

FILE

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

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

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**FIRSTENERGY SOLUTIONS CORP. MEMORANDUM IN OPPOSITION TO OHIO  
POWER COMPANY APPLICATION FOR REHEARING**

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## I. INTRODUCTION

AEP Ohio's Application for Rehearing (the "Application") takes issue with almost all of the November 13, 2013 Opinion and Order (the "Order"). AEP Ohio primarily alleges that the Commission incorrectly interpreted its own prior orders. As noted by the Commission in the Order, this is obviously incorrect. The Order relies upon language from the AEP Ohio ESP II proceeding<sup>1</sup> stating that auction results should be blended with historic base generation rates. In light of the clear direction which has been provided by the Commission on multiple occasions, AEP Ohio's argument should be rejected.

AEP Ohio next argues that the proposed Fixed Cost Rider ("FCR") does not double-recover certain capacity costs. To make this argument, AEP Ohio points to everything except the record evidence in this case, which supports the Commission's double-recovery concern. Because AEP Ohio will be fully compensated for its capacity costs supporting the auction load through the \$188.88/MW-day capacity price, the FCR should be blended so that it does not double-recover these same capacity costs. In addition, it is reasonable for the Commission to examine in other proceedings whether AEP Ohio will double-recover through the FCR the same fixed generation costs that AEP Ohio recovers through its base generation rates.

AEP Ohio also takes issue with the procedural schedule proposed by the Commission to examine the double-recovery issue. AEP Ohio seeks to avoid any substantive review of its fixed cost recovery by seeking: (1) another evidentiary proceeding to obtain more evidence; (2) a new auditor; (3) a new docket to consider this issue; and/or (4) non-record evidence being introduced into the record in this proceeding. None of these requests is appropriate. The Commission has established a reasonable mechanism to audit the FCR to determine if the FCR would double-

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<sup>1</sup> *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 No. 11-346-EL-SSO, et al.

recover capacity costs. The parties already have presented extensive evidence in this proceeding that EVA can reference in its audit, and FES proposed in its Application for Rehearing that parties be permitted to intervene in the next quarterly fuel proceeding to assist the Commission in this review. The reasonable approach is to continue the path properly established by the Commission in the Order and to permit intervenor participation in the next quarterly fuel case.

Finally, AEP Ohio identifies an issue also identified in the FES Application for Rehearing. The Order includes a misstatement requiring winning auction bidders to pay for capacity rather than SSO customers. AEP Ohio asks the Commission to correct this error. As discussed in the FES Application for Rehearing, FES agrees this misstatement should be corrected on rehearing.

Other than the misstatement regarding winning bidder payment for capacity pricing, the Order was appropriate in all significant respects. FES therefore respectfully requests that, other than the issue of winning bidder payment for capacity costs, AEP Ohio's Application be denied.

## **II. THE COMMISSION CORRECTLY INTERPRETED THE ESP II ORDERS TO REQUIRE BLENDING OF AUCTION RESULTS WITH HISTORIC RATES.**

As discussed extensively at hearing and in the post-hearing briefs filed by the parties, AEP Ohio proposed that it continue to charge its base generation rates to 100% of customer load through December 31, 2014, even while 10% and then 60% of that load is served through the combination of an energy-only auction and AEP Ohio-provided capacity. The Commission ordered that, for the period when the energy-only auction serves 10% of load, the SSO rate should reflect 90% of the frozen base generation rates blended with 10% of AEP Ohio-provided capacity priced at \$188.88/MW-day.<sup>2</sup> And when the energy-only auction serves 60% of load, the SSO rate should reflect 40% of the frozen base generation rates blended with 60% of AEP

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<sup>2</sup> Order, p. 14.

Ohio-provided capacity priced at \$188.88/MW-day. AEP Ohio complains that the Commission ordered that its base generation rates be “unfrozen” prior to January 2015,<sup>3</sup> but this is not accurate. AEP Ohio receives its “frozen” base generation charge for the percentage of load that it continues to serve on a “bundled” basis using its own generation, while being fully compensated for the capacity it provides to support the 10% and 60% auctions. The same holds true after December 31, 2014, when 100% of the load will be served via the energy-only auction and capacity priced at \$188.88/MW-day. The Commission’s decision is both reasonable and consistent with its directives issued in the ESP II proceeding.

The Commission correctly rejected AEP Ohio’s proposal as directly contrary to the prior orders of the Commission in the ESP II proceeding, which intended that customers would receive actual benefits from the accelerated auctions prior to 2015. In its Application, AEP Ohio repeats the same arguments previously rejected by the Commission, and AEP Ohio claims that the Commission misunderstood its own prior orders. AEP Ohio is once again incorrect, and the Commission should affirm its Order and make clear (again) that AEP Ohio is obligated to blend auction results with AEP Ohio’s base generation rates.

**A. The Order Correctly Interpreted The Commission’s ESP II Decisions.**

As discussed in the FES post-hearing brief,<sup>4</sup> there were two unmistakable conclusions from the AEP ESP II Order<sup>5</sup> and Entry on Rehearing<sup>6</sup> which are relevant to this case. The Commission: (1) wanted to accelerate AEP Ohio’s transition to market through accelerated use of wholesale auctions; and (2) wanted customers to benefit from that acceleration. The

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<sup>3</sup> AEP Ohio Application, p. 5.

<sup>4</sup> FES Post-Hearing Brief, p. 1.

<sup>5</sup> Case No. 11-346-EL-SSO, *et al.*, Opinion and Order dated August 8, 2012 (“ESP II Order”).

<sup>6</sup> Case No. 11-346-EL-SSO, *et al.*, Entry on Rehearing dated January 30, 2013 (“Entry on Rehearing”).

Commission found that the faster transition to market prices could create a quantitative benefit which “may well exceed the costs associated with the GRR and RSR.”<sup>7</sup>

AEP Ohio took issue with the Commission’s ESP II Order, and on rehearing requested that the Commission make clear that base generation rates were not to fluctuate with auction results. The Commission soundly rejected this request, explaining that “[t]he entire crux of the Opinion and Order was the value in providing customers with the opportunity to take advantage of market-based prices and the importance of establishing a competitive electric marketplace.”<sup>8</sup> Accordingly, the Commission specifically rejected AEP Ohio’s request to freeze the rates charged to customers:

We find that AEP-Ohio’s request to continue to freeze base generation rates through the auction process is inappropriate and should be rejected. . . . **AEP Ohio’s proposal is completely inconsistent with the Commission’s mission and would preclude AEP-Ohio customers from realizing any potential savings that may result from its expanded energy auctions. This is precisely the reason why the Commission expanded and accelerated the CBP in the first place.** Further, we find AEP-Ohio’s fear of adverse financial impacts is unfounded, as the RSR will in part ensure AEP Ohio has sufficient funds to efficiently maintain its operations.<sup>9</sup>

Despite this clear language, AEP Ohio argued in this proceeding that the base generation rate should apply to all load, including the auction load, until the last five months of the ESP term in order to avoid substantial financial harm to AEP Ohio.<sup>10</sup> AEP Ohio also argued that in calculating the RSR the Commission did not take into account any blending of auction prices.<sup>11</sup>

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<sup>7</sup> ESP II Order, p. 76.

<sup>8</sup> Entry on Rehearing, pp. 36-37.

<sup>9</sup> Entry on Rehearing, pp. 36-37 (emphasis added).

<sup>10</sup> Order, p. 11.

<sup>11</sup> Order, p. 11.

AEP Ohio finally argued that there was no evidence that base generation rates included energy costs since such rates were not cost-based.<sup>12</sup>

In the Order, the Commission rejected all of AEP Ohio's arguments and upheld its prior decisions in the ESP II Order. The Commission found that "AEP Ohio's auction rate proposal is inconsistent with the Commission's ESP II Order and the subsequent Entry on Rehearing."<sup>13</sup> The Commission also found that, although AEP Ohio had "couched its request in terms of the final five months of the ESP," that its decision was not limited to that period.<sup>14</sup>

Despite the Commission expressly finding that AEP Ohio could not continue to freeze base generation rates throughout the entire auction process, and that the state compensation mechanism does *determine the cost of capacity for SSO customers once the auctions commence*, AEP Ohio curiously proposed frozen base generation rates with no adjustment to reflect the results of the auctions, and failed to incorporate the state compensation mechanism of \$188.88/MW-day. . . Regardless of the timeframe for which AEP Ohio sought clarification in its assignments of error in the ESP II Order, nothing within the Commission's conclusion limited it to the final five months of the ESP.<sup>15</sup>

Despite this clear direction from the Commission in the Order, AEP Ohio has once again repeated the same arguments which have previously been considered and rejected. As these arguments have already been extensively briefed, they will only be briefly addressed here.

### **1. The Commission Properly Interpreted Its Prior Orders.**

AEP Ohio argues that the Commission did not interpret its own orders correctly when it failed to approve AEP Ohio's proposed blending mechanism.<sup>16</sup> As previously pointed out by the Commission, nothing in the ESP II Order limited its holding to 2015 only. Instead, the ESP II

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<sup>12</sup> Order, p. 11.

<sup>13</sup> Order, p. 12.

<sup>14</sup> Order, p. 13.

<sup>15</sup> Order, pp. 13-14.

<sup>16</sup> AEP Ohio Application, pp. 5-7.

Order addressed the entire ESP term, as was acknowledged through the opposition filed by FES and other parties. AEP Ohio failed to seek rehearing of the ESP II Entry on Rehearing or seek clarification on this point in the ESP proceeding. Therefore, there is no evidence that the interpretation of the ESP II Order and Entry on Rehearing by the Commission, FES and other intervenors was improper.

## **2. AEP Ohio's Reliance On Its "Financial Assumptions" Is Unfounded And Contrary To Record Evidence.**

As it did in its post-hearing brief, AEP Ohio argues that the ESP II Order did not include financial projections with "fluctuating" base generation rates.<sup>17</sup> Notably, AEP Ohio is intentionally conflating base generation rates, which are frozen, with base generation revenues, which understandably will fluctuate as AEP Ohio serves less and less of the SSO load through the "bundled generation service" it has traditionally provided to SSO customers.<sup>18</sup> The Commission correctly rejected AEP Ohio's argument in the Order, finding that AEP Ohio's financial stability will be secured because "AEP Ohio will continue to receive the RSR throughout the remainder of the ESP II."<sup>19</sup> Thus, AEP Ohio's argument contradicts the ESP II Order.

In addition, AEP Ohio's claim based on AEP Ohio Exhibit 6<sup>20</sup> is factually incorrect. The calculations referenced in AEP Ohio Ex. 6 do not accurately reflect the Commission's expectations of the level of generation revenue that would result from the ESP, as modified by the Commission.<sup>21</sup> The Commission began its RSR calculation by starting with AEP Ohio

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<sup>17</sup> AEP Ohio Application, p. 7-8.

<sup>18</sup> See AEP Ohio Application, p. 8.

<sup>19</sup> Order, p. 14.

<sup>20</sup> AEP Ohio Application, p. 7.

<sup>21</sup> See FES Post-Hearing Reply Brief, pp. 7-9.



witness Allen's generation revenue estimates, which did not incorporate the accelerated auction schedule created by the Commission in that same ESP II Order.<sup>22</sup> With accelerated auctions, AEP Ohio's revenues obviously will fluctuate. However, the RSR discussion at page 34 of the ESP II Order does not include these fluctuating revenues. This can be seen most clearly in 2015. Even AEP Ohio acknowledges that base generation prices will be reduced from \$22.86/MWh to \$13.50/MWh starting in 2015.<sup>23</sup> Despite all parties' agreement that 2015 prices will decline, AEP Ohio Ex. 6 (which AEP Ohio claims reflects the Commission's RSR calculation) assumes that the AEP Ohio historic base generation price will be \$22.86/MWh throughout the ESP term, including in Planning Year 2014/2015.<sup>24</sup> As this is clearly inconsistent with AEP Ohio's interpretation of the RSR calculation, this argument is invalid.

**B. Record Evidence Supports The Commission's Determination.**

AEP Ohio claims that the Commission's interpretation "is unreasonable and unlawful because it lacks any basis in the record in this case."<sup>25</sup> AEP Ohio points to the direct testimony of Mr. Roush that base generation rates are not cost-based and, therefore, should not be considered to contain either capacity or energy components.<sup>26</sup> Yet the Commission's Order simply implements the ESP II proceeding's directives regarding accelerated auctions – no additional record was necessary in this case. Regardless, the Commission's Order has record support, as shown through Mr. Roush's testimony on cross-examination and FES witness Noewer's testimony.

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<sup>22</sup> ESP Order, p. 34.

<sup>23</sup> AEP Ohio Brief, p. 16, n. 2; Roush Direct, pp. 6-7. Ms. Noewer estimated the base generation rate will fall to \$13.12/MWh. Noewer Direct, Att. 1.

<sup>24</sup> AEP Ohio Ex. 6.

<sup>25</sup> AEP Ohio Application, p. 7.

<sup>26</sup> AEP Ohio Application, pp. 7-8.

On cross-examination, Mr. Roush testified that current base generation rates include: (1) capacity costs; (2) the Commercial Activities Tax (“CAT”); (3) uncollectible expense for certain costs; and (4) a return on equity.<sup>27</sup> AEP Ohio’s current base generation rates are the equivalent of \$314/MW-day,<sup>28</sup> or approximately \$22.50/MWh, while its capacity cost, which includes a return on equity, is \$188.88/MW-day, or approximately \$13.50/MWh.<sup>29</sup> Therefore, AEP Ohio is recovering through its base generation rates \$9/MWh for two negligible cost items – the CAT and uncollectibles – plus an additional return on equity over and above the return on equity already provided in the \$188.88/MW-day capacity pricing determined by the Commission.<sup>30</sup> In light of the \$9/MWh spread between AEP Ohio’s costs and its historic base generation rates, AEP Ohio cannot complain that the Commission’s Order in this proceeding is preventing it from being fully compensated.

In addition to the testimony from AEP Ohio’s own witness on this point, FES witness Noewer also provided relevant record evidence supporting the Commission’s decision. FES witness Noewer provided detailed testimony showing that AEP Ohio’s proposed blending methodology was not consistent with the Commission’s ESP decisions.<sup>31</sup> To the contrary, she testified that customers would “not see any benefit” from AEP Ohio’s proposal until 2015, and that AEP Ohio’s proposal would remove many of the incentives implemented by the Commission in the ESP proceeding.<sup>32</sup> The record supports the Commission’s determination.

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<sup>27</sup> Tr. Vol. I, pp. 88-89.

<sup>28</sup> Tr. Vol. I, p. 912.

<sup>29</sup> Tr. Vol. I, p. 93. See also Roush Direct, pp. 6-7.

<sup>30</sup> FES Post-Hearing Brief, p. 7.

<sup>31</sup> Noewer Direct, pp. 4-8.

<sup>32</sup> *Id.*

**C. The Commission Appropriately Considered And Rejected AEP Ohio's Financial Stability Claims.**

AEP Ohio repeats the same financial stability claims which the Commission already has rejected,<sup>33</sup> claiming that it will receive substantially less revenue than it requested in this proceeding.<sup>34</sup> As AEP Ohio has presented no new arguments on this point, the argument should be summarily rejected.

To the extent the Commission considers this argument, AEP Ohio has attempted to create a financial stability claim by calculating the difference between what it requested in this case and what it ultimately received. AEP Ohio points to the revenue it would have received under its proposal and claims that not receiving this revenue potentially undermines the RSR.<sup>35</sup> However, without evidence that its financial stability is actually threatened, this argument is meaningless. If AEP Ohio's financial stability is truly threatened, then it can seek emergency rate relief. Absent any evidence of a true financial emergency, this argument should be once again rejected by the Commission.

AEP Ohio ignores that the Commission increased the RSR amount starting June 1, 2014 specifically to reflect the Commission's acceleration of the energy auctions and corresponding decrease in base generation revenues.<sup>36</sup> Remarkably, the estimated \$24 million increase in the RSR corresponds exactly to the \$24 million decrease in base generation revenues AEP Ohio claims will occur during the two months of the accelerated 60% auction, now scheduled to be in

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<sup>33</sup> Order, p. 14 ("we find AEP Ohio's arguments that the blending of base generation rates with energy auction results will cause AEP Ohio serious financial harm to be unpersuasive.")

<sup>34</sup> AEP Ohio Application, pp. 8-9.

<sup>35</sup> AEP Ohio Application, p. 8.

<sup>36</sup> ESP II Order, p. 36.

effect in from November 1 through December 31, 2014.<sup>37</sup> AEP Ohio complains in its Application that this revenue impact will extend into 2015, but any such revenue impact is a result of the 100% energy-only auction with \$188.88/MW-day capacity pricing proposed by AEP Ohio, not the accelerated auctions.

Finally, AEP Ohio's financial integrity argument once again conflates the base generation rate (which remains frozen under the FES proposal adopted by the Commission) and total base generation revenues which AEP Ohio ultimately receives (which will fluctuate pursuant to the ESP II decisions). Despite AEP Ohio's claims to the contrary, the Order did not require "AEP Ohio's frozen base generation rates to fluctuate."<sup>38</sup> Under the terms of the Order, the historic base generation rate remains frozen, but is then blended with auction results to determine the final rate charged to customers and AEP Ohio's revenue. Any impact on AEP Ohio's financial stability was created by the terms of the ESP II decisions, with the RSR specifically adopted to address AEP Ohio's financial stability. AEP Ohio's stale collateral attack in this proceeding should be rejected.

### **III. THE FCR WOULD CREATE A DOUBLE RECOVERY OF CAPACITY COSTS, AND THE COMMISSION WAS CORRECTLY CONCERNED ABOUT THIS ISSUE.**

AEP Ohio encourages the Commission to decide in this proceeding that AEP Ohio will not be recovering through the FCR costs that it also is recovering through base generation rates.<sup>39</sup> AEP Ohio's primary argument is deceptively simple – its base generation rates are not cost-

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<sup>37</sup> See AEP Ohio Application, p. 8 (estimating revenue impacts of \$11.8 million per month); Order, p. 5 (Nov. 1, 2014 start date for 60% auction); ESP Order, p. 75 n.32 (calculating \$24 million increase in RSR in final year of modified ESP).

<sup>38</sup> AEP Ohio Application, p. 8.

<sup>39</sup> AEP Ohio Application, pp. 9-20.

based and, thus, are not recovering any costs.<sup>40</sup> The Order did not address this potential double recovery associated with the FCR, instead finding that “this proceeding is not the appropriate forum to address these issues.” In a pending fuel proceeding, the Commission provided additional detail, ordering that EVA conduct an audit to examine this issue.<sup>41</sup> AEP Ohio offers no valid argument that should convince the Commission to change its current approach.

First, it is important to note what AEP Ohio is not arguing. As FES explained in its Application for Rehearing, there are two double-recovery issues: (1) whether the FCR will be blended the same as base generation rates to prevent the FCR from double-recovering the same fixed generation costs that are included in the \$188.88/MW-day capacity price AEP Ohio will be paid for supporting the auction load; and (2) whether the FCR as applied to the non-auction load double-recovers fixed generation costs also recovered through base generation rates.<sup>42</sup> AEP Ohio is not addressing either of these issues here but is, instead, confusing and conflating the two by ignoring that an increasing percentage of its SSO load will be served through an auction process with capacity support.

AEP Ohio’s position is that it continues to serve all SSO load as a bundled retail service through December 31, 2014 and, thus, that its base generation rates and FCR should apply to the entirety of that load the same as it did prior to the auctions. As a result, AEP Ohio pitches to this Commission the idea that the Order results in AEP Ohio’s base generation rates being substantially reduced after blending with the \$188.88/MW-day capacity price serving the auction load.<sup>43</sup> But this is not true. Starting April 1, 2014, 10% of AEP Ohio’s SSO load will be served

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<sup>40</sup> AEP Ohio Application, pp. 11-12.

<sup>41</sup> Case No. 11-5906-EL-FAC et al., Entry dated December 4, 2013, pp. 3-4.

<sup>42</sup> FES Application, pp. 4-7.

<sup>43</sup> AEP Ohio Application, p. 12.

through an energy-only auction and AEP Ohio-provided capacity priced at \$188.88/MW-day, increasing to 60% starting November 1, 2014.<sup>44</sup> AEP Ohio will continue to serve the remainder of its load as a bundled service and be compensated using its full, frozen base generation rates and actual fuel costs.<sup>45</sup> Although the resulting costs and base generation rates are blended into final SSO rates so that all customers benefit from market-based pricing, double-recovery issues must necessarily be examined by looking separately at cost recovery from the auction load and the non-auction load.

With regard to the auction load, the FCR and the \$188.88/MW-day capacity price are both indisputably cost-based charges that are designed to recover the same costs from FERC Account 555.<sup>46</sup> Thus, the FCR should be blended at 90% and then 40% so as not to double-recover the same costs already being recovered through the \$188.88/MW-day capacity price. With regard to non-auction load, the Commission's double-recovery concern involving base generation rates is valid and should be explored in future proceedings. FES supports the Commission's decision to ask its auditor to examine the issue further. However, FES strongly opposes AEP Ohio's attempt to delay the auction process further by seeking to reopen this proceeding to take additional evidence regarding the double-recovery issue. The base generation rates are frozen during the ESP period and will not change regardless of the outcome of any further investigation of costs AEP Ohio seeks to include in the FCR. Thus, there is no reason to give AEP Ohio further opportunities for delaying the upcoming auctions by re-opening this proceeding.

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<sup>44</sup> See Order, p. 5.

<sup>45</sup> The Auction Rider recovers AEP Ohio's variable fuel costs.

<sup>46</sup> FES Ex. 2; Tr. Vol. I, pp. 97, 99, 101-02.

**A. The FCR Double-Recovers Costs Also Included In \$188.88/MW-day Capacity Pricing.**

AEP Ohio tips its hand in its Application by admitting that the capacity costs included in the FCR also were included in the \$188.88/MW-day capacity price set by the Commission in Case No. 10-2929-EL-UNC (the “Capacity Case”).<sup>47</sup> AEP Ohio frames this as a collateral attack on the Capacity Case order,<sup>48</sup> but no party is attempting to change the \$188.88/MW-day price in this proceeding. The question here simply is whether AEP Ohio should double-recover its fixed generation costs through the FCR that it already is recovering through the \$188.88/MW-day charge. Given that AEP Ohio admits this would be double recovery, the answer should be obvious.

Yet even after admitting to double recovery, AEP Ohio attempts on the following pages of its Application to argue that the \$188.88/MW-day capacity price does not allow it to recover the fixed generation costs it seeks to include in the FCR.<sup>49</sup> AEP Ohio argues that the Commission’s calculation of the \$188.88/MW-day capacity price in the Capacity Case is “opaque and riddled with errors.”<sup>50</sup> AEP Ohio concludes that the 10-2929 Order “makes it infeasible to determine which costs are actually being recovered through that charge.”<sup>51</sup> Of course, this criticism is the exact sort of collateral attack on a previous Commission order that AEP Ohio argues earlier in its Application should not be permitted. It also is wrong.

While AEP Ohio criticizes EVA’s energy credit, it makes no attempt to show that the OVEC/Lawrenceburg demand charges were not included in the formula rate used to calculate the

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<sup>47</sup> AEP Ohio Application, p. 15.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*, pp. 16-20.

<sup>50</sup> AEP Ohio Application, p. 19.

<sup>51</sup> AEP Ohio Application, p. 19.

\$188.88/MW-day capacity price. Such a showing is impossible given that AEP Ohio's own witness acknowledged that all six line items proposed to be included in the FCR had been included in AEP Ohio's proposed formula rate adopted by the Commission.<sup>52</sup> The Commission made only small adjustments to the cost portion of the formula rate, none of which are relevant here, and relied on that formula rate when calculating the \$188.88/MW-day capacity price.<sup>53</sup> Thus, the same costs proposed to be included in the FCR were also included in the Commission's \$188.88/MW-day capacity price calculation.

Permitting AEP Ohio to recover its capacity costs through the \$188.88/MW-day capacity price while also applying the FCR to the auction load would be improper.

**B. The Commission Should Examine Whether AEP Ohio Is Double-Recovering Demand Costs Through The FCR And Base Generation Rates.**

AEP Ohio argues that base generation rates are not cost-based, and therefore by definition cannot double-recover for costs included in the FCR.<sup>54</sup> AEP Ohio claims that FCR costs are not included in its base generation rates, were approved in prior cases, and that bundled services like base generation should not be compared with stand-alone costs like the FCR. Therefore, AEP Ohio claims that there can be no double recovery between the base generation rate and the FCR. However, it is fair for the Commission to ask whether a cost-based FCR is necessary if AEP Ohio's base generation rates already fully compensate it for its fixed generation costs.

First, AEP Ohio is mistaken in claiming that "[i]n the face of the double recovery allegations, the Commission found that continuing to recover the non-energy/fixed component of

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<sup>52</sup> Tr. Vol. I, pp. 101-02.

<sup>53</sup> See Case No. 10-2929-EL-UNC, Opinion and Order, pp. 33-35 (July 2, 2012) ("10-2929 Order")

<sup>54</sup> AEP Ohio Application, pp. 11-15.



the FAC relating to purchased power agreements . . . was reasonable.”<sup>55</sup> As AEP Ohio well knows and acknowledges through the rest of its brief, this statement is incomplete. The Commission did not find that the costs to be included in the FCR were reasonable, or approve recovery under the FCR while this issue was litigated. Instead, as acknowledged by AEP Ohio, the “Commission found that this proceeding was not the appropriate forum to address these issues.”<sup>56</sup> It is misleading for AEP Ohio to suggest that the Commission already has determined this issue in its favor when the remainder of its Application takes the Commission to task for not deciding this issue in this proceeding.

Second, there is significant evidence that AEP Ohio does recover for capacity costs through both base generation rates and the FCR. As explained by AEP Ohio witness Roush, the base generation rates are the “leftover” after backing out riders with specific cost bases.<sup>57</sup> This “leftover” charge does not recover any energy costs.<sup>58</sup> Instead, it recovers costs related to (1) fixed capacity; (2) the Commercial Activity Tax; and (3) uncollectible expense.<sup>59</sup> It also allows AEP Ohio to earn a return on equity.<sup>60</sup> The Commission determined in the Capacity Case that AEP Ohio is fully compensated for its fixed capacity costs and earns a fair return on equity at a rate of \$13.50/MWh,<sup>61</sup> but its base generation rates are the equivalent of \$22.50/MWh. Therefore, in order to justify an additional cost-based charge for the OVEC/Lawrenceburg costs that would apply on top of the base generation rates, AEP Ohio should demonstrate that its

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<sup>55</sup> AEP Ohio Application, p. 10.

<sup>56</sup> AEP Ohio Application, p. 9.

<sup>57</sup> Tr. Vol. I, p. 88; Roush Direct, p. 4.

<sup>58</sup> Tr. Vol. I, p. 89.

<sup>59</sup> Tr. Vol. I, pp. 88-89.

<sup>60</sup> Tr. Vol. I, pp. 88-89.

<sup>61</sup> AEP Ohio witness Roush converted the \$188.88/MWh capacity price into a per MWh charge of \$13.50. Roush Direct, pp. 6-7.

current \$22.50/MWh rate is insufficient to recover its fixed capacity costs (including the OVEC/Lawrenceburg costs), its Commercial Activity Tax costs, and its uncollectible costs. This is a reasonable analysis for the Staff to conduct when AEP Ohio makes its quarterly fuel filings and for EVA to conduct during its fuel audit.

**C. AEP Ohio's Attempt To Use Non-Record Evidence Is Improper And Irrelevant.**

Apparently acknowledging that it would double-recover costs through the FCR, AEP Ohio has attempted to re-litigate the Capacity Case using non-record evidence provided for the first time in its Application as an "update using actual 2012 data."<sup>62</sup> As a preliminary matter, it is inappropriate for AEP Ohio to attempt to present new evidence in its Application when it could have presented this evidence at hearing.<sup>63</sup> Therefore, the Commission should reject AEP Ohio's attempt to use non-record evidence for the first time in its Application.

In addition to being legally improper, the new evidence presented by AEP Ohio is also irrelevant. The size of the energy credit ultimately adopted by the Commission, and the "updated" 2012 data which AEP Ohio claims increases its revenue requirement to \$397.23/MW-day, have no bearing on what costs from the Capacity Case actually were included in the \$188.88/MW-day capacity price. As discussed above, the Commission largely accepted AEP Ohio's formula rate before correcting its proposed energy credit. Therefore, the costs proposed to be included in the FCR are being recovered through the \$188.88/MW-day capacity price.

Similarly, AEP Ohio argues that \$188.88/MW-day capacity pricing cannot double-recover costs because the OVEC/Lawrenceburg costs are "less than \$39/MW-day – far less than

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<sup>62</sup> AEP Application, p. 18; AEP Application Ex. A.

<sup>63</sup> O.R.C. § 4903.10(B)(“ The commission shall also specify the scope of the additional evidence, if any, that will be taken, but it shall not upon such rehearing take any evidence that, with reasonable diligence, could have been offered upon the original hearing.”)(emphasis added)

the \$167/MW-day reduction” from the amount originally requested by AEP Ohio.<sup>64</sup> In essence, AEP Ohio argues that because the total reduction from AEP Ohio’s original demand exceeded the costs at issue there is no possible double recovery of those costs. This is factually incorrect. AEP Ohio’s original demand for \$355.72/MW-day was shown in the Capacity Case to be baseless. However, the Commission accepted for the most part the capacity cost portion of the formula rate, with the substantial difference in capacity pricing resulting from the Commission’s correction of AEP Ohio’s energy credit. AEP Ohio has not shown that the \$39/MW-day of OVEC/Lawrenceburg costs were not included in the formula rate. Indeed, AEP Ohio admits elsewhere in its Application that these costs were included in the formula rate and, thus, in the \$188.88/MW-day price.<sup>65</sup> Thus, the facts and AEP Ohio’s own statements contradict its argument—the Commission should reject it.

**D. AEP Ohio’s Manufactured Wholesale v. Retail Distinction Is Irrelevant.**

AEP Ohio repeatedly argues that there can be no double recovery in this case because the Capacity Case addressed wholesale capacity pricing, while this case addresses retail pricing.<sup>66</sup> This distinction is irrelevant. No party has contested that, as the FRR entity through May 31, 2015, AEP Ohio must provide the capacity to support the energy-only auctions. Unlike the bundled service provided to non-auction load, the auction load must be supported by a capacity-only product. The Commission has found that AEP Ohio’s cost for capacity is \$188.88/MW-day, and that cost does not vary depending upon whether the capacity is supporting shopping customers or non-shopping customers. Capacity is capacity – there’s no “retail” capacity or

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<sup>64</sup> AEP Ohio Application, p. 17.

<sup>65</sup> AEP Ohio Application, p. 15.

<sup>66</sup> AEP Ohio Application, pp. 12-13, 16, 19.

“wholesale” capacity. Capacity priced at \$188.88/MW-day fully compensates AEP Ohio for the capacity it provides to support the auction load.

AEP Ohio never explains why it would be inappropriate to establish retail rates using its actual costs as approved by the Commission, for good reason. The Commission’s well-reasoned Order fully compensates AEP Ohio for the capacity it provides. There is no reason why the Commission should not use AEP Ohio’s actual costs in this manner, and AEP Ohio’s unsupported argument should be rejected.

#### **IV. AEP OHIO’S PROCEDURAL DEMANDS SHOULD BE REJECTED.**

##### **A. The Commission’s Choice Of Auditor Is Reasonable**

AEP Ohio takes issue with the Commission’s selection in a separate proceeding of EVA as the Commission’s chosen auditor regarding the double-recovery issue.<sup>67</sup> AEP Ohio argues that EVA would not be an independent auditor because EVA testified on behalf of Staff in the Capacity Case and calculated AEP Ohio’s capacity cost.<sup>68</sup> While arguments regarding EVA’s audit are best left to the proceeding in which the audit will be performed, AEP Ohio has not shown here that reliance upon EVA’s expertise is unreasonable or unlawful.

Despite AEP Ohio’s attempt to muddy the waters, this case is not the appropriate forum to re-litigate the Capacity Case. Instead, the audit issue is much simpler. Does the FCR include costs which also are being recovered through other charges? If so, then the FCR should be adjusted so that these costs are not recovered through the FCR. Making this determination does not require EVA to “audit its own audit.”<sup>69</sup> Instead, the double-recovery issue is a yes or no factual determination which is readily within EVA’s expertise regarding AEP Ohio’s FAC

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<sup>67</sup> AEP Ohio Application, pp. 20-21.

<sup>68</sup> AEP Ohio Application, p. 21.

<sup>69</sup> AEP Ohio Application, p. 22.

charge and the specific cost-based build up of AEP Ohio's capacity charge. AEP Ohio's premature criticism of EVA should be rejected.

**B. The Commission Has Discretion To Address Double-Recovery Issues In AEP Ohio's FAC Audit Proceedings.**

AEP Ohio objects to the Commission's decision to address the double-recovery issue in AEP Ohio's FAC audit proceedings, arguing that these issues have been fully briefed in this proceeding and are therefore ripe for determination.<sup>70</sup> Interestingly, the double-recovery issue referenced by AEP Ohio in Section III of its Application is that resulting from the \$188.88/MW-day capacity price recovering the same costs that AEP Ohio hopes to include in the FCR.<sup>71</sup> As such, FES agrees that the Commission should clarify its Order in this proceeding to make clear that the FCR will be blended to avoid double recovery. No additional hearing is necessary because AEP Ohio witness Roush already has admitted that all FCR costs were also included in the \$188.88/MW-day capacity price.<sup>72</sup>

However, there is no reason why the Commission cannot consider the double-recovery issue relating to base generation rates in one or more of AEP Ohio's fuel cases. The FAC proceedings are specifically designed to prevent improper fuel charges, and the Commission can certainly utilize those proceedings to review the proposed FCR for any potential double recovery.

It is also curious that AEP Ohio is the entity arguing that this issue must be considered in this proceeding in light of its position in other cases. For example, in its ESP II proceeding, AEP Ohio requested that the Commission defer to a future proceeding its decision on cost recovery for the Turning Point facility. FES and other parties objected to this proposal based on the text

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<sup>70</sup> AEP Ohio Application, pp. 9-10, 20.

<sup>71</sup> AEP Ohio Application, pp. 20-22.

<sup>72</sup> See *supra*, Section III.

of R.C. § 4928.143(B)(2)(c), which expressly required a decision on generating costs “in the [ESP] proceeding.” Despite this statutory language, AEP Ohio repeatedly argued that the Commission could defer its decision to a future proceeding because the Commission has discretion to manage its dockets.<sup>73</sup> Here, there is no statute mandating that the Commission consider the double-recovery issue in this proceeding. Therefore, there is no statutory authority prohibiting the Commission from managing its dockets by considering the double-recovery issue in the FAC proceeding.

AEP Ohio makes the alternative suggestion that if the Commission needs additional information it should hold another evidentiary hearing in this proceeding regarding the double-recovery issue. However, a significant benefit of the ESP II Order was AEP Ohio’s transition to market pricing through competitive auctions. AEP Ohio’s request is a transparent attempt to manufacture additional delay so that it can avoid the energy auctions now scheduled for February, May and September of 2014. Those auctions should not be delayed further while the double-recovery issue is litigated.

#### **V. CAPACITY COSTS SHOULD BE RECOVERED FROM SSO CUSTOMERS.**

AEP Ohio argues that page 14 of the Order contains an error requiring winning auction bidders to pay for capacity service.<sup>74</sup> As discussed in the FES Application for Rehearing at pp. 2-4, FES agrees with AEP Ohio. The \$188.88/MW-day price for capacity supporting the auction load will be blended into the SSO rates paid by customers, not paid by winning auction bidders. This misstatement in the Order should be corrected on rehearing.

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<sup>73</sup> See, e.g., Case No. 11-346-EL-SSO et al., AEP Ohio Post-Hearing Reply Brief, pp. 48-50.

<sup>74</sup> AEP Ohio Application, pp. 22-24.

## VI. CONCLUSION

FES respectfully requests that, other than the issue related to winning auction bidders paying for capacity, the Commission deny AEP Ohio's Application for Rehearing.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp. Memorandum in Opposition to AEP Ohio Application for Rehearing* was served this 23rd day of December, 2013, via e-mail upon the parties below.

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