

**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 MOTION TO STRIKE OHIO ENERGY GROUP'S
REPLY TO OHIO POWER COMPANY'S MEMORANDUM CONTRA**

Pursuant to Rule 4901-1-12 and Rule 4901-1-27(B)(7)(a) and (b), Ohio Admin. Code, Ohio Power Company (the "Company" or "AEP Ohio") moves to strike the Motion for Leave to Reply and Reply filed by Ohio Energy Group ("OEG") in this proceeding on August 7, 2012. As demonstrated in the attached memorandum in support, AEP Ohio seeks to strike the entirety of OEG's pleading on the grounds that Rule 4901-1-35 does not provide for the filing of a reply to a memorandum contra an application for rehearing.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

On July 26, 2012, OEG filed an Application for Rehearing of the July 2, 2012 Opinion and Order pursuant to Section 4903.10, which was procedurally defective. On July 27, 2012, OEG filed a corrected Application for Rehearing. On August 6, 2012, AEP Ohio filed a Memorandum in Partial Opposition to OEG's Application for Rehearing. On August 7, 2012, OEG filed a Motion for Leave to Reply and Reply to AEP Ohio's Memorandum in Partial Opposition, which itself was procedurally defective. OEG's Reply should be stricken in its entirety and The Public Utilities Commission of Ohio ("Commission") should not consider it as part of the record in this proceeding because Rule 4901-1-35 does not provide for the filing of a reply to a memorandum contra an application for rehearing.

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Admin. Code, any party or any affected person may file an application for rehearing within thirty days after the issuance of a Commission order. Any party may file a memorandum contra within ten days after the filing of an application for rehearing. 4901-1-35(A) and (B), Ohio Admin. Code. However, unlike Rule 4901-1-12(B)(2) applicable to motions, Rule 4901-1-35 does not allow an applicant for rehearing to submit a reply or additional argument in support of its application of rehearing after another party files a memorandum contra. The Commission has consistently held that a reply to a memorandum contra filed pursuant to Rule 4901-1-35(B) shall not be considered. *See e.g., In Re Intrastate Universal Service Discounts*, Case No. 97-632-TP-COI, Entry on Rehearing (July 8, 2009) at ¶16 ("The Commission notes, however, that, unlike Rule 4901-1-12(B)(2), O.A.C., Rule 4901-1-35, O.A.C., does not contemplate the filing of

reply memorandum.”); *Cincinnati Gas & Elec. Co. v. City of Forest Park*, Case No. 05-75-EL-PWC, Entry on Rehearing (March 7, 2007) at ¶6 (“Rule 4901-1-35, O.A.C., does not provide for the filing of a reply to a memorandum contra an application for rehearing.”); *In re Ohio Power Co.*, Case No. 94-996-EL-AIR, Entry on Rehearing (May 18, 1995) at ¶2.

OEG’s August 7, 2012 filing is an impermissible reply to a memorandum contra an application for rehearing and should be stricken accordingly. The pleading is labeled as a motion but it doesn’t even comply with Rule 4901-1-12, given there is no motion and memorandum in support. The Commission should strike OEG’s August 7, 2012 pleading, which does nothing more than reiterate OEG’s arguments in support of its application for rehearing, on that basis alone. *See In re. Ohio Power Co.*, Case No. 98-101-EL-EFC, Entry on Rehearing (July 15, 1999) (granting AEP Ohio’s motion to strike argument that served “only to bolster [the] [i]ntervenors’ position relative to their own application for rehearing”). The additional points made in OEG’s pleading are things that could have been raised as part of its rehearing application. If the Commission intended to provide an applicant for rehearing with the opportunity to submit a reply to memorandum contra, it could have done so in its rules just as it did in Rule 4901-1-12(B)(2)-- but it did not. OEG’s willingness to disregard the clear process established for rehearing before this Commission should not be rewarded.

For the foregoing reasons, AEP Ohio respectfully requests that the Commission strike OEG’s August 7, 2012 reply.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served upon the below-named counsel via electronic mail this 7th day of August, 2012.

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Summary: Motion to Strike electronically filed by Mr. Yazen Alami on behalf of American Electric Power Service Corporation