BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technologies and Resources, and Emission Control Reporting Requirements, and Amendment of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and Chapters 4901:5-7 of the Ohio Administrative Code, Pursuant to Chapter 4928, Revised Code, to Implement Senate Bill No. 221	)))))) \)))	**Case No. 08-888-EL-ORD**

COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
MEMORANDUM CONTRA
OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES'
APPLICATION FOR REHEARING

Pursuant to the Attorney Examiner Entry dated May 21, 2009, the deadline for filing memoranda contra the May 15, 2009 applications for rehearing was extended by one day to May 27, 2009. Pursuant to that Entry, Columbus Southern Power Company and Ohio Power Company ("AEP Ohio" or "the Companies") file this memorandum contra in opposition to certain arguments raised in the Ohio Consumer and Environmental Advocates' (OCEA) application for rehearing. Failure to respond to issues raised on rehearing by OCEA or any other party should not be interpreted as acquiescence by the Companies regarding those issues.

1. **OCEA's recommendation (pp. 8-9) that the independent program evaluator be hired directly by the Commission should be rejected.**

OCEA proposes that the Commission directly hire the independent program evaluator referred to in Rule 4901:1-39-01(L). (OCEA Memorandum in Support, pp. 8-9.) In support of its recommendation, OCEA relies on a telecommunication case (Case

No. 99-938-TP-COI) where the Commission opened an investigation regarding compliance with the Minimum Telephone Service Standards. This argument should be rejected.

As a threshold matter, it is not an appropriate basis for rehearing to merely second-guess the manner with which the Commission implements the requirement for an independent program evaluator. Further, the analogy to a Commission-ordered investigation where reasonable grounds where found to exist regarding violations of existing requirements is not comparable to the routine compliance efforts involved with the independent program evaluator referred to in Rule 4901:1-39-01(L). Finally, as AEP Ohio argued in its own application for rehearing, requiring an independent program evaluator to operate at the direction of the Staff is inefficient and will unnecessarily drive up the cost of compliance; this is because the requirement that the utility pay for the M&V contractor yet not allow the utility to hire and direct said contractor will require the utility to, in essence, spend twice the cost to do effective measurement and evaluation. Accordingly, requiring the independent program evaluator to be hired directly by the Commission would make the process even more inefficient and cumbersome.

As the Commission recognized in its Order (p.6) in connection with administering DSM programs, SB 221 "places the responsibility of implementing programs on the electric utilities." While AEP Ohio agrees that third-party M&V should be required, it remains the utility's responsibility to achieve compliance with the benchmarks The day-to-day compliance efforts should be left to the management of the utility and the engagement of and direction to an independent program evaluator is one of those decisions.

Because the utility needs to work on a daily basis with its implementation contractors and M&V contractors to ensure accurate results, it is burdensome for the utility to have to go through Staff to work with the Staff's M&V contractors as well on such an involved basis. It will still be necessary for the utility to hire its own third-party M&V in addition to the contractor hired by staff. In other words, AEP Ohio will likely have to hire and pay both for its independent program evaluator and pay for the independent program evaluator that will operate under the Staff's direction.

Rather than take the approach recommended by OCEA, the rules should be revised to require third-party evaluation administered by the utility with reporting transparency to its Collaborative as well as to the Commission. The Commission Staff could hire a third-party consultant paid for by the utility if determined necessary to review the results of the utility's evaluation contractor or could hire a third-party consultant to evaluate certain aspects of all the electric utilities' implementation efforts. The consultant hired by staff can review the work of each utility's third-party evaluation contractor at much lower cost than the rules would require as written.

2. OCEA's recommendation to use the Societal Test (pp. 9-10), if entertained, should be clarified to apply narrowly.

OCEA also recommends that the Commission incorporate a standard way to calculate nonenergy benefits when evaluating the effects of externalities in the context of approving portfolio program plans. (OCEA Memorandum in Support, pp. 9-10.) In this regard, AEP Ohio would urge the Commission to make clear that the portfolio standard is and remains the TRC Test – not the Societal Test – and that "cost effective" means measured on a TRC basis (except when applying it to the non-energy benefits of a

particular program). Otherwise, the effect of this addition would change the nature of program screening and evaluation.

3. The Commission should reject OCEA's recommendation (pp. 12-13) that a civil forfeiture should be mandatory and non-discretionary under Sec. 4928.66, Ohio Rev. Code.

OCEA argues that waiving compliance with Sec. 4928.66(B), Ohio Rev. Code, is not an option and proposes to clarify the rules by clarifying the "statutorily mandated consequences of non-compliance." (OCEA Memorandum in Support, p. 12.) AEP Ohio generally agrees with OCEA that the Commission's rules "should adequately reflect S.B. 221to ensure that all parties have easy access to what is expected of them and what the consequences are if utilities do not meet those expectations." (*Id*.) Unfortunately, as AEP Ohio and others argued in their applications for rehearing, major questions remain open concerning what is expected for compliance and whether particular actions and programs will count toward satisfaction of the statutory mandates. Indeed, in recognition of these realities, AEP Ohio and others have already argued that the Commission should waive or partially waive the requirements for 2009. (AEP Ohio Application for Rehearing, p. 14.)

Enforcement matters should not be inflexible or non-discretionary as OCEA's premise suggests. The language in the adopted rule properly recognizes that enforcement matters often involve unique or extenuating circumstance and involve matters beyond the utility's control. In the governing statute, the General Assembly codified this discretion when providing a compliance excusal provision and incorporating the concept that a utility may not be able to comply due to regulatory, economic, or technological reasons beyond its reasonable control. (Sec. 4928.66(A)(2)(b), Ohio Rev. Code.) OCEA's

recommendation for an inflexible and non-discretionary enforcement language should be rejected.

4. The Commission should reject OCEA's recommendations (pp. 19-26) to expand the Long-Term Forecast Report rules requiring Integrated Resource Plans under Sec. 4901:5-5-06, Ohio Rev. Code.

As noted in the Companies' application for rehearing in this proceeding, the Commission's proposed rules to require a detailed Integrated Resource Plan (IRP), with detailed supporting data, as part of each year's Long-Term Forecast Report (LTFR) go far beyond the general description of the resource plan contemplated in Sec. 4935.04 (C) (1), Ohio Rev. Code. OCEA would have the Commission require yet additional information to be filed annually in support of an electric utility's IRP.

OCEA relies on Sec. 4935.04 (F) (5), Ohio Rev. Code, to support its argument for requiring anticipated economic and demographic changes be included in support of the IRP. (OCEA Memorandum in Support, p. 20). That statutory provision lists seven different determinations the Commission is supposed to make regarding the LTFR. Given that Paragraph (C) (1) requires only a "*general description* of the resource plan to meet demand" (emphasis added) the Commission should reject the notion that one of the determinations it must make requires the submission of detailed and voluminous information. Similarly, the argument that generation forced outage and availability rates, the number of units at a generating facility (existing and planned), uncertainties concerning factors "considered" even if not modeled, resource uncertainly, the ability to buy from and sell power to other electric systems, inclusion of forecast uncertainty regarding assumptions such as population and economic conditions as part of the State's regulatory climate, and more detailed discussion of reliability criteria all should be

included as part of the "general description" (*id*. at 20-24) should be rejected by the Commission.

OCEA proposes that the IRP's cost effectiveness should be demonstrated over a 20-year period, instead of a 10-year period. This request for yet additional information fails to recognize that the longer period of projection results in less reliable information. OCEA's proposal for doubling the requested information period so as to require more information, which will be of decreasing reliability is contrary to the statutory requirement for a "general description of the resource plan" and should be rejected.

Finally, OCEA proposes expanding Forms FE-R4 and R5 to include projected load duration curves with generation resource stacks laid over those curves. OCEA contends this requirement "is consistent with the expectations of R.C. 4935.04 (C) (1) and the requirement that the electric utility provide information regarding its resource plan to meet demand in the future." (*Id*. at 26). It appears that OCEA believes that a "general description" is synonymous with requiring more and more information. OCEA's proposal is inconsistent with Paragraph (C) (1) and should be rejected.

OCEA gives lip service to the statutory requirement for a general description of the resource plan. (*Id*. at 21). The true nature of its proposals, however, is reflected in its arguments that the Commission's rules do "not include enough information" (*Id*. at 19); are "not inclusive of important resource planning information (*Id*. at 20); that the report must be "comprehensive in its evaluation of the forecasting uncertainties" (*Id*. at 21); that without its proposed change "the report cannot be considered comprehensive" (*Id*. at 23); and that its proposed changes "will provide all parties the information needed to

determine the need for new generation (especially peak generation) or whether another non-generation resource could be procured in a least cost manner." (*Id.* at 25).

The Commission's rules already go far beyond requiring a general description of the resource plan. It should reject all of OCEA's proposals for even more information.

CONCLUSION

For the foregoing reasons, the Commission should reject OCEA's application as discussed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra was served electronically upon counsel for all parties of record this 27th day of May, 2009.

/s/ Steven T. Nourse_____

Summary: Memorandum CSP's and OPCO's Memorandum Contra Ohio Consumer and Environmental Advocates' Application for Rehearing electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company and Columbus Southern Power Company