

**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 Pursuant)	Case No. 11-348-EL-SSO
to Section 4928.143, Revised 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.)	

**MEMORANDUM CONTRA THE MOTION TO STRIKE OF OHIO POWER CO.
ON BEHALF OF INTERSTATE GAS SUPPLY, INC.**

I. INTRODUCTION

On May 11, 2012, Ohio Power Co. (“OP”) filed a motion to strike the testimony of numerous witnesses on the grounds the testimony “is irrelevant to this proceeding.” (OP Mot. to Strike 1.) It raised the same argument regarding portions of the testimony of Interstate Gas Supply, Inc. witness Vince Parisi, arguing that portions of his direct testimony “are not relevant and would needlessly and impermissibly complicate this proceeding.” (*Id.* at 7.)

OP’s motion lacks merit and should be denied.

II. ARGUMENT

The only ground OP offers for striking portions of Mr. Parisi’s testimony is that they purportedly do not “relate[] to the proposed ESP” and thus are irrelevant. (*Id.*) But as OP’s motion makes clear, it believes that the only provisions “relate[d] to the proposed ESP” are those actually “included in the ESP.” (*Id.*) One can understand the company’s desire for such a rule, but “what OP wants” and “relevance” are not the same things, and adopting OP’s narrow definition of relevance would violate the law.

A. R.C. 4928.143 allows ESPs to include a wide array of provisions, including those described in the challenged testimony.

The ESP statute broadly allows plans to include “provisions relating to the supply and pricing of electric generation service,” R.C. 4928.143(B)(1), as well as provisions regarding shopping, R.C. 4928.143(B)(2)(d). All of the challenged recommendations (in which Mr. Parisi recommends and addresses a purchase-of-receivables program, a retail auction, disclosure of Tier 1 capacity, and other shopping terms and conditions) relate to such matters and thus could permissibly be made part of an ESP. OP does not argue otherwise. Much of the challenged testimony expressly seeks to modify OP’s existing proposals. (*See, e.g.*, Parisi Dir. 14, 21–24.) And while OP did not propose a purchase-of-receivables program, it may be permissibly considered in an ESP proceeding. In fact, the Commission approved a stipulation providing for such a program in Duke Energy Ohio’s recent ESP case. *See In re Application of Duke Energy Ohio*, Case No. 11-3549-EL-SSO, 2011 Ohio PUC LEXIS 1248, Order at *58 (Nov. 22, 2011) (describing POR plan).

B. The Commission must consider proposals beyond those of the company.

The sole factor relied on by OP—that it did not propose Mr. Parisi’s recommendations—is inconsequential. The ESP statute affirmatively rules out OP’s assumption that only *company-proposed* provisions are fair game for the Commission. The Commission may “modify and approve” ESPs, and nothing in the statute suggests that “modify” excludes non-price modifications. R.C. 4928.143(C)(1). On the contrary, the Commission cannot approve an ESP unless “its pricing *and all other terms and conditions*, . . . is more favorable in the aggregate” than the expected results of a market rate offer. *Id.* (emphasis added). As the Ohio Supreme Court recently held, “the commission must consider more than price in determining whether an

electric security plan should be modified.” *In re Columbus S. Power Co.*, 128 Ohio St. 3d 402, 2011-Ohio-958, ¶ 27 (2011).

In short, ESPs may be modified; the statute permits non-price modifications; and all of Mr. Parisi’s proposed modifications fit within the categories allowed under R.C. 4928.143(B). Accordingly, Mr. Parisi’s recommendations must be considered on their merits and cannot be prematurely dismissed as irrelevant simply because OP has not raised these issues in its own ESP.

C. Regardless of OP’s interests, the Commission cannot stack the deck in the company’s favor.

OP may be entitled to pursue its own interests, as it has done in its proposed ESP. But OP cannot stifle the voices of other parties just to keep the record stacked in its favor. And regardless of OP’s interests, the Commission has a duty to the public, and that includes the duty to consider modifications to the ESP.

It also includes a duty to conduct fair hearings. The Commission must “conduct a fair and open hearing with suitable opportunity being given through evidence and argument to challenge the result found by the commission.” *East Ohio Gas Co. v. Pub. Util. Comm.*, 133 Ohio St. 212, 217 (1938). Despite OP’s invitation, the Commission should not be asked to bury its head in the sand. OP’s only basis for striking Mr. Parisi’s testimony is that OP did not make his proposals. Not only does this lack merit as an evidentiary matter, but it invites trouble on appeal. If the Commission were to approve the ESP only after eliminating from evidence any contrary proposals—for no other reason than that they were not the company’s—it would call the fairness of the proceedings and the sufficiency of the record into serious question.

III. CONCLUSION

For the foregoing reasons, the motion to strike portions of Mr. Parisi's testimony should be denied.

Dated: May 16, 2012

Respectfully submitted,

/s/ Andrew J. Campbell

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Memorandum Contra Ohio Power Co.'s Motion to Strike was served by electronic mail this 16th day of May, 2012 to the following:

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Summary: Memorandum Contra to Ohio Power Company's Motion To Strike electronically filed by Ms. Melissa L. Thompson on behalf of Interstate Gas Supply, Inc.