OMA ENERGY GROUP
WEEKLY BRIEFING

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Statewide

FERC Order Expands Resources Subject to the Price Floor for Wholesale Capacity Auctions

Summary: To address the growing impact of state-subsidized resources on the competitive wholesale capacity market, on December 19, 2019, FERC expanded the Minimum Offer Price Rule (MOPR), which sets an offer price floor for each resource class, to apply to new and existing capacity resources that receive, or are entitled to receive, a state subsidy, unless the resource qualifies for an exemption.

Even with the broadened rule, not all state-subsidized resources will be subject to the MOPR. The five exemptions that may qualify include: 1.) existing self-supply resources, 2.) existing demand response, energy efficiency, and capacity storage resources, 3.) existing renewable portfolio standards (RPS) resources, 4.) competitive exemption for new and existing resources, and 5.) unit-specific exemption.

For a detailed summary of the FERC Order, please see this Carpenter Lipps & Leland memo.

Supreme Court of Ohio Agrees to Consider HB 6 Referendum Issues

Summary: On December 24, 2019, the Supreme Court of Ohio agreed to hear the case relating to a federal court challenge of House Bill 6 (the nuclear bailout bill) and the time period for gathering signatures to have Ohioans vote on whether to overturn HB 6 on the November 2020 ballot. As you may recall, the referendum effort appeared to have ended this past October when not enough signatures were gathered within the allotted 90-day period to put the matter to the voters, but Ohioans Against Corporate Bailouts challenged the referendum process on the grounds the organization did not receive the full 90-day period to gather signatures as authorized under Ohio law – because for part of the 90-day period, the referendum was being reviewed by the Ohio Attorney General for "fair and truthful content." A federal court ruled that there were no federal questions to be resolved by the court, but asked the Supreme Court of Ohio to resolve the case

based on state law questions. The Court agreed to consider whether the Ohio Attorney General may in effect shorten the authorized 90-day period for gathering signatures.

The Court will now decide whether the 90-day period starts when the bill is signed by the governor or when the referendum supporters get formal approval from the Ohio Attorney General to begin collecting signatures.

OMAEG Seeks Rehearing Regarding Per Account Cap on New OVEC Rider (Case No. 19-1808-EL-UNC)

Summary: OMAEG requested reconsideration of the PUCO's order where the PUCO created a new statewide non-bypassable rider to subsidize the OVEC plants and implemented the monthly cost cap on a per account basis. OMAEG argued that the PUCO ignored clear legislative intent that the new rider be capped on a per customer basis, not a per account basis as directed by the PUCO. As you may recall, after receiving legislative testimony from OMAEG and others, the "per customer" cap was explicitly adopted by the legislature, replacing "per account" language. The PUCO, however, chose to ignore that clear mandate in HB 6.

The utilities opposed OMAEG's request for rehearing, arguing that the law is unambiguous in its creation of a "one customer one account" rule. The utilities mistakenly characterized OMAEG as arguing that the term "per customer" is ambiguous, when OMAEG actually argued that "per customer" is not ambiguous at all. The utilities further argued that a "per customer" cap would be administratively difficult to accomplish. The Office of the Ohio Consumers' Counsel also opposed OMAEG's request to the extent that it would shift costs to residential customers. But OMAEG did not challenge the class allocation methodology established by the PUCO and did not propose any cost shifting.

AEP

Staff Recommends a Credit to Customers Following Review of Rider ESSR (Case Nos. 19-1747-EL-RDR)

Summary: On September 5, 2019, AEP filed an application to update its Enhanced Service Reliability Rider (ESRR) rates. Rider ESSR is authorized to recover "vegetation management expenditures" subject to a cap set by the PUCO. AEP requested a rate of 2.09795% of base distribution revenue for its ESRR – which would represent a decrease at the time AEP applied for an update, but would be an increase over the rate put in AEP's tariffs this past month. Staff reviewed the filing for accuracy and conformity

with PUCO regulations, and determined that there was significant regrowth in one of AEP's service areas that should have been remedied. Staff also found serious incongruities in the calculations by AEP, including finding that AEP improperly sought to recover costs not actually accounted for in 2018 and did not account for historical cumulative overspend. Staff recommended adjustments, which would reduce the total revenue requirement to a negative $8,981,709, correspondingly reducing the rate applied to customers' bills, which will be -1.38501% of base distribution revenue resulting in a credit on customers' bills. The matter is pending before the PUCO.

FirstEnergy

FirstEnergy Directed Not to File New Distribution Rate Case in Rider DMR Proceedings (Case No. 19-361-EL-RDR)

Summary: The PUCO correctly denied FirstEnergy's unlawful Rider DMR based on a mandate from the Supreme Court of Ohio, but then the PUCO improperly removed the requirement that FirstEnergy file a new distribution base rate case at the end of its current electric security plan in 2024. OMAEG sought reconsideration of the PUCO's decision as FirstEnergy has not filed for a base rate case since 2007, and prior PUCO orders made clear that it was in the public interest for FirstEnergy to file a rate case in 2024. Without the requirement to file a rate case, FirstEnergy's expenses and revenues could theoretically go unreviewed in perpetuity while FirstEnergy continues to receive additional revenue from its newly established decoupling rider.

FirstEnergy opposed OMAEG's rehearing request, stating that OMAEG was "not prejudiced" by the decision to remove the requirement to file a base rate case and that circumstances have changed insofar as a decoupling mechanism was implemented and Rider DMR was invalidated so the requirement to file a rate case in 2024 was no longer necessary. Tellingly, FirstEnergy argued that the Significantly Excessive Earnings Test could provide the review or check that OMAEG was looking for to ensure that FirstEnergy was not overrunning too much.