

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company and)	
Ohio Power Company for Authority to)	Case No. 11-346-EL-SSO
Establish a Standard Service Offer)	Case No. 11-348-EL-SSO
Pursuant to §4928.143, Ohio Rev. Code,)	
in the Form of an Electric Security Plan.)	

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

**INDUSTRIAL ENERGY USERS-OHIO'S
MEMORANDUM CONTRA OHIO POWER COMPANY'S MOTION TO STRIKE**

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**INDUSTRIAL ENERGY USERS-OHIO'S MEMORANDUM CONTRA
OHIO POWER COMPANY'S MOTION TO STRIKE**

I. INTRODUCTION

On May 4, 2012, Industrial Energy Users-Ohio ("IEU-Ohio") submitted the pre-filed testimony of Kevin M. Murray and Joseph G. Bowser. On May 11, 2012, Ohio Power Company ("OP") moved to strike portions of both of these witnesses' pre-filed direct testimony. Because OP's Motion to Strike is without merit, it should be denied.

II. ARGUMENT

A. Witness Murray's Testimony on the Effects of a Competitive Bidding Process for Standard Service Offer Service Starting June 1, 2015, is Relevant Because OP Has Raised the Issue in This Proceeding Claiming that its Early Transition to a Competitive Bid Process in June 2015 is a Benefit of its Modified Electric Security Plan

All of witness Murray's testimony that OP seeks to strike relates to his analysis of the likely results of a competitive bidding process ("CBP") auction for service starting June 1, 2015. OP claims that portions of Kevin Murray's testimony should be stricken because his analysis goes beyond the term of OP's proposed Modified Electric Security

Plan (“ESP”). OP, however, ignores the fact that it has placed this very issue in front of the Public Utilities Commission of Ohio (“Commission”) in this proceeding, requesting approval to set rates through a CBP at the end of the ESP. Furthermore, OP claims that the early transition to a CBP is a benefit of the Modified ESP proposal. OP witness Dias claims the CBP that will occur after the proposed ESP ends is an example of why OP’s Modified ESP Application satisfies the State Policy objectives contained in 4928.02, Revised Code.¹ OP cannot have it both ways: OP cannot claim that an early transition to a full CBP (for both energy and capacity) is relevant as a benefit of the Modified ESP, and then seek to strike testimony that addresses the potential benefit (or cost) of the transition to a full CBP on grounds of relevancy. So long as OP’s Application requests approval to set rates at the end of the ESP through a CBP, and claims this transition as a benefit of its Modified ESP, intervening parties have a right to present evidence evaluating OP’s claim.

B. Witness Bowser’s Testimony Regarding the Phase-In Recovery Rider Is Relevant to This Proceeding Because OP has Proposed the Rider as Part of its Modified ESP

Without merit, OP seeks to strike portions of witness Bowser’s testimony on grounds that the Phase-In Recovery Rider (“PIRR”) is not relevant to this proceeding. But testimony regarding the PIRR is relevant to this proceeding because OP included explicit terms and conditions related to the PIRR in its Modified ESP Application.

The Commission previously determined that the issues related to the terms of the PIRR would be addressed in Case Nos. 11-4920-EL-RDR, *et al.*, stating:

[w]hile the Commission's order in the ESP I proceedings permits AEP-Ohio to seek recovery of fuel cost deferrals from 2012 to 2018, it did not establish a rider or other tariff provision for AEP-Ohio to recover deferred

¹ Direct Testimony of Selwyn J. Dias at 4-5 (March 30, 2012).

fuel costs or set a hard deadline for when recovery shall begin. To the contrary, as FES points out, in the ESP I order, the Commission explicitly provided that any recovery shall occur as necessary, indicating the Commission would conduct an additional analysis to determine the appropriate recovery of fuel cost expenses incurred plus carrying costs. AEP-Ohio's mischaracterization of both the language within the March 7 Entry and the ESP I order unravels its other assignments of error, as the Commission cannot violate Sections 4928.144 and 4928.143(C)(2)(b), Revised Code, when the March 7 Entry is entirely consistent with its order in the ESP I proceedings. Further, AEP-Ohio's arguments that the March 7 Entry failed to order the PIRR to incorporate a weighted average cost of capital carrying charge or permit AEP-Ohio to recover the deferred fuel expense on a gross-of-tax basis should be rejected, as both arguments are premature and will be addressed in [Case Nos. 11-4920-EL-RDR, *et al.*].²

Thus, the Commission has held that terms of the PIRR are yet to be decided. But OP's Modified ESP Application seeks to set the specific terms of the PIRR in this proceeding. Specifically, OP requests that the Commission delay the implementation of the PIRR until June 1, 2013, continue accrual of carrying charges at full weighted average cost of capital ("WACC"), spread the recovery of the PIRR between OP and Columbus Southern Power Company ("CSP") customers, and suspend the procedural schedule in Case Nos. 11-4920-EL-RDR, *et al.*³

The Commission can approve an ESP only if it determines that the "electric security plan so approved, including its pricing and all other terms and conditions" is more favorable in the aggregate than an MRO.⁴ Because OP has proposed terms for the PIRR as part of its Modified ESP Application the validity of OP's request must be

² *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Mechanisms to Recover Deferred Fuel Costs Ordered Under Section 4928.144, Revised Code*, Case Nos. 11-4920-EL-RDR, *et al.*, Entry on Rehearing at 5 (April 11, 2012) (emphasis added).

³ Modified ESP Application at 14-15; Direct Testimony of Selwyn J. Dias at 10.

⁴ Section 4928.143(C)(1), Revised Code.

addressed and accounted for in the ESP v. MRO test. The testimony of Joseph Bowser addresses these very issues.

Mr. Bowser's testimony addresses the increased cost to customers that would result from OP's proposal to delay the implementation of the PIRR and continue to collect carrying costs at full WACC.⁵ Mr. Bowser addresses OP's proposal to spread recovery of the PIRR across OP and CSP customers.⁶ Mr. Bowser also addresses open issues regarding the PIRR that OP fails to address, such as accumulated deferred income taxes ("ADIT") and governmental aggregation. For example, Mr. Bowser addresses the impact of not removing ADIT before calculating carrying charges,⁷ as well as the potential impact of any Ohio Supreme Court ruling adverse to OP.⁸ Finally, Mr. Bowser's testimony addresses issues pertaining to government aggregation.

Putting forward important evidence such that the Commission is able to properly weigh the costs of the ESP in the ESP v. MRO test is a crucial function of the evidentiary hearing in this proceeding and a right possessed by intervenors. Although OP would like to get a free pass to collect carrying charges at a WACC rate (roughly 11.5%) rather than a debt rate (in the range of 3%-5.34%) without an ADIT adjustment

⁵ Direct Testimony of Joseph Bowser at 7-8.

⁶ Direct Testimony of Joseph Bowser at 17.

⁷ *Id.* at 9, 15-16.

⁸ *Id.* at 9. In its December 14, 2011 Opinion and Order in this proceeding, the Commission held that such issues are relevant to the PIRR, stating:

Finally, the Commission clarifies that prior to securitization of the PIRR, if the Commission or the Court issues a decision that impacts the amount of PIRR regulatory assets, AEP-Ohio shall appropriately adjust the book balance of the PIRR regulatory assets or use a mechanism to make the appropriate adjustment ordered by the Commission or the Court that prospectively adjusts rates through a credit or charge of the PIRR.

Opinion and Order at 59 (Dec. 14, 2011).

and spread the cost to the former CSP customers who did not meaningfully contribute to the deferrals, the fact remains that OP has placed the issue in front of the Commission and intervenors have a right to challenge OP's position and introduce evidence about the true costs of the ESP.

III. CONCLUSION

For reasons stated herein, the Commission should deny OP's Motion to Strike.

Respectfully submitted,

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I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Memorandum Contra Ohio Power Company's Motion to Strike*, was served upon the following parties of record this 16th day of May 2012, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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