

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of)
the Capacity Charges of Ohio Power)
Company and Columbus Southern Power)
Company) Case No. 10-2929-EL-UNC

**CONSTELLATION ENERGY COMMODITIES GROUP, INC., CONSTELLATION
NEWENERGY, INC., DIRECT ENERGY SERVICES, LLC, DIRECT ENERGY
BUSINESS, LLC AND RETAIL ENERGY SUPPLY ASSOCIATION'S
MEMORANDUM CONTRA OHIO POWER COMPANY'S MOTION FOR RELIEF
AND REQUEST FOR EXPEDITED RULING**

I. INTRODUCTION

Pursuant to Ohio Administrative Code 4909-1-12, now come Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., Direct Energy Services, LLC, Direct Energy Business, LLC and the Retail Energy Supply Association¹ (collectively "Suppliers") and hereby submit this memorandum contra to the Motion for Relief and Request for Expedited Ruling ("Motion") filed in this proceeding on February 27, 2012 by the Ohio Power Company ("AEP Ohio"). Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., ("Constellation"), Direct Energy Services, LLC, and Direct Energy Business, LLC ("Direct Energy") are parties of record to this proceeding, who in accordance with the Commission's Entry of December 8, 2010 filed comments. The filed comments affirmed the continued use under the PJM Interconnection, LLC ("PJM") tariffs of a Commission established capacity charge for load serving entities in the AEP Ohio service area ("State Compensation

¹ RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

Mechanism”). Further, the Constellation and Direct Energy comments supported the establishment of the State Compensation Mechanism to be the applicable PJM RPM rate as that rate changes annually effective June 1st of each year. Constellation NewEnergy, Inc. and Direct Energy Services, LLC are members of the Retail Energy Supply Association (“RESA”). RESA was an active participant in the AEP Ohio ESP II proceeding² and addressed the issue of capacity rates for competitive retail electric service (“CRES”) providers in that proceeding, which had been consolidated with the above-referenced proceeding (“Capacity Case”) for purposes of hearing. Given the Commission’s Entry on Rehearing in the AEP ESP II³ proceeding rejecting the Stipulation, and requesting the Attorney Examiners to set a procedural schedule in the matter at bar on a standalone basis, RESA contemporaneously with this memorandum contra has filed for intervention.⁴ Constellation, Direct Energy, and RESA, in keeping with the Commission’s policy that parties with like interests consolidate their pleadings, present the present the following joint memorandum contra.

II. BACKGROUND ON THIS PROCEEDING

On November 24, 2010, pursuant to a Deficiency Letter⁵ issued on November 19, 2010 in FERC Docket Numbers ER11-1995-000, ER11-1997-000 and 001 and ER11-2034-000, (together, “Initial Proceedings”) American Electric Power Service Corporation (“AEPSC”) on behalf of Columbus Southern Power Company (“CSPCo”) and Ohio Power Company (“OPCo”)

² Case No. 11-346-EL-SSO.

³ The Entry on Rehearing was issued on February 23, 2012.

⁴ Intervention was granted for Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Direct Energy Business, LLC, and Direct Energy Services, LLC by Entry dated August 11, 2011 in this docket.

⁵ See *Deficiency Letter*, issued on November 19, 2010 in Docket Nos. ER11-1995-000, ER11-1997-000, ER11-1997-001 and ER11-2034-000. (“Deficiency Letter”). The Deficiency Letter instructed AEP to file the Capacity Compensation Formula templates under Attachment M-2 or whatever other section PJM designated for such provision in PJM’s Tariff, with separate tariff sheets for each CSPCo and OPCo. PJM has designated Schedule 8.1 – Appendix to the RAA for the filing of the Capacity Compensation Formulae.

(now, pursuant to the recent merger, Ohio Power Company) AEP proposed that the AEP Ohio Companies recover capacity costs essentially based on embedded generation costs from CRES providers in Ohio, a retail choice state. On December 8, 2010, the Ohio Commission issued an entry in this docket and set the State Compensation Mechanism for capacity prices as equivalent to PJM's applicable RPM price, consistent with AEP Ohio's historical rate, while the Commission reviewed the proposed capacity charges.

As noted above, the Capacity Case was consolidated for hearing with AEP Ohio's application for an Electric Security Plan and other related pending proceedings ("Consolidated Proceeding"). On September 7, 2011, eighteen parties to the Consolidated Proceeding entered into a Stipulation presenting a comprehensive plan resolving the pending proceedings, in which AEP Ohio would transition its load to a full competitive market in 2015. As part of this comprehensive agreement, the parties agreed to a two-tiered capacity pricing scheme, in which AEP Ohio would phase-in RPM-based capacity charges for shopping customers, as part of a three year glide path to RPM-based pricing for all of AEP Ohio's load.

Pursuant to the December 14, 2011 Opinion and Order, as modified by the January 23, 2012 Entry, the Commission approved the comprehensive Stipulation. On February 23, 2012, the Commission in an Entry on Rehearing revoked this approval, rejected the Stipulation and ordered AEP Ohio to file tariffs which reinstated the rates established in the remanded Electric Security Plan I proceeding, including adjustments. The Commission specifically noted that AEP Ohio's capacity charge to CRES providers as addressed in this docket, would again be considered by the Commission.⁶

⁶ February 23, 2012 Entry, p. 13. "In addition, in light of our rejection of the Stipulation, the attorney examiners are directed to establish a procedural schedule in the Capacity Charge Case."

III. RPM PRICED CAPACITY IS THE PROPER STATE COMPENSATION MECHANISM RATE FOR CRES CAPACITY

- a. **The Two Tiered Capacity Charge in the Stipulation cannot be used other than as part of a comprehensive plan to establish competitive capacity as well as energy retail markets.**

The Suppliers oppose AEP Ohio's Motion to implement the two-tiered capacity charge,⁷ as well as AEP Ohio's "alternative" two-tiered capacity proposal⁸ in the instant proceeding. First, AEP Ohio's request is contrary to the Commission's February 23, 2012 Entry which rejected the Stipulation, and "reset" the proceedings.⁹ The Commission's Rehearing Entry called upon AEP Ohio to file tariffs "to continue the provisions, terms, and conditions of its previous electric security plan, including ... an appropriate application of capacity charges under the approved state compensation mechanism established in the Capacity Charge Case."¹⁰ Although AEP Ohio asserts that this directive is confusing,¹¹ the Commission's order could not be more clear—AEP Ohio must implement the tariffs in place prior to the Stipulation, *including the capacity charge set at RPM-based prices*. Nothing in the Commission's Entry indicated that AEP Ohio may pick and choose portions of the comprehensive Stipulation to retain and apply to consumers, while rejecting less favorable portions. Thus, AEP Ohio's motion is contrary to the Commission's clear directive, and should be rejected.

⁷ AEP Ohio proposes retaining the two-tiered capacity pricing agreed to under the comprehensive Stipulation, so that approximately 21% of AEP Ohio's load that is shopping will pay for capacity at RPM-based prices, while the remainder will pay \$255 MW-day for capacity. Motion, p. 7.

⁸ Under the Alternative, AEP Ohio proposes that only customers shopping as of February 23, 2012 will receive RPM-based capacity pricing, and the remainder will pay the \$255 MW-day price. Motion, p. 15.

⁹ February 23, 2012 Entry. Also see the PUCO's February 23, 2012 press release quoting Commissioner Snitchler, "Our decision effectively hits the reset button on AEP's electric security plan, allows us to start over from the beginning...."

¹⁰ February 23, 2012 Entry, p. 12.

¹¹ AEP Ohio Motion, pp. 16-19.

Second, the two-tiered capacity charge agreed to under the Stipulation was a specific component of a comprehensive plan. It cannot be lifted in part from the Stipulation and used outside of the context for which it was created as part of the Stipulation. The only purpose of the two-tiered capacity charge was a transitory mechanism to assist AEP Ohio in making the transition to a fully competitive market. The two-tier capacity was designed to be a “glide path” which extended RPM pricing to increasing numbers of shopping customers culminating with 100% RPM capacity pricing over the course of a 42 month period. There were a host of other measures contained in the Stipulation that were designed to aid in the movement toward reliance upon a competitive market model. AEP Ohio’s current request, on the other hand, would effectively curtail competition and postpone market-based pricing indefinitely, without all of the other aspects of a transition to competition, which was the hallmark of the Stipulation. While the Stipulation sought to balance the competing interests of multiple stakeholders and resolve all of the complex, inter-related issues in dispute, AEP Ohio’s pending motion makes no attempt to balance or account for any other parties’ interests. For this reason, the motion should be rejected.

b. Outside the context of the comprehensive Stipulation, the only appropriate charge for capacity is RPM-based pricing.

The RPM-based price is a transparent, competitive price that ensures AEP Ohio will be compensated for the market value of its capacity. The RPM-based price is determined by market forces and “is designed to compensate AEP Ohio for the market value of the capacity.”¹² The RPM-based price additionally ensures that CRES providers and their customers will be paying capacity charges that are consistent with the current capacity prices in the unconstrained portions

¹² Comments by Direct Energy Services, LLC and Direct Energy Business, LLC, p. 2, filed January 7, 2011 in this docket.

of the PJM region which use the RPM for capacity.¹³ In stark contrast, the \$255 per Megawatt Day top tier of the proposed two tiered capacity pricing is a negotiated number based in large measure on the value of the other items in the comprehensive settlement. Since those items are off the table, the top tier of the pricing has no logical basis and it certainly does not reflect market prices.

AEP Ohio voices concern that putting the RPM-based rates back into place will cause “uncertainty and instability for customers.”¹⁴ Contrary to AEP Ohio’s position, the RPM-based rates add an element of stability and predictability for customers and CRES providers alike, as it is the same predictable rate that AEP Ohio has historically charged CRES providers, with the exception of the previous two months in which the comprehensive Stipulation applied. In addition, AEP Ohio has been on notice since December 8, 2010 that it is required to charge RPM-based prices for capacity to competitive electric suppliers. As such, the rate is both transparent and predictable for all market participants, including consumers and CRES providers, and is the only appropriate rate for capacity outside the context of a comprehensive transition to a competitive market.

c. AEP Ohio’s concern that a flash cut to 100% RPM priced capacity would cause a highly detrimental financial impact on AEP Ohio is not well founded at this time.

On its face, AEP Ohio’s argument that a flash cut to 100% RPM priced capacity would cause a highly detrimental financial impact on AEP Ohio¹⁵ seems premature. For customers within the AEP Ohio service territory who are not shopping, AEP Ohio will collect rates for

¹³ Comments by Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc., p. 4, filed January 7, 2011 in this docket.

¹⁴ Motion, pp. 6-9

¹⁵ Motion, pp. 4- 6

generation which are based on the cost of its generation fleet adjusted for current fuel and power purchase costs.¹⁶ For those customers who are shopping for approximately 90 days (until the June billing cycle) the State Compensation Mechanism rate for capacity will be approximately \$116 per Megawatt Day.¹⁷ That is the same rate AEP Ohio has been charging all shopping customers since the June 2011 billing cycle save for a small number of commercial and industrial customers shopping customers who signed up after September 7, 2011. In its compliance tariffs filed February 28, 2012, AEP Ohio reinstated the 90 day notice for most non residential customers that switch. Thus, at least for the next quarter, AEP Ohio's tariffs have protected the utility from a flood of new shopping customers by reinstating a shopping barrier eliminated by the Stipulation. When one considers the capacity revenues AEP Ohio will be collecting until the June billing cycle given the State Compensation Mechanism (\$116 per Megawatt Day) for shopping customers and the price of capacity built into tariff rates and the notice barrier for most commercial and industrial customers to shop, AEP Ohio has not made a case that it will be under-compensated if the Commission's February 23, 2012 Entry to reinstate RPM pricing is not stayed.

Ninety days may be enough time to complete the review of the State Compensation Mechanism in this proceeding, especially if portions of the transcript and testimony in the AEP Ohio ESP II on the topic can be incorporated into the record in the matter at bar. Ninety days may also be enough time to put together a new comprehensive plan for the development of a competitive market in the AEP Ohio service area. AEP Ohio is to file its revised ESP II plan in

¹⁶ See Entry on Remand 08-917-EL-SSO.

¹⁷ PJM's final zonal capacity price of \$116.15 is available on PJM's website at <http://pjm.com/markets-and-operations/rpm/~media/markets-ops/rpm/rpm-auction-info/2011-2012-final-zonal-ucap-obligations-and-final-zonal-scaling-factors.ashx>.

the next three weeks.¹⁸ In designing that plan, AEP Ohio will have had time to consider the concerns articulated by the Commission, as well as the framework from Duke Energy Ohio, Inc.'s (Duke) second Electric Security Plan ("ESP II"). Many of the same parties were involved in both the Duke ESP II negotiations and the AEP Ohio proceeding.

IV. CONCLUSION

WHEREFORE, the Suppliers respectfully request that the Commission deny AEP Ohio's motion to apply its primary or alternative two-tiered capacity construct. Further, to clear up any possible ambiguity on the subject, the Commission should once again confirm that the State Compensation Mechanism for purposes of the applicable capacity charge for load serving entities in the AEP Ohio service territory is the applicable RPM price.

Respectfully submitted,



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*On behalf of
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¹⁸ Entry on Rehearing February 23, 2012 p. 12.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following persons via e-mail this 5th day of March, 2012 and certify that I will serve additional parties as they become known who may file comments in this case.



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