

134 FERC ¶ 61,039
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

American Electric Power Service Corporation

Docket No. ER11-2183-000

ORDER REJECTING FORMULA RATE PROPOSAL

(Issued January 20, 2011)

1. On November 24, 2010, American Electric Power Service Corporation (AEP) filed on behalf of Columbus Southern Power Company (CSPC) and Ohio Power Company (OPC) (collectively, AEP Ohio Companies)¹ new rate schedules under Schedule 8.1 – Appendix to the PJM Interconnection, L.L.C. (PJM) Reliability Assurance Agreement (RAA) to collect their respective capacity costs for meeting the capacity obligation of the PJM Resource Procurement Model (RPM). As discussed below, the Commission will reject the proposal as unauthorized under the RAA.

I. Background

2. The RAA, a rate schedule on file with the Commission, contains an alternative method for meeting the RPM capacity obligation, the Fixed Resource Requirement (FRR) Alternative, which applies to entities that choose not to participate in the RPM auctions. The RAA requires an eligible load-serving entity (FRR Entity) that chooses the FRR Alternative to submit a capacity plan, for all load in the FRR service area, to meet the capacity requirement with specific capacity resources, as an alternative to participation in the RPM auction process. Section D.8 of Schedule 8.1 of the RAA provides:

¹ On October 18, 2010, CSPC and OPC filed with the Public Utilities of Ohio an application to merge the two companies, with OPC being the sole surviving company. AEP states that CSPC and OPC intend to file with FERC for authority to merge. AEP states that the merger transaction is expected to close in 2011.

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. 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.* (Emphasis added.)

3. Section D.8 of Schedule 8.1 of the RAA 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 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. (Emphasis added.)

II. The AEP Ohio Companies' Filing

4. The AEP Ohio Companies participate in the PJM capacity market under the FRR Alternative as FRR Entities. Since the start of the PJM RPM capacity market, the AEP Ohio Companies have been receiving capacity compensation from alternative retail LSEs² based on the RPM clearing prices in the unconstrained part of PJM. Under this mechanism, each retail LSE would pay the RPM clearing price for its proportionate share of the total capacity procured. The AEP Ohio Companies argue that the auction prices are not permitting them to fully recover their costs, and therefore they propose to change the basis for compensation for their FRR capacity obligations to cost-based recovery. More specifically, the AEP Ohio Companies seek Commission approval to change the basis of their capacity compensation from the PJM RPM clearing price to annually adjusting formulas that track actual capacity costs. The proposed rate schedules are formula rate templates under which the AEP Ohio Companies propose to calculate their respective capacity costs. The AEP Ohio Companies contend that the proposed formulas

² In Ohio, alternative retail LSEs are referred to as Competitive Retail Electric Suppliers.

are standard cost-of-service trackers. The AEP Ohio Companies propose to make these rate schedules effective on January 1, 2011. The AEP Ohio Companies also assert that Ohio had not established a state compensation mechanism.

III. Notice of Filing and Responsive Pleadings

5. Notice of the AEP Ohio Companies' filing was published in the *Federal Register*, 75 Fed. Reg. 76,725 (2010), with interventions and protests due on or before December 10, 2010. Timely motions to intervene were filed by FirstEnergy Service Company (FirstEnergy),³ Industrial Energy Users-Ohio (IEU-Ohio), Direct Energy Business, L.L.C. (Direct Energy), Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (Constellation), American Municipal Power, Inc. (AMP), Public Utilities Commission of Ohio (Ohio Commission), Office of Ohio Consumer Counsel, DPL Energy Resources, Inc., Dayton Power and Light Company, Ohio Partners for Affordable Energy (Ohio Partners), Monitoring Analytics, LLC,⁴ PSEG Companies,⁵ Exelon Corporation, Duke Energy Ohio, Inc. DTE Energy Trading, Inc. (DTEET), AEP Retail Energy Partners LLC. (AEPREP), and Ohio Energy Group (OEG) filed motions to intervene out of time. OEG, IEU-Ohio, and FirstEnergy filed protests, and Direct Energy, Constellation, and the Ohio Commission filed comments in opposition to the AEP Ohio Companies' proposal. AMP filed comments seeking clarification. On December 17, 2010, the AEP Ohio Companies filed a response to the protests and comments.⁶

6. The Ohio Commission states that the state implicitly adopted the use of the RPM auction price to value capacity since the inception of AEP-Ohio's current standard service offer, and, on December 8, 2010, has now expressly adopted the use of the RPM auction price as its state compensation mechanism. In addition, the Ohio Commission states that it has started an investigation concerning the AEP Ohio Companies' capacity charges to Ohio's alternative retail providers.

³ On behalf of FirstEnergy Solutions Corp.

⁴ Acting in its capacity as the Independent Market Monitor for PJM.

⁵ Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

⁶ Ohio Partners and IEU-Ohio filed an answer to the AEP Ohio Companies answer, and the AEP Ohio Companies filed a second response.

IV. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), 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 OEG, DTEET, and AEPREP. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the AEP Ohio Companies' answer because it has provided information that assisted us in our decision making process. We are not persuaded to accept the Ohio Partners and IEU-Ohio answer, or the AEP Ohio Companies second response and will, therefore, reject them.

V. Discussion

8. We reject the AEP Ohio Companies' filing. Section D.8 of Schedule 8.1 of the RAA provides that a "state compensation mechanism will prevail" in allocating capacity costs to retail LSEs. In this case, the Ohio Commission has adopted such a state mechanism and we therefore reject the AEP Ohio Companies' filing.

9. The AEP Ohio Companies recognized in their initial filing that the absence of a state mechanism was a prerequisite to their filing, stating "Ohio has not established a compensation mechanism for capacity sales."⁷ It is uncontroverted that such a mechanism has now been adopted by the Ohio Commission, even if the parties disagree over whether such a mechanism existed on the date the AEP Ohio Companies submitted its filing.

10. The AEP Ohio Companies argue that the RAA expressly provides for making a section 205 filing to change the compensation mechanism. However, when read in context, the provision for making a section 205 filing applies only when no state compensation mechanism exists; the adverbial phrase in Section D.8 of Schedule 8.1 of the RAA, "in the absence of a state compensation mechanism," qualifies the remainder of that sentence and therefore conditions the right to make a section 205 filing.⁸

11. The AEP Ohio Companies further argue that interpreting the RAA only to provide them with the option to file for cost-based compensation in the absence of a state compensation mechanism would usurp the Commission's exclusive jurisdiction over

⁷ AEP Ohio Companies Petition at 3.

⁸ 16 U.S.C. § 824d (2006).

wholesale rates, and would deprive the AEP Ohio Companies of their Federal Power Act (FPA) section 205 rights.⁹ The AEP Ohio Companies suggest that the RAA should not be interpreted to prevent them from exercising their FPA section 205 rights. The AEP Ohio Companies note that *Atlantic City* indicates that utilities may, by contract, voluntarily give up some of their FPA section 205 rights, but contend that they did not expressly do so.

12. The AEP Ohio Companies, however, voluntarily signed the RAA,¹⁰ and, therefore, in fact, they have voluntarily relinquished such rights under *Atlantic City*, and the AEP Ohio Companies made this filing pursuant to the PJM RAA. Since the PJM RAA does not permit AEP to change a state imposed allocation mechanism, and AEP is a signatory to the RAA and does not have the right to change the PJM RAA unilaterally through a section 205 filing, this section 205 filing is not the appropriate vehicle for challenging the justness and reasonableness of Section D.8 of Schedule 8.1 of the PJM RAA.¹¹

13. Therefore, we find that, pursuant to the RAA, the AEP Ohio Companies are not permitted to submit their proposed formula rate, given the existence of a state compensation mechanism, and we will reject this filing.

⁹ AEP Ohio Companies Response at 7-8 (citing *Atlantic City Elec. Co. v. FERC*, 295 F. 3d 1, at 11 (D.C. Cir. 2002) (*Atlantic City*). *Atlantic City* dealt only with the section 205 filing rights for PJM-member, transmission-owner and provider utilities. In this proceeding, the AEP Ohio Companies are not filing in that capacity, but rather as distribution companies. In this context, *Atlantic City* is inapposite).

¹⁰ The Commission approved a settlement agreement, which the AEP Ohio Companies signed, of the PJM RPM, which included the RAA and FRR Alternative. See *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 75-78 (2006), *order on reh'g*, 119 FERC ¶ 61,318, *reh'g denied*, 121 FERC ¶ 61,173 (2007), *aff'd sub nom. Pub. Serv. Elec. & Gas Co. v. FERC* D.C. Circuit Case No. 07- 1336 (Mar. 17, 2009) (unpublished). See also PJM RAA Schedule 17.

¹¹ We need not, and do not address here whether the AEP Ohio Companies may challenge this provision of the RAA under section 206 of the FPA, 16 U.S.C. § 824e (2006).

The Commission orders:

The AEP Ohio Companies' formula rate proposal is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.