

**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.)

**MEMORANDUM CONTRA OHIO POWER COMPANY’S
MOTION FOR EXTENSION
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of the approximately 1.2 million residential utility customers of Ohio Power Company (the “Company” or “AEP-Ohio”), submits this Memorandum Contra Ohio Power’s Motion for Extension, (“Motion for Extension”) pursuant to Ohio Admin Code. 4901-1-12(B)(1).

On March 7, 2012, the Public Utilities Commission of Ohio (“Commission” or “PUCO”) issued an Entry (“Entry”) implementing an interim¹ two-tier capacity pricing mechanism.² Under the interim pricing mechanism, the first twenty-one percent of customers in each customer class are entitled to “tier-one” PJM reliability pricing model (“RPM”) capacity prices of \$146 per MW-day through May 31, 2012. The second-tier charge for capacity (i.e., the price for customers who are not in the first twenty-one percent of their respective customer class) is \$255.00/MW-day through May 31, 2012.³

¹ An interim pricing mechanism was implemented so that the Commission could “develop an evidentiary record on a state [capacity] compensation mechanism.” *See* Case No. 10-2929-EL-UNC, Entry at ¶8 (March 14, 2012).

² *See 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, Entry (March 7, 2012).

³ *Id.* at 26.

The Commission implemented this “interim” capacity pricing mechanism because it determined that it was necessary to “to fully develop the record to address the issues raised in this proceeding”⁴ with respect to capacity pricing.

In its Entry, the Commission states that the “interim rate will be in effect until May 31, 2012, **at which point the rate for capacity under the state compensation mechanism shall revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 year.**” (Emphasis added). The RPM rate for the 2012/2013 year will be \$20.01 per MW-day.⁵

On April 30, 2012, AEP-Ohio filed a Motion for Extension requesting that the Commission “preserve the status quo capacity pricing,”⁶ rather than implement the PJM RPM rate for the 2012/2013 year. The Company argues that reverting to the PJM RPM price on June 1, 2012 will cause “customer confusion,”⁷ “financial harm”⁸ and that the Commission “appropriately recognized the unjust and unreasonable result of the RPM pricing when establishing the current interim mechanism.”⁹ For the reasons that follow, the Company’s Motion for Extension should be denied.

⁴ Id.

⁵ See Exhibit KDP-7 of *Direct Testimony of Kelley D. Pearce on behalf of Ohio Power Company*, Case No. 10-2929-EL-UNC, March 23, 2012.

⁶ See Motion for Extension, Case No. 10-2929-EL-UNC at 9 (April 30, 2012).

⁷ Id.

⁸ Id.

⁹ Id.

II. ARGUMENT

A. The Commission Determined In Its March 7, 2012 Entry That The State Compensation Mechanism Would Revert To PJM RPM Pricing Starting June 1, 2012.

The Commission should deny the Company's Motion for Extension because the PUCO's March 7, 2012 Entry clearly set-forth the interim mechanism for capacity pricing post May 31, 2012. In this regard, the PUCO stated:

Under the two-tier capacity pricing mechanism, the first 21 percent of each customer class shall be entitled to tier-one RPM pricing. All customers of governmental aggregations approved on or before November 8, 2011, shall be entitled to receive tier-one RPM pricing. The second-tier charge for capacity shall be at \$255.00/MW-day. This interim rate will be in effect until May 31, 2012, **at which point the rate for capacity under the state compensation mechanism shall revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 year.**¹⁰ (Emphasis added).

It is evident from the Commission's Entry that the RPM price of \$146 per MW-day for the first twenty-one percent of each customer class is only in effect until May 31, 2012. Accordingly, in the event the Commission has not issued a decision to establish capacity pricing in this proceeding prior to May 31, 2012, the state mechanism **shall revert to the current RPM price in effect.** Thus, the appropriate price to charge is \$20.01 per MW-day, not \$146 per-MW day, as proposed by AEP-Ohio. It should also be noted that the "status quo" price (\$146 per-MW day) that AEP-Ohio is urging the Commission to implement post May 31, 2012 is neither a cost-based capacity price, nor a market-based price. Thus, there is no justification for the capacity price to which AEP-Ohio believes it is entitled.

¹⁰ Case No. 10-2929-EL-UNC, Entry at ¶26 (March 7, 2012).

The Commission's Entry also shows that it contemplated that a decision for this proceeding might not be issued until **after** May 31, 2012. This is apparent because the Commission mandated that the interim price for capacity post May 31, 2012 would be the "current RPM in effect...for the 2012/2013 year." Had the Commission intended for the price for capacity to be \$146 per MW-day post May 31, 2012, it would have so stated.

The Company argues in its Motion for Extension that reverting to the PJM RPM price on June 1, 2012 will cause "customer confusion"¹¹ and, that the Commission "appropriately recognized the unjust and unreasonable result of the RPM pricing when establishing the current interim mechanism."¹² The Company's arguments are flawed. First, customers and Competitive Retail Electric Service ("CRES") providers were put on notice as to the price for capacity post May 31, 2012, based upon the Commission's March 7, 2012 Entry which stated that the state compensation mechanism shall revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 year. It is likely that some of AEP-Ohio' customers based decisions regarding shopping on that Commission ruling authorizing a reduction of the capacity charge to revert back to the PJM RPM pricing (\$20.01 per MW-day¹³) absent a final decision in the case. And at least one (or more) CRES agreement provides a mechanism which may be utilized by the CRES provider to pass through any new or modified charge that was authorized by a governmental entity. Accordingly, if (at the request of AEP-Ohio) the Commission reverses its decision to revert to the PJM RPM price on June 1, 2012 as indicated above,

¹¹ Id.

¹² Id.

¹³ See Exhibit KDP-7 of *Direct Testimony of Kelley D. Pearce on behalf of Ohio Power Company*, Case No. 10-2929-EL-UNC, March 23, 2012.

then some shopping customers may have to pay more than the fixed-price for their electric generation after June 1, 2012 because of the capacity charge.

Second, the Commission stated in its Entry that it found support in the record that, “as applied to AEP-Ohio for the interim period only, the state compensation mechanism **could** risk an unjust and unreasonable result.”¹⁴ The Commission did not conclude that RPM priced capacity **would** be unjust or unreasonable. The Company’s Motion for Extension is premised on the notion that it is entitled to charge a price for capacity that is more than the market-based PJM RPM rate—but that has yet to be determined by the Commission.

The Company also claims that the Commission should extend the two-tiered pricing mechanism so it can avoid “financial harm.”¹⁵ However, AEP-Ohio has failed to substantiate this claim. The Company has not provided any evidence that supports the claim that charging RPM PJM prices starting June 1, 2012, until the time the Commission makes a decision in this proceeding, will cause them to suffer “financial harm.” And the Company fails to address the fact that some customers may have relied on the Commission’s Entry (establishing that absent a final decision— RPM PJM prices would be in effect starting June 1, 2012,) in making decisions regarding shopping.

B. The Commission Is Without Jurisdiction To Reverse Its March 7, 2012 Finding That RPM PJM Prices For Capacity Shall Become Effective June 1, 2012 If A Decision Has Not Been Issued In This Proceeding.

The Commission is without authority to consider AEP-Ohio’s April 30, 2012 request to modify the Commission’s March 7, 2012 Entry. Specifically, AEP-Ohio is

¹⁴ Id. (Emphasis added).

¹⁵ See Motion for Extension, Case No. 10-2929-EL-UNC at 9 (April 30, 2012).

now (as of April 30th) requesting that the Commission reverse its March 7th finding that RPM PJM prices for capacity shall become effective June 1, 2012. This request is over three weeks overdue.¹⁶ Ohio law establishes a specific 30-day time limit on all parties wishing to apply for rehearing of a Commission decision. Specifically, R.C. 4903.10 states as follows:

After any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding. **Such application shall be filed within thirty days after the entry of the order upon the journal of the commission.** ... (Emphasis added).

The Company is requesting that the Commission make a substantive revision to its March 7, 2012 Entry. In this regard, several parties¹⁷ appropriately filed timely applications for rehearing of the Commission's March 7, 2012 Entry, but AEP-Ohio did not. The appropriate remedy available to the Company to dispute the Commission's Entry was an application for rehearing, not a motion for an extension of the interim plan and existing prices.

It is improper for the Company to attempt to circumvent Ohio law by calling its late-filed application for rehearing a motion. Similarly, in Case No. 05-376-EL-UNC, AEP-Ohio filed a motion for clarification that sought additional financial assurances from the Commission as well as an expedited schedule upon which to consider the Company's application for monies in connection with the construction of an integrated gasification

¹⁶ Any application of rehearing filed in regards to the Commission's March 7, 2012 Entry was due on or before April 6, 2012. R.C. 4903.10.

¹⁷ FirstEnergy Solutions Industrial Energy Users ("IEU"), and RESA all filed timely Applications for Rehearing of the Commission's March 7, 2012, Entry. In addition, AEP-Ohio filed a memorandum contra the applications for rehearing filed by RESA, FES and IEU.

combined-cycle (“IGCC”) power plant.¹⁸ In that proceeding, the Commission held that the Company’s request for clarification be “treated and considered as an application for rehearing.”¹⁹

The present case is analogous to the case cited above because the remedy available to AEP-Ohio in this case was an application for rehearing. Since the deadline for applications for rehearing for the March 7, 2012 Entry has passed, AEP-Ohio’s attempt to change the Commission’s ruling is untimely, and should be denied.

III. CONCLUSION

The Company’s Motion for Extension should be considered a late-filed application for rehearing. As such, its Motion should be denied because the Commission does not have the authority to waive the statutory deadline for the filing of an application for rehearing. Accordingly, if the Commission has not issued a decision in this proceeding by May 31, 2012, capacity under the state mechanism should revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 year on June 1, 2012.²⁰

For the reasons stated herein, OCC respectfully requests that the Commission deny the Company’s Motion for Extension.

¹⁸ *In re AEP Ohio’s Proposed IGCC Power Plant*, Case No. 05-376-EL-UNC, Entry on Rehearing at 1, ¶4 (June 6, 2006).

¹⁹ *Id.* at 2, ¶5.

²⁰ Case No. 10-2929-EL-UNC, Entry at ¶26 (March 7, 2012).

Respectfully submitted,

**BRUCE J. WESTON
CONSUMERS' COUNSEL**

/s/ Kyle L. Kern

Kyle L. Kern, Counsel of Record

Melissa R. Yost

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

614-466-9585 (Kern Telephone)

614-466-1291 (Yost Telephone)

kern@occ.state.oh.us

yost@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Memorandum Contra Ohio Power Company's Motion for Extension by the Office of the Ohio Consumers' Counsel* was served on the persons stated below via electronic transmission, this 7th day of May, 2012.

/s/ Melissa R. Yost

Melissa R. Yost
Assistant Consumers' Counsel

SERVICE LIST

Thomas.lindgren@puc.state.oh.us
dboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org
haydenm@firstenergycorp.com
Paul.Wight@skadden.com
John.Estes@skadden.com
cendsley@ofbf.org
Amy.spiller@duke-energy.com
rsugarman@keglerbrown.com
BarthRoyer@aol.com
Gary.A.Jeffries@dom.com
Gregory.dunn@icemiller.com
Christopher.miller@icemiller.com
Asim.haque@icemiller.com
rjhart@hahnlaw.com
rremington@hahnlaw.com
djmichalski@hahnlaw.com

stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com
Jeanne.Kingery@duke-energy.com
whitt@whitt-sturtevant.com
Thompson@whitt-sturtevant.com
campbell@whitt-sturtevant.com
vparisi@igsenergy.com
mswhite@igsenergy.com
Sandy.grace@exeloncorp.com
lmcalister@bricker.com
ricks@ohanet.org
tobrien@bricker.com
mhpetricoff@vorys.com
zkravitz@taftlaw.com
myurick@taftlaw.com
dane.stinson@baileycavalieri.com
Dorothy.Corbett@duke-energy.com
bpbarger@bcslawyers.com
dconway@porterwright.com
cmoore@porterwright.com
dstahl@eimerstahl.com

Greta.see@puc.state.oh.us
Sarah.parrot@puc.state.oh.us

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