

**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.)

**REPLY COMMENTS OF THE
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. INTRODUCTION

On July 8, 2014, Ohio Power Company (AEP or the Company) filed an application (Application) with the Public Utilities Commission of Ohio (Commission) to adopt a final implementation plan for its Retail Stability Rider (RSR). On July 18, 2014, the Ohio Manufacturers' Association Energy Group (OMAEG) filed a motion to intervene in the proceeding, which the Attorney Examiner granted by entry dated October 30, 2014 (Entry). In addition to granting various motions to intervene, the Entry set forth a procedural schedule governing the present phase of the proceeding. Pursuant to the Entry, on December 1, 2014, OMAEG and several other parties, including the staff of the Commission (Staff), the Office of the Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), the Ohio Energy Group (OEG), the Ohio Hospital Association (OHA), The Kroger Company (Kroger), and the Retail Energy Supply Association (RESA) filed initial comments on AEP's Application. The Entry also directed that interested parties file reply comments by December 16, 2014. Pursuant to that directive, OMAEG submits these reply comments in response to comments previously submitted by other intervenors in the above-captioned matter.

II. REPLY COMMENTS

With the exception of Staff, all parties that filed initial comments on AEP's Application recommend that the Commission (1) dismiss the Application or presently abstain from making a determination on the Application; (2) make significant changes with regard to the allocation of the RSR; or (3) advocate some combination of or alternative approach utilizing the two aforementioned recommendations. OMAEG offers the following comments on these approaches.

A. The Commission should dismiss the Application or, in the alternative, hold a determination in the matter in abeyance until such time as key jurisdictional, legal, and factual issues implicated by the Application have been resolved.

In IEU-Ohio's August 19, 2014 motion to dismiss, and again in the initial comments filed by IEU-Ohio, OHA, and OMAEG in this matter, those parties raise questions regarding the Commission's jurisdiction over the regulation of compensation for wholesale capacity service. Moreover, as noted in numerous parties' initial comments, Commission orders authorizing the capacity deferral AEP seeks to collect by means of its Application in this case are presently under review by the Supreme Court of Ohio.¹ Concepts implicated in the Application, such as double payment of deferred capacity costs, are also tied to the ultimate determinations made in the Capacity Appeal, the ESP II Appeal, and other fuel adjustment clause cases pending before the Commission.

Further, as noted by the Attorney Examiner in the Entry, all determinations regarding future recovery of the capacity deferral balance are scheduled to occur following the Company's

¹ See generally, *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, PUCO Case No. 10-2929-EL-UNC (Capacity Case) and the appeal of the Commission's determination in the same, Supreme Court of Ohio Case No. 2013-0228 (Capacity Appeal); see also *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*, PUCO Case Nos. 11-346-EL-SSO, et al. (ESP II Case) and the appeal of the Commission's determination in the same, Supreme Court of Ohio Case No. 2013-0521 (ESP II Appeal).

filing of its actual shopping statistics at the end of the current ESP term.² The term of AEP's current ESP does not expire until May 31, 2015. Accordingly, a determination on an application such as the one filed by AEP and under consideration in this matter may not be properly considered until June 1, 2015 or after.

Given that jurisdictional, legal, and factual issues affecting various aspects of the Application are presently under review, and the fact that the actual shopping statistics (upon which the Commission has indicated it intends to rely when considering future recovery of the capacity deferral balance) will not be filed until at least June 1, 2015, the Commission should either dismiss the Application at this time or, as suggested by OHA, hold a determination on the Application in abeyance until certain pertinent matters are resolved.

B. If the Commission determines that the proposal made in the Application is ripe for determination, any approved collection of deferral amounts from AEP customers should be converted to a demand charge for demand-metered customers and be made subject to refund.

In the event that the Commission determines that it may reasonably consider AEP's Application at this point in time, OMAEG contends that the RSR design should be converted from an energy charge to a demand charge for those customers who are demand-metered. This recommendation is in line with proposals advanced by OEG and Kroger in their initial comments. Although OMAEG agrees with OCC that cost causers, rather than customers, should be paying for the deferred capacity costs, converting RSR charges to demand charges rather than energy charges for demand-billed customers would result in a more equitable allocation of deferred capacity costs than has been achieved under the present allocation methodology.

² Entry at ¶ 3, citing ESP II Case, Opinion and Order at 36 (August 8, 2012).

Further, as noted by OCC and RESA in their initial comments, if the Commission approves the collection of deferred capacity charges, such charges should be collected subject to customer refund. Adopting this approach would alleviate, in part, customers' serious concerns that collection of RSR charges while the Capacity Appeal and ESP II Appeal are pending may preclude customers' ability to later recoup these charges if the RSR is determined to be unlawful, in light of prohibitions against retroactive ratemaking. OMAEG respectfully requests that the Commission closely evaluate these concerns before making any decision on AEP's Application.

III. CONCLUSION

As advanced by OMAEG in its initial comments and the reply comments set forth above, the Commission has no authority to approve AEP's capacity shopping tax application. Further, a number of key jurisdictional, legal, and factual issues which must necessarily be considered when evaluating the Application are either under review or are presently unsettled. Prudence, therefore, dictates that the Commission either dismiss the Application, or hold any determination on the Application in abeyance until the aforementioned issues are resolved. Notwithstanding this recommendation, if the Commission determines that it is proper to act on the Application at the present, OMAEG respectfully requests that the Commission convert RSR charges to demand charges, rather than energy charges, for demand-metered customers, and specify that such charges are subject to refund if the Capacity Appeal or ESP II Appeal hold that collection of the RSR is unlawful or unreasonable.

Respectfully submitted,

/s/ Rebecca L. Hussey

Kimberly W. Bojko (0069402)

Jonathan A. Allison (0062720)

Rebecca L. Hussey (0079444)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4100

Email: Bojko@carpenterlipps.com

Allison@carpenterlipps.com

Hussey@carpenterlipps.com

Counsel for OMAEG

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on December 16, 2014.

/s/ Rebecca L. Hussey
Rebecca L. Hussey

stnourse@aep.com
mjsatterwhite@aep.com
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
jkyler@bkllawfirm.com
ricks@ohanet.org
tobrien@bricker.com
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
myurick@taftlaw.com
dparram@taftlaw.com
Maureen.grady@occ.ohio.gov
Terry.etter@occ.ohio.gov
mhpetricoff@vorys.com
glpetrucci@vorys.com
joseph.clark@directenergy.com
William.wright@puc.state.oh.us

Attorney Examiners:
Greta.see@puc.state.oh.us
Sarah.parrot@puc.state.oh.us

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Summary: Reply Comments of OMAEG electronically filed by Ms. Rebecca L Hussey on behalf of OMAEG