

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.)	

**NFIB/OHIO’S MEMORANDUM IN OPPOSITION TO OHIO POWER
COMPANY’S MOTION TO STRIKE TESTIMONY**

I. Introduction.

In this proceeding, AEP-Ohio seeks to establish the price for the capacity that AEP-Ohio provides to competitive retail electric service providers (“CRES”) in its service territory. NFIB/Ohio sought leave to intervene in this case because it has a:

... real and substantial interest in the proceeding before this Commission – a proceeding which will determine whether and to what extent to change the basis for compensation for capacity costs to a cost-based mechanism. **The interests of NFIB/Ohio center on competition and the resulting costs which will be incurred by their members. NFIB/Ohio has long championed the position that fostering competitive markets and limiting government intervention will free entrepreneurs to create jobs, make capital investments, and take risks that help grow their businesses.** (Memorandum in Support, p.3; emphasis supplied.)

No party filed any opposition to this Motion and by Entry dated April 13, 2012, the Attorney Examiner granted NFIB/Ohio’s Motion finding the “motion to intervene asserts a real and substantial interest that is not represented by another party to this case.”

AEP-Ohio has filed a Motion to Strike a portion of the Direct Testimony of Roger R. Geiger, NFIB/Ohio’s Vice President and Executive Director asserting that Mr. Geiger’s Testimony at page 3, lines 6-23, and page 4, lines 1-20, is “outside the scope of

this proceeding” and “not related in any way to AEP-Ohio’s proposed capacity pricing mechanism and thus, is irrelevant.” (Motion to Strike, p.6.) AEP-Ohio is wrong.

Mr. Geiger’s testimony explaining NFIB/Ohio’s position concerning the costs to be incurred by NFIB/Ohio’s members as a result of this proceeding is relevant to and within the scope of the issues in this proceeding and consistent with the purpose for which NFIB/Ohio sought intervention. AEP-Ohio’s Motion to Strike is misplaced, and AEP-Ohio has acknowledged as much by taking an inconsistent position in its Motion to Compel discovery from FirstEnergy Solutions (“FES”). Unless AEP-Ohio is conceding or guaranteeing that nothing will occur in this docket that can or will ultimately increase the rates paid to AEP-Ohio by NFIB /Ohio’s members, its efforts to block Mr. Geiger’s testimony should be rejected.

II. Argument.

The testimony to which AEP-Ohio seeks to block Mr. Geiger from providing in this matter are in response to the following questions:

- Q. Have you previously testified before the Commission?**
- Q. Why are you [testifying] in this proceeding?**
- Q. What is the purpose of your testimony?**
- Q. What has been the impact on your members of the AEP-Ohio rates currently under reassessment by the Commission?**

If AEP-Ohio truly believed testimony focusing on competition and the resulting costs incurred by NFIB/Ohio’s members was “outside the scope of the proceeding” or “not related in any way to AEP-Ohio’s proposed capacity pricing mechanism,” AEP-Ohio could have raised an objection at the time NFIB/Ohio sought intervention on these grounds, but did not do so.

The purpose of Mr. Geiger’s testimony, consistent with these statements, is to

“provide the Commission with some examples as to the impact of this Proceeding upon our Members and to convey the concerns of our Members to the Commission. In addition, **my testimony will explain NFIB/Ohio’s position – and the position of our over 24,000 Members – concerning the State’s transition to a competitive electric marketplace and the reinstated two-tiered capacity pricing plan.**” (Direct Testimony of Roger R. Geiger, p.3, lines 15-19; emphasis supplied.) The purpose of NFIB/Ohio’s intervention is captured in this testimony and forms a very relevant part of the subject matter to be addressed in the development of the record in this matter.

To confirm the relevance of Mr. Geiger’s testimony in this proceeding, the Hearing Examiner need only look to AEP-Ohio’s Motion to Compel discovery responses from FirstEnergy Solutions (“FES”), filed the same day as its Motion to Strike. In this motion, AEP-Ohio argues that “There is no question that the ultimate prices charged to customers and capacity charges that FES would be required to pay as a result of this case are issues directly advocated by FES in this proceeding. (Motion to Compel, p.3.) Thus, AEP-Ohio claims that the discovery it seeks from FES is “relevant to this proceeding because FES has attempted to make the impact on the competitive market in Ohio a central issue in this case, and doing so implicates the terms and conditions of services with its customers related to the treatment of the capacity component of its costs.” *Id.*, p.7.

AEP-Ohio further asserts that “FES has argued that the capacity charge [is] directly tied to competition in Ohio and its ability to serve retail customers.” *Id.*, p.8. Moreover, AEP-Ohio says that “FES has asserted end use customers’ ability to save is impacted by increases in component costs, including capacity costs. *Id.* FES has also

asserted in testimony, according to AEP-Ohio, that the Proposed Capacity Price would establish a significantly above-market price for capacity charged to CRES providers which will constrain **customers'** ability to access savings." *Id.* AEP Ohio's Motion to Compel reveals the contradictory nature of positions taken in motions filed the same day in the same proceeding by the same party.

AEP-Ohio next mistakenly claims that the Testimony of Mr. Geiger surrounding the customer rate impacts relate solely to AEP Ohio's ESP rates that the Commission initially approved in December, 2011, and is not related to AEP Ohio's proposed capacity pricing mechanism." (Motion to Strike, p.6.) Again, and inconsistent with this argument, AEP-Ohio claims that it should be entitled to inquire of FES as to matters which may constrain customers' ability to access savings, increase component costs, or impact the competitive marketplace. The marked inconsistencies of these self-serving positions advanced by AEP-Ohio in these motions are readily apparent.

FES' Combined Memorandum Contra AEP Ohio's Motion to Compel And Motion for Protective Order, filed April 16, 2012, also underscores the inconsistencies of AEP-Ohio's position. FES notes that in responding to interrogatories propounded by AEP Ohio that "FES also confirmed that some of FES' contracts would allow FES to pass through an increase in capacity costs to its customers if AEP Ohio's capacity prices were increased through this proceeding." (FES' Memo, p. 4; underlining in the original.) In sum, the arguments by both FES and AEP-Ohio in their discovery dispute confirm the relevance of the testimony of Mr. Geiger sought to be excluded by AEP-Ohio

III. Conclusion.

Mr. Geiger's Direct Testimony, beginning at page 3, lines 6 through 23, and

continuing at page 4, lines 1 through 20, explains members' position concerning the possible impacts they will experience as a result of this proceeding. This testimony is relevant to the issues in this proceeding and consistent with the purposes for which NFIB/Ohio sought and was granted intervention. AEP-Ohio's Motion to Compel discovery from FES highlights the lack of legal or logical support for its Motion to Strike. For all the foregoing reasons, AEP-Ohio's Motion to Strike portions of Mr. Geiger's direct testimony should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NFIB/OHIO'S MEMORANDUM IN OPPOSITION TO OHIO POWER COMPANY'S MOTION TO STRIKE TESTIMONY was served by electronic mail, this 17th day of April, 2012, upon the following parties, or their counsel of record to this action:

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Summary: Memorandum NFIB/Ohio's Memorandum in Opposition to Ohio Power Company's Motion to Strike Testimony electronically filed by Mr. Roger P. Sugarman on behalf of The National Federation of Independent Business