

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of</b>	)	
<b>Columbus Southern Power Company and</b>	)	
<b>Ohio Power Company for Authority to</b>	)	<b>Case No. 11-346-EL-SSO</b>
<b>Establish a Standard Service Offer</b>	)	<b>Case No. 11-348-EL-SSO</b>
<b>Pursuant to §4928.143, Ohio Rev. Code,</b>	)	
<b>in the Form of an Electric Security Plan.</b>	)	
<b>In the Matter of the Application of</b>	)	
<b>Columbus Southern Power Company and</b>	)	<b>Case No. 11-349-EL-AAM</b>
<b>Ohio Power Company for Approval of</b>	)	<b>Case No. 11-350-EL-AAM</b>
<b>Certain Accounting Authority</b>	)	

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**OHIO POWER COMPANY’S MEMORANDUM CONTRA  
TO INDUSTRIAL ENERGY USERS-OHIO  
MOTION TO COMPEL DISCOVERY RESPONSE**

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Pursuant to Rules 4901-1-12 Ohio Administrative Code, Ohio Power Company (“Ohio Power” or the “Company”) provides this Memorandum Contra the Industrial Energy Users-Ohio (IEU) motion to compel a specific answer in discovery.

In this proceeding Ohio Power has filed a modified application seeking to set up an electric security plan for a term commencing on June 1, 2012 and ending on May 31, 2015. The application and testimony in support of it deal with the benefits derived from that modified proposal and the particulars of the plan during that term.

IEU seeks to compel the production of a document that relates to forecasts beyond the proposed ESP period and should be denied. IEU seeks to compel a response to IEU Set 2 Interrogatory 1 and Request for Production of Document 1. IEU’s interrogatory request stated:

**Question-IEU INT 2-1:** During cross-examination in Case No. 10-2929-EL-UNC, Dr. Kelly Pearce stated that “there is a group within AEP that does some capacity forecasting.”

- a. Identify all forecasts of the price for capacity in any PJM auction (including the base residual auction and any true-up auctions) performed by AEP.
- b. If You identified any forecast in response to (a), for each forecast, identify the assumptions in the forecast, including but not limited to the generating units bid into the base residual auction or true-up auction, the date of the forecast, the auction delivery year, and the price of capacity.

**Ohio Power Company’s RESPONSE**

The Company objects to the extent the request seeks information from another case where discovery is already complete, it is vague without any timeframe, it is beyond the scope of this case and to the extent is seeking forecasts for the future it is beyond the ESP period proposed in this case and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Prepared by: Counsel

IEU states that Ohio Power claims the cost of capacity is relevant to this proceeding and IEU’s interrogatory and request for production of documents request information about that cost of capacity, thus it argues it is reasonably calculated to lead to the discovery of admissible evidence.

IEU’s argument is an oversimplification and ignores some important facts. As stated in the response, the request seeks information related to another case after the discovery period in that case. Likewise, the only document responsive to the request relates to a period beyond the capacity sought for recovery in the modified ESP and is therefore irrelevant. Compounding the lack of relevance is the fact that the actual auction results become public information on Friday, May 18, 2012, making any forecast irrelevant because the actual results, if even applicable to this case, will determine any arguments IEU may need to make.

In response to Ohio Power's objections, IEU argues that Ohio Power responded to IEU's motion to strike asserting that capacity issues are at issue in this proceeding as part of the ESP/MRO comparison. IEU Motion at 7-8. IEU fails to point out that Ohio Power considered the capacity pricing in its test and 2-tier proposal only for the period of the ESP, not what the capacity pricing would be going forward after the ESP is over. Ohio Power has committed to move to RPM capacity pricing in the 2015-2016 election. Any forecast of what the outcome of the auction may be is irrelevant to that election and this case alike. IEU argues that it must be able to determine if Ohio Power will be able to recover its costs from RPM or not. That issue is only applicable to the transition period and is not an issue post-ESP when AEP Ohio is at RPM capacity pricing, again a price that will be soon be published officially.

As a secondary argument IEU relies on its argument that there is a requirement related to the corporate separation docket concerning the transfer of assets that would compel discovery. Again the corporate separation docket is also a separate docket and not engulfed within the modified ESP dockets. While corporate separation may be an important point for the Commission to consider during the transition it is not a reason to compel discovery on the 10-2929-EL-UNC case in this modified ESP case.

IEU also fails to respond to the argument that discovery is already closed in the 10-2929-EL-UNC case. The Commission should prevent IEU from any improper discovery. As seen in the record in the 10-2929 case, IEU already introduced exhibits provided in this modified ESP as part of its cross-examination in that case. *See* IEU Ex. 124 from the 10-2929-EL-UNC Docket. IEU used documents obtained in this case and marked for its cross-examination purposes in the 10-2929-EL-UNC, even though it was

provided those documents in the modified ESP discovery process and provided them after the discovery period had closed. The document was obtained in response to OCC Set 5-92<sup>1</sup> in this proceeding not in the 10-2929-EL-UNC proceeding where it was used. The questions IEU seeks to compel are direct citation to testimony in that other docket and asking for responses to issues involved in that case. The Commission should not entertain the attempt to circumvent the discovery rules when the party has shown a record of using the responses in the modified ESP case in other proceedings.

The Commission should deny the motion to compel discovery of the capacity case cross-examination. The only document responsive to IEU's request is a forecast beyond the term of the modified ESP and relate to an auction that will release its official results in a matter of days. Accordingly, the Commission should deny the motion to compel.

Respectfully submitted,

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<sup>1</sup> This is the same response in this case that IEU withdrew its other motion to compel.

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of Ohio Power Company's Memorandum Contra was served by E-mail upon counsel for all parties of record in this case on this 16th day of May, 2012.

/s/ Matthew J. Satterwhite

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Summary: Memorandum Contra to IEU-Ohio's Motion to Compel Discovery Response  
electronically filed by Mr. Matthew J Satterwhite on behalf of American Electric Power Service  
Corporation