

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Commission Review of : Case No. 2013-0228  
the Capacity Charges of Ohio Power Company :  
and Columbus Southern Power Company : Public Utilities Commission of Ohio  
: Case No. 10-2929-EL-UNC

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RESPONSE OF INDUSTRIAL ENERGY USERS-OHIO TO MOTION TO DISMISS

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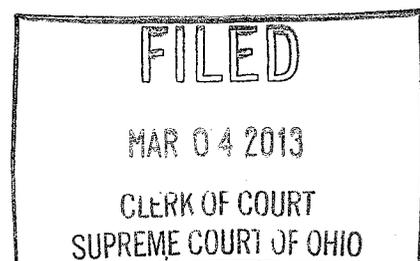
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### RESPONSE OF INDUSTRIAL ENERGY USERS-OHIO TO MOTION TO DISMISS

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On December 14, 2012, Industrial Energy Users-Ohio (“IEU-Ohio”) filed its Notice of Appeal in Case No. 2012-2098 from the Public Utilities Commission of Ohio’s (“Commission”) March 7, 2012 Entry; May 30, 2012 Entry; July 2, 2012 Opinion and Order; October 17, 2012 Entry on Rehearing; and December 12, 2012 Entry on Rehearing in PUCO Case No. 10-2929-EL-UNC. On January 14, 2013, the Commission transferred its record to the Court.

Subsequent to filing the notice of appeal, the Office of the Ohio Consumers’ Counsel (“OCC”) filed an application for rehearing with the Commission seeking rehearing of the Commission’s December 12, 2012 Entry on Rehearing. On January 18, 2013, the Commission moved to dismiss IEU-Ohio’s appeal in Case No. 2012-2098 on grounds that it was filed prematurely.

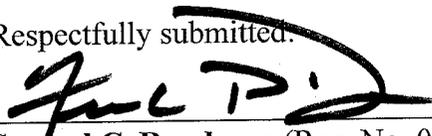
On February 6, 2013, IEU-Ohio filed a Notice of Appeal from the Commission’s March 7, 2012 Entry; May 30, 2012 Entry; July 2, 2012 Opinion and Order; October 17, 2012 Entry on Rehearing; December 12, 2012 Entry on Rehearing; and January 30, 2013 Entry on Rehearing. IEU-Ohio’s February 6, 2013 second Notice of Appeal from the proceeding below has been assigned Case No. 2013-0228.

On February 11, 2013, the Commission and IEU-Ohio filed a motion requesting the Court to consolidate these matters for briefing or in the alternative to suspend the briefing

schedule until the Commission's motion to dismiss was resolved. The Ohio Power Company subsequently opposed the motion to consolidate in Case No. 2012-2098 and filed a motion to dismiss Case No. 2013-0228 on the ground that IEU-Ohio's second notice of appeal was duplicative, *i.e.*, that the first appeal was proper.

For the customers of Ohio Power Company, the adverse effects of the Commission's decision were final when the Commission refused to grant rehearing. Based on the Commission's final orders, IEU-Ohio has filed a timely notice of appeal regardless of whether the December 12, 2012 Entry on Rehearing or the January 30, 2013 Entry on Rehearing is deemed the final order from which an appeal may be taken. R.C. 4903.11. IEU-Ohio, therefore, again urges the Court to consolidate the matters for briefing based on the schedule of the latter filed case (as requested by IEU-Ohio and the Commission) or suspend the briefing schedule until such time as the Court rules on the various motions and concludes which of the proceedings is final for purposes for taking an appeal.

Respectfully submitted.



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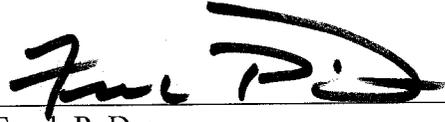
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Response of Industrial Energy Users-Ohio to Motion to Dismiss* was served upon the parties of record this 4th day of March, 2013 via electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.



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