Before

**The Public Utilities Commission of Ohio**

In the Matter of the Application of Columbus )

Southern Power Company for Approval )

of its Program Portfolio Plan and Request ) Case No. 09-1089-EL-POR

for Expedited Consideration. )

In the Matter of the Application of Ohio )

Power Company for Approval of its )

Program Portfolio Plan and Request for ) Case No. 09-1090-EL-POR

Expedited Consideration. )

# REPLY BRIEF OF INDUSTRIAL ENERGY USERS-OHIO

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# REPLY BRIEF OF INDUSTRIAL ENERGY USERS-OHIO

1. **INTRODUCTION**

In accordance with the schedule established by Attorney Examiners See and Hussey, Industrial Energy Users-Ohio (“IEU-Ohio”) submits its Reply Brief for consideration by the Public Utilities Commission of Ohio (“Commission”).

1. **ARGUMENT**

On March 10, 2010, Columbus Southern Power Company (“CSP”) and Ohio Power Company (“OP”) (collectively, “AEP-Ohio” or “Companies”) filed an Initial Brief to support the Application for approval of an energy efficiency and peak demand reduction portfolio plan (“Portfolio Plan”) and the Stipulation and Recommendation (“Stipulation”) filed contemporaneously with the Application. AEP-Ohio spends much of its brief attacking the credentials of IEU-Ohio’s witness Kevin M. Murray and the high level comparison of AEP-Ohio’s Portfolio Plan to other electric distribution utility (“EDU”) portfolio plans conducted by Mr. Murray. AEP-Ohio misunderstood the purpose of Mr. Murray’s comparison and appears to be using its attack on Mr. Murray’s comparison to distract from the simple facts in the record: 1) AEP-Ohio’s Portfolio Plan will cost Ohio customers approximately $7 million more for peak demand reduction than an alternative that AEP-Ohio has been directed to develop but has chosen to ignore; and 2) there is no justification provided for awarding AEP-Ohio lost distribution revenue. For these reasons, the Stipulation requesting approval of AEP-Ohio’s Portfolio Plan is not in the public interest and should not be adopted by the Commission without modification.

1. **The Portfolio Plan is not in the public interest inasmuch as the peak demand reduction program does not take advantage of lower cost options.**

AEP-Ohio provides three responses to IEU-Ohio’s assertion that AEP-Ohio should include an option in its Portfolio Plan that accepts mercantile customer-sited peak demand reduction capabilities that are participating in PJM’s demand response programs for commitment into AEP-Ohio’s portfolio for the purpose of counting towards AEP-Ohio’s peak demand reduction requirements: 1) there is substantial uncertainty associated with the details surrounding such an option; 2) there are some costs associated with the option; and, 3) AEP-Ohio may propose such an option at some point in the future. None of these responses overcome the fact that the Portfolio Plan before the Commission does not take advantage of lower cost options and should be modified or rejected.

Any uncertainty associated with how to commit customer-sited demand response resources based on participation in the PJM demand response programs towards AEP-Ohio’s portfolio obligations is, in large part, created by AEP-Ohio’s actions. Despite state and federal law being settled on whether retail customers are eligible to participate in regional transmission organization (“RTO”) demand response programs, AEP-Ohio continues to oppose such participation at every opportunity. For example, AEP-Ohio is opposing Eramet Marietta, Inc.’s Application to commit its peak demand reduction capabilities to CSP despite the facts that the customer was ordered by the Commission to commit the capabilities and the customer is not requesting compensation [in the form of an exemption from the Energy Efficiency/Peak Demand Reduction (“EE/PDR”) Rider or otherwise] for its commitment.[[1]](#footnote-1)

Moreover, as with its program whereby mercantile customers can commit their energy savings and receive an energy efficiency credit, which IEU-Ohio supports, AEP-Ohio could have included an option with a standard application form to allow customers participating in PJM’s demand response programs to commit their peak demand reduction capabilities towards AEP-Ohio’s portfolio obligations. Instead, AEP-Ohio chose to limit its Portfolio Plan options to its current interruptible rate schedule offers that have not been successful in attracting customers.

IEU-Ohio concedes that there may be some administrative costs associated with a customer commitment option. However, as AEP-Ohio witness Jon F. Williams stated, any administrative costs would be significantly less than the approximately $7 million embedded in the Portfolio Plan now.[[2]](#footnote-2) Again, AEP-Ohio could have controlled and minimized the costs associated with the customer commitment application process through this Portfolio Plan but chose to ignore the option.[[3]](#footnote-3)

Finally, AEP-Ohio indicates that despite not including the customer commitment option in its Portfolio Plan that is before the Commission for approval now, AEP-Ohio is in the process of developing a “PJM equivalent” option that is not before the Commission that should be used to allay IEU-Ohio’s concerns.[[4]](#footnote-4) The Commission can only judge the Portfolio Plan and the Stipulation on the actual programs that have been proposed and are part of the record in this case. Unless and until AEP-Ohio actually includes a customer commitment option as part of its Portfolio Plan, the Commission should reject the Portfolio Plan as not in the public interest.

1. **AEP-Ohio has failed to meet its burden of proving that recovery of lost distribution revenue is necessary or appropriate.**

AEP-Ohio states that “there are numerous factors to be considered when adopting a portfolio program plan, including the balanced provisions that encourage the electric utility to embrace and internalize energy efficiency and demand response goals.”[[5]](#footnote-5) IEU-Ohio agrees. Unfortunately, however, AEP-Ohio has failed to provide a single factor that demonstrates that the recovery of lost distribution revenue is necessary or appropriate in the circumstances presented in this proceeding.

IEU-Ohio also agrees that Rule 4901:1-39-07(A), Ohio Administrative Code, permits EDUs to include in its cost recovery mechanism “**appropriate** lost distribution revenues, and shared savings.”[[6]](#footnote-6) Again, however, AEP-Ohio has not demonstrated that recovery of lost distribution revenues for its operating companies is appropriate. Rather, AEP-Ohio simply keeps asserting that it will accurately account for lost distribution revenue, based upon the methodology reflected in Mr. Roush’s testimony.[[7]](#footnote-7) As demonstrated during the evidentiary hearing, this methodology significantly overstates any lost distribution revenues AEP-Ohio may experience. However, regardless of whether AEP-Ohio may be capable of accurately accounting for lost distribution revenues, it has failed to demonstrate that any lost distribution revenue is appropriate. Contrary to AEP-Ohio’s suggestion, it is not IEU-Ohio’s position that it “would be inappropriate to include any provision that could be portrayed as doing anything other than strictly minimizing compliance costs.”[[8]](#footnote-8) In fact, IEU-Ohio witness Murray stated that there are instances when lost distribution revenues may be appropriate:

Q. First of all, is it your position that distribution loss revenues should not be recovered in any DSM case by any utility?

A. No.

Q. When would you allow it?

A. I think it has to be judged based upon circumstances. I can give you an example of when it might be appropriate. If you have a utility that has just gone through a distribution rate case where its cost and expenses have been trued up against revenues and immediately thereafter it embarks on a program designed to achieve significant energy efficiency savings, in those circumstances it may be appropriate for a Commission to look at that and say we are going to provide some vehicle or avenue for the utility to accrue lost distribution revenues recognizing that the timing of that specific example is such that the utility may not have an opportunity to recover its authorized revenue requirement.[[9]](#footnote-9)

Additionally, AEP-Ohio indicates that Section 4928.66(D), Revised Code, allows for the recovery of revenue that otherwise may be foregone by the EDU as a result of, or in connection with, the implementation of energy efficiency programs.[[10]](#footnote-10) However, AEP-Ohio conveniently includes only part of Section 4928.66(D), Revised Code. AEP-Ohio ignores that Section 4928.66(D), Revised Code, requires an EDU to use a revenue decoupling mechanism to recover foregone revenue. AEP-Ohio has not included a revenue decoupling mechanism as part of its Portfolio Plan, which is just one more reason (in addition to those identified by IEU-Ohio in its Initial Brief) why AEP-Ohio’s Portfolio Plan and the Stipulation should not be adopted without modification by the Commission.

1. **CONCLUSION**

Despite AEP-Ohio’s attacks on the credentials of IEU-Ohio’s witness and the high level comparison he conducted that spurred him to conduct additional analysis, AEP-Ohio has admitted that its peak demand reduction plan is incomplete and more expensive than alternative options it chose to not pursue. Additionally, AEP-Ohio has not provided any justification for its request to recover lost distribution revenues. Consequently, AEP-Ohio has not met its burden of demonstrating that its Portfolio Plan is just, reasonable or appropriate. Moreover, the Stipulation recommending that the Commission adopt the plan is not in the public interest. Accordingly, IEU-Ohio respectfully requests that the Commission find that AEP-Ohio’s Portfolio Plan, as proposed, fails to comply with Ohio law and the Commission’s criteria for demonstrating the reasonableness of settlements. Alternatively, IEU-Ohio requests that the Commission direct AEP-Ohio to: 1) modify its proposed Portfolio Plan to provide that customer participation as a demand response capacity resource in PJM’s markets will be counted towards AEP-Ohio’s portfolio obligation, provided that the customer commits its capabilities to AEP-Ohio as required under the Commission’s rules; and 2) remove any amounts associated with lost distribution revenue from its proposed EE/PDR Rider.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

#### I hereby certify that a copy of the foregoing Reply Brief of Industrial Energy Users-Ohio was served upon the following parties of record this 19th day of March, 2010, electronically or via first class mail, postage prepaid.

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1. *In the Matter of the Application of Eramet Marietta, Inc. to incorporate Customer’s Peak Demand Reduction Capabilities into Columbus Southern Power Company’s Demand Reduction Capabilities into Columbus Southern Power Company’s Demand Reduction Program*, Case No. 10-188-EL-EEC, Columbus Southern Power Company’s Motion to Intervene and Initial Comments on Eramet Marietta, Inc.’s Application (March 3, 2010). [↑](#footnote-ref-1)
2. Tr. at 45-46. Mr. Williams stated, “if PJM retail customer participation counts toward our compliance to the extent that the committal process is solid and it goes against our compliance and the Commission rules that it goes towards our compliance and the committal process is sound and it goes toward our compliance and assuming that there is no cost to a -- to the customer, that no cost from AEP Ohio to the customer to commit those resources, then the cost in the demand reduction section of this plan would be significantly reduced….” [↑](#footnote-ref-2)
3. IEU-Ohio also notes that the “administrative costs” associated with the customer commitment option will be higher than necessary if AEP-Ohio opposes every such application and subsequently seeks to recover its legal costs through the EE/PDR Rider. [↑](#footnote-ref-3)
4. Tr. at 45; AEP-Ohio’s Initial Brief at 15. [↑](#footnote-ref-4)
5. AEP-Ohio’s Initial Brief at 13. [↑](#footnote-ref-5)
6. *Id.* (citing Rule 4901:1-39-07(A), Ohio Administrative Code). [↑](#footnote-ref-6)
7. *Id.* at 13-14. [↑](#footnote-ref-7)
8. *Id.* at 13. [↑](#footnote-ref-8)
9. Tr. at 88-89. [↑](#footnote-ref-9)
10. AEP-Ohio Initial Brief at 13. [↑](#footnote-ref-10)