BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OHIO POWER COMPANY'S MEMORANDUM IN PARTIAL OPPOSITION TO THE OHIO ENERGY GROUP'S APPLICATION FOR REHEARING

Pursuant to Section 4903.10, Ohio Revised Code ("R.C."), and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), the Ohio Energy Group (OEG) filed an application for rehearing relating to the Commission's July 2, 2012 Opinion and Order in this case (the "10-2929 decision"). Ohio Power Company (dba AEP Ohio) respectfully files this memorandum in partial opposition. While AEP Ohio agrees with some of the criticisms advanced by OEG, AEP Ohio also disagrees with some of the legal claims made by OEG. Accordingly, the Commission should not adopt OEG's flawed position in those respects.

OEG argues that the Commission cannot establish a nonbypassable charge under R.C. 4928.144 to cover costs relating to the differential between $189/MW-day and RPM pricing, because OEG maintains (at 2-4) that the deferral is not money ratepayers owe the Company but is money the CRES providers owe the Company. This premise is false and should be rejected. The 10-2929 decision was concerned with establishing capacity pricing and the only decision made with respect to the $189/RPM differential was to authorize the deferral; the Commission did not address cost recovery for the $189/RPM differential. Indeed, the fact that cost recovery

was not addressed in the decision was one of the objections raised by AEP Ohio in its application for rehearing. (AEP Ohio Application for Rehearing, Error II.B)

While AEP Ohio shares some of the same concerns voiced by OEG about the approach taken by the Commission in several respects (as reflected through the Company's own application for rehearing), OEG is wrong in characterizing the 10-2929 decision as indicating that CRES providers owe the Company $189/MW-day or providing that customers would pay the discount on behalf of the CRES providers. Rather, the reality is that, even though the Commission's Opinion and Order (at 22) decided to "establish a cost-based state compensation mechanism for AEP Ohio" that (at 36) "should reasonably and fairly compensate the Company and should not significantly undermine the Company's ability to earn an adequate return on its investment," the order only authorized AEP Ohio to charge CRES providers RPM pricing for capacity. As designed, the State Compensation Mechanism (SCM) established in the 10-2929 decision clearly involves a wholesale component (RPM pricing to CRES providers) and a retail component (with the retail recovery component to be determined in the *ESP II* decision).

The Commission clearly explained these two components in its order:

> Therefore, with the intention of adopting a state compensation mechanism that achieves a reasonable outcome for all stakeholders, the Commission directs that the state compensation mechanism shall be based on the costs incurred by the FRR Entity for its FRR capacity obligations, as discussed further in the following section. *** [1] [T]he Commission directs AEP-Ohio to charge CRES providers the adjusted final zonal PJM RPM rate in effect for the rest of the RTO region for the current PJM delivery year (as of today, approximately $20/MW-day), and with the rate changing annually on June 1,2013, and June 1,2014, to match the then current adjusted final zonal PJM RPM rate in the rest of the RTO region. [2] Further, the Commission will authorize AEP-Ohio to modify its accounting procedures, pursuant to Section 4905.13, Revised Code, to defer incurred capacity costs not recovered from CRES provider billings during the ESP period to the extent that the total incurred capacity costs do not exceed the capacity pricing that we approve below. Moreover, the Commission notes that we will establish an appropriate recovery mechanism for such deferred costs and address any additional financial considerations in the 11-346 proceeding.

(10-2929 decision at 23 (internal brackets added for convenience).) Obviously, the two components are the wholesale RPM rate and the retail charge to be established in the *ESP II* decision for recovery of the differential.

The below-cost discount from AEP Ohio's costs (according to the Commission's Opinion and Order) was to be funded by all customers, since all customers benefit from the opportunity to shop afforded by RPM-priced capacity. The Commission's Opinion and Order found that the discount would promote Ohio energy policy and stimulate competition through higher levels of shopping in AEP Ohio's service territory. (*Id*.) Therefore, OEG mischaracterizes the Opinion and Order in suggesting that retail customers are required to pay amounts owed by CRES providers or incurred on their behalf.

OEG also argues that R.C. 4928.144 is inapplicable. But this argument again fails to recognize that the 10-2929 decision only authorized deferral and did not address cost recovery. The upcoming decision in AEP Ohio's ESP case is supposed to address cost recovery of the deferrals through establishment of a retail charge as the second part of the SCM. And certainly the phase-in statute, R.C. 4928.144, is applicable in an ESP case. Moreover, the Commission can authorize accounting deferrals under R.C. 4905.13, which is part of its general jurisdiction over utilities and is the cited basis for the deferrals authorized in the 10-2929 decision (at 23). As a related matter, OEG's present reliance on the 1993 *Columbus Southern* case (at 3) is misplaced, because the inability to implement a phase-in as part of a traditional rate case is not relevant here. Thus, while AEP Ohio agrees that CRES providers should pay for the Company's true cost of providing capacity and should not be afforded discounted RPM pricing, the

Company disagrees with OEG's claim that the $189/RPM differential was created as an obligation of CRES providers that is to be funded by AEP Ohio's customers.

It is fair for all customers to fund the $189/RPM differential. All customers are benefiting from the associated capacity, whether they shop or not. The capacity was developed or obtained years ago for all connected load based on AEP Ohio's FRR status – so it is not accurate to say that the payment obligation is being transferred from shopping customers (or their CRES provider) to non-shopping customers. CRES providers are being given a right to the capacity at a price below cost, in order to increase shopping levels in AEP Ohio's service territory. Because the $189/RPM differential is not a CRES obligation, it is inaccurate to say that the obligation is being transferred to customers.

OEG's characterization of the $189/RPM differential (at 4) as being "above market" is also misguided. The 10-2929 decision determined that the State Compensation Mechanism should be cost-based pricing and it did not impose market pricing on AEP Ohio. The Commission proceeded to create a discount below the determined cost in order to promote retail competition in AEP Ohio's service territory. OEG's position is premised on the notion (at 5) that the 10-2929 decision creates a payment obligation of $189/MW-day on CRES providers when that is not the case under the Opinion and Order.

In advancing its second argument (at 6-9), OEG also claims that the $189/RPM differential is caused by shopping customers and that special contract customers are not part of the cause for such deferrals. It is the right to shop, not whether a customer actually shops, that is being promoted through the capacity cost discount. AEP Ohio acknowledges that slightly different circumstances exist for special arrangement customers, but submits that those customers should not be exempted from paying for the $189/RPM differential. Timken has a

right to shop under its special contract. While Ormet and Eramet do not have a right to shop, those customers are receiving substantial benefits under their subsidized contracts and should not be heard to complain about supporting energy policies that advance the interests of other customers. In any case, a phased-in recovery of the $189/RPM differential is certainly something the Commission could adopt in its upcoming *ESP II* decision. Using the phase-in statute, R.C. 4928.144, involves two steps: (1) a determination that a rate or rider is appropriate for inclusion in an ESP, and (2) a determination that part of the rate should be deferred or phased-in over time in order to be collected. For example, the Commission may approve a larger Retail Stability Rider in the *ESP II* case and decide that part of it needs to be phased in and collected through a nonbypassable surcharge after the ESP term ends. Such an approach is substantially similar to the *ESP I* phase-in plan, whereby fuel costs were deferred and will be collected from all customers.

CONCLUSION

For the foregoing reasons, the Commission should not accept the arguments contained in OEG's application for rehearing that are opposed herein.

Respectfully submitted,

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On behalf of Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Ohio Power Company's Memorandum in Partial Opposition* was served by electronic mail upon counsel for all other parties of record in this case on this 6th day of August, 2012.

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Summary: Memorandum in Partial Oppostion to the OEG's Application for Rehearing electronically filed by Mr. Steven T Nourse on behalf of American Electric Power Service Corporation