

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbus	)	
Southern Power Company to Amend its	)	Case No. 10-343-EL-ATA
Emergency Curtailment Service Riders.	)	

In the Matter of the Application of Ohio Power	)	
Company to Amend its Emergency	)	Case No. 10-344-EL-ATA
Curtailment Service Riders.	)	

---

**MOTION TO INTERVENE, MEMORANDUM IN SUPPORT  
AND COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO**

---

Samuel C. Randazzo, Counsel of Record  
Lisa G. McAlister  
Joseph M. Clark  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-4228  
Telephone: (614) 469-8000  
Telecopier: (614) 469-4653  
sam@mwncmh.com  
lmcalister@mwncmh.com  
jclark@mwncmh.com

**April 8, 2010**

**Attorneys for Industrial Energy Users-Ohio**

## **TABLE OF CONTENTS**

I.	MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE .....	3
II.	COMMENTS.....	4
	A. Introduction .....	4
	B. AEP-Ohio's proposal is an unjust, unreasonable, unlawful and inconsistent with Commission precedent .....	6
	C. AEP-Ohio's arguments that permitting Ohio customers to participate in PJM's demand response programs would export limited resources to the East Coast is a red herring .....	9
	D. AEP-Ohio's proposal may result in higher costs to comply with peak demand reduction obligations .....	12
	E. AEP-Ohio's proposal to conscript mercantile customer's peak demand reduction capabilities towards AEP-Ohio's obligations should be rejected ...	15
	F. Parts of AEP-Ohio's proposal are simply illegal and unworkable .....	17
III.	CONCLUSION.....	18
	CERTIFICATE OF SERVICE .....	19

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbus )	
Southern Power Company to Amend its )	Case No. 10-343-EL-ATA
Emergency Curtailment Service Riders. )	

In the Matter of the Application of Ohio Power )	
Company to Amend its Emergency )	Case No. 10-344-EL-ATA
Curtailment Service Riders. )	

---

**MOTION TO INTERVENE OF INDUSTRIAL ENERGY USERS-OHIO**

---

Industrial Energy Users-Ohio ("IEU-Ohio") hereby respectfully moves the Public Utilities Commission of Ohio ("Commission"), pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code ("O.A.C."), for leave to intervene in the above-captioned matter with the full powers and rights granted by the Commission, specifically by statute or by the provisions of the O.A.C., to intervening parties.

On March 19, 2010, Columbus Southern Power Company and Ohio Power Company (collectively, "AEP-Ohio" or "Companies") filed an Application requesting authority from the Public Utilities Commission of Ohio ("Commission") to modify its Emergency Curtailment Service ("ECS") Riders and offer a new demand response program regarding customer participation in PJM Interconnection, L.L.C. ("PJM") demand response programs.

As demonstrated further in the Memorandum in Support attached hereto and incorporated herein, IEU-Ohio has a direct, real, and substantial interest in the issues

and matters involved in the above-captioned proceedings, and is so situated that the disposition of these proceedings may, as a practical matter, impair or impede its ability to protect that interest. IEU-Ohio believes that its participation will not unduly prolong or delay these proceedings and that it will significantly contribute to the full development and equitable resolution of the factual and other issues in these proceedings. The interests of IEU-Ohio will not be adequately represented by other parties to the proceedings and, as such, IEU-Ohio is entitled to intervene with the full powers and rights granted by the Commission, specifically by statute and by the provisions of the O.A.C. to intervening parties.

Respectfully submitted,

/s/ Lisa G. McAlister  
Samuel C. Randazzo (Counsel of Record)  
Lisa G. McAlister  
Joseph M. Clark  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-4228  
Telephone: (614) 469-8000  
Telecopier: (614) 469-4653  
sam@mwncmh.com  
lmcAlister@mwncmh.com  
jclark@mwncmh.com

**Attorneys for Industrial Energy Users-Ohio**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbus )	
Southern Power Company to Amend its )	Case No. 10-343-EL-ATA
Emergency Curtailment Service Riders. )	

In the Matter of the Application of Ohio Power )	
Company to Amend its Emergency )	Case No. 10-344-EL-ATA
Curtailment Service Riders. )	

---

**MEMORANDUM IN SUPPORT AND COMMENTS**

---

**I. MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

In support of this Motion to Intervene, IEU-Ohio states that it is an association of ultimate customers. A current listing of IEU-Ohio member companies is available on IEU-Ohio's website at [http://www.ieu-ohio.org/member\\_list.aspx](http://www.ieu-ohio.org/member_list.aspx). IEU-Ohio's members purchase electricity from AEP-Ohio, which is a public utility subject to the jurisdiction of the Commission.

IEU-Ohio's members work together to address matters that affect the availability and price of utility services. Additionally, IEU-Ohio seeks to promote customer-driven policies that will assure an adequate, reliable, and efficient supply of energy for all consumers at competitive prices. To this end, IEU-Ohio has worked, and will continue to work, to produce legislative, regulatory, and market outcomes that are consistent with the state policy contained in Section 4928.02, Revised Code. IEU-Ohio members have been, and continue to be, active participants in state and federal regulatory proceedings concerning Ohio's electric utilities, including the proceedings regarding AEP-Ohio's energy efficiency and peak demand reduction portfolio plan ("EE/PDR") and

proceedings involving customer participation in PJM's demand response programs, including AEP-Ohio's electric security plan ("ESP").<sup>1</sup>

A portion of IEU-Ohio's member companies are served by AEP-Ohio and may be affected by AEP-Ohio's proposed Application to the extent that AEP-Ohio's proposal may affect the rates charged to IEU-Ohio members for electric service as well as impact the quality and types of services that IEU-Ohio members receive from AEP-Ohio. This potential vests IEU-Ohio with a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceeding, the disposition of which may impair or impede its ability to protect that interest.

For the aforementioned reasons, IEU-Ohio has a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceeding that will only be protected by its participation in this proceeding. Therefore, IEU-Ohio hereby requests that the Commission grant its intervention with the full powers and rights granted by the Commission, specifically by statute and by the provisions of the O.A.C., to intervening parties.

## **II. COMMENTS**

### **A. Introduction**

As noted above, AEP-Ohio's Application requests Commission authority to modify its ECS Riders<sup>2</sup> and offer a new demand response program regarding customer

---

<sup>1</sup> *In the Matter of the Application of Columbus Southern Power Company for Approval of its Portfolio Plan and Request for Expedited Consideration*, Case No. 09-1089-EL-POR, Application and Request for Expedited Consideration (November 12, 2009); *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case Nos. 08-917-EL-SSO, *et al.*, Opinion and Order (March 18, 2009) (hereinafter "ESP Case").

participation in PJM demand response programs. Specifically, AEP-Ohio's proposed modifications to its ECS Rider, would, subject to performance and participation conditions, compensate the customer at: 1) an energy credit based on a negotiated amount of not less than 80% of the AEP East load zone hourly Real-Time Locational Marginal Price ("LMP"), including congestion and marginal losses; and, 2) a demand credit based on a negotiated amount of not less than 80% of the Reliability Pricing Model ("RPM") auction price established by PJM in its base residual capacity auction for the current delivery year. AEP-Ohio asserts that the modifications to its ECS Rider would make it equivalent to PJM's demand response programs. AEP-Ohio requests that all costs associated with the ECS Rider (including the negotiated amounts paid to customers) be recovered from other customers through AEP-Ohio's EE/PDR Rider.

Additionally, in its Application AEP-Ohio requests that the Commission permit customers to participate in PJM's demand response programs (which they are already permitted to do without prior Commission authorization unless receiving service through a reasonable arrangement) on the conditions that: 1) customers commit their demand response load registered with PJM towards AEP-Ohio for the purpose of counting towards AEP-Ohio's peak demand reduction requirements; 2) the Commission permits AEP-Ohio to count the customer-sited commitments towards AEP-Ohio's peak demand reduction requirements; 3) customers agree to report curtailment information to AEP-Ohio and cooperate in documenting related peak demand reductions and capabilities; 4) AEP-Ohio gets timely recovery of any costs associated with implementing this proposal; and, 5) customers do not receive any compensation or exemption from AEP-

---

<sup>2</sup> AEP-Ohio calls this component the "Enhanced Tariff Program Equivalent to PJM DRPs." It is worth noting that neither a modification nor an additional option necessarily mean that AEP-Ohio's demand response options for customers have been "enhanced."

Ohio's EE/PDR Rider in exchange for committing customer-sited peak demand reduction capabilities to AEP-Ohio. Finally, AEP-Ohio states that it would like its proposed option to apply beginning with the 2010-2011 PJM Planning Year, which begins on June 1, 2010 and runs through May 31, 2011.

AEP-Ohio's proposal requesting that the Commission condition customers' ability to participate in PJM's demand response programs through curtailment service providers is unjust, unreasonable and should be denied by the Commission. Alternatively, the Commission should set this matter for hearing.

**B. AEP-Ohio's proposal is unjust, unreasonable, unlawful and inconsistent with Commission precedent.**

AEP-Ohio claims that while the Commission's decisions on AEP-Ohio's ESP Case did not fully or permanently resolve the questions related to retail participation in PJM demand response programs, the Commission exercised its authority to impose an interim restriction on retail participation in the PJM demand response programs for customers taking service pursuant to a reasonable arrangement. AEP-Ohio Application at 2. However, AEP-Ohio's selective reading of the Commission's Order conveniently ignores that the Commission affirmed its "decision **not** to prohibit AEP-Ohio's SSO customers' from participating in PJM's DRP at this time...."<sup>3</sup> (Emphasis added.) Thus, presently all Ohio retail customers are permitted to participate in Regional Transmission Organization ("RTO") demand response programs except that customers taking service pursuant to reasonable arrangements must seek specific Commission approval.

---

<sup>3</sup> ESP Case, Entry on Rehearing at 40 (July 23, 2009). The Commission indicated that it would reconsider its decision in a subsequent proceeding and noted that it would require additional information to consider the costs incurred by various customers to balance the interest of AEP-Ohio customers participating in PJM's demand response programs and the cost AEP-Ohio's other customers incur via retail rates. *Id.* While AEP-Ohio's Application mentions several categories of "costs" resulting from customer participation in PJM's demand response programs, AEP-Ohio fails to quantify any of the "costs."



Additionally, Ohio law permits customers that participate in PJM's demand response programs, and elect to commit their demand response capabilities towards the electric distribution utility ("EDU") peak demand reduction obligation, to seek an exemption from the EDU's energy efficiency and peak demand reduction cost recovery mechanism.

Specifically, and as AEP-Ohio acknowledges, Section 4928.66(A)(2)(c), Revised Code, states:

(c) **Compliance** with divisions (A)(1)(a) and (b) of this section **shall be measured by including** the effects of all demand-response programs for mercantile customers of the subject electric distribution utility **and all such mercantile customer-sited energy efficiency and peak demand reduction programs**, adjusted upward by the appropriate loss factors. Any mechanism designed to recover the cost of energy efficiency and peak demand reduction programs under divisions (A)(1)(a) and (b) of this section may exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs, if the commission determines that that exemption reasonably encourages such customers to commit those capabilities to those programs...

Thus, if a customer participates in PJM's demand response program and commits its peak demand reduction capabilities to AEP-Ohio, this commitment shall be counted towards an EDU's EE/PDR benchmarks. Additionally, Section 4928.66(A)(2)(d), Revised Code, requires the Commission to apply the compliance provisions of that section in ways that facilitate "...efforts by a mercantile customer or group of those customers to offer customer-sited demand-response, energy efficiency, or peak demand reduction capabilities to the electric distribution utility as part of a reasonable arrangement submitted to the commission pursuant to section 4905.31 of the Revised Code."

However, it is the customer's discretion whether to commit its self-directed capabilities towards the EDU's portfolio obligation. While a customer and AEP-Ohio may mutually agree on committing the customer's capabilities towards AEP-Ohio's statutory obligations, Section 4928.66(A)(2)(c), Revised Code, also provides mercantile customers the right to unilaterally make an application at the Commission to commit their customer-sited capabilities towards an EDU's portfolio obligations.<sup>4</sup> The fact that such commitments are at the discretion of the customer is reinforced by the language in Section 4928.66(A)(2)(c) regarding the Commission's ability to grant the mercantile customer an exemption from the cost recovery mechanism for its commitment. Specifically, Section 4928.66(A)(2)(c), Revised Code, states:

Any mechanism designed to recover the cost of energy efficiency and peak demand reduction programs under divisions (A)(1)(a) and (b) of this section may exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs, if the commission determines that that exemption reasonably encourages such customers to commit those capabilities to those programs. **If a mercantile customer makes such existing or new demand-response, energy efficiency, or peak demand reduction capability available** to an electric distribution utility pursuant to division (A)(2)(c) of this section, the electric utility's baseline under division (A)(2)(a) of this section shall be adjusted to exclude the effects of all such demand-response, energy efficiency, or peak demand reduction programs that may have existed during the period used to establish the baseline.

(Emphasis added).

Thus, based upon Commission precedent and Ohio law, AEP-Ohio's mercantile customers (with the exception as it applies to reasonable arrangement customers as

---

<sup>4</sup> *In the Matter of the Application for Establishment of a Reasonable Arrangement Between Eramet Marietta, Inc. and Columbus Southern Power Company, Case No. 09-516-EL-AEC, Entry on Rehearing (March 24, 2010).* In this case, the Commission approved a mercantile customer's request to commit its peak demand reduction capabilities to Columbus Southern Power ("CSP") over CSP's objection.

discussed above) may participate in PJM's demand response programs; may elect to commit those customer-sited capabilities to AEP-Ohio for the purpose of counting towards AEP-Ohio's peak demand reduction targets; and, may elect to request an exemption from AEP-Ohio's EE/PDR Rider.

Through its Application AEP-Ohio is seeking to either hold customers hostage to inferior demand response programs available through AEP-Ohio or impose conditions or limitations on mercantile customer's abilities to commit their capabilities towards AEP-Ohio's peak demand reduction obligations. AEP-Ohio has failed to meet its burden of proof to demonstrate its Application is just and reasonable. Consequently, the Commission should deny AEP-Ohio's Application or, alternatively, set this matter for hearing.

**C. AEP-Ohio's arguments that permitting Ohio customers to participate in PJM's demand response programs would export limited resources to the East Coast is a red herring.**

AEP-Ohio claims that "allowing retail participation in the PJM DR programs outside the context of a utility program would encourage mercantile customers to *export* Ohio's limited demand response resources to the East Coast by allowing them to leverage payments associated with the PJM DR programs against SB 221's design for operation of the innovative mercantile provisions." AEP-Ohio Application at 6-7 (emphasis in original). AEP-Ohio appears to be resorting to factually inaccurate scare tactics in an attempt to sway the Commission.

PJM operates a regional electricity market, in which participants submit market-based bids, such that the least-cost means of satisfying the projected hourly energy, Operating Reserves, and other Ancillary Services requirements of the Market Buyers,

including the reliability requirements of the PJM Balancing Area, are met. PJM's markets include a capacity market that is intended to ensure the adequate availability of necessary generation and demand response resources that can be called upon to ensure the reliability of the grid. The basis for the capacity market design is the Reliability Pricing Model ("RPM"). The objective of RPM is to align capacity pricing with system reliability requirements and to provide transparent information to all market participants far enough in advance for actionable response to the information. RPM operates primarily through a centralized auction for capacity resources. RPM features locational capacity pricing to recognize and quantify the locational value of capacity; a variable resource requirement mechanism to adjust prices based on the level of resources procured; a forward commitment of supply by generation, demand resources and qualified transmission upgrades cleared in a multi-auction structure; and, a reliability backstop mechanism to ensure that sufficient generation, transmission and demand response solutions will be available to preserve system reliability.

PJM's capacity market also contains an alternative method of participation, known as the Fixed Resource Requirement ("FRR") alternative. The FRR alternative provides a load serving entity ("LSE") with the option to submit a FRR capacity plan detailing the generation and demand response resources they hold and will make available to PJM to meet a fixed capacity resource requirement as an alternative to the requirement to participate in PJM's RPM auctions. CSP, as part of the AEP East group of operating companies, elected the FRR alternative.

AEP-Ohio has the opportunity to sell and has sold generating capacity into PJM's RPM auctions. If AEP-Ohio has capacity in excess of that reflected in its FRR capacity

plan, it may sell the next 1,300 megawatts into the RPM market. When AEP-Ohio has had a capacity surplus within that bandwidth, it has sold the excess capacity into the market for a profit.

PJM permits demand response resources to be utilized as capacity resources in both the RPM auctions and the FRR alternative. Under the FRR alternative, a demand response resource reduces the amount of generation resources the LSE would otherwise need to submit as part of its capacity plan to PJM to demonstrate that they have adequate resources. When this occurs, it frees up generation capacity owned by the LSE to be sold to other market participants.

Demand resources are also permitted by PJM to be used as capacity resources if they clear in periodic base residual auctions conducted by PJM as part of its RPM. Through the 2011-2012 planning year, demand response can also qualify as a capacity resource through the interruptible load for reliability (“ILR”) option.<sup>5</sup> A planning year runs from June 1 of a given year through May 31 of the following calendar year.

Unlike the FRR alternative, when a demand response resource clears in the RPM auction or registers under the ILR option, the demand resource receives payments from PJM to act as a capacity resource. When demand response clears as a capacity resource in PJM, it has the effect of displacing higher cost generation offers that could otherwise clear in the auction. Decreasing the amount of generation that clears will work to lower the overall price of capacity in the RTO zone. The payments to the demand response resources are funded by LSEs that elect to secure their capacity

---

<sup>5</sup> The ILR program is being phased out and will not be available to any customers beyond May 31, 2012. Thus, all demand response not included in a FRR LSE's capacity plan will have to be bid directly into the RPM auctions to be counted as a capacity resource and will be paid the RPM clearing price.

requirements through the RPM auction. These LSEs are paying the demand response resource less than they would otherwise have paid higher cost generation resources. Thus, customers in the RTO zone will benefit from lower capacity prices.

Customers who participate in PJM's demand response programs are no more "exporting" their demand response capabilities than AEP-Ohio is "exporting" its generating capacity when it sells excess generating capacity into PJM's markets. AEP-Ohio's argument is nothing more than a red herring and should be disregarded.

**D. AEP-Ohio's proposal may result in higher costs to comply with peak demand reduction obligations.**

AEP-Ohio also suggests, without support, that when customers participate in PJM's demand response programs directly, rather than through AEP-Ohio's preferred option, it will result in costs that will be reflected in AEP-Ohio's retail rates. AEP-Ohio suggests that these costs could be avoided under AEP-Ohio's preferred approach (amended ECS Rider). AEP-Ohio Application at 3. AEP-Ohio's claims stretch credibility at best.

AEP-Ohio's retail rates under its ESP do not explicitly reflect any costs AEP-Ohio may incur (or revenue they may collect) under the FRR alternative. More importantly, AEP-Ohio completely ignores what AEP-Ohio proposes to treat as a "cost" under its amended ECR Rider.

As previously noted, under its amended ECR Rider, AEP-Ohio would pay customers a negotiated amount equal to no less than 80% of the RPM auction prices for the current delivery year and 80% of the relevant LMP. Rather than recognizing that customers on the amended ECR Rider would be paying a lower net price in exchange for a lower quality of service, AEP-Ohio is proposing to treat these payments to

customers as a “cost” that it would recover from other Ohio customers. AEP-Ohio Application at 5. Not surprisingly, AEP-Ohio also ignores that if customers elected service under the amended ECS Rider it would free up AEP-Ohio’s generating capacity that could be sold.<sup>6</sup>

Ironically, AEP-Ohio notes that it is not opposed to customers participating in the PJM demand response programs if those customers have switched from AEP-Ohio's standard service offer to generation service at market-based rates from a competitive retail electric service (“CRES”) provider. AEP-Ohio Application at 3.<sup>7</sup> In this context, AEP-Ohio's Application is silent on whether AEP-Ohio would afford such customers the opportunity to commit their capabilities towards AEP-Ohio's peak demand reduction

---

<sup>6</sup> Any approval of AEP-Ohio's amended ECS Rider should be conditioned by the Commission on a requirement that AEP-Ohio net any additional profits it incurs from generation capacity sales against the cost associated with the amended ECS Rider.

<sup>7</sup> AEP-Ohio also notes that it has opposed allowing its retail customers receiving regulated, standard service offer rates to “independently resell utility power at market-based rates through PJM DRPs operated in the wholesale market.” *Id.* AEP-Ohio's characterization of customer participation in PJM demand response programs as a sale-for-resale is factually and legally incorrect. First, even if it was a sale-for-resale, Section 4928.40(D), Revised Code, clearly states that AEP-Ohio cannot impose an unreasonable restriction on resale. Second, the Federal Energy Regulatory Commission (“FERC”) has again confirmed that customer-sited demand response resources participation in RTO demand response programs is not a sale-for-resale:

The Commission [FERC] defines “demand response resource” as “a resource capable of providing demand response,”<sup>7</sup> and defines “demand response” as “a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy.”

\* \* \*

We acknowledge that the Commission has previously characterized certain “purchases of demand reduction” as wholesale sales that “involve the sale for resale of energy that would ordinarily be consumed” by an end-use consumer. **The Commission no longer relies on that characterization.** As discussed above, the Commission's regulations now define “demand response” as “a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy.”<sup>7</sup>

Thus, in asserting jurisdiction over demand response provided by retail customers, FERC has determined that it is more appropriate to characterize demand response as a service, rather than a sale-for-resale.

obligation. The Application is also silent on whether AEP-Ohio supports the ability of a shopping customer that commits its capabilities towards AEP-Ohio's peak demand reduction obligations to seek an exemption from the EE/PDR Rider in exchange for the customer's commitment. IEU-Ohio suspects AEP-Ohio's indifference is the result of the PJM rules applicable to FRR plans. As noted above, because of its FRR election, AEP-Ohio must count the load of all customers (including shopping customers) within its footprint, except those customers taking service under AEP-Ohio's interruptible rate schedules, as firm load for the purpose of complying with PJM's FRR alternative. Under the FRR plan, when customers switch to a CRES provider, the CRES provider must obtain and pay AEP-Ohio for generating capacity at the corresponding RPM auction clearing price for the relevant delivery year. Specifically, PJM's Reliability Assurance Agreement provides that:

8. 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.

PJM Interconnection, L.L.C., Rate Schedule FERC No. 44, Original Sheet No. 44.



**E. AEP-Ohio's proposal to conscript mercantile customer's peak demand reduction capabilities towards AEP-Ohio's obligations should be rejected.**

AEP-Ohio also alleges without any quantitative analysis or support that because customers participating in PJM demand response programs are being paid the auction clearing price for their capabilities (which are offsetting more expensive generating assets), those customers should not receive an exemption from AEP-Ohio's EE/PDR Rider for committing those capabilities to AEP-Ohio's portfolio for three reasons: 1) because those customers are imposing FRR-related costs on AEP-Ohio; 2) the exemptions would be funded by other Ohio customers; and, 3) customers who participate in PJM's demand response programs are not providing any benefits to other Ohio customers. AEP-Ohio Application at 8. AEP-Ohio is incorrect on all three allegations.

First, as noted above, AEP-Ohio's claims that it incurs "costs" when customers participate directly in PJM demand response programs are without merit.

Second, exemptions from AEP-Ohio's EE/PDR Rider are not "funded" by other Ohio customers. The customers who commit their capabilities to AEP-Ohio for the purpose of counting towards AEP-Ohio's Substitute Senate Bill 221 ("SB 221") targets are making a like-kind contribution: either customers pay for AEP-Ohio's demand response programs or they achieve savings on their own and commit their capabilities to the EDU and do not pay "their share" of the costs to achieve the savings through the EE/PDR Rider. AEP-Ohio is selectively ignoring that the customers who commit their capabilities to AEP-Ohio are contributing as much or more than all other Ohio

customers.<sup>8</sup> It does not make any sense for customers to have to give their capabilities to AEP-Ohio **AND** pay the costs of achieving AEP-Ohio's demand response goals. The Commission should reject such an unreasonable and unjust proposition.

Finally, customers who participate in PJM's demand response programs are providing additional benefits to other Ohio customers whether or not they commit the capabilities to AEP-Ohio. As noted above, demand response resources that clear in the PJM auctions are offsetting higher priced generating assets, resulting in overall lower capacity prices for other Ohio customers. Also, as noted above, customers who participate in PJM's programs and commit the capabilities to AEP-Ohio, in addition to lowering the capacity prices, are providing a like-kind contribution towards meeting AEP-Ohio's SB 221 compliance targets. In fact, customers who participate in PJM's programs and commit their capabilities to AEP-Ohio and receive an exemption from the EE/PDR Rider are actually reducing the overall peak demand reduction compliance costs for all Ohio customers because, in the absence of commitments of mercantile customer peak demand reduction capabilities, at least for CSP, AEP-Ohio will seek to enroll additional customers under Schedule IRP-D or its "Enhanced Tariff Program Equivalent to PJM DRPs" and treat the reduced rate the customers receive for electing lower quality service as a peak demand reduction compliance cost that AEP-Ohio is entitled to recover from customers.

Mercantile customer participation in PJM's demand response programs and commitment of those capabilities to AEP-Ohio in exchange for an exemption from the EE/PDR Rider is lawful, reasonable and the most effective means of compliance with

---

<sup>8</sup> A customer seeking to qualify for an exemption may meet or exceed the comparable EDU benchmark for a percentage reduction from peak load.

the peak demand reduction mandates in SB 221. Accordingly, AEP-Ohio's Application should be denied or, alternatively, set for hearing.

**F. Parts of AEP-Ohio's proposal are simply illegal and unworkable.**

The Commission should not approve AEP-Ohio's proposal beginning with the 2010-2011 PJM Planning Year. Specifically, AEP-Ohio indicates that its proposal for the second option in its plan is that only customers who voluntarily commit their demand response load registered with PJM under the demand response programs should be permitted to participate, beginning with the 2010-2011 PJM Planning Year (that starts on June 1, 2010). AEP-Ohio Application at 7. However, as AEP-Ohio elsewhere notes, the PJM demand response program registration period for the 2010-2011 delivery year ended on March 1, 2010. Customers who are registered in the PJM demand response programs may not withdraw or fail to comply without penalty. Thus, if AEP-Ohio's plan is approved as proposed, for those customers already enrolled in PJM's demand response programs, either their peak demand reduction capabilities would be confiscated without even the ability to exercise their statutory right to request an exemption from the EE/PDR Rider pursuant to Section 4928.66(A)(2)(c), Revised Code, or they are forced to breach their contractual obligations for participating in PJM's demand response programs and subjected to penalty. Neither is a lawful or acceptable outcome. Thus, even if the Commission approves AEP-Ohio's proposal, which it should not, it should not become effective until PJM's 2011-2012 Planning Year.

Also, in Exhibit C of the Application (Customer Demand Response Resource Commitment Agreement), the draft commitment agreement states that the customer is committing its actual "demand-response load" to AEP-Ohio rather than its peak demand

reduction capabilities. This is an incorrect description of what the customer would be committing and should be corrected if it is to be used as the document that commits the customer's capabilities to the EDU.

### **III. CONCLUSION**

IEU-Ohio respectfully requests this Commission to grant its Motion to Intervene and deny AEP-Ohio's request to condition customer participation in PJM's demand response programs on "voluntary" commitment of customer-sited capabilities to AEP-Ohio inasmuch as it is unjust and unreasonable. Alternatively, the Commission should set this matter for hearing.

Respectfully submitted,

/s/ Lisa G. McAlister  
Samuel C. Randazzo (Counsel of Record)  
Lisa G. McAlister  
Joseph M. Clark  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215-4228  
Telephone: (614) 469-8000  
Telecopier: (614) 469-4653  
sam@mwncmh.com  
lmcAlister@mwncmh.com  
jclark@mwncmh.com

**Attorneys for Industrial Energy Users-Ohio**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene, Memorandum in Support and Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 8<sup>th</sup> day of April 2010, via first class mail, postage prepaid.

/s/ Lisa G. McAlister  
LISA G. MCALISTER

Steven T. Nourse  
Marvin I. Resnik  
American Electric Power Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215-2373  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[miresnik@aep.com](mailto:miresnik@aep.com)

**ON BEHALF OF AMERICAN ELECTRIC  
POWER SERVICE CORPORATION**

M. Howard Petricoff  
Stephen M. Howard  
VORYS, SATER, SEYMOUR AND  
PEASE LLP  
52 East Gay Street  
Columbus, Ohio 43216-1008  
[MHPetricoff@vorys.com](mailto:MHPetricoff@vorys.com)  
[smhoward@vorys.com](mailto:smhoward@vorys.com)

David I. Fein  
Cynthia Fonner Brady  
Constellation Energy Group, Inc.  
550 West Washington, Blvd., Suite 300  
Chicago, IL 60661  
312.704.8499  
[david.fein@constellation.com](mailto:david.fein@constellation.com)  
[cynthia.brady@constellation.com](mailto:cynthia.brady@constellation.com)

**ON BEHALF OF CONSTELLATION NEW  
ENERGY INC.**

Allen Freifeld  
Samuel A. Wolfe  
Viridity Energy, Inc.  
100 West Elm Street, Suite 410  
Conshohocken, PA 19428  
[afreifeld@viridityenergy.com](mailto:afreifeld@viridityenergy.com)  
[swolfe@viridityenergy.com](mailto:swolfe@viridityenergy.com)

**ON BEHALF OF VIRIDITY ENERGY, INC.**

Jacqueline Lake Roberts,  
Counsel of Record  
101 Federal Street, Suite 1100  
Boston, MA 02110  
[jroberts@enernoc.com](mailto:jroberts@enernoc.com)

**ON BEHALF OF ENERNOC, INC.  
CPOWER, INC., VIRIDITY ENERGY,  
INC., ENERGYCONNECT, INC.  
COMVERGE INC., ENERWISE  
GLOBAL TECHNOLOGIES, INC.  
ENERGY CURTAILMENT  
SPECIALISTS, INC.**

Duane Luckey  
Office of the Ohio Attorney General  
Public Utilities Section  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, OH 43215  
[duane.luckey@puc.state.oh.us](mailto:duane.luckey@puc.state.oh.us)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**4/8/2010 5:08:44 PM**

**in**

**Case No(s). 10-0343-EL-ATA, 10-0344-EL-ATA**

Summary: Motion to Intervene, Memorandum in Support and Comments of Industrial Energy Users-Ohio electronically filed by Mrs. Lisa G. McAlister on behalf of Industrial Energy Users-Ohio