

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Fuel Adjustment	)	Case No. 10-268-EL-FAC
Clause of Columbus Southern Power	)	Case No. 10-269-EL-FAC
Company and Ohio Power Company and	)	
Related Matters for 2010.	)	

In the Matter of the Application of the Fuel	)	
Adjustment Clauses for Columbus Southern	)	Case No. 11-281-EL-FAC
Power Company and Ohio Power Company	)	
and Related Matters.	)	

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**INDUSTRIAL ENERGY USERS-OHIO'S  
MEMORANDUM CONTRA TO THE APPLICATION FOR REHEARING  
OF OHIO POWER COMPANY**

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**JUNE 23, 2014**

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

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On June 13, 2014, Ohio Power Company ("AEP-Ohio") filed an Application for Rehearing in the above-captioned matters from the Public Utilities Commission of Ohio's ("Commission") May 14, 2014 Opinion and Order ("FAC Order"). Pursuant to Rule 4901-1-35(B), Ohio Administrative Code ("O.A.C."), Industrial Energy Users-Ohio ("IEU-Ohio") files this Memorandum Contra to AEP-Ohio's Application for Rehearing. As discussed below, AEP-Ohio's Application for Rehearing should be denied because it lacks specificity and because the FAC Order is lawful and reasonable.

**I. ARGUMENT**

**A. The Commission should deny AEP-Ohio's Application for Rehearing because the Application for Rehearing lacks specificity**

Section 4903.10(B), Revised Code, requires that an application for rehearing "set forth specifically the ground or grounds on which the applicant considers the order to be

unreasonable or unlawful.” (emphasis added). According to the Court, it has “strictly construed the specificity test set forth in R.C. 4903.10.”<sup>1</sup> “[W]hen an appellant’s grounds for rehearing fail to specifically allege in what respect the PUCO’s order was unreasonable or unlawful, the requirements of R.C. 4903.10 have not been met.”<sup>2</sup> Rule 4901-1-35, O.A.C. also requires that an application for rehearing set forth the specific grounds for rehearing in the application for rehearing. AEP-Ohio’s Application for Rehearing fails to meet the specificity requirement.

In its Application for Rehearing, AEP-Ohio states:

The Commission’s Order is unlawful and unreasonable, and should be clarified, in the following respects:

- I. It was unreasonable for the Order to adopt management audit recommendation number 3 from the 2011 audit report.
- II. It was unlawful and unreasonable for the Order to adopt financial audit recommendation number 5 from the 2010 audit report and financial audit recommendation number 4 from the 2011 audit report.
- III. The Commission should clarify that any “lingering concerns” addressed by the Auditor in its next audit report should only be addressed prospectively.<sup>3</sup>

Nowhere in the Application for Rehearing does AEP-Ohio specifically allege in what respect the FAC Order is unlawful and unreasonable.

Instead, AEP-Ohio waits until its Memorandum in Support to provide the specific reasons why it believes the FAC Order is unlawful and unreasonable. AEP-Ohio’s reliance on its Memorandum in Support, however, does not cure the statutory defects in its Application for Rehearing. Section 4903.10, Revised Code, does not provide for the

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<sup>1</sup> *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, ¶ 59.

<sup>2</sup> *Id.*

<sup>3</sup> AEP-Ohio Application for Rehearing at 1.

filing of a memorandum in support of an application for rehearing. The requirement for filing a memorandum in support of an application for rehearing is a requirement contained in Rule 4901-1-35(A), O.A.C.:

an application for rehearing must set forth the specific ground or grounds upon which the applicant considers the commission order to be unreasonable or unlawful. 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.

Accordingly, AEP-Ohio's reliance on its Memorandum in Support does not cure the statutory defects in its Application for Rehearing and, therefore, the Commission should deny AEP-Ohio's Application for Rehearing.

**B. The Commission should deny AEP-Ohio's third ground for rehearing because the Commission's holding that the auditor address lingering issues is both lawful and reasonable**

In its third ground for rehearing, AEP-Ohio requests that the Commission clarify the Commission's statement that: "EVA and Larkin may address any lingering concerns in their next audit report, as they deem necessary."<sup>4</sup> AEP-Ohio requests that the Commission clarify that "the statement was only meant to direct the Auditor prospectively."<sup>5</sup> AEP-Ohio argues that it "would be inappropriate for the Auditor to revisit in next year's audit matters already previously adjudicated and decided in these proceedings, as has been the inclination of the Auditor."<sup>6</sup> AEP-Ohio's argument is without merit.

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<sup>4</sup> *Id.* at 12 (*quoting* FAC Order at 23).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 12-13.

The FAC Order is reasonable because AEP-Ohio has agreed to, and the Commission has directed AEP-Ohio to, implement various management and performance (“m/p”) and financial recommendations made by the Auditor in the 2009, 2010, and 2011 audits.<sup>7</sup> It is appropriate and reasonable for the Auditor to ensure that AEP-Ohio is maintaining ongoing compliance with the Commission’s orders regarding the 2009, 2010, and 2011 audits. Additionally, the Commission has left open at least two issues from prior audit periods and held that they would be addressed at later dates. Specifically, the Commission has deferred for later determination the actual value of AEP-Ohio’s coal reserve at issue in the 2009 audit and AEP-Ohio’s future market discount under the Contract Support Agreement.<sup>8</sup> IEU-Ohio has also filed an Application for Rehearing of the FAC Order, and IEU-Ohio seeks through its Application for Rehearing to have the Commission leave another issue open to address in a future FAC audit hearing; that is, IEU-Ohio seeks an order from the Commission on rehearing allowing IEU-Ohio to present evidence regarding AEP-Ohio’s double-recovery of certain capacity costs through its FAC rates in 2010 and 2011. Accordingly, the Commission’s finding that AEP-Ohio’s compliance with prior audit recommendations and lingering issues from prior audit periods be addressed by the Auditor in future audits is reasonable. Therefore, AEP-Ohio’s third ground for rehearing should be denied.

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<sup>7</sup> See, e.g., FAC Order at 22-23.

<sup>8</sup> FAC Order at 20, 25.

Respectfully submitted,

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

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra to the Application for Rehearing of Ohio Power Company* was served upon the following parties of record this 23<sup>rd</sup> day of June 2014, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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Summary: Memorandum Contra to the Application for Rehearing of Ohio Power Company electronically filed by Mr. Matthew R. Pritchard on behalf of Industrial Energy Users-Ohio