

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**PUCO**

In the Matter of the Application of )  
Columbus Southern Power Company for )  
Approval of its Electric Security Plan; an )  
Amendment to its Corporate Separation )  
Plan; and the Sale or Transfer of )  
Certain Generating Assets. )

Case No. 08-917-EL-SSO

In the Matter of the Application of )  
Ohio Power Company for Approval of its )  
Electric Security Plan; and an Amendment )  
to its Corporate Separation Plan. )

Case No. 08-918-EL-SSO

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**INDUSTRIAL ENERGY USERS-OHIO'S MOTION FOR  
IMMEDIATE RELIEF FROM ELECTRIC RATE INCREASES**

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April 20, 2009

**Attorneys for Industrial Energy Users-Ohio**

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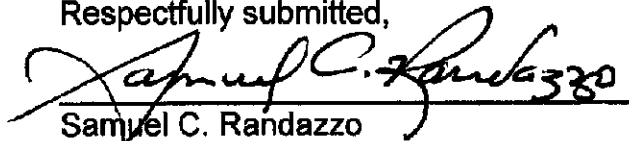
On March 18, 2009, the Public Utilities Commission of Ohio ("PUCO" or "Commission") issued an Opinion and Order ("Order") modifying the electric security plan ("ESP") proposals of Columbus Southern Power Company and Ohio Power Company (individually "CSP" and "OP", respectively, and collectively "Companies" or "AEP-Ohio"). As instructed by the Order, AEP-Ohio filed revised tariffs on March 23, 2009. A transmittal letter accompanied the revised tariff filing on March 23, 2009. The transmittal letter stated that AEP-Ohio was not waiving its right to seek rehearing or to withdraw the ESP application. AEP-Ohio's transmittal letter notified the Commission that it would make its decision after action taken by the Commission in response to any rehearing requests.

Over the objections of intervenors, the Commission approved the revised tariffs on Monday, March 30, 2009, and AEP-Ohio promptly began billing customers, on a "bills rendered" basis, rates and charges for electric service that produce total bill increases significantly in excess of the amounts specified in the Commission's Order.

On April 17, 2009, the last day for doing so, AEP-Ohio filed an application for rehearing asserting that the Commission's Order is unreasonable and unlawful in many (thirteen) respects. AEP-Ohio's rehearing request asks the Commission to provide relief in response to its application for rehearing so that AEP-Ohio can "... make an informed decision on whether to accept or withdraw the Commission-modified plan".<sup>1</sup>

For the reasons explained herein, IEU-Ohio urges the Commission to direct AEP-Ohio to: (1) cease and desist from billing and collecting any rates and charges that may currently be on file with the Commission as a result of the Order; and (2) only bill and collect such rates and charges as may apply by the terms of the rate plan that was in effect on March 18, 2009.<sup>2</sup> Additionally, IEU-Ohio urges the Commission to direct AEP-Ohio to refund, with a reasonable interest, any amounts collected from consumers in excess of the amount that AEP-Ohio was authorized to bill and collect pursuant to the rates and charges that were in effect at the time the Order was issued.

Respectfully submitted,

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<sup>1</sup> AEP-Ohio Application for Rehearing at 3.

<sup>2</sup> Section 4928.141(A), Revised Code, makes it clear that previously authorized transition costs are to be excluded.

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**MEMORANDUM IN SUPPORT OF  
INDUSTRIAL ENERGY USERS-OHIO'S MOTION FOR  
IMMEDIATE RELIEF FROM ELECTRIC RATE INCREASES**

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On March 18, 2009, the Commission issued an Order modifying the ESP proposals of CSP and OP. As instructed by the Order, AEP-Ohio filed revised tariffs on March 23, 2009. A transmittal letter accompanied the revised tariff filing on March 23, 2009. The transmittal letter stated that AEP-Ohio was not waiving its right to seek rehearing or to withdraw the ESP application. AEP-Ohio's transmittal letter notified the Commission that it would make its decision after action taken by the Commission in response to any rehearing requests.

Over the objections of intervenors, the Commission approved the revised tariffs on Monday, March 30, 2009, and AEP-Ohio promptly began billing customers, on a "bills rendered" basis, rates and charges for electric service that produce total bill increases significantly in excess of the amounts specified in the Commission's Order.

On April 17, 2009, the last day for doing so, AEP-Ohio filed an application for rehearing asserting that the Commission's Order is unreasonable and unlawful in many (thirteen) respects. AEP-Ohio's rehearing request asks the Commission to provide relief in

response to its application for rehearing so that AEP-Ohio can "... make an informed decision on whether to accept or withdraw the Commission-modified plan".<sup>3</sup>

Section 4928.143, Revised Code, permits an electric distribution utility ("EDU") such as CSP and OP to do certain things when the Commission issues an order modifying an ESP which is not acceptable to the EDU. The EDU may withdraw, thereby terminating, the ESP application. Upon such withdrawal and termination, the EDU may file a new application under Section 4928.142, Revised Code, or Section 4928.143, Revised Code. Section 4928.141, Revised Code, states plainly that:

Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section; and that standard service offer shall serve as the utility's default standard service offer for the purpose of section 4928.14 of the Revised Code. Notwithstanding the foregoing provision, the rate plan of an electric distribution utility shall continue for the purpose of the utility's compliance with this division until a standard service offer is first authorized under section 4928.142 or 4928.143 of the Revised Code...

AEP-Ohio's March 23, 2009 transmittal letter referenced above as well as the April 17, 2009 application for rehearing clearly indicate that AEP-Ohio has not accepted the Order and is withholding judgment on whether to withdraw and thereby terminate its ESP application. AEP-Ohio's April 17, 2009 application for rehearing makes it clear that it believes that the Order is unreasonable and unlawful. Yet, AEP-Ohio is currently billing and collecting rates and charges pursuant to the Order. In other words, AEP-Ohio is currently taking the benefits of the Order while contesting its reasonableness and lawfulness. Ohio law does not allow AEP-Ohio to take the benefits of an Order under Section 4928.143, Revised Code, while it is reserving judgment to withdraw and terminate its ESP proposal. So long as AEP-Ohio is reserving judgment to withdraw and terminate

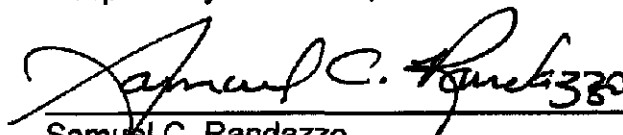
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<sup>3</sup> AEP-Ohio Application for Rehearing at 3.

its proposed ESP as a result of modifications made by the Commission, Section 4928.141, Revised Code, requires the prior "rate plan" to continue. In addition to being unlawful by the terms of Sections 4928.141 and 4928.143, Revised Code, AEP-Ohio's actions work against the policy objectives in Section 4928.02, Revised Code.

For the reasons explained herein, IEU-Ohio urges the Commission to direct AEP-Ohio to: (1) cease and desist from billing and collecting any rates and charges that may currently be on file with the Commission as a result of the Order; and (2) only bill and collect such rates and charges as may apply by the terms of the rate plan that was in effect on March 18, 2009.<sup>4</sup> Additionally, IEU-Ohio urges the Commission to direct AEP-Ohio to refund, with a reasonable interest, any amounts collected from consumers in excess of the amount that AEP-Ohio was authorized to bill and collect pursuant to the rates and charges that were in effect at the time the Order was issued.

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<sup>4</sup> Section 4928.141(A), Revised Code, makes it clear that previously authorized transition costs are to be excluded.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *INDUSTRIAL ENERGY USERS-OHIO'S MOTION FOR IMMEDIATE RELIEF FROM ELECTRIC RATE INCREASES AND MEMORANDUM IN SUPPORT* was served upon the following parties of record this 20<sup>th</sup> day of April 2009, via electronic transmission, hand-delivery or first class mail, postage prepaid.



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