

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company and)	
Ohio Power Company for Authority to)	Case No. 11-346-EL-SSO
Establish a Standard Service Offer)	Case No. 11-348-EL-SSO
Pursuant to §4928.143, Ohio Rev. Code,)	
in the Form of an Electric Security Plan.)	

In the Matter of the Application of)	
Columbus Southern Power Company and)	Case No. 11-349-EL-AAM
Ohio Power Company for Approval of)	Case No. 11-350-EL-AAM
Certain Accounting Authority.)	

**INDUSTRIAL ENERGY USERS-OHIO'S MOTION TO STRIKE
OHIO POWER COMPANY'S APPLICATION AND SUPPORTING TESTIMONY
AND MEMORANDUM IN SUPPORT**

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ATTORNEYS FOR INDUSTRIAL ENERGY USERS-OHIO

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**INDUSTRIAL ENERGY USERS-OHIO’S MOTION TO STRIKE
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On March 30, 2012, Ohio Power Company (“OP” or “AEP-Ohio”) filed a Modified Application to establish a standard service offer (“SSO”) in the form of an electric security plan (“ESP”) (“Application”).¹ The Application and supporting Testimony, however, contain proposals that are without statutory justification or a basis in law. Accordingly, Industrial Energy Users-Ohio (“IEU-Ohio”) hereby moves to strike portions of the Application and Testimony, as identified in Attachment 1, that reference:

1. OP’s Formula Rate:
 - a. Discounted capacity as a benefit;
 - b. Establishing a capacity rate to charge certified retail electric service (“CRES”) providers of shopping customers in OP’s territory;
 - c. PJM Interconnection’s LLC (“PJM”) Capacity Market;
 - d. The Fixed Resource Requirement (“FRR”) for the AEP East operating companies.

¹ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Modified Application (March 30, 2012) (hereinafter “*ESP II*”).

2. OP's corporate separation plan filed in Case No. 12-1126-EL-UNC;
3. The AEP Interconnection Agreement (aka the Pool Agreement), the revenues OP obtains under the Pool Agreement, and the Pool Termination Rider;
4. An Alternate Method to consider the impact of the Turning Point Solar Project on the ESP Market Rate Offer ("MRO") price test;
5. References to an improperly calculated ESP v. MRO price test where OP failed to properly blend the MRO side of the equation;
6. Citations and references to stipulations that contain provisions prohibiting references and citations to the stipulations;
7. Documents that contain statements that are unreliable and contain use restrictions.

As discussed in additional detail in the Memorandum in Support, references to these items are not relevant to the Public Utilities Commission of Ohio's ("Commission") decision regarding OP's Application. Alternatively, to striking the portions of the Testimony of Laura Thomas where she incorrectly calculates the cost of the ESP and the cost of an MRO, it would be appropriate to direct OP to update her Testimony to reflect the appropriate cost of both the ESP and MRO, as discussed below. This approach has been endorsed by the Commission at least twice already in this proceeding; first during the ESP II Stipulation hearing to reflect the removal of provider of last resort ("POLR") charges, and second in the Commission's April 25, 2012 Entry directing OP to update their Testimony to include the costs of the Turning Point Solar project as a cost of the ESP.

Respectfully Submitted,

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INDUSTRIAL ENERGY USERS-OHIO’S MEMORANDUM IN SUPPORT

OP’s Application contains numerous citations and references to information that is not relevant to the Commission’s review of OP’s ESP, as presented in the Application and Testimony. Rule 4901-1-27(B)(7), Ohio Administrative Code, authorizes the attorney examiner presiding over a hearing to “[t]ake such actions as are necessary to: (a) Avoid unnecessary delay [and] (b) Prevent the presentation of irrelevant or cumulative evidence.” As demonstrated below, OP’s Application and Testimony contain numerous passages that attempt to present irrelevant evidence to the consideration of an ESP that will unnecessarily delay the hearing and confuse the record.

A. ARGUMENT

1. The Commission Should Strike Testimony That Is Not Relevant to the Outcome of the Proceeding

Evidence that is not relevant to this proceeding should be stricken from the Application and Testimony because it is not of consequence to the determination of the

matters presented in this case.² Ohio Rule of Evidence 401 provides the definition of relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Additionally, Rule 4901-1-27(B)(7), Ohio Administrative Code, allows the attorney examiner to “[t]ake such actions as are necessary to: (a) [a]void unnecessary delay [and] (b) [p]revent the presentation of irrelevant or cumulative evidence.”

The Commission has followed this rule in the past and stricken irrelevant evidence. *In the Matter of the Application of Verizon Wireless for Arbitration of an Interconnection Agreement with SBC Ohio*, Case No. 03-515-TP-ARB, Arbitration Award at 4 (November 13, 2003), (holding that “this evidence is irrelevant in any case, as the Commission determines in this opinion and order that the activities of SBC’s affiliate in Michigan are not relevant to any finding of discrimination in Ohio”); *see also In the Matter of the Petition of TDS MetroCom, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio*, Case No. 02-1254-TP-ARB, Entry at 2 (September 27, 2002), (holding that comments should be stricken as they are outside the scope of the proceeding and do not assist the Commission in determining the issues presented in the proceeding); *see also In the Matter of the Joint Application of SBC Communications Inc. and AT&T Corporation for Consent and Approval of a Change of Control*, Case No. 05-269-TP-ACO, Entry at 5-6 (August 3, 2005), (holding that testimony addressing issues outside the proceeding should be stricken); *see also In the Matter of the Application of Ohio Edison Company*,

² See generally R. Evid. 401.

the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Case No. 10-388-EL-SSO, Opinion and Order at 19 (August 25, 2010), (granting IEU-Ohio's motion to strike portions of witness testimony not probative to an application filed pursuant to Section 4928.141, Revised Code).

References in the Application and Testimony to matters beyond the scope of an ESP proceeding or to matters beyond the Commission's jurisdiction are irrelevant to the Commission's consideration of the Application and should be stricken because they will not aid the Commission's review of the Application. References in the Application and Testimony that have no basis in law should be stricken because they will confuse the record, cause unnecessary delay, and not aid the Commission in its review of the Application. Further, OP's references to various stipulations entered into in separate proceedings are without evidentiary weight and should be stricken as irrelevant. By their very terms, these stipulations do not carry any precedent or evidentiary weight. Therefore, citation and reference to these stipulations do not make any facts in this proceeding "more probable or less probable." Finally, Testimony that has no basis in law should be stricken.

Allowing the presentation of irrelevant evidence will only further delay this proceeding; a proceeding that has been ongoing for well over a year. As discussed below, the presentation of evidence on these matters is unnecessary as they are irrelevant and will only delay the hearing.

B. THE BASIS FOR STRIKING PORTIONS OF THE APPLICATION AND TESTIMONY

1. OP's Unlawful Capacity Proposals

The portions of the Application and Testimony that reference “discounted capacity” as a benefit in the ESP v. MRO test should be stricken. Likewise, all references to the \$355 per megawatt-day (“MW”) capacity price should be stricken on the MRO side of the test. The Commission has already ruled that OP’s discounted capacity benefit claim and use of the \$355 MW/day price in the ESP v. MRO price test were meritless.³ Continued and extensive testimony and cross-examination on this subject will only confuse the record, delay the hearing and will not make the Commission’s application of the ESP v. MRO test any different.⁴ Moreover, unless the Commission strikes these references, OP will inevitably reargue this position on brief *ad nauseum*, and each party will be forced to respond rather than focusing on the real issues in this proceeding. Therefore, the references to discounted capacity, as identified in Attachment 1, should be stricken. Further, the Commission is without authority to approve OP’s requested formula rate in an ESP proceeding and, therefore, the entire topic is irrelevant to this proceeding.

An ESP may only include items that fall into the enumerated categories in the ESP statute.⁵ None of the enumerated sections authorize the Commission to establish a formula-rate/cost-based capacity charge to assess to CRES providers of shopping

³ Opinion and Order at 30-31 (Dec. 14, 2011).

⁴ In the alternative to striking this testimony, the Commission should direct Ms. Thomas to recalculate the ESP v. MRO price test without “discounted capacity” and the improper \$355/MW-day capacity price on the MRO side of the test. Such an order would be consistent with the Attorney Examiner’s order that OP remove unlawful POLR charges from the ESP v. MRO price test. See Tr. Vol. I at 151.

⁵ *In re Columbus S. Power Co.*, 128 Ohio St. 3d 512, 2011-Ohio-1788 ¶¶ 31-35.

customers in OP's territory.⁶ Because the ESP Statute⁷ does not authorize the Commission to approve OP's capacity formula rate or two-tiered capacity rate, the proposal to establish such a rate, discussions about the rate, and background information on PJM's capacity market and OP's position as part of the AEP East operating companies' FRR Entity are irrelevant. Discussions about the formula rate, two-tiered capacity and PJM's capacity market, etc., do not make it any "more probable or less probable" that the Commission will approve the requested formula rate, as there is no basis in the ESP Statute to approve such a charge. Furthermore, all the extraneous information on the PJM capacity market will cause undue delay and will not add anything meaningful to the actual scope of this proceeding; the consideration of an ESP.

Additionally, the Commission is no longer authorized to approve transition revenues for an electric distribution utility's ("EDU") generation assets that are above market.⁸ OP claims that its book-cost of its generation fleet exceeds the revenues OP can obtain in the short-term from the market.⁹ In this proceeding OP has requested an above-market two-tiered capacity plan,¹⁰ or alternatively, approval of its above market

⁶ See Section 4928.143, Revised Code.

⁷ *Id.*

⁸ Section 4928.40(A), Revised Code; Section 4928.141(A), Revised Code.

⁹ See Testimony of J. Edward Hess (May 4, 2012); Testimony of Kevin M. Murray (May 4, 2012). OP also references its "litigation position" in its Case No. 10-2929-EL-UNC, to claim that a discount from its unreasonably \$355/MW-day charge requested in that case is somehow a benefit. Reference to the Testimony of Kevin Murray, and J. Edward Hess in that case, however, demonstrate that the \$355/MW-day charge is another request for transition revenues. *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Testimony of Kevin M. Murray (Apr. 4, 2012) (hereinafter "*OP Capacity Case*"); *OP Capacity Case*, Testimony of J. Edward Hess (Apr. 4, 2012). OP also requests approval of the \$355/MW-day charge in this proceeding. Testimony of William Allen at 15-16 (March 30, 2012).

¹⁰ Testimony of William Allen at 6 (Mar. 30, 2012).

formula-rate. OP's proposal is an improper request for transition revenues. OP does not attempt to hide the fact that it is requesting above-market revenues such that it can "transition"¹¹ to market-based rates. However, under Ohio law the transition period to market -based generation rates for EDU's has expired as has OP's right to request transition revenues.¹²

As identified in the direct testimony of IEU-Ohio witnesses Kevin M. Murray and J. Edward Hess, filed in this proceeding on May 4, 2012, OP's request to recover above-market generation costs is nothing more than another request for transition revenues.¹³ Because Ohio law no longer authorizes the Commission to grant recovery of stranded-costs and because Ohio law no longer allows and EDU to collect stranded costs, OP's two-tiered capacity and its formula-rate producing \$355/MW-day transition charge are unlawful and irrelevant to consideration of an ESP. Furthermore, in the electric transition plans ("ETP") of OP and Columbus Southern Power Company ("CSP"), both CSP and OP agreed to forgo recovery of stranded costs.¹⁴ Thus, the Commission is prohibited by law from authorizing, and OP is prohibited from requesting (per the ETP stipulation), the two-tiered capacity charge and the alternative formula-rate \$355/MW-day charge. Both of these proposals amount to transition charges and are

¹¹ Testimony of Robert Powers at 4 (Mar. 30, 2012).

¹² Section 4928.40(A), Revised Code; Section 4928.141(A), Revised Code.

¹³ Testimony of J. Edward Hess (May 4, 2012); Testimony of Kevin M. Murray (May 4, 2012); *see also OP Capacity Case*, Testimony of Kevin M. Murray (Apr. 4, 2012); *OP Capacity Case*, Testimony of J. Edward Hess (Apr. 4, 2012).

¹⁴ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Transition Plan and Application for Receipt of Transition Revenues*, Case Nos. 99-1729-EL-ETP, *et al.*, Stipulation and Recommendation at 3 (May 8, 2000).

simply another attempt by OP to take a bite of the stranded-cost/transition-revenue apple.¹⁵

For these reasons, IEU-Ohio moves to strike the portions of the Application and Testimony identified in Attachment 1 that relate to or reference: discounted capacity as a benefit; a formula-rate/cost-based capacity charge to levy upon CRES providers of shopping customers; and background information on PJM's capacity market and the AEP East operating companies' FRR obligation.

2. Corporate Separation

The references in the Application and the Testimony to OP's corporate separation plan should be stricken because the plan has not been filed in this proceeding and is, therefore, irrelevant to the consideration of OP's ESP. OP's corporate separation plan, and its request to transfer generation assets, has been filed in Case No 12-1126-EL-UNC. OP has not filed the plan and transfer request in this proceeding and has not requested that the case be consolidated with this proceeding. Thus, there is no basis to consider these details and any consideration of the plan and transfer request in this proceeding will not have any impact on OP's ESP. This makes corporate separation and OP's transfer request irrelevant in this proceeding and testimony and cross-examination on this subject will only cause undue delay in this proceeding. Therefore, IEU-Ohio moves to strike the applicable portions of the Application and Testimony identified in Attachment 1.

¹⁵ As further demonstrated by the Testimony of J. Edward Hess and Kevin Murray, the retail stability rider suffers from the same defect in that it requests transition revenues.

3. Pool Termination

In the Application, OP requested the Commission approve a pool termination rider if the Commission modifies OP's corporate separation application and transfer request in any form. As mentioned above, the corporate separation plan and transfer request are not at issue in this proceeding and, therefore, one of the premises upon which OP will request the rider will not be determined through this proceeding. Thus, any discussion about the pool termination rider at this point in time is superfluous and not ripe. If the Commission subsequently modifies the corporate separation plan and transfer request OP is not without remedy, OP may withdraw its ESP and may file a new application that proposes a pool termination rider.

Furthermore, there is no basis for approval of a pool termination rider in the ESP Statute.¹⁶ As with OP's requested formula rate capacity charge, if the Commission lacks authority to authorize the rider under the ESP Statute,¹⁷ testimony on the subject is irrelevant in the proceeding. Moreover, the Pool Termination Rider is just another request for transition revenues for assets that cannot recover their costs in the short-term market.¹⁸ For these reasons, IEU-Ohio moves to strike the portions of the Application and Testimony, as identified in Attachment 1, that reference: a Pool Termination Rider, the AEP Interconnection Agreement (the "Pool Agreement"), and other background information on the Pool Agreement including revenues OP receives under the agreement. These issues are irrelevant to this ESP proceeding and consideration of these issues will cause undue delay.

¹⁶ Section 4928.143, Revised Code.

¹⁷ *Id.*

¹⁸ Testimony of J. Edward Hess at 22-24 (May 4, 2012).

4. References in OP Witness Thomas' Testimony to an Alternate Method to Consider the Impact of the Turning Point Solar Project

OP requested a waiver of Rule 4901:35-03(C)(9)(b), Ohio Administrative Code, with respect to the cost information for the facility known as Turning Point Solar. The Commission denied the request, citing to its December 14, 2011, Opinion and Order, which stated that the information must be included in the ESP v. MRO price test as a cost of the ESP. Particularly, the Commission stated:

As we established in our December 14, 2011, Opinion and Order, we believed the inclusion of projected Turning Point solar project costs were an important consideration in the statutory test under Section 4928.143, Revised Code. Further, AEP-Ohio provided such project costs in the previous evidentiary hearing in this case. See Opinion and Order at 30 (December 14, 2011). Therefore, while we stress that the Commission is not predetermining or prejudging the merits of AEP-Ohio's modified application, having information related to any projected rate impacts by customer class, as well as any projected costs that are currently known to be associated with the creation of the Turning Point facility available for the Commission's consideration, is not only necessary for our consideration of the modified application, but is also in the public interest. Accordingly, AEP-Ohio's request for waivers is hereby denied. AEP-Ohio is directed to supplement its application with this information within seven days unless otherwise ordered by the Commission or the attorney examiner.¹⁹

On May 2, 2012, OP filed the supplemental testimony of Laura Thomas. But, Ms. Thomas claimed,

[A]s advised by Counsel, Rider GRR would be available under either an ESP or a MRO. Therefore, while Company witness Roush has quantified the customer impact of the TPS Project under Rider GRR, that customer impact would be exactly the same regardless of whether the Company is under a MRO or an ESP.²⁰

¹⁹ Entry at 3 (Apr. 25, 2012); *see also* Opinion and Order at 30 (Dec. 14, 2011) (requiring the inclusion of the Turning Point Solar project as a cost of the ESP in the ESP v. MRO test).

²⁰ Supplemental Testimony of Laura Thomas at 2.

Ms. Thomas' claim conflicts with the Commission's December 14, 2011 Opinion and Order and April 25, 2012 Entry, which state that the price of Turning Point must be considered in the ESP price only. Accordingly, the Commission must strike the inaccurate supplemental testimony of Laura Thomas, as identified in Attachment 1, inasmuch as her testimony claims that Turning Point would impact both the ESP and the MRO.

5. References in OP Witness Thomas' Testimony Regarding the ESP v. MRO Test Inasmuch as Her Testimony Fails to Properly Price the Last Year of the MRO Side of the Test.

Portions of Laura Thomas' testimony fails to comply with the requirements of Sections 4928.142 and 4928.143, Revised Code, regarding the MRO side of the ESP v. MRO price test for the period of January to May 2015 and should, therefore, be stricken.

Ms. Thomas calculates the MRO price under two different methods for which there is no statutory authority. First, Ms. Thomas claims that "[t]he first method would continue the weighting of the Generation Service Price, although adjustments would be made to the price according to the provisions of Section 4928.142(D) [sic], Revised Code, as the generation price, including the fuel factor, would be replaced by purchased power cost that reflects the price resulting from the competitive bid process."²¹ Ms. Thomas attempts to conflate the ESP proposal (a competitive bidding process in 2015) with the result that would occur under an MRO, which would render the ESP v. MRO price test meaningless under any proposal for a competitive bidding process. But the MRO side of the test is a price benchmark that is unaffected by the ESP proposal. As

²¹ Direct Testimony of Laura Thomas at 19.

Section 4928.142(D), Revised Code, specifically states, the MRO side of the test must be blended for each of the first five years.

Furthermore, even assuming that the ESP proposal could impact the MRO benchmark price, it would be imprudent to flow through the higher price that would result from the competitive bidding process through the purchase power clause.²² The Commission has held that the purpose of the gradual blending period is to protect customers, stating, “[w]e believe that one of the primary intents of the statutory language is to protect the company's customers from drastic rate changes.”²³ Thus, under an MRO, OP would be required to blend its legacy generation rate with the results of the competitive bidding process for five years.

Ms. Thomas claims, “[b]ecause pricing during this period is based on a competitive bidding process, both methodologies result in the Expected Bid Price being equal to the MRO price which is equal to the modified ESP price.”²⁴ She further cites to the Opinion and Order in FirstEnergy Corp.’s (“FirstEnergy”) ESP Case to support her conclusion.

First, the FirstEnergy ESP was resolved through a stipulation and citation to this stipulation is improper (as more fully explained below). Second, an MRO would be blended differently for FirstEnergy than it would for OP because FirstEnergy did not own or operate generation as of July 31, 2008. Section 4928.142(D), Revised Code, states:

²² *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for the Monongahela Power Company*, Case No. 04-480-EL-UNC, Opinion and Order at 18-19 (Dec. 8, 2004) (finding it imprudent for MonPower to not enter an agreement at capped rates).

²³ *In the Matter of Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for a Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, Opinion and Order at 25 (Feb. 23, 2011).

²⁴ Direct Testimony of Laura Thomas at 20.

[t]he first application filed under this section by an electric distribution utility that, as of July 31, 2008, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in this state shall require that a portion of that utility's standard service offer load for the first five years of the market rate offer be competitively bid under division (A) of this section as follows: ten per cent of the load in year one, not more than twenty per cent in year two, thirty per cent in year three, forty per cent in year four, and fifty per cent in year five.

Since FirstEnergy did not own or operate generation as of July 31, 2008, the blending percentages did not apply to FE's ESP v. MRO test. The same cannot be said for OP. For these reasons, IEU-Ohio moves to strike to applicable Testimony of Laura Thomas, as identified in Attachment 1.

6. References to Stipulations

References in the Application and Testimony to various stipulations previously approved by the Commission should be stricken. By their very language, these stipulations carry no precedential or evidentiary weight and prohibit citation to them.²⁵ Additionally, the Ohio Supreme Court has held that stipulations are not evidence themselves. Because the various stipulations referenced throughout the Application and Testimony do not carry any weight, they do not make any fact of consequence in

²⁵ In the Application and Testimony OP cites to/references the following cases that were resolved by the Stipulation: *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates*, Case Nos. 11-351-EL-AIR, *et al.*, Stipulation at 14 (Nov. 23, 2011); *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Stipulation at 28-29 (Sep. 7, 2011); *In the Matter of the Application of FirstEnergy Corp. on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Their Transitions Plans and For Authorization to Collect for Transition Revenues*, Case Nos. 99-1212-EL-ETP, *et al.*, Stipulation at 17-18 (Apr. 17, 2000); *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Stipulation at 41-42 (Oct. 24, 2011); *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Stipulation at 34 (Mar. 23, 2010). Each of these stipulations contains provisions prohibiting citation to them as precedent to support propositions in future proceedings.

this proceeding “more probable or less probable” and, are therefore, irrelevant in this proceeding. Therefore, references and citations to these stipulations, and identified in Attachment 1, add nothing to the evidentiary record in this proceeding and will only cause further undue delay as parties argue over the meaning of irrelevant terms.

7. Documents that Limit Their Use and are Otherwise Unreliable

References in the Testimony to documents that contain use restrictions and are otherwise unreliable should be stricken. The Testimony of OP witness Hawkins references several financial analysis documents in her Exhibit RVH-6. These documents were prepared by an outside entity that is not being presented in this proceeding to authenticate the documents or otherwise provide any foundation or background to the documents. Without the ability to cross-examine the witness who prepared these documents IEU-Ohio is unduly prejudiced.

Additionally, the documents contain various disclaimers that wholly discredit their reliability and therefore, Exhibit RVH-6 should be stricken. The first document on pages 1-3 of Exhibit RVH-6 contains the following disclaimer:

No warranty express or implied, as to the accuracy, timeliness, completeness ... of any such ... opinion or information given or made by Moody's in any form or manner whatsoever.²⁶

Further, and similar to the reason for not allowing references to the stipulations discussed above, the document contains the following limitation:

All information contained herein is protected by law, including but not limited to copyright law, and none of such information may be recopied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without Moody's prior written consent.

²⁶ Exhibit RVH-6 at 3 (all caps text removed).

Allowing the introduction of this document would not only be improper because the document itself disclaims its reliability, but the further use and dissemination of this document might constitute breach of contract or a violation of copyright law.

The second document in Exhibit RVH-6 is contained on pages 5 and 6 of the Exhibit and contains a similar disclaimer and use restriction. The third and final document in Exhibit RVH-6 is contained on pages 7 through 10. The third document references an external website for additional information on its disclaimers. That website provides:

Ratings are not facts, and therefore cannot be described as being "accurate" or "inaccurate".

If the information in this third document contains opinions of an outside entity that cannot confirm the accuracy of the document it would be improper to consider it in this proceeding. For these reasons, IEU-Ohio moves to strike Exhibit RVH-6 in its entirety as the information is not reliable and contains restrictions on its use. Further use and reproduction of these documents could constitute violations of various laws and contracts.

C. CONCLUSION

As discussed above, OP's testimony contains irrelevant discussions and citations that will not make the Commission's determination of fact of consequence "more probable or less probable." When a party attempts to introduce irrelevant evidence or evidence that will cause undue delay the attorney examiner is authorized by Rule 4901-1-27, Ohio Administrative Code, to take appropriate action. For the reasons discussed herein, IEU-Ohio moves to strike the portions of the Application and Testimony

identified in Attachment 1. Alternatively to striking all the portions of Ms. Thomas' Testimony where she calculates the cost of the ESP and the cost of the MRO, it would be appropriate, consistent with the Commission's actions regarding the costs of POLR during the ESP II Stipulation hearing and the Commission's April 25, 2012 Entry denying waivers regarding the Turning Point Solar project, to direct OP to update Ms. Thomas' testimony to (1) remove "discounted capacity" as a benefit of the ESP and (2) to remove the price effects that the \$355/MW-day charge has on the cost of the MRO.

Respectfully Submitted,

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ATTORNEYS FOR INDUSTRIAL ENERGY USERS-OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Motion to Strike Ohio Power Company's Application and Testimony, and Memorandum in Support* was served upon the following parties of record this 4th day of May 2012, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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ATTORNEY EXAMINERS

Grounds for Striking**Location of Passage to Strike**

	APPLICATION
Basis 1 – Illegal Capacity Charges	Application at 2, 3rd line from the bottom, “highly discounted capacity charges”
Basis 1 – Illegal Capacity Charges	Application at 4, under witness Powers in chart, reference to capacity price overview
Basis 1 – Illegal Capacity Charges	Application at 4, under witness Nelson in chart, reference to “FRR/capacity obligation”
Basis 1 – Illegal Capacity Charges	Application at 4, under witness Allen in chart, reference to “two-tiered capacity pricing”
Basis 1 – Illegal Capacity Charges	Application at 5, under witness Graves in chart , reference to “detailed discussion of PJM capacity market”
Basis 1 – Illegal Capacity Charges	Application at 10, starting with Section “B” and continuing through the end of the section on page 12

	ALLEN
Basis 1 – Illegal Capacity Charges	Allen at 3, lines 4-6, starting with “describe how” through “(CRES) providers”
Basis 1 – Illegal Capacity Charges	Allen at 3, line 17, “Benefit of Discounted Capacity”
Basis 1 – Illegal Capacity Charges	Allen at 4, all of lines 8-14
Basis 1 – Illegal Capacity Charges	Allen at 5, the entire chart
Basis 1 – Illegal Capacity Charges	Allen at 6, line 5 through page 9, line 13
Basis 1 – Illegal Capacity Charges	Allen at 14, line 17 through page 15, line 3
Basis 1 – Illegal Capacity Charges	Allen at 15, line 18 through page 17, line 13
Basis 1 – Illegal Capacity Charges	Allen at WAA-3, all of Exhibit WAA-3
Basis 1 – Illegal Capacity Charges	Allen at WAA-4, all of Exhibit WAA-4
Basis 1 – Illegal Capacity Charges	Allen at WAA-6, 2 nd row in bottom chart, referring to CRES capacity revenues, the 4 th row in the bottom chart labeled “subtotal” and the row labeled “total revenues”

	DIAS
Basis 1 – Illegal Capacity Charges	Dias at 4, line 13 to 18
Basis 1 – Illegal Capacity Charges	Dias at 8, line 15 to 17
Basis 1 – Illegal Capacity Charges	Dias at 10, line 10 to 13

Grounds for Striking

Location of Passage to Strike

	GRAVES
Basis 1 – Illegal Capacity Charges	All of the testimony

	HAWKINS
Basis 6 – Improper Citation to Stipulation	Hawkins at 4, line 22 to page 5 line 1, strike all of the sentence that starts the cost of equity on line 3
Basis 7 – Unreliable/Limited Use Documents	Hawkins at 10 line 19 to page 13 line 5.
Basis 1 – Illegal Capacity Charges Basis 6 – Improper Citation to Stipulation	Hawkins at RVH-6, page 1, the 2 nd and 3 rd paragraphs referencing the now-rejected ESP II Stipulation
Basis 7 – Unreliable/Limited Use Documents	Hawkins Exhibit RVH-6, pages 1-3. The document contained on pages 1-3 contains use restrictions and disclaims its accuracy
Basis 7 – Unreliable/Limited Use Documents	Hawkins Exhibit RVH-6, Page 5 and 6, the document contains use restrictions and disclaims its accuracy
Basis 7 – Unreliable/Limited Use Documents	Hawkins Exhibit RVH-6, pages 7-10, The document contained in pages 7-10 is an outside opinion and it disclaims its accuracy.

	NELSON
Basis 3 – Illegal Pool Termination Rider	Nelson at 3 lines 18 to 20, starting “I sponsor” and ending “Interconnection Agreement (AEP Pool)”
Basis 2 – Corporate Separation Not at Issue	Nelson at 4, lines 1-4
Basis 3 – Illegal Pool Termination Rider	Nelson at 4, lines 5-6
Basis 2 – Corporate Separation Not at Issue	Nelson at 4, line 9 through page 6, line 7
Basis 1 – Illegal Capacity Charges	Nelson at 9, line 1 through page 14 line 6
Basis 3 – Illegal Pool Termination Rider	Nelson 21, line 3 through page 23 line 18
Basis 2 – Corporate Separation Not at Issue	Nelson Ex. PJN-1 and PJN-2
Basis 3 – Illegal Pool Termination Rider	Nelson PJN-3
Basis 2 – Corporate Separation Not at Issue	Nelson PJN 4, page 6

Grounds for Striking	Location of Passage to Strike
	POWERS
Basis 1 – Illegal Capacity Charges	Powers at 4, line 17 through page 5 line 4, starting “that includes discounted capacity” and ending “during the transition.”
Basis 1 – Illegal Capacity Charges	Powers at 5, chart. Powers – “Capacity price overview”; Nelson – “FRR/capacity obligation”
Basis 2 – Corporate Separation Not at Issue	Powers at 5, chart, Nelson – “Transfer of AEP Ohio generation assets”
Basis 3 – Illegal Pool Termination Rider	Powers at 5, chart, Nelson – “new capacity, and pool termination”
Basis 1 – Illegal Capacity Charges	
Basis 1 – Illegal Capacity Charges	Powers at 6, Allen – “Capacity pricing” and “two-tiered capacity pricing”
Basis 1 – Illegal Capacity Charges	Powers at 6, Graves, entire reference and summary of Grave’s testimony
Basis 6 – Improper Citation to Stipulation	Powers at 6, line 5 to page 7 line 7, starting with “for example” ending with “transmission assets”
Basis 6 – Improper Citation to Stipulation	Powers at 7 lines 15 to 18, starting “By contrast” and ending “projected market prices.”
Basis 1 – Illegal Capacity Charges	Powers at page 9, line 10 through 23
Basis 1 – Illegal Capacity Charges	Powers at 10, line 19 through 20, starting with “and to fulfill” ending “FRR Entity”
Basis 1 – Illegal Capacity Charges	Powers at 10, line 23 through page 11, line 15, starting with “and a” ending with “in this proceeding”
Basis 1 – Illegal Capacity Charges	Powers at 13, line 8 through page 18, line 6
Basis 1 – Illegal Capacity Charges	Powers at 18, line 13 to page 19, line 1, starting with “For example” and ending on page 19 with first word “compliance”
Basis 3 – Illegal Pool Termination Rider	
Basis 2 – Corporate Separation Not at Issue	Powers at 19, line 5 to line 6, starting with “until” and ending with “complete”
Basis 3 – Illegal Pool Termination Rider	
Basis 2 – Corporate Separation Not at Issue	Powers at 19, line 15 to 16, starting with “particularly” and ending “being terminated.”
Basis 3 – Illegal Pool Termination Rider	
Basis 1 – Illegal Capacity Charges	Powers at 19, line 21 to 22 starting with “AEP” and ending “\$255/MW-day”
Basis 3 – Illegal Pool Termination Rider	Powers at 20, line 21 to 23, starting with “including” ending “Pool Agreement”
Basis 2 – Corporate Separation Not at Issue	Powers at 21, line 7 to page 23, line 19
Basis 1 – Illegal Capacity Charges	Powers at 23, line 22 to page 24, line 9
Basis 6 – Improper Citation to Stipulation	Powers at 24, line 17, starting with “including” ending “cases”
Basis 3 – Illegal Pool Termination Rider	Powers at RPP-1, page 2, starting 2 nd overall bullet that begins with “Elimination” and continuing through 4 th overall bullet that ends “cost to AEP.”
Basis 3 – Illegal Pool Termination Rider	Powers at RPP-1, page 3, 3 rd bullet point that starts “Pool termination provision.”

Grounds for Striking

Location of Passage to Strike

	ROUSH
Basis 6 – Improper Citation to Stipulation	Roush at page 13, line 19 to line 23, starting with “For example” and ending “Generation Rider.”

	THOMAS
Basis 1 – Illegal Capacity Charges	Thomas at 3, line 8 “Full Cost Capacity”
Basis 1 – Illegal Capacity Charges	Thomas at 3 line 23 to page 4, line 31, starting with “recognition” and ending “FRR”)
Basis 1 – Illegal Capacity Charges	Thomas at 4, line 19 to 22, starting with “As discussed” and ending “for customers.”
Basis 1 – Illegal Capacity Charges Basis 2 – Corporate Separation Not at Issue Basis 3 – Illegal Pool Termination Rider	Thomas at page 5, lines 17 to 22, starting with “Company’s FRR” and ending “corporate separation”
Basis 1 – Illegal Capacity Charges	Thomas at 6 line 18 to 19, starting “the quantifiable” and ending “\$960 million.”
Basis 1 – Illegal Capacity Charges	Thomas at 10, line 3 to 4 starting with “but also” ending “period”
Basis 1 – Illegal Capacity Charges	Thomas at 15 line 5 to line 12, starting with “during the period” and ending “that capacity obligation”
Basis 1 – Illegal Capacity Charges	Thomas at 15, line 15 through page 16 line 8 (including the chart)
Basis 1 – Illegal Capacity Charges	Thomas at 17 line 12 “\$62.17/MWH”
Basis 1 – Illegal Capacity Charges	Thomas at 17 line 23 “\$65.39/MWH”
Basis 1 – Illegal Capacity Charges	Thomas at 18 line 3 “\$63.62/MWH”
Basis 1 – Illegal Capacity Charges	Thomas at 20 line 7 to 14 starting “this result” and ending “at page 44).”
Basis 1 – Illegal Capacity Charges	Thomas at 21, Table 3
Basis 1 – Illegal Capacity Charges	Thomas at 21 line 15 to line 16, starting “\$1.77/MWH” and ending “\$265 million”
Basis 1 – Illegal Capacity Charges	Thomas at 21 line 19 to page 22 line 12, starting “while exhibit” and ending “would apply”
Basis 1 – Illegal Capacity Charges	Thomas at LJT-1 page 1, rows one and two, labeled “MRO Price Test” and “Discounted, tiered capacity pricing for CRES providers”
Basis 4 – Improper Turning Point Application	Thomas at LJT-1 page 1 row 4 labeled “Placeholder Riders* Generation Resource Rider”

Basis 1 – Illegal Capacity Charges	Thomas at LJT-1 page 1 the row titled “TOTAL Quantifiable Benefits of the ESP \$960,622,505
Basis 4 – Improper Turning Point Application	
Basis 1 – Illegal Capacity Charges	Thomas at LJT-1 page 2 line 4, line 6, and lines 8-15
Basis 4 – Improper Turning Point Application	
Basis 5 – Improper MRO Blending	
Basis 1 – Illegal Capacity Charges	Thomas at LJT-1 page 3, all of the page
Basis 4 – Improper Turning Point Application	
Basis 5 – Improper MRO Blending	
Basis 1 – Illegal Capacity Charges	Thomas at LJT-2 page 1 (chart at the top) line 4 and the last two rows of the top chart that are labeled “Class Total” and “Weighted Total”
Basis 1 – Illegal Capacity Charges	Thomas at LJT-2 page 1 (chart at the bottom) line 4 and the last two rows of the top chart that are labeled “Class Total” and “Weighted Total”
Basis 1 – Illegal Capacity Charges	Thomas at LJT-2 page 2 line 4 and the last two rows of the chart that are labeled “Class Total” and “Weighted Total”
Basis 1 – Illegal Capacity Charges	Thomas at LJT-3 page 1, rows 7, 10, and 12 to 15 and all of column 2
Basis 5 – Improper MRO Blending	
Basis 1 – Illegal Capacity Charges	Thomas at LJT-4, all of the exhibit
Basis 1 – Illegal Capacity Charges	Thomas at LJT-5, all of the exhibit
Basis 4 – Improper Turning Point Application	Thomas Supplemental Testimony at 2 line 10 through 15, starting “that customer impact” and ending “under a MRO”
Basis 4 – Improper Turning Point Application	Thomas Supplemental Testimony at 2 line 19 through 21, starting “there is no impact” and ending “of my direct testimony.”
Basis 1 – Illegal Capacity Charges	Thomas Supplemental Testimony at 3 line 7 “\$952 million”
Basis 1 – Illegal Capacity Charges	Thomas at Supplemental Exhibit LJT-1 page 1, rows one and two, labeled “MRO Price Test” and “Discounted, tiered capacity pricing for CRES providers”
Basis 4 – Improper Turning Point Application	Thomas at Supplemental Exhibit LJT-1 page 1 row 4 labeled “Placeholder Riders* Generation Resource Rider”

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Case No(s). 11-0346-EL-SSO, 11-0348-EL-SSO, 11-0349-EL-AAM, 11-0350-EL-AAM

Summary: Motion of Industrial Energy Users-Ohio to Strike Ohio Power Company's Application and Supporting Testimony and Memorandum in Support electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio