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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION TO STRIKE A PORTION OF THE INITIAL POST-HEARING BRIEF
ON REMAND OF COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER
COMPANY AND MEMORANDUM IN SUPPORT BY INDUSTRIAL ENERGY USERS-
OHIO**

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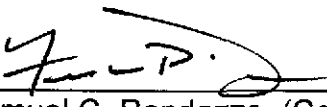
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**MOTION TO STRIKE A PORTION OF THE INITIAL POST-HEARING BRIEF
ON REMAND OF COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER
COMPANY BY INDUSTRIAL ENERGY USERS-OHIO**

The Industrial Energy Users-Ohio ("IEU-Ohio") moves the Public Utilities Commission of Ohio ("Commission") for an order striking a portion of the Initial Post-Hearing Brief on Remand of Columbus Southern Power Company and Ohio Power Company ("Companies"), beginning on page 30 with the first paragraph and ending at the conclusion of the table, for the reasons set out in the accompanying memorandum.



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MEMORANDUM IN SUPPORT

In this motion, IEU-Ohio joins the Office of Consumers' Counsel ("OCC") and Ohio Partners for Affordable Energy ("OPAE") in seeking an order from the Commission striking a portion of the Companies' brief on page 30, beginning with the first paragraph and concluding at the end of the table on the same page.

The portion of the brief IEU-Ohio seeks to strike is a paragraph and a table comparing the Companies' provider of last resort (POLR) charges to those of Dayton Power and Light Company and Duke Energy. The information contained in the table is not a part of the record of this case.

Section 4903.09, Revised Code, requires the Commission to make a complete record in all contested proceedings. The Commission must show in sufficient detail the facts in the record upon which its decision is made. *MCI Telecommunications Corp. v.*

Public Utils. Comm'n of Ohio, 32 Ohio St. 3d 306 (1987). Thus, any reliance on assertions that are extraneous to the record would violate a statutory requirement governing the Commission's decision making process.

Concerns about complying with the record in this proceeding were highlighted by the Supreme Court in the appeal that generated this remand hearing. In regard to establishing a POLR charge, the Commission has already been admonished that it must carefully consider what costs it is attributing to the POLR obligation and to explain its rationale, respond to contrary positions, and support its decision with appropriate evidence. *In re Application of Columbus Southern Power Co.*, 128, Ohio St. 3d 512, 518-19 (2011). Any reliance on information outside the record would clearly violate the terms of the Supreme Court's remand.

The need for the Commission to base its decision on the record is abundantly clear when the details of what is included in the Companies' brief are reviewed. For example, the charge attributed to Dayton Power and Light Company was a charge established under a pre-ESP rate plan that was continued by agreement.¹ The number asserted by the Companies for Duke Energy is inconsistent with the current ESP stipulation which states that residential customers will not be charged a standby charge,² and there is no explanation as to how the rate was derived. Additionally, the stipulations in ESP settlements specifically preclude their use as Commission

¹ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO, Stipulation and Recommendation (Feb. 24, 2009) at 4 and 18 (agreeing to the continuation of the RSS charge).

² *In the Matter of the Application of Duke Energy Ohio for Approval of an electric Security Plan*, Case No. 08-920-EL-SSO, Stipulation and Recommendation at 33.

precedent.³ Based on these concerns, any attempt to introduce this information at the hearing would have generated significant challenges on both the propriety of using it and its relevance. The Companies cannot be permitted to introduce these claims at this point.

For the reasons set out above, IEU-Ohio urges the Commission to strike the portion on page 30 of the Companies' brief that is not based on the record.

Respectfully Submitted,



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³ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 08-1094-EL-SSO, Stipulation and Recommendation (Feb. 24, 2009) at 4 and 18 (agreeing to the continuation of the RSS charge); *In the Matter of the Application of Duke Energy Ohio for Approval of an electric Security Plan*, Case No. 08-920-EL-SSO, Stipulation and Recommendation at 2 (Oct. 27, 2008) (stipulation has no precedential value)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Remand Motion to Strike a Portion of the Initial Post-Hearing Brief on Remand of Columbus Southern Power Company and Ohio Power Company and Memorandum in Support by Industrial Energy Users-Ohio* was served upon the following parties of record this 11th day of August, 2011 via electronic transmission, hand-delivery or first class mail, postage prepaid.



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