

FILE

**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.)	

INITIAL COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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I. INTRODUCTION

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 to offer a new demand response program regarding customer participation in PJM Interconnection, L.L.C. ("PJM") demand response programs ("Application"). 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-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.

Industrial Energy Users-Ohio ("IEU-Ohio") filed a Motion to Intervene, Memorandum in Support and Comments on April 8, 2010 ("April 8, 2010 Comments"). IEU-Ohio will not repeat the issues already addressed in its April 8, 2010 Comments. However, IEU-Ohio incorporates its April 8, 2010 Comments herein by reference.

II. COMMENTS

The essence of the proposal before the Commission in this proceeding would allow each electric distribution utility ("EDU") to establish restrictions and conditions that affect the ability of customers (all customers) to participate in the demand response programs available from or through PJM. The AEP-Ohio EDUs are: (1) asking the Commission to regulate and supervise customers' access to a competitive service; and, (2) asking the Commission to approve tariff provisions that will differentiate between the opportunities available to customers that elect to obtain this competitive service from a competitive retail electric services ("CRES") provider and the opportunities the same customers would have if they elect to obtain the same competitive service from the EDUs. For example and under the EDUs' proposal, a customer cannot use a competitive supplier to participate in the PJM demand response programs unless the customer executes a capability commitment form.¹ In other words, AEP-Ohio's Application asks the Commission to exercise authority it does not have² and to approve

¹ AEP-Ohio states: "Any customer that does not agree to commit their DRP-registered load toward AEP-Ohio's compliance with the PDR benchmarks would henceforth be prohibited from participating in the PJM DRPs." Application at 9.

² AEP-Ohio asserts without citation that the Commission has authority to restrict retail customer participation in PJM demand response programs, which are part of the organized market operated by PJM. See, for example, Application at 6. IEU-Ohio believes this assertion is incorrect as a matter of law. Of course, the Commission has authority to ensure that competitive services are provided by suppliers that have been certified by the Commission in accordance with the statutory requirements. But, the General Assembly gave customers the right to obtain competitive services from suppliers authorized to provide such services in Ohio and neither AEP-Ohio nor the Commission can deprive customers of this right. AEP-Ohio's claim that the Federal Energy Regulatory Commission ("FERC") has given the Commission authority to, upon AEP-Ohio's request, limit the rights that Ohio customers derive by Ohio law is without merit as a matter of law. Application at 6-7. FERC's Order 719 requires PJM to take bids from demand resources, including demand resource bids from retail customers, "...unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate." FERC cannot and did not delegate authority to the states to limit retail customer participation in organized markets subject to the exclusive jurisdiction of FERC.

discriminatory³ and non-comparable treatment of competitive suppliers and customers relying on competitive suppliers all in violation of Section 4928.03, Revised Code.

Over the many years that AEP-Ohio and its affiliates have worked hard, in opposition to Ohio's state policy, to erect and maintain barriers to demand response programs, IEU-Ohio has reached out to AEP-Ohio to coordinate the interface between customers' demand response capabilities, programs available from PJM and the use of customers' capabilities to help meet Ohio's portfolio requirements. Indeed, but for the legislative proposals of IEU-Ohio, the opportunity for AEP-Ohio to rely on the capabilities of mercantile customers to comply with Ohio's portfolio requirements would not be part of Ohio law. Instead of informal meetings and collaboration to work through these issues, AEP-Ohio has chosen, time after time, to grind away making the process more complicated and the substantive solutions more distant while wrapping itself in a flag that signals loyalty to customers. In reality, AEP-Ohio's evolving behavior on this topic indicates that it is just very opposed to retail customers (all customers) participating in demand response programs available from or through PJM regardless of what the law, public policy or the Commission says and AEP-Ohio will play this opposition as trump over all other positions as long as it is permitted to do so by the Commission.

For example, among other things, AEP-Ohio has requested that the Commission prohibit retail customers from participating in PJM demand response programs even

³ In its Application, AEP-Ohio has documented its discrimination between customers based upon their status when the customers seek to participate in demand response programs. For example, AEP-Ohio states that it does not oppose participation of customers if they are obtaining generation supply from a competitive supplier and that its opposition to such participation is focused on customers that are receiving such supply from AEP-Ohio as the default supplier. Application at 3. But, generation supply is a competitive service by the command of Section 4928.03, Revised Code, and it is unlawful for AEP-Ohio to discriminate between the rates and charges or service terms and conditions that are available to a customer based on the customer's choice of supplier of any competitive service.

after the customers have signed PJM documents committing themselves to PJM's demand response programs (including peak demand reduction programs). Additionally, AEP-Ohio routinely sends a "rejection" to PJM when a retail customer attempts to enroll in PJM's demand response programs even when AEP-Ohio fully knows that its objection is without merit. Specifically, AEP-Ohio regularly submits the following notice to PJM when customers or Curtailment Service Providers attempt to register customer-sited peak demand reduction capabilities in PJM's demand response programs: "Applicant receives requirements service under a retail tariff at average embedded costs, does not take title to capacity or energy, and is not authorized to resell. AEP does not accept the applicant as eligible for PJM's Program." In response to AEP-Ohio's continued "rejection" of customer-sited peak demand reduction capabilities from participating in PJM's demand response programs, PJM recently sent a notice to all Curtailment Service Providers that had registrations denied by AEP-Ohio that included instructions for how to manually override AEP-Ohio's rejection and made it clear that "PJM will then approve the registration since this is not a valid reason to deny a registration." To the best of IEU-Ohio's knowledge and belief, AEP-Ohio continues to "reject" all customer enrollments even after PJM's determination that AEP-Ohio's rejection is invalid.

AEP-Ohio's current proposal is consistent with its prior and ongoing actions to block customer participation in demand response programs and, as discussed above, is contrary to the letter and spirit of Ohio law.

It is also important to remind the Commission that AEP-Ohio joined PJM knowing that PJM has demand response programs for ultimate customers. Nonetheless, AEP-

Ohio's actions frustrate the value of PJM's demand response resources. Arguably, AEP-Ohio's actions are the equivalent of "withholding." In fact, given AEP-Ohio's relentless pursuit to limit or prohibit customer participation in PJM's demand response programs, in addition to rejecting AEP-Ohio's Application, it would not be unreasonable for the Commission to request that PJM's independent market monitor investigate such behavior and initiate actions to remedy the damages caused by the behavior including payments to offset the extra costs that retail customers have to pay as a result of foreclosed demand response. Barriers to retail customer participation in demand response are contrary to the public interest and produce rates that are unjust and unreasonable.

Finally, AEP-Ohio's proposal ignores the encouragement from Chairman Schriber and Commissioner Centolella in AEP-Ohio's electric security plan case to work with PJM, the Commission and stakeholders to ensure that customer demand response is recognized as a reduction in capacity that AEP-Ohio must carry under PJM's market rules.⁴

IEU-Ohio remains interested in sensible, balanced solutions and is ready and able to work with the Commission's staff, AEP-Ohio and other stakeholders to this end. In the meantime and in self-defense, IEU-Ohio is compelled to point out that the relief requested by AEP-Ohio is as illegal as it is unwise. And, in case it counts for anything, the relief that AEP-Ohio seeks in this proceeding is decidedly anticompetitive and anti-consumer. There is no demand response without customer participation.

⁴ *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.*, Concurring Opinion of Chairman Alan R. Schriber and Commissioner Paul A. Centolella at 2 (March 18, 2009).

III. CONCLUSION

IEU-Ohio respectfully requests this Commission deny AEP-Ohio's Application and its request to condition customer participation in PJM's demand response programs on commitment of customer-sited capabilities to AEP-Ohio inasmuch as it is unjust, unreasonable and unlawful.

Respectfully submitted,



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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 28th day of May 2010, via electronic transmission.


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