

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.)

ENTRY

The Commission finds:

- (1) By entry issued on March 7, 2012, the Commission granted the request of Columbus Southern Power Company and Ohio Power Company (jointly, AEP-Ohio or Company) for relief and implemented an interim capacity charge until May 31, 2012.¹ This interim capacity charge established a two-tier capacity pricing mechanism proposed by the Company, subject to the clarifications contained in our January 23, 2012, entry in this proceeding. More specifically, mercantile customers in governmental aggregations are eligible to receive capacity priced in accordance with PJM Interconnection's (PJM's) Reliability Pricing Model (RPM). Further, under the two-tier capacity pricing mechanism, the first 21 percent of each customer class is entitled to tier-one RPM pricing. All customers of governmental aggregations approved on or before November 8, 2011, are entitled to receive tier-one RPM pricing. The second-tier charge for capacity is \$255/megawatt (MW)-day. Further, the March 7, 2012, entry placed the interim rate in effect until May 31, 2012, at which point the rate for capacity under the state compensation mechanism would revert to the current RPM in effect pursuant to the PJM base residual auction for the 2012/2013 delivery year.
- (2) On April 30, 2012, AEP-Ohio filed a request for an extension of the interim capacity pricing implemented by the Commission, pursuant to entry issued on March 7, 2012. AEP-Ohio reasons that, as a result of issues arising in this proceeding, the scheduled start of the evidentiary hearing in the Company's

¹ By entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company into Ohio Power Company, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

modified electric security plan (ESP 2) cases,² and the fact that Commission Staff is working on both proceedings, it is unlikely that an order on the merits can be issued before May 31, 2012. Furthermore, AEP-Ohio notes that, as part of its modified ESP 2 proceeding, it proposes an alternative two-tiered capacity pricing mechanism. AEP-Ohio reasons that consideration of the capacity charge mechanism in the modified ESP 2 proceeding represents the potential for yet another change in capacity rates for shopping customers. To avoid customer confusion and uncertainty, undue disruption to the competitive Ohio retail market, and financial harm to the Company given the significant drop in the RPM rate effective June 1, 2012, AEP-Ohio requests that the current interim capacity charges remain in effect (tier one at \$146/MW-day and tier two at \$255/MW-day) until the Commission issues a decision on the merits.

- (3) Memoranda contra AEP-Ohio's motion for an extension of the currently effective interim capacity rates were filed by Ohio Manufacturers' Association (OMA), jointly by Duke Energy Commercial Asset Management (DECAM) and Duke Energy Retail Sales (DERS), jointly by FirstEnergy Solutions (FES) and Industrial Energy Users-Ohio (IEU-Ohio), Ohio Consumers' Counsel (OCC), Exelon Generation Company (Exelon), and Retail Energy Supply Association (RESA). Ohio Energy Group (OEG) also filed a response.
- (4) In their joint memorandum contra, FES and IEU-Ohio respond that AEP-Ohio's motion for extension should be denied because it is legally and procedurally deficient. Specifically, FES and IEU-Ohio argue that the Commission has already determined that the interim two-tiered capacity pricing ends on May 31, 2012, and that RPM-based pricing will resume on June 1, 2012. According to FES and IEU-Ohio, there is no reason to alter the Commission's determination that the interim two-tiered capacity pricing will remain in place only for that limited period, particularly when customers and competitive retail electric service (CRES) providers have relied on the Commission's determination in making decisions regarding

² *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer and In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority*, Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, and 11-350-EL-AAM.

shopping. Further, FES and IEU-Ohio contend that AEP-Ohio's motion for extension constitutes an untimely application for rehearing. FES and IEU-Ohio maintain that AEP-Ohio effectively seeks a substantive modification of the Commission's March 7, 2012, entry granting interim relief and that the Company should have, but did not, file an application for rehearing as its remedy. Because AEP-Ohio elected not to file an application for rehearing, FES and IEU-Ohio assert that the Company's motion should be rejected as an untimely application for rehearing and a collateral attack on the March 7, 2012, entry. FES and IEU-Ohio also contend that the purported harm to AEP-Ohio from RPM-based capacity pricing is overstated and unsupported. FES and IEU-Ohio argue that AEP-Ohio has failed to establish that it is entitled to emergency rate relief or to offer any evidence demonstrating that financial peril would result from a return to RPM-based capacity pricing. FES and IEU-Ohio note that, in light of the interim relief granted by the Commission to date, AEP-Ohio's return on equity will exceed the 7.6 percent in 2012 formerly projected by the Company, which FES and IEU-Ohio contend is more than enough to avoid significant financial harm to the Company. FES and IEU-Ohio further note that AEP-Ohio will not be harmed by RPM-based capacity pricing, given that such pricing applies to every other generator in Ohio and the rest of PJM. Finally, FES and IEU-Ohio assert that, at a minimum, AEP-Ohio's request to maintain the current pricing for customers in the first tier should be rejected, if the Commission should decide to extend the interim two-tiered capacity pricing. FES and IEU-Ohio maintain that there is no reason to deny such customers the benefits of the decrease in RPM-based capacity pricing for the 2012/2013 delivery year.

- (5) In its memorandum contra, OMA asserts that AEP-Ohio's motion is not merely a request for an extension, but is actually a request for additional relief in that the Company seeks to modify the RPM-based capacity pricing for customers in the first tier. Additionally, OMA notes that, although the Commission limited the interim relief period to May 31, 2012, it did not guarantee that this case would be resolved by June 1, 2012. According to OMA, the unlikelihood of having a final Commission decision by that date does not warrant an extension of the interim capacity pricing. OMA contends that AEP-Ohio has failed to show good cause for its request,

offering nothing other than an unsubstantiated claim of financial harm. OMA maintains that AEP-Ohio's motion would harm Ohio manufacturers, noting that AEP-Ohio is asking for a rate increase that would impact shopping customers immediately without any demonstration that there is any harm to the Company. OMA further argues that AEP-Ohio's motion for extension is an unlawful and untimely attempt at rehearing of the Commission's March 7, 2012, entry. Finally, OMA recommends that, if the Commission grants AEP-Ohio's motion, the Commission should also require the Company to deposit the difference between the RPM-based price for capacity and the amount authorized by the Commission as additional or continued interim relief into an escrow account. If the Commission ultimately determines that the state compensation mechanism should be based on RPM pricing, OMA requests that AEP-Ohio be directed to return the amount in escrow directly to customers that paid more than the RPM-based price through agreements with CRES providers.

- (6) DERS and DECAM contend that AEP-Ohio should not be permitted, even on an interim basis, to charge anything more than RPM-based capacity prices. DERS and DECAM believe that AEP-Ohio's effort in this proceeding to extend capacity pricing that is above market rates will form the basis of the Company's attempt to gain approval of its pending modified ESP 2 proposal. Without the Commission's approval to extend AEP-Ohio's current capacity pricing, DERS and DECAM maintain that the Company will be unable to prove that its proposed ESP is more favorable than a market rate option. Further, DERS and DECAM note that the Commission's March 7, 2012, entry did not direct that the capacity pricing for customers in the first tier should remain at the RPM price that was then in effect. Rather, DERS and DECAM assert that, as the RPM price changes for the 2012/2013 year, the capacity price for customers in the first tier must likewise change. According to DERS and DECAM, AEP-Ohio has failed to demonstrate that the Commission should grant further extraordinary relief. DERS and DECAM note that the relief requested by AEP-Ohio would have a prejudicial impact on the competitive environment in Ohio by altering the business arrangements made by CRES providers. DERS and DECAM contend that AEP-Ohio has not offered verifiable, convincing support for its projections of revenue loss. DERS and DECAM

conclude that the Commission should reject AEP-Ohio's attempt to have the Commission prejudge the final outcome of this proceeding. DERS and DECAM add that, if the Commission elects to grant further relief, it should at least deny AEP-Ohio's request to maintain the current RPM-based price for customers in the first tier.

- (7) In its memorandum contra, RESA argues that AEP-Ohio's motion is an impermissible collateral attack on the March 7, 2012, entry and that the Company should have made its arguments in an application for rehearing. RESA contends that there are no new circumstances that would warrant consideration of AEP-Ohio's motion, which is essentially an untimely application for rehearing. RESA notes that the RPM-based capacity price to take effect on June 1, 2012, was known on March 7, 2012, when the entry was issued, and that it was also foreseeable at that point that a final order may not be issued by May 31, 2012. RESA further notes that the potential revenue reduction and resulting financial harm that AEP-Ohio will suffer from RPM-based capacity pricing was also known on March 7, 2012, and is, therefore, no reason to grant the Company's motion. Finally, RESA adds that AEP-Ohio's motion should be denied on equitable grounds. RESA believes that customers that shopped under a state compensation mechanism for capacity at RPM-based prices should be able to rely on the Commission's prior orders and receive the benefit of RPM-based capacity pricing.
- (8) Exelon likewise responds that there is no legitimate reason or set of facts that has occurred since the March 7, 2012, entry that would warrant a delay in the return to RPM-based capacity pricing. Exelon contends that AEP-Ohio seeks only to restrict competitive market offerings and to restore an environment in which the Company's profits are protected at the cost of competition. Exelon argues that the mere fact of AEP-Ohio's status as a Fixed Resource Requirement (FRR) entity does not justify further avoidance of RPM-based capacity pricing. Exelon notes that AEP-Ohio's FRR status does not excuse it from its responsibility to explore lower cost capacity options in the market and that nothing prevents the Company from procuring capacity from the market to fulfill its FRR commitment. Exelon also notes that the record reflects a serious disagreement as to whether any cost-based rate that

may be appropriate or lawful would be an embedded cost rate, as AEP-Ohio seeks, or a marginal or incremental cost-based rate. Further, Exelon points out that AEP-Ohio has known since December 8, 2010, that it is required to charge CRES providers RPM-based capacity prices. Finally, Exelon asserts that granting AEP-Ohio's motion would effectively curtail competition and postpone market-based pricing indefinitely.

- (9) Arguing that AEP-Ohio's motion should be denied, OCC notes that the Commission determined in its March 7, 2012, entry that the state compensation mechanism would revert to RPM-based capacity pricing effective June 1, 2012, and that some customers may have relied on this entry in making decisions regarding shopping. OCC adds that AEP-Ohio seeks to maintain a capacity price for customers in the first tier that will be neither a cost-based nor market-based rate as of June 1, 2012. Additionally, OCC contends that AEP-Ohio has offered no evidence in support of its claim of financial harm. According to OCC, the Commission has no jurisdiction to reverse its finding in the March 7, 2012, entry that RPM-based capacity prices will take effect on June 1, 2012. OCC notes that, because AEP-Ohio failed to file a timely application for rehearing of the March 7, 2012, entry, the Commission is without statutory authority to consider the Company's requested relief.
- (10) In its memorandum in response to AEP-Ohio's motion for extension, OEG asserts that the Company's request is reasonable, given that the implementation of a different pricing mechanism for a short period of time may only serve to aggravate the current uncertainty and customer confusion regarding capacity pricing. Specifically, OEG notes that it does not oppose an extension of AEP-Ohio's current capacity pricing structure for a 60-day period through the end of July.
- (11) AEP-Ohio filed a reply to the memoranda contra on May 8, 2012. AEP-Ohio asserts that most of the arguments raised in the memoranda contra were also made by parties who opposed the initial request for interim relief and have been addressed and rejected by the Commission in the March 7, 2012, entry. Further, AEP-Ohio contends that assertions that the Commission, through the March 7, 2012, entry, affirmatively committed to the implementation of RPM capacity pricing as of June 1, 2012, are absurd. According to AEP-Ohio, such a

decision would amount to the Commission predetermining its decision on the merits and foreclose the possibility that the Commission could conclude that RPM pricing is not appropriate. Further, the Company reasons that, if the Commission issues its order before June 1, 2012, RPM capacity rates would not go into effect on June 1, 2012, as opposing parties claim. In addition, AEP-Ohio submits that evidence in this proceeding further supports that its capacity costs are \$355/MW-day, significantly higher than the RPM rate of \$20/MW-day, to be effective June 1, 2012.

- (12) We reject the arguments that AEP-Ohio's request amounts to an untimely application for rehearing of the March 7, 2012, entry. The Commission is well within its jurisdiction to consider a request for an extension of its previous ruling. The fact that the Commission indicated that AEP-Ohio's interim relief would be in effect until May 31, 2012, does not prevent our subsequent approval of either an extension of the current interim relief or another interim capacity charge mechanism, if warranted under the circumstances. Due to various factors that have prolonged the course of this proceeding and precluded the issuance of an order by May 31, 2012, we find that AEP-Ohio's request for further interim relief does not constitute a collateral attack on the March 7, 2012, entry. Furthermore, for the reasons presented in the Commission's March 7, 2012, entry, in particular the evidence in the record that supports a range of capacity costs, as well as AEP-Ohio's participation in the Pool Agreement, the Commission concluded that "as applied to AEP-Ohio, ... the state compensation mechanism could risk an unjust and unreasonable result." The circumstances faced by AEP-Ohio that prompted the Commission to approve the request for interim relief have not changed.

The Commission adopted the interim capacity charge mechanism to allow for the development of the record in this case and to address the issues raised as to the state compensation mechanism for capacity charges, without the delay of AEP-Ohio's modified ESP 2 case, which had not yet been filed. As directed in the March 7, 2012, entry the evidentiary hearing in this case commenced April 17, 2012, continued as expeditiously as feasible, and concluded on May 15, 2012. Initial briefs were filed May 23, 2012, and reply briefs

are due May 30, 2012. Despite the schedule in this proceeding, it is apparent that the Commission will not be able to issue a decision on the merits before the interim capacity mechanism expires on May 31, 2012. To the extent that the Commission has already concluded that the circumstances faced by AEP-Ohio are unique and have not changed since the issuance of the March 7, 2012, entry, and, given that the Commission has made significant progress to address the issues raised in the capacity charge proceeding, the Commission finds it reasonable and appropriate to extend the current interim capacity mechanism. The interim capacity rates put into effect by the March 7, 2012, entry, tier one at \$146/MW-day and tier two at \$255/MW-day, shall continue until July 2, 2012, unless the Commission issues its order in this case.

It is, therefore,

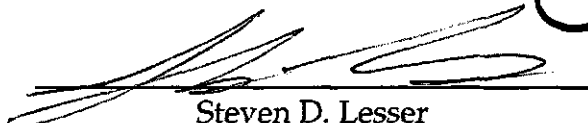
ORDERED, That AEP-Ohio's motion for an extension of the interim capacity rates is granted, such that the capacity rates put into effect by the March 7, 2012, entry shall continue until July 2, 2012, unless the Commission issues its order in this case. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO




Todd A. Snitchler, Chairman



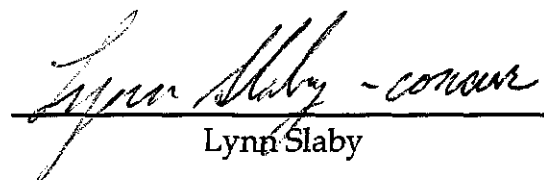
Steven D. Lesser



Andre T. Porter



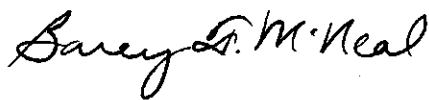
Cheryl L. Roberto



Lynn Slaby

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Entered in the Journal
MAY 30 2012



Barcy F. McNeal
Secretary

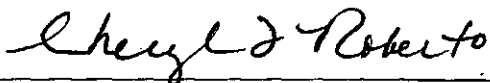
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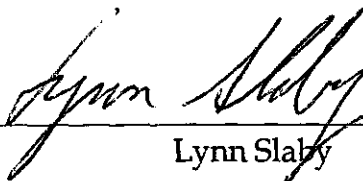
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CONCURRING OPINION OF COMMISSIONERS CHERYL L. ROBERTO
AND LYNN SLABY

In order to promote regulatory stability during the pendency of this matter, I concur in result only.



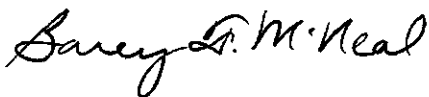
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DISSENTING OPINION OF COMMISSIONER ANDRE T. PORTER

Commission's March 7, 2012, entry and order made clear that the interim rate adopted in that order "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." If this Commission is to adopt anything else other than RPM based rates for 100% of shopping load, in which case I would have significant reservations, then a record of evidence must be cited in support of the decision. At most, I believe that a case record could be cited to support an extension of the interim capacity price to be "RPM-based" for tier-one customers, *i.e.* approximately \$20/Mw day as of June 1, 2012, with tier-two customers remaining at the previously approved \$255 Mw day.

On December 8, 2010, the Commission approved a state compensation mechanism based upon PJM Inc.'s annual base residual auction. That auction establishes annual capacity rates, effective during the PJM delivery calendar year, *i.e.* from June 1 to May 31 of the following year, which competitive suppliers are to pay AEP-Ohio for their capacity. Thus, pursuant to this Commission's decision on December 8, 2010, and based upon the applicable base residual auctions, it is my understanding that AEP-Ohio charged \$174.29/Mw day for capacity as of the date of that entry through May 31, 2011, and charged \$110/Mw day as of June 1, 2011. No party, nor does the majority in its entry today, contends that the change in the state compensation mechanism as of June 1, 2011, was an unjustified interpretation of the Commission's adoption of the "capacity charges established by the three-year [base residual auction] conducted by PJM, Inc."

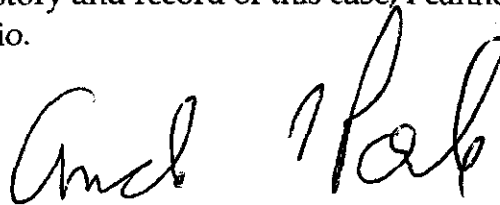
On December 7, 2011, this Commission modified and approved a Stipulation that was executed by AEP-Ohio and numerous other parties, many if not all of whom are currently participating in this proceeding. That Stipulation provided for a tiered capacity rate mechanism with 21%¹ of AEP-Ohio load qualifying for tier-one rates—rates that would be based upon the clearing prices of PJM's base residual auction and would, therefore, change annually to match the published PJM capacity clearing price effective on June 1; those not coming under the percentage cap would receive tier-two rates of \$255/Mw day. It should be noted here that, similar to the December 8, 2010, entry, no

¹ The percentage for tier-one capacity agreed to by AEP Ohio and other parties was 21% for 2012, 31% for 2013, and 41% for 2014.

party, nor does the majority in its entry today, contends that the annual change to match the published PJM capacity clearing price is an unjustified interpretation of the Commission's December 7, 2011, entry. The Commission later rejected all components of the Stipulation, including the tiered capacity mechanism.

However, on March 7, 2012, following a request from AEP-Ohio, the Commission approved, as an interim state compensation mechanism that was to last only until May 31, 2012, a tiered approach that is virtually identical in terms of its RPM-based components to each the December 8, 2010; December 7, 2011; and March 7, 2012, entries. That is, this Commission left no doubt that 21 % of shopping customers would qualify for tier-one capacity at RPM-based prices, with other shopping customers permitted to shop at the tier-two rate of \$255/Mw day; after this interim mechanism expired on May 31, 2012, capacity rates for all competitive suppliers would be the RPM-based rate.


In sum, by approving the March 7, 2012, entry, which was itself based upon a review of the record that began with the December 8, 2010, entry, and developed to support the Stipulation as per AEP Ohio's request to maintain the *status quo*, the Commission made a decision to approve a two-tier mechanism, with tier-one pricing based upon RPM prices with the RPM prices changing to match current prices as of each new PJM delivery year. In light of the history and record of this case, I cannot support this today's entry, and the request of AEP Ohio.



Andre T. Porter

Entered in the Journal

MAY 30 2012



Barcy F. McNeal
Secretary