March 25, 2013

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426  

Re: Ohio Power Company  
Docket No. ER13-1164-000

Dear Secretary Bose:

American Electric Power Service Corporation, on behalf of its utility affiliate Ohio Power Company (“Ohio Power,” and collectively “AEP”), hereby submits for filing a proposed appendix to the PJM Interconnection, L.L.C. (“PJM”) Reliability Assurance Agreement (“RAA”) \(^1\) that specifies the wholesale charges to be assessed to Competitive Retail Electric Service (“CRES”) providers in Ohio for the Fixed Resource Requirement (“FRR”) capacity that Ohio Power is required to make available under Schedule 8.1 of Section D.8 to the RAA.

This filing is the capstone of over two years of administrative litigation before this Commission and the Public Utilities Commission of Ohio (“Ohio Commission”) concerning the appropriate level of charges that Ohio Power should collect for supplying wholesale FRR capacity to CRES providers in Ohio. Consistent with Section D.8, the Ohio Commission adopted a “state compensation mechanism” through a series of orders. As explained in detail below, that mechanism, which was adopted based on the record compiled in a comprehensive evidentiary proceeding, is designed by the Ohio Commission to allow Ohio Power to recover the cost of making capacity available for shopping load through a combination of wholesale charges to CRES providers and retail charges to Ohio

\(^1\) PJM Rate Schedule FERC No. 44. The provisions addressing the FRR capacity charges are set out in RAA Schedule 8.1, Section D.8 (“Section D.8”).
Power’s retail distribution customers. The rate will end on June 1, 2015, when Ohio Power will no longer participate as an FRR entity.

From the Ohio Commission’s adoption of a final state compensation mechanism flow two interrelated requests that Ohio Power asks of this Commission to bring this matter to a close: First, pursuant to its authority to interpret the RAA as a tariff on file with the Commission, Ohio Power asks the Commission to confirm that the Ohio Commission’s adoption of a state compensation mechanism with wholesale and retail components is fully consistent with Section D.8 of the RAA, which puts no restrictions on the form of cost-based compensation mechanism that a state commission may adopt. Here, the Ohio Commission adopted a unified package of wholesale and retail charges that together yields the level of compensation (in this case $188.88/MW-day) determined by the Ohio Commission as necessary and appropriate to enable Ohio Power to recover the costs of meeting its wholesale FRR capacity obligation for shopping load.

Second, in conjunction with that determination, Ohio Power asks the Commission to accept for filing the wholesale component of the Ohio state compensation mechanism set forth in the attached RAA appendix (“Schedule 8.1 – Appendix (Ohio Power Company)”) proposed in this filing. Such a ruling would be consistent with the Commission’s exclusive authority under the Federal Power Act over wholesale rates and will diffuse any ambiguity over the Commission’s authority over wholesale charges that initially are established as part of a state compensation mechanism.

These rulings will (i) permit the parties to the various regulatory proceedings to move past jurisdictional questions about state commission authority to establish wholesale charges, (ii) bring additional certainty to longstanding proceedings at both the state and federal levels, and (iii) ultimately dispose of these and other contentious issues pending before the Commission in related proceedings. Now that the Ohio Commission has completed the process of adopting a state compensation mechanism that includes wholesale FRR charges, AEP respectfully submits that, under the RAA, it is appropriate for this Commission to facilitate the implementation of that state compensation mechanism by making the rulings requested in this application.
I. Background

The FRR regime in which Ohio Power currently participates was agreed upon by numerous parties who executed the RAA settlement. It was expressly designed as a traditional, cost-based alternative to the capacity market design adopted by PJM through its Reliability Pricing Model, or “RPM.” Rather than participating in the annual RPM auctions, where load-serving entities essentially pay for capacity at prices established in accordance with an administratively-administered demand curve, an FRR Entity submits to PJM an FRR Capacity Plan demonstrating how it will use its own resources to meet its capacity resource requirements. In other words, the FRR Entity’s capacity is not subject to the RPM auction rules, and its retail and wholesale load requirements are not met through the RPM capacity auction. Indeed, the RPM auction rules do not apply to FRR Entities. At the time that the FRR settlement was submitted to and approved by the Commission, the AEP PJM utilities were the only FRR Entities, and AEP’s representatives were key participants in the negotiations leading up to the FRR provisions that ultimately were included within the RAA approved by the Commission.

Section D.8 provides that in states that have implemented retail choice, alternative retail suppliers (in Ohio, the CRES providers) may require the FRR Entity to include their shopping loads within the FRR Entity’s FRR Capacity Plan. CRES providers have the option to secure their own capacity, but none in Ohio has done so; all of the CRES providers have relied on Ohio Power to meet their PJM capacity requirements. A key feature of Section D.8 is the express right of an FRR Entity to recover the costs that it incurs to meet these requirements. Section D.8 references the RPM auction clearing prices as a default should an FRR Entity choose not to make a Section 205 filing to establish its capacity costs. There is no suggestion anywhere in Section D.8 or in PJM’s filing of the RAA settlement that an FRR Entity that originally used the default mechanism to price its FRR capacity could not avail itself of its express right under the RAA to seek a different price based on the cost of its capacity.

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2 The background of the RAA’s FRR provisions and the rights and obligations of FRR Entities such as Ohio Power are discussed in detail in the pleadings submitted in Docket No. ER11-2183 and the Commission’s January 20, 2011 “Order Rejecting Formula Rate Proposal” issued in that docket. American Electric Power Service Corp., 134 FERC ¶ 61,039 (2011) (“January 2011 Order”).
Recognizing the interplay between the FRR capacity costs and obligations and a state’s retail choice rules, the RAA enables a state utility commission to craft its own “state compensation mechanism” for FRR capacity, and Section D.8 states that such mechanisms will “prevail.” Section D.8 is silent as to whether this was meant to cover retail charges or wholesale charges, and neither the FRR settlement nor the Commission’s orders approving the settlement address this issue. Similarly, the January 2011 Order did not address the jurisdictional issues raised by the Ohio Commission’s decision to adopt an interim state compensation mechanism that set the wholesale FRR capacity charges to be assessed to CRES providers.

On February 22, 2011, AEP sought rehearing of the January 2011 Order arguing, among other things, that the order was inconsistent with the Federal Power Act and longstanding jurisprudence establishing the Commission’s exclusive authority over wholesale rates and charges. AEP further contended that the only reasonable interpretation of the RAA is for retail rates established pursuant to a state compensation mechanism to “prevail,” because retail rates are beyond the Commission’s jurisdiction. Conversely, the Commission is not permitted to cede to state commissions the authority to establish wholesale charges because that falls within the Commission’s exclusive jurisdiction. The Commission has not yet ruled on these issues.

Following the issuance of the January 2011 Order, the Ohio Commission convened a proceeding to address the level of compensation that Ohio Power should receive for FRR capacity. As discussed in detail below, based on the extensive record evidence developed in that proceeding, the Ohio Commission adopted a state compensation mechanism that is intended to compensate Ohio Power for the wholesale FRR capacity that Ohio Power is required under the RAA to make available to CRES providers who serve shopping load.

While there are aspects of the Ohio state compensation mechanism with which AEP disagrees, as a public utility under Ohio law, Ohio Power is obligated to implement orders of the Ohio Commission. AEP is submitting this filing

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2 See, e.g., Ohio Rev. Code Ann. 4905.54. AEP’s implementation of Ohio’s state compensation mechanism, however, does not serve as a waiver of Ohio Power’s right,
consistent with its position throughout these proceedings that to the extent that the Ohio Commission establishes the level of compensation for wholesale FRR capacity, this Commission has an independent obligation under Federal Power Act Section 205 to review and accept or approve those charges. Therefore, AEP requests that the Commission approve the proposed appendix to the RAA (Attachment A hereto) that sets out the wholesale FRR charges that PJM will assess to CRES providers pursuant to the Ohio state compensation mechanism.

The Commission also should confirm that the RAA provides sufficient latitude to enable the Ohio Commission to adopt a state compensation mechanism that includes retail charges that, in tandem with the wholesale charges, provide the appropriate overall compensation for Ohio Power’s FRR capacity obligations for shopping load under the RAA. That ruling, together with Commission approval of the wholesale charges established pursuant to the Ohio state compensation mechanism, will resolve the jurisdictional issues arising under the January 2011 Order. Issues related to the specific retail rate features approved by the Ohio Commission are beyond this Commission’s jurisdiction and can be reviewed by the Supreme Court of Ohio.

II. The Ohio State Compensation Mechanism

On July 2, 2012, the Ohio Commission issued its Opinion and Order in Case No. 10-2929-EL-UNC, which adopted a state compensation mechanism effective as of August 8, 2012 (“Ohio SCM Order”). On October 17, 2012, the Ohio Commission issued its Entry on Rehearing in that docket, in which the Ohio Commission essentially affirmed its earlier order. (“Ohio SCM Rehearing Order”). On August 8, 2012, the Ohio Commission issued its Opinion and Order which it fully reserves, to pursue legal remedies available to challenge aspects of the Ohio Commission orders. Indeed, Ohio Power has filed a cross-appeal regarding the Ohio SCM Order and a related order on rehearing. See Notice of Cross-Appeal of Ohio Power Company, Case No. 2012-2098 (S. Ct. Ohio February 11, 2013). Likewise, as discussed below, AEP does not waive any arguments that it raised on rehearing of the January 2011 Order or AEP’s rights to seek appellate review in that proceeding.

5 The Ohio SCM Order is available at: http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=a05341c9-d812-45af-91d9-0b84748725e5. The state compensation mechanism approved in this order replaces the earlier interim mechanism that was last updated on May 30, 2012.

6 The Ohio SCM Rehearing Order is available at: http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=73ced2b5-4644-4a87-99e7-1a50e94fe2e6. The Ohio Commission issued two subsequent orders denying rehearing: (Continued . . .)
in Case No. 11-346-EL-SSS, et al., which, among other things, implemented a cost deferral recovery mechanism that is intended to enable Ohio Power to recover a portion of its FRR capacity costs from retail customers (“Ohio Cost Deferral Recovery Order”). On January 30, 2013, the Ohio Commission issued its Entry on Rehearing in which it affirmed the cost deferral recovery mechanism approved in the Ohio Cost Deferral Recovery Order (“Ohio Cost Deferral Rehearing Order”).

As relevant here, there are two significant aspects of these orders. First, the Ohio Commission unambiguously ruled that Ohio Power should be entitled to recover the costs of its FRR capacity: “We conclude that the state compensation mechanism for [Ohio Power] should be based on the Company’s costs.” Ohio SCM Order at 22. That ruling was confirmed in the concurring and dissenting opinions as well. In determining Ohio Power’s capacity costs, the Ohio Commission ruled that, “Given that compensation for [Ohio Power’s] FRR capacity obligations from CRES providers is wholesale in nature, we find that [Ohio Power’s] formula rate template is an appropriate starting point for determination of its capacity charges.” Id. at 33. Based on its analysis, the Ohio Commission determined that the cost of the FRR capacity that Ohio Power is required to make available to the CRES providers is $188.88/MW-day. Id. at 35.

Several parties to the proceeding challenged the Ohio Commission’s decision to base the FRR compensation on Ohio Power’s embedded capacity costs, arguing that some other metric, such as the RPM auction prices, should set the cap on compensation. The Ohio Commission unambiguously rejected these arguments on rehearing:

We continue to believe that the SCM for [Ohio Power] should be based on the Company’s costs and that RPM-based capacity pricing would prove insufficient

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to yield reasonable compensation for the Company’s provision of capacity to CRES providers in fulfillment of its FRR capacity obligations.

Ohio SCM Rehearing Order at 31. These rulings and the level of the costs (i.e., $188.88/MW-day) were based on the record compiled before the Ohio Commission and should not be second-guessed by parties before this Commission. The Commission need only determine that, as provided for in the RAA, the Ohio Commission established a level of compensation that it determined was reasonable in light of Ohio Power’s FRR capacity obligations for shopping load.

The second key aspect of the Ohio orders is the nature of the state compensation mechanism that the Ohio Commission adopted. The Ohio Commission decided that Ohio Power should recover its capacity costs for shopping load through a two-part mechanism. The first part of the mechanism set wholesale charges that are to be based on the RPM auction prices. The Ohio Commission “direct[ed] [Ohio Power] to charge CRES providers the adjusted final zonal PJM RPM rate in effect for the rest of the RTO region for the current PJM delivery year (as of today, approximately $20/MW-day), 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 effect for the rest of the RTO region.” Id. at 23. The FRR charges assessed to the CRES providers are wholesale charges that are subject to this Commission’s Federal Power Act jurisdiction.

The Ohio Commission acknowledged, however, that the RPM prices are well below Ohio Power’s capacity costs, finding: “In short, the record reveals that the RPM-based capacity pricing would be insufficient to yield reasonable compensation for [Ohio Power’s] provision of capacity to CRES providers in fulfillment of its FRR capacity obligations.” Id. at 22-23. The Ohio Commission further found that relying solely on the RPM auction prices would cause Ohio Power to earn “an unusually low return on equity of 7.6 percent in 2012 and 2.4 percent in 2013, with a loss of $240 million between 2012 and 2013…” Id. at 23 (citations omitted).

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2 The Ohio Commission also denied rehearing of its decision to approve the prior wholesale rates established in the interim state compensation mechanism: “We uphold our belief that it was reasonable and appropriate to extend the interim capacity pricing mechanism under these circumstances. Therefore, rehearing should be denied.” Ohio SCM Rehearing Order at 24.
With respect to the second part of the mechanism, in an effort to address this under-recovery of costs, the Ohio Commission ruled that Ohio Power could, through “accounting procedures,” defer recovery of the capacity costs it incurred above the RPM auction prices up to $188.88/MW-day. The Ohio SCM Order noted that, in a separate proceeding, it would establish “an appropriate recovery mechanism for such deferred costs and address any additional financial considerations in [a separate] proceeding.” Id. at 23. The Ohio Commission determined “that the approach that we adopt today appropriately balances our objectives of enabling [Ohio Power] 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.” Id. at 24. The Ohio Commission affirmed this ruling in the Ohio SCM Rehearing Order at 38-39.

In the Ohio Cost Deferral Recovery Order, the Ohio Commission affirmed its decision to establish a deferral recovery mechanism through which Ohio Power would account for the difference between the $188.88 per MW-day that represents Ohio Power’s total capacity costs and the amounts that Ohio Power recovers from the charges assessed to the CRES providers. That order permitted Ohio Power to begin recovering through a Retail Stability Rider (“RSR”) in retail rates the substantial amounts of the wholesale capacity costs that are to be collected from retail customers. Ohio Cost Deferral Recovery Order at 33, 36, and 52. The order also reaffirmed a key aspect of the Ohio SCM Order:

We find it inappropriate to consider market prices in establishing [the FRR] capacity component, as [Ohio Power] is and will remain an FRR entity for the immediate future. In conducting the statutory price test, we shall use [Ohio Power’s] cost of capacity of $188.88, as supported by Case 10-2929, for the competitive benchmark.

Id. at 74. This point was strongly reinforced in a concurring opinion of two of the Ohio Commissioners:

Moreover, [the state compensation mechanism] recognizes the important function and commitment of [Ohio Power] as a fixed resource requirement entity having dedicated capacity to serve customers in its service territory. However, these resources are not without cost. Accordingly the order allows [Ohio Power] 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/MW-day.  *This result is a fair balance of all interests because rather than subjecting [Ohio Power] to RPM capacity rates that were derived from a market process in which [Ohio Power] did not participate, the order allows [Ohio Power] to recover the costs of the agreement to which it was a participant dedicating its capacity to serve consumers in its service territory.*

The Ohio Commission reaffirmed its rulings in the Ohio Cost Deferral Rehearing Order.  As relevant here, the Ohio Commission stated that under the applicable Ohio statute, it is authorized to include a portion of the wholesale FRR capacity costs within the retail RSR charge because:

although [the FRR capacity costs] are wholesale, they were established to allow CRES providers access to capacity at market prices in order to allow retail electric service providers the ability to provide competitive offers to [Ohio Power] customers.

The Ohio Commission further rejected arguments that the deferred costs recovered through the RSR represented a “transition cost,” affirming its earlier ruling that these costs are directly associated with Ohio Power’s capacity obligation for shopping load under the RAA as an FRR Entity.

The foregoing demonstrates that the Ohio Commission has adopted a state compensation mechanism, in orders that have been affirmed in relevant part on rehearing, under which Ohio Power is entitled “to recover its actual costs of capacity, pursuant to our decision in the Capacity Case [*i.e., the Ohio SCM Order.*]” *Ohio Cost Deferral Recovery Order* at 32.  The Ohio Commission expressly recognized that Ohio Power is required by the RAA to make FRR capacity available to CRES providers, and in return, Ohio Power is entitled to

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10 *See Ohio SCM Order, Concurring Opinion of Commissioners Andre T. Porter and Lynn Slaby at 1, emphasis supplied.*

11 *Ohio Cost Deferral Rehearing Order* at 20.

12 *Id.* at 21.
recover the capacity costs determined by the Ohio Commission; *i.e.*, $188.88 per MW-day. In other words, the state compensation mechanism adopted by the Ohio Commission pursuant to the RAA is intended to enable Ohio Power to recover $188.88 per MW-day. The Ohio Commission also confirmed that the capacity costs are *wholesale* in nature, as they are incurred by Ohio Power to meet its FRR obligations under the RAA.

While the Ohio Commission determined that Ohio Power’s recovery of these wholesale costs should be accomplished through a package comprised of a wholesale component (subject to this Commission’s jurisdiction) and a retail component (subject to the Ohio Commission’s jurisdiction), there can be no doubt that the Ohio Commission intended for Ohio Power to have the opportunity to fully recover the cost associated with the FRR capacity obligation for shopping load imposed under the RAA. The Commission should, therefore, rule that the Ohio Commission was authorized, pursuant to the RAA, to adopt, and has adopted, a state compensation mechanism whose components form a unified package that together yield the level of compensation ($188.88/MW-day) as determined to be appropriate by the Ohio Commission. That level of compensation was established pursuant to the record developed in an evidentiary proceeding in which all interested parties had a full opportunity to participate, and the Ohio Commission has issued four orders affirming the state compensation mechanism.

### III. Section 205 submission

Now that the Ohio Commission has acted on requests for rehearing of its various orders addressing the Ohio state compensation mechanism, it is appropriate for the Commission to issue an order (i) determining that the overall Ohio state compensation mechanism is authorized under the RAA, and (ii) based on that determination, accepting for filing the wholesale charge component of that mechanism consistent with the Commission’s obligation under Section 205 of the Federal Power Act.\(^\text{13}\)

To implement the wholesale component, AEP proposes an appendix to the RAA (included as Attachment A), which is described immediately below, and

\(^\text{13}\) This outcome is in contrast to a situation where a state commission adopted a state compensation mechanism that included only retail charges. In that case, this Commission would have no jurisdiction to review the state compensation mechanism, notwithstanding the fact that it was adopted pursuant to the RAA.
AEP requests that the Commission accept the appendix for filing effective on August 8, 2012, the date that the Ohio state compensation mechanism became effective under the Ohio SCM Order. The appendix sets out the total state compensation level approved by the Ohio Commission as well as the wholesale charges that PJM will recover from CRES providers.

In compliance with the Ohio SCM Order, the FRR charge set out in the proposed appendix equals the $/MW-day total established in the applicable RPM auction, adjusted to reflect the Final Zonal Capacity Price (that accounts for the RPM Scaling Factor, the Forecast Pool Requirement and Losses) applicable to the unconstrained region of PJM in effect as of June 1 for each PJM billing year (the “FZCP”). In accordance with the PJM RPM auction process, the FZCP adjusts each June 1. The appendix references the FZCP prices through May 31, 2015, which are discussed below in Section III.A.2.

As the Ohio Commission made clear in its orders, the RPM auction prices that serve as the basis for the wholesale charges are well below Ohio Power’s capacity costs as determined by the Ohio Commission. That is why the Ohio Commission adopted a state compensation mechanism that is designed to permit Ohio Power to recover what the Ohio Commission determined to be the appropriate level of Ohio Power’s wholesale capacity costs ($188.88 per MW-day).

The Ohio Commission orders further confirm that if the Ohio Supreme Court ultimately rejects aspects of the retail rate component established in the Ohio state compensation mechanism, Ohio Power could face a substantial under-recovery of its FRR capacity costs. Whether the Ohio Commission could revise its state compensation mechanism to provide an alternative means for Ohio Power to recover its costs from retail customers would need to be reviewed by the Ohio Commission based upon the Ohio Supreme Court’s ruling. It is possible, however, that Ohio Power may be precluded from recovering some or all of the portion of the costs that were allocated to retail customers in the Ohio Cost Deferral Recovery Order. To account for that possibility, AEP alerts the Commission and CRES providers that if Ohio Power ultimately is unable to recover some or all of the portion of the FRR costs that were allocated to retail

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14 AEP further requests that the Commission accept the wholesale FRR charges approved in the Ohio Commission’s interim state compensation mechanism that was replaced by the state compensation mechanism that went into effect on August 8, 2012, in accordance with the Ohio SCM Order.
customers under the Ohio Cost Deferral Recovery Order, AEP reserves the right to file to amend the RAA appendix in an effort to recover those costs from CRES providers, or to file a new wholesale FRR charge under Section 205 if the Ohio Supreme Court rejects the Ohio state compensation mechanism, such that AEP is precluded from recovering its FRR capacity costs.

A. Compliance with 18 C.F.R. § 35.13

In compliance with the requirements of 18 C.F.R. § 35.13, AEP states as follows:

1. General Information – 18.C.F.R. § 35.13(b)

The documents provided with this filing include this Transmittal Letter and the attachment to be included as an appendix to the RAA.\textsuperscript{15} The persons upon whom this filing has been served are set out below in Section IV. A description of and the reasons for the rate changes proposed are discussed in this Transmittal Letter. AEP further states that there are no costs included in the cost-of-service data that have been alleged or judged in any administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs that are demonstrably the product of discriminatory employment practices.

2. Cost Support

Consistent with the Ohio SCM Order, the FRR Charge to the CRES providers is set at the adjusted RPM auction prices (i.e., the FZCP) that go into effect each June 1. For the period August 8, 2012, through May 31, 2013, the FRR Charge is $20.01 per MW-day. For the period June 1, 2013, through May 31, 2014, the FRR Charge is projected to be $33.71 per MW-day. For the period June 1, 2014, through May 31, 2015, the FRR Charge is projected to be $153.89

\textsuperscript{15} Pursuant to Order No. 714, this filing is submitted by PJM on behalf of Ohio Power as part of an XML filing package that conforms with the Commission’s regulations. PJM submits this filing on behalf of Ohio Power Company as required by the Commission, in its November 19, 2010 deficiency notice in Docket Nos. ER11-1995-000, ER11-1997-000 and -001 and ER11-2034-000, in order to provide transparency. PJM also submits this filing on behalf of Ohio Power Company in order to retain administrative control over the RAA. Thus, Ohio Power has requested PJM submit this appendix in the eTariff system as part of PJM’s electronic Intra PJM Tariff.
Based on the foregoing, AEP requests waiver of Section 35.13 of the Commission’s regulations to provide any additional cost support data, including waiver of the full Period I and Period II data requirements. Good cause exists for this waiver. Detailed statements of the Ohio Power’s cost of service are not needed where the proposed rates are based on the PJM’s RPM auction prices (and not Ohio Power’s cost of service), which are well-publicized and the result of a Commission-approved auction process. AEP further requests waiver of the requirement to provide projected revenue estimates because the revenues that Ohio Power will earn through recovery of the wholesale charges provided under the appendix at issue here are precisely the same revenues that Ohio Power would earn under the Section D.8 default rate; i.e., the RPM auction prices. AEP further requests waiver of any applicable regulations to allow the filing to take effect in the manner described.

B. Effective Date

AEP requests that the proposed Appendix to the RAA setting out the wholesale FRR capacity charges proposed by the Ohio Commission be permitted to become effective on August 8, 2012, and AEP requests waiver of any Commission regulations necessary for the Commission to establish that effective date.

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16 In accordance with the Ohio Commission’s orders, beginning on June 1, 2015, Ohio Power will no longer be an FRR Entity.
IV. Correspondence and Service

AEP requests that any correspondence or communications with respect to this filing be sent to the following:

John C. Crespo    Amanda Riggs Conner
Deputy General Counsel   Senior Counsel
American Electric Power   American Electric Power
Service Corporation       Service Corporation
1 Riverside Plaza    801 Pennsylvania Avenue, N.W.
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A copy of this filing will be served on the Ohio Commission and on PJM. Also, PJM has served a copy of this filing on all PJM Members by posting this filing electronically. In accordance with the Commission’s regulations, PJM will post a copy of this filing to the FERC filings section of its internet site, located at the following link: http://www.pjm.com/documents/ferc-manuals/ferc-filings.aspx with a specific link to the newly-filed document, and will send an e-mail on the same date as this filing to all PJM Members and all state utility regulatory commissions in the PJM Region alerting them that this filing has been made by PJM and is available by following such link. If the document is not immediately available by using the referenced link, the document will be available through the referenced link within 24 hours of the filing. Also, a copy of this filing will be available on the Commission’s eLibrary website located at the following link: http://www.ferc.gov/docs-filing/elibrary.asp in accordance with the Commission’s regulations and Order No. 714. In addition, the filing has been posted on Ohio Power’s website at https://www.aepohio.com/service/choice/cres/. This site posts information applicable to CRES providers.
V. Conclusion and Request for Relief

As the Commission is aware, AEP consistently has taken the position that under the Federal Power Act and decades of Commission and judicial precedent, this Commission has the exclusive authority to establish wholesale FRR capacity charges. That the RAA settlement adopted a provision that enables a state commission to establish a state compensation mechanism that “will prevail” cannot override the Federal Power Act. AEP agrees that it readily and voluntarily signed onto the RAA settlement adopting the FRR alternative, but AEP did not—and legally could not—agree to, and the Commission could not have approved, a settlement that disregarded the structural constitutional and statutory requirements of the Federal Power Act. AEP continues to maintain that position, and AEP submits this filing with full reservation of all of its legal rights, including pursuing judicial review of orders issued by this Commission.

The foregoing notwithstanding, however, the fact is that the Ohio Commission has now completed its process of establishing a state compensation mechanism for Ohio Power that will be in place through May 31, 2015. Under the circumstances, AEP believes that the best course forward is for the Commission to confirm that nothing in the RAA precludes the Ohio Commission from adopting a state compensation mechanism that includes wholesale and retail rate components, and that the Ohio Commission has adopted a single, unified package that together yields the level of compensation ($188.88/MW-day) determined by the Ohio Commission.

In conjunction with this finding, AEP further respectfully requests that the Commission accept for filing the proposed appendix included as Attachment A, and, consistent with the state compensation mechanism approved by the Ohio Commission, permit the appendix to be made effective on August 8, 2012. While

17 See, e.g., Olympic Pipe Line Co. v. City of Seattle, 437 F.3d 872, 883-84 (9th Cir. 2006) (“Preemption is a power of the federal government, not an individual right of a third party that the party can ‘waive.’”); Maine Yankee Atomic Power Co. v. Bonsey, 107 F. Supp. 2d 47, 50 (D. Me. 2000); Missouri Public Service Comm’n v. Missouri Interstate Gas, LLC, No. 06AC-CC00630-01, 2007 WL 6364304 (Mo. Cir. May 1, 2007) (state public utility agency is precluded from compelling utilities to comply with its ratesetting order, despite utilities entering a joint agreement giving agency full authority to regulate rate, because the order was preempted by FERC and “[p]reemption is a power of the federal government, not an individual right of a third party that the party can ‘waive’” (quoting Olympic Pipe Line, 437 F.3d at 884)).
AEP requests that the Commission accept for filing the wholesale component of that mechanism, consistent with its Federal Power Act jurisdiction, issues relating to the retail component of the mechanism can be addressed in Ohio proceedings, as necessary. Such an outcome will chart a course that will enable the parties to Docket No. ER11-2183 to dispose of the jurisdictional issues raised by the January 2011 Order, and the parties to the Ohio proceedings to dispose of their state ratemaking issues before the Ohio Commission and, if necessary, the Supreme Court of Ohio.

As noted above, parties in the cases before the Ohio Commission have already appealed the Ohio SCM Order (and its various rehearing orders) to the Supreme Court of Ohio, noting that they will challenge the Ohio Commission’s jurisdiction to approve a state compensation mechanism that contains wholesale charges, its ability under the RAA to adopt a cost-based state compensation mechanism, and even the Ohio Commission’s jurisdiction to interpret the RAA in order to determine the type of state compensation mechanism that it is authorized to adopt.18 A Commission ruling confirming that nothing in Section D.8 of the RAA precludes the Ohio Commission from adopting a cost-based state compensation mechanism with wholesale and retail components would greatly assist the Ohio Supreme Court, which otherwise would have to independently interpret the RAA to determine the scope of the Ohio Commission’s authority thereunder. If the Ohio state compensation mechanism and cost recovery regime were to unravel as a result of an Ohio Supreme Court interpretation of the RAA that this Commission ultimately disagreed with, the result would be significant confusion and ultimately further protracted litigation before the Commission.19

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18 See Notice of Appeal of Appellant Industrial Energy Users-Ohio, Case No. 10-2929-EL-UNC (February 6, 2013) (Assignment of Errors No. 2 (alleging that the Ohio Commission’s jurisdiction does not extend to wholesale capacity transactions between Ohio Power and CRES providers); 3 (alleging that the Ohio Commission is without jurisdiction to determine Ohio Power’s rights under the RAA); 5 (alleging that the RAA does not authorize the Ohio Commission to establish a cost-based state compensation mechanism and, instead, only authorizes RPM based pricing)); and FirstEnergy Solutions Corp.’s Notice of Cross-Appeal, Case No. 10-2929-EL-UNC (February 11, 2013) (Assignment of Error No. 1 (alleging that a state compensation mechanism based on fully embedded costs contravenes the RAA)).

19 Should that occur, AEP reserves the right to exercise its rights under Section D.8 to propose revised wholesale FRR charges that would be in effect through May 31, 2015.
As discussed above, even if the issues of jurisdiction and regulatory authority are resolved favorably before the Ohio Supreme Court, Ohio Power could still face an under-recovery of the wholesale FRR capacity costs if, as a result of rulings by the Ohio Supreme Court, Ohio Power were unable to recover some or all of the costs that were allocated to retail customers in the Ohio Cost Deferral Recovery Order. Ohio Power therefore alerts the Commission and CRES providers that if those circumstances should arise, Ohio Power may seek to modify the wholesale charges to include amounts necessary to provide Ohio Power with the opportunity to recover the level of compensation determined by the Ohio Commission as necessary for Ohio Power to recover the costs of meeting its FRR obligations under the RAA ($188.88/MW-day) throughout the term of the state compensation mechanism, taking into account FRR charges already being recovered from CRES providers and any retail charges that Ohio Power was precluded from recovering as a result of state rulings. If the Ohio Supreme Court rejects the Ohio state compensation mechanism such that AEP is precluded from recovering the costs of capacity as determined by the Ohio Commission, AEP further alerts the Commission and CRES providers that Ohio Power may file a new wholesale FRR charge under Section 205 of the Federal Power Act.

Once a Commission order approving Ohio Power’s proposal and accepting the appendix proposed herein has become final and non-appealable, AEP will withdraw its request for rehearing of the January 2011 Order as well as the Section 206 proceeding that AEP initiated in Docket No. EL11-32.  

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20 In connection with its ruling on that filing, the Commission may also take whatever action it deems appropriate to accept or approve the Ohio Commission’s interim state compensation mechanisms that were in place prior to, and have been superseded by, the state compensation mechanism at issue in this proceeding that was approved in the various Ohio Commission orders discussed above.
If you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

AMERICAN ELECTRIC POWER
SERVICE CORPORATION

/s/
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Attachment
Attachment A

Revisions to the
PJM Reliability Assurance Agreement

(Clean Format)
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 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).
Attachment B

Revisions to the
PJM Reliability Assurance Agreement

(Marked / Redline Format)
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 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).