

**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

MOTION FOR RELIEF AND REQUEST FOR EXPEDITED RULING

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On behalf of Ohio Power Company

MOTION FOR RELIEF AND REQUEST FOR EXPEDITED RULING

On February 23, 2012, the Commission issued its Entry on Rehearing rejecting the September 7, 2011 Stipulation and Recommendation (Stipulation) that proposed to resolve ten major proceedings involving Ohio Power Company (dba AEP Ohio), including this proceeding. Through a September 16, 2011 Entry issued by the Attorney Examiner, the Commission had consolidated the ten cases for purposes of the considering adoption of the Stipulation. Now that the purpose of consolidation has run its course and the settlement is rejected, the remaining issues must be carried forward and resolved through litigation. The Entry on Rehearing recognized that this case (aka the Capacity Charge Case) would now need to proceed independently and (at 13) directed the Attorney Examiners to establish a procedural schedule. As a related matter, the Commission (at 12) directed “an appropriate application of capacity charges under the approved state compensation mechanism established in the Capacity Charge Case.” As discussed below, AEP Ohio is not clear on what the Commission intended by “an appropriate application of capacity charges.” But AEP Ohio requests the following relief in order to avoid undue prejudice, in the form of substantial and adverse financial impact, that would otherwise result under the Entry on Rehearing:

- I. If the Commission is considering requiring AEP Ohio to file a retail tariff for the wholesale State Compensation Mechanism (SCM), AEP Ohio opposes that outcome and requests that the Commission consider additional information and alternatives prior to imposing such a requirement.
 - A. A flash-cut to 100% RPM-priced capacity would cause highly detrimental financial impact on AEP Ohio that can be avoided.
 - B. A flash-cut to 100% to RPM-priced capacity should not be prematurely ordered as it would cause uncertainty and instability for customers and AEP Ohio, while also prejudicing the outcome of this proceeding.

- C. A reasonable interim solution of maintaining the *status quo* pending an expeditious resolution of this proceeding is supported by the record and is reasonable and fair.
 - D. A reasonable alternative would be to blend the opposing litigation positions together and permit RPM-priced capacity for everyone that has shopped to date and use the Company's proposed cost-based rate for new shopping, pending an expeditious resolution of this proceeding.
- II. The Entry on Rehearing's directive regarding application of the State Compensation Mechanism needs clarification.

Pursuant to Rule 4901-1-12(C), Ohio Admin. Code, OPCo requests an expedited ruling on this motion.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

Implementing 100% RPM pricing for AEP Ohio's capacity pending the outcome of this proceeding would precipitate grievous financial harm on AEP Ohio. In particular, AEP Ohio would be forced to provide access to its capacity at below-cost rates, causing the majority of AEP Ohio's customers to leave the standard service offer and AEP Ohio to suffer massive revenue loss. As demonstrated below, the 100% RPM scenario is confiscatory as it takes AEP Ohio's valuable property and gives it to competitive suppliers priced substantially below cost. Facing such an unreasonable and unjust result, AEP Ohio will be forced to pursue all possible legal remedies before the Federal Energy Regulatory Commission (FERC), Federal Courts, the Supreme Court of Ohio and/or lower state courts. This motion is intended to provide the Commission with an opportunity to address this important matter and potentially defuse the major conflict that is currently staged.

The Commission should take a more reasonable course of action to stabilize the situation while it expeditiously adjudicates this proceeding. Nothing about the Commission's decision to reject the Stipulation was based on the proposed capacity charge resolution and there is no reason to impose such a punitive result as 100% RPM pricing on AEP Ohio. Before the Stipulation was reached, the Commission had established an expeditious schedule to render a decision by the end of 2011 based on a stated purpose of exploring appropriate cost-based recovery mechanisms. While the Commission ultimately decided to reject the Stipulation for reasons unrelated to capacity charges, it should not place AEP Ohio in such a detrimental position as compared to the situation that existed prior to the Stipulation. Finally, as set forth in

Proposition II below, the Commission's directive in Finding 20 of the Entry on Rehearing needs clarification in order for AEP Ohio to understand what it needs to do to comply with it (presuming for that purpose that the Commission does not grant the relief requested herein).

I. If the Commission is considering requiring AEP Ohio to file a retail tariff for the wholesale SCM, AEP Ohio opposes that outcome and requests that the Commission consider additional information and alternatives prior to imposing such a requirement.

If the Commission implements full RPM pricing pending the outcome of this proceeding, AEP Ohio will suffer immediate and irreparable harm. Further, switching to RPM now and implementing a different pricing regime after the case is decided will cause uncertainty and confusion for customers. The Commission should avoid those results by establishing a reasonable and stabilizing interim rate pending the merit decision in this case. Using the same two-tiered capacity pricing proposed in the Stipulation offers the most stability and represents a reasonable middle ground based on the record in this proceeding. There may be other reasonable alternatives for an interim rate but they need to be stable and avoid a precipitous adverse financial impact on AEP Ohio pending the outcome of this case, while also avoiding the result of prejudging the merit decision.

A. A flash-cut to 100% RPM-priced capacity would cause highly detrimental financial impact on AEP Ohio that can be avoided.

Requiring AEP Ohio to provide below-cost capacity to its competitors upon rejecting the Stipulation is unreasonable and unlawful. Separate and apart from the Commission's decision to reject the Stipulation, implementing RPM pricing will result in confiscatory rates for AEP Ohio – by taking AEP Ohio's valuable property and providing it to competitive suppliers at a price

substantially below cost. A flash-cut to 100% RPM-based capacity pricing would quickly cause AEP Ohio's return on equity to drop below a just and reasonable level. Per the attached workpaper, AEP Ohio's projected 2012 earnings (which already reflect rejection of the Stipulation) *would drop by 27% to 7.6% return on equity* and projected 2013 earnings *would drop by 67% to be 2.4%*.

Investors understand the dire consequences associated with the Commission's order. Immediately following issuance of the February 23 Entry on Rehearing, AEP's stock was significantly devalued, *losing approximately \$1 billion in market capitalization within 24 hours of the decision*. Based on the increasing business risk in Ohio and the resulting financial harm to AEP Ohio, it is possible that the rating agencies will make downward adjustments to AEP Ohio's credit ratings. Ultimately, a weakening credit profile will increase the cost to serve customers in Ohio.

As an FRR entity, AEP Ohio reasonably relied upon its expected ability to establish cost-based rates should the RPM-based rates become unjust and unreasonable. The Commission had previously applauded AEP Ohio for opting to become an FRR entity, and implementing a flash-cut to RPM now (without a reasonable transition mechanism) traps AEP Ohio in an untenable financial position. Though AEP Ohio still hopes to establish cost-based rates through a merit decision in this proceeding (at least during a transition period during which AEP Ohio remains an FRR entity), that outcome is yet to be determined, and immediate irreparable harm will befall the Company if a reasonable interim rate is not established pending the outcome of the case. As referenced above, facing such dire prospects will force AEP Ohio to aggressively pursue all possible remedies at law before any available federal and state court or administrative body, including the FERC, federal courts, and state courts. In order to diffuse the unnecessary legal

conflict and litigation, as well as avoid the immediate, irreparable harm to AEP Ohio, the Commission should expeditiously pursue resolution of this proceeding (by considering implementation of a cost-based rate) and establish a reasonable interim rate pending the outcome of the merit decision.

B. A flash-cut to 100% to RPM-priced capacity should not be prematurely ordered as it would cause uncertainty and instability for customers and AEP Ohio, while also prejudicing the outcome of this proceeding.

The Commission should opt for maintaining stability and continuity for customers and AEP Ohio alike. As explained further below, AEP Ohio proposes a *status quo* approach that would offer a higher degree of stability and certainty to stakeholders than a flash-cut to 100% RPM-priced capacity. The Commission's decision to reject the Stipulation should have no bearing on the outcome of litigated result in this proceeding and certainly does not necessitate or justify taking adverse action against AEP Ohio in the Capacity Charge Case. Yet, the ultimate outcome of the proceeding would be adversely pre-judged and prejudiced if 100% RPM pricing is implemented. Moreover, in addition to causing undue irreparable harm to AEP Ohio, imposing an additional round of potential capacity charge regime changes through a flash-cut to 100% RPM pricing is unnecessary and would cause undue confusion and uncertainty for all stakeholders (since the regime could again change after the merits are decided).

Another measure of stability is to establish an expedited and firm procedural schedule for resolution of this case. Specifically, the Commission should set forth a schedule that fully submits the record for decision in 60 days and commit to making a decision on the merits within 90 days. Such a brief period for employing an interim solution would ensure stability for customers and AEP Ohio. That approach also helps ensure by design that only one additional change in the compensation regime would occur. Whereas, if the Commission changes the

current capacity charge regime to 100% RPM pricing and then resolves the case through a different outcome, there will be a total of three pricing regime changes (versus two under the advocated *status quo* approach)

The *status quo* approach being proposed by AEP Ohio here is to maintain the current approach that has been implemented by AEP Ohio to date (the Revised Detailed Implementation Plan filed by AEP Ohio on December 29, 2011, referred to as the “Revised DIP”). AEP Ohio recognizes that the Commission’s January 23, 2012 Entry had also imposed five new and enhanced obligations in addition to the Revised DIP, most of those related to aggregation. Because parties have maintained that forming and implementing an aggregation program takes longer than 3 months, hopefully this proceeding will be decided quicker than new aggregation efforts would be completed. Should the Commission require that AEP Ohio conform to the January 23 Entry’s new and enhanced obligations for purposes of implementing an interim solution pending the outcome of this case, AEP Ohio requests, at a minimum, relief from one of the five obligations: including the mercantile customer load in the RPM-priced capacity set-aside. Adding mercantile load exposes AEP Ohio to a huge financial harm – \$237 million projected impact for the proposed 2012-2015 ESP term – as demonstrated in AEP Ohio’s February 10, 2012 Application for Rehearing (at 3, 13, attached workpapers). Thus, AEP Ohio is proposing that capacity pricing for 2012 until such time as the case is decided to be RPM-priced capacity for the first 21% of shopping load of each customer class, plus aggregation (excluding mercantile load).

In addition to avoiding undue irreparable harm to AEP Ohio, excluding mercantile load from the RPM set-aside also makes sense because it has not been implemented and nobody has relied on that aspect of the RPM queue to date. Moreover, there were multiple rehearing

requests pending on those matters at the time when the Commission decided to reject the Stipulation without resolving or addressing them. Rather than expend additional time and resources to resolving those issues, the Revised DIP could continue to be implemented and parties can focus their efforts on litigating the merits of this proceeding. AEP Ohio's suggested approach also avoids the thorny task of unwinding the current regime that has been followed for nearly six months (since the Stipulation was signed).

Finally in this regard, implementing a flash-cut to 100% RPM would prejudice the outcome and prejudice a decision on the merits in this proceeding. If 100% RPM pricing is implemented, CRES providers will pursue winning retail customers based on RPM before the Commission even has a chance to issue a decision in this case. It is integral that the Commission conduct this proceeding in a way that preserves the possibility that a cost-based capacity charge will be established which would apply to shopping customer load after it is adopted. The Commission's August 11, 2011 Entry established an expedited procedural schedule and directed (at 2) parties to "develop an evidentiary record on the appropriate capacity cost pricing/recovery mechanism including, if necessary, the appropriate components of any proposed capacity cost recovery mechanism." Thus, the Commission's pre-Stipulation stated goals were to expeditiously decide the case after developing a record on the appropriate capacity *cost pricing/recovery mechanism*. That outcome is not reasonably preserved if the Commission presently employs a flash-cut to 100% RPM pricing.

The Commission should avoid undue customer confusion and adopt a solution that promotes stability and preserves the integrity of the outcome of this proceeding. If the Commission is unwilling to maintain stability through a *status quo* approach or a new interim

SCM, it needs to address how it will avoid prejudicing the outcome of the proceeding if the vast majority of AEP Ohio's retail customers have switched by the time it issues a decision.

C. A reasonable interim solution of maintaining the *status quo* pending an expeditious resolution of this proceeding is supported by the record and is reasonable and fair.

As further outlined below, the information, data, and record materials, including testimony, already submitted by AEP Ohio provide more than adequate support for the conclusion that the *status quo* capacity pricing already implemented by AEP Ohio to date (in accordance with the Revised DIP AEP Ohio filed on December 29, 2011) is a reasonable interim capacity pricing mechanism. Alternatively, should the Commission decline to adopt the *status quo* approach, that existing information, data, and testimony also provide adequate support for an interim mechanism that conforms to the January 23, 2012 Entry's new and enhanced obligations (without including the mercantile customer load in the RPM-priced capacity set aside.)

Specifically, there are two readily available sources of support for the interim capacity pricing proposals described above. First, in this *Capacity Charge Docket*, prior to its joinder with the other cases addressed by the Stipulation (that has now been rejected), AEP Ohio submitted the prefiled direct testimony of Dr. Kelly D. Pearce on August 31, 2011. As further explained and supported below, Dr. Pearce's August 31, 2011 prefiled testimony ("Pearce August 31 Testimony") supports a cost-based formula rate that is well in excess of the interim capacity pricing described and proposed by this motion. The second source of readily available support for this proposed interim capacity pricing may be found in Dr. Pearce's testimony in support of the Stipulation ("Pearce September 13 Testimony"). That testimony was prefiled on September 13, 2011, subjected to cross-examination, and accepted into the record of the

Stipulation proceeding as AEP Ohio Ex. 3. Dr. Pearce's September 13, 2011 prefiled testimony also supports the same cost-based formula rate that is well in excess of the interim capacity pricing that AEP Ohio proposes in this motion.

The reasonableness of the interim capacity pricing is demonstrated by comparing it to the pricing that AEP Ohio is advocating and that Dr. Pearce's prefiled testimony supports in Case No. 10-2929-EL-UNC. AEP Ohio's litigation position in that proceeding is that capacity prices should be based on its embedded costs of capacity. Dr. Pearce calculated that AEP Ohio's embedded cost of capacity, using FERC Form 1 data for 2010 and a formula methodology accepted by the FERC for setting wholesale prices, would be \$355.72/MW-Day on a combined (CSP and OPco merged) basis for AEP Ohio for the PJM Planning Year 2011/2012. (Pearce August 31 Testimony at 20, Ex. KDP-6; Pearce September 13 Testimony at 9-10, Ex. KDP-4.) If the Commission were to adopt an energy credit using AEP Ohio's methodology, Dr. Pearce estimated that the capacity price, on a combined basis, would be reduced to \$338.14/MW-Day. (*Id.*) In comparison, the interim capacity pricing proposed by this motion provides a two-tiered approach, including (1) set aside amounts of RPM-priced capacity available to an initial tier of customers and (2) capacity priced at \$255/MW-Day for amounts above the first tier amounts.

On November 1, 2010, AEP Ohio filed an application under the PJM RAA and Section 205 of the Federal Power Act (FPA) to initiate FERC Docket No. ER11-1995-000. On November 24, 2010, at the direction of FERC, AEP Ohio refiled its application in Docket No. ER11-2183-000 (This case is referred to as the "*Section 205 FERC Application*"). In its *Section 205 FERC Application*, AEP Ohio proposed cost-based formula tariffs that were based on the Companies' 2009 FERC Form 1 filings. AEP Ohio's application proposed to implement an existing clause within the PJM RAA to change the basis of compensation for CRES providers'

use of its capacity to an AEP Ohio cost-based method. AEP Ohio filed the *Section 205 FERC Application* because CRES providers were receiving a subsidy (through payment of a below-cost rates) for their use of the Companies' capacity due to the use of RPM auction-clearing prices as the basis for the capacity charge. In response to the *Section 205 FERC Application*, the Commission initiated the *Ohio Capacity Charge Docket* (Case No. 10-2929-EL-UNC) through a December 8, 2010 Entry, and the Commission represented to FERC that as of December 8, 2010 it was "adopt[ing] as the state compensation mechanism for the Companies the current capacity charges established by the three-year capacity auction conducted by PJM," which is the PJM RPM auction price. *Id.* at 8.

On August 11, 2011, at the conclusion of an initial and reply comment cycle in the *Ohio Capacity Charge Docket*, the Commission's attorney examiner issued an Entry adopting a procedural schedule, including an evidentiary hearing. According to the Entry, at Finding 6, the purpose of the hearing would be "to establish an evidentiary record on a state compensation mechanism [and that] parties should develop an evidentiary record on the appropriate capacity cost pricing/recovery mechanism including, if necessary, the appropriate components of any proposed capacity cost recovery mechanism."

AEP Ohio's basic position in the *Ohio Capacity Charge Docket* is that the RPM-based pricing mechanism under-compensates AEP Ohio for the capacity it provides to CRES providers for resale to shopping retail customers. The impact on AEP Ohio's ability to be compensated for its costs has become significant due to the sharp downward trend in RPM auction prices, as well the growth in shopping by AEP Ohio customers whose CRES providers take advantage of the capacity supplied by AEP Ohio rather than supplying their own capacity.

AEP Ohio, as a Load Serving Entity in PJM, does not participate in the PJM RPM auction market for the purposes of meeting AEP Ohio's load obligation. AEP Ohio's SSO generation rates are intended to cover AEP Ohio's non-fuel cost of generation, including the cost of capacity for non-shopping customers. However, CRES providers who serve shopping customers, and who choose not to self-supply capacity, are currently required to pay only the PJM RPM-based auction price. Thus, while these CRES providers are using AEP Ohio's capacity resources, they (unlike AEP Ohio's non-shopping SSO customers) avoid paying the embedded generation capacity costs that are on AEP Ohio's books. AEP Ohio maintains that it should be allowed just and reasonable compensation from CRES providers based on AEP Ohio's embedded cost of capacity that will allow for continued investment in Ohio generation resources.

Using 2010 FERC Form 1 data, AEP Ohio's cost-based formula capacity rates, as calculated by Company witness Pearce, would be \$327.59/MW-day for CSP (Pearce August 31 Testimony at 19; Pearce September 13 Testimony at Ex. KDP-1, p. 1) and \$379.23/MW-day for OPCo (Pearce August 31 Testimony at 19; Pearce September 13 Testimony at Ex. KDP-2, p. 1) or \$355.72/MW-day (Pearce August 31 Testimony at 20; Pearce September 13 Testimony at Ex. KDP-4) on a combined basis for AEP Ohio. Dr. Pearce testified that the cost-based rate calculation that he used is formulaic in nature and currently utilized in many states by AEP for wholesale sales. (Pearce August 31 Testimony at 7; Pearce September 13 Testimony at 7.) He explained that the formulae for these rates use an average allocation of cost between the parties based on common cost allocation mechanisms. (*Id.*) Dr. Pearce testified that this cost-based rate approach provides a high degree of transparency. The bulk of the input information can be tied back to the FERC Form 1 annual reports of CSP and OPCo and the various work papers are readily available (*Id.*)

Dr. Pearce also noted that the template selected for the cost-based rates that he supported is modeled after the recently FERC-approved template utilized by the Cities of Minden, Louisiana, Prescott, Arkansas, and Southwestern Electric Power Company (SWEPCo), an AEP Ohio-affiliated operating company. (Pearce August 31 Testimony at 8; Pearce September 13 Testimony at 8.) He observed that these cities are full requirements customers, taking both capacity and energy from SWEPCo under long term agreements. (*Id.*) He noted that the formula rate template used to support the rates ultimately approved for those customers was the subject of a lengthy negotiation between the seller and purchasers and FERC Staff. (*Id.*) In addition, he explained, the template adopted various modifications originating from FERC Staff. (*Id.*) As such, in his opinion, this template represented a fair and reasonable formula for calculation of capacity costs. (*Id.*) He used the capacity portion of this rate template, with certain modifications, to develop the proposed capacity rates. (*Id.*)

The reasonableness of the capacity prices proposed by this motion on an interim basis is confirmed by the Commission's conclusion regarding the two-tiered RPM and \$255/MW-Day pricing in its December 14, 2011 Opinion and Order modifying and adopting the Stipulation. First, the Commission confirmed that "neither S.B. 3 [n]or the ESP cases foreclosed or conflicts with AEP Ohio's ability to pursue cost-based capacity rates, at this time." December 14, 2011 Opinion and Order, at 55.

Second, the Commission also confirmed that the \$255/MW-Day price for the second tier of the Stipulation's capacity pricing "is a reasonable compromise given the evidence presented in this proceeding." *Id.* In other words, the Commission found that the \$255/MW-Day level of pricing for capacity had record support on a stand-alone basis.

Finally, in that regard, the Commission specifically noted that the reasonableness of the \$255/MW-Day second tier pricing for capacity even found substantial support from the testimony by a witness who testified on behalf of an opponent of that pricing:

[I]the record in this proceeding provides a range of possible capacity costs, from a low of \$57.35 MW-day, according to FES, to a high of \$355/MW-day, claimed by AEP Ohio. However, one of the key aspects of the record evidence demonstrating the reasonableness of the \$255/MW-day interim capacity charge of the Stipulation is the testimony of one of FES's witness. The witness specifically acknowledges that with an adjustment for deferred fuel his "maximum" capacity charge is within the range of reasonableness.

Id.

From the outset, the Commission and its Staff endorsed the use of the FRR mechanism, including its cost-based pricing alternative, in order to achieve equitable treatment of AEP Ohio and its customers. In particular, the Commission and its Staff supported the establishment of, and AEP Ohio's election of, the FRR option along with that option's cost-based alternative, in the course of their participation in the FERC proceeding that established PJM's capacity pricing regime. In its public comments filed at FERC in advance of a FERC Staff Technical Conference on June 7, 2006, this Commission's Staff stated that it "would like to compliment the FERC for accepting the traditional resource requirement approach (the Fixed Resource Requirement option) as a legitimate alternative to RPM. The Ohio Staff would like to request that, in developing the rules for the two alternatives, the FERC needs to ensure that a resource supplier is treated equitably in terms of the [Installed Reserve Margin (IRM)] requirement, the penalties for violating an IRM requirement, and the appropriate length of a resource commitment, regardless of what alternative the supplier chooses." Ohio Regulatory Staff Remarks, FERC Docket Nos. ER05-1410-000, EL05-148-000, at 1 (June 7, 2006).

D. A reasonable alternative would be to blend the opposing litigation positions together and permit RPM-priced capacity for everyone that has shopped to date and use the Company's proposed cost-based rate for new shopping, pending an expeditious resolution of this proceeding.

If the Commission had proceeded to decide the 10-2929 case without a Stipulation, there would have been a decision by now. That decision could establish a cost-based rate for capacity that may or may not happen to expand immediate competitive opportunities based on current energy prices. CRES providers will predictably maintain the position that all of AEP Ohio's capital investments should be made available at an arbitrary short-term price known as RPM. AEP Ohio merely wants to recover its costs for providing access to use of its power plants. A perfect compromise in this situation where a temporary solution is needed until a more permanent decision is made is to "split the baby" by (i) allowing RPM pricing for customers being served by CRES providers or having provided a switch request as of the February 23 Entry on Rehearing, and (ii) charging \$255/MW-Day for all other customers (including additional aggregation load) for customers who shop before the case is decided.

As demonstrated above, AEP Ohio's cost-justified rate is much higher than \$255/MW-Day but this kind of pure compromise would reasonably facilitate substantial shopping during the pendency of this case, while avoiding financial disastrous consequences for AEP Ohio. Since the time that the \$255/MW-Day pricing was supported in the record as being reasonable, energy prices have continued to drop which allows even more margin for CRES providers and opportunity for customers to shop based on the second tier or capacity pricing. This alternative is fair and would inject certainty and stability while the case is being expeditiously resolved. Because it adopts both opposing litigation positions in part, it can be implemented without prejudice to the outcome of this case.

II. The Entry on Rehearing's directive regarding application of the State Compensation Mechanism needs clarification.

The Entry on Rehearing provided the following directives, after quoting R.C.

4928.143(C)(2)(b) regarding the requirement to return to the prior SSO rate plan:

Therefore, we direct AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its previous electric security plan, including but not limited to the base generation rates as approved in ESP I, along with the current uncapped fuel costs and the environmental investment carry cost rider set at the 2011 level, as well as modifications to those rates for credits for amounts fully refunded to customers, such as the significantly excessive earnings test (SEET) credit, and an appropriate application of capacity charges under the approved state compensation mechanism established in the Capacity Charge Case.

(Entry on Rehearing at 12, underlining added) The first directive (underlined to facilitate the discussion of what the entire sentence means) clearly involves reinstating the prior rate plan and fully implements the statutory provision quoted just prior to issuing the directive. What the second directive (after the underlining) means with respect to the Capacity Charge Case is unclear.

As a threshold matter, R.C. 149.43(C)(2)(b) only applies to retail standard service offer rates and has nothing to do with wholesale capacity charges. Consequently, the statutory provision quoted above this directive has no relation to the latter part of the directive regarding the Capacity Charge Case. As has been firmly established by the Supreme Court, the Commission is not authorized to establish rates under the ESP statute unless such rates are justified through one of the categories explicitly listed in R.C. 4928.143(B)(2).¹ Thus, the ESP

¹ The Commission itself recently acknowledged that "The Court determined that Section 4928.143(B)(2), Revised Code, does not authorize the Commission to allow recovery of items not enumerated in the section." *ESP I*, October 3, 2011 Remand Order at 3 citing *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 520.

statute as a whole does not relate to the Capacity Charge Case and cannot support any directive in connection with the Capacity Charge Case. And the directive to file tariffs in order to temporarily reinstate the prior rate plan is fully implemented through the entire first part of the sentence (underlined above). In short, neither the statutory language quoted in Finding 20 nor the entire first part of the sentence provides any guidance on what the last part of the sentence means.

In addition, the directive is unclear because it is grammatically incomplete and may have inadvertently excluded language. Specifically, the first part of the directive (underlined) requires AEP Ohio to file new tariffs to continue to prior rate plan and the second part of the sentence (not underlined) is missing a verb and is thus unclear. In other words, the structure of the sentence is a directive for AEP Ohio [1] to file new tariffs to continue the prior rate plan and [2] ____ [missing language/verb] ____ an appropriate application of capacity charges. Did the Commission intend to direct AEP Ohio to “develop” an appropriate application of capacity charges? To “submit for review” an appropriate application of capacity charges? To “file a new tariff reflecting” an appropriate application of capacity charges? AEP Ohio could speculate, but it is simply not clear due to a grammatical flaw in the sentence.

If the Commission intended to direct AEP Ohio to file a new tariff to reflect an appropriate application of capacity charges under the approved state compensation mechanism, it would have used additional language. For example, if one were to presume the two directives as both related to filing tariffs (by changing the underlining as follows), the language still does not confirm that interpretation:

Therefore, we direct AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its previous electric security plan, including but not limited to the base generation rates as

approved in ESP I, along with the current uncapped fuel costs and the environmental investment carry cost rider set at the 2011 level, as well as modifications to those rates for credits for amounts fully refunded to customers, such as the significantly excessive earnings test (SEET) credit, and an appropriate application of capacity charges under the approved state compensation mechanism established in the Capacity Charge Case.

Even with this alternative way to break out the two directives, the second directive does not convey a complete thought. If both directives were intended to relate to filing new tariffs, the language would have directed AEP Ohio to file new proposed tariffs “to continue the provisions ... and [to reflect] an appropriate application of capacity charges...” Either way the language is dissected, there is something missing (the operative verb and perhaps additional language) and the second directive is simply unclear.²

Beyond the language problems in Finding 20, it does not make sense to assume that the Commission intended to suddenly direct AEP Ohio to file a tariff regarding a SCM that has been in place for many months. The SCM is already being administered through a FERC and PJM tariff process, not unilaterally by AEP Ohio. The SCM was purportedly adopted by the Commission through reliance on the terms of the FERC-approved Reliability Assurance Agreement (RAA) applicable to PJM Interconnection. Specifically, Section D 8 of Schedule 8.1 of PJM’s RAA is the basis for a State commission such as the PUCO to adopt a SCM. *Capacity Charge Case*, December 8, 2010 Entry and August 11, 2011 Entry. In December, when the Opinion and Order modified the SCM it had previously adopted through the December 8, 2010

² There is a third possible interpretation where the language could be parsed as AEP Ohio is directed to file “new proposed tariffs to continue ... [the prior rate plan] and an appropriate application of capacity charges under the approved state compensation mechanism established in the Capacity Charge Case.” But this reading would, likewise, lack consistency and a clear meaning. The current *status quo* is the Stipulation’s two-tiered capacity discount, not the prior state compensation mechanism (so it would not be said to continue). Moreover, there is no current tariff and never has been for the state compensation mechanism (so there would be no continuation of a tariff either). So that reading does not convey a clear meaning either.

Entry in Case No. 10-2929-EL-UNC, there was no requirement imposed to file a tariff. And for the entire time the SCM has been in effect (more than a year), there has been no PUCO-approved tariff required with respect to the SCM. No CRES provider has complained about the lack of tariff or requested the Commission adopt such a tariff. And the Commission simply does not regulate or oversee wholesale tariffs involving the sale for resale of electric services.³ Further, as previously explained, AEP Ohio has already followed the applicable PJM protocol regarding the SCM; it makes no sense to have two tariffs on file in two different places under two different authorities. Consequently, there is no need and no lawful reason to assume – especially without an explicit discussion and directive – that the Commission is now requiring the filing of a retail SCM tariff.

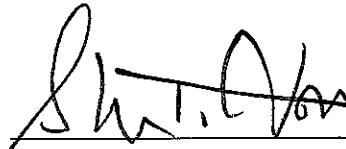
In sum, the Entry on Rehearing’s directive regarding the SCM needs to be clarified in order for AEP Ohio to understand what it means and take appropriate action.

³ Indeed, AEP Ohio has challenged the Commission’s jurisdiction over this matter in the Company’s January 7, 2011 Application for Rehearing in this docket (which remains pending) by arguing (Assignment of Error II at 18-21) that the Commission lacks jurisdiction to issue an order affecting wholesale electricity rates regulated by the Federal Energy Regulatory Commission. Similarly, as explained in the testimony of AEP Ohio witness Nelson supporting the Stipulation (AEP Ohio Ex. 7 at 9), AEP Ohio filed a Section 206 complaint before FERC “to confirm that any state compensation mechanism must compensate FRR entities for capacity costs through charges included in retail rates and to preserve the FRR entities’ right to submit filings to established just and reasonable FRR charges.” AEP Ohio further maintains in the Section 206 complaint that the existing SCM language in the RAA contemplates retail charges can be established by States, not wholesale charges. Thus, in making the instant motion, AEP Ohio explicitly reserves the right to pursue any legal right or remedy available to challenge a flash-cut to RPM-priced capacity through the SCM including but not limited to challenging the Commission’s legal authority in this regard.

CONCLUSION

To be fair, the Commission should pick up this proceeding where it was suspended at the time the Stipulation was executed. Doing so would have resulted in a decision by the end of 2011 and AEP Ohio would not have faced the prospect of unreasonably low RPM rates. The Commission should redouble its efforts to conduct this proceeding with efficiency and speed, fully exploring an appropriate cost recovery mechanism for AEP Ohio's provision of capacity to support retail shopping in its territory. A reasonable interim rate is critical to implement immediately and remain in place while the Commission adjudicates this case. Allowing a flash-cut to 100% RPM pricing based on rejection of the Stipulation would cause immediate and irreparable harm to AEP Ohio – including material diminution of its earnings to confiscatory levels and potential downgrading of its credit rating. That is an unnecessary result that can and should be avoided.

Respectfully submitted,



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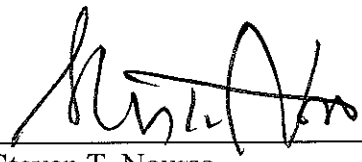
Estimate of Ohio Power's Earnings

	Ohio Power Company			
	2012		2013	
	\$ millions	ROE	\$ millions	ROE
Projected Earnings (Two Tiered Capacity Pricing)*	471	10.4%	331	7.3%
Estimate of February 23, 2012 Ruling: Additional Switching net of OSS Margins and Capacity Revenues	(194)		(341)	
Income Taxes	68		119	
Total adjustment (after-Tax)	(126)		(222)	
Projected Earnings (all capacity at RPM)	344	7.6%	109	2.4%

* The projected earnings already include the impact of the rejection of the September 7, 2011, Stipulation and Recommendation. Two Tiered Pricing consistent with December 29, 2011, Detailed Implementation Plan adjusted to include pre-November Aggregation Communities (excluding Mercantile accounts).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the forgoing motion and request for expedited was served this 27th day of February, 2012 by U.S. Mail and electronic mail, upon the persons listed below


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Case No(s). 10-2929-EL-UNC

Summary: Motion for Relief and Request for Expedited Ruling electronically filed by Mr. Steven T Nourse on behalf of American Electric Power Service Corporation