

143 FERC ¶ 61,164
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

PJM Interconnection, L.L.C.
Ohio Power Company

Docket No. ER13-1164-000

ORDER ACCEPTING APPENDIX TO RELIABILITY ASSURANCE AGREEMENT
SUBJECT TO A COMPLIANCE FILING

(Issued May 23, 2013)

1. On March 25, 2013, American Electric Power Service Corporation, on behalf of Ohio Power Company (AEP Ohio), filed a proposed appendix (Appendix)¹ to the PJM Interconnection, L.L.C. (PJM) Reliability Assurance Agreement (RAA).² AEP Ohio requests that the Commission confirm that the Ohio state compensation mechanism is consistent with Schedule 8.1.D-FRR Capacity Plans (Schedule 8.1) of the PJM RAA and accept the Appendix to the RAA. In this order, we accept the proposed Appendix, to become effective August 8, 2012, subject to a compliance filing requiring AEP Ohio to implement certain revisions to which it has agreed.

I. Background

2. PJM has a capacity market designed to ensure the availability of necessary resources to provide reliable service to load within the PJM region. The PJM capacity market includes the reliability pricing model (RPM), in which PJM conducts forward auctions to secure capacity for future delivery years. The RAA contains an alternative method for meeting the PJM capacity obligation, the Fixed Resource Requirement (FRR) Alternative, for entities that choose not to participate in the RPM auctions (FRR Entities).

3. Schedule 8.1 of the RAA includes the provisions of the FRR Alternative. Section D.8 of Schedule 8.1 provides:

¹ PJM, Intra-PJM Tariffs, RAA, SCHEDULE 8.1 Appendix-Ohio Power FRR Capacity Ra (Appendix) (0.0.0).

² PJM, Intra-PJM Tariffs, RAA, SCHEDULE 8.1.D-FRR Capacity Plans (Schedule 8.1) (4.0.0).

In a state regulatory jurisdiction that has implemented retail choice, the FRR Entity must include in its FRR Capacity Plan all load, including expected load growth, in the FRR Service Area, notwithstanding the loss of any such load to or among alternative retail LSEs [that is, load serving entities]. In the case of load reflected in the FRR Capacity Plan that switches to an alternative LSE, where the state regulatory jurisdiction requires switching customers or the LSE to compensate the FRR Entity for its FRR capacity obligations, such state compensation mechanism will prevail.

Section D.8 further provides:

In the absence of a state compensation mechanism, the applicable alternative retail LSE shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff, provided that the FRR Entity may, at any time, make a filing with FERC under Sections 205 of the Federal Power Act [FPA] proposing to change the basis for compensation to a method based on the FRR Entity's cost or such other basis shown to be just and reasonable, and a retail LSE may at any time exercise its rights under Section 206 of the FPA.

4. On November 24, 2010, AEP Ohio submitted a formula rate filing, in Docket No. ER11-2183-000, to change the rate of compensation for the capacity it provides on behalf of alternative LSEs under the FRR Alternative to a cost-based formula.³ On January 20, 2011, the Commission rejected the formula rate proposal by AEP Ohio to collect the costs of meeting the capacity obligation under the FRR Alternative on the grounds that Public Utilities Commission of Ohio (Ohio Commission) had established a state compensation mechanism.⁴ AEP Ohio has filed a request for rehearing of that order. On April 4, 2011, AEP Ohio also filed a complaint asserting that the January 2011 Order's interpretation of the RAA was inconsistent with the FPA and the original intent of the FRR Alternative provisions.

³ Alternative retail suppliers, or alternative LSEs, are known under Ohio state law as competitive retail electric service (CRES) providers.

⁴ *American Electric Power Serv. Corp.*, 134 FERC ¶ 61,039 (2011) (January 2011 Order), *rehearing pending*.

5. On July 2, 2012, the Ohio Commission issued a ruling establishing charges for a state compensation mechanism.⁵ On September 17, 2012, AEP Ohio notified the Commission that, in compliance with the Ohio Commission's orders and subject to any future rulings by the Ohio Commission or this Commission, AEP Ohio's FRR capacity would be available to Ohio LSEs in accordance with the state compensation mechanism adopted by the Ohio Commission, effective August 8, 2012.⁶

II. Filing

6. AEP Ohio asks that the Commission accept an Appendix to the RAA that sets forth the rate of compensation for the capacity it provides on behalf of alternative LSEs pursuant to the Ohio Commission's adoption of a state compensation mechanism, which AEP Ohio states is permitted under the RAA. Specifically, AEP Ohio's proposed Appendix provides:

The [Ohio Commission] in Case No. 10-2929-EL-UNC on July 2, 2012, issued an order approving a cost-based state compensation mechanism for load of alternative retail LSEs (a/k/a Competitive Retail Electric Service (CRES) providers) in Ohio Power Company's FRR Service Area, of \$188.88/MW-day for FRR capacity made available by Ohio Power Company under the RAA, effective as of August 8, 2012. For purposes of administering the state compensation mechanism, the Final Zonal Capacity Price will be the price applicable to the unconstrained region of PJM adjusted for the RPM Scaling factor, the Forecast Pool Requirement and Losses. Ohio Power has indicated that it expressly reserves its right to propose a revised capacity rate to include charges or assessments necessary to enable Ohio Power to fully recover the cost of the FRR capacity (as determined by the [Ohio Commission] in its July 2, 2012 order).

⁵ AEP Ohio Transmittal at 5, (citing Ohio Commission Case No. 10-2929-EL-UNC). AEP Ohio states that the Ohio Commission found that the record established in the state proceeding supported a cost-based charge of \$188.88/MW day. AEP Ohio further states that, on August 8, 2012, the Ohio Commission implemented a cost deferral recovery mechanism that is intended to enable AEP Ohio to recover a portion of its FRR capacity costs from retail customers. *Id.* at 5-6 (citing Ohio Commission Case No. 11-346-EL-SSO).

⁶ *See* September 17, 2012 Update on Status of Proceeding at 2 (Docket Nos. ER11-2183-001 and EL11-32-000).

AEP Ohio requests an effective date of August 8, 2012, the date that the Ohio state compensation mechanism became effective.

7. AEP Ohio states that once this filing is approved by the Commission and becomes final and non-appealable, it will withdraw both its request for rehearing of the January 2011 Order and its complaint in Docket No. EL11-32-000.

III. Notice of Filing, Comments, Protests and Responsive Pleadings

8. Notice of the AEP Ohio's filing was published in the *Federal Register*, 78 Fed. Reg. 19,700 (2013), with interventions and protests due on or before April 15, 2013.

9. The Ohio Commission filed a notice of intervention. Timely motions to intervene were filed by American Municipal Power, Inc; DPL Energy Resources, Inc.; Duke Energy Ohio, Inc. and Duke Energy Corporation (collectively, Duke); Exelon Corporation (Exelon); Industrial Energy Users-Ohio (IEU-Ohio);⁷ and the Retail Energy Supply Association (RESA).⁸ FirstEnergy Service Company (FirstEnergy);⁹ Office of Ohio Consumer Counsel (OCC); and PJM filed motions to intervene out of time.

10. The Ohio Commission filed comments. Exelon, IEU-Ohio, RESA, FirstEnergy and OCC filed protests, and Duke filed a limited protest. PJM, AEP Ohio,¹⁰ and IEU-Ohio filed answers.

A. Comments and Protests

11. The Ohio Commission urges the Commission to accept AEP Ohio's filing as proposed. The Ohio Commission affirms that it has adopted a state compensation

⁷ Energy Users-Ohio is an association of large Ohio-based energy consumers.

⁸ Retail Energy Supply Association's members include: Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P.

⁹ On behalf of FirstEnergy Solutions Corp.

¹⁰ AEP Ohio filed answers on April 30, 2013 and May 16, 2013.

mechanism and that accepting AEP Ohio's proposed filing would avoid a jurisdictional dispute between the Ohio Commission and the Commission.¹¹

12. Protesters do not support AEP Ohio's proposed tariff language and argue that the Commission should reject the filing. Exelon states that AEP Ohio's proposed Appendix is not required, and the Commission should not approve it. Exelon notes that, in an order issued on July 2, 2012, the Ohio Commission adopted the state compensation mechanism to apply to AEP Ohio's capacity under the RAA.¹² Exelon states that this order is currently effective and alternative LSEs have been compensating AEP Ohio at the rate required by this order. Therefore, Exelon asserts that the Commission need not accept a capacity mechanism that has already been established by a state commission and which the RAA states takes precedence over any other proposal AEP Ohio may file.¹³ RESA and First Energy state that the Commission's January 2011 Order found that AEP Ohio did not have the right to make its filing given the existence of a state compensation mechanism in Ohio.¹⁴ RESA states that this finding also applies to AEP Ohio's filing in this proceeding given the continued existence of a state compensation mechanism in Ohio.¹⁵ RESA, FirstEnergy, and OCC contend that AEP Ohio has not met its burden to show that the rates are just and reasonable. RESA states that AEP Ohio's filing is unclear, and should be rejected for failing to provide any cost support.¹⁶

13. FirstEnergy and IEU-Ohio state that AEP Ohio's filing should be rejected because AEP Ohio does not have the authority to amend the RAA.¹⁷ IEU-Ohio argues that even if AEP Ohio's filing is authorized, the Commission cannot grant AEP Ohio's requested relief because it exceeds the Commission's jurisdiction. IEU-Ohio contends that the Commission only has the authority and responsibility to approve only the wholesale rate

¹¹ Ohio Commission Comments at 2-5.

¹² Exelon Comments at 2 (citing Ohio Commission's *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 on Rehearing, October 17, 2012).

¹³ Exelon Comments at 2-3.

¹⁴ RESA Protest at 8 (citing January 2011 Order, 134 FERC ¶ 61,039 at PP 8, 10).

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 14.

¹⁷ FirstEnergy Protest at 4-5; IEU-Ohio Protest at 12-15.

for capacity that is provided to alternative LSEs, which in this instance, is the PJM RPM clearing price.¹⁸

14. Protestors also raise issues that they assert the Commission should consider if the Commission does not reject AEP Ohio's filing in this proceeding. Exelon states that the proposed Appendix should be revised to remove the ambiguities as to the capacity rate established. First Energy proposes the following modifications to the proposed Appendix, which FirstEnergy asserts accurately reflect the Ohio Commission's finding:¹⁹

The Public Utilities Commission of Ohio (PUCO) in Case No. 10-2929-EL-UNC on July 2, 2012, issued an order approving a ~~cost-based~~ state compensation mechanism for load of alternative retail LSEs (a/k/a Competitive Retail Electric Service (CRES) providers) in Ohio Power Company's FRR Service Area, ~~of \$188.88/MW-day, for FRR capacity made available by Ohio Power Company under the RAA, effective as of August 8, 2012.~~ For purposes of administering the state compensation mechanism, the wholesale rate shall be equal to the adjusted final zonal PJM RPM rate in effect for the rest of the RTO region for the current PJM delivery year, and with the rate changing annually on June 1, 2013, and June 1, 2014, to match the then current adjusted final zonal PJM RPM rate in the rest of the RTO region. The Final Zonal Capacity Price will be the price applicable to the unconstrained region of PJM adjusted for the RPM Scaling Factor, the Forecast Pool Requirement and Losses. ~~Ohio Power has indicated that it expressly reserves its right to propose a revised capacity rate to include charges or assessments necessary to enable Ohio Power to fully~~

~~recover the cost of the FRR capacity (as determined by the PUCO in its July 2, 2012 order).~~

¹⁸ IEU-Ohio at 16-17. IEU-Ohio states that a portion of what AEP Ohio characterizes as the state compensation mechanism (specifically, the difference between the PJM RPM clearing price that applies to alternative LSEs and \$188.88/MW-day) is exclusively a retail rate.

¹⁹ FirstEnergy Protest at 6-7. In its protest, FirstEnergy provides its proposed revisions to AEP Ohio's proposed Appendix in redlined strike out, as reflected in the body of this order.

15. Further, FirstEnergy and RESA state that AEP Ohio's request for a retroactive effective date of August 8, 2012, for AEP Ohio's proposed rates must be denied as inconsistent with the filed rate doctrine.

B. Answers

16. PJM states the PJM Board of Directors (Board) authorized the filing of a revision to the RAA to incorporate an appendix to Schedule 8.1 in order to incorporate a capacity compensation rate for AEP Ohio.²⁰

17. In its April 30, 2013 answer, AEP Ohio asserts that the Commission should disregard commenters' requests to reject AEP Ohio's filing on the basis that AEP Ohio is either not authorized to make the filing or that the filing is not needed. AEP Ohio notes that PJM's comments clarify that PJM received the proper authorization to make this amendment to the RAA on AEP Ohio's behalf.

18. AEP Ohio asserts that this filing is not contrary to the Commission's January 2011 Order because AEP Ohio's filing is not proposing to establish its capacity compensation charge, rather its filing is seeking the Commission's acceptance of the wholesale FRR charges as reflected in the Ohio Commission-approved state compensation mechanism. Therefore, AEP Ohio states that the Commission's acceptance of this filing would ensure that the state compensation mechanism would prevail, as in accordance with section D.8 of Schedule 8.1 of the RAA. Finally, AEP Ohio disputes arguments that this filing is not needed, noting the Ohio Commission's comments urging the Commission to accept the filing.²¹

19. AEP Ohio clarifies that it is not requesting that the Commission approve the Ohio Commission's determination as to AEP Ohio's FRR capacity costs. AEP Ohio states that it, and the Ohio Commission, are requesting one limited ruling that the Ohio Commission's decision to adopt a two-part state compensation mechanism is fully consistent with the RAA, which was adopted pursuant to federal law.²²

20. AEP Ohio also agrees with FirstEnergy's proposed modifications and offers to submit a compliance filing to reflect these edits. AEP Ohio states that the only proposed modification that it objects to relates to removing the effective date (August 8, 2012),

²⁰ PJM Answer at 2-3.

²¹ AEP Ohio Answer at 7-8.

²² AEP Ohio Answer at 5.

because, according to AEP Ohio, that is in fact the date that the Ohio Commission adopted the state compensation mechanism.²³

21. IEU-Ohio asserts that AEP Ohio's answer does not adequately address the issues IEU-Ohio raises in its protest. In its May 16, 2013 answer, AEP Ohio asserts that IEU-Ohio's answer raises the same arguments that IEU-Ohio raised in its protest.

IV. Commission Determination

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely unopposed motions to intervene serve to make the entities filing them parties to the proceeding. Given the lack of undue prejudice or delay, the parties' interest, and the early stage of the proceeding, we find good cause to grant the unopposed, untimely motions to intervene of FirstEnergy, OCC, and PJM.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's, AEP Ohio's, and IEU-Ohio's answers because they have provided information that assisted us in our decision-making process.

B. Proposed Appendix

24. As discussed below, we will accept AEP Ohio's proposed Appendix, to become effective August 8, 2012, subject to a compliance filing to modify the proposed Appendix as AEP Ohio has agreed to. We also accept AEP Ohio's commitment to withdraw its request for rehearing of the January 2011 Order, and the complaint filed in Docket No. EL11-32-000 once this filing is approved by the Commission and becomes final and non-appealable.

25. Under Schedule 8.1, a state is permitted to establish the compensation mechanism in a state regulatory jurisdiction that has implemented retail choice. The Ohio Commission states in its comments that the proposed Appendix conforms to the state compensation mechanism it approved, and that it supports the filing, effective on August 8, 2012.

26. Several protestors contend that the proposed Appendix is unnecessary as the RAA governs. Protestors argue that the Commission need not approve a capacity mechanism that has already been established by the Ohio Commission pursuant to the RAA. While

²³ *Id.* at 6-7.

AEP Ohio was not obligated by the RAA to file the proposed Appendix, we find no basis for rejecting the filing since it is consistent with the RAA.

27. Several parties maintain that the filing is unauthorized because the RAA permits only PJM to make filings to amend the RAA. Parties assert that AEP Ohio has not demonstrated that it received approval from the PJM Board to make this filing, as required for any filing to amend the RAA. We reject these arguments. We find that the filing is permissible because, as PJM answers, the PJM Board has authorized AEP Ohio to make this type of filing, which only adds an appendix, but which does not amend the body of the RAA itself.

28. First Energy argues that the effective date should not be August 8, 2012 and should be removed from the RAA provision. However, the Ohio Commission adopted the state compensation mechanism effective August 8, 2012, which no party disputes, and we therefore find that date to be in accordance with the RAA.

29. Several parties raise a concern that the proposed Appendix is ambiguous and unclear, and is unjust and unreasonable. But the protests were filed prior to AEP Ohio's answer in which AEP Ohio agreed to certain revisions to the Appendix that address these parties' concerns.

30. Having established that the proposed Appendix accords with the RAA and the state compensation mechanism, as detailed above, we therefore, reject the protests.

The Commission orders:

AEP Ohio's Appendix to the RAA is hereby accepted for filing, to become effective August 8, 2012, subject to a compliance filing, within 30 days of the issuance of this order, to implement the revisions to the Appendix to which AEP Ohio has agreed.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.