

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

**REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

On March 19, 2010, the Ohio Power Company and the Columbus Southern Power Company (collectively “AEP” or “Companies”) filed an application with the Public Utilities Commission of Ohio (“PUCO” or “Commission”) for approval to amend the Emergency Curtailable Service Rider (“ECS Rider”) and for approval of a second demand response program seeking to place certain conditions on a retail customer’s participation in PJM demand response programs. On May 28, 2010, the Office of the Ohio Consumers’ Counsel (“OCC”) filed a motion to intervene and comments on these proposals. The Industrial Energy Users – Ohio (“IEU”), Constellation New Energy (“Constellation”) and EnerNOC, Inc. (“EnerNOC”) also filed comments on AEP’s Application.

OCC’s initial comments included recommendations that the PUCO approve the modifications to the ECS Rider (also known as Customer Option One or “First Option”) and that the Companies make the ECS Rider or First Option available to Curtailable

Service Providers (“CSPs”).¹ This proposal would satisfy the peak demand reduction requirements presented in Senate Bill 221 (“SB 221”).²

OCC also recommended the PUCO reject the proposed Customer Option Two (“Second Option”) because curtailment capabilities committed by retail customers to PJM programs would not reduce the Companies’ specific peak demand, except during a coincidental peak with PJM.³ OCC also urged the PUCO to reject the Second Option because it would condition retail customer participation in PJM programs on a prior commitment of capabilities to AEP.⁴ Finally, OCC urged the rejection of any kind of double-payment for the same capability.⁵

OCC respectfully submits these Reply Comments to reiterate OCC’s initial recommendations and to further clarify OCC’s position regarding issues presented by other parties listed above. OCC’s interests, as expressed in the previous filing, are to maintain certain residential customers’ abilities to participate in certain demand response programs, and to ensure that Ohio residential customers and other customer classes receive the intended benefits of SB 221. In the event that all outstanding issues are unable to be resolved in these cases, the OCC recommends that the Commission schedule a technical workshop to be followed by a hearing, if necessary, to foster a resolution and ensure compliance by the Companies with Ohio’s peak demand reduction goals.

¹ *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-343-EL-ATA, et al, OCC Motion to Intervene and Comments at 5 (May 28, 2010).

² R.C. 4928.66(A)(1)(b).

³ OCC Motion to Intervene and Comments at 6 (May 28, 2010).

⁴ Id.

⁵ Id.

II. REPLY COMMENTS

A. **The Penalty Provision in the Proposed *Customer Demand Response Resource Commitment Agreement* is Anti-Competitive, Discriminatory, and Discourages Customer Participation in Demand Response Programs.**

Under the Second Option, AEP may impose a double-penalty on retail customers participating in PJM demand response programs. This provision is another reason that the Second Option should not be approved by the PUCO as filed. In the alternative, if the Second Option is approved, this penalty provision should be eliminated. The penalty provision in the *Customer Demand Response Resource Commitment Agreement* states that a customer failing to curtail in the case where PJM calls a curtailment event is subject to an additional penalty from AEP if the Companies fail to meet their statutory demand reduction benchmarks.⁶

In other words, if the PUCO levies forfeiture against one or both of the Companies for failing to meet their statutory demand response reduction in a given year, AEP will levy a portion of this forfeiture against any retail customer, participating in a PJM demand response program, for failing to curtail in the *PJM event*. The amount of this fine would be “any payment or forfeiture assessed against AEP Ohio...but not to exceed the PJM payment identified in [the] Customer’s Curtailment Service Provider Contract.”⁷ This second penalty is anti-competitive, discriminatory, and will discourage customer participation in PJM demand response programs.

The penalty is anti-competitive and discriminatory because it is only levied by the Companies against customers participating in a PJM demand response program through a

⁶ Application at Exhibit C, ¶5 (March 19, 2010).

⁷ Id.

curtailment service provider contract. As noted in the comments of EnerNOC, “AEP-Ohio would impose this liability only on customers who participate through a curtailment service provider, and not upon its utility tariff demand customers.”⁸ Customers participating in the First Option, or directly in AEP’s demand response program, are not subject to liability for both the PJM penalty and the penalty for the Companies’ failure to meet the SB 221 peak demand reduction goals.

If a second penalty is imposed, an AEP customer would likely choose the AEP program instead of the PJM program if, as proposed by AEP, the customer would have to commit their capabilities to *both* AEP and PJM under the Second Option. If the commitment payments are similar under both the First and Second Options, a customer is more likely to choose the option with the possibility of only one penalty provision. Thus, AEP is placing its demand response program in direct competition with PJM programs, and competing with curtailment service providers for participants. However, under the Second Option, a customer must commit their capabilities to AEP *before* being allowed to participate in PJM programs. The customer is then subject to the imposition of additional liability for SB 221 non-compliance penalties. This is anti-competitive. Thus, the Second Option as filed should be rejected by the PUCO.

In the alternative, the penalty provision should be eliminated. As noted in OCC’s initial comments, there are several benefits derived from retail customer participation in PJM demand response programs.⁹ Customer participation will be discouraged if additional liability for participation is imposed. As noted in initial comments, this liability “can be imposed even when the customer’s demand response is not the proximate cause

⁸ EnerNOC Comments at 7 (May 28, 2010).

⁹ OCC Motion to Intervene and Comments at 7 (May 28, 2010).

of [AEP's] failure to meet its statutory obligations.”¹⁰ The imposition of the penalty, as presented in the agreement, is discriminatory, anti-competitive, and will discourage customer participation in PJM programs, under the conditional requirements of the Second Option. If the Second Option is approved by the PUCO, this penalty provision should be eliminated.

B. Ohio Adm. Code 4901:1-39-05(E)(2) Does not Allow Participation in a Regional Transmission Organization Program to be Automatically Counted Towards a Distribution Utility's Peak Demand Reduction Benchmark Compliance.

The PUCO should not allow a distribution utility to automatically count customer participation in PJM demand response programs towards compliance with statutory peak demand reduction benchmarks. EnerNOC states that the language in Ohio Adm. Code 4901:1-39-05 “deems demand response resource capacity resources participating in the PJM programs eligible to count towards the utility peak-demand reduction benchmarks.”¹¹ The language of the statute and the Rule are contrary to this assertion. Rather, it is required that Ohio electric distribution utility companies implement programs designed to achieve peak demand reductions of their specific loads:

*Beginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one percent reduction in 2009 in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018. (Emphasis added)*¹²

The statutory language indicates specific effort by the utility to implement programs that will specifically reduce their peak demand. The fact that it must be specific to the electric

¹⁰ EnerNOC Comments at 7 (May 28, 2010).

¹¹ EnerNOC Comments at 11 (May 28, 2010).

¹² R.C. 4928.66(A)(1)(b).

distribution utility's particular load is emphasized in the baseline calculation for determining the reduction amount:

[T]he baseline for a peak demand reduction under division (A) (1) (b) of this section shall be the average peak demand *on the utility* in the preceding three calendar years...(Emphasis added).¹³

Thus, the statutory language places the burden of program implementation on the utility, and the results of those programs must be specific to the utility's peak demand.

The "Green Rules" also contain language that indicate electric utility peak demand reduction programs, while mirroring the requirements of a regional transmission organization ("RTO") demand response program, are more than merely counting the capacity committed to an RTO demand response program. Ohio Adm. Code 4901:1-39-05(E)(2)(a) states that a utility may demonstrate capacity to reduce peak demand through a program that "meets the requirements to be counted as a capacity resource under the tariff of a[n RTO]. Part (b) of the Rule states that a program may also be "equivalent to a[n RTO] program." If the Rules were permissive and allowed the inclusion of the capacity committed to an RTO, the language would have simply stated as much.

Further, the regional peak of an RTO may not correspond to the zonal peak of the Companies. As noted in OCC's initial comments, unless there is a coincidental peak, the PJM demand response participation would not be applicable to a peak demand reduction the Companies.¹⁴ As stated by Constellation, AEP's ability to call for curtailments of its own should be through a program that is "separate and distinct from the PJM Demand Response Program."¹⁵ Thus, OCC disagrees with EnerNOC's assertion that demand

¹³ R.C. 4928.66(A)(2)(a).

¹⁴ OCC Motion to Intervene and Comments at 6 (May 28, 2010).

¹⁵ Constellation Comments at 3 (May 28, 2010).

response resource capacity resources participating in the PJM programs are eligible to count towards the utility peak-demand reduction benchmarks. This interpretation of Rule 4901:1-39-05(E) should be rejected. The Commission should not allow the demand response capabilities committed to PJM to replace the Companies' efforts to reduce their specific peak demand, unless this resource is specifically available to AEP to reduce the peak demand of its Companies.

C. Customers Receiving Service from a Competitive Retail Electric Supplier Should not be Compensated Twice for the Same Demand Response Capability.

Customers participating in demand response programs should only be compensated once for the same capability. Constellation states that "if a [Competitive Retail Electric Supplier] mercantile customer who integrates its conservation efforts with AEP, the customer should be permitted to avoid AEP's energy efficiency and demand response riders."¹⁶ OCC agrees that the customer should receive compensation for its demand response capability commitment. However, the customer should only receive compensation once for its commitment. Avoiding the rider is one form of compensation. However, if the customer is compensated in another way, through participation in a PJM program, or through the terms presented in the First Option, that customer should not be compensated again by avoiding the rider.

III. CONCLUSION

The PUCO should approve the First Option as presented by AEP in these cases. The Second Option as filed should be rejected because it does not accomplish the specific

¹⁶ Constellation Comments at 4 (May 28, 2010).

peak demand reduction requirements of SB 221. Further, the penalty provision that would be imposed by the Companies is discriminatory, anti-competitive, and discourages customers from participating in PJM demand response programs. If necessary, the Commission should hold a technical workshop to be followed by a hearing, if necessary to ensure the resolution of these issues, and guarantee that Ohio's peak demand reduction requirements for Ohio's electric distribution utilities are met, and that the benefits of the legislation are realized by Ohio consumers.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these *Reply Comments* was served on the persons stated below *via* regular U.S. Mail, postage prepaid, or via electronic mail this 7th day of June 2010.

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Summary: Reply Reply Comments by the Office of the Ohio Consumers' Counsel
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