BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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

OHIO POWER COMPANY'S REPLY POST-HEARING BRIEF

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INTRODUCTION

After extensive comments, an evidentiary hearing, and initial briefs, it has become clear to Ohio Power Company d/b/a AEP Ohio ("AEP Ohio" or the "Company") that the number of issues about which the parties to this proceeding disagree has narrowed considerably. The issues that remain the subject of dispute are addressed herein. For the following reasons, and as the Company has previously demonstrated through its witnesses' testimony and in its Application, Supplement, Reply Comments, Sur-Reply Comments, and Initial Brief, the Company's proposals regarding auction reserve prices, the unbundling of the Fuel Adjustment Clause (FAC), system-wide auctions, and freezing of base generation rates are reasonable and appropriate. The Commission should adopt them as proposed, and it should reject intervenor proposals seeking to modify them. Accordingly, AEP Ohio respectfully requests that the Commission approve without further modification the Company's competitive bidding process (CBP) proposals.

ARGUMENT

I. The Commission should adopt AEP Ohio's proposals regarding auction starting prices and FAC unbundling and reject intervenors' proposals.

Ohio Energy Group and the Office of the Ohio Consumers' Counsel ("OEG/OCC") claim that the energy-only auctions that the Commission ordered in the *ESP II* case (Case No. 11-346-EL-SSO, *et al.*) will "not ensure that customers benefit from the transition to market-based prices" unless a reserve price equal to AEP Ohio's FAC rate is set for the 10% and 60% auctions. (OEG/OCC Br. at 5, 9.) Industrial Energy Users-Ohio ("IEU") makes a similar contention. (IEU Br. at 6-9.) If the Commission declines these intervenors' reserve price

request, OEG/OCC request that the Commission reject the Company's proposal to unbundle the FAC because allowing the FAC to be unbundled "could" also force non-shopping customers to pay increased cost-based charges through the FCR. (*Id.* at 10.) OEG/OCC and IEU also argue that the FCR will allow AEP Ohio to double recover the fixed costs associated with its OVEC and Lawrenceburg contracts from January 1, 2015 through May 31, 2015. (*Id.*; IEU Br. at 9-11) Each of OEG/OCC's and IEU's reserve price arguments is flawed, and each should be disregarded.

A. It is inappropriate to set reserve prices for the 10% and 60% auctions.

As AEP Ohio demonstrated at hearing and in its initial post-hearing brief, it would be inappropriate to use the FAC as a bid opening or reserve price because doing so (1) would be arbitrary, (2) may not attract the necessary bidder participation and supply required in order for an auction to be successful and reflect market conditions, and (3) would hamper the transition to a competitive market for electricity in AEP Ohio's service territory. (AEP Ohio Br. at 7-9; AEP Ohio Ex. 1 at 7-8.) FirstEnergy Solutions Corp. (FES) and Constellation NewEnergy, Inc. and Exelon Generation LLC (collectively, "Exelon") agree that setting a reserve price is inappropriate. (FES Br. at 14;Exelon Br. at 5-8.)

OEG/OCC concede that a reserve price could chill competition and cause the 10% and 60% auctions to fail. (OEG/OCC Br. at 11-12.) They do not see that result as a problem, however, because then AEP Ohio/AEP Genco would simply continue to provide energy to non-shopping customers at FAC rates through December 31, 2014. (*Id.*) Although such a result might not financially harm AEP Ohio or its generation affiliate, it would conflict with the General Assembly's long-term plan of transitioning to a fully competitive SSO environment in Ohio, which the Company and the Commission seek to fulfill through the auctions. That plan

should not be altered or put on hold based on short-term potential market fluctuations; if it were, it is conceivable that the goal of a competitive electric market in AEP Ohio's service territory might never be realized. As a related matter, AEP Ohio's impending generation divestiture approved by the Commission (and the resulting wholesale power supply agreements submitted for FERC approval that incorporate AEP Ohio's shrinking 90%, 40% and 0% non-auction SSO obligations) means that the Company will not have access to generation resources to fall back on if artificial starting prices effectively cancel the SSO energy auctions.

Additionally, as AEP Ohio explained in its Initial Brief, concerns about the potential rate impacts of the auctions on non-shopping customers can and should be addressed when rates are set after the market auction price is established. (*See* AEP Ohio Br. at 9; AEP Ohio Ex. 1 at 8.) They do not and should not be addressed by changing the auction design or requiring an arbitrary auction starting price. Moreover, the Commission has twice-rejected similar arguments by OEG/OCC in the *ESP II* case. (*See* AEP Ohio Br. at 8, quoting *ESP II*, Opinion and Order at 39-40 (Aug. 8. 2012) (rejecting OCC argument), and citing *ESP II*, Entry on Rehearing at 35 (Jan. 30, 2013) (rejecting OEG argument).) The Commission should again reject OEG/OCC's and IEU's argument here.

Overall, OEG/OCC's questions regarding the Commission's intent in setting AEP Ohio's auction schedule in the *ESP II* case are misguided. The Commission speaks through its orders. *See, e.g.*, 07-589-GA-AIR, *et al.*, Entry on Rehearing at 6 (July 23, 2008), citing *Murray v. Ohio Bell Tel. Co.*, 54 Ohio Op. 82, 117 N.E.2d 495 (1954). In the *ESP II* case, the Commission clearly stated its intent to transition to a market for electricity in AEP Ohio's service territory by holding 10% and 60% energy-only auctions, followed by a full requirements auction for all SSO load. *See ESP II*, Opinion and Order at 39-40 (Aug. 8. 2012). Moreover, as discussed in Section

III below, it is inappropriate to question or modify the Commission's intent in the *ESP II* case in this proceeding. For these reasons, the Commission should not set a reserve price for the Company's 10% and 60% auctions.

B. The Commission should accept AEP Ohio's reasonable proposal to unbundle the FAC.

OEG/OCC, IEU, and FES argue that unbundling the fixed cost portion of the FAC and recovering those fixed costs, which include demand charges from wholesale purchased power arrangements, through the FCR will lead to a double-recovery of those costs. (OEG/OCC Br. at 10; IEU Br. at 9-10; FES Br. at 11-14.) According to their argument, AEP Ohio already recovers those costs through its Base Generation Rates. Thus, allowing AEP Ohio to recover those costs a second time through the FCR would be inappropriate, they contend.

The primary flaw in this argument is the flawed assumption that the FAC demand charges are reflected in the Company's Base Generation Rates. First, the reality is that the Base Generation Rates are not cost-based. As Mr. Roush explained in detail (AEP Ohio Ex. 2, at 3), and as the Commission well knows, the current Base Generation Rates result from a number of decisions that the Commission made in prior regulatory proceedings, starting in 1999, which were designed to transition the Company and its SSO generation rates to a restructured, competitive, model.[1] In none of those proceedings were Base Generation Rates established on a cost basis. Second and most importantly, when the Commission approved each of AEP Ohio's electric security plans through its orders in *ESP I* and *ESP II*, it followed the requirements of SB 221 and allowed AEP Ohio, pursuant to Section 4928.143(B)(2)(a), to implement, as part of its ESPs, a fuel adjustment clause that provided for the automatic recovery of, among other things, the costs of purchased power, including the cost of energy *and capacity* of those purchased

[1] Case Nos. 99-1729 and 1730-EL-ETP; 04-169-EL-UNC; 08-917 and 918-EL-SSO; and 11-346 and 348-EL-SSO.

power arrangements. The FCR that AEP Ohio has proposed does not improperly "double recover" the capacity costs of those purchased power arrangements any more than the FACs that have been in place throughout the terms of each of the Company's first two ESPs have improperly "double recovered" such costs. In sum, the arguments by OEG/OCC, IEU, and FES that the FCR would enable AEP Ohio to improperly double recover fixed costs of existing purchased power arrangements currently being recovered through the Company's FAC are meritless.

Additionally, the Company notes that IEU's proposal regarding AEP Ohio's pending FAC audit proceedings, Case No. 09-872-EL-FAC (*see* IEU Br. at 10-11) is inappropriate because it is outside the scope of this proceeding, which is to determine the process and details of the Company's CBP. IEU's comment regarding the Company's recovery of generation capacity similarly should be disregarded, as that issue has been litigated extensively and already decided in AEP Ohio's Capacity (Case No. 10-2929-EL-UNC) and *ESP II* cases. Accordingly, the Commission should disregard both arguments.

II. The Commission should reject OEG/OCC's proposal to hold separate auctions for the Columbus Southern Power Company and Ohio Power Company rate zones.

At the end of their initial brief, OEG/OCC argue in passing that the Commission should order that AEP Ohio's 10% and 60% energy auctions should be held separately for the Company's two rate zones because the FAC "price to beat" for energy is higher for customers in the CSP rate zone than for those in the OP rate zone. (OEG/OCC Br. at 14-15.) They claim that because of that FAC rate difference, the clearing price for a combined auction may lead to unreasonably high energy rates for customers in the OP rate zone. (*Id.*)

For the reasons set forth in AEP Ohio's Initial Brief, at 9-10, this proposal lacks merit. There has been no evidence in this proceeding that bids would differ if the auctions were held on

a separate rate zone basis rather than for AEP Ohio's service territory as a whole. To the contrary, OEG/OCC's witness Kollen agreed that it is reasonable to expect that the results of auctions held on a separate rate zone basis would be similar, if not identical. Tr. Vol. I at 199-200. This proposal is yet another transparent attempt to manipulate the rate impacts of SSO rates set by auction – for certain customers. Thus, there is no reason to separate the procurement of energy for the two rate zones. Doing so would only increase the administrative costs of the auctions and, as a result, customers' rates. Exelon agrees that OEG/OCC's proposal would not provide any discernible benefit and recommends that AEP Ohio's proposal to hold system-wide auctions be approved. (Exelon Br. at 11.) Because separating the auctions by rate zone would not benefit customers and would only serve to increase auction costs, the Commission should reject OEG/OCC's auction splitting proposal.

III. FES's, Exelon's, and OEG/OCC's attempts to re-litigate issues decided in the Electric Security Plan should be rejected.

As it did in comments prior to hearing, FES criticizes AEP Ohio's proposal to freeze its base generation rates through December 31, 2014, as well as its proposal for recovering the costs of purchased power demand charges through the FCR through May 31, 2015. (FES Br. at 3-14.) Exelon also criticizes AEP Ohio's base generation rate proposal. (Exelon Br. at 12-13.) FES's and Exelon's arguments on brief merely repeat those that FES raised previously. AEP Ohio addressed each of these arguments at length in its Initial Brief. (*See* AEP Ohio Br. at 14-24.) As the Company demonstrated, FES's and Exelon's proposals conflict with and would undermine the Commission's orders in the *ESP II* case, including the Retail Stability Rider (RSR) mechanism that the Commission approved in that proceeding, and they would cause the Company to suffer the very financial harm that the *ESP II* decision was designed to avoid. (*Id.*) The Commission should reject FES's inappropriate "blending" proposals.

In their initial brief, OEG/OCC argue that there is "no need" for the Commission to mandate that AEP Ohio phase-in the transition to a 100% energy and capacity auction. (OEG/OCC Br. at 12.) Moreover, OEG/OCC invite the Commission to manipulate specific outcomes for certain customers under the energy auctions based on various alternative re-interpretations of the purpose and intent behind the energy auctions. (OEG/OCC Brief at 4-13.) But as the Commission knows, the structure of AEP Ohio's energy auctions was considered and decided in the *ESP II* case. *See ESP II*, Opinion and Order at 39-40; *ESP II*, Entry on Rehearing at 35. It would be inappropriate for the Commission to jump straight to the 100% energy auction as the Commission clearly intended to implement a transition between 0% and 100%. But given the delay associated with the unexpected protracted litigation of this case, it would be reasonable for the Commission to delay both the 10% and 60% energy auctions or go straight to the 60% energy auction later in 2014 as a transitory step toward the 100% energy auction in 2015.

IV. Exelon's proposed crediting mechanism should be rejected.

Exelon attempts to support its proposal for a "crediting mechanism" at pages 13-16 of its Brief. AEP Ohio explained in its Initial Brief, at 24-28, based on Mr. Roush's rebuttal testimony (AEP Ohio Ex. 7) the numerous ways in which Exelon's proposal is both inappropriate and unworkable. Exelon's brief leaves this multitude of flaws unaddressed. Instead, Exelon simply reiterates its argument that, "if the clearing prices are above the FAC, AEP will be able to sell the additional energy... and still receive that price" (Exelon Br. at 14) and attempts to dismiss the host of flaws in its proposal as simply being, in the aggregate, an argument that its proposal "is too complicated." (*Id.* at 15.)

AEP Ohio refuted Exelon's assumption that AEP would simply be able to sell the energy replaced (of "freed up") by the auction purchases and thereby recover the amounts that Exelon

proposes to subtract from the capacity deferrals. First, the auction clearing price and the current FAC rate are not comparable. Second, regarding the January through May 2015 period, there will be no FAC rate that could be used even to make the inappropriate comparison. Third, even if the two values were comparable in some general sense, Exelon's proposal ignores the effect of economic dispatch on the FAC rate and the displaced energy's costs. Fourth, Exelon's proposal incorrectly assumes that all freed up energy would be sold. Fifth, the proposal incorrectly assumes that freed up energy would receive the same sales price as auction resources obtain. Sixth, it incorrectly assumes that if AEP Genco wins any tranches in the auctions, they will be supported by the same physical assets that support AEP Ohio's SSO. Seventh, the proposal arithmetically appears to be an unjustified transfer of fund from a corporately-separate generation affiliate to a regulated wires company. Finally, Exelon's proposal double counts OSS margins because they were already deducted once before, as an energy credit offset to generation asset costs, when the Commission determined the $188.88/MW-day capacity price.

Exelon's contention that these criticisms are at a "basic level [an argument] that the crediting mechanism is flawed because it is too complicated" is a mischaracterization. The multitude of flaws that AEP Ohio has identified are, at their basic level, that the proposed crediting mechanism is inappropriate, and it depends upon incorrect or unsupported assumptions. In short, it should be rejected.

CONCLUSION

For the foregoing reasons and those set forth in AEP Ohio's Initial Brief, the Commission should approve AEP Ohio's Application and Supplement, as clarified and explained in the Company's written and oral testimony and post-hearing briefs, without further modification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the parties of record in this proceeding by electronic service this 30th day of August, 2013.

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Summary: Brief Ohio Power Company's Reply Post-Hearing Brief electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company