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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

OBJECTIONS OF INDUSTRIAL ENERGY USERS-OHIO TO COLUMBUS SOUTHERN POWER COMPANY'S AND OHIO POWER COMPANY'S OCTOBER 6, 2011 TARIFF FILING

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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") (collectively, "the Companies") that included $152 million in new revenues through Provider of Last Resort ("POLR") charges.[1] 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, among other errors, failed to provide a basis in the record to support the POLR charges.[2] On May 4, 2011, the Commission responded to

[1] Opinion and Order at 40 (Mar. 18, 2009).

[2] *In re Application of Columbus Southern Power Co.*, 128 Ohio St. 3d 512 (2011).

the Court's decision by ordering the Companies to file revised tariffs "that would remove the POLR charges...the Companies' tariffs."[3]

After the Companies filed non-conforming tariffs and a request for further hearing, the Commission directed the Companies to file a second set of revised tariffs "specifically stating that the POLR riders . . . are subject to refund by May 27, 2011, to be effective as to the first billing cycle of June 2011." The Commission also set a procedural schedule to allow the Companies an opportunity to provide the Commission some legal basis for the POLR charges.[4] On October 3, 2011 the Commission issued its Order on Remand following several days of hearing. In the Order on Remand, the Commission found that the Companies had failed to demonstrate a cost basis for the POLR charges previously authorized in the March 18, 2009 ESP Order and directed the Companies to file revised tariffs that "back out the amount of the POLR charges authorized in the ESP Order."[5] The Commission further found that there was no reason to address the bypassability of the POLR charge, stating: "In light of our decision in this order on remand, that the POLR charges are not supported by the record, Constellation's arguments on this issue are moot, as customers will return to the Companies' service at the standard service offer rate for the remainder of the term of this ESP."[6]

In response to the Commission's Order on Remand, OP and CSP on October 6, 2011, filed two versions of their proposed revised tariffs and a cover letter. In the first

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[3] Entry at 2 (May 4, 2011).

[4] Entry at 4 (May 25, 2011).

[5] Order on Remand at 33 (Oct. 3, 2011).

[6] *Id.*

set of tariffs (what the Companies refer incorrectly to as the "Compliance Tariffs"), they proposed POLR charges based on the Companies' 2004 Rate Stabilization Plans ("RSP"), essentially ignoring the Commission's Order on Remand to back out the POLR charges authorized in the ESP Opinion and Order.[7] In further violation of the Commission's Order on Rehearing, they removed a provision that permitted shopping customers to waive the POLR charge if they agreed to return to ESP service at a market rate, making the proposed charges nonbypassable. In the second set of revised tariffs (which the Companies refer to as the "Alternative Tariffs"), the Companies reset the POLR charge to zero for each rate class. In the cover letter, the Companies offered a convoluted theory as to why the rates contained in the first set of revised tariffs should be adopted by the Commission. Because there is no basis for permitting the Companies to continue to collect POLR charges, Industrial Energy Users-Ohio ("IEU-Ohio") once again is compelled to file Objections to that portion of the compliance filing urging the continuation of illegal POLR charges.

DISCUSSION

The simple response to the Companies' argument that they are entitled to continue to collect POLR revenues is that it is inconsistent with the Commission Order on Remand. The Commission found that the Companies failed to justify POLR charges on any basis and were ordered to remove the POLR charges. The Commission further found that the issue of bypassability was moot since customers would not have a POLR charge to concern them if they returned to SSO service.

[7] Letter to Betty McCauley from Steven T. Nourse (October 6, 2011) ("Cover Letter").

The Companies offer three reasons to support their argument that they should continue to collect the pre-ESP POLR charges. First, the Companies seek to justify continuing to collect POLR revenues on the theory that the Commission intended that result when the Commission ordered the Companies to "back out" the current POLR charges.[8] Noting that they used the term "back out" in May 2011 to mean that they intended to revert to the pre-2009 POLR charge in the Companies' May 11, 2011 filing, they conclude that the Commission's use of the same term in the Order on Remand must have had the same meaning. Second, the Companies offer that they withdrew their Application for Rehearing so as to avoid challenging the Commission's authority to remove the POLR charge completely.[9] Third, the Companies argue that the ESP "authorized an increase to the POLR charge,"[10] None of these arguments supports the Companies' position that the "Compliance Tariffs" should be approved.

First, the notion that the Commission's use of the term "back out" as a justification for leaving amount in the rates is completely inconsistent with the balance of the Order on Remand and the decisions that preceded that Order. The only POLR charge authorized in the ESP is found in the March 18, 2009 Opinion and Order, and it authorized the collection of $152 million. The Commission has repeatedly indicated that the POLR charges should be removed unless the Companies had a legal basis for them. The Commission on May 4, 2011 directed the Companies to remove the POLR charges. When it directed revised tariffs be filed on May 25, 2011, it directed that the POLR charges, not some portion, be collected subject to refund. In the Order on

[8] Cover Letter at 2.

[9] Cover Letter at 3.

[10] *Id.*

Remand, it found that the Companies had failed to demonstrate any factual or legal basis for continuing to collect a POLR charge. At this point, there is no ambiguity as to what POLR charges are in the ESP and that the Commission ordered the POLR charges to be removed.

The second argument that the Commission somehow agreed with the Companies' position when it allowed the POLR charges to be collected subject to refund, likewise, is incorrect. At best, the only thing that can be understood from the Companies' decision to not pursue the argument that they were entitled to recover the pre-ESP POLR is that they agreed to wait until the Commission reached a decision on the merits; the May 25, 2011 decision says nothing about why the Commission agreed with the Companies' recommendation other than that other parties disagreed with the Companies' assertion that they could continue to collect the pre-ESP "POLR" revenues. Moreover, there cannot be a suggestion that the Commission was agreeing to waive its authority to set the proper rates following the remand hearing. The Commission has now completed its review, found that the POLR charges are not legally supported, and ordered the Companies to remove the POLR charges from their tariffs.

The third argument that the ESP approved an increase in POLR charges ignores what the Commission ordered in the Rate Stabilization Plans ("RSP") and the current ESP for OP and CSP. As the Commission will recall, the revenues the Companies were authorized to collect in the RSPs were for regional transmission organization administrative costs and recovery of deferred construction work in progress. [11] In contrast, the Commission's March 18, 2009 Opinion and Order authorized identifiable

[11] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Post Market Development Period Rate Stabilization Plan,* Case No. 04-169-EL-UNC, Opinion and Order at 25-29 (Jan. 25, 2005)

POLR charges for CSP and OP based on a formula that produced a "cost" of $152 million annually. The POLR tariffs subsequently approved by the Commission were designed to produce that same $152 million annually. Thus, there is no basis for stating that the increase in POLR charges had any connection to the pre-ESP charges in the RSPs.

CONCLUSION

As discussed above, there is no basis for the Companies to continue to be permitted to collect the POLR charges under their current tariffs. 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 approve the "Alternative" revised tariffs that correctly reflect the revenue effects of the Supreme Court's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Objections of Industrial Energy Users-Ohio to Columbus Southern Power Company's and Ohio Power Company's October 6, 2011 Tariff Filing* was served upon the following parties of record this 13th day of October 2011, via electronic transmission, hand-delivery or first class mail, postage prepaid.

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