

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Ohio Power Company and Columbus ) Case No. 10-2376-EL-UNC  
Southern Power Company for Authority )  
to Merge and Related Approvals. )

In the Matter of the Application of )  
Columbus Southern Power Company and )  
Ohio Power Company for Authority to ) Case No. 11-346-EL-SSO  
Establish a Standard Service Offer ) Case No. 11-348-EL-SSO  
Pursuant to §4928.143, Ohio Rev. Code, )  
in the Form of an Electric Security Plan. )

In the Matter of the Application of )  
Columbus Southern Power Company and ) Case No. 11-349-EL-AAM  
Ohio Power Company for Approval of ) Case No. 11-350-EL-AAM  
Certain Accounting Authority. )

In the Matter of the Application of )  
Columbus Southern Power Company to ) Case No. 10-343-EL-ATA  
Amend its Emergency Curtailment )  
Service Riders. )

In the Matter of the Application of )  
Ohio Power Company to Amend its ) Case No. 10-344-EL-ATA  
Emergency Curtailment Service Riders. )

In the Matter of the Commission Review )  
Of the Capacity Charges of Ohio Power ) Case No. 10-2929-EL-UNC  
Company and Columbus Southern )  
Power Company. )

In the Matter of the Application of )  
Columbus Southern Power Company ) Case No. 11-4920-EL-RDR  
for Approval of a Mechanism to Recover )  
Deferred Fuel Costs Ordered Under )  
Ohio Revised Code 4928.144. )

In the Matter of the Application of )  
Ohio Power Company for Approval of a )  
Mechanism to Recover Deferred Fuel ) Case No. 11-4921-EL-RDR  
Costs Ordered Under Ohio Revised )  
Code 4928.144. )

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MOTION OF INDUSTRIAL ENERGY USERS -OHIO FOR ORDERS  
MODIFYING THE OHIO POWER COMPANY'S AND COLUMBUS  
SOUTHERN POWER COMPANY'S REVISED IMPLEMENTATION PLAN  
AND REQUEST FOR EXPEDITED RULING AND SUPPORTING  
MEMORANDUM IN SUPPORT

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**December 30, 2011**

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SOUTHERN POWER COMPANY'S REVISED IMPLEMENTATION PLAN  
AND REQUEST FOR EXPEDITED RULING

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Pursuant to Rule 4901-1-12, Ohio Administrative Code ("OAC"), Industrial Energy Users-Ohio ("IEU-Ohio") moves the Public Utilities Commission of Ohio ("Commission") for an Order modifying the Detailed Implementation Plan filed by Ohio Power Company and Columbus Southern Power Company on December 29, 2011 so that it will conform with State law requirements concerning tariffs and the terms of the Commission's Opinion and Order filed December 14, 2011. The reasons supporting this Motion are set out in the accompanying memorandum. Because December 14, 2011 Opinion and Order directs that the rates and other terms filed pursuant to it become effective on January 1, 2012, IEU-Ohio requests that the Commission consider this Motion for an expedited ruling.

Respectfully submitted,

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## MEMORANDUM IN SUPPORT OF MOTION

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On December 28, 2011, Ohio Power Company (“OP”) and Columbus Southern Power Company (“CSP”) (collectively “Companies” or “AEP-Ohio”) filed a revised version of its “Detailed Implementation Plan” (“DIP”) in these matters. Additionally, the Companies circulated a letter they submitted to the Federal Energy Regulatory Commission (“FERC”) indicating that they had reached a working agreement with PJM Interconnection, LLC (“PJM”) regarding the implementation of the two-tiered capacity charge structure approved by the Public Utilities Commission of Ohio (“Commission”) on December 14, 2011. Neither document contains the detail required to identify how the two-tiered capacity charge structure shall be billed or collected. More specifically, neither document discloses the details on how load and usage characteristics of shopping customers shall result in the application of one market-based capacity charge (RPM-priced capacity) or the other and the significantly higher \$255 per MW day capacity charge. Without this detail, customers as well as Competitive Retail Electric Service (“CRES”) suppliers will be deprived of information that is essential to an independent and up-front determination of the electric bill that will result in a shopping scenario and it will be impossible to test the implementation of the two-tiered capacity charge structure based on controlling language in a schedule (such as the Companies’ supplier tariff) on file with the Commission. To cure this defect having legal<sup>1</sup> and

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<sup>1</sup> Section 4905.30, Revised Code requires that all rates and charges, as well as all rules and regulations affecting the rates billed or collected by a utility, be those set forth in a schedule on file with the Commission. A public utility may not charge a rate different from that specified in its schedule filed with {C36377:5 }

practical implications,<sup>2</sup> the Commission must direct the Companies to include the necessary detail in their tariff on file with the Commission.

Further, the provisions dealing with the Commission-ordered modification for government aggregation programs does not conform to the Commission's Opinion and Order. To cure this defect the Commission must direct the Companies to conform the DIP to the Commission's Opinion and Order. .

### **Determining Capacity Charges**

The Commission approved with modifications provisions of the Stipulation filed by AEP-Ohio on September 7, 2011. As a result, the Commission has effectively modified the state compensation mechanism it identified in the December 8, 2010 Entry in Case No. 10-2929-EL-UNC, if the Companies do not elect to withdraw from the modified ESP.<sup>3</sup> Under Ohio law, the Companies are required to file tariffs detailing the "charges for service of every kind furnished by it, and all rules and regulations affecting them."<sup>4</sup> The public utility's charges are then governed by those filings.<sup>5</sup>

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the Commission. Section 4905.32, Revised Code. See, also, 4905.33, Revised Code (no public utility may charge greater or lesser compensation for services rendered except as provided by statute than it charges any other person). The antidiscrimination provisions apply to EDUs regulated under Chapter 4928, Revised Code. See Section 4928.97, Revised Code. See, also, Section 4928.15, Revised Code (services must be provided pursuant to schedule filed with the Commission).

<sup>2</sup> The companies "black box" approach to the implementation of the two-tiered capacity charge structure will stymie efforts by customers and CRES suppliers to identify the electric bill consequences of shopping, thereby effectively frustrating the type of consumer behavior that Ohio law encourages. Customer choice requires the billing significance of shopping to be clearly identifiable.

<sup>3</sup> See page 2 of AEP-Ohio's Dec. 22, 2011 and Dec. 29, 2011 cover letters to compliance tariff filings. The Commission has previously recognized that it has authority to require tariffs governing the regulation of gas pooling arrangements necessary to support gas transportation service. *In the Matter of the Complaint of the Ohio Gas Marketers Association v. East Ohio Gas Company*, Case No. 94-2010-GA-CSS, Entry at 2 (Dec. 29, 1994). This matter presents a similar circumstance in that the Commission has asserted jurisdiction over capacity charges as a result of the terms of the PJM RPM structure and now must have in place the tariff provisions that define the duties and obligations of the parties.

<sup>4</sup> Section 4905.30, Revised Code.

<sup>5</sup> Section 4905.32, Revised Code.

The DIP contains language that generally describes how the amount of shopping eligible for RPM-priced capacity will be determined during the term of the electric security plan as modified by the Commission. For shopping that is not eligible for RPM-priced capacity, however, a higher charge of \$255 per megawatt-day (“MW-Day”) shall be applied. But there is nothing in the DIP that identifies how the load and usage characteristics of customers will result in the MW-Day billing determinant and the application of the \$255 charge.

PJM Interconnect LLC’s (“PJM”) resource adequacy obligation provides the foundation for the establishment of a capacity charge that may be billed to and collected from a CRES supplier serving retail customers in the Companies’ service area. The PJM tariff dictates that the capacity charge shall be based on RPM but also provides for an alternative charge established through a state retail access plan. Presently, the PJM resource adequacy obligation of the Companies is an unspecified part of the overall resource adequacy obligation of the pool of affiliated operating companies otherwise known as AEP East. The missing DIP detail described above is detail that is required to: Synchronize the PJM resource adequacy obligation with the state plan approved by the Commission; Identify implementation consequences of the two-tiered capacity charge that have billing significance; and, Ensure that the overall compensation available to the Companies through the two-tiered capacity charge structure is not improperly enhanced through the Companies’ discretionary specification of the MW-Day billing determinant.



Below, IEU-Ohio offers suggestions on how the detail should be included in the documentation associated with the Companies implementation of the two-tiered capacity charge structure.

PJM’s manuals indicate that capacity costs are billed in the following manner. The capacity charge rate is multiplied by a customer’s Peak Load Contribution (“PLC”) [or the aggregated PLC for customers of a Load Serving Entity (“LSE”)] and then multiplied by a final zonal scaling factor and multiplied by the forecast pool requirement factor. Those values are shown below:

	<b>2011/2012</b>	<b>2012/2013</b>	<b>2013/2014</b>	<b>2014/2015</b>
PJM Adjustment for FPR	1.0833	1.0872	1.0804	1.0809
PJM Adjustment for FRZSF	1.1204	1.0572	1.0881	1.0928

Given the role of the PLC in the PJM resource adequacy structure, the detail included in the Companies’ documentation on how the two-tiered capacity charge structure shall be applied must identify how a shopping customer’s PLC will be determined. This documentation must also identify the means by which this PLC specification will be synchronized with the overall resource adequacy obligation of AEP East and the means by which such obligation shall be allocated between shopping and non-shopping customers. The documentation must also identify how the resource adequacy obligation and the PLC will be modified as a result of the periodic changes made by PJM to the resource adequacy requirement and how the PLC will be modified to reflect change in a customer’s load and usage characteristics.

Once the synchronization detail and documentation is supplied in proper form, the \$255 per MW-Day charge should apply, where applicable, to the integrated sum of the PLCs of shopping customers served by a CRES and the RPM-price charge should apply to the integrated sum of the PLCs of the balance of shopping customers served by a CRES. This approach will cause each CRES to receive a capacity invoice from AEP-Ohio (the Fixed Resource Requirements or “FRR” entity) or PJM (the billing, collection and remitting entity) that is the weighted average of the two-tiered capacity charge structure with sufficient detail to audit the invoice based on the PLC data that is synchronized with PJM’s resource adequacy requirement as modified (both in the aggregate and in the case of individual customers) during the term of the electric security plan (ESP). The PLC factor of each account must be documented in detail in advance of any application of the new Ohio state compensation mechanism and must correspond with the customer’s PLC value recognized by PJM.<sup>6</sup> In the event that a discrepancy in PLC values is discovered there must be a means to contest the capacity charges billed to the CRES supplier.

### **Governmental Aggregation**

The DIP also includes language proposed by AEP-Ohio to address the Commission’s modification of the RPM set-aside provisions of the stipulation to accommodate governmental aggregation programs. AEP-Ohio has proposed language that is inconsistent with the Commission’s order in several respects. First, AEP-Ohio has proposed language intending to limit governmental aggregation customers not subject to the set-aside restrictions to non-mercantile customers. That language should

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<sup>6</sup> Each PJM Electric Distribution Company (“EDC”) is responsible for allocating the previous summer’s weather normalized peak to end-use customers in the zone (both retail and wholesale) and providing this information to PJM by Dec. 31 prior to the start of the Delivery Year.

be stricken. While it is correct that governmental aggregation programs are prohibited from including mercantile customers pursuant to Section 4928.20(B), Revised Code, without mercantile customer approval, mercantile customers are expressly permitted to participate in governmental aggregation programs by opting in. Therefore, the capacity available at the RPM set-aside price should include capacity necessary to serve mercantile customers served through a governmental aggregation program.

Second, AEP-Ohio has proposed to limit the governmental aggregation RPM set-aside to only those communities that passed aggregation ordinances during the November 2011 general election. The Commission's order requires the RPM set-aside be available to any community that completes the necessary process to take service by December 31, 2012. There will also need to be some clarification as to how governmental programs in future years will be addressed, as required by the Commission's Opinion and Order.

Finally, AEP-Ohio has proposed language that may treat customers served through a governmental aggregation program as first in the queue for the RPM set-aside capacity. The Commission's order, however, modified the RPM set-aside such that customers served through a governmental aggregation program have access to additional capacity based upon RPM clearing prices, and the RPM set-aside capacity of 21%, 31% and 41% of AEP-Ohio load is available to all other shopping customers. The Commission should assure that implementation of its intentions to assure access of governmental aggregation customers to capacity at RPM clearing prices does not work an injustice to those customers who have already qualified for RPM set-aside capacity.

### **Need for Tariffs**

As discussed above, the Commission should require the capacity pricing and allocation process to be part of the AEP-Ohio supplier tariffs. If as represented by AEP-Ohio in its letter to the Federal Energy Regulatory Commission, the Opinion and Order set the state compensation mechanism for purposes of AEP-Ohio's Fixed Resource Requirements election, then these matters need to be specified and approved by the Commission through a formal tariff filing. That tariff then would afford the parties with a "common understanding" and legally enforceable set of rates and procedures for determining capacity charges. As things now stand, however, AEP-Ohio seems to be proceeding as though it unilaterally determines the terms of the implementation of and compliance with the Commission's Opinion and Order.<sup>7</sup> As discussed above, its implementation has strayed from that decision, leaving customers and CRES suppliers with no means of determining whether they are being charged properly or provided the services required by the Commission's order.

Given that the terms of the Opinion and Order are to become effective on January 1, 2012 on a bills rendered basis without further Commission action, IEU-Ohio also requests that the Commission address this Motion on an expedited basis pursuant to Rule 4901-1-12(C), OAC. Customers (both retail and wholesale) face immediate and potentially harmful consequences due to the lack of transparency in the manner in which the Companies propose to implement the two-tiered capacity pricing and the lack of compliance with the Commission's orders regarding the treatment of governmental aggregation.

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<sup>7</sup> AEP-Ohio circulated the revised Detailed Implementation Plan to parties on December 22, 2011 and requested comments by December 27, 2011. Comments were returned by FirstEnergy Solutions, IEU-Ohio, and OCC. The implementation plan filed on December 28, 2011 is substantively the same as that circulated on December 22, 2011.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion of Industrial Energy User-Ohio for Orders Modifying the Ohio Power Company's and Columbus Southern Power Company's Revised Implementation Plan and Request for Expedited Ruling and Supporting Memorandum in Support* was served upon the following parties of record this 30<sup>th</sup> day of December 2011, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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Summary: Motion of Industrial Energy Users-Ohio for Orders Modifying the Ohio Power Company's and Columbus Southern Power Company's Revised Implementation Plan and Request for Expedited Ruling and Supporting Memorandum in Support electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio