

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Commission’s Review)
of Customer Rate Impacts from Ohio) Case No. 13-1530-EL-UNC
Power Company’s Transition to Market)
Based Rates)**

AEP OHIO REPLY COMMENTS

Background

In adopting the modified Electric Security Plan for Ohio Power Company d/b/a AEP Ohio (“AEP Ohio” or the “Company”) in the *ESP II* proceeding (Case Nos. 11-346-EL-SSO *et al.*), the Commission incorporated three energy-only auctions during the ESP term: (1) a 10% energy-only auction initially; (2) a 60% energy-only auction starting in June 2014; and (3) a 100% energy-only auction from January to May 2015. As part of the Opinion and Order in the 11-346 cases, the Commission (at 15-16) directed the attorney examiners “to establish a new docket within 90 days of this opinion and order and issue an entry establishing a procedural schedule to allow Staff and any interested party to consider means to mitigate any potential adverse rate impacts upon rates being set by auction.” This passage from the 11-346 decision is the basis for initiation of this docket and it governs the scope and purpose of this inquiry. On August 12, 2013, comments were filed by AEP Ohio, Commission Staff, the Office of Consumers’ Counsel (OCC), Industrial Energy Users – Ohio (IEU), FirstEnergy Solutions Corp. (FES) and Interstate Gas Supply (IGS). AEP Ohio hereby submits its reply comments.

Overview

Issues presented for decision in the *CBP Case* (Case No. 12-3254-EL-UNC), when decided in that case, should moot or at least partially displace or modify most of the issues being raised by parties in this case. AEP Ohio does not believe that the extensive litigation process advocated by OCC in this case is necessary for appropriate resolution of the issues in this docket.

But to the extent the Commission believes there is an overlap between the issues already submitted for decision in the *CBP Case* and those being examined here, the Commission should decide the CBP issues now (competitive bidding process, timing of auctions, fixed cost recovery, etc.) and continue to consider revenue neutral rate impact solutions in this docket (whether to adopt the 12% rate cap for auction rate impacts, etc.). In any case, AEP Ohio's positions should be adopted as further explained below.

Reply Comments

I. AEP Ohio's proposal for a 12% rate cap remains the most viable and comprehensive solution for addressing the potential rate impact of the required energy auctions

As part of the *CBP Case*, the Company has already set forth its rate impact mitigation proposals for the period during this ESP when rates are set by energy auction. The Company's position, as discussed in its initial comments, covers the four areas raised in the June 27, 2013 Entry in the case at bar: (1) cross subsidies among tariff classes; (2) phase-outs of historic rate design mechanisms; (3) methodologies to transition to market based rates; and (4) potential impacts on high winter usage customers.

As set forth in Mr. Roush's testimony in the *CBP Case* and discussed in more detail in the Company's initial comments in this docket, AEP Ohio offered three distinct rate mitigation proposals to address and mitigate the potential impacts of rates being set by auction during the ESP. First, Mr. Roush pointed out that the overall base generation rate decrease anticipated in January 2015 under the *ESP II* decision could be in the \$9/MWh range, equating to approximately \$10 savings per month for residential customers using 1,000 kWh of electricity per month. (Ex. A, CBP Roush Direct Test., at 7.) Second, Mr. Roush recommended in the *CBP Case* that the separate OPG and CSP rate zones be maintained for the FAC through December

2014, leading up to the 100% energy auction in January 2015. (Ex. A, CBP Roush Direct Test., at 9-10.) Specifically, the current differentiation between the rate zones would be maintained during this period, in order to avoid the rate impact of both rate zones being flash-cut to a uniform auction price. Ex. B, CBP Tr. I, at 111-117.) Last but certainly not least, Mr. Roush recommended in the *CBP Case* that the Commission expand the 12% rate cap adopted in the 11-346 decision to include the energy auction rate impacts. (Ex. A, CBP Roush Direct Test., at 11.) It is this third and primary recommendation of AEP Ohio that addresses potential auction rate impacts and provides an adequate transition to market rates during the ESP term. As Mr. Roush testified, using the 12% rate cap “would further address the concerns raised by the parties with respect to the auction results and is consistent with the Commission’s desire to maintain protection for customers from any unforeseen risks that may arise from a developing competitive market, as expressed by the Commission on page 11 of the January 30, 2013 Entry on Rehearing in the Company’s ESP.” (Ex. A, CBP Roush Direct Test., at 11.)

FES’s proposal to scale customer’s rates back to \$188.88/MW-day would also create substantial rate impacts for customers – some would be favorable and some unfavorable. Moreover, as OCC pointed out (at 4), the *ESP II* decision mandates revenue neutrality for each customer class, so implementing a customer-specific scale back to \$188.88/MW-day would not work for that reason as well. In any case, AEP Ohio offered its illustrative “straw man” proposal in the *CBP Case* to scale back rates uniformly by approximately 40%. While AEP Ohio anticipated a separate, future filing to implement this feature of the *ESP II* decision closer to the time of the scheduled January 1, 2015 reduction, the details of the rate reduction can be finalized earlier if the Commission wants to direct that those matters be worked out now – either in this docket or in a separate application. As further discussed below, the other commenters mainly

indicated more information was needed (OCC and Staff) or attempted to revisit aspects of the Commission's decision in the *ESP II* proceeding with which they continue to disagree (IEU, IGS and FES).

Regardless, adopting AEP Ohio's recommendation to incorporate the impacts of setting rates by auction into the existing 12% rate cap is reasonable and logical. In addition to striking a reasonable balance during the transition period, expanding the rate cap to cover auction impacts would implement an auction rate impact solution that is only triggered if necessary. Nobody knows what the clearing prices will be for the energy auctions and designing elaborate solutions in anticipation of certain clearing prices might end up being misguided and unnecessary. Further, if certain customer groups have specific impacts associated with the auction – such as high winter usage customers – they would be protected by the rate cap. While other parties may propose more elaborate solutions based on certain assumptions about expected auction clearing prices (all of which are speculative), the simple elegance of the rate cap solution is that it utilizes an existing rate impact threshold determined by the Commission to strike a reasonable balance between moving toward market rates and the long-term benefits to be enjoyed by customers while recognizing the short-term potential need to mitigate rate impacts during the transition period.

II. The Commission does not generally need to expand the process for decision in this case; if it does so, it should only do so incrementally, as needed. To the extent the Commission believes there is an overlap between the issues already submitted for decision in the *CBP Case* and those being examined here, the Commission should decide the CBP issues now and continue to consider revenue neutral rate impact solutions in this docket for later resolution.

OCC and Staff suggest more information and more process be required in order to move forward in this case. Specifically, OCC recommends (at 4) that AEP Ohio be directed to propose a detailed rate design with supporting testimony, then recommends a discovery period of 120

days followed by an evidentiary hearing and briefing schedule. OCC also asks (at 7) the Commission to require AEP Ohio to provide detailed information about bill impacts and auction price projections, as well as the specifics for converting base generation rates into energy charges. For its part, Staff (at 2-3) submits a long and detailed list of information requests it would like to have the Commission direct AEP Ohio to fulfill. While Staff offers no suggestion on additional process, it simply states that the Commission will be able to better understand the potential impacts of transitioning to market-based rates after the Company provides all of the information. Reading Staff's comments was the first time AEP Ohio had heard about Staff's desire to get this information, as it was not requested formally or informally prior to the comments.

In any case, AEP Ohio would generally be amenable to working with Staff to provide information it seeks, using stated assumptions and parameters provided by Staff. But the Company should not be required to project auction results or market price forecasts, as OCC suggests. Staff's method outlined (at 3) for illustrating various auction based market rates (*i.e.*, 10%, 20%, 30% and 40% more and less than current rates) is feasible to calculate – but it does not show what likely results would be and could be misleading or unreliable for that reason. In any case, the Company could agree (if adopted by the Commission or Attorney Examiner) to work with Staff to provide additional information a file it in the docket within 60 days if that is viewed as being productive. The Company maintains, however, that its 12% rate cap proposal is the best solution that would operate to adequately protect customers – but would only be triggered if there are auction results that would otherwise produce substantial rate impacts (which is not something anyone can know ahead of time regardless of how much data may be produced by the Company). In sum, AEP Ohio believes the Commission should move forward

to decide the *CBP Case* as submitted and adopt the 12% rate cap to address potential impacts of setting rates by auction.

To the extent the Commission believes there is an overlap between the issues already submitted for decision in the *CBP Case* and those being examined here, the Commission should decide the CBP issues now (competitive bidding process, timing of auctions, fixed cost recovery, etc.) and continue to consider revenue neutral rate impact solutions in this docket (whether to adopt the 12% rate cap for auction rate impacts, etc.).

III. The Commission should not re-litigate issues presented in the *CBP Case* here or open up issues already decided in the *ESP II* proceeding.

Comments that improperly seek to re-litigate matters decided in the *ESP II* proceeding or already fully submitted for decision in the *CBP Case* should not be decided or modified in this docket. Matters decided in the *ESP II* proceeding are *res judicata* and already reflected in a final order that is pending on appeal before the Supreme Court of Ohio. Matters that have been fully submitted for decision in the *CBP Case* through completion of the process established in that case for comments, testimony, evidentiary hearing and merit briefs should not be subjected to a second bite at the apple here. Presumably, as referenced above, the *CBP Case* will be decided first and will moot or largely displace the overlapping issues addressed by parties in their comments in this docket. As further discussed below, all of IGS's comments and some of IEU's and FES's comments fall into these prohibited categories and should not be entertained in this docket. Alternatively, as discussed above, if the Commission intends to adopt additional litigation process in this auction rate impact docket, it should decide the CBP issues now and continue to consider revenue neutral rate impact solutions in this docket. Under no

circumstances, however, should the Commission re-open or attempt to modify the final *ESP II* decision that is currently pending on appeal before the Supreme Court of Ohio.

In its comments, IGS blatantly seeks to re-hash its proposals advance in the *ESP II* proceeding that were not adopted by the Commission. The entirety of IGS's comments consist of again advocating IGS witness Parisi's "retail auction" proposal from his May 4, 2013 direct testimony in the 11-346 cases. Inexplicably, IGS claims (at 7) that the retail auction proposal is "consistent with" the *ESP II* decision. But auctioning off the non-shopping customers that are not being served by the energy auction would obviously involve a massive loss of base generation revenue that would amount to a major change to the Modified ESP and would undercut all of the revenue assumptions that went into not only the RSR design but also the MRO test, both of which were fundamental components of the decision. IGS's retail auction was not adopted by the Commission in the *ESP II* decision and cannot be adopted now as part of this subservient docket to implement the Modified ESP. Even if the *ESP II* decision were set aside (which the Commission cannot do), there is no basis under R.C. 4928 to permit or conduct such a retail auction – it is simply not a choice under R.C. 4928.141.

IGS's further suggestion (at 7) that the Commission could "simply select a date to conduct a retail auction to serve 100% of the SSO load (e.g. June 1, 2015)" is doubly wrong. First, it would address a period that involves AEP Ohio's next SSO plan that is completely beyond the scope of this proceeding or within the Commission's authority to unilaterally address in any docket until the Company files an application under R.C. 4928.141 to cover that time period. Second, adopting the retail auction for any period within the current ESP term would violate the *ESP II* decision, as discussed above.

IGS's final recommendation (at 10) that the proceeds from a retail auction could help payback the capacity deferral is moot since adopting a retail auction would itself eliminate retail generation revenues that the Commission assigned to AEP Ohio as part of the Modified ESP and would cause substantial financial harm to the Company (in addition to violating the *ESP II* decision).

IEU continues to attack the *ESP II* decision as the main thrust of its comments as well. IEU pejoratively refers to this rate impact docket as the "second transition" in its comments. This jab is apparently another criticism of the *ESP II* and *Capacity Charge* decisions, wherein IEU's tired theory that SB 3 precluded establishment of anything other than market-based rates for both retail SSO rates and the wholesale capacity charge. IEU goes on to more explicitly revisit its standing grievance with the *ESP II* decision saying (at 5) that the transition to market was supposed to be completed by 2005 under SB 3 and that the Commission's decision "ignored fundamental commands from the General Assembly." As an untimely and improper (misguided) challenge of those prior decisions should be ignored or again rejected.

IEU also attacks the Commission's ability to implement this docket asserting (at 2) that no legal authority has been identified that allows the Commission to mitigate adverse rate impacts of AEP Ohio's transition to market-based rates, since "a transition to market-based rates necessarily means that a competitive retail electric service is involved and the General Assembly has removed the Commission's supervisory and regulatory authority over such service (except in very limited circumstances). But the SSO is not a competitive retail electric service under R.C. Chapter 4928. And the Commission has ample discretion to create revenue-neutral rate design solutions as part of implementing the ESP, especially since the Commission explicitly reserved the right to do so in connection with the energy auctions in its *ESP II* decision. While IEU may

disagree with the Commission's goal of tempering the move to market-based rates with consideration of customer rate impacts (which disagreement is curious coming from a customer group), IEU cannot properly argue that it is legal error to implement a revenue-neutral rate design solution in connection with the energy auctions.

For its part, FES's rate blending proposals have no place in this docket since it is constrained to considering revenue-neutral solutions. FES's comments heavily feature the same position it advanced *ad nauseam* in the *CBP Case*: that the Commission should displace fuel and non-fuel (aka base generation) revenues that were incorporated into the *ESP II* decision by reducing the ESP's "fixed generation rates" and disallowing recovery of costs long recovered through the FAC, even though the *ESP II* decision continued the FAC as is. (FES comments at 2-9.) FES's comments remain inappropriate for all of the substantive reasons extensively discussed by AEP Ohio in the *CBP Case*. As fully explained in AEP Ohio's positions advanced in the *CBP Case*, FES's proposals – to scale back base generation rates prior to January 1, 2015 and to disallow purchased power demand charges long-recovered through the FAC – run afoul of the *ESP II* decision rather than implementing the decision. In short, FES's proposals are no less inappropriate in this case than they were in the *CBP Case* – and they should be rejected. FES continues to be very unhappy about the *ESP II* decision, as evidenced by its broad-based attack on the decision before the Supreme Court of Ohio, but it cannot be permitted to use this ESP implementation docket to re-litigate and modify the final *ESP II* decision.

CONCLUSION

For the reasons stated in AEP Ohio's initial and reply comments, the Commission should address the potential impacts of setting rates by auction through adoption of the 12% cap proposal advanced by the Company.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing AEP Ohio Comments was served upon the parties of record by electronic service this 6th day of September 2013.

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Summary: Comments AEP Ohio Reply Comments electronically filed by Mr. Steven T Nourse
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