

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbus)	
Southern Power Company for Approval)	
of its Program Portfolio Plan and Request)	Case No. 09-1089-EL-POR
for Expedited Consideration.)	

In the Matter of the Application of Ohio)	
Power Company for Approval of its)	
Program Portfolio Plan and Request for)	Case No. 09-1090-EL-POR
Expedited Consideration.)	

INITIAL BRIEF OF INDUSTRIAL ENERGY USERS-OHIO

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CERTIFICATE OF SERVICE

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I. INTRODUCTION

On November 12, 2009, Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP") (collectively, "AEP-Ohio" or "Companies") filed an application ("Application") for approval of an energy efficiency and peak demand reduction portfolio plan ("AEP-Ohio Portfolio Plan") to comply with the requirements of Amended Substitute Senate Bill 221 ("SB 221"). Contemporaneously, AEP-Ohio submitted a Stipulation and Recommendation ("Stipulation") entered into by some parties in support of AEP-Ohio's Portfolio Plan.

On December 11, 2009, Industrial Energy Users-Ohio ("IEU-Ohio") submitted objections and recommended modifications to AEP-Ohio's Portfolio Plan. On January 21, 2010, the Commission issued an entry adopting a procedural schedule. On February 25, 2010, an evidentiary hearing was conducted. In accordance with the

schedule established by the Attorney Examiners, IEU-Ohio submits its Initial Brief for consideration by the Commission.

II. STANDARD OF REVIEW

AEP-Ohio's Portfolio Plan must comply with Ohio law. Specifically, Section 4928.66(A)(1)(a), Revised Code, requires Ohio electric distribution utilities ("EDUs"), beginning in 2009, to implement energy efficiency programs that achieve energy savings equivalent to at least three-tenths of one per cent of the total, annual average, and normalized kilowatt-hour ("kWh") sales of the EDU during the preceding three calendar years to customers in Ohio. Ohio's energy efficiency requirements gradually increase to culminate in an annual reduction in energy use of over 22% by 2025.¹ Section 4928.66, Revised Code, also requires EDUs to implement measures designed to achieve a reduction in peak demand of 1.0% in 2009 and an additional 0.75% reduction each year through 2018.²

Section 4928.66(B), Revised Code, requires the Commission to adopt rules to implement the energy efficiency and peak demand reduction requirements and to produce an annual report containing the results of its verification of the annual levels of energy efficiency and of peak demand reductions achieved by each EDU. Section 4928.66(C), Revised Code, requires the Commission to assess a forfeiture on the EDU if, after notice and opportunity for hearing and based upon its annual report, the Commission determines that the EDU has failed to comply with an energy efficiency or peak demand reduction requirement.

¹ Section 4928.66(A)(1)(a), Revised Code.

² Section 4928.66(A)(1)(b), Revised Code.

Also relevant in this proceeding are the provisions in Section 4928.66, Revised Code, permitting the integration of customer-sited capabilities of mercantile customers who commit the capabilities to the EDU for the purpose of counting towards meeting the EDU's compliance targets.³ Specifically, Section 4928.66(A)(2)(c), Revised Code, gives the Commission discretion to help bring these customer-sited capabilities into the EDU's compliance plan:

Any mechanism designed to recover the cost of energy efficiency and peak demand reduction programs under divisions (A)(1)(a) and (b) of this section may exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs, if the commission determines that that exemption reasonably encourages such customers to commit those capabilities to those programs.

Thus, Section 4928.66(A)(2)(c), Revised Code, limits eligibility for this exemption to "mercantile customers"⁴ in circumstances that cause the Commission to determine that the exemption will reasonably encourage mercantile customers to commit their capabilities for integration into the EDU's demand-response, energy efficiency, or peak demand reduction programs. Additionally, Section 4928.66(A)(2)(d), Revised Code, requires the Commission to apply the compliance provisions of that section in ways that facilitate "...efforts by a mercantile customer or group of those customers to offer customer-sited demand-response, energy efficiency, or peak demand reduction capabilities to the electric distribution utility as part of a reasonable arrangement submitted to the commission pursuant to section 4905.31 of the Revised Code."

³ Section 4928.66(A)(2)(c), (d), Revised Code.

⁴ Section 4928.01(A)(19), Revised Code, defines a "mercantile customer" as "a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states."

The Commission's rules to implement the energy efficiency and peak demand reduction requirements of SB 221 require all EDUs to file an initial program portfolio plan by January 1, 2010. The program portfolio plan must be designed to meet or exceed the statutory benchmarks for energy efficiency and peak demand reductions.⁵

The Commission's rules also specifically permit a customer's peak demand reduction capability to count towards an EDU's portfolio obligation if the customer's peak demand reduction capability meets the requirements to be counted as a capacity resource under the tariff of a regional transmission organization ("RTO") approved by the Federal Energy Regulatory Commission ("FERC") and it is committed to the EDU for purposes of meeting its portfolio requirements.⁶ Thus, participation in PJM Interconnection LLC's ("PJM") reliability pricing model ("RPM"), which allows qualifying demand response resources to clear as capacity resources in base residual auctions, act as interruptible load for reliability ("ILR"), or reduce the capacity obligations for fixed resource requirement entities, is a compliance strategy that can be used to satisfy Ohio's peak demand reduction obligation.

As noted above, AEP-Ohio also submitted the Stipulation requesting Commission approval of AEP-Ohio's Portfolio Plan. The Commission and the Ohio Supreme Court apply a three-part test when evaluating the reasonableness of settlements: whether the settlement is a product of serious bargaining among capable, knowledgeable parties; whether the settlement, as a package, benefits ratepayers and

⁵ Rule 4901:1-39-04(A), Administrative Code. Interested persons are permitted to file objections and proposed modifications to the portfolio plan, which will be considered by the Commission in its evaluation. Rule 4901:1-39-04(D), Administrative Code.

⁶ Rule 4901:1-39-05(E)(2)(a), Administrative Code.

the public interest; and whether the settlement package violates any important regulatory principles or practices.⁷

Section 4928.02 Revised Code, sets forth Ohio's public interest objectives which include, in pertinent part, that it is the policy of Ohio to do the following throughout the state:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and ***reasonably priced retail electric service***;

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

* * *

(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;

* * *

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;

* * *

(N) Facilitate the state's effectiveness in the global economy.

(Emphasis added).

As the applicant, AEP-Ohio has the burden of proving that it has met the foregoing requirements before the Commission can approve AEP-Ohio's Portfolio Plan.

⁷ *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370. See, also, *AK Steel Corp. v. Pub. Util. Comm.* (2002), 95 Ohio St.3d 81, 82-83, 765 N.E.2d 862.

Although AEP-Ohio asserts otherwise, without at least the modifications discussed herein, AEP-Ohio has not met its burden of proof.

III. THE STIPULATION FAILS TO MEET THE COMMISSION'S CRITERIA FOR THE EVALUATION OF SETTLEMENTS BECAUSE IT DOES NOT BENEFIT RATEPAYERS, IS NOT IN THE PUBLIC INTEREST AND IT VIOLATES IMPORTANT REGULATORY PRINCIPLES AND PRACTICES.

The parties supporting the Stipulation represent that AEP-Ohio's Portfolio Plan, if approved, could produce total bill increases of 0.4% to 3.4% for CSP customers and 0.4% to 4.0% for OP customers.⁸ These rate increases cannot be viewed in isolation or without real world examples because the total electric bill increases attributed to the proposed AEP-Ohio Portfolio Plan are not the only increases facing CSP and OP customers.

As a result of the Commission's January 7, 2010 order in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC, *et al.*, CSP customers saw, on average, a 6% increase in the total amount of their January 2010 electric bills. OP customers saw, on average, a 7% increase in the total amount of their January 2010 electric bills. Customer bills increased additionally as a result of the Commission's January 7, 2010 order in Case No. 09-1095-EL-RDR. CSP customers experienced an additional 10.52701% increase in the distribution charges in their January 2010 electric bills, while OP customers experienced an additional 8.33091% increase in the distribution charges in their January 2010 electric bills. These increases are compounding increases in CSP and OP rates that have occurred each year since 2006.⁹

⁸ IEU-Ohio Exhibit 1 at 14.

⁹ *Id.* at 14-15.

The estimated bill impacts reflected in the Stipulation are likely understated as they assumed recovery of the estimated costs of AEP-Ohio's Portfolio Plan over a two-year period. Since the recovery period will not be twenty-four months, with all other things being equal, collecting the same amount of dollars over a shorter period will necessarily result in the recovery mechanism increasing and, thus, the bill impacts will increase as well.¹⁰

Given the substantial customer impact of AEP-Ohio's Portfolio Plan, with the limited resources available to IEU-Ohio,¹¹ IEU-Ohio witness Kevin Murray undertook a preliminary, high-level review of AEP-Ohio's Portfolio Plan and, specifically, the Action Plan contained therein, to benchmark the plan against similar energy efficiency plans proposed by EDUs in other states.¹² This analysis was simply for the purpose of determining whether additional analysis was necessary. Based upon his analysis, IEU-Ohio witness Murray concluded that AEP-Ohio's Portfolio Plan had relatively high costs to benefits.¹³ As a result of this conclusion, IEU-Ohio witness Murray conducted further, targeted analysis on a few aspects of the proposed Portfolio Plan, identified specific deficiencies in AEP-Ohio's Portfolio Plan and recommended changes to mitigate the high costs of AEP-Ohio's Portfolio Plan.

¹⁰ Tr. at 61.

¹¹ To this point, IEU-Ohio has invested significant time and resources to offer suggestions in the course of the Commission's rulemaking proceedings to implement SB 221, IEU-Ohio's interaction with the Joint Committee on Agency Rule Review ("JCARR"), the many collaborative meetings regarding each Ohio EDU's energy efficiency and peak demand reduction portfolio plan and "oral arguments" before the Commission. Additionally, the state of Ohio's economy has taken a toll of the resources that are available to devote to this important work.

¹² IEU-Ohio Exhibit 1 at 4, Tr. at 116-117

¹³ IEU-Ohio Exhibit 1 at 12-14.

Although IEU-Ohio witness Murray did not undertake a comprehensive review of each of the programs proposed in AEP-Ohio's Portfolio Plan, his targeted review of the plan determined that without modification, AEP-Ohio's Portfolio Plan should not be approved. The Stipulation fails the Commission's three-part test for approval of settlements as it does not benefit ratepayers or the public interest and it violates important regulatory principles and practices. Accordingly, for the reasons set forth below, the Commission should not adopt the Stipulation without the modifications described below.

A. AEP-Ohio's peak demand reduction proposal is unreasonable and unlawful.

As previously noted, Section 4928.66, Revised Code, requires EDUs to implement measures to reduce peak demand achieving a 1.0% peak demand reduction in 2009 and achieving an additional 0.75% reduction each year through 2018.¹⁴ To achieve these requirements, AEP-Ohio intends to rely upon its existing and future customers obtaining interruptible service through Schedules IRP-D.¹⁵

AEP-Ohio's Schedules IRP-D are not new. Each Company's Schedule IRP-D has been in existence and available to customers for some time and is one of a number of schedules highlighted by AEP-Ohio as including features to encourage energy

¹⁴ Section 4928.66(A)(1)(b), Revised Code.

¹⁵ AEP-Ohio Exhibit No. 1 at 26-27. In the case of OP, existing customers provide sufficient peak reduction capabilities to allow OP to meet its benchmarks through 2011. Tr. at 38. However, for CSP, additional customers must commit peak demand reduction capabilities in order for CSP to achieve its benchmarks in 2010 and 2011. Tr. at 39. During his cross-examination, AEP-Ohio witness Jon F. Williams confirmed these plans, but suggested that AEP-Ohio also plans to offer a modified peak demand reduction plan that is similar to PJM's demand response programs. Tr. at 38.

efficient behaviors in customers.¹⁶ Despite the perhaps long-standing availability of AEP-Ohio's interruptible schedules, only one CSP customer is taking service under the schedule and only six OP customers. In fact, AEP-Ohio has previously acknowledged that the interruptible programs it offers customers are not attractive, particularly in comparison to PJM's demand response programs.¹⁷

If customers do not find AEP-Ohio's current interruptible rate schedules attractive enough to subscribe to, they cannot result in demand reduction.¹⁸ Despite AEP-Ohio's acknowledgement that its current offers fail to attract customers, AEP-Ohio has not included any real substantive changes to its current offers and has not included any new programs that may be more attractive to customers.¹⁹ Thus, at least for CSP, based upon the record, AEP-Ohio's Portfolio Plan as it pertains to peak demand reduction is not designed to achieve a reduction in peak demand of 1.0% in 2009 and an additional 0.75% reduction each year through 2018 as required by Section 4928.66, Revised Code.²⁰

B. The AEP-Ohio Portfolio Plan ignores lower cost compliance options.

Notwithstanding the fact that AEP-Ohio's Portfolio Plan regarding its peak demand reduction proposal is unlawful because it is not designed to meet the statutory

¹⁶ Tr. at 58.

¹⁷ See, for example, *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case Nos. 08-917-EL-SSO, *et al.*, Testimony of David M. Roush on Behalf of Columbus Southern Power Company and Ohio Power Company at 5 (July 31, 2008).

¹⁸ Tr. at 60.

¹⁹ Nonetheless, AEP-Ohio witness Jon F. Williams stated that the costs associated with developing new peak demand reduction programs are included in the Portfolio Plan. Tr. at 39-40.

²⁰ Section 4928.66(A)(1)(b), Revised Code.

benchmarks, it also ignores lower cost options that exist to achieve compliance with peak demand reduction obligations.

The costs that AEP-Ohio proposes to recover from customers through its Energy Efficiency and Peak Demand Reduction ("EE/PDR") Rider include \$3,371,250 in 2010 and \$3,545,625 in 2011 (for a total cost of \$6,916,875) associated with peak demand response programs.²¹ The roughly \$6.9 million reflects \$1,561,875 in administrative costs and \$5,355,000 for customer incentives.²² Customer incentives in this instance reflect the lower electric rate that the customer receives as a result of electing to receive lower quality, interruptible service.²³ In other words, AEP-Ohio is seeking to treat the discount a customer receives as a result of electing interruptible service as a "cost" or, perhaps said differently, as quasi-delta revenue that AEP-Ohio may be permitted to recover from other customers. Thus, at least in part, the amounts that AEP-Ohio seeks to recover from other Ohio customers are not appropriately or lawfully recoverable.

Moreover, even if only "costs" were included for recovery, the AEP-Ohio Portfolio Plan ignores lower cost compliance options. As noted above, the rules adopted by the Commission to implement Ohio's portfolio requirements permit a customer's peak demand reduction capability to count towards an EDU's portfolio obligation if the customer's peak demand reduction capability is recognized as a capacity resource under the tariff of an RTO that has been approved by FERC, and if it is committed to the

²¹ AEP-Ohio Exhibit No. 1, Exhibit JFW-2, Volume 1 page 16 of 163 (Table E-6), Tr. at 54.

²² *Id.* at Exhibit JFW-2, Volume 1 page 131 of 163.

²³ *Id.* at Exhibit JFW-2, Volume 1 page 112 of 163 (Incentive Strategy).

EDU for purposes of meeting its portfolio requirements. Specifically, Rule 4901:1-39-05

(E), Ohio Administrative Code, states:

(E) An electric utility may satisfy its peak-demand reduction benchmarks through a combination of energy efficiency and peak-demand response programs implemented by electric utilities and/or programs implemented on mercantile customer sites where the mercantile program is committed to the electric utility.

- (1) For energy efficiency programs, an electric utility may count the programs' effects resulting in coincident peak-demand savings.
- (2) For demand response programs, an electric utility may count demand reductions towards satisfying some or all of the peak-demand reduction benchmarks by demonstrating that either the electric utility has reduced its actual peak demand or has the capability to reduce its peak demand and such capability is created under either of the following circumstances:
 - (a) A peak-demand reduction program meets the requirements to be counted as a capacity resource under the tariff of a regional transmission organization approved by the Federal Energy Regulatory Commission.
 - (b) A peak-demand reduction program equivalent to a regional transmission organization program, which has been approved by this Commission.

As discussed in IEU-Ohio witness Murray's testimony, demand resources are recognized by PJM as a capacity resource if they clear in periodic base residual auctions conducted by PJM as part of its RPM.²⁴ Through the 2011-2012 planning year, demand response can also qualify as a capacity resource through the ILR option. A planning year runs from June 1 of a given year through May 31 of the following calendar year.

Since AEP-Ohio is a member of PJM, this rule allows a customer's peak demand reduction capabilities to be recognized as a capacity resource by PJM and to be

²⁴ IEU-Ohio Exhibit 1 at 20.

counted by AEP-Ohio towards its portfolio obligation so long as the customer commits its capabilities to AEP-Ohio. The process of committing such capabilities to AEP-Ohio requires the customer to file an application, either jointly or unilaterally, for Commission approval.²⁵ At this time, several applications have been submitted for approval by the Commission and are pending before the Commission.²⁶

In contrast to AEP-Ohio's proposal, in which AEP-Ohio would treat the discounted rate provided to interruptible customers as a cost of complying with its peak demand reduction obligation, demand response resources that clear in the base residual auctions conducted by PJM, or qualify as ILR resources, are paid by PJM as a capacity resource. The capacity provided by demand response resources has the effect of displacing higher cost generation resources that would otherwise clear in the auction.²⁷ This has the result of lowering the overall clearing price in the auction, which benefits customers.²⁸

IEU-Ohio witness Murray estimated that achieving peak reduction benchmark compliance through a strategy that leverages participation in the demand response

²⁵ Section 4928.66(A)(2)(d), Revised Code. See also, Rule 4901:1-39-05 (G), Administrative Code.

²⁶ See, for example, *In The Matter of the Joint Application of The Dayton Power and Light Company and Airgas, Inc. for Approval of a Reasonable Arrangement to Incorporate Customer Participation in PJM's Demand Response Programs Into DP&L's Demand Reduction Program*, Case No. 09-702-EL-AEC, Joint Application of the Dayton Power and Light Company and Airgas, Inc., for Approval of a Reasonable Arrangement to Incorporate Customer Participation in PJM's Demand Response Programs into DP&L's Demand Reduction Program (August 7, 2009); *In The Matter of the Joint Application of The Dayton Power and Light Company and Appleton Papers, Inc. for Approval of a Reasonable Arrangement to Incorporate Customer Participation in PJM's Demand Response Programs Into DP&L's Demand Reduction Program*, Case No. 09-1701-EL-EEC, Joint Application of the Dayton Power and Light Company and Appleton Papers, Inc., for Approval of a Reasonable Arrangement to Incorporate Customer Participation in PJM's Demand Response Programs into DP&L's Demand Reduction Program (December 17, 2009).

²⁷ IEU-Ohio Exhibit 1 at 21.

²⁸ *Id.*

options available through PJM could lower the overall cost of AEP-Ohio's Portfolio Plan by approximately \$7 million.²⁹ AEP-Ohio witness Jon F. Williams agreed with this conclusion.³⁰ However, when questioned about why AEP-Ohio did not include a PJM demand participation option as part of the AEP-Ohio Portfolio Plan, AEP-Ohio witness Williams indicated that the failure to include such an option reflected a management policy decision on behalf of the Companies.³¹

In other words, AEP-Ohio's management policies have blocked the incorporation of peak demand reduction options into the AEP-Ohio Portfolio Plan that AEP-Ohio's Manager of Energy Efficiency and Peak Demand Reduction Programs concedes are lower cost than what is reflected in AEP-Ohio's Portfolio Plan. This behavior persists notwithstanding specific encouragement from two Commissioners urging AEP-Ohio to work with PJM, the Commission, and interested stakeholders to ensure that predictable consumer demand response is recognized as a reduction in capacity that it must carry under PJM market rules.³²

Ignoring known lower cost options that reduce the overall cost of AEP-Ohio's Portfolio Plan does not benefit ratepayers and is not in the public interest. It is also contrary to the state's policies as embodied in Section 4928.02, Revised Code, and specifically Section 4928.02(A), Revised Code, which seeks to ensure the availability to

²⁹ *Id.*; see also, Tr. at 87.

³⁰ Tr. at 43, 54.

³¹ Tr. at 44.

³² *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case Nos. 08-917-EL-SSO, *et al.*, Concurring Opinion of Chairman Alan R. Schriber and Commissioner Paul A. Centolella at 2 (March 18, 2009).

consumers of reasonably priced electricity service. Consequently, the Stipulation as proposed should not be adopted. Alternatively, the Commission should direct AEP-Ohio to modify AEP-Ohio's Portfolio Plan to provide that customer-sited demand response capabilities that qualify as capacity resources in PJM's market will be counted towards AEP-Ohio's portfolio obligation, provided that the customer commits its capabilities to AEP-Ohio as required under Ohio law and the Commission's rules.³³

C. AEP-Ohio has failed to meet its burden of proving that recovery of lost distribution revenue is necessary or appropriate.

The Stipulation provides that AEP-Ohio will be permitted to recover lost distribution revenue and generally describes the level of lost distribution revenue that AEP-Ohio would be permitted to recover if the Commission approves the Stipulation.³⁴ AEP-Ohio witness Roush also explained how lost distribution revenue was calculated.³⁵ However, there is no evidence at all in this proceeding to demonstrate that it is appropriate or necessary to permit AEP-Ohio to recover lost distribution revenue. To the contrary, IEU-Ohio has provided at least two reasons why recovery of lost distribution revenue is not appropriate in this case.³⁶

³³ IEU-Ohio Exhibit 1 at 19-22, Tr. at 81. During IEU-Ohio witness Murray's cross-examination, he identified that participation in PJM's markets as a demand response capacity resource is not limited to mercantile customers. Tr. at 84-85. The Commission's rules allow non-mercantile customer participation in PJM's markets to also count towards an EDU's portfolio obligation if it occurs as part of a peak-demand response program implemented by the EDU. Given AEP-Ohio's management policies regarding participation in PJM's demand response options, IEU-Ohio harbors no illusions that non-mercantile customers will have such an option available in the foreseeable future.

³⁴ Joint Exhibit 1 at 9.

³⁵ AEP-Ohio Exhibit 2 at 5.

³⁶ IEU-Ohio witness Murray acknowledged that there are circumstances that would warrant the recovery of lost distribution revenue but that those circumstances do not exist here. Tr. at 88-89.
{C30360:4 }

First, IEU-Ohio witness Murray explained that regulatory policies generally disfavor approving the recovery of lost distribution revenue or to otherwise adjust rates outside of being examined in a rate case because the Commission does not have the ability to look at all the other variables that affect the calculation of the utility's overall revenue requirement.³⁷ CSP's last distribution rate case was in 1991, 19 years ago, in Case No. 91-418-EL-AIR. OP's last distribution rate case was in 1994, 16 years ago, in Case No. 94-996-EL-AIR. There has been no evidence presented to demonstrate that recovery of lost distribution revenue is necessary in order to allow either CSP or OP an opportunity to recover its cost of providing distribution service including a fair and reasonable return on used and useful distribution rate base.

Additionally, IEU-Ohio witness Murray explained that a mechanism to recover lost distribution revenue reduces the utility's overall risk, which suggests that there should be a downward adjustment to a utility's authorized rate of return contemporaneously to the introduction of any lost revenue recovery mechanism.³⁸ IEU-Ohio witness Murray conceded that it may be appropriate to deviate from this general rule against adjusting rates outside of a rate case if there are financial indicators that provide strong reasons to deviate such as a strong drop-off in sales.³⁹ But that is not the case here.⁴⁰

³⁷ IEU-Ohio Exhibit 1 at 16.

³⁸ *Id.*; see also Tr. at 88-89.

³⁹ IEU-Ohio Exhibit 1 at 16.

⁴⁰ *Id.* In announcing its fourth quarter 2009 earnings, American Electric Power Company, Inc. indicated it expected its overall electricity consumption by retail customers to grow by 1.6% in 2010 over 2009 levels, with a 5% increase among industrial customers.

This proceeding does not provide the Commission with information or the ability to look at all the other variables that affect the calculation of AEP-Ohio's overall revenue requirement, as would be the case in a typical case rate proceeding.⁴¹ Because there are no circumstances that demonstrate that a deviation from the general rule against adjusting rates outside of a rate case is warranted, the Commission should prohibit AEP-Ohio from recovering lost distribution revenue.

Assuming for argument sake that AEP-Ohio has demonstrated that recovery of lost distribution revenue is reasonable and necessary (which it has not), the methodology used by AEP-Ohio to calculate the lost distribution revenue is incorrect. Specifically, AEP-Ohio overstated the potential lost distribution revenue that AEP-Ohio might incur as a result of energy efficiency measures because it incorrectly assumed that AEP-Ohio will experience lost distribution revenue if commercial and industrial customers reduce energy usage.

As IEU-Ohio witness Murray explained, the distribution energy charges applicable to AEP-Ohio commercial and industrial customers are a combination of fixed monthly customer charges, demand charges subject to ratchets, and variable distribution charges based upon energy usage.⁴² However, most base distribution revenue are collected through monthly customer charges and demand charges.⁴³ Nonetheless, to calculate lost revenue for commercial and industrial customers, AEP-Ohio witness Roush divided total annual base distribution revenue (excluding revenue

⁴¹ IEU-Ohio Exhibit 1 at 16.

⁴² IEU-Ohio Exhibit 1 at 18.

⁴³ *Id.*

associated with customer charges and pass-through riders) by billed energy to derive average distribution revenue.⁴⁴ Thus, AEP-Ohio's estimated lost distribution revenue significantly overstates the variable distribution charges that AEP-Ohio collects from commercial and industrial customers.⁴⁵

IEU-Ohio witness Murray's conclusions were not rebutted. Therefore, even if the Commission were to determine that it may be appropriate to deviate from the general rule against adjusting rates outside of a rate case, AEP-Ohio's estimated lost distribution revenue are excessive and significantly overstate potential lost revenue and, thus, are unreasonable.

AEP-Ohio has not met its burden of proving that recovery of lost distribution revenue is necessary or appropriate and overestimated the potential lost revenue it did calculate. Accordingly, the Stipulation as proposed should not be adopted. Alternatively, the Commission should direct AEP-Ohio to remove any amounts associated with lost distribution revenue from its proposed EE/PDR Rider.

IV. CONCLUSION

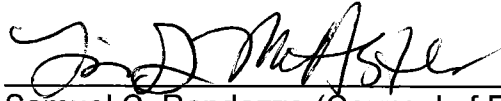
IEU-Ohio respectfully requests that the Commission find that AEP-Ohio's Portfolio Plan, as proposed, fails to comply with Ohio law and the Commission's criteria for demonstrating the reasonableness of settlements. Accordingly, for the reasons stated herein, IEU-Ohio requests that the Commission direct AEP-Ohio to: 1) modify its proposed Portfolio Plan to provide that customer participation as a demand response capacity resource in PJM's markets will be counted towards AEP-Ohio's portfolio

⁴⁴ *Id.* at 17.

⁴⁵ IEU-Ohio Exhibit 1 at 17-18.
{C30360:4 }

obligation, provided that the customer commits its capabilities to AEP-Ohio as required under the Commission's rules; and 2) remove any amounts associated with lost distribution revenue from its proposed EE/PDR Rider.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samuel C. Randazzo", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Initial Brief of Industrial Energy Users-Ohio* was served upon the following parties of record this 10th day of March, 2010, electronically or via first class mail, postage prepaid.


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