

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals.	) ) ) )	Case No. 10-2376-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan.	) ) ) ) )	Case No. 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.	) ) ) )	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM
In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders.	) ) )	Case No. 10-343-EL-ATA
In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders.	) ) )	Case No. 10-344-EL-ATA
In the Matter of the Commission Review Of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	) ) )	Case No. 10-2929-EL-UNC
In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144.	) ) ) )	Case No. 11-4920-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144.	) ) ) )	Case No. 11-4921-EL-RDR

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**APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF  
THE OMA ENERGY GROUP**

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**APPLICATION FOR REHEARING**

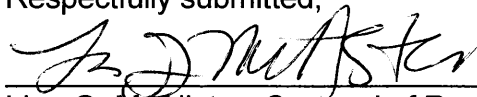
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Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), the OMA Energy Group ("OMAEG") respectfully submits this Application for Rehearing of the Opinion and Order ("Order") issued by the Public Utilities Commission of Ohio ("Commission") on December 14, 2011 concerning the electric security plans ("ESP") of Columbus Southern Power Company and Ohio Power Company (individually "CSP" and "OP," respectively, and collectively "Companies" or AEP-Ohio"). The Commission's Order is unlawful and unreasonable in the following respects:

1. The Commission's Order unreasonably altered the balance struck by parties negotiating in good faith on the allocation of RPM-priced capacity.
2. The Commission's Order modified the shopping credit provision in a way that unreasonably fails to maximize the benefits to GS-2 customers.

OMAEG respectfully requests that the Commission grant this Application for Rehearing and modify its Order as described in greater detail in the Memorandum in Support attached hereto.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT**

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## I. INTRODUCTION

On September 7, 2011, numerous parties filed a Stipulation and Recommendation (“Stipulation”) before the Public Utilities Commission of Ohio (“Commission”) as a package of recommendations to address important regulatory issues and resolve a number of contested cases pending before both this Commission and the Federal Energy Regulatory Commission (“FERC”). On December 14, 2011, the Commission issued an Opinion and Order (“Order”) that approved the Stipulation with several modifications.

Specifically, the Order (at page 55) modified the allocation of the RPM-priced capacity allotments by maintaining each customer class’s proportion indefinitely rather than reallocating any unused amounts to other customer classes on a first-come, first-served basis. Additionally, the Commission (at pages 38-39) modified the shopping credit for GS-2 customers by expanding its availability an additional 1 million MWhs to newly shopping GS-2 customers.

As described below, as the modification to the RPM-priced capacity allocations is unreasonable and fundamentally upsets the balance struck in the Stipulation, the Commission should reverse this modification. Additionally, while OMAEG supports the Commission’s modification to the shopping credit provision, further modification could maximize the benefit intended by the Commission’s shopping credit expansion.

## II. ARGUMENT

### A. **The Order unreasonably altered the balance struck by parties negotiating in good faith on the allocation of RPM-priced capacity.**

The Stipulation sets forth the process for allocating the RPM- priced capacity.<sup>1</sup>

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<sup>1</sup> Stipulation and Recommendation at 22-23 (September 7, 2011).

The set aside of RPM-priced capacity shall be initially allocated on a pro rata basis among the residential, commercial and the industrial classes based upon projected kWh consumption for a period of approximately 4 months after the filing of the Stipulation. A customer's class determination shall be based on the same criteria used to define the class for purposes of the current forecasted load projection. The RPM-priced capacity set aside shall be awarded to customers on a first come, first serve basis based upon the rules and processes set forth in Appendix C. After the expiration of the four month period, any kWhs of RPM-priced capacity that have not been consumed by a customer class will be available for customers in any customer class based upon the priority as set forth in Appendix C. During this transition period of RPM-priced capacity, a shopping customer that obtains the RPM-priced capacity shall retain the right to receive the RPM-priced capacity as long as the customer continues to take service from a CRES provider.

The Commission modified the allocation process in two ways. First, it allowed for an increase to the amount of RPM-priced capacity available to residential customers in order to ensure that communities that approved governmental aggregation programs in November 2011 have access to the RPM-priced capacity.<sup>2</sup> OMAEG does not take issue with that part of the Commission's decision.<sup>3</sup>

However, the Commission also modified the allocation process to prohibit any reallocation of unused RPM-priced capacity to customers of another class. The Commission held:

We also find it necessary to modify the Stipulation to ensure that residential customers are not foreclosed from their share of the capacity at RPM rates. To that end, the Commission notes that the Stipulation provides 'any kWhs of RPM-priced capacity that have not been consumed by a customer class will be available for customers in any customer class based upon the priority as set forth in Appendix C.' We are modifying the Stipulation such that RPM-priced capacity allocation determined for each

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<sup>2</sup> Opinion and Order at 54. However, governmental aggregation communities will only qualify for the RPM set aside if the community or its CRES provider completes the necessary process to take service in the AEP-Ohio service territory by December 31, 2012.

<sup>3</sup> The Commission also noted that any communities that failed to approve an aggregation program in the November 2011 election may still take measures to aggregate and pursue a shopping rate within the RPM set aside to the extent it is available in the residential allocation.

customer class is only available for customers in the particular customer class, no RPM-priced capacity can be allocated to a customer in another customer class.<sup>4</sup>

This modification to the capacity allocation upsets the balance achieved in the Stipulation, is unreasonable and is contrary to the public interest.<sup>5</sup>

The Stipulation is supported by a substantial list of stakeholders, including OMAEG, representing a diverse group of interests. Not only does the Stipulation fundamentally restructure AEP-Ohio's business model and drive the potential for achieving a statewide consensus model for an auction-based standard service offer ("SSO"), the negotiated result incorporates an impressive array of customer and public policy benefits that were achieved through staggering compromises among the Signatory Parties' litigation positions. While the Stipulation involves a host of important issues and proposals, one of the most important issues to OMAEG was the capacity price paid to AEP-Ohio by competitive retail electric service ("CRES") providers to support retail shopping.

OMAEG negotiated in good faith to reach the settlement reflected in the Stipulation. At all times during the negotiations it was made clear by the OMAEG that its support was predicated on manufacturers, Ohio's number one economic sector providing hundreds of thousands of Ohioans with family sustaining wages, having reasonable access to RPM-priced capacity. The OMAEG was aware that the industrial

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<sup>4</sup> Opinion and Order at 55 (internal citations omitted).

<sup>5</sup> The combination of these modifications has provided residential customers with a greater portion of RPM-priced capacity than the commercial and industrial customers. Individual residential customers may shop on their own and receive an RPM set aside to the extent it is available; communities who did not approve governmental aggregation programs in November 2011 may do so now and receive an RPM set aside to the extent it is available. And, for those communities who approved governmental aggregation programs in November 2011, regardless of whether the residential allocations have been fully subscribed, those communities will receive RPM-priced capacity.

allocation may end up fully subscribed, but was assured that access to unsubscribed residential RPM-priced capacity would fill the need for Ohio's job creators.

The OMAEG was also aware of a need to provide a reasonable period of access to RPM-priced capacity for residential customers who wished to shop. The OMAEG conceded to the allocation based on customer class but only for a limited period of time. There are two important reasons for the reallocation after the window.

First, for many industrial customers, shopping is an extremely important economic development and retention tool. The market and its RPM-priced capacity is providing manufacturers who have access to it with much needed savings. In many communities these manufacturers are the employers providing family sustaining wages. These manufacturers are Ohio's wealth creators who, by their very presence, provide significant direct economic benefits through payroll and taxes and important indirect contributions. For example, these manufacturers purchase goods and services from local and Ohio businesses and their employees use local accountants, eat at local restaurants, retain local lawyers, use local dry cleaners, and a host of other service industries. But for the manufacturer actually creating wealth and bringing dollars into the local economy, many of these service jobs would wither. Thus, even recognizing that residential customers may not receive a pro-rata share, ensuring that Ohio's manufacturers have access to RPM-priced capacity and remain competitive is reasonable and in the public interest.

Second, it makes little sense to allow for any RPM-priced capacity to remain unused. Each customer class was given the same window of time to use its allocation, which was specifically designed to allow communities to approve governmental



aggregation programs. After the window expires, the unused portions were to be awarded on a first-come, first-served basis. To exclude a portion of RPM-priced capacity, perhaps indefinitely, is unreasonable when there are other customers who could take advantage of it. This is particularly true given the fact that the Commission accounted for the event that the currently unused residential allocation is used by industrial customers by increasing the residential allocation for governmental aggregation programs.

While OMAEG was not enthusiastic about limiting the availability of RPM-priced capacity, it agreed to the Stipulation as a total package and based upon the notion that there would be RPM-priced capacity available to industrial customers who acted reasonably. The reallocation has become critical to OMAEG in recent days now that AEP-Ohio has informed CRES providers that industrial customers who submitted a 90-day notice to AEP-Ohio of their intent to shop had to do so prior to September 8, 2011 in order to receive an allotment of RPM-priced capacity. September 8, 2011 is the day after the Stipulation was finalized and filed. This is contrary to the messages provided during and for a significant period of time after the Stipulation was filed. For example, on October 21, 2011, AEP-Ohio posted an update on the capacity allocation to its website that indicated that as of October 14, 2011, there were 54,375 MWhs of RPM-priced capacity remaining for industrial customers. But, on December 29, 2011, AEP-Ohio issued a notice that stated in pertinent part:

Those Group 5 customers also include industrial customers that have had an EDI message received by AEP Ohio for a valid transaction to begin open access service, had an affidavit submitted by a CRES regarding the existence of a validly executed contract, or provided a 90 day notice to AEP Ohio **prior to September 8, 2011**. Some industrial customers that took any of these actions on September 8, 2011 have also received

allotments. AEP Ohio will inform those specific industrial customers whether they have received allotments of RPM-priced capacity. (Emphasis added).<sup>6</sup>

In other words, it has only become public that the RPM-priced capacity became fully subscribed for industrial customers on or before September 8, 2011. Had the OMAEG, and perhaps other customer groups, known in August what it learned on December 29<sup>th</sup> a different stipulation likely would have emerged.

As a result of this information, the reallocation of the unused residential RPM-priced capacity becomes critical to achieving the bargain that OMAEG and others believed they were getting, supporting manufacturing competitiveness in AEP-Ohio's service territory and not squandering valuable RPM-priced capacity left unused. If there is no reallocation of RPM-priced capacity, manufacturing competitiveness in Ohio suffers. If there is no reallocation and the residential bucket never becomes fully subscribed, manufacturing competitiveness in Ohio suffers needlessly.

While OMAEG does not intend to renege on its end of the deal, OMAEG requests that the Commission maintain the precarious balance embodied in the Stipulation by reconsidering its capacity allocation modification.

**B. The Commission's Order modified the shopping credit provision in a way that unreasonably fails to maximize the benefits to GS-2 customers.**

As part of the package, the Stipulation established a shopping credit for schools who are currently shopping and GS-2 customers who are new to shopping after September 6, 2011. The Stipulation provides, "All GS-1 and GS-2 schools that are currently shopping, as well as GS-2 customers that switch to a CRES provider after

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<sup>6</sup> The notices are available on AEP-Ohio's website at: <https://www.aepohio.com/service/choice/cres/>. Last reviewed on January 11, 2012.

September 6, 2011, will receive a shopping credit of \$10/MWh for the first one million MWh of usage per calendar year. Customers that obtain this shopping credit retain it for the entire term of the ESP.”<sup>7</sup> Further, AEP-Ohio will recover the cost of the shopping credit through the MTR.<sup>8</sup>

The Commission’s Order modified the shopping credit by increasing the credit to the first 2,000,000 MWh of usage per calendar year, with any unused MWh to carry over to the next calendar year.<sup>9</sup> The Commission reasoned that it was necessary to expand the availability of the shopping credit to encourage economic development by including new customers who might otherwise be capped out and to mitigate the increase to the rates of the GS-2 customers.<sup>10</sup>

While OMAEG supports the Commission’s expansion of the shopping credit (even noting that it has the effect of reducing the credit and increasing the charge of the MTR for other customers), OMAEG believes that the unused portion should be credited to GS-2 customers who are existing shoppers and are realizing distribution rate increases of 30% or more.

AEP-Ohio’s GS-2 tariff is generally reserved for lower load-factor customers. While some of these customers elected to shop already and are receiving the RPM-priced capacity, many are potentially realizing significant unavoidable price increases. Allowing the unused portion of the shopping credit to be accessed by GS-2 customers who may be experiencing notable increases (30% or more) is in the public interest,

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<sup>7</sup> Stipulation and Recommendation at 5 (September 7, 2011).

<sup>8</sup> *Id.*

<sup>9</sup> Opinion and Order at 39.

<sup>10</sup> *Id.*


does not upset the delicate balance reflected in the stipulation, and will focus scarce resources on those parties most in need. Further, it would mitigate the impact of the rate increases to those customers and provide the rate stability that the Commission said is an essential tool for business retention.

Again, to leave benefits on the table when they could positively impact existing customers is unreasonable and contrary to the public interest. Accordingly, OMAEG respectfully requests that the Commission modify the shopping credit by crediting any unused portion to aforementioned GS-2 shopping customers.

### **III. CONCLUSION**

For the reasons outlined above, the Commission should grant rehearing to reallocate the unused RPM-priced capacity consistent with the Stipulation and to credit currently shopping GS-2 customers with a 30% or greater unavoidable rate increase with any unused shopping credit. Failure to do so would be unreasonable, contrary to the public interest, and would upset the balance struck in the Stipulation.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Application for Rehearing was served by electronic mail on the parties of record listed below this 13<sup>th</sup> day of January 2012.

  
\_\_\_\_\_  
Lisa G. McAlister

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Summary: Application for Rehearing electronically filed by Teresa Orahood on behalf of OMA Energy Group