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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**PUCO**

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 Generating Assets. )

Case No. 08-917-EL-SSO

In the Matter of the Application of Ohio Power )  
Company for Approval of its Electric Security )  
Plan; and an Amendment to its Corporate )  
Separation Plan. )

Case No. 08-918-EL-SSO

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**OBJECTIONS BY INDUSTRIAL ENERGY USERS-OHIO TO MAY 11, 2011 TARIFF  
FILING**

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**May 18, 2011**

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On March 18, 2009, the Public Utilities Commission of Ohio ("Commission") issued an Opinion and Order modifying and approving Electric Security Plans ("ESP") for Ohio Power Company ("OP") and Columbus Southern Power Company ("CSP"). On April 19, 2011, the Ohio Supreme Court ("Supreme Court") reversed and remanded the March 18, 2009 Opinion and Order, finding that the Opinion and Order contained three substantive errors. On May 4, 2011, the Supreme Court issued its mandate returning jurisdiction of these matters to the Commission. The Commission in response to the mandate directed CSP and OP "to file by May 11, 2011, proposed revised tariffs that would remove the POLR charges and environmental carrying cost charges associated with investments made from 2001 to 2008 from the Companies' tariffs."<sup>1</sup>

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<sup>1</sup> Entry at 2 (May 4, 2011).

On May 11, 2011, OP and CSP filed revised tariffs and two motions seeking either to have the current (unrevised) tariffs remain in effect or to collect the current revenues associated with POLR and environmental carrying costs associated with investments made from 2001-2008 subject to refund. In their proposed revised tariffs and based on the Companies' work papers, it appears that the Companies removed the revenue effects associated with the 2001-2008 environmental carrying costs.<sup>2</sup> However, the Companies failed to comply with the Commission's directive to remove the revenue effect of the POLR charges from their rates. Instead of removing the POLR revenue effect, the Companies offered a self-serving and legally unsupported claim that the Companies are entitled to continue to collect revenue under the POLR riders that existed prior to the ESP and under the Companies' 2004 Rate Stabilization Plans ("RSP").<sup>3</sup> To protect customers from the actions of the Companies' decision to ignore the Commission's May 4, 2011 Entry and to encourage the Commission to modify and approve the proposed tariffs as recommended herein, IEU-Ohio is filing these Objections.

Initially, it is clear that the Companies have not complied with the May 4, 2011 Entry ordering them to remove POLR charges from their tariffs. As noted above, the Commission directed the Companies to file revised tariffs removing the POLR charges.<sup>4</sup> The Companies' transmittal letter accompanying the May 11, 2011 proposed tariff filing,

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<sup>2</sup> The proposed tariffs reflect the removal of the revenue effect of the 2001-2008 environmental carrying costs from base generation rates and corresponding adjustments for some rate schedules to the fuel adjustment clause.

<sup>3</sup> *Columbus Southern Power Company's and Ohio Power Company's Combined Motion to Establish a Procedural Schedule for the Remand Proceeding and to Reject or Hold in Abeyance the Tariffs Filed on May 11, 2011, and Motion to Prospectively Convert the Affected Rates to Being Collected Subject to Refund, and Request for Expedited Ruling on Both Motions* at 7-8 (May 11, 2011) ("May 11, 2011 Motions").

<sup>4</sup> May 4, 2011 Entry at 2.

however, states that the proposed tariffs include POLR charges set at pre-ESP levels and language making the new POLR charges non-bypassable (unavoidable by shopping customers).<sup>5</sup> The Companies' then offer the rationale for proposing non-bypassable pre-ESP POLR charges in their May 11, 2011 Motions:

Another important consequence of this approach [*i.e.*, the Commission's decision to direct the Companies to comply with the Supreme Court's decision by removing revenue effects for environmental carrying costs and POLR] relates to the limited bypassability aspect of the POLR charge approved in the ESP Order. Specifically, the ESP Order decided to only award 90% of AEP Ohio's request and addressed the other portion of risk by saying that shopping customers can elect to bypass the POLR charge during the time they shop by agreeing to pay a market rate if they return. [Citation omitted.] This aspect of the POLR charge was adopted part-and-parcel with the approved POLR charge increase that was remanded to the Commission. When the approved POLR is backed out of AEP Ohio's tariffs, the prior POLR charge will remain and will once again be strictly non-bypassable.<sup>6</sup>

Apparently, the Companies are attempting justify retaining the pre-ESP POLR charges by pointing to something they think the Commission did or did not do in the March 18, 2009 Opinion and Order. By leaving in the revenue effects of POLR charges, however, the proposed tariffs do not comply with the Commission's May 4, 2011 Entry.

Beyond their literal non-compliance, the Companies' proposal to continue to collect nonbypassable POLR revenues is without legal or logical merit. On March 30, 2009, the Commission approved a set of revised tariffs implementing the Commission's March 18, 2009 Opinion and Order.<sup>7</sup> At that point, the Companies were authorized to

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<sup>5</sup> Letter to Betty McCauley from Steven T. Nourse (May 11, 2011).

<sup>6</sup> May 11, 2011 Motions at 7-8.

<sup>7</sup> Entry at 4 (Mar. 30, 2009).

collect revenues under an Electric Security Plan or ESP as governed by Section 4928.143, Revised Code. Section 4928.143, Revised Code, however, permits recovery of revenues only for those ESP terms for which the Companies have successfully established a lawful claim.<sup>8</sup> Pre-ESP rates and charges thereafter were relevant only in their entirety (not selectively as the Companies would have it) and in the event that the Companies withdraw and terminate an ESP as modified by the Commission. In the case of the POLR, the Supreme Court found there was not sufficient evidence to support the Commission's finding that the Companies' POLR was cost-based.<sup>9</sup> Under Section 4928.141, Revised Code, the ESP form of an SSO must conform to the requirements of Section 4928.143, Revised Code. "Only a standard service offer authorized in accordance with section . . . 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section."<sup>10</sup> Therefore, it was proper for the Commission to direct the Companies to file tariffs that removed the POLR revenues. It was improper, as a matter of law, for the Companies to attempt to selectively revert to the pre-ESP POLR. If the Companies want to revert to the pre-ESP POLR and all the other pre-ESP rates and charges, they should consider acting on their perpetual threat to withdraw and terminate the ESP (assuming that the law will allow this action at this time).<sup>11</sup>

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<sup>8</sup> Under Section 4928.141, Revised Code, the Companies may only seek revenues for a Standard Service Offer that complies with either Section 4928.142 or 4928.143, Revised Code. Further, the Companies may recover revenues to the extent that they can establish that the revenue is justified under one of the provisions of Section 4928.143(B), Revised Code. *ESP Remand* at ¶ 32. The Companies have the burden to establish that the recovery is lawful. Section 4928.143(C), Revised Code.

<sup>9</sup> *ESP Remand* at ¶ 29.

<sup>10</sup> Section 4928.141, Revised Code.

<sup>11</sup> May 11, 2011 Motions at 10-11.

Finally, the Companies' tariff filing is an intentional violation of the Commission's May 4, 2011 Entry. The Commission's Entry is unambiguous. The Companies were directed to file "proposed revised tariffs that would remove POLR charges."<sup>12</sup> In their May 11, 2011 Motions, the Companies acknowledge that the Commission's Order required them to remove POLR revenues when they complained that the harm of the May 4, 2011 Entry "is magnified by the fact that the Commission's Entry presumption that the *entire* amounts of these charges approved as part of the Companies' ESP should be eliminated."<sup>13</sup> Thus, the Companies understood what the Commission intended them to do; they simply chose to ignore the Commission's Order.<sup>14</sup>

At this point, the Companies are billing and collecting revenue in excess of the amount the Commission lawfully authorized. Under the operative law, the Companies have no legal claim to continue to recover this revenue. Yet, through steps that can only be described as intentional, the Companies have sought to delay and possibly flout the implementation a decision of the Supreme Court by the Commission.

The Companies' slow-walking and non-compliance with the Commission's May 4, 2011 Entry could mean that electric bills for the balance of the ESP (and in some cases thereafter) will continue to be unlawfully excessive. But the effect of the Companies' non-complaint tariff proposals is also designed to derail the opportunity to reduce electric bills by obtaining generation supply from a competitive retail electric services ("CRES") supplier.

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<sup>12</sup> Entry at 4 (May 4, 2011).

<sup>13</sup> May 11, 2011 Motions at 8 (emphasis in original).

<sup>14</sup> The May 11, 2011 Motions further demonstrate that Companies have also ignored the Commission-specified means by which they might include POLR-related revenue in their rates; a means which requires the Companies to file an application that will comply with the requirements of Section 4928.143, Revised Code.

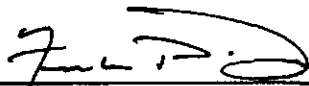
The mathematical consequences of the Companies' proposal to selectively revert to a pre-ESP POLR that is non-bypassable means that shopping consumers will see less value from shopping. As evidenced by the Companies' proposals for a new ESP, the Companies are interested in erecting economic and other barriers to shopping. The Companies have taken advantage of the Commission's May 4, 2011 Entry to propose tariffs that serve the Companies' strategic objectives. In the case of Ohio Power, the inclusion of the per-ESP POLR works to reduce the amount of the fuel charge. The fuel charge is fully bypassable. Reducing the fuel charge in this context works against shopping. Also in the case of Ohio Power, the proposal to revert to the pre-ESP POLR operates to increase the amount of revenue subject to future collection through a non-bypassable charge (the ESP hangover) commencing in 2012. Because of the interest charges that the Commission authorized to be added to the revenue deferred for future collection, the net present value of such deferrals is decidedly anti-consumer and further unjust enrichment of the Companies.

The next step is clear if the Commission wants to avoid further delay in providing consumers with relief from the revenue effects of the unlawfully authorized charges. The March 18, 2009 Opinion and Order authorized CSP and OP to collect, respectively, \$97.4 million and \$54.8 million in annual POLR revenue. The May 4, 2011 Entry requires removing the revenue effect of the POLR authorization from the ESP rates. Mathematically and administratively, this is a simple exercise and only requires the POLR rate for all rate schedules be reset to zero.

To put an end to the opportunity for the Companies to manufacture delay in the Commission's effort to comply with the Supreme Court's decision and to eliminate the going-forward effect of the unlawfully authorized charges from consumers' electric bills,

IEU-Ohio urges the Commission to modify and promptly approve the revised tariffs that correctly reflect the revenue effects of the Supreme Court's decision. The Commission should accept the Companies' May 11, 2011 proposed tariffs except those related to the proposed POLR Rider. The Commission should direct the Companies to file a final revised tariff that sets the POLR charge at zero with fuel charges adjusted accordingly and make the tariff effective for all bills rendered subsequent to the date of such approval. Moreover, IEU-Ohio encourages the Commission to enforce its May 4, 2011 Entry promptly so as to assure that the Companies do not continue to collect revenues or defer amounts that are not lawful.

Respectfully submitted,



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I hereby certify that a copy of the foregoing *Objection by Industrial Energy Users-Ohio to May 11, 2011 Tariff Filing* was served upon the following parties of record this 18<sup>th</sup> day of May 2011, via electronic transmission, hand-delivery or first class mail, postage prepaid.

  
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