

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Commission Review of
the Capacity Charges of Ohio Power Company
and Columbus Southern Power Company;

Industrial Energy Users-Ohio,

Appellant,

v.

Public Utilities Commission of Ohio,

Appellee.

Case No. 2013-~~13~~-0228

Appeal from the Public Utilities
Commission of Ohio

Public Utilities Commission of Ohio
Case No. 10-2929-EL-UNC

NOTICE OF APPEAL OF
APPELLANT INDUSTRIAL ENERGY USERS-OHIO

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FILED
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SUPREME COURT OF OHIO

**NOTICE OF APPEAL OF APPELLANT
INDUSTRIAL ENERGY USERS-OHIO**

Appellant, Industrial Energy Users-Ohio (“IEU-Ohio” or “Appellant”) hereby gives its notice of appeal, pursuant to R.C. 4903.11 and 4903.13, S.Ct.Prac.R. 10.02(A), and Ohio Adm.Code 4901-1-02(A) and 4901-1-36, to the Supreme Court of Ohio and Appellee, the Public Utilities Commission of Ohio (“Commission” or “PUCO”), from the Commission’s March 7, 2012 Entry (Attachment A); May 30, 2012 Entry (Attachment B); July 2, 2012 Opinion and Order (Attachment C); October 17, 2012 Entry on Rehearing (Attachment D); December 12, 2012 Entry on Rehearing (Attachment E); and January 30, 2013 Entry on Rehearing (Attachment F) in Case No. 10-2929-EL-UNC (collectively, the “Capacity Case Decisions”).

Appellant was and is a party of record in Case No. 10-2929-EL-UNC and timely filed its application for rehearing from the March 7, 2012 Entry on March 27, 2012; timely filed its application for rehearing from the May 30, 2012 Entry on June 19, 2012; timely filed its application for rehearing from the July 2, 2012 Opinion and Order on August 1, 2012; and timely filed its application for rehearing from the October 17, 2012 Entry on Rehearing on November 15, 2012. On December 14, 2012, IEU-Ohio filed a notice of appeal with the Court in Case No. 2012-2098. Subsequent to filing the notice of appeal, an application for rehearing was filed with the Commission seeking rehearing of the Commission’s December 12, 2012 Entry on Rehearing. On January 18, 2013, the Commission moved to dismiss IEU-Ohio’s December 14, 2012 appeal on grounds that it was prematurely filed. On January 30, 2013, the Commission denied the application for rehearing from its December 12, 2012 Entry on Rehearing. IEU-Ohio hereby gives its notice of appeal from the Capacity Case Decisions.

The Capacity Case Decisions are unlawful and unreasonable for the reasons set out in the following Assignments of Error:

1. The Capacity Case Decisions are unlawful and unreasonable since any authority the Commission may have to approve prices for generation-related capacity service does not permit the Commission to apply a cost-based ratemaking methodology or resort to R.C. Chapters 4905 and 4909, to supervise and regulate pricing for generation-related capacity services. Similarly, the Capacity Case Decisions are unreasonable and unlawful to the extent that they state or otherwise suggest that AEP-Ohio¹ has a right to establish rates for generation-related services that are based on any cost-based ratemaking methodology, including the ratemaking methodology identified or referenced in R.C. Chapters 4905 and 4909.
2. The Capacity Case Decisions are unlawful and unreasonable because the Commission's jurisdiction under R.C. 4905.04, 4905.05, 4905.06, and 4905.26, extends to an electric light company, only when it is "engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state,"² and does not include wholesale transactions between AEP-Ohio and competitive retail electric service ("CRES") providers.
3. The Capacity Case Decisions are unlawful and unreasonable because the Commission is without authority to "adjudicate controversies between parties as to contract rights."³ The Commission's Capacity Case Decisions rest upon the Commission's assessment of AEP-Ohio's rights under PJM Interconnection, L.L.C.'s ("PJM") Reliability Assurance Agreement ("RAA"), a contract approved by the Federal Energy Regulatory Commission ("FERC"), which is subject to Delaware law. The Commission is without jurisdiction to determine what, if any, rights AEP-Ohio may have under an agreement and this is particularly true in this case since the RAA is subject to the exclusive jurisdiction of FERC.
4. Assuming for purposes of argument that the Commission has authority to authorize the billing and collection of a generation-related capacity service charge pursuant to R.C. Chapters 4905 and 4909, the Capacity Case Decisions are unreasonable and unlawful because AEP-Ohio failed to present the required evidence and the Commission failed to comply with the substantive and procedural requirements contained in such Chapters.
5. The Capacity Case Decisions, which claimed to set a generation-related capacity rate consistent with the RAA, are unlawful and unreasonable inasmuch as the Capacity Case Decisions violate the plain language of the

¹ As used herein, AEP-Ohio refers to Ohio Power Company, which has merged with Columbus Southern Power Company.

² R.C. 4905.03.

³ *New Bremen v. Pub. Util. Comm.*, 103 Ohio St. 23, 30-31 (1921).

RAA, which must be interpreted under Delaware law (the controlling law under the RAA).

- a. The administratively-determined “cost-based” rates for AEP-Ohio’s certified electric distribution service area contained in the Capacity Case Decisions violate the plain language of Article 2 of the RAA that states the RAA has a region-wide focus and pro-competitive purpose.
 - b. Even if the Commission could establish cost-based rates that were consistent with the RAA, the Commission unlawfully and unreasonably based its determination of “cost” upon the embedded cost of AEP-Ohio’s owned and controlled generating assets based on a defective assumption that such generating assets are the source of capacity available to CRES providers serving customers in AEP-Ohio’s certified electric distribution service area. The RAA requires that any change to the default pricing, PJM’s Reliability Pricing Model (“RPM” or “RPM-Based Pricing”), must be just and reasonable and looks to the Fixed Resource Requirement (“FRR”) Entity, and the FRR Entity’s Service Area and the Capacity Resources in the FRR Entity’s Capacity Plan to establish any pricing other than RPM-Based Pricing. Based on the plain meaning of the word “cost,” the Capacity Case Decisions’ sanctioning of the use of embedded cost to establish generation-related capacity services is arbitrary and capricious. In addition, the uncontested evidence demonstrates that AEP-Ohio is not an FRR Entity, AEP-Ohio’s owned and controlled generating assets are not dedicated to serve Ohio load or satisfy any FRR obligation and also demonstrates that AEP-Ohio’s owned and controlled generating assets are not the Capacity Resources in the FRR Entity’s Capacity Plan. In such circumstances, the Commission’s reliance upon embedded cost data for AEP-Ohio’s owned and controlled generating assets to establish the cost incurred to provide generation-related capacity services to CRES providers is arbitrary and capricious.
6. The Capacity Case Decisions, which offer AEP-Ohio the opportunity to obtain above-market compensation for generation-related capacity service through a deferred revenue supplement [computed based upon the difference between RPM-Based Pricing and \$188.88/megawatt-day (“MW-day”), including interest charges], are unlawful and unreasonable for the reasons detailed below.
- a. The above-market supplement is unlawful and unreasonable inasmuch as it allows AEP-Ohio to collect above-market compensation for generation-related capacity service in violation of Ohio law’s prohibition on collecting transition revenue or its equivalent. The above-market supplement also violates the terms of AEP-Ohio’s Commission-approved settlement commitment to not impose lost generation-related revenue charges on shopping customers.

- b. The above-market supplement conflicts with the policies contained in R.C. 4928.02, which relies upon market forces, customer choice, and prices disciplined by market forces to regulate prices for competitive electric services. Additionally, the Capacity Case Decisions are unlawful and unreasonable inasmuch as the Commission authorized AEP-Ohio to collect above-market compensation for generation-related capacity service, which will provide AEP-Ohio's generation business with an unlawful subsidy in violation of R.C. 4928.02(H).
- c. The Commission is prohibited under R.C. 4928.05(A), from regulating or otherwise creating a deferral associated with a competitive retail electric service under R.C. 4905.13. The Commission may only authorize deferred collection of a generation service-related price under R.C. 4928.144, and any such deferral must be related to a rate established under R.C. 4928.141 to 4928.143.
- d. The Commission unlawfully and unreasonably authorized AEP-Ohio to defer the collection of generation-related capacity service revenue. Under generally accepted accounting principles, only an incurred cost can be deferred for future collection. To the extent that the Capacity Case Decisions imply the Commission's intended use of R.C. 4928.144, that Section also requires the Commission to identify the incurred cost that is associated with any deferral, a requirement unreasonably and unlawfully neglected by the Capacity Case Decisions.
- e. The Commission unlawfully and unreasonably determined that allowing AEP-Ohio to collect above-market compensation for generation-related capacity service was appropriate to address AEP-Ohio's claims regarding the financial performance of its generation business, the competitive business segment under Ohio law. The Commission's deference to AEP-Ohio's claims regarding the financial performance of its competitive generation business is also unlawful and unreasonable because it violates the Commission's prior determinations holding that such financial performance is irrelevant for purposes of establishing compensation for generation-related service.
- f. The Commission unlawfully and unreasonably authorized AEP-Ohio to increase the above-market revenue supplement by adding carrying charges to the deferred supplement without any evidence that carrying charges, or any specific level of carrying charges, are lawful or reasonable.
- g. The Capacity Case Decisions are unlawful and unreasonable because they fail to recognize that the rates and charges applicable to non-shopping customers, *i.e.* customers taking service under AEP-Ohio's electric security plan ("ESP"), are also providing AEP-Ohio with compensation

for generation-related capacity service, it ignores or disregards the fact that AEP-Ohio has maintained that non-shopping customers are, on average, paying nearly twice the \$188.88/MW-day price, and it fails to establish a mechanism to credit such excess compensation obtained from non-shopping customers against any deferred balance the Capacity Case Decisions work to create by comparing RPM-Based Pricing to the \$188.88/MW-day price. The non-symmetrical and arbitrary bias embedded in the Capacity Case Decisions' description of how the deferred revenue supplement shall be computed guarantees that AEP-Ohio shall collect, in the aggregate, total revenue for generation-related capacity service substantially in excess of the revenue produced by using the \$188.88/MW-day price to determine AEP-Ohio's generation-related capacity service compensation for shopping and non-shopping customers.

7. The Capacity Case Decisions are unlawful and unreasonable inasmuch as the Commission failed to restore RPM-Based Pricing as required by R.C. 4928.143(C)(2)(b), when it rejected AEP-Ohio's ESP in its February 23, 2012 Entry on Rehearing in AEP-Ohio's consolidated ESP proceeding (which included this proceeding). Additionally, the Capacity Case Decisions are unlawful and unreasonable because the Commission abrogated its February 23, 2012 Entry on Rehearing despite the fact that no party filed an application for rehearing from the February 23, 2012 Entry on Rehearing challenging the appropriate level of compensation AEP-Ohio was to receive for generation-related capacity service during the pendency of the Commission's review in this proceeding.
8. The Capacity Case Decisions are unlawful and unreasonable inasmuch as the temporary two-tiered rates authorized therein violate the comparability requirements in R.C. Chapter 4928, which require the generation-related capacity service rate applicable to CRES providers or otherwise to shopping customers to be comparable to the generation-related capacity service rate embedded in AEP-Ohio's standard service offer ("SSO") rates and are otherwise unduly discriminatory in violation of Ohio law.
9. The Capacity Case Decisions are unlawful and unreasonable because the temporary two-tiered rates established by the March 7, 2012 Entry and May 30, 2012 Entry were not based upon the record from this proceeding.
10. The Capacity Case Decisions are unlawful and unreasonable inasmuch as the Commission failed to direct AEP-Ohio to refund the above-market portion of capacity charges in place since January 2012 or credit the excess collection against regulatory asset balances otherwise eligible for amortization through retail rates and charges.

11. The Capacity Case Decisions are unlawful and unreasonable inasmuch as the Commission violated R.C. 4903.09, by failing to properly address all material issues raised by the parties.
12. In addition to the individual errors committed by the Commission which are referenced or identified herein, the totality of the Commission's conduct throughout this proceeding is arbitrary and capricious, an abuse of discretion, otherwise outside the law and "... at variance with 'the rudiments of fair play' long known to our law. The Fourteenth Amendment condemns such methods and defeats them." *West Ohio Gas Co. v. Public Utilities Commission*, 294 U.S. 63, 71 (1935) (quoting *Chicago, Milwaukee, & St. Paul Ry. Co. v. Polt*, 232 U.S. 165, 168 (1917)). Additionally, the implications of the Commission's unlawful and unreasonable actions in the proceeding below now threaten to reach beyond the customers served by AEP-Ohio as both Duke Energy Ohio, Inc. ("Duke") and The Dayton Power and Light Company ("DP&L") have filed copycat applications seeking to impose hundreds of millions of dollars in unlawful, unreasonable, and above-market generation-related charges upon the customers they serve.
13. The Capacity Case Decisions are unlawful and unreasonable because they unreasonably impair the value of contracts entered into with CRES providers by retroactively altering the capacity pricing method that was in place when such contracts were executed. The unlawful and unreasonable impairment arises, in the particular circumstances presented by this case (and will arise in the case of Duke's copycat application if the Commission grants Duke's request), because the prices established by PJM's RPM-Based Pricing establishes generation-related capacity service prices three years in advance and the Capacity Case Decisions alter the capacity prices that had been fixed and were known and certain at the time such contracts were executed. To the extent the Commission has any authority to approve prices for generation-related capacity services by altering the ratemaking methodology, that authority may not be lawfully exercised to affect the prices established by the capacity pricing method previously approved by the Commission, in force by operation of law and known and certain for contracts entered into prior to the effective date of the new capacity pricing method.

WHEREFORE, Appellant respectfully submits that Appellee's Capacity Case Decisions are unlawful, unjust, and unreasonable and should be reversed. The case should be remanded to the Appellee with instructions to correct the errors complained of herein.

Respectfully submitted,

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ATTACHMENT A

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Power Company and Columbus Southern) Case No. 10-2376-EL-UNC
Power Company for Authority to Merge)
and Related Approvals.)

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company for Authority to) Case No. 11-346-EL-SSO
Establish a Standard Service Offer Pursuant) Case No. 11-348-EL-SSO
to Section 4928.143, Revised Code, in the)
Form of an Electric Security Plan.)

In the Matter of the Application of)
Columbus Southern Power Company and) Case No. 11-349-EL-AAM
Ohio Power Company for Approval of) Case No. 11-350-EL-AAM
Certain Accounting Authority.)

In the Matter of the Application of)
Columbus Southern Power Company and) Case No. 10-343-EL-ATA
Ohio Power Company to Amend their) Case No. 10-344-EL-ATA
Emergency Curtailment Service Riders.)

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

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company for Approval of) Case No. 11-4920-EL-RDR
Mechanisms to Recover Deferred Fuel) Case No. 11-4921-EL-RDR
Costs Ordered Under Section 4928.144,)
Revised Code.)

ENTRY

The Commission finds:

- (5) On February 28, 2012, AEP-Ohio submitted its proposed compliance tariffs containing the provisions, terms, and conditions of its previous electric security plan, as approved in Case No. 08-917-EL-SSO (ESP 1) et al. *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.* AEP-Ohio further explains that the implementation of the phase-in recovery rider (PIRR), as approved in ESP 1, was recalculated on its January and February collections and carrying costs for those two months based on the long term debt rate. Therefore, AEP-Ohio states that the new PIRR rates are designed to collect the revised balance over the remaining 82 months of the amortization period.
- (6) On March 2, 2012, Industrial Energy Users-Ohio (IEU-Ohio) filed objections to AEP-Ohio's compliance tariffs. In its objections, IEU-Ohio asserts that AEP-Ohio's compliance tariffs contain a blended fuel adjustment clause (FAC) transmission cost recovery rider (TCRR) for both Ohio Power Company and Columbus Southern Power Company instead of individual provisions, improperly included the PIRR in its compliance tariffs, and failed to file an appropriate application of its capacity charges. IEU-Ohio also maintains that AEP-Ohio incorrectly omitted key terms and conditions of service.
- (7) On March 5, 2012, Ormet filed an objection to AEP-Ohio's compliance tariffs. Ormet contends that the inclusion of the PIRR in the compliance tariffs is improper and unauthorized.
- (8) On March 5, 2012, AEP-Ohio filed a Notice of Intent that it intends to submit a modified ESP pursuant to Section 4928.143, Revised Code, by March 30, 2012.
- (9) On March 6, 2012, the Ohio Consumers' Counsel and the Appalachian Peace and Justice Network (collectively OCC/APJN) filed a motion to reject portions of AEP-Ohio's compliance filing that implement the PIRR. In the alternative, OCC/APJN request that the Commission issue an order to stay the collection of the PIRR rates or order the PIRR rates be collected subject to refund.

to include a TCRR rate for its IRP-D customers. Therefore, we direct AEP-Ohio to amend Original Sheet No. 475-1 to make it consistent with ESP 1's terms and conditions.

- (14) With respect to the PIRR, AEP-Ohio is directed to file, in final form, new tariffs removing the PIRR at this time. The Commission will address AEP-Ohio's application to establish the PIRR by subsequent entry in the Deferred Fuel Cost Cases.
- (15) Further, as AEP-Ohio filed corrections to its compliance filing on March 6, 2012, we do not need to address IEU-Ohio's objection that AEP-Ohio incorrectly omitted key terms and conditions of service.
- (16) In addition, as the captioned cases were consolidated by the Stipulation which the Commission disapproved, all future filings should be made in the appropriate case docket, as the consolidated case matters will no longer be docketed in all of the above-captioned cases.
- (17) Finally, the Commission notes that, on March 5, 2012, AEP-Ohio filed its notice of intent to file a modified ESP application. The Commission expects that such modified ESP application will include a thorough discussion of: any plans of AEP-Ohio to divest its generation assets, including provisions to ensure that adequate capacity will be available on an on-going basis to Ohio customers, notwithstanding any potential plant retirements; provisions to address rate design concerns for small commercial customers and residential customers in the former CSP service territory using more than 800 kWh in winter months; provisions regarding plans to take advantage of a territory-wide deployment of emerging metering technology to provide ample choices regarding pricing, information, and electric energy services for customers in a competitive market, including provisions that AEP-Ohio does not foreclose the possibility of working collaboratively with other utilities, retail energy suppliers, and interested stakeholders to explore cost saving and market development opportunities; provisions to take advantage of the deployment of emerging distribution system technologies in all locations where they can cost-effectively improve the efficiency of the distribution system or enhance reliability consistent with the value customers place on

ORDERED, That the Companies file in final form four complete copies of tariffs. One copy shall be filed with this case docket, one shall be filed with each company's TRF docket, and the remaining two copies shall be designated for distribution to the Rates and Tariffs Division of the Commission's Utilities Department. The Companies shall also update their respective tariffs previously filed electronically with the Commission's Docketing Division. It is, further,

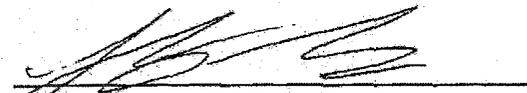
ORDERED, That the Companies shall notify their customers of the changes to the tariff via bill message or bill insert within 30 days of the effective date. A copy of this notice shall be submitted to the Commission's Service Monitoring and Enforcement Department prior to its distribution to customers. It is, further,

ORDERED, That a copy of this entry be served on all parties of record.

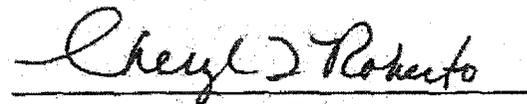
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centofella


Steven D. Lesser


Andre T. Porter


Cheryl L. Roberto

JIT/sc

Entered in the Journal

MAR 07 2012



Barcy F. McNeal
Secretary

modified electric security plan (ESP 2) cases,² and the fact that Commission Staff is working on both proceedings, it is unlikely that an order on the merits can be issued before May 31, 2012. Furthermore, AEP-Ohio notes that, as part of its modified ESP 2 proceeding, it proposes an alternative two-tiered capacity pricing mechanism. AEP-Ohio reasons that consideration of the capacity charge mechanism in the modified ESP 2 proceeding represents the potential for yet another change in capacity rates for shopping customers. To avoid customer confusion and uncertainty, undue disruption to the competitive Ohio retail market, and financial harm to the Company given the significant drop in the RPM rate effective June 1, 2012, AEP-Ohio requests that the current interim capacity charges remain in effect (tier one at \$146/MW-day and tier two at \$255/MW-day) until the Commission issues a decision on the merits.

- (3) Memoranda contra AEP-Ohio's motion for an extension of the currently effective interim capacity rates were filed by Ohio Manufacturers' Association (OMA), jointly by Duke Energy Commercial Asset Management (DECAM) and Duke Energy Retail Sales (DERS), jointly by FirstEnergy Solutions (FES) and Industrial Energy Users-Ohio (IEU-Ohio), Ohio Consumers' Counsel (OCC), Exelon Generation Company (Exelon), and Retail Energy Supply Association (RESA). Ohio Energy Group (OEG) also filed a response.
- (4) In their joint memorandum contra, FES and IEU-Ohio respond that AEP-Ohio's motion for extension should be denied because it is legally and procedurally deficient. Specifically, FES and IEU-Ohio argue that the Commission has already determined that the interim two-tiered capacity pricing ends on May 31, 2012, and that RPM-based pricing will resume on June 1, 2012. According to FES and IEU-Ohio, there is no reason to alter the Commission's determination that the interim two-tiered capacity pricing will remain in place only for that limited period, particularly when customers and competitive retail electric service (CRES) providers have relied on the Commission's determination in making decisions regarding

² *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer and In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority*, Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, and 11-350-EL-AAM.

offering nothing other than an unsubstantiated claim of financial harm. OMA maintains that AEP-Ohio's motion would harm Ohio manufacturers, noting that AEP-Ohio is asking for a rate increase that would impact shopping customers immediately without any demonstration that there is any harm to the Company. OMA further argues that AEP-Ohio's motion for extension is an unlawful and untimely attempt at rehearing of the Commission's March 7, 2012, entry. Finally, OMA recommends that, if the Commission grants AEP-Ohio's motion, the Commission should also require the Company to deposit the difference between the RPM-based price for capacity and the amount authorized by the Commission as additional or continued interim relief into an escrow account. If the Commission ultimately determines that the state compensation mechanism should be based on RPM pricing, OMA requests that AEP-Ohio be directed to return the amount in escrow directly to customers that paid more than the RPM-based price through agreements with CRES providers.

- (6) DERS and DECAM contend that AEP-Ohio should not be permitted, even on an interim basis, to charge anything more than RPM-based capacity prices. DERS and DECAM believe that AEP-Ohio's effort in this proceeding to extend capacity pricing that is above market rates will form the basis of the Company's attempt to gain approval of its pending modified ESP 2 proposal. Without the Commission's approval to extend AEP-Ohio's current capacity pricing, DERS and DECAM maintain that the Company will be unable to prove that its proposed ESP is more favorable than a market rate option. Further, DERS and DECAM note that the Commission's March 7, 2012, entry did not direct that the capacity pricing for customers in the first tier should remain at the RPM price that was then in effect. Rather, DERS and DECAM assert that, as the RPM price changes for the 2012/2013 year, the capacity price for customers in the first tier must likewise change. According to DERS and DECAM, AEP-Ohio has failed to demonstrate that the Commission should grant further extraordinary relief. DERS and DECAM note that the relief requested by AEP-Ohio would have a prejudicial impact on the competitive environment in Ohio by altering the business arrangements made by CRES providers. DERS and DECAM contend that AEP-Ohio has not offered verifiable, convincing support for its projections of revenue loss. DERS and DECAM

may be appropriate or lawful would be an embedded cost rate, as AEP-Ohio seeks, or a marginal or incremental cost-based rate. Further, Exelon points out that AEP-Ohio has known since December 8, 2010, that it is required to charge CRES providers RPM-based capacity prices. Finally, Exelon asserts that granting AEP-Ohio's motion would effectively curtail competition and postpone market-based pricing indefinitely.

- (9) Arguing that AEP-Ohio's motion should be denied, OCC notes that the Commission determined in its March 7, 2012, entry that the state compensation mechanism would revert to RPM-based capacity pricing effective June 1, 2012, and that some customers may have relied on this entry in making decisions regarding shopping. OCC adds that AEP-Ohio seeks to maintain a capacity price for customers in the first tier that will be neither a cost-based nor market-based rate as of June 1, 2012. Additionally, OCC contends that AEP-Ohio has offered no evidence in support of its claim of financial harm. According to OCC, the Commission has no jurisdiction to reverse its finding in the March 7, 2012, entry that RPM-based capacity prices will take effect on June 1, 2012. OCC notes that, because AEP-Ohio failed to file a timely application for rehearing of the March 7, 2012, entry, the Commission is without statutory authority to consider the Company's requested relief.
- (10) In its memorandum in response to AEP-Ohio's motion for extension, OEG asserts that the Company's request is reasonable, given that the implementation of a different pricing mechanism for a short period of time may only serve to aggravate the current uncertainty and customer confusion regarding capacity pricing. Specifically, OEG notes that it does not oppose an extension of AEP-Ohio's current capacity pricing structure for a 60-day period through the end of July.
- (11) AEP-Ohio filed a reply to the memoranda contra on May 8, 2012. AEP-Ohio asserts that most of the arguments raised in the memoranda contra were also made by parties who opposed the initial request for interim relief and have been addressed and rejected by the Commission in the March 7, 2012, entry. Further, AEP-Ohio contends that assertions that the Commission, through the March 7, 2012, entry, affirmatively committed to the implementation of RPM capacity pricing as of June 1, 2012, are absurd. According to AEP-Ohio, such a

are due May 30, 2012. Despite the schedule in this proceeding, it is apparent that the Commission will not be able to issue a decision on the merits before the interim capacity mechanism expires on May 31, 2012. To the extent that the Commission has already concluded that the circumstances faced by AEP-Ohio are unique and have not changed since the issuance of the March 7, 2012, entry, and, given that the Commission has made significant progress to address the issues raised in the capacity charge proceeding, the Commission finds it reasonable and appropriate to extend the current interim capacity mechanism. The interim capacity rates put into effect by the March 7, 2012, entry, tier one at \$146/MW-day and tier two at \$255/MW-day, shall continue until July 2, 2012, unless the Commission issues its order in this case.

It is, therefore,

ORDERED, That AEP-Ohio's motion for an extension of the interim capacity rates is granted, such that the capacity rates put into effect by the March 7, 2012, entry shall continue until July 2, 2012, unless the Commission issues its order in this case. It is, further,

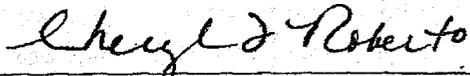
BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

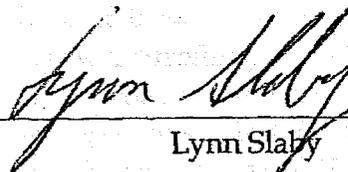
In the Matter of the Commission Review of)
the Capacity Charges of Ohio Power) Case No. 10-2929-EL-UNC
Company and Columbus Southern Power)
Company.)

CONCURRING OPINION OF COMMISSIONERS CHERYL L. ROBERTO
AND LYNN SLABY

In order to promote regulatory stability during the pendency of this matter, I concur in result only.



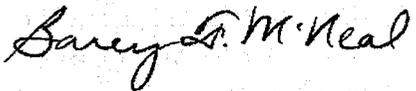
Cheryl L. Roberto



Lynn Slaby

Entered in the Journal

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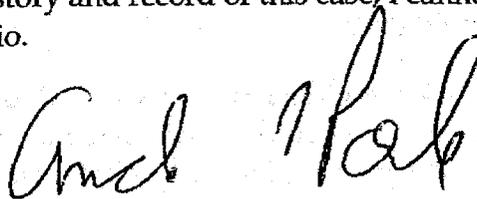


Barcy F. McNeal
Secretary

party, nor does the majority in its entry today, contends that the annual change to match the published PJM capacity clearing price is an unjustified interpretation of the Commission's December 7, 2011, entry. The Commission later rejected all components of the Stipulation, including the tiered capacity mechanism.

However, on March 7, 2012, following a request from AEP-Ohio, the Commission approved, as an interim state compensation mechanism that was to last only until May 31, 2012, a tiered approach that is virtually identical in terms of its RPM-based components to each the December 8, 2010; December 7, 2011; and March 7, 2012, entries. That is, this Commission left no doubt that 21 % of shopping customers would qualify for tier-one capacity at RPM-based prices, with other shopping customers permitted to shop at the tier-two rate of \$255/Mw day; after this interim mechanism expired on May 31, 2012, capacity rates for all competitive suppliers would be the RPM-based rate.

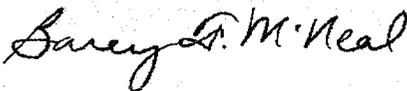
In sum, by approving the March 7, 2012, entry, which was itself based upon a review of the record that began with the December 8, 2010, entry, and developed to support the Stipulation as per AEP Ohio's request to maintain the *status quo*, the Commission made a decision to approve a two-tier mechanism, with tier-one pricing based upon RPM prices with the RPM prices changing to match current prices as of each new PJM delivery year. In light of the history and record of this case, I cannot support this today's entry, and the request of AEP Ohio.



Andre T. Porter

Entered in the Journal

MAY 30 2012



Barcy F. McNeal
Secretary

Vorys, Sater, Seymour & Pease LLP, by M. Howard Petricoff and Lija Kaleps-Clark, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216, on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC.

Vorys, Sater, Seymour & Pease LLP, by M. Howard Petricoff and Lija Kaleps-Clark, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216, on behalf of the Retail Energy Supply Association.

Vorys, Sater, Seymour & Pease LLP, by M. Howard Petricoff and Lija Kaleps-Clark, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216, Eimer Stahl LLP, by David M. Stahl, 224 South Michigan Avenue, Suite 1100, Chicago, Illinois 60604, and Sandy I-ru Grace, 101 Constitution Avenue NW, Suite 400 East, Washington, D.C. 20001, on behalf of Exelon Generation Company, LLC.

Mark A. Hayden, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, Calfee, Halter & Griswold, LLP, by James F. Lang, Laura C. McBride, and N. Trevor Alexander, 1400 KeyBank Center, 800 Superior Avenue, Cleveland, Ohio 44114, and Jones Day, by David A. Kutik and Allison E. Haedt, 901 Lakeside Avenue, Cleveland, Ohio 44114, on behalf of FirstEnergy Solutions Corp.

Bricker & Eckler LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215, and Richard L. Sites, 155 East Broad Street, 15th Floor, Columbus, Ohio 43215, on behalf of the Ohio Hospital Association.

Bricker & Eckler LLP, by Lisa G. McAlister, 100 South Third Street, Columbus, Ohio 43215, on behalf of the Ohio Manufacturers' Association.

Jeanne W. Kingery and Amy B. Spiller, 139 East Fourth Street, Cincinnati, Ohio 45202, on behalf of Duke Energy Retail Sales, LLC and Duke Energy Commercial Asset Management, Inc.

Whitt Sturtevant LLP, by Mark A. Whitt, Andrew J. Campbell, and Melissa L. Thompson, PNC Plaza, Suite 2020, 155 East Broad Street, Columbus, Ohio 43215, and Matthew White, 6100 Emerald Parkway, Dublin, Ohio 43016, on behalf of Interstate Gas Supply, Inc.

Bailey Cavaliere LLC, by Dane Stinson, 10 West Broad Street, Suite 2100, Columbus, Ohio 43215, on behalf of the Ohio Association of School Business Officials, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Schools Council.

the proceeding within 30 days of issuance of the entry and to submit reply comments within 45 days of the issuance of the entry. Additionally, in light of the change proposed by AEP-Ohio, the Commission explicitly adopted as the state compensation mechanism for the Company, during the pendency of the review, the current capacity charge established by the three-year capacity auction conducted by PJM based on its reliability pricing model (RPM).

On January 20, 2011, AEP-Ohio filed a motion to stay the reply comment period and to establish a procedural schedule for hearing. In the alternative, AEP-Ohio requested an extension of the deadline to file reply comments until January 28, 2011. In support of its motion, AEP-Ohio asserted that, due to the recent rejection of its application by FERC based on the existence of a state compensation mechanism, it would be necessary for the Commission to move forward with an evidentiary hearing process to establish the proper state compensation mechanism. AEP-Ohio argued that, in light of this recent development, the parties needed more time to file reply comments.

By entry issued on January 21, 2011, the attorney examiner granted AEP-Ohio's motion to extend the deadline to file reply comments and established the new reply comment deadline as February 7, 2011. The January 21, 2011, entry also determined that AEP-Ohio's motion for the Commission to establish a procedural schedule for hearing would be considered after the reply comment period had concluded.

On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.* (11-346), AEP-Ohio filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code.² The application was for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.

Motions to intervene in the present case were filed and intervention was granted to the following parties: Ohio Energy Group (OEG); Industrial Energy Users-Ohio (IEU-Ohio); Ohio Consumers' Counsel (OCC); Ohio Partners for Affordable Energy (OPAE)³; Ohio Manufacturers' Association (OMA); Ohio Hospital Association (OHA); Direct Energy Services, LLC and Direct Energy Business, LLC (jointly, Direct Energy); Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (jointly, Constellation); FirstEnergy Solutions Corp. (FES); Duke Energy Retail Sales, LLC and Duke Energy Commercial Asset Management, Inc. (jointly, Duke); Exelon Generation Company, LLC (Exelon); Interstate Gas Supply, Inc. (IGS); Retail Energy Supply Association (RESA);

² *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 and 11-348-EL-SSO; In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority, Case Nos. 11-349-EL-AAM and 11-350-EL-AAM.*

³ On November 17, 2011, OPAE filed a notice of withdrawal from this case.

capacity pricing mechanism. Subsequently, on February 23, 2012, the Commission issued an entry on rehearing in the consolidated cases, granting rehearing in part. Finding that the signatory parties to the ESP 2 Stipulation had not met their burden of demonstrating that the stipulation, as a package, benefits ratepayers and the public interest, as required by the Commission's three-part test for the consideration of stipulations, the Commission rejected the ESP 2 Stipulation. The Commission directed AEP-Ohio to file, no later than February 28, 2012, new proposed tariffs to continue the provisions, terms, and conditions of its previous ESP, including an appropriate application of capacity charges under the approved state compensation mechanism established in the present case.

By entry issued on March 7, 2012, in the above-captioned case, the Commission implemented an interim capacity pricing mechanism proposed by AEP-Ohio in a motion for relief filed on February 27, 2012. Specifically, the Commission approved a two-tier capacity pricing mechanism modeled after the one recommended in the ESP 2 Stipulation. Approval of the interim capacity pricing mechanism was subject to the clarifications contained in the Commission's January 23, 2012, entry in the consolidated cases, including the clarification to include mercantile customers as governmental aggregation customers eligible to receive capacity pricing based on PJM's RPM. Under the two-tier capacity pricing mechanism, the first 21 percent of each customer class was entitled to tier-one, RPM-based capacity pricing. All customers of governmental aggregations approved on or before November 8, 2011, were also entitled to receive tier-one, RPM-based capacity pricing. For all other customers, the second-tier charge for capacity was \$255/megawatt-day (MW-day). In accordance with the March 7, 2012, entry, the interim rate was to remain in effect until May 31, 2012, at which point the charge for capacity under the state compensation mechanism would revert to the current RPM price in effect pursuant to the PJM base residual auction for the 2012/2013 delivery year.

By entry issued on March 14, 2012, the attorney examiner established a procedural schedule, which included a deadline for AEP-Ohio to revise or update its August 31, 2011, testimony. A prehearing conference occurred on April 11, 2012. The evidentiary hearing commenced on April 17, 2012, and concluded on May 15, 2012. During the evidentiary hearing, AEP-Ohio offered the direct testimony of five witnesses and the rebuttal testimony of three witnesses. Additionally, 17 witnesses testified on behalf of various intervenors and three witnesses testified on behalf of Staff.

On April 30, 2012, AEP-Ohio filed a motion for extension of the interim relief granted by the Commission in the March 7, 2012, entry. By entry issued on May 30, 2012, the Commission approved extension of the interim capacity pricing mechanism through July 2, 2012.

Initial briefs were filed by the parties on May 23, 2012, and reply briefs were filed on May 30, 2012.

III. DISCUSSION AND CONCLUSIONS

A. Procedural Issues

1. Motion to Dismiss

On April 10, 2012, as corrected on April 11, 2012, IEU-Ohio filed a motion to dismiss this case. In its motion, IEU-Ohio asserts that the Commission lacks statutory authority to authorize cost-based or formula-based compensation for AEP-Ohio's FRR capacity obligations from CRES providers serving retail customers in the Company's service territory. On April 13, 2012, AEP-Ohio filed a memorandum in partial opposition to IEU-Ohio's motion to dismiss. AEP-Ohio argues that the establishment of wholesale rates to be charged to CRES providers for the provision of capacity for resale to retail customers is a matter governed by federal law. AEP-Ohio notes, however, that IEU-Ohio's untimely position in its motion to dismiss is severely undercut by its previous arguments regarding Ohio law. AEP-Ohio further notes that IEU-Ohio requests that the Commission order a return to RPM-based capacity pricing upon concluding that it has no jurisdiction. AEP-Ohio argues that, if the Commission concludes that it lacks jurisdiction, it must revoke the state compensation mechanism established in its December 8, 2010, entry, revoke its orders issued in this case, and leave the matter to FERC. IEU-Ohio filed a reply to AEP-Ohio's memorandum on April 16, 2012, reiterating its request for dismissal of the case and implementation of RPM-based capacity pricing. On April 17, 2012, RESA filed a memorandum contra IEU-Ohio's motion to dismiss. RESA contends that the Commission has jurisdiction pursuant to its general supervisory powers under Sections 4905.04, 4905.05, and 4905.06, Revised Code, as well as pursuant to Section 4928.143, Revised Code, to establish a state compensation mechanism and that IEU-Ohio's motion is procedurally improper and should be denied.

At the outset of the hearing on April 17, 2012, the attorney examiner deferred ruling on IEU-Ohio's motion to dismiss (Tr. I at 21-22). Upon conclusion of AEP-Ohio's direct case, IEU-Ohio made an oral motion to dismiss the proceeding, asserting that the Company had failed to meet its burden of proof such that the Commission could approve the proposed capacity charge based on either its authority to set rates for competitive or noncompetitive retail electric service, or its authority to set rates pursuant to Section 4909.16, Revised Code (Tr. V at 1056-1059). Again, the attorney examiner deferred ruling on the motion (Tr. V at 1061).

In its brief, IEU-Ohio argues that the Commission should dismiss this case and require AEP-Ohio to reimburse all consumer representative stakeholders for the cost of participation in this proceeding and 11-346, as such costs were incurred by all consumer representative stakeholders who opposed the ESP 2 Stipulation, with reimbursement occurring through a cash payment. IEU-Ohio contends that AEP-Ohio's proposed capacity charge is unlawful and contrary to the public interest based on the common law principles

a. AEP-Ohio

Article 2 of the RAA provides that the RAA's purpose is "to ensure that adequate Capacity Resources, including planned and Existing Generation Capacity Resources, planned and existing Demand Resources, Energy Efficiency Resources, and [Interruptible Load for Reliability] will be planned and made available to provide reliable service to loads within the PJM Region, to assist other Parties during Emergencies and to coordinate planning of such resources consistent with the Reliability Principles and Standards." It further provides that the RAA should be implemented "in a manner consistent with the development of a robust competitive marketplace." Under Section 7.4 of the RAA, "[a] Party that is eligible for the [FRR] Alternative may satisfy its obligations hereunder to provide Unforced Capacity by submitting and adhering to an FRR Capacity Plan."

In accordance with the RAA, AEP-Ohio elected to opt out of participation in PJM's RPM capacity market and instead chose to become an FRR Entity that is obligated to provide sufficient capacity for all connected load, including shopping load, in its service territory. AEP-Ohio will remain an FRR Entity through May 31, 2015 (AEP-Ohio Ex. 101 at 7-8), and, accordingly, the Company has committed to ensuring that adequate capacity resources exist within its footprint during this timeframe. Under the RAA, the default charge for providing this service is based on PJM's RPM capacity auction prices. According to AEP-Ohio, due to the decrease in RPM auction prices as reflected below and the onset of retail shopping in the Company's service territory in 2010, the adverse financial impact on the Company from supplying CRES providers with capacity at prices below cost has become significant.

PJM Delivery Year	\$/MW-day	
	PJM Base Residual Auction (BRA) Price	Capacity Charge*
2010/2011	\$174.29	\$220.96
2011/2012	\$110.00	\$145.79
2012/2013	\$16.46	\$20.01
2013/2014	\$27.73	\$33.71
2014/2015	\$125.99	\$153.89

*BRA adjusted for final zonal capacity price, scaling factor, forecast pool requirement, and losses

of the statutory requirements found in Chapter 4909, Revised Code. IEU-Ohio also argues that AEP-Ohio has failed to satisfy the requirements of Section 4909.16, Revised Code, which must be met before the Commission can authorize a rate increase to avoid financial harm. Finally, IEU-Ohio maintains that the Commission's general supervisory authority is not a basis for approving rates. Even aside from the question of the Commission's jurisdiction, IEU-Ohio contends that AEP-Ohio has not met the burden of proof that would apply pursuant to Section 4909.16, 4909.18, or 4928.143, Revised Code.

RESA and Direct Energy (jointly, Suppliers) argue that the Commission has authority under state law to establish the state compensation mechanism. The Suppliers contend that the Commission, pursuant to its general supervisory authority contained within Sections 4905.04, 4905.05, and 4905.06, Revised Code, may initiate investigations to review rates and charges, as it has done in this case to consider AEP-Ohio's capacity pricing mechanism for its FRR obligations. The Suppliers point out that, in the December 8, 2010, entry, the Commission even referenced those sections and noted that it has the authority to supervise and regulate all public utilities within its jurisdiction. Additionally, the Suppliers believe that the Commission may establish the state compensation mechanism pursuant to Sections 4928.141(A) and 4928.143(B)(2)(d), Revised Code, which enable the Commission to set rates for certain competitive services as part of an ESP. The Suppliers also assert that the provision of capacity is a retail electric service, as defined by Section 4928.01(A)(27), Revised Code, given that it is a service arranged for ultimate consumers in this state.

In response to the Suppliers, IEU-Ohio argues that the Commission's general supervisory authority does not provide it with unlimited powers to approve rates. IEU-Ohio further disputes the Suppliers' claim that Section 4928.143(B)(2)(d), Revised Code, offers another statutory basis upon which to approve capacity pricing for CRES providers, noting, among other reasons, that this is not an SSO proceeding.

c. Conclusion

As a creature of statute, the Commission has and may exercise only the authority conferred upon it by the General Assembly. *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 88 (1999). Thus, as an initial matter, the Commission must determine whether there is a statutory basis under Ohio law upon which it may rely to establish a state compensation mechanism. As we noted in the December 8, 2010, entry, Sections 4905.04, 4905.05, and 4905.06, Revised Code, grant the Commission authority to supervise and regulate all public utilities within its jurisdiction. We further noted that AEP-Ohio is an electric light company as defined in Section 4905.03(A)(3), Revised Code, and a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission. We affirm our prior finding that Sections 4905.04, 4905.05, and 4905.06, Revised Code, grant the Commission the necessary statutory authority to establish a state compensation mechanism.

permit AEPSC to change the state compensation mechanism. In fact, FERC rejected AEPSC's proposed formula rate, given the existence of the state compensation mechanism established by the Commission in its December 8, 2010, entry.⁷

2. Should the state compensation mechanism for AEP-Ohio be based on the Company's capacity costs or on another pricing mechanism such as RPM-based auction prices?

a. AEP-Ohio

As an initial matter, AEP-Ohio notes that it recently declared that it will not continue its status as an FRR Entity and instead will fully participate in the RPM capacity market auctions, beginning on June 1, 2015, which is the earliest possible date on which to transition from an FRR Entity to a full participant in the RPM capacity market. AEP-Ohio points out that this development narrows the scope of this proceeding to establishing a three-year transitional, rather than permanent, form of compensation for its FRR capacity obligations.

AEP-Ohio argues that it is entitled to full compensation for the capacity that it supplies to CRES providers pursuant to its FRR obligations. Specifically, AEP-Ohio contends that Section D.8 of Schedule 8.1 of the RAA grants the Company the right to establish a rate for capacity that is based on cost. AEP-Ohio notes that, by its plain language, the RAA allows an FRR Entity like AEP-Ohio to change the basis for capacity pricing to a cost-based method at any time. AEP-Ohio also notes that no party to this proceeding challenges the Commission's discretion under the RAA to establish cost-based capacity pricing as the state compensation mechanism. According to AEP-Ohio, the term "cost" as used in Section D.8 of Schedule 8.1 of the RAA refers to embedded cost. AEP-Ohio adds that its proposed cost-based capacity rate of \$355.72/MW-day advances state policy objectives enumerated in Section 4928.02, Revised Code, as well as the Commission's objectives in this proceeding of promoting alternative competitive supply and retail competition, while also ensuring the Company's ability to attract capital investment to meet its FRR capacity obligations, which were set forth by the Commission in response to the FERC filing (OEG Ex. 101 at 4). With respect to promoting alternative competitive supply and retail competition, AEP-Ohio asserts that the Commission's focus should be on fairness and genuine competition, rather than on the manufacture of artificial competition through subsidization. AEP-Ohio believes that, because shopping will still occur and CRES providers will still realize a significant margin at the Company's proposed rate (Tr. XI at 2330-2333), the rate is consistent with the Commission's first objective. AEP-Ohio also believes that its proposed rate satisfies the Commission's second objective of ensuring the Company's ability to attract capital investment to meet its FRR capacity obligations. AEP-Ohio contends that its proposed rate would enable the Company to continue to attract

⁷ *American Electric Power Service Corporation*, 134 FERC ¶ 61,039 (2011).

should, therefore, also be appropriate for AEP-Ohio. Staff further notes that the evidentiary record does not support AEP-Ohio's proposed capacity pricing of \$355.72/MW-day.

c. Intervenors

All of the intervenors in this case agree that the Commission should adopt RPM-based capacity pricing as the state compensation mechanism. Many of the intervenors note that AEP-Ohio has used RPM-based capacity pricing since 2007, without incurring financial hardship or compromising service reliability for its customers. They further note that AEP-Ohio will continue to use RPM-based capacity pricing, at the Company's own election, beginning on June 1, 2015. They believe, therefore, that the Commission should adopt RPM-based capacity pricing as the state compensation mechanism for the intervening three-year period for numerous reasons, including for the sake of competition and continuity.

FES argues that RPM-based capacity pricing is the proper state compensation mechanism for AEP-Ohio. FES contends that a market-based state compensation mechanism, specifically one that adopts the RPM price as the best indicator of the market price for capacity, is required because Ohio law and policy have established and promoted a competitive market for electric generation service; RPM-based pricing is supported by sound economic principles and avoids distorted incentives for CRES providers; and AEP-Ohio's return on equity is more than sufficient under RPM-based pricing, given that the Company's analysis is based on unrealistic shopping assumptions. FES adds that, even if cost-based pricing were appropriate, AEP-Ohio has dramatically overstated its costs. FES argues that AEP-Ohio's proposed capacity pricing mechanism is not based on the costs associated with the capacity provided by AEP-Ohio to Ohio customers; includes all costs, rather than just those avoidable costs that are relevant in economic decision making; includes stranded costs that may not be recovered under Ohio law; and fails to include an appropriate offset for energy sales. FES notes that, if the Commission were to allow AEP-Ohio to charge CRES providers any rate other than the RPM-based rate, the Company would be the only capacity supplier in PJM that could charge shopping customers its full embedded costs for generation, which, according to FES, is a concept that is not found within the RAA, whereas there are numerous provisions referring to "avoidable costs."

FES believes that AEP-Ohio's proposed capacity pricing would preclude customers from receiving the benefits of competition. Specifically, FES argues that competition is state law and policy, and benefits customers; AEP-Ohio's price of \$355.72/MW-day would harm competition and customers; and its proposed price would provide improper, anti-competitive benefits to the Company.

IEU-Ohio contends that AEP-Ohio has failed to demonstrate that its proposed capacity pricing mechanism is just and reasonable, as required by Section 4905.22, Revised Code. IEU-Ohio asserts that RPM-based capacity pricing is the appropriate market pricing

OEG argues that the Commission should establish either the annual or the average RPM price for the next three PJM planning years as the price that AEP-Ohio can charge CRES providers under the state compensation mechanism for its FRR capacity obligations. OEG notes that use of the three-year average RPM price of \$69.20/MW-day would mitigate some of the financial impact on AEP-Ohio from fluctuating future RPM prices and ease the Company's transition out of FRR status. OEG adds that the two-tier capacity pricing mechanism should not be continued and that a single price should be charged for all CRES providers. OEG notes that its position in this case has been guided by the Commission's twin goals, as expressed to FERC, of promoting competition, while also ensuring that AEP-Ohio has the necessary capital to maintain reliability. OEG believes that AEP-Ohio's proposed capacity pricing mechanism represents a drastic departure from past precedent that would deter shopping and undermine the benefits of retail competition, which is contrary to the Commission's goal of promoting competition. With respect to OEG's position that a three-year RPM price average could be used, AEP-Ohio notes that the concept was raised for the first time in OEG's initial brief, is without evidentiary support, and should be rejected.

OMA and OHA assert that, because the Commission has already established RPM-based capacity pricing as the state compensation mechanism, AEP-Ohio has the burden, as the entity challenging the state compensation mechanism, of proving that it is unjust and unreasonable. OMA and OHA further assert that AEP-Ohio has failed to sustain its burden. OMA and OHA believe that RPM-based capacity pricing is a just, reasonable, and lawful basis for the state compensation mechanism. According to OMA and OHA, AEP-Ohio has not demonstrated that RPM-based capacity pricing would cause substantial financial harm to the Company. OMA and OHA note that AEP-Ohio's projections are based on unrealistic and unsubstantiated shopping assumptions, with 65 percent of residential customers, 80 percent of commercial customers, and 90 percent of industrial customers switching by the end of 2012 (AEP-Ohio Ex. 104 at 4-5). OMA and OHA believe that RPM-based capacity pricing would not impact AEP-Ohio's ability to attract and invest capital, noting that the Company continues to invest capital regardless of its capacity costs for shopping customers and has no need or plan to attract or invest capital in additional capacity (IEU-Ohio Ex. 104; Tr. I at 36, 128-131; Tr. V at 868). On the other hand, OMA and OHA argue that AEP-Ohio's proposed capacity pricing mechanism would substantially harm customers and CRES providers and violate state policy, as it would significantly restrict the ability of customers to shop and enjoy savings; would unfairly deny customers access to market rates for capacity when market rates are low, and subject customers to market rates when they are high; and would harm economic development and recovery efforts. OMA and OHA urge the Commission to ensure that all customers in Ohio are able to take advantage of historically low capacity prices and have access to the lowest possible competitive electricity rates, as a means to stimulate and sustain economic growth.

670). Finally, Dominion Retail points out that AEP-Ohio's proposed cost-based capacity pricing mechanism is nowhere near the Company's capacity proposal pending in 11-346, which would provide for a capacity rate of \$146/MW-day for some shopping customers and \$255/MW-day for the rest. Dominion Retail contends that this fact demonstrates AEP-Ohio's willingness to provide capacity at a rate less than what it has proposed in this case and also undercuts the Company's confiscation argument.

The Schools also request that the Commission retain RPM-based capacity pricing. The Schools argue that, if AEP-Ohio's proposed capacity pricing mechanism is adopted, the rate would likely be passed through to the Ohio schools that are served by CRES providers, and that these schools would suffer rate shock in violation of Section 4928.02(A), Revised Code (Schools Ex. 101 at 9). Additionally, the Schools believe that Ohio schools that do not currently receive generation service from a CRES provider would be deprived of the opportunity to shop, in violation of Section 4928.02(C), Revised Code (Schools Ex. 101 at 10-11). Finally, the Schools contend that approval of AEP-Ohio's proposed capacity pricing mechanism would likely result in cuts to teaching and staff positions, materials and equipment, and programs, in violation of Section 4928.02(N), Revised Code (Schools Ex. 101 at 10).

Duke also contends that the Commission should adopt RPM-based capacity pricing as the state compensation mechanism, which is consistent with state policy supporting competition. Duke asserts that, pursuant to the RAA, an FRR Entity may only apply to FERC for cost-based compensation for its FRR capacity obligations, if there is no state compensation mechanism in place. According to Duke, neither the RAA nor Ohio law grants AEP-Ohio the right to recover its embedded costs. Duke notes that, under Ohio law, capacity is a competitive generation service that is not subject to cost-based ratemaking.

Exelon and Constellation assert that, if AEP-Ohio's proposed capacity pricing mechanism is approved, retail competition in the Company's service territory will be stifled and customers will bear the cost. Exelon and Constellation cite numerous reasons supporting their position that AEP-Ohio's proposal should be rejected in favor of RPM-based capacity pricing: Ohio law does not require that the state compensation mechanism be based on cost; AEP-Ohio's status as an FRR Entity does not entitle it to cost-based capacity pricing; AEP-Ohio, even as an FRR Entity, could have elected to participate in the RPM auction for 2014, rather than self-supply more expensive capacity, putting its own interests above those of customers; RPM-based capacity pricing is consistent with state policy promoting the development of competitive markets, whereas the Company's proposal is not; the Company should not be allowed to unilaterally apply better-of-cost-or-market pricing; CRES providers are captive to AEP-Ohio, given the requirement that capacity be committed more than three years in advance of delivery; Ohio law requires comparable and nondiscriminatory access to CRES and RPM-based capacity pricing is used throughout Ohio except in AEP-Ohio's service territory; and adopting RPM-based capacity

Given that there is, and has continually been, a state compensation mechanism in place for AEP-Ohio from the beginning of this proceeding, the issue for our consideration is whether the state compensation mechanism, on a going-forward basis, must or should be modified such that it is based on cost. AEP-Ohio contends that the state compensation mechanism must be amended so that the Company is able to recover its embedded costs of capacity. All of the intervenors and Staff oppose AEP-Ohio's request and advocate instead that the Commission retain the RPM-based state compensation mechanism, as it was established in the December 8, 2010, entry.

Pursuant to Section 4905.22, Revised Code, all charges for service shall be just and reasonable and not more than allowed by law or by order of the Commission. In this case, AEP-Ohio asserts that its proposed compensation for its FRR capacity obligations is just and reasonable and should be adopted by the Commission. Specifically, AEP-Ohio asserts that its proposed cost-based capacity pricing is consistent with state policy, will promote alternative competitive supply and retail competition, and will ensure the Company's ability to attract capital investment to meet its FRR capacity obligations. All of the intervenors and Staff, on the other hand, recommend that market-based RPM capacity pricing should be approved as the state compensation mechanism for AEP-Ohio. As discussed above, there is a general consensus among these parties that RPM-based capacity pricing is just and reasonable, easily implemented and understood, and consistent with state policy. Staff and intervenors further agree that RPM-based capacity pricing will fulfill the Commission's stated goals of both promoting competition and ensuring that AEP-Ohio has the required capital to maintain service reliability.

As discussed above, the Commission finds that it has jurisdiction to establish a state compensation mechanism in this case pursuant to its general supervisory authority found in Sections 4905.04, 4905.05, and 4905.06, Revised Code. We further find, pursuant to our regulatory authority under Chapter 4905, Revised Code, as well as Chapter 4909, Revised Code, that it is necessary and appropriate to establish a cost-based state compensation mechanism for AEP-Ohio. Those chapters require that the Commission use traditional rate base/rate of return regulation to approve rates that are based on cost, with the ultimate objective of approving a charge that is just and reasonable consistent with Section 4905.22, Revised Code. Although Chapter 4928, Revised Code, provides for market-based pricing for retail electric generation service, those provisions do not apply because, as we noted earlier, capacity is a wholesale rather than a retail service. The Commission's obligation under traditional rate regulation is to ensure that the jurisdictional utilities receive reasonable compensation for the services that they render. We conclude that the state compensation mechanism for AEP-Ohio should be based on the Company's costs. Although Staff and intervenors contend that RPM-based capacity pricing is just and reasonable, we note that the record indicates that the RPM-based price for capacity has decreased greatly since the December 8, 2010, entry was issued, and that the adjusted RPM

order to ensure that the Company is fully compensated. Thereafter, AEP-Ohio should be authorized to collect carrying charges at its long-term cost of debt.

Additionally, the Commission directs that the state compensation mechanism that we approve today shall not take effect until our opinion and order is issued in 11-346, or until August 8, 2012, whichever is sooner. Until that time, the interim capacity pricing mechanism that we approved on March 7, 2012, and extended on May 30, 2012, shall remain in place. In further extending the interim capacity pricing mechanism, we recognize that 11-346 and the present proceeding are intricately related. In fact, AEP-Ohio has put forth an entirely different capacity pricing mechanism in 11-346 as a component of its proposed ESP. Although this case has proceeded separately so that an evidentiary record on the appropriate capacity cost pricing/recovery mechanism could be developed, there is an overlap of issues between the two proceedings. For that reason, we find that the state compensation mechanism approved today should become effective with the issuance of our order in 11-346, which will address AEP-Ohio's comprehensive rate package, including its capacity pricing proposal, or August 8, 2012, whichever occurs first.

We note that the state compensation mechanism, once effective, shall remain in effect until AEP-Ohio's transition to full participation in the RPM market is complete and the Company is no longer subject to its FRR capacity obligations, which is expected to occur on or before June 1, 2015, or until otherwise directed by the Commission.

The Commission believes that the approach that we adopt today appropriately balances our objectives of enabling AEP-Ohio to recover its costs for capacity incurred in fulfilling its FRR capacity obligations, while promoting the further development of retail competition in the Company's service territory.

3. What should the resulting compensation be for AEP-Ohio's FRR capacity obligations?

a. AEP-Ohio

AEP-Ohio's position is that the appropriate cost-based capacity price to be charged to CRES providers is \$355.72/MW-day, on a merged company basis, before consideration of any offsetting energy credit. AEP-Ohio notes that the formula rate approach recommended by Company witness Pearce is based upon the average cost of serving the Company's LSE obligation load (both the load served directly by AEP-Ohio and the load served by CRES providers) on a dollar-per-MW-day basis. AEP-Ohio further notes that, because the Company supplies its own generation resources to satisfy these load obligations, the cost to provide this capacity is the actual embedded capacity cost of its generation. AEP-Ohio's formula rate template was modeled after, and modified from, the capacity portion of a FERC-approved template used to derive the charges applied to wholesale sales made by Southwestern Electric Power Company, an affiliate of the Company, to the cities of Minden,

question is not used and useful and AEP-Ohio has given no indication as to when it will become so (Staff Ex. 103 at 16). CWC was excluded by Staff because AEP-Ohio did not prepare a lead-lag study or otherwise demonstrate a need for CWC (Staff Ex. 103 at 18-21). Staff excluded AEP-Ohio's prepaid pension asset for numerous reasons, mainly because the Company did not demonstrate that it has a net prepaid pension asset and its FERC Form 1 for 2010 suggests that there is actually a net liability; pension funding levels are the result of discretionary management decisions regarding the funding of defined benefit pensions; and pension expense is typically included in the determination of CWC in a lead-lag study, which was not provided (Staff Ex. 103 at 21-31). Staff further excluded nonrecurring costs related to the significant number of positions that were permanently eliminated as a result of AEP-Ohio's severance program in 2010 (Staff Ex. 1-3 at 43-52).

AEP-Ohio responds that Mr. Smith's downward adjustments and elimination of certain costs from Dr. Pearce's calculations are fundamentally flawed in that Dr. Pearce's formula rate approach is based on a formula rate template that was approved by FERC. AEP-Ohio also counters that adjustments made by Mr. Smith to the return on equity, operations and maintenance expenses attributable to severance programs, prepaid pension assets, CWC, CWIP, and PHFFU understate the Company's costs and contradict prior orders and practices of both the Commission and FERC. With respect to the return on equity, AEP-Ohio notes that Mr. Smith's adjustment was inappropriately taken from the stipulation in the Company's recent distribution rate case and that Mr. Smith agreed that the competitive generation business is more risky than the distribution business (Staff Ex. 103 at 12-13; Tr. IX at 1991, 1993; AEP-Ohio Ex. 142 at 17). AEP-Ohio contends that the Commission should adopt a return on equity of 11.15 percent as recommended by Dr. Pearce or, at a minimum, a return on equity of 10.5 percent, which AEP-Ohio claims is consistent with a return on equity that the Commission has recently recognized for certain generating assets of the Company (AEP-Ohio Ex. 142 at 17-18). AEP-Ohio further contends that Mr. Smith's elimination of certain severance costs and prepaid pension expenses is inconsistent with the Commission's treatment of such costs in the Company's recent distribution rate case, and that the \$39.004 million in severance costs should be amortized over three years (AEP-Ohio Ex. 142 at 17). AEP-Ohio argues that Mr. Smith's elimination of CWIP and CWC is inconsistent with FERC practice.

Additionally, AEP-Ohio asserts that Staff witnesses Smith and Harter failed to account for nearly \$66.5 million in certain energy costs incurred by the Company, including Production-Related Administrative & General Expenses, Return on Production-Related Investments, Production-Related Depreciation Expenses, and Production-Related Income Taxes. According to AEP-Ohio, due to these trapped costs, Mr. Smith's capacity charge is understated by \$20.11/MW-day on a merged company basis (AEP-Ohio Ex. 143 at 3, 5-6). AEP-Ohio witness Allen incorporated this amount in his calculation of what Staff's capacity rate would be, as modified by his recommended energy credit and cost-of-service

credit is appropriate. Dr. Pearce's template for the calculation of energy costs is derived from the same formula rate template discussed above and approved by FERC (AEP-Ohio Ex. 102 at 14). The energy credit would be calculated as the difference between the revenues that the historic load shapes for CSP and OP, including all shopping and non-shopping load, would be valued at using locational marginal prices (LMP) that settle in the PJM day-ahead market, less the cost basis of this energy (AEP-Ohio Ex. 102 at Ex. KDP-1 through KDP-5). According to Dr. Pearce, the calculation relies upon a fair and reasonable proxy for the energy revenues that could have been obtained by CSP and OP by selling equivalent generation into the market (AEP-Ohio Ex. 102 at 15). AEP-Ohio contends that, if an energy credit is used to partially offset the demand charge, it should reflect actual energy margins for 2010 in order to best match the corresponding cost basis for calculating the demand charge. Dr. Pearce recommends that energy margins from OSS that are properly attributed to capacity sales to CRES providers should be shared on a 50/50 basis between AEP-Ohio and CRES providers (AEP-Ohio Ex. 102 at 18). Additionally, Dr. Pearce recommends that any energy credit be capped at 40 percent of the capacity charge that would be applicable with no energy credit, as a means to ensure that the credit does not grow so large as to reduce greatly capacity payments from CRES providers in times of high prices (AEP-Ohio Ex. 102 at 18).

b) Staff

As discussed above, Staff recommends that AEP-Ohio's compensation for its FRR capacity obligations be based on RPM pricing. Alternatively, Staff proposes a capacity rate of \$146.41/MW-day, which includes an offsetting energy credit and ancillary services credit. In calculating its proposed energy credit, Staff developed a forecast of total energy margins for AEP-Ohio's generating assets, using a dispatch market model known as AURORAxmp, which is licensed by Staff's consultant in this case, Energy Ventures Analysis, Inc. (EVA), as well as by AEP-Ohio and others (Staff Ex. 101 at 6; Tr. X at 2146, 2149; Tr. XII at 2637).

AEP-Ohio contends that Staff's black-box methodology for calculation of the energy credit is flawed in several ways and produces unrealistic and grossly overstated results. Specifically, AEP-Ohio argues that the AURORAxmp model used by Staff witnesses Harter and Medine is not well-suited for the task of computing an energy credit and that EVA implemented the model in a flawed manner through use of inaccurate and inappropriate input data and assumptions, which overstates gross energy margins for the period of June 2012 through May 2015 by nearly 200 percent (AEP-Ohio Ex. 144 at 8-25; AEP-Ohio Ex. 142 at 2-14). AEP-Ohio notes that, among other flaws, Staff's proposed energy credit understates fuel costs for coal units, understates the heat rates for gas units, overstates market prices (e.g., use of zonal rather than nodal prices, use of forecasted LMP rather than forward energy prices), fails to account for the gross margins allocable to the Company's full requirements contract with Wheeling Power Company, and fails to account for the fact

embedded capacity costs both from shopping customers and off-system energy sales (FES Ex. 103 at 47; Tr. I at 29-30). At minimum, FES believes that AEP-Ohio should account for its portion of OSS revenues, after pool sharing, in its capacity price. (FES Ex. 103 at 48-49.) If RPM-based capacity pricing is not required by the Commission, FES recommends that FES witness Lesser's energy credit, which simply uses AEP-Ohio's FERC account information without adjustments to account for the pool agreement, be adopted. FES notes that Dr. Lesser determined that AEP-Ohio overstated its capacity costs by \$178.1 million by failing to include an offset for energy sales.

OCC notes that it would be unjust and unreasonable for AEP-Ohio to be permitted to recover any of its embedded generation costs from customers, particularly without any offset for energy sales. OCC argues that, if the Commission adopts a cost-based capacity pricing mechanism, an energy credit that accounts for profits from OSS is warranted to ensure that AEP-Ohio does not recover embedded capacity costs from CRES providers, as well as recover some of those same costs from off-system energy sales, resulting in double recovery.

(ii) Does the Company's proposed cost-based capacity pricing mechanism constitute a request for recovery of stranded generation investment?

a) Intervenors

FES argues that SB 3 required that all generation plant investment occurring after January 1, 2001, be recovered solely in the market. FES notes that AEP-Ohio admits, in its recently filed corporate separation plan,⁹ that it can no longer recover stranded costs, as the transition period for recovery of such costs is long over. FES adds that AEP-Ohio witness Pearce failed to exclude stranded costs from his calculation of capacity costs. FES points out that, pursuant to the stipulation approved by the Commission in AEP-Ohio's electric transition plan (ETP) case, the Company waived recovery of its stranded generation costs and, in any event, through depreciation accruals, has already fully recovered such costs. FES also notes that Dr. Pearce's calculation inappropriately includes costs for generation plant investments made after December 31, 2000, and also seeks to recover the costs of assets that will no longer be owned by the Company as of January 1, 2014, but will rather be owned by AEP Generation Resources.

IEU-Ohio agrees with FES that AEP-Ohio agreed to forgo any claim for stranded generation costs, which bars the Company's untimely claim to generation plant-related transition revenues. IEU-Ohio contends that AEP-Ohio seeks to impose what IEU-Ohio considers to be a lost revenue charge on CRES suppliers serving shopping customers.

⁹ *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC.

price for the 2011/2012 PJM delivery year. OEG believes that such price has proven effective in providing a more than sufficient return on equity for AEP-Ohio, while still fostering retail competition in the Company's service territory. (OEG Ex. 102 at 10-11). Additionally, OEG witness Kollen recommends that the Commission adopt an ESM to ensure that AEP-Ohio's earnings are neither too high nor too low and instead are maintained within a Commission-determined zone of reasonableness. OEG believes that such an approach is appropriate, given the significant uncertainty regarding both the proper compensation for AEP-Ohio's FRR capacity obligations and the impact of various charges on the Company's earnings. In particular, Mr. Kollen suggests that an earnings bandwidth be established, with a lower threshold return on equity of seven percent and an upper threshold return on equity of 11 percent. If AEP-Ohio's earnings fall below the lower threshold of seven percent, then the Company would be allowed to increase its rates through a nonbypassable ESM charge sufficient to increase its earnings to the seven percent level. If earnings exceed the upper threshold of 11 percent, then AEP-Ohio would return the excess earnings to customers through a nonbypassable ESM credit. If AEP-Ohio's earnings are within the earnings bandwidth, there would be no rate changes other than those that operate to recover defined costs such as through the fuel adjustment clause. Finally, Mr. Kollen notes that the Commission would have the discretion to make modifications as circumstances warrant. (OEG Ex. 102 at 15-21.) OEG believes that its recommended lower threshold is reasonable as confirmed by the recent actual earned returns of the AEP East affiliates, which averaged 6.8 percent in 2010 and 7.8 percent in 2011 (OEG Ex. 102 at 13). Additionally, AEP-Ohio's adjusted return in 2011 was 11.42 percent, just above its suggested upper threshold (OEG Ex. 102 at Ex. LK-3). Mr. Kollen explained that AEP-Ohio's earned return on equity would be computed in the same manner as under the significantly excessive earnings test (SEET) of Section 4928.143(F), Revised Code, although he believes that OSS margins should be included in the computation to be consistent with certain other parties' recommended approach of accounting for energy margins in the calculation of a cost-based capacity price (OEG Ex. 102 at 10, 15, 18; Tr. VI at 1290.)

b) AEP-Ohio

AEP-Ohio urges the Commission to reject OEG's alternate proposal. AEP-Ohio notes that the upper threshold of 11 percent is significantly lower than any SEET threshold previously applied to the Company and that the proposal would essentially render the statutory SEET obsolete. According to AEP-Ohio, the Commission is without jurisdiction to impose another, more stringent, excessive earnings test on the Company. AEP-Ohio also argues that OEG's proposal would preclude the Company from exercising its right under Section D.8 of Schedule 8.1 of the RAA to establish a cost-based compensation method. AEP-Ohio believes that Mr. Kollen's excessive earnings test would offer no material protection to the Company from undercompensation of its costs incurred to furnish capacity to CRES providers, and that the test would be difficult to administer, cause

pricing to account for margins from off-system energy sales and ancillary receipts (Staff Ex. 101 at 4). We agree with Staff, FES, and OCC that an offset for energy-related sales is necessary to ensure that AEP-Ohio does not over recover its capacity costs through recovery of its embedded costs as well as OSS margins (FES Ex. 103 at 45-46).

AEP-Ohio takes issue with the adjustments made by Staff witness Smith as well as with EVA's calculation of the energy credit. The Commission believes that the adjustments to AEP-Ohio's proposed capacity pricing mechanism that were made by Staff witness Smith are, for the most part, reasonable and consistent with our ratemaking practices in Ohio. With regard to AEP-Ohio's prepaid pension asset, however, we agree with the Company that Mr. Smith's exclusion of this item was inconsistent with Staff's recommendation in the Company's recent distribution rate case (AEP-Ohio Ex. 129A; AEP-Ohio Ex. 129B), as well as with our treatment of pension expense in other proceedings.¹⁰ We see no reason to vary our practice in the present case and, therefore, find that AEP-Ohio's prepaid pension asset should not have been excluded. The result of our adjustment increases Staff's recommendation by \$3.20/MW-day (AEP-Ohio Ex. 142 at 16, Ex. WAA-R7). Similarly, with respect to AEP-Ohio's severance program costs, we find that Mr. Smith's exclusion of such costs was inconsistent with their treatment in the Company's distribution rate case. Amortization of the severance program costs over a three-year period increases Staff's recommendation by \$4.07/MW-day. (AEP-Ohio Ex. 142 at 16-17.) Further, upon consideration of the arguments with respect to the appropriate return on equity, we find that AEP-Ohio's recommendation of 11.15 percent is reasonable and should be adopted. As AEP-Ohio notes, Staff's recommended return on equity was solely based on the negotiated return on equity in the Company's distribution rate case (Staff Ex. 103 at 12-13), which has no precedential effect pursuant to the express terms of the stipulation adopted by the Commission in that case. Our adoption of a return on equity of 11.15 percent increases Staff's recommendation by \$10.09/MW-day (AEP-Ohio Ex. 142 at 17). We also agree with AEP-Ohio that certain energy costs were trapped in Staff's calculation of its recommended capacity charge, in that Staff witness Smith regarded such costs as energy related and thus excluded them from his calculations, while EVA disregarded them in its determination of the energy credit. Accordingly, we find that Staff's recommendation should be increased by \$20.11/MW-day to account for these trapped costs. (AEP-Ohio Ex. 143 at 5-6.)

Additionally, the Commission finds, on the whole, that Staff's recommended energy credit, as put forth by EVA, is reasonable. AEP-Ohio raises a number of arguments as to why Staff's energy credit, as calculated by EVA, should not be adopted by the Commission. In essence, AEP-Ohio fundamentally disagrees with the methodology used by EVA. Although we find that EVA's methodology should be adopted, we agree with AEP-Ohio

¹⁰ See, e.g., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices, and for Tariff Approvals*, Case No. 07-551-EL-AIR, et al., Opinion and Order (January 21, 2009), at 16.

must be at least 75 percent complete in order to qualify for a CWIP allowance and that AEP-Ohio failed to demonstrate compliance with this requirement.

As previously mentioned above, AEP-Ohio raises numerous concerns regarding Staff's proposed energy credit and offered the rebuttal testimony of Company witness Meehan in an effort to critique EVA's testimony. Upon review of all of the testimony, the Commission finds that it is clear that the dispute between AEP-Ohio and Staff amounts to a fundamental difference in methodology in everything from the calculation of gross energy margins to accounting for operation of the pool agreement. AEP-Ohio claims that Staff's inputs to the AURORAxmp model result in an overstated energy credit, while Staff argues that the Company's energy credit is far too low. Essentially, AEP-Ohio and Staff have simply offered two quite different approaches in their attempt to forecast market prices for energy. The Commission concludes that AEP-Ohio has not shown that the process used by Staff was erroneous or unreasonable. We further find that the approach put forth by EVA is a proper means of determining the energy credit and produces an energy credit that will ensure that AEP-Ohio does not over recover its capacity costs.

Accordingly, we adopt Staff's proposed energy credit, as modified above to account for AEP-Ohio's full requirements contract with Wheeling Power Company, and find that a capacity charge of \$188.88/MW-day is just, reasonable, and should be adopted. The Commission agrees with AEP-Ohio that the compensation received from CRES providers for the Company's FRR capacity obligations should reasonably and fairly compensate the Company and should not significantly undermine the Company's ability to earn an adequate return on its investment. The Commission believes that, by adopting a cost-based state compensation mechanism for AEP-Ohio, with a capacity charge of \$188.88/MW-day, in conjunction with the authorized deferral of the Company's incurred capacity costs, to the extent that the total incurred capacity costs do not exceed \$188.88/MW-day not recovered from CRES provider billings reflecting the adjusted RPM-based price, we have accomplished those objectives, while also protecting the interests of all stakeholders.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) AEP-Ohio is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On November 1, 2010, AEPSC, on behalf of AEP-Ohio, filed an application with FERC in FERC Docket No. ER11-1995, and on November 24, 2010, refiled its application, at the direction of FERC, in FERC Docket No. ER11-2183. The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism and included proposed formula rate

- (13) The Commission has jurisdiction in this matter pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.
- (14) The state compensation mechanism for AEP-Ohio, as set forth herein, is just and reasonable and should be adopted.

ORDER:

It is, therefore,

ORDERED, That IEU-Ohio's motion to dismiss this case be denied. It is, further,

ORDERED, That the motion for permission to appear *pro hac vice instante* filed by Derek Shaffer be granted. It is, further,

ORDERED, That the state compensation mechanism for AEP-Ohio be adopted as set forth herein. It is, further,

ORDERED, That AEP-Ohio be authorized to defer its incurred capacity costs not recovered from CRES provider billings to the extent the total incurred capacity costs do not exceed \$188.88/MW-day. It is, further,

ORDERED, That the interim capacity pricing mechanism approved on March 7, 2012, and extended on May 30, 2012, shall remain in place until the earlier of August 8, 2012, or such time as the Commission issues its opinion and order in 11-346, at which point the state compensation mechanism approved herein shall be incorporated into the rates to be effective pursuant to that order. It is, further,

ORDERED, That nothing in this opinion and order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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) Case No. 10-2929-EL-UNC
Company.)

CONCURRING OPINION
OF COMMISSIONERS ANDRE T. PORTER AND LYNN SLABY

The majority opinion and order balances the interests of consumers, suppliers, and AEP-Ohio. It provides certainty for consumers and suppliers by resolving questions about whether there will be a competitive electricity market in the AEP-Ohio territory, specifically, and across this state, generally. It does so by establishing a state compensation mechanism pursuant to which competitive retail electric suppliers have access to RPM-based market capacity pricing, which will encourage competition among those suppliers, resulting in the benefit to consumers of the lowest and best possible electric generation rates in the AEP-Ohio territory.

Moreover, it recognizes the important function and commitment of AEP-Ohio as a fixed resource requirement entity having dedicated capacity to serve consumers in its service territory. However, these resources are not without cost. Accordingly, the order allows AEP-Ohio to receive its actual costs of providing the capacity through the deferral mechanism described therein, which we have determined, after thorough consideration of the record in this proceeding, to be \$188.88/MW-day. This result is a fair balance of all interests because rather than subjecting AEP-Ohio to RPM capacity rates that were derived from a market process in which AEP-Ohio did not participate, the order allows AEP-Ohio to recover the costs of the agreement to which it was a participant—dedicating its capacity to serve consumers in its service territory. Our opinion of this result, in this case, should not be misunderstood as it relates to RPM; *by joining the majority opinion, we do not, in any way, agree to any description of RPM-based capacity rates as being unjust or unreasonable.*

Finally, while we prefer to have the state compensation mechanism effective as of today, we join with the majority in setting the effective date of August 8, 2012, or to coincide with our as-yet unissued opinion and order in Docket No. 11-346-EL-SSO, whichever is earlier. In an attempt to balance the deferral authorization created in this proceeding and

BEFORE

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Company and Columbus Southern Power) Case No. 10-2929-EL-UNC
Company.)

CONCURRING AND DISSENTING OPINION
OF COMMISSIONER CHERYL L. ROBERTO

I join my colleagues in updating the state compensation method for the Fixed Resource Requirement from that originally adopted implicitly in AEP-Ohio's first ESP case, Case No. 08-917-EL-SSO, *et al.*, and explicitly in this matter to a cost-based rate of \$188.88/MW-day.

I depart from the majority, however, in the analysis of the nature of the Fixed Resource Requirement and, as a result, the basis for the Commission's authority to update the state compensation method for the Fixed Resource Requirement.

Additionally, I dissent from those portions of the majority opinion creating a deferral of a portion of the authorized cost-based Fixed Resource Requirement rate adopted today.

What is a Fixed Resource Requirement?

In order to assure that the transmission system is reliable, PJM requires any one who wishes to transmit electricity over the system to their customers¹ to provide reliability assurance that they have the wherewithal - or *capacity* - to use the transmission system without crashing it or otherwise destabilizing it for everyone else.² The protocols for making this demonstration are contained in the Reliability Assurance Agreement. Each transmission system user must show that they possess Capacity Resources sufficient to meet their own needs plus a margin for safety. These Capacity Resources may include a combination of generation facilities, demand resources, energy efficiency, and Interruptible

¹ These transmission users are known as a "Load Serving Entity" or "LSE." LSE shall mean any entity (or the duly designated agent of such an entity), including a load aggregator or power marketer, (i) serving end-users within the PJM Region, and (ii) that has been granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electric energy to end-users located within the PJM Region. *Reliability Assurance Agreement Among Load Serving Entities in the PJM Region, PJM Interconnection, L.L.C.*, Rate Schedule FERC No. 44 (effective date May 29, 2012) (hereinafter Reliability Assurance Agreement), Section 1.44.

² Section 5, Capacity Resource Commitment, PJM Open Access Transmission Tariff (effective date June 8, 2012), at 2395-2443.

establish a compensation method for Fixed Resource Requirement service, it has opted not to do so in favor of a state compensation method when a state chooses to establish one. When this Commission chooses to establish a state compensation method for a noncompetitive retail electric service, the adopted rate must be just and reasonable based upon traditional cost-of-service principles.

This Commission previously established a state compensation method for AEP-Ohio's Fixed Resource Requirement service within AEP-Ohio's initial ESP. AEP-Ohio received compensation for its Fixed Resource Requirement service through both the provider of last resort charges to certain retail shopping customers and a capacity charge levied on competitive retail providers that was established by the three-year capacity auction conducted by PJM.⁹ Since the Commission adopted this compensation method, the Ohio Supreme Court reversed the authorized provider of last resort charges,¹⁰ and the auction value of the capacity charges has fallen precipitously, as has the relative proportion of shoppers to non-shoppers.

I agree with the majority that the Commission is empowered pursuant to its general supervisory authority found in Sections 4905.04, 4905.05, and 4905.06, Revised Code to establish an appropriate rate for the Fixed Resource Requirement service. I also agree that pursuant to regulatory authority under Chapter 4905, Revised Code, as well as Chapter 4909, Revised Code a cost-based compensation method is necessary and appropriate. Additionally, I find that because the Fixed Resource Requirement is a noncompetitive retail electric service, the Commission must establish the appropriate rate based upon traditional cost of service principles. Finally, I find specific authority within Section 4909.13, Revised Code, for a process by which the Commission may cause further hearings and investigations and may examine into all matters which may change, modify, or affect any finding of fact previously made. Given the change in circumstances since the Commission adopted the initial state compensation for AEP-Ohio's Fixed Resource Requirement service, it is appropriate for the Commission to revisit and adjust that rate to reflect current circumstances as we have today.

"Deferral"

In prior cases, this Commission has levied a rate or tariff on a group of customers but deferred collection of revenues due from that group until a later date. In this instance, the majority proposes to establish a rate for the Fixed Resource Requirement service provided

⁹ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, *et al.*, Opinion and Order (March 18, 2009), Entry on Rehearing (July 23, 2009); *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, Entry (December 8, 2010).

¹⁰ *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512 (2011).

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) Case No. 10-2929-EL-UNC
Company.)

ENTRY ON REHEARING

The Commission finds:

- (1) On March 18, 2009, in Case No. 08-917-EL-SSO, *et al.*, the Commission issued its opinion and order regarding the application for an electric security plan (ESP) for Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Company),¹ pursuant to Section 4928.143, Revised Code (ESP 1 Order).² The ESP 1 Order was appealed to the Ohio Supreme Court and subsequently remanded to the Commission for further proceedings.
- (2) On November 1, 2010, American Electric Power Service Corporation (AEPSC), on behalf of AEP-Ohio, filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. On November 24, 2010, at the direction of FERC, AEPSC refiled the application in FERC Docket No. ER11-2183 (FERC filing). The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism, pursuant to Section 205 of the Federal Power Act and Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement (RAA) for the regional transmission organization, PJM Interconnection, LLC (PJM), and included proposed formula rate templates under which AEP-Ohio would calculate its capacity costs.

¹ By entry issued on March 7, 2012, the Commission approved and confirmed the merger of CSP into OP, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

² *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO; *In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan*, Case No. 08-918-EL-SSO.

(SSO) in the form of a new ESP, pursuant to Section 4928.143, Revised Code (ESP 2 Case).⁴

- (7) By entry dated February 2, 2011, the Commission granted rehearing of the Initial Entry for further consideration of the matters specified in AEP-Ohio's application for rehearing. The Commission noted that the SCM adopted in the Initial Entry would remain in effect during the pendency of its review.
- (8) By entry issued on August 11, 2011, the attorney examiner set a procedural schedule in order to establish an evidentiary record on a proper SCM. The evidentiary hearing was scheduled to commence on October 4, 2011, and interested parties were directed to develop an evidentiary record on the appropriate capacity cost pricing/recovery mechanism, including, if necessary, the appropriate components of any proposed capacity cost recovery mechanism.
- (9) On September 7, 2011, a stipulation and recommendation (ESP 2 Stipulation) was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in the ESP 2 Case and several other cases pending before the Commission (consolidated cases),⁵ including the above-captioned case. Pursuant to an entry issued on September 16, 2011, the consolidated cases were consolidated for the sole purpose of considering the ESP 2 Stipulation. The September 16, 2011, entry also stayed the procedural schedules in the

⁴ *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 No. 11-346-EL-SSO and 11-348-EL-SSO; In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority, Case No. 11-349-EL-AAM and 11-350-EL-AAM.*

⁵ *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals, Case No. 10-2376-EL-UNC; In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders, Case No. 10-343-EL-ATA; In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders, Case No. 10-344-EL-ATA; 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; In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code, Case No. 11-4920-EL-RDR; In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code, Case No. 11-4921-EL-RDR.*

before November 8, 2011, were also entitled to receive tier-one, RPM-based capacity pricing. For all other customers, the second-tier charge for capacity was \$255/megawatt-day (MW-day). In accordance with the Interim Relief Entry, the interim rate was to remain in effect until May 31, 2012, at which point the charge for capacity under the SCM would revert to the current RPM price in effect pursuant to the PJM base residual auction for the 2012/2013 delivery year.

- (12) On March 14, 2012, an application for rehearing of the Interim Relief Entry was filed by the Retail Energy Supply Association (RESA). Applications for rehearing were also filed by FES and IEU-Ohio on March 21, 2012, and March 27, 2012, respectively. Memoranda contra the applications for rehearing were filed by AEP-Ohio.
- (13) By entry issued on April 11, 2012, the Commission granted rehearing of the Interim Relief Entry for further consideration of the matters specified in the applications for rehearing filed by RESA, FES, and IEU-Ohio.
- (14) The evidentiary hearing in this case commenced on April 17, 2012, and concluded on May 15, 2012.
- (15) On April 30, 2012, AEP-Ohio filed a motion for extension of the interim relief granted by the Commission in the Interim Relief Entry. By entry issued on May 30, 2012, the Commission approved an extension of the interim capacity pricing mechanism through July 2, 2012 (Interim Relief Extension Entry).
- (16) On June 15, 2012, an application for rehearing of the Interim Relief Extension Entry was filed by FES. Applications for rehearing were also filed by IEU-Ohio and the Ohio Manufacturers' Association (OMA) on June 19, 2012, and June 20, 2012, respectively. A memorandum contra the applications for rehearing was filed by AEP-Ohio on June 25, 2012.
- (17) By opinion and order issued on July 2, 2012, the Commission approved a capacity pricing mechanism for AEP-Ohio (Capacity Order). The Commission established

- (20) On August 7, 2012, OEG filed a motion for leave to reply and reply to the memorandum contra filed by AEP-Ohio on August 6, 2012. On that same date, AEP-Ohio filed a motion to strike OEG's motion and reply on the grounds that Rule 4901-1-35, Ohio Administrative Code (O.A.C.), does not provide for the filing of a reply to a memorandum contra an application for rehearing.

The Commission finds that OEG's motion is procedurally deficient in several respects. First, as we have recognized in prior cases, Rule 4901-1-35, O.A.C., does not contemplate the filing of a reply to a memorandum contra an application for rehearing.⁷ Additionally, although OEG's filing is styled as a motion and reply, the filing is essentially a reply only, lacking a motion and memorandum in support. OEG, therefore, also failed to comply with the requirements for a proper motion, as specified in Rule 4901-1-12, O.A.C. In any event, the Commission has reviewed OEG's filing and finds that OEG merely reiterates arguments that it has already raised elsewhere in this proceeding. Accordingly, OEG's motion for leave to file a reply should be denied and its reply should not be considered as part of the record in this proceeding. Further, AEP-Ohio's motion to strike should be denied as moot.

- (21) On August 15, 2012, the Commission issued an entry on rehearing, granting rehearing of the Capacity Order for further consideration of the matters specified in the applications for rehearing filed by AEP-Ohio, OEG, IEU-Ohio, FES, Schools, OMA, OHA, and OCC.
- (22) The Commission has reviewed and considered all of the arguments raised in the applications for rehearing of the Initial Entry, Interim Relief Entry, Interim Relief Extension Entry, and Capacity Order. In this entry on rehearing, the Commission will address all of the assignments of error by subject matter as set forth below. Any arguments on rehearing not specifically discussed herein have been

⁷ See, e.g., *In the Matter of the Commission Investigation of the Intrastate Universal Service Discounts*, Case No. 97-632-TP-COI, Entry on Rehearing (July 8, 2009).

and approved as a distribution charge and distribution service is subject to the exclusive jurisdiction of the Commission, the Commission's determination as to what compensation is provided by the POLR charge raises no issue that is subject to FERC's jurisdiction. IEU-Ohio also notes that the Commission has previously rejected the argument that a specific grant of authority from the General Assembly is required before it can make a determination that has significance for purposes of implementing a requirement approved by FERC.

- (26) FES argues that, pursuant to Section D.8 of Schedule 8.1 of the RAA, AEP-Ohio, as an FRR Entity, has no option to seek wholesale recovery of capacity costs associated with retail switching, if an SCM is in place. Additionally, FES asserts that the Commission has jurisdiction to review AEP-Ohio's rates. FES emphasizes that AEP-Ohio admits that the Commission has broad authority to investigate matters involving Ohio utilities and that the Commission may explore such matters even as an adjunct to its own participation in FERC proceedings.
- (27) As stated in the Initial Entry, Sections 4905.04, 4905.05, and 4905.06, Revised Code, grant the Commission authority to supervise and regulate all public utilities within its jurisdiction. The Commission's explicit adoption of an SCM for AEP-Ohio was well within the bounds of this broad statutory authority. Additionally, we stated in the Initial Entry that, in light of AEPSC's FERC filing, a review was necessary to evaluate the impact of the proposed change to AEP-Ohio's existing capacity charge. Section 4905.26, Revised Code, provides the Commission with considerable authority to initiate proceedings to investigate the reasonableness of any rate or charge rendered or proposed to be rendered by a public utility, which the Ohio Supreme Court has affirmed on several occasions.⁸ We therefore, grant rehearing for the limited purpose of clarifying that the investigation initiated by the Commission in this proceeding was consistent with Section

⁸ See, e.g., *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 400 (2006); *Allnet Communications Services, Inc. v. Pub. Util. Comm.*, 32 Ohio St.3d 115, 117 (1987); *Ohio Utilities Co. v. Pub. Util. Comm.*, 58 Ohio St.2d 153, 156-158 (1979).

envisioned under the RAA and did not compensate the Company for the wholesale capacity that it makes available as an FRR Entity under the RAA.

- (29) In its memorandum contra, IEU-Ohio argues that AEP-Ohio's POLR charge, as it was proposed by the Company and largely approved by the Commission in the ESP 1 Order, included compensation for capacity costs. FES agrees with IEU-Ohio that the POLR charge recovered capacity costs associated with retail switching. Both IEU-Ohio and FES note that AEP-Ohio's testimony in support of the POLR charge indicated that the charge would compensate the Company for the challenges of providing capacity and energy on short notice. FES adds that AEP-Ohio's POLR charge and its wholesale capacity charge were both intended to recover capacity costs associated with accommodating retail choice and ultimately pay for the same generating capacity. FES and Constellation assert that AEP-Ohio's POLR charge was the SCM, contrary to the Company's claim.
- (30) In the Initial Entry, the Commission noted that it had approved retail rates for AEP-Ohio, including recovery of capacity costs through the POLR charge to certain retail shopping customers, based upon the continuation of the current capacity charges established by PJM's capacity auction. We find no error in having made this finding. The Commission approved AEP-Ohio's retail rates, including the POLR charge, in the ESP 1 Order. For the most part, the POLR charge was approved by the Commission as it was proposed by AEP-Ohio.¹⁰ AEP-Ohio's testimony in support of the POLR charge indicates that various inputs were used by the Company to calculate the proposed charge.¹¹ One of these inputs was the market price, a large component of which was intended to reflect AEP-Ohio's capacity obligations as a member of PJM. Although the purpose of the POLR charge was to compensate AEP-Ohio for the risk associated with its POLR obligation, we nonetheless find that the POLR charge was approved, in

¹⁰ ESP 1 Order at 38-40.

¹¹ Cos. Ex. 2-A at 12-14, 31-32; Tr. XI at 76-77; Tr. XIV at 245.

in light of AEPSC's FERC filing proposing a cost-based capacity charge. Thus, AEP-Ohio's request for rehearing should be denied.

Interim Relief Entry

Jurisdiction

- (34) IEU-Ohio argues that the Interim Relief Entry is unlawful because the Commission is without subject matter jurisdiction to establish a cost-based capacity charge in this proceeding. IEU-Ohio notes that the Commission's ratemaking authority under state law is governed by statute. According to IEU-Ohio, this case is not properly before the Commission, regardless of whether capacity service is considered a competitive or noncompetitive retail electric service.
- (35) As discussed above with respect to the Initial Entry and addressed further below in regard to the Capacity Order, the Commission finds that it has jurisdiction under state law to establish an SCM, pursuant to the general supervisory authority granted by Sections 4905.04, 4905.05, and 4905.06, Revised Code, and that our review was consistent with our broad investigative authority under Section 4905.26, Revised Code. The Ohio Supreme Court has recognized the Commission's authority to investigate an existing rate and, following a hearing, to order a new rate.¹² Additionally, we believe that a cost-based SCM may be established for AEP-Ohio's FRR capacity obligations, pursuant to our regulatory authority under Chapter 4905, Revised Code, as well as Chapter 4909, Revised Code, which enable the Commission to use its traditional regulatory authority to approve rates that are based on cost. We find, therefore, that IEU-Ohio's request for rehearing should be denied.

¹² *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 400 (2006); *Ohio Utilities Co. v. Pub. Util. Comm.*, 58 Ohio St.2d 153, 156-158 (1979).

have other means to challenge or seek relief from an interim SCM based on RPM capacity pricing, we also found that the Commission is vested with the authority to modify the SCM that we established in the Initial Entry. We continue to believe that, just as we have the necessary authority to establish the SCM, as discussed elsewhere in this entry, so too may we modify the SCM. Accordingly, FES' and IEU-Ohio's assignments of error should be denied.

Evidentiary Record and Basis for Commission's Decision

- (40) FES asserts that the Interim Relief Entry is unlawful and unreasonable in that it authorized AEP-Ohio to recover a capacity rate allegedly based on its full embedded costs, which costs are not authorized by the RAA, are not recoverable under Ohio law, and do not reflect an offset for energy revenues. FES contends that, because the ESP 2 Stipulation was rejected, the Commission lacks a record basis to approve the negotiated rate of \$255/MW-day as an element of the interim SCM.
- (41) FES further argues that the Interim Relief Entry is not based on probative evidence that AEP-Ohio would suffer immediate or irreparable financial harm under RPM-based capacity pricing. FES adds that the Commission erred in relying on AEP-Ohio's loss of revenues from its unlawful POLR charge as further justification for the tier-two rate of \$255/MW-day.
- (42) AEP-Ohio replies that FES' arguments regarding the two-tiered capacity pricing structure have already been considered and rejected by the Commission on more than one occasion.
- (43) IEU-Ohio asserts that the Interim Relief Entry is unlawful and unreasonable because there is no record to support the Commission's finding that the SCM could risk an unjust and unreasonable result. Like FES, IEU-Ohio argues that it was unreasonable for the Commission to rely on the fact that AEP-Ohio is no longer recovering its POLR costs as support for the interim SCM, when the Commission previously determined that the POLR charge was not

evidence as a basis for granting AEP-Ohio's motion for interim relief.

In the Interim Relief Entry, the Commission cited three reasons justifying the interim relief granted, specifically the elimination of AEP-Ohio's POLR charge, the operation of the pool agreement, and evidence indicating that RPM-based capacity pricing is below the Company's capacity costs. With respect to the POLR charge, we merely noted that AEP-Ohio was no longer receiving a revenue stream that was intended, in part, to enable the Company to recover capacity costs. Although the Commission determined that AEP-Ohio's POLR charge was not supported by the record on remand, nothing in that order negated the fact that there are capacity costs associated with an electric distribution utility's POLR obligation and that such costs may be properly recoverable upon a proper record.¹⁴ Having noted that AEP-Ohio was no longer receiving recovery of capacity costs through the POLR charge, the Commission next pointed to evidence in the record of the consolidated cases indicating that the Company's capacity costs fall somewhere within the range of \$57.35/MW-day to \$355.72/MW-day, as a merged entity. Finally, we noted that, although AEP-Ohio may sell its excess supply into the wholesale market when retail customers switch to CRES providers, the pool agreement limits the Company's ability to fully benefit from these sales, as the margins must be shared with its affiliates.¹⁵ Although IEU-Ohio argues that AEP-Ohio failed to demonstrate any shortfall resulting from the operation of the pool agreement or any other economic justification for the interim rate relief, IEU-Ohio offers insufficient support for its theory that the Company must make such a showing. We have previously rejected IEU-Ohio's argument that the Commission broadly stated in the ESP 1

¹⁴ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets, Case No. 08-917-EL-SSO, et al., Order on Remand (October 3, 2011).*

¹⁵ AEP-Ohio Ex. 7 at 17.

- (49) In response to many of IEU-Ohio's various arguments, including its discrimination claim, AEP-Ohio contends that IEU-Ohio improperly attempts to relitigate issues that have already been considered and rejected by the Commission.
- (50) The Commission does not agree that the interim capacity pricing authorized by the Interim Relief Entry was unduly discriminatory or otherwise unlawful. We recognize that customers who acted earlier than others to switch to a CRES provider benefitted from their prompt action. However, as we have determined on prior occasions, this does not amount to undue preference nor create a case of discrimination, given that all customers had an equal opportunity to take advantage of the allotted RPM-based capacity pricing.¹⁷ Rehearing on this issue should thus be denied.

Transition Costs

- (51) IEU-Ohio maintains that the Interim Relief Entry is unlawful and unreasonable because it permitted AEP-Ohio to recover transition costs in violation of state law. According to IEU-Ohio, AEP-Ohio's opportunity to recover transition costs has ended, pursuant to Section 4928.38, Revised Code. AEP-Ohio responds that IEU-Ohio merely repeats an argument that the Commission has previously rejected.
- (52) The Commission disagrees that the Interim Relief Entry authorized the recovery of transition costs. We do not believe that the capacity costs associated with AEP-Ohio's FRR obligations constitute transition costs. Pursuant to Section 4928.39, Revised Code, transition costs are costs that, among meeting other criteria, are directly assignable or allocable to retail electric generation service provided to electric consumers in this state. AEP-Ohio's provision of capacity to CRES providers, as required by the Company's FRR capacity obligations, is not a retail electric service as

¹⁷ See, e.g., *In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval of its Electric Transition Plan, Approval of Tariff Changes and New Tariffs, Authority to Modify Current Accounting Procedures, and Approval to Transfer its Generating Assets to an Exempt Wholesale Generator*, Case No. 99-1658-EL-ETP, et al., Opinion and Order (August 31, 2000), at 41.

- (54) Like RESA, FES also notes that AEP-Ohio has interpreted the Interim Relief Entry to allow RPM-based capacity pricing to be taken away from a significant number of customers that were shopping as of September 7, 2011, when the ESP 2 Stipulation was filed. FES notes that both the ESP 2 Stipulation and the Initial ESP 2 Order recognized that all shopping customers qualifying for RPM-based capacity pricing as of September 7, 2011, would be entitled to continue to receive such pricing. FES argues that the Commission should have established an interim SCM based on RPM prices or, alternatively, should confirm that, during the interim period, all customers that were shopping as of September 7, 2011, should receive RPM-based capacity pricing.
- (55) AEP-Ohio contends that the applications for rehearing of RESA and FES should be denied, because they are essentially untimely applications for rehearing of the Initial ESP 2 Clarification Entry in the consolidated cases. AEP-Ohio asserts that the Interim Relief Entry merely confirmed that the capacity pricing requirements of the Initial ESP 2 Clarification Entry were to continue on an interim basis, even though the Commission rejected the ESP 2 Stipulation. AEP-Ohio believes that RESA and FES should have raised their objections to the capacity pricing requirements by seeking rehearing of the Initial ESP 2 Clarification Entry. AEP-Ohio further argues that RESA and FES ignore the fact that the ESP 2 Stipulation was rejected by the Commission in its entirety, which eliminated all of the benefits of the stipulation, and, therefore, RESA and FES have no basis upon which to claim that CRES providers should receive those benefits.

Next, AEP-Ohio disputes RESA's characterization of the status quo, and argues that the Commission maintained the status quo by retaining the capacity pricing set forth in the Initial ESP 2 Clarification Entry. Finally, AEP-Ohio asserts that the Initial ESP 2 Clarification Entry, which remained in effect pursuant to the Interim Relief Entry, required that each customer class receive an allocation of RPM-based capacity pricing for 21 percent of its load, and did not permit the reallocation of capacity from one customer class

pricing for customers shopping as of September 7, 2011. AEP-Ohio is directed to make any necessary adjustments to CRES billings that occurred during the interim period, consistent with this clarification.

Interim Relief Extension Entry

Evidentiary Record and Basis for Commission's Decision

- (57) FES argues that the Interim Relief Extension Entry is unreasonable and unlawful because it is not based on probative or credible evidence that AEP-Ohio would suffer immediate or irreparable financial harm under RPM-based capacity pricing. FES asserts that AEP-Ohio's claims regarding the purported harm that would result from RPM-based capacity pricing are overstated and unsupported by any evidence in the record. FES adds that AEP-Ohio made no attempt to comply with the requirements for emergency rate relief.

Additionally, FES contends that the Interim Relief Extension Entry is unreasonable and unlawful because it is in direct conflict with the RAA and RPM, pursuant to which capacity pricing is not based on a traditional cost-of-service ratemaking methodology, but is instead intended only to compensate RPM participants, including FRR Entities, for ensuring reliability. According to FES, capacity pricing is not intended to compensate AEP-Ohio for the cost of its generating assets and only the Company's avoidable costs are relevant.

FES also argues that the Interim Relief Extension Entry is unreasonable and unlawful because it imposed capacity pricing above the RPM-based price on tier-one customers that have always been entitled to RPM-based capacity pricing, without any explanation or supporting evidence. FES adds that tier-one customers and CRES providers will be severely prejudiced by the Commission's modification.

Finally, FES argues that the Interim Relief Extension Entry is unreasonable and unlawful because it extended an improper interim SCM without sufficient justification as to why the Commission elected to continue above-market

Extension of Interim SCM

- (61) FES argues that the Interim Relief Extension Entry is unreasonable and unlawful because it authorized the extension of an interim SCM that is unlawful, as demonstrated in FES' application for rehearing of the Interim Relief Entry. Similarly, IEU-Ohio reiterates the arguments raised in its briefs and application for rehearing of the Interim Relief Entry. AEP-Ohio replies that the Commission has already addressed intervenors' arguments in the course of this proceeding.
- (62) As addressed above, the Commission does not agree that the interim SCM was unlawful. For the same reasons enumerated above with respect to the Interim Relief Entry, the Commission finds nothing improper in our extension of the interim SCM for a brief period.

Due Process

- (63) IEU-Ohio contends that the totality of the Commission's actions during the course of this proceeding violated IEU-Ohio's due process rights under the Fourteenth Amendment. IEU-Ohio believes the Commission's conduct throughout this proceeding has subjected the positions of parties objecting to AEP-Ohio's demands to condemnation without trial. In its memorandum contra, AEP-Ohio argues that IEU-Ohio's lengthy description of the procedural history of this proceeding negates its due process claim.
- (64) The Commission finds no merit in IEU-Ohio's due process claim. Pursuant to the procedural schedule, all parties, including IEU-Ohio, were afforded ample opportunity to participate in this proceeding through means of discovery, a lengthy evidentiary hearing with cross-examination of witnesses and presentation of exhibits, and briefing. IEU-Ohio was also afforded the opportunity to respond to AEP-Ohio's motion for interim relief, as well as its motion for an extension of the interim relief. As the record reflects, IEU-

from the Interim Relief Extension Entry was required, the appropriate course of action would have been to seek a stay of the entry.

We do not agree that the Interim Relief Extension Entry undermined customer expectations or caused substantial harm to customers. This case was initiated by the Commission nearly two years ago for the purposes of reviewing AEP-Ohio's capacity charge and determining whether the SCM should be modified in order to promote competition and to enable the Company to recover the costs associated with its FRR capacity obligations. In any event, as with any rate, there is no guarantee that the rate will remain unchanged in the future. We find that the Interim Relief Extension Entry appropriately balanced the interests of AEP-Ohio, CRES providers, and customers, which has been the Commission's objective throughout this proceeding.

Capacity Order

Jurisdiction

- (69) IEU-Ohio argues that the Capacity Order is unlawful and unreasonable because the Commission is prohibited from applying cost-based ratemaking principles or resorting to Chapters 4905 and 4909, Revised Code, to supervise and regulate generation capacity service from the point of generation to the point of consumption. IEU-Ohio contends that it makes no difference whether the service is termed wholesale or retail, because retail electric service includes any service from the point of generation to the point of consumption. IEU-Ohio asserts that the Commission's authority with respect to generation service is limited to the authorization of retail SSO rates that are established in conformance with the requirements of Sections 4928.141 to 4928.144, Revised Code.
- (70) The Schools contend that the Commission lacks authority to set cost-based capacity rates, because AEP-Ohio's capacity service is a deregulated generation-related service. The Schools believe the Commission's authority regarding

The Commission carefully considered the question of whether we have the requisite statutory authority in this matter. We affirm our findings in the Capacity Order that capacity service is a wholesale generation service between AEP-Ohio and CRES providers and that the provisions of Chapter 4928, Revised Code, that restrict the Commission's regulation of competitive retail electric services are inapplicable. The definition of retail electric service found in Section 4928.01(A)(27), Revised Code, is more narrow than IEU-Ohio would have it. As we discussed in the Capacity Order, retail electric service is "any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption." Because AEP-Ohio supplies the capacity service in question to CRES providers, rather than directly to retail customers, it is not a retail electric service, as IEU-Ohio appears to contend, or a deregulated service, as the Schools assert.

Additionally, as discussed above, we note that Section 4905.26, Revised Code, grants the Commission considerable authority to review rates²⁰ and authorizes our investigation in this case. The Commission properly initiated this proceeding, consistent with that statute, to examine AEP-Ohio's existing capacity charge for its FRR obligations and to establish an appropriate SCM upon completion of our review. We grant rehearing for the limited purpose of clarifying that the Capacity Order was issued in accordance with the Commission's authority found in Section 4905.26, Revised Code, as well as Sections 4905.04, 4905.05, and 4905.06, Revised Code.

Cost-Based SCM

- (72) OCC argues that the Commission erred in adopting a cost-based SCM rather than finding that the SCM should be based on RPM pricing. Similarly, the Schools argue that the Commission failed to find that RPM-based capacity

²⁰ See, e.g., *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 400 (2006); *Allnet Communications Services, Inc. v. Pub. Util. Comm.*, 32 Ohio St.3d 115, 117 (1987); *Ohio Utilities Co. v. Pub. Util. Comm.*, 58 Ohio St.2d 153, 156-158 (1979).

RAA's focus on the entire PJM region and the RAA's objective to support the development of a robust competitive marketplace; finds that use of the term "cost" in the RAA means embedded cost; and is based on AEP-Ohio's flawed assumptions that the Company is an FRR Entity with owned and controlled generating assets that are the source of capacity provided to CRES providers serving retail customers in the Company's certified electric distribution service area.

- (76) In its memorandum contra, AEP-Ohio notes that IEU-Ohio fails to explain how the application of Delaware law would make any practical difference with respect to the Commission's interpretation of the RAA. AEP-Ohio argues that the RAA cannot be interpreted to mean that state commissions are constrained by Delaware law in establishing an SCM. AEP-Ohio also contends that, if the reference to cost in Section D.8 of Schedule 8.1 of the RAA is interpreted as avoidable cost, it would render the provision meaningless. AEP-Ohio adds that IEU-Ohio relies on inapplicable U.S. Supreme Court precedent in support of its argument that cost does not mean embedded cost.
- (77) The Commission finds that the arguments raised by the Schools, OCC, FES, and IEU-Ohio have already been thoroughly considered by the Commission and should again be denied. As discussed above, the Commission has an obligation to ensure that AEP-Ohio receives reasonable compensation for the capacity service that it provides. We continue to believe that the SCM for AEP-Ohio should be based on the Company's costs and that RPM-based capacity pricing would prove insufficient to yield reasonable compensation for the Company's provision of capacity to CRES providers in fulfillment of its FRR capacity obligations.

Initially, the Commission finds no merit in IEU-Ohio's claim that AEP-Ohio is not an FRR Entity. Although AEPSC signed the RAA, it did so on behalf of the Company. The Commission also disagrees with FES' contention that the Capacity Order affords an undue competitive advantage to AEP-Ohio over other capacity

between the Commission's recognition in the Capacity Order that RPM-based pricing will cause shopping to increase and the Commission's adoption of EVA's methodology without an adjustment to reflect a higher level of shopping. At a minimum, AEP-Ohio argues that the Commission should account for the actual shopping level as of the date of the Capacity Order.

- (79) IEU-Ohio responds that the arguments raised by AEP-Ohio in its application for rehearing assume that the Commission may act beyond its statutory jurisdiction to set generation rates and that the Commission may unlawfully authorize the Company to collect transition revenue. IEU-Ohio also contends that all of AEP-Ohio's assignments of error that relate to the energy credit are based on the flawed assumption that the Company identified and established the incurred cost of satisfying the FRR Entity's capacity obligations. IEU-Ohio notes that AEP-Ohio's cost-based methodology relies on the false assumption that the Company's owned and controlled generating assets are the source of capacity available to CRES providers serving customers in the Company's distribution service territory.
- (80) AEP-Ohio also argues that there are a number of errors in EVA's energy credit, resulting in an energy credit that is unreasonable and against the manifest weight of the evidence. AEP-Ohio contends that the Commission adopted EVA's energy credit without meaningful explanation or analysis and abdicated its statutory duty to make reasonable findings and conclusions, in violation of Section 4903.09, Revised Code.

Specifically, AEP-Ohio asserts that EVA's methodology does not withstand basic scrutiny and is largely a black box that cannot be meaningfully tested or evaluated by others; EVA failed to calibrate its model or otherwise account for the impact of zonal rather than nodal prices; EVA erred in forecasting locational marginal prices (LMP) instead of using available forward energy prices, which were used by Staff in the ESP 2 Case; EVA used inaccurate and understated fuel costs; EVA failed to use correct heat rates to capture minimum and start time operating constraints and associated cost impacts; EVA wrongly incorporated

nothing inappropriate in EVA's use of a static shopping level of 26 percent, which reflects the actual level of shopping in AEP-Ohio's service territory as of March 31, 2012, which was around the time of EVA's analysis. We recognize that the level of shopping will continually fluctuate in both directions. For that reason, we believe that it was appropriate for EVA to use the actual level of shopping as of a recent date, rather than a projection, and find that EVA's figure is a reasonable approximation. EVA's use of a static shopping level provides certainty to the energy credit and capacity rate. The alternative would be to review the level of shopping at regular intervals, an option that would unreasonably necessitate continual recalculations of the energy credit to reflect the shopping level of the moment, while introducing uncertainty into the capacity rate. The Commission also notes that, contrary to AEP-Ohio's assertion, Staff witness Medine did not testify that the energy credit should be adjusted to reflect the current level of shopping. Rather, Ms. Medine testified only that EVA assumed a shopping level of 26 percent, which was the level of shopping as of March 31, 2012, and that this figure was used as a conservative approach.²¹

Regarding the alleged errors in EVA's approach, the Commission notes initially that we explained the basis for our adoption of EVA's energy credit in the Capacity Order, consistent with the requirements of Section 4903.09, Revised Code. A review of the testimony of Staff witnesses Medine and Harter reflects that EVA sufficiently described its methodology, including the fuel costs and heat rates applied in this case; its decision to use zonal prices and forecasted LMP; and its accounting for OSS margins and operation of the pool agreement.²² We affirm our finding that, as a whole, EVA's energy credit, as adjusted by the Commission, is reasonable. Although AEP-Ohio contends that EVA should have used different inputs in a number of respects, we do not believe that the Company has demonstrated that the inputs actually used by EVA are unreasonable. AEP-Ohio's preference for other inputs that

²¹ Tr. X at 2189, 2194; Staff Ex. 105 at 19.

²² Staff Ex. 101 at 6-11, 105 at 4-19.

circumstances in the present case. The evidence of record reflects that AEP-Ohio's proposed ROE is consistent with the ROEs that are in effect for the Company's affiliates for wholesale transactions in other states.²³ Therefore, the requests for rehearing should be denied.

Deferral of Difference Between Cost and RPM

Deferral Authority

- (86) IEU-Ohio argues that the Commission is prohibited under Section 4928.05(A), Revised Code, from regulating or otherwise creating a deferral associated with a competitive retail electric service under Section 4905.13, Revised Code, and that the Commission may only authorize a deferral resulting from a phase-in of an SSO rate pursuant to Section 4928.144, Revised Code. IEU-Ohio further notes that, under generally accepted accounting principles (GAAP), only an incurred cost can be deferred for future collection, and not the difference between two rates. IEU-Ohio also asserts that the Commission unreasonably and unlawfully determined that AEP-Ohio might suffer financial harm if it charged RPM-based capacity pricing and established compensation for generation capacity service designed to address the financial performance of the Company's competitive generation business, despite the Commission's prior confirmation that the Company's earnings do not matter for purposes of establishing generation rates.
- (87) AEP-Ohio asserts that it was unreasonable and unlawful for the Commission to adopt a cost-based SCM and then order the Company to charge CRES providers the lower RPM-based capacity pricing. Specifically, AEP-Ohio contends that it was unreasonable and unlawful to require the Company to charge any price other than \$188.88/MW-day, which the Commission established as the just and reasonable cost-based rate. AEP-Ohio argues that the Commission has no statutory authority to require the Company to charge CRES providers less than the cost-

²³ Tr. II at 305.

capacity costs incurred in carrying out its FRR obligations, while encouraging retail competition in the Company's service territory.

The Commission finds no merit in the arguments that we lack the authority to order the deferral. As we noted in the Capacity Order, the Commission relied upon the authority granted to us by Section 4905.13, Revised Code, in directing AEP-Ohio to modify its accounting procedures to defer a portion of its capacity costs. Having found that the capacity service at issue is not a retail electric service and thus not a competitive retail electric service, IEU-Ohio's argument that the Commission may not rely on Section 4905.13, Revised Code, is unavailing. Neither do we find that authorization of the deferral was contrary to GAAP or prior Commission precedent, as IEU-Ohio contends. The requests for rehearing of IEU-Ohio and AEP-Ohio should, therefore, be denied.

Competition

- (93) AEP-Ohio contends that it was unreasonable and unlawful for the Commission to require the Company to supply capacity to CRES providers at a below-cost rate to promote artificial, uneconomic, and subsidized competition that is unsustainable and likely to harm customers and the state economy, as well as the Company.
- (94) Duke disagrees, noting that the evidence is to the contrary. Duke adds that the other Ohio utilities use RPM-based capacity pricing without causing a flood of unsustainable competition or damage to the economy in the state. FES responds that the deferral authorized by the Commission is an appropriate way to spur real competition and to prevent the chilling effect on competition that would result from above-market capacity pricing. FES contends that there is nothing artificial in allowing customers to purchase capacity from willing sellers at market rates. RESA and Direct Energy agree, noting that the Capacity Order will promote real competition among CRES providers to the benefit of customers.

OMA notes that AEP-Ohio's argument is contrary to state policy, which requires that nondiscriminatory retail electric service be available to consumers.

- (98) The Commission finds no merit in AEP-Ohio's argument and its request for rehearing should, therefore, be denied. The contracts in question are between CRES providers and their customers, not AEP-Ohio. It is for the parties to each contract to determine whether the contract pricing will be renegotiated in light of the Capacity Order. As between AEP-Ohio and CRES providers, the Company should charge the applicable RPM-based capacity pricing as required by the Capacity Order.

State Policy

- (99) IEU-Ohio believes the deferral mechanism is in conflict with the state policy found in Section 4928.02, Revised Code, which generally supports reliance on market-based approaches to set prices for competitive services such as generation service and strongly favors competition to discipline prices of competitive services.
- (100) AEP-Ohio asserts that it was unreasonable and unlawful for the Commission to rely on the state policies set forth in Sections 4928.02 and 4928.06(A), Revised Code, as justification for reducing CRES providers' price of capacity to RPM-based pricing, after the Commission determined that Chapter 4928, Revised Code, does not apply to the capacity charge paid by CRES providers to the Company. AEP-Ohio argues that the Commission determined that the chapter is inapplicable to the Company's capacity service but then unreasonably relied upon it anyway.
- (101) Duke disagrees, noting that the impact of AEP-Ohio's capacity charge on retail competition in Ohio is an issue for Commission review in this proceeding and that the issue cannot be considered without reference to state policy. IEU-Ohio adds that AEP-Ohio has urged the Commission in this proceeding to rely on the state policy found in Section 4928.02, Revised Code. IEU-Ohio also points out that the Commission is required to apply the state policy in making decisions regarding generation capacity service.

OCC believes that any carrying charges should be calculated based on AEP-Ohio's long-term cost of debt.

- (104) AEP-Ohio responds that OCC's argument is moot. AEP-Ohio explains that the SCM and associated deferral did not take effect until August 8, 2012, which was the date on which the Commission approved a recovery mechanism in the ESP 2 Case, and, therefore, the WACC rate did not apply.
- (105) Like OCC, IEU-Ohio contends that the Commission's authorization of carrying charges lacks any supporting evidence in the record and that the carrying charge rates approved are excessive, arbitrary, capricious, and contrary to Commission precedent.
- (106) The Commission notes that OCC appears to assert that the Commission may not authorize a deferral unless it has first been proposed by a party to the proceeding. We find no basis for OCC's apparent contention that the Commission may not authorize a deferral on our own initiative. As discussed above, the Commission has the requisite authority pursuant to Section 4905.13, Revised Code. Further, the reasons prompting our decision were thoroughly explained in the Capacity Order and supported with evidence in the record, as reflected in the order. We thus find no violation of Section 4903.09, Revised Code.

Regarding the specific carrying cost rates authorized, the Commission finds that it was appropriate to approve the WACC rate until such time as the recovery mechanism was established in the ESP 2 Case, in order to ensure that AEP-Ohio was fully compensated, and to approve the long-term debt rate from that point forward. As we have noted in other proceedings, once collection of the deferred costs begins, the risk of non-collection is significantly reduced. At that point, it is more appropriate to use the long-term cost of debt rate, which is consistent with sound regulatory practice and Commission precedent.²⁴ In any event, as

²⁴ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Each Company's Transmission Cost Recovery Rider, Case No. 08-1202-EL-UNC, Finding and Order (December 17, 2008); In the Matter of the Application of Columbus Southern Power Company and Ohio*

CRES providers to AEP-Ohio. OEG contends that the deferral authorized by the Commission will result in future customers paying hundreds of millions of dollars in above-market capacity rates as well as interest on the deferral. According to OEG, CRES providers should pay the full cost-based capacity price of \$188.88/MW-day as AEP-Ohio incurs its capacity costs. Noting that shopping occurred in AEP-Ohio's service territory with a capacity charge of \$255/MW-day, OEG asserts that the record does not indicate that a capacity charge of \$188.88/MW-day will hinder retail competition and, therefore, there is no reason to transfer the wholesale capacity payment obligation from CRES providers to future retail customers.

Alternatively, OEG requests that the Commission clarify that customers that have reasonable arrangements and certify that they did not shop during the three-year ESP period are exempt from repayment of AEP-Ohio's deferred capacity costs; any deferred capacity costs will be allocated and recovered on the same basis as if the CRES providers were charged the full capacity rate in the first place (*i.e.*, on the basis of demand); and the Company is required to reduce any deferred capacity costs by the relevant accumulated deferred income tax during the recovery period so that the interest expense reflects its actual carrying costs. OEG asserts that payment of the deferred capacity costs should be collected only from CRES providers or shopping customers, which are the entities that will have benefitted from the initial RPM-based capacity pricing.

- (110) AEP-Ohio and numerous intervenors disagree with OEG's characterization of the Capacity Order as having represented that the deferral is an amount owed by CRES providers to the Company. AEP-Ohio asserts that the Commission clearly indicated that all customers, including customers with reasonable arrangements, should pay for the deferral because they benefit from the opportunity to shop that is afforded by RPM-based capacity pricing. AEP-Ohio offers a similar response to the contentions of OCC and OMA/OHA that the deferral is solely the obligation of CRES providers. AEP-Ohio notes that all customers benefit

speaking, the deferral authorized by the Commission is the only way in which to maintain RPM-based capacity pricing in AEP-Ohio's service territory, while also ensuring the Company recovers its embedded costs until corporate separation occurs. RESA adds that all customers should pay for the deferral, because all customers have the opportunity to shop and receive the benefit of the RPM-based capacity pricing. RESA contends that the fact that some level of competition may still occur is not justification alone to charge CRES providers \$188.88/MW-day. According to RESA, the Commission has the necessary authority to establish the deferral and design the SCM as it did.

- (113) According to Duke, OEG misconstrues the nature of a deferral. Duke points out that OEG incorrectly characterizes the deferral as an amount owed to the FRR Entity, rather than an amount reflecting costs incurred but not recovered. Duke also notes that the Commission has specifically directed that CRES providers not be charged more than the RPM-based price. Duke argues that the deferred amount is, therefore, not the obligation of CRES providers. Duke disagrees with OEG's argument that the Commission has no authority to authorize a deferral, noting that, although the Ohio Supreme Court has held that the Commission must fix rates that will provide a utility with appropriate annual revenues, it has not determined that the Commission is barred from ordering a deferral.
- (114) The Schools contend that collection of the deferral from CRES providers or customers would cause Ohio's schools serious financial harm. The Schools believe that CRES providers may pass the increase through to their shopping customers under existing contracts or terminate the contracts altogether. The Schools add that, pursuant to AEP-Ohio's proposal for a retail stability rider (RSR) in the ESP 2 Case, the capacity charge adopted by the Commission in this case could result in an increase to the RSR of approximately \$550 million, which could lead to rate shock for Ohio's schools.

not permit capacity costs to be recovered from non-shopping customers pursuant to the SCM. Because the Commission established a wholesale cost-based capacity charge of \$188.88/MW-day, OEG believes that the charge must be paid by CRES providers. OEG argues that state law does not authorize the Commission to assess a wholesale charge directly to shopping customers. OEG concludes that the SCM can only apply to CRES providers and that the Commission has no authority to direct that deferred capacity costs be recovered on a nonbypassable basis. OCC agrees with the arguments made by OEG and notes that there is no statutory basis upon which the Commission may order recovery of the deferred capacity costs from all customers under the provisions of an ESP.

- (119) OCC also argues that FES' argument for a nonbypassable cost recovery mechanism should be rejected because CRES providers should be responsible for paying capacity costs. OCC notes that, if a wholesale charge applies to retail customers, the result will be unfair competition, double payments, and discrimination in violation of Sections 4905.33, 4905.35, 4928.02(A), 4928.02(L), and 4928.141, Revised Code. OCC argues that non-shopping customers should not have to pay for an anticompetitive subsidy for the sake of competition, which is contrary to Section 4928.02(H), Revised Code. OCC also disagrees with FES' characterization of the Capacity Order as providing a subsidy to AEP-Ohio. According to OCC, there can be no subsidy where AEP-Ohio is receiving compensation for its cost of capacity, as determined by the Commission.
- (120) IEU-Ohio also urges the Commission to reject FES' request for clarification and argues that an unlawful and unreasonable charge cannot be made lawful and reasonable simply by making it a nonbypassable charge.
- (121) AEP-Ohio argues, in response to FES, that it is lawful and reasonable to continue recovery of the deferral after corporate separation occurs. AEP-Ohio notes that the Commission already rejected FES' arguments in the ESP 2 Case. AEP-Ohio notes that, because its generation affiliate will be obligated to support SSO service through the

the deferral recovery mechanism, such as whether CRES providers or retail customers should be responsible for payment of AEP-Ohio's deferred capacity costs, whether such costs should be paid by non-shopping customers as well as shopping customers, and whether the deferral results in subsidies or discriminatory pricing between non-shopping and shopping customers. We find that all of these arguments were prematurely raised in this case. The Capacity Order did not address the deferral recovery mechanism. Rather, the Commission merely noted that an appropriate recovery mechanism would be established in the ESP 2 Case and that any other financial considerations would also be addressed by the Commission in that case. The Commission finds it unnecessary to address arguments that were raised in this proceeding merely as an attempt to anticipate the Commission's decision in the ESP 2 Case. Accordingly, the requests for rehearing or clarification should be denied.

Process

- (126) AEP-Ohio asserts that it was unreasonable and unlawful for the Commission to authorize the Company to collect only RPM-based pricing and require deferral of expenses up to \$188.88/MW-day without simultaneously providing for recovery of the shortfall. AEP-Ohio argues that the Commission's decision to establish an appropriate recovery mechanism for the deferral in the ESP 2 Case rather than in the present case was unreasonable, because the two proceedings involve unrelated issues and each will be subject to a separate rehearing and appeal process.
- (127) OCC agrees that the Commission's decision to address the issue of recovery of the deferral in the ESP 2 Case was unreasonable and unlawful. OCC argues that there is no evidence in the ESP 2 Case related to an appropriate recovery mechanism, which is a separate and distinct proceeding, and that it was particularly unreasonable to defer the issue for decision just one week prior to the filing of reply briefs in the ESP 2 Case.

Section D.8 of Schedule 8.1 of the RAA. AEP-Ohio asserts that the adjudicatory process used by the Commission was more than sufficient, consisting of extensive discovery, written and oral testimony, cross-examination, presentation of evidence through exhibits, and briefs. AEP-Ohio adds that, even if the ratemaking requirements were strictly applicable, the Commission could have determined that these proceedings involve a first filing of rates for a service not previously addressed in a Commission-approved tariff, pursuant to Section 4909.18, Revised Code. AEP-Ohio argues that the process adopted by the Commission in this case far exceeded the requirements for a first filing.

- (133) IEU-Ohio argues that the Commission failed to restore RPM-based capacity pricing, as required by Section 4928.143(C)(2)(b), Revised Code, due to its rejection of the ESP 2 Stipulation. IEU-Ohio contends that the Commission was required to restore the prior provisions, terms, and conditions of AEP-Ohio's prior SSO, including RPM-based capacity pricing, until such time as a new SSO was authorized for the Company.

On a related note, IEU-Ohio asserts that, because the Commission was obligated to restore RPM-based capacity pricing upon rejection of the ESP 2 Stipulation, the Commission should have directed AEP-Ohio to refund all revenue collected above RPM-based capacity pricing, or at least to credit the excess collection against regulatory asset balances otherwise eligible for amortization through retail rates and charges. AEP-Ohio responds that the Commission has recently rejected similar arguments in other proceedings.

- (134) Upon review of the parties' arguments, the Commission finds that rehearing should be denied. The Commission believes that the process followed in this proceeding has been proper and well within the bounds of our discretion. As the Ohio Supreme Court has recognized, the Commission is vested with broad discretion to manage its dockets so as to avoid undue delay and the duplication of effort, including the discretion to decide how, in light of its internal organization and docket considerations, it may

Constitutional Claims

- (135) AEP-Ohio argues that the SCM, particularly with respect to the energy credit adopted by the Commission, is unconstitutionally confiscatory and constitutes an unconstitutional taking of property without just compensation, given that the energy credit incorporates actual costs for the test period and then imputes revenues that have no basis in actual costs. AEP-Ohio points out that the Commission has recognized that traditional constitutional law questions are beyond its authority to determine; however, the Company raises the arguments so as to preserve its rights on appeal.
- (136) In its memorandum contra, OMA argues that the Capacity Order does not result in confiscation or an unconstitutional taking and that AEP-Ohio has not made the requisite showing for either claim. IEU-Ohio responds that neither the applicable law nor the record or non-record evidence cited by AEP-Ohio supports the Company's claims. FES points out that FERC has determined that RPM-based capacity pricing is just and reasonable and, therefore, such pricing is not confiscatory or a taking without just compensation. The Schools argue that AEP-Ohio's constitutional issues would be avoided if the Commission were to recognize that capacity service is a competitive generation service and that market-based rates should apply. The Schools also note that AEP-Ohio, in making its partial takings claim, relies on extra-record evidence from the ESP 2 Case and that the Company's reference to such evidence should be stricken. OCC argues that the Commission does not have jurisdiction to resolve constitutional claims and that, in any event, AEP-Ohio's arguments are without merit and should be denied.
- (137) IEU-Ohio also asserts a constitutional claim, specifically contending that the Capacity Order unreasonably impairs the value of contracts entered into between CRES providers and customers under a justified assumption that RPM-based capacity pricing would remain in effect. IEU-Ohio believes that the capacity pricing adopted in the Capacity Order should not apply to such contracts.

providers. IEU-Ohio's request for rehearing should thus be denied.

Peak Load Contribution (PLC)

- (142) IEU-Ohio contends that the Commission unlawfully and unreasonably failed to ensure that AEP-Ohio's generation capacity service is charged in accordance with a customer's PLC factor that is the controlling billing determinant under the RAA. IEU-Ohio argues that AEP-Ohio should be required to disclose publicly the means by which the PLC is disaggregated from AEP East down to AEP-Ohio and then down to each customer of the Company. IEU-Ohio adds that calculation of the difference between RPM-based capacity pricing and \$188.88/MW-day will require a transparent and proper identification of the PLC.
- (143) The Commission notes that IEU-Ohio is the only party that has identified or even addressed the PLC factor as a potential issue requiring resolution in this proceeding. Additionally, the Commission finds that IEU-Ohio has not provided any indication that there are inconsistencies or errors in capacity billings. In the absence of anything other than IEU-Ohio's mere conclusion that the issue requires the Commission's attention, we find no basis upon which to consider the issue at this time. If IEU-Ohio believes that billing inaccuracies have occurred, it may file a complaint pursuant to Section 4905.26, Revised Code. Therefore, IEU-Ohio's request for rehearing should be denied.

Due Process

- (144) IEU-Ohio argues that the totality of the Commission's actions during the course of this proceeding violated IEU-Ohio's due process rights under the Fourteenth Amendment. Specifically, IEU-Ohio believes that the Commission has repeatedly granted applications for rehearing, indefinitely tolling them to prevent parties from taking an unobstructed appeal to the Ohio Supreme Court; repeatedly granted AEP-Ohio authority to temporarily impose various forms of its two-tiered, shopping-blocking capacity charges without record support; failed to address

proceeding is quite extensive, consisting of considerable testimony and exhibits submitted in this proceeding, as well as the consolidated cases. Finally, we do not agree that we have failed to address any of the material issues in violation of Section 4903.09, Revised Code. The Commission believes that the findings of fact and written opinion found in the Capacity Order provide a sufficient basis for our decision. The Commission concludes that we have appropriately explained the basis for each of our orders in this case based on the evidence of record and that IEU-Ohio has been afforded ample process. Its request for rehearing should be denied.

Pending Application for Rehearing

- (147) AEP-Ohio argues that it was unreasonable and unlawful for the Commission to fail to address in the Capacity Order the merits of the Company's application for rehearing of the Initial Entry.
- (148) In light of the fact that the Commission has addressed AEP-Ohio's application for rehearing of the Initial Entry in this entry on rehearing, we find that the Company's assignment of error is moot and should, therefore, be denied.

It is, therefore,

ORDERED, That OEG's motion for leave to reply filed on August 7, 2012, be denied. It is, further,

ORDERED, That the applications for rehearing of the Initial Entry, Interim Relief Entry, and Capacity Order be granted, in part, and denied, in part, as set forth herein. It is, further,

ORDERED, That the applications for rehearing of the Interim Relief Extension Entry be denied. It is, further,

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

CONCURRING OPINION
OF COMMISSIONER ANDRE T. PORTER

I concur with the majority on the reasoning and result on all issues addressed in this opinion and entry on rehearing except to the extent that my May 30, 2012 statement stands.



Andre T. Porter

ATP/sc

Entered in the Journal

Barcy F. McNeal

Barcy F. McNeal
Secretary

capacity auction conducted by PJM.² Since the Commission adopted this compensation method, the Ohio Supreme Court reversed the authorized provider of last resort charges,³ and the auction value of the capacity charges has fallen precipitously, as has the relative proportion of shoppers to non-shoppers.

I agree with the majority that the Commission is empowered pursuant to its general supervisory authority found in Sections 4905.04, 4905.05, and 4905.06, Revised Code to establish an appropriate rate for the Fixed Resource Requirement service. I also agree that pursuant to regulatory authority under Chapter 4905, Revised Code, as well as Chapter 4909, Revised Code a cost-based compensation method is necessary and appropriate. Additionally, I find that because the Fixed Resource Requirement is a noncompetitive retail electric service, the Commission must establish the appropriate rate based upon traditional cost of service principles. Finally, I find specific authority within Section 4909.13, Revised Code, for a process by which the Commission may cause further hearings and investigations and may examine into all matters which may change, modify, or affect any finding of fact previously made. Given the change in circumstances since the Commission adopted the initial state compensation for AEP-Ohio's Fixed Resource Requirement service, it is appropriate for the Commission to revisit and adjust that rate to reflect current circumstances.

Additionally, I continue to find that the "deferral" is unlawful and inappropriate. In prior cases, this Commission has levied a rate or tariff on a group of customers but deferred collection of revenues due from that group until a later date. In this instance, the majority proposes to establish a rate for the Fixed Resource Requirement service provided by AEP-Ohio to other transmission users but then to discount that rate such that the transmission users will never pay it. The difference between the authorized rate and that paid by the other transmission users will be booked for future payment not by the transmission users but by retail electricity customers. The stated purpose of this device is to promote competition.

As an initial matter, I am not convinced on the record before us that competition has suffered sufficiently or will suffer sufficiently during the remaining

² *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, *et al.*, Opinion and Order (March 18, 2009), Entry on Rehearing (July 23, 2009); *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, Entry (December 8, 2010).

³ *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512 (2011).

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) Case No. 10-2929-EL-UNC
Company.)

ENTRY ON REHEARING

The Commission finds:

- (1) On November 1, 2010, American Electric Power Service Corporation (AEPSC), on behalf of Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Company),¹ filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. On November 24, 2010, at the direction of FERC, AEPSC refiled the application in FERC Docket No. ER11-2183 (FERC filing). The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism, pursuant to Section 205 of the Federal Power Act and Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement (RAA) for the regional transmission organization, PJM Interconnection, LLC (PJM), and included proposed formula rate templates under which AEP-Ohio would calculate its capacity costs.
- (2) By entry issued on December 8, 2010, in the above-captioned case, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charge (Initial Entry). Consequently, the Commission sought public comments regarding the following issues: (1) what changes to the current state compensation mechanism (SCM) were appropriate to determine AEP-Ohio's fixed resource requirement (FRR) capacity charge to Ohio competitive retail electric service (CRES) providers, which are referred to as alternative load serving entities within PJM; (2) the degree to which AEP-Ohio's capacity

¹ By entry issued on March 7, 2012, the Commission approved and confirmed the merger of CSP into OP, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

not recovered from CRES providers, with the recovery mechanism to be established in the ESP 2 Case.

- (7) Section 4903.10, Revised Code, 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.
- (8) By entry on rehearing issued on October 17, 2012, the Commission granted, in part, and denied, in part, applications for rehearing of the Initial Entry, Interim Relief Entry, and Capacity Order, and denied applications for rehearing of the Interim Relief Extension Entry (Capacity Entry on Rehearing).
- (9) On November 15, 2012, Industrial Energy Users-Ohio (IEU-Ohio) filed an application for rehearing of the Capacity Entry on Rehearing. The Ohio Consumers' Counsel (OCC) and FirstEnergy Solutions Corp. (FES) filed applications for rehearing on November 16, 2012. AEP-Ohio filed a memorandum contra the applications for rehearing on November 26, 2012.
- (10) In its first assignment of error, IEU-Ohio claims that the Capacity Entry on Rehearing is unlawful and unreasonable, because the Commission cannot rely on Section 4905.26, Revised Code, to apply a cost-based ratemaking methodology in establishing AEP-Ohio's capacity charge for its FRR obligations. Citing Section 4928.05(A)(1), Revised Code, IEU-Ohio contends that AEP-Ohio's capacity service is a competitive retail electric service that cannot be regulated by the Commission under Chapter 4905, Revised Code. IEU-Ohio adds that the Ohio Supreme Court has determined that the Commission cannot use its general supervisory powers to circumvent the statutory ratemaking process enacted by the General Assembly. IEU-Ohio also notes that Section 4905.26, Revised Code, is a procedural statute that does not delegate substantive authority to the Commission to increase a utility's rates. IEU-Ohio asserts that the Commission has found that rates can only be established under Section 4905.26, Revised Code, in limited circumstances, and in

Commission's clarification in the Capacity Entry on Rehearing that the Commission is under no obligation with regard to the specific mechanism used to address capacity costs.

- (13) In its memorandum contra, AEP-Ohio notes that the Ohio Supreme Court has repeatedly held that the Commission has broad authority to change utility rates in proceedings under Section 4905.26, Revised Code. In response to IEU-Ohio's argument that the Commission authorizes rates under Section 4905.26, Revised Code, only in limited circumstances, AEP-Ohio asserts that Commission precedent indicates that is the case for self-complaint proceedings, but not for Commission-initiated investigations. AEP-Ohio also points out that IEU-Ohio and OCC offer no authority in support of their contention that Chapter 4905, Revised Code, does not permit the Commission to set wholesale rates. AEP-Ohio notes that nothing in Chapter 4905, Revised Code, limits its application to retail rates. AEP-Ohio further notes that the Commission has often regulated wholesale rates and that its orders have been upheld by the Ohio Supreme Court.
- (14) With respect to OCC's argument that the Commission failed to find that reasonable grounds for complaint exist in this case, AEP-Ohio replies that OCC's position is overly technical and without basis in precedent. AEP-Ohio notes that there is no requirement that the Commission must make a rote finding of reasonable grounds for complaint in proceedings initiated pursuant to Section 4905.26, Revised Code. AEP-Ohio believes that, in initiating this proceeding, the Commission implicitly found that there were reasonable grounds for complaint. Similarly, in response to OCC's and IEU-Ohio's argument that the Commission did not comply with Section 4905.26, Revised Code, because it failed to find that RPM-based capacity pricing is unjust or unreasonable, AEP-Ohio notes that the statute does not require the Commission to make such a finding. According to AEP-Ohio, the statute requires the Commission to conduct a hearing, if there are reasonable grounds for complaint that a rate is unreasonable, unjust, unduly discriminatory or preferential, or otherwise in violation of law. AEP-Ohio adds that the Commission

adherence to the mandatory ratemaking formula of Section 4909.15, Revised Code, which requires determinations regarding property valuation, rate of return, and so forth.

- (18) AEP-Ohio responds that the Commission already rejected, in the Capacity Entry on Rehearing, the argument that a traditional base rate case was required under the circumstances. AEP-Ohio notes that, although the Commission may elect to apply Chapter 4909, Revised Code, following a complaint proceeding, there is no requirement that it must do so. AEP-Ohio also points out that the Commission has not adjusted retail rates in this case.
- (19) In its second assignment of error, OCC contends that the Commission unlawfully and unreasonably determined that OCC's arguments in opposition to the deferral of capacity costs were prematurely raised in this proceeding and should instead be addressed in the ESP 2 Case. OCC asserts that, in declining to resolve OCC's arguments in the present case, the Commission violated Section 4903.09, Revised Code, and unreasonably impeded OCC's right to take an appeal. OCC notes that the Commission has not yet ruled on its application for rehearing in the ESP 2 Case, which has delayed the appellate review process, while AEP-Ohio has nevertheless begun to account for the deferred capacity costs on its books to the detriment of customers.
- (20) In response, AEP-Ohio notes that the Commission has already rejected OCC's argument and found that issues related to the creation and recovery of the deferral are more appropriate for consideration in the ESP 2 Case, in which the Commission adopted the retail stability rider (RSR), in part to compensate the Company for its deferred capacity costs. AEP-Ohio adds that, because the Commission did not adjust retail rates in the present case, and the RSR was adopted in the ESP 2 Case, there is no harm resulting from the Commission's decision in this docket.
- (21) In the Capacity Entry on Rehearing, the Commission clarified that our initiation of this proceeding for the purpose of reviewing AEP-Ohio's capacity charge was

Company Concerning its Existing Tariff Provisions, Case No. 11-5846-GA-SLF, Opinion and Order, at 6 (August 15, 2012).

- (24) Additionally, we find no merit in the argument that the procedural requirements of Section 4905.26, Revised Code, were not followed in this case, which was initiated by the Commission in response to AEP-Ohio's FERC filing. In the Initial Entry, the Commission noted that this proceeding was necessary to review and determine the impact of the proposed change to AEP-Ohio's capacity charge.⁴ We believe that the Initial Entry provided sufficient indication of the Commission's finding of reasonable grounds for complaint that AEP-Ohio's capacity charge may be unjust or unreasonable. We agree with AEP-Ohio that there is no precedent requiring the Commission to use rote words tracking the exact language of the statute in every complaint proceeding. In any event, to the extent necessary, the Commission clarifies that there were reasonable grounds for complaint that AEP-Ohio's proposed capacity charge may have been unjust or unreasonable. Also, as previously discussed, the Commission may establish new rates under Section 4905.26, Revised Code, if the existing rates are unjust and unreasonable, which is exactly what has occurred in the present case. In the Interim Relief Entry, the Commission determined that RPM-based capacity pricing could risk an unjust and unreasonable result for AEP-Ohio and subsequently confirmed, in the Capacity Order, that such pricing would be insufficient to yield reasonable compensation for the Company's capacity service.⁵
- (25) We find no merit in the parties' arguments that the Commission is precluded from regulating wholesale rates under Chapter 4905, Revised Code, or Section 4905.26, Revised Code, in particular, and the parties offer no precedent in support of their position. Neither Section 4905.26, Revised Code, nor any other provision of Chapter 4905, Revised Code, prohibits the Commission from initiating a review of a wholesale rate. For its part, IEU-

⁴ Initial Entry at 2.

⁵ Interim Relief Entry at 16-17; Capacity Order at 23; Capacity Entry on Rehearing at 18, 31.

raised nothing new for our consideration with respect to these issues.

- (28) Finally, we do not agree with OCC that it was unreasonable and unlawful, or in violation of Section 4903.09, Revised Code, to find that arguments regarding the mechanics of the deferral recovery mechanism should be raised and addressed in the ESP 2 Case. The Commission did not outline the mechanics of, or even establish, the deferral recovery mechanism in the Capacity Order. Rather, we indicated that an appropriate recovery mechanism for AEP-Ohio's deferred costs would be established, and any additional financial considerations addressed, in the ESP 2 Case.⁹ Although numerous parties, including OCC, attempted to predict how the deferral mechanism would be implemented and what its impact would be on ratepayers, the Commission continues to find that it would have been meaningless to address such anticipatory arguments in the Capacity Entry on Rehearing. We, therefore, find no error in having determined that OCC's claims of unfair competition, unlawful subsidies, double payments, and discriminatory pricing were premature, given that the Commission had not yet determined how and from whom AEP-Ohio's deferred capacity costs would be recovered.¹⁰ The Commission notes that we thoroughly addressed OCC's other numerous arguments with respect to the deferral of capacity costs in the Capacity Entry on Rehearing.
- (29) For the above reasons, we find no error in our clarifications in the Capacity Entry on Rehearing, or in determining that arguments related to the mechanics of the deferral recovery mechanism should be resolved in the ESP 2 Case. Any other arguments raised on rehearing that are not specifically discussed herein have been thoroughly and adequately considered by the Commission and are being denied. Accordingly, the Commission finds that the applications for rehearing filed by IEU-Ohio, OCC, and FES should be denied in their entirety.

⁹ Capacity Order at 23.

¹⁰ Capacity Entry on Rehearing at 50-51.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

- (1) On November 1, 2010, American Electric Power Service Corporation (AEPSC), on behalf of Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Company),¹ filed an application with the Federal Energy Regulatory Commission (FERC) in FERC Docket No. ER11-1995. On November 24, 2010, at the direction of FERC, AEPSC refiled the application in FERC Docket No. ER11-2183 (FERC filing). The application proposed to change the basis for compensation for capacity costs to a cost-based mechanism, pursuant to Section 205 of the Federal Power Act and Section D.8 of Schedule 8.1 of the Reliability Assurance Agreement for the regional transmission organization, PJM Interconnection, LLC (PJM), and included proposed formula rate templates under which AEP-Ohio would calculate its capacity costs.
- (2) By entry issued on December 8, 2010, in the above-captioned case, the Commission found that an investigation was necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charge (Initial Entry). Consequently, the Commission sought public comments regarding the following issues: (1) what changes to the current state compensation mechanism (SCM) were appropriate to determine AEP-Ohio's fixed resource requirement (FRR) capacity charge to Ohio competitive retail electric service (CRES) providers, which are referred to as alternative load serving entities

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accounting procedures to defer the incurred capacity costs not recovered from CRES providers, with the recovery mechanism to be established in the ESP 2 Case.

- (7) Section 4903.10, Revised Code, 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.
- (8) By entry on rehearing issued on October 17, 2012, the Commission granted, in part, and denied, in part, applications for rehearing of the Initial Entry, Interim Relief Entry, and Capacity Order, and denied applications for rehearing of the Interim Relief Extension Entry (October Capacity Entry on Rehearing).
- (9) On December 12, 2012, the Commission issued an entry on rehearing, denying applications for rehearing of the October Capacity Entry on Rehearing that were filed by the Ohio Consumers' Counsel (OCC), Industrial Energy Users-Ohio (IEU-Ohio), and FirstEnergy Solutions Corp. (FES) (December Capacity Entry on Rehearing).
- (10) On January 11, 2013, OCC filed an application for rehearing of the December Capacity Entry on Rehearing. AEP-Ohio filed a memorandum contra on January 22, 2013.
- (11) In its single assignment of error, OCC asserts that the Commission unlawfully and unreasonably clarified in the December Capacity Entry on Rehearing that there were reasonable grounds for complaint, pursuant to Section 4905.26, Revised Code, that AEP-Ohio's proposed capacity charge in this case may have been unjust or unreasonable. OCC contends that the Commission's clarification attempts to cure an error after the fact, is not supported by sufficient evidence, and is procedurally flawed. According to OCC, the Commission's clarification is not supported by its findings in the Initial Entry. OCC argues that the Commission has not satisfied the requirements of Section 4905.26, Revised Code, and, thus, has no jurisdiction in this case to alter AEP-Ohio's capacity charge.

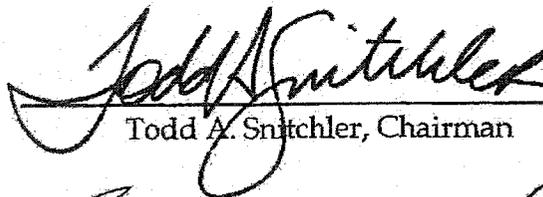
Adjustment of their Interim Emergency and Temporary Percentage of Income Payment Plan Riders, Case No. 05-1421-GA-PIP, et al., Second Entry on Rehearing (May 3, 2006), at 4. The December Capacity Entry on Rehearing denied rehearing on all assignments of error and modified no substantive aspect of the October Capacity Entry on Rehearing, and OCC is not entitled to another attempt at rehearing. Accordingly, the application for rehearing filed by OCC on January 11, 2013, should be denied as procedurally improper.

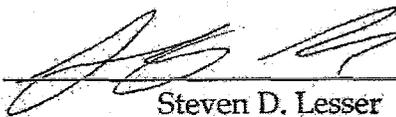
It is, therefore,

ORDERED, That the application for rehearing filed by OCC on January 11, 2013, be denied. It is, further,

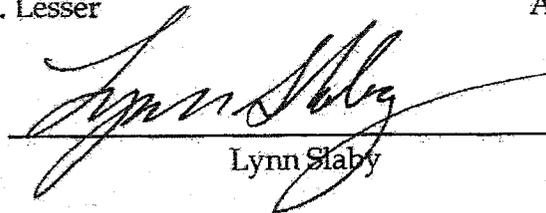
ORDERED, That a copy of this entry on rehearing be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser

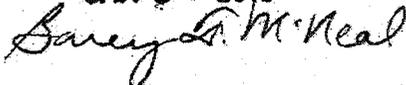

Andre T. Porter


Lynn Slaby

SJP/sc

Entered in the Journal

JAN 30 2013



Barcy F. McNeal
Secretary

CERTIFICATE OF FILING

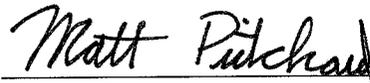
I hereby certify that, in accordance with S.Ct.Prac.R. 3.11(A)(2), Industrial Energy Users-Ohio's Notice of Appeal has been filed with the Docketing Division of the Public Utilities Commission of Ohio by leaving a copy at the office of the Commission in Columbus, Ohio, in accordance with Ohio Adm.Code 4901-1-02(A) and 4901-1-36, on the 6th day of February 2013.

Matthew R. Pritchard

Matthew R. Pritchard
Counsel for Appellant
Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Notice of Appeal of Appellant Industrial Energy Users-Ohio* was served upon the parties of record to the proceeding before the Public Utilities Commission of Ohio listed below and pursuant to S.Ct.Prac.R. 3.11(A)(2) and R.C. 4903.13 this 6th day of February 2013, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.



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