

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Ohio Power Company to Establish a)
Competitive Bidding Process for) Case No. 12-3254-EL-UNC
Procurement of Energy to Support Its)
Standard Service Offer.)

ENTRY

The attorney examiner finds:

- (1) Ohio Power Company (AEP Ohio)¹ is an electric utility as defined by Section 4928.01(A)(11), Revised Code, and an electric distribution utility as defined by Section 4928.01(A)(6), Revised Code.
- (2) Section 4928.141, Revised Code, provides that an electric distribution utility shall provide consumers a standard service offer (SSO) of all competitive retail electric services in accordance with Sections 4928.142 or 4928.143, Revised Code.
- (3) In Case No. 11-346-EL-SSO, *et al.*, the Commission modified and approved, pursuant to Section 4928.143, Revised Code, AEP Ohio's application for an electric security plan (ESP), including a competitive auction-based SSO format (ESP Case).² The Commission established a series of competitive energy auctions for AEP Ohio's SSO load, including a 10 percent slice-of-system energy only auction to commence six months after issuance of a final order in the Company's corporate separation proceeding,³ a 60 percent slice-of-system energy only auction for delivery commencing on June 1, 2014, and, finally, a 100 percent energy only auction

¹ By entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company (CSP) into Ohio Power Company (OP). *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.

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, *et al.*, Opinion and Order, at 38-40 (August 8, 2012) (ESP Case Order); Entry on Rehearing (January 30, 2013) (ESP Case Entry on Rehearing).

³ *In the Matter of the Application of Ohio Power Company for Approval of an Amendment to Its Corporate Separation Plan*, Case No. 12-1126-EL-UNC.

for delivery commencing on January 1, 2015, and continuing throughout the remainder of the ESP. The Commission also directed AEP Ohio to implement a competitive bid procurement (CBP) process consistent with Section 4928.142, Revised Code, by December 31, 2012, and to establish a stakeholder process prior to filing its CBP.

- (4) By correspondence filed in the ESP Case on September 7, 2012, and October 12, 2012, AEP Ohio initiated its stakeholder process and scheduled a stakeholder meeting, respectively.
- (5) On December 21, 2012, AEP Ohio filed its application in the above-captioned case to establish a CBP process for its SSO. The application includes proposed CBP rules for auctions, associated bidder protocols, communication protocols, and a master energy supply agreement (MESA). In its application, AEP Ohio states that it discussed its CBP proposal with stakeholders on October 25, November 8, November 9, and November 27, 2012, through various means, and that AEP Ohio fully considered all of the issues raised during the stakeholder process in developing the application. AEP Ohio indicates that the stakeholder process focused on the energy auction procurement process, and that, following the Commission's decision on rehearing in the ESP Case, AEP Ohio would supplement its application to include retail rate issues associated with the energy auctions.
- (6) On January 30, 2013, the Commission issued its entry on rehearing in the ESP Case.
- (7) By entry issued on January 31, 2013, in the above-captioned case, a procedural schedule was established to assist the Commission in its review of AEP Ohio's proposed CBP process.
- (8) On February 11, 2013, AEP Ohio filed a supplement to its application in order to address recovery of auction-related costs through retail rates, in a manner that is consistent with the Commission's entry on rehearing in the ESP Case, according to AEP Ohio. Additionally, in order to blend the auction clearing prices with its generation rates, AEP Ohio proposes to unbundle its fuel adjustment clause (FAC) mechanism into fixed/non-energy and variable/energy rate

components. AEP Ohio notes that the unbundled components would continue to be computed on a rate zone basis and adjusted quarterly, consistent with current practice. AEP Ohio proposes that the unbundled fixed/non-energy component be included in a new fixed cost rider that would remain in effect through May 31, 2015, in order to enable AEP Ohio to recover FAC costs that are not diminished or otherwise affected by the procurement of energy through the auction process. The unbundled variable/energy component would be included in a new auction phase-in rider, which would also include an auction purchase component consisting of both the auction clearing price and the prudently incurred costs of conducting the auction. AEP Ohio notes that it would use over-recovery and under-recovery accounting for both riders with reconciliation to occur in the subsequent period.

- (9) On various dates, motions to intervene in this proceeding were filed by Ohio Energy Group (OEG); Industrial Energy Users-Ohio (IEU-Ohio); FirstEnergy Solutions Corp. (FES); Exelon Generation Company, LLC (Exelon); Constellation NewEnergy, Inc. (Constellation); and Ohio Consumers' Counsel (OCC). No memoranda contra were filed. Upon consideration of the motions to intervene, the attorney examiner finds that the motions to intervene are reasonable and should be granted.
- (10) In accordance with the established procedural schedule, initial comments were filed on March 4, 2013, by OCC, FES, IEU-Ohio, and OEG.
- (11) On March 8, 2013, Exelon filed its initial comments, along with a motion for leave to file the comments out-of-time. In its motion, Exelon states that AEP Ohio is the only party adversely affected by the brief delay in the filing, which is the result of Exelon's efforts to review and seek clarification regarding the details of the MESA. Exelon represents that AEP Ohio has no objection to the motion. Given that Exelon seeks leave to file its comments just a few days past the deadline, and no memoranda contra Exelon's motion were filed, the attorney examiner finds that Exelon's request to file its comments out-of-time should be granted under the circumstances.

- (12) Timely reply comments were filed on March 14, 2013, by AEP Ohio, OCC, FES, and Exelon.
- (13) On March 20, 2013, AEP Ohio filed a motion to strike a portion of FES' reply comments or, in the alternative, a motion for leave to file surreply comments. AEP Ohio asserts that the third and final argument in FES' reply comments, which is that clarification of AEP Ohio's proposal to freeze base generation rates is needed, addresses a matter that was not raised in FES's initial comments or any of the other initial comments filed in this case. AEP Ohio also contends that FES's argument amounts to an untimely application for rehearing of the Commission's January 30, 2013, entry on rehearing in the ESP Case.
- (14) On March 25, 2013, FES filed a response to AEP Ohio's motion to strike. FES states that it noted in its initial comments that the procedural schedule established in this case did not provide the parties with sufficient time to assess AEP Ohio's supplement or time to conduct discovery with respect to the supplement. FES adds that, for that reason, it reserved the right in its initial comments to provide further comments. Because the comment process is not defined by rule or statute, and given the limited opportunity for investigation, FES contends that its reply comments should be considered in their entirety and that AEP Ohio's motion to strike should be denied.
- (15) On March 29, 2013, AEP Ohio filed a reply memorandum. AEP Ohio points out that FES does not have the ability to unilaterally alter the comment cycle established by the Commission by reserving the right to file further comments. AEP Ohio argues that, if FES believed that an additional opportunity for investigation was needed, it should have requested it in a timely manner rather than ignore the Commission's procedures. AEP Ohio further argues that FES tacitly admits in its response to AEP Ohio's motion that a portion of FES's reply comments was improper.
- (16) Upon review of AEP Ohio's motion to strike and the related pleadings, the attorney examiner finds that the motion to strike should be denied and the AEP Ohio's motion for leave to file surreply comments should be granted. The attorney

examiner agrees with AEP Ohio that FES offers no reason for its failure to raise the matter in question in its initial comments, other than insufficient time for discovery with respect to AEP Ohio's supplement. We note that the proper course of action would have been to seek an extension of the deadline for filing initial comments. In the alternative, nothing prevented FES from raising the issue in its initial comments, without having conducted discovery, solely on the basis of the representations contained in AEP Ohio's supplement, which is what FES appears to have done in its reply comments. Nevertheless, the attorney examiner finds that the third and final argument contained in FES's reply comments should be considered, as it indicates a dispute in over interpretation of the Commission's ESP Order.

- (17) Similarly, the attorney examiner notes that several parties had conflicting suggestions regarding auction pricing mechanisms, including starting bid prices. OEG, IEU, and OCC recommend utilizing such mechanisms, while AEP Ohio, FES, and Exelon, oppose any Commission involvement in auction pricing, noting that it could discourage bidder participation. Further, as indicated in FES and AEP Ohio's comments, reply comments, and surreply comments, there is confusion over the appropriate retail rate that AEP Ohio's SSO customers should be charged upon the commencement of AEP Ohio's energy auctions. Finally, as AEP Ohio notes in its reply comments, the date of the initial 10 percent slice-of-system auction and the proposed delivery date are currently unknown.
- (18) In light of the disputes raised in the comments regarding auction pricing, customer retail rates, and the auction schedule, the attorney examiner finds an evidentiary hearing is necessary. Accordingly, the following procedural schedule shall be established:
 - (a) Testimony on behalf of AEP Ohio and Intervenor shall be filed by June 14, 2013;
 - (b) The evidentiary hearing shall commence on June 24, 2013, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-A, Columbus, Ohio.

It is, therefore,

ORDERED, That the motions to intervene in this proceeding filed by OEG, IEU-Ohio, FES, Exelon, Constellation, and OCC be granted. It is, further,

ORDERED, That Exelon's motion for leave to file its initial comments out-of-time be granted. It is, further,

ORDERED, That AEP Ohio's motion to strike a portion of FES's reply comments be denied and that AEP Ohio's motion for leave to file surreply comments be granted. It is, further,

ORDERED, That the procedural schedule as set forth in Finding (18) be adopted. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Jonathan Tauber

By: Jonathan J. Tauber
Attorney Examiner

JRJ/sc

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in

Case No(s). 12-3254-EL-UNC

Summary: Attorney Examiner Entry grants motions to intervene filed by OEG, IEU-Ohio, FES, Exelon, Constellation, and OCC, grants Exelon's motion for leave to file its initial comments out-of-time, denies AEP Ohio's motion to strike a portion of FES's reply comments, grants AEP Ohio's motion for leave to file surreply comments, and orders the procedural schedule set forth in Finding (18). - electronically filed by Sandra Coffey on behalf of Jonathan Tauber, Attorney Examiner, Public Utilities Commission of Ohio