

**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.)

**JOINT REPLY BRIEF OF THE OHIO MANUFACTURERS' ASSOCIATION
AND THE OHIO HOSPITAL ASSOCIATION**

Lisa G. McAlister, Counsel of Record
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: lmcalister@bricker.com

**On behalf of The Ohio Manufacturers'
Association**

Richard L. Sites
General Counsel and
Senior Director of Health Policy
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
Telephone: (614) 221-7614
E-mail: ricks@OHANET.org

and

Thomas J. O'Brien
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2335
Facsimile: (614) 227-2390
E-mail: tobrien@bricker.com

On behalf of the Ohio Hospital Association

**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.)

I. INTRODUCTION

The Commission opened this proceeding to determine the appropriate price that AEP-Ohio should be permitted to charge competitive retail electric service (“CRES”) providers for the use of AEP-Ohio’s capacity resources for a limited, interim period before AEP-Ohio moves to full competition and corporate separation in 2015. Throughout the course of this case, AEP-Ohio has portrayed itself as the victim of circumstances, fostered by the Public Utilities Commission of Ohio (“Commission”) and exploited by competitive retail electric service (“CRES”) providers.¹ Glaringly absent is any acknowledgement by AEP-Ohio that it had the ultimate control over its decisions regarding its generation capacity. AEP-Ohio now argues that the Commission should prevent further victimization by permitting AEP-Ohio to charge more than 20 times the PJM RPM rate for capacity until the very point in time at which the auction-based rates begin an upswing - at which point AEP-Ohio has agreed to charge that auction-based rate.

Ultimately, customers will pay the price for capacity regardless of whether the Commission adopts AEP-Ohio’s embedded “cost-based” \$355/MW-day price or affirms

¹ This victim portrayal has reached new heights (or depths) for a regulatory proceeding before the Commission with major advertising campaigns being launched where AEP-Ohio is metaphorically cast as a pig-tailed six year old girl whose lemonade is essentially stolen and resold at a higher price and elementary school children being pummeled by FirstEnergy Solutions in an uneven dodge ball game.

the PJM RPM auction price as the state compensation mechanism. In any event, it is critical that the Commission not allow customers to be casualties in this battle.

There is little that can be added to benefit the record at this point in the case for the Commission's review. Nonetheless, several of the arguments put forth by AEP-Ohio and CRES providers cannot go without further response, as they are contrary to customers' interests. Accordingly, without being repetitive, The Ohio Manufacturers Association ("OMA") and the Ohio Hospital Association ("OHA") provide this reply brief for the Commission's consideration. OMA's and OHA's failure to address every argument of other parties should not be considered agreement with those arguments.

For the reasons set forth below, the Commission should affirm the PJM RPM auction price as the state compensation mechanism.

II. ARGUMENT

Section 4905.22, Revised Code, requires all charges made or demanded for any service rendered, or to be rendered, to be just, reasonable, and not more than the charges allowed by law or by order of the Commission. It follows that the state compensation mechanism for capacity and the AEP-Ohio charges to CRES providers resulting therefrom must be just and reasonable. The just and reasonable outcome in this proceeding *requires* a balance of both investor and consumer interests, and the fact of the matter is that consumer interests have lately been lost in the equation. AEP-Ohio's proposal to change the state compensation mechanism will not result in just and reasonable rates, and, therefore, should be rejected.

AEP-Ohio's position in this case unfairly denies customers access to market rates for capacity when market rates are low, but subjects customers to market rates

when they are high. AEP-Ohio's "pick and choose" position lacks balance and fairness. At a time when capacity charges are at historical lows, customers in AEP-Ohio's service territory would pay prices that are substantially higher than the auction-determined PJM RPM prices that are readily available to customers in all other regions of Ohio.

A. AEP-Ohio's sudden switch to a short-term view of cost recovery for its generating assets undercuts its arguments that the Commission should compensate AEP-Ohio based on basis of a long-term view.

AEP-Ohio argues that its "cost-based capacity rate advances the state policy set forth in R.C. 4928.02(A) and represents a long-term view of affordable and reliable capacity for Ohio customers for two reasons...." First, it will encourage investment in generation in Ohio and, second, it will compensate AEP-Ohio for its Fixed Resource Requirements ("FRR") obligations.

AEP-Ohio's own actions contradict its arguments for embedded cost-based pricing for its capacity.

AEP-Ohio argues that "its power plants are built as long-term assets, with an understanding between the state and the company building them (in this case, AEP Ohio) that the company will be compensated over the long term for its investment."² AEP-Ohio elaborates that such cost-based recovery would incentivize AEP-Ohio to make additional future investment in in-state generation that would help ensure long-term generation adequacy and reliability within the state.³

The OMA and OHA do not take issue with the fact that AEP-Ohio built its power plants as long-term assets. The OMA and OHA also do not contest AEP-Ohio's assertion that at the time that most, if not all, of those assets were constructed, AEP-

² AEP-Ohio Brief at 20.

³ *Id.*

Ohio was operating under a cost-based regime under which AEP-Ohio may have understood that it would be compensated over a long-term for the investments – the traditional “regulatory compact”. However, in the very breath after claiming that it is taking a very long-term view of its assets and encouraging the Commission to compensate it on a cost basis, AEP-Ohio acknowledges that it is switching to the short-term, 3-year forward PJM RPM capacity model and that it is not planning to build significant new generation prior to 2015.⁴

By terminating its status as an FRR entity, AEP-Ohio has elected to put its generating assets into the short-term capacity market going forward. Further, because AEP-Ohio is not making any in-state investments in new generating assets, AEP-Ohio does not need the incentives that cost-based recovery may provide to encourage such investment. In other words, the reasons upon which AEP-Ohio based its expectation on having the fully embedded costs of capacity assets reimbursed over a long term no longer exist through AEP-Ohio’s own actions. In the absence of these reasons, the only remaining rationale for Commission to approve an embedded cost-based capacity charge is to maintain AEP-Ohio’s enviable earnings.

While the OMA and the OHA do not condemn AEP-Ohio for protecting its shareholder’s (AEP, Inc.) interests, this does not bring AEP-Ohio’s proposal within the zone of reasonableness and is a poor reason to authorize AEP-Ohio to charge more than 20 times the PJM RPM rate for capacity that is available in other Ohio service territories and in other states within the PJM footprint.

⁴ AEP-Ohio Brief at 20-22.

B. RESA's proposal for a level playing field at the expense of customers should be rejected.

While the Retail Energy Supply Association ("RESA")⁵ advocates that the PJM RPM auction price should be used as the state compensation mechanism,⁶ as a fall-back position RESA states that the Commission "can remedy any determined confiscatory nature of the rate with a non-bypassable stabilization charge assessed to shopping and non-shopping customers alike."⁷ RESA references the retail stabilization rider ("RSR") proposed by AEP-Ohio in its ESP case (Case No. 11-346-EL-SSO) and states that such a measure or charge should be considered in that case.⁸ However, RESA does not specifically identify what level of RSR would be compensatory or appropriate and provides no justification for such a charge to customers other than stating that "a non-bypassable rider will ensure no entity is subsidizing the other."⁹

AEP-Ohio picked up on a similar suggestion made by RESA witness Ringenbach. AEP-Ohio noted that RESA agreed that so long as AEP-Ohio is collecting \$355.72/MW-day for capacity from SSO customers, it is appropriate to charge CRES providers \$355.72/MW-day in order to match rates and ensure that there is no cross-subsidy.¹⁰ RESA witness Ringenbach went as far as saying that within AEP-Ohio's

⁵ Direct Energy Services, LLC and Direct Energy Business, LLC join RESA's brief and are included when "RESA" is used herein.

⁶ Retail Energy Supply Association, Direct Energy Business, LLC, and Direct Energy Services LLC's Post-Hearing Brief ("RESA Brief") at 22.

⁷ *Id.* at 26.

⁸ *Id.* at 27.

⁹ *Id.* at 26.

¹⁰ Ohio Power Company's Initial Post-Hearing Brief at 35 ("AEP-Ohio Brief") (citing Tr. Vol. IV at 815)(internal citations omitted).

service territory, the *level of the capacity charge is irrelevant* to CRES suppliers so long as all customers pay the same amount.¹¹

While OMA and OHA understand and appreciate RESA's desire for a level playing field, this suggestion epitomizes the absolute worst of a bad public policy. Boiled down, the suggestion amounts to "raise all customer rates equally so that all CRES providers have a shot at serving them." The OMA and OHA urge the Commission to reject this suggestion outright. The Commission has a duty to balance the interests of ratepayers, utilities and CRES providers. Any suggestion that the rates should be raised without any justification, other than reaching a level that is high enough to ensure that CRES providers can compete with AEP-Ohio, tramples on customer interests and should be rejected.

III. CONCLUSION

For the foregoing reasons, along with those set forth in their Joint Post Hearing Brief, the OMA and the OHA respectfully request that the Commission affirm the PJM RPM auction price as the state recovery mechanism for AEP-Ohio.

¹¹ Tr. Vol. IV at 838.

Respectfully submitted,



Lisa G. McAlister, Counsel of Record
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
E-mail: lmcaster@bricker.com

On behalf of The Ohio Manufacturers' Association



Richard L. Sites
General Counsel and Senior Director of Health Policy
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
Telephone: (614) 221-7614
E-mail: ricks@OHANET.org

and

Thomas J. O'Brien
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2335
Facsimile: (614) 227-2390
E-mail: tobrien@bricker.com

On behalf of the Ohio Hospital Association

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Joint Reply Brief of The Ohio Manufacturers' Association and The Ohio Hospital Association was served upon the parties of record listed below this 30th day of May 2012 *via* email transmission or first class mail.



Lisa G. McAlister

stnourse@aep.com
mjsatterwhite@aep.com
dconway@porterwright.com
Daniel.Shields@puc.state.oh.us
Stephen.Reilly@puc.state.oh.us
Werner.Margard@puc.state.oh.us
William.Wright@puc.state.oh.us
Thomas.Lindgren@puc.state.oh.us
john.jones@puc.state.oh.us
dclark1@aep.com
grady@occ.state.oh.us
keith.nusbaum@snrdenton.com
kpkreider@kmlaw.com
ned.ford@fuse.net
pfox@hilliardohio.gov
ricks@ohanet.org
cathy@theoec.org
dsullivan@nrdc.org
aehaedt@jonesday.com
dakutik@jonesday.com
haydenm@firstenergycorp.com
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com
etter@occ.state.oh.us
gregory.dunn@icemiller.com
mhpetricoff@vorys.com
smhoward@vorys.com
mjsettineri@vorys.com
lkalepsclark@vorys.com
bakahn@vorys.com
Gary.A.Jeffries@dom.com
Stephen.chriss@wal-mart.com
dmeyer@kmlaw.com

small@occ.state.oh.us
cynthia.a.fonner@constellation.com
David.fein@constellation.com
Dorothy.corbett@duke-energy.com
Amy.spiller@duke-energy.com
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
tobrien@bricker.com
myurick@taftlaw.com
zkravitz@taftlaw.com
cmoore@porterwright.com
jejadwin@aep.com
msmalz@ohiopoverlylaw.org
jmaskovyak@ohiopoverlylaw.org
todonnell@bricker.com
cmontgomery@bricker.com
gthomas@gtpowergroup.com
wmassey@cov.com
henryeckhart@aol.com
laurac@chappelleconsulting.net
whitt@whitt-sturtevant.com
thompson@whitt-sturtevant.com
sandy.grace@exeloncorp.com
christopher.miller@icemiller.com
asim.haque@icemiller.com
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com
jestes@skadden.com
paul.wight@skadden.com
dstahl@eimerstahl.com
aaragona@eimerstahl.com
ssolberg@eimerstahl.com
tsantarelli@elpc.org

holly@raysmithlaw.com
barthroyer@aol.com
philip.sineneng@thompsonhine.com
carolyn.flahive@thompsonhine.com
terrance.mebane@thompsonhine.com
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org
gpoulos@enernoc.com
emma.hand@snrdenton.com
doug.bonner@snrdenton.com
clinton.vince@snrdenton.com

callwein@wamenergylaw.com
malina@wexlerwalker.com
jkooper@hess.com
kguerry@hess.com
afreifeld@viridityenergy.com
swolfe@viridityenergy.com
korenergy@insight.rr.com
sasloan@aep.com
Dane.Stinson@baileycavalieri.com
cendsley@ofbf.org
bpbarger@bcslawyers.com
OhioESP2@aep.com
kaelber@buckleyking.com
walter@buckleyking.com
trent@theoec.org
nolan@theoec.org

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/30/2012 3:25:08 PM

in

Case No(s). 10-2929-EL-UNC

Summary: Reply Brief electronically filed by Teresa Orahod on behalf of Ohio Manufacturers' Association and Ohio Hospital Association