FILE

10

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Application Not for An Increase in Rates Pursuant to Section 4909.18, Revised Code, Of Ohio Power Company and Columbus Southern Power Company to Establish New Market Based Rate for Returning CRES Customers That Elected to Avoid the POLR Charge	)))))))	Case No. 11-531-EL-ATA

COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

Samuel C. Randazzo, Counsel of Record
Frank P. Darr
Joseph E. Oliker
McNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

July 22, 2011

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Application Not for An Increase in Rates Pursuant to Section 4909.18, Revised Code, Of Ohio Power Company and Columbus Southern Power Company to Establish New Market Based Rate for Returning CRES Customers That Elected to Avoid the POLR Charge	)))))))	Case No. 11-531-EL-ATA

COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

I. INTRODUCTION

On February 4, 2011, Columbus Southern Power Company's ("CSP") and Ohio Power Company's ("OPCo") (collectively, the "Companies") filed an application to establish new market based rates for returning competitive retail electric service ("CRES") customers that elected to avoid the provider of last resort ("POLR") charge ("Application"). The Application was filed pursuant to Section 4909.18, Revised Code. In their Application, the Companies referenced the Public Utilities Commission of Ohio's ("Commission") decision in the Companies' electric security plan ("ESP") cases[1] as the basis for their Application. The Application itself consists of proposed rate schedules for CSP and OPCo and does not include testimony or any other support.

On February 15, 2011, Industrial Energy Users-Ohio ("IEU-Ohio") moved to intervene in this proceeding.

---

[1] *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 No. 08-917-EL-SSO, *et al.*, Opinion and Order (March 18, 2009) (hereinafter "*2009 ESP*").

On February 18, 2011, IEU-Ohio filed a Motion to Consolidate this proceeding and a number of other cases that are currently pending before the Commission with the Companies' pending Application to establish a new ESP (Case Nos. 11-346-EL-SSO and 11-348-EL-SSO) arguing the Application as well as other pending applications raise a number of common factual and legal issues with the Companies' proposed ESP. The Commission has not acted on IEU-Ohio's Motion to Consolidate.[2]

On June 29, 2011, an Entry was issued permitting interested persons to submit comments regarding the Application. Pursuant to the June 29, 2011 Entry, IEU-Ohio submits these Comments for the Commission's consideration.

II. DESCRIPTION OF PROPOSAL

Both Companies have proposed two "market-based" tariffs, one for "small" service and one for "large" service. All of the rate schedules are based on formulas that identify components of the Market Generation Rate that are either externally determined or internally determined. In the rate proposed for small customers the category of factors includes an element for the "Simple Swap" (AEP-Dayton hub on-peak and off-peak prices), a basis adjustment to the hub price, marginal losses adjusted for losses already included in the transmission tariff, congestion charges, a charge for the alternative energy requirement, losses other than those already recognized by the transmission element, capacity, a load following/shaping adjustment, a retail administration charge, and a transaction risk adder.[3] The rate for each month would be published by the Company on its website by the 25th of the preceding month. The

[2] IEU-Ohio renews its February 18, 2011 Motion to Consolidate, and incorporates it by reference into these Comments.

[3] Application, Ex. A, page 1 (CSP tariff). The OPCo tariff provides the same structure. *Id.*, Ex. C.

formula for the large service rate includes factors for a capacity charge, including any applicable reserve margin multiplied by a demand loss factor, an energy charge based on the System Energy Price component of the AEP Load Zone Real-Time Locational Marginal Price set by PJM, and a monthly demand charge of $25.[4]

III. COMMENTS

Under Section 4909.18, Revised Code, the Commission is authorized to approve an application to establish a new rate if it determines such application is not for an increase in any rate, joint rate, toll, classification, charge, or rental. If it appears that the proposals in the proposal may be unjust or unreasonable, the Commission shall set the application for hearing.[5] Because the Application appears unreasonable in several respects, it must be set for hearing.

The need for the proposed market-based rate schedule traces its origins to the Commission's March 18, 2009 ESP Order and the discussion as to the Companies' POLR obligation:

> As the POLR, the Commission believes that the Companies do have some risks associated with customers switching to CRES providers and returning to the electric utility's SSO rate at the conclusion of CRES contracts or during times of rising prices. . . . As noted by several intervenors and Staff, the 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. In exchange for this commitment, those customers shall avoid paying the POLR charge.[6]

---

[4] Application, Ex. B, pages 1 & 2. The OPCo tariff provides the same structure. *Id.*, Ex. D.

[5] Section 4909.18, Revised Code.

[6] *2009 ESP*, Case No. 08-917-EL-SSO, *et al.*, Opinion and Order at 40 (March 18, 2009)(emphasis added).

Thus, for those customers who elect to waive the POLR charge, the Opinion and Order required that their SSO be set at a market price.

While the proposed small and large market base service rates point to factors that would appear to be market-based, as noted below the proposal is confusing at best and more likely unworkable. More importantly, however, the Companies have avoided an obvious solution to setting a market rate, i.e. to establish a market price by going to the market.

As has been recently argued in the remand case, the Companies could use a market to address its requirement to serve returning customers. Certainly the Opinion and Order anticipated that approach. The Companies could identify and hedge the load necessary to serve returning customers.[7] Bidding the load would provide a directly observable means of establishing the rate that should be charged to customers that are returning to the market-based rate.

Instead, the Companies point to several factors to build a price to be charged to returning customers who have waived the POLR charge. In practice the approach would be unworkable.

One component of the formula rate is a capacity element. As noted previously, Schedule MB-1 (Market Based Service – Small) provides that the capacity component is the "Cost of AEP's capacity obligation in accordance with PJM's Reliability Assurance Agreement Among Load Serving Entities."[8] Similarly, on proposed Schedule MB-2 (Market Based Service – Large) the capacity component (before loss adjustment) is set

[7] *2009 ESP*, Case No. 08-917 EL-SSO, *et al.*, Testimony of Kevin M. Murray on Behalf of Industrial Energy Users-Ohio at 8 (June 30, 2011) (addressing a means of addressing the Companies' Standard Service Obligation).

[8] Application at Ex. A, page 1; Application at Ex. C, page 1.

equal to the "Cost of AEP's capacity obligation in accordance with PJM's Reliability Assurance Agreement Among Load Serving Entities, including any applicable reserve margin."[9]

The problem with the Companies' proposed tariff language is that it points to a cost that does not exist. Within PJM, the Companies have elected to utilize the fixed resource requirement ("FRR") option under PJM's Reliability Pricing Model ("RPM"). Under the FRR option, an investor owned utility, electric cooperative or public power entity may submit a resource plan to PJM prior to the base residual auction for the delivery year. The resource plan identifies the capacity resources the entity will utilize to meet forecast peak demand in the FRR service area. The entity electing the FRR plan assumes the obligation to obtain sufficient capacity resources to meet all demand in the FRR service area, including load growth. Electing the FRR option requires the entity to establish the quantity of capacity resources they will rely upon to meet demand. However, making the FRR election does not establish or identify the costs of those capacity resources.[10] Thus, there is no value to insert into the formula for capacity as provided by either formula. The formula is simply unworkable.

Proposed Schedule MB-1 (Market Based Service – Small) suffers from an additional problem in that it points to a factor that is not in current tariffs of either Company. The formula rate the Companies' have proposed includes a component associated with an Alternative Energy Requirement which is defined as the "Cost associated with Ohio Renewable Portfolio Standard."[11] Here again, the Companies are

---

[9] Application at Ex. B, page 1; Application at Ex. D, page 1.

[10] *2009 ESP*, Case No. 08-917-EL-SSO, *et al.*, Transcript Vol. XI, from Hearing Held on December 3, 2008 at 76-77 (December 17, 2008).

[11] Application at Ex. A, page 1; Application at Ex. C, page 1.

pointing to a cost that does not exist, at least with respect to a specific rate that has been approved by the Commission. As part of the Companies current ESP, any costs associated with compliance with Ohio's renewable portfolio standards are currently collected entirely through the Companies' fuel adjustment charge ("FAC").[12] Although an Alternative Energy Rider is proposed in the pending AEP-Ohio ESP Application,[13] the Companies have not identified how they would establish a rate for the renewable energy component of this rate schedule, nor have they identified how they would assure this rate component would not collect costs the Companies are already recovering through their FAC clauses.

Finally, although the Companies have included language in the proposed rate schedules that requires customers to receive service for only such time until they switch to a CRES provider,[14] the Companies have neglected to make other changes to their rate schedules necessary to make the proposed market-based rate schedule reasonable. Currently, the Companies' rate schedules require returning large commercial and industrial customers to stay on the standard service offer ("SSO") for a minimum of twelve consecutive months.[15] The Companies have not proposed to modify any of the current minimum stay provisions in their rate schedules. The Companies' proposed market-based rate schedules still constitute standard offer service that would

---

[12] *2009 ESP*, Case No. 08-917-EL-SSO, *et al.*, Opinion and Order at 18 (March 18, 2009).

[13] *In the matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Ohio Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.*, Testimony of David M. Roush, Ex. DMR-4 (Jan. 27, 2011).

[14] This is a required provision of the rate schedule pursuant to the Commission's ESP Order. *2009 ESP*, Case No. 08-917-EL-SSO, *et al.*, Opinion and Order at 40 (March 18, 2009).

[15] *See* Columbus Southern Power Company P.U.C.O. No. 7, 1st Revised Sheet No. 3-23D; Ohio Power Company P.U.C.O. No. 19, 1st Revised Sheet No. 3-26D.

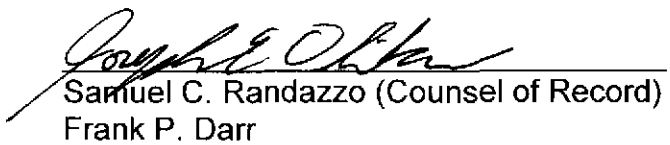
be available from the Companies. Thus, in the absence of corresponding change to modify the current minimum stay provisions, the proposed market-based tariffs could be interpreted to require a returning customer to remain on the rate schedule for a minimum of twelve months.

The minimum stay provisions are an outgrowth of the Commission's implementation of retail customer choice of generation providers.[16] The minimum stay provisions in the Companies' rate schedule are a legacy that reflects the assumption the customer is returning to SSO rates that are both cost based and reflect a revenue requirement to be collected over twelve months. This presumption is not accurate today, particularly under the circumstances in which a customer is paying market-based rates. Thus, the failure of the Companies to propose modifications to the minimum stay requirements in their rate schedules as part of the Application renders the proposed market-based rate schedules unreasonable.

IV. CONCLUSION

For the reasons discussed in these comments, IEU-Ohio urges the Commission to find the Companies' proposed market-based rate schedules are not reasonable, and set the matter for hearing. In the interest of judicial efficiency, IEU-Ohio also urges the Commission to grant its Motion to Consolidate.

Respectfully submitted,



Samuel C. Randazzo (Counsel of Record)
Frank P. Darr
Joseph E. Oliker
McNEES WALLACE & NURICK LLC

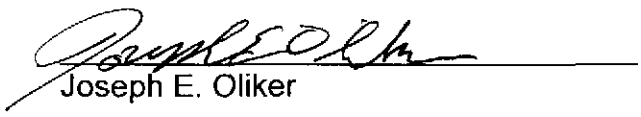
[16] *In the Matter of the Establishment of Electronic Data Exchange Standards and Uniform Business Practices for the Electric Utility Industry*, Case No. 00-813-EL-EDI, Finding and Order at 11-14 (July 19, 2000).

21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 22nd day of July 2011, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.



Joseph E. Oliker

Steven T. Nourse
Anne M. Vogel
American Electric Power Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
stnourse@aep.com
amvogel@aep.com

ON BEHALF OF COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY

William L. Wright
Section Chief
Thomas W. McNamee
Assistant Attorney General
Public Utilities Section
180 E. Broad Street, 6th floor
Columbus, OH 43215-3793
thomas.mcnamee@puc.state.oh.us

ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

Janine L. Migden-Ostrander
Consumers' Counsel
Kyle L. Verrett
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
verrett@occ.state.oh.us

ON BEHALF OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Lisa G. McAlister
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
lmcalister@bricker.com
mwarnock@bricker.com

ON BEHALF OF OMA ENERGY GROUP