

**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.     )

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**INITIAL BRIEF  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

The Office of the Ohio Consumers' Counsel ("OCC") submits this brief on behalf of all the approximately 1.2 million residential utility consumers of the Ohio Power Company ("AEP Ohio" or "the Company"). At issue in this proceeding is the Public Utilities Commission of Ohio's ("PUCO" or "Commission") determination of the capacity price that AEP Ohio will charge to competitive retail electric service ("CRES") providers in Ohio. Capacity charges represent the costs of a utility making its generation units available to provide electric service to a customer. This proceeding is significant to residential customers because AEP Ohio's capacity charges may ultimately be charged to residential customers in Ohio. In addition, the Commission's decision in this proceeding could greatly impact retail competition in Ohio.

R.C. 4928.02(A) makes it a state policy in Ohio to "[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service...." R.C. 4928.02(I) seeks protection for retail electric service customers "against unreasonable sales practices, market deficiencies, and market power." R.C. 4905.22 requires the Commission to set public utility service rates that are just and

reasonable. Accordingly, the Company's proposed cost-based capacity price of \$355.72/MW-day must be rejected by the Commission because it is not in accordance with the policy of the state of Ohio, and will ultimately cost AEP Ohio's customers considerably more than market-based priced capacity.

## **II. STATEMENT OF FACTS**

AEP Ohio is a load serving entity ("LSE"). LSEs are responsible for providing electric service to both residential and wholesale customers. Although "all load-serving entities in the PJM footprint are part of the RPM [reliability pricing model] design,"<sup>1</sup> there are two ways that an entity can meet those obligations -- either through the base residual auction ("BRA") or through the Fixed Resource Requirement Alternative ("FRR").<sup>2</sup> As an FRR entity, an LSE is "obligated to provide capacity for its distribution customers' load for the period of its FRR election, including the load of customers who purchase retail electric service from CRES providers."<sup>3</sup> Under PJM's Reliability Assurance Agreement ("RAA"), a LSE that meets the eligibility requirements can be an FRR entity.<sup>4</sup> The RAA establishes the FRR alternative to participating in the reliability pricing model ("RPM").<sup>5</sup> The FRR alternative allows LSEs the "option to submit a FRR Capacity Plan and meet a fixed capacity requirement as an alternative to participating in

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<sup>1</sup> Trial VIII, at 1593.

<sup>2</sup> Id.

<sup>3</sup> FES Ex. 103, Lesser at 8.

<sup>4</sup> Id.

<sup>5</sup> Trial VIII, at 1608.

the RPM capacity auction.”<sup>6</sup> An LSE that submits an FRR Capacity Plan is a “FRR entity.”<sup>7</sup> AEP Ohio is an FRR entity.<sup>8</sup>

Schedule 8.1, Section D-8, of the RAA controls the pricing of capacity by an FRR entity (like AEP Ohio).<sup>9</sup> The RAA states that cost-based capacity prices are only permitted **in the absence** of a state compensation mechanism:

In a state regulatory jurisdiction that has implemented retail choice, the FRR Entity must include in its FRR Capacity Plan all load, including expected load growth, in the FRR Service Area, notwithstanding the loss of any such load to or among alternative retail LSEs. In the case of load reflected in the FRR Capacity Plan that switches to an alternative retail LSE, where the state regulatory jurisdiction requires switching customers or the LSE to compensate the FRR Entity for its FRR capacity obligations, **such state compensation mechanism will prevail**. In the absence of a state compensation mechanism, the applicable alternative retail LSE shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff, provided that the FRR Entity may, at any time, make a filing with FERC under Section 205 of the Federal Power Act proposing to change the basis for compensation to a method based on the FRR Entity’s cost or such other basis shown to be just and reasonable and a retail LSE may at any time exercise its rights under Section 206 of the FPA. (Emphasis added).

Thus, the RAA establishes how the capacity rate that the FRR Entity may charge a CRES provider will be determined. Specifically, if a state compensation mechanism exists, it takes precedence.<sup>10</sup> Absent such a mechanism, the capacity rate is set at the regional transmission organization’s (“RTO”) capacity clearing price, which in PJM

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<sup>6</sup> FES Ex. 101, Stoddard at 8.

<sup>7</sup> Id.

<sup>8</sup> Company Ex. 101, Munczinski at 4.

<sup>9</sup> Trial VIII, at 1608.

<sup>10</sup> See FES Ex. 110A, Reliability Assurance Agreement, Schedule 8.1, Section D-8.

Interconnection LLC (“PJM”) is RPM.<sup>11</sup> Notably, FERC has ruled that only in the absence of a state compensation mechanism does an FRR Entity have the option to make a filing with the FERC to change to cost-based recovery.<sup>12</sup>

The parties to this proceeding have argued for capacity prices ranging from \$20.01/MW-day (market-based price for 2012/2013) to \$355.72/MW-day (the Company’s cost-based price). AEP Ohio argues that it is entitled to a \$355.72/MW-day capacity price in order to collect its full embedded generation costs.<sup>13</sup> However, all of the intervening parties in this proceeding oppose the Company’s position on capacity pricing. Most of these parties argue that market-based pricing arising out of PJM’s RPM is the appropriate pricing mechanism for CRES providers and their customers.<sup>14</sup>

While the PUCO Staff advocates for the use of a cost-based approach, the PUCO Staff recommends a **significantly** lower price than the price requested by the Company. And the PUCO Staff’s calculation of the capacity charge also incorporates an energy credit. Specifically, the PUCO Staff recommends a merged capacity rate (of Columbus Southern Power Company and Ohio Power Company) of \$144.58/MW-day.<sup>15</sup> The PUCO Staff uses the AEP Ohio 2010 data from Dr. Kelly Pearce’s Exhibits KDP-3 and KDP-4

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<sup>11</sup> Id.

<sup>12</sup> FES Ex. 101, Stoddard at 11, citing to *American Electric Power Serv. Corp.*, 134 FERC 61039 (2011).

<sup>13</sup> Company Ex. 102, Direct Testimony of Kelly Pearce at 23.

<sup>14</sup> FirstEnergy Solutions, RESA, Constellation Energy Commodities Group, Inc., Exelon Energy Company, Inc., IGS, the Ohio Manufacturer’s Association, National Federation of Independent Businesses, Buckeye Association of School Administrators, et al, and the Ohio Energy Group all submitted direct testimony in favor of RPM pricing. In addition, Industrial Energy Users-Ohio critiqued the Company’s cost-based approach calling it “strategically asymmetrical, unbalanced, unjust and unreasonable.” IEU Ex. 101, at 18.

<sup>15</sup> Staff Ex. 103, Direct Testimony of Ralph Smith at 9 and 10. Note also that Staff Witness Emily Medine later revised the energy credit proposed by witness Harter and recommended a \$146.41 merged CSP and OPCo capacity daily rate with energy credit and ancillary services receipts. See Staff Ex. 105, Medine at ESM-4, page 1 of 1.

as a starting point to determine a capacity price.<sup>16</sup> Next, PUCO Staff witness Ryan Harter calculated the energy margins using the Aurora model. Finally, witness Ralph Smith subtracted amounts for energy sales margins and ancillary service receipt amounts that were provided by Mr. Harter which resulted in a \$144.58/MW-day capacity charge.<sup>17</sup>

The Ohio Energy Group (“OEG”) argues that RPM-based capacity is the appropriate price for AEP Ohio to charge CRES providers under the state compensation mechanism.<sup>18</sup> However, OEG witness Lane Kollen proposes that if the Commission establishes a state compensation mechanism that is higher than the RPM-based price for 2012-2015, then it should “not exceed the RPM-based capacity price the Company charged CRES providers at the end of 2011.” The RPM-based capacity price at the end of 2011 was \$145.79/MW-day.<sup>19</sup>

OEG witness Kollen recommends that \$145.79/MW-day should be the “upper limit on the amount of total compensation AEP Ohio receives for providing capacity to CRES providers as it transitions from being a FRR Entity to an RPM Entity.”<sup>20</sup> Witness Kollen points out that this capacity “compensation cap” is significantly higher than the actual RPM auction results that will be in effect during the first two years of the transition period, but slightly lower in the third.<sup>21</sup>

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<sup>16</sup> Staff Ex. 103, Smith at 8.

<sup>17</sup> Id.

<sup>18</sup> OEG Ex. 102, Direct Testimony of Lane Kollen at 3.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

### III. LAW AND ARGUMENT

#### A. **The Commission Should Reject AEP Ohio's Proposed \$355.72/MW-Day Cost-Based Rate And Protect Customers From Unreasonable Rates.**

##### 1. **PJM's Reliability Assurance Agreement mandates that state policy prevails, when such policy exists, and Ohio's state compensation mechanism is RPM pricing.**

On December 8, 2010, the PUCO issued an Entry, which found that a review was necessary to determine the impact of American Electric Power Service Corporation's ("AEPSC") request to the FERC to change capacity pricing to a cost-based mechanism.<sup>22</sup> In that same Entry, the Commission **expressly adopted an RPM-based rate** as the "state compensation mechanism" (under Section D.8 of Schedule 8.1 of the RAA) in combination with retail rates that included the recovery of capacity costs through provider-of-last-resort ("POLR") charges.<sup>23</sup>

AEP Ohio ignores the language of the RAA (discussed above) and the Commission's March 8, 2010 Entry adopting RPM as the state compensation mechanism and makes up its own rationale to justify its request to make customers pay for its embedded costs. Specifically, AEP Ohio witness Pearce states:

AEP Ohio elected to utilize the FRR option to provide or "self-supply" capacity to meet their load serving entity (LSE) obligations rather than acquire this capacity through the PJM RPM market. Since AEP Ohio is self-supplying its own generation resources to satisfy these load obligations, the costs to provide this capacity is the actual embedded capacity cost of AEP Ohio's generation.<sup>24</sup>

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<sup>22</sup> Case No. 10-2929-EL-UNC, Entry at 2 (December 8, 2010).

<sup>23</sup> Case No. 10-2929-EL-UNC, Entry at 2 (December 8, 2010).

<sup>24</sup> Company Ex. 102, Pearce at 6.



But as explained above, the Company's request for cost-based capacity prices is contrary to the plain unambiguous language of the RAA. FES Witness Stoddard explains in testimony that the "RAA establishes a clear sequence to determine the capacity rate that the FRR Entity may charge a CRES provider, with the "state compensation mechanism," if one exists, taking precedence. Absent such a mechanism, the capacity rate is set at the RTO capacity clearing price in the RPM RTO."<sup>25</sup> As such, AEP Ohio's request for \$355.72/MW-day cost-based capacity should be denied.

In addition, Stoddard points out that "embedded cost" "is a concept nowhere to be found in the RPM Tariff or the RAA."<sup>26</sup> Yet AEP is "seeking to change the text of the RAA, itself"<sup>27</sup> and has requested that the PUCO determine that something other than the state compensation mechanism applies. The Company's argument is flawed. As the FERC ruled: "...the PJM RAA does not permit AEP to change a state imposed allocation mechanism...."<sup>28</sup>

## **2. The Federal Energy Regulatory Commission has already rejected American Electric Power Service Corporation's "cost-based" capacity charge request.**

On November 24, 2010, the American Electric Power Service Corporation ("AEPSC") filed a request with the Federal Energy Regulatory Commission ("FERC"), seeking approval to establish formula rates as the basis for the price for capacity that CRES providers would pay in Ohio<sup>29</sup> and that will be passed onto shopping customers. Specifically, AEPSC requested to change its PJM RPM market-based mechanism to a

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<sup>25</sup> FES Ex. 101, Stoddard at 11.

<sup>26</sup> FES Ex. 101, Stoddard at 16.

<sup>27</sup> Trial VIII, at 1610.

<sup>28</sup> See American Electric Power Serv. Corp., 134 FERC 61039 at ¶ 12 (2011).

<sup>29</sup> See AEPSC November 24, 2010 filing in FERC Docket No. ER11-2183-000.

cost-based mechanism.<sup>30</sup> Through its filing at FERC, the Company elected to be an FRR Entity through May 31, 2015, after which it will obtain capacity through the PJM RPM.<sup>31</sup> AEPSC cited Schedule 8.1, Section D.8 of the PJM RAA as authority for its request.<sup>32</sup> In that FERC proceeding, AEPSC proposed the same cost-based capacity charges that AEP Ohio has now proposed in this proceeding before the PUCO.

On January 20, 2011, FERC issued an Order holding that the PUCO had adopted, as provided for by the RAA, the use of the RPM auction price as the state compensation mechanism for capacity compensation related to load migrating to CRES providers.<sup>33</sup> Thus, FERC rejected AEPSC's "cost-based" proposal.<sup>34</sup>

**3. It would be unjust and unreasonable for AEP Ohio to be permitted to collect any of its embedded generation costs indirectly from its customers, especially without any offset for off-system energy sales.**

Despite decisions by both the PUCO and the FERC, AEP Ohio continues to argue that Ohio's state compensation mechanism should be altered so that AEP Ohio can collect 100% of embedded generation costs. And AEP Ohio proposes to do so without any offset for off-system energy sales to protect customers from overpaying for capacity. AEP Ohio's cost-based capacity price is flawed for several reasons.

First, the RAA specifically states that if a state compensation mechanism exists, that pricing prevails.<sup>35</sup> There is a state compensation mechanism in Ohio, so that

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<sup>30</sup> Id.

<sup>31</sup> FES Ex. 101, Stoddard at 9-10.

<sup>32</sup> Currently, AEP Ohio and Duke Energy Ohio are the only FRR entities in Ohio. However, witness Stoddard points out that "Duke Energy Ohio proposed, and the Commission agreed, to a capacity rate equal to the RPM clearing price for the applicable planning year." See FES Ex. 101, Stoddard at 19.

<sup>33</sup> FERC Entry dated January 20, 2011, Case No. ER11-2183-000.

<sup>34</sup> FES Ex. 101, at 44, citing to, FERC Entry dated January 20, 2011, Case No. ER11-2183-000.

<sup>35</sup> Trial VIII, at 1608; *see also*, FES Ex. 110A (Reliability Assurance Agreement).

mechanism should prevail. To this end, the FERC concluded “pursuant to the RAA, the AEP Ohio Companies are not permitted to submit their proposed formula rate, **given the existence of a state compensation mechanism,**” and it rejected the Company’s cost-based filing.<sup>36</sup>

Second, AEP Ohio seeks to charge a capacity rate (for customers ultimately to pay) that is “far in excess of the market price for capacity that CRES providers would have paid, but for AEP Ohio’s election of the FRR Alternative.”<sup>37</sup> But the Company voluntarily elected to become an FRR entity,<sup>38</sup> and “charging a capacity rate that reflects historical, embedded costs rather than the market value of the capacity is inconsistent with economic efficiency,”<sup>39</sup> and is also contrary to state policy.

Third, AEP Ohio fails to reduce its proposed “embedded cost” rate by profits it will earn from off-system energy sales.”<sup>40</sup> FirstEnergy Solutions (“FES”) witness Jonathan Lesser testified that under AEP Ohio’s proposal, the Company is essentially recovering a portion of its embedded costs twice: “first, through its embedded capacity cost and second through off-system energy sales.”<sup>41</sup> “Double recovery” of the same costs is improper and would result in unjust and unreasonable public utility service rates.<sup>42</sup>

The Company’s argument that it should be allowed to charge a cost-based capacity price is perplexing, especially given the fact that the Company will begin

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<sup>36</sup> See American Electric Power Serv. Corp., 134 FERC 61,039 (2011) at ¶ 13. (Emphasis added).

<sup>37</sup> FES Ex. 101, Stoddard at 4.

<sup>38</sup> Id. at 9.

<sup>39</sup> Id at 47.

<sup>40</sup> FES Ex. 101, Stoddard at 4.

<sup>41</sup> FES Ex. 103, Lesser at 46.

<sup>42</sup> Id. See also, R.C. R.C. 4905.22, which requires the Commission to set public utility service rates that are just and reasonable.

participating in the PJM RPM auction as of June 1, 2015.<sup>43</sup> The Company's position that it must have a "cost-based" recovery mechanism in place for the next three years but will charge market-based prices for capacity is not just or reasonable.<sup>44</sup> As FES witness Jonathan Lesser points out, "[the Company's] argument is contrary to the entire purpose of the RPM capacity market, which is to provide transparent market signals that encourage economically efficient generating capacity investment decisions. If AEP Ohio were correct, there would be no economic incentive for any generator to participate in the PJM RPM."<sup>45</sup>

If the Commission allows AEP Ohio to collect its "embedded costs" (which ultimately would result in Ohio customers paying more) AEP Ohio will be the only capacity supplier in PJM that will charge shopping customers its embedded costs for generation.<sup>46</sup> In addition, the Commission will be allowing AEP Ohio to charge a capacity price that is "over 400% higher than the average PJM delivered market price for capacity of \$69.22/MW-day for the next three years, beginning on June 1, 2012."<sup>47</sup> Witness Stoddard maintains that adopting RPM rates for AEP Ohio "puts it in exactly the same position as every other generation supplier in PJM."<sup>48</sup>

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<sup>43</sup> Company Ex. 101, Munczinski at 7.

<sup>44</sup> See R.C. 4905.22, which requires the Commission to set public utility service rates that are just and reasonable.

<sup>45</sup> FES Ex. 103, Lesser at 26.

<sup>46</sup> FES Ex. 101, Stoddard at 19.

<sup>47</sup> FES Ex. 103, Lesser at 3.

<sup>48</sup> FES Ex. 101, Stoddard at 23.

**B. The Commission Should Establish A Capacity Price Based On PJM RPM Prices As the Fair Price For AEP Ohio And Ohio Customers.**

Given the precedent established by the Commission and the FERC, and considering that AEP Ohio has historically used RPM priced capacity for sales to CRES providers, the Commission should find that the appropriate price for capacity is the RPM market-based price. RPM priced capacity is appropriate because these prices represent the true market value of capacity and take into consideration market risks, while cost-based capacity prices do not. RPM priced capacity also provides the most efficient market prices, which avoids creating any distortions of the market.

Further, RPM pricing is the “economically efficient price.”<sup>49</sup> According to witness Lesser, AEP Ohio’s capacity price can be thought of as an “internal transfer price of capacity that is sold to SSO customers and CRES providers.”<sup>50</sup> In this regard, CRES providers must purchase all of their required capacity from AEP, rather than purchasing capacity from the market (RPM).<sup>51</sup> Therefore, the Commission should adopt an “economically efficient price.”<sup>52</sup>

The Company should not get to pick and choose between market-based and cost-based prices -- but this is exactly what it is attempting to do. To this end, AEP Ohio witness Munczinski states that the company wishes to charge a cost-based rate because, “[a]t this time in the market cycle, adjusted RPM-based capacity prices are below AEP Ohio’s embedded costs.”<sup>53</sup> Similarly, Company witness Frank Graves states that “the

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<sup>49</sup> FES Ex. 103, Lesser at 5.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Company Ex. 101, Munczinski at 12.

current RPM price is much lower than AEP Ohio's embedded costs, so it would not be compensatory for AEP Ohio."<sup>54</sup> But FES witness Stoddard points out: "Mr. Graves works from the false premise that the appropriate capacity charge has any connection with embedded costs in a competitive wholesale market."<sup>55</sup> AEP Ohio's argument is apparently that the RPM market price is only economically efficient if the RPM price is the same (or greater than) the Company's calculated embedded costs. This argument is unsound. The price to be charged is dictated by the RAA, and the RAA does not include the term embedded costs.

Furthermore, RPM pricing better coincides with the policies of the State. S.B. 221 was designed to promote shopping for electricity by residential customers.<sup>56</sup>

R.C. 4928.02(B) and (C) state:

It is the policy of this state to do the following throughout this state:

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(C) **Ensure diversity of electricity supplies and suppliers**, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities. (Emphasis added).

The RPM rate is the best measure of the true market value of capacity,<sup>57</sup> and an above-market capacity rate will discourage competition. FES witness Lesser explains that "[a]lthough CRES providers can sell at a loss, unlike AEP Ohio's retail affiliate, those

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<sup>54</sup> Company Ex. 105, Graves at 4.

<sup>55</sup> FES Ex. 101, Stoddard at 15.

<sup>56</sup> See, e.g., R.C. 4928.02(B) and (C).

<sup>57</sup> FES Ex. 101, Stoddard at 3.

losses will not be cross-subsidized by AEP Ohio's profits from selling capacity at an above-market price.”<sup>58</sup> Thus, “AEP Ohio's affiliate CRES provider will gain an anticompetitive advantage in the retail market.”<sup>59</sup> This would be contrary to the state's policy goal of “enhancing retail competition.”<sup>60</sup> Setting capacity charges higher than market rates will lead to higher retail prices for shopping customers.<sup>61</sup>

PJM's BRA auctions have cleared at the following prices: \$110.04/MW-day (planning year 2011/12), \$16.46/MW-day (planning year 2012/13), \$27.73/MW-day (planning year 2013/14), and \$125.99/MW-day (planning year 2014/15).<sup>62</sup> FES witness Stoddard calculated the weighted average capacity price in the BRA to be \$62.23/MW-day, for the 41 months.<sup>63</sup> Stoddard testified that “[t]ogether they represent the best estimate currently available for the market value of such capacity for the transition period.”<sup>64</sup> Witness Stoddard states that “competition intrinsically means that consumers will pay market-based prices, not cost based prices.”<sup>65</sup> Accordingly, RPM capacity prices are the “best indicators of market price for capacity.”<sup>66</sup>

Finally, R.C. 4928.02(I) seeks to protect retail electric service consumers “against unreasonable sales practices, market deficiencies, and market power.” FES witness Tony

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<sup>58</sup> FES Ex. 102, Lesser at 23.

<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> FES Ex. 101, Stoddard at 48.

<sup>62</sup> FES Ex. 103, Lesser at 35 (Table 2).

<sup>63</sup> FES Ex. 101, Stoddard at 25.

<sup>64</sup> Id.

<sup>65</sup> Id. at 47.

<sup>66</sup> Id.

Banks testified that the Company's proposed capacity price does not provide protection to customers against unreasonable market power.<sup>67</sup> Mr. Banks states:

[a]llowing AEP Ohio to receive above-market revenue through a capacity price charged to CRES providers that is several times higher than market (and, thus, several times higher than any other EDU or Load Serving Entity participating in the PJM market will receive for their capacity), the Proposed Capacity Pricing would favor AEP Ohio, over all others.<sup>68</sup>

The Commission should therefore adopt capacity pricing that complies with Ohio's policies.

**C. If The Commission Adopts A Cost-Based Capacity Price, Then An Energy Credit That Recognizes The Profits From Off-System Sales Is Warranted To Protect Customers From Paying Double For Capacity.**

The Company argues that it should be allowed to keep all of the profits it earns from off-system energy sales. This argument should be rejected by the Commission.

OCC submits that an energy credit that recognizes the profits from off-system sales is warranted, if the Commission establishes a non-RPM capacity price. In this regard, it would be reasonable for the Commission to set the shopping credit at a rate that reflects the expected margin from wholesale sales of energy from the Company's generating resources that is likely to increase with the increased shopping.

FES witness Lesser critiques the Company's formula rate estimates of 2010 capacity costs because the Company only subtracted "those revenues from capacity-specific sales for resale."<sup>69</sup> Lesser points out that the Company "proposes to recover a portion of its embedded capacity costs from CRES providers and recover the same

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<sup>67</sup> FES Ex. 102, Direct Testimony of Tony Banks, at 14.

<sup>68</sup> Id.

<sup>69</sup> FES Ex. 103, Lesser at 45.



portion from off-system energy sales.”<sup>70</sup> The result is a “double-recovery” of the same costs because the Company proposes to recover embedded capacity costs from CRES providers, **and** it wants to recover some of those same costs from off-system energy sales.<sup>71</sup> Lesser concluded that AEP Ohio “would earn more than the 11.15% return on equity it proposes in its formula rate.”<sup>72</sup>

In summary, if the Commission finds that the Company is entitled to recover embedded costs, then the Commission should also find that the Company is not permitted to “double recover” those costs.<sup>73</sup> Accordingly, OCC submits that an energy credit that recognizes the margins from off-system sales is just and reasonable and should be applied to reduce customers’ bills.

#### **IV. CONCLUSION**

For the reasons stated herein, the Commission should reject AEP Ohio’s proposal for a cost-based capacity price of \$355.72/MW-day. The Commission should instead adopt RPM-priced capacity because that is the state compensation mechanism. Furthermore, RPM pricing coincides with the policies of the State of Ohio, including those policies for serving the interests of Ohio consumers.

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<sup>70</sup> Id. at 47.

<sup>71</sup> Id.

<sup>72</sup> Id.

<sup>73</sup> Id at 46.

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the *Initial Brief of the Office of the Ohio Consumers' Counsel* was served on the persons stated below via electronic transmission, this 23<sup>rd</sup> day of May, 2012.

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