BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of the Purchase of Receivables Implementation Plan For Ohio Power Company	))))	Case No. 15-1507-EL-EDI

OHIO POWER COMPANY'S MEMORANDUM IN OPPOSITION

In response to the Application for Rehearing filed by the Ohio Consumers' Counsel (OCC) on October 27, 2017 regarding the September 27, 2017 Finding and Order (Order), Ohio Power Company ("AEP Ohio" or the "Company") files this memorandum in opposition to OCC's rehearing request. The Commission's Order is reasonable and lawful in the respects being challenged by OCC. Consequently, the Commission should reject OCC's rehearing request.

OCC Prop. 1: The requirements of R.C. 4928.08 do not support OCC's position that the Bad Debt Rider should not be used as a cost recovery backstop.

OCC downplays the importance of the Bad Debt Rider (BDR), recommended by Staff as a "backstop," but it is a crucial component of the POR program for AEP Ohio. The Company strongly agrees with Paragraph 67 of the Order, however, as a term and condition of adopting the POR program directives; indeed, the Company would need to challenge any final POR directive that eliminated a clear path for cost recovery associated with a POR program directive. Contrary to OCC's arguments, the BDR is needed as a cost recovery mechanism of last resort in order to ensure that the Company has a reasonable opportunity to recover potential losses associated with the POR program adopted by the Order.

OCC wrongly claims (AFR at 3-5) that R.C. 4928.08(B) undercuts the Commission's decision to provide backstop cost recovery through the BDR. That statute requires the Commission to confirm a provider's technical, financial and managerial capabilities before certifying them as a CRES, which does help manage CRES default risk – but does not eliminate that risk. And the statute requires the Commission to provide for financial security to avoid default risk accruing to the utility or its other customers. Again, that measure also mitigates – but does not eliminate – financial risk of CRES default. But those matters are separate and distinct from completely covering the risk that AEP Ohio will not completely recover its POR program costs from participating CRES providers. OCC is wrong in thinking that participating CRES can financially guarantee that all of the Company's POR program costs are recovered.

As a related matter, OCC recommends that the Company seek collateral from the CRES to mitigate any risk related to a CRES default, a large customer default in the program, or a mass-migration of CRES out of the program if the discount rate is too high. (OCC AFR at 4.) But the risk cannot be mitigated by seeking collateral from the CRES. For example, if we have a $4M capital expense for implementation with only 2 CRES that ultimately participate, the $4M will be amortized through the discount rate and per bill fee. If both participants leave, the Company is left with $4M unrecovered. And it would not be reasonable for the Company to seek $2M in collateral to mitigate that risk from each CRES that may only be billing a few hundred customers in the program.

The CRES provider's security/collateral provided to AEP Ohio does not cover costs incurred by the Company to deploy customer choice billing and IT systems because such costs are reflected in rates. All customers benefit from the ability to shop and the POR program to

facilitate competitive offerings from CRES providers. While an appropriate collateral requirement and diligent enforcement efforts can help mitigate those financial risks, those measures do not eliminate the risk. That is a why a backstop cost recovery mechanism is needed – the Commission properly recognized this need and addressed it as part of the POR program regime adopted in its Order. That is also why OCC is wrong in claiming (at 4) that customers "might pay twice" for these risks; but because CRES providers do not pay collateral/security relating to the Company's billing and IT customer choice costs, that claim is fallacious.

OCC also suggests the Company just needs to do a better job of analyzing the business risk of the CRES. (OCC AFR at 4.) The Company already monitors exposure daily and do margin calls as needed on all the participants. The inherent risk is what has been imposed by the Commission through a per bill fee structure and by allowing CRES to move in and out of the program freely. AEP Ohio did not concur with those recommendations (the Company recommended mandatory POR for utility consolidated billing); but requiring the per bill fee structure and allowing CRES to enter and leave the program without also providing for a cost recovery backstop would improperly leave AEP Ohio exposed to stranded capital investment and large customer bankruptcies.

OCC Prop. 2: The Commission should not clarify its ruling as requested by OCC to "place severe restrictions" on the use of the BDR or provide that the rider can only be used "under extreme circumstances."

OCC asks the Commission (OCC AFR at 5-7) to explain what the Order means by "a collection mechanism of last resort. OCC suggests that the Commission on rehearing should "impose severe restrictions" on use of the BDR and provide that it can only be used "under extreme circumstances." It is not clear what OCC means by using this inflammatory language,

but the one specific recommendation made in this section of its argument (at 7) is that the BDR should only be used to collect bad debt expense above the $12.2 million reflected in base rates.

OCC is wrong on this point. The bad debt associated with the POR program that is being ramped up now was not reflected in the 2010 test year from Case Nos. 11-351-EL-AIR et al. Accordingly, all of the bad debt costs associated with the POR program should be recovered through the BDR – if the costs are not recovered through the per bill fee, the discount rate or through CRES security/collateral.

OCC Prop. 3: The Order does not violate consumers' due process rights and OCC cannot assert constitutional rights of individual customers.

As a final point, OCC throws in (at 7-8) that customers should have an inherent right to review the bad debt costs and challenge them annually. No due process right of customers has been undermined or infringed upon in this case – because they have no due process right to require the Commission to fully litigate each and every theory OCC may come up with. Moreover, if individual customers had a due process right, OCC has no statutory authority to represent or prosecute the rights of individual customers – in this case or otherwise.

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). No due process rights have been violated in this case.

CONCLUSION

On rehearing, the Commission should reject the OCC's application for rehearing as outlined above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Application for Rehearing of Ohio Power Company* has been served upon the below-named counsel and Attorney Examiners via electronic mail this 6th day of November, 2017.

/s/ Steven T. Nourse
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Summary: Memorandum - Ohio Power Company's Memorandum in Opposition electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company