

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company and)	Case No. 11-346-EL-SSO
Ohio Power Company for Authority to)	Case No. 11-348-EL-SSO
Establish a Standard Service Offer)	
Pursuant to § 4928.143, Ohio Rev. Code,)	
in the Form of an Electric Security Plan.)	

In the Matter of the Application of)	
Columbus Southern Power Company and)	Case No. 11-349-EL-AAM
Ohio Power Company for Approval of)	Case No. 11-350-EL-AAM
Certain Accounting Authority.)	

In the Matter of the Commission Review)	
of the Capacity Charges of Ohio Power)	Case No. 10-2929-EL-UNC
Company and Columbus Southern Power)	
Company)	

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

**OHIO POWER COMPANY’S MEMORANDUM CONTRA
MOTION TO CEASE AND DESIST**

On May 6, 2016, The Office of the Ohio Consumers’ Counsel,, The Kroger Company, the Ohio Energy Group and the Ohio Manufacturers’ Association Energy Group (collectively, the “Joint Movants”) asked the Commission to order Ohio Power Company (“AEP Ohio”) to immediately stop charging the Retail Stability Rider (RSR).¹ For the reasons provided below,

¹ The heading of the Joint Movants’ motion erroneously refers to the non-existent “Rider RRS” and the body of the motion refers to the equally non-existent “Rate Stability Rider.” The proper name of the rider is the “Retail Stability Rider,” referred to herein as the “RSR.”

the motion to cease and desist should be denied –the Commission should instead move forward expeditiously to resolve a single net change to the going-forward deferral balance and resulting RSR rider rate.

Joint Movants’ motion completely ignores the Commission’s and Supreme Court of Ohio’s careful pairing of the issues in the *ESP II* cases² with the companion issues in the *Capacity Charge* case.³ The Court’s reversal and remand directive in the *Capacity Charge* appeals⁴ is likely to offset and exceed the reversal and remand directive in the *ESP II* appeals.⁵ The Commission on remand should continue – as the Commission originally did and as the Court did on appeal – to address the inextricably intertwined issues together and at the same time. AEP Ohio agrees with the Joint Movants that the matters (when paired together) should be considered quickly by the Commission, but considering one half of the picture at a different pace than the other is inappropriate.

Before the Commission, both the original *ESP II* and *Capacity Charge* decisions were issued as inter-related companion decisions. The *Capacity Charge* decision was issued first on July 2, 2012 and made prominent cross-references to the impending *ESP II* decision, most notably including an explicit premise that recovery of the deferral and carrying charges approved in the *Capacity Charge* decision would be approved in the *ESP II* decision. (*Capacity Charge*,

² *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to § 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO and 11-348-EL-SSO.

³ *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.

⁴ *In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, 2016-Ohio-1607.

⁵ *In re Application of Columbus S. Power Co.*, 2016-Ohio- 1608.

Opinion and Order at 4-6, 8, 23, 37.) Likewise, the *ESP II* decision was then issued shortly thereafter (on August 8, 2012) and made extensive references to the underlying provisions from the companion *Capacity Charge* decision. (*ESP II*, Opinion and Order at 6, 11-14, 25-36, 49-52, 59, 75.) Further, on appeal, the Supreme Court went out of its way to issue an entry on December 30, 2015 saying that the Court would decide the two sets of appeals in tandem – and then it jointly issued the two decisions on April 21, 2016. Thus, the two sets of issues have always been – and should continue to be – procedurally bound to one another.

It also bears pointing out that the underlying reason for the *ESP II* and *Capacity Charge* cases being handled as one is that both the RSR and the approved capacity charge both directly impact the balance of the regulatory asset accounting deferral that is currently being recovered through the RSR. It is well established that the Commission has the discretion to determine how to most efficiently manage its docket.⁶ It makes sense to address the deferral and non-deferral remand directives associated with the RSR together as opposed to employing a piecemeal approach. The Joint Movants’ motion selectively addresses only one of the relevant issues and seeks to artificially enforce a rate reduction that is unsubstantiated and premature.

The Court determined there were flaws in the Commission’s determination of the energy credit necessitating a remand for further consideration. (*Capacity Charge appeals*, 2016-Ohio-1607 at ¶57.) The Court explicitly acknowledged that “the commission’s error is clear and prejudicial” because an overstated energy credit understates the net capacity charge and ordered the Commission to substantively address AEP’s input arguments on remand. (*Id.*) Specifically, the Court agreed that the Capacity Charge decision failed to address the Company’s six major

⁶ See, e.g., *In re Application of Duke Energy Ohio, Inc. for Approval of an Advanced Meter Opt-Out Service Tariff*, Case Nos. 14-1160-EL-UNC et seq., Entry at 2-3 (Sept. 16, 2015); *In re Application of Ohio Power Company for a Limited Waiver of Ohio Adm. Code 4901:1-35-10*, Case No. 15-386-EL-WVR, Entry at 4 (Apr. 22, 2015).

flaws in the energy credit model, because it: (1) was not properly calibrated, which resulted in overstated gross energy margins by more than 200 percent, (2) wrongly incorporated traditional off-system sales margins, (3) failed to properly reflect AEP's System Interconnection Agreement ("pool agreement") for off-system sales, (4) overstated forecasted market prices, (5) understated fuel costs for coal units, and (6) understated heat rates for generation facilities. (*Id.* at ¶52.)

When that remand proceeding is conducted, the Company will again demonstrate the significant financial impact of these errors showing that the energy credit was vastly overstated and should be corrected to a much lower value. The Company will show how this review, ordered by the Court, will increase the *Capacity Charge* deferral balance by much more than the non-deferral balance reduction required by the *ESP II* remand. Thus, it cannot be presumed – as Joint Movants prematurely do without basis – that the net effect of the remand proceedings will eliminate (or even reduce) the RSR collections.

The Commission should avoid the preventable confusion and misleading information Joint Movants seek to create for retail customers by breaking these integrated set of issues into two separate steps. Joint Movants proposal would result in a "step one" decrease or suspension of the RSR and a subsequently result in a "step two" increase or reinstatement of the RSR. Entertaining the Joint Movants' piecemeal approach is inappropriate, inefficient and would confuse customers. Rather, the Commission should keep the companion issues together and resolve them in an efficient, integrated fashion.

The basis for the Joint Movants' proposed remedy requesting that the Commission issue an order directing AEP Ohio to "cease and desist" collecting Rider RSR charges from customers is that AEP Ohio is allegedly "acting in a manner contrary to the Court's decision that the RSR charges were unlawful." (Motion at 3.) Joint Movants' motion contends that AEP Ohio's

collection of RSR charges, in light of the Court's decision, is equivalent to trucking companies operating inconsistently with their certificates of authority and, thus the statutes that authorized those certificates of authority. (*Id.* at 3 and note 4.) Hence, the Joint Movants claim that several decisions by the Court confirming the Commission's authority to issue cease and desist orders to misbehaving trucking companies should be relied upon to stop AEP Ohio's collection of RSR charges. This argument is meritless.

The decisions involving violations of trucking companies' certificates of authority that the Joint Movants cite to support their motion are inapposite, and the related enforcement authority that those decisions confirmed that the Commission had to issue cease and desist orders to recalcitrant trucking companies is not applicable in this remand proceeding. Indeed, the statutory authority that underpinned the Commission's authority to issue a cease and desist order in each of those cases, R.C. 4921.10, had no application to EDUs and, in any event, was repealed years ago. *See, e.g., Commercial Motor Freight, Inc. v. Pub. Util. Comm.*, 46 Ohio St. 2d 195, 196-197, 348 N.E.2d 132 (1976). Moreover, such a remedy is also inappropriate and unnecessary.

First, AEP Ohio has not acted contrary to any statute or law, including the Court's decision, in collecting RSR charges at any point in time. Rather, AEP Ohio has at all times and in every instance when it has collected RSR rates, charged the lawful rates according to Commission-approved tariffs. Indeed, AEP Ohio is required by law to collect the Commission-approved tariff RSR rates until the Commission changes them. Nothing in the Court's decision calls that into question. Accordingly, the premise of the Joint Movants' argument – that AEP Ohio's collection of the RSR charge now and at any previous point in time has been contrary to statute or Ohio law, including the Court's decision – is baseless.

Second, for the reasons provided above, the inapplicable “cease and desist” order that the Joint Movants have requested would be inappropriate and unnecessary. The Commission has other remedial tools available to it that are more than sufficient to achieve all legitimate objectives of the remand process, including protection of customers’ interests while also preventing unwarranted – and unlawful – injury to AEP Ohio. In particular, the Commission has the authority to prospectively make the future collection of RSR charges subject to refund pending the completion of the remand process – as it did in the *ESP I* remand case.

CONCLUSION

For the reasons set forth above, AEP Ohio requests that the Commission deny motion to cease and desist in its entirety and expeditiously move forward to simultaneously resolve the remand issues together.

Respectfully submitted,

//s/ Steven T. Nourse

Steven T. Nourse
Matthew J. Satterwhite
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1606
Fax: (614) 716-2950
Email: stnourse@aep.com
mjsatterwhite@aep.com

Daniel R. Conway
Christen M. Moore
Porter Wright Morris & Arthur LLP
41 S. High Street, Suites 2800-3200
Columbus, Ohio 43215
Telephone: (614) 227-2770
Fax: (614) 227-2100
Email: dconway@porterwright.com
cmoore@porterwright.com

On behalf of Ohio Power Company

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Ohio Power Company's Memorandum Contra Motion to Cease and Desist* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 17th day of May 2016, via electronic transmission.

//s/ Steven T. Nourse

Steven T. Nourse

aaragona@eimerstahl.com;
aehaedt@jonesday.com;
afreifeld@viridityenergy.com;
Amy.spiller@duke-energy.com;
campbell@whitt-sturtevant.com;
arthur.beeman@snrdenton.com;
asim.haque@icemiller.com;
bakahn@vorys.com;
barthroyer@aol.com;
bkelly@cpv.com;
bmcmahon@emh-law.com;
bpbarger@bcslawyers.com;
callwein@wamenergylaw.com;
carolyn.flahive@thompsonhine.com;
cathy@theoec.org;
cendsley@ofbf.org;
christopher.miller@icemiller.com;
clinton.vince@snrdenton.com;
cmontgomery@bricker.com;
cmooney2@columbus.rr.com;
cmoore@porterwright.com;
cynthia.a.fonner@constellation.com;
dakutik@jonesday.com;
Dane.Stinson@baileycavalieri.com;
ghiloni@carpenterlipps.com;
dbweiss@aep.com;

dboehm@BKLlawfirm.com;
David.fein@constellation.com;
dclark1@aep.com;
dconway@porterwright.com;
dparram@taftlaw.com;
djmichalski@hahnlaw.com;
dmeyer@kmklaw.com;
Doris.McCarter@puc.state.oh.us;
Dorothy.corbett@duke-energy.com;
doug.bonner@snrdenton.com;
drinebolt@ohiopartners.org;
dstahl@eimerstahl.com;
dsullivan@nrdc.org;
eisenstatl@dicksteinsharpapiro.com;
Elizabeth.watts@duke-energy.com;
emma.hand@snrdenton.com;
etter@occ.state.oh.us;
fdarr@mwncmh.com;
Gary.A.Jeffries@dom.com;
gpoulos@enernoc.com;
grady@occ.state.oh.us;
Greg.Price@puc.state.oh.us;
gregory.dunn@icemiller.com;
Greta.see@puc.state.oh.us;
glpetrucci@vorys.com;
gthomas@gtpowergroup.com;

glover@whitt-sturtevant.com
haydenm@firstenergycorp.com;
henryeckhart@aol.com;
Hisham.Choueiki@puc.state.oh.us;
holly@raysmithlaw.com;
mhpetricoff@vorys.com;
jejadwin@aep.com;
Jeanne.Kingery@duke-energy.com;
jeff.jones@puc.state.oh.us;
jennifer.spinosi@directenergy.com;
jestes@skadden.com;
jhummer@uaoh.net;
jkooper@hess.com;
jlang@calfee.com;
jmaskovyak@ohiopoveritylaw.org;
Jodi.Bair@puc.state.oh.us;
jkylercohn@BKLawfirm.com;
john.jones@puc.state.oh.us;
joseph.clark@directenergy.com;
judi.sobecki@DPLINC.com;
keith.nusbaum@snrdenton.com;
kern@occ.state.oh.us;
kguerry@hess.com;
Bojko@carpenterlipps.com;
kinderr@dicksteinsharpipro.com;
korenergy@insight.rr.com;
kpkreider@kmklaw.com;
kwatson@cloppertlaw.com;
laurac@chappelleconsulting.net;
lehfeldtr@dicksteinsharpipro.com;
lkalepsclark@vorys.com;
lmcbride@calfee.com;
malina@wexlerwalker.com;
mpritchard@mwncmh.com;
matt@matthewcoxlaw.com;
mjsatterwhite@aep.com;
Maureen.grady@occ.ohio.gov;
mcbride@calfee.com;
mchristensen@columbuslaw.org;
mkurtz@BKLawfirm.com;
Michael.dillard@thompsonhine.com;
mjsettineri@vorys.com;

msmalz@ohiopoveritylaw.org;
mwarnock@bricker.com;
ned.ford@fuse.net;
OhioESP2 <ohioesp2@aep.com>
paul.wight@skadden.com;
pfox@hilliardohio.gov;
philip.sineneng@thompsonhine.com;
Randall.griffin@DPLINC.com;
rburke@cpv.com;
rdove@attorneydove.com;
ricks@ohanet.org;
rjhart@hahnlaw.com;
rmason@ohiorestarant.org;
Rocco.dascenzo@duke-energy.com;
O'Rourke@carpenterlipps.com
rremington@hahnlaw.com;
rsugarman@keglerbrown.com;
sam@mwncmh.com;
sandy.grace@exeloncorp.com;
Sarah.Parrot@puc.state.oh.us;
sbruce@oada.com;
sechler@carpenterlipps.com;
sasloan@aep.com;
small@occ.state.oh.us;
smhoward@vorys.com;
ssalamido@cloppertlaw.com;
ssolberg@eimerstahl.com;
stephanie.chmiel@thompsonhine.com;
Stephen.chriss@wal-mart.com;
stnourse@aep.com;
steven.beeler@ohioattorneygeneral.gov;
swolfe@viridityenergy.com;
talexander@calfee.com;
Tammy.Turkenton@puc.state.oh.us;
terrance.mebane@thompsonhine.com;
terry.etter@occ.ohio.gov;
Thomas.Lindgren@ohioattorneygeneral.gov;
thompson@whitt-sturtevant.com;
tlindsey@uaoh.net;
toddm@wamenergylaw.com;
todonnell@bricker.com;

trent@theoec.org;
tsantarelli@elpc.org;
tsiwo@bricker.com;
Werner.margard@ohioattorneygeneral.gov;
whitt@whitt-sturtevant.com;
William.Wright@ohioattorneygeneral.gov;
wmassey@cov.com;
yost@occ.state.oh.us;

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/17/2016 11:49:36 AM

in

Case No(s). 11-0346-EL-SSO, 11-0348-EL-SSO, 11-0349-EL-AAM, 11-0350-EL-AAM, 10-2929-EL-UNC

Summary: Memorandum -Ohio Power Company's Memorandum Contra Motion to Cease and Desist electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company