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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application)
of Columbus Southern Power) Case No. 10-343-EL-ATA
Company to Amend its Emergency)
Curtailment Service Riders)

In the Matter of the Application)
of Ohio Power Company) Case No. 10-344-EL-ATA
to Amend its Emergency Curtailment)
Service Riders)

AEP OHIO REPLY COMMENTS

Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, the "Companies" or "AEP Ohio") submitted an Application on March 19, 2010, seeking approval of the Companies' Emergency Curtailment Service Riders and a Second demand response program involving conditional approval of retail participation in PJM Demand Response Programs. The Commission established a comment cycle and several parties intervened and filed comments in response to the Application. AEP Ohio submits these reply comments in support of its Application. AEP Ohio has attempted to address the substantive issues raised in comments but should not be understood to agree with any of the parties' comments not addressed herein that are inconsistent with the Application.

AEP Ohio's longstanding position on retail participation in PJM's wholesale Demand Response Programs (DRPs) is the backdrop for the current ECS proposal.

AEP Ohio has consistently advanced its position before the Commission that it is not appropriate or permissible for retail customers receiving regulated, standard service

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offer rates to resell utility power at market-based rates through PJM DRP programs operated in the wholesale market. A primary concern is that AEP Ohio must continue to count the load of PJM demand response participants as firm under the Fixed Resource Requirement (FRR) option and the cost of doing so will be reflected in AEP Ohio's retail rates – a cost that could be avoided if the customer participated in a AEP Ohio demand response program. Customers receiving service at regulated, standard service offer rates and then reselling utility power at market-based rates through the PJM program, is effectively a “heads you lose, tails you lose” proposition for AEP Ohio and its other customers.

On multiple occasions, AEP Ohio has previously explained its concerns with retail participation in the PJM DRPs under SB 221.¹ While the Commission deferred a final resolution of the issue, the March 17, 2009 Opinion and Order in the *AEP Ohio ESP Case* contained a detailed discussion (at 53-58) of the arguments and issues, demonstrating that the Commission is already aware of the major considerations and issues that surround this debate. Thus, AEP Ohio will not repeat all of those arguments in detail here but, instead, incorporate them by reference. As a brief reminder of those concerns, however, AEP Ohio will summarize its general concerns with retail participation in the PJM DRPs again in this pleading.

The mercantile provisions in SB 221 allow customers to commit alternative energy, energy efficiency or peak demand reduction resources toward an EDU's compliance with the statutory benchmarks for each of these areas, based upon a mutual

¹ See *AEP Ohio Electric Security Plan Cases*, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO: AEP Ohio Post-Hearing Brief (December 30, 2008) at 115-126; AEP Ohio Reply Brief (January 14, 2009) at 97-115; AEP Ohio Memo Contra Integrys Energy's Motion for Order (March 2, 2009) at 2-11; AEP Ohio Comments on Integrys Energy's Withdrawal of Motion (March 11, 2009) at 1-3; AEP Ohio Application for Rehearing (April 17, 2009) at 23-26.

agreement between AEP Ohio and one of its customers. AEP Ohio supports these innovative provisions and is actively working with mercantile customers to explore such options. Under that approach (and the design of SB 221), these “win-win” solutions between mercantile customers and EDUs can mutually be harvested and the benefits used within Ohio and in satisfaction of Ohio law.

AEP Ohio has raised concerns regarding the ability of retail customers to participate in the PJM demand response programs “from day one” – prior to the first customer attempting to participate and since then in response to multiple other opportunities. Though financially lucrative to participating retail customers and their curtailment service providers (who get a percentage of the proceeds) –even if the customer never curtails – the PJM demand response programs do have a cost to AEP Ohio’s customers. As discussed further below, AEP Ohio must continue to count the load of PJM demand response participants as firm under the FRR option and the cost of doing so is and will continue to be reflected in AEP Ohio’s retail rates.

Electric utilities such as AEP Ohio can and should incorporate participation in PJM programs into their own demand response programs and efforts –this would include passing some of the economic benefits associated with participation in the PJM programs on to retail customers through complementary retail tariff programs. Under Ohio law, AEP Ohio can also pursue mercantile customer-sited mutually agreeable arrangements as provided in S.B. 221 to commit demand response resources and achieve compliance with the PDR benchmarks. In that manner, AEP Ohio’s wholesale participation in the PJM programs and commitment of retail customer-sited resources would be effectively managed as part of the electric utility’s supply portfolio and help contribute toward

compliance with the benchmarks. That approach would also keep rates lower since it would avoid duplicative supply costs. AEP Ohio would like to reach a comprehensive solution for all of its customers whereby all available demand response capability, whether based on utility programs for its customers or based on customer-sited resources, is committed toward AEP Ohio's compliance and any associated costs are recovered through AEP Ohio's EE/PDR Rider.

AEP Ohio's proposal for Option 1 and Option 2 represents a reasonable compromise to resolve the varying interests at stake in these proceedings.

The Industrial Energy Users – Ohio (IEU) Comments² argue (at 4) that AEP Ohio and its affiliates have worked to erect and maintain barriers to demand response programs “while wrapping itself in a flag that signals loyalty to customers.” IEU goes on (at 5-6) to deride AEP Ohio's conduct when performing its role as a Load Serving Entity in connection with PJM DRP registration process, claiming that AEP Ohio has maintained a “relentless pursuit to limit or prohibit customer participation in PJM's demand response programs” and even suggesting that the PJM market monitor should investigate AEP Ohio's conduct. Each of IEU's assertions is misguided and should be ignored or rejected.

As to AEP Ohio's procedure for handling the PJM DRP registration process, similar claims were made by Integrys Energy in the *AEP Ohio ESP Cases* and, after AEP Ohio responded with verified facts supported by multiple affidavits and testimony, Integrys voluntarily withdrew its motion to cease and desist. To the extent the Commission wishes to entertain these inaccurate claims, AEP Ohio incorporates its memorandum contra filed in Case Nos. 09-917-EL-SSO and 08-918-EL-SSO on March

² IEU filed two sets of comments in these cases. As part of its intervention request, IEU set forth extensive comments (referred to herein as the “IEU Intervention Comments”) and IEU also took advantage of the subsequent comment cycle and filed another set of comments (referred to herein as “IEU Comments”).

2, 2009. Regarding IEU's irritation with AEP Ohio's efforts to have the Commission address these issues, IEU ignores the fact that both the FERC and the PUCO have recognized there are legitimate retail issues to consider when deciding whether to allow retail participation in the PJM DRPs. Based on the recognition that this is a matter that different State regulatory commissions could reasonably reach different results, there is no cause for an investigation as FERC, the creator of the PJM DR programs, has directly recognized in its Final Rule³ that State commissions may have a legitimate interest in prohibiting participation in these programs and has expressly deferred to States to make that decision. Similarly, the PUCO's decision in the AEP Ohio *ESP Cases* imposed a retail participation restriction on customers receiving a rate discount and, far from rejecting the remaining issues relating to retail participation as being wrong or not worth considering, the Commission expressly deferred those issues for subsequent decision. (*AEP Ohio ESP Cases*, July 23, 2009 Entry on Rehearing at ¶ 108.) AEP Ohio's efforts to have the Commission decide these issues cannot reasonably be viewed as nefarious or anti-competitive.

AEP Ohio has not delayed resolution of these issues but, rather, has consistently advocated resolution of these issues before the Commission, dating back to its August of 2008 ESP application in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO. While IEU may complain that AEP Ohio's ECS proposal was not advanced swiftly enough, the Green Rules were only finalized and effective in December 2009 and AEP Ohio began working actively with stakeholders toward developing a filing to resolve these issues for

³ *Wholesale Competition in Regions with Organized Electric Markets* (Docket Nos. RM07-19-000 and AD07-7-000), 125 FERC ¶ 61,071 (October 17, 2008) ("*Final Rule*"). The Final Rule is contained in 18 CFR Part 35.

all customers in a manner that at least partially addresses AEP Ohio's concerns. In that same vein, AEP Ohio has filed hundreds of EEC applications with the Commission to commit customer-sited resourced toward AEP Ohio's benchmark compliance, based upon mutual agreement with industrial and commercial mercantile customers. Thus, it is manifestly evident that AEP Ohio is willing and able to work with mercantile customers, including many of IEU's members, to forge mutually acceptable resource commitment agreements to be presented for Commission approval. In order to continue and significantly expand those ongoing efforts, AEP Ohio has brought the Option 1 and Option 2 ECS proposals forward in these proceedings for the Commission's consideration. Contrary to the rhetoric offered by the IEU in its comments, AEP Ohio submits that its proposal represents a reasonable and lawful compromise to resolve the varying interests at stake in these proceedings.

Ideally, AEP Ohio believes that its retail customers should participate in demand response through AEP Ohio-sponsored, Commission-approved programs. In that context and given the aggressive PDR mandates of SB 221, it would not be unreasonable for AEP Ohio to propose being the exclusive provider of demand response programs at the retail level. But rather than only proposing a program where AEP Ohio would be the exclusive provider of demand response programs (*e.g.*, offering Option 1 only), AEP Ohio is also including Option 2 as a way for customers that want to continue participating in the PJM DRPs to do so in a way that balances AEP Ohio's need to comply with the aggressive PDR mandates of SB 221 while keeping compliance costs reasonable.

EnerNOC, one of the interested parties with substantial business interests directly at stake in these proceedings, has stated (at 2) that "EnerNOC wishes to acknowledge that

the AEP Ohio Application represents clear progress accommodating curtailment service providers in AEP Ohio's service territory. EnerNOC appreciates that AEP Ohio seeks its Application to preserve opportunities for customers to participate in demand response through curtailment service providers." While EnerNOC and AEP Ohio continue to disagree on some of the particular design aspects of the proposed Option 2, EnerNOC – unlike IEU – more reasonably appraises AEP Ohio's situation and its middle ground proposal.

Commitment of PDR resources is still a matter of mercantile customer choice under AEP Ohio's proposal but the Commission can lawfully attach a condition/consequence to that choice.

IEU maintains that AEP Ohio's proposal is unjust because the commitment of PDR resources should be the choice of the mercantile customer and AEP Ohio's proposal seeks to impose conditions on mercantile customers (IEU Intervention Comments at 6-9.) Other commenters advance similar arguments. *See* EnerNOC Comments at 5-6 (Commission should not adopt the condition that customer commit resources); OCC Comments at 7 (customers should not have their choice conditioned upon resource commitment to AEP Ohio); Globe letter at 1 (AEP Ohio proposal to restrict customer choice); Airgas letter at 2 (same); Energy Management Consulting (EMC) letter at 1 (same); Glatfelter letter at 1 (same). While imposing a condition may sound undesirable in the abstract, the reality is that mercantile customers will still get to exercise choice and, in any case, there are sound reasons for AEP Ohio's proposed condition as part of ECS Option 2.

While commitment of customer-sited resources is a voluntary choice for mercantile customers, the Commission's approval of retail participation in the PJM DRPs

is also discretionary and approval may be reasonably limited to those mercantile customers who have chosen to commit their DRP-registered load toward AEP Ohio's compliance with the statutory PDR benchmarks. As referenced above, the FERC's Final Rule explicitly only permitted participation by retail customers "unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate." Final Rule at ¶ 154. *See also* 18 CFR 35.28(g)(1)(B)(3)(iii).

Based on the Commission's ability to ban or restrict retail participation in the PJM DRPs in Ohio, AEP Ohio proposes that only customers who voluntarily commit their demand response load registered with PJM under the DRPs should be permitted to participate. In that way, customers can simultaneously participate in the PJM DRPs, receiving the payments for doing so from PJM, while participating in a State-approved utility program. AEP Ohio's approach fulfills the unique provisions of SB 221 regarding commitment of customer-sited peak demand reduction resources and satisfies Rule 4901:1-39-05(E)(2), Ohio Administrative Code, which requires commitment of customer-sited resources prior to counting toward an electric utility's compliance. As such, AEP Ohio's proposed conditional approval for ECS Option 2 is entirely reasonable in the context of AEP Ohio's unique FRR-related circumstances relating to the impact of retail PJM DRP participation on its FRR obligation and given the mandatory PDR benchmarks.

As a related matter, EnerNOC's comments (at 5-6) and IEU's Comments (at 3-4) briefly question the Commission's legal authority to impose a condition of commitment. AEP Ohio more extensively addressed the Commission's jurisdiction to restrict retail participation in the PJM DRPs as part of its Reply Brief in the *AEP Ohio ESP Cases* (at

pages 100-109) and incorporates those arguments herein, to the extent the Commission wants to closely examine the issue. But for purposes of EnerNOC's and IEU's passing objection, AEP Ohio will only briefly address the matter here. In the lexicon of the Final Rule, FERC uses the term "relevant electric retail regulatory authority" which is defined as *the entity that establishes the retail electric prices and any retail competition policies for customers, such as the city council for a municipal utility, the governing board of a cooperative utility, or the state public utility commission.* (Final Rule ¶ 158). Throughout the Final Rule, FERC deferred this determination to "the entity that establishes the retail electric prices and any retail competition policies for customers" – the Commission fulfills this purpose in Ohio. The FERC did not say it defers to the State legislature but, instead, defers to *state and local regulatory authorities* and preserved a "continuing role" for State commissions. (Final Rule ¶ 157) The FERC refused to preempt State commissions and deferred to them the question whether retail customers participate in the PJM DR programs.

The Commission regulates all aspects of the retail utility transaction, including those that directly involve or affect the customer, and frequently exercises jurisdiction over retail transactions in a way that involves or affects customers. This broad and comprehensive jurisdiction over electric service recognized by the Supreme Court certainly includes the tariff provisions such as those at issue under AEP Ohio's proposal. The Supreme Court of Ohio recently stated that "[i]t is readily apparent that the General Assembly has provided for Commission oversight of filed tariffs, including the right to adjudicate complaints involving customer rates and services." *State, ex rel. Columbus Southern Power v. Fais* (2008), 117 Ohio St.3d 340, 345 (internal citations omitted). The

Commission has jurisdiction to decide whether to permit retail participation in the PJM DRPs and it has already asserted jurisdiction over the issue by previously committing to decide it.

AEP Ohio maintains its position that unconditional retail participation in the PJM DRPs improperly results in exporting Ohio's limited PDR Resources.

IEU's Intervention Comments (at 9-10) disagree with AEP Ohio's point that allowing unconditional retail participation in the PJM DRPs amounts to exporting Ohio's limited demand response resources to the benefit of customers beyond its borders. *See also* KOREnergy letter at 1. AEP Ohio submits that allowing unconditional retail participation in the PJM DR programs outside the context of a utility program does encourage mercantile customers to *export* Ohio's limited demand response resources to the East Coast by allowing them to leverage payments associated with the PJM DR programs against SB 221's design for operation of the innovative mercantile provisions – all without retaining the demand response benefits in Ohio. Even IEU does not deny that it is the East Coast that has needed capacity within the PJM Zone. It would be unfair to enforce the aggressive targets found in SB 221 and simultaneously allow major demand response resources to leave the State of Ohio to the detriment of other Ohio ratepayers. By contrast, AEP Ohio's proposed Options 1 and 2 keep the demand response benefits in Ohio while also allowing the mercantile customers to continue collecting payments from their participation in the PJM DRPs.

AEP Ohio submits that SB 221's plan for demand response lies with implementation of programs through the EDU as regulated by the Commission under Ohio law – not with PJM or another Regional Transmission Organization regulated by

FERC under federal law. Unlike the “best of both worlds” position advanced by IEU, AEP Ohio submits that its proposal reasonably attempts to balance the interests of participating PJM DRP customers and non-participating customers, while achieving PDR compliance at a reasonable cost level for all customers.

It cannot be disputed that AEP Ohio must maintain capacity resources to meet the PJM-registered DRP load and there is necessarily a cost in doing so.

IEU’s Intervention Comments state (at 11) that “[u]nder the FRR alternative, a demand response resource reduces the amount of generation resources the LSE would otherwise need to submit as part of its capacity plan to PJM to demonstrate that they have adequate resources.” This unqualified statement by IEU could be misleading in these cases if not clarified. In particular, only demand response resources of AEP Ohio can offset its FRR capacity resource obligation. In the context of AEP Ohio’s two proposals made in these cases, this means that load registered under the Option 1 program would offset the FRR capacity obligation and the PJM-registered load committed to AEP Ohio under Option 2 would not (the same as any load registered through third-party curtailment service providers). IEU’s Intervention Comments acknowledge this principle elsewhere, saying (at 14) that AEP currently must count the load of all customers “except those customers taking service under AEP Ohio’s interruptible rate schedules, as firm load for the purpose of complying with PJM’s FRR alternative.”

Notably, even where a customer participating in the PJM DRPs commits load toward AEP Ohio’s compliance with Ohio’s PDR benchmarks, it would nonetheless be carried as firm load by AEP Ohio under its FRR obligation to PJM (PJM considers the demand response load as already having being sold into the Reliability Pricing Model

market and it cannot be used again to reduce AEP Ohio's FRR obligation to PJM). In other words, when a demand response customer enrolls with PJM, AEP Ohio must continue to include that participating customer as firm load as part of AEP Ohio's capacity obligation to PJM – regardless of whether the customer is also permitted to commit the same load toward compliance with AEP Ohio's PDR benchmarks. This is another reason why AEP Ohio's balanced proposal to allow retail participation only if the PJM-registered load is committed to AEP Ohio at no additional cost.

By contrast, AEP Ohio can and does use its interruptible customer load (for those retail customers on AEP Ohio's interruptible tariffs) to meet its capacity obligation under the FRR option under the RPM market. For example, the interruptible capability of customers under Schedule IRP-D is used as a resource to meet AEP Ohio's FRR obligation. Thus, interruptible resources that exist under AEP Ohio's own programs can be utilized to satisfy capacity obligations as part of the supply portfolio being provided to SSO customers at ESP rates. (See Rule 4901:1-39-05(E), OAC.)

IEU even challenges the notion that AEP Ohio incurs costs for covering the PJM-registered load as part of its FRR obligation. IEU's Intervention Comments contest (at 12-13) AEP Ohio's position that it incurs costs when customers participate directly in the PJM DRPs (i) because AEP Ohio's retail rates do not explicitly reflect any costs AEP Ohio may incur under the FRR alternative, and (ii) because AEP Ohio proposes to recover the payments to customers under the Option 1 tariff program through the EE/PDR Rider as compliance costs. Both of these arguments are misplaced.

As AEP Ohio stated in the application (at ¶ 5), it must count the PJM-registered load as firm load under its FRR obligation and the cost of doing so is necessarily

reflected in its retail rates. The fact that there is no specific retail rate component that is explicitly tied to this cost does not make the cost go away. And there is no basis to conclude that AEP Ohio's existing retail rates already provide for recovery of those costs. It is clearly a cost of providing generation service that needs to be recovered through retail rates. Indeed, the Commission has already found that AEP Ohio incurs costs in counting PJM-registered load as firm load under the FRR obligation:

In its November 4, 2009 Second Entry on Rehearing in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, the Commission has characterized its own Orders in the *AEP Ohio ESP Cases* as follows:

The March Order relies on Staff's testimony, which states that the PJM DRP cost AEP-Ohio's other customers as the load of such PJM program participants continues to count toward the Companies' FRR option and such cost is reflected in AEP-Ohio's retail rates (Tr. Vol. VIII at 165-166; March Order at 54). The March Order and the July Entry explain the factors that the Commission relied upon to reach its decision on this issue, as well as to support the refinement of the decision in the July Entry. Recognizing that the PJM DRP offers a benefit to Ohio program participants, in the March Order, the Commission also recognized that the record indicated that the PJM DRP costs AEP-Ohio's other customers.

AEP Ohio ESP Cases, Second Entry on Rehearing at 5-6. The Commission went on to repeatedly describe customers that directly participate in the PJM DRPs as receiving "benefits from the PJM DRP at the expense of AEP Ohio's other customers." *Id.* Thus, the Commission has already found that the PJM DRP costs AEP Ohio's other customers and IEU's suggestion to the contrary should be ignored or rejected.

IEU also misses the mark in arguing that the cost of carrying PJM-registered load a firm load under the FRR is negated because the payments to be made by AEP Ohio to customers under the proposed Option 1 program would be recovered as PDR compliance costs. IEU's argument in this regard conflates two separate costs involving different

customers. The cost associated with carrying PJM-registered load as firm load under the FRR is a capacity cost caused by the particular customers that have registered but borne by all customers and reflected in AEP Ohio's retail generation rates and, thus, relates to proposed ECS Option 2. (The fact that this capacity cost is incurred in order to enable those registered customers to collect payments under the PJM DRPs is one of the reasons AEP Ohio advocates that the PJM-registered load must be committed at no additional cost toward AEP Ohio's PDR benchmark compliance.) Whereas, the cost of payments to customers under the Option 1 program are tied to customers that are participating in the Option 1 program and are, necessarily, not participating in the PJM DRPs. Moreover, the demand response load of the Option 1 customers will be used to offset AEP Ohio's FRR obligation and the capacity costs discussed above will not be incurred for that load. Because SB 221 imposes the PDR benchmark obligation on AEP Ohio and such Option 1 program costs are properly considered compliance costs, recovery through the EE/PDR Rider is entirely appropriate.⁴ Accordingly, IEU's arguments in this regard are without merit.

Shopping customers who commit PDR resources should not be exempt from the EE/PDR Rider but would not be restricted from participating in the PJM DRPs under AEP Ohio's proposal.

Constellation NewEnergy argues (at 4-5) that shopping customers should not pay AEP Ohio's EE/PDR Rider since AEP is not reserving any capacity for customers served

⁴ As a related matter, IEU's Intervention Comments suggests (at note 5) that the Commission should offset any cost recovery by any additional off system sales margins. This would be inappropriate for several reasons. AEP Ohio's approved ESP does not provide for any such capturing of OSS margins. Neither the approved ESP nor the enabling law, SB 221, incorporates such a traditional/ cost-based regulation approach, even if the OSS margins were under the retail ratemaking jurisdiction (which they are not). Moreover, SB 221's mandates for energy efficiency, peak demand reduction and alternative energy portfolio requirements all displace existing generation capacity with respect to Ohio retail load that existed when the law was passed and there is no basis in the law to attempt to capture OSS margins resulting from those mandates. IEU's passing reference to capturing OSS margins should be ignored or rejected.

by a CRES. Similarly, IEU's Intervention Comments state (at 14) that AEP Ohio's application is silent on whether AEP Ohio supports the ability of a shopping customer to avoid the EE/PDR Rider if the customer commits customer-sited resources toward AEP Ohio's PDR compliance. IEU's Comments (note 3) also falsely accuse AEP Ohio of discrimination based on the distinction between shopping and non-shopping customers. While shopping customers should not avoid the nonbypassable EE/PDR Rider as approved in the ESP Cases, AEP Ohio is not advocating any restrictions on the ability of shopping customers to participate in the PJM DRPs – because shopping customers present different circumstances and have a different impact on AEP Ohio when they participate in the PJM DRPs.⁵

The Commission approved the EE/PDR Rider as being nonbypassable. (CSP Tariff Sheet No. 81-1 and 81-1D; OP Tariff Sheet No. 81-1 and 81-1D.) This is consistent with SB 221 and the fact that the EE/PDR mandates are not imposed on CRES providers. By contrast, the alternative energy portfolio requirements are imposed on CRES providers and the charges associated with the portfolio compliance costs are bypassable. (Ohio Rev. Code Ann. 4928.64(E).) And while the fact that AEP Ohio does not incur a FRR capacity obligation for shopping customers does not justify an exemption from the EE/PDR Rider, it does mean (by logical extension of AEP Ohio's position) that shopping customers should not be required to commit their PDR resources to AEP Ohio at no additional cost.

⁵ Likewise, there is no basis for the related but distinct argument by EnerNOC (at 16-18) that the ECS proposals violate R.C. 4905.33's prohibition on undue discrimination among similarly situated customers. It is not rate discrimination to have a negotiated rate to provide a competitive service to different customers and different times based on arm's length negotiations within a specified price range. Such a claim is highly speculative and unripe for review; an undue discrimination claim could only be evaluated based on actual facts that develop in the future.

Indeed, AEP Ohio's Application expressly indicated that it is not advocating a restriction on shopping customers' participation in the PJM DRPs during the time they receive service from a CRES provider. (Application at ¶ 5.) This is because shopping customers, as IEU's Intervention Comments admit (at 14), CRES providers compensate AEP Ohio in accordance with PJM requirements, *i.e.*, they do not impose net capacity costs on AEP Ohio like the non-shoppers. Ohio would also note that most of the costs collected under the EE/PDR Rider are associated with energy efficiency programs, not peak demand response programs (thus, any exemption should recognize only the value associated with the PDR resource commitment). In any case, the Commission should not entertain modifying the nonbypassable nature of the EE/PDR Rider.

As a related matter, IEU's Intervention Comments also argue (at 15-16) that customers that commit PDR resources are making an in-kind contribution and do not shift costs to other customers by receiving an exemption from the EE/PDR Rider, concluding that "it does not make any sense" for customers to have to give their capabilities to AEP Ohio and also pay for the compliance costs of AEP Ohio. AEP Ohio submits that it does make sense for a PJM-registered customer to continue to pay the EE/PDR Rider because retail customers are getting access to power at average embedded cost and re-selling at wholesale for higher market rates – a profit margin not only made possible by AEP Ohio but also subsidized through retail rates paid by all customers. Requiring mercantile customers to continue paying the EE/PDR Rider and to commit their PJM-registered demand response load at no additional cost is more reasonable than a customer getting paid twice for the same demand response load. IEU is advocating the "best of both worlds" for its members and (because IEU is also a curtailment service

provider) for itself. *See* OCC Comments at 7 (under no circumstances should customers who participate in PJM LRPs be entitled to a second payment). AEP Ohio's proposal involves two alternative options that mutually benefit the mercantile customer and the interest of all of AEP Ohio's other customers; a customer can choose either Option 1 or Option 2 – but not both.

AEP Ohio believes that the penalty proposed in conjunction with ECS Option 2 is reasonable and submit that it was intended only to make AEP Ohio whole.

EnerNOC strongly objects to the penalty provision associated with Option 2, claiming (at 6-9) that adopting it is unlawful; misapprehends demand response portfolio management undertaken by curtailment service providers; and amounts to a "poison pill" that could lead to customers avoiding participation in demand response. Constellation NewEnergy also argues (at 4) that the penalty provision is unwarranted. These positions tend to sidestep the potential statutory penalty for AEP shareholders if AEP Ohio relies on the customer-sited resources only to fall into non-compliance when the customer fails to curtail load. AEP Ohio does, however, recognize that curtailment service providers such as EnerNOC and Constellation manage their demand response on a portfolio basis and individual customers may or may not respond to a given curtailment call. AEP Ohio also recognizes that, given the balance of interests at stake in proposing that mercantile customers participate in the PJM DRPs based on the condition that the registered load be committed to AEP Ohio at no additional cost, it may be appropriate to remove the penalty provision if Option 2 is otherwise adopted as proposed. To that end and in the context of adopting Option 2 on that basis, the amended Rider ECS language proffered by EnerNOC on pages 13 and 14 of its comments regarding Option 2 would be acceptable to AEP

Ohio. Alternatively, AEP Ohio would also be willing to work toward a solution where curtailment service providers would take responsibility for a group of customers they represent such that an aggregate amount of demand response would be achieved and a demand response portfolio management approach could continue to be utilized.

AEP Ohio's understanding of the Green Rules is that an affirmative commitment by a mercantile customer in order for the customer-sited resources to count toward a utility's compliance with the statutory benchmarks.

EnerNOC alone argues (at 10-11) that a customer-sited resource that satisfies the criteria in Rule 4901:1-39-05(E)(2), OAC, automatically counts toward a utility's compliance and does not suggest that "a condition in a utility tariff or separate agreement is required if demand reductions are due to participation as a PJM capacity resource." The prefatory language at the beginning of subsection (E) that was omitted in EnerNOC's quotation of the rule, says that the utility may satisfy the benchmarks using mercantile customer-sited resources "where the mercantile program is committed to the electric utility." Thus, while AEP Ohio would not necessarily oppose a conclusion like that advocated by EnerNOC, it does not appear to be consistent with the language in the rule or the statutory design.⁶

As a related matter, EnerNOC suggests (at 12) that AEP Ohio does not need a condition that the mercantile customer provide information to document compliance with

⁶ AEP Ohio would also note that, on the other end of the spectrum, the OCC maintains (at 6) that even the Companies' tariff and contract approach does not sufficiently establish a sufficient link between the commitment of PJM-registered load and peak demand reduction for AEP Ohio. In support of this position, OCC invokes arguments made by AEP Ohio during the *ESP Cases*. OCC argues (at 6-7) that the PJM-registered load only represents a PJM capability to reduce load and does not provide AEP Ohio the capability to reduce load. As a related matter, OCC claims (at 7-8) that AEP Ohio's compliance efforts in conjunction with the PJM programs would be redundant. All of these arguments directly conflict with the Commission's adoption of Rule 4901:1-39-05(E), OAC, in Case No. 08-888-EL-ORD. Consequently, the arguments (as well as OCC's reliance on AEP Ohio statements made prior to adoption of the rule) should be rejected.

the PDR benchmarks because PJM already publishes helpful data and AEP Ohio received additional “add back” information for customers served by curtailment service providers. If the Commission determines that PJM’s acceptance of load under the DRPs (including the testing requirements imposed by PJM) would, in and of itself, be sufficient to demonstrate PDR benchmark compliance for that amount of demand response load, AEP Ohio is not opposed to that result and it may in fact be a reasonable outcome. Significantly, AEP Ohio would also note that such an approach could “moot” the disagreement concerning AEP Ohio’s proposed penalty clause for ECS Option 2 (discussed above). This is because there would, by definition, never be noncompliance associated demand response load that is registered under the PJM DRPs.

The Commission should adopt AEP Ohio’s proposal for Option 1 and Option 2 as soon as possible, even if the retail participation condition reflected in Option 2 is not proactively enforced until the 2011-2012 PJM Planning Year.

IEU’s Intervention Comments argue (at 17) that customers who are already registered in the PJM DRPs for the 2010-2011 Planning Year may not withdraw or fail to comply without penalty, suggesting that the Commission should not implement any restrictions until the 2011-2012 Planning Year if at all. Similarly the nearly identical “form letters” submitted by Globe, Airgas, EMC and Glatfelter urge the Commission to avoiding any retroactive effects if AEP Ohio’s proposals are adopted. AEP Ohio does not believe it is necessary to cause any mercantile customer to incur any penalty prior to the 2011-2012 Planning Year if at all.

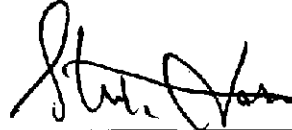
If the Commission adopts the conditional retail participation approach proposed by AEP Ohio, customers that are already registered for the 2010-2011 Planning Year can simply sign the resource commitment agreement and the PJM-registered load pertaining

to the 2010-2011 Planning Year could be used toward AEP Ohio's 2010 PDR benchmark compliance. There is no need to incur a penalty or apply the proposed framework retroactively. Starting with the 2011-2012 Planning Year registration period, the Commission and AEP Ohio could more proactively apply the commitment condition before the PJM registration process begins or in tandem with it. Thus, AEP Ohio would like to get its proposal approved as soon as possible.

CONCLUSION

Consistent with the Application and the above reply comments, the Companies respectfully request that both of the proposed ECS Riders and the related customer agreement be deemed just and reasonable and approved.

Respectfully submitted,

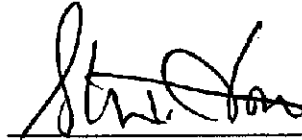


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Columbus Southern Power Company's and Ohio Power Company's Reply Comments of AEP Ohio has been served upon the below-named counsel via First Class mail, postage prepaid, this 7th day of June, 2010.



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