

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

- (1) Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company)<sup>1</sup> is an electric utility as defined by R.C. 4928.01(A)(11) and an electric distribution utility as defined by R.C. 4928.01(A)(6).
- (2) R.C. 4928.141 provides that an electric distribution utility shall provide consumers a standard service offer (SSO) of all competitive retail electric services in accordance with R.C. 4928.142 or 4928.143.
- (3) In Case No. 11-346-EL-SSO, et al., the Commission modified and approved, pursuant to R.C. 4928.143, AEP Ohio's application for an electric security plan (ESP), including a competitive auction-based SSO format. *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 11-346-EL-SSO, et al. (ESP Case), Opinion and Order (Aug. 8, 2012) at 38-40; Entry on Rehearing (Jan. 30, 2013) at 34-39. The Commission established a series of competitive energy auctions for AEP Ohio's SSO load. The Commission also directed AEP Ohio to formulate a competitive bid procurement (CBP) process consistent with R.C. 4928.142 by December 31, 2012, and to initiate a stakeholder process prior to filing its CBP.
- (4) On December 21, 2012, AEP Ohio filed an application in the above-captioned case to establish a CBP process for its SSO. On February 11, 2013, AEP Ohio filed a supplement to its application.

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<sup>1</sup> On March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company into Ohio Power Company. *In re Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2376-EL-UNC, Entry (Mar. 7, 2012).

- (5) By Opinion and Order issued on November 13, 2013, the Commission approved and modified AEP Ohio's application and supplement (CBP Order). The Commission determined that AEP Ohio's application and supplement, as modified, established reasonable auction procedures that are consistent with the auctions conducted by other electric distribution utilities in Ohio.
- (6) R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.
- (7) On November 20, 2013, the Ohio Energy Group (OEG) filed an application for rehearing of the CBP Order. OEG filed attachments to its application for rehearing on November 21, 2013. AEP Ohio filed a memorandum in response to OEG's application for rehearing on December 2, 2013.
- (8) On December 13, 2013, FirstEnergy Solutions Corp. (FES) and AEP Ohio filed applications for rehearing of the CBP Order.
- (9) By Entry on Rehearing issued on December 18, 2013, the Commission granted the applications for rehearing filed by OEG, FES, and AEP Ohio for further consideration of the matters specified in the applications for rehearing.
- (10) Constellation NewEnergy, Inc. and Exelon Generation Company LLC (jointly, Exelon) filed correspondence on December 20, 2013, in response to FES' application for rehearing. Additionally, AEP Ohio filed a memorandum contra FES' application for rehearing on December 23, 2013. Memoranda contra AEP Ohio's application for rehearing were filed by FES, OEG, Ohio Consumers' Counsel (OCC), and Industrial Energy Users-Ohio (IEU-Ohio) on December 23, 2013.

#### Blending of Auction Results and SSO Rates

- (11) In its first ground for rehearing, AEP Ohio argues that it was unreasonable and unlawful for the Commission to order that the Company's base generation rates be decreased in connection with the energy-only auctions. According to AEP

Ohio, the Commission has based its decision to adjust the Company's base generation rates through the auctions on an improper interpretation of the Commission's orders in the *ESP Case*. AEP Ohio asserts that its proposal to continue to charge current base generation rates for all SSO sales during the delivery period through December 31, 2014 is reasonable and consistent with the Commission's findings in the *ESP Case*. AEP Ohio notes that the Commission's CBP Order relies on language in the *ESP Case* that is related solely and expressly to the Company's request that base generation rates remain frozen after December 2014. AEP Ohio adds that its ESP, as a package of terms and conditions, did not incorporate base generation rate reductions, particularly with respect to the retail stability rider (RSR) and the market rate offer test. Further, AEP Ohio contends that there is no basis in the record for the Commission's decision to adjust base generation rates to account for the results of the energy-only auctions, which, according to the Company, will have a significant financial impact and undermine the RSR. Specifically, AEP Ohio maintains that there is no basis for concluding that base generation rates reflect energy-related costs or should fluctuate based on the energy auction process, or that retail base generation service is equivalent to wholesale capacity service.

- (12) Noting that the Commission already addressed in the CBP Order the proper interpretation of its findings on rehearing in the *ESP Case*, OEG asserts that AEP Ohio has offered no valid reason to alter that interpretation. OEG adds that the capacity blending methodology adopted by the Commission is supported by the record and that AEP Ohio has cited no new information regarding the financial impact of the Commission's decision on the Company.
- (13) Like OEG, FES believes that the CBP Order is consistent with the Commission's orders in the *ESP Case* and that AEP Ohio has merely repeated the same arguments that have been previously considered and rejected by the Commission. FES adds that AEP Ohio conflates base generation rates, which are frozen, with base generation revenues, which will fluctuate as the Company serves fewer and fewer SSO customers through traditional bundled generation service. FES also notes that the Commission correctly determined that AEP Ohio's financial

stability will be maintained through the RSR for the remainder of the ESP term.

- (14) For its part, IEU-Ohio notes that, in the *ESP Case*, the Commission required AEP Ohio to reduce its base generation rates once delivery of energy from the auctions begins. IEU-Ohio, therefore, contends that the CBP Order only requires AEP Ohio to comply with the directives in the *ESP Case* and that the Company's arguments in the present proceeding amount to a collateral attack on the *ESP Case*. With respect to capacity pricing in base generation rates, IEU-Ohio notes that the Commission has already determined that AEP Ohio provides the same capacity service to shopping and non-shopping load and that the service is, thus, comparable.
- (15) OCC asserts that the CBP Order is consistent with the Commission's express finding on rehearing in the *ESP Case* that it would be unreasonable to permit AEP Ohio to recover more than its cost of service for capacity from SSO customers. OCC contends that AEP Ohio's attempt to draw distinctions between capacity supplied to competitive retail electric service providers for shopping customers and capacity supplied by the Company to non-shopping customers should be rejected. OCC notes that there is no difference in the cost of capacity whether it is supplied on a wholesale or retail basis.
- (16) The Commission finds that AEP Ohio has raised no new arguments for our consideration with respect to its first ground for rehearing addressing the blending of auction results with the Company's SSO rates. We find no merit in AEP Ohio's claim that the CBP Order is based on an improper interpretation of our orders in the *ESP Case*. The CBP Order clearly sets forth our key findings from the *ESP Case*, which rejected AEP Ohio's arguments. Additionally, the CBP Order fully explains how AEP Ohio's rate proposal is inconsistent with our orders in the *ESP Case*, while the blending proposal put forth by FES appropriately reflects those orders. (CBP Order at 12-14.) We disagree with AEP Ohio's contention that the CBP Order results in a decrease in base generation rates, as the Company's base generation rates will remain unchanged. The CBP Order requires only that AEP Ohio's SSO rates be comprised of a blend of energy-only auction results, capacity, and base generation rates, which is consistent with our decision

in the *ESP Case*. Although base generation revenues will subside as more SSO customers are served through the auctions, AEP Ohio will continue to receive the benefit of significant RSR revenues throughout the entire ESP term (CBP Order at 14). The Commission, therefore, again rejects AEP Ohio's arguments that the blending of base generation rates with energy auction results will result in significant financial harm to the Company. Accordingly, we find that AEP Ohio's first ground for rehearing should be denied.

- (17) In its application for rehearing, FES notes that, in the CBP Order, the Commission states that winning auction bidders should pay for capacity at a rate of \$188.88/megawatt-day (MW-day) (CBP Order at 14). FES notes that this particular sentence is confusing and appears to be a misstatement. FES requests that the Commission clarify that auction winners are not required to pay for capacity associated with the energy-only auctions and that SSO customers will pay the \$188.88/MW-day charge for capacity that supports the auction load in lieu of the base generation rate.
- (18) Similarly, in its fourth ground for rehearing, AEP Ohio asserts that, regardless of whether the Commission reverses or modifies its decision to reduce non-energy rates in conjunction with the energy-only auctions, the Commission should correct the erroneous statement that energy-only auction suppliers should pay the \$188.88/MW-day charge for wholesale capacity service (CBP Order at 14). AEP Ohio notes that the inclusion of a capacity product into the auction process at this point would be a substantial undertaking, create uncertainty for prospective suppliers, delay the auction schedule, and likely have a significant adverse effect on the success of the auctions.
- (19) Exelon agrees with FES and AEP Ohio that the Commission should clarify that capacity costs will be recovered from non-shopping customers rather than winning auction bidders. Exelon asserts that this clarification is necessary to provide certainty to prospective participants in the upcoming auctions.
- (20) The CBP Order states that "as the winners of the energy only auctions will receive capacity from AEP Ohio, winning auction bidders should pay for capacity at the rate of \$188.88/MW-day" (CBP Order at 14). The Commission finds that the

sentence in question is imprecise and may cause confusion and, therefore, we agree with AEP Ohio and FES that clarification is necessary. Although the Commission believes that our intent is apparent from the remainder of the CBP Order, we clarify that it is the SSO load served by the winning auction bidders, and not the bidders themselves, that will receive capacity from AEP Ohio. Auction winners, therefore, are not required to provide or pay for capacity associated with the energy-only auctions. Rather, the \$188.88/MW-day charge for capacity associated with the auction load should be assessed to AEP Ohio's SSO customers for the portion of the SSO load obtained through the auctions. With this clarification in place, the requests for rehearing of AEP Ohio and FES should be denied.

#### Cost Allocation

- (21) In its application for rehearing, OEG asserts that the CBP Order unreasonably fails to specify that AEP Ohio should allocate the energy costs resulting from its SSO auctions and its \$188.88/MW-day demand cost in the same manner used by The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company (collectively, FirstEnergy). OEG argues that AEP Ohio should be required to allocate its SSO auction energy costs with adjustments for line losses, while allocating its \$188.88/MW-day demand cost on a 5 Peak Load Contribution basis used by PJM Interconnection. OEG notes that its proposed cost allocation approach is revenue neutral, grounded in fundamental ratemaking principles, and consistent with FirstEnergy's practice. OEG urges the Commission to act quickly on this issue, in light of AEP Ohio's mandatory filing addressing market rate impacts in another docket. *In re Ohio Power Company*, Case No. 13-1530-EL-UNC (*Market Rate Impact Case*), Finding and Order (Nov. 13, 2013).
- (22) AEP Ohio responds that OEG's requested clarification is unnecessary, particularly on an expedited basis. AEP Ohio points out that its testimony reflects that energy auction purchase costs will be adjusted to reflect losses. AEP Ohio adds that it is sufficiently clear that the \$188.88/MW-day charge would be allocated on a 5 Coincident Peaks basis. AEP Ohio argues that OEG's request to clarify these rate design details on rehearing is inconsistent with the process established in the

*Market Rate Impact Case* and should, therefore, be resolved in that proceeding.

- (23) The Commission agrees with AEP Ohio that cost allocation issues should be resolved in the pending *Market Rate Impact Case*, in which the Company has been directed to provide information regarding auction-based rates, including the expected rate design for each customer class, schedules for each customer class that identify billing determinants, potential rate impacts for each customer class, and any options that would mitigate adverse impacts that may result from implementing the rate design. Interested parties have been invited to file comments in response to AEP Ohio's filing in that docket. (*Market Rate Impact Case* at 7-8.) For that reason, OEG's application for rehearing should be denied.

#### Double Recovery and Fixed Cost Rider

- (24) In its second ground for rehearing, AEP Ohio contends that it was unreasonable and unlawful for the Commission to defer ruling on the intervenors' argument that the fixed cost rider (FCR) will result in a double recovery of certain fixed costs. AEP Ohio asserts that the allegations of double recovery, which were thoroughly litigated, should be addressed in the present proceeding, including an additional hearing, if deemed necessary by the Commission. In support of its position, AEP Ohio offers several arguments. First, AEP Ohio maintains that the allegations of double recovery are based on cost-of-service ratemaking, although the Company's base generation rates are not cost-based rates. Consequently, AEP Ohio points out that there is no basis for finding that costs previously recovered through the fuel adjustment clause (FAC), or soon recovered through the FCR, are also being recovered through base generation rates. Next, AEP Ohio argues that the Commission has already recognized in the *ESP Case* that retail base generation rates for bundled SSO service reflect different services than the \$188.88/MW-day rate for wholesale capacity service to support shopping load. Third, AEP Ohio contends that double-recovery arguments are improper collateral attacks on prior Commission orders approving the Company's base generation rates and cost of capacity. Finally, AEP Ohio asserts that the existing record confirms that the allegations of double recovery are meritless.

- (25) In its third ground for rehearing, AEP Ohio argues that, even if the double-recovery issue is not resolved on rehearing, it would be unreasonable to defer resolution of the issue to the Company's pending FAC audit. *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 11-5906-EL-FAC, et al. (FAC Audit Case), Entry (Dec. 4, 2013) at 3-4. AEP Ohio asserts that, if the Commission elects to defer consideration of the double-recovery allegations, the Commission should establish a new docket in which to address the allegations. AEP Ohio maintains that it is not appropriate to instruct the selected auditor, Energy Ventures Analysis, Inc. (EVA), to evaluate capacity cost issues, given that EVA has previously assisted the Commission's Staff as an advocate adverse to the Company. AEP Ohio adds that EVA should not be permitted, in effect, to perform a review of its own financial and management audit completed in a prior case establishing capacity rates. *In re Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC (*Capacity Case*), Opinion and Order (July 2, 2012); Entry on Rehearing (Oct. 17, 2012).
- (26) FES strongly opposes AEP Ohio's attempt to delay the auction process by seeking to reopen this proceeding for additional evidence regarding the double-recovery allegations. FES also asserts that AEP Ohio admits that the FCR will recover fixed generation costs already included in the \$188.88/MW-day capacity charge. With respect to base generation rates, FES believes that the Commission should consider, contrary to AEP Ohio's claims, whether a cost-based FCR is necessary if the Company's base generation rates already provide full compensation for fixed generation costs.
- (27) OCC urges the Commission to reject AEP Ohio's attempt to establish on rehearing that there is no double recovery of capacity costs. OCC points out that AEP Ohio focuses its arguments on base generation rates, despite the fact that double recovery will allegedly occur through capacity rates and the FCR. Similarly, OEG points out that AEP Ohio's argument denying double recovery through its base generation rates misses the point, because the double-recovery allegations stem from the fact that certain fixed purchased power costs may be recovered through both the FCR and the blended SSO capacity rates. OEG argues that AEP Ohio has failed to refute



that the FCR will not result in double recovery of the fixed purchased power costs from customers, given that the Company cannot conclusively state that the fixed purchased power costs were excluded from the computation of the \$188.88/MW-day capacity rate.

- (28) IEU-Ohio notes that AEP Ohio's arguments ignore the fact that the Company is recovering certain capacity-related costs through its current FAC rates in conjunction with the new FCR, through base generation rates, and through the \$188.88/MW-day price for capacity. IEU-Ohio adds that AEP Ohio fails to provide a single citation to the record in this case or any other case that refutes the existence of double recovery.
- (29) Additionally, IEU-Ohio reiterates that the Commission has confirmed that there is no difference in the capacity service provided to shopping load and non-shopping load. FES agrees that AEP Ohio's attempt to distinguish between wholesale and retail capacity pricing is irrelevant, as the cost of capacity does not vary depending on whether the capacity supports shopping or non-shopping customers. Further, IEU-Ohio notes that, in the CBP Order, the Commission merely noted that the present case is not the proper forum in which to address the alleged double recovery and, therefore, AEP Ohio's arguments opposing an audit are not ripe for review in this case, because they do not challenge the CBP Order.
- (30) OCC and FES also point out that AEP Ohio's arguments denying any double recovery, as set forth in the Company's application for rehearing, improperly rely on non-record information, including two new attached exhibits, in violation of R.C. 4903.09. OCC asserts that the double-recovery allegations should be resolved in the *FAC Audit Case*, as required by the Commission. According to OCC, there is no basis for AEP Ohio's complaint that EVA cannot perform an independent analysis of the double-recovery allegations. Rather, OCC contends that EVA's familiarity with the complex issues involved is an advantage that will ensure a thorough review. Similarly, IEU-Ohio finds that there is no conflict of interest. IEU-Ohio notes that EVA will determine whether costs collected through the FAC or FCR are already being recovered elsewhere. Because EVA will not be required to revisit its analysis with respect to AEP Ohio's cost of capacity,

as in the *Capacity Case*, IEU-Ohio asserts that there is no merit in the Company's argument that EVA will audit its own audit. FES agrees, pointing out that the double-recovery issue requires a simple factual determination that is readily within EVA's expertise. FES contends that AEP Ohio's criticism of EVA is premature and should be rejected. FES further contends that the Commission has discretion to address the double-recovery issues in the *FAC Audit Case*.

- (31) Although the Commission acknowledged intervenors' concerns regarding AEP Ohio's potential double recovery of certain capacity costs in the CBP Order, we noted that this proceeding is not the appropriate forum in which to address the allegations (CBP Order at 16). Subsequently, in the *FAC Audit Case*, the Commission selected EVA to conduct an audit of AEP Ohio's fuel and alternative energy costs. The Commission further directed EVA to review and investigate the double-recovery allegations as part of its audit and to recommend appropriate Commission action based on the review. (*FAC Audit Case* at 2, 3-4.) We find no error in having deferred our consideration of the double-recovery allegations to the *FAC Audit Case*. The Commission reasonably directed EVA to conduct a thorough investigation of the allegations and offer recommendations for the Commission's consideration. We find that this is a sound approach that will provide for a systematic review of the costs in question. The Commission finds that rehearing is not appropriate on this issue because the Commission did not select EVA in the CBP Order. Further, although the Commission does not agree with AEP Ohio's contention that the selection of EVA as auditor was in some way inappropriate, we nevertheless direct Staff to issue a supplemental request for proposal in the *FAC Audit Case*, solely for the investigation of the double-recovery allegations, in order to avoid any appearance of a conflict of interest with respect to the investigation. To the extent that AEP Ohio raises other arguments regarding the directives in the *FAC Audit Case*, we find that such arguments lack merit and should, therefore, be rejected. For these reasons, we find that AEP Ohio's second and third grounds for rehearing should be denied.
- (32) In its application for rehearing, FES requests that the Commission provide additional clarity regarding AEP Ohio's potential double recovery of capacity costs through the FCR.

FES asserts that the Commission should clarify that the FCR will be blended at the same percentages as AEP Ohio's base generation rates. FES notes that this blending is necessary, given that AEP Ohio will fully recover its fixed fuel costs for the auction load through the \$188.88/MW-day capacity charge. FES asserts that the Commission should specify that it adopted the blending mechanism proposed by FES in its entirety, including blending with respect to the FCR, and thereby eliminate the potential for a double recovery of \$46.7 million.

- (33) AEP Ohio responds that the Commission already considered and rejected FES' blending proposal for the FCR. According to AEP Ohio, there is no basis in the Commission's orders in the *ESP Case* for concluding that the fixed cost of purchased power arrangements recovered through the FCR should be incrementally reduced to zero for portions of the SSO load corresponding to the 10 percent, 60 percent, and 100 percent portions of the energy-only auctions. AEP Ohio notes that, in the *ESP Case*, the Commission authorized the Company to continue its FAC mechanism, including recovery of non-energy costs associated with purchased power contracts used to fulfill the Company's obligation to provide an SSO to non-shopping customers. AEP Ohio adds that disallowance of recovery of costs associated with contracts approved by the Federal Energy Regulatory Commission would trap costs in violation of federal law.
- (34) Additionally, FES points out that another concern is that AEP Ohio's base generation rates recover the same fixed fuel costs that are proposed for recovery through the FCR. FES contends that, although the Commission noted that this proceeding is not the proper forum in which to address the potential double recovery, the Commission failed to identify the appropriate forum and instead later ordered the review to occur in the *FAC Audit Case*. FES argues that the Commission should require Staff to examine the potential for double recovery in AEP Ohio's next quarterly FAC proceeding. FES adds that interested parties should be permitted to participate in that proceeding and to assist in the review of AEP Ohio's FCR calculation.
- (35) AEP Ohio replies that FES' concern is without basis for the reasons set forth in the Company's application for rehearing.

AEP Ohio, therefore, urges the Commission to reject FES' request for a Staff review of the double-recovery issue in the context of the Company's next quarterly FAC proceeding.

- (36) With respect to FES' request for clarification regarding the FCR, the Commission notes that the CBP Order expressly adopted AEP Ohio's proposal to unbundle the FAC, including the Company's request for approval of the FCR as a means to recover non-energy costs related to purchased power agreements utilized by the Company to fulfill its SSO obligations (CBP Order at 16). Further, as addressed above, we reasonably deferred consideration of the intervenors' double-recovery allegations to the *FAC Audit Case*, in which an independent auditor will examine the allegations and advise the Commission on any recommended action. Consequently, AEP Ohio's alleged double recovery of capacity costs through the FCR is among the issues to be addressed in the *FAC Audit Case*. Turning to FES' request that Staff be directed to examine the double-recovery allegations within the context of AEP Ohio's next quarterly FAC filing, we find that the *FAC Audit Case* will provide ample opportunity for Staff and intervenors in those proceedings to raise any concerns regarding double recovery. The Commission finds, therefore, that FES' request for rehearing on these issues should be denied.

It is, therefore,

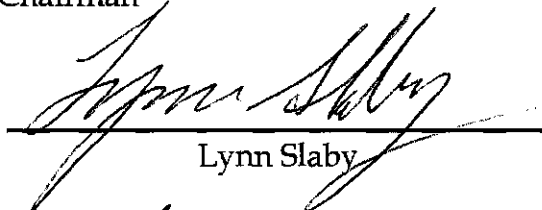
ORDERED, That the applications for rehearing filed by AEP Ohio, FES, and OEG be denied. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

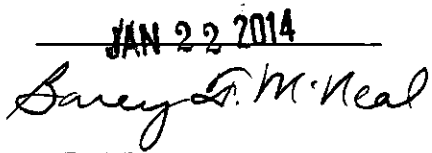
  
Lynn Slaby

  
M. Beth Trombold

  
Asim Z. Haque

SJP/vrm

Entered in the Journal

JAN 22 2014  
  
Barcy F. McNeal

Barcy F. McNeal  
Secretary