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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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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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APPLICATION FOR REHEARING BY INDUSTRIAL ENERGY USERS-OHIO  
OF MAY 25, 2011 ENTRY AND MEMORANDUM IN SUPPORT

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June 1, 2011

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**APPLICATION FOR REHEARING BY INDUSTRIAL ENERGY USERS-OHIO OF MAY  
25, 2011 ENTRY**

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Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), Industrial Energy Users-Ohio ("IEU-Ohio") respectfully submits this Application for Rehearing of the Entry issued by the Public Utilities Commission of Ohio ("Commission") on May 25, 2011 on the Electric Security Plans ("ESP") of Columbus Southern Power Company and Ohio Power Company (individually "CSP" and "OP", respectively, and collectively "Companies" or "AEP-Ohio"). IEU-Ohio seeks rehearing for the following reasons:

1. The Commission in its May 25, 2011 Entry unreasonably and unlawfully failed to fully identify the flow-through effects on consumers' electric bills as such effects must be addressed for purposes of complying with the Supreme Court's remand.

2. The Commission in its May 25, 2011 Entry unreasonably and unlawfully failed to suspend or order the collection of the Environmental Investment Carrying Cost Riders of OP and CSP to be collected subject to refund.

As discussed in greater detail in the Memorandum in Support attached hereto, IEU-Ohio respectfully requests that the Commission grant this Application for Rehearing and initiate proceedings to assure that customers are afforded the full protections required by the Supreme Court's decision to remand the Opinion and Order to the Commission.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT**

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On March 18, 2009, the Commission issued an Opinion and Order modifying and approving ESPs for OP and CSP. Based on appeals by IEU-Ohio and the Ohio Consumers' Counsel ("OCC"), the Ohio Supreme Court reversed and remanded the Opinion and Order to the Commission on April 19, 2011. The Supreme Court found that the Commission engaged in retroactive ratemaking when it permitted OP and CSP to collect \$63 million in revenues for the time the ESP Applications were pending after January 1, 2009. It reversed and remanded the Opinion and Order because it found that the Commission's determination that the Provider of Last Resort ("POLR") charge was cost based was not supported by the manifest evidence. Finally, it reversed and remanded the Opinion and Order because it found that the Commission incorrectly used Section 4928.143(B)(2), Revised Code, as the basis for allowing OP and CSP to collect revenues for the carrying costs of environmental investments from 2001 to 2008. In response to the Supreme Court's remand, the Commission on May 4, 2011 ordered OP and CSP to file revised tariffs that were adjusted to remove the effects of the POLR

charge and the effects of the carrying costs for environmental investments from 2001 to 2008. On May 25, 2011, the Commission, in apparent response the Companies' motion to collect rates subject to refund and over the objections of IEU-Ohio and others, directed the Companies to file revised tariffs that permitted the Companies to continue to collect POLR charges and revenues associated with the 2001-2008 incremental environmental investments subject to refund.<sup>1</sup>

Additionally, the Commission established a procedural schedule to allow it to address the issues remanded by the Court. In defining the scope of the hearing, the Commission stated that the Companies and intervenors "should be afforded an opportunity to present testimony and to offer additional evidence in regard to the POLR and environmental carrying charges remanded to the Commission. The parties may address the amount of the POLR charges at issue and the rate of interest charges applicable, if any."<sup>2</sup>

Although strongly supportive of the Commission's recognition that the Companies should be at risk for the collection of the revenues associated with the issues remanded by the Supreme Court (but obviously more supportive of them not collecting anything that the Supreme Court found was not properly recoverable), IEU-Ohio files this Application for Rehearing to assure that it has protected its position set out in the motion filed May 10, 2011 urging the Commission to take additional action to assure that the full effects of the Supreme Court's decision are identified and addressed in these cases and any other related matters currently pending before or expected to be before the Commission.

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

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

While IEU-Ohio believes it would be sensible to read the Commission's May 4 and 25, 2011 Entries in these proceedings as a logical first step in the compliance effort, IEU-Ohio is also mindful that OP and CSP will likely make any legal argument they can to keep all the benefits OP and CSP have or will collect pursuant to their ESPs as modified and approved by the Commission in early 2009. The Companies' responses to IEU-Ohio's May 10, 2011 Motion and Application for Rehearing demonstrate their willingness to advance arguments that if accepted would severely constrain the ability of the Commission to address the full range of the revenue effects of the remanded issues.<sup>3</sup> Because of IEU-Ohio's concern about the legal arguments that OP and CSP will launch in the days ahead, IEU-Ohio seeks rehearing.

It is IEU-Ohio's position that the Commission's May 25, 2011 Entry in these proceedings is unreasonable and unlawful because it fails to address the full range of the effects of the Supreme Court's remand and direct OP and CSP to comprehensively address such effects for purposes of establishing current rates and charges as well as the rates and charges that OP and CSP may be lawfully eligible to collect in the future. A range of effects is illustrated in the motion which IEU-Ohio filed in these proceedings on May 10, 2011, and the motion is hereby incorporated by reference.<sup>4</sup>

Because the May 25, 2011 Entry may be limited to setting a procedural schedule that addresses only the appropriate level of the POLR charge, revenue level for 2001-

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<sup>3</sup> AEP Ohio's Memorandum in Opposition to IEU Ohio's Application for Rehearing (May 25, 2011); Columbus Southern Power Co. and Ohio Power Co.'s Memorandum in Opposition to Industrial Energy Users-Ohio's Motion Requesting Commission Orders (May 25, 2011).

<sup>4</sup> Motion Requesting Commission Orders to Bring Electric Security Plans of Ohio Power Co. and Columbus Power Company Co. into Compliance with the Ohio Supreme Court's Decision and Other Relief and Memorandum in Support (May 10, 2011)

2008 carrying costs for the remainder of the ESP period, and any interest payable on refunds, the directives in the May 25, 2011 Entry will not fully address other elements of the ESPs (as they were modified and approved by the Commission) that may result in charges that OP and CSP intend to impose on consumers. The additional areas of concern that must be addressed by the Commission include: the deferred revenue collection opportunity enabled by the bill increase limitations in the current ESP; delta revenue resulting from reasonable arrangements and, in effect, Universal Service Fund ("USF") collection; the calculation of base revenues in the current ESP application (recognizing the current ESP may remain in effect beyond December 31, 2011 in the event a new rate plan is not lawfully authorized to be effective on January 1, 2012); recovery of revenues through the Companies' environmental riders, and reviews of OP and CSP earnings required under Section 4928.143(F), Revised Code.<sup>5</sup>

IEU-Ohio is fully aware that the first necessary step, now that the Commission has ordered the affected tariffs be filed for collection subject to refund, is to address what, if any, revenues should be collected. Once that determination is made, then the full import of that decision can be reflected in the various other matters and proceedings identified in the May 10, 2011 Motion.

Additionally, IEU-Ohio urges that the Commission grant rehearing to address the effect of the Supreme Court's decision on the Environmental Investment Carrying Cost Riders ("EICCR") of OP and CSP. This issue was also raised in the prior Application for Rehearing and is raised again here to assure that the issue is preserved. (In its Comments filed May 20, 2011, IEU-Ohio addressed a similar issue regarding OP and

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<sup>5</sup> As noted in the May 10, 2011 Motion, this list of areas affected by the current rates is not intended to be exhaustive.

CSP's current application to increase the EICCR.<sup>6</sup>) Although the Supreme Court's decision was limited to the revenue effects of the 2001-2008 incremental environmental investment carrying costs, the import of the decision does not appear so limited.<sup>7</sup> As the Supreme Court has made clear, the Commission cannot authorize collection of revenues for items not set out in one of the categories listed in Section 4928.143(B)(2), Revised Code.<sup>8</sup> Conversely, the Commission may authorize only revenue recovery that complies with the provisions of Section 4928.143, Revised Code.<sup>9</sup> Just as there was no statutory basis for the revenue requirement for 2001-2008 environmental investment carrying costs, the Opinion and Order provides no indication of any statutory basis for additional revenues for the 2009 environmental investment carrying costs.<sup>10</sup> For this reason, therefore, IEU-Ohio urges the Commission's May 25, 2011 Entry was unlawful and unreasonable because it failed to either suspend the Companies' current EICCR tariffs that permit the Companies to collect approximately \$60 million during the current ESP period or direct the Companies to file tariffs that permit collection subject to refund.

For the reasons outlined above, and those stated in the May 10, 2011 Motion and incorporated herein by reference, IEU-Ohio urges the Commission to grant its Application for Rehearing and begin the important process of assuring the electric bill increases that CSP and OP were unlawfully authorized to bill and collect from

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<sup>6</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Establish Environmental Investment Carrying Cost Riders*, Case No. 11-1337-EL-RDR, Motion to Intervene and Comments of IEU-Ohio (May 20, 2011); *id.*, Reply Comments (May 31, 2011).

<sup>7</sup> *In re Application of Columbus Southern Power Co.*, Slip Op. No. 2011-Ohio-1788 at ¶¶ 31-35 (Apr. 19, 2011).

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

<sup>9</sup> Section 4928.141, Revised Code.

<sup>10</sup> Opinion and Order at 29-30.



consumers are removed from current rates as well as any claims for revenue that OP or CSP may seek to collect in the future.

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio* was served upon the following parties of record June 1, 2011, via electronic transmission, hand-delivery or first class mail, postage prepaid.

  
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