BEFORE THE
PUBLIC UTILITES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company to Adopt a Final Implementation Plan for the Retail Stability Rider	**)** **)** **)** **)**	**Case No. 14-1186-EL-RDR**

OHIO POWER COMPANY'S MEMORANDUM IN OPPOSITION TO THE MOTION TO DISMISS OF INDUSTRIAL ENERGY USERS – OHIO

Steven T. Nourse
Matthew J. Satterwhite
American Electric Power Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373
Telephone: (614) 716-1608
Facsimile: (614) 716-2950
stnourse@aep.com
mjsatterwhite@aep.com

Counsel for Ohio Power Company

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Ohio Power Company (dba AEP Ohio) filed its Application in this case to implement one specific aspect of the Commission's decision in the *ESP II* proceeding (Case Nos. 11-346-EL-SSO et al.). The narrow purpose of this docket is to verify the capacity deferral balance and finalize the Retail Stability Rider (RSR) rate for the post-ESP term collection period. The motion to dismiss filed by Industrial Energy Users – Ohio (IEU) is without merit and should be rejected.

The *ESP II* decision approved the RSR, with two distinct components: (1) to provide revenue to AEP Ohio during the ESP term as a measure of financial stability given other aspects of the ESP package, including but not limited to fixed SSO generation rates, and (2) to recover the capacity charge deferrals resulting from the Commission's prior decision in the *Capacity Charge* proceeding (Case No. 10-2929-EL-UNC). (*ESP II*, Opinion and Order at 36.) With respect to recovery of the capacity deferrals, the Commission provided that, during the term of the ESP, $1/MWh of the RSR charge would be used to amortize and recover the capacity deferral; at the end of the ESP term, the remaining capacity deferral balance would be amortized and recovered through continuation of the RSR over a three-year period unless a different recovery period was ordered by the Commission. (*Id*.) In authorizing the recovery of the capacity deferral over the full period (ESP term plus three years), the Commission invoked and relied upon the phase-in statute, R.C. 4928.144. (*Id*. at 52.) That statute requires the

Commission to establish a nonbypassable charge for recovery of the costs incurred equal to the amount not collected, plus carrying charges. That is exactly what the Commission did in the *ESP II* decision.

Thus, the post-ESP collection of the capacity deferrals should no longer be subject to debate before the Commission. Like the Company's Phase-In Recovery Rider (PIRR) that recovered fuel costs incurred during the ESP I term for a three-year period following the ESP I term, capacity costs being incurred during the ESP II term are also being recovered through the RSR over a three-year period following the ESP II term (inclusive of carrying charges and less the $1/MWh collected during the ESP II term). In both instances, the Commission relied upon R.C. 4928.144 and had to ensure that the amount recovered after the ESP term through the nonbypassable charge equals the amount not collected during the ESP term, plus carrying charges on that amount. Because the Commission in its *ESP II* decision already authorized the post-ESP recovery of the capacity deferrals through continued collection of the RSR, the Company's recovery of the capacity deferrals through the RSR has already been fully and finally adjudicated before this Commission and must be implemented absent any reversal or remand by the Court. Hence, the only issues in this docket relate to verification of the capacity deferral amount and finalization of the post-ESP rate designed to collect the deferral plus carrying charges.

Nonetheless, IEU filed a motion to dismiss in this implementation case dredging up the same rhetorical challenges to what IEU pejoratively refers to as the "capacity shopping tax." These well-worn arguments were advanced throughout the *ESP II* and *Capacity Charge* cases, as well as through the related appeals (which not only include

merit briefing but also a stay request advancing the same arguments) and through a separate writ action filed by IEU before the Court. IEU does include one minor point that – while it is a new argument not presented before as part of IEU's vexatious campaign on these issues – can be summarily rejected as untimely and utterly without merit. Regardless, all of IEU's arguments in support of dismissal amount to untimely and improper collateral attacks on the *ESP II* and *Capacity Charge* decisions, with a distinct focus on the latter. Ironically, though the motion to dismiss seeks to undermine and invalidate the premise of the RSR, IEU fails to meaningfully address the primary statutes relied upon by the Commission to adopt the RSR: R.C. 4928.143(B)(2)(d) and 4928.144. Thus, IEU's jurisdictional challenges to the *Capacity Charge* decision should not be entertained in this case. If the Commission does reiterate its prior determinations in this record, it should again reject IEU's jurisdictional challenges. In this regard, AEP Ohio will not repeat all of its prior detailed responses to IEU's tired arguments that have already been rejected by the Commission; rather, the Company will recite them below in summary fashion.

I. IEU's jurisdictional challenges have already been adjudicated before the Commission and have been raised and remain pending before the Supreme Court of Ohio; as such, they should only be further addressed at this point – if at all – exclusively by the Court.

The underlying *ESP II* and *Capacity Charge* decisions are final and pending on appeal before the Supreme Court of Ohio (S.Ct. Case Nos. 2012-2098, 2013-228 and 2013-521). The Supreme Court of Ohio will determine whether IEU's arguments have any merit and this Commission currently lacks jurisdiction over those aspects of the *ESP II* and *Capacity Charge* decisions. The Commission orders being attacked by IEU are *res judicata* and can only be modified by the Supreme Court of Ohio in the pending appeals

reviewing those prior decisions. The prior Commission orders being collaterally attacked by IEU are final adjudications and are fully effective under R.C. 4903.15.

Unlike IEU's overbroad and improper request to re-litigate threshold jurisdictional issues already adjudicated in the *Capacity Charge* decision, the *ESP II* order did contemplate, in finalizing the deferral recovery plan, that a subsequent review of the shopping statistics and verification of the quantity of capacity provided by AEP Ohio during the ESP II term to support shopping customer load, would be appropriate. Of course, AEP Ohio remains a fixed resource requirements (FRR) entity in the PJM capacity market through May 2015 and the capacity charge adopted by the Commission will apply through that date. The Commission ordered the Company to maintain its actual monthly shopping percentages on a month-by-month basis through the term of the ESP. (*ESP II*, Opinion and Order at 36.) Thus, the narrow purpose of this case is to implement those focused provisions of the *ESP II* decision and provide a vehicle for reviewing the capacity shopping quantities and associated deferrals provided by the Company in order to finalize the default plan outlined in that order of recovering the capacity deferrals over three years commencing June 2015.

The Commission already considered and rejected IEU's arguments as part of its decision in the Capacity Charge decision. (*Capacity Charge*, Opinion and Order at 9, 12-14, 21-24; October 17, 2012 Entry on Rehearing at 14-15.) IEU has challenged those determinations, raising the same set of jurisdictional challenges in an original action (writ of prohibition) before the Supreme Court in S.Ct. Case No. 2012-1494, which has been dismissed. IEU also raised these and other arguments in its appeals in S.Ct. Case Nos. 2012-2098 and 2013-228 (from the *Capacity Charge* decision) and S.Ct. Case No. 2013-

521 (from the *ESP II* decision). (*Capacity Charge*, December 12, 2014 Entry on Rehearing at 7-11.) Most recently, IEU joined a request for stay in the ESP II appeal (S.Ct. Case No. 2013-521) that raises many of the same arguments challenging the capacity charge deferral recovery through the RSR. (S.Ct. Case No. 2013-521 August 5, 2014 Joint Motion for Stay at 11-16.) The Commission has not only rejected IEU's arguments in its own decisions, but has defended those decisions through continued disagreement with IEU's jurisdictional challenges in merit briefs and other pleadings before the Court. Indeed, on August 15, 2014 – just a couple days before IEU filed its motion in this case – the Commission and AEP Ohio opposed the stay request and defended the Commission's decision in adopting the RSR. (S.Ct. Case No. 2013-521 August 15, 2014 Memo Contra of PUCO.)

IEU should only get one bite at the apple in pursuing its challenges of the prior Commission decisions – like everyone else – but IEU has raised these arguments so many times, it is not clear that any of the apple even remains. Even regarding the one new argument raised here, it is untimely and cannot be entertained; but it also lacks merit. The Commission should proceed with the straightforward implementation of its *ESP II* decision, as requested in the Company's Application, and deny IEU's motion for dismissal.

II. If the Commission does reiterate its jurisdictional determinations in this case, it should again find that IEU's jurisdictional challenges are without merit as previously determined by the Commission.

In support of the overall contention that the Commission lacked jurisdiction to adopt the RSR, IEU's memorandum in support advances seven related and overlapping points that can be paraphrased as follows: (A) the Commission lacked jurisdiction in the

Capacity Charge case to adopt a wholesale capacity rate because the Commission only has jurisdiction over retail rates, (B) if capacity service is considered retail, the Commission lacked jurisdiction to establish a cost-based rate, (C) the Commission lacks jurisdiction to depart from the prescriptive ratemaking formula in R.C. Chapter 4909, (D) the Reliability Assurance Agreement tariff (approved by the Federal Energy Regulatory Commission) does not convey jurisdiction to the Commission to establish the capacity charge, (E) the Commission had to follow R.C. Chapter 4909 in establishing the capacity charge, (F) the capacity charge amounts to unlawful transition revenue under R.C. 4928.38, and (G) two recent federal court decisions involving Maryland and New Jersey law support the conclusion that federal law preempted the Commission from establishing a wholesale capacity charge. (IEU Memo at 7-28.) As referenced above, all of these arguments except the last one have been raised and disposed of in prior Commission proceedings and have been raised and partially disposed of before the Supreme Court of Ohio. Regarding the last argument, while it may be new, it is still an improper and untimely attack on prior adjudicative final orders of the Commission; in addition, it lacks any merit.

IEU points A, B and D all relate to the Commission's statutory jurisdiction to adopt the capacity charge and will be addressed together. (IEU Memo at 7-16, 18-20.) As a threshold matter, it is worth noting that IEU never discusses R.C. 4928.143(B)(2)(d) or 4928.144 – the two statutes invoked by the Commission in the *ESP II* decision as the statutory basis for adopting the RSR. Likewise, IEU glosses over the Commission's substantial jurisdiction under R.C. 4905.26, which the Commission relied upon in the *Capacity Charge* proceeding to adopt the capacity charge. In addition to being untimely

and procedurally improper as a collateral attack, IEU's jurisdictional challenge lacks merit.

IEU challenges the Commission's jurisdiction, arguing that capacity service is a competitive retail electric service that the Commission may only regulate under R.C. 4928.141 through 4928.144. According to IEU, the Commission was not permitted in the *Capacity Charge* docket to rely on R.C. Chapters 4905 and 4909 to establishing the capacity charge. The Commission found "reasonable grounds" existed to initiate and pursue the investigation into AEP Ohio's capacity charges, consistent with its authority under R.C. 4905.26:

> We believe that the Initial Entry provided sufficient indication of the Commission's finding of reasonable grounds for complaint that AEP-Ohio's capacity charge may be unjust or unreasonable. We agree with AEP-Ohio that there is no precedent requiring the Commission to use rote words tracking the exact language of the statute in every complaint proceeding. In any event, to the extent necessary, the Commission clarifies that there were reasonable grounds for complaint that AEP-Ohio's proposed capacity charge may have been unjust or unreasonable.

(*Capacity Charge*, Second Rehearing Entry at 9.) The Commission is correct that its jurisdiction does not turn on whether it recites a specific phrase at a particular stage of the proceeding; rather, it is based on whether the substantive nature of its actions are based on law and the record. As the Supreme Court has found, the Commission has considerable authority under R.C. 4905.26 to initiate proceedings to investigate the reasonableness of any rate or charge and impose new utility rates or change existing rates of a public utility. *Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 2006-Ohio-4706, 853 N.E.2d 1153, ¶¶ 29, 32. *See, e.g., Allnet Communications Servs., Inc. v. Pub. Util. Comm.*, 32 Ohio St.3d 115, 117, 512 N.E.2d 350 (1987) ("R.C. 4905.26 is broad in scope as to what kinds of matters may be raised by complaint before the PUCO.)

The Commission properly asserted jurisdiction over this case based on R.C. 4905.26 and the IEU's jurisdictional challenges should be rejected.

IEU argues that the Commission's ratemaking authority over the capacity service at issue is limited to R.C. 4928.141 through 4928.144. (*See* IEU Br. at 20-22). But that rests on two flawed assumptions: (1) that the capacity service at issue here is a *retail*—rather than *wholesale*—service; and (2) that it is a *competitive* retail electric service. As the Commission correctly determined, the capacity service that AEP Ohio furnishes to CRES providers is not a retail electric service. (*Capacity Charge,* Opinion and Order at 13, 22.) IEU's claim to the contrary belies reality. The Commission considered the definition of "retail electric service" in R.C. 4928.01(A)(27) and reached the obvious conclusion that *wholesale capacity service* does not fit. *Id.*

A retail electric service is "any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption." R.C. 4928.01(A)(27). The capacity service at issue here is one that AEP Ohio provides not to "ultimate consumers," but rather to CRES providers who then bundle that capacity with other wholesale components so as to sell complete retail electric generation service to their ultimate customers. "[A]lthough the capacity service benefits shopping customers in due course, [those retail customers] are initially one step removed from the transaction, which is more appropriately characterized as an intrastate wholesale matter between AEP Ohio and each CRES provider operating in the Company's service territory." (*Capacity Charge,* Opinion and Order at 13.)

The capacity service at issue in the *Capacity Charge* case, moreover, was not a "competitive" service. The Commission found it "unnecessary to determine whether

capacity service is considered a competitive or noncompetitive service under Chapter 4928, Revised Code." *Id*. Nevertheless, it is clear that wholesale capacity is not "competitive." As an FRR entity, AEP Ohio is obligated to provide capacity resources sufficient to support all shopping load in its service territory. (*Capacity Charge,* AEP Ohio Ex. 105 at 8, Supp. at 257; Tr. III at 662:2-3.) CRES providers who purchase capacity from AEP Ohio testified that they are "captive" to AEP Ohio and would otherwise have had to purchase and commit capacity to serve retail customers more than three years in advance of delivery, when they had few or no committed retail customers. (*Capacity Charge,* Exelon Ex. 101 at 8; FES Ex. 103 at 8, 16-17.) As Commissioner Roberto's concurring opinion in the *Capacity Case* recognized, "[n]o other entity may provide the service during the term of the current AEP Ohio Fixed Resource Requirement Capacity Plan [through May 2015]." (*Capacity Charge,* Opinion and Order, Concurring and Dissenting Opinion of Commissioner Cheryl L. Roberto, at 2.) It is thus clear that capacity service is not "competitive." Because the service is a wholesale service, and because it is not "competitive," R.C. Chapter 4928 is inapplicable and cannot limit the Commission's jurisdiction over the capacity charge.

Rather, R.C. Chapters 4905 and 4909 support the Commission's exercise of jurisdiction, and the Commission's actions were consistent with R.C. 4905.26. The Commission correctly determined that R.C. 4905 and 4909 apply to wholesale services such as capacity service. (*Capacity Charge,* Second Rehearing Entry at 9.) No provision of Chapters 4905 or 4909 of the Revised Code prohibits the Commission from initiating a review of or fixing a wholesale rate. Rather, Chapter 4905 grants the Commission broad "power and jurisdiction to supervise and regulate public utilities" within the State. *See*,

e.g., R.C. 4905.04, 4905.05, 4905.06. And Chapter 4909 endows the Commission with broad authority to fix, alter, or suspend rates. *See, e.g.,* R.C. 4909.03, 4909.16. If the General Assembly intended either Chapter 4905 or 4909 to be limited only to *retail* rates, then it would have said so. *See Taylor v. City of London*, 88 Ohio St.3d 137, 143, 2000-Ohio-278, 723 N.E.2d 1089; *AT&T Communications of Ohio, Inc. v. Ameritech Ohio*, PUCO Case No. 96-336-TP-CSS, Opinion and Order, at 17, 1997 Ohio PUC LEXIS 712, *43-44 (Sept. 18, 1997).[1] Although the Commission's authority to regulate wholesale electric service is subservient to federal law, the FERC-approved Reliability Assurance Agreement (RAA) authorizes the use of state compensation mechanisms, and FERC concluded that the capacity charge mechanism adopted by the Commission was "consistent with the RAA." FERC Order at ¶ 26.

Finally regarding the Commission's statutory jurisdiction over the wholesale capacity charge, IEU contends that the RAA does not provide the Commission any authority to establish a cost-based ratemaking methodology for capacity-related compensation. IEU failed to raise this argument in any application for rehearing; thus, IEU is precluded from advancing this argument. (*See Cameron Creek Apts. v. Columbia Gas of Ohio, Inc.*, Slip Op. No. 2013-Ohio-3705, ¶¶23-24 (failure to specify claim on rehearing "deprives this court of jurisdiction" over the claim).) Besides, the RAA

[1] The Supreme Court has repeatedly emphasized the Commission's authority to address wholesale charges under R.C. Chapter 4905. *See, e.g., AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.*, 88 Ohio St.3d 549, 2000-Ohio-423, 728 N.E.2d 371 (complaint regarding wholesale interstate carrier access); *Time Warner AxS v. Pub. Util. Comm., et al.*, 75 Ohio St.3d 229, 235-236, 661 N.E.2d 1097 (1996) (Commission has authority to regulate basic local exchange service under R.C. Title 49, including wholesale network access to competing long-distance carriers); *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 38 Ohio St.3d 266, 527 N.E.2d 777 (1988) (affirming Commission order setting transition plan for wholesale access charge).

contemplates that pricing for an FRR entity's capacity may be determined through a state compensation mechanism (SCM)—and it expressly endorses SCMs—which *supports* the Commission's establishment of such a mechanism. (*Capacity Charge*, Opinion and Order at 7.) And, as discussed above, Ohio law provides the Commission authority to establish capacity charges, eliminating any need to look to the RAA for that authority.

At bottom, IEU cannot avoid the long line of authority recognizing the Commission's broad regulatory authority over public utilities. There can be no doubt that the General Assembly has spoken broadly about that jurisdiction. *E.g., Corrigan v. Illuminating Co.*, 122 Ohio St.3d 265, 2009-Ohio-2524, 910 N.E.2d 1009, ¶ 8 ("This 'jurisdiction specifically conferred by statute upon the Public Utilities Commission over public utilities of the state * * * is so complete, comprehensive and adequate as to warrant the conclusion that it is likewise exclusive.'"), quoting *State ex rel. Northern Ohio Tel. Co. v. Winter*, 23 Ohio St.2d 6, 260 N.E.2d 827 (1970). This Court has described the Commission's wide-ranging authority over public utilities as "broad and complete." *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 150-151, 573 N.E.2d 655 (1991). As the Court explained:

> R.C. Title 49 sets forth a detailed statutory framework for the regulation of utility service and the fixation of rates charged by public utilities to their customers. As part of that scheme, the legislature created the Public Utilities Commission and empowered it with broad authority to administer and enforce the provisions of Title 49.

Id. at 150. Indeed, "there is perhaps no field of business subject to greater statutory and governmental control than that of the public utility." *Id.* In light of this, it would be exceptional for the Commission or the Supreme Court to conclude that the Commission lacks jurisdiction over the capacity rates at issue.

IEU points C and E will be addressed together since they both relate to the traditional ratemaking under R.C. Chapters 4905 and 4909. (IEU Memo at 16-18, 20-22.) IEU contends that the Commission's *Capacity Charge* orders are unreasonable and unlawful because the Commission did not conduct a full-blown base rate case pursuant to R.C. Chapter 4909. Again, the Commission established RPM as the wholesale price that CRES providers would pay for capacity; the Commission did not set retail rates for the recovery of deferred costs. One can review IEU's argument in vain for a citation to precedent supporting the theory that a full-blown traditional base rate case proceeding was required in the *Capacity Charge* case, where the Commission did not actually set base rates. As the Supreme Court has recognized, the Commission is vested with broad discretion to manage its dockets and to decide how it may best proceed to manage the orderly flow of its business. *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982). And as the Commission correctly recognized, strict adherence to the procedural and substantive requirements applicable to a base rate proceeding was not required in the *Capacity Charge* case because the Commission's investigation was not a traditional base rate case. (*Capacity Charge*, Rehearing Entry at 54.) In that case, the *Commission* (not a base rate applicant) initiated the proceeding in response to AEP Ohio's FERC filing to review the capacity charge associated with AEP Ohio's FRR obligations. Moreover, as discussed above, R.C. 4905.26 authorized the Commission to do so. That statute requires only that the Commission hold a hearing and provide notice. *See* R.C. 4905.26. The Commission conducted its proceeding in full compliance with those requirements. It permitted extensive discovery, written and oral testimony, cross-examination, voluminous hearing

exhibits, and additional argument through briefing. The massive record in the *Capacity Charge* case confirms that the adjudicatory process was more than sufficient.

Moreover, the proceeding below could properly be construed as a "first filing" of rates for a service not previously addressed in a Commission-approved tariff. R.C. 4909.18. Such a "first filing" does not require *any* hearing, much less the extensive hearings that the Commission conducted, in which IEU fully and actively participated. *Id.*; *see also Consumers' Counsel*, 2006-Ohio-5789, at ¶18 (the notice, investigation, and hearing requirements of R.C. Chapter 4909 apply only to applications for a rate *increase* pursuant to R.C. 4909.18 and the Commission has discretion to determine whether a rate increase is sought and a hearing necessary). Nor does such a "first filing" require the application of a rate base, rate-of-return, cost methodology. *Ohio Domestic Violence Network v. Pub. Util. Comm.*, 70 Ohio St.3d 311, 323, 638 N.E.2d 1012 (1994). IEU's argument lacks merit.

Next, IEU point F claims the capacity charge provides unlawful transition revenue to AEP Ohio in violation of R.C. 4928.38. (IEU Memo at 22-24.) In the *ESP II* decision, the Commission properly rejected the "improper transition cost" argument. It explained that "transition costs are retail costs that, among meeting other criteria, are directly assignable or allocable to retail electric generation service provided to electric consumers in this state." (*ESP II*, Rehearing Entry at 19.) AEP Ohio's provision of capacity to CRES providers, by contrast, "is not a retail electric service" because it "is not provided directly by AEP Ohio to retail customers, but is rather a wholesale transaction between the Company and CRES providers." (*Id.* at 19-20.) Thus, "[b]ecause AEP Ohio's capacity costs are not directly assignable or allocable to retail electric generation

service," the Commission correctly determined that they are "not transition costs by definition." (*Id.* at 20.) The Commission's rejection of IEU's transition cost argument is final and cannot be revisited by the Commission here.

Finally, IEU point G merely presents a new twist on the argument that the Federal Power Act preempts the Commission from establishing a wholesale capacity charge. (IEU Memo at 24-28.) IEU relies on two recent federal court decisions to assert that the Federal Power Act preempted the Commission from establishing a wholesale capacity rate in the *Capacity Charge* case: *PPL EnergyPlus, LCC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014) (affirming *PPL EnergyPlus, LCC v. Nazarian*, 974 F. Supp.2d 790 (D. Md. 2013)), and a lower federal court decision in *PPL EnergyPlus, LLC v. Hanna*, 977 F. Supp.2d 372 (D.N.J. 2013). As with the RAA arguments discussed above under IEU point D, IEU failed to advance this argument in its rehearing and appeal of the *Capacity Charge* decision and is precluded from doing so now. Regardless, IEU's new argument is clearly incorrect and can be summarily rejected.

IEU misunderstands both the *Nazarian* and *Hanna* decisions and fails to distinguish the situation presented in the *Capacity Charge* proceeding involving the RAA. *Nazarian* and *Hanna* concern the lack of authority of state utilities commissions to regulate the wholesale price of power and to force local utilities to enter into wholesale arrangements against their will. AEP Ohio voluntarily entered the RAA contract and the terms of the contract have been regulated and approved by FERC. More importantly, the FERC-approved RAA specifically contemplates that wholesale pricing for an FRR entity's capacity may initially be determined through an SCM—it affirmatively endorses state compensation mechanisms, which *supports* the Commission's establishment of such

a mechanism. (*Capacity Charge*, Opinion and Order at 7.) Moreover, consistent with AEP Ohio's position throughout these proceedings, AEP sought and obtained FERC approval of an appendix to the FERC-approved RAA that expressly set out the wholesale component of the SCM. Because the FERC-approved RAA specifically contemplates that a State commission like the PUCO could establish a State Compensation Mechanism under the RAA, it is clear that IEU's claim is misguided that the *Capacity Charge* decision was preempted by federal law. Of course, IEU also seems to miss the obvious point that the RSR is a retail rate mechanism which – although it has a federal component (for which a FERC schedule filing was made and accepted) – is clearly within the Commission's jurisdiction and wholly outside the purview of the federal law conflict identified in *Nazarian* and *Hanna*. In short, the *Nazarian* and *Hanna* cases are inapt and IEU's new-found reliance on those decisions is misplaced.

CONCLUSION

IEU's dismissal request is improper and should be denied for the reasons set forth above.

Respectfully Submitted,

/s/ Steven T. Nourse
Steven T. Nourse
Matthew J. Satterwhite
American Electric Power Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215-2373
Telephone: (614) 716-1608
Facsimile: (614) 716-2950
stnourse@aep.com
mjsatterwhite@aep.com

Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Ohio Power Company's Memorandum in Opposition has been served upon the below-named counsel by electronic mail this 3rd day of September, 2014.

/s/ Steven T. Nourse
Steven T. Nourse

dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com
jkyler@bkllawfirm.com
ricks@ohanet.org
tobrien@bricker.com
grady@occ.state.oh.us
sam@mwncmh.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
bojko@carpenterlipps.com
hussey@carpenterlipps.com

Summary: Memorandum -Ohio Power Company's Memorandum in Opposition to the Motion to Dismiss of Industrial Energy Users-Ohio electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company