

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals.	) ) ) )	Case No. 10-2376-EL-UNC
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 Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.	) ) ) )	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM
In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders.	) ) ) )	Case No. 10-343-EL-ATA
In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders.	) ) )	Case No. 10-344-EL-ATA
In the Matter of the Commission Review Of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	) ) ) )	Case No. 10-2929-EL-UNC
In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144.	) ) ) ) )	Case No. 11-4920-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144.	) ) ) ) )	Case No. 11-4921-EL-RDR

## **RESPONSE BY INDUSTRIAL ENERGY USERS-OHIO TO OHIO POWER COMPANY'S REPLY TO TARIFF OBJECTIONS**

### **I. INTRODUCTION**

On February 28, 2012, Ohio Power Company ("OP") filed compliance tariffs in response to the February 23, 2012 Entry on Rehearing of the Public Utilities Commission of Ohio ("Commission") that rejected a Stipulation and Recommendation ("Stipulation") and ordered OP to reinstate the terms and conditions of the prior electric security plan ("ESP") and capacity charges. In response to the compliance filing, Industrial Energy Users-Ohio ("IEU-Ohio") and others filed objections because OP attempted to introduce rates and terms that are inconsistent with the Commission's orders.

In its reply to the objections, OP makes several factual and legal claims that are incorrect.<sup>1</sup> These incorrect claims seek to portray OP's compliance tariff filing as if OP had not materially violated the letter and spirit of the orders contained in the Entry on Rehearing. Because OP's claims should not be accepted or delay the effect of the Commission's decision to reject the Stipulation, IEU-Ohio again urges the Commission to direct OP to bill customers for rates in effect under the prior ESP (with the adjustments for fuel required by Section 4928.143, Revised Code) and to reject OP's unlawful and unreasonable efforts to maintain the two-tiered capacity pricing scheme ("Pricing Scheme").

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<sup>1</sup> Given the limited time to prepare a response, IEU-Ohio does not intend to respond to all the claims made by OP. The failure to address each assertion is not and should not be construed as agreement with any of OP's claims that are not addressed herein.

## II. ARGUMENTS

### 1. The Merged Fuel Adjustment Clause (“FAC”) and Transmission Cost Recovery Rider (“TCRR”) Violate the Terms of the Commission’s Entry on Rehearing

OP argues that it is permitted by the Entry on Rehearing to maintain a merged FAC and TCRR. It supports this argument by incorrectly asserting that the FAC was approved prior to the Commission’s adoption of the Stipulation and therefore was unaffected by the Commission’s Entry on Rehearing<sup>2</sup> and that the completion of the merger makes it “impractical”<sup>3</sup> to submit FAC and TCRR rates by zone. Neither assertion has merit.

The claims regarding the FAC approval are factually wrong, ignore the terms on which the Commission approved the merged FAC rates, and are inconsistent with the Commission’s Entry on Rehearing and the requirements of Section 4928.143, Revised Code. The merged FAC was approved on December 14, 2011, not December 1, 2011 as OP claims. Further, the Finding and Order approving the merged FAC rate was predicated on the Commission’s decision approving the Stipulation,<sup>4</sup> also issued on December 14, 2011.<sup>5</sup> In its Entry on Rehearing, moreover, the Commission rejected the Stipulation and ordered OP to file tariffs “to continue the provisions, terms, and

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<sup>2</sup> AEP Ohio Reply to the Tariff Objections Filed by Industrial Energy Users-Ohio, Ormet Primary Aluminum and the Office of the Ohio Consumers’ Counsel/Appalachian Peace and Justice Network at 4 (Mar. 6, 2012) (“OP Reply”).

<sup>3</sup> *Id.*

<sup>4</sup> *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company and Related Matters*, Case No. 11-5906-EL-FAC, Finding and Order at 2 (Dec. 14, 2011).

<sup>5</sup> *Id.* at 3.

conditions of its previous electric security plan, including but not limited to the base generation rates as approved in ESP I, along with the current uncapped fuel costs and the environmental carry [*sic*] cost rider set at the 2011 level.”<sup>6</sup> Notably, the Commission made no provision for the FAC or any other rate to be filed on a merged basis. Instead, the Commission ordered that OP file tariffs to return rates to the prior levels with current uncapped fuel costs. The return to the prior ESP rates that the Commission ordered is required by the terms of Section 4928.143, Revised Code. Thus, there is no factual or legal basis to assert that the FAC should be continued on a merged basis.

The assertion that it is “impractical” to file either the FAC or the TCRR on a Columbus Southern Power Company (“CSP”) and OP zone-specific basis is also incorrect. OP had no difficulty in instituting a zone-specific basis for other provisions of the prior ESP. There is no reason to believe that it cannot establish similar zone-specific rates for the FAC and the TCRR.

Additionally, the “impracticality” of complying with the Commission’s order provides no legal basis for assigning revenue responsibilities without reference to the customers who are responsible for those costs. The Commission’s recent experience with OP’s attempt to reassign rate responsibilities without some rational and understandable basis has produced the fine state of affairs in which it, OP’s customers, and the Commission find themselves.

Finally, OP asserts that the merger provides some basis for these illegal tariff filings.<sup>7</sup> If it provided some legal basis for ignoring a Commission order, that basis is

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<sup>6</sup> Entry on Rehearing at 12 (Feb. 23, 2012).

<sup>7</sup> OP Reply at 4

now gone. The OP-CSP merger authority was part of the Stipulation which has been rejected.<sup>8</sup> Beyond the lack of authority supporting the merged rates, however, OP ignores a more fundamental problem: regardless of whether the merger can or should be unwound at this point, it does not provide a legal basis for ignoring the Commission's order to unwind the rates as required by Section 4928.143(C), Revised Code.

**2. OP Incorrectly States that the Commission Authorized the Phase-in Recovery Rider ("PIRR") in *ESP I***

OP's assertion that the Commission authorized the PIRR in its Opinion and Order in *ESP I* also is incorrect. As all of the parties that have filed objections to OP's inclusion of the PIRR in its compliance tariffs have noted and as demonstrated by the Stipulation itself, OP recognized it lacked the requisite authority and sought the authorization it needed to recover the outstanding deferrals.<sup>9</sup> OP's assertion that the *ESP I* Opinion and Order provided it authorization for establishing the PIRR is simply wrong.

The assertion is also not credible in light of the statements OP made in the Application it filed to establish the PIRR. In the Application, OP explained that it was "submit[ting] this application to seek approval of a mechanism to recover the fuel costs ordered to be deferred for later collection by the Commission as part of the phase-in of rate changes ordered by the Commission" in *ESP I*.<sup>10</sup> Further, the Application stated:

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<sup>8</sup> The Stipulation served as the proposed authorization for the merger. Stipulation at 24 (Sept. 7, 2011).

<sup>9</sup> *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144*, Case Nos. 11-4920-EL-RDR, *et al.*, Application at 1 (Sept. 1, 2011) (hereinafter, "*PIRR Application*").

<sup>10</sup> *Id.*

Based on the reasons stated above, the Companies request the creation of a recovery mechanism to ensure recovery of the their accumulated deferred fuel costs, including carrying costs, that were the direct result of the Commission's phase-in decision in the *Initial ESP cases*. The Companies submit as Exhibit A their nonbypassable Phase-In Recovery Rider (PIRR) to be effective with the first billing cycle of January 2012.<sup>11</sup>

Obviously, OP was aware (at least as recently as September 1, 2011 when it filed the Application) that the Opinion and Order in *ESP I* did not authorize a recovery mechanism.

Further, OP tries to hide the fact that the PIRR has not yet been authorized in its Reply to the objections. OP states that “the issue is whether AEP-Ohio’s proposed tariffs, including the PIRR, appropriately implement the prior rate plan—not whether a prior order exists (besides the December 14 Opinion and Order) which authorizes the PIRR tariffs filed by AEP Ohio on February 28.”<sup>12</sup> OP’s argument is nonsensical: there was no PIRR in the prior rate plan, only the authority to create the deferral balances. OP’s cat-and-mouse game of trying to reframe simple and clear directives to achieve unreasonable and unlawful results should be rejected.

In conclusion, OP was well aware that it needed authorization outside of the *ESP I* Opinion and Order to implement a recovery mechanism to begin amortizing the deferral the Commission authorized in *ESP I*. OP itself filed an Application seeking this result and requested that the Commission “create” the recovery mechanism.<sup>13</sup> Therefore, OP’s arguments are without merit and must be rejected.

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<sup>11</sup> *Id.* at 3.

<sup>12</sup> OP Reply at 6.

<sup>13</sup> PIRR Application at 3.

**3. OP's Refusal to Remove the Detailed Implementation Plan ("DIP") Represents a Continuing Violation of the Commission's Entry on Rehearing**

OP further asserts that IEU-Ohio misstates the status of the proceeding when IEU-Ohio objected to OP's failure to address the capacity issues in its compliance filing.<sup>14</sup> As a justification for ignoring the Commission's order, OP asserts that Section 4928.143(C), Revised Code, the statutory provision requiring it to implement the prior ESP rates, provides no guidance as to what it is required to do to comply with the Commission's orders in regard to the Pricing Scheme and that it sought clarification of the Commission's Entry on Rehearing.<sup>15</sup>

The Commission need not decide any grand jurisdictional issue regarding the scope of Section 4928.143, Revised Code, to decide whether OP should have removed the vestiges of the Pricing Scheme from its state filings.<sup>16</sup> The Pricing Scheme was a part of the Stipulation, and OP filed the DIP to implement the Pricing Scheme. The Stipulation, however, has been rejected and with it the authorization for the Pricing Scheme.<sup>17</sup> The DIP, however, remains on file with the Commission in its rejected

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<sup>14</sup> Notably, OP's cover letter of the compliance filing itself raised the issue by stating that it was not complying with the Commission's Entry on Rehearing with regard to capacity charges. See below.

<sup>15</sup> OP Reply at 9-10.

<sup>16</sup> As the Commission will recall, OP filed the revised Detailed Implementation Plan to implement the Commission's modifications of the Pricing Scheme. Letter to Attorney Examiner Greta See and Jonathan J. Tauber from Steven Nourse (Dec. 29, 2011).

<sup>17</sup> Entry on Rehearing at 12.

form,<sup>18</sup> and OP has indicated that it will continue to apply the DIP until the Commission rejects it a third time.<sup>19</sup>

Moreover, OP has failed to revise its state filings under the unsupportable claim that it needs “clarification.”<sup>20</sup> This need for clarification stands in stark contrast to representations AEP has made to federal authorities concerning the status of the Pricing Scheme. As previously noted, American Electric Power Service Corporation (“AEPSC”) has represented that OP is required to return capacity pricing to its previously approved levels.<sup>21</sup> OP’s parent, American Electric Power, has also been more forthcoming in a recent filing with the Securities and Exchange Commission (“SEC”). The SEC filing states, “Currently, there are no limitations on the obligation to provide below cost capacity rate pricing to alternative suppliers to support customers switching in Ohio.”<sup>22</sup> The suggestion that OP needs clarification before it brings its state filings into compliance with the Commission’s Entry on Rehearing is not credible.

### **III. CONCLUSION**

As previously stated, OP’s February 28, 2012 tariff filing fails to comport with the Commission’s Entry on Rehearing. The failure of OP to comply, however, should not

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<sup>18</sup> Entry (Jan. 23, 2012).

<sup>19</sup> In its cover letter accompanying the tariffs filed on February 28, 2012, OP continued to maintain that it needed “clarification” of the Commission’s Entry on Rehearing and would “await further direction based on the disposition of its Motion for Relief filed yesterday (February 27, 2012) in Case No. 10-2929-EL-UNC.” Letter from Steven T. Nourse to Betty McCauley (Feb. 28, 2012).

<sup>20</sup> OP Reply at 9.

<sup>21</sup> Previously, IEU-Ohio noted that American Electric Power Service Company had represented to the Federal Energy Regulatory Commission that OP was under an obligation to provide capacity at the price established by PJM Interconnection, Inc.’s Reliability Pricing Model. Industrial Energy Users-Ohio’s Objections to Ohio Power Company’s Compliance Tariffs and Request to Set a Reconciliation Date at 6 (Mar. 2, 2012) (“IEU-Ohio Objections”).

<sup>22</sup> American Electric Power Annual Report at 33 (viewed at [http://www.aep.com/investors/financialfilingsandreports/edgar/docs/AEP\\_10K\\_2011.pdf](http://www.aep.com/investors/financialfilingsandreports/edgar/docs/AEP_10K_2011.pdf)).



put customers at risk. To avoid the continuing rate shock of the Stipulation ESP and Pricing Scheme, OP should be directed to bill customers at the legal rates. The Commission also should order that rates currently billed are subject to reconciliation. Additionally, the Commission should direct that OP take all necessary actions to assure that capacity is priced in compliance with the terms of the Entry on Rehearing. By taking these actions, the Commission can assure that OP's customers will not continue to face the excessive and unreasonable rates established through the Stipulation or the incomplete and unlawful rates proposed in the February 28, 2012 compliance filing.

Respectfully Submitted,

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I hereby certify that a copy of the foregoing *Response by Industrial Energy Users-Ohio to the Ohio Power Reply to Tariff Objections* was served upon the following parties of record this 7<sup>th</sup> day of March 2012, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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

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Summary: Response By Industrial Energy Users-Ohio to Ohio Powr Company's Reply to Tariff  
Objections electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio