

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of )  
Ohio Power Company and Columbus ) Case No. 10-2376-EL-UNC  
Southern Power Company for Authority )  
to Merge and Related Approvals. )

In the Matter of the Application of )  
Columbus Southern Power Company and )  
Ohio Power Company for Authority to ) Case No. 11-346-EL-SSO  
Establish a Standard Service Offer ) Case No. 11-348-EL-SSO  
Pursuant to §4928.143, Ohio Rev. Code, )  
in the Form of an Electric Security Plan. )

In the Matter of the Application of )  
Columbus Southern Power Company and ) Case No. 11-349-EL-AAM  
Ohio Power Company for Approval of ) Case No. 11-350-EL-AAM  
Certain Accounting Authority. )

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

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

In the Matter of the Commission Review )  
Of the Capacity Charges of Ohio Power ) Case No. 10-2929-EL-UNC  
Company and Columbus Southern )  
Power Company. )

In the Matter of the Application of )  
Columbus Southern Power Company ) Case No. 11-4920-EL-RDR  
for Approval of a Mechanism to Recover )  
Deferred Fuel Costs Ordered Under )  
Ohio Revised Code 4928.144 )

In the Matter of the Application of )  
Ohio Power Company for Approval of a )  
Mechanism to Recover Deferred Fuel ) Case No. 11-4921-EL-RDR  
Costs Ordered Under Ohio Revised )  
Code 4928.144 )

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**REVISED - RETAIL ENERGY SUPPLY ASSOCIATION'S  
APPLICATION FOR REHEARING  
AND  
MEMORANDUM IN SUPPORT**

Pursuant to Section 4903.10, Revised Code and Rule 4901-1-35 of the Ohio Administrative Code, now come the Retail Energy Supply Association (“RESA”)<sup>1</sup> and respectfully submits this application for rehearing and memorandum in support from the Opinion and Order issued by the Commission in the above styled consolidated proceedings. In its December 14, 2011 Opinion and Order, the Public Utilities Commission of Ohio adopted a stipulation but modified parts of it. Specifically, RESA alleges that the December 14, 2011 Opinion and Order was unreasonable and unlawful in the following respects:

(A) At Page 55 of the Opinion and Order, the Commission stated that it was modifying the Stipulation such that “RPM-priced capacity allocation determined for each customer class is only available for customers in the particular customer class, no RPM-priced capacity can be allocated to a customer in another customer class”. This alteration negated an important aspect of the Stipulation, namely that the full amount of RPM set aside priced capacity would be allocated to customers that desire it. The imposition of permanent class reservations creates a potential to strand RPM pricing and reduce the “glide path” from 21% RPM pricing in 2012 to 100% RPM pricing in June 2015.

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<sup>1</sup>RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

(B) At Page 54 of the Opinion and Order, the Commission modified the proposed Stipulation to adjust the RPM set-aside levels to accommodate the load of any community that approved a governmental aggregation program in the November 8, 2011, election to ensure that any customer located in the governmental aggregation community, would qualify for the RPM set-aside, so long as the community or its CRES provider completed the necessary process to take service in the AEP-Ohio service territory by December 31, 2012. The Commission's Opinion and Order, though, needs to be clarified so that it is clear that any such additional capacity awarded to the governmental aggregation communities which passed ordinances in the November 8, 2011 election does not decrease the "glide path" increases for other shopping customers in calendar years 2013, 2014 and the first half of 2015.

(C) At Page 68 of the Opinion and Order the Commission authorizes implementation of the ESP II program effect with the January billing cycle. RESA does not object to immediate implementation, but in light of the fact that it is foreseeable that there will be implementation issues and that correction of those disputes may have effect on other parts of the ESP II program, an implementation dispute resolution process is required.

The reasons supporting the unreasonableness and unlawfulness of these three grounds is set forth in the accompanying Memorandum in Support.

WHEREFORE, RESA respectfully requests that the Commission grant re-hearing on these three issues and modify its December 14, 2011 Opinion and Order.

Respectfully submitted,



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## MEMORANDUM IN SUPPORT

(A) At pages 20-23 of the September 7, 2011 Stipulation, the Signatory Parties agreed as follows:

1. The Signatory Parties recommend that the Commission (upon acceptance of this Stipulation) set the capacity charge in Case No. 10-2929-EL-UNC to be the PJM RPM-based rate except that an interim rate of \$255/MW-Day effective starting in January, 2012 will be charged to CRES providers for all shopping above the thresholds set forth in (b)(3) below. After May 31, 2015, the Commission's State Compensation mechanism will expire and the capacity charge will be the PJM RPM-based capacity rate. Consistent with current practice and PJM rules, the applicable PJM RPM-based capacity rate shall be the Final Zonal Capacity Price, which includes the effects of incremental auctions and ILR, as determined under applicable PJM rules; billing shall be adjusted for the applicable zonal scaling factor, forecast pool requirement and losses. Signatory Parties are agreeing to this capacity rate structure based on the total package being agreed to, including the RPM-priced set aside commitment, and reserve their right to oppose any capacity rate proposal that may be advanced in other cases involving companies not affiliated with AEP Ohio;
2. With regard to customers who are receiving generation service from a CRES provider as of the time that the Stipulation is filed, the capacity rate to be paid by the CRES provider to AEP Ohio for that customer's load will continue to be charged the otherwise applicable RPM rate for the remaining period that the contract remains effective (including renewals). The load grandfathered under this paragraph will be counted toward the RPM-priced set aside limits set forth below and will remain subject to a RPM-priced capacity during the term of the ESP, provided the contract remains in effect during that period;
3. In order to preserve and expand retail shopping in AEP Ohio's service territory and implement AEP Ohio's transition to a fully market-based SSO pricing system more quickly than is possible under an MRO, there will be a set aside of RPM-priced capacity available as follows: twenty-one percent of AEP Ohio's total retail load in 2012 (based on total kWh retail sales), twenty-nine percent in 2013 until securitization is completed when it will become thirty-one percent for the remaining portion of 2013 after which securitization is completed (if securitization is completed prior to January 1, 2013, then the applicable set aside for the

entirety of 2013 will be thirty-one percent), and forty-one percent in 2014 continuing through the first half of 2015. AEP Ohio agrees to conduct quarterly meetings with the Signatory Parties during the ESP term to discuss the status of securitization implementation efforts until securitization is completed. Beginning June 1, 2015, the RPM-price will apply for all SSO load. During this transition period ending May 31, 2015, there will be no exceptions to the RPM-priced capacity set aside set forth in this Paragraph and the Commission will monitor and enforce the RPM-priced capacity set aside provisions during the transition period, such that any and all shopping in excess of the RPM-priced set aside limits will be priced at the \$255/MW-Day capacity rate. The RPM-priced capacity set aside provisions set forth in this Paragraph include all existing and future shopping load during the transition period. The set aside of RPM-priced capacity shall be initially allocated on a pro rata basis among the residential, commercial and industrial classes based upon projected kWh consumption for a period of approximately 4 months after the filing of the Stipulation. A customer's class determination shall be based on the same criteria used to define the class for purposes of the current forecasted load projection. The RPM-priced capacity set aside shall be awarded to customers on a first come, first serve basis based upon the rules and processes set forth in Appendix C. After the expiration of the four month period, any kWhs of RPM-priced capacity that have not been consumed by a customer class will be available for customers in any customer class based upon the priority as set forth in Appendix C. During this transition period of RPM-priced capacity, a shopping customer that obtains the RPM-priced capacity shall retain the right to receive the RPM-priced capacity as long as the customer continues to take service from a CRES provider. In other words, it is the customer that retains the right to the RPM-priced capacity in the event the customer changes from one CRES provider to another. AEP Ohio shall not give any competitive advantage to AEP Retail, in the allocation of RPM-priced capacity pursuant to the process outlined in Appendix C. AEP Retail Energy shall be allowed to compete on the same fair and non-discriminatory manner as all other CRES providers.

At page 55 of its December 14, 2011 Opinion and Order, the Commission stated:

We also find it necessary to modify the Stipulation to ensure that residential customers are not foreclosed from their share of the capacity at RPM rates. To that end, the Commission notes that the Stipulation provides "any kWhs of RPM-priced capacity that have not been consumed by a customer class will be available for

customers in any customer class based upon the priority as set forth in Appendix C.” (Stipulation IV.2.b.3.) We are modifying the Stipulation such that RPM-priced capacity allocation determined for each customer class is only available for customers in the particular customer class; no RPM-priced capacity can be allocated to a customer in another customer class.

The Commission’s modification is unreasonable and unlawful because it establishes restrictions to access of RPM-priced capacity that did not exist in the Stipulation. The Stipulation recognized that the customers most likely to shop would be those for whom the tariff rates substantially exceed the market cost of power. Given the rate design by class, it is foreseeable that customers of some classes will have greater interest in shopping than customers in another class. As detailed in pages 22-23 of the Opinion and Order cited above, under the Stipulation customer class is only used as an allocation tool to begin the process. After the initial assignments of RPM pricing in January of 2012 under Appendix C of the Stipulation allocation of the RPM-priced capacity moves to a first come – first serve paradigm with all unassigned RPM-priced capacity going to the customers who are waiting in the queue – regardless of class.

The system as designed by the Stipulation has two virtues. First, it protects customers that are shopping or who signed up to shop under the capacity pricing established by the Commission’s December 8, 2010 decision in Case No. 10-2929-EL-UNC<sup>2</sup> by providing that those customers will continue to receive capacity priced at RPM. Grandfathering the existing customers is important for it preserves the bargain they made when they signed up to shop. The second virtue of using strict first come – first serve allocation is that it prevents any of the RPM-priced capacity from going unused.

In sharp contrast, if the Commission imposes the “three bucket system” of capacity – namely rigid set asides each year beyond January of 2012 based on class – then RPM priced

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<sup>2</sup> This case has been consolidated as part of the matter at bar pursuant to the Entry dated September 16, 2011.

capacity could go unallocated, unclaimed and, essentially, become stranded. For example, if the pricing of tariff service is such that there is not a great interest in shopping by a particular class, then under a strict class set aside, that RPM pricing set aside and unclaimed is simply lost. The signatories to the Stipulation intended to create a glide path to market based capacity with set percentage increases each year from 21% in 2012 and gradually rising to 100% percent in 2015. Those percentages and the goal of a glide path are at risk if the Commission's modification is adopted as written. For example, in 2013 when a new allotment of RPM priced capacity is made available if there is little or no interest by residential customers then roughly a quarter of the incremental increase in RPM pricing may go unutilized. It is inequitable and poor public policy to deny customers waiting in line for RPM-priced capacity so they can economically shop, while RPM priced capacity designed to be part of the glide path goes unclaimed. For that reason, the Commission should grant re-hearing and allow the Stipulation to go into effect unmodified so that the three bucket system will end in January, of 2012.

(B) The Commission also unreasonably and unlawfully modified the capacity set-asides during the term of the ESP II to accommodate governmental aggregation. At page 54 of its December 14, 2011 Opinion and Order, the Commission's stated:

Although currently shopping customers will not be adversely affected by the capacity set-aside provisions, the Commission is greatly concerned that governmental aggregations approved by communities across the state in the November 2011 election will be foreclosed from participation by the September 7, 2011 Stipulation. It is the State policy to ensure the availability of unbundled and comparable retail electric service to all customer classes, including residential customers and governmental aggregator programs have proven to be the most likely means to get substantial numbers of residential customers to become the customer of a CRES provider. For these reasons, we find it necessary to modify the proposed Stipulation to adjust the RPM set-aside levels to accommodate the load of any community that approved a governmental aggregation program in the November 8,



2011, election to ensure that any customer located in a governmental aggregation community will qualify for the RPM set-aside, so long as the community or its CRES provider completes the necessary process to take service in the AEP-Ohio service territory by December 31, 2012. The RPM set-aside level shall be adjusted to accommodate such governmental aggregation programs for each subsequent year of the Stipulated ESP, to the extent, and only, if necessary. We note that customers in a non-governmental aggregation communities still have the ability to pursue a shopping rate within the RPM set-aside to the extent it is available (OCCEX.5;TR. III at 331-340). (Emphasis added)

The underlined language does not present clear instructions as to how the RPM set aside levels for 2013, 2014 and 2015<sup>3</sup> should be assigned. For 2012, it has been established that all the originally allocated capacity for commercial and industrial customers will be claimed.<sup>4</sup> The residential assigned capacity for 2012 has a balance of approximately 2.4 million MWh.<sup>5</sup> AEP Ohio rate witness William Allen testified that the anticipated MWh usage for the communities on the November 2011 ballot with aggregation programs had an anticipated load equal to about 2.4 million MWh.<sup>6</sup> Thus, it would appear that for 2012 the governmental aggregation programs which the Commission wishes to make provisions to obtain RPM pricing will be accommodated. Similarly, the language of the December 14<sup>th</sup> Opinion and Order requires AEP Ohio to make additional RPM-priced capacity available for the governmental aggregations passed on November 8, 2011 since none may be available depending upon the status of the queue. The ambiguity begins though when it becomes time to apply the underscored Opinion and Order language for calendar year 2013, 2014 and 2015. For illustrative purposes let us assume that in order to accommodate the November 8<sup>th</sup> approved governmental aggregation communities 1 million MWh are necessary and AEP makes 1 million MWh of RPM-priced capacity available.

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<sup>3</sup> In June 2015 all capacity will be charged at RPM prices so the ambiguity only extends to the first six months of 2015.

<sup>4</sup> Opinion and Order, p. 54.

<sup>5</sup> Tr. Vol. III, pp. 403-04; OCC Ex. 5.

<sup>6</sup> Id.

Let us further assume that in 2013 the glide path increase from 21% to 31%<sup>7</sup> creates an incremental addition of 1 million MWh. Would AEP Ohio be required to make 1 million MWh available to customers waiting in the RPM priced queue, or would in this example no additional customers receive RPM pricing as the 2012 addition for Governmental Aggregation absorbed the whole glide path for that year? If the application of the Commission's modification to the Stipulation results in a reduction of the full intended increment in 2013 and 2014 / 2015 for shopping customers it is unreasonable and violates a key provision of the Stipulation.

(C) On page 68 of the Opinion and Order the Commission authorizes AEP Ohio to place into effect the new rates with the January billing cycle. RESA believes that it is reasonable to commence the AEP Ohio ESP II with the January billing cycle, so long as there is a mechanism for hearing implementation issues and disputes and then making the necessary adjustments to the overall program. For example, RESA supports the Stipulation including the criteria for allocation of the RPM pricing contained in Appendix C. Appendix C 1 i provides a group 2 priority out of 5 priority groups to customers who began taking service between July 1, 2011 and September 7<sup>th</sup>. Good faith factual disputes exist today as to what constitutes "taking service". Final resolution on a case by case basis of how that is to be done will affect the queue line and the allocation of RPM pricing. Arrangements should be made to quickly hear and dispose of such claims so for 2012 the assignment of RPM pricing can be finalized soon. This is just one of what no doubt will be many implementation claims. Thus, it is reasonable to have a process for resolving such disputes equitably for all parties including AEP Ohio. This process should be included in the Final Order.

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<sup>7</sup> For this example it is assumed that the Securitization legislation has passed.

WHEREFORE, the Retail Energy Supply Association respectfully requests that the Commission grant its Application for re-hearing on the two grounds set forth above.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 13th day of January, 2012 by electronic mail, upon the persons listed below.



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