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Via E-file

July 6, 2016

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

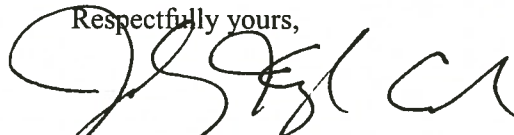
**In re: Case No. 10-2929-EL-UNC
Case No. 11-346-EL-SSO
Case No. 11-348-EL-SSO
Case No. 11-349-EL-AAM
Case No. 11-350-EL-AAM
Case No. 14-1186-EL-RDR
Case No. 13-1892-EL-FAC**

Dear Sir/Madam:

Please find attached the REPLY TO MEMORANDUM CONTRA OF THE OHIO ENERGY GROUP AND THE OFFICE OF THE OHIO CONSUMERS' COUNSEL for filing in the above-referenced matters.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

MLKkew

Encl.

Cc: Maureen R. Willis, Esq., Office of the Ohio Consumers' Counsel
Certificate of Service

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

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

In the Matter of the Fuel Adjustment Clauses for Ohio : **Case No. 13-1892-EL-FAC**
Power Company. :

**REPLY TO MEMORANDUM CONTRA
OF THE OHIO ENERGY GROUP AND
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

This case is supposed to be about rectifying the unlawful orders of the PUCO so that customers are not charged for unlawful transition charges by Ohio Power Company (“AEP Ohio,” “Company,” or “Utility”). Instead, AEP Ohio is using this forum to try to extract more money from its customers. The PUCO should not let this happen.

The Ohio Energy Group (“OEG”) and the Office of the Ohio Consumers’ Counsel (collectively, “Joint Movants”) submit this pleading to reply to the Memorandum Contra filed by AEP Ohio on June 29, 2016.¹ AEP Ohio claims that Joint Movants’ Motion to Strike portions of the Allen Testimony should be denied because it is

¹ Ohio Adm. Code 4901-1-12(2). While AEP Ohio’s pleading is styled as a Reply, a portion of that pleading is a Memorandum Contra the Motion to Strike filed by Joint Movants on June 2, 2016 (“Motion to Strike”). Accordingly, Joint Movants have a right to file a Reply to that portion of AEP Ohio’s pleading.

based upon a misinterpretation of the Supreme Court of Ohio's recent rulings.² The Company also claims that the "after-the-fact" evidence introduced by AEP Ohio in the Allen Testimony should be admitted since it would be helpful to the PUCO in reaching its decision in this proceeding. Both of AEP Ohio's claims should be rejected.

AEP Ohio undertakes great effort to twist the plain language of the Court's recent decisions in support of its argument that the PUCO should retroactively increase customer rates by \$470 million. But the Company's interpretation simply does not square with the Court's explicit instructions to the PUCO. In AEP Ohio's view, because the Court ordered that customer rates to be offset by \$327 million in unlawful Retail Stability Rider ("RSR") charges, then, even though not ordered by the Court, it logically follows that the Company should get to retroactively increase customer rates by \$470 million through an adjustment to its final FRR capacity deferral balance as of May 31, 2015. This may be logical to AEP Ohio, but it is not the outcome mandated by the plain language of the Court.

In the *ESP II Appeal*, the Court explicitly instructed the PUCO to "*adjust the balance of the deferred capacity costs to eliminate the overcompensation of capacity revenue recovered through the nondeferral part of the RSR during the ESP.*"³ The Court used such explicit language to make clear its mandate that the PUCO must prospectively remedy the harm done to AEP Ohio's customers. Contrary to AEP Ohio's insinuations,⁴ the Court's choice to insert the phrase "*adjust the balance of the deferred capacity costs*" in that sentence did not mean that the PUCO should *increase* the current RSR charge. Indeed, the whole thrust of the Court's decision in the *ESP II Appeal* was to return to customers some of the unlawful charges that they had already paid to AEP Ohio. A PUCO decision ordering AEP Ohio to immediately cease collection of the RSR and to refund all RSR charge collected after June 1, 2016 (when the PUCO made the charges subject to refund) to customers would therefore be consistent with the *Keco* doctrine as promulgated by the Court.

² *In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, Slip Opinion No. 2016-Ohio-1607 ("*Capacity Charge Appeal*"); *In re: Application of Columbus S. Power Co.*, Slip Op. No. 2016-Ohio-1608 ("*ESP II Appeal*").

³ *In re: Application of Columbus S. Power Co.*, Slip Op. No. 2016-Ohio-1608 at ¶40.

⁴ AEP Ohio Reply at 6.

The Court carved out no *Keco* exception in the *Capacity Charge Appeal*. There, the Court merely “direct[ed] the commission on remand to substantively address AEP’s input arguments.”⁵ Nowhere did the Court instruct the PUCO to retroactively alter AEP Ohio’s final FRR capacity balance as of May 31, 2015 or to retroactively increase the RSR charge by \$470 million. The Court simply asked the PUCO for more explanation regarding the basis for accepting Staff’s input assumptions over AEP Ohio’s input assumptions. While implementing the Court’s mandate may result in little more than an academic exercise with respect to the energy credit issue, the Court’s decision to remand simply stresses that the PUCO must sufficiently address parties’ arguments in its orders. The PUCO should not indulge AEP Ohio’s improper attempt to broadly expand the scope of the remand in contravention of the *Keco* prohibition on retroactive ratemaking in this proceeding. Because the PUCO can satisfy the Court’s remand instructions in the *Capacity Charge Appeal* by simply following the Court’s directive to “substantively address AEP’s input arguments,” the portions of the Allen Testimony proposing to retroactively increase customer rates by \$470 are irrelevant to these proceedings and should be stricken.

AEP Ohio complains that denying its proposed retroactive rate increase would be “completely arbitrary and patently unfair.”⁶ AEP Ohio is wrong. Complying with Ohio law is neither unfair nor arbitrary. But it would be arbitrary and patently unfair for customers to pay \$470 million in *increased* RSR charges when the Court specifically instructed the PUCO to *decrease* those charges. And such an outcome would almost certainly put these issues back before the Court. Moreover, AEP Ohio’s customers have paid over \$400 million in patently unfair charges in the past without remedy due to the *Keco* doctrine. That doctrine precluded a refund of \$63 million to customers stemming from AEP Ohio’s first ESP case.⁷ And *Keco*’s prohibition on retroactive ratemaking foreclosed customers from receiving a refund of \$368 million in unlawful provider-of-last-resort charges collected by AEP Ohio.⁸ Applying *Keco* with equal force to AEP Ohio is thus consistent with principles of fairness and consistency.

⁵ *In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, Slip Opinion No. 2016-Ohio-1607 at ¶57.

⁶ AEP Ohio Reply at 8.


⁷ *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655.

⁸ *In re Application of Columbus S. Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462, 8 N.E.3d 863 at ¶ 56.

With respect to the “*after-the-fact*” evidence presented in the Allen Testimony, AEP Ohio claims that such evidence would be helpful to the PUCO in resolving these proceedings. Yet as Joint Movants previously stated, allowing the disputed evidence in the record would establish a dangerous precedent whereby parties could continually seek to revisit PUCO decisions rendered years before based upon post-decision data. This outcome would be contrary to *Keco* and its progeny and would invite perpetual litigation and rate uncertainty in Ohio.

WHEREFORE, for the foregoing reasons, the Commission should strike the portions of the Allen Testimony related to AEP Ohio’s proposal to retroactively increase customer rates by \$470 million, including those portions relying upon improper “*after-the-fact*” evidence.

Respectfully submitted,



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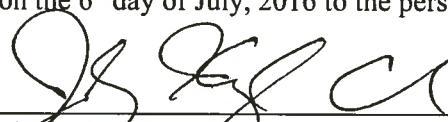
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July 6, 2016

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 on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 6th day of July, 2016 to the persons listed below.



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Summary: Reply OEG and OCC Reply to Memorandum Contra electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group and Office of Ohio Consumers' Counsel