BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market.	)))	Case No. 12-3151-EL-COI

COMMENTS OF ENVIRONMENTAL LAW & POLICY CENTER

INTRODUCTION

On December 12, 2012, the Public Utilities Commission of Ohio ("Commission" or "PUCO") issued an entry in this docket requesting comments on a variety of questions about the current state of the retail electric service market in Ohio. On January 24, 2013, the Commission extended the comment period to March 1, 2013. The Commission specifically requested ideas on how to mitigate "the potential impact of capacity constraints on Ohio ratepayers."[1] The following comments address the Commission's second question (k) under the Market Design Section, which asks whether electric utilities have "an obligation to control the size and shape of its native load so as to improve energy prices and reduce capacity costs?"[2] The Environmental Law & Policy Center believes that utilities have an obligation to reduce capacity costs and can do so by bidding eligible anticipated energy efficiency and demand response resources into the PJM Base Residual Auction, PJM's capacity market. These are resources that have not yet been created, but will be created pursuant to Ohio law and will be eligible to meet capacity obligations through the capacity market. By bidding these resources into the capacity market, Ohio utilities can reduce the clearing price of the auction, thereby directly lowering the cost of capacity. Utilities will also

[1] Entry, at 2.
[2] Entry, at 4.

receive revenue from the auction that can be used to offset the costs to ratepayers of statutorily required energy efficiency and demand response portfolio programs.

COMMENTS

Section 4928.02 of the Ohio Revised Code ("ORC") requires that utilities "ensure the availability to consumers of . . . reasonably priced retail electric service."[3] The Commission has already acknowledged in an entry in 12-814-EL-UNC that utilities have an "obligation to take all reasonable and cost-effective steps to avoid unnecessary RPM price increases for their customers."[4] The RPM, or Reliability Pricing Model, is PJM's capacity market. Utilities, therefore, must take steps to reduce capacity prices. The primary mechanism for setting the price of capacity in the RPM is through the PJM Base Residual Auction ("BRA"). One of the few ways that retail distribution utilities can directly lower capacity prices is to bid into the BRA the energy efficiency ("EE") and peak demand reduction ("PDR") that they are obligated to implement under ORC § 4928.66, which requires utilities to "implement energy efficiency [and peak demand reduction] programs that achieve" certain escalating benchmarks over the next several years and beyond.

The BRA is a competitive auction that secures capacity commitments three years before the resources will be needed. The year the capacity resources are needed is called the delivery year (June 1 to May 31), and the BRA for that delivery year takes place three years in advance.[5] For example, the BRA for the 2015/2016 delivery year (June 1, 2015 to May 31, 2016) took place on May 7, 2012.[6] Participants in the BRA bid eligible resources into the auction, which

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[3] ORC § 4928.02(a).
[4] 12-814-EL-UNC, Entry, at paragraph 4 (February 29, 2012) (the RPM, or Reliability Pricing Model, is PJM's capacity model).
[5] PJM Manual 18, at page 6.
[6] 2015/2016 RPM Base Residual Auction Results, at page 2.

commits them to install those resources by the delivery year. There is no requirement that the resources utilities bid into the BRA are actually installed at the time of the bid, only that they will be available by June 1 of the delivery year. Utilities, therefore, are free to bid the savings from their EE/PDR portfolios into the BRA so long as the utilities anticipate that those resources will be installed by the delivery year, which is the case since the resources are required by Ohio law. The utilities need only ensure that their EE/PDR programs reserve to the utilities ownership of the right to bid savings into the BRA. The PUCO has thus far not required utilities to bid these anticipated resources and thus far most Ohio utilities have not voluntarily bid these resources. If utilities do not bid anticipated eligible resources into the BRA, they will continue to miss opportunities to significantly reduce the prices their customers pay for electricity.

Bidding into the BRA reduces costs to consumers for two reasons. First, bidding anticipated eligible resources at a low price shifts the supply curve to the right and tends to cause the auction to clear at a lower price than it otherwise would have. We have already seen that capacity prices can place significant hardship on Ohio ratepayers. In the 2015/2016 BRA, American Transmission System Inc. ("ATSI") zone, in which the FirstEnergy Ohio utilities operate, was severely constrained following significant generation retirement announcements in early 2012. The ATSI zone cleared at $357/MW-day, more than 2.5 times the $136/MW-day for the rest of PJM.[7] These capacity prices will be passed on to FirstEnergy customers. Had the FirstEnergy utilities bid anticipated eligible resources into the 2015/2016 BRA, prices for capacity could have been reduced and the companies would have earned significant revenue to offset the costs of the EE/PDR programs.

[7] 2015/2016 RPM Base Residual Auction Results, at page 14, Table 4.

Utilities can reduce the capacity price by bidding EE and DR resources into the BRA so long as the auction clears at a rising rather than flat part of the supply curve. While there is no way to know in advance what the curve will look like, we know that in the past the auctions have cleared on the rising parts of the curves. As shown in Figures 1 and 2 below, the May 2012 auction, for example, cleared at a steeply inclining part of the supply curve for both the RTO and the ATSI clearing prices.[8]

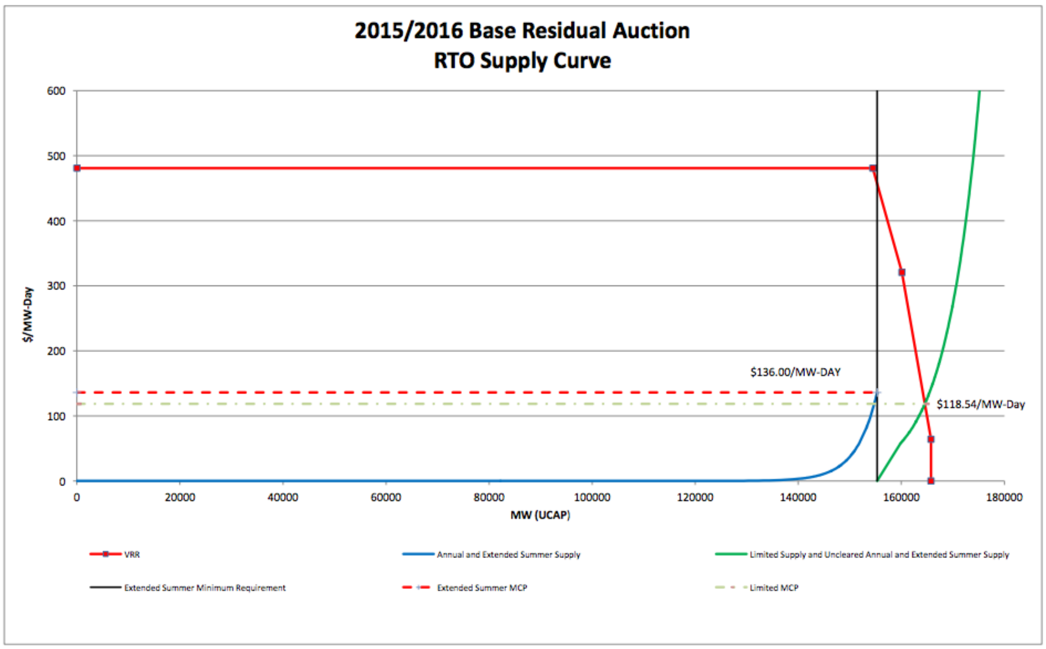

Figure 1

[8] 2015/2016 Base Residual Auction Supply Curves (September 27, 2012), available at http://www.pjm.com/~/media/markets-ops/rpm/rpm-auction-info/2015-2016-base-residual-auction-supply-curves.ashx

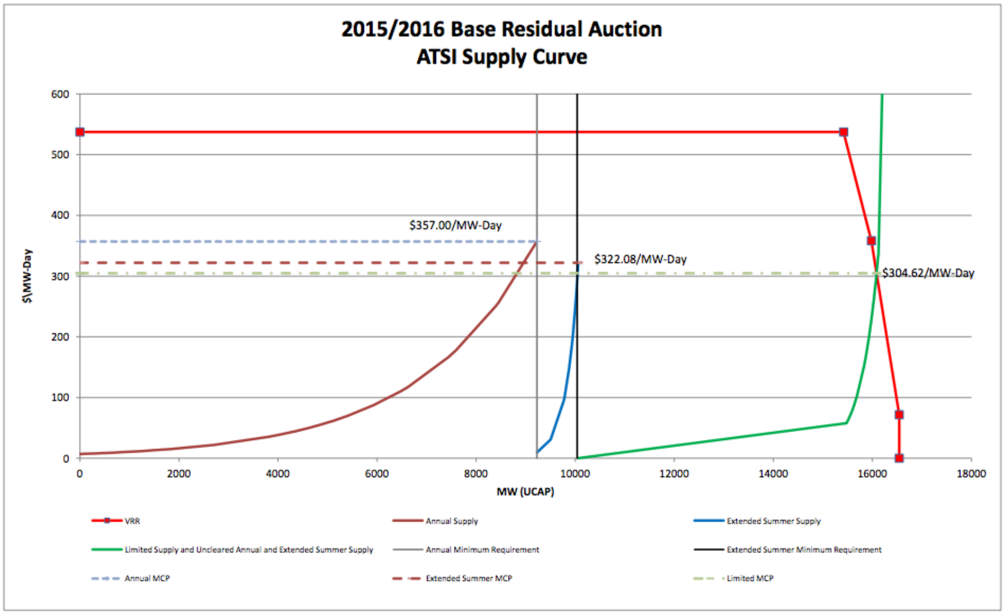

Figure 2

If utilities had bid anticipated eligible resources into the BRA, the supply curve would have shifted left and the auction would have cleared at a lower price.

The second way that bidding into the BRA reduces costs to consumers is that cleared bids would serve as a revenue source that could be used to offset the costs of EE/PDR portfolio plans. Customers are already paying for the EE and PDR resources produced by plans, and they should reap all the rewards from those investments, including revenues from the BRA. The potential revenue is significant. In Illinois, for example, ComEd has earned as much as $20 million in revenue by bidding anticipated eligible resources into the BRA.

In order to make the most of BRA bids, utilities should bid the anticipated eligible resources into the BRA at a low price that is just enough to cover their energy measurement and verification ("EM&V") costs and the administrative costs of actually bidding the resources. Bidding this price virtually guarantees that the resources will clear the auction and provide revenue. The revenue from the auction, less the EM&V costs and the costs of bidding, should then be passed through to the customers by offsetting the costs of portfolio plans. In order to mitigate any risk associated with failing to acquire the sufficient resources before the delivery date, utilities should initially only bid a substantial portion of anticipated resources into the BRA. While the exact the amount might be determined on a utility-by-utility basis, 75% is likely a good starting point. Utilities are required by ORC § 4928.66(A)(1)(a) to produce these resources, so there is little risk that they will not reach a target below their statutory minimum.

If at the delivery year a utility is short of the capacity it bid into the BRA for any year, the Commission should require that utility to purchase the shortfall from incremental auctions, which typically clear at a lower price than the BRA and therefore pose little risk if a utility for some reason needs to make up some shortfall. The balance of the incremental auction purchase, whether positive (purchased capacity at a price lower than the BRA) or negative (purchased capacity at a price higher than the BRA) should then be credited to or charged against the overall BRA revenues for that delivery year. Assuming the utility acted prudently, in the event that purchasing from the incremental auction does not eliminate the utility's unmet obligations to deliver capacity, the Commission should hold the utility harmless and shift the burden of paying any penalties to the ratepayers. Utilities should also be held harmless if for whatever reason they are no longer required by law to achieve EE and PDR savings. The benefits of additional revenue and reduced capacity prices so vastly outweigh the risks that customers should be willing to take on minimal risk for substantial benefits.

CONCLUSION

Ohio law requires utilities take reasonable steps to reduce capacity prices in order to ensure reasonable rates for their customers. However, utilities have thus far not taken the reasonable step of bidding anticipated eligible EE and PDR resources into the PJM BRA, which can reduce capacity prices and generate revenue to reduce the costs of the EE/PDR programs. The Commission should require utilities to bid anticipated eligible EE and PDR resources into future PJM BRAs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Comments* submitted on behalf of the Environmental Law & Policy Center was served by electronic mail, upon the following Parties of Record, this 1st day of March, 2013.

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