BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Fuel Adjustment Clause of Columbus Southern Power Company and Ohio Power Company And Related Matters for 2010	))))	Case No. 10-268-EL-FAC Case No. 10-269-EL-FAC
In the Matter of the Fuel Adjustment Clause of Columbus Southern Power Company and Ohio Power Company And Related Matters for 2011	))))	Case No. 11-281-EL-FAC

MEMORANDUM CONTRA OF OHIO POWER COMPANY

On June 13, 2014, Industrial Energy Users – Ohio (IEU) filed an application for rehearing challenging the Commission's lawful and reasonable decision in the Opinion and Order declining to pursue a baseless theory advanced by IEU that would substantially expand the scope of this proceeding. IEU's rehearing application raises nothing new and the Commission should again decline this ill-advised invitation to create uncertainty and risk for the Ohio Power Company's (AEP Ohio's) recovery of regulatory deferrals previously authorized by the Commission. For the reasons explained below, the Commission should reaffirm its Opinion and Order and deny IEU's application for rehearing.

I. IEU's double recovery claims are beyond the scope of this proceeding and otherwise without merit.

As with its post-hearing brief, IEU again seeks to advance its flawed theory of double recovery on rehearing in this case. The Attorney Examiner properly excluded evidence and cross examination relating to the double recovery issue identified in the November 13, 2013

Opinion and Order in Case No. 12-3254-EL-UNC, since these proceedings relate to 2010-2011 Audit periods and the double recovery issue relates to a subsequent time period. The underlying issue relates to the $188.88/MW-day capacity charge approved by the Commission in Case No. 10-2929-EL-UNC, which did not become effective until August 2012. IEU's proffer of evidence attempts to take information from the 10-2929 case and extend it beyond the scope of that case, beyond the scope of the double recovery audit and beyond the scope of the management audit in this case. At the very least, IEU should have sponsored its own witness and raised these claims here; instead, its legal counsel attempted to cobble together a series of claims based on evidence presented in other cases in different contexts. Thus, none of IEU's arguments in this regard need to be considered and the excluded evidence it proffered can be ignored. Even if the proffered evidence is considered, it fails to support the factual inferences drawn by IEU.

More importantly, there are multiple legal barriers that also squarely defeat IEU's vacuous double recovery claim, as set forth below. Most notably, even beyond being out of context and misapplied, IEU's misguided assertions about the Company's base generation rates clearly and improperly attempt to re-litigate matters already adjudicated by the Commission in AEP Ohio's *ESP I* proceeding, Case Nos. 08-917-EL-SSO et al. In that case, the Commission explicitly permitted recovery of the OVEC and Lawrenceburg demand charges through the FAC for 2009-2011 because the OVEC and Lawrenceburg costs were not reflected in Base Generation Rates. Specifically, in the *ESP I* decision, the Commission approved without modification the Company's proposal to commence explicit recovery of the OVEC and Lawrenceburg demand charges through the FAC and separately from Base Generation Rates; the details of the Company's FAC proposal were set forth in the testimony of AEP Ohio witness Philip J. Nelson, as was explicitly referenced and relied upon in the *ESP I* decision when the Commission adopted

the FAC proposal. (See *ESP I*, March 18, 2009 Opinion and Order at 14-15, and 51-52.) The *ESP I* decision to explicitly allow recovery of the OVEC/Lawrenceburg demand charges simply would not have been permitted if Base Generation Rates already reflected those costs. Moreover, the Commission issues its decision in the 2009 FAC proceeding and approved the Company's full recovery of OVEC/Lawrenceburg demand charges through the FAC.

A. The Attorney Examiner properly excluded evidence and prevented cross examination regarding matters outside the scope of these proceedings.

The Attorney Examiner sustained AEP Ohio's objections and excluded evidence and precluded cross examination by IEU on matters that go well beyond the audit involved in this case. Tr. at 53, 55. Nonetheless, IEU proffered IEU Exhibits 7-12 in an attempt to advance its flawed double recovery theory. AEP Ohio maintains that IEU should have filed an interlocutory appeal if it wanted to challenge the Attorney Examiner's rulings and secure a ruling from the Commission that additional evidence could be taken.[1] Because IEU failed to do so and the Attorney Examiner's rulings cannot now be reversed, the proffered evidence cannot be relied upon or otherwise considered by the Commission in deciding the merits of these cases. As IEU well knows, it would be error for the Commission to reverse the Attorney Examiner's proper ruling or rely on extra-record evidence. *Industrial Energy Users – Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, Par. 30 (2008) (ruling on an issue without record support is an abuse of discretion and reversible error). Specifically, the excluded evidence proffered by IEU constitutes extra-record material that cannot be relied upon by the Commission in making a decision in this

[1] While OAC Rule 4901-1-15(F) arguably permits IEU to challenge the evidentiary ruling in its merit brief even without having filed an interlocutory appeal, there is no basis for IEU to present and rely on evidence excluded from the record in its brief. In any case, as discussed below, IEU makes arguments that are not supported by the proffered evidence and otherwise fallacious.

case absent (1) reversal of the Attorney Examiner's ruling and (2) provision of a new evidentiary hearing to address such new evidence.

In any case, as was discussed on the record in this case, AEP Ohio has challenged and addressed the double recovery allegations as part of Case No. 12-3254-EL-UNC. Tr. at 50; IEU Initial Brief at 6. The Commission's Opinion and Order in that case determined (at 16) that the allegations were of "AEP Ohio double recovering certain capacity revenues." Of course, the capacity revenues in that section of the decision relate to the $188.88/MW-day rate adopted in Case No. 10-2929-EL-UNC ("*Capacity Case*"), which rates did not become effective until August 2012. There is no possible way that such double recovery could have occurred prior to August 2012, and AEP Ohio maintains that no such double recovery occurred even after August 2012. For present purposes, however, it is sufficient for the Commission to confirm the Attorney Examiner's ruling that the double recovery allegation referenced in Case No. 12-3254-EL-UNC cannot be raised here because it bears no relationship to the 2010 and 2011 audit periods at issue in these proceedings. Nothing further on the merits of that issue needs to be done in this case as the Attorney Examiner properly excluded the double recovery issue from the evidence and there is no record basis to consider or resolve the issue.

In addition to being dependent upon evidence from another proceeding developed in a different context, the conclusions asserted by IEU in this regard are simply not supported by the proffered exhibits. Double recovery is a fact-intensive claim and should not be presumed from sweeping inferences or broad assumptions as IEU has done. Whether or not OVEC and Lawrenceburg demand charges are being recovered through the $188.88/MW-day capacity charge will be determined in the pending double recovery audit proceeding. As explained above, the scope of that inquiry can only extend back to August 2012 at the earliest. But IEU's present

claim relates to recovery of OVEC/Lawrenceburg demand charges in Base Generation Rates during 2010 and 2011, which is a matter fully adjudicated in the *ESP I* decision and cannot be revisited.

B. IEU's double recovery arguments are improper attempts to collaterally attack prior adjudicative decisions, especially the *ESP I* decision that affirmatively permitted recovery of OVEC/Lawrenceburg demand charges separate from Base Generation Rates.

The key claim IEU makes based on its proffered exhibits is that they "demonstrate that AEP Ohio's Base Generation Rates in effect during 2010 and 2011 fully compensated AEP Ohio for the Lawrenceburg and OVEC capacity costs that AEP Ohio flowed through the FAC in 2010 and 2011." IEU AFR at 6. No matter how much IEU wants to conflate Base Generation Rates and the $188.88/MW-day capacity charge, they are two different things. Separate from the Base Generation Rates established in the *ESP I* decision for 2009-2011, the double recovery issue arose out of the *ESP II* decision (for the 2012-2014 term) and subdockets in Case Nos. 12-3254-EL-UNC and 13-1530-EL-UNC relating to SSO auction process and auction-based rate design. IEU's entire argument is based on going back and re-litigating *ESP I* matters – something the Commission should faithfully continue refusing to do. Of course, AEP Ohio has steadfastly maintained – and will continue to demonstrate through the double recovery audit process – that no double recovery occurred. Because those determinations will be made in a separate proceeding, however, they need not be revisited as part of denying IEU's application for rehearing.

IEU's after-the-fact challenge of AEP Ohio's Base Generation Rates is simply an improper attempt to collaterally attack prior decisions of the Commission. The Ohio Supreme Court has described a collateral attack as "an attempt to defeat the operation of a judgment, in a

proceeding where some new right derived from or through the judgment is involved." *Ohio Pyro, Inc. v. Ohio Dep't of Commerce*, 115 Ohio St. 3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 16. In addition to the doctrine of collateral attack, the related doctrines of *res judicata* and collateral estoppel are applicable to Commission proceedings and bar attempts of parties to re-litigate issues finally decided in prior proceedings. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 16 Ohio St.3d 9, 10, 475 N.E.2d 782 (1985).[2]

In the case of SSO Base Generation Rates, such pricing is not, and has not been, cost-based since before 1999. As the Commission affirmatively adjudicated in AEP Ohio's Rate Stabilization Plan case, generation rates under the RSP "constitute an appropriate market-based standard service offer, as required by Section 4928.14(A), Revised Code." *RSP*, Case No. 04-169-EL-UNC (Jan. 26, 2005 Opinion and Order) at 14. *See also, id.* at 18 ("[W]ith the expiration of the MDP, generation rates are subject to the market (not the Commission's traditional cost-of-service rate regulation) * * * .") Moreover, in the Company's *ESP II* case, the Commission again rejected the argument that AEP Ohio's Base Generation Rates must be cost-based to be justified "as there is not a statutory requirement, nor * * * a Commission mandate to require that [AEP Ohio] conduct a cost of service study." *ESP II*, Opinion and Order at 42 (Dec. 14, 2011). In that case, the Commission approved AEP Ohio's proposal to freeze Base

[2] As the Commission knows, both the Commission and the Ohio Supreme Court have recognized that *res judicata* is not a bar to a complaint filed under R.C. 4905.26 and that that statutory provision is broad enough to permit a collateral attack on approved rates. *See, e.g., Western Reserve Transit Authority v. Pub. Util. Comm.*, 39 Ohio St. 2d 16, 18-19, 313 N.E.2d 811 (1974). This proceeding, however, was not initiated under, and is not authorized by, R.C. 4905.25; thus, the narrow exception for complaint cases is inapplicable. Moreover, even where R.C. 4905.26 is implicated and permits a collateral attack through which the Commission determines that a utility's rate is unjust or unreasonable, any substitution of a new rate in place of the existing rate has prospective effect only. *Lucas County Comm'rs v. Pub. Util. Comm.*, 80 Ohio St. 3d 344, 347-348, 686 N.E.2d 501 (1997), *citing Keco Industries*, 166 Ohio St. 254. Thus, in addition to being an improper collateral attack barred by *res judicata*, opening up the recovery of authorized costs through the FAC to a date prior to the effective date of the FCR also is unlawful retroactive ratemaking.

Generation Rates, established in the Company's *ESP I* proceeding, until all rates are established through a Competitive Bidding Process ("CBP"). *ESP II*, Opinion and Order at 15 (Aug. 8, 2012). The Commission approved those now-frozen Base Generation Rates as just and reasonable and more favorable in the aggregate than expected results of an MRO in the Company's *ESP I* case. *See ESP I*, Opinion and Order at 72 (Mar. 18, 2009). Accordingly, any contention that the Company's adjudicated and approved Base Generation Rates will – after being reduced – double recover any particular costs plainly amount to a collateral attack on the Commission's prior decisions approving those Base Generation Rates (*e.g.*, its *ESP I, ESP II* and *RSP* orders, which adjudicated that the FAC and Base Generation Rates are reasonable and found that the Base Generation Rates are not cost-based). Further, if the "logic" advocated by IEU here is upheld, the non-cost-based Base Generation Rates could be similarly characterized (improperly) as propagating double recovery for *any cost* recovered in *any other rate*. In reality, as set forth above, since before 1999, AEP Ohio's Base Generation Rates cannot be characterized as cost-based and, therefore, cannot properly be concluded as enabling the double recovery of any cost.

Separately, the question of what is the appropriate cost of capacity furnished to CRES providers during the term of the current ESP was litigated extensively and decided by the Commission in its *Capacity Case*. *See* Case No. 10-2929-EL-UNC. Of course, the demand charges to be recovered in the FCR have been recovered through the FAC for several years. Under the intervenor's misguided theory of double recovery, the $188.88/MW-day capacity charge should have been even lower to account for demand charges already being recovered through the FAC. Consequently, any argument that recovery of the capacity costs supporting the

$188.88/MW-day rate double recovers any portion of the FAC costs also clearly amounts to an improper collateral attack on the *Capacity Case* decision.

But perhaps the most open and obvious (and most egregious) collateral attack relates to the Commission's decision in *ESP I* to affirmatively permit recovery of OVEC and Lawrenceburg demand charges separate from Base Generation Rates – since the demand costs were not reflected in Base Generation Rates (a pivotal conclusion that IEU now wishes to re-litigate). Because IEU has placed the scope of the *ESP I* decision at issue through its present rehearing request, the background and content of the *ESP I* decision must be reviewed in this context. Upon review of the *ESP I* decision and the undisputable result reached in that decision, it is readily apparent that IEU's current rehearing request must be rejected as it violates the *res judicata* principle and constitutes an improper collateral attack on a final non-appealable adjudicatory decision of this Commission.

In the *ESP I* case, AEP Ohio witness Philip J. Nelson sponsored the reinstitution of a fuel adjustment clause (FAC) through his testimony. Mr. Nelson's testimony (AEP Ohio Ex. 7) showed that the OVEC and Lawrenceburg demand charges were being proposed for recovery through the FAC. See also *ESP I*, Tr. IV at 249-257; Tr. VI at 203-2014. As a related matter, the Company had proposed to transfer the (then) recently-acquired Darby and Waterford generating stations or, alternatively, to receive a carrying charge for those assets since they had been recently acquired and never placed in the Company's rate base.

Specifically, AEP witness J. Craig Baker testified:

> Generation rates have not reflected the CSP owned Darby or Waterford plants' return requirements or the expenses of operating and maintaining them. Likewise the demand and energy charges for OVEC and Lawrenceburg have not been previously included in rates. If the Companies through a Commission order are prohibited from transferring these plants or entitlements then any expense not

> recovered by the FAC should be recovered in the non-FAC rate. This would include carrying costs on and expenses of Darby and Waterford of about $50 million annually. With respect to the OVEC entitlements the demand charge should be included in the FAC and be recoverable from internal load customers. The demand charge is about $70 annually.

ESP I, J.C Baker Rebuttal (AEP Ohio Ex. 2E) at 20-21. IEU then – like now – opposed the recovery of the OVEC and Lawrenceburg demand charges through the FAC. In its merit brief, IEU argued as follows:

> As explained above, the Companies' proposed FAC includes a broad range of Costs that were not previously recoverable under the Commission's EFC rule. For example, the Companies' proposed FAC would, If approved, provide the Companies with the ability to recover demand and capacity-related costs that were not subject to recovery through the Commission's EFC rule.

ESP I, IEU Post-Hearing Brief (December 30, 2008) at 11-12. By contrast, the Staff acknowledged in its merit brief that the Company's proposed FAC included non-fuel and purchased power costs and indicated that "Staff witness Strom testified that the costs sought to be recovered are appropriate for inclusion in the FAC, and that recovering them in a single rate makes logical sense." *ESP I*, Staff Post-Hearing Brief (December 30, 2008) at 2 (citing the testimony of Raymond W. Strom, Staff Ex. 8, at 3). Thus, it could not have been clearer that AEP Ohio was proposing to recover OVEC/Lawrenceburg demand charges through the FAC and maintained that those costs were not already recovered in Base Generation Rates.

In that context, the Commission's Opinion and Order did two things that are pertinent here. First, upon citing Mr. Nelson's testimony regarding the scope of the proposed FAC, the Commission approved the FAC for 2009-2011 "as proposed by [AEP Ohio]." *ESP I*, Opinion and Order at 14-15. Second, with respect to the request to divest the Darby and Waterford stations as well as the OVEC and Lawrenceburg contractual entitlements, the Commission initially summarized the alternative request as follows:

> The Companies argue that, if the Commission does not grant authorization to transfer these plants or entitlements, then any expense related to the plants or entitlements not recovered in the FAC should be recovered in the non-FAC portion of the generation rate (Cos. Br. at 89; Cos. Ex, 2-E at 20-21). AEP-Ohio states that this rate recovery would include approximately $50 million of carrying costs and expenses related to the Waterford Energy Center and the Darby Electric Generating Station annually, and $70 million annually for the contract entitlements (Id.)

ESP I, Opinion and Order at 51. Upon describing the Company's requests in these explicit terms, the Commission denied the request to transfer the generating assets and went on to rule as follows regarding the alternative cost recovery requests:

> *The Commission, however, recognizes that these generating assets have not and are not included in rate base and, thus, the Companies cannot collect any expenses related thereto, even if the facilities or contractual outputs have been used for the benefit of Ohio customers.* If the Commission is going to require that the electric utilities retain these generating assets, then the Commission should also allow the Companies to recover Ohio customers' jurisdictional share of any costs associated with maintaining and operating such facilities. Accordingly, we find that while the Companies still own the generating facilities, they should be allowed to obtain recovery for the Ohio customers' jurisdictional share of any costs associated therewith. Thus, we believe that any expense related to these generating facilities and contract entitlements that are not recovered in the FAC shall be recoverable in the non-FAC portion of the generation rate as proposed by the Companies.

ESP I, Opinion and Order at 52 (emphasis added). In its application for rehearing, IEU again challenged (at 48-50) the decision to allow recovery of demand charges through the FAC and challenged (at 35-38) the decision to allow recovery of a carrying charge for the Darby and Waterford assets. The Commission's July 23, 2009 Entry on Rehearing only granted IEU's second request (at 35-36), eliminating the non-FAC generation rate increase for Waterford/Darby carrying charge as being unjustified while leaving the approved FAC unmodified. That decision to deny AEP Ohio a separate carrying charge for Waterford/Darby was further upheld in the Commission's Second Entry on Rehearing (November 4, 2009). Reversal of the

Waterford/Darby carrying charge while leaving in place the OVEC/Lawrenceburg recovery through the FAC also reflects the balancing within the Commission's adjudicatory decision and shows that IEU prevailed on one – but not both – of its arguments. Five years later, however, IEU cannot come back in a separate case and attempt to reverse the separate issue it lost.

It is clear that the final orders in the *ESP I* proceeding explicitly decided to permit recovery of OVEC/Lawrenceburg demand charges through the FAC for the period of 2009-2011. This decision was made over the objections of IEU, which IEU carried through to the rehearing stage of the case. This explicit recovery of the demand charges simply would not have been permitted if Base Generation Rates already reflected those costs. Moreover, the Commission issues its decision in the 2009 FAC proceeding and approved the Company's full recovery of OVEC/Lawrenceburg demand charges through the FAC. That aspect of the *ESP I* decision was not appealed by IEU (or any other party) and cannot be re-litigated or otherwise modified now. But there can be no question that IEU's present rehearing request seeks to undermine and directly undo the Commission's decision to grant recovery of OVEC/Lawrenceburg demand charges through the FAC, separate and apart from Base Generation Rates. Accordingly, it must be rejected.

C. IEU's other circular and bootstrapping arguments must also be rejected.

Using as a foundation its faulty premise that double recovery of the OVEC/Lawrenceburg demand charges has occurred in connection with the Base Generation Rates collected in 2010-2011, IEU builds three additional arguments on top of that. First, IEU claims that its due process rights have been violated through the exclusion of the proffered evidence. Second, IEU claims that the Commission's decision violates R.C. 4903.09. Third, IEU claims that it suffers financial

injury that should be redressed through an FAC disallowance. In addition to the fact that IEU's foundational premise of double recovery is flawed, these three additional arguments are independently misguided and should be disregarded.

Regarding the due process claim, IEU asserts (at 15) a right to: (1) ample notice, (2) an opportunity to present evidence, (3) cross examination of other parties' witnesses, (4) introduce exhibits, (5) present post-hearing briefs, and (6) challenge the Commission's findings through rehearing. Of course, IEU has been given the opportunity to do all of these things in this case – even though it does not have a legal right to receive all of these procedural protections in this case. In response to being provided these procedural opportunities, IEU failed to present a witness or any independent evidence; rather, IEU simply tried to recycle and misapply evidence from another case out of context. What IEU really wants is a separate hearing process to pursue all of its misguided claims. That is certainly not something the Commission has to provide.

No due process right of IEU has been undermined or infringed upon in this case – because it has no due process right to require the Commission to fully litigate each and every theory IEU may come up with. In *Consumers' Counsel v. Pub. Util. Comm*., 70 Ohio St.3d 244 (1994), the Supreme Court of Ohio found that at common law, a utility had the same right as other businesses to set the rate for its services. Its customers had no substantive right to a fixed rate, and thus had no procedural rights in the ratemaking process. *Consumers' Counsel*, 70 Ohio St.3d at 248 (citations omitted). With the advent of regulation, ratemaking became solely a legislative function and, absent express statutory provision, ratepayers had no right to participate in that process through the ballot box. *Id*. In this context, the *Consumers' Counsel* Court reviewed its longstanding principle that no inherent right to a hearing before the Commission. Specifically, the Court stated that it has "repeatedly held that the right to participate in a

ratemaking proceeding is statutory, not constitutional, and that absent express statutory provision, a ratepayer has no right to notice and hearing under the Due Process Clauses of the Ohio and United States Constitutions. 70 Ohio St.3d at 249 citing *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1988), 38 Ohio St.3d 266, 269, 527 N.E.2d 777, 780; *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 310, 513 N.E.2d 337, 342; *Armco, Inc. v. Pub. Util. Comm.* (1982), 69 Ohio St.2d 401, 409, 23 O.O.3d 361, 366, 433 N.E.2d 923, 928; *Cleveland v. Pub. Util. Comm.* (1981), 67 Ohio St.2d 446, 453, 21 O.O.3d 279, 283, 424 N.E.2d 561, 566; *Committee Against MRT v. Pub. Util. Comm.* (1977), 52 Ohio St.2d 231, 239, 6 O.O.3d 475, 480, 371 N.E.2d 547, 552 (P. Brown, J., dissenting). None of IEU's due process rights have been violated in this case. Ironically in this regard, even though IEU seeks to capture $200 million from the Company through this claim, IEU's suggested approach conveniently ignores AEP Ohio's due process rights to defend such a claim through a hearing process.

Second, IEU brings out its go-to argument whenever IEU disagrees with a Commission decision: that the Commission's ruling violates R.C. 4903.09. (IEU AFR at 14-17.) The Supreme Court of Ohio has held that, as long as there is a basic rationale and record supporting the Order, no violation of §4903.09, Ohio Rev. Code, exists. *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, 117 Ohio St. 3d 486, 493 (Ohio 2008 990 ¶ 30) quoting *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 312, 513 N.E.2d 337; *Tongren v. Pub. Util. Comm*. (1999), 85 Ohio St. 3d 87, 90, 1999 Ohio 206, 706 N.E.2d 1255; *Cleveland Elec. Illum. Co. v. Pub. Util. Comm*. (1996), 76 Ohio St. 3d 163, 166, 1996 Ohio 296, 666 N.E.2d 1372. The Opinion and Order easily satisfies the R.C. 4903.09 standard of providing a record-based explanation for rejecting IEU's position. If the Commission wishes to further clarify the

basis for doing so, it could indicate that the *ESP I* decision's approval of the recovery of OVEC/Lawrenceburg demand charges through the FAC during 2009-2011 is not subject to re-litigation at this point. Otherwise, it is evident that IEU merely disagrees with the Commission's decision.

Finally, IEU claims financial injury as the basis for pleading that the Commission pursue an additional FAC disallowance on this basis. (IEU AFR at 17-18.) This argument, in addition to being incredibly short, superficial and devoid of any record basis, adds nothing. It is merely a circular claim that, if there is double recovery, IEU suffers financial injury. This final argument is without basis and should also be rejected.

CONCLUSION

As set forth above, the Commission should reject IEU's double recovery arguments (if the claims are considered at all). IEU's positions constitute an improper collateral attack on the *RSP*, *ESP I*, *ESP II* and *Capacity Case* decisions. But since IEU's rehearing claim just involves 2010 and 2011, the only determination that needs to be made by the Commission in this case is that IEU cannot re-litigate the *ESP I* decision which affirmatively authorized recovery of both Base Generation Rates and a separate FAC that included the OVEC/Lawrenceburg demand charges. The double recovery issues relating to 2012 through the present will be adjudicated in the pending double recovery audit proceeding and do not need to be addressed in this case.

Respectfully submitted,

/s/ Steven T. Nourse
Steven T. Nourse
Matthew J. Satterwhite
Yazen Alami
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1915
Facsimile: (614) 716-2950
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com

Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via electronic mail upon the below-listed counsel this 23rd day of June, 2014.

/s/ Steven T. Nourse
Steven T. Nourse

Thomas McNamee
Steven Beeler
Assistant Attorney's General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
Thomas.mcnamee@puc.state.oh.us
Steven.beeler@puc.state.oh.us

Terry Etter
Office of the Ohio Consumers' Counsel
10 West Broad Street, 18th Street
Columbus, Ohio 43215
etter@occ.state.oh.us

Samuel C. Randazzo
Frank P. Darr
Joseph E. Oliker
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com

Colleen Mooney
231 West Lima Street
Findlay, Oh 45840
cmooney2@columbus.rr.com

Rocco D'Ascenzo
Amy B. Spiller
Jeanne Kingery
139 East Fourth Street
1303-Main
Cincinnati, Ohio 45202
Rocco.d'ascenzo@duke-energy.com
Amy.spiller@duke-energy.com
Jeanne.Kingery@duke-energy.com

Philip B. Sineneng
THOMPSON HINE LLP
41 S. High Street, Suite 1700
Columbus, OH 43215
Philip.Sineneng@ThompsonHine.com

John J. Kulewicz
M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216
jjkulewicz@vorys.com
mhpetricoff@vorys.com
smhoward@vorys.com

Mallory Mohler
Carpenter Lipps & Leland
280 North High Street, Suite 1300
Columbus, Ohio 43215
mohler@carpenterlipps.com

Summary: Memorandum Contra electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company