

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

14
RECEIVED-DOCKETING DIV
2012 MAY 30 PM 3:27
PUCO

In the Matter of the Commission Review)
of the Capacity Charges of Ohio Power)
and Columbus Southern Power Company.)

Case No. 10-2929-EL-UNC

**REPLY BRIEF OF
BUCKEYE ASSOCIATION OF SCHOOL ADMINISTRATORS, OHIO ASSOCIATION
OF SCHOOL BUSINESS OFFICIALS, OHIO SCHOOL BOARD ASSOCIATION,
AND OHIO SCHOOLS COUNCIL**

Dane Stinson, Esq.
BAILEY CAVALIERI LLC
10 West Broad Street, Suite 2100
Columbus, OH 43215-3422
(614) 221-3155 (telephone)
(614) 221-0479 (fax)
Dane.Stinson@BaileyCavalieri.com
Attorney for Ohio Schools

#712563v1

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician DD Date Processed 5-30-12

TABLE OF CONTENTS

	<u>Page</u>
<i>I. INTRODUCTION AND CONCLUSION</i>	<i>1</i>
<i>II. ARGUMENT</i>	<i>2</i>
A. SHOPPING SCHOOLS FACE RATE SHOCK OR CRES CONTRACT TERMINATION UNDER AEP OHIO’S COST BASED CAPACITY CHARGE PROPOSAL IN VIOLATION OF SECTIONS 4928.02(A) AND (C), OHIO REV. CODE.....	2
B. NON-SHOPPING SCHOOLS WILL BE DENIED THE BENEFITS OF SHOPPING UNDER AEP OHIO’S COST BASED CAPACITY CHARGE PROPOSAL IN VIOLATION OF SECTION 4928.02(C), OHIO REV. CODE.....	4
C. STANDARD OF REVIEW	5
<i>III. CONCLUSION.....</i>	<i>6</i>

I. INTRODUCTION AND CONCLUSION

In this proceeding, AEP Ohio¹ seeks an enormous increase in the capacity charge that it assesses to competitive retail electric service (“CRES”) providers – from approximately \$20/MW-day (the traditional Reliability Pricing Model (“RPM”) price), to approximately \$355/MW-day (AEP Ohio’s proposed “cost-based” price). Ohio Schools’ Exhibit 101, at 5-6. As stated in their Initial Brief filed May 23, 2012, the Ohio Schools² intervened in this proceeding to avoid the rate shock that many school districts experienced under the order issued December 14, 2011, which approved a stipulation resolving this case and related cases. Ohio Schools’ Motion to Intervene, at 6. The Ohio Schools’ primary concerns are that the massive capacity charge increase AEP Ohio is proposing in this phase of the proceeding:

- A. would be passed through to school districts which currently shop, causing similar rate shock;
- B. would prevent non-shopping schools from shopping and from realizing the benefits of a competitive marketplace, and
- C. would force schools to reduce funding for teaching and staff positions, equipment and materials.

Unfortunately, AEP Ohio’s Initial Brief filed May 23, 2012, confirms the Ohio Schools’ fears. On brief, AEP Ohio recognizes that the capacity charge increase may be passed through to shopping consumers and advances the incredible position that consumers’ appropriate remedy is to terminate their CRES contracts, pay early termination fees (AEP Ohio Initial Brief, at 18-19),

¹ Ohio Power Company and Columbus Southern Power Company merged effective December 31, 2011. Ohio Power Company is the surviving entity and will be referred to as AEP-Ohio.

² Joint Intervenor Buckeye Association of School Administrators, Ohio Association of School Business Officials, Ohio School Boards Association and Ohio Schools Council are collectively referred to as the “Ohio Schools.”

and apparently return to AEP Ohio's standard service offer ("SSO"). While acknowledging this potential termination of all shopping contracts, AEP Ohio has the gall to claim that its proposed \$355.72/MW-day capacity charge actually promotes retail competition in this state. AEP Ohio Initial Brief, at 16. AEP Ohio's position is more galling considering that it admits in its Motion for Relief filed February 27, 2012, that an increased capacity charge of \$255/MW-day was needed in order to keep its customers from shopping. Entry of March 7, 2012, at 5. AEP Ohio's position clearly violates the state policy contained in Section 4928.02(C), Ohio Rev. Code, which is to "[e]nsure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers..."

As stated in the Ohio Schools' Initial Brief, if the increased capacity charges are passed-through to customers, the attendant rate shock will violate Section 4928.02(A), Ohio Rev. Code, which requires the Commission to ensure reasonably priced electric service.

AEP Ohio has failed to show that its proposed capacity charge complies with the policies of the State of Ohio contained in Section 4928.02, Ohio Rev. Code. Accordingly, its request to change the state capacity compensation mechanism from RPM to its "cost-based" proposal must be denied.

II. ARGUMENT

A. SHOPPING SCHOOLS FACE RATE SHOCK OR CRES CONTRACT TERMINATION UNDER AEP OHIO'S COST BASED CAPACITY CHARGE PROPOSAL IN VIOLATION OF SECTIONS 4928.02(A) AND (C), OHIO REV. CODE.

Ohio Schools' witness Frye testified at hearing that AEP Ohio traditionally has charged CRES providers for capacity at RPM prices (Schools Ex. 101, at 5), and that CRES providers had relied on AEP Ohio's RPM pricing when setting the price in their contracts with Ohio's

schools. *Id.*, at 8, 9. However, to protect against subsequent and material regulatory changes, e.g., changes to capacity charges and new taxes, CRES providers inserted provisions in their contracts that would permit them to pass through such incremental costs to consumers. *Id.*, at 9; Tr. XI, at 1769.

Mr. Frye's assertion that AEP Ohio's "cost-based" \$355.72/MW-day capacity charge could be passed through to Ohio's schools was not disputed at hearing.³ Nor does AEP Ohio dispute Mr. Frye's assertion on brief. Indeed, AEP Ohio recognizes the existence of such contract provisions and advances the incredible argument that, if the capacity charges are passed through to consumers, the consumer's remedy is to terminate the contract, incur early termination fees (AEP Ohio Initial Brief, at 18-19), and apparently return to AEP Ohio's standard service offer ("SSO"). While acknowledging the potential termination of all shopping contracts, AEP Ohio has the gall to claim that its proposed \$355.72/MW-day capacity charge actually promotes retail competition in this state. AEP Ohio Initial Brief, at 16. AEP Ohio's position clearly violates the state policy contained in Section 4928.02(C), Ohio Rev. Code, which is to "[e]nsure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers..."

As stated in the Ohio Schools' Initial Brief, if the increased capacity charges are passed-through to customers, the attendant rate shock will violate Section 4928.02(A), Ohio Rev. Code, which requires the Commission to ensure reasonably priced electric service.

³ Indeed, CRES providers confirmed that such pass-through would occur. See, e.g., Tr. IV, at 784; Tr. VIII, at 1693.

B. NON-SHOPPING SCHOOLS WILL BE DENIED THE BENEFITS OF SHOPPING UNDER AEP OHIO'S COST BASED CAPACITY CHARGE PROPOSAL IN VIOLATION OF SECTION 4928.02(C), OHIO REV. CODE.

Similar to his analysis with shopping schools, Ohio School's witness Frye testified that non-shopping schools would be harmed by AEP Ohio's proposed capacity charge increase, as it would increase CRES providers' price of service and impair shopping. Schools Ex. 101, at 10-11. Mr. Frye testified that even a partial pass-through of the costs would impair shopping. Tr. XI, at 1769-1770.

On brief, AEP Ohio claims that the \$355.72/MW-day capacity charge will not impair shopping, yet bases its argument largely on the fact that some CRES providers could make contract offers to some customers based on the current second tier \$255/MW-day capacity charge. AEP Ohio Initial Brief, at 17-18. Shopping at the \$255 capacity price clearly is not probative of the shopping that will occur at the \$355.72 level.

AEP Ohio also argues that "some" CRES providers could provide some contracts at the \$355.72 price (AEP Ohio Initial Brief at 17-18); however, in doing so it misrepresents the testimony of the Retail Energy Suppliers Association ("RESA"). RESA's testimony makes clear that CRES providers generally could not make such offers because the "financials" wouldn't support the contract. Tr. IV, at 820-821. The only situation in which such contracts would be offered would be where a CRES provider was serving a customer in other states and included the customers' Ohio facilities as part of national account. Id. Multiple intervenors, including RESA, testified that shopping would be severely impaired or non-existent at the \$355.72 level. See Tr. VIII, at 1564; Tr. IV, at 784; RESA Exhibit 101, at 5, 12; IGS Exhibit 101, at 5; NFIB Exhibit 101, at 5;

AEP Ohio's intent to impair shopping is made evident by its Motion for Relief filed in this proceeding on February 27, 2012, in which it asked the Commission for an interim two-tiered capacity charge, with the Tier 1 charge of approximately \$145.79/MW-day available only to the first 21% of load in each customer class, and the Tier 2 charge of \$255 available to all other shopping customers. AEP Ohio sought the two-tiered charge claiming that, if the charge were based solely on RPM pricing (currently at \$145.79/MW-day), it would lose a majority of its customers to shopping. Entry of March 7, 2012, at 5. The impairment will be much more significant if the Commission were to approve AEP-Ohio's proposed capacity charge of \$355.72/MW-day in this phase of the proceeding. AEP Ohio clearly intends to economically require a substantial portion of its distribution customers to remain on its standard service offer. Thus, the proposed charge violates Section 4928.02(C), Ohio Rev. Code, because it deprives consumers of effective choices over their electric supplies and suppliers.

C. STANDARD OF REVIEW

Conspicuously absent from AEP Ohio's brief is the statutory standard of review under which the Commission is to determine this proceeding. Instead, AEP Ohio relies on PJM's Reliability Assurance Agreement ("RAA") to support its "right" to cost-based capacity pricing, and specifically Section D.8 of Schedule 8.1, which provides:

In the case of load reflected in the FRR Capacity Plan that switches to [a CRES], where the state regulatory jurisdiction requires switching customers or the [CRES] 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 [CRES] shall compensate the FRR Entity at [rest-of-pool or "RTO" clearing prices], 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 costs or such other basis shown to be just and reasonable. (Emphasis supplied.)

It is settled that the Commission has adopted RPM pricing as the state compensation mechanism for capacity. See Opinion and Order, December 8, 2010. Under the above language, Ohio's RPM compensation mechanism prevails, and precludes AEP Ohio from seeking cost based capacity rates at the FERC. Rather, Ohio's statutory provisions apply. In this instance, the applicable statutory provisions are contained in the state policies set forth in Section 4928.02, Ohio Rev. Code. The Ohio Schools, and other intervenors in this proceeding, have shown that AEP Ohio's proposed changes to the state compensation mechanism for capacity miserably fails these state policies and must be denied.

III. CONCLUSION

For the foregoing reasons, the Ohio Schools respectfully request the Commission to order AEP Ohio to continue its traditional, competitively-based, RPM pricing.

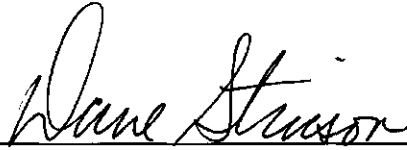
Respectfully submitted,

A handwritten signature in cursive script, reading "Dane Stinson", is written over a horizontal line.

Dane Stinson, Esq.
BAILEY CAVALIERI LLC
10 West Broad Street, Suite 2100
Columbus, OH 43215-3422
(614) 221-3155 (telephone)
(614) 221-0479 (fax)
Dane.Stinson@BaileyCavalieri.com
Attorney for Ohio Schools

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Reply Brief was served by electronic mail this 30th day of May upon the following.



Dane Stinson

Steven T. Nourse, Counsel of Record
Matthew J. Satterwhite
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
stnourse@aep.com
mjsatterwhite@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
Huntington Center
41 South High Street
Columbus, OH 43215
dconway@porterwright.com

Mark Hayden
First Energy
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

Allison E. Haedt
Jones Day
901 Lakeside Avenue
Columbus, OH 43216
aehaedt@jonesday.com

David A. Kutik
Jones Day
901 Lakeside Avenue
Cleveland, OH 44144
dakutik@jonesday.com

Cynthia Fonner Brady
David I. Fein
550 W. Washington St., Suite 300
Chicago, IL 60661
cynthia.a.fonner@constellation.com
david.fein@constellation.com

James F. Lang
Laura C. McBride
N. Trevor Alexander
Calfee, Halter & Griswold, LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

Terry L. Etter
Maureen R. Grady
Jeffrey L. Small
Office of the Ohio Consumer Counsel
10 West Broad St., Suite 1800
Columbus, OH 43215-3485
etter@occ.state.oh.us
grady@occ.state.oh.us
small@occ.state.oh.us

Dorothy K. Corbett
Amy Spiller
Jeanne W. Kingery
Duke Energy Retail Sales
Q39 East Fourth Street
1303-Main
Cincinnati, OH 45202
dorothy.corbett@duke-energy.com
amy.spiller@duke-energy.com

Richard L. Sites
Ohio Hospital Association
155 East Broad St., 15th Floor
Columbus, OH 43215
ricks@ohanet.org

Thomas J. O'Brien
Bricker & Eckler
100 South Third Street
Columbus, OH 43215
tobrien@bricker.com

Jay E. Jadwin
155 West Nationwide Blvd., Suite 500
Columbus, OH 43215
jejadwin@aep.com

Terrance O'Donnell
Christopher Montgomery
Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215
todonnell@bricker.com
cmontgomery@bricker.com

Lisa G. McAlister
Matthew W. Warnock
Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215
lmcalister@bricker.com
mwarnock@bricker.com

John W. Bentine
J. Bentine
Chester Wilcox & Saxbe, LLP
65 East State St., Suite 1000
Columbus, OH 43215
jbentine@cwslaw.com
jbentine@taftlaw.com

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh St., Suite 1510
Cincinnati, OH 45202
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com

David M. Stahl
Eimer Stahl Klevorn & Solberg, LLP
224 South Michigan Ave., Suite 1100
Chicago, IL 60604
dstahl@eimerstahl.com

Glen Thomas
1060 First Avenue, Suite 400
King of Prussia, PA 19406
gthomas@gtpowergroup.com

Michael R. Smalz
Joseph V. Maskovyak
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, OH 43215
msmalz@ohiopoveritylaw.org
jmaskovyak@ohiopoveritylaw.org

Trent A. Dougherty
Nolan Moser
Ohio Environmental Council
1207 Grandview Ave., Suite 201
Columbus, OH 43212
trent@theoec.org
cathy@theoec.org

William L. Massey
Covington & Burling, LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
wmassey@cov.com

Mark A. Whitt
Whitt Sturtevant LLP
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, OH 43215
whitt@whitt-sturtevant.com

Sandy Grace
Exelon Business Services Company
101 Constitution Avenue, NW
Suite 400 East
Washington, DC 20001
sandy.grace@exeloncorp.com

Gregory H. Dunn
Counsel of Record
Chrisopher L. Miller
Asim Z. Hague
Ice Miller LLP
250 West Street
Columbus, OH 43215
Gregory.dunn@icemiller.com
Christopher.miller@icemiller.com
Asim.hague@icemiller.com

Steve W. Chriss
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, AR 72716
stephen.chriss@wal-mart.com

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215
barthroyer@aol.com

Henry W. Eckhart
2100 Chambers Road, Suite 106
Columbus, OH 43212
henryeckhart@aol.com

Laura Chappell
4218 Jacob Meadows
Okemos, MI 48864
laurac@chappelleconsulting.net

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212
gary.a.jeffries@dom.com

M. Howard Petricoff
Stephen M. Howard
Michael J. Settineri
Lija Kaleps-Clark
Benita Kahn
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street
Columbus, OH 43216
mhpetricoff@vorys.com
smhoward@vorys.com
mjsettineri@vorys.com
lkalepsclark@vorys.com
bakahn@vorys.com

Holly Rachel Smith
Holly Rachel Smith, PLLC
HITT Business Center
3803 Rectortown Road
Marshall, VA 20115
holly@raysmithlaw.com

Gregory J. Poulos
EnerNOC
101 Federal Street, Suite 1100
Boston, MA 02110
gpoulos@enernoc.com

Kenneth P. Kreider
David A. Meyer
Keating Muething & Klekamp, PLL
One East Fourth Street, Suite 1400
Cincinnati, OH 45202
kpkreider@kmmklaw.com
dmeyer@kmmklaw.com

Emma F. Hand
Douglas G. Bonner
Keith C. Nusbaum
Clinton A. Vince
SNR Denton US, LLP
1301 K Street, NW, Suite 600, East Tower
Washington, DC 20005-3364
emma.hand@snrdenton.com
doug.bonner@snrdenton.com
clinton.vince@snrdenton.com

Samuel C. Randazzo
Joseph E. Olikier
Frank P. Darr
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com

John N. Estes III
Paul F. Wright
Skadden Arps Slate Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005
jestes@skadden.com
paul.wright@skadden.com

Werner L. Margard III
John H. Jones
William Wright
Stephen Beeler
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215
werner.margard@puc.state.oh.us
william.wright@puc.state.oh.us
John.Jones@puc.state.oh.us
steven.beeler@puc.state.oh.us

Philip B. Sineneng
Terrance A. Mebane
Carolyn S. Flahive
Thompson & Hine, LLP
41 S. High Street, Suite 1700
Columbus, OH 43215
philip.sineneng@thompsonhine.com
carolyn.flahive@thompsonhine.com
terrance.mebane@thompsonhine.com

Colleen L. Mooney
David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima Street, PO Box 1793
Findlay, OH 45840
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org

Tara C. Santarelli
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, OH 43212
tsantarelli@elpc.org

Joel Malina
Executive Director
COMPLETE Coalition
1317 F Street, NE, Suite 600
Washington, DC 20004
malina@wexlerwalker.com

Jay L. Kooper
Katherine Guerry
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095
jkooper@hess.com
kguerry@hess.com

Robert Korandovich
KOREEnergy
P.O. Box 148
Sunbury, OH 43074
korenergy@insight.rr.com

Jeanne W. Kingery
Associate General counsel
Amy B. Spiller
Deputy General Counsel
139 E. Fourth Street, 1303-Main
P.O. Box 961
Cincinnati, OH 45201-0960
Jeanne.Kingery@duke-energy.com
Amy.Spiller@duke-energy.com

Roger P. Sugarman
Kegler, Brown, Hill & Ritter
65 East State Street, Suite 1800
Columbus, OH 43215
rsugarman@keglerbrown.com

Christopher J. Allwein
Williams, Allwein and Moser, LLC
1373 Granview Avenue, Suite 212
Columbus, OH 43212
callwein@wamenergylaw.com

Allen Freifeld
Samuel A. Wolfe
Viridity Energy, Inc.
100 West Elm Street, Suite 410
Conshohocken, PA 19428
afreifeld@viridityenergy.com
swolfe@viridityenergy.com

Chad A. Endsley
Chief Legal Counsel
Ohio Farm Bureau Federation
280 North High Street
P.O. Box 182383
Columbus, OH 43218-2383
cendsley@ofbf.org

Mark S. Yurick
Zachary D. Kravitz
Taft Stettinius & Hollister LLP
65 East State Street, Suite 1000
Columbus, OH 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

Brian P. Barger
Brady, Coyle & Schmidt, Ltd.
4052 Holland-Sylvania Road
Toledo, OH 43623
bpbarger@bcslawyers.com

Additional Electronic Service

greta.see@puc.state.oh.us
jeff.jones@puc.state.oh.us
tammy.turkenton@puc.state.oh.us
jodi.bair@puc.state.oh.us
bob.fortney@puc.state.oh.us
doris.mccarter@puc.state.oh.us
stephen.reilly@puc.state.oh.us
john.jones@puc.state.oh.us
daniel.shields@puc.state.oh.us
dclark1@aep.com
grady@occ.state.oh.us
keith.nusbaum@snrdenton.com
ned.ford@fuse.net
pfox@hilliardohio.gov
ricks@ohanet.org
joseph.dominquez@exeloncorp.com
dsullivan@nrdc.org
whitt@whitt-sturtevant.com
thompson@whitt-sturtevant.com
aaragona@eimerstahl.com
ssolberg@eimerstahl.com
callwein@wamenergyllaw.com
sasloan@aep.com
Kim.Wissman@puc.state.oh.us
Hisham.Choueiki@puc.state.oh.us
Dan.Johnson@puc.state.oh.us
Sarah.Parrot@puc.state.oh.us