

**FILE**

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Ohio Power Company for Approval of the )  
Shutdown of Unit 5 of the Philip Sporn )  
Generating Station and to Establish a )  
Plant Shutdown Rider. )

Case No. 10-1454-EL-RDR

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**REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO**

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**2011 APR 22 PM 5:12**

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**April 22, 2011**

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**REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO**

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In this proceeding, the Public Utilities Commission of Ohio ("Commission") sought initial and reply comments from interested parties concerning an Application by Ohio Power Company ("OP") for approval of a rider for closure costs of the Sporn Generating Station Unit No. 5 ("Sporn"). Initial Comments were filed by seven interested parties. Since the Initial Comments were filed, the Ohio Supreme Court has provided additional guidance on the recoverability of the Sporn closure costs, and that guidance supports the Initial Comments by Industrial Energy Users-Ohio ("IEU-Ohio") and others including the Commission's Staff<sup>1</sup> that the Sporn closure costs are not recoverable as part of an Electric Security Plan.

As noted in IEU-Ohio's Initial Comments, there are several reasons to dismiss OP's Application without further hearing.<sup>2</sup> Importantly, IEU-Ohio noted that current law does not provide support for the rider that OP seeks through this Application. Because OP's default generation supply prices are governed by an ESP under Section 4928.143,

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<sup>1</sup> Comments Submitted on behalf of the Staff of the Public Utilities Commission of Ohio at 3.

<sup>2</sup> Initial Comments of IEU-Ohio at 5.

Revised Code, OP may seek recovery only within the terms of that section, and nothing in that section authorizes the recovery of Sporn closure costs.<sup>3</sup>

On April 19, 2011, the Ohio Supreme Court provided additional support for IEU-Ohio's position regarding the scope of costs that may be recovered in an ESP. Specifically, the Supreme Court rejected the assertion that the phrase "without limitation" allows items not listed in Section 4928.143(B)(2)(a)-(i), Revised Code, to be included in an ESP. The Court held: "By its terms, R.C. 4928.143(B)(2) allows plans to include only 'any of the following' provisions. It does not allow plans to include 'any provision.' So if a given provision does not fit within one of the categories listed 'following' (B)(2), it is not authorized by statute."<sup>4</sup>

OP has not pointed to any provision under Section 4928.143(B)(2), Revised Code, that allows recovery for closure costs. The subdivisions of that section provide Commission-approved automatic recovery for prudently incurred fuel and purchased power costs, allowances for the recovery for construction work in progress for new generation and environmental expenditures, a surcharge for new generating facilities under strict conditions, and various other items related to the sale and distribution of electricity. There is nothing providing a basis for recovery of closure costs. As a result, OP has no defensible claim for closure costs based on either the Commission's prior

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<sup>3</sup> Initial Comments of IEU-Ohio at 6.

<sup>4</sup> *In re Application of Columbus Southern Power Co., et al.*, Case No. 2011-Ohio-1788 (Apr. 19, 2011) at ¶ 32.

ESP Opinion and Order<sup>5</sup> or any independent claim based on Section 4928.143, Revised Code.

The Court's April 19, 2011 decision thus reinforces the Initial Comments of IEU-Ohio and others that there is no legal basis for OP to recover the stranded costs associated with its choice to prematurely close Sporn. The opportunity to recover economically stranded plant has passed, and the Commission should dismiss the Application.

Respectfully submitted,

  
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<sup>5</sup> OP's Application asserts that the Commission contemplated recovery of costs in its 2009 ESP Opinion and Order. Application at 5. As noted by IEU-Ohio, that claim is overstated at best. Initial Comments of IEU-Ohio at 6-7.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Reply Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 22nd day of April, 2011, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

  
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