

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company to Amend Its Supplier) Case No. 13-729-EL-ATA
Coordination Tariff and Related Contracts.)

COMMENTS OF INDUSTRIAL ENERGY-USERS OHIO

I. BACKGROUND

On March 22, 2013, pursuant to Section 4909.18, Revised Code, Ohio Power Company ("AEP-Ohio") filed an application to amend its Electric Generation Supplier Tariff and Related Contracts.¹ AEP-Ohio's Application affects the terms and conditions of service of customers acting as their own load serving entity ("LSE") and competitive retail electric service ("CRES") providers that are providing generation service to AEP-Ohio distribution service customers. Thus, AEP-Ohio's Application will affect customers acting as their own LSE and the CRES providers' to provision of generation service to Industrial Energy Users-Ohio's ("IEU-Ohio") members in AEP-Ohio's territory that have exercised their statutory customer choice rights.

AEP-Ohio's Application also affects how AEP-Ohio will establish capacity obligations and energy usage for CRES providers.² As discussed below, these calculations will affect the ultimate price that shopping and non-shopping customers pay for electricity.

¹ Hereinafter referred to as the Application and the Supplier Tariff.

² The capacity and energy usage obligation of each CRES provider is merely the totality of capacity and energy usage of the customers of a CRES provider.

The Public Utilities Commission of Ohio ("Commission") has directed AEP-Ohio to modify its accounting procedures to defer the difference between the adjusted PJM Interconnection LLC, ("PJM") Reliability Pricing Model ("RPM") rate currently in effect and the Commission-determined \$188.88 per megawatt-day ("MW-day") price.³ This difference must be multiplied by the quantity of capacity associated with customers receiving service from CRES providers (the capacity obligation) in order to establish both the total revenue that is eligible for collection based on the \$188.88 per MW-day price and the portion that is presently being deferred for future collection. In the Opinion and Order authorizing AEP-Ohio's electric security plan ("ESP"), the Commission authorized AEP-Ohio to establish the non-bypassable Retail Stability Rider ("RSR") and authorized AEP-Ohio to begin collecting a portion (\$1 per megawatt hour) of the \$188.88 per MW-day capacity revenue through the RSR. The Commission has authorized the balance of this \$188.88 per MW-day revenue to be collected through a future non-bypassable charge in an amount to be determined by the Commission. Therefore, AEP-Ohio's Application may affect the electric bills paid by all customers (shopping, non-shopping and reasonable arrangement customers).⁴

Moreover, the manner in which AEP-Ohio calculates a customers' capacity obligation may affect the amount of capacity that a demand response customer may bid into PJM's RPM auctions, as well as the amount of peak demand reduction that may be counted toward compliance with state peak demand reduction mandates under Section 4928.66, Revised Code.

³ *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus and Southern Power Company*, Case No. 10-2929-EL-UNC, Opinion and Order (Jul. 2, 2012) (hereinafter "*Capacity Case*").

⁴ *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 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Opinion and Order at 52 (Aug. 8, 2012).

Additionally, AEP-Ohio's Application seeks to impose unreasonable credit requirements on CRES providers. Finally, AEP-Ohio's Application requests authority to insulate itself from liability that may result from its negligent operation of its distribution system.

II. COMMENTS

Section 4909.19, Revised Code, provides that any application for an increase in rates classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental, or any regulation or practice filed under Section 4909.18, Revised Code, must be set for hearing. AEP-Ohio's Application claims that "[t]his application will not result in an increase in rates, joint rates, tolls, classifications, charges or rentals." But, as discussed below, AEP-Ohio's Application fails to contain sufficient information for parties to determine whether the Application will result in an increase in rates, tolls classifications, charges, or rentals.

Even if the Commission determines that AEP-Ohio's Application does not request an increase, Section 4909.18, Revised Code, provides that the Application must be set for hearing if it appears to be unjust and unreasonable:

If it appears to the commission that the proposals in the application may be unjust or unreasonable, the commission shall set the matter for hearing and shall give notice of such hearing by sending written notice of the date set for the hearing to the public utility and publishing notice of the hearing one time in a newspaper of general circulation in each county in the service area affected by the application. At such hearing, the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility. After such hearing, the commission shall, where practicable, issue an appropriate order within six months from the date the application was filed.

As discussed below, AEP-Ohio has failed to demonstrate that the Application is just and reasonable. Therefore, the Commission must schedule an evidentiary hearing to consider AEP-Ohio's Application.

A. Capacity Obligation

For purposes of establishing each customer's capacity obligation, each electric distribution company ("EDC") is responsible for allocating its normalized previous summer's peak (measured based on five coincident peaks) to each customer in the zone (both wholesale and retail). To assist in performing these allocations, PJM publishes information, known as the five coincident peaks ("5CP"), for each summer, typically by mid-October.⁵ The 5CP reflects the five highest non-holiday weekday Regional Transmission Organization's ("RTO") unrestricted daily peaks from the summer. An individual customer's usage during those five hours is known as the peak load contribution ("PLC"). According to PJM, the "most accurate, available measure of an end user's *contribution* to the system peak load is its PLC."⁶

AEP-Ohio's Application does not establish the capacity obligation of CRES providers based upon their customers' PLCs. Rather, AEP-Ohio's Application requests that the Commission delegate to AEP-Ohio the authority to calculate the capacity obligations of CRES providers in its service territory based upon methodologies "posted on the Company's website."⁷ The methodology proposed by AEP-Ohio has not been disclosed, is not transparent, and may be modified without Commission review or approval at the discretion of AEP-Ohio.

The calculation of capacity obligations is an important matter for all customers. Ohio law requires AEP-Ohio to calculate the capacity obligation of shopping and non-

⁵ PJM Tariff, Attachment DD-1, Sec. J.

⁶ See Response of PJM Interconnection, LLC, to Post-Technical Conference Comments of EnerNOC, Inc., Docket No. ER11-3322-000, at 6 (Sept. 9, 2011).

⁷ Application at 103-33D. Currently, no such process for calculating the capacity obligation is available on AEP-Ohio's website.

shopping customers in a comparable and non-discriminatory manner.⁸ AEP-Ohio's failure to disclose its proposed methodology prevents the Commission, CRES providers, and, most importantly, customers from determining whether AEP-Ohio will calculate the capacity obligations of shopping and non-shopping customers on a comparable and non-discriminatory basis.

Moreover, from a PJM perspective, a customer's PLC is the maximum amount of demand response capacity that an end user can register to provide in RPM.⁹ Industrial customers generally participate as demand resources in RPM. Absent clearly defined rules in the Supplier Tariff, an individual customer cannot know, or have the ability to identify and verify, its AEP-Ohio determined capacity obligation.

For customers that receive generation supply from a CRES provider or become their own LSE, the customer's capacity obligation establishes the quantity of capacity that the CRES provider must purchase from AEP-Ohio.¹⁰ The capacity costs incurred by a CRES provider will likely be reflected in the price of electricity they offer to their customers. And, many CRES contracts allow the CRES provider to flow through capacity charges directly to customers. Additionally, the shopping customer's capacity obligation will also be used to calculate the amount of deferred revenue the Commission authorized in the *Capacity Case*, which will ultimately land in the electric bills of all customers.¹¹ Because the capacity obligation will affect both current and future prices

⁸ Section 4928.02(A) and (B), Revised Code.

⁹ See Response of PJM Interconnection, LLC to Post-Technical Conference Comments of EnerNOC, Inc., Docket No. ER11-3322-000, at 6 (Sept. 9, 2011) ("That is why PLC long has been, and remains, the maximum amount of demand response capacity that an end user can register to provide in RPM").

¹⁰ This is true in the context of AEP-Ohio due to AEP-Ohio's election to operate on the Fixed Resource Requirement.

¹¹ *Capacity Case*, Opinion and Order at 33 (Jul. 2, 2012).

for electricity, the methodology for establishing the capacity obligation must be fully detailed in AEP-Ohio's Supplier Tariff and subject to review and approval by the Commission. In the absence of a transparent, auditable, and reasonable methodology for establishing capacity obligations it will be impossible for the Commission and other parties to verify whether CRES providers and customers are being properly charged and whether AEP-Ohio has properly deferred capacity revenue.

Because AEP-Ohio has failed to provide the information specifically required by Section 4909.18, Revised Code, failed to include information necessary to determine whether the Application will result in an increase of rates, charges, regulation, or practice, and failed to demonstrate that its Application is just and reasonable, the Commission must set this matter for hearing. AEP-Ohio's Supplier Tariff must establish each CRES provider's capacity obligation based upon the aggregate PLC (based upon the 5CPs) of their customers in AEP-Ohio's service area. AEP-Ohio must demonstrate the capacity obligation associated with non-shopping customers has been established in a comparable manner. Further AEP-Ohio's Supplier Tariff must provide CRES providers and their customers with an opportunity to challenge the capacity obligation established by AEP-Ohio and a process by which disputes can be promptly resolved. At a minimum, the Commission must direct AEP-Ohio to revise the Application to include the current and proposed specific methodology for calculating capacity obligations in AEP-Ohio's Supplier Tariff.

B. Energy Usage Calculation

IEU-Ohio objects to AEP-Ohio's proposal to calculate load according to "the AEP-Ohio CRES Hourly Energy Calculation Process, which shall be posted on the

Company's website."¹² Similar to AEP-Ohio's capacity proposal, AEP-Ohio's proposal lacks transparency and specificity necessary to properly evaluate AEP-Ohio's proposal. The Commission must direct AEP-Ohio to revise the Application to include the current and proposed specific methodology for calculating load in AEP-Ohio's Supplier Tariff. AEP-Ohio has failed to demonstrate that its proposal is reasonable and the Commission must set this matter for an evidentiary hearing.

C. Proposed Credit Requirements

IEU-Ohio objects to AEP-Ohio's proposed modifications to its credit requirements and, specifically, AEP-Ohio's proposed methodology to establish a CRES provider's initial and ongoing collateral requirement. AEP-Ohio has proposed to calculate a CRES provider's initial collateral requirement by multiplying 30 days of the CRES provider's summer energy usage (deliveries to the CRES provider's customers) by the forward price of energy for the next July as established by a generally-accepted industry price index. Similarly, AEP-Ohio has proposed to calculate a CRES provider's ongoing collateral requirement by multiplying the CRES provider's highest monthly usage (deliveries to the CRES provider's customers) over a rolling 12-month period by the forward price of energy for the next July as established by a generally-accepted industry price index. Both methodologies significantly overstate AEP-Ohio's credit exposure.

CRES providers serving customers are required to be members of PJM.¹³ As such, PJM bills the CRES provider for its energy transactions in PJM's market, as well as for the transmission service the CRES provider obtains on behalf of the end-use

¹² Application at 103-33D.

¹³ This fact is noted on Original Sheet No. 103-32D of AEP-Ohio's proposed Supplier Tariff. "[A]ll CRES Providers must complete all required actions relative to membership with the Transmission Provider."

customers it is serving. Therefore, the vast majority of the credit exposure associated with a CRES provider is being carried by PJM and its members (including IEU-Ohio). PJM requires a member transacting in PJM's energy market to provide collateral or credit assurance equal to the member's Peak Market Activity measured over a three-week period.¹⁴ Within PJM, if a default event occurs, the costs of the default are socialized (uplifted) to all PJM members based upon a formula in PJM's Federal Energy Regulatory Commission ("FERC") approved tariff.¹⁵

In the event a CRES provider defaults with PJM and the CRES provider is unable to cure its default, PJM will terminate the CRES provider's ability to transact in PJM's energy markets.¹⁶ If this occurs, the CRES provider's customers will be returned to AEP-Ohio pursuant to its statutory obligation as the provider of last resort ("POLR"). AEP-Ohio would be required to provide generation to these returned customers at the Commission-authorized standard service offer ("SSO") price. In doing so, AEP-Ohio would also have the ability to invoice the returned customers for generation service at the SSO price. Therefore, AEP-Ohio's credit exposure is *de minimus*. As a result of its POLR obligation, AEP-Ohio may face lost opportunity costs if a CRES provider's default results in customers being returned to SSO generation. However, lost opportunity costs may be negative if the SSO generation price is higher than prevailing market prices as is the case today. Additionally, any exposure AEP-Ohio may carry to lost opportunity

¹⁴ See PJM's *Credit Overview and Supplement Guide* at page 7-8. A copy of the guide is posted on PJM's website at: <http://www.pjm.com/~media/documents/agreements/pjm-credit-overview.ashx> (last accessed July 3, 2013).

¹⁵ *Id.* 26-28.

¹⁶ Amended And Restated Operating Agreement of PJM Interconnection, L.L.C. at 15.1.5.i. A copy of this agreement is posted on PJM's website at: <http://www.pjm.com/~media/documents/agreements/oa.ashx> (last accessed July 3, 2013).

costs is being reduced as a result of the plans to bid out increasing portions of the standard service generation supply obligation through a competitive bidding process (“CBP”), and will be eliminated entirely once the transition to the use of a CBP for 100% of the SSO generation supply obligation is complete in June 2015.

AEP-Ohio’s proposed modifications to its credit requirements do not appear to be motivated by credit risk, but will result in a barrier to a customer’s ability to secure the benefits of competitive generation supply. For these reasons, AEP-Ohio has failed to demonstrate that the proposed modifications to its credit requirements are just and reasonable and the Commission must set this matter for an evidentiary hearing.

D. Limitation of Liability

IEU-Ohio objects to AEP-Ohio’s proposal to remove from its tariff the requirement that it “shall use reasonable diligence in delivering regular and uninterrupted supply of energy.”¹⁷ AEP-Ohio’s proposal must be rejected because it conflicts with Commission precedent and Ohio law.

Ohio law requires every electric distribution utility (“EDU”) to provide adequate service.¹⁸ Although an EDU need not ensure a completely uninterrupted supply of electricity, the utility must use reasonable diligence to prevent outages from resulting from matters within their control.¹⁹ Likewise, an EDU must use reasonable diligence to restore power once an outage occurs.²⁰ AEP-Ohio has failed to demonstrate that the

¹⁷ Application at 103-51-D.

¹⁸ Sections 4905.22 and 4933.83, Revised Code. See also *In the Matter of Miami Wabash Paper LLC v. the Cincinnati Gas and Electric Co.*, Case Nos. 02-2162-EL-CSS, *et al.*, Opinion and Order at 5-8 (Sep. 23, 2003) (hereinafter “*Wabash Paper*”).

¹⁹ *Wabash Paper*, Opinion and Order at 8 (Sep. 23, 2003).

²⁰ *Id.*

proposed modifications to its limitation on liability are reasonable and the Commission must set this matter for an evidentiary hearing.²¹

III. CONCLUSION

For the reasons stated herein, IEU-Ohio requests that the Commission direct AEP-Ohio to revise its Application to include the information required by Section 4909.18, Revised Code, and schedule an evidentiary hearing to consider AEP-Ohio's Application.

Respectfully submitted,



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²¹ IEU-Ohio does not concede that AEP-Ohio's proposed tariff modification may limit AEP-Ohio's statutory liability or obligation under Sections 4905.22 and 4933.83, Revised Code, but, regardless, the Commission must reject AEP-Ohio's proposal.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 8th day of July 2013, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.



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