

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	Case No. 10-2376-EL-UNC
Power Company and Columbus Southern	)	
Power Company for Authority to Merge	)	
and Related Approvals.	)	

In the Matter of the Application of	)	Case No. 11-346-EL-SSO
Columbus Southern Power Company and	)	Case No. 11-348-EL-SSO
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.	)	

In the Matter of the Application of	)	Case No. 11-349-EL-AAM
Columbus Southern Power Company and	)	Case No. 11-350-EL-AAM
Ohio Power Company for Approval of	)	
Certain Accounting Authority.	)	

In the Matter of the Application of	)	Case No. 10-343-EL-ATA
Columbus Southern Power Company to	)	
Amend its Emergency Curtailment	)	
Service Riders.	)	

In the Matter of the Application of Ohio	)	Case No. 10-344-EL-ATA
Power Company to Amend its Emergency	)	
Curtailment Service Riders.	)	

In the Matter of the Commission Review	)	Case No. 10-2929-EL-UNC
of the Capacity Charges of Ohio Power	)	
Company and Columbus Southern Power	)	
Company.	)	

In the Matter of the Application of	)	Case No. 11-4920-EL-RDR
Columbus Southern Power Company for	)	
Approval of a Mechanism to Recover	)	
Deferred Fuel Costs Ordered Under Ohio	)	
Revised Code 4928.144.	)	

In the Matter of the Application of Ohio	)	Case No. 11-4921-EL-RDR
Power Company for Approval of a	)	
Mechanism to Recover Deferred Fuel	)	
Costs Ordered Under Ohio Revised Code	)	
4928.144.	)	

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**MEMORANDUM CONTRA OHIO POWER COMPANY’S MOTION AND  
REQUEST FOR EXPEDITED RULING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers’ Counsel (“OCC”) files this Memorandum Contra<sup>1</sup> to the motion of Ohio Power Company (“OP” or “Company”) requesting permission from the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to defer the filing of a revised detailed implementation plan (“DIP”) until after the Commission issues its rehearing decisions in this case. OCC files this Memorandum Contra to support the Commission’s determination that revisions were needed to the DIP, especially where such revisions will have the effect of facilitating aggregation efforts that are underway for residential customers.

**I. INTRODUCTION**

On December 14, 2011, the Commission issued an Opinion and Order in the above-captioned cases.<sup>2</sup> That Opinion and Order modified, but adopted, a partial Stipulation that had been reached and filed with the PUCO on September 7, 2011. As part of the Opinion and Order, changes<sup>3</sup> were made to the capacity charge provisions of the Stipulation. These changes affected portions of Appendix C to the Stipulation, which was itself modified by a DIP filed by the Signatory Parties on October 4, 2011. On

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<sup>1</sup> This pleading is filed as permitted under Ohio Admin. Code 4901-1-12(B)(1).

<sup>2</sup> *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., Opinion and Order (Dec. 13, 2011).

<sup>3</sup> See Opinion and Order at 54-55.

December 29, 2011, the Company filed a “compliance” version of the implementation plan for Appendix C in order to implement the Opinion and Order’s modifications. FirstEnergy Solutions (“FES”) and Industrial Energy Users (“IEU”) filed pleadings objecting to the “compliance” DIP and requesting clarification.

In an Entry dated January 23, 2012, the Commission ordered AEP Ohio to revise its DIP to be consistent with the PUCO’s Entry, concluding that the December 29 “compliance” DIP did not comply with the PUCO’s December 14, 2011 Opinion and Order.<sup>4</sup> The Commission ordered that a revised DIP be included in Ohio Power’s tariffs and ordered the Companies to update their respective tariffs.<sup>5</sup>

On January 25, 2012, the Ohio Power Company filed a motion and request for expedited ruling.<sup>6</sup> In that motion Ohio Power requests clarification that the filing of the new version of the revised DIP be deferred into the future. The Company notes that it has applied for rehearing on related issues in its January 13, 2012 application for rehearing of the December 14, 2011 Opinion and Order. The Company also indicates that it plans to file an application for rehearing from the DIP Entry as well. The Company advises the Commission that it “plans to await ruling on this motion prior to filing a new version of the Revised DIP.”<sup>7</sup> On January 26, 2012, the Ohio Energy Group filed an

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<sup>4</sup> *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. Entry (Jan. 23, 2012) (“DIP Entry”).

<sup>5</sup> *Id.* at 9.

<sup>6</sup> In its request for expedited ruling, the Company did not certify that no party has an objection to the issuance of an expedited ruling; thus parties have seven days to file a memorandum contra.

<sup>7</sup> OP Motion at 9.

“answer” supporting the Company’s motion.<sup>8</sup> Both FES and IEU Ohio filed memoranda contra the Company’s motion.

## **II. ARGUMENT**

Under R.C. 4903.15, “[u]nless a different time is specified therein, or by law, every order made by the public utilities commission shall become effective immediately upon entry thereof upon the journal of the public utilities commission.” The DIP Entry of the Commission did not specify when the Order is to go into effect. Thus, by law, the DIP Entry must become effective upon being entered in the journal of Commission. That date was January 23, 2012.

Under R.C. 4903.10, unless an application for rehearing is filed before the effective date of the order, “the making of such an application shall not excuse any person from complying with the order, or operate to stay or postpone the enforcement thereof, without a special order of the commission.” The Company did not file an application for rehearing before January 23, 2012. The Company’s motion cannot excuse it from complying with a PUCO order or operate to stay or postpone the enforcement of the DIP Entry. And yet, the Company has self-authorized a stay of its responsibility to comply with the Commission’s DIP Entry by asserting that it “plans to await ruling on this motion prior to filing a new version of the Revised DIP.”<sup>9</sup>

Put quite simply, the Company’s approach does not follow the law. The PUCO should reject it. The appropriate tool to avoid filing a new version of the revised DIP is a stay. The Company could have filed for a stay, but deliberately chose not to do so.

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<sup>8</sup> There is no provision in the Commission’s rules that permit the filing of such a pleading. Hence, the Commission should disregard the arguments presented therein.

<sup>9</sup> OP Motion at 9.

This wait and see approach that the Company seeks could also potentially leave the filing of a compliant DIP up in the air for an indeterminate period of time. Tying the filing of a compliant DIP to efforts on rehearing related to two separate rulings of the Commission is likely to cause considerable delay as the applications work their way through the rehearing process, which then may lead to an even more lengthy appeal process.

Moreover, the DIP is a crucial part of the claimed bargain under the Stipulation. The DIP is the instruction manual to the glide path to competition, with competition being the goal to which the Stipulation aspires. In exchange for the move to competition, the Companies received approval of other aspects of the electric security plan, including generation rate increases. By not filing a compliant DIP, the Company seeks to delay taking a necessary step toward fulfilling its commitment to bring competition to its customers. Yet customers have been required to meet their PUCO imposed commitments at the same time. For instance the generation rate increases ordered under the Stipulation were implemented January 1, 2012, and customers have been paying increased generation rates as of that date. Allowing concomitant commitments under the stipulation to be met at different times, contrary to the intent of the stipulation, unreasonably alters the balance of benefits in the stipulation.

### **III. CONCLUSION**

The Company's motion to allow it to delay filing a compliant DIP should be rejected. The Commission's DIP Entry, which directs the Company to file a compliant DIP, should be upheld. The DIP should be filed now because it is needed to enable customers to take advantage of the right to shop. By rejecting the Company's motion, the

Commission would be upholding the law and ensuring that the customers of the Company are receiving their part of the bargain from the PUCO-approved Stipulation.

Respectfully submitted,

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/s/ Terry L. Etter

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served via electronic transmission, to the persons listed below, on this 31st day of January 2012.

/s/ Terry L. Etter

Terry L. Etter  
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Summary: Memorandum Memorandum Contra Ohio Power Company's Motion and Request for Expedited Ruling by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.