

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Power Company and Columbus Southern) Case No. 10-2376-EL-UNC
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 Pursuant) Case No. 11-348-EL-SSO
to Section 4928.143, Revised 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 and) Case No. 10-343-EL-ATA
Ohio Power Company to Amend their) 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 and) Case No. 11-4920-EL-RDR
Ohio Power Company for Approval of) Case No. 11-4921-EL-RDR
Mechanisms to Recover Deferred Fuel)
Costs Ordered Under Section 4928.144,)
Ohio Revised Code.)

ENTRY

The Commission finds:

- (1) On January 27, 2011, in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM and 11-350-EL-AAM, Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Companies) filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code (ESP 2).
- (2) On September 7, 2011, a Stipulation and Recommendation (Stipulation) was filed for the purpose of resolving all the issues raised in the ESP 2 cases and several other AEP-Ohio cases pending before the Commission, Case No. 10-2376-EL-UNC, *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals* (Merger Case); Case No. 10-343-EL-ATA, *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders* and Case No. 10-344-EL-ATA, *In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders* (jointly Curtailment Cases); Case No. 10-2929-EL-UNC, *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company* (Capacity Charges Case); and Case No. 11-4920-EL-RDR, *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, and Case No. 11-4921-EL-RDR, *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code* (jointly Deferred Fuel Cost Cases).
- (3) On December 14, 2011, the Commission issued its Opinion and Order in the consolidated cases, finding that the Stipulation, as modified, be adopted and approved.
- (4) On December 22, 2011, AEP-Ohio filed its compliance tariffs pursuant to the December 14, 2011 Opinion and Order (Opinion and Order).
- (5) On December 29, 2011, AEP-Ohio filed its revised detailed implementation plan (DIP), as modified by the Opinion and Order.
- (6) On December 30, 2011, FirstEnergy Solutions Corp. (FES) filed objections to AEP-Ohio's revised DIP, alleging it does not

conform to the Commission's Opinion and Order. FES also requested expedited treatment.

- (7) Also on December 30, 2011, Industrial Energy Users-Ohio (IEU-Ohio) filed a motion and a request for expedited treatment that the Commission order AEP-Ohio to file tariffs identifying how the two-tiered capacity charge will be billed or collected. IEU-Ohio also opines that the revised implementation plan is inconsistent with the Opinion and Order, and requests that the Commission order AEP-Ohio to file a *modified implementation plan* that is consistent with the Opinion and Order.
- (8) The Commission has reviewed and considered all of the concerns and requests for clarification raised by FES and IEU-Ohio, and will address them individually below.
- (9) FES states that the revised DIP improperly includes a pro rata adjustment to the 21 percent RPM-priced capacity allotment which would decrease the allotments of RPM-priced capacity to residential and industrial customers. FES argues that the language of the Opinion and Order indicates that industrial and residential customers should receive their full 21 percent allotment regardless of what happens with the commercial class.
- (10) AEP-Ohio explains that the original DIP provided that if an allotment to any customer class exceeds 21 percent, then the remaining class allocations should be reduced on a pro rata basis. The Commission, AEP-Ohio states, did not modify the initial calculation of the class set asides, but rather modified the DIP to prevent the reversion to any unused capacity allotments as of January 2012.
- (11) The Commission clarifies that, in the Opinion and Order, we explicitly modified the Stipulation to ensure "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," (Opinion and Order at 55). Nowhere in the Opinion and Order is this modification limited to unused capacity allotments as of January 2012. For further clarification purposes, the Commission notes that this modification to the Stipulation goes back to the initial allocation among the

customer classes based on the September 7, 2011, data, regardless of whether any customer class is now oversubscribed.

- (12) FES argues that AEP-Ohio's revised DIP only permits communities that approved governmental aggregation programs in the November 2011 election to receive RPM priced capacity, but that all communities that approved governmental aggregation on or before the November 2011 ballot are entitled to receive the allotment under the Commission's Opinion and Order. IEU-Ohio claims that the Opinion and Order requires the RPM set-aside be available to any community that completes the necessary process to take service by December 31, 2012.
- (13) AEP-Ohio opines that the Opinion and Order clearly tailors the set-aside modification only to the November 2011 ballot communities.
- (14) The Commission clarifies that the modification to the Stipulation is meant to include all communities that have established governmental aggregation programs, up to and including those communities that approved government aggregation programs in the November 2011 election, provided the community or its CRES provider completes the necessary process to take service in the AEP-Ohio service territory by December 31, 2012.
- (15) FES argues that AEP-Ohio wrongfully included the load associated with governmental aggregation in the 21 percent allotment of RPM priced capacity when it should be additive to any pro rata allotment provided to customers.
- (16) IEU-Ohio raises similar concerns, and notes the Commission's modification in the Opinion and Order modified the aggregation load such that governmental aggregation customers shall have access to additional capacity based upon RPM clearing prices, while the 21 percent RPM set-aside will be available to all other shopping customers.
- (17) AEP-Ohio asserts that there is no basis to FES's or IEU-Ohio's claims that the aggregation load cannot be included as part of the 21 percent allotment of RPM priced capacity, but rather, the

Opinion and Order explains that the set-aside levels should be adjusted only if necessary.

- (18) In the Opinion and Order, the Commission held that RPM set-aside level should “accommodate the load of any community that approved a governmental aggregation program...to ensure that any customer located in a governmental aggregation community will qualify for the RPM set aside...,” (Opinion and Order at 54). In modifying this provision, the Commission established an additional separate allotment of RPM-priced capacity set asides, over and above the pro rata allocation provided to customers in the Stipulation for 2012 to ensure that any customer located in a governmental aggregation community receives a set-aside. For subsequent years beginning in 2013, the Commission held that the set-aside levels “shall be adjusted to accommodate such governmental aggregation programs for each subsequent year of the Stipulated ESP, to the extent, and only if necessary,” (*Id.* at 54). Therefore, the Commission clarifies that we retain continuing jurisdiction over the set-aside levels for 2013 and 2014, as approved in the Opinion and Order in this proceeding. We further note that it is the policy of this state to promote retail competition irrespective of whether such competition takes place through government aggregation or shopping by individual retail customers. We will continue to monitor retail shopping in the AEP-Ohio service territories, and we retain jurisdiction over the set-aside levels, as well as all other provisions of the Stipulation, in order to ensure that retail shopping through government aggregations does not unintentionally displace individual customer shopping in 2013 and 2014.
- (19) FES and IEU-Ohio assert that the revised DIP incorrectly limits governmental aggregation to only non-mercantile customers. IEU-Ohio explains that while governmental aggregation programs are prohibited from including mercantile customers without mercantile customer approval under Section 4928.20(B), Revised Code, mercantile customers may participate in governmental aggregation programs by opting in. FES notes that the Commission’s order does not exclude mercantile customers in eligible governmental aggregation communities.

- (20) AEP-Ohio explains that to the extent that mercantile customers can voluntarily opt in to an existing aggregation program after it is established should not change the nature of the Commission's modification. AEP-Ohio stresses that the focus of the modification was on residential customers and the means to get residential customers to become customers of a CRES provider.
- (21) The Commission notes that Section 4928.20, Revised Code, permits mercantile customers to voluntarily opt in to an existing government program after it is established, and accordingly, mercantile customers should not be excluded from RPM-priced capacity that may be available to non-mercantile customers in eligible governmental aggregation communities. Therefore, the Commission directs AEP-Ohio to correct its revised DIP such that it does not exclude mercantile customers who comply with the provisions set forth in Section 4928.20, Revised Code.
- (22) In addition to addressing concerns with the revised DIP, FES asserts that AEP-Ohio has not provided sufficient information about the queue, and AEP-Ohio cannot inform CRES providers as to its customers' status in the queue. FES requests that the Commission require AEP-Ohio to grant a one-month extension on the implementation of the \$255/MW-Day capacity charge to allow AEP-Ohio to provide necessary information to all CRES providers.
- (23) AEP-Ohio states that it has provided FES and other CRES providers with information about the capacity queue, and therefore FES's request is moot. In response to the one-month extension on the implementation of the capacity charge, AEP-Ohio notes that any rates set by the Commission are lawful until, and only if, they are set aside by the Supreme Court of Ohio.
- (24) The Commission notes that as AEP-Ohio has provided FES and other CRES providers with the requested information about the capacity queue, no further clarifications or orders are necessary.
- (25) Finally, FES argues that AEP-Ohio cannot institute the rates authorized by the Commission's Opinion and Order because

AEP-Ohio has not yet accepted the Commission's modifications, and therefore should not be entitled to any increased rates. In the alternative, FES requests that all increased rates be subject to refund.

- (26) Similarly, on December 20, 2011, IEU-Ohio filed a motion requesting that all new rates and charges be billed and collected subject to reconciliation.
- (27) AEP-Ohio provides that FES's argument was already denied by the Commission and the Supreme Court of Ohio in the Companies' prior ESP proceeding and need not be revisited in this proceeding. Further, AEP-Ohio argues IEU-Ohio's motion and FES's request that rates be subject to refund are inappropriate and amount to a request for a stay of execution.
- (28) The Commission finds that AEP-Ohio is correct, as the Supreme Court has held that utilities may withdraw modified ESPs, but does not require it to accept a modified ESP (See *In re Application of Columbus S. Power Co.*, 128 Ohio St. 3d 512, 2011-Ohio 1788). Accordingly, it is not necessary to address FES's argument as AEP-Ohio has not filed a notice to withdraw this ESP. Further, IEU-Ohio's motion for new rates to be billed subject to reconciliation and FES's request that rates be subject to refund are not appropriate to be addressed in this clarification entry, but rather on rehearing.
- (29) IEU-Ohio asserts that the revised DIP filed by AEP-Ohio does not include sufficient detailed information for a competitive retail electric service (CRES) provider to determine the applicable capacity charges under the two-tiered capacity charge system adopted. IEU-Ohio requests that AEP-Ohio be directed to include the capacity allocation process and pricing information in its supplier tariffs to be approved by the Commission.
- (30) As to IEU-Ohio's claims that additional information is required regarding the allocation process and billing determinants, AEP-Ohio responds that the process of applying each shopping customer's peak load contribution to the load associated with a CRES provider has been and will continue to be administered and billed by PJM. The Companies state the two-tiered capacity charge does not affect the process only the rate

charged. AEP-Ohio explains that with the two-tiered capacity charge, a shopping customer will be identified as eligible for the RPM-priced set-aside capacity or the \$255/MW-day capacity charge and CRES providers can confirm the accuracy of their bill from PJM. Thus, AEP-Ohio concludes there is no reason to address a problem that does not exist, is not ripe to be addressed by the Commission.

- (31) Further, AEP-Ohio notes that there has not previously been a retail tariff for the state compensation mechanism for capacity charges, and argues that IEU-Ohio has not demonstrated a need for a retail tariff to implement the modified state compensation mechanism adopted by the Commission in the Opinion and Order. AEP-Ohio states that the Companies, along with PJM, are in the process of making a filing with the Federal Energy Regulatory Commission (FERC), consistent with the capacity compensation mechanism adopted by this Commission, and the Companies have been advised by PJM that no further FERC filing is necessary. Thus, AEP-Ohio reasons that that Ohio's state compensation mechanism has been implemented under a FERC-approved tariff for wholesale electric service, as with the previous capacity compensation mechanism, and there is no need for a separate retail tariff filing.
- (32) The Commission finds that IEU-Ohio has not justified its request to require the Companies' to revise the Ohio retail tariffs to include the CRES capacity allocation process nor the billing determinants to reflect the capacity charges applicable under the Opinion and Order. The state compensation mechanism for capacity charges will continue to be billed to CRES providers by PJM. For this reason, we deny IEU-Ohio's requests to require the Companies to amend the retail tariff and or the revised DIP.

It is, therefore,

ORDERED, That AEP-Ohio revise the DIP filed December 29, 2011, to be consistent with this Entry. It is, further,

ORDERED, That the Companies file in final form four complete copies of the revised DIP in Ohio Power's tariffs as clarified by this Entry. One copy shall be filed with this case docket, one shall be filed with each company's TRF docket, and the remaining two copies shall be designated for distribution to the Rates and Tariffs Division of the Commission's Utilities Department. The Companies shall also update their respective tariffs previously filed electronically with the Commission's Docketing Division. It is, further,

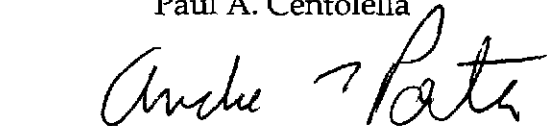
ORDERED, That a copy of this Entry be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella

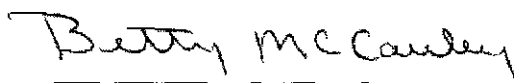

Steven D. Lesser


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Cheryl L. Roberto

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Entered in the Journal
JAN 23 2012



Betty McCauley
Secretary

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CONCURRING IN PART AND DISSENTING IN PART
OPINION OF COMMISSIONER CHERYL L. ROBERTO

Although I concur with the majority of clarifications provided by the Commission today, I do not agree with the majority's clarification regarding government aggregation.

Although I fully support the development of competitive markets in this state, I believe that the clarification on government aggregation is inconsistent with the letter and intent of the Opinion and Order in these proceedings. The Opinion and Order clearly contemplates that, once retail shopping for any customer class reaches 21 percent through any combination of individual shopping and government aggregation in 2012, the capacity set asides will be available only for additional customers through government aggregation for the balance of the year. The clarification in today's Entry greatly expands the set asides available to individual shoppers significantly altering the balance of benefits in the stipulation. Accordingly, I concur, in part, and dissent, in part, from the Entry.


Cheryl L. Roberto

CLR/sc

Entered in the Journal

JAN 23 2012



Betty McCauley
Secretary