

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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)	

**RETAIL ENERGY SUPPLY ASSOCIATION’S MEMORANDUM CONTRA
OHIO POWER COMPANY’S MOTION TO STRIKE TESTIMONY**

Pursuant to Rule 4901:1-12 of the Ohio Administrative Code, the Retail Energy Supply Association¹ (“RESA”) hereby submits this memorandum contra in response to the April 12, 2012 Ohio Power Company (“Ohio Power”) motion to strike a portion of the testimony of RESA witness Teresa L. Ringenbach.

For the reasons set forth below, the Commission should not strike any portion of the testimony of Teresa L. Ringenbach.

In its April 12, 2012 motion, Ohio Power seeks to strike the April 4 testimony of Teresa L. Ringenbach at page 10, lines 5 through 23 and page 11, lines 1 through 18. At pages 5-6 of its motion to strike, Ohio Power argues that a portion of the testimony should be stricken because it constitutes an improper additional argument in support of RESA’s March 14, 2012 petition for rehearing. Ohio Power cites In re Ohio Power Co., Case No. 98-101-EL-EFC, Entry on Rehearing, July 15, 1999 in support of the premise that Ms. Ringenbach’s testimony should be stricken because it does nothing more than reiterate RESA’s arguments in support of

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; 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; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus; Reliant Energy Northeast LLC 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.

rehearing. In addition, Ohio Power argues that Ms. Ringenbach's testimony should be stricken because the temporary interim capacity pricing mechanism adopted in the March 7 entry is wholly irrelevant to the issue in this proceeding -- the adoption of a permanent state compensation mechanism for AEP-Ohio.

Both of Ohio Power counts in its motion to strike should be denied.

First, the July 15, 1999 Entry on Rehearing in Case No. 98-101-EL-EFC cited by Ohio Power is not applicable and thus is not legal precedent for the matter at bar. That Entry on Rehearing in Case No. 98-101 addressed the issue of the striking of a memorandum contra, not testimony. Ohio Power had argued in Case No. 98-101 that statements in the memorandum contra in response to an application for rehearing constituted improper additional arguments to support the intervenor's application for rehearing. The Commission's rules do not allow the entity that files an application for rehearing to file a reply to a memorandum contra. The Commission found that the information and arguments contained in the memorandum contra were irrelevant to the intervenor's stated purpose of countering the Company's application for rehearing and served only to bolster the intervenor's position relative to their own application for rehearing. Thus, the Commission granted the motion to strike the memorandum contra in Case No. 98-101. See In re Ohio Power Co., Case No. 98-101-EL-EFC, et al. Entry on Rehearing, July 15, 1999 at page 9.

In this case, RESA did not file a memorandum contra in order to support its application for rehearing. There was no attempt to deprive Ohio Power from having an opportunity to respond to RESA's filed testimony. Ohio Power's claim that RESA seeks to bolster its rehearing argument seems misplaced as the Commission, in its recent April 11, 2012 Entry on Rehearing,

granted RESA's application for rehearing, finding that sufficient reasons had been set forth in the application for rehearing to warrant further consideration of the matters specified.

Ohio Power's claim that pages 10 and 11 of Ms. Ringenbach's testimony is outside the scope of the proceeding is incorrect. The testimony on pages 10-11 address the problems with the current state compensation mechanism, and the need to correct the problems associated with "tiers" going forward.

This case was initiated by the Commission, not Ohio Power, in order to investigate "the impact of the proposed change to AEP-Ohio's capacity charges. See the December 8, 2010 Entry at Finding 5 and the August 11, 2011 Entry at Finding 2. On August 11, 2011, the Commission established a procedural schedule which was set forth in order to "develop an evidentiary record on a state compensation mechanism." See the August 11, 2011 Entry at Finding 6. Investigating the AEP-Ohio's capacity rate falls within the Commission's general supervisory powers. See the December 8, 2010 Entry, at Finding 2.

The state compensation mechanism is a "charge relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service . . ." and has "the effect of stabilizing or providing certainty regarding retail electric service." Thus, the Commission has the substantive authority under Section 4928.143, Revised Code to set the state compensation method for CRES providers and their customers.

When the Commission initiated this investigation in Case No. 10-2929, it did so in order to determine the impact of the proposed change to AEP-Ohio's capacity charges. The Commission sought public comments regarding what changes to the current state mechanism are appropriate to determine the Company's fixed resource requirement capacity charges to Ohio CRES providers, the degree to which AEP-Ohio's capacity charges are currently being recovered

through retail rates approved by the Commission or other capacity charges, and the impact of AEP-Ohio's capacity charges upon CRES providers and retail competition in Ohio. The Commission provided stakeholders to provide comments and, now, to file testimony. The Commission is not limited to approving or disapproving Ohio Power's proposal; it has the authority and duty to consider all proposals in order to establish a state compensation mechanism. Ms. Ringenbach's testimony is indeed relevant in this case and should not be stricken.

As an additional factor, Ms. Ringenbach simply makes the point that the current experience of capacity price uncertainty is not something that should be perpetuated and provides a good illustration as to why a uniform RPM capacity price is preferable.

Ohio Power has failed to demonstrate why pages 10-11 of Ms. Ringenbach's testimony should be stricken. The motion to strike a portion of the testimony of Ms. Ringenbach should be denied.

Respectfully submitted,



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*On behalf of the Retail Energy Supply
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served this 17th day of April, 2012 via electronic mail on the following persons.



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Summary: Memorandum Retail Energy Supply Association's Memorandum Contra Ohio Power Company's Motion to Strike Testimony electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association