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FILE

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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Application Not for An Increase in Rates)
Pursuant to Section 4909.18, Revised)
Code, of Ohio Power Company and)
Columbus Southern Power Company to)
Case No. 11-0531-EL-ATA Establish)
New Market Based Rate for Returning)
CRES Customers That Elected to Avoid
the POLR Charge

Case No 11-0531-EL-ATA **RUCO**

COMMENTS OF FIRSTENERGY SOLUTIONS CORP.

I. INTRODUCTION

On March 18, 2009, the Public Utilities Commission of Ohio ("Commission") determined that "the POLR rider shall be avoidable for those customers who shop and agree to return at market price and pay the market price of power incurred by the Companies to serve the returning customers."¹ On February 4, 2011, Ohio Power Company and Columbus Southern Power Company ("AEP Ohio") filed an application to establish new market rate schedules for customers returning to AEP Ohio after electing to avoid the Provider of Last Resort Charge Rider ("POLR") while taking service with a Competitive Retail Electric Service ("CRES") Provider. AEP Ohio's application was then revised on February 7, 2011.

In the June 29, 2011 Entry in the above-referenced proceeding, the Attorney Examiner requested comments regarding AEP Ohio's application by July 22, 2010. FirstEnergy Solutions Corp. ("FES") believes that AEP Ohio's proposed tariffs are deficient because they fail to fully describe the proposed charge which will be imposed on returning customers. AEP Ohio's proposal includes variables which are completely undefined, variables which are defined so vaguely as to make it impossible for customers to determine the rate which will be charged, and

¹ March 18, 2009 Opinion and Order in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, p. 40.

variables which AEP Ohio has failed to justify. It also fails to include necessary time limitations on the proposed tariffs required by statute and Commission Order. Accordingly, FES offers the following comments for the Commission's consideration.

II. COMMENTS

A. The application to establish Market-Based Service Tariffs fails to meet the requirements of O.R.C. § 4909.18, and should therefore be rejected.

O.R.C. § 4909.18 requires a utility to file an application with the Commission to:

“...establish any rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same...If such application proposes a new service or the use of new equipment, or proposes the establishment or amendment of a regulation, the application shall **fully describe** the new service or equipment, or the regulation proposed to be established or amended, and shall explain how the proposed service or equipment differs from services or equipment presently offered or in use, or how the regulation proposed to be established or amended differs from regulations presently in effect.” (emphasis added)

AEP Ohio's application to establish new Market Based Service – Small (“Schedule MB-1”) and Market Based Service – Large (“Schedule MB-2”) rates for returning CRES customers that elected to avoid the POLR charge does not meet the requirements of O.R.C. § 4909.18, as the application fails to **fully describe** the new market-based service. The specific deficiencies in AEP Ohio's proposal include:

1. Of the eleven components included in the “Market Generation Rate” formula in Schedule MB-1, only ten are defined in the tariff. The formula includes component “AN”, which is completely undefined.
2. The formula in Schedule MB-1 includes an apparent error in which Marginal Losses (“ML”) and Congestion (“C”) are added instead of subtracted.

3. Schedule MB-1 fails to adequately define the Retail Administrative Charge (“RA”)². AEP Ohio has provided no explanation establishing what this variable is or how it will be calculated. Moreover, AEP Ohio has failed to provide any support establishing that it incurs any expenses which would be captured by this charge, the amount of those expenses, or that these expenses are not already recovered elsewhere. Without guidance in the tariff establishing how this variable of the Market Generation Rate is calculated, there is no way for customers to accurately evaluate their shopping options or for the Commission to evaluate AEP Ohio’s proposed charges to returning customers.
4. Schedule MB-1 fails to adequately define the Load Following/Shaping Adjustment (“LF”)³. It is unclear based on the definition in the tariff whether LF will result in a separate market generation rate by class, by load profile, or an average market generation rate for the Schedule MB-1. Further, it is unclear whether it will be shaped by all customers, or only the customers who are returning from service from a CRES provider.
5. Schedule MB-1 fails to adequately define the Transaction Risk Adder (“TR”)⁴, the Alternative Energy Requirement (“AE”)⁵, and Losses (“L”)⁶. Similar to variable RA, AEP Ohio has provided no explanation establishing what these variables are or how they will be calculated. At minimum AEP Ohio should

² Defined by AEP Ohio as “Cost associated with managing full requirements energy supply.” *See* Schedule MB-1, Ex. A pg. 1.

³ Defined by AEP Ohio as “Adjustment to reflect customer class-specific load shapes and time of use.” *Id.*

⁴ Defined by AEP Ohio as “Cost associated with market risk.” *Id.*

⁵ Defined by AEP Ohio as “Cost associated with Ohio Renewable Portfolio Standard.” *Id.*

⁶ Defined by AEP Ohio as “Cost of losses excluding variable transmission (marginal) losses.” *Id.*

provide a detailed definition of these terms or provide workpapers with its application showing how these variables will be calculated.

6. Schedule MB-1 and Schedule MB-2 both fail to provide sufficient detail regarding the proposed Capacity charge (“C”)⁷. It is unclear whether AEP Ohio is proposing to utilize the PJM RPM Clearing Price or the cost-based price it has proposed in Case No. 10-2929-EL-UNC. It also is unclear whether AEP Ohio is proposing to charge customers under these schedules more for capacity than it charges similarly-situated SSO customers. AEP Ohio should define with specificity which capacity charge it is proposing for inclusion in its application.

As explained above, AEP Ohio has failed to provide definitions for several variables of its proposed Market Generation Rate which would allow shopping customers and the Commission to evaluate whether AEP Ohio’s proposed rate is a valid market rate or to independently evaluate AEP Ohio’s calculation of that rate. In other words, there is no way for a customer to determine how the price will be calculated if it returns to AEP Ohio. Due to the lack of information on how these costs will be calculated and the failure to provide any estimates of these costs, the Commission does not have enough information to determine whether these charges result in reasonably priced electric service, and customers will not be able to use the tariffs to help make shopping-related decisions. Accordingly, AEP Ohio’s application should be rejected and AEP Ohio should be required to file revised tariffs which meet the requirements of O.R.C. § 4909.18.

⁷ Defined by AEP Ohio as “Cost of AEP’s capacity obligation in accordance with PJM’s Reliability Assurance Agreement Among Load Serving Entities.” *Id.*

B. The application's "Conditions of Service" are not in accordance with the Commission's March 18, 2009 Opinion and Order in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

AEP Ohio recognized in its application that the authorization for the application arises from Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.⁸ Specifically, AEP Ohio relied on the March 18, 2009 Opinion and Order in that case, which authorized AEP Ohio to charge market rates to returning customers.⁹ However, AEP Ohio has failed to quote the entirety of the relevant portion of the Commission's Order. Specifically, the Commission ruled that

"[T]he risk of returning customers may be mitigated, not eliminated, by requiring customers that switch to an alternative supplier (either through a governmental aggregation or individual CRES providers) to agree to return to market price, and pay market price, if they return to the electric utility after taking service from a CRES provider, **for the remaining period of the ESP term or until the customer switches to another alternative supplier.**" March 18, 2009 Opinion and Order in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, p. 40 (emphasis added).

AEP Ohio's application fails to recognize the express time limitation contained in the Commission's Order. Instead, in Schedule MB-1 and MB-2, AEP Ohio's proposed "Conditions of Service" states that "[t]he customer shall be billed under this schedule until the customer switches to service from a CRES Provider." This fails to recognize the other limitation imposed by the Commission – that the customer can return to SSO pricing at the conclusion of the ESP term.

As the tariff fails to include the Commission's express finding that customers are only required to pay market rates "for the remaining period of the ESP term," AEP Ohio's application should be rejected and AEP Ohio should be required to file revised tariffs in accordance with the Commission's March 18, 2009 Order.

⁸ See application at ¶ 2.

⁹ *Id.* at ¶ 3.

C. The application to establish Market-Based Service Tariffs fails to meet the requirements of O.R.C. § 4928.20(J), and should therefore be rejected.

Pursuant to O.R.C. § 4928.20(J), governmental aggregation customers are able to avoid the POLR charge.¹⁰ While the majority of returning governmental aggregation customers would likely fall under the proposed Schedule MB-1, FES is aware of governmental aggregation customers with demands of 200 kW or greater. Therefore, both of AEP Ohio's proposed schedules need to comply with Section 4928.20(J) of the Ohio Revised Code. O.R.C. § 4928.20(J) further provides that in the event those customers return to the utility after shopping, the customers "shall pay the market price of power incurred by the utility to serve that consumer. . ." The statute includes an express time limitation on these market based charges:

"The period of time during which the market price and alternative energy resource amount shall be so assessed on the consumer shall be from the time the consumer so returns to the electric distribution utility **until the expiration of the electric security plan**. However, if that period of time is expected to be more than two years, the commission may reduce the time period to a period of not less than two years." O.R.C. § 4928.20(J) (emphasis added).

AEP Ohio's application is silent as to whether these proposed tariffs are intended to apply to governmental aggregation customers. However, the "Availability of Service" section of these proposed tariffs could be read to include these customers.¹¹ As the proposed tariffs are written so as to include governmental aggregation customers, they must comply with the provisions of O.R.C. § 4928.20(J) and include the time limitations contained therein. These tariffs should apply only for two years or the end of the ESP term, whichever is shorter.

¹⁰ See also PUCO No. 7 and PUCO No. 19 First Revised Sheet No. 69-1 (Provider of Last Resort Rider).

¹¹ "This schedule only applies to customers that elected to avoid the Company's Provider of Last Resort Charge Rider while taking service from a CRES Provider." See Schedule MB-1, Exhibit A page 1; Schedule MB-2, Exhibit B page 1.

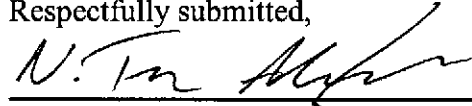
As the tariffs fail to include the time limitation included in O.R.C. § 4928.20(J), AEP Ohio's application should be rejected and AEP Ohio should be required to file revised tariffs.

III. CONCLUSION

FES believes the lack of certainty regarding these proposed charges has a significant effect on shopping customers who will factor these potential charges into their shopping decision (including the decision whether to avoid the POLR charge and whether to continue shopping or return to AEP Ohio), and respectfully requests that the Commission issue a decision as soon as possible. For the reasons stated above, AEP Ohio's Market-Based Service Schedules MB-1 and MB-2 should be rejected, and AEP Ohio should be required to file revised tariffs. These revised tariffs should be filed immediately, to remove the uncertainty around market-based rates for returning CRES customers who elected to avoid the POLR charge.

Dated: July 22, 2011

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of FirstEnergy Solutions Corp.* was served this 22nd day of July, 2011, via US mail and e-mail upon the parties below.



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