

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company for Approval)	Case No. 09-1873-EL-ACP
of its Renewable Energy Credit)	
Purchase Offer Program.)	

In the Matter of the Application of)	
Columbus Southern Power Company)	Case No. 09-1874-EL-ACP
for Approval of its Renewable Energy)	
Credit Purchase Offer Program.)	

INITIAL COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

Samuel C. Randazzo (Counsel of Record)
Joseph M. Clark
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
jclark@mwncmh.com

October 8, 2010

Attorneys for Industrial Energy Users-Ohio

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company for Approval)	Case No. 09-1873-EL-ACP
of its Renewable Energy Credit)	
Purchase Offer Program.)	

In the Matter of the Application of)	
Columbus Southern Power Company)	Case No. 09-1874-EL-ACP
for Approval of its Renewable Energy)	
Credit Purchase Offer Program.)	

INITIAL COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

A. INTRODUCTION

On November 30, 2009, Columbus Southern Power (“CSP”) and Ohio Power Company (“OP”) (collectively, American Electric Power-Ohio or “AEP-Ohio”) filed the instant Application for approval of a Renewable Energy Credit (“REC”) Purchase program (hereinafter “Program”) for approval by the Public Utilities Commission of Ohio (“Commission”). AEP-Ohio filed the Application pursuant to a Stipulation and Recommendation (“Stipulation”) submitted in AEP-Ohio’s energy efficiency/peak demand reduction (“EE/PDR”) portfolio plan proceeding.¹ On September 24, 2010, the Attorney Examiner granted the Motions to Intervene of Industrial Energy Users-Ohio (“IEU-Ohio”) and the Office of the Ohio Consumers’ Counsel (“OCC”) and also established a procedural schedule permitting initial and reply comments on the Application. On October 4, 2010, the Attorney Examiner granted a Motion to extend the

¹ *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, PUCO Case Nos. 09-1089-EL-POR, *et al.*, Stipulation and Recommendation at 5-6 (November 12, 2009). The Stipulation, as modified and approved by the Commission, only requires AEP-Ohio to propose the Program and in no way pre-determines approval of the Program. *Id.* at 5.

initial comment period to October 8, 2010 and similarly extended the reply comment period to October 15, 2010. Pursuant to the October 4, 2010 Entry, IEU-Ohio hereby submits its Initial Comments regarding the Application.

B. INITIAL COMMENTS

In its Application, AEP-Ohio proposes this Program for the purchasing of RECs from customer-sited solar photovoltaic (“PV”) and small wind renewable energy resource facilities during calendar years 2010 and 2011. The Application notes the Stipulation in the EE/PDR portfolio plan case calls for prudently-incurred costs of the Program to be recovered through the respective fuel adjustment clause (“FAC”) mechanisms of CSP and OP. Additionally, among other things, the proposed Program would pay \$260 per solar REC and \$29 per small wind REC generated between August 1, 2008 and December 31, 2011. Finally, AEP-Ohio’s Application notes that it already “tentatively secured means to meet applicable in-state solar PV benchmarks in 2010 and 2011” and that AEP-Ohio has no plans to purchase solar RECs from the market or conduct market solicitations for solar RECs during 2010 or 2011.²

The Commission should reject the Application.³ AEP-Ohio admits in its Application that it does not need solar RECs from the market or elsewhere to comply with the 2010 or 2011 solar mandates. In AEP-Ohio’s Application for a *force majeure* determination related to its 2009 solar mandate, AEP-Ohio stated that its renewable energy purchase agreement with Wyandot Solar LLC (“Wyandot”) would “enable AEP Ohio to ‘catch up’ in 2010 and even produce enough RECs to meet the 2011 solar

² Application at 4.

³ It is IEU-Ohio’s understanding that a Stipulation will likely be executed in this case that will generally follow the construct contained in the Application but with certain modifications. The Stipulation, however, was not filed as of the comment deadline. IEU-Ohio’s comments regarding the Application should also be considered as opposition to the Stipulation inasmuch as the comments are equally applicable to the Stipulation.

benchmarks at a much more reasonable cost than attempting to continue purchasing what few 2009 RECs are available on the market now, at high market prices.”⁴ Nor does the Application include a demonstration that the Program is needed to meet AEP-Ohio’s non-solar renewable energy mandates. Further, the Application does not provide any indication of how the price per REC in the Program stacks up against the cost per REC under the Wyandot contract or other compliance options to evaluate the cost-effectiveness of the Program.

Additionally, as the Commission is well aware, both CSP’s and OP’s rates are capped at Commission-established increase percentages for each year of the respective electric security plans (“ESP”) for CSP and OP, subject to certain exceptions specifically enumerated by the Commission.⁵ CSP’s and OP’s non-fuel costs are collected first and then the FAC charges are collected up to the caps set by the Commission.⁶ Any FAC costs above the cap are deferred, with interest, for future collection through a non-bypassable rider from 2012 through 2018.⁷ If the combined non-fuel and fuel charges of either CSP or OP are below the increase cap in any given year, then the approved ESP requires CSP or OP to amortize the deferrals up to the

⁴ *In the Matter of the Application of Columbus Southern Power Company for Amendment of the 2009 Solar Energy Resource Benchmark, Pursuant to Section 4928.64(C)(4), Ohio Revised Code*, PUCO Case Nos. 09-987-EL-EEC, *et al.*, Columbus Southern Power Company’s and Ohio Power Company’s Additional Reply Comments at 4 (December 16, 2009). In its Application in the *force majeure* proceeding, AEP-Ohio noted the Wyandot agreement would “provide AEP Ohio a stream of Ohio-based solar RECs well into the future – but there will be none produced in 2009 from the Wyandot Solar project.” *In the Matter of the Application of Columbus Southern Power Company for Amendment of the 2009 Solar Energy Resource Benchmark, Pursuant to Section 4928.64(C)(4), Ohio Revised Code.*, PUCO Case Nos. 09-987-EL-EEC, *et al.*, Columbus Southern Power’s and Ohio Power’s Application and Request for Expedited Consideration at 4 (October 26, 2009).

⁵ *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, PUCO Case Nos. 08-917-EL-SSO, *et al.*, Opinion and Order at 22 (March 18, 2009).

⁶ *Id.*

⁷ *Id.* at 22-23.

cap amount.⁸ AEP-Ohio's most recent FAC filing showed the OP FAC deferral now stands at \$406 million and CSP's FAC deferral is \$9.4 million.⁹

The consequence of approving the Application for OP would be additional deferrals, with interest, to be collected through a non-bypassable rider beginning in 2012. And, for CSP customers, approval of the Application might prolong FAC deferral amortization and possibly cause the unnecessary delay of lower rates for customers of all customer classes.¹⁰ Neither of these outcomes is acceptable when AEP-Ohio has itself acknowledged it does not need the Program for compliance with the alternative energy mandates during the current ESP period and the Application does not provide any analysis of the cost-effectiveness of the Program.

Finally, approval of the Application would once again force customers to pay costs through the FAC but not have assurances that they will receive the benefits associated with those costs. In AEP-Ohio's pending audit proceeding to review its 2009 FAC charges, IEU-Ohio, as well as OCC, is objecting to customers paying for fuel costs through the FAC without receiving the benefits associated with those costs or without any guarantee they will receive the attendant benefits of those costs.¹¹ It is true that

⁸ *Id.* at 22.

⁹ *In the Matter of the Fuel Adjustment Clauses of Columbus Southern Power Company and Ohio Power Company*, Case Nos. 10-1286-EL-FAC, *et al.*, Tariff Update, Schedule 3, Page 1 of 3 (September 2, 2010). The deferral amounts for CSP and OP are found on Schedule 3, Page 1 of 3 on the respective attachments for CSP and OP.

¹⁰ AEP-Ohio's third quarter and fourth quarter FAC filings show CSP is currently amortizing deferred FAC costs. Compare *In the Matter of the Fuel Adjustment Clauses of Columbus Southern Power Company and Ohio Power Company*, Case Nos. 10-1286-EL-FAC, *et al.*, Tariff Update, Schedule 3, Page 1 of 3 (September 2, 2010)] with *In the Matter of the Fuel Adjustment Clauses of Columbus Southern Power Company and Ohio Power Company*, Case Nos. 10-870-EL-FAC, *et al.*, Tariff Update, Schedule 3, Page 1 of 3 (June 22, 2010).

¹¹ *In the Matter of the Fuel Adjustment Clauses of Columbus Southern Power Company and Ohio Power Company*, PUCO Case Nos. 09-872-EL-FAC, *et al.*, Initial Brief of Industrial Energy Users-Ohio (September 23, 2010) (hereinafter cited as "2009 FAC Audit Case"). *2009 FAC Audit Case*, Post-Hearing Brief by the Office of the Ohio Consumers' Counsel (September 23, 2010).

AEP-Ohio could simply bank the RECs and then use them for future compliance, pursuant to Section 4928.65, Revised Code. However, there is no guarantee there will be an FAC beyond 2011 inasmuch as AEP-Ohio's future standard service offer ("SSO") beyond 2011 is unknown.¹² Thus, customers will pay for the RECs through the volumetric rate design of the FAC for 2010 and 2011 but, because there is no guarantee of whether the future SSO will be an ESP, or if that hypothetical ESP will even contain an FAC mechanism, or if that hypothetical ESP will recover renewable mandate compliance costs through the hypothetical future FAC, there would be no certainty that customers would actually receive the benefits of pre-payment for future years' compliance RECs through a lower prospective FAC rate.

As an alternative, the Commission should instruct AEP-Ohio to discuss the Program with interested parties in the context of its next SSO application. As noted above, there is no need for the Program before the end of the ESP, nor any information on the cost-effectiveness of utilizing Program RECs for compliance with the mandates versus other available compliance alternatives. Further, the Stipulation in the EE/PDR portfolio plan case contemplates discussions before the next SSO filing about compliance with the alternative energy benchmarks, stating "At least six months before the Companies file for a new standard service offer, a working group of interested Signatory Parties and Commission Staff will be formed to discuss whether the costs of renewable energy should be recovered in the fuel adjustment charge or in a separate bypassable surcharge."¹³ This option would be well-timed, has already been

¹² 2009 FAC Audit Case, AEP-Ohio Initial Brief at 34-35 (September 24, 2010); 2009 FAC Audit Case, IEU-Ohio Initial Brief at 17 (September 24, 2010).

¹³ *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration.*, PUCO Case Nos. 09-1089-EL-POR, *et al.*, Stipulation and Recommendation at 6 (November 12, 2009).

contemplated by the Signatory Parties to the EE/PDR case, and would avoid needlessly increasing FAC costs during the ESP period.

C. CONCLUSION

For the reasons stated herein, IEU-Ohio requests the Commission deny the Application and direct the Parties to discuss this Program in the context of AEP-Ohio's next SSO filing.

Respectfully submitted,

/s/ Joseph M. Clark

Samuel C. Randazzo (Counsel of Record)

Joseph M. Clark

MCNEES WALLACE & NURICK LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

sam@mwncmh.com

jclark@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Initial Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 8th day of October 2010 via electronic transmission, hand delivery, or first class mail, postage prepaid.

/s/ Joseph M. Clark

Joseph M. Clark

Steven Nourse (Counsel of Record)
Matthew J. Satterwhite
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
stnourse@aep.com
mjsatterwhite@aep.com

**ON BEHALF OF COLUMBUS SOUTHERN
POWER COMPANY AND OHIO POWER
COMPANY**

Janine L. Midgen-Ostrander
Consumers' Counsel
Christopher J. Allwein, (Counsel of Record)
Ann M. Hotz
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
allwein@occ.state.oh.us
hotz@occ.state.oh.us

**ON BEHALF OF THE OFFICE OF THE OHIO
CONSUMERS' COUNSEL**

Rebecca L. Hussey
Assistant Section Chief
Thomas W. McNamee
Assistant Attorney General
Public Utilities Section
180 East Broad Street
Columbus, OH 43215-3793
rebecca.hussey@puc.state.oh.us
thomas.mcnamee@puc.state.oh.us

Greta See
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

**ON BEHALF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/8/2010 12:42:51 PM

in

Case No(s). 09-1873-EL-ACP, 09-1874-EL-ACP

Summary: Comments of Industrial Energy Users-Ohio electronically filed by Mr. Joe Clark on behalf of INDUSTRIAL ENERGY USERS OF OHIO