BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Costs in Relation to the Department of Development's Update to the Percentage of Income Payment Plan Plus and Deferral of Costs.	:	Case No. 11-148-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Costs in Relation to the Department of Development's Update to the Percentage of Income Payment Plan Plus and Deferral of Costs.	:	Case No. 11-149-EL-RDR

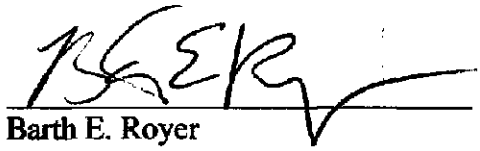
MOTION TO INTERVENE
OF
THE OHIO DEPARTMENT OF DEVELOPMENT

By the above-styled applications, Columbus Southern Power Company and Ohio Power Company (collectively, the "Companies") seek authority to establish new distribution riders to recover the incremental uncollectible expense the Companies allege will be created by the new PIPP Plus rules recently implemented by the Ohio Department of Development ("ODOD"). The Companies also request approval of related accounting modifications to permit deferral of the uncollectible expense subject to recovery through the proposed riders. As more fully discussed in the accompanying memorandum, ODOD has a real and substantial interest in this 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. Further, ODOD's interest in this proceeding is not represented by any existing party, and its participation in this proceeding will contribute to a just

and expeditious resolution of the issues involved without unduly delaying the proceeding or unjustly prejudicing any existing party. Accordingly, ODOD moves to intervene in this proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code ("OAC").

WHEREFORE, ODOD respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE OF THE OHIO DEPARTMENT OF DEVELOPMENT

By their joint application filed herein on January 11, 2011, Columbus Southern Power Company and Ohio Power Company (collectively, the "Companies") request Commission approval of distribution riders to recover the incremental uncollectible expense which the Companies allege will be created as a result of certain new rules governing the operation of the electric percentage of income payment plan ("PIPP") program administered by the Ohio Department of Development ("ODOD"). The application also seeks approval of accounting modifications to permit the Companies to defer this incremental uncollectible expense until such time as it is recovered through the proposed riders.

Section 4903.221, Revised Code, provides that any "person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding." The Ohio Department of Development ("ODOD") is charged by statute with the responsibility for administering the electric PIPP program.[1] In fulfilling that responsibility, ODOD, after providing all stakeholders with an opportunity to be heard, adopted a new set of rules – known as the PIPP Plus rules – governing the operation of the electric PIPP program,[2] including the rules alluded to in the Companies' application. For reasons discussed *infra*, ODOD submits that approval of this application would undermine the intent of the rules in question to the detriment of the newly-created PIPP Plus program and the Companies' ratepayers. Thus, there can be no question that ODOD "may be adversely affected" by this proceeding. Further, not only does ODOD satisfy the statutory standard for intervention in Commission proceedings, but it also satisfies the standards governing intervention set forth in the Commission's rules.[3]

Rule 4901-1-11(A), Ohio Administrative Code ("OAC"), provides, in pertinent part, as follows:

> (A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:
>
> . . .
>
> (2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his ability to protect that interest, unless the person's interest is adequately represented by existing parties.

[1] *See* Section 4928.53, Revised Code.

[2] *See* Chapter 122:5-3, OAC, effective November 1, 2010.

[3] In this connection, ODOD would point out that, although the statutory definition of a "person" does not include state agencies [*see* Section 1.59(C), Revised Code], the definition of a "person" in the Commission's rules does include agencies of the state of Ohio [*see* Rule 4901-1-01(K), OAC]. Thus, even if the Commission were to find that ODOD does not have a statutory right to intervene under Rule 4901-1-11(A)(1), OAC, the Commission must, nonetheless, grant ODOD' motion to intervene if ODOD satisfies the requirements of Rule 4901-1-11(A)(2), OAC.

As the administrator of the PIPP Plus program, ODOD plainly has a real and substantial interest in a proceeding in which the Commission is being asked to approve an application containing a proposal that would undermine the objective of certain of its rules. Moreover, at this juncture, no other party has been granted leave to intervene in this proceeding. Thus, by definition, no existing parties represent ODOD's interest. Although ODOD does not believe this to be a close question, each of the specific considerations that the Commission may, by rule, take into account in applying the Rule 4901-1-11(A)(2), OAC, standard also fully support granting ODOD's motion to intervene.

Rule 4901-1-11(B), OAC, provides as follows:

> In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner shall consider:
>
> (1) The nature and extent of the prospective intervenor's interest.
>
> (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.
>
> (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
>
> (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
>
> (5) The extent to which the person's interest is represented by existing parties.

First, ODOD's interest in a proceeding on an application, which, if approved, would pull the rug from under certain of its rule changes is obviously direct and substantial. Second, ODOD's position that this application is inconsistent with the underlying intent of certain provisions of the new PIPP Plus rules and is not in the public interest goes directly on the merits of the application. Third, the Commission must consider arguments that an application should

not be approved in determining the merits of any application. Thus, granting ODOD's motion to intervene will not unduly prolong or delay the proceeding. Fourth, no one is better placed than ODOD to explain the intent of provisions of its rules, and ODOD, which fully considered the ramifications of the provisions in question in the context of its own rulemaking, will bring substantial expertise to bear on the issues raised. Finally, as previously noted, no existing parties represent ODOD's interest. Thus, granting ODOD's motion to intervene is consistent with all the considerations set out in Rule 4901-1-11(B), OAC, and is also consistent with the Commission's stated policy "to encourage the broadest possible participation in its proceedings."[4]

Apart from stating that the proposed uncollectible expense riders would operate "outside the current rate caps,"[5] the application is silent with respect to the authority under which the Companies bring this application to the Commission. ODOD assumes that this statement is intended to invoke the provision of their 2008 ESP applications that proposed that "the ESP enable them to submit filings with the Commission during the ESP period to recover costs incurred in conjunction with compliance with a government mandate that is imposed after the filing of this application."[6] However, neither this provision nor the relevant Commission orders in the ESP cases[7] establish the ground rules for proceedings on such filings.[8] Thus, the

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[4] *See, e.g., Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR (Entry dated January 14, 1986, at 2).

[5] Application, 4.

[6] *See In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan*, Case No. 08-917-EL-SSO (Application dated July 31, 2008, at 18, ¶VI.A); *In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan*, Case No. 08-918-EL-SSO(Application dated July 31, 2008, at 18,¶VI.A).

[7] *See* Case Nos. 08-917-EL-SSO and 08-918-EL-SSO (Opinion and Order dated March 18, 2009 and Entry on Rehearing dated July 23, 2009), *passim.*

[8] Indeed, the Commission's orders in the ESP cases do not even address this proposal.

procedural requirements and the specific standards to be applied by the Commission in evaluating an application made pursuant to this provision of the ESP are less than clear.[9] Be that as it may, the Commission certainly has an obligation to determine if the application contains proposals that may be unjust and unreasonable, and, if it so finds, to set the application for hearing or, at minimum, establish a period for the filing of objections and/or comments.[10] ODOD offers the following as a showing that the proposals contained in the application may be unjust and unreasonable.

At the outset, ODOD would emphasize that it has no obligation in this proceeding to defend its duly-enacted and JCARR-approved rules. However, in determining whether the proposals in the application may be unjust or unreasonable, it is important that the Commission understand the objectives of the rule change cited by the Companies as the basis for their application.

As the Commission well knows, income-eligible customers enrolled in the PIPP program can maintain service by paying a fixed, specified percentage of their income to the utility each

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[9] In so stating, ODOD is aware that this provision of the Companies' ESP applications cited the "reasonable arrangements" statute, Section 4905.31, Revised Code, as the authority for this proposal. However, Section 4905.31(E), Revised Code, merely provides that no schedule or arrangement filed pursuant thereto is lawful unless it is approved by the Commission, and does not speak to the process to be employed the Commission in evaluating such filings. One thing that is clear is that, regardless of the procedural vehicle, the Companies, as the applicant utilities, have the burden of proof with respect to the reasonableness of the proposals contained in their application.

[10] If this were a not-for-an increase ATA application, a showing that the "proposals in the application may be unjust or unreasonable" would trigger the requirement that the matter be set for hearing (*see* Section 4909.18, Revised Code). ODOD respectfully submits that, regardless of the authority under which the application has been filed, this would still be an appropriate standard for determining if a hearing is required. Although ODOD has suggested the possibility of a establishing a formal comment cycle as an alternative to a hearing, ODOD would note that the Companies make certain factual allegations in an attempt to support the application, including the claim that the rule changes in question could increase the Companies' incremental uncollectible expense by some $3.65 million per year (Application, 3). Factual allegations of this type are best examined in a hearing, where the evidence offered in support of such allegations can be tested.

month, as opposed to paying the amount of the bill based on their actual monthly consumption. Under the electric PIPP program, the electric distribution utility ("EDU") is made whole for the difference between the PIPP installment amount paid by the PIPP customer and the cost of the electricity delivered to the PIPP customer through payments by the EDU's ratepayers collected via Universal Service Fund ("USF") riders approved by this Commission.[11] Pursuant to Section 4928.51(A), Revised Code, the EDU remits the funds collected through the USF riders to ODOD on a monthly basis for deposit in the state treasury's USF. ODOD then reimburses the EDU from the USF for the cost of electricity delivered to PIPP customers. This cost includes any accumulated arrearage at the time the customer enrolls in PIPP, as well as the difference between the PIPP customer payment and the cost of the electricity delivered to the PIPP customer after the customer is enrolled.

Historically, the EDUs remitted the PIPP payment amounts collected from customers enrolled in the PIPP program along with the USF rider collections, and ODOD's reimbursement payments covered both this amount and the difference between the PIPP payment received and the cost of the electricity delivered to the PIPP customer. This practice resulted in the portion of the arrearages generated by a PIPP customer's failure to pay the monthly PIPP installment amount being included in the cost of PIPP. Because the EDU was guaranteed 100 percent recovery of the cost of electricity delivered to the PIPP customer regardless of whether the PIPP customer made the monthly PIPP installment payment, the EDU had no incentive to disconnect a defaulting PIPP customer promptly or to pursue collection aggressively once the customer was

[11] USF rider collections also fund low-income customer energy efficiency and consumer education programs administered by ODOD, and pay the administrative costs incurred by ODOD in connection with these programs. *See* Section 4928.52(A), Revised Code. However, the focus here is on the cost of PIPP component of the USF rider revenue requirement.

disconnected.[12] ODOD believed that this lack of incentive may well have resulted in the cost of PIPP collected from ratepayers through the USF riders being greater than it would have been if the EDU faced the same financial risk with respect to defaulting PIPP customers that it faces with respect to defaulting customers generally. Thus, ODOD took pains to address this concern in developing its new PIPP Plus rules.

New Rule 122:5-3-04(B)(1), OAC, continues to treat accrued arrearages at the time of initial PIPP enrollment as a cost of PIPP that is fully reimbursed from the USF, and continues to guarantee the EDU 100 percent recovery of PIPP customer's post-enrollment arrearages created by the difference between the PIPP installment payment amount and the actual bill for the service provided.[13] However, new Rule 122:5-3-04(B)(2), OAC, now provides that:

> Electric distribution utilities shall not be entitled to recover from the fund, and they shall not charge to the director, any deficiencies accruing as a result of a PIPP customer's failure to pay monthly PIPP installment amounts.

By allowing the EDU to retain PIPP installment payment revenue[14] and excluding arrearages generated by a PIPP customer's failure to pay the monthly PIPP installment amount,[15]

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[12] Indeed, prior to the settlement agreement between ODOD and the Companies that resolved the remaining open issues identified in ODOD's supplement to its notice of intent in the 2008 USF rider rate adjustment proceeding, the Companies did not turn final-billed PIPP account balances over for third-party collection. *See In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 08-658-EL-UNC (ODOD Supplement to Notice of Intent dated April 15, 2009, at 26).

[13] In their application, the Companies state that, under PIPP Plus, they "will no longer be reimbursed for the portion of the customer's usage which is actually billed to the customer, but not paid by the customer." Application, 3. Just to be clear, the amount for which the Companies will no longer be reimbursed is the difference between the amount of the prescribed PIPP installment payment and the amount the customer actually pays. Under the PIPP Plus rules, the Companies will continue to be fully reimbursed for accrued arrearages at the time of initial enrollment and for the difference between prescribed PIPP payment installment amount and the cost of the electricity delivered to the customer. *See* Rule 122:5-04(B)(1), OAC.

[14] Under new Rule 122:5-05(D)(1), OAC, the EDU remits only USF rider collections.

ODOD placed PIPP customer defaults on the same footing as other customer defaults, thereby providing the same incentive for the EDU to disconnect defaulting PIPP customers promptly and to pursue collection activities against them as the EDU has to take these actions with respect to other defaulting customers. Simply stated, with this rule change, the EDU now has skin in the game, whereas, before the rule change, it did not. But the risk the EDU now faces – *i.e.*, the risk that the PIPP customer will default on the installment payment – is the same risk of nonpayment the EDU always faces when it bills a customer for the amount due. In other words, this risk is not created by the PIPP program and, thus, as the new rule recognizes, the USF should not be liable for the PIPP customer's failure to pay the PIPP installment amount. Moreover, the EDU's financial exposure is likely considerably less in the case of the PIPP customer because the dollar amount in jeopardy is only the amount of the current PIPP installment payment, as opposed to the total amount owed for service, the amount at risk in the case of all other customers.

As in the case of non-PIPP customer defaults, the Commission's disconnection procedures provide the EDU with the mechanism to limit the amount at risk, and the ability to pursue collection provides the EDU with the opportunity to reduce the amount that will ultimately be written off as bad debt. Yet the Companies now ask the Commission to insulate them completely from any incremental increase in uncollectible expense attributable to PIPP customer defaults on PIPP installment payments when the Companies have no similar protection from incremental increases in uncollectible expense resulting from non-PIPP customer defaults. A Commission order approving the PIPP-specific uncollectible expense riders proposed in the application would completely undo what ODOD intended to accomplish by this rule change and

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[15] It should be noted that the EDU will continue to be reimbursed for the difference between the cost of electricity delivered to an active PIPP customer and the applicable monthly PIPP installment amount regardless whether the PIPP customer makes the PIPP installment payment. *See* Rule 122:5-05(B), OAC.

would result in the Companies' ratepayers providing the same guarantee of 100 percent recovery of PIPP installment payments that they previously backed via the USF riders.

In opposing the Companies' application, ODOD understands that uncollectible expense is an ordinary business expense and, as such, can be recognized, in some manner, in the EDU's rates. However, ODOD objects to carving out PIPP-related uncollectible expense for guaranteed recovery when there is no similar guarantee with respect to the uncollectible expense generated by other customers. Treating all uncollectible expense the same would satisfy ODOD's objective of placing the unrecovered installment payment arrearages of defaulting PIPP customers on the same footing as the arrearages of all other defaulting customers so that the incentives for the Companies to disconnect the defaulting customers promptly and to purse collection efforts would be the same in both scenarios. Thus, ODOD's objection goes to the Companies' attempt to circumvent newly-enacted PIPP Plus rules by asking the Commission to establish PIPP-specific uncollectible expense riders to give back what the new rules deliberately – and reasonably – took away as a part of ODOD's continuing effort to control the cost of the electric PIPP program and the burden it imposes on EDU ratepayers.

In their application, the Companies quote a passage from ODOD's notice of intent in the its 2010 USF rider rate adjustment case in which ODOD explained that it would not propose adjustments to the test-period cost of PIPP to reflect the impact of the new PIPP Plus rules in its application because "there is no way to forecast with any degree of certainty the impact these changes will have on the cost of PIPP during the 2011 collection period."[16] It appears that the Companies have cited this language to raise the spectre that the increase in incremental

[16] *In the Matter of the Application of the Ohio Department of Development for an Order Approving Adjustments to the Universal Service Fund Riders of Jurisdictional Ohio Electric Distribution Utilities*, Case No. 10-725-EL-USF (Notice of Intent dated May 28, 2010, at 4-5).

uncollectible expense resulting from the new PIPP Plus rules could be even greater than the $3.65 million impact the Companies allege could be produced.[17] Because the application contains no analysis to support this $3.65 million figure, ODOD has no idea how it was derived. However, it is clear is that the quoted passage lends no support to the Companies' position.

The explanation of ODOD's decision not to propose post-test period adjustments in its 2010 USF rider rate adjustment application to reflect the potential impact of the new PIPP Plus rules was not specifically related to the rule change regarding the reimbursement of arrearages created by the failure of PIPP customers to make their monthly PIPP installment payments. Rather, this explanation related primarily to the unknown impact of the changes in the basis upon which the installment payment would be calculated,[18] the unknown impact of the new requirement that electric PIPP payments be made year round,[19] and the unknown impact of the new PIPP arrearage crediting program.[20] Although the hope is that these program changes will ultimately reduce the cost of PIPP charged to ratepayers from what it otherwise would have been, none of these changes have any effect on ODOD's obligation to reimburse the EDU for the cost of PIPP. Thus, the uncertainty regarding the impact of these changes on the cost of PIPP has nothing to do with the potential increase in uncollectible expense the Companies seek to address through the proposed riders. On the other hand, new Rule 122:5-3-04(B)(2), OAC, will definitely reduce the cost to ratepayers by transferring responsibility for nonpayment of the PIPP

[17] Application, 3.

[18] *See* Rule 122:5-3-04(A)(1), OAC.

[19] *Id.*

[20] New Rule 122:5-3-04(B)(3), OAC, establishes an arrearage crediting program whereby a PIPP customer that makes a monthly on-time payment of the PIPP installment amount receives a credit against the current bill balance and a specified portion of his/her total accumulated arrearage balance. Because the EDU is reimbursed for the current bill balance and has already been reimbursed for the customer's accumulated arrearages, this program is risk-free from the EDU's perspective.

installment amount to the EDU, thereby placing defaulting PIPP customers on the same footing as all other defaulting customers.

Having said this, ODOD recognizes that, because the Companies heretofore have been guaranteed 100 percent recovery of PIPP-related costs, their current rates contain no allowance for PIPP-specific uncollectible expense. However, before approving the proposed PIPP-specific uncollectible expense riders, the Commission should take a broader look at the issues involved. The first step should be to gain some sense of the dollar value of the regulatory asset that would be created by authorizing the deferral of PIPP-specific uncollectible expense. As previously noted, as a matter of simple mathematics, the balance due when a PIPP customer defaults on a monthly installment payment will be considerably less than the balance due when a non-PIPP customer defaults on his/her total actual bill. Moreover, the anecdotal evidence thus far indicates that the new PIPP Plus arrearage crediting program is having the desired effect and suggests that this additional incentive to make full and timely installment payments will, indeed, reduce the risk of PIPP-customer defaults.

Next, the Commission should weigh the Companies' increased exposure to uncollectible expense created by the rule change against the policy objective underlying the rule change before handing the Companies the blank check they request in their application. In proposing this balancing test, ODOD would note that approval of this application is a matter within the discretion of the Commission. Although Paragraph VI.A of the Companies' ESP applications "enable them to submit filings with the Commission during the ESP period to recover costs incurred in conjunction with compliance with a government mandate that is imposed after the filing of this application," there is nothing in this paragraph that makes Commission approval of

these filings mandatory.[21] Similarly, although Section 4905.31, Revised Code, permits "a public utility electric light company" to file a schedule "to recover costs incurred in conjunction with . . . compliance with any government mandate," the statute further provides that such a schedule is not lawful unless it is approved by the Commission.[22] Under this statute, the Commission must, at minimum, determine that the proposed "financial device . . . may be practicable or advantageous to the parties interested."[23] Although the uncollectible expense riders proposed in the instant application would be advantageous to the Companies, these financial devices would clearly not be advantageous to the Companies' ratepayers and would defeat the purpose of the rule change.

Finally, the Commission should consider whether the Companies' recently filed distribution rate increase application represents the more appropriate vehicle for taking up the question of the impact of the new PIPP plus rules on the Companies' uncollectible expense.[24] Addressing this issue in the context of determining the appropriate overall allowance for uncollectible expense would be consistent with the ODOD's objective of equalizing the incentive for the EDU to disconnect defaulting PIPP customers promptly and to pursue collections against them with the incentive to take these actions in connection with defaults by non-PIPP customers.

ODOD submits that the foregoing discussion demonstrates that the proposals in the application may be unjust or unreasonable. Thus, the burden to prove otherwise falls to the Companies. This application plainly represents an attempt by the Companies to make an end run

[21] Case Nos. 08-917-EL-SSO and 08-918-EL-SSO (Applications dated July 31, 2008, at 18)

[22] Section 4905.31(E), Revised Code.

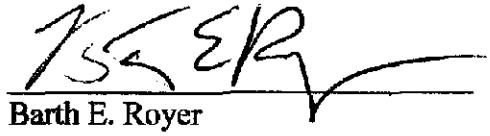
[23] *Id.*

[24] See In re the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger is Approved, as a Merged Company (collectively AEP Ohio) for an Increase in Electric Distribution Rates, Case No. 11-351-EL-AIR, et al. (Application dated January 27, 2011).

around a provision of ODOD's new PIPP Plus rules. The Commission should not permit the Companies to circumvent this provision without providing stakeholders, including, but not limited to, ODOD with the opportunity to be heard.

WHEREFORE, ODOD respectfully requests that the Commission grant its motion to intervene, find that the proposals in the application may be unjust or unreasonable, and set this matter for hearing or, at minimum, establish a formal comment cycle that will permit the issues raised herein by ODOD to be fully explored.

Respectfully submitted,



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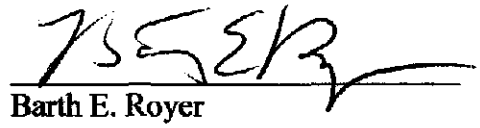
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail, postage prepaid, this 25th day of February 2011.



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