

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**THE OHIO MANUFACTURERS' ASSOCIATION'S MEMORANDUM CONTRA
OHIO POWER COMPANY'S MOTION FOR RELIEF AND REQUEST FOR
EXPEDITED RULING**

I. INTRODUCTION

On February 23, 2012, the Public Utilities Commission of Ohio, ("Commission") overturned its prior approval of the Stipulation and Recommendation ("Stipulation") filed on September 7, 2011 and rejected the Stipulation in its entirety. On February 27, 2012, the Ohio Power Company ("AEP-Ohio") filed a Motion for Relief and Request for Expedited Ruling ("Motion") requesting that the Commission consider two alternatives to requiring AEP-Ohio to charge competitive retail electric service ("CRES") providers only the PJM reliability pricing model ("RPM") price for capacity for an interim period until the Commission approves a new standard service offer ("SSO") plan for AEP-Ohio. For the reasons set forth herein, the Commission should deny AEP-Ohio's Motion.

II. ARGUMENT

AEP-Ohio argues that if the Commission's Entry on Rehearing stands without modification, it will have a significant financial impact on AEP-Ohio and will be "confiscatory" as AEP-Ohio will be required to supply its capacity to CRES providers below AEP-Ohio's capacity costs. AEP-Ohio also states that if the Commission does

not grant some interim relief, 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.” Motion at 3. AEP-Ohio adds that its 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.”

Id.

AEP-Ohio sets forth two alternative scenarios for interim relief:

- 1) keep the Stipulation capacity pricing in place – meaning that the limited pool of customers (21% of AEP-Ohio’s total load plus non-mercantile governmental aggregation)¹ that shopped prior to September 7, 2011 would get the RPM-priced capacity but new shoppers get the settled \$255/MW-day price; or,
- 2) all shoppers as of February 23, 2012 get the RPM-priced capacity but for any other new shopping customers (including all governmental aggregation), they get the settled \$255/MW-day price.

AEP-Ohio’s Motion would result in harm to Ohio manufacturers and is legally and procedurally deficient.

A. AEP-Ohio’s Motion Would Harm Ohio Manufacturers.

The mission of the Ohio Manufacturers’ Association (“OMA”) is to protect and grow manufacturing in Ohio.² The events that have taken place since the Stipulation was filed in September 2011 have made it virtually impossible for Ohio’s manufacturers to make reasonable predictions of electricity prices and educated purchasing decisions

¹ The Ohio Manufacturers’ Association is not directly addressing AEP-Ohio’s suggestion to exclude mercantile customers from government aggregation programs because the OMA is seeking the complete denial of AEP Ohio’s Motion.

² The OMA is the party that intervened in this specific case as the OMA Energy Group, a subset of OMA members formed as the energy advocacy group within the OMA, was not founded at the time AEP-Ohio filed its initial application.

to cover any period of time, let alone any long-term period. Certainty, predictability and reasonable pricing are critical to manufacturing.

Current Ohio law provides customers with opportunities to competitively source generation or to remain on a default or standard service offer (“SSO”) pricing structure. Given that the economic recovery that Ohio is experiencing is slow, manufacturers need a reasonable SSO price, real shopping opportunities, price certainty and predictability. Especially when working towards economic recovery, Ohio’s manufacturers cannot afford to be burdened with electric rates that are artificially high or be precluded from obtaining other options. In fact, even the filing of the Motion has caused uncertainty in the market and additional customer confusion.

AEP-Ohio seeks to selectively enforce an isolated provision of the Stipulation that would benefit only AEP-Ohio to the detriment of customers and without any of the countervailing measures that would have benefitted customers. Further, the result of what AEP-Ohio seeks in its Motion would prevent customers from taking advantage of historically low market prices. Finally, while the Commission gave AEP-Ohio 30 days to determine whether it will file a new SSO or resume its original 29-month plan, if AEP-Ohio’s Motion is granted, it will have at least some of the revenue protection it seeks and will not be incented to expeditiously develop a better plan than the one filed in September 2011.

For these practical and real world reasons alone, AEP-Ohio’s Motion should be denied. But those are not the only reasons.

B. AEP-Ohio Could Lessen the Detrimental Financial Impact of the Commission's Entry on Rehearing by Developing and Filing a New, Better SSO.

The attachment to AEP-Ohio's Motion demonstrates that it will earn a return on equity ("ROE") of 7.6% in 2012 and 2.4% in 2013, if it is permitted to collect only the RPM price for capacity from CRES providers. The OMA agrees with AEP-Ohio that it is in customers' interest to have healthy utility companies. The OMA further agrees that a 2.4% ROE is not a healthy ROE for AEP-Ohio. However, the 2.4% projection is for 2013, which is outside of a short-term, interim period. Further, the 2.4% projection does not include all of the assumptions upon which it is based, but clearly does not reflect a to-be-proposed SSO plan. Thus, while it is not a healthy ROE for AEP-Ohio, it also may never come to fruition.

The period of time at issue in AEP-Ohio's Motion is only the interim period until a new SSO is approved. The OMA believes it is in everyone's best interest to develop a new, better and balanced SSO plan that can be implemented expeditiously to reduce some of, and avoid the most severe, financial ramifications that AEP-Ohio describes without also causing financial harm to customers.

The Commission should deny AEP-Ohio's Motion so that AEP-Ohio and the other interested parties, including the OMAEG, can get to the more important work of developing a new, long term, SSO plan.

C. AEP-Ohio's Motion is Legally Deficient.

AEP-Ohio claims that the interim relief requested would maintain the status quo. However, with the rejection of the Stipulation, the status quo is RPM-priced capacity.

Without an approved request to change the status quo, AEP-Ohio's Motion to charge a different capacity price in the interim is unlawful.³

As the Commission is well aware, AEP-Ohio participates in the PJM capacity market under the Fixed Resource Requirement ("FRR") alternative to the otherwise applicable RPM. Section D.8 of Schedule 8.1 of PJM's Reliability Assurance Agreement ("RAA") establishes the capacity obligations for load serving entities ("LSEs") in PJM, including AEP-Ohio. That section requires FRR entities to submit an FRR Capacity Plan that includes all load, whether the load is being supplied by AEP-Ohio or a CRES provider. CRES providers must either pay AEP-Ohio for the capacity supplied to its shopping load, or CRES providers have the option of self-supplying.⁴ The default rate at which CRES providers must compensate AEP-Ohio for capacity is the "capacity price in the unconstrained portions of the PJM Region."⁵ However, if there is a state compensation mechanism in place, it will prevail. *Id.*

Further, even AEP-Ohio has acknowledged that since June 2007, when the PJM RPM market began, AEP-Ohio companies have been receiving compensation for capacity from CRES providers based upon the RPM clearing price mechanism.⁶

Without the Commission changing the state mechanism, granting emergency relief (which AEP-Ohio has not sought), or FERC mandating a change to the PJM tariff

³ It is important to note that the OMA's view on this issue is consistent with the comments the OMA filed in this docket on January 7, 2011.

⁴ Although AEP-Ohio portrays the option of self-supply as a viable alternative for CRES providers, because of the timing of notice requirements, it is not. See FirstEnergy's Memorandum Contra AEP-Ohio's Motion at 13.

⁵ PJM Open Access Transmission Tariff, Attachment D, Schedule 8.1 ("Fixed Resource Requirement Alternative").

⁶ *American Electric Power Service Corporation; PJM Interconnection, LLC*, FERC Docket No. ER11-2183, Transmittal Letter at 3 (November 24, 2010).

that permits AEP-Ohio to change the capacity cost, the Commission may not authorize AEP-Ohio to modify the capacity rate, even for an interim period.

D. AEP Ohio's Motion is Procedurally Deficient.

Simply put, AEP-Ohio's Motion is not authorized by Ohio law or Commission rule and should be denied. AEP-Ohio is seeking to achieve the benefits of the Stipulation without any balance being afforded to customers. If AEP-Ohio objects to the outcome of the Commission's Entry on Rehearing, the proper procedures include: rehearing,⁷ emergency relief,⁸ or a direct claim to PJM and FERC.

It is clear that AEP-Ohio is aware of these options as it filed a Motion before FERC on February 29, 2012.⁹ In the FERC Motion, AEP requested that FERC grant AEP's request for rehearing and let its proposed cost-based capacity charges go into effect as of March 1, 2012, subject to any additional FERC procedures; or, alternatively, if FERC affirms its findings that the PJM tariff allows the Ohio Commission to determine the state capacity compensation mechanism, FERC should modify the PJM tariff to permit AEP to change its capacity rates at will, regardless of the state mechanism, subject to FERC review and approval.

The Commission should deny AEP-Ohio's Motion and direct it to seek only those options allowed by law.

⁷ FirstEnergy Solutions succinctly identified the procedural options in its Memorandum Contra the Motion. Section 4903.10, Revised Code.

⁸ Section 4909.16, Revised Code.

⁹ See *American Electric Power Service Corporation*, Docket No. ER11-2183-001 and *American Electric Power Service Corporation v. PJM Interconnection, LLC*, Docket No. EL11-32-000, Motion of American Electric Power Service Corporation for Expedited Rulings (February 29, 2012).

E. A Threat of Legal Remedies is Not Sufficient Basis to Grant the Motion.

It is worth noting that AEP-Ohio indicated in its Motion that if the Commission grants the interim relief, AEP-Ohio may not pursue its legal remedies in other venues and ways. This apparent threat is not a sufficient basis to grant an otherwise illegal remedy. Moreover, as noted above, AEP-Ohio has already filed a Motion requesting an expedited ruling that undermines its conditional agreement to do otherwise. Thus, as AEP-Ohio has already take the proper legal steps at FERC that it claimed it would hold off on and, more importantly, because an agreement not to do so is no basis for awarding the relief sought by AEP-Ohio, the Commission should deny AEP-Ohio's Motion.

F. Granting the Motion Would Not be Reasonable.

Given the knowledge we have today about actual customer switching, granting the Motion would not be reasonable.

While the OMA Energy Group ("OMA EG") supported the Stipulation that contained, among other things, the structure of what AEP-Ohio seeks in its Motion, the Motion by itself is not reasonable.

First, the Stipulation contained a balance of provisions, while the Motion seeks only to benefit AEP-Ohio and does not provide the balance of provisions in the Stipulation.

Second, OMAEG relied upon representations by AEP-Ohio during the course of negotiations on the Stipulation that there was sufficient room under the capacity pricing mechanism for sufficient shopping. The reality that we now know, and only have known since December 29th, 2011, is that the RPM-priced capacity queue had been reached

on September 7th, the day the Stipulation was signed and filed with the Commission. In other words, it is now abundantly clear that more customers than the Stipulation capacity pricing mechanism allowed for want to shop. Thus, granting AEP-Ohio's motion would prevent customers from exercising choice of service providers.

As adopting a single provision of a rejected settlement that only benefits AEP-Ohio would not be reasonable given what we now know, the Commission should deny the Motion.

III. CONCLUSION

For the foregoing reasons, the Commission should protect manufacturers and other AEP-Ohio customers and deny AEP Ohio's Motion.

Respectfully submitted,



Lisa G. McAlister, Counsel of Record
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: lmcaster@bricker.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MEMO CONTRA was served by electronic mail on the parties of record listed below this 5th day of March 2012.



Lisa G. McAlister

PARTIES SERVED

Werner.margard@puc.state.oh.us
John.jones@puc.state.oh.us
grady@occ.state.oh.us
MWarnock@bricker.com
stnourse@aep.com
mjsatterwhite@aep.com
tobrien@bricker.com
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
ricks@ohanet.org
msmalz@ohiopoveritylaw.org
jmaskovyak@ohiopoveritylaw.org
Philip.sineneng@thompsonhine.com
Dorothy.corbett@duke-energy.com
todonnell@bricker.com
cmontgomery@bricker.com
myurick@cwsllaw.com
dconway@porterwright.com
haydenm@firstenergycorp.com
mkurtz@BKLLawfirm.com
dboehm@BKLLawfirm.com
emma.hand@snrdenton.com
doug.bonner@snrdenton.com
keith.nusbaum@snrdenton.com
JLang@Calfee.com
lmcbride@calfee.com
talAlexander@calfee.com

jbentine@cwsllaw.com
cmooney2@columbus.rr.com
jejadwin@aep.com
mhpetricoff@vorys.com
smhoward@vorys.com
mjsettineri@vorys.com
wmassey@cov.com
henryeckhart@aol.com
jesse.rodriquez@exeloncorp.com
sandy.grace@exeloncorp.com
kpkreider@kmklaw.com
holly@raysmithlaw.com
BarthRoyer@aol.com
Gary.A.Jeffries@dom.com
gthomas@gtpowergroup.com
laurac@chappelleconsulting.net
cmiller@szd.com
gdunn@szd.com
ahaque@szd.com
tsantarelli@elpc.org
nolan@theoec.org
trent@theoec.org
ned.ford@fuse.net
gpoulos@enernoc.com
sfisk@nrdc.org
zkravitz@cwsllaw.com
aehaedt@jonesday.com
dakutik@jonesday.com

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