Before

**The Public Utilities Commission of Ohio**

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| 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 |

# Industrial Energy Users-Ohio’s Memorandum Contra To

# Ohio Power Company’s Motion To Implement A

# Single Blended Fuel Adjustment Clause

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# Single Blended Fuel Adjustment Clause

On March 16, 2012, Ohio Power Company (“OP”) filed a Motion in this proceeding requesting the Public Utilities Commission of Ohio (“Commission”) authorize OP to implement a single blended fuel adjustment clause (“FAC”) rate for the OP and Columbus Southern Power Company (“CSP”) rate zones. OP’s March 16, 2012 Motion in this case should be denied because the Commission’s March 7, 2012 Entry in the consolidated *ESP II[[1]](#footnote-1)* proceeding (the “Compliance Tariff Entry”) as well as the March 7, 2012 Entry in the merger proceeding[[2]](#footnote-2) (the “Merger Entry”) are both reasonable and lawful. In contrast, OP’s Motion requests the Commission to violate the law in two respects. First, OP requests the Commission ignore Section 4928.143(C)(2)(b), Revised Code, and return OP to rates that were not in effect during *ESP I*.[[3]](#footnote-3) Second, OP requests the Commission assert jurisdiction that it does not possess and modify CSP’s and OP’s FAC rates outside of an ESP proceeding.

Additionally, even if the Commission agreed with OP’s request and found it could authorize a blended FAC in this proceeding, OP’s Motion should be rejected because OP has repeatedly stated that it would not seek to modify rates as a result of the merger (outside of a proper ratemaking proceeding such as an ESP proceeding).[[4]](#footnote-4)

**I. BACKGROUND**

On February 23, 2012, the Commission issued an Entry on Rehearing rejecting a stipulation and recommendation submitted on September 7, 2011 in the *ESP II* proceeding. The February 23 Entry on Rehearing directed OP to file compliance tariffs no later than February 28, 2012 to:

continue the provisions, terms, and 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 investment carry cost rider set at the 2011 level, as well as modifications to those rates for credits for amounts fully refunded to customers, such as the significantly excessive earnings test (SEET) credit, and an appropriate application of capacity charges under the approved state compensation mechanism established in the Capacity Charge Case.[[5]](#footnote-5)

On February 28, 2012, OP responded to the February 23 Entry on Rehearing by submitting tariffs that failed to fully comply with the February 23, 2012 Entry on Rehearing inasmuch as the tariffs, *inter alia*, retained a single blended FAC rate. Additionally, on March 1, 2012, OP submitted an application in this proceeding to establish FAC rates on a combined company basis to be effective on April 1, 2012. On March 7, 2012, the Commission responded to the February 28, 2012 tariff filing and directed OP to re-file its FAC riders to reflect separate and unblended FAC rates for the OP and CSP rate zones, noting OP’s commitment in its merger application that the merger would not affect OP’s and CSP’s rates.

On March 16, 2012, OP submitted revised rate schedules in this proceeding to reflect unblended FAC rates for the OP and CSP rate zones to become effective on April 1, 2012. On the same day, OP filed a Motion requesting an expedited order permitting OP to implement the blended rates proposed in its March 1, 2012 application.

**II. ARGUMENT**

1. **The Compliance Tariff Entry and the Merger Entry are Reasonable and Lawful**
2. **Section 4928.143(C)(2)(b), Revised Code, Requires the Commission to Issue Such Orders as Necessary to Return Customers to the Rates Under a Previous SSO**

The Commission’s Entry on Rehearing and Compliance Tariff Entry are reasonable and lawful because they directed OP to return customers to the rates charged under the initial CSP and OP standard service offers (“SSO”), *i.e. ESP I*. Section 4928.143(C)(2)(b), Revised Code, directs the Commission to issue “such order as is necessary to continue the provisions, terms, and conditions of the utility’s most recent standard service offer ….” The Compliance Tariff Entry, along with the Commission’s *ESP II* Entry on Rehearing,[[6]](#footnote-6) did just that: they directed OP and CSP to file tariffs to continue their previous ESPs and to remove tariffs that did not exist as proposed under their previous ESPs.

Although OP’s Motion claims it is impracticable for it to continue separate and distinct FAC rates for the CSP and OP rate zones, OP has no choice but to follow the law. The law requires OP’s and CSP’s previous SSO’s provisions, terms, and conditions (*i.e.* their *ESP I* tariffs) to be continued if the Commission disapproves an SSO application. Under OP’s and CSP’s prior SSO, they maintained separate and distinct FACs. Therefore, there can be no argument that the law requires OP to maintain separate FAC rates for the CSP and OP rate zones.

The fact that OP claims hardship does not change this outcome. The law is clear and only allows a deviation from the prior SSO tariffs to reflect “any expected increases or decreases in fuel costs.”[[7]](#footnote-7) Because that is not the case here, OP’s Motion must be denied.

1. **The OP and CSP-Specific FAC Rates May Only Be Modified in an ESP Proceeding**

Both the Commission and OP have correctly stated that the Commission may not modify OP’s rates outside of a proper ratemaking proceeding. The Commission addressed this very issue in the Merger Entry:

Furthermore, the Commission agrees, as acknowledged by IEU-Ohio in its comments, that the merger of CSP into OP will not change the legal relationship between CSP and its customers or CSP’s tariff obligations to its customers. Any tariff amendments will be reviewed by separate entry in the ESP 2 case before the Commission. The Companies’ ESP 2 case is the proper proceeding to consider and resolve rate matters.[[8]](#footnote-8)

The Commission’s conclusion that it must address the FAC in an ESP proceeding is consistent with the Commission’s statutory authority under Section 4928.143(B)(2)(a), Revised Code. Therefore, and as the Commission has previously stated, any modification to the FAC must be accomplished in OP’s *ESP II* proceeding. Until the Commission replaces the current SSO rates (*ESP I*) with a new SSO, OP must maintain OP and CSP-specific FAC rates. It is not a requirement of convenience, it is required by law.

OP has also previously addressed this issue during the comment period of the merger proceeding. In its initial comments in the merger proceeding, Ohio Partners for Affordable Energy (“OPAE”) requested the Commission consider addressing the rate differential between CSP’s higher rates and OP’s lower rates.[[9]](#footnote-9) OP responded that “OPAE’s position is untenable because the merger proceeding is not a ratemaking proceeding.”[[10]](#footnote-10) Likewise, this quarterly update FAC proceeding is not a ratemaking proceeding. Therefore, the Commission must reject OP’s Motion requesting authority to blend the CSP and OP FAC rates as an ESP proceeding is the only statutorily permissible proceeding to address OP’s request.

1. **The Commission Should Reject OP’s Motion Because OP Has Repeatedly Stated that it Would Maintain Separate Rates Following the Merger Subject to Modification in Future Ratemaking Proceedings**

OP has consistently argued that the merger, if approved, would not impact CSP’s or OP’s rates. In its Application in the merger proceeding, OP asserted that post-merger OP would:

continue to provide retail electric services to customers within the pre-merger certified territories of CSP and OPCo in accordance with their respective rates and terms and conditions in effect for CSP and OPCo prior to the merger until such time as the Commission approves new rates and terms and conditions.[[11]](#footnote-11)

Additionally, in its Reply Comments in the merger proceeding, OP again asserted that “the merger application does not propose to change any rate for either Company and approval of the merger will not impact their rates.”[[12]](#footnote-12) From the beginning of the proposed merger, OP has asserted that it could and would maintain separate rates for the CSP and OP rates zones until such time as new rates were approved. OP has further recognized that certain proceedings (like this quarterly FAC update proceeding) are not proper ratemaking proceedings to seek an adjustment to rates.[[13]](#footnote-13)

Finally, on March 7, 2012, the Commission issued an Entry approving the merger of OP and CSP. As a basis for the authority to merge, the Commission noted that OP had stated that it would maintain “the rates, terms and conditions of service presently in effect for each company … until the Commission approves new rates.”[[14]](#footnote-14) The Commission should hold OP to its commitment and should therefore reject OP’s Motion.

**III. CONCLUSION**

OP’s Motion must be denied because the Commission must follow the law and return customers to the *ESP I* tariffs that existed for customers of OP and CSP. Additionally, the Commission lacks authority and jurisdiction to authorize OP to blend the FAC rates in this proceeding. Finally, the Commission should hold OP to its word and require OP to continue its rates as they existed during *ESP I*. For the reasons discussed above, the Commission should deny OP’s Motion.

Respectfully submitted,

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**Certificate of Service**

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio’s Memorandum Contra to Ohio Power Company’s Motion to Implement a Single Blended Fuel Adjustment Clause* was served upon the following parties of record this 23rd day of March 2012, *via* hand-delivery, electronic transmission, or first class mail, U.S. postage prepaid.

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**On Behalf of the Staff of the Public Utilities Commission of Ohio**

1. *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan,* Case Nos. 11-346-EL-SSO, *et al.* (hereinafter “*ESP II*”). [↑](#footnote-ref-1)
2. *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 (hereinafter “*Merger Proceeding*”). [↑](#footnote-ref-2)
3. *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 Generation Assets*, PUCO Case Nos. 08-917-EL-SSO, *et al.* (hereinafter “*ESP I*”). [↑](#footnote-ref-3)
4. *Merger Proceeding*, Reply Comments of Ohio Power Company and Columbus Southern Power Company at 4, 6 (March 11, 2011) (“the Companies reiterate that the merger application does not propose to change any rate for either Company and approval of the merger will not impact their rates. … The other pending proceedings, including the ESP and distribution rate cases, will address and resolve rate-related issues.”) [↑](#footnote-ref-4)
5. *ESP II*, Entry on Rehearingat 12 (February 23, 2012) [↑](#footnote-ref-5)
6. *ESP II*, Entry on Rehearing at 12 (February 23, 2012). [↑](#footnote-ref-6)
7. Section 4928.143(C)(2)(b), Revised Code. [↑](#footnote-ref-7)
8. *Merger Proceeding*,Entry at 7 (March 7, 2012). [↑](#footnote-ref-8)
9. *Merger Proceeding*,Initial Comments of Ohio Partners for Affordable Energy at 1-2 (February 25, 2011). [↑](#footnote-ref-9)
10. *Merger Proceeding*,Reply Comments of Ohio Power Company and Columbus Southern Power Company at 5 (March 11, 2011). [↑](#footnote-ref-10)
11. *Merger Proceeding*,Application at 4 (October 18, 2010). [↑](#footnote-ref-11)
12. *Merger Proceeding*,Reply Comments of Ohio Power Company and Columbus Southern Power Company at 4 (March 11, 2011). [↑](#footnote-ref-12)
13. *See Merger Proceeding*, Reply Comments of Ohio Power Company and Columbus Southern Power Company at 5 (March 11, 2011). [↑](#footnote-ref-13)
14. *Merger Proceeding*, Entry at 6 (March 7, 2012). [↑](#footnote-ref-14)