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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company to Establish) Case No. 10-155-EL-RDR
Environmental Investment Carrying Cost)
Riders.)

MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT
AND COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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March 26, 2010

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MOTION TO INTERVENE

Industrial Energy Users-Ohio ("IEU-Ohio") hereby respectfully moves the Public Utilities Commission of Ohio ("Commission"), pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code ("O.A.C."), for leave to intervene in the above-captioned matter with the full powers and rights granted by the Commission, specifically by statute or by the provisions of the O.A.C., to intervening parties.

On February 8, 2010, Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP") (collectively, "AEP-Ohio" or "Companies") filed an Application to establish their respective environmental investment carrying cost riders ("EICCR").

As demonstrated further in the Memorandum in Support, attached hereto and incorporated herein, IEU-Ohio has a direct, real, and substantial interest in the issues and matters involved in the above-captioned proceeding, and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. IEU-Ohio believes that its participation will not unduly prolong or delay this proceeding and that it will significantly contribute to the full development and equitable resolution of the factual and other issues in this proceeding. The interests of

IEU-Ohio will not be adequately represented by other parties to the proceeding and, as such, IEU-Ohio is entitled to intervene with the full powers and rights granted by the Commission, specifically by statute and by the provisions of the O.A.C., to intervening parties.

Respectfully submitted,



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MEMORANDUM IN SUPPORT AND COMMENTS

A. MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

In support of this Motion to Intervene, IEU-Ohio states that it is an association of ultimate customers. A current listing of IEU-Ohio member companies is available on IEU-Ohio's website at http://www.ieu-ohio.org/member_list.aspx. IEU-Ohio's members work together to address matters that affect the availability and price of utility services. Additionally, IEU-Ohio seeks to promote customer-driven policies that will assure an adequate, reliable, and efficient supply of energy for all consumers at competitive prices. To this end, IEU-Ohio has worked, and will continue to work, to produce legislative, regulatory, and market outcomes that are consistent with the state policy contained in Section 4928.02, Revised Code.

Some of IEU-Ohio's members obtain their electricity supply from AEP-Ohio, which is a public utility subject to the jurisdiction of the Commission. AEP-Ohio's Application to establish the EICCRs will, if approved by the Commission, affect the rates and charges of the IEU-Ohio members obtaining their electricity supply from AEP-Ohio. More specifically, AEP-Ohio's proposal may result in increases to the rates charged to IEU-Ohio members for electric service as well as impact the quality of service that IEU-Ohio members receive from AEP-Ohio. Thus, IEU-Ohio has a direct, real, and

substantial interest in the issues and matters involved in the above-captioned proceedings, the disposition of which may impair or impede its ability to protect that interest.

Based on the foregoing reasons, IEU-Ohio requests that the Commission grant its intervention with the full powers and rights granted by the Commission, specifically by statute and by the provisions of the O.A.C., to intervening parties.

B. COMMENTS ON AEP-OHIO'S APPLICATION

AEP-Ohio is currently collecting standard service offer ("SSO") rates and charges based on the Commission's modification and approval of an electric security plan ("ESP") submitted by AEP-Ohio. AEP-Ohio did not accept the as-modified ESP. The ESP rates and charges are based on, among other things, an odd (and IEU-Ohio believes illegal) assortment of automatic annual increases, a market-based price comparison that overstated any estimate of the then appropriate market price, charges based on hypothetical costs associated with the risk that customers might "shop" in accordance with their statutory rights, hypothetical carrying costs, and deferrals that will land on customers when the current ESP ends. Throughout the ESP process, AEP-Ohio has flip-flopped between market-based and cost-based reasoning and the Commission has, so far, accommodated the flip flops.

The Commission's as-modified and approved ESP is being contested through appeals that are presently pending at the Ohio Supreme Court.¹

In another effort to further increase the already relatively large margin that AEP-Ohio makes available to its parent company, AEP-Ohio filed the Application which

¹ *Indus. Energy Users-Ohio v. Pub. Util. Comm.*, Ohio Supreme Court Case No. 2009-2022; *Columbus Southern Power Co v. Pub. Util. Comm.*, Ohio Supreme Court Case No. 2009-2298.

is addressed herein. The image below shows the relative gross margin contribution by AEP-Ohio. The image was extracted from a page of a larger presentation which American Electric Power made at the Edison Electric Institute's fall 2009 conference.²

Detailed Ongoing Earnings Guidance

2009E: \$2.90 - \$3.05		American Electric Power 2009 Guidance vs. 2010 Guidance		2010E: \$2.80 - \$3.20	
		2009 Guidance (\$ millions)	2010 Guidance (\$ millions)		
UTILITY OPERATIONS:					
1	Gross Margin:				
2	East Regulated Integrated Utilities	66,754 GWh @ \$ 38.4 /MWh =	2,862	66,240 GWh @ \$ 42.1 /MWh =	2,873
3	Ohio Companies	47,294 GWh @ \$ 67.8 /MWh =	2,738	47,832 GWh @ \$ 67.9 /MWh =	2,906
4	West Regulated Integrated Utilities	36,112 GWh @ \$ 29.6 /MWh =	1,168	41,485 GWh @ \$ 31.3 /MWh =	1,290
5	Texas Utilities	27,206 GWh @ \$ 21.1 /MWh =	575	29,540 GWh @ \$ 21.9 /MWh =	650
6	Off-System Sales (Net of Shareings)	13,520 GWh @ \$ 16.7 /MWh =	228	25,662 GWh @ \$ 13.4 /MWh =	322
7	Transmission Revenue - 3rd Party		350		350
8	Other Operating Revenue		779		554
9	Utility Gross Margin		8,397		8,670
10	Operations & Maintenance		(3,306)		(3,646)
11	Depreciation & Amortization		(1,862)		(1,626)
12	Taxes Other than Income Taxes		(706)		(761)
13	Interest Exp & Preferred Dividend		(824)		(986)
14	Other Income & Deductions		128		186
15	Income Taxes		(867)		(743)
16	Utility Operations On-Going Earnings		1,241		1,446
17	Transmission Operations On-Going Earnings		4		9
NON-UTILITY OPERATIONS:					
18	AEP River Operations		47		49
19	Generation & Marketing		35		2
20	Non-Utility Operations On-Going Earnings		82		40
21	Parent & Other On-Going Earnings		(82)		(82)
22	ONGOING EARNINGS		1,254		1,445



For analysis purposes, certain financial statement amounts have been restated for the effect on earnings presentation.

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From a bigger picture perspective, IEU-Ohio believes the Commission should revisit its modification and approval of an ESP (which has yet to be accepted by AEP-Ohio) for the purpose of testing it against the goals in Section 4928.02, Revised Code. The modified and approved ESP is unfairly tilted against AEP-Ohio's customers and has features that will further stack the deck against such customers beginning in 2012.

² The presentation is available via the Internet at:
http://www.aep.com/investors/present/documents/FallEEIAdditionalHandout_FINAL.pdf (last checked March 21, 2010).

From this bigger picture perspective, IEU-Ohio will now address AEP-Ohio's EICCR Application.

In its ESP Application, AEP-Ohio asked the Commission for automatic non-FAC increases of 3% and 7% for CSP and OP customers, respectively.³ AEP-Ohio's proposed automatic non-fuel adjustment clause ("FAC") increases were designed to produce incremental and substantial revenue allowances for, among other things, carrying costs associated with anticipated environmental investment costs during the ESP period. In response to AEP-Ohio's proposal, the Commission's Staff ("Staff") suggested, instead, that the Commission approve only half of the requested automatic increases and also suggested that AEP-Ohio be permitted to recover carrying costs for anticipated environmental investments made during the ESP period.⁴ Ultimately, the Commission denied AEP-Ohio's proposal for automatic non-FAC increases and, following the Staff's suggestion, directed AEP-Ohio to file an application in 2010 for recovery of 2009 actual environmental investment costs and annually thereafter.⁵ AEP-Ohio's EICCR Application seeks to increase AEP-Ohio's revenue over the remaining 18 months of the current ESP based on a claimed level of carrying costs associated with its 2009 environmental investment.

³ See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, PUCO Case Nos. 08-917-EL-SSO, *et al.*, Opinion and Order at 28 (March 18, 2009) (hereinafter cited as "*AEP-Ohio ESP Proceeding*").

⁴ *Id.* at 29.

⁵ *Id.* at 30; *AEP-Ohio ESP Proceeding*, Entry on Rehearing at 14 (July 23, 2009).

- 1. The monthly carrying cost calculation methodology is unreasonable and inconsistent with the carrying cost methodology approved in AEP-Ohio's ESP proceeding.**

The methodology used by AEP-Ohio in this filing implies that AEP-Ohio has incurred carrying costs on a monthly basis and then sums the monthly values rather than using a single, end-of-year application of its hypothetical carrying cost rate to its total environmental investment for 2009. Substantively, AEP-Ohio's carrying cost calculation methodology in the EICCR Application is different than AEP-Ohio proposed in its ESP proceeding, and the difference is designed to produce a higher level of revenue. In the ESP testimony of Philip J. Nelson, AEP-Ohio showed an end-of-year carrying cost calculation, not a monthly-compounding carrying cost calculation.⁶

Calculating the carrying cost associated with environmental investment on a monthly basis rather than a single calculation at year end compounds carrying cost charges and increases the carrying cost amount associated with the 2009 environmental investments. The monthly-compounding carrying cost methodology increases the amounts to be recovered from customers during the remainder of the ESP period or increases the amount that will be deferred (with interest) for future recovery through a non-bypassable charge. If the Commission allows AEP-Ohio to increase rates to recover a hypothetical carrying cost on certain investment through an EICCR, the Commission should require AEP-Ohio to calculate the recoverable carrying charges using a single, end-of-year methodology. Doing so would reduce the amount subject to collection from customers as well as be consistent with the methodology proposed in AEP-Ohio's ESP proceeding.

⁶ *AEP-Ohio ESP Proceeding*, Testimony of Phillip J. Nelson at PJN-8 (July 31, 2008).

2. A return on and of AEP-Ohio's environmental investments made during the ESP period is unreasonable.

AEP-Ohio's EICCR Application also relies on a hypothetical carrying cost rate of 13.98% for OP and 14.94% for CSP for purposes of determining the amount of the rate increases that will occur if the Commission approves the Application.⁷ AEP-Ohio's carrying cost math produces a revenue allowance that includes a weighted average return of equity and debt as well as deferred depreciation expense, federal income tax expense, property tax expense and administrative and general expense on its environmental investment.⁸ AEP-Ohio's proposed carrying cost math is designed to produce an excessive allowance for carrying costs, is well beyond a traditional carrying cost, and is otherwise unreasonable.

AEP-Ohio's Application requests the same hypothetical carrying cost rate for its environmental investments during the ESP period as the Commission embedded in the modified and approved ESP for AEP-Ohio with regard to eligible investment made prior to the ESP period (from 2001-2008). While the Commission's Orders in the ESP case explicitly approved this hypothetical carrying cost rate for environmental investments made before the ESP period, the Commission did not specify that the same hypothetical carrying cost rate should be used to develop an allowance for carrying costs associated with environmental investments during the ESP period.

IEU-Ohio urges the Commission to reject AEP-Ohio's proposed and hypothetical carrying cost rate. If the Commission authorizes any further increase in rates as a result of this proceeding, any allowance for carrying costs should be limited to the return on the investment and should be at the average debt rate (5.71% for OP and 5.73% for

⁷ Application at CSP Schedule 1 and OP Schedule 1 (February 8, 2010).

⁸ Application at CSP Schedule 3 and OP Schedule 3 (February 8, 2010).

CSP).⁹ Traditionally, carrying costs have been designed to provide a utility with revenue to compensate the utility for the time value of money related to eligible investment. This time value of money concept does not enable an opportunity for a utility to load up rates with allowances for monthly depreciation expense, federal income tax expense, property tax expense, and administrative and general expenses even when expense levels are tied to actual, prudently incurred amounts. AEP-Ohio's proposed EICCR carrying cost rate unnecessarily and unreasonably increases the amounts subject to recovery from AEP-Ohio's customers either during the remainder of the ESP period or through a non-bypassable charge after the ESP period ends. The revenue increases that the Commission has made available to AEP-Ohio during the ESP period and thereafter make the use of a debt-related interest rate (rather than a weighted cost of debt and equity) more appropriate since the carrying costs associated with these ESP period investments will be recovered through a non-bypassable rider over a seven year period once the current ESP ends. Finally, the use of a debt-related carrying cost rate would be consistent with the Commission's recent precedent for other utilities.¹⁰

⁹ *AEP-Ohio ESP Proceeding*, Testimony of Phillip J. Nelson at PJN-11 (July 31, 2008).

¹⁰ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices, and for Tariff Approvals*, PUCO Case Nos. 07-551-EL-AIR, *et al.*, Opinion and Order at 10 (July 21, 2009).

3. AEP-Ohio's Application must be dismissed inasmuch as the Commission lacks subject matter jurisdiction over the Application.

AEP-Ohio filed its initial ESP Application with the Commission on July 31, 2008. Under Section 4928.143, Revised Code, the Commission was required to issue an order on AEP-Ohio's proposed ESP within 150 days, or December 28, 2008. The Commission eventually issued its Opinion and Order 80 days late on March 18, 2009. AEP-Ohio relies upon its approved ESP as the basis and the enabling vehicle for its EICCR Application.¹¹

Section 4928.143(C)(1), Revised Code, states, "The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date." Under Section 4928.141(A), Revised Code, until the Commission issues an Order approving, modifying and approving, or denying an ESP Application, and upon expiration of the jurisdictional deadline, the then-current rate plan of an electric distribution utility ("EDU") must continue for the purpose of the utility's compliance with Section 4928.141(A), Revised Code. Thus, the Commission lost subject matter jurisdiction over AEP-Ohio's ESP Application when it failed to issue an Order within the 150-day timeframe mandated by Section 4928.143(C)(1), Revised Code.

As a creature of statute, the Commission may only exercise that jurisdiction conferred upon it by the Ohio Revised Code.¹² The Commission patently lacked

¹¹ Application at 1-2 (February 8, 2010).

¹² *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 234 (1999).

jurisdiction to proceed with the ESP case. Because the underlying ESP Orders are unlawful and the authority for this Application is grounded in those Orders, the Commission lacks the subject matter jurisdiction to consider AEP-Ohio's Application. All Commission Orders in the ESP proceeding itself, or any other subsequent proceedings stemming from the ESP proceeding, are illegal.

The Commission should *sua sponte* dismiss AEP-Ohio's Application inasmuch as the Commission lacks subject matter jurisdiction over the Application and therefore does not possess the power to approve the Application. The Commission should find that its Orders in the ESP case and all subsequent AEP-Ohio proceedings stemming from the ESP case were beyond its statutory authority inasmuch as the Commission lost subject matter jurisdiction over AEP-Ohio's ESP when it failed to issue an order within the 150-day deadline imposed by SB 221. As a remedy, the Commission should require AEP-Ohio to replace its current tariffs with the tariffs that were in effect on July 31, 2008 in accordance with Sections 4928.141 and 4928.143, Revised Code.

- 4. Even if the Commission finds it does have subject matter jurisdiction over the instant Application, the Commission cannot approve the Application unless and until AEP-Ohio accepts its ESP and withdraws the appeal of its ESP in Ohio Supreme Court Case No. 2009-2298.**

Section 4928.143(C)(1), Revised Code only permits the Commission to approve an ESP if it finds that the approved ESP, which the Commission may modify before approving, is "more favorable in the aggregate" as compared to the expected results of a market rate option ("MRO") plan. Additionally, Section 4928.143(C)(2)(a), Revised Code, permits an EDU such as AEP-Ohio to withdraw, and thereby terminate, an ESP application when modifications made by the Commission are not acceptable to the EDU. Upon such withdrawal and termination, the EDU may file a new ESP application

or an MRO under Section 4928.142, Revised Code. Further, Section 4928.141, Revised Code, states plainly that:

Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section; and that standard service offer shall serve as the utility's default standard service offer for the purpose of section 4928.14 of the Revised Code. Notwithstanding the foregoing provision, the rate plan of an electric distribution utility shall continue for the purpose of the utility's compliance with this division until a standard service offer is first authorized under section 4928.142 or 4928.143 of the Revised Code.

Thus, under Section 4928.141, Revised Code, an EDU cannot accept the benefits of the rates approved in an ESP while simultaneously preserving the right to withdraw and terminate the ESP.

As IEU-Ohio has documented previously, AEP-Ohio has taken the benefits of its approved ESP at every turn while continuing to dispute the lawfulness and reasonableness of the very Orders that permit AEP-Ohio to enjoy those benefits.¹³ Indeed, AEP-Ohio has never formally accepted its approved ESP, is still taking the benefits of the approved ESP, and has filed an appeal of its ESP at the Ohio Supreme Court.¹⁴ The Commission has never substantively addressed this point of law despite IEU-Ohio raising it multiple times during the ESP proceeding.¹⁵

¹³ See *AEP-Ohio ESP Proceeding*, Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio at 9-12 (August 17, 2009). See also *AEP-Ohio ESP Proceeding*, Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio (February 5, 2010).

¹⁴ *Columbus Southern Power Co. v. Pub. Util. Comm.*, Ohio Supreme Court Case No. 2009-2298.

¹⁵ See *AEP-Ohio ESP Proceeding*, Entry on Rehearing at 2 (July 23, 2009). IEU-Ohio filed a Motion for Immediate Relief from Electric Rate Increases on April 20, 2009, raising this legal issue for the Commission's consideration. Despite the Commission indicating it would address IEU-Ohio's Motion (and all other pending motions) in its Entry on Rehearing, the Commission never mentioned or ruled on IEU-Ohio's Motion (or any of the other pending motions) in the remainder of its Entry on Rehearing. See also *AEP-Ohio ESP Proceeding*, Second Entry on Rehearing at 7 (November 4, 2009) (finding that it was unnecessary to address this issue on rehearing because AEP-Ohio has not filed notice with the Commission indicating it would withdraw and terminate its approved ESP).

Ohio law does not allow AEP-Ohio to take the benefits of the Commission's Orders while it is itself challenging the lawfulness of the very orders that bestow these benefits as well as reserving judgment to withdraw and terminate its ESP proposal. So long as AEP-Ohio reserves judgment to withdraw and terminate the approved ESP as a result of modifications made by the Commission or the Ohio Supreme Court pursuant to requests from AEP-Ohio, Section 4928.141, Revised Code, requires the prior "rate plan" to continue. Thus, even if the Commission finds it has subject matter jurisdiction to entertain AEP-Ohio's Application, the Commission must dismiss the Application unless and until AEP-Ohio accepts its ESP and withdraws its appeal of the ESP in Ohio Supreme Court Case No. 2009-2298.

Further, the Commission's failure to prohibit AEP-Ohio from accepting the benefits of the ESP, while simultaneously reserving judgment on whether to withdraw and terminate the ESP, undermines the very threshold ESP versus MRO comparison that Section 4928.143, Revised Code, requires be met for the Commission to approve an ESP and, by extension, to entertain the instant Application. The ESP versus MRO comparison conducted in the ESP proceeding by the Commission necessarily assumes that each of the components of the ESP will go unchallenged and not be disturbed. Modifying any portion of the approved ESP would necessarily affect the "more favorable in the aggregate" test. The Commission's failure to prohibit AEP-Ohio from taking the benefits of the ESP, while reserving judgment on whether to accept the ESP, leaves open the question of the ultimate costs to customers from the ESP, thereby calling into question the necessary assumption that the ESP construct in which this Application is proposed is in fact more favorable in the aggregate than the expected results of an MRO.

Thus, even if the Commission finds it has subject matter jurisdiction to approve the instant Application, the Commission must condition its approval on AEP-Ohio accepting its ESP and withdrawing the appeal of its ESP. Failing to include this condition in an order approving AEP-Ohio's Application would violate Sections 4928.141 and 4928.143, Revised Code, as well as continue to permit AEP-Ohio to accept the benefits of its ESP while AEP-Ohio's own actions undermine the assumptions necessary for finding the approved ESP construct is in fact more favorable than the expected results of an MRO.

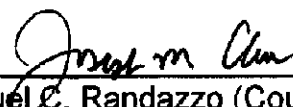
5. The Commission should find that AEP-Ohio's proposal may be unlawful and unreasonable, establish a schedule for the filing of initial and reply comments, and set the matter for hearing.

AEP-Ohio requests that the Commission forgo a hearing in this matter and instead only permit the filing of initial and reply comments before approving the Application. AEP-Ohio reasons that a hearing is not necessary inasmuch as the Application is the result of the Commission's Orders in the ESP proceeding and the Staff can verify the schedules supporting the Application. On February 23, 2010, the Ohio Consumers' Counsel ("OCC") filed a Motion to Intervene and Motion for Procedural Ruling. OCC opposes AEP-Ohio's request to decide this matter through a paper hearing. On March 3, 2010, AEP-Ohio filed a Memorandum Contra OCC's Motion for Procedural Ruling; OCC filed its Reply to AEP-Ohio's Memorandum Contra on March 15, 2010.

As evidenced by the comments offered above, there are multiple issues that need to be resolved in this case and AEP-Ohio's proposal appears to be unlawful and unreasonable. IEU-Ohio respectfully submits that the Commission should establish an initial and reply comment period for stakeholders, find that AEP-Ohio's proposal may be

unlawful and unreasonable, and set the matter for a hearing with a scope defined by the Commission based on its review of any filed comments.¹⁶ Given that the timing of the Application coincides with the July 1, 2010 FAC adjustment, the Commission has ample time to receive comments as well as hold a hearing before the planned July 1, 2010 FAC rate adjustment.

Respectfully submitted,



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¹⁶ IEU-Ohio is submitting comments with its Motion to Intervene because the Commission has, on occasion, issued an order approving proposals by AEP-Ohio without establishing a formal comment period, hearing, or other opportunity to be heard. IEU-Ohio reserves the right submit further comments and to otherwise fully participate in any process the Commission may establish in this proceeding.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Intervene and Memorandum in Support and Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 26th day of March 2010, via first class mail, postage prepaid.


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