

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company to Establish)	
a Competitive Bidding Process for)	Case No. 12-3254-EL-UNC
Procurement of Energy to Support its)	
Standard Service Offer)	

**OHIO POWER COMPANY’S REPLY MEMORANDUM IN SUPPORT OF ITS
MOTION TO STRIKE OR, IN THE ALTERNATIVE, FOR LEAVE TO FILE
INSTANTER SUR-REPLY COMMENTS**

Ohio Power Company (AEP Ohio) moved to strike from the record FirstEnergy Solutions' (FES's) third/final point in its reply comments (Item II.C. on pages 5-6). FES's third point addressed a matter that was not discussed in any of the initial comments filed in this docket, even though AEP Ohio clearly explained its proposal regarding that matter in its Supplement to the Application -- which was filed well before the comment cycle began. AEP Ohio pointed out that this type of "sandbagging" by FES is particularly egregious when its target, in this instance AEP Ohio, carries the burden of proof. Moreover, AEP Ohio pointed out that, in this case, the most appropriate remedy for FES's misconduct is to strike the comment from the record. It is the most appropriate remedy, first, because of the egregious nature of the improper tactic, and, second, because it would also rebuff FES's improper attempt to use this comment cycle to make an untimely application for rehearing of the Commission's decision in AEP Ohio's Electric Security Plan proceeding, Case Nos. 11-346-EL-SSO, et al. (*ESP II*). As an alternative remedy, albeit less satisfactory, AEP Ohio requested leave to file *instanter* sur-reply comments to the third item of FES's reply comments.

FES now has filed a "Response to AEP Ohio's Motion to Strike." Notably, FES does not argue that Item II.C. of its Reply Comments was made in reply to any of the initial comments. Rather, FES simply states that it had previously "reserved its right to provide further comments," and that, because it had been given a "limited opportunity for investigation," its reply comments should be considered in their entirety. (FES's Response, at page 1.) FES does not have the ability to unilaterally alter the comment cycle for this, or any other, proceeding by "reserving its right" to submit additional initial comments whenever it likes. In addition, if FES believed it needed an additional "opportunity for investigation," its remedy was to ask for it in a timely manner, not to thumb its nose at the Commission and other interested parties by simply ignoring the procedures that the Commission established for this proceeding.

Another notable feature of FES's "Response" to the motion to strike is that FES does not object, indeed it does not address, AEP Ohio's alternative request for leave to file sur-reply comments. Beyond acquiescing in AEP Ohio's alternative request, this is a tacit admission that Item II.C. of FES's Reply Comments is an improper reply comment.

The greater part of FES's "Response" is simply an effort to further bolster its improper reply comment, not to defend its improper tactic. For example, FES contends, at page 2 of its Response, that the Commission's January 30 Entry on Rehearing in *ESP II* rejected the rate structure that AEP Ohio has proposed through the Supplement to its Application in this proceeding. That criticism is baseless. Prior to the January 30, 2013 Entry on Rehearing, AEP Ohio proposed using the Fuel Adjustment Clause (FAC) to flow through the results of the competitive bid process. In response to the Entry on Rehearing, AEP Ohio revised its proposed SSO generation rate structure to comply with the Entry on Rehearing. Specifically, AEP Ohio proposed to unbundle the FAC into Energy (Variable) and Non-Energy (Fixed) components,

blend the unbundled Energy components with the clearing prices from the energy auctions in order to produce a retail SSO energy rate that reflects the appropriate combination of energy costs, and then recover the combined energy costs through an Auction Phase-In Rider. This approach was certainly not rejected by the January 30 Entry on Rehearing. In addition, this approach also enables AEP Ohio to continue to offer, during the term of the ESP, the frozen SSO base generation rates to all eligible customers, whether they choose to take SSO generation service throughout the term of the ESP or shop and then elect to return to SSO generation service during the term of the plan. The manner in which AEP Ohio proposed to blend the auction clearing prices of the auctions with the unbundled Energy components of the FAC was clearly set out in the Supplement to its Application. FES's position, which it advanced in its improper reply comment, would undermine the Commission's objective of, and the benefits that the Commission found will result from, maintaining frozen base generation rates during the term of the ESP.

FES also feigns surprise that AEP Ohio's proposed sur-reply comments responded as firmly as they do to the substance of FES's improper reply comment. AEP Ohio sur-reply comments only respond directly, and thoroughly, to FES's effort to mischaracterize and misinterpret the Commission's January 30, 2013 Entry on Rehearing in *ESP II*.

Accordingly, FES's (also inappropriate) efforts to use its Response to enhance the merits of its inappropriate reply comment should be rejected also.

CONCLUSION

FES's third point in its Reply Comments is clearly not a proper reply comment. FES does not seriously contend otherwise in its Response. Accordingly, it should be stricken from the record and ignored in deciding this case. If the Commission does not grant AEP Ohio's

motion to strike, it should at least grant the Company permission to file *instanter* the sur-reply comments regarding the item.

Respectfully submitted,

/s/ Steven T. Nourse

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing AEP Ohio Reply Memorandum was served upon the parties of record of the Public Utilities Commission of Ohio by electronic service this 29th day of March 2013.

/s/ Steven T. Nourse

Steven T. Nourse

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Summary: Reply Ohio Power Company's Reply Memorandum in Support of its Motion to Strike or, in the Alternative, for Leave to File Instant Sur-Reply Comments electronically filed by Ms. Christen M. Blend on behalf of Mr. Steven T. Nourse and Ohio Power Company