

**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)	Case No. 10-2929-EL-UNC
Power Company.)	

INITIAL POST-HEARING BRIEF OF THE KROGER COMPANY

A. BACKGROUND

On November 24, 2010, AEP filed an application before the Federal Energy Regulatory Commission ("FERC") in Docket No. ER11-2183. AEP sought FERC approval to change the mechanism it uses to charge CRES providers for capacity. Specifically, AEP requested that it charge CRES providers based on AEP's calculation of its "embedded cost" of capacity, rather than a mechanism based on the RPM clearing price.

On December 8, 2011 the Public Utilities Commission of Ohio ("Commission") issued an entry adopting an RPM based rate as the "state compensation mechanism."

On September 7, 2011, a Stipulation and Recommendation was filed in the AEP Ohio ESP case,¹ along with other cases consolidated therewith which appeared to resolve the capacity issue. The Commission modified and approved the Stipulation on December 14, 2011. After further consideration, on February 23, 2012, the Commission rejected the Stipulation.

¹ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, et al.

On February 27, 2012, AEP Ohio requested interim relief on the capacity price issue and the Commission granted interim relief on March 7, 2012, adopting a two tiered capacity pricing mechanism until May 31, 2012. The Commission also established a procedural schedule in this case to develop an evidentiary record. On April 17, 2012, the evidentiary hearing commenced. The hearing concluded on May 16, 2012.

B. ARGUMENT

I. The RPM Clearing Price is The Appropriate Charge to CRES Providers.

Every entity that sells electricity to retail customers (load serving entities or “LSEs”) whether an electric distribution utility (or “EDU”) or a competitive retail electric supplier (or “CRES”) must have capacity reserves set by PJM each year, called the installed reserve margin (“IRM”) based on the entity’s forecast peak load for the planning year. The capacity reserve ensures that there is always enough reserve capacity to meet forecast peak demand for power at all times. The IRM also accounts for unplanned events, such as forced generation outages or loss of a transmission line.

The provision of capacity can be accomplished in various ways. Capacity may be purchased through the PJM RPM, which is a competitive wholesale market for buyers and sellers of capacity. Purchases of capacity can also be made through bilateral arrangements between an LSE and a generator. Additionally, LSE’s that meet certain eligibility requirements may declare themselves fixed resource requirement (“FRR”) entities and provide capacity directly to their distribution load for the period of the FRR election, including the load of customers who purchase generation service from a CRES (“shopping customers”). (Prefiled testimony of Jonathan A. Lesser,

FirstEnergy Solutions witness, filed on April 4, 2012 and marked and admitted on April 27, 2012 as FES Exhibit No. 103 at pages 7 and 8).

AEP Ohio has elected to be an FRR entity through May 31, 2015, after which it will obtain capacity through the PJM RPM. Therefore, AEP Ohio requires that all CRES providers that serve AEP Ohio's distribution customers purchase their required capacity from AEP Ohio for the next three planning years. As a result, CRES providers are prohibited from purchasing capacity through the open market through PJM RPM, or from any source other than from AEP Ohio. (*Id.* at page 8).

AEP Ohio is not, however, entitled to charge any price it desires in return for capacity. Schedule 8.1, Section D.8 of the PJM Reliability Assurance Agreement ("RAA") establishes that an FRR entity may charge either the price required by an established state compensation mechanism, or the capacity price in the PJM RPM market. For the 2011-2012 planning year, the RPM capacity clearing price is \$116.15/MW-day. When adjusted for scaling factor, forecast pool requirements and transmission system losses, the final RPM prices are \$145.78/MW-day for the 2011-2012 planning year. (*Id.* at 9).

Because CRES providers are required to obtain capacity for the next three PJM planning years from AEP Ohio, the price AEP Ohio charges for such capacity has the potential to profoundly affect the competitive environment in AEP Ohio's service territory. If AEP Ohio were to charge unreasonably high rates for capacity, CRES providers will be unable to compete for customers on a fair and non-discriminatory basis. This would violate express state policy, which is to encourage retail electric competition. (*Id.* at 10 (citing Revised Code § 4928.01)).

The most economically efficient capacity price and the price that AEP Ohio should be required to charge CRES providers for capacity, is the PJM RPM market price. (Testimony of First Energy Solutions witness Lesser, FirstEnergy Solutions Exhibit No. 103 at page 23). The Commission should establish an RPM based capacity price of \$20.01/MW-day for 2012/2013, \$33.71/MW-day for 2013-2014 and \$153.89/MW-day for 2014-2015 as the prices AEP Ohio can charge CRES providers under the state compensation mechanism during the transition period. (Prefiled testimony of Lane Kollen, Ohio Energy Group witness, filed on April 4, 2012 and marked and admitted on April 24, 2012 as OEG-Ohio Exhibit No. 102).

II. AEP Should Not Be Permitted to Recover Generation Transition Costs Through Capacity Charges.

Under Senate Bill 3 ("S.B. 3") retail electric generation service was unbundled from distribution and transmission service beginning January 1, 2001. All generation plant investment after that date, with the exception of allowed transition costs, were to be recovered solely through the market. Under S.B. 3, electric utilities were given an opportunity during a transition period to recover any previously-sunk costs in their generation facilities (Generation Transition Costs or "GTC's") incurred prior to January 1, 2001, that would be uneconomic or "stranded" in competitive markets. S.B. 3 provided a clear date to determine pre-transition versus post-transition generation costs (*Id.* at 4th ¶ pages 10-11).

A proposed ETP had to be filed within ninety (90) days after the effective date of S.B. 3. Statutory criteria were used to determine how much of the generation transition cost claim was eligible for collection through generation transition charges. For the generation plant-related portion of the transition revenue claim, the net book value of

generating assets at December 31, 2000 was used as the baseline to determine how much, if any, of the net, verifiable, prudently incurred book value was not recoverable in the market. The most common method used to determine generation transition costs due to deregulation was a revenue based approach. Generally, revenue streams for various generation assets were projected and reduced to present value. That present value was compared to the net book value of the plants as of December 31, 2000. Generation transition costs were deemed to be positive and potentially recoverable if the net present value of the projected revenue stream was less than net book value as of December 31, 2000. (Prefiled testimony of Ed Hess, AEP witness, filed on April 4, 2012 and marked and admitted on April 24, 2012 as AEP Exhibit No. 110).

Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP") filed their proposed ETPs on December 30, 1999.² Included in the ETPs was a claim for generation plant transition revenue. (*Id.* at page 8). As part of a settlement package approved by the Commission, CSP and OP withdrew claims for recovery of generation plant-related stranded costs. This settlement provided CSP and OP with an opportunity to collect significant regulatory transition charges (regulatory transition costs or "RTC's"). Also as part of the Commission approved settlement, AEP Ohio committed not to "impose any lost revenue charges on any switching customer." (*Id.* at 10-11).

Now, through the instant capacity case, AEP Ohio wants to renew a claim for generation transition costs. However, AEP Ohio can no longer recover stranded costs of generation assets. All such costs must be recovered in the market. There is simply no regulatory basis for AEP to charge any embedded capacity cost to any of its

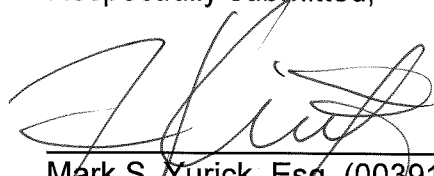
² *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Transition Plan and Application for Receipt of Transition Revenues*, Case Nos. 99-1729-EL-ETP, et al.

customers. (Testimony of First Energy Solutions witness Lesser, FirstEnergy Solutions Exhibit No. 103 at page 15). Under the terms of the settlement in the ETP cases, AEP Ohio agreed to forego recovery of generation transition costs in return for numerous benefits. AEP Ohio should not be permitted to renege on the Commission approved settlement agreement in CSP's and OP's ETP cases, which allowed AEP Ohio to recover substantial regulatory transition costs, by recovering the stranded costs of its generation assets through capacity charges to CRES providers.

III. Conclusion

For the foregoing reasons, The Kroger Company requests the Commission to issue an order establishing an RPM capacity price and denying AEP Ohio's attempt to recover stranded generation transition costs through capacity charges.

Respectfully submitted,



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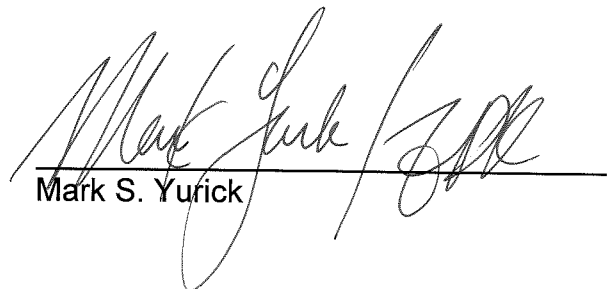
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