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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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 No. 11-346-EL-SSO
Case No. 11-348-EL-SSO

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company for Approval of)
Certain Accounting Authority.)

Case No. 11-349-EL-AAM
Case No. 11-350-EL-AAM

MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF
INDUSTRIAL ENERGY USERS-OHIO

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May 10, 2011

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TABLE OF CONTENTS

I.	MOTION	1
II.	MEMORANDUM IN SUPPORT	3
III.	INTRODUCTION	3
IV.	BACKGROUND	4
V.	ARGUMENT	10
	A. Summary of Argument	10
	B. An Application for an ESP Must be Made by an EDU and Provide Information Concerning that EDU in Conformity with the Commission's Filing Requirements.....	11
	C. CSP and OPCo's Filing as a Merged Entity Violates the Statutory Condition that an EDU File for an ESP	13
	D. The Application Fails to Provide the Detailed Cost Information Required by Commission Rules.....	15
VI.	CONCLUSION.....	19

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**MOTION TO DISMISS OF
INDUSTRIAL ENERGY USERS-OHIO**

On January 27, 2011, Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPCo") (collectively, "AEP-Ohio" or "Companies") filed a combined Application to establish a standard service offer ("SSO") in the form of an electric security plan ("ESP").¹ CSP and OPCo state that the Application and supporting exhibits are presented as if CSP and OPCo were a merged company. Accordingly, CSP and OPCo seek approval by the Public Utilities Commission of Ohio ("Commission") of an ESP as if the Companies were a single entity, AEP-Ohio, pursuant to Sections 4928.141 and 4928.143, Revised Code, and Chapter 4901:1-35, Ohio Administrative Code ("OAC").

¹ *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 No. 11-346-EL-SSO, et al., Application (January 27, 2011) (hereinafter "Application").*
{C33835.7 }

Industrial Energy Users-Ohio ("IEU-Ohio") respectfully moves to dismiss CSP and OPCo's Application. As demonstrated in the Memorandum in Support, CSP and OPCo's Application fails to comply with Sections 4928.141 and 4928.143, Revised Code, and the Commission's rules in the following ways: CSP and OPCo failed to file an application on behalf of the existing electric distribution utilities; CSP and OPCo failed to provide pro forma projections of the effect of the implementation of the Application upon the existing electric distribution utilities; and the Companies' inclusion of unquantified "placeholder" riders and improper application of the test for approval of an ESP contained in Section 4928.143(C), Revised Code, make it impossible to determine the impact of the implementation of the proposed ESP upon the electric distribution utilities or their customers. Therefore, CSP's and OPCo's Application should be dismissed.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF THE MOTION TO DISMISS
OF INDUSTRIAL ENERGY USERS-OHIO**

I. INTRODUCTION

On January 27, 2011, CSP and OPCo filed an Application to establish an SSO in the form of an ESP.² As presented by the Application, CSP and OPCo seek approval of an ESP for a combined company identified in these applications as AEP-Ohio.³ Further, the Application contains numerous proposed riders for which the Companies may someday provide data to support additional rate increases. As filed, the Application does not comply with the relevant statutory provisions or Commission rules

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, Revised Code, in the Form of an Electric Security Plan, Case No. 11-346-EL-SSO, et al, Application (January 27, 2011). (hereinafter "Application").*

³ In a separate filing, CSP and OPCo have sought authority to merge. The resulting operating company would be called Ohio Power Company. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals, Case No. 10-2376-EL-UNC, Application (October 18, 2010)*

implementing the SSO process. Because it fails to comply with the applicable statutory and regulatory requirements, the Commission should dismiss the Application.

II. BACKGROUND

On January 27, 2011, CSP and OPCo filed for approval of an SSO beginning in January 2012. Although the Application was filed for OPCo and CSP, both of which are identified as Electric Distribution Utilities ("EDU"), the Application nonetheless seeks to establish a new ESP for a single entity described as AEP-Ohio.⁴ Application at 1. CSP and OPCo explain that "[t]his application has been developed and presented as a single-company filing, given the proposed merger of CSP and OPCo (currently pending in Case No. 10-2376-EL-UNC) that is expected to close prior to 2012." Application at 1.

The Application does not allege that AEP-Ohio qualifies as an EDU under Section 4928.01, Revised Code. In fact, the Companies publicly acknowledge that AEP-Ohio is not the legal entity responsible for providing service and charging customers.⁵ As the AEP-Ohio website states, "American Electric Power operates two electric utility companies in Ohio—Columbus Southern Power Company (CSP) and

⁴ At page 3 of the Application, CSP and OPCo state that they expect to file an application for approval of a Market Rate Offer ("MRO") if the proposed ESP is not adopted and that they are reserving the right to do so during the time the proposed ESP is pending. The Application (also at page 3) states that "[e]ach of the major components of the ESP are critical to AEP-Ohio's future and need to be addressed in order for the Company to remain in a regulated SSO plan."

As explained herein, the opportunity to file an ESP and MRO application is reserved to an EDU. Also, should a new SSO not be established for the period commencing January 1, 2012 (either because the Commission has not acted or because the Commission has modified the ESP proposed in these proceeding in ways that cause CSP and OPCo to terminate the ESP Application, Ohio law requires that the current individual ESP of CSP and OPCo be used to establish rates and charges for service on and after January 1, 2012. All of the mechanisms available to the Commission or EDUs to lawfully establish an SSO are EDU specific and EDU focused.

⁵ In fact, American Electric Power Company, Inc. has claimed that it is not a public utility and, as a result, the Commission lacks jurisdiction over it: "AEP posits that it is not a public utility as the term is defined in Section 4905.02, Revised Code, and therefore, the Commission lacks jurisdiction over AEP." *In the Matter of the Complaint of Brian Tomlin v. Columbus Power Company*, Case No. 02-46-EL-CSS, Opinion and Order (December 12, 2002).

Ohio Power Company (OP). The companies are jointly managed under the name AEP-Ohio. However, as separate legal entities the companies have different rate structures.”⁶ Additionally, the current operating companies report separately to the Commission annually. *In the Matter of Filing of Annual Reports for Calendar Year 2010 by Electric Utilities*, Case No. 11-01-EL-RPT, Entry (March 9, 2011). The merger, moreover, has not taken place and may not before the time that the new rates become effective. Thus, the Application asks the Commission to establish an SSO for a company that has no legal relationship to its customers, but is rather a creation of American Electric Power Company's (“AEP”) operations and marketing.

The problems with the Application extend beyond the misidentification of the EDU as AEP-Ohio. For example, the Application seeks to require CSP customers to share the burdens of revenue deferred for future collection by OPCo. The Application states that CSP and OPCo were authorized to defer revenue for future collection in each of their respective ESPs, “over a seven-year period as approved in the Commission’s order in Case Nos. 08-EL-917-SSO and 08-EL-918-ESP (“2009 ESP Order”).”⁷ At the end of 2011, the revenue deferred for OPCo's future collection is expected to be \$643 million, but CSP will have no deferred balance.⁸ Although nothing in the prior ESP authorized reassigning the individual EDU deferred amounts, the

⁶ <http://www.aepohio.com/account/bills/rates/AEPOhioRatesTariffsOH.aspx> (viewed March 22, 2011).

⁷ Testimony of Philip J. Nelson at 8.

⁸ Testimony of Philip J. Nelson at 8. The Commission's application of the significantly excessive earnings test eliminated CSP's deferred fuel balance. *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-1261-EL-UNC, Opinion and Order at 35 (January 11, 2011)

Application seeks recovery of OPCo's deferred balances from the customers of both OPCo and CSP.⁹

Additionally, the Companies fail to provide a full set of financial projections on an EDU-specific basis. Although OPCo and CSP assert that the Application contains this information,¹⁰ company witness Joseph Hamrock acknowledges that the Commission could make its own calculations if it wants to determine the information specific to OPCo and CSP,¹¹ and the pro forma financial projections of the effect of the ESP included in Exhibit PJN-3 are for AEP-Ohio only. Exhibit PJN-3, pages 7-9; Testimony of Philip J. Nelson at 3.

The Application also fails to provide the information required to calculate the effect of the many proposed riders as required by Commission rules.¹² The Application states that the projected rate impact of the ESP on customer classes is included in the testimony of David Roush and Exhibit DMR-1. Application at 5. The Application, however, includes several riders for which CSP and OPCo have not provided values (proposed rates and charges); these include the Generation Resource Rider¹³ ("GRR"),

⁹ Testimony of Philip J. Nelson at 10.

¹⁰ Application at 5.

¹¹ Testimony of Joseph Hamrock at 8-9.

¹² Rule 4901:1-35-03(C)(2) and (3) and (9), Ohio Administrative Code.

¹³ Witness Roush states, "As discussed by Company witness Nelson, the GRR is a nonbypassable rider designed to collect the costs associated with AEP-Ohio investment in generating facilities in accordance with Section 4928.143 (B)(2)(c), Revised Code. Since AEP-Ohio has no such costs at this time, the rider is simply a placeholder until such time as the Commission approves costs to be recovered. The Turning Point Solar Project, as discussed by Company witnesses Godfrey and Nelson, is anticipated to be the first project included in the GRR." Testimony of David Roush at 11; see also Exhibit DMR-5, p. 144 of 154; Exhibit DMR-6, p. 152 of 162. Witness Nelson confirms that the Companies do not intend to propose a rate for the GRR until a later date. Testimony of Philip Nelson at 23. Thus, CSP and OPCo have not submitted a detailed description of the actual costs that CSP and OPCo intend to recover or the impact upon rates of the proposed charges. CSP and OPCo also have not included the proposed terms for the capacity, energy, and associated rates for the life of Turning Point Solar Project.

Alternative Energy Rider¹⁴ ("AER"), Distribution Investment Rider¹⁵ ("DIR"), Pool Termination and Modification Provision¹⁶ (not a rider, but a condition of the ESP), Generation NERC Compliance Cost Recovery Rider¹⁷ ("NERCR"), and the Facilities Closure Cost Recovery Rider¹⁸ ("FCCR") (hereinafter collectively referred to as the

¹⁴ The AER is designed to collect costs associated with obtaining renewable energy credits ("REC"). The Companies provide a methodology that will be used to calculate these costs but fail to provide an estimate of what the tariff rate may be. Testimony of Philip Nelson at 11-16; Exhibit DMR-5, p. 145 of 154; Exhibit DMR-6, p. 152 of 162.

¹⁵ The Companies do not provide an estimate of the costs to be recovered through the DIR, even though the Companies have detailed cost projections. *Columbus Southern Power Company's and Ohio Power Company's Responses to Public Utilities Commission of Ohio's McCarter Data Request 2*, Case No. 11-346-EL-SSO and 11-348-EL-SSO, Interrogatory No. 001 (attached as Exhibit 1). At best, the Companies provide a rationale for the necessity of distribution investment. Testimony of Thomas Kirkpatrick at 9-17. The testimony of Andrea Moore states that the calculation of DIR can be found at Exhibit AEM-4. Testimony of Andrea Moore at 4. But Exhibit AEM-4 states "TBD" instead of quantifying the cost of the DIR. The proposed Riders for CSP and OPCo also do not indicate what the tariff rate is likely to be. Exhibit DMR-5, p. 134 of 154; Exhibit DMR-6, p. 142 of 162.

¹⁶ CSP and OPCo cannot predict the amount of lost revenue that will be subject to collection through the Pool Termination and Modification Provision. Witness Nelson stated:

"Without knowing the results of discussions with the various stakeholders and the result of the required filing with the FERC, I cannot be precise at this time. However, in general, the Company will compare the lost AEP Pool capacity revenue to increases in net revenue related to new wholesale transaction or decreases in generation asset costs that result from the FERC proceedings related to the AEP Pool. If there is substantial decrease in net revenue then the Company may avail itself of this provision and seek recovery of the lost net revenue from retail customers." Testimony of Phillip Nelson at 30-31.

¹⁷ CSP and OPCo seek recovery of NERC compliance costs but failed to provide an estimate of what those costs may be. The NERCR states, "all customer bills subject to the provisions of this Rider, including any bills rendered under special contract, shall be adjusted by the Generation NERC Compliance Cost Recovery Rider charge of _____. This Rider shall be adjusted periodically to recover amounts authorized by the Commission." Exhibit DMR-5, Page 148 of 154; Exhibit DMR-6, Page 156 of 162. Additionally, Witnesses Moore and Thomas—the only witnesses that speak about NERCR in depth—both fail to estimate the costs that will be recovered through the rider. Testimony of Andrea Moore at 14; Testimony of Laura J. Thomas at 26-27.

¹⁸ When asked whether CSP and OPCo can predict the cost of facility closures, witness Thomas stated, "No. Even for facilities that the Company may be able to determine a closure date, the total closure cost of a facility will be affected by the applicable environmental rules and therefore the Company is unable to determine the total cost. If the Company was able to determine the cost at this time, it would be included in the Company's proposed ESP prices." Testimony of Lauren Thomas at 24-25; see also Exhibit DMR-5, p. 149 of 154; Exhibit DMR-6, p. 157 of 162. Therefore, CSP and OPCo seek pre-approval to close any facilities that CSP and OPCo determine to be uneconomic to operate. *Id.* at 26.

"Placeholder Riders"). Discovery responses from CSP and OPCo confirm that there are no estimates for the values that will be collected through the Placeholder Riders.¹⁹ The Carbon Capture and Sequestration Rider²⁰ ("CCSR") presents a similar problem in that the Companies can only provide a very soft estimate of the project and do not demonstrate that they incurred any costs on this project.

An example of the problems presented by the Placeholder Riders is found in the Application's treatment of the Turning Point Solar Project ("Turning Point"). Turning Point is a proposal to create a solar generating plant on reclaimed OPCo land. It is variously described as a joint venture in which AEP-Ohio, Turning Point Solar, LLC, and possibly others will own or finance the project as a capital lease arrangement in which AEP-Ohio is the lessee, and as a strategy that may be pursued.²¹ Absent from the Application are cost estimates or other evidence of substantial compliance with either Section 4928.143(B)(2)(b) or (c), Revised Code. Yet the Commission is being asked to approve a cost recovery mechanism for Turning Point through the GRR.

Even in areas in which the Application is plowing old ground, the Application comes up wanting. The provider of last resort ("POLR") charge, for example, presents a

¹⁹ *Columbus Southern Power Company's and Ohio Power Company's Responses to Industrial Energy Users-Ohio's Interrogatories, Requests for Production of Documents, Requests for Admission*, Case No. 11-346-EL-SSO and 11-348-EL-SSO, First Set, Interrogatory Nos. 10-27 and 34 (attached as Exhibit 2).

²⁰ The CCSR seeks to recover generation-related environmental research costs incurred by Appalachian Power Company at its West Virginia Mountaineer site. Testimony of Phillip Nelson at 18. CSP and OPCo do not know the price of the West Virginia project. *Id.* at 20; *see also* Exhibit DMR-5, p. 150 of 154; Exhibit DMR-6, p. 158 of 162. Witness Nelson stated, "[t]he total cost for the CCS project is not known at this time and the FEED study will provide a detailed estimate. However, preliminary estimates for the total capital project cost would be about \$610 million with an estimated in-service date of 2015." *Id.* The total cost of the project may vary depending on a number of factors, but the Companies are seeking preapproval to collect these costs from Ohio customers.

²¹ Testimony of Jay Godfey at 21, 24-25, & 29.

problem because CSP and OPCo are seeking approval of a methodology that is detached from any quantified value.²²

In summary, CSP and OPCo's Application seeks to establish an SSO for an entity that is not an EDU. When information is provided, costs and revenues are associated with the entity that may exist after a proposed merger is consummated. Frequently, no rate, cost or revenue information is provided at all, and in at least one instance (POLR), the calculation of a charge is not possible until after the Commission issues its decision (assuming that OPCo and CSP do not elect to terminate and withdraw the Application). Because of these faults, the Application is legally deficient.

Beyond being legally deficient, the administrative complexity of working through the Application and the various statutory implementation scenarios is stunning. As noted above, all of the statutory scenarios for an SSO are driven by an EDU-specific focus, a focus that is inconsistent with the Application. The administrative complexity of the Application's scheme, perhaps by design, will thwart the ability of consumers (all consumers) to understand and predict the electric bills that they will receive if the Application is approved.

It is IEU-Ohio's position that the Application should be dismissed because of its legal shortcomings. But, the relief IEU-Ohio seeks here and now is not motivated alone by a desire that the law be followed.

IEU-Ohio is an organization that speaks on behalf of Ohio businesses (commercial and industrial customers). These businesses must compete in the global economy. They need and want accurate information about CSP's and OPCo's electric

²² Witness Thomas states, "[t]he Company proposes that the Commission approve its POLR methodology as set forth in this testimony. Once the ESP rates, Competitive Benchmark prices and switching rules become final in this proceeding, the Company will provide the final (compliance) POLR charges based on that methodology." Testimony of Laura J. Thomas at 22.

rates and charges to, among other things, develop their operating budgets for periods commencing January 1, 2012 and to evaluate opportunities that may be presented by suppliers of competitive retail electric services. In response to this need, the Application offers obfuscation, mystery, and threats of more of the same. In response to this need, the Application demands that consumers be transformed into involuntary investors in CSP and OPCo with consumers' wealth diverted to the EDUs by a parade of nonbypassable charges that work to also make consumers increasingly responsible for the business and financial risk associated with the EDUs' generation business.

III. ARGUMENT

A. Summary of Argument

The Application for an ESP fails to satisfy the statutory and regulatory requirements. First, the Companies' Application seeking to treat the EDUs as a single entity is inconsistent with the statutory requirement that only an EDU may seek an ESP. Second, the Application fails to provide information necessary to evaluate the effect of the rate increase on each EDU's customers. Third, it fails to provide the information necessary to assess the various proposals contained in the Application. The failures are so significant that dismissal, as in the recent Duke Standard Service Offer case,²³ is the only appropriate remedy.

²³ *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for a Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, Opinion and Order (February 23, 2011) (hereinafter "*Duke SSO*").

B. An Application for an ESP Must be Made by an EDU and Provide Information Concerning that EDU in Conformity with the Commission's Filing Requirements

Section 4928.141, Revised Code, requires that an EDU apply to the Commission to establish an SSO. If the EDU elects to file an application for an ESP, the application is governed by Section 4928.143, Revised Code. Division (A) of that Section provides in relevant part:

[A]n electric distribution utility may file an application for public utilities commission approval of an electric security plan as prescribed under division (B) of this section. The utility may file that application prior to the effective date of any rules the commission may adopt for the purpose of this section, and, as the commission determines necessary, the utility immediately shall conform its filing to those rules upon their taking effect.²⁴

This division creates three requirements relevant to this Motion.

First, only an EDU can file an application for an ESP. "EDU" is a defined term. Section 4928.01, Revised Code, defines "Electric Distribution Utility" as "an electric utility that supplies at least retail electric distribution service." It further defines "Electric Utility" as "an electric light company that has a certified territory and is engaged on a for-profit basis either in the business of supplying a noncompetitive retail electric service in this state or in the businesses of supplying both a noncompetitive and a competitive retail electric service in this state." Nothing other than an EDU is authorized to seek an ESP.

Second, the plan must relate to the terms of service of the EDU. Division (B)(2)(a) provides the opportunity for the EDU to seek automatic recovery of prudently incurred generation costs. Division (B)(2)(b) and (c) are limited to providing cost recovery for construction work in progress and generation facilities dedicated to Ohio

²⁴ Section 4928.143, Revised Code (emphasis added).

customers by the EDU. Divisions (B)(2)(f), (g), (h), and (i) similarly are constrained by reference to the EDU. Although Division (B)(2)(d) and (e) do not specifically mention a limitation to an EDU, they are limited to terms affecting the EDU's "retail electric service" and "standard service offer price," respectively.²⁵

Third, Section 4928.143(B)(2)(a)-(i), Revised Code, requires that the ESP relate specifically to services and charges of an EDU, and just as importantly, those subdivisions detail the exclusive list of what may be included in an ESP. As the Ohio Supreme Court²⁶ recently explained, "[b]y its terms, R.C. 4928.143(B)(2) allows plans to include only 'any of the following' provisions. It does not allow plans to include 'any' provision. So if a given provision does not fit within one of the categories listed 'following' (B)(2), it is not authorized by statute."²⁷

Fourth, the Application must conform to the Commission's filing requirements. The filing requirements are set out in Rule 4901:1-35-03, OAC, and serve as the basis for the Commission to review²⁸ and the customers to understand the scope of the Companies' application. Of particular importance to this motion are subdivision (C)(2)

²⁵ The relevant provisions of Sections 4928.143(C) and 4928.144 similarly apply to only an EDU. The EDU has the burden to demonstrate that the ESP meets the requirement that the ESP is better in the aggregate than the alternative under Section 4928.142, Revised Code, and it only the EDU that may withdraw an ESP if the Commission modifies and approves an ESP not to the EDU's liking. Section 4928.143(C). Finally, the provision regarding deferred cost recovery is similarly limited to the provision of a phase-in plan for an EDU. Section 4928.144, Revised Code.

²⁶ The Application also has a provision that the Supreme Court has concluded constitutes retroactive ratemaking. *In re Application of Columbus Southern Power Co.*, Slip Op. 2011-Ohio-1788 (Apr. 19, 2011) at 5-6 & 8. Specifically, the Application illegally provides that, if the Commission does not issue a final order prior to the end of December 2011, the Companies will utilize a rider "to prospectively collect the difference between the approved ESP rates and the actual rates charged to customers during the period between the end of the December 2011 billing month and the effective date of the approved ESP rates." Testimony of David M. Roush at 12-13.

²⁷ *In re Application of Columbus Southern Power Co.*, Slip Op. 2011-Ohio-1788 (Apr. 19, 2011) at 12.

²⁸ The Commission is charged with evaluating the legitimacy of the terms and conditions of the plan in making a determination whether to approve, dismiss, or modify and approve an ESP application. Section 4928.143(C), Revised Code; *In re Columbus Southern Power Co.*, Slip Op. 2011-Ohio-958 (Mar. 9, 2011) at 8.

which requires “pro forma financial projections of the effect of the ESP’s implementation upon the electric utility . . .” and subdivision (C)(3) which requires “projected rate impacts by customer class/rate schedules for the duration of the ESP.”²⁹ The Commission rules thus make it clear that “placeholders” are not appropriate in an ESP filing.

A company’s failure to comply with the statutory requirements and administrative rules is grounds for dismissing the Application. As the Commission recently determined in *Duke SSO*:

As we stated throughout this order, the Commission finds that Duke’s application does not comply with the statute and, therefore, this case cannot proceed as filed. It is required that Duke provide the information dictated by the statute and delineated in the Commission’s rules, in order for the Commission to determine if the application satisfies the statutory requirements. Duke readily concedes that it did not provide certain information because it was outside of its two-year proposal. Accordingly, the Commission can not find that Duke satisfied the requirements set forth in Rules 4901:1-35-03 and 4901:1-35-11, O.A.C.³⁰

C. CSP and OPCo’s Filing as a Merged Entity Violates the Statutory Condition that an EDU File for an ESP

The Companies’ filing on a combined basis violates the letter of Section 4928.143, Revised Code. The statute requires that an EDU file an application for an SSO, and the rules require the EDU to comply with certain filing requirements. CSP and OPCo are EDUs within the meaning of Section 4928.143, Revised Code. They provide electric retail service in Ohio. Section 4928.01, Revised Code. In contrast, AEP-Ohio does not serve a certified territory, does not provide retail service, and is not

²⁹ Rule 4901:1-35-03(C)(2) and (3), OAC.

³⁰ *Duke SSO*, Case No. 10-2586-EL-SSO, Opinion and Order at 49 (February 23, 2011) (emphasis added).

subject to other commission rules applicable to EDUs such as the requirement to file annual reports. The filing thus does not comply with the letter of the law.

The combined filing's failure to identify terms and conditions applicable to each EDU further violates Sections 4928.143 and 4928.144, Revised Code. The Application's description of Turning Point, for example, fails to identify costs and whether either EDU is an owner and fails to comply with the various requirements of Sections 4928.143(B)(2)(b) or (c), Revised Code. The claim for cost recovery for preliminary costs incurred for the carbon capture and sequestration project at Appalachian Power Co.'s Mountaineer generation plant similarly avoids any demonstration that the costs are properly recoverable under the applicable statutory provisions as costs incurred by either CSP or OPCo to provide generation service to their customers.³¹

Moreover, the Application contains Placeholder Riders for which there is no statutory basis. As noted previously, the Supreme Court has recently concluded that Section 4928.143(B)(2), Revised Code, defines the scope of the charges that may legitimately be included in an ESP.³² The Application, however, contains several Placeholder Riders for which there is no statutory support. The FCCR, which would recover costs for plants closed for any reason, does not relate to the provision of service at all. Other Placeholder Riders such as the NERCER and Pool Modification are not supported by any identifiable provision in Section 4928.143(B)(2), Revised Code.

Even when some information is provided, however, the Application's blending of OPCo and CSP activities is not consistent with the requirement of Section 4928.143

³¹ See note 13 *supra*.

³² *In re Application of Columbus Southern Power Co.*, Slip Op. 2011-Ohio-1788 (Apr. 19, 2011) at 12.
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and Section 4928.144, Revised Code. OPCo's deferred revenue collection amount, for example, is spread to both EDUs' customers. In the pro forma statements, similarly there is no attempt to demonstrate which revenues and costs are properly assigned to each individual EDU. The combined filing thus disguises the real impacts of the proposed ESP, and it is impossible for the Commission to assess the Companies' claim that the ESP is better for OPCo customers or CSP customers on a basis that makes any sense.

D. The Application Fails to Provide the Detailed Cost Information Required by Commission Rules

The problems caused by the combined filing are compounded by the EDUs' non-compliance with Commission rules that require detailed cost and other information. The filing requirements, if nothing else, attempt to provide some transparency to the EDUs' Application. The required pro forma projections, for example, are significant because they give the Commission and customers a picture of the impact of the proposed changes on the EDUs' financial position if the proposed ESP is authorized. In their Application, however, CSP and OPCo filed the pro forma financial projections as if the Companies were already combined. Given the recent finding that CSP had significantly excessive earnings³³ and AEP's management position that the merger will help in managing the risk of SEET reviews,³⁴ the combined company approach has the

³³ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code, Case No. 10-1261-EL-UNC, Opinion and Order (January 11, 2011).*

³⁴ *Columbus Southern Power Company's and Ohio Power Company's Responses to Office of Ohio Consumers' Counsel's Interrogatories and Requests for Production of Documents, Case No. 11-346-EL-SSO and 11-348-EL-SSO, Request for Production of Documents No. 35 (Minutes of Board of Directors Meeting, Oct. 26, 2010) (attached as Exhibit 3).*

potential of preventing the Commission from properly evaluating the financial case for the Application.

The Application's lack of transparency is further complicated by the Placeholder Riders. As noted previously, the EDUs are required to include all expected costs and revenues in the pro forma calculations under Rule 4901:1-35-03(C)(2), OAC. However, the Application does not provide costs or expected revenues for the Placeholder Riders.³⁵ In some cases, such as the DIR, the Companies do not assign costs to the Placeholder Riders even when those costs are actually known.³⁶ Because the EDUs have filed an incomplete Application, the parties and the Commission are required to guess the full impact of the Application on the SSO.

Commission rules further require the EDU to provide estimates of rate impacts and specific costs to be recovered through the ESP. Rule 4901:1-35-03(C)(3) and (9), OAC. Remarkably, the Application and supporting testimony do not attempt to establish what the costs of the Placeholder Riders will be.³⁷ As recent experience demonstrates, this lack of compliance is not an idle concern. In the current proceedings addressing the Environmental Investment Carrying Cost Rider ("EICCR"), for example, the Companies have increased their cost recovery by substantial amounts on the basis of a previously approved rider for which there is little or no constraint on the level of recovery.³⁸

³⁵ CSP and OPco recognize this requirement at page 21 of the Application. Specifically, CSP and OPco requested a waiver of Rule 4901:1-35-03(C)(3) and (9), OAC, for the GRR (Turning Point Solar). But CSP and OPco did not request a waiver of those requirements for any of the other Placeholder Riders.

³⁶ See Footnote 14 *supra*.

³⁷ See text accompanying Footnotes 11-18 *supra*.

³⁸ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company* (C33835:7)

The problems regarding cost estimates, however, are not limited to the Placeholder Riders. In the case of the Provider of Last Resort Rider ("POLR"), the testimony supporting the Application indicates that the Company is proposing only a methodology to price the "option" that customers purchase through their rates for the right to return at the ESP price after having gone with a Competitive Retail Electric Supplier, not the level of recovery itself.³⁹ Due to the method of the calculation of that rider, the revenue to be recovered for the supposed "option" changes based on the relationship between the estimate of the market and the "final" ESP price calculated without the POLR Rider. The Application thus offers at best an estimate on one of the largest revenue drivers, but the POLR charge cannot be calculated until after the Commission enters an order on all other issues in the case. With regard to the POLR, therefore, the Application violates at least the spirit, if not the letter, of the filing requirements.⁴⁰

to Update Their Environmental Investment Carrying Cost Riders, Case No. 11-1337-EL-RDR, Application (March 18, 2011).

³⁹ Application, Testimony of Laura J. Thomas at 22.

⁴⁰ Rule 4901:1-35-3(C)(9)(c) provides:

Division (B)(2)(d) of section 4928.143 of the Revised Code authorizes an electric utility to include terms, conditions, or charges related to retail shopping by customers. Any application which includes such terms, conditions or charges, shall include, at a minimum, the following information:

(i) A listing of all components of the ESP which would have the effect of preventing, limiting, inhibiting, or promoting customer shopping for retail electric generation service. Such components would include, but are not limited to, terms and conditions relating to shopping or to returning to the standard service offer and any unavoidable charges. For each such component, an explanation of the component and a descriptive rationale and, to the extent possible, a quantitative justification shall be provided.

(ii) A description and quantification or estimation of any charges, other than those associated with generation expansion or environmental investment under divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, which will be deferred for future recovery, together with the carrying costs, amortization periods, and avoidability of such charges.

The Placeholder Riders and the troublesome POLR "methodology" further undermine the Commission's ability to compare the Application to the market rate offer alternative. The Commission can approve an ESP only "if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code." Section 4928.143, Revised Code (emphasis added). Failure to quantify the Placeholder Riders renders this comparison meaningless because the Commission cannot evaluate the actual ESP price.

As in the *Duke SSO*, CSP and OPCo's Application fails to comply with the basic filing requirements. The data are combined for a non-existent entity, costs and revenues of each EDU are comingled, and the data that are provided are incomplete. CSP and OPCo, moreover, have indicated that the necessary information will not be available. As in the *Duke SSO*, the Commission is being asked to take on faith that the proposed ESP will satisfy the statutory test. As the Commission concluded in the *Duke SSO*, "[t]he statute does not call for a determination in the situation where a utility files an incomplete application." *Duke SSO* at 26.

(iii) A listing, description, and quantitative justification of any unavoidable charges for standby, back-up, or supplemental power.

IV. CONCLUSION

For the reasons outlined above, the Motion to Dismiss should be granted. This proceeding should be ended before an extraordinary amount of time and money is spent litigating an incomplete application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samuel C. Randazzo", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Dismiss and Memorandum in Support of Industrial Energy Users-Ohio* was served upon the following parties of record this 10th day of May 2011, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.


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Exhibit 1

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
PUBLIC UTILITIES COMMISSION OF OHIO'S
MCCARTER DATA REQUEST 2
CASE NO. 11-346-EL-SSO AND 11-348-EL-SSO**

INTERROGATORY

INT-001. Using the 2010 actual spending levels of AEP, what does AEP anticipate the DIR rider amount to be for 2011, 2012, 2013 (i.e. capital dollars above what is included in rate base)?

RESPONSE

Company Witness Kirkpatrick discusses the capital forecast of Distribution Spend for the years 2011-2013 on page 18 of his testimony. As discussed on Page 18, the DIR will provide a mechanism to support the total capital investment. Based on this, the DIR for the years 2011-2013 would be anticipated to collect capital investments of \$164.4M in 2011, \$242.47M in 2012 and \$271.8 in 2013. Included in these amounts is capital spend related to the Companies' Base Capital spend in the ESRR of \$1.2M for CSP and \$2.4M for OPCo.

Exhibit 2

CSP's and OPCo's Responses to IEU-Ohio's Interrogatories, Requests for Production of Documents, and Requests for Admission, First Set, Case No. 11-346-EL-SSO and 11-348-EL-SSO, Interrogatory Nos. 10-27 and 34.

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-010. Has CSP or OP prepared any estimates of the annual revenues or rates to be collected for the Turning Point Solar Project?

RESPONSE

No.

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-011. Does CSP or OP have any workpapers or documents to support its calculation of the annual revenues or rates to be recovered from ratepayers for the Turning Point Solar Project? If yes, please identify the documents or workpapers in AEP's possession and the individuals that were responsible for the calculations in those documents or workpapers

RESPONSE

See IEU INT-010

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-012. If the answer to Interrogatory No 10 is negative, when does CSP and OP plan to provide an estimate of the rates to be recovered for the Turing Point Solar Project?

RESPONSE

Please see Company's Witness Godfrey's prefiled direct testimony (page 21, line 14-17). "During the upcoming months, the parties would expect to conduct additional due diligence, continue to refine the cost estimates, and work towards the execution of definitive agreements which would memorialize the project structure and timing "

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-013. Has CSP or OP prepared any estimates of the annual revenues or rates to be collected through the Alternative Energy Rider in 2012, 2013, or 2014?

RESPONSE

No.

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-014. Does CSP or OP have any workpapers or documents to support its calculation of the annual revenues or rates to be collected through the Alternative Energy Rider in 2012, 2013, or 2014? If yes, please identify the documents or workpapers in AEP's possession and the individuals that were responsible for the calculations in those documents or workpapers

RESPONSE

See response to IEU INT-013.

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-015 If the answer to Interrogatory No 13 is negative, when does CSP or OP plan to provide the rates to be collected through the Alternative Energy Rider in 2012, 2013, and 2014?

RESPONSE

The Company will file the AER Energy Rider rates concurrently with its FAC filing for rates effective January 1, 2012. It is anticipated that this filing will be made in the fourth quarter of 2011

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-016 Has CSP or OP prepared any estimates of the annual revenues or rates to be collected through the Generation Resource Rider in 2012, 2013, or 2014?

RESPONSE

The project that is currently anticipated to be recovered through rider GRR is the Turning Point project. See response to IEU INT-010.

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-017. Does CSP or OP have any workpapers or documents to support its calculation of the annual revenues or rates to be collected through the Generation Resource Rider in 2012, 2013, or 2014? If yes, please identify the documents or workpapers in AEP's possession and the individuals that were responsible for the calculations in those documents or workpapers.

RESPONSE

No. See also IEU INT-010 and Company witness Roush's testimony page 11

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-018. If the Answer to Interrogatory No. 16 is negative, when does CSP and OP plan to provide the rates to be collected through the Generation Resource Rider in 2012, 2013, and 2014?

RESPONSE

See IEU INT-012.

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-019. Has CSP or OP prepared any estimates of the annual revenues or rates to be collected through the Distribution Investment Rider in 2012, 2013, or 2014?

RESPONSE

No. The worksheet referenced in Company witness Moore's testimony was only meant to show how the rider would be calculated.

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-020. Does CSP or OP have any workpapers or documents to support its calculation of the annual revenues or rates to be collected through the Distribution Investment Rider in 2012, 2013, or 2014? If yes, please identify the documents or workpapers in AEP's possession and the individuals that were responsible for the calculations in those documents or workpapers.

RESPONSE

The Company does not have any workpapers or documents that support the calculation of annual revenues or rates to be collected through the Distribution Investment Rider in 2012, 2013 and 2014.

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-021. If the answer to Interrogatory No. 19 is negative, when does CSP and OP plan to provide the rates to be collected through the Distribution Investment Rider in 2012, 2013, and 2014?

RESPONSE

The Company would provide the rates to be collected through the Distribution Investment Rider when the FERC Form 1 for 2011 is available, estimated to be May of 2012.

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-022. Has CSP or OP prepared any estimates of the annual revenues or rates to be collected through the NERC Compliance Rider in 2012, 2013, or 2014?

RESPONSE

No such estimates have been prepared at this time.

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-023. Does CSP or OP have any workpapers or documents to support its calculation of the annual revenues or rates to be collected through the NERC Compliance Rider in 2012, 2013, or 2014? If yes, please identify the documents or workpapers in AEP's possession and the individuals that were responsible for the calculations in those documents or workpapers.

RESPONSE

See IEU INT-022

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-024. If the answer to Interrogatory No 22 is negative, when does CSP and OP plan to provide the rates to be collected through the NERC Compliance Rider in 2012, 2013, and 2014?

RESPONSE

On an annual basis, AEP Ohio will request recovery under the proposed rider of the specific costs incurred during the previous year.

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-025. Has CSP or OP prepared any estimates of the annual revenues or rates to be collected through the Facility Closure Cost Recovery Rider in 2012, 2013, or 2014?

RESPONSE

No such estimates have been prepared at this time.

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-026. Does CSP or OP have any workpapers or documents to support its calculation of the annual revenues or rates to be collected through the Facility Closure Cost Recovery Rider in 2012, 2013, or 2014? If yes, please identify the documents or workpapers in AEP's possession and the individuals that were responsible for the calculations in those documents or workpapers

RESPONSE

See IEU INT-025. Also, see the testimony of Company witness Thomas, pages 24-25

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-027 If the answer to Interrogatory No. 25 is negative, when does CSP
and OP plan to provide the rates to be collected through the
Facility Closure Cost Recovery Rider in 2012, 2013, and 2014?

RESPONSE

Please see the testimony of Company witness Thomas, page 25.

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
INDUSTRIAL ENERGY USERS-OHIO'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
FIRST SET**

INTERROGATORY

INT-034. Besides the riders listed in Interrogatories Nos. 13-33, are there any riders in the ESP filing that CSP or OP has not provided the annual revenues or rates to be recovered in 2012, 2013, or 2014? If the answer is yes, please identify those riders

RESPONSE

Yes, the Carbon Capture and Sequestration Rider.

Exhibit 3

AMERICAN ELECTRIC POWER COMPANY, INC.

Board of Directors

October 26, 2010

Pursuant to notice a meeting of the Board of Directors of American Electric Power Company, Inc. was held at the Northridge Country Club, 120 Bill Rogers Drive, Texarkana, Texas commencing at 9:30 a. m. on Tuesday, October 26, 2010.

1. Roll Call

Present: E. R. Brooks L. A. Hudson, Jr.
D.M. Carlton M. G. Morris
R. D. Crosby, Jr. L. L. Nowell, III
J. F. Cordes K. D. Sullivan
T. E. Hoaglin S. M. Tucker

Phone: L. A. Goodspeed J. F. Turner
R. L. Sandor

This constituted the full Board and a quorum was declared.

Present from the Company were Carl L. English, Venita McCellon-Allen, Nicholas K. Akins, Robert P. Powers, Brian X. Tierney, D. Michael Miller, Barbara D. Radous, Todd D. Busby and Jeffrey D. Cross, all of whom are officers of the Company's subsidiary, American Electric Power Service Corporation.

Michael G. Morris, Chairman of the Company, presided over the meeting and Jeffrey D. Cross, Assistant Secretary of the Company, acted as secretary of the meeting.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

