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BEFORE
 THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review)
 of the Capacity Charges of Ohio Power) Case No. 10-2929-EL-UNC
 and Columbus Southern Power Company.)

***THE OHIO SCHOOLS'
 MEMORANDUM CONTRA OHIO POWER COMPANY'S MOTION TO STRIKE***

Even the most casual observer is aware of the deep economic recession that has gripped this state, its effect on the state's operating budget, and the resulting impact to Ohio's schools. School districts have been required to bear major burdens in balancing the state budget and the loss of federal stimulus dollars. Because they were blindsided by the enormous rate increases caused by the previous stipulated resolution of this case, the Ohio Schools¹ intervened to protect their interests, and to inform Ohio Power Company ("AEP Ohio") that they simply can't afford increases to their electricity rates. The Ohio Schools accepted AEP Ohio's invitation to listen to concerned consumers at the public forum held March 23, 2012, and followed up by explaining their plight in the testimony of Mark Frye filed April 4, 2012. Regrettably, AEP Ohio has stopped listening and, by motion of April 12, 2012, moved to strike portions of Mr. Frye's testimony that explained the schools' hardships, claiming such hardships were beyond the scope of this case and irrelevant.

The Ohio Schools, through counsel and pursuant to Rule 4901-1-12(B)(1), Ohio Admin. Code, oppose AEP Ohio's motion to strike. At issue is the emphasized portion of Mr. Frye's testimony set for below, and Exhibits MF-2 and MF-3 referred to therein.

¹ Joint intervenors Ohio Association of School Business Officials, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Schools Council are referred to herein as the "Ohio Schools."

Q. All shopping customers could experience significant increases under AEP-Ohio's capacity application, are schools' circumstances any different?

A. It is difficult for all customers to absorb rate increases; however, schools are in a unique position. Unlike business enterprises, schools cannot voluntarily increase their price for services to pass through the rate increase to consumers. Instead, schools must rely on scarce taxpayer funds at the state and local levels for support. The massive \$780 million cuts in state funding to primary and secondary schools in this biennium has been widely reported by The Columbus Dispatch, a copy of which I offer as Exhibit MF-2. In addition, the passage of new operating levies at the local level has not fared well recently. A review of the Ohio Secretary of State's website of election results for the November 8, 2011, general election shows that 81 of the 108 local school issues seeking an increase in property or income taxes failed. [Footnote link to Ohio Secretary of State website omitted.] I offer a summary of those results, attached as Exhibit MF-3. The drastically increased capacity charges proposed by AEP-Ohio will only add to the Schools' plight caused by the lack of traditional revenue sources, likely leading to funding cuts affecting the levels of teachers, staff, materials and programs.

Frye Testimony, filed April 4, 2012, page 10, lines 7-14 (emphasis supplied.)

I. THE DISPUTED TESTIMONY IS RELEVANT

Unfortunately, AEP Ohio is attempting to narrow the scope of this proceeding to a mechanical determination of the appropriate methodology to calculate the level of capacity charges, choosing to divorce itself from the practical impact of the calculations on consumers. However, the Ohio Revised Code requires the Public Utilities Commission of Ohio ("Commission") to ensure that consumers' rates are reasonable. See, e.g., Sections 4928.02(A) and 4928.143, Ohio Rev. Code. Indeed, the Commission adhered to this very principle in overturning the prior stipulation in this proceeding, once it learned how the mechanics of riders MTR and LFR operated to dramatically increase GS-2 customer rates. See February 23, 2012 Entry on Rehearing, at 11 ("...the actual impacts suffered by a significant number of GS-2

customers appear to have vastly exceeded AEP-Ohio's representations at hearing. Since we issued the Opinion and Order, numerous customers have filed, in the case record of this proceeding, actual bills containing total bill rate increases disproportionately higher than the 30 percent predicted by AEP-Ohio. The disproportionate rate impacts indicated by these bills undermine the evidence presented by the signatory parties that the MTR and LFR provide rate certainty and stability pursuant to Section 4928.143(B)(2)(d), Revised Code.”) The Commission cannot divorce the mechanics of rate setting methodologies from their practical impact.

The capacity charges proposed in this proceeding range from the June 2012 Reliability Pricing Model's approximate \$20/MW-day to AEP Ohio's proposed approximate \$355/MW-day. It is the Ohio School's position that the magnitude of the rate proposed by AEP Ohio is unreasonable, and the Ohio Schools have supported the unreasonableness of the rate, in part, on their inability to afford it due to massive budget cuts and the failure of school operating levies.

Lest there be any doubt that the affordability of the capacity charge is within the scope of this proceeding, the Ohio Schools direct the Commission to the pre-filed testimony of AEP-Ohio witness Richard E. Munczinski, who testified that AEP Ohio's cost-based capacity charge should be adopted because it “represents a long-term view of affordable and reliable capacity...” Munczinski Testimony, page 10, line 3 (emphasis supplied).

AEP-Ohio, itself, placed affordability in issue. The Commission should find that Mr. Frye's testimony at issue, on page 10, lines 7-14, should not be stricken.

II. EXHIBITS MF-2 AND MF-3 ARE ADMISSIBLE

AEP Ohio also seeks to strike Exhibit MF-2, an article in *The Columbus Dispatch* reporting on a \$780 million state budget cut to schools, and Exhibit MF-3, a summary of the results of school operating levies appearing on the November 8, 2011 ballot compiled from the Ohio Secretary of State's official website. AEP-Ohio claims that each exhibit constitutes impermissible hearsay under the Ohio Rules of Evidence. Although the documents clearly are admissible under Ohio's evidentiary rules, as set forth below, the Ohio Schools must note that the Commission "is not strictly confined by the Rules of Evidence." See *Cincinnati Bell Tel. Co. v. Pub. Util. Comm.* (1984), 12 Ohio St. 3d 280. Commission proceedings are not tried before a jury, but before an Attorney Examiner who has broad discretion in the conduct of proceedings and the expertise to provide proper weight the evidence admitted.

A. Exhibit MF-2, *The Columbus Dispatch* Article

Apparently, AEP Ohio misunderstands the purpose for which the Dispatch article is being offered. It is not being offered to prove the truth of the assertions made by individuals quoted or referred to in the article (see Ohio Rule of Evidence 801(C)); but, as Mr. Frye states, to show that the *Dispatch* had widely reported on the massive budget cut to schools. The article clearly is admissible for that purpose.

Moreover, the Commission can take administrative notice of the widely reported \$780 million budget cut, considering that the fact that the budget cuts occurred will have been introduced at hearing and AEP-Ohio will have had an opportunity to rebut that fact. See *Allen v. Pub. Util. Comm.* (1988), 40 Ohio St.3d 184; *Forest Hills Util. Co. v. Pub. Util. Comm.* (1974), 39 Ohio St.2d 1. The Ohio Schools urge the Commission to do so.

B. Exhibit MF-3, The Secretary of State Summary

Exhibit MF-3 is a summary of the results of school operating levies appearing on the November 8, 2011 ballot. The summary is derived from the Ohio Secretary of State's official website,² the link to which Mr. Frye provided in his testimony. Ohio Rule of Evidence 803(8) excepts from the hearsay rule:

Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (a) the activities of the office or agency, or (b) matters observed pursuant to duty imposed by law as to which matters there was a duty to report...

The Secretary of State is responsible for compiling and publishing election statistics in Ohio. Section 111.12, Ohio Rev. Code. See *SFJV 2005, LLC v. Ream* (2010), 187 Ohio App. 3d 715 (Ohio Ct. App., Champaign County) (documents kept by the Ohio Secretary of State fall within the exception to Ohio Rule of Evidence 803(8)). Clearly, the election statistics maintained by the Ohio Secretary of State on its official website is not hearsay. Mr. Frye may testify regarding the accuracy of the summary, prepared by him or under his supervision, through his personal knowledge. See Ohio Rule of Evidence 602. AEP Ohio will have the opportunity to cross examine Mr. Frye on the accuracy of the summary prepared from the official records, if it so chooses.

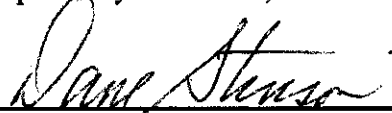
Moreover, Ohio Rule of Evidence 1006 permits summaries to be made of voluminous writings which cannot be conveniently examined in court, provided the originals are made available for examination. See, e.g., *State v. Edwards* (2004), 2004 Ohio 4015 (Ohio Ct. App., Marion County). The Ohio Secretary of State's election reports are cumbersome to review. Reducing the reports to summary form is intended to aid the Commission and the parties in their review. Mr. Frye has complied with the requirements of Ohio Rule of Evidence 1006. His summary is not hearsay.

² <http://www.sos.state.oh.us/sos/elections/Research/electResultsMain/2011results/20111108local.aspx>

III. CONCLUSION

For the foregoing reasons, the Ohio Schools respectfully request that the Commission find that Mr. Frye's testimony at page 10, lines 7-14, is relevant and not beyond the scope of this proceeding; that Exhibits MF-2 and MF-3 do not constitute hearsay; and that AEP Ohio's motion to strike should be denied.

Respectfully submitted,

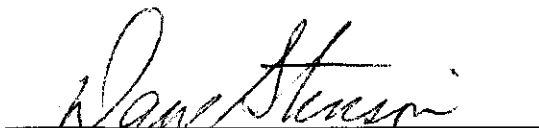
A handwritten signature in cursive script, reading "Dane Stinson", is written over a solid horizontal line.

Dane Stinson, Esq.
BAILEY CAVALIERI LLC
10 West Broad Street, Suite 2100
Columbus, OH 43215-3422
(614) 221-3155 (telephone)
(614) 221-0479 (fax)
dane.stinson@baileycavalieri.com

Attorney for the Ohio Schools

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing the *Ohio Schools' Memorandum Contra Ohio Power Company's Motion to Strike* was served by electronic mail this 18th day of April 2012, upon the following.


Dane Stinson

Steven T. Nourse, Counsel of Record
Matthew J. Satterwhite
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
stnourse@aep.com
mjsatterwhite@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
Huntington Center
41 South High Street
Columbus, OH 43215
dconway@porterwright.com

Mark Hayden
First Energy
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

Allison E. Haedt
Jones Day
901 Lakeside Avenue
Columbus, OH 43216
aehaedt@jonesday.com

David A. Kutik
Jones Day
901 Lakeside Avenue
Cleveland, OH 44144
dakutik@jonesday.com

Cynthia Fonner Brady
David I. Fein
550 W. Washington St., Suite 300
Chicago, IL 60661
cynthia.a.fonner@constellation.com
david.fein@constellation.com

James F. Lang
Laura C. McBride
N. Trevor Alexander
Calfee, Halter & Griswold, LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com
tallexander@calfee.com

Kyle L. Kern
Melissa R. Yost
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
kern@occ.state.oh.us
yost@occ.state.oh.us

Dorothy K. Corbett
Amy Spiller
Jeanne W. Kingery
Duke Energy Retail Sales
Q39 East Fourth Street
1303-Main
Cincinnati, OH 45202
dorothy.corbett@duke-energy.com
amy.spiller@duke-energy.com

Richard L. Sites
Ohio Hospital Association
155 East Broad St., 15th Floor
Columbus, OH 43215
ricks@ohanet.org

Thomas J. O'Brien
Bricker & Eckler
100 South Third Street
Columbus, OH 43215
tobrien@bricker.com

Jay E. Jadwin
155 West Nationwide Blvd., Suite 500
Columbus, OH 43215
jejadwin@aep.com

Terrance O'Donnell
Christopher Montgomery
Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215
todonnell@bricker.com
cmontgomery@bricker.com

Lisa G. McAlister
Matthew W. Warnock
Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215
lmcalister@bricker.com
mwarnock@bricker.com

John W. Bentine
J. Bentine
Chester Wilcox & Saxbe, LLP
65 East State St., Suite 1000
Columbus, OH 43215
jbentine@cwslaw.com
jbentine@taftlaw.com

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh St., Suite 1510
Cincinnati, OH 45202
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com

David M. Stahl
Eimer Stahl Klevorn & Solberg, LLP
224 South Michigan Ave., Suite 1100
Chicago, IL 60604
dstahl@eimerstahl.com

Glen Thomas
1060 First Avenue, Suite 400
King of Prussia, PA 19406
gthomas@gtpowergroup.com

Michael R. Smalz
Joseph V. Maskovyak
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, OH 43215
msmalz@ohiopovertylaw.org
jmaskovyak@ohiopovertylaw.org

Trent A. Dougherty
Nolan Moser
Ohio Environmental Council
1207 Grandview Ave., Suite 201
Columbus, OH 43212
trent@theoec.org
cathy@theoec.org

William L. Massey
Covington & Burling, LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
wmassey@cov.com

Mark A. Whitt
Whitt Sturtevant LLP
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, OH 43215
whitt@whitt-sturtevant.com

Sandy Grace
Exelon Business Services Company
101 Constitution Avenue, NW
Suite 400 East
Washington, DC 20001
sandy.grace@exeloncorp.com

Gregory H. Dunn
Counsel of Record
Chrisopher L. Miller
Asim Z. Hague
Ice Miller LLP
250 West Street
Columbus, OH 43215
Gregory.dunn@icemiller.com
Christopher.miller@icemiller.com
Asim.hague@icemiller.com

Steve W. Chriss
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, AR 72716
stephen.chriss@wal-mart.com

Henry W. Eckhart
2100 Chambers Road, Suite 106
Columbus, OH 43212
henryeckhart@aol.com

Laura Chappell
4218 Jacob Meadows
Okemos, MI 48864
laurac@chappelleconsulting.net

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212
gary.a.jeffries@dom.com

M. Howard Petricoff
Stephen M. Howard
Michael J. Settineri
Lija Kaleps-Clark
Benita Kahn
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street
Columbus, OH 43216
mhpetricoff@vorys.com
smhoward@vorys.com
mjsettineri@vorys.com
lkalepsclark@vorys.com
bakahn@vorys.com

Holly Rachel Smith
Holly Rachel Smith, PLLC
HITT Business Center
3803 Rectortown Road
Marshall, VA 20115
holly@raysmithlaw.com

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215
barthroyer@aol.com

Kenneth P. Kreider
David A. Meyer
Keating Muething & Klekamp, PLL
One East Fourth Street, Suite 1400
Cincinnati, OH 45202
kpkreider@kmmklaw.com
dmeyer@kmmklaw.com

Emma F. Hand
Douglas G. Bonner
Keith C. Nusbaum
Clinton A. Vince
SNR Denton US, LLP
1301 K Street, NW, Suite 600, East Tower
Washington, DC 20005-3364
emma.hand@snrdenton.com
doug.bonner@snrdenton.com
clinton.vince@snrdenton.com

Samuel C. Randazzo
Joseph E. Olikier
Frank P. Darr
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwnncmh.com
joliker@mwnncmh.com
fdarr@mwnncmh.com

John N. Estes III
Paul F. Wright
Skadden Arps Slate Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005
jestes@skadden.com

Gregory J. Poulos
EnerNOC
101 Federal Street, Suite 1100
Boston, MA 02110
gpoulos@enernoc.com

Werner L. Margard III
John H. Jones
William Wright
Stephen Beeler
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215
werner.margard@puc.state.oh.us
william.wright@puc.state.oh.us
John.Jones@puc.state.oh.us
steven.beeler@puc.state.oh.us

Philip B. Sineneng
Terrance A. Mebane
Carolyn S. Flahive
Thompson & Hine, LLP
41 S. High Street, Suite 1700
Columbus, OH 43215
philip.sineneng@thompsonhine.com
carolyn.flahive@thompsonhine.com
terrance.mebane@thompsonhine.com

Colleen L. Mooney
David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima Street, PO Box 1793
Findlay, OH 45840
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org

Tara C. Santarelli
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, OH 43212
tsantarelli@elpc.org

paul.wright@skadden.com

Joel Malina
Executive Director
COMPLETE Coalition
1317 F Street, NE, Suite 600
Washington, DC 20004
malina@wexlerwalker.com

Jay L. Kooper
Katherine Guerri
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095
jkooper@hess.com
kguerri@hess.com

Robert Korandovich
KOREEnergy
P.O. Box 148
Sunbury, OH 43074
korenergy@insight.rr.com

Jeanne W. Kingery
Associate General counsel
Amy B. Spiller
Deputy General Counsel
139 E. Fourth Street, 1303-Main
P.O. Box 961
Cincinnati, OH 45201-0960
Jeanne.Kingery@duke-energy.com
Amy.Spiller@duke-energy.com

Roger P. Sugarman
Kegler, Brown, Hill & Ritter
65 East State Street, Suite 1800
Columbus, OH 43215
rsugarman@keglerbrown.com

Christopher J. Allwein
Williams, Allwein and Moser, LLC
1373 Granview Avenue, Suite 212
Columbus, OH 43212
callwein@wamenergylaw.com

Allen Freifeld
Samuel A. Wolfe
Viridity Energy, Inc.
100 West Elm Street, Suite 410
Conshohocken, PA 19428
afreifeld@viridityenergy.com
swolfe@viridityenergy.com

Chad A. Endsley
Chief Legal Counsel
Ohio Farm Bureau Federation
280 North High Street
P.O. Box 182383
Columbus, OH 43218-2383
cendsley@ofbf.org

Mark S. Yurick
Zachary D. Kravitz
Taft Stettinius & Hollister LLP
65 East State Street, Suite 1000
Columbus, OH 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

Brian P. Barger
Brady, Coyle & Schmidt, Ltd.
4052 Holland-Sylvania Road
Toledo, OH 43623
bpbarger@bcslawyers.com

Additional Electronic Service

greta.see@puc.state.oh.us
sarah.parrot@puc.state.oh.us
jeff.jones@puc.state.oh.us
tammy.turkenton@puc.state.oh.us
jodi.bair@puc.state.oh.us
bob.fortney@puc.state.oh.us
doris.mccarter@puc.state.oh.us
stephen.reilly@puc.state.oh.us
john.jones@puc.state.oh.us
daniel.shields@puc.state.oh.us
dclark1@aep.com
grady@occ.state.oh.us
keith.nusbaum@snrdenton.com
ned.ford@fuse.net
pfox@hilliardohio.gov
ricks@ohanet.org
joseph.dominquez@exeloncorp.com
dsullivan@nrdc.org
whitt@whitt-sturtevant.com
thompson@whitt-sturtevant.com
aaragona@eimerstahl.com
ssolberg@eimerstahl.com
callwein@wamenergylaw.com
sasloan@aep.com
Kim.Wissman@puc.state.oh.us
Hisham.Choueiki@puc.state.oh.us
Dan.Johnson@puc.state.oh.us