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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 Update Their Environmental ) Case No. 11-1337-EL-RDR  
Investment Carrying Cost Riders )

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COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

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May 20, 2011

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In the Matter of the Application of Columbus	)	
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**COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO**

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On March 18, 2009, the Public Utilities Commission of Ohio (the "Commission") issued an Opinion and Order approving Columbus Southern Power Company's ("CSP") and Ohio Power Company's ("OPCo") (collectively, "AEP" or the "Companies") electric security plan ("ESP"), with modifications.<sup>1</sup> The Opinion and Order directed the Companies to make annual filings if they sought to recover incremental environmental expenditures during the ESP period. On appeal, the Supreme Court held that an ESP may only include items specifically listed under Section 4928.143(B)(2), Revised Code, and the Court specifically held that certain carrying costs for environmental investments were not a listed item.<sup>2</sup>

In this Application the Companies seek to increase their Environmental Investment Carrying Cost Rider ("EICCR") to recover revenues for 2010 incremental investments. Because the Application and the Commission's Order which served as the basis of the request fail to demonstrate that the revenues are properly recoverable

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<sup>1</sup> *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 (March 18, 2009) (hereinafter "AEP ESP").

<sup>2</sup> *In re Application of Columbus Southern Power Co., et al.*, Slip Op. 2011-Ohio-1788 (Apr. 19, 2011) at ¶31-35.

under Section 4928.143(B), Revised Code, the Application should be dismissed.<sup>3</sup> In the event that the Commission approves AEP's Application, the Commission should reject AEP's methodology for calculating the revenue requirement for several reasons because it overstates the revenues and results in rate shock. Further, the Commission should consider initiating more detailed auditing of the Companies' Application to assure that the Companies are including those items that are proper for revenue recovery.

AEP bases its Application on the Commission's March 18, 2009 Opinion and Order approving its current ESP.<sup>4</sup> But the Office of the Ohio Consumers' Counsel ("OCC") appealed the provision of the *AEP ESP* in which the Commission held that it had the discretion to approve items in an ESP that are not specifically listed under Section 4928.143(B)(2), Revised Code, to support revenue recovery for certain environmental expenditures. *In re Application of Columbus Southern Power Co., et al.*, Slip Op. 2011-Ohio-1788 (April 19, 2011) at ¶¶ 31-35. On appeal, the Supreme Court rejected the Commission's 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: "[b]y 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>5</sup>

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<sup>3</sup> For similar reasons, the Commission should direct the Companies to terminate the EICCR established in *In the Matter of the Application of the Columbus Southern Power Company and Ohio Power Company to Establish Environmental Investment Carrying Cost Riders*, Case No. 10-155-EL-RDR, Opinion and Order (February 8, 2010).

<sup>4</sup> Application at 1.

<sup>5</sup> *In re Application of Columbus Southern Power Co., et al.*, Case No. 2011-Ohio-1788 (Apr. 19, 2011) at ¶¶ 32. The only provision related to recovery of environmental expenditures is Section 4928.143(B)(2)(b), Revised Code. But that provision is expressly limited to recovery for construction work in progress on

The Supreme Court's April 19, 2011 decision fundamentally and significantly clarified the process for assessing the legitimacy of revenue claims in an ESP.<sup>6</sup> Claims for revenue must be based on items for which the General Assembly has provided a statutory basis in Section 4928.143, Revised Code. As the Commission recognized in its May 4, 2011 Entry following the remand of the Supreme Court's decision, items not permitted by Section 4928.143(B), Revised Code, should be removed from tariffs.<sup>7</sup> To that end, the Commission has begun the process of correcting the Companies' tariffs by requiring the Companies to file revised tariffs removing the revenue effects of the carrying costs for incremental 2001-2008 environmental investments.<sup>8</sup> The full implications of the Court's decision, however, remain to be fully implemented.<sup>9</sup>

The Commission should continue the process of correcting the revenue recovery of the ESP by denying this Application.<sup>10</sup> There is no provision in Section 4928.143(B)(2), Revised Code, that facially justifies the EICCR.<sup>11</sup> A careful reading of

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environmental expenditures. AEP's Application has not demonstrated that the costs it is seeking to recover pertain to construction work in progress.

<sup>6</sup> *In re Application of Columbus Southern Power Co., et al.*, Case No. 2011-Ohio-1788 (Apr. 19, 2011) at ¶ 32.

<sup>7</sup> *AEP ESP*, Case No. 08-917-EL-SSO, *et al.*, Entry (May 4, 2011).

<sup>8</sup> *Id* at 2.

<sup>9</sup> IEU-Ohio has already identified several opportunities for the Commission to act to assure that customers are not improperly burdened by revenue recovery that is not permitted under an ESP including the need to address the EICCR in its Application for Rehearing of the May 4, 2011 Entry (May 16, 2011) and its Motion Requesting Commission Orders to Bring the Electric Security Plans of Ohio Power Company and Columbus Southern Power Company into Compliance with the Ohio Supreme Court's Decision and Relief (May 10, 2011), in the *AEP ESP*.

<sup>10</sup> The resolution of this matter will have a direct impact on the amount of deferred revenue that the Companies will collect through a nonbypassable charge starting in 2012. As developed more thoroughly in IEU-Ohio's May 10, 2011 Motion, the Commission has the opportunity to reduce the amount of deferred revenues by any amounts that were unlawfully authorized.

<sup>11</sup> The only division that addresses environmental expenditures is Section 4928.143(B)(2)(b), Revised Code, which provides for recovery of construction work in progress under narrowly defined terms. The Companies' application makes no attempt to demonstrate that they are seeking recovery on that basis.

the March 18, 2009 Opinion and Order demonstrates that the Commission did not identify a statutory basis for allowing the Companies to recover additional incremental revenues associated with new environmental investments.<sup>12</sup> Moreover, the Companies, which have the burden to demonstrate that their Application presents a legitimate claim to the requested change to the EICCR,<sup>13</sup> point only to the provisions of the 2009 ESP.<sup>14</sup> Thus, the Companies have failed to demonstrate any claim to recover sixteen million dollars over the last six months of the current ESP. Because the Companies have failed to make any demonstration that their Application complies with the requirements of Section 4828.143(B), Revised Code, and there is nothing in either the Opinion and Order or the Ohio Revised Code to warrant a different result, the Commission should terminate this proceeding.

If the Commission permits this matter to proceed, the Commission should, at a minimum, reduce AEP's unfair and unreasonable carrying cost rate. Prior to the Supreme Court's decision, AEP filed an Application on February 8, 2010, to establish the EICCR to recover revenues for carrying costs for environmental investments from 2009.<sup>15</sup> The Commission approved the EICCR with some modifications,<sup>16</sup> including reducing the carrying cost rate for CSP to 13.59 percent and 13.34 percent for OPG.

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<sup>12</sup> *AEP ESP*, Case No. 08-917-EL-SSO, *et al.*, Opinion and Order at 30 (March 18, 2009).

<sup>13</sup> Section 4928.143(C)(1), Revised Code, places the burden of proof on the Companies. The applicant in most proceedings has that burden.

<sup>14</sup> Application at 1-5.

<sup>15</sup> *In the Matter of the Application of the Columbus Southern Power Company and Ohio Power Company to Establish Environmental Investment Carrying Cost Riders*, Case No. 10-155-EL-RDR, Application (February 8, 2010).

<sup>16</sup> *In the Matter of the Application of the Columbus Southern Power Company and Ohio Power Company to Establish Environmental Investment Carrying Cost Riders*, Case No. 10-155-EL-RDR, Finding and Order at 10 (August 25, 2010).

The Commission, however, over the objections of various customer parties, permitted AEP to calculate carrying costs on a monthly basis.<sup>17</sup>

AEP's Application to update its EICCR to recover revenues for carrying costs on 2010 environmental investments<sup>18</sup> requests to continue a 13.59 percent carrying cost rate for CSP and 13.34 percent for OPCo, and the period of recovery compresses eighteen months of carrying cost recovery into a six month period.<sup>19</sup> If the Commission should find a basis for continuing the EICCR, the Commission should substantially revise the method of calculating the revenue requirement for the 2010 incremental environmental investments.

CSP's and OPCo's respective carrying cost rates are already high, both over 13 percent. Embedded in the carrying costs is the weighted average cost of capital.<sup>20</sup> Typically regulators have justified a higher cost of capital in light of regulatory lag.<sup>21</sup> If there is no lag, then the justification for the higher rate is lacking. In this case, the Application proposes to recover carrying costs in a way in which there is no significant lag. By operation of the design of their proposal, they recover revenues during the ESP for the full carrying cost plus compounding. Moreover, the compounding is then embedded in the annual recovery thereafter. The effect of the methodology is aggravated further by collecting the revenue requirement for eighteen months of carrying costs over a six month period. While the Company compounds recovery in the

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<sup>17</sup> *Id.* at 7.

<sup>18</sup> Application at ¶¶ 8-9, CSP Schedule 3 and OPC Schedule 3.

<sup>19</sup> Application at ¶¶ 8-9.

<sup>20</sup> Application at CSP Schedule 3 and OPC Schedule 3 (citing to *AEP ESP*, Case No. 08-917-EL-SSO, *et al.*, Testimony of Philip Nelson, Exhibit PJN-11).

<sup>21</sup> Robert L. Hahne & Gregory E. Aliff, *Accounting for Public Utilities*, 9-27 (Lexis Nexis 2009).

first year and proposes to embed the compounding every year thereafter, the customers pay the compounded carrying costs and bear the additional brunt of a recovery made initially very expensive due to the shortened recovery period.

This distorted recovery mechanism violates the policy enumerated in Section 4928.02(a), Revised Code, which requires "the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service."<sup>22</sup> Section 4928.06, Revised Code, requires the Commission to carry out this policy:

The Commission notes that Section 4928.06, Revised Code, makes the policy specified in Section 4928.02, Revised Code, more than a statement of general policy objectives. **Section 4928.06(A), Revised Code, imposes on the Commission a specific duty to "ensure the policy specified in section 4928.02 of the Revised Code is effectuated."**<sup>23</sup>

The rate shock inherent in the Companies' filing strongly suggests the need for the Commission to mitigate the rate effects associated with the EICCR.

One logical way to soften the blow to customers would be to adjust the carrying cost rate. The Companies' riders essentially result in no risk to the Companies due to their environmental expenditures. The Companies receive a dollar for dollar return of and on the investment with no demonstration of need or reasonableness of the investment. Thus, the rate of return should be decreased. Calculating AEP's cost of capital at the debt rate (5.7 percent) as opposed to the proposed weighted average cost of capital (8.11 percent) would bring balance back into AEP's calculation.

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<sup>22</sup> Section 4928.02(a), Revised Code (emphasis added).

<sup>23</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service*, Case No. 08-936-EL-SSO, Opinion and Order at 13-14 (November 25, 2008) (hereinafter "*FirstEnergy MRO*") (emphasis added); see also *Elyria Foundry v. Public Utilities Commission*, 114 Ohio St. 3d. 305 (2007).

It appears that the Companies' excessive carrying cost rate—which contains components for depreciation, federal income tax, and administrative and general expenses—is also being applied to projects accounted for as construction work in progress.<sup>24</sup> Typical ratemaking policy would not permit the Companies to recover depreciation, federal income tax, and administrative and general expenses on projects accounted for as construction work in progress. Thus, if the Commission does not dismiss the Application because it is not authorized by Section 4928.143(B), Revised Code, it should further define those costs that are appropriate for setting the basis for the incremental revenue requirement and assure that the Companies' Application does not overreach.

This filing and the pending ESP Application<sup>25</sup> further suggest the need for a more robust review of the environmental expenditures the Companies are making. Neither Company offers any substantive detail about the costs that it is seeking to recover through the EICCR.<sup>26</sup> Nor is there any suggestion that the costs are reasonably incurred. As a result, the riders have become a blank check for the Companies. As the Companies are seeking cost recovery through these riders and are claiming the need to return to the prior regulatory paradigm, this filing is an opportunity for the Commission to adjust the process by which it reviews the EICCR so that only prudently incurred costs are recovered.

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<sup>24</sup> CSP's and OPCo's Revised Responses to the Ohio Energy Group Discovery Request, Third Set, Case No. 11-346-EL-SSO and 11-348-EL-SSO, Interrogatories 3-001 and 3-002 (attached as Exhibit 1).

<sup>25</sup> *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 §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, *et al.*, Application (January 27, 2011).

<sup>26</sup> Based on the Companies' discovery responses in their pending ESP, it appears that the Companies are seeking to recover revenue for carrying costs on projects that predate 2009 and it is unclear whether the Companies' recovery is confined to construction work in progress. CSP's and OPCo's Revised Responses to the Ohio Energy Group Discovery Request, Third Set, Case No. 11-346-EL-SSO and 11-348-EL-SSO, Interrogatories 3-001 and 3-002 (attached as Exhibit 1).



**A. CONCLUSION**

The Commission should reject the Companies' Application because the Companies fail to demonstrate a basis under Section 4928.143(B)(2), Revised Code, for recovery of revenues for carrying costs on environmental investment for 2010. Moreover, the Companies methodology for collecting more revenue fails to satisfy Section 4928.02, Revised Code, inasmuch as customers face rate shock due to the shortened recovery period on costs for which there is minimal review.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 20th day of May, 2011 via first class mail, postage prepaid.

  
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**ON BEHALF OF THE OFFICE OF THE OHIO  
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**COLUMBUS SOUTHERN POWER COMPANY'S  
AND OHIO POWER COMPANY'S RESPONSE TO  
OHIO ENERGY GROUP'S  
DISCOVERY REQUEST  
PUCO CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO  
THIRD SET**

**INTERROGATORY**

INT -3-001. For each project for which OPCO is currently recovering CWIP pursuant to Environmental Investment Cost Recovery Rider, please provide the following information:

- a. A description of the project, including the name of the generating unit or other facility at which the investment is being made.
- b. The date on which construction of the project began or the date on which costs were incurred that are being recovered in the EICRR.
- c. The date on which construction of the project was completed or, if the project is continuing, the expected date on which the project will be completed and the investment costs will be included in plant in-service.
- d. The FERC account in which the costs are currently being recorded
- e. The current balance of investment costs for the project included in the FERC account identified in (d) above.
- f. The estimated total cost of the project.
- g. The monthly amount of O&M expenses incurred to date
- h. The projected level of O&M expenses by month for the next 36 months

**RESPONSE:**

a. Please see OEG 3-001 Attachment 1.

b.-f. Please see following table:

**INT-3-001 (CONTINUED)**

	OEG3-001b.	OEG3-001c.		OEG3-001d.	OEG3-001e.	OEG3-001f.
Project Name	Start Date	Completion Date	I/S Date	FERC Account	10/0001 Bal @ 3/31/2011	Est Cost
Amos Unit 3 Precipitator	11/1/2005	2/28/2009		107	(5,194)	180,716,057
Amos Unit 3 Ash Disposal	Oct-07	12/31/2010		107	4,208	50,363,388
Amos Unit 3 FGD	2/1/2004	2/25/2009		107	436,297	712,364,385
Cardinal Unit 1 FGD	8/25/2008	7/1/2008	12/16/2007	107	2,989,154	299,047,007
Kammer Units 1-3 Fuel Switch	12/6/2007	4/30/2010	12/31/2009	107	-	40,446,283
Mitchell Unit 1 FGD	10/1/2001	11/1/2008	5/7/2007	107	1,530,682	535,982,078
Mitchell Unit 2 FGD	10/1/2001	5/1/2009	5/1/2009	107	114,278	517,754,488
Associated SO2 Landfill					3,343,398	
Mercury					1,947,373	
NOx Associated					1,685,464	
Other FGD					40,055	
Other Environmental					16,350,675	
					28,426,480	

g. Projects for which CWIP is being recovered are not in-service and therefore no O&M expenses have been incurred to date.

h. Projects for which CWIP is being recovered are not in-service and therefore no monthly O&M expenses have been projected over the next 36 months.

**REVISED RESPONSE**

a. Please see OEG 3-001 Attachment 1.

b -f Please see following table:

**INT-3-001 (CONTINUED)**

	OEG 3-001b.	OEG 3-001c.		OEG 3-001d.	OEG 3-001e.	OEG 3-001f.
Project Name	Start Date	Completion Date	I/S Date	FERC Account	10/0001 Bal @ 3/31/2011	Est Cost
Amos Unit 3 Precipitator	11/1/2005	2/28/2009		107	(5,194)	155,607,071
Amos Unit 3 Ash Disposal	Oct-07	12/31/2010		107	4,208	39,617,821
Amos Unit 3 FGD	2/1/2004	2/25/2009		107	486,297	372,464,793
Cardinal Unit 1 FGD	8/25/2008	7/1/2009	12/16/2007	107	2,968,154	296,927,983
Kammer Units 1-3 Fuel Switch	12/6/2007	4/30/2010	12/31/2009	107	-	40,375,581
Mitchell Unit 1 FGD	10/1/2001	11/1/2008	5/7/2007	107	1,530,692	534,741,797
Mitchell Unit 2 FGD	10/1/2001	5/1/2009	5/1/2009	107	114,278	514,155,605
Associated SO2 Landfill					3,343,398	
Mercury					1,947,373	
NOx Associated					1,685,464	
Other FGD					40,035	
Other Environmental					16,350,675	
					28,426,480	

g. Projects for which CWIP is being recovered are not in-service and therefore no O&M expenses have been incurred to date.

h. Projects for which CWIP is being recovered are not in-service and therefore no monthly O&M expenses have been projected over the next 36 months.

**COLUMBUS SOUTHERN POWER COMPANY'S  
AND OHIO POWER COMPANY'S RESPONSE TO  
OHIO ENERGY GROUP  
DISCOVERY REQUEST  
PUCO CASE NO. 11-346-EL-SSO AND 11-348-EL-SSO  
THIRD SET**

**INTERROGATORY**

INT-3-002 For each project for which CSP is currently recovering CWIP pursuant to Environmental Investment Cost Recovery Rider, please provide the following information:

- a. A description of the project, including the name of the generating unit or other facility at which the investment is being made
- b. The date on which construction of the project began or the date on which costs were incurred that are being recovered in the EICRR.
- c. The date on which construction of the project was completed or, if the project is continuing, the expected date on which the project will be completed and the investment costs will be included in plant in-service.
- d. The FERC account in which the costs are currently being recorded
- e. The current balance of investment costs for the project included in the FERC account identified in (d) above.
- f. The estimated total cost of the project.
- g. The monthly amount of O&M expenses incurred to date.
- h. The projected level of O&M expenses by month for the next 36 months.

**RESPONSE**

a. Please see OEG 3-002 Attachment 1 and CSP Schedule 2 and OPC Schedule 2 of the applications submitted before the PUCO in Case Nos. 10-155-EL-RDR and 11-1337-EL-RDR.

b -f. Please see the following table:

**INT-3-002. (CONTINUED)**

	OEG3-001b	OEG3-001c		OEG3-001d	OEG3-001e	OEG3-001f
Project Name	Start Date	Completion Date	I/S Date	FERC Account	10/0001 Bal @ 3/31/2011	Est Cost
Conesville Unit 4 FGD					705,708	
Conesville Unit 4 SCR					-	
Conesville Unit 5 FGD					195,888	
Conesville Unit 6 FGD					188,888	
Stuart Units 1-4 FGD					(10,149)	
Associated SO2 Landfill					14,280,317	
Mercury					(464,842)	
NOx Associated					6,028,346	
Other FGD					57,619	
Other Environmental					1,234,963	
					22,216,713	

g. Projects for which CWIP is being recovered are not in-service and therefore no O&M expenses have been incurred to date.

h. Projects for which CWIP is being recovered are not in-service and therefore no O&M expenses have been projected over the next 36 months

**REVISED RESPONSE**

a. Please see OEG 3-002 Attachment 1 and CSP Schedule 2 and OPC Schedule 2 of the applications submitted before the PUCO in Case Nos 10-155-EL-RDR and 11-1337-EL-RDR.

b. -f. Please see the following table:

	OEG3-002b	OEG3-002c		OEG3-002d	OEG3-002e	OEG3-002f
Project Name	Start Date	Completion Date	I/S Date	FERC Account	10/0001 Bal @ 3/31/2011	Est Cost
Conesville Unit 4 FGD	6/15/2004	12/31/2009	4/12/2009	107	705,708	156,632,877
Conesville Unit 4 SCR	6/15/2004	12/31/2009	4/12/2009	107	-	45,361,629
Conesville Unit 5 FGD	11/30/2005	12/31/2009	12/6/2009	107	195,888	56,081,377
Conesville Unit 6 FGD	9/9/2006	12/31/2010	11/28/2010	107	188,888	64,366,163
Stuart Units 1-4 FGD	2005	2009		107	(10,149)	190,366,577
Associated SO2 Landfill					14,280,317	
Mercury					(464,842)	
NOx Associated					6,028,346	
Other FGD					57,619	
Other Environmental					1,234,963	
					22,216,713	

**INT-3-002. (CONTINUED)**

g. Projects for which CWIP is being recovered are not in-service and therefore no O&M expenses have been incurred to date.

h. Projects for which CWIP is being recovered are not in-service and therefore no monthly O&M expenses have been projected over the next 36 months.