

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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)	

OHIO POWER COMPANY’S MOTION TO STRIKE TESTIMONY

Pursuant to Rules 4901-1-12 and 4901-1-27(B)(7)(a) and (b), Ohio Administrative Code, Ohio Power Company (“Ohio Power” or the “Company”) moves to strike certain portions of the direct testimony that Industrial Energy Users-Ohio (“IEU”), Interstate Gas Supply, Inc. (“IGS”), the National Federation of Independent Business (“NFIB/Ohio”), The Ohio Association of School Business Officials, The Ohio Schools Boards Association, The Buckeye Association of School Administrators, and The Ohio Schools Council (collectively, the “Schools”), Summit Ethanol, LLC and Fostoria Ethanol, LLC (collectively, “Summit/Fostoria”), and The Office of the Ohio Consumers’ Counsel (“OCC”) have proffered in this proceeding. As demonstrated in the attached memorandum in support, Ohio Power seeks to strike portions of the direct testimonies of IEU witnesses Murray and Bowser, IGS witness Parisi, NFIB/Ohio witness Geiger, OCC witnesses Duann and Soliman, Summit/Fostoria witness Swanson, as well as Schools witness Fleeter’s entire direct testimony, on the grounds that those portions sought to be

stricken are irrelevant to this proceeding. Ohio Power also seeks to strike a portion of OCC witness Coppola's testimony because it constitutes improper legal opinion by a lay witness.

Accordingly, Ohio Power respectfully requests that the following direct testimony be stricken:

1. IEU Witness Kevin M. Murray's Direct Testimony (filed May 4, 2012):
 - Page 70, lines 13 through 17
 - Page 79, line 1, through page 80, line 20
2. IEU Witness Joseph Bowser's Direct Testimony (filed May 4, 2012):
 - Page 3, line 5: "approval of" should be stricken
 - Page 3, lines 7-21
 - Page 4, lines 9-22
 - Page 5, line 1, through page 6, line 7
 - Page 10, lines 3-14
 - Page 11, line 16, through page 13, line 24
 - Page 14, line 17, through page 17, line 22
 - Page 18, line 18, through page 28, line 20
 - Page 29, line 2: "amortization period as well as from" should be stricken
 - Page 29, line 4, through page 30, line 15
 - Exhibits JGB-2 through JGB-4
3. OCC Witness Daniel Duann's Direct Testimony (filed May 4, 2012):
 - Page 20, lines 7-11
 - Page 22, line 20, through page 28, line 18

4. Summit/Fostoria Witness Gary Swanson's Direct Testimony (filed May 4, 2012):
 - Page 9, line 16, through page 10, line 2
5. OCC Witness Ibrahim Soliman's Direct Testimony (filed May 4, 2012):
 - Page 3, line 3, through page 4, line 10
 - All attachments
 - Alternatively, all testimony
6. IGS Witness Vincent Parisi's Direct Testimony (filed May 4, 2012):
 - Page 1, lines 12 through 16
 - Page 2, line 18, through page 3, line 5
 - Page 9, lines 15 through 17, line 18 beginning with "and AEP" through "minimum stay requirements" on line 20
 - Page 13, line 15, through page 26, line 11
7. NFIB/Ohio Witness Roger R. Geiger's Direct Testimony (filed May 4, 2012):
 - Page 5, line 10, through page 6, line 23 through "territory"
8. Schools Witness Howard B. Fleeter's Direct Testimony (filed May 4, 2012):
 - Entire testimony
9. OCC Witness Sebastian Coppola's Direct Testimony (filed May 4, 2012):
 - Page 6, line 1

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Commission should strike the identified portions of the direct testimonies of IEU witnesses Murray and Bowser, IGS witness Parisi, NFIB/Ohio witness Geiger, Summit/Fostoria witness Swanson, Schools witness Fleeter, and OCC witnesses Duann and Soliman, because they address topics that are outside the scope of these proceedings and irrelevant to the subject matter of this case. The testimony does not relate to the proposals set forth in Ohio Power's electric service plan (ESP) Application or the supporting testimony filed therewith. Accordingly, the Commission should strike it. The Commission also should strike the requested portion of OCC witness Coppola's testimony as improper legal opinion from a lay witness.

II. ARGUMENT

The portions of witnesses Murray's, Bowser's, Parisi's, Geiger's, Fleeter's, Swanson's Soliman's and Duann's testimony identified in Ohio Power Company's Motion to Strike Testimony address issues that are outside the scope of this proceeding and, therefore, are irrelevant. Evidence, including witness testimony, that is not relevant to the issues before the Commission in a proceeding should be stricken. *See In the Matter of the Application of Columbus Southern Power Co. for Approval of an Electric Security Plan*, Case No. 08-917-EL-SSO, et. al, Entry at 6 (July 19, 2011) (striking witness testimony relating to issues outside the scope of the issues on remand); *In re. Verizon Wireless*, Case No. 03-515-TP-ARB, Opinion at 4 (Nov. 13, 2003) (striking witness affidavit based in part upon the fact that the information contained therein was "not relevant" to the case); *In re. TDS MetroCom, Inc.*, Case No. 02-1254-TP-ARB, Entry at 2 (Sept. 27, 2002) (striking witness testimony on issues that did "not assist the Commission" in deciding the relevant issues in the case). The intervenor witnesses' testimony at

issue here similarly is outside the scope of this proceeding, is not relevant to Ohio Power's proposed ESP, and will not assist the Commission in deciding this case. The testimony, therefore, should be stricken.

IEU witness Murray's testimony on page 70, lines 13 through 17, and from page 79, line 1, through page 80, line 20, is not relevant to, and thus should not be considered in, this proceeding. Mr. Murray's testimony on page 70 describes his calculation of the ESP/MRO price test for the period for the June 2015 through May 2016 delivery year. On pages 79 and 80, Mr. Murray attempts to expand this proceeding into a debate regarding how the competitive bid process (CBP), through which Ohio Power proposes to procure its standard service offer (SSO) load for the June 2015 through May 2016 delivery year, should be structured and conducted. However, the subject of this proceeding, Ohio Power's proposed ESP, is for the three year period from June 2012 through May 2015. The ESP/MRO price comparison for the year *following* the proposed ESP is simply not relevant. Likewise, the CBP that will take place to procure SSO load for the period *after* the term of this proposed ESP is not within the scope of Ohio Power's present ESP Application. Mr. Murray's opinions regarding any time period after June 1, 2015, therefore, are not relevant to this proceeding and should be stricken.

The portions of IEU witness Bowser's, OCC witness Duann's, and Summit/Fostoria witness Swanson's direct testimony identified as beyond the scope of this case relate to their attempts to reargue the merits of the Phase In Recovery Rider (PIRR). As the Commission is aware, the merits of the PIRR were an issue in the first ESP and, as recognized in the Company's application in this proceeding, a filing was made in Case Nos. 11-4920-EL-RDR and 11-4921-EL-RDR (*PIRR Dockets*) to establish the collection of the deferred fuel expenses authorized for recovery starting in January 2012. *See* Application at 14. The Company, as part of its proposed

ESP package in this case, agreed to delay the implementation of the rider. The Company did not seek to litigate in this case the issues that the Commission already fully addressed in the *PIRR Dockets*. The Company merely proposed to delay the commencement of the rider until June 2013. It would appear that parties trying to take a fresh bite at this apple are relying upon the language in the application that requests to delay the schedule in the *PIRR Dockets* to consider the delayed PIRR as part of the modified ESP. The Company's only request with respect to the PIRR in this case is to delay its implementation until June 2013 and to establish the details necessary to make that happen. The Company never intended to reopen the *PIRR Dockets* or to relitigate the issues addressed therein. Those issues are submitted and the Commission has full comments and an appropriate record to issue a decision. Accordingly, any testimony in this case on the merits or makeup of the PIRR or the issues in *PIRR Dockets* is misplaced and would serve to needlessly extend this hearing and record, which already has an abundance of parties, testimony, and issues that do apply to the case to be considered.

IEU witness Bowser discusses the items in the *PIRR Dockets* almost exclusively. His table of contents has three bullets, Introduction (pg 1) , Phase-In Recovery Rider (Rider PIRR) (pg 6) , and Recommendations (pg 28). On page 3 of his testimony, in the first paragraph of the purpose of his testimony, Mr. Bowser states the purpose of his testimony involves the "requested approval of Rider PIRR effective June 1, 2013." The rest of Mr. Bowser's purpose statement discusses merits of the *PIRR Dockets* including the issue of maintaining separation between the operating companies. Mr. Bowser makes his recommendations on pages 4-6. He includes means of financing the amortization, and he attacks the carrying charge applied and the elements that make up the charge, the separate company rates, application to customer groups, and other changes all related to the *PIRR Dockets* consideration. The language starting on page 6 to the

end of page 7 does not necessarily need to be stricken because it simply provides a description of the *PIRR Dockets* and really shows why the other testimony does not belong in the case. The testimony explains that there was a process in the *PIRR Dockets*. IEU witness Bowser even attaches the party's comments from that case to his testimony as an admission that he is trying to bring those issues into this case. Those exhibits that deal with the issues in the *PIRR Dockets* should also be stricken as they relate to the subject matter in that case, and not the simple issue of delaying the implementation of the PIRR, which is all that the Company has presented in this case. In short, discussion of the merits of the PIRR already occurred in the *PIRR Dockets* and does not belong in this case.

Mr. Bowser discusses the application of the PIRR treatment in this case on pages 8 through most of 10,¹ but on page 11 again begins to argue with the components of the rider and states, “[i]n addition, before the Commission should approve Rider PIRR rates, there are several adjustments that need to be made to the phase-in deferral balance before any version of Rider PIRR is permitted to go into effect.” Mr. Bowser openly admits he is trying to revisit the very issue that was the basis of the *PIRR Dockets*. Pages 12 and 13 deal with components of the *PIRR Dockets* and concerns with the PIRR beyond the delay in implementation and, thus, they should be stricken. The discussion from lines 1 through 16 on page 14 deal with the carrying charge during the delay and are appropriate testimony for this case. But the arguments that begin on page 14, line 17, and continue through the end of page 17 all concern the issues in the *PIRR Dockets* and are not related to the limited delay of the PIRR's implementation. Similarly, page 18, line 18, through page 28, line 8, concern only issues addressed or raised in the *PIRR Dockets* on the elements of the rider. The discussion brings up Supreme Court arguments, POLR

¹ Lines 3-4 of page 10 should also be stricken as they apply to the overall balance of the PIRR and items raised and under review in the *PIRR Dockets*.

charges, and other elements that are beyond the scope of this case. Mr. Bowser discusses his view of whether any changes he declares should be changed are reflected in the balances and other items raised in IEU comments in the *PIRR Dockets*. The recommendations pick back up on page 28 through line 15 of page 30. All of these recommendations relate to the *PIRR Dockets*. The only appropriate recommendation that should stay is found on page 29 lines 1-3. The language on line 2 stating “amortization period as well as from” should be stricken to ensure the recommendation relates only to the carrying charge relating to the delay of implementation offered in the case.

Dr. Duann’s testimony on behalf of OCC suffers from the same problem. Dr. Duann recognizes the existence of the *PIRR Dockets* but states in his testimony that he is unsure how the PIRR will be handled at the Commission. That “unknown” leads Dr. Duann to state on page 20 that, “[i]n any event, I offer OCC’s position in the following paragraphs on the more important aspects of the PIRR, if the Commission chooses to decide the PIRR in this proceeding.” This is a clear indication that he is offering a position just in case the issue is in this case. It is not. All of his testimony that does not deal with the limited delay in implementation of the PIRR should be stricken as the *PIRR Dockets* are controlling. Discussion about providing OCC’s position on the PIRR from lines 7-20 on page 20 also is beyond the scope of this case and should be stricken. The discussion starting on 22 through page 26 is the majority of Dr. Duann’s description of OCC’s position on the *PIRR Dockets*, provided as a safety concern as admitted earlier in testimony. The discussion deals with recalculating the balance, identifying adjustments, tax considerations, and collecting the PIRR subject to refund. All of the topics relate to issues provided the Commission in the *PIRR Dockets* and should not be raised in this proceeding. Likewise, the discussion on pages 27 and 28 of Dr. Duann’s testimony

deals with carrying charge levels and length of the amortization period for the overall balance – again issues in the *PIRR Dockets*. Although Dr. Duann states that he included the testimony on PIRR just to be safe should the PIRR be an issue for consideration in the modified ESP, the only issue in this case relating to the PIRR is the delay in its implementation. The issues under consideration in the *PIRR Dockets* should stay in the *PIRR Dockets* before the Commission.

Like Mr. Bowser and Dr. Duann, on page 9, line 16, through page 10, line 2 of his direct testimony, Summit/Fostoria witness Swanson offers his opinion as to the approach that should be taken with regard to the PIRR. For the same reasons discussed above with respect to Mr. Bowser's and Dr. Duann's testimony, this portion of Mr. Swanson's testimony should be stricken.

OCC witness Ibrahim Soliman also discusses the level of carrying charges that OCC prefers as part of the deferred fuel at issue in the *PIRR Dockets*. Dr. Duann, at page 26 line 20 of his testimony, even refers to Mr. Soliman as related testimony. In fact, a review of Mr. Soliman's testimony shows that his testimony suffers from the same problems as witnesses Bowser, Duann, and Swanson and concerns issues already before the Commission in the *PIRR Dockets*. Mr. Soliman starts his substantive issue testimony on page 3 and describes his purpose as "the proper calculation of carrying charges on deferred fuel." He then goes on to make a recommendation on the carrying charges for the fuel deferred during the ESP I deferral period (2009-2011). Mr. Soliman goes on in his testimony, at page 4, about how his position is consistent with other positions offered in the *PIRR Dockets* citing specific party comments from those dockets. On page 5, Mr. Soliman discusses his views on accumulated deferred income tax and how that should be used to reduce the fuel carrying charges from the ESP I period with a number of attachments. These again are all issues that are under Commission review in the

PIRR Dockets and Soliman's discussion of them in this case should be stricken. On pages 6 and 7, Mr. Soliman further opines on his recommendations on how to apply changes to the fuel deferral. He again cites to the comments filed in the *PIRR Dockets* for support. Finally, on page 7, he provides his final recommendation, again dealing with issues in the PIRR case. The entire substantive portion of Mr. Soliman's testimony deals with adjustments raised in the *PIRR Dockets*. He even cites to those comments throughout his testimony. The Commission will address those issues in the *PIRR Docket*. Accordingly, the substantive portions of Mr. Soliman's testimony should be stricken and, because all that remains is background and credentials, the testimony should be stricken in its entirety.

The portions of IGS witness Parisi's direct testimony identified in Ohio Power Company's Motion to Strike Testimony also are not relevant and would needlessly and impermissibly complicate this proceeding. None of the testimony relates to the proposed ESP. Rather, Mr. Parisi identifies a number of mechanisms that he thinks *should* have been included in the ESP. This attempt to expand and complicate the issues for Commission consideration in this case is improper and should not be permitted. Given the number of parties and witnesses to this case, as well as the complexity of the issues already before the Commission and the anticipated lengthy duration of the upcoming evidentiary hearing, the Commission should strike those portions of Mr. Parisi's testimony that do not relate to the proposals contained in Ohio Power's ESP application.

NFIB/Ohio witness Geiger's direct testimony, from page 5, line 10, through page 6, line 23 through "territory", including all of the exhibits attached to Mr. Geiger's testimony, also is outside the scope of this proceeding and should be stricken. These portions of Mr. Geiger's testimony relate solely to the rate impacts NFIB/Ohio members experienced as a result of Ohio

Power's retail rates that the Commission initially approved in December 2011. Those rates, however, were subsequently rejected and the Company is proposing different rates as part of its application in this proceeding. The exhibits attached to Mr. Geiger's testimony are similarly irrelevant because they show customer bills calculated using the old retail rates. Accordingly, the portions of Mr. Geiger's testimony discussing the Company's old rates, including all of the exhibits attached to his testimony, are irrelevant and should be stricken.

Schools witness Fleeter's entire direct testimony is outside the scope of this proceeding and should be stricken from the record. The sole stated purpose of this testimony is to discuss the impact of the State's 2012-2013 budget on Ohio's public schools. The testimony makes no reference to any of the Company's proposals in this case and, therefore, will not assist the Commission in deciding the relevant issues in this proceeding. Accordingly, the Commission should strike it in its entirety.

Finally, OCC witness Coppola's statement on page 6, line 1 states a legal conclusion that is more appropriate for briefing and argument by counsel. This portion of Mr. Coppola's testimony should be stricken as there is no indication that Mr. Coppola is an attorney licensed to practice law in Ohio yet he is clearly offering a legal conclusion. In the alternative, if Mr. Coppola made this statement after being advised by his counsel and revises this portion of his testimony to indicate as much, the Company would not seek to strike this portion of his testimony. As it is written now, however, this portion of Mr. Coppola's testimony should be stricken.

III. CONCLUSION

For the reasons set forth above, Ohio Power Company respectfully requests that the Commission strike the portions of Mr. Murray's, Mr. Bowser's, Dr. Duann's Mr. Swanson's,

Mr. Soliman's, Mr. Parisi's, Mr. Geiger's, Mr. Riley's, and Mr. Coppola's direct testimony discussed above, as well as the entirety of Dr. Fleeter's direct testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Ohio Power Company's Motion to Strike Testimony was served by E-mail upon counsel for all parties of record in this case on this 11th day of May, 2012.

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Summary: Motion Ohio Power Company's Motion to Strike Testimony electronically filed by Mr. Yazen Alami on behalf of Ohio Power Company