

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

American Electric Power Service Corporation)	
)	
v.)	Docket No. EL11-32-000
)	
PJM Interconnection, L.L.C.)	

**MOTION FOR LEAVE TO INTERVENE AND PROTEST
OF THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Sections 211 and 214 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.211 and § 385.214, the Electric Power Supply Association ("EPSA")¹ respectfully files this motion for leave to intervene and protest in the above referenced proceeding.² On April 4, 2011, the American Electric Power Service Corporation ("AEP") filed under section 206 of the Federal Power Act ("FPA") a complaint seeking modifications to Schedule 8.1, Section D.8 of the PJM Interconnection, L.L.C. ("PJM") Reliability Assurance Agreement ("RAA"). AEP asserts the complaint is necessitated by the Commission's interpretation of the RAA in an order issued January 20, 2011, in Docket No. ER11-2183-000.³ To the contrary, EPSA believes the AEP complaint should be dismissed as the company has not met its burden of proof to demonstrate that the current RAA provision is unjust and unreasonable. Furthermore, the issue of contention

¹ The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the view of any particular member with respect to any specific issue.

² *American Electric Power Service Corporation v. PJM Interconnection, L.L.C.*, Docket No. EL11-32-000 (filed April 4, 2011). ("AEP Complaint")

³ *American Electric Power Service Corp.*, "Order Rejecting Formula Rate Proposal," 132 FERC ¶ 61, 039 (2011). ("January Order")

is being appropriately addressed in an on-going proceeding before the Public Utilities Commission of Ohio (“PUCO”).

I. MOTION TO INTERVENE & COMMUNICATIONS

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which, collectively, account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. EPSA seeks to bring the benefits of competition to all power customers.

Many of EPSA’s members both own generation assets and are authorized to sell energy and ancillary services in PJM, and also participate in the RTO’s forward capacity market. Given this involvement in the PJM markets, EPSA’s members are significantly affected by any proposed changes to the PJM tariffs, operating agreements and/or market rules. Hence, EPSA has a direct and substantial interest in the instant proceeding that cannot be adequately represented by any other party, and allowing EPSA to actively participate in this proceeding would be in the public interest. Accordingly, EPSA respectfully requests that the Commission grant this timely motion to intervene.

All pleadings, correspondence and other communications concerning this proceeding should be directed to:

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II. BACKGROUND

AEP's Columbus Southern Power Company ('CSPC') and Ohio Power Company ('OPC') (collectively, the "AEP Ohio Companies") participate in the PJM Reliability Pricing Model ("RPM") capacity market under the Fixed Resource Requirement ("FRR") Alternative as FRR Entities. As such, since the inception of RPM, they have been receiving capacity compensation from alternative retail load serving entities ("LSEs"), referred to in Ohio as Competitive Retail Electric Suppliers ("CRES"), based on the RPM clearing prices in the unconstrained part of PJM. Under this mechanism, each CRES would pay the RPM clearing price for its proportionate share of the total capacity procured.⁴ The AEP Ohio Companies argue the RPM prices are not permitting them to fully recover their costs, and in a section 205 FPA filing submitted on November 24, 2010, in Docket No. ER11-2183-000, AEP sought Commission approval to change the basis for compensation for FRR capacity obligations to cost-based recovery.⁵

The Commission's January Order in the underlying section 205 proceeding rejected the AEP filing, finding the proposed rate schedules to be "unauthorized under the RAA."⁶ On February 22, 2011, AEP submitted a request for rehearing of the January Order and rehearing is currently pending.

III. PROTEST

EPSA protests the AEP complaint and believes it should be dismissed as follows:

⁴ January Order at P 4.

⁵ Id. (The AEP Ohio Companies proposed formula rate templates under which they would calculate their respective capacity costs through annual cost-of-service rate trackers.)

⁶ Id. at P 1.

As a threshold matter, FERC has the authority to defer to the PUCO in determining mechanisms for compensating LSEs for capacity-related costs flowing from Ohio's retail compensation structures. The issue of contention concerns costs (rather than rates) for capacity. Rates are FERC jurisdictional; but neither FERC nor state commissions have exclusive jurisdiction over costs.⁷ In this case, it is appropriate and legal for FERC to determine (as it did in the underlying section 205 proceeding) that the PUCO is the more appropriate forum for assessing costs that are associated with meeting retail customer capacity needs under the state's retail choice program and assert jurisdiction only where the state has not done so.⁸

As outlined by the PUCO in the earlier proceeding, it has started an investigation concerning the AEP Ohio Companies' capacity charges to Ohio's alternative retail providers, and accordingly, asserted jurisdiction over this matter.⁹ In addition to the PUCO investigation to determine the impact of AEP's proposed change, it is important to note that AEP has another pending proceeding before the PUCO, where the company has filed what is known as an Electric Security Plan as its Standard Service Offer, through which it is seeking to recover these capacity costs. In other words, it

⁷ See *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (2000)(upholding FERC's decision to assert jurisdiction over retail stranded costs associated with state retail choice programs only when the state did not exercise its authority).

⁸ January Order at PP 8-13.

⁹ *In the Matter of the Commission Review of the Capacity Charges of the Ohio Power Company and Columbus Southern Power Company*, PUCO Case No. 10-2929-EL-UNC, (issued December 8, 2010). (PUCO Order at P 5: "Further, the Commission finds that a review is necessary in order to determine the impact of the proposed change to AEP-Ohio's capacity charges. As an initial step, the Commission seeks public comment regarding the following issues: (1) what changes to the current state mechanism are appropriate to determine the Companies' FRR capacity charges to Ohio [CRES] providers; (2) the degree to which AEP-Ohio's capacity charges are currently being recovered through retail rates approved by the Commission or other capacity charges; and (3) the impact of AEP-Ohio's capacity charges upon CRES providers and retail competition in Ohio.") The order is available here: <http://dis.puc.state.oh.us/TiffToPdf/A1001001A10L08B40234G54807.pdf>

appears several mechanisms may provide the opportunity for AEP to collect the same costs. Accordingly, EPSA believes the issue of cost recovery is squarely in front of the appropriate jurisdictional agency for review as the Commission has previously determined.

Secondly, AEP has not met its burden of proof to demonstrate that the current PJM RAA provision is unjust and unreasonable. The plain language of the RAA's Section D.8 of Schedule 8.1 is clear, that the FRR Entity may only propose to change the basis for compensation if a state compensation mechanism does not otherwise exist as reflected in the following:

In the case of load reflected in the FRR Capacity Plan that switches to an alternative retail 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.)

To the extent there was any doubt whether the provider-of-last-resort ("POLR") charges approved for recovery by AEP were a state compensation mechanism, the PUCO addressed this through its express finding in its December 8, 2010 order, the order which also initiated the investigation of the AEP Ohio Companies' capacity charges, as referenced above.¹⁰ Although AEP claims it seeks "limited and discrete" changes to the RAA provision, the impacts of those changes on wholesale and retail markets within the AEP Ohio service area could be significant and are not permissible on a unilateral basis. If AEP believes changes are necessary to the RAA, the appropriate course of action is to work through the PJM stakeholder process to propose any modifications to the agreement.

¹⁰ January Order at P 6; also, see PUCO Order at P 4.

IV. CONCLUSION

Wherefore, EPSA respectfully requests that the Commission grant its motion for leave to intervene in this proceeding, and consider and take actions consistent with the comments herein.

Respectfully Submitted,



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April 25, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email, upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., April 25, 2011.



Nancy Bagot, VP Regulatory Affairs