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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

2011 MAY 16 PM 4: 53

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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

APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT
OF INDUSTRIAL ENERGY USERS-OHIO

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May 16, 2011

Attorneys for Industrial Energy Users-Ohio

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APPLICATION FOR REHEARING OF INDUSTRIAL ENERGY USERS-OHIO

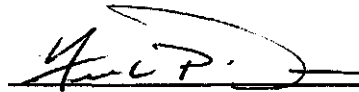
Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), Industrial Energy Users-Ohio ("IEU-Ohio"), respectfully submits this Application for Rehearing of the Entry issued by the Public Utilities Commission of Ohio ("Commission") on May 4, 2011 on the electric security plan ("ESP") of Columbus Southern Power Company and Ohio Power Company (individually "CSP" and "OP", respectively, and collectively "Companies" or "AEP-Ohio"). Although the Commission properly found that OP and CSP should file new tariffs in conformance with the Supreme Court decision remanding the March 18, 2009 Opinion and Order, IEU-Ohio seeks rehearing for the following reasons:

1. The Commission's May 4, 2011 Entry unreasonably and unlawfully failed to fully identify the flow-through effects on consumers' electric bills as such effects must be addressed for purposes of complying with the Supreme Court's remand.

2. The Commission's May 4, 2011 Entry unreasonably and unlawfully failed to suspend the tariffs for the Environmental Investment Carrying Cost Riders of OP and CSP.

As discussed in greater detail in the Memorandum in Support attached hereto, IEU-Ohio respectfully requests that the Commission grant this Application for Rehearing and initiate proceedings to assure that customers are afforded the full protections required by the Supreme Court's decision to remand the Opinion and Order to the Commission.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

On March 18, 2009, the Commission issued an Opinion and Order modifying and approving ESPs for OP and CSP. Based on appeals by IEU-Ohio and the Ohio Consumers' Counsel ("OCC"), the Ohio Supreme Court reversed and remanded the Opinion and Order to the Commission on April 19, 2011. The Supreme Court found that the Commission engaged in retroactive ratemaking when it permitted OP and CSP to collect \$63 million in revenues while the ESP Applications were pending. It reversed and remanded the Opinion and Order because it found that the Commission's determination that the Provider of Last Resort ("POLR") charge was cost based and was not supported by the manifest evidence. Finally, it reversed and remanded the Opinion and Order because it found that the Commission incorrectly applied Section 4928.143(B)(2), Revised Code, as the basis for allowing OP and CSP to collect revenues for the carrying costs of environmental investments from 2001 to 2008. In response to the Supreme Court's remand, the Commission on May 4, 2011 ordered OP and CSP to file revised tariffs that were adjusted to remove the effects of the POLR

charge and the effects of the carrying costs for environmental investments from 2001 to 2008.

Although strongly supportive of the Commission's decision to order OP and CSP to file revised tariffs, IEU-Ohio files this Application for Rehearing to assure that it has protected its position set out in a motion filed May 10, 2011 urging the Commission to take additional action to assure that the full effects of the Supreme Court's decision are identified and addressed in these cases and any other related matters currently pending before the Commission or expected to be before the Commission.

It may be that the Commission's decision to order OP and CSP to file revised tariffs for the balance of the current ESP period was not a decision regarding the full scope of actions the Commission must take to fully comply with the Supreme Court's decision but rather an initial step in the Commission's compliance effort. While IEU-Ohio believes it would be sensible to read the Commission's May 4, 2011 decision in these proceedings as a logical first step in the compliance effort, IEU-Ohio is also mindful that OP and CSP will likely make any legal argument they can to keep all the benefits OP and CSP have or will collect pursuant to their ESPs as modified and approved by the Commission in early 2009. Because of IEU-Ohio's concern about the legal arguments that OP and CSP will launch in the days ahead, IEU-Ohio seeks rehearing.

For the reasons explained above, it is IEU-Ohio's position that the Commission's May 4, 2011 Entry in these proceedings is unreasonable and unlawful because it fails to address the full range of the effects of the Supreme Court's remand and direct OP and CSP to comprehensively address such effects for purposes of establishing current rates

and charges as well as the rates and charges that OP and CSP may be lawfully eligible to collect in the future. The full range of effects is illustrated in a motion which IEU-Ohio filed in these proceedings on May 10, 2011 and such motion is hereby incorporated herein by reference.¹

The Commission is aware that IEU-Ohio has asked that the Commission address the full scope of the revenue effects that arise as a result of the Supreme Court's Decision. To assure that these concerns are properly before the Commission and given the rather unusual posture of the cases, IEU-Ohio is filing this Application for Rehearing. Because the May 4, 2011 Entry was limited to correcting the current ESP tariff schedules, the directives in the May 4, 2011 Entry will not fully address other elements of the ESP (as it was modified and approved by the Commission) that may result in charges that OP and CSP intend to impose on consumers. The additional areas of concern that must be addressed by the Commission include: the deferred revenue collection opportunity enabled by the bill increase limitations in the current ESP; delta revenue resulting from reasonable arrangements and, in effect, Universal Service Fund ("USF") collection; the calculation of base revenues in the current ESP application (recognizing the current ESP may remain in effect beyond December 31, 2011 in the event a new rate plan is not lawfully authorized to be effective on January 1, 2012); and, reviews of OP and CSP earnings required under Section 4928.143(F), Revised Code.²

¹ Motion Requesting Commission Orders to Bring Electric Security Plans of Ohio Power Co. and Columbus Power Company Co. into Compliance with the Ohio Supreme Court's Decision and Other Relief and Memorandum in Support (filed May 10, 2011)

² As noted in the May 10, 2011 Motion, this list of areas affected by the current rates is not intended to be exhaustive.

Additionally, IEU-Ohio urges that the Commission grant rehearing to address the effect of the Supreme Court's decision on the Environmental Investment Carrying Cost Riders of OP and CSP. (In its Comments due May 25, 2011, IEU-Ohio will be raising a similar issue regarding OP and CSP's current application.³) Although OCC's assignment of error was limited to the revenue effects of the 2001-2008 incremental environmental investment carrying costs, the Supreme Court's decision does not appear so limited.⁴ As the Supreme Court has made clear, the Commission cannot authorize collection of revenues for items not set out in one of the categories listed in Section 4928.143(B)(2), Revised Code.⁵ Conversely, the Commission may authorize only an ESP that is in compliance with the provisions of Section 4928.143, Revised Code.⁶ Just as there was no statutory basis for the revenue requirement for 2001-2008 environmental investment carrying costs, the Opinion and Order provides no indication of any statutory basis for additional revenues for the 2009 investment carrying costs.⁷ For this reason, therefore, IEU-Ohio urges the Commission to suspend the Companies' current EICCR tariffs that permit the Companies to collect approximately \$60 million during the current ESP period.

For the reasons outlined above, and those stated in the May 10, 2011 Motion and incorporated herein by reference, IEU-Ohio urges the Commission to grant its

³ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Establish Environmental Investment Carrying Cost Riders*, Case No. 11-1337-EL-RDR.

⁴ *In re Application of Columbus Southern Power Co.*, Slip Op. No 2011-Ohio-1788 at ¶¶ 31-35 (Apr. 19, 2011).

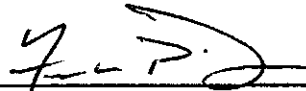
⁵ *Id.*

⁶ Section 4928.141, Revised Code.

⁷ Opinion and Order at 29-30.

Application for Rehearing and begin the important process of assuring the electric bill increases that CSP and OP were unlawfully authorized to bill and collect from consumers are fully and completely removed from current rates as well as any revenue that OP or CSP may have been authorized to collect in the future.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio* was served upon the following parties of record May 16, 2011, via electronic transmission, hand-delivery or first class mail, postage prepaid.


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