

**IN THE SUPREME COURT OF OHIO**

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 § 4928.143 Ohio ) Rev. Code, in the Form of an Electric Security ) Plan. )	Supreme Court Case No. 13-0521
In the Matter of the Application of Columbus ) Southern Power Company and Ohio Power ) Company for Approval of Certain Accounting ) Authority. )	Third Appeal from the Public Utilities Commission of Ohio  PUCO Case Nos. 11-346-EL-SSO, 11-348-EL-SSO; 11-349-EL-AAM, and 11-350-EL-AAM.

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**LIST OF ADDITIONAL AUTHORITY  
BY  
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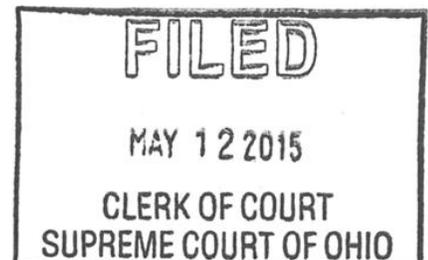
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**IN THE SUPREME COURT OF OHIO**

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 § 4928.143 Ohio ) Rev. Code, in the Form of an Electric Security ) Plan. )	Supreme Court Case No. 13-0521
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BY  
APPELLANT, THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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Pursuant to S. Ct. Prac. R. 17.08, Appellant, the Office of the Ohio Consumers' Counsel ("OCC"), hereby files the following additional authority that may be relied upon during oral argument: *In the Matter of the Application of Ohio Power Company to Adopt a Final Implementation Plan for the Retail Stability Rider*, Pub. Util. Comm. No. 14-1186-EL-RDR, Finding and Order (Apr. 2, 2015).

The oral argument in this matter is scheduled for May 19, 2015. For the convenience of the Court, the additional authority is attached.

Respectfully submitted,

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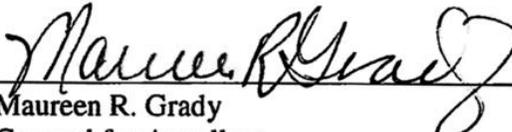
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *List of Additional Authority by Appellant*, the *Office of the Ohio Consumers' Counsel* was served upon the following counsel by via electronic transmission this 12th day of May, 2015.

  
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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is a public utility as defined in R.C. 4905.02 and an electric utility as defined in R.C. 4928.01(A)(11), and, as such, is subject to the jurisdiction of this Commission.
- (2) On July 2, 2012, in Case No. 10-2929-EL-UNC, the Commission approved a capacity pricing mechanism for AEP Ohio. *In re Ohio Power Co. and Columbus Southern Power Co.*, Case No. 10-2929-EL-UNC (*Capacity Case*), Opinion and Order (July 2, 2012). The Commission established \$188.88/megawatt-day (MW-day) as the appropriate charge to enable AEP Ohio to recover, pursuant to its fixed resource requirement obligations, its capacity costs from competitive retail electric service (CRES) providers. However, the Commission also directed that AEP Ohio's capacity charge to CRES providers should be based on the rate established by the reliability pricing model (RPM) for PJM Interconnection, LLC (PJM), including final zonal adjustments, in light of the fact that the RPM-based rate would promote retail electric competition. The Commission authorized AEP Ohio to modify its accounting procedures to defer capacity costs not recovered from CRES providers to the extent the total incurred capacity costs do not exceed \$188.88/MW-day, with the recovery mechanism to be established in the Company's then pending second electric security plan (ESP) proceedings. *Capacity Case* at 33.
- (3) On August 8, 2012, the Commission issued its Opinion and Order in Case No. 11-346-EL-SSO, et al., which approved, with certain modifications, AEP Ohio's application for a standard service offer in the form of an ESP, in accordance with R.C. 4928.143. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-

EL-SSO, et al. (*ESP 2 Case*), Opinion and Order (Aug. 8, 2012). Among other provisions of the ESP, the Commission modified and approved AEP Ohio's proposed retail stability rider (RSR), which, in part, was intended to enable the Company to begin to recover the deferred amount of its capacity costs, consistent with the Commission's directives in the *Capacity Case*. Specifically, AEP Ohio was permitted to collect a monthly charge of \$3.50 per megawatt hour (MWh) through May 31, 2014, and \$4.00 per MWh between June 1, 2014, and May 31, 2015, with \$1.00 per MWh allocated toward the capacity deferral. Additionally, the Commission found that any remaining capacity deferral balance at the conclusion of the ESP term should be amortized over a three-year period, unless otherwise ordered by the Commission. The Commission also directed AEP Ohio to file its actual shopping statistics at the end of the ESP term and noted that all determinations for future recovery of the capacity deferral balance would occur following the Company's filing of its actual shopping statistics. *ESP 2 Case* at 36.

- (4) On July 8, 2014, in the above-captioned case, AEP Ohio filed an application requesting approval to continue its implementation of the RSR. In the application, AEP Ohio proposes a final implementation plan to continue the current \$4.00 per MWh RSR charge, beginning on June 1, 2015, and continuing over a collection period of 32 months, until the remaining capacity deferral and carrying charge balance is fully recovered. AEP Ohio notes that, as of June 1, 2015, all of the RSR revenue will be applied to the remaining capacity deferral balance and carrying charges calculated at 5.34 percent annually. AEP Ohio points out that, by continuing the current \$4.00 per MWh RSR charge, the resulting collection period would be approximately 32 months, which is consistent with the 36-month timeframe contemplated in the *ESP 2 Case*. Finally, AEP Ohio proposes to provide quarterly updates on the capacity deferral balance to Staff and to submit to a financial audit of the final capacity deferral balance as of May 31, 2015, subject to a specific audit process set forth in the Company's application.
- (5) On August 19, 2014, Industrial Energy Users-Ohio (IEU-Ohio) filed a motion to dismiss this case, asserting that the Commission lacks jurisdiction under state law and is preempted under federal

law from approving AEP Ohio's application. AEP Ohio filed a memorandum contra on September 3, 2014. IEU-Ohio filed a reply on September 10, 2014. As further addressed below, the Commission finds that IEU-Ohio's motion to dismiss should be denied.

- (6) On September 17, 2014, IEU-Ohio filed a motion for an order permitting the filing of additional authority in support of its motion to dismiss. Specifically, IEU-Ohio notes that a recent federal appellate court decision will assist the Commission in making a proper determination regarding its authority in this case. AEP Ohio filed a memorandum contra on October 2, 2014. IEU-Ohio filed a reply on October 9, 2014. The Commission finds that IEU-Ohio's motion for an order permitting the filing of additional authority is reasonable under the circumstances and should be granted.
- (7) By Entry issued on October 30, 2014, the attorney examiner established a procedural schedule, with an intervention deadline of November 24, 2014, and initial and reply comments due on December 1, 2014, and December 16, 2014, respectively. The attorney examiner also granted motions to intervene in this proceeding filed by the Ohio Energy Group (OEG), Ohio Hospital Association (OHA), Ohio Manufacturers' Association Energy Group (OMAEG), IEU-Ohio, Ohio Consumers' Counsel (OCC), and The Kroger Company (Kroger).
- (8) Subsequently, a motion to intervene in this proceeding was filed by the Retail Energy Supply Association (RESA) on November 21, 2014. On November 24, 2014, Direct Energy Services, LLC, Direct Energy Business, LLC, and Direct Energy Business Marketing, LLC (collectively, Direct Energy) also filed a motion to intervene. No memoranda contra were filed. The Commission finds that the motions to intervene filed by RESA and Direct Energy are reasonable and should be granted.
- (9) Consistent with the established procedural schedule, initial comments were filed by Staff, IEU-Ohio, OMAEG, OHA, Kroger, OCC, OEG, and RESA. Reply comments were filed by AEP Ohio, IEU-Ohio, RESA, OMAEG, and OCC.

CommentsStaff

- (10) In its comments, Staff states that, during its review of AEP Ohio's application to continue the RSR, Staff discovered that the Company had overstated its carrying charges by \$2,056.62 in its general ledger and the application. Staff further states that AEP Ohio agreed with Staff's assessment and recorded a correcting journal entry in its general ledger during June 2014. Staff concludes that AEP Ohio's application is reasonable and recommends that the Commission adopt a final implementation plan as proposed in the application.
- (11) IEU-Ohio argues that Staff's endorsement of AEP Ohio's RSR application as reasonable is inconsistent with Staff's position presented in its briefs filed in the Company's third ESP proceedings, Case No. 13-2385-EL-SSO, et al., and in Duke Energy Ohio, Inc.'s pending ESP proceedings, Case No. 14-841-EL-SSO, et al. IEU-Ohio asserts that, in regards to power purchase agreements proposed in those cases, Staff argued that the Commission is preempted by the Federal Power Act (FPA) from increasing the compensation that the electric distribution utility receives for wholesale generation-related electric services.
- (12) OCC notes that Staff's recommended approval of AEP Ohio's RSR application is limited to its verification of the Company's classification of all applicable charges, collections, and deferrals. OCC asserts that Staff's accounting review failed to consider the broader issues that must be addressed in this proceeding.
- (13) Noting that the Commission authorized the RSR in the ESP 2 Case, AEP Ohio replies that Staff's comments and recommendation appropriately reflect the scope of the RSR application. According to AEP Ohio, the focus of this proceeding is to verify the amount of the capacity deferral and finalize the post-ESP 2 rates to collect the deferral and associated carrying costs, subject to a financial audit, consistent with R.C. 4928.144.

IEU-Ohio

- (14) IEU-Ohio asserts that its motion to dismiss should be granted, as the Commission lacks jurisdiction to approve AEP Ohio's application. In its motion to dismiss, IEU-Ohio raises the same arguments that are raised in its comments. Specifically, IEU-Ohio contends that the Commission lacks jurisdiction under R.C. Chapters 4905, 4909, and 4928 to adopt a cost-based ratemaking methodology and increase AEP Ohio's compensation for a wholesale service such as capacity service. IEU-Ohio concludes, therefore, that the Commission also has no jurisdiction to approve AEP Ohio's application. Although IEU-Ohio recognizes that the Commission determined, in the *Capacity Case*, that the capacity service in question is a wholesale electric service, IEU-Ohio nevertheless proceeds to argue that, even if the capacity service is deemed a retail electric service, the Commission would lack jurisdiction, because the capacity service constitutes a generation-related service that has been declared a competitive retail electric service that is not subject to the Commission's regulation under R.C. Chapter 4928. Noting that the Commission authorized the capacity deferral under R.C. Chapter 4905, IEU-Ohio adds that R.C. 4928.144, which applies only to rates established under R.C. 4928.141 to 4928.143, does not provide the Commission with jurisdiction to authorize either the capacity deferral or the non-bypassable RSR. Next, IEU-Ohio argues that R.C. 4905.04, 4905.05, 4905.06, and 4905.26 do not provide the Commission with jurisdiction to apply a cost-based ratemaking methodology to increase AEP Ohio's capacity compensation. IEU-Ohio also asserts that PJM's Reliability Assurance Agreement (RAA) does not authorize the Commission to regulate prices for wholesale electric services. As its next argument, IEU-Ohio points out that, although the Commission regarded AEP Ohio's capacity service as a non-competitive electric generation service, the Commission lacks jurisdiction to authorize a rate for a non-competitive retail electric service without following the procedural and substantive requirements of R.C. Chapter 4909. Further, IEU-Ohio contends that the Commission lacks jurisdiction to authorize transition or equivalent revenues. As its final argument, IEU-Ohio asserts that, because wholesale capacity service is a field within the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC) under the FPA, the Commission is preempted from approving

AEP Ohio's application in this case. IEU-Ohio notes that two recent federal appellate court decisions demonstrate that attempts by the states to price wholesale generation-related capacity and energy services are preempted, because they invade a field of regulation within the exclusive authority of FERC. *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014) (*Nazarian*); *PPL EnergyPlus, LLC v. Solomon*, 766 F.3d 241 (3d Cir. 2014) (*Solomon*). IEU-Ohio concludes that the Commission is preempted from increasing AEP Ohio's compensation for capacity service above FERC-approved prices and, therefore, the Commission cannot authorize the Company to extend the RSR and collect the remainder of the capacity deferral.

- (15) AEP Ohio notes that the arguments in IEU-Ohio's motion to dismiss and comments are identical to the arguments raised in the *Capacity Case* and the *ESP 2 Case*, which the Commission has already rejected. According to AEP Ohio, IEU-Ohio and several other intervenors attempt to challenge the Commission's final orders in those prior cases through improper collateral attacks in this proceeding. AEP Ohio also notes that it previously addressed IEU-Ohio's jurisdictional claims in the memorandum contra IEU-Ohio's motion to dismiss and, for administrative efficiency, the Company incorporates the memorandum by reference. AEP Ohio requests that the Commission once again reject IEU-Ohio's claims and deny the motion to dismiss the Company's RSR application.

#### OCC

- (16) OCC argues that AEP Ohio's proposed collection of deferred capacity costs is inconsistent with the well-established ratemaking principle of cost causation. OCC asserts that CRES providers caused AEP Ohio to incur its deferred capacity costs and, therefore, CRES providers should pay them. OCC next contends that, if all residential customers are required to pay for AEP Ohio's deferred capacity costs, it will result in an unreasonable and unlawful subsidy provided to CRES providers by the Company's distribution customers, in violation of R.C. 4928.02(H), as well as a double payment by customers for capacity service. OCC recommends that, if AEP Ohio is permitted to recover its deferred capacity costs from customers, the Commission should allocate the costs to each customer class based on the demand of the shopping customers within each class

during the capacity deferral period and the costs should be recovered only from shopping customers. As a separate matter, OCC argues that AEP Ohio failed to support its RSR proposal. In particular, OCC claims that AEP Ohio should provide work papers or other detailed documentation that shows the accounting and recovery of the capacity deferral balance from August 2012 through May 2015, as well as the proposed collection of the remaining balance from June 2015 through January 2018. OCC contends that the one-page exhibit attached to the application is not sufficient to document that AEP Ohio has accurately calculated the capacity costs to be collected from customers. According to OCC, AEP Ohio has also failed to comply with the Commission's directives in the *ESP 2 Case*, which required the Company to submit shopping statistics and other data to support its proposed capacity charges. Finally, OCC requests that an evidentiary hearing be scheduled and that any collection of deferred capacity costs by AEP Ohio be made subject to refund.

- (17) While OMAEG endorses OCC's recommendation that the cost causers be required to pay the deferred capacity costs, OMAEG suggests that converting the RSR charge to a demand charge for demand-billed customers is a more equitable allocation of deferred capacity costs.
- (18) RESA opposes OCC's proposal that CRES providers incur the deferred capacity costs. RESA notes that these same arguments were raised in the *Capacity Case* and the *ESP 2 Case* and rejected by the Commission.
- (19) Despite OCC's claims otherwise, AEP Ohio responds that its actual shopping statistics are due, pursuant to the *ESP 2 Case*, after the end of the ESP 2 term. AEP Ohio emphasizes that the Company's proposed final implementation plan provides for ongoing reconciliation of the actual and projected capacity deferral balance. AEP Ohio also responds to OCC and several other intervenors that the Commission should not impose refund conditions or defer its ruling in this proceeding.

OHA

- (20) OHA urges the Commission to dismiss this case or, alternatively, hold it in abeyance until such time as the legal challenges to the Commission's orders in the *Capacity Case* and the *ESP 2 Case* have been resolved. OHA emphasizes that, once the capacity deferral balance has been collected from ratepayers, the prohibition against retroactive ratemaking would prevent a refund of the amount collected, even if the underlying orders are determined to be unlawful. OHA argues that a delay in the collection of the capacity deferral balance until after the Commission's orders have been found lawful will cause AEP Ohio no harm, because carrying charges will fully compensate the Company for any delay in collection. OHA adds that *Nazarian* and *Solomon* appear to restrict the Commission's authority to determine AEP Ohio's wholesale generation costs and revenues.
- (21) RESA does not believe that this proceeding must be delayed until the appeals of the *ESP 2 Case* and the *Capacity Case* have been concluded. RESA suggests that the Commission establish a process to hear claims and to adjust the capacity deferral balance based on the outcome of the appeals of the *ESP 2 Case* and the *Capacity Case*.

OMAEG

- (22) OMAEG argues that AEP Ohio's application is premature, because the Company has not yet filed the shopping statistics prescribed by the Commission in the *ESP 2 Case*. Specifically, OMAEG notes that the Commission previously directed that all determinations regarding future recovery of the capacity deferral balance would occur following AEP Ohio's filing of its actual shopping statistics at the end of the current ESP term on May 31, 2015. OMAEG, therefore, recommends that the Commission dismiss AEP Ohio's application as untimely filed or hold it in abeyance until the Company has filed its actual shopping statistics. OMAEG also asserts that AEP Ohio has offered no reason for its proposal to implement a 32-month collection period instead of the 36-month period contemplated by the Commission in the *ESP 2 Case*. Finally, citing *Nazarian* and *Solomon*, OMAEG contends that the FPA preempts Commission regulation of AEP Ohio's compensation for wholesale capacity service.

- (23) AEP Ohio avers that OMAEG has elevated form over substance in its comments. AEP Ohio points out that the Commission is vested with broad discretion to manage its dockets and to decide how it may best proceed to manage the orderly flow of its business. *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 433 N.E.2d 212 (1982). AEP Ohio submits that delaying the reconciliation process, as OMAEG and other intervenors propose, would create unnecessary regulatory lag, which ultimately increases the carrying charges and the total amount that customers will be required to pay, as well as result in rate volatility and confusion. AEP Ohio states that the 32-month collection period is based on the continuation of the \$4.00 per MWh RSR charge as of June 1, 2015, and is comparable to the three-year collection period anticipated in the *ESP 2 Case*. Nonetheless, AEP Ohio notes that it defers to the Commission on this issue, provided any such modification to the RSR is revenue neutral to the Company.

#### Kroger

- (24) Kroger requests that, if the RSR is continued beyond May 31, 2015, the rate design be changed from an energy charge to a demand charge for demand-billed customer classes. Kroger points out that the RSR enables AEP Ohio to recover capacity costs that are allocated to the various customer classes on the basis of demand. Kroger asserts that it is unreasonable for AEP Ohio to recover capacity costs through an energy charge from demand-billed customers, because it results in customers with higher load factors paying for a portion of the capacity costs attributable to lower load factor customers within the same customer class. Kroger further asserts that it is a fundamental principle of ratemaking that, if costs are allocated on the basis of demand, they should also be recovered through a demand charge. Although Kroger recognizes that not all customers have demand meters, Kroger contends that the vast majority of medium and large non-residential customers have demand meters. Kroger concludes that there is no reasonable basis for failing to properly align costs and charges for this group of customers.

- (25) AEP Ohio replies that it does not oppose Kroger's proposal to allocate the recovery of the capacity deferral to customers on the basis of demand, beginning on June 1, 2015, provided the approved rate design is revenue neutral to the Company.

OEG

- (26) OEG also recommends that, if the Commission approves AEP Ohio's proposal to continue the RSR, capacity costs be allocated among the business customer rate schedules on the basis of demand and be recovered through a demand charge. OEG notes that its recommendation properly accounts for cost-of-service differentials, is consistent with cost-causation principles, and is revenue neutral to AEP Ohio. OEG points out that, beginning on June 1, 2015, the RSR will enable AEP Ohio to recover only capacity costs, which should be allocated and recovered on the basis of demand. OEG, therefore, recommends that AEP Ohio be required to continue to allocate the total RSR revenue requirement between the four broad categories of customers on a 5 Coincident Peaks (CP) basis. OEG also recommends that AEP Ohio be required to further allocate its RSR costs among each business rate schedule on a demand basis, using the PJM 5 Peak Load Contribution (PLC) method, and collect the RSR costs from the demand-billed business rate schedules through a demand charge. As another matter, OEG recommends that, if the Commission determines that the RSR should be allocated to customer classes based upon shopping statistics, the Commission should require AEP Ohio to treat customers with approved reasonable arrangements as a separate customer class for purposes of allocation of RSR costs. Specifically, OEG proposes that, if a reasonable arrangement customer shopped during the capacity deferral period, the customer would pay precisely the amount of RSR costs that it caused AEP Ohio to incur back to the Company beginning on June 1, 2015, whereas reasonable arrangement customers that did not shop during the capacity deferral period would not be allocated any RSR costs. OEG notes that its proposal is necessary to ensure that reasonable arrangement customers do not pay a disproportionate share of RSR costs caused by other business customers, which OEG believes would undermine the economic development objectives of the reasonable arrangements.

- (27) AEP Ohio responds that it does not oppose OEG's proposal to allocate the recovery of the capacity deferral to business customers on the basis of demand, as of June 1, 2015, provided the approved rate design is revenue neutral to the Company.

#### RESA

- (28) RESA asserts that the Commission should reserve the right to make future adjustments to any deferred capacity amount that it authorizes in this case for recovery through the RSR, commencing on June 1, 2015, based on the outcomes in a number of cases that are pending before the Commission and the Supreme Court of Ohio. Specifically, RESA notes that the Commission is in the process of reviewing allegations regarding AEP Ohio's alleged double recovery of certain capacity costs in Case No. 11-5906-EL-FAC, et al. RESA adds that the Commission's orders in the *Capacity Case* and the *ESP 2 Case* remain on appeal. In light of these pending matters, RESA contends that the Commission should reserve, in the present case, the right to adjust the deferred capacity amount and reject any concerns that may arise over retroactive ratemaking. RESA points out that the Commission has not approved a rate for AEP Ohio's recovery of deferred capacity costs after May 31, 2015, and, therefore, the Commission's reservation of right to adjust the RSR would have only a prospective effect on revenues to be collected by the Company in the future.
- (29) AEP Ohio submits that its recovery of the capacity deferral through the RSR has been fully and finally adjudicated before the Commission and, absent reversal or remand by the Supreme Court of Ohio, must be implemented pursuant to the Commission's directives in the *ESP 2 Case*. Accordingly, AEP Ohio contends that the only issue in this proceeding relates to the verification of the capacity deferral amount and finalization of the post-ESP 2 rates, including carrying charges.

#### Conclusion

- (30) Upon review, the Commission finds that AEP Ohio's application for continued authority to implement the RSR is reasonable and consistent with our prior directives and should, therefore, be approved, to the extent addressed below, pursuant to R.C.

4928.144 and our final orders in the *Capacity Case* and the *ESP 2 Case*. AEP Ohio's proposal to continue the existing RSR charge of \$4.00 per MWh does not appear to be unjust or unreasonable and, thus, it is unnecessary to hold a hearing in this matter.

- (31) In the *ESP 2 Case*, the Commission approved the RSR, in part, as a mechanism for AEP Ohio to begin to recover its deferred capacity costs, in accordance with our decision in the *Capacity Case*. Additionally, in the *ESP 2 Case*, we directed, pursuant to R.C. 4928.144, that any capacity deferral balance remaining at the conclusion of the ESP term on May 31, 2015, should be amortized over a three-year period, unless otherwise ordered by the Commission. *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 36, 52. In the present proceeding, AEP Ohio has proposed to continue the RSR, beginning on June 1, 2015, and to collect the remaining capacity deferral and carrying charge balance over a period of 32 months. The Commission finds that AEP Ohio has offered a reasonable proposal to collect the remaining balance by continuing the current \$4.00 per MWh RSR charge, resulting in an expected post-ESP collection period of 32 months, which is in line with the 36-month collection period anticipated by the Commission in the *ESP 2 Case*. Our continued approval of the RSR is subject to the following terms and conditions:
- (a) As of June 1, 2015, AEP Ohio should continue to collect the current \$4.00 per MWh charge for the RSR, until the capacity deferral and carrying costs are fully recovered, with a collection period of approximately 32 months.
  - (b) Beginning on June 1, 2015, AEP Ohio should apply all of its RSR revenues to the remaining balance of the capacity deferral and carrying costs based on the Company's long-term cost of debt.
  - (c) AEP Ohio should reduce the RSR charge for the final month of collection, in order to ensure that collected revenues match the final balance.

- (d) AEP Ohio should provide quarterly updates to Staff regarding the remaining capacity deferral balance, until the capacity deferral and carrying charges are fully collected.
  - (e) A financial audit of the final capacity deferral balance as of May 31, 2015, should be conducted by Staff or, at Staff's discretion, an outside auditor, with the audit report to be filed in this docket. By subsequent entry, the Commission will establish a process for review of the audit's findings and recommendations. AEP Ohio's capacity deferral and carrying costs are subject to adjustment and reconciliation as a result of the financial audit.
  - (f) AEP Ohio should file its actual shopping statistics at the end of the current ESP term. As the Commission stated in the *ESP 2 Case*, all determinations for future recovery of the capacity deferral balance will occur following the filing of the actual shopping statistics. *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 36, Entry on Rehearing (Jan. 30, 2013) at 28.
- (32) Several of the intervenors raise the issue of federal preemption and assert that the Commission should reject AEP Ohio's application, in light of *Nazarian* and *Solomon*. We decline to address such constitutional issues, which are best reserved for judicial determination.<sup>1</sup> Alternatively, the intervenors argue that the Commission should hold AEP Ohio's application in abeyance, given the pendency of certain cases before the Commission and the Supreme Court of Ohio. We note that any adjustment to AEP Ohio's deferred capacity costs that is necessitated by the outcome of any pending proceeding will be addressed at the proper time. Additionally, OMAEG contends that AEP Ohio's application is premature, because the Company has not yet filed its actual shopping statistics, as required by the Commission in the *ESP 2 Case*. On the contrary, we find that AEP Ohio appropriately filed an application for authority to continue its collection of the RSR,

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<sup>1</sup> We note, however, that AEP Ohio obtained FERC's approval of an appendix to the RAA that specifically references the Commission's decision in the *Capacity Case*. *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,164, at P 24 (2013).

beginning on June 1, 2015. Following the conclusion of the ESP 2 term, AEP Ohio should file its final actual shopping statistics, which the Commission will then evaluate in the course of making the final determination regarding recovery of the remaining capacity deferral balance. In the meantime, we find that it is reasonable to permit AEP Ohio to continue the status quo, by collecting the current \$4.00 per MWh RSR charge and applying the revenues to reduce the capacity deferral and carrying cost balance, beginning on June 1, 2015, until otherwise ordered by the Commission. As AEP Ohio notes, a temporary gap during which the RSR would not be charged to customers, pending our evaluation of the shopping statistics, would result in unnecessary volatility and confusion regarding the Company's rates.

- (33) With respect to the intervenors' remaining comments, we find that their arguments in opposition to the capacity deferral and the RSR have already been thoroughly considered and rejected by the Commission in the *Capacity Case* and the *ESP 2 Case*. Specifically, the Commission has already addressed and denied, at length, arguments pertaining to our jurisdiction and authority to establish a cost-based capacity compensation mechanism for AEP Ohio, including the deferral of the Company's capacity costs and recovery through the RSR; cost causation principles; the evidence of record that supports our decisions; the process and procedural requirements that were followed in these cases; the statutory provisions regarding transition revenues that do not apply under the circumstances; and the cost allocation methodology adopted and implemented for the RSR. *Capacity Case*, Opinion and Order (July 2, 2012) at 12-14, 22-24, Entry on Rehearing (Oct. 17, 2012) at 28-29, 31-32, 38-39, 43, 53-54, 56-57; *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 35-36, 37, 52, Entry on Rehearing (Jan. 30, 2013) at 17, 18, 20, 21, 25-26. Such arguments raised in this proceeding constitute a collateral attack on the Commission's final orders in the *Capacity Case* and the *ESP 2 Case*. For the same reasons already articulated in those prior cases, we find that the intervenors' arguments regarding the Commission's jurisdiction, cost causation, adequate process and compliance with procedural requirements, transition revenues, and the cost allocation method adopted for the RSR should again be rejected. We likewise deny IEU-Ohio's motion to dismiss.

- (34) Accordingly, the Commission finds that AEP Ohio should be authorized to file final tariffs consistent with this Finding and Order. The final tariffs shall be approved effective June 1, 2015, contingent upon final review by the Commission.

It is, therefore,

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

ORDERED, That IEU-Ohio's motion for an order permitting the filing of additional authority be granted. It is, further,

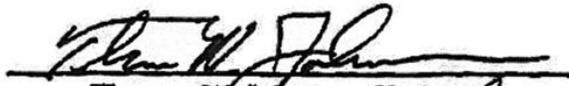
ORDERED, That the motions to intervene filed by RESA and Direct Energy be granted. It is, further,

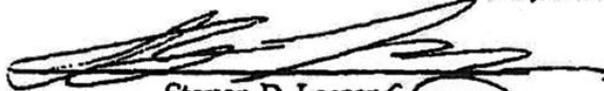
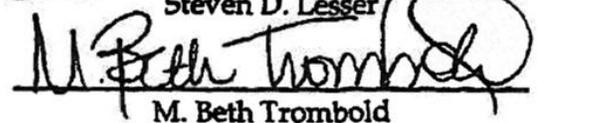
ORDERED, That AEP Ohio's application, as modified by this Finding and Order, be approved. It is, further,

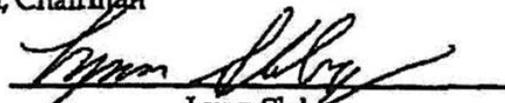
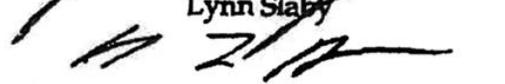
ORDERED, That AEP Ohio is authorized to file tariffs, in final form, consistent with this Finding and Order. AEP Ohio shall file one copy in this case docket and one copy in its TRF docket. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

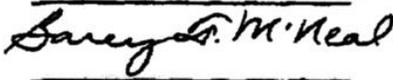
  
Thomas W. Johnson, Chairman

  
Steven D. Lesser  
  
M. Beth Trombold

  
Lynn Slaby  
  
Asim Z. Haque

SJP/GNS/sc

Entered in the Journal **APR 02 2015**

  
Barry F. McNeal  
Secretary