

**FILE**

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

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**In the Matter of the Application of )  
Columbus Southern Power Company )  
for Approval of its Peak Demand )  
Reduction Program Portfolio Plan and )  
Request for Waiver and Request for )  
Amendment of the 2009 Peak Demand )  
Reduction Benchmark Pursuant to )  
Section 4928.66(A)(2)(b), Ohio )  
Revised Code. )**

**Case No. 09-578-EL-EEC**

**In the Matter of the Application of )  
Ohio Power Company for )  
Approval of its Peak Demand )  
Reduction Program Portfolio Plan and )  
Request for Waiver and Request for )  
Amendment of the 2009 Peak Demand )  
Reduction Benchmark Pursuant to )  
Section 4928.66(A)(2)(b), Ohio )  
Revised Code. )**

**Case No. 09-579-EL-EEC**

**MEMORANDUM IN OPPOSITION TO  
REQUESTS OF THE OHIO CONSUMERS' COUNSEL AND  
COMMENTS OF THE OHIO ENVIRONMENTAL COUNCIL  
SUBMITTED BY AEP OHIO**

Columbus Southern Power Company (CSP) and Ohio Power Company (OPCo), collectively the "Companies" or "AEP Ohio," submitted an application regarding the Companies' peak demand reduction (PDR) portion of their Program Portfolio Plan on July 9, 2009. The Ohio Consumers' Counsel (OCC) filed a motion to intervene on August 6, 2009 which also sets forth "requests" regarding AEP Ohio's application. Similarly, the Ohio Environmental Council (OEC) filed an intervention request and comments on AEP Ohio's application on August 17, 2009. Although AEP Ohio requested expedited consideration of its application, there has been no entry or order

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issued to indicate a process or schedule that is contemplated in the cases. Thus, it is not clear whether OCC's or OEC's intervention will unduly delay or prolong the proceeding – even though OCC waited for nearly a month after the expedited request was made to file an intervention request and OEC waited for five weeks. In any case, AEP Ohio briefly responds to the OCC's and OEC's comments and renews its request for expedited consideration of the application. To the extent not specifically addressed again here, AEP Ohio relies upon the reasons already stated in the application to support the requested relief.

**I. The interpretation of §4928.66, Ohio Rev. Code described in AEP Ohio's application should be adopted**

The OCC concludes (pages 6-7) that AEP Ohio's interpretation should be rejected based on the following:

Any demand reductions resulting from the economic downturn are unplanned, not by utility design and implementation as required by the statute. \*\*\* The underlying reasons that led the Ohio legislature to impose peak demand reduction requirements, such as the postponement of expensive new electric generating capacity and price stability, remain during the current economic conditions.

In advancing a nearly identical argument, the OEC asserts (at page 7) that AEP Ohio's interpretation should not be adopted because:

Any demand reductions caused by the national economic downturn are unplanned, fortuitous reductions – not reductions caused by implemented programs. Further, the reduction benchmarks were not enacted merely for the purpose of reducing peak demand, but also to require utilities to implement programs that would continue to reduce demand and provide future rate stability.

These arguments miss the point of the application and ignore the merits of the Companies' requests.

AEP Ohio, of course, is not claiming that the economic downturn was the result of a program designed and implemented by AEP Ohio. Rather, AEP Ohio's common sense interpretation of §4928.66, Ohio Rev. Code, is that the benchmarks are set to achieve results and that EDUs are not required to unnecessarily implement expensive programs where the results are being achieved and the benefits of future peak demand reductions are fully preserved. The mechanics of AEP Ohio's interpretation and the implications of that reading were explained in detail in paragraphs 5 through 9 of the application and need not be repeated here. It is sufficient in this context to confirm that granting the application would not relieve AEP Ohio of the obligation to achieve peak demand reduction benchmarks in future years when the current economic trend reverses and load growth resumes. Unlike the OCC/OEC interpretation, AEP Ohio's interpretation of the statute fully achieves the twin legislative goals of avoiding the future deployment of unneeded generating capacity while also providing stable rates.

Just as the 2009 benchmarks would be achieved through reduced peak demands, the benchmarks for subsequent years would also be achieved under AEP Ohio's interpretation. Indeed, precisely the same level of new generation capacity avoidance specified by the Ohio General Assembly in enacting SB 221 would also be achieved in the future under AEP Ohio's reading of the statute. Thus, the OCC/OEC claim that their interpretation better achieves the legislative intent of avoiding unneeded future capacity investment is incorrect. As for the OCC/OEC argument regarding rate stability, that goal is also best achieved under AEP Ohio's interpretation which precludes the need for unnecessarily implementing expensive programs if the results are already being achieved. Accordingly, AEP Ohio urges the Commission to adopt this straightforward

interpretation of the statute. To the extent that the Commission does not agree with this practical application of the statute and more strictly interprets the peak demand reduction benchmarks, AEP Ohio alternatively requested that the Commission amend the 2009 benchmarks to zero.

**II. The Commission should amend the 2009 peak demand reduction benchmarks for AEP Ohio, using its authority under §4928.66(A)(2)(b), Ohio Rev. Code.**

Under §4928.66(A)(2)(b), Ohio Rev. Code, the Commission may amend the 2009 PDR benchmarks if it determines that the amendment is necessary because the utility cannot reasonably achieve the benchmarks due to regulatory, economic, or technological reasons beyond its reasonable control. The bases for AEP Ohio's request to amend the 2009 peak demand reduction benchmarks were the economic downturn and the regulatory uncertainty – both circumstances beyond AEP Ohio's control. Either the regulatory or the economic reasons independently justify amendment of the 2009 PDR benchmarks and the Commission could reasonably rely upon either or both reasons to support the Companies' requested amendment.

Neither OCC nor OEC disputes the Commission's ability to amend the 2009 peak demand reduction benchmarks under the statutory authority invoked by AEP Ohio in the application, §4928.66(A)(2)(b), Ohio Rev. Code. Rather, OCC and OEC largely ignore the two statutory bases cited in the application and assert that AEP Ohio should be required to achieve the benchmarks simply because OCC and OEC are not persuaded that AEP Ohio cannot do so without the amendment. Interestingly, the OCC also (at page 7) agrees with AEP Ohio that the solution to the utilities' situation is "not capriciously

shutting down industrial facilities critical to Ohio's economy." This is an affirmative recognition by OCC of the potential economic damage that can be caused by a strict and aggressive reading of peak demand reduction benchmarks. Yet, after quoting the discussion in the June 17, 2009 Entry on Rehearing in Case No. 08-888-EL-ORD informing utilities that interruptible capacity may not necessarily be relied upon to achieve peak demand reductions and that the utilities should seek to implement peak demand reductions through other means, OCC concludes that the solution is to simply procure additional demand reduction resources. OCC's appraisal fails to recognize that its own position denies customers the benefit of reduced compliance costs using a more narrow and practical reading of benchmark compliance that simultaneously preserves the benefits intended by the General Assembly.

Both OCC and OEC advance their interpretation of §4928.66(A)(2)(b)'s "cannot reasonably be achieved" language by arguing that the utilities must achieve the benchmarks even without regulatory guidance and without regard to other economic factors such as program cost or the general state of the economy. This "get-r-done" response dramatically oversimplifies the complexity of implementing the statutory peak demand reduction benchmarks. The OCC/OEC position also fails to recognize that the utilities must balance and pursue various compliance options using a number of variables such as cost, time required for implementation, customer participation, regulatory acceptance and timely cost recovery. If utilities had simply assumed that none of the cheaper, more feasible methods for peak demand reductions would be available or accepted by the Commission, consumer groups would also undoubtedly complain about the result when it came time for cost recovery.

AEP Ohio submits that interpretation of the “cannot reasonably achieve” language in the excusal statute should focus on the key word in that phrase: *reasonably*. In achieving a goal reasonably, surely one must consider economic factors such as the cost and the fact that the goal has already been achieved. The OCC/OEC position ignores these obvious factors.

Also very significant is the fact that the “get-r-done” approach fails to recognize that material aspects of regulatory compliance relative to the PDR benchmarks remain unresolved (the role that interruptible tariff service should play in satisfying the PDR benchmarks, retail participation in the wholesale PJM demand response programs, the interpretation of the governing statute, etc.). Indeed, the regulatory uncertainty continues to exist presently as the Commission recently granted rehearing to reconsider the “green rules.” AEP Ohio’s application seeks clarification of its duties in the face of substantial regulatory uncertainty concerning compliance with the peak demand reduction benchmarks. AEP Ohio’s application attempts to resolve these uncertainties in a timely and proactive manner. It is not sufficient to respond by saying it is the utilities’ problem alone to unilaterally achieve peak demand reductions.

More pertinent are the two independent bases for amending the 2009 benchmarks outlined in the application. First, based on the present downturn in the economy, CSP’s and OPCo’s forecasted 2009 Summer peak demand are more than 1% below their respective three-year adjusted baseline level, primarily due to reductions in industrial and commercial load. Thus, the goal of the General Assembly’s 2009 PDR benchmark has already been satisfied through the unfortunate and unanticipated events associated with

the economy.<sup>1</sup> AEP Ohio submits that it is appropriate in the current economic conditions to determine that multiple – and possibly frequent – curtailment events during the Summer of 2009 would not advance the public interest and could be harmful to those industrial and commercial firms operating during the depressed Summer peak demand period of 2009. Second, as discussed above, a decision to amend the 2009 PDR benchmarks is also independently justified under Section 4928.66(A)(2)(b), Ohio Rev. Code, for regulatory reasons beyond AEP Ohio's control.

Finally in this regard, OCC indicated (at page 9) that if the Commission does grant the 2009 waiver, "the PDR benchmark for 2009 should not be discarded" meaning that the one percent benchmark required for 2009 should carry over with the 0.75 percent benchmark for 2010 so that AEP Ohio's 2010 cumulative benchmark would be 1.75 percent. AEP Ohio agrees that, absent a further waiver or amendment of the 2010 benchmark, the peak demand reduction benchmark for 2010 would be 1.75 percent. That was the intended effect of the application's request to only amend the 2009 benchmark to zero (2010's and all subsequent years' benchmarks would be unaffected by amending the 2009 benchmark).

**III. No additional process is required in this case but if the Commission is not prepared to grant the relief requested, it should establish additional procedures on an expedited basis.**

This case is brought in an attempt to proactively address compliance issues since AEP Ohio is facing a confluence of regulatory uncertainty and highly unusual economic conditions. AEP Ohio submits that a clear and timely answer from the Commission is an appropriate and reasonable expectation as set forth in the application. AEP Ohio does not

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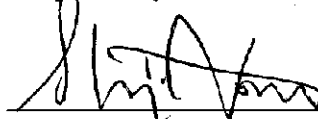
<sup>1</sup> These economic circumstances are certainly not "fortuitous" as characterized by OEC (at page 7).

see the need for additional process in this case given that outside interested parties have already had an opportunity to comment. Of course, it is within the Commission's discretion to determine whether to establish more process through an additional comment schedule or some other procedure if desired. If additional procedures are established, AEP Ohio merely asks that the case progress in an expedited manner.

### CONCLUSION

For the foregoing reasons, the Commission should grant the relief requested in AEP Ohio's application.

Respectfully submitted,



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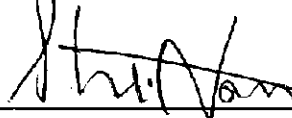
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of Columbus Southern Power Company's and Ohio Power Company's memorandum in opposition was served by U.S. Mail and electronic mail upon the individuals listed below this 24<sup>th</sup> day of August 2009.



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