

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission)	
Review of the Capacity Charges of Ohio)	Case No. 10-2929-EL-UNC
Power Company and Columbus)	
Southern Power Company)	

**POST-HEARING REPLY BRIEF OF
EXELON GENERATION COMPANY, LLC,
EXELON ENERGY COMPANY, INC.,
CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION ENERGY COMMODITIES GROUP, INC.**

Exelon Generation¹ respectfully submits this reply brief in response to the initial post-hearing brief filed on behalf of AEP Ohio (a/k/a Ohio Power Company) on May 23, 2012.

* * * *

AEP Ohio asserts that the only purpose of this proceeding is to determine the appropriate cost-based price for capacity and that market-based RPM pricing arguments are beyond the scope of this case and irrelevant. (*See* AEP Br. at 11-13) AEP Ohio seeks to support this extreme position by seizing on a couple of ambiguous statements in two Commission Entries related to the development of an “evidentiary record.” Unquestionably, the Commission intended to develop an evidentiary record on what a cost-

¹ All capitalized names, acronyms and abbreviations used herein have the same meanings as defined in Exelon Generation’s Initial Post-Hearing Brief filed on May 23, 2012.

based capacity price might be—if it elected to adopt such a measure. It would be unreasonable, however, to interpret that intent as precluding consideration of a market-based approach. Such an illogical interpretation would suggest that when it initiated this case, the Commission had already repudiated its December 2010 Entry establishing market-based (RPM) pricing as the proper interim measure. Not surprisingly, AEP Ohio cites nothing to support its unfounded perspective.

Although Exelon has not presented any evidence on the issue of a cost-based price, an extensive evidentiary record on that issue has been developed. That evidentiary record provides further support for adoption of market-based pricing. The Commission is left with the unenviable position of having to decide whether the proper “cost” basis is approximately \$78.53/MW-day (as FirstEnergy Solutions asserts) or \$356/MW-day (as AEP Ohio insists) or somewhere in between (such as Staff’s proposed \$146.41/MW-day). Indeed nearly two-thirds of AEP Ohio’s brief—over 60 pages—is devoted to a discussion of such complex and controversial issues as whether Staff’s consultant: properly calibrated its model or otherwise “properly accounted for the impact of zonal rather than nodal prices” (AEP Ohio Br. at 51-53); used the correct heat rates to capture minimum and start time operating constraints and associated cost impacts (*id.* at 60-64); or used proper “shopping” assumptions (*id.* at 64-65). By contrast, there is no dispute or confusion as to what RPM prices will be during the three-year period before AEP Ohio fully adopts market-based pricing. Given AEP Ohio has charged CRES providers RPM prices for capacity on an almost uninterrupted basis since 2007, will charge RPM prices beginning no later than June 1, 2015, and the high degree of controversy surrounding what a proper cost-based price is,

the Commission should re-affirm its December 2010 entry and adopt RPM pricing as the proper state compensation mechanism.

Even if AEP Ohio could adequately support the excessive embedded cost price it seeks, it cannot dismiss the central issue of cost versus market pricing. In its brief (at 31-34), AEP Ohio attempts to refute the various arguments made by Exelon Generation witness David Fein and others in favor of market pricing. None of its challenges hit their mark.

1. Nothing in Ohio law requires a cost-based state compensation mechanism.

AEP Ohio does not contest this point, nor can it, as this has been the Commission's consistent position.² Instead, AEP Ohio merely argues that Ohio law "also does not require that the state compensation mechanism be based on RPM prices." (AEP Br. at 32) If you ignore entirely the Commission's December 8, 2010 Entry this may be true, but it is also beside the point. Market-based RPM pricing is wholly consistent with state law and policy favoring competitive electricity markets in Ohio. AEP Ohio's proposal is not.³

2. RPM pricing is consistent with Ohio state policy to promote the development of competitive markets. AEP Ohio has used RPM pricing for capacity since 2007, the Commission ordered that RPM was the appropriate state compensation mechanism in

² See Motion for Leave to Answer and Limited Answer Submitted on Behalf of the Public Utilities Commission of Ohio to PJM Interconnection, LLC Response to AEP Motion for Expedited Ruling (filed 3/22/2012 in FERC Docket No. ER11-2183-000).

³ Ohio state policy calls for the Commission to promote the development of competitive markets. (See Section 4928.02, Revised Code). The record evidence shows that AEP Ohio's requested rate of \$356/MW-day would stifle retail competition in AEP Ohio's service territory during the transition period. See Exelon Ex. 1 (Fein Testimony) at 7:13-15; Lesser Testimony at 33:3-5.

December 2010, and as of June 1, 2015, all of AEP Ohio's load will be in the RPM market with capacity priced at RPM. Every other utility in the state of Ohio has adopted RPM pricing for the supply of capacity to CRES providers. Despite this, AEP Ohio now suggests that RPM pricing is "wholly inconsistent" with state and Commission policy. (AEP Br. at 32) In making this statement, AEP ignores the state policy in favor of competitive markets and focuses instead on the policy of ensuring financial integrity and service reliability in the Ohio utility industry. (AEP Br. at 16) But since 2007, AEP Ohio has been using RPM to price capacity without suffering financial hardship or compromising service reliability for its customers; and it provides no legitimate reason to expect otherwise if RPM is used during the next three years.

3. *AEP Ohio cannot unilaterally apply "better-of-cost-or-market pricing."* AEP Ohio argues that the "better-of-cost-or-market" label "mischaracterizes events leading up to today." (AEP Br. at 32) But there is no other way to describe it: AEP Ohio charged a RPM market price when it was profitable to do so, and now that it is no longer as profitable for AEP Ohio, it seeks to impose a "cost-based" price that is substantially higher than the prevailing market price. The recognized term for such conduct is "better-of-cost-or-market pricing."

In any event, AEP Ohio's reliance on its purported "contractual right to charge a cost-based rate for capacity" to CRES providers (*id.* at 32-33) is misplaced. The company's FRR status does not automatically allow it to receive a cost-based price. Under the RAA, a FRR entity is entitled to collect a cost-based price only if the state-approved compensation

mechanism so allows, and “in the absence of a state compensation mechanism” the RPM price applies.⁴ In a situation where RPM applies “in the absence of a state compensation mechanism,” the RAA provides that a FRR entity may petition FERC under FPA Section 205 “*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” (emphasis added). Contrary to what AEP would have this Commission believe, however, this does not create a “contractual right” to charge a cost-based rate to CRES providers. At most, the RAA recognizes a right under certain circumstances to apply to FERC to *propose* a rate other than RPM, which AEP did (FERC Docket No. ER11-2183-001). That request was denied, however, and AEP’s subsequent request for rehearing has yet to be ruled upon.

4. *CRES providers are captive to AEP Ohio as an FRR entity.* While it may be true in theory that CRES providers have the option to purchase capacity from entities other than AEP Ohio, in reality this option is an illusory one due to AEP Ohio’s status as an FRR entity. AEP Ohio’s only response to this is that, to date, no CRES provider has ever purchased capacity to meet its needs in AEP’s territory. (AEP Br. at 33) But this proves, rather than disproves, Exelon’s point. PJM rules require that capacity to serve the load be committed more than three years in advance of delivery. But no reasonable CRES provider would

⁴ See PJM Open Access Transmission Tariff, Attachment D, Schedule 8.1 (“Fixed Resource Requirement Alternative”) (“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 Sections 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.”).

purchase and commit capacity to serve retail customers more than three years in advance of delivery when they would have few or no committed retail customers.⁵ Moreover, three years ago AEP Ohio was charging RPM for CRES provider capacity, so there was no reason for any CRES provider to self-supply capacity when AEP had been consistently charging RPM since 2007.

5. *Consumers in AEP Ohio's territory are entitled to RPM-based capacity pricing to ensure "comparable and non-discriminatory" access to CRES.* RPM is used to price capacity to CRES providers operating throughout Ohio, including the areas served by Duke, FirstEnergy and others. If RPM is adopted as the state compensation mechanism here, it will ensure access to CRES in AEP Ohio's territory at rates comparable to those available to consumers elsewhere throughout the state.⁶ AEP Ohio belittles this consideration as "nonsensical" and argues that other electric utilities (Duke, for example) only agreed to provide capacity at RPM in the context of a stipulation. (AEP Br. at 33-34) Even so, this does not change that RPM is the prevailing pricing mechanism for capacity throughout most of the state. Nor does it diminish the clear benefits to retail competition by adopting RPM here, including those identified in Exelon's initial brief, which AEP Ohio chooses to ignore.⁷

⁵ See PJM Tariff, Schedule 8.1. See also Exelon Ex. 1 (Fein Testimony) at 8:3-6; Graves Testimony (filed 3/23/2012) at 9:9-18.

⁶ Section 4928.03 of the Revised Code requires that each consumer in the state have "comparable and non-discriminatory" access to CRES.

⁷ Among other things, adopting RPM here would (1) increase efficiencies for all Ohio retail customers, especially for those commercial and industrial customers who are served by more than one electric utility; and (2) facilitate business planning and increasing transparency for customers and CRES providers. See Exelon Generation's Initial Br. at 10.

6. *The Commission should adopt RPM over AEP Ohio's "cost-based" capacity price because RPM provides a transparent, readily verifiable market price.* A competitive market for capacity exists today in the RPM auctions at PJM. AEP Ohio argues that the entire PJM structure is a "regulatory construct" and that RPM "does not categorically or exclusively represent *the* market price for capacity." (AEP Br. at 34; emphasis original) Those claims in no way refute the essential point that the RPM price is transparent, objective and readily verifiable, unlike the so-called subjective "cost-based" approach that AEP Ohio prefers. For good reason, the Ohio legislature has eliminated the full cost-of-service analysis AEP would prefer, and although AEP Ohio questions some aspects of the RPM auction process, the Independent Market Monitor for PJM has found that the capacity market results were competitive in each of the RPM auctions setting the price for capacity between 2012 and 2015.⁸ The Commission should utilize those competitively derived prices to establish the state compensation mechanism here, and reject use of an arcane method of "establishing" cost that harkens back to a by-gone era of regulation.

Conclusion

This capacity charge proceeding is intimately intertwined with AEP Ohio's ESP case. Both AEP Ohio and Exelon Generation have proposed a middle ground solution, but the critical difference is that Exelon's starts with an objective market price for capacity whereas AEP's starts with a dubious cost-based price designed to stifle competition in its territory for the next three years. AEP Ohio proposes an embedded cost price for capacity

⁸ See PJM State of the Market Reports for 2008, 2009, 2010, and 2011 at: [http://www.monitoringanalytics.com/reports/PJM State of the Market/2011.shtml](http://www.monitoringanalytics.com/reports/PJM%20State%20of%20the%20Market/2011.shtml).

in the first instance with a "discount" off of that monopoly price to certain purchasers in the ESP case. In so doing, AEP has put the proverbial cart before the horse. The better approach is the one advocated by Exelon Generation because it starts with an objective measure—the RPM market price instead of highly contentious "cost" based measures—and then provides mitigation, in the ESP case, of any verifiable resulting financial harm.

For the reasons expressed above and in Exelon Generation's initial post-hearing brief, the Commission should adopt RPM as the state compensation mechanism. Whether AEP Ohio should be afforded additional protection to maintain its financial integrity is an issue that can be addressed in the pending ESP proceeding.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following persons via e-mail this 30th day of May, 2012.



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