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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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

COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY'S REPLY TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S AND INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDA CONTRA MOTION TO STRIKE TESTIMONY OUTSIDE THE SCOPE OF THE REMAND PROCEEDING

I. INTRODUCTION

As the Attorney Examiner has acknowledged, "the[se] remand proceedings are narrow in scope, being limited to just two issues[.]" (Entry at p. 6 (June 30, 2011).) Those two issues are Columbus Southern Power Company and Ohio Power Company's (collectively "AEP Ohio" or the "Companies") recovery of provider-of-last-resort ("POLR") charges and of the increases to their base generation rates that enabled them to recover the carrying costs on their incremental 2001-2008 environmental investments ("2001-2008 EICC rate increases"). The Ohio Supreme Court remanded the POLR issue for the Commission to determine "whether a non-cost-based POLR charge is reasonable and lawful" or, "[a]lternatively, . . . whether . . . AEP [can] present evidence of its actual POLR costs." *In re Application of Columbus S. Power Co.,* 128 Ohio St.3d 512, 2011-Ohio-1788, at ¶ 30. The Court remanded the 2001-2008 EICC rate increases for the Commission to determine "whether any of the listed categories of [R.C. 4928.143](B)(2) authorize recovery of environmental carrying charges." *Id.* at ¶ 35.

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The Court did not, however, remand this case to the Commission to consider remedies for AEP Ohio customers who had paid these POLR charges or increased base rates. To the contrary, the Court held that appellant The Office of the Ohio Consumers' Counsel (OCC) *had* no remedy, a conclusion that, the Court acknowledged, "transform[ed] OCC's win on the merits into a somewhat hollow victory." *Id.* at ¶ 17. The Court explained that "*the remedy* provided by law" when challenging a rate increase is to seek a stay of the rates up-front and "post[ ] . . . a bond sufficient to protect the utility against damage." *Id.*, slip op. at p. 6, ¶¶ 17, 20 (citing Ohio Rev. Code § 4903.16) (emphasis added). "OCC did not avail itself of the remedy provided by law[.]" *Id.*, slip op. at p. 6. Nor did appellant Industrial Energy Users-Ohio (IEU). Because the rate complained of had already been charged and collected as a Commission-approved "filed rate," there could be no prospective remedy to reverse the effect of the rate which was later determined to be defective.

IEU-Ohio and the OCC (collectively, "Intervenors") are now attempting to convince the Commission to create new remedies to prospectively reverse the effects of the POLR and environmental carrying charges previously collected. Under the Companies' approved 2008 ESP, a portion of AEP Ohio's annual incremental Fuel Adjustment Clause (FAC) expenses were deferred for recovery after the ESP's term, in order to limit the annual increases in AEP Ohio's new rates. (*See* Opinion and Order at pp. 20-23 (Mar. 18, 2009).) OCC witnesses Dr. Duann and Mr. Thompson and IEU witness Mr. Bowser recommend that the Commission reduce AEP Ohio's recovery of those deferred expenses by an amount equal to the POLR charges and 2001-2008 EICC rate increases collected from AEP Ohio's customers from April 2009 to May 2011. (*See* Duann Testimony at pp. 4-5; Thompson Testimony at p. 6, n.7, and p. 38, n. 51; Bowser Testimony at pp. 9-11.) Dr. Duann explains this would require "re-calculat[ing] the amount of

fuel expenses [already] deferred under the 2009 to 2011 rate caps, and the associated carrying charges[.]" (Duann Testimony at p. 25.) Rather than calling this what it is – retroactive rulemaking – IEU refers to this as "address[ing]" the "flow-through effects" of the POLR charges and 2001-2008 EICC rate increases. (IEU-Ohio Application for Rehearing at p. 1 (May 17, 2011).)

On July 12, 2011, AEP Ohio moved to strike the Intervenors' testimony on the purported "flow-through" effects of the Companies' POLR charges and 2001-2008 EICC rate increases, pursuant to the Attorney Examiner's authority to "[t]ake such actions as are necessary to . . . [a]void unnecessary delay" and "[p]revent the presentation of irrelevant . . . evidence[.]" Rule 4901-1-27(B)(7)(a) and (b), Ohio Admin. Code. On July 15, 2011, OCC and IEU filed memoranda contra AEP Ohio's motion. Because OCC and IEU's testimony and memoranda contra advocate unlawful remedies and do not demonstrate that the challenged testimony is relevant to these limited remand proceedings, the Attorney Examiner should grant AEP Ohio's motion and strike the irrelevant testimony.

II. LAW AND ARGUMENT

As a threshold matter, OCC selectively quotes and mischaracterizes the Commission's June 22 Entry on Rehearing. OCC begins its argument (at p. 2) with the statement that the Commission "determined in an Entry on Rehearing that it '*should* consider any flow through effects on customers' bills' ..." (OCC Memo Contra at 2 (emphasis added by OCC.) This is inaccurate. The Entry on Rehearing actually stated (at ¶ 9) that the Commission's May 25 Entry "does not preclude IEU-Ohio from asserting, during the remand proceeding established by the entry, that the Commission should consider any flow-through effects on customers' bills, as may be necessary to comply with the Court's remand." There is a big difference between the

Commission determining it should consider the flow through effects (as falsely portrayed by OCC) and the Commission determining that IEU was not precluded from arguing that the Commission should consider the flow through effects necessary to implement the Court's remand (which is what actually happened). IEU understands at least part of this important distinction and characterized the Entry on Rehearing (at p. 5) as holding "that nothing in the Commission Orders prevented IEU-Ohio from presenting its arguments and evidence regarding the flow-through effects." Regarding the remainder of the distinction, AEP Ohio would further clarify that the Entry on Rehearing (at ¶ 9) explicitly qualified the flow-through presentation as being limited to only that evidence "as may be necessary to comply with the Court's remand." While AEP Ohio agrees that the Commission has not yet determined the scope of evidence that is necessary to comply with the Court's remand, it is appropriate at this stage in the proceedings to better define the scope of the hearing and the range of evidence that can be presented. AEP Ohio submits that the testimony that is the subject of its motion to strike is beyond the scope of the remand and must be stricken.

Regarding the substantive arguments supporting their positions, OCC and IEU took different tacks in responding to AEP Ohio's motion to strike. OCC agreed with AEP Ohio's assertion that "the scope of remand is governed by the Supreme Court of Ohio's remand instructions[.]" (Memorandum Contra AEP Ohio's Motion to Strike by OCC ("OCC Memo Contra") at p. 3 (July 15, 2011).) OCC apparently agreed that the Court remanded only two issues, the Companies' recovery of POLR charges and the 2001-2008 EICC rate increases. (*See id.* at pp. 3-4.) OCC argued, however, that the Court's use of the word "may" in describing how the Commission might reconsider those issues authorizes the Commission to "[p]rescrib[e] remedies" that go beyond simply removing the POLR charges from AEP Ohio's tariffs and/or

reducing AEP Ohio's base generation rates by the amounts attributable to the 2001-2008 EICC rate increases. (*Id.*) OCC then argued that the "proscription against retroactive rulemaking" in Ohio does not apply "[w]here there is a mechanism built into the rates that permit future rate adjustments to be made[.]" (*Id.* at p. 3.) OCC asserted that the "collection of phase-in deferrals" under the ESP provides such a mechanism. (*Id.*)

IEU raised a number of arguments. *First*, IEU argued that the Commission has already held that IEU may offer testimony in this remand proceeding regarding the purported "flow-through effects" of the POLR charges and 2001-2008 EICC rate increases. (IEU's Memo Contra AEP Ohio's Motion to Strike Testimony ("IEU Memo Contra") at pp. 5-6.) *Second*, IEU argued that because removing the POLR charges and 2001-2008 EICC rate increases from AEP Ohio's tariffs would affect the amount of annual incremental FAC costs deferred for the remainder of the 2008 ESP, IEU's witnesses should be permitted to endorse restrictions on AEP Ohio's recovery of incremental FAC costs that have *already* been deferred. (*Id.* at p. 6.) *Third*, IEU argues that the Companies were supposed to defer only those annual incremental FAC costs that were "over the *allowable total bill increase* percentage levels" (*i.e.*, over the rate increase caps imposed in the 2008 ESP). (*Id.* at p. 7 (citing Mar. 18, 2009 Opinion and Order at p. 22).) Because, IEU asserts, "the Supreme Court subsequently found the POLR charge and the environmental investment revenues to be illegal" – a finding the Ohio Supreme Court never actually made – IEU asserts that a portion of AEP Ohio's deferrals equal to those POLR charges and environmental investment revenues was not "allowable" and must be recovered. *Fourth*, IEU argued that the "filed rate" doctrine does not prevent the Commission from reducing AEP Ohio's future recovery of deferred FAC costs to make up for what it calls an "illegal transfer of consumers' wealth that has already occurred[.]" (*Id.* at p. 10.) *Fifth*, and most confusingly, IEU

argues that the Commission may address the legality of AEP Ohio's recovery under its post-2008 Environmental Investment Carrying Cost Rider ("post-2008 EICCR") because the Commission's ruling that it would *not* address that issue here was somehow filed "in other proceedings." (*Id.* at p. 12.) As shown below, none of these arguments withstands scrutiny.

A. Testimony Endorsing *Post-Hoc* Adjustments to AEP Ohio's Authorized and Already-Deferred FAC Costs Is Outside the Scope of this Proceeding.

IEU first attempts to forestall any discussion of the proper scope of these remand proceedings by insisting that the Commission has already determined the issue. According to IEU, the Commission's Entry on Rehearing "recognized that nothing in the Commission Orders prevented IEU-Ohio from presenting its arguments and evidence regarding the flow-through effects." (IEU Memo Contra at p. 5, citing Entry on Rehearing at ¶ 9 (June 22, 2011).) IEU is only half right. The Commission's Entry on Rehearing declined to rule on the parties' arguments regarding the Commission's duty to consider the so-called "flow-through effects" of the Companies' POLR charges and 2001-2008 EICC rate increases. (Entry on Rehearing at ¶ 9 (June 22, 2011).) Instead, the Commission held that it would consider those arguments during "[t]he remand proceedings established in the May 25, 2011, entry," "which include[ ] the filing of intervenor testimony[.]" (*Id.*) IEU has now had "the opportunity to offer testimony and present its arguments, as well as to respond to any arguments advanced by the Companies," regarding the relevance of these "flow-through" effects. (*Id.*) By the clear text of the Commission's Entry on Rehearing, the Commission must now determine whether IEU's endorsements of retroactive ratemaking should be considered any further in this hearing.

IEU's selective quotation omits, moreover, an important caveat in the Commission's Entry on Rehearing. The Commission held that IEU would be permitted to present arguments "that the Commission should consider any flow-through effects [of the Companies' POLR

charges and 2001-2008 EICC rate increases] on customers' bills, *as may be necessary to comply with the Court's remand.*" (*Id.* (emphasis added).) Reducing AEP Ohio's recovery of already-deferred, annual incremental FAC costs is not necessary to comply with the Court's remand. To the contrary; as explained in AEP Ohio's Motion to Strike (*see* Motion to Strike at p. 6) and further discussed below, it is prohibited by the Court's opinion and longstanding precedent.

OCC, unlike IEU, acknowledges that the Commission permitted IEU to present evidence on the so-called flow-through effects only "as may be necessary to comply with the Court's remand," but argues that this language imposes no meaningful limitation on the presentation of evidence. (OCC Memo Contra at p. 3.) According to OCC, the Court's remand was "permissive in part," because the Court gave the Commission options as to how it "may" reconsider the POLR charges and 2001-2008 EICC rate increases on remand. (*Id.*) Like IEU, OCC is half right. The Court reversed the Commission on its authorization of the POLR charges and 2001-2008 EICC rate increases and remanded these issues to the Commission. *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, at ¶¶ 29, 30, and 35. The Court did not mandate that the Commission undertake any particular action on these issues. What these parties fail to acknowledge, however, is that failure to address the matters and preserving the status quo only serves to leave the existing rates in place and would not enable IEU's or OCC's position to prevail or succeed in any way.

It does not follow, in any case, that the Commission's discretion extends to considering issues *other than* the evidentiary and legal support for the POLR charges and 2001-2008 EICC rate increases. Contrary to OCC's arguments, testimony that recommends retroactively "[a]djusting the FAC deferrals to compensate customers for the . . . POLR [charges] and environmental investment carrying [cost rate increases] that they have paid beginning in April

2009," or other similar "flow-through adjustments," is not relevant to this remand. (OCC Memo Contra at p. 4.) Again, OCC is half right when it asserts, "remedies must be part of the remand in order to fulfill the Court's directive." (*Id.*) If the Commission were to conclude that there was insufficient evidentiary support for the POLR charges (which AEP Ohio disputes), or that the carrying costs on their incremental environmental investments may not be recovered in an ESP (which AEP Ohio also disputes), the Commission would be required to remove those charges and/or rate increases from AEP Ohio's tariff. Per the Commission's May 25 Entry regarding the scope of the remand proceeding, the impact of such a determination on remand would be limited to June 2011 through the end of the year (the period during which the rates are being charged subject to refund). What the Intervenors are asking this Commission to do, however, is "go beyond the correction of the currently authorized revenue for the balance of term of the current ESP[.]" (IEU Motion Requesting Commission Orders at p. 13 (May 10, 2011.) And finding a prospective remedy for AEP Ohio customers' *past* payments of those charges and rate increases is not within the scope of the remand.

B. *Post-Hoc* Adjustments to AEP Ohio's Authorized and Already-Deferred FAC Costs Would Be Prohibited Retroactive Rulemaking.

Indeed, granting Intervenors their requested remedy would be directly contrary to the Court's remand opinion. IEU and OCC argue that the testimony AEP Ohio has moved to strike simply "addresses . . . the flow-through effects of the Supreme Court's remand order on deferred revenues and other regulatory assets and other issues such as delta revenues." (IEU Memo Contra at p. 2; *see also* OCC Memo Contra at p. 2 (asserting that the OCC testimony that AEP Ohio has moved to strike "relates to the 'flowthrough' effects on customers bills of the Companies' POLR charges and the 2001-2008 environmental investment carrying charge rate

increases").) But "flow-through effects" is simply a euphemism for a remedy that the Ohio Supreme Court has already held the Intervenors cannot obtain: restitution.

IEU has said that the Commission must:

- "act to ensure that the economic relationship between the Companies and consumers is rebalanced . . . to reflect the value that the Companies improperly received through the unlawfully authorized revenue increases." (IEU Motion Requesting Commission Orders at p. 7 (May 10, 2011).)
- "ensure that at least some measure of consumers' wealth unlawfully transferred to the Companies is prospectively restored to consumers (perhaps in equivalent value)[.]" (*Id.* at p. 12.)
- "correct and mitigate the . . . consumers' wealth transfer that unjustly enriched OP, CSP, and their one shareholder." (*Id.* at p. 13.)

These are all just elaborate ways of saying that IEU's members want their money back. Admirably, OCC avoids IEU's rhetorical flourishes and explains that what the Intervenors are seeking is "compensat[ion] for the . . . POLR and environmental investment carrying charges that [AEP Ohio's customers] . . . paid beginning in April 2009[.]" (OCC Memo Contra at p. 4.)

As explained above and in AEP Ohio's motion to strike, however, restitution is not an available remedy. "[T]he remedy provided by law" for a purportedly unlawful rate increase is to seek a stay and post a bond, per Ohio Rev. Code § 4903.16. *See In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, at ¶ 20. That is *the* manner in which Ohio's "statutes protect against unlawfully high rates[.]" *Id.* at ¶ 17. Neither Intervenor took advantage of this option. A refund of an unlawful rate increase, which OCC requested in its appeal to the Ohio Supreme Court, is prohibited because Ohio law prohibits retroactive ratemaking. *See id.* at ¶¶ 15-16.

OCC argues that the Ohio Supreme Court's ruling in *Lucas County Commissioners v. Public Utility Commission of Ohio*, 80 Ohio St.3d 344, 686 N.E.2d 501 (1997), creates an exception to the general prohibition against retroactive ratemaking "[w]here there is a mechanism built into the rates that permit future rate adjustments to be made[.]" (OCC Memo

Contra at p. 3, citing *Lucas Cty. Comm'rs*, 80 Ohio St.3d at 348.) And, according to OCC, there is such a mechanism in AEP Ohio's ESP – "the continuation of the ESP rates and collection of phase-in deferrals associated with the FAC from customers during 2012 through 2018." (*Id.*) IEU goes further, arguing that Ohio Rev. Code § 4928.144 and the Commission's March 18, 2009 Opinion and Order *require* the Commission to "restate the deferred revenues." (IEU Memo Contra at p. 8.) According to IEU, deferred FAC costs were calculated as "[a]ny amount over the *allowable* total bill increase percentage levels," and because those levels included the POLR charges and 2001-2008 EICC rate increases, the Commission must now reconsider which of the deferred revenues are "allowable." (*Id.*) These arguments misinterpret, or mischaracterize, the FAC cost deferral mechanism established in the Commission's March 18, 2009 Opinion and Order.

In that Opinion and Order, the Commission exercised its authority under Ohio Rev. Code § 4928.144 and ordered the Companies to "phase-in any authorized increases [in their rates] so as not to exceed, on a total bill basis," certain yearly rate increase caps (*e.g.*, 7% for CSP and 8% for OP in 2009). (Opinion and Order at p. 22 (Mar. 18, 2009).) The Commission explained that "Section 4928.144, Revised Code, also mandates that any deferrals associated with the phase-in authorized by the Commission *shall be collected* through an unavoidable surcharge." (*Id.* (emphasis added)) Accordingly, the Commission held that "[a]ny amount over the allowable total bill increase percentage levels will be deferred . . . with carrying costs[,]" and "any deferred FAC expense balance remaining at the end of 2011 *shall be recovered* via an unavoidable surcharge." (*Id.* at pp. 22-23 (emphasis added).) The Commission further held that "the collection of any deferrals, with carrying costs, . . . *shall occur* from 2012 to 2018[.]" (*Id.* at p. 23 (emphasis added).) The deferrals relate to fuel costs and bear no relationship to uncollected

POLR or environmental carrying costs. For all these reasons, any reduction of these deferred fuel costs based on IEU's/OCC's restitution theory would violate both final and non-appealable aspects of the ESP Order and Ohio Rev. Code § 4928.144.

Absolutely nothing in the Commission's March 18, 2009 Opinion and Order established a mechanism through which the annual incremental FAC costs that AEP Ohio has already deferred between April 2009 and May 2011 may now be second-guessed. When the Commission held that "[a]ny amount over the allowable total bill increase percentage levels will be deferred" (*id.* at p. 22), it meant that any amount *over the yearly rate increase caps* would be deferred. It did not mean, as IEU now argues, that "the deferral mechanism was subject to the deferred revenues being legally recoverable," or that the Commission would be undertaking a review of the deferred revenues after the term of this ESP to "determine[ ] whether any of the deferred revenues are allowable[.]" (IEU Memo Contra at pp. 6, 8.) To the contrary, the Commission's Opinion and Order stated that the deferred revenues "*shall be recovered.*" (Opinion and Order at p. 23 (Mar. 18, 2009) (emphasis added).) This is consistent with Ohio Rev. Code § 4928.144, which states that any incurred costs that are deferred to allow the phase-in of an electric distribution utility rate "shall" be collected "through a nonbypassable surcharge on any such rate or price so established[.]" Ohio Rev. Code § 4928.144.

To the extent the Intervenors' witnesses have submitted testimony on the effect that removing the POLR charges and 2001-2008 EICC rate increases from AEP Ohio's tariffs would have on the deferral of annual incremental FAC costs for the *remainder* of 2011, AEP Ohio has no objections to such testimony (although the Companies, of course, oppose the merits of any such position). Similarly, to the extent the Intervenors' witnesses have submitted testimony regarding the effect that removing the POLR charges and 2001-2008 EICC rate increases from

AEP Ohio's tariffs would have on the calculation of delta revenues or USF recovery for the remainder of the term of the 2008 ESP (*see* IEU Memo Contra at p. 10), such testimony would not be objectionable. But, where the Intervenors' witnesses have testified, for example, that "the Commission [should] order AEP Ohio to re-calculate the amount of fuel expenses deferred under the 2009 to 2011 rate caps, and the associated carrying charges as a result of removing POLR and environmental carrying charges from the rates in effect during the period of April 2009 to May 2011" (Duann Testimony at p. 25), that testimony is impermissible.

"[U]tility ratemaking by the Public Utilities Commission is prospective only." *Lucas Cty. Comm'rs*, 80 Ohio St.3d at 348. Altering the calculation of FAC costs after-the-fact so as to withhold revenues that the Commission previously authorized and deferred is the epitome of retroactive ratemaking and would violate Ohio Rev. Code § 4928.144. OCC may find it "[i]ncredibl[e]" that the POLR charges and 2001-2008 EICC rate increases that AEP Ohio collected between April 2009 and May 2011 cannot be refunded or credited to AEP Ohio's customers. (OCC Memo Contra at p. 2.) IEU may think that a failure to recalculate AEP Ohio's already deferred FAC costs would "work a grave injustice[.]" (IEU Memo Contra at p. 12.) But as the Ohio Supreme Court held, "[a]ny apparent unfairness . . . remains a policy decision mandated by the larger legislative scheme." *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, at ¶ 17.

The fact that the remedy advocated by IEU and OCC is to prospectively adjust deferrals that have not yet been charged does not alter the unlawful nature of the suggested remedy in any way. By definition, no future rate has ever been charged and prospectively changing any rate or deferral would always involve a prospective adjustment to a future rate mechanism. The focus of the retroactive ratemaking prohibition is attempts to cure the effects of rates that have already

been charged. In this case, IEU and OCC are very clear about the basis or premise of their "unjust enrichment" theory – it is the historical POLR and environmental carrying charges rendered by AEP Ohio from 2009 through mid-2011. Prospectively curing for past rates collected and subsequently determined to be unlawful is precisely the nature of unlawful retroactive ratemaking which was reviled with force in the Supreme Court's remand decision. The Commission does not have the authority to reduce AEP Ohio's already-deferred FAC costs retroactively, and any and all testimony discussing or endorsing such an improper remedy should be struck.

C. The Commission's Entry on Rehearing Prohibits IEU's Proffered Testimony on the Companies' Recovery of Carrying Costs for Incremental Environmental Investments Made During 2009-2011.

IEU's final, and most puzzling, argument relates to the Companies' recovery under their post-2008 Environmental Investment Carrying Cost Rider ("post-2008 EICCR") of their carrying costs on incremental environmental investments undertaken in 2009, 2010, and 2011. As AEP Ohio pointed out in its Motion to Strike, the Commission has already held that cost recovery under the post-2008 EICCR "is not subject to attack at this point in the proceedings" because that issue was not raised in the parties' pre-remand applications for rehearing or in their appeals to the Ohio Supreme Court. (*See* AEP Ohio Motion to Strike at p. 6, *quoting* Entry on Rehearing at p. 6 (June 22, 2011).) In response, IEU states:

> While IEU-Ohio recognizes that the Commission has indicated that it will not address the legality of [the] post-2008 component in other proceedings dealing with the Environmental Investment Carrying Cost Rider and the Applications for Rehearing, it should do so in this case since the law applies here regardless of what the Commission may be doing in another case.

(IEU Memo Contra at p. 12.)

IEU appears to be confused. The Commission did not hold that it would not address the legality of the post-2008 EICCR in other proceedings. It held that it would not address that

subject in *this* proceeding. (*See* Entry on Rehearing at pp. 6-7 (June 22, 2011).) Again, IEU fails to recognize the limits of the Commission's jurisdiction on remand – the EICCR was not an issue on appeal and necessarily cannot be an issue on remand. IEU's witness's testimony on the post-2008 EICCR (*see* Bowser Testimony at pp. 11-12) is contrary to the Commission's rulings in *this* proceeding and should be struck.

III. CONCLUSION

For the reasons provided above, Columbus Southern Power Company and Ohio Power Company renew their request that the Commission strike those portions of Messrs. Bowser, Duann, and Thompson's testimony that delve into topics that are outside the scope of the remand and seek remedies that are beyond this Commission's power to grant.

Respectfully Submitted,

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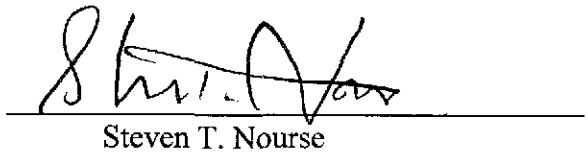
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Columbus Southern Power Company's and Ohio Power Company's Reply to the Office of the Ohio Consumers' Counsel's and Industrial Energy Users-Ohio's Memoranda Contra Motion to Strike Testimony Outside the Scope of the Remand Proceeding has been served upon the below-named counsel and Attorney Examiners via electronic mail this 18th day of July, 2011.



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