BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power 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. 13-2385-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority.	)))	Case No. 13-2386-EL-AAM

APPLICATION FOR REHEARING OF OHIO POWER COMPANY

Pursuant to Section 4903.10, Ohio Revised Code ("R.C."), and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), Ohio Power Company ("AEP Ohio" or the "Company") respectfully files this Application for Rehearing of the Commission's May 28, 2015 Second Entry on Rehearing ("Entry on Rehearing"). The Commission's Entry on Rehearing is unreasonable and unlawful in the following respects:

I. The decision to indefinitely defer ruling on the PPA Rider issues raised in the AEP Ohio and intervenor applications for rehearing unlawfully and unreasonably impairs the Company's right to withdraw under R.C. 4928.143(C)(2). *In re Application of Ohio Power Company*, Slip Opinion No. 2015-Ohio-2056.

II. The Commission should re-adjust the annual DIR revenue caps to meet its stated intention of providing a 3-4% growth rate and avoid unintended negative consequences on reliability-impacting capital infrastructure projects.

III. It is unreasonable for the Commission to delegate issues to the working group for detailed implementation and structure but not empower the working group to make recommendations that may be necessary to implement a workable Purchase of Receivables Program in AEP Ohio's territory.

IV. The Commission should grant rehearing and confirm, or in the alternative provide clarification, that AEP Ohio is not required to be a curtailment service provider (CSP) for the IRP customer and, in any event that AEP Ohio will not be responsible for non-performance charges assessed by PJM for demand resources provided by the IRP customer that are successfully bid into the PJM capacity market.

A memorandum in support of this Application for Rehearing is attached.

Respectfully submitted,

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On behalf of Ohio Power Company

MEMORANDUM IN SUPPORT

INTRODUCTION

As the Commission well knows, it is common for parties opposing rehearing to lodge procedural objections to certain arguments made in support of rehearing. For the following reasons, however, the arguments set forth in the instant Application for Rehearing are indeed properly before the Commission now. Given that reply memoranda are not permitted in support of rehearing requests, AEP Ohio would like to address that issue proactively.

As a threshold matter, the Ohio Supreme Court has recently reminded all participants in proceedings before the Commission that any arguments or issues that a party will ask the Court to review on direct appeal must be included in an application for rehearing or else they are waived, and the Supreme Court is jurisdictionally barred from considering them. *In re Application of Ohio Power Co.*, 140 Ohio St.3d 509, 2014-Ohio-4271, 20 N.E.3d 669, ¶ 45. AEP Ohio thus now seeks rehearing to preserve critical issues concerning the PPA Rider, DIR, POR program, and the IRP-D Tariff (referred to herein as the IRP Tariff)[1] that the Company may ask the Ohio Supreme Court to resolve on the merits, in the event that the Commission rejects this additional rehearing request and declines to modify its Opinion and Order and Second Entry on Rehearing as the Company proposes.

The Supreme Court has also confirmed that parties receive "a new 30-day period to challenge entries on rehearing that modify earlier orders," and that R.C. 4903.10 "'permits an application for rehearing after any order.'" *In re Application of Columbus Southern Power Co.*,

[1] The original name of the interruptible tariff is "Interruptible Power – Discretionary" or IRP-D, which is a misnomer at this point given that it encompasses emergency and pre-emergency interruptions that are mandatory. Thus, in the Company's compliance tariff filing, it proposed to shorten the tariff name to IRP, which is also the reference used in this Application for Rehearing.

128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501, ¶ 12, quoting *Senior Citizens Coalition v. Pub. Util. Com.,* 40 Ohio St.3d 329, 333, 533 N.E.2d 353 (1988). In that case, the Supreme Court confirmed that it was appropriate for the Company to apply for rehearing after the Commission modified its prior Opinion and Order and, for the first time, made a new ruling adverse to the Company in doing so. *In re Application of Columbus Southern Power Co.*, 2011-Ohio-958, at ¶ 13-14.

Here, each branch of AEP Ohio's Application for Rehearing raises new issues that have arisen based on determinations made for the first time in the Commission's May 28, 2015 Second Entry on Rehearing (Entry on Rehearing), which modified the Commission's original Opinion and Order in several key respects. With respect to the PPA Rider, for example, the Commission's Entry on Rehearing injected new uncertainty concerning certain legal and policy challenges previously lodged against the PPA Rider, effectively impairing the Company's statutory right to withdraw from the ESP. This was not an issue until the Commission modified its stance on the PPA Rider in its Entry on Rehearing (at 5). Moreover, the Company's argument on this point is supported by a very recent Ohio Supreme Court decision confirming the fundamental significance of the Company's statutory withdrawal right, *In re Application of Ohio Power Company*, Slip Opinion No. 2015-Ohio-2056 – a decision that was not released until five days *after* the Commission's Second Entry on Rehearing.

With respect to the DIR, the Entry on Rehearing established new DIR annual revenue caps and stated the Commission's intention that the new caps would reflect growth of 3-4% annually so that they more closely track the progression from the ESP II case. The growth calculation made in the rehearing decision is flawed and may have unintended negative consequences on important reliability-impacting capital infrastructure projects. The annual DIR

revenue caps should be further modified to reflect a growth rate of at least the bottom end of the Commission's stated range.

With respect to the POR program, AEP Ohio has now asked the Commission to clarify its Entry on Rehearing to confirm that the sub group exploring a potential POR program in AEP Ohio's territory has the freedom and flexibility, unconstrained by certain prior Commission findings, to craft a POR program that AEP Ohio would be willing to implement. The Commission regularly grants rehearing to clarify its prior Opinions and Orders in certain respects, as it did recently in the *Capacity Charge* case now pending at the Ohio Supreme Court, to clarify and confirm the jurisdictional basis for its decision. *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, Entry on Rehearing, ¶ 27 (October 17, 2012) (granting rehearing for the limited purpose of clarifying that the investigation initiated by the Commission in that proceeding was consistent with certain provisions in the Revised Code).

Finally, with respect to Rider IRP, in its Entry on Rehearing, the Commission added a new directive not present in its original Opinion and Order – that current IRP tariff customers must agree, as a condition of service under the tariff, to allow the Company to bid their interruptible load resources into future PJM's capacity auctions, including upcoming incremental capacity auctions for delivery years within the term of ESP III and both incremental and base residual auctions for the 2018-19 delivery year and thereafter, and that the resulting revenues be credited back to customers. This modification to the Commission's original Opinion and Order, while constructive, raises new issues addressed in the instant Application for Rehearing that could not have been fully developed in the Company's prior Application for Rehearing – including the propriety of requiring AEP Ohio to act as the curtailment service provider (CSP)

on behalf of the IRP customers regarding transactions executed in the PJM markets and the possibility of penalty charges being levied against demand resources as the result of a FERC Order issued just days *after* the Commission's Entry on Rehearing. *See* Federal Energy Regulatory Commission's Order on Proposed Tariff Revisions in Docket ER15-623-000, et al., 151 FERC ¶61,208 (June 9, 2015). As such, the Company's request for the Commission to confirm that AEP Ohio should not be required to act as the CSP on behalf of the IRP customers regarding transactions executed in the PJM markets and clarify that AEP Ohio should not bear the burden to pay for the poor performance of IRP customers' demand resources in PJM's capacity markets is properly before the Commission now in this Application for Rehearing; the request relies on facts and developments post-dating the Commission's Entry on Rehearing and on modifications the Commission made in that Entry on Rehearing to its original Opinion and Order.

For the foregoing reasons, the Company's rehearing arguments are procedurally sound and appropriately before the Commission now, in light of modifications to the original Opinion and Order that the Commission made in its Entry on Rehearing, as well as other developments that have occurred in the time since that Entry on Rehearing was issued. *See*, *e.g.*, *In the Matter of the Application of Columbus Southern Power for Approval of an Electric Security Plan; and Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, Second Entry on Rehearing (Nov. 4, 2009) (Commission addressing the merits of rehearing arguments the Company raised in an ESP proceeding, after the Commission modified its original Opinion and Order by revoking the Company's ability to recover certain costs). None of the four errors raised herein constitute re-argument or seeks to have the Commission revisit arguments already considered in the first round of rehearing. More

importantly, each argument has merit and needs to be granted in order to render the ESP III decision just and reasonable.

ARGUMENT

I. The decision to indefinitely defer ruling on the PPA Rider issues raised in the AEP Ohio and intervenor applications for rehearing unlawfully and unreasonably impairs the Company's right to withdraw under R.C. 4928.143(C)(2). *In re Application of Ohio Power Company*, Slip Opinion No. 2015-Ohio-2056.

The Opinion and Order appropriately concluded that the PPA Rider is supported by the ESP statute, R.C. 4928.143, and the statutory energy policies in R.C. 4928.02. (Opinion and Order at 19-23.) In approving the PPA Rider, the Commission properly relied upon the ESP statute, which permits provisions, like the PPA Rider, that relate to bypassability and limitations on customer shopping for electric generation service. *See* R.C. 4928.143(B)(2)(d). While the Opinion and Order concluded that, based on the record in this proceeding, it is not persuaded that the OVEC proposal "would provide customers with sufficient benefit from the rider's financial hedging mechanism or any other benefit that is commensurate with the rider's potential cost," the Commission did go on to make clear that a properly-structured PPA Rider proposal "has the potential to supplement the benefits derived from the staggering and laddering of the SSO auctions, and to protect customers from price volatility in the wholesale market" and emphasized that the denial of OVEC's inclusion in the PPA Rider based on the current record does not prevent AEP Ohio from addressing those issues and the other factors listed on Page 25 of the Opinion and Order in a separate proceeding. *Id* at 25.

Thus, the Commission approved a zero-dollar placeholder PPA Rider that could be filled during the ESP term based on a future finding of benefit. *Id*. It is well-settled that the Commission may approve placeholder riders in an ESP, as the Commission itself recognized in

its Opinion and Order. Moreover, it would be a legally flawed approach to deny the Rider now, when the ESP statute supports it, and to subsequently try to adopt it outside of an ESP proceeding. Setting aside the matter of whether the OVEC proposal is supported by the current record,[2] the net effect of the Opinion and Order was acceptable to AEP Ohio regarding the PPA Rider in that it established solid statutory and policy support for the PPA Rider while reserving factual determinations regarding the quantitative benefits of particular PPA proposals to future determination. The PPA findings in the Opinion and Order, including the advisory factors of consideration on Page 25, have been incorporated and applied in the ESP proceeding for the FirstEnergy operating companies (Case No. 14-1297-EL-SSO).

Unfortunately, the Entry on Rehearing indefinitely deferred ruling on the assignments of error related to the PPA. (Entry on Rehearing at 5.) Obviously, the zero-dollar placeholder PPA Rider is still in place and the Commission has not reversed or modified the legal and policy determinations made in the Opinion and Order. But this decision injects a cloud of uncertainty over the Opinion and Order's clear legal and policy determinations regarding the PPA Rider and places the ostensible forward progress regarding the PPA issues into a state of limbo. In legal terms, the indefinite non-decision made in the Entry on Rehearing impairs AEP Ohio's statutory right under R.C. 4928.143(C) to withdraw from an ESP modified by the Commission.

The Supreme Court of Ohio very recently addressed the ESP consent provision in reversing a Commission order. The decision first outlined the general operation of the statute:

[2] AEP Ohio challenged the OVEC conclusion from the Opinion and Order on rehearing, arguing that the record does adequately support approval of the OVEC proposal at this time and requesting that the Commission should reconsider its decision to defer ruling on whether to include the OVEC asset in the PPA Rider. (AEP Ohio AFR at 15-25.) The Company's rehearing challenge in this regard was a request to reconsider the record support for OVEC and not a fundamental disagreement with the Opinion and Order on how the PPA Rider issues were resolved. In any case, the Company's rehearing request regarding OVEC also remains pending before the Commission.

> When considering an ESP application, R.C. 4928.143(C)(1) requires the commission to do one of three things: (1) approve, (2) modify and approve, or (3) disapprove the application. Under R.C. 4928.143(C)(2)(a), if the commission issues an order that modifies and approves an application, the utility "may withdraw the application, thereby terminating it, and may file a new standard service offer."

In re Application of Ohio Power Company, Slip Opinion No. 2015-Ohio-2056 at ¶ 24.[3] The Court went on to confirm that if the commission makes a modification to a proposed ESP that the utility is unwilling to accept, R.C. 4928.143(C)(2)(a) allows the utility to withdraw the ESP application. *Id*. at ¶ 26.

The Supreme Court decision involved the Commission's modification of ESP I through an order that was issued well after the initial ESP decision – and the Commission argued that it only had to preserve the consent right of the utility as part of the original ESP decision. The Court rejected that interpretation:

> The commission's interpretation nullifies *the clear purpose of R.C. 4928.143(C)(2)(a), namely, to allow a utility to withdraw its proposed ESP if it dislikes the commission's modifications*. But broader problems exist with the commission's reading. As read by the commission, R.C. 4928.143(C)(2)(a) applies only when the commission is deciding the fate of the ESP application. *On this reading, the commission could modify an ESP at any time after the application has been approved—even while the ESP is still in effect—and the utility would have no recourse but to implement the change*. This would hardly be a "just and reasonable result," R.C. 1.47(C).

Id. at ¶ 30 (emphasis added). From the statutory language, as interpreted by the Court, it is clear that the Commission cannot leave open the possibility that modifications of the ESP will be adopted subsequent to the initial decision to adopt, reject or modify and adopt. Rather, the Commission must provide a clear decision on the package of terms and conditions being adopted in the ESP so that the utility can make an informed choice as to whether it should exercise its

[3] A Motion for reconsideration has been filed regarding the Court's decision and remains pending at this time.

statutory right to withdraw. Unfortunately, the Entry on Rehearing in this case does leave open the possibility that modifications to the Opinion and Order could be made well into the future.

The PPA Rider was a centerpiece of the Company's ESP proposal and its resolution has a significant impact on the package of terms and conditions that were proposed in this ESP proceeding. As such, keeping the PPA Rider issues in limbo indefinitely prevents the Company from making an informed choice in exercising its statutory consent rights. The approach taken in the Opinion and Order of affirming the legal and policy support for the PPA Rider while reserving factual determinations was acceptable to AEP Ohio and would not cause the Company to withdraw. Given the current uncertainty regarding the PPA Rider, the Company reserves the right to withdraw dependent upon the outcome of this rehearing issue. If the Commission were to adopt the intervenors' broad attacks on the PPA Rider and ultimately deny the PPA Rider on rehearing, for example, it may be necessary and appropriate from the Company's perspective to either withdraw or modify the package of terms and conditions in the ESP in order to re-balance the interests of the Company and its customers. For now, however, AEP Ohio is not exercising its right to withdraw and simply requests that the Commission make a substantive ruling on the pending rehearing requests so that the Company can make an informed choice in exercising its statutory rights.

The Entry on Rehearing only provides two reasons for indefinitely delaying resolution of the PPA rehearing issues. First, the Commission noted that PJM's Capacity Performance filing is currently pending before FERC in Docket ER15-623 and that the delivery years of the proposed transitional incremental auctions (with the auctions potentially being conducted in August 2015) overlap with the PPA delivery period. (Entry on Rehearing at 5.) Second, the Commission took administrative notice of the US Environmental Protection Agency's Clean

Power Plan that would limit carbon dioxide emissions from generation plants and the final rule is expected in the Summer of 2015. (*Id*.) While both of these items are pertinent to the separate PPA Rider proceeding, neither of them provides a valid basis to defer resolution of the PPA rehearing issues.

Regarding Capacity Performance, the FERC did issue its decision in Docket ER15-623 on June 9, 2015. So there is already more certainty about how the Capacity Performance product will work and the auction schedule is presently being finalized. More to the point, the Capacity Performance component of PJM does not affect or relate to the legal and policy support under Ohio law for approving a placeholder PPA Rider like the one adopted in the Opinion and Order here. Rather, the Capacity Performance component of PJM affects the quantitative forecast of revenues for the generation plants involved – which is a matter within the scope of the separate PPA Rider proceeding; those issues are not within the scope of this case and do not need to be addressed in resolving the rehearing issues. Indeed, as indicated in the Opinion and Order itself as part of the same paragraph that approved the placeholder PPA Rider (page 25), the "financial need of [each] generating plant" should be addressed in the "future proceeding" where the Commission will consider adopting PPAs within the empty rider. Consideration of the implications of the Capacity Performance product is appropriate in the PPA Rider case but simply does not justify deferring the rehearing issues involving the legal and policy basis for approving the placeholder PPA Rider. Similarly, while the financial implications of the final Clean Power Plan rule are fair game for discussion in the PPA Rider proceeding, the imminent issuance of the final rule is not a basis for delaying resolution of the PPA rehearing issues.

Finally, some parties may argue that the Company has not demonstrated prejudice because the Commission could eventually grant the PPA requests in the pending rider

proceeding (Case Nos. 14-1693-EL-RDR et al.) or otherwise approve a replacement plan that is more advantageous to the Company. Such a position would ignore the true nature of the risk to the Company that is present here: because the rehearing ruling was indefinitely deferred, the Commission could eventually end up rejecting the legal and policy basis for the PPA Rider and significantly modify the original ESP (which supports the legal and policy basis for the PPA Rider) at a point in time that renders the statutory withdrawal rights meaningless. That position would also ignore the legal principle that the loss of a legal right itself is sufficient injury or prejudice to warrant judicial review and correction. *See, e.g.*, *Meade v. Plummer*, 344 F. Supp. 2d 569, 572 (E.D. Mich. 2004) ("[A] deprivation of First Amendment rights standing alone is a cognizable injury.") (quoting *Rowe v. Shake*, 196 F.3d 778, 781 (7th Cir. 1999)). The deprivation of a legal right is prejudicial even though the injured party cannot prove he would have been better off had he been afforded his legal right. *See, e.g. Lacey v. Laird*, 166 Ohio St. 12, 15, 139 N.E.2d 25 (1956) ("Even though a surgical operation is beneficial or harmless, it is, in the absence of a proper consent to the operation, a technical assault and battery for which the patient may recover damages . . . ."). By way of further example, a public employee terminated without due process is injured, and entitled to redress, even if it is more likely than not that he would have been terminated after a pre-termination due process hearing. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). A candidate for public office wrongfully denied a place on the ballot need not show he would be the winner in order to have the election board's order overturned. *Anderson v. Celebrezze*, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983). A company wrongfully denied permission to drill for oil and gas need not prove it would have received revenue from the sale of oil and gas in excess of its cost of drilling in order to obtain a reversal of the denial. *State ex rel. Morrison v. Beck Energy Corp.*,

No. 2013-0465, 2015-Ohio-485 (Feb. 17, 2015). For the same reasons, an electric utility deprived of its right to terminate an electric security plan based on unacceptable Commission modifications is enough by itself to constitute harm and reversible error.

Accordingly, the Commission should issue a substantive ruling on the PPA rehearing issues within the statutory deadline for ruling on this application for rehearing.

II. The Commission should re-adjust the annual DIR revenue caps to meet its stated intention of providing a 3-4% growth rate, in order to preserve important reliability-impacting capital infrastructure projects.

In its *ESP II* Opinion and Order, the Commission found that "adoption of the DIR and the improved service that will come with the replacement of aging infrastructure will facilitate improved service reliability and better align the Company's and its customers' expectations." *In re Application of Columbus Southern Power Company and Ohio Power Company*, Case Nos. 11-346-EL-SSO et al. (*ESP II*), Opinion and Order at 46 (Aug. 8, 2012) ("*ESP II* Opinion and Order"). The Company's Application in this case proposed to include the DIR as part of *ESP III* and was intended to continue reliability-impacting infrastructure investment and better align the Company's and customers' interests. The Opinion and Order, however, significantly reduced the Company's proposal and adopted lower DIR revenue caps.

The Company's rehearing request pointed out that in reducing the Company's proposed annual revenue caps, the Commission stated that it "determined the annual DIR amounts based on the level of growth of three to four percent as permitted for the DIR in the *ESP 2 Case*." Opinion and Order at 47. However, the numbers reflected in the Opinion and Order did not match this explanation. In reality, the adopted annual DIR revenue caps result in 0% growth in distribution revenue for 2015, followed by a more reasonable 2.8% growth in 2016 and 3% growth in 2017. When comparing the growth rate of the *ESP II* DIR caps to the *ESP III* adopted

caps, it was clear that the *ESP III* adopted caps were not consistent with the Commission's stated intention. And such results clearly did not fit with the Commission's separately-stated expectation of approving a funding "level to allow AEP Ohio to continue to replace aging infrastructure in order to maintain and improve service reliability over the term of this ESP." Opinion and Order at 47. The Company also pointed out on rehearing that the reduced DIR caps undermined the Commission's additional expectation that "although AEP Ohio has not committed to refrain from filing a distribution rate case application during the ESP period, the Commission's approval of the continuation of the DIR, ESRR, and other distribution-related riders should enable the Company to hold base distribution rates constant over the ESP period, while making significant investments in distribution infrastructure and improving service reliability." *Id.* at 95.

In its Entry on Rehearing, the Commission adjusted the annual DIR revenue caps to be $145 million for 2015, $165 million for 2016, $185 million for 2017 and $86 million for January through May 2018. (Entry on Rehearing at 24.) The Commission found that "the adjusted caps shall reflect annual growth in the DIR, as a percentage of customer base distribution charges, of three to four percent, which was our objective in modifying the DIR annual revenue caps proposed by AEP Ohio for the EP 3 term so that they more closely track the progression from the *ESP 2 Case*." (*Id*.) While the Company appreciates the additional flexibility provided in the rehearing order with respect to DIR spending, the annual revenue caps still fall short of the Commission's stated intention of 3-4% growth, as reflected in the following tables.[4]

[4] The calculations in these tables used the baseline year of 2014 as approved in ESP II and base distribution revenue of $642,058,981 per Exhibit AEM-2 to the Testimony of Andrea E. Moore (AEP Ohio Ex. 13).

DIR Caps Using 4% Increase in Base Distribution Revenue ($ in millions)						
Year	DIR Cap	Base D	Total D	Increase In Distribution Revenue	Total DIR Cap	Percentage Change in Distribution Revenue
2014	$124	$642	$766	$31	$155	4.00%
2015	$155	$642	$797	$32	$187	4.00%
2016	$187	$642	$829	$33	$220	4.00%
2017	$220	$642	$862	$34	$254	4.00%
2018	$106	$642	$748	$30	$136	4.00%
	$667					

DIR Caps Using 3% Increase of Base Distribution Revenue ($ in millions)						
Year	DIR Cap	Base D	Total D	Increase In Distribution Revenue	Total DIR Cap	Percentage Change in Distribution Revenue
2014	$124	$642	$766	$23	$147	3.00%
2015	$147	$642	$789	$24	$171	3.00%
2016	$171	$642	$813	$24	$195	3.00%
2017	$195	$642	$837	$25	$220	3.00%
2018	$92	$642	$734	$22	$114	3.00%
	$604					

Entry on Rehearing DIR Caps Are < 3% Increase in Base Dist. Rev. ($ in millions)						
Year	DIR Cap	Base D	Total D	Increase In Distribution Revenue	Total DIR Cap	Percentage Change in Distribution Revenue
2014	$124	$642	$766	$21	$145	2.74%
2015	$145	$642	$787	$21	$166	2.67%
2016	$165	$642	$807	$20	$185	2.48%
2017	$185	$642	$827	$20	$205	2.42%
2018	$86	$642	$728	$21	$107	2.88%
	$581					

Thus, in order to match up with the bottom end of the 3-4% growth range, an additional $23 million is needed over the ESP term beyond the annual revenue caps adopted in the Entry on

Rehearing. And if the top end of the Commission's stated range is to be achieved (*i.e.*, 4% growth), an additional $86 million is needed over the ESP term beyond the annual caps adopted in the Entry on Rehearing. Because the Entry on Rehearing mistakenly indicated that the newly-established DIR annual revenue caps reflect a 3-4% growth rate and more closely track the progression of the ESP II case, the Commission should further adjust the annual revenue caps on rehearing to match its stated intention.[5]

AEP Ohio's request for additional reconsideration of the annual caps is not taken lightly and the Company appreciates the accommodations made by the Commission to date. But there is a real need for supporting additional infrastructure investments – even beyond the important projects anticipated in the original Application's request. Absent additional funding, the capital infrastructure programs that the Company has undertaken to improve reliability could be impacted. An example of the capital infrastructure programs that the Company has undertaken and recovered through the DIR mechanism is the Underground Network Risk Mitigation Project. The capital budget for this program was approved in May of 2014; the program is designed to eliminate overloaded sections of the primary enterprise network, proactively replace aging equipment and install additional safety and performance monitoring equipment. The modeling for the program was completed in the 3rd quarter of 2014 and the program is being fully implemented going forward. Obviously, this is an important capital-intensive program that will affect reliability in the densest urban areas of the Company's service territory – but it was not even considered in the revenue caps proposed in this case because of the timing of the program's

[5] Intervenors may claim that the Company's new rehearing argument is merely re-arguing its original rehearing argument that the DIR caps should be adjusted to match the 3-4% growth target stated by the Commission. But that claim would be incorrect, as the Company's new rehearing argument is based on a new set of caps and a distinct finding by the Commission that applies to that new set of caps. It just so happens that the Commission made the same type of error in both the Opinion and Order and the Entry on Rehearing with the language used to describe the change not matching the numbers indicting the result. The Commission attempted to fix the problem in its Entry on Rehearing and it should do so again in response to this new rehearing request.

development. If the Commission would like to get more details about the Underground Network Risk Mitigation Project, it could grant rehearing and receive additional information or even accept additional testimony or evidence about the program. But AEP Ohio does not believe an additional evidentiary hearing is needed; the Underground Network Risk Mitigation Project is briefly mentioned here as an example of how dynamic conditions affect the Company's capital budget and investment priorities and to illustrate how challenging it will be for the Company to operate under the existing DIR caps. Regardless, the Commission can and should solve this problem simply by adjusting the annual revenue caps to meet its stated intention of providing a 3-4% growth rate.

III. It is unreasonable for the Commission to delegate issues to the working group for detailed implementation and structure but not empower the working group to make recommendations that may be necessary to implement a workable Purchase of Receivables Program in AEP Ohio's territory.

The Commission provided a number of clarifications to its Purchase of Receivables (POR) findings in the Entry on Rehearing. One such clarification was that a subset of the Market Development Working Group (MDWG) should meet to address implementation of AEP Ohio's POR program as opposed to the greater group. (Entry on Rehearing at ¶102.) The Commission clarified the ability for CRES providers to move in and out of the POR program (*Id*. at ¶88), that commodity charges do not include termination fees (*Id*. at ¶83), and adjustment of the bad debt rider baseline was in need of adjustment and further deliberation (*Id*. at ¶96). The Commission Order is unreasonable because now that it has delegated detailed implementation to the subset of the MDWG, that group may find itself limited by findings in the Commission Orders. AEP Ohio was against the delegation of some issues to the working group, but now that the Commission has done so to a further refined group to focus on the issues specific to AEP Ohio's territory it

would be reasonable to allow the process to work under the guidance provided in the Order, but leave this new subset group free to craft a POR system that can be agreed upon and that AEP Ohio would be willing to implement when making a recommendation to the Commission for approval.

As the Commission is aware the rejection of AEP Ohio's proposed plan leaves the future of POR in AEP Ohio's territory in a delicate state. AEP Ohio is working with the subset members of the working group to determine if there is a model, following the Commission findings, that AEP Ohio would be willing to implement. AEP Ohio understands that the Commission prefers a discount rate option and is working to determine any and all options that can be incorporated to make that type of POR program a viable option. But ultimately program constraints, costs or unforeseen impacts on customers could result in AEP Ohio declining to implement this voluntary program. While the Commission ordered a report by the Staff on the subgroup's progress, ultimately it is AEP Ohio that must decide if it can and will offer this program.

As AEP Ohio works cooperatively with the working group to determine if there is a viable option it is willing to implement, there may be reason to visit some of the findings the Commission relied upon in its orders. The Commission pointed out its preference for developing the details in the working group and now recently the subgroup. Hence, it would be reasonable for the Commission to leave open the option for change to the direction provided in its findings. AEP Ohio is not attempting to seek its initial plan with no discount rate and recovery of all costs through a bad debt rider for all AEP Ohio's services. But the process of starting from scratch and developing a new program based on a discount rate may create new challenges that requires flexibility beyond that ordered in the Orders to date.

AEP Ohio is committed to work cooperatively to determine if there is a POR program it can implement, but that program must make sense. A rehearing entry that permits the subgroup to raise whatever issues necessary increases the chance that a plan can be developed that AEP Ohio is willing to implement. AEP Ohio respectfully asks that the Commission grant rehearing to clarify that the sub group exploring a potential POR program in AEP Ohio's territory is free to develop a discount rate program based on the work of the subgroup that the Company is willing to implement.

IV. The Commission should grant rehearing and confirm, or in the alternative provide clarification, that AEP Ohio is not required to be a curtailment service provider (CSP) for the IRP customer and, in any event that AEP Ohio will not be responsible for non-performance charges assessed by PJM for demand resources provided by the IRP customer that are successfully bid into the PJM capacity market.

In its Opinion and Order, the Commission found that Rider IRP should be retained, but modified, to "provide for unlimited emergency interruptions[,] and that the $8.21/kW-month credit should be available to new and existing shopping and non-shopping customers." Opinion and Order at 40. The Commission also allowed that "[c]onsistent with its current practice, AEP Ohio should continue to apply for recovery of the costs associated with the IRP through the EE/PDR rider, until otherwise ordered by the Commission." *Id.* The Commission further directed "AEP Ohio [to] bid the additional capacity resources associated with the IRP into PJM's base residual auctions held during the ESP term, with any resulting revenues credited back to customers through the EE/PDR rider." *Id.*

In its initial application for rehearing, AEP Ohio raised four issues regarding the Commission's findings and directives regarding Rider IRP and the recovery of the costs of its $8.21/kW-month credit. First, the Company asked the Commission to clarify on rehearing that its Opinion and Order did not intend to eliminate the provisions of the existing IRP tariff that: (a) require customers to contract for not less than 1 megawatt (MW) of interruptible capacity; and

(b) cap the total interruptible power contract capacity for all customers served under Rider IRP at 525 MW. Second, the Company asked the Commission to modify the method through which AEP Ohio recovers its actual costs of providing the IRP interruptible credits from the EE/PDR Rider to the Economic Development Rider (EDR). Third, the Company requested that the Commission eliminate the requirement that AEP Ohio bid capacity resources associated with Rider IRP into PJM's base residual capacity auctions for delivery periods spanning the three-year term of ESP III and then offset against the cost of the IRP credits the revenues received from PJM, because the directive is infeasible due to the fact that those auctions already have been held. Fourth, the Company asked the Commission to confirm that AEP Ohio is entitled to fully recover its costs of providing all interruptible credits required by Rider IRP.

In its Entry on Rehearing the Commission addressed a number of issues and concerns raised on rehearing regarding AEP Ohio's Rider IRP. The Commission, on rehearing, agreed that the Company's IRP program should be continued only for existing customers and should not be expanded to new customers; clarified that it had modified the IRP program so that it will allow unlimited emergency interruptions only (and that discretionary interruptions will no longer be required); confirmed that the 1 MW per customer minimum interruptible load commitment and the 525 MW aggregate cap for all customers should be retained; reiterated that the costs of the interruptible credits should be recovered through the EE/PDR rider, until otherwise ordered by the Commission; and confirmed that it is appropriate for the Company to recover its actual costs of providing the IRP credit. Entry on Rehearing, at 9 and 12.

The Commission also addressed AEP Ohio's request on rehearing to modify the Opinion and Order's requirement that the Company bid the capacity resources associated with the IRP program into PJM's base residual capacity auctions and credit the revenues received against the

costs of the IRP credits. AEP Ohio had explained on rehearing that PJM already has conducted the base residual auctions into which such capacity resources may be bid for each of the delivery years that span the three-year term of ESP III. AEP Ohio also noted, however, that it is highly likely that existing IRP customers have already bid, either through contractual arrangements or on an individual basis, their IRP related capacity into those base residual auctions. Accordingly, AEP Ohio recommended that all IRP customers should be required to certify that they have bid into the PJM auctions, or will bid into the next auction, their interruptible capacity resources. In addition, AEP Ohio proposed to offset against, and thus reduce the amount of, the interruptible credit provided to each customer an imputed amount approximating the gross amount of revenues that the customer would have received if it had, in fact, bid its interruptible capacity into PJM's base residual auctions.

On rehearing, the Commission recognized that its Opinion and Order's directive was not feasible, given that PJM's base residual auctions have already occurred for the three delivery years encompassed by the three-year term of ESP III. Nevertheless, the Commission declined to adopt AEP Ohio's proposal. Instead, the Commission made three inter-related modifications to its Opinion and Order's infeasible directive to offset the costs of the IRP credits with capacity revenues derived from PJM's base residual auctions for delivery years within the term of ESP III. First it directed AEP Ohio to act as the IRP customer's curtailment service provider (CSP) and bid into PJM's future *incremental* capacity auctions for the delivery years spanning the term of the ESP III any interruptible capacity resources that IRP customers had not already bid into the base residual auctions for those delivery years, and to offset against the amount recovered through the EE/PDR rider any revenues received from those future *incremental* capacity auctions. Second, the Commission allowed existing IRP customers which have already bid their

interruptible resources into PJM's auctions for the delivery years of ESP III, whether directly or through a CSP, to retain the capacity revenues they receive without any reduction to their IRP credit for imputed revenue. (*Id*.) Third, the Commission concluded that it is appropriate, for capacity delivery years beginning with the June 2018 through May 2019 year – delivery years that begin after the term of ESP III – to reduce the cost of the IRP credits, by offsetting against them all of the capacity revenues that actually can be realized from the sale of the underlying interruptible capacity into the PJM capacity markets. Thus, the Commission required that current IRP customers must agree to allow AEP Ohio to act as their CSP and bid their interruptible resources into PJM's future capacity auctions for delivery years subsequent to the term of ESP III:

> Although the Commission expresses no opinion on whether the IRP will be extended beyond ESP 3, in the event that it is, in fact, extended, for PJM delivery years after May 31, 2018, current IRP customers should be required to agree, as a condition of service under the IRP tariff, to allow AEP Ohio to bid their interruptible resources into PJM's auctions, with resulting revenues credited back to customers through the EE/PDR rider.

Id. at 15.

AEP Ohio believes that the changes and clarifications that the Commission provided in its Entry on Rehearing regarding Rider IRP were, in large part, constructive and well-reasoned. In addition, the Company supports the Commission's goal underlying those several interrelated modifications, which is to require that emergency interruption revenues realized from successfully bidding the IRP customer's interruptible resources into future auctions held by PJM should be used to reduce the cost to all customers of the IRP program's credits AEP Ohio believes that this goal can be achieved in a fair and reasonable manner. However, the approach that the Commission has developed on rehearing to achieve that goal is unreasonable in a few aspects, and AEP Ohio requests rehearing in order to remedy them.

First, the requirement that AEP Ohio act as the CSP for the IRP customers with regard to future PJM auctions creates problems and complications for both the IRP customer and AEP Ohio that are both unnecessary and readily avoidable. In order to fully understand these problems and complications, it is helpful to review some background regarding PJM's market rules and the limits of AEP Ohio's technical capabilities and resources needed to act as a CSP on behalf of the IRP customer. An emergency interruptible resource that has been successfully bid into PJM's capacity market for a particular delivery year has the opportunity to sell other products, in addition to its emergency capacity. These include emergency energy, economic energy and ancillaries. The Company's understanding is that the Commission's goal is to use the revenues from the sale of the interruptible resource's capacity and emergency energy (both of which are available for sale as a result of its commitment to interrupt during emergencies) to offset the cost to other customers of the IRP credits. Under the Company's understanding of the Commission's approach to utilizing the capacity and emergency energy revenues as an offset to the cost of the IRP credits, the IRP customer would retain revenues from other non-emergency products that it is able to sell into the PJM markets, including economic energy and ancillary services.

Under PJM's market rules, an interruptible resource owner, such as the IRP customer, may use one CSP to bid and, if successful, register and sell on the owner's behalf its interruptible capacity either on an "emergency capacity only" or on an "emergency full" basis. Under the "emergency capacity only" option, that CSP only manages the capacity transaction on behalf of the IRP customer and the IRP customer is free to engage another CSP to act on its behalf with regard to the sale of economic energy and ancillary services. However, using the emergency capacity only option precludes the opportunity to receive emergency energy

payments. Emergency energy payments are based on the higher of Locational Marginal Price (LMP) or the strike price (up to $1,849/MWh under current PJM rules) and are only available under the emergency full option. Under the "emergency full" option, however, the first CSP acts on behalf of the IRP customer for both the emergency capacity and emergency energy transactions and a second CSP may not be engaged to act on behalf of the customer for the sale of any other products, such as economy energy and ancillary services.[6] Instead, the first CSP must be used for the sale of all of those other products.

Use of AEP Ohio as a CSP on behalf of the IRP customer poses very significant practical problems and inevitably leads to unnecessary and costly complications. A primary problem results from AEP Ohio's lack of technical ability and resources to act as a CSP with regard to economy energy and ancillary service transactions.[7] As a result, if AEP Ohio is required to be the IRP customer's CSP, its role logically and practically must be limited to capacity and emergency energy transactions. Assignment to AEP Ohio of the responsibility for both of those transactions on behalf of the IRP customer, which implies selection of the "emergency full" option, when combined with PJM's restriction against the customer's use of a second CSP under the "emergency full" option, leads to a Hobson's choice for the customer. Either the customer foregoes any possible economic energy and ancillary service transactions and their resulting

[6] PJM has a special exclusion for Regulation Service only.

[7] AEP Ohio has not directly participated in PJM's economic or ancillary services DR programs and does not have the resources or technical ability to offer these products. PJM Manual 11 contains the operational requirements to participate in PJM's energy and ancillary services markets. Individuals participating in PJM's Regulation and Synchronized Reserve markets must complete mandatory Ancillary Service training in the PJM Learning Management System (LMS), including initial and annual requirements in accordance with Manual 40. Depending on the program, Ancillary Services products may require 1-minute interval metering, daily schedule offering into PJM's eMKT with hourly updates, a 24-hour desk to receive PJM's dispatch, the ability to receive PJM's All Call via Electronic Notification, and the ability to provide reserve capability with 30-minutes or less depending on the program.

revenues or the customer must use a CSP that is ill-equipped for the task of executing such transactions (*i.e.*, AEP Ohio).

With this background regarding PJM's restrictions on the manner in which multiple CSPs may be used by the IRP customer and the limitations of AEP Ohio's technical capabilities and resource to act as the CSP, the practical problems and undue complexities that result from requiring AEP Ohio to act as the CSP for the IRP customer become evident. There are two ways in which AEP Ohio might act as the CSP for the IRP customer. One way is by using the "emergency full" option. As explained above, though, that way prevents the IRP customer from effectively selling its economic energy and ancillary services into the PJM markets. Accordingly, that option is both impractical and unfair to the IRP customer (and it is unfair to AEP Ohio to the extent that it ends up requiring the Company to accomplish tasks that it is not suited to do), and it should be rejected.

Another way to use AEP Ohio would be to assign it the responsibility to be the CSP for the IRP customer using the "emergency capacity only" option. Under PJM's rules this would allow AEP Ohio to be the CSP for the IRP customer's capacity transactions. It would also permit the customer to engage a second CSP, one that has the technical capability and the resources to execute economic and ancillary service transactions. That way would mitigate the unfairness to the customer that results from requiring AEP Ohio to act as CSP for purposes of both capacity and emergency energy transactions under the "economy full" option. However, the opportunity to receive emergency energy revenues would be lost. In order to obtain some benefit for the other customers (those who are paying for the IRP credits) of including energy revenues in the offset against the costs of the credits, the IRP customer would have to commit contractually with AEP Ohio to pass back any economic energy revenues received during

emergency or pre-emergency events so that they could be included in the offset. Unlike emergency energy, economic energy is based on LMP, without the "floor" established by the $1,849 strike price. As a result, this "emergency capacity only" option ends up requiring use of a second, third-party, CSP and a contractual pass-back mechanism between the IRP customer and AEP Ohio to obtain the economic energy revenues during emergency and pre-emergency events for the offset and, thus, recoup partial benefits for the offset that the other customers would have received under the "emergency full" option. This approach is quite complicated because it ends up requiring two CSPs, AEP Ohio and a third party CSP.

A final, overarching shortcoming that adversely affect both of the options that would use AEP Ohio as a CSP is that each of them would require AEP Ohio to commit to be a CSP now for future periods when there might not even be an IRP program. Bidding interruptible load into the upcoming 2018/19 PJM Base Residual Auction and beyond would create resource obligations and resulting financial liabilities beyond the term of the current ESP. That eventuality would require AEP Ohio to be a CSP engaging in transactions on behalf of customers that have no connection to the Company's business – and the IRP tariff may not even be in existence during that period of time beyond ESP III. Placing AEP Ohio in that position is unfair and unreasonable.

Neither of the two options that involve using AEP Ohio as a CSP should be adopted, for all of the reasons explained above. Rather, as those analyses demonstrate, due to PJM's rules and AEP Ohio's technical and resource limitations, it would be in some ways impractical and unfair and in other ways unduly complicated and inefficient to require AEP Ohio to be the IRP customer's CSP for purposes of capacity or emergency energy transactions in the PJM markets. The simpler, more straightforward, and fair approach is to require the IRP customer to either act

directly on its own behalf or contract with a third-party CSP to conduct its bidding, registration, and sales transactions for capacity and emergency energy and all other products that the customer might have the opportunity to sell into PJM's markets. Under that approach, the IRP customer would also be required to enter into an agreement to pass back to AEP Ohio all capacity and emergency energy revenues realized from the PJM markets, so that the Company could then use them to offset the costs of the IRP credits borne by all other customers.

In the event that the Commission does not remedy the unreasonable aspects of its Entry on Rehearing in the manner requested above and continues to require AEP Ohio to serve as a CSP in some manner, the Company requests that the Commission grant rehearing and confirm, or clarify, that if after successfully bidding the interruptible load resources into the PJM capacity auctions (including both the yet-to-be-conducted incremental auctions for delivery years within the term of ESP III or any auctions for delivery years after the term of ESP III) those demand resources are assessed penalty charges by PJM as a result of their substandard performance, such charges would not be the responsibility of AEP Ohio or the other customers. Notably, the possibility of significantly higher penalty charges for substandard performance being levied against demand resources successfully bid into the PJM capacity auctions, beginning with the 2018-19 delivery year, is now a real possibility as a result of FERC's Order addressing PJM's Capacity Performance filing in Docket ER15-623-000, et al., 151 FERC ¶61,208 (Issued June 9, 2015). It would be unjust and unreasonable to impose on AEP Ohio the burden of paying for any poor performance of IRP customers' demand resources in PJM's capacity markets. Accordingly, AEP Ohio requests that the Commission grant rehearing and confirm, or in the alternative provide clarification, that AEP Ohio will not be responsible for, and that the other customers who bear the cost of IRP program's credits will not be adversely affected by such

penalty charges. This could be accomplished by requiring that any such non-performance charges be the direct responsibility of the IRP customers and suspending the $8.21/MW-day credits until such non-performance charges are paid.

Third, in the event that the Commission does not remedy the unreasonable aspects of its Entry on Rehearing in the manner requested above and continues to require AEP Ohio to serve as a CSP in some manner, the Company should be held harmless from the risk of IRP customers becoming insolvent and defaulting on their obligations to provide their demand resources that have been bid successfully into the PJM market as capacity performance resources. The costs of any PJM charges resulting from the insolvency of an IRP customer whose interruptible load has been successfully bid into the PJM market and that becomes a liability for AEP Ohio must be recoverable through the EE/PDR rider. Any result that imposes upon AEP Ohio the cost of substandard performance charges resulting from the insolvency of the IRP customer would be unjust and unreasonable. More specifically, given the FERC's recent Capacity Performance decision as applied to the Commission's stated intention (Entry on Rehearing at 12) that AEP Ohio should "recover its actual costs of providing the IRP credit," the Commission should confirm that any such charge is eligible for recovery through the EE/PDR rider.

Fourth, AEP Ohio requests that the Commission require IRP customers to commit contractually, as a condition of participating in the IRP program, that they will hold AEP Ohio harmless from and, if necessary to do so reimburse AEP Ohio, for the costs of any charges for the substandard performance of their interruptible loads that are successfully bid into PJM's capacity markets.

In sum, the Commission should confirm that: (1) AEP Ohio is not required to act as an IRP customer's CSP with regard to bidding, registering, and selling the products that result from

the customer's interruptible resource into the PJM markets; (2) the IRP customer is directly responsible for any performance charges under the FERC's Capacity Performance decision, (3) any performance charges not paid by the IRP customer would be recovered through the EE/PDR rider, and (4) IRP customers must commit contractually to hold AEP Ohio harmless from the cost of any charges for the substandard performance of their interruptible loads that are successfully bid into PJM's capacity markets, as a condition of their participation in the IRP program. In anticipation of the above-described options being considered by the Commission, the Companies included in its June 26, 2015 compliance tariff filing three versions of Rider IRP. One which reflected the rider consistent with the Company's understanding of the Commission's rehearing order. A second which reflected the Company's request in this application for rehearing and a third which reflected partial acceptance of the Company's request in this application, wherein the Company remains the CSP and registers the customer as capacity-only.

CONCLUSION

For the foregoing reasons, the Commission should grant rehearing and should reverse, modify, and/or clarify its May 28, 2015 Entry on Rehearing as set forth above.

Respectfully submitted,

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On behalf of Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of *Ohio Power Company's Application for Rehearing* was served upon counsel for all other parties of record in this case, on this 29th day of June, 2015.

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Summary: App for Rehearing electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company