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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

*FIRSTENERGY SOLUTIONS CORP.'S REPLY COMMENTS  
AND OPPOSITION TO MOTION TO ESTABLISH A PROCEDURAL SCHEDULE FOR  
HEARING AND EXPEDITED RULING*

FirstEnergy Solutions Corp. ("FirstEnergy") hereby submits these reply comments in response to the Initial Comments filed by Ohio Power Company and Columbus Southern Power Company (collectively, "AEP-Ohio") in this proceeding. AEP-Ohio has offered no evidence or justification for it to collect capacity revenues beyond those that it is already recovering in the PUCO-approved Provider of Last Resort ("POLR") Rider. And the Federal Energy Regulatory Commission ("FERC") has now rejected AEP-Ohio's cost-based filing at FERC because a state compensation mechanism is already in place, and AEP-Ohio thus has no option to seek wholesale recovery under the plain terms of the PJM Reliability Assurance Agreement ("RAA"). See *Am. Elec. Power Serv. Corp.*, 134 FERC ¶ 61,039 (2011).

We also oppose AEP-Ohio's motion to establish a procedural schedule for a hearing and expedited ruling. See Columbus Southern Power Company's and Ohio Power Company's Motion to Stay the Reply Comment Period and Establish a Procedural Schedule for Hearing and Expedited Ruling (Jan. 20, 2011) ("AEP-Ohio Motion for Procedural Schedule"). The Commission already established a procedural schedule for this proceeding in its Dec. 8, 2010 Entry, as modified by its January 21, 2011 Entry. AEP-Ohio has not submitted any evidence in this proceeding that would justify a hearing.

*REPLY COMMENTS*

FirstEnergy has previously addressed AEP-Ohio's arguments in our initial comments in this proceeding (dated Jan. 6, 2011) ("FirstEnergy Comments") and in our memorandum contra

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to AEP-Ohio's application for rehearing (dated Jan. 17, 2011) ("FirstEnergy Memorandum Contra"). We refer the Commission to those pleadings. We use these reply comments to briefly highlight a few points raised in AEP-Ohio's Initial Comments.

*First*, AEP-Ohio continues to misstate its options under the PJM tariff. According to AEP-Ohio:

The Reliability Assurance Agreement (RAA) *essentially* provides alternatives for pricing Fixed Resource Requirement (FRR) capacity charges to CRES providers: 1) the PJM capacity auction price; 2) a state compensation mechanism under certain circumstances; or 3) a method based on the FRR Entity's cost or such other basis shown to be just and reasonable.... As stated in the RAA, AEP Ohio – the FRR entity, may *at any time* make a filing with FERC to change the basis for the compensation of capacity costs.

AEP-Ohio Initial Comments at 2-3 (emphasis added). The RAA "essentially" provides nothing of the kind. It instead states that if there is a state compensation mechanism in place, "such state compensation mechanism *will prevail*." RAA, Schedule 8.1, Section D.8 (emphasis added). It is only "[i]n the absence of a state compensation mechanism" that an FRR Entity has the option to seek either auction-based or cost-based wholesale recovery. *Id.* (emphasis added).<sup>1</sup>

The FERC agrees with our interpretation. It rejected AEP-Ohio's FERC filing for cost-based recovery, holding:

We reject the AEP Ohio Companies' filing. Section D.8 of Schedule 8.1 of the RAA provides that a "state compensation mechanism will prevail" in allocating capacity costs to retail LSEs. In this case, the Ohio Commission has adopted such a state mechanism and we therefore reject the AEP Ohio Companies' filing.

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<sup>1</sup> In its application for rehearing, AEP-Ohio similarly claimed that "it is true that [the RAA] ... suggests that a state mechanism *may* 'prevail' in lieu of a federally approved alternative." AEP-Ohio Memorandum in Support (Jan. 7, 2011) at 5-6 (emphasis added). To the contrary, the RAA expressly states that a "state compensation mechanism *will* prevail." *Id.*; see also FirstEnergy Memorandum Contra at 2-3 (discussing same).

The AEP Ohio Companies argue that the RAA expressly provides for making a section 205 filing to change the compensation mechanism. However, when read in context, the provision for making a section 205 filing applies only when no state compensation mechanism exists; the adverbial phrase in Section D.8 of Schedule 8.1 of the RAA, "in the absence of a state compensation mechanism," qualifies the remainder of that sentence and therefore conditions the right to make a section 205 filing.

*Am. Elec. Power Serv. Corp.*, 134 FERC ¶ 61,039 at PP 8, 10 (2011). The RAA does not provide a menu of compensation alternatives. Under the plain terms of the RAA, a state compensation mechanism *always* takes precedence.

*Second*, AEP-Ohio has now made three filings at FERC<sup>2</sup> and two filings at the PUCO but still has not provided any hard data on what AEP-Ohio itself identifies as the most important issue in this case: "The primary consideration must be whether the capacity charges that AEP Ohio charges CRES providers provides [sic] reasonable compensation to AEP Ohio for the capacity resources that the Companies have dedicated through the FRR process to serve retail load in Ohio." See AEP-Ohio Initial Comments at 5. AEP-Ohio has never attempted any such showing. At FERC, it just asserted that it needed more compensation and filed a cost-of-service formula. It was not even clear what resources AEP-Ohio included in its cost of service.

We *do* agree with AEP-Ohio that *if* it had the option to seek cost-based recovery under the PJM tariff, then the primary consideration becomes what revenues AEP-Ohio is already collecting for the resources needed to provide capacity for retail switching customers in Ohio. AEP-Ohio has never addressed this issue and thus is entitled to no additional compensation. See FirstEnergy Comments at 13-20 (discussing missing cost information in AEP-Ohio's filings).<sup>3</sup>

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<sup>2</sup> AEP-Ohio has actually made five filings at FERC, if you count its earlier aborted dockets.

<sup>3</sup> As set forth below, AEP-Ohio's failure to submit any real evidence in this proceeding means that there is no need for the Commission to establish hearing procedures.

*Third*, AEP-Ohio asserts that it “does not recover *any* capacity costs through retail rates.” AEP-Ohio Initial Comments at 5. This is not credible. It is also flatly inconsistent with AEP-Ohio’s past representations before this Commission. See *In re Application of Columbus S. Power Co.*, PUCO Case Nos. 08-918-EL-SSO & 08-918-EL-SSO, Direct Testimony of J. Craig Baker on Behalf of Columbus Southern Power Company and Ohio Power Company (“Baker Testimony”) at 26:12-13 (the POLR Rider will compensate AEP-Ohio for, among other things, “the challenges of providing *capacity and energy* on short notice”) (emphasis added); see also FirstEnergy Comments at 8-9 (demonstrating that the POLR Rider is a capacity charge); *id.* at 13 (discussing additional retail capacity recovery mechanisms for AEP-Ohio).

*Fourth*, AEP-Ohio claims that RPM auction prices are likely to increase in future years and thus it would be a benefit for Ohio ratepayers not to be exposed to them. See AEP-Ohio Initial Comments at 6. The fact is, however, that AEP-Ohio’s proposed cost-based rate was up to *25 times higher* than auction prices that Competitive Electric Service Providers (“CRES Providers”) are currently slated to pay to AEP-Ohio. See FirstEnergy Comments at 21. The possibility that auction prices may go up in some future day is hardly salve for a 25-fold rate increase today.

AEP-Ohio takes the view that auction prices have been too low to date and has thus proposed to switch to higher, cost-based recovery. But if AEP-Ohio can switch to cost-based recovery whenever it feels like it (which we dispute, given the existence of state capacity compensation mechanisms), there is nothing to stop AEP-Ohio from switching back to auction-based recovery as soon as auction prices increase. In other words, in the absence of a state compensation mechanism, AEP-Ohio would always be able to toggle between the “higher of” auction-based or cost-based recovery under the PJM tariff. Luckily, there is a state

compensation mechanism in place and it “*will prevail*” over any wholesale alternative. AEP-Ohio has no right to toggle between cost-based and auction-based recovery.

*Finally*, AEP-Ohio asserts that CRES Providers are “sophisticated and knowledgeable entities” that “*have and will continue to have* the option to avoid compensating AEP Ohio” at cost-based rates. AEP-Ohio Initial Comments at 6 (emphasis added). CRES Providers may be sophisticated and knowledgeable, but they are not time travelers. The CRES Providers’ option to self-supply must be exercised *three years in advance*. At FERC, however, AEP-Ohio sought to impose its new cost-based rate with an effective date of January 1, 2011—with less than 2 months notice, let alone the three years necessary for CRES Providers to self-supply. *See* FirstEnergy Comments at 23-24 (discussing AEP-Ohio’s proposed effective date, the inability of CRES Providers to self-supply and the harm to retail choice). The first time that CRES Providers could exercise their self-supply option to avoid AEP-Ohio’s new rate would have been for the delivery year beginning June 1, 2014—3½ years after AEP-Ohio’s proposed effective date at FERC. *See id.*

In sum, the Federal Energy Regulatory Commission has now rejected AEP-Ohio’s proposed wholesale filing for cost-based recovery. AEP-Ohio has made no showing whatsoever that it is entitled to any recovery beyond the POLR Rider that it is already receiving.

#### *OPPOSITION TO MOTION FOR PROCEDURAL SCHEDULE*

On the same day that FERC issued its order rejecting AEP-Ohio’s cost-based wholesale rate proposal, AEP-Ohio filed its motion to delay reply comments and for the Commission to establish a procedural schedule for a hearing and expedited ruling. The Commission delayed reply comments by its Entry dated January 21, 2011.

The Commission has yet to act on AEP-Ohio’s motion for a procedural schedule. It is a curious request. AEP-Ohio has had multiple opportunities to provide record support—if any

exists—for increased rates both at FERC and at the Commission, but has not submitted any evidence in this proceeding that would justify a hearing. AEP-Ohio has made no showing of the capacity costs that it dedicates to providing service to Ohio customers. AEP-Ohio has made no showing of how it allocates all of the capacity revenues that it already receives (indeed, according to AEP-Ohio, it receives none in retail rates). AEP-Ohio has made no showing that there is any shortfall in the rates that it is already collecting. *See generally*, FirstEnergy Comments at 13-20 (discussing missing cost information in AEP-Ohio's filings).

AEP-Ohio has not, in fact, even filed for a capacity rate increase.<sup>4</sup> And now it wants a hearing in this proceeding? For what? AEP-Ohio should have to make some initial filing or showing before the Commission starts scheduling hearings. There certainly is no need for a hearing for AEP-Ohio to repeat rejected arguments that there is no state capacity compensation mechanism in place.

Meanwhile, AEP-Ohio will almost certainly seek rehearing at FERC to overturn FERC's sound decision rejecting AEP-Ohio's filing there. *See* AEP-Ohio Motion for Procedural Schedule at 2, n.1 (reserving rights to challenge FERC order). Thus even as it seeks hearings at the Commission it will be trying to reinstate its cost-based proposal at FERC.

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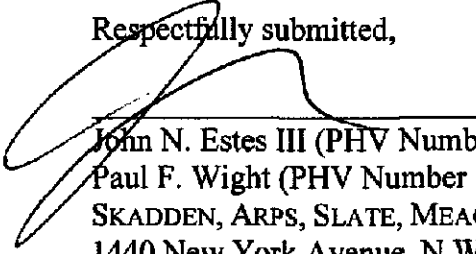
<sup>4</sup> On January 27, 2011, AEP-Ohio did file for a new Electric Security Plan. *In re Application of Columbus S. Power Co. & Ohio Power Co. for Authority to Establish a Standard Serv. Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Elec. Security Plan*, Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, 11-350-EL-AAM. While the filing is voluminous, it apparently does not seek additional capacity revenues associated with retail switching. AEP-Ohio does argue at length that the POLR Rider is not and has never been a capacity compensation mechanism (*see id.* "Direct Testimony of Laura J. Thomas on Behalf of Columbus Southern Power Company and Ohio Power Company," at 19:15-20:15), contrary to the evidence that it originally submitted in support of the POLR Rider. *See* Baker Testimony at 26:12-13, discussed *supra* at 4.

*CONCLUSION*

AEP-Ohio has failed to justify any additional capacity compensation or even a hearing to address whether it is entitled to additional capacity compensation.

Respectfully submitted,

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February 4, 2011

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*CERTIFICATE OF SERVICE*

I hereby certify that I have on this day caused to be served a true and correct copy of the foregoing Reply Comments of FirstEnergy Solutions Corp. via electronic mail (when available) and by first-class postage prepaid mail, to all parties on this 4<sup>th</sup> day of February, 2011.

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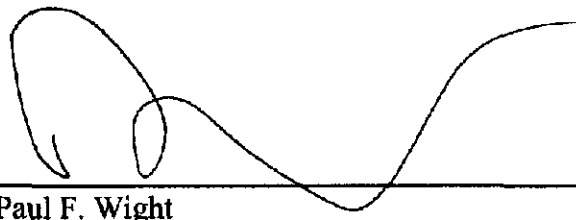
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A handwritten signature in black ink, appearing to read 'Paul F. Wight', is written above a horizontal line.

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