

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company and Related Matters)))	Case No. 11-5906-EL-FAC
In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company)))	Case No. 12-3133-EL-FAC
In the Matter of the Fuel Adjustment Clauses for Ohio Power Company))	Case No. 13-572-EL-FAC
In the Matter of the Fuel Adjustment Clauses for Ohio Power Company))	Case No. 13-1286-EL-FAC
In the Matter of the Fuel Adjustment Clauses for Ohio Power Company))	Case No. 13-1892-EL-FAC

**JOINT MEMORANDUM CONTRA
OHIO POWER COMPANY'S JANUARY 3, 2014
APPLICATION FOR REHEARING
BY INDUSTRIAL ENERGY USERS-OHIO
AND THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**ON BEHALF OF THE INDUSTRIAL ENERGY
USERS-OHIO**

January 13, 2014

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In accordance with Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code (O.A.C.), Industrial Energy Users-Ohio (“IEU-Ohio”) and the Office of the Ohio Consumers’ Counsel (“OCC”) hereby file their memorandum contra to the Application for Rehearing filed by Ohio Power Company (“AEP-Ohio”) on January 3, 2014 in the above-captioned proceedings relating to the audit of AEP-Ohio’s Fuel Adjustment Clause (“FAC”) for 2012, 2013, and 2014. In an Entry issued on December 4, 2013, the Public Utilities Commission of Ohio (“Commission”) selected

Energy Ventures Analysis, Inc. (“EVA”) as the auditor to audit AEP-Ohio’s FAC.¹ In this Entry, the Commission also directed EVA to “review and investigate [the possible double recovery of certain capacity related costs by AEP Ohio] as part of this audit and to recommend appropriate Commission action based on this review.”² AEP-Ohio’s Application for Rehearing argues that the Commission acted unlawfully and unreasonably by directing EVA to review and investigate whether AEP-Ohio was double recovering certain costs through its FAC and by selecting EVA as the auditor for the double recovery issue. As discussed below, AEP-Ohio’s Application for Rehearing is without merit and should be denied.

I. BACKGROUND

Parties first discovered in the *CBP Case*³ that AEP-Ohio was double recovering through the FAC the capacity costs associated with AEP-Ohio’s purchase power agreements with the Lawrenceburg and Ohio Valley Electric Corporation (“OVEC”) generating facilities.⁴ During the evidentiary hearing in that case, AEP-Ohio’s witness admitted that the Lawrenceburg and OVEC capacity costs that were recovered through the FAC were also included in AEP-Ohio’s proposed cost-based capacity charge of \$355/megawatt-day (“MW-day”) that it sought in the *Capacity Case*.⁵ Since the Commission’s adjustments to the \$355/MW-day price in the Capacity Order were not

¹ Entry at 1-4 (Dec. 4, 2013).

² *Id.* at 4.

³ *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 (hereinafter, “*CBP Case*”).

⁴ *CBP Case*, Initial Brief of IEU-Ohio at 9-11 (Aug. 16, 2013).

⁵ *CBP Case*, Tr. Vol. I at 98-101. *In the Matter of the Commission Review of the Capacity Charges of Ohio Power, Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, (hereinafter “*Capacity Case*”).

related to the Lawrenceburg or OVEC capacity costs, it is apparent that these costs are being double recovered.⁶ Additionally, AEP-Ohio previously alleged that its base generation rates recovered revenue equivalent to a \$355/MW-day charge.⁷ Thus, it is apparent that AEP-Ohio is being compensated for its capacity costs in multiple places, including through the FAC, and therefore it is appropriate to audit the double recovery of the Lawrenceburg and OVEC capacity costs through the FAC.

Although IEU-Ohio and others addressed the double recovery issue in their post hearing briefs in the *CBP Case*, the Commission noted in its November 13, 2013 Opinion and Order in the *CBP Case* (“CBP Order”) that the *CBP Case* was not the appropriate case to address the double recovery issue.⁸ Two Commissioners concurred with the CBP Order and specifically found that the double recovery issue should be addressed in “subsequent FAC proceedings, where the auditor should be directed to investigate these claims”⁹

Subsequent to the CBP Order, the Commission issued an Entry in this proceeding on December 4, 2013. As mentioned above, in this Entry the Commission specifically directed the FAC auditor, EVA, to review and investigate the double recovery of the Lawrenceburg and OVEC capacity costs through the FAC and to make appropriate recommendations to the Commission.

⁶ *Capacity Case*, Opinion and Order (July 2, 2012) (hereinafter “Capacity Order”).

⁷ *CBP Case*, Tr. Vol. I at 242 (AEP-Ohio’s base generation rates provide AEP-Ohio with compensation for generation capacity service in the range of \$340/MW-day to \$355/MW-day, far in excess of the \$188.88/MW-day price approved by the Commission); *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority Establish a Standard Service Offer Pursuant To Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Tr. Vol. V at 1438. (hereinafter, “*ESP II Case*”).

⁸ CBP Order at 16.

⁹ CBP Order, Concurring Opinions of Commissioners Steven D. Lesser and M. Beth Trombold at 1 (Nov. 13, 2013).

In an attempt to evade and frustrate a review of its double recovery through the FAC, AEP-Ohio raises two assignments of error in its Application for Rehearing from the December 4, 2013 Entry.¹⁰ First, AEP-Ohio argues that it is unlawful and unreasonable for the Commission to direct the FAC auditor to review whether AEP-Ohio was double-recovering the Lawrenceburg and OVEC capacity costs through its FAC. Second, AEP-Ohio argues that it is unlawful and unreasonable to allow EVA to audit the double-recovery issue because a conflict of interest or an appearance of a conflict of interest exists with EVA. Because neither argument has merit, the Commission should deny AEP-Ohio's Application for Rehearing.

II. STANDARD OF REVIEW

Applications for rehearing are governed by Section 4903.10, Revised Code. The statute allows that, within 30 days after issuance of a Commission order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding." Rule 4901-1-35(B), O.A.C., provides that any party may file a memorandum contra within ten days of the filing of an application for rehearing. IEU-Ohio filed a motion to intervene in this proceeding (in Case No. 11-5906-EL-FAC) on March 9, 2012. OCC filed a motion to intervene in this proceeding (in Case No. 11-5906-EL-FAC) on March 7, 2012. Both motions to intervene were granted on March 28, 2012. On January 13, 2014, IEU-Ohio and OCC filed motions to intervene in Case Nos. 12-3133-EL-FAC, 13-0572-EL-FAC, 13-1286-EL-FAC, and 13-1892-EL-FAC.

¹⁰ AEP-Ohio also filed an Application for Rehearing in the *CBP Case* raising similar arguments as here. IEU-Ohio's December 23, 2013 Memorandum Contra AEP-Ohio's Application for Rehearing in the *CBP Case* demonstrates that AEP-Ohio's Application for Rehearing in the *CBP Case* is also without merit and should be denied. *CBP Case*, IEU-Ohio's Memorandum Contra Ohio Power Company's Application for Rehearing (Dec. 23, 2013).

Section 4903.10, Revised Code, requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” In addition, Rule 4901-1-35(A), O.A.C., states: “An application for rehearing must be accompanied by a memorandum in support, which sets forth an explanation of the basis for each ground for rehearing identified in the application for rehearing and which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, Section 4903.10, Revised Code, provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” As demonstrated herein, AEP-Ohio has not met the statutory standard for modifying the December 4, 2013 Entry and, therefore, the Commission should deny AEP-Ohio’s Application for Rehearing.

III. ARGUMENT

A. The Commission correctly determined that this is the appropriate proceeding to audit AEP-Ohio’s double recovery of certain capacity costs from its customers

In its first assignment of error challenging the Commission’s December 4, 2013 Entry, AEP-Ohio alleges that it was unlawful and unreasonable for the Commission to direct EVA to audit the double recovery of the Lawrenceburg and OVEC capacity costs

through the FAC.¹¹ To support its first assignment of error, AEP-Ohio strings together several disjointed and unsupported theories. AEP-Ohio initially argues that this proceeding is not the appropriate proceeding to address the double recovery issue.¹² AEP-Ohio then argues that an audit of the double recovery amounts to an audit of its base generation rates and the \$188/MW-day price of capacity and is an improper collateral attack on prior Commission decisions approving AEP-Ohio's base generation rates and the \$188/MW-day price for capacity. Finally, AEP-Ohio argues that the Commission acted unlawfully and unreasonably by failing to limit the scope of the auditor's investigation.¹³ These arguments are without merit and therefore AEP-Ohio's first assignment of error should be denied.

1. The audit of AEP-Ohio's double recovery of the OVEC and Lawrenceburg capacity costs from customers through the FAC is a "FAC issue" and therefore the Commission correctly directed the auditor to review the reasonableness of including these costs in the FAC

AEP-Ohio asserts that the double recovery "is not a FAC issue."¹⁴ AEP-Ohio supports this claim by asserting that "there is no prudence question relating to those FERC-approved contracts [with OVEC and Lawrenceburg] or recovery of the underlying costs in retail rates"¹⁵ and by asserting that the *CBP Case* is the appropriate case to address the double recovery issue.¹⁶

¹¹ AEP-Ohio Application for Rehearing at 3-7 (Jan. 3, 2014).

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 4.

Contrary to AEP-Ohio's assertions, the double recovery of the Lawrenceburg and OVEC capacity costs is a FAC issue. AEP-Ohio admitted that it collects the Lawrenceburg and OVEC capacity costs through the FAC and the \$188/MW-day price of capacity. AEP-Ohio has also argued that it is provided compensation for its capacity costs through base generation rates, which AEP-Ohio contends is equivalent to \$355/MW-day.¹⁷ It is improper for AEP-Ohio to double recover these costs from customers.¹⁸ Thus, because there is an apparent double recovery of the OVEC and Lawrenceburg capacity costs, an audit of the Lawrenceburg and OVEC capacity costs, which are double recovered from customers through the FAC, is proper. Additionally, the Commission has previously ordered audits in FAC-type cases to review whether certain costs were being double recovered through a FAC-type clause as well as other charges.¹⁹

AEP-Ohio also argues that this is not the appropriate proceeding to address the double recovery issue because the *CBP Case* is the appropriate proceeding to address the issue.²⁰ AEP-Ohio does not offer anything to support this claim. Because AEP-Ohio failed to offer anything new to support this claim, the Commission should reject AEP-Ohio's argument.

¹⁷ *CBP Case*, Tr. Vol. I at 98-101; *CBP Case*, Tr. Vol. I at 242 (AEP-Ohio's base generation rates provide AEP-Ohio with compensation for generation capacity service in the range of \$340/MW-day to \$355/MW-day, far in excess of the \$188.88/MW-day price approved by the Commission); *ESP II Case*, Tr. Vol. V at 1438; see also *supra*, at 2-3.

¹⁸ See *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify its Accounting Procedure for Certain Storm-Related Service Restoration Costs*, Case No. 12-2281-EL-AAM, Entry on Rehearing at 3-4 (Feb. 13, 2013); *ESP II Case*, Opinion and Order at 47 (Aug. 8, 2012) (AEP-Ohio will not be permitted to double recover costs through the Distribution Investment Rider).

¹⁹ *In the Matter of the Transmission Rates Contained in the Rate Schedules of Duke Energy Ohio and Related Matters*, Case Nos. 05-727-EL-UNC, *et al.*, Entry at 4 (Nov. 28, 2006) ("The Commission also finds that issues relating to possible double recovery of congestion costs should be considered in the pending audit of the FPP rider, in Case No. 05-725-EL-UNC, *et al.*").

²⁰ AEP-Ohio's Application for Rehearing at 4 (Jan. 3, 2014).

Further, the Commission should reject this argument because the Commission granted AEP-Ohio's request to limit to scope of the *CBP Case*. Prior to the commencement of the hearing in the *CBP Case*, AEP-Ohio filed a motion arguing that the scope of the *CBP Case* should be limited to a resolution of issues that parties raised in comments filed before the evidentiary hearing began (the double recovery issue was not brought to light until the hearing). The Commission granted AEP-Ohio's motion prior to the hearing in an Entry dated June 6, 2013.²¹ AEP-Ohio's Application for Rehearing in this case is a collateral attack on the Commission's June 6, 2013 Entry in the *CBP Case* that granted AEP-Ohio's request to limit the scope of the *CBP Case*.²² Moreover, following the hearing in the *CBP Case*, the Commission confirmed that the *CBP Case* was not the appropriate proceeding to address the double recovery issue;²³ and two Commissioners explicitly found that the double recovery issue should be addressed in this proceeding.²⁴

Finally, AEP-Ohio's argument regarding the prudence of the Lawrenceburg and OVEC capacity costs is irrelevant.²⁵ Even if it is assumed that these costs were prudently incurred, AEP-Ohio would only be entitled to recover these costs once from customers. The Commission has also held that a finding of imprudence is not a

²¹ *CBP Case*, Entry at 3 (June 6, 2013).

²² *Id.*

²³ Capacity Order at 16.

²⁴ *CBP Order*, Concurring Opinion of Steven D. Lesser and M. Beth Trombold at 1 (Nov. 13, 2013).

²⁵ AEP-Ohio's Application for Rehearing at 3 (Jan. 3, 2014).

condition precedent to making an adjustment to AEP-Ohio's FAC for overstated FAC costs.²⁶

Accordingly, it was lawful and reasonable for the Commission to direct the FAC auditor to review and investigate whether AEP-Ohio was double recovering from customers the Lawrenceburg and OVEC capacity costs through the FAC and to make appropriate recommendations to the Commission.

2. An audit of AEP-Ohio's FAC to determine whether AEP-Ohio is double recovering the Lawrenceburg and OVEC capacity costs from customers through the FAC is not a collateral attack on base generation rates or the \$188/MW-day price established in the *Capacity Case*

AEP-Ohio asserts that an audit of its FAC to confirm that it is double recovering the Lawrenceburg and OVEC capacity costs through the FAC is a collateral attack on the Commission's prior orders addressing AEP-Ohio's base generation rates and the \$188/MW-day price for capacity.²⁷ AEP-Ohio's argument is without merit.

An audit of the costs included in AEP-Ohio's FAC will have no impact on AEP-Ohio's base generation rates or the \$188/MW-day price for capacity. If the Commission concludes that AEP-Ohio improperly double recovered costs from customers through its FAC, the Commission can order an adjustment to current or future FAC rates.²⁸ Thus, an adjustment in this proceeding due to AEP-Ohio's double

²⁶ *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case Nos. 09-872-EL-FAC, *et al.*, Entry on Rehearing at 7 (Apr. 11, 2012) (hereinafter "*2009 FAC Audit Case*").

²⁷ AEP-Ohio's Application for Rehearing at 3-7 (Jan. 3, 2014).

²⁸ *2009 FAC Audit Case*, Opinion and Order at 12-14 (Jan. 23, 2012). Similarly, the Commission could order a credit against the portion of the ESP I rate increase that was not collected during the term of the ESP I due to the ESP I rate caps, which was deferred for future collection through the Phase-In Recovery Rider ("PIRR").

recovery of costs through its FAC will not result in a collateral attack on AEP-Ohio's base generation rates or the \$188/MW-day price for capacity.

Accordingly, AEP-Ohio's argument is without merit and should be rejected.

3. The Commission should not modify its December 6, 2013 Entry to include the unlawful and unreasonable limitations against the interest of customers that AEP-Ohio requests be placed on the scope of the FAC audit

AEP-Ohio argues that the Commission acted unlawfully and unreasonably by failing to limit scope of the audit of AEP-Ohio's double recovery of the Lawrenceburg and OVEC capacity costs. Specifically, AEP-Ohio claims that there are many limitations that should have been imposed on the audit; however, AEP-Ohio lists only two. First, AEP-Ohio requests that the Commission grant rehearing to modify the December 6, 2013 Entry and direct the auditor to review the double recovery issue only on a forward looking basis. Second, AEP-Ohio requests that the Commission grant rehearing to modify the December 6, 2013 Entry and direct the auditor to only consider the double recovery issue once the Fixed Cost Rider ("FCR") starts in April 2014. AEP-Ohio's request for the Commission to modify the December 6, 2013 Entry to contain these two limitations is neither lawful nor reasonable.

To support its argument that the audit of the double recovery should only be forward looking AEP-Ohio makes the blanket statement that a "more expansive retrospective review would violate the prohibition against retroactive ratemaking."²⁹ AEP-Ohio did not offer any analysis to support this statement. Because AEP-Ohio has failed to offer anything to support its argument, the Commission should reject the argument.

²⁹ AEP-Ohio's Application for Rehearing at 4 (Jan. 3, 2014).

Further, the Ohio Supreme Court and Commission have already addressed and rejected this retroactive ratemaking argument.³⁰ The Court found that the Commission's prospective adjustments to a variable rate (e.g., AEP-Ohio's FAC) to account for amounts that were unreasonably included in the rate did not amount to retroactive ratemaking.³¹ The Court held that the Commission's initial authorization of the variable rate was not ratemaking as the term is traditionally defined and applied in the context of retroactive making.³² Unlike traditional ratemaking, where the Commission renders a decision on the lawfulness of charges before they go into effect, a variable rate such as the FAC allows a utility to assess a charge on customers before the Commission determines the lawfulness and reasonableness of the costs collected through the charge.³³

In applying this distinction to a previous FAC proceeding for AEP-Ohio under facts nearly identical to the double recovery issue in this case, the Court upheld the Commission's order that AEP-Ohio refund revenue collected through its fuel clause equal to the compensation AEP-Ohio was already provided elsewhere for the same costs:

Fuel adjustment clauses are not and may not be permitted to become a carte-blanche authorization to an electric utility to pass through to its tariff customers expenses other than fuel costs fairly attributable to the production of the service to those customers. Although charges in billings to customers may not be made other than pursuant to a fuel adjustment

³⁰ *River Gas Co. v. Pub. Util. Comm.*, 69 Ohio St.2d 509, 512-13 (1982); *Ohio Power Co. v. Pub. Util. Comm.*, 54 Ohio St.2d 342, 344 (1978); *2009 FAC Audit Case*, Opinion and Order at 12-14 (Jan. 23, 2012); *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison, Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 11-5201-EL-RDR, Second Entry on Rehearing at 20-24 (Dec. 18, 2013).

³¹ *River Gas Co. v. Pub. Util. Comm.*, 69 Ohio St.2d 509, 512-13 (1982)

³² *Id.*

³³ *Id.*

clause in effect and approved by the commission, that approval must be tentative to the extent that it cannot be known in advance what charges not so attributable may be included by virtue of the utility's interpretation of the clause.

We perceive that the requirement of fairness which compels adjustments in rates to compensate utilities for escalating fuel costs also compels retrospective reconciliation to exclude charges identifiably resulting from unreasonable computations or inclusions.³⁴

In the *2009 FAC Audit Case*, the Commission also rejected AEP-Ohio's argument that it could not make a prospective adjustment based upon the FAC rates being overstated due to the inclusion of unreasonable costs.³⁵ Accordingly, AEP-Ohio's retroactive ratemaking argument is without merit and should be rejected.

AEP-Ohio also argues that the Commission acted unlawfully and unreasonably by failing to hold that there can be no consideration of the double recovery issue "prior to the point in time when the FAC is unbundled into the Fixed Cost Rider ("FCR") and the energy-only auctions begin replacing portions of the FAC energy-related costs – which does not occur until April 2014."³⁶ Just like the first condition that AEP-Ohio requests to be imposed, AEP-Ohio failed to provide any analysis as to why the exclusion of this condition is unlawful or unreasonable. Moreover, there is nothing unique about that starting date of the FCR; the Lawrenceburg and OVEC capacity costs that will be collected through the FCR were collected through the FAC during the audit periods in these proceedings. Because the Lawrenceburg and OVEC capacity costs

³⁴ *Ohio Power Co. v. Pub. Util. Comm.*, 54 Ohio St.2d 342, 344 (1978).

³⁵ *2009 FAC Audit Case*, Opinion and Order at 12-14 (Jan. 23, 2012); see also *In the Matter of the Review of the Alternative Energy Rider Contained in the Tariffs of Ohio Edison, Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 11-5201-EL-RDR, Second Entry on Rehearing at 20-24 (Dec. 18, 2013).

³⁶ AEP-Ohio Application for Rehearing at 4 (Jan. 3, 2014).

are currently embedded in the FAC, the Commission should review the inclusion of these costs in the FAC to prevent the unlawful and unreasonable double recovery.

In sum, the Commission did not act unlawfully or unreasonably by excluding these two conditions from the scope of the audit. Accordingly, the Commission should reject AEP-Ohio's argument.

B. There is no conflict of interest or appearance of a conflict of interest if EVA conducts the audit of AEP-Ohio's double recovery of the Lawrenceburg and OVEC capacity costs through the FAC

AEP-Ohio also argues that the Commission acted unlawfully and unreasonably by allowing EVA to conduct the audit of the double recovery of the Lawrenceburg and OVEC capacity costs through the FAC because a conflict of interest or an apparent conflict of interest exists.³⁷ AEP-Ohio claims that EVA provided expert testimony on behalf of Staff regarding AEP-Ohio's "cost" of capacity in the *Capacity Case* and as such was an adverse party to AEP-Ohio.³⁸ AEP-Ohio then asserts that EVA's audit in this case would allow EVA to "audit its own consulting work"³⁹ from the *Capacity Case*. AEP-Ohio argues that this creates a conflict of interest that would prevent the auditor from being independent. AEP-Ohio's argument is without merit.

Initially, AEP-Ohio's argument should be rejected because there will not be an audit of EVA's analysis from the *Capacity Case*. In the *Capacity Case*, EVA reviewed AEP-Ohio's requested \$355/MW-day capacity charge, and proposed certain modifications to the fixed cost portion of the charge and an energy credit.⁴⁰ The audit in

³⁷ *Id.* at 7-9.

³⁸ *Id.* at 7.

³⁹ *Id.* at 8

⁴⁰ *Capacity Case*, Direct Testimony of Ryan T. Harter (Apr. 16, 2012); *Capacity Case*; Direct Testimony of Ralph C. Smith (Apr. 16, 2012); *Capacity Case*, Direct Testimony of Emily S. Medine (May 7, 2012).

this case will look to see if AEP-Ohio is compensated elsewhere for the Lawrenceburg and OVEC capacity costs that AEP-Ohio collects through the FAC; it will not require EVA to propose any changes to the \$188/MW-day capacity price or base generation rates. Thus, AEP-Ohio's characterization that EVA will "audit its own consulting work" is incorrect.

Additionally, AEP-Ohio does not offer any explanation on how a conflict of interest actually exists. AEP-Ohio describes EVA's work in the *Capacity Case* as providing testimony on behalf of Staff "regarding capacity cost issues that were the subject of vigorous and contentious litigation."⁴¹ EVA's audit of the double recovery of the Lawrenceburg and OVEC capacity costs will require EVA to determine whether AEP-Ohio is compensated for the Lawrenceburg and OVEC capacity costs through multiple charges. This was not an issue addressed by the auditors in the *Capacity Case*. Thus, AEP-Ohio failed to demonstrate that a conflict of interest or the appearance of a conflict of interest exists.

Further, the conflict of interest case cited by AEP-Ohio is inapposite.⁴² The *DP&L EFC Case*⁴³ dealt with a situation where the independent auditor in an electric fuel component ("EFC") audit proceeding contracted with a party adverse to the utility in the EFC proceeding to provide testimony that was adverse to the utility in a separate pending forecasting case before the Commission.⁴⁴ Unlike the *DP&L EFC Case* that AEP-Ohio relies upon, EVA is not testifying on behalf of a party in a pending proceeding

⁴¹ AEP-Ohio's Application for Rehearing at 7 (Jan. 3, 2014).

⁴² *Id.* at 7-8.

⁴³ *In the Matter of the Regulation of Electric Fuel Component Contained within the Rate Schedules of The Dayton Power & Light Co.*, Case No. 86-07-EL-EFC, Opinion and Order at 70-71 (Feb. 18, 1987) (hereinafter, "*DP&L EFC Case*").

⁴⁴ *DP&L EFC Case*, Opinion and Order at 70-71 (Feb. 18, 1987).

while also being retained as an independent auditor in a separate proceeding. The Commission issued its final order in the *Capacity Case* over a year ago.

Also, unlike the *DP&L EFC Case*, in both cases EVA has been retained by the Commission – the Commission’s Staff in the *Capacity Case* and the Commission itself in this case. EVA’s independent analysis for the Commission’s Staff in the *Capacity Case*, and its independent analysis for the Commission in this case, are akin to an independent auditor in a FAC audit proceeding making a recommendation adverse to a utility company in an FAC audit case, and then conducting an audit of that utility company’s FAC for a subsequent year.

Accordingly, the Commission lawfully and reasonably selected EVA to audit the double recovery of the Lawrenceburg and OVEC capacity costs.

IV. CONCLUSION

For the reasons discussed above, the Commission should deny AEP-Ohio’s Application for Rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Memorandum Contra Ohio Power Company's January 3, 2014 Application for Rehearing by Industrial Energy Users-Ohio and the Office of the Ohio Consumers' Counsel* was served upon the following parties of record this 13th day of January 2014, via hand-delivery, electronic transmission, or first class mail, U.S. postage prepaid.

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Summary: Memorandum (Joint Memorandum) Contra Ohio Power Company's January 3, 2014 Application for Rehearing electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio