

FILE

13

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV

2011 JUN -1 PM 5:11

PUCO

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

Case No. 08-917-EL-SSO

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

Case No. 08-918-EL-SSO

---

APPLICATION FOR REHEARING BY INDUSTRIAL ENERGY USERS-OHIO  
OF MAY 25, 2011 ENTRY AND MEMORANDUM IN SUPPORT

---

Samuel C. Randazzo (Counsel of Record)  
Frank P. Darr  
Joseph E. Olikier  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17<sup>TH</sup> Floor  
Columbus, OH 43215  
Telephone: (614) 469-8000  
Telecopier: (614) 469-4653  
sam@mwncmh.com  
fdarr@mwncmh.com  
joliker@mwncmh.com

June 1, 2011

Attorneys for Industrial Energy Users-Ohio

{C34254: }

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.  
Technician Sam Date Processed JUN 02 2011

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

---

**APPLICATION FOR REHEARING BY INDUSTRIAL ENERGY USERS-OHIO OF MAY  
25, 2011 ENTRY**

---


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 25, 2011 on the Electric Security Plans ("ESP") of Columbus Southern Power Company and Ohio Power Company (individually "CSP" and "OP", respectively, and collectively "Companies" or "AEP-Ohio"). IEU-Ohio seeks rehearing for the following reasons:

1. The Commission in its May 25, 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 in its May 25, 2011 Entry unreasonably and unlawfully failed to suspend or order the collection of the Environmental Investment Carrying Cost Riders of OP and CSP to be collected subject to refund.

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,



---

Samuel C. Randazzo  
Frank P. Darr  
Joseph E. Olier  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17<sup>TH</sup> Floor  
Columbus, OH 43215  
Telephone: (614) 469-8000  
Telecopier: (614) 469-4653  
sam@mwncmh.com  
fdarr@mwncmh.com  
joliker@mwncmh.com

**Attorneys for Industrial Energy Users-Ohio**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

---

**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 for the time the ESP Applications were pending after January 1, 2009. 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 was not supported by the manifest evidence. Finally, it reversed and remanded the Opinion and Order because it found that the Commission incorrectly used 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. On May 25, 2011, the Commission, in apparent response the Companies' motion to collect rates subject to refund and over the objections of IEU-Ohio and others, directed the Companies to file revised tariffs that permitted the Companies to continue to collect POLR charges and revenues associated with the 2001-2008 incremental environmental investments subject to refund.<sup>1</sup>

Additionally, the Commission established a procedural schedule to allow it to address the issues remanded by the Court. In defining the scope of the hearing, the Commission stated that the Companies and intervenors "should be afforded an opportunity to present testimony and to offer additional evidence in regard to the POLR and environmental carrying charges remanded to the Commission. The parties may address the amount of the POLR charges at issue and the rate of interest charges applicable, if any."<sup>2</sup>

Although strongly supportive of the Commission's recognition that the Companies should be at risk for the collection of the revenues associated with the issues remanded by the Supreme Court (but obviously more supportive of them not collecting anything that the Supreme Court found was not properly recoverable), IEU-Ohio files this Application for Rehearing to assure that it has protected its position set out in the 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 or expected to be before the Commission.

---

<sup>1</sup> Entry at 4.

<sup>2</sup> *Id.*

While IEU-Ohio believes it would be sensible to read the Commission's May 4 and 25, 2011 Entries 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. The Companies' responses to IEU-Ohio's May 10, 2011 Motion and Application for Rehearing demonstrate their willingness to advance arguments that if accepted would severely constrain the ability of the Commission to address the full range of the revenue effects of the remanded issues.<sup>3</sup> Because of IEU-Ohio's concern about the legal arguments that OP and CSP will launch in the days ahead, IEU-Ohio seeks rehearing.

It is IEU-Ohio's position that the Commission's May 25, 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. A range of effects is illustrated in the motion which IEU-Ohio filed in these proceedings on May 10, 2011, and the motion is hereby incorporated by reference.<sup>4</sup>

Because the May 25, 2011 Entry may be limited to setting a procedural schedule that addresses only the appropriate level of the POLR charge, revenue level for 2001-

---

<sup>3</sup> AEP Ohio's Memorandum in Opposition to IEU Ohio's Application for Rehearing (May 25, 2011); Columbus Southern Power Co. and Ohio Power Co.'s Memorandum in Opposition to Industrial Energy Users-Ohio's Motion Requesting Commission Orders (May 25, 2011).

<sup>4</sup> 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 (May 10, 2011)

2008 carrying costs for the remainder of the ESP period, and any interest payable on refunds, the directives in the May 25, 2011 Entry will not fully address other elements of the ESPs (as they were 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); recovery of revenues through the Companies' environmental riders, and reviews of OP and CSP earnings required under Section 4928.143(F), Revised Code.<sup>5</sup>

IEU-Ohio is fully aware that the first necessary step, now that the Commission has ordered the affected tariffs be filed for collection subject to refund, is to address what, if any, revenues should be collected. Once that determination is made, then the full import of that decision can be reflected in the various other matters and proceedings identified in the May 10, 2011 Motion.

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 ("EICCR") of OP and CSP. This issue was also raised in the prior Application for Rehearing and is raised again here to assure that the issue is preserved. (In its Comments filed May 20, 2011, IEU-Ohio addressed a similar issue regarding OP and

---

<sup>5</sup> As noted in the May 10, 2011 Motion, this list of areas affected by the current rates is not intended to be exhaustive.

CSP's current application to increase the EICCR.<sup>6</sup>) Although the Supreme Court's decision was limited to the revenue effects of the 2001-2008 incremental environmental investment carrying costs, the import of the decision does not appear so limited.<sup>7</sup> 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.<sup>8</sup> Conversely, the Commission may authorize only revenue recovery that complies with the provisions of Section 4928.143, Revised Code.<sup>9</sup> 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 environmental investment carrying costs.<sup>10</sup> For this reason, therefore, IEU-Ohio urges the Commission's May 25, 2011 Entry was unlawful and unreasonable because it failed to either suspend the Companies' current EICCR tariffs that permit the Companies to collect approximately \$60 million during the current ESP period or direct the Companies to file tariffs that permit collection subject to refund.

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 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

---

<sup>6</sup> *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, Motion to Intervene and Comments of IEU-Ohio (May 20, 2011); *id.*, Reply Comments (May 31, 2011).

<sup>7</sup> *In re Application of Columbus Southern Power Co.*, Slip Op. No. 2011-Ohio-1788 at ¶¶ 31-35 (Apr. 19, 2011).

<sup>8</sup> *Id.*

<sup>9</sup> Section 4928.141, Revised Code.

<sup>10</sup> Opinion and Order at 29-30.



consumers are removed from current rates as well as any claims for revenue that OP or CSP may seek to collect in the future.

Respectfully submitted,



---

Samuel C. Randazzo

Frank P. Darr

Joseph E. Olikar

MCNEES WALLACE & NURICK LLC

21 East State Street, 17<sup>TH</sup> Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

sam@mwncmh.com

fdarr@mwncmh.com

joliker@mwncmh.com

**Attorneys for Industrial Energy Users-Ohio**

## **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 June 1, 2011, via electronic transmission, hand-delivery or first class mail, postage prepaid.

  
\_\_\_\_\_  
Frank P. Darr

Steven T. Nourse  
American Electric Power Service Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215

Selwyn J. R. Dias  
Columbus Southern Power Company  
Ohio Power Company  
88 E. Broad Street – Suite 800  
Columbus, OH 43215

Daniel R. Conway  
Porter Wright Morris & Arthur  
Huntington Center  
41 S. High Street  
Columbus, OH 43215

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

David F. Boehm  
Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202

**ON BEHALF OF OHIO ENERGY GROUP**

John W. Bentine  
Mark S. Yurick  
Chester, Willcox & Saxbe LLP  
65 East State Street, Suite 1000  
Columbus, OH 43215-4213

**ON BEHALF OF THE KROGER CO.**

Janine L. Migden-Ostrander  
Consumers' Counsel  
Maureen R. Grady, Counsel of Record  
Terry L. Etter  
Michael E. Idzkowski  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485

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

Barth E. Royer, Counsel of Record  
Bell & Royer Co. LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927

Nolan Moser  
Air & Energy Program Manager  
The Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212-3449

Trent A. Dougherty  
Staff Attorney  
The Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212-3449

**ON BEHALF OF THE OHIO ENVIRONMENTAL  
COUNCIL**

David C. Rinebolt  
Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, OH 45839

**ON BEHALF OF OHIO PARTNERS FOR AFFORDABLE ENERGY**

Richard L. Sites  
Ohio Hospital Association  
155 E. Broad Street, 15<sup>th</sup> Floor  
Columbus, OH 43215-3620

Thomas O'Brien  
Matthew Warnock  
Bricker & Eckler  
100 South Third Street  
Columbus, OH 43215

**ON BEHALF OF THE OHIO HOSPITAL ASSOCIATION**

David I. Fein  
Cynthia Fonner  
Constellation Energy Group  
550 W. Washington Street, Suite 300  
Chicago, IL 60661

**ON BEHALF OF CONSTELLATION ENERGY GROUP**

Howard Petricoff  
Stephen M. Howard  
Michael Setterini  
Vorys, Sater, Seymour & Pease LLP  
52 E. Gay Street  
Columbus, OH 43215

**ON BEHALF OF CONSTELLATION NEW ENERGY AND  
CONSTELLATION NEW ENERGY COMMODITIES  
GROUP, DIRECT ENERGY SERVICES, LLC,  
INTEGRYS ENERGY SERVICES, INC., NATIONAL  
ENERGY MARKETERS ASSOCIATION, OHIO SCHOOL  
OF BUSINESS OFFICIALS, OHIO SCHOOL BOARDS  
ASSOCIATION, BUCKEYE ASSOCIATION OF SCHOOL  
ADMINISTRATORS, AND ENERNOC, INC.**

Craig G. Goodman  
National Energy Marketers Association  
3333 K. Street, N.W., Suite 110  
Washington, D.C. 20007

**ON BEHALF OF NATIONAL ENERGY MARKETERS ASSOCIATION**

Barth Royer  
Bell & Royer Co. LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927

Gary Jeffries  
Dominion Resources Services  
501 Martindale Street, Suite 400  
Pittsburgh, PA 15212-5817

**ON BEHALF OF DOMINION RETAIL, INC.**

Henry W. Eckhart  
2100 Chambers Road, Suite 106  
Columbus, OH 43212  
henryeckhart@aol.com

**ON BEHALF OF THE SIERRA CLUB, OHIO CHAPTER,  
AND THE NATURAL RESOURCES DEFENSE COUNCIL**

Matthew Warnock  
Bricker & Eckler  
100 South Third Street  
Columbus, OH 43215

Kevin Schmidt  
The Ohio Manufacturers' Association  
33 North High Street  
Columbus, OH 43215

**ON BEHALF OF THE OHIO MANUFACTURERS' ASSOCIATION**

Larry Gearhardt  
Ohio Farm Bureau Federation  
280 North High Street, P.O. Box 182383  
Columbus, OH 43218

**ON BEHALF OF THE OHIO FARM BUREAU FEDERATION**

Keith C. Nusbaum  
Sonnenschein Nath & Rosenthal  
1221 Avenue of the Americas  
New York, NY 10020-1089

Clinton A. Vince  
Emma F. Hand  
Daniel D. Bamowski  
Douglas G. Bonner  
Sonnenschein Nath & Rosenthal  
1301 K Street NW  
Suite 600, East Tower  
Washington, DC 20005

**ON BEHALF OF ORMET PRIMARY ALUMINUM CORPORATION**

Stephen J. Romeo  
Scott DeBroff  
Alicia R. Peterson  
Smigel, Anderson & Sacks  
River Chase Office Center  
4431 North Front Street  
Harrisburg, PA 17110

Benjamin Edwards  
Law Offices of John L. Alden  
One East Livingston Ave.  
Columbus, OH 43215

**ON BEHALF OF CONSUMERPOWERLINE**

Grace C. Wung  
McDermott Will & Emery LLP  
600 Thirteenth Street, NW  
Washington, DC 20005

Douglas M. Mancino  
McDermott Will & Emery LLP  
2049 Century Park East  
Suite 300  
Los Angeles, CA 90067

Steve W. Chriss  
Manager, State Rate Proceedings  
Wal-Mart Stores, Inc.  
2001 SE 10<sup>th</sup> Street  
Bentonville, AR 72716

**ON BEHALF OF THE WAL-MART STORES EAST LP,  
MACY'S INC., AND SAM'S CLUB EAST, LP**

Sally W. Bloomfield  
Terrence O'Donnell  
Bricker & Eckler  
100 South Third Street  
Columbus, OH 43215

**ON BEHALF OF AMERICAN WIND ENERGY  
ASSOCIATION, WIND ON THE WIRES AND OHIO  
ADVANCED ENERGY**

C. Todd Jones  
Christopher Miller  
Gregory Dunn  
Schottenstein Zox and Dunn Co., LPA  
250 West Street  
Columbus, OH 43215

**ON BEHALF OF THE ASSOCIATION OF INDEPENDENT  
COLLEGES AND UNIVERSITIES OF OHIO**

Douglas M. Mancino  
McDermott Will & Emery LLP  
2049 Century Park East  
Suite 3800  
Los Angeles, CA 90067

Gregory K. Lawrence  
McDermott Will & Emery LLC  
28 State Street  
Boston, MA 02109

Steven Huhman  
Vice President  
MSCG  
200 Westchester Ave.  
Purchase, NY 10577

**ON BEHALF OF MORGAN STANLEY CAPITAL  
GROUP, INC.**

Glenn D. Magee  
Abbott Nutrition  
6480 Busch Blvd.  
Columbus, OH 43229

**ON BEHALF OF ABBOTT NUTRITION**

Cheryl Maxfield  
John Jones  
Thomas Lindgren  
Werner Margard  
Assistant Attorneys General  
Public Utilities Section  
180 East Broad Street  
Columbus, OH 43215

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

Greta See  
Attorney Examiner  
Public Utilities Commission of Ohio  
180 East Broad Street, 12<sup>th</sup> Floor  
Columbus, OH 43215

**ATTORNEY EXAMINER**