

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission Review of)	
the Capacity Charges of Ohio Power)	Case No. 10-2929-EL-UNC
Company and Columbus Southern Power)	
Company)	

**OHIO POWER COMPANY'S
MEMORANDUM IN RESPONSE TO STAFF'S MOTION AND REQUEST
FOR EXPEDITED RELIEF**

Late in the afternoon of May 1, 2012, the parties to this case received a communication from counsel for the Commission Staff that it would be seeking leave to file corrected testimony and seek a change in the procedural schedule to ensure a complete record for Commission review. Ohio Power Company ("Company" or "AEP Ohio") does not oppose a complete record for the Commission's review, however, the Company does have a number of concerns with the vague request by the Staff to file testimony and with the unresolved status of promised data not being provided as agreed to on the record in the case. It would appear from its motion that Staff may be attempting to achieve two distinct things: (1) correct "significant, inadvertent errors" in Mr. Harter's testimony, and (2) obtain a second, after-the-fact opportunity to present additional testimony, for the purpose of rehabilitating or supplementing areas in Staff's written and oral testimony that were deficient. The Company does not oppose the first goal (which is the stated purpose of the motion) but Staff should not be permitted to pursue the second goal because that would violate the due process rights of the Company and other parties involved in the litigation.

Of course, the Company agrees that a schedule change is appropriate to alleviate the need for the Company to file rebuttal testimony four and a half business hours after the motion was filed by Staff and in the absence of the promised underlying data. Until the afternoon of May 1, the Company had been patiently working with Staff to obtain the workpapers supporting Staff's testimony and was expecting to meet the May 2 rebuttal deadline after receiving the information. The change in schedule should either provide the Company the data and time needed to complete the rebuttal testimony, or if the Commission grants Staff time to correct errors in the direct case filed, then provide the Company sufficient time to examine and consider the corrections made to the testimony.

The Company was in contact with the Staff seeking production of the documents that Staff Counsel agreed to provide by Monday, April 30, 2012, in response to a request by the Bench for the data. (See Tr. IX at 2055-2056.) Staff witness Harter did not provide all of the information to explain the generation data used for the modeling relied upon by the witness. As of Wednesday morning of May 2, data that matches the "Total Generation" column on Exhibit RTH-1 still has not been provided by Staff. The Company was prepared to file a request for continuance but Staff represented that it planned to do so since the information needed by the Company had not yet been provided by Staff.

The Staff indicates in its motion that in the process of collecting those workpapers to be released to the Company that it discovered the "significant, inadvertent errors" in estimating the energy credits in the testimony of Ryan T. Harter. Staff indicated its desire to eliminate those errors through the presentation of testimony and suggested this new schedule. The Company is not opposed to ensuring the Commission has an accurate record but that goal should be pursued through a reasonable and fair process. If the request is for the Staff to make corrections to Mr.

Harter's testimony to eliminate errors that were discovered after cross examination to ensure the Commission has the corrected analysis to apply with accurate data, then the Company does not take issue with that approach -- subject to the Company being afforded a timely opportunity to review and examine Mr. Harter on the stand to discuss his corrected testimony.

The broad language in the motion suggests, however, that correction of Mr. Harter's errors may not be the full extent of the testimony to be filed. Procedurally, a correction to exhibits or analysis upon discovery in hearing that errors have been presented to the Commission by Staff can be viewed as merely correcting the record. But any attempt to jettison the previous position (and/or witness) in favor of a new approach under the banner of making corrections should not be permitted. The Commission established a process to follow in this case and that process has been followed to date.

To the extent the Staff's intention is to file a new method or supplant Mr. Harter with a different witness testifying to different issues (or answering questions that Mr. Harter was simply not able to address), then the Company's concerns increase and maintaining fairness and due process may be difficult under that approach. Staff freely chose its witness and should not be permitted to substitute for another after the hearing process is completed simply because the previous witness made significant errors. Stated differently, it is one thing for Staff to correct previously undiscovered errors; it is quite another for Staff to be granted a "second bite at the apple" or switch out its witnesses after already being subjected to extensive and revealing cross examination.

Even if the Commission were inclined to accept a new witness and/or a new methodology, which it should not, then that witness should stand on his or her own. It would be procedurally deficient for any new witness to rely upon the testimony of Mr. Harter when the

Commission Staff admits it had significant errors (whereas if Mr. Harter were correcting his own analysis, he could at least explain the basis for the corrections and the relationship to his prior testimony and extensive cross examination). A deficient record and process could still exist if a new witness was provided just to provide the underlying data that was full of errors and Mr. Harter did not appear again as a witness to explore how any of that data would be applied in the model. Regardless of the approach taken, the Company would expect the data already promised to still be provided and that complete workpapers associated with any updates would also be required along with the corrected testimony – at the same time the corrected testimony is filed. The workpapers provided should be sufficient for the Company and Parties to validate the accuracy of the Staff's analysis and the underlying assumptions as well as to calculate the impact of changes to the input assumptions (*i.e.*, a description of the model, indication of the settings and inputs used, etc.). It is unclear what position will be advanced by Staff in its corrected testimony, but the Company still has the right to the data previously relied upon to test the veracity of the new position compared to the old position.

The delay in the proceeding is another significant concern by the Company. Each day that passes extends the risk that the Commission will not be able to reach a full and vetted decision before the interim capacity pricing established by the Commission, and intended to serve throughout the duration of this case, expires. The Company did file a motion Monday seeking an extension of the same capacity pricing previously approved by the Commission in this interim period until a decision can be reached in this case. A further delay to either provide the promised data or to provide Staff time to correct errors in its testimony further supports the reasonableness of that request, which should be simultaneously granted if the Staff's motion is granted. The modified ESP II cases (Case Nos. 11-346-EL-SSO et al.) are also set to begin on

May 14, 2012, the day Staff recommends holding the rebuttal hearing in this case. The Company is interested in moving forward with the modified ESP II as soon as practicable and does not want to sacrifice any process in those cases due to actions in the present case.¹

For the reasons outlined above, the Commission should condition Staff's request for an extension and leave to file corrections in line with the concerns raised above to ensure a complete record as a result of the corrections to the errors in the Staff testimony and order the production of the documentation previously promised before the Examiner in the case.

Respectfully submitted,

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On behalf of Ohio Power Company

¹ If the Commission did adjust the procedural schedule in the modified ESP cases it could simultaneously provide the Company more than the single business day opportunity to serve written discovery on the over 40 Intervenor in those cases. The Company is currently set to receive the testimony of all Intervenor on Friday, May 4, 2012, and is expected to serve all written discovery by the cutoff date of Monday, May 7, 2012. It must also conduct that discovery while still being subject to discovery from the other Intervenor despite the fact that the Company filed its testimony a month ago.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the forgoing memorandum in response and request for expedited relief was served this 2nd day of May, 2012 by U.S. Mail and electronic mail, upon the persons listed below.

//ss// Matthew J. Satterwhite
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Summary: Memorandum in Reponse to Staff's Motion and Request for Expedited Relief electronically filed by Mr. Steven T Nourse on behalf of American Electric Power Service Corporation