

**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
Company and Columbus Southern Power)	
Company)	

**OHIO POWER COMPANY’S
MEMORANDUM IN OPPOSITION TO FIRSTENERGY SOLUTIONS CORP.**

In response to the Attorney Examiner’s May 3 Entry granting Staff’s motion to mandate the procedural schedule, FES filed a motion to further modify the schedule because it disagrees with the schedule adopted by the Attorney Examiner. Specifically, FES seeks to extinguish AEP Ohio’s established right to file rebuttal testimony and, alternatively, to further delay the rebuttal hearing. FES is, once again, attempting to override the Attorney Examiner's procedural ruling in this case without due cause. Though FES is only marginally involved in the rebuttal process that primarily relates to Staff and the Company, FES wants to seize on the chance to undermine the Company's basic opportunity for filing rebuttal testimony in this proceeding. FES's motion to modify the procedural schedule should be denied, as discussed below.

Staff’s request to delay and expand the procedural schedule was filed on Tuesday, prior to the rebuttal deadline. In its response filed on Wednesday morning, the Company strongly endorsed the aspect of Staff’s motion that involved delaying the Company's rebuttal deadline. (AEP Ohio Memo in Response at 2.) Staff had committed to filing the motion to extend the Company's rebuttal deadline prior to the actual filing Tuesday afternoon; Staff indicated to the

Company that it wanted to request the delay because it was Staff that was not able to provide the workpapers. Upon the filing of Staff's motion and the Company's response, the matter was already fully submitted prior to the Wednesday Noon deadline. AEP Ohio could not control when the Staff's motion was ruled upon but any additional request by the Company would have been cumulative and redundant.

FES's position also ignores the fact that receiving Staff's workpapers was a precursor to the Company filing its rebuttal testimony. Staff fully understood that the workpapers were "to be released to AEP for its use in preparation of rebuttal testimony," as stated in its memorandum in support (at 2). Further, Staff's request for modifying the procedural schedule was made, in part, in order to "provide AEP with the ability to address its rebuttal issues both to that portion of the hearing already held and to Staff's additional testimony proposed herein." (*Id.*) Upon receiving Staff's motion, the Company filed a response that stated, in pertinent part, that "a schedule change is appropriate to alleviate the need for the Company to file rebuttal testimony four and a half business hours after the motion was filed by Staff and in the absence of the promised underlying data." (AEP Ohio Memo in Response at 2.) Further, as AEP Ohio indicated in its Wednesday morning response to Staff's Tuesday afternoon's motion, the Company and Staff had been in constant communication since Monday afternoon of April 30 attempting to resolve the matter of the workpapers. (*Id.*) As Staff has admitted, it was not able to produce the workpapers on the agreed schedule and felt obligated to request a continuance of the schedule. The record is clear that the workpapers supporting the "Total Generation" column of Exhibit RTH-1 were needed in order for the Company to complete its rebuttal testimony. (Tr. IX at 2055-2056.) Thus, the Staff, the Company and the Attorney Examiners all understood that the Company was

not in a position to file its rebuttal testimony without having received the workpapers as promised.

Moreover, FES's motion overlooks the fact that the Attorney Examiner already ruled and granted Staff's request to modify the procedural schedule, including a new date for Company rebuttal testimony. FES is now suggesting that the Attorney Examiner's ruling – regarding a matter already deliberated and decided – should be reversed. The proper procedure for such a request is an interlocutory appeal, a procedure with which FES is quite familiar. FES's use of the wrong procedure to “end run” the Attorney Examiner's ruling should be denied.

Finally, FES's alternative proposal seeks, in part, to conduct discovery after the cutoff has already occurred. Discovery for rebuttal testimony is not normally permitted or necessary. In addition, as AEP Ohio has noted in its April 30 motion for extension and in its response to Staff's request to modify the schedule, the delay associated with the modified procedural schedule further jeopardizes the Commission's ability to issue a merit decision in May and further support for the Company's request to freeze the current capacity pricing pending the outcome of this proceeding.

CONCLUSION

FES's request for additional delay is unsupported and should not be granted.

Respectfully submitted,

//s/ Steven T. Nourse

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the forgoing memorandum in opposition was served this 7th day of May, 2012 by U.S. Mail and electronic mail, upon the persons listed below.

//s/ Steven T. Nourse
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Summary: Memorandum Memorandum in Opposition electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company