BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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, Revised 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

THE OMA ENERGY GROUP'S AND THE OHIO HOSPITAL ASSOCIATION'S JOINT MEMORANDUM CONTRA THE APPLICATIONS FOR REHEARING OF OHIO POWER COMPANY AND THE OHIO CONSUMERS' COUNSEL

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JOINT MEMORANDUM CONTRA OHIO POWER COMPANY'S AND OHIO CONSUMERS' COUNSEL'S APPLICATIONS FOR REHEARING

I. INTRODUCTION

Pursuant to Rule 4901-1-35, Ohio Administrative Code ("O.A.C.), the OMA Energy Group ("OMAEG") and the Ohio Hospital Association ("OHA", collectively, "OMAEG/OHA") respectfully submit this memorandum contra the application for rehearing of the August 8, 2012 Opinion and Order ("August 8 Order") filed by Ohio Power Company ("OP" or "AEP-Ohio") and in partial opposition to the application for rehearing filed by the Ohio Consumers' Counsel ("OCC") and the Appalachian Peace and Justice Network ("APJN").

AEP-Ohio raised numerous assignments of error regarding the Public Utilities Commission of Ohio's ("Commission") August 8 Order modifying and approving AEP-Ohio's electric security plan ("ESP"). For the reasons described herein, the Commission should deny the following of AEP-Ohio's requests for rehearing[1]:

[1] Failure to address each and every argument of AEP-Ohio on rehearing should not be construed as agreement with those arguments.

1) The Commission should permit AEP-Ohio to charge standard service offer ("SSO") customers a discriminatory price for capacity;

2) The Commission should authorize AEP-Ohio to recover an unspecified amount to complete unspecified processes to comply with the Commission's energy auction requirements;

3) The Commission should clarify that AEP-Ohio will be held harmless in the event of an Ohio Supreme Court reversal of the Commission's capacity cost deferral and recovery decisions; future Commission determinations regarding the recovery of the capacity cost deferrals; or any future determination regarding the energy auction rate impacts; and,

4) The Commission should recalculate the market rate offer ("MRO") price test to reflect that the ESP is less detrimental than the Commission previously found.

Additionally, while OMAEG/OHA agree with most of OCC/APJN's requests for rehearing, the Commission should deny the requests to limit the recovery of the interruptible credit to the GS-4 rate class and allocate the RSR according to the percentage of customers shopping in each class.

II. THE COMMISSION SHOULD DENY AEP-OHIO'S UNREASONABLE AND UNLAWFUL REHEARING REQUESTS.

A. The Commission should deny AEP-Ohio's request to charge SSO customers a discriminatory price for capacity.

AEP-Ohio asks the Commission to find explicitly that the state compensation mechanism does not apply to non-shopping customers. In other words, AEP-Ohio is requesting that shopping customers pay PJM RPM-based capacity rates plus the recovery of the delta between the PJM RPM-based charges and AEP-Ohio's cost of capacity at $189/MW-D but non-shopping customers pay approximately $355/MW-D plus the delta. Whether or not the Commission finds that the state compensation mechanism applies to the costs of capacity for shopping customers, the Commission cannot lawfully permit AEP-Ohio to charge discriminatory capacity rates.

Section 4928.141(A), Revised Code, requires AEP-Ohio to "provide consumers, *on a comparable and nondiscriminatory basis* within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service." (emphasis added). As OMAEG/OHA have noted several times, the Commission cannot lawfully permit AEP-Ohio to charge customers on the basis of shopping different prices for the same capacity service. To do so would violate Ohio law's prohibition against discriminatory pricing for like services. Section 4928.141(A), Revised Code. Thus, regardless of whether the state compensation mechanism applies to SSO customers or only shopping customers, the Commission must still reduce AEP-Ohio's base generation rates in order to ensure that they are nondiscriminatory.

B. The Commission should not authorize AEP-Ohio to recover an unspecified amount to complete unspecified processes to comply with the Commission's energy auction requirements.

AEP-Ohio argues that there *may* be significant costs associated with the energy auctions ordered by the Commission, including the costs associated with hiring an auction manager, and capital investments in IT and software. AEP-Ohio Application for Rehearing at 19. AEP-Ohio requests that the Commission explicitly provide for the recovery of such costs on rehearing. Quite simply, without some estimate for whether those costs will exist, how much they will be and whether AEP-Ohio prudently incurred costs, the Commission should not authorize AEP-Ohio to recover any yet-to-be determined costs. The Commission should not make a preemptive determination unless and until the Commission has more information about the speculative costs that AEP-Ohio describes in its Application for Rehearing.

C. The Commission should not make any premature determinations regarding the capacity cost deferrals or the auction rate impact that hold AEP-Ohio harmless.

In the Commission's Order, the Commission deferred making several important decisions until some future proceedings. Specifically, the Commission deferred on making all determinations regarding future recovery of the deferral of the difference between $189/MW-D and the PJM RPM capacity costs until the Commission has AEP-Ohio's actual shopping statistics. August 8 Order at 36. The Commission found that it cannot determine the amount of the deferral until the end of the ESP term, at which time it will "make appropriate adjustments based on AEP-Ohio's actual shopping statistics and the amount that has been collected towards the deferral through the RSR, as necessary." *Id.* Nonetheless, the Commission indicates that it anticipates that the deferral amount will be amortized over a three year period.

Additionally, the Commission found that, as there is the possibility of disproportionate rate impacts on customers when class rates are set by auction, a new docket should be opened to allow Staff and any interested party to consider means to mitigate any potential adverse rate impacts for customers upon rates being set by auction. *Id.* at 15-16.

AEP-Ohio is not happy with the uncertainty of the Commission's Order and, rather than wait until the Commission has data upon which to make a determination on these matters, AEP-Ohio essentially seeks three declaratory judgments, the result of which would hold AEP-Ohio harmless and whole regardless of what the future may hold. AEP-Ohio Application for Rehearing at 20. The Commission cannot and should not make such determinations at this time.

First, AEP-Ohio seems to concede that there is a high likelihood of a successful appeal to the Ohio Supreme Court regarding the unlawfulness of the Commission's decision in Case No. 10-2929-EL-UNC ("10-2929 Case") authorizing AEP-Ohio to defer for future recovery the difference between $189/MW-D and the prevailing PJM RPM capacity price. AEP-Ohio Application for Rehearing at 25. In order to protect itself in the event of a reversal of the RSR on appeal, AEP-Ohio requests that the Commission "modify the combined decisions (in this proceeding and the 10-2929 case which is also pending on rehearing) to provide for a reconciliation of the SCM [state compensation mechanism] to $188.88/MW-day (to be reconciled back to the date of the rehearing decision in this case)" such that "CRES providers would automatically be responsible for the entire $189/MW-day charge if either the establishment of the capacity deferral or the deferral recovery aspect of the RSR is reversed or vacated on appeal." AEP-Ohio Application for Rehearing at 25-26. The Commission should deny AEP-Ohio's request.

Inasmuch as AEP-Ohio requests that the Commission modify the state compensation mechanism, AEP-Ohio's request is essentially a request for rehearing on the 10-2929 Case that is out of time and inappropriate. While AEP-Ohio has requested that the Commission consolidate this case with the 10-2929 Case for the purposes of rehearing, the cases are not consolidated and the deadline for applications for rehearing on the 10-2929 Case has passed. For this reason alone, the Commission should deny AEP-Ohio's request.

Additionally, AEP-Ohio's request highlights the unlawfulness of the Commission's "combined decisions" in this case and the 10-2929 Case regarding the capacity deferrals. The Commission held, and AEP-Ohio supported the argument, that "as a

result of the Capacity Case, customers may be able to lower their bill impacts by taking advantage of CRES provider offers allowing customers to realize savings that may not have otherwise occurred without the development of a competitive market." August 8 Order at 36; *AEP-Ohio Memorandum Contra of Ohio Power Company to the Ohio Manufacturers' Association's and Ohio Hospital Association's July 30, 2012 Application for Rehearing and FirstEnergy Solutions Corp's, Industrial Energy Users-Ohio's, the Office of the Ohio Consumers' Counsel's, and the Ohio Schools' August 1, 2012 Applications for Rehearing*, Case No. 10-2929 at 13 (August 13, 2012).

While OMAEG/OHA believe that no customers should have to pay for the capacity deferral and that capacity for shopping customers charged by AEP-Ohio to CRES providers is a wholesale cost, if the Commission upholds the deferral and authorizes recovery from CRES providers, it will undermine the Commission's initial basis for the deferral in the first place. Stated differently, if the Commission adopts AEP-Ohio's "back stop" proposal to recover $189/MW-day from CRES providers, shopping customers may not have the opportunity to lower their bill impacts by taking advantage of CRES provider offers allowing customers to realize savings. The Commission should revoke its deferral authorization altogether or deny AEP-Ohio's unreasonable and unlawful attempt to be held harmless if and when the Ohio Supreme Court does so.

Similarly, AEP-Ohio requests a determination from the Commission that, in spite of the Commission's clear assertion that all decisions related to recovery of the capacity deferral are reserved for future determination, AEP-Ohio should be held harmless and any future determinations should be limited to verifying that the deferral amount is

correct. AEP-Ohio Application for Rehearing at 23. Again, the Commission should deny AEP-Ohio's request as unreasonable, unlawful and premature.

AEP-Ohio attempts to justify such a declaratory judgment pursuant to Section 4928.144, Revised Code, by arguing that in order to comply with that section, the Commission must provide for up front authorization of the amount that would otherwise be collected but which will not be collected. AEP-Ohio's reliance on Section 4928.144, Revised Code, is misplaced at best. Section 4928.144, Revised Code, pertains only to rates or prices established under Sections 4928.141 to 4928.143, Revised Code. As AEP-Ohio acknowledges, the deferrals were "created under the 10-2929 decision" – not the ESP case. AEP-Ohio Application for Rehearing at 23. Thus, as previously noted by OMAEG/OHA, not only does the Commission lack authority to authorize the deferral of the capacity cost delta, but the Commission certainly is under no obligation to preemptively find that any and all capacity cost delta must be recovered from ratepayers. Accordingly, if the Commission does not reverse its authorization of the deferral altogether (which is OMAEG/OHA's recommendation), at a minimum, the Commission should deny AEP-Ohio's request and make determinations regarding the cost recovery when we have more information about the total amount of the delta.

Finally, the Commission should deny as unreasonable, unlawful and premature, AEP-Ohio's request for a preemptive hold-harmless decision from the Commission regarding any rate mitigation mechanisms that are required to avoid unreasonable and disproportionate impacts from the energy auctions.

AEP-Ohio proposes to recover all energy auction costs through a continuing FAC mechanism. The FAC is a rider that is allocated on a per kilowatt-hour ("kWh") basis.

Costs associated with capital investments in IT and the auction manager are not appropriate for the FAC as it will disproportionately impact larger customers. AEP-Ohio's request to recover all energy auction related charges through the FAC should be rejected.

Irrespective of the error of recovering all auction cost through a per kWh FAC rider, without knowing any of the details associated with such auctions, it is premature to conclude that any rate mitigation mechanisms based on the auction results of the energy auctions should be borne by customers only. Accordingly, the Commission should deny both AEP-Ohio's proposals to recover all energy auction costs through the FAC and to preemptively determine that any and all such costs should be recovered from ratepayers only.

D. AEP-Ohio's request to recalculate the benefits of the ESP to reflect that it is a loser by $266 million, as opposed to the $388 million calculated by the Commission, is irrelevant.

AEP-Ohio argues that the Commission should have found that the ESP is less favorable than the MRO by $266 million and not $388 million. AEP-Ohio Application for Rehearing at 47. The Commission should disregard AEP-Ohio's request as disingenuous at best and a waste of Commission resources.

Numerous parties, including OMAEG/OHA demonstrated how the Commission actually underestimated the negative impact of the ESP. AEP-Ohio simply notes that since the Commission used only part of the ESP period to compare it to an MRO, it should have used the corresponding time frame for all aspects. The OMAEG/OHA, among others, noted that the limited period was inappropriate and unlawful, so to modify the balance of the modified ESP would be similarly unreasonable and unlawful.

Irrespective of the timeframe, the Commission has unreasonably and unlawfully sacrificed reasonably priced retail electric service for at least six years (depending on the repayment terms of the deferred capacity costs) in exchange for a more expeditious transition to market pricing. Whether it is a $266 million detriment or a $388 million detriment does matter to customers who will pay that price for the more expeditious transition to market. However, regardless of the number, the ESP still fails the MRO price test and should be rejected.

III. THE COMMISSION SHOULD DENY OCC/APJN'S REQUESTS REGARDING THE ALLOCATION OF THE RSR COSTS AND THE IRP-D CREDITS.

OMAEG/OHA agree with the majority of OCC/APJN's rehearing requests. However, OMAEG/OHA respectfully disagree with two of the OCC/APJN's assignments of error and requests that the Commission deny them.

A. The Commission should deny OCC/APJN's request to allocate the RSR to customer classes based upon their share of total switched load.

OCC/APJN argue that the Commission failed to address OCC's recommendation that the RSR be allocated among the different classes based on their share of total switched load. OCC/APJN Application for Rehearing at 55-56. The Commission's failure to adopt OCC's recommendation signifies that it was rejected, and rightfully so.

The OMAEG addressed OCC's recommendation in its initial post hearing brief (at 20-21). The OMAEG explained that OCC's recommendation to allocate the cost of the rider based upon the customer class' share of switched load in kWhs has the effect of dramatically and unreasonably shifting the cost responsibility for the RSR to commercial and industrial customers. In fact, as Dr. Ibrahim explains, as AEP-Ohio has proposed the RSR, residential customers would be responsible for 41.55% of the RSR with

commercial and industrial customers responsible for the balance of 57%. OCC Ex. 110 at 7. If AEP-Ohio allocated the RSR based upon Dr. Ibrahim's recommendation, residential customers would be responsible for only 8% of the RSR with commercial and industrial customers being responsible for 92%. *Id.* at 10. Dr. Ibrahim's alternative recommendation would increase industrial customers' RSR by approximately 70 percent. Tr. Vol. VII at 2258. Additionally, under Dr. Ibrahim's recommendation, the RSR allocation may not be updated to reflect what could be a dramatic change in the shopping percentages resulting from governmental aggregation programs in a timely manner. Tr. Vol. VII at 2267-2268. Finally, OCC/APJN's recommendation is anticompetitive in that the more a class shops, the more that class' relative share of the switched kWh will be. Therefore, the higher a class' relative share of switched kWh sales, the higher the RSR will be for that class, which as a result, will discourage customers from shopping. OCC/APJN's recommendation is unreasonable and should be denied.

B. The Commission should deny OCC/APJN's request to limit the recovery of the IRP-D credit to GS-4/IRP-D customers.

OCC/APJN argue that the credit for customers providing interruptible capabilities should be recovered from only those customers receiving the credit, or at least not from residential customers. OCC/APJN Application for Rehearing at 113. They argue that limiting the cost recovery is consistent with the Stipulation in Case No. 11-5568-EL-POR. *Id.*

While OMAEG/OHA agree that the credit should not be recovered from any customer group because those customers are essentially receiving a discount off the

otherwise applicable rates for the diminished quality of service they are willing to take; if the credit is recovered, it should be recovered from all customers.

The Commission listed the benefits to all customers of having customers with interruptible capabilities on AEP-Ohio's system, including, increasing overall system reliability, furthering Ohio's effectiveness in the global economy, and providing an additional demand response resource to meet AEP-Ohio's capacity obligations. These are benefits that all AEP-Ohio customers receive from the IRP-D service. Thus, if there is any cost recovery, all customers should contribute as they all benefit from the interruptible services provided by the IRP-D customers.

Additionally, allocating IRP-D credit "costs" to all customers is not inconsistent with AEP-Ohio's energy efficiency portfolio plan case ("EE/POR" in Case No. 11-5568-EL-POR). While the stipulation in that case states that program costs will be assigned for collection purposes to the respective rate classes whose customers are eligible for the program, as noted above, the credit is not a "cost." Moreover, the reference provided by OCC/APJN to demonstrate the programs that residential customers would not contribute to, does not include interruptible service. Thus, should the IRP-D credit be recovered, there is nothing in the EE/POR case that prohibits recovery from all customers.

IV. CONCLUSION

For the reasons set forth herein, the OMAEG/OHA respectfully request that the Commission deny AEP-Ohio's application for rehearing as to the issues raised in this memorandum contra and OCC/APJN's argument regarding the allocation of the RSR and the IRP-D credit.

Respectfully submitted,

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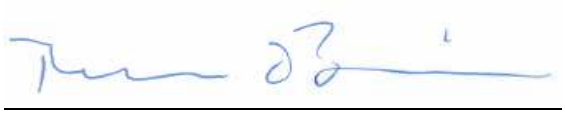

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On behalf of The Ohio Hospital Association

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Application for Rehearing and Memorandum in Support was served upon the parties of record listed below this 7th day of September 2012 *via* email transmission.

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Summary: Memorandum Contra The Applications for Rehearing of Ohio Power Company and The Ohio Consumers' Counsel electronically filed by Teresa Orahood on behalf of OMA Energy Group and Ohio Hospital Association