FILE

IN THE SUPREME COURT OF OHIO 12-2938

In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company;	:	Case No. 2012-_____
	:	Appeal from the Public Utilities Commission of Ohio
Industrial Energy Users-Ohio,	:	
	:	Public Utilities Commission of Ohio
Appellant,	:	Case No. 10-2929-EL-UNC
v.	:	
Public Utilities Commission of Ohio,	:	
Appellee.	:	

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NOTICE OF APPEAL OF APPELLANT INDUSTRIAL ENERGY USERS-OHIO

Samuel C. Randazzo (Reg. No. 0016386)
(Counsel of Record)
Frank P. Darr (Reg. No. 0025469)
Joseph E. Oliker (Reg. No. 0086088)
Matthew R. Pritchard (Reg. 0088070)
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Facsimile: (614) 469-4653
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com

COUNSEL FOR APPELLANT, INDUSTRIAL ENERGY USERS-OHIO

Michael DeWine (Reg. No. 0009181)
Attorney General of Ohio

William L. Wright (Reg. No. 0018010)
Section Chief, Public Utilities Section
Werner L. Margard (Reg. No. 0024858)
Thomas McNamee (Reg. No. 0017352)
Assistant Attorneys General
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, OH 43215
Telephone: (614) 466-4397
Facsimile: (614) 644-8764
william.wright@puc.state.oh.us
werner.margard@puc.state.oh.us
thomas.McNamee@puc.state.oh.us

COUNSEL FOR APPELLEE, PUBLIC UTILITIES COMMISSION OF OHIO

NOTICE OF APPEAL OF APPELLANT
INDUSTRIAL ENERGY USERS-OHIO

Appellant, Industrial Energy Users-Ohio ("IEU-Ohio" or "Appellant") hereby gives its notice of appeal, pursuant to Sections 4903.11 and 4903.13, Revised Code, and Supreme Court Rule of Practice 2.3(B), to the Supreme Court of Ohio and Appellee, the Public Utilities Commission of Ohio ("Commission" or "PUCO"), from the Commission's March 7, 2012 Entry (Attachment A), May 30, 2012 Entry (Attachment B), July 2, 2012 Opinion and Order (Attachment C), October 17, 2012 Entry on Rehearing (Attachment D), and December 12, 2012 Entry on Rehearing (Attachment E) in Case No. 10-2929-EL-UNC.

Appellant was and is a party of record in Case No. 10-2929-EL-UNC and timely filed its application for rehearing from the March 7, 2012 Entry on March 27, 2012; timely filed its application for rehearing from the May 30, 2012 Entry on June 19, 2012; timely filed its application for rehearing from the July 2, 2012 Opinion and Order on August 1, 2012; and timely filed its application for rehearing from the October 17, 2012 Entry on Rehearing on November 15, 2012.

The Commission's March 7, 2012 Entry, May 30, 2012 Entry, July 2, 2012 Opinion and Order, October 17, 2012 Entry on Rehearing, and December 12, 2012 Entry on Rehearing (collectively, "the Capacity Case Decisions") are unlawful and unreasonable for the reasons set out in the following Assignments of Error:

1. The Capacity Case Decisions are unlawful and unreasonable since any authority the Commission may have to approve prices for generation-related capacity service does not permit the Commission to apply a cost-based ratemaking methodology or resort to Chapters 4905 and 4909, Revised Code, to supervise and regulate pricing for generation-related capacity services. Similarly, the Capacity Case Decisions are unreasonable and unlawful to the extent that they state or otherwise

suggest that AEP-Ohio[1] has a right to establish rates for generation-related services that are based on any cost-based ratemaking methodology, including the ratemaking methodology identified or referenced in Chapters 4905 and 4909, Revised Code.

2. The Capacity Case Decisions are unlawful and unreasonable because the Commission's jurisdiction under Sections 4905.04, 4905.05, 4905.06, and 4905.26, Revised Code, extends to an electric light company, only when it is "engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state,"[2] and does not include wholesale transactions between AEP-Ohio and competitive retail electric service ("CRES") providers.

3. The Capacity Case Decisions are unlawful and unreasonable because the Commission is without authority to "adjudicate controversies between parties as to contract rights."[3] The Commission's Capacity Case Decisions rest upon the Commission's assessment of AEP-Ohio's rights under PJM Interconnection, L.L.C.'s ("PJM") Reliability Assurance Agreement ("RAA"), a contract approved by the Federal Energy Regulatory Commission ("FERC"), which is subject to Delaware law. The Commission is without jurisdiction to determine what, if any, rights AEP-Ohio may have under an agreement and this is particularly true in this case since the RAA is subject to the exclusive jurisdiction of FERC.

4. Assuming for purposes of argument that the Commission has authority to authorize the billing and collection of a generation-related capacity service charge pursuant to Chapters 4905 and 4909, Revised Code, the Capacity Case Decisions are unreasonable and unlawful because AEP-Ohio failed to present the required evidence and the Commission failed to comply with the substantive and procedural requirements contained in such Chapters.

5. The Capacity Case Decisions, which claimed to set a generation-related capacity rate consistent with the RAA, are unlawful and unreasonable inasmuch as the Capacity Case Decisions violate the plain language of the RAA, which must be interpreted under Delaware law (the controlling law under the RAA).

   a. The administratively-determined "cost-based" rates for AEP-Ohio's certified electric distribution service area contained in the Capacity Case

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[1] As used herein, AEP-Ohio refers to Ohio Power Company, which has merged with Columbus Southern Power Company.

[2] Section 4905.03, Revised Code.

[3] *New Bremen v. Pub. Util. Comm.*, 103 Ohio St. 23, 30-31 (1921).

Decisions violate the plain language of Article 2 of the RAA that states the RAA has a region-wide focus and pro-competitive purpose.

b. Even if the Commission could establish cost-based rates that were consistent with the RAA, the Commission unlawfully and unreasonably based its determination of "cost" upon the embedded cost of AEP-Ohio's owned and controlled generating assets based on a defective assumption that such generating assets are the source of capacity available to CRES providers serving customers in AEP-Ohio's certified electric distribution service area. The RAA requires that any change to the default pricing, PJM's Reliability Pricing Model ("RPM" or RPM-Based Pricing), must be just and reasonable and looks to the Fixed Resource Requirement ("FRR") Entity, and the FRR Entity's Service Area and the Capacity Resources in the FRR Entity's Capacity Plan to establish any pricing other than RPM-Based Pricing. Based on the plain meaning of the word "cost," the Capacity Case Decisions' sanctioning of the use of embedded cost to establish generation-related capacity services is arbitrary and capricious. In addition, the uncontested evidence demonstrates that AEP-Ohio is not an FRR Entity, AEP-Ohio's owned and controlled generating assets are not dedicated to serve Ohio load or satisfy any FRR obligation and also demonstrates that AEP-Ohio's owned and controlled generating assets are not the Capacity Resources in the FRR Entity's Capacity Plan. In such circumstances, the Commission's reliance upon embedded cost data for AEP-Ohio's owned and controlled generating assets to establish the cost incurred to provide generation-related capacity services to CRES providers is arbitrary and capricious.

6. The Capacity Case Decisions, which offer AEP-Ohio the opportunity to obtain above-market compensation for generation-related capacity service through a deferred revenue supplement [computed based upon the difference between RPM-Based Pricing and $188.88/megawatt-day ("MW-day"), including interest charges] are unlawful and unreasonable for the reasons detailed below.

a. The above-market supplement is unlawful and unreasonable inasmuch as it allows AEP-Ohio to collect above-market compensation for generation-related capacity service in violation of Ohio law's prohibition on collecting transition revenue or its equivalent. The above-market supplement also violates the terms of AEP-Ohio's Commission-approved settlement commitment to not impose lost generation-related revenue charges on shopping customers.

b. The above-market supplement conflicts with the policies contained in Section 4928.02, Revised Code, which relies upon market forces, customer choice, and prices disciplined by market forces to regulate prices for competitive electric services. Additionally, the Capacity Case

Decisions are unlawful and unreasonable inasmuch as the Commission authorized AEP-Ohio to collect above-market compensation for generation-related capacity service, which will provide AEP-Ohio's generation business with an unlawful subsidy in violation of Section 4928.02(H), Revised Code.

c. The Commission is prohibited under Section 4928.05(A), Revised Code, from regulating or otherwise creating a deferral associated with a competitive retail electric service under Section 4905.13, Revised Code. The Commission may only authorize deferred collection of a generation service-related price under Section 4928.144, Revised Code, and any such deferral must be related to a rate established under Sections 4928.141 to 4928.143, Revised Code.

d. The Commission unlawfully and unreasonably authorized AEP-Ohio to defer the collection of generation-related capacity service revenue. Under generally accepted accounting principles, only an incurred cost can be deferred for future collection. To the extent that the Capacity Case Decisions imply the Commission's intended use of Section 4928.144, Revised Code, that Section also requires the Commission to identify the incurred cost that is associated with any deferral, a requirement unreasonably and unlawfully neglected by the Capacity Case Decisions.

e. The Commission unlawfully and unreasonably determined that allowing AEP-Ohio to collect above-market compensation for generation-related capacity service was appropriate to address AEP-Ohio's claims regarding the financial performance of its generation business, the competitive business segment under Ohio law. The Commission's deference to AEP-Ohio's claims regarding the financial performance of its competitive generation business is also unlawful and unreasonable because it violates the Commission's prior determinations holding that such financial performance is irrelevant for purposes of establishing compensation for generation-related service.

f. The Commission unlawfully and unreasonably authorized AEP-Ohio to increase the above-market revenue supplement by adding carrying charges to the deferred supplement without any evidence that carrying charges, or any specific level of carrying charges, are lawful or reasonable.

g. The Capacity Case Decisions are unlawful and unreasonable because they fail to recognize that the rates and charges applicable to non-shopping customers, *i.e.* customers taking service under AEP-Ohio's electric security plan ("ESP"), are also providing AEP-Ohio with compensation for generation-related capacity service, it ignores or disregards the fact that AEP-Ohio has maintained that non-shopping customers are, on average, paying nearly twice the $188.88/MW-day price, and it fails to

establish a mechanism to credit such excess compensation obtained from non-shopping customers against any deferred balance the Capacity Case Decisions work to create by comparing RPM-Based Pricing to the $188.88/MW-day price. The non-symmetrical and arbitrary bias embedded in the Capacity Case Decisions' description of how the deferred revenue supplement shall be computed guarantees that AEP-Ohio shall collect, in the aggregate, total revenue for generation-related capacity service substantially in excess of the revenue produced by using the $188.88/MW-day price to determine AEP-Ohio's generation-related capacity service compensation for shopping and non-shopping customers.

7. The Capacity Case Decisions are unlawful and unreasonable inasmuch as the Commission failed to restore RPM-Based Pricing as required by Section 4928.143(C)(2)(b), Revised Code, when it rejected AEP-Ohio's ESP in its February 23, 2012 Entry on Rehearing in AEP-Ohio's consolidated ESP proceeding (which included this proceeding). Additionally, the Capacity Case Decisions are unlawful and unreasonable because the Commission abrogated its February 23, 2012 Entry on Rehearing despite the fact that no party filed an application for rehearing from the February 23, 2012 Entry on Rehearing challenging the appropriate level of compensation AEP-Ohio was to receive for generation-related capacity service during the pendency of the Commission's review in this proceeding.

8. The Capacity Case Decisions are unlawful and unreasonable inasmuch as the temporary two-tiered rates authorized therein violate the comparability requirements in Chapter 4928, Revised Code, which require the generation-related capacity service rate applicable to CRES providers or otherwise to shopping customers to be comparable to the generation-related capacity service rate embedded in AEP-Ohio's standard service offer ("SSO") rates and are otherwise unduly discriminatory in violation of Ohio law.

9. The Capacity Case Decisions are unlawful and unreasonable because the temporary two-tiered rates established by the March 7, 2012 Entry and May 30, 2012 Entry were not based upon the record from this proceeding.

10. The Capacity Case Decisions are unlawful and unreasonable inasmuch as the Commission failed to direct AEP-Ohio to refund the above-market portion of capacity charges in place since January 2012 or credit the excess collection against regulatory asset balances otherwise eligible for amortization through retail rates and charges.

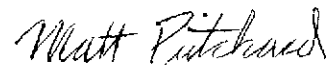
11. The Capacity Case Decisions are unlawful and unreasonable inasmuch as the Commission violated Section 4903.09, Revised Code, by failing to properly address all material issues raised by the parties.

12. In addition to the individual errors committed by the Commission which are referenced or identified herein, the totality of the Commission's conduct throughout this proceeding is arbitrary and capricious, an abuse of discretion, otherwise outside the law and "... at variance with 'the rudiments of fair play' long known to our law. The Fourteenth Amendment condemns such methods and defeats them." *West Ohio Gas Co. v. Public Utilities Commission*, 294 U.S. 63, 71 (1935) (*quoting Chicago, Milwaukee, & St. Paul Ry. Co. v. Polt*, 232 U.S. 165, 168 (1917)). Additionally, the implications of the Commission's unlawful and unreasonable actions in the proceeding below now threaten to reach beyond the customers served by AEP-Ohio as both Duke Energy Ohio, Inc. ("Duke") and The Dayton Power and Light Company ("DP&L") have filed copycat applications seeking to impose hundreds of millions of dollars in unlawful, unreasonable, and above-market generation-related charges upon the customers they serve.

13. The Capacity Case Decisions are unlawful and unreasonable because they unreasonably impair the value of contracts entered into with CRES providers by retroactively altering the capacity pricing method that was in place when such contracts were executed. The unlawful and unreasonable impairment arises, in the particular circumstances presented by this case (and will arise in the case of Duke's copycat application if the Commission grants Duke's request), because the prices established by PJM's RPM-Based Pricing establishes generation-related capacity service prices three years in advance and the Capacity Case Decisions alter the capacity prices that had been fixed and were known and certain at the time such contracts were executed. To the extent the Commission has any authority to approve prices for generation-related capacity services by altering the ratemaking methodology, that authority may not be lawfully exercised to affect the prices established by the capacity pricing method previously approved by the Commission, in force by operation of law and known and certain for contracts entered into prior to the effective date of the new capacity pricing method.

WHEREFORE, Appellant respectfully submits that Appellee's March 7, 2012 Entry, May 30, 2012 Entry, July 2, 2012 Opinion and Order, October 17, 2012 Entry on Rehearing, and December 12, 2012 Entry on Rehearing are unlawful, unjust, and unreasonable and should be reversed. The case should be remanded to the Appellee with instructions to correct the errors complained of herein.

Respectfully submitted,



Samuel C. Randazzo (Reg. No. 0016386)
(Counsel of Record)
Frank P. Darr (Reg. No. 0025469)
Joseph E. Oliker (Reg. No. 0086088)
Matthew R. Pritchard (Reg. 0088070)
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Facsimile: (614) 469-4653
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com

**COUNSEL FOR APPELLANT,
INDUSTRIAL ENERGY USERS-OHIO**

CERTIFICATE OF FILING

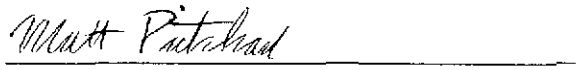
I hereby certify that, in accordance with Supreme Court Rule of Practice XIV, Section 2(C)(2), Industrial Energy Users-Ohio's Notice of Appeal has been filed with the Docketing Division of the Public Utilities Commission of Ohio by leaving a copy at the office of the Chairman in Columbus, Ohio, in accordance with Rules 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code, on the 14th day of December 2012.

Matt Pritchard

Matthew R. Pritchard
Counsel for Appellant
Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Notice of Appeal of Appellant Industrial Energy Users-Ohio* was served upon the parties of record to the proceeding before the Public Utilities Commission of Ohio listed below and pursuant to Section 4903.13, Revised Code, this 14th day of December 2012, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.



Matthew R. Pritchard
Counsel for Appellant
Industrial Energy Users-Ohio

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

Daniel R. Conway
Christen M. Moore
Porter Wright Morris & Arthur
Huntington Center
41 S. High Street
Columbus, OH 43215
dconway@porterwright.com
cmoore@porterwright.com

Derek Shaffer
Quinn Emanuel Urquhart & Sullivan, LLP
1299 Pennsylvania Avenue, NW, Suite 825
Washington, DC 20004
derekshaffer@quinnemanuel.com

COUNSEL FOR COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY

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

COUNSEL FOR THE OHIO ENERGY GROUP

Kyle L. Kern, Counsel of Record
Melissa R. Yost
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
kern@occ.state.oh.us
yost@occ.state.oh.us

COUNSEL FOR THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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

COUNSEL FOR THE OHIO MANUFACTURERS' ASSOCIATION

Richard L. Sites
General Counsel & Senior Director of Health Policy
Ohio Hospital Association
155 E. Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

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

COUNSEL FOR OHIO HOSPITAL ASSOCIATION

M. Howard Petricoff
Stephen M. Howard
Lija Kaleps-Clark
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
PO Box 1008
Columbus OH 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com
lkalepsclark@vorys.com

COUNSEL FOR DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS, LLC AND CONSTELLATION NEWENERGY, INC. AND CONSTELLATION ENERGY COMMODITIES GROUP, INC., RETAIL ENERGY SUPPLY ASSOCIATION

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

John N. Estes III
Paul F. Wight
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005
john.estes@skadden.com
paul.wight@skadden.com

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

David A. Kutik
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com

Allison E. Haedt
Jones Day
P.O. Box 165017
Columbus, OH 43216-5017
aehaedt@jonesday.com

COUNSEL FOR FIRSTENERGY SOLUTIONS CORP.

Dorothy Kim Corbett
Associate General Counsel
Duke Energy Business Services LLC
139 East Fourth Street
Cincinnati, OH 45202
Dorothy.Corbett@duke-energy.com

Jeanne W. Kingery
Associate General Counsel
155 East Broad Street, 21st Floor
Columbus, OH 43215
Jeanne.Kingery@duke-energy.com

COUNSEL FOR DUKE ENERGY RETAIL SALES, LLC

David M. Stahl
Eimer Stahl LLP
224 S. Michigan Avenue, Suite 1100
Chicago, IL 60604
dstahl@eimerstahl.com

Sandy I-ru Grace
Assistant General Counsel
Exelon Business Services Company
101 Constitution Avenue N.W.
Suite 400 East
Washington, DC 20001
sandy.grace@exeloncorp.com

COUNSEL FOR EXELON GENERATION COMPANY, LLC

Mark A. Whitt
Andrew J. Campbell
Whitt Sturtevant LLP
The KeyBank Building
88 East Broad Street, Suite 1590
Columbus, OH 43215
whitt@whitt-sturtevant.com
Campbell@whitt-sturtevant.com

Vincent Parisi
Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, OH 43016
vparisi@igsenergy.com
mswhite@igsenergy.com

COUNSEL FOR INTERSTATE GAS SUPPLY, INC.

Dane Stinson
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, OH 43215
dane.stinson@baileycavalieri.com

COUNSEL FOR THE OHIO ASSOCIATION OF SCHOOL BUSINESS OFFICIALS, THE OHIO SCHOOL BOARDS ASSOCIATION, THE OHIO SCHOOLS COUNCIL AND THE BUCKEYE ASSOCIATION OF SCHOOL ADMINISTRATORS

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

COUNSEL FOR THE OHIO FARM BUREAU FEDERATION

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

COUNSEL FOR THE KROGER CO.

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

COUNSEL FOR DUKE ENERGY COMMERCIAL ASSET MANAGEMENT, INC.

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927
BarthRoyer@aol.com

Gary A. Jeffries
Assistant General Counsel
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
Gary.A.Jeffries@dom.com

COUNSEL FOR DOMINION RETAIL, INC.

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

COUNSEL FOR THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS

C. Todd Jones
Gregory H. Dunn
Christopher L. Miller
Ice Miller LLP
250 West Street
Columbus, OH 43215
Gregory.dunn@icemiller.com
christopher.miller@icemiller.com

COUNSEL FOR THE ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES OF OHIO AND THE CITY OF GROVE CITY, OHIO

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
PO Box 1793
Findlay, OH 45839-1793
drinebolt@ohiopartners.org
cmooney2@columbus.rr.com

COUNSEL FOR OHIO PARTNERS FOR AFFORDABLE ENERGY

Steven Beeler
Werner Margard
John Jones
Public Utilities Section
Ohio Attorney General's Office
180 East Broad Street, 6th Floor
Columbus, OH 43215
werner.margard@puc.state.oh.us
steven.beeler@puc.state.oh.us
john.jones@puc.state.oh.us

COUNSEL FOR THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

Greta See
Sarah Parrot
Attorney Examiners
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215
Greta.See@puc.state.oh.us
Sarah.Parrot@puc.state.oh.us

ATTORNEY EXAMINERS

ATTACHMENT A

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The Commission finds:

(1) On November 1, 2010, American Electric Power Service Corporation (AEPSC), on behalf of Columbus Southern Power Company and Ohio Power Company (AEP-Ohio or the Company),[1] filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. At the direction of FERC, AEPSC refiled its application in FERC Docket No. ER11-2183 on November 24, 2010. The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism and included proposed formula rate templates under which AEP-Ohio would calculate its capacity costs under Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement (RAA).

(2) On December 8, 2010, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charges. Consequently, the Commission sought public comments regarding the following issues: (1) what changes to the current state mechanism are appropriate to determine AEP-Ohio's fixed resource requirement (FRR) capacity charges to Ohio competitive retail electric service (CRES) providers; (2) the degree to which AEP-Ohio's capacity charges are currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charges upon CRES providers and retail competition in Ohio. The Commission invited all interested

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1 The Commission notes that the merger of Columbus Southern Power Company into Ohio Power Company has been confirmed today in a separate docket. *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.

to establish an evidentiary record on a state compensation mechanism. Interested parties were directed to develop an evidentiary record on the appropriate capacity cost pricing/recovery mechanism including, if necessary, the appropriate components of any proposed capacity cost recovery mechanism. An evidentiary hearing was scheduled to commence on October 4, 2011.

(7) On September 7, 2011, a stipulation and recommendation (ESP 2 Stipulation) was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in 11-346 and several other cases pending before the Commission (consolidated cases),[3] including the above-captioned case. Pursuant to an entry issued September 16, 2011, the consolidated cases were consolidated for the purpose of considering the ESP 2 Stipulation. The September 16, 2011, entry also stayed the procedural schedule in the pending cases, including this proceeding, until the Commission specifically ordered otherwise. The evidentiary hearing on the ESP 2 Stipulation commenced on October 4, 2011, and concluded on October 27, 2011.

(8) On December 14, 2011, the Commission issued an opinion and order in the consolidated cases, modifying and adopting the ESP 2 Stipulation (ESP 2 order).

(9) Subsequently, on February 23, 2012, the Commission issued an entry on rehearing in the consolidated cases, granting rehearing in part (ESP 2 entry on rehearing). Finding that the signatory parties to the ESP 2 Stipulation had not met their burden of demonstrating that the stipulation, as a package, benefits ratepayers and the public interest, as required by the Commission's three-part test for the consideration of stipulations, the Commission rejected the ESP 2 Stipulation.

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3 *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; *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-343-EL-ATA; *In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-344-EL-ATA; *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4920-EL-RDR; *In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4921-EL-RDR.

prejudge the merits of the case through implementation of the interim rate. AEP-Ohio contends that the interim rate should not be based exclusively on PJM's Reliability Pricing Model (RPM) auction prices, which, according to AEP-Ohio, would precipitate immediate, irreparable financial harm on the Company, as it would be forced to provide CRES providers with access to its capacity at below-cost rates. AEP-Ohio believes that the majority of its customers would leave its SSO service, resulting in massive revenue loss for the Company. Specifically, AEP-Ohio projects that its earnings for 2012 and 2013 would decrease by 27 percent and 67 percent, respectively, resulting in a return on equity of 7.6 percent and 2.4 percent, respectively, as well as possible downward adjustments to the Company's credit ratings. AEP-Ohio argues that such a result would be confiscatory, unreasonable, and unjust. AEP-Ohio adds that the Company would be forced to pursue all possible legal remedies if the Commission elects to impose full RPM-based capacity pricing. Noting that the ESP 2 Stipulation was rejected for reasons unrelated to its capacity charge provisions, AEP-Ohio argues that it should not be subject to the punitive result of full RPM-based capacity pricing, which the Company believes would prejudice the outcome of this proceeding by causing the majority of its customers to switch providers by the time a final decision is reached. AEP-Ohio also claims that switching to RPM-based capacity pricing now, and later implementing a different pricing scheme after the case is decided, would cause uncertainty and confusion for customers.

AEP-Ohio believes that using the same two-tiered capacity pricing proposed in the ESP 2 Stipulation would offer the most stability and represents a reasonable middle ground based on the record in this case. Specifically, AEP-Ohio proposes that the interim rate should be RPM-based capacity pricing for the first 21 percent of shopping load of each customer class, plus aggregation, but excluding mercantile load, with an interim rate of $255.00/megawatt-day (MW-day) for shopping load above the 21 percent cap. AEP-Ohio notes that this "status quo" proposal would essentially maintain the approach implemented to date by the Company pursuant to the revised Detailed Implementation Plan (DIP) filed on December 29, 2011, which the Company recognizes was subsequently modified by the Commission on January 23, 2012, in the consolidated cases. AEP-Ohio asserts that the record supports

compensation mechanism set forth in the RAA, FES notes that the Company has already filed a complaint case in FERC Docket No. EL11-32, seeking to change the terms of the RAA. Rather than pursue these options, FES argues that AEP-Ohio elected to file its motion for relief, which disregards the rehearing process and is not authorized by statute.

Additionally, FES takes issue with AEP-Ohio's claim that RPM-based capacity pricing will cause the Company to suffer immediate and irreparable harm. FES points out that, although AEP-Ohio sought rehearing of the December 8, 2010, entry in this docket, the Company did not claim in its application for rehearing that RPM-based capacity pricing would cause such harm and, therefore, FES contends that the Company has waived the argument. FES adds that AEP-Ohio's claim that RPM-based capacity pricing is confiscatory is not credible, given that the Company voluntarily used such pricing throughout the term of its first ESP. FES notes that the RPM zonal price for delivery year 2011/2012 is approximately $116.00/MW-day and that AEP-Ohio voluntarily charged a price of $105.00/MW-day as recently as the 2009/2010 delivery year. FES further notes that AEP-Ohio's projections for 2012 and 2013 show significant earnings, despite the Company's unsupported assumption that the majority of its customers will switch to CRES providers under RPM-based capacity pricing. FES also indicates that AEP-Ohio's anticipated return on equity of 7.6 percent for 2012 under RPM-based capacity pricing is almost exactly what the Company had projected that it would earn under the ESP 2 Stipulation.

In addition, FES argues that the Commission's directive to AEP-Ohio is clear and that there is no need for clarification of the ESP 2 entry on rehearing. FES asserts that AEP-Ohio should comply with the Commission's directive and continue to charge RPM-based pricing for its capacity in accordance with the state compensation mechanism established in the Commission's December 8, 2010, entry. In order to comply with the Commission's directive, FES notes that AEP-Ohio need only notify PJM that the state compensation mechanism requires RPM-based capacity pricing.

FES adds that the restoration of RPM-based capacity pricing, which is the default pricing structure under the RAA, would

maintain the capacity pricing recommended in the ESP 2 Stipulation, was agreed to by most of the parties in the consolidated cases. IGS cautions that the RPM capacity allotments must be available to all customer classes equally, if AEP-Ohio's interim proposal is to remain a viable interim solution. Additionally, although IGS does not object to AEP-Ohio's interim proposal, IGS suggests that, as an alternative, the Commission could implement a cap on the governmental aggregation load to which RPM-based capacity pricing applies. With respect to mercantile customers, IGS proposes that the Commission could defer the decision of whether to exclude such customers to the communities seeking to aggregate, instructing each community to capture its decision in its plan of governance.

IGS believes that AEP-Ohio's compromise position would distort the basic premise of market-priced capacity and would immediately and perhaps permanently stifle competition. Noting that there has been a general consensus among stakeholders that AEP-Ohio should transition to competition, IGS argues that a flat rate increase to $255.00/MW-day for all customers electing to shop after February 23, 2012, would not serve this end but would rather create a roadblock to competitive markets.

(14) In its memorandum contra, DERS argues that AEP-Ohio's motion for relief should be denied and that the Company should be required immediately to implement RPM-based rates for capacity while this proceeding is pending. DERS believes that AEP-Ohio's interim proposal would harm the competitive markets and dissuade customers from shopping in violation of state policy. According to DERS, AEP-Ohio's interim proposal would penalize new shoppers by imposing a dramatic escalation in capacity charges. Noting that the Commission has approved RPM-based capacity pricing as the state compensation mechanism, DERS maintains that AEP-Ohio seeks a drastic change from the situation that existed before this proceeding commenced. DERS further notes that AEP-Ohio's proposed two-tiered capacity charge is entirely at odds with the capacity charge calculation methodologies approved for other utilities in the state.

that the Company was ordered to implement in the ESP 2 entry on rehearing, IEU-Ohio maintains that the Company has not provided any basis upon which to believe that the ESP 2 entry on rehearing will result in confiscation. Even if there were a legitimate confiscation claim, IEU-Ohio believes that AEP-Ohio should direct its efforts at FERC.

Additionally, IEU-Ohio disputes AEP-Ohio's argument that a return to RPM-based capacity pricing would create confusion for customers and CRES providers. IEU-Ohio avers that the only confusion surrounding capacity charges stems from AEP-Ohio's continued efforts to impede shopping. Noting that AEP-Ohio is not authorized to compete with CRES providers to provide service to retail customers, IEU-Ohio also takes issue with AEP-Ohio's claim that it would be unlawful to require the Company to provide below-cost capacity to its competitors. IEU-Ohio asserts that AEP-Ohio has clearly indicated that its proposed capacity pricing structure is intended to prevent customers from shopping.

IEU-Ohio further argues that none of AEP-Ohio's proposed interim solutions is based on record evidence. IEU-Ohio points out that AEP-Ohio's testimony in this proceeding has not been subjected to discovery or cross-examination and that reliance on the record supporting the ESP 2 Stipulation and the ESP 2 order is unreasonable in light of the fact that the stipulation has now been rejected. IEU-Ohio also contends that AEP-Ohio's proposed interim solutions are unreasonable, as they would unreasonably restrict customer choice and limit access to RPM-based capacity pricing. Finally, IEU-Ohio maintains that the ESP 2 entry on rehearing clearly directs AEP-Ohio to implement RPM-based capacity pricing. IEU-Ohio adds that AEP-Ohio's position that the ESP 2 entry on rehearing requires clarification is not credible in light of testimony given by the Company during the hearing on the ESP 2 Stipulation, as well as arguments raised by AEPSC in a recent filing for relief in FERC Docket No. ER11-2183.

(16) OCC, in its memorandum contra, argues that AEP-Ohio's motion for relief and request for expedited ruling are procedurally improper and that the subject matter of the motion should have been addressed in an application for rehearing of the ESP 2 entry on rehearing. OCC requests that

providers, and is the only appropriate pricing for capacity outside of the context of a comprehensive transition to a competitive market. The Joint Suppliers note that, for non-shopping customers, the price of capacity is built into AEP-Ohio's tariff rates. With respect to shopping customers, the Joint Suppliers note that the RPM-based capacity rate will be approximately $116.00/MW-day until the June 2012 billing cycle, which is the same amount that AEP-Ohio has charged since the June 2011 billing cycle, other than for a small number of commercial and industrial customers that switched after the ESP 2 Stipulation was executed. The Joint Suppliers add that AEP-Ohio reinstated, in its compliance tariffs filed on February 28, 2012, the 90-day notice requirement for most non-residential customers that elect to shop, which the Joint Suppliers argue will protect the Company from a flood of shopping for at least the next 90 days while this proceeding is pending. Therefore, the Joint Suppliers maintain that AEP-Ohio's financial concerns are not well founded at this time.

(18) OMA argues that granting AEP-Ohio's motion would harm Ohio manufacturers. OMA contends that the relief sought by AEP-Ohio would prevent customers from taking advantage of historically low market prices. OMA adds that, if AEP-Ohio's motion for relief is granted, the Company will not be incented to develop expeditiously a better rate plan than the rejected ESP 2 Stipulation, as the Company will have some of the revenue protection that it seeks. OMA also argues that AEP-Ohio could lessen the detrimental financial impact of the ESP 2 entry on rehearing by developing and filing a new and improved SSO. OMA notes that AEP-Ohio's projected 2.4 percent return on equity for 2013, while not a healthy return on equity, does not reflect a new rate plan and thus may never come to fruition. OMA emphasizes that AEP-Ohio seeks relief for only an interim period until a new SSO is approved. OMA believes that it is more important for AEP-Ohio and the other parties to develop a new SSO that can be expeditiously implemented so as to avoid financial harm to both AEP-Ohio and customers.

Additionally, OMA asserts that AEP-Ohio's motion for relief is legally deficient. OMA contends that the Commission may not authorize AEP-Ohio to modify its capacity charges, even for an interim period, unless the state compensation mechanism is

which, in exchange for an accelerated response time, prohibits the filing of a reply. Further, FES argues that there is nothing AEP-Ohio filed in its reply that could not have been included in its motion for relief, which would have granted the other parties an opportunity to respond. FES claims that AEP-Ohio's reply is unreasonable and a violation of procedural due process and requests that the Commission not consider the information presented in the reply as, according to FES, to do so would be plain error.

(21) Rule 4901-1-38, O.A.C., provides that the Commission may, for good cause shown, prescribe different practices from those provided by rule. It is imperative that the Commission have the most accurate and complete information available to make an informed decision to balance the interests of all stakeholders, particularly in light of the unique circumstances of this case. Accordingly, we grant AEP-Ohio's motion for leave to file a reply.

(22) We reject claims that the interim relief is not based upon record evidence. The instant proceeding was consolidated with 11-346 and the cases enumerated in footnote three of this entry for purposes of considering the ESP 2 Stipulation. All of the testimony and exhibits admitted into the record for purposes of considering the ESP 2 Stipulation are part of the record in this proceeding. Our subsequent rejection of the ESP 2 Stipulation did not remove such evidence from the record, and we may, and do, rely upon such evidence in our decision granting interim relief.

(23) As certain of the memoranda contra argue, the two-tier capacity rate was created and agreed to by numerous intervenors to the consolidated cases, as one component of the ESP 2 Stipulation. As is the case with a stipulation, parties negotiate for and compromise on various provisions. We understand that parties may feel that consideration of the two-tier capacity rate as the state compensation mechanism denies the other parties to the stipulation the benefit of the bargain. Moreover, while AEP-Ohio may have other avenues to challenge the alleged confiscatory impact of the state compensation mechanism, the Commission is also vested with the authority to modify the state compensation mechanism established in our December 8, 2010, entry in this case.

entry, including the clarification including mercantile customers as governmental aggregation customers eligible to receive RPM-priced capacity. Under the two-tier capacity pricing mechanism, the first 21 percent of each customer class shall be entitled to tier-one RPM pricing. All customers of governmental aggregations approved on or before November 8, 2011, shall be entitled to receive tier-one RPM pricing. The second-tier charge for capacity shall be at $255.00/MW-day. This interim rate 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.

Finally, we note that, on March 5, 2012, AEP-Ohio filed notice of its intent to file a modified ESP, pursuant to Section 4928.143, Revised Code, by March 30, 2012. AEP-Ohio plans to propose as part of the modified ESP a capacity charge, applicable until such time as AEP-Ohio can transition from an FRR to an RPM entity. AEP-Ohio submits that this will preclude the need for the Commission to adjudicate this case, provided a satisfactory interim mechanism is established and the ESP is resolved expeditiously. The Company states the term of the modified ESP will be June 1, 2012, through May 31, 2016.

Although AEP-Ohio believes that the present case may be resolved under its modified application for an ESP, the Commission believes that resolution of this case should no longer be delayed. Our decision today temporarily modifying the state compensation mechanism will allow the Commission to fully develop the record to address the issues raised in this proceeding. Therefore, the Commission directs the attorney examiner to issue a procedural schedule in this case under which this matter be set for hearing no later than April 17, 2012.

It is, therefore,

ORDERED, That AEP-Ohio's motion for leave to file a reply is granted. It is, further,

ORDERED, That AEP-Ohio's motion for relief be granted, as determined above, until May 31, 2012. It is, further,

ATTACHMENT B

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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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.

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,

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

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

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

GNS/SJP/vrm

Entered in the Journal

MAY 30 2012

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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.

ATTACHMENT C

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

The Commission, coming now to consider the evidence presented in this proceeding, the transcripts of the hearing, and briefs of the parties, hereby issues its opinion and order.

APPEARANCES:

Steven T. Nourse, Matthew J. Satterwhite, and Yazen Alami, American Electric Power Service Corporation, One Riverside Plaza, 29th Floor, Columbus, Ohio 43215, Porter, Wright, Morris & Arthur, LLP, by Daniel R. Conway and Christen M. Moore, 41 South High Street, Columbus, Ohio 43215, and Quinn, Emanuel, Urquhart & Sullivan, LLP, by Derek L. Shaffer, 1299 Pennsylvania Avenue NW, Suite 825, Washington, D.C. 20004, on behalf of Ohio Power Company.

Mike DeWine, Ohio Attorney General, by John H. Jones, Assistant Section Chief, and Steven L. Beeler, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

Bruce J. Weston, Ohio Consumers' Counsel, by Kyle L. Kern and Melissa R. Yost, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Ohio Power Company.

Boehm, Kurtz & Lowry, by David F. Boehm, Michael L. Kurtz, and Jody M. Kyler, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of the Ohio Energy Group.

Taft, Stettinius & Hollister LLP, by Mark S. Yurick and Zachary D. Kravitz, 65 East State Street, Suite 1000, Columbus, Ohio 43215, on behalf of The Kroger Company.

McNees, Wallace & Nurick LLC, by Samuel C. Randazzo, Frank P. Darr, and Joseph E. Oliker, 21 East State Street, 17th Floor, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

Vorys, Sater, Seymour & Pease LLP, by M. Howard Petricoff and Lija Kaleps-Clark, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216, on behalf of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.

Kegler, Brown, Hill & Ritter, LPA, by Roger P. Sugarman, 65 East State Street, Suite 1800, Columbus, Ohio 43215, on behalf of the National Federation of Independent Business, Ohio Chapter.

Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215, on behalf of Dominion Retail, Inc.

Ice Miller LLP, by Christopher L. Miller, Asim Z. Haque, and Gregory H. Dunn, 250 West Street, Columbus, Ohio 43215, on behalf of the Association of Independent Colleges and Universities of Ohio.

Ice Miller LLP, by Asim Z. Haque, Christopher L. Miller, and Gregory H. Dunn, 250 West Street, Columbus, Ohio 43215, on behalf of the city of Grove City, Ohio.

OPINION:

I. HISTORY OF THE PROCEEDING

On November 1, 2010, American Electric Power Service Corporation (AEPSC), on behalf of Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Company),[1] filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. On November 24, 2010, at the direction of FERC, AEPSC refiled the application in FERC Docket No. ER11-2183 (FERC filing). The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism, pursuant to Section 205 of the Federal Power Act (FPA) and Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement (RAA) for the regional transmission organization (RTO), PJM Interconnection, LLC (PJM), and included proposed formula rate templates under which AEP-Ohio would calculate its capacity costs.

On December 8, 2010, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charge. Consequently, the Commission sought public comments regarding the following issues: (1) what changes to the current state compensation mechanism are appropriate to determine AEP-Ohio's fixed resource requirement (FRR) capacity charge to Ohio competitive retail electric service (CRES) providers, which are referred to as alternative load serving entities (LSE) within PJM; (2) the degree to which AEP-Ohio's capacity charge is currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charge upon CRES providers and retail competition in Ohio. The Commission invited all interested stakeholders to submit written comments in

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1 By entry issued on March 7, 2012, the Commission approved and confirmed the merger of CSP into OP, 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.

Ohio Association of School Business Officials, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Schools Council (collectively, Schools); Ohio Farm Bureau Federation (OFBF); The Kroger Company (Kroger); Ohio Chapter of the National Federation of Independent Business (NFIB); Dominion Retail, Inc. (Dominion Retail); Association of Independent Colleges and Universities of Ohio (AICUO); city of Grove City, Ohio (Grove City); and Ohio Construction Materials Coalition (OCMC).[4]

Initial comments were filed by AEP-Ohio, IEU-Ohio, OMA, OHA, Constellation, Direct Energy, OEG, FES, OPAE, and OCC. Reply comments were filed by AEP-Ohio, OEG, Constellation, OPAE, FES, and OCC.

By entry issued on August 11, 2011, the attorney examiner set a procedural schedule in order to establish an evidentiary record on a proper state compensation mechanism. The evidentiary hearing was scheduled to commence on October 4, 2011, and interested parties were directed to develop an evidentiary record on the appropriate capacity cost pricing/recovery mechanism, including, if necessary, the appropriate components of any proposed capacity cost recovery mechanism. In accordance with the procedural schedule, AEP-Ohio filed direct testimony on August 31, 2011.

On September 7, 2011, a stipulation and recommendation (ESP 2 Stipulation) was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in 11-346 and several other cases pending before the Commission (consolidated cases),[5] including the above-captioned case. Pursuant to an entry issued on September 16, 2011, the consolidated cases were consolidated for the sole purpose of considering the ESP 2 Stipulation. The September 16, 2011, entry also stayed the procedural schedules in the pending cases, including this proceeding, until the Commission specifically ordered otherwise. The evidentiary hearing on the ESP 2 Stipulation commenced on October 4, 2011, and concluded on October 27, 2011.

On December 14, 2011, the Commission issued an opinion and order in the consolidated cases, modifying and adopting the ESP 2 Stipulation, including its two-tier

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4 On April 19, 2012, OCMC filed a corrected cover sheet to its motion for intervention, indicating that it did not intend to seek intervention in this case.

5 *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; *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-343-EL-ATA; *In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-344-EL-ATA; *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4920-EL-RDR; *In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4921-EL-RDR.

II. APPLICABLE LAW

AEP-Ohio is an electric light company as defined by Section 4905.03(A)(3), Revised Code, and a public utility pursuant to Section 4905.02, Revised Code. AEP-Ohio is, therefore, subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

In accordance with Section 4905.22, Revised Code, all charges for service shall be just and reasonable and not more than allowed by law or by order of the Commission. Additionally, Section D.8 of Schedule 8.1 of the RAA, which is a portion of PJM's tariff approved by FERC, is informative in this case. It states:

> 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 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.

codified in Chapter 1331, Revised Code, which is known as the Valentine Act and governs monopolies and anticompetitive conduct. IEU-Ohio asserts that the Valentine Act compels the Commission to reject AEP-Ohio's anticompetitive scheme to preclude free and unrestricted competition among purchasers or consumers in the sale of competitive generation service. According to IEU-Ohio, if the AEP East Interconnection Agreement (pool agreement) and the RAA are agreements having the effect of precluding free and unrestricted competition between the parties to such agreements, purchasers, or consumers, the agreements are void by operation of Ohio law. AEP-Ohio responds that IEU-Ohio urges the Commission to rely on a statute that it has no jurisdiction to enforce, noting that authority to enforce the Valentine Act is vested in the courts of common pleas, pursuant to Section 1331.11, Revised Code. AEP-Ohio adds that IEU-Ohio's request for reimbursement of litigation costs is unjustified under the circumstances of this case, unsupported by any statute or rule, and should be denied.

The Commission agrees with AEP-Ohio that it has no authority with respect to Chapter 1331, Revised Code. However, the Commission finds that it has jurisdiction to establish a state compensation mechanism, as addressed further below. IEU-Ohio's motion to dismiss this proceeding is, therefore, without merit and should be denied. In addition, IEU-Ohio's request for reimbursement of its litigation expenses is unfounded and should likewise be denied.

2. Motion for Permission to Appear *Pro Hac Vice Instanter*

On May 9, 2012, as supplemented on May 14, 2012, a motion for permission to appear *pro hac vice instanter* on behalf of AEP-Ohio was filed by Derek Shaffer. No memoranda contra were filed. The Commission finds that the motion for permission to appear *pro hac vice instanter* is reasonable and should be granted.

B. Substantive Issues

The key substantive issues before the Commission may be posed as the following questions: (1) does the Commission have jurisdiction to establish a state compensation mechanism; (2) should the state compensation mechanism for AEP-Ohio be based on the Company's capacity costs or on another pricing mechanism such as RPM-based auction prices; and (3) what should the resulting compensation be for AEP-Ohio's FRR capacity obligations. In addressing this final question, there are a number of related issues to be considered, including whether there should be an offsetting energy credit, whether AEP-Ohio's proposed cost-based capacity pricing mechanism constitutes a request for recovery of stranded generation investment, and whether OEG's alternate proposal should be adopted by the Commission.

1. Does the Commission have jurisdiction to establish a state compensation mechanism?

As a result, AEP-Ohio made the decision to seek approval, pursuant to the RAA, to collect a cost-based capacity rate from CRES providers. In its FERC filing, AEP-Ohio proposed cost-based formula tariffs that were based on its FERC Form 1 for 2009. In response to the FERC filing, the Commission opened this docket and, in the December 8, 2010, entry, adopted capacity pricing based on the RPM auction price as the state compensation mechanism for AEP-Ohio's FRR capacity obligations. Subsequently, FERC rejected AEP-Ohio's proposed formula rate in light of the state compensation mechanism.

AEP-Ohio asserts that, because FERC has jurisdiction over wholesale electric rates and state commissions have jurisdiction over retail rate matters, it is evident that the reference to a state compensation mechanism in Section D.8 of Schedule 8.1 of the RAA contemplates a retail, not a wholesale, capacity pricing mechanism. AEP-Ohio believes that the provision of generation capacity to CRES providers is a wholesale transaction that falls within the exclusive ratemaking jurisdiction of FERC. In its brief, AEP-Ohio states that the purpose of this proceeding is to establish a wholesale capacity pricing mechanism and that retail rates cannot change as a result of this case. AEP-Ohio notes that intervenors universally agreed that the compensation paid by CRES providers to the Company for its FRR capacity obligations is wholesale in nature (Tr. IV at 795; Tr. V at 1097, 1125; Tr. VI at 1246, 1309).

b. Intervenors

As discussed above with respect to its motion to dismiss, IEU-Ohio contends that the Commission lacks statutory authority to approve a cost-based rate for capacity available to CRES providers serving retail customers in AEP-Ohio's service territory. IEU-Ohio argues that, if the Commission concludes that the provision of capacity to CRES providers is subject to the Commission's economic regulation jurisdiction, it must determine whether the service is competitive or noncompetitive. IEU-Ohio notes that generation service is classified as a competitive service under Section 4928.03, Revised Code. IEU-Ohio emphasizes that no party has claimed that capacity is not part of generation service. IEU-Ohio asserts that, if the provision of capacity is in fact considered a competitive generation service, the Commission's economic regulation jurisdiction is limited to Sections 4928.141, 4928.142, and 4928.143, Revised Code, which pertain to the establishment of an SSO. IEU-Ohio notes that these sections contain various substantive and procedural requirements that must be satisfied prior to the lawful establishment of an SSO, none of which has been satisfied in the present case, which precludes the Commission from considering or approving AEP-Ohio's proposed cost-based capacity pricing mechanism. IEU-Ohio adds that Section 4928.05, Revised Code, prohibits the Commission from regulating competitive retail electric service under its traditional cost-based ratemaking authority contained in Chapter 4909, Revised Code. IEU-Ohio continues that, if the provision of capacity is nevertheless deemed a noncompetitive service, the Commission cannot approve AEP-Ohio's proposed capacity pricing mechanism because the Company has failed to satisfy any

IEU-Ohio contends that the Commission must determine whether capacity service is a competitive or noncompetitive retail electric service pursuant to Chapter 4928, Revised Code. Section 4928.05(A)(1), Revised Code, provides that competitive retail electric service is, to a large extent, exempt from supervision and regulation by the Commission, including pursuant to the Commission's general supervisory authority contained in Sections 4905.04, 4905.05, and 4905.06, Revised Code. Section 4928.05(A)(2), Revised Code, provides that noncompetitive retail electric service, on the other hand, generally remains subject to supervision and regulation by the Commission. Prior to determining whether a retail electric service is competitive or noncompetitive, however, we must first confirm that it is indeed a retail electric service. Section 4928.01(A)(27), Revised Code, defines a retail electric service as "any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption." In this case, the electric service in question (*i.e.*, capacity service) is provided by AEP-Ohio for CRES providers, with CRES providers compensating the Company in return for its FRR capacity obligations. Such capacity service is not provided directly by AEP-Ohio to retail customers. (AEP-Ohio Ex. 101 at 11; Tr. I at 63.) Although the capacity service benefits shopping customers in due course, they are initially one step removed from the transaction, which is more appropriately characterized as an intrastate wholesale matter between AEP-Ohio and each CRES provider operating in the Company's service territory. As AEP-Ohio notes, many of the parties, including the Company, regard the capacity compensation assessed by the Company to CRES providers as a wholesale matter (Tr. IV at 795; Tr. V at 1097, 1125; Tr. VI at 1246, 1309). We agree that the provision of capacity for CRES providers by AEP-Ohio, pursuant to the Company's FRR capacity obligations, is not a retail electric service as defined by Ohio law. Accordingly, we find it unnecessary to determine whether capacity service is considered a competitive or noncompetitive service under Chapter 4928, Revised Code.

The Commission recognizes that, pursuant to the FPA, electric sales for resale and other wholesale transactions are generally subject to the exclusive jurisdiction of FERC. In this case, however, our exercise of jurisdiction, for the sole purpose of establishing an appropriate state compensation mechanism, is consistent with the governing section of the RAA, which, as a part of PJM's tariffs, has been approved by FERC and was accepted by AEP-Ohio when the RAA was signed on its behalf by AEPSC.[6] Section D.8 of Schedule 8.1 of the RAA acknowledges the authority of a state regulatory jurisdiction, such as the Commission, to establish a state compensation mechanism. It further provides that a state compensation mechanism, once established, prevails over the other compensation methods that are addressed in that section. Additionally, FERC has found that the RAA does not

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[6] In its order rejecting the FERC filing, FERC noted its approval of the RAA pursuant to a settlement agreement. *American Electric Power Service Corporation*, 134 FERC ¶ 61,039 (2011), *citing PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 (2006), *order on reh'g*, 119 FERC ¶ 61,318, *reh'g denied*, 121 FERC ¶ 61,173 (2007), *aff'd sub nom. Pub. Serv. Elec. & Gas Co. v. FERC*, D.C. Circuit Case No. 07-1336 (March 17, 2009) (unpublished). FERC also noted that the RAA was voluntarily signed on behalf of AEP-Ohio.

capital and satisfy its FRR capacity obligations without harm to the Company, while providing customers with reliable and reasonably priced retail electric service as required by Section 4928.02, Revised Code. AEP-Ohio argues that cost-based capacity pricing would encourage investment in generation in Ohio and thereby increase retail reliability and affordability, as well as adequately compensate the Company for its capacity obligations as an FRR Entity.

AEP-Ohio contends that, during the period in which it remains an FRR Entity, RPM-based capacity pricing is not appropriate. As an FRR Entity, AEP-Ohio notes that it does not procure capacity for its load obligations in PJM's RPM auctions or even participate in such auctions, except to the extent that the Company has capacity that it does not need for its native load. AEP-Ohio points out that, under such circumstances, its auction participation is limited to 1,300 MW. (AEP-Ohio Ex. 105 at 8; Tr. III at 661-662.) AEP Ohio argues that, as an FRR Entity, it would not recover its capacity costs, if capacity pricing is based on RPM prices, and the difference is not made up by its SSO customers (Tr. I at 64). AEP-Ohio maintains that, because its obligations as an FRR Entity are longer and more binding reliability obligations than a CRES provider's obligations as an alternative LSE, an RPM-based price for capacity would not be compensatory or allow the Company to recover an amount even remotely approaching its embedded costs for the 2011-2012 and 2012-2013 PJM planning years, and should thus be rejected (Tr. II at 243). According to AEP-Ohio, RPM-based capacity pricing would also give CRES providers an unfair advantage over the members of the pool agreement, which purchase capacity based on embedded costs (Tr. I at 59-60), and discriminate against non-shopping customers.

Additionally, AEP-Ohio claims that RPM-based capacity pricing would cause substantial, confiscatory financial harm to the Company. According to AEP-Ohio witness Allen, the Company would earn a return on equity of 7.6 percent in 2012 and a return on equity of 2.4 percent in 2013, with a $240 million decrease in earnings between 2012 and 2013, if RPM-based capacity pricing is adopted (AEP-Ohio Ex. 104 at 3-5, Ex. WAA-1; Tr. III at 701).

Finally, AEP-Ohio notes that RPM-based capacity pricing is inappropriate because it would constitute an illegal subsidy to CRES providers in violation of Section 4928.02(H), Revised Code.

b. Staff

In its brief, Staff contends that AEP-Ohio should receive compensation from CRES providers for the Company's FRR obligations in the form of the prevailing RPM rate in the unconstrained region of PJM. Staff opposes the Company's request to establish a capacity rate that is significantly above the market rate. Staff notes that other investor-owned utilities in Ohio charge CRES providers RPM-based capacity pricing and that such pricing

for capacity. IEU-Ohio believes that RPM-based capacity pricing is consistent with state policy, whereas AEP-Ohio's proposed capacity pricing mechanism would unlawfully subsidize the Company's position with regard to the competitive generation business, contrary to state policy. IEU-Ohio notes that neither AEP-Ohio's status as an FRR Entity nor the pool agreement is a basis for the Company's cost-based capacity pricing mechanism. IEU-Ohio points out that AEP-Ohio used RPM-based capacity pricing from 2007 through 2011, during which time the Company was an FRR Entity and the pool agreement was in effect. IEU-Ohio further argues that AEP-Ohio's proposed cost-based capacity pricing mechanism would produce results that are not comparable to the capacity price paid by SSO customers, contrary to state law. IEU-Ohio further notes that AEP-Ohio has not identified the capacity component of its SSO rates and that it is thus impossible to determine whether the proposed capacity pricing for CRES providers would be comparable to the capacity component of its SSO rates. (IEU-Ohio Ex. 102A at 29-32, Ex. KMM-10.) Regardless of the method by which the capacity pricing mechanism is established, IEU-Ohio requests that AEP-Ohio be directed to provide details to customers and CRES providers that show how the peak load contribution (PLC) that the Company assigns to a customer corresponds with the customer's PLC recognized by PJM. IEU-Ohio contends that this information is necessary to ensure that capacity compensation is being properly applied to shopping and non-shopping customers. (IEU-Ohio Ex. 102A at 33-34.)

The Suppliers argue that a capacity rate based on AEP-Ohio's embedded costs is not appropriate under the plain language of the RAA. Citing Section D.8 of Schedule 8.1 of the RAA, the Suppliers contend that AEP-Ohio may seek a cost-based rate by making a filing at FERC under Section 205 of the FPA, but only if there is no state compensation mechanism in place. The Suppliers add that the purpose of this proceeding is to establish the appropriate state compensation mechanism and that a state compensation mechanism based on AEP-Ohio's embedded costs would be contrary to the intent of the RAA, which refers only to the avoided cost rate. The Suppliers also note that allowing AEP-Ohio to recover its embedded costs would grant the Company a higher return on equity (12.2 percent in 2013) than has been allowed for any of its affiliates in other states and that is considerably higher than what the Commission granted in the Company's last rate case (RESA Ex. 103). Finally, the Suppliers maintain that AEP-Ohio's proposed cost-based capacity pricing mechanism would preclude CRES providers from making attractive offers, could result in shopping customers subsidizing non-shopping customers, and would destroy Ohio's growing competitive retail electricity market.

The Suppliers also believe that the two-tier capacity pricing mechanism that has been in effect is inequitable and inefficient and that a single RPM-based rate should be in place for all shopping customers. The Suppliers argue that the RPM price is the most transparent, market-based price for capacity, and is necessary as part of AEP-Ohio's three-year transition to market.

OCC contends that AEP-Ohio's proposed capacity pricing mechanism should be rejected because it is contrary to the plain language of the RAA, which provides that, if a state compensation mechanism exists, its pricing prevails. According to OCC, the Commission established RPM-based capacity pricing as the state compensation mechanism in its December 8, 2010, entry. OCC notes that FERC has already rejected AEPSC's attempt to establish a formula rate for capacity in Ohio in light of the Commission's adoption of RPM-based capacity pricing as the state compensation mechanism. OCC further notes that AEP-Ohio's proposed capacity pricing mechanism is inconsistent with economic efficiency and contrary to state policy. OCC's position is that the Commission should find that RPM-based capacity pricing is appropriate, given the precedent already established by the Commission and FERC, and in light of the fact that AEP-Ohio has historically used RPM-based pricing for capacity sales to CRES providers.

NFIB urges the Commission to base AEP-Ohio's capacity compensation on RPM prices. NFIB adds that AEP-Ohio's proposed capacity pricing mechanism does not promote competition and would prevent small business owners from taking advantage of historically low market prices over the next several years. NFIB believes that AEP-Ohio would earn a healthy return on equity under RPM-based capacity pricing and that the Company has failed to establish how it would be better equipped to transition to the RPM market, if its cost-based pricing mechanism is approved.

Dominion Retail recommends that the Commission continue to employ RPM-based capacity pricing as the state compensation mechanism, as market-based pricing is fundamental to the development of a robust competitive market in AEP-Ohio's service territory. According to Dominion Retail, RPM-based capacity pricing would not require AEP-Ohio, shareholders, or SSO customers to subsidize CRES providers, as the Company contends. Dominion Retail notes that AEP-Ohio proposed cost-based capacity pricing only when it became apparent that market-based energy and capacity charges would permit CRES providers to compete effectively for customers in the Company's service territory for the first time. Dominion Retail adds that AEP-Ohio's underlying motivation is to constrain shopping and that allowing the Company to charge a cost-based capacity rate would be contrary to the state policy of promoting competition. Dominion Retail argues that Ohio law does not require that capacity pricing be based on embedded costs. Dominion Retail points out that AEP-Ohio's status as an FRR Entity does not mean that the state compensation mechanism must be based on embedded costs. Dominion Retail notes that Duke Energy Ohio, Inc. will also be an FRR Entity until mid-2015, and that it nevertheless uses RPM-based capacity pricing. Dominion Retail further notes that Amended Substitute Senate Bill No. 3 (SB 3) eliminated cost-of-service-based ratemaking for generation service. Dominion Retail asserts that AEP-Ohio is unrealistic in assuming that CRES providers would be able to compete successfully if AEP-Ohio's proposed capacity pricing is adopted. Dominion Retail points out that even AEP-Ohio witness Allen agrees that the Company's proposed capacity pricing would stifle competition in the residential market (Tr. III at 669-

pricing would avoid the need to determine an arbitrary estimate of the Company's cost of service for capacity and, in any event, SB 3 eliminated full cost-of-service analysis. Exelon and Constellation note that 11-346 is the proper forum in which to determine whether AEP-Ohio requires protection to maintain its financial integrity. Exelon and Constellation further note that they would support reasonable measures that comport with a timely transition to a fully competitive market and resolution of related issues in 11-346, if such measures are shown to be necessary.

IGS contends that RPM-based capacity pricing is the clear choice over AEP-Ohio's proposed capacity pricing mechanism. IGS points out that RPM-based capacity pricing already exists, was neutrally created, applies all over the region, is market-based, is nondiscriminatory, and provides the correct incentives to assure investment in generation resources. On the other hand, AEP-Ohio's proposal, according to IGS, was devised by the Company, for this case and this case only, returns Ohio to a cost-based generation regulatory regime, shows no relationship to short- or long-term generation adequacy, and could stifle competition. IGS notes that RPM-based capacity pricing fully comports with Ohio law in that it is market-based pricing and would support the continued development of Ohio's competitive market; would avoid subsidies and discriminatory pricing; would assure adequate resources are available to provide stable electric service; and would avoid any legal problems associated with extending the transition to competition. IGS asserts that AEP-Ohio's proposed capacity pricing would be contrary to Ohio law in that it would harm the development of competition; result in anticompetitive subsidies; and violate Ohio's transition laws. IGS also notes that AEP-Ohio's justifications for recovering embedded costs are refuted by the evidence and disregard state policy. IGS contends that RPM-based capacity pricing does not raise reliability concerns or subsidize CRES providers. IGS argues that AEP-Ohio has a fundamental disagreement with state policy. IGS notes that AEP-Ohio's judgment as to the wisdom of state policy is irrelevant, given that it has been codified by the General Assembly and must be effectuated by the Commission.

Finally, Kroger asserts that the most economically efficient price and the price that AEP-Ohio should be required to charge CRES providers for capacity is the RPM price.

d. Conclusion

Initially, the Commission notes that a state compensation mechanism, as referenced in the RAA, has been in place for AEP-Ohio for some time now, at least since issuance of the December 8, 2010, entry, which expressly adopted RPM-based capacity pricing as the state compensation mechanism for the Company during the pendency of this case. The state compensation mechanism was subsequently modified by the Commission's March 7, 2012, and May 30, 2012, entries granting AEP-Ohio's requests for interim relief. No party appears to dispute, at least in this proceeding, that the Commission has adopted a state compensation mechanism for AEP-Ohio.

rate currently in effect is substantially below all estimates provided by the parties regarding AEP-Ohio's cost of capacity (AEP-Ohio Ex. 102 at 21, 22; FES Ex. 103 at 55; Staff Ex. 105 at Ex. ESM-4). The record further reflects that, if RPM-based capacity pricing is adopted, AEP-Ohio may earn an unusually low return on equity of 7.6 percent in 2012 and 2.4 percent in 2013, with a loss of $240 million between 2012 and 2013 (AEP-Ohio Ex. 104 at 3-5, Ex. WAA-1; Tr. III at 701). In short, the record reveals that RPM-based capacity pricing would be insufficient to yield reasonable compensation for AEP-Ohio's provision of capacity to CRES providers in fulfillment of its FRR capacity obligations.

However, the Commission also recognizes that RPM-based capacity pricing will further the development of competition in the market (Exelon Ex. 101 at 7; OEG Ex. 102 at 11), which is one of our primary objectives in this proceeding. We believe that RPM-based capacity pricing will stimulate true competition among suppliers in AEP-Ohio's service territory. We also believe that RPM-based capacity pricing will facilitate AEP-Ohio's transition to full participation in the competitive market, as well as incent shopping. RPM-based capacity pricing has been used successfully throughout Ohio and the rest of the PJM region and puts electric utilities and CRES providers on a level playing field (FES Ex. 101 at 50-51; FES Ex. 102 at 3). RPM-based capacity pricing is thus a reasonable means of promoting shopping in AEP-Ohio's service territory and advancing the state policy objectives of Section 4928.02, Revised Code, which the Commission is required to effectuate pursuant to Section 4928.06(A), Revised Code.

Therefore, with the intention of adopting a state compensation mechanism that achieves a reasonable outcome for all stakeholders, the Commission directs that the state compensation mechanism shall be based on the costs incurred by the FRR Entity for its FRR capacity obligations, as discussed further in the following section. However, because the record in this proceeding demonstrates that RPM-based capacity pricing will promote retail electric competition, we find it necessary to take appropriate measures to facilitate this important objective. For that reason, the Commission directs AEP-Ohio to charge CRES providers the adjusted final zonal PJM RPM rate in effect for the rest of the RTO region for the current PJM delivery year (as of today, approximately $20/MW-day), and with the rate changing annually on June 1, 2013, and June 1, 2014, to match the then current adjusted final zonal PJM RPM rate in the rest of the RTO region. Further, the Commission will authorize AEP-Ohio to modify its accounting procedures, pursuant to Section 4905.13, Revised Code, to defer incurred capacity costs not recovered from CRES provider billings during the ESP period to the extent that the total incurred capacity costs do not exceed the capacity pricing that we approve below. Moreover, the Commission notes that we will establish an appropriate recovery mechanism for such deferred costs and address any additional financial considerations in the 11-346 proceeding. We also find that AEP-Ohio should be authorized to collect carrying charges on the deferral based on the Company's weighted average cost of capital, until such time as a recovery mechanism is approved in 11-346, in

Louisiana and Prescott, Arkansas. AEP-Ohio notes that Dr. Pearce's formula rate approach is transparent and, if adopted, would be updated annually by May 31 to reflect the most current input data, most of which is publicly available and taken directly from the Company's FERC Form 1 and audited financial statements (AEP-Ohio Ex. 102 at 8). AEP-Ohio adds that its proposed formula rate template would promote rate stability and result in a reasonable return on equity of 12.2 percent in 2013, based on a capacity price of $355.72/MW-day (Tr. II at 12-25; AEP-Ohio Ex. 142 at 21-22).

AEP-Ohio contends that its proposed cost-based capacity pricing roughly approximates and is, therefore, comparable to the amount that the Company receives from its SSO customers for capacity through base generation rates (AEP-Ohio Ex. 142 at 19-20; Tr. II at 304, 350).

b. Staff

If the Commission determines that RPM-based capacity pricing is not appropriate for AEP-Ohio, Staff proposes an alternate capacity rate of $146.41/MW-day, which accounts for energy margins as well as certain cost adjustments to the Company's proposed capacity pricing mechanism. Staff notes that its alternate rate may offer more financial stability to AEP-Ohio than RPM-based capacity pricing over the next three years, and is just and reasonable unlike the Company's excessive rate proposal. Staff finds that its alternate rate would appropriately balance the interests of AEP-Ohio in recovering its embedded costs to meet its FRR capacity obligations and attracting capital investment, while also promoting alternative competitive supply and retail competition.

According to Staff, the reduction of AEP-Ohio's proposed rate of $355.72/MW-day to Staff's alternative recommendation of $146.41/MW-day is a result of removing and adjusting numerous items, including return on equity; rate of return; construction work in progress (CWIP); plant held for future use (PHFFU); cash working capital (CWC); certain prepayments, including a prepaid pension asset and the related accumulated deferred income taxes; accumulated deferred income taxes; payroll and benefits for eliminated positions; 2010 severance program cost; income tax expense; domestic production activities; payroll tax expense; capacity equalization revenue; ancillary services revenue; and energy sales margin and ancillary services receipts. In terms of the return on equity, Staff witness Smith used ten percent for CSP and 10.3 percent for OP, because these percentages were adopted by the Commission in AEP-Ohio's recent distribution rate case (Staff Ex. 103 at 12-13).[8] Staff notes that CWIP was properly excluded from rate base because AEP-Ohio has not demonstrated that the requirements of Section 4909.15 or 4928.143, Revised Code, have been met (Staff Ex. 103 at 14-15). Staff also excluded PHFFU from rate base, as the plant in

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8 *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates*, Case No. 11-351-EL-AIR, *et al.*

adjustments, and reached a resulting capacity rate of $291.58/MW-day (AEP-Ohio Ex. 142 at 18; Tr. XI at 2311).

c. Intervenors

If the Commission believes that it is appropriate to consider AEP-Ohio's embedded costs, FES argues that the Company's true cost of capacity is $78.53/MW-day, after adjustments are made to reflect the removal of stranded costs and post-2001 generation investment, as well as an appropriate offset for energy sales. At most, FES contends that it should be $90.83/MW-day, if a further adjustment is made to credit back to AEP-Ohio the capacity equalization payments for the Company's Waterford and Darby plants, which were acquired in 2005 and 2007. FES also recommends that the Commission require AEP-Ohio to unbundle its base generation rate into energy and capacity components, which would ensure that the Company is charging the same price for shopping and non-shopping customers and allow customers to compare offers from CRES providers with the Company's tariff rates (FES Ex. 103 at 22).

The Suppliers note that, if the Commission finds that RPM-based capacity pricing is confiscatory or otherwise fails to compensate AEP-Ohio adequately, a nonbypassable stabilization charge, such as the rate stability rider rate proposed by the Company in 11-346, would be appropriate and should be considered in that case. OMA and OHA respond by arguing that any suggestion that rates should be raised without any justification, other than reaching a level that is high enough to ensure that CRES providers are able to compete with AEP-Ohio, tramples on customer interests and should be rejected by the Commission.

As discussed in greater detail below, OEG recommends that AEP-Ohio's capacity charge should be no higher than $145.79/MW-day, which was the RPM-based price for the 2011/2012 PJM delivery year, and only if the Commission determines that the prevailing RPM price is not sufficient compensation (OEG Ex. 102 at 9-10). OEG argues that a capacity charge of $145.79/MW-day provided a more than sufficient return on equity for AEP-Ohio, as well as fostered retail competition in its service territory (OEG Ex. 102 at 10-11). As part of this recommendation, OEG urges the Commission adopt an earnings stabilization mechanism (ESM) in the form of an annual review to gauge whether AEP-Ohio's earnings are too high or too low (OEG Ex. 102 at 15-21).

(i) Should there be an offsetting energy credit?

a) AEP-Ohio

AEP-Ohio does not recommend that the Commission adopt an energy credit offset to the capacity price, given that PJM maintains separate markets for capacity and energy (AEP-Ohio Ex. 102 at 13). AEP-Ohio witness Pearce, however, offers a recommendation for how an energy credit should be devised, if the Commission determines that an energy

that the pool agreement limits the gross margins retained by the Company. AEP-Ohio argues that Company witness Allen proposed a number of conservative adjustments that should, at a minimum, be made to Staff's approach, resulting in an energy credit of $47.46/MW-day (AEP-Ohio Ex. 142 at 4-14). AEP-Ohio adds that the documentation of EVA's approach is incomplete, inadequate, and cannot be sufficiently tested or validated; the data used in the model and the model itself cannot be reasonably verified; EVA's quality control measures are deficient; and the execution of EVA's analysis contains significant errors and has not been performed with requisite care (AEP-Ohio Ex. 144 at 13-18).

Additionally, AEP-Ohio points out that Staff's proposed energy credit wrongly incorporates OSS margins not related to capacity sales to CRES providers and also fails to properly reflect the impact of the pool agreement. Specifically, AEP-Ohio contends that, if an energy credit is adopted, it should reflect only the OSS margins attributable to energy that is freed up due to capacity sales to CRES providers. AEP-Ohio further notes that Staff inappropriately assumes that 100 percent of the margins associated with retail sales to SSO customers are available to be offset against the cost of capacity sold to CRES providers, which is inconsistent with the terms of the pool agreement, pursuant to which the Company's member load ratio share is 40 percent. AEP-Ohio believes that there is no reason to include margins associated with retail sales to SSO customers in an energy credit calculation intended to price capacity for shopping load. In accordance with Mr. Allen's recommendations, AEP-Ohio concludes that, if Staff's proposed energy credit is adopted by the Commission, it should be adjusted to $47.46/MW-day. Alternatively, AEP-Ohio notes that Mr. Allen's proposed adjustments (AEP-Ohio Ex. 142 at 14) to Staff's energy credit could be made individually or in combination to the extent that the Commission agrees with the basis for each adjustment. AEP-Ohio adds that Company witness Nelson also offered additional options for an energy credit calculation, with the various methods converging around $66/MW-day for the energy credit (AEP-Ohio Ex. 143 at 8, 12-13, 17). As a final option, AEP-Ohio states that the Commission could direct Staff to calculate an energy credit that is consistent with the forward prices recommended by Staff for use in the market rate option price comparison test in 11-346, which the Company believes would reduce Staff's energy credit by approximately $50/MW-day.

c) Intervenors

FES argues that AEP-Ohio's formula rate should include an offset for energy-related sales or else the Company would double recover its capacity costs. FES notes that an energy credit is appropriate because AEP-Ohio recovers a portion of its fixed costs through energy-related sales for resale, and is also necessary to avoid an above-market return on equity for the Company. (FES Ex. 103 at 45-46, 49-50.) FES adds that all of AEP-Ohio's OSS revenues should be included as a credit against capacity costs and that no adjustment should be made to account for the pool agreement, given that the pool agreement could have been modified to account for retail shopping, as well as that the Company proposes to recover its

Citing Sections 4928.141, 4928.38, and 4928.40, Revised Code, as well as AEP-Ohio's agreement to forgo recovery of generation transition revenues in its ETP case (Tr. I at 49-50; FES Ex. 106; FES Ex. 107), OMA and OHA likewise contend that Ohio law prohibits the Commission from establishing a state compensation mechanism that would authorize the receipt of transition revenues or any equivalent revenues by AEP-Ohio as a means to recover its above-market capacity costs.

Kroger argues that AEP-Ohio, through its requested compensation for its FRR capacity obligations, seeks recovery of stranded generation transition costs in this case. Kroger contends that such costs must be recovered in the market and that AEP-Ohio should not be permitted to renege on the stipulation in the ETP case. Dominion Retail likewise argues that AEP-Ohio should not be permitted to violate the terms of the ETP stipulation and recover stranded above-market generation investment costs after the statutory period for such recovery has expired. Dominion Retail believes that AEP-Ohio is effectively seeking a second transition plan in this case. IGS adds that the law is meaningless if utilities may continue to require all customers to pay embedded generation costs after the transition period has ended and that approval of AEP-Ohio's proposed capacity pricing mechanism would be contrary to the statutory requirements found in Sections 4928.38, 4928.39, and 4928.40, Revised Code.

b) AEP-Ohio

AEP-Ohio responds that neither the provisions of SB 3 nor the ETP stipulation are applicable to this case. AEP-Ohio notes that the purpose of this proceeding is to establish a wholesale capacity pricing mechanism based on the Company's embedded capacity costs, as opposed to the retail generation transition charges authorized by Section 4928.40, Revised Code, which is what the Company agreed to forgo during the market development period as part of the ETP stipulation. AEP-Ohio asserts that the issue of whether the Company could recover stranded asset value from retail customers under SB 3 is a separate matter from establishing a wholesale price that permits the Company's competitors to use that same capacity. AEP-Ohio adds that a conclusion that SB 3 precludes the Company from recovering its capacity costs through a wholesale rate would conflict with the RAA and be preempted under the FPA.

(iii) Should OEG's alternate proposal be adopted?

a) OEG

OEG recommends that AEP-Ohio's capacity pricing mechanism should be based on RPM prices. As an alternative recommendation, if the Commission determines that AEP-Ohio's capacity pricing should be higher than the prevailing RPM price, OEG suggests that the capacity price should be no higher than $145.79/MW-day, which was the RPM-based

prolonged litigation on an annual basis, and create substantial uncertainty for the Company and customers.

d. Conclusion

As discussed above, the Commission believes that AEP-Ohio's capacity costs, rather than RPM-based pricing, should form the basis of the state compensation mechanism established in this proceeding. Upon review of the considerable evidence in this proceeding, we find that the record supports compensation of $188.88/MW-day as an appropriate charge to enable AEP-Ohio to recover its capacity costs for its FRR obligations from CRES providers. We also find that, as a means to encourage the further development of retail competition in AEP-Ohio's service territory, the Company should modify its accounting procedures to defer the difference between the adjusted RPM rate currently in effect and AEP-Ohio's incurred capacity costs, to the extent that such costs do not exceed the capacity charge approved today. We believe that this approach successfully balances the Commission's objectives and the interests of the many parties to this proceeding.

The record reflects a range in AEP-Ohio's cost of capacity from a low of $78.53/MW-day, put forth by FES, to the Company's high of $355.72/MW-day, as a merged entity, with Staff and OEG offering recommendations more in the middle of the range (AEP-Ohio Ex. 102 at 21; FES Ex. 103 at 55; Staff Ex. 105 at Ex. ESM-4; OEG Ex. 102 at 10-11). The Commission finds that Staff's determination of AEP-Ohio's capacity costs is reasonable, supported by the evidence of record, and should be adopted as modified in this order. Initially, we note that no party other than AEP-Ohio appears to seriously challenge Staff's recommended cost-based capacity pricing mechanism in this case. Additionally, we do not believe that AEP-Ohio has demonstrated that its proposed charge of $355.72/MW-day falls within the zone of reasonableness, nor do we believe that FES' proposed charge of $78.53/MW-day would result in reasonable compensation for the Company's FRR capacity obligations.

The Commission believes that the approach used by Staff is an appropriate method for determining AEP-Ohio's capacity costs. In deriving its recommended charge, Staff followed its traditional process of making reasonable adjustments to AEP-Ohio's proposed capacity pricing mechanism, which is based on the capacity portion of a formula rate template approved by FERC for one of the Company's affiliates and was modified by the Company for use in this case with data from its FERC Form 1 (Staff Ex. 103 at 10-12; AEP-Ohio Ex. 102 at 8, 9). As AEP-Ohio notes, FERC-approved formula rates are routinely used by the Company's affiliates in other states (AEP-Ohio Ex. 102 at 8; Tr. II at 253). Given that compensation for AEP-Ohio's FRR capacity obligations from CRES providers is wholesale in nature, we find that AEP-Ohio's formula rate template is an appropriate starting point for determination of its capacity costs. From that starting point, Staff made a number of reasonable adjustments to AEP-Ohio's proposal in order to be consistent with the Commission's ratemaking practices. Staff further adjusted AEP-Ohio's proposed capacity

that EVA's calculation should have accounted for the Company's full requirements obligation to serve Wheeling Power Company, a point that Staff did not dispute in its briefs. As AEP-Ohio witness Allen testified, the Company's sales to Wheeling Power Company reduce the quantity of generation available for OSS and thus should have been reflected in EVA's calculation of OSS margins. (AEP-Ohio Ex. 142 at 10-11, Ex. WAA-R5). The result of this adjustment reduces Staff's recommended energy credit by $5/MW-day (AEP-Ohio Ex. 142 at 11, Ex. WAA-R5) to $147.41/MW-day. The overall effect of this adjustment, in combination with the adjustments for AEP-Ohio's prepaid pension asset, severance program costs, return on equity, and trapped costs, results in a capacity charge of $188.88/MW-day.

We note that a charge of $188.88/MW-day is fairly in line with OEG's alternate recommendation that the capacity charge not exceed $145.79/MW-day, which was the adjusted RPM rate in effect in the prior PJM delivery year that recently concluded (OEG Ex. 102 at 10-11). The close proximity of our approved charge with OEG's recommendation is further confirmation that the approved charge falls within the zone of reasonableness. Additionally, as OEG notes, a charge of $145.79/MW-day afforded AEP-Ohio an adequate return on equity. In 2011, AEP-Ohio earned a per books, unadjusted return of 10.21 percent, or an adjusted return of 11.42 percent after adjustments for plant impairment expense and certain non-recurring revenue (OEG Ex. 102 at 11, Ex. LK-3). At the same time, the capacity charge was not so high as to hinder retail competition in AEP-Ohio's service territory. In the first quarter of 2011, the RPM price was $220.96/MW-day and only 7.1 percent of AEP-Ohio's total load had switched to a CRES provider. However, by the end of the year, with a lower RPM price of $145.79/MW-day in effect, shopping had significantly increased in AEP-Ohio's service territory, with 19.10 percent of the Company's total load having elected to shop (specifically, 5.53 percent of the residential class, 33.88 percent of the commercial class, and 18.26 percent of the industrial class). (OEG Ex. 102 at 11.) We expect that the approved compensation of $188.88/MW-day for AEP-Ohio's FRR capacity obligations will likewise ensure that the Company earns an appropriate return on equity, as well as enable the further development of competition in the Company's service territory.

Although AEP-Ohio criticizes Staff's proposed capacity pricing mechanism for various reasons, the Commission finds that none of these arguments has merit. First, as a general matter, AEP-Ohio argues that Staff failed to follow FERC practices and precedent. We agree with Staff that FERC has different requirements for items such as CWC and CWIP than are found in Ohio. As Staff notes, the outcome of this case should not be dictated by FERC practices or precedent but should instead be consistent with Ohio ratemaking principles. Although FERC practices and precedent may be informative in some instances, the Commission is bound by Ohio law in establishing an appropriate state compensation mechanism. In response to AEP-Ohio's specific argument regarding the exclusion of CWIP, Staff explained that Section 4909.15(A)(1), Revised Codes, requires that construction projects

templates under which AEP-Ohio would calculate its capacity costs under Section D.8 of Schedule 8.1 of the RAA.

(3) By entry issued on December 8, 2010, the Commission initiated an investigation in the present case to determine the impact of AEP-Ohio's proposed change to its capacity charge.

(4) The following parties were granted intervention in this proceeding: OEG, IEU-Ohio, OCC, OPAE, OMA, OHA, Direct Energy, Constellation, FES, Duke, Exelon, IGS, RESA, Schools, OFBF, Kroger, NFIB, Dominion Retail, AICUO, Grove City, and OCMC.

(5) On September 7, 2011, the ESP 2 Stipulation was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in the consolidated cases, including the present case.

(6) On December 14, 2011, the Commission adopted the ESP 2 Stipulation with modifications.

(7) By entry on rehearing issued on February 23, 2012, the Commission revoked its prior approval of the ESP 2 Stipulation, finding that the signatory parties had not met their burden of demonstrating that the stipulation, as a package, benefits ratepayers and the public interest.

(8) By entry issued on March 7, 2012, the Commission approved, with modifications, AEP-Ohio's proposed interim capacity pricing mechanism.

(9) A prehearing conference occurred on April 11, 2012.

(10) A hearing commenced on April 17, 2012, and concluded on May 15, 2012. AEP-Ohio offered the direct testimony of five witnesses and the rebuttal testimony of three witnesses. Additionally, 17 witnesses testified on behalf of various intervenors and three witnesses testified on behalf of Staff.

(11) Initial briefs and reply briefs were filed on May 23, 2012, and May 30, 2012, respectively.

(12) By entry issued on May 30, 2012, the Commission approved an extension of AEP-Ohio's interim capacity pricing mechanism through July 2, 2012.

ORDERED, That a copy of this opinion and order 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 w/ concurrence

Cheryl L. Roberto

Lynn Slaby w/ concurrence

SJP/GNS/sc

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Barcy F. McNeal

Barcy F. McNeal
Secretary

the anticipated mechanism to be considered as part of Docket No. 11-346-EL-SSO to administer the deferral, we agree that it is equitable to tie the decision being made in this order to that in 11-346-EL-SSO. However, we caution that the balance is only achieved within an expeditious resolution of the 11-346-EL-SSO docket by August 8, 2012.

Andre T. Porter

Lynn Slaby

ATP/LS/sc

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Barcy F. McNeal

Barcy F. McNeal
Secretary

Load for Reliability.[3] Capacity Resources may even include a transmission upgrade.[4] The Fixed Resource Requirement is nothing more than an enforceable agreement that for a finite period one transmission user will demonstrate on behalf of other transmission users within a specified territory that sufficient Capacity Resources exist to meet all of their respective reliability needs. During this period, the transmission user offering to provide the Fixed Resource Requirement is the sole authorized means by which a transmission user who opts to use this service may demonstrate the adequacy of their Capacity Resources.[5] This demonstration is embodied in a Fixed Resource Requirement Capacity Plan that describes a portfolio of the generation, demand resources, energy efficiency, Interruptible Load for Reliability, and transmission upgrades it plans to use to meet the Capacity Resource requirements for the territory.[6] The Ohio Supreme Court has noted that regional transmission organizations, such as PJM, provide transmission services through FERC approved rates and tariffs.[7] Thus, the Fixed Resource Requirement is a commitment to provide a transmission service pursuant to the tariffs filed by PJM with FERC.

As established in this matter, AEP-Ohio has committed to provide the Fixed Resource Requirement for all transmission users offering electricity for sale to retail customers within the footprint of its system. No other entity may provide this service during the term of the current AEP-Ohio Fixed Resource Requirement Capacity Plan.

Commission Authority to Establish State Compensation Method for the Fixed Resource Requirement Service

Chapter 4928, Revised Code, defines "retail electric service" to mean any service involved in the supply or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption. For purposes of Chapter 4928, Revised Code, retail electric service includes, among other things, transmission service.[8] As discussed, *supra*, AEP-Ohio is the sole provider of the Fixed Resource Requirement service for other transmission users operating within its footprint until the expiration of its obligation on June 1, 2015. As such, this service is a "noncompetitive retail electric service" pursuant to Sections 4928.01(A)(21) and 4928.03, Revised Code. This Commission is empowered to set rates for noncompetitive retail electric services. While PJM could certainly propose a tariff for FERC adoption directing PJM to

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3 Reliability Assurance Agreement, Schedule 6, Procedures for Demand Resources, ILR, and Energy Efficiency.

4 Reliability Assurance Agreement, Schedule 8.1, Section D.6.

5 Reliability Assurance Agreement, Section 1.29 defines the Fixed Resource Requirement Capacity Plan to mean a long-term plan for the commitment of Capacity Resources to satisfy the capacity obligations of a Party that has elected the FRR Alternative, as more fully set forth in Schedule 8.1 to this Agreement.

6 Reliability Assurance Agreement, Section 7.4, Fixed Resource Requirement Alternative.

7 *Ohio Consumers' Counsel v. PUCO*, 111 Ohio St.3d. 384, 856 N.E.2d 940 (2006).

8 Section 4928.01(A)(27), Revised Code.

by AEP-Ohio to other transmission users but then to discount that rate such that the transmission users will never pay it. The difference between the authorized rate and that paid by the other transmission users will be booked for future payment not by the transmission users but by retail electricity customers. The stated purpose of this device is to promote competition.

As an initial matter, I am not convinced on the record before us that competition has suffered sufficiently or will suffer sufficiently during the remaining term of the Fixed Resource Requirement as the result of the state compensation method to warrant intervention in the market. If it did, the Commission could consider regulatory options such as shopping credits granted to the consumers to promote consumer entry into the market. With more buyers in the market, in theory, more sellers should enter and prices should fall. The method selected by the majority, however, attempts to entice more sellers to the market by offering a significant, no-strings-attached, unearned benefit. This policy choice operates on faith alone that sellers will compete at levels that drop energy prices while transferring the unearned discount to consumers. If the retail providers do not pass along the entirety of the discount, then consumers will certainly and inevitably pay twice for the discount today granted to the retail suppliers. To be clear, unless every retail provider disgorges 100 percent of the discount to consumers in the form of lower prices, shopping consumers will pay more for Fixed Resource Requirements service than the retail provider did. This represents the first payment by the consumer for the service. Then the deferral, with carrying costs, will come due and the consumer will pay for it all over again – plus interest.

I find that that the mechanism labeled a "deferral" in the majority opinion is an unnecessary, ineffective, and costly intervention into the market that I cannot support. Thus, I dissent from those portions of the majority opinion adopting this mechanism.

Cheryl L. Roberto

CLR/sc

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Barcy F. McNeal
Secretary

(3) By entry issued on December 8, 2010, in the above-captioned case, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charge (Initial Entry). Consequently, the Commission sought public comments regarding the following issues: (1) what changes to the current state compensation mechanism (SCM) were appropriate to determine AEP-Ohio's fixed resource requirement (FRR) capacity charge to Ohio competitive retail electric service (CRES) providers, which are referred to as alternative load serving entities within PJM; (2) the degree to which AEP-Ohio's capacity charge was currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charge upon CRES providers and retail competition in Ohio. Additionally, in light of the change proposed by AEP-Ohio, the Commission explicitly adopted as the SCM for the Company, during the pendency of the review, the current capacity charge established by the three-year capacity auction conducted by PJM based on its reliability pricing model (RPM).

(4) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

(5) On January 7, 2011, AEP-Ohio filed an application for rehearing of the Initial Entry. Memoranda contra AEP-Ohio's application for rehearing were filed by Industrial Energy Users-Ohio (IEU-Ohio); FirstEnergy Solutions Corp. (FES); Ohio Partners for Affordable Energy (OPAE)[3]; and Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (jointly, Constellation).

(6) On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.*, AEP-Ohio filed an application for a standard service offer

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3 On November 17, 2011, OPAE filed a notice of withdrawal from this case.

pending cases, including this proceeding, until the Commission specifically ordered otherwise. The evidentiary hearing on the ESP 2 Stipulation commenced on October 4, 2011, and concluded on October 27, 2011.

(10) On December 14, 2011, the Commission issued an opinion and order in the consolidated cases, modifying and adopting the ESP 2 Stipulation, including its two-tier capacity pricing mechanism (Initial ESP 2 Order). On January 23, 2012, the Commission issued an entry clarifying certain aspects of the Initial ESP 2 Order (Initial ESP 2 Clarification Entry). Subsequently, on February 23, 2012, the Commission issued an entry on rehearing in the consolidated cases, granting rehearing in part (Initial ESP 2 Entry on Rehearing). Finding that the signatory parties to the ESP 2 Stipulation had not met their burden of demonstrating that the stipulation, as a package, benefits ratepayers and the public interest, as required by the Commission's three-part test for the consideration of stipulations, the Commission rejected the ESP 2 Stipulation. The Commission directed AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its previous ESP, including an appropriate application of capacity charges under the approved SCM established in the present case.

(11) By entry issued on March 7, 2012, in the above-captioned case, the Commission implemented an interim capacity pricing mechanism proposed by AEP-Ohio in a motion for relief filed on February 27, 2012 (Interim Relief Entry). Specifically, the Commission approved a two-tier capacity pricing mechanism modeled after the one recommended in the ESP 2 Stipulation. Approval of the interim capacity pricing mechanism was subject to the clarifications contained in the Initial ESP 2 Clarification Entry issued in the consolidated cases, including the clarification to include mercantile customers as governmental aggregation customers eligible to receive capacity pricing based on PJM's RPM. Under the two-tier capacity pricing mechanism, the first 21 percent of each customer class was entitled to tier-one, RPM-based capacity pricing. All customers of governmental aggregations approved on or

$188.88/MW-day as the appropriate charge to enable AEP-Ohio to recover its capacity costs pursuant to its FRR obligations from CRES providers. However, the Commission also directed that AEP-Ohio's capacity charge to CRES providers should be the RPM-based rate, including final zonal adjustments, on the basis that the RPM-based rate will promote retail electric competition. The Commission authorized AEP-Ohio to modify its accounting procedures to defer the incurred capacity costs not recovered from CRES providers, with the recovery mechanism to be established in the ESP 2 Case.

(18) By entry on rehearing issued on July 11, 2012, the Commission granted rehearing of the Interim Relief Extension Entry for further consideration of the matters specified in the applications for rehearing filed by FES, IEU-Ohio, and OMA.

(19) On July 20, 2012, AEP-Ohio filed an application for rehearing of the Capacity Order. The Ohio Energy Group (OEG) filed an application for rehearing and a corrected application for rehearing of the Capacity Order on July 26, 2012, and July 27, 2012, respectively. On August 1, 2012, applications for rehearing of the Capacity Order were filed by IEU-Ohio; FES; Ohio Association of School Business Officials, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Schools Council (collectively, Schools); and the Ohio Consumers' Counsel (OCC). OMA and the Ohio Hospital Association (OHA) filed a joint application for rehearing on August 1, 2012. Memoranda contra the various applications for rehearing were filed by Duke Energy Retail Sales, LLC (Duke); IEU-Ohio; FES; Schools; OMA; OCC; OEG; AEP-Ohio; RESA; and Interstate Gas Supply, Inc. (IGS). Joint memoranda contra were filed by Constellation and Exelon Generation Company, LLC (Exelon)[6]; and by Direct Energy Services, LLC and Direct Energy Business, LLC (jointly, Direct Energy), along with RESA.

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6 The joint memorandum contra was also signed on behalf of Exelon Energy Company, Inc., which has not sought intervention in this proceeding. As a non-party, its participation in the joint memorandum contra was improper and, therefore, will not be afforded any weight by the Commission.

thoroughly and adequately considered by the Commission and are being denied.

Initial Entry

Jurisdiction and Preemption

(23) AEP-Ohio asserts that the Initial Entry is unreasonable and unlawful because the Commission, as a creature of statute, lacks jurisdiction under both federal and state law to issue an order that affects wholesale rates regulated by FERC. According to AEP-Ohio, the provision of generation capacity to CRES providers is a wholesale transaction that falls within the exclusive ratemaking jurisdiction of FERC. AEP-Ohio adds that no provision of Title 49, Revised Code, authorizes the Commission to establish wholesale prices for the Company's provision of capacity to CRES providers. Additionally, AEP-Ohio believes that Section D.8 of Schedule 8.1 of the RAA does not allow the Commission to adopt RPM-based capacity pricing as the SCM. AEP-Ohio argues that RPM-based capacity pricing, as the default option, is an available pricing option only if there is no SCM.

(24) On a related note, AEP-Ohio also contends that the portions of the Initial Entry relating to the establishment of an SCM are in direct conflict with, and preempted by, federal law. AEP-Ohio notes that Section D.8 of Schedule 8.1 of the RAA is a provision of a FERC-approved tariff that is subject to FERC's exclusive jurisdiction. AEP-Ohio further notes that the provision of capacity service to CRES providers is a wholesale transaction that falls exclusively within FERC's jurisdiction. Accordingly, AEP-Ohio argues that the Commission's initiation of this proceeding was an attempt to delay or derail FERC's review of the Company's FERC filing and to usurp FERC's role in resolving this matter, and that the Commission has acted without regard for the supremacy of federal law.

(25) In its memorandum contra, IEU-Ohio contends that the Commission has not exercised jurisdiction over any subject that is within FERC's exclusive jurisdiction. According to IEU-Ohio, because AEP-Ohio's POLR charge was proposed

4905.26, Revised Code, as well as with our authority under Sections 4905.04, 4905.05, and 4905.06, Revised Code.

The Commission disagrees with AEP-Ohio that we have acted in an area that is reserved exclusively to FERC or that our actions are preempted by federal law. Although wholesale transactions are generally subject to the exclusive jurisdiction of FERC, the Commission exercised jurisdiction in this case for the sole purpose of establishing an appropriate SCM upon review of AEP-Ohio's proposed capacity charge. In doing so, the Commission acted consistent with the governing section of the RAA, which, as a part of PJM's tariffs, has been approved by FERC. Section D.8 of Schedule 8.1 of the RAA acknowledges the authority of the Commission to establish an SCM that, once established, prevails over the other compensation methods addressed in that section. In fact, following issuance of the Initial Entry, FERC rejected AEPSC's proposed formula rate in light of the fact that the Commission had established the SCM.[9] Therefore, we do not agree that we have intruded upon FERC's domain.

Provider of Last Resort (POLR) Charge

(28) AEP-Ohio contends that the Initial Entry is unlawful and unreasonable in finding that the POLR charge approved in the ESP 1 Order reflected the Company's cost of supplying capacity for retail loads served by CRES providers and that the POLR charge was based upon the continued use of RPM pricing to set the capacity charge for CRES providers. AEP-Ohio notes that the POLR charge related to an entirely different service and was based on an entirely different set of costs than the capacity rates provided for under Section D.8 of Schedule 8.1 of the RAA. Specifically, AEP-Ohio points out that the POLR charge was based on the right of retail customers to switch to a CRES provider and subsequently return to the Company for generation service under SSO rates, whereas the capacity charge compensates the Company for its wholesale FRR capacity obligations to CRES providers that serve shopping customers. AEP-Ohio argues that its retail POLR charge was not the SCM

9 *American Electric Power Service Corporation*, 134 FERC ¶ 61,039 (2011).

part, to recover capacity costs associated with customer shopping. Accordingly, we find that AEP-Ohio's request for rehearing should be denied.

Due Process

(31) AEP-Ohio argues that the Initial Entry was issued in a manner that denied the Company due process and violated various statutes, including Sections 4903.09, 4905.26, and 4909.16, Revised Code. AEP-Ohio notes that, absent an emergency situation under Section 4909.16, Revised Code, the Commission must provide notice and a hearing before setting a rate. AEP-Ohio argues that there is no emergency in the present case and that the Commission was, therefore, required to provide notice and a hearing pursuant to the procedural requirements of Section 4905.26, Revised Code, prior to imposing a capacity pricing mechanism that is different from the mechanism proposed by the Company in its FERC filing. Additionally, AEP-Ohio argues that the Initial Entry was issued in the absence of any record and that it provides little explanation as to how the Commission arrived at its decision to establish a capacity rate, contrary to Section 4903.09, Revised Code.

(32) IEU-Ohio responds that the Initial Entry did not establish or alter any of AEP-Ohio's rates or charges and that the entry merely confirmed what the Commission had previously determined.

(33) The Commission finds no merit in AEP-Ohio's due process claims. The Initial Entry upheld a charge that had been previously established in the ESP 1 Order. The Initial Entry did not institute or even modify AEP-Ohio's capacity charge, which was based on RPM pricing both before and after issuance of the entry. The purpose of the Initial Entry was to expressly establish the SCM and maintain RPM pricing as the basis for the SCM during the pendency of the review of AEP-Ohio's proposed change to its capacity charge. Additionally, we find that the rationale behind the Initial Entry was sufficiently explained, consistent with the requirements of Section 4903.09, Revised Code. The Commission clearly indicated that it was necessary to explicitly establish the SCM based on RPM capacity pricing

Process

(36) FES and IEU-Ohio contend that the Interim Relief Entry is unreasonable, unlawful, and procedurally defective because it effectively allowed AEP-Ohio to avoid the statutory procedures to seek the relief granted by the entry.[13] FES and IEU-Ohio argue that there is no remedy or procedure to seek relief from a Commission order other than to file an application for rehearing pursuant to Section 4903.10, Revised Code, and that the Commission, in granting AEP-Ohio's motion for relief, allowed the Company to bypass the rehearing process. IEU-Ohio adds that the Commission abrogated its prior order directing the Company to implement RPM-based capacity pricing upon rejection of the ESP 2 Stipulation, without determining that the prior order was unjust or unwarranted.

(37) IEU-Ohio also asserts that the Interim Relief Entry is unlawful and unreasonable because the Commission failed to comply with the emergency rate relief provisions found in Section 4909.16, Revised Code. IEU-Ohio adds that AEP-Ohio has not invoked the Commission's emergency authority pursuant to that statute and, in any event, the Company failed to present a case supporting emergency rate relief.

(38) AEP-Ohio responds that its motion for relief did not seek to revise the Initial ESP 2 Entry on Rehearing, which rejected the ESP 2 Stipulation. Rather, AEP-Ohio submits that the motion was filed, pursuant to Rule 4901-1-12, O.A.C., for the purpose of seeking interim relief during the pendency of the ESP 2 Case and the present proceedings. AEP-Ohio adds that the motion for relief was properly granted based on the evidence and that arguments to the contrary have already been considered and rejected by the Commission.

(39) The Commission finds that no new arguments have been raised regarding the process by which AEP-Ohio sought, and the Commission granted, interim relief. Although we recognized in the Interim Relief Entry that AEP-Ohio may

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[13] IEU-Ohio joins in the application for rehearing filed by FES, in addition to raising its own assignments of error.

justified. Further, IEU-Ohio contends that the Commission unreasonably relied on evidence supporting the ESP 2 Stipulation, given that the Commission rejected the stipulation and elected instead to restart this proceeding. Finally, regarding the Commission's reasoning that AEP-Ohio must share off-system sales (OSS) revenues with its affiliates pursuant to the AEP East Interconnection Agreement (pool agreement), IEU-Ohio notes that there is no evidence addressing any shortfall that may occur.

(44) AEP-Ohio contends that its motion for relief was properly made and properly granted by the Commission based on probative evidence in the record. According to AEP-Ohio, the Commission recognized that the Company's ability to mitigate capacity costs with off-system energy sales is limited. AEP-Ohio adds that the Commission's eventual determination that the Company may not assess a POLR charge does not contradict the fact that the Commission initially relied upon the Company's POLR charge in setting RPM-based capacity pricing as the SCM in the Initial Entry.

(45) IEU-Ohio also argues that the Interim Relief Entry is unlawful and unreasonable because the rate increase is not based on any economic justification as required by Commission precedent. According to IEU-Ohio, the Commission stated, in the ESP 1 Order, that AEP-Ohio must demonstrate the economic basis for a rate increase in the context of a full rate review. IEU-Ohio argues that, contrary to this precedent, AEP-Ohio made no showing, and the Commission made no finding, that the Company was suffering an economic shortfall.

(46) The Commission again rejects claims that the relief granted in the Interim Relief Entry was not based on record evidence. The present case was consolidated with the ESP 2 Case and the other consolidated cases for the purpose of considering the ESP 2 Stipulation. As we noted in the Interim Relief Entry, the testimony and exhibits admitted into the record for that purpose remain a part of the record in this proceeding. Although the Commission subsequently rejected the ESP 2 Stipulation, that action did not purge the evidence from the record in this case. It was thus appropriate for the Commission to rely upon that

Order that AEP-Ohio must demonstrate the economic basis for a rate increase in the context of a full rate review.[16]

In light of the evidence discussed above, the Commission reasonably concluded that an SCM based on the current RPM pricing could risk an unjust and unreasonable result for AEP-Ohio. We determined that the two-tier capacity pricing mechanism, as proposed by AEP-Ohio and modified by the Commission, should be approved on an interim basis, with the first tier based on RPM pricing, and the second tier fixed at $255/MW-day, representing a reasonable charge in the mid portion of the range reflected in the record. Upon review of the arguments raised on rehearing, we continue to believe that our rationale for granting AEP-Ohio's interim relief was thoroughly explained, warranted under the unique circumstances, and supported by the evidence of record in the consolidated cases. Accordingly, FES' and IEU-Ohio's requests for rehearing should be denied.

Discriminatory Pricing

(47) FES argues that the Interim Relief Entry established an interim SCM that imposed on certain customers a capacity price that was two times more than other customers paid, contrary to the Commission's duty to ensure nondiscriminatory pricing and an effective competitive market, and in violation of Sections 4905.33, 4905.35, 4928.02, and 4928.17, Revised Code.

(48) Similarly, IEU-Ohio contends that the Interim Relief Entry is unlawful because the resulting rates were unduly discriminatory and not comparable. IEU-Ohio notes that the interim SCM authorized two different capacity rates without any demonstration that the difference was justified. IEU-Ohio adds that there has been no showing that the capacity rates for CRES providers were comparable to the capacity costs paid by SSO customers.

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16 *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, *et al.*, Entry on Rehearing (December 14, 2011), at 5-6.

defined by Section 4928.01(A)(27), Revised Code. The capacity service in question is not provided directly by AEP-Ohio to retail customers, but is rather a wholesale transaction between the Company and CRES providers. Because AEP-Ohio's capacity costs are not directly assignable or allocable to retail electric generation service, they are not transition costs by definition. IEU-Ohio's assignment of error should be denied.

Allocation of RPM-Based Capacity Pricing

(53) RESA requests that the Commission grant rehearing for the purpose of clarifying that the Interim Relief Entry did not authorize AEP-Ohio to revoke RPM-based capacity pricing to any customer who received such pricing pursuant to the Commission's approval of the ESP 2 Stipulation. RESA asserts that, in order to maintain the status quo, commercial customers that have been receiving RPM-based capacity pricing should have continued to receive such pricing. According to RESA, the Interim Relief Entry did not direct AEP-Ohio to decrease the number of commercial customers that were receiving RPM-based capacity pricing. RESA notes that the Interim Relief Entry states that the first 21 percent of each class shall receive RPM-based capacity pricing, but it did not require that only 21 percent can receive such pricing.

RESA argues that it would be unjust and unreasonable to charge customers that were shopping and receiving RPM-based capacity pricing prior to the Commission's rejection of the ESP 2 Stipulation, and while the ESP 2 Stipulation was in place, the tier-two price for capacity. RESA also argues that it is unjust and unreasonable to decrease the amount of RPM-based capacity pricing for the commercial class from the level authorized in the Initial ESP 2 Order, in light of the fact that the Commission ordered an expansion of RPM-based capacity pricing for governmental aggregation. RESA concludes that the Commission should clarify that any customer that began shopping prior to September 7, 2012, and received RPM-based capacity pricing shall be charged such pricing during the period covered by the Interim Relief Entry.

to another. AEP-Ohio argues that RESA has misconstrued the Interim Relief Entry in representing the 21 percent as a minimum, not a maximum.

(56) Initially, the Commission disagrees with AEP-Ohio's argument that RESA's and FES' applications for rehearing of the Interim Relief Entry are essentially untimely applications for rehearing of the Initial ESP 2 Clarification Entry. Although the Interim Relief Entry was subject to the clarifications in the Initial ESP 2 Clarification Entry, the entries are otherwise entirely distinct and were issued for different purposes. Whereas the Initial ESP 2 Clarification Entry was issued to clarify the terms of our approval of the ESP 2 Stipulation, the Interim Relief Entry was issued to approve an interim SCM in light of our subsequent rejection of the ESP 2 Stipulation. We find that the applications for rehearing of RESA and FES were appropriate under the circumstances.

Further, the Commission clarifies that all customers that were shopping as of September 7, 2011, should have continued to receive RPM-based capacity pricing during the period in which the interim SCM was in effect. Pursuant to the terms of the ESP 2 Stipulation as approved by the Commission in the Initial ESP 2 Order, customers that were taking generation service from a CRES provider as of the date of the ESP 2 Stipulation (*i.e.*, September 7, 2011) were to continue to be served under the RPM rate applicable for the remainder of the contract term, including renewals.[18] In the Initial ESP 2 Clarification Entry, the Commission confirmed that it had modified the ESP 2 Stipulation to prohibit the allocation of RPM-based capacity pricing from one customer class to another and that this modification dated back to the initial allocation among the customer classes based on the September 7, 2011, data. This clarification was not intended to adversely impact customers already shopping as of September 7, 2011. Likewise, the Interim Relief Entry, which was subject to the clarifications in the Initial ESP 2 Clarification Entry, was not intended to discontinue RPM-based capacity

18 Initial ESP 2 Order at 25, 54.

capacity pricing, despite its earlier determination that the interim rates should only remain in effect though May 31, 2012. FES contends that the Commission relied on traditional cost-of-service concepts that have no relevance in this proceeding.

(58) OMA argues that the Commission's approval of AEP-Ohio's proposal to increase and extend the Company's interim capacity pricing is not supported by record evidence. OMA adds that a majority of the Commission was unable to agree on a rationale for granting the extension. OMA concludes that the Commission should reverse its decision to grant the extension or, in the alternative, retain the interim capacity pricing adopted in the Interim Relief Entry.

(59) AEP-Ohio responds that the majority of the arguments raised by FES and OMA have already been considered and rejected by the Commission on numerous occasions during the course of the proceeding and should again be rejected. Regarding the remaining arguments, AEP-Ohio notes that the Commission thoroughly addressed all of the arguments that were raised in response to the Company's motion for extension.

(60) As discussed above, the Commission finds that we thoroughly explained the basis for our decision to grant interim relief and approve an interim capacity pricing mechanism as compensation for AEP-Ohio's FRR obligations. In granting an extension of the interim relief, the Commission found that the same rationale continued to apply. In the Interim Relief Extension Entry, we explained that, because the circumstances prompting us to grant the interim relief had not changed, it was appropriate to continue the interim relief, in its current form, for an additional period while the case remained pending. The Commission also specifically noted that various factors had prolonged the course of the proceeding and delayed a final resolution, despite the Commission's considerable efforts to maintain an expeditious schedule. We uphold our belief that it was reasonable and appropriate to extend the interim capacity pricing mechanism under these circumstances. Therefore, rehearing should be denied.

Ohio took full advantage of its opportunities and, accordingly, its request for rehearing should be denied.

Requests for Escrow Account or Refund

(65) OMA asserts that the Interim Relief Extension Entry undermined customer expectations and substantially harmed Ohio manufacturers and other customers. OMA notes that, as a result of the Interim Relief Extension Entry, all customers, including customers in tier one, were required to pay capacity rates that were substantially higher than the current RPM-based capacity price, contrary to their reasonable expectations, and to the detriment of their business arrangements and the competitive market. OMA adds that the Commission failed to consider its recommendation that AEP-Ohio deposit the difference between the two-tiered interim relief and the RPM-based capacity price in an escrow account.

(66) IEU-Ohio asserts that the Commission should direct AEP-Ohio to refund all revenue collected above RPM-based capacity pricing, or at least to credit the excess collection against regulatory asset balances otherwise eligible for amortization through retail rates and charges.

(67) In response to IEU-Ohio, AEP-Ohio asserts that many of IEU-Ohio's arguments are irrelevant to the Interim Relief Extension Entry and thus inappropriate for an application for rehearing. Further, AEP-Ohio disagrees with OMA that there is no evidence that the Company would suffer harm from RPM-based capacity pricing. AEP-Ohio also contends that neither customers nor CRES providers can claim a continuing expectation of such pricing or rely upon the now rejected ESP 2 Stipulation.

(68) For the reasons previously discussed, the Commission finds that the brief extension of the interim capacity pricing mechanism, without modification, was reasonable under the circumstances. Accordingly, we do not believe that IEU-Ohio's request for a refund of any amount in excess of RPM-based capacity pricing and OMA's request that an escrow account be established are necessary or appropriate. Further, if intervenors believed that extraordinary relief

capacity service is limited to effectuating the state's energy policy found in Section 4928.02, Revised Code.

(71) In the Capacity Order, the Commission determined that it has authority pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code, to establish the SCM. We determined that AEP-Ohio's provision of capacity to CRES providers is appropriately characterized as a wholesale transaction rather than a retail electric service. We noted that, although wholesale transactions are generally subject to the exclusive jurisdiction of FERC, our exercise of jurisdiction in this case was for the sole purpose of establishing an appropriate SCM and is consistent with Section D.8 of Schedule 8.1 of the FERC-approved RAA. Additionally, we noted that FERC had rejected AEPSC's proposed formula rate in light of the fact that the Commission had established an SCM in the Initial Entry.[19] The Commission further determined, within its discretion, that it was necessary and appropriate to establish a cost-based SCM for AEP-Ohio, pursuant to our regulatory authority under Chapter 4905, Revised Code, as well as Chapter 4909, Revised Code, which authorized the Commission to use its traditional regulatory authority to approve rates that are based on cost, such that the resulting rates are just and reasonable, in accordance with Section 4905.22, Revised Code. Because the capacity service at issue is a wholesale rather than retail electric service, we found that, although market-based pricing is contemplated in Chapter 4928, Revised Code, that chapter pertains solely to retail electric service and is thus inapplicable under the circumstances. The Commission concluded that we have an obligation under traditional rate regulation to ensure that the jurisdictional utilities receive just and reasonable compensation for the services that they render. However, rehearing is granted to clarify that the Commission is under no obligation with regard to the specific mechanism used to address capacity costs. Such costs may be addressed through an SCM that is specifically crafted to meet the stated needs of a particular utility or through a rider or other mechanism.

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19 *American Electric Power Service Corporation*, 134 FERC ¶ 61,039 (2011).

pricing is reasonable and lawful and should be reinstated as the SCM. AEP-Ohio replies that the arguments raised by OCC and the Schools are unsupported and have already been considered and rejected by the Commission. AEP-Ohio notes that the Commission determined that it has the authority to establish an SCM based on the costs associated with the Company's FRR capacity obligations.

(73) FES contends that the Capacity Order unlawfully and unreasonably established an SCM based on embedded costs. Specifically, FES argues that, pursuant to the language and purpose of the RAA, the only costs that can possibly be considered for pricing capacity in PJM are avoidable, not embedded, costs and that AEP-Ohio's avoidable costs would be fully recovered using RPM-based pricing. FES asserts that AEP-Ohio's FRR capacity obligations are not defined by the cost of its fixed generation assets but are instead valued based on PJM's reliability requirements. FES believes that the Capacity Order provides a competitive advantage to AEP-Ohio in that the Company will be the only capacity supplier in PJM that is guaranteed to recover its full embedded costs for generation. FES notes that AEP-Ohio's status as an FRR Entity does not justify different treatment, as there is no material difference between the FRR election and participation in PJM's base residual auction.

(74) AEP-Ohio argues that the Commission appropriately determined that cost, as the term is used in Section D.8 of Schedule 8.1 of the RAA, refers to embedded cost. AEP-Ohio notes that no reference to avoided cost is contained within Section D.8 of Schedule 8.1 of the RAA and that, as a participant in the drafting of the RAA, the Company understood that the reference to cost was intended to mean embedded cost. AEP-Ohio contends that, because avoided costs are bid into the RPM's base residual auction, FES' argument renders the option to establish a cost-based capacity rate under Section D.8 of Schedule 8.1 of the RAA meaningless.

(75) Like FES, IEU-Ohio argues that the Capacity Order is in conflict with the RAA for numerous reasons, including that the order does not account for Delaware law; ignores the

suppliers in PJM. The Commission initiated this proceeding solely to review AEP-Ohio's capacity costs and determine an appropriate capacity charge for its FRR obligations. We have not considered the costs of any other capacity supplier subject to our jurisdiction nor do we find it appropriate to do so in this proceeding. Further, the Commission does not agree that the SCM that we have adopted is inconsistent with the RAA. Section D.8 of Schedule 8.1 of the RAA provides only that, where the state regulatory jurisdiction requires that the FRR Entity be compensated for its FRR capacity obligations, such SCM will prevail. There are no requirements or limitations for the SCM in that section or elsewhere in the RAA. Although Section D.8 of Schedule 8.1 of the RAA specifically contemplates that an SCM may be established by the state regulatory jurisdiction, neither that section nor any other addresses whether the SCM may provide for the recovery of embedded costs, nor would we expect it to do so, given that the FRR Entity's compensation is to be provided by way of a state mechanism. The Commission finds that we appropriately adopted an SCM that is consistent with Section D.8 of Schedule 8.1 of the RAA and state law and that nothing in the Capacity Order is otherwise contrary to the RAA.

Energy Credit

(78) AEP-Ohio raises numerous issues with respect to the energy credit recommended by Staff's consultant in this case, Energy Ventures Analysis, Inc. (EVA), which was adopted by the Commission in the Capacity Order. In its first assignment of error, AEP-Ohio contends that the Commission's adoption of an energy credit of $147.41/MW-day was flawed, given that EVA assumed a static shopping level of 26.1 percent throughout the relevant timeframe. AEP-Ohio notes that, according to Staff's own witness, the energy credit should be lower based upon the established shopping level of thirty percent as of April 30, 2012. AEP-Ohio adds that the energy credit should be substantially lower based upon the increased levels of shopping that will occur with RPM-based capacity pricing. AEP-Ohio believes that there is an inconsistency

traditional OSS margins and otherwise failed to properly reflect the impact of the pool agreement; and EVA's estimate of gross margins that AEP-Ohio will earn from June 2012 through May 2015 are overstated by nearly 200 percent. AEP-Ohio argues that, at a minimum, the Commission should conduct an evidentiary hearing on rehearing to evaluate the accuracy of EVA's energy credit compared to actual results. In support of its request, AEP-Ohio proffers that EVA's forecasted energy margins for June 2012 were more than three times higher than the Company's actual margins, resulting in an energy credit that is overstated by $91.52/MW-day, and that provisional data for July 2012 confirms a similar degree of error in EVA's projections.

AEP-Ohio also points out that Staff admitted to significant, inadvertent errors in Staff witness Harter's testimony regarding calculation of the energy credit and that Staff was granted additional time to present the supplemental testimony of Staff witness Medine in an attempt to correct the errors. AEP-Ohio notes that Staff presented three different versions of EVA's calculation of the energy credit, which was revised twice in order to address errors in the calculation. AEP-Ohio asserts that the Commission nevertheless adopted EVA's energy credit without mention of these procedural irregularities. In any event, AEP-Ohio believes that Ms. Medine's testimony only partially and superficially addressed Mr. Harter's errors. According to AEP-Ohio, the Commission should grant the Company's application for rehearing and address the remaining fundamental deficiencies in EVA's methodology in order to avoid a reversal and remand from the Ohio Supreme Court.

(81) FES responds that the Commission already considered and rejected each of AEP-Ohio's arguments. FES adds that there are flaws in the energy credit calculated by AEP-Ohio's own witness and that the Company's criticisms of EVA's approach lack merit.

(82) The Commission finds that AEP-Ohio's assignments of error regarding the energy credit should be denied. First, with respect to EVA's shopping assumption, we find

would result in an outcome more to its liking is not a sufficient ground for rehearing. Neither do we find any relevance in AEP-Ohio's claimed procedural irregularities with respect to EVA's testimony. Essentially, the Commission was presented with two different methodologies for calculating the energy credit, both of which were questioned and criticized by the parties. Overall, the Commission believes that EVA's approach is the more reasonable of the two in projecting AEP-Ohio's future energy margins and that it will best ensure that the Company does not over recover its capacity costs.

Authorized Compensation

(83) OCC argues that the Commission erred in finding that compensation of $188.88/MW-day is an appropriate charge to enable AEP-Ohio to recover its capacity costs for its FRR obligations from CRES providers. OCC notes that there is no evidence to support the Commission's finding, given that no party recommended a charge of $188.88/MW-day. OCC further notes that the Commission adopted AEP-Ohio's unsupported return on equity (ROE), without explanation, in violation of Section 4903.09, Revised Code.

(84) In response to OCC, as well as similar arguments from OMA and OHA, AEP-Ohio asserts that the ROE approved by the Commission is supported by relevant and competent evidence and that the ROE is appropriate for the increased risk associated with generation service. Given the considerable evidence in the record, AEP-Ohio contends that the rationale for the Commission's rejection of Staff's proposed downward adjustment to the Company's proposed ROE is evident.

(85) In the Capacity Order, the Commission explained thoroughly based on the evidence in the record how it determined that $188.88/MW-day is an appropriate capacity charge for AEP-Ohio's FRR obligations. We also explained that we declined to adopt Staff's recommended ROE, given that it was solely based on a stipulated ROE from an unrelated case, and concluded that the ROE proposed by AEP-Ohio was reasonable under the

based capacity rate that the Commission determined was just and reasonable.

(88) In its memorandum contra, IEU-Ohio argues that AEP-Ohio assumes that the Commission may act beyond its statutory jurisdiction to set generation rates and that the Commission may unlawfully authorize the Company to collect transition revenue. IEU-Ohio adds that customer choice will be frustrated if the Commission grants the relief requested by AEP-Ohio in its application for rehearing.

(89) The Schools respond that AEP-Ohio should not complain that the Commission lacks authority to order a deferral, given that the Company has refused to accept the ratemaking formula and related process contained in Sections 4909.15, 4909.18, and 4909.19, Revised Code. The Schools add, however, that the Commission has wide discretion to issue accounting orders under Section 4905.13, Revised Code, in cases where the Commission is not setting rates pursuant to Section 4909.15, Revised Code.

(90) RESA and Direct Energy argue that the Commission's approach is consistent with Ohio's energy policy, supported by the record, and reasonable and lawful. RESA and Direct Energy believe that the Commission pragmatically balanced the various competing interests of the parties in establishing a just and reasonable SCM.

(91) Noting that nothing prohibits the Commission from bifurcating the means of recovery of a just and reasonable rate, Duke replies that AEP-Ohio's argument is not well founded, given that the Company will be made whole through the deferral mechanism to be established in the ESP 2 Case.

(92) In the Capacity Order, the Commission authorized AEP-Ohio to modify its accounting procedures to defer the incurred capacity costs not recovered from CRES providers and indicated that a recovery mechanism for the deferred capacity costs would be established in the ESP 2 Case. We find nothing unlawful or unreasonable in this approach. We continue to believe that it appropriately balances our objectives of enabling AEP-Ohio to fully recover its

(95) As the Commission thoroughly addressed in the Capacity Order, we believe that a capacity charge assessed to CRES providers on the basis of RPM pricing will advance the development of true competition in AEP-Ohio's service territory. We do not agree with AEP-Ohio that there is anything artificial in charging CRES providers the same market-based pricing that is used throughout PJM. Lacking any merit, AEP-Ohio's assignment of error should be denied.

Existing Contracts

(96) AEP-Ohio argues that it was unreasonable and unlawful, as well as unnecessary, for the Commission to extend RPM-based pricing to customers that switched to a CRES provider at a capacity price of $255/MW-day. AEP-Ohio asserts that CRES providers will enjoy a significant windfall to the Company's financial detriment. According to AEP-Ohio, the Capacity Order should not apply to existing contracts with a capacity price of $255/MW-day.

(97) Duke responds that AEP-Ohio offers no evidence that these contracts prohibit renegotiation of pricing for generation supply. IEU-Ohio asserts that AEP-Ohio's argument must be rejected because the Company may not charge a rate that has not been authorized by the Commission, and the Company has not demonstrated that it has any valid basis to charge $255/MW-day for capacity supplied to CRES providers. IEU-Ohio adds that there is likewise no basis to conclude that CRES providers will enjoy a windfall, given the fact that the Commission earlier indicated that RPM-based capacity pricing would be restored and such pricing comprised the first tier of the interim capacity pricing mechanism. FES also contends that there is no justification for discriminating against customers formerly charged $255/MW-day for capacity by requiring them to continue to pay above-market rates. RESA and Direct Energy add that customers that were charged $255/MW-day elected to shop with the expectation that they would eventually be charged RPM-based capacity pricing. OMA agrees that customers had a reasonable expectation of RPM-based capacity pricing, regardless of when they elected to shop.

FES contends that, if the Commission has the authority to create a cost-based SCM, then it also has the authority to follow the express guidance of Chapter 4928, Revised Code, and encourage competition through the use of market pricing. RESA and Direct Energy note that Section 4928.02, Revised Code, contains the state's energy policy, parts of which are not limited to retail electric services. RESA and Direct Energy contend that the Capacity Order is consistent with Section 4928.02(C), Revised Code, which requires a diversity of electricity supplies and suppliers.

(102) Initially, the Commission notes that, although we determined that Chapter 4928, Revised Code, has no application in terms of the Commission's authority to establish the SCM, we have made it clear from the outset that one of the objectives in this proceeding was to determine the impact of AEP-Ohio's capacity charge on CRES providers and retail competition in Ohio. The Commission cannot accomplish that objective without reference to the state policy found in Section 4928.02, Revised Code. Further, as the Commission stated in the Capacity Order, we believe that RPM-based capacity pricing is a reasonable means to promote retail competition, consistent with the state policy objectives enumerated in Section 4928.02, Revised Code. We do not agree with IEU-Ohio that the deferral of a portion of AEP-Ohio's capacity costs is contrary to any of the state policy objectives identified in that section. The assignments of error raised by AEP-Ohio and IEU-Ohio should be denied.

Evidentiary Record and Basis for Commission's Decision

(103) OCC contends that there is no evidence in the record that supports or even addresses a deferral of capacity costs and that the Commission, therefore, did not base its decision on facts in the record, contrary to Section 4903.09, Revised Code. OCC also asserts that the Commission erred in authorizing carrying charges based on the weighted average cost of capital (WACC) until such time as a recovery mechanism was approved in the ESP 2 Case.

AEP-Ohio notes, OCC's argument is moot. Because the SCM took effect on the same date on which the deferral recovery mechanism was approved in the ESP 2 Case, there was no period in which the WACC rate applied. Accordingly, OCC's and IEU-Ohio's assignments of error should be denied.

Recovery of Deferred Capacity Costs

(107) OCC argues that the Commission erred in allowing wholesale capacity costs, which should be the responsibility of CRES providers, to be deferred for potential collection from customers through the Company's rates for retail electric service established as part of its ESP. OCC asserts that the Commission has no jurisdiction to authorize AEP-Ohio to collect wholesale costs for capacity service from retail SSO customers. OCC contends that nothing in either Chapter 4905 or 4909, Revised Code, enables the Commission to authorize a deferral of wholesale capacity costs that are to be recovered by AEP-Ohio through an ESP approved for retail electric service pursuant to Section 4928.143, Revised Code.

(108) IGS responds that OCC's argument should be addressed in the ESP 2 Case, which IGS believes is the appropriate venue in which to determine whether the deferred capacity costs may be collected through an ESP.

(109) OEG argues that the Commission has no legal authority to order future retail customers to repay the wholesale capacity cost obligations that unregulated CRES providers owe to AEP-Ohio. OMA and OHA agree with OEG that the Commission has neither general ratemaking authority nor any specific statutory authority that applies under the circumstances to order the deferral of costs that the utility is authorized to recover, and that retail customers may not lawfully be required to pay the wholesale costs owed by

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Power Company for Authority to Modify Their Accounting Procedure for Certain Storm-Related Services Restoration Costs, Case No. 08-1301-EL-AAM, Finding and Order (December 19, 2008); *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Section 4928.144, Ohio Revised Code*, Case No. 11-4920-EL-RDR, *et al.*, Finding and Order (August 1, 2012).

from the provided capacity, which was developed or obtained years ago for all connected load based on the Company's FRR obligations. AEP-Ohio argues that, if the Commission does not permit recovery of the deferred capacity costs from retail customers, the deferred amount should be recovered from CRES providers. AEP-Ohio also requests that the Commission create a backstop remedy to ensure that the full deferred amount is collected from CRES providers, in the event the Company is not able to recover the deferred costs from retail customers as a result of an appeal.

In response to arguments that the Commission lacks statutory authority to approve the deferral, AEP-Ohio asserts, as an initial matter, that such arguments should be raised in the ESP 2 Case, because recovery of the deferral is to be addressed in those proceedings. AEP-Ohio adds that the Commission explained in the Capacity Order that it may authorize an accounting deferral, pursuant to Section 4905.13, Revised Code, and also noted, in the ESP 2 Case, that it may order a just and reasonable phase-in, pursuant to Section 4928.144, Revised Code, for rates established under Section 4928.141, 4928.142, or 4928.143, Revised Code.

(111) FES responds to OEG that the only amount that AEP-Ohio can charge CRES providers for capacity is the RPM-based price and that the deferral does not reflect any cost obligation on the part of CRES providers. FES adds that the deferral authorized by the Commission is an above-market subsidy intended to provide financial benefits to AEP-Ohio and that should thus be paid for by all of the Company's customers, if it is maintained as part of the SCM. FES also asserts that OEG's argument regarding the Commission's lack of statutory authority to order the deferral is flawed, because the Commission's authority to establish the SCM is not based on Chapter 4909, Revised Code, but rather on the RAA.

(112) RESA agrees with FES that the deferred amount is not owed by CRES providers and that the Commission clearly indicated that CRES providers should only be charged RPM-based capacity pricing. RESA notes that, practically

(115) OMA and OHA contend that the authorized deferral is so large that it will substantially harm customers. They assert that, if AEP-Ohio's shopping projections come to fruition, the amount of the deferral will be approximately $726 million, plus carrying charges, which renders the capacity charge unjust and unreasonable, contrary to Section 4905.22, Revised Code. OMA and OHA conclude that, on rehearing, the Commission should revoke the deferral authority granted to AEP-Ohio or, at a minimum, find that Staff's recommended ROE is reasonable and reduce the cost of the Company's capacity charge by $10.09/MW-day.

(116) AEP-Ohio replies that the arguments of the Schools and OMA and OHA regarding the size and impact of the deferral are premature and speculative, given that their projections are based on a number of variables that are uncertain, such as future energy prices, future shopping levels, and the ultimate outcome in the ESP 2 Case.

(117) FES asserts that, if AEP-Ohio is permitted to recover its full embedded costs, the Commission should clarify that the deferral recovery mechanism is nonbypassable because the excess cost recovery serves only as a subsidy to the Company and, therefore, all of its customers should be required to pay for it. FES believes that a nonbypassable recovery mechanism is necessary to fulfill the Commission's goal of promoting competition. FES also asserts that the Commission should recognize AEP-Ohio's impending corporate separation and direct that the SCM will remain in place only until January 1, 2014, or transfer of the Company's generating assets to its affiliate, in order to avoid an improper cross-subsidy to a competitive, unregulated supplier.

(118) OEG asserts that FES mischaracterizes the Capacity Order in describing the deferral as an above-market subsidy. OEG also contends that the SCM established by the Commission does not consist of a wholesale market-based charge and a cost-based retail charge, as FES believes. According to OEG, the Capacity Order explicitly states that $188.88/MW-day is an appropriate charge to enable AEP-Ohio to recover its capacity costs for its FRR obligations from CRES providers. OEG also notes that the RAA does

provision of adequate capacity and energy, it is appropriate that the affiliate receive the associated revenues.

(122) IEU-Ohio asserts that the Capacity Order does not ensure comparable and non-discriminatory capacity rates for shopping and non-shopping customers, contrary to Sections 4928.02(B), 4928.15, and 4928.35(C), Revised Code. According to IEU-Ohio, the Commission must recognize that AEP-Ohio has maintained that non-shopping customers are, on average, paying nearly twice the $188.88/MW-day price for generation capacity service. IEU-Ohio contends that the Commission must eliminate the excessive compensation embedded in the SSO or credit the amount of such compensation above $188.88/MW-day against any amount deferred based on the difference between RPM-based capacity pricing and $188.88/MW-day. IEU-Ohio also believes that the Commission's approval of an above-market rate for generation capacity service will unlawfully subsidize AEP-Ohio's competitive generation business by allowing the Company to recover competitive generation costs through its noncompetitive distribution rates, which is contrary to Section 4928.02(H), Revised Code.

(123) Similarly, OCC argues that both shopping and non-shopping customers will be forced to pay twice for capacity in violation of Sections 4928.141, 4928.02(A), and 4928.02(L), Revised Code, and that non-shopping customers will pay more for capacity than shopping customers in violation of Sections 4928.141, 4928.02(A), 4905.33, and 4905.35, Revised Code. OCC believes that, if the deferral is collected from retail customers, the Commission will have granted an unlawful and anticompetitive subsidy to CRES providers in violation of Section 4928.02(H), Revised Code.

(124) In response to OCC, IGS replies that the Capacity Order does not result in a subsidy to CRES providers. IGS notes that the capacity compensation authorized by the Commission is for AEP-Ohio, not CRES providers.

(125) The Commission notes that several of the parties have spent considerable effort in addressing the mechanics of

(128) IGS disagrees with OCC and argues that the Commission's decision to address the deferral in the ESP 2 Case was not unreasonable. IGS points out that the Commission has discretion to decide how to manage its dockets and that it should consider the deferral in the context of AEP-Ohio's total package of rates, which is at issue in the ESP 2 Case.

(129) Constellation and Exelon respond that AEP-Ohio's argument is contrary to its position in September 2011, when the Company sought to consolidate this case and the ESP 2 Case for the purpose of hearing in light of related issues. Duke agrees that AEP-Ohio has invited the review of one issue in multiple dockets and adds that the Commission is required to consider the deferral mechanism in the ESP 2 Case.

(130) RESA and Direct Energy argue that there is no statute or rule that requires the Commission to establish a deferral and corresponding recovery mechanism in the same proceeding. They add that, because recovery of the deferral will require an amendment to AEP-Ohio's retail tariffs, the proper forum to establish the recovery mechanism is the ESP 2 Case.

(131) Additionally, the Schools argue that the Capacity Order is unlawful, because the Commission failed to follow the traditional ratemaking formula and related processes prescribed by Sections 4909.05, 4909.15, 4909.18, and 4909.19, Revised Code. The Schools add that neither Section 4905.22, Revised Code, nor the Commission's general supervisory authority contained in Sections 4905.04, 4905.05, and 4905.06, Revised Code, authorizes the Commission to establish cost-based rates. FES and IEU-Ohio raise similar arguments.

(132) AEP-Ohio responds that arguments that the Commission and the Company were required to conduct a traditional base rate case, following all of the procedural and substantive requirements in Chapter 4909, Revised Code, relevant to applications for an increase in rates, are without support, given that the Commission was acting under its general supervisory authority found in Sections 4905.04, 4905.05, and 4905.06, Revised Code, and pursuant to

best proceed to manage and expedite the orderly flow of its business, avoid undue delay, and eliminate unnecessary duplication of effort.[25] We, therefore, find no error in our decision to address the recovery mechanism for the deferral in the ESP 2 Case, as a means to effectively consider how the deferral recovery mechanism would fit within the mechanics of AEP-Ohio's ESP.

Additionally, we find no merit in the various arguments that the Commission or AEP-Ohio failed to comply with Chapters 4905 and 4909, Revised Code. This proceeding is not a traditional rate case requiring an application from AEP-Ohio under Section 4909.18, Revised Code. Rather, this proceeding was initiated by the Commission in response to AEPSC's FERC filing for the purpose of reviewing the capacity charge associated with AEP-Ohio's FRR obligations. As clarified above, the Commission's initiation of this proceeding was consistent with Section 4905.26, Revised Code, which requires only that the Commission hold a hearing and provide notice to the applicable parties. The Commission has fully complied with the requirements of the statute. We also note that the Ohio Supreme Court has recognized that Section 4905.26, Revised Code, enables the Commission to change a rate or charge, without compelling the public utility to apply for a rate increase pursuant to Section 4909.18, Revised Code.[26]

Finally, the Commission does not agree with IEU-Ohio's arguments that the rejection of the ESP 2 Stipulation necessitated the restoration of RPM-based capacity pricing until such time as a new SSO was authorized for AEP-Ohio, or that the Company should have been directed to refund any revenue collected above RPM-based capacity pricing. As addressed elsewhere in this entry on rehearing, the Commission finds that we have the requisite authority to modify the SCM and the rejection of the ESP 2 Stipulation has no bearing on that authority.

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25 *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560 (1982).

26 *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 400 (2006).

(138) AEP-Ohio replies that it is noteworthy that neither the intervenors that are actually parties to the contracts nor OCC seeks rehearing on this issue. AEP-Ohio further notes that IEU-Ohio identifies no specific contract that has allegedly been unconstitutionally impaired. According to AEP-Ohio, the lack of any such contract in the record is fatal to IEU-Ohio's impairment claim. AEP-Ohio adds that customers and CRES providers have long been aware that the Commission was in the process of establishing an SCM that might be based on something other than RPM pricing. Finally, AEP-Ohio points out that IEU-Ohio makes no attempt to satisfy the test used to analyze impairment claims.

(139) The Commission agrees that it is the province of the courts, and not the Commission, to judge constitutional claims. As the Ohio Supreme Court is the appropriate forum for the constitutional challenges raised by AEP-Ohio and IEU-Ohio, they will not be considered here.

Transition Costs

(140) IEU contends that the Commission, in approving an above-market rate for generation capacity service, authorized AEP-Ohio to collect transition revenue or its equivalent, contrary to Section 4928.40, Revised Code, and the stipulation approved by the Commission in the Company's electric transition plan case. AEP-Ohio responds that this argument has already been considered and rejected by the Commission.

(141) As previously discussed, the Commission does not believe that AEP-Ohio's capacity costs fall within the category of transition costs. Section 4928.39, Revised Code, defines transition costs as costs that, among meeting other criteria, are directly assignable or allocable to retail electric generation service provided to electric consumers in this state. As we have determined, AEP-Ohio's provision of capacity to CRES providers is not a retail electric service as defined by Section 4928.01(A)(27), Revised Code. It is a wholesale transaction between AEP-Ohio and CRES

major issues raised by parties in violation of Section 4903.09, Revised Code; authorized a deferral mechanism without record support and then addressed the details of the deferral mechanism in a separate proceeding where the evidentiary record had already closed; and authorized carrying charges on the deferral at the WACC rate without record support. AEP-Ohio responds that the various due process arguments raised by IEU-Ohio are generally misguided.

(145) In a similar vein, IEU-Ohio contends that the Commission violated Section 4903.09, Revised Code, in that it failed to address all of the material issues raised by IEU-Ohio, including its arguments related to transition revenue; PLC transparency; non-comparability and discrimination in capacity rates; the Commission's lack of jurisdiction to use cost-based ratemaking to increase rates for generation service or through the exercise of general supervisory authority; the anticompetitive subsidy resulting from AEP-Ohio's above-market capacity pricing; and the conflict between the Company's cost-based ratemaking proposal and the plain language of the RAA. AEP-Ohio disagrees, noting that the Commission has already responded to IEU-Ohio's arguments on numerous occasions and has done so in compliance with Section 4903.09, Revised Code.

(146) The Commission again finds no merit in IEU-Ohio's due process claim. This proceeding was initiated by the Commission for the purpose of reviewing AEP-Ohio's capacity charge for its FRR obligations. From the beginning, IEU-Ohio was afforded the opportunity to participate, and did participate, in this proceeding, including the evidentiary hearing. Contrary to IEU-Ohio's claims, the Commission has, at no point, intended to delay this proceeding, but has rather proceeded carefully to establish a thorough record addressing the SCM and AEP-Ohio's capacity costs. Additionally, as discussed throughout this entry on rehearing, the Commission was well within its authority to initiate and carry out its investigation of AEP-Ohio's capacity charge in this proceeding. We find no merit in IEU-Ohio's claim that we acted without evidence in the record. The evidence in this

ORDERED, That a copy of this entry on rehearing 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

SJP/sc

Entered in the Journal
OCT 17 2012

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

CONCURRING AND DISSENTING OPINION
OF COMMISSIONER CHERYL L. ROBERTO

I dissent from the findings and conclusions in the following paragraphs of the rehearing order: 71, 92, 95,98, 102, 106, 125, and 134.

As I have expressed previously, to the extent that the Commission has authority to determine capacity costs it is because these costs compensate noncompetitive retail electric service. Chapter 4928, Revised Code, defines "retail electric service" to mean any service involved in the supply or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption. For purposes of Chapter 4928, Revised Code, retail electric service includes, among other things, transmission service.[1] As discussed, *supra*, AEP-Ohio is the sole provider of the Fixed Resource Requirement service for other transmission users operating within its footprint until the expiration of its obligation on June 1, 2015. As such, this service is a "noncompetitive retail electric service" pursuant to Sections 4928.01(A)(21) and 4928.03, Revised Code. This Commission is empowered to set rates for noncompetitive retail electric services. While PJM could certainly propose a tariff for FERC adoption directing PJM to establish a compensation method for Fixed Resource Requirement service, it has opted not to do so in favor of a state compensation method when a state chooses to establish one. When this Commission chooses to establish a state compensation method for a noncompetitive retail electric service, the adopted rate must be just and reasonable based upon traditional cost-of-service principles.

This Commission previously established a state compensation method for AEP-Ohio's Fixed Resource Requirement service within AEP-Ohio's initial ESP. AEP-Ohio received compensation for its Fixed Resource Requirement service through both the provider of last resort charges to certain retail shopping customers and a capacity charge levied on competitive retail providers that was established by the three-year

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1 Section 4928.01(A)(27), Revised Code.

term of the Fixed Resource Requirement as the result of the state compensation method to warrant intervention in the market. If it did, the Commission could consider regulatory options such as shopping credits granted to the consumers to promote consumer entry into the market. With more buyers in the market, in theory, more sellers should enter and prices should fall. The method selected by the majority, however, attempts to entice more sellers to the market by offering a significant, no-strings-attached, unearned benefit. This policy choice operates on faith alone that sellers will compete at levels that drop energy prices while transferring the unearned discount to consumers. If the retail providers do not pass along the entirety of the discount, then consumers will certainly and inevitably pay twice for the discount today granted to the retail suppliers. To be clear, unless every retail provider disgorges 100 percent of the discount to consumers in the form of lower prices, shopping consumers will pay more for Fixed Resource Requirements service than the retail provider did. This represents the first payment by the consumer for the service. Then the deferral, with carrying costs, will come due and the consumer will pay for it all over again –plus interest.

I find that that the mechanism labeled a "deferral" in the majority opinion is an unnecessary, ineffective, and costly intervention into the market for which no authority exists and that I cannot support.

To the extent that these issues were challenged in rehearing, I would grant rehearing.

Cheryl L. Roberto

CLR/sc

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OCT 17 2012
Barcy F. McNeal

Barcy F. McNeal
Secretary

charge was currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charge upon CRES providers and retail competition in Ohio. Additionally, in light of the change proposed by AEP-Ohio in the FERC filing, the Commission explicitly adopted as the SCM for the Company, during the pendency of the review, the current capacity charge established by the three-year capacity auction conducted by PJM based on its reliability pricing model (RPM).

(3) On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.*, AEP-Ohio filed an application for a standard service offer in the form of a new electric security plan (ESP), pursuant to Section 4928.143, Revised Code (ESP 2 Case).[2]

(4) By entry issued on March 7, 2012, in the above-captioned case, the Commission implemented an interim capacity pricing mechanism proposed by AEP-Ohio in a motion for relief filed on February 27, 2012 (Interim Relief Entry).

(5) By entry issued on May 30, 2012, the Commission approved an extension of the interim capacity pricing mechanism through July 2, 2012 (Interim Relief Extension Entry).

(6) By opinion and order issued on July 2, 2012, the Commission approved a capacity pricing mechanism for AEP-Ohio (Capacity Order). The Commission established $188.88/megawatt-day as the appropriate charge to enable AEP-Ohio to recover its capacity costs pursuant to its FRR obligations from CRES providers. However, the Commission also directed that AEP-Ohio's capacity charge to CRES providers should be the RPM-based rate, including final zonal adjustments, on the basis that the RPM-based rate will promote retail electric competition. The Commission authorized AEP-Ohio to modify its accounting procedures to defer the incurred capacity costs

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2 *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO and 11-348-EL-SSO; *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority*, Case No. 11-349-EL-AAM and 11-350-EL-AAM.

accordance with other ratemaking statutes. According to IEU-Ohio, the determination as to whether a particular rate is unjust or unreasonable can only be made by reference to other provisions of Title 49, Revised Code. IEU-Ohio argues that the Commission neglected to identify any statutory ratemaking criteria for determining whether AEP-Ohio's prior capacity compensation was unjust or unreasonable. IEU-Ohio contends that there is no statute that authorizes the Commission to apply a cost-based ratemaking methodology to increase rates for a competitive retail electric service.

(11) Similarly, OCC's first assignment of error is that the Commission erred in finding that it had authority under Section 4905.26, Revised Code, to initiate this proceeding and investigate AEP-Ohio's wholesale capacity charge. OCC points out that Section 4905.26, Revised Code, governs complaint proceedings that fall within the Commission's general authority under Chapter 4905, Revised Code. OCC contends that Chapter 4905, Revised Code, does not permit the Commission to establish a wholesale capacity charge or an SCM and, therefore, Section 4905.26, Revised Code, is not a source of authority that enables the Commission to investigate and fix AEP-Ohio's wholesale capacity rate. OCC adds that the various procedural requirements of Section 4905.26, Revised Code, were not followed by the Commission in the course of this proceeding. Specifically, OCC notes that the Commission did not find that there were reasonable grounds for complaint prior to the hearing, nor did it find that AEP-Ohio's existing capacity charge was unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law.

(12) Like IEU-Ohio and OCC, FES asserts that the Capacity Entry on Rehearing is unlawful and unreasonable, because it relied on Section 4905.26, Revised Code, as a source of authority to establish a cost-based SCM. FES contends that, although Section 4905.26, Revised Code, provides the Commission with authority to investigate and set a hearing to review a rate or charge that may be unjust or unreasonable, the statute does not confer jurisdiction to establish a cost-based rate. FES also disputes the

found in the Capacity Order and the Capacity Entry on Rehearing that RPM-based capacity pricing would produce unjust and unreasonable results.

(15) In its second assignment of error, IEU-Ohio asserts that the Capacity Entry on Rehearing is unlawful and unreasonable, because the Commission cannot regulate a wholesale rate, pursuant to Section 4905.04, 4905.05, 4905.06, or 4905.26, Revised Code. Specifically, IEU-Ohio contends that the Commission's regulatory authority under Chapter 4905, Revised Code, extends only to the retail services provided by an electric light company, when it is engaged in the business of supplying electricity for light, heat, or power purposes to consumers within the state. IEU-Ohio notes that the Commission determined in the Capacity Order that the capacity service provided by AEP-Ohio to CRES providers is a wholesale transaction rather than a retail service.

(16) In its memorandum contra, AEP-Ohio notes that IEU-Ohio's argument is contrary to its initial position in this case, which was that the Commission does have jurisdiction to establish capacity rates, pursuant to the option for an SCM under Section D.8 of Schedule 8.1 of the FERC-approved RAA. AEP-Ohio argues that IEU-Ohio's current position is based on an overly restrictive statutory interpretation. AEP-Ohio points out that the characteristics of an entity that determine whether it is a public utility subject to the Commission's jurisdiction do not necessarily establish the extent of, or limitations on, the Commission's jurisdiction over the entity's activities, which is a separate matter. AEP-Ohio reiterates that the Commission's authority under Section 4905.26, Revised Code, is considerable and encompasses regulation of wholesale rates in Ohio.

(17) In its second assignment of error, FES argues that, even if the Commission has authority under Chapter 4905, Revised Code, to establish an SCM, the Commission must nonetheless observe the procedural requirements of Chapter 4909, Revised Code. FES asserts that the Capacity Entry on Rehearing is unreasonable and unlawful, because the Commission upheld a cost-based SCM without

consistent with Section 4905.26, Revised Code.[3] In relevant part, the statute provides that, upon the initiative or complaint of the Commission that any rate or charge is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, if it appears that reasonable grounds for complaint are stated, the Commission must schedule, and provide notice of, a hearing. The Ohio Supreme Court has found that the Commission has considerable discretion under the statute, including the authority to conduct an investigation and fix new utility rates, if the existing rates are unjust and unreasonable. *See, e.g., Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 400 (2006); *Allnet Communications Services, Inc. v. Pub. Util. Comm.*, 32 Ohio St.3d 115, 117 (1987); *Ohio Utilities Co. v. Pub. Util. Comm.*, 58 Ohio St.2d 153, 156-158 (1979). The Court has also stated that utility rates may be changed by the Commission in a complaint proceeding under Section 4905.26, Revised Code, without compelling the utility to apply for a rate increase under Section 4909.18, Revised Code. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 400 (2006). The Commission, therefore, disagrees with the arguments of IEU-Ohio, FES, and OCC that are counter to this precedent.

(22) Further, we find no requirement in Ohio Supreme Court precedent or anywhere else that the Commission must first invoke Chapter 4909, Revised Code, or some other ratemaking authority, prior to fixing new utility rates, if the Commission finds that the existing rates are unjust and unreasonable following a proceeding under Section 4905.26, Revised Code. As noted above, precedent is to the contrary.

(23) With respect to IEU-Ohio's interpretation of Commission precedent, we disagree that rates can only be established under Section 4905.26, Revised Code, in limited circumstances. The Commission precedent cited by IEU-Ohio is inapplicable here, as it specifically pertains to self-complaint proceedings initiated by a public utility. *In the Matter of the Self-Complaint of Suburban Natural Gas*

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[3] Capacity Entry on Rehearing at 9-10, 13, 29, 54.

Ohio contends that the Commission's regulatory authority under Chapter 4905, Revised Code, is limited to an electric light company engaged in the business of supplying electricity to consumers (*i.e.*, as a retail service). Because the Commission determined that the capacity service provided by AEP-Ohio to CRES providers is a wholesale, not retail, transaction, IEU-Ohio believes that the Commission's reliance on Section 4905.26, Revised Code, as well as Sections 4905.04, 4905.05, 4905.06, Revised Code, is unreasonable and unlawful. However, from the outset of this proceeding, the Commission clearly indicated that the review of AEP-Ohio's proposed capacity charge would be comprehensive in scope and include consideration of other related issues, including the impact on retail competition and the degree to which the Company's capacity costs were already being recovered through retail rates.[6]

(26) Next, we find no error in our clarification that, although the Commission must ensure that the jurisdictional utilities receive just and reasonable compensation for the services that they render, the Commission is under no obligation with regard to the specific mechanism used to address capacity costs.[7] We did not find, as FES contends, that the Commission's ratemaking powers are unbounded by any law. Rather, we clarified only that the Commission has discretion to determine the type of mechanism implemented to enable a utility to recover its capacity costs, and that the recovery mechanism may take the form of an SCM, rider, or some other mechanism.

(27) In its remaining arguments, IEU-Ohio contends that AEP-Ohio's capacity service is a competitive retail electric service, rather than a wholesale transaction, and again disputes our reliance on the Commission's general supervisory powers under Sections 4905.04, 4905.05, and 4906.06, Revised Code, as authority to establish the SCM. These arguments were already rejected by the Commission in the Capacity Entry on Rehearing,[8] and IEU-Ohio has

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6 Initial Entry at 2.

7 Capacity Entry on Rehearing at 28.

8 Capacity Entry on Rehearing at 28-29.

It is, therefore,

ORDERED, That the applications for rehearing filed by IEU-Ohio, OCC, and FES be denied in their entirety. It is, further,

ORDERED, That a copy of this entry on rehearing 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

SJP/sc

Entered in the Journal DEC 12 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary