BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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

OHIO POWER COMPANY'S MEMORANDUM CONTRA FIRSTENERGY SOLUTION CORP.'S APPLICATION FOR REHEARING

The Commission found in its Opinion and Order, at 16, that Ohio Power Company's ("AEP Ohio" or the "Company") proposal for unbundling its Fuel Adjustment Clause (FAC), including its request for authority to establish the Fixed Cost Rider (FCR) and Auction Rider, should be adopted. The Commission agreed with AEP Ohio that, in light of the fact that the Competitive Bidding Process (CBP) in this matter pertains to energy-only auctions, as a practical matter it made sense to divide the FAC into two components, with one to recover all energy and variable costs and the other to collect non-energy fixed costs. The Commission noted that fixed costs to be collected through the FCR pertain to purchased power contractual commitments that AEP Ohio has made to fulfill its obligation to provide a SSO to all non-shopping customers.

FirstEnergy Solutions Corp. ("FES") continues to contend on rehearing, as it did at hearing and in its post-hearing briefs, that the fixed costs of purchased power recovered through the FCR should be incrementally reduced to zero for portions of the SSO load corresponding to the 10%, 60%, and 100% portions of the energy-only auctions. FES also raises a "concern" that the FCR will lead to the 'double recovery" of purchased power fixed costs recovered through Base Generation Rates. FES recommends that the Commission direct the Staff to examine that issue at the time of the Company's next quarterly FAC tariff filing. (FES AFR at 4-7.)

A. FES's Blending Proposal For The FCR, Which Raises No Argument That The Commission Has Not Already Considered And Overruled, Should Be Rejected Again.

The Commission considered and rejected FES's inappropriate "blending" proposal for the FCR in its Opinion and Order. FES has raised nothing new in its arguments on rehearing related to this issue. As the Opinion and Order already appropriately found (at 16), "the non-energy costs to be collected through the [Fixed Cost Rider] pertain to previous purchased power contractual commitments that AEP Ohio has made to fulfill its obligation to provide a SSO to all non-shopping customers." Of course, the energy-only auctions do not diminish the "non-energy costs" described by the Commission and recovery of those costs should not be reduced or eliminated. Accordingly, the Commission should reject FES's proposal on rehearing.

There is no basis in the modified *ESP II*'s[1] orders for concluding that the fixed cost of purchase power arrangements recovered through the FCR should be incrementally reduced to zero for portions of the SSO load corresponding to the 10%, 60%, and 100% portions of the energy-only auctions. In its modified *ESP II* Opinion and Order, at pages 16-18, the Commission continued the FAC mechanism established in the prior ESP without modifying the type of costs that have long been recovered under the FAC, including the demand charges associated with purchased power contracts. AEP Ohio witness Roush explained that these costs have always been bypassable and would continue to be avoidable for customers that elect to take service from a CRES provider. However, these non-energy costs primarily relate to FERC-approved contractual commitments by the Company to purchase power from Ohio Valley Electric Cooperative and AEP Generating Company (Lawrenceburg Generating Plant), which are used to fulfill the Company's obligations to provide an SSO to non-shopping customers and should continue to be collected from non-shopping customers. These costs are not part of the

[1] Case Nos. 11-346-EL-SSO, *et al.*

Company's base generation rates, have been recognized as prudent costs to be collected from customers through the FAC, and are actual costs incurred by the Company that are passed through to customers without any return for the Company. (AEP Ohio Ex. 7 at 8-9.) Arguments, like those advanced by FES, that recovery of any portion of these costs should be disallowed, are inconsistent with the Commission's *ESP II* decision that authorized the continuation of the FAC.

In addition, any disallowance of cost recovery of these FERC-approved contracts would unlawfully trap costs in violation of federal law. *See Nantahala Power and Light v. Thornburg*, 476 U.S. 953 (1986); *Mississippi Power v. Moore*, 487 U.S. 354 (1988). In *Nantahala*, the Court established that:

> The filed rate doctrine ensures that sellers of wholesale power governed by FERC can recover the costs incurred by their payment of just and reasonable FERC-set rates. When FERC sets a rate between a seller of power and a wholesaler-as-buyer, a State may not exercise its undoubted jurisdiction over retail sales to prevent the wholesaler-as-seller from recovering the costs of paying the FERC-approved rate. [Citations omitted.] Such a "trapping" of costs is prohibited.

Id. at 970. *See also Mississippi Power*, 487 U.S. at 372.

Moreover, FES' proposal is inconsistent with the basic nature of the energy-only auctions approved in the ESP II orders. The *ESP II* decision made it clear that AEP Ohio would conduct energy-only auctions during the ESP term; winning bidders in those auctions will neither provide capacity to, nor obtain capacity from, AEP Ohio. (*See* AEP Ohio Ex. 1 at 6.) The product procured through the energy-only auction, therefore, is equivalent to the variable energy portion of the FAC. As a consequence, the fact that energy auctions will be conducted for increasing portions of the SSO energy supply during the ESP term does not mean that the Company should discontinue recovery of non-energy costs that have historically been recovered through the FAC.

For these reasons, and consistent with the Commission's treatment of this issue in its Opinion and Order, FES's contention that fixed costs of purchase power arrangements recovered through the FCR should be incrementally reduced to zero for portions of the SSO load corresponding to the 10%, 60%, and 100% portions of the energy-only auctions should be rejected.

B. FES's Double-Recovery "Concern" Is Meritless, And Its Request To Have the Staff Address It In AEP Ohio's Next Quarterly FAC Tariff Filing Should Be Rejected.

FES's additional "concern" that the FCR might double-recover through Base Generation Rates the fixed costs of purchased power arrangements is also baseless, for the reasons provided by AEP Ohio in its Memorandum in Support of its Application for Rehearing, at 9-20. First, the double-recovery "concern" is inherently grounded in a cost-of-service ratemaking perspective that is inapplicable here. Base Generation Rates are not cost-based. Consequently, there is no basis for finding that any costs previously recovered through the FAC, or now recovered through the FCR, are being double-recovered through Base Generation Rates. (*See* AEP Ohio AFR at 11-12.) Second, the Commission has already recognized that Base Generation Rates for bundled SSO service are charges for a retail service that is different than the wholesale capacity service provided to competitive retail electric service (CRES) providers. (*See id.* at 12-13.) Accordingly, cost-of-service analyses applied to cost-based wholesale capacity service rates are inapplicable to charges for Base Generation Service rates. Third, double-recovery arguments are improper attempts to collaterally attack prior Commission adjudicative decisions that approved the Company's Base Generation Service rates and its FAC rate mechanism. (*See id.* at 13-15.) Fourth, as demonstrated by the Company in its Application for Rehearing, even a threshold

analysis using the existing record confirms that, in any event, allegations and concerns of double recovery are meritless. (*See id.* at 16-20.)

FES's concern is without basis, and its suggestion that the Commission should direct the Staff to address its concern in the context of AEP Ohio's next quarterly FAC tariff filing is both inappropriate and unnecessary. As a related matter, FES's apparent request (at 2, 7) in this case for intervention in the Company's FAC case is inappropriate. A CRES provider has no interest or legitimate basis to intervene or participate in AEP Ohio's FAC case. FES's interest in doing so confirms that the so-called double counting issue should be rejected on rehearing in this docket or taken up in a case other than the FAC (if it is to be further litigated over AEP Ohio's objections) –the challenge clearly amounts to a second-guessing of the $188.88/MW-day capacity rate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the parties of record in this proceeding by electronic service this 23rd day of December, 2013.

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Summary: Memorandum Contra FirstEnergy Solutions Corp.'s Application for Rehearing electronically filed by Mr. Yazen Alami on behalf of Ohio Power Company