

ORIGINAL

IN THE SUPREME COURT 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.)
)
) Supreme Court Case No. 12-0187
)
)
)
 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.)
) Appeal from the Public Utilities Commission of Ohio
)
) Case Nos. 08-917-EL-SSO and
) 08-918-EL-SSO
)
 On Remand)

REPLY BRIEF AND APPENDIX OF
 THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Bruce J. Weston
 (Reg. No. 0016973)
 Ohio Consumers' Counsel

Michael DeWine
 (Reg. No. 0009181)
 Attorney General of Ohio

Maureen R. Grady, Counsel of Record
 (Reg. No. 0020847)
 Terry L. Etter
 (Reg. No. 0067445)
 Assistant Consumers' Counsel

Werner L. Margard III
 (Reg. No. 0024858)
 John H. Jones
 (Reg. No. 0051913)
 Assistant Attorneys General

Office of the Ohio Consumers' Counsel
 10 West Broad Street, Suite 1800
 Columbus, Ohio 43215-3485
 (614) 466-9567 (Telephone) - Grady
 (614) 466-7964 (Telephone)- Etter
 (614) 466-9475 (Facsimile)
grady@occ.state.oh.us
etter@occ.state.oh.us

Public Utilities Commission of Ohio
 180 East Broad Street, 6th Floor
 Columbus, Ohio 43215-3793
 (614) 644-8698 - Telephone
 (614) 644-8764 - Facsimile
werner.margard@puc.state.oh.us
john.jones@puc.state.oh.us

*Attorneys for Appellant
 Office of the Ohio Consumers' Counsel*

*Attorneys for Appellee
 Public Utilities Commission of Ohio*

FILED
 JUL 09 2012
 CLERK OF COURT
 SUPREME COURT OF OHIO

Samuel C. Randazzo, Counsel of Record
(Reg. No. 0016386)
Frank P. Darr
(Reg. No. 0025469)
Joseph E. Olikier
(Reg. No. 0086088)

McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
(614) 469-8000 – Telephone
(614) 469-4653 – Facsimile
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com

*Attorneys for Appellant
Industrial Energy Users-Ohio*

Steven T. Nourse (0046705)
Counsel of Record
Matthew J. Satterwhite (0071972)
Yazen Alami (0086371)

American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1608
Facsimile: (614) 716-2950
stnourse@aep.com
mjsatterwhite@aep.com
yalami@aep.com

*Attorneys for Intervening Appellee
Ohio Power Company*

TABLE OF CONTENTS

	<u>Page</u>
I. PROPOSITION OF LAW NO. 1:	1
The Public Utilities Commission Must Reduce Phase-In Deferrals By Charges Not Proven To Be Reasonable And Lawful Under R.C. 4928.143(B)(2).....	1
A. The Commission, in its <i>ESP I Order</i> , permitted the Companies to seek recovery of their deferrals; it did not approve recovery of any of the phase-in deferrals from customers.	2
B. The ESP I rates have not been fully collected, but will continue to be collected from customers through a phase-in recovery rider. When rates have not been fully collected, the Public Utilities Commission may order a credit without engaging in retroactive ratemaking.	8
C. The Court should permit an exception to retroactive ratemaking and order the PUCO to remedy the unjustified collection of \$368 million of POLR charges from customers.	14
II. CONCLUSION.....	19

APPENDIX

CERTIFICATE OF SERVICE

APPENDIX

APPX. NO.

STATUTES:

R.C. 4903.16	000747
R.C. 4905.06	000748
R.C. 4905.22	000749
R.C. 4905.32	000750
R.C. 4909.15	000751
R.C. 4928.05	000755
R.C. 4928.142	000756

DECISIONS OF THE PUBLIC UTILITIES COMMISSION OF OHIO:

<i>In the Matter of the Application of Columbus S. Power Co. and Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Pub. Util. Comm. No. 11-346-EL-SSO et al., Entry on Rehearing (Apr. 11, 2012)</i>	000759
<i>In the Matter of the Application of Columbus S. Power Co. and Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Pub. Util. Comm. No. 11-346-EL-SSO et al., Ohio Power Company’s Modified Electric Security Plan (Mar. 30, 2012).....</i>	000764
<i>In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144 and In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144, Pub. Util. Comm. No. 11-4920-EL-RDR et al., Comments by the Office of the Ohio Consumers’ Counsel (Apr. 2, 2012)</i>	000785

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases</u>	
<i>Columbus S. Power Co. v. Pub. Util. Comm.</i> , 67 Ohio St.3d 535, 620 N.E.2d 835 (1993)	15
<i>Ford Motor Co. v. Pub. Util. Comm.</i> , 52 Ohio St.2d 142, 370 N.E.2d 468 (1977)	2
<i>Keco Indus. Inc. v. Cincinnati & Suburban Bell Tel. Co.</i> , 166 Ohio St. 254, 141 N.E.2d 465 (1957)	9,14,15,16
<i>Lucas County Commrs. v. Pub. Util. Comm.</i> , 80 Ohio St.3d 344, 686 N.E.2d 501 (1997)	10
<i>Office of Consumers' Counsel v. Pub. Util. Comm.</i> , 6 Ohio St.3d 377, 453 N.E.2d 673 (1983)	11
<i>River Gas Co. v. Pub. Util. Comm.</i> , 69 Ohio St.2d 509, 433 N.E.2d 568 (1982)	2,8
 <u>Entries and Orders of the Public Utilities Commission of Ohio</u>	
<i>In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company</i> , Pub. Util. Comm. Nos. 09-872-EL-FAC et al., Opinion and Order (Jan. 23, 2012)	11,12
<i>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 Generation Assets</i> , Pub. Util. Comm. Nos. 08-917-EL-AIR et al., Opinion and Order (Mar. 18, 2009)	1
<i>In the Matter of the Application of Columbus S. Power Co.</i> , Pub. Util. Comm. No. 08-917-EL-SSO et al., Remand Order (Oct. 3, 2011)	1,19
<i>In the Matter of the Application of Columbus S. Power Co. and Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan</i> , Pub. Util. Comm. No. 11-346-EL-SSO et al., 2012 Ohio PUC LEXIS 192, Entry on Rehearing (Feb. 23, 2012)	6,17

TABLE OF AUTHORITIES

Page

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan, Pub. Util. Comm. No. 11-346-EL-SSO et al., Entry (Mar. 7, 2012)4

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan, Pub. Util. Comm. No. 11-346-EL-SSO et al., Entry on Rehearing (Apr. 11, 2012)3,4,7

STATUTES:

R.C. 4903.1616

R.C. 4905.0616

R.C. 4905.22 16

R.C. 4905.32 16

R.C. 4909.155

R.C. 4928.0516

R.C. 4928.1415,16

R.C. 4928.1425

R.C. 4928.143passim

R.C. 4928.144passim

MISCELLANEOUS:

Krieger, The Ghost of Regulation Past: Current Applications of the Rule Against Retroactive Ratemaking in Public Utility Proceedings, 1991 U. Ill. L.Rev. 983, 1045 (1991)15,17

I. PROPOSITION OF LAW NO. 1:

The Public Utilities Commission Must Reduce Phase-In Deferrals By Charges Not Proven To Be Reasonable And Lawful Under R.C. 4928.143(B)(2).

The PUCO found that the Companies' provider of last resort ("POLR") charges, authorized to be collected from customers in the *ESP I Order*,¹ were not supported by the record on remand.² Although the PUCO did order a partial refund of a portion of the POLR charges -- those collected from customers "subject to refund" from June 2011 -- it should have done more. It should have reduced the remaining portion of the phase-in rates to return to customers all that they paid for POLR. But, the PUCO failed to credit the remaining electric security plan rates for the POLR revenues customers paid from April 2009 through May 2011. Those revenues amounted to approximately \$368 million, excluding the financing charges accrued on the deferrals from 2009-2011.³

This was an error that the PUCO had to fix to comply with R.C. 4928.143 (OCC Appx. 019-023) and 4928.144 (OCC Appx. 024). While the phase-in rates themselves could not be fixed, it was incumbent upon the PUCO to adjust the remaining elements of the phase-in: the regulatory assets created by the deferrals and the future collection of those deferrals. Because the regulatory assets were based on rates lacking evidentiary support, the phase-in plan failed to comply with R.C. 4928.144. (OCC Appx. 024).

¹ *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 Generation Assets*, Pub. Util. Comm. Case Nos. 08-917-EL-AIR et al., Opinion and Order (Mar. 18, 2009) ("ESP I Order"). (OCC Appx. 399).

² *In the Matter of the Application of Columbus S. Power Co.*, Pub. Util. Comm. No. 08-917-EL-SSO, *Remand Order* at 18-24 (Oct. 3, 2011). (OCC Supp. 304-310).

³ See Testimony of OCC Witness Dr. Duann at 23, Attachment DJD-D. (OCC Supp. 25).

When the PUCO failed to reduce the value of the regulatory assets for each dollar of unlawful POLR revenues collected, it was not following the law. The PUCO failed to act and instead will allow the Companies to collect the remaining ESP rates from customers through a phase-in recovery rider (“PIRR”). But these remaining rates are derived from POLR charges found to be without evidentiary support by both the Court and the PUCO. The PUCO’s inaction in this regard will harm 1.2 million residential customers of the Companies.

A. The Commission, in its *ESP I Order*, permitted the Companies to seek recovery of their deferrals; it did not approve recovery of any of the phase-in deferrals from customers.

This Court has determined that certain matters are not “retroactive ratemaking” because they are simply not “ratemaking.”⁴ To have retroactive ratemaking, ratemaking itself must be present. Neither the Companies nor the PUCO dispute this premise.

Rather the dispute lies in how parties characterize the PUCO’s decision in the *ESP I Order*. The Companies claim that “ratemaking” occurred because the PUCO “actually ordered recovery of these expenses, as required by R.C. 4928.144.”⁵ The PUCO likewise describes the deferrals as “not merely an accounting matter” but accounting that is enabled by R.C. 4928.144, under which “special deferrals” can be created, where recovery is not in doubt.⁶ In essence the Appellees claim ratemaking has occurred and that the PUCO has approved the recovery of the deferrals from customers, with carrying costs.

But this claim does not square with the Commission’s *ESP I Order*, recent pronouncements by the Commission, and the language of R.C. 4928.144. When these sources

⁴See e.g. *Ford Motor Co. v. Pub. Util. Comm.*, 52 Ohio St.2d 142, 370 N.E.2d 468 (1977); *River Gas Co. v. Publ. Util. Comm.*, 69 Ohio St.2d 509, 433 N.E.2d 568 (1982).

⁵ AEP Brief at 21.

⁶ PUCO Brief at 18.

are examined it can be seen that ratemaking has not occurred, and thus any adjustments to the remaining ESP rates would not amount to retroactive ratemaking.

The *ESP I Order* simply provided that “the collection of any deferrals, with carrying costs, created by the phase-in that are remaining at the end of the ESP [I] term shall occur from 2012 to 2018 *as necessary* to recover the actual fuel expenses incurred plus carrying costs.”⁷ Appellees ignore the phrase “as necessary.” Such language shows that the Commission only authorized the collection of any deferrals “as necessary.” Thus, the Commission’s *ESP I Order* anticipated a separate proceeding or assessment to determine whether the collection was necessary -- focusing on what deferrals would be collected from customers and how. That separate proceeding, the *Deferred Fuel Cost Proceeding*, was initiated by the Companies when they filed an application on September 1, 2011, seeking to collect \$628,073,320 in deferrals from customers.⁸

Recently, the PUCO itself confirmed the effect of its holding in the *ESP I Order*.⁹ The PUCO denied the Companies’ request that the Commission reconsider its March 7, 2012

⁷ See *ESP I Order* at 23 (emphasis added).

⁸ See *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144*, Pub. Util. Comm. No. 11-4920-EL-EDR et al., Application at Exhibit A, page 2 of 7 (Sept. 1, 2011).

⁹ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Pub. Util. Comm. No. 11-346-EL-SSO et al., Entry on Rehearing at ¶13 (April 11, 2012). (OCC Appx. 762).

ruling.¹⁰ That ruling precluded a phase-in recovery rider from being collected as part of the Companies' continued electric security plan rates.¹¹ In denying the Companies' request for reconsideration of its decision, the PUCO described its findings in the *ESP I Order* pertaining to the phase-in deferrals: "While the Commission's order in the ESP I proceedings permits AEP-Ohio to *seek recovery* of deferred fuel cost deferrals from 2012 to 2018, it did not establish a rider or other tariff provision for AEP-Ohio to *recover* deferred fuel costs or set a hard deadline for when recovery shall begin. To the contrary, as FES points out, in the ESP I order, the Commission explicitly provided that *any recovery shall occur as necessary*, indicating the Commission would conduct an additional analysis to determine the appropriate recovery of fuel cost expenses incurred plus carrying costs."¹² The words of the Commission from the original *ESP I Order*, expounded upon in the PUCO's recent Entry, clarify that recovery was not ruled upon in the initial *ESP I Order*, contrary to the claims of the Appellees.¹³

¹⁰ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Pub. Util. Comm. No. 11-346-EL-SSO et al., Entry at ¶14 (March 7, 2012) (OCC Appx. 150) (approving tariffs to continue the provisions, terms, and conditions of its *ESP I* plan, but removing the phase-in recovery rider and deferring consideration of AEP-Ohio's application to establish a phase-in recovery rider in Case No. 11-4920-EL-RDR, et al. (the "*Deferred Fuel Cost Proceeding*")).

¹¹ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Pub. Util. Comm. No. 11-346-EL-SSO et al., Entry on Rehearing at ¶13 (April 11, 2012). (OCC Appx. 762).

¹² *Id.*

¹³ The Companies argue that the appeal is a collateral attack on the *ESP I Order*. AEP Brief at 25-26. This argument is premised upon the notion that the *ESP I Order* determined that the Companies were entitled to full recovery of all deferrals. As explained *supra*, the *ESP I Order* did not approve recovery. Thus, there is no collateral attack on the *ESP I Order* because the order did not resolve the issue of recovery of the deferrals in the first instance. This argument should be rejected.

The Appellees' arguments also ignore the language of the statute in question, R.C. 4928.144. The statute recognizes there are separate and distinct portions that comprise a phase-in plan, which when separately examined, reveal that "ratemaking" is not necessarily present when a phase-in plan is created under an electric security plan.

R.C. 4928.144 establishes the first portion of a phase-in plan -- "a just and reasonable phase-in of any EDU rate or price established" under R.C. 4928.141 to R.C. 4928.143. Phased-in rates "may" be authorized under the ESP rate plan. Notably, the statute refers to "authorizing" and not setting rates. This is because, with the advent of S.B. 221, the utilities propose rates as part of an overall ESP package and the Commission modifies or approves the ESP, with the utility having the ultimate power to withdraw or terminate its application.

Prior to S.B. 221, the Commission *was* required to fix and determine just and reasonable rates based on a complex and detailed formulaic process.¹⁴ But after S.B. 221, the entire process changed. The detailed and prescriptive regulatory formula traditionally associated with rate cases does not apply to a utility's electric security plan. Instead, the Commission, in order to approve an ESP, must determine if a utility's plan compares favorably in the aggregate with the expected results of a market rate offer under R.C. 4928.142. (OCC Appx. 756-759). The utility's proposed rates need not be cost based, nor derived from a formula. They are merely one provision in an electric security plan that ultimately is judged by comparing the ESP plan as a whole with a market rate offer. And a utility may unilaterally reject any modifications to the ESP that the PUCO may make.¹⁵

So, under R.C. 4928.144, the first portion of a phase-in plan, the phase-in rates do not constitute ratemaking because the rates themselves are not set in the traditional sense. Rather

¹⁴ See R.C. 4909.15. (OCC Appx. 751-754).

¹⁵ See R.C. 4928.143(C)(2)(a). (OCC Appx. 0019).

they are the product of an entirely different regulatory process. This process is one under which rates are contained in a package proposed by a utility, with the utility having the ultimate authority to withdraw the rates if it cannot abide by the PUCO modifications to its electric security plan.

Second, under R.C. 4928.144, there is “the creation of regulatory assets, pursuant to ‘generally accepted accounting principles.’” The creation of regulatory assets occurs “by authorizing the deferral of incurred costs.” This portion of the statute refers to standard (not special) accounting, pursuant to “generally accepted accounting principles.” So, by the words contained in the statute itself, the General Assembly has conveyed that this portion of a phase-in plan is a matter of accounting, not ratemaking.

The third portion of R.C. 4928.144 addresses how collection of the deferrals shall occur - - through a non-bypassable surcharge on the rate or price established. This portion of the statute, contrary to Appellees’ claims, does not mandate that recovery must occur, but mandates how collection must take place -- through a non-bypassable surcharge. And in the case below, although a surcharge was approved *in concept* for the ultimate deferrals that would be created, no specific surcharge to collect deferrals was approved or implemented. Both the Companies and the PUCO would later acknowledge this lack of approval.

This acknowledgement from the Companies’ came when they sought PUCO approval to implement a discrete surcharge to collect deferrals as part of their continued rates.¹⁶ The PUCO, however, refused to implement the surcharge without further addressing the issues in a separate

¹⁶ See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Pub. Util. Comm. Nos. 11-346-EL-SSO et al., *New Proposed Tariffs to Implement Provisions, Terms and Conditions of Previous Electric Security Plan* at 2 (Feb. 28, 2012).

case, the *Deferred Fuel Cost Proceeding*.¹⁷ Moreover, it did not change its ruling when challenged by the Companies in a request for rehearing. Rather the PUCO explained, as noted above, that the Companies were mischaracterizing the language in the *ESP I Order*.¹⁸ The Commission opined that it was bound to conduct an additional analysis to determine the appropriate recovery of fuel cost expenses incurred plus carrying costs. In other words the PUCO would determine what deferrals would be collected from customers and how; it had not approved a discrete amount of deferrals to be collected. In that case, the *Deferred Fuel Cost Proceeding*, the Commission will set a specific surcharge to be charged to customers. There the Commission will determine whether the deferrals “are necessary” and can be collected. The PUCO will also examine the appropriateness of the deferral balance and the financing charges.

Thus, when the PUCO permitted the Companies to implement phase-in rates and defer incremental revenue increases under the phased-in rates, it was not setting rates. Rather it was allowing the Companies to implement phase-in rates and giving the Companies accounting authority to create the deferrals. It was not ruling upon whether the deferrals could be collected from customers for ratemaking purposes. Nor was it ruling upon the appropriateness of the deferral balance. These determinations could only be made later,¹⁹ after the deferral balances, carrying charges, and underlying ESP expenses are determined to be necessary and appropriate

¹⁷ *Id.*, Entry on Rehearing (Feb. 23, 2012). (OCC Appx. 157-169).

¹⁸ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Pub. Util. Comm. No. 11-346-EL-SSO et al., Entry on Rehearing at ¶13 (April 11, 2012). (OCC Appx. 762).

¹⁹ *See In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Section 4928.144, Ohio Revised Code*, Pub. Util. Comm. Nos. 11-4920-EL-RDR et al., Entry (Mar. 14, 2012). (OCC Appx. 146-149).

as fuel costs incurred to provide the standard service offer. That proceeding, the *Deferred Fuel Cost Proceeding*, although currently underway, has not concluded.

Thus, while the Appellees allege that the Commission's actions amounted to more than accounting approval, the language of the *ESP I Order*, the Commission's explanation of that language, and the specific provisions of R.C. 4928.144 belie Appellees' claims. There simply was no ratemaking when the phase-in rates were established by the Companies. Rates were not set when the Commission ruled that the Companies could *seek* to recover deferred expenses "as necessary." Deferrals were permitted, and, as this Court has recognized, approval of accounting is not the same as ratemaking.

When there is no ratemaking, there can be no retroactive ratemaking. *River Gas Co. v. Pub. Util. Comm.*, 69 Ohio St.2d 509, 512, 433 N.E.2d 568 (1982). On this basis the Court should determine that the PUCO was not precluded from adjusting the remaining ESP rates by reducing the deferral balance; indeed it was required to do so to make the phase-in plan comply with the law. This would have rightfully protected customers from overpaying for POLR. Adjusting the phase-in rates would not violate the prohibition against retroactive ratemaking because, even if the adjustment was determined to be retroactive, the underlying PUCO action did not amount to ratemaking.

B. The ESP I rates have not been fully collected, but will continue to be collected from customers through a phase-in recovery rider. When rates have not been fully collected, the Public Utilities Commission may order a credit without engaging in retroactive ratemaking.

While *some* of the past 2009-2011 ESP rates have been collected from customers, there is a large portion of these ESP rates yet to be collected. The portion of the 2009-2011 ESP rates that remains are the deferred revenue increases that were authorized under the Companies' standard service offer. These deferred revenue increases were estimated by the Companies to be

\$628 million for OP.²⁰ The deferred revenue increases were created during 2009-2011. The deferred revenue increases were a subset of the electric security plan increases and were intended to be collected from customers during 2012-2018 through an unavoidable surcharge.

The POLR charges contributed to more than half of the unamortized deferral balance that will be collected from customers through the phase-in rider. This is because \$457 million of POLR charges, along with the other ESP rate increases, were lumped together in order to set the value of the phase-in rates. The value of the phase-in rates drove the level of deferrals. The Companies have sought to collect these deferrals through a phase-in recovery rider.

The fact that a deferred component of the 2009-2011 ESP rates continues to exist and will be collected from customers over the next six years is an important point. Appellants are asking to prospectively lower a portion of the 2009-2011 ESP rates, not different future rates. Appellants are not seeking to balance past rates with different, future rates -- an action prohibited under *Keco Indus. Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957).

There is one set of rates at issue. They are the remaining 2009-2011 ESP rates that have not been collected yet from customers and are expected to be collected from 2012 through 2018. The existence of phase-in deferrals creates a mechanism that permits the PUCO to make rate adjustments to fully remedy the POLR overcharges, without running afoul of retroactive ratemaking.

²⁰ No deferrals were expected for CSP. In fact the Company estimated that for CSP there would be a need to credit customers for approximately \$3.9 million at the end of 2011. *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144*, Pub. Util. Comm. Nos. 11-4920-RDR, et al., Application, Exhibit A, page 1 of 7 (Sept. 1, 2011).

If there is revenue against which the Commission can order a credit, then there is no retroactive ratemaking.²¹ Appellees offer no arguments disputing this particular interpretation of the retroactive ratemaking precedent presented in *Lucas County Commrs. v. Pub. Util. Comm.*,²² and its progeny. Appellees' response to OCC's argument comes in a different form.

In an attempt to deny customers a remedy for the over-collected POLR charges, the Companies allege that there is no pot of undifferentiated ESP revenues waiting to be collected.²³ Rather, what exists, according to the Companies, is a deferred balance of actual fuel expenses and carrying costs that the Commission ordered to be recovered via an unavoidable surcharge in 2012 to 2018.²⁴ The PUCO echoes that argument, claiming that the Companies are entitled to fuel cost recovery²⁵ and the "recoverability of fuel costs is not subject to later review."²⁶ Hence, the Appellees dispute that there is revenue against which the Commission can order a credit.

To accept these arguments would require the Court to ignore the plain language contained in the PUCO's order which ordered a phase-in for "any authorized increases" –not just pure fuel increases.²⁷ Additionally, accepting the Appellees' arguments would require disregarding Companies' Witness Roush's testimony which explains how the phase-in rates were

²¹ See OCC Merit Brief at 24-38.

²² *Lucas County Commrs. v. Pub. Util. Comm.*, 80 Ohio St.3d 344, 686 N.E.2d 501 (1997).

²³ OP Brief at 22.

²⁴ OP Brief at 21.

²⁵ PUCO Brief at 22-28

²⁶ *Id.* at 25.

²⁷ *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 Generation Assets*, Pub. Util. Comm. Case Nos. 08-917-EL-AIR et al., Opinion and Order at 22 (finding that the "Companies should phase-in any authorized increases so as to not exceed, on a total bill basis, an increase of ***"). (OCC Appx. 0421).

residually created from “any authorized increase.”²⁸ Moreover, one would have to accept that the accounting the Companies chose (deferring “any authorized increases” as “deferred FAC”) defines the nature of the assets created and prescribes how the assets must be treated for regulatory purposes. It, however, is axiomatic that accounting does not control ratemaking. *Office of Consumers’ Counsel v. Pub. Util. Comm.*, 6 Ohio St.3d 377, 379, 453 N.E.2d 673 (1983).

Even if one were to assume *arguendo* that the deferrals created under the ESP are pure fuel expenses (which OCC does not concede), that does not preclude the remedy OCC is seeking. If the deferred expenses are truly fuel expenses, then these expenses could not have been authorized for recovery through the Commission’s March 18, 2009 *ESP I Order*, contrary to Appellees’ claims otherwise.

Under R.C. 4928.143(B)(2)(a) (OCC Appx. 00019), a utility’s electric security plan allows automatic recovery of certain costs including the cost of fuel and purchased power, *provided the cost is prudently incurred*. In order to determine whether a fuel cost is prudently incurred, an after-the-fact review of the fuel costs must be done. This review consists of reconciliation between estimated and actual costs, an accounting of fuel costs, and an examination of whether the fuel costs were “prudently incurred.”²⁹

The after the fact review is conducted annually. Such an annual review is necessary in order to comply with the statutory language of R.C. 4928.143(B)(2)(a) (OCC Appx. 019), permitting automatic recovery of the costs of fuel only if the cost is “prudently incurred.” The

²⁸ See Testimony of Companies’ Witness Rousch at 14. (OCC Supp. 157).

²⁹ See for example, *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Pub. Util. Comm. No. 09-872-EL-FAC et al., Opinion and Order (Jan. 23, 2012). (OCC Appx. 170-189).

annual prudence review is accompanied by an audit, with a procedural schedule for conducting the audit, and hearing-related activities being established by the Commission.³⁰

Since the approval of the Companies' ESP 1 rates, quarterly filings have been regularly made, one annual audit (2009) has been completed,³¹ and another (2010) is underway.³² It is in the context of these cases that recoverability is determined. A case in point is the Companies' 2009 fuel audit proceeding -- the first of three annual audit proceedings that was explicitly contemplated in the Companies' electric security plan case.

There the Commission reviewed the cost of fuel used to generate electricity supplied for 2009.³³ The Commission ultimately ordered a remedy that OCC and IEU have sought in this appeal -- it credited the Companies' fuel deferrals to compensate customers for overpayments related to a pre-fuel audit period.³⁴ The Commission explicitly determined that the fuel deferrals *can* be reduced on a going forward basis to adjust for a past event -- a 2008 settlement agreement -- without amounting to retroactive ratemaking.

Had the deferrals been already approved for recovery in the *ESP I Order*, as Appellees claim, no adjustments could have been made to the deferrals in the subsequent audit case. The deferrals would have been untouchable. The Commission however, recognized that the deferrals

³⁰ See Testimony of Witness Strom at 4. (R. 142, Supp. 48).

³¹ See *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Pub. Util. Comm. No. 09-872-EL-FAC et al., Opinion and Order (Jan. 23, 2012). (OCC Appx. 170-189).

³² See *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Pub. Util. Comm. Nos. 10-1286-EL-FAC and 10-1288-EL-FAC, Application (Sept. 2, 2010).

³³ *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Pub. Util. Comm. Nos. 09-872-EL-FAC, Opinion and Order (Jan. 23, 2012). (OCC Appx. 170-189).

³⁴ *Id.* at 12. (OCC Appx. 181).

are not sacrosanct. The deferrals, if considered purely fuel costs, are subject to review in the annual audit proceedings. They must be so reviewed according to R.C. 4928.143(B)(2)(a), which only permits recovery if the cost is prudently incurred. In those proceedings the amount of deferred costs that may be collected from customers is examined to determine, among other things, if the costs are prudently incurred. If the utility fails to show how the deferred costs were prudently incurred to generate the electricity supplied under the ESP, the Commission must deny recovery.

The Commission also argues that the deferrals are untouchable because neither OCC nor IEU sought a stay of the phase-in portion of the *ESP I Order*.³⁵ The Commission's position, however, ignores one basic fact: the total amount of the deferrals, including carrying charges, was not decided at the time the *ESP I Order* was issued, and in fact has yet to be determined. Thus, the issue is not ripe for a stay, and indeed the PUCO would likely have argued that position had a stay of the *ESP I Order* been sought.

The issue of how much customers will be expected to pay for deferred fuel costs is being considered in the Commission's *Deferred Fuel Cost Proceeding*. Comments and reply comments were filed in that proceeding in April, but the Commission has not yet issued a decision. Thus, it may be procedurally premature to seek a stay of the implementation of these riders.

In addition, AEP Ohio, in its latest ESP case, has sought a further delay of the implementation of the phase-in rider to be used for collecting deferred fuel costs from customers. There, AEP Ohio has asked the Commission to delay commencement of the phase-in rider until

³⁵ See PUCO Brief at 1-2, 29.

June 2013.³⁶ Thus, AEP Ohio's collection of the deferred fuel costs from customers might not begin for another eleven months, or more.

Nevertheless, OCC has asked the Commission to make collection of the deferrals subject to refund, as a way to protect consumers.³⁷ That is the most OCC can do at this time.

Thus, to accept Appellees' arguments that ESP rates have been fully collected, when the deferred balance created by the phase-in rates exists, and is subject to adjustment, in multiple audit proceedings, is unreasonable. It conflicts with the undisputed fact that there is \$628 million of deferred revenues created under ESP I rates. It flouts the Commission's duty to examine the deferred revenues to determine if the deferrals are necessary and the underlying expenses prudently incurred. And it disregards the fact that the Commission in practice has ordered decreases to the ESP I deferrals. Appellees' arguments should be rejected.

C. The Court should permit an exception to retroactive ratemaking and order the PUCO to remedy the unjustified collection of \$368 million of POLR charges from customers.

According to Appellees, *Keco* is "well-established, settled jurisprudence that should be applied to this case."³⁸ The Appellees argue that "*Keco* is inescapable."³⁹ But Appellees fail to recognize that fifty five years have passed since *Keco* was announced. In these years the

³⁶ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Pub. Util. Comm. No. 11-346-EL-SSO et al., AEP Ohio Application at 14 (Mar. 30, 2012). (OCC Appx. 764).

³⁷ See *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144*, Pub. Util. Comm. Nos. 11-4920-RDR, et al., OCC Comments at 11-15 (Apr. 2, 2012). (OCC Appx. 785).

³⁸ PUCO Brief at 19.

³⁹ PUCO Brief at 28.

regulatory structure in Ohio has significantly changed. These significant changes in the law call into question whether *Keco* creates an absolute bar to the remedy Appellants seek.

Ohio Supreme Court Justice Douglas, in a concurring opinion written in 1993, recognized that the prohibition against retroactive ratemaking, construed in *Keco*, should not be applied “so absolutely.” *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 550, 620 N.E. 2d 835, 847 (1993). Doing so, he noted, deprives the Commission and the Court of the flexibility it needs to meet the modern needs of both consumers and utilities. *Id.* at 549.

According to Justice Douglas, the preferred approach would be to apply the rule with the presumption that it is valid in a given case. But the facts of each case should be reviewed to determine whether the presumption should apply or has, for good reason, been effectively rebutted.⁴⁰ *Id.* at 550. Such an approach would allow the Commission and the Court flexibility in allowing retroactive relief for any number of reasons, including the period of time the case is on appeal and during the remand period after reversal, and for rate orders containing procedural or substantive mistakes.

To the extent that the Court determines that the remedy OCC is seeking is retroactive ratemaking, OCC urges the Court to find there is good reason to presume that the rule against retroactive ratemaking is either not valid or has been rebutted.

⁴⁰ See, e.g., Krieger, *The Ghost of Regulation Past: Current Applications of the Rule Against Retroactive Ratemaking in Public Utility Proceedings*, 1991 U. Ill. L.Rev. 983, 1045 (1991) (advocating the approach of Justice Douglas’ and analyzing the rationality and legitimacy of expectations of the parties and the incentives or disincentives to the utility). This article preceded Justice Douglas’ opinion and may have been one of the sources that Justice Douglas drew upon in his opinion.

First, whether the bar against retroactive ratemaking is valid, post SB 221, is a matter of debate and a matter this Court has not ruled upon.⁴¹ Justice Douglas once noted that the principles of retroactive ratemaking do not lie in specific sections of the Revised Code. *Id.* at 547. Rather in Ohio the bar on retroactive ratemaking has evolved through case law creating Ohio's "filed rate doctrine."⁴² The source of that doctrine has been two statutes: R.C. 4905.22 (OCC Appx. 749) and 4905.32 (OCC Appx. 750). Under R.C. 4905.22 all rates shall be just and reasonable and no more than allowed by the PUCO. Under Section 4905.32, a public utility may not collect a different rate than that specified in such schedules.

Yet, under the express provisions of R.C. 4928.05 (A)(1) (OCC Appx.755), a competitive retail service (generation) supplied by an electric distribution utility is not subject to supervision or regulation by the PUCO under Chapter 4905. This provision has been in place since S.B. 3 was passed in 1999. While there is a provision of R.C. Chapter 4905 that continues to apply (i.e., R.C. 4905.06), the General Assembly did not similarly identify either R.C. 4905.22 or 4905.32 as statutes that continue to apply under S.B. 3 and S.B. 221.

In this case, the presumption that the bar against retroactive ratemaking is valid should not apply given that the statutes which the Ohio filed rate doctrine were developed from no longer apply under R.C. 4928.05(A)(1). Consequently, the Court should construe exceptions liberally in light of the questionable continued validity of the principle. Exceptions to the retroactive ban in this case should be examined in light of the "expectations of the parties" in

⁴¹ See *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788 at ¶12, ("The appellees respond by arguing that *Keco's* rule does not apply in proceedings under the new statutes of S.B. 221. We need not decide whether *Keco* continues to apply, as the ruling also violates a provision of S.B. 221 itself, under R.C. 4928.141(A)").

⁴² See, e.g., *Keco Indus. Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 257, discussing R.C. 4905.32 and 4903.16. (OCC Appx. 747,750).

regard to previously approved ESP I rates.⁴³ Additionally, the Court should examine whether the “retroactivity” would create efficiency “incentives or disincentives to the utility.”⁴⁴

Here, the period of time the POLR issue has been either “on appeal” in the original ESP I appeal⁴⁵ or subject to remand (and the ensuing appeal), has spanned over three years. There has been no final order on POLR to speak of as the entire review process has not concluded and will not conclude until this appeal is resolved. When a rate order is appealed, the legitimate expectation of the parties should be that the Court may reverse those rates on review, or the court may remand the issue to the PUCO which could also cause a reversal.

Moreover, the law also creates very limited expectations concerning the finality of the ESP rates. This is because both the utility and the Commission may terminate the plan, in some instances even after the ESP rates have been approved and are being collected from customers.

For instance, under the provisions of R.C. 4928.143(C)(2)(a), an electric distribution utility may unilaterally withdraw its application, thereby terminating it if the Commission modifies the application. Recently, the Companies did just that, in response to the PUCO rejecting and disapproving a stipulated ESP, after the stipulated ESP rates were in effect for six weeks.⁴⁶ As a result, the stipulated ESP rates were replaced with “continued” rates

⁴³ See, e.g., Krieger, *The Ghost of Regulation Past: Current Applications of the Rule Against Retroactive Ratemaking in Public Utility Proceedings*, 1991 U. Ill. L.Rev. 983, 1045 (1991) (analyzing the rationality and legitimacy of expectations of the parties and the incentives or disincentives to the utility).

⁴⁴ *Id.*

⁴⁵ *In re: Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655.

⁴⁶ See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Pub. Util. Comm. No. 11-346-EL-SSO et al., Entry on Rehearing (Feb. 23, 2012). (OCC Appx. 00157).

implementing the provisions, terms, and conditions of the Company's previous electric security plan as approved in *ESP I*. Those *ESP I* rates are presently in place.⁴⁷

R.C. 4928.143(F) also vests the electric distribution utility with the unilateral right to terminate the plan and immediately file an application to establish the standard service offer through a market rate offering. Under that statute, if the Commission after conducting the annual significantly excessive earnings review, orders a refund to customers, the utility may terminate the plan. The annual review occurs only after the ESP rates have been approved and in effect for at least a year.

Under R.C. 4928.143(E), the Commission itself may, after a prospective review of a plan,⁴⁸ terminate the plan. This prospective review of the plan occurs in the fourth year of the plan. The Commission may terminate the plan if it determines that the plan will not continue to be more favorable in the aggregate than an MRO or if the plan is substantially likely to provide the EDU with a significantly excessive return.

Prohibiting retroactive relief during the appeal process can give Appellees the benefit of delay in the review process. In the previous appeal of the Company's *ESP I* proceeding, the timing of the Commission's final order was such that there was virtually no pot of funds left to remedy what the Court later determined was retroactive ratemaking.⁴⁹

The Court can order a remedy for the unjustified POLR collections. It can avoid the apparent unfairness that will otherwise result if the Company is permitted to keep funds collected

⁴⁷ The PUCO's contention that "the rates complained of are no longer being charged" (PUCO Brief at 27) is factually incorrect and misleading.

⁴⁸ To trigger this prospective review the ESP must have a term of more than three years.

⁴⁹ See *In re: Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788 at ¶ 15.

that were ultimately determined to be lacking any evidentiary support. The Court should reverse the Commission's Order on Remand and provide prospective relief to customers by reducing the phase-in recovery rates for the unjustified POLR charges collected from customers.

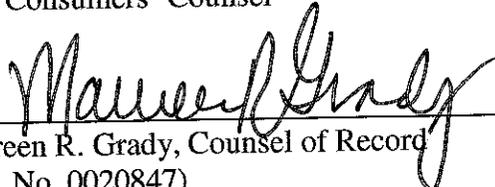
II. CONCLUSION

Customers of the Companies paid \$368 million in POLR charges from April 2009 through May 2011. The POLR charges were charges the Ohio Supreme Court determined were not justified on the basis of the record during the initial phase of the case. And these are the same charges the PUCO also ruled were not justified in the *Remand Order. In the Matter of the Application of Columbus S. Power Co.*, Pub. Util. Comm. No. 08-917-EL-SSO, *Remand Order* at 18-24 (Oct. 3, 2011). (OCC Supp. 304-310).

OCC asked the PUCO to remedy the effect of the unlawful POLR charges. The PUCO chose not to. In the near future, customers will be forced to pay residual electric security plan rates from 2012 through 2018 that reflect the impact of the unjustified POLR charges. To prevent any further unfairness and to carry out the laws of this state, the Court should reverse the Commission and order prospective relief for customers.

Respectfully submitted,

Bruce J. Weston
(Reg. No. 0016973)
Ohio Consumers' Counsel

By: 
Maureen R. Grady, Counsel of Record
(Reg. No. 0020847)

Terry L. Etter
(Reg. No. 0067445)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-9567 (Telephone) – Grady
(614) 466-7964 (Telephone) - Etter
(614) 466-9475 (Facsimile)
grady@occ.state.oh.us
etter@occ.state.oh.us

Attorneys for Appellant

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Columbus)
Southern Power Company for Approval of its)
Electric Security Plan; an Amendment to its) Supreme Court Case No. 12-0187
Corporate Separation Plan; and the Sale or)
Transfer of Certain Generating Assets.)
)
In the Matter of the Application of Ohio) Appeal from the Public Utilities
Power Company for Approval of its Electric) Commission of Ohio
Security Plan; and an Amendment to its)
Corporate Separation Plan.) Case Nos. 08-917-EL-SSO and
) 08-918-EL-SSO
On Remand)

APPENDIX

4903.16 Stay of execution.

A proceeding to reverse, vacate, or modify a final order rendered by the public utilities commission does not stay execution of such order unless the supreme court or a judge thereof in vacation, on application and three days' notice to the commission, allows such stay, in which event the appellant shall execute an undertaking, payable to the state in such a sum as the supreme court prescribes, with surety to the satisfaction of the clerk of the supreme court, conditioned for the prompt payment by the appellant of all damages caused by the delay in the enforcement of the order complained of, and for the repayment of all moneys paid by any person, firm, or corporation for transportation, transmission, produce, commodity, or service in excess of the charges fixed by the order complained of, in the event such order is sustained.

Effective Date: 10-01-1953

000747

4905.06 General supervision.

The public utilities commission has general supervision over all public utilities within its jurisdiction as defined in section 4905.05 of the Revised Code, and may examine such public utilities and keep informed as to their general condition, capitalization, and franchises, and as to the manner in which their properties are leased, operated, managed, and conducted with respect to the adequacy or accommodation afforded by their service, the safety and security of the public and their employees, and their compliance with all laws, orders of the commission, franchises, and charter requirements. The commission has general supervision over all other companies referred to in section 4905.05 of the Revised Code to the extent of its jurisdiction as defined in that section, and may examine such companies and keep informed as to their general condition and capitalization, and as to the manner in which their properties are leased, operated, managed, and conducted with respect to the adequacy or accommodation afforded by their service, and their compliance with all laws and orders of the commission, insofar as any of such matters may relate to the costs associated with the provision of electric utility service by public utilities in this state which are affiliated or associated with such companies. The commission, through the public utilities commissioners or inspectors or employees of the commission authorized by it, may enter in or upon, for purposes of inspection, any property, equipment, building, plant, factory, office, apparatus, machinery, device, and lines of any public utility. The power to inspect includes the power to prescribe any rule or order that the commission finds necessary for protection of the public safety. In order to assist the commission in the performance of its duties under this chapter, authorized employees of the motor carrier enforcement unit, created under section 5503.34 of the Revised Code in the division of state highway patrol, of the department of public safety may enter in or upon, for inspection purposes, any motor vehicle of any motor transportation company or private motor carrier as defined in section 4923.02 of the Revised Code. In order to inspect motor vehicles owned or operated by a motor transportation company engaged in the transportation of persons, authorized employees of the motor carrier enforcement unit, division of state highway patrol, of the department of public safety may enter in or upon any property of any motor transportation company, as defined in section 4921.02 of the Revised Code, engaged in the intrastate transportation of persons.

Effective Date: 09-01-2000; 09-16-2004

000748

4905.22 Service and facilities required - unreasonable charge prohibited.

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

Effective Date: 10-01-1953

000749

4905.32 Schedule rate collected.

No public utility shall charge, demand, exact, receive, or collect a different rate, rental, toll, or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the public utilities commission which is in effect at the time. No public utility shall refund or remit directly or indirectly, any rate, rental, toll, or charge so specified, or any part thereof, or extend to any person, firm, or corporation, any rule, regulation, privilege, or facility except such as are specified in such schedule and regularly and uniformly extended to all persons, firms, and corporations under like circumstances for like, or substantially similar, service.

Effective Date: 10-01-1953

000750

4909.15 Fixation of reasonable rate.

(A) The public utilities commission, when fixing and determining just and reasonable rates, fares, tolls, rentals, and charges, shall determine:

(1) The valuation as of the date certain of the property of the public utility used and useful or, with respect to a natural gas company, projected to be used and useful as of the date certain, in rendering the public utility service for which rates are to be fixed and determined. The valuation so determined shall be the total value as set forth in division (C)(8) of section 4909.05 of the Revised Code, and a reasonable allowance for materials and supplies and cash working capital as determined by the commission.

The commission, in its discretion, may include in the valuation a reasonable allowance for construction work in progress but, in no event, may such an allowance be made by the commission until it has determined that the particular construction project is at least seventy-five per cent complete.

In determining the percentage completion of a particular construction project, the commission shall consider, among other relevant criteria, the per cent of time elapsed in construction; the per cent of construction funds, excluding allowance for funds used during construction, expended, or obligated to such construction funds budgeted where all such funds are adjusted to reflect current purchasing power; and any physical inspection performed by or on behalf of any party, including the commission's staff.

A reasonable allowance for construction work in progress shall not exceed ten per cent of the total valuation as stated in this division, not including such allowance for construction work in progress.

Where the commission permits an allowance for construction work in progress, the dollar value of the project or portion thereof included in the valuation as construction work in progress shall not be included in the valuation as plant in service until such time as the total revenue effect of the construction work in progress allowance is offset by the total revenue effect of the plant in service exclusion. Carrying charges calculated in a manner similar to allowance for funds used during construction shall accrue on that portion of the project in service but not reflected in rates as plant in service, and such accrued carrying charges shall be included in the valuation of the property at the conclusion of the offset period for purposes of division (C)(8) of section 4909.05 of the Revised Code.

From and after April 10, 1985, no allowance for construction work in progress as it relates to a particular construction project shall be reflected in rates for a period exceeding forty-eight consecutive months commencing on the date the initial rates reflecting such allowance become effective, except as otherwise provided in this division.

The applicable maximum period in rates for an allowance for construction work in progress as it relates to a particular construction project shall be tolled if, and to the extent, a delay in the in-service date of the project is caused by the action or inaction of any federal, state, county, or municipal agency having jurisdiction, where such action or inaction relates to a change in a rule, standard, or approval of such agency, and where such action or inaction is not the result of the failure of the utility to reasonably endeavor to comply with any rule, standard, or approval prior to such change.

In the event that such period expires before the project goes into service, the commission shall exclude, from the date of expiration, the allowance for the project as construction work in progress

000751

from rates, except that the commission may extend the expiration date up to twelve months for good cause shown.

In the event that a utility has permanently canceled, abandoned, or terminated construction of a project for which it was previously permitted a construction work in progress allowance, the commission immediately shall exclude the allowance for the project from the valuation.

In the event that a construction work in progress project previously included in the valuation is removed from the valuation pursuant to this division, any revenues collected by the utility from its customers after April 10, 1985, that resulted from such prior inclusion shall be offset against future revenues over the same period of time as the project was included in the valuation as construction work in progress. The total revenue effect of such offset shall not exceed the total revenues previously collected.

In no event shall the total revenue effect of any offset or offsets provided under division (A)(1) of this section exceed the total revenue effect of any construction work in progress allowance.

(2) A fair and reasonable rate of return to the utility on the valuation as determined in division (A)(1) of this section;

(3) The dollar annual return to which the utility is entitled by applying the fair and reasonable rate of return as determined under division (A)(2) of this section to the valuation of the utility determined under division (A)(1) of this section;

(4) The cost to the utility of rendering the public utility service for the test period used for the determination under division (C)(1) of this section, less the total of any interest on cash or credit refunds paid, pursuant to section 4909.42 of the Revised Code, by the utility during the test period.

(a) Federal, state, and local taxes imposed on or measured by net income may, in the discretion of the commission, be computed by the normalization method of accounting, provided the utility maintains accounting reserves that reflect differences between taxes actually payable and taxes on a normalized basis, provided that no determination as to the treatment in the rate-making process of such taxes shall be made that will result in loss of any tax depreciation or other tax benefit to which the utility would otherwise be entitled, and further provided that such tax benefit as redounds to the utility as a result of such a computation may not be retained by the company, used to fund any dividend or distribution, or utilized for any purpose other than the defrayal of the operating expenses of the utility and the defrayal of the expenses of the utility in connection with construction work.

(b) The amount of any tax credits granted to an electric light company under section 5727.391 of the Revised Code for Ohio coal burned prior to January 1, 2000, shall not be retained by the company, used to fund any dividend or distribution, or utilized for any purposes other than the defrayal of the allowable operating expenses of the company and the defrayal of the allowable expenses of the company in connection with the installation, acquisition, construction, or use of a compliance facility. The amount of the tax credits granted to an electric light company under that section for Ohio coal burned prior to January 1, 2000, shall be returned to its customers within three years after initially claiming the credit through an offset to the company's rates or fuel component, as determined by the commission, as set forth in schedules filed by the company under section 4905.30 of the Revised Code. As used in division (A)(4)(b) of this section, "compliance facility" has the same meaning as in section 5727.391 of the Revised Code.

000752

(B) The commission shall compute the gross annual revenues to which the utility is entitled by adding the dollar amount of return under division (A)(3) of this section to the cost, for the test period used for the determination under division (C)(1) of this section, of rendering the public utility service under division (A)(4) of this section.

(C)(1) Except as provided in division (D) of this section, the revenues and expenses of the utility shall be determined during a test period. The utility may propose a test period for this determination that is any twelve-month period beginning not more than six months prior to the date the application is filed and ending not more than nine months subsequent to that date. The test period for determining revenues and expenses of the utility shall be the test period proposed by the utility, unless otherwise ordered by the commission.

(2) The date certain shall be not later than the date of filing, except that it shall be, for a natural gas company, not later than the end of the test period.

(D) A natural gas company may propose adjustments to the revenues and expenses to be determined under division (C)(1) of this section for any changes that are, during the test period or the twelve-month period immediately following the test period, reasonably expected to occur. The natural gas company shall identify and quantify, individually, any proposed adjustments. The commission shall incorporate the proposed adjustments into the determination if the adjustments are just and reasonable.

(E) When the commission is of the opinion, after hearing and after making the determinations under divisions (A) and (B) of this section, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is, or will be, unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, that the service is, or will be, inadequate, or that the maximum rates, charges, tolls, or rentals chargeable by any such public utility are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, the commission shall:

(1) With due regard among other things to the value of all property of the public utility actually used and useful for the convenience of the public as determined under division (A)(1) of this section, excluding from such value the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state or county, as the consideration for the grant of such franchise or right, and excluding any value added to such property by reason of a monopoly or merger, with due regard in determining the dollar annual return under division (A)(3) of this section to the necessity of making reservation out of the income for surplus, depreciation, and contingencies, and;

(2) With due regard to all such other matters as are proper, according to the facts in each case,

(a) Including a fair and reasonable rate of return determined by the commission with reference to a cost of debt equal to the actual embedded cost of debt of such public utility,

(b) But not including the portion of any periodic rental or use payments representing that cost of property that is included in the valuation report under divisions (C)(4) and (5) of section 4909.05 of the Revised Code, fix and determine the just and reasonable rate, fare, charge, toll, rental, or service to be rendered, charged, demanded, exacted, or collected for the performance or rendition of the

000753

service that will provide the public utility the allowable gross annual revenues under division (B) of this section, and order such just and reasonable rate, fare, charge, toll, rental, or service to be substituted for the existing one. After such determination and order no change in the rate, fare, toll, charge, rental, schedule, classification, or service shall be made, rendered, charged, demanded, exacted, or changed by such public utility without the order of the commission, and any other rate, fare, toll, charge, rental, classification, or service is prohibited.

(F) Upon application of any person or any public utility, and after notice to the parties in interest and opportunity to be heard as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code for other hearings, has been given, the commission may rescind, alter, or amend an order fixing any rate, fare, toll, charge, rental, classification, or service, or any other order made by the commission. Certified copies of such orders shall be served and take effect as provided for original orders.

Amended by 129th General Assembly File No. 20, HB 95, § 1, eff. 9/9/2011.

Effective Date: 11-24-1999

000754

4928.05 Extent of exemptions.

(A)(1) On and after the starting date of competitive retail electric service, a competitive retail electric service supplied by an electric utility or electric services company shall not be subject to supervision and regulation by a municipal corporation under Chapter 743. of the Revised Code or by the public utilities commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code, except sections 4905.10 and 4905.31, division (B) of section 4905.33, and sections 4905.35 and 4933.81 to 4933.90 ; except sections 4905.06, 4935.03, 4963.40, and 4963.41 of the Revised Code only to the extent related to service reliability and public safety; and except as otherwise provided in this chapter. The commission's authority to enforce those excepted provisions with respect to a competitive retail electric service shall be such authority as is provided for their enforcement under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code and this chapter. Nothing in this division shall be construed to limit the commission's authority under sections 4928.141 to 4928.144 of the Revised Code. On and after the starting date of competitive retail electric service, a competitive retail electric service supplied by an electric cooperative shall not be subject to supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code, except as otherwise expressly provided in sections 4928.01 to 4928.10 and 4928.16 of the Revised Code.

(2) On and after the starting date of competitive retail electric service, a noncompetitive retail electric service supplied by an electric utility shall be subject to supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code and this chapter, to the extent that authority is not preempted by federal law. The commission's authority to enforce those provisions with respect to a noncompetitive retail electric service shall be the authority provided under those chapters and this chapter, to the extent the authority is not preempted by federal law. Notwithstanding Chapters 4905. and 4909. of the Revised Code, commission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission. The commission shall exercise its jurisdiction with respect to the delivery of electricity by an electric utility in this state on or after the starting date of competitive retail electric service so as to ensure that no aspect of the delivery of electricity by the utility to consumers in this state that consists of a noncompetitive retail electric service is unregulated. On and after that starting date, a noncompetitive retail electric service supplied by an electric cooperative shall not be subject to supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code, except sections 4933.81 to 4933.90 and 4935.03 of the Revised Code. The commission's authority to enforce those excepted sections with respect to a noncompetitive retail electric service of an electric cooperative shall be such authority as is provided for their enforcement under Chapters 4933. and 4935. of the Revised Code.

(B) Nothing in this chapter affects the authority of the commission under Title XLIX of the Revised Code to regulate an electric light company in this state or an electric service supplied in this state prior to the starting date of competitive retail electric service.

Effective Date: 10-05-1999; 2008 SB221 07-31-2008

000755

4928.142 Standard generation service offer price - competitive bidding.

(A) For the purpose of complying with section 4928.141 of the Revised Code and subject to division (D) of this section and, as applicable, subject to the rate plan requirement of division (A) of section 4928.141 of the Revised Code, an electric distribution utility may establish a standard service offer price for retail electric generation service that is delivered to the utility under a market-rate offer.

(1) The market-rate offer shall be determined through a competitive bidding process that provides for all of the following:

(a) Open, fair, and transparent competitive solicitation;

(b) Clear product definition;

(c) Standardized bid evaluation criteria;

(d) Oversight by an independent third party that shall design the solicitation, administer the bidding, and ensure that the criteria specified in division (A)(1)(a) to (c) of this section are met;

(e) Evaluation of the submitted bids prior to the selection of the least-cost bid winner or winners. No generation supplier shall be prohibited from participating in the bidding process.

(2) The public utilities commission shall modify rules, or adopt new rules as necessary, concerning the conduct of the competitive bidding process and the qualifications of bidders, which rules shall foster supplier participation in the bidding process and shall be consistent with the requirements of division (A)(1) of this section.

(B) Prior to initiating a competitive bidding process for a market-rate offer under division (A) of this section, the electric distribution utility shall file an application with the commission. An electric distribution utility may file its application with the commission prior to the effective date of the commission rules required under division (A)(2) of this section, and, as the commission determines necessary, the utility shall immediately conform its filing to the rules upon their taking effect. An application under this division shall detail the electric distribution utility's proposed compliance with the requirements of division (A)(1) of this section and with commission rules under division (A)(2) of this section and demonstrate that all of the following requirements are met:

(1) The electric distribution utility or its transmission service affiliate belongs to at least one regional transmission organization that has been approved by the federal energy regulatory commission; or there otherwise is comparable and nondiscriminatory access to the electric transmission grid.

(2) Any such regional transmission organization has a market-monitor function and the ability to take actions to identify and mitigate market power or the electric distribution utility's market conduct; or a similar market monitoring function exists with commensurate ability to identify and monitor market conditions and mitigate conduct associated with the exercise of market power.

(3) A published source of information is available publicly or through subscription that identifies pricing information for traded electricity on- and off-peak energy products that are contracts for delivery beginning at least two years from the date of the publication and is updated on a regular basis. The commission shall initiate a proceeding and, within ninety days after the application's filing date, shall

000756

determine by order whether the electric distribution utility and its market-rate offer meet all of the foregoing requirements. If the finding is positive, the electric distribution utility may initiate its competitive bidding process. If the finding is negative as to one or more requirements, the commission in the order shall direct the electric distribution utility regarding how any deficiency may be remedied in a timely manner to the commission's satisfaction; otherwise, the electric distribution utility shall withdraw the application. However, if such remedy is made and the subsequent finding is positive and also if the electric distribution utility made a simultaneous filing under this section and section 4928.143 of the Revised Code, the utility shall not initiate its competitive bid until at least one hundred fifty days after the filing date of those applications.

(C) Upon the completion of the competitive bidding process authorized by divisions (A) and (B) of this section, including for the purpose of division (D) of this section, the commission shall select the least-cost bid winner or winners of that process, and such selected bid or bids, as prescribed as retail rates by the commission, shall be the electric distribution utility's standard service offer unless the commission, by order issued before the third calendar day following the conclusion of the competitive bidding process for the market rate offer, determines that one or more of the following criteria were not met:

(1) Each portion of the bidding process was oversubscribed, such that the amount of supply bid upon was greater than the amount of the load bid out.

(2) There were four or more bidders.

(3) At least twenty-five per cent of the load is bid upon by one or more persons other than the electric distribution utility. All costs incurred by the electric distribution utility as a result of or related to the competitive bidding process or to procuring generation service to provide the standard service offer, including the costs of energy and capacity and the costs of all other products and services procured as a result of the competitive bidding process, shall be timely recovered through the standard service offer price, and, for that purpose, the commission shall approve a reconciliation mechanism, other recovery mechanism, or a combination of such mechanisms for the utility.

(D) The first application filed under this section by an electric distribution utility that, as of July 31, 2008, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in this state shall require that a portion of that utility's standard service offer load for the first five years of the market rate offer be competitively bid under division (A) of this section as follows: ten per cent of the load in year one, not more than twenty per cent in year two, thirty per cent in year three, forty per cent in year four, and fifty per cent in year five. Consistent with those percentages, the commission shall determine the actual percentages for each year of years one through five. The standard service offer price for retail electric generation service under this first application shall be a proportionate blend of the bid price and the generation service price for the remaining standard service offer load, which latter price shall be equal to the electric distribution utility's most recent standard service offer price, adjusted upward or downward as the commission determines reasonable, relative to the jurisdictional portion of any known and measurable changes from the level of any one or more of the following costs as reflected in that most recent standard service offer price:

(1) The electric distribution utility's prudently incurred cost of fuel used to produce electricity;

(2) Its prudently incurred purchased power costs;

000757

(3) Its prudently incurred costs of satisfying the supply and demand portfolio requirements of this state, including, but not limited to, renewable energy resource and energy efficiency requirements;

(4) Its costs prudently incurred to comply with environmental laws and regulations, with consideration of the derating of any facility associated with those costs. In making any adjustment to the most recent standard service offer price on the basis of costs described in division (D) of this section, the commission shall include the benefits that may become available to the electric distribution utility as a result of or in connection with the costs included in the adjustment, including, but not limited to, the utility's receipt of emissions credits or its receipt of tax benefits or of other benefits, and, accordingly, the commission may impose such conditions on the adjustment to ensure that any such benefits are properly aligned with the associated cost responsibility. The commission shall also determine how such adjustments will affect the electric distribution utility's return on common equity that may be achieved by those adjustments. The commission shall not apply its consideration of the return on common equity to reduce any adjustments authorized under this division unless the adjustments will cause the electric distribution utility to earn a return on common equity that is significantly in excess of the return on common equity that is earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. The burden of proof for demonstrating that significantly excessive earnings will not occur shall be on the electric distribution utility. Additionally, the commission may adjust the electric distribution utility's most recent standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue available to the utility for providing the standard service offer is not so inadequate as to result, directly or indirectly, in a taking of property without compensation pursuant to Section 19 of Article I, Ohio Constitution. The electric distribution utility has the burden of demonstrating that any adjustment to its most recent standard service offer price is proper in accordance with this division.

(E) Beginning in the second year of a blended price under division (D) of this section and notwithstanding any other requirement of this section, the commission may alter prospectively the proportions specified in that division to mitigate any effect of an abrupt or significant change in the electric distribution utility's standard service offer price that would otherwise result in general or with respect to any rate group or rate schedule but for such alteration. Any such alteration shall be made not more often than annually, and the commission shall not, by altering those proportions and in any event, including because of the length of time, as authorized under division (C) of this section, taken to approve the market rate offer, cause the duration of the blending period to exceed ten years as counted from the effective date of the approved market rate offer. Additionally, any such alteration shall be limited to an alteration affecting the prospective proportions used during the blending period and shall not affect any blending proportion previously approved and applied by the commission under this division.

(F) An electric distribution utility that has received commission approval of its first application under division (C) of this section shall not, nor ever shall be authorized or required by the commission to, file an application under section 4928.143 of the Revised Code.

Effective Date: 2008 SB221 07-31-2008; 2008 HB562 09-22-2008

000758

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.)

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company for Approval of) Case No. 11-4920-EL-RDR
Mechanisms to Recover Deferred Fuel) Case No. 11-4921-EL-RDR
Costs Ordered Under Section 4928.144,)
Revised Code.)

ENTRY ON REHEARING

- (1) On January 27, 2011, Columbus Southern Power Company and Ohio Power Company (jointly, AEP-Ohio)¹ filed an application for a standard service offer pursuant to Section 4928.141, Revised Code. The application was for an electric security plan in accordance with Section 4928.143, Revised Code.
- (2) On September 7, 2011, a Stipulation and Recommendation (Stipulation) was filed by AEP-Ohio, Staff, and other parties to resolve the issues raised in several cases pending before the Commission, including the above captioned cases.
- (3) On December 14, 2011, the Commission issued its Opinion and Order, adopting the Stipulation, with modifications.

¹ By entry issued on March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company into OP, effective December 31, 2011. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC.

- (4) On February 23, 2012, the Commission issued its Entry on Rehearing determining that the Stipulation, as a package, did not benefit ratepayers and the public interest and, thus, did not satisfy the three-part test for the consideration of stipulations. The Commission directed AEP-Ohio to file its proposed tariffs to continue the provisions, terms, and conditions of its previous electric security plan no later than February 28, 2012.
- (5) On February 28, 2012, AEP-Ohio submitted its proposed compliance tariffs containing the provisions, terms, and conditions of its previous electric security plan, as approved in *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 08-917-EL-SSO et al. (ESP I). The Industrial Energy Users-Ohio (IEU-Ohio), Ormet Primary Aluminum Corporation (Ormet), the Ohio Consumers Counsel and the Appalachian Peace and Justice Network (OCC/APJN), and FirstEnergy Solutions (FES) filed objections to various parts of AEP-Ohio's proposed compliance tariffs, including the implementation of the phase-in recovery rider (PIRR), which was contained within the proposed tariffs.
- (6) AEP-Ohio filed revised tariffs on March 6, 2012, that reinserted terms and conditions that were omitted from the proposed tariffs filed on February 28, 2012.
- (7) On March 7, 2012, the Commission issued an entry (March 7 Entry) approving the tariffs in part and ordered AEP-Ohio to file new tariffs removing the PIRR and deferring consideration of AEP-Ohio's application to establish the PIRR to *In re Columbus Southern Power Company*, Case No. 11-4920-EL-RDR and *In re Ohio Power Company*, Case No. 11-4921-EL-RDR (jointly *Deferred Fuel Cost Cases*).
- (8) On March 14, 2012, AEP-Ohio filed an application for rehearing of the March 7 Entry. AEP-Ohio asserts that the Commission's refusal to allow the PIRR to become immediately effective violates the Commission's decision in the ESP I order. AEP-Ohio opines that ESP I authorized the recovery of the fuel cost deferrals beginning in 2012 and continuing through 2018. AEP-Ohio contends that the Commission also violated Sections 4928.143(C)(2)(b) and 4928.144, Revised Code. AEP-Ohio

believes these provisions require the Commission to ensure the recovery of the fuel cost deferrals as set forth in the *ESP I* proceedings. In AEP-Ohio's last two assignments of error, the Companies argue that the March 7 Entry should have authorized the PIRR to continue to incorporate a weighted average cost of capital carrying charge. AEP-Ohio also asserts that the Commission erred by failing to order the PIRR be enabled to recover the deferred fuel expense on a gross-of-tax basis, consistent with the *ESP I* order.

- (9) On March 21, 2012, Ormet filed a memorandum contra AEP-Ohio's application for rehearing. In its memorandum, Ormet explains that the March 7 Entry is not inconsistent with the *ESP I* order, as the Commission did not approve any specific recovery mechanism but rather, created a general approval of the future recovery of deferred fuel costs. Ormet points out that, even if the *ESP I* order had created a cost recovery mechanism, there is no language requiring that specific mechanism be effective by a certain date.
- (10) On March 26, 2012, FES filed a memorandum contra AEP-Ohio's application for rehearing. In its memorandum, FES argues that the *ESP I* order authorized a collection of any deferrals, if necessary, thus indicating a separate proceeding or assessment would occur as to the collection of the deferrals. Further, FES points out that there is no language within the *ESP I* order permitting AEP-Ohio to automatically begin recovery in the beginning of 2012; thus, nothing precludes AEP-Ohio from recovering deferrals from the 2012 to 2018 time frame. FES also states that the Commission's March 7 Entry does not violate Sections 4928.143(C)(2)(b) and 4928.144, Revised Code, as nothing within the March 7 Entry precludes AEP-Ohio from collecting the deferrals authorized in *ESP I* order.
- (11) OCC/APJN filed a memorandum contra AEP-Ohio's application for rehearing on March 26, 2012. OCC/APJN claim that there is nothing within either the *ESP I* order or Ohio law that requires the PIRR to be immediately collected by a set date. OCC/APJN argue that the March 7 Entry explained that the issues surrounding the PIRR would be addressed in the *Deferred Fuel Cost Cases*. Further, OCC/APJN note that, as there is no Commission precedent or state law requiring the

Commission to permit AEP-Ohio to recover PIRR charges after rejecting the Stipulation, it was not necessary for the Commission to address the weighted average cost of capital for carrying charges or collection of the deferred fuel expenses on a gross-of-tax basis.

- (12) On March 26, 2012, IEU-Ohio filed a memorandum contra AEP-Ohio's application for rehearing of the March 7 Entry. IEU-Ohio explains that the Commission properly ordered AEP-Ohio to exclude the proposed PIRR rates, and nothing within Sections 4928.143(C)(2)(b) or 4928.144, Revised Code, requires the Commission to immediately implement the PIRR. IEU-Ohio opines that since the Commission did not permit the PIRR to be filed within the tariffs, the Commission did not need to address the amortization rate of the *ESP I* order deferrals.
- (13) The Commission finds that AEP-Ohio's application for rehearing of the March 7 Entry should be denied. While the March 7 Entry ordered AEP-Ohio to remove the PIRR from its proposed tariffs filed before the Commission, the March 7 Entry did not preclude AEP-Ohio from the recovery of fuel cost deferrals with carrying costs but rather, provided that the PIRR recovery will be addressed in the *Deferred Fuel Cost Cases*. While the Commission's order in the *ESP I* proceedings permits AEP-Ohio to seek recovery of fuel cost deferrals from 2012 to 2018, it did not establish a rider or other tariff provision for AEP-Ohio to recover deferred fuel costs or set a hard deadline for when recovery shall begin. To the contrary, as FES points out, in the *ESP I* order, the Commission explicitly provided that any recovery shall occur as necessary, indicating the Commission would conduct an additional analysis to determine the appropriate recovery of fuel cost expenses incurred plus carrying costs. AEP-Ohio's mischaracterization of both the language within the March 7 Entry and the *ESP I* order unravels its other assignments of error, as the Commission cannot violate Sections 4928.144 and 4928.143(C)(2)(b), Revised Code, when the March 7 Entry is entirely consistent with its order in the *ESP I* proceedings. Further, AEP-Ohio's arguments that the March 7 Entry failed to order the PIRR to incorporate a weighted average cost of capital carrying charge or permit AEP-Ohio to recover the deferred fuel expense on a gross-of-tax basis should be rejected, as both arguments are premature and will be addressed in the

Deferred Fuel Cost Cases, as established in the March 7 Entry. Accordingly, AEP-Ohio's application for rehearing of the March 7 Entry is denied.

It is, therefore,

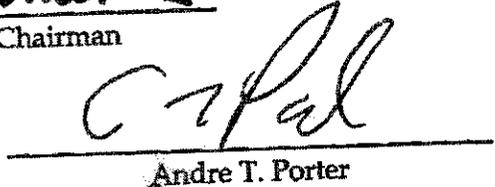
ORDERED, That AEP-Ohio's Application for Rehearing of the March 7 Entry be denied. It is, further,

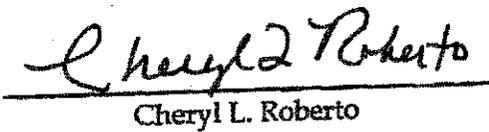
ORDRED, That a copy of this entry on rehearing be served on all parties of record.

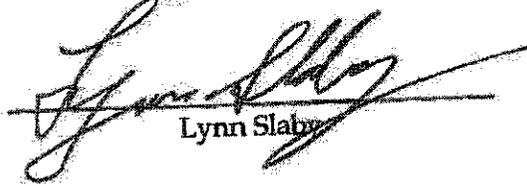
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser

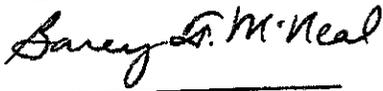

Andre T. Porter


Cheryl L. Roberto


Lynn Slaby

JJT/sc

Entered in the Journal
APR 11 2012



Barcy F. McNeal
Secretary

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
MODIFIED ELECTRIC SECURITY PLAN**

I. AEP Ohio's current Standard Service Offer rates

Through a March 18, 2009 Opinion and Order and a July 23, 2009 Entry on Rehearing in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, the Commission approved a modified Electric Security Plan (ESP) to be in effect for AEP Ohio from 2009 through the end of 2011. Although the Commission approved a new ESP for AEP Ohio in its December 14, 2011 Opinion and Order, the Commission subsequently reversed its decision and rejected the ESP in its February 23, 2012 Entry on Rehearing. Citing § 4928.143(C)(2)(b), Revised Code, the Commission issued a March 7, 2012 Entry approving tariffs that reinstated the first ESP rate plan effective March 9, 2012.

During the period leading up to December 31, 2011, Columbus Southern Power Company (CSP) and Ohio Power Company (OPCo) were separate subsidiary electric utility operating companies of American Electric Power Company, Inc. (AEP) though they conducted their combined business in Ohio as "AEP Ohio." On December 31, 2011, after receiving approvals from the Public Utilities Commission of Ohio (Commission) and the Federal Energy Regulatory Commission, CSP merged with OPCo with OPCo being the surviving entity.

As relevant to this application, OPCo (generally referred to herein as "AEP Ohio") is an "electric distribution utility," "electric light company," "electric supplier" and "electric utility" as those terms are defined in §4928.01 (A) (6), (7), (10) and (11), Ohio Rev. Code, respectively. Through a March 7, 2012 Entry in Case No. 10-2376-EL-UNC, the Commission reiterated its approval of the merger and provided that CSP and OPCo rate zones would be maintained until they are modified in another proceeding. As set forth in Company witness Roush's Exhibit DMR-4, AEP Ohio proposes in connection with the modified ESP that several rates be changed from having separate rate zones to being unified rates for all AEP Ohio customers.

II. Summary of the Modified Electric Security Plan and Requested Relief

An electric distribution utility (EDU) may comply with §4928.141(A)'s standard service offer (SSO) requirement through either a market rate offer (MRO), pursuant to §4928.142, Ohio Rev. Code, or an ESP, pursuant to 4928.143, Ohio Rev. Code. Pursuant to § 4928.143, Ohio Rev. Code and as set forth in greater detail below, AEP Ohio is proposing an ESP to fulfill its obligation to provide an SSO under §4928.141, Ohio Rev. Code. The Applicant seeks the Commission's approval of an ESP based on §4928.143, Ohio Rev. Code, and Rule 4901:1-35, Ohio Admin. Code, for a term commencing on June 1, 2012 and ending May 31, 2015.

The Company has approached the modified ESP in a manner that is consistent with S.B. 221. For example, the ESP addresses a range of issues that are broader than simply focusing on the SSO for competitive retail electric services. The Company's ESP, as described in this application and in supporting Company testimony, also address provisions regarding their distribution service (See §4928.143 (B) (2) (d) and (h), Ohio Rev. Code); provisions that promote retail electric competition, including highly discounted capacity charges; economic development and job retention (See §§4928.02(N), 4928.143 (B) (2) (i) and 4905.31 (E), Ohio Rev. Code); the alternative energy resource requirements of §4928.64, Ohio Rev. Code; the

energy efficiency requirements of §4928.66, Ohio Rev. Code (See also §§4928.143 (B) (2) (i) and 4905.31 (E), Ohio Rev. Code); preserving and expanding the development of competition for retail electric services in its territory in accordance with §4928.02(B) and (C), Ohio Rev. Code; and other matters. That being said, the primary focus of the application concerns SSO pricing issues.

The modified ESP which addresses this broad range of issues will have the effect of stabilizing and providing certainty regarding retail electric service (§4928.143 (B) (2) (d), Ohio Rev. Code) and is "more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code." (§4928.143, (C) Ohio Rev. Code). The terms of the modified ESP offer AEP Ohio customers financial stability and reasonable electricity rates while offering investors some measure of financial stability. Each of the major components of the modified ESP is critical to AEP Ohio's future and need to be addressed in order for the Company to remain in transition to a fully competitive auction-based SSO. Through a separate application, AEP Ohio is proposing to implement structural corporate separation, including the transfer of generation assets at net book value to an affiliated generation company. Legal corporation separation, along with termination of the AEP Interconnection Agreement (also known as the AEP Pool), are needed in order to facilitate the quick transition to an auction-based SSO and implement a permanent and fully competitive structure for AEP Ohio.

Accordingly, as set forth below in greater detail, AEP Ohio requests that the Commission:

1. approve the proposed ESP without modification, including all accounting authority needed to implement the proposed riders and other aspects of the ESP as proposed;
2. approve new rates under the modified ESP effective with the first billing cycle of June, 2012 and continuing through the last billing cycle of May, 2015; and

3. approve the separate application for structural corporate separation.

III. Filing Requirements of Rule 4901:1-35-03(C), Ohio Admin. Code

A. Description of Supporting Testimony

A more complete description of and support for the modified ESP is provided through the testimony of the Company witnesses listed in the following table, with each witnesses' subjects also being referenced in the table.

Witness	General Subject Area	General Description of Testimony
Robert Powers	Overview of the ESP	<ul style="list-style-type: none"> • Overview of the AEP Ohio modified ESP • Capacity price overview • Retail Stability Rider • Auction process overview • Corporate separation overview • Integrated package of terms and conditions
Selwyn Dias	General Policy Witness	<ul style="list-style-type: none"> • Advancement of state policies • Components of the modified ESP riders • Alternative Energy Standards • Phase In Recovery Rider
Philip Nelson	Capacity Plan Corporate Separation Fuel Adjustment Clause (FAC) Generation resource rider (GRR) Alternative energy rider (AER) Pool termination & modification	<ul style="list-style-type: none"> • FRR/Capacity obligation • Transfer of AEP Ohio generation assets • Cost Recovery Mechanisms for fuel, renewable energy credits, new capacity, and pool termination
David Roush	Tariffs and Rate Design Customer Rate Impacts	<ul style="list-style-type: none"> • Modifications to the tariffs, terms and conditions of service • Design of the proposed rates and riders • Implementation and bill impacts
William Allen	Capacity Pricing Distribution Investment Rider (DIR) Retail Stability Rider (RSR) Detailed Implementation Plan (DIP)	<ul style="list-style-type: none"> • Two tiered capacity pricing • Description of how the DIR will function and the DIR revenue requirement • Need for and basis for the RSR • Customer switching levels
Laura Thomas	Aggregate Market Rate Offer (MRO) Test	<ul style="list-style-type: none"> • Aggregate MRO test • Competitive benchmark price development
Renee Hawkins	AEP Ohio's Capital Structure Securitization of Deferred Fuel Updated credit agency reports	<ul style="list-style-type: none"> • Capitalization, weighted average cost of capital (WACC), and carrying costs • Rationale and benefits of securitization of Deferred Fuel • Recent credit agency reports indicate the negative impact of the revoked ESP on the Company's credit
Oliver Sever	Pro-forma financial statements	<ul style="list-style-type: none"> • Forecast methodology • Forecast assumptions and results

Witness	General Subject Area	General Description of Testimony
Thomas Mitchell	Regulatory accounting	<ul style="list-style-type: none"> • Regulatory accounting details for proposed riders • Regulatory accounting for future recovery of deferrals
Thomas Kirkpatrick	Distribution Investment Rider (DIR) Enhanced Service Reliability Rider (ESRR) Storm Damage Recovery Mechanism gridSMART®	<ul style="list-style-type: none"> • Overview and description of the Distribution investment rider, which includes investment in Distribution programs • Vegetation program, gridSMART® program, and storm damage
Jay Godfrey	Request prudence for cost recovery of the Timber Road wind renewable energy power purchase agreement (REPA)	<ul style="list-style-type: none"> • Company's experience in renewable energy • Ohio renewable energy market • Timber Road wind REPA
Frank Graves	Capacity Markets and the Reliability Pricing Model	<ul style="list-style-type: none"> • Detailed discussion of PJM capacity market

B. *Pro Forma* Financial Projections of the Effect of the Modified ESP

Pro forma financial projections of the effect of the modified ESP for the duration of the ESP are presented in the testimony of Company witness Sever as part of Exhibit OJS-2 and the assumptions made and methodologies used in deriving the *pro forma* projections are listed in Exhibit OJS-1.

C. Projected Rate Impacts of the Modified ESP

Projected rate impacts by customer class/rate schedules during the ESP are contained in the testimony of Company witness Roush and Exhibit DMR-1.

D. Description of the Corporate Separation Plan and Demonstration that the Plan Complies with §4928.17, Ohio Rev. Code and Rule 4901:1-37, Ohio Admin. Code

AEP Ohio provides a description of its corporate separation plan, to be adopted pursuant to §4928.17, Ohio Rev. Code, through a separate application filed concurrently with the modified ESP (Case No. 12-1126-EL-UNC) and cross referenced in the testimony of Company witnesses Powers and Nelson filed in support of the modified ESP. After more than a decade of following the provisional approach of functional corporate separation, the Company submits that it is time to fully and finally implement the goal of §4928.17, Ohio Rev. Code. Though the

Company is requesting specific amendments to the corporate separation plan as part of a separate docket, approval of full structural separation (*i.e.*, generation divestiture) is a critical and necessary prerequisite for the Company's modified ESP proposal to transition toward and implement an auction-based SSO.

E. Status of the Operational Support Plan

Pursuant to Rule 4901:1-35-03(C)(5), Ohio Admin. Code, AEP Ohio states that its Operational Support Plan has been implemented and that it is not aware of any outstanding problems with its implementation.

F. Description of How the Company Addresses Governmental Aggregation and Implementation of Divisions (I), (J), and (K) of §4928.20, Ohio Rev. Code and the Effect on Large-Scale Governmental Aggregation of Unavoidable Generation Charges

For the modified ESP, the Company's plan for addressing governmental aggregation programs and the implementation of divisions (I), (J), and (K) of §4928.20, Ohio Rev. Code, and the effect on large-scale governmental aggregation of any unavoidable generation charges, is to preserve and expand retail competition opportunities through discounted capacity pricing in support of shopping load and an expedited transition to a fully competitive, auction-based SSO structure. The Company's proposed nonbypassable generation charges do not have an adverse impact on large-scale governmental aggregation.

G. State Policies Enumerated in §4928.02, Ohio Rev. Code, Are Advanced by the Modified ESP

A detailed account of how the modified ESP is consistent with and advances the policies of this state enumerated in §4928.02(A) through (N), Ohio Rev. Code, is provided by Company witness Dias.

H. Statement Regarding Qualifying Transmission Entity

OPCo and AEP Ohio Transmission Company, Inc. are members of PJM Interconnection, which is a qualifying transmission entity, as that term is used in §4928.12, Ohio Rev. Code.

I. Executive Summary

An executive summary of the modified ESP is included in the testimony of Company witness Powers and Exhibit RPP-1.

IV. Standard Service Offer Rate Provisions of the Modified ESP

A. Generation Rates

1. SSO Generation Service Rider (base generation rate)

In order to minimize overall rate impacts on individual customers and help stabilize non-fuel generation SSO rates, OPCo is proposing as part of a comprehensive ESP package of terms and conditions to freeze current non-fuel generation rates until such time as those rates are established through a competitive bidding process. AEP Ohio is proposing to bundle the current Environmental Investment Carrying Charge Rider (EICCR) and the base generation rates for the CSP and OPCo rate zones, respectively, such that the EICCR would no longer exist. Under this approach, no customer taking SSO service will see a change in non-fuel generation charges during the entire pre-auction ESP period. The base generation rates are discussed in Company witness Roush's testimony and shown in Exhibit DMR-1.

2. Fuel Adjustment Clause

The proposed ESP includes continuation and modification of a bypassable Fuel Adjustment Clause (FAC), as discussed in the testimony of Company witnesses Nelson and Mitchell. The Company is proposing to modify the FAC by removing renewable energy credits (RECs) currently recorded in Account No. 557 from the FAC, and recovering this expense through a new Alternative Energy Rider, which is discussed separately below. In addition, bundled purchased power products, or REPAs, currently recorded in Account No. 555, will be split into their REC and non-REC components. The REC component will be recovered through the AER and the non-REC portion will continue to be recovered through the FAC. The

Company also proposes to unify the rates for each FAC rate zone into a single set of merged rates, on a delayed basis as discussed in the testimony of Company witness Roush. A summary and brief description of the types of fuel costs encompassed within the proposed FAC is found in the testimony of Company witness Nelson and Exhibit PJN-4, as is a description of the plants that the cost pertains to and a narrative pertaining to the procurement policies and procedures.

3. Alternative Energy Rider

The modified ESP includes establishment of a bypassable Alternative Energy Rider (AER). The Company is proposing to begin recovery of REC expense via the AER instead of the FAC starting in the modified ESP. REC expense is the identified renewable value of cost associated with acquiring or creating renewable energy. The energy and capacity costs of renewable energy resources would continue to be recovered through the FAC. Additional details on the proposed rider are discussed in the testimony of Company witnesses Nelson and Mitchell.

4. Generation Resource Rider

The Generation Resource Rider (GRR) is a new nonbypassable rider designed to collect the costs associated with AEP Ohio's investment in generating facilities in accordance with §4928.143 (B) (2) (c), Ohio Rev. Code. This proposed rider is nonbypassable and is designed to recover renewable and alternative capacity additions, as well as, more traditional capacity constructed or financed by the Company and approved by the Commission. The rider will be established as a placeholder rider, such that any charges included in the GRR will need to be approved in a separate Commission proceeding during the term of the modified ESP.

The proposed Turning Point solar project will be the first capacity resource addition to be included in the GRR, if approved. After the Commission first determines need for the Turning Point facility in the pending Long-Term Forecast Report proceeding (Case Nos. 10-501-EL-FOR and 10-502-EL-FOR), the Company will make a separate EL-RDR filing proposing the rate level for the nonbypassable charge for the life of the facility. To the extent it is necessary to

implement the above-described approach, the Company requests a waiver of Rule 4901:1-35-03(C)(3) or (C)(9)(b), Ohio Admin. Code.

5. Interruptible Service Rates

The modified ESP includes modification and continuation of Interruptible Service Rates. The credit under Rider IRP-D will be the current base generation rate demand charge discount under Schedule IRP-D relative to Schedule GS-4 adjusted upward to reflect the roll-in of the EICCR, which is consistent with AEP Ohio's proposal for all other base generation rates. Upon approval of the RSR, AEP Ohio is willing to increase the IRP-D credit to \$8.21 per kW-month. If approved, this increased level of credit would reduce the base generation revenues and would be reflected in the RSR. Additional details on interruptible service rates are discussed in the testimony of Company witness Roush.

AEP Ohio's existing interruptible service offerings are being restructured to reflect the transition to participation in the PJM Interconnection LLC (PJM) Base Residual Auction for the June 2015 to May 2016 delivery year and the transition to the use of a competitive bid process to meet AEP Ohio's SSO obligation. Consistent with this transition, AEP Ohio proposes to permit retail customer participation in PJM demand response programs. Schedule Interruptible Power – Discretionary (IRP-D) will be restructured as Rider IRP-D, reflecting an offset to firm service rates. AEP Ohio is also proposing to eliminate Rider Emergency Curtailable Service (ECS) and Rider Price Curtailable Service (PCS), including the proposed changes pending in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA. Customers with peak demand response attributes that have cleared in the PJM market that are also receiving an incentive payment through a reasonable arrangement shall commit such peak demand response attributes to the Company at no additional cost. Finally in this regard, AEP Ohio proposes that it be allowed to issue an RFP to meet any remaining peak demand reduction mandates.

6. Retail Stability Rider

The modified ESP includes establishment of a nonbypassable Retail Stability Rider (RSR). Because the Company is proposing as part of the integrated package of terms and conditions in the proposed ESP, including highly discounted capacity pricing to support shopping load, the Company would be in a precarious financial position during the ESP term without the RSR. This would cause the Company to implement significant cost controls and could trigger negative job impacts in Ohio. In order to provide stability and certainty to both customers and the Company, the RSR is a generation revenue decoupling charge that would be paid by shopping and non-shopping customers during the period prior to June 2015 when the Company will no longer be providing capacity to serve its entire connected load as an FRR entity. Additional details on the proposed rider are discussed in the testimony of Company witnesses Allen and Roush.

B. Pro-Competitive Proposals including Discounted Capacity Charges

Retail shopping is swiftly expanding in AEP Ohio's service territory and the modified ESP is designed to preserve and expand this shopping trend – through a series of pro-competitive proposals. With the modified ESP II, AEP Ohio has committed to adjust its business plan to a fully competitive energy and capacity market by June 1, 2015 to address the Commission's recent policy directive,¹ it is important to bear in mind that each of these features is fully dependent upon the total package of inter-related terms and conditions of the proposed ESP and none stands alone. Moreover, the pro-competitive proposals are being advanced as part of the ESP package that contains benefits to both customers and AEP Ohio.

As referenced above, the modified ESP is premised upon structural corporate separation being approved and implemented, as well as the termination of the AEP Interconnection

¹ In AEP Ohio Case 10-2376-EL-UNC. Entry(March 7,2012) at 5-6

Agreement (also known as the "AEP Pool"). As explained in the testimony of Company witness Powers, the modified ESP also proposes to quickly transition AEP Ohio to an energy auction for 100% of SSO load for delivery commencing January 2015, provided that its Corporate Separation plan and AEP Pool termination are approved and implemented before that time. Moreover, for the purpose of facilitating a smooth transition to the full SSO energy auction in January 2015, AEP Ohio is also willing to engage in an energy-only, slice-of-system auction for 5% of SSO load as part of the ESP package prior to January 2015; based on the express condition of financially being made whole. The early energy auction would be for delivery beginning six months after final orders are both issued adopting the ESP as proposed and the corporate separation plan as filed and with the delivery period extending through December 31, 2014.

These pro-competitive provisions and aggressive transition schedule enable AEP Ohio to achieve a fully competitive SSO much faster than is possible under a market rate option. The modified ESP also proposes to resolve other competitive issues between AEP Ohio and CRES providers competing in its service territory (e.g., eliminating the 90-day advanced notice for shopping), as discussed in the testimony of Company witness Roush.

Another important competitive issue relates to the price charged for using AEP Ohio's capacity resources to support shopping load within its service territory. Issues regarding the appropriate capacity charges for AEP Ohio are currently pending before the Commission in Case No. 10-2929-EL-UNC. The modified ESP proposes – only as part of the integrated package of ESP terms and conditions and without waiving its independent litigation position in the 10-2929 case – a capacity charge structure whereby highly discounted capacity charges are offered during the remaining period that AEP Ohio remains contractually obligated to remain a Fixed Resource Requirements (FRR) entity in the PJM Interconnection, LLC (PJM) capacity market. The discounted capacity charge structure is described in more detail in the testimony of Company

witnesses Powers and Allen. By proposing this alternative capacity pricing as a part of the integrated ESP package with other benefits to AEP Ohio, the Company is not waiving or otherwise compromising its litigation position in the 10-2929 case and reserves the right to pursue any available legal remedies or avenues of relief before any state or federal administrative agency or court. AEP Ohio emphasizes the importance of keeping the 10-2929 litigation moving forward in an expedited procedural schedule in parallel with the modified ESP proceeding, especially in light of the present expiration date that is established for the interim relief granted in the Commission's March 7, 2012 Entry in the 10-2929 case. Until such time that final orders are issued by the Commission approving the proposed ESP without modification and approving the Company's corporate separation filing as proposed, the Company will continue to prosecute its litigation position in the 10-2929 case.

C. Transmission Rates

The Company proposes to retain the Transmission Cost Recovery Rider (TCRR) mechanism as it is presently comprised, except that AEP Ohio proposes to unify the rates for each rate zone into a single set of merged rates. Annual filings for the TCRR will comply with the requirements of Chapter 4901:1-36, Ohio Admin. Code. Continuation of the TCRR is discussed in the testimony of Company witnesses Mitchell and Roush.

D. Distribution Rates

1. Distribution Investment Rider

The modified ESP includes establishment of a Distribution Investment Rider (DIR). The purpose of this rider is to provide capital funding for distribution assets needed to support distribution asset management programs, distribution capacity and infrastructure additions driven by customer demand and support the continued implementation of advanced technology including AEP Ohio's gridSMART[®] initiative. Once established, the rider rate will be updated

periodically. Additional details on the proposed rider are discussed in the testimony of Company witnesses Allen, Kirkpatrick, Roush and Mitchell.

2. gridSMART® Rider

The modified ESP includes continuation of the gridSMART® Rider. While the Company proposes to unify the rates for each rate zone into a single set of merged rates, the proposed rider is otherwise a continuation same rider previously approved by the Commission in Case Nos. 08-917-EL-SSO, 08-918-EL-SSO and 10-164-EL-RDR. The rider rate will continue to be updated periodically. Additional details on the proposed rider are discussed in the testimony of Company witnesses Kirkpatrick, Roush and Mitchell.

3. Enhanced Service Reliability Rider

The modified ESP includes continuation of a Enhanced Service Reliability Rider (ESRR). While the Company proposes to unify the rates for each rate zone into a single set of merged rates, the proposed rider is otherwise the same rider approved and addressed by the Commission in Case Nos. 08-917-EL-SSO, 08-918-EL-SSO and 10-163-EL-RDR, updated to reflect the anticipated program costs during the ESP term. The rider rate will continue to be updated periodically. Additional details on the proposed rider are discussed in the testimony of Company witnesses Kirkpatrick, Roush and Mitchell.

E. Energy Efficiency/Peak Demand Reduction Rider

The modified ESP includes modification and continuation of a Energy Efficiency/ Peak Demand Reduction Rider (EE/PDR). While the Company proposes to unify the rates for each rate zone into a single set of merged rates, the proposed rider is otherwise the same rider approved and addressed by the Commission in Case Nos. 08-917-EL-SSO, 08-918-EL-SSO, 09-1089-EL-POR, 09-1090-EL-POR, 11-5568-EL-POR and 11-5569-EL-POR. The rider rate will

continue to be updated periodically. Additional details on the proposed rider are discussed in the testimony of Company witnesses Dias, Roush and Mitchell.

F. Economic Development Rider

The modified ESP includes continuation and modification of a nonbypassable Economic Development Rider (EDR). While the Company proposes to unify the rates for each rate zone into a single set of merged rates, the proposed rider is otherwise the same rider approved and addressed by the Commission in Case Nos. 08-917-EL-SSO, 08-918-EL-SSO, 09-1095-EL-RDR and 10-1072-EL-RDR. The rider rate will continue to be updated periodically. Additional details on the proposed rider are discussed in the testimony of Company witnesses Roush and Mitchell.

G. Continuation of Statutory and Existing Miscellaneous Riders

The Company plans to continue implementing other existing riders during the term of the modified ESP, as detailed in the testimony of Company witness Roush and Exhibit DMR-4.

V. New Accounting Deferrals and Recovery of Existing Regulatory Assets

The Company filed Case Nos. 11-4920-EL-RDR and 11-4921-EL-RDR to establish the Phase In Recovery Rider (PIRR) for collection of the deferred fuel expenses authorized for recovery starting in January 2012 by the Commission's final, non-appealable decision in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO. To date, the Commission has not approved the PIRR or otherwise implemented this aspect of *ESP I*, as is presently required under §4928.143(C)(2)(b), Ohio Rev. Code. Nevertheless, as part of the integrated package of terms and conditions presented in the modified ESP and without waiving its lawful rights and remedies related to the PIRR implementation, AEP Ohio is proposing to delay the commencement of PIRR recovery until June 2013 (with the end of the recovery period remaining as December 31.

2018), while continuing to accrue during the continuing deferral period a weighted average cost of capital carrying charge as authorized in the *ESP I* decision. Accordingly, the Company requests that the Commission consider the delayed PIRR as part of the modified ESP and suspend the procedural schedule currently established in Case Nos. 11-4920-EL-RDR and 11-4921-EL-RDR. The delayed PIRR proposal is being coordinated with the delayed unification of the FAC rates, as discussed in the testimony of Company witnesses Dias and Roush.

The modified ESP includes approval for accounting deferrals including a major storm damage recovery mechanism proposal discussed in the testimony of Company witnesses Kirkpatrick and Mitchell.

The modified ESP includes approval for accounting deferrals for future recovery of net book value of retired meters related to the expansion of gridSMART[®] discussed in the testimony of Company witnesses Kirkpatrick and Mitchell.

VI. Work Papers

Filed with this modified ESP is a complete set of work papers, consistent with Rule 4901:1-35-03(G), Ohio Admin. Code. The work papers include all pertinent documents prepared by the Company for the Application and an explanation, narrative or other support of the assumptions used in the work papers. Parties are also being electronically served with the native files containing the work papers.

VII. Waiver Requests

Under Rule 4901:1-35-02(B), Ohio Admin. Code, the Commission may grant requests to waive any requirement of Chapter 4901:1-35 for good cause shown. Because this modified ESP was filed in the existing proceeding and was submitted in response to the Commission's March 7, 2012 Entry, AEP Ohio submits that the SSO filing requirements do not apply to this filing. But in the spirit of transparency and efficiency, AEP Ohio has attempted to comply with the filing requirements in making this filing, except as otherwise noted as it relates to waiver

requests herein. As discussed in Paragraph IV.A.5 above, to the extent it is necessary to implement the described approach regarding approval of the GRR and the Turning Point project, the Company requests a waiver of Rule 4901:1-35-03(C)(3) or (C)(9)(b), Ohio Admin. Code. To the extent that the relief requested in this application requires a waiver of any other filing requirements found in Chapter Rule 4901:1-35, Ohio Admin. Code, the Company requests such a waiver.

VIII. Service of the Application

As required by Rule 4901:1-35-04(A), Ohio Admin. Code, the Company is providing, concurrent with the filing of this Application and any waiver requests, an electronic copy of the filing to each party in the current SSO proceeding, Case Nos. 11-346-EL-SSO and 11-348-EL-SSO. In a manner consistent with Rule 4901:1-35-04(B), Ohio Admin. Code, attached as Attachment 1 to this Application is a proposed notice for newspaper publication that fully discloses the substance of the modified ESP, including projected rate impacts, and that prominently states that any person may request to become a party to the proceeding.

WHEREFORE, AEP Ohio requests that the Commission find and order as follows:

1. That the Company's modified ESP is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code."
2. That the Company's ESP be approved, including all accounting authority needed to implement the proposed riders and other aspects of the ESP as proposed;
3. That the Company's proposed tariffs be approved; and
4. That the Commission issue such other orders as may be just and proper.

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse

Matthew J. Satterwhite

American Electric Power Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215-2373

Telephone: (614) 716-1608

Facsimile: (614) 716-2950

stnourse@aep.com

mjsatterwhite@aep.com

Daniel R. Conway

Porter Wright Morris & Arthur

Huntington Center

41 S. High Street

Columbus, Ohio 43215

Telephone: (614) 227-2770

Fax: (614) 227-2100

dconway@porterwright.com

Counsel for Ohio Power Company

Attachment 1

LEGAL NOTICE

Ohio Power Company (OPCo) is a subsidiary electric utility operating company of American Electric Power Company, Inc. OPCo conducts its business in Ohio as "AEP Ohio." As a result of the recent merger of Columbus Southern Power Company into OPCo, there are two rate zones: CSP rate zone and OPCo rate zone. AEP Ohio has filed with the Public Utilities Commission of Ohio (PUCO) Case No. 11-346-EL-SSO and 11-348-EL-SSO, *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, and Case No. 11-349-EL-AAM and 11-350-EL-AAM, *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority*. In these cases the Commission will consider AEP Ohio's request for approval of its new Electric Security Plan (ESP) that includes its standard service offer (SSO), effective with the first billing cycle of June 2012, through the last billing cycle of May 2015. The ESP, which includes the SSO pricing for generation, also addresses provisions regarding distribution service, economic development, alternative energy resource requirements, energy efficiency requirements and other matters. Rates for some customer classes will increase and rates for other classes will decline; however, on average for all customer classes, CSP rate zone will experience average annual 2% total rate increases during the ESP period and OPCo rate zone customers will see average annual 4% total rate increases during the ESP period. AEP Ohio proposes to recover certain other costs through riders during the ESP period; however, those costs and the subsequent rate impacts are not known at this time.

Any person may request to become a party to the proceeding.

Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, viewing the Commission's web page at <http://www.puc.state.oh.us>, or contacting the Commission's call center at 1-800-686-7826.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Ohio Power Company's Modified Electric Service Plan has been served upon the below-named counsel and Attorney Examiners by electronic mail to all Parties this 30th day of March, 2012.

/s/ Steven T. Nourse

greta.see@puc.state.oh.us.
Greg.Price@puc.state.oh.us,
jeff.jones@puc.state.oh.us,
Jonathan.Tauber@puc.state.oh.us,
Jodi.Bair@puc.state.oh.us,
Bob.Fortney@puc.state.oh.us,
Doris.McCarter@puc.state.oh.us,
Daniel.Shields@puc.state.oh.us,
Tammy.Turkenton@puc.state.oh.us,
Stephen.Reilly@puc.state.oh.us,
Werner.Margard@puc.state.oh.us,
William.Wright@puc.state.oh.us,
Thomas.Lindgren@puc.state.oh.us,
john.jones@puc.state.oh.us,
dclark1@aep.com,
grady@occ.state.oh.us,
keith.nusbaum@srdenton.com,
kpkreider@krklaw.com,
mjsatterwhite@aep.com,
ned.ford@fuse.net,
pfox@hilliardohio.gov,
ricks@ohanet.org,
stnourse@aep.com,
cathy@theoec.org,
dsullivan@nrdc.org,
aehaedt@jonesday.com,
dakutik@jonesday.com,
haydenm@firstenergycorp.com,
dconway@porterwright.com,
jlang@calfee.com,
lmcbride@calfee.com,
talAlexander@calfee.com,
etter@occ.state.oh.us,
grady@occ.state.oh.us,
small@occ.state.oh.us,
cyathia.a.fomer@constellation.com,
David.fein@constellation.com,
Dorothy.corbett@duke-energy.com,
Amy.spiller@duke-energy.com,
dboehm@bkllawfirm.com,
mkurtz@bkllawfirm.com,
ricks@ohanet.org,
tobrien@bricker.com,
jbentine@cwslaw.com,
myurick@cwslaw.com,
zkravitz@cwslaw.com,
jejadwin@aep.com,
msmalz@ohiopoverlylaw.org,
jmaskovyak@ohiopoverlylaw.org.

todonnell@bricker.com,
cmontgomery@bricker.com,
lmcaster@bricker.com,
mwarnock@bricker.com,
gthomas@gtpowergroup.com,
wmassey@cov.com,
henryeckhart@aol.com,
laurac@chappelleconsulting.net,
whitt@whitt-sturtevant.com,
thompson@whitt-sturtevant.com,
sandy.grace@exeloncorp.com,
cmiller@szd.com,
abaque@szd.com,
gdunn@szd.com,
mhpetricoff@vorys.com,
smhoward@vorys.com,
mjsettineri@vorys.com,
lkalepsclark@vorys.com,
bakahn@vorys.com,
Gary.A.Jeffries@dom.com,
Stephen.chriss@wal-mart.com,
dmeyer@knklaw.com,
holly@raysmithlaw.com,
barthroyer@aol.com,
philip.sineneng@thompsonhine.com,
carolyn.flahive@thompsonhine.com,
terrance.mebane@thompsonhine.com,
cmooney2@columbus.rr.com,
drinebolt@ohiopartners.org,
trent@theoeg.com,
nolan@theoec.org,
gpoulos@enemcc.com,
emma.hand@srdenton.com,
doug.bonner@srdenton.com,
clinton.vince@srdenton.com,
sam@mwncmh.com,
joliker@mwncmh.com,
fdarr@mwncmh.com,
jestes@skadden.com,
paul.wight@skadden.com,
dstahl@eimerstahl.com,
aaragona@eimerstahl.com,
ssolberg@eimerstahl.com,
tsantarelli@elpe.org,
callwein@wamenergylaw.com,
malina@wexlerwalker.com,
jkooper@hess.com,
kquerry@hess.com,
nreifeld@viridityenergy.com,
swolfe@viridityenergy.com,
korenergy@insight.rr.com,
sasloan@aep.com,
Dane.Stinson@baileycavalieri.com,
cendsley@ofbf.org

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Columbus Southern Power Company for) Case No. 11-4920-EL-RDR
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) Case No. 11-4921-EL-RDR
Mechanism to Recover Deferred Fuel)
Costs Ordered Under Ohio Revised Code)
4928.144.)

**COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Respectfully submitted,

BRUCE J. WESTON

Terry L. Etter, Counsel of Record
Maureen R. Grady
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: 614-466-7964
etter@occ.state.oh.us
grady@occ.state.oh.us

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION.....	1
II. DISCUSSION.....	5
A. The Commission Cannot Approve The Collection Of The Rider Because It Is Based On ESP Rates That Were Not Established In Compliance With R.C. 4928.143 And A Phase-In Plan That Is Not Just And Reasonable Under R.C. 4928.144.....	6
B. The Company Must Meet Its Burden Of Proving That The Fuel Costs Were "Prudently Incurred" Costs Of Fuel Used To Generate Electricity Supplied Under The Offer, As Required By R.C. 4928.143(B)(2)(A).....	8
C. To Avoid An Inequitable Result That Could Harm Consumers, The Commission Should Make Collection Of The Rider Subject To Refund.....	11
D. If The Commission Does Not Reduce The Rider For \$368 Million (Plus Carrying Charges) Of Unlawful Charges, Then It Should Only Allow Collection Of The Rider Subject To Refund.....	13
E. The Company's Proposed Amortization Schedule Does Not Comply With The ESP 1 Order, And The Commission Should Require A Shorter Period For Collection Of The Deferred Fuel Costs Through The Rider To Help Reduce Carrying Costs.....	15
F. Carrying Charges For The Company's Deferred Fuel Costs Should Be Calculated At The Company's Long-Term Cost Of Debt Instead Of Its Much Higher Weighted Average Cost Of Capital, And The Deferrals Should Be Reduced To Reflect Accumulated Deferred Income Taxes.....	18
G. The Over-Collection Of CSP's Fuel Costs Should Be Returned With Interest To CSP's Customers As Soon As Possible.....	19
III. CONCLUSION.....	20

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Columbus Southern Power Company for) Case No. 11-4920-EL-RDR
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) Case No. 11-4921-EL-RDR
Mechanism to Recover Deferred Fuel)
Costs Ordered Under Ohio Revised Code)
4928.144.)

**COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC")¹ files these comments to advocate that the 1.2 million residential customers of Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPC") (collectively, "OPC" or "Company")² should be charged rates for electric service that are no higher than what is reasonable, in keeping with the state policy espoused in R.C. 4928.02(A). In these proceedings, the Company seeks approval from the Public Utilities Commission of Ohio ("Commission" or "PUCO") to collect significant rate increases from customers for fuel

¹ R.C. Chapter 4911.

² Effective at the end of 2011, OPC and CSP (both of which were operating companies of AEP Ohio) merged, with OPC becoming the successor in interest to CSP. See *In re: AEP Ohio ESP Cases*, Case No. 11-346-EL-SSO, et al., OPC Application for Rehearing (January 13, 2012) at 2. The Commission approved the merger on March 7, 2012, effective December 31, 2012. *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, Entry (March 7, 2012).

costs (and a large amount of carrying costs) the Company purportedly incurred but did not collect during 2009-2011, as a result of "capped" or phased-in ESP rates.³

In its Applications, the Company estimated that it over-collected fuel costs in the amount of \$3,896,041 from its CSP customers as of December 31, 2011.⁴ It does not, however, seek to refund this amount to CSP customers in this proceeding. Instead it intends to return the over-collection in its March 2012 fuel adjustment clause case.⁵

In addition, the Company claims that it will have under-collected \$628,073,325 in deferred fuel charges from OP customers as of December 31, 2011.⁶ To begin collecting these charges, the Company proposes a Phase-In Recovery Rider ("Rider"). This rider will begin on February 1, 2012 and last until January 1, 2019.⁷ Under the Company's proposal, it would also collect an additional \$279 million in carrying charges, based on its proposed interest rate of 11.15%, during the seven-year life of the Rider. The Company proposes to collect these charges from all customer classes, on a per-kwh rate.⁸ Under the Company's proposed Rider, OPC's residential customers would pay an additional \$0.51 per month for customers using 100 kWh up to \$10.12 per month for customers using 2,000 kWh.⁹

As discussed below, the Commission should follow the law by requiring the Companies to prove that the fuel costs, incurred from 2009-2011, were prudently

³ See Applications (September 1, 2011) ("Applications"), Exhibit A at 6.

⁴ Id., Exhibit A at 1.

⁵ Id. at 3.

⁶ Id. Exhibit A at 1.

⁷ Id. at 3.

⁸ See id., Exhibit A at 6-7.

⁹ See id., Exhibit A at 6.

incurred. This is in keeping with the fact that the Company has the burden of proving (under R.C. 4928.143(B)(2)(a)) that the fuel charges it seeks to collect from customers are prudently-incurred costs of fuel used to generate the electricity supplied under the standard service offer. Because there are pending proceedings where the fuel charges incurred from 2009-2011 are still being considered, if any rider is implemented it should only be implemented subject to refund and/or reconciliation or true up.

For now however, Commission should address whether the phase-in plan (including the level of deferrals and collection) is "just and reasonable." under R.C. 4928.144. If and only if the Commission makes such a determination, then the Company would be permitted to collect such costs under R.C. 4928.143 and 4928.144. In this respect, as discussed below, OCC urges the Commission to reject the rider rates because they are based on ESP Rates that were not established in compliance with R.C. 4928.143 and because they are a result of a phase-in that is not just and reasonable. Accordingly, the base level of unamortized deferrals (and carrying costs) to be collected from customers should be reduced before collection begins.

In the event the PUCO does not adjust the unamortized deferrals, as requested by OCC, in order to protect customers during the appeal¹⁰ of the ESP 1 Remand Order,¹¹ the Commission should order the Rider to be collected, subject to refund, with interest accruing at the Company's long term cost of debt. This will preserve the deferrals that are under appeal so there will be a remedy for customers if the appeal by OCC and the Industrial Energy Users-Ohio ("IEU") is successful. Otherwise, customers will be

¹⁰ Ohio Supreme Court Case No. 12-0187.

¹¹ *In the Matter of the Application of Columbus S. Power Co.*, Case No. 08-917-EL-SSO et al. ("ESP I"), Order on Remand (October 3, 2011) ("Remand Order").

harmful and a remedy that exists today may be taken away as the deferral "pot" dwindles down.¹² It would be patently unfair¹³ for the Commission to deprive customers of an adequate remedy, especially when these same customers paid \$63 million in retroactive rates and were given no refund of those unlawful collections because the rates had expired.¹⁴ Additionally, collecting the rider subject to refund will not unduly harm the Company, and is in fact consistent with the PUCO's collection of provider of last resort ("POLR") revenues subject to refund during the remand hearing.¹⁵

Beyond these fundamental issues there are also several problems with the Applications themselves. First, the Company proposes to collect the charges one year longer than the approved timeframe for collecting deferrals allowed by the Commission's ESP 1 Order.¹⁶ Extending the collection out for one year would unlawfully add approximately \$43 million to the carrying costs that customers would pay assuming an interest rate of 11.15%.¹⁷ The Commission should only allow the Company to collect deferrals through the Rider no later than January 1, 2018, the time period approved in the Commission's ESP 1 Order.

Second, in order to reduce the carrying charges that customers will pay, the Commission should calculate carrying costs using the Company's long-term cost of debt instead of the Company's higher weighted average cost of capital ("WACC") and should

¹² OCC's appeal seeks a reduction of the deferrals by \$368 million plus interest.

¹³ See *In re: Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655 ("ESP 1 Appeal Decision"), ¶ 17 (where the Court recognized the "apparent unfairness" of a no-refund rule, applied to the \$63 million in unlawful retroactive charges).

¹⁴ See *id.*, ¶¶ 15-21.

¹⁵ See *ESP 1*, Entry (May 25, 2011).

¹⁶ *ESP 1*, Opinion and Order (March 18, 2009).

¹⁷ See OCC Attachment 2.

calculate the charges on a net of tax basis. If the Commission takes these actions, it will save the Company's customers millions of dollars in carrying costs and reduce their monthly electricity bills at a time when many consumers are still struggling to make ends meet. This would be a good step toward fulfilling the Commission's duties under the law to ensure reasonably priced electricity for Ohio customers, a policy of the State of Ohio. See R.C. 4928.02(A).

Third, the Commission should order the Company to refund the over-collection of \$3,896,041 in deferred fuel charges for CSP customers as of December 31, 2011, plus accrued interest calculated at the same interest rates that will be allowed for the Companies, as soon as possible. The Company's proposal to return the over-collection in its March 2012 fuel adjustment clause, without interest payment, is not fair to CSP's customers, who over-paid for fuel from 2009-2011. Doing so would be consistent with the Commission's directive in the Remand Order to return funds (POLR) collected from customers, with interest (at a rate equal to the Company's long term debt) within the next billing cycle following the order.¹⁸

II. DISCUSSION

The outcomes of other proceedings have a direct bearing on whether customers should have to pay the charges the Company is requesting to collect from customers through the Rider. Those cases are the pending Fuel Adjustment Clause ("FAC") audit proceedings and the appeals of OCC and IEU from the Remand proceeding.

The pending fuel adjustment clause proceedings were initiated to examine the prudence and accounting of the Company's fuel costs incurred during the first ESP term.

¹⁸ Remand Order at 34.

These are the proceedings which the PUCO insisted upon as a condition for approving the phase-in rates.

The OCC's and IEU's appeal of the Commission's Remand Order seek to return to customers the revenues from POLR charges the PUCO found the Company failed to prove as "reasonable and lawful" under its electric security plan.¹⁹ The Commission must take those cases into full account in determining the rates to be paid under the phase-in recovery rider. The only way it can do so is to require the rider to be collected subject to refund and/or reconciliation or true up.

A. The Commission Cannot Approve The Collection Of The Rider Because It Is Based On ESP Rates That Were Not Established In Compliance With R.C. 4928.143 And A Phase-In Plan That Is Not Just And Reasonable Under R.C. 4928.144.

The deferral balance at the end of December 2011 is the basis (or the amortization principal) to charge customers increased rates under the Rider. But the Commission must first determine whether the Company has borne the burden of proving that the charges are reasonable and lawful under R.C. 4928.143(B)(2)(a). The Commission must determine as well whether the balance of deferred fuel costs and its collection amount to a just and reasonable phase-in under R.C. 4928.144.

The balance of the deferred fuel costs that the Company seeks to collect from its customers has been overstated. This is because the phase-in rates which directly drive the deferred balance included all authorized ESP rate increases, including rates for POLR. The deferrals thus have been overstated by POLR collections on a dollar-by-

¹⁹ Remand Order at 37.

dollar basis. And the PUCO found that the Company had not demonstrated that its POLR charges requested in the ESP were reasonable and lawful.²⁰

Moreover, the PUCO cannot by law approve the collection of the deferred fuel costs unless the phase-in plan which created the deferrals is found to be “just and reasonable.”²¹ It is axiomatic that if the rates established under R.C. 4928.143 are not found to be reasonable and lawful, then the phase-in plan implementing those rates cannot be “just and reasonable” as required under R.C. 4928.144.

While the Commission cannot adjust the phase-in rates at this time, it must remedy the unlawfulness of the phase-in plan. It must do so to bring all remaining elements of the phase-in plan into compliance with R.C. 4928.144. It must also do so to fulfill its responsibilities under R.C. 4928.02(A) to ensure “reasonably priced retail electric service.”

Accordingly, to get to the base level of deferrals that could lawfully be included in the phase-in recovery rider, the Commission should reduce the unamortized balance of deferrals by \$368 million, plus carrying charges, to account for the unlawful embedded costs of the deferrals that have accrued from 2009-2011. On a going forward basis, with such a reduced unamortized balance, the \$279 million in carrying charges would also be reduced. Only then is there an appropriate starting base level for the rider to be collected from customers. That base level for the rider itself would necessarily have to be collected subject to refund and/or reconciliation or true up, pending the various fuel proceedings that have not concluded to date.

²⁰ Remand Order at 37.

²¹ R.C. 4928.144.

B. The Company Must Meet Its Burden Of Proving That The Fuel Costs Were "Prudently Incurred" Costs Of Fuel Used To Generate Electricity Supplied Under The Offer, As Required By R.C. 4928.143(B)(2)(A).

In the ESP 1 Order, the Commission ordered the establishment of a FAC "with quarterly adjustments as proposed by the Companies, as well as an annual prudence and accounting review recommended by Staff..."²² Thus, the annual FAC Audits for the fuel-related costs the Company incurred in 2009, 2010, and 2011 are an essential and integral part of the fuel adjustment mechanism approved in the Company's first ESP. Indeed they are the only way that the Commission can determine whether the fuel costs were prudently incurred and thus allowed to be collected under R.C. 4928.143(B)(2)(a).

There is no presumption that all fuel-related costs sought to be included in the Rider were prudently incurred and reasonable. In fact, the Company has the burden to prove these fuel costs were prudently incurred costs of fuel used to generate electricity supplied under the standard service offer, in order to comply with R.C. 4928.143(B)(2)(a).

If there are adjustments or disallowances for the fuel costs and associated carrying charges, as ordered by the Commission based on FAC audits, they must be fully reflected in the rates charged through the Rider. Otherwise, the Company's customers will be overpaying for fuel-related costs and associated carrying charges. Additionally, the charges will be unlawful under R.C. 4928.143(B)(2)(a). In such a case the Commission, as a creature of statute,²³ has no authority to approve their collection from customers.

²² ESP 1 Order at 15.

²³ See e.g. *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535 (1993).

The 2009 FAC audit has been completed and the Commission issued an order on January 23, 2012. OCC and other parties filed applications for rehearing on February 22, 2012. The Commission granted the requests for rehearing on March 21, 2012 for further consideration, but has not made a final determination in that case.

The 2010 FAC audit report was filed by the auditors on May 26, 2011 and this case is pending before the Commission.²⁴ The auditors for the 2011 FAC audit have been selected,²⁵ and it is expected that the 2011 FAC audit report will be filed in May 2012 similar to the schedules of the 2009 and 2010 FAC audit proceedings.

The adjustments that may result from the Commission's decisions on the three FAC annual audits should be fully accounted for in the Rider. In the 2009 FAC audit proceeding, the Commission ordered specific and substantial reductions of OPC's 2009 fuel costs.²⁶ In addition, the Commission ordered that these adjustments "should be credited against OP's FAC under-recovery namely the portion of the \$30 million 2008 lump sum payment not already credited to OP ratepayers as well as the \$41 million value of the West Virginia coal reserve that AEP booked when the Settlement Agreement was executed."²⁷ Further, the Commission directed the Company "to hire an auditor specifically to examine the value of the West Virginia coal reserve and to make a recommendation to the Commission as to whether the increased value, if any above the \$41 million already required to be credited against OP's under-recovery, should accrue to

²⁴ Case Nos. 10-268-EL-FAC, 10-269-EL-FAC, 10-870-EL-FAC, 10-871-EL-FAC, 10-1286-EL-FAC, and 10-1288-EL-FAC.

²⁵ See Case No. 09-872-EL-FAC, et al., Entry (January 25, 2011) at 2.

²⁶ 2009 FAC Audit Order at 12-14.

²⁷ Id. at 12.

OP ratepayers beyond the value of the reserve that AEPSC booked under the Settlement Agreement.”²⁸

As a result of the 2009 FAC Audit Order, there are substantial reductions to the FAC deferral balance as recorded by the Company. And there may be increased value over and above the \$41 million credited to OP’s fuel under-recovery from the West Virginia coal reserve. Customers of OP should receive the full benefit of such increased value. In other words, any additional value over and above the \$41 million credited should go to further reduce the substantial fuel deferral balance.

While there is no revised value for the West Virginia coal reserve at this time, a reduction of \$150 million to \$250 million in FAC deferral balance solely as a result of the 2009 FAC audit, could be a possible outcome. For discussion purposes, OCC has calculated the impact such a reduction would have on the carrying costs associated with the fuel deferrals (and on the customers that would be asked to pay them), and has included the calculations as Attachment 1 to these Comments.

Assuming a seven-year amortization period and an interest rate of 11.15%, both proposed by the Company, a \$150 million reduction in the fuel deferral balance would reduce the total carrying charges over the amortization period by \$67 million. The monthly collection from all of OPC’s retail customers will be reduced from \$10.8 million to \$8.2 million. A \$250 million reduction in the FAC deferral balance can reduce the total carrying charge over the amortization period by \$111 million, and reduce the monthly collection by \$4.3 million from customers.

²⁸ Id.

These calculations are made to point out the fact that the FAC deferral balance could be greatly affected by a revaluing of the West Virginia coal reserve. And this is a revaluing that was specifically ordered by the PUCO. As this is but one of several significant reductions pending to the FAC deferral balance it is essential that any rider approved by the Commission is approved subject to refund and/or reconciliation or true up. This is because the value of the deferrals and the carrying costs scheduled to be collected will be greatly affected by the adjustments that are likely to occur. For this reason, the Commission must explicitly rule that any Rider, set in this proceeding, is subject to refund and/or reconciliation or true up.

C. To Avoid An Inequitable Result That Could Harm Consumers, The Commission Should Make Collection Of The Rider Subject To Refund.

In order to protect consumers, the Commission should collect the rider, at a reduced level taking into account the \$368 million plus offset, subject to refund and or reconciliation or true up, pending the outcome of the FAC audits. Otherwise, customers may be forced to pay unlawful and unreasonable rates that may later be proven to be unreasonable and unlawful.

The Commission has, in the past, ordered utility rates to be subject to refund, and the Supreme Court has approved such measures. In 1983, for example, the Commission determined that a portion of the allowance related to Columbus & Southern Ohio Electric Company's construction work in progress for the Zimmer plant would be collected subject to refund to customers.²⁹ After the Commission's action was upheld on appeal,³⁰

²⁹ *In re Columbus & Southern Ohio Electric Co.*, Case No. 81-1058-EL-AIR, Entry (November 17, 1982).

³⁰ *Columbus & Southern Ohio Electric Co. v. Pub. Util. Comm.* (1984), 10 Ohio St.3d 12.

the Commission ordered the utility to refund approximately \$4.5 million to its customers.³¹ The Commission ordered the collection to be subject to refund in order to protect customers in the event of a later decision that the utility was collecting more from customers than warranted by law, rule, or reason.

A more recent example of the Commission collecting rates subject to refund was in the Remand proceeding. In the ESP 1 Appeal, the Ohio Supreme Court determined that the POLR rates approved in the Commission ESP 1 Order were not supported by record evidence, and remanded that issue to the PUCO for further consideration.³² There, after the Court remanded the POLR issue (and the environmental carrying charges) to the PUCO, OCC and others requested that the PUCO either stay the collections of the POLR charge, or collect the charge subject to refund.³³ The PUCO, though first directing the Company to remove the rates from tariffs,³⁴ subsequently ordered the charges collected subject to refund.³⁵

The Commission can act now to protect consumers from further harm while the FAC audits are underway. The Commission can protect consumers by only allowing a reduced base level rider to be collected, explicitly subject to refund and/or reconciliation or true-up. This will allow the Commission to subsequently adjust the level of the rider, consistent with its findings in the audit proceedings.

³¹ Case No. 81-1058-EL-AIR, Order on Rehearing (May 1, 1984).

³² ESP 1 Appeal, ¶ 24.

³³ Case No. 08-917-EL-SSO (Remand) (Apr. 26, 2012).

³⁴ Case No. 08-917-EL-SSO, Entry (May 4, 2012).

³⁵ Case No. 08-917-EL-SSO, Entry (May 25, 2012).

D. If The Commission Does Not Reduce The Rider For \$368 Million (Plus Carrying Charges) Of Unlawful Charges, Then It Should Only Allow Collection Of The Rider Subject To Refund.

On April 19, 2011, the Ohio Supreme Court issued a ruling on the OCC and IEU appeals from this Commission's ESP 1 Order. The Court reversed the PUCO on three grounds: (1) the Commission had engaged in retroactive ratemaking by allowing the Company to collect revenues lost due to regulatory delay³⁶; (2) there was no evidence that the POLR charges were cost based³⁷; and (3) there was no statutory authorization for allowing the Company to collect carrying charges on environmental investment made before January 1, 2009.³⁸ Two of these issues – POLR charges and carrying charges on environmental investment – were remanded to the Commission.³⁹

After conducting an evidentiary hearing, the Commission issued its Remand Order on October 3, 2011. The Commission concluded that, although given the full opportunity to present evidence, the Company failed to provide any evidence of its actual POLR costs.⁴⁰ The Commission directed the Company to refund the POLR charges that were collected subject to refund since June 2011, plus interest. Specifically, the Company was ordered to apply that amount to any deferrals in the fuel adjustment accounts of OPC and CSP as of the date of the Remand Order, with the remaining

³⁶ *ESP 1 Appeal Decision*, ¶¶ 9-11.

³⁷ *Id.*, ¶¶ 25-29.

³⁸ *Id.*, ¶¶ 32-35.

³⁹ *Id.*, ¶¶ 30, 35.

⁴⁰ Remand Order at 18-24.

balance credited to customers beginning in November 2011.⁴¹ The PUCO also ordered that the interest rate would be equal to the Company's long-term cost of debt.⁴²

With respect to the \$368 million (plus carrying charges) of POLR charges collected from April 2009 through May 2011, however, the Commission declined to apply that POLR revenue to offset the deferrals, as requested by OCC and IEU. The Commission concluded that such a proposed adjustment "would be tantamount to unlawful retroactive ratemaking."⁴³ The Commission noted that it "cannot order a prospective adjustment to account for past rates that have already been collected from customers and subsequently found to be unjustified."⁴⁴

On December 14, 2011, the Commission denied a joint application for rehearing filed by OCC and Ohio Partners for Affordable Energy, and a separate application for rehearing filed by IEU. On February 1, 2012, IEU filed a Notice of Appeal of the Remand Order, docketed at the Supreme Court of Ohio as Case No. 12-187. On February 10, 2012, OCC also filed a Notice of Appeal of the Remand Order at the Supreme Court of Ohio in the same docket.

The unlawful charges the appeal seeks to remedy are a component of the ESP 1 rates that the Company now seeks to collect through the Rider in this proceeding. The ESP 1 rates can be properly described as residual rates because they were created through deferral accounting that was permitted in order to moderate or phase-in the ESP rate increases. The deferral accounting approved in ESP 1 allowed regulatory assets to be created in order to

⁴¹ Id at 38.

⁴² Id. at 34.

⁴³ Id. at 35-36.

⁴⁴ Id. at 36.

maintain “capped” ESP 1 rates for a three-year period. This is because the “capped” ESP 1 rates consisted of all elements of the Commission-approved ESP 1,⁴⁵ including non-fuel elements such as the unjustified POLR charges. Thus, on a dollar-for-dollar basis, the deferred fuel cost balances were overvalued by the approximately \$368 million (plus carrying charges) of unjustified POLR charges collected from customers from April 2009 through May 2011.

These are the very same deferrals which the Company now seeks to collect from customers through its Rider in this proceeding. As argued earlier, the Commission should reduce the unamortized balance of the deferrals by \$368 million plus carrying charges, in order to back out the unlawful effects of the POLR collections. If the Commission fails to do so, it should require the collections under the Rider to be made, subject to refund. This will provide a remedy for customers should the Court find for the appellants.

E. The Company’s Proposed Amortization Schedule Does Not Comply With The ESP 1 Order, And The Commission Should Require A Shorter Period For Collection Of The Deferred Fuel Costs Through The Rider To Help Reduce Carrying Costs.

In the ESP 1 Order, the Commission directed that “the collection of any deferrals, with carrying costs, created by the phase-in that are remaining at the end of the ESP term shall occur from 2012 to 2018 as necessary to recover the actual fuel expenses incurred plus carrying costs.”⁴⁶ The timeframe was recommended by the Company.⁴⁷

The Company’s proposed amortization schedule, however, covers a timeframe from 2012 through 2018. This will add another twelve months of carrying costs, costs

⁴⁵ There were ESP provisions that were not considered part of the rate cap. These provisions included distribution base rate increases, the transmission cost recovery rider and future adjustments to the energy efficiency/peak demand rider. See ESP 1. Entry on Rehearing (July 23, 2009) at 9.

⁴⁶ ESP 1 Order at 23 (emphasis added).

⁴⁷ See *id.* at 20.

which will likely be collected from customers. Thus, the Company's proposed schedule for collecting deferred fuel costs does not comply with the ESP 1 Order. The additional year of amortization unnecessarily adds carrying costs that customers will be asked to pay through the unavoidable rider.

Further, the ESP 1 Order does not require that the Rider must be in effect for the entire six-year period from 2012 to 2018. Although the ESP 1 Order established the 2012 to 2018 timeframe for collecting the deferrals, that timeframe was qualified by the phrase "as necessary to recover the actual fuel expenses incurred plus carrying costs." The Order thus provides only that the Rider exist for as long as necessary to collect the deferred fuel costs, but must end by 2018. The Commission is not required to set a collection schedule that goes the full six years mentioned in the ESP 1 Order.

The Commission should order a shorter timeframe for the Company to collect the deferred fuel costs through the Rider. As OCC and others noted in the ESP 1 case, collecting deferrals over a longer timeframe increases the carrying costs that customers will pay.⁴⁸

The Company has presented a collection schedule that is heavily laden with carrying costs. In its Applications, the Company set out an 84-month amortization schedule, starting on February 1, 2012 and ending on January 1, 2019.⁴⁹ The cumulative carrying charges for this schedule are \$279,441,240.⁵⁰ Adding these cumulative carrying charges to the deferral balance of \$628,073,325 would mean that the Company's OPC

⁴⁸ See *ESP 1*, Initial Post-Hearing Brief of The Ohio Consumer and Environmental Advocates (December 30, 2008) at 87-90.

⁴⁹ Application, Exhibit A.

⁵⁰ *Id.* at 2.

customers would pay more than \$907,000,000 for the fuel deferrals in the seven years of the collection plan – thirty percent of which would be carrying charges.

A shorter collection timeframe will ultimately save customers many millions of dollars. Specifically, OCC estimates that, using the Companies' proposed interest rate of 11.15%, a six-year amortization period (as ordered in the ESP 1 decision), as compared to the seven-year amortization proposed by the Companies, may save customers about \$43 million in carrying charges over the amortization period. A five-year amortization period and using the 11.15% interest rate, in comparison to the seven-year amortization, may save customers \$85 million in total carrying charges.⁵¹

A shorter collection timeframe may mean that the Company's customers would pay a slightly higher rate than the Company proposes if the same interest rates were used, as shown in Attachment 2 to these Comments. Using the same assumptions as in the Applications, the monthly collection for a six-year amortization period is about \$1.2 million more than the monthly collection of a seven-year amortization period. Similarly, the increase in monthly collection is about \$2.9 million if a five-year amortization period is used instead of a seven-year amortization period. While there would be higher monthly charges under a shorter schedule, the overall, costs to consumers would be less as consumers would save millions of dollars in carrying charges.

As discussed below, a shorter collection timeframe in combination with a reasonable carrying charge rate (based on the cost of long-term debt) will not only save customers many millions dollars in carrying charges but also may lower the monthly bills

⁵¹ See Attachment 2.

of the customers. The Commission should shorten the timeframe for collection of the deferred fuel costs under the Rider.

F. Carrying Charges For The Company's Deferred Fuel Costs Should Be Calculated At The Company's Long-Term Cost Of Debt Instead Of Its Much Higher Weighted Average Cost Of Capital, And The Deferrals Should Be Reduced To Reflect Accumulated Deferred Income Taxes.

The Commission should adjust the Rider to account for two corrections to the collection mechanism proposed by the Company. First, the Commission should order that once collection of the Rider begins from customers, the carrying charges on the deferrals should be reduced to the Company's long-term cost of debt, rather than the WACC. Consistent with PUCO precedent, once deferral amortization has begun, it is appropriate to use a carrying charge based on long-term cost of debt.⁵² This reflects the fact that once the deferral collection has begun, the risk of non-collection is significantly lessened, making a lower cost of capital (long-term cost of debt) more appropriate.

OCC has calculated carrying charges based on OPC's cost of long-term debt – 5.27% – (decided in the most recent Company distribution rate case⁵³) instead of the 11.15% WACC rate.⁵⁴ OCC estimates that, by using OPC's cost of long-term debt, the total carrying cost to customers may be reduced by about \$ 174 million over the six-year amortization period approved by the Commission (and \$155 million over the seven-year amortization period proposed by the Company), for an initial amortization balance of \$628,073,325.

⁵² *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA. Opinion and Order at 24 (May 25, 2011).

⁵³ PUCO Case Nos. 11-351-EL-AIR. et al.

⁵⁴ See Attachment 3 to these Comments.

Second, the carrying costs included in the Rider should be calculated with a reduction for accumulated deferred income tax. During the deferral period, the balance on which the carrying charges are accrued should be reduced by the applicable deferred taxes. The deferred expenses create a deferred tax obligation that reduces a utility's current tax expense. The Company will only need to rely on short-term debt borrowed from the capital market to support the net of tax balance of deferred expenses until the expense is collected from customers. If the Company is permitted to accrue carrying charges on the gross-of-tax, and collect that from customers, it will be over-collecting the actual carrying charges of these fuel deferral balances.

Restricting the carrying charges to a net of tax basis is consistent with the PUCO's ruling on this issue in the FirstEnergy standard service offer case.⁵⁵ There, the Commission accepted arguments by OCC and the PUCO Staff, finding that the calculation of carrying charges on a net of tax basis is in accordance with "sound ratemaking theory" as well as Commission precedent.⁵⁶ The Commission should honor its precedent and rule in this proceeding, as it has in the past that carrying charges should be calculated on a net of tax basis.

G. The Over-Collection Of CSP's Fuel Costs Should Be Returned With Interest To CSP's Customers As Soon As Possible.

As noted above, the Company estimated a negative balance (i.e., an over-collection) of \$3,896,041 in deferred fuel charges for CSP customers as of December 31,

⁵⁵ *In re FirstEnergy ESP Case*, Case No. 08-935-EL-SSO, Opinion and Order (December 19, 2008).

⁵⁶ *Id.* at 58, citing *Cleveland Electric Illuminating Co.*, Case No. 83-205-EL-AAM, Entry (February 17, 1988) (ordering carrying charges for Perry nuclear power plant to be net of taxes) and *In re Cleveland Electric Illuminating Co.*, Case No. 92-713-EL-AAM, Entry (December 17, 1992) (ordering carrying charges on deferred program costs to be on a net of tax basis).

2011.⁵⁷ The Company, however, does not seek to refund this amount to CSP customers in this proceeding, but instead stated that it intends to return the over-collection in its March 2012 fuel adjustment clause case.⁵⁸ This approach is unfair to CSP's customers.

This over-collection should be returned to customers, with interest, as soon as possible. The Company's customers, including those served by CSP, are required to pay a very high carrying charge rate (i.e., the WACC) to the Company if there was an under-collection of fuel costs. It is only fair that if fuel costs are over-collected, the Company's customers (including those served by CSP) be compensated at the same interest rates approved for the Company. Indeed the Commission came to this very conclusion in the Remand Order. There, when it ordered a portion of the POLR charges to be returned, it required the Company to include interest at a rate equal to the Companies' long-term cost of debt.⁵⁹

III. CONCLUSION

In this proceeding, the Company seeks to collect charges from customers that are based on ESP rates that were not established in compliance with R.C. 4928.143. Additionally, the phase-in plan that produced these rates is not just and reasonable as required under R.C. 4928.144.

In order to remedy this unlawfulness, the Commission should protect customers by reducing the unamortized deferred balance by unsubstantiated POLR collections that are embedded in the deferral balance —amounting to an overstatement of the balance by

⁵⁷ Applications. Exhibit A at 1.

⁵⁸ Id. at 3.

⁵⁹ Case No. 08-917-EL-SSO. Order on Remand at 34 (Dec. 14, 2011).

\$368 million. Additionally the deferral balance should be reduced by carrying charges accrued on the deferrals pertaining to a \$368 million overstatement. This would then provide the Company with a base level rider that could be implemented, subject to refund and/or reconciliation and true up.

However, if this Commission declines to make such adjustments, it should nonetheless order the rider collected be collected subject to refund. This will allow subsequent adjustments to be made, either on the basis of pending fuel audits, or on the basis of a Supreme Court reversal.

In addition, in order to reduce the carrying costs that the Company's customers will be required to pay, the Commission should shorten the amortization timeframe for the deferred fuel costs and calculate carrying charges on a net of tax basis. Also, the carrying charges should be assessed at the Company's long-term cost of debt instead of the higher WACC. The Commission should also order the Company to return the Company's over-collection to customers, with interest, as soon as possible.

Respectfully submitted,

BRUCE J. WESTON

/s/ Maureen R. Grady

Terry L. Etter, Counsel of Record
Maureen R. Grady
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: 614-466-7964
etter@occ.state.oh.us
grady@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 2nd day of April 2012.

/s/ Maureen R. Grady

Maureen R. Grady
Assistant Consumers' Counsel

SERVICE LIST

Matthew J. Satterwhite
Steven T. Nourse
AEP Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
misatterwhite@aep.com
stnourse@aep.com

Thomas Lindgren
Devin Parram
Public Utilities Commission of Ohio
180 E. Broad St., 6th Floor
Columbus, OH 43215
Thomas.lindgren@puc.state.oh.us
Devin.parram@puc.state.oh.us

Colleen L Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
cmooney2@columbus.rr.com

Samuel C. Randazzo
Frank P. Darr
Joseph E. Olikier
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com

Mark A. Whitt
Melissa L. Thompson
Whitt Sturtevant LLP
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, OH 43215
whitt@whitt-sturtevant.com
thompson@whitt-sturtevant.com
Dane Stinson
Bailey Cavaliere LLC
10 West Broad Street, Suite 2100
Columbus, OH 43215
Dane.stinson@baileycavaliere.com

Vincent Parisi
Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, OH 43016
vparisi@igsenergy.com
mwhite@igsenergy.com

Chad A. Endsley
Ohio Farm Bureau Federation
280 North High Street, P.O. Box 182383
Columbus, OH 43218-2383
cendsley@ofbf.org

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

David F. Boehm
Michael L. Kurtz
Jody M. Kyler
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@BKLaw.com
mkurtz@BKLaw.com
jkyler@BKLaw.com

Emma F. Hand
Dan Barnowski
SNR Denton US LLP
1301 K Street, NW
Suite 600, East Tower
Washington, DC 20005
emma.hand@snrdenton.com
dan.barnowski@snrdenton.com

OCC Attachment 1: Estimated Impact of Reduction in Amortization Principal

Amortization Period	Seven Years	Seven Years	Seven Years
Deferral Balance *	\$628,073,325	\$478,073,325	\$378,073,325
Reduction in Deferral Balance **		\$150,000,000	\$250,000,000
Annual Interest Rate ***	11.15%	11.15%	11.15%
Monthly Collection	-\$10,803,745	-\$8,223,534	-\$6,503,393
Differences in Monthly Collection		-\$2,580,211	-\$4,300,352
Annual Collection ****	-\$129,644,938	-\$98,682,406	-\$78,040,717
Total Collection *****	-\$907,514,568	-\$690,776,840	-\$546,285,022
Total Carrying Charges *****	\$279,441,243	\$212,703,515	\$168,211,697
Savings in Carrying Charges		\$66,737,727	\$111,229,546

* : See AEP Ohio PIRR Application (PUCO Case Nos. 11-4920-EL-RDR et al.), Exhibit A, page 1 of 7.

** : OCC's Examples of Possible Deferral Balance Reductions.

*** : See AEP Ohio PIRR Application, page 3.

**** : Monthly Collection X 12.

***** : Annual Collection X Years of Amortization.

*****: Total Collection minus Deferral Balance.

OCC Attachment 2: Estimated Impact of Various Amortization Periods

Amortization Period	Seven Years	Six Years	Five Years
Deferral Balance *	\$628,073,325	\$628,073,325	\$628,073,325
Annual Interest Rate **	11.15%	11.15%	11.15%
Monthly Collection	-\$10,803,745	-\$12,003,107	-\$13,702,867
Differences in Monthly Collection		\$1,199,362	\$2,899,122
Annual Collection ***	-\$129,644,938	-\$144,037,281	-\$164,434,401
Total Collection ****	-\$907,514,568	-\$864,223,685	-\$822,172,005
Total Carrying Charges *****	\$279,441,243	\$236,150,360	\$194,098,680
Savings in Carrying Charges		\$43,290,882	\$85,342,562

* : See AEP Ohio PIRR Application (PUCO Case Nos. 11-4920-EL-RDR et al.), Exhibit A, page 1 of 7.

** : See AEP Ohio PIRR Application, page 3.

*** : Monthly Collection X 12.

**** : Annual Collection X Years of Amortization Period.

*****: Total Collection minus Deferral Balance.

OCC Attachment 3: Estimated Impact of Amortization Interest Rates and Amortization Period

Annual Interest Rate	11.15%*	5.27%**	5.27%**
Deferral Balance ***	\$628,073,325	\$628,073,325	\$628,073,325
Amortization Period (year)	7	7	6
Monthly Collection	-\$10,803,745	-\$8,957,032	-\$10,193,928
Difference in Monthly Collection		-\$1,846,712	-\$609,817
Annual Collection ****	-\$129,644,938	-\$107,484,389	-\$122,327,130
Total Collection *****	-\$907,514,568	-\$752,390,723	-\$733,962,780
Total Carrying Charges *****	\$279,441,243	\$124,317,398	\$105,889,455
Savings in Carrying Charges		\$155,123,844	\$173,551,787

* : See AEP Ohio PIRR Application, page 3.

** : The cost of long-term debt as determined in the most recent AEP Ohio distribution case.

*** : See AEP Ohio PIRR Application (PUCO Case Nos. 11-4920-EL-RDR et al.), Exhibit A, page 1 of 7.

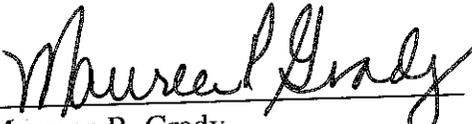
**** : Monthly Collection X 12.

***** : Annual Collection X Years of Amortization.

*****: Total Collection minus Deferral Balance.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Reply Brief on behalf of the Office of the Ohio Consumers' Counsel* has been served upon the below-named counsel via First Class mail, postage prepaid this 9th day of July, 2012.


Maureen R. Grady
Assistant Consumers' Counsel

SERVICE NOTICE

Werner L. Margard, III
John H. Jones
Assistant Attorneys General
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793

Steven T. Nourse
Matthew J. Satterwhite
American Electric Power Service Corp.
1 Riverside Plaza, 29th Fl
Columbus, Ohio 43215

Samuel C. Randazzo
Frank P. Darr
Joseph E. Olikier
McNees Wallace & Nurick LLC
21 East State Street 17th Floor
Columbus, Ohio 43215