

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Power Company to Adopt a Final	)	Case No. 14-1186-EL-RDR
Implementation Plan for the Retail Stability	)	
Rider.	)	

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**REPLY COMMENTS OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION**

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**I. Introduction**

In accordance with the schedule established by the Attorney Examiner, the Retail Energy Supply Association ("RESA")<sup>1</sup> hereby files its Reply Comments in this matter involving the application by Ohio Power Company ("Ohio Power") to continue its Retail Stability Rider ("RSR") after June 1, 2015, until it completes collection of all amounts in its Deferred Capacity Account.<sup>2</sup> First, RESA responds to the ill-advised and duplicated argument of the Ohio Consumers' Counsel ("OCC") that competitive retail electric service ("CRES") providers should pay all amounts in the Deferred Capacity Account. Second, RESA concurs with the Ohio

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<sup>1</sup> RESA is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than a regulated utility structure. Several RESA members are certified as competitive retail electric service providers, are active in the Ohio retail electric and natural gas markets, and provide service to residential, commercial, industrial and governmental customers, including customers in Ohio Power's service territory. RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

<sup>2</sup> The current Deferred Capacity Account authority was established in *In the Matter of the Commission's Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Opinion and Order at 23 (July 2, 2012) ("Capacity Case"). The Commission initiated recovery of those deferred amounts in *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO et al., Opinion and Order at 36 (August 8, 2012) ("ESP II").

Hospital Association (“OHA”) that pending appeals<sup>3</sup> at the Ohio Supreme Court may have a bearing on the collection of the Deferred Capacity Account, which RESA also pointed out in its Initial Comments. RESA believes that the Public Utilities Commission of Ohio (“Commission”) can move forward with this application by reserving the right to make adjustments based on the outcome of those appeals, as well as other pending Commission cases.<sup>4</sup>

**I. Competitive retail electric service providers should not pay all the deferred capacity costs.**

OCC claims that only CRES providers should pay the deferred capacity costs on three theories: (a) the CRES providers are the cost-causers of the deferred capacity costs; (b) the current cost-recovery approach creates a subsidy for CRES providers; and (c) residential customers will pay twice for the capacity if they have to pay the deferred capacity costs.<sup>5</sup> In support of the first theory, OCC further states that the deferral was accorded to the CRES providers “with the expectation that it would assist in developing a competitive generation market.”<sup>6</sup> In OCC’s view, there is now a robust competitive market in Ohio Power’s service territory now and therefore the shopping and non-shopping customers should no longer have to pay the deferred capacity costs.

These three OCC arguments are not new; they were all raised in the *Capacity Case* and/or the *ESP II*. In the *Capacity case*, the Commission specifically ruled that the capacity compensation shall be \$188.88/megawatt-day as the “appropriate charge to enable AEP-Ohio to recover its capacity costs for its [fixed resource requirement] obligations from CRES providers.”<sup>7</sup>

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<sup>3</sup> Supreme Court Case Nos. 2013-228 and 2013-521 are the appeals from decisions in *Capacity Case* and the *ESP II*, respectively.

<sup>4</sup> *In the Matter of the Application of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company and Related Matters*, Case Nos. 11-5906-EL-FAC et al. (“*FAC Cases*”)

<sup>5</sup> OCC Initial Comments at 5, 7, 9.

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Capacity Case*, Opinion and Order at 33.

The Commission did not rule that, when recovery was sought, the deferred capacity costs should be charged to CRES providers.

In fact, the Commission reached the opposite conclusion. In *ESP II*, the Commission ordered Ohio Power to begin to recover the deferral through Rider RSR, on a non-bypassable basis.<sup>8</sup> Moreover, the Commission expressly rejected the claims that such recovery of the deferred capacity costs violates cost-causation principles, constitutes an improper subsidy, and causes customers to pay twice.<sup>9</sup> As a result, the Commission ruled that the costs should be recovered from ratepayers. No changes have occurred since the Commission issued those rulings<sup>10</sup> and, therefore, there is no basis for altering the recovery of the deferred capacity costs at this juncture. Accordingly, the Commission should reject these arguments raised by the OCC.

Although RESA recommends that OCC's double-recovery argument be rejected, RESA recognizes that another concern over double-recovery with regard to capacity costs has been raised and is currently under consideration. The Commission decided to evaluate a claim that certain capacity-related costs are being double-recovered by Ohio Power – once through its fuel adjustment clause (“FAC”) and/or its new Fixed Cost Rider, and another time through the deferred capacity amounts.<sup>11</sup> The Commission has ordered an audit of Ohio Power's FAC and included specifically an inquiry into that allegation of double recovery.<sup>12</sup> As RESA pointed out in its Initial Comments, a ruling in the *FAC Cases* may also have a bearing on the recovery of

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<sup>8</sup> *ESP II*, Opinion and Order at 36-37.

<sup>9</sup> *ESP II*, Entry on Rehearing at 18-19.

<sup>10</sup> Appeals related to the *Capacity Case* and the *ESP II* are still pending. Those appeals involve the same argument that OCC raises here.

<sup>11</sup> *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, Opinion and Order at 16 (November 13, 2013).

<sup>12</sup> *Id.* at 16; Entry on Rehearing (January 22, 2014) at 10. The audit is occurring in *FAC Cases*, *supra*.

deferred capacity costs.<sup>13</sup>

**II. The pending appeals at the Ohio Supreme Court, as well as the pending FAC cases, may have a bearing on the collection of the Deferred Capacity Account.**

A deferral of this proceeding, as recommended by OHA, may initially appear to be an attractive option given these other related matters. However, RESA believes that a complete deferral of this proceeding is not needed when the Commission can, in the context of moving forward here, establish a process to address the outcomes from the *FAC Cases* and the two Supreme Court appeals.<sup>14</sup> The Commission should provide for a process both to hear claims and to adjust the dollar balance in the Deferred Capacity Account if the Commission finds merit based on its ruling in the *FAC Cases* and if the rulings from the Ohio Supreme Court in the *Capacity Case* and/or the *ESP II* require adjustment.

Finally, for the reasons explained in RESA's Initial Comments, reserving the ability to make adjustments based on the outcomes of the various identified proceedings will necessitate rejection of two Ohio Power's proposals:

- To adjust only the capacity deferrals and carrying charge balance by reconciling revenues collected through the RSR allocated at \$1.00/MWh with the final deferral/carrying charge balance as confirmed by a financial audit conducted as of May 31, 2015.<sup>15</sup>
- To adjudicate a recommended adjustment based on a financial audit conducted as of May 31, 2015.<sup>16</sup>

**III. Conclusion**

WHEREFORE, RESA respectfully requests that the Commission reject OCC's claims

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<sup>13</sup> An adjustment to the Deferred Capacity Account is appropriate because, at the time of the double collection, there were very few shopping customers. In contrast, today, the majority of customers and the overwhelming majority of the load is shopping. Thus, the correct way to address the double collection is by adjusting the balance of the Deferred Capacity Account.

<sup>14</sup> Interestingly, OCC similarly argued that any cost recovery decision in this matter should be subject to refund, depending on the outcome of the Supreme Court appeals. OCC Initial Comments at 15.

<sup>15</sup> Paragraph 4(f) of the Application.

<sup>16</sup> Paragraph 4(e) of the Application.

that only CRES providers pay all the deferred capacity costs. Moreover, because pending appeals and other Commission cases may have a bearing on the collection of the Deferred Capacity Account, the Commission should reserve the right to make future adjustments to any deferred capacity cost amount that it authorizes in this case for recovery through the RSR, commencing June 1, 2015.

Respectfully Submitted,




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### CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 16<sup>th</sup> day of December 2014 upon the persons/entities listed below.

  
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