their incumbent utility. Further, if the CRES provider to whom customers switched or the supplier to the government aggregation group were to default in its service obligation, those customers can return to the incumbent utility.
>
> ***This flexibility*** leaves the Companies in the precarious position of being exposed to losing generation service load when the market price is low but needing to stand ready to begin serving that load again when the market price is high, and in the case of a CRES or other supplier default, doing so at a moment's notice. There is a definite and significant cost associated with providing ***this flexibility.***
>
> In addition to the challenges of providing capacity and energy on short notice, ***the Companies would provide service to returning customers at the SSO rate***

(even though they are likely to be returning because market prices exceed the SSO).

ESP Cases, Cos. Ex. 2A at 25-26 (emphasis added) (attached hereto as Attachment B).

Further, Mr. Baker testified:

> [C]ustomers have the right to leave the utility and take service from an alternative supplier as well as the right to return to AEP's ESP pricing if future market price fluctuations make it advantageous for them to do so. AEP is holding the other side of that arrangement; AEP is obligated to stand ready to handle whatever load fluctuations may result from such switching. The financial risk inherent in such arrangements is a result of the asymmetrical relationship that exists between the two parties - one party is holding the rights that will bring financial benefits to themselves and at the same time impose financial losses on the other party.

Id. at 30. Mr. Baker went on to describe "the keys to understanding AEP's cost of providing its POLR obligation":

> Wholesale price volatility and the asymmetrical impacts of retail choice - *i.e.*, the customer is the party who holds the ability to choose if and when they want to take service from a competitive retail provider or under the utility's ESP plan - are the keys to understanding AEP's cost of providing its POLR obligation. The customers' option to switch providers can be demanded opportunistically, at the economic convenience of customers. In fact, Ohio's desire to create structures and incentives to encourage customer switching is one of the stated policy goals of SB 221. When determining the cost of AEP's POLR obligation, it is important to realize that in financial terms, such one-sided rights that customers receive through retail choice are equivalent to a series of options on power. When it becomes apparent that there are economic benefits from switching between a competitive supplier and the ESP price, the rational customer will exercise his or her flexibility to change providers. AEP, however, will bear the difference between market and ESP prices as a loss. Thus, an option pricing model provides an effective way to calculate the cost of AEP's POLR obligation.

Id. at 30-31. Finally, during cross-examination, Mr. Baker provided a very succinct description of the risks that the companies were attempting to quantify in determining the cost of the POLR obligation:

> In my view the [proposed POLR charge] is the series of options that are provided to customers, the right to leave the customer's tariff and go back -- the SSO tariff price and go to the market when it's economically attractive and then come back

> to the SSO rate when that's economically attractive. That's my definition of POLR.

ESP Cases, Tr. Vol. XIV at 193:18-25 (attached hereto as Attachment C).

When read in context, it becomes readily apparent that the Entry's conflation of the two charges is arbitrary and capricious. The decision in the *ESP Cases* contains absolutely no discussion of the CRES Providers' FRR obligations or the RAA provisions under which CSP and OPC serve as "FRR Entities" to enable the CRES Providers to meet those obligations. Rather, after hearing the evidence and considering the proposal, the PUCO acknowledged that AEP's proposed POLR charge would cover two distinct risks: "the cost of allowing a customer to remain with the Companies, or to switch to a [competitive] provider and then return to the Companies' SSO after shopping" and noted that CSP and OPC "utilized the Black-Scholes Model to calculate their cost of fulfilling the POLR obligation, comparing customers' rights to 'a series of options on power.'" *ESP Cases* (Mar. 18, 2009) at 38-39 (internal citations omitted) (included as Attachment C to FirstEnergy's Protest). The PUCO also recognized its Staff's position that there are "two risks involved: one risk is the risk of customers returning to the SSO and the other risk is that the customers leave and take service from a [competitive] provider (migration risk)." *Id.* at 39. Regarding the migration risk (that customers could migrate, *i.e.*, leave when market prices drop below the SSO rate during the period of the ESP), the PUCO granted most of the requested POLR revenue requirement in order to compensate AEP Ohio for that risk. *Id.* at 40. Regarding the second risk (a customer shopping and then returning to the SSO rate when the market price goes back up), the PUCO permitted shopping customers to bypass the POLR charge only if they agree (at the time they begin shopping) to pay a market price if they end up returning to SSO service later. *Id.*

Finding 4 of the Entry does not cite even a single passage from the *ESP Cases* record wherein the RAA or the FRR obligations were ever mentioned in the context of the POLR charges, let alone any record-basis that the POLR charges were approved for those purposes. The silence speaks volumes. Of course, there is no record basis to conclude that the approved POLR charges reflect the cost of capacity to support a CRES provider's generation service to a shopping customer and, likewise, no basis to presume that the POLR charge somehow overlaps with the wholesale capacity charge or otherwise results in double recovery for AEP Ohio. Indeed, if the Commission had believed that the POLR charge already resulted in recovery of such capacity charges for AEP Ohio, there would have been no reason to further adopt the RPM-based wholesale capacity charge for AEP Ohio – as Finding 4 purports to do. Rather, Finding 4's conclusion that the POLR charge already reflects such capacity costs and simultaneous decision to adopt the RPM-based wholesale capacity charge fundamentally amounts to a *non sequitur* and serves to further compound the Commission's error.

Similarly, the Commission in the *ESP Cases* ordered that the Companies' approved POLR charge could be avoided by shopping customers who promise to pay a market rate if they return to the SSO. (*ESP Cases*, Opinion and Order at 40.) To the extent that the POLR charges reflect capacity costs associated with shopping customers, this would mean that such customers would receive free capacity during the entire period when they shop (which could be permanent). This makes no sense and further reveals that a charge that is bypassable by a customer cannot possibly be recovering capacity costs for serving that same customer. Thus, not only would this be unduly discriminatory and anti-competitive – to the unfair advantage of competing CRES providers serving those shopping customers – but it would also mean that customers receive free capacity at the expense of AEP Ohio. On rehearing, the Commission should recognize that the Entry misapprehends the POLR charge approved in the *ESP Cases* and reverse Finding 4.

D. The Commission's decision in the Ormet Case and the Eramet Case also directly undercut the Entry's present finding that the approved POLR charges already reflect the capacity cost associated with shopping customers.

Finally in this regard, the Entry's presumption that the POLR charges reflect capacity costs of serving shopping customers is flatly inconsistent with other decisions wherein the Commission had occasion to interpret and clarify the POLR charges after the decision in the *ESP Cases*. More specifically, in its July 15, 2009 Opinion and Order in Case No. 09-119-EL-AEC (*Ormet Case*), the Commission addressed the POLR charges as follows:

> The Commission finds that under the terms of the unique arrangement AEP-Ohio will be the exclusive supplier to Ormet (Tr. I at 37-38; Tr. IV at 484). Therefore, there is no risk that Ormet will shop for competitive generation and then return to AEP-Ohio's POLR service. If AEP-Ohio were to retain these charges, AEP-Ohio would be compensated for a service it would not be providing. * * * During the term of the unique arrangement, AEP-Ohio shall credit any POLR charges paid by Ormet to its economic development rider in order to reduce the impact of the unique arrangement on other ratepayers' bills.

Ormet Case, Opinion and Order at 13-14. This position was upheld by the Commission in its September 15, 2009 Entry on Rehearing in the *Ormet Case*.

Similarly, in its October 15, 2009 Opinion and Order in Case No. 09-516-EL-AEC (*Eramet Case*), the Commission found that the customer agreed not to shop during the term of the proposed reasonable arrangement. *Eramet Case*, Opinion and Order at 7 ("Based upon the evidence in the record, the Commission finds that that Eramet knowingly decided that it would not shop for electric service in exchange for securing a long-term power contract with CSP.") As with the *Ormet Case*, the Commission decided in the *Eramet Case* to eliminate the POLR charge for the affected customer:

> If there is no risk of Eramet shopping and returning to standard offer service during CSP's ESP, CSP will incur no costs for providing POLR service that can be recovered under Section 4905.31, Revised Code. Accordingly, the Commission finds that CSP should credit any POLR charges paid by Eramet to its economic development rider in order to reduce the amount of delta revenues recovered from other ratepayers.

Eramet Case, Opinion and Order at 8-9. This decision was upheld on the Commission's March 24, 2010 Entry on Rehearing in the *Eramet Case*.

Thus, both the decision in the *Ormet Case* and the decision in the *Eramet Case* clearly and unequivocally hold that the Companies POLR charges are based strictly on the migration risk associated with shopping and that risk is nonexistent (and the attendant cost being recovered through the POLR charges is not incurred) where a customer agrees not to shop.[6] There is no discussion of the POLR charges reflecting capacity costs of any kind. Indeed, the direct and explicit impact of the Commission's decisions in the *Ormet Case* and the *Eramet Case* is that the involved customers avoid the POLR charges even though AEP Ohio was deemed to be the exclusive supplier for those customers and would clearly incur capacity costs in serving them. Hence, those decisions confirm that the POLR charges do not reflect capacity costs.

II. The Commission's Entry establishing an interim wholesale capacity rate is unreasonable and unlawful because the Commission is a creature of statute and lacks jurisdiction under both Federal and Ohio law to issue an order affecting wholesale rates regulated by the Federal Energy Regulatory Commission.

The Commission's attempt in Finding 4 to "expressly adopt as its state compensation mechanism the AEP Ohio Companies' charges established by the reliability pricing model's three-year capacity auction conducted by PJM" is not sustainable. It appears that the Commission has determined that, in light of the rates proposed by the Companies' FERC filing, it

[6] AEP Ohio's reference to these decisions in no way endorses them. AEP Ohio has challenged the decisions before the Supreme Court of Ohio in Case Nos. 2009-2060, 2010-722 and 2010-723. But the decisions do represent the Commission's views on the approved POLR charges and that is the context of AEP Ohio referencing them here.

was necessary for the Commission to step in and establish its own mechanism for the Companies to recover FRR capacity costs from CRES providers. In particular, the Commission's Entry purports to establish, on an interim basis, the prices that the Companies may charge for providing capacity to support CRES providers' sales to retail customers. But the provision of generation capacity to CRES providers is a wholesale transaction that falls within the exclusive ratemaking jurisdiction of the FERC.[7] The FERC recently reiterated that its "authority under the FPA includes the exclusive jurisdiction to regulate the rates, terms and conditions of sales for resale of electric energy in interstate commerce," and that efforts by a state commission to set the rate for the wholesale sale of electric energy are preempted by FERC's exclusive jurisdiction.[8] Recognition of FERC's exclusive jurisdiction over the FRR capacity compensation received from "alternative retail LSEs" (*i.e.*, the CRES providers) is memorialized in Section D.8, which expressly reserves the right of each "FRR Entity" (*i.e.*, CSP and OPCo) to make filings under FPA Section 205, and the right of each retail LSE (*i.e.*, a CRES Provider) to "at any time exercise its rights under Section 206 of the FPA."

Alternatively, even assuming the Commission is not precluded by federal law from regulating wholesale transactions involving capacity (although it clearly is), the Commission cannot adopt as the state compensation mechanism for the Companies the current capacity charges the Companies charge CRES Providers under the PJM Tariff. That action is entirely at odds with Sec. D.8. That section sets out three possible alternatives for the recovery of FRR

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[7] *See* FPA Section 201(b), 16 U.S.C. § 824(b) (2006); *e.g.*, *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 374, (1988) ("Congress has drawn a bright line between state and federal authority in the setting of wholesale rates"); *FPC v. Southern Cal. Edison Co.*, 376 U.S. 205, 215-16 (1964) ("Congress meant to draw a bright line easily ascertained, between state and federal jurisdiction, making unnecessary such case-by-case analysis. This was done in the Power Act by making FPC jurisdiction plenary and extending it to all wholesale sales in interstate commerce..."); *U.S. v. Public Utilities Comm;n of California*, 345 U.S. 295, 308 (1953) ("Congress interpreted [*Attleboro*] as prohibiting state control of wholesale rates in interstate commerce for resale, and so armed the Federal Power Commission with precisely that power").

[8] *Public Utilities Comm'n of California*, 132 FERC ¶ 61,047 at P 64 (2010).

capacity charges: 1) a state compensation mechanism; 2) the establishment of capacity charges through the capacity auction in accordance with Attachment DD to the PJM Tariff as the default option in the event there is no state compensation mechanism; or 3) a cost-based method or other "just and reasonable" method specific to the FRR Entity based upon a filing made "at any time" and approved by the FERC. Section D.8 does not allow the Commission to adopt the federal default option as a temporary or permanent state compensation mechanism; these are mutually exclusively options, as evidenced by the fact that the default option becomes available only if there is no state compensation mechanism. And, it clearly does not allow the Commission to preempt the FRR Entities' right under Section 205 of the Federal Power Act to propose a change in the basis for compensating it for its capacity obligations by locking in the current capacity charges established in accordance with Attachment DD to the PJM Tariff to the exclusion of any alternative basis the FRR Entity might otherwise be permitted to propose.

Moreover, the Commission is a creature of statute and has no statutory authority beyond that conferred by the General Assembly. *See Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 373, 2007-Ohio-53, 859 N.E.2d 957 (2007) (*citing Reading v. Pub. Util. Comm.*, 109 Ohio St.3d 193, 2006-Ohio-2181, 846 N.E.2d 840, ¶ 13 (2006)). Ohio law does not confer upon the Commission – even assuming that doing so would be permitted under Federal law (which it is not) – the authority to regulate wholesale transactions. No provision of Title 49, Ohio Rev. Code, authorizes the Commission to establish wholesale prices for the Companies provision of capacity that CRES providers require in order to serve their retail electric generation service customers. Even though the Commission suggests that it is acting out of concern for "retail competition in Ohio" (December 8 Entry, at Finding 5), "[a] concern for the future of the competitive market does not empower the commission to create remedies beyond the parameters of the law." *Industrial Energy Users v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 491, 2008-Ohio-990, 885 N.E.2d 195 (2008) (citation omitted).

When the General Assembly wants to empower the Commission to perform acts delegated to it under federal law, it must confer statutory jurisdiction to do so – as it has done in order to implement the 1996 Telecommunications Act through enactment of Section 4927.04, Revised Code. The General Assembly has not chosen to do so in this instance. Thus, even if FERC had delegated authority to establish wholesale capacity charges (which it has not), the Commission lacks subject matter jurisdiction under Ohio law to do so. Accordingly, Finding 4 of the Entry should be reversed and vacated on rehearing.

III. The Entry was issued in a manner that denied AEP Ohio due process and violated statutes within Title 49 of the Revised Code, including Sections 4903.09, 4905.26, and 4909.16, Revised Code.

There is another, and more fundamental, flaw in the Commission's determination in Finding 4 of its Entry to adopt the current RPM auction prices as the state compensation mechanism for the Companies during the pendency of its review in this proceeding. Even assuming the Commission has subject matter jurisdiction to establish a wholesale capacity charge (which it does not), multiple provisions within Title 49 of the Revised Code require that the Commission provide a public utility due process prior to unilaterally establishing or changing a rate. Consequently, Finding 4 of the Entry violates Ohio law and should be reversed and vacated on rehearing.

The Commission "may temporarily alter [or] amend" an existing rate without a hearing only "[w]hen the . . . commission deems it necessary to prevent injury to the business or interests of the public or of any public utility of this state in case of any emergency[.]" §4909.16, Ohio

Rev. Code. The Companies' filing of a FERC application seeking to modify the basis on which it recovers its capacity costs, however, would not credibly qualify as an "emergency" for which unilateral, immediate action by the Commission would be necessary "to prevent injury to the business or interests of the public[.]" *Id.* Regardless, the Commission's December 8 Entry gives no indication that the Commission was acting pursuant to §4909.16.

Absent an emergency situation, the Ohio Revised Code requires the Commission to provide notice and a public hearing before setting a utility rate, even if the ratemaking is only temporary. *See, e.g.*, *Lucas Cty. Commrs. v. Pub. Util. Comm.*, 80 Ohio St. 3d 344, 347, 686 N.E.2d 501 (1997) (holding that, "[p]ursuant to R.C. 4905.26 and 4909.15(D), the commission may conduct an investigation and hearing, and fix new rates to be substituted for existing rates, if it determines that the rates charged by a utility are unjust or unreasonable."). In *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*, 64 Ohio St. 3d 145, 593 N.E.2d 286 (1992), the Court considered a Commission order prohibiting local exchange telephone companies ("LECs") from billing customer-owned, coin-operated telephone ("COCOT") providers for directory assistance calls placed by COCOT phone users. When the Commission issued that order, it explained that the prohibition was simply "'an interim policy position'" while the Commission investigated complaints that ratepayers were unfairly subsidizing the LECs' directory assistance service. *Id.* at 146. The Supreme Court of Ohio reversed and vacated the Commission's order. The Court held that "[r]egardless of how the action is characterized by the commission, it is still a rate change subject to the procedural requirements of R.C. 4905.26." *Id.* at 148. Accordingly, the Commission was required to provide notice and a public hearing under §4905.26, Ohio Rev. Code, which states in relevant part:

> upon the initiative or complaint of the public utilities commission, that any rate, fare, charge, toll, rental, schedule, classification, or service, . . . is in any respect

> unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, . . . if it appears that reasonable grounds for complaint are stated, the commission shall fix a time for hearing and shall notify complainants and the public utility thereof. . . . The parties to the complaint shall be entitled to be heard, represented by counsel, and to have process to enforce the attendance of witnesses.

Id. The Court explained that the statute required "a formal evidentiary hearing," rather than the "notice and comment format" that the Commission had attempted instead to use. *Id.* For the same reasons, the Commission may not impose a wholesale capacity charge on the Companies without notice and a full evidentiary hearing. The Commission's action in this proceeding purports to effect a rate change – it imposes a FRR capacity cost-recovery mechanism different from the mechanism that the Companies have sought FERC's approval to apply. Per the Supreme Court's finding in *Ohio Bell Telephone*, "before the commission may order a change in utility rates on policy grounds, the procedural requirements of R.C. 4905.26 for notice and a public hearing must first be satisfied." *Id.* The Commission here has not satisfied those statutory requirements. Regardless, the Commission provided no notice to the Companies of its intention to establish the rates that Finding 4 of its Entry purports to set. There is no rate-setting process contained in Ohio law that permits the Commission to establish rates for a public utility without first notifying the public utility of its intention to set rates. As a result, the Commission also failed to provide the Companies with any opportunity to be heard regarding the justness and reasonableness of the rates that the Commission established. The rates are not just and reasonable because they chronically under-recover the Companies' costs.

In addition, Section 4903.09, Ohio Rev. Code, requires that, in all contested cases, the Commission must make a complete record of its proceedings, including a transcript of all testimony and exhibits, and the Commission must file, with the record of the case, findings of fact and written opinions setting forth the reasons prompting its decisions, based upon those findings of fact. In this case, the results of which the Companies vigorously contest, the Commission created no record basis for the establishment of the rates that it set. Perhaps not surprisingly, as a result, its Entry provides virtually no explanation of the basis for and manner in which the Commission arrived at its decision to establish the rates that it set. Where the Commission's order fails to state specific findings of fact, supported by the record, and fails to state the reasons upon which the conclusions in the Commission's order were based, the order fails to comply with the requirements of §4903.09, Ohio Rev. Code, and is, therefore, unlawful. *Motor Service Co. v. Pub. Util. Comm.*, 39 Ohio St.2d 5, 313 N. E.2d 803 (1974). *See also Allnet Comms. Serv. v. Pub. Util. Comm.*, 70 Ohio St. 3d 202, 209, 638 N.E.2d 516 (1994) (holding that the Commission must at least "suppl[y] some factual basis and reasoning based thereon in reaching its conclusion."). For all of these reasons, Finding 4 of the Commission's December 8 Entry failed to provide AEP Ohio with the important due process protections provided by Title 49 of the Ohio Revised Code and must be reversed.

IV. Finding 4 of the Entry and subpart 1 of Finding 5 must be reversed and vacated because they are in direct conflict with, and preempted by, federal law.

The Commission lacked jurisdiction to issue Finding 4 and subpart 1 of Finding 5 of the Entry because they are in direct conflict with, and preempted by, federal law. The Commission acknowledges that this proceeding was initiated in direct response to the Companies' filing of an application with FERC, under Schedule 8.1, Section D.8 of the RAA to change the basis for compensating the Companies for their capacity obligations to a cost-based method. Entry at ¶3, citing FERC Docket No. ER11-1995. By this proceeding the Commission is seeking to delay or derail the FERC's own review and adjudication of the Companies' application to propose a change in the method for determining capacity charges.[9] As a result, the Commission's action – this proceeding – is an apparent attempt by the Commission to assert state jurisdiction in direct violation of federal law.

The central and common issue in this proceeding and in the pending FERC proceeding is the interpretation of Schedule 8.1, Sec. D.8 of the RAA. The RAA is a FERC-approved tariff and its interpretation and application falls within the exclusive jurisdiction of the FERC. *AEP Texas North Co. v. Texas Indus. Energy Consumers*, 473 F.3d 581, 585 (5th Cir. 2006) ("FERC, not the state, is the appropriate arbiter of any disputes involving a tariff's interpretation."). Thus, it is up to the FERC, not this Commission, to decide whether Ohio properly or effectively adopted a "state compensation mechanism" within the purview of Section D.8 in the Companies' *ESP Cases*. Similarly, it is up to FERC to decide if a state compensation mechanism can be properly or effectively initiated only after the FRR Entity has begun to collect capacity charges as determined in accordance with the PJM Tariff and in an effort to eliminate the FRR Entity's right to propose a change in method as expressly reserved in Schedule 8.1, Sec. D.8. Each of these issues falls within the exclusive jurisdiction of the FERC under the FPA. The Commission has already intervened in the pending FERC proceeding; it has and can continue to advance arguments that it has adopted, or yet may adopt, a state compensation mechanism in that proceeding.

That the Commission in this case is unlawfully intruding into an area reserved exclusively to the FERC is abundantly clear from settled precedent. The provision of service to CRES Providers is a wholesale transaction and as such it falls exclusively within the FERC's exclusive jurisdiction under FPA Section 201, 16 U.S.C. § 824(b), over "the sale of electric energy at wholesale in interstate commerce." *See generally*, *Mississippi Power & Light Co. v.*

[9] See note 3, *supra*.

Mississippi ex rel. Moore, 487 U.S. 354, 374 (1988) (recognizing the "bright line between state and federal authority in the . . . regulation of agreements that affect wholesale rates" and holding that states "may not consistent with the Supremacy Clause *conduct any proceedings* that challenge the reasonableness of FERC's [decisions]" (emphasis added)). FERC's exclusive jurisdiction unquestionably extends to the wholesale sale of capacity as well as the sale of energy. See e.g. *Conn. Dept. of Pub. Util. Control v. FERC*, 569 F.3d 477, 484 (D.C. Cir. 2009) ("[T]here is nothing special about capacity decisions that places them beyond the Commission's jurisdiction.")

The proceeding now pending before the FERC as Docket No. ER11-2183 is in effect a proceeding to amend the RAA by allowing the Companies to collect capacity charges on a cost-basis under Sch. 8.1, Sec. D.8 of the RAA. The FERC has the exclusive jurisdiction over that proposal to amend the tariff. To the extent that there is a question as to whether Ohio presently has a compensation mechanism in place in retail rates to compensate the Companies for their FRR capacity obligations that question may and should be resolved by the FERC. Consistent with the Supremacy Clause, this Commission may not usurp the FERC role in this regard. It may not do so by declaring *ipso facto* that a state mechanism was previously established. Nor can it do so by appropriating the current capacity charges determined under federal law and the federally-approved tariff as the state compensation mechanism.

Similarly, now that there is a proceeding pending before the FERC which specifically invokes the Companies' right under Section 205 of the FPA as reserved in a FERC-approved tariff, it is improper and unlawful for the Commission to initiate a proceeding to challenge the the Companies' capacity charges to CRES Providers. Under Section 205 of the FPA, 16 U.S.C. § 824d, FERC has the duty to ensure that all rates and charges for the transmission or sale of electric energy or capacity subject to its jurisdiction are "just and reasonable." This federal statute imposes a duty on the Commission and a concomitant right on the Companies. *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002). This right was memorialized in the RAA itself, but even if it had not been, the Companies' right to receive just and reasonable capacity charges could not have been undermined by the RAA. *Id.* (holding that a provision in an ISO operating agreement that required owners of transmission assets to give up their right to file changes in tariff rates, terms and conditions was unlawful as in conflict with Section 205 of the FPA). While Sch. 8.1, Sec. D.8 of the RAA recites that a state compensation mechanism may be established and may "prevail," it does not provide or suggest that the existence of a state mechanism, let alone the prospect of a someday-to-be state mechanism, abrogates FERC's plenary authority to review and determine whether charges within its jurisdiction are just and reasonable or waives the Companies' statutory right to petition the FERC to authorize changes in the methods by which the Companies are compensated for service subject to the FERC's jurisdiction.

Thus, separate and apart from the issues of whether this Commission might have established in the past a proper and enforceable state compensation mechanism consistent with Sec. D.8, federal law and its limited state authority, or whether it might yet do so at some time in the future -- issues which must be decided in the negative for the reasons already discussed – at the present time with a proceeding pending before the FERC to review the Companies' proposed changes for recovering capacity costs associated with retail loads associated with CRES providers, it is beyond cavil that the Commission's Entry, which was expressly intended to stop the pending FERC proceeding, is preempted by federal law. Consistent with the Supremacy Clause,

> Congress has drawn a bright line between state and federal authority in the setting of wholesale rates and in the regulation of agreements that affect wholesale rates. States may not regulate in areas where FERC has properly exercised its jurisdiction to determine just and reasonable wholesale rates or to ensure that agreements affecting wholesale rates are reasonable.

Mississippi Power & Light, 487 U.S. at 374. Schedule 8.1., Sec. D.8 of the RAA is a provision within a FERC-approved tariff. Its interpretation and application is a matter within the exclusive jurisdiction of the FERC. By opening this proceeding, and creating a parallel state review of the reasonableness of the Companies' capacity charges, the Commission acted in flagrant disregard and disrespect of the supremacy of federal law.

CONCLUSION

For the foregoing reasons, the Commission should grant rehearing to reverse and vacate the interim rate established in Finding 4 of the Entry and to narrowly tailor its review of the Companies' current capacity charges as proposed in Finding 5 to be consistent with its limited authority under both federal and state law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that Columbus Southern Power Company's and Ohio Power Company's foregoing Application for Rehearing was served by First-Class U.S. Mail upon counsel for all parties of record identified below this 7th[th] day of January, 2011.

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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

ENTRY ON REHEARING

The Commission finds:

(1) On November 1, 2010, AEP Electric Power Service Corporation (AEP), on behalf of Ohio Power Company and Columbus Southern Power Company (AEP-Ohio or the Companies), filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. The application proposes to change the basis for compensation for capacity costs to a cost-based mechanism and includes proposed formula rate templates under which the Companies would calculate their respective capacity costs under Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement. At the direction of FERC, AEP-Ohio refiled its application in FERC Docket No. ER11-2183 on November 24, 2010.

(2) On December 8, 2010, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charges and sought public comments on three issues. All interested stakeholders were directed to file written comments with the Commission by January 7, 2011 and to file written reply comments by January 22, 2011. By entry issued January 21, 2011, the due date for reply comments was extended to February 7, 2011.

(3) On January 7, 2011, AEP-Ohio filed an application for rehearing of the Commission's December 8, 2010 entry asserting that the entry was unjust, unreasonable or in violation of law in four respects. First, AEP-Ohio argues that the entry is unlawful and unreasonable to the extent that it finds that the provider of last resort (POLR) charges, approved in the Companies' electric security plan (ESP) cases,[1] cover the

1 *In re AEP-Ohio,* Case No. 08-917-EL-SSO and 08-918-EL-SSO, Opinion and Order (March 18, 2009).

Companies' cost of supplying capacity for retail loads served by competitive retail electric service (CRES) providers. AEP-Ohio asserts that the Commission also erred in finding that the approved POLR charges were based upon the continued use of Reliability Pricing Model auction prices to set capacity charges for CRES providers.

(4) Second, AEP-Ohio argues that the entry establishing an interim wholesale capacity rate is unreasonable and unlawful because the Commission is a creature of statute and lacks jurisdiction under both federal and Ohio law to issue an order affecting wholesale rates regulated by FERC.

(5) Third, according to AEP-Ohio, the entry was issued in a manner that denied AEP-Ohio due process and violated statutes within Title 49 of the Revised Code, including Sections 4903.09, 4905.26, and 4909.16, Revised Code.

(6) Finally, AEP-Ohio argues that Finding (4) and subpart (1) of Finding (5) of the December 8, 2010 entry must be reversed and vacated because they are in direct conflict with, and preempted by, federal law.

(7) Memoranda contra the application were filed by Industrial Energy Users-Ohio, FirstEnergy Solutions Corp., and Ohio Partners for Affordable Energy and jointly by Constellation Newenergy, Inc. and Constellation Energy Commodities Group, Inc.

(8) The Commission grants AEP-Ohio's application for rehearing. We believe that sufficient reason has been set forth by AEP-Ohio to warrant further consideration of the matters specified in the application for rehearing. However, the Commission notes that the state compensation mechanism adopted in our December 8, 2010, Finding and Order will remain in effect during the pendency of our review.

It is, therefore,

ORDERED, That AEP-Ohio's application for rehearing be granted for further consideration of the matters specified in the application. It is, further.

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Steven D. Lesser, Chairman

Paul A. Centolella

Valerie A. Lemmie

Cheryl L. Roberto

GNS/vrm

Entered in the Journal FEB 02 2011

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals.	)	Case No. 10-2376-EL-UNC
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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan.	)	Case No. 11-346-EL-SSO Case No. 11-348-EI-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.	)	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Amend their Emergency Curtailment Service Riders.	)	Case No. 10-343-EL-ATA Case No. 10-344-EL-ATA
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
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Mechanisms to Recover Deferred Fuel Costs Ordered Under Section 4928.144, Revised Code.	)	Case No. 11-4920-EL-RDR Case No. 11-4921-EL-RDR

ENTRY ON REHEARING

The Commission finds:

(1) On January 27, 2011, Columbus Southern Power Company's (CSP) and Ohio Power Company's (OP) (jointly, AEP-Ohio or

the Companies) filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code, in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, and 11-350-EL-AAM. This original application was for approval of an electric security plan (ESP 2) in accordance with Section 4928.143, Revised Code. As filed, AEP-Ohio's SSO application for ESP 2 would commence on January 1, 2012, and continue through May 31, 2014.

(2) On September 7, 2011, numerous parties (Signatory Parties)[1] to the proceedings filed a Joint Stipulation and Recommendation (Stipulation) proposing to resolve the issues raised in AEP-Ohio's ESP 2 cases and related matters pending before the Commission in several other AEP-Ohio cases which include: an emergency curtailment proceeding in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA (Emergency Curtailment Cases); a request for the merger of CSP with and into OP in Case No. 10-2376-EL-UNC (Merger Case); a determination of the capacity charge that the Companies will assess on competitive retail electric service (CRES) providers in Case No. 10-2929-EL-UNC (Capacity Charges Case); and a request for approval of a mechanism to recover deferred fuel costs and accounting treatment in Case Nos. 11-4920-EL-RDR and 11-4921-EL-RDR (Fuel Deferral Cases). Pursuant to entry issued September 16, 2011, the hearing in the ESP 2 case was consolidated with the above listed cases for the sole purpose of considering the Stipulation.

(3) On December 14, 2011, the Commission issued its Opinion and Order in this proceeding, finding that the Stipulation, as modified by the order, should be adopted and approved. On December 22, 2011, AEP-Ohio filed its compliance tariffs and, on December 29, 2011, AEP-Ohio filed its revised detailed

1 The Signatory Parties to the Stipulation are: AEP-Ohio, Staff, Ohio Energy Group, Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc., Ohio Hospital Association (OHA), Ohio Manufacturers' Association Energy Group (OMAEG), The Kroger Company, the city of Hilliard, the city of Grove City, Association of Independent Colleges and Universities of Ohio, Exelon Generation Company, LLC, Duke Energy Retail Sales, LLC, AEP Retail Energy Partners LLC (AEP Retail), Wal-Mart Stores East, LP and Sam's East, Inc., Retail Energy Supply Association (RESA), Paulding Wind Farm II LLC, Ohio Environmental Council, Environmental Law and Policy Center , EnerNOC, Inc., Natural Resources Defense Council, and PJM Power Providers Group.

implementation plan (DIP), as modified by the Opinion and Order.

(4) Pursuant to Section 4903.10, Revised Code, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.

(5) On January 13, 2012, AEP-Ohio, Ormet Primary Aluminum Corporation (Ormet), Industrial Energy Users-Ohio (IEU-Ohio), Retail Energy Supply Association (RESA), OMA Energy Group (OMAEG), Ohio Hospital Association (OHA), FirstEnergy Solutions Corp. (FES), and the Ohio Consumers' Counsel and Appalachian Peace and Justice Network (OCC/APJN) filed applications for rehearing. Memoranda contra the various applications for rehearing were filed by the Ohio Environmental Council (OEC), FES, OCC/APJN, IEU-Ohio, OMAEG, RESA, and AEP-Ohio on January 23, 2012.

(6) On January 23, 2012, the Commission issued an entry that provided a number of clarifications regarding its December 14, 2011, Opinion and Order (Clarification Entry).

(7) By entry dated February 1, 2012, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing of the ESP 2 Opinion and Order.

(8) On February 10, 2012, AEP-Ohio filed an application for rehearing of the Commission's Clarification Entry, arguing among other things that the Clarification Entry exceeds the Commission's jurisdiction and violates the statutory rehearing process by expanding the Opinion and Order outside the statutory rehearing process. Further, AEP-Ohio argues the Clarification Entry is not supported by the record, forces AEP-Ohio to involuntarily provide a below-cost subsidy, and unreasonably retreats from the RPM-priced capacity set-aside limitations without an explanation. In addition, AEP-Ohio asserts that the Clarification Entry unreasonably imposes long-term obligations on AEP-Ohio while preserving the option to further modify the RPM set-aside levels in the future. Memoranda contra the application were filed by FES on February 17, 2012, IEU-Ohio on February 17, 2012, as revised

on February 21, 2012, and by Ormet and OCC/APJN on February 21, 2012. Memoranda in response to AEP-Ohio's second application for rehearing were filed by OEG and RESA on February 21, 2012.

(9) On February 17, 2012, IEU-Ohio filed an application for rehearing of the Commission's Clarification Entry, arguing the entry was unreasonable by not allowing all governmental aggregation programs that complete the necessary process by December 31, 2012, to have access to RPM-priced capacity. IEU-Ohio also asserts that the December 31, 2012, deadline to complete the government aggregation process is unreasonable. AEP-Ohio filed a memoranda contra IEU-Ohio's application for rehearing on February 21, 2012.

(10) In this Entry on Rehearing, the Commission has reviewed and considered all of the arguments on rehearing regarding the ESP 2 Order as well as the Clarification Entry. As discussed below, upon review of the applications for rehearing, the Commission has determined that the Stipulation, as a package, does not benefit ratepayers and the public interest and, thus, does not satisfy our three-part test for the consideration of stipulations. Accordingly, the Commission will reject the Stipulation. Further, the Commission notes that any arguments on rehearing not specifically discussed herein have been thoroughly and adequately considered by the Commission but are moot in light of our rejection of the Stipulation for the reasons stated below.

(11) FES alleges the Commission unreasonably failed to modify the Stipulation to impose specific conditions on the Companies' corporate separation and subsequent pool termination. FES proposes that the Commission require AEP-Ohio to provide more detail regarding what it expects from AEP-Ohio in future proceedings involving corporate separation and pool termination. FES also requests that the Commission require AEP-Ohio to provide all details in the corporate separation case regarding the corporate separation plan, including the fair market and book value, and an explanation of how fair market value was determined, for of all property that will be transferred. FES suggests the commission impose a penalty in the event that AEP-Ohio fails to achieve corporate separation and should encourage AEP-Ohio to be more diligent in

completing its corporate separation and pool termination. IEU-Ohio believes the Commission's generation asset divestiture is unlawful in that the transfer of generation assets was prematurely approved without determining that the requirements contained in Section 4928.17, Revised Code, were met.

(12) AEP-Ohio responds that the proposed modifications would add additional confusion to the corporate separation issue, and would take an extensive amount of time.

(13) In its application for rehearing, AEP-Ohio argues that the Commission's corporate separation modification is unlawful and unreasonable in that it applies Section 4928.17, Revised Code, and Chapter 4901:1-37, O.A.C., in an inconsistent manner with the corporate separation approved by the Commission in the Duke ESP proceeding. AEP-Ohio claims the Opinion and Order had discriminatory impact on AEP-Ohio. As a result, AEP-Ohio argues that the modification violates state policy of ensuring effective competition under Sections 4928.17, 4928.06, and 4928.02(H), Revised Code.

(14) FES challenges AEP-Ohio's arguments, noting the Signatory Parties provided no details on the generation asset transfer, and the Commission properly determined that additional time was necessary. FES notes that while AEP-Ohio claims it is receiving discriminatory treatment as compared to the Commission's ruling on Duke's corporate separation, the Stipulations in the Duke ESP case and this case are materially different, as evidenced by the extensive amount of detail Duke provided in its stipulation as compared to AEP-Ohio's Stipulation.

OCC/APJN also oppose AEP-Ohio's request for rehearing, explaining that the Commission's decision to take additional time was reasonable and in compliance with its statutory obligations. OCC/APJN contend that AEP-Ohio's arguments about inconsistent treatment are not ripe for Commission consideration. Further, even if the arguments were ripe for consideration, OCC/APJN point out that the Commission is not statutorily obligated to handle each corporate separation application in the same manner.

IEU-Ohio explains that the differences between the Duke and AEP-Ohio stipulations do not support AEP-Ohio's assertion that corporate separation should be approved through rehearing. IEU-Ohio points out that the Duke proceeding was resolved through an unopposed ESP stipulation, while this proceeding was contested, as were the waiver requests filed by AEP-Ohio. Further, IEU-Ohio states that the Companies have failed to demonstrate how the Commission's decision to provide further review of the corporate separation will injure the public interest, and assert that it unnecessary for the Commission to rush its judgment on the corporate separation proceedings.

(15) In approving the generation asset divestiture pursuant to Section 4928.17(E), Revised Code, the Commission authorized AEP-Ohio to divest its generation assets from its noncompetitive electric distribution utility (EDU) to a separate competitive retail generation subsidiary (AEP GenCo) and directed AEP-Ohio to notify PJM that the utility intends to enter its auction process for the delivery year 2015. However, as FES correctly points out in its application for rehearing, there is significant uncertainty regarding AEP-Ohio's plan to divest its generation assets, as evidenced by AEP-Ohio's recent filings with the Federal Energy Regulation Commission (FERC)[2] and conflicting interpretations of the Stipulation contained in the record. Because of the contradictory testimony and FERC filings of what AEP-Ohio's responsibilities were in its generation asset divestiture, we grant FES's application for rehearing.

The Stipulation provides that upon the Commission's approval of full legal corporate separation, AEP-Ohio's transmission and distribution assets will be held by the EDU, while any generation resource rider (GRR) assets will also remain with the EDU. Regarding the transfer of generation assets, AEP-Ohio's generation, fuel, and other assets would be transferred to AEP GenCo. This transfer of generation assets includes AEP-Ohio's existing generating units and contractual

2 On February 10, 2012, AEP-Ohio and other AEP operating companies made filings with FERC regarding corporate separation and the generation asset divestiture in docket numbers: EC12-71; EC12-70; EC12-69; ER12-1041, ER12-1047, 1048, 1049; ER12-1042,1043,1044, 1045, and 1046 . The Commission hereby takes administrative notice of those filings.

entitlements, as well as renewable energy purchase agreements, existing fuel-related assets and contracts, and other assets related to the generation business. (See Joint Ex. 1 at 11, AEP-Ohio Exhibit 7 at PJN-1)[3]. However, at the hearing, AEP witness Nelson testified that the Companies had not determined which of AEP-Ohio's existing generation assets would be bid into the RPM base residual auction. He further claimed that, while the first step would be to transfer all generation assets to AEP GenCo, there were numerous subsequent possibilities, including transferring a plant to an AEP affiliate to shore up their reserve margin or transferring the generation to a third party. In addition, Mr. Nelson explained that AEP-Ohio did not know whether all of its generating units, once transferred, would be bid into the base residual auction (Tr. V. at 690, 697-699, 751).

We note that, Mr. Nelson's testimony was presented under unique circumstances which undermine its credibility. On September 29, 2011, AEP-Ohio filed an expedited request and motion to substitute the testimony of its original witness, Richard Munczinski, with Mr. Nelson's testimony, due to an unforeseen conflict. While the substance and content between both sets of direct testimony were the same, on cross-examination Mr. Nelson testified that Mr. Munczinski was his "boss" at AEP Service Corporation, and that he had no role in the preparation of the direct testimony he was adopting (Tr. V at 681-682). Further, Mr. Nelson's testimony is inconsistent with Attachment PJN-1 to his direct testimony, which confirms that all of AEP-Ohio's existing generating units and contractual entitlements as referenced in Exhibit WAA-1 would be transferred to a newly-created AEP generation affiliate (AEP-Ohio Ex. 4). Moreover, Mr. Nelson speculated on cross-examination that there were many options available to AEP-Ohio for the disposition of its generation assets and claimed that the ultimate disposition of AEP-Ohio's generation assets was an "open question."

Mr. Nelson's testimony is contradicted by the testimony of two other Signatory Parties' witnesses. RESA witness Ringenbach

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3 In AEP-Ohio Ex. 7, Mr. Nelson states that the detailed description of the generation asset divestiture is contained in exhibit REM-1, however the attached exhibit is labeled as PJN-1, which Mr. Nelson corrected on the record (Tr. V. 675-676).

testified that the "[s]tipulation calls for AEP-Ohio to provide notice to PJM by March of 2012, that it intends to end its term as a Fixed Resource Requirement (FRR) entity and bid all of its load into the next base residual auction under the RPM construct," (RESA Ex. 1 at 6). Similarly, on cross-examination, Constellation witness Fein affirmed that AEP GenCo would be required to bid all the generation it owns into the RPM base residual auction (Tr. VI at 977).

The Commission's intent in approving the generation asset divestiture was based on our understanding that AEP-Ohio would place all of its current (as of September 7, 2011) generation assets into the 2015 base residual auction, pursuant to the plain language of the Stipulation. Our intent is supported by not only the language within the Stipulation but also the testimony of two of the Signatory Parties' primary witnesses. However, AEP-Ohio's FERC filing is inconsistent with the intent of the Commission in that it fails to ensure that all generation assets currently owned by AEP-Ohio will be bid into the upcoming base residual auction.

Based upon the contradictory testimony presented by the Signatory Parties' witnesses, AEP-Ohio's witness Nelson's claim that the ultimate disposition of AEP-Ohio's generation assets was an "open question," and the fact that AEP-Ohio's FERC filing regarding divestiture is inconsistent with the Commission's intent in approving the Stipulation, the Commission finds that there are fundamental disagreements regarding important issues allegedly resolved by the Stipulation. The resolution of these issues is critical to the underlying question of whether the Stipulation benefits ratepayers and the public interest; therefore, we find, upon review of the record of this proceeding, that the Signatory Parties have not met their burden of demonstrating that the Stipulation, as a package, benefits ratepayers and the public interest as required by the second prong of our three-part test for the consideration of stipulations. Accordingly, we must reject the Stipulation. Therefore, the Commission's approval of AEP-Ohio's generation asset divestiture pursuant to Section 4928.17(E), Revised Code, is revoked.

(16) IEU-Ohio contends that the market transition rider (MTR) does not satisfy the requirements contained within Section

4928.143(B)(2)(d), Revised Code, as the Companies did not meet their burden of showing the MTR would have the effect of stabilizing or providing rate certainty for retail electric service. IEU-Ohio claims the MTR distorts purchasing decisions of customers by lowering rates of customers more likely to shop, and raising rates for customers less likely to shop, in direct violation of state policy. Further, IEU-Ohio argues that because the MTR is being collected though a non-bypassable charge, it is essentially a generation charge that is being collected as a distribution charge. IEU-Ohio further opines that the Commission's order is unlawful and unreasonable in that AEP-Ohio will receive an additional $24 million in revenue from the MTR without any evidence to support it, in violation of Section 4903.09, Revised Code, and fails to follow Commission precedent which requires cost-justification for generation rate increases.

FES states that, even if the MTR provides rate certainty and stability to AEP-Ohio customers, the MTR is still not justified as a non-bypassable rider, and there was insufficient evidence in the record to support the MTR. In addition, FES claims that there is no statutory basis to permit AEP-Ohio to receive an additional $24 million in MTR revenues for 2012.

OMAEG argues in that the Commission's Order modified the shopping credit provision in a way that unreasonably fails to maximize the benefits available to GS-2 customers. In its request to further review the GS-2 shopping credit provision, OMAEG raises concerns that while some GS-2 customers may already be shopping, many may realize significant and unavoidable price increases. OMAEG recommends that along with the Commission's expansion of the shopping credit to GS-2 customers, any unused portions of the credit should be given to GS-2 customers who are currently shopping and have had distribution rate increases of thirty percent or more. OMAEG opines that it is in the public interest to allow the unused portion to be accessed by GS-2 customers with notable increases as opposed to just rolling the GS-2 credit over into the next year. OMAEG claims this will also mitigate the impact of the rate increases to the GS-2 customers and provide the necessary rate stability to ensure business retention in Ohio.

(17) AEP-Ohio responds to IEU-Ohio, and FES, stating that the MTR is a rate design tool that is a valuable part of the Stipulation for customers by facilitating the transition from current generation rates to the market-based SSO generation service rates. AEP-Ohio asserts that IEU-Ohio's argument that the MTR is effectively a distribution charge because it is non-bypassable is flawed. AEP-Ohio argues that the MTR is clearly a generation related charge that the Commission may adopt pursuant to Section 4928.143(B)(2)(d), Revised Code. Further, AEP-Ohio argues there is more than sufficient evidence in the record to support the MTR. Specifically, AEP-Ohio points to AEP-Ohio witness Roush's testimony explaining the MTR was designed to limit changes in rates for all customer classes.

(18) In its application for rehearing on the Commission's clarification entry, AEP-Ohio raises similar proposals to OMAEG's suggestion to re-allocate the GS-2 shopping credit, as well as other alternatives to address any rate increases for GS-2 customers. In addition to expanding eligibility for the shopping credit as OMAEG proposed, AEP-Ohio raises the possibility of earmarking funds within the Ohio Growth Fund (OGF) to mitigate the impact on the GS-2 customer rate increase. AEP-Ohio also suggests the creation of a revenue neutral phase-in of the GS-2 load factor provision (LFP) demand charge, such that the GS-2 LFP demand charge is 25 percent of the approved non-bypassable demand charge of \$3.29/kW in 2012, 50 percent in 2013, 75 percent in 2014, and 100 percent in 2015. AEP-Ohio suggests that the phase-in of the GS-2 LFP be offset by a commensurate reduction to the GS-3 and GS-4 customers LFP energy credit.

(19) The Commission finds that rehearing should be granted with respect to the assignments of error raised by IEU-Ohio and FES. Upon review of the record of this proceeding, we find that the Signatory Parties have not demonstrated that the MTR and LFP provisions of the Stipulation promote rate certainty and stability as required by Section 4928.143.(B)(2)(d), Revised Code. We further find that the Signatory Parties have not demonstrated these provisions benefit ratepayers and the public interest as required by the second prong of our three part test for the consideration of stipulations.

At the hearing, AEP-Ohio presented testimony regarding the rate impacts of the Stipulation upon customers, including small commercial customers in the GS-2 class (AEP-Ohio Ex. 2, Exhibit DMR-5). In the Opinion and Order, the Commission recognized that these rate impacts may be significant, based upon evidence indicating that total bill impacts may, in some cases, approach 30 percent. However, the evidence in the record inadvertently failed to present a full and accurate portrayal of the actual bill impacts to be felt by customers, particularly with respect to low load factor customers who have low usage but high demand.

Due to the evidence that some commercial customers were going to receive significant total bill increases in approaching 30 percent, we modified the shopping credits provision to provide additional relief to GS-2 customers in the form of an additional allocation of shopping credits to new shopping customers. However, the actual impacts suffered by a significant number of GS-2 customers appear to have vastly exceeded AEP-Ohio's representations at hearing. Since we issued the Opinion and Order, numerous customers have filed, in the case record of this proceeding, actual bills containing total bill rate increases disproportionately higher than the 30 percent predicted by AEP-Ohio. The disproportionate rate impacts indicated by these bills undermine the evidence presented by the signatory parties that the MTR and LFP provide rate certainty and stability pursuant to Section 4928.143(B)(2)(d), Revised Code. We note that the parties seeking rehearing acknowledge that customers in the GS-2 class have received significant total bill rate increases and that it is appropriate to provide relief to these customers. However, the Commission is not persuaded that the actual total bill impacts inherent in the MTR and the LFP can be cured by a phase-in of the LFP or an additional allocation of shopping credits as recommended by AEP-Ohio. We find that the Signatory Parties have not met their burden of proof of demonstrating that the MTR and LFP provisions meet the statutory requirement of Section 4928.143(B)(2)(d), Revised Code, to provide rate certainty and stability, and that Signatory Parties have not demonstrated that the MTR and LFP benefit ratepayers and the public interest. Accordingly, pursuant to our three-part test for the consideration of stipulations, we must reject the Stipulation.

(20) In this Entry on Rehearing, the Commission has determined, on two independent grounds, that the Stipulation submitted by the Signatory Parties does not benefit ratepayers and the public interest. Thus, we find that the Stipulation must be rejected and the application, as modified by the Stipulation, must be disapproved. Section 4928.143(C)(2)(b), Revised Code, provides that:

> If the utility terminates an application pursuant to division (C)(2)(a) of this section or if the commission disapproves an application under division (C)(1) of this section, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or Section 4928.142, Revised Code, respectively.

Therefore, we direct AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its previous electric security plan, including but not limited to the base generation rates as approved in ESP I, along with the current uncapped fuel costs and the environmental investment carry cost rider set at the 2011 level, as well as modifications to those rates for credits for amounts fully refunded to customers, such as the significantly excessive earnings test (SEET) credit, and an appropriate application of capacity charges under the approved state compensation mechanism established in the Capacity Charge Case.

(21) According to the Stipulation, in the event that the Stipulation is materially modified or rejected by the Commission, this proceeding shall go forward at the procedural point at which the Stipulation was filed; therefore, AEP-Ohio should be provided an opportunity to modify or withdraw its original application for an ESP filed in this proceeding. AEP-Ohio is directed to file a notice in this docket within 30 days stating whether it is prepared to proceed on its application as filed or whether it intends to modify or withdraw such application.

Further, the attorney examiners are directed to establish a new procedural schedule consistent with AEP-Ohio's notice along with a new intervention deadline to enable interested persons who had not previously participated in this proceeding to intervene. In addition, in light of our rejection of the Stipulation, the attorney examiners are directed to establish a procedural schedule in the Capacity Charge Case.

It is, therefore,

ORDERED, That the applications for rehearing filed by IEU-Ohio and FES be granted, in part, and denied, in part. Further, the applications for rehearing filed by AEP-Ohio, Ormet, OCC/APJN, RESA, OHA, and OMAEG be denied. It is, further,

ORDERED, That the Companies shall file proposed tariffs consistent with this order by February 28, 2012. It is, further,

ORDERED, That a copy of this entry on rehearing be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

GAP/JJT/GNS/vrm

Entered in the Journal

FEB 23 2012

Barcy F. McNeal

Secretary

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

ENTRY

The Commission finds:

(1) On November 1, 2010, American Electric Power Service Corporation (AEPSC), on behalf of Columbus Southern Power Company and Ohio Power Company (AEP-Ohio or the Company),[1] filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. At the direction of FERC, AEPSC refiled its application in FERC Docket No. ER11-2183 on November 24, 2010. The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism and included proposed formula rate templates under which AEP-Ohio would calculate its capacity costs under Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement (RAA).

(2) On December 8, 2010, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charges. Consequently, the Commission sought public comments regarding the following issues: (1) what changes to the current state mechanism are appropriate to determine AEP-Ohio's fixed resource requirement (FRR) capacity charges to Ohio competitive retail electric service (CRES) providers; (2) the degree to which AEP-Ohio's capacity charges are currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charges upon CRES providers and retail competition in Ohio. The Commission invited all interested

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1 The Commission notes that the merger of Columbus Southern Power Company into Ohio Power Company has been confirmed today in a separate docket. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

stakeholders to submit written comments in the proceeding within 30 days of issuance of the entry and to submit reply comments within 45 days of the issuance of the entry. Additionally, in light of the change proposed by AEP-Ohio, the Commission adopted as the state compensation mechanism for AEP-Ohio the current capacity charges established by the three-year capacity auction conducted by PJM Interconnection (PJM), during the pendency of the review.

(3) On January 20, 2011, AEP-Ohio filed a motion to stay the reply comment period and to establish a procedural schedule for hearing, as well as for an expedited ruling. In the alternative, AEP-Ohio requested an extension of the deadline to file reply comments until January 28, 2011. In support of its motion, AEP-Ohio asserted that, due to the recent rejection of its application by FERC based on the "existence of a state compensation mechanism," it would be necessary for the Commission to move forward with an evidentiary hearing process to establish the state compensation mechanism. AEP-Ohio argued that, in light of this recent development, the parties needed more time to file reply comments.

(4) By entry issued January 21, 2011, the attorney examiner granted AEP-Ohio's motion to extend the deadline to file reply comments and established the new reply comment deadline as February 7, 2011. The January 21, 2011, entry also determined that AEP-Ohio's motion for the Commission to establish a procedural schedule for hearing would be considered after the reply comment period had concluded.

(5) On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.* (11-346), AEP-Ohio filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code.[2] The application was for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.

(6) By entry issued August 11, 2011, in the present case, the attorney examiner established a procedural schedule in order

[2] *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan,* Case Nos. 11-346-EL-SSO and 11-348-EL-SSO; *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority,* Case Nos. 11-349-EL-AAM and 11-350-EL-AAM.

to establish an evidentiary record on a state compensation mechanism. Interested parties were directed to develop an evidentiary record on the appropriate capacity cost pricing/recovery mechanism including, if necessary, the appropriate components of any proposed capacity cost recovery mechanism. An evidentiary hearing was scheduled to commence on October 4, 2011.

(7) On September 7, 2011, a stipulation and recommendation (ESP 2 Stipulation) was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in 11-346 and several other cases pending before the Commission (consolidated cases),[3] including the above-captioned case. Pursuant to an entry issued September 16, 2011, the consolidated cases were consolidated for the purpose of considering the ESP 2 Stipulation. The September 16, 2011, entry also stayed the procedural schedule in the pending cases, including this proceeding, until the Commission specifically ordered otherwise. The evidentiary hearing on the ESP 2 Stipulation commenced on October 4, 2011, and concluded on October 27, 2011.

(8) On December 14, 2011, the Commission issued an opinion and order in the consolidated cases, modifying and adopting the ESP 2 Stipulation (ESP 2 order).

(9) Subsequently, on February 23, 2012, the Commission issued an entry on rehearing in the consolidated cases, granting rehearing in part (ESP 2 entry on rehearing). Finding that the signatory parties to the ESP 2 Stipulation had not met their burden of demonstrating that the stipulation, as a package, benefits ratepayers and the public interest, as required by the Commission's three-part test for the consideration of stipulations, the Commission rejected the ESP 2 Stipulation.

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3 *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-343-EL-ATA; *In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-344-EL-ATA; *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; *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4920-EL-RDR; *In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4921-EL-RDR.

The Commission directed AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its previous ESP, including an appropriate application of capacity charges under the approved state compensation mechanism established in the present case.

(10) On February 27, 2012, AEP-Ohio filed a motion for relief and request for expedited ruling in the present docket. Under the provisions of Rule 4901-1-12(C), Ohio Administrative Code (O.A.C.), any memoranda contra AEP-Ohio's request for expedited ruling are due by March 5, 2012. Memoranda contra AEP-Ohio's request for relief were filed by FirstEnergy Solutions Corp. (FES), Interstate Gas Supply, Inc. (IGS), Duke Energy Retail Sales, LLC (DERS), Industrial Energy Users-Ohio (IEU-Ohio), Ohio Consumers' Counsel (OCC), and Ohio Manufacturers' Association (OMA). A joint memorandum contra was filed by Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., Direct Energy Services, LLC, Direct Energy Business, LLC, and the Retail Energy Supply Association (RESA) (collectively, Joint Suppliers).[4]

(11) In its motion for relief and request for expedited ruling, AEP-Ohio asserts that, in light of the Commission's rejection of the ESP 2 Stipulation, the Commission should quickly resume this proceeding from the point at which it was suspended to allow for consideration of the stipulation. AEP-Ohio reasons that, in the absence of the ESP 2 Stipulation, this proceeding would have been resolved by the end of 2011, and the Company would not have faced the prospect of unreasonably low capacity rates. AEP-Ohio believes that the Commission should expeditiously consider implementation of a cost-based capacity rate, at least for a transition period during which the Company would remain an FRR entity, and issue a decision on the merits of the case within 90 days.

Additionally, AEP-Ohio argues that a reasonable interim capacity rate should be implemented during the pendency of this proceeding, but cautions that the Commission should not

4 On February 28, 2012, and March 5, 2012, IGS and RESA, respectively, filed a motion to intervene in this case. IGS and RESA are, therefore, each deemed a party for the purpose of responding to AEP-Ohio's motion pursuant to Rule 4901-1-12(E), O.A.C.

prejudge the merits of the case through implementation of the interim rate. AEP-Ohio contends that the interim rate should not be based exclusively on PJM's Reliability Pricing Model (RPM) auction prices, which, according to AEP-Ohio, would precipitate immediate, irreparable financial harm on the Company, as it would be forced to provide CRES providers with access to its capacity at below-cost rates. AEP-Ohio believes that the majority of its customers would leave its SSO service, resulting in massive revenue loss for the Company. Specifically, AEP-Ohio projects that its earnings for 2012 and 2013 would decrease by 27 percent and 67 percent, respectively, resulting in a return on equity of 7.6 percent and 2.4 percent, respectively, as well as possible downward adjustments to the Company's credit ratings. AEP-Ohio argues that such a result would be confiscatory, unreasonable, and unjust. AEP-Ohio adds that the Company would be forced to pursue all possible legal remedies if the Commission elects to impose full RPM-based capacity pricing. Noting that the ESP 2 Stipulation was rejected for reasons unrelated to its capacity charge provisions, AEP-Ohio argues that it should not be subject to the punitive result of full RPM-based capacity pricing, which the Company believes would prejudice the outcome of this proceeding by causing the majority of its customers to switch providers by the time a final decision is reached. AEP-Ohio also claims that switching to RPM-based capacity pricing now, and later implementing a different pricing scheme after the case is decided, would cause uncertainty and confusion for customers.

AEP-Ohio believes that using the same two-tiered capacity pricing proposed in the ESP 2 Stipulation would offer the most stability and represents a reasonable middle ground based on the record in this case. Specifically, AEP-Ohio proposes that the interim rate should be RPM-based capacity pricing for the first 21 percent of shopping load of each customer class, plus aggregation, but excluding mercantile load, with an interim rate of $255.00/megawatt-day (MW-day) for shopping load above the 21 percent cap. AEP-Ohio notes that this "status quo" proposal would essentially maintain the approach implemented to date by the Company pursuant to the revised Detailed Implementation Plan (DIP) filed on December 29, 2011, which the Company recognizes was subsequently modified by the Commission on January 23, 2012, in the consolidated cases. AEP-Ohio asserts that the record supports its interim proposal or, in the alternative, an interim mechanism that conforms to the Commission's modifications to the revised DIP, with the exception of the inclusion of mercantile load. AEP-Ohio notes that it has filed the testimony of Dr. Kelly Pearce in this docket, as well as testimony from the same witness in support of the ESP 2 Stipulation in the consolidated cases, which, according to the Company, supports a cost-based formula rate that is well in excess of its interim proposal. AEP-Ohio notes that Dr. Pearce's testimony supports a capacity rate of $355.72/MW-day, whereas its interim proposal would set aside amounts of RPM-priced capacity for an initial tier of customers and provide for a capacity rate of $255.00/MW-day for amounts above the first tier.

Alternatively, AEP-Ohio proposes a compromise position of RPM-based capacity pricing for customers already served by CRES providers or those having provided a switch request as of the date of the ESP 2 entry on rehearing, and $255.00/MW-day for all other customers, including aggregation load, that switch before the case is decided. AEP-Ohio believes that this proposal is a reasonable interim solution, one that would facilitate shopping during the pendency of the case, as well as avoid financial harm for the Company. As this approach would adopt two opposing litigation positions in part, AEP-Ohio notes that it can be implemented without prejudice to the outcome of the case.

Finally, AEP-Ohio notes that the ESP 2 entry on rehearing is unclear with respect to the directive regarding capacity pricing and that the Commission should provide clarification so that AEP-Ohio may comply with the Commission's directive.

(12) In its memorandum contra, FES argues that AEP-Ohio's motion for relief should be denied as legally and procedurally deficient, and that the Commission should reject the Company's attempt to retain the anticompetitive and discriminatory capacity pricing scheme from the now rejected ESP 2 Stipulation. FES contends that AEP-Ohio has a number of means by which it could have sought relief, including seeking rehearing of the ESP 2 entry on rehearing pursuant to Section 4903.10, Revised Code, or seeking emergency rate relief pursuant to Section 4909.16, Revised Code. If AEP-Ohio's dispute is with the allegedly confiscatory impact of the state

compensation mechanism set forth in the RAA, FES notes that the Company has already filed a complaint case in FERC Docket No. EL11-32, seeking to change the terms of the RAA. Rather than pursue these options, FES argues that AEP-Ohio elected to file its motion for relief, which disregards the rehearing process and is not authorized by statute.

Additionally, FES takes issue with AEP-Ohio's claim that RPM-based capacity pricing will cause the Company to suffer immediate and irreparable harm. FES points out that, although AEP-Ohio sought rehearing of the December 8, 2010, entry in this docket, the Company did not claim in its application for rehearing that RPM-based capacity pricing would cause such harm and, therefore, FES contends that the Company has waived the argument. FES adds that AEP-Ohio's claim that RPM-based capacity pricing is confiscatory is not credible, given that the Company voluntarily used such pricing throughout the term of its first ESP. FES notes that the RPM zonal price for delivery year 2011/2012 is approximately $116.00/MW-day and that AEP-Ohio voluntarily charged a price of $105.00/MW-day as recently as the 2009/2010 delivery year. FES further notes that AEP-Ohio's projections for 2012 and 2013 show significant earnings, despite the Company's unsupported assumption that the majority of its customers will switch to CRES providers under RPM-based capacity pricing. FES also indicates that AEP-Ohio's anticipated return on equity of 7.6 percent for 2012 under RPM-based capacity pricing is almost exactly what the Company had projected that it would earn under the ESP 2 Stipulation.

In addition, FES argues that the Commission's directive to AEP-Ohio is clear and that there is no need for clarification of the ESP 2 entry on rehearing. FES asserts that AEP-Ohio should comply with the Commission's directive and continue to charge RPM-based pricing for its capacity in accordance with the state compensation mechanism established in the Commission's December 8, 2010, entry. In order to comply with the Commission's directive, FES notes that AEP-Ohio need only notify PJM that the state compensation mechanism requires RPM-based capacity pricing.

FES adds that the restoration of RPM-based capacity pricing, which is the default pricing structure under the RAA, would not predetermine the outcome of this case but rather complies with the RAA and restores all parties to the circumstances in place throughout all of AEP-Ohio's first ESP. Given that the ESP 2 Stipulation has now been rejected, FES also notes that there is no support in the record for a capacity price of $255.00/MW-day, which was negotiated by the signatory parties to the stipulation. FES argues that AEP-Ohio cannot rely on the hearing record in the consolidated cases to support its claims, as the consolidated cases were consolidated for the limited purpose of considering the ESP 2 Stipulation. Further, FES points out that even several of the signatory parties agreed that setting the capacity price based on anything other than RPM-based pricing was unreasonable but that the other purported benefits of the ESP 2 Stipulation made the two-tiered approach acceptable to them. FES adds that AEP-Ohio's interim proposal would harm governmental aggregation and restrict shopping. FES also argues that the two-tiered interim proposal would discriminate among shopping customers, as well as between shopping customers and non-shopping customers, and that there are no benefits to outweigh the harm caused to competitive markets, now that the ESP 2 Stipulation has been rejected. With respect to AEP-Ohio's alternative proposal, FES argues that it directly conflicts with state law and policy and with the Commission's express intent in the ESP 2 order to accommodate governmental aggregation. FES notes that, if AEP-Ohio's alternative proposal is adopted, all governmental aggregation load from the November 2011 ballot initiatives would be denied RPM-based capacity pricing, as those communities have not completed enrollments.

(13) IGS states that it does not object to AEP-Ohio's interim proposal, but argues that AEP-Ohio's compromise position should be rejected. Although IGS believes that capacity charges should be market based, it notes that there is a need for a measured transition from a regulated to a competitive paradigm. IGS asserts that AEP-Ohio's interim proposal is a reasonable approach that would enable the parties to engage again in a constructive dialogue toward a more permanent solution that provides certainty for all stakeholders. IGS contends that AEP-Ohio's interim proposal would provide clarity for CRES providers, as well as an opportunity for customers to benefit from savings offered by CRES providers. IGS notes that the interim proposal, which would essentially

maintain the capacity pricing recommended in the ESP 2 Stipulation, was agreed to by most of the parties in the consolidated cases. IGS cautions that the RPM capacity allotments must be available to all customer classes equally, if AEP-Ohio's interim proposal is to remain a viable interim solution. Additionally, although IGS does not object to AEP-Ohio's interim proposal, IGS suggests that, as an alternative, the Commission could implement a cap on the governmental aggregation load to which RPM-based capacity pricing applies. With respect to mercantile customers, IGS proposes that the Commission could defer the decision of whether to exclude such customers to the communities seeking to aggregate, instructing each community to capture its decision in its plan of governance.

IGS believes that AEP-Ohio's compromise position would distort the basic premise of market-priced capacity and would immediately and perhaps permanently stifle competition. Noting that there has been a general consensus among stakeholders that AEP-Ohio should transition to competition, IGS argues that a flat rate increase to $255.00/MW-day for all customers electing to shop after February 23, 2012, would not serve this end but would rather create a roadblock to competitive markets.

(14) In its memorandum contra, DERS argues that AEP-Ohio's motion for relief should be denied and that the Company should be required immediately to implement RPM-based rates for capacity while this proceeding is pending. DERS believes that AEP-Ohio's interim proposal would harm the competitive markets and dissuade customers from shopping in violation of state policy. According to DERS, AEP-Ohio's interim proposal would penalize new shoppers by imposing a dramatic escalation in capacity charges. Noting that the Commission has approved RPM-based capacity pricing as the state compensation mechanism, DERS maintains that AEP-Ohio seeks a drastic change from the situation that existed before this proceeding commenced. DERS further notes that AEP-Ohio's proposed two-tiered capacity charge is entirely at odds with the capacity charge calculation methodologies approved for other utilities in the state.

Additionally, DERS contends that there is no justification for the remedy that AEP-Ohio seeks. DERS argues that AEP-Ohio has effectively sought a stay of the capacity-related portion of the ESP 2 entry on rehearing. DERS asserts that AEP-Ohio has made no attempt to address any of the relevant factors that are considered in determining whether to grant a stay of an order, other than to allege that the Company will suffer financial harm.

(15) IEU-Ohio argues that AEP-Ohio's motion for relief should be denied as another attempt by the Company to impede shopping by limiting access to RPM-based capacity pricing. IEU-Ohio notes that the state compensation mechanism established in this proceeding requires RPM-based capacity pricing. Because the Commission has now rejected the ESP 2 Stipulation including its capacity pricing provisions, IEU-Ohio asserts that the "status quo" price is the RPM-based price as a matter of law. IEU-Ohio adds that each of the interim solutions proposed by AEP-Ohio is discriminatory and non-comparable in violation of various sections of Chapter 4928, Revised Code, in that similarly situated customers would be subject to one of two significantly different capacity prices based on nothing more than when the determination to switch providers was made.

In addition, IEU-Ohio agrees with DERS that AEP-Ohio has failed to provide any basis for a stay of the Commission's orders regarding capacity charges. Specifically, IEU-Ohio contends that a claim of irreparable harm does not enable AEP-Ohio to secure approval for a new capacity pricing scheme, even on an interim basis, in this proceeding. IEU-Ohio believes that, although claims of financial distress and confiscation may appropriately justify regulatory relief in some circumstances, no such circumstances exist in this case. IEU-Ohio notes that AEP-Ohio has not invoked the Commission's authority under Section 4909.16, Revised Code, and that the Company, therefore, has no justification for seeking interim relief based on alleged financial distress. IEU-Ohio further notes that AEP-Ohio has failed to provide any support for its claim of confiscation and instead has offered non-record information showing positive returns for 2012 and 2013. Given that AEP-Ohio has benefited from significantly excessive earnings under the same SSO rates and the same capacity pricing mechanism that the Company was ordered to implement in the ESP 2 entry on rehearing, IEU-Ohio maintains that the Company has not provided any basis upon which to believe that the ESP 2 entry on rehearing will result in confiscation. Even if there were a legitimate confiscation claim, IEU-Ohio believes that AEP-Ohio should direct its efforts at FERC.

Additionally, IEU-Ohio disputes AEP-Ohio's argument that a return to RPM-based capacity pricing would create confusion for customers and CRES providers. IEU-Ohio avers that the only confusion surrounding capacity charges stems from AEP-Ohio's continued efforts to impede shopping. Noting that AEP-Ohio is not authorized to compete with CRES providers to provide service to retail customers, IEU-Ohio also takes issue with AEP-Ohio's claim that it would be unlawful to require the Company to provide below-cost capacity to its competitors. IEU-Ohio asserts that AEP-Ohio has clearly indicated that its proposed capacity pricing structure is intended to prevent customers from shopping.

IEU-Ohio further argues that none of AEP-Ohio's proposed interim solutions is based on record evidence. IEU-Ohio points out that AEP-Ohio's testimony in this proceeding has not been subjected to discovery or cross-examination and that reliance on the record supporting the ESP 2 Stipulation and the ESP 2 order is unreasonable in light of the fact that the stipulation has now been rejected. IEU-Ohio also contends that AEP-Ohio's proposed interim solutions are unreasonable, as they would unreasonably restrict customer choice and limit access to RPM-based capacity pricing. Finally, IEU-Ohio maintains that the ESP 2 entry on rehearing clearly directs AEP-Ohio to implement RPM-based capacity pricing. IEU-Ohio adds that AEP-Ohio's position that the ESP 2 entry on rehearing requires clarification is not credible in light of testimony given by the Company during the hearing on the ESP 2 Stipulation, as well as arguments raised by AEPSC in a recent filing for relief in FERC Docket No. ER11-2183.

(16) OCC, in its memorandum contra, argues that AEP-Ohio's motion for relief and request for expedited ruling are procedurally improper and that the subject matter of the motion should have been addressed in an application for rehearing of the ESP 2 entry on rehearing. OCC requests that

the Commission treat AEP-Ohio's motion as an application for rehearing and proceed on that basis. OCC further contends that AEP-Ohio's untested financial assertions are not part of the record and should be disregarded.

In addition, OCC maintains that AEP-Ohio has failed to provide any legal basis for its interim capacity pricing proposals. OCC believes that Section 4928.143(C)(2)(b), Revised Code, requires a return to the RPM-based capacity pricing that existed in December 2011 under the first ESP and that AEP-Ohio's proposals are not consistent with the statute. OCC adds that the ESP 2 entry on rehearing is clear and that the Commission ordered AEP-Ohio to apply RPM-based capacity pricing under the conditions that were used during the first ESP. OCC notes that it is disingenuous for AEP-Ohio to claim that it does not understand the Commission's directive in the ESP 2 entry on rehearing when the Company's pleading in this case and the recent filing in FERC Docket No. ER11-2183 are largely devoted to asserting the consequences of a return to RPM-based capacity pricing. OCC concludes that AEP-Ohio's attempt to limit shopping by increasing capacity charges in violation of state policy should be rejected.

(17) The Joint Suppliers argue that AEP-Ohio's interim capacity proposals are contrary to the ESP 2 entry on rehearing, including the Commission's clear directive to implement RPM-based capacity pricing. The Joint Suppliers assert that the two-tiered capacity charge agreed to under the ESP 2 Stipulation was a specific component of a comprehensive plan that cannot now be lifted in part from the stipulation and used outside of the context for which it was created. The Joint Suppliers add that AEP-Ohio's interim proposals would effectively curtail competition and postpone market-based pricing indefinitely, without all of the other aspects of a transition to competition, which was the purpose of the two-tiered capacity charge in the ESP 2 Stipulation. The Joint Suppliers contend that, outside of the context of the comprehensive ESP 2 Stipulation, the only appropriate charge for capacity is RPM-based pricing. The Joint Suppliers note that the top tier of $255.00/MW-day, which was a negotiated number, has no logical basis and does not reflect market prices. The Joint Suppliers believe that RPM-based capacity pricing is both transparent and predictable for all market participants, including consumers and CRES

providers, and is the only appropriate pricing for capacity outside of the context of a comprehensive transition to a competitive market. The Joint Suppliers note that, for non-shopping customers, the price of capacity is built into AEP-Ohio's tariff rates. With respect to shopping customers, the Joint Suppliers note that the RPM-based capacity rate will be approximately $116.00/MW-day until the June 2012 billing cycle, which is the same amount that AEP-Ohio has charged since the June 2011 billing cycle, other than for a small number of commercial and industrial customers that switched after the ESP 2 Stipulation was executed. The Joint Suppliers add that AEP-Ohio reinstated, in its compliance tariffs filed on February 28, 2012, the 90-day notice requirement for most non-residential customers that elect to shop, which the Joint Suppliers argue will protect the Company from a flood of shopping for at least the next 90 days while this proceeding is pending. Therefore, the Joint Suppliers maintain that AEP-Ohio's financial concerns are not well founded at this time.

(18) OMA argues that granting AEP-Ohio's motion would harm Ohio manufacturers. OMA contends that the relief sought by AEP-Ohio would prevent customers from taking advantage of historically low market prices. OMA adds that, if AEP-Ohio's motion for relief is granted, the Company will not be incented to develop expeditiously a better rate plan than the rejected ESP 2 Stipulation, as the Company will have some of the revenue protection that it seeks. OMA also argues that AEP-Ohio could lessen the detrimental financial impact of the ESP 2 entry on rehearing by developing and filing a new and improved SSO. OMA notes that AEP-Ohio's projected 2.4 percent return on equity for 2013, while not a healthy return on equity, does not reflect a new rate plan and thus may never come to fruition. OMA emphasizes that AEP-Ohio seeks relief for only an interim period until a new SSO is approved. OMA believes that it is more important for AEP-Ohio and the other parties to develop a new SSO that can be expeditiously implemented so as to avoid financial harm to both AEP-Ohio and customers.

Additionally, OMA asserts that AEP-Ohio's motion for relief is legally deficient. OMA contends that the Commission may not authorize AEP-Ohio to modify its capacity charges, even for an interim period, unless the state compensation mechanism is changed, emergency relief is granted, or the RAA is modified at FERC's direction. OMA further contends that AEP-Ohio's motion for relief is not authorized under Ohio law and is thus procedurally deficient.

(19) On March 5, 2012, AEP-Ohio filed a motion for leave to file a reply to the various memoranda contra to provide the Commission with updated information in response to the arguments offered by the intervenors and ensure that the Commission has the necessary information to make an informed decision. The motion includes the affidavit of AEP-Ohio employee William A. Allen, Director-Rate Case Management, regarding the level of shopping in AEP-Ohio's service territory and the details and assumptions used in the Company's analysis in support of the information provided in the Company's request for relief.

AEP-Ohio responds that 36.7 percent of AEP-Ohio's load has switched or indicated an intention to switch to a CRES provider as of March 1, 2012. Under the two-tier capacity pricing mechanism approved by the Commission in the ESP 2 order, AEP-Ohio claims that 6.8 percent of its total load transferred to a CRES provider at the second tier of $255.00/MW-day. This is the interim structure that AEP-Ohio requests remain in place until the Commission issues a final decision on the capacity charge issue. Since the ESP 2 entry on rehearing issued February 23, 2012, AEP-Ohio states some 10,000 switch requests have been presented to the Company.

Further, Mr. Allen attests that, since his rebuttal testimony in the consolidated cases, the energy prices in the PJM market have decreased by approximately 25 percent, increasing the headroom available for CRES providers. Mr. Allen further reasons that, with the current energy prices, CRES providers can make offers below the Company's tariff rates with capacity at $255.00/MW-day. According to AEP-Ohio, customer shopping increased after the ESP 2 entry on rehearing and will continue to increase, particularly if all capacity is priced at RPM, harming AEP-Ohio.

(20) On March 6, 2012, FES filed a memorandum contra AEP-Ohio's motion for leave to file a reply. FES contends that AEP-Ohio filed its motion for relief pursuant to Rule 4901-1-12(C), O.A.C.,

which, in exchange for an accelerated response time, prohibits the filing of a reply. Further, FES argues that there is nothing AEP-Ohio filed in its reply that could not have been included in its motion for relief, which would have granted the other parties an opportunity to respond. FES claims that AEP-Ohio's reply is unreasonable and a violation of procedural due process and requests that the Commission not consider the information presented in the reply as, according to FES, to do so would be plain error.

(21) Rule 4901-1-38, O.A.C., provides that the Commission may, for good cause shown, prescribe different practices from those provided by rule. It is imperative that the Commission have the most accurate and complete information available to make an informed decision to balance the interests of all stakeholders, particularly in light of the unique circumstances of this case. Accordingly, we grant AEP-Ohio's motion for leave to file a reply.

(22) We reject claims that the interim relief is not based upon record evidence. The instant proceeding was consolidated with 11-346 and the cases enumerated in footnote three of this entry for purposes of considering the ESP 2 Stipulation. All of the testimony and exhibits admitted into the record for purposes of considering the ESP 2 Stipulation are part of the record in this proceeding. Our subsequent rejection of the ESP 2 Stipulation did not remove such evidence from the record, and we may, and do, rely upon such evidence in our decision granting interim relief.

(23) As certain of the memoranda contra argue, the two-tier capacity rate was created and agreed to by numerous intervenors to the consolidated cases, as one component of the ESP 2 Stipulation. As is the case with a stipulation, parties negotiate for and compromise on various provisions. We understand that parties may feel that consideration of the two-tier capacity rate as the state compensation mechanism denies the other parties to the stipulation the benefit of the bargain. Moreover, while AEP-Ohio may have other avenues to challenge the alleged confiscatory impact of the state compensation mechanism, the Commission is also vested with the authority to modify the state compensation mechanism established in our December 8, 2010, entry in this case.

(24) As we noted in the entry establishing the state compensation mechanism, the Commission approved retail rates for AEP-Ohio in its first ESP proceeding. *In re Columbus Southern Power Company and Ohio Power Company*, Case Nos. 08-917-EL-SSO, *et al.* (ESP 1 Case). These retail rates included the recovery of capacity costs through provider-of-last-resort (POLR) charges to certain retail shopping customers based upon the continuation of the current capacity charges established by the three-year capacity auction conducted by PJM under the current FRR mechanism. Entry (December 8, 2010) at 1-2. Further, the Commission established, as the state compensation mechanism, the current RPM rate established by the PJM base residual auction.

(25) However, on remand from the Supreme Court, the Commission eliminated the POLR charges. ESP 1 Case Order on Remand at 33 (October 3, 2011). Therefore, AEP-Ohio is no longer receiving any contribution towards recovery of capacity costs from the POLR charges. Further, evidence presented in this proceeding in support of the ESP 2 Stipulation claimed that RPM rates for capacity are below AEP-Ohio's costs to provide such capacity. As we have previously noted, the evidence in the record indicates a range of potential capacity costs from a low of $57.35/MW-day (FES Ex. 2 at 5) to a high of $355.72/MW-day, as a merged entity (AEP-Ohio Ex. 3 at 10). Moreover, when retail customers switch to competitive suppliers, AEP-Ohio cannot take full advantage of the opportunity to sell into the wholesale market as any margin on off-system sales must be shared with other AEP affiliate companies under its current Pool Agreement and in many instances is flowed through to customers of non-Ohio AEP utility affiliates. The Pool Agreement was last amended in 1980 and did not contemplate current circumstances. Until the Pool Agreement is modified, it places AEP-Ohio in a position different from other Ohio utilities.

(26) Accordingly, we find support in the record that, as applied to AEP-Ohio for the interim period only, the state compensation mechanism could risk an unjust and unreasonable result. Therefore, the Commission implements the two-tier capacity pricing. We implement the two-tier capacity pricing mechanism proposed by AEP-Ohio in its motion for relief, subject to the clarifications contained in our January 23, 2012,

entry, including the clarification including mercantile customers as governmental aggregation customers eligible to receive RPM-priced capacity. Under the two-tier capacity pricing mechanism, the first 21 percent of each customer class shall be entitled to tier-one RPM pricing. All customers of governmental aggregations approved on or before November 8, 2011, shall be entitled to receive tier-one RPM pricing. The second-tier charge for capacity shall be at $255.00/MW-day. This interim rate will be in effect until May 31, 2012, at which point the rate for capacity under the state compensation mechanism shall revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 year.

Finally, we note that, on March 5, 2012, AEP-Ohio filed notice of its intent to file a modified ESP, pursuant to Section 4928.143, Revised Code, by March 30, 2012. AEP-Ohio plans to propose as part of the modified ESP a capacity charge, applicable until such time as AEP-Ohio can transition from an FRR to an RPM entity. AEP-Ohio submits that this will preclude the need for the Commission to adjudicate this case, provided a satisfactory interim mechanism is established and the ESP is resolved expeditiously. The Company states the term of the modified ESP will be June 1, 2012, through May 31, 2016.

Although AEP-Ohio believes that the present case may be resolved under its modified application for an ESP, the Commission believes that resolution of this case should no longer be delayed. Our decision today temporarily modifying the state compensation mechanism will allow the Commission to fully develop the record to address the issues raised in this proceeding. Therefore, the Commission directs the attorney examiner to issue a procedural schedule in this case under which this matter be set for hearing no later than April 17, 2012.

It is, therefore,

ORDERED, That AEP-Ohio's motion for leave to file a reply is granted. It is, further,

ORDERED, That AEP-Ohio's motion for relief be granted, as determined above, until May 31, 2012. It is, further, ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

SJP/GNS/vrm

Entered in the Journal
MAR 07 2012

Barcy F. McNeal
Barcy F. McNeal
Secretary

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

ENTRY ON REHEARING

The Commission finds:

(1) On November 1, 2010, American Electric Power Service Corporation (AEP), on behalf of Ohio Power Company and Columbus Southern Power Company (AEP-Ohio or the Companies),[1] filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. At the direction of FERC, AEP refiled its application in FERC Docket No. ER11-2183 on November 24, 2010. The application proposes to change the basis for compensation for capacity costs to a cost-based mechanism and includes proposed formula rate templates under which the Companies would calculate their respective capacity costs under Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement.

(2) On December 8, 2010, in the above noted docket, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charges (Capacity Charge Case). Consequently, the Commission sought public comments regarding the following issues: (1) what changes to the current state mechanism are appropriate to determine the Companies' fixed resource requirement capacity charges to Ohio competitive retail electric service (CRES) providers; (2) the degree to which AEP-Ohio's capacity charges are currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charges upon CRES providers and retail competition in Ohio. The Commission invited all interested stakeholders to submit written comments

1 By entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company into Ohio Power Company, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

to the proceeding within 30 days of issuance of the entry and to submit reply comments within 45 days of the issuance of the entry. Comments and/or reply comments to the Capacity Charge Case were filed by AEP-Ohio, the office of the Ohio Consumers' Counsel, Ohio Partners for Affordable Energy, Industrial Energy Users-Ohio (IEU-Ohio), Direct Energy Business, LLC, FirstEnergy Solutions Corporation (FES), Ohio Energy Group, and Constellation Energy Commodities Group, Inc. and Constellation NewEnergy. By entry issued August 11, 2011, a procedural schedule, including a hearing, was established in the Capacity Charge Case. Pursuant to the August 11, 2011, entry, written testimony was filed by AEP-Ohio.

(3) On January 27, 2011, AEP-Ohio filed an application for a standard service offer pursuant to Section 4928.141, Revised Code, in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, and 11-350-EL-AAM. The application was for approval of an electric security plan (ESP 2) in accordance with Section 4928.143, Revised Code.

(4) On September 7, 2011, the Companies, Staff, and numerous other intervenors to the ESP 2 proceedings filed a Stipulation and Recommendation in the ESP 2 cases and several other AEP-Ohio cases, including the Capacity Charge Case, to resolve all the issues raised in the cases (Consolidated Stipulation). By entry issued September 16, 2011, the Capacity Charge Case was consolidated with the other AEP-Ohio proceedings, for the purpose of holding a hearing to consider the Consolidated Stipulation.

(5) On December 14, 2011, the Commission issued its Opinion and Order in the ESP 2 proceedings, adopting, with modifications, including modifications to the capacity set-aside provisions, the Consolidated Stipulation. However, in light of issues raised on rehearing, by Entry on Rehearing issued February 23, 2012, the Commission concluded that, even as modified, two provisions of the Consolidated Stipulation did not benefit ratepayers and the public interest; and, therefore, the Commission rejected and disapproved the Consolidated Stipulation and the application, as modified.

(6) On February 27, 2012, AEP-Ohio filed a motion for interim relief and a request for expedited ruling in the Capacity Charge Case. By entry issued March 7, 2012, the Commission granted AEP-Ohio's request for interim relief and implemented the two-tier capacity pricing mechanism proposed by AEP-Ohio, subject to the clarifications contained in the Commission's January 23, 2012, entry. Consistent with that entry, the first 21 percent of each customer class, and all customers of governmental aggregations approved on or before November 8, 2011, including mercantile customers, shall be entitled to tier-one reliability pricing model (RPM) pricing. The second-tier charge for capacity shall be at $255.00/MW-day. The interim capacity charge mechanism will be in effect until May 31, 2012, at which point the rate for capacity under the state compensation mechanism shall revert to the current RPM in effect pursuant to the PJM Interconnection, LLC, base residual auction for the 2012/2013 year.

(7) Pursuant to Section 4903.10, Revised Code, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission within 30 days of the entry of the order on the journal of the Commission. Further, Section 4903.10, Revised Code, provides that if the Commission does not grant or deny an application for rehearing within 30 days of filing, the application is denied by operation of law.

(8) On March 14, 2012, the Retail Energy Suppliers Association (RESA) filed an application for rehearing of the March 7, 2012, entry. Accordingly, the Commission must act on the RESA's application by April 13, 2012, otherwise, RESA's application for rehearing will be denied by operation of law. FES and IEU-Ohio also filed applications for rehearing of the March 7, 2012, entry on March 21, 2012 and March 27, 2012, respectively.

(9) AEP-Ohio filed a memorandum contra the applications for rehearing filed by RESA, FES and IEU-Ohio.

(10) In order to address the applications concurrently, the Commission finds that the applications for rehearing filed by RESA, FES, and IEU-Ohio should be granted. Furthermore, we believe that sufficient reasons have been set forth in the applications for rehearing to warrant further consideration of

the matters specified in the applications for rehearing. Accordingly, the applications for rehearing filed by RESA, FES, and IEU-Ohio should be granted.

It is, therefore,

ORDERED, That the applications for rehearing filed by RESA, FES, and IEU-Ohio be granted for further consideration of the matters specified in the applications for rehearing. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

Lynn Slaby

GNS/vrm

Entered in the Journal
APR 11 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

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

ENTRY ON REHEARING

The Commission finds:

(1) By entry issued on March 7, 2012, the Commission granted the request of Columbus Southern Power Company and Ohio Power Company (jointly, AEP-Ohio) for relief and implemented an interim capacity pricing mechanism until May 31, 2012.[1] Approval of the interim capacity pricing mechanism was subject to the clarifications contained in the Commission's January 23, 2012, entry, including the clarification to include mercantile customers as governmental aggregation customers eligible to receive capacity pricing based on the reliability pricing model (RPM) of PJM Interconnection, LLC (PJM). Under the two-tier capacity pricing mechanism, the first 21 percent of each customer class was entitled to tier-one, RPM-based capacity pricing. All customers of governmental aggregations approved on or before November 8, 2011, were also entitled to receive tier-one, RPM-based capacity pricing. For all other customers, the second-tier charge for capacity was $255/megawatt-day. In accordance with the March 7, 2012, entry, the interim rate was to remain in effect until May 31, 2012, at which point the charge for capacity under the state compensation mechanism would revert to the current RPM price in effect pursuant to the PJM base residual auction for the 2012/2013 delivery year.

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1 By entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company into Ohio Power Company, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

(2) On April 30, 2012, AEP-Ohio filed a request for an extension of the interim capacity pricing mechanism implemented by the Commission pursuant to the entry issued on March 7, 2012.

(3) By entry issued on May 30, 2012, the Commission approved an extension of the interim capacity pricing mechanism through July 2, 2012.

(4) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

(5) On June 15, 2012, FirstEnergy Solutions Corp. (FES) filed an application for rehearing of the May 30, 2012, entry. Industrial Energy Users-Ohio (IEU-Ohio) and the Ohio Manufacturers' Association (OMA) also filed applications for rehearing of the May 30, 2012, entry on June 19, 2012, and June 20, 2012, respectively.

(6) On June 25, 2012, AEP-Ohio filed a memorandum contra the applications for rehearing filed by FES, IEU-Ohio, and OMA.

(7) The Commission believes that sufficient reason has been set forth by FES, IEU-Ohio, and OMA to warrant further consideration of the matters specified in the applications for rehearing. Accordingly, the applications for rehearing filed by FES, IEU-Ohio, and OMA should be granted.

It is, therefore,

ORDERED, That the applications for rehearing filed by FES, IEU-Ohio, and OMA be granted for further consideration of the matters specified in the applications for rehearing. It is, further, ORDERED, That a copy of this entry on rehearing be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

Lynn Slaby

SJP/sc

Entered in the Journal
JUL 11 2012

Barcy F. McNeal
Secretary

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

American Electric Power Service Corporation	)	Docket No. ER11-2183-000
PJM Interconnection, L.L.C.	)	

COMMENTS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION AND BACKGROUND

On November 24, 2010, American Electric Power Service Corporation ("AEPSC") on behalf of Columbus Southern Power Company ("CSPCo") and Ohio Power Company ("OPCo") (collectively, the AEP Ohio Companies) filed proposed formula rate templates under which each of the AEP Ohio Companies would calculate its respective capacity costs under Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement (RAA). The Ohio-only filing reflects that the revised capacity charges will be billed to competitive retail electric service ("CRES") providers operating in the State of Ohio.

On November 26, 2010, the Federal Energy Regulatory Commission (FERC) issued its Combined Notice of Filings #1 inviting comments concerning

AEPSC's application by December 10, 2010. The Public Utilities Commission of Ohio (Ohio Commission) hereby submits its comments responding to AEPSC's application and FERC's invitation for public input in the above-captioned proceeding.

DISCUSSION

On December 8, 2010, the Ohio Commission issued an entry (attached) in Case No. 10-2929-EL-UNC inviting comments from interested persons concerning the AEP Ohio Companies' capacity charges to Ohio's CRES providers. The Ohio Commission's entry notes that currently the PUCO-approved rates for the AEP Ohio Companies include recovery of capacity costs through provider-of-last-resort charges to certain retail shopping customers.[1] These rates are based on the continuation of the current FRR mechanism and the continued use of PJM's reliability pricing model's three-year auction results. The AEP Ohio Companies' filing for formula rates could impact this current mechanism. Consequently, the Ohio

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1 PUCO Case No. 08-917-EL-SSO, In the Matter of the Application of the Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets; and PUCO Case No. 08-918-EL-SSO, In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan. See also, In the Matter of the Columbus Southern Power Company and the Ohio Power Company, Case No. 05-1194-EL-UNC.

Commission's investigation invites comments from interested persons concerning the following issues: (1) what changes to the current Ohio Commission mechanism are appropriate to determine the AEP Ohio Companies' Fixed Resource Requirement (FRR) capacity charges to the State of Ohio's CRES providers; (2) the degree to which the AEP Ohio Companies' capacity charges are currently being recovered through retail rates approved by the Ohio Commission or other capacity charges; and (3) the impact the AEP Ohio Companies' capacity charges will have on CRES providers and retail competition in the State of Ohio. Although the state compensation mechanism has implicitly been in place since the inception of AEP-Ohio's current Standard Service Offer,[2] the Ohio Commission expressly adopted as its state compensation mechanism the AEP Ohio Companies' charges established by the reliability pricing model's three-year capacity auction conducted by PJM. Currently, the 2010/2011 clearing price is equal to $174.29 per MW-day.[3]

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2 *Supra* n.1.

3. The 2010/2011 rate equals $208.20 per MW-day including adders for transmission losses (3.4126%), the scaling factor (1.06633), and the pool requirement (1.0833). The 2010/2011 rate is effective through May 31, 2011. The 2011/2012 rate, which becomes effective on June 1, 2011, is equal to $110.00 per MW-day (without the adders).

Consistent with Section D.8 of Schedule 8.1 of the RAA, which dictates that state imposed compensation mechanisms prevail in those instances where the state jurisdiction requires the load serving entity (LSE) (or switching customers) to compensate the FRR entity,[4] the Ohio Commission maintains that there is no current need for FERC to advance its proceeding regarding this matter because the Ohio Commission has a rate for capacity charges to CRES providers. Consequently, the Ohio Commission respectfully requests that FERC dismiss the application and close this investigation, or, in the alternative, suspend its final decision in this proceeding until the Ohio Commission has concluded its state proceeding. If FERC elects to hold the case in abeyance, the Ohio Commission will inform FERC, in the above-captioned proceeding, as to the outcome of its investigation.

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4 Schedule 8.1 reads as follows: "In a state regulatory jurisdiction that has implemented retail choice, the FRR Entity must include in its FRR Capacity Plan all load, including expected load growth, in the FRR Service Area, notwithstanding the loss of any such load to or among alternative retail LSEs. In the case of load reflected in the FRR Capacity Plan that switches to an alternative retail LSE, where the state regulatory jurisdiction requires switching customers or the LSE to compensate the FRR Entity for its FRR capacity obligations, such state compensation mechanism will prevail. In the absence of a state compensation mechanism, the applicable alternative retail LSE shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff, provided that the FRR Entity may, at any time, make a filing with FERC under Sections 205 of the Federal Power Act proposing to change the basis for compensation to a method based on the FRR Entity's cost or such other basis shown to be just and reasonable, and a retail LSE may at any time exercise its rights under Section 206 of the FPA."

CONCLUSION

The Ohio Commission thanks FERC for the opportunity to provide its Comments in this proceeding.

Respectfully submitted,

/s/ *Thomas W. McNamee*

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On behalf of
The Public Utilities Commission of Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ *Thomas W. McNamee*

Thomas W. McNamee

Dated at Columbus, Ohio this December 10, 2010.

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

ENTRY

The Commission finds:

(1) Ohio Power Company and Columbus Southern Power Company (AEP-Ohio or the Companies) are electric light companies as defined in Section 4905.03(A)(3), Revised Code, and public utilities as defined in Section 4905.02, Revised Code. As such, the Companies are subject to the jurisdiction of the Commission in accordance with Sections 4905.04 and 4905.05, Revised Code.

(2) Sections 4905.04, 4905.05, and 4905.06, Revised Code, grant the Commission authority to supervise and regulate all public utilities within its jurisdiction.

(3) On November 1, 2010, AEP Electric Power Service Corporation, on behalf of AEP-Ohio, filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. At the direction of FERC, AEP refiled its application in FERC Docket No. ER11-2183 on November 24, 2010. The application proposes to change the basis for compensation for capacity costs to a cost-based mechanism and includes proposed formula rate templates under which the Companies would calculate their respective capacity costs under Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement.

(4) Prior to the filing of this application, the Commission approved retail rates for the Companies, including recovery of capacity costs through provider-of-last-

resort charges to certain retail shopping customers, based upon the continuation of the current capacity charges established by the three-year capacity auction conducted by PJM, Inc., under the current fixed resource requirement (FRR) mechanism. *In re Columbus Southern Power Company*, Case No. 08-917-EL-SSO; *In re Ohio Power Company*, Case No. 08-917-EL-SSO. See also, *In re Columbus Southern Power Company and Ohio Power Company*, Case Nos. 05-1194-EL-UNC et al. However, in light of the change proposed by the Companies, the Commission will now expressly adopt as the state compensation mechanism for the Companies the current capacity charges established by the three-year capacity auction conducted by PJM, Inc. during the pendency of this review.

(5) Further, the Commission finds that a review is necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charges. As an initial step, the Commission seeks public comment regarding the following issues: (1) what changes to the current state mechanism are appropriate to determine the Companies' FRR capacity charges to Ohio competitive retail electric service (CRES) providers; (2) the degree to which AEP-Ohio's capacity charges are currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charges upon CRES providers and retail competition in Ohio.

(6) All interested stakeholders are invited to submit written comments in this proceeding within 30 days of the issuance of this entry and to submit reply comments within 45 days of the issuance of this entry.

It is, therefore,

ORDERED, That written comments be filed within 30 days after the issuance of this order and that reply comments be filed within 45 days of the issuance of this entry. It is, further, ORDERED, That a copy of this entry be served on AEP-Ohio and all parties of record in the Companies' most recent standard service offer proceedings, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Valerie A. Lemmie

Steven D. Lesser

Cheryl L. Roberto

GAP/sc

Entered in the Journal
OCT 0 8 2010

Reneé J. Jenkins
Secretary

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

American Electric Power Service Corporation	:	
	:	Docket No. EL11-32-000
v.	:	ER11-2183-000
	:	
PJM Interconnection, L.L.C.	:	

RESPONSE
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO
TO
RENEWED MOTION
OF
AMERICAN ELECTRIC POWER SERVICE CORPORATION
FOR EXPEDITED RULING

July 30, 2012

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FEDERAL ENERGY REGULATORY COMMISSION

American Electric Power Service Corporation	:	
	:	Docket No. EL11-32-000
v.	:	
	:	
PJM Interconnection, L.L.C.	:	

RESPONSE SUBMITTED ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO TO RENEWED MOTION OF AMERICAN ELECTRIC POWER SERVICE CORPORATION FOR EXPEDITED RULING

INTRODUCTION

The Federal Energy Regulatory Commission (Commission) is frequently tasked with making complex determinations involving abstruse legal requirements, conflicting economic considerations, and major policy determinations with vast consequences for the industry and the country as a whole. Thankfully, this is not such a case.

This case is quite simple. Applicants signed a contract. They now find this contract terms not to their liking and ask this Commission to change those terms. This Commission has ruled previously that it will not reform contracts for parties generally and that it will not reform this contract specifically. That is all there is to it. AEP made a deal and now it must live with the deal that it has made. Its motion seeks a way out of the obligation AEP created for itself and this Commission should not allow this out. The motion should be denied.

THE DEAL AEP MADE

As this Commission has previously found, AEP voluntarily entered into the Reliability Assurance Agreement (RAA).[1] Two portions of that agreement are relevant for present purposes. Section D.8 of Schedule 8.1 of the RAA provides:

> In a state regulatory jurisdiction that has implemented retail choice, the FRR Entity must include in its FRR Capacity Plan all load, including expected load growth, in the FRR Service Area, notwithstanding the loss of any such load to or among alternative retail LSEs. In the case of load reflected in the FRR Capacity Plan that switches to an alternative LSE, where the state regulatory jurisdiction requires switching customers or the LSE to compensate the FRR Entity for its FRR capacity obligations, *such state compensation mechanism will prevail.*[2]

Section D.8 of Schedule 8.1 of the RAA further provides:

> *In the absence of a state compensation mechanism*, the applicable alternative retail LSE shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff, provided that the FRR Entity may, at any

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1 The Commission approved a settlement agreement, which the AEP Ohio Companies signed, of the PJM RPM, which included the RAA and FRR Alternative. See *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at 75-78 (2006), order on reh'g, 119 FERC ¶ 61,318, reh'g denied, 121 FERC ¶ 61,173 (2007), aff'd *sub nom. Pub. Serv. Elec. & Gas Co. v. FERC*, D.C. Circuit Case No. 07- 1336 (Mar. 17, 2009) (unpublished). See also PJM RAA Schedule 17.

2 *American Electric Power Service Corp.*, 134 FERC ¶ 61,039 (emphasis added).

> time, make a filing with FERC under Sections 205 of the Federal Power Act proposing to change the basis for compensation to a method based on the FRR Entity's cost or such other basis shown to be just and reasonable, and a retail LSE may at any time exercise its rights under Section 206 of the FPA.[3]

These provisions are unambiguous. The words say what they say and mean what they mean.

These provisions of the RAA establish a bifurcated system for establishing capacity rates. In a state which has implemented retail choice, either the state has a mechanism to compensate the FRR entity for FRR capacity obligations by switching customers or it does not. If the state has such a mechanism, the RAA provides "*...such state compensation mechanism will prevail.*" If the state has no such mechanism, the FRR entity faces a choice. It may either collect charges at the auction price in the unconstrained portions of the region or it may petition this Commission under Sections 205 or 206.

The structure of the RAA is perfectly clear. As Ohio is a retail choice state,[4] AEP's rights under the sections turn on whether or not the state has a mechanism to compensate AEP for capacity provided to switching customers. Ohio has such a mechanism and, under terms of the RAA, that mechanism prevails. AEP agreed to give up its ability to access this Commission through Section 205 or 206 in such circumstances. To grant AEP's renewed motion is to change the terms of the voluntary agreement embodied in the RAA. This the Commission should not do and the motion should be denied.

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3 *American Electric Power Service Corp.*, 134 FERC ¶ 61,039 (emphasis added).

4 Ohio Revised Code Chapter 4928.

THE OHIO MECHANISM

Currently the capacity payment mechanism in force in Ohio is what is termed the "interim capacity pricing mechanism" proposed by AEP and adopted by the Ohio Commission on March 7, 2012, as a replacement for yet another, earlier mechanism. Under the two-tier capacity pricing mechanism, the first 21 percent of each customer class was entitled to tier-one, RPM-based capacity pricing. All customers of governmental aggregations approved on or before November 8, 2011, were also entitled to receive tier-one, RPM-based capacity pricing. For all other customers, the second-tier charge for capacity was $255/megawatt-day (MW-day). This structure is in force today but will be superseded by a permanent mechanism which resulting from the Ohio Commission's decision in its case number 10-2929 which is attached as attachment A to AEP's renewed motion.

Determining a permanent compensation mechanism which strikes the right balance was no simple task. The Public Utilities Commission of Ohio (Ohio Commission) needed to find a level which would allow AEP a reasonable opportunity to earn a fair return on its investment while simultaneously allowing the development of a competitive market in the state. The Ohio Commission struggled long and hard to thread the needle. A full history of this effort can be found in the Ohio Commission's order in its case 10-2929, which is attached to AEP's renewed motion as attachment A, and that history will not be recounted here. Suffice it to say that the Ohio Commission held a month long (April 17 to May 15, 2012) live hearing with twenty five parties represented, and twenty five witnesses cross examined. Briefs and reply briefs were submitted and a decision ultimately reached on July 2, 2012.

The permanent mechanism set by the Ohio Commission is somewhat simpler. AEP will be permitted to charge the adjusted final zonal PJM RPM rate in effect for the rest of the region as that rate adjusts in June of 2013 and 2014. The Ohio Commission further determined that a compensatory rate for AEP would be $188.88 per MW day and that the difference between this value and the amount being charged currently should be deferred on the company's books until a mechanism is established to collect that deferred differential. This collection mechanism will be established in another Ohio Commission case specifically 11-346. A decision in the Ohio Commission's 11-346 case will be made on or about August 8, 2012, at which time the permanent mechanism will replace the interim. In this way the Ohio Commission has struck the balance, both fully compensating AEP for its actual costs and allowing the development of a competitive market.

In sum, the Ohio Commission has devoted great resources to this endeavor. At all times relevant, there has been, is currently, and will continue to be a state mechanism to allow recovery of capacity costs.

STATE LAW RELIEF FOR AEP

AEP may be dissatisfied with the Ohio Commission's actions. Should it wish to challenge the Ohio Commission's actions, whether its power to act, or the procedure it used or the conclusions it reached, these are matters of state law and state law provides efficient and expeditious means to address these questions. Under state law all decisions of the Ohio Commission are subject to an appeal as of right to the highest Court in the state, the Ohio Supreme Court.[5] By statute, appeals of Ohio Commission decisions are to be heard out of order on the docket of the Supreme Court of Ohio.[6] AEP has available to it the means to challenge the validity of the Ohio Commission's actions. Indeed it has already taken the first set in this process by filing an application for rehearing, a jurisdictional prerequisite to taking an appeal.[7]

In sum, if AEP has concerns about the state-law proceedings at the Ohio Commission, it has access to, and is taking the steps necessary to protect its interests in, these state-law matters. State law provides an efficient, speedy, and final means to resolve whatever concerns AEP has with the Ohio Commission's actions.

AEP MUST LIVE WITH ITS CONTRACT

It has long been a feature of Commission ratemaking that parties must live with the rates to which they have agreed by contract.[8] This Commission is only empowered to change the terms of a freely entered agreement when required to protect the public interest. This is true even in circumstances where the Commission did not have the opportunity to review the rates established.[9] Manifestly the public interest is served by

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5 Ohio Revised Code Section 4903.12.

6 Ohio Revised Code Section 4903.20.

7 Ohio Revised Code Section 4903.11.

8 *United Gas Pipeline Co. v. Mobile Gas Service Corp.* 350 U.S. 332 (1956) (for Section 205 cases); *Federal Power Comm'n v. Sierra Pacific Power Co.* 350 U.S. 348 (1956) (for Section 206 cases).

9 *Morgan Stanley Capital Group v. Public Utility District #1* 554 U.S. 527 (2008).

preserving the RAA not by altering it. Even a cursory review of the Ohio Commission's order shows that it was quite intentionally crafted to simultaneously provide AEP with sufficient revenues to maintain its financial health and provide a payment level that will allow the development of a competitive market. As noted in the Ohio Commission decision, even at the $145.79 level that was in force for AEP in the prior year, AEP was able to achieve an adjusted rate of return or over 11%.[10] The permanent mechanism would provide AEP with compensation at the $188.88 level, certainly assuring the company of adequate return on its investment. The Mobile-Sierra doctrine does not even require that contract rates be compensatory, rather they must merely be freely entered at arms length, but the Ohio Commission, in fulfilling its obligations, has assured that the rates do fully compensate AEP. As also noted in the Ohio Commission decision, this level should also provide sufficient headroom for competitors to enter. In short, the RAA is working exactly as it should. The public interest is protected. The Mobile-Sierra doctrine requires that AEP live with its own bargain. The Ohio Commission has assured that AEP's bargain is compensatory.

This Commission has already spoken on the matter as regards a Section 205 filing:

> 12. The AEP Ohio Companies, however, voluntarily signed the RAA, and, therefore, in fact, they have voluntarily relinquished such rights under *Atlantic City*, and the AEP Ohio Companies made this filing pursuant to the PJM RAA. Since the PJM RAA does not permit AEP to change a state imposed allocation mechanism, and AEP is a signatory to the RAA and does not have the right to change the PJM RAA unilaterally through a section 205 filing, this section 205 fil-

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10 Attachment A to the Renewed Motion at page 35.

> ing is not the appropriate vehicle for challenging the justness and reasonableness of Section D.8 of Schedule 8.1 of the PJM RAA.
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> 13. Therefore, we find that, pursuant to the RAA, the AEP Ohio Companies are not permitted to submit their proposed formula rate, given the existence of a state compensation mechanism, and we will reject this filing.[11]

While this Commission's decision in ER11-2183 did not reach the Section 206 question (it did not have to), the logic and conclusion is just the same. The Mobile-Sierra doctrine applies to Section 206 as well as Section 205.[12] Section D.8 of Schedule 8.1 of the RAA provides:

> In the absence of a state compensation mechanism, the applicable alternative retail LSE shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff, provided that the FRR Entity may, at any time, make a filing with FERC under Sections 205 of the Federal Power Act proposing to change the basis for compensation to a method based on the FRR Entity's cost or such other basis shown to be just and reasonable, and a retail LSE may at any time exercise its rights under Section 206 of the FPA.[13]

Again, the words of the single sentence of the section are clear. If there is no state compensation mechanism, the FRR entity has the choice of three things. It may accept the auction result, or file under Section 205, or file under Section 206. Just as this Commission has already found that this sentence indicates that AEP waived its ability to make

[11] *American Electric Power Service Corp.*, 134 FERC ¶ 61,039.

[12] *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

[13] *American Electric Power Service Corp.*, 134 FERC ¶ 61,039 (emphasis added.).

a Section 205 filing (because there is a state compensation mechanism) the Commission should now find that, under the same sentence, AEP has waived the ability to make a Section 206 filing. The logic is exactly the same. That is what the sentence says.

In sum, AEP made a deal. Now it must, under this Commission's precedent, live with that deal.

SUMMARY

Within a very short time of the filing of this pleading, there will be a permanent state level compensation mechanism for AEP's provision of capacity to customers who shop for their energy supply. Under terms of the RAA that AEP voluntarily bargained for, this state established mechanism prevails. That was what AEP bargained for, that is what it must be given. AEP has had second thoughts. It no longer likes the terms it negotiated. That provides it no basis for relief from this Commission. As discussed above, the state compensation mechanism benefits the public, indeed it benefits AEP too. Under this Commission's precedent, the RAA must stand and AEP's motion be denied.

Respectfully submitted,

/s/ Thomas W. McNamee

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On behalf of
The Public Utilities Commission of Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Thomas W. McNamee

Thomas W. McNamee

Dated at Columbus, Ohio this July 30, 2012.

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

ENTRY

The Commission finds:

(1) By entry issued on March 7, 2012, the Commission granted the request of Columbus Southern Power Company and Ohio Power Company (jointly, AEP-Ohio or Company) for relief and implemented an interim capacity charge until May 31, 2012.[1] This interim capacity charge established a two-tier capacity pricing mechanism proposed by the Company, subject to the clarifications contained in our January 23, 2012, entry in this proceeding. More specifically, mercantile customers in governmental aggregations are eligible to receive capacity priced in accordance with PJM Interconnection's (PJM's) Reliability Pricing Model (RPM). Further, under the two-tier capacity pricing mechanism, the first 21 percent of each customer class is entitled to tier-one RPM pricing. All customers of governmental aggregations approved on or before November 8, 2011, are entitled to receive tier-one RPM pricing. The second-tier charge for capacity is $255/megawatt (MW)-day. Further, the March 7, 2012, entry placed the interim rate in effect until May 31, 2012, at which point the rate for capacity under the state compensation mechanism would revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 delivery year.

(2) On April 30, 2012, AEP-Ohio filed a request for an extension of the interim capacity pricing implemented by the Commission, pursuant to entry issued on March 7, 2012. AEP-Ohio reasons that, as a result of issues arising in this proceeding, the scheduled start of the evidentiary hearing in the Company's

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1 By entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company into Ohio Power Company, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

modified electric security plan (ESP 2) cases,[2] and the fact that Commission Staff is working on both proceedings, it is unlikely that an order on the merits can be issued before May 31, 2012. Furthermore, AEP-Ohio notes that, as part of its modified ESP 2 proceeding, it proposes an alternative two-tiered capacity pricing mechanism. AEP-Ohio reasons that consideration of the capacity charge mechanism in the modified ESP 2 proceeding represents the potential for yet another change in capacity rates for shopping customers. To avoid customer confusion and uncertainty, undue disruption to the competitive Ohio retail market, and financial harm to the Company given the significant drop in the RPM rate effective June 1, 2012, AEP-Ohio requests that the current interim capacity charges remain in effect (tier one at $146/MW-day and tier two at $255/MW-day) until the Commission issues a decision on the merits.

(3) Memoranda contra AEP-Ohio's motion for an extension of the currently effective interim capacity rates were filed by Ohio Manufacturers' Association (OMA), jointly by Duke Energy Commercial Asset Management (DECAM) and Duke Energy Retail Sales (DERS), jointly by FirstEnergy Solutions (FES) and Industrial Energy Users-Ohio (IEU-Ohio), Ohio Consumers' Counsel (OCC), Exelon Generation Company (Exelon), and Retail Energy Supply Association (RESA). Ohio Energy Group (OEG) also filed a response.

(4) In their joint memorandum contra, FES and IEU-Ohio respond that AEP-Ohio's motion for extension should be denied because it is legally and procedurally deficient. Specifically, FES and IEU-Ohio argue that the Commission has already determined that the interim two-tiered capacity pricing ends on May 31, 2012, and that RPM-based pricing will resume on June 1, 2012. According to FES and IEU-Ohio, there is no reason to alter the Commission's determination that the interim two-tiered capacity pricing will remain in place only for that limited period, particularly when customers and competitive retail electric service (CRES) providers have relied on the Commission's determination in making decisions regarding

2 *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer* and *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority,* Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, and 11-350-EL-AAM.

shopping. Further, FES and IEU-Ohio contend that AEP-Ohio's motion for extension constitutes an untimely application for rehearing. FES and IEU-Ohio maintain that AEP-Ohio effectively seeks a substantive modification of the Commission's March 7, 2012, entry granting interim relief and that the Company should have, but did not, file an application for rehearing as its remedy. Because AEP-Ohio elected not to file an application for rehearing, FES and IEU-Ohio assert that the Company's motion should be rejected as an untimely application for rehearing and a collateral attack on the March 7, 2012, entry. FES and IEU-Ohio also contend that the purported harm to AEP-Ohio from RPM-based capacity pricing is overstated and unsupported. FES and IEU-Ohio argue that AEP-Ohio has failed to establish that it is entitled to emergency rate relief or to offer any evidence demonstrating that financial peril would result from a return to RPM-based capacity pricing. FES and IEU-Ohio note that, in light of the interim relief granted by the Commission to date, AEP-Ohio's return on equity will exceed the 7.6 percent in 2012 formerly projected by the Company, which FES and IEU-Ohio contend is more than enough to avoid significant financial harm to the Company. FES and IEU-Ohio further note that AEP-Ohio will not be harmed by RPM-based capacity pricing, given that such pricing applies to every other generator in Ohio and the rest of PJM. Finally, FES and IEU-Ohio assert that, at a minimum, AEP-Ohio's request to maintain the current pricing for customers in the first tier should be rejected, if the Commission should decide to extend the interim two-tiered capacity pricing. FES and IEU-Ohio maintain that there is no reason to deny such customers the benefits of the decrease in RPM-based capacity pricing for the 2012/2013 delivery year.

(5) In its memorandum contra, OMA asserts that AEP-Ohio's motion is not merely a request for an extension, but is actually a request for additional relief in that the Company seeks to modify the RPM-based capacity pricing for customers in the first tier. Additionally, OMA notes that, although the Commission limited the interim relief period to May 31, 2012, it did not guarantee that this case would be resolved by June 1, 2012. According to OMA, the unlikelihood of having a final Commission decision by that date does not warrant an extension of the interim capacity pricing. OMA contends that AEP-Ohio has failed to show good cause for its request,

offering nothing other than an unsubstantiated claim of financial harm. OMA maintains that AEP-Ohio's motion would harm Ohio manufacturers, noting that AEP-Ohio is asking for a rate increase that would impact shopping customers immediately without any demonstration that there is any harm to the Company. OMA further argues that AEP-Ohio's motion for extension is an unlawful and untimely attempt at rehearing of the Commission's March 7, 2012, entry. Finally, OMA recommends that, if the Commission grants AEP-Ohio's motion, the Commission should also require the Company to deposit the difference between the RPM-based price for capacity and the amount authorized by the Commission as additional or continued interim relief into an escrow account. If the Commission ultimately determines that the state compensation mechanism should be based on RPM pricing, OMA requests that AEP-Ohio be directed to return the amount in escrow directly to customers that paid more than the RPM-based price through agreements with CRES providers.

(6) DERS and DECAM contend that AEP-Ohio should not be permitted, even on an interim basis, to charge anything more than RPM-based capacity prices. DERS and DECAM believe that AEP-Ohio's effort in this proceeding to extend capacity pricing that is above market rates will form the basis of the Company's attempt to gain approval of its pending modified ESP 2 proposal. Without the Commission's approval to extend AEP-Ohio's current capacity pricing, DERS and DECAM maintain that the Company will be unable to prove that its proposed ESP is more favorable than a market rate option. Further, DERS and DECAM note that the Commission's March 7, 2012, entry did not direct that the capacity pricing for customers in the first tier should remain at the RPM price that was then in effect. Rather, DERS and DECAM assert that, as the RPM price changes for the 2012/2013 year, the capacity price for customers in the first tier must likewise change. According to DERS and DECAM, AEP-Ohio has failed to demonstrate that the Commission should grant further extraordinary relief. DERS and DECAM note that the relief requested by AEP-Ohio would have a prejudicial impact on the competitive environment in Ohio by altering the business arrangements made by CRES providers. DERS and DECAM contend that AEP-Ohio has not offered verifiable, convincing support for its projections of revenue loss. DERS and DECAM

conclude that the Commission should reject AEP-Ohio's attempt to have the Commission prejudge the final outcome of this proceeding. DERS and DECAM add that, if the Commission elects to grant further relief, it should at least deny AEP-Ohio's request to maintain the current RPM-based price for customers in the first tier.

(7) In its memorandum contra, RESA argues that AEP-Ohio's motion is an impermissible collateral attack on the March 7, 2012, entry and that the Company should have made its arguments in an application for rehearing. RESA contends that there are no new circumstances that would warrant consideration of AEP-Ohio's motion, which is essentially an untimely application for rehearing. RESA notes that the RPM-based capacity price to take effect on June 1, 2012, was known on March 7, 2012, when the entry was issued, and that it was also foreseeable at that point that a final order may not be issued by May 31, 2012. RESA further notes that the potential revenue reduction and resulting financial harm that AEP-Ohio will suffer from RPM-based capacity pricing was also known on March 7, 2012, and is, therefore, no reason to grant the Company's motion. Finally, RESA adds that AEP-Ohio's motion should be denied on equitable grounds. RESA believes that customers that shopped under a state compensation mechanism for capacity at RPM-based prices should be able to rely on the Commission's prior orders and receive the benefit of RPM-based capacity pricing.

(8) Exelon likewise responds that there is no legitimate reason or set of facts that has occurred since the March 7, 2012, entry that would warrant a delay in the return to RPM-based capacity pricing. Exelon contends that AEP-Ohio seeks only to restrict competitive market offerings and to restore an environment in which the Company's profits are protected at the cost of competition. Exelon argues that the mere fact of AEP-Ohio's status as a Fixed Resource Requirement (FRR) entity does not justify further avoidance of RPM-based capacity pricing. Exelon notes that AEP-Ohio's FRR status does not excuse it from its responsibility to explore lower cost capacity options in the market and that nothing prevents the Company from procuring capacity from the market to fulfill its FRR commitment. Exelon also notes that the record reflects a serious disagreement as to whether any cost-based rate that

may be appropriate or lawful would be an embedded cost rate, as AEP-Ohio seeks, or a marginal or incremental cost-based rate. Further, Exelon points out that AEP-Ohio has known since December 8, 2010, that it is required to charge CRES providers RPM-based capacity prices. Finally, Exelon asserts that granting AEP-Ohio's motion would effectively curtail competition and postpone market-based pricing indefinitely.

(9) Arguing that AEP-Ohio's motion should be denied, OCC notes that the Commission determined in its March 7, 2012, entry that the state compensation mechanism would revert to RPM-based capacity pricing effective June 1, 2012, and that some customers may have relied on this entry in making decisions regarding shopping. OCC adds that AEP-Ohio seeks to maintain a capacity price for customers in the first tier that will be neither a cost-based nor market-based rate as of June 1, 2012. Additionally, OCC contends that AEP-Ohio has offered no evidence in support of its claim of financial harm. According to OCC, the Commission has no jurisdiction to reverse its finding in the March 7, 2012, entry that RPM-based capacity prices will take effect on June 1, 2012. OCC notes that, because AEP-Ohio failed to file a timely application for rehearing of the March 7, 2012, entry, the Commission is without statutory authority to consider the Company's requested relief.

(10) In its memorandum in response to AEP-Ohio's motion for extension, OEG asserts that the Company's request is reasonable, given that the implementation of a different pricing mechanism for a short period of time may only serve to aggravate the current uncertainty and customer confusion regarding capacity pricing. Specifically, OEG notes that it does not oppose an extension of AEP-Ohio's current capacity pricing structure for a 60-day period through the end of July.

(11) AEP-Ohio filed a reply to the memoranda contra on May 8, 2012. AEP-Ohio asserts that most of the arguments raised in the memoranda contra were also made by parties who opposed the initial request for interim relief and have been addressed and rejected by the Commission in the March 7, 2012, entry. Further, AEP-Ohio contends that assertions that the Commission, through the March 7, 2012, entry, affirmatively committed to the implementation of RPM capacity pricing as of June 1, 2012, are absurd. According to AEP-Ohio, such a

decision would amount to the Commission predetermining its decision on the merits and foreclose the possibility that the Commission could conclude that RPM pricing is not appropriate. Further, the Company reasons that, if the Commission issues its order before June 1, 2012, RPM capacity rates would not go into effect on June 1, 2012, as opposing parties claim. In addition, AEP-Ohio submits that evidence in this proceeding further supports that its capacity costs are \$355/MW-day, significantly higher than the RPM rate of \$20/MW-day, to be effective June 1, 2012.

(12) We reject the arguments that AEP-Ohio's request amounts to an untimely application for rehearing of the March 7, 2012, entry. The Commission is well within its jurisdiction to consider a request for an extension of its previous ruling. The fact that the Commission indicated that AEP-Ohio's interim relief would be in effect until May 31, 2012, does not prevent our subsequent approval of either an extension of the current interim relief or another interim capacity charge mechanism, if warranted under the circumstances. Due to various factors that have prolonged the course of this proceeding and precluded the issuance of an order by May 31, 2012, we find that AEP-Ohio's request for further interim relief does not constitute a collateral attack on the March 7, 2012, entry. Furthermore, for the reasons presented in the Commission's March 7, 2012, entry, in particular the evidence in the record that supports a range of capacity costs, as well as AEP-Ohio's participation in the Pool Agreement, the Commission concluded that "as applied to AEP-Ohio, ... the state compensation mechanism could risk an unjust and unreasonable result." The circumstances faced by AEP-Ohio that prompted the Commission to approve the request for interim relief have not changed.

The Commission adopted the interim capacity charge mechanism to allow for the development of the record in this case and to address the issues raised as to the state compensation mechanism for capacity charges, without the delay of AEP-Ohio's modified ESP 2 case, which had not yet been filed. As directed in the March 7, 2012, entry the evidentiary hearing in this case commenced April 17, 2012, continued as expeditiously as feasible, and concluded on May 15, 2012. Initial briefs were filed May 23, 2012, and reply briefs are due May 30, 2012. Despite the schedule in this proceeding, it is apparent that the Commission will not be able to issue a decision on the merits before the interim capacity mechanism expires on May 31, 2012. To the extent that the Commission has already concluded that the circumstances faced by AEP-Ohio are unique and have not changed since the issuance of the March 7, 2012, entry, and, given that the Commission has made significant progress to address the issues raised in the capacity charge proceeding, the Commission finds it reasonable and appropriate to extend the current interim capacity mechanism. The interim capacity rates put into effect by the March 7, 2012, entry, tier one at $146/MW-day and tier two at $255/MW-day, shall continue until July 2, 2012, unless the Commission issues its order in this case.

It is, therefore,

ORDERED, That AEP-Ohio's motion for an extension of the interim capacity rates is granted, such that the capacity rates put into effect by the March 7, 2012, entry shall continue until July 2, 2012, unless the Commission issues its order in this case. It is, further, ORDERED, That a copy of this Entry be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto - concur

Cheryl L. Roberto

Lynn Slaby - concur

Lynn Slaby

GNS/SJP/vrm

Entered in the Journal
MAY 3 0 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

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

CONCURRING OPINION OF COMMISSIONERS CHERYL L. ROBERTO AND LYNN SLABY

In order to promote regulatory stability during the pendency of this matter, I concur in result only.

Cheryl L. Roberto

Cheryl L. Roberto

Lynn Slaby

Lynn Slaby

Entered in the Journal
MAY 3 0 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

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

DISSENTING OPINION OF COMMISSIONER ANDRE T. PORTER

Commission's March 7, 2012, entry and order made clear that the interim rate adopted in that order "will be in effect until May 31, 2012, at which point the rate for capacity under the state compensation mechanism shall revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 year." If this Commission is to adopt anything else other than RPM based rates for 100% of shopping load, in which case I would have significant reservations, then a record of evidence must be cited in support of the decision. At most, I believe that a case record could be cited to support 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.

On December 8, 2010, the Commission approved a state compensation mechanism based upon PJM Inc.'s annual base residual auction. That auction establishes annual capacity rates, effective during the PJM delivery calendar year, *i.e.* from June 1 to May 31 of the following year, which competitive suppliers are to pay AEP-Ohio for their capacity. Thus, pursuant to this Commission's decision on December 8, 2010, and based upon the applicable base residual auctions, it is my understanding that AEP-Ohio charged $174.29/Mw day for capacity as of the date of that entry through May 31, 2011, and charged $110/Mw day as of June 1, 2011. No party, nor does the majority in its entry today, contends that the change in the state compensation mechanism as of June 1, 2011, was an unjustified interpretation of the Commission's adoption of the "capacity charges established by the three-year [base residual auction] conducted by PJM, Inc."

On December 7, 2011, this Commission modified and approved a Stipulation that was executed by AEP-Ohio and numerous other parties, many if not all of whom are currently participating in this proceeding. That Stipulation provided for a tiered capacity rate mechanism with 21%[1] of AEP-Ohio load qualifying for tier-one rates—rates that would be based upon the clearing prices of PJM's base residual auction and would, therefore, change annually to match the published PJM capacity clearing price effective on June 1; those not coming under the percentage cap would receive tier-two rates of $255/Mw day. It should be noted here that, similar to the December 8, 2010, entry, no

1 The percentage for tier-one capacity agreed to by AEP Ohio and other parties was 21% for 2012, 31% for 2013, and 41% for 2014.

party, nor does the majority in its entry today, contends that the annual change to match the published PJM capacity clearing price is an unjustified interpretation of the Commission's December 7, 2011, entry. The Commission later rejected all components of the Stipulation, including the tiered capacity mechanism.

However, on March 7, 2012, *following a request from AEP-Ohio*, the Commission approved, as an interim state compensation mechanism that was to last only until May 31, 2012, a tiered approach that is virtually identical in terms of its RPM-based components to each the December 8, 2010; December 7, 2011; and March 7, 2012, entries. That is, this Commission left no doubt that 21 % of shopping customers would qualify for tier-one capacity at RPM-based prices, with other shopping customers permitted to shop at the tier-two rate of $255/Mw day; after this interim mechanism expired on May 31, 2012, capacity rates for all competitive suppliers would be the RPM-based rate.

In sum, by approving the March 7, 2012, entry, which was itself based upon a review of the record that began with the December 8, 2010, entry, and developed to support the Stipulation as per AEP Ohio's request to maintain the *status quo*, the Commission made a decision to approve a two-tier mechanism, with tier-one pricing based upon RPM prices with the RPM prices changing to match current prices as of each new PJM delivery year. In light of the history and record of this case, I cannot support this today's entry, and the request of AEP Ohio.

Andre T. Porter

Entered in the Journal

MAY 3 0 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary