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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Columbus Southern Power Company for ) Case No. 08-917-EL-SSO  
Approval of its Electric Security Plan; an )  
Amendment to its Corporate Separation )  
Plan; and the Sale or Transfer of Certain )  
Generation Assets. )

In the Matter of the Application of Ohio )  
Power Company for Approval of its ) Case No. 08-918-EL-SSO  
Electric Security Plan; and an Amendment )  
to its Corporate Separation Plan. )

**MOTION TO REJECT TARIFFS FILED BY  
COLUMBUS SOUTHERN POWER COMPANY AND  
OHIO POWER COMPANY  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL  
AND  
OHIO PARTNERS FOR AFFORDABLE ENERGY**

PUCO

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential electric customers of the Ohio Power Company ("OP") and Columbus Southern Power Company ("CSP," together with OP, the "Companies" or "AEP Ohio"), and Ohio Partners for Affordable Energy ("OPAE," and jointly with OCC, "Movants"), an Ohio corporation with a stated purpose of advocating for affordable energy policies for low and moderate income Ohioans, file this Motion to Reject Tariffs<sup>1</sup> filed by CSP and OP on May 11, 2011. Movants further seek a Public Utilities Commission of Ohio ("PUCO" or "Commission") order directing the Companies to, without further delay, file and

<sup>1</sup> This Motion is filed pursuant to Ohio Adm. Code 4901-1-12.

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implement tariffs that fully remove provider of last resort ("POLR") and environmental carrying charges from rates paid by customers. The filing of such tariffs was ordered by the PUCO in its May 4, 2011 Entry ("May Entry").

This pleading is filed to ensure that the Companies' customers receive the full protection ordered by the PUCO in its May Entry. The PUCO ordered the Companies to "remove" the POLR charges and environmental carrying cost charges from the Companies' tariffs. The tariffs filed by the Companies, however, do not conform to the May Entry because AEP Ohio failed to remove the entire POLR charge that was approved by the PUCO in the Companies' electric security plan ("ESP"). This failure and the matters required to correct the situation are further explained in the attached Memorandum in Support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

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On April 19, 2011, the Ohio Supreme Court issued an opinion on the appeals filed by OCC and the Industrial Energy Users-Ohio ("IEU-Ohio") from the PUCO's March 18, 2009 Opinion and Order ("2009 Order"). The Supreme Court reversed the PUCO's 2009 Order on three grounds -- retroactive ratemaking, POLR charges, and carrying charges on environmental investment.<sup>2</sup> The Court also remanded the 2009 Order to the Commission for further proceedings.<sup>3</sup>

On May 4, 2011, the Ohio Supreme Court issued a mandate to the Commission. Also on May 4, 2011, the Commission issued its May Entry. In the May Entry, the

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<sup>2</sup> The three grounds where the Court found the Commission committed error were 1) with respect to unlawfully allowing a retroactive rate increase (OCC Prop. of Law 1, 2, and 3); 2) the inclusion of items in the electric security plan that are not specifically authorized by R.C. 4928.143(B)(2) (OCC Prop. of Law 6); and 3) in approving a POLR charge (OCC Prop. of Law 5; IEU-Ohio Prop. of Law 3). The Court upheld the Commission on six other grounds raised by IEU-Ohio. *In re: Application of Columbus Southern Power Co.*, Slip Op. No. 2011-Ohio-1788.

<sup>3</sup> Id. at ¶¶29, 30, and 35.

Commission noted the recent rulings of the Court and, “[p]ursuant to the Court’s decision,” directed AEP Ohio to file revised tariffs by May 11, 2011 that “would remove the POLR charges and environmental carrying cost charges associated with investments made from 2001 through 2008, from the Companies’ tariffs.”<sup>4</sup> The Commission also directed AEP Ohio to make an appropriate filing if the Companies intend to seek a POLR charge, whether or not the Companies seek approval of a POLR charge based upon costs. The PUCO advised that the Companies may also seek recovery of environmental carrying charges that were addressed by the Court’s opinion.<sup>5</sup>

On May 11, 2011, the Companies filed tariffs purporting to respond to the May Entry. In its filing, the Companies alleged that the tariffs complied with the Commission’s Entry. In its filed tariffs, AEP Ohio took a three-step approach which included, among other things, setting the POLR rates at “pre-ESP levels (2008 POLR rates).”<sup>6</sup> Nonetheless, the Companies requested that the Commission reject the tariffs, allowing the current tariffs to remain in place, collecting charges that the Supreme Court ruled are not justified. Alternatively, the Companies asked that the PUCO hold the tariffs in abeyance until after such time that the PUCO conducts a remand proceeding.<sup>7</sup> This too would require allowing the current tariffs to remain in place, collecting charges from customers as though the Supreme Court had upheld the charges and not reversed the PUCO.

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<sup>4</sup> May Entry at ¶(4).

<sup>5</sup> Id. at ¶(5).

<sup>6</sup> *In re AEP Ohio First ESP Case*, Case Nos. 08-917-EL-SSO, et al., Tariff Filing Enclosure Letter (May 11, 2011) (“*AEP Ohio First ESP Case*”).

<sup>7</sup> Id.

The revised tariffs fail to comply with either the letter or the spirit of the Commission's May Entry. The tariffs should be rejected because they do not comply with the Commission's directives. However, in rejecting the tariffs, Movants do not support maintaining the current tariffs as requested by the Companies. Rather, the Companies should be ordered to immediately file tariffs that comply with the Commission's May Entry -- tariffs that completely remove the POLR charges, including the 2008 "POLR" rates.

While the Companies were ordered to remove the POLR charges and environmental carrying charges from their tariffs, the Companies nonetheless filed tariffs that included pre-ESP 2008 "POLR" rates. But the total POLR charges approved by the Commission in the *AEP Ohio First ESP Case* were not unrelated to the 2008 "POLR" rates. A review of the record in the *AEP Ohio First ESP Case* establishes that the total POLR charge sought (and eventually approved by the PUCO) consisted of an add-on to the 2008 "POLR" rates. Specifically, Exhibit DMR-5 shows the derivation of the revenue requirement requested for POLR as starting with the 2008 POLR charge,<sup>8</sup> and building upon that charge to achieve a proposed total revenue requirement for the POLR charge. Thus, leaving in the 2008 "POLR" charges does not entirely remove the PUCO approved POLR charges from the *AEP Ohio ESP Case* that (as approved) included 2008 "POLR" costs. It is also clear that in the *AEP Ohio First ESP Case* the Commission granted the Companies unavoidable POLR riders that would allow annual collection of "a POLR revenue requirement of \$97.4 million for CSP and \$54.8 million for OP," a total

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<sup>8</sup> See Attachment A.

POLR for both companies of \$152.2 million.<sup>9</sup> The Companies' July 28, 2009 tariff filings and supporting work papers show that the POLR charge in rates is based on a POLR revenue requirement for CSP of \$97,384,098. That revenue requirement, consistent with Schedule DMR-5, consists of a component for 2008 POLR "current rates" of \$14,007,101 plus non-FAC increase of \$83,376,997.<sup>10</sup> Similarly, the Companies' July 28, 2009 tariff filings and supporting workpapers show that the POLR charge in rates is based on a POLR revenue requirement for OP of \$54,801,769. That revenue requirement, consistent with Schedule DMR-5, consists of a component for 2008 POLR of \$38,091,727 plus non-FAC increase of \$16,710,042.<sup>11</sup> Thus, the total POLR for both companies (\$152,185,867) consists of a 2008 POLR component that amounts to \$52,098,828. It is that piece of POLR that remains in the tariff rates filed by the Companies and it is that amount of POLR that should be removed, consistent with the Commission's May 4 Entry.

Moreover, to set the "POLR" at pre-ESP levels assumes that the 2008 POLR charges relate to the actual responsibilities of the Companies to be the provider of last resort. They do not.

In the *AEP Ohio First ESP Case*, the Companies identified the POLR "costs" as costs pertaining to the optionality afforded customers as a result of statutory obligations the Companies must bear.<sup>12</sup> The Commission accepted 90 percent of the Companies'

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<sup>9</sup> *AEP Ohio's First ESP*, Case Nos. 08-917-EL-SSO, et al., Order at 38 (March 18, 2009)

<sup>10</sup> See Tariff Filing, Case Nos. 08-917-EL-SSO, et al., (July 28, 2009) at [60] ("Summary of Requested Rate Increase").

<sup>11</sup> See *id.* at [71].

<sup>12</sup> See, e.g., Company Ex. 2A, Direct testimony of AEP Ohio Witness Baker at 25-26.

quantification of the value of the options to customers, relying upon the Black Scholes option pricing model.<sup>13</sup>

The 2008 “POLR” rates, approved as an outgrowth of the Companies’ Rate Stabilization Plan (“RSP”) proceeding,<sup>14</sup> stand in stark contrast to the ESP approved POLR rates. The 2008 “POLR” charges approved in the RSP pertained to regional transmission organization (“RTO”) administrative charges and carrying charges associated with Construction Work in Progress and in-service plant expenditures.<sup>15</sup> As correctly pointed out by the Companies in their *AEP Ohio First ESP Reply Brief*, the 2008 POLR charges “have nothing to do with POLR costs.”<sup>16</sup> Thus, because they do not represent POLR costs, and the Companies have not identified these costs as qualifying under a specific enumerated provision of R.C. 4928.143(B)(2), they cannot on a stand alone basis be included as an element of the Companies’ ESP standard service offer price.<sup>17</sup>

The Companies did not comply with the PUCO’s May Entry and violated provisions of the Ohio Revised Code, including R.C. 4905.54 and R.C. 4905.56. These statutes require public utilities to comply with PUCO orders, and make it unlawful for any public utility to fail to comply with the PUCO’s directives. Each day that the public utility knowingly fails to comply with an order of the PUCO constitutes a separate offense. R.C. 4905.54 through 4905.61 provide for liability and recourse ranging from

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<sup>13</sup> *AEP Ohio First ESP Case*, Case Nos. 08-917-EL-SSO, et al., Opinion and Order at 40 (March 18, 2009).

<sup>14</sup> *In re AEP Ohio Rate Stabilization Plan*, Case No. 04-169-EL-UNC, Opinion and Order at 27-29 (January 26, 2005).

<sup>15</sup> *Id.*

<sup>16</sup> See Companies’ Reply Brief at 77 (January 14, 2009).

<sup>17</sup> See *In re: Application of Columbus Southern Power Co.*, Slip Op. No. 2011-Ohio-1788 at ¶31-32.



forfeitures to treble damages for violations, and R.C. 4905.99(B) lists an additional penalty for not complying with R.C. 4905.56. These statutes, taken as a whole, establish a regulatory scheme to protect customers and ensure the Commission has the means by which it can “persuade” public utilities to comply with the PUCO’s directives.

The PUCO should find that the Companies did not comply with its May Entry, giving the Companies due notice of their failure to comply. An AEP Ohio pleading in this docket states that the “Commission’s [May] Entry presume[s] that the *entire* amounts of these charges approved as part of the Companies’ ESPs should be eliminated.”<sup>18</sup> Thus, while it is apparent that AEP Ohio understood the meaning of the Commission’s directive in the May Entry, AEP Ohio did not entirely eliminate the POLR charge. AEP Ohio’s actions in proposing tariffs that do not comply will cause a delay in implementing the Commission’s May Entry. What this means to customers is that the rate reductions which were intended to occur and be implemented in May, will likely not be implemented until June, and another \$22 million will be kept by the Companies. Then it is likely the Companies will argue that these collected funds cannot be refunded even if the PUCO determines on remand that the collection was unlawful. If such arguments are accepted, this will amount to a replay of the unfairness that the Supreme Court recognized with respect to the retroactive ratemaking collections.<sup>19</sup>

In light of the deliberate and knowing actions of AEP Ohio, the PUCO should consider assessing a forfeiture penalty upon the Companies, consistent with its ability to do so under R.C. 4905.54. The Commission should also consider, consistent with R.C.

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<sup>18</sup> AEP Ohio’s Motion to Establish a Procedural Schedule for the Remand Proceeding and to Reject or Hold in Abeyance the Tariffs Filed on May 11, 2011 at 8 (May 11, 2011) (emphasis sic).

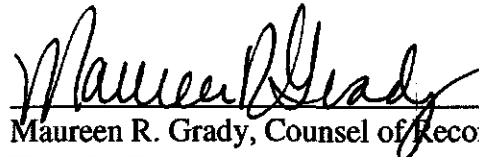
<sup>19</sup> See *In re Application of Columbus Southern Power Co.*, Slip Op. No. 2011-Ohio-1788 at ¶17.

4905.57, directing the Attorney General to prosecute an action to recover forfeitures from the Companies related to the Companies' violation of its May Entry. At a minimum, any further non-compliance by the Companies should automatically trigger the forfeiture provisions of R.C. 4905.54 and require prosecutorial action by the Attorney General at the PUCO's behest.

The Commission should order the Companies to expeditiously file tariffs that comply with the May Entry. Such tariffs should exclude the *entire* POLR rider, including those POLR charges that were identified as 2008 POLR rates and specifically identified on Companies Ex. DMR-5 as "Current" Provider of Last Resort revenues. Only then will the POLR charges have been removed, as the PUCO ordered in its May Entry.

Respectfully submitted,

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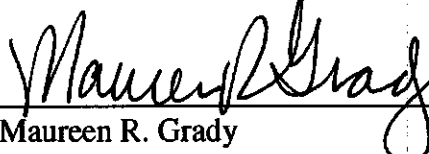
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Counsel for Ohio Partners for Affordable  
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Reject Tariffs was served electronically to the persons listed below, on this 19th day of May, 2011.

  
Maureen R. Grady  
Assistant Consumers' Counsel

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## Calculation of Provider of Last Resort Charge

## Columbus Southern Power Company

Tariff	Forecast		Current		Proposed		Revenue	
	KWh	Rate	Revenue	Increase	Revenue	Rate	Verification	Difference
RS	7,713,795,528	0.0008192	6,319,141	40,575,042	46,894,184	0.0060793	45,894,477	
GS-1	379,610,267	0.0007042	267,322	1,716,465	1,983,786	0.0052258	1,983,767	
GS-2	1,846,387,874	0.0007177	1,396,923	8,969,604	10,366,527	0.0053260	10,366,462	
GS-3	7,657,835,151	0.0005557	4,256,346	27,323,478	31,578,826	0.0041238	31,578,556	
GS4/IRP	4,920,516,766	0.0004711	2,318,065	14,884,174	17,202,229	0.0034960	17,202,127	
SBS	0	0.0005747	0	0	0	0.0042648	0	
SL	40,736,108	0.0002674	10,893	69,943	80,835	0.0019844	80,837	
AL	56,434,205	0.0002348	13,238	85,010	98,250	0.0017410	98,252	
<b>Total</b>	<b>22,715,116,000</b>		<b>14,580,821</b>	<b>93,623,718</b>	<b>108,204,637</b>		<b>108,204,478</b>	<b>(159)</b>

## Ohio Power Company

Tariff	Forecast		Current		Proposed		Revenue	
	KWh	Rate	Revenue	Increase	Revenue	Rate	Verification	Difference
RS	7,685,115,416	0.0016241	12,481,386	6,982,191	19,143,687	0.0024910	19,143,623	
GS-1	379,643,819	0.0018339	696,229	371,626	1,067,855	0.0028128	1,067,862	
GS-2	3,610,723,618	0.0016759	6,773,356	3,615,413	10,388,769	0.0028772	10,388,774	
GS-3	6,632,601,101	0.0013472	8,935,440	4,769,467	13,704,908	0.0020662 *	13,704,280	
GS4/IRP	9,629,838,329	0.0011002	10,594,748	5,656,156	16,249,904	0.0016875	16,250,352	
EHG	25,343,233	0.0019876	50,626	27,022	77,648	0.0030639	77,649	
EH6	472,787	0.0026840	1,222	652	1,874	0.0039633	1,874	
SS	55,650,240	0.0020601	114,069	60,897	174,966	0.0031444	174,967	
CL	59,891,996	0.0009667	23,759	12,682	36,441	0.0006084	36,438	
SL	70,465,298	0.0009666	27,869	14,876	42,745	0.0006066	42,744	
SBS	1,198,162	0.0013108	1,572	839	2,411	0.0020106	2,411	
<b>Total</b>	<b>28,150,945,000</b>		<b>39,700,306</b>	<b>21,190,621</b>	<b>60,891,126</b>		<b>60,890,994</b>	<b>(132)</b>

\* Revised after revenue verification