Before

**The Public Utilities Commission of Ohio**

In the Matter of the Application of )

Ohio Power Company to Update Its ) Case No. 12-1046-EL-RDR

Transmission Cost Recovery Rider. )

Supplemental Comments of

Industrial Energy Users-Ohio

in Response to Commission Staff’s October 15, 2012 Review and Recommendation

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# INTRODUCTION

 Industrial Energy Users-Ohio (“IEU-Ohio”) hereby submits supplemental comments in response to the Commission Staff’s (“Staff”) October 15, 2012 Review and Recommendation (“Staff Review”) concerning Ohio Power Company’s (“OP”) Application to update its Transmission Cost Recovery Rider (“TCRR”). In its Application, OP seeks to increase the TCRR for two main reasons. First, OP seeks to increase the TCRR to make up for its under-recovery during its prior 12-month collection period.[[1]](#footnote-1) Second, OP seeks to increase the TCRR as a result of a decrease in its forecasted non-shopping load.[[2]](#footnote-2)

The Staff Review contains two recommendations. First, because “recovering the full under recovered amount over the next period combined with the projected increase in costs results in excessive increases,” Staff “recommends that the recovery of the under recovered amount be collected over a 3-year period.”[[3]](#footnote-3) To collect the under-recovered amount, Staff recommends that “the Applicant establish a separate non-bypassable rate as part of the current TCRR rider. The separate non-bypassable rate should be designed to recover $36M over a three year period but shall terminate once that amount has been collected.”[[4]](#footnote-4) Staff supports this recommendation for a non-bypassable charge to recover the under-recovered amount based upon the assumption that the burden of the recovery would fall on a decreasing number of non-shopping customers due to the increase in shopping.[[5]](#footnote-5)

Second, Staff recommends a change in the method for allocating net marginal losses from historical base generation revenue to a projected kilowatt-hour (“kWh”) basis.[[6]](#footnote-6) Because this change “may result in costs shifts between classes,”[[7]](#footnote-7) Staff recommends that the transition occur in two steps.[[8]](#footnote-8)

Staff’s recommendations should be rejected. There is no legal basis for using a non-bypassable charge to collect the under-recovery. Further, Staff’s recommendation to revise the allocation of the net marginal losses is unlawful and unreasonable because it violates the Commission’s recent ESP II Order[[9]](#footnote-9) and other decisions approving the current TCRR revenue allocation and may result in cost shifting that has not been demonstrated to be reasonable.

# ARGUMENT

## The Commission should reject the Staff Recommendation for the Commission to authorize an unlawful and unreasonable non-bypassable charge.

There is no legal basis for approving a non-bypassable charge to recover the under-recovered amounts, as proposed by Staff. The Staff Review does not offer any legal basis for approving a non-bypassable charge, and IEU-Ohio’s July 25, 2012 Comments addressed OP’s unlawful assertion that such a charge could be implemented under Section 4928.144, Revised Code.

Section 4928.144, Revised Code, provides that the Commission:

may authorize any just and reasonable phase-in of any electric distribution utility rate or price established under sections 4928.141 to 4928.143 of the Revised Code, and inclusive of carrying charges, as the commission considers necessary to ensure rate or price stability for consumers. If the commission’s order includes such a phase-in, the order also shall provide for the creation of regulatory assets pursuant to generally accepted accounting principles, by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount. Further, the order shall authorize the collection of those deferrals through a nonbypassable surcharge on any such rate or price so established for the electric distribution utility by the commission.

Thus, there is no authority to order a phase-in unless the detailed requirements of the Section are satisfied.

OP’s current TCRR, which generated the under-recovery, was authorized by the Commission’s Finding and Order dated June 22, 2011 in Case No. 11-2473-EL-RDR. In its order, the Commission specifically authorized the TCRR under Section 4928.05(A)(2), Revised Code, not Sections 4928.141 to 4928.143, Revised Code.[[10]](#footnote-10) Because OP’s TCRR under-recovery was not established under Sections 4928.141 to 4928.143, Revised Code, Section 4928.144, Revised Code, may not be relied upon to “phase-in” and then recover, on a non-bypassable basis, the prior collection period’s under-recovery.

 In response to IEU-Ohio’s July 25, 2012 Comments, OP asserted that the Commission authorized the TCRR under its first ESP. The ESP I Order,[[11]](#footnote-11) however, clearly did not authorize the TCRR. OP had sought to retain its then current TCRR that was approved in Case No. 08-1202-EL-UNC, and the Commission agreed.[[12]](#footnote-12)

 Nor does the ESP II Order provide a basis for the Commission to authorize a non-bypassable charge in this proceeding. In the ESP II Order, the Commission approved the TCRR under Section 4928.05(A)(2), not Sections 4928.141 to 4928.143, Revised Code.[[13]](#footnote-13)

Further, any use of phase-in authority under Section 4928.144, Revised Code, requires the Commission to identify, as part of the phase-in accounting, the “incurred costs” that are equated to the revenue not collected. Staff has not identified the “incurred cost” that the Commission must specify to lawfully proceed with the phase-in authority in Section 4928.144, Revised Code, even if such authority could be used in the case of the TCRR.

OP, likewise, failed to identify the costs. In a circular statement lacking any support, OP in reply comments stated that “’amounts not collected’ as contemplated by the phase-in statute are the under-recovery dollars based on incurred costs that have already been accounted for in the Company’s filing.”[[14]](#footnote-14) Clearly this statement is wrong: it confuses revenue with cost, and does not address the cost that must be identified for purposes of the statutory requirements of Section 4928.144, Revised Code. Absent the required identification of “incurred costs,” there is no means proposed by OP to ensure that the deferral is necessary to compensate OP for “incurred costs.” This point takes on added significance since transmission rates, which are the foundation for the TCRR, are subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”) and are generally set based on a “formula rate” methodology.

 Further the Staff recommendation does not comply with the Commission’s rules which do not permit a non-bypassable TCRR. Commission Rule 4901:1-36-04(B), Ohio Administrative Code, states that a “transmission cost recovery rider shall be avoidable by all customers who choose alternative generation suppliers.” Because the Commission’s rules require the TCRR to be avoidable by shopping customers, there is no basis upon which to make the under-recovery from a prior collection period non-bypassable.[[15]](#footnote-15)

 Finally, Commission precedent does not support the Staff recommendation to establish a non-bypassable true-up mechanism for a rider that is, itself, bypassable. In Duke Energy Ohio, Inc.’s (“Duke”) recent market rate offer (“MRO”) proceeding (Case No. 10-2586-EL-SSO), Duke requested authority to conduct a final true-up of two of its electric security plan (“ESP”) riders that would terminate once Duke’s proposed MRO began.[[16]](#footnote-16) One of the two riders was avoidable, and the other was conditionally avoidable; the preponderance of the cost eligible for recovery and reconciliation through the riders to be reconciled was fully avoidable by shopping customers.[[17]](#footnote-17) Staff opposed Duke’s proposal to use a non-bypassable reconciliation mechanism to address the over/under-collection consequences of a bypassable rider, stating that “Duke’s generation-related costs should not be attributed to customers not taking generation service from Duke.”[[18]](#footnote-18) The Commission adopted Staff’s recommendation and held that the rider could not be approved as proposed.[[19]](#footnote-19) Staff’s recommendation in this case regarding a non-bypassable rider to true-up the TCRR under-recovery is inconsistent with the Commission’s prior determination in the *Duke MRO Case* and should be rejected.

## The Commission should reject the Staff Recommendation to revise the allocation methodology for net marginal losses.

 IEU-Ohio also opposes the Staff recommendation to change the methodology for recovering net marginal losses from a base generation revenue allocation to a kWh allocation methodology. Staff’s only basis for supporting this change is the assumption that the change in methodology would better assign the costs to those who are creating the costs.[[20]](#footnote-20) As Staff acknowledges, such a change may result in cost shifts, and these costs shifts likely will increase rates to high load factor customers such as manufacturers. Although Staff acknowledges its proposal would shift costs among rate classes, Staff has not offered any analysis of the magnitude of these shifts or the reasonableness of such shifts.  Thus, the Commission has no basis to find that the proposed alteration of the allocation methodology is lawful and reasonable. Given the overall weak state of the Ohio economy, and the challenges facing Ohio’s manufacturers that include recent rate increases resulting from AEP-Ohio’s *ESP II Case* and Phase-In Recovery Rider (“PIRR”) proceedings,[[21]](#footnote-21) the last thing manufacturers need is to have even more costs imposed upon them.

 Further, Staff’s brief discussion supporting its recommendation to revise the allocation methodology for net marginal losses does not address the complicated basis for developing those costs at the wholesale level.[[22]](#footnote-22) It is unclear, and unaddressed by the Staff review, whether a move to a purely energy-based allocation is reasonable.

Staff’s suggested methodology for the allocation of net marginal losses also fails to address the precedent established in OP’s two prior TCRR cases (Case No. 11-2473-EL-RDR and Case No. 10-477-EL-RDR), in which OP requested, and the Commission approved, the base generation revenue based allocation that AEP-Ohio requested in the current TCRR proceeding.  The Staff recommendation also ignores the Commission’s recent findings in the *ESP II Case* concerning the TCRR. In that case, OP sought only to combine the TCRR of OP and Columbus Southern Power Company (“CSP”) due to the completion of the merger of the two EDUs. The Commission agreed:

The Commission also notes that the current TCRR process has been in place since 2009, and operates appropriately. As structured, with the TCRR mechanism any over- or under-recovery is accounted for in the next semi-annual review of the TCRR mechanism. For this reason, we do not expect any adverse rate impact for customers with the combining of the CSP and OP TCRR mechanism.[[23]](#footnote-23)

There is no reason to adopt a revised methodology in light of the Commission’s recent determination that the current TCRR mechanism, which includes the allocation method for net marginal losses, will not have any adverse rate impact for customers even with the changes requested by OP. Thus, there is no reason for the Commission to adopt the Staff recommendation to revise the allocation method until Staff and other parties have an opportunity to examine the reasonableness of the proposed revision so that the Commission has a clear understanding of the scope and effect of it.

# Conclusion

 For the reasons stated above, the Commission should reject the recommendations by Staff to make the under-recovery portion of the rate non-bypassable and to revise the allocation method for net marginal losses.

 Respectfully submitted,

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**Certificate of Service**

I hereby certify that a copy of the foregoing *Comments of Industrial Energy Users-Ohio in Response to Commission Staff’s October 15, 2012 Review and Recommendation* was served upon the following parties of record this 19th day of October 2012, *via* hand-delivery, electronic transmission, or first class mail, U.S. postage prepaid.

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1. Application at 4-5 (June 15, 2012). [↑](#footnote-ref-1)
2. *Id.* at 4. [↑](#footnote-ref-2)
3. Staff Review at 1 (Oct. 15, 2012). [↑](#footnote-ref-3)
4. *Id.* at 2. [↑](#footnote-ref-4)
5. *Id.* at 1. [↑](#footnote-ref-5)
6. *Id.* at 2. [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *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.,* Opinion and Order (Aug. 8, 2012) (“*ESP II Case*” or “ESP II Order”). [↑](#footnote-ref-9)
10. *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Update Each Company's Transmission Cost Recovery Rider*, Case No. 11-2473-EL-RDR, Finding and Order at 3 (June 22, 2011). [↑](#footnote-ref-10)
11. *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 Nos. 08-917-EL-SSO, *et al.*, Opinion and Order at 49-50 (Mar. 18, 2009) (“ESP I Order”). [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. ESP II Orderat 63. [↑](#footnote-ref-13)
14. Ohio Power Comments at 2 (Aug. 1, 2012). [↑](#footnote-ref-14)
15. In its Comments, Ohio Power states that the rule applies to the “TCRR in the first instance and does not preclude a phase-in collection of under-recovery costs as proposed by the Company.” *Id*. at 2. The only legal support Ohio Power provides for this statement is a citation to the deferral mechanism the Commission approved in the *ESP I Case*. The ESP I phase-in was unrelated to the Commission’s approval of the TCRR in a completely separate case and clearly applied to rates that were approved under Section 4928.143, Revised Code. Equally clear is the fact that the Commission’s rule provides no basis for concluding that some part of the revenue recovery for transmission services should be recovered through a non-bypassable rider. Ohio Power’s argument is meritless. [↑](#footnote-ref-15)
16. *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for a Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, Opinion and Order at 56 (Feb. 23, 2011). (“*Duke MRO Case*”). [↑](#footnote-ref-16)
17. *Id.* [↑](#footnote-ref-17)
18. *Id.* [↑](#footnote-ref-18)
19. *Id.* at 57. [↑](#footnote-ref-19)
20. Staff Review at 2. [↑](#footnote-ref-20)
21. *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered under Section 4928.144, Ohio Revised Code*, Case No. 11-4920-EL-RDR, *et al*. [↑](#footnote-ref-21)
22. *See* http://www.pjm.com/committees-and-groups/closed-groups/~/media/committees-groups/working-groups/mlwg/postings/marginal-losses-implementation-training.ashx and http://www.potomaceconomics.com/uploads/nyiso\_documents/Patton%20Marginal%20Losses%20Affidavit.pdf for description of losses.  [↑](#footnote-ref-22)
23. ESP II Order at 63. [↑](#footnote-ref-23)