BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Amendment of the 2009 Solar Energy Resource Benchmark, Pursuant to Section 4928.64(C)(4), Ohio Revised Code.	)	**Case No. 09-0987-EL-EEC**
In the Matter of the Application of Ohio Power Company for Amendment of the 2009 Solar Energy Resource Benchmark, Pursuant to Section 4928.64(C)(4), Ohio Revised Code.	)	**Case No. 09-0988 -EL-EEC**

COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
ADDITIONAL REPLY COMMENTS

Columbus Southern Power Company (CSP) and Ohio Power Company (OP), collectively "AEP Ohio" or the "Companies," filed an application regarding the Companies' 2009 Solar Energy Resource (SER) benchmark. In particular, the Companies requested that the Commission determine, for compliance purposes, that the Companies' 2009 SER benchmark be reduced by the amount of the Companies' actual shortfall and requested that the Commission issue an order, pursuant to its *force majeure* authority under Section 4928.64(C)(4), Revised Code, granting the Companies' request. The Companies proposed that the Commission correspondingly increase their 2010 SER benchmark, absent any further action in 2010 by the Commission, to be more than the statutory SER 2010 benchmark. In other words, as stated in the application, the

Companies' request was being made to achieve full compliance by 2010 but to do so at a more reasonable cost.

Several parties have moved to intervene in these cases since the time the application was filed, a few of those parties making passing remarks about the propriety of the Companies' request. The Ohio Environmental Council (OEC), submitted substantive comments in opposition to the application on December 8, 2009. On December 15, AEP Ohio filed reply comments in response to OEC's comments. Also, on December 15, two additional sets of comments were filed, one by the Ohio Advanced Energy and Vote Solar (OAE/VS) and another by the Ohio Consumers and Environmental Advocates (OCEA).[1] The Companies hereby submit additional reply comments in response to OAE/VS's and OCEA's comments.

I. AEP OHIO RESPONSE TO OHIO ADVANCED ENERGY AND VOTE SOLAR COMMENTS

A. Background on OAE/VS

The Commission should first understand OAE/VS's perspective on these issues and should consider their comments in that context. On Vote Solar's website, they describe their policy guideline as follows:

> Our strongest clean energy future will include both panels on individual roofs (distributed generation) and centralized solar power plants (large-scale generation) that provide reliable electricity to the entire grid. These two distinct solar market types have very distinct policy needs. We're working to help advance them all.
> http://votesolar.org/policy-guidelines/

[1] AEP Ohio notes that the Ohio Environmental Council is listed as a member of OCEA and also filed its own comments, which have already been addressed by AEP Ohio. OEC should not be permitted to file multiple sets of comments and take "two bites of the apple" in addressing issues. To this extent, AEP Ohio submits that it is unfair for OEC to portray its same positions as having additional support through also participating in the OCEA filing. The Commission should discount such duplicitous efforts.

Thus, Vote Solar's mission is to put solar panels on individual roofs, deploy large-scale solar generation and provide solar electricity to the entire grid.

Similarly, Ohio Advanced Energy (OAE) is a trade organization representing the solar industry. OAE's members include the law firm that files comments on its behalf and their website touts the value of joining and investing in OAE as follows:

> At this juncture, it is critical that the advanced and renewable energy industries along with those organizations and entities that support the continued expansion of these industries in Ohio continue to press forward on all fronts to assert their interest and take advantage of the newly created opportunities in Ohio.
> http://www.ohioadvancedenergy.org/new/members/benefits.aspx

Thus, OAE's mission is to expand the renewable industry in Ohio by taking advantage of the newly created opportunities under SB 221. AEP Ohio is not criticizing the mission of either VS or OAE, but merely pointing out that the Commission should consider the solar industry comments as being made from a narrowly-focused viewpoint.

B. The arguments advanced by OAE/VS are without merit

OAE/VS improperly criticizes and dismisses as inconsequential the substantial efforts made by AEP Ohio to date in attempting to achieve compliance, both in the short and long term. When these criticisms are examined, it becomes evident that they all lead back to the same premise: AEP Ohio should have built more solar facilities itself or entered into long-term financing arrangements with other parties, preferably its members.[2] For example, OAE/VA barely acknowledges AEP Ohio's 20-year agreement with Wyandot Solar, LLC in connection with the construction of a 10 MW AC (12 MW DC) solar farm in Wyandot County, Ohio and simply dismisses (note 5) the Wyandot

[2] As reflected in the application, AEP Ohio did in fact prepare to build capacity in 2008 when it contracted to have its solar panels built and installed at two AEP Ohio-owned service center facilities enabling them to begin generation in early 2009.

project as "not applicable to the 2009 benchmark." Apparently, in order to gain OAE's endorsement, one not only has to undertake a long-term financing quality off-take agreement that helps ensure a solar farm gets built in Ohio but one has to also do so with a member of OAE.

Moreover, OAE/VS is wrong in concluding that the 20 – year Wyandot agreement, which was announced in June of 2009 as a result of an RFP for Solar Resources issued in early 2009, is not relevant to the 2009 waiver/deferral request. As stated in paragraphs 9 and 13 of AEP Ohio's application that the Wyandot agreement will enable AEP Ohio to "catch up" in 2010 and even produce enough RECs to meet the 2011 solar benchmarks at a much more reasonable cost than attempting to continue purchasing what few 2009 RECs are available on the market now, at high market prices. As discussed in AEP Ohio's response to comments filed by the Ohio Environmental Council (OEC) in this case, the dispositive question under Section 4928.64(C)(4), Revised Code, is whether renewable energy resources or RECs are reasonably available in the market. They are not, and most importantly, neither OEC, OAE/VS nor OCEA have offered evidence to the contrary. As set forth in paragraph 7 of the application, AEP Ohio has conducted an RFP for 2008-2009 solar RECs and no bids were received. Purchases made on the open market were only achieved at very high prices.

Though OAE/VS does not question the market data submitted in AEP Ohio's application, OAE/VS nevertheless argues (at 4) that "the price of solar panels has been steadily falling and they remain available in abundant supply." While solar panel prices may be trending down, they are still high (a matter left unaddressed by OAE); in any

case, the downward trend only serves to bolster the reasonableness of AEP Ohio's proposal to defer compliance and subsequently catch up at more reasonable prices.

Similarly, OAE/VS demands (at 4) that "solar developers must have signed, long-term contracts for both the electricity and the sRECs before they can obtain financing from a bank and proceed to build the solar system." Again, AEP Ohio has entered into a long-term agreement to purchase solar energy and RECs at a reasonable price: the Wyandot agreement. It is not appropriate for OAE/VS to merely second-guess all of AEP Ohio's decisions after-the-fact and simply set forth a list of things that could have been done. AEP Ohio has made a good faith effort to comply with the SER benchmarks in a cost-responsible manner and further committed to Ohio based projects to meet 100% of its 2010 and 2011 benchmark requirements rather than the 50% which is allowed under SB 221.

Unlike the narrow interests advocated by OAE/VS and other commenters that do not consider the cost impact on customers and the time needed to procure and develop, finance, construct and commission these resources, the Commission needs to more broadly balance the interests of the solar industry with the cost to be paid by customers for blindly pursuing high-priced RECs and rushing facility build-outs and the reality that procuring and developing, permitting, financing, constructing and commissioning a sustainable project or solar industry in Ohio does not occur instantaneously. The General Assembly has entrusted the Commission with the authority and responsibility to balance the desire for deployment of alternative energy resources with the cost and other practical barriers that are faced when doing so. Based on the facts set forth in the application, and

not refuted elsewhere, AEP Ohio submits that 2009 solar RECs are not "reasonably available" and that a deferral/waiver should be granted.

C. The Commission must reject the remedies advocated by OAE/VS

While OAE/VS admits (at 6) that the absence of long-term contracts for 2009 solar RECs "has had serious consequences for Ohio's solar marketplace" (this observation goes well beyond anything that is within AEP Ohio's control), it proceeds to suggest (at 7) that the Commission delay ruling on the application and order AEP Ohio "to solicit long-term, financeable sREC contracts." It is not at all clear how such a process would result in anything different from AEP Ohio's current long-term 20-year agreement with Wyandot for the first utility-scale solar project in Ohio and one of the largest solar projects east of the Mississippi River. Thus, it makes no sense to consider an additional long-term arrangement at this time, given the existence of the Wyandot agreement which as mentioned before, will satisfy AEP Ohio's benchmark obligations through 2011 (the end of the Companies' ESP plan). And it is self-evident that any resulting arrangement would not yield construction of a solar facility any sooner than the Wyandot facility (expected to be online by April 15, 2010). Indeed, OAE/VS is forced to creatively suggest (at 8) that the Commission would need to "retroactively create" solar RECs for satisfaction of the 2009 obligation under their proposal. This is not contemplated by the statute and there is no reason to reach such a tortured interpretation.

OAE/VS alternatively suggests (at 8) that the Commission should impose a $749,700 non-compliance fine. This suggestion, in addition to completely ignoring an electric utility's right to due process and a hearing prior to any such fine, is wholly unwarranted. The purpose of AEP Ohio's application was to request a timely ruling

excusing 2009 SER benchmark performance so as to avoid paying high prices to achieve compliance which could not likely be satisfied at any price due to the unavailability of solar RECs in the market and instead add any unfulfilled obligations for the 2009 SER benchmark to AEP Ohio's 2010 SER benchmark. Though OAE members might hope to procure benefits from the resulting deposit into the Advanced Energy Fund, it would be premature and otherwise unreasonable for the Commission to deny the deferral/waiver request and simultaneously impose a fine for noncompliance.

II. AEP OHIO RESPONSE TO COMMENTS OF THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES

OCEA submits four arguments in opposition to AEP Ohio's application: (A) the Commission must properly enforce the *force majeure* standard (at 3-6); (B) AEP Ohio could have sought long-term contracts (at 6-7); (C) AEP failed to adequately encourage the development of distributed generation (at 8-10); and (D) if the application is granted, the Commission should impose additional requirements upon the Companies (at 10-12). Some of these arguments partially overlap with arguments made by OEC and OAE/VS that have already been addressed by AEP Ohio. Each claim lacks merit and will be briefly addressed below.

A. OCEA wrongly characterizes the standard applicable to AEP Ohio's request

OCEA argues (at 4) that the General Assembly passed the SER benchmark in 2008 with a 2009 requirement and, had the legislature wished to institute solar requirements in 2010, it would have written the statute as such. This argument should be ignored by the Commission as it glosses over the fact, admitted elsewhere by OCEA, that

Section 4928.64(C)(4)(c) clearly enables the Commission to determine that the necessary solar resources "are not reasonably available" to meet the 2009 SER benchmark. If the General Assembly had intended to rigidly enforce the benchmarks without exception, it would not have granted the Commission authority to reasonably balance availability of resources with the associated price that customers will pay.

OCEA also criticizes (at 4-5) AEP Ohio's statement that it could not finalize its compliance plan until the Commission's Green Rules (Case No 08-888-EL-ORD) were finalized. As the Commission fully understands, there were several uncertainties associated with the REC-related requirements that were not resolved until the final stages of the still-pending rulemaking – such as the Ohio-based requirements, various double counting issues, definition of RECs, registration requirements, metering requirements for distributed generation facilities, renewable energy resource definitional uncertainties like those addressed just last week by the Commission in Case No. 09-730-EL-REN (Glatfelter certification), etc.

In addition, since 2008, AEP Ohio has consistently informed the Commission through its ESP applications and testimony (Case Nos. 08-917-EL-SSO and 08-918-EL-SSO) of its plan to comply in 2009 primarily by purchasing RECs. The Commission responded in the ESP cases by authorizing a fuel adjustment clause that includes pass through of prudently-incurred renewable energy purchase costs and REC purchase costs. The high prices found in today's solar REC market due to lack of supply are beyond the control of AEP Ohio and form a valid basis for granting a deferral/waiver as requested.

B. OCEA's position that AEP Ohio should have sought long-term contracts should be rejected

OCEA argues that AEP Ohio should have sought long-term contracts. Again, OCEA argues (at 6) that medium to large scale projects will not develop in Ohio unless there is a firm source of financing. It is not AEP Ohio's responsibility to alone change the Ohio solar REC market. Nonetheless, as discussed, the Companies did enter into a long-term contract, the largest to-date in Ohio, that will catch up and carry through 2011.

OCEA also argues (at 7) that utilities that seek current year solar RECs do not provide the necessary market stability to induce the solar industry to construct and operate solar farms. Again, this position misses the point that AEP Ohio has (uniquely among Ohio utilities) promoted Ohio solar farm development that will exceed AEP Ohio's in-state solar REC requirement. Moreover, Section 4928.65, Revised Code, expressly permits use of REC purchases for compliance and it is not reasonable or appropriate to require multiple long-term agreements that would result in over-compliance and significant compliance cost increases that would be passed through to customers. AEP Ohio is not asking to be rewarded for its progressive efforts to help develop Ohio-based solar development, but it is asking for the Commission to ensure that it is not unfairly punished.

C. OCEA's criticism, that AEP Ohio should have further stimulated development of distributed generation, is also misplaced

OCEA next argues (at 8) that AEP Ohio should have encouraged wider use of customer-sited systems and (at 9) taken a more active role in encouraging residential solar projects. AEP Ohio submits that it has no duty to create or modify a REC market

and, in any case, such programs could not have formed the basis for a robust 2009 solar REC compliance plan (AEP Ohio needed more than 1,800 solar RECs for 2009). Nevertheless, AEP Ohio is committed to developing consumer programs that encourage reasonable development of distributed solar generation facilities and rewarding customers that have existing solar facilities. As OCEA is well aware, AEP Ohio has filed proposals for a Renewable Energy Technology Program to provide long-term (20 year) incentives for solar photovoltaic and small wind resources to encourage residential and non-residential customers to install renewable energy resources on the customer premises (Case Nos. 09-1871-EL-ACP and 09-0872-EL-ACP); and for a Renewable Energy Credit Purchase Program to purchase solar photovoltaic and small wind RECs from residential and non-residential customers with existing customer-sited resources (Case Nos. 09-1873-EL-ACP and 09-0874-EL-ACP). Again, development of such programs follows the development of the Commission's Green Rules; it would be unwise for a utility to roll out such programs before the rules were substantially completed – only to have to go back and retract or modify the programs. In any case, AEP Ohio proposed significant programs to promote distributed solar generation and approval of those programs are presently pending before the Commission for decision (where all of the final parameters of those programs, including resolution of OCEA's unsupported suggestion that a specific quota/percentage of the Companies' required REC purchases be from consumers will be resolved). Such matters are not for resolution in this case.

D. The Commission should not entertain OCEA's alternative punitive remedy

Like its counterpart OEC, OCEA also argues that granting the Companies' application would set a bad precedent for handling other excusal requests. OCEA's

position fails to credit AEP Ohio for simply making a request to defer compliance for a short period in order to significantly reduce the compliance costs to be paid by all of its customers due to the lack of RECs in the market in 2009. Perhaps because AEP Ohio proposed a reasonable compromise of deferred compliance, OCEA decided to more aggressively pursue a punitive remedy. In any case, OCEA proposes that AEP Ohio not only catch up in 2010 but also would add an extra requirement on AEP Ohio for 2010 as punishment for seeking a deferral of the SER 2009 benchmark. This is inappropriate and unjustified, especially since (as discussed above) AEP Ohio has developed a plan that focuses on Ohio-based solar generation in excess of the Ohio-specific mandates – a material fact overlooked by all commenters. Granting a deferral of compliance, rather than an excusal, is not precedence for allowing Companies to avoid compliance. The statute does not even presume (as is being proposed by AEP Ohio) that a fully justified excusal would be subsequently made up. The Companies' proposal to fully catch up in 2010 at a more reasonable cost is appropriate and there is no statutory basis – let alone due cause – to impose a punitive remedy as suggested by OCEA.

CONCLUSION

All of OCEA's and OAE/VS's arguments should be rejected and the Companies' application should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Additional Reply Comments was served by U.S. Mail upon the individuals listed below this 16th day of December 2009.

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Summary: Reply -- Additional Reply Comments electronically filed by Mr. Steven T Nourse on behalf of Columbus Southern Power Company and Ohio Power Company